



Judicial Proceedings Panel Subcommittee
Minutes of July 22, 2015 Subcommittee Meeting

AUTHORIZATION: The Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (JPP or Panel), 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.

At the Secretary of Defense's direction, the JPP Subcommittee (the Subcommittee) has been established under the JPP. The Subcommittee has been tasked to support the JPP by assisting with the Secretary's objectives for an independent review of the judicial proceedings conducted under the Uniform Code of Military Justice (UCMJ) involving adult sexual assault and related offenses since the amendments made to the UCMJ by section 541 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Public Law 112-81).

EVENT: The JPP Subcommittee held a meeting on July 22, 2015, from 11:04 a.m. to 4:38 p.m., focusing on Article 120 of the Uniform Code of Military Justice Deliberations and Abuse of Authority and Coercive Sexual Offenses.

LOCATION: The meeting was held at the Judicial Proceedings Panel Office, located at Suite 150, 875 North Randolph Street, Arlington, Virginia, 22203.

MATERIALS: A verbatim transcript of the meeting, as well as preparatory materials provided to the JPP Subcommittee members prior to, during and after the meeting, are incorporated herein by reference and listed individually below. Materials received by the Panel are available on the JPP website: <http://jpp.whs.mil>.

PARTICIPANTS

Participating JPP Subcommittee Members:

The Honorable Barbara Jones, Chair
The Honorable Elizabeth Holtzman
Dean Michelle J. Anderson
Ms. Lisa M. Friel
Ms. Laurie Rose Kepros
Professor Lee D. Schinasi
Brigadier General, U.S. Marine Corps (Retired), James R. Schwenk
Ms. Jill Wine-Banks
Major General, U.S. Air Force (Retired), Margaret H. Woodward

Absent JPP Subcommittee Members:

Dean Lisa N. Schenck
Professor Stephen J. Schulhofer

Participating JPP Staff:

Colonel Kyle Green, U.S. Air Force, JPP Staff Director
Lieutenant Colonel Glen Hines, Branch Chief, JPP Subcommittee
Lieutenant Colonel Kelly McGovern, U.S. Army, JPP Deputy Director
Ms. Sharon Zahn, Senior Paralegal and Meeting Recorder

Other Participants:

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

Presenters:

Major General, U.S. Army (Retired), Robert Shadley
Major General, U.S. Air Force (Retired), Margaret H. Woodward
Major General Peggy Combs, U.S. Army, Commanding General U.S. Army Cadet Command and Fort Knox, Kentucky
Major General Gina Grosso, U.S. Air Force, Director Sexual Assault Prevention and Response, Office of the Vice Chief of Staff, Headquarters Air Force, Washington, D.C.
Rear Admiral Cari Thomas, U.S. Coast Guard, Assistant Commandant for Human Resource, Washington, D.C.
Brigadier General Austin Renforth, U.S. Marine Corps, Commanding General, Training Command, Quantico, Virginia

MEETING MINUTES

The DFO opened the meeting at 11:04 a.m.

Article 120 of the Uniform Code of Military Justice Deliberations

The Subcommittee started their deliberations by hearing presentations from each of the three Working Groups on the issues detailed to them, a summary of their discussions, and finally whether the working group recommended changes, no changes, or whether an issue required additional research or analysis.

- Working Group #1: the Honorable Ms. Holtzman, Ms. Kepros, BG (Retired) Schwenk and Professor Schulhofer (absent) briefed their recommended proposals for Issues 5 and 8.
- Working Group #2: Ms. Friel, Ms. Wine-Banks, Professor Schinasi and Dean Schenk (absent) briefed their recommended proposals for Issues 3, however, they due to time constraints, they did not have an opportunity to discuss Issues 4 and 9.
- Working Group #3: the Honorable Ms. Jones, Dean Anderson and Maj Gen (Retired) Woodward briefed their recommended proposals for Issues 1, 7, and 10.
- Issues 2 and 11 were not referred to a working group because the entire subcommittee planned to discuss the issues as a whole.
- Issue 6 was not assigned to a working group because it was decided it would be more appropriate to be discussed in conjunction with the issues pertaining to coercive relationships.

The subcommittee members analyzed each of the issues presented and the proposed recommendations. Each Working Group agreed they would prepare a final recommendation based on the deliberations for the members to make final determinations during the next session of deliberations.

Case Studies on Abuse of Authority/Coercive Sexual Offenses in the Training Environment

In the afternoon, the Subcommittee heard testimony from two former commanders, Major General (Retired) Robert Shadley and Subcommittee member Major General (Retired) Margaret Woodward.

Major General Shadley testified that while assigned to Aberdeen Proving Ground in the late 1990s, he uncovered sexual misconduct by numerous training instructors who were using their rank and status to sexually abuse recruits. General Shadley testified about the many victim interviews he conducted and opined that the trainee/trainer relationship is one of trust. He concluded that because of the vast disparity in power between instructors and recruits that recruits simply cannot legally consent to sexual activity with their instructors and when this relationship is abused by an instructor it is a crime. He stated that his accounts of the interviews of the victims of the "Aberdeen Sex Scandal" are contained in his book, The GAME: Unraveling a Military Sex Scandal.

Major General Woodward testified that while assigned as the Director, Air Force Sexual Assault Prevention and Response, she conducted a review of the Air Force Basic Training scandal at Lackland Air Force Base. She spoke about the charges that were preferred in those cases and how some accused were charged and convicted under Article 120 and others under Article 92. Major General Woodward spoke about the trainee/trainer relationship and shared her account of victim interviews and the victims' fear of retribution if they did not do as they were told by their trainer, due to the trainer's rank and position. Major General Woodward also offered her perspectives as a former commander, holding both special and general court-martial convening authority.

Major General Shadley and Major General Woodward answered questions from the Subcommittee members and discussed their opinions on recommendations for potential changes to Article 120 as it applies to sexual misconduct cases involving the training environment and abuse of rank.

Former Training Commanders' Perspectives on Preventing and Prosecuting Abuse of Authority/Coercive Sexual Offenses

The Subcommittee also heard testimony from four senior military officers: (1) Major General Peggy Combs, U.S. Army, (2) Major General Gina Grosso, U.S. Air Force, (3) Rear Admiral Cari Thomas, U.S. Coast Guard, and (4) Brigadier General Austin Renforth, U.S. Marine Corps. The presenters offered their personal opinions about the trainee/trainer dynamic, and at what stage in training a violation of this relationship should be considered a violation of Article 120, versus a violation of Article 92 (orders violation) or 93 (maltreatment). In addition, they testified

to the impact that a violation by a trainer has on both the trainee and the unit. The presenters answered the Subcommittee members' questions and discussed their perspectives on whether Article 120 should be amended further to include trainee/trainer relationships during initial training based on the trainers' rank and status, and if the trainees have the ability to consent.

The DFO closed the meeting at 4:38 p.m.

CERTIFICATION

I hereby certify, to the best of my knowledge, the foregoing minutes are accurate and complete.



Barbara Jones
Chair
Judicial Proceedings Panel Subcommittee

MATERIALS

Meeting Record:

1. Transcript of July 22, 2015 JPP Subcommittee meeting, prepared by Neal R. Gross and Co., Inc.

Meeting Materials:

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

Read Ahead Materials:

5. Summary of Meeting Materials
6. List of Issues 6, 12-17
7. *U.S. Department of Defense, Report on Protections for Prospective Members and New Members of the Armed Forces During Entry-Level Processing and Training* (May 2014)
8. *Military Sex Scandals from Tailhook to the Present: The Cure Can Be Worse than the Disease*, Duke Journal of Gender Law & Policy, May, 2007 (Professor Kingsley R. Browne)
9. *Commander Directed Investigation Report-Developing America's Airmen: A Review of Air Force Enlisted Training*, 22 August 2012 (Executive Summary)

10. *AETC Commander's Report to the Secretary of the Air Force - Review of Major General Woodward's Commander-Directed Investigation, 2 November 2012 (Executive Summary)*
11. *Services' RFI Response-Methods of Prosecuting Abuse of Authority Offenses in the Training Environment*
12. *Services' RFI Response-Impact of Imposing Strict Liability for Sexual Relationships in the Training Environment*
13. *Services' RFI Response-Examples of Charging Constructive Force Offenses in the Training Environment*
14. *Services' RFI Response-Charging Sexual Offenses in the Training Environment Under Articles Other Than Art. 120*
15. *U.S. Army Training and Doctrine Command Regulation 350-6, dated 7 November 2013 (Paragraph 2-6(d) Prohibits Sexual Relationships with Trainees)*
16. *U.S. Air Force Air Education and Training Command Instruction 36-2909, dated 2 December 2013 (Paragraph 2.3.3 Prohibits Sexual Relationships with Trainees)*
17. *U.S. Coast Guard Memorandum Order dated 9 December 2013 (Paragraph 4.b Prohibits Sexual Relationships with Trainees)*
18. *U.S. Marine Corps Depot Order P1510.31, dated 20 March 2014 (Paragraph 3201 Prohibits Sexual Relationships with Trainees)*
19. *U.S. Navy Recruit Training Instruction 3000.1A, dated 23 January 2008 (Paragraph 9.d. Prohibits Sexual Relationships with Trainees)*
20. *United States v. Pease, __ M.J. __, No. 201400165 (N-M. Ct. Crim. App. Jul. 14, 2015)*
21. *United States v. Schloff, __ M.J. __, No. 15-0294/AR (C.A.A.F. 2015)*

Materials Provided During the Meeting:

22. Working Group #1, Prep Session Worksheet
23. Working Group #2, Prep Session Worksheet
24. Working Group #3, Prep Session Worksheet
25. Other Issues Worksheet
26. Issues 1 – 11
27. Prior Version of Indecent Acts Offenses Under the UCMJ, Indecent Acts for Offenses Committed before October 1, 2007
28. Benchbook Instructions, Indecent Act, Article 120, October 1, 2007 – June 27, 2012
29. Text of Article 120 – Rape and Sexual Assault, 2012 Version
30. Draft of New Article 134 Offense Contained in Draft Executive Order