



Chairwoman Martha Brashford
ATTN: DAC-IPAD
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Arlington, VA 22203

31 January 2019

Madam Chair,

I am writing to request the DAC-IPAD consider looking into several areas the committee has not yet explored. By way of introduction, I am currently the President of Protect Our Defenders (POD), a human rights organization dedicated to fighting for survivors of military sexual assault and harassment. Prior to assuming my current position, I served 23 ½ years as an Air Force judge advocate. During that time, I was fortunate to serve almost exclusively in litigation positions, which is almost unheard of for a JAG. I have served as an area defense counsel, a circuit defense counsel, multiple base level prosecution positions, as the chief prosecutor for Europe and Southwest Asia and as a military judge. The last four years of my career I served as the chief prosecutor of the Air Force and as head of the government appellate division.

Since coming to POD, I have met with dozens of survivors, and as of last year I have started representing survivors pro bono as part of POD's Law Center. Based on these interactions, I can unequivocally state that survivors are facing incredible hurdles with regard to gaining access to relevant information necessary to advocate for their case being prosecuted or preparing for trial in the extremely rare event their offender is actually court-martialed. As a civilian SVC, I have requested to be furnished copies of my clients' statements, the results of sex assault examinations, the names of trial counsel, and the names and contact information for the convening authorities. These requests usually go answered with an eventual refusal to provide the information. Instead, the government directs us to the cumbersome and slow FOIA process.

FOIA simply is ineffective as a discovery tool. POD has been in litigation in federal court for 14 months pursuing information through FOIA. Clearly, this is unacceptable. I have also been told by the Air Force that because I am a civilian SVC, they will not release documents to me because of the Privacy Act. This simply cannot stand. An attorney cannot advocate for his or her client without knowing basic information such as what she said in her witness interview. I have spoken with many SVCs, VLCs, and civilian SVCs who share my frustration. It should be clear that a victim and her counsel are entitled to certain relevant information. As a result, I would ask the DAC-IPAD take a more in-depth look at this issue in order to develop potential solutions.

Additionally, I would request the DAC-IPAD hold a hearing on the military sentencing process. Court-martial sentencing is an archaic process devoid of any of the tools of the modern jurisprudence. For example, a court-martial has no access to a presentencing report such as is used in the federal system. As a result, the court-martial is left to guess as to future dangerousness of an accused convicted of a violent or sexual offense. A court-martial has no ability to order mental health treatment, to order an offender to surrender weapons, to order restitution, to order an offender to stay away from a victim, or to order post confinement probation to name a few. In reality, the sentencing options are virtually

unchanged from when George Washington commanded the Continental Army. Additionally, there are no sentencing guidelines, which has resulted in massive sentencing disparity. It is past time for the court-martial system to be updated to reflect the realities that sentencing offenders requires more than 18th century options and that the consequences of failing to properly sentence offenders can have serious ramifications for the offender and society.

Finally, I attended the last DAC-IPAD hearing concerning prosecution and conviction rates. I was heartened to hear you acknowledge that the conviction rates were “god-awful.” The military has been in denial about the abysmal conviction rates and your words needed to be said. As someone who has been working in this area for over 27 years, I would appreciate the opportunity to discuss with the panel my views on why the conviction rate is so low and how it can be improved.

In closing, I wish to thank you and the panel for the many hours you have already dedicated to addressing the military justice process. I look forward to assisting the panel in any way possible.

Sincerely,

A handwritten signature in black ink, reading "Don m Christensen". The signature is written in a cursive style with a horizontal line underneath it.

Don Christensen, Colonel
President, Protect Our Defenders