



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

April 23, 2019

The Honorable Jackie Speier
U.S. House of Representatives
Chair
House Armed Services Subcommittee
on Military Personnel
2465 Rayburn House Office Building
Washington, DC 20515

The Honorable Trent Kelly
U.S. House of Representatives
Ranking Member
House Armed Services Subcommittee
on Military Personnel
1005 Longworth House Office
Washington, DC 20515

Dear Chair Speier and Ranking Member Kelly:

I am writing to provide clarification on a public statement that has recently come to the Committee's attention regarding information contained in the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces' ("the Committee" or "DAC-IPAD") Third Annual Report released on March 26, 2019.

In testimony before the House Armed Services Subcommittee on Military Personnel held on April 2, 2019, Mr. Don Christensen, President of Protect Our Defenders, stated that the "DAC-IPAD report that came out last week showed that there are a number of occasions where penetrative sexual assault cases are going to special courts and summary courts...and that has been done in direct violation of law that was passed by this Congress."¹ Based on the sexual assault case documents provided by the Military Services to the DAC-IPAD, which were thoroughly analyzed by the Committee and reported in its annual report, the DAC-IPAD has found no penetrative sexual assault offenses that were tried by special or summary courts-martial in fiscal year 2017.

We believe Mr. Christensen was referring to a chart found on page 73 of the above-referenced report which specifies 23 instances in which charges were preferred for a penetrative sexual assault offense and the case was resolved at a special or summary court-martial. While it is correct that there are instances in which a special or summary court-martial was convened after a penetrative sexual assault offense was initially charged, in all but one, possibly two, of the 23 penetrative sexual assault cases identified in the report, the courts-martial were the result of plea agreements that dismissed the penetrative sexual assault charge in exchange for guilty pleas to other offenses which were then referred to special or summary courts-martial.

¹ *Examining the Role of the Commander in Sexual Assault: Hearing Before the Subcomm. on Mil. Pers. of the H. Comm. on Armed Svcs.*, 116th Cong. (Apr 2, 2019, 1:04:47) (testimony of Mr. Don Christensen, President, Protect Our Defenders), available at <https://armedservices.house.gov/hearings?ID=A9165FA4-C008-405B-9617-368955A35B01>.

In one of the cases, there was no pretrial agreement and a penetrative sexual assault offense was initially referred to a special court-martial along with other charges. However, the referral of the penetrative sexual assault offense was successfully challenged by a defense motion for lack of jurisdiction. The penetrative sexual assault charge was ultimately dismissed and the other charges proceeded to trial by special court-martial. The accused was acquitted on all charges.

In a second case, the Report of Result of Trial (RROT) indicates that a penetrative sexual assault offense was referred to a special court-martial. The RROT also notes the existence of a pretrial agreement but does not mention its effect on the referral of charges. The Military Service concerned did not provide the DAC-IPAD with the supporting case documents for this case; therefore, the DAC-IPAD is unable to determine the final action taken by the convening authority in this instance.

To provide the Subcommittee with additional information on the charges and specifications for each of the cases in question, we have enclosed charts detailing the charges preferred; the advice of the staff judge advocate, if available; the terms of any pretrial agreements; the charges referred to special or summary court-martial; the accused's pleas; and the findings at trial. Please note that the charts include two additional cases not reported in the March 2019 report. The total has increased by two as the Committee staff is continuously identifying and recording cases that were not previously reported to the Committee by the Military Services. Such cases are typically identified by the DAC-IPAD staff by tracking appellate decisions and by reclassifying cases that were provided to the Committee for the incorrect fiscal year.

Thank you for your dedication and commitment to the important issue of sexual assault in the military. The Committee looks forward to providing any additional information or assistance that may be helpful on these issues. My point of contact for any questions is Colonel Steven Weir, JA, U.S. Army, the director of the DAC-IPAD. He can be reached at (703) 693-3857 or via email at steven.b.weir.mil@mail.mil.

Sincerely,



Martha S. Bashford
Chair

cc:

The Honorable Patrick Shanahan
Acting Secretary of Defense

Senate Armed Services Committee
Ms. Stephanie Barna
Majority General Counsel
Mr. Gerald Leeling

Minority General Counsel

House Armed Services Committee

Mr. Craig Greene

Majority General Counsel

Mr. Daniel Sennott

Minority General Counsel

Mr. Don Christensen

President, Protect Our Defenders

Enclosures:

As stated

Separate Cover:

DAC-IPAD Third Annual Report, March 2019

DAC-IPAD Adjudication Database:
Fiscal Year 2017 - Penetrative Offense Preferred and Case Ultimately Resolved at Special Court-Martial

Case	Preferral				Referral				Plea	Findings
	Offense	Spec	Articles	SJA Advice	Terms of PTA	Offense	Spec	Article		
1	I	1	Article 80 - Attempted Penetrative		None	I	1	Article 80 - Attempted Penetrative	Not Guilty	W/D
	I	2	Article 80 - Attempted Indecent Viewing			I	2	Article 80 - Attempted Indecent Viewing	Not Guilty	Not Guilty
	II	1-2	Article 120 - Contact			II	1-2	Article 120 - Contact	Not Guilty	Not Guilty
	III	1	Article 120c - Indecent Exposure			III	1	Article 120c - Indecent Exposure	Not Guilty	Not Guilty
	III	2	Article 120c - Indecent Viewing			III	2	Article 120c - Indecent Viewing	Not Guilty	Not Guilty
2	I	1	Article 120 - Penetrative	Dismiss						
	II	1	Article 120c - Indecent Viewing	GCM	In exchange for guilty plea to Article	II	1	Article 120c - Indecent Viewing	Not Guilty	W/D
	III	1	Article 127 - Extortion	GCM	134, the CA will withdraw Article	III	1	Article 127 - Extortion	Not Guilty	W/D
	IV	1	Article 134 - Communicate Threat	GCM	120c and Article 127 charges to be	IV	1	Article 134 - Communicate Threat	Guilty	Guilty
	Add'l I	1	Article 134 - Indecent Language		dismissed with prejudice.	Add'l I	1	Article 134 - Indecent Language	Guilty	Guilty
3					Through mistake of the parties,					
					penetrative offense referred to					
					SPCM. Revised PTA affirmed that in					
					exchange for guilty plea to Article					
					92, Article 107 and Article 134,					
				Article 93 charge to be dismissed	I	1	Article 92 - Failure to Obey	Guilty	Guilty	
				with prejudice. Additionally, Article	II	1	Article 93 - Cruelty and maltreatment	Not Guilty	W/D	
				120 charge to be W/D prior to re-	III	1-2	Article 107 - False Official Statement	Guilty	Guilty	
				referral.	V	1	Article 134 - Disorderly Conduct	Guilty	Guilty	
4					In exchange for guilty plea to Article					
					128 and Article 234, all charges					
					previously preferred will be					
					dismissed to ripen into prejudice					
				upon appellate review.	I	1-2	Article 128 - Assault & Battery	Guilty	Guilty	
					II	1	Article 134 - Negligent Discharge of Firearm	Guilty	Guilty	
5					In exchange for guilty plea to Article					
					128, Article 120 charge and					
					specifications will be dismissed to					
					ripen into prejudice upon appellate					
				review.	I	1	Article 128 - Assault & Battery	Guilty	Guilty	
6					In exchange for guilty plea to Article					
					121, Article 80 and Article 128, the					
					Article 120 charge and specifications					
					will be dismissed to ripen into					
					prejudice upon appellate review.					
					I	1-2	Article 121 - Larceny	Guilty	Guilty	
					II	1	Article 80 - Attempted Larceny	Guilty	Guilty	
					III	1	Article 128 - Aggravated assault	Guilty	Guilty	
						2		GuiltyLIO	GuiltyLIO	
						3		Not Guilty	W/D	
7					In exchange for guilty plea to Article					
					92 and Article 128, Article 120					
					charge will be dismissed to ripen into					
				prejudice upon appellate review.	Charge	1	Article 92 - Failure to Obey	Guilty	Guilty	
					Add'l I	1	Article 128 - Assault & Battery	Guilty	Guilty	

DAC-IPAD Adjudication Database:
Fiscal Year 2017 - Penetrative Offense Preferred and Case Ultimately Resolved at Special Court-Martial

8	I	1-3	Article 120 - Penetrative	In exchange for guilty plea to Article 128, Article 134, and Article 92, Article 120 charge and specifications will be W/D and dismissed. Only charges with a guilty plea to be referred. However, the RROT shows all charges, even those not preferred to the court-martial.	II	1	Article 128 – Assault & Battery	Not Guilty	W/D
	I	4-6	Article 120 - Contact		2			Guilty	Guilty
	II	1-3	Article 128 - Assault & Battery		3			Guilty	Merge w/2
	III	1-3	Article 134 - Adultery, Child Endgrmnt, Delq.		III	1-3	Article 134 – Adultery, Child Endgrmnt, Delq.	Guilty	Guilty
	Add'l I	1-2	Article 92 - Failure to Obey		Add'l I	1	Article 92 - Failure to Obey	Guilty	Guilty
Add'l II	1	Article 128 - Assault & Battery	Add'l II	1	Article 128 – Assault & Battery	Not Guilty	W/D		
							Guilty	Guilty	
9	I	1	Article 128 - Assault & Battery	In exchange for guilty plea to Article 128 and Article 134, Article 80, Article 120, and Additional Article 134 charges will be W/D by CA to ripen into dismissal with prejudice upon appellate review.	I	1	Article 128 – Assault & Battery	Guilty	Guilty
	II	1	Article 134 - Breaking Restriction		II	1	Article 134 – Breaking Restriction	Guilty	Guilty
	Add'l I	1	Article 80 - Attempted Penetrative		Add'l I	1	Article 80 - Attempted Penetrative	Not Guilty	W/D
	Add'l II	1	Article 120 - Aggravated Sexual Contact		Add'l II	1	Article 120 - Aggravated Sexual Contact	Not Guilty	W/D
	Add'l III	1	Article 128 - Assault & Battery		Add'l III	1	Article 128 – Assault & Battery	Guilty	Guilty
Add'l IV	1-2	Article 134 - Communicate Threat & Solicitation	Add'l IV	1-2	Article 134 – Communicate Threat & Solicitation	Not Guilty	W/D		
10	I	1	Article 80 - Attempted Penetrative	In exchange for guilty plea to Article 128 and Article 134, Article 80, Article 120, and additional Article 134 charges will be W/D by CA to ripen into dismissal with prejudice upon appellate review.	I	1	Article 80 - Attempted Penetrative	Not Guilty	W/D
	II	1	Article 120 - Aggravated Sexual Contact		II	1	Article 120 - Aggravated Sexual Contact	Not Guilty	W/D
	III	1-2	Article 128 - Assault & Battery		III	1-2	Article 128 - Assault & Battery	Guilty	Guilty
	IV	1	Article 134 - Obstructing Justice		IV	1	Article 134 - Obstructing Justice	Guilty	Guilty
	IV	2	Article 134 - Breaking Restriction		IV	2	Article 134 - Breaking Restriction	Guilty	Guilty
IV	3	Article 134 - Communicate Threat	IV	3	Article 134 - Communicate Threat	Not Guilty	W/D		
11	I	1	Article 120 - Contact	In exchange for guilty plea to Article 92, Article 128 and Article 134, the Article 120 charges will be W/D by CA to ripen into dismissal with prejudice upon appellate review.	I	1	Article 120 - Contact	Not Guilty	W/D
		2	Article 120 - Penetrative			2	Article 120 - Penetrative	Not Guilty	W/D
	Add'l I	1	Article 92 - Failure to Obey		Add'l I	1	Article 92 - Failure to Obey	Guilty	Guilty
	Add'l II	1-2	Article 128 - Assault & Battery		Add'l II	1-2	Article 128 - Assault & Battery	Guilty	Guilty
Add'l III	1	Article 134 - Disorderly Conduct	Add'l III	1	Article 134 - Disorderly Conduct	Guilty	Guilty		
12	I	1-4	Article 109 - Destruction of Property	Unknown					
	II	1	Article 119a - Injury Unborn Child						
	III	1-4	Article 120 - Penetrative						
	IV	1-20	Article 128 - Assault & Battery						
	Charge	1	Article 134 - Communicate Threat		I	1-3	Article 120 - Penetrative	Not Guilty	Not Guilty
	Add'l IV	1-3	Article 120a - Stalking		II	1-20	Article 128 - Assault & Battery	Not Guilty	Not Guilty
Add'l V	1	Article 128 - Aggravated assault	II	21	Article 128 - Assault & Battery	Guilty	Guilty		
Add'l VI	1	Article 134 - Communicate Threat	III	1-2	Article 134 - Communicate Threat	Guilty	Guilty		
13	I	1	Article 120 - Penetrative	In exchange for guilty plea to Article 128 and Article 92, the government will withdraw and dismiss charges and specifications previously preferred to ripen into dismissal with prejudice upon appellate review.					
	I	2	Article 120 - Penetrative						
	Add'l I	1	Article 92 - Failure to Obey						
	Add'l I	2	Article 92 - Failure to Obey						
	Add'l II	1	Article 107 - False Official Statement						
	Add'l III	1	Article 134 - Adultery						
	Add'l IV	1	Article 92 - Failure to Obey						
	Add'l V	1	Article 128 - Assault & Battery						
Add'l VI	1	Article 92 - Failure to Obey	I	1	Article 128 - Assault & Battery	Guilty	Guilty		
Add'l VII	1	Article 134 - Breaking Restriction	II	1	Article 92 - Failure to Obey	Guilty	Guilty		

DAC-IPAD Adjudication Database:
Fiscal Year 2017 - Penetrative Offense Preferred and Case Ultimately Resolved at Summary Court-Martial

Case	Preferral				Referral				Plea	Findings
	Offense	Spec	Articles	SJA Advice	Terms of PTA	Offense	Spec	Articles		
1	I	1	Article 120 - Penetrative	SCM	In exchange for guilty plea to Article 92 and Article 134 at SCM, the CA will dismiss with prejudice Charges I-IV.	I	1	Article 120 - Penetrative	Not Guilty	W/D
	II	1	Article 125 - Forcible Sodomy	SCM		II	1	Article 125 - Forcible Sodomy	Not Guilty	W/D
	III	1	Article 81 - Conspiracy	SCM		III	1	Article 81 - Conspiracy	Not Guilty	W/D
	IV	1	Article 134 - Obstruction of Justice	SCM		IV	1	Article 134 - Obstruction of Justice	Not Guilty	W/D
	V	1	Article 92 - Failure to Obey	SCM		V	1	Article 92 - Failure to Obey	Guilty	Guilty
	Add'l I	1	Article 134 - Indecent Conduct	SCM		Add'l I	1	Article 134 - Indecent Conduct	Guilty	Guilty
	Add'l II	1	Article 134 - Communicate Threat	SCM		Add'l II	1	Article 134 - Communicate Threat	Guilty	Guilty
2					The PTA amended the Article 120 to Article 128 and Article 120c to Article 134. Additionally, the accused agreed to plea guilty to all charges, as amended, at SCM.					
	I	1	Article 120 - Penetrative		I	1	Article 128 - Assault & Battery	Guilty	Guilty	
	II	1	Article 120c - Wrongful Viewing		II	1	Article 134 - Drunk & Disorderly	Guilty	Guilty	
	III	1	Article 92 - Failure to Obey		III	1	Article 92 - Failure to Obey	Guilty	Guilty	
3	I	1	Article 120 - Penetrative		In exchange for guilty plea to Article 120 - Contact offense, Article 82, Article 92, and Article 120c at SCM, the CA will dismiss the Article 120 - Penetrative offense.	I	1	Article 120 - Penetrative	Not Guilty	W/D
	I	2-4	Article 120 - Contact			I	2-4	Article 120 - Contact	Guilty	Guilty
	II	1-2	Article 81 Conspiracy			II	1-2	Article 81 Conspiracy	Guilty	Guilty
	III	1	Article 120c - Indecent Exposure			III	1	Article 120c - Indecent Exposure	Guilty	Guilty
	IV	1-2	Article 92 - Failure to Obey			IV	1-2	Article 92 - Failure to Obey	Guilty	Guilty
4	I	1	Article 120 - Penetrative		In exchange for guilty plea to Article 81 and Article 92 at SCM, the CA will dismiss the Article 120 - Penetrative, Article 120 - Contact and remaining charges.	I	1	Article 120 - Penetrative	Not Guilty	W/D
		2	Article 120 - Contact				2	Article 120 - Contact	Not Guilty	W/D
	II	1	Article 134 - Clause 2			II	1	Article 134 - Clause 2	Not Guilty	W/D
	III	1-2	Article 81 - Conspiracy			III	1-2	Article 81 - Conspiracy	Guilty	Guilty
	IV	1	Article 120c - Indecent Exposure			IV	1	Article 120c - Indecent Exposure	Not Guilty	W/D
	V	1	Article 92 - Failure to Obey			V	1	Article 92 - Failure to Obey	Guilty	Guilty
	2	Article 92 - Failure to Obey			2	Article 92 - Failure to Obey	Not Guilty	W/D		
5					In exchange for guilty plea to Article 128 at SCM, the CA will dismiss the preferred Article 120 charge.					
	I	1	Article 120 - Penetrative			Add'l I	1	Article 128 - Assault & Battery	Guilty	Guilty
	Add'l I	1	Article 128 - Assault & Battery							
6					In exchange for guilty plea to Article 92, Article 134 and Article 107 at SCM, the CA will dismiss Article 120 - Penetrative and remaining offenses to ripen into dismissal with prejudice upon announcement of sentence at SCM.					
	I	1	Article 92 - Failure to Obey			I	1	Article 92 - Failure to Obey	Guilty	Guilty
	II	1-2	Article 107 - False Official Statement			II	1	Article 134 - Adultery	Guilty	Guilty
	III	1-2	Article 120 - Penetrative			III	1	Article 107 - False Statement	Guilty	Guilty
	IV	1	Article 134 - Adultery							
Add'l I	1	Article 107 - False Statement								

DAC-IPAD Adjudication Database:
Fiscal Year 2017 - Penetrative Offense Preferred and Case Ultimately Resolved at Summary Court-Martial

7	I	1	Article - 120 - Penetrative	GCM	In exchange for guilty plea to Article 121 and Article 128 at SCM, the CA will dismiss Article 120 - Penetrative and Article 120 - Contact charges pending at general court-martial to ripen into dismissal with prejudice upon announcement of sentence at SCM.														
	II	1-2	Article 120 - Contact	GCM															
	III	1	Article 121 - Steal Property	GCM															
	IV	1	Article 128 - Assault & Battery																
	Add'l I	1-2	Article 120 - Contact																
8	I	1-2	Article 120 - Penetrative	GCM	In exchange for guilty plea to Article 92 and Article 134 at SCM, the CA will dismiss Article 120 - Penetrative offenses and all other charges pending at court-martial to ripen into dismissal with prejudice upon announcement of sentence at SCM.														
	II	1-2	Article 92 - Failure to Obey	GCM															
	Add'l I	1-2	Article 92 - Failure to Obey	GCM															
	Add'l II	1	Article 134 - Solicitation																
		2	Article 134 - Disorderly Conduct																
9	I	1	Article 92 - Failure to Obey		In exchange for guilty plea to Article 92 at SCM, the CA will dismiss the Article 120 - Penetrative offenses at pending GCM. PTA requires that only Article 92 be referred to SCM. However, the Court-Martial Order reflects all charges.														
	II	1-3	Article 120 - Penetrative																
10	I	1	Article 80 - Attempted Rape		In exchange for guilty plea to Article 120 - Contact offense at SCM, the CA will dismiss the Article 80 - Attempted Rape and Article 120 - Penetrative offense charges.														
	II	1	Article 120 - Penetrative																
		2-3	Article 120 - Contact																