



JUDICIAL PROCEEDINGS PANEL

April 26, 2017

FOR IMMEDIATE RELEASE

The Judicial Proceedings Panel Releases its Report on Military Defense Counsel Resources in Sexual Assault Cases

Arlington, VA – The Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (JPP) released a report identifying serious deficiencies in the ability of defense counsel in military sexual assault prosecutions to provide a robust defense and made four recommendations to correct the problems. The identification of the problems and the recommendations grew out of site visits made by a Subcommittee of the JPP conducted from July to September 2016.

During these site visits, the JPP Subcommittee spoke to more than 280 individuals from all of the military Services involved in the investigation, prosecution, and defense of sexual assault offenses. Numerous prosecutors and defense counsel indicated that recent legal and policy changes to the military justice system have exacerbated an already existing disparity in resources, personnel, and experience between prosecutors and defense counsel. The JPP Subcommittee reviewed the information gathered from these site visits, as well as information on this topic received by the JPP in public meetings, and submitted its findings and recommendations to the JPP.

Based on the information received from the Subcommittee and its own deliberations, the JPP made four recommendations relating to defense counsel resources and experience in sexual assault cases.

First, the JPP found that recent changes to the military justice system, such as substantial changes to the Article 32 pre-trial hearing process, have reduced or eliminated the already limited ability of defense counsel to gain important information regarding the prosecution's case. To help address this deficit, the JPP recommended that military defense counsel, like their civilian counterparts, have access to independent defense investigators.

Second, the JPP found that military defense offices are often understaffed and underfunded as compared to prosecution offices. The JPP therefore recommended that the military Services ensure defense organizations are sufficiently staffed and have appropriate funding.

Third, the JPP found that military defense counsel, unlike civilian public defenders, are required to request approval and funding of defense experts from military convening authorities, who often deny these requests. Moreover, defense counsel must send these requests through the prosecutor, thereby requiring them to prematurely reveal their defense strategies to prosecutors. To correct this problem, the JPP recommended that defense offices be given approval and funding authority for their own expert witnesses.

Fourth, the JPP found that defense counsel in sexual assault cases do not always have the experience required to defend clients in complex cases. Therefore, the JPP recommended that the military Services ensure lead defense counsel in sexual assault cases have sufficient litigation experience and set a minimum tour length for defense counsel of two years.

The JPP noted that three of the recommendations had also been made by the predecessor sexual assault federal advisory committee—the Response Systems to Adult Sexual Assault Crimes Panel (RSP)—in June 2014.

The Judicial Proceedings Panel is an independent federal advisory committee tasked with conducting an independent review and assessment of military judicial proceedings for sexual assault offenses since Fiscal Year 2012, for the purpose of developing recommendations to Congress and the Secretary of Defense for improvements to such proceedings. The JPP was established by the Secretary of Defense in June 2014 in accordance with section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013.

More information about the JPP, including the full version of this report and testimony and materials considered by the Panel members in developing these recommendations, is available on the JPP’s website at <http://jpp.whs.mil>.