Judicial Proceedings Panel
Minutes of April 10, 2015 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 amended by section 1731(b) of the NDAA for FY 2014, section 546 of the NDAA for FY 2015, 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 April 10, 2015, from 8:37 a.m. to 4:29 p.m. The meeting opened with the JPP members' initial deliberations regarding restitution and compensation for victims of sexual assault in the military. After deliberations, leaders from the Department of Defense (DoD) and Military Services' Sexual Assault Prevention and Response Offices explaining how DoD is addressing concerns expressed by victims regarding professional and social retaliation. The JPP also heard from civilian scholars and experts about their studies on retaliation in the workplace and the effects on victims and organizations. The last session of the meeting consisted of representatives from the DoD Office of Inspector General and Military Services' Boards for Correction of Military Records. They explained how DoD and the Military Services currently investigate and resolve complaints of reprisal and professional retaliation made by sexual assault victims.

LOCATION: The meeting was held in Courtroom 20, 6th Floor, U.S. District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington DC 20001.

MATERIALS: A verbatim transcript of the meeting is incorporated herein and is available on the JPP website: http://jpp.whs.mil.

PARTICIPANTS

Participating JPP Members:
The Honorable Elizabeth Holtzman, Chair
Vice Admiral, United States Navy (Retired), Patricia A. Tracey
Professor Thomas W. Taylor
Mr. Victor Stone (by phone for the deliberation session only)

Participating JPP Staff:
Lieutenant Colonel Kyle Green, United States Air Force, JPP Staff Director
Lieutenant Colonel Kelly McGovern, United States Army, JPP Deputy Staff Director
Mr. Doug Nelson, JPP Staff Attorney
Ms. Meghan Tokash, JPP Staff Attorney
Ms. Julie Carson, JPP Staff Attorney

Other Participants:
Mr. William Sprance, Department of Defense, Office of the General Counsel, Designated Federal Official

Presenters:
Major General Jeffrey Snow, Director, DoD Sexual Assault Prevention and Response Office (SAPRO)
Nathan Galbreath, Ph.D., Senior Executive Advisor, DoD SAPRO
Lilia M. Cortina, Ph.D., Professor, University of Michigan
Vicki Magley, Ph.D., University of Connecticut
Professor Michael F. Noone, Jr., S.J.D., Columbus Law School, Catholic University
Patricia J. Harned, Ph.D., Chief Executive Officer, Ethics Resource Center
Matthew F. Soulier, M.D., University of California, Davis
Veronique N. Valliere, Psy.D., Valliere & Counseling Associates, Inc.
Ms. Monique Ferrell, Director, U.S. Army SHARP
Rear Admiral Richard P. Snyder, U.S. Navy, Director, Twenty-First Century Sailor Office
Colonel Scott S. Jensen, U.S. Marine Corps, Branch Head, HQ, Marine Corps SAPR
Mr. Jay Aanrud, Deputy Director, HQ, U.S. Air Force SAPR
Mr. Patrick Gookin, Director, DoD IG Hotline & Whistleblower Protection Ombudsman
Ms. Nilgun Tolek, Director, DoD IG Whistleblower Reprisal Investigations
Mr. John K. Vallario, Deputy Executive Director, Air Force BCMR
Mr. Douglas Huff, Senior Legal Advisor, Army Review Boards Agency
Mr. Jonathan Ruskin, Board for Correction of Naval Records Counsel
Ms. Julia Andrews, Chair, U.S. Coast Guard BCMR

Public Comment:
None

MEETING MINUTES

The DFO opened the public meeting at 8:37 a.m. The Honorable Elizabeth Holtzman provided opening remarks, reviewed the tasks of the JPP, and the agenda for the meeting.

Deliberations on Victim Compensation and Restitution

The public meeting began with the JPP members' deliberations on victim compensation and restitution. During the deliberation session, the JPP members reviewed issues regarding having the offender pay restitution to the victim for out of pocket expenses, and issues relating to non-offender based compensation to the victim for out of pocket expenses.

The members focused on five of the issues and provided their perspectives based on prior testimony they heard and information they received on the topic. During deliberations, members of the JPP staff provided information and clarification on specific issues. At the conclusion of the deliberation session, the members agreed to postpone further deliberations on these issues until the June 2015 meeting.

DoD Sexual Assault Prevention and Response Office (SAPRO) Review of Findings and Initiatives Regarding Retaliation

The JPP members first heard from Major General Jeffrey Snow, Director and Dr. Nathan Galbreath, Executive Advisor, of the DoD Sexual Assault Prevention and Response Office. Major General Snow presented the latest DoD SAPRO survey data and statistics on professional retaliation and social ostracism against victims who report sexual assault crimes. He informed the JPP Panel that new SAPRO victim surveys provide DoD and the Services with information to improve SAPR programs. As a result, victims who experience subsequent retaliation as a result of reporting a criminal offense receive better assistance.

Major General Snow noted that the most recent surveys indicate that victims report retaliation and/or social ostracism from junior ranking members and peer groups rather than from senior ranking members. He noted that professional retaliation against victims, which tends to be more overt, is much less of a problem than peer-to-peer social ostracism. DoD SAPRO found that most military members gave their senior leadership good marks for their efforts to create a reporting-friendly environment.

Dr. Galbreath provided information regarding statistics. He explained that he is currently assessing the status of all victims who made an unrestricted report of sexual assault in order to determine career impact and attrition rates. Major General Snow closed by outlining the actions his office and the Services are taking to implement the Secretary of Defense's initiatives that focus on retaliation prevention measures.

Workplace Retaliation Studies & Human Relations Dynamics

The JPP next heard from Dr. Lilia Cortina, Dr. Vicki Magley, Prof. Michael Noone, Jr., and Dr. Patricia Harned about workplace retaliation studies and human relations dynamics. Dr. Cortina provided results of her study that linked retaliation and victim psychological well-being in the workplace. Dr. Magley's testimony focused on workplace climate assessment studies that showed a positive workplace climate reduces employees' fear of retaliation and actual retaliation by co-workers. Professor Noone gave testimony on the difficulties of applying civilian sexual harassment criteria to the highly specialized and unique aspects of the military community. Finally, Dr. Harned presented findings from recent studies, which indicate that workplaces with ethical, supportive leadership create an overall positive environment for their employees. As such, employees feel more comfortable reporting retaliation and experience less actual retaliation than workplaces with non-ethical leadership.

Workplace Retaliation on Victims, Workplace Productivity, Unit Cohesiveness & Mission Readiness

The afternoon session began with Dr. Matthew Soulier and Dr. Veronique Valliere. Both presenters testified about their personal experience working with sexual assault victims who experienced retaliation and social ostracism. Dr. Soulier testified about his experience as an expert consultant for military prosecutors and defense attorneys during the courts-martial process. Having participated in over 50 military trials, Dr. Soulier stated that he saw, first-hand,

blatant social ostracism and retaliation against victims of sexual assault who participated in the courts-martial process. He recommended retaliation training as an approach to eliminate these harmful behaviors and attitudes.

Dr. Valliere discussed her experience working with sexual offenders. She explained how sexual offenders often contribute to the retaliation and ostracism that victims experience by "prepping the battlefield" and degrading the victim's reputation prior to committing the sexual assault or sexual offense. She provided examples to demonstrate how offenders publically express negative views about the victim's behavior or personality and encourage others to ostracize or blame the victim before a crime is ever reported. In closing, Dr. Valliere suggested the JPP members review current anti-bulling campaigns to assist them in their deliberations to help combat negative treatment of sex crimes victims within military units.

Policies, Practices and Prevention of Retaliation with the Military Services

The JPP members next heard from Service SAPR representatives, Ms. Monique Ferrell, Colonel Scott Jensen, and Mr. Jay Aanrud, and Rear Admiral Richard Snyder. Each representative provided an overview of policies, practices and the prevention of retaliation within their respective Service. Each representative described the negative impact retaliation has on unit cohesion and combat readiness. They gave an overview of new training measures, prevention education, and reporting guidance implementation to address retaliation and reprisal against victims who report sexual assault crimes.

DoD Inspector General (IG) and Board of Corrections of Military Records (BCMR) Representatives

During the final session, the JPP members heard from Mr. Patrick Gookin and Ms. Nilgun Tolek, who represented the DoD IG hotline and the investigations section. Mr. Gookin and Ms. Tolek provided testimony concerning the DoD IG's process of receiving, responding to, and investigating complaints of professional retaliation and reprisal from sexual assault victims.

Mr. Vallario provided an overview of the role of the BCMR's to provide relief by correcting military records in cases of retaliation. Mr. Huff, Mr. Ruskin, and Ms. Andrews further explained the unique aspects of their Services' BCMRs, the process for receiving, reviewing, and responding to requests for correction of military records when a military member's career has been affected by instances of retaliation.

Having received no requests for public comment, the public meeting of the JPP closed at 4:29 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 April 10, 2015 JPP meeting, prepared by Neal R. Gross and Co., Inc.
2. Video recording of April 10, 2015 JPP meeting filmed by Army Television.

Meeting Materials:

3. Public Meeting Table of Contents
4. Meeting Agenda
5. Presenter Biographies

Legislation and Reports Pertaining to Retaliation in the Military

6. Summary of Legislation Pertaining to Retaliation (8 pages)
7. DoD Report on Prohibiting Retaliation Against an Alleged Victim or Other Member of the Armed Forces Who Reports a Criminal Offense, June 2014 (9 pages)
8. DoD Report on Prohibiting Retaliation Against an Alleged Victim or Other Member of the Armed Forces Who Reports a Criminal Offense, June 2014 (9 pages)
9. DoD IG Semiannual Reports for FY 2014 (25 pages)
10. GAO Report to the Ranking Member, Committee on the Judiciary, U.S. Senate, "Whistleblower Protection: Actions Needed to Improve DoD's Military Whistleblower Reprisal Program," February 2012 (85 pages)

Articles on Retaliation in the Workplace

11. Retaliation: When Whistleblowers Become Victims, A Supplemental Report of the 2011 National Business Ethics Survey © 2012 Ethics Resource Center (23 pages)
12. Lilia M. Cortina and Vicki J. Magley, *Raising Voice, Risking Retaliation: Events Following Interpersonal Maltreatment in the Workplace: Incidence and Impact,* JOURNAL OF OCCUPATIONAL HEALTH PSYCHOLOGY (2003) (19 pages)
13. Michael F. Noone, *Chimera or Jackalope? Department of Defense Efforts to Apply Civilian Sexual Harassment Criteria to the Military,* 6 Duke J. GNDER L. & POL'Y 151-172 (Spring 1999) (22 pages)

DoD and Service Memoranda, Policies and Regulations Regarding Retaliation

14. Summary Chart of Service Regulatory Provisions Pertaining to Retaliation (9 pages)
15. Excerpts from Service Punitive Regulations Pertaining to Retaliation (11 pages)
    - Army Directive 2014-20 "Prohibition of Retaliation Against Soldiers for Reporting a Criminal Offense" (June 19, 2014)
    - Air Force Instruction 36-2909 "Air Force Guidance Memorandum to AFI 36-2909, "Professional and Unprofessional Relationships" (June 19, 2014)
    - ALNAV 030/14 "Retaliation Against Members of the Armed Forces Reporting a Criminal Offense" (April, 2014)
16. Recent SECDEF Directive Memoranda Relating to Retaliation Against Sexual Assault Victims (14 pages)
    - December 3, 2014 SECDEF Memorandum
    - February 2, 2015 SECDEF Memorandum (2 pages)
    - March 12, 2015 Under Secretary of Defense Data Call (2 pages + attachments)

Additional Reference Material on Restitution & Compensation

17. Summary of Enclosed Reading Materials

Deliberation Materials Prepared by Staff

18. Proposed Issues for JPP Deliberations
19. Financial Needs of Sexual Assault Victims
20. Outline of the Factual Information Regarding Restitution & Compensation
21. Presenters' and Authors' Perspectives on Restitution & Compensation

Supplemental Restitution/Compensation Articles

22. Colonel R. Peter Masterson, U.S. Army, *Claims Office Management*, 2011-SEP Army Law. 48, September, 2011
23. Julie Dickerson, *A Compensation System for Military Victims of Sexual Assault and Harassment*, 222 Mil. L. Rev. 211 (Winter 2014)

Materials Provided by Presenters following March 13th Public Meeting

24. Letter from Professor Julie Goldscheid, CUNY School of Law (March 18, 2015)
25. Memorandum from Colonel John G. Baker, U.S. Marine Corps, Chair, Joint Service Committee (March 20, 2015)
26. U.S. Marine Corps, Military Justice Branch, Practice Advisory No. 3-15, "What to Know About Victims' Rights" (February 26, 2015)
27. U.S. Marine Corps, Military Justice Branch, Practice Advisory No. 5-15, "Changes to Military Justice in LSAM, Part I: Special Victim Cases, Processes, and Reporting" (March 9, 2015)

Statutory Materials Relating to Restitution & Compensation

28. Personnel Claims Act (formerly known as the Military Personnel and Civilian Employees Claims Act), 31 U.S.C. § 3721
29. Military Claims Act, 10 U.S.C. § 2733
30. Materials the Armed Forces Retirement Home

31. U.S. Department of Defense, Financial management Regulation 7000.14-R, Vol. 7B, Ch. 60, "Victims of Abuse – Nonretirement Eligible Members (Transitional Compensation)" (February, 2015)