



Judicial Proceedings Panel Subcommittee
Minutes of October 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 October 22, 2015, from 9:17 a.m. to 4:49 p.m., to hear a briefing about the Military Justice Review Group 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
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

Brigadier General (Retired) James R. Schwenk, U.S. Marine Corps

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

Lieutenant Colonel Kelly McGovern, U.S. Army, Deputy, JPP Staff Director

Ms. Sharon Zahn, Senior Paralegal and Meeting Recorder

Other Participants:

Mr. Dwight Sullivan, Department of Defense Office of the General Counsel, Designated Federal Official (DFO)

Presenter:

Honorable Andrew Effron, Director, Military Justice Review Group

MEETING MINUTES

The DFO opened the meeting at 9:17 a.m.

Military Justice Review Group Briefing

The Subcommittee first heard testimony from the Honorable Andrew Effron, former Chief Judge for the Court of Appeals for the Armed Forces, who is currently the Director of the Military Justice Review Group (MJRG). Judge Effron briefed the panel on the MJRG's pending legislative proposal report on the Uniform Code of Military Justice (UCMJ). He informed the Subcommittee he could only testify about the MJRG's process and could not speak about specific recommendations, as the report is currently in Executive Branch review. Once this review is completed, he anticipates the report will be delivered to Congress, at which point it will be made available to the public. Judge Effron explained how the MJRG was formed and described its process for reviewing all 146 articles of the UCMJ. He told the Subcommittee that the MJRG reviewed Article 120, but he said his group's proposals regarding Article 120 were very modest. He said the MJRG's one-year review of the entire UCMJ was very different than the in-depth review of Article 120 being conducted by the JPP and its subcommittee.

Deliberations

The Subcommittee members next returned to deliberations on the seventeen issues regarding Article 120 referred to the Subcommittee by the JPP. Lieutenant Colonel Hines first reviewed the status of the Subcommittee's conclusions and recommendations from previous deliberation sessions and explained the read-ahead materials that had been provided to the members. The Subcommittee members spent the remainder of the meeting reviewing and discussing each of the 17 issues. They agreed on final recommendations for several issues and tasked individual Subcommittee members to draft proposed statutory or regulatory revisions for several issues for the full Subcommittee to consider. The members requested the staff to prepare an updated draft

report based on their deliberations that could be reviewed and revised by the Subcommittee members in preparation for their briefing to the JPP, which is scheduled for the December 11 public meeting.

The DFO closed the meeting at 4:49 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 October 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 Biography

Read Ahead Materials:

5. Summary of Meeting Materials
6. Summary of Deliberations Status on Unresolved on Issues 1-17
7. DoD and Joint Service Committee Submission to Congress Addressing Draft of 2012 Version of Article 120
8. Draft of Proposed Language for Amendment to Article 120(g)(7) Definition of "Threatening or Placing That Other Person In Fear.", Dean Anderson.
9. Chart of Presenters' Recommendations on Unresolved Issues

Materials Provided During the Meeting:

10. List of Issues 1 – 11
11. List of Issues 6, 12-17
12. Text of Article 120 – Rape and Sexual Assault, 2012 Version
13. Outline of Issues Subcommittee has decided, as of 20 October 2015

Materials Presented During the Meeting:

14. Military Justice Review Group Slides, Honorable Andrew Effron