

UNITED STATES DEPARTMENT OF DEFENSE

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DEFENSE ADVISORY COMMITTEE ON INVESTIGATION,
PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT
IN THE ARMED FORCES (DAC-IPAD)

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PUBLIC MEETING

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FRIDAY
MARCH 9, 2018

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The Committee convened via teleconference at
11:00 a.m., Martha S. Bashford, Chair, presiding.

PRESENT

MS. MARTHA S. BASHFORD, Chair
THE HONORABLE LEO I. BRISBOIS
MS. KATHLEEN B. CANNON
MS. MARGARET A. GARVIN
THE HONORABLE PAUL W. GRIMM
MS. JENNIFER GENTILE LONG
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
THE HONORABLE REGGIE B. WALTON

ALSO PRESENT

CAPTAIN TAMMY TIDESWELL, JAGC, U.S. NAVY -

Staff Director

COLONEL STEVEN WEIR, JAGC, U.S. ARMY,

Deputy Staff Director

MAJOR ISRAEL KING, Alternate Designated

Federal Official

MS. JULIE K. CARSON, Legislative

Liaison/Attorney Advisor

MS. MEGHAN PETERS, Attorney Advisor

C-O-N-T-E-N-T-S

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Committee Review of and Final Deliberations
on March 2018 DAC-IPAD Report. 5

Public Comment N/A

Adjourned. 75

1 P-R-O-C-E-E-D-I-N-G-S

2 11:02 a.m.

3 MAJ KING: And with that, this public
4 meeting of the DAC-IPAD is officially open.

5 MS. BASHFORD: Thank you, Major King.
6 Good morning to all, I'm Martha Bashford. I
7 would like to welcome the members and everyone in
8 attendance today to the sixth meeting of the
9 Defense Advisory Committee on Investigation,
10 Prosecution, and Defense of Sexual Assault in the
11 Armed Forces, or DAC-IPAD.

12 The Secretary of Defense appointed 16
13 members to the Committee. All of the members are
14 present, with the exception of Major General
15 Anderson, Mr. Kramer, Dean Harrison, Dr. Spohn,
16 and Mr. Markey. Some of them may join us in
17 progress.

18 The DAC-IPAD was created by the
19 Secretary of Defense in accordance with the
20 National Defense Authorization Act for Fiscal
21 Year 2015, as amended.

22 Our mandate is to advise the Secretary

1 of Defense on the investigation, prosecution, and
2 defense of allegations of sexual assault and
3 other sexual misconduct involving members of the
4 Armed Forces.

5 Please note, that today's meeting is
6 being transcribed, and the complete written
7 transcript will be posted on the DAC-IPAD
8 website.

9 At today's meeting, the Committee will
10 conduct final deliberations and vote on the
11 approval of the March 2018 report to the
12 Secretary of Defense and the Armed Services
13 Committee of the House and Senate.

14 Each public meeting of the DAC-IPAD
15 includes a period of time for public comment.
16 The Committee has received no requests for public
17 comment at today's meeting.

18 If a member of the audience would like
19 to comment on an issue before the Committee,
20 please direct your request to the DAC-IPAD Staff
21 Director, Captain Tammy Tideswell.

22 All public comments will be heard at

1 the end of the meeting and at the discretion of
2 the Chair. Written public comments may always be
3 submitted for Committee consideration.

4 Thank you very much for joining us
5 today and before I turn it over to Captain
6 Tideswell, I really want to thank the staff, who
7 have done a heroic job in putting together 14
8 months of our work, deliberations, meetings, and
9 testimony into such a solid report.

10 Captain Tideswell, take it away.

11 CAPT TIDESWELL: Yes, ma'am. So, our
12 Committee members, if you don't mind, what I'd
13 like to do is walk us through the draft report.
14 We'll go comment by comment, identifying which
15 Committee member made the comment and determining
16 whether or not there's any objections and/or
17 discussion.

18 Since we are telephonic, if you
19 wouldn't mind identifying yourself before you
20 speak, that would help greatly with the
21 transcription.

22 So, to begin, I would like to start

1 with Comment 1, which starts off in the Table of
2 Contents. That's a comment from Brigadier
3 General Schwenk, who suggested, maybe it's just
4 me, but I prefer not to pat myself on the back,
5 but instead leave that to others.

6 So, I think this should read:

7 "Overview of DAC-IPAD 2017 Objectives and
8 Actions". If someone other than us thinks one or
9 more of our actions are good enough to be
10 considered accomplishments, well, that's up to
11 them. For us, they're just actions that we took.

12 So, you will note the staff has
13 changed the word "accomplishments" to the word
14 "actions". Do any of the members have an
15 objection to that? There being no objection,
16 we'll move on to the next comment.

17 It's Comment 2. Brigadier General
18 Schwenk edit, consider specifically saying that
19 the Case Review Working Group is doing the case
20 reviews required by statute and addressed on this
21 page in the paragraph number two.

22 So, you will note there's been a

1 change to the verbiage, "statutorily mandated".
2 Are there any objections to that change?

3 Comment 3, Brigadier General Schwenk
4 edit, clarify preferral by saying "preferral of
5 charges". I think that is the first use of
6 preferral.

7 You will note that it now states, "of
8 charges". Any objections from the Committee on
9 that change?

10 Comment 4, General Schwenk edit,
11 clarify and use more legally precise lingo for
12 "administrative or non-judicial action" by saying
13 "administrative action or non-judicial
14 punishment". That terminology appears on Page
15 24, IV, Line 7, and maybe elsewhere.

16 And you will notice, as we make our
17 way through the report, the staff has changed it
18 in all applicable places. Are there any
19 objections to that recommended change?

20 Comment 5, General Schwenk suggested
21 edit. Consider being more specific by ending the
22 sentence, "identify factors that may affect

1 commander's disposition decision and assess
2 whether those decisions were reasonable based
3 solely on the information in the relevant
4 investigative files".

5 And you will note that that language
6 now appears in that sentence. Are there any
7 comments or objections to that recommended
8 change?

9 Moving on to Comment 6. Brigadier
10 General Schwenk edit, since lots of folks will
11 only skim the first seven pages of the report,
12 use the opportunity in the executive summary to
13 answer the, what will the CRWG do next, by
14 saying, the CRWG intends to turn in 2019 to
15 conducting case reviews of preferred cases.

16 And you will note that sentence now
17 addresses that. Are there any objections to that
18 recommended change?

19 Comment 7, Brigadier General Schwenk
20 edit, footnote clarifying what is meant by sexual
21 assault.

22 You will note Footnote 3 on the bottom

1 now outlines the offenses under the UCMJ that are
2 considered to fall under the rubric of sexual
3 assault. Are there any objections to that
4 change?

5 Brigadier General Schwenk Suggested
6 Edit 8. Commander training versus training for
7 commander and senior enlisted leaders. The
8 latter is the correct scope and they should read
9 the same.

10 The recommended changes were made.
11 Are there any objections to those?

12 Comment 9, Brigadier General Schwenk
13 suggested edit. Leave "O-5" to precede
14 "commanders", so it reads: "O-5 commanders and
15 senior enlisted advisors".

16 I think we heard from present and
17 former Servicemembers. If so, we may want to say
18 that.

19 And since we did, that language was
20 added in. Are there any objections to that
21 change?

22 Comment G10, Chair Bashford suggested

1 edit. If all we are saying is, this is what they
2 testified to, is that a finding? Or do we say,
3 at least preliminarily, that this is an
4 overwhelming, beneficial, et cetera, based on the
5 testimony of these groups?

6 So, I think the issue Chair Bashford
7 is raising is sort of a philosophical one, as to
8 what constitutes a finding of fact. As the
9 report was written, typically we tried to use the
10 findings of fact to support the recommendations
11 made. Chair Bashford, do you want to address
12 that?

13 MS. BASHFORD: If that's fine as a
14 finding, I have no problem. I think it's just
15 really a philosophical difference. And I think
16 later down in the document, it's really
17 addressed.

18 CAPT TIDESWELL: Are there any other
19 comments from the Committee?

20 HON. GRIMM: Let me just say -- this is
21 Paul Grimm. My sense is, is that what our Chair
22 has raised is an important distinction here in

1 the report.

2 People testify all the time in
3 proceedings, whether they're regulatory or
4 they're judicial. And it's not unusual to find
5 they're testifying to inconsistent things.

6 So, they can -- the fact that they
7 said it simply means that it was heard by the
8 body. The body then has to decide what to
9 accept, and that's the finding.

10 I don't disagree that what the report
11 referred to as a finding is supported by what we
12 heard.

13 But generally, the distinction is an
14 important distinction because it shows that there
15 was not just information presented, but it was
16 credited by the Committee as a basis for
17 recommendations to be made.

18 CAPT TIDESWELL: So, Judge, with that
19 said, are you comfortable, and are the other
20 Committee members comfortable, with the way it's
21 been represented here, or are there --

22 HON. GRIMM: Yes. I -- yes. I feel

1 like he hasn't -- so I don't have any quarrel
2 with that being described as a finding, but I
3 think it's important, since we'll be doing these
4 reports on an annual basis going forward, that
5 the -- for example, some of our working groups
6 have identified areas of inquiry that need to be
7 pursued from the hard work that they have been
8 doing, in order to get information to make
9 determinations that would be findings that you
10 would justify our making recommendations to the
11 Secretary.

12 And it's important as we go forward to
13 keep in mind that a finding implies that there's
14 some consensus by the Committee that this
15 information that we have received is credited and
16 for that reason, it warrants specific
17 recommendations that we are making.

18 I don't have a quarrel with what has
19 been represented as a finding.

20 CAPT TIDESWELL: Yes, sir. So, it
21 sounds like the Committee is comfortable with the
22 way it's been represented. Unless I hear an

1 objection, I'll go ahead and move on, then, to
2 Comment 11.

3 Which is Brigadier General Schwenk's
4 suggested edit to insert the word "some" before
5 "Servicemember victim", which, quote, I think was
6 the testimony, not that all victims do so. Are
7 there any objections to that recommended change?

8 Comment G12, I believe is similar to
9 the one we discussed in G10, with Chair
10 Bashford's philosophical question. So, unless
11 there's any objections or further discussion,
12 I'll move on to the next comment.

13 Which is Comment 13. It's a Brigadier
14 General Schwenk suggested edit. I think this is
15 fine, but the issue is broader. It's that this
16 misperception can put justice at risk.

17 We were told that defense counsel make
18 the bare assertion of expedited transfer abuse in
19 a specific case, even with nothing to corroborate
20 or support such an assertion, in the hopes that
21 doing so will be enough, with whatever other
22 fairy dust the DC can spread during the case, for

1 members who believe there is widespread expedited
2 transfer abuse to disbelieve the victim and
3 acquit.

4 I'm not sure how best to phrase that,
5 but I believe that was the primary reason for the
6 expressed concern.

7 So, you will see the staff recommended
8 language to address that suggested edit in red.
9 Is the Committee comfortable with that language?
10 Are there any objections?

11 BG SCHWENK: Yes, this is Jim Schwenk.
12 I think that's fine. Thank you.

13 CAPT TIDESWELL: There being no
14 objections, I'll go ahead and move on to G14,
15 which is a comment, I believe it's a Chair
16 Bashford suggested edit. Same as the testimony,
17 the finding, or does the testimony support a
18 finding by us that there is no widespread abuse?

19 MS. BASHFORD: This is Martha. That's
20 sort of the same clarification for 1, 2, 3, and
21 4. I was just questioning whether these are
22 actually findings or testimony. So, I think we

1 can just keep that in mind for the future.

2 CAPT TIDESWELL: Yes, ma'am. We'll go
3 ahead and move on to Comment G15. Chair Bashford
4 suggested edit. Finding 2, that many counsel
5 perceive an abuse of expedited transfers, seems
6 to be contradicted by Finding 4, little to no
7 abuse seen by VLCs, prosecutors.

8 The staff suggests deleting the second
9 sentence of Finding 2 and adding the following
10 phrase at the end of Finding 4, "though they do
11 believe there are some rare cases in which it has
12 been abused by Servicemembers".

13 Are there any discussions on that
14 comment and the recommended change in language?
15 Are there any objections to the recommended
16 change?

17 MS. GARVIN: I'm sorry, this is Meg
18 Garvin. Can you repeat the recommended change?
19 I think I'm not seeing it in my document, which
20 means I've just lost it a little bit.

21 CAPT TIDESWELL: Yes, ma'am. So, Chair
22 Bashford suggested that Finding 2, that many

1 counsel perceive an abuse of expedited transfers,
2 seems to be contradicted by Finding 4, little to
3 no abuse seen by VLCs and prosecutors.

4 So, the staff has suggested deleting
5 the second sentence of Finding 2 and adding the
6 following phrase at the end of Finding 4, "though
7 they do believe there are some rare cases in
8 which it has been abused by Servicemembers".

9 MS. CARSON: This is Julie Carson. If
10 I can just clarify what the issue is? In the
11 Judicial Proceedings Panel report, they commented
12 that counsel perceive there is abuse.

13 In the testimony that the Committee
14 and the Policy Working Group heard from counsel,
15 counsel didn't think there was a pervasive
16 problem of abuse, but they reported that it is a
17 widespread perception among the force at large.

18 So, the contradiction is to say, in
19 agreement with the JPP report, would be saying,
20 in agreement with the notion that it's counsel
21 who perceive the abuse.

22 So, just taking out the JPP reference

1 at all and then, adding in where we talk about,
2 in Finding 4, where we say, there were -- the
3 counsel that testified to the DAC-IPAD did
4 indicate there were some instances of abuse, but
5 not that it's widespread --

6 CAPT TIDESWELL: Very rare.

7 MS. CARSON: -- fixes the problem.
8 That's the distinction, if that makes sense.

9 CAPT TIDESWELL: Are there any
10 objections to the staff recommended language?

11 There being none, we'll move on to
12 Comment G16. Brigadier General Schwenk suggested
13 edit. Insert "only" after "applies" for
14 emphasis. Are there any objections to that
15 recommended change?

16 There is not a recommended change that
17 is on your document, it's under the paragraph
18 called Summary of DAC-IPAD Recommendations, it's
19 on Page 7 of your document.

20 We received an email very recently
21 from the Coast Guard and in their review of the
22 recommendations, you see references to the

1 Secretary of Defense for DoD level family
2 advocacy. Nowhere do we include the Coast Guard
3 in the language.

4 And so, what the staff would like to
5 recommend to the Panel is that we include
6 language that addresses not only the Secretary of
7 Defense, but also includes the Coast Guard.

8 So, for example, in Recommendation 1,
9 the Secretary of Defense, and then we would add
10 in parentheses or additional language that would
11 say, "and in the case of the Coast Guard, the
12 Secretary of the Department in which the Coast
13 Guard is operating in, take action to dispel".

14 So, what we would do in each one of
15 those recommendations is just put verbiage in
16 that would include the Coast Guard.

17 BG SCHWENK: Yes, this is Jim Schwenk.
18 I don't know why we need to say the legal
19 language, why don't we just say, Secretary of
20 Homeland Security?

21 CAPT TIDESWELL: Fair enough, sir.

22 BG SCHWENK: I mean, the Coast Guard's

1 not going anywhere in the life of our Panel.

2 CAPT TIDESWELL: Yes, sir.

3 BG SCHWENK: So, I would say, the
4 Secretary of Defense, comma, the Secretary of
5 Homeland Security, comma, and the Services take
6 actions to dispel the misperception.

7 CAPT TIDESWELL: Are there any
8 objections to including the Coast Guard,
9 specifically to the language to include Secretary
10 of Homeland Security?

11 There being no objections, the staff
12 will go ahead and make the changes to the
13 recommendations. And thank you to our Coast
14 Guard rep who raised the issue.

15 The next recommended change is Comment
16 G17. Ms. Tokash pointed out that Fort Leonard
17 Wood is not in Kansas, it's actually in Missouri.
18 So, thank you very much. Are there any
19 objections to that change?

20 BG SCHWENK: Did that come from the
21 famous expression, we're not in Kansas anymore?

22 (Laughter.)

1 CAPT TIDESWELL: The next comment is
2 G18, from Chair Bashford. The suggested edit is,
3 I would move charging decisions to the front of
4 conviction rates, so it tracks chronologically
5 through charging, conviction, sentence.

6 The recommended change was made in the
7 text. Are there any objections to that change?
8 No objections.

9 The next recommended change is from
10 Ms. Long. There's a suggested edit. I would
11 suggest using the language from Page 18, "because
12 these cases typically involve the most serious
13 sexual assault offense and have garnered the most
14 attention from Congress". The way it reads now
15 is a little minimizing and generalizing.

16 And, Ms. Long, I believe you're on the
17 line. We also noted that you had tracked changes
18 in your document and so, the tracked changes that
19 you see were put in by Ms. Long. Did you want to
20 address this comment, ma'am?

21 MS. LONG: If people think it's
22 necessary. I think the -- hopefully the comment

1 was clear. I made the track changes and that
2 edit before I made it later down. So, once I saw
3 the language later on in the document, I was fine
4 with the second way you described.

5 It was just the first way, it
6 basically said, all contact crimes aren't
7 serious, is the -- was the implication by the
8 language, I thought. And I didn't think that's
9 what we meant to say. I think we were just
10 talking about grading and that's what I thought
11 we were doing.

12 CAPT TIDESWELL: Yes, ma'am. So, would
13 the Committee like to discuss the recommended
14 language, "tend to be graded more seriously"?

15 The only thing I would throw in as the
16 staff director is the term graded isn't something
17 we typically hear in the military, in military
18 practice.

19 MS. LONG: That's why I said I was fine
20 with the way you said it later on. You used
21 different language later on in the document and
22 that language, I thought was more clear than the

1 language that occurred here. And it seemed to be
2 addressing the same, why we selected penetrative
3 crimes.

4 CAPT TIDESWELL: Yes, ma'am. So, I
5 think what I'm hearing is, instead of using the
6 track changes language, we would adopt the
7 language that we see in the bubble comment, where
8 the quotes are, because these cases typically --

9 MS. LONG: That's correct.

10 CAPT TIDESWELL: Yes, ma'am.

11 MS. BASHFORD: This is Chair Bashford.
12 I'm not sure that I would want to put "has
13 garnered the most attention from Congress".

14 I don't -- I wouldn't want this to be
15 like a public opinion, it should just be -- I
16 would just nick that sentence and I would have it
17 as, because these cases typically involve the
18 most serious sexual assault --

19 CAPT TIDESWELL: Chair Bashford, ma'am,
20 I think you're breaking up.

21 MS. BASHFORD: I'm sorry. I would
22 leave out the "and has garnered the most

1 attention from Congress". I don't want it to be
2 like an opinion poll. I would just put a period
3 at the end of, because these cases typically
4 involve the most serious sexual assault offenses.

5 CAPT TIDESWELL: Yes, ma'am. Are there
6 any objections to that approach? Does the
7 Committee --

8 MR. MARKEY: This is Jim Markey. I am
9 on the line, thank you, good morning. I concur.
10 And I read it to mean that one of the reasons
11 we're assembled as a Committee is because
12 Congress -- theoretically, yes, but because we're
13 doing this because Congress is concerned.

14 It actually is because the need
15 addresses overall in the community of the
16 military as well. So, I agree, I concur with
17 leaving that out as well.

18 CAPT TIDESWELL: Thank you, sir. Any
19 other comments? So, with that said, the language
20 will now read: "because these cases typically
21 involve the most serious sexual assault
22 offenses".

1 The next comment is Comment C20.
2 Brigadier General Schwenk suggested edit. The
3 first sentence can easily be read to say that we
4 didn't have the authority to do what the third
5 sentence says we did.

6 Delete both sentences, then change
7 "formed" to "tasked", on Page 16, Chapter 1, II,
8 Line 4, for consistency.

9 You will see the staff made the
10 recommended changes from General Schwenk. Are
11 there any objections to those?

12 The next change is Comment 21.
13 Brigadier General Schwenk suggested edit. For
14 consistency with the prior edit, the word
15 "formed" has been changed to "tasked". Any
16 objections?

17 The next comment is C22. Brigadier
18 General Schwenk suggests, change "a sentence of
19 A" to "a sentence including A" for clarity and
20 accuracy. Any objections to that change?

21 Moving on to Comment T23. The Case
22 Review Working Group added some additional

1 language to this sentence, based on a meeting
2 that they held as a working group on the 6th of
3 March, regarding jurisdiction at time of
4 disposition.

5 They would like to add the language,
6 so the sentence now reads: "The CRWG decided to
7 consider only investigations involving a military
8 subject and an adult victim, where the military
9 had jurisdiction at the time of disposition".

10 Are there any objections to that
11 recommended change?

12 The next comment is Comment 24.
13 Brigadier General Schwenk edit. Delete the no-
14 action bullets and the paragraph that follows.
15 We don't discuss it in any detail.

16 It seems to come out of nowhere and
17 I'm not sure what we gain by highlighting that
18 piece of the bigger puzzle at this point. Let's
19 wait until after we've done some analysis, then
20 decide what to say in next year's report.

21 Are there any objections from the
22 Committee to deleting that language? No

1 objection.

2 The next comment is T25. Brigadier
3 General Schwenk has suggested edits, and you'll
4 note that it applies to all of the Service charts
5 on the next several pages.

6 His suggested edit is, in the charts
7 and tables give each a name and number. Change
8 "reported" (action reported and no action
9 reported, the latter left me wondering whether
10 some reader might wonder whether an action was
11 taken, but not reported) to "taken" to more
12 clearly state what we mean.

13 And the Service table charts would be
14 more helpful if they included the percentages for
15 the two main categories, in what percentage of
16 case was "action taken" and "not taken"?

17 So, you will note that each chart by
18 Service has been given a title. We did not
19 include a table number; we were going to allow
20 the graphic designer to take care of that, when
21 she gets the report in order.

22 And we've added the terms "action

1 taken" and "no action taken", they're embedded in
2 the chart. And you will note, we've also
3 included the requested percentages for each.

4 Are there any objections? And you
5 will note again that the same comment applies to
6 the charts for each one of the Services. So,
7 we're really looking at Page 20 through 23. Does
8 anyone on the Committee have any objections to
9 any of the recommended changes?

10 Okay. There being no objection, the
11 next comment is C30. Brigadier General Schwenk
12 suggested edit. I think it's inevitable that the
13 Case Review Working Group will end up assessing,
14 based solely on the information in the
15 investigative files, all disposition decisions.
16 Anything less will open us up to being incomplete
17 and/or cherry-picking.

18 So, I recommend we say: "When
19 reviewing cases, the CRWG will also make a
20 subjective assessment, based solely on the
21 information in the investigative file, whether
22 the disposition decision in each case was

1 reasonable".

2 You will also note that in that
3 sentence, there were also some recommended
4 changes, Ms. Long suggested, do we really intend
5 to make a subjective conclusion or aren't we
6 going to base it on some agreed upon standard?

7 And so, you will note, there's sort of
8 a combined change of that sentence. The CRWG met
9 on March 6 and the members have also suggested,
10 from that working group, deleting the subjective
11 language and adding the language as noted.

12 I know it looks a little confusing, so
13 allow me to read the sentence, so we make sure
14 everyone understands. The sentence will now
15 read:

16 "When reviewing cases, the CRWG will
17 also make a neutral assessment, based on a
18 detailed analysis of the information in the
19 investigative file, whether the disposition in
20 each case was reasonable".

21 Is there any discussion on those
22 changes?

1 MR. MARKEY: This is Jim Markey. I was
2 curious what a neutral decision is. And I was
3 thinking of an objective assessment, so I don't
4 know if that's something to consider.

5 MS. BASHFORD: This is Martha Bashford.
6 When I saw it in print, I also was not sure what
7 "neutral" adds. I would just take "neutral" out
8 just say "make an assessment".

9 DR. SPOHN: This is Cassia Spohn. I do
10 think "neutral" raises kind of a red flag. I
11 agree with Martha Bashford, that we should just
12 take that out. Or replace it with "objective",
13 one or the other.

14 MS. GARVIN: This is Meg Garvin. I
15 agree with removing any of the descriptors. And
16 other people are going to identify how they think
17 we did it, but I think we, in our language, just
18 say we're doing it.

19 DR. MARKOWITZ: This is Jen Markowitz.
20 I agree with everybody on that.

21 BG SCHWENK: Yes, this is Jim Schwenk.
22 I agree with deleting "neutral".

1 CAPT TIDESWELL: All right. So, if
2 there's no objections, we'll go ahead and delete
3 the word "neutral", it'll read: "an assessment".
4 Are there any objections to that? Are there any
5 other objections to the remaining part of the
6 statement?

7 Okay. The next comment is G33. It's
8 a Ms. Long suggested edit. I apologize for not
9 picking this up sooner. The reason we developed
10 the case complexity chart was not to justify
11 declining cases, but rather to help offices
12 determine the complexity of the cases going
13 forward, so that they could better assess their
14 practices, their conviction rates, and the types
15 of cases they were willing to prosecute.

16 I just want to be clear here, because
17 I don't think it should be used to determine if
18 it was reasonable. If anything, it might point
19 to a gap in training, skills, or perhaps missing
20 support in a jurisdiction. Or, if complex cases
21 are going forward, it can highlight elevated
22 practices.

1 So, with that said, the staff made
2 some recommended changes to the sentence. And I
3 believe at the March 6, 2018 Case Review Working
4 Group, the members also had a recommendation to
5 strike some of the language, and the language has
6 been added as noted.

7 So, the sentence will now read:
8 "Drawing on their collective experience, the Case
9 Review Working Group members also identify case
10 complexity and evidentiary factors that may
11 affect case outcomes", and added these factors to
12 the template.

13 Are there any objections to the
14 sentence as it now reads? And you will note
15 then, the last sentence in that paragraph was
16 deleted, the sentence that started with
17 "consideration of such factors". Are there any
18 objections to that?

19 All right. Moving on to Comment C36.
20 Brigadier General Schwenk suggested edit. This
21 is confusing because the numbers do not add up
22 and the explanation of Footnote 82 isn't real

1 clear, to me anyway, because it doesn't expressly
2 address how the change to the U.S. Coast Guard
3 numbers creates an addition problem.

4 Recommend either changing the numbers
5 in the total sample column, so everything adds
6 up, or adding a sentence to Footnote 82
7 specifically addressing the addition problem.

8 So, the staff recommended change is to
9 take the numbers in the Coast Guard column, to
10 reduce them from two to the number one.

11 And in the footnote, Footnote 83,
12 clarify that as we conduct the review, the Coast
13 Guard number of sample size will include two
14 cases and not just one, because the statisticians
15 have advised that in order to get a solid sample,
16 you need at least two cases.

17 Brigadier General Schwenk, does that
18 address your issues, sir?

19 BG SCHWENK: Yes, that's fine.

20 CAPT TIDESWELL: Are there any
21 objections to that recommended change from the
22 Committee?

1 MS. BASHFORD: This is Marsha Bashford.
2 I'm just confused, because we're saying we're
3 going to take two cases from the Coast Guard, but
4 we seem to have crossed out two and replaced it
5 with one.

6 CAPT TIDESWELL: Yes, ma'am. So, we
7 had one of two approaches. We could either
8 change the numbers in the chart, so that they add
9 up to -- counting the Coast Guard as having two
10 cases or we could change the footnote. So, we
11 could do it either way.

12 In this instance, we decided to
13 decrease the number of Coast Guard cases to one,
14 but we are in fact really going to review two and
15 explain it in the footnote. But it could go
16 either way.

17 The statisticians have just said, you
18 don't want to review one case. In order to be
19 statistically viable, you need to review at least
20 two.

21 BG SCHWENK: So, the -- this is Jim
22 Schwenk. So, the title of the table or chart is

1 Number of Cases Selected for Review by CRWG
2 Members Through Random Selection.

3 So, the random selection gives us one,
4 one, one, one, in the Coast Guard numbers, are
5 all ones. Except that the statisticians came
6 along and said, you really need to do at least
7 two.

8 So, the footnote tells us that,
9 although random selection said one was enough,
10 the statisticians have told us to do two and we
11 intend to do two. Is that right?

12 CAPT TIDESWELL: Yes, sir. That's
13 correct.

14 BG SCHWENK: Okay.

15 CAPT TIDESWELL: Are there any
16 objections to the change or would the Committee
17 prefer to see it another way? Okay.

18 There being no objections, the next
19 comment is Comment 37. Brigadier General Schwenk
20 edit. Change "appropriate" to "reasonable",
21 because that is what we are going to assess. Are
22 there any objections to that change?

1 Comment C38, Brigadier General Schwenk
2 suggested edit. And I'll read all four of the
3 bubble comments, because they're all related.

4 First, C38, as written, this isn't
5 accurate, because their assessments will be based
6 solely on the investigative files, because that
7 is all we have.

8 The CRWG, but not the Committee, has
9 discussed what to do for any cases where we think
10 the disposition decision was not reasonable, and
11 possibilities include asking the Services for any
12 additional info they may have outside the
13 investigative file, that may help us better
14 understand the commander's decision. For
15 example, a trial counsel memo.

16 But we haven't decided, so that is
17 down the road. I think this bullet should read
18 exactly the same as the sentence addressed in the
19 comment above.

20 Ms. Long suggested that we have an
21 edit, do we really intend to make a subjective
22 conclusion or aren't we going to base it on some

1 agreed upon standard?

2 At the March 6 Case Review Working
3 Group meeting, the members suggested deleting the
4 subjective language and adding language as noted.

5 Ms. Long also suggested, I think this
6 needs to be reworded. A subjective assessment
7 doesn't seem helpful. I know we don't want to
8 review cases with 20/20 hindsight, but shouldn't
9 the standard be an objective, reasonable person
10 or, alternatively, an appellate standard?

11 So, the staff has recommended deleting
12 the bullet that starts with "analyze
13 investigations resulting in" and rewriting the
14 bullet to say below.

15 "Make a neutral assessment, based on
16 a detailed analysis of the information in the
17 investigative file, whether the disposition in
18 each case was reasonable."

19 I know we've removed the word
20 "neutral" before, so I would like to throw that
21 also to the Committee. Is that something you
22 want to delete from this particular sub-bullet?

1 MS. BASHFORD: I would say, yes.

2 BG SCHWENK: Yes, this is Jim Schwenk.

3 Yes, the two sentences should read the same.

4 DR. MARKOWITZ: This is Jen Markowitz,
5 I agree.

6 MS. TOKASH: Meghan Tokash, I agree.

7 MS. CANNON: Kathy Cannon, I agree.

8 HON. WALTON: Reggie Walton, I agree.

9 CHIEF MCKINLEY: Rod McKinley, I agree.

10 HON. GRIMM: Paul Grimm, I agree.

11 CAPT TIDESWELL: All right. So, it

12 sounds like -- I'll just double-back. The
13 sentence will now read: "make an assessment,
14 based on a detailed analysis of the information
15 in the investigative file, whether the
16 disposition in each case was reasonable." Are
17 there any objections to that change?

18 Next comment is G42. Suggested edit
19 by Chair Bashford, "to carry out these
20 recommendations" makes it sound like we felt they
21 were mandatory. It should be more that we agreed
22 with the recs and decided to, dot dot dot.

1 So, you will note, this sentence has
2 been changed. "The DAC-IPAD agreed with these
3 recommendations and decided to form the Data
4 Working Group to continue the collection and
5 analysis of data on sexual assault courts-
6 martial."

7 Are there any objections to that
8 recommended change?

9 The next recommended change is G43.
10 Ms. Bashford identified a split infinitive. You
11 will note, instead of saying "thoroughly assess",
12 we now say "assess thoroughly".

13 BG SCHWENK: Yes, that's something up
14 with which we cannot put.

15 (Laughter.)

16 CAPT TIDESWELL: Are there any
17 objections to that recommended change? There
18 being none, we'll move on to the next comment.

19 Which is G44. Chair Bashford
20 suggested edit. A variety? Otherwise, my first
21 thought was different from what?

22 So, you will note, it now states,

1 "commanders have a variety of tools of military
2 justice at their disposal". Are there any
3 objections to that recommended change?

4 The next comment is G45. It's a Ms.
5 Long suggested edit. Are we speaking about just
6 filing of charges? This is a little limiting.
7 We have diversion, special problem solving
8 courts, and restorative justice is starting to be
9 considered.

10 It is true that these would generally
11 not be available in sexual assault cases, but
12 it's a little limiting to lay it out in this way.

13 Ms. Long, is there anything you would
14 like to add?

15 MS. LONG: No, unless people are
16 confused.

17 CAPT TIDESWELL: Yes, ma'am.

18 MS. LONG: It just seemed like the
19 civil remedies available were being not fully
20 laid out in there, making it sound like there was
21 a big distinction between what was possible in
22 military and civilian.

1 MS. BASHFORD: This is Martha. I'm
2 just not sure how often, in this context, you
3 would see diversion or problem solving courts or
4 restorative justice. We certainly don't have
5 that here for sexual assault cases.

6 MS. LONG: I guess my point is, I don't
7 know that we fully know that, in terms of what
8 people do if they downgrade and put things in.
9 But to say -- or maybe they're available, but
10 they're not used in the same way.

11 Versus the way it was written here
12 made it sound like the military had specific non-
13 judicial punishment that we didn't have
14 available, the distinction may be -- maybe it's
15 better to say, the civilian world has these, but
16 doesn't use them for sexual violence cases.

17 Because the way it was written, it
18 sounded like the military had something, a tool
19 that we don't have.

20 MS. BASHFORD: This is Martha again.
21 What if it said, "civilian prosecutors may be
22 often limited to"?

1 (Simultaneous speaking.)

2 MS. LONG: I know it sounds like a
3 crazy distinction, but if we're choosing not to
4 use this, I mean, there's nothing stopping us,
5 it's just that we don't think they're
6 appropriate.

7 Isn't that a distinction, if it's
8 being used in the military and we're not using
9 it? Or do people think that's too combative? I
10 certainly don't want to be combative, I just
11 thought as it was written, it was a little
12 inaccurate.

13 BG SCHWENK: This is Jim Schwenk. It
14 seems to me that this section has the Committee
15 in its annual report going off on a tangent,
16 talking about, the title of the section is The
17 Court-Martial Process.

18 And I wondered why it was there, and
19 I'm sure it's there in an effort to allow a
20 reader who doesn't know anything about it, or
21 very little about the court-martial process, to
22 understand it.

1 So, I don't see, if that's the purpose
2 of this section, why to make a comparison between
3 civilian and military is even necessary. Let's
4 just talk about the military justice process.

5 So, I would just get out and get rid
6 of the whole thing about a significant difference
7 between military and civilian systems is the
8 range of options available. Just delete it and
9 just -- and the same thing with civilian
10 prosecutors are limited.

11 And instead, just say, a military
12 commander, as convening authority, may refer a
13 case to a court-martial or, if the commander
14 determines that's not an appropriate disposition
15 in the case, imposes non-judicial punishment and
16 administrative.

17 Rewrite it just to talk about the
18 military process and dispense with trying to make
19 the comparison with civilians.

20 Because those people -- Jennifer and
21 Martha have already pointed out, we'll go around
22 forever trying to figure out how to say that

1 accurately. And it's not necessary, so I say
2 delete it.

3 MS. BASHFORD: This is Martha. So, I
4 would suggest it read, delete those sentences and
5 then, start up: "a military convening authority
6 may determine that court-martial is an
7 appropriate disposition, but also has other ways
8 to address misconduct." Something like that.

9 BG SCHWENK: Right. That sounds good
10 to me. This is Jim, yes.

11 HON. WALTON: Hi, this is Reggie
12 Walton. I agree with that suggestion.

13 CAPT TIDESWELL: Are there any
14 objections from the Committee to that suggestion?
15 All right. The staff will make the recommended
16 changes. Thank you, Ms. Long.

17 The next comment is G46. Brigadier
18 General Schwenk was kind enough to find a typo,
19 the word "that" has been changed to "than".

20 BG SCHWENK: You know what's amazing to
21 me is it's the only typo I saw reading through
22 this. So, I was really proud of that comment.

1 CAPT TIDESWELL: I cried for days, sir.

2 (Laughter.)

3 CAPT TIDESWELL: The next change or
4 next comment is G47, which does not appear until
5 Page, I believe, 51.

6 BG SCHWENK: Fifty.

7 CAPT TIDESWELL: Fifty, Page 50. It's
8 Comment G47. Brigadier General Schwenk suggested
9 edit. I think something is wrong with at least
10 one part of the two Article 32 charts on Pages
11 51-52.

12 The number that caught my eye was in
13 the chart on Page 52, where it says that in FY16,
14 accused waived the Article 32 preliminary hearing
15 in almost 85 percent of the cases with a
16 penetrative offense.

17 That seems way too high as a practical
18 matter and when I checked the numbers, I couldn't
19 get them to add up to anything close to 85
20 percent.

21 My rough guesstimates were the
22 opposite, about 15-25 percent. I can explain in

1 more detail, but somebody needs to look closely
2 at all the data in these two charts.

3 So, Brigadier General Schwenk was kind
4 enough to work with Mr. Mason and I late
5 yesterday afternoon. Sir, I believe you're
6 comfortable that the numbers are in fact
7 accurate?

8 BG SCHWENK: Yes, I was -- I misread
9 what the comparison was all about. I applied the
10 numbers to the first chart on Article 32s, with
11 the FY2016 total number of cases, 614. And
12 that's not what the chart, the second chart is
13 doing. It's comparing within the smaller
14 universe.

15 So, the numbers are correct. I just
16 thought, okay, if the numbers are correct and I
17 misread it, somebody else may misread it. So,
18 let's change that introductory paragraph to be
19 more explanatory. And take it away, Captain
20 Tideswell.

21 CAPT TIDESWELL: Yes, sir. So, you'll
22 see additional staff language, which is in

1 Comment G48. And as you read through that,
2 General Schwenk recommended that we include
3 percentages with that language, he thought that
4 that might be more explanatory for the reader of
5 the report.

6 So, the language that you're looking
7 at has been slightly changed to include
8 percentages. So, if you will indulge me, I'm
9 going to go ahead and read the new language, to
10 see if there's any objections.

11 So, that paragraph that starts right
12 now with "in Fiscal Year 2016, the percentage of
13 Article 32 hearings waived" will now read, and
14 the whole paragraph will read:

15 "In Fiscal Year 2016, Article 32
16 hearings were waived in 90 cases (70.9 percent)
17 without a pretrial agreement, an increase from 31
18 cases (50.8 percent) in Fiscal Year 2015.

19 Of the 127 cases in Fiscal Year 2016,
20 where the Article 32 hearing was waived, 20 (15.7
21 percent) involved a contact offense and 107 (84.3
22 percent) involved a penetrative offense.

1 Of the Article 32 hearings waived, the
2 percentage involving a contact offense decreased
3 from Fiscal Years 2014, which was at 35.5
4 percent, to 2016's 15.7 percent, while the
5 percentage involving a penetrative offense
6 increased from Fiscal Year 2014's (65.5 percent)
7 to 2016, which was at 84.35 percent.

8 The conviction rate when the Article
9 32 is waived continued to decrease from Fiscal
10 Years 2013 to 2016. In 2013, it was 92.1 percent
11 and in 2016, it was 52 percent."

12 I think this might be a slightly
13 complicated change and I would ask the members to
14 allow the staff to make the change and that, when
15 we send out the final report, that this is one
16 area that you specifically check prior to us
17 going to print, if that's okay.

18 I know it's --

19 BG SCHWENK: Yes, this is Jim Schwenk.
20 I don't think we need all the percentages there
21 for all the numbers, but if you send it out to
22 us, we can look at it.

1 CAPT TIDESWELL: Yes, sir.

2 MS. BASHFORD: This is Martha. I just
3 think, going forward, it's fascinating that where
4 Article 32 is waived, the conviction rate has
5 seen such a substantial decrease. I don't know
6 what that signifies, but I'm interested in
7 finding out in the future.

8 CAPT TIDESWELL: Yes, ma'am. So, if
9 you don't mind, we'll go ahead and we'll make the
10 recommended changes. We'll get rid of the
11 percentages and we'll provide the language to you
12 in the final report and give you just one last
13 check on that.

14 Are there any objections to that
15 approach? The next --

16 HON. GRIMM: There's no objection, but
17 when you do that, can you flag what is our -- I'm
18 guessing there will be a relatively few number in
19 which that's the case and flagging where we need
20 to go, right to that point, would be helpful.

21 CAPT TIDESWELL: Absolutely, will do,
22 sir. The next recommended change is Comment 49.

1 Apologies to Brigadier General Schwenk,
2 apparently we gave him the wrong middle initial
3 and we have deleted the middle initial per his
4 request.

5 BG SCHWENK: My mother thanks you.

6 CAPT TIDESWELL: Yes, sir. Any
7 objections to that?

8 COL WEIR: Yes.

9 (Laughter.)

10 CAPT TIDESWELL: The next recommended
11 change is G50. Brigadier General Schwenk
12 suggested edit. Last sentence, we may want to
13 add that the Policy Working Group also heard from
14 a parent of a Servicemember victim. Very
15 compelling testimony and we mention it later in
16 the report.

17 The staff made the recommended change
18 to the sentence. Are there any objections?

19 The next comment is Comment G51.
20 Brigadier General Schwenk suggested edit. What
21 two issues? We should state them or delete this
22 point, because the draft raises the question and

1 I don't know what they are, since we had four
2 recommendations, not two.

3 You will note that the staff has
4 deleted the language. Are there any objections
5 to that change?

6 The next comment is G52. Brigadier
7 General Schwenk suggested edit. Sub-bullets are
8 likely to raise the question, what did the rest
9 of the respondents answer?

10 For example, the first sub-bullet says
11 that 54 percent liked their new duty station
12 better than their old. But how many liked their
13 old better and how many didn't see much of a
14 difference between the two? I'd like to know and
15 I think our readers may too.

16 So, you will note that the staff went
17 through under the sub-bullets and basically put
18 more explanatory language addressing the issues
19 identified by General Schwenk, sort of doing the
20 comparison before and after. Are there any
21 objections to the additions to those sub-bullets?

22 Next comment is a Brigadier General

1 Schwenk suggested edit, it's G53. Delete the
2 second and third sentence. We will consider this
3 for next year's report, when the Policy Work
4 Group evaluates the RFI data.

5 I'm pretty hard over on this one and
6 the next -- and I believe he's referring to the
7 next comment.

8 So, the staff went ahead and deleted
9 the language as requested by Brigadier General
10 Schwenk. Are there any objections?

11 Comment G54, Brigadier General Schwenk
12 suggested edit. Delete and start on Page 64,
13 Paragraph C. As we note in the first sentence of
14 the third paragraph, the Policy Working Group
15 hasn't had time to look at this data.

16 The Policy Working Group can analyze
17 the data for the next year's report and advise
18 the Committee accordingly.

19 So, what the staff has done is they
20 have removed the language and they've also
21 removed the charts that contain the data
22 following the text. Are there any objections to

1 this?

2 MS. BASHFORD: I'm just looking through
3 -- this is Martha. I'm just looking through it.

4 BG SCHWENK: Yes, this is Jim Schwenk.
5 I thought, Martha, that you wanted to talk about
6 whether to leave, take out any comments, but
7 leave the data in, since we have the data.

8 MS. BASHFORD: It seems to me that if
9 we wait a year, some of this data might be kind
10 of stale. And I think it's really pretty
11 compelling, right? I think we should reference
12 it in some form. It's just hard to --

13 BG SCHWENK: Yes, this is Jim Schwenk.
14 I was mostly concerned about making comments on
15 the data, when we hadn't really analyzed it at a
16 working group level or a DAC-IPAD level.

17 I'm less concerned about putting the
18 data out there. Part of me says, well, we just
19 got the data, we haven't even analyzed it, so
20 we're sort of just throwing it out there without
21 any comments.

22 But the other part of me says, well,

1 we are a Federal Advisory Committee. Any data
2 that we get is available to the public, all
3 they've got to do is ask for it.

4 And this isn't one of those where
5 we're going to put another report out in a month
6 or two; it's another year to go. So, when our
7 illustrious staff director told me that Martha
8 was wondering about the data, I reconsidered.

9 And I don't mind putting the data in
10 here, as long as we don't comment on it, because
11 we haven't had a chance to analyze it and make
12 any decisions. But the data itself, we have it,
13 I guess I'm not as -- it doesn't bother me to put
14 it out.

15 MS. BASHFORD: I would have some
16 comment, but an objective comment, since the Navy
17 provided the SVC/VLC representation to the DAC-
18 IPAD, that's the third sentence in the beginning
19 paragraph that's struck out.

20 And I would leave out the "striking",
21 I would just simply say, "out of 302 requests for
22 expedited transfer, 300, or 99 percent, were

1 represented by VLCs". And then that we believe
2 going forward that tracking this would be very
3 useful.

4 But I do think the fact that 99
5 percent were -- I think that's a sentence that
6 should be in there, without saying that we find
7 it "striking" or anything. It is what it is.

8 CAPT TIDESWELL: Any further discussion
9 from the Committee? If there's no objections,
10 ma'am, we as a staff will go ahead and put
11 appropriate text in there and this will be
12 another item that I will flag, per Judge Grimm's
13 request, when I send the report out for the final
14 review. If that's okay with the Committee.

15 All right. There being no objections,
16 is everyone comfortable that we keep the data in?

17 MS. BASHFORD: Yes.

18 CHIEF MCKINLEY: This is Rod McKinley.
19 I'm comfortable with that.

20 CAPT TIDESWELL: All right. There
21 being no objections, we'll keep the data charts
22 in.

1 The next recommended change is G55.
2 And I believe there were edits on Page 5, at the
3 beginning of the report, that we will now have to
4 make changes to this particular finding to make
5 sure everything matches.

6 So, just so the Committee knows, as
7 we've made changes, the staff will take it upon
8 themselves to make sure we maintain consistency
9 throughout the report.

10 With that noted, the next comment is
11 G56. The staff added this language in response
12 to General Schwenk's request for more information
13 to support Finding 3, which was made at the
14 beginning of the report and the beginning of our
15 review today.

16 And I would also note that we added
17 Footnote 190, which is a cite to a Policy Working
18 Group preparatory session, specifically citing
19 the testimony of Captain Brandon Regan of the
20 U.S. Marine Corps.

21 Are there any objections to that
22 language?

1 The next comment is G57. Brigadier
2 General Schwenk suggested edit. Do we really
3 want to get into officially commenting on which
4 duty locations/stations are better than others?
5 Based on what criteria?

6 I vote not to go there. I'd delete
7 everything having to do with this RFI until the
8 Policy Working Group has time to review and
9 discuss what to publish and what to say about
10 what is published. We appear to be trying to do
11 too much too quickly.

12 So, with that said, are there any
13 objections to that being deleted? No objections.

14 The next comment is G58. Just to note
15 that the findings will be revised based on the
16 edits we made on Page 5, to make sure we have
17 consistency. That's more of a flag than
18 anything.

19 Next comment is G59. Brigadier
20 General Schwenk suggested edit. Can we add any
21 additional info/testimony to support this
22 finding, as it is pretty weakly supported?

1 And that's the information that we
2 provided on Page, I believe it's 65, next to
3 Comment G56. That's the bolstering language that
4 he requested.

5 HON. GRIMM: Where is that bolstering
6 language, please?

7 CAPT TIDESWELL: Yes, sir. It's right
8 next to Comment 56. It starts with, "another
9 concern noted by the JPP". Are there any
10 objections --

11 HON. GRIMM: Could I just make one --

12 CAPT TIDESWELL: Yes, sir.

13 HON. GRIMM: We say that while this is
14 -- on Page 68, top of the page, the blue
15 language, it says "while this is a proper line of
16 questioning", I'd be interested in Judge Walton's
17 view, but it's an appropriate line of questioning
18 when there's a legitimate basis for questioning
19 the motivation of the person making the transfer.

20 It's not a legitimate line of
21 questioning if you're just pulling it out to ask
22 the question, to leave the inference that was

1 there, there's nothing there to do it.

2 So, I don't know, how about saying
3 "may be an appropriate line of questioning in a
4 particular case"? That's something the military
5 judge is supposed to control.

6 The defense attorney is -- the
7 prosecutor is supposed to be trained to know to
8 object and to approach the bench and ask for a
9 proffer if there's a factual basis to support the
10 line of questioning.

11 There are evidentiary tools available
12 to deal with that. But I think it goes too far
13 to imply that it's universally proper line of
14 questioning.

15 MS. GARVIN: This is Meg Garvin. I'm
16 going to concur with that, adding at least "may
17 be" would be useful.

18 HON. GRIMM: It's a loophole fix just
19 to say "may".

20 HON. WALTON: This is Reggie Walton. I
21 agree with that.

22 HON. BRISBOIS: Judge Brisbois, I

1 concur.

2 CAPT TIDESWELL: So, unless there are
3 any objections from the Committee, and I believe
4 we were referring to a sentence that appears very
5 close to G59, just to orient everyone, the
6 sentence will now read:

7 "While this may be a proper line of
8 questioning, it may reinforce the member's
9 perception of widespread abuse of the expedited
10 transfer policy."

11 HON. GRIMM: Thank you.

12 CAPT TIDESWELL: Are there any
13 objections to that language?

14 With that said, I believe the only
15 remaining comment is G61, from Brigadier General
16 Schwenk. I think we should further explain,
17 perhaps by putting something like the following
18 at the end: "And these differences are less
19 favorable to victims."

20 Are there any objections to that
21 change? There being no objection, I think that's
22 the last recommended change to the report.

1 Is there anything else the Committee
2 would like to discussion before I address the
3 transmittal letter?

4 MS. BASHFORD: This is Martha. There
5 are places, I'm sorry, I can't find one right
6 now, I know they are -- for example, on Page 83,
7 when they're talking about people who testified
8 in front of the Policy Working Group.

9 Airman First Class EF, Petty Officer
10 Second Class CC, is that sufficiently anonymized?
11 Petty Officer Third Class JC from the Coast
12 Guard?

13 Is putting their initials with their
14 rank going to really keep them anonymous? I
15 don't know the answer to that, I'm just raising
16 it.

17 MS. CARSON: We can just make it the
18 generic, "a Petty Officer Third Class".

19 CAPT TIDESWELL: Yes, ma'am.

20 MS. BASHFORD: Okay. I would feel more
21 comfortable with that.

22 CAPT TIDESWELL: Are there any

1 objections from the Committee to eliminating the
2 victims who testified, their initials? We'll
3 just go with rank only.

4 MS. BASHFORD: And I'm sorry to do this
5 to you, but it appears as footnotes throughout as
6 well.

7 CAPT TIDESWELL: Yes, ma'am. We'll
8 take care of it, that's easy.

9 MS. BASHFORD: Okay. Thank you.

10 CAPT TIDESWELL: Is there any other
11 discussion, objections, comments on the report
12 itself?

13 MS. PETERS: Ma'am, I have one
14 question. This is Meghan Peters, from the staff.
15 Regarding the language, the new language of
16 Finding 3.

17 The additional language that the
18 Committee just discussed, the second sentence
19 says that "trial defense counsel can use the fact
20 that a victim received an expedited transfer to
21 show a potential motive to fabricate a sexual
22 assault, even with no evidence to corroborate or

1 support such an assertion", and then the finding
2 continues on.

3 Is that phrase, "even with no evidence
4 to corroborate or support such an assertion",
5 something that falls in line with Judge Grimm's
6 concerns about making statements further than we
7 need to go about the nature of the evidence
8 that's subject to cross examination?

9 HON. GRIMM: That's a good point. What
10 we might -- what we have -- what has been
11 reported to us that there have been instances in
12 which that may have happened, without a factual
13 basis to support it.

14 And if that phraseology was used, it
15 does not get into the weeds about when is it or
16 is not appropriate ethically to pursue a line of
17 cross examination if you know that you don't have
18 factual basis for pursuing, because it's a
19 nuanced line that is very fact dependent.

20 But nor, frankly, did we have enough
21 information presented to us to say that in the
22 cases where it was done, that it wasn't a basis

1 to do it.

2 So, if we were to approach it from the
3 description that it was reported that there are
4 cases where it may have been done in instances
5 where there was not a factual basis, it raises an
6 issue of a situation that we've been told occurs.

7 We're not trying to tell the military
8 justice folks how to fix it, but we're saying
9 that that perception reinforces, or may
10 reinforce, the perception widely among commanders
11 and others that this transfer process is being
12 abused, when the evidence presented to us
13 overwhelmingly shows that it is not.

14 It explains a reason why there was a
15 finding that we made without asserting it as if
16 it is factually established. I don't know if
17 that was helpful.

18 CAPT TIDESWELL: So, do we want --

19 MS. BASHFORD: This is Martha.

20 CAPT TIDESWELL: I'm sorry.

21 MS. BASHFORD: I think the factual
22 basis is that the person received a transfer.

1 The cross examination would be as to the
2 motivation. I mean, we see it in civilian
3 prosecutions most often with somebody applying
4 for a U visa.

5 So, the fact is that, yes, they
6 applied for a U visa. And then, that's used to
7 question their motivation for lodging the charge,
8 which is a prerequisite for getting the U visa.

9 So, I would think that you received a
10 transfer, the follow-up -- does that -- did you
11 make the allegation so that you could receive it?
12 I don't know how you would be able to prove that.

13 HON. GRIMM: It's the difference
14 between the way in which you ask the questions.
15 Did you do this in order to get -- just simply to
16 do that? As opposed to asserting, in argument,
17 for example, before the court, or a final
18 argument to the jury, if there was no evidence to
19 support it, that that's what was done.

20 And that's where you get into the
21 mechanics of how a trial is supposed to operate,
22 how a prosecutor is supposed to object if the --

1 if the answer was, yes, I considered that, then
2 they've got evidence and they can make the
3 argument.

4 So, it's likely not to happen unless
5 there was an actual transfer, that's true. It's
6 likely to be an area where asking the question
7 and seeing what the answer is. But if you assert
8 it as, they did this, so you all know why that
9 was done, there's no evidence there, that's where
10 the abuse comes in.

11 CAPT TIDESWELL: So, Chair Bashford,
12 would it be appropriate to just delete the
13 verbiage "even with no evidence to corroborate or
14 support such an assertion"? So, the sentence
15 basically reads:

16 "At trial, defense counsel can use the
17 fact that a victim received an expedited transfer
18 to show a potential motive to fabricate a sexual
19 assault in the hope that doing so will be enough
20 for members who believe there is widespread
21 abuse."

22 MS. BASHFORD: I would just say,

1 instead of "can", I would say "may".

2 HON. GRIMM: I agree with that.

3 CAPT TIDESWELL: "May use"?

4 MS. BASHFORD: Yes.

5 BG SCHWENK: Yes, this is Jim Schwenk.

6 That's fine with me.

7 CAPT TIDESWELL: And then, leave the
8 language in?

9 HON. GRIMM: Yes.

10 MS. BASHFORD: I thought it was fine
11 the way you just read it, except instead of "can
12 use it" I would have said, they "may use it".

13 HON. GRIMM: Right.

14 CAPT TIDESWELL: Yes, ma'am. So,
15 Chair, just to confirm, we would like to delete
16 the language "even with no evidence to
17 corroborate or support such an assertion", take
18 that out?

19 MS. BASHFORD: I would take that out,
20 yes.

21 CAPT TIDESWELL: Are there any
22 objections from the Committee in doing so? Are

1 there any objections to changing the word "can"
2 to "may"? All right. Thank you, Ms. Peters,
3 that was a good catch.

4 Okay. Anything else from the Committee
5 on the report itself? Major King, should we do a
6 roll call real quick, just to confirm that the
7 Committee is approving the report --

8 MAJ KING: Absolutely.

9 CAPT TIDESWELL: -- with the changes as
10 recommended?

11 BG SCHWENK: Hey, I'd like to say one
12 thing. I want to go back to what Chair Bashford
13 said to start off.

14 I thought the Committee did a terrific
15 job of taking a bunch of blank -- I mean, the
16 staff did a terrific job of taking a bunch of
17 blank pieces of paper and a lot of stuff that we
18 did and putting a very compelling, easy to
19 understand piece of paper together as our final
20 report for this year.

21 So, I want to say exactly what she
22 said, congratulations to the members of the staff

1 who did this and thank you so much for all your
2 efforts.

3 MS. BASHFORD: Ditto.

4 CAPT TIDESWELL: Thank you. Thank you,
5 everybody.

6 BG SCHWENK: Yes, I'd like the public
7 record to reflect that. It's an enormously
8 impressive amount of work and the fact that it
9 reads so well and flows so smoothly masks the
10 fact that it was an enormous undertaking. And it
11 really was a first rate job.

12 CAPT TIDESWELL: Chair Bashford, I
13 don't make this comment lightly, but after 30
14 years of service, and please do not tell the Navy
15 on me, this is literally the finest staff I have
16 had the honor of working with. So, thank you to
17 all of them. I so appreciate every one of you.

18 Okay. Ma'am, if you don't mind, I
19 would like to run a real quick roll call on the
20 report to get everybody's approval. And I'll
21 just go name by name. And this is approval of
22 the report with the recommended changes to be

1 made as discussed during this phone call.

2 Chair Bashford, do you approve?

3 MS. BASHFORD: Approve.

4 CAPT TIDESWELL: Judge Brisbois?

5 HON. BRISBOIS: Approve.

6 CAPT TIDESWELL: Ms. Cannon?

7 MS. CANNON: Yes, I approve.

8 CAPT TIDESWELL: Ms. Garvin?

9 MS. GARVIN: Yes.

10 CAPT TIDESWELL: Judge Grimm?

11 HON. GRIMM: I approve.

12 CAPT TIDESWELL: Ms. Long?

13 MS. LONG: I approve.

14 CAPT TIDESWELL: Mr. Markey?

15 MR. MARKEY: I approve.

16 CAPT TIDESWELL: Dr. Markowitz?

17 DR. MARKOWITZ: I approve.

18 CAPT TIDESWELL: Chief McKinley?

19 CHIEF MCKINLEY: Approve.

20 CAPT TIDESWELL: Brigadier General

21 Schwenk?

22 BG SCHWENK: Approve.

1 CAPT TIDESWELL: Dr. Spohn?

2 DR. SPOHN: I approve.

3 CAPT TIDESWELL: Ms. Tokash?

4 MS. TOKASH: I approve.

5 CAPT TIDESWELL: Judge Walton?

6 HON. WALTON: I approve.

7 CAPT TIDESWELL: Have I missed anyone?

8 We have an approved report.

9 Did the Committee have the opportunity
10 to review the transmittal letter and are there
11 any recommended changes, edits, or --

12 HON. WALTON: This is Reggie Walton. My
13 only recommendation is that the second, I guess
14 it's the second sentence of the first paragraph,
15 we indicate either that this is our preliminary
16 impressions or our impressions at this time. We
17 may have different impressions at some point down
18 the line.

19 CAPT TIDESWELL: Yes, sir. Are there
20 any objections to including the word
21 "preliminary"?

22 MS. BASHFORD: I'm still pulling up the

1 transmittal letter, sorry. Yes, that's fine.

2 CAPT TIDESWELL: Yes, ma'am. So, the
3 sentence will now read: "This report summarizes
4 the Committee's preliminary impressions on issues
5 of importance related to the investigation,
6 prosecution, and defense of sexual assault crimes
7 in the military."

8 Do the members concur with the
9 transmittal letter as written? Let me just go
10 down, roll call real quick. Chair Bashford?

11 MS. BASHFORD: Yes.

12 CAPT TIDESWELL: Judge Brisbois?

13 HON. BRISBOIS: Shouldn't the second
14 paragraph say "six public meetings"?

15 CAPT TIDESWELL: Yes, excellent catch.
16 I don't know who that was, but thank you.

17 HON. BRISBOIS: That's Judge Brisbois,
18 sorry.

19 CAPT TIDESWELL: Thank you, sir. We
20 will make the change to "six public meetings".

21 HON. BRISBOIS: Otherwise, yes, I am
22 fine with it.

1 CAPT TIDESWELL: Yes, sir. Ms. Cannon?

2 MS. CANNON: Yes, I'm fine.

3 CAPT TIDESWELL: Ms. Garvin?

4 MS. GARVIN: Yes.

5 CAPT TIDESWELL: Judge Grimm?

6 HON. GRIMM: Yes.

7 CAPT TIDESWELL: Ms. Long?

8 MS. LONG: Yes.

9 CAPT TIDESWELL: Mr. Markey?

10 MR. MARKEY: Yes.

11 CAPT TIDESWELL: Dr. Markowitz?

12 DR. MARKOWITZ: Yes.

13 CAPT TIDESWELL: Chief McKinley?

14 CHIEF MCKINLEY: Yes.

15 CAPT TIDESWELL: Brigadier General

16 Schwenk?

17 BG SCHWENK: Yes.

18 CAPT TIDESWELL: Dr. Spohn?

19 DR. SPOHN: Yes.

20 CAPT TIDESWELL: Ms. Tokash?

21 MS. TOKASH: Yes.

22 CAPT TIDESWELL: Judge Walton?

1 HON. WALTON: Yes.

2 CAPT TIDESWELL: Unless the Committee
3 has other matters to take up, I believe that's
4 the end of the meeting. Is there anything
5 anybody would like to raise?

6 HON. WALTON: This is Reggie Walton.
7 Just a question. Will we -- will you be, when
8 you have the final materials, will you be
9 instructing us to sign and send it back in some
10 fashion?

11 CAPT TIDESWELL: Yes, sir. So, what
12 will happen next is, we'll have about two or
13 three days of downtime, while we wait for the
14 transcript, so we can go back and make sure we're
15 capturing everything properly.

16 We will then send it to our editor,
17 Ms. Falk. Once she's done, it'll go to the
18 graphics designer. So, what you all will see is
19 literally the completed report, to include a
20 blank transmittal letter.

21 And what I will ask you to do is, is
22 to provide me with your okay on the document. I

1 will flag some of the highlighted areas that I
2 would like you to pay particular attention to.

3 And once you're comfortable, I will
4 ask each member to give me the okay to
5 electronically place their signature on the
6 document.

7 HON. WALTON: And you'll do that in a
8 separate communication?

9 CAPT TIDESWELL: Yes, sir.

10 HON. WALTON: Okay, great. That's
11 perfect.

12 CAPT TIDESWELL: And I suspect it's
13 probably going to take us about a week or a week
14 and a half. We're cutting it close, but I think
15 we're still on target, unless the wind blows a
16 lot in Washington and they cancel work.

17 But so far, I think we'll be fine.
18 All right, sir.

19 MAJ KING: And with that, this public
20 meeting of the DAC-IPAD is officially closed.

21 (Whereupon, the above-entitled matter
22 went off the record at 12:15 p.m.)

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