



March 20, 2015

MEMORANDUM FOR Judicial Proceedings Panel, One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, VA 22203

SUBJECT: Follow-On Responses to Judicial Proceedings Panel Members' Questions

1. On March 13, 2015, the Judicial Proceedings Panel (JPP) conducted a public meeting on the topic of restitution. Two questions asked by panel members required follow-up responses.
2. Mr. Thomas Taylor asked whether amending Article 139, Uniform Code of Military Justice (UCMJ), to include bodily harm has ever been previously considered.

Response: From our records review, it does not appear that the Joint Service Committee (JSC) has ever studied amending Article 139, UCMJ, to include bodily harm. The review did show that in 2003, the JSC studied amending Article 57, UCMJ, and Rule for Court-Martial 1003 to permit restitution as a sentence. At the conclusion of the study, the JSC determined that allowing restitution as a permissible punishment at a court-martial to be unworkable.

3. Judge Barbara Jones noted that the RSP recommended Manual for Courts-Martial modifications and appropriate regulations providing victims the right to be heard: (A) regarding a pretrial agreement (PTA); (B) regarding a plea; and (C) before the convening authority acts on a PTA offer from the accused. She also noted that on December 14, 2014, the Secretary of Defense advised that the Office of General Counsel referred these recommendations (Recommendations 54-A, 54-B, and 54-C) to the Joint Service Committee on Military Justice. Judge Jones specifically wanted to know the status of this recommendation.

Response: The JSC is reviewing these recommendations as a part of its 2015 Annual Review. The recommendations have moved from the JSC Proposal Log and into the JSC Action Log. At this time, it appears that any proposal to implement these recommendations will center on a possible change to Rule for Courts-Martial 705 (pretrial agreements) and further implementation through Service regulations which the Services have already begun to do.

4. Additionally, during my testimony, I used a slide deck that included a reference to the Military Claims Act (MCA) and I indicated that some Services were using the MCA as a mechanism to provide restitution to victims. Since providing that testimony, I learned that the Services are not able to use the MCA as a means to provide restitution; rather, in certain cases, such reimbursements could be accomplished under the Personnel Claims Act (PCA). However, payments to civilians are not authorized under the PCA.
5. Finally, during my testimony, I made reference to the JSC's recent approval of new Standard Operating Procedures. A copy of those procedures are enclosed.

6. The POC for this memorandum, Captain Harlye S. Carlton, USMC, can be reached at harlye.carlton@usmc.mil or (703) 693-9299.



J. G. BAKER
Colonel, U.S. Marine Corps
Chair, Joint Service Committee on Military Justice

Encl
- SOP for the JSC



11 March 2015

MEMORANDUM FOR JOINT SERVICE COMMITTEE ON MILITARY JUSTICE

SUBJECT: Standard Operating Procedures for the Joint Service Committee on Military Justice

Reference: DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," 3 May 2003

1. Purpose. These procedures govern the Joint Service Committee on Military Justice (JSC) operations. They are permitted by the reference.
2. Mission. Further the Department of Defense's duty to assist the President in fulfilling the responsibility of ensuring that the Uniform Code of Military Justice (UCMJ) and Manual for Courts-Martial (MCM) constitute a comprehensive body of military criminal law and procedure.
3. Primary Duties
 - 3.1. Conduct an annual review of the MCM, considering judicial and legislative developments in civilian and military law, including any amendments to the UCMJ.
 - 3.2. Propose amendments to the UCMJ and MCM as necessary.
 - 3.3. Perform studies or tasks related to the administration of military justice as the General Counsel of the Department of Defense (DoD GC) shall direct.
4. Organization. The JSC consists of the Voting Group (VG), the Working Group (WG), the JSC Chair, the Executive Secretary (ExecSec), and Advisors.
 - 4.1. Voting Group. Each Service shall provide one VG member, appointed by the respective Judge Advocate General (TJAG) or Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC). Voting Group members are responsible for promoting their Service positions during the execution of JSC duties. Voting Group members may delegate the authority to vote on specific matters to the WG member, or other appropriate individual, for that Service when the VG member is unavailable to vote.
 - 4.2. Working Group. Each Service shall provide at least one WG member, appointed by the respective VG member for that Service. Working Group members are responsible for staffing and studying proposals and other military justice issues at the direction of the VG, and for making reports to the VG as directed. Working Group members may vote on specific matters on behalf of their Services in the absence of the VG member when the authority to vote has been so delegated.

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4.3. JSC Chair. The JSC is headed by the Chair. The JSC Chair position rotates biennially among the Services in the following order: Army, Air Force, Marine Corps, Navy, and Coast Guard. The JSC Chair shall be the VG member for that Chair's Service. A Service may submit a request to waive or defer its JSC Chair position for good cause to the DoD GC. A Coast Guard's request not to be considered for JSC chairmanship shall be honored. The Chair's duties include:

4.3.1. Control the agenda for the annual review;

4.3.2. Lead VG meetings;

4.3.3. Represent the JSC at public meetings;

4.3.4. Acknowledge and respond to proposals received from non-DoD individuals and agencies during the public comment period, providing the proponent with an explanation of action taken; and

4.3.5. Perform other tasks as directed by the DoD GC.

4.4. ExecSec. The ExecSec is provided by the JSC Chair's Service. The ExecSec may be the WG member for that Service. The ExecSec's duties include:

4.4.1. Preparing and distributing the agenda, outstanding minutes, and relevant documents to the WG members prior to WG meetings, and to all VG, WG, and Advisors prior to each VG meeting;

4.4.2. Receiving and tracking all proposals and comments received by the JSC. The ExecSec shall also maintain any files on proposals received;

4.4.3. Annual review. Arranging for publication of the annual call for proposals in the Federal Register and ensuring solicitation for proposals from the Services;

4.4.4. Proposed changes to the MCM. Arranging for publication of proposed changes to the MCM and request for comments in the Federal Register and ensuring solicitation for comments from the Services. The ExecSec shall also arrange for the publication of a notice of actions taken in response to comments received in the Federal Register;

4.4.5. Maintaining the JSC public website and internal SharePoint site;

4.4.6. Tasking WG members as necessary; and

4.4.7. Executing other actions as may be directed by the JSC Chair.

4.5. Advisors. Advisors representing the DoD GC, United States Court of Appeals for the Armed Forces, and the Legal Advisor to the Joint Chiefs of Staff shall be appointed by the

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appropriate personnel in their organizations. Advisors shall be invited to all meetings and may provide input on JSC matters. Advisors are non-voting members of the JSC.

5. Annual Review

5.1. Generally. The JSC shall conduct an annual review of the MCM, accounting for judicial and legislative developments in military and civilian practice. The annual review cycle concludes on 31 December and shall commence no later than 31 January via two simultaneous calls for proposals: (1) by Service solicitation from individuals and agencies within the DoD, and (2) by Federal Register for proposals from individuals and agencies outside the DoD. While the JSC shall conduct a call for proposals each year, proposals for amendments to the MCM or UCMJ shall be accepted regardless of when they are received.

5.1.1. From the Services via Solicitation. JSC VG members shall ensure that the solicitation for proposals is sent to appropriate groups within their respective Services no later than 31 January and shall allow 60 days for the submission of proposals. These groups include trial, defense, and victim counsel organizations, judiciaries, and Service legal training schools. By the close of the solicitation period, JSC VG members from each Service shall compile the proposals and, if sponsored by the VG member for that Service, forward them to the ExecSec for inclusion in the Proposal Log. These proposals shall be handled in accordance with the procedures outlined in the rules governing the Proposal Log. Each Service is responsible for notifying their respective groups of the action that the JSC voted to take on their respective proposals. Service members and DoD employees may follow the procedures in 5.1.2 to submit matters in their individual capacity.

5.1.2. From Organizations Outside the DoD or Individuals via the Federal Register. The solicitation for proposals shall be sent to the Federal Register for publication no later than 31 January and shall allow no less than 60 days for the submission of proposals. Proposals from organizations outside of the DoD or individuals shall be handled in the following manner:

5.1.2.1. The proposal shall be placed on the Proposal Log and shall be handled in accordance with the procedures governing the Proposal Log; and

5.1.2.2. Whenever practicable, at an appropriate time, the Chair shall notify the individual or agency that submitted the proposal of the action that the JSC voted to take (*see* Proposal Log procedures).

5.2. Report of Annual Review. After 31 December, the JSC shall draft, and by majority vote approve, a Report of Annual Review. The Report of Annual Review details the JSC actions taken over the course of that year. The JSC Chair shall transmit the Report of Annual Review to the DoD Office of General Counsel (OGC) no later than 31 January.

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6. Amendments to the MCM

6.1. Documents to Prepare. If the JSC decides to propose changes to the MCM, the JSC shall prepare the following two documents:

6.1.1. Proposed Executive Order (PEO). The PEO must include the parts of the MCM that are promulgated by the President (Parts I-V) and may include MCM parts that do not require Presidential promulgation (Table of Contents, Discussions, Analyses, Appendices, and the Index).

6.1.2. PEO Comment Log. The ExecSec shall maintain a PEO Comment Log for each iteration of PEO. The purpose of the PEO Comment Log is to track the comments received and action taken by the JSC pertaining solely to the Call for Comments for those specific PEOs. The PEO Log is separate from the Proposal Log and Action Log used in the normal course of the Annual Review. The implementation of any comment to either the PEO requires a majority vote from the VG. By a majority vote, PEO comments may be transferred to the Proposal Log for inclusion in the Annual Review.

6.2. Call for Comments. The JSC may solicit comments on the PEO via the Federal Register. Once the PEO is submitted to the Federal Register, the JSC should normally allow 60 days for comment. The ExecSec should compile the comments received for inclusion in the PEO Comment Log. The ExecSec should publish in the Federal Register a response detailing the actions taken by the JSC in response to all comments received.

6.3. Routing

6.3.1. PEO. After the PEO is approved by the JSC, the Chair shall transmit the PEO to DoD GC.

6.3.2. Other Proposed Changes. For any documents or proposed changes that do not require Presidential promulgation and are not included in the PEO, upon a majority vote of the JSC, the Chair shall transmit those documents or proposed changes to DoD GC for approval.

6.4. Changes to Federal Rules of Evidence. No later than 31 December the JSC WG shall conduct an annual review of the Federal Rules of Evidence in accordance with R.C.M. 1102 and report to the Chair any changes.

7. Amendments to the UCMJ. All proposed amendments to the UCMJ shall be added to the Proposal Log for VG consideration. If the VG votes to move a proposed amendment to the Action Log, the action officer assigned shall provide a summary of the issue and draft language for the amendment for VG review. If the JSC approves the proposed amendment and language, the Chair shall transmit the proposed amendment to DoD GC.

8. Other Tasks as DOD GC may Direct. Upon receipt of a task from DoD GC, said duty or task shall be placed on the Proposal Log for tracking purposes only. The item shall be moved to the

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Action Log as soon as practicable; at that time, the item shall be assigned a deadline and an Action Service(s) shall be assigned.

9. Proposals. Proposals are any written submissions to the JSC regarding changes to the UCMJ or MCM. Proposals may be received by the JSC at any time and shall be tracked on the appropriate log.

9.1. Proposal Log. The Chair and the ExecSec control the modification of the Proposal Log. All proposals (1) offered by a JSC Advisor, (2) received or offered by any VG or WG member, or (3) offered by a member of the public shall be forwarded to the ExecSec for inclusion in the Proposal Log. The JSC shall follow the following procedures with respect to the Proposal Log:

9.1.1. The ExecSec shall notate the proposal in the proposal log and shall acknowledge receipt to the sender.

9.1.2. The JSC shall, by majority vote, take one of the following actions on all new proposals:

9.1.2.1. Return the proposal to the proponent as not within the cognizance of the JSC (ExecSec or Service, as applicable, shall inform the proponent and may suggest an appropriate avenue for the proposal);

9.1.2.2. Reject the proposal;

9.1.2.3. Table the proposal; or

9.1.2.4. Move the proposal to the Action Log.

9.2. Action Log. Voting to move a proposal to the Action Log means that the JSC will review that proposal; it does not mean that the JSC endorses the proposal or that the proposal has been approved. The Chair and the ExecSec control the modification of the Action Log. The ExecSec, in coordination with the WG, shall assign a deadline and task a Service. The JSC Chair may grant an extension of up to 30 days from the originally assigned deadline. Additional extensions require a VG majority vote.

10. Operating Procedures

10.1. VG Meetings. Voting Group meetings will normally occur on the second Wednesday of each month. The JSC Chair may modify this schedule *sua sponte* or upon request of a VG member for good cause. Working Group members should attend all VG meetings. The JSC Chair shall preside and shall conduct the meeting, normally, in the following manner: (1) approving minutes from the previous meeting; (2) old business (includes Action Log items); (3) new business (includes Proposal Log items). The ExecSec or other WG member shall maintain minutes, which shall be approved at the next VG meeting. The minutes shall contain, at a

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minimum, persons in attendance, start and end times, summary of the matters discussed, and actions taken. All approved minutes shall be uploaded to the JSC SharePoint site.

10.2. WG Meetings. Working Group meetings shall be coordinated by the ExecSec. The ExecSec or another WG member shall maintain minutes, which shall be approved at the next WG meeting. The minutes shall contain, at a minimum, persons in attendance, start and end times, summary of the matters discussed, and actions taken. All approved minutes shall be uploaded to the JSC SharePoint site.

10.3. Voting

10.3.1. When any item (e.g. proposal, report) under consideration by the JSC requires a vote, the item must pass by a majority vote of the VG, which is 3 or more votes in favor. Failure to vote by the deadline shall be treated as an abstention. The JSC Chair may reschedule any vote *sua sponte* or upon request by any JSC VG member for good cause.

10.3.2. Whenever practicable, the VG should vote in person. However, the VG may vote items via email, telephone, or other remote means.

11. Subcommittees. When a proposal or a task from DoD GC requires in-depth study, a subcommittee may be created. Subcommittees are created by the signing of a Subcommittee Charter which shall include, at a minimum, the duration of the subcommittee, its mission, its objectives, and its authorities. Subcommittee Charters shall be signed by the DoD GC or the DoD GC designee. When necessary, JSC shall draft a Subcommittee Charter for DoD GC signature when a majority of the VG deems a subcommittee is required to study a proposal or issue. Services shall provide personnel in accordance with the charter. A draft Subcommittee Charter requires a VG majority vote prior to transmitting the draft Subcommittee Charter to DoD GC for signature.

12. Public Meetings. The JSC should host at least two public meetings per annual review cycle unless the JSC Chair determines that more or less public meetings are necessary. The first public meeting should occur during the 60-day period for Service solicitation and call for proposals in the Federal Register. The second meeting should occur during the 60-day comment period for any proposed amendments to the MCM. If the JSC has no proposed amendments to the MCM, or if the Secretary of Defense waives the 60-day notice requirement for proposed changes to the MCM, the JSC should hold a public meeting to inform the public of ongoing and completed projects and receive any additional comments.

13. Communication. Any documents posted to a public website or released to the public by the JSC shall have the approval of the majority of the VG. The final release authority is the DoD GC or the DoD GC designee.

13.1. JSC Public Site. The JSC public site shall contain the mission of the JSC, VG member names, final documents, announcements, contact information for the ExecSec, and other relevant information as approved by the JSC. The JSC public site content shall be maintained by the ExecSec. The DoD GC Advisor shall liaise with DoD Security Personnel to examine all

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content posted to the JSC public site and shall ensure the documents undergo the prepublication review process.

13.2. JSC SharePoint Site

13.2.1. Generally. Voting Group and WG members will normally use the JSC SharePoint site as the primary means of sharing pre-decisional and approved documents, coordinating schedules, viewing the proposal log, and storing historical documents. The ExecSec is responsible for site maintenance, to include updating the calendar and contact information, and uploading and monitoring working and approved documents.

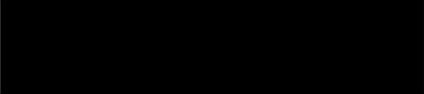
13.2.2. Access. Each Service may request and receive SharePoint access for as many individuals as it requires, understanding that the SharePoint site contains pre-decisional documents. If any Service requires access for individuals other than the Chair, ExecSec, VG members, or WG members, the VG member for that Service must sponsor that individual. The VG member shall send the request for access to the DoD GC Advisor, copying all VG and WG members. The DoD GC Advisor shall have administrative permissions to add individuals to the JSC SharePoint site. The ExecSec shall maintain a roster of who has access to the site. Service WG members are responsible for informing the DoD GC Advisor and ExecSec when an individual no longer requires access to the JSC SharePoint site.

14. Record Keeping. The Army shall maintain a system of records for the JSC. Additionally, all final or approved documents and subcommittee reports should be uploaded to the JSC SharePoint site. The ExecSec shall maintain all documents current as to that annual year, such as the Proposal and Action Logs, Subcommittee Charters, final reports, etc. No later than 31 January, the ExecSec shall transmit to the Army all hard-copy files and historical electronic files. Approved documents shall be saved with the date and the words “(VG Approved)” in the file name (Ex: R.C.M. 405 – 4 Sep 14 (VG Approved)).

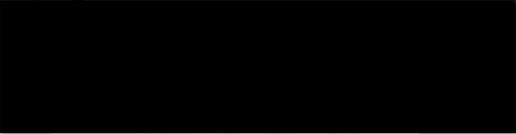
15. This document should be reviewed upon rotation of the JSC Chair to another Service.

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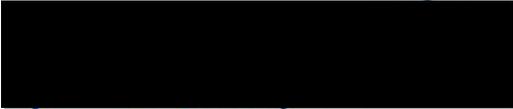
Signed this 11th day of March, 2015.


John G. Baker
Colonel, U.S. Marine Corps
JSC Chair


Michael A. Lewis
Colonel, U.S. Air Force
JSC VG Member


Robert J. Crow
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DoD GC, JSC Advisor


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JCS Legal Counsel, JSC Advisor