



DEPARTMENT OF DEFENSE
OFFICE OF THE GENERAL COUNSEL

1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

April 6, 2016

The Honorable Elizabeth Holtzman
Chair
Judicial Proceedings Panel
One Liberty Center
Suite 150
875 North Randolph Street
Arlington, VA 22203

Dear Representative Holtzman:

Thank you for the opportunity to provide additional information concerning some of the topics addressed during the March 11, 2016 public meeting of the Judicial Proceedings Panel (JPP).

In addition to the issues identified in my letter of March 23, 2016, several inaccurate statements were made to the JPP concerning the capabilities of the Military Departments' current electronic case-tracking systems. Before exploring those issues in greater detail, it is important to note that the Department of Defense (DoD) has recognized the current absence of a comprehensive DoD-wide military justice database and has offered a legislative proposal to create such a resource. Section 1104 of the proposed Military Justice Act of 2016, which DoD transmitted to Congress on December 28, 2015, would require the prescription of uniform standards across the Services for the "[c]ollection and analysis of data concerning substantive offenses and procedural matters in a manner that facilitates case management and decision making within the military justice system." The sectional analysis explains that the purpose of that provision "is to enhance the management of cases" and "the collection of data necessary for evaluation and analysis." Recognizing the technological and budgetary challenges that must be addressed to implement section 1104 were it to become law, that provision has a two-year timeline for the prescription of uniform standards and a four-year timeline for full implementation. Congress's enactment of section 1104 of the proposed Military Justice Act of 2016 would make data compilation and analysis across the military justice system significantly easier and more reliable.

While DoD supports a comprehensive military justice electronic information system, the JPP was given accounts of the Military Departments' current electronic data collection systems that understated their true capabilities. For example, the JPP was told that "in no one instance" could "the various military-specific systems or Service-specific systems" answer the question of "how many sexual assault cases are going on in [the relevant] Service right now." In fact, every Military Department and the United States Coast Guard have a comprehensive court-martial case-tracking system that is available to the relevant headquarters element. These systems can be and are used for data collection and analysis purposes. The Army's Military Justice Online system, the Air Force's Automated Military Justice Analysis and Management System



(AMJAMS), the Navy-Marine Corps' Case Management System, and the Coast Guard's Law Manager database would all be able to provide the number of on-going sexual assault courts-martial at any given time as well as disposition data for court-martial cases. For example, within one duty day of an unrestricted report being made in the Air Force, the case will be entered into AMJAMS, which will be updated with each subsequent development in the case.

Also at the March 11 public meeting, several imprecise statements were made to the JPP concerning statutory changes governing referral of charges alleging penetrative offenses. A brief synopsis of the actual rules may be helpful. On April 20, 2012, the Secretary of Defense precluded anyone who is not at least a special court-martial convening authority in the grade of O-6 (colonel or Navy captain) from disposing of allegations of the following offenses: "(i) rape, in violation of Article 120; (ii) sexual assault, in violation of Article 120 of the UCMJ; (iii) forcible sodomy, in violation of Article 125 of the UCMJ; and (iv) all attempts to commit such offenses, in violation of Article 80." Pursuant to section 1705(b) of the National Defense Authorization Act for Fiscal Year 2014 (FY14 NDAA), "only general courts-martial have jurisdiction over" those alleged offenses, as well as allegations of rape of a child or sexual assault of a child. Pub. L. No. 113-66, tit. XVII, § 1705(b), 127 Stat. 672, 959 (2013). Additionally, a general court-martial convening authority's decision not to refer allegations of certain sex-related offenses is subject to higher-level review. A general court-martial convening authority's decision not to refer a charge of rape or sexual assault under Article 120(a) or (b), forcible sodomy under Article 125, or an attempt to commit any of those offenses under Article 80 will be reviewed by the next-superior general court-martial convening authority if the Article 34 advice letter recommended against referral. A non-referral decision contrary to the Article 34 advice letter's recommendation requires review by the Secretary of the relevant Military Department.

Additionally, a permanent record will be maintained of any judicial or administrative determination that a service member committed such an offense. Pursuant to section 1745 of the FY14 NDAA, if a complaint of a sex-related offense is made against a member of the Armed Forces and the member is convicted by court-martial or receives non-judicial punishment or punitive administrative action for such a sex-related offense, a notation to that effect shall be placed in the personnel service record of the member, regardless of the member's grade. Pub. L. No. 113-66, tit. XVII, § 1745, 127 Stat. 672, 982 (2013).

Thank you again for the opportunity to provide additional information to the JPP. I hope that this information proves useful as the JPP continues with its vitally important work.

Sincerely,



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Personnel and Health Policy

cc:

The Honorable Barbara Jones

Vice Admiral Patricia A. Tracey, Ret.

Professor Thomas W. Taylor

Mr. Victor Stone