



Judicial Proceedings Panel
Minutes of November 6, 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 November 6, 2015, from 9:03 a.m. to 3:18 p.m. The JPP members began the meeting with a brief discussion about the review of the Uniform Code of Military Justice (UCMJ) conducted by the Military Justice Review Group (MJRG). Next, the JPP members continued deliberations on retaliation against victims of sexual assault crimes. The JPP members then heard from the Department of Defense (DoD) Sexual Assault Prevention and Response Office (SAPRO) about sexual assault judicial processing statistics from recent DoD annual reports to Congress. Next, the JPP members heard from the JPP staff on the research and methodology used to obtain and analyze information about the military's adjudication of sexual assault crimes. The JPP members then reviewed a preliminary overview of case outcomes in military sexual assault trials and discussed and identified focus areas for further examination regarding military sexual assault adjudications. The meeting concluded with public comments.

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 JPP are available on its 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 Tracey

Attending JPP Staff:

Colonel Kyle Green, United States Air Force, JPP Staff Director
Lieutenant Colonel Kelly McGovern, United States Army, JPP Deputy Staff Director
Ms. Julie Carson, Staff Advisor-Attorney
Ms. Nalini Gupta, Staff Advisor-Attorney

Ms. Meghan Peters, Staff Advisor-Attorney
Ms. Terri Saunders, Staff Advisor-Attorney
Ms. Stayce Rozell, Senior Paralegal
Ms. Sharon Zahn, Senior Paralegal and Meeting Recorder

Other Participants:

Mr. William Sprance, DoD Office of the General Counsel, Designated Federal Officer (DFO)

Presenters:

Dr. Nathan W. Galbreath, Senior Executive Advisor, DoD SAPRO
Dr. Cassia Spohn, Professor and Director, Arizona State University School of Criminology and Justice

Public Comments:

Mr. Christopher Perry, Program Director, Center for Prosecutor Integrity
Mr. Howard G. Cooley, Jordan, Patrick & Cooley, LLP, Attorneys at Law

MEETING MINUTES

The DFO opened the public meeting at 9:03 a.m. The Honorable Elizabeth Holtzman provided opening remarks, reviewed the tasks of the JPP, and summarized the agenda for the meeting.

JPP Discussion of Issues Examined by the MJRG

The JPP members first briefly discussed a review of the UCMJ that was recently completed by the MJRG. The JPP members then briefly discussed testimony and briefing slides that the Honorable Andrew Effron, Director of the MJRG, previously presented to the JPP Subcommittee at a Subcommittee meeting on October 22, 2015. The members discussed the MJRG's pending legislative proposal report to Congress and agreed that they would consider the MJRG's report and, if need be, request more information from former Judge Effron once the MJRG report is published and made available to the JPP.

Deliberations: Retaliation Against Victims of Sexual Assault Crimes

The JPP members continued their deliberations concerning retaliation against victims of sexual assault crimes. The members reviewed and discussed a proposed draft report outline prepared by the JPP staff. Then the JPP members heard information from the JPP staff concerning retaliation topics, issue or recommendations, on which the JPP members had neither deliberated nor reached consensus. The JPP members discussed forms of retaliation as well as protections and prohibitions against retaliation, whether methods for reporting retaliation should be standardized, and how reports of retaliation should be investigated, monitored, and reviewed. The JPP members agreed to continue their deliberations on this topic at its next meeting.

Department of Defense SAPRO Overview of Statistics from Annual Reports to Congress

Dr. Galbreath then briefed the JPP about data tracked by SAPRO regarding the judicial resolution of sexual assault crimes. Dr. Galbreath reviewed case flow charts for 2014 sexual assault cases, which SAPRO prepared for its annual report to Congress to track and assess the processing of cases from the time a sexual assault is reported until the case is resolved. He explained how SAPRO obtains case information from the military Services at different stages of the judicial process and described significant information and conclusions about sexual assault case processing that SAPRO believes are indicated by the data compilations.

Staff Presentation: Research and Methodology Used to Obtain and Analyze Information about the Military's Adjudication of Sexual Assault Crimes

Next, JPP staff members briefed the JPP about sexual assault case data for fiscal years 2012 to 2014 that the staff gathered from DoD and the military Services. The staff explained its preliminary research and described issues that were identified during data collection. They reviewed the number of courts-martial case record documents collected for each fiscal year from the military Services. The staff also provided the JPP with information obtained from DoD SAPRO reports about sexual assault cases that resulted in non-judicial punishment and/or adverse action. Finally, the staff reviewed information about appellate cases for fiscal years 2012 through 2014 that involved sexual assault convictions.

Staff Presentation: Descriptive Overview of Sexual Assault Case Outcomes and Comparative Data

Dr. Spohn, who is working as a consultant to the JPP, next presented a preliminary assessment of the case data obtained by the JPP from the courts-martial case documents received from the Services. Dr. Spohn discussed her initial impressions regarding outcomes, predictors, and limitations she believes may be determined from the case data that was collected and compiled by the JPP staff. Dr. Spohn also explained potential factors that could influence case outcomes and complicating factors in the data collection that she will address in her analysis.

Panel Discussion: Identifying Focus Areas for Further Examination Regarding Military Sexual Assault Adjudications

Members of the JPP staff then reviewed with the JPP members the tasks assigned to the JPP by Congress that involve court-martial data. The staff presented summaries of possible issues related to each of these tasks that could be focus areas for JPP assessment using the case information gathered from each of the Services. The JPP directed the staff to continue its review of case data in order to provide the JPP with information regarding the military's adjudication of sexual assault crimes at upcoming meetings.

Public Comments

Mr. Perry provided a written statement and public comments to the JPP members. He reviewed recent discussions he had with staff members of congressional committees regarding sexual assault crimes in the military. He discussed his organization's positions regarding over-referral

of sexual assault cases, the Special Victims' Counsel Programs implemented by the military Services, and concerns about incorporating an affirmative consent policy in the military.

Mr. Cooley provided a written statement and public comments to the JPP. He explained his organization's proposal that DoD establish a special Board for Correction of Military Records (BCMR) for sexual assault and related matters, versus the Service BCMRs.

The DFO closed the public meeting at 3:18 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 November 6, 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. Article 120 Offense Guide
7. Executive Summary – JPP Review of Data and Trends
8. 18 U.S.C. § 3553(a)
9. The DoD Family Advocacy Program (FAP) Fiscal Year 2014 Data
10. DoD SAPRO Statistics Regarding Adjudication Outcomes for Fiscal Years 2012, 2013, and 2014

Retaliation Materials

11. JPP Report on Retaliation – Preliminary Outline
12. Proposed Issues for JPP Deliberations on Retaliation
13. JPP Deliberation Guide for Issues on Retaliation
14. JPP Request for Information Set #5, Recommendation Statuses and Retaliation

Presentation Slides:

15. JPP Court-Martial Trends and Statistics Slides
16. JPP Data and Data Analysis Slides
17. Proposed Research Questions Related to the JPP Statutory Tasks

Materials Provided During Meeting:

18. Military Justice Review Group Briefing Slides, dated 22 October 2015
19. H.R. 4310-132, General or Flag Officer Review of and Concurrence in Separation of Members of the Armed Forces Making an Unrestricted Report of Sexual Assault
20. DoD Retaliation Data Call March 2015

Public Comment:

21. Public Comment from Ms. Christina D. Thundathil, dated 26 September 2015
22. Public Comment from Mr. Robin Hood, Esquire, dated 21 October 2015
23. Public Comment from Mr. Christopher J. Perry, Program Director, Center for Prosecutor Integrity, dated 6 November 2015
24. Public Comment from Mr. Howard G. Cooley, Jordan, Patrick & Cooley, LLP, dated 29 October 2015 (with enclosures).