

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

FEBRUARY 22, 2019

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The Committee met at One Liberty
Center, Suite 1432, 875 North Randolph Street,
Arlington, Virginia, at 11:00 a.m., Ms. Martha
Bashford, Chair, presiding.

PRESENT:

Ms. Martha S. Bashford, Chair*
Major General Marcia M. Anderson, USA (Ret.)*
Hon. Leo I. Brisbois*
Mr. A.J. Kramer*
Ms. Jennifer Gentile Long*
Mr. James P. Markey*
Dr. Jenifer Markowitz*
Brig. Gen. James R. Schwenk, USMC (Ret.)*
Ms. Meghan A. Tokash*

STAFF:

Col. Steven Weir, USA, Staff Director
Ms. Julie Carson, Deputy Staff Director
Maj. Israel King, USAF, Alternate Designated
Federal Officer (ADFO)
Dr. Janice Chayt, Investigator
Dr. Alice Falk, Editor
Ms. Theresa Gallagher, Attorney-Advisor
Ms. Nalini Gupta, Attorney-Advisor*
Mr. Chuck Mason, Attorney-Advisor*
Ms. Marguerite McKinley, Analyst
Ms. Meghan Peters, Attorney-Advisor
Ms. Stacy Powell, Attorney-Advisor
Ms. Stayce Rozell, Senior Paralegal
Dr. William Wells, Criminologist*

SERVICE REPRESENTATIVES:

Major Jane Male, U.S. Air Force*
Ms. Janet Mansfield, U.S. Army*
Mr. Stephen McCleary, U.S. Coast Guard*
Major Blake Peltz, U.S. Marine Corps*

*Present via teleconference

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

2 11:05 a.m.

3 MR. SULLIVAN: All right. This
4 meeting of the Defense Advisory Committee on
5 Investigation, Prosecution, and Defense of Sexual
6 Assault in the Armed Forces is opened.

7 I'm Dwight Sullivan, the Designated
8 Federal Officer for the Committee.

9 Ms. Bashford, you have the time.

10 CHAIR BASHFORD: Thank you, Mr.
11 Sullivan.

12 Good morning to everybody. I'd like
13 to welcome the members and everyone in attendance
14 to the 12th meeting of the Defense Advisory
15 Committee on Investigation, Prosecution, and
16 Defense of Sexual Assault in the Armed Forces, or
17 the DAC-IPAD.

18 Of the 15 Committee members, eight are
19 presently participating this morning and a ninth
20 should be joining us. Since we're all
21 participating by phone, when I say your name,
22 please identify that you're here.

1 Major General Marcia Anderson?

2 MG ANDERSON: Here.

3 CHAIR BASHFORD: Judge Leo Brisbois?

4 JUDGE BRISBOIS: Here.

5 CHAIR BASHFORD: Mr. A.J. Kramer?

6 MR. KRAMER: Here.

7 CHAIR BASHFORD: I think we're missing
8 Chief McKinley at the moment.

9 Mr. Jim Markey?

10 SGT MARKEY: Here.

11 CHAIR BASHFORD: Dr. Jen Markowitz?

12 DR. MARKOWITZ: Here.

13 CHAIR BASHFORD: Brigadier General
14 James Schwenk?

15 BGEN SCHWENK: Here.

16 CHAIR BASHFORD: Ms. Meghan Tokash?

17 MS. TOKASH: Here.

18 CHAIR BASHFORD: And I'm Martha
19 Bashford, and I'm here.

20 Did somebody just join us?

21 (No response.)

22 Did I miss anyone?

1 (No response.)

2 Okay. The DAC-IPAD was created by the
3 Secretary of Defense in accordance with the
4 National Defense Authorization Act for Fiscal
5 Year 2015, as amended. Our mandate is to advise
6 the Secretary of Defense on the investigation,
7 prosecution, and defense of allegations of sexual
8 assault and other sexual misconduct involving
9 members of the Armed Forces.

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

13 The purpose of today's meeting is to
14 conduct final deliberations and vote to approve
15 the 2019 DAC-IPAD Annual Report. We will also
16 discuss our next steps as a Committee.

17 Each public meeting of the DAC-IPAD
18 includes a period of time for public comment.
19 We've received no such request for today's
20 meeting.

21 With that, we'll begin our
22 deliberations on the 2019 report. I will hand it

1 over to our Director, Colonel Steve Weir, to
2 start us on the deliberations review of all the
3 updates to the report or any that people have.

4 Thank you, Steve. Take it away.

5 COL WEIR: Good morning, everyone.

6 Thank you for participating this morning.

7 As you recall, in the January 19th
8 public meeting we did most of the heavy lifting
9 for the report where we voted on the findings and
10 recommendations and went over that report in
11 great detail.

12 What I'm going to do right now is turn
13 it over to Julie, who's been tracking the latest
14 changes, and she will go over that with you and
15 we'll have further discussion, if needed.

16 Thank you.

17 Julie?

18 MS. CARSON: Okay. So, after the
19 January 25th public meeting deliberations, we
20 incorporated the revisions to the report and sent
21 out a Draft Version 2.0 on February 8th and asked
22 members to submit any edits to us, which we have

1 incorporated and sent back out Version 3.0, which
2 we are deliberating on today.

3 So, I am just going to walk you
4 through the things substantively that changed in
5 the report. And it starts with page 24 of
6 Version 3.0, which has at the top two charts,
7 "Status of Case Reviews as of February 5, 2019".
8 Just the note is: that has been added. That
9 information was not in Version 2.0, and it shows
10 how many of the total amount of investigative
11 cases there are to review, how many have been
12 reviewed, and how many are left as of, I believe,
13 February 5th.

14 CHAIR BASHFORD: Okay.

15 MS. CARSON: Next is page 28. You
16 were provided in Version 2.0 with two different
17 charts on the Command decision, making one that
18 identified all of the results by unanimous
19 decisions versus majority decisions and one chart
20 that consolidated everything together with the
21 majority reasonable/the majority unreasonable.
22 Based on the input, we've put in, I believe it

1 was option 2, and footnoted in footnote 33 the
2 information that breaks it down by unanimous
3 versus majority of reviewers.

4 MS. PETERS: Footnote 43.

5 MS. CARSON: Forty-three. Whatever I
6 said, I don't --

7 Does anybody have any questions or
8 comments on that edit?

9 (No response.)

10 If not, we'll move on to page 32. And
11 based on the deliberations on the 25th, there
12 were two columns added for the cases in which no
13 penetrative charge was preferred and cases in
14 which penetrative charge was preferred. And
15 then, another chart was added on page 33, which
16 is the duration of investigations.

17 Are there any comments or issues with
18 those?

19 (No response.)

20 Okay. The next change is page 34.
21 That's one more chart that was added. No, a
22 footnote was added to that chart. Because the

1 numbers -- as you'll see, the N equals 97 and N
2 equals 37 -- are not totaling the 164 cases, a
3 Committee member noted that and asked why. So,
4 we've added footnote 50 which explains that, in
5 the case files, only 97 out of 122 no action
6 cases had documentation sufficient to identify
7 the time elapsed, and only 37 out of the 42
8 preferred cases had sufficient documentation.
9 That's why they don't total 164.

10 Are there any questions on that?

11 (No response.)

12 Okay. The next change is on page 36.

13 And this section and the charts have been added
14 following the presentation by Dr. Bill Wells.
15 So, this data is information that he presented at
16 the January 25th meeting. That is Section D on
17 page 36, "The Victim-Subject Relationship". And
18 the charts on page 36 and 37 were added.

19 CHAIR BASHFORD: This is not tracking
20 with yours. I'm showing that as on page 35 and
21 continuing to 36.

22 MS. CARSON: Yours might have printed

1 off differently.

2 CHAIR BASHFORD: Okay. It's pretty
3 close.

4 MS. CARSON: But it's Section D,
5 "Victim-Subject Relationship".

6 CHAIR BASHFORD: Yes.

7 MS. CARSON: And one thing I noted,
8 looking over it this morning, the first chart,
9 "Relationship of Victim to Subject," doesn't have
10 an N equals 164. So, I noted that on there.
11 We'll add that in.

12 CHAIR BASHFORD: Okay.

13 MS. CARSON: Well, there was one
14 internal issue we mentioned as a staff. There's
15 not a spouse category. But we don't have Kate
16 Tagert here or Bill on the line.

17 MS. POWELL: Dr. Wells may be on the
18 line.

19 Dr. Wells, are you on?

20 MS. CARSON: I don't think we could
21 join until one o'clock.

22 MS. POWELL: No, he said he could join

1 prior to that.

2 MS. CARSON: Oh, okay.

3 MS. POWELL: But I can't speak to Dr.
4 Wells' charts, unfortunately.

5 MS. CARSON: Okay, okay. Well, we'll
6 leave it as it is and send out any information
7 that we can get from Kate or Dr. Wells after the
8 fact.

9 But there was a question raised about
10 why spouse isn't on there; it's just an intimate
11 partner.

12 Hi. Did someone just join?

13 MS. GENTILE LONG: Hi. It's Jen Long.
14 I just got out of class.

15 MS. CARSON: Hi. Great. Okay.

16 CHAIR BASHFORD: Welcome.

17 MS. GENTILE LONG: Thank you.

18 MS. CARSON: We are reviewing the
19 report. We're currently on page 36.

20 MS. GENTILE LONG: I'm walking. So,
21 I'll just listen.

22 (Laughter.)

1 MS. CARSON: Okay. You'll just
2 listen? Okay. Excellent.

3 The next change is on page 41, on
4 Section 5, that says "Investigator Discretion".
5 In Version 2.0, when it was presented on the 25th
6 of January, it also had a section on the length
7 of investigations. Because that wasn't really an
8 issue that was developed with substantive
9 information yet, it was decided to hold that
10 until the 2020 report. So, that language was
11 deleted from the title of Section 5. A paragraph
12 on the discussion was deleted.

13 And also, what used to be Finding No.
14 3 was deleted. I can read the Finding No. 3 if
15 anybody wants me to, but it essentially didn't
16 make a complete finding on the length of -- okay,
17 the finding said:

18 "In some cases in which the accused is
19 not prosecuted for the penetrative sexual
20 offense, investigations are taking about six
21 months to complete. Lengthy investigations often
22 have significant negative consequences for

1 accused Service members as well as victims."

2 The issue with that finding is it
3 doesn't connect six months to lengthy
4 investigations. The statement should be made, if
5 it's going to be a finding, that six months is a
6 lengthy investigation or too long for an
7 investigation, and that connection wasn't made.
8 So, from the input that we received, we
9 considered it a better idea to just remove the
10 finding all together, when more analysis might be
11 made at the 2020 report.

12 Is there any comment or concern with
13 that removal?

14 (No response.)

15 Okay. Hearing none, we will accept
16 that and move to the next change, which is on
17 page 45.

18 This is the addition of the chart that
19 was presented by Dr. Wells on January the 25th,
20 the case disposition terms most commonly utilized
21 across organizations for cases in which no action
22 was taken. We did change -- there were longer

1 terms, I believe, and we changed it to just other
2 terms because they were terms that hadn't been
3 discussed by the Committee before. So, that's
4 the only change that was made to that chart.

5 Are there any questions about adding
6 that chart? Is everyone satisfied that it should
7 be added? Or are there any questions?

8 (No response.)

9 Okay. Hearing none, we'll move on and
10 we will continue to include the chart.

11 The next is on page 47-48. The first
12 point is on page 47, Section D, "Findings and
13 Recommendations". This is, it starts with
14 Finding 4, but because we've deleted Finding 3,
15 that will actually have to be renumbered now as
16 Finding 3. So, we'll follow through the rest of
17 the report with that numbering change. I just
18 wanted to point that out.

19 And then, to Recommendation 1. We've
20 added in each recommendation that it's to the
21 Secretary of Defense. We've also added the
22 language that will include the Coast Guard. The

1 Coast Guard's preferred language for that is "the
2 Secretary of Homeland Security with respect to
3 the Coast Guard when not operating as a service
4 in the Navy". So, we added that as a
5 parenthetical where we have a recommendation made
6 to the Secretary of Defense.

7 Are there any questions about doing
8 that or any disagreement with adding that in?

9 (No response.)

10 Okay. Hearing none, we will move on.

11 CHAIR BASHFORD: They're very touchy,
12 aren't they?

13 (Laughter.)

14 MS. CARSON: The last is, let's see,
15 page 63. We just did very slight wording tweaks.
16 None of it changed the substantive meanings. I
17 can read the tweaks, but they're very minimal for
18 Findings 13, 14 -- no, 13 and 15, and the
19 recommendation.

20 One thing I did note in Recommendation
21 3 we say "Military Services" where elsewhere we
22 say "Services". So, I'll go ahead and change,

1 take out the "Military" there, unless anyone has
2 a preference to keep it in.

3 (No response.)

4 If no one has any questions about
5 that, I will move. There's one other part I
6 would like to note, and that is in Chapter 3
7 regarding Article 140A. At the time of the
8 meeting on January 25th, you had just received a
9 response from the Department of Defense, Office
10 of General Counsel, Mr. Paul Koffsky, to this
11 recommendation letter that was provided to the
12 Office of General Counsel in September of 2018.
13 So, we added Section 5 on page 93 titled, "DoD
14 Response to DAC-IPAD Recommendations Regarding
15 Article 140A UCMJ," where we summarized the
16 contents of that letter, and the letter is also
17 added as an appendix to the report.

18 Then, added a Section 6 on page 94,
19 Article 140A, "Standards and Criteria Issued by
20 the General Counsel of the Department of Defense
21 on December 17, 2018". This is the "Standards
22 and Criteria" that was required by January of

1 2019. When Mr. Koffsky sent the DAC-IPAD the
2 response, he attached this memo and the
3 "Standards and Criteria". So, we have attached
4 those as well as an appendix.

5 And Section 7, "Discussion and
6 Assessment of Article 140A Standards and Criteria
7 Prescribed by the Department of Defense," we
8 added the following assessment:

9 "The Committee is very pleased that
10 DoD is open in the future to further evaluation
11 and consideration of its recommendation of a
12 centralized, document-based, military justice
13 data collection system. The Committee will
14 continue to collect and analyze sexual assault
15 case adjudication data until its term ends, and
16 is hopeful that the Military Justice Review Panel
17 will continue and expand the Sexual Assault Case
18 Adjudication Project."

19 Are there any comments or issues with
20 that assessment?

21 MR. SULLIVAN: Ms. Carson, if I could
22 just note there's a small issue with regard to

1 Mr. Koffsky's title. It should be "Senior Deputy
2 General Counsel and/or Deputy General Counsel for
3 Personnel and Health Policy".

4 MS. CARSON: Okay. Thank you.

5 MR. SULLIVAN: All right.

6 MS. CARSON: That just adds a little
7 bit more.

8 (Laughter.)

9 Okay. That is the last of the
10 substantive changes to the report.

11 CHAIR BASHFORD: I think we need to,
12 then, take a vote.

13 MS. CARSON: Let me add one more
14 thing, if I could.

15 CHAIR BASHFORD: Yes.

16 MS. CARSON: If you will look at the
17 Table of Contents on page 4, the last part is
18 appendixes. There are 19 of them, most of which
19 -- you have seen everything before. It's the
20 letters; it's the statutes, the Charter, the list
21 of members. The two I want to point out are
22 Appendix G, which is Dr. Wells' report, the

1 "Statistical Report on Sexual Assault
2 Investigations: Results from a Sample of 164
3 Cases Closed in Fiscal Year 2017," and Appendix
4 I, which is the case adjudication database which
5 is discussed in Chapter 2, the data in Chapter 2.
6 This is the appendix with the detailed charts
7 called "Demographic and Adjudication Data of
8 Sexual Offenses Recorded in the DAC-IPAD Case
9 Adjudication Database".

10 So, we'll be sending today all of
11 those appendixes to you to review, but I wanted
12 to note those are the ones you've not seen
13 before. If you could respond when you receive
14 that, just that you've received it and you have
15 no -- if you have any issues with it, let us
16 know. If you're fine with the appendixes, let us
17 know.

18 CHAIR BASHFORD: Great. Then, I think
19 we need a motion to approve the 2019 Annual
20 Report, subject to a couple of revisions we
21 mentioned about renumbering the findings.

22 MS. MANSFIELD: Ma'am, this is Janet

1 Mansfield from the Army. I apologize for
2 interrupting, but could I ask two questions about
3 two of the new charts?

4 CHAIR BASHFORD: Sure.

5 MS. MANSFIELD: Thanks. Thanks for
6 that.

7 So, on page 19, when, essentially,
8 we're looking at a prosecution rate for the
9 penetrative sexual assault cases, Julie, does
10 that include no probable cause cases in your
11 denominator, where an attorney said there was not
12 probable cause?

13 MS. PETERS: No. It's just the --

14 MS. CARSON: No, this is cases --

15 MS. MANSFIELD: This is
16 investigations, correct?

17 MS. CARSON: This is investigations.
18 So, this is whether or not there were charges
19 preferred --

20 MS. MANSFIELD: But this is a result
21 of no probable cause opined, investigations that
22 resulted in a probable cause opined or

1 investigations that just were completed?

2 MS. CARSON: Oh, are you talking about
3 on page 19?

4 MS. MANSFIELD: Uh-hum.

5 MS. CARSON: The 2,055?

6 MS. MANSFIELD: Yes.

7 MS. PETERS: It does include --

8 MS. CARSON: That includes every
9 completed investigation of a penetrative sexual
10 assault allegation or complaint.

11 MS. MANSFIELD: Is there any way for
12 you to clarify, somewhere in a footnote or
13 something, that this would have included cases in
14 which there was a no probable cause opined from
15 the attorney --

16 MS. CARSON: Okay. If you want to
17 look, also, in the appendix, it's RFI 5 that has
18 the detailed request that was made to the MCIOs.
19 So, you can see exactly what was asked for from
20 them.

21 MS. MANSFIELD: Okay. I'm just
22 concerned that in the report we're not clarifying

1 upfront, when we're calculating what's
2 essentially a prosecution rate, we are
3 considering cases that have no probable cause
4 opined report on to the commander.

5 MS. CARSON: Okay. Okay. So, a
6 footnote to this chart that indicates that?

7 MS. MANSFIELD: Perfect. Thank you.

8 MS. PETERS: And, Janet, this is
9 Meghan Peters. Yes, this definitely includes
10 cases in which a prosecutor opined there was no
11 probable cause.

12 MS. MANSFIELD: Okay. Thank you for
13 that, Meghan.

14 Then, the second question I have is
15 page 24 of that chart. So, when we're talking
16 about the non-judicial punishment for penetrative
17 sexual assault, Steve, I think these are the ones
18 we've been clarifying for you that there was not
19 actually a penetrative charge on the non-judicial
20 punishment; that because there was insufficient
21 evidence to go forward with the penetrative
22 sexual assault, the underlying misconduct was on

1 the NJP. Is it possible to clarify that in some
2 way?

3 MS. CARSON: That's in the substance
4 of the chapter.

5 MS. MANSFIELD: Okay.

6 MS. CARSON: Let's see, if you look
7 at --

8 MS. MANSFIELD: Just the way the chart
9 reads, it looks like the Army has 17 Article 15s
10 for rape.

11 MS. CARSON: Well that is what the
12 MCIOs provided. But they provided their -- yes,
13 they provided their information to us by what
14 they reported as the case disposition.

15 MS. MANSFIELD: Okay.

16 MS. CARSON: And that's something that
17 we've identified now in the larger pool of cases,
18 that that case disposition is not necessarily the
19 penetrative sexual assault case disposition.

20 MS. MANSFIELD: Right.

21 MS. CARSON: So, it is discussed in
22 the report itself. If you think it's not clear

1 enough -- it's in the methodology. Let's see.

2 MS. MANSFIELD: I'm just looking for
3 another place to throw it in that's closer to the
4 chart.

5 BGEN SCHWENK: Yes, this is Jim
6 Schwenk. I think that's a good point. If the
7 Army, through the MCIO CID, gave us 17, and then
8 later, the Army, through the TJAG, told us, no,
9 17 is too high, it's some lesser number, then it
10 seems to me we ought to put an asterisk right
11 there in the chart and drop a footnote that says
12 exactly that: we got 17 from the MCIOs. Later,
13 the Army told us it was -- whatever number it
14 was, or put the right number up there. And then,
15 down in the footnote say, we initially got 17,
16 but the Army told us that was wrong. We've now
17 corrected it to the correct number.

18 This points out the problem that that
19 highlights about the inaccuracy of case
20 disposition information in the investigative
21 files.

22 MS. MANSFIELD: Yes. Thank you.

1 BGEN SCHWENK: It seems to me we ought
2 to do something like that.

3 MS. CARSON: Okay. And let me just
4 point you to where it is in the methodology, just
5 so you'll know. On page 19, if you look at the
6 first full paragraph that explains what the
7 DAC-IPAD did when it received the RFI
8 responses --

9 MS. MANSFIELD: Got it.

10 MS. CARSON: So, "The cases were
11 sorted by the Service of the subject and whether
12 or not the disposition of the case involved
13 preferral of charges. The Committee notes that,
14 in cases in which no charges were preferred for
15 the penetrative sexual assault, some other
16 adverse actions, such as non-judicial punishment
17 or admin action, may have been taken against the
18 subject."

19 MS. MANSFIELD: Okay. Thanks, Julie.
20 I see it.

21 MS. CARSON: Okay.

22 MS. MANSFIELD: Thanks very much,

1 ma'am, for letting me interrupt there.

2 CHAIR BASHFORD: Of course.

3 COL WEIR: Did someone just join?

4 BGEN SCHWENK: But, Julie, I still
5 think we ought to do that with the chart, that
6 the chart ought to have the right number,
7 whatever it is, if we have the right number. And
8 then, we can have a footnote that explains how it
9 was hosed-up.

10 MS. CARSON: Sure. Absolutely. If
11 all of the cases had been reviewed -- we also say
12 in the methodology the NJP and admin action cases
13 were set aside and not reviewed. So, that
14 analysis hasn't been done yet. That's why this
15 isn't more clear in this report, but I understand
16 the concern. We'll note that in there, but
17 that's why. Those cases specifically weren't
18 reviewed by the members in order to be able to
19 say those aren't correct.

20 DR. CHAYT: Julie, I think construct
21 a footnote annotating that this was action taken
22 based on the investigation --

1 MS. CARSON: Yes, and we'll definitely
2 do that.

3 DR. CHAYT: -- and not necessarily the
4 penetrative offense.

5 MS. CARSON: Yes.

6 DR. CHAYT: I'll craft that and
7 provide that.

8 MS. CARSON: Yes.

9 DR. CHAYT: Okay.

10 MS. CARSON: Did someone else join?

11 DR. WELLS: Yes, this is Bill.

12 MS. CARSON: Oh, hi. Okay, great.

13 COL WEIR: I think we left off with
14 the Chair. Ma'am, if you want to continue?

15 CHAIR BASHFORD: Yes, I'm losing track
16 of what little -- there's going to be a couple of
17 changes, one to the numbering of the findings.
18 There will be an extra footnote with respect to
19 one of the charts, and we will be getting the
20 appendices that we have not yet seen to review
21 and get back to you.

22 But, subject to that, does anybody

1 move to adopt the DAC-IPAD 2019?

2 MS. CARSON: But there's one more
3 thing, Chair Bashford.

4 CHAIR BASHFORD: What's that?

5 MS. CARSON: If I may, this will now,
6 once it's substantively approved, will be sent to
7 our editor, who will make any editing changes
8 that are not substance-related, just editing for
9 purposes of improving the written quality of the
10 report.

11 CHAIR BASHFORD: Which we welcome.

12 (Laughter.)

13 MS. CARSON: She's done a cursory
14 review of each section as we've gone. But, now
15 that it's finished, she's going to do the really
16 deep editing.

17 CHAIR BASHFORD: So, this would be our
18 final pre-edited draft --

19 MS. CARSON: Correct.

20 CHAIR BASHFORD: -- that we'll be
21 approving?

22 MS. CARSON: So, it will be subject to

1 the changes we've discussed today and the editing
2 that will be done by the professional editor.

3 CHAIR BASHFORD: Okay. Is there a
4 motion?

5 BGEN SCHWENK: Moved.

6 CHAIR BASHFORD: Second?

7 DR. MARKOWITZ: I second.

8 CHAIR BASHFORD: Okay. And since
9 we're on the phone, I'm going to ask if there's a
10 vote to approve. If people could just say by
11 name?

12 So, Bashford, I approve.

13 MG ANDERSON: Anderson, I approve.

14 JUDGE BRISBOIS: Brisbois, aye.

15 MR. KRAMER: Kramer, I approve.

16 DR. MARKOWITZ: Markowitz --

17 SGT MARKEY: Markey, I approve.

18 MS. GENTILE LONG: Jen Long. I
19 approve.

20 MS. TOKASH: Tokash, I approve.

21 BGEN SCHWENK: Schwenk, approve.

22 CHAIR BASHFORD: Did we miss anybody?

1 MS. CARSON: Dr. Markowitz? Maybe she
2 had to go --

3 DR. MARKOWITZ: Sorry, I think I got
4 lost in the process.

5 MS. CARSON: Oh, okay.

6 DR. MARKOWITZ: I approve also.

7 MS. CARSON: Thank you.

8 COL WEIR: Did Ms. Long --

9 CHAIR BASHFORD: Okay. So, it's
10 unanimously approved.

11 COL WEIR: Did she --

12 MS. CARSON: Yes.

13 COL WEIR: Okay.

14 CHAIR BASHFORD: Anything further?

15 BGEN SCHWENK: And I think we ought to
16 say, once again, what a great job the staff did
17 in putting this thing together. I thought it
18 read real well, and people can draw from it what
19 they want, but I thought it was quite well done.
20 So, congratulations to everybody.

21 CHAIR BASHFORD: Absolutely, yes.

22 MG ANDERSON: Great job.

1 DR. MARKOWITZ: Very well done.

2 MS. CARSON: Thank you.

3 COL WEIR: What we wanted to discuss
4 now is, since we're finished with the report,
5 talk about what we're going to do in the future.
6 I had a conversation with the Chair about the way
7 ahead.

8 As you all know, we've been working
9 hard to do these case reviews, and now that we're
10 finalizing the report, the staff's major role
11 will be to finalize and review those
12 investigations.

13 The decision was made to cancel the
14 May 17th public meeting. In order to plan a
15 public meeting, it takes a lot of background work
16 to get that off the ground and to hold the
17 meeting, which takes a lot of staff effort. And
18 so, it was determined that the staff's effort
19 could best be utilized in reviewing cases and get
20 those knocked out, those 2,055.

21 So, the next public meeting will be on
22 August 23rd. That allows the staff to finish the

1 case reviews, and it also allows the Case Review
2 Working Group to come here to our offices and
3 review those cases, instead of coming to a public
4 meeting.

5 So, you're welcome to come here
6 anytime, as much as you would like. Get with
7 Amanda and she will set up your travel and
8 lodging.

9 And I know that General Schwenk has
10 been in contact with Kate Tagert about the Case
11 Review Committee's need to review some of those
12 cases.

13 What's come to our attention as the
14 staff -- and I mentioned this briefly, I think,
15 at the public meeting -- was either how you look
16 at the acquittal rate or the conviction rate.
17 The conviction rate has been determined to be low
18 based upon what is normal, and how we define
19 "normal" is something we can look into, but the
20 acquittal rate is something that the staff has
21 determined that it would be something that the
22 Committee would want to look into.

1 There's been interest on Capitol Hill
2 about the acquittal rate and why it's so high.
3 And so, one of the things that we would like to
4 do, as the staff, and propose to the Committee,
5 as we start looking into those, the acquittal
6 rates, one of the things or several of the things
7 that we could do, as a staff, is pull the data
8 that we already have in both the Case Review
9 Working Group database and the court martial
10 database, and try to determine if we can bin
11 those cases factually and maybe make a
12 determination of the likelihood of acquittal
13 based upon the factual scenario.

14 If we can have Dr. Wells pull a
15 bivariate or multivariate analysis that will say,
16 in cases where there's alcohol involved, it's in
17 a barracks, a dormitory setting, and both
18 participants have been consuming alcohol, what's
19 the likelihood of acquittal in that case? So, we
20 could do that based upon the databases that we
21 have in-house.

22 The other thing we can do is we've

1 discussed looking at records of trial, and we've
2 been in discussions with how we can get those and
3 how it best serves us to look at those. A record
4 of trial may or may not indicate what happened at
5 the court martial.

6 Another idea or possibility to look at
7 is victim declination. We can send out a Request
8 for Information to the Services, to their Special
9 Victim Counsels' offices, and try to get back --
10 I know there's no mechanism right now that I'm
11 aware of that the Services have, an outbriefing,
12 so to speak, of when the victim leaves or the
13 attorney-client relationship is severed with the
14 Special Victim Special, the reasons why that
15 victim did not want to participate. I think this
16 will be more anecdotal information that would be
17 beneficial to the Committee to determine, once we
18 get that information in, where you guys go with
19 that information.

20 Are they declining to participate
21 because of the length of the investigation? And
22 maybe that goes to further focus or study on the

1 length of these investigations.

2 How relevant or how important is the
3 Special Victim Counsel's advice concerning the
4 acquittal rate? Is that something that they're
5 looking at? When they say to their counsel, "I
6 see where it's 25 percent conviction rate. I
7 don't want to go through this when the odds are
8 stacked against me like that."

9 So, those are some of the things that
10 we can do through an RFI, just get anecdotal
11 information. And that also lends itself to going
12 to a site, an onsite visit, to ask the SVCs and
13 get some on-the-road, where-the-rubber-meets-the-
14 road information from those SVCs.

15 And the overall acquittal topic also
16 goes into Article 32, which the General Counsel's
17 Office has asked us to look into, as well as the
18 Staff Judge Advocate's advice. So, wrapped up in
19 that overarching acquittal, there's a lot of
20 small pieces to that.

21 And we've been involved and talked
22 about the training piece and what training is

1 going on in the field out there. But we've
2 requested and received what the Services are
3 doing as far as training to incoming Service
4 members in their basic training, whatever Service
5 that may be, as well as their annual training,
6 quarterly training. So, we have that.

7 That may be something that we want to
8 ask because we've looked at -- one of our staff
9 members has reviewed some of the voir dire
10 questions that are being answered, or asked, by
11 defense counsel. There may be a disconnect
12 between the actual what's in the program of
13 instruction for the training versus what the
14 member is actually receiving or hearing.

15 And it sort of reminds me of the
16 expedited transfer. Remember the anecdotal, this
17 is being, this expedited transfer process or
18 policy is being used by Service members to get
19 better duty assignments. And I think you all
20 found that that's not the case at all.

21 So, maybe part of the training is
22 that, what we believe, you know, one drink and

1 you can't consent to sex, may be a myth that
2 needs to be dispelled more than additional
3 training. But that's something on a site visit
4 we could also look into.

5 But these are just some of the ideas
6 that the staff have kicked around, based upon
7 input we have received from the Senate Armed
8 Services Committee and Senators and
9 Representatives on the Hill.

10 CHAIR BASHFORD: This is Martha.

11 I'm not sure, Steve, that counsels
12 will be able to tell you why somebody declined.
13 That might be on an individual basis -- I would
14 think that would be privileged.

15 COL WEIR: Yes, what we were looking
16 at more is general comments from them, like not
17 saying that Specialist Susie Smith said this,
18 where obviously that would be a privileged
19 communication, but more of these are the five
20 things that we've been told why victims decline
21 to participate, and group them like that versus
22 individuals, just to try to get some handle on

1 why --

2 CHAIR BASHFORD: Sure.

3 COL WEIR: -- victims are declining.

4 Because, obviously, I think -- and we have the
5 stat -- I want to say 40 percent are declining to
6 participate. So, that's a big number. And so,
7 trying to figure out why that number is that
8 large may be beneficial to the Secretary of
9 Defense and those on the Hill.

10 And how we go about that, obviously,
11 is open for discussion.

12 CHAIR BASHFORD: Okay.

13 COL WEIR: But that would be the
14 staff's --

15 CHAIR BASHFORD: So, are you sending
16 out an RFI?

17 COL WEIR: We can do that. That would
18 be the staff's recommendation to the Committee
19 and the Chair, is that we look at the acquittals
20 as our next way ahead; after the case review is
21 completed, we look at the acquittals.

22 And then, for the August 20 meeting,

1 we will have -- or excuse me -- the August
2 -- what did I say? -- the 23rd meeting, that we
3 will be more in tune to looking at the acquittal
4 piece of this.

5 CHAIR BASHFORD: Anybody have any
6 comment on the Director's proposal?

7 BGEN SCHWENK: Yes. This is Jim
8 Schwenk.

9 I think that the Case Review Working
10 Group had pretty much decided that, once we got
11 finished with the work we're doing right now,
12 that we would move on to looking at acquittals
13 and figure out how to do that. So, what Steve
14 said dovetails with our discussions within the
15 Case Review Working Group.

16 I will note that Steve points out two
17 issues that are related, but separate. One is,
18 why do people decline; why do victims decline to
19 participate? Which probably in most cases
20 doesn't have anything to do with the acquittal
21 rate, because they probably declined before we're
22 in the middle of a court. So, it's probably two

1 related, but separate issues that we would end up
2 looking at.

3 SGT MARKEY: And this is Jim Markey.

4 I think that you make a good point,
5 General. Why they may have dropped out, and
6 then, is there a timeline of when they appear to
7 be dropping out of the process? I think that
8 would be valuable to see, too, because there may
9 be something tied into the timing of that.

10 MS. GENTILE LONG: The only thing I
11 would say is I think this is a great place where
12 the research is very helpful on downstream
13 orientation. Because this is where -- I don't
14 know if it was Colonel Weir or Chair Bashford who
15 talked about maybe decisions made based on
16 acquittals. It sometimes happens that the panels
17 don't like this or someone makes a decision or
18 recommendation based on the next one down the
19 chain. So, it might be a good time to pull that
20 and just be mindful of what you might be reading
21 to see if there is any indication of that, which
22 I don't know how you're going to find in the

1 documents that you have, but --

2 COL WEIR: Right now, the checklist
3 that we are working off of, the question of
4 victim participation, yes, no, and then, at what
5 point in the process. So, I would say, just off
6 the top of my head, 95 percent are in the
7 investigation phase. We've got a couple that
8 we've determined, once the case has been handed
9 off, that we'll get a note in the investigation
10 file that says, and this could be even after
11 charges were preferred, that the victim is
12 declining to participate. But that's a smaller
13 number, a much, much smaller number than what we
14 have right now at the investigation stage.

15 I'll toot the Army's horn. They've
16 got a CID Form 570E that the victim fills out
17 that we see in most all of the Army CID files
18 where the victim declines to participate. And
19 that form is signed by the victim, and there's a
20 date certain when that individual has signed that
21 form. So, that's what we found in the
22 investigations so far.

1 But if we could get some anecdotal
2 information from the SVCs that say that these are
3 the top five reasons, and then, that would give
4 us, from that RFI, that would give us an
5 opportunity to dive deeper into what that reason
6 may be.

7 And so, for example, I mentioned
8 earlier, one of the top five reasons or top three
9 is length of the investigation. "I just don't
10 want to put myself through this because the SVC
11 has told me it might take 18 months." Then,
12 maybe that's something that the Committee can do
13 a deeper dive into, as to how you shorten the
14 process, if it's possible.

15 But that's all I have, unless you have
16 anything further.

17 CHAIR BASHFORD: Well, it would also
18 be interesting, if we could, if it's possible to
19 find, were the declinations during the
20 investigatory stage, how early they come in the
21 investigatory stage. Because that would relate
22 back to our discussion of should somebody be

1 allowed to re-restrict their report, sort of an
2 inadvertent disclosure. If they're deciding on
3 like day three that they don't want to
4 participate, but the investigation kind of
5 continues along, it would just be interesting
6 data.

7 COL WEIR: Yes, ma'am, we'll see what
8 we can pull.

9 But I think what you'll find is, if
10 the victim declines on day three, the
11 investigation does not stop, which I think in
12 most civilian -- and, Mr. Markey, please comment.
13 In most civilian jurisdictions, if the victim
14 comes in and says, "I don't want to file a
15 complaint," then that pretty much stops the
16 investigation, which seems not to be the case in
17 the military.

18 SGT MARKEY: Yes. This is Jim.

19 True. But also, one of the things
20 that we have been looking at is the use of the
21 declination form and how those are presented to
22 victims and the timing of those forms. And

1 sometimes we have, only anecdotal, that those
2 forms are being used to influence the victim, not
3 -- how they're presented not to perhaps pursue
4 the case. So, I think that would be interesting
5 to look at that practice.

6 And the other question I had is, when
7 you talked about training, are you talking about
8 the individuals involved in the investigation and
9 prosecution, process training, or are you talking
10 about enlisted training for the general
11 population of the military about sexual violence?

12 COL WEIR: The latter there, the
13 general training they receive and what the
14 understanding of that training is.

15 SGT MARKEY: Okay. Because I'm
16 curious about training retention of MCIOs, JAGs,
17 of SVCs, and kind of experience level of that. I
18 know we've kind of talked about that a few times
19 at some of the meetings as well, and the turnover
20 rate, and how that might impact acquittal or
21 prosecution rates.

22 COL WEIR: Okay. I mean, one of the

1 things that we've discussed with the acquittal
2 rate, and trying to figure out how to get a
3 handle on that, is in our discussions with the
4 staff, there was some thought at one point it's
5 because the prosecutors don't have the experience
6 to prosecute these crimes. And then, the
7 Services have assigned special prosecutors to
8 these cases. You have senior trial counsels who
9 are trying these cases. You've got Deputy Staff
10 Judge Advocates involved.

11 And from my past experience, I can
12 tell you, when I was the Staff Judge Advocate and
13 had a sexual assault case, believe me, that was a
14 high priority for me, and I made sure that the
15 lawyers who were going to be bringing that case
16 to trial were prepared and ready to try the case.

17 So, I think we can get away from
18 looking at, well, this prosecutor only had two
19 years' experience and this was, you know -- but
20 we don't back it up with the senior trial counsel
21 who tried the case, he was a major, she was a
22 major. And so, the level of experience of the

1 prosecutor I think is not the issue.

2 If you look across the courtroom and
3 sitting next to the trial counsel's table is
4 defense counsel who is a young captain, what do
5 you make of that? These young, you know, the
6 defense counsels are that much better when
7 they're peers of the trial counsel? So, I think
8 that the issue becomes evidence. It becomes the
9 standard of beyond a reasonable doubt versus how
10 you got into the courtroom, which is probable
11 cause, and the mindset of, you know, when we go
12 back and try to bin these cases, what's the
13 corroborating evidence, if any? Is it the
14 classic "he said/she said," both drinking?

15 So, I think that's probably the focus
16 versus looking at the training or the experience
17 level of the prosecutor, because they've got
18 levels and layers above them who are exerting
19 -- I hate to use the word "pressure" -- but
20 exerting, you know, that they need to be well-
21 prepared to try the case.

22 And I'm sure we could go out, and that

1 could be another site visit, and talk to the
2 Special Victim Counsel -- or excuse me -- the
3 Special Victim Prosecutors, talk to staff Judge
4 Advocates and get what their focus is on these
5 sexual assault cases. Because you have those
6 cases come across your desk as the Staff Judge
7 Advocate. Regardless of the Service you're in,
8 you understand the importance of making sure that
9 this is a well-trying case. And so, you put in
10 focus your effort there.

11 I don't believe, based upon my
12 experience of that, it's the experience level of
13 the prosecutors. There is something else at play
14 here. Because, like I said before, you have
15 defense counsel who are peers of those trying the
16 case and they're defending it. And so, it's not
17 the skill or the experience level.

18 Chair?

19 CHAIR BASHFORD: I think that sounds
20 all fine. And we've been collecting all these
21 different data points originally in the Case
22 Review Working Group to see if there was

1 something predictive about what cases would get
2 preferred or not. I think those same points will
3 be useful when we extend it on further to see if
4 those data points, if there's something there
5 that Dr. Wells can use to predict which cases
6 will result in acquittals or which cases will
7 result in convictions.

8 COL WEIR: Based on what I've just
9 described as the way ahead, do we get the thumbs-
10 up to go ahead and pursue that way ahead from the
11 staff?

12 CHAIR BASHFORD: Anybody have any
13 comments?

14 (No response.)

15 I'm going to take lack of comment as
16 approval.

17 (Laughter.)

18 COL WEIR: All right. Well, I don't
19 have anything further here from the staff.

20 MS. TOKASH: Sorry, this is Meghan
21 Tokash.

22 I agree, Colonel Weir. I think

1 looking at the high acquittal rate is very
2 important, especially as a member of this
3 Committee, now that I have a comparative view as
4 a federal civilian prosecutor. So, I think that
5 that is a very good direction.

6 I would just ask that maybe we can
7 keep prosecutor training, or maybe not even
8 training, but the prosecutor track idea open as a
9 possible reason for the high acquittal rate. I
10 don't think that it is personally, from my
11 personal experience, but I just wouldn't want to
12 preclude, just shut down that avenue. I mean, if
13 that crops up, then maybe that's a road that we
14 go down and explore. But I just would hope that
15 we wouldn't completely preclude it.

16 COL WEIR: Meghan, let me make sure I
17 understand what you're saying. So, you're
18 talking about when the Services decided that they
19 were going to -- and I think it's the Navy, where
20 they were going to say you're going to be a
21 prosecutor for -- that's basically your job.
22 You're talking about that prosecution track, when

1 you say that?

2 MS. TOKASH: Right.

3 COL WEIR: Okay.

4 MS. TOKASH: So, for example, just
5 based on personal experience, I know when the
6 Army's SVP program was initiated, one of the
7 initiating ideas was that those SVPs would come
8 around and serve SVP tours again. I'm not sure
9 that that's ever happened to date. Maybe it has.
10 Maybe I'm four years removed now and I just don't
11 have --

12 DR. MARKOWITZ: It has, Meghan. It
13 has.

14 MS. TOKASH: Yes. So, I think that
15 that would be something interesting, then, to get
16 perspectives from SVPs who are serving a second
17 tour, and that sort of thing.

18 COL WEIR: Okay. Definitely something
19 we can look into.

20 MS. TOKASH: Thank you.

21 JUDGE BRISBOIS: Chairwoman Bashford?

22 CHAIR BASHFORD: Yes?

1 JUDGE BRISBOIS: This is Judge
2 Brisbois. I'm sorry, I have to take the Bench
3 for a hearing in five minutes. So, I need to
4 drop off the call.

5 CHAIR BASHFORD: Okay. Thank you for
6 staying on this long.

7 JUDGE BRISBOIS: All right. Thank
8 you.

9 COL WEIR: Ma'am, that's all I have.
10 If there's no further comments, I think Mr.
11 Dwight Sullivan can close us down.

12 CHAIR BASHFORD: Mr. Sullivan, you
13 have the gavel.

14 (Laughter.)

15 MR. SULLIVAN: Very well.

16 This meeting of the DAC-IPAD is
17 officially closed.

18 (Whereupon, at 11:56 a.m., the
19 Committee was adjourned.)
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21
22

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