

**Defense Advisory Committee on Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces (DAC-IPAD)
Public Meeting**

July 20, 2018

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- *At this meeting, the Committee received briefings on case management and data collection in civilian criminal courts and the current military justice data collection and case management capabilities of the Military Services.*

Tab 8 Memorandum from Acting General Counsel of the Dep't of Def. to Chair, DAC-IPAD, Subject: Assessment of Judicial Proceedings Since Fiscal Year 2012 Amendments Panel Recommendations 54, 55, 57, 58 and 60 (June 7, 2018) (3 pages)

- *Memorandum received by DAC-IPAD from DoD Acting General Counsel, William Castle, requesting that assessments of five of the recommendations made by the JPP be undertaken by the DAC-IPAD and included in the next annual DAC-IPAD report.*

**Defense Advisory Committee on Investigation, Prosecution, and Defense
of Sexual Assault in the Armed Forces (DAC-IPAD)**

PUBLIC MEETING AGENDA

July 20, 2018

**One Liberty Center, Suite 1432
875 North Randolph Street, Arlington, Virginia**

8:30 a.m. – 9:00 a.m. **Administrative Session (41 C.F.R. § 102-3.160, not subject to notice & open meeting requirements)**

9:00 a.m. – 9:15 a.m. **Public Meeting Begins – Welcome and Introduction**

- *Designated Federal Official Opens Meeting*
- *Remarks of the Chair*

9:15 a.m. – 10:15 a.m. **Military Services' Perspectives on Best Practices for Implementing Article 140a, UCMJ, Case management; data collection and accessibility**

- *Ms. Janet K. Mansfield, Chief, Programs Branch, Criminal Law Division, Office of the Judge Advocate General for the U.S. Army*
- *Lieutenant Commander Jeffrey Pietrzyk, U.S. Navy, Deputy Director, Criminal Law Division, Office of the Judge Advocate General for the U.S. Navy*
- *Major Wayne Shew, U.S. Marine Corps, Deputy Branch Head for Military Justice, Judge Advocate Division, Headquarters, U.S. Marine Corps*
- *Mr. John E. Hartsell, Associate Chief, Military Justice Division, Air Force Legal Operations Agency*
- *Mr. Steve McCleary, Senior Military Justice Counsel, Office of the Judge Advocate General for the U.S. Coast Guard*

10:15 a.m. – 10:30 a.m. **Break**

**Defense Advisory Committee on
Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces (DAC-IPAD)
Public Meeting Agenda**

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| 10:30 a.m. – 12:30 p.m. | Presentation by DAC-IPAD Policy Working Group Members and
Deliberations on Best Practices for Implementing Article 140a,
UCMJ, <i>Case management; data collection and accessibility</i> |
| 12:30 p.m. – 1:30 p.m. | Lunch |
| 1:30 p.m. – 4:00 p.m. | Deliberations on Best Practices for Implementing Article 140a,
UCMJ, <i>Case management; data collection and accessibility</i> |
| 4:00 p.m. – 4:40 p.m. | Updates from the Staff Director, Data Working Group and the Case
Review Working Group |
| 4:40 p.m. – 5:00 p.m. | Public Comment |
| 5:00 p.m. | Public Meeting Adjourned |

**Defense Advisory Committee on Investigation, Prosecution, and Defense
of Sexual Assault in the Armed Forces
(DAC-IPAD)**

July 20, 2018, Public Meeting

Deliberation Guide Prepared by DAC-IPAD Staff:

**Best Practices for Implementing Article 140a,
Uniform Code of Military Justice (UCMJ),
*Case management; data collection and accessibility***

PURPOSE OF THE DELIBERATION GUIDE: To facilitate the Committee's decision-making regarding findings and recommendations for the implementation of Article 140a, UCMJ.

- This document draws from testimony and written references received by the Committee.
- The Policy Working Group deliberated on Article 140a, UCMJ, on June 14, 2018. The Working Group identified several issues for discussion by the full Committee at the July 20, 2018, DAC-IPAD Public Meeting.
- The DAC-IPAD Staff consolidated the information and issues identified by the Policy Working Group, and developed a list of options to consider within each issue.

OVERVIEW OF ISSUES OUTLINED IN THE DELIBERATION GUIDE:

1. On what types of offenses should the DAC-IPAD focus its recommendations concerning Article 140a, UCMJ?
2. On which of the four functions within Article 140a, UCMJ, should the committee focus its recommendations?
3. When does a case begin for purposes of Article 140a, UCMJ?
4. When does a case end for purposes of Article 140a, UCMJ?
5. Should Article 140a, UCMJ, provide a means to monitor compliance with federal statutory requirements and DoD policy?
6. What are the best practices for case data collection that the military should adopt?
7. Miscellaneous data elements to consider including in an Art. 140a system.

ISSUE 1

On what types of offenses should the DAC-IPAD focus its recommendations concerning Article 140a, UCMJ?

Factors to consider:

- *The UCMJ contains both common law and military-specific offenses.*
- *The military-specific offenses, and violations of Service-specific regulations and orders, may be processed differently than common law offenses.*
- *Sexual violence may occur among a constellation of other violent offenses, and sexual assault may not trigger a report to law enforcement. An investigation into the following crimes may reveal that a sexual assault has also occurred:*
 - *Domestic violence (assault; strangulation)*
 - *Human trafficking*
 - *Forced prostitution*
 - *Fraternalization*

OPTION 1: The Committee focuses only on sexual assault cases.

Factors in favor	Factors not in favor
The Committee’s charter is to advise on sexual assault cases in the military, not all cases arising under the UCMJ.	Data on other types of offenses that may occur alongside sexual assault (ex: aggravated assault; child (sex) abuse; forced prostitution) should also be collected and analyzed in order to promote a broader understanding of the context in which sexual assault occurs.
By focusing on one category of cases, the Committee can make specific, targeted recommendations around an important topic.	The Committee may not fully consider whether its recommendations are scalable to the rest of the punitive articles of the UCMJ.

OPTION 2: The Committee focuses on all UCMJ offenses.

Factors to consider:

- There were approximately 1,860 courts-martial across all Services in FY17 (source: the Annual CAAF Report for Fiscal Year 2017). About 25% of courts-martial involved an adult-victim sexual assault offense (source: DAC-IPAD Staff estimate based on the Committee’s court-martial data).
- The UCMJ contains a number of military-specific offenses that may be processed differently than a reported sexual assault. For example, the following offenses may be handled entirely within the chain of command and may not require investigation by an MCIO: AWOL; Disrespect; Failure to Obey; Violation of an Order or Service Regulation.
- The Military Justice Act of 2016 changed and reorganized many of the substantive offenses and procedural provisions of the Manual for Courts-Martial, effective January 1, 2019.

Factors in favor	Factors not in favor
Article 140a applies to all UCMJ offenses, not just sexual assault.	The Committee has not discussed substantive offenses other than sexual assault.
The Committee may consider recommending ways to study sexual assault data as they relate to overall trends in military justice cases.	

Any recommendation from the Committee regarding best practices for data collection and analysis could apply to all offenses covered by Art. 140a.	
OPTION 3: The Committee focuses on sexual assault and related offenses.	
Factors in favor	Factors not in favor
It may be useful to obtain consistent information about related cases, such as domestic violence offenses, that may also involve sexual assault. This approach could improve the military's and the public's understanding of the context in which sexual violence occurs.	The Committee's charter extends to adult-victim sexual assault offenses.
Sexual assault, as well as related offenses, often generate concern among the general public.	
Congress has requested data from the military concerning domestic violence and child (sex) abuse offenses; therefore, it may be useful to incorporate data responsive to these inquiries into an Art. 140a system.	

ISSUE 2
**On which of the four functions within Article 140a, UCMJ,
Should the committee focus its recommendations?**

Text of Art. 140a, Case management; data collection and accessibility

“The Secretary of Defense shall prescribe uniform standards and criteria for conduct of each of the following functions at all stages of the military justice system....

- (1) Collection and analysis of data necessary for evaluation and analysis concerning substantive offenses and procedural matters in a manner that facilitates case management and decision making within the military justice system, and that enhances the quality of periodic reviews under 10 U.S.C. 946 (article 146, UCMJ).
- (2) Case processing and management.
- (3) Timely, efficient, and accurate production and distribution of records of trial within the military justice system.
- (4) Facilitation of access to docket information, filings, and records...”

OPTION 1: The Committee focuses on data collection.

Factors in favor	Factors not in favor
This option allows the Committee to focus on an important component of Art. 140a, which addresses the lack of consistent, uniform data collected by the Services.	This option leaves unaddressed three out of four functions within Art. 140a.
The Committee has received more information on the topic of data collection than on any other topic, particularly as it relates to the practices of the U.S. Courts and the U.S. Sentencing Commission.	With this approach, the Committee may not fully address the role that case management systems should play in data collection under Art. 140a.
The Committee can draw from its own experience with crime data collection.	The Committee would not evaluate the utility of PACER or a PACER-like system for the Military Services, or address the type of case information, other than court filings, that should be made public.

OPTION 2: The Committee focuses on data collection and case management.

Factors to consider:

- The Army, Air Force, and Coast guard each have different case management systems, and the Navy and Marine Corps have a common case management system (since 2013) that differs from the other Services.
- The focus of the Services’ systems is on advising commanders (convening authorities) about pending cases, monitoring the court-martial caseload across jurisdictions, and tracking case processing times. Some systems are used by judges to manage their docket.
- None of the Services’ systems connect to the MCIO’s database, though the Services are each separately working on this capability. This adds a layer of complexity to the concept of using a single system to both manage cases and collect data, assuming the Committee recommends data should be collected from the point of initiation of an investigation into a sexual assault or related offense.
- In testimony at the April 20, 2018, public meeting, military Service witnesses explained that their respective case management system(s) can be used to respond to ad hoc queries and to analyze data at

<p>various command echelons. However the witnesses also stressed the need for their systems to remain focused on the needs of the end user, and advised against increasing the demands on their systems for data collection.</p> <ul style="list-style-type: none"> • All of the Services’ case management systems rely on self-reported data provided by prosecutors and paralegals familiar with the case. This information is reported by many different people as a collateral duty. The completeness and consistency of the data vary widely within and across the Services. • By statute, the U.S. Sentencing Commission and the Federal Judicial Center (FJC) collect data for research and other purposes. Some of FJC’s data derives from the electronic case management system used to process cases filed in the federal courts. 	
Factors in favor	Factors not in favor
The Committee has received extensive information on the ways in which a case management system can produce valuable data about the justice system.	The Services have the expertise to manage their cases, and the Committee has not received enough information to make a full assessment of the Services’ respective case management systems.
<p>The Committee can recommend whether the Services should have:</p> <ul style="list-style-type: none"> • one universal system for data collection, • one universal system for case management (with Service-specific modifications), <u>or</u> • one universal system that serves to both collect data and manage active cases. 	Case management processes can vary depending on the type of disposition reached, the Service that’s responsible for the case, and the offense involved. The Committee has only considered case management for sexual assault offenses.
By addressing the case management function of Art. 140a, the Committee can address the tension between the competing purposes of an electronic case management system.	
OPTION 3: Committee focuses on data collection, case management, and public access.	
<p>Factors to consider:</p> <ul style="list-style-type: none"> • The Army and the Air Force have a public docket containing basic information about pending court-martial hearings, such as the name of the accused, installation where trial is held, and the offenses charged. These public dockets do not provide access to the filings. • The Navy and Marine Corps have a public docket with limited information about cases pending in each judicial circuit. • The Services do not have a statutory mandate to publicize research on court-martial data; however, Congress requires this type of data in DoD’s annual report to Congress on sexual assault (the Annual SAPRO Report on Sexual Assault in the Military). • The Committee has noted that across the 94 federal districts, there is consistency without uniformity; each district uses the same system, with local modifications built into each district’s case management system. 	
Factors in favor	Factors not in favor
This option allows the Committee to address at least two key components of Art. 140a, and to demonstrate how data collection relates to the function of providing public access to case information.	By focusing on some, but not all, of the functions addressed by Art. 140a, the Committee may not be able to fully address how the selected functions relate the production and distribution of records of trial.
The Committee can identify the types of aggregate data and/or documents, beyond court filings, that should be made public pursuant to Art. 140a.	The Committee has not received testimony or information regarding the implications of collecting information beyond public documents filed in court-martial (ex: Article 15 proceedings and other administrative actions).
Public access to military case information is an important way to shape public perception and	

policy concerning the military's handling of sexual assault and other related offenses.	
Researchers are interested in court-martial data.	

ISSUE 3

When does a case begin for purposes of Article 140a, UCMJ?

OPTION 1: A case begins when a report of sexual assault is made to law enforcement or the command.

Factors in favor	Factors not in favor
The initiation of a sexual assault investigation is a significant event, and many decisions made during the course of an investigation can affect the ultimate outcome of the case.	Starting data collection at the earliest stage of the process could greatly expand the size (by number of cases and documents) and complexity of an electronic database used to implement Art. 140a.
This approach could capture information about all types of disciplinary and legal actions taken in a case, to include no action.	Commanders can take a number of actions in a case that do not fall under the UCMJ, such as separating a Service member from service, or taking no action at all. The additional data gained from this expansive view of a “case” may not be useful to an evaluation of the UCMJ. One reason for this is administrative actions are governed by Service regulations and are therefore not uniform across DoD.
The JPP and DAC-IPAD have reviewed case data from cases not referred to court-martial and found them useful for understanding case dispositions and outcomes. The DAC-IPAD is also reviewing cases in which no action was taken.	To the extent that collecting disposition information on all investigations requires collecting data on nonjudicial punishment proceedings conducted pursuant to Article 15, UCMJ, this approach may not yield useful data, as noted above.
This approach may provide a more complete picture of the processing of cases in the military justice system than if only cases tried by courts-martial were examined.	Monitoring an ongoing criminal investigation, and the judicial or administrative process that follows, is more of a case management function than a data collection function.
Several federal statutes contain requirements that are triggered early in the investigative process, and Art. 140a can only assess compliance with those requirements if it collects investigative information.	This model may not be scalable for all UCMJ offenses.
The MJRG report contemplates Art.140a being used to “align military justice data collection” with the major federal crime reporting statutes, which could mean collecting some case information during an ongoing criminal investigation, or after an investigation is closed without action.	Consider the advice of Dr. Beck, BJS Senior Statistical Advisor, at the April 20 th public meeting: “...simplicity is a virtue. If you try to collect every piece of information on every aspect in every process and decision point, you’re never going to collect anything.”
The investigative file may contain relevant facts and evidence that are not consistently found in procedural documents, particularly in cases in which no Article 32 preliminary hearing was held, so this approach provides access to potentially relevant facts and evidence in every sexual assault case.	Some minor offenses, and military-specific offenses, do not require law enforcement investigation. Requiring detailed information from, or documentation of, each and every incident of misconduct handled by commanders poses a number of challenges.
Several of the public controversies that have arisen in the last few years around military justice data reporting involve the investigative stages. These phases, which involve sharing information with another organization, are potentially where problems arise, and thus could be the most important areas to review.	

OPTION 2: A case begins at preferral of charges.

Factors to consider:

- The DAC-IPAD received case information for 738 cases in which one or more charges of sexual assault were preferred, across all Services, in fiscal year 2016.
- Preferral of charges triggers certain due process rights integral to any criminal justice process, such as the right to counsel, the right to discovery, and the start of the speedy trial clock.

Factors in favor	Factors not in favor
This approach aligns with the scope of the DACIPAD’s court-martial data project.	Preferral of charges is a procedural step towards prosecution, but it is not the “disposition” of a case. These cases may have a variety of outcomes other than court-martial.
Examining all preferred cases provides a means to analyze cases in which charges are dismissed or resolved by alternate means.	This approach may be broader in scope than the text of Art. 140a requires.
The number of cases in which charges were preferred is not reported in publicly available reports containing military justice data.	
Under the Military Justice Act for 2016, magistrates will handle matters after preferral that under the current system must wait until after referral of charges, such as the issuance of subpoenas and challenges to Article 32 proceedings.	

OPTION 3: A case begins at referral of charges.

Factors to consider:

- The DAC-IPAD received case information for 453 cases in which one or more charges of sexual assault were referred to court-martial, across all Services, in fiscal year 2016.
- The military does not have standing courts, so there is no court-martial until the convening authority directs one.

Factors in favor	Factors not in favor
The requirements of Art. 140a clearly apply to cases referred to courts-martial.	Out of the three options presented, this option covers the fewest cases.
Court-martial case documents are generally uniform and easier to obtain than administrative documents.	
It may be possible to collect more information about each case if the number of cases is limited to referred cases.	

ISSUE 4

When does a case end for purposes of Article 140a, UCMJ?

OPTION 1: A case ends at the completion of appellate review.

Factors in favor	Factors not in favor
This option could incorporate the result of any legal or disciplinary action taken in a case.	The appellate process can take years to complete, particularly if the case is appealed to CAAF or SCOTUS.
A case is not final until the completion of appellate review.	Information from the corrections process, such as the actual amount of time served in confinement would not be included in this option.
Capturing appellate data would reflect modifications to the findings or sentence adjudged at trial.	
Data on rehearings and/or new trials that result from appellate decisions would be useful to understanding the military justice process.	

OPTION 2: A case ends when a defendant is released from post-trial confinement.

It is helpful to understand how long a defendant serves in confinement and when s/he is released from confinement.	This approach is broader in scope than the language of Art. 140a.
This approach provides a means to monitor administrative information such as victim notification requests, Brady Handgun Act compliance, and sex offender registration requirements.	May require gathering information from agencies outside DoD, which adds complexity to the Art. 140a system.
A few of the public controversies that have arisen in the last few years around military justice data reporting involve the confinement/release stage of a case. <i>See, for example, the Military Times article included in read-ahead materials, available at: https://www.militarytimes.com/news/your-army/2017/11/08/military-services-dodge-questions-about-29-year-old-crime-reporting-law/</i>	Corrections data may not be useful to the daily administration of military justice.

ISSUE 5

Should Article 140a, UCMJ, provide a means to monitor compliance with federal statutory requirements and DoD policy?

Factors to consider: Examples of Statutes Relevant to Sexual Assault Cases

a. Article 6b, UCMJ; Victim Rights and Restitution Act of 1990, as amended

- Victims and selected witnesses must be notified of their rights at certain phases of a criminal case, from the time of initial contact with law enforcement throughout the prosecution phase, and, if the case results in confinement, the corrections phase.
- The confinement authority must advise the victim or witness of an inmate's status, including length of sentence, anticipated earliest release date, place of confinement, the possibility of transfer, the possibility of parole or clemency, release from confinement, escape, and death.
- DoD Instruction (DoDI) 1030.02 requires the use of a standard form, DD Form 2705, "Victim/Witness Notification of Inmate Status," to report the number and nature of victim-witness notifications to DoD.

b. Military Sex Offender Reporting Act of 2015

- This statute requires DoD to provide information to the National Sex Offense Registry concerning any offender who is convicted by a court-martial or released from a military corrections facility. Military offenders are generally required to register where they live, work, or go to school

c. The Brady Handgun Violence Prevention Act of 1993; Lautenberg Amendment to the Gun Control Act of 1996

- Requires the Department of Defense to report the following categories of events to the FBI for purposes of prohibiting firearm purchases:
 - 1) Persons who have been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;
 - 2) Persons who are fugitives from justice;
 - 3) Persons who are unlawful users of, or addicted to, any controlled substance;
 - 4) Persons who have been adjudicated as mental defectives or who have been committed to a mental institution;
 - 5) Persons who have been discharged from the U.S. Armed Forces under dishonorable conditions;
 - 6) Persons who, having been citizens of the United States, have renounced their U.S. citizenship;
 - 7) Persons convicted in any court of a misdemeanor crime of domestic violence;
 - 8) Persons who are under indictment or information for a crime punishable by imprisonment for a term exceeding 1 year.
 - 9) Persons who have been convicted in any court of a misdemeanor crime of domestic violence.

OPTION: Art. 140a should account for federal notification or reporting requirements for sexual assault cases.

Factors in favor	Factors not in favor
<p>The MJRG Report contemplates the 140a system should “align military justice data collection” with the major federal crime reporting statutes, including the Uniform Crime Reporting Act of 1988, which could mean collecting case information during an ongoing criminal investigation.</p>	<p>This approach is broader in scope than the language of Art. 140a.</p>
<p>This approach provides a means to monitor or audit administrative information such as victim notification requests, Brady Handgun Act compliance, and sex offender registration requirements.</p>	<p>This approach adds complexity to the Art. 140a requirements. For example, a victims’ post-trial rights and notifications are governed by a variety of statutes, rules, and policies. There are several different forms and memoranda that document each point in time at which a right may be asserted through different agencies. Is this level of detail beneficial, if Art. 140a is not a statute about oversight?</p>
<p>Some issues giving rise to public scrutiny of the military are complicated by an inability within the Services and/or DoD to determine the number of cases affected by the issue of interest, particularly where the military is required to report information to federal databases or other agencies.</p> <p><i>See, for example, an AP story regarding sex abuse offenses committed by civilians on base (children or adults), available at:</i> https://www.apnews.com/41da2867897042399f3f9c55cfde3f16</p>	<p>Some federal reporting requirements apply only law enforcement agencies which have access to national databases such as NIBRS and the national background check system. Expanding the reach of Art. 140a to cover these functions is something the Committee may not have fully examined.</p>

ISSUE 6

What are the best practices for case data collection that the military should adopt?

Factors to consider: Highlights from the testimony of Mr. Glenn Schmitt, Director, Office of Research and Data, U.S. Sentencing Commission [*hereinafter USSC*] (DAC-IPAD public meeting, April 20, 2018):

- USSC’s research office collects data about the sentences imposed in federal courts and disseminates that information to the public.
- In 2017, the USSC received documentation on almost 67,000 original sentencing, over 5,000 re-sentencings, and 7,800 appeals. In total, USSC staff reviewed more than 325,000 court documents.
- USSC research staff: 45 full-time staff members enter and analyze data in the USSC’s database.
- Congress requires federal courts to provide five standardized documents to USSC within 30 days after the entry of judgment in a criminal case:
 1. Indictment or other charging document
 2. Presentence Report
 3. Judgment and Commitment Order
 4. Plea Agreement
 5. Written Statement of Reasons
- Essential pillars of USSC’s data collection and analysis:
 1. Complete. “Our data is a universe and not a sample because the courts are required [by statute] to provide us with the source materials we use...”
 2. Accurate. “Only Commission staff input data into our data set ... by limiting the number of people who are involved in our data collection and cleaning process, we can ensure that the data is collected in a consistent manner by our highly trained staff.” “...we know that when you tell a judge this is what other cases look like, he or she’s going to use that information to deprive someone of their liberty. So we really want to be accurate...”
 3. Thorough. “We are fortunate that Congress has authorized and appropriated the funding for such a large research staff of social science professionals. Obviously, the more people who are available to work on a project, the more data can be collected about the issues under study.”
 4. Expert. “Our social science staff all have advanced degrees in criminology or related fields with a thorough understanding of research and analytical methods. As a result, our data is collected with a view towards the research questions that will be asked of us by members of the Commission, by the courts, and by Congress.”
- Limitations of the Sentencing Commission’s data:
 1. Data are limited to the sentencing process.
 2. No information is collected from law enforcement or prosecutors’ files (i.e., facts and evidence).
 3. No information collected on dismissals or acquittals, or charges dropped in a plea agreement.
 4. No information collected on participation in corrections programs or on supervised release.
 5. Little information about crime victims, except when the information pertains to a sentence enhancement.
 6. USSC does not receive classified documents.

PROPOSED RECOMMENDATIONS:

a. Collect information from standardized source documents (legal and investigative documents) that are produced in the normal course of the military justice process described therein (ex: report of investigation, command disposition decision, charge sheet, Article 32 report, report of result of trial, convening authority action).

b. Centralize the data collection by mandating that all jurisdictions provide the same documents and information to a single entity within DoD.

c. Develop an electronic database for the storage and analysis of data and source documents.

d. Limit data entry to one team of trained professionals whose full-time occupation is data entry and analysis. This team should comprise expertise in the military justice process and in social science research methods. Individuals would transfer information directly from the source documents into the electronic database.

e. Ensure that Art. 140a is the Services' and/or DoD's primary source for all military justice case information, and that other Service and/or DoD systems that collect or rely on the same information become customers of the data and analysis in the Art. 140a system.

f. Collect and analyze data within a reasonable amount of time [six months?] from the end of the established review period (annually, quarterly). Alternatively, analyze data on a continuous basis, no more than six months from the closure of an investigation, the end of the trial, or the date of dismissal.

g. The Military Services should retain their own respective systems for managing cases in the field, provided they are all using the same standards and definitions to refer to common procedures and substantive offenses under the UCMJ.

SUPPORTING RATOINALE and/or CONSIDERATIONS:

- Art. 140a data needs to be accurate because future assessments of the UCMJ and rules of practice will depend on this data.
- The USSC's quality assurance measures produce accurate, reliable data.
- In contrast to the USSC model, both DSAID and the military Services' case management systems rely almost entirely on self-reported data from innumerable practitioners and paralegals in the field, which makes it difficult to achieve consistency in the terms and definitions applied to various data elements.
- It is important to limit the amount of free-form and subjective case data collected from individuals in the field; however, some of this type of data may be needed in order to understand the facts and evidentiary issues that are not routinely found in standard forms or procedural documents.
 - Examples: The role that alcohol played in the incident; MRE 412 (rape shield) evidence; impeachment evidence pertaining to the victim and/or the accused.

ISSUE 7
Miscellaneous Data Elements to Consider Including in an Art. 140a System.

Expedited transfer requests, approval/disapproval, date and location of transfer.

Adjudication of collateral misconduct committed by a victim in a sexual assault case.

Note: Collateral misconduct relates directly to the sexual assault incident. Examples include underage drinking, adultery, and fraternization.

Case processing timelines.

Civilian misdemeanor and felony sex crimes committed on military bases. These data are typically kept by judge advocates appointed as Special Assistant U.S. Attorneys (SAUSAs).

Other items.

Public Law 114–328—Dec. 23, 2016 (FY 2017 NDAA § 5521)

As Amended by

Public Law 115-91—Dec. 12, 2017 (FY 2018 NDAA § 531(k))

TITLE LXII—MILITARY JUSTICE REVIEW PANEL AND ANNUAL REPORTS

Sec. 5521. Military Justice Review Panel.

Sec. 5522. Annual reports.

SEC. 5521. MILITARY JUSTICE REVIEW PANEL.

Section 946 of title 10, United States Code (article 146 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 946. Art. 146. Military Justice Review Panel

“(a) **ESTABLISHMENT.**—The Secretary of Defense shall establish a panel to conduct independent periodic reviews and assessments of the operation of this chapter. The panel shall be known as the ‘Military Justice Review Panel’ (in this section referred to as the ‘Panel’).

“(b) **MEMBERS.**—

“(1) **NUMBER OF MEMBERS.**—The Panel shall be composed of thirteen members.

“(2) **APPOINTMENT OF CERTAIN MEMBERS.**—Each of the following shall appoint one member of the Panel:

“(A) The Secretary of Defense (in consultation with the Secretary of the department in which the Coast Guard is operating when it is not operating as a service in the Navy).

“(B) The Attorney General.

“(C) The Judge Advocates General of the Army, Navy, Air Force, and Coast Guard, and the Staff Judge Advocate to the Commandant of the Marine Corps.

“(3) **APPOINTMENT OF REMAINING MEMBERS BY SECRETARY OF DEFENSE.**—The Secretary of Defense shall appoint the remaining members of the Panel, taking into consideration recommendations made by each of the following:

“(A) The chairman and ranking minority member of the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

“(B) The Chief Justice of the United States.

“(C) The Chief Judge of the United States Court of Appeals for the Armed Forces.

“(c) **QUALIFICATIONS OF MEMBERS.**—The members of the Panel shall be appointed from among private United States citizens with expertise in criminal law, as well as appropriate and diverse experience in investigation, prosecution, defense, victim representation, or adjudication with respect to courts-martial, Federal civilian courts, or State courts.

“(d) CHAIR.—The Secretary of Defense shall select the chair of the Panel from among the members.

“(e) TERM; VACANCIES.—Each member shall be appointed for a term of eight years, and no member may serve more than one term. Any vacancy shall be filled in the same manner as the original appointment.

“(f) REVIEWS AND REPORTS.—

“(1) INITIAL REVIEW OF RECENT AMENDMENTS TO UCMJ.— During fiscal year ~~2020~~2021, the Panel shall conduct an initial review and assessment of the implementation of the amendments made to this chapter during the preceding five years. In conducting the initial review and assessment, the Panel may review such other aspects of the operation of this chapter as the Panel considers appropriate.

“(2) SENTENCING DATA COLLECTION AND REPORT.—During fiscal year ~~2020~~2021, the Panel shall gather and analyze sentencing data collected from each of the armed forces from general and special courts-martial applying offense-based sentencing under section 856 of this title (article 56). The sentencing data shall include the number of accused who request member sentencing and the number who request sentencing by military judge alone, the offenses which the accused were convicted of, and the resulting sentence for each offense in each case. The Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps shall provide the sentencing data in the format and for the duration established by the chair of the Panel. ~~Not later than October 31, 2020, the Panel shall submit to the Committees on Armed Services of the Senate and the House of Representatives through the Secretary of Defense a report setting forth the Panel’s findings and recommendations on the need for sentencing reform.~~The analysis under this paragraph shall be included in the assessment required by paragraph (1).”

“(3) PERIODIC COMPREHENSIVE REVIEWS.—During fiscal year 2024 and every eight years thereafter, the Panel shall conduct a comprehensive review and assessment of the operation of this chapter.

“(4) PERIODIC INTERIM REVIEWS.—During fiscal year 2028 and every eight years thereafter, the Panel shall conduct an interim review and assessment of such other aspects of the operation of this chapter as the Panel considers appropriate. In addition, at the request of the Secretary of Defense, the Panel may, at any time, review and assess other specific matters relating to the operation of this chapter.

“(5) ~~REPORTS.— Not later than December 31 of each year during which the Panel conducts a review and assessment under this subsection, the Panel shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the results of such review and assessment, including the Panel’s findings and recommendations.~~ REPORTS.—With respect to each review and assessment under this subsection, the Panel shall submit a report to the Committees on Armed Services of the Senate and the House of Representatives. Each report—

“(A) shall set forth the results of the review and assessment concerned, including the findings and recommendations of the Panel; and

“(B) shall be submitted not later than December 31 of the calendar year in which the review and assessment is concluded.”.

- “(g) HEARINGS.—The Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Panel considers appropriate to carry out its duties under this section.
- “(h) INFORMATION FROM FEDERAL AGENCIES.—Upon request of the chair of the Panel, a department or agency of the Federal Government shall provide information that the Panel considers necessary to carry out its duties under this section.
- “(i) ADMINISTRATIVE MATTERS.—
- “(1) MEMBERS TO SERVE WITHOUT PAY.—Members of the Panel shall serve without pay, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the Panel.
- “(2) STAFFING AND RESOURCES.—The Secretary of Defense shall provide staffing and resources to support the Panel.
- “(j) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Panel.”.

SEC. 5522. ANNUAL REPORTS.

Subchapter XII of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by adding at the end the following new section (article):

“§ 946a. Art. 146a. Annual reports

- “(a) COURT OF APPEALS FOR THE ARMED FORCES.—Not later than December 31 each year, the Court of Appeals for the Armed Forces shall submit a report that, with respect to the previous fiscal year, provides information on the number and status of completed and pending cases before the Court, and such other matters as the Court considers appropriate regarding the operation of this chapter.
- “(b) SERVICE REPORTS.—Not later than December 31 each year, the Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps shall each submit a report, with respect to the preceding fiscal year, containing the following:
- “(1) Data on the number and status of pending cases.
- “(2) Information on the appellate review process, including—
- “(A) information on compliance with processing time goals;
- “(B) descriptions of the circumstances surrounding cases in which general or special court-martial convictions were (i) reversed because of command influence or denial of the right to speedy review or (ii) otherwise remitted because of loss of records of trial or other administrative deficiencies; and

- “(C) an analysis of each case in which a provision of this chapter was held unconstitutional.
- “(3)(A) An explanation of measures implemented by the armed force concerned to ensure the ability of judge advocates—
 - “(i) to participate competently as trial counsel and defense counsel in cases under this chapter;
 - “(ii) to preside as military judges in cases under this chapter; and
 - “(iii) to perform the duties of Special Victims’ Counsel, when so designated under section 1044e of this title.
- “(B) The explanation under subparagraph (A) shall specifically identify the measures that focus on capital cases, national security cases, sexual assault cases, and proceedings of military commissions.
- “(4) The independent views of each Judge Advocate General and of the Staff Judge Advocate to the Commandant of the Marine Corps as to the sufficiency of resources available within the respective armed forces, including total workforce, funding, training, and officer and enlisted grade structure, to capably perform military justice functions.
- “(5) Such other matters regarding the operation of this chapter as may be appropriate.
- “(c) SUBMISSION.—Each report under this section shall be submitted—
 - “(1) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives; and
 - “(2) to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of the department in which the Coast Guard is operating when it is not operating as a service in the Navy.’’.

Military services dodge questions about 29-year-old crime reporting law

<https://www.militarytimes.com/news/your-army/2017/11/08/military-services-dodge-questions-about-29-year-old-crime-reporting-law/>

By: Karen Jowers November 8, 2017



State troopers check a memorial outside the First Baptist Church on Nov. 8, 2017. The church was the scene of the mass shooting that killed 26 people in Sutherland Springs, Texas. (Mark Ralston/AFP via Getty Images)

It's been nearly 30 years since Congress first passed a law requiring that the Defense Department track and report crimes in the military community and routinely report them to the FBI.

But despite decades of prodding from Congress and internal Pentagon reviews, it still remains unclear whether the military services have set up a reliable system that can accurately transmit information from command-level courts martial to the FBI's main database that tracks crime nationwide.

This week all three Defense Department service branches declined to say whether they are reporting military crimes properly.

The military's crime reporting is in the spotlight this week in the aftermath of the Texas church shooting that killed 26 people on Sunday.

The shooter, Devin Kelley, was a former airman who was court-martialed and convicted in 2012 for beating his wife and stepson. The Air Force failed to report the conviction to the FBI.

Had the Air Force properly reported this information, it would have prohibited the former airman from buying guns.

Secretary of Defense James Mattis on Monday asked the Defense Department Inspector General's office to conduct a broad review of how military law enforcement agencies are submitting criminal information to the national crime database.

Mattis specifically asked the IG, the Defense Department's internal watchdog, to review whether "appropriate information" about Devin Kelley should have been provided to the Federal Bureau of Investigation for inclusion in the National Crime Information Center database, whether it was provided, and if not, why not.

But it's not clear how that IG probe will be any different than previous IG investigations in 2014 and 1997. In both of those investigations, the IG concluded that the Defense Department was not meeting its reporting requirements under law and the DoD vowed to fix that problem.

DoD has spent years developing an internal database known as the Defense Incident-Based Reporting System, or DIBRS, designed to meet the federal requirements.

Pentagon spokesman Lt. Cmdr. Gary Ross said military law enforcement agencies submit information to the Defense Incident-Based Reporting System, which is provided to the FBI for inclusion in their National Incident-Based Reporting System, the process they use "to comply with DoD's statutory requirement to provide crime reporting data to FBI."

"Additionally, the FBI receives information on crimes committed by service members directly from each DoD law enforcement agency through [their respective] processes/systems that interact with FBI's National Instant Criminal Background Check System."

But this week, none of the Defense Department's military service branches could say whether they are currently and accurately reporting crime data in accordance with the 1988 law.

In response to Military Times questions about whether they were reporting crime data through this DIBRS system:

Air Force spokeswoman Ann Stefanek declined comment, citing the current review under way by the Air Force.

The Navy also declined to comment on its current procedures. "The DoD Office of Inspector General will review relevant policies and procedures to determine whether appropriate qualifying information is submitted by the DoD to the FBI for entry into the NCIC database," said Cmdr. Bill Speaks, spokesman for the Navy at the Pentagon. "At this time, it would be inappropriate to comment further."

The Army's public affairs office referred questions about crime reporting to the Army's Criminal Investigation's Command, which did not immediately respond to questions.

The Marine Corps said its commands report information "to the FBI, through the [Navy Criminal Investigative Service]," said spokesman Maj. Brian Block. "We are thoroughly reviewing our data and procedures to ensure full compliance."

The FBI's National Crime Information Center is one database that is accessed by the National Instant Criminal Background Check System – which is what firearms dealers use to do a background check for criminal histories before they sell a gun.

In 2003, DoD Directive 7730.47, "Defense Incident-Based Reporting System," required personnel and readiness officials to make sure the Defense Manpower Data Center, known as DMDC, built a mechanism to track and report crimes. DoD created the Defense Incident-Based Reporting System, known as DIBRS.

DoD has been working on this process since the 1990s, with a DIBRS Council supporting the system that was created in the 1990s.

In the 2014 DoD response to the IG report, noted that DIBRS has "taken a backseat" to the need for sharing criminal justice information among law enforcement agencies for crime, terrorism, and insider threat prevention and criminal investigative closure. Thus DoD has created the DoD Law Enforcement Defense Data Exchange.

Their 2014 response also noted that this data exchange would ultimately alleviate the need for maintaining systems such as the DIBRS.

The DoD instruction outlining the requirements of DIBRS remains in effect and was updated as recently as April, 2017, military records show.

Defense officials have been criticized over the years for their inability to provide the data to the FBI.

In 1997, the DoD IG conducted an investigation and found that the military criminal investigative organizations were not consistently submitting fingerprint cards and final disposition reports to the FBI criminal history data files.

Twenty years later, that remains an issue. In February of this year, the DoD IG announced a project to evaluate whether DoD law enforcement organizations are submitting required fingerprint cards and final disposition reports to the Criminal Justice Information Services Division, for inclusion in the National Crime Information Center criminal history database.

In 2006, Rep. Carolyn Maloney, D-New York, introduced legislation that would have required then-Defense Secretary Donald Rumsfeld's pay to be docked for each day that the Defense Incident-Based Reporting System was not up and running. She said noted the federal law had mandated the database in 1988, and that DoD officials had been promising to fully implement the law each year.

Staff writers Steve Losey, Mark Faram, Jeff Schogol and Meghann Myers contributed to this report.

About
this
Author



About [Karen Jowers](#)

Karen covers military families, quality of life and consumer issues for Military Times



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AP: Child-on-child sex assault cases languish on US bases



By JUSTIN PRITCHARD
and REESE DUNKLIN

Mar. 14, 2018



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JACKSONVILLE, N.C. (AP) — A decade after the Pentagon began confronting rape in the ranks, the U.S. military frequently fails to protect or provide justice to the children of service members when they are sexually assaulted by other children on base, an Associated Press investigation has found.

Reports of assaults and rapes among kids on military bases often die on the desks of prosecutors, even when an attacker confesses. Other cases don't make it that far because criminal investigators shelve them, despite requirements they be pursued.

The Pentagon does not know the scope of the problem and does little to track it. AP was able to document nearly 600 sex assault cases on base since 2007 through dozens of interviews and by piecing together records and data from the military's four main branches and school system.

Sexual violence occurs anywhere children and teens gather on base — homes, schools, playgrounds, food courts, even a chapel bathroom. Many cases get lost in a dead zone of justice, with neither victim nor offender receiving help.

“These are the children that we need to be protecting, the children of our heroes,” said Heather Ryan, a former military investigator.

The tens of thousands of kids who live on bases in the U.S. and abroad are not covered by military law. The U.S. Justice Department, which has jurisdiction over many military bases, isn't equipped or inclined to handle cases involving juveniles, so it rarely takes them on.

Federal prosecutors, for example, pursued roughly one in seven juvenile sex offense cases that military investigators presented, according to AP's review of about 100 investigative files from Navy and Marine Corps bases.

In one unprosecuted case from Japan, witnesses confirmed that a 17-year-old boy pulled a 17-year-old girl from a car in a school parking lot and took her to

his residence, where she said he raped her. A medical exam of the girl found his semen.

On a U.S. Army base in Germany, Leandra Mulla told investigators that her teenage ex-boyfriend dragged her to a secluded area and thrust his hand down her pants while forcibly trying to kiss her. Four years later, Mulla still wonders what came of her report.

Offenders, meanwhile, typically receive neither therapy nor punishment, and some are shuffled off to other installations or into the civilian world.

In North Carolina, at Camp Lejeune, the coastal training ground for U.S. Marines, a 9-year-old boy admitted to Naval Criminal Investigative Service investigators that he had fondled toddlers in his home and classmates at Heroes Elementary School. He said he couldn't help himself.

Military child abuse specialists couldn't help him either — they intervene only when the alleged abuser is a parent or other caretaker. A federal prosecutor twice declined to take action.

A dozen current or former prosecutors and military investigators described to AP how policies within the Pentagon and Justice Department thwarted efforts to help victims and rehabilitate offenders.



Former Army criminal investigator Russell Strand. (AP Photo/Julie Jacobson)

“The military is designed to kill people and break things,” said former Army criminal investigator Russell Strand, one of the military’s pioneering experts on sexual assault. “The primary mission, it’s not to deal with kids sexually assaulting kids on federal property.”

Sexual assault cases can be difficult to investigate and messy to prosecute, more so when they involve children. Offenders may threaten further harm, and victims or their parents may not want to relive the trauma through lengthy investigations and prosecutions.

AP began investigating sexual violence among military children after readers of its [2017 investigation](#) of sex assault in U.S. public schools described an even more complex problem on bases.

AP found the otherwise data-driven Pentagon does not analyze reports it receives of sexual violence among children and teens on base. When the Defense Department said it could not pinpoint the number of assault reports, AP used U.S. Freedom of Information Act requests to obtain investigative reports and data from the agencies that police the Army, Air Force, Navy and Marines. AP also analyzed documents released by the Pentagon's school system, which educates 71,000 students in seven U.S. states and 11 other countries.

Records the military initially released omitted a third of the cases AP identified through interviews with prosecutors, military investigators, family members, whistleblowers and data that officials later provided. Other cases get buried.

Strand, now a private-sector consultant, estimated that in the Army alone colleagues passed on opening several hundred sex assault cases involving offenders under 14. Strand said he learned of those alleged assaults in the 32 years that he was a military investigator and, later, as a trainer.

Responding to AP's findings, the Defense Department said it "takes seriously any incident impacting the well-being of our service members and their families." The department promised to take "appropriate actions" to help juveniles involved in sex assaults. It said it was "not aware of any juvenile sex offender treatment specialists" working in the military or its school system.

The Office of the Secretary of Defense described child-on-child sexual assault as "an emerging issue" that merited further review. AP found that military lawyers have warned about a juvenile justice black hole since the 1970s.

The military's school system said student safety was its highest priority, that school officials were obligated to report all incidents and that "a single report of sexual assault is one too many."

MISSING REPORTS

Leandra Mulla was a freshman at Vilseck High School on a U.S. Army base in Germany when, she recalls, her former boyfriend dragged her off campus and sexually assaulted her one afternoon in February 2014. Her basketball coach saw her crying and alerted the principal's office.

At a police station on base, Army criminal investigators and local authorities met with Mulla. They took some of her clothes as evidence, she said, and when it was over an officer explained someone would be in touch.

After no one followed up and the boy remained in school, her father sought answers. Pete Mulla, a civilian Army employee, said military investigators offered fuzzy details about German officials possibly having done something.

All the family could glean was that some sort of restraining order had been issued.

"I just really want closure," said Mulla, who graduated last spring. "At least tell me something."

Prosecutors in Germany, who share jurisdiction over crimes on U.S. military bases there, told AP they investigated but found insufficient evidence to file charges. The Pentagon school system told AP it had "no responsive records" on the Mulla case.

Leandra Mulla said neither the Army nor the school offered her any help, such as counseling.

“The military is a great field to be in,” she said. “But they just like to cover up what goes on because they have an expectation and they try to uphold an image.”

How sexual assault reports are handled can hinge on personality and rank. Whether their child is the accused or accuser, higher-ranking families receive more consideration, several former military investigators and lawyers told AP. Supervisors with kids of their own were more likely to push an investigation, they said, while in Army offices preoccupied with case backlogs investigators would stash less serious allegations in a “raw data” file, where they languished.

Regulations require that all credible reports of sexual assault be investigated, Army Criminal Investigation Command spokesman Chris Grey said, adding that raw data files are checked for cases that merit a second look.

AP unearthed just over 200 cases missing from records the military and Pentagon school system initially provided when asked about assaults. At least 44 had been criminally investigated.

Some agencies resisted providing all data sources or defined cases in ways that led to undercounts. Pressed about missing cases, for example, Grey said that data initially released representing “the number of sex crimes reported at installations” in fact reflected a much narrower subset — full investigations “closed” only after an extensive, bureaucratic paperwork process.

Among the missing cases was one in which an Army investigator’s step-daughter reported being assaulted

in a pool at Fort Leonard Wood, Missouri. According to the official data provided AP, there were no assaults at that base. The last assault on any Army base in Germany was, according to the records, in 2012 — two years before Mulla reported being attacked.

AP also found undisclosed cases at large military bases in Alaska, Colorado, Texas and Italy, which reported having no or only a few sexual assaults.

Unlike many U.S. school districts, Pentagon schools do not publicly share statistics on student sex assaults. Responding to AP's request for total incidents since the start of 2007, school officials said they had information only as of fall 2011 and produced documents that showed 67 sexual assault or rape reports through last summer.

A review of the school system's underlying records, though, showed they were in such disarray that, for four years, forms recording sexual assaults were misclassified as "child pornography" reports.

Reporters also learned of a separate student information database that logs student misconduct. After arguing the database could not be analyzed, school system officials released logs showing 157 confirmed cases — mostly fondling and groping — that fit the criteria for a federal felony charge. They acknowledged those records were incomplete.

Presented with AP's findings before publication, school system officials said their primary incident tracking system "has had some challenges" and acknowledged that the student information database included "additional cases of interest."

ELUSIVE JUSTICE

On most bases, the military's criminal branches investigate sex assault reports, and U.S. Justice Department attorneys decide whether to prosecute.

Federal prosecutors tend to be "allergic" to any case involving juveniles, said James Trusty, a Washington, D.C., attorney who as a longtime Justice Department section chief advised colleagues considering juvenile prosecutions.

Department policy is that federal prosecutors should hand juvenile cases to their local counterparts whenever possible. AP found few military bases where local authorities regularly assumed such cases.

The federal reluctance to prosecute is clear in an AP analysis of about 100 juvenile-on-juvenile sex assault investigations on Navy and Marine Corps bases over the last decade.

Investigators referred 74 cases to federal prosecutors who, according to records released to AP, pursued only 11 cases. In contrast, local prosecutors were presented with 29 cases and acted on 11.

Cases from overseas bases were almost never prosecuted, including those that came with a confession.

In one unprosecuted case, a 14-year-old boy told investigators that over many months he broke into the bedrooms of two girls on an Air Force base in Japan while their families slept. He later recanted an admission that he molested one girl, though records noted video evidence of a sexual assault.

The findings come from more than 600 pages of investigative summaries the Naval Criminal

Investigative Service released after redacting some details on personal privacy grounds.

One case involved the alleged assaults by the 9-year-old boy at Heroes Elementary on Marine Corps Base Camp Lejeune.

Less than 24 hours after the initial report of an assault in the boy's home, the federal prosecutor on base declined to take the case because of "the age of the parties involved and the circumstances surrounding the alleged incident," according to the case file.

That decision came before NCIS agents had interviewed the boy. When agents pressed on, they found he'd also fondled kids in school and at a sleepover. Approached again by investigators, the prosecutor stood firm. AP was unable to locate the families involved, and no official would discuss the case.

A Justice Department spokesman said the agency does not comment on how its attorneys select cases. Prosecution rates are not a good way to assess how the system is working, spokesman Wyn Hornbuckle wrote in an email, though he said there was no alternative measure for such "a niche area" as juvenile sex assault cases on bases.

Former prosecutors and criminal investigators described to AP a legal netherworld in which justice for the children of service members depends on luck and location.

When a call came into the Air Force Office of Special Investigations on bases where Nate Galbreath was a special agent, his first move was to a map. Even bases that are governed by federal law can have nooks where, due to historical quirks and formal or informal agreements, local law enforcement takes the lead.

“It got very complicated very quickly,” recalled Galbreath, now the top expert at the Pentagon’s Sexual Assault Prevention and Response Office, which monitors and responds to incidents among service members.

No place illustrates the intricate legal terrain quite like Fort Campbell, which as home to the Army’s 101st Airborne Division straddles the Kentucky-Tennessee line. Even though it is a base where federal law prevails, the local court handled some alleged assaults on the Kentucky side. Cases on the Tennessee side were routed to federal prosecutors.

There is only one legally bulletproof way to move civilian cases from a federal jurisdiction base, experts said. It involves a rarely used legal process in which the Pentagon formally transfers jurisdiction to local authorities, as has been done at Kentucky’s Fort Knox and Joint Base Lewis-McChord outside Tacoma, Washington.

When prosecutors don’t get involved, a base commander may ban an offender from returning, pending therapy, or transfer the family. But commanders don’t have to take any action.

“There’s not necessarily any kind of justice, it’s just, ‘You can’t be here anymore,’” said Marcus Williams, a former NCIS investigator who now handles discrimination claims, including sex assault reports, at Brigham Young University.

Relocating a kid rather than requiring rehabilitative therapy through a court process misses a crucial opportunity for reform. The most comprehensive research suggests that only 5 percent of juveniles who are arrested for a sex offense will get caught reoffending. Experts worry that when adults do not

intervene, children may conclude assaults are acceptable.



Heather Ryan talks about the challenge of investigating cases on a federal level

The fear of future victims still gnaws at Heather Ryan, who worked as an NCIS investigator for more than two years at Camp Lejeune.

In 2011, two sisters, 7 and 9, said their 10-year-old half-brother sexually assaulted them and threatened violence if they talked. The boy confessed.

Ryan worried the boy could become a lifelong offender, but said she struggled to get him help from the military's vast support structure. Desperate, Ryan persuaded a federal prosecutor to take the case with a plan of forcing the 10-year-old into sex offender treatment in the civilian world.

When the boy stopped cooperating, the case fell apart. His family was later transferred to a base in another state. It's unclear whether he ever received therapy.

"This child needed help. He really, really needed help," Ryan, who retired from NCIS in 2015, said. "I think of him a lot and wonder how he's doing, and if he has hurt anybody else."

Pritchard reported from Los Angeles. David Rising in Berlin, Germany, contributed reporting. Also contributing were Rhonda Shafner and Jennifer Farrar in New York, and Yuri Kageyama in Tokyo.

If you have a tip, comment or story to share about child-on-child sexual assault on U.S. military bases, please email: schoolhousesexassault@ap.org. See AP's entire package of stories here:

<https://www.apnews.com/tag/HiddenVictims>

Contact the reporters on Twitter at <https://twitter.com/lalanewsman> or <https://twitter.com/ReeseDunklin>

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

MINUTES OF APRIL 20, 2018 PUBLIC MEETING

AUTHORIZATION

The Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (“the Committee”) is a federal advisory committee established by the Secretary of Defense in February 2016 in accordance with section 546 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 and section 537 of the NDAA for FY 2016. The Committee is tasked 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 based on its review of such cases on an ongoing basis.

EVENT

The Committee held its seventh public meeting on April 20, 2018, from 9:00 a.m. to 3:15 p.m. The Committee received briefings on case management and data collection in civilian criminal courts and the current military justice data and case management capabilities of the Military Services. The Committee also received briefings from each of the working groups.

LOCATION

The meeting was held at One Liberty Center, Suite 1432, 875 North Randolph Street, Arlington, Virginia 22203.

MATERIALS

A verbatim transcript of the meeting, as well as preparatory materials provided to the Committee members prior to and during the meeting, are incorporated herein by reference and listed individually below. The meeting transcript and materials received by the Committee are available on the website at <https://dacipad.whs.mil>.

PARTICIPANTS

Participating Committee Members

Ms. Martha S. Bashford, Chair
The Honorable Leo I. Brisbois
Ms. Kathleen B. Cannon
Ms. Margaret A. Garvin
The Honorable Paul W. Grimm
Dean Keith M. Harrison
Mr. A.J. Kramer
Ms. Jennifer Gentile Long
Mr. James P. Markey

Chief Master Sergeant of the Air Force
Rodney J. McKinley, U.S. Air Force
Retired
Dr. Cassia C. Spohn
Brigadier General James R. Schwenk, U.S.
Marine Corps, Retired
Ms. Meghan A. Tokash
The Honorable Reggie B. Walton

Absent Committee Members

Major General Marcia M. Anderson
U.S. Army, Retired

Dr. Jenifer Markowitz

Committee Staff

Colonel Steven Weir, JAGC, U.S. Army, Staff Director
Ms. Julie Carson, Deputy Staff Director
Mr. Dale Trexler, Chief of Staff
Dr. Janice Chayt, Investigator
Dr. Alice Falk, Editor
Ms. Theresa Gallagher, Attorney-Advisor
Ms. Nalini Gupta, Attorney-Advisor
Ms. Amanda Hagy, Senior Paralegal
Mr. Glen Hines, Attorney-Advisor
Mr. Chuck Mason, Attorney-Advisor
Ms. Stacy Powell, Senior Paralegal
Ms. Stayce Rozell, Senior Paralegal
Ms. Terri Saunders, Attorney-Advisor
Ms. Kate Tagert, Attorney-Advisor

Other Participants

Mr. Dwight Sullivan, Designated Federal Officer (DFO)
Major Israel King, U.S. Air Force, Alternate Designated Federal Officer (ADFO)
Major Joseph Ahlers, U.S. Air Force, Service Representative
Mr. Stephen McCleary, U.S. Coast Guard, Service Representative
Major Wayne Shew, U.S. Marine Corps, Service Representative
Lieutenant Colonel Mary Catherine Vergona, U.S. Army, Service Representative

Presenters

Mr. Glenn Schmitt, Director, Office of Research and Data, U.S. Sentencing Commission
Mr. Wendell Skidgel, Electronic Public Access Staff, Administrative Office of the U.S. Courts

Ms. Margaret Sheehan McCaleb, Project Director, Next Generation CM/ECF, Case Management Systems Office, Administrative Office of the U.S. Courts
Dr. Allen Beck, Senior Statistical Advisor, Bureau of Justice Statistics, U.S. Department of Justice
Lieutenant Colonel Jason Coats, U.S. Army, Operations Branch Chief, Criminal Law Division, Office of the Judge Advocate General
Captain Michael Luken, U.S. Navy, Director, U.S. Navy Trial Counsel Assistance Program
Major Jesse Schweig, U.S. Marine Corps, Trial Counsel Assistance Program, Judge Advocate Division – Military Justice
Major Noel Horton, U.S. Air Force, Executive Officer, Air Force Judiciary Directorate, Air Force Legal Operations Agency
Mr. Stephen McCleary, U.S. Coast Guard, Senior Military Justice Counsel, Office of Military Justice, Washington D.C.

MEETING MINUTES

The DFO opened the public meeting at 9:03 a.m. Chair Martha Bashford provided opening remarks and summarized the agenda for the meeting.

Best Practices for Case Management and Data Collection in Civilian Criminal Courts

The first speaker was Ms. Margaret McCaleb, project director for the next generation of the Case Management Electronic Case Filing System (CM/ECF) at the Administrative Office of the U.S. Courts (AO). CM/ECF is the online system that all federal appellate, district, and bankruptcy courts use to manage their cases and which attorneys use to file motions, briefs, and other case-related documents. Because there are variations in the business processes among bankruptcy courts, district courts, and appellate courts, there are three separate but related versions of CM/ECF. Because there are also variations among the courts within a given type, the nationally supported versions of CM/ECF include tables that allow individual courts to customize the application to meet their local rules and procedures.

CM/ECF allows judges, chamber staff, and clerks' office staff to manage cases electronically, keeping track of deadlines, hearings, trials, motions filed, and more. It also provides automatic notification of filings. Courts have developed quality control processes.

Judge Paul Grimm asked how sealed matters are filed. Ms. McCaleb explained that there are seven to nine different levels of restrictions that can be set on documents filed with a federal district court. A single document can be sealed, or the entire case can be sealed, as necessary. Additionally, there are different degrees accessibility depending on the nature and purpose of the sealed document.

Judge Reggie Walton asked how the system accommodates individuals who represent themselves. Ms. McCaleb explained that if a *pro se* filer wanted to file a document under seal, they would need to file a motion saying that they want to file under seal. Judge Grimm added

that there are variations that exist within the system: some courts do not permit pro se filings unless specifically authorized by the court.

Dean Keith Harrison asked for advice on how to implement a similar system. Judge Grimm added that before the CM/ECF system was rolled out for the entire federal judiciary there were a number of courts that tested the system out. He asked whether the Department of Defense should develop a pilot program to see whether there are unanticipated glitches before going live with an entirely new system. Ms. McCaleb responded that she highly recommended using pilot programs.

Judge Grimm asked for Ms. McCaleb's opinion on the utility of a system that allows users to access it wherever they have internet connection. Ms. McCaleb responded that the technology has evolved over time, and now there is a mobile query available. She also noted that the system is web-enabled, and all 204 federal courts have their own separate databases which are housed in two data centers.

Mr. James Markey asked about standardization. Ms. McCaleb responded that while there is standardization, there also has to be room for flexibility for local court procedures. She noted that different courts call the same type of motions by different names, but there is a code attached to each entry so that as long as the code is the same, the display can be different. Judge Grimm added that the system is remarkably user-friendly and has drop-down menus and instructions; his strong suggestion was that, as the military migrates towards considering such a system, the people who might be responsible for developing it coordinate with the AO, or any other organization that has similar filing systems, to see how it actually works.

Judge Grimm then commented that there is a branch in the AO called the Judicial Training Center which provides legal education and support for the judges. That branch is able to mine data to produce reports that make it possible to have non-anecdotal development of policy.

Chair Bashford asked about the collection of data. Ms. McCaleb responded that while the AO does not use that data for research purposes, the Federal Judicial Center may. Judge Grimm added that the Sentencing Commission captures all sentencing data. He also noted that judges are required by law to report every six months to Congress on the status of civil cases, including cases that are over three years old. This data is published by the AO. Ms. McCaleb also noted that the information is available if someone queried the system.

Ms. Margaret Garvin asked how often the system is updated to capture new reporting requirements. Ms. McCaleb noted they do at least one major release every year of the software.

Mr. Wendel Skidgel, a senior attorney for the Judicial Electronic Public Access Program at the Administrative Office of the U.S. Courts, was the next speaker. The mission of the Judicial Electronic Public Access Program is to facilitate and improve public access to court records and court information in accordance with federal law, rules, judiciary policy, and user needs. Mr. Skidgel noted that PACER provides access to docket sheets for 53 million cases and access to more than 1.1 billion documents that have been filed with the courts through CM/ECF. The program is funded entirely through user fees set by the Judicial Conference of the United States. He added that the judiciary proactively works to strike a balance between providing public access to court files and protecting sensitive information.

Chair Bashford asked how to file a motion under seal. Judge Grimm clarified that for certain matters, if you file a document requesting that it be filed under seal, the system allows the document to be sealed until such time that the court rules on it. If the opposing party files something that one believes should be sealed, they can request that document to be sealed. Ms. Garvin noted that if victim's counsel has not entered their appearance, they will not get notification of what has been filed. Mr. A. J. Kramer noted that there are two types of sealing: one where there is an indication on the public docket that a document is sealed, and one where there is not even an indication of the document on the public docket.

Chair Bashford asked if there was a way to query the system to get aggregate data. Ms. McCaleb noted that this would have to be done court by court, since each has its own database.

Mr. Glenn Schmitt, Director of the Office of Research and Data, U.S. Sentencing Commission, was the next speaker. He noted that the Sentencing Reform Act of 1984 created the Commission, a bipartisan agency that provides advice to federal judges when determining the sentences to be imposed on persons convicted of federal crimes. To support the promulgation of guidelines, Congress authorized the Commission to establish a research program to collect data about the sentences imposed in federal courts, and to disseminate that information to the public. Central to the Commission's work is its data collection effort.

To facilitate the Commission's work, Congress has required that the courts provide five documents to the Commission within 30 days after the entry of judgment in a criminal case: the indictment or other charging document, the presentence report, the judgment and commitment order, the plea agreement if there is one, and the written statement of reasons form. The data from the five core documents submitted to the Commission are extracted and coded by Commission staff and input into a computer database. For each case in the offender data set, the Commission routinely collects information on case identifiers, demographic information about the offender, the statutes of conviction and the maximum and any minimum penalties that applied at sentencing, any guideline provisions that the court applied in the case, the type and length of sentence imposed, and the reasons given by the court for sentences that are outside the guideline range. Mr. Schmitt explained that the Commission has a staff of approximately 45 persons who enter this data into the Commission database, ensure that it is accurate and complete, and then use it for a myriad of analyses.

Mr. Schmitt noted that the Commission's data is regarded as one of the most complete and accurate data sets in the social science arena for several reasons. First, the data are a universe and not a sample. Second, only Commission staff input data into the data set. Third, Congress has authorized and appropriated the funding for a large research staff of social science professionals, allowing for more data to be collected. Fourth, all staff have advanced degrees in criminology or related fields with a thorough understanding of research and analytical methods.

Finally, Mr. Schmitt discussed some of the limitations of the Commission's data, including that the Commission does not collect data on investigations or prosecutorial decisions, among other things. Additionally, the Commission does not generally collect information about victims of crimes. The Commission also does not collect information about offender characteristics, such as

previous employment history, mental health and drug abuse history, support provided to dependents, and military service.

Dr. Cassia Spohn noted the lack of uniformity among the Services regarding the forms they use to collect data. She asked Mr. Schmitt for advice on how to improve the process so there is uniformity and consistency. Mr. Schmitt noted that some documents collected by the Commission are always in the same format, and some are not. He noted that the DAC-IPAD has the option to recommend that the documents be standardized, or to allow each of the Services to have their own approach, which would make things more complex and may limit what could be done with the data.

Judge Grimm asked whether some of the information the Commission does not collect could be derived from the five documents the Commission receives. Mr. Schmitt explained that when presented with a research question, the Commission will often go back into the documents and try to capture the special data that is not routinely collected. Mr. Schmitt noted that it is much easier to start with a big list of what information should be collected and then mandate that those data points be collected from the beginning, rather than put things on the list as you go forward. However, the longer the list, the more staff and money it takes to collect the data.

Judge Grimm then asked whether the Commission uses computer-assisted analytics to search data. Mr. Schmitt responded that prior to 2015, all of the Commission's data was collected by an employee who would look at the documents from the court and then manually put that information in a computer. He noted that relying on highly-trained, skilled human beings is more accurate than any computer extraction program. However, after 2015, the Commission began using computers in more ways, including to collect criminal history information to a greater level of specificity. Mr. Schmitt commented that since the Commission's data is used to deprive people of their liberty interest, it is extremely important to be accurate. Judge Grimm noted that there are two components of big analytics data—precision and recall—and these are inversely related.

Chair Bashford asked Mr. Schmitt if he would have the same confidence in the data if district court personnel did the coding, rather than Commission staff. Mr. Schmitt said he would not, because his staff is trained specifically to collect this data. He told the Committee that it was very important to have staff dedicated to this function.

Judge Walton asked if the Commission has collected information to assess whether there is a legitimate basis for sentencing disparities other than race. Mr. Schmitt responded that the Commission has done a number of studies that show unexplained differences in sentencing that are aligned on racial grounds. He noted that the studies also point out that there are data missing from these analyses. It could be that there is no other legitimate reason for the disparities other than race, or it could be that there is something that the Commission is not able to measure that is correlated with race that explains the result on a legal ground. He noted that based on some preliminary work, the Commission found that violence in the offender's past did not have a statistically significant impact on the outcome.

Dr. Spohn asked about the process that researchers have to go through to get access to the data. Mr. Schmitt noted that the Commission makes its data sets available to the public with two important limitations: it takes out information that would identify offenders and the sentencing judge. He noted that the Commission has a process in place by which researchers can enter into a cooperative agreement with the Commission if the researcher needs to know the identity of the judge or offender.

Judge Grimm asked whether having more information about the investigation and prosecution would give the Commission more data to determine whether disparities in sentences are correlated to or caused by certain demographics. Mr. Schmitt agreed that this data would be helpful, but noted that it would be complicated by certain factors—for instance, the fact that prosecutors charge crimes in different ways.

Chair Bashford asked if the AO captures charging information. The presenters responded that this information is knowable, but not yet captured. Ms. McCaleb added that the data are not captured separately in the database, though the information is available on the presentence report.

Chair Bashford then asked whether any fields have been added to the database over time. Mr. Schmitt noted that most of the time a new field would only capture information going forward, but there have been a few instances where the Commission has captured information looking backward as well.

Mr. Kramer asked how many data points are extracted from each case, to which Mr. Schmitt estimated 200. Depending on what kind of case it is, certain screens are available to be filled in. Most of the information comes from the judgment that the court signs, the statement of reasons form, and then the presentence investigation report.

Ms. Meghan Tokash commented that the military does not have presentence investigation reports. Mr. Schmitt responded that the fact that there is no presentence investigation report provides an opportunity for DoD to mandate how that information is collected. He noted that one possibility would be a report of trial document with check-boxes for the trial counsel to complete that would capture all the things in the presentence investigation report. He added that the Committee would need to think very carefully about what information should be collected. In his view, the database should not be limited to sexual assault crimes.

Mr. Schmitt remarked that his analysts code between 4 and 4.4 cases per hour. When asked about quality control, he noted the importance of having a dedicated staff and continuous training. He added that the Commission uses computer technology to double check some of the database entries and a “clean up” staff that reviews the entries when they do not seem correct.

Ms. Kathleen Cannon asked for advice on collecting information about cases early on in the military justice process. Mr. Schmitt responded that the military will need to capture data from law enforcement, staff judge advocates, and convening authorities. He noted that the challenge with the last two groups is that it may chill their prosecutorial discretion and decision-making.

Mr. Markey asked about the accuracy of the source documents received by the Commission. Mr. Schmitt commented that the documents the Commission collects are copies of official records generated by federal court proceedings, and are sent to the Commission in PDF format. While the documents are created by a range of people, they are normally sent to the Commission by the probation officers. The Commission examines the documents themselves because they want to have a fresh set of eyes on the information they contain. Mr. Schmitt added that his staff needs to use their judgment for some of the data entries—for example, when a person has multiple crimes for which they are sentenced, the staff needs to determine which sentencing guideline was used.

Judge Grimm asked how to capture information about why certain charges resulted in a conviction. Mr. Schmitt answered that a big issue would be whether there was a plea agreement or whether the case was contested. Beyond that, he did not believe it would be possible to “get in the mind” of the judge or jury and understand why there was a conviction.

Ms. Garvin asked about how to protect people’s privacy in the database. Ms. McCaleb answered that there is software that can detect certain patterns—such as social security numbers—to warn the attorney when s/he forgets to redact that information before filing the document. She also mentioned that the federal courts are considering using software that allows documents to be viewed by the parties to the case for twenty-four hours before making those documents public, in order to allow time for all parties to ensure appropriate protections are in place for sensitive information.

Ms. Meghan Peters asked about the code book from the Federal Judicial Center. Ms. McCaleb responded that one way for quality control is to limit the entry in the database to one of the available codes. Mr. Skidgel added that the codes allow for standardization—even if the same types of motions have different names, they are coded in the same way.

Ms. Peters then asked how a database could handle classified cases. Ms. McCaleb noted that there can be different levels of security built into the system from the beginning—similar to how sealed cases are handled.

After the speakers were excused, the Committee discussed some of the main points of the session. Chair Bashford commented that one of the most important things that they heard was the benefits of having a document-based system where the documents go to a central location. Ms. Cannon noted that it is important to streamline and standardize the documents used to collect information. General Schwenk added that one approach for the Committee would be to think about what the system should look like in order to provide the information that the Services and others need.

Ms. Tokash stated that she did not believe that collecting information on a commander’s decision to go forward with a case would infringe upon prosecutorial discretion. Judge Grimm responded that it would be difficult to get people to admit the real reasons they treated a case a certain way unless that information was anonymized.

Updates for the Committee from the Data, Case Review, and Policy Working Groups

General Schwenk provided an update on the status of the Case Review Working Group's review of no action taken cases. He noted some preliminary issues the DAC-IPAD may want to explore further: (1) victim and subjects experience adverse effects from lengthy investigations; (2) the influence of an alleged victim's desire to go forward on the command legal decision; (3) prosecutor case analysis and additional investigation is generally not captured in command action documents; (4) apparent inconsistency between the judge advocate's probable cause determination and command action submission; (5) lengthy delays between final investigative report of investigation, command disposition action, and investigative case closure; (6) full investigation triggered by third party and command required reporting; and (7) usefulness of character interviews in case files.

Mr. Chuck Mason, DAC-IPAD Attorney-Advisor, provided an update on the Data Working Group. He advised that the Services have declined to provide the DAC-IPAD with their case lists until the SAPRO report comes out in May. He noted that this will put the working group very behind in collecting and analyzing data, and therefore the working group has revised its approach for issuing the request for information in the future. Mr. Mason then told the Committee about a couple of data calls that the working group has recently received and responded to, adding that he was proud to report that the DAC-IPAD's data system is meeting the needs of its customers.

Lastly, Chief Rodney McKinley provided an update on the Policy Working Group. The Policy Working Group is currently focusing on two issues. The first is making recommendations to the full Committee regarding the implementation of Article 140a, UCMJ, and the second is examining expedited transfer policies in order to complete the working group's assessment of several specific issues that were highlighted in the Committee's report of March 2018.

U.S. Department of Justice, Bureau of Justice Statistics Data Collection Methodology and Current Capabilities of the Military Services' Case Management and Data Collection Programs

The first speaker was Dr. Allen Beck, Senior Statistical Advisor for the Bureau of Justice Statistics (BJS). He is involved in developing information systems, ensuring efficiency of design, addressing data quality, and ensuring the accuracy of the estimates that are produced by the agency. He noted that the military faces many of the same issues as BJS, including ensuring uniformity of definitions and harmonizing data from diverse groups.

Chair Bashford asked Dr. Beck what works well when gathering data from so many different agencies with differing definitions. Dr. Beck explained that part of BJS's mandate is to provide a standard to law enforcement agents, corrections agencies, and other criminal justice agencies as to what the various terms mean and how they should be measured and reported. He emphasized the importance of financial and technical assistance for local law enforcement agencies, as well as being able to demonstrate the link between data and operations.

Chair Bashford then asked if it is possible in the civilian sector to measure the drop-off from reporting to prosecutions of sexual assault crimes. Dr. Beck noted that only about half of the incidents of rape and sexual assault actually get reported to someone. He added that BJS lacks a real system for tracking cases through the entire criminal justice process; instead, they have a

series of snapshots in time.

The next speaker, Lieutenant Colonel Jason Coats, U.S. Army, spoke about the Army's military justice case management systems. The Army JAG Corps manages military justice primarily utilizing two applications: Military Justice Online (MJO), and the Army Courts-Martial Information System (ACMIS). MJO serves three primary purposes: first, to create and produce standardized documents and facilitate the processing of investigations, administrative separations, military non-judicial punishment, and courts-martial; second, to create reports for the pre-trial, trial, post-trial phases of courts-martial within a general courts-martial convening authority's jurisdiction; and third, to produce statistical data for internal use in identifying gaps and trends concerning the execution of military justice actions, as well as external requests for information concerning it. The second system, ACMIS, is a secure web-based case management tool developed to give the Army Court of Criminal Appeals and trial judges the ability to monitor, track, and document every step required to maintain official court-martial case reports. In addition to those two systems, the Army also has an e-docket that is accessible to the public, and a monthly results of court-martial report that is published and is publicly available.

Captain Michael Luken, U.S. Navy, spoke about the Navy's data collection system. He noted the importance of having a system that is user-focused so that the individuals find value in inputting the information. The Navy currently uses the Case Management System (CMS)—this is a case manager, not a case tracker. It can be used to generate reports that show how long a case has been pending, how long it takes to get a recommendation to the command, and how long it takes from the point of referral, to the Article 32 preliminary hearing, or to completion of the trial. It is overseen by the Trial Counsel Assistance Program (TCAP) so that common themes can be identified and problems can be fixed. Every case goes into CMS; once Naval Criminal Investigative Service (NCIS) notifies the legal office about a case, the trial counsel is responsible for providing updates, recording the case chronology, and entering information into the different tables and checkboxes. He noted that, however, as more entries are added in CMS, more time and personnel are needed to provide information about a given case.

Major Jesse Schweig, U.S. Marine Corps, spoke on behalf of the Marine Corps. He noted that the Marine Corps has the same system as the Navy with a couple exceptions. The Marine Corps recently transitioned from a "prosecution merits memorandum" to a "case analysis memorandum," which requires the special victim prosecutor to give advice to the convening authority for all sexual assault cases in a two-step format. First, the special victim prosecutor will let the convening authority know whether there is probable cause; if there is probable cause, that special victim prosecutor will state whether there is a serious evidentiary defect that would preclude prosecution, such as when the victim declines to participate in the case, or when prosecution is otherwise inadvisable. Major Schweig then commented that there are two ways to create a data system: a headquarters-centric top-down data system, which he believes to be inefficient, or a modern, user-centric, bottom-up data system.

Major Noel Horton, U.S. Air Force, spoke about the Air Force's case management system, known as the Automated Military Justice Analysis and Management System (AMJAMS). AMJAMS collects data during all stages of military justice actions on offenses, as well as information on the participants, procedural matters, and timelines for the investigatory, court-martial, appellate, and non-judicial punishment processes. AMJAMS supports efforts to

eliminate or highlight excessive processing delays and provides the capability to monitor the current status of military justice actions. Data entry is predominantly done at the field level. AMJAMS can also be used by the Air Force JAG Corps headquarters to analyze trends and compare caseloads across different jurisdictions.

Finally, Mr. Stephen McCleary, U.S. Coast Guard, spoke about the Coast Guard program called Law Manager. While Law Manager is capable of tracking cases from the inception of the investigation, it is more commonly used after referral of charges. Additionally, Coast Guard Investigative Service (CGIS) uses a different system for their investigative work and to generate reports. Mr. McCleary noted that the Coast Guard had previously met with Ms. McCaleb, but the AO did not make CM/ECF available to them. This was for three reasons, according to Mr. McCleary: 1) the AO was busy working on the next generation of CM/ECF; 2) the AO had previously tried modify CM/ECF for another user in the executive branch, and that had not gone well; and 3) the AO believed CM/ECF is a far too complex for the Coast Guard's relatively small number and type of cases.

Chair Bashford asked the presenters whether they can query their systems to search for victim declination cases. All the Services except for the Army noted that while victim declination is memorialized in a document in the case file, they do not have specific data fields in their systems that capture this information. The Army noted that they have just added this as one of their data fields, so going forward this information would be available.

Dean Harrison asked what information is available to the public when a Service member is prosecuted. Lieutenant Colonel Coats noted that while the e-docket is available, no documents are actually available to the public; however, a member of the public may request information pursuant to the Freedom of Information Act.

Mr. Markey commented on the lack of standardization among the Services. Captain Luken agreed the Services were working in silos and using clunky, outdated systems, and that the Services should not be looking through open-field narratives in a database in order to compile information on victim declinations. Major Horton added that the Air Force has struggled to decide what data fields should be tracked, and to continuously adapt as public and Congressional interest changes over time.

General Schwenk asked how long it takes to add a new field to AMJAMS, and Major Horton responded that while adding the data field does not take a long time, training users is more complex. Lieutenant Colonel Coats agreed that when adding a field, it needs to be done in an intuitive way. Dr. Beck commented that it is important to have common metrics and targets, which requires that everyone speak the same language. He added that you cannot attempt to collect every aspect of every decision point.

Ms. Jennifer Long asked whether Captain Luken was able to flag the more complicated cases in the Navy's Case Management System. Captain Luken noted that the metric he uses is that a typical caseload is 18 to 20 cases, and that TCAP has a system for noting and tracking high-visibility cases such as sexual assault cases.

Chief McKinley asked the presenters whether the military should continue to have five different systems, or whether there should be one system that every Service uses. Mr. McCleary

responded that though it would be possible to have five different systems, he thinks it would be better to have one. Major Horton disagreed, stating that it would be possible to have five different systems if there were common standards among all the Services. He added that the Air Force system already has reliable data going back to the 1980s and 90s. Major Schweig commented that there are a lot of differences between the five Services, and creating one uniform data system would require “an act of God.” Captain Luken agreed that all the Services have different histories and cultures and different administrative and non-judicial punishment processes. Lieutenant Colonel Coats added that military justice is different in each of the Services, so it would be difficult to have one case management system. He noted that even in the civilian sector there is not one overarching system across all federal or state courts.

Judge Grimm observed that the people asking for data on sexual assault cases do not necessarily understand that the military justice system operates in a dual capacity and handles cases such as sexual assault cases as well as cases that affect good order and discipline. He added that if the military is unable to answer questions about sexual assault, however, Congress might take away the military’s ability to handle sexual assault cases. He noted that the Committee must fashion recommendations that recognize this reality.

Chair Bashford asked about the definitions of certain terms used in the Defense Sexual Assault Incident Database (DSAID), such as “unsubstantiated” and “unfounded.” The presenters commented that they were not the people who entered information into DSAID and could not provide definitions on the spot.

Dr. Spohn noted that the Defense Incident-Based Reporting System (DIBRS) often contains a different case closure code than the closure disposition recorded in the case file itself. Captain Luken responded that in the Navy, there is a disconnect because DIBRS and the sexual assault disposition report (SADR) are handled by the convening authority, while the case closure disposition in the case file is classified by the prosecution.

Dean Harrison asked which office in each of the Services should be responsible for data collection. Captain Luken responded that it depends on what type of data is requested—it might be law enforcement, or it might be the JAG officers.

Mr. Markey asked about resource limitations. Captain Luken said he would want paralegals and good administrative staff available to enter data, and he would need good IT support as well. Mr. McCleary noted that in the military justice system there are no standing courts, so there is no equivalent of the clerk function.

Major Schweig commented that in the military, the cases are not normally “who done it” cases, but rather a question of whether the incident constituted a crime. In response, Mr. Kramer asked why the conviction rate is so low. Major Schweig answered that he believes “who done it” cases are often easier cases, but questions of whether something constitutes a crime require a judgment call by the jury members or the judge.

Ms. Peters asked whether the Services, using their systems, are able to analyze data to explain trends. Captain Luken responded that trends can prompt analysis: for instance, he can see certain trends including what the conviction rate is and how many Article 32s have been waived, and depending on that information, he can determine if more training is needed or something of that

sort. LTC Coats commented that he can look at multiple data fields and correlate two data points, or draw comparisons to explain why one data field is resulting in a certain trend based on the trend of another data field.

Colonel Steven Weir, DAC-IPAD Director, asked whether the Services can query their systems to determine in how many sexual assault cases that went to court martial did the suspect consume alcohol. The Air Force and Army currently do not have that ability. Captain Luken said that the Navy does, as long as the trial counsel or paralegal check the data box indicating alcohol was involved.

Ms. Peters asked Dr. Beck what information is important to know about a sexual assault case in order to understand its outcome. Dr. Beck answered that use of alcohol, history of abuse, and the nature of the injuries are significant correlates of the probability of conviction. He added that obtaining a statement from the defendant and presence of a witness also seem to enhance the probability of a conviction.

Finally, Ms. Theresa Gallagher, DAC-IPAD Attorney-Advisor, asked the Service presenters about their command disposition reports. In the Air Force, this document is maintained by the Office of Special Investigations. The local legal office will maintain other documents memorializing command action. In the Coast Guard, this document is maintained by the legal office working on the case. In the Marine Corps, the Staff Judge Advocate completes this form and submits it to Headquarters Marine Corps, where it is entered into DSAID. Captain Luken noted that the new procedure in the Navy is that this form is kept in two places: it is kept at Navy headquarters, and it is uploaded into CMS so the trial counsel has access to it. In the Army, when a case is disposed of, the data is pushed to the criminal investigation division, which populates the standard form used to record command disposition decisions.

Public Comment

There were no public comments.

The ADFO closed the public meeting at 3:15 p.m.

CERTIFICATION

I hereby certify, to the best of my knowledge, the foregoing minutes are accurate and complete.



Martha Bashford
Chair

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

MATERIALS

Meeting Records

1. Transcript of April 20, 2018 Committee meeting, prepared by Neal R. Gross and Co., Inc.

Read Ahead Materials Provided Prior to and at the Public Meeting

2. Meeting Agenda
3. Biographies of Meeting Presenters
4. Report of the Military Justice Review Group – Part 1: UCMJ Recommendations; Article 140a (New Provision) – Case Management; Data Collection and Accessibility (pp. 1011-15) (Dec. 22, 2015)
5. Report of the Military Justice Review Group – Part 1: UCMJ Recommendations; Article 146 – Code Committee & Article 146a (New Provision) – Annual Reports (pp. 1021-31) (Dec. 22, 2015)
6. Memorandum from General Counsel, Dep’t of Def, to Chair, Joint Service Committee on Military Justice, subject: Charter of the Article 140a Implementation Subcommittee of the Joint Service Committee on Military Justice (Oct. 3, 2017)
7. 28 USCS § 994 Duties of the Commission
8. 28 USCS § 995 Powers of the Commission
9. U.S. Department of Justice, Bureau of Justice Statistics, Special Report on Profile of Intimate Partner Violence Cases in Large Urban Counties (Oct. 2009)
10. Department of Defense Crime Data Reporting, prepared by DAC-IPAD staff (Apr. 5, 2018)
11. Service responses to Judicial Proceedings Panel Request for Information (RFI) 89, for Oct. 9, 2015 Meeting, Updated March 2018
12. DAC-IPAD Court-Martial Database Documents and Data Elements, prepared by DAC-IPAD staff (Apr. 5, 2018)
13. Summary of JPP Findings and Recommendations on Military Justice Case Data for Sexual Assault Offenses, prepared by DAC-IPAD staff (Apr. 20, 2018)
14. Department of Defense Response to Judicial Proceedings Panel Request for Information Set 11 (Apr. 5, 2017)
15. Memorandum from Sec’y of Def to Deputy Sec’y of Def, subject: Establishment of Cross-Functional Teams to Address Improved Mission Effectiveness and Efficiencies in the DoD (Feb. 17, 2018)

Materials Provided During the Public Meeting

16. Written Statement of Ms. Margaret Sheehan McCaleb to the DAC-IPAD (Apr. 20, 2018)
17. Written Statement of Mr. Wendell Skidgel to the DAC-IPAD (Apr. 20, 2018)
18. Federal Judicial Center, Criminal Code Book 1996 to Present (Aug. 2016), *available at* https://www.fjc.gov/sites/default/files/idb/codebooks/Criminal%20Code%20Book%201996%20Forward_0.pdf
19. PowerPoint Presentation, Types of Reports, prepared by Navy JAG
20. Navy Handout, Example Reports (Apr. 16, 2018)



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

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JUN 7 2018

GENERAL COUNSEL

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

SUBJECT: Assessment of Judicial Proceedings Since Fiscal Year 2012 Amendments Panel
Recommendations 54, 55, 57, 58 and 60

The Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (JPP), a congressionally mandated federal advisory committee, concluded its work on October 9, 2017 with the issuance of its final report. Having reviewed the recommendations, I have determined that the Defense Advisory Committee on Investigation, Prosecution and Defense of Sexual Assault in the Armed Forces (DAC-IPAD)'s analysis of recommendations 54, 55, 57, 58 and 60 would be helpful, and respectfully request that the DAC-IPAD examine these recommendations.

I respectfully request that the DAC-IPAD include its analysis and findings, if any, of the aforementioned recommendations in its next annual report.

A handwritten signature in black ink, appearing to read "William S. Castle".

William S. Castle
Acting

Recommendations of the Judicial Proceedings Panel Assigned to The DAC-IPAD by DoD on June 7, 2018

A. Judicial Proceedings Panel Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses for Fiscal Year 2015 (September 2017)

Recommendation 54: The successor federal advisory committee to the JPP, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, should consider continuing to analyze adult-victim sexual assault court-martial data on an annual basis as the JPP has done, and should consider analyzing the following patterns that the JPP discovered in its analysis of fiscal year 2015 court-martial data:

- a. Cases involving military victims tend to have less punitive outcomes than cases involving civilian victims; and
- b. The conviction and acquittal rates for sexual assault offenses vary significantly among the military Services.
- c. If a Service member is charged with a sexual assault offense, and pleads not guilty, the probability that he or she will be convicted of a sexual assault offense is 36%, and the probability that he or she will be convicted of any offense (i.e., either a sex or a non-sex offense) is 59%.

B. Judicial Proceedings Panel Report on Panel Concerns Regarding the Fair Administration of Military Justice (September 2017)

Recommendation 55: The Secretary of Defense and the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) continue the review of the new Article 32 preliminary hearing process, which, in the view of many counsel interviewed during military installation site visits and according to information presented to the JPP, no longer serves a useful discovery purpose. This review should look at whether preliminary hearing officers in sexual assault cases should be military judges or other senior judge advocates with military justice experience and whether a recommendation of such a preliminary hearing officer against referral, based on lack of probable cause, should be given more weight by the convening authority. This review should evaluate data on how often the recommendations of preliminary hearing officers regarding case disposition are followed by convening authorities and determine whether further analysis of, or changes to, the process are required.

In addition, because the Article 32 hearing no longer serves as a discovery mechanism for the defense, the JPP reiterates its recommendation—presented in its report on military defense counsel resources and experience in sexual assault cases—that the military Services provide the defense with independent investigators.

Recommendation 57: After case disposition guidance under Article 33, UCMJ, is promulgated, the Secretary of Defense and DAC-IPAD conduct both military installation site visits and further research to determine whether convening authorities and staff judge advocates are making effective use of this guidance in deciding case dispositions. They should also determine what effect, if any, this guidance has had on the number of sexual assault cases being referred to courts-martial and on the acquittal rate in such cases.

Recommendation 58: The Secretary of Defense and the DAC-IPAD review whether Article 34 of the UCMJ and Rule for Court-Martial 406 should be amended to remove the requirement that the staff judge advocate's pretrial advice to the convening authority (except for exculpatory information contained in that advice) be released to the defense upon referral of charges to court-martial. This review should determine whether any memo from trial counsel that is appended should also be shielded from disclosure to the defense. This review should also consider whether such a change would encourage the staff judge advocate to provide more fully developed and candid written advice to the convening authority regarding the strengths and weaknesses of the charges so that the convening authority can make a better-informed disposition decision

Recommendation 60: The Secretary of Defense and the DAC-IPAD continue to gather data and other evidence on disposition decisions and conviction rates of sexual assault courts-martial to supplement information provided to the JPP Subcommittee during military installation site visits and to determine future recommendations for improvements to the military justice system.

**Defense Advisory Committee on
Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces (DAC-IPAD)**

July 20, 2018

DAC-IPAD Public Meeting

Biographies of Presenters

Best Practices for the Implementation of Article 140a, UCMJ

9:15 a.m. – 10:15 a.m.

Ms. Janet Mansfield is an attorney serving as the Chief, Programs Branch, Criminal Law Division, U.S. Army Office of The Judge Advocate General (OTJAG) since November, 2009. In this position, Ms. Mansfield is the primary legal advisor to the Army Sexual Harassment/Assault Response and Prevention program and the Army's chief legal officer for the Defense Sexual Assault Incident Database. Ms. Mansfield has Army-wide administrative privileges for both the Army Court-Martial Information System database and Military Justice Online and regularly supervises the use of both databases for external and internal requests for information. Ms. Mansfield is also the Army OTJAG representative to the Criminal Justice Information Reporting Working Group and works closely with law enforcement and corrections officials using Army Law Enforcement Reporting System.

Lieutenant Commander Jeff Pietrzyk is the Deputy Director of Code 20, Military Justice Directorate at the Office of The Judge Advocate General, U.S. Navy. Previously, he was the senior trial counsel at Region Legal Service Office Japan, where he was the prosecutor in charge of all courts-martial in the Asia-Pacific area of responsibility. LCDR Pietrzyk has served as defense counsel and as an instructor of military justice and procedure at the Naval Justice School. He is a member of the New York State Bar and graduated from the State University of New York at Buffalo where he earned his Bachelor of Arts and Juris Doctor. He holds a Masters of Laws degree from George Washington University Law School in Litigation and Dispute Resolution.

Major Wayne Shew is the Deputy Branch Head, Military Justice, Judge Advocate Division, Headquarters, U.S. Marine Corps. Previously he has served as a trial counsel, victims' legal counsel, and senior trial counsel, Legal Services Support Team, Kaneohe, Hawaii; special assistant U.S. attorney and civil law officer, Camp Lejeune, North Carolina; and trial counsel at Camp Pendleton, California. Major Shew is a graduate of the University of California, Davis and Hastings College of the Law.

Mr. John Hartsell is the Associate Chief of the Military Justice Division, Air Force Legal Operations Agency, Joint Base Andrews, Maryland, where he was formerly the Chief while on active duty. Mr. Hartsell entered active duty as an Air Force judge advocate in 1992. He has earned three masters degrees, including a Master of Laws with a specialty in government contracts. He served as a circuit trial counsel, the Deputy Chief Trial Judge of the Air Force, and a staff judge advocate. Mr. Hartsell also served as the staff judge advocate for the Air Force's Informational Technology Acquisition Group in Montgomery, Alabama. He is admitted to practice law before the Supreme Court of Florida and the United States Court of Appeals for the Armed Forces. He retired from active duty as a colonel in 2014, grew a beard, and joined the civil service.

Mr. Steve McCleary is the Senior Military Justice Counsel and Chief Prosecutor in the Coast Guard's Office of Military Justice. He served for 22 years on active duty in the Coast Guard, with his last position as the Executive Assistance to The Judge Advocate General. Prior to that he was the Chief of the Office of Military Justice, was a military judge for five years, and served two tours as a staff judge advocate, including one at the Coast Guard's Recruit Training Center in Cape May, New Jersey. He also served as a defense counsel assigned to the Navy, and had extensive experience as a trial counsel.

MILITARY APPELLATE CASE LAW UPDATE

Charged Offenses as Propensity Evidence

United States v. Hills, 75 M.J. 350 (C.A.A.F. Jun. 27, 2016)

- Background: Military Rule of Evidence (M.R.E.) 413 is an exception to the ordinary rule that evidence of uncharged misconduct or prior convictions is generally inadmissible and may not be used to show an accused's propensity or predisposition to commit charged conduct. M.R.E. 413(a) provides that "[i]n a court-martial in which the accused is charged with an offense of sexual assault, evidence of the accused's commission of one or more offenses of sexual assault is admissible and may be considered for its bearing on any manner to which it is relevant."
- The standard jury findings instruction that effectuated M.R.E. 413(a) allowed jury members to consider charged offenses for propensity purposes, even when there was not evidence beyond a reasonable doubt for those specific offenses. This increased the chances of a conviction on related sexual assault offenses.
- In *Hills*, a unanimous Court of Appeals for the Armed Forces (CAAF) concluded that charged offenses may not be used under M.R.E. 413 to prove an accused's propensity to commit the charged offenses.
- CAAF also held that the standard instruction given to members regarding how to handle such propensity evidence undermines the presumption of innocence.
- CAAF stated that "[i]t is antithetical to the presumption of innocence to suggest that conduct of which an accused is presumed innocent may be used to show a propensity to have committed other conduct of which he is presumed innocent."
- As CAAF noted, uncharged conduct can still be used as propensity evidence, as "no presumption of innocence attaches to uncharged conduct." In cases since *Hills*, this has arguably incentivized the government to leave some sex offense allegations off the charge sheet in order to get the propensity instruction in relation to charged sex offenses.

Mandatory Minimum Punitive Discharges

United States v. Kelly, 77 M.J. 404 (C.A.A.F. May 23, 2018)

- Background: Article 56(b) of the UCMJ provides for mandatory minimum punitive discharges in cases involving rape, sexual assault, forcible sodomy, and attempts to commit such offenses. Article 66(c) provides that the Court of Criminal Appeals (CCA) may only approve that part of a sentence that it finds should be approved, even if the sentence is correct as a matter of law.
- In *Kelly*, the accused was convicted of abusive sexual contact and sexual assault, and among other things, was sentenced to a dishonorable discharge as required under Article 56(b). On appeal, the accused argued that the mandatory minimum sentence of a punitive discharge was inappropriately severe. The CCA held that it lacked the authority to grant relief.
- CAAF held that a CCA does have the power to disapprove a mandatory minimum

punitive discharge, finding that Article 56(b) should be construed as a limit on the court-martial, not on any of the reviewing authorities.

Speedy Trial Right

United States v. Hendrix, __ M.J. __ (C.A.A.F. June 19, 2018)

- Background: Under Rule for Courts-Martial (R.C.M.) 707, an accused must be brought to trial within 120 days of preferral of charges. If charges are dismissed and then repreferred, a new 120-day period begins from the date of repreferal, except in cases of subterfuge (*i.e.*, the Government acting in bad faith to circumvent the rule).
- In *Hendrix*, the accused was charged with sexual assault. The alleged victim declined to participate in any prosecution, and the convening authority dismissed the charges. The victim changed her mind three days later and the charges were re-preferred one day after that. The accused was arraigned 156 days after the first preferral.
- The military judge granted the accused's motion to dismiss with prejudice, finding that the convening authority's dismissal was a subterfuge.
- The CAAF found that the military judge abused his discretion by dismissing the charge and specifications with prejudice, stating that the dismissal was not a subterfuge because it was based on the alleged victim's changed mind about whether to participate. Even though no new evidence was found and no new crimes were charged between dismissal and repreferal, the fact that the witness changed her mind about testifying dramatically changed the strength of the Government's case.
- The CAAF noted that dismissal when the victim stated she did not want to participate, along with the subsequent repreferal when the victim changed her mind, were also in line with DoDI 6495.02 (which states that the victim's decision to decline to participate in an investigation or prosecution should be honored by all personnel charged with the investigation and prosecution of sexual assault cases).

Article 6b Writ-Appeals

United States, and ST, Appellees v. Colby Morris, Appellant (pending before C.A.A.F.)

- Background: Under Article 6b of the UCMJ, a victim may petition the CCA for a writ of mandamus if the victim believes that a preliminary hearing ruling or a court-martial ruling violates his or her rights. There has been a line of cases—*EV v. United States & Martinez*, 75 M.J. 331 (C.A.A.F. June 21, 2016) and *Randolph v. HV and United States*, 76 M.J. 27 (C.A.A.F. Feb. 2, 2017)—in which CAAF has found that it does not have jurisdiction to review writ-appeals under Article 6b.
- CAAF's jurisdiction over Article 6b petitions was an issue explored by the JPP, and the 2017 NDAA amended Article 6b to give CAAF jurisdiction over a victim's Article 6b petition.
- In *Morris*, the military judge ruled, based on the facts of the case, that evidence of what the victim was wearing was not excludable under M.R.E. 412 (the military rape shield law). The government petitioned the CCA for extraordinary relief, and the victim filed a separate petition under Article 6b. The CCA granted the petition. The

accused appealed to CAAF. This case is different from *Martinez* and *Randolph* because it involves a hybrid petition for a writ of mandamus that was brought by both the prosecution and the victim.

Victim Impact Statements

United States v. Barker, 77 M.J. 377 (C.A.A.F. May 21, 2018) (Note: While this is a child pornography case, it places general limitations on the ability of a court-martial to admit a victim impact statement offered by the trial counsel under R.C.M. 1001A. This may have an impact on sentencing proceedings in sex assault cases as well.)

- In this case, the trial counsel offered three victim impact statements at sentencing that were purportedly from one of the child pornography victims. These statements were received by the FBI. Trial counsel did not introduce any accompanying affidavits or testimony to establish the origin of these documents, the circumstances of their creation, or where these documents were maintained.
- CAAF concluded that the statements, which were admitted under R.C.M. 1001A (the President's implementation of the Article 6b right of a victim to be heard), were not admissible because the victim did not actually participate in the proceeding. The CAAF found that all the procedures in R.C.M. 1001A contemplate the actual participation of the victim, and the statement being offered by the victim or through her counsel. In this case, the trial counsel did not appear to have any contact with the victim, the victim did not participate in the proceedings, and there was no indication that the victim was even aware of the accused's trial.
- Note that under a separate rule, R.C.M. 1001(b)(4), the trial counsel can present evidence of victim impact as a matter in aggravation independent of R.C.M. 1001A.



**Defense Advisory Committee on
Investigation, Prosecution, and Defense
of Sexual Assault
in the Armed Forces (DAC-IPAD)**

Case Review Working Group
Report to Committee

July 20, 2018



FY17 Total Case Files Reviewed

Army	Marine Corps	Navy	Air Force	Coast Guard
No Action Taken				
22%	28%	81%	97%	100%
Preferrals	Preferrals	Preferrals	Preferrals	Preferrals
7%	5%	8%	90%	17%

Total case files reviewed: 769/1,725 (45%)



FY17 Total Case Files Reviewed Random Sample

	Army	Marine Corps	Navy	Air Force	Coast Guard	Total Sample Size	Cases Remaining to Review
No Action Taken	53	16	23	21	2	115	
# Reviewed by Staff	53	16	23	21	2	115	0 case
% Reviewed	100%	100%	100%	100%	100%	100%	
# Reviewed by Members	49	16	22	21	2	110	5 cases
% Reviewed	92%	100%	96%	100%	100%	96%	
Preferrals	13	6	6	10	2	37	
# Reviewed by Staff	10	2	3	10	2	27	10 cases
% Reviewed	77%	33%	50%	100%	100%	73%	
# Reviewed by Members	0	0	0	10	0	10	27 cases
% Reviewed	0%	0%	0%	100%	0%	27%	



Case Review Group Developments

- March 2019 Report:

- Present the DAC-IPAD with investigative case file descriptive data based on the random sample cases and make findings and recommendations.
- Determination of whether the command decision was reasonable in the “no action” cases.

- March 2020 Report:

- Present the DAC-IPAD with service specific multi-variate analysis to identify statistically significant predictive factors for preferal.
- Determination of whether the command decision was reasonable in the preferred cases.
- Present the DAC-IPAD with descriptive data from 1,725 case reviews.



Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD)

Data Working Group
Report to Committee

July 20, 2018



FY17 Data Collection & Entry

	Army	Marine Corps	Navy	Air Force	Coast Guard
Outstanding	34%	2%	64%	5%	0%
Received	4%	84%	0%	0%	100%
Error	11%	14%	9%	11%	0%
Entered	51%	0%	27%	84%	0%
Completion Rate of Available Files	92%	0%	100%	100%	0%

Note: 11 – FY16 cases added to database as part of FY17 data collection



Data Project Developments

- March 2019 Report:
 - FY16 Data – multi-variate analysis
 - FY17 Data – descriptive statistics, bivariate and multi-variate analysis
- Dr. Wells received preliminary data file for familiarization purposes.
- RFI – FY18 cases



Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD)

Policy Working Group (PWG) Update

July 20, 2018



DoD Expedited Transfer Policy

In its March 2018 Annual Report, the DAC-IPAD provided an overall assessment of the DoD expedited transfer policy and made four recommendations for its continued improvement.

In addition, the DAC-IPAD made interim assessments and tasked the PWG with further review of the following six issues:

Issue 1: Should expedited transfers be available to Service members who make restricted sexual assault reports?

Issue 2: Should a victim who loses the ability to make a restricted report because of a third-party report or because he or she inadvertently disclosed the sexual assault to command, have the ability to restrict further disclosure or investigation of the incident?



DoD Expedited Transfer Policy

Issue 3: Does the DoD expedited transfer policy need to be modified to clarify the approval standard and the purpose of the policy?

Issue 4: Should the expedited transfer policy include intra-installation moves as well as moves to other installations or locations?

Issue 5: Should expedited transfers be available to Service members whose civilian spouses or children are sexual assault victims?

Issue 6: Should those active duty victims who require it have the option to attend a transitional care program away from their units, similar to Wounded Warrior programs, to enable them to return to full duty status?



DoD Expedited Transfer Policy

The PWG reviewed one additional issue:

Issue 7: Should the Department of Defense and military Services increase the amount and types of data they collect on victims of sexual assault who receive expedited transfers and alleged offenders who are transferred to different locations?



DoD Expedited Transfer Policy

In addition to previous testimony taken on this topic at the October 2017 DAC-IPAD public meeting and December 2017 PWG preparatory session, the PWG held a preparatory session on May 24, 2018 and heard from the following presenters:

- DoD and Service SAPR program representatives
- SVC and VLC program managers
- Service SARCs
- Service defense organization leaders
- Service MCIOs



PWG Presentation to DAC-IPAD

The PWG will present its final findings and recommendations on expedited transfer issues to the DAC-IPAD at the October 2018 public meeting.



Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD)

Policy Working Group (PWG)

Presentation on Article 140a, UCMJ
*Case management; data collection and
accessibility*

July 20, 2018



Text of Article 140a, UCMJ (10 U.S.C. § 940a):

“The Secretary of Defense shall prescribe

uniform standards and criteria

for conduct of each of the following functions

at all stages of the military justice system,

***including pretrial, trial, post-trial, and appellate processes,
using, insofar as practicable, the best practices of Federal and
State courts:”***



Text of Article 140a, UCMJ (10 U.S.C. § 940a) – Cont’d:

- (1) Collection of data concerning substantive offenses and procedural matters***
- (2) Case processing and management.***
- (3) Production and distribution of records of trial***
- (4) Facilitation of access to docket information, filings, and records.***



Purpose of Art. 140a Data Collection

- “Facilitate case management”
- “Military justice decision-making”
- Periodic assessments of the UCMJ under Article 146
 - Assess recent amendments (MJA for 2016)
 - Gather and analyze sentencing data



Issues identified by the Policy Working Group

1. Offenses
2. Functions of Art. 140a
3. When a case begins
4. When a case ends
5. Monitoring federal statutory requirements
6. Best practices for data collection
7. Other specific data elements



Overview:

- The Committee heard from military and civilian witnesses at its April 20, 2018, public meeting
- The Committee reviewed read-ahead materials and RFI responses regarding the capabilities of the military Services' case management systems
- The Policy Working Group deliberated on the implementation of Article 140a
- The Policy Working Group identified 7 issues for discussion by the full Committee



Issue 1

On what types of offenses should the DAC-IPAD focus its recommendations concerning Article 140a, UCMJ?



Issue 1

Options

1. The Committee focuses only on sexual assault cases.
2. The Committee focuses on all UCMJ offenses.
3. The Committee focuses on sexual assault and related offenses.



Issue 1

Option 3:

Committee recommendations should extend to sexual assault and other special victim offenses.

- Interpersonal violence cases may involve sexual assault, or share characteristics in common with sexual assault cases.
- Examples:
 - Special victim cases
 - Complexities stemming from a close relationship between victim and accused
- Sexual assault and other cases are viewed as “high-visibility” cases
- Phrasing: “Related cases” vs. “Other cases, such as...”



Issue 2

On which of the four functions within Article 140a, UCMJ, should the committee focus its recommendations?



Issue 2 Options

1. The Committee focuses on data collection.
2. The Committee focuses on data collection and case management.
3. The Committee focuses on data collection, case management, and public access.



Issue 2

The Committee should focus on data collection and public access

- The provisions of Art. 140a prioritize data collection, but do not specify what to collect or how to collect it.
- “Public access” has two components:
 - Access to court documents in pending and completed cases
 - Aggregate data and analysis (historical data)
- The Committee may not be ready to make recommendations regarding case management, which extends across the investigation, prosecution, and appellate review of a case.

Example: www.uscourts.gov

“U.S. District Courts – Criminal Defendants Filed, by Offense”

Table D-2. (June 30, 2017—Continued)

Offense	2013	2014	2015	2016	2017
All Other Drugs, Total	22,077	20,171	19,126	20,170	19,494
Sell, Distribute, or Dispense	19,365	17,717	16,815	18,109	17,113
Import/Export	1,700	1,549	1,478	1,562	1,682
Manufacture	675	603	438	159	177
Possession	337	302	395	340	522
Other Drug Offenses	84	96	87	91	78
Firearms and Explosives Offenses, Total	8,402	7,726	7,739	8,660	9,340
Firearms, Total	8,221	7,537	7,602	8,518	9,188
Possession by Prohibited Persons	4,878	4,444	4,481	5,034	5,499
Furtherance of Violent/Drug-Trafficking Crimes	1,859	1,890	1,943	2,203	2,379
Other Firearms Offenses	1,484	1,203	1,178	1,281	1,310
Explosives	181	189	137	142	152
Sex Offenses, Total	3,450	3,425	3,300	3,369	3,141
Sexual Abuse of Adults	144	111	110	139	119
Sexual Abuse of Minors	747	917	818	971	853
Sexually Explicit Material	1,739	1,595	1,636	1,556	1,469
Transportation for Illegal Sexual Activity	230	281	223	226	228
Sex Offender Registry	587	511	498	470	461
Other Sex Offenses	3	10	15	7	11

Example: www.uscourts.gov

“U.S. District Courts – Criminal Defendants Disposed of, by Type of Disposition and Offense, During the 12-month Period Ending December 31, 2017”

Table D-4.

U.S. District Courts–Criminal Defendants Disposed of, by Type of Disposition and Offense, During the 12-Month Period Ending December 31, 2017

Offense	Total Defendants	Not Convicted				Convicted and Sentenced			
		Total	Dismissed	Acquitted by		Total	Plea of Guilty	Convicted by	
				Bench Trial	Jury Trial			Bench Trial	Jury Trial
Total	75,868	6,279	5,995	81	203	69,589	67,959	175	1,455
Sex Offenses, Total	3,080	176	157	2	17	2,904	2,791	12	101
Sexual Abuse of Adults	88	21	8	1	12	67	57	1	9
Sexual Abuse of Minors	677	51	45	1	5	626	579	4	43
Sexually Explicit Material	1,559	60	60	-	-	1,499	1,463	6	30
Transportation for Illegal Sexual Activity	316	17	17	-	-	299	282	-	17
Sex Offender Registry	428	25	25	-	-	403	400	1	2
Other Sex Offenses	12	2	2	-	-	10	10	-	-



Issue 3

**When does a case begin for purposes of
Article 140a, UCMJ?**



Issue 3

Options

1. A case begins when a report of sexual assault is made to law enforcement.
2. A case begins at preferral.
3. A case begins at referral.



Issue 4

**When does a case end for purposes of
Article 140a, UCMJ?**



Issue 4 Options

1. A case ends at the completion of appellate review.
2. A case ends when a defendant is released from post-trial confinement.



Issue 5

Should Article 140a, UCMJ, provide a means to monitor compliance with federal statutory requirements and DoD policy?



Issue 5

Options – Identify specific statute(s)

- Uniform Crime Reporting Act of 1988
- Victim Rights and Restitution Act of 1990
- Military Sex Offender Reporting Act of 2015
- Brady Handgun Violence Prevention Act of 1993



Issue 5 - Considerations

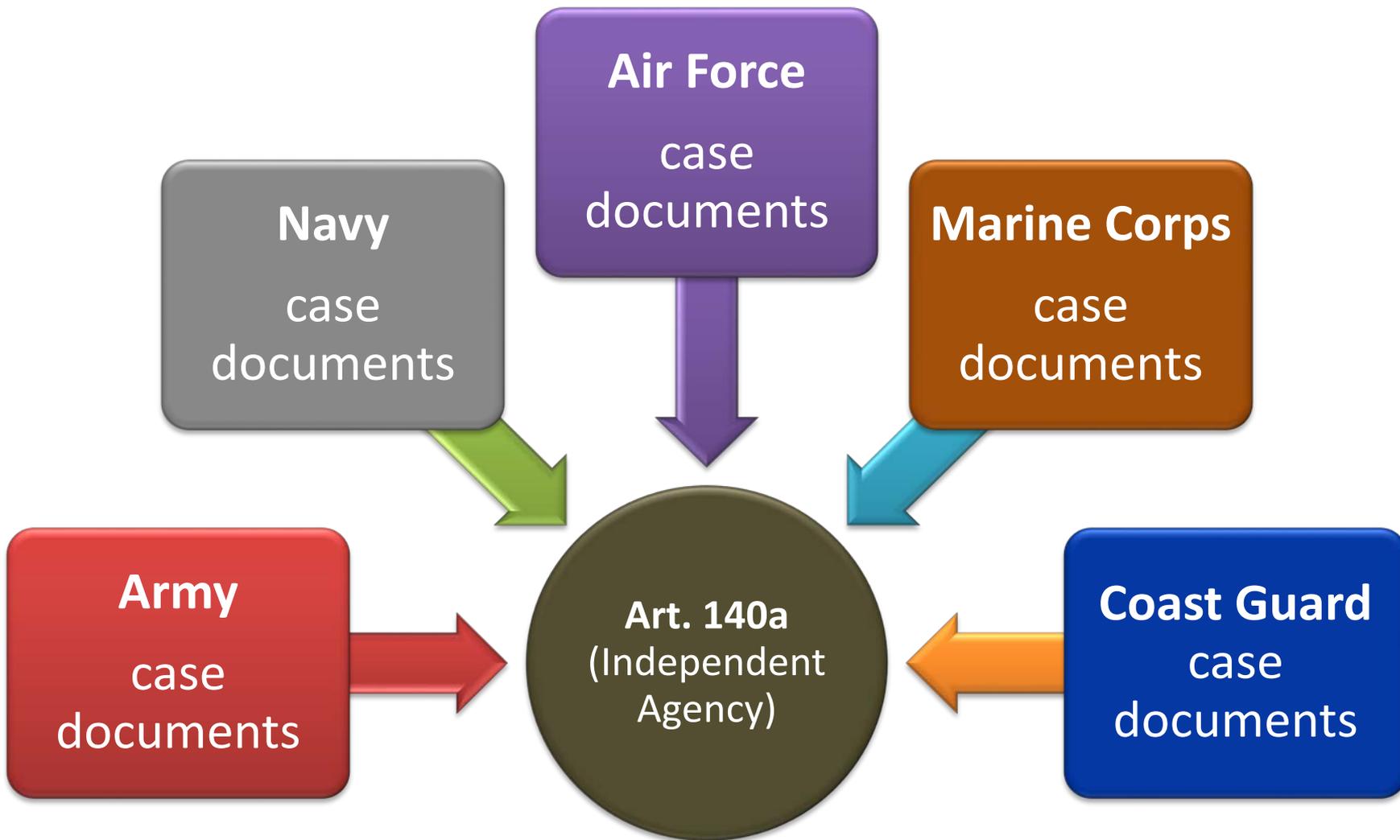
- Source data may cross organizations (legal, investigative, corrections)
- Data collection potentially takes longer
- Oversight role?
- Enhances ability to respond to ad hoc queries



Issue 6

Best practices

- a. Use standardized source documents
- b. Centralize data collection in one place
- c. Use an electronic database
- d. Limit data entry to a team of trained professionals
- e. Ensure Art. 140a system is the system of record, with regular audits to ensure accuracy
- f. Shorten time between case completion and published data
- g. Military Services maintain case management systems independent of the Art. 140a data collection system





Issue 6

Best practices - goals

- Complete data set on all military justice activities being evaluated
- Accurate data
- Thorough case data
- Expert analysis of the information



Issue 7

Miscellaneous Data Elements to Consider Including in an Art. 140a System

- Expedited transfers
- Collateral misconduct
- Alcohol and/or drug use by victim/accused
- Relationship between accused and victim
- Civilian crimes on military installations
- Other issues identified by Committee members



Issues identified by the Policy Working Group

1. Offenses
2. Functions of Art. 140a
3. When a case begins
4. When a case ends
5. Monitoring federal statutory requirements
6. Best practices for data collection
7. Other specific data elements



Format and Timeline for Art. 140a Recommendations

- Letter to the Secretary of Defense
- Attachments or Enclosures
- Deadline: September 2018

Hello,

My name is Kylisha Boyd. I was raped by a United States Airforce active duty member in July of 2016. At the time I was halfway through a criminal justice administration degree. I had a decent understanding of court process, investigation, and prosecution. I was a former DOD employee and raising my 12yr old son who had lost his father a few years earlier. I had not been in a relationship for a while and was living at home with my parents.

On the night of July 6, I went out with some friends and my mother to celebrate her 60th birthday. I met the man who would rape me at the bar. I ordered two drinks that night. He insisted on buying me a drink, and I always maintained that he put something in that drink. I was not in the habit of approaching strange men, he had approached me. I assessed whether he was a danger risk and his relationship status. Since he told me he was in the military and divorced, with children, I felt he would be safe because he had a lot to lose.

I decided to go back to his hotel room after everyone else left the party for a consensual sexual encounter. Before we left the bar, we discussed that he would stop if I said no to anything and that he would use a condom. He wanted to tie me up and I agreed, although later I would decide this was not a good idea. Looking back these were major faults I held against myself and a source of embarrassment in deciding whether to come forward. I still regret the poor decisions I made that night and feel I put myself in a bad situation. But I now also know it was not my fault.

When he tied me up I felt an intense fear come over me. I immediately begged and pleaded with him to untie me, but it was too late. He gagged me with a belt and rag, which I had not agreed to and he refused to let me go. He then began trying to drug me. As he raped me, I just wanted it to be over. I was afraid I would die there in that room and no one would know where I was or who did it. When I woke up, I was able to escape because he was asleep. I will never know what he intended to do to me. I consider myself lucky to be alive and healthy. I have remained sober from drugs and alcohol since that night.

What I also did not know and what was never disclosed to me was that he was HIV-positive. I later learned that he was required to tell me he was HIV positive and supposed to use a condom. I was devastated and terrified when I found out

the next day, from the forensic nurse that my rapist was HIV-positive. He took away my right to decide whether I wanted to take that risk. I had to go through a rigorous medication cycle and wait a full year to be assured I was negative.

I never intended to report this. I was extremely embarrassed and hurt. I could not believe this happened to me. Here I was studying criminal justice and had become a victim. I knew if I reported, I would have to disclose my drug use and could end my career and end up in prison. When I finally reported, the officer stressed the importance of preventing this from happening to someone else. I hadn't thought about that aspect. This was the deciding factor for me. I could not live with myself knowing he could do this to someone else because I didn't tell.

I had to write a statement right there in the parking lot in my car. I knew the importance of including all the details, but I was honestly still in shock. I got the main information, that he tried to drug me, raped me, wouldn't let me go, and strangled me. However, this statement dwarfed in comparison to what he did and lacked details describing the entire incident.

The next officer I spoke with witnessed incoming text messages from the man who raped me. During this interview, I disclosed what I could remember. However, the case was quickly transferred to the military. I did not know I had the right to express a choice of jurisdiction and did not know enough about military justice to make an informed decision.

The evidence in my case was very compelling including:

- Pills he tried to drug me with,
- The chair with the belt still tied to the leg (which I escaped from),
- The belt he choked me with,
- HIV medication,
- text messages sent to me from my rapist (while I was in the process of filing my report to police) stating "...I just remember not untying you as soon as you wanted to go"

The only text messages retrieved by investigators were from my own phone (which I got back over 1yr later). I still cannot understand why they did not obtain this evidence from his phone. I really did not want to hand over my phone. There were other people's private information I would be handing over. I initially

refused to turn it over. I went home and started to delete other messages to protect the privacy of my friends. I later decided to turn it over. The defense made a huge point about this when the prosecution could have obtained the same information from his device instead of mine.

At the time of the assault, I was a civilian and thus did not have a right to an appointed lawyer. I was told by the military prosecutor during my forensic interview that I had a right to a lawyer but, that getting a lawyer complicates the process and having one would likely cause bias with some judges and juries.

In my case this definitely turned out to be true. I initially agreed to proceed without legal counsel. After realizing I was giving up my rights to privacy and not being wholly informed on case progress, I found a civilian lawyer. I did not receive a resource list of available legal assistance. I found a lawyer on my own, just a few weeks before trial was scheduled to begin. The defense was aggressively seeking my counseling and medical records. My lawyer was able to prevent them from being compelled. At the trial my lawyer was not formally acknowledged to the court. He was not allowed to object and was prevented from full participation in the trial. I had questions for my lawyer during my cross examination. I asked procedural questions (not about my testimony) during the break. When this was raised by the defense counsel, the judge directly questioned me on the stand about what communication I had with my legal counsel despite my lawyer's objections.

I was completely ill-prepared for this trial which took place at Wright-Patterson Air Force base and was decided by judge only. I met with the prosecution one time prior to the day before trial. On several occasions I had answered questions from different investigators. These were specific questions I answered that were not discussed previously. This resulted in emphasis being placed on certain details or details being missed depending on the focus of each individual investigator. During trial, this was construed as me changing what I reported. I never changed any statements, I simply gave more detail when prompted. My statements were consistent, and the additional details were supplemental, not substantively different. My character and the consistency of my statements were attacked without rehabilitation from the prosecution.

The process of memory recall and trauma was not addressed properly by the prosecution. There were paid experts present for the prosecution who could have testified about why a trauma victim might not recall all events in a “normal” fashion. However, they were never utilized at trial for testimony. By the time the prosecution realized they should use the experts they had retained to explain this, the judge would not allow it. It was too late. I can still remember the sinking feeling sitting there knowing all the things the prosecution should have anticipated and did not prepare for.

It cannot be ignored that I was impaired at the time of the assault. I was fully aware that this information would be used against me. I decided to tell the truth, the whole truth, to stop this guy from doing this to someone else. I was completely honest to the point of placing myself in jeopardy of my own prosecution, yet I still went forward with the case (prior to any mention of immunity). Being a criminal justice student at the time of the assault, I felt a sense of duty to see this through even if it meant I was prosecuted or cast in a negative light. The prosecution had an opportunity to highlight this but remained silent. I never lied to any investigator or official about anything. I repeated the same description over and over because it was the truth.

Closing arguments was the most difficult part of the trial. I sat and listened while the defense called me a liar drug addict who had no respect for the justice process. The accused was made out to be a victim of someone who was cunning and “knew what to say”. Those words cut deep. I hoped the judge understood that I had no motive to willingly place my freedom and career in jeopardy to accuse a complete stranger. I hoped he would consider what I had to lose in coming forward. But when the defense attorney argued that this case was brought because of political correctness and pressure, and I saw the judge nodding along, I knew all hope was lost.

As the verdict was being read, my knees buckled when I heard the words “not guilty on all charges”. I could not understand the judge’s reasoning. I felt confused, embarrassed, disappointed, and angry. I requested transcripts of the case to try and understand what happened. I was told there would be no transcripts created because he was found not guilty. The lack of transcripts in

acquittals coupled with the lack of written or verbal opinion of a judge's reasoning for findings makes this a very closed and suspect process.

It is my hope that this committee will look at my case and others to identify what steps can lead to a better representation of justice.

Thank you for your time,

Kylisha Boyd

Good afternoon. I am (ret.) Staff Sergeant Alyssa Rodriguez, and I am here to tell you about my experience in the Air Force. When you see videos or commercials on the computer or on the television screen, you see military members, regardless of the branch, working together as a team. Recruiters come to your school during your junior year of high school tell you about all the benefits you could receive if you join the military. When the recruiters talked to me one benefit stood out the most. The benefit that appealed to me the most was the camaraderie. The idea of a family working together for the ultimate goal. That is what I craved most in my life. The thought of joining the military made me feel so anxious, but anxious in a good way. I was excited to be challenged physically and mentally and experience things I never would have done had I not joined the military. I decided to join the Air Force because I wanted to be a part of something greater than myself. While it may seem cliché, it's the truth. I wanted my family to look at me and be proud that I, Alyssa Rodriguez, was willing to make sacrifices that many others were unwilling or unable to make.

I served in the Air Force for 9 years in the Healthcare Services field, supporting the medical providers and technicians. I remember the day in technical training when we were assigned our very first duty stations. I was originally handed notice that I would be going to Guam. I was so excited to go overseas. But a few hours later, I was told that my first duty station had changed to Kessler Air Force

Base, Mississippi due to the manning assistance needed in the wake of Hurricane Katrina. I was told that I was one of the first Airmen to get stationed there after the disaster struck. Even though I wasn't going overseas anymore, I was still excited because I was going to be a part of the reconstruction of the base, more specifically, one of the biggest medical centers in the Air Force. I accepted every job title I received while at Keesler with such pride. I became the admin for the Life Support program and received a "Best Practice" award. I also became a Life Support instructor and thrived in the instructor environment and received Airmen of the Quarter awards.

Eventually, I was seen by leadership and was offered the Non-commissioned Officer In Charge of a squadron (MDTS), meaning I would be in charge of the unit. I absolutely loved my job and felt ready for a new challenge and new environment. I knew I wanted to make a career out of the Air Force and this position would assist me to do great things and make an impact.

While working as the Non-commissioned Officer in Charge, I received orders to go to Aviano Air Base in Italy. This was the most exciting news, to the point where I physically fainted when I received the news while at work. The idea of going overseas meant meeting new people and forming bonds with peers and possibly finding new mentors. I was also excited to see what the hype was about being stationed overseas. My peers constantly talked about the bonds formed,

morale, and the camaraderie that came with being out of the country and spending time with the people you worked with because everyone ends up feeling a little alone in an unfamiliar place.

When I got to Aviano, it wasn't anything like what I had expected. Everyone was doing their own thing and the morale was so low people barely talked to one another. I wanted to be the change we needed as a team. I tried to form new bonds with everyone in the section. Some seemed interested and others, I felt just needed more time.

Two months after I arrived, in July of 2012, I was sexually assaulted by a fellow Airmen. That day we had gone to the mall and window shopped, had gelato, and had dinner at a fast food restaurant. We talked about movies we had seen and ones we would like to eventually watch. After a day of what I thought was building morale and forming friendships, I was taken advantage of by people I thought I could trust. I wasn't drunk, I wasn't leading anyone on, I didn't ask for it, or change my mind. But someone thought it would be a fun game to see who could have sex with me first and the idea of being turned down to them wasn't how they wanted to play the game. It wasn't a game, nor was it fun to me.

In the military, you have the option to file an unrestricted or restricted report after a sexual assault. Filing unrestricted means that the details are shared throughout your chain of command. When you file a restricted report you keep your

privacy, but no criminal charges will be brought forth. After my assault I chose to file a Restricted Report. I originally filed a Restricted Report because, even after just a little Victim Advocate training and Computer-Based trainings about sexual assault, I knew that filing an Unrestricted report would mean that I wouldn't have any privacy during one of the most difficult times of my life. It would mean that I would have to remember things I otherwise wanted to forget, and would have to endure things no one should have to. Even though I had the intention to eventually change my report to unrestricted, I wanted at least a little time to brace myself for the events that were about to come. Regardless of that fact, I still had a Rape kit done at the hospital. Despite everything that had already happened to me, I choose to go to the hospital and sit in a cold bright room. I was tired, uncomfortable, completely vulnerable, and traumatized.

I did eventually change my report to Unrestricted so that charges could be brought forth. I decided to do so when an airmen in my duty section told me that the same person who had assaulted me had also touched her inappropriately while at work. She told me how uncomfortable it made her feel. In that moment, I knew that this person didn't deserve any sort of sympathy and would continuously assault people because he didn't see anything wrong with what he was doing. He didn't have any remorse, or he just didn't care because he knew there were no consequences.

Changing my report to Unrestricted only complicated things. I didn't have a support system because I was so new to the base, nor had I made any real friends. My attacker was in my unit which meant I would have to see him every day, which was unbearable.

Because of this, I requested to move to a different section in my unit so I wouldn't have to see my assailant on a daily basis. Leadership moved him to a different unit instead, but now he was physically closer in proximity to my office. He was now right next door. In addition, my supervisor was extremely unsupportive after she learned what happened and continuously made derogatory comments towards me. For example, she told me, "It happens to all of us," "Don't talk about it," and "Suck it up". She also felt it was in my best interest to work harder, and piled more work on top of what I already had to do, knowing I could barely get my original responsibilities done. I felt alienated and alone, and didn't know what I could do to make things better.

It wasn't until after I changed my report to Unrestricted that I learned about other options. Only after I changed my report, did the Sexual Assault Response Coordinator (SARC) inform me of the possibility of transferring to another base closer to my support system – something called an Expedited Transfer Request. In fact, the SARC didn't inform me until after she learned that my attacker was in my

unit and he went to her office to talk to her about the case. I wish I had known that this was an option from the very first day.

I felt unsupported at Aviano and decided to take advantage of the Expedited transfer program. My original Expedited Transfer request to Langley Air Force Base was denied, due to a manning issues. I was sent to Joint Base Anacostia-Bolling instead, which was not equipped with the medical and mental health support systems I needed. On top of that, leadership at my incoming base did little to help me settle in or find the support I needed. Looking back, I feel certain I would have been able to remain on active duty if I would have received the medical, professional, and emotional support I most desperately needed at the time.

There is one thing that I think would have made a huge difference to me while I struggled with this horrific experience – and that is having a qualified SVC from the very beginning. I didn't get one until I was already transferring duty stations. I was left to navigate the system on my own, without fully understanding my options.

To make matters worse, my original SVC was completely incompetent and didn't seem to understand anything that was going on. I believe that if he had stayed on as my SVC, I would not have been able to proceed with my case. I was lucky in one small way, however – and that is because I was able to find a new SVC. I am forever grateful for the SVC that I ended up with. Maribel was understanding, She fought for what I wanted and explained the process to me until I understood what

was going on and what would happen based on the decisions I made. She gave me all of the options and informed me how they would affect the case. That was the first time during the process I felt represented. It is truly my belief that, while victims are now afforded an SVC, many SVCs aren't able to advocate for their client's rights without fearing that they will be reprimanded if their advocacy doesn't align with the military's perspective.

After changing my report to unrestricted, I endured two Article 32s. I testified in both. During the first Article 32, I felt that the questions I was asked by the investigating officer aligned more with the defense than a neutral party or anyone who had my interests at heart. They felt invasive. And I didn't feel like he could be an unbiased decision maker. For example, he repeatedly asked me questions about my underwear; if I had any on and, if I did, what kind of underwear were they. As I expected, after the first Article 32 the Preliminary Hearing Officer recommended not to move forward with my case. Thanks to the dedication of my SVC, however, the Secretary of Defense ordered a new Article 32, which eventually resulted in the Preliminary Hearing Officer recommending trial. In that second Article 32, I could feel the difference in the way the officer conducted himself. He respected me, and saw me as a human being.

During the investigation and lead up to trial I cooperated the entire time, with full knowledge that I didn't necessarily have to. But it was my choice. I volunteered

to sit down for multiple interviews with the defense. I was required to testify about my sexual history. I was asked questions about a prior sexual assault. I had to endure interviews with a forensic analyst present who analyzed my mental stability. I had to testify about my mental health so that the judge could decide if the defendant should have access to my mental health records. Regardless of the fact that I did not want anyone to review my mental health records, the judge ordered me to turn them over so that he could review them in chambers. Nothing was sacred, and I had no privacy.

Even during the trial I felt like there was still a bias toward the defendant. Members of the jury were able to ask questions. Their questions grilled me on my inability to recall the precise number of seconds the assault took place, whether I had received sufficient awards and decorations, and why I wanted an expedited transfer. It made me feel like a program that was designed to help victims of sexual assault was being used against me

I wish I had been better informed throughout this entire process. If I had had more knowledge about my options and about how the process worked legally, I would have been more prepared for what was about to come. Even though the Air Force offers some Victim Advocate training, I was not prepared. I would have been more comfortable had I received access to a competent, trained legal representative from the very first moment I filed my report. Having knowledge of the expedited

transfer program earlier in the process and having a competent SVC immediately after filing my restricted report would have made a significant difference to me. And I'm sure it would to others.