



Judicial Proceedings Panel Subcommittee  
Minutes of September 17, 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 September 17, 2015, from 9:12 a.m. to 4:41 p.m., to hear from witnesses concerning abuse of authority/coercive sexual offenses under Article 120 of the Uniform Code of Military Justice and to deliberate on several issues relating to Article 120.

**LOCATION:** The meeting was held at the Judicial Proceedings Panel Office, 875 North Randolph Street, Suite 150, 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  
Dean Lisa N. Schenck  
Brigadier General (Retired) James R. Schwenk, U.S. Marine Corps  
Professor Stephen J. Schulhofer  
Ms. Jill Wine-Banks  
Major General (Retired) Margaret H. Woodward, U.S. Air Force

Absent JPP Subcommittee Members:

Professor Lee D. Schinasi

Participating JPP Staff:

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

Lieutenant Colonel Glen Hines, U.S. Marine Corps, Branch Chief, JPP Subcommittee

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:

Congresswoman Lois Frankel

Ms. Elisha Morrow

## **MEETING MINUTES**

The DFO opened the meeting at 9:12 a.m.

Deliberations

The Subcommittee members began their deliberations by first hearing a review of the August 17, 2015 Subcommittee meeting from Dean Michelle Anderson. Dean Anderson provided a summary of the testimony from prosecutors, defense counsel and training command staff judge advocates with regards to Abuse of Power/Coercive Sexual Offenses. The Subcommittee members then discussed the August deliberations and analysis of issues 6 and 12-17. Dean Anderson then briefed the Subcommittee on the Department of Defense perspective on Sex Offender Registration, based on the August testimony of Mr. John Awtrey, Director, Law Enforcement Policy and Support.

Congressional (and Victim) Perspectives Regarding Abuse of Authority and Coercive Sexual Offenses

The Subcommittee then heard testimony from Congresswoman Lois Frankel (D-22nd FL). Congresswoman Frankel discussed her views about whether the definition of rape in Article 120 should be amended to include relationships involving a service member who abuses his or her power within the chain of command. She was accompanied by a constituent from her district, Ms. Elisha Morrow, who described her experience as a U.S. Coast Guard trainee when she and other trainees were sexually harassed and assaulted by their instructor at basic training. While not proposing a strict liability offense, Representative Frankel recommended amending Article 120's rape provision to include instances in which an individual abuses his or her position of authority to commit a sexual act. She further recommended defining "position of authority" as "superior in rank to the other person."

## Deliberations

During the meeting's afternoon session, the Subcommittee members began their deliberations by reviewing the issues and proposals for recommended changes to Article 120 that were previously discussed. The Subcommittee members analyzed each of the 17 issues. In addition, they deferred several issues for further deliberation and agreed to continue their deliberations at their next meeting.

The DFO closed the meeting at 4:41 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 September 17, 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. Summary of the Status of JPP Subcommittee Deliberations on Issues 1-17
7. Pages from August Subcommittee Transcript Containing Deliberations Session on Issues 12-17 (Coercive and Abuse of Authority Sexual Misconduct Offenses)
8. Additional Written Remarks Provided by Major Mary Ellen Payne, USAF, In Follow-Up to Her Statements at the August Subcommittee Meeting
9. Report of Article 32 Investigation – United States Coast Guard – Redacted
10. Article 34 Advice Letter – United States Coast Guard – Redacted

### Materials Provided During the Meeting:

11. List of Issues 1 – 11
12. List of Issues 6, 12-17
13. Text of Article 120 – Rape and Sexual Assault, 2012 Version
14. August 2014 “Red Line” Version of Article 120, UCMJ (received from Representative Frankel)

Materials Presented During the Meeting:

15. September 2015 Updated “Red Line” Version of Article 120, UCMJ (received from Representative Frankel)