Judicial Proceedings Panel
Minutes of June 18, 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 and 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 June 18, 2015, from 9:10 a.m. to 3:49 p.m. The Panel continued its assessment of restitution and compensation for victims of sexual assault crimes in the military. In its first three sessions, the Panel reviewed medical care and benefits available to Service members and their family members who are victims of sexual assault after they leave the military, whether restitution should be incorporated as an authorized punishment at courts-martial, and whether the DoD should establish a uniform crime victim compensation program.

The JPP also continued its review of retaliation against victims who reported sexual misconduct. The Panel heard from special victims' counsel (SVCs) from each of the military Services. The SVCs spoke about retaliation their clients experienced after making an allegation of sexual assault, and the SVCs' ability to effectively assist in resolving retaliation issues when they arise. The meeting concluded with time reserved for public comment.

LOCATION: The meeting was held in the Faculty Conference Center, George Washington University, School of Law, 2000 H Street NW, Washington DC 20052.

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

PARTICIPANTS

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

Attending JPP Staff:
Lieutenant Colonel Kyle Green, United States Air Force, JPP Staff Director

Other Participants:
Ms. Maria Fried, Office of the General Counsel, Department of Defense, Designated Federal Official

Presenters:
Ms. Mary Kaye Justis, Director, TRICARE Health Plan, Falls Church, Virginia
Dr. Cara J. Krulewitch, CNM, Ph.D., FACNM, Director, Women's Health, Medical Ethics and Patient Advocacy, Falls Church, Virginia
Dr. Stacey Pollack, PhD., National Director of Program Policy Implementation, Veterans Health Administration, Washington DC
Ms. Diana M. Williard, Quality Assurance Officer, Compensation Service, Veterans Benefits Administration, Nashville, Tennessee
Ms. Stephanie Li, Chief, Regulations and Policy Staff, Compensation Service, Veterans Benefits Administration, Washington DC
Mr. R. Peter Masterton, U.S. Army, Chief, European Tort Claims Division, U.S. Army Claims Service Europe, Wiesbaden, Germany
Ms. Jennifer Riley, Assistant General Counsel for Military and Civilian Pay, Defense Finance and Accounting Services, Indianapolis, Indiana
Mr. Kenneth R. Feinberg, Founder and Managing Partner, Feinberg Rozen, LLP [by telephone]
Mr. Dan Eddy, Executive Director, National Association of Crime Victim Compensation Boards, Alexandria, Virginia
Lieutenant Commander James Toohey, U.S. Navy, Victims' Legal Counsel, Naval Base Coronado, San Diego, California
Lieutenant Commander Kismet Wunder, U.S. Coast Guard, Special Victims' Counsel, U.S.C.G. Base Cleveland, Ohio
Captain George "Rob" Lavine III, Senior Special Victims' Counsel, Grafenwoehr, Bavaria
Captain Micah Smith, U.S. Air Force, Special Victims' Counsel, Royal Air Force Lakenheath, United Kingdom
Major Chantell Higgins, U.S. Marine Corps, Victims' Legal Counsel, Jacksonville, North Carolina

Public Comments:
Ms. Donna Adams

MEETING MINUTES

The DFO opened the public meeting at 9:10 a.m. The Honorable Elizabeth Holtzman provided opening remarks, reviewed the tasks of the JPP and the agenda for the meeting.

Overview of the Continuation of Care for Former Active-Duty Servicemembers and Family Members who are Victims of Sexual Assault

The JPP members first heard from Ms. Justis, Dr. Krulewitch, Dr. Pollack, Ms. Williard and Ms. Li, who provided the members with information about benefits and medical care available to military Servicemembers and their family members who are victims of sexual assault. The presenters also provided a review of the the Veterans Administration processes to review disability claims based on injuries sustained from a military sexual trauma event.

Review of Relevant Uniform Code of Military Justice Provisions, Fines and Forfeitures and Further Deliberations on Restitution as an Authorized Punishment at Courts-Martial

Mr. Masterton and Ms. Riley discussed whether restitution should be incorporated as an authorized punishment at courts-martial and if so, the ability for the Department Finance and Accounting Services to accomplish payment of forfeitures and/or restitution.

Developing a Department of Defense Uniform Crime Victim Compensation Program with Consultation from Claims System Experts

The afternoon session began with Mr. Feinberg, who provided his recommendations on ways to develop and manage a victim compensation program. Mr. Masterton and Mr. Eddy then provided the Panel with their opinions as to whether the DoD should establish a uniform crime victim compensation program and the pros and cons of establishing one.

Special Victims' Counsel Perspectives on Retaliation against Victims of Sexual Assault Crimes in the Military

In the final panel, the members heard from the following special victim counsel from each Service: Lieutenant Commander Toohey, Lieutenant Commander Wunder, Captain Lavine, Captain Smith and Major Higgins. The SVCs gave their personal accounts of the retaliation their clients experienced and the ability of victims' counsel to effectively assist in resolving retaliation issues when they arise. In addition, Major Higgins provided the members with her own experience with the retaliation she faced during the course of her representation of a victim client.

Public Comment

The meeting concluded with public comment from Ms. Adams.

The Chair thanked Ms. Adams and the public meeting was closed at 3:49 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 June 18, 2015 JPP meeting, prepared by Neal R. Gross and Co., Inc.
2. Video recording of June 18, 2015 JPP meeting filmed by Army Television.

Read-Ahead Material Related to Restitution & Compensation Provided to JPP *Prior* to Public Meeting

Materials Related to Restitution as a Possible Authorized Punishment

3. Lieutenant Colonel David M. Jones, U.S. Marine Corps, *Making the Accused Pay for His Crime: A Proposal to Add Restitution as an Authorized Punishment under Rule for Courts-Martial 1003(B),* 52 NAVAL L. REV. 1 (2005)
4. Materials on the Armed Forces Retirement Home

Materials Relevant to Continuity of Care for Active-Duty Service Members and Family Members

5. VA fact sheets (2014-15)
6. U.S. Dep't of Defense, Integrated Disability Evaluation System (IDES) brochure
7. Major John W. Brooker, U.S. Army, et al., *Beyond "T.B.D.": Understanding VA's Evaluation of a Former Servicemember's Benefit Eligibility Following Involuntary or Punitive Discharge from the Armed Forces,* 214 MIL. L. REV. 1, 99-105 (Winter 2014)
8. Invisible Wounds: *Examining the Disability Compensation Benefits Process for Victims of Military Sexual Trauma: Hearing Before the Subcommittee on Disability Assistance and Memorial Affairs of the House Committee on Veterans' Affairs,* 112th Cong. 37-46 (2012)
9. U.S. Government Accountability Office (GAO), *Military Sexual Trauma: Improvements Made, but VA Can Do More to Track and Improve the Consistency of Disability Claim Decisions* (June 2014)
10. Congress.gov, "All Bill Information (Except Text) for H.R. 1607 - Ruth Moore Act of 2015"

Materials Relevant to Developing a DoD Uniform Crime Victim Compensation Program

11. OVC fact sheet and VOCA claims data (June 2013)
12. 42 U.S.C. § 10602 (Crime victim compensation)
13. Julie Dickerson, *A Compensation System for Military Victims of Sexual Assault and Harassment,* 222 MIL. L. REV. 211, 240-70 (Winter 2014)
14. Colonel R. Peter Masterton, U.S. Army, *Claims Office Management*, 2011-SEP ARMY LAW. 48, Sept. 2011
15. Linda S. Mullenix, *Designing Compensatory Funds: In Search of First Principles,* 3 STAN. J. COMPLEX LITIG. 1 (Winter 2015)

16. Kenneth R. Feinberg, *Unconventional Responses to Unique Catastrophes,* 45 AKRON L. REV. 575 (2011-12)eliberation Material Related to Restitution & Compensation Provided to JPP *at* Public Meeting

17. JPP Analysis and Recommendations as to Proposed Changes to Restitution (Draft)
18. Witness Perspectives from March 13, 2015 Meeting: 4 Options for Change (Draft)
19. DoD Compensation and Benefits Handbook, Chapter 4: The Integrated Disability Evaluation System (IDES) (2014)
20. The One Fund Final Protocol, Victim Relief Fund (May 15, 2013)

Deliberation Material Related to Retaliation Provided to JPP *at* Public Meeting

21. JPP Report on Retaliation – Preliminary Outline drafted by Staff (Draft)
22. Proposed Issues for Preliminary JPP Deliberation on Retaliation (Draft)
23. Army Commander's Reprisal Prevention Plan from Colonel Foley in Response to Mr. Taylor's Request at May 19, 2015 Public Meeting
24. "Confronting Unethical Conduct on Social Media" Case Study Video Vignette: Discussion Guide
25. "Standing Strong: Confronting Unethical Conduct (Cadet Version)" Case Study Video Vignette: Discussion Guide
26. "The Effects of Hazing and Sexual Assault in the Army Profession" Case-Ex Video Vignette: Discussion Guide

Other Material Provided to JPP *at* Public Meeting

27. Public Comment from Ms. Donna Adams
28. Public Comment from Ms. Jessica Hinves
29. Statement from Mr. Dan Eddy, Executive Director, National Association of Crime Victim Compensation Boards