

Judicial Proceedings Panel
Minutes of August 7, 2014 Public Meeting

AUTHORIZATION: The Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (JPP), is a federal advisory committee established pursuant to Section 576(a)(2) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013, as modified by section 1731(b) of the NDAA for FY 2014, and in accordance with the Federal Advisory Committee Act of 1972, the Government in Sunshine Act of 1976, and governing federal regulations.

EVENT: The JPP held a public meeting on August 7, 2014, from 10:00 a.m. to 4:21 p.m., focusing on the history and elements of the laws criminalizing rape and sexual assault under state and federal law and the Uniform Code of Military Justice (UCMJ), which governs crimes committed by members of the Armed Forces.

LOCATION: The meeting was held at The George Washington University Law School, Faculty Conference Room Library, 2000 H Street NW, Washington, DC 20052.

MATERIALS: A verbatim transcript and video recording of the meeting, as well as preparatory materials provided to the Panel members prior to or during the meeting, are incorporated herein by reference and listed individually below. Materials received by the Panel are available on the JPP website: <http://jpp.whs.mil>.

PARTICIPANTS

Participating JPP Members:

The Honorable Elizabeth Holtzman, Chair
The Honorable Barbara S. Jones
Vice Admiral (Retired) Patricia A. Tracey
Professor Thomas W. Taylor
Mr. Victor Stone

Participating JPP Staff:

Lieutenant Colonel Kyle Green, U.S. Air Force, JPP Staff Director

Other Participants:

Ms. Maria Fried, Office of the General Counsel, Department of Defense, Designated Federal Official (DFO)

Presenters:

Mr. Dwight Sullivan, Office of the General Counsel, Department of Defense
Ms. Carol E. Tracy, Women's Law Project
Mr. John Wilkinson, AEquitas, The Prosecutors' Resource on Violence Against Women
Ms. Charlene Whitman, AEquitas, The Prosecutors' Resource on Violence Against Women
Professor Stephen Schulhofer, NYU School of Law, American Law Institute (by phone)
Captain Christian Reismeier, U.S. Navy, Chief Judge of the Navy
Mr. William Cassara, Attorney at Law, Augusta, Georgia
Colonel (Retired) Timothy Grammel, U.S. Army, former Trial Judiciary Circuit Judge

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Colonel Gary M. Jackson, U.S. Air Force, Staff Judge Advocate, Headquarters Air Force Global Strike Command

Public Comment:

None

MEETING MINUTES

The DFO opened the meeting at 10:00 a.m. The Honorable Elizabeth Holtzman provided opening remarks and introduced the JPP members.

Military Justice Discussion and Legislative Update

Mr. Dwight Sullivan provided an overview briefing of the military justice system and answered questions from JPP members concerning the UCMJ and procedures for resolving allegations of misconduct through courts-martial, nonjudicial punishment, and other administrative procedures. He reviewed legislative amendments to the UCMJ that have changed or will change courts-martial processes for resolving allegations of rape, sexual assault, and other sex-related offenses by members of the military.

Response Systems to Sexual Assault Crimes Panel Report

The Honorable Barbara Jones, former Chair of the Response Systems to Adult Sexual Assault Crimes Panel (RSP), and the Honorable Elizabeth Holtzman, also a former member of the RSP, provided a brief review of the RSP's assessment, report, and recommendations. Members of the JPP discussed the tasks assigned to the JPP by Congress and reviewed how the work of the RSP will affect the JPP's study.

Evolution of Rape and Sexual Assault Laws in the United States

Ms. Carol Tracy was joined by Ms. Charlene Whitman and Mr. John Wilkinson to present the findings of a comprehensive report authored and released last year by the Women's Law Project and AEquitas comparing rape and sexual assault laws across the United States. Ms. Tracy reviewed the history of rape and sexual assault statutes in U.S. jurisdictions, while Mr. Wilkinson reviewed common features and distinctions of different statutes used in various jurisdictions.

Professor Stephen Schulhofer participated by phone to explain draft sexual assault provisions of the Model Penal Code (MPC). He noted that the draft, which is now under consideration by the American Law Institute, represents the first revision of the MPC's sexual assault provisions since they were adopted in 1962. Professor Schulhofer also explained features of the draft MPC provisions and provided his assessment of how they compare to Article 120 of the UCMJ.

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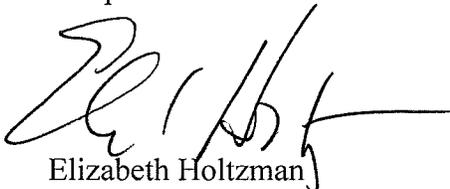
Evolution of Article 120 of the UCMJ

The JPP members heard testimony from current and former military justice practitioners about the evolution of Article 120 of the UCMJ. Mr. Sullivan provided an overview briefing on the evolution of Article 120 and statutory changes to it since the UCMJ was enacted in 1950. Captain Christian Reismeier, Mr. William Cassara, Colonel (Ret.) Timothy Grammel, and Colonel Gary Jackson offered their personal insights into the 2007 and 2012 amendments to Article 120 and current issues arising in military sexual assault prosecutions. The presenters answered questions from JPP members and discussed their perspectives concerning whether Article 120 should be further amended.

Having received no requests for public comment to the Panel, the public meeting was closed at 4:21 p.m.

CERTIFICATION

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



Elizabeth Holtzman
Chair
Judicial Proceedings Panel

MATERIALS

Meeting Records:

1. Transcript of August 7, 2014 JPP meeting, prepared by Neal R. Gross and Co., Inc.
2. Video Recording of August 7, 2014 JPP meeting, filmed by U.S. Army Video

Preparatory Materials:

3. Public Meeting Table of Contents
4. August 7, 2014, Meeting Agenda
5. Speaker Biographies
6. Response Systems Panel and Judicial Proceedings Panel Timelines
7. FY 13 NDAA Federal Advisory Committee Summaries
8. Summary of Tasks for the RSP and JPP
9. Timeline of Changes to Article 120, UCMJ
10. Section 541 of the NDAA for FY 2012 (establishing current version of Article 120)
11. Excerpt from the Military Judge's Benchbook (Article 120 Instructions)

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12. Comparison of Model Penal Code and Article 120, UCMJ
13. Summary of Read-Ahead Materials
14. "Rape and Sexual Assault in the Legal System," C. Tracy, T. Fromson, J. Long & C. Whitman (2012)
15. Excerpt from Model Penal Code: Sexual Assault and Related Offenses Tentative Draft No. 1, American Law Institute (2014)
16. Model Penal Code Article 213, Rape and Related Offenses: Prospectus for a Project of Revision, S. Schulhofer (2012)
17. Current Article 120, UCMJ (2012)
18. Analysis of Crimes and Defenses 2012 UCMJ Article 120, J. Clark (2012)
19. Excerpt from Sex Crimes and the UCMJ: A Report for the Joint Service Committee on Military Justice, (2004)
20. Annual Review of Developments in Instructions, COL Masterton, COL Robertson and COL Daknis (2013)
21. "Neither a Model of Clarity nor a Model Statute: An Analysis of the History, Challenges, and Suggested Changes to the "New" Article 120," Brig Gen (Ret.) Nevin and LT Lorenz (2011)
22. "Sex Offenses Under Military Law: Will the Recent Changes in the Uniform Code of Military Justice (UCMJ) Re-traumatize Sexual Assault Survivors in the Courtroom?" COL (Ret) Lisa Schenck (2014)
23. Report of the Response Systems to Adult Sexual Assault Crimes Panel, Executive Summary Pamphlet (June 2014)
24. Report of the Response Systems to Adult Sexual Assault Crimes Panel, (June 27, 2014)

Participant Presentations:

25. PowerPoint Slides, "Military Justice and Legislation," presented by Mr. Dwight Sullivan
26. PowerPoint Slides, "Evolution of Article 120," presented by Mr. Dwight Sullivan