

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
DECEMBER 4, 2020

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The Committee met via Teleconference,
at 11:00 a.m. EST, Ms. Martha Bashford, Chair,
presiding.

PRESENT:

Ms. Martha S. Bashford, Chair
Maj. Gen. Marcia Anderson (Ret.)
Hon. Leo I. Brisbois
Ms. Kathleen Cannon
Ms. Meg Garvin
Hon. Paul W. Grimm
Mr. A.J. Kramer
Ms. Jennifer Gentile Long
Sgt. James "Jim" Markey (Ret.)
Dr. Jenifer Markowitz
CMSAF Rodney J. McKinley, USAF (Ret.)
Brig. Gen. James R. Schwenk, USMC (Ret.)
Dr. Cassia C. Spohn
Hon. Reggie B. Walton

STAFF:

Col. Laura Calese, U.S. Army, Staff Director
Mr. Dwight Sullivan, Designated Federal Official
Ms. Theresa Gallagher, Attorney-Advisor
Ms. Nalini Gupta, Attorney-Advisor
Ms. Amanda Hagy, Senior Paralegal
Mr. Chuck Mason, Attorney-Advisory
Ms. Marguerite McKinney, Attorney-Advisor
Ms. Meghan Peters, Attorney-Advisor
Ms. Stacy Powell, Senior Paralegal
Ms. Stayce Rozell, Senior Paralegal
Ms. Terri Saunders, Attorney-Advisor
Ms. Kate Tagert, Attorney-Advisor
Ms. Eleanor Magers Vuono, Attorney-Advisor
Mr. Pete Yob, Attorney-Advisor

SERVICE REPRESENTATIVES:

Ms. Janet Mansfield, U.S. Army
Mr. James Martinson, U.S. Navy
Colonel Erin McMahan, U.S. Army, National Guard
Major Marquita Ricks, U.S. Air Force
Captain Vasilios Tasikas, U. S. Coast Guard
Lieutenant Commander Daniel Wiltshire, U.S. Coast
Guard
Colonel Tracianna Winston, U.S. Army, National
Guard
Ms. Asha Vaghela, U.S. Air Force

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

2 11:01 a.m.

3 MR. SULLIVAN: Good morning. I am
4 Dwight Sullivan, the Designated Federal Officer
5 of the Defense Advisory Committee on
6 Investigation, Prosecution, and Defense of Sexual
7 Assault in the Armed Forces, colloquially known
8 as the DAC-IPAD. This public meeting is open.

9 Ms. Bashford, you have the conn.

10 CHAIR BASHFORD: Thank you, Mr.
11 Sullivan. Good morning to everyone. I'd like to
12 welcome the members and everybody in attendance
13 today to the 21st public meeting of the Defense
14 Advisory Committee on Investigation, Prosecution,
15 and Defense of Sexual Assault in the Armed
16 Forces, or DAC-IPAD.

17 In accordance with current Department
18 of Defense guidelines for operations during the
19 COVID-19 pandemic, today's meeting is being held
20 via teleconference. Please note that non-DAC-
21 IPAD attendees will be muted by our
22 teleconference administrator in compliance with

1 DoD's legal guidance and to prevent background
2 noise or disruptions during the meeting. To any
3 members of staff, I ask you to please keep your
4 phones muted as well when you are not speaking.

5 Additionally, in case the current
6 conference line fails, we will break for 15
7 minutes and move to an alternate conference line.
8 The alternate conference line dial-in information
9 will be reposted on the DAC-IPAD website with
10 instructions for rejoining the meeting.

11 We have a quorum and we have everyone
12 in attendance, but I did not hear from Ms.
13 Tokash.

14 Ms. Tokash, are you there? Okay, we
15 still have a quorum.

16 The DAC-IPAD was created by the
17 Secretary of Defense in 2016 in accordance with
18 the National Defense Authorization Act for fiscal
19 year 2015 as amended.

20 Our mandate is to advise the Secretary
21 of Defense on the investigation, prosecution, and
22 defense of allegations of sexual assault and

1 other sexual misconduct involving members of the
2 armed forces.

3 The purpose of today's meeting is to
4 facilitate and record the vote for substantive
5 content, findings, and recommendations of the
6 DAC-IPAD's report on racial and ethnic data
7 relating to disparities in the investigation,
8 prosecution, and conviction of service members
9 for sexual offenses involving adult victims
10 within the military justice system as required by
11 Section 5401 of the NDAA for fiscal year 2020.

12 This meeting is being transcribed and
13 the complete written transcript will be posted on
14 the DAC-IPAD website.

15 If a meeting attendee would like to
16 make a public comment, please submit your name
17 and the phone number you are calling from to
18 whs.pentagon.em.mbx.dacipad@mail.mil. Comments
19 will be heard at the discretion of the Chair.
20 Written public comments may be submitted at any
21 time for Committee consideration.

22 To assist the court reporter in

1 identifying speakers and to minimize confusion
2 caused by multiple people speaking at the same
3 time, I request that Committee members signal
4 when they have a question or wish to speak by
5 just stating your name and then waiting to be
6 acknowledged before proceeding. Please also
7 remember to keep your phone on mute unless you
8 are speaking.

9 Regarding public comments, we received
10 no requests to make a public comment at today's
11 meeting. However, we did receive two written
12 public comments via email during the public
13 meeting on November 6 that I would like to
14 recognize on the record.

15 The first was from Survivors United
16 requesting that the executive director of that
17 organization provide testimony to the Committee
18 regarding her victim impact statement during
19 sentencing.

20 We are coordinating with Survivors
21 United to schedule time for her comments when the
22 topic is next addressed by the Committee or

1 subcommittee assigned to develop this topic
2 further.

3 We also received a comment from a
4 former Navy officer regarding his court-martial
5 for sexual offenses and his concern about racial
6 disparities in the military justice system, and
7 of judges and military panels specifically. He
8 did not wish to have his email posted to the DAC-
9 IPAD website.

10 The email correspondence from both
11 members of the public was provided to all of the
12 Committee members via email from the DAC-IPAD
13 staff.

14 Today, with respect to the race and
15 ethnicity report, we will complete the voting
16 process. First, we will return to the
17 substantive content of the report itself.

18 With good recordkeeping, we'll ensure
19 that we have concurrences and dissent for the
20 substantive discussion. Then we will affirm the
21 vote on the five findings. We did not receive
22 any recommended edits to these findings since our

1 last meeting.

2 Next, we will review and affirm the
3 recommendations that we voted on in our previous
4 session. Based on edits received to the draft,
5 we will revisit recommendations six and seven.

6 Finally, we will consider whether to
7 include an appendix that was discussed in
8 subcommittee meetings and our session on 23
9 October. Chuck Mason will lead this discussion
10 and we will vote on whether to include this
11 appendix.

12 To ensure we've captured the full
13 Committee's intent, we'll take a final vote on
14 the report as a whole.

15 You received the final draft of the
16 report via email on December 2, 2020, which
17 incorporates the substantive changes agreed to
18 and voted upon by the Committee during the
19 November 6 public meeting.

20 This draft incorporates several non-
21 substantive edits recommended by staff and
22 Committee members after that meeting. These

1 include some organization matters like the
2 inclusion of key recommendations in the executive
3 summary, and the addition of recommendations to
4 the conclusion.

5 If any member has any desire for
6 further deliberation, other than the topics
7 mentioned above, please move to reopen the
8 deliberation.

9 Otherwise, I now direct you first to
10 Tabs 1 and 2 in the read ahead materials
11 containing the final draft report and the
12 PowerPoint slides with discussion points for the
13 couple of substantive edits to be considered in
14 the recommendation section.

15 For the public, the finding and
16 recommendations are provided on the DAC-IPAD
17 website link for today's meeting materials.

18 To begin, we will look at the
19 substantive content points of deliberation. We
20 will then affirm our findings, affirm and discuss
21 our recommendations, and vote on the appendix and
22 then overall report.

1 I'm turning it over to Ms. Vuono and
2 Mr. Mason to guide and record our vote. So,
3 thanks, Ms. Vuono, for walking us through the
4 report, findings, and recommendations' vote.

5 MS. VUONO: Good morning, this is
6 Eleanor Vuono. First, I want to take just a
7 moment to highlight four key items that you
8 discussed in the public meeting in November, and
9 then we'll move onto the findings and
10 recommendations.

11 First, just a reminder that the title
12 of the report was edited and changed after your
13 deliberations to read Racial and Ethnic Data
14 Relating to Disparities in the Investigation,
15 Prosecution, and Conviction of Sexual Offenses in
16 the Military.

17 The second point to highlight based on
18 your deliberations was the importance of
19 recording the race and ethnicity of the victim in
20 addition to the accused for every investigation
21 initiated by military law enforcement in which a
22 service member is identified as the subject

1 through final disposition, and that important
2 point was added both to the ex sum and became
3 finding number five which you've already voted to
4 approve.

5 The next substantive area to highlight
6 is the fact that the Committee wanted to describe
7 the narrative key points of the October 2020 DAC-
8 IPAD report on investigative case file reviews
9 for military adult penetrative sexual offense
10 cases closed in fiscal year 2017. Those are now
11 reflected at page 16 as bullet points describing
12 the statistical findings from Dr. Wells' section
13 of that October 2020 report.

14 And next, the other key item in the
15 content and the body of the report was the
16 decision discussed in November not to include a
17 separate standalone series of observations as
18 part of the reporting of the raw data.

19 So, the Committee determined to report
20 the raw data as it was presented to the DAC-IPAD
21 from the services. Those are shown in the data
22 section of the report as charts, and in a moment,

1 Chuck will discuss that raw data that we received
2 as reflected in Appendix G.

3 So, that is it for the report itself.
4 Chair Bashford, should I move onto the point
5 about the findings or did you want to call for
6 any discussion, concurrences, or dissents on
7 those substantive points of the report?

8 CHAIR BASHFORD: I would like to call
9 for a vote for to open it up if there's any
10 discussion on those points that you just went
11 through. Does any Committee member want to
12 discuss those further?

13 Hearing nothing, I'm then going to ask
14 people to vote. If I do not hear any dissent or
15 abstentions, your vote will be taken as to
16 approve that. Is there a second?

17 PARTICIPANT: I second.

18 CHAIR BASHFORD: Okay, then does
19 anybody wish to abstain or does anybody dissent
20 from those changes? Hearing nothing, they have
21 been unanimously adapted. Ms. Vuono, can you
22 continue, please, or is it over to Mr. Mason?

1 MS. VUONO: Yes, well, just real fast,
2 the findings, as everyone knows, there have been
3 no changes to the five findings since the
4 Committee deliberated and voted on those on
5 November 6.

6 Chair Bashford, would you like to go
7 on the record affirming that, unless anyone
8 wishes to reopen the findings, those five
9 findings for discussion or revote?

10 CHAIR BASHFORD: Yes, this is exactly
11 what we voted on the last time, so unless there's
12 any discussion, I'm going to move that we adopt
13 them again. Second?

14 HON. GRIMM: Seconded, Grimm.

15 CHAIR BASHFORD: Does anybody wish to
16 abstain to dissent from those findings? Hearing
17 nothing, those findings are now affirmed, the
18 five findings.

19 MS. VUONO: Great, now moving onto the
20 recommendations, as you'll see, the
21 recommendations are -- we can go through them
22 quickly. There were no changes to Recommendation

1 1.

2 In Recommendation 2, the phrase more
3 than one race or other was edited since our
4 discussion in November to align with the OMB
5 Directive 15 language, and so that was just a
6 recommendation from one of our Committee members
7 to make sure that those terms aligned, so that is
8 now more than one race other as in the OMB
9 directive.

10 But just a note though, in our charts,
11 we didn't change our charts which used the phrase
12 two or more other, but for the recommendation
13 purposes, we wanted to track that language
14 properly from OMB Directive 15.

15 Recommendation 3 has been slightly
16 edited, not to change the content, but to provide
17 clarity, and this was a very helpful suggestion
18 from one of our service representatives, a good
19 reminder again how much we value and appreciate
20 the input of our service representatives.

21 And so the Recommendation 3, as you
22 can see, has been rewritten to say Congress

1 authorized and appropriates funds for the
2 Secretary of Defense to establish a pilot program
3 operating one uniform document-based data system
4 for collecting and reporting contact in
5 penetrative sexual offenses across all of the
6 military services.

7 The pilot program, which should cover
8 every sexual offense allegation made against the
9 service member, under the military jurisdiction
10 that is investigated by a military criminal
11 investigative organization, will record case data
12 from standardized source documents provided to
13 the pilot program by the military services, and
14 will include demographic data pertaining to each
15 victim and accused, including race and ethnicity.
16 That was the editorial suggestion that the
17 recommendation be changed to read.

18 Recommendation 4 (telephonic
19 interference) 5 and what is now 8, what was 9,
20 just added the preliminary hearing officers to
21 that list of (telephonic interference) involved
22 in every investigation through courts-martial, so

1 that's the only change to those recommendations.

2 Then the key focus right now for the
3 recommendations is the combination of
4 Recommendations 6 and 7. It was the view of the
5 staff and recommendations from several Committee
6 members that that was confusing to have
7 Recommendations 6 and 7 so similar in what they
8 were recommending.

9 Both of them were suggesting that the
10 newly established MJRP, the Military Justice
11 Review Panel, should consider doing further
12 studies of race and ethnicity in sort of two
13 different areas, one, what we call functional
14 roles, organizational roles, those demographics
15 of the police, the defense counsel, staff judge
16 advocates, panel members, et cetera, and then the
17 second recommendation, what was Recommendation 7,
18 was to do it looking at those same individuals
19 for each case or whatever number of cases they
20 decide to assess.

21 It seems confusing to have them sort
22 of so similar, but as two separate

1 recommendations, so we have combined them to
2 explain that the recommendation is now for the
3 MJRG to consider whether to review and access
4 those two different aspects of race and ethnicity
5 demographics, both the organizational individuals
6 sort of as a whole, and then on a case by case or
7 individual case basis.

8 So, we hope that by combining those
9 two, it's clarified the recommendation, but given
10 that that's the only other change, I turn it back
11 over to the Chair to see if the members like that
12 change or would like to discuss that change,
13 deliberate on that change before voting.

14 CHAIR BASHFORD: Thank you, Ms. Vuono.
15 As you all recall, we had two ideas. One was a
16 snapshot at this point in time who are the
17 players on the stage, and the other was the case
18 by case basis. This combines them into simply
19 one recommendation rather than two. Does anybody
20 have any comments or want to discuss that?

21 Okay, hearing nothing, we can move on
22 and we'll vote on the recommendations. I believe

1 the only change then was to Recommendation 9
2 where you added the faux as well, is that
3 correct?

4 MS. VUONO: That's correct, and then
5 also renumbered it, but they'll be renumbered
6 again, but, yes, that's the only substantive
7 change.

8 CHAIR BASHFORD: Okay, so we'll now be
9 voting on -- I just want to make sure we have
10 this correctly. It will be Recommendations 1, 2,
11 3, 4, 5, 6, and 8 will be now 7, and 9 which will
12 now be 8, is that correct?

13 MS. VUONO: Correct.

14 CHAIR BASHFORD: Okay, then I move
15 that we vote on those recommendations. Is there
16 a second?

17 PARTICIPANT: Second.

18 MS. LONG: Second, Long.

19 CHAIR BASHFORD: Does anybody want to
20 discuss them further? Then I would now move that
21 we adopt those recommendations. If anybody wants
22 to abstain or dissent, please make your feelings

1 known. Hearing nothing, the recommendations are
2 unanimously adopted, Recommendations 1 through 8.

3 MS. VUONO: Yes, ma'am, and now I'll
4 turn the phone over to Chuck Mason to discuss the
5 proposed, excuse me, appendix providing the
6 aggregated data provided by the military services
7 in response to RFI 18 and 18a. Chuck?

8 MR. MASON: Good morning. If you
9 would like to turn to tab four of the read ahead
10 materials, you will see the proposed Appendix G.
11 It's quite lengthy, but it is in three parts, and
12 it would be possible to sever off any part if you
13 so desire.

14 The first part of the appendix are the
15 narratives that the services provided as part of
16 the RFI to explain how they actually obtained the
17 information that they provided to us. Rather
18 than including it in the body, we have a footnote
19 that cites to this to provide more information of
20 the process that each service utilized.

21 The second part of the appendix should
22 be very familiar to everybody. It is what we

1 have at the end of every case adjudication report
2 that we've done. In the past, I've said this is
3 how we show our work.

4 So, what we have done is taken the
5 spreadsheets that were provided to us by the
6 services. We removed any PII, personal
7 identifiable information, and then we've taken
8 that and put them into table formats so that the
9 reader, when they look at the full report, can
10 see exactly how we came up with the charts in the
11 front and the observations that were made.

12 The third part of the appendix which
13 is slightly different and it's an addition
14 compared to what we've done in the past is it's
15 just a graphical representation of all of the
16 tables from part two.

17 And in an attempt to be more reader
18 friendly, for individuals that respond and learn
19 through pictures better, I wanted to include the
20 graphical representations rather than the just
21 text tables that we have in part two.

22 There was the tables as seen, or the

1 tables in part two were not included in the
2 discussion at the subcommittee level. Some of
3 the charts were included and that's how we got to
4 the final product for the report that is in the
5 main text.

6 If anybody has any questions about the
7 appendix, Chair Bashford, if you'd like to
8 determine if it should be included or not, or if
9 it's included, if it should be in the entirety or
10 different portions of it?

11 CHAIR BASHFORD: This is Chair
12 Bashford. Chuck, I actually have one question.
13 On a couple of the, like figure six, which was
14 Army sex of the victims, it said 58 percent were
15 unknown.

16 At table 24, Air Force, age of the
17 victim, 100 percent was unknown, and clearly
18 these things are knowable. Why are they listed
19 as unknown? Is it because of what was provided
20 to us?

21 MR. MASON: Yes, ma'am, it's unknown
22 because the information was not provided as part

1 of the RFI. They responded on the spreadsheet as
2 either unknown or unavailable, so for us, it's
3 unknown because they did not record it.

4 CHAIR BASHFORD: Okay, thank you for
5 clearing that.

6 MR. MASON: Yes, ma'am.

7 CHAIR BASHFORD: Any discussion from
8 any of the Committee members? So, then I guess
9 we should move to do we want to include the
10 appendix or not include the appendix. Any
11 discussion?

12 I'm a big fan of show your work, so I
13 would be inclined to include it. Does anybody
14 feel differently? Hearing no further discussion,
15 I would then ask that we vote to include the
16 appendix as part of the report. Is there a
17 second?

18 DR. MARKOWITZ: Markowitz, I second.

19 CHAIR BASHFORD: If anybody is in
20 opposition or wishes to abstain, please make
21 yourself known. Hearing no negative votes or
22 abstentions, we've now approved the addition of

1 Appendix G in its entirety to the report.

2 And then our last matter is we need a
3 motion to vote on approval of the entire report
4 as presented and deliberated on today for
5 publication and submission to the Secretary of
6 Defense and Congress, so I move to adopt the
7 entire report. Is there a second?

8 HON. GRIMM: Grimm, Second.

9 CHAIR BASHFORD: If anybody has an
10 objection to approving the report as a whole or
11 wishes to abstain from that, please make yourself
12 known. Hearing no disapproval or requests to
13 abstain, the entire report as a whole is
14 unanimously approved for publication and
15 submission.

16 I want to again thank our service
17 members. One of the substantive edits they
18 provided was very helpful. We simply did not see
19 how that could have been misread, and so their
20 input was very helpful.

21 And I again want to thank our race and
22 ethnicity writing team who have done simply a

1 bang up job on getting this all together under
2 tight circumstances.

3 I'm going to hand it back over to
4 Colonel Calese to wrap us up, and then to Mr.
5 Sullivan to close this 21st meeting of the DAC-
6 IPAD, and I thank everybody.

7 I hope everybody had a great
8 Thanksgiving and I hope you have, under these
9 circumstances, a wonderful holiday, and we hope
10 to see you in the new year. Colonel Calese?

11 COL CALESE: Thank you, ma'am. I ask
12 for the same best wishes for a safe and healthy
13 holiday, and over to you, Mr. Sullivan. I don't
14 believe we have any further business, so if you
15 could please close us out?

16 MR. SULLIVAN: This meeting is
17 officially closed.

18 (Whereupon, the above-entitled matter
19 went off the record at 11:24 a.m.)
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21
22

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