Judicial Proceedings Panel
Minutes of December 11, 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 December 11, 2015, from 9:02 a.m. to 2:54 p.m. The Panel began the morning session by deliberating on issues pertaining to retaliation and restitution and compensation. During the afternoon session, the JPP Subcommittee presented its analysis, conclusions, and recommendations regarding the 17 issues on Article 120 of the Uniform Code of Military Justice (UCMJ) that were referred to the Subcommittee for consideration, followed by discussions between Panel and Subcommittee members regarding the the recommendations. The meeting concluded with public comment.

LOCATION: The meeting was held at the Holiday Inn Arlington, The Junior 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
Professor Thomas W. Taylor
Vice Admiral (Retired) Patricia Tracey

JPP Members Not in Attendance:
Mr. Victor Stone

Attending JPP Staff:
Colonel Kyle Green, U.S. Air Force, JPP Staff Director
Lieutenant Colonel Kelly McGovern, U.S. Army, JPP Deputy Staff Director
Lieutenant Colonel Glen Hines, U.S. Marine Corps, Branch Chief, JPP Subcommittee
Ms. Julie Carson, Attorney-Advisor & Legislative Liaison
Ms. Nalini Gupta, Attorney-Advisor
Mr. Kirtland Marsh, Attorney-Advisor

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

JPP Subcommittee Presenters:
Dean Michelle J. Anderson
Professor Stephen J. Schulhofer
Ms. Jill Wine-Banks
Ms. Laurie Rose Kepros
Dean Lisa N. Schenck
Brigadier General (Retired) James R. Schwenk, U.S. Marine Corps

Public Comment:
Dr. E. Edward Bartlett, President, Center for Prosecutor Integrity

MEETING MINUTES

The DFO opened the public meeting at 9:02 a.m. The Honorable Elizabeth Holtzman provided opening remarks, reviewed the tasks of the JPP, and summarized the agenda for the meeting.

Deliberations: Retaliation Against Victims of Sexual Assault Crimes

The Panel completed its deliberations on issues identified during the JPP's assessment of retaliation against victims of sexual assault crimes. Colonel Green, Lieutenant Colonel McGovern, Ms. Carson and Ms. Gupta supported the Panel as it deliberated, referring the Panel members to the information and testimony received in previous public meetings. Specific topics deliberated on by the Panel included reporting of retaliation, offender accountability, and recent legislative proposals.

Deliberations: Review of the Restitution and Compensation Draft Report

The Panel briefly discussed the draft of the Panel's recommendations and report on restitution and compensation for victims of sexual assault crimes as prepared by the JPP staff.

JPP Subcommittee Presentation: Overview of Art. 120 Analysis, Conclusions and Recommendations

The Panel received a briefing on the Subcommittee recommendations from Subcommittee members Dean Anderson, Professor Schulhofer, and Ms. Wine-Banks. Dean Anderson first summarized the Subcommittee's work since April 2015, and the Subcommittee members then reviewed the final report of the Subcommittee, including its analysis of the 17 issues regarding Article 120 of the UCMJ. The Subcommittee provided the Panel with seven recommendations for amendments to Article 120 and the Manual for Courts-Martial, and 10 recommendations for no changes.

Following the Subcommittee's presentation, Ms. Kepros presented her statement of additional views and dissent, which accompanied the Subcommittee's report to the Panel. Based on the information provided by the Subcommittee members, the Panel agreed to request additional input or views from the Subcommittee members and other individuals or groups and then revisit the Subcommittee's recommendations for deliberation at the Panel's next meeting.

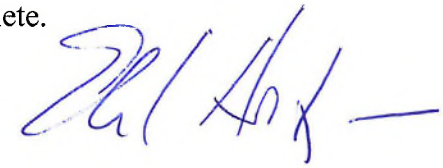
Public Comment

Dr. E. Edward Bartlett, Center for Prosecutor Integrity requested to provide public comment at the meeting. Dr. Bartlett spoke to the Panel regarding his views on over-referral of sexual assault cases, the special victims' counsel programs implemented by the military Services, and his concerns about incorporating an affirmative consent policy in the military's sexual assault statutes.

The DFO closed the public meeting at 2:54 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 December 11, 2015 JPP meeting, prepared by Neal R. Gross and Co., Inc.

Read-Ahead Materials Provided Prior to Meeting:

2. Public Meeting Table of Contents
3. Meeting Agenda

Materials Relevant to Retaliation

4. Summary Materials for JPP Members Regarding Retaliation
5. DoD's "Report on Prohibiting Retaliation Against an Alleged Victim or Other Member of the Armed Forces Who Reports A Criminal Offense," dated June 2014
6. DoD SAPRO Retaliation Overview, dated April 10, 2015
7. Chart: Summary of Service Regulatory Provisions Defining Retaliation
9. Chart: Military Whistleblower Protection Act (MWPA) compared to Federal Civilian DoD Whistleblower Protections Pursuant to the No FEAR Act
10. Legal Justice for Servicemembers Act and Related Press Releases

11. Major William E. Brown, *Whistleblower Protection for Military Members,* 2008 Army Law. 58 (Dec. 2008)
12. Robert J. McCarthy, *Blowing in the Wind: Answers for Federal Whistleblowers,* 3 Wm. & Mary Pol'y Rev. 184 (Spring 2012)
13. Legislative Update for Retaliation in the Military
14. Responses to RFI Set #5, Questions 90-102 (Dec. 4, 2015)
15. Proposed Issues for JPP Deliberations on Retaliation (Draft)

Materials Relevant to Restitution and Compensation

16. JPP Report of Restitution and Compensation (Draft)

Materials Relevant to JPP Subcommittee's Review of Article 120, UCMJ

17. Subcommittee Report to the JPP on Article 120, UCMJ, dated December 2015
18. Subcommittee Report to the JPP, Article 120, UMCJ, Slides of Presentation
19. Panel's Red Line Changes to Article 120, UCMJ Text

Public Comment

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