

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
SEPTEMBER 7, 2018

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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*
Maj. Gen. Marcia M. Anderson, USA, Ret.*
The Honorable Paul W. Grimm*
Ms. Jennifer Gentile Long*
Brig. Gen. James R. Schwenk, USMC, Ret.*
Dr. Cassia C. Spohn*
Ms. Meghan A. Tokash*
Hon. Reggie B. Walton*

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

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

2 (11:02 a.m.)

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

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

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

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

22 The DAC-IPAD was created by the

1 Secretary of Defense and was approved with the
2 National Defense Authorization Act of Fiscal Year
3 2015, as amended.

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

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

12 At today's meeting, the Committee will
13 conduct its final deliberations on Article 140a,
14 Uniform Code of Military Justice, which was
15 enacted as part of the Fiscal Year 2017 National
16 Defense Authorization Act.

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

22 The Committee plans to make its

1 recommendation to the Secretary of Defense on
2 this issue based on the Committees expertise
3 related to the investigation, prosecution, and
4 defense of sexual assault, and its review of
5 criminal data collection best practices in the
6 civilian and military justice system.

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

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

22 MS. PETERS: Yes, ma'am. For

1 reference, this is Meghan Peters and we are
2 working off of the materials provided to the
3 members by email on August 30th and by email on
4 September 6th.

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

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

19 What I suggest we do, Chair Bashford,
20 is I could begin by reading through the
21 recommendations that begin on page 2 of the
22 letter for the Committee's discussion and vote.

1 CHAIR BASHFORD: That would be great.
2 Thank you.

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

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

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

21 C. "Develop one electronic database
22 for the storage and analysis of standardized

1 source documents and locate that database in the
2 centralized military justice data office
3 organization within DoD."

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

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

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

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

21 CHAIR BASHFORD: I agree. I guess if
22 there's no other substantive comments, I would

1 ask that the Committee vote to approve and adopt
2 Recommendation No. 1. Are there any objections
3 to that?

4 (Chorus of nos.)

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

8 MS. PETERS: All right.
9 Recommendation 1a begins on page 3, not to be
10 confused with the Recommendation 1 that we just
11 read through.

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

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

22 MS. PETERS: We could make it

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

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

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

20 BGEN SCHWENK: Yeah, this is Jim
21 Schwenk. The reason I recommended that is I
22 think it was implied by what we had originally in

1 Recommendation 1, but I just felt that since it
2 was a key point that we discussed in July, that
3 we ought to pull it out and expressly state it so
4 it's clear. That was my only reasoning for that.

5 CHAIR BASHFORD: I think it's good.
6 So can the Committee Members vote to adopt the
7 newly renumbered recommendation?

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

10 CHAIR BASHFORD: Of course.

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

16 MS. PETERS: Yes. Should I read that
17 back again to the members, just for clarity?
18 Thank you for the suggestion, Ms. Falk.

19 MS. CARSON: And that was Alice Falk.
20 Yes, the technical editor.

21 MS. PETERS: So the newly labeled
22 Recommendation 2, at the top of page 3, would

1 read, "The source documents referenced in DAC-
2 IPAD Recommendation 1 should contain uniformly
3 defined content covering all data elements that
4 DoD decides to collect to meet the requirements
5 of Articles 140a and 146, UCMJ."

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

8 JUDGE GRIMM: Agreed.

9 CHAIR BASHFORD: Agreed. So can we
10 then adopt the newly numbered Recommendation 2?
11 Are there any further comments or are there any
12 objections to that?

13 MS. TOKASH: No objection.

14 MG ANDERSON: No objection.

15 JUDGE WALTON: No objection.

16 MS. LONG: No objection.

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

21 MS. PETERS: Okay. Recommendation 3.
22 It reads, "The data produced pursuant to Article

1 140a, UCMJ should be sufficiently robust to serve
2 as the primary source for the military justice
3 review panel's periodic assessments of the
4 military justice system, which are required by
5 Article 146, UCMJ, and as the sole source of
6 military justice data for all other organizations
7 in DoD and external entities."

8 CHAIR BASHFORD: Comments, discussion?

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

18 CHAIR BASHFORD: I think that would be
19 clearer.

20 MS. LONG: Do you need me to address
21 my note? This is Jen Long. I was a little
22 concerned that robust was vague and ill-defined.

1 And since you had already laid out what data you
2 sought would satisfy "robust," is there a way to
3 reference that again without, now hearing what
4 you just said, without referencing a footnote
5 maybe?

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

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

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

17 MS. PETERS: By way of explanation, I
18 guess, in the drafting process this was pulling
19 together comments that the Committee wanted to
20 emphasize that 140a should be the preeminent data
21 collection sort of project, the go-to gold
22 standard for data collection. And maybe other

1 words like comprehensive were used to discuss the
2 data where it says robust here. I think that was
3 just an alternate suggestion.

4 But that was the idea, to say, do 140a
5 like you know that it has to be used by Article
6 146, UCMJ assessments.

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

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

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

20 They can be -- they don't have to be
21 listed, necessarily, but they then state that,
22 because if this is going to be the document that

1 you can go to, everyone all up and down the chain
2 makes decisions on this as to what is happening
3 and whether it's happening properly, and if
4 central to that goal is meeting those four
5 criteria, it certainly wouldn't hurt to reference
6 them, even if you didn't repeat what those
7 criteria were because they are identified in
8 attachments.

9 CHAIR BASHFORD: I kind of lost track
10 of that.

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

18 JUDGE GRIMM: Right. I'm just saying,
19 because since Ms. Long raised an interesting
20 point, is that if the four DAC-IPAD factors drive
21 whether or not the data is complete enough so
22 that it is the eminent source of data, the gold

1 standard, if that is the definition of what it
2 requires to be complete, then if you are worried
3 about whether it is ambiguous as to what it needs
4 to be complete or robust or whatever other
5 adjective you want to use, that it would not hurt
6 to reference those factors so that those who
7 would have to design it know, at a minimum, what
8 it would have to contain. That was my only
9 comment.

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

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

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

1 be produced?

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

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

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

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

20 COLONEL WEIR: So, this is Colonel
21 Weir. For Recommendation 3, the data produced
22 pursuant to Article 140a, there would be a

1 footnote there that would footnote Appendix 3, or
2 Enclosure 3: "UCMJ should be sufficient to serve
3 as the primary source for military justice review
4 panel's periodic assessments of the military
5 justice system, which are required by Article
6 146, UCMJ, and as the sole source of military
7 justice data for all other organizations in DoD
8 and external entities."

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

11 MS. LONG: Yes.

12 (Simultaneous speaking.)

13 CHAIR BASHFORD: -- Footnote 5
14 someplace else?

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

21 And we will instead make sure that the
22 footnote after 140a references Enclosure 3 as

1 sort of the minimum data collection elements that
2 are sufficient to serve as the primary source for
3 146 assessments. And basically to make it the
4 preeminent data source.

5 CHAIR BASHFORD: Any other --

6 (Telephonic interference)

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

10 (Telephonic interference)

11 MS. PETERS: Chair Bashford?

12 CHAIR BASHFORD: Yes.

13 MS. PETERS: Okay.

14 CHAIR BASHFORD: Are you going to read
15 it again?

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

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

21 MS. PETERS: Recommendation 3, as
22 amended. The data produced pursuant to Article

1 140a, UCMJ, footnote to be inserted, should serve
2 as the primary source of the Military Justice
3 Review Panel's periodic assessments of the
4 military justice system, which are required by
5 Article 146, UCMJ, and as the sole source of
6 military justice data for all other organizations
7 in DoD and external entities. Delete footnote
8 reference there.

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

11 JUDGE GRIMM: No.

12 MS. LONG: No.

13 MS. CARSON: Is Chair Bashford still
14 on?

15 CHAIR BASHFORD: Yeah, I am.

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

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

22 MS. LONG: I don't have any objection.

1 CHAIR BASHFORD: No objection.

2 MS. TOKASH: No objection. Meghan
3 Tokash.

4 JUDGE GRIMM: Paul Grimm, no.

5 JUDGE WALTON: No objection. Reggie
6 Walton.

7 BGEN SCHWENK: No objection. Jim
8 Schwenk.

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

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

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

20 A. "The circumstances giving rise to
21 a criminal investigation by a military criminal
22 investigation organization concerning a military

1 member who is subject to the UCMJ;

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

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

6 D. the relationship between the
7 accused and the victims;

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

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

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

21 H. whether a defense counsel requested
22 expert assistance on behalf of a military

1 accused, whether that request was approved by a
2 convening authority or a judge, and whether the
3 government availed itself of expert assistance;

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

8 That is Recommendation 4.

9 CHAIR BASHFORD: Comments from the
10 members?

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

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

20 BGEN SCHWENK: Yeah. From my
21 standpoint, if I run an Article 146 panel, I'd
22 like to know both of those factors.

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

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

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

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

17 MS. CARSON: Yes.

18 JUDGE GRIMM: Yeah, that's more
19 helpful.

20 MS. LONG: Yeah. Or, I mean, I think
21 you could just say that. If that's what you
22 mean, I don't know that you have to say the

1 circumstances giving rise. You could just say, a
2 summary of the initial complaint and how the
3 complaint became known.

4 JUDGE GRIMM: That's very direct.

5 CHAIR BASHFORD: Which lead to a
6 criminal investigation.

7 MS. LONG: Right.

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

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

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

20 CHAIR BASHFORD: Yeah.

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

1 minor edit.

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

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

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

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

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

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

22 CHAIR BASHFORD: Okay.

1 MS. PETERS: Or, you know, initiates
2 an investigation.

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

10 JUDGE GRIMM: Yes.

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

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

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

20 D details the relationship between the
21 accused and the victim. That states that it is
22 assumed that there was a relationship. I don't

1 think we should use the overused language that we
2 see in court cases, "if any." But we do have in
3 D whether -- and then it goes on from there.

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

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

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

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

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

22 JUDGE GRIMM: But "whether there was

1 a relationship between the accused and the
2 victim" would be parallel to the language of B
3 without having the "if any." Which is --

4 MS. PETERS: Could it say --

5 CHAIR BASHFORD: That works for me.

6 MS. PETERS: Okay.

7 COLONEL WEIR: So just put whether
8 there --

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

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

15 MS. PETERS: Right.

16 JUDGE GRIMM: -- and if so explain --
17 or should we say, "Explain the nature of any
18 relationship between the accused and the victim"?
19 That would make it clear that we don't just want
20 yes or no.

21 MS. PETERS: Right. Whether there was
22 a relationship between the accused the victim and

1 the nature of that relationship?

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

5 JUDGE GRIMM: Yes, that's good.

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

11 JUDGE GRIMM: No, just the nature.
12 Yeah, it's much shorter: "the nature of any
13 relationship between the accused and the victim."

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

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

20 MS. CARSON: That's what you --

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

1 relationship between the --

2 JUDGE GRIMM: There you go.

3 MS. PETERS: -- accused and victim.

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

9 PARTICIPANT: No objection.

10 BGEN SCHWENK: This is Jim Schwenk, no
11 objections.

12 MS. LONG: Jen Long, no objections.

13 MS. TOKASH: Meghan Tokash, no
14 objection.

15 MG ANDERSON: Anderson, no objections.

16 JUDGE GRIMM: Paul Grimm, no
17 objections.

18 JUDGE WALTON: Reggie Walton, no
19 objections.

20 CHAIR BASHFORD: Then Recommendation
21 4, as amended, is approved by the DAC-IPAD.
22 Meghan?

1 MS. PETERS: Okay. Recommendation 5.

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

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

19 MS. PETERS: Yes, sir. We'll make
20 sure that it references the periodic reviews
21 required by the statute, not just one initial
22 review. Point taken.

1 BGEN SCHWENK: Thank you.

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

7 A. the military services uses the same
8 uniform standards and definitions to refer to
9 common procedures and substantive offenses in the
10 Manual for Courts-Martial, as required by Article
11 140a and,

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

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

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

21 CHAIR BASHFORD: Hearing no other
22 comments, I'm going to ask if the Committee vote

1 on Recommendation 5. Are there any votes in
2 opposition or abstention?

3 MS. LONG: Jen Long, no objection.

4 JUDGE WALTON: Reggie Walton, no
5 objection.

6 JUDGE GRIMM: Paul Grimm, none.

7 MG ANDERSON: Marcia Anderson, none.

8 MS. TOKASH: Meghan Tokash, none.

9 BGEN SCHWENK: Jim Schwenk, no
10 objection.

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

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

21 CHAIR BASHFORD: Sure.

22 MS. PETERS: So, on page 1 of the

1 letter, the suggested edits are there in tracked
2 changes. Are there any other comments from the
3 members on any of the language on page 1?

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

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

18 MS. PETERS: Yes, sir, will do.

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

21 MS. PETERS: Okay.

22 CHAIR BASHFORD: -- reviewing and re-

1 examining.

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

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

7 (Laughter.)

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

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

16 MS. LONG: I think it did. I laid it
17 out fully at the end of the letter, but just for
18 the benefit of the others in the meeting, that
19 it's really to try and respond to what I felt
20 like I was hearing a lot in the testimony from
21 the prosecutors on the ground, and I think might
22 just be a good description.

1 I mean, the military have data fatigue
2 and maybe the field, feeling like you're asked to
3 collect data for not sure what but always for
4 oversight, and that there is value in it for them
5 as well. Not just in what it demonstrates by
6 their willingness to do it, but what they can
7 learn from it.

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

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

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

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

22 CHAIR BASHFORD: On page 5, the second

1 full paragraph, you're going to have to change it
2 from Recommendation 2 to Recommendation 3, I
3 believe, since we renumbered them.

4 MS. PETERS: Yes, ma'am, will do.
5 Okay, hearing no other comments on page 5, can we
6 move to page 6?

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

11 (Telephonic interference)

12 BGEN SCHWENK: I think you're right.
13 But I guess it's a product of frustration with so
14 many projects over the years where we will, one,
15 do more with less. I hate that term. Number
16 two, we'll take it out of hide. And here's an
17 opportunity to actually develop a data system
18 that would be of use to everybody in the
19 department and people outside of the department.
20 And to take it out of hide will probably diminish
21 what could otherwise be done.

22 CHAIR BASHFORD: I don't disagree with

1 the sentiment, I just disagree with how it's
2 said.

3 (Simultaneously speaking)

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

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

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

18 If you don't have the resources to do
19 it, then it just won't be done. And I think
20 there is nothing wrong with us saying that we
21 think that it's essential to achieving the goal
22 that is being acquired by the article.

1 CHAIR BASHFORD: So, how about if we
2 start it, because I believe some of this language
3 comes from something Secretary Mattis had said,
4 so what if we start by saying, "the DAC-IPAD
5 recognizes that military justice is essential to
6 good order and discipline, and thus essential to
7 military readiness; therefore," and then pull in
8 Judge Grimm's language that this will require
9 support, sufficient support. Something like
10 that.

11 JUDGE GRIMM: Resources. We're
12 talking --

13 CHAIR BASHFORD: Yes.

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

18 CHAIR BASHFORD: Sufficient financial
19 resources?

20 JUDGE GRIMM: That would work with me.

21 MG ANDERSON: Yes, me. This is Marcia
22 Anderson.

1 JUDGE WALTON: This is Reggie Walton
2 and I agree.

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

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

7 (Laughter.)

8 CHAIR BASHFORD: So we can say
9 financial resources.

10 BGEN SCHWENK: Yes.

11 CHAIR BASHFORD: Meghan, what do you
12 have?

13 MS. PETERS: Well, what --

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

18 CHAIR BASHFORD: Yes. I think it
19 would highlight it more. I would say "the DAC-
20 IPAD recognizes." And then pick up from the end
21 of the first sentence, that military justice is
22 essential to good order and discipline, and thus

1 essential to military readiness. Therefore, the
2 DoD should provide financial resources. I wish I
3 could add --

4 COLONEL WEIR: Provide sufficient
5 financial resources?

6 CHAIR BASHFORD: Yes. "Necessary to
7 maintain" -- I'm not sure what the end of the
8 sentence should be, though.

9 MS. PETERS: Well, could we pick up
10 with the end of that last, the end of the
11 existing last sentence? Maybe it's too vague,
12 but to end with the comment about sufficient to,
13 I guess, ensure the reform is successful and
14 demonstrate that DoD is committed to maintaining
15 a military justice system that is truly efficient
16 and effective. Tie it back to that overarching
17 purpose.

18 CHAIR BASHFORD: Try reading it as a
19 whole.

20 MS. PETERS: "The DAC-IPAD recognizes
21 that military justice is essential to good order
22 and discipline, and thus essential to military

1 readiness. Therefore, the DoD should provide
2 sufficient financial resources to accomplish this
3 reform and demonstrate that DoD is committed to
4 maintaining a military justice system that is
5 truly efficient and effective."

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

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

11 BGEN SCHWENK: Agreed.

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

14 MS. TOKASH: Meghan Tokash, I agree.

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

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

21 MS. PETERS: Right. I think I was
22 borrowing from -- so, inserted in that last

1 sentence to say, after resources, "DoD must
2 provide sufficient financial resources to
3 implement 140a and demonstrate that DoD is
4 committed to maintaining a military justice
5 system that is truly efficient and effective."

6 JUDGE GRIMM: Could we also say fair?

7 MS. PETERS: Fair, efficient, and
8 effective.

9 MS. TOKASH: Yes, I agree.

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

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

14 MS. PETERS: Yes, ma'am. It is, "the
15 DAC-IPAD recognizes that military justice is
16 essential to good order and discipline, and thus
17 essential to military readiness. Therefore, the
18 DoD must provide sufficient financial resources
19 to implement Article 140a and demonstrate that
20 DoD is committed to maintaining a military
21 justice system that is truly fair, efficient, and
22 effective."

1 CHAIR BASHFORD: Meghan, I'm sorry,
2 you broke up when you said, "must provide." What
3 was the words after "must provide"?

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

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

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

14 CHAIR BASHFORD: Any further comments?

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

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

21 (Laughter)

22 COLONEL WEIR: Okay, Meghan, read it

1 one more time with all the -- this will be the
2 final version, we think.

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

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

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

21 CHAIR BASHFORD: I think these are
22 good to include because it shows that people have

1 been recommending this for a period of time.

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

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

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

19 In response, DoD provided this letter
20 to the JPP in April 2017. I guess the only sort
21 of responsive and clear portion that's relevant
22 from the letter is the language that's been

1 highlighted on page 1, where DoD said, "the new
2 requirements set forth in the FY17 NDAA,
3 pertaining to the collection analysis of military
4 justice data." And that's really talking about
5 Article 140a.

6 Basically, DoD says, Article 140a will
7 influence our way forward on these
8 recommendations. That being JPP Recommendations
9 37 and 38 about case data.

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

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

19 MS. PETERS: No, the staff only
20 included the whole letter for completeness. But
21 the rest of the letter is something else
22 entirely. Not entirely, but other than the

1 subject of the DAC-IPAD's letter. And Enclosure
2 1 is an excerpt; there's no reason Enclosure 2
3 can't also be an excerpt.

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

10 (Simultaneous speaking.)

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

14 MS. PETERS: Okay.

15 JUDGE GRIMM: I agree with that.
16 We've all had the experience where we get a lot
17 of enclosures or get a relatively short document
18 with a stack of enclosures and we're trying to
19 figure what enclosure is important.

20 The highlighting is great because it
21 takes your eye right to it, but the rest of it
22 really has nothing to do with the point that

1 we're trying to highlight. As long as it's clear
2 that we have edited to include only the relevant
3 points that we're talking about, then it's more
4 likely to be received by a reader of the report
5 for the reasons that we want them to take from
6 it, which is just the highlighted language.

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

13 JUDGE GRIMM: Right.

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

18 COLONEL WEIR: Yes.

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

21 Enclosure 3 is the sexual assault case
22 documents and data elements collected by the DAC-

1 IPAD. Were there any comments or suggestions
2 with regard to this enclosure?

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

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

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

17 We took that out based on, I think,
18 multiple discussions, and thought that the
19 preferred case data elements checklist, the data
20 group's checklist was reliable, clear, had been
21 sort of tested already by the DAC-IPAD fully and
22 fully analyzed, and still provided an example of

1 what robust data collection elements look like.

2 BGEN SCHWENK: Thank you.

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

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

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

16 MS. PETERS: Okay.

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

19 MS. PETERS: In preferred cases. And
20 I am saying, for clarity on the record, I am
21 saying preferral, in which charges are first
22 initiated in the case; not to be confused with

1 referral, the second sort of phase of a case.

2 CHAIR BASHFORD: And then for your
3 case data elements, what category of cases is
4 that referring to?

5 MS. PETERS: Same.

6 CHAIR BASHFORD: Okay.

7 MS. PETERS: Okay, so, for
8 consistency, we'll make the same clarification at
9 the top of page 2 of Enclosure 3. Will that
10 work?

11 CHAIR BASHFORD: I just think it
12 clarifies it a bit.

13 MS. PETERS: Absolutely. No, it does,
14 and that is a good clarification to me.

15 CHAIR BASHFORD: So, we're also
16 collecting data on the no action cases, too?

17 MS. PETERS: Yes. The thought there
18 was the Committee seemed to decline to
19 specifically prescribe every element about a case
20 that could be collected. That was one.

21 And the other is that the case review
22 checklist requires reviewing an entire

1 investigative case file, rather than select
2 standardized documents, which is what's in the
3 recommendations.

4 CHAIR BASHFORD: No, you're right.

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

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

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

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

1 review it. I'm grateful for that.

2 MS. PETERS: Okay.

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

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

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

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

12 (Laughter)

13 COLONEL WEIR: General, that order
14 will be followed.

15 (Laughter)

16 COLONEL WEIR: Unless there's any
17 other comments, and I believe we don't have any
18 more, I would just to take a second to talk
19 about, we're tracking what's happening with Dean
20 Harrison. We will ensure that when we hear more
21 information we'll put that out. As I think I've
22 discussed before, maybe not, but his wife's

1 wishes is that he be interred in Arlington. And I
2 know that there's a long backup to get into
3 Arlington, so we will keep tracking that and we
4 will let you know what's happening with that as
5 the time gets closer. But we don't have any word
6 about what's going on with that.

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

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

17 CHAIR BASHFORD: Were there any
18 requests for public comments?

19 MS. PETERS: No.

20 COLONEL WEIR: No.

21 CHAIR BASHFORD: Then, Major King, I
22 think you can adjourn us.

1 MAJOR KING: Very well. And in that
2 case, this public meeting of the DAC-IPAD is
3 officially closed.

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

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In the matter of: Public Meeting

Before: DAC IPAD

Date: 09-07-18

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