UNITED STATES DEPARTMENT OF DEFENSE

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

PUBLIC MEETING

FRIDAY
SEPTEMBER 7, 2018

The Committee met at One Liberty Center, Suite 150, 875 North Randolph Street, Arlington, Virginia, at 11:00 a.m., Ms. Martha Bashford, Chair, presiding.

PRESENT:

Ms. Martha S. Bashford, Chair*
Hon. Leo I. Brisbois*
The Honorable Paul W. Grimm*
Ms. Jennifer Gentile Long*
Dr. Cassia C. Spohn*
Ms. Meghan A. Tokash*
Hon. Reggie B. Walton*

* denotes a member of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD)
STAFF:

Col. Steven Weir, USA, Staff Director
Maj. Israel King, USAF, Alternate Designated Federal Officer (ADFO)*
Ms. Julie Carson, Deputy Staff Director
Dr. Janice Chayt, Investigator
Ms. Meghan Peters, Attorney-Advisor
Ms. Terri Saunders, Attorney-Advisor
Dr. Alice Falk, Technical Editor
Mr. Chuck Mason, Attorney-Advisor

ALSO PRESENT:

Lt. Col. Mary Catherine Vergona, USA, Service Representative*
Maj. Jane Male, USAF, Service Representative
Mr. James Martinson, USN, Service Representative*
Capt. Vasili Tasikas, USCG, Service Representative*
Maj. Wayne Shew, USMC, Service Representative

*Present via teleconference
C-O-N-T-E-N-T-S

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(11:02 a.m.)

COLONEL WEIR: At this time I'd like to request that the DOF Major King open the public meeting.

MAJOR KING: That sounds like my cue. In that case, the public meeting of the DAC-IPAD is officially open.

CHAIR BASHFORD: Thank you, Major King. Good morning to everybody. I'd like to welcome the members and everyone in attendance today to the 9th meeting of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, or DAC-IPAD.

The Secretary of Defense appointed 16 members, nine of whom are present today, all participating by teleconference. Six members are not able to be here: Kathleen Cannon, Mr. A.J. Kramer, Mr. James Markey, Meg Garvin, Dr. Jenifer Markowitz, and Chief Rodney McKinley.

The DAC-IPAD was created by the
Secretary of Defense and was approved with the
National Defense Authorization Act of Fiscal Year
2015, as amended.

Our mandate is to advise the Secretary
of Defense on the investigation, prosecution, and
defense of allegations of sexual assault and
other sexual misconduct involving members of the
Armed Forces.

Today's meeting is being transcribed.
The written transcript will be posted on DAC-
IPAD's website.

At today's meeting, the Committee will
conduct its final deliberations on Article 140a,
Uniform Code of Military Justice, which was
enacted as part of the Fiscal Year 2017 National

Article 140a requires the Secretary of
Defense set uniform standards and criteria for
managing courts-martial and collecting data on
criminal cases of all the military services, no
later than January 1, 2019.

The Committee plans to make its
recommendation to the Secretary of Defense on this issue based on the Committees expertise related to the investigation, prosecution, and defense of sexual assault, and its review of criminal data collection best practices in the civilian and military justice system.

Each public meeting of the DAC-IPAD includes a period of time for public comments. We have received no request for public comments for today's meeting. If the audience would like to comment on an issue, please direct your requests to the DAC-IPAD Staff Director, Colonel Steven Weir. All public comments will be heard at the end of the meeting and at the discretion of the Chair. Written comments may also be submitted for consideration.

Ms. Peters, would you please begin the deliberation session by explaining the documents we have before us and the comments and edits you have received from the members. Thank you. Take it away.

MS. PETERS: Yes, ma'am. For
reference, this is Meghan Peters and we are
working off of the materials provided to the
members by email on August 30th and by email on
September 6th.

That contains or pertains to a six-
page letter with three enclosures. The version
of the letter that we are working off of contains
the staff's technical edits through the drafting
process, as well as comments and edits that the
staff has received from the members since the
July 20th public meeting.

What the staff has done is
incorporated any additional minor technical edits
from the members, but, specifically, anything
substantive has been added in tracked changes.
And those changes from the members are then
labeled with the member's name in the margin and
sort of in the tracked change comment.

What I suggest we do, Chair Bashford,
is I could begin by reading through the
recommendations that begin on page 2 of the
letter for the Committee's discussion and vote.
CHAIR BASHFORD: That would be great.
Thank you.

MS. PETERS: So on Page 2 of the draft letter, Recommendation 1 reads, "The uniform standards and criteria developed to implement Article 140a, UCMJ should reflect the following best practices for case data collection."

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

B. "Centralized document collection by mandating that all jurisdictions provide the same procedural documents to one military justice data office or organization within DoD.

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

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

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

CHAIR BASHFORD: Great. Is there any discussion, comments about Recommendation No. 1?

BGEN SCHWENK: Yeah, this is Jim Schwenk. I'm happy with Recommendation No. 1. I think it accurately reflects what we decided at the July meeting.

CHAIR BASHFORD: I agree. I guess if there's no other substantive comments, I would
ask that the Committee vote to approve and adopt Recommendation No. 1. Are there any objections to that?

(Chorus of nos.)

CHAIR BASHFORD: Then Recommendation No. 1 has been unanimously adopted by the DAC-IPAD. Ms. Peters, take us away.

MS. PETERS: All right.

Recommendation 1a begins on page 3, not to be confused with the Recommendation 1 that we just read through.

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

CHAIR BASHFORD: This is Martha. My only comments on that is I think it's confusing to have it labeled Recommendation 1a. Could we do 1.1 or some other numbering system?

MS. PETERS: We could make it
Recommendation 2 and just renumber everything that follows. It was because it's closely related to best practices. The staff received this suggestion originally as part of original Recommendation 1 but it appeared to do something different, slightly different, than what was discussed at the July meeting and so we broke it out as a separate recommendation for clarity.

JUDGE GRIMM: This is Paul Grimm. I think our Chair's suggestion makes some sense. If we do it as No. 2, it self-references back to Recommendation 1. So it's not like there's going to be any confusion about what it's modifying. It's just it's easier to have a series of sequentially numbered recommendations.

CHAIR BASHFORD: Other than renumbering it, is there any other comments from anybody on the Committee about the newly renumbered Recommendation 2?

BGEN SCHWENK: Yeah, this is Jim Schwenk. The reason I recommended that is I think it was implied by what we had originally in
Recommendation 1, but I just felt that since it
was a key point that we discussed in July, that
we ought to pull it out and expressly state it so
it's clear. That was my only reasoning for that.

CHAIR BASHFORD: I think it's good.

So can the Committee Members vote to adopt the
newly renumbered recommendation?

MS. FALK: Can I just jump in for a
second?

CHAIR BASHFORD: Of course.

MS. FALK: On a language point. It's
not parallel to the other recommendations. If
you want the language to be similar it should be,
"the source documents referenced should contain."
Is that okay?

MS. PETERS: Yes. Should I read that
back again to the members, just for clarity?

Thank you for the suggestion, Ms. Falk.

MS. CARSON: And that was Alice Falk.

Yes, the technical editor.

MS. PETERS: So the newly labeled
Recommendation 2, at the top of page 3, would
read, "The source documents referenced in DAC-IPAD Recommendation 1 should contain uniformly defined content covering all data elements that DoD decides to collect to meet the requirements of Articles 140a and 146, UCMJ."

   BGEN SCHWENK: Yeah. This is Jim Schwenk, I like that change.

   JUDGE GRIMM:  Agreed.

   CHAIR BASHFORD:  Agreed. So can we then adopt the newly numbered Recommendation 2?

   Are there any further comments or are there any objections to that?

   MS. TOKASH:  No objection.

   MG ANDERSON:  No objection.

   JUDGE WALTON:  No objection.

   MS. LONG:  No objection.

   CHAIR BASHFORD:  Approved. Then Recommendation 2, as modified, has been adopted by the DAC-IPAD. I think that will move us along.

   MS. PETERS:  Okay. Recommendation 3. It reads, "The data produced pursuant to Article
140a, UCMJ should be sufficiently robust to serve as the primary source for the military justice review panel's periodic assessments of the military justice system, which are required by Article 146, UCMJ, and as the sole source of military justice data for all other organizations in DoD and external entities."

CHAIR BASHFORD: Comments, discussion?

MS. PETERS: This is Meghan Peters again. Ma'am, there is a footnote that the staff placed, a footnote 5. Maybe we can work with our technical editor; maybe we shouldn't footnote a recommendation. That might be something, for clarity, that we avoid doing. We could probably place that somewhere else in the letter so that the recommendation doesn't require reading a footnote.

CHAIR BASHFORD: I think that would be clearer.

MS. LONG: Do you need me to address my note? This is Jen Long. I was a little concerned that robust was vague and ill-defined.
And since you had already laid out what data you sought would satisfy "robust," is there a way to reference that again without, now hearing what you just said, without referencing a footnote maybe?

CHAIR BASHFORD: Jennifer, I think we have -- the DAC-IPAD factors are now attached as the third attachment to this, I believe.

MS. PETERS: Yes, that's correct, ma'am.

MS. LONG: Okay. I guess I'm just wondering, should we be referring to that instead of using a term "robust" that isn't defined to talk about the data produced? Should it come from that, or maybe I'm just misunderstanding what "robust" is referring to.

MS. PETERS: By way of explanation, I guess, in the drafting process this was pulling together comments that the Committee wanted to emphasize that 140a should be the preeminent data collection sort of project, the go-to gold standard for data collection. And maybe other
words like comprehensive were used to discuss the data where it says robust here. I think that was just an alternate suggestion.

But that was the idea, to say, do 140a like you know that it has to be used by Article 146, UCMJ assessments.

MS. CARSON: Maybe you could just say -- this is Julie Carson -- it should be sufficient to serve as the primary source. Or just "should serve as the primary source."

CHAIR BASHFORD: I think should serve -- this is Martha -- "should serve as the primary source" makes it pretty clear.

JUDGE GRIMM: If the four factors are integral to achieving the goal of making it sufficiently -- to be sufficient, then I don't know, it certainly wouldn't hurt to include some sort of reference to -- and address each of -- or comply with each of the four DAC-IPAD factors.

They can be -- they don't have to be listed, necessarily, but they then state that, because if this is going to be the document that
you can go to, everyone all up and down the chain
makes decisions on this as to what is happening
and whether it's happening properly, and if
central to that goal is meeting those four
criteria, it certainly wouldn't hurt to reference
them, even if you didn't repeat what those
criteria were because they are identified in
attachments.

CHAIR BASHFORD: I kind of lost track
of that.

MS. PETERS: I think, Judge Grimm, are
you referring to the reference, I think on page 2
in the paragraph above where the recommendation
starts, we have uniform -- well, we have uniform,
thorough, and reliable data, and I think complete
was the fourth factor that hadn't been discussed
in previous meetings.

JUDGE GRIMM: Right. I'm just saying,
because since Ms. Long raised an interesting
point, is that if the four DAC-IPAD factors drive
whether or not the data is complete enough so
that it is the eminent source of data, the gold
standard, if that is the definition of what it requires to be complete, then if you are worried about whether it is ambiguous as to what it needs to be complete or robust or whatever other adjective you want to use, that it would not hurt to reference those factors so that those who would have to design it know, at a minimum, what it would have to contain. That was my only comment.

CHAIR BASHFORD: So would you propose putting it in the recommendation or, again, footnoting, again, referring to Enclosure No. 3?

JUDGE GRIMM: I would have no problem referring to Enclosure No. 3, just so that when we look at that you know, okay, there is a specific place I can go to get further detail on what, at a minimum, this must include.

CHAIR BASHFORD: So, what about if we then re-did Footnote No. 3 again, and the data produced pursuant to Article 140a, UCMJ, and then put the footnote there? So, again, that would sort of modify that that's the data that should
be produced?

JUDGE GRIMM: Right. Ms. Long may have other thoughts on that, but I thought that the point that she raised was a legitimate point.

MS. LONG: No, I'm happy to hear people who have to work around the rules figure out how to best solve this. I just was -- I think you just underscored the point and better articulated it.

I'm concerned that that was a vague term and who would know what that was, what is "robust." So if we tell them it was the standard and can put to something that we want them to do, then there's no argument over it.

And I think what you -- I think what the Judge suggested makes sense. Or the footnote. Whatever has to be accomplished to give meaning to the word "robust," specific meaning.

COLONEL WEIR: So, this is Colonel Weir. For Recommendation 3, the data produced pursuant to Article 140a, there would be a
footnote there that would footnote Appendix 3, or
Enclosure 3: "UCMJ should be sufficient to serve
as the primary source for military justice review
panel's periodic assessments of the military
justice system, which are required by Article
146, UCMJ, and as the sole source of military
justice data for all other organizations in DoD
and external entities."

As I just read that, does that make
sense to everybody on the Committee?

MS. LONG: Yes.

(Simultaneous speaking.)

CHAIR BASHFORD: -- Footnote 5

someplace else?

MS. PETERS: Yes, we'll move Footnote
5. That will be removed from the recommendation
entirely. And I think Article 146 is either
already explained elsewhere, or can be explained
elsewhere, in a footnote or otherwise. So, it's
really extraneous there.

And we will instead make sure that the
footnote after 140a references Enclosure 3 as
sort of the minimum data collection elements that are sufficient to serve as the primary source for 146 assessments. And basically to make it the preeminent data source.

CHAIR BASHFORD: Any other --

(Telephonic interference)

MS. PETERS: Should I read it back one more time, ma'am, just for purposes of voting, unless there's any other comments?

(Telephonic interference)

MS. PETERS: Chair Bashford?

CHAIR BASHFORD: Yes.

MS. PETERS: Okay.

CHAIR BASHFORD: Are you going to read it again?

MS. PETERS: Yes, I can read it. I think we were getting feedback on this end and I wasn't sure if I was missing something.

CHAIR BASHFORD: No, go ahead and read it again, please.

MS. PETERS: Recommendation 3, as amended. The data produced pursuant to Article
140a, UCMJ, footnote to be inserted, should serve as the primary source of the Military Justice Review Panel's periodic assessments of the military justice system, which are required by Article 146, UCMJ, and as the sole source of military justice data for all other organizations in DoD and external entities. Delete footnote reference there.

MS. CARSON: Is there any further comment or discussion on that Recommendation 3?

JUDGE GRIMM: No.

MS. LONG: No.

MS. CARSON: Is Chair Bashford still on?

CHAIR BASHFORD: Yeah, I am.

MS. CARSON: Okay. Do you want to go ahead and take a vote, then, on that recommendation, as amended?

CHAIR BASHFORD: Yes. Are there any either abstentions or objections to the amended reference?

MS. LONG: I don't have any objection.
CHAIR BASHFORD: No objection.

MS. TOKASH: No objection. Meghan Tokash.

JUDGE GRIMM: Paul Grimm, no.

JUDGE WALTON: No objection. Reggie Walton.

BGEN SCHWENK: No objection. Jim Schwenk.

MS. CARSON: Hearing no objections then, we'll --

CHAIR BASHFORD: The recommendation is adopted by the DAC-IPAD.

MS. PETERS: Okay. Recommendation 4 reads, "Article 140a UCMJ should be implemented so as to require a collection of the following information with respect to allegations of both adult victim and child victim sexual offenses, within the meaning of articles 120, 120b and 125, UCMJ."

A. "The circumstances giving rise to a criminal investigation by a military criminal investigation organization concerning a military
member who is subject to the UCMJ;

B. whether an unrestricted report of
sexual assault originated as a restricted report;

C. demographic data pertaining to each
victim and accused, including race and gender;

D. the relationship between the
accused and the victims;

E. the initial disposition decision
under Rule for Courts-Martial 306, including the
decision to take no action and the outcome of any
administrative action, disciplinary action, or
any case in which one or more charges of sexual
assault were preferred through the completion of
courts-martial and appellate review;

F. whether a victim requested an
expedited transfer or a transfer of the accused
and the result of that request;

G. whether a victim declined to
participate at any point in the military justice
process;

H. whether a defense counsel requested
expert assistance on behalf of a military
accused, whether that request was approved by a
convening authority or a judge, and whether the
government availed itself of expert assistance;

    And, I. the duration of each completed
military criminal investigation and any
additional time taken to complete administrative
or disciplinary action against the accused."

That is Recommendation 4.

CHAIR BASHFORD: Comments from the

members?

BGEN SCHWENK: This is Jim Schwenk.
I thought that, I guess it was Jen Long's comment
on 4a, that we think about clarifying the
circumstances language at the beginning of 4a.
That we should consider that.

MS. PETERS: Sir, is that so that it
references both the summary of the initial
complaint and how the complaint became known to
investigators?

BGEN SCHWENK: Yeah. From my

standpoint, if I run an Article 146 panel, I'd

like to know both of those factors.
JUDGE GRIMM: We could say a
description of the circumstances. I mean, I
think both of those are useful, but what we're
saying is the description of what happened here
that led to these charges. Apart from how it
became known.

MS. PETERS: So, what if after it
says, a description of the circumstances giving
rise to a criminal investigation by a criminal
investigation organization, including how the
complaint became known to law enforcement.

MS. CARSON: And a summary of the
complaint? You can put both in there.

CHAIR BASHFORD: I would say,
"including a summary of the initial complaint and
how it became known to law enforcement."

MS. CARSON: Yes.

JUDGE GRIMM: Yeah, that's more
helpful.

MS. LONG: Yeah. Or, I mean, I think
you could just say that. If that's what you
mean, I don't know that you have to say the
circumstances giving rise. You could just say, a summary of the initial complaint and how the complaint became known.

JUDGE GRIMM: That's very direct.

CHAIR BASHFORD: Which lead to a criminal investigation.

MS. LONG: Right.

BGEN SCHWENK: All right, so as amended, 4a would read, "A summary of the initial complaint giving rise to a criminal investigation and how it became known to the military criminal investigation organization."

CHAIR BASHFORD: Or a military court that's subject to the UCMJ.

MS. PETERS: Okay. Yes, I'm trying to -- I'll revisit. I'll make sure that it flows, but that language would remain in there, because we're talking about investigations in which the military has jurisdiction.

CHAIR BASHFORD: Yeah.

MS. PETERS: So I'll leave that in there for now, subject to any, I don't know,
minor edit.

MS. CARSON: Would it be clearer if it's "source of the complaint"?

MS. PETERS: I think how it became known is better.

MS. CARSON: Okay. Do you want to read it one more time?

MS. PETERS: If I could read it one more time, because I think it sounds like there's no other suggestions about the language, but just to make sure, it would say, "a summary of the initial complaint giving rise to a criminal investigation by a military criminal investigation organization, including how the complaint became known to law enforcement."

CHAIR BASHFORD: How about including the source of the complaint?

MS. PETERS: That might be -- because of the processes in the military, that may not be broad enough to encompass all the ways in which a complaint arrives.

CHAIR BASHFORD: Okay.
MS. PETERS: Or, you know, initiates an investigation.

So, I could actually take the latter clause and just move it to the beginning and say, "A summary of the initial complaint giving rise to a criminal investigation by an MCIO concerning a military member who is subject to the UCMJ and how the complaint became known to law enforcement." Is that clearer for everyone?

JUDGE GRIMM: Yes.

BGEN SCHWENK: This is Jim Schwenk, that works for me.

CHAIR BASHFORD: Are there any other comments on A through I under Recommendation 4 by anybody?

JUDGE GRIMM: This is Paul, ma'am. I just have a question. This is a very minor thing, and I'm not prepared to die in a ditch over this, but I do want to raise it.

D details the relationship between the accused and the victim. That states that it is assumed that there was a relationship. I don't
1 think we should use the overused language that we
see in court cases, "if any." But we do have in
D whether -- and then it goes on from there.

   Could D say, "whether there was a
relationship between the accused and the victim"?
Because if they're strangers, then that's
different than if they're husband/wife or same
unit or something of that nature.

   It's a small thing but the way it
states now is it starts with sort of the implied
assumption that there was a relationship. There
may not have been.

   CHAIR BASHFORD: Yes, that was my
first thought, but then I looked and I thought,
well, maybe the relationship is that they're
strangers.

   MS. TOKASH: This is Meghan Tokash.
Or the relationship could be subordinate and
commander.

   CHAIR BASHFORD: So, what if we put in
the legal, "the relationship, if any."

   JUDGE GRIMM: But "whether there was
a relationship between the accused and the victim" would be parallel to the language of B without having the "if any." Which is --

MS. PETERS: Could it say --

CHAIR BASHFORD: That works for me.

MS. PETERS: Okay.

COLONEL WEIR: So just put whether

there --

MS. PETERS: Whether there was -- so, D would read, "whether there was a relationship between the accused and the victim."

JUDGE GRIMM: Yes. And, I mean, we don't need to say -- we're not looking for a yes or no, right, we're --

MS. PETERS: Right.

JUDGE GRIMM: -- and if so explain -- or should we say, "Explain the nature of any relationship between the accused and the victim"?

That would make it clear that we don't just want yes or no.

MS. PETERS: Right. Whether there was a relationship between the accused the victim and
the nature of that relationship?

    CHAIR BASHFORD: I think it would be
easier just to say, the nature of any
relationship between the accuser and the victim.

    JUDGE GRIMM: Yes, that's good.

    MS. PETERS: Okay. All right, reading
it back one more time, D reads, "Whether there
was a relationship between the accused and the
victim and the nature of any relationship between
the accused and victim."

    JUDGE GRIMM: No, just the nature.

Yeah, it's much shorter: "the nature of any
relationship between the accused and the victim."

    MS. PETERS: Okay. Oh, I understand
now. I think that was my fault. So it should
read, D should read, "the nature of any
relationship between the accused and victim."

    JUDGE GRIMM: Again, the nature of any
relationship between --

    MS. CARSON: That's what you --

    MS. PETERS: Oh, forgive me, Judge, I
may not have -- I meant to say the nature of any
relationship between the --

JUDGE GRIMM: There you go.

MS. PETERS: -- accused and victim.

CHAIR BASHFORD: Any further comments on A through I of Recommendation 4? Then I would suggest that we vote to approve Recommendation 4. Are there objections to approving that as amended?

PARTICIPANT: No objection.

BGEN SCHWENK: This is Jim Schwenk, no objections.

MS. LONG: Jen Long, no objections.

MS. TOKASH: Meghan Tokash, no objection.

MG ANDERSON: Anderson, no objections.

JUDGE GRIMM: Paul Grimm, no objections.

JUDGE WALTON: Reggie Walton, no objections.

CHAIR BASHFORD: Then Recommendation 4, as amended, is approved by the DAC-IPAD.

Meghan?

BGEN SCHWENK: Yeah. Hey, Meghan, before you go on to Recommendation 5, that footnote 5 that we're going to change into talking about Enclosure 3, if we're going to have a footnote on 146, you know, Article 146, the one that we have right now is incomplete. I mean, it makes you think all they're going to do is an initial review and assessment on the recent amendments and sentencing, when obviously every eight years they're going to do a comprehensive assessment, et cetera.

So, if we are going to explain 146 in a footnote somewhere else, which I don't know that we need to, but if we do, I just want to note that the current one is incomplete and misleading, so we need to fix it if we're going to use it.

MS. PETERS: Yes, sir. We'll make sure that it references the periodic reviews required by the statute, not just one initial review. Point taken.
BGEN SCHWENK: Thank you.

MS. PETERS: So, Recommendation 5 then reads, "The military services may retain their respective electronic case management systems for purposes of managing their military justice organizations, provided that,

A. the military services uses the same uniform standards and definitions to refer to common procedures and substantive offenses in the Manual for Courts-Martial, as required by Article 140a and,

B. the military services develop a plan to transition toward operating one uniform case management system across all of the military services, similar to the federal judiciary's case management electronic court filing system.

CHAIR BASHFORD: Are there any comments by the Committee on Recommendation 5?

BGEN SCHWENK: This is Jim Schwenk. I like it.

CHAIR BASHFORD: Hearing no other comments, I'm going to ask if the Committee vote
on Recommendation 5. Are there any votes in opposition or abstention?

MS. LONG: Jen Long, no objection.

JUDGE WALTON: Reggie Walton, no objection.

JUDGE GRIMM: Paul Grimm, none.

MG ANDERSON: Marcia Anderson, none.

MS. TOKASH: Meghan Tokash, none.

BGEN SCHWENK: Jim Schwenk, no objection.

CHAIR BASHFORD: The Chair has no objection. So Recommendation 5 is adopted by the DAC-IPAD.

MS. PETERS: All right. Ma'am, I think that concludes the recommendations contained in the letter. What I suggest doing now to cover the additional edits to the narrative is I would just suggest the Committee go page-by-page and ask if there's any comments on the content, as drafted, of each page.

CHAIR BASHFORD: Sure.

MS. PETERS: So, on page 1 of the
letter, the suggested edits are there in tracked changes. Are there any other comments from the members on any of the language on page 1?

All right, hearing none, if it's okay, we can turn to page 2. Again, there is a portion of a paragraph at the top of the page, and a second paragraph that starts, "As part of its mandate." That's on page 2 of the letter. Does any member have any comment on anything in those portions of the letter?

BGEN SCHWENK: This is Jim Schwenk. I have a really, really important comment. On the first full paragraph, the one that starts, "As part of its mandate," in line 2 the last word, "are," check to see whether it shouldn't be "is." And you're welcome for that really scintillating comment.

MS. PETERS: Yes, sir, will do.

CHAIR BASHFORD: It should be -- (Telephonic interference)

MS. PETERS: Okay.

CHAIR BASHFORD: -- reviewing and re-
examining.

MS. PETERS: Okay. The staff has made note of that. All right, so anything else on page 2 from the members?

CHAIR BASHFORD: Other than to thank Jim Schwenk for all of his edits.

(Laughter.)

MS. PETERS: All right, then, moving on to page 4. That's the next page on the letter in which there is a narrative. It begins under "rationale." Do the members have any comments, anything on that portion of the page?

And, Ms. Long, the staff suggested an edit in tracked changes. Does that address your concern?

MS. LONG: I think it did. I laid it out fully at the end of the letter, but just for the benefit of the others in the meeting, that it's really to try and respond to what I felt like I was hearing a lot in the testimony from the prosecutors on the ground, and I think might just be a good description.
I mean, the military have data fatigue and maybe the field, feeling like you're asked to collect data for not sure what but always for oversight, and that there is value in it for them as well. Not just in what it demonstrates by their willingness to do it, but what they can learn from it.

I know that this isn't really the purpose of this letter, but I thought it was important to reinforce, both for their buy-in and for an accurate representation from looking into this. But if people disagree, I just want to know the intent behind it, so that the people who disagree, they can weigh in.

CHAIR BASHFORD: Do you think that's somewhat captured then by having the addition, they're not just trying to provide the data, they're also speaking to improve their practice?

MS. LONG: Yeah, I was happy with it.

MS. PETERS: Okay, are there any other comments on page 4? Then, turning to page 5.

CHAIR BASHFORD: On page 5, the second
full paragraph, you're going to have to change it from Recommendation 2 to Recommendation 3, I believe, since we renumbered them.

MS. PETERS: Yes, ma'am, will do.

Okay, hearing no other comments on page 5, can we move to page 6?

CHAIR BASHFORD: I'm not comfortable -- my notes are suggested -- but I'm not comfortable us devoting even a few thousandths of one percent of the budget. It's a unduly --

(Telephonic interference)

BGEN SCHWENK: I think you're right.

But I guess it's a product of frustration with so many projects over the years where we will, one, do more with less. I hate that term. Number two, we'll take it out of hide. And here's an opportunity to actually develop a data system that would be of use to everybody in the department and people outside of the department. And to take it out of hide will probably diminish what could otherwise be done.

CHAIR BASHFORD: I don't disagree with
the sentiment, I just disagree with how it's said.

(Simultaneously speaking)

CHAIR BASHFORD: I think we could say something like, DoD should provide financial support to Article 140a's implementation. Again, leading by example.

JUDGE GRIMM: This is Paul Grimm. I agree with that, but I think that General Schwenk's comment is an important comment.

But I think we can say it in a way that somebody will not think is perhaps being cute or flip, it's just simply saying, to the effect that it is a view of the Committee, that achieving the purpose of 140a cannot be accomplished unless sufficient resources are devoted to the procedures recommended.

If you don't have the resources to do it, then it just won't be done. And I think there is nothing wrong with us saying that we think that it's essential to achieving the goal that is being acquired by the article.
CHAIR BASHFORD: So, how about if we start it, because I believe some of this language comes from something Secretary Mattis had said, so what if we start by saying, "the DAC-IPAD recognizes that military justice is essential to good order and discipline, and thus essential to military readiness; therefore," and then pull in Judge Grimm's language that this will require support, sufficient support. Something like that.

JUDGE GRIMM: Resources. We're talking --

CHAIR BASHFORD: Yes.

JUDGE GRIMM: -- what the General's point is, is that there's got to be funding available for all of the various components in this.

CHAIR BASHFORD: Sufficient financial resources?

JUDGE GRIMM: That would work with me.

MG ANDERSON: Yes, me. This is Marcia Anderson.
JUDGE WALTON: This is Reggie Walton and I agree.

CHAIR BASHFORD: Support can be very, you know, "go forth and do a good job," you know.

BGEN SCHWENK: Right. Or "we're right behind you, take the point."

(Laughter.)

CHAIR BASHFORD: So we can say financial resources.

BGEN SCHWENK: Yes.

CHAIR BASHFORD: Meghan, what do you have?

MS. PETERS: Well, what --

COLONEL WEIR: Chair Bashford, could you restate the -- and do you want that to be a separate paragraph from the current paragraph that this --

CHAIR BASHFORD: Yes. I think it would highlight it more. I would say "the DAC-IPAD recognizes." And then pick up from the end of the first sentence, that military justice is essential to good order and discipline, and thus
essential to military readiness. Therefore, the DoD should provide financial resources. I wish I could add --

        COLONEL WEIR: Provide sufficient financial resources?
        
        CHAIR BASHFORD: Yes. "Necessary to maintain" -- I'm not sure what the end of the sentence should ne, though.
        
        MS. PETERS: Well, could we pick up with the end of that last, the end of the existing last sentence? Maybe it's too vague, but to end with the comment about sufficient to, I guess, ensure the reform is successful and demonstrate that DoD is committed to maintaining a military justice system that is truly efficient and effective. Tie it back to that overarching purpose.

        CHAIR BASHFORD: Try reading it as a whole.

        MS. PETERS: "The DAC-IPAD recognizes that military justice is essential to good order and discipline, and thus essential to military
readiness. Therefore, the DoD should provide sufficient financial resources to accomplish this reform and demonstrate that DoD is committed to maintaining a military justice system that is truly efficient and effective."

CHAIR BASHFORD: I would say "must," not "should."

MS. PETERS: Must. So, not "should provide the sufficient financial resources;" "DoD must provide sufficient financial resources."

BGEN SCHWENK: Agreed.

CHAIR BASHFORD: Unless people think that's too aggressive.

MS. TOKASH: Meghan Tokash, I agree.

JUDGE GRIMM: I don't. I don't.

BGEN SCHWENK: Yeah, this is Jim Schwenk, I like the must. And then I'd say, after resources, to implement Article 140a, rather than whatever the language was you had, Meghan.

MS. PETERS: Right. I think I was borrowing from -- so, inserted in that last
sentence to say, after resources, "DoD must provide sufficient financial resources to implement Article 140a and demonstrate that DoD is committed to maintaining a military justice system that is truly efficient and effective."

JUDGE GRIMM: Could we also say fair?

MS. PETERS: Fair, efficient, and effective.

MS. TOKASH: Yes, I agree.

COLONEL WEIR: Okay, let's read this all over again.

CHAIR BASHFORD: Read that one more time, ma'am.

MS. PETERS: Yes, ma'am. It is, "the DAC-IPAD recognizes that military justice is essential to good order and discipline, and thus essential to military readiness. Therefore, the DoD must provide sufficient financial resources to implement Article 140a and demonstrate that DoD is committed to maintaining a military justice system that is truly fair, efficient, and effective."
CHAIR BASHFORD: Meghan, I'm sorry, you broke up when you said, "must provide." What was the words after "must provide"?

MS. PETERS: Must provide sufficient financial resources to implement Article 140a and demonstrate that DoD is committed to maintaining a military justice system that is truly fair, efficient and effective.

JUDGE GRIMM: Could I suggest, instead of saying "and demonstrate," to say, "to demonstrate"?

MS. PETERS: "To implement 140a and to demonstrate." Yes, sir.

CHAIR BASHFORD: Any further comments?

MS. TOKASH: This is Meghan Tokash. I like those changes. I just have to excuse myself for a 12 o'clock court appearance. I apologize.

CHAIR BASHFORD: I moved mine to 9:30 this morning.

(Laughter)

COLONEL WEIR: Okay, Meghan, read it
one more time with all the -- this will be the
final version, we think.

MS. PETERS: "The DAC-IPAD recognizes
that military justice is essential to good order
and discipline, and thus essential to military
readiness. Therefore, the DoD must provide
sufficient financial resources to implement
Article 140a and to demonstrate that DoD is
committed to maintaining a military justice
system that is truly fair, efficient, and
effective."

CHAIR BASHFORD: I think we have a
winner. That sounds good.

MS. PETERS: All right, the last item
is to ask the members if they have any comments
on Enclosure 1, which is the Judicial Proceedings
Panel findings and recommendations regarding
military justice case data for sexual assault
offenses. These are excerpts of the findings and
recommendations in a few separate JPP reports.

CHAIR BASHFORD: I think these are
good to include because it shows that people have
been recommending this for a period of time.

MS. PETERS: And if there's any question about the presentation or the formatting, we're happy to address that as well.

COLONEL WEIR: Yeah, the enclosures are directly taken from the source documents. So the staff did not do any tinkering with those. So what you see there is what the other panels or committees have sent forward. So this is just to amplify the DAC-IPAD Committee's recommendations.

MS. PETERS: The Enclosure 2 is a response from DoD when the JPP requested to know the status of some of their recommendations. That being the first two, Recommendations 37 that actually says, DoD should use a standardized document-based data collection system for sexual assault cases. And Recommendation 38 pertains to reporting all sex assault case data in one place.

In response, DoD provided this letter to the JPP in April 2017. I guess the only sort of responsive and clear portion that's relevant from the letter is the language that's been
highlighted on page 1, where DoD said, "the new requirements set forth in the FY17 NDAA, pertaining to the collection analysis of military justice data." And that's really talking about Article 140a.

Basically, DoD says, Article 140a will influence our way forward on these recommendations. That being JPP Recommendations 37 and 38 about case data.

"As such, how we will implement the JPPs recommendations in light of the NDAA requirements remains pre-decisional." That's what they said last year.

CHAIR BASHFORD: I guess my only -- if the highlighted part is the only part that's really relevant, do we want to edit that letter, just the relevant portion? Or do you think having the entire thing adds value?

MS. PETERS: No, the staff only included the whole letter for completeness. But the rest of the letter is something else entirely. Not entirely, but other than the
subject of the DAC-IPAD's letter. And Enclosure 1 is an excerpt; there's no reason Enclosure 2 can't also be an excerpt.

It was put there for completeness, so that, you know, we acknowledge that DoD has at least given some response to previous similar recommendations from other committees. That was the reason for this letter or for including this to begin with. But the only --

(Simultaneous speaking.)

CHAIR BASHFORD: I guess I would -- not relevant and then say something about this is edited to make it clear it's been edited.

MS. PETERS: Okay.

JUDGE GRIMM: I agree with that.

We've all had the experience where we get a lot of enclosures or get a relatively short document with a stack of enclosures and we're trying to figure what enclosure is important.

The highlighting is great because it takes your eye right to it, but the rest of it really has nothing to do with the point that
we're trying to highlight. As long as it's clear that we have edited to include only the relevant points that we're talking about, then it's more likely to be received by a reader of the report for the reasons that we want them to take from it, which is just the highlighted language.

MS. PETERS: Well, we can certainly do that. So is that how everyone would like us to proceed? Unless there's any other suggestions, we can make sure that this is an excerpt, and make it clear that we have excerpted the relevant portion of DoD's response letter.

JUDGE GRIMM: Right.

MS. PETERS: Okay. All right, hearing nothing else from the Committee, that's how the staff will edit Enclosure 2. And I think we are interpreting that as a non-substantive edit.

COLONEL WEIR: Yes.

MS. PETERS: Major King, you can tell me otherwise.

Enclosure 3 is the sexual assault case documents and data elements collected by the DAC-
IPAD. Were there any comments or suggestions with regard to this enclosure?

BGEN SCHWENK: Meghan, this is Jim Schwenk. The case data elements, does that come from what the Data Working Group has been doing?

MS. PETERS: That is a good question, sir, and thank you for clarifying. This list of elements only covers what the court-martial data group has been covering. So this is what the DAC-IPAD is looking at for every case in which a sex assault charge is preferred.

This does not include every descriptive item as part of review of cases where no action was taken. And they're just looking at several dozen elements of investigative files. Because that review is still ongoing.

We took that out based on, I think, multiple discussions, and thought that the preferred case data elements checklist, the data group's checklist was reliable, clear, had been sort of tested already by the DAC-IPAD fully and fully analyzed, and still provided an example of
what robust data collection elements look like.

BGEN SCHWENK: Thank you.

CHAIR BASHFORD: Do you want to just clarify then for the first chunk of case documents collected sort of what type of cases? These are for the referred cases?

MS. PETERS: Right. So, like, for cases -- we can do that. So it will say, case documents collected for every case in which one or more charges of sexual assault was preferred. Or we'll phrase it something like that to make it clear.

CHAIR BASHFORD: Well, your whole heading is sexual assault cases. I would say case documents collected in referred cases.

MS. PETERS: Okay.

CHAIR BASHFORD: If that doesn't get too long.

MS. PETERS: In preferred cases. And I am saying, for clarity on the record, I am saying preferral, in which charges are first initiated in the case; not to be confused with
referral, the second sort of phase of a case.

CHAIR BASHFORD: And then for your

case data elements, what category of cases is

that referring to?

MS. PETERS: Same.

CHAIR BASHFORD: Okay.

MS. PETERS: Okay, so, for

consistency, we'll make the same clarification at

the top of page 2 of Enclosure 3. Will that

work?

CHAIR BASHFORD: I just think it

clarifies it a bit.

MS. PETERS: Absolutely. No, it does,

and that is a good clarification to me.

CHAIR BASHFORD: So, we're also

collecting data on the no action cases, too?

MS. PETERS: Yes. The thought there

was the Committee seemed to decline to

specifically prescribe every element about a case

that could be collected. That was one.

And the other is that the case review

checklist requires reviewing an entire
investigative case file, rather than select
standardized documents, which is what's in the
recommendations.

CHAIR BASHFORD: No, you're right.

COLONEL WEIR: This is Colonel Weir.
I would just add that, when you look at the case
data elements, a lot of what we collect in the
Case Review Working Group datasheet, it tracks
greatly with what Enclosure 3 has.

So the rank, gender, all that
information is captured as well. So I think that
this is a good enclosure to point to what you
would need to have collected as part of your
database.

CHAIR BASHFORD: So, do any of the
members have any other comments about enclosures
or the document as a whole?

JUDGE GRIMM: This is Paul Grimm. I
just wanted to thank the staff for their
extremely hard work and helpful presentations of
materials so that it would be easier for us to
digest and getting it to us so we had time to
review it. I'm grateful for that.

MS. PETERS: Okay.

CHAIR BASHFORD: We have an amazing staff, I must say.

MS. LONG: Totally agree. This is Jen. Thank you, staff.

MS. CARSON: Oh, you're cheering us up. Keep it up. Thank you.

MG ANDERSON: Yes, I agree. This is Marcia Anderson. I vote they get the rest of the day off.

(Laughter)

COLONEL WEIR: General, that order will be followed.

(Laughter)

COLONEL WEIR: Unless there's any other comments, and I believe we don't have any more, I would just to take a second to talk about, we're tracking what's happening with Dean Harrison. We will ensure that when we hear more information we'll put that out. As I think I've discussed before, maybe not, but his wife's
wishes is that he be interred in Arlington. And I know that there's a long backup to get into Arlington, so we will keep tracking that and we will let you know what's happening with that as the time gets closer. But we don't have any word about what's going on with that.

MS. CARSON: And this is Julie Carson. Regarding the charitable contribution, I called the funeral home and they didn't have a designated charity. So I've asked his wife. I'm waiting to hear back from her, if there is a charity of her choice that the DAC-IPAD would like to make a group contribution to. So I'll keep you posted on that, too.

COLONEL WEIR: Chair Bashford, that's all the comments that staff has.

CHAIR BASHFORD: Were there any requests for public comments?

MS. PETERS: No.

COLONEL WEIR: No.

CHAIR BASHFORD: Then, Major King, I think you can adjourn us.
MAJOR KING: Very well. And in that case, this public meeting of the DAC-IPAD is officially closed.

(Whereupon, the above-entitled matter went off the record at 12:02 p.m.)
CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DAC IPAD

Date: 09-07-18

Place: Arlington, VA

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

[Signature]

Court Reporter