



Judicial Proceedings Panel
Minutes of April 8, 2016 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 April 8, 2016, from 9:05 a.m. to 4:25 p.m. The Panel completed deliberations on its report covering military justice case data for adult sexual assault offenses for fiscal years 2012-2014, heard a staff briefing about sexual assault legislative provisions and a recent special victims' counsel training course, and received updates on the special victims' counsel (SVC) programs from each Service's program manager. In the afternoon, the Panel assessed trends in the development, utilization, and effectiveness of the special victims capabilities required by section 573 of the Fiscal Year 2013 National Defense Authorization Act. The meeting concluded with a presentation by an SVC program manager, on behalf of herself and other SVC program managers, to address issues raised by in an earlier briefing that day by SVC program managers. At the earlier session, the Chair invited suggestions from the SVC program managers on changes they would recommend to Article 6b. In response to this invitation, the SVC program managers proposed changes to Article 6b and Article 70 of the Uniform Code of Military Justice (UCMJ). Based on the proposed changes, the Chair determined that the Panel would seek input from other stakeholders on the proposed changes and directed the Staff Director to post the proposal on the website, and encouraged stakeholders to provide 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 Panel are 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 Tracy

Participating JPP Staff:

Colonel Kyle Green, U.S. Air Force, JPP Staff Director

Ms. Julie Carson, Staff Attorney and Legislative Liaison
Ms. Meghan Peters, Staff Attorney
Ms. Stayce Rozell, Senior Paralegal
Ms. Terri Saunders, Staff Attorney

Other Participants:

Ms. Maria Fried, Designated Federal Officer (DFO)

Presenters:

Colonel Elizabeth Marotta, U.S. Army, Special Victims' Counsel Program Manager
Captain Karen Fischer-Anderson, U.S. Navy, Chief of Staff, Victims' Legal Counsel Program
Colonel Andrea deCamara, U.S. Air Force, Chief, Special Victims' Counsel Division
Colonel Katherine McDonald, U.S. Marine Corps, Officer in Charge Victim's Legal Counsel Organization
Ms. Christa Cothrel, U.S. Coast Guard, Special Victims' Counsel Program Manager
Mr. Guy Surian, U.S. Army, Deputy Chief of Investigative Operations, Investigative Policy and Criminal Intelligence
Special Agent Jeremy Gauthier, U.S. Navy, Deputy Assistant Director, Criminal Investigations & Operations Directorate, NCIS Headquarters
Mr. Kevin Poorman, U.S. Air Force, Associate Director, Criminal Headquarters, Air Force Office of Special Investigations
Ms. Beverly Vogel, Sex Crimes Program Manager, U.S. Coast Guard Investigative Service [by phone]
Mr. John Buchanan, Deputy Director, U.S. Coast Guard Investigative Service
Lieutenant Colonel Bret Batdorff, U.S. Army, Chief, Trial Counsel Assistance Program
Lieutenant Commander Ryan Stormer, U.S. Navy, Deputy Chief, Trial Counsel Assistance Program
Major Jesse Schweig, U.S. Marine Corps, Officer-in-Charge, Trial Counsel Assistance Program
Captain Bradley Palmer, U.S. Air Force, Special Victims Unit Senior Trial Counsel
Ms. Christa Thompson, U.S. Army, Special Victim Witness Liaison Program Manager
Mr. John Hartsell, U.S. Air Force, Associate Chief, Military Justice Division
Mr. William Yables Jr., U.S. Marine Corps, Paralegal Specialist, Installation Victim Witness Liaison Officer

MEETING MINUTES

The DFO opened the public meeting at 9:05 a.m. The Honorable Elizabeth Holtzman provided opening remarks, reviewed the tasks of the JPP, and summarized the agenda for the meeting.

Deliberations on Military Justice Case Data for Sexual Assault Offenses

The JPP members reviewed their updated draft report on statistical data regarding military adjudication of adult sexual assault offenses under the Uniform Code of Military Justice. The JPP staff reviewed updates to the report made in response to member feedback, and the Panel briefly deliberated on minor corrections to their recommendations. The members of the Panel reviewed and approved the final version of the report for publication.

Legislative Update and Report on the Army's SVC Course held in January 2016

Ms. Julie Carson briefed the Panel and fielded Panel member questions about recent changes to sexual assault legislation in the FY15 and FY16 NDAA provisions. She also summarized the Army's SVC Training Course she attended in January 2016 and compared the course to the SVC training course she attended with Mr. Stone in August 2014.

Updates on SVC (Victims' Legal Counsel (VLC)) Programs

The JPP members next heard from SVC/VLC program managers, Colonel Marotta, Captain Fischer-Anderson, Colonel deCamara, Colonel McDonald and Ms. Cothrel, who provided an update on their programs since the JPP last assessed them in November 2014. The program managers indicated that their programs have added additional billets in response to the growing demand for SVC/VLC services and the expansion of eligibility to include civilian clients. Since the JPP's last assessment, the SVC/VLC programs have created new manuals and handbooks that have promulgated updated policies, procedures and responsibilities.

Each of the program managers reported that overall growth of the SVC/VLC programs has had a positive effect for victims and victim's rights; and that commanders, SJAs, and other agencies have come to appreciate the important role of the SVC. Some of the program managers expressed that they worry that too much expansion may have an effect on manning, case workload, and professional responsibility.

Program managers also expressed concerns regarding the rights of sexual assault victims in the appellate process. They indicated that victims do not receive the same protections in the appellate process that are provided at trial under Military Rules of Evidence 412 and 513, and they said victims often are not informed about appellate hearings or rulings in their cases. The presenters indicated they have been contemplating recommendations to improve victim rights in the appellate process. The JPP Chair said the Panel would be interested in receiving proposals from the SVC programs to consider in the JPP's assessment.

Military Criminal Investigative Organization (MCIO) Overview and Perspectives on Special Victim Investigation and Prosecution (SVIP) Policies, Practices, and Procedures

The JPP members then heard from MCIO representatives, Mr. Surian, Mr. Gauthier, Mr. Poorman and Mr. Buchanan, who gave an overview of new policies, practices, and procedures for investigating sexual assault crimes. The presenters noted that MCIO manuals, guides or pamphlets are routinely updated to reflect current policy or procedural changes to assist investigators in working with SVC/VLCs. Training courses also have been updated with curriculum that teaches investigators new techniques for interviewing victims and working with SVPs and SVC/VLCs.

The MCIO representatives highlighted that the SVC/VLCs initially had a negative impact on investigations, because investigators must coordinate with a victim's attorney when a victim has representation. But the presenters described how MCIOs have adapted to this new requirement

in their investigations. Lastly, the presenters indicated that investigators work closely with prosecutors as an SVIP capability, but they emphasized that MCIOs must remain independent and neutral in order to conduct a thorough and impartial investigation.

Military Prosecutor and Paralegal Overview and Perspectives on the SVIP Policies, Practices, and Procedures

The JPP members next heard from military prosecutors, LTC Batdorff, LCDR Stormer, Maj Schweig, and Capt Palmer. Since the formation of the SVIP capability, some Services have added additional special victim prosecutor (SVP) billets, while others have modified their approach to incorporate the investigative agencies into this special victim capability. In addition to prosecutors and investigators, paralegals, and in some cases victim witness liaisons, have been integrated.

The presenters noted that there have been improvements in the SVP selection process and the addition of joint training with investigative agencies, which emphasizes the importance of working together during the investigation and prosecution of sexual assault crimes. The presenters indicated that these improvements have improved the SVIP capability, to the benefit of victims and the military justice system.

Victim Witness Liaison (VWL) Overview and Perspectives on the SVIP Policies, Practices, and Procedures

The last session of the meeting included VWL personnel, Ms. Thompson, Mr. Hartsell and Mr. Yables. The presenters explained to the Panel that the role of the VWL is to work with the special victim capability team to help provide the best possible services for the victim. They described how their Service's VWL programs are incorporated into the special victim capabilities of their Service, and they explained how their Service trains VWL personnel about the integration and their specific roles and responsibilities. They responded to Panel member questions about how SVIP personnel, including VWLs, manage and coordinate services and information when multiple SVIP personnel may be working with a victim.

SVC/VLC Program Managers' Proposal Regarding Victim Rights

Finally, Col. deCamara, after having collaborated with SVC program managers from the other Services, submitted proposed amendments to Article 6b and Article 70 of the UCMJ to address current issues regarding the appellate rights of sexual assault victims. Members of the Panel asked questions about the specific text of the proposed amendments and agreed to consider the proposal further after requesting public comments on the proposal.

The DFO closed the public meeting at 4:25 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 8, 2016 JPP meeting, prepared by Neal R. Gross and Co., Inc.

Read-Ahead Materials Provided Prior to Meeting:

2. Meeting Agenda
3. Summary of Read-Ahead Materials for JPP Members

Materials Relevant to Military Sexual Assault Legislation:

4. Chart: Chronological Legislative Overview
5. Chart: Legislative Overview by Topic

Materials Relevant to Special Victims' Counsel:

6. JPP Staff Summary of the Army SVC Training Course

Materials Relevant to Special Victim Investigation and Prosecution (SVIP) Capability:

7. Department of Defense, Establishment of Special Victim Capabilities within the Military Departments to Respond to Certain Special Victim Offenses: Report to the Committees on Armed Services of the U.S. Senate and U.S. House of Representatives (December 12, 2013)
8. Department of Defense, Directive-type Memorandum 14-003, DoD Implementation of Special Victim Capability (SVC) Prosecution and Legal Support (incorporating Change 1) (February 5, 2015)
9. DoD Instruction 5505.19, Establishment of Special Victim Investigation and Prosecution (SVIP) Capability within the Military Criminal Investigative Organizations (MCIOs)(Incorporating Change 1) (September 4, 2015)
10. Excerpts from Report by the Response Systems Panel (RSP) Pertaining to the SVIP Capability
11. Excerpts from the Report by the Comparative Systems Subcommittee (CSS) of the RSP Pertaining to the SVIP Capability

Materials Relevant to the Withholding Policy of the Initial Disposition Authority:

12. U.S. Dep't of Def., Memorandum from the Secretary of Defense on Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases (April 20, 2012)
13. Excerpt of Dep't of Defense Annual Report on Sexual Assault in the Military Fiscal Year 2014 (Apr. 2015)
14. Service Directives directing adherence to the Secretary of Defense's April 20, 2012 Memo Withholding Initial Disposition Authority in Sexual Assault Cases

Materials Provided Day of Meeting:

15. Summaries of Presenters' Biographies
16. Letter from Mr. Paul Koffsky, dated 23 March 2016
17. Letter from Mr. Paul Koffsky, dated 6 April 2016
18. JPP Report on the Military Adjudication of Sexual Assault Offenses (Draft)
19. FY 12-14 Case Summaries: CAAF Decisions Providing Relief on Adult Sexual Assault Offenses
20. Legislative Briefing to the JPP Slide Presentation
21. Bock, Sara. "A Voice for Victims – How the Victims' Legal Counsel Organization Is Changing the Face of the Military Justice System" *Leatherneck*, April 2016: 32-35

Materials Provided After Meeting:

22. U.S. Coast Guard Response to MCIO Overview and Perspective of the SVIP Policies, Practices, and Procedures Panel