

THE JOINT SERVICE COMMITTEE ON MILITARY JUSTICE



Judicial Proceedings Panel Brief

Colonel William N. Pigott, USMC
Chair, JSC
November 18, 2016



AGENDA

- Joint Service Committee on Military Justice (JSC) Overview
- Make-up of the JSC
- Operation of the JSC
- Recent Executive Orders
 - Executive Order 13696 of June 17, 2015
 - Executive Order 13730 of May 20, 2016
 - Executive Order 13740 of Sept 16, 2016



JSC OVERVIEW

- Executive Order 12473 of April 14, 1984
- DoDDir 5500.17, “Role and Responsibility of the Joint Service Committee on Military Justice,” May 3, 2003, certified current as of October 31, 2006.
- Reviews the Manual for Courts-Martial (MCM) annually and proposes amendments as necessary



MAKEUP OF THE JSC

- Voting Group members
- Working Group members
- Chair
- Executive Secretary
- Advisors
 - DoD Office of General Counsel
 - Court of Appeals for the Armed Forces
 - Joint Chiefs of Staff Legal



OPERATION OF THE JSC

- Uniform Code of Military Justice
- Article 36 provides authorities to the President for pretrial, trial, and post-trial procedures
- Manual for Courts-Martial
 - 5 Parts:
 - Part I: Preamble
 - Part II: Rules for Courts-Martial
 - Part III: Military Rules of Evidence
 - Part IV: Punitive Articles
 - Part V: Nonjudicial Punishment Procedures
 - Supplementary Materials: Preface, Table of Contents, Discussions, Appendices, and Index



OPERATION OF THE JSC

- Input for changes to Manual for Courts-Martial
 - Statutory changes
 - Annual call for proposals
 - Public and Services
 - Panel recommendations
 - Case law updates
 - Directly to Executive Secretary via JSC website



OPERATION OF THE JSC

- 60-day Comment Period
 - Federal Register for public comment
 - Service solicitation
- Submission of proposed Executive Order to DoD Office of General Counsel
- If President signs Executive Order, submission of Supplementary Materials accompanying MCM to DoD Office of General Counsel



EXECUTIVE ORDER 13696

17 JUNE 2015

- Implements Article 6b rights throughout MCM
- R.C.M. 404A and 405 – New Article 32 procedures
- R.C.M. 702 – Depositions
- R.C.M. 1001 and 1001A – Crime victims' rights to be heard during presentencing and allows sworn or unsworn victim impact statements in non-capital cases
- R.C.M. 1107 – Implements changes to Article 60
- Mil.R.Evid. 513 and 514 – Requires a hearing prior to Military Judge ordering *in camera* review of matters



EXECUTIVE ORDER 13730

20 MAY 2016

- R.C.M. 104 – Ratings for Special Victims’ Counsel and Victims’ Legal Counsel
- R.C.M. 306 – Victim preference on jurisdiction
- R.C.M. 705 – Victim consultation on pretrial agreements
- R.C.M. 1109 – Vacation hearing procedures
- R.C.M. 1203 – Procedures for victim writs of mandamus
- Mil.R.Evid. 304(c) – Not every element or fact must be independently proven



EXECUTIVE ORDER 13740

16 SEPTEMBER 2016

- Implements portions of FY12, 14, and 15 NDAAAs
- Preamble – MCM Name and Supplementary Materials
- R.C.M. 701/703 – Defense Counsel interview of victims
- R.C.M. 906 – Unreasonable Multiplication of Charges and Multiplicity
- Part IV - No longer lists lesser included offenses
- Para. 3.b. – Art. 79 - Military judges must *sua sponte* instruct on lesser included offenses
- Provides elements, explanations, and sample specifications for Articles 120, 120b, and 120c



EXECUTIVE ORDER 13740

16 SEPTEMBER 2016

- Reflects elimination of consensual sodomy
- Article 134 offenses - Specifically requires specifications allege terminal elements
- Article 134 Animal abuse – comprehensive offense
- Article 134 Indecent conduct
 - Prior “Indecent Acts with Another,” but no requirement for another person
- Article 134 Pandering and prostitution – broadened to include any sexual act, rather than just intercourse, for compensation

QUESTIONS?



JSC Website: <http://jsc.defense.gov>