

**DEFENSE ADVISORY COMMITTEE
ON INVESTIGATION,
PROSECUTION, AND DEFENSE
OF SEXUAL ASSAULT
IN THE ARMED FORCES**



INITIAL REPORT

March 2017

Defense Advisory Committee

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**Defense Advisory Committee on
Investigation, Prosecution, and
Defense of Sexual Assault
in the Armed Forces**



INITIAL REPORT

March 2017



**THE DEFENSE ADVISORY COMMITTEE ON
INVESTIGATION, PROSECUTION, AND DEFENSE OF
SEXUAL ASSAULT IN THE ARMED FORCES**

March 30, 2017

The Honorable John McCain
Chair, Committee
on Armed Services
United States Senate
Washington, DC 20510

The Honorable Jack Reed
Ranking Member, Committee
on Armed Services
United States Senate
Washington, DC 20510

The Honorable Mac Thornberry
Chair, Committee
on Armed Services
United States House of
Representatives
Washington, DC 20515

The Honorable Adam Smith
Ranking Member, Committee
on Armed Services
United States House of
Representatives
Washington, DC 20515

The Honorable James Mattis
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Chairs, Ranking Members, and Mr. Secretary:

We are pleased to submit the initial report of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD), as required by section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law No. 113-291). This report summarizes the Committee's impressions on issues of importance related to the investigation, prosecution, and defense of sexual assault crimes in the military and on the course of action it should take to best advise the Secretary of Defense.

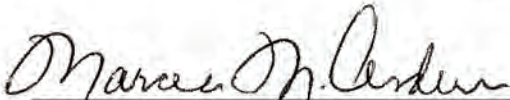
The DAC-IPAD held its first public meeting on January 19, 2017, at which time the Committee members received presentations from Department of Defense personnel informing us about the court-martial process, recent legislative action related to sexual assault in the military, and the previous sexual assault advisory committees, followed by a Committee discussion on our strategic plan.

Because the Committee members were sworn in only two months prior to the statutory due date of this initial report, its scope is limited to the deliberations of the Committee on our priorities and our plan to fulfill our statutory directive to review cases in order to advise the Secretary of Defense on the investigation, prosecution, and defense of sexual assault in the Armed Forces.

The members of the DAC-IPAD would like to express our sincere gratitude and appreciation to the Secretary of Defense and to Congress for the opportunity to make use of our experience and expertise to develop recommendations for improving the military's response to sexual misconduct within its ranks over the course of our term.

Respectfully submitted,

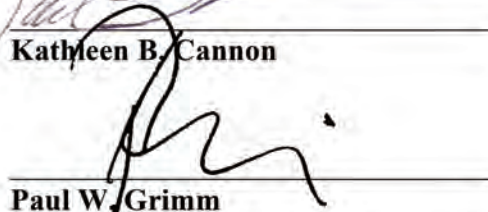

Martha S. Bashford, Chair


Marcia M. Anderson


Leo J. Brisbois


Kathleen B. Cannon

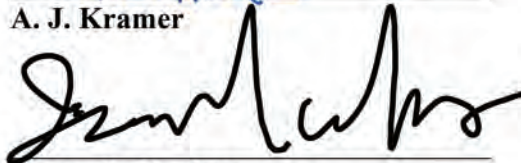

Margaret A. Garvin


Paul W. Grimm

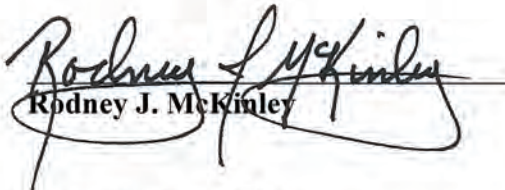

Keith M. Harrison

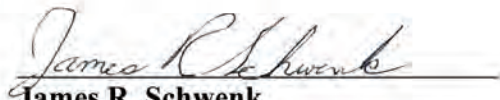

A. J. Kramer


Jennifer Gentle Long


James P. Markey

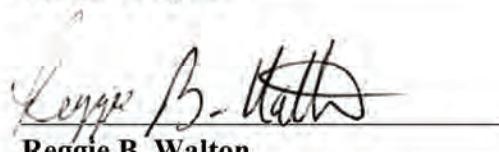

Jenifer Markowitz


Rodney J. McKinley


James R. Schwenk


Cassia C. Spohn


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Reggie B. Walton

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EXECUTIVE SUMMARY

ESTABLISHMENT OF THE DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES

In section 546 of the National Defense Authorization Act for Fiscal Year 2015 (FY 2015 NDAA), enacted on December 23, 2014, Congress directed the Secretary of Defense to establish the sixth congressionally mandated task force on sexual assault in the military since 2003: the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD).¹ The DAC-IPAD was initially required to begin its work in September 2017, following the completion of the term of the Judicial Proceedings Since 2012 Amendments Panel (JPP).² However, in the following year Congress advanced the start date for the Committee, requiring it to be formed within 90 days of the enactment of the National Defense Authorization Act for Fiscal Year 2016 (FY 2016 NDAA).³ Pursuant to the FY 2016 NDAA requirement, the Department of Defense filed the charter for the Committee on February 18, 2016.⁴ In January 2017, the Secretary of Defense appointed 16 members to the DAC-IPAD, and the Committee held its inaugural public meeting on January 19, 2017.⁵

PURPOSE OF THE COMMITTEE

The authorizing legislation charges the Committee to execute three tasks over its five-year term:⁶

1. To advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces;
2. To review, on an ongoing basis, cases involving allegations of sexual misconduct for purposes of providing advice to the Secretary of Defense; and
3. To submit an annual report to the Secretary of Defense and to the Committees on Armed Services of the Senate and the House of Representatives no later than March 30 of each year.

REPORT OF THE COMMITTEE

Because of the brief time between when Committee members were appointed and when its first report is required by statute, this report will simply describe the establishment of the Committee, its membership, the status of its strategic plan, and its proposed methodology for executing its mission. The Committee invites feedback, comment, or proposals on issues of concern from victims, legal practitioners, experts, researchers,

1 National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291 [hereinafter FY15 NDAA], § 546, 128 Stat. 3292, 3374 (2014). See Appendix A, Historical Background, for a brief discussion of the previous congressional task forces on military sexual assault.

2 FY15 NDAA, *supra* note 1, at § 546.

3 National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92 [hereinafter FY16 NDAA], § 537, 129 Stat. 726, 817 (2015).

4 See Appendix C, Charter of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (February 18, 2016).

5 See *Transcript of DAC-IPAD Public Meeting 7* (Jan. 19, 2017) (testimony of Ms. Martha Bashford, Committee chair).

6 FY15 NDAA, *supra* note 1, at § 546.

academics, advocacy organizations, and others engaged with the important issue of sexual assault in the military. Over the remaining four years of its term, the Committee will consider all submissions as it develops the timeline and strategic plan to execute its statutory mission to advise the Secretary of Defense on sexual misconduct in the Armed Forces.

I. ADVISORY COMMITTEE RESPONSIBILITIES

The Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) was established by the Secretary of Defense in February 2016 pursuant to section 546 of the National Defense Authorization Act for Fiscal Year 2015 (FY 2015 NDAA), as amended by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (FY 2016 NDAA).⁷ The mission of the DAC-IPAD is to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.⁸ In order to provide that advice, the Committee is directed to review, on an ongoing basis, cases involving allegations of sexual misconduct.⁹

The DAC-IPAD is required to submit annual reports to the Secretary of Defense and to the Committees on Armed Services of the Senate and the House of Representatives, no later than March 30 each year, describing the results of the Committee's activities.¹⁰

In accordance with the authorizing statute and the Federal Advisory Committee Act of 1972 (FACA), the Department of Defense (DoD) filed the charter for the DAC-IPAD with the General Services Administration on February 18, 2016.¹¹

II. COMPOSITION OF THE COMMITTEE

The Committee's authorizing legislation required the Secretary of Defense to select Committee members with experience in investigating, prosecuting, and defending against allegations of sexual assault offenses.¹² Active duty Service members are expressly prohibited from serving on the Committee.¹³ In January 2017 the Secretary of Defense appointed 16 members to the DAC-IPAD.¹⁴ The Committee members represent a broad range of perspectives and experience related to sexual assault both within and outside the military.¹⁵

The areas of expertise of the members of the Committee include

- Civilian sexual assault investigation and forensics
- Civilian and military sexual assault prosecution
- Civilian and military sexual assault defense

7 FY15 NDAA, *supra* note 1, at § 546; FY16 NDAA, *supra* note 3, at § 537.

8 FY15 NDAA, *supra* note 1, at § 546(c)(1).

9 *Id.* at § 546(c)(2).

10 *Id.* at § 546(d).

11 Federal Advisory Committee Act of 1972, 5 U.S.C. App §§ 1-16. *See* Appendix B, Charter of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (February 18, 2016).

12 FY15 NDAA, *supra* note 1, at § 546.

13 *Id.*

14 *See Transcript of DAC-IPAD Public Meeting 7* (Jan. 19, 2017) (testimony of Ms. Martha Bashford, Committee chair).

15 *See* Appendix D for a list and short biographies of the DAC-IPAD members.

- Federal and state court system
- Military command
- Criminology
- Academic disciplines and legal policy

Combined, the DAC-IPAD members have over one hundred years of experience dealing with sexual assault in both military and civilian jurisdictions. Four members of the Committee retired from the military and three more served previously as judge advocates. The depth and breadth of experience represented on the DAC-IPAD will be extremely valuable as members develop thoughtful, well-considered recommendations to guide the Secretary of Defense and provide informed, authoritative assessments of the status of the military's response to sexual assault within its ranks.¹⁶ The Committee is poised to deliver recommendations that take into consideration both civilian best practices and the unique nature of the military criminal justice system.

III. INAUGURAL MEETING OF THE COMMITTEE

The DAC-IPAD held its initial public meeting on January 19, 2017, in Arlington, Virginia. All 16 members of the Committee were in attendance.¹⁷ The General Counsel of the Department of Defense, the Honorable Jennifer O'Connor, opened the meeting with introductory remarks to the Committee.¹⁸ The Committee members then received three informational presentations. The first, an overview of the court-martial process, was provided by Mr. Dwight Sullivan, Associate Deputy General Counsel for Military Justice at the Department of Defense, who is also Designated Federal Official for the DAC-IPAD.¹⁹ The second presentation, on recent legislation involving sexual assault in the U.S. military, was provided by Captain Warren "Art" Record, Judge Advocate General's Corps (JAGC), U.S. Navy, Chair of the Department of Defense Joint Service Committee on Military Justice.²⁰ Finally, the Committee heard a presentation on its two predecessor Department of Defense panels on sexual assault—the Judicial Proceedings Since 2012 Amendments Panel (JPP) and the Response Systems to Adult Sexual Assault Crimes Panel (RSP)—provided by Ms. Maria Fried, Associate Deputy General Counsel for Personnel Policy at the Department of Defense and Designated Federal Official for the RSP and JPP.²¹ Following these informational briefings, the Committee held a planning session to discuss its statutory tasks, its priorities and the development of the Committee's strategic plan.

16 *Transcript of DAC-IPAD Public Meeting* 17 (Jan. 19, 2017) (testimony of the Honorable Jennifer M. O'Connor, General Counsel, U.S. Department of Defense).

17 *Transcript of DAC-IPAD Public Meeting* 7 (Jan. 19, 2017) (testimony of Ms. Martha Bashford, Committee chair).

18 *See Transcript of DAC-IPAD Public Meeting* 11–18 (Jan. 19, 2017) (testimony of the Honorable Jennifer M. O'Connor, General Counsel, U.S. Department of Defense).

19 *See Transcript of DAC-IPAD Public Meeting* 18–101 (Jan. 19, 2017) (testimony of Mr. Dwight Sullivan, Associate Deputy General Counsel for Military Justice, U.S. Department of Defense).

20 *See Transcript of DAC-IPAD Public Meeting* 101–53 (Jan. 19, 2017) (testimony of Captain Warren "Art" Record, JAGC, USN, Chair, Joint Service Committee on Military Justice).

21 *See Transcript of DAC-IPAD Public Meeting* 154–77 (Jan. 19, 2017) (testimony of Ms. Maria Fried, Associate Deputy General Counsel for Personnel Policy, U.S. Department of Defense).

The second meeting of the DAC-IPAD will be held on April 28, 2017, in Arlington, Virginia. At that meeting the Committee will continue to develop its strategic plan and will receive two presentations: the Department of Defense Sexual Assault Prevention and Response Office will explain current sexual assault data collection and reporting, and faculty at the U.S. Army Judge Advocate General's Legal Center and School in Charlottesville, Virginia, will describe the mechanics of a sexual assault case in the military from initial report through disposition.

IV. TOPICS FOR ASSESSMENT

The Committee's authorizing legislation directs it to advise the Secretary of Defense on the investigation, prosecution, and defense of sexual assault and other sexual misconduct in the military, but does not specify particular issues that the Committee should assess or investigate. The Committee has received input from two sources regarding issues it may wish to consider. First, the Honorable Jennifer O'Connor offered guidance in her remarks at the first public meeting of the DAC-IPAD.²² Second, Mr. Don Christensen, a retired Air Force colonel and the president of Protect Our Defenders, an organization dedicated to reforming military justice and to advocacy for survivors of sexual assault, suggested topics to the Committee during his public comment at the end of the same meeting.²³ Finally, as part of its planning session at the January 19 meeting, the members of the Committee discussed issues each considered important based on their extensive experience and areas of expertise.²⁴

A. DEPARTMENT OF DEFENSE GUIDANCE

In her remarks to the Committee, Ms. O'Connor highlighted three key reforms already undertaken by the Department of Defense in recent years to improve the military's investigation and prosecution of sexual assault allegations.²⁵ First, DoD now requires that all sexual assault reports be investigated by military criminal investigative organizations (MCIOs) rather than by lower-level law enforcement agencies or in command-directed investigations.²⁶ Second, in 2012 DoD began requiring that the initial disposition of any charge of a penetrative sexual assault must be made by an officer who is at least an O-6 (a colonel or Navy captain) and a special court-martial convening authority.²⁷ And third, in 2013 the Air Force launched its Special Victims' Counsel Program offering free legal representation to sexual assault victims in the military—a program that has now been implemented by all of the Services.²⁸

22 See *Transcript of DAC-IPAD Public Meeting* 15–16 (Jan. 19, 2017) (testimony of the Honorable Jennifer M. O'Connor, General Counsel, U.S. Department of Defense).

23 See *Transcript of DAC-IPAD Public Meeting* 285–94 (Jan. 19, 2017) (public comment of Mr. Don Christensen, President, Protect Our Defenders).

24 See *Transcript of DAC-IPAD Public Meeting* 177–285 (Jan. 19, 2017) (Committee planning session).

25 *Transcript of DAC-IPAD Public Meeting* 12–13 (Jan. 19, 2017) (testimony of the Honorable Jennifer M. O'Connor, General Counsel, Department of Defense).

26 *Id.*

27 *Id.* at 13.

28 *Id.*

Ms. O'Connor also discussed the most sweeping military justice reform undertaken by DoD in the past 50 years: a complete review of the military justice system conducted at the direction of the Secretary of Defense, following a recommendation in 2013 by the Chairman of the Joint Chiefs of Staff for the Armed Forces, General Martin Dempsey.²⁹ Ms. O'Connor noted that a former chief judge of the Court of Appeals of the Armed Forces, the Honorable Andrew Effron, led this effort, which culminated in the passage of the Military Justice Act of 2016 in December 2016.³⁰ While the scope of these reforms extends well beyond the issue of sexual assault, the changes will dramatically affect the military justice process, and therefore how sexual assaults are investigated, prosecuted, and defended. Ms. O'Connor noted that the purpose of the reforms was to revise much of the Uniform Code of Military Justice in order to bring it into closer alignment with federal law and to substantially enhance transparency in the military's criminal justice system.³¹ She specifically highlighted the requirement that the Department establish an online database, similar to the federal Public Access to Court Electronic Records (PACER) system, to provide the public with instantaneous access to filings in court-martial cases.³²

After describing to the Committee these significant Department initiatives, Ms. O'Connor emphasized that it is critical to continue to improve the military's investigative, prosecutorial, and defense functions and, importantly, to scrutinize the reforms that have already been made.³³ She encouraged the Committee to consider the following topics:

1. Whether those involved in the investigation, prosecution, and defense of sexual assault cases in the military have sufficient training, experience, and resources to fulfill their responsibilities;
2. How the military's investigation, prosecution, and defense functions are performing in settings where Service members are deployed;
3. Whether there are best practices from civilian jurisdictions that should be incorporated into military practice;
4. Whether the investigation, prosecution, and defense of sexual assault cases are influenced by the grade of either the suspect or the victim;
5. Whether the Services are collecting the right data and properly analyzing them to help inform public policy decisions; and
6. What effect the Services' Special Victims' Counsel Programs have had.³⁴

29 *Id.* at 14.

30 *Id.*; see National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328 [hereinafter FY17 NDAA], Division E, 130 Stat. 2000 (2016). See also *Transcript of DAC-IPAD Public Meeting* 32–33 (Jan. 19, 2017) (testimony of Mr. Dwight Sullivan, Associate Deputy General Counsel for Military Justice, U.S. Department of Defense).

31 *Transcript of DAC-IPAD Public Meeting* 15 (Jan. 19, 2017) (testimony of the Honorable Jennifer M. O'Connor, General Counsel, Department of Defense).

32 *Id.*

33 *Id.*

34 *Id.* at 15–16. For purposes of this report, the Committee utilizes the term “special victims’ counsel” to encompass all of the Services’ victims’ counsel programs.

B. TOPICS RECOMMENDED BY PROTECT OUR DEFENDERS

Mr. Don Christensen, president of Protect Our Defenders, addressed the Committee during its public comment session at the January 19 public meeting.³⁵ Mr. Christensen encouraged the Committee to look at the experience levels of military investigators, prosecutors, and defense counsel.³⁶ He maintained that the view of the JAG Corps is that judge advocates should be generalists.³⁷ Drawing on his experience in the Air Force, Mr. Christensen expressed the belief that most judge advocates do not continue litigation practice after their first tour.³⁸ He added that as a prosecutor, he frequently dealt with investigators—working on serious sex abuse or murder cases—who were serving on their first, and often their last, case as a lead investigator, as they were soon moved on to another function.³⁹ Mr. Christensen encouraged the Committee to look at the need for specialization in the fields of criminal investigation and litigation.⁴⁰

Mr. Christensen also raised concerns about the accuracy of the estimated sexual assault data released by DoD every two years. He pointed out that because these surveys are provided only to Service members, they do not count or capture military spouses, children, DoD civilian employees, or other civilians who may have been sexually assaulted by members of the military.⁴¹ As a result, the numbers estimated by these surveys may significantly underrepresent the incidence of sexual assault in the military.

A third issue Mr. Christensen brought to the Committee's attention involves the data on reported incidents of sexual assault compiled and submitted to Congress each year by the Department of Defense.⁴² As required by statute, these reports must include specific information about reported sexual assault incidents and their disposition.⁴³ Mr. Christensen expressed concern about the accuracy of the case disposition information that is provided in these reports.⁴⁴

Finally, Mr. Christensen recommended that the Committee members review a recent Department of Defense Inspector General (DoD IG) report concerning retaliation against victims of sexual assault after reporting the incident, as well as two reports issued by Human Rights Watch dealing with retaliation in the military and its impact on survivors of sexual assault after they make a report.⁴⁵

35 *Transcript of DAC-IPAD Public Meeting* 286 (Jan. 19, 2017) (public comment of Mr. Don Christensen, President, Protect Our Defenders).

36 *Id.* at 292.

37 *Id.* at 292–93.

38 *Id.*

39 *Id.* at 293.

40 *Id.* at 294.

41 *Id.* at 288.

42 *Id.* at 288–90.

43 *See, e.g.*, National Defense Authorization Act for Fiscal Year 2011, Pub. L. No. 111-383, § 1631, 124 Stat. 4137 (2011) (designating specific data that must be included in DoD annual sexual assault reports).

44 *Transcript of DAC-IPAD Public Meeting* 288 (Jan. 19, 2017) (public comment of Mr. Don Christensen, President, Protect Our Defenders).

45 *Id.* at 290–91.

C. TOPICS IDENTIFIED BY COMMITTEE MEMBERS

During the informational presentations received by the Committee and the subsequent Committee discussion at the January 19 public meeting, questions and topics emerged that members are interested in investigating further.

1. Sexual Assault Reporting

Committee Member Keith Harrison, acting Associate Dean of the Savannah Law School and former U.S. Coast Guard judge advocate, suggested that the Committee seek to determine why many victims do not report by looking at veterans' groups who treat victims who did not report until separating from their Service.⁴⁶ Committee Member Senior Judge Reggie Walton, of the U.S. District Court for the District of Columbia, advised the Committee that his experience serving on the Prison Rape Elimination Commission leads him to believe that current estimates of the incidence of military sexual assaults could be the tip of the iceberg.⁴⁷

Committee Member Judge Paul Grimm, a retired U.S. Army judge advocate now on the U.S. District Court for the District of Maryland, raised questions about the distinction between restricted and unrestricted reports, including who decides which to file and what kind of guidance and counseling are available to victims beforehand.⁴⁸ Committee Chair Martha Bashford, chief of the New York County District Attorney's Office Sex Crimes Unit, was interested in looking into whether reporting is truly a voluntary decision or whether the person is being "steered towards filing a report in a certain way."⁴⁹

Committee Member Jenifer Markowitz, a forensic nursing consultant who has worked with judge advocates from each of the Services, suggested that the Committee consider convening focus groups of those to whom victims may confidentially report sexual assaults within the military, such as chaplains, medical professionals, sexual assault response coordinators (SARCs), victim advocates and special victims' counsel/victims' legal counsel (SVC/VLCs), to find out what they are hearing about victims' reluctance to report and what factors influence a decision to convert a restricted report to an unrestricted report.⁵⁰ Dr. Markowitz noted that she has attended conferences at which colleagues have talked about discouraging patients from reporting because professionals who are among the first to interact with victims perceive so little benefit to the victim in making a report.⁵¹ She added that she has not seen this issue discussed before and believes it would be important for the Committee to study it.⁵²

2. Sexual Assault Investigations

Committee Member James Markey, a retired detective sergeant whose more than 30 years' experience on the Phoenix Police Department included supervising a sexual assault unit, recommended that the Committee look

46 *Transcript of DAC-IPAD Public Meeting* 187–88 (Jan. 19, 2017) (testimony of Dean Keith Harrison, Committee member).

47 *Transcript of DAC-IPAD Public Meeting* 203–04 (Jan. 19, 2017) (testimony of Judge Reggie Walton, Committee member).

48 *Transcript of DAC-IPAD Public Meeting* 140 (Jan. 19, 2017) (testimony of Judge Paul Grimm, Committee member).

49 *Transcript of DAC-IPAD Public Meeting* 211–13 (Jan. 19, 2017) (testimony of Ms. Martha Bashford, Committee chair).

50 *Transcript of DAC-IPAD Public Meeting* 211–13 (Jan. 19, 2017) (testimony of Dr. Jenifer Markowitz, Committee member).

51 *Id.*

52 *Id.*

into what is happening to the investigative cases before they are reviewed for a determination of whether to file charges.⁵³ He suggested that the Committee look at investigative case files in their entirety—everything from the “first contact response through every documentation”—to see what facts or circumstances are being presented to the prosecutor and commanders who must decide on moving cases forward, and to consider whether the quality of the investigation needs to be improved.⁵⁴ Mr. Markey discussed his experience doing such case reviews in civilian jurisdictions.⁵⁵

Dr. Markowitz identified another topic related to investigations that the Committee may wish to review: where sexual assault forensic exams are being conducted.⁵⁶ She noted that forensic medical exams are not “consistently conducted within military hospitals,” and that their location affects the quality of the evidence, the quality of the testimony, and the willingness of people to participate in the process.⁵⁷ She suggested that the Committee look at whether and how significantly this issue affects the justice process.⁵⁸

3. The Founding and Unfounding of Cases

Committee Member Cassia Spohn, Director of the School of Criminology and Criminal Justice at Arizona State University and consultant to the JPP for data analysis, suggested that the Committee build on a previous RSP recommendation regarding the “founding” or “unfounding” of sexual assault allegations.⁵⁹ Dr. Spohn recommended undertaking a study that focuses on the unfounded cases and determining whether they are, in fact, false or baseless, according to the definitions of these terms used in the FBI’s Uniform Crime Reporting (UCR) Program.⁶⁰ Ms. Bashford added that she would be interested in looking at comparisons Service by Service, as well as base by base, similar to the jurisdiction-by-jurisdiction comparisons performed in the civilian world.⁶¹ She noted that case volumes can vary considerably by jurisdiction.⁶²

4. Charging Decisions

The Committee members expressed interest in Mr. Sullivan’s testimony about the impact of the recent legislative requirement that all decisions by the general court-martial convening authority to not refer cases involving penetrative sexual assault allegations to trial be reviewed by higher-level commands—including, in some

53 *Transcript of DAC-IPAD Public Meeting 193–95* (Jan. 19, 2017) (testimony of Mr. James Markey, Committee member).

54 *Id.*

55 *Id.* at 210–11.

56 *Transcript of DAC-IPAD Public Meeting 197–98* (Jan. 19, 2017) (testimony of Dr. Jenifer Markowitz, Committee member).

57 *Id.*

58 *Id.*

59 *Transcript of DAC-IPAD Public Meeting 195–96* (Jan. 19, 2017) (testimony of Dr. Cassia Spohn, Committee member). RSP Recommendation 93 states, “The Secretary of Defense direct the Service Secretaries to standardize the process for determining a case is unfounded. The decision to unfound reports should apply the Uniform Crime Reporting (UCR) Program standard to determine if a case should be unfounded. Only those reports determined to be false or baseless should be unfounded.” REPORT OF THE RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL 41 (June 2014), available at <http://responsesystemspanel.whs.mil>.

60 *Transcript of DAC-IPAD Public Meeting 195–96* (Jan. 19, 2017) (testimony of Dr. Cassia Spohn, Committee member).

61 *Transcript of DAC-IPAD Public Meeting 196–97* (Jan. 19, 2017) (testimony of Ms. Martha Bashford, Committee chair).

62 *Id.*

cases, the Service Secretaries.⁶³ In response to questions from the Committee, Mr. Sullivan indicated that since the enactment of this requirement, a general court-martial convening authority has never declined to refer a penetrative sexual assault charge to a court-martial when the staff judge advocate (SJA), who serves as the commander's legal adviser, recommended going forward.⁶⁴ Committee Member Judge Leo Brisbois, U.S. Magistrate Judge for the District of Minnesota and a former U.S. Army judge advocate, inquired about the opposite circumstance—the number of cases referred to trial by convening authorities when the SJA advised against going forward.⁶⁵ Mr. Sullivan noted that because there is no requirement to report such cases, this statistic cannot currently be tracked, though he pointed to a recent example of its occurring at the Naval Academy.⁶⁶ Mr. Sullivan added that this appears to be a very rare event.⁶⁷

Committee Member Meghan Tokash, Assistant U.S. Attorney for the Western District of New York and a former U.S. Army special victim prosecutor, recommended that the Committee look at prosecution standards in the military.⁶⁸ She suggested reviewing the factors considered by judge advocates in advising commanders whether to prefer charges.⁶⁹ She also expressed interest in looking into whether uniform charging standards would be helpful when initiating a case, and how such standards would affect preferral and referral decisions.⁷⁰

Ms. Bashford suggested that the Committee look at unrestricted reports in cases in which charges were not preferred to see the reasoning behind that decision.⁷¹ She is interested to see the details of the unrestricted report and whether the decision not to prefer charges was made because the charges were deemed to be unfounded, because the complaint was withdrawn by the complainant, because proof was lacking, or because the facts didn't fit the definition of a crime.⁷²

5. Acquittals and Dismissals

Drawing on her work with the JPP and the court-martial database it has developed (discussed below), Dr. Spohn advised the committee that when sexual assault charges are preferred, many cases result in acquittals or dismissals.⁷³ She added that the JPP database does not include information that would indicate why this is

63 *Transcript of DAC-IPAD Public Meeting 76–78* (Jan. 19, 2017) (testimony of Mr. Dwight Sullivan, Associate Deputy General Counsel for Military Justice, U.S. Department of Defense). When a general court-martial convening authority's legal adviser, the command staff judge advocate, recommends the case go to trial but the convening authority does not refer the case, that decision must be reviewed by the Secretary of the Military Department. When the command legal adviser recommends the case not go to trial and the general court-martial convening authority follows the legal advice, and does not send the case to trial, that decision must be reviewed by the next senior general or admiral in the command. *Id.*

64 *Id.*

65 *Transcript of DAC-IPAD Public Meeting 82* (Jan. 19, 2017) (testimony of Judge Leo Brisbois, Committee member).

66 *Transcript of DAC-IPAD Public Meeting 82–83* (Jan. 19, 2017) (testimony of Mr. Dwight Sullivan, Associate Deputy General Counsel for Military Justice, U.S. Department of Defense).

67 *Id.* at 83.

68 *Transcript of DAC-IPAD Public Meeting 188–89* (Jan. 19, 2017) (testimony of Ms. Meghan Tokash, Committee member).

69 *Id.*

70 *Id.*

71 *Transcript of DAC-IPAD Public Meeting 189–90* (Jan. 19, 2017) (testimony of Ms. Martha Bashford, Committee chair).

72 *Id.* at 189–90, 192.

73 *Transcript of DAC-IPAD Public Meeting 184–85* (Jan. 19, 2017) (testimony of Dr. Cassia Spohn, Committee member).

the case.⁷⁴ Dr. Spohn suggested that to investigate this important question, the Committee may wish to take a random sample of cases, focus on specific kinds of disposition, and collect more detailed data, such as whether there was an evidentiary issue or whether the victim refused to cooperate.⁷⁵

Committee Member Jennifer Long, a former prosecutor and the CEO and co-founder of AEquitas, an organization that trains civilian prosecutors, suggested that the Committee review transcripts to see where trial issues, prosecution strategy issues, or other problems might be identified.⁷⁶

6. Concerns of Commanders

Three members of the Committee are distinguished former senior military leaders, bringing valuable perspectives on concerns of military commanders. One of these former leaders, Committee Member Marcia Anderson, a retired Army major general who served as the deputy commanding general of the Army's Human Resources Command, noted two issues she would be interested in assessing. She suggested that the Committee review the number of sexual assault victims who elect to leave the military and how the numbers differ between those making restricted and unrestricted reports.⁷⁷ She also expressed interest in investigating the disparity in outcomes for officers and enlisted Service members who are accused under similar circumstances.⁷⁸

Retired Chief Master Sergeant of the Air Force Rodney McKinley was similarly interested to know whether victims stay in the military, including after the conviction of the perpetrator.⁷⁹ In addition, Chief McKinley emphasized the difficulty faced by commanders when both the victim and accused are in the same unit.⁸⁰ He also noted how hard it is for a victim in such cases to stay in the unit: it is often easier for them to say, "I am out of here."⁸¹

Another issue of interest to Chief McKinley was how the military plans to educate the 1.3 million Service members on the many new changes in the Uniform Code of Military Justice (UCMJ)—for example, the recently modified definition of sexual harassment.⁸²

7. Resources

Committee Member Kathleen Cannon, a criminal defense attorney with over 30 years of service as a public defender in Los Angeles and San Diego counties, expressed interest in conducting a comparative analysis of the

74 *Id.*

75 *Id.*

76 *Transcript of DAC-IPAD Public Meeting* 190–91 (Jan. 19, 2017) (testimony of Ms. Jennifer Long, Committee member).

77 *Transcript of DAC-IPAD Public Meeting* 247 (Jan. 19, 2017) (testimony of MG (Ret.) Marcia Anderson, Committee member).

78 *Id.* at 225–26. *See also id.* at 230–31 (testimony of Ms. Martha Bashford, Committee chair) (asking whether there is a difference in plea deals too and whether officers are being offered a better outcome); *id.* at 231 (testimony of Dean Keith Harrison, Committee member) (contemplating that officers may get to end their careers without going to any type of criminal arena whereas an enlisted person who engaged in the same conduct doesn't have that option to resign).

79 *Transcript of DAC-IPAD Public Meeting* 171–72 (Jan. 19, 2017) (testimony of CMSAF (Ret.) Rodney McKinley, Committee member).

80 *Id.* at 200.

81 *Id.* at 200, 215–16.

82 *Id.* at 151.

parity of legal and investigative resources, level of representation, and level of experts.⁸³ The Committee may wish to look at resource disparities between trial and defense counsel by Service and also compare military and civilian jurisdictions. This issue is the subject of a forthcoming JPP report.

8. Secretary of Defense Requests

Chair Bashford noted that the Secretary of Defense may have particular issues of interest that he would like the Committee to review; to date, however, the Committee has not received any specific requests.⁸⁴

V. FOCUS ON DATA

A recurring theme during the Committee's initial meeting was the need for and importance of data so that members can fully understand the issues and make sound policy recommendations to the Secretary of Defense. Three key statistics are typically cited by news reports to present the scope of the problem of sexual assault in the military: (1) the number of sexual assaults actually occurring in the military, as estimated by anonymous surveys; (2) the number of sexual assaults involving members of the military that are formally reported to authorities; and (3) the number of courts-martial and convictions for sexual assault offenses. The statistics provided at the January meeting—that more than 20,000 sexual assaults occur annually within the military, with about 550 general courts-martial for sex offenses held in fiscal year 2015—caused serious concern among Committee members.⁸⁵ The tremendous disparity between these two statistics drives much of the public debate about sexual assault in the military.⁸⁶

The first step in understanding the scope of the problem of sexual assault in the military is to have a thorough understanding of how these statistics are derived and whether the data are accurate, reliable, and methodologically sound. Only then can the Committee meaningfully embark on the essential work of investigating what the variances mean and whether the right steps are being taken to address them. There

83 *Transcript of DAC-IPAD Public Meeting 203* (Jan. 19, 2017) (testimony of Ms. Kathleen Cannon, Committee member).

84 *Transcript of DAC-IPAD Public Meeting 209* (Jan. 19, 2017) (testimony of Ms. Martha Bashford, Committee chair).

85 See *Transcript of DAC-IPAD Public Meeting 106* (Jan. 19, 2017) (testimony of Captain Warren “Art” Record, JAGC, USN, Chair, Joint Service Committee on Military Justice) (stating “And many of you remember the number—the claim of 26,000 rapes in the military.”); *id.* at 137–38 (testimony of Captain Warren “Art” Record, JAGC, USN, Chair, Joint Service Committee on Military Justice) (stating that in 2014 RAND estimated 20,500 incidents of sexual assault); *cf. id.* at 207 (testimony of BGen (Ret.) James Schwenk, Committee member) (explaining that the 26,000 estimate is an extrapolation from limited survey data that includes a broad definition of sexual assault); *id.* at 287 (testimony of Mr. Don Christensen, President, Protect Our Defenders) (maintaining that the sexual assault survey numbers fluctuate every year from 20,000 in 2010 to 26,000 in 2012 and approximately 20,500 in 2014); *id.* at 61 (testimony of Mr. Dwight Sullivan, Associate Deputy General Counsel for Military Justice, U.S. Department of Defense) (stating that there were a total of 1,104 general courts-martial in fiscal year 2015 and about half were for sex offenses); *id.* at 194 (testimony of Mr. James Markey, Committee member) (noting the gap between the 26,000 estimated incidents of sexual assault and the small number that make it into the court system); *id.* at 198–99 (testimony of CMSAF (Ret.) Rodney McKinley, Committee member) (expressing concern about the “26,000 victims who said they were raped” compared to the “550 that went to general courts-martial.”).

86 See, e.g., Donald J. Trump (@realDonaldTrump), TWITTER (May 7, 2013, 4:04 P.M.), <https://twitter.com/realdonaldtrump/status/331907383771148288?lang=en>: “26,000 unreported sexual assaults in the military—only 238 convictions.” See also Helene Cooper, *Pentagon Study Finds 50% Increase in Reports of Military Sexual Assaults*, N.Y. TIMES (May 1, 2014), https://www.nytimes.com/2014/05/02/us/military-sex-assault-report.html?_r=0.

... Ms. Gillibrand said the study was a troubling look at sexual assault in the military: The Pentagon said that of the 5,061 reported cases, 484 went to trial, and 376 resulted in convictions. The numbers, she said, “should send chills down people’s spines,” because less than one of 10 reported cases proceeded to trial. *Id.*

are four topics related to sexual assault data collection and analysis that the Committee may be interested in exploring.

A. SURVEY DATA ON MILITARY SEXUAL ASSAULTS

The Committee heard both Captain Record and Mr. Christensen refer to the survey data collected in the military's biennial Workplace and Gender Relations Surveys.⁸⁷ Committee Member James Schwenk, a retired Marine Corps brigadier general, judge advocate, and former Senior Associate Deputy General Counsel for the Department of Defense, recommended that the Committee begin by reviewing data on sexual assault allegations and look at the survey methodology.⁸⁸

B. MILITARY SEXUAL ASSAULT REPORTING AND DEMOGRAPHIC DATA

The Department of Defense Sexual Assault Prevention and Response Office, known as SAPRO, collects data and reports to Congress annually on the number of restricted and unrestricted sexual assault reports made each fiscal year, demographic and other data surrounding the incident and the parties, and information on case disposition.⁸⁹

During their discussions, Committee members expressed interest in analyzing key data points. Specifically, Committee members would like to review data regarding

1. Cases within a family;⁹⁰
2. Cases in which one person is not a member of the Service;⁹¹
3. Incidents occurring off base involving civilians and those cases handled by civilian courts;⁹²
4. The impact of race on conviction rates, sentencing, and charging decisions;⁹³
5. The impact of sexual orientation on conviction rates, sentencing, and charging decisions;⁹⁴
6. The impact of rank on conviction rates, sentencing, and charging decisions;⁹⁵ and

87 See *supra* note 85.

88 *Transcript of DAC-IPAD Public Meeting* 204–08 (Jan. 19, 2017) (testimony of BGen (Ret.) James Schwenk, Committee member).

89 See *Transcript of DAC-IPAD Public Meeting* 84–85 (Jan. 19, 2017) (testimony of Mr. Dwight Sullivan, Associate Deputy General Counsel for Military Justice, U.S. Department of Defense); see also, DEP'T OF DEF., SEXUAL ASSAULT PREVENTION AND RESPONSE OFFICE (SAPRO), DEPARTMENT OF DEFENSE ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY: FISCAL YEAR 2015 (May, 2, 2016), available at http://www.sapr.mil/public/docs/reports/FY15_Annual/FY15_Annual_Report_on_Sexual_Assault_in_the_Military.pdf.

90 *Transcript of DAC-IPAD Public Meeting* 202–03 (Jan. 19, 2017) (testimony of Ms. Martha Bashford, Committee chair).

91 *Id.*

92 *Id.*; see also *id.* at 238 (testimony of Dean Keith Harrison, Committee member).

93 *Transcript of DAC-IPAD Public Meeting* 238 (Jan. 19, 2017) (testimony of Judge Reggie Walton, Committee member).

94 *Transcript of DAC-IPAD Public Meeting* 238 (Jan. 19, 2017) (testimony of Ms. Kathleen Cannon, Committee member).

95 See *Transcript of DAC-IPAD Public Meeting* 225–26 (Jan. 19, 2017) (testimony of MG (Ret.) Maria Anderson, Committee member); *id.* at 230–31 (testimony of Ms. Martha Bashford, Committee chair); *id.* at 231 (testimony of Dean Keith Harrison, Committee member).

7. Locations where sexual assault are occurring—in the United States, overseas, on deployments, in barracks, or off post.⁹⁶

Mr. Sullivan briefly explained that this is the type of information collected by SAPRO.⁹⁷ The Committee will be very interested in reviewing the annual SAPRO reports to determine what data are available on these demographic issues.

C. COURT-MARTIAL DATA

Committee members were interested in the testimony they heard about the declining number of courts-martial in recent years.⁹⁸ According to Mr. Sullivan, in fiscal year 2015—the most recent year for which numbers are available—a total of 1,104 general courts-martial were tried throughout the military, including the Coast Guard.⁹⁹ He stressed that about half of those were for sex offenses.¹⁰⁰ In the same period, 836 special courts-martial, 634 summary courts-martial, and 51,000 instances of non-judicial punishment (NJP) occurred.¹⁰¹ These numbers, Mr. Sullivan explained, represent a marked decline in military prosecutions over the past 15 years.¹⁰² He presented data to the Committee showing that while the size of the force fell by about 4.5% between 2000 and 2015, the number of general courts-martial dropped by almost a third, the number of special courts-martial by three-quarters, and non-judicial punishments by more than a third.¹⁰³ Mr. Sullivan suggested some possible anecdotal explanations but noted that he has not found any statistical study that looks specifically at this question.¹⁰⁴

In light of the estimated 26,000 sexual assaults that took place in 2012, as reported by DoD, the Committee members were very concerned by the small number of sexual assault courts-martial.¹⁰⁵ The Committee is interested in reviewing whether the percentage of general courts-martial that involve sexual assaults has increased or decreased over time and how the military's numbers compare per capita to those of the civilian community.¹⁰⁶ The members also expressed interest in looking at the percentages by rank and Service branch.¹⁰⁷

96 See *Transcript of DAC-IPAD Public Meeting* 85 (Jan. 19, 2017) (testimony of CMSAF (Ret.) Rodney McKinley, Committee member); *id.* at 245 (testimony of Mr. A.J. Kramer, Committee member).

97 *Transcript of DAC-IPAD Public Meeting* 84–85 (Jan. 19, 2017) (testimony of Mr. Dwight Sullivan, Associate Deputy General Counsel for Military Justice, U.S. Department of Defense).

98 See *id.* at 61.

99 *Id.*

100 *Id.*

101 *Id.*

102 *Id.*

103 *Id.* at 64.

104 *Id.* at 66–70.

105 See *transcript of DAC-IPAD Public Meeting* 198–99 (Jan. 19, 2017) (testimony of CMSAF (Ret.) Rodney McKinley, Committee member).

106 *Id.* at 83–84.

107 *Id.*

Mr. Sullivan told the Committee members that DoD SAPRO tracks this information, and the Committee plans to review the SAPRO data and to request briefings from SAPRO at its next public meeting.¹⁰⁸

Judicial Proceedings Panel Court-Martial Data

The Judicial Proceedings Panel has collected data from case files on the disposition of sexual assault cases, from the preferral of charges through final action, for fiscal years 2012 through 2015.¹⁰⁹ In March 2016 the JPP issued a report on court-martial data trends from fiscal years 2012 through 2014, and later this year it will issue a second and final data report that includes fiscal year 2015 data. In its 2016 report, the JPP recommended that DoD adopt a document-based data collection system, similar to that developed by the JPP, which is modeled on the best practices utilized by the U.S. Sentencing Commission.¹¹⁰ When Congress enacted the legislation to establish the DAC-IPAD, it recommended that the Committee in conducting its reviews should utilize the data that the JPP has compiled.¹¹¹

D. ARTICLE 140A OF THE UNIFORM CODE OF MILITARY JUSTICE—CASE DATA MANAGEMENT

As the JPP database was being developed, the Military Justice Review Group tasked by DoD to review and propose reforms to the UCMJ, recommended that a new UCMJ article on case data management be enacted to improve the uniformity and transparency of court-martial data.¹¹² Article 140a, UCMJ, was included in the sweeping military justice reforms enacted by Congress in December 2016 as part of the National Defense Authorization Act for Fiscal Year 2017.¹¹³ Article 140a requires that the Secretary of Defense establish uniform

108 *Transcript of DAC-IPAD Public Meeting* 84–85 (Jan. 19, 2017) (testimony of Mr. Dwight Sullivan, Associate Deputy General Counsel for Military Justice, U.S. Department of Defense).

109 *See generally*, JUDICIAL PROCEEDINGS PANEL REPORT ON STATISTICAL DATA REGARDING MILITARY ADJUDICATION OF SEXUAL ASSAULT OFFENSES (April 2016).

110 *Id.* at 5.

111 H.R. REP. NO. 114-270, at 652 (2015) (Conf. Rep.).

The conferees note that the Judicial Proceedings Panel (JPP) has already gathered a significant number of documents provided by the Department of Defense, and encourage the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces to make full use of the information already gathered by and for the JPP. *Id.*

112 *See* U.S. DEP'T OF DEF., MILITARY JUSTICE REVIEW GROUP, REPORT OF THE MILITARY JUSTICE REVIEW GROUP, PART I: UCMJ RECOMMENDATIONS [hereinafter MJRG REPORT] 1011–15 (Dec. 22, 2015), available at <http://www.dod.gov/dodgc/mjrg.html>.

The separate case management, data access, and data collection practices currently in use by the services makes it difficult to collect and analyze military justice data on a system-wide basis. As noted by the Response Systems Panel in its 2014 Report to Congress, “. . . the lack of uniform, offense-specific sentencing data from military courts-martial makes meaningful comparison and analysis of sentencing outcomes in military and civilian courts difficult, if not impossible.”

This proposal would require the development of standards in the Manual for Courts-Martial outlining the minimum data collection requirements for military justice activities and statistics from across the Department of Defense and the Coast Guard.

A baseline of similarly collected and reported data would help facilitate periodic reviews of the military justice system by the Code Committee or its successor.

This proposal would better align military justice data collection with the Uniform Federal Crime Reporting Act of 1988, the victim and witness notifications mandated under the Crime Victims Fund pursuant to 42 U.S.C. § 10601, the Victim's Rights and Restitution Act of 1990, and the Brady Handgun Violence Prevention Act of 1993. *Id.* at 1012 (internal citations omitted).

113 FY17 NDAA, *supra* note 30, at § 5504.

criteria for data collection and that they be implemented within four years.¹¹⁴ The expertise of the members of the DAC-IPAD could be very useful in developing recommendations to the Secretary of Defense on this issue.

VI. METHODOLOGY FOR REVIEW

A. REVIEW OF CASES

The DAC-IPAD is statutorily directed to “review, on an ongoing basis, cases involving allegations of sexual misconduct,”¹¹⁵ and the Committee recognizes that case reviews are a fundamental component of its mission.¹¹⁶ One Committee member noted that many of the tasks that the DoD General Counsel recommended be pursued by the DAC-IPAD could be accomplished by reviewing cases from the time of disclosure through the criminal prosecution.¹¹⁷ He observed that the Committee will need to decide what materials will be required to conduct an effective review and will need to develop metrics on such questions as whether information is being properly documented and collected.¹¹⁸

B. REVIEW OF LEGISLATIVE AND POLICY INITIATIVES

During the January public meeting, presenters provided the Committee with an overview of current DoD policies and legislation dealing with military sexual assault.¹¹⁹ Mr. Sullivan told the Committee members that there have been 75 significant military justice changes in NDAAAs from 2012 through 2016.¹²⁰ The Committee will continue to analyze the legislation and DoD policies related to sexual misconduct to assess and monitor the actions already taken to combat sexual assault in the military and the current implementation status of the many reforms enacted in recent years.

C. REVIEW OF PREVIOUS REPORTS

Over the past 20 years, numerous external investigations, task forces, and studies have evaluated issues related to military sexual assault.¹²¹ For the Committee to effectively execute its mission to advise the Secretary of Defense, it must thoroughly assess the work that has already been done, the information collected, and recommendations made and implemented.¹²² As important as comprehending the problem is gauging the efficacy of the reforms

114 *Id.* at § 5504(b).

115 FY15 NDAA, *supra* note 1, at § 546(c)(2).

116 *See Transcript of DAC-IPAD Public Meeting* 204–08 (Jan. 19, 2017) (testimony of BGen (Ret.) James Schwenk, Committee member).

117 *Transcript of DAC-IPAD Public Meeting* 210–11 (Jan. 19, 2017) (testimony of Mr. James Markey, Committee member).

118 *Id.*

119 *See* Section III., *supra*.

120 *Transcript of DAC-IPAD Public Meeting* 106 (Jan. 19, 2017) (testimony of Mr. Dwight Sullivan, Associate Deputy General Counsel for Military Justice, U.S. Department of Defense).

121 *See* Appendix A, Historical Background.

122 *Transcript of DAC-IPAD Public Meeting* 181–82 (Jan. 19, 2017) (testimony of Mr. James Markey, Committee member) (suggesting the Committee look at the previous panel recommendations to see if they have been implemented and whether they are effective and being measured).

enacted to date. The Committee will review previous reports, including those issued by the Department of Defense Inspector General, Human Rights Watch, Senator Kirsten Gillibrand, the Government Accountability Office, and the previous congressional task forces focused on military sexual assault, to assess their findings and impact on law and policy.

To organize and make available the body of reports and studies conducted and published on this issue to date, the DAC-IPAD has created a “Reading Room” on its website where reports, studies, articles, and other related resource materials are organized and posted for public access.¹²³

D. TESTIMONY FROM EXPERTS AND STAKEHOLDERS

At public meetings to be held quarterly over the next 12 months, the Committee will receive testimony from practitioners and experts on military and civilian processes and procedures related to reporting, investigating, and adjudicating sexual assault allegations, as well as on practices of data collection and analysis and of program oversight.

E. SITE VISITS AND FOCUS GROUPS

Several Committee members cited the importance of focus groups and field assessments to the work of the Committee.¹²⁴ Site visits have been conducted by each of the predecessor congressional sexual assault task forces—most notably by the Defense Task Force on Sexual Assault in the Military Services (DTF-SAMS), which visited 60 military installations over the course of its term.¹²⁵

F. REVIEW OF PROPOSALS AND RECOMMENDATIONS FROM THE PUBLIC AND ADVOCACY ORGANIZATIONS

Because of the broad nature of the Committee’s mandate and the length of its term, the DAC-IPAD welcomes input and proposals from the public, individual Service members, governmental and nongovernmental organizations, military departments, and any others interested in combating sexual assault in the military and improving the policies, procedures, and law governing the administration of justice and the military prevention of and response to sexual misconduct.

VII. ESTABLISHMENT OF SUBCOMMITTEES

The Committee Chair stated at the January public meeting that the Committee will likely establish subcommittees to facilitate its work, but decisions have not yet been made as to the composition or scope of such subcommittees.¹²⁶

123 The DAC-IPAD Reading Room resource is available at <https://dacipad.whs.mil/reading>.

124 *Transcript of DAC-IPAD Public Meeting* 175 (Jan. 19, 2017) (testimony of Mr. James Markey, Committee member); *id.* (testimony of Dr. Jenifer Markowitz, Committee member) (advocating the use of focus groups).

125 See Appendix A, Historical Background.

126 *Transcript of DAC-IPAD Public Meeting* 179 (Jan. 19, 2017) (testimony of Ms. Martha Bashford, Committee chair).

VIII. SCOPE OF REVIEW

The members discussed the scope of the Committee's mission, but the Committee has not yet determined what aspects of sexual misconduct and what types of cases it will examine. Some on the Committee did express interest in looking at cases involving children, but they recognized the substantial privacy concerns that must be considered. The Committee agreed it initially would concentrate exclusively on adult cases.¹²⁷ The Committee chair expressed a primary interest in focusing on "how we can keep people in the Service without being sexually assaulted."¹²⁸

IX. CONCLUSION

The dramatic gaps between the incidence of sexual assault in the military indicated by Department of Defense surveys of Service members, the number of sexual assault incidents formally reported to military authorities, and the still smaller number of criminal prosecutions and convictions have led to ongoing, intense congressional and public scrutiny of the issue over the past two decades.¹²⁹ Thousands of hours have been devoted by dedicated Service members and civilians throughout the Department of Defense, at the cost of millions of dollars, to root out this crime. However, despite years of effort, the disparities persist.

Since 2005, Congress has enacted and DoD has implemented hundreds of statutory reforms, initiatives, mandates, and directives based largely on recommendations and findings made by the congressional advisory committees preceding this one. Many of the reforms of the past decade have led to great improvements, innovative programs, better care of victims, and enhanced awareness and training. Yet there still remains a great need to connect the various systemic reforms with their impact on the statistics they are intended to change. An important role for this Committee in the months and years ahead will be to identify the data and analysis required to better understand the nature and extent of the problem of sexual assault in the military, the impact of the multitude of changes the system has now undergone, and the efficacy of the systems now in place.

127 See *Transcript of DAC-IPAD Public Meeting* 224 (Jan. 19, 2017) (testimony of Ms. Meg Garvin, Committee member) (recommending that the DAC-IPAD review child cases and noting that there is a gap in data on children); *but see, id.* at 264 (testimony of Dr. Jen Markowitz, Committee member) (stating that she does not think the committee should review child sex abuse cases); *id.* at 266 (testimony of Ms. Martha Bashford, Committee chair) (maintaining that for her the most important issue is ensuring that adults may serve in the military without getting sexually assaulted, but also noting that doesn't mean the Committee can't ever look at children, domestic violence, civilians).

128 *Transcript of DAC-IPAD Public Meeting* 193–95 (Jan. 19, 2017) (testimony of Ms. Martha Bashford, Committee chair).

129 *Transcript of DAC-IPAD Public Meeting* 198–99 (Jan. 19, 2017) (testimony of CMSAF (Ret.) Rodney McKinley, Committee member).

APPENDIX A. HISTORICAL BACKGROUND

Sexual assault is a complex societal problem that extends across cultural, geographic, and economic boundaries. Increasing public awareness and concern about sexual assault within the United States military have given rise to numerous commissions, task forces, and advisory committees established to conduct assessments and recommend ways to eradicate this insidious crime, though it continues to plague both the military and society at large.

It has been over 20 years since reports that naval aviators sexually abused more than 80 women during a party at the 35th Annual Tailhook Symposium in Las Vegas hit the news.¹ The allegations led to the resignation of the Secretary of the Navy and ended many Navy careers. The Tailhook incident ignited the debate that continues today about sexual misconduct in the Armed Forces.²

In the years following Tailhook, several more high-profile incidents resulted in further attention and public scrutiny. In 1996, dozens of female Army trainees at Aberdeen Proving Grounds in Maryland alleged they had been raped and sexually harassed by their drill sergeants.³ Shortly thereafter, female trainees made similar allegations against Army trainers in Fort Leonard Wood, Kansas, and at several other Army training bases.⁴

In 2003, accusations surfaced that female cadets at the U.S. Air Force Academy were being ignored or retaliated against by commanders at the Academy after reporting sexual assaults.⁵ To investigate the allegations, Congress established its first military sexual assault task force.⁶ The Fowler Commission—led by former congresswoman Tillie Fowler—issued a report containing 20 recommendations in September 2003.⁷ A second task force, established by Congress to assess “sexual harassment and violence” at the U.S. Military Academy and the Naval Academy, issued a report in June 2005 containing 15 recommendations.⁸ Congress then extended and renamed

1 Michael Winerip, *Revisiting the Military's Tailhook Scandal*, N.Y. TIMES (May 13, 2013), <http://www.nytimes.com/2013/05/13/booming/revisiting-the-militarys-tailhook-scandal-video.html>.

2 See Kingsley R. Browne, *Military Sex Scandals from Tailhook to the Present: The Cure Can be Worse than the Disease*, 14 DUKE J. OF GENDER L. & POL'Y 749, 760–64 (2007).

3 Rowan Scarborough, *Army Trainees Accuse Instructors of Rape, Harassment*, WASH. TIMES (Nov. 8, 1996), at A3.

4 See Michael Kilian, *New Sex Scandal Hits Army Ranks*, CHICAGO TRIBUNE (November 13, 1996), http://articles.chicagotribune.com/1996-11-13/news/9611130215_1_trainees-sexual-misconduct-sexual-harassment.

5 See OFFICE OF THE INSPECTOR GEN. OF THE DEP'T OF DEFENSE, *EVALUATION OF SEXUAL ASSAULT, REPRISAL, AND RELATED LEADERSHIP CHALLENGES AT THE UNITED STATES AIR FORCE ACADEMY* (2004), available at <http://www.defenselink.mil/news/Dec2004/d20041207igsummary.pdf>.

6 See REPORT OF THE PANEL TO REVIEW SEXUAL MISCONDUCT ALLEGATIONS AT THE U.S. AIR FORCE ACADEMY. (2003), available at <http://files.eric.ed.gov/fulltext/ED480473.pdf>. On April 16, 2003, Congress passed Public Law (P.L.) 108-11 establishing a “Panel to Review Sexual Misconduct Allegations at United States Air Force Academy.” Congress required the Secretary of Defense to appoint a seven-member panel from among private United States citizens who had expertise in behavioral and psychological sciences, standards and practices related to properly treating sexual assault victims (including their medical and legal rights and needs), as well as members from the United States military academies, to investigate reports that at least 56 cadets had been sexually assaulted at USAFA. The panel, headed by former Congresswoman Tillie K. Fowler, completed its review and issued a report on September 22, 2003, which included 20 recommendations to the Air Force. *Id.*

7 See *id.*

8 See REPORT OF THE DEFENSE TASK FORCE ON SEXUAL HARASSMENT & VIOLENCE AT THE MILITARY SERVICE ACADEMIES (June 2005), available at http://www.sapr.mil/public/docs/research/High_GPO_RRC_tx.pdf. On November 24, 2003, Congress passed Public Law (P.L.) 108-136 establishing the “Defense Task Force on Sexual Harassment and Violence at the U.S. Military Academy and the U.S. Naval Academy.” Congress directed the Task Force to assess and make recommendations concerning how the Departments of the Army and the Navy may more effectively address sexual harassment and assault at the Academies. The Secretary of Defense appointed six members from the four branches of the Armed Forces and six members from the civilian community to the Task Force. On June 30, 2005, the Task Force issued a report, which included 15 recommendations. *Id.*

the task force. It directed this new entity, the Defense Task Force on Sexual Assault in the Military Services (DTF-SAMS), to conduct a review of sexual assault across all of the Armed Forces.⁹ DTF-SAMS began its assessment in 2008, conducting site visits at 60 installations in the United States, the Middle East, the Pacific Rim, and Europe.¹⁰ In its report, issued in December 2009, DTF-SAMS made 30 recommendations.¹¹ The task force found that while the military had made significant progress in its handling of sexual assaults, there was still much work to be done: the areas that needed improvement included SAPR Program standards and oversight,¹² a DoD-wide prevention strategy, measures of prevention and response effectiveness,¹³ support of and response to victims,¹⁴ and the accuracy, reliability, and validity of data collected on sexual assault incidents.¹⁵

While DoD and the Services were working to implement the recommendations of DTF-SAMS and the legislative reforms that followed, other events of 2012 and 2013 would lead to some of the most extensive legislative reforms enacted to date to address military sexual assault. The first was release in the spring of 2012 of the Academy Award–nominated documentary *The Invisible War*.¹⁶ The film details the experiences of several young female veterans and their treatment by commanders after they reported that they were sexually assaulted while serving in the military.¹⁷ Shortly after viewing *The Invisible War*, then–Defense Secretary Leon Panetta issued a memorandum elevating the initial disposition authority for rape and sexual assault allegations to commanders in the grade of O-6 (colonel or Navy captain) or above.¹⁸ Many commanders required their NCOs and officers to view the film.¹⁹ At the same time, many in the military criticized it for inaccuracies and misrepresentations of military law and policy.²⁰

Congress quickly responded by establishing two panels to conduct independent assessments of the military’s response to sexual assault. The first of these panels, the Response Systems to Adult Sexual Assault Crimes Panel

9 See REPORT OF THE DEFENSE TASK FORCE ON SEXUAL ASSAULT IN THE MILITARY SERVICES (2009), available at http://www.sapr.mil/public/docs/research/DTFSAMS-Rept_Dec09.pdf. On October 28, 2004, Congress passed Public Law (P.L.) 108-375, which directed the Service Academy Task Force established by P.L. 108-136 to be extended for 18 months, renamed the “Defense Task Force on Sexual Assault in the Military Services (DTF-SAMS),” and tasked to examine matters relating to sexual assault cases in which members of the Armed Forces are either victims or commit acts of sexual assault. The Secretary of Defense appointed 10 members: one Service member from each Military Service, one civilian official from the Office of the Secretary of Defense, and five civilians from outside the Department. DTF-SAMS completed its work and on December 1, 2009, released a report with 30 recommendations to the Secretary of Defense. *Id.*

10 *Id.* at ES-1.

11 *Id.* at ES-2–6.

12 *Id.* at 41.

13 *Id.* at 57.

14 *Id.* at 67.

15 *Id.* at 77.

16 See *THE INVISIBLE WAR* (Chain Camera Pictures 2012). See also Robert E. Murdough, Article: *Barracks, Dormitories, and Capitol Hill: Finding Justice in the Divergent Politics of Military and College Sexual Assault*, 223 MIL. L. REV. 233, 243–45 (2015).

17 *Id.*

18 See Todd Perkins, *The Invisible War Filmmakers Respond to Secretary of Defense Leon Panetta’s Rock Center with Brian Williams Appearance on Rape in the Military*, IndieWire (September 8, 2012), <http://www.indiewire.com/2012/09/the-invisible-war-filmmakers-respond-to-secretary-of-defense-leon-panettas-rock-center-with-brian-williams-appearance-on-rape-in-the-military-44577/>. See also, Memorandum from Sec’y of Def. to Sec’y of Military Dep’ts et al., subject: Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases (April 20, 2012).

19 See Murdough, *supra* note 16, at 244–45.

20 See *id.*, at 244 n.45.

(RSP), was directed by Congress to spend 18 months (subsequently shortened by Secretary of Defense Chuck Hagel to 12 months) reviewing and assessing the services provided by the military to sexual assault victims, the military's disciplinary response to allegations of sexual assault, and proposed legislative initiatives to modify the role of commanders in the administration of military justice.²¹ Composed of nine civilian members and led by former federal judge Barbara S. Jones, the RSP issued its report in June 2014: all but one of its 132 recommendations were either approved, approved in part, or sent to working groups for further study by DoD.²²

Following the release of the RSP's report, the Secretary of Defense established the congressionally mandated Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (JPP) for a three-year term.²³ The JPP is composed of five members appointed by the Secretary of Defense, two of whom were required to have served on the predecessor RSP.²⁴ The JPP is led by former congresswoman Elizabeth Holtzman, who also served as a member of the RSP.²⁵ To date, the JPP has issued five reports and 36 recommendations on the topics of victim privacy, Article 120 of the UCMJ, the Special Victims' Counsel Programs, restitution and compensation of victims of sexual assault, retaliation against those who report sexual assault, and court-martial data trends.²⁶ These reports have led to numerous legislative and policy reforms related to sexual assault. By law the JPP will terminate on September 30, 2017; before the end of its term, the Panel is planning to release several additional reports on topics including victims' appellate rights, resources and experience of military defense counsel, and sexual assault investigations.

21 See National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239 [hereinafter FY13 NDAA], § 576, 126 Stat. 1632, 1758–60 (2012). The RSP was composed of 9 members, five appointed by the Secretary of Defense and four appointed by the chairmen and ranking members of the Armed Services Committees of the Senate and House of Representatives. *Id.*

22 See REPORT OF THE RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL (June 2014); see also Memorandum from Sec'y of Def. to Sec'ys of Military Dep'ts et al., subject: Department of Defense Implementation of the Recommendations of the Response Systems to Adult Sexual Assault Crimes Panel (Dec. 15, 2014).

23 FY13 NDAA, *supra* note 21, at § 576.

24 *Id.*

25 See Judicial Proceedings Panel website, <http://jpp.whs.mil/about/panel/holtzman>.

26 JUDICIAL PROCEEDINGS PANEL INITIAL REPORT (Feb. 2015); JUDICIAL PROCEEDINGS PANEL REPORT ON RESTITUTION AND COMPENSATION FOR MILITARY ADULT SEXUAL ASSAULT CRIMES (Feb. 2016); JUDICIAL PROCEEDINGS PANEL REPORT ON RETALIATION RELATED TO SEXUAL ASSAULT OFFENSES (Feb. 2016); JUDICIAL PROCEEDINGS PANEL REPORT ON ARTICLE 120 OF THE UNIFORM CODE OF MILITARY JUSTICE (Feb. 2016); JUDICIAL PROCEEDINGS PANEL REPORT ON STATISTICAL DATA REGARDING MILITARY ADJUDICATION OF SEXUAL ASSAULT OFFENSES (April 2016).

APPENDIX B. AUTHORIZING STATUTES

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2015

SECTION 546. DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES.

(a) **ESTABLISHMENT REQUIRED.**—

(1) **IN GENERAL.**—The Secretary of Defense shall establish and maintain within the Department of Defense an advisory committee to be known as the “Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces” (in this section referred to as the “Advisory Committee”).

(2) **DEADLINE FOR ESTABLISHMENT.**—The Secretary shall establish the Advisory Committee not later than 30 days before the termination date of the independent panel established by the Secretary under section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1758), known as the “judicial proceedings panel”.

(b) **MEMBERSHIP.**—The Advisory Committee shall consist of not more than 20 members, to be appointed by the Secretary of Defense, who have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses. Members of the Advisory Committee may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as a member of the Advisory Committee.

(c) **DUTIES.**—

(1) **IN GENERAL.**—The Advisory Committee shall advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.

(2) **BASIS FOR PROVISION OF ADVICE.**—For purposes of providing advice to the Secretary pursuant to this subsection, the Advisory Committee shall review, on an ongoing basis, cases involving allegations of sexual misconduct described in paragraph (1).

(d) **ANNUAL REPORTS.**—Not later than March 30 each year, the Advisory Committee shall submit to the Secretary of Defense and the Committees on Armed Services of the Senate and the House of Representatives a report describing the results of the activities of the Advisory Committee pursuant to this section during the preceding year.

(e) **TERMINATION.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the Advisory Committee shall terminate on the date that is five years after the date of the establishment of the Advisory Committee pursuant to subsection (a).

(2) CONTINUATION.—The Secretary of Defense may continue the Advisory Committee after the termination date applicable under paragraph (1) if the Secretary determines that continuation of the Advisory Committee after that date is advisable and appropriate. If the Secretary determines to continue the Advisory Committee after that date, the Secretary shall submit to the President and the congressional committees specified in subsection (d) a report describing the reasons for that determination and specifying the new termination date for the Advisory Committee.

(f) DUE DATE FOR ANNUAL REPORT OF JUDICIAL PROCEEDINGS PANEL.—Section 576(c)(2)(B) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1760) is amended by inserting “annually thereafter” after “reports”.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2016

SECTION 537. MODIFICATION OF DEADLINE FOR ESTABLISHMENT OF DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES.

Section 546(a)(2) of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3374; 10 U.S.C. 1561 note) is amended by striking “not later than” and all that follows and inserting “not later than 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016.”

APPENDIX C. COMMITTEE CHARTER

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Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces

1. Committee's Official Designation: The Committee will be known as the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces ("the Committee").
2. Authority: The Secretary of Defense, pursuant to section 546 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 ("FY 2015 NDAA") (Public Law 113-291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92), and in accordance with the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 C.F.R. § 102-3.50(a), established this non-discretionary Committee.
3. Objectives and Scope of Activities: The Committee, pursuant to section 546(c)(1) of the FY 2015 NDAA, will advise the Secretary of Defense and the Deputy Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.
4. Description of Duties: Pursuant to section 546(c)(2) and (d) of the FY 2015 NDAA, the Committee, not later than March 30 of each year, will submit to the Secretary of Defense through the General Counsel (GC) for the Department of Defense (DoD), and the Committees on Armed Services of the Senate and House of Representatives, a report describing the results of the activities of the Committee pursuant to section 546 of the FY 2015 NDAA during the preceding year. The Committee will review, on an ongoing basis, cases involving allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.
5. Agency or Official to Whom the Committee Reports: The Committee will report to the Secretary and Deputy Secretary of Defense, through the GC DoD.
6. Support: The DoD, through the GC DoD, the Washington Headquarters Services, and the DoD Components, will provide staffing and resources to support the Committee's functions, and will ensure compliance with requirements of the FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. § 552b, as amended) ("the Sunshine Act"), governing Federal statutes and regulations, and established DoD policies and procedures.
7. Estimated Annual Operating Costs and Staff Years: The estimated annual operating cost, including travel, meetings, and contract support, is approximately \$2,000,000. The estimated annual personnel cost to the DoD is 15.0 full-time equivalents.
8. Designated Federal Officer: The Committee's Designated Federal Officer (DFO), pursuant to DoD policy, will be a full-time or permanent part-time DoD employee or military member, designated in accordance with established DoD policies and procedures.

The Committee's DFO is required to be in attendance at all Committee and subcommittee meetings for the entire duration of each and every meeting. However, in the absence of the Committee's DFO, a properly approved Alternate DFO, duly designated to the Committee

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according to DoD policies and procedures, will attend the entire duration of all of the Committee or subcommittee meetings.

The DFO, or the Alternate DFO, will call all of the Committee and its subcommittee meetings; prepare and approve all meeting agendas; and adjourn any meeting when the DFO, or the Alternate DFO, determines adjournment to be in the public interest or required by governing regulations or DoD policies and procedures.

9. Estimated Number and Frequency of Meetings: The Committee will meet at the call of the Committee's DFO, in consultation with the GC DoD and the Committee's Chair. The Committee will meet at a minimum of once per year.
10. Duration: The Committee will remain in effect until terminated as provided for by sections 546(e)(1) and (2) of the FY 2015 NDAA; however, the charter is subject to renewal every two years.
11. Termination: According to sections 546(e)(1) and (2) of the FY 2015 NDAA, the Committee will terminate on the date that is five years after the date the Committee is established unless the Secretary of Defense determines that continuation of the Committee after that date is advisable and appropriate. If the Secretary of Defense determines to continue the Committee after that date, the Secretary of Defense will submit to the President and the Committees on Armed Services of the Senate and House of Representatives a report describing the reasons for that determination and specifying the new termination date for the Committee.
12. Membership and Designation: Pursuant to section 546(b) of the FY 2015 NDAA, the Committee will be composed of no more than 20 members. Committee members selected will have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses. Members of the Committee may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as members of the Committee.

The appointment of Committee members will be authorized by the Secretary of Defense or the Deputy Secretary of Defense, and administratively certified by the GC DoD, for a term of service of one to four years, and their appointments will be renewed on an annual basis in accordance with DoD policies and procedures. Members of the Committee who are not full-time or permanent part-time Federal officers or employees will be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as special government employee (SGE) members. Committee members who are full-time or permanent part-time Federal officers or employees will be appointed pursuant to 41 C.F.R. § 101-3.130(a) to serve as regular government employee (RGE) members. No member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service on the Committee, including its subcommittees, or serve on more than two DoD federal advisory committees at one time.

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All members of the Committee are appointed to provide advice on the basis of their best judgment on behalf of the Government without representing any particular point of view and in a manner that is free from conflict of interest.

Except for reimbursement of official Committee-related travel and per diem, Committee members serve without compensation.

Consistent with authority delegated to DoD Sponsors, the GC DoD will appoint the Committee's Chair from among the membership previously authorized by the Secretary of Defense or Deputy Secretary of Defense.

13. Subcommittees: The DoD, as necessary and consistent with the Committee's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Committee.

Establishment of subcommittees will be based upon a written determination, including terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the GC DoD as the DoD Sponsor.

Such subcommittees will not work independently of the Committee and will report all their recommendations and advice solely to the Committee for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, orally or in writing, on behalf of the Committee. No subcommittee or any of its members can update or report, orally or in writing, directly to the DoD or any Federal officers or employees. If a majority of Committee members are appointed to a particular subcommittee, then that subcommittee may be required to operate pursuant to the same notice and openness requirements of FACA which govern the Committee's operations.

Pursuant to Secretary of Defense policy, the GC DoD is authorized to administratively certify the appointment of subcommittee members if the Secretary of Defense or the Deputy Secretary of Defense has previously authorized the individual's appointment to the Committee or another DoD advisory committee. If the Secretary of Defense or the Deputy Secretary of Defense has not previously authorized the appointment of the individual to the Committee or another DoD advisory committee, then the individual's subcommittee appointment must first be authorized by the Secretary of Defense or the Deputy Secretary of Defense and subsequently administratively certified by the GC DoD.

Subcommittee members, with the approval of the Secretary of Defense, will be appointed for a term of service of one-to-four years, subject to annual renewals; however, no member will serve more than two consecutive terms of service on the subcommittee. Subcommittee members, if not full-time or part-time Federal officers or employees, will be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as SGE members. Subcommittee members who are full-time or permanent part-time Federal officers or employees will be appointed pursuant to 41 C.F.R. § 101-3.130(a) to serve as RGE members. With the exception of reimbursement for travel and per diem as it pertains to official travel related to

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the Committee or its subcommittees, subcommittee members will serve without compensation.

The Secretary of Defense authorizes the GC DoD to appoint the chair of any appropriately approved subcommittee from among the subcommittee membership previously authorized by the Secretary of Defense or Deputy Secretary of Defense.

Each subcommittee member is appointed to provide advice on the basis of his or her best judgment on behalf of the Government without representing any particular point of view and in a manner that is free from conflict of interest.

All subcommittees operate under the provisions of the FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies and procedures.

14. Recordkeeping: The records of the Committee and its subcommittees will be managed in accordance with General Record Schedule 6.2, Federal Advisory Committee Records, or other approved agency records disposition schedule, and the appropriate DoD policies and procedures. These records will be available for public inspection and copying, subject to the Freedom of Information Act of 1966 (5 U.S.C. § 552, as amended).
15. Filing Date: February 18, 2016

APPENDIX D. COMMITTEE MEMBERS

MS. MARTHA S. BASHFORD, CHAIR



Martha Bashford is the chief of the New York County District Attorney's Office Sex Crimes Unit, which was the first of its kind in the country. Previously she was co-chief of the Forensic Sciences/Cold Case Unit, where she examined unsolved homicide cases that might now be solvable through DNA analysis. Ms. Bashford was also co-chief of the DNA Cold Case Project, which used DNA technology to investigate and prosecute unsolved sexual assault cases. She indicted assailants identified through the FBI's Combined DNA Index System (CODIS) and obtained John Doe DNA profile indictments to stop the statute of limitations where no suspect had yet been identified. She is a Fellow in the American Academy of Forensic Sciences. Ms. Bashford graduated from Barnard College in 1976 (summa cum laude) and received her J.D. degree from Yale Law School in 1979.

MAJOR GENERAL MARCIA M. ANDERSON, U.S. ARMY, RETIRED



MG Marcia Anderson is the Clerk of Court for the Bankruptcy Court – Western District of Wisconsin since 1998, where she is responsible for the management of the budget and administration of bankruptcy cases for 44 counties in western Wisconsin. Major General Anderson recently retired in 2016 from a distinguished career in the U.S. Army Reserve after 36 years of service, which included serving as the Deputy Commanding General of the Army's Human Resources Command at Fort Knox, Kentucky. In 2011, she became the first African American woman to achieve the rank of major general in the history of the U.S. Army. Her service culminated with an assignment at the Pentagon as the Deputy Chief Army Reserve (DCAR). As the DCAR, she represented the Chief, Army Reserve, and had oversight for the planning, programming, and resource management for the execution of an Army Reserve budget of \$8 billion that supported over 225,000 Army Reserve Soldiers, civilians, and their families. She is a graduate of the Rutgers University School of Law, the U.S. Army War College, and Creighton University.

THE HONORABLE LEO I. BRISBOIS



Leo I. Brisbois has been a U.S. Magistrate Judge for the District of Minnesota chambered in Duluth, Minnesota, since 2010. Prior to his appointment to the bench, Judge Brisbois served as an Assistant Staff Judge Advocate, U.S. Army, from 1987 through 1998, both on active duty and then in the reserves; his active duty service included work as a trial counsel and as an administrative law officer, both while serving in Germany. Judge Brisbois was in private practice with the Minneapolis, Minnesota, firm of Stich, Angell, Kreidler, Dodge & Unke from 1991 to 2010, where his practice included all aspects of litigation and appeals involving the defense of civil claims in state and federal courts. Judge Brisbois has also previously served on the Civil Rules and Racial Fairness in the Courts advisory committees established by the Minnesota State Supreme Court, and he has served on the Minnesota Commission on Judicial Selection. From 2009 to 2010, Judge Brisbois was the first person of known Native American heritage to serve as President of the more than 16,000 member Minnesota State Bar Association.

MS. KATHLEEN B. CANNON



Kathleen Cannon is a criminal defense attorney in Vista, California, specializing in serious felony and high-profile cases. Prior to entering private practice in 2011, Ms. Cannon was a public defender for over 30 years, in Los Angeles and San Diego counties. Over the course of her career, Ms. Cannon supervised branch operations and training programs within the offices and handled thousands of criminal cases. She has completed hundreds of jury trials, including those involving violent sexual assault and capital murder with special circumstances. Since 1994, Ms. Cannon has taught trial advocacy as an adjunct professor of law at California

Western School of Law in San Diego, and has been on the faculty with the National Institute of Trial Advocacy as a Team Leader and teacher. She is past-President and current Training Coordinator for the California Public Defenders' Association, providing educational seminars for criminal defense attorneys throughout the state of California. Ms. Cannon has lectured on battered women syndrome evidence at the Marine Corps World Wide Training Conference at Marine Corps Recruit Depot (MCRD), San Diego, and was a small-group facilitator for the Naval Justice School course "Defending Sexual Assault Cases" in San Diego. Ms. Cannon has received numerous awards, including Top Ten Criminal Defense Attorney in San Diego, Lawyer of the Year from the North County Bar Association, and Attorney of the Year from the San Diego County Public Defender's Office.

MS. MARGARET A. GARVIN



Margaret "Meg" Garvin, M.A., J.D., is the executive director of the National Crime Victim Law Institute (NCVLI), where she has worked since 2003. She is also a clinical professor of law at Lewis & Clark Law School, where NCVLI is located. In 2014, Ms. Garvin was appointed to the Victims Advisory Group of the United States Sentencing Commission, and during 2013–14, she served on the Victim Services Subcommittee of the Response Systems to Adult Sexual Assault Crimes Panel of the United States Department of Defense. She has served as co-chair of the American Bar Association's Criminal Justice Section Victims Committee, as co-chair of

the Oregon Attorney General's Crime Victims' Rights Task Force, and as a member of the Legislative & Public Policy Committee of the Oregon Attorney General's Sexual Assault Task Force. Ms. Garvin received the John W. Gillis Leadership Award from National Parents of Murdered Children in August 2015. Prior to joining NCVLI, Ms. Garvin practiced law in Minneapolis, Minnesota, and clerked for the Eighth Circuit Court of Appeals. She received her bachelor of arts degree from the University of Puget Sound, her master of arts degree in communication studies from the University of Iowa, and her J.D. from the University of Minnesota.

THE HONORABLE PAUL W. GRIMM



Paul W. Grimm serves as a United States District Judge for the District of Maryland. Previously, he served as a United States Magistrate Judge and as Chief Magistrate Judge for the District of Maryland. In 2009, the Chief Justice of the United States appointed Judge Grimm to serve as a member of the Civil Rules Advisory Committee, where he served for six years and chaired the Discovery Subcommittee. Before his appointment to the court, Judge Grimm was in private practice for 13 years, handling commercial litigation. Prior to that, he served as an Assistant Attorney General for Maryland, an Assistant States Attorney for Baltimore County, Maryland, and an active duty and Reserve Army Judge Advocate General's Corps officer, retiring as a lieutenant colonel in 2001. Judge Grimm has served as an adjunct professor of law at the University of Maryland School of

Law and at the University of Baltimore School of Law, and has published many articles on evidence and civil procedure.

DEAN KEITH M. HARRISON



Keith Harrison began his legal career as a Judge Advocate in the U.S. Coast Guard. After military service he began what was supposed to be a two-year stint as a law teacher. More than 30 years later he has been a member of the full-time faculty at three law schools and a visiting faculty member at four others. In 2016 he joined the faculty of the Savannah Law School as a visiting professor and acting associate dean. Dean Harrison's primary areas of teaching are in the criminal justice area, including criminal law, criminal procedure, military criminal law, and intellectual property crimes. He was the founding chair of the International Criminal Law & Justice Graduate Programs at Franklin Pierce Law Center. He served as a public member of the Uniform Code of Military Justice Code Committee. He has served as a volunteer guardian ad litem for Court Appointed Special Advocates (CASA), New Hampshire. He is a graduate of Leadership New Hampshire and has served on several arts, education, and community boards, including the Endowment for Health and the board of St. John's College.

MR. A. J. KRAMER



A. J. Kramer has been the Federal Public Defender for the District of Columbia since 1990. He was the Chief Assistant Federal Public Defender in Sacramento, California, from 1987 to 1990, and an Assistant Federal Public Defender in San Francisco, California, from 1980 to 1987. He was a law clerk for the Honorable Proctor Hug, Jr., United States Court of Appeals for the Ninth Circuit, Reno, Nevada, from 1979 to 1980. He received a B.A. from Stanford University in 1975, and a J.D. from Boalt Hall School of Law at the University of California at Berkeley in 1979. Mr. Kramer taught legal research and writing at Hastings Law School from 1983 to 1988. He is a permanent faculty member of the National Criminal Defense College in Macon, Georgia. He is a Fellow of the American College of Trial Lawyers. He is a member of the United States Judicial Conference Advisory Committee on Evidence Rules and the ABA Criminal Justice System Council. He was a member of the National Academy of Sciences Committee on Scientific Approaches to Understanding and Maximizing the Validity and Reliability of Eyewitness Identification in Law Enforcement and the Courts. In December 2013, he received the Annice M. Wagner Pioneer Award from the Bar Association of the District of Columbia.

MS. JENNIFER GENTILE LONG



Jennifer Gentile Long (MGA, JD) is CEO and co-founder of AEquitas and an adjunct professor at Georgetown University Law School. She served as an Assistant District Attorney in Philadelphia specializing in sexual violence, child abuse, and intimate partner violence. She was a senior attorney and then Director of the National Center for the Prosecution of Violence Against Women at the American Prosecutors Research Institute. She publishes articles, delivers trainings, and provides expert case consultation on issues relevant to gender-based violence and human trafficking nationally and internationally. Ms. Long serves as an Advisory Committee member to the American Law Institute's Model Penal Code Revision to Sexual Assault and Related Laws and as an Editorial Board member with the Civic Research Institute for the Sexual Assault and Domestic Violence Reports. She graduated from Lehigh University and the University of Pennsylvania Law School and the Fels School of Government.

MR. JAMES P. MARKEY



Jim Markey has over 30 years of law enforcement experience with the Phoenix Police Department. Serving in a variety of positions, Mr. Markey was recognized with more than 30 commendations and awards. For over 14 years he directly supervised the sexual assault unit, which is part of a multidisciplinary sexual assault response team co-located in the City of Phoenix Family Advocacy Center. Mr. Markey oversaw the investigation of more than 7,000 sexual assaults, including more than 150 serial rape cases. In 2000, he was able to secure Violence Against Women grant funding to design, develop, and supervise a first-of-its-kind sexual assault cold case team with the City of Phoenix. This team has been successful in reviewing nearly 4,000 unsolved sexual assault dating back over 25 years. For the past 15 years Mr. Markey has been a certified and nationally recognized trainer, delivering in-person and online webinar training for numerous criminal justice organizations on sexual assault investigations and response. Currently, he is a contract consultant for the DOJ Bureau of Justice Assistance Sexual Assault Kit Initiative (SAKI), where his team provides technical assistance and training to over 50 SAKI grantees across the United States. His expertise and experience have been used in investigative case review as well as assessment of sexual assault unit response. This includes a recently completed comprehensive assessment for the Tempe Police Department (Tempe, AZ) Sexual Assault Unit. Mr. Markey currently serves as a member of the National Institute of Justice (NIJ) Sexual Assault Forensic Evidence Reporting (SAFER) Working Group and Editorial Team, NIJ Cold Case Working Group, Arizona Commission on Victims in the Courts (COVIC), and the Arizona Forensic Advisory Committee.

DR. JENIFER MARKOWITZ



Jenifer Markowitz is a forensic nursing consultant who specializes in issues related to sexual assault, domestic violence, and strangulation, including medical-forensic examinations and professional education and curriculum development. In addition to teaching at workshops and conferences around the world, she provides expert testimony, case consultation, and technical assistance and develops training materials, resources, and publications. A forensic nurse examiner since 1995, Dr. Markowitz regularly serves as faculty and as an expert consultant for the Judge Advocate General's (JAG) Corps for the U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard. Past national activities include working with the Army Surgeon General's office to develop a curriculum for sexual assault medical-forensic examiners working in military treatment facilities (subsequently adopted by the Navy and Air Force); with the U.S. Department of Justice Office on Violence Against Women (OVW) to develop a national protocol and training standards for sexual assault medical-forensic examinations; with the Peace Corps to assess the agency's multidisciplinary response to sexual assault; with the U.S. Department of Defense to revise the military's sexual assault evidence collection kit and corresponding documentation forms; and as an Advisory Board member for the National Sexual Violence Resource Center. In 2004, Dr. Markowitz was named a Distinguished Fellow of the International Association of Forensic Nurses (IAFN); in 2012, she served as IAFN's President.

CHIEF MASTER SERGEANT OF THE AIR FORCE RODNEY J. MCKINLEY, RETIRED



Chief Master Sergeant of the Air Force Rodney J. McKinley represented the highest enlisted level of leadership and, as such, provided direction for the enlisted corps and represented their interests, as appropriate, to the American public and to those in all levels of government. He served as the personal advisor to the Chief of Staff and the Secretary of the Air Force on all issues regarding the welfare, readiness, morale, and proper utilization and progress of the enlisted force. Chief McKinley is the 15th chief master sergeant appointed to the highest non-commissioned officer position. His background includes various duties in medical and aircraft maintenance, and he served 10 years as a first sergeant. He also served as a command chief master sergeant at wing, numbered Air Force, and major command levels. He is currently the co-chair for the Air Force Retiree Council and frequently is a guest speaker at bases across the Air Force. He is an honors graduate of St. Leo College, Florida, and received his master's degree in human relations from the University of Oklahoma.

BRIGADIER GENERAL JAMES R. SCHWENK, U.S. MARINE CORPS, RETIRED



BGen Schwenk was commissioned as an infantry officer in the Marine Corps in 1970. After serving as a platoon commander and company commander, he attended law school at the Washington College of Law, American University, and became a judge advocate. As a judge advocate he served in the Office of the Secretary of Defense, the Office of the Secretary of the Navy, and Headquarters, Marine Corps; he served as Staff Judge Advocate for Marine Forces Atlantic, II Marine Expeditionary Force, Marine Corps Air Bases West, and several other commands; and he participated in several hundred courts-martial and administrative discharge boards. He represented the Department of Defense on the television show *American Justice*, and represented the Marine Corps in a Mike Wallace segment on *60 Minutes*. He retired from the Marine Corps in 2000.

Upon retirement from the Marine Corps, BGen Schwenk joined the Office of the General Counsel of the Department of Defense as an associate deputy general counsel. He was a legal advisor in the Pentagon on 9/11, and he was the primary drafter from the Department of Defense of many of the emergency legal authorities used in Afghanistan, Iraq, the United States, and elsewhere since that date. He was the principal legal advisor for the repeal of “don’t ask, don’t tell,” for the provision of benefits to same-sex spouses of military personnel, in the review of the murders at Fort Hood in 2009, and on numerous DoD working groups in the area of military personnel policy. He worked extensively with the White House and Congress, and he retired after 49 years of federal service in 2014.

DR. CASSIA C. SPOHN



Cassia Spohn is a Foundation Professor and Director of the School of Criminology and Criminal Justice at Arizona State University. She received a Ph.D. in political science from the University of Nebraska–Lincoln. Prior to joining the ASU faculty in 2006, she was a faculty member in the School of Criminology and Criminal Justice at the University of Nebraska at Omaha for 28 years. She is the author or co-author of seven books, including *Policing and Prosecuting Sexual Assault: Inside the Criminal Justice System* and *How Do Judges Decide? The Search for Fairness and Equity in Sentencing*. Her research interests include prosecutorial and judicial decision making; the intersections of race, ethnicity, crime, and justice; and sexual assault case processing decisions. In 2013, she received ASU’s Award for Leading Edge Research in the Social Sciences and was selected as a Fellow of the American Society of Criminology.

MS. MEGHAN A. TOKASH



Meghan Tokash is an Assistant United States Attorney (AUSA) at the U.S. Department of Justice serving the Western District of New York in the violent crimes unit. For eight years she served as a judge advocate in the U.S. Army Judge Advocate General's Corps, where she prosecuted a wide range of cases relating to homicide, rape, sexual assault, domestic violence, and child abuse. AUSA Tokash was selected by the Judge Advocate General of the U.S. Army to serve as one of 15 Special Victim Prosecutors; she worked in the Army's first Special Victim Unit at the Fort Hood Criminal Investigation Division Office and U.S. Army Europe/Central Command. Previously, AUSA Tokash served as an Army trial defense counsel and as a civilian victim-witness liaison officer for the Department of the Army. AUSA Tokash clerked for the United States Court of Appeals for the Armed Forces. She is a graduate of the Catholic University Columbus School of Law. She earned her master of laws degree in trial advocacy from the Beasley School of Law at Temple University where she received the honor graduate faculty award.

THE HONORABLE REGGIE B. WALTON



Judge Walton was born in Donora, Pennsylvania. In 1971 he graduated from West Virginia State University, where he was a three-year letterman on the football team and played on the 1968 nationally ranked conference championship team. Judge Walton received his law degree from the American University, Washington College of Law, in 1974.

Judge Walton assumed his current position as a U.S. District Judge for the District of Columbia in 2001. He was also appointed by President George W. Bush in 2004 as the Chair of the National Prison Rape Elimination Commission, a commission created by Congress to identify methods to reduce prison rape. The U.S. Attorney General substantially adopted the Commission's recommendations for implementation in federal prisons; other federal, state, and local officials throughout the country are considering adopting the recommendations. Former U.S. Supreme Court Chief Justice William Rehnquist appointed Judge Walton in 2005 to the federal judiciary's Criminal Law Committee, on which he served until 2011. In 2007 Chief Justice John Roberts appointed Judge Walton to a seven-year term as a Judge of the U.S. Foreign Intelligence Surveillance Court, and he was subsequently appointed Presiding Judge in 2013. He completed his term on that court on May 18, 2014. Upon completion of his appointment to the Foreign Intelligence Surveillance Court, Judge Walton was appointed by Chief Justice John Roberts to serve as a member of the Judicial Conference Committee on Court Administration and Case Management. Judge Walton traveled to Russia in 1996 to instruct Russian judges on criminal law in a program funded by the U.S. Department of Justice and the American Bar Association's Central and East European Law Initiative Reform Project. He is also an instructor in Harvard Law School's Advocacy Workshop and a faculty member at the National Judicial College in Reno, Nevada.

APPENDIX E. COMMITTEE STAFF

COMMITTEE STAFF

Captain Tammy P. Tideswell,
JAGC, U.S. Navy, Staff Director

Lieutenant Colonel Patricia H. Lewis,
JAGC, U.S. Army, Deputy Staff Director

Mr. Dale Trexler, Chief of Staff

Ms. Julie Carson, Attorney and
Lead Report Writer

Dr. Janice Chayt, Investigator

Dr. Alice Falk, Editor

Ms. Theresa Gallagher, Attorney

Ms. Nalini Gupta, Attorney

Ms. Amanda Hagy, Senior Paralegal

Ms. Laurel Prucha Moran, Graphic Designer

Ms. Meghan Peters, Attorney

Ms. Stayce Rozell, Senior Paralegal

Ms. Terri Saunders, Attorney

Ms. Tiffany Williams, Supervising Paralegal

DESIGNATED FEDERAL OFFICIALS

Mr. Dwight H. Sullivan,
Associate Deputy General Counsel
for Military Justice,
U.S. Department of Defense
Designated Federal Official

Mr. David J. Gruber,
Associate Deputy General Counsel for
Military Personnel, Readiness, and Voting,
U.S. Department of Defense
Alternate Designated Federal Official

Lieutenant Colonel Jacqueline M. Stingl,
U.S. Air Force, Office of the General Counsel,
U.S. Department of Defense
Alternate Designated Federal Official

APPENDIX F. MEETING AND PRESENTERS

Meeting	Presenters
<p>January 19, 2017</p> <p>Public Meeting of the DAC-IPAD at the Holiday Inn Arlington at Ballston, Arlington, Virginia</p>	<ul style="list-style-type: none">• The Honorable Jennifer M. O'Connor, General Counsel, U.S. Department of Defense• Mr. Dwight Sullivan, Associate Deputy General Counsel for Military Justice, U.S. Department of Defense• Captain Warren Record, JAGC, U.S. Navy, Chair, Joint Service Committee on Military Justice, U.S. Department of Defense• Ms. Maria Fried, Associate Deputy General Counsel for Personnel Policy, U.S. Department of Defense• Lieutenant Colonel Jacqueline M. Stingl, U.S. Air Force, Office of the General Counsel, U.S. Department of Defense, Alternate Designated Federal Official

APPENDIX G. ACRONYMS AND ABBREVIATIONS

CEO	chief executive officer
DAC-IPAD	Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces
DoD	Department of Defense
DoD IG	Department of Defense Inspector General
DTF-SAMS	Defense Task Force on Sexual Assault in the Military Services
FACA	Federal Advisory Committee Act of 1972
FBI	Federal Bureau of Investigation
FY	fiscal year
JAG	Judge Advocate General
JAGC	Judge Advocate General's Corps
JPP	Judicial Proceedings Panel
MCIO	military criminal investigative organization
NCO	non-commissioned officer
NDAA	National Defense Authorization Act
NJP	non-judicial punishment
PACER	Public Access to Court Electronic Records
RSP	Response Systems to Adult Sexual Assault Crimes Panel
SAPRO	Sexual Assault Prevention and Response Office
SARC	sexual assault response coordinator
SJA	staff judge advocate
SVC	special victims' counsel
UCMJ	Uniform Code of Military Justice
UCR	Uniform Crime Reporting
U.S.C.	United States Code
VLC	victims' legal counsel

APPENDIX H. SOURCES CONSULTED

1. U.S. Constitution

2. Legislative Sources

a. Enacted Statutes

5 U.S.C. App § 1-16 (Federal Advisory Committee Act)

10 U.S.C. §§ 801-946 (Uniform Code of Military Justice)

National Defense Authorization Act for Fiscal Year 2011, Pub. L. No. 111-383, 124 Stat. 4137 (2011)

National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, 126 Stat. 1632, 1758–60 (2012)

National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 672 (2013)

National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, 128 Stat. 3292 (2014)

National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92, 129 Stat. 726 (2015)

National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016)

b. Reports of Congress

House Report No. 114-270 (2015) (Conf. Rep.)

3. Meetings

Transcript of DAC-IPAD Public Meeting (January 19, 2017)

4. Official Policy Statements

Memorandum from Sec’y of Def. to Sec’ys of Military Dep’ts et al., subject: Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases (April 20, 2012)

Memorandum from Sec’y of Def. to Sec’ys of Military Dep’ts et al., subject: Department of Defense Implementation of the Recommendations of the Response Systems to Adult Sexual Assault Crimes Panel (Dec. 15, 2014)

5. Official Reports

a. DoD and DoD Agencies

DEP’T OF DEF., MILITARY JUSTICE REVIEW GROUP, REPORT OF THE MILITARY JUSTICE REVIEW GROUP, PART I: UCMJ RECOMMENDATIONS (Dec. 22, 2015), *available at* <http://www.dod.gov/dodgc/mjrg.html>

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REPORT OF THE DEFENSE TASK FORCE ON SEXUAL ASSAULT IN THE MILITARY SERVICES (2009), *available at* http://www.sapr.mil/public/docs/research/DTFSSAMS-Rept_Dec09.pdf

REPORT OF THE PANEL TO REVIEW SEXUAL MISCONDUCT ALLEGATIONS AT THE U.S. AIR FORCE ACADEMY (2003), *available at* <http://files.eric.ed.gov/fulltext/ED480473.pdf>

b. Response Systems Panel Reports and Assessments

REPORT OF THE RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL (June 2014), *available at* <http://responsesystemspanel.whs.mil/>

c. Judicial Proceedings Panel Reports and Assessments

INITIAL REPORT OF THE JUDICIAL PROCEEDINGS PANEL (Feb. 2015), *available at* <http://jpp.whs.mil/>

JUDICIAL PROCEEDINGS PANEL REPORT ON ARTICLE 120 OF THE UNIFORM CODE OF MILITARY JUSTICE (Feb. 2016), *available at* <http://jpp.whs.mil/>

JUDICIAL PROCEEDINGS PANEL REPORT ON RESTITUTION AND COMPENSATION FOR MILITARY ADULT SEXUAL ASSAULT CRIMES (Feb. 2016), *available at* <http://jpp.whs.mil/>

JUDICIAL PROCEEDINGS PANEL REPORT ON RETALIATION RELATED TO SEXUAL ASSAULT OFFENSES (Feb. 2016), *available at* <http://jpp.whs.mil/>

JUDICIAL PROCEEDINGS PANEL REPORT ON STATISTICAL DATA REGARDING MILITARY ADJUDICATION OF SEXUAL ASSAULT OFFENSES (April 2016), *available at* <http://jpp.whs.mil/>

6. Journal Articles

Kingsley R. Browne, *Military Sex Scandals from Tailhook to the Present: The Cure Can be Worse than the Disease*, 14 DUKE J. OF GENDER L. & POL'Y 749, 760–64 (2007)

Robert E. Murchough, Article: *Barracks, Dormitories, and Capitol Hill: Finding Justice in the Divergent Politics of Military and College Sexual Assault*, 223 Mil. L. Rev. 233, 243–45 (2015)

7. News Articles

Helene Cooper, *Pentagon Study Finds 50% Increase in Reports of Military Sexual Assaults*, N.Y. Times (May 1, 2014), https://www.nytimes.com/2014/05/02/us/military-sex-assault-report.html?_r=0

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Michael Winerip, *Revisiting the Military's Tailhook Scandal*, N.Y. Times (May 13, 2013), <http://www.nytimes.com/2013/05/13/booming/revisiting-the-militarys-tailhook-scandal-video.html>

8. Internet Resources

DAC-IPAD Reading Room, *available at* <https://dacipad.whs.mil/reading>

Todd Perkins, *The Invisible War Filmmakers Respond to Secretary of Defense Leon Panetta's Rock Center with Brian Williams Appearance on Rape in the Military*, IndieWire (September 8, 2012), <http://www.indiewire.com/2012/09/the-invisible-war-filmmakers-respond-to-secretary-of-defense-leon-panettas-rock-center-with-brian-williams-appearance-on-rape-in-the-military-44577/>

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