



JUDICIAL PROCEEDINGS PANEL

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FOR IMMEDIATE RELEASE

The Judicial Proceedings Panel Releases Its Report on Panel Concerns Regarding the Fair Administration of Military Justice in Sexual Assault Cases

Arlington, VA – The Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (JPP) has released a report containing nine recommendations to address concerns about the fundamental fairness of the military justice system when it comes to the treatment of the accused in sexual assault cases. The panel noted that while many constructive and important changes dealing with sexual assault in the military have recently been implemented, such as those designed to help victims, some of the changes have also created unintended adverse consequences for defendants.

This report, like the JPP's reports on military defense counsel resources and experience in sexual assault cases and on sexual assault investigations in the military, grew out of the military installation site visits conducted by the JPP Subcommittee from July through September 2016. Many of the prosecutors and defense counsel interviewed during the site visits perceived that recent statutory changes to the Article 32 preliminary hearing process have made that hearing less useful in evaluating the strength of the evidence and determining a proper outcome in sexual assault cases. Further, curtailing the role of these hearings so that they no longer function as a useful discovery device for the defendant as they had in the past, coupled with the lack of investigative and other resources available to defendants, has put the accused at a disadvantage, counsel pointed out. Counsel also perceived that convening authorities feel pressure to send cases to courts-martial even when the evidence is weak and the likelihood of a conviction small. As a result, according to many counsel, the acquittal rate in sexual assault cases is high and members of the military are questioning the fairness of the military justice system.

On the basis of information received from the Subcommittee and its own deliberations, the JPP made nine recommendations regarding issues affecting the fair administration of military justice in sexual assault cases.

Six recommendations were directed to the Secretary of Defense and the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces.

These recommendations are to:

- (1) continue to review the impact of the 2014 statutory revisions to the Article 32 preliminary hearing process, including a review of whether preliminary hearing officers in sexual assault cases should be military judges or experienced counsel and how often case disposition recommendations from preliminary hearing officers are followed by convening authorities;

- (2) conduct site visits to evaluate whether convening authorities are making effective use of pending case disposition guidance required to be promulgated by the National Defense Authorization Act for Fiscal Year 2017;
- (3) review whether the statute and rules governing written pretrial advice given to a convening authority by the staff judge advocate should be amended to limit its disclosure to defense counsel;
- (4) continue to gather data and other evidence regarding disposition decisions and conviction rates;
- (5) monitor whether misperceptions regarding alcohol consumption and the ability to consent to sexual activity affect court-martial panel members; and
- (6) collect and review data on the Department of Defense policy that allows Service members who report a sexual assault to request an expedited transfer to a different unit or installation.

In addition, the JPP specifically recommended that the rules providing convening authorities and staff judge advocates with case disposition guidance include the following non-binding standard: the charges are supported by probable cause and there is a reasonable likelihood of proving the elements of each offense beyond a reasonable doubt using only evidence likely to be found admissible at trial. The JPP also recommended that Congress consider revising the statutory provisions requiring that non-referral decisions in certain sexual assault cases be reviewed by a higher general court-martial convening authority or the Service Secretary, because these provisions are perceived as pressuring convening authorities to refer weak cases to court-martial, and recommended that the Secretary of Defense develop procedures to mitigate this perception.

Finally, the JPP recommended that the Secretary of Defense ensure adequate training of victims' counsel on the importance of timely interviews and effective relationships between victims and prosecutors; ensure that the sexual assault prevention and response training provided to Service members regarding the terms "consent" and "impairment" is legally accurate; and review the DoD policy on expedited transfers and whether added restrictions on transfer destinations are needed.

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. This is the tenth report issued by the JPP.

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>.