



Judicial Proceedings Panel  
Minutes of October 9, 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 October 9, 2015, from 9:12 a.m. to 4:11 p.m. The Panel began the meeting with testimony comparing sentencing schemes in the military and civilian criminal justice systems and examining military justice data on sexual assault crimes. During the afternoon session the Panel deliberated on issues pertaining to restitution and compensation for victims of sexual assault victim crimes and retaliation against victims of sexual assault crimes.

**LOCATION:** The meeting was held at the Holiday Inn Arlington, Arlington Ballroom, 4610 N. Fairfax Drive, Arlington, VA 22203.

**MATERIALS:** A verbatim transcript of the meeting, as well as preparatory materials provided to the JPP members prior to, during and after the meeting, are incorporated herein by reference and listed individually below. The meeting transcript and 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 Jones  
Vice Admiral (Retired) Patricia Tracey  
Mr. Victor Stone

JPP Members Not in Attendance:

Professor Thomas W. Taylor

Attending JPP Staff:

Colonel Kyle Green, United States Air Force, JPP Staff Director  
Lieutenant Colonel Kelly McGovern, United States Army, JPP Deputy Staff Director  
Mr. Doug Nelson, Staff Advisor-Attorney  
Ms. Julie Carson, Staff Advisor-Attorney  
Ms. Sharon Zahn, Senior Paralegal and Meeting Recorder

Other Participants:

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

Presenters:

Honorable Frank D. Whitney, United States Chief District Judge, Western District of North Carolina [By telephone]  
Mr. Steven J. Grocki, Deputy Chief for Litigation, Child Exploitation and Obscenity Section, Criminal Division, United States Department of Justice  
Mr. Thomas F. Fichter, Assistant Prosecutor, Monmouth County Prosecutor's Office and Director, Special Victim's Unit, Monmouth, New Jersey  
Ms. Darlene Sullivan, Defense Sexual Assault Incident Database (DSAID) Program Manager, DoD Sexual Assault Prevention and Response Office (SAPRO)  
Ms. Katherine E. Robertson, Family Advocacy Program (FAP) Manager, DoD Office of Family Readiness Policy  
Colonel Walter M. Hudson, U.S. Army, Chief, Criminal Law Division, Office of The Judge Advocate General  
Lieutenant Colonel Julie L. Rutherford, U.S. Air Force, Air Staff Counsel, Air Force Sexual Assault Prevention and Response Office  
Lieutenant Colonel Angela B. Wissman, U.S. Marine Corps, Branch Head, Judge Advocate Division's Military Justice Branch, Headquarters, U.S. Marine Corps  
Mr. Stephen P. McCleary, U.S. Coast Guard, Senior Military Justice Counsel and Chief Prosecutor, Office of Military Justice, Office of the Judge Advocate General  
Lieutenant Commander Stuart Kirkby, U.S. Navy, Staff Attorney, Navy-Marine Corps Appellate Review Activity

Public Comments:

Mr. Christopher Perry, Center for Prosecutor Integrity

## MEETING MINUTES

The DFO opened the public meeting at 9:12 a.m. The Honorable Elizabeth Holtzman provided opening remarks, reviewed the tasks of the JPP, and summarized the agenda for the meeting.

### Comparing Punishments for Sexual Assault Crimes in Military and Civilian Courts:

The JPP members first heard from the Honorable Frank Whitney, Mr. Steven Grocki, and Mr. Thomas Fichter. The presenters testified to the comparability of punishments for sexual assault crimes in military and civilian courts. They summarized their respective duties in their civilian positions and explained to the Panel their military service and military justice experience. Each testified that it is difficult to compare civilian and military court outcomes and explained that sentencing disparities may be due to many differences in the systems. The presenters testified that federal and state courts, where sentences are determined by a judge who is advised by either the Federal Sentencing Guidelines or state criminal codes, consider pre-sentencing reports, probation and restitution when determining a sentence. They observed that the sentencing phase in the military justice system immediately follows the findings phase, where the sentencing authority is either the military judge or a panel comprised of military personnel. Additionally, military sentencing is aggregated rather than unitary for each convicted offense, and punishment can include a punitive discharge, which may affect sentences of confinement in an unquantifiable

way. The presenters observed that the structural and procedural differences in the systems make it impossible to equate punishments rendered in the civilian and military systems or to make effective comparisons of sentences imposed in similar cases. They agreed that sentencing disparity in individual cases does not necessarily indicate injustice.

#### How the Department of Defense and the Military Services Manage Military Justice Data for Sexual Assault Cases:

The Panel then heard testimony about the DoD's Defense Sexual Assault Incident Database (DSAID) and DoD Family Advocacy Program data collection systems. First, Ms. Darlene Sullivan briefed the Panel on the development and implementation of DSAID, and explained how it is a collaborative effort between DoD and the Services and their SAPR program managers. She explained the process for obtaining data in DSAID and who inputs data into the case management system, including sexual assault response coordinators, investigators, and legal officers. She said that in addition to DSAID being used for program management, it is also used to gather data for the DoD's annual report to Congress. The Panel then heard from Ms. Robinson, FAP Manager, who provided an overview of DoD's Family Advocacy Program. She testified that FAP collaborates with commanders, investigators, and the legal office, but she noted that the FAP's goal is prevention and treatment, not command action. Therefore, FAP data collection is strictly for administrative purposes and for monitoring clinical services.

The Panel next heard from Colonel Walter Hudson, Lieutenant Colonel Julie Rutherford, Lieutenant Colonel Angela Wissman, Mr. Stephen McCleary and Lieutenant Commander Stuart Kirkby. Each of the Service representatives described how their Services gather, track, and validate sexual assault case information. Each described using different military justice case systems and collecting slightly different amounts and types of data. They also told the Panel how their Services cross-check information from their military justice systems with DSAID to ensure proper accounting of case information. The presenters told the panel that because the military justice system uses unitary sentencing, it is not possible to determine what portion of an adjudged sentence was rendered for a specific offense when someone is convicted of more than one offense. Ms. Sullivan told the Panel that DoD SAPRO is considering how to best track information in regards to retaliation within DSAID, such as adding data fields into their current system. In addition, the presenters discussed how the Services and DoD SAPRO are working to improve the interface of their various data tracking systems with DSAID.

#### Deliberations: Restitution and Compensation for Sexual Assault Victims

After a lunch break, the Panel continued its deliberations on restitution and compensation for sexual assault victims, focusing on the draft report developed by the JPP staff and issues that remained unresolved from previous deliberations. They discussed the ramifications that would result from making restitution an authorized punishment in courts-martial, and the creation of a victim compensation program similar to those adopted by States. The Panel agreed that they had received sufficient testimony and information to conclude their deliberations on restitution and compensation for sexual assault victims. The Panel requested that the staff incorporate the Panel's final recommendations and proposed guidance for a DoD victim compensation program into the draft report for final review by the Panel members.

## Deliberations: Retaliation against Victims of Sexual Assault Crimes

During the final session of the day, the Panel continued their deliberations on retaliation against individuals who report incidents of sexual assault within the military. Colonel Green, Lieutenant Colonel McGovern and Ms. Carson provided the Panel members with additional information requested by the Panel to assist them in their further deliberations on these issues. The Panel discussed the various processes available to victims when filing a complaint of retaliation and who should investigate, track and report cases of retaliation. The Panel requested the staff to obtain additional information from DoD and the Services about Inspector General procedures and statistics regarding complaints of professional reprisal following sexual assault reports. The members agreed to continue their discussions of the remaining issues at a future meeting.

### Public Comment

Mr. Christopher Perry, Center for Prosecutor Integrity requested to provide public comments at the meeting. In addition to providing a written statement, Mr. Perry elaborated on the views expressed in his written regarding over-referral of sexual assault cases, the Special Victims' Counsel Programs implemented by the Services, and concerns about incorporating an affirmative consent policy in the military.

The DFO closed the public meeting at 4:11 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 October 9, 2015 JPP meeting, prepared by Neal R. Gross and Co., Inc.

#### Meeting Materials:

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

Read-Ahead Materials:

5. Court-Martial Process Flow Chart
6. Colonel James E. Baker, *Is Military Justice Sentencing On the March? Should it be? And if so, Where should it Head? Court-Martial Sentencing Process, Practice, and Issues* GEORGETOWN UNIVERSITY LAW CENTER (December 2014)
7. Section 563 of the Fiscal Year 2009 National Defense Authorization Act (FY13 NDAA)
8. Defense Sexual Assault Incident Database (DSAID) Case Data Flow Overview
9. Summary of Statutory Sexual Assault Case Reporting Requirements for DoD
10. Fiscal Year 2014 Department of Defense Sexual Assault Prevention and Response Office (SAPRO) Report, Appendix A (Statistics)
11. 2014 POTUS Report Excerpt Containing Coast Guard Statistics on Military Justice
12. UCMJ Article 146, Code Committee
13. Annual Report Pursuant to UCMJ Article 146 (aka "CAAF Report") for Fiscal Year 2014
14. Lisa M. Schenck, *Informing the Debate about Sexual Assault in the Military Services: Is the Department of Defense Its Own Worst Enemy?* OHIO STATE JOURNAL OF CRIMINAL LAW (2014)
15. Example of Periodic, Public Releases by the Military Services of Individual Courts-Martial Results - Army: August 2015 Courts-Martial Results Published in the Army Times
16. Example of Periodic, Public Releases by the Military Services of Individual Courts-Martial Results - Navy Courts-Martial Results Published Online

Materials Provided During Meeting:

17. FY16 NDAA Proposals Regarding Sexual Assault in the Military
18. JPP Request for Information #89, How the Services Manage Military Justice Data for Sexual Assault Case, with Service responses
19. Sexual Assault in the U.S. Coast Guard (FY2014) Report
20. DoD Instruction 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures, Enclosures 11 and 12, DSAID and Reporting Requirements
21. Proposed Issues for JPP Deliberations on Retaliation
22. DoD Instruction 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures, Enclosure 9, Case Management Group
23. 1130, The Legal Justice for Service Members Act
24. H.R. 2026, the "SUPPORT Act"
25. FY13 NDAA, Section 578
26. DoD IG Monthly Update, dated October 2015
27. DoD Guide to Investigating Military Whistleblower Reprisal and Restriction Complaints
28. 10 U.S.C. §1034. Protected communications; prohibition of retaliatory personnel actions

Presentation Slides:

29. Military Justice and Federal Criminal Justice: A Procedural Comparison, Judge Whitney
30. Defense Sexual Assault Incident Database, Ms. Sullivan, DoD SAPRO
31. Family Advocacy Program Central Registry, Ms. Robertson, OSD FAP

Public Comment:

32. Public Comment from Mr. Christopher Perry, Program Director at the Center for Prosecutor Integrity