JUDICIAL PROCEEDINGS PANEL

FINAL REPORT

October 2017
Report of the Judicial Proceedings
Since Fiscal Year 2012 Amendments Panel

Final Report

October 2017
Dear Chairs, Ranking Members, and Mr. Secretary:

We are pleased to submit the final report of the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (JPP). This report is the culmination of three years of the Panel’s review and assessment of issues involving judicial proceedings related to sexual assault in the Armed Forces. To conduct its assessments, the JPP held 32 public meetings between August 2014 and July 2017 during which the members heard testimony from hundreds of witnesses, including sexual assault survivors and victim advocacy organizations, military leaders, military and civilian prosecutors, defense counsel and victims’ counsel, former judges, victim services personnel, and numerous others. The Panel also received thousands of pages of documents from the Department of Defense, the military Services, and other interested parties.

Since February 2015, the JPP has issued 11 reports containing a total of 63 recommendations to Congress, the Secretary of Defense, the military Services, and the Defense Advisory Committee on Investigations, Prosecution, and Defense of Sexual Assault in the Armed Forces, presenting its research and findings on the topics assigned to it by Congress, those recommended by its predecessor sexual assault advisory committee—the Response Systems Panel—as well as on two related issues.
The JPP has observed and assessed many constructive and important changes addressing sexual assault in the military and support for victims over the past three years. The Panel applauds the efforts of Congress, the Department of Defense, the military Services, and advocacy organizations as they continue to focus attention on this important matter.

The JPP conveys its gratitude to Congress for the opportunity to examine the issue of sexual assault in the military. The Panel would have not been able to complete its work without the support and assistance of the JPP Subcommittee, the military Services, the Department of Defense, and the hundreds of experts and witnesses who shared their experiences and perspectives with the Panel. The JPP expresses its appreciation to everyone who helped it fulfill its mission.

Respectfully submitted,

[Signatures]

Elizabeth Holtzman, Chair

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In section 576 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013, enacted on January 2, 2013, Congress directed the Secretary of Defense to establish the fifth congressionally mandated task force on sexual assault in the military created since 2003: the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (Judicial Proceedings Panel, or JPP). Its immediate predecessor was the Response Systems to Adult Sexual Assault Crimes Panel (Response Systems Panel, or RSP), which completed its work in June 2014.

Congress instructed the JPP “to conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice (UCMJ) involving adult sexual assault and related offenses . . . for the purpose of developing recommendations for improvements to such proceedings.” In June 2014 the Secretary of Defense appointed five members to the JPP, including two members who had previously served on the RSP.

A. RESPONSIBILITIES AND METHODOLOGY OF THE JUDICIAL PROCEEDINGS PANEL

In the National Defense Authorization Acts for Fiscal Years 2013, 2014, and 2015, Congress assigned to the JPP a total of 16 specific duties covering a wide array of topics related to sexual assault in the military. The Response Systems Panel recommended four issues for review by the JPP. In accordance with its charter, the JPP examined two additional topics that came to the attention of the Panel as

1. RSP Recommendation 45—The Judicial Proceedings Panel and the Joint Services Committee should review and clarify the extent of a victim’s right to access information that is relevant to the assertion of a particular right.
2. RSP Recommendation 113—The Judicial Proceedings Panel and Joint Service Committee consider whether to recommend legislation that would either split sexual assault offenses under Article 120 of the UCMJ into different articles that separate penetrative and contact offenses from other offenses or narrow the breadth of conduct currently criminalized under Article 120.
3. RSP Recommendation 115—The Judicial Proceedings Panel assess the use of depositions in light of changes to the Article 32 proceeding, and determine whether to recommend changes to the deposition process, including whether military judges should serve as deposition officers.
4. RSP Recommendation 117—The Judicial Proceedings Panel study whether the military plea bargaining process should be modified.
it conducted its statutory assessments: retaliation against victims of sexual assault and the appellate rights of victims in the military justice process.

To explore and assess these topics, the JPP held 32 public meetings between August 2014 and July 2017. To over the course of those meetings, the Panel heard from hundreds of witnesses, including military leaders, sexual assault victims, sexual assault advocacy groups, Department of Defense (DoD) and civilian victim services personnel, military and civilian prosecutors, defense counsel and victims’ counsel, academics and subject matter experts, members of the public, and members of Congress. The JPP also received and reviewed thousands of pages of documents provided by DoD, the military Services, victim advocacy organizations, and other interested parties.

The JPP also tasked a subcommittee appointed by DoD to conduct its own review of certain issues. The JPP Subcommittee held multiple meetings between April 2015 and May 2017. In addition, between July and September 2016 members of the JPP Subcommittee conducted site visits to military installations in the United States and Asia, during which members spoke with panels of more than 280 individuals from all of the Services involved in the investigation, prosecution, and defense of sexual assault offenses.

Congress required the JPP to submit its initial report to the Secretary of Defense and the Committees on Armed Services of the Senate and House of Representatives within 180 days of its first meeting and to issue subsequent reports annually thereafter through fiscal year 2017. The JPP issued its first report in 2015, followed by four reports in 2016 and six reports in 2017. These reports contain a total of 63 recommendations, many of which have been implemented by Congress, DoD, and the Services. The JPP’s reports and recommendations, along with ensuing legislative and regulatory changes made by Congress, DoD, and the Services, are discussed below.

B. REPORTS AND RECOMMENDATIONS OF THE JUDICIAL PROCEEDINGS PANEL

1. Initial Report

The JPP issued its initial report in February 2015. It summarized the JPP’s assessments from the first six months of its review, with a focus on the effects and implementation of the 2012 amendments to Article 120 of the UCMJ, the effects and implementation of special victims’ counsel programs instituted by DoD and the military Services, victim privacy issues in military sexual assault cases, and the rights and needs of sexual assault victims to receive case information and participate in the military judicial process. The JPP made 11 recommendations relating to these topics.

The JPP referred 17 issues for additional consideration to the JPP Subcommittee. The first 11 of these issues related to definitions of terms and elements of offenses, defenses, and enumerated offenses under Article 120 of the UCMJ, the military’s sexual assault statute. The remaining six issues

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7 A list of the JPP’s public meetings and the JPP Subcommittee meetings is included as Appendix D.
8 The biographies of the Subcommittee members are included as Appendix B.
9 A list of the JPP’s recommendations is included as Appendix E. The status of these recommendations is included as Appendix F.
related to how the military prosecutes crimes that involve coercive sexual relationships and abuse of authority, including relationships between trainers and trainees, recruiters and recruits, and senior and subordinate military members in the same chain of command.

A number of JPP recommendations contained in its initial report have been implemented by Congress and DoD.11 Following the JPP’s recommendation relating to the DoD and interagency review process, Congress enacted section 543 of the FY16 NDAA. This provision required the Secretary of Defense to examine the DoD process for implementing statutory changes to the UCMJ for the purpose of developing options to streamline that process and adopting procedures to ensure that legal guidance is published as soon as practicable whenever statutory changes to the UCMJ are implemented.12 The Deputy Secretary of Defense also approved this JPP recommendation in a September 2, 2016, memorandum to the Service Secretaries.13

Following the JPP’s recommendations relating to the special victims’ counsel/victims’ legal counsel (SVC/VLC) program, Congress enacted section 535 of the FY16 NDAA. This provision required the Secretary of Defense to establish guiding principles and standardize training for the SVC/VLC program, as well as ensure that SVCs/VLCs are assigned to locations that maximize their face-to-face contact with clients.14 DoD also approved, in whole or in part, the JPP’s recommendations to establish uniform policies concerning SVC/VLC participation in military justice proceedings, to impose more stringent criteria for selecting SVCs/VLCs, and to extend the eligibility for SVC/VLC representation to last as long as a victim’s rights are at issue.15

Following the release of the JPP’s initial report, Congress addressed the rights of victims through the judicial process in two pieces of legislation. First, Congress enacted section 531 of the FY16 NDAA, expanding a victim’s ability to petition an appellate court for a writ of mandamus if the victim believes that his or her rights have been violated.16 Second, consistent with the JPP’s recommendation on victims’ access to information, Congress enacted section 5504 of the FY17 NDAA, creating a new Article 140a, UCMJ (Case management; data collection and accessibility).17 This article requires the Secretary of Defense to prescribe uniform standards and criteria for improved access to docket information, filings, and records in the military justice system, using, so far as practicable, the best practices of federal and state courts. DoD also acted on the JPP recommendation, directing the Service Secretaries to develop guidance for their respective Departments to ensure that victims and their counsel have appropriate access to docketing information and case filings.18

11 A chart with the implementation status of JPP recommendations is included as Appendix F.
14 FY16 NDAA, supra note 12, § 535. SVCs are victim attorneys in the Army, Air Force and Coast Guard. The Navy and Marine Corps victim attorneys are referred to as VLCs.
15 DSD Memo on Recommendations, supra note 13.
16 FY16 NDAA, supra note 12, § 531.
18 DSD Memo on Recommendations, supra note 13.
In addition, consistent with the JPP’s recommendation on Military Rule of Evidence (M.R.E.) 412, the military’s rape shield law, the President signed Executive Order 13696 on June 17, 2015, eliminating the “constitutionally required” exception within M.R.E. 412 at Article 32 hearings.19

Finally, DoD approved in part the JPP’s recommendation on M.R.E. 513, directing the Joint Service Committee on Military Justice to recommend uniform guidance regarding release of mental health records to ensure an appropriate balance between the interests of law enforcement and the privacy interests of victims of an alleged sex-related offense.20

2. Report on Restitution and Compensation for Military Adult Sexual Assault Crimes21

After issuing its initial report, the Panel turned its attention to the specific task of examining restitution and compensation for victims of sexual assault in the military. In the FY14 NDAA, Congress instructed the Panel to analyze and assess the adequacy of the provision of compensation and restitution for victims of sexual assault crimes committed by military Service personnel, and specifically to evaluate three proposals for expanding such relief. In February 2016, the JPP released a report containing six recommendations to Congress and the Secretary of Defense to simplify and accelerate how restitution and compensation are provided to victims.

The JPP concluded that to best meet the financial needs of sexual assault victims, a new uniform DoD compensation program should be established that would provide benefits to victims without regard to the physical location of the offense or the victim’s state of residence. At present, state victim compensation programs vary as to who and what is covered, in the length of coverage, and in the amounts provided.

The JPP also encouraged the President to issue an executive order that would modify the Rules for Courts-Martial (R.C.M.) to provide victims with the right to be heard before a convening authority enters into a pretrial agreement, noting that the inclusion of restitution in a pretrial agreement is within the discretion of convening authorities. The Panel further recommended that the Services provide regular training to attorneys and victim assistance personnel on the availability and use of restitution in pretrial agreements.

The JPP evaluated three proposals to amend the UCMJ that would allow victims to be compensated from the forfeited wages of incarcerated Service members, would include bodily harm among the injuries meriting compensation in a claim filed against the alleged offender under Article 139 of the UCMJ, and would add restitution as an authorized punishment that could be adjudged at courts-martial. Ultimately, the Panel determined that the negative effects of these proposals would outweigh the benefits each sought to achieve and instead recommended that a new, uniform DoD compensation program be established for victims.

Consistent with one of the JPP’s recommendations, the President signed Executive Order 13730 on May 20, 2016, amending R.C.M. 705(d)(3) to require consultation with the victim, whenever practicable, before the convening authority accepts a pretrial agreement.22

20 DSD Memo on Recommendations, supra note 13.
3. **Report on Article 120 of the Uniform Code of Military Justice**\(^{23}\)

In February 2016 the JPP released its report on Article 120 of the UCMJ, the military’s statute for prosecuting sexual assault cases. The JPP’s report followed an in-depth review and analysis of Article 120 by the JPP Subcommittee. Over the course of nine meetings, the JPP Subcommittee heard perspectives and recommendations from more than 40 military justice practitioners and debated the issues directed to it by the JPP, including definitions of terms and elements of offenses, defenses, and enumerated offenses under Article 120. The Subcommittee also compared Article 120 to similar federal criminal law provisions under Title 18 of the United States Code and reviewed how the military currently prosecutes abuse of authority and coercive relationships.

On the basis of the Subcommittee’s findings and recommendations and of the JPP’s own deliberations, the JPP determined that the most recent version of Article 120, enacted by Congress in 2012, provides a reasonably effective statutory framework for the prosecution of sexual assault offenses in the military. However, the JPP found that some definitions and terms used in the statute are confusing or vague and could possibly obscure standards of conduct among Service members or hinder court-martial prosecution of sexual assault offenses. To address these concerns, the JPP recommended that Congress amend five definitions in Article 120 and adopt a new theory of liability for coercive sexual acts or contacts in which a perpetrator used position, rank, or authority to secure compliance by the other person.

The JPP also recommended that the President amend the Manual for Courts-Martial to specifically state that consent and mistake of fact as to consent may be raised in any case in which they are relevant.

Following these JPP recommendations, in the FY17 NDAA Congress amended the definition of “consent,” removed the definition and element of “bodily harm,” and amended the definitions of “sexual act” and “sexual contact” in Article 120.\(^{24}\) Congress also added a definition for “incapable of consenting,” as recommended by the JPP; however, Congress chose to use the definition contained in federal law rather than the one proposed by the JPP, which the JPP Subcommittee developed after determining that the federal definition was itself problematic.\(^{25}\)

Congress did not enact the JPP’s recommendation to adopt a new theory of liability for coercive sex acts based on a perpetrator’s position, rank, or authority. Though it appeared in the Senate version of the FY17 NDAA, it was not included in the final conference report. The conferees noted that this conduct is prohibited under Article 93a, UCMJ (*Maltreatment*), as added by another provision in the FY17 NDAA.\(^{26}\)

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\(^{24}\) FY17 NDAA, *supra* note 17, § 5430.


4. Report on Retaliation Related to Sexual Assault Offenses

The JPP next examined the issue of retaliation related to sexual assault offenses, in a report released in February 2016. The issue of retaliation was brought to the JPP’s attention by a 2014 survey published by the RAND Corporation, which indicated that 62% of active duty women who reported unwanted sexual contact to a military authority in 2014 perceived some form of retaliation. This percentage was unchanged from a 2012 survey.

The JPP made 13 recommendations to improve DoD’s response to retaliation against Service members who report sexual misconduct. At the heart of the JPP’s report was a concern over the fundamental lack of data about the prevalence and nature of reported incidents of retaliation and the steps taken to deal with it. The Panel stressed the critical importance of such data to understand and mitigate the effects of retaliation on individual Service members, unit cohesion, and military readiness.

The JPP found little information on the prevalence of retaliation in the military, because workplace surveys are the only source of existing data about it. The JPP concluded that effective collection and tracking of actual incident data are necessary to understand the extent and nature of the problem of retaliation; such understanding, in turn, is necessary for Congress and DoD to craft more effective solutions and ensure the security and well-being of affected Service members.

To meet this need, the Panel’s report recommended that DoD and the Services use a standardized reporting form for incidents of retaliation, similar to the form employed when a sexual assault is reported. The form should be linked to the underlying report of sexual assault. The JPP recommended that incident information should be collected and tracked uniformly for every victim and across each of the Services.

The JPP further noted that there was no single person charged with monitoring what happens to a victim of retaliation. The JPP report recommended that the installation sexual assault response coordinators be tasked to consolidate retaliation reports, track and record retaliation data, and provide information to installation case management groups to monitor progress in resolving complaints.

Congress enacted a number of the JPP’s recommendations on retaliation. For example, section 543 of the FY17 NDAA requires DoD to include in the annual Sexual Assault Prevention and Response Office (SAPRO) report to Congress detailed information on each claim of retaliation in connection with a report of sexual assault made by or against a Service member.

Following another JPP recommendation in part, Congress enacted section 545 of the FY17 NDAA, which requires DoD SAPRO to establish metrics for evaluating the efforts of the Armed Forces to prevent and respond to retaliation in connection with sexual assault and to identify best practices to be used by the Military Departments as they seek to prevent and respond to retaliation.

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29 FY17 NDAA, supra note 17, § 543.

30 Id. § 545.
Adopting another JPP recommendation, Congress also enacted section 546 of the FY17 NDAA, which requires DoD personnel who investigate claims of retaliation to “receive training on the nature and consequences of retaliation, and, in cases involving reports of sexual assault, the nature and consequences of sexual assault trauma.”

In addition, following a JPP recommendation, Congress enacted section 547 of the FY17 NDAA, which directs the Secretary of Defense to develop regulations requiring a Service member who reports retaliation to “be informed in writing of the results of the investigation, including whether the complaint was substantiated, unsubstantiated, or dismissed.”

Finally, citing the recommendations of the JPP, on July 28, 2016, the Department of Defense Office of Inspector General (DoD IG) announced that a newly created team of seven DoD IG investigators and a supervisor would directly handle all sexual assault reprisal cases across the Services rather than serving in an oversight capacity for investigations conducted at the branch level.

5. Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses

In April 2016, the JPP released a report reviewing trends in the adjudication of adult sexual assault crimes in the military from fiscal years 2012 through 2014.

In conducting its analysis, the JPP extracted data from court records, case documents, and other publicly available resources, reviewing court-martial documents from 1,761 sexual assault cases resolved in fiscal years 2012 through 2014. The JPP retained an expert consultant, the distinguished criminologist Dr. Cassia Spohn, to analyze the data and provide statistics on case characteristics and outcomes. These were used in developing the report and recommendations.

The JPP’s report made two specific recommendations. First, the JPP recommended that Congress and the Secretary of Defense collect and analyze case adjudication data using a standardized, document-based collection model similar to systems used by the U.S. Sentencing Commission and developed by the JPP.

Second, the JPP recommended that DoD change its policy that excludes from the annual SAPRO reports to Congress those adult-victim sexual assault cases handled by the DoD Family Advocacy Program (FAP). The JPP recommended that DoD include legal disposition information related to all reported adult sexual assault incidents in one annual DoD report.

31 Id. § 546.
32 Id. § 547.
35 Document-based case adjudication data collection is a best practice used and recommended by the U.S. Sentencing Commission. The JPP’s document-based approach to data collection involves obtaining relevant case documents from the military Services (e.g., charge sheet, report of results of trial) and recording the relevant case history data into a centralized database for analysis.
Consistent with the first recommendation, Congress enacted section 5504 of the Military Justice Act of 2016, which created a new Article 140a, UCMJ, on case management, data collection, and accessibility.36

Congress also enacted section 574 of the FY17 NDAA, requiring the FAP to produce an annual report that includes the number of intimate partner, spousal, and child physical and sexual abuse incidents reported and substantiated each year, along with analyses of types of abuse reported and characteristics of the victims and perpetrators.37 Another provision, section 544 of the FY17 NDAA, requires that the FAP and SAPRO annual reports be submitted together to Congress.38 However, the statute does not require intimate partner and spousal sexual assault case judicial and disciplinary data to be included in either the FAP or SAPRO annual reports, as the JPP recommended.


In April 2017, the JPP released a report identifying serious issues that affect the ability of defense counsel in military sexual assault cases to provide a robust defense and offering four recommendations to correct the problems. The report grew out of the site visits conducted from July to September 2016 by members of the JPP Subcommittee, who visited military installations in the United States and Asia. The JPP Subcommittee met with panels of more than 280 individuals from 25 military installations and all of the military Services, including prosecutors, defense counsel, SVCs/VLCs, paralegals, commanders, investigators, and sexual assault response coordinators and other victim support personnel. These individuals spoke without attribution so that the JPP Subcommittee could gain an unfiltered, candid assessment of how changes in sexual assault laws and policies have, in their view, affected the military justice system.

On the basis of 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. Several of the recommendations were—in some form—previously recommended by the RSP.

First, the JPP found that recent changes to the military justice system, such as substantial changes to the Article 32 pretrial 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 loss of information, the JPP recommended that military defense counsel, like their civilian counterparts, have access to independent defense investigators—access that now exists only in the Navy.

Second, the JPP found that military defense offices, when compared to prosecution offices, are often understaffed and underfunded. The JPP therefore recommended that the military Services ensure that 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 convening authorities, who often deny these requests. Moreover, because defense counsel must send their requests through the prosecutor, they are

36 FY17 NDAA, supra note 17, § 5504.
37 Id. § 574.
38 Id. § 544.
forced to prematurely reveal their defense strategies. 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 that lead defense counsel in sexual assault cases have sufficient litigation experience and set a minimum tour length for defense counsel of two years.

7. Report on Victims’ Appellate Rights

In June 2017, the JPP released a report that called for enhancing the rights of victims of sexual assault in the military justice system’s appellate process. The Panel made four recommendations to Congress, the Department of Defense, and the Services: (1) to provide victims, through legislation, with the ability to protect their rights in post-conviction appellate proceedings; (2) to grant, by legislation, the Court of Appeals for the Armed Forces (CAAF) specific jurisdiction to review victims’ appeals under Article 6b of the Uniform Code of Military Justice, the military victims’ rights statute; (3) to provide victims with an opportunity to be heard prior to appellate counsel review of certain sealed materials; and (4) to require that victims be provided with notice of significant appellate matters.

The Panel began its assessment of the protection of victims’ rights in the appellate process after hearing concerns expressed by the military Services’ SVC/VLC program managers at its public meeting in April 2016. In response, the JPP Chair solicited from the program managers a legislative proposal addressing their concerns. The Panel held two public meetings to hear the perspectives of judges, practitioners, and experts—including a former chief judge of CAAF, former military appellate judges, military appellate defense and government counsel, civilian appellate defense counsel, an official from the Department of Justice Office of Victims of Crime, and attorneys from victims’ rights organizations—about the proposed changes to the appellate process. The JPP also received written submissions from the DoD, current and former Service judge advocates, and victims’ rights organizations.

In May 2017, Congressman Mike Turner and Congresswoman Niki Tsongas introduced the BE HEARD (Building an Environment for Helpful, Effective, and Accessible Representation and Decision-making) Act. This bill, if enacted, would codify the JPP’s recommendation to grant CAAF jurisdiction to hear victims’ interlocutory appeals under Article 6b, UCMJ.

8. Report on Sexual Assault Investigations in the Military


9. Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses for Fiscal Year 2015


10. Report on Panel Concerns Regarding the Fair Administration of Military Justice in Sexual Assault Cases


C. REPORTS OF THE JUDICIAL PROCEEDINGS PANEL SUBCOMMITTEE

In its February 2015 assessment of the 2012 version of Article 120 of the Uniform Code of Military Justice, the JPP recommended that 17 issues related to Article 120 be referred to a subcommittee for further evaluation. Following the JPP recommendation, the Secretary of Defense empaneled the JPP Subcommittee in April 2015. The JPP Subcommittee presented the following 4 reports and 3 short reports to the JPP.

1. Subcommittee Report on Article 120 of the Uniform Code of Military Justice


2. Subcommittee Report on Military Defense Counsel Resources and Experience in Sexual Assault Cases


3. Subcommittee Report on Sexual Assault Investigations in the Military


42 The biographies of the Subcommittee members are included as Appendix B.
I. INTRODUCTION AND TASKS ACCOMPLISHED

4. Subcommittee Short Reports on Department of Defense Initial Disposition Withholding Policy,\textsuperscript{43} Military Rules of Evidence 412 and 513,\textsuperscript{44} and the Training and Experience of Trial Counsel and Victims’ Counsel\textsuperscript{45}

The JPP Subcommittee presented three short reports to the JPP in March 2017 on the topics of the DoD initial disposition withholding policy, Military Rules of Evidence 412 and 513, and the training and experience of trial counsel and SVCs/VLCS. The reports are available at http://jpp.whs.mil/Public/docs/08-Panel_Reports/JPP_Subcomm_ShortReports_20170302_Final.pdf.

5. Subcommittee Report on Barriers to the Fair Administration of Military Justice in Sexual Assault Cases


II. Additional Issues Reviewed and Assessed by the Judicial Proceedings Panel

The JPP was directed by Congress to review and assess five issues that have not been fully addressed in previous JPP reports:

1. Department of Defense initial disposition withholding policy;
2. Trial counsel training and experience;
3. Special Victim Investigation and Prosecution (SVIP) Capability Program;
4. Military Rule of Evidence 412—admission of evidence of a victim’s sexual behavior or predisposition; and
5. Disclosure and admission of mental health records under Military Rule of Evidence 513.

The findings and assessments of the JPP regarding these issues are detailed below.

A. DEPARTMENT OF DEFENSE INITIAL DISPOSITION WITHHOLDING POLICY

1. Statutory Task

In the FY13 NDAA, Congress directed the JPP to “[m]onitor the implementation of the April 20, 2012, Secretary of Defense policy memorandum regarding withholding initial disposition authority under the Uniform Code of Military Justice in certain sexual assault cases.”

In that memorandum, setting forth a policy effective June 28, 2012, the Secretary of Defense directed that “commanders within the Department of Defense who do not possess at least special court-martial convening authority and who are not in the grade of O-6 (i.e., colonel or Navy captain) or higher” may not determine the initial disposition of alleged offenses involving the following:

(i) rape, in violation of Article 120 of the UCMJ;
(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 of the UCMJ.

2. Assessment

The JPP monitored the implementation of the withholding policy in two ways. First, on February 3, 2016, the JPP issued a request for information (RFI) to the Services and the DoD, asking whether they had problems with or concerns about the withholding policy. Second, the JPP Subcommittee asked

46 FY13 NDAA, supra note 1, § 576(d)(2)(I).
Service members questions about the implementation of the withholding policy during the site visits conducted between July and September 2016.

In response to the RFI, no entity other than the Marine Corps noted any reservations about the withholding policy. The Marine Corps expressed concern that in certain cases, minor misconduct, such as underage drinking or a barracks order violation, must be disposed of by a higher-level commander than would have previously handled the misconduct; this elevation occurs because the withholding policy applies to “all other alleged offenses arising from or relating to the same incident(s).”

During the JPP Subcommittee’s site visits, counsel stated that the withholding policy had little, if any, negative impact on sexual assault case processing other than minor administrative delays attributed to scheduling difficulties inherent in meeting with a senior officer.

On the other hand, site visit participants observed positive effects of the policy: an officer of an O-6 rank typically has more military justice experience than a lower-level commander and the policy has improved the public perception of the military’s handling of sexual assault cases. In addition, lower-level commanders themselves “generally supported elevating the decision to a higher-level commander.”

On the basis of the foregoing, the JPP does not recommend any changes to the current DoD withholding policy.

B. TRIAL COUNSEL TRAINING AND EXPERIENCE

1. Statutory Task

The FY13 NDAA directed the JPP to assess trends in the training and experience levels of military trial counsel in adult sexual assault cases and the impact of those trends on the prosecution and adjudication of such cases.

2. Assessment

In order to assess the training and experience of adult sexual assault prosecutors, the JPP issued RFIs to the Services in February and December 2016. The JPP also heard testimony on the training and experience of prosecutors at a public meeting on May 13, 2016, during which the Panel heard from leaders of the Service Judge Advocate General’s (JAG) schools and members of the JAG Corps who litigate adult sexual assault crimes. In addition, the JPP Subcommittee spoke with prosecutors about...
their training and experience during site visits conducted during the summer of 2016 and reported this information to the JPP at a public meeting on March 10, 2017.\textsuperscript{54}

The Services collaborate extensively on training.\textsuperscript{55} In recent years, the number of specialized courses on sexual assault prosecutions has increased;\textsuperscript{56} moreover, information about trying sexual assault cases has been incorporated in the Services' general advocacy courses.\textsuperscript{57} Each Service also provides attorneys with liberal access to the specialized training on sexual assault prosecutions available to federal and state prosecutors.\textsuperscript{58}

During the site visits, the Subcommittee observed that training programs for trial counsel seemed to be operating well.\textsuperscript{59} However, the Subcommittee noted that while trial counsel are generally satisfied that they are receiving adequate and appropriate training, many remarked that the extensive training does not make up for their lack of in-court experience.\textsuperscript{60}

Ms. Julia Hejazi, a highly qualified expert (HQE) and experienced civilian prosecutor for the Marine Corps, presented a different perspective regarding counsel training and experience at the May 2016 JPP public meeting. She testified that on the basis of her 16 years of prosecution experience and her 17 months as an HQE for the Marines, she believes that the military is successfully using training—including the experience gained from practical training exercises—to bridge the experience gap between military and civilian sexual assault prosecutors.\textsuperscript{61}

In addition to training, each Service has developed units dedicated to the prosecution of sexual assault, led by prosecutors with specialized training and experience.\textsuperscript{62} The organizational structures

\textsuperscript{54} Transcript of JPP Public Meeting 177 (Mar. 10, 2017) (testimony of Brigadier General James Schwenk, JPP Subcommittee Member); see also SUBCOMMITTEE SHORT REPORT ON TRIAL COUNSEL TRAINING, supra note 45.

\textsuperscript{55} See Service Responses to JPP Request for Information 111, 112, 118, 121 (Mar. 31, 2016).

\textsuperscript{56} See Service Responses to JPP Request for Information 112, 120 (Mar. 31, 2016). See generally Transcript of JPP Public Meeting 11–131 (May 13, 2016); see also Policy Memorandum 16-01, The Office of the Judge Advocate General, U.S. Army, subject: Special Victim Prosecution Program (Aug 8, 2016) [hereinafter TJAG Policy Memorandum 16-01].

\textsuperscript{57} See, e.g., Transcript of JPP Public Meeting 34 (May 13, 2016) (testimony of Lieutenant Colonel Hanorah Tyer-Witek, U.S. Marine Corps, Executive Officer, Naval Justice School); id. at 22–23 (testimony of Colonel Kirk Davies, U.S. Air Force, former Commandant, The Judge Advocate General’s School); id. at 113 (testimony of Lieutenant Colonel Bret Batdorff, U.S. Army, Chief, Trial Counsel Assistance Program). See also Service Responses to JPP Request for Information 111 (Mar. 31, 2016).

\textsuperscript{58} See Service Responses to JPP Request for Information 111, 112 (Mar. 31, 2016); see also Navy Response to JPP Request for Information 160 (Dec. 29, 2016); see also Transcript of JPP Public Meeting 122, 126–28 (May 13, 2016) (testimony of Major Jesse Schweig, U.S. Marine Corps, Officer in Charge, Trial Counsel Assistance Program); id. at 96 (testimony of Colonel Katherine Oler, U.S. Air Force, Chief, Government Trial and Appellate Counsel Division); see also Army SVP, Information Paper (Feb. 24, 2016), available at http://jpp.whs.mil/Public/docs/07-RFI/07-07tfm/1197136.pdf.

\textsuperscript{59} Transcript of JPP Public Meeting 185 (Mar. 10, 2017) (testimony of Brigadier General James Schwenk, JPP Subcommittee Member).

\textsuperscript{60} SUBCOMMITTEE SHORT REPORT ON TRIAL COUNSEL TRAINING, supra note 45.

\textsuperscript{61} Transcript of JPP Public Meeting 128, 135–36 (May 13, 2016) (testimony of Ms. Julia Hejazi, U.S. Marine Corps, HQE, Trial Counsel Assistance Program).

\textsuperscript{62} See Service Responses to JPP Requests for Information 107-109, 111-112, 118-119 (Mar. 31, 2016); see also TJAG Policy Memorandum 16-01, supra note 56; see also Service Responses to JPP Request for Information 160(c) (Jan. 3, 2017); see also Service Responses to Response Systems Panel Request for Information 50 (Nov. 21, 2013); see also Transcript of JPP Public Meeting 99–106 (May 13, 2016) (testimony of Commander Michael Luken, U.S. Navy, Chief, Trial Counsel Assistance Program); id. at 111, 117-119, 147 (testimony of Lieutenant Colonel Bret Batdorff, U.S. Army, Chief Trial
have, in part, been designed and revised to help experienced prosecutors provide oversight and guidance to more junior prosecutors undertaking sexual assault cases, starting at the investigation stage. However, according to some site visit participants speaking to the Subcommittee, in practice senior counsel sometimes get involved in a case just a few days before trial, leaving much of the trial preparation to be performed by junior counsel.

The Army, Navy, and Marine Corps also have HQEs who assist in sexual assault prosecutions, as well as Trial Counsel Assistance Programs (TCAPs) that provide specialized training, case consultation, and prosecutor augmentation. Lieutenant Colonel Bret Batdorff, former Chief of the Army’s TCAP, testified about the type of assistance provided by HQEs, noting that the Army’s civilian special victim litigation experts “are on the road, sitting behind the bar . . . helping [the military prosecutors] prep witnesses, interview witnesses, practice opening statements, and things like that.”

A recently enacted NDAA provision specifically addresses counsel training and experience. Section 542 of the FY17 NDAA requires the Service Secretaries to establish a system of military justice skill and experience identifiers to ensure that judge advocates with sufficient skills and experience in military justice are assigned to prosecute and defend cases and are assigned to develop less-experienced judge advocates. The provision also requires the Service Secretaries to carry out a five-year pilot program to assess the feasibility and advisability of establishing a deliberate process of professional development in military justice for judge advocates. The Army, Navy, and Marine Corps have implemented military

Counsel Assistance Program); id. at 87-99 (testimony of Colonel Katherine Oler, U.S. Air Force, Government Trial and Appellate Counsel Division); see also MARINE CORPS BULLETIN 5800, MILITARY JUSTICE REQUIREMENTS AND IMPLEMENTATION GUIDANCE (May 25, 2017) [hereinafter MARINE CORPS BULLETIN 5800], available at http://www.marines.mil/Portals/59/Publications/MCBUL%205800%20(Justice).pdf?ver=2017-05-30-131345-063; see also email from Stephen McCleary (Jun. 21, 2017, 09:49 EST) (on file with the JPP).

63 See TJAG Policy Memorandum 16-01, supra note 56; see also Air Force Response to JPP Request for Information 109, 111, 113 (Mar. 31, 2016); see also Air Force and Navy Response to JPP Request for Information 160 (Dec. 29, 2016); see also Navy Response to Response Systems Panel Request for Information 50 (Nov. 21, 2013); see also Transcript of JPP Public Meeting 86–99 (May 13, 2016) (testimony of Colonel Katherine Oler, U.S. Air Force, Chief, Government Trial and Appellate Counsel Division); see also Transcript of JPP Public Meeting 275–83 (Apr. 8, 2016) (testimony of Lieutenant Commander Ryan Stormer, U.S. Navy, Deputy Chief, Trial Counsel Assistance Program); see also MARINE CORPS BULLETIN 5800, supra note 62; see also email from Stephen McCleary (Jun. 21, 2017, 09:49 EST) (on file with the JPP).

64 See JPP Sub-Committee Report on Trial Counsel Training, supra note 45.

65 MARINE CORPS BULLETIN 5800, supra note 62; see also Services Responses to JPP Request for Information 109, 121 (Mar. 31, 2016); see also Transcript of JPP Public Meeting 305 (Apr. 8, 2016) (testimony of Lieutenant Commander Ryan Stormer, U.S. Navy, Deputy Chief, Trial Counsel Assistance Program); id. at 305 (testimony of Major Jesse Schweig, U.S. Marine Corps, Officer in Charge, Trial Counsel Assistance Program); id. at 305–06 (testimony of Lieutenant Colonel Bret Batdorff, U.S. Army, Chief, Trial Counsel Assistance Program); see also Transcript of JPP Public Meeting 128–34 (May 13, 2016) (testimony of Ms. Julia Hejazi, U.S. Marine Corps, HQE, Trial Counsel Assistance Program); id. at 142 (testimony of Commander Michael Luken, U.S. Navy, Chief, Trial Counsel Assistance Program); id. at 147 (testimony of Lieutenant Colonel Bret Batdorff, U.S. Army, Chief, Trial Counsel Assistance Program). The Air Force does not have TCAP or HQE capabilities similar to the other Services for the prosecution of special victim cases. See Air Force Response to Requests for Information 119–21 (Mar. 31, 2016). Instead, the Air Force provides Senior Trial Counsel with reach-back capabilities to consult with the U.S. Air Force Government Trial and Appellate Counsel Division, consisting of experienced military and civilian litigators. Transcript of JPP Public Meeting 143–46 (May 13, 2016) (testimony of Colonel Katherine Oler, U.S. Air Force, Chief, Government Trial and Appellate Counsel Division).


67 FY17 NDAA, supra note 17, § 542.

68 Id. § 542(c).
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justice skill and experience identifier systems, and in all Services the selection of prosecutors to lead sexual assault prosecutions is based on demonstrated military justice skill and experience.

In light of Congress’s actions, the JPP makes no further recommendations at this time.

C. SPECIAL VICTIM INVESTIGATION AND PROSECUTION (SVIP) CAPABILITY PROGRAM

1. Statutory Task

In the FY13 NDAA, Congress tasked the JPP to “[m]onitor trends in the development, utilization and effectiveness of the special victim capability.” The term “special victim capability” is defined by Congress as a “distinct, recognizable group of appropriately skilled professionals who work collaboratively” to achieve the stated purposes of “(1) investigating and prosecuting allegations of child abuse, serious domestic violence, or sexual offenses; and (2) providing support for the victims of such offenses.” Congress required that this capability include specially trained and selected military investigators, judge advocates, victim witness assistance personnel, and administrative paralegal support personnel.

In compliance with section 573, DoD published special victim investigation and prosecution (SVIP) capability guidance in 2014.
2. Assessment

In order to monitor trends in the development, utilization, and effectiveness of the SVIP capability, the JPP sent an RFI to the military Services in February 2016. The JPP also received testimony on the Services’ SVIP capability at a public meeting on April 8, 2016, during which the Panel heard from MCIO representatives, military prosecutors, and victim witness liaison (VWL) personnel from each Service. At another public meeting, on May 13, 2016, the JPP received additional testimony on the Services’ SVIP capability, specifically relating to the prosecution of sexual assault offenses.

In addition, the JPP Subcommittee, at the direction of the JPP, spoke with investigators, prosecutors, and VWL personnel about SVIP capability during the site visits. Drawing on information received at the site visits, the JPP Subcommittee reported its findings to the JPP on trial counsel training and experience on March 10, 2017, and on sexual assault investigations in the military on February 24, 2017.

All Services have developed a capability that uses investigators specially trained in sexual assault offense investigations to investigate allegations of sexual assault and to collaborate with assigned SVIP personnel from other disciplines. As discussed above, all Services also have prosecutors who are trained and experienced in sexual assault prosecutions to assess and, if appropriate, prosecute allegations of sexual assault. In addition, the Services have specially selected and trained paralegals

76 See generally Transcript of JPP Public Meeting 209–362 (Apr. 8, 2016).
77 See generally Transcript of JPP Public Meeting 85–163 (May 13, 2016).
78 The JPP Subcommittee Site Visit Reports are available at http://jpp.whs.mil/ under “Reports/Subcommittee Site Visits.”
79 Transcript of JPP Public Meeting 11–84 (March 10, 2017). See also Subcommittee Short Report on Trial Counsel Training, supra note 45.
81 U.S. Dep’t of Def. Instr. 5505.19, Establishment of Special Victim Investigation and Prosecution (SVIP) Capability Within the Military Criminal Investigative Organizations (MCIOs) (Feb. 3, 2015) (Change 2, Mar. 23, 2017); see also Service Responses to JPP Request for Information 104, 107-109, 111 (Mar. 31, 2016); see also U.S. Coast Guard Response to JPP Request for Information 109 (Mar. 31, 2016) (noting that the Coast Guard is building proficiency and capability in the prosecution and investigation of sexual assault cases even though section 573 of the FY13 NDAA does not expressly apply to the Coast Guard or the Department of Homeland Security).
82 See Service Responses to JPP Requests for Information 107-109, 111-112, 118-119 (Mar. 31, 2016); see also TJAG Policy Memorandum 16-01, supra note 56; see also Service Responses to JPP Request for Information 160(c) (Jan. 3, 2017); see also Service Responses to Response Systems Panel Request for Information 50 (Nov. 21, 2013); see also Transcript of JPP Public Meeting 99–106 (May 13, 2016) (testimony of Commander Michael Luken, U.S. Navy, Chief, Trial Counsel Assistance Program); id. at 111, 117-119, 147 (testimony of Lieutenant Colonel Bret Batdorff, U.S. Army, Chief, Trial Counsel Assistance Program); id. at 87-99 (testimony of Colonel Katherine Oler, U.S. Air Force, Government Trial and Appellate Counsel Division); see also Marine Corps Bulletin 5800, supra note 62; see also email from Stephen McCleary (Jun. 21, 2017, 09:49 EST) (on file with the JPP).
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who provide support both to special victim prosecutors and to victims. To varying degrees, the Services also have specially trained victim witness liaisons to assist sexual assault victims.

Lieutenant Colonel Batdorff spoke positively about the development of the SVIP capability, commending in particular the quality of the investigations. He noted that “[h]aving investigators dedicated solely to sexual assault cases has allowed the agents to hone their skills and do more complete quality work.”

Several presenters at the JPP’s April 2016 meeting observed that the SVIP capability has improved communication and coordination between the investigators and the prosecution teams. During site visits, prosecutors and investigators similarly described improved working relationships and agreed that the prosecutors are involved in investigations earlier now than they had been in the past. However, both prosecutors and investigators expressed concern about issues that arise once a case has been closed by investigators but before the prosecutor has completed preparation for trial. Prosecutors asserted that the investigators often decline to follow up on important leads, while investigators asserted that the requested additional investigation is unnecessary or is difficult for an already overburdened and understaffed investigative unit to execute. The Marine Corps is the only Service that has added investigators to its Complex Trial Team to complete any additional investigation needed for the prosecution effort.

Finally, the Services have developed specialized, collaborative training as part of the SVIP capability. The joint training of investigators, prosecutors, victim witness liaisons, and paralegals has played a critical role in building relationships among the SVIP capability team members.

83 Service Responses to JPP Request for Information 107, 111(c) (Mar. 31, 2016); see also MARINE CORPS BULLETIN 5800, supra note 62; see also email from Stephen Mc Cleary (Jun. 21, 2017, 09:49 EST) (on file with the JPP); see also U.S. Army Information Paper, Trial Counsel Assistance Program, subject: Army Special Victim Non-Commissioned Officer Paralegals (Mar. 15, 2016).

84 Service Responses to JPP Request for Information 107, 111 (Mar. 31, 2016); see also MARINE CORPS BULLETIN 5800, supra note 62; see also MARINE CORPS ORDER 5800.14, VICTIM-WITNESS ASSISTANCE PROGRAM (Mar. 15, 2013); see also Transcript of JPP Public Meeting 346 (April 8, 2016) (testimony of Ms. Christa Thompson, U.S. Army Special Victim Witness Liaison Program Manager); id. at 322–25; id. at 352; id. at 346, 355 (testimony of Mr. William Yables, U.S. Marine Corps Paralegal Specialist, Installation Victim Witness Liaison Officer); id. at 331–335 (testimony of Mr. John Hartsell, U.S. Air Force, Associate Chief, Military Justice Division).

85 Transcript of JPP Public Meeting 273 (Apr. 8, 2016) (testimony of Lieutenant Colonel Bret Batdorff, U.S. Army, Chief, Trial Counsel Assistance Program).

86 See generally Transcript of JPP Public Meeting 214 (Apr. 8, 2016) (testimony of Mr. Guy Surian, U.S. Army, Deputy Chief of Investigative Operations, Investigative Policy and Criminal Intelligence); id. at 216–17 (testimony of Mr. Jeremy Gauthier, U.S. Navy, Deputy Assistant Director, Criminal Investigations and Operations Directorate); id. at 271–75 (testimony of Lieutenant Colonel Bret Batdorff, U.S. Army, Chief, Trial Counsel Assistance Program); see also Service Responses to JPP Requests for Information 108, 109, and 113 (Mar. 31, 2016).

87 JPP Subcommittee Site Visit Reports, supra note 78.

88 Id.

89 JPP SUBCOMMITTEE REPORT ON INVESTIGATIONS, supra note 80.

90 Transcript of JPP Public Meeting 285 (Apr. 8, 2016) (testimony of Major Jesse Schweig, U.S. Marine Corps, Officer in Charge, Trial Counsel Assistance Program). The Complex Trial Team consists of the special victim prosecutor (SVP), the regional trial investigator, the civilian HQEs, and specially trained legal administrative support specialists.

91 Transcript of JPP Public Meeting 279–80 (Apr. 8, 2016) (testimony of Lieutenant Commander Ryan Stormer, U.S. Navy, Deputy Chief, Trial Counsel Assistance Program); id. at 113–19 (testimony of Lieutenant Colonel Bret Batdorff, U.S. Army, Chief, Trial Counsel Assistance Program); id. at 101–06 (testimony of Commander Michael Luken, U.S. Navy, Director, Trial Counsel Assistance Program); id. at 124 (testimony of Major Jesse Schweig, U.S. Marine Corps, Officer
D. MILITARY RULE OF EVIDENCE 412—ADMISSION OF EVIDENCE OF A VICTIM’S SEXUAL BEHAVIOR OR PREDISPOSITION

1. Statutory Tasks

The FY13 NDAA directed the JPP to carry out two tasks relating to M.R.E. 412. First, the Panel was asked to review and assess those instances in which prior sexual conduct of the alleged victim was considered in an Article 32 hearing, and any instances in which prior sexual conduct was determined to be inadmissible.92 Second, it was to review those instances in which evidence of prior sexual conduct of the alleged victim was introduced by the defense in courts-martial and assess what impact that evidence had on the case.93

M.R.E. 412, which was promulgated in March 1980 with an effective date of September 1, 1980,94 establishes a rape shield provision that generally bars a victim’s sexual behavior or predisposition from being admitted as evidence. The rule contains three exceptions, including one that would allow evidence to be admitted if the exclusion of such evidence would violate the constitutional rights of the accused.95

In Executive Order 13696, effective June 17, 2015, the President amended R.C.M. 405, which governs Article 32 preliminary hearings, to prohibit application of the M.R.E. 412 “constitutionally required” evidence exception at preliminary hearings.96 However, the executive order did not amend the text of M.R.E. 412 itself, and the “constitutionally required” evidence exception continues to apply at courts-martial.

In its Initial Report, released in February 2015, the JPP reviewed and assessed M.R.E. 412, but noted that the pending change to Article 32 practice, along with the application of M.R.E. 412 by military judges at courts-martial, should be monitored.97

2. Assessment

In order to assess the application of M.R.E. 412 by preliminary hearing officers (PHOs) at Article 32 preliminary hearings and by military judges at courts-martial, the JPP received testimony from former trial judges, trial counsel, defense counsel, and SVCs/VLCs from each Service at a public meeting on
January 6, 2017. In addition, the JPP Subcommittee assessed litigation practice under M.R.E. 412 during site visits and reported its findings to the JPP on March 10, 2017.

These presenters provided insight into the status of preliminary hearing practice approximately 18 months after the “constitutionally required” evidence exception to M.R.E. 412 at such hearings had been eliminated. They testified that the PHOs are well-trained and do not consider evidence that does not fit within the remaining two exceptions. While SVCs/VLCs praised the elimination of the “constitutionally required” exception as benefiting sexual assault victims, defense counsel expressed fear that the convening authority is no longer informed of valuable evidence regarding credibility that may be admitted at courts-martial and cannot be factored into a referral decision.

The presenters were generally in agreement that military judges are well-trained in applying M.R.E. 412 to the facts and narrowly tailor admissible evidence to the relevant purpose at courts-martial. The Subcommittee similarly observed that most counsel are satisfied with both the rule and the procedures used by the military judges.

E. DISCLOSURE AND ADMISSION OF MENTAL HEALTH RECORDS UNDER MILITARY RULE OF EVIDENCE 513

1. Statutory Task

The FY15 NDAA directed the JPP to review and assess the use by the accused of any mental health records of the victim of an offense under the UCMJ, both during the Article 32 preliminary hearing and during court-martial proceedings, as compared to the use of similar records in civilian criminal legal proceedings.

The FY15 NDAA also significantly revised M.R.E. 513—the psychotherapist-patient privilege—in two major ways. First, the NDAA increased the burden on the party seeking the production or admission

98 See generally Transcript of JPP Public Meeting (Jan. 6, 2017).
99 Transcript of JPP Public Meeting 181 (Mar. 10, 2017) (testimony of Brigadier General James Schwenk, JPP Subcommittee Member). See also SUBCOMMITTEE SHORT REPORT ON M.R.E.S 412 AND 513, supra note 44. See also JPP Subcommittee Site Visit Reports, supra note 78.
100 Transcript of JPP Public Meeting 294–95 (Jan. 6, 2017) (testimony of Lieutenant Commander Elizabeth Hutton, U.S. Coast Guard, Special Victims’ Counsel); id. at 159–60 (testimony of Major Ryan Reed, U.S. Air Force, Senior Trial Counsel, Special Victims’ Unit); id. at 202–03 (testimony of Major James Argentina Jr., U.S. Marine Corps, Senior Defense Counsel); id. at 106–08 (testimony of Major Adam Workman, U.S. Marine Corps, Legal Services Support Team).
101 Transcript of JPP Public Meeting 173–77 (Jan. 6, 2017) (testimony of Major Benjamin Henley, U.S. Air Force, Senior Defense Counsel); id. at 184–85 (testimony of Major Marcia Reyes-Steward, U.S. Army, Senior Defense Counsel); id. at 202–03, 238 (testimony of Major James Argentina Jr., U.S. Marine Corps, Senior Defense Counsel); see also SUBCOMMITTEE SHORT REPORT ON M.R.E.S 412 AND 513, supra note 44.
102 Transcript of JPP Public Meeting 283 (Jan. 6, 2017) (testimony of Major Aran Walsh, U.S. Marine Corps, Regional Victims’ Legal Counsel); id. at 307 (testimony of Lieutenant Commander James Toohy, U.S. Navy, Victims’ Legal Counsel); id. at 94 (testimony of Lieutenant Commander Geralyn van de Krol, U.S. Coast Guard, Branch Chief, Trial Services, Coast Guard Legal Services Command); id. at 102–03 (testimony of Lieutenant Commander Ben Robertson, U.S. Navy, Senior Trial Counsel); id. at 109–10 (testimony of Major Adam Workman, U.S. Marine Corps, Legal Support Team).
103 Transcript of JPP Public Meeting 181 (Mar. 10, 2017) (testimony of Brigadier General James Schwenk, JPP Subcommittee Member).
104 FY15 NDAA, supra note 5, § 545.
of records protected by M.R.E. 513. Under the new test, a military judge may conduct an *in camera* review of records or communications only if he or she finds by a preponderance of the evidence that the moving party has shown that (1) there exists “a specific factual basis demonstrating a reasonable likelihood that the records or communications would yield evidence admissible under an exception to the privilege,” (2) “the requested information meets one of the enumerated exceptions to the privilege,” (3) “the information sought is not merely cumulative of other information available,” and (4) “the party made reasonable efforts to obtain the same or substantially similar information through non-privileged sources.”\(^{105}\) This change went into effect on June 17, 2015.\(^{106}\)

Second, the FY15 NDAA eliminated the enumerated “constitutionally required” exception to M.R.E. 513 at both the Article 32 hearing and at courts-martial.\(^{107}\)

The JPP’s *Initial Report*, dated February 2015, reviewed the origins of the military psychotherapist-patient privilege and reviewed application of the rule then in effect. The JPP noted the extensive changes to M.R.E. 513 made in the FY15 NDAA and determined to monitor practice in light of those changes.\(^{108}\)

2. **Assessment**

In order to assess the effect of the revised rules on mental health evidence, the JPP received testimony from former trial judges, trial counsel, defense counsel, and SVCs/VLCs from each Service at a public meeting in January 2017.\(^{109}\) These presenters provided insight into preliminary hearing and court-martial practice approximately 18 months after the June 2015 changes to M.R.E. 513 were implemented. In addition, during its site visits the JPP Subcommittee asked trial counsel, defense counsel, and SVCs/VLCs about Article 32 and courts-martial practice in light of the changes to M.R.E. 513. The JPP Subcommittee reported its findings to the JPP on March 10, 2017.\(^{110}\)

*a. Admissibility of M.R.E. 513 Evidence*

The presenters at the January 2017 JPP meeting generally agreed that under current practice, M.R.E. 513 evidence is rarely admitted at either Article 32 hearings or courts-martial. First, the presenters observed that M.R.E. 513 evidence is infrequently sought at Article 32 hearings, because the PHO does not have the authority to order that mental health records be produced.\(^{111}\) Second, they agreed that while M.R.E. 513 evidence is frequently sought at courts-martial, mental health records are rarely produced for even an *in camera* review, because the requisite factual basis—a demonstration that the records are likely to contain admissible evidence—is difficult to meet.\(^{112}\) The Subcommittee heard

\(^{105}\) Id. § 537.


\(^{107}\) FY15 NDAA, *supra* note 5, § 537.


\(^{109}\) See generally Transcript of JPP Public Meeting (Jan. 6, 2017).

\(^{110}\) *Transcript of JPP Public Meeting* 181 (Mar. 10, 2017) (testimony of Brigadier General James Schwenk, JPP Subcommittee Member). See also *Subcommittee Short Report on M.R.E.s 412 and 513*, *supra* note 44.

\(^{111}\) *Transcript of JPP Public Meeting* 308–09 (Jan. 6, 2017) (testimony of Lieutenant Commander James Toohey, U.S. Navy, Victims’ Legal Counsel); *id.* at 177 (testimony of Major Benjamin Henley, U.S. Air Force, Senior Defense Counsel); *id.* at 318–19 (testimony of Captain September Foy, U.S. Air Force, Special Victims’ Counsel).

\(^{112}\) *Transcript of JPP Public Meeting* 287–88 (Jan. 6, 2017) (testimony of Major Aran Walsh, U.S. Marine Corps, Regional
similar comments from defense counsel about the difficulty of obtaining an in camera review of mental health records at courts-martial.\textsuperscript{113}

However, the Subcommittee heard from many trial counsel and SVCs/VLCs who view the changes to M.R.E. 513 positively.\textsuperscript{114} They stated that “the rule now works as was intended—to keep mental health records out of the courtroom.”\textsuperscript{115} Previously, trial counsel would typically obtain mental health records prior to the military judge’s production order to facilitate the military judge’s anticipated, and almost routine, in camera review of the records.\textsuperscript{116}

\textit{b. Elimination of the “Constitutionally Required” Exception}

Several presenters at the January 2017 meeting also noted the lack of uniformity in how military judges are interpreting the elimination of the “constitutionally required” exception to M.R.E. 513. Since this change, judges have ruled inconsistently on whether the Constitution requires the admission of evidence bearing on credibility, perception, ability to recall, or motive.\textsuperscript{117} Counsel had previously used this enumerated exception to admit such evidence. Several former military judges asserted that some judges are ordering that evidence be produced but not identifying the particular enumerated exception on which such an order is based; some judges are citing constitutional due process or confrontation as a basis for production; and some are excluding any evidence that does not fit within an enumerated exception, without addressing constitutional implications.\textsuperscript{118}

Trial counsel, defense counsel, and SVCs/VLCs on the site visits confirmed this observation, noting that following the removal of the “constitutionally required” exception, “trial judges have taken different positions on whether M.R.E. 513 must be read in light of the Constitution.” Faced with inconsistent judicial interpretations, counsel are waiting for appellate guidance on this issue.\textsuperscript{119} Though two Service

\textsuperscript{113} \textit{Subcommittee Short Report on M.R.E.s 412 and 513, supra note 44.}

\textsuperscript{114} \textit{Id.}

\textsuperscript{115} \textit{Id.}

\textsuperscript{116} \textit{Id.}

\textsuperscript{117} \textit{Transcript of JPP Public Meeting} 271 (Jan. 6, 2017) (testimony of Lieutenant Commander Rachel Trest, U.S. Navy, Senior Defense Counsel, explaining that the ambiguity stems from removing the “constitutionally required” exception without explaining the intent behind the removal); \textit{id.} at 119 (testimony of Captain Brad Dixon, U.S. Army, Trial Counsel Assistance Program Training Officer); \textit{id.} at 161 (testimony of Major Ryan Reed, U.S. Air Force, Senior Trial Counsel, Special Victims’ Unit); \textit{id.} at 228–29 (testimony of Major James Argentina Jr., U.S. Marine Corps, Senior Defense Counsel).

\textsuperscript{118} \textit{Transcript of JPP Public Meeting} 36–38 (Jan. 6, 2017) (testimony of Lieutenant Colonel (Retired) Wade Faulkner) (stating “many of the judges have taken the newly written 513 and they are applying it in the same way as other well-established privileges like attorney-client and priest-penitent . . . there are some judges that are reluctant to treat the 513 privilege the same way . . . . ”); \textit{id.} at 64–65 (testimony of Commander Mike Luken, U.S. Navy, former military trial judge); \textit{id.} at 55 (testimony of Commander Cassie Kitchen, U.S. Coast Guard, former military trial judge); \textit{id.} at 26–28 (testimony of Lieutenant Colonel (Retired) Wendy Sherman, U.S. Air Force, former military judge).

\textsuperscript{119} \textit{Subcommittee Short Report on M.R.E.s 412 and 513, supra note 44; see also Transcript of JPP Public Meeting} 184 (Mar. 10, 2017) (testimony of Brigadier General James Schwenk, JPP Subcommittee Member).
Courts of Criminal Appeals have recently reviewed the effect of the removal of the “constitutionally required” exception from M.R.E. 513, CAAF has yet to rule on this issue.

c. Scope of M.R.E. 513 Privilege

Another issue raised by several presenters at the January public meeting concerned the scope of the M.R.E. 513 privilege. M.R.E. 513 protects “confidential communication made between the patient and a psychotherapist or an assistant to the psychotherapist . . . if such communication was made for the purpose of facilitating diagnosis or treatment of the patient’s mental or emotional condition.” However, the text of the rule does not address whether “confidential communication” includes the psychiatric diagnosis, the medications prescribed and the duration of those prescriptions, the type of therapies used, and the resolution of the diagnosed psychiatric condition. Several presenters noted inconsistencies in the interpretation of what falls under the umbrella of “confidential communication;” they recommended that the rule be clarified by Congress or the President.

A recent Coast Guard case illustrates the uncertainty surrounding the scope of the M.R.E. 513 privilege. In *H.V. v. Kitchen*, the Coast Guard Court of Criminal Appeals (CGCCA) reversed a military judge’s order to disclose mental health information that the military judge determined was not privileged under M.R.E. 513, including dates treated, the identity of the provider, the psychiatric diagnosis, medications prescribed and the duration of those prescriptions, the types of therapies used, and the resolution of the diagnosed psychiatric condition. In a 2–1 decision, the CGCCA held that all the above mental health information was privileged under M.R.E. 513, except for the dates of treatment, the duration of the appointments, and the identity of the provider. Although the CGCCA opinion provides guidance to the other military Services, it is not binding precedent on them.

120 *J.M. v. Payton-O’Brien*, 2017 CCA LEXIS 424 (N-M. Ct. Crim. App. June 28, 2017) (holding military judges cannot order production or release of M.R.E. 513 privileged communications unless an enumerated exception applies; however, military judges can protect the constitutional rights of an accused by ordering remedial measures necessary to “guarantee a meaningful opportunity to present a complete defense.”); *L.K. v. Acosta*, 76 M.J. 611 (A. Ct. Crim. App. May 24, 2017) (noting in dicta that regardless of the language of M.R.E. 513, “the reach of the constitutional exception is the same today as it was prior to the deletion of the constitutional exception pursuant to NDAA 2015. Under our constitutional hierarchy, a federal statute cannot bar the ‘admission or disclosure’ of a communication that is ‘constitutionally required.’”).

121 2016 MCM, supra note 95, M.R.E. 513(a).

122 *Transcript of JPP Public Meeting 48–49* (Jan. 6, 2017) (testimony of Lieutenant Colonel (Retired) Elizabeth Harvey, U.S. Marine Corps, former military trial judge); *id. at 63* (testimony of Commander Mike Luken, U.S. Navy, former military trial judge); *id. at 302–03* (testimony of Lieutenant Commander Elizabeth Hutton, U.S. Coast Guard, Special Victims’ Counsel); *id. at 309, 312–14* (testimony of Lieutenant Commander James Toohey, U.S. Navy, Victims’ Legal Counsel); *id. at 195, 255* (testimony of Major James Argentina Jr., U.S. Marine Corps, Senior Defense Counsel).

The JPP was assigned four issues—two by Congress, and two by its predecessor panel, the RSP—that it did not assess because of changes in regulations and legislation. Those four issues are discussed in this section.

A. MANDATORY MINIMUM SENTENCES

In Section 1731(b)(1)(C) of the FY14 NDAA, Congress directed the JPP to assess the implementation and effects of the mandatory minimum sentences established by Article 56(b) of the UCMJ, which requires that persons found guilty of certain sex offenses receive, at a minimum, dismissal or dishonorable discharge. Congress also tasked the JPP to assess the appropriateness of statutorily mandated minimum sentencing provisions for additional offenses under the UCMJ.

In its 2015 report, the Military Justice Review Group (MJRG)—a working group established by the Secretary of Defense to conduct a comprehensive review of the UCMJ—recommended a revision to Article 56, UCMJ (Sentencing). The proposal would have replaced the current sentencing process with a system based on published standards developed by a new Military Sentencing Parameters and Criteria Board. That board would collect and analyze sentencing data, use those data to determine appropriate sentencing parameters and criteria for specific offenses, propose them for approval by the President, and issue other sentencing policy guidance.

Under the MJRG proposal, once sentencing parameters and criteria took effect, they would replace the mandatory punitive discharge provisions in Article 56(b), eliminating “a current incongruity in the system” whereby designated sex offenses result in mandatory discharge, but other serious crimes such as murder do not.

Congress amended Article 56, UCMJ (Sentencing). However, it did not adopt the MJRG’s proposal for determining sentencing parameters and criteria for all offenses, nor did it alter the current mandatory punitive discharge provisions for certain sexual assault offenses.

In light of the MJRG’s recommendations and the subsequent action taken by Congress in the Military Justice Act of 2016, the JPP did not conduct an assessment of mandatory minimum sentences.

124 FY14 NDAA, supra note 5, §§ 1731(b)(1)(C), 1705.
125 Id. § 1731(b)(1)(C).
127 Id. at 514.
128 See FY17 NDAA, supra note 17, § 5301.
B. DEPARTMENT OF DEFENSE SAFE HELPLINE PRIVILEGE

Section 545(a)(2) of the FY15 NDAA tasked the JPP with reviewing and assessing the establishment of a privilege under the M.R.E.s against the disclosure of communications between (1) users of the DoD Safe Helpline and personnel staffing it and (2) users of the DoD Safe HelpRoom and personnel staffing it.129

On June 17, 2015, the President issued Executive Order 13696, which established a privilege for confidential communications with DoD Safe Helpline staff. The executive order amended M.R.E. 514(a) to state: “A victim has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between . . . the alleged victim and Department of Defense Safe Helpline staff, in a case arising under the UCMJ, if such communication was made for the purpose of facilitating advice or assistance to the alleged victim.”130

In light of the executive order, the JPP did not conduct a review and assessment or make recommendations on the Safe Helpline privilege.

C. DEPOSITIONS

In its report issued in June 2014, the RSP recommended that the JPP assess the use of depositions in light of changes to the Article 32 proceeding, and determine what, if any, changes to the deposition process should be recommended, including whether military judges should serve as deposition officers.131

Congress subsequently enacted section 532 of the FY15 NDAA, requiring that a party requesting a deposition demonstrate that “due to exceptional circumstances, it is in the interest of justice” to take a deposition. Section 532 also provided that the convening authority may designate commissioned officers as counsel.132

In 2016, as part of the Military Justice Act of 2016, Congress amended Article 49, UCMJ (Depositions), to codify and expand the FY15 NDAA provision. The amendments included a requirement that deposition officers be judge advocates “whenever practicable.”133

In light of the provisions in the FY15 NDAA and the Military Justice Act of 2016, the JPP did not conduct further assessment nor make recommendations on the issue of depositions.

129 FY15 NDAA, supra note 5, § 545(a)(2).
131 RSP Report, supra note 6, at 48.
132 FY15 NDAA, supra note 5, § 532.
133 Id. § 5231.
D. PLEA BARGAINING

The RSP also recommended that the JPP study whether the military plea bargaining process should be modified.134

In the Military Justice Act of 2016, Congress enacted section 5237, creating a new Article 53a, UCMJ (Plea agreements). This article provided basic rules for (1) the construction and negotiation of plea agreements concerning the charges, the sentence, or both; (2) the military judge’s determination of whether to accept a proposed plea agreement; and (3) the entrance of the convening authority and the accused into binding agreements regarding the sentence that may be adjudged.135

In light of the provisions in the Military Justice Act of 2016, the JPP did not conduct a further assessment or make recommendations on the issue of plea bargaining.

134 RSP Report, supra note 6, at 49.
135 FY17 NDAA, supra note 17, § 5237.
The JPP made the following eight recommendations to the DAC-IPAD:

- **Judicial Proceedings Panel Report on Sexual Assault Investigations in the Military (September 2017)**
  
  **Recommendation 47:** “In order to ensure that MCIOs can focus investigative resources on the most serious sexual assault cases, the advisory committee that follows the JPP, the DAC-IPAD, monitor the effects of the DoD policy that allows Service law enforcement agencies to assist the MCIOs with sexual assault investigations, and make findings and recommendations to the Secretary of Defense as it deems appropriate.”

- **Judicial Proceedings Panel Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses for Fiscal Year 2015 (September 2017)**
  
  **Recommendation 54:** “The successor federal advisory committee to the JPP, the DAC-IPAD, should consider continuing to analyze adult-victim sexual assault court-martial data on an annual basis as the JPP has done, and should consider analyzing the following patterns that the JPP discovered in its analysis of fiscal year 2015 court-martial data:

  a. Cases involving military victims tend to have fewer punitive outcomes than cases involving civilian victims; and

  b. The conviction and acquittal rates for sexual assault offenses vary significantly among the military Services.

  c. If a Service member is charged with a sexual assault offense, and pleads not guilty, the probability that he or she will be convicted of a sexual assault offense is 36%, and the probability that he or she will be convicted of any offense (i.e., either a sex or a non-sex offense) is 59%.”

  
  **Recommendation 55:** “The Secretary of Defense and the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD)
continue the review of the new Article 32 preliminary hearing process, which, in the view of
many counsel interviewed during military installation site visits and according to information
presented to the JPP, no longer serves a useful discovery purpose. This review should look at
whether preliminary hearing officers in sexual assault cases should be military judges or other
senior judge advocates with military justice experience and whether a recommendation of such
a preliminary hearing officer against referral, based on lack of probable cause, should be given
more weight by the convening authority. This review should evaluate data on how often the
recommendations of preliminary hearing officers regarding case disposition are followed by
convening authorities and determine whether further analysis of, or changes to, the process are
required.”138

Recommendation 57: “After case disposition guidance under Article 33, UCMJ, is
promulgated, the Secretary of Defense and DAC-IPAD conduct both military installation
site visits and further research to determine whether convening authorities and staff judge
advocates are making effective use of this guidance in deciding case dispositions. They should
also determine what effect, if any, this guidance has had on the number of sexual assault cases
being referred to courts-martial and on the acquittal rate in such cases.”139

Recommendation 58: “The Secretary of Defense and the DAC-IPAD review whether Article 34
of the UCMJ and Rule for Court-Martial 406 should be amended to remove the requirement
that the staff judge advocate’s pretrial advice to the convening authority (except for
exculpatory information contained in that advice) be released to the defense upon referral of
charges to court-martial. This review should determine whether any memo from trial counsel
that is appended should also be shielded from disclosure to the defense. This review should
also consider whether such a change would encourage the staff judge advocate to provide more
fully developed and candid written advice to the convening authority regarding the strengths
and weaknesses of the charges so that the convening authority can make a better-informed
disposition decision.”140

Recommendation 60: “The Secretary of Defense and the DAC-IPAD continue to gather
data and other evidence on disposition decisions and conviction rates of sexual assault
courts-martial to supplement information provided to the JPP Subcommittee during military
installation site visits and to determine future recommendations for improvements to the
military justice system.”141

Recommendation 62: “The Secretary of Defense and the DAC-IPAD monitor whether
misperceptions regarding alcohol consumption and consent affect court-martial panel
members.”142

Recommendation 63: “The Secretary of Defense and the DAC-IPAD collect data on expedited
transfers to determine the locations from which and to which victims are requesting expedited
transfers and to review their stated reasons.”143

138 JUDICIAL PROCEEDINGS PANEL REPORT ON PANEL CONCERNS REGARDING THE FAIR ADMINISTRATION OF MILITARY JUSTICE IN SEXUAL
139 Id. at 9 (Recommendation 57).
140 Id. at 9 (Recommendation 58).
141 Id. at 11 (Recommendation 60).
142 Id. at 11 (Recommendation 62).
143 Id. at 12 (Recommendation 63).
The JPP is grateful to Congress for the opportunity to provide an independent review and assessment of judicial proceedings conducted under the UCMJ involving adult sexual assault and related offenses for the purpose of developing recommendations for improvements to such proceedings. We hope our work has made positive contributions to the military justice system. The JPP would have not been able to complete its work without the support and assistance of the JPP Subcommittee, the military Services, the Department of Defense, and the hundreds of experts and witnesses who shared their experiences and perspectives with the Panel. The JPP expresses its deep appreciation to its hardworking and dedicated staff and to all others who helped fulfill this important mission.
APPENDIX A: Judicial Proceedings Panel
Authorizing Statutes and Charter

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2013

SECTION 576. INDEPENDENT REVIEWS AND ASSESSMENTS OF UNIFORM CODE OF MILITARY JUSTICE AND JUDICIAL PROCEEDINGS OF SEXUAL ASSAULT CASES.

(a) INDEPENDENT REVIEWS AND ASSESSMENTS REQUIRED.—

(2) JUDICIAL PROCEEDINGS SINCE FISCAL YEAR 2012 AMENDMENTS.—The Secretary of Defense shall establish a panel to conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice involving adult sexual assault and related offenses since the amendments made to the Uniform Code of Military Justice by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1404) for the purpose of developing recommendations for improvements to such proceedings.

(b) ESTABLISHMENT OF INDEPENDENT REVIEW PANELS.

(1) COMPOSITION.

(B) JUDICIAL PROCEEDINGS PANEL.—The panel required by subsection (a)(2) shall be appointed by the Secretary of Defense and consist of five members, two of whom must have also served on the panel established under subsection (a)(1).

(2) QUALIFICATIONS.—The members of each panel shall be selected from among private United States citizens who collectively possess expertise in military law, civilian law, the investigation, prosecution, and adjudication of sexual assaults in State and Federal criminal courts, victim advocacy, treatment for victims, military justice, the organization and missions of the Armed Forces, and offenses relating to rape, sexual assault, and other adult sexual assault crimes.

(3) CHAIR.—The chair of each panel shall be appointed by the Secretary of Defense from among the members of the panel.

(4) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the panel. Any vacancy in a panel shall be filled in the same manner as the original appointment.

(5) DEADLINE FOR APPOINTMENTS.—

(B) JUDICIAL PROCEEDINGS PANEL.—All original appointments to the panel required by subsection (a)(2) shall be made before the termination date of the panel established under subsection (a)(1), but no later than 30 days before the termination date.

(6) MEETINGS.—A panel shall meet at the call of the chair.
(7) FIRST MEETING.—The chair shall call the first meeting of a panel not later than 60 days after the date of the appointment of all the members of the panel.

(c) REPORTS AND DURATION.—

(2) JUDICIAL PROCEEDINGS PANEL.—

(A) FIRST REPORT.—The panel established under subsection (a)(2) shall submit a first report, including any proposals for legislative or administrative changes the panel considers appropriate, to the Secretary of Defense and the Committees on Armed Services of the Senate and the House of Representatives not later than 180 days after the first meeting of the panel.

(B) SUBSEQUENT REPORTS.—The panel established under subsection (a)(2) shall submit subsequent reports during fiscal years 2014 through 2017.

(C) TERMINATION.—The panel established under subsection (a)(2) shall terminate on September 30, 2017.

(d) DUTIES OF PANELS.—

(2) JUDICIAL PROCEEDINGS PANEL.—The panel required by subsection (a)(2) shall perform the following duties:

(A) Assess and make recommendations for improvements in the implementation of the reforms to the offenses relating to rape, sexual assault, and other sexual misconduct under the Uniform Code of Military Justice that were enacted by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1404).

(B) Review and evaluate current trends in response to sexual assault crimes whether by courts-martial proceedings, non-judicial punishment and administrative actions, including the number of punishments by type, and the consistency and appropriateness of the decisions, punishments, and administrative actions based on the facts of individual cases.

(C) Identify any trends in punishments rendered by military courts, including general, special, and summary courts-martial, in response to sexual assault, including the number of punishments by type, and the consistency of the punishments, based on the facts of each case compared with the punishments rendered by Federal and State criminal courts.

(D) Review and evaluate court-martial convictions for sexual assault in the year covered by the most-recent report required by subsection (c)(2) and the number and description of instances when punishments were reduced or set aside upon appeal and the instances in which the defendant appealed following a plea agreement, if such information is available.

(E) Review and assess those instances in which prior sexual conduct of the alleged victim was considered in a proceeding under section 832 of title 10, United States Code (article 32 of the Uniform Code of Military Justice), and any instances in which prior sexual conduct was determined to be inadmissible.
(F) Review and assess those instances in which evidence of prior sexual conduct of the alleged victim was introduced by the defense in a court-martial and what impact that evidence had on the case.

(G) Building on the data compiled as a result of paragraph (1)(D), assess the trends in the training and experience levels of military defense and trial counsel in adult sexual assault cases and the impact of those trends in the prosecution and adjudication of such cases.

(H) Monitor trends in the development, utilization and effectiveness of the special victims capabilities required by section 573 of this Act.

(I) Monitor the implementation of the April 20, 2012, Secretary of Defense policy memorandum regarding withholding initial disposition authority under the Uniform Code of Military Justice in certain sexual assault cases.

(J) Consider such other matters and materials as the panel considers appropriate for purposes of the reports.

(3) UTILIZATION OF OTHER STUDIES.—In conducting reviews and assessments and preparing reports, a panel may review, and incorporate as appropriate, the data and findings of applicable ongoing and completed studies.

(e) AUTHORITY OF PANELS.—

(1) HEARINGS.—A panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the panel considers appropriate to carry out its duties under this section.

(2) INFORMATION FROM FEDERAL AGENCIES.—Upon request by the chair of a panel, a department or agency of the Federal Government shall provide information that the panel considers necessary to carry out its duties under this section.

(f) PERSONNEL MATTERS.—

(1) PAY OF MEMBERS.—Members of a panel shall serve without pay by reason of their work on the panel.

(2) TRAVEL EXPENSES.—The members of a panel shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance or services for the panel.

(3) STAFFING AND RESOURCES.—The Secretary of Defense shall provide staffing and resources to support the panels, except that the Secretary may not assign primary responsibility for such staffing and resources to the Sexual Assault Prevention and Response Office.
NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2014

SEC. 1731. INDEPENDENT REVIEWS AND ASSESSMENTS OF UNIFORM CODE OF MILITARY JUSTICE AND JUDICIAL PROCEEDINGS OF SEXUAL ASSAULT CASES.

(b) ADDITIONAL DUTIES FOR JUDICIAL PROCEEDINGS PANEL.—

(1) ADDITIONAL ASSESSMENTS SPECIFIED.—The independent panel established by the Secretary of Defense under subsection (a)(2) of section 576 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1758), known as the “judicial proceedings panel”, shall conduct the following:

(A) An assessment of the likely consequences of amending the definition of rape and sexual assault under section 920 of title 10, United States Code (article 120 of the Uniform Code of Military Justice), to expressly cover a situation in which a person subject to chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), commits a sexual act upon another person by abusing one’s position in the chain of command of the other person to gain access to or coerce the other person.

(B) An assessment of the implementation and effect of section 1044e of title 10, United States Code, as added by section 1716, and make such recommendations for modification of such section 1044e as the judicial proceedings panel considers appropriate.

(C) An assessment of the implementation and effect of the mandatory minimum sentences established by section 856(b) of title 10, United States Code (article 56(b) of the Uniform Code of Military Justice), as added by section 1705, and the appropriateness of statutorily mandated minimum sentencing provisions for additional offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

(D) An assessment of the adequacy of the provision of compensation and restitution for victims of offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), and develop recommendations on expanding such compensation and restitution, including consideration of the options as follows:

(i) Providing the forfeited wages of incarcerated members of the Armed Forces to victims of offenses as compensation.

(ii) Including bodily harm among the injuries meriting compensation for redress under section 939 of title 10, United States Code (article 139 of the Uniform Code of Military Justice).

(iii) Requiring restitution by members of the Armed Forces to victims of their offenses upon the direction of a court-martial.

(2) SUBMISSION OF RESULTS.—The judicial proceedings panel shall include the results of the assessments required by paragraph (1) in one of the reports required by subsection (c)(2)(B) of section 576 of the National Defense Authorization Act for Fiscal Year 2013.
APPENDIX A: JUDICIAL PROCEEDINGS PANEL AUTHORIZING STATUTES AND CHARTER

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2015

SEC. 545. ADDITIONAL DUTIES FOR JUDICIAL PROCEEDINGS PANEL.

(a) ADDITIONAL DUTIES IMPOSED.—The independent panel established by the Secretary of Defense under section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1758), known as the “judicial proceedings panel”, shall perform the following additional duties:

(1) Conduct a review and assessment regarding the impact of the use of any mental health records of the victim of an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), by the accused during the preliminary hearing conducted under section 832 of such title (article 32 of the Uniform Code of Military Justice), and during court-martial proceedings, as compared to the use of similar records in civilian criminal legal proceedings.

(2) Conduct a review and assessment regarding the establishment of a privilege under the Military Rules of Evidence against the disclosure of communications between—

(A) users of and personnel staffing the Department of Defense Safe Helpline; and

(B) users of and personnel staffing the 26 Department of Defense Safe Help Room.

(b) SUBMISSION OF RESULTS.—The judicial proceedings panel shall include the results of the reviews and assessments conducted under subsection (a) in one of the reports required by section 576(c)(2)(B) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1760).

SEC. 546. DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES

(f) DUE DATE FOR ANNUAL REPORT OF JUDICIAL PROCEEDINGS PANEL.—Section 576(c)(2) (B) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1760) is amended by inserting “annually thereafter” after “reports”.

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2. Authority: The Secretary of Defense, as required by section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (“the FY 2013 NDAA”) (Public Law 112-239), as modified by section 1731(b) of the National Defense Authorization Act for Fiscal Year 2014 (“the FY 2014 NDAA”) (Public Law 113-66), and in accordance with the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended) and 41 C.F.R. § 102-3.50(a), established the Judicial Proceedings Panel.

3. Objectives and Scope of Activities: The Judicial Proceedings Panel will conduct an independent review and assessment of 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 for Fiscal Year 2012 (“the FY 2012 NDAA”) (Public Law 112-81) for the purpose of developing recommendations for improvements to such proceedings.

4. Description of Duties: Section 576(d)(2) directs the Judicial Proceedings Panel to perform the following duties, with additional duties as added by section 1731(b)(1) of the FY 2014 NDAA:
   a. Assess and make recommendations for improvements in the implementation of the reforms to the offenses relating to rape, sexual assault, and other sexual misconduct under the UCMJ that were enacted by section 541 of the FY 2012 NDAA.
   b. Review and evaluate current trends in response to sexual assault crimes whether by courts-martial proceedings, non-judicial punishment and administrative actions, including the number of punishments by type, and the consistency and appropriateness of the decisions, punishments, and administrative actions based on the facts of individual cases.
   c. Identify any trends in punishments rendered by military courts, including general, special, and summary courts-martial, in response to sexual assault, including the number of punishments by type, and the consistency of the punishments, based on the facts of each case compared with the punishments rendered by Federal and State criminal courts.
   d. Review and evaluate court-martial convictions for sexual assault in the year covered by the most-recent report of the Judicial Proceedings Panel and the number and description of instances when punishments were reduced or set aside upon appeal and the instances in which the defendant appealed following a plea agreement, if such information is available.
   e. Review and assess those instances in which prior sexual conduct of the alleged victim was considered in a proceeding under section 832 of title 10, United States Code (article 32 of the UCMJ), and any instances in which prior sexual conduct was determined to be inadmissible.
f. Review and assess those instances in which evidence of prior sexual conduct of the alleged victim was introduced by the defense in a court-martial and what impact that evidence had on the case.

g. Building on the data compiled as a result of the assessment conducted by the Response Systems to Adult Sexual Assault Crimes Panel (“the Response Systems Panel”), a Federal advisory committee established pursuant to section 576(a)(1) of the FY 2013 NDAA and in accordance with FACA, of the training level of military defense and trial counsel, assess the trends in the training and experience levels of military defense and trial counsel in adult sexual assault cases and the impact of those trends in the prosecution and adjudication of such cases.

h. Monitor trends in the development, utilization and effectiveness of the special victims capabilities required by Section 573 of the FY 2013 NDAA.

i. Monitor the implementation of the April 20, 2012, Secretary of Defense policy memorandum regarding withholding initial disposition authority under the UCMJ in certain sexual assault cases.

j. Assess the likely consequences of amending the definition of rape and sexual assault under section 920 of title 10, United States Code (article 120 of the UCMJ), to expressly cover a situation in which a person subject to the UCMJ commits a sexual act upon another person by abusing one’s position in the chain of command of the other person to gain access to or coerce the other person.

k. Assess the implementation and effect of the Special Victim’s Counsel for victims of sex-related offenses established by the Secretary of Defense on August 14, 2013 and codified in Section 1044e of title 10, United States Code, by the enactment of Section 1716 of the FY 2014 NDAA on December 26, 2013. The panel shall make such recommendations for modifications of section 1044e as the Judicial Proceedings Panel considers appropriate.

l. Assess the implementation and effect of the mandatory minimum sentences established by section 856(b) of title 10, United States Code (article 56(b) of the UCMJ), as added by section 1705 of the FY 2014 NDAA, which requires at a minimum, that upon a finding of guilt for the offenses of rape, sexual assault, rape and sexual assault of a child, forcible sodomy, and attempts to commit such acts, the punishment include dismissal or dishonorable discharge, except as provided for by Article 60 of the UCMJ, and the appropriateness of statutorily mandated minimum sentencing provisions for additional offenses under chapter 47 of title 10, United States Code (the UCMJ).

m. Assess the adequacy of the provision of compensation and restitution for victims of offenses under chapter 47 of title 10, United States Code (the UCMJ), and develop recommendations on expanding such compensation and restitution, including consideration of the options as follows:

i. Providing the forfeited wages of incarcerated members of the Armed Forces to victims of offenses as compensation.

ii. Including bodily harm among the injuries meriting compensation for redress under section 939 of title 10, United States Code (article 139 of the UCMJ).
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Judicial Proceedings Since Fiscal Year 2012 Amendments Panel

iii. Requiring restitution by members of the Armed Forces to victims of their offenses upon the direction of a court-martial.

n. Consider such other matters and materials as the Judicial Proceedings Panel considers appropriate for purposes of the reports.

In conducting reviews and assessments and preparing reports, the Judicial Proceedings Panel may review, and incorporate as appropriate, the data and findings of applicable ongoing and completed studies. The Judicial Proceedings Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as it considers appropriate to carry out its duties. Upon request by the Chair of the Judicial Proceedings Panel, a department or agency of the Federal Government shall provide information that the Judicial Proceedings Panel considers necessary to carry out its duties.

5. Agency or Official to Whom the Committee Reports: The Judicial Proceedings Panel shall provide its first report, including any proposals for legislative or administrative changes it considers appropriate, to the Secretary of Defense through the Department of Defense (DoD) General Counsel (GC), and the Committees on Armed Services of the Senate and the House of Representatives, not later than 180 days after its first meeting. The Judicial Proceedings Panel shall submit subsequent reports during fiscal years 2014 through 2017.

6. Support: The DoD, through the DoD Office of General Counsel (DoD OGC), the Washington Headquarters Services, and the Office of the Under Secretary of Defense for Personnel and Readiness, shall provide staffing and resources as deemed necessary for the performance of the Judicial Proceedings Panel’s functions, and shall ensure compliance with the requirements of the FACA, the Government in the Sunshine Act of 1976 (“the Sunshine Act”) (5 U.S.C. § 552b, as amended), governing federal statutes and regulations, and established DoD policies and procedures. Primary responsibility for such staffing and resourcing may not be assigned to the Sexual Assault Prevention and Response Office.

7. Estimated Annual Operating Costs and Staff Years: The estimated annual operating cost, to include travel, meetings, and contract support, is approximately $4,000,000 and 15 full-time equivalents.

8. Designated Federal Officer: The Designated Federal Officer (DFO), pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with governing DoD policies and procedures.

In addition, the Judicial Proceedings Panel’s DFO is required to be in attendance at all meetings of the Panel and its subcommittees for the entire duration of each and every meeting. However, in the absence of the DFO, the Alternate DFO, duly appointed to the Judicial Proceedings Panel according to DoD policies and procedures, shall attend the entire duration of the Judicial Proceedings Panel and any subcommittee meetings.
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The DFO, or the Alternate DFO, shall approve all of the meetings of the Judicial Proceedings Panel as called by the Chair; shall call all meetings of its subcommittees, in coordination with the Chair; prepare and approve all meeting agendas for the Judicial Proceedings Panel and any subcommittees; and adjourn any meeting when the DFO or the Alternate DFO determines adjournment to be in the public’s interest or required by governing regulations or DoD policies and procedures.

9. **Estimated Number and Frequency of Meetings:** Consistent with sections 576(b)(6) and (7) of the FY 2013 NDAA, the Judicial Proceedings Panel shall meet at the call of the Chair, and the Chair shall call the first meeting of the Judicial Proceedings Panel not later than 60 days after the date of the appointment of all the members of the Judicial Proceedings Panel. The Judicial Proceedings Panel shall meet at a minimum once per year.

10. **Duration:** The Judicial Proceedings Panel shall remain in effect until terminated, as provided for and as required by section 576(c)(2)(C) of the FY 2013 NDAA; however, the charter is subject to renewal every two years.

11. **Termination:** According to section 576(c)(2)(C) of the FY 2013 NDAA, the Judicial Proceedings Panel shall terminate on September 30, 2017.

12. **Membership and Designation:** Pursuant to sections 576(b)(1)(B) and (b)(2), the Judicial Proceedings Panel shall be appointed by the Secretary of Defense and consist of five members, two of whom must have served on the Response Systems Panel.

The members shall be selected from among private United States citizens who collectively possess expertise in military law, civilian law, the investigation, prosecution, and adjudication of sexual assaults in State and Federal criminal courts, victim advocacy, treatment for victims, military justice, the organization and missions of the Armed Force, and offenses relating to rape, sexual assault, and other adult sexual assault crimes. The Chair shall be appointed by the Secretary of Defense from among the members of the Judicial Proceedings Panel.

Members shall be appointed for the life of the Judicial Proceedings Panel, subject to annual renewals. Any vacancy on the Judicial Proceedings Panel shall be filled in the same manner as the original appointment. Panel members shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as special government employee (SGE) members. With the exception of reimbursement of official travel and per diem, Judicial Proceedings Panel members shall serve without compensation.

The DoD GC, according to DoD policies and procedures, may select experts and consultants as subject matter experts under the authority of 5 U.S.C. § 3109 to advise the Judicial Proceedings Panel or its subcommittees; these individuals do not count toward the Judicial Proceedings Panel’s total membership nor do they have voting privileges. In addition, these subject matter experts shall not participate in any deliberations dealing with
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the substantive matters before the Judicial Proceedings Panel or its subcommittees nor shall they participate in any voting.

13. **Subcommittees**: The Department, when necessary and consistent with the Judicial Proceedings Panel’s mission and DoD policies and procedures, may establish subcommittees, task groups, or working groups to support the Judicial Proceedings Panel. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the DoD GC.

These subcommittees shall not work independently of the Judicial Proceedings Panel and shall report all of their recommendations and advice to the Judicial Proceedings Panel for full deliberation and discussion. Subcommittees have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Judicial Proceedings Panel. No subcommittee or any of its members may update or report directly to the DoD or any Federal officers or employees.

The Secretary of Defense shall appoint subcommittee members even if the member in question is already a member of the Judicial Proceedings Panel. All subcommittee appointments shall be subject to annual renewal. Such individuals, if not full-time or part-time government personnel, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as SGE members. Those individuals who are full-time or permanent part-time Federal employees shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) as RGE members. Subcommittee members shall serve for the life of the subcommittee. With the exception of reimbursement of official travel and per diem, subcommittee members shall serve without compensation.

All subcommittees operate pursuant to the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies and procedures.

14. **Recordkeeping**: The records of the Judicial Proceedings Panel and its subcommittees shall be handled according to section 2, General Records Schedule 26, and appropriate Department of Defense policies and procedures. These records shall be available for public inspection and copying, subject to the Freedom of Information Act of 1966 (5 U.S.C. § 552, as amended).

15. **Filing Date**: June 24, 2014
JUDICIAL PROCEEDINGS PANEL MEMBERS

THE HONORABLE ELIZABETH HOLTZMAN — CHAIR OF THE JPP

Elizabeth Holtzman is counsel with the law firm Herrick, Feinstein LLP. Ms. Holtzman served for eight years as a U.S. representative (D-NY, 1973–81). While in office, she authored the Rape Privacy Act. She then served for eight years as District Attorney of Kings County, New York (Brooklyn), the fourth-largest DA’s office in the country, where she helped change rape laws, improve standards and methods for prosecution, and develop programs to train police and medical personnel. In 1989 Ms. Holtzman became the only woman ever elected Comptroller of New York City. Ms. Holtzman graduated from Radcliffe College, magna cum laude, and received her law degree from Harvard Law School.

THE HONORABLE BARBARA S. JONES

Barbara Jones is a partner at the law firm Bracewell, LLP. She served as a judge in the U.S. District Court for the Southern District of New York for 16 years and heard a wide range of cases relating to accounting and securities fraud, antitrust, fraud and corruption involving city contracts and federal loan programs, labor racketeering, and terrorism. Before being nominated to the bench in 1995, Judge Jones was the Chief Assistant to Robert M. Morgenthau, then the District Attorney of New York County (Manhattan). In that role she supervised community affairs, handled public information, and oversaw the work of the Homicide Investigation Unit. In addition to her judicial service, she spent more than two decades as a prosecutor. Judge Jones was a special attorney of the United States Department of Justice (DOJ) Organized Crime & Racketeering, Criminal Division, and the Manhattan Strike Force Against Organized Crime and Racketeering. Previously, Judge Jones served as an Assistant U.S. Attorney, as chief of the General Crimes Unit, and as chief of the Organized Crime Unit in the Southern District of New York.

MR. VICTOR STONE

Victor Stone represents crime victims at the Maryland Crime Victims Resource Center, Inc. Previously, he served as Special Counsel at the United States Department of Justice, including in the Appellate and General Litigation and Legal Advice Sections of the Criminal Division, U.S. Department of Justice; as Chief Counsel, FBI Foreign Terrorist Task Force; as an Assistant United States Attorney in Oregon and in the District of Columbia; as General Counsel to the D.C. Corrections Trustee; as a U.S. Immigration Judge; as a Special U.S. Parole Commissioner; as an expert at Council of Europe, United Nations, and Prison Rape Elimination Commission subcommittees, and as a DOJ member on the ABA Task Force updating Standards for Prisoner Rights. He also served as the Criminal Division’s legal advisor to the Federal Witness Security Program, and regarding federal victims’ rights compliance.
PROFESSOR THOMAS W. TAYLOR

Tom Taylor teaches graduate courses at Duke University’s Sanford School of Public Policy. Previously, he served as a decorated and distinguished Army officer, civil servant, and member of the Senior Executive Service. During a 27-year career in the Pentagon, he advised seven secretaries and seven Chiefs of Staff of the Army, and as the senior leader of the Army legal community he worked on a wide variety of operational, personnel, and intelligence issues. He graduated with high honors from Guilford College, Greensboro, N.C., and with honors from the University of North Carolina at Chapel Hill law school, where he was a Morehead Fellow, a member of the law review, and a member of the Order of the Coif.

VICE ADMIRAL PATRICIA A. TRACEY, U.S. NAVY (RETIRED)

Pat Tracey was most recently the Vice President of Homeland Security and Defense for Hewlett Packard Enterprise Services, U.S. Public Sector, developing dynamic strategies and providing support to various agencies including the U.S. Department of Homeland Security, U.S. Department of Justice, U.S. Department of State, and U.S. Department of Defense. She completed a distinguished 34-year naval career in 2004, retiring as a vice admiral and the most senior woman officer in the history of the U.S. Navy. As chief of the Navy’s $5 billion global education and training enterprise, Admiral Tracey led a successful revolution in training technology to improve the quality, access, effectiveness, and cost of Navy training. She graduated from the College of New Rochelle and the Naval Postgraduate School, with distinction, and completed a Fellowship with the Chief of Naval Operations’ Strategic Studies Group.
JUDICIAL PROCEEDINGS PANEL SUBCOMMITTEE MEMBERS

THE HONORABLE BARBARA S. JONES — CHAIR OF THE JPP SUBCOMMITTEE

Barbara Jones is a partner at the law firm Bracewell, LLP. She served as a judge in the U.S. District Court for the Southern District of New York for 16 years and heard a wide range of cases relating to accounting and securities fraud, antitrust, fraud and corruption involving city contracts and federal loan programs, labor racketeering, and terrorism. Before being nominated to the bench in 1995, Judge Jones was the Chief Assistant to Robert M. Morgenthau, then the District Attorney of New York County (Manhattan). In that role she supervised community affairs, handled public information, and oversaw the work of the Homicide Investigation Unit. In addition to her judicial service, she spent more than two decades as a prosecutor. Judge Jones was a special attorney of the United States Department of Justice (DOJ) Organized Crime & Racketeering, Criminal Division, and the Manhattan Strike Force Against Organized Crime and Racketeering. Previously, Judge Jones served as an Assistant U.S. Attorney, as chief of the General Crimes Unit, and as chief of the Organized Crime Unit in the Southern District of New York.

THE HONORABLE ELIZABETH HOLTZMAN — CHAIR OF THE JPP

Elizabeth Holtzman, who took office as the youngest woman ever elected to Congress, served in the House of Representatives from 1973 to 1981, representing New York’s 16th Congressional District. While in Congress, she served on the House Judiciary and Budget Committees and chaired the Immigration and Refugees Subcommittee. She co-founded the Congressional Women’s Caucus and was elected its first Democratic chair. She subsequently was elected Brooklyn District Attorney (where she pioneered new strategies for the prosecution of rape cases)—the only woman ever elected DA in New York City. She was then elected New York City Comptroller, the only woman ever to hold that position. Ms. Holtzman was appointed by President Bill Clinton to the Interagency Working Group (on declassifying secret Nazi war crimes files), and by Secretary Hagel to the Response Systems to Adult Sexual Assault Crimes Panel. She has also been appointed to the Department of Homeland Security Advisory Committee. Ms. Holtzman is a graduate of Harvard Law School and Harvard University’s Radcliffe College, magna cum laude. She practices law in New York City with the firm Herrick, Feinstein, LLP.
MS. LISA FRIEL

Lisa Friel is an internationally recognized expert on sexual assault. Ms. Friel has investigated and supervised complex cases involving sexual assault and harassment, human trafficking, workplace violence, child pornography, Internet predators, unlawful surveillance, theft, and fraud. Ms. Friel began her professional career at the New York County District Attorney’s Office, specializing in sexual assault cases. She was the Chief of the Sex Crimes Prosecution Unit for nearly a decade and the Deputy Chief for 11 years. Supervising more than 40 assistant district attorneys, support staff, and investigators, she typically managed 300 cases and investigations at any one time.

Ms. Friel has directed thousands of investigations into allegations of sexual assault and other misconduct and has trained hundreds of law enforcement personnel throughout the world. In October 2011, following a distinguished 28-year career as a Manhattan prosecutor, Ms. Friel joined T&M Protection Resources as Vice President of the Sexual Misconduct Consulting & Investigations division. Ms. Friel and her staff developed policies and procedures, provided training workshops, and conducted sensitive investigations into a myriad of issues, including sexual misconduct (both sexual assault and sexual harassment) and domestic violence. In September 2014, Ms. Friel was appointed as T&M’s Special Advisor to the NFL Commissioner, consulting on domestic violence, child abuse, and sexual assault within the National Football League. In April 2015, Ms. Friel accepted a permanent position with the NFL: an appointment by Commissioner Goodell as the NFL’s Special Counsel for Investigations, where she is responsible for all investigations related to possible violations of the NFL’s Personal Conduct Policy.

MS. LAURIE ROSE KEPROS

Laurie Rose Kepros is the Director of Sexual Litigation for the Colorado Office of the State Public Defender, where she trains and advises more than 700 lawyers and other staff statewide in their representation of adults and juveniles accused or convicted of sexual crimes. Ms. Kepros has personally represented thousands of criminal defendants, including many victims of sexual assault. She has tried and consulted on thousands of sexual offense cases across the state of Colorado. She has served on dozens of subcommittees of the Colorado Sex Offender Management Board and as a member of both the Sex Offense Task Force and the Sex Offense Working Group of the Sentencing Task Force of the Colorado Commission on Criminal and Juvenile Justice. Ms. Kepros was on the Board of Directors of the Colorado Criminal Defense Bar for 10 years and currently serves on the board of the CCDB’s sister policy organization, the Colorado Criminal Defense Institute. She is a member of the Association for the Treatment of Sexual Abusers and an adjunct professor at the University of Denver School of Law. She has repeatedly testified before the Colorado legislature as a subject matter expert in sexual crime law and as an expert witness in Colorado sex offense law in federal district court. In 2012, the CCDB awarded her the Gideon Award for upholding and preserving the principles captured by *Gideon v. Wainwright.*
DEAN LISA SCHENCK (COLONEL, U.S. ARMY, RETIRED)

Lisa Schenck became Associate Dean for Academic Affairs at the George Washington University Law School in 2009 after serving in the Army’s Judge Advocate General’s Corps for more than 25 years. She also has served as a judge, lawyer, and educator. While in the military, she was an appellate military judge on the U.S. Army Court of Criminal Appeals in 2002 and received the 2003 Judge Advocates Association Outstanding Career Armed Services Attorney Award (Army). In 2005, Dean Schenck was the first woman appointed as a Senior Judge on that court, where she served until she retired. In 2007, the Secretary of Defense also appointed her to serve concurrently as Associate Judge on the U.S. Court of Military Commission Review. After retiring from the military as a colonel in 2008, Dean Schenck served as Senior Advisor to the Defense Task Force on Sexual Assault in Military Services.

PROFESSOR LEE SCHINASI (COLONEL, U.S. ARMY, RETIRED)

Lee Schinasi began his legal career as a trial attorney for the Office of Economic Opportunity before starting a 23-year career in the Army’s Judge Advocate General’s Corps. His final assignment was as Dean of Academics and Vice Dean of the Army’s JAGC School. Professor Schinasi attended the resident Command and General Staff College and the resident Army War College. He has served as military legal advisor to the Army’s Chief of Staff for Intelligence and as Staff Judge Advocate of the 3rd Infantry Division (in Germany) and United States Army South (in Panama). Professor Schinasi is co-author of several books on evidence and litigation, including The Military Rules of Evidence Manual, Military Evidentiary Foundations, The Florida Evidence Code Trial Book, Florida Evidentiary Foundations, Evidence in Florida, Emerging Problems under the Federal Rules of Evidence, and Lawyers Cooperative Practice Guide: Florida Evidence. He received a bachelor’s degree in economics and a J.D. degree from the University of Toledo. Before joining the Barry Law faculty, Professor Schinasi taught at the University of Miami School of Law. He currently teaches evidence, torts, civil procedure, and national security law.
BRIGADIER GENERAL JAMES SCHWENK, U.S. MARINE CORPS (RETIRED)

James Schwenk retired from the Marine Corps in 2000 and from civil service in 2014, after 49 years of federal service. As a Marine Corps judge advocate, he served as a trial counsel, defense counsel, Deputy Staff Judge Advocate, Staff Judge Advocate, Special Assistant to the General Counsel of the Navy, Head of Operational Law Branch at Headquarters Marine Corps, Deputy Director of Legal and Legislative Policy for the Office of the Assistant Secretary of Defense for Force Management and Policy, Assistant Judge Advocate General of the Navy for Military Law, and Military Assistant to the DoD General Counsel. Upon retiring from active duty, BGen Schwenk served for 14 years in the Office of the General Counsel of the Department of Defense as Senior Associate Deputy General Counsel, specializing in personnel policy, military justice, and civil support. He was the principal legal advisor for the repeal of “don’t ask, don’t tell” and the provision of benefits to same-sex spouses of military personnel. In addition, he was the principal legal advisor to numerous DoD working groups in the area of military personnel policy, working extensively with the White House and Congress. BGen Schwenk attended the Washington College of Law, American University, earning his J.D. in 1977.

MS. JILL WINE-BANKS

Jill Wine-Banks has a background as a corporate executive in manufacturing and telecommunications and as an attorney and not-for-profit and government leader. Ms. Wine-Banks started her career at the Department of Justice prosecuting organized crime and labor racketeering cases and then played a crucial role as an assistant special prosecutor investigating and trying the Watergate obstruction of justice case. Ms. Wine-Banks also served as the General Counsel of the United States Army. In that position, Ms. Wine-Banks dealt with environmental, procurement, Panama Canal, intelligence, military justice, and political issues, including the integration of women into basic training and West Point. After leaving the Pentagon, she was a litigation partner at Jenner and Block, the Solicitor General and Deputy Attorney General of Illinois, and later the Executive Vice President and Chief Operating Officer of the American Bar Association, the world’s largest legal publisher and professional association with almost 400,000 members. That experience led to her becoming a senior corporate executive at Motorola and then Maytag, handling international business development, global operations, alliance creation and management, and government relations in Pakistan, China, Ukraine, Russia, France, Germany, Japan, and Singapore. Recently, Ms. Wine-Banks was head of career and technical education for the Chicago Public Schools and a business consultant. Ms. Wine-Banks is currently writing a book about her life and career, with a special focus on her experiences during Watergate.
A. STATUTORY TASKS

1. Assess and make recommendations for improvements in the implementation of the reforms to the offenses relating to rape, sexual assault, and other sexual misconduct under the Uniform Code of Military Justice that were enacted by section 541 (Article 120 revision) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Public Law 112-81; 125 Stat. 1404). (FY13 NDAA, § 576(d)(2)(A))

2. Review and evaluate current trends in response to sexual assault crimes whether by courts-martial proceedings, non-judicial punishment and administrative actions, including the number of punishments by type, and the consistency and appropriateness of the decisions, punishments, and administrative actions based on the facts of individual cases. (FY13 NDAA, § 576(d)(2)(B))

3. Identify any trends in punishments rendered by military courts, including general, special, and summary courts-martial, in response to sexual assault, including the number of punishments by type, and the consistency of the punishments, based on the facts of each case compared with the punishments rendered by Federal and State criminal courts. (FY13 NDAA, § 576(d)(2)(C))

4. Review and evaluate court-martial convictions for sexual assault in the year covered by the most-recent report required of the JPP and the number and description of instances when punishments were reduced or set aside upon appeal and the instances in which the defendant appealed following a plea agreement, if such information is available. (FY13 NDAA, § 576(d)(2)(D))

5. Review and assess those instances in which prior sexual conduct of the alleged victim was considered in a proceeding under section 832 of title 10, United States Code (article 32 of the Uniform Code of Military Justice), and any instances in which prior sexual conduct was determined to be inadmissible. (FY13 NDAA, § 576(d)(2)(E))

6. Review and assess those instances in which evidence of prior sexual conduct of the alleged victim was introduced by the defense in a court-martial and what impact that evidence had on the case. (FY13 NDAA, § 576(d)(2)(F))

7. Building on the data compiled as a result of paragraph (1)(D), assess the trends in the training and experience levels of military defense and trial counsel in adult sexual assault cases and the impact of those trends in the prosecution and adjudication of such cases. (FY13 NDAA, § 576(d)(2)(G))

8. Monitor trends in the development, utilization and effectiveness of the special victims capabilities required by section 573 of this Act. (FY13 NDAA, § 576(d)(2)(H))
9. Monitor the implementation of the April 20, 2012, Secretary of Defense policy memorandum regarding withholding initial disposition authority under the Uniform Code of Military Justice in certain sexual assault cases. (FY13 NDAA, § 576(d)(2)(I))

10. Consider such other matters and materials as the panel considers appropriate for purposes of the reports. (FY13 NDAA, § 576(d)(2)(J))

11. An assessment of the likely consequences of amending the definition of rape and sexual assault under section 920 of title 10, United States Code (article 120 of the Uniform Code of Military Justice), to expressly cover a situation in which a person subject to chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), commits a sexual act upon another person by abusing one’s position in the chain of command of the other person to gain access to or coerce the other person. (FY14 NDAA, § 1731(b)(1)(A))

12. An assessment of the implementation and effect of section 1044e of title 10, United States Code, as added by section 1716, and make such recommendations for modification of such section as the Judicial Proceedings Panel considers appropriate. (FY14 NDAA, § 1731(b)(1)(B))

13. An assessment of the implementation and effect of the mandatory minimum sentences established by section 856(b) of title 10, United States Code (article 56(b) of the Uniform Code of Military Justice), as added by section 1705, and the appropriateness of statutorily mandated minimum sentencing provisions for additional offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice). (FY14 NDAA, § 1731(b)(1)(C))

14. An assessment of the adequacy of the provision of compensation and restitution for victims of offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), and develop recommendations on expanding such compensation and restitution, including consideration of the options as follows:

   (i) Providing the forfeited wages of incarcerated members of the Armed Forces to victims of offenses as compensation.

   (ii) Including bodily harm among the injuries meriting compensation for redress under section 939 of title 10, United States Code (article 139 of the Uniform Code of Military Justice).

   (iii) Requiring restitution by members of the Armed Forces to victims of their offenses upon the direction of a court-martial. (FY14 NDAA, 1731(b)(1)(D))

15. Conduct a review and assessment regarding the impact of the use of any mental health records of the victim of an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), by the accused during the preliminary hearing conducted under section 832 of such title (article 32 of the Uniform Code of Military Justice), and during court-martial proceedings, as compared to the use of similar records in civilian criminal legal proceedings. (FY15 NDAA, § 545(a)(1))
16. Conduct a review and assessment regarding the establishment of a privilege under the M.R.E. against the disclosure of communications between—

(A) users of and personnel staffing the Department of Defense Safe Helpline; and

(B) users of and personnel staffing the Department of Defense Safe HelpRoom. (FY15 NDAA, § 545(a)(2))

B. TASKS ASSIGNED TO THE JUDICIAL PROCEEDINGS PANEL BY THE RESPONSE SYSTEMS PANEL (RSP)

1. The Judicial Proceedings Panel and the Joint Services Committee should review and clarify the extent of a victim’s right to access information that is relevant to the assertion of a particular right. (RSP Recommendation 45)

2. The Judicial Proceedings Panel and Joint Service Committee consider whether to recommend legislation that would either split sexual assault offenses under Article 120 of the UCMJ into different articles that separate penetrative and contact offenses from other offenses or narrow the breadth of conduct currently criminalized under Article 120. (RSP Recommendation 113)

3. The Judicial Proceedings Panel assess the use of depositions in light of changes to the Article 32 proceeding, and determine whether to recommend changes to the deposition process, including whether military judges should serve as deposition officers. (RSP Recommendation 115)

4. The Judicial Proceedings Panel study whether the military plea bargaining process should be modified. (RSP Recommendation 117)

C. TASKS UNDERTAKEN INDEPENDENTLY BY THE JUDICIAL PROCEEDINGS PANEL

1. Assess the occurrence of retaliation related to sexual assault offenses. This task was undertaken by the JPP in response to the May 2015 release of a DoD Sexual Assault Prevention and Response Office report indicating that 62% of the victims who report being sexually assaulted experience retaliation as a result of making the report.

2. Assess the protection of sexual assault victims’ appellate rights. This task was undertaken by the JPP in response to concerns raised by the Service special victims’ counsel program managers at the April 8, 2016, JPP public meeting.
## APPENDIX D: Judicial Proceedings Panel and Subcommittee Meetings

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<tr>
<th>MEETINGS</th>
<th>PRESENTERS</th>
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<tr>
<td>August 7, 2014</td>
<td>• Mr. William Cassara, Attorney-at-Law, Augusta, Georgia</td>
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<tr>
<td>Public Meeting of the JPP</td>
<td>• Colonel (Retired) Timothy Grammel, U.S. Army, former Trial Judiciary Circuit Judge</td>
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<tr>
<td>The George Washington University Law School</td>
<td>• Colonel Gary Jackson, U.S. Air Force, Staff Judge Advocate, Headquarters Air Force Global Strike Command</td>
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<td>Washington, DC</td>
<td>• Captain Christian Reismeier, U.S. Navy, Chief Judge of the Navy</td>
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<td></td>
<td>• Professor Stephen Schulhofer, New York University School of Law, American Law Institute (by telephone)</td>
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<td>• Mr. Dwight Sullivan, Department of Defense, Office of the General Counsel</td>
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<td>• Ms. Carol Tracy, Women’s Law Project</td>
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<td>• Ms. Charlene Whitman, Æquitas</td>
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<td>• Mr. John Wilkinson, Æquitas</td>
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<td>MEETINGS</td>
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| September 19, 2014 | • Captain Steven Andersen, U.S. Coast Guard, Commanding Officer, Legal Services Command  
| Public Meeting of the JPP | • Colonel John Baker, U.S. Marine Corps, Deputy Director, Judge Advocate Division, Military Justice & Community Development  
| Holiday Inn Arlington at Ballston Arlington, VA | • Captain Robert Crow, U.S. Navy, Director, Criminal Law Division  
| | • Congresswoman Lois Frankel (D-22nd FL)  
| | • Professor Victor Hansen, New England School of Law (by telephone)  
| | • Commander Jason Jones, U.S. Navy, Defense Service Office West  
| | • Colonel Polly Kenny, U.S. Air Force, Staff Judge Advocate, Air Education and Training Command  
| | • Lieutenant Colonel John Kiel, U.S. Army, Criminal Law Division, Office of the Judge Advocate General  
| | • Major Frank Kostik, U.S. Army, Senior Defense Counsel  
| | • Colonel Michael Lewis, U.S. Air Force, Chief, Military Justice Division  
| | • Major Melanie Mann, U.S. Marine Corps, Military Justice Officer  
| | • Captain (Retired) Stephen McCleary, U.S. Coast Guard, former Chief of Military Justice  
| | • Ms. Elisha Morrow, former U.S. Coast Guard  
| | • Mr. E. J. O’Brien, U.S. Army, Highly Qualified Expert, Trial Defense Services  
| | • Lieutenant Colonel Alex Pickands, U.S. Army, Trial Counsel Assistance Program  
| | • Lieutenant Colonel Julie Pitvorec, U.S. Air Force, Chief Senior Defense Counsel  
| | • Major Mark Rosenow, U.S. Air Force, Special Victims Unit, Chief of Policy and Coordination  
| | • Lieutenant Colonel Michael Sayegh, U.S. Marine Corps, Staff Judge Advocate, Training Command  
| | • Ms. Teresa Scalzo, U.S. Navy, Highly Qualified Expert, Trial Counsel Assistance Program  
| | • Congresswoman Jackie Speier (D-14th CA)  
| | • Lieutenant Commander Ryan Stormer, U.S. Navy, Trial Counsel Assistance Program  
| | • Lieutenant Colonel Chris Thielemann, U.S. Marine Corps, Regional Trial Counsel  
| | • Professor Rachel VanLandingham, Southwestern Law School  
| | • Lieutenant Colonel James Varley, U.S. Army, Government Appellate Division  
| | • Mr. Ronald White, former Highly Qualified Expert for the U.S. Army Trial Defense Services  
<p>| | • Colonel Terri Zimmermann, U.S. Marine Corps, Officer-in-Charge (Reserve), Defense Services Organization |</p>
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<th>MEETINGS</th>
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<tr>
<td>October 10, 2014</td>
<td>• Colonel John Baker, U.S. Marine Corps, Deputy Director, Judge Advocate Division, Military Justice &amp; Community Development</td>
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<tr>
<td>Public Meeting of the JPP</td>
<td>• Mr. William Barto, U.S. Army, Director, Advocacy Training and Programs, Criminal Law Division, Office of the Judge Advocate General</td>
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<td>Holiday Inn Arlington at Ballston Arlington, VA</td>
<td>• Major Rebecca DiMuro, U.S. Army, Special Victim Prosecutor</td>
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<td>• Professor Clifford Fishman, Catholic University School of Law</td>
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<td>• Mr. Ryan Guilds, Counsel, Arnold &amp; Porter LLP</td>
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<td>• Major Andrea Hall, U.S. Air Force, Senior Defense Counsel</td>
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<td>• Major Pete Houtz, U.S. Marine Corps, Regional Trial Counsel</td>
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<td>• Mr. Greg Jacob, Policy Director, Service Women’s Action Network</td>
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<td>• Ms. Laurie Rose Kepros, Director of Sexual Litigation, Colorado Office of the State Public Defender</td>
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<td>• Ms. Viktoria Kristiansson, Attorney Advisor, Æquitas</td>
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<td>• Ms. Jennifer Long, Director, Æquitas</td>
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<td>• Ms. Miranda Petersen, Program &amp; Policy Director, Protect Our Defenders</td>
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<td>• Major Matthew Powers, U.S. Marine Corps, Senior Defense Counsel</td>
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<td>• Ms. Patricia Powers, Senior Deputy Prosecuting Attorney, Yakima County, Washington, Prosecuting Attorney’s Office</td>
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<td>• Commander Stephen Reyes, U.S. Navy, Director, Defense Counsel Assistance Program</td>
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<td>• Major Shari Shugart, U.S. Army, Senior Defense Counsel</td>
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<td>• Commander Jonathan Stephens, U.S. Navy, Senior Trial Counsel, Region Legal Service Office Mid-Atlantic</td>
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<td>• Lieutenant Colonel Brian Thompson, U.S. Air Force, Chief Senior Trial Counsel, Government Trial and Appellate Counsel Division</td>
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<tr>
<td>November 14, 2014</td>
<td>• Mr. Michael Andrews, Project Director and Managing Attorney, District of Columbia Crime Victims’ Resource Center</td>
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<tr>
<td>Public Meeting of the JPP</td>
<td>• Major William Babor, U.S. Air Force, Senior Defense Counsel</td>
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<td>Holiday Inn Arlington at Ballston Arlington, VA</td>
<td>• Lieutenant Jeffrey Barnum, U.S. Coast Guard, Trial Counsel</td>
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<td>• Mr. James Boerner, Special Agent, Army Criminal Investigative Command</td>
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<td>• Lieutenant Colonel Andrea deCamara, U.S. Air Force, Chief, Special Victims’ Counsel Division</td>
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<td>• Mr. Mike DeFamio, Supervisory Special Agent, U.S. Naval Criminal Investigative Service</td>
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<td>• Captain Karen Fischer-Anderson, U.S. Navy, Chief of Staff, Victims’ Legal Counsel</td>
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<td>• Commander Ted Fowles, U.S. Coast Guard, Chief, Office of Special Victims’ Counsel</td>
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<td>• Ms. Meg Garvin, Executive Director, National Crime Victims’ Law Institute</td>
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<td>• Lieutenant Commander Philip Hamon, U.S. Navy, Senior Trial Counsel, Region Legal Service Office, Naval District Washington</td>
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<td>• Major Douglas Hatch, U.S. Marine Corps, Senior Complex Trial Counsel, Legal Support Section West</td>
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<td>• Lieutenant Colonel Scott Hutmacher, U.S. Army, Special Victim Prosecutor</td>
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<td>• Captain Brent Jones, U.S. Air Force, Senior Trial Counsel, Air Force Legal Operations Agency</td>
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<td>• Colonel Carol Joyce, U.S. Marine Corps, Officer in Charge, Victims’ Legal Counsel Organization</td>
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<td>• Major Kyle Kilian, U.S. Marine Corps, Senior Defense Counsel</td>
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<td>• Captain Aaron Kirk, U.S. Air Force, Special Victims’ Counsel</td>
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<td>• Colonel James Robert McKee, U.S. Army, Program Manager, Special Victims’ Counsel Program</td>
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<td>• Lieutenant Colonel Ryan Oakley, Deputy Director, Legal Policy, Office of the Under Secretary of Defense for Personnel and Readiness</td>
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<td>• Captain Sarah Robbins, U.S. Army, Trial Defense Counsel</td>
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<td>• Commander Colleen Shook, U.S. Navy, Officer in Charge, Victims’ Legal Program Mid-Atlantic</td>
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<td>• Captain Jessie Sommer, U.S. Army, Chief, 82nd Airborne Division Legal Assistance Office and Special Victims’ Counsel</td>
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<td>• Mr. Victor Stone, JPP Member</td>
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</tbody>
</table>

Continued
### MEETINGS

<table>
<thead>
<tr>
<th>Date</th>
<th>Public Meeting of the JPP</th>
<th>Presenters</th>
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</thead>
</table>
| November 14, 2014 | Holiday Inn Arlington at Ballston, Arlington, VA                                           | Continued
<p>|                   |                                                                                          | • Major Marc Tilney, U.S. Marine Corps, Regional Victims’ Legal Counsel                                                                  |
|                   |                                                                                          | • Mr. Mark Walker, Sexual Assault Investigations and Operations Consultant to the Sexual Assault Prevention and Response Office, Air Force Office of Special Investigations |
|                   |                                                                                          | • Lieutenant Commander Kismet Wunder, U.S. Coast Guard, Special Victims’ Counsel                                                           |
| December 12, 2014 | Holiday Inn Arlington at Ballston, Arlington, VA                                           | • Ms. Gloria Arteaga, U.S. Navy, Sexual Assault Response Coordinator                                                                     |
|                   |                                                                                          | • Colonel John Baker, U.S. Marine Corps, Deputy Director, Judge Advocate Division, Military Justice and Community Development             |
|                   |                                                                                          | • Ms. Marie Brodie, U.S. Marine Corps Installation Sexual Assault Response Coordinator                                                     |
|                   |                                                                                          | • Lieutenant General Christopher Burne, U.S. Air Force, The Judge Advocate General                                                        |
|                   |                                                                                          | • Colonel (Retired) Don Christensen, U.S. Air Force, President, Protect Our Defenders                                                   |
|                   |                                                                                          | • Lieutenant General Flora Darpino, U.S. Army, The Judge Advocate General                                                                 |
|                   |                                                                                          | • Lieutenant Kathryn DeAngelo, U.S. Navy, Victims’ Legal Counsel and Airman V.T.                                                           |
|                   |                                                                                          | • Vice Admiral Nannette DeRenzi, U.S. Navy, Judge Advocate General                                                                      |
|                   |                                                                                          | • Ms. Phylista Dudzinski, U.S. Air Force, Sexual Assault Response Coordinator                                                             |
|                   |                                                                                          | • Ms. Simone Hall, U.S. Coast Guard, Sexual Assault Response Coordinator                                                                |
|                   |                                                                                          | • Major William Ivins III, U.S. Marine Corps, Regional Victims’ Legal Counsel-West, and Ms. J.B.                                          |
|                   |                                                                                          | • Sergeant First Class Bridgett Joseph, U.S. Army, Sexual Assault Response Coordinator                                                    |
|                   |                                                                                          | • Captain Christopher Mangels, U.S. Air Force, Special Victims’ Counsel, and Ms. R.S.                                                      |
|                   |                                                                                          | • Rear Admiral Steven Poulin, U.S. Coast Guard, Judge Advocate General and Chief Counsel                                                   |
|                   |                                                                                          | • Lieutenant Commander Kelley Stevens, U.S. Coast Guard, Special Victims’ Counsel and Petty Officer N.S.                                  |
|                   |                                                                                          | • Captain Brian Stransky, U.S. Army, Operational Law Attorney and Specialist A.S.                                                          |</p>
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<th>MEETINGS</th>
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<tr>
<td><strong>January 16, 2015</strong></td>
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<tr>
<td>Public Meeting of the JPP</td>
<td>• Panel Deliberations (no speakers)</td>
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<tr>
<td>U.S. District Court for the District of Columbia Washington, DC</td>
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<tr>
<td><strong>January 30, 2015</strong></td>
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<tr>
<td>Public Meeting of the JPP</td>
<td>• Panel Deliberations (no speakers)</td>
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<tr>
<td>One Liberty Center Arlington, VA</td>
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<tr>
<td>MEETINGS</td>
<td>PRESENTERS</td>
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<tr>
<td>March 13, 2015</td>
<td>• Captain Joseph Ahlers, U.S. Air Force, Special Victims’ Counsel</td>
</tr>
<tr>
<td>Public Meeting of the JPP</td>
<td>• Colonel John Baker, U.S. Marine Corps, Chair, Joint Service Committee on Military Justice</td>
</tr>
<tr>
<td>U.S. District Court for the District of Columbia Washington, DC</td>
<td>• Ms. Nikki Charles, Co-Executive Director, Network for Victim Recovery of DC, and former Administrator of Victim Services, Maryland Criminal Injuries Compensation Board</td>
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<tr>
<td></td>
<td>• Major Richard Cloninger, U.S. Marine Corps, Regional Victims’ Legal Counsel</td>
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<tr>
<td></td>
<td>• Mr. Charles Cosgrove, U.S. Army, Chief, Programs Branch, Criminal Law Division, Office of the Judge Advocate General</td>
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<td></td>
<td>• Mr. Dan Eddy, Executive Director, National Association of Crime Victim Compensation Boards</td>
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<tr>
<td></td>
<td>• Professor Julie Goldscheid, the City University of New York School of Law</td>
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<tr>
<td></td>
<td>• Ms. Bridgette Marie Harwood, Director of Legal Services, Network for Victim Recovery of DC</td>
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<td></td>
<td>• Ms. Susan Smith Howley, Director, Public Policy, National Center for Victims of Crime</td>
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<td></td>
<td>• Lieutenant Commander Patrick Korody, U.S. Navy, Supervising Attorney, Victims’ Legal Counsel Program</td>
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<tr>
<td></td>
<td>• Professor Cortney Lollar, University of Kentucky College of Law</td>
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<td>• Colonel Michael Mulligan, U.S. Army, Chief, Criminal Law Division, Office of the Judge Advocate General</td>
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<td></td>
<td>• Professor Njeri Mathis Rutledge, South Texas College of Law</td>
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<td></td>
<td>• Mr. Gene McCleskey, Director, Texas Crime Victims’ Compensation Program</td>
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<tr>
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<td>• Ms. Kathy Nelson, U.S. Air Force, Victim Witness Assistance Program (by telephone)</td>
</tr>
<tr>
<td></td>
<td>• Major Mary Ellen Payne, U.S. Air Force, Government Trial and Appellate Counsel Division, Air Force Legal Operations Agency</td>
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<td></td>
<td>• Ms. Laura Banks Reed, Director, DC Superior Court Crime Victims Compensation Program</td>
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<tr>
<td></td>
<td>• Major Mark Sameit, U.S. Marine Corps, Officer in Charge, Trial Counsel Assistance Program</td>
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<tr>
<td></td>
<td>• Ms. Teresa Scalzo, Deputy Director, U.S. Navy, Trial Counsel Assistance Program</td>
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<td></td>
<td>• Ms. Lindsey Silverberg, Advocacy and Outreach Supervisor, Network for Victim Recovery of DC</td>
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### MEETINGS

**April 9, 2015**

Meeting of the JPP Subcommittee

**One Liberty Center**

**Arlington, VA**

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<tbody>
<tr>
<td>• Colonel (Retired) Tim Grammel, U.S. Army, former Military Judge</td>
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<tr>
<td>• Commander (Retired) John Maksym, U.S. Navy, former Military Judge</td>
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<tr>
<td>• Colonel (Retired) William Orr, U.S. Air Force, former Military Judge</td>
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<tr>
<td>• Professor Stephen Schulhofer, New York University School of Law</td>
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<tr>
<td>• Mr. Dwight Sullivan, Department of Defense, Office of General Counsel</td>
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<tr>
<td>• Lieutenant Colonel (Retired) Quincy Ward, U.S. Marine Corps, former Military Judge</td>
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<td>MEETINGS</td>
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</tbody>
</table>
| April 10, 2015 Public Meeting of the JPP U.S. District Court for the District of Columbia Washington, DC | • Mr. Jay Aanrud, U.S. Air Force, Deputy Director, Headquarters, Sexual Assault Prevention and Response  
• Ms. Julia Andrews, U.S. Coast Guard, Chair, Board for Correction of Military Records  
• Dr. Lilia Cortina, Professor, University of Michigan  
• Ms. Monique Ferrell, Director, U.S. Army, Sexual Harassment/Assault Response and Prevention  
• Dr. Nathan Galbreath, Department of Defense, Senior Executive Advisor, Sexual Assault Prevention and Response Office  
• Mr. Patrick Gookin, Director, Department of Defense Inspector General Hotline & Whistleblower Protection Ombudsman  
• Dr. Patricia Harned, Chief Executive Officer, Ethics & Compliance Initiative  
• Mr. Douglas Huff, U.S. Army, Legal Advisor, Review Boards Agency  
• Colonel Scott Jensen, U.S. Marine Corps, Branch Head, Headquarters, Sexual Assault Prevention and Response  
• Dr. Vicki Magley, Professor, University of Connecticut  
• Mr. Michael Noone, Professor, Columbus Law School, Catholic University  
• Mr. Jon Ruskin, Counsel, Board for Correction of Naval Records  
• Major General Jeffrey Snow, Director, DoD Headquarters, Sexual Assault Prevention and Response Office  
• Rear Admiral Richard Snyder, Director, Twenty-First Century Sailor Office  
• Dr. Matthew Soulier, Professor, University of California, Davis  
• Ms. Nilgun Tolek, Director, DoD Inspector General Whistleblower Reprisal Investigations  
• Mr. John Vallario, U.S. Air Force, Deputy Executive Director, Board for Correction of Military Records  
• Dr. Veronique Valliere, Valliere & Counseling Associates, Inc. |
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<td>May 7, 2015</td>
<td>- Major Aimee Bateman, U.S. Army, The Judge Advocate General’s Legal Center and School</td>
</tr>
<tr>
<td>Meeting of the JPP Subcommittee</td>
<td>- Colonel (Retired) Don Christensen, U.S. Air Force, President, Protect Our Defenders</td>
</tr>
<tr>
<td>U.S. Courthouse</td>
<td>- Colonel Mark Jamison, U.S. Marine Corps, Director, Navy-Marine Corps Appellate Government Division</td>
</tr>
<tr>
<td>New York, NY</td>
<td>- Lieutenant Commander Stuart Kirkby, U.S. Navy, Staff Attorney, Navy-Marine Corps Appellate Review Activity</td>
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<td></td>
<td>- Major Frank Kostik, U.S. Army, Senior Defense Counsel</td>
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<td></td>
<td>- Major Mary Ellen Payne, U.S. Air Force, Government Appellate Division</td>
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<td>- Lieutenant Colonel Alex Pickands, U.S. Army, Trial Counsel Assistance Program</td>
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<td>- Major Mark Rosenow, U.S. Air Force, Special Victims Unit, Chief of Policy and Coordination</td>
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<td>- Major Thomas Smith, U.S. Air Force, Defense Appellate Division</td>
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<td>- Mr. Zachary Spilman, Attorney at Law</td>
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<td>- Major John Stephens, U.S. Marine Corps, Navy-Marine Corps Appellate Defense Division</td>
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<td>- Lieutenant Colonel Christopher Thielemann, U.S. Marine Corps, Regional Trial Counsel</td>
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<td>- Captain Jihan Walker, U.S. Army, Government Appellate Division</td>
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<td>- Mr. John Wilkinson, Attorney Advisor, Æquitas</td>
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<td>- Colonel Terri Zimmermann, U.S. Marine Corps, Chief Reserve Defense Counsel of the Marine Corps</td>
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<tr>
<td>May 19, 2015</td>
<td>Ms. Kim Agnew, U.S. Navy, Sexual Assault Response Coordinator</td>
</tr>
<tr>
<td>Public Meeting of the JPP</td>
<td>Staff Sergeant E.A., U.S. Army</td>
</tr>
<tr>
<td>U.S. District Court for the District of Columbia</td>
<td>Ms. Marie Brodie, U.S. Marine Corps, Sexual Assault Response Coordinator</td>
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<tr>
<td>Washington, DC</td>
<td>Colonel Allen Broughton, U.S. Marine Corps, Chief of Staff, Marine Corps Installations National Capital Region</td>
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<td>Ms. Susan Burke, Victim Counsel, Law Offices of Susan L. Burke</td>
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<td>Ms. C.B., former U.S. Air Force Enlisted Member</td>
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<td></td>
<td>1st Lieutenant C.B., U.S. Army</td>
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<td></td>
<td>Ms. Sara Darehshori, Senior Counsel, Human Rights Watch, U.S. Program</td>
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<td></td>
<td>Captain Heidi Fleming, U.S. Navy, Commanding Officer</td>
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<td>Colonel Brian Foley, U.S. Army, Garrison Commander</td>
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<td>Petty Officer First Class S.F., U.S. Coast Guard</td>
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<td>Command Master Chief Kevin Goodrich, U.S. Navy</td>
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<td>Mr. Magnus Graham, U.S. Coast Guard, Sexual Assault Response Coordinator</td>
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<td>Command Master Chief Jason Griffin, U.S. Coast Guard</td>
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<td>Brigadier General David Harris, U.S. Air Force, Commander</td>
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<td>Ms. A.H., Spouse of U.S. Air Force Staff Sergeant</td>
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<td>Master Sergeant Michelle Johnson, U.S. Army</td>
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<td>Sergeant First Class Bridgett Joseph, U.S. Army, Sexual Assault Response Coordinator</td>
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<td>Lance Corporal J.J., U.S. Marine Corps</td>
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<td>Staff Sergeant N.L., U.S. Air Force</td>
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<td>Retaliation video featuring First Sergeant Katrina Moerk, U.S. Army</td>
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<td>Petty Officer Third Class D.M., U.S. Coast Guard</td>
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<td>Staff Sergeant LeeAnn Nelson, U.S. Marine Corps, Uniformed Victim Advocate</td>
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<td>Command Chief Master Sergeant Craig Neri, U.S. Air Force</td>
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<td>Ms. A.N., former U.S. Navy Petty Officer Second Class</td>
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<td>Ms. Nancy Pike, U.S. Air Force, Sexual Assault Response Coordinator</td>
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<td>Captain V.P. (Retired), U.S. Army</td>
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<td>Ms. Meghan Rhoad, Researcher, Human Rights Watch, Women’s Rights Division</td>
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<tr>
<th>MEETINGS</th>
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<tr>
<td>May 19, 2015</td>
<td><strong>Continued</strong></td>
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</tbody>
</table>
| Public Meeting of the JPP            | • Mr. Michael Starkey, U.S. Air Force, Sexual Assault Prevention and Response Victim Advocate  
• Technical Sergeant J.S. (Retired), U.S. Air Force  
• Master Sergeant T.S., U.S. Air Force  
• Major K.V., U.S. Air Force  
• Captain Jeffrey Westling, U.S. Coast Guard, Commander |
| U.S. District Court for the District of Columbia  
Washington, DC                        |                                                                                                                                                                                                              |
| June 18, 2015                         | • Mr. Dan Eddy, Executive Director, National Association of Crime Victim Compensation Boards  
• Mr. Kenneth Feinberg, Founder and Managing Partner, Feinberg Rozen, LLP (by telephone)  
• Major Chantell Higgins, U.S. Marine Corps, Victims’ Legal Counsel  
• Ms. Mary Kaye Justis, Director, TRICARE Health Plan  
• Dr. Cara J. Krulewitch, Certified Nurse-Midwife, Fellow of the American College of Nurse Midwives, Director, Women’s Health, Medical Ethics and Patient Advocacy  
• Captain George “Rob” Lavine III, Senior Special Victims’ Counsel  
• Ms. Stephanie Li, Chief, Regulations and Policy Staff, Compensation Service, Veterans Benefits Administration  
• Mr. R. Peter Masterton, U.S. Army, Chief, European Tort Claims Division, U.S. Army Claims Service Europe  
• Dr. Stacey Pollack, National Director of Program Policy Implementation, Veterans Health Administration  
• Ms. Jennifer Riley, Assistant General Counsel for Military and Civilian Pay, Defense Finance and Accounting Services  
• Captain Micah Smith, U.S. Air Force, Special Victims’ Counsel  
• Lieutenant Commander James Toohey, U.S. Navy, Victims’ Legal Counsel  
• Ms. Diana M. Williard, Quality Assurance Officer, Compensation Service, Veterans Benefits Administration  
• Lieutenant Commander Kismet Wunder, U.S. Coast Guard, Special Victims’ Counsel  
• Ms. Donna Adams (public comment) |
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<td><strong>June 25, 2015</strong></td>
<td>• Lieutenant Colonel Christopher Kennebeck, U.S. Army, Deputy Staff Judge Advocate</td>
</tr>
<tr>
<td>Meeting of the JPP Subcommittee</td>
<td>• Brigadier General Charles Pede, U.S. Army, Commander/Commandant, The Judge Advocate General’s Legal Center and School</td>
</tr>
<tr>
<td>Moynihan Courthouse</td>
<td>• Mr. Dwight Sullivan, Department of Defense, Office of the General Counsel</td>
</tr>
<tr>
<td>New York, NY</td>
<td></td>
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<tr>
<td><strong>July 22, 2015</strong></td>
<td>• Major General Peggy Combs, U.S. Army, Commanding General, U.S. Army Cadet Command and Fort Knox</td>
</tr>
<tr>
<td>Meeting of the JPP Subcommittee</td>
<td>• Major General Gina Grosso, U.S. Air Force, Director, Sexual Assault Prevention and Response</td>
</tr>
<tr>
<td>One Liberty Center</td>
<td>• Brigadier General Austin Renforth, U.S. Marine Corps, Commanding General, Training Command</td>
</tr>
<tr>
<td>Arlington, VA</td>
<td>• Major General (Retired) Robert Shadley, U.S. Army</td>
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<td>• Rear Admiral Cari Thomas, U.S. Coast Guard, Assistant Commandant for Human Resources</td>
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<td></td>
<td>• Major General (Retired) Margaret Woodward, U.S. Air Force</td>
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<tr>
<td><strong>August 6, 2015</strong></td>
<td>• Panel Deliberations (no speakers)</td>
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<tr>
<td>Public Meeting of the JPP</td>
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<tr>
<td>George Washington University</td>
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<td>Washington, DC</td>
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<td>MEETINGS</td>
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| August 27, 2015       | • Mr. John Awtrey, Department of Defense, Director, Law Enforcement Policy and Support  
                        | • Lieutenant Commander Paul Casey, U.S. Coast Guard, Staff Judge Advocate  
                        | • Lieutenant Commander Benedict Gullo, U.S. Coast Guard, Deputy Staff Judge Advocate  
                        | • Major Tyler Heimann, U.S. Army, former Special Victim Prosecutor  
                        | • Lieutenant Paul Hochmuth, U.S. Navy, Officer in Charge, Defense Service Office Southeast  
                        | • Major Adam King, U.S. Marine Corps, Senior Trial Counsel  
                        | • Colonel David Mendelson, U.S. Army, Staff Judge Advocate  
                        | • Colonel Brynn Morgan, U.S. Air Force, Staff Judge Advocate  
                        | • Captain Charles Olson, U.S. Marine Corps, Defense Counsel  
                        | • Major Mary Ellen Payne, U.S. Air Force, Appellate Counsel, Government Trial and Appellate Division  
                        | • Lieutenant Commander Ben Robertson, U.S. Navy, Senior Trial Counsel  
                        | • Captain Lauren Shure, U.S. Air Force, Appellate Defense Counsel  
                        | • Major Ryan Wardle, U.S. Army, Senior Defense Counsel  
                        | • Lieutenant Colonel Brett Wilson, U.S. Marine Corps Reserves |
| Meeting of the JPP Subcommittee | One Liberty Center  
| Arlington, VA          | September 17, 2015                                                       |  
|                       | • Congresswoman Lois Frankel (D-22nd FL)  
                        | • Ms. Elisha Morrow, former U.S. Coast Guard  
|                       | One Liberty Center  
<p>|                       | Arlington, VA                                                          |</p>
<table>
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<tr>
<th>MEETINGS</th>
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| September 18, 2015 | • Dr. Nathan Galbreath, Department of Defense, Senior Executive Advisor, Sexual Assault Prevention and Response Office  
  • Dr. James Lynch, Professor and Chair, Department of Criminology and Criminal Justice, University of Maryland  
  • Major General Camille Nichols, U.S. Army, Director, DoD Sexual Assault Prevention and Response Office  
  • Mr. Glenn Schmitt, Director, Office of Research and Data at the U.S. Sentencing Commission  
  • Dr. Howard Snyder, Deputy Director, Bureau of Justice Statistics, U.S. Department of Justice  
  • Dr. Cassia Spohn, Foundation Professor and Director, Arizona State University School of Criminology and Criminal Justice |
| Public Meeting of the JPP | Holiday Inn Arlington at Ballston  
  Arlington, VA |
| October 9, 2015 | • Mr. Thomas F. Fichter, Assistant Prosecutor, Monmouth County Prosecutor’s Office and Director, Special Victim’s Unit  
  • Mr. Steven J. Grocki, Deputy Chief for Litigation, Child Exploitation and Obscenity Section, Criminal Division, U.S. Department of Justice  
  • Colonel Walter M. Hudson, U.S. Army, Chief, Criminal Law Division, Office of the Judge Advocate General  
  • Lieutenant Commander Stuart Kirkby, U.S. Navy, Navy-Marine Corps Appellate Review Activity  
  • Mr. Stephen P. McCleary, U.S. Coast Guard, Senior Military Justice Counsel and Chief Prosecutor, Office of Military Justice, Office of the Judge Advocate General  
  • Ms. Katherine E. Robertson, Family Advocacy Program Manager, DoD Office of Family Readiness Policy  
  • Lieutenant Colonel Julie L. Rutherford, U.S. Air Force, Air Staff Counsel, Air Force Sexual Assault Prevention and Response Office  
  • Ms. Darlene Sullivan, Defense Sexual Assault Incident Database Program Manager, DoD Sexual Assault Prevention and Response Office  
  • The Honorable Frank D. Whitney, United States Chief District Judge, Western District of North Carolina (by telephone)  
  • Lieutenant Colonel Angela B. Wissman, U.S. Marine Corps, Branch Head, Judge Advocate Division, Military Justice Branch  
  • Mr. Christopher Perry, Center for Prosecutor Integrity (public comment) |
| Public Meeting of the JPP | Holiday Inn Arlington at Ballston  
  Arlington, VA |
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<tr>
<td>October 22, 2015</td>
<td>• The Honorable Andrew Effron, former Chief Judge, U.S. Court of Appeals for the Armed Forces, current Director, Military Justice Review Group</td>
</tr>
<tr>
<td>Meeting of the JPP Subcommittee</td>
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</table>
| November 6, 2015                     | • Dr. Nathan Galbreath, Department of Defense, Senior Executive Advisor, Sexual Assault Prevention and Response Office  
• Dr. Cassia Spohn, Foundation Professor and Director, Arizona State University School of Criminology and Justice  
• Mr. Howard Cooley, Jordan, Patrick & Cooley LLP, Attorneys at Law (public comment)  
• Mr. Christopher Perry, Program Director, Center for Prosecutor Integrity (public comment)                                                                 |
<p>| Public Meeting of the JPP           |                                                                                                                                                                                                            |
| Holiday Inn Arlington at Ballston    |                                                                                                                                                                                                            |
| Arlington, VA                        |                                                                                                                                                                                                            |
| November 19, 2015                    | • Subcommittee Deliberations (no speakers)                                                                                                                                                                |
| Meeting (telephonic) of the JPP      |                                                                                                                                                                                                            |
| Subcommittee                          |                                                                                                                                                                                                            |
| Committee                             |                                                                                                                                                                                                            |
| One Liberty Center                   |                                                                                                                                                                                                            |
| Arlington, VA                        |                                                                                                                                                                                                            |
| December 2, 2015                     | • Subcommittee Deliberations and Review of Draft Report (no speakers)                                                                                                                                       |
| Meeting (telephonic) of the JPP      |                                                                                                                                                                                                            |
| Subcommittee                          |                                                                                                                                                                                                            |
| Committee                             |                                                                                                                                                                                                            |
| One Liberty Center                   |                                                                                                                                                                                                            |
| Arlington, VA                        |                                                                                                                                                                                                            |</p>
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<td>• Dean Michelle Anderson, JPP Subcommittee Member</td>
</tr>
<tr>
<td>Public Meeting of the JPP</td>
<td>• Ms. Laurie Rose Kepros, JPP Subcommittee Member</td>
</tr>
<tr>
<td>Holiday Inn Arlington at</td>
<td>• Dean Lisa Schenck, JPP Subcommittee Member</td>
</tr>
<tr>
<td>Ballston Arlington, VA</td>
<td>• Professor Stephen Schulhofer, JPP Subcommittee Member</td>
</tr>
<tr>
<td></td>
<td>• Brigadier General (Retired) James Schwenk, U.S. Marine Corps, JPP</td>
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<td>Subcommittee Member</td>
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<td>• Ms. Jill Wine-Banks, JPP Subcommittee Member</td>
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<td></td>
<td>• Dr. E. Edward Bartlett, President, Center for Prosecutor Integrity</td>
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<td>(public comment)</td>
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<td>January 22, 2016</td>
<td>• Ms. Meghan Peters, JPP Staff Attorney</td>
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<tr>
<td>Public Meeting of the JPP</td>
<td>• Dr. Cassia Spohn, Foundation Professor and Director, Arizona State</td>
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<tr>
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| April 8, 2016 | • Lieutenant Colonel Bret Batdorff, U.S. Army, Chief, Trial Counsel Assistance Program  
| Public Meeting of the JPP | • Ms. Julie Carson, JPP Staff Attorney and Legislative Liaison  
| Holiday Inn Arlington at Ballston Arlington, VA | • Ms. Christa Cothrel, U.S. Coast Guard Special Victims’ Counsel Program Manager  
| | • Colonel Andrea deCamara, U.S. Air Force, Chief, Special Victims’ Counsel Division  
| | • Captain Karen Fischer-Anderson, U.S. Navy, Chief of Staff, Navy Victims’ Legal Counsel Program  
| | • Special Agent Jeremy Gauthier, Deputy Assistant Director, Criminal Investigations & Operations Directorate, Naval Criminal Investigative Service Headquarters  
| | • Mr. John Hartsell, U.S. Air Force, Associate Chief, Military Justice Division  
| | • Colonel Elizabeth Marotta, U.S. Army, Special Victims’ Counsel Program Manager  
| | • Colonel Katherine McDonald, U.S. Marine Corps, Officer in Charge, Victim’s Legal Counsel Organization  
| | • Captain Bradley Palmer, U.S. Air Force, Special Victims Unit, Senior Trial Counsel  
| | • Mr. Kevin Poorman, U.S. Air Force, Associate Director, Criminal Headquarters, Air Force Office of Special Investigations  
| | • Major Jesse Schweig, U.S. Marine Corps, Officer in Charge, Trial Counsel Assistance Program  
| | • Lieutenant Commander Ryan Stormer, U.S. Navy, Deputy Chief, Trial Counsel Assistance Program  
| | • Mr. Guy Surian, U.S. Army, Deputy Chief of Investigative Operations, Investigative Policy and Criminal Intelligence  
| | • Ms. Christa Thompson, U.S. Army, Special Victim Witness Liaison Program Manager  
| | • Ms. Beverly Vogel, Sex Crimes Program Manager, U.S. Coast Guard Investigative Service  
| | • Mr. William Yables, Jr., U.S. Marine Corps, Paralegal Specialist, Installation Victim Witness Liaison Officer |
# APPENDIX D: JUDICIAL PROCEEDINGS PANEL AND SUBCOMMITTEE MEETINGS

## MEETINGS PRESENTERS

<table>
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<tr>
<th>MEETINGS</th>
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| May 13, 2016 Public Meeting of the JPP The Judge Advocate General’s Legal Center and School Charlottesville, VA | • Lieutenant Colonel Bret Batdorff, U.S. Army, Chief, Trial Counsel Assistance Program  
• Colonel Daniel Brookhart, U.S. Army, Chief, Trial Defense Service  
• Ms. Charlotte Cluverius, U.S. Navy, Deputy Chief of Staff, Victims’ Legal Counsel Program  
• Colonel Kirk Davies, U.S. Air Force, Commandant, The Judge Advocate General’s School  
• Colonel Andrea deCamara, U.S. Air Force, Chief, Special Victims’ Counsel Division  
• Ms. Julia Hejazi, U.S. Marine Corps, Highly Qualified Expert, Trial Counsel Assistance Program  
• Colonel Daniel Higgins, U.S. Air Force, Chief, Trial Defense Division  
• Lieutenant Colonel Christopher Kennebeck, U.S. Army, Chair and Professor, Criminal Law Department  
• Captain John Luce, U.S. Coast Guard, Chief, Legal Policy and Program Development  
• Commander Michael Luken, U.S. Navy, Chief, Trial Counsel Assistance Program  
• Colonel Katherine McDonald, U.S. Marine Corps, Officer in Charge, Victim Legal Counsel Organization  
• Colonel Katherine Oler, U.S. Air Force, Chief, Government Trial and Appellate Counsel Division  
• Brigadier General Charles Pede, U.S. Army, Commander/Commandant, The Judge Advocate General’s Legal Center and School  
• Commander Stephen Reyes, U.S. Navy, Director, Defense Counsel Assistance Program  
• Major Jesse Schweig, U.S. Marine Corps, Officer-In-Charge, Trial Counsel Assistance Program  
• Lieutenant Colonel Hanorah Tyer-Witek, U.S. Marine Corps, Executive Officer, Naval Justice School  
• Colonel Terri Zimmermann, U.S. Marine Corps, Officer in Charge (Reserve), Defense Services Agency |
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<th>MEETINGS</th>
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| September 23, 2016 Public Meeting of the JPP One Liberty Center Arlington, VA | • Judge James Baker, former Chief Judge, United States Court of Appeals for the Armed Forces  
• Mr. Roger Bruce, U.S. Air Force, Senior Appellate Government Counsel (by phone)  
• Lieutenant Colonel Christopher Carrier, U.S. Army, Chief, Capital and Complex Litigation Branch  
• Captain Andrew House, U.S. Navy-Marine Corps, Director, Appellate Defense Division  
• Major Anne Hsieh, U.S. Army, Senior Appellate Government Attorney and Branch Chief  
• Mr. Brian Keller, U.S. Navy-Marine Corps, Supervisory Appellate Counsel  
• Colonel (Retired) Denise Lind, former Senior Judge, Army Court of Criminal Appeals  
• Lieutenant Commander Michael Meyer, U.S. Coast Guard, Chief, Defense Services Division  
• Lieutenant Robert Miller, U.S. Navy, Appellate Government Counsel  
• Mr. Brian Mizer, U.S. Air Force, Senior Appellate Defense Counsel  
• Lieutenant Tereza Ohley, U.S. Coast Guard, Appellate Government Counsel  
• Colonel (Retired) William Orr, former Chief Judge, Air Force Court of Criminal Appeals  
• Rear Admiral (Retired) Christian Reismeier, former Chief Judge, Navy-Marine Corps Court of Criminal Appeals  
• Major Lauren Shure, U.S Air Force, Appellate Defense Counsel  
• Major Meredith Steer, U.S. Air Force, Appellate Government Counsel |
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| October 14, 2016 | • Colonel (Retired) Don Christensen, U.S. Air Force, President, Protect Our Defenders  
• Ms. Meg Garvin, Executive Director, National Crime Victim Law Institute  
• Mr. Ryan Guilds, Counsel, Arnold & Porter LLP  
• Mr. Chris Johnson, Chief Appellate Defender for the State of New Hampshire (by telephone)  
• Mr. Jason Middleton, Supervising Deputy State Public Defender, Appellate Division, Colorado State Public Defender  
• Ms. Ann Vallandingham, Senior Policy Advisor to the Director, Office for Victims of Crime, U.S. Department of Justice |
| Public Meeting of the JPP  
Holiday Inn Arlington at Ballston  
Arlington, VA |
| November 18, 2016 | • Major Harlye Carlton, U.S. Marine Corps, Executive Secretary, Joint Service Committee on Military Justice  
• Captain Andrew House, U.S. Navy, Director, Navy-Marine Corps Appellate Defense Division  
• Mr. Stephen McCleary, Senior Military Justice Counsel, U.S. Coast Guard  
• Colonel (Retired) William Orr, Jr., U.S. Air Force, former Chief Judge, U.S. Air Force Court of Criminal Appeals  
• Colonel William Pigott, Jr., U.S. Marine Corps, Chair, Joint Service Committee on Military Justice  
• Lieutenant Colonel Mary Catherine Vergona, U.S. Army, Chief, Policy Branch, Office of the Judge Advocate General  
• Lieutenant Colonel Angela Wissman, U.S. Marine Corps Reserve, Deputy Officer in Charge, Victims’ Legal Counsel Organization |
| Public Meeting of the JPP  
One Liberty Center  
Arlington, VA |
| December 9, 2016 | • The Honorable Andrew Effron, Director, Military Justice Review Group, Department of Defense  
• Ms. Lisa Friel, JPP Subcommittee Member  
• Ms. Laurie Kepros, JPP Subcommittee Member  
• Dean Lisa Schenck, JPP Subcommittee Member  
• Brigadier General (Retired) James Schwenk, U.S. Marine Corps, JPP Subcommittee Member  
• Mr. Dwight Sullivan, Department of Defense, Office of General Counsel  
• Ms. Jill Wine-Banks, JPP Subcommittee Member |
| Public Meeting of the JPP  
Holiday Inn Arlington at Ballston  
Arlington, VA |
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| December 21, 2016  
Meeting (telephonic) of the JPP Subcommittee  
One Liberty Center  
Arlington, VA | • Subcommittee Deliberations and Review of Draft Report (no speakers) |
| January 5, 2017  
Meeting of the JPP Subcommittee  
One Liberty Center  
Arlington, VA | • Major Emilee Elbert, U.S. Army, Deputy Chief, Trial Counsel Assistance Program  
• Special Agent Diane Kelley, Department of Defense, Office of Inspector General  
• Colonel William R. Kern, U.S. Army, Professional Responsibility Branch  
• Commander Cassie Kitchen, U.S. Coast Guard, Chief, Military Justice and Command Advice  
• Mr. Steven Knight, Department of Defense, Office of Inspector General  
• Commander Michael Luken, U.S. Navy, Director, Trial Counsel Assistance Program  
• Lieutenant Colonel Nicholas Martz, U.S. Marine Corps, Military Justice Branch Head  
• Colonel Katherine Oler, U.S. Air Force, Chief, Government Trial and Appellate Counsel Division  
• Colonel (Retired) Kathryn Stone, U.S. Army, Attorney Advisor, Professional Responsibility Branch Head |
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| **January 6, 2017**<br>Public Meeting of the JPP<br>Holiday Inn Arlington at Ballston<br>Arlington, VA | • Major James Argentina, Jr., U.S. Marine Corps, Senior Defense Counsel  
• Captain Brad Dixon, U.S. Army, Trial Counsel Assistance Program Training Officer  
• Captain Christopher Donlin, U.S. Army, Special Victims’ Counsel  
• Lieutenant Colonel (Retired) Wade Faulkner, U.S. Army, former Military Trial Judge  
• Captain September Foy, U.S. Air Force, Special Victims’ Counsel  
• Lieutenant Colonel (Retired) Elizabeth Harvey, U.S. Marine Corps, former Military Trial Judge  
• Major Benjamin Henley, U.S. Air Force, Senior Defense Counsel  
• Lieutenant Commander Elizabeth Hutton, U.S. Coast Guard, Special Victims’ Counsel  
• Commander Cassie Kitchen, U.S. Coast Guard, former Military Trial Judge  
• Commander Mike Luken, U.S. Navy, former Military Trial Judge  
• Major Ryan Reed, U.S. Air Force, Senior Trial Counsel, Special Victims’ Unit  
• Major Marcia Reyes-Steward, U.S. Army, Senior Defense Counsel  
• Lieutenant Commander Ben Robertson, U.S. Navy, Senior Trial Counsel  
• Lieutenant Colonel (Retired) Wendy Sherman, U.S. Air Force, former Military Trial Judge  
• Lieutenant Commander James Toohey, U.S. Navy, Victims’ Legal Counsel  
• Lieutenant Commander Rachel Trest, U.S. Navy, Senior Defense Counsel  
• Lieutenant Commander Geralyn van de Krol, U.S. Coast Guard, Branch Chief, Trial Services, Coast Guard Legal Service Command  
• Major Aran Walsh, U.S. Marine Corps, Regional Victims’ Legal Counsel – West  
• Major Adam Workman, U.S. Marine Corps, Legal Services Support Team |
<p>| <strong>January 24, 2017</strong>&lt;br&gt;Meeting (telephonic) of the JPP Subcommittee&lt;br&gt;One Liberty Center&lt;br&gt;Arlington, VA | • Subcommittee Deliberations and Review of Draft Report (no speakers) |</p>
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<td>February 8, 2017</td>
<td>• Subcommittee Deliberations and Review of Draft Report (no speakers)</td>
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<td>February 24, 2017</td>
<td>• Lieutenant Colonel Deanna Daly, U.S. Air Force, Senior Special Victims’ Counsel for Appellate and Outreach at the Special Victims’ Counsel Division</td>
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<td>• Ms. Lisa Friel, JPP Subcommittee Member</td>
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<tr>
<td>Holiday Inn Arlington at Ballston</td>
<td>• Captain Andrew House, U.S. Navy, Director, Navy-Marine Corps Appellate Division</td>
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<tr>
<td>Arlington, VA</td>
<td>• Ms. Laurie Kepros, JPP Subcommittee Member</td>
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<td>• Mr. Stephen McCleary, U.S. Coast Guard, Deputy Chief of Staff and Deputy Managing Counsel, Department of Homeland Security</td>
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<td>• Colonel Katherine Oler, U.S. Air Force, Chief Government Trial and Appellate Counsel Division</td>
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<td>• Dean Lisa Schenck, JPP Subcommittee Member</td>
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<td>• Lieutenant Colonel Mary Catherine Vergona, U.S. Army, Chief, Policy Branch, Criminal Law Division</td>
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<td>• Ms. Jill Wine-Banks, JPP Subcommittee Member</td>
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<td>February 28, 2017</td>
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<td>March 10, 2017</td>
<td>• Ms. Laurie Kepros, JPP Subcommittee Member</td>
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<td>• Mr. James Martinson, U.S. Navy, Highly Qualified Expert</td>
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<td>• Mr. Stephen McCleary, U.S. Coast Guard, Deputy Chief of Staff and Deputy Managing Counsel, Department of Homeland Security</td>
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<td>• Brigadier General (Retired) James Schwenk, U.S. Marine Corps, JPP Subcommittee Member</td>
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<td>• Lieutenant Colonel Mary Catherine Vergona, U.S. Army, Chief, Policy Branch, Criminal Law Division</td>
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<td>• Ms. Jill Wine-Banks, JPP Subcommittee Member</td>
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<td>April 4, 2017</td>
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<td>April 7, 2017</td>
<td>• Dr. Nathan Galbreath, Senior Executive Advisor, Department of Defense Sexual Assault Prevention and Response Office</td>
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<tr>
<td>Public Meeting of the JPP</td>
<td>• Ms. Kathy Robertson, Family Advocacy Program Manager, Office of the Deputy Assistant Secretary, Military Community and Family Policy, Department of Defense</td>
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<td>• Dr. Cassia Spohn, Foundation Professor and Director, School of Criminology and Criminal Justice, Arizona State University</td>
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<td>April 26, 2017</td>
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<td>• Dean Lisa Schenck, JPP Subcommittee Member</td>
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<td>June 16, 2017</td>
<td>• Panel Deliberations (no speakers)</td>
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<tr>
<td>July 26–27, 2017 Public Meeting of the JPP One Liberty Center Arlington, VA</td>
<td>• Panel Deliberations (no speakers)</td>
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A. JUDICIAL PROCEEDINGS PANEL INITIAL REPORT (FEBRUARY 2015)

1. Implementation Process for Amendments to the Uniform Code of Military Justice

**Recommendation 1:** The Secretary of Defense examine the DoD and interagency review process for establishing guidance for implementing statutory provisions of the UCMJ and explore options to streamline the procedures.

2. Special Victims’ Counsel Program

**Recommendation 2:** The Secretary of Defense direct the Services to implement additional selection criteria requiring that judge advocates have adequate criminal justice experience before they are assigned as special victims’ counsel.

**Recommendation 3:** The Department of Defense develop a policy to standardize both the time frame within which to receive SVC training and the substantive requirements of SVC training.

**Recommendation 4:** The Secretary of Defense direct the Services to perform regular evaluations to ensure SVCs’ assignment to locations that maximize the opportunity for face-to-face interactions between SVCs and clients, and to develop effective means for SVCs to communicate with clients when face-to-face communication is not possible.

**Recommendation 5:** The Secretary of Defense establish appropriate SVC program performance measures and standards, including evaluating, monitoring, and reporting on the SVC programs; establishing guiding principles for the Services; and ensuring centralized, standardized assessment of SVC program effectiveness and client satisfaction.

**Recommendation 6:** The Secretary of Defense direct the Services to ensure SVCs and victims have appropriate access to docketing information and case filings. In part, this could be accomplished by adopting an electronic system akin to the civilian PACER (Public Access to Court Electronic Records) service.

**Recommendation 7:** The Secretary of Defense direct the Services to establish uniform practices and procedures concerning SVCs’ participation for all military judicial proceedings.

3. Victims’ Rights

**Recommendation 8:** The Secretary of Defense consider establishing expedited procedures for victims to seek mandatory interlocutory review in the Service Courts of Criminal Appeals of any alleged violation of victims’ rights.
Recommendation 9: The Secretary of Defense propose timely revisions to statutes, the Manual for Courts-Martial (MCM), and/or regulations to extend eligibility for SVC representation so long as a right of the victim exists and is at issue.

4. Military Rules of Evidence 412 (Past sexual behavior) and 513 (Psychotherapist-patient privilege)

Recommendation 10: The President sign an executive order eliminating the “constitutionally required” exception within M.R.E. 412 at Article 32 hearings.

Recommendation 11: The Secretary of Defense issue specific, uniform guidance to ensure that mental health records are neither sought from a medical treatment facility by investigators or military justice practitioners nor acknowledged or released by medical treatment facility personnel until a military judge or Article 32 hearing officer has ordered their production.

5. Article 120 of the Uniform Code of Military Justice

Non-Enumerated Recommendations: The JPP believes that bifurcating different types of sex offenses under the UCMJ is not necessary at this time and would create further confusion. The JPP recommends against this action and does not believe that further evaluation of this issue is warranted.

The JPP recommends that a subcommittee conduct further evaluation and provide recommendations [on 17 specific questions related to Article 120, UCMJ, and coercive sexual relationships and situations involving abuse of authority].

B. JUDICIAL PROCEEDINGS PANEL REPORT ON RESTITUTION AND COMPENSATION FOR MILITARY ADULT SEXUAL ASSAULT CRIMES (FEBRUARY 2016)

Recommendation 12: The Department of Defense establish a new, uniform program that provides compensation for unreimbursed out-of-pocket expenses of victims of sexual assault crimes committed by Service members.

Recommendation 13: Congress not amend the Uniform Code of Military Justice to add restitution as an authorized punishment that may be adjudged at courts-martial.

Recommendation 14: The military Services provide recurring training to trial practitioners and victim assistance personnel on the availability and use of restitution in pretrial agreements between the government and the accused.

Recommendation 15: The President enact the Department of Defense’s recently proposed executive order to modify Rule for Courts-Martial 705(d)(3) to provide victims the right to be heard before a convening authority enters into a pretrial agreement.

Recommendation 16: Congress not amend the Uniform Code of Military Justice to direct that the forfeited wages of incarcerated members of the Armed Forces be used to pay compensation to victims of sexual assault crimes committed by Service members.

Recommendation 17: Congress not amend Article 139 of the Uniform Code of Military Justice to include bodily harm among the injuries meriting compensation for redress.
C. JUDICIAL PROCEEDINGS PANEL REPORT ON ARTICLE 120 OF THE UNIFORM CODE OF MILITARY JUSTICE (FEBRUARY 2016)

Recommendation 18: Congress should amend the definition of “consent” in Article 120(g)(8) of the Uniform Code of Military Justice.

Recommendation 19: The President should amend the Manual for Courts-Martial to specifically state that consent (as an attack on proof) and mistake of fact as to consent (as a clearly delineated defense) may be raised in any case in which they are relevant.

Recommendation 20: Congress should amend Article 120 of the Uniform Code of Military Justice to provide a definition of the term “incapable of consenting” for cases under Article 120(b) and (d), and the President should provide further executive guidance about the circumstances to consider when considering whether a victim was incapable of consenting.

Recommendation 21: Congress should amend and replace the reference in Article 120(b)(1)(B) of the Uniform Code of Military Justice to “causing bodily harm” and should remove the definition of “bodily harm” from Article 120(g)(3).

Recommendation 22: Congress should amend the definitions of “sexual act” and “sexual contact” in Article 120(g)(1)–(2) of the Uniform Code of Military Justice.

Recommendation 23: Congress should adopt a new theory of liability in Article 120(b)(1)(E) of the Uniform Code of Military Justice for coercive sexual acts or contact in which a perpetrator has used position, rank, or authority to obtain compliance by the other person.

D. JUDICIAL PROCEEDINGS PANEL REPORT ON RETALIATION RELATED TO SEXUAL ASSAULT OFFENSES (FEBRUARY 2016)

Recommendation 24: In the Department of Defense’s strategy addressing retaliation related to sexual assault, the Secretary of Defense specify (1) processes for reporting and investigating retaliation, (2) responsibility for the collection and monitoring of reports, and (3) mechanisms for tracking retaliation complaints and outcomes.

Recommendation 25: The Secretary of Defense and Service Secretaries develop a standardized form for reporting retaliation. The standardized form should be linked to DD Form 2910 in the Defense Sexual Assault Incident Database to properly track retaliation allegations related to sexual assault offenses, should provide victims of retaliation with the option to file an informal or formal retaliation report, and should be updated throughout the investigative and judicial process to ensure that the retaliation allegation is monitored and resolved.

Recommendation 26: The Secretary of Defense and Service Secretaries continue to provide multiple channels for Service members to report retaliation. In addition, the Secretary of Defense and Service Secretaries formally task installation sexual assault response coordinators (SARCs) with consolidating information from reports on retaliation, recording information on retaliation reports in the Defense Sexual Assault Incident Database, and ensuring that information about the investigation and resolution of retaliation claims is properly and fully monitored.
**Recommendation 27:** Congress require the Secretary of Defense and Service Secretaries to track retaliation allegations related to sexual assault offenses and publish information regarding retaliation complaints, investigations, and final dispositions in the Department’s annual report to Congress on sexual assault prevention and response.

**Recommendation 28:** The Secretary of Defense establish a policy that requires the DoD Office of Inspector General to investigate all complaints of professional retaliation related to sexual assault. The Secretary of Defense ensure that these investigations are prioritized and conducted by personnel with specialized training. The Secretary of Defense require the inspectors general to report the status of the investigations to the installation sexual assault response coordinators (SARCs) prior to each monthly case management group meeting.

**Recommendation 29:** The Service Secretaries establish policies to ensure that personnel assigned by commanders to investigate retaliation complaints are properly trained on issues regarding retaliation relating to sexual assault.

**Recommendation 30:** The Secretary of Defense and Service Secretaries expand the expedited transfer program to include job retraining for Service members who belong to small specialty branches and to be made available, on a case-by-case basis, to bystanders and witnesses of sexual assault who experience retaliation.

**Recommendation 31:** The Secretary of Defense establish specific guidelines clarifying what information can be released to a person who files a retaliation complaint related to a sexual assault.

**Recommendation 32:** The Secretary of Defense begin tracking the Services’ implementation of the statutory requirement that general or flag officers review proposed involuntary separations of Service members who made unrestricted reports of sexual assault within the preceding year.

**Recommendation 33:** The Service Secretaries revise their regulatory definitions of maltreatment, which currently contain an overly narrow intent requirement.

**Recommendation 34:** Congress refrain from creating an enumerated offense prohibiting social retaliation in the Uniform Code of Military Justice.

**Recommendation 35:** The Secretary of Defense and Service Secretaries develop innovative and effective training on retaliation for commanders and all other Service members, including targeted training that may be used in response to problems of retaliation within an organization.

**Recommendation 36:** The Secretary of Defense revise the elements and burdens of proof for reprisal claims made under the Military Whistleblower Protection Act so that they parallel the elements and burdens of proof outlined in the Whistleblower Protection Act for DoD civilians.

**E. JUDICIAL PROCEEDINGS PANEL REPORT ON STATISTICAL DATA REGARDING MILITARY ADJUDICATION OF SEXUAL ASSAULT OFFENSES (APRIL 2016)**

**Recommendation 37:** The Department of Defense collect and analyze case adjudication data using a standardized, document-based collection model, similar to systems used by the Judicial Proceedings Panel or U.S. Sentencing Commission, that incorporates uniform definitions and categories across all of the military Services.
Recommendation 38: The Department of Defense include legal disposition information related to all adult sexual assault complaints in one annual DoD report, changing its policy that excludes adult-victim cases that are handled by the Family Advocacy Program from Sexual Assault Prevention and Response Office reports.

F. JUDICIAL PROCEEDINGS PANEL REPORT ON MILITARY DEFENSE COUNSEL RESOURCES AND EXPERIENCE IN SEXUAL ASSAULT CASES (APRIL 2017)

Recommendation 39: In order to ensure the fair administration of justice, all of the military Services provide independent and deployable defense investigators under their control in sufficient numbers so that every defense counsel has access to an investigator, as reasonably needed.

Recommendation 40: The military Services immediately review Service defense organizations’ staffing—defense counsel, paralegals, highly qualified experts, and administrative support personnel—and augment current levels in order to alleviate the reported understaffing. The Secretary of Defense should direct an independent audit of defense staffing across all military Services to determine the optimal level of staffing for the Service defense organizations in the long term and authorize temporary details from one Service to another to ensure expeditious disposition of allegations. Organizations that have conducted similar kinds of assessments of public defender resources in various civilian jurisdictions may be of assistance in conducting this audit.

Recommendation 41: The Secretary of Defense direct the Joint Service Committee on Military Justice to draft appropriate rules and measures, as necessary, to vest defense expert approval authority and expenditure funding in the Service defense organizations.

Recommendation 42: The military Services permit only defense counsel with prior military justice or civilian criminal litigation experience to serve as lead defense counsel in sexual assault cases. The military Services should develop a formal process, using objective and subjective criteria, to determine when a defense counsel is qualified to serve as a lead defense counsel in a sexual assault case. In addition, the military Services should set assignment policies that provide defense counsel two or more consecutive years of experience in the role, to the maximum extent feasible at the same location. Exceptions to this policy should be personally approved, on a case-by-case basis, by the Service Judge Advocate General or Staff Judge Advocate to the Commandant of the Marine Corps.

G. JUDICIAL PROCEEDINGS PANEL REPORT ON VICTIMS’ APPELLATE RIGHTS (JUNE 2017)

Recommendation 43: The Joint Service Committee on Military Justice revise its proposed amendment to Rule for Courts-Martial (R.C.M.) 1103A(b)(4)(B)(ii) to include the following language: “Prior to a decision to permit examination of material described in this subparagraph, notice and an opportunity to be heard shall be given to any person whose records are about to be examined and to appellate counsel.”

Recommendation 44: The Services formalize procedures to provide victims in sexual assault cases (1) with timely notice, unless declined, of significant appellate matters, including but not limited to the date and time of the filing of appellate pleadings and briefs, of any appellate courtroom proceedings, of the date when the case is taken under submission, and of the final decision and any opinion of
any appellate court, and (2) with convenient access to any unsealed documents filed in the case, if requested.

**Recommendation 45:** Congress revise Section 547(a) of S. 2943, the Senate version of the Fiscal Year 2017 National Defense Authorization Act, to state:

SEC. 547. APPELLATE STANDING OF VICTIMS UNDER THE UNIFORM CODE OF MILITARY JUSTICE.

(a) APPELLATE REVIEW.—Section 806b of title 10, United States Code (article 6b of the Uniform Code of Military Justice), is amended by adding at the end the following new subsection:

“(f) APPELLATE REVIEW.—(1) If counsel for the accused or the Government files appellate pleadings under section 866 or 867 of this title (article 66 or 67) calling into question a prior judicial ruling in the case on an issue as to which a victim previously had standing and was heard, during appellate review that same victim may respond in the same manner as a party regarding that same issue, including through a Special Victims’ Counsel under section 1044e of this title.”

**Recommendation 46:** Congress amend Article 6b of the Uniform Code of Military Justice to grant the Court of Appeals for the Armed Forces (CAAF) jurisdiction to hear a victim’s appeal if a Service Court of Criminal Appeals denies the victim’s petition for a writ of mandamus under Article 6b.

**H. JUDICIAL PROCEEDINGS PANEL REPORT ON SEXUAL ASSAULT INVESTIGATIONS IN THE MILITARY (SEPTEMBER 2017)**

**Recommendation 47:** In order to ensure that military criminal investigative organizations can focus investigative resources on the most serious sexual assault cases, the advisory committee that follows the JPP, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, monitor the effects of the DoD policy that allows Service law enforcement agencies to assist the MCIOs with sexual assault investigations, and make findings and recommendations to the Secretary of Defense as it deems appropriate.

**Recommendation 48:** The Secretary of Defense take the necessary steps to ensure that special victims’ counsel and victims’ legal counsel (1) have the resources to schedule and attend the initial victim interview promptly after a report of sexual assault and (2) receive the training necessary to recognize the importance of a prompt initial victim interview by the MCIO to an effective and just prosecution.

**Recommendation 49:** The Secretary of Defense identify and remove barriers to thorough questioning of a sexual assault victim by the MCIOs or other law enforcement agencies.

**Recommendation 50:** The Secretary of Defense remove impediments to MCIOs’ obtaining tangible evidence from a sexual assault victim, particularly information contained on a cell phone or other digital devices, and develop appropriate remedies that address victims’ legitimate concerns about turning over this evidence to ensure that sexual assault investigations are complete and thorough.

**Recommendation 51:** The Secretary of Defense review the resources, staffing, procedures, and policies at forensic laboratories within the Department of Defense to ensure expeditious testing of evidence by forensic laboratories.
I. JUDICIAL PROCEEDINGS PANEL REPORT ON STATISTICAL DATA REGARDING MILITARY ADJUDICATION OF SEXUAL ASSAULT OFFENSES FOR FISCAL YEAR 2015 (SEPTEMBER 2017)

Recommendation 52: The Secretary of Defense and the military Services use a standardized, document-based collection model for collecting and analyzing case adjudication data in order to implement Article 140a, Uniform Code of Military Justice (Case Management; Data Collection and Accessibility).

Recommendation 53: The new military justice data collection system required to be developed pursuant to Article 140a, Uniform Code of Military Justice (Case Management; Data Collection and Accessibility), should be designed so as to become the exclusive source of sexual assault case adjudication data for DoD’s annual report to Congress on DoD’s sexual assault prevention and response initiatives.

Recommendation 54: The successor federal advisory committee to the JPP, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, should consider continuing to analyze adult-victim sexual assault court-martial data on an annual basis as the JPP has done, and should consider analyzing the following patterns that the JPP discovered in its analysis of fiscal year 2015 court-martial data:

a. Cases involving military victims tend to have less punitive outcomes than cases involving civilian victims; and

b. The conviction and acquittal rates for sexual assault offenses vary significantly among the military Services.

c. If a Service member is charged with a sexual assault offense, and pleads not guilty, the probability that he or she will be convicted of a sexual assault offense is 36%, and the probability that he or she will be convicted of any offense (i.e., either a sex or a non-sex offense) is 59%.

J. JUDICIAL PROCEEDINGS PANEL REPORT ON PANEL CONCERNS REGARDING THE FAIR ADMINISTRATION OF MILITARY JUSTICE IN SEXUAL ASSAULT CASES (SEPTEMBER 2017)

Recommendation 55: The Secretary of Defense and the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) continue the review of the new Article 32 preliminary hearing process, which, in the view of many counsel interviewed during military installation site visits and according to information presented to the JPP, no longer serves a useful discovery purpose. This review should look at whether preliminary hearing officers in sexual assault cases should be military judges or other senior judge advocates with military justice experience and whether a recommendation of such a preliminary hearing officer against referral, based on lack of probable cause, should be given more weight by the convening authority. This review should evaluate data on how often the recommendations of preliminary hearing officers regarding case disposition are followed by convening authorities and determine whether further analysis of, or changes to, the process are required.

In addition, because the Article 32 hearing no longer serves as a discovery mechanism for the defense, the JPP reiterates its recommendation—presented in its report on military defense counsel resources
and experience in sexual assault cases—that the military Services provide the defense with independent investigators.

**Recommendation 56:** Article 33, UCMJ, nonbinding case disposition guidance for convening authorities and staff judge advocates should require that the following standard be considered for referral to court-martial: 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 nonbinding disposition guidance should require the staff judge advocate and convening authority to consider all the prescribed guideline factors in making a disposition determination, though they should retain discretion regarding the weight they assign each factor.

**Recommendation 57:** After case disposition guidance under Article 33, UCMJ, is promulgated, the Secretary of Defense and DAC-IPAD conduct both military installation site visits and further research to determine whether convening authorities and staff judge advocates are making effective use of this guidance in deciding case dispositions. They should also determine what effect, if any, this guidance has had on the number of sexual assault cases being referred to courts-martial and on the acquittal rate in such cases.

**Recommendation 58:** The Secretary of Defense and the DAC-IPAD review whether Article 34 of the UCMJ and Rule for Court-Martial 406 should be amended to remove the requirement that the staff judge advocate’s pretrial advice to the convening authority (except for exculpatory information contained in that advice) be released to the defense upon referral of charges to court-martial. This review should determine whether any memo from trial counsel that is appended should also be shielded from disclosure to the defense. This review should also consider whether such a change would encourage the staff judge advocate to provide more fully developed and candid written advice to the convening authority regarding the strengths and weaknesses of the charges so that the convening authority can make a better-informed disposition decision.

**Recommendation 59:** Congress review and consider revising provisions in the National Defense Authorization Act for Fiscal Year 2014 and Fiscal Year 2015, sections 1744 and 541 respectively, that require non-referral decisions in certain sexual assault cases to be forwarded for review and decision to a higher general court-martial convening authority or to the Service Secretary, because these provisions appear to have created a perception of undue pressure on convening authorities to refer such cases. The Secretary of Defense should develop procedures to mitigate this perception.

**Recommendation 60:** The Secretary of Defense and the DAC-IPAD continue to gather data and other evidence on disposition decisions and conviction rates of sexual assault courts-martial to supplement information provided to the JPP Subcommittee during military installation site visits and to determine future recommendations for improvements to the military justice system.

**Recommendation 61:** The Secretary of Defense ensure that special victims’ counsel/victims’ legal counsel (SVCs/VLCs) receive the necessary training on the importance of allowing reasonable access by prosecutors to sexual assault victims prior to courts-martial. Such training will ensure that SVCs/VLCs are considering the value of an effective relationship between the prosecutor and the victim in the advice they provide their victim-clients, with the goal of assisting the prosecutor in fully preparing for trial.
Recommendation 62: The Department of Defense Sexual Assault Prevention and Response Office ensure that sexual assault training conducted by the military Services provide accurate information to military members regarding a person’s ability to consent to sexual contact after consuming alcohol and regarding the legal definition of “impairment” in this context and that training be timed and conducted so as to avoid “training fatigue.”

The Secretary of Defense and the DAC-IPAD monitor whether misperceptions regarding alcohol consumption and consent affect court-martial panel members.

Recommendation 63: The Secretary of Defense review the policy on expedited transfer of sexual assault victims and consider whether it should be modified to require commanders to determine, in each case, whether a sexual assault victim could be transferred to another unit on the same installation or to a nearby installation without sacrificing the vital interests of the victim. The intent of this change would be to strike a balance between ensuring that prosecutors have access to victims in preparing for courts-martial and satisfying the need to separate the victim from the accused, while maintaining the victim’s access to support systems. Commanders and SVCs/VLCs should receive training in how relocating victims from less desirable to more desirable locations can be used by defense counsel to suggest victims’ abuse of this system and to cast doubt on their credibility, possibly leading to more acquittals at courts-martial. The Secretary of Defense should develop procedures to minimize this problem.

The Secretary of Defense and the DAC-IPAD collect data on expedited transfers to determine the locations from which and to which victims are requesting expedited transfers and to review their stated reasons.
### Article 120, UCMJ
*(Rape and Sexual Assault Generally)*

| Article 120 Tasks | 1. Assess and make recommendations for improvements in the implementation of the reforms to the offenses relating to rape, sexual assault, and other sexual misconduct under the Uniform Code of Military Justice (UCMJ) that were enacted by section 541 (Article 120 revision) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1404). (FY13 NDAA, § 576(d)(2)(A))

2. An assessment of the likely consequences of amending the definition of rape and sexual assault under section 920 of title 10, United States Code (article 120 of the Uniform Code of Military Justice), to expressly cover a situation in which a person subject to chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), commits a sexual act upon another person by abusing one’s position in the chain of command of the other person to gain access to or coerce the other person. (FY14 NDAA, § 1731(b)(1)(A))

3. Consider whether to recommend legislation that would either split sexual assault offenses under Article 120 of the UCMJ into different articles that separate penetrative and contact offenses from other offenses or narrow the breadth of conduct currently criminalized under Article 120. (RSP Recommendation 113 (June 2014)) |
<table>
<thead>
<tr>
<th>Article 120</th>
<th>JPP Reports and Recommendations</th>
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<tbody>
<tr>
<td>9 Recommendations (including 2 non-enumerated recommendations)</td>
<td></td>
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<tr>
<td>JPP Initial Report (February 2015)</td>
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<tr>
<td>R-1: The Secretary of Defense examine the DoD and interagency review process for establishing implementation guidance for UCMJ provisions and explore options to streamline the process.</td>
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<tr>
<td>Non-Enumerated Recommendations: (1) Article 120, UCMJ, not be bifurcated into separate penetrative and contact (non-penetrative) offenses; and (2) a subcommittee be formed to evaluate 17 specific issues related to Article 120, UCMJ, and coercive sexual relationships and situations involving abuse of authority.</td>
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<tr>
<td>JPP Report on Article 120 of the Uniform Code of Military Justice (February 2016)</td>
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<tr>
<td>R-18: Congress should amend the definition of “consent” in Article 120(g)(8), UCMJ.</td>
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<td>R-19: The President should amend the Manual for Courts-Martial to specifically state that consent (as an attack on proof) and mistake of fact as to consent (as a clearly delineated defense) may be raised in any case in which they are relevant.</td>
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<td>R-20: Congress should amend Article 120, UCMJ, to provide a definition of the term “incapable of consenting” for cases under Article 120(b) and (d), and the President should provide further executive guidance about the circumstances to consider when considering whether a victim was incapable of consenting.</td>
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<td>R-21: Congress should amend and replace the reference in Article 120(b)(1) (B), UCMJ, to “causing bodily harm” and should remove the definition of “bodily harm” from Article 120(g)(3), UCMJ.</td>
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<td>R-22: Congress should amend the definitions of “sexual act” and “sexual contact” in Article 120(g)(1)–(2), UCMJ.</td>
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<td>R-23: Congress should adopt a new theory of liability in Article 120(b)(1)(E), UCMJ, for coercive sexual acts or contact in which a perpetrator has used position, rank, or authority to obtain compliance by another person.</td>
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| **ARTICLE 120, UCMJ**  
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<th>(RAPE AND SEXUAL ASSAULT GENERALLY)</th>
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| **Article 120**  
**Congressional and DoD Implementation** |
| Subsequent to the JPP recommendations, Congress enacted FY16 NDAA, § 543, requiring the Secretary of Defense to examine the DoD process for implementing statutory changes to the UCMJ for the purpose of developing options to streamline such a process. The Secretary is required to adopt procedures to ensure that legal guidance is published as soon as practicable whenever statutory changes to the UCMJ are implemented.  
In the FY17 NDAA, § 5430, Congress amended the definition of “consent,” removed the definition and element of “bodily harm,” and amended the definitions of “sexual act” and “sexual contact” in Article 120, UCMJ. Congress also added a definition for “incapable of consent”; however, Congress chose to use the definition from the federal statute.  
Congress did not enact a new provision in Article 120, UCMJ, to add a theory of liability for coercive sex acts based on a perpetrator’s position, rank, or authority, but did enact Article 93a, UCMJ, in the FY 17 NDAA that prohibited activities with a military recruit or trainee by a person in a position of special trust. |
### SPECIAL VICTIMS’ COUNSEL/VICTIMS’ LEGAL COUNSEL (SVC/VLC) PROGRAM

<table>
<thead>
<tr>
<th>SVC Program Task</th>
<th>An assessment of the implementation and effect of section 1044e of title 10, United States Code, as added by section 1716, and make such recommendations for modification of such section as the Judicial Proceedings Panel considers appropriate. (FY14 NDAA, § 1731(b)(1)(B))</th>
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<tbody>
<tr>
<td>SVC Program JPP Reports and Recommendations</td>
<td><strong>7 Recommendations</strong></td>
</tr>
<tr>
<td>JPP Initial Report (February 2015)</td>
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<tr>
<td>R-2: The Secretary of Defense direct the Services to implement additional selection criteria for SVCs/VLCs.</td>
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<td>R-3: DoD develop a policy to standardize requirements for both content and timing of SVC/VLC training.</td>
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<td>R-4: The Secretary of Defense direct the Services to optimize SVC/VLC assignments to maximize face-to-face contact with clients.</td>
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<td>R-5: The Secretary of Defense establish SVC/VLC guiding principles and performance measures.</td>
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<td>R-7: The Secretary of Defense direct the Services to establish uniform SVC/VLC participation policies for judicial proceedings.</td>
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<td>R-9: The Secretary of Defense propose revisions to statutes, the Manual for Courts-Martial (MCM), and/or regulations to extend eligibility for SVC/VLC representation as long as a right of the victim is at issue.</td>
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<tr>
<td>JPP Report on Panel Concerns Regarding the Fair Administration of Military Justice in Sexual Assault Cases (September 2017)</td>
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<tr>
<td>R-61: The Secretary of Defense ensure that SVCs/VLCs receive the necessary training on the importance of allowing reasonable access by prosecutors to sexual assault victims prior to courts-martial. Such training will ensure that SVCs/VLCs are considering the value of an effective relationship between the prosecutor and the victim in the advice they provide their victim-clients, with the goal of assisting the prosecutor in fully preparing for trial.</td>
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</table>
## SPECIAL VICTIMS’ COUNSEL/VICTIMS’ LEGAL COUNSEL (SVC/VLC) PROGRAM

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<tr>
<th>SVC Program</th>
<th>Congressional and DoD Implementation</th>
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<tr>
<td>Subsequent to the JPP recommendations, Congress enacted FY16 NDAA, §§ 531 and 535 standardizing training, maximizing face-to-face contact between SVCs/VLCs and clients, and establishing guiding principles.</td>
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<tr>
<td>DoD directed the Services to establish uniform participation policies, implement additional selection criteria for SVCs, and extend the eligibility for SVC/VLC representation for as long as a victim’s right is at issue. (Sept. 2, 2016, DSD Memo)</td>
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## VICTIMS’ ACCESS TO INFORMATION

### Access to Information Task

The Judicial Proceedings Panel and the Joint Service Committee should review and clarify the extent of a victim’s right to access information that is relevant to the assertion of a particular right. (RSP Recommendation 45)

### Access to Information JPP Reports and Recommendations

#### 1 Recommendation

**JPP Initial Report (February 2015)**

R-6: The Secretary of Defense direct the Services to ensure SVCs and victims have appropriate access to docketing information and case filings. In part, this could be accomplished by adopting an electronic system akin to the civilian Public Access to Court Electronic Records (PACER) service.

### Access to Information Congressional and DoD Implementation

Subsequent to the JPP recommendations, Congress enacted FY 17 NDAA, § 5504, creating a new Article 140a, UCMJ (Case management; data collection and accessibility), which requires the Secretary of Defense to prescribe uniform standards and criteria for facilitating access to docket information, filings, and records in the military justice system, using, so far as practicable, the best practices of federal and state courts.

DoD directed the Service Secretaries to develop guidance for their respective Departments to ensure that victims and their counsel have appropriate access to docketing information and case filings. (Sept. 2, 2016, DSD Memo)
### VICTIM PRIVACY – MILITARY RULE OF EVIDENCE (M.R.E.) 412 (SEX OFFENSE CASES: THE VICTIM'S SEXUAL BEHAVIOR OR PREDISPOSITION)

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<tr>
<th>M.R.E. 412</th>
<th>Tasks</th>
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<td>1. Review and assess those instances in which prior sexual conduct of the alleged victim was considered in a proceeding under section 832 of title 10, United States Code (Article 32 of the Uniform Code of Military Justice), and any instances in which prior sexual conduct was determined to be inadmissible. (FY13 NDAA, § 576(d)(2)(E))</td>
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<td>2. Review and assess those instances in which evidence of prior sexual conduct of the alleged victim was introduced by the defense in a court-martial and what impact that evidence had on the case. (FY13 NDAA, § 576(d)(2)(F))</td>
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<thead>
<tr>
<th>M.R.E. 412</th>
<th>JPP Reports and Recommendations</th>
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<tr>
<td></td>
<td><strong>1 Recommendation</strong></td>
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<td><strong>JPP Initial Report</strong> (February 2015)</td>
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<td>R-10: The President sign an executive order eliminating the “constitutionally required” exception within M.R.E. 412 at Article 32 hearings.</td>
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<td><strong>JPP Final Report</strong> (October 2017)</td>
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<td></td>
<td>The JPP received additional testimony on this topic from 19 practitioners and former military judges at its January 6, 2017, public meeting devoted to military stakeholder perspectives on the application of M.R.E. 412 and 513 at Article 32 hearings and courts-martial.</td>
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<tr>
<th>M.R.E. 412</th>
<th>Congressional and DoD Implementation</th>
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<td>Subsequent to the JPP recommendations, Executive Order 13696, signed on June 17, 2015, eliminated the “constitutionally required” exception within M.R.E. 412 at Article 32 hearings.</td>
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<tr>
<td>M.R.E. 513 Task</td>
<td>VICTIM PRIVACY – M.R.E. 513 (PSYCHOTHERAPIST-PATIENT PRIVILEGE)</td>
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<td>Conduct a review and assessment regarding the impact of the use of any mental health records of the victim of an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), by the accused during the preliminary hearing conducted under section 832 of such title (Article 32 of the Uniform Code of Military Justice), and during court-martial proceedings, as compared to the use of similar records in civilian criminal legal proceedings. (FY15NDAA, § 545(a)(1))</td>
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<tr>
<th>M.R.E. 513</th>
<th>1 Recommendation</th>
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<tbody>
<tr>
<td>JPP Initial Report (February 2015)</td>
<td>R-11: The Secretary of Defense issue specific, uniform guidance to ensure that mental health records are not sought from or released by medical treatment facility personnel until a military judge or Article 32 hearing officer has ordered their production.</td>
</tr>
<tr>
<td>JPP Final Report (October 2017)</td>
<td>The JPP received additional testimony on this topic from 19 practitioners and former military judges at its January 6, 2017, public meeting devoted to military stakeholder perspectives on the application of M.R.E. 412 and 513 at Article 32 hearings and courts-martial.</td>
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| M.R.E. 513 Congressional and DoD Implementation | In the FY15 NDAA, § 537, Congress set a much higher standard for in camera review and disclosure of mental health records. DoD directed the Joint Service Committee on Military Justice to recommend uniform guidance regarding release of mental health records to ensure an appropriate balance between the interests of law enforcement and the privacy interests of victims of an alleged sex-related offense. (Sept. 2, 2016, DSD Memo) Executive Order 13696, signed June 17, 2016, implemented sweeping legislative reforms to Article 32 hearings and prohibited Article 32 preliminary hearing officers from ordering production of communications covered by M.R.E. 513 and 514. |
## VICTIM RESTITUTION AND COMPENSATION

### Restitution and Compensation Tasks

An assessment of the adequacy of the provision of compensation and restitution for victims of offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), and develop recommendations on expanding such compensation and restitution, including consideration of the options as follows:

(i) Providing the forfeited wages of incarcerated members of the Armed Forces to victims of offenses as compensation.

(ii) Including bodily harm among the injuries meriting compensation for redress under section 939 of title 10, United States Code (Article 139 of the Uniform Code of Military Justice).

(iii) Requiring restitution by members of the Armed Forces to victims of their offenses upon the direction of a court-martial. (FY14 NDAA, § 1731(b)(1)(D))

### Restitution and Compensation JPP Reports and Recommendations

#### 6 Recommendations

**JPP Report on Restitution and Compensation for Military Adult Sexual Assault Crimes (February 2016)**

- **R-12:** DoD establish a program to provide sexual assault victims with compensation for unreimbursed out-of-pocket expenses.

- **R-13:** Congress not amend the UCMJ to add restitution as an authorized punishment that may be adjudged at courts-martial.

- **R-14:** The Services provide practitioners recurring training on the availability and use of restitution in pretrial agreements.

- **R-15:** The President enact an executive order to provide victims the right to be heard before a convening authority enters into a pretrial agreement.

- **R-16:** Congress not amend the UCMJ to allow the forfeited wages of incarcerated Service members to be used to pay compensation to victims of sexual assault crimes.

- **R-17:** Congress not amend Article 139, UCMJ, to include bodily harm among the injuries meriting compensation for redress.
### VICTIM RESTITUTION AND COMPENSATION

<table>
<thead>
<tr>
<th>Restitution and Compensation</th>
<th>Subsequent to the JPP recommendations, Executive Order 13730 was signed on May 20, 2016, amending R.C.M. 705(d)(3) to require consultation with the victim, whenever practicable, before the convening authority accepts a pretrial agreement.</th>
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<tr>
<td>Congressional and DoD Implementation</td>
<td></td>
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<tr>
<td>Retaliation Task</td>
<td>The issue of retaliation related to the reporting of sexual assault offenses came to the JPP’s attention when a 2014 survey published by the RAND Corporation indicated that 62% of active duty women who reported unwanted sexual contact to a military authority in 2014 perceived some form of retaliation. This statistic was unchanged from the 2012 survey. The Panel reviewed the issue pursuant to FY13 NDAA, § 576(d)(2)(J), which provides that the JPP may assess other issues it considers appropriate.</td>
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### RETALIATION

<table>
<thead>
<tr>
<th>Retaliation</th>
<th>JPP Reports and Recommendations</th>
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<tbody>
<tr>
<td><strong>13 Recommendations</strong></td>
<td><strong>JPP REPORT ON RETALIATION RELATED TO SEXUAL ASSAULT OFFENSES (February 2016)</strong></td>
</tr>
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</table>

R-24: The Secretary of Defense specify processes for reporting, investigating, monitoring, and recording retaliation complaints and outcomes.

R-25: The Secretary of Defense and Service Secretaries develop a standardized form to report retaliation, link it to a sexual assault report in the Defense Sexual Assault Incident Database (DSAID), and provide victims with an option to file an informal or formal complaint.

R-26: The Secretary of Defense and Service Secretaries continue to provide multiple reporting channels and task sexual assault response coordinators (SARCs) to enter and track retaliation complaints in DSAID.

R-27: Congress require the Secretary of Defense and Service Secretaries to track retaliation incidents and publish statistics in the annual Sexual Assault Prevention and Response Office (SAPRO) reports to Congress.

R-28: The Secretary of Defense establish a policy to require the DoD Inspector General to investigate all complaints of professional retaliation related to sexual assault reports, to receive specialized training, and to update SARCs on investigations at monthly case review meetings.

R-29: Service Secretaries establish policies to ensure specialized training of command personnel assigned to investigate retaliation related to sexual assault.

R-30: The Secretary of Defense and Service Secretaries expand the expedited transfer program to include job retraining for those in small specialty fields and to be available for bystanders and witnesses experiencing retaliation (on a case-by-case basis).

R-31: The Secretary of Defense establish specific guidelines on the release of retaliation complaint disposition information to complainants.

R-32: The Secretary of Defense begin tracking the Services’ implementation of the statutorily required general or flag officer review of involuntary separations of sexual assault victims who made unrestricted reports in the previous year.

R-33: Service Secretaries revise Service regulatory definitions of maltreatment, which currently contain an overly narrow intent requirement.

R-34: Congress not create a UCMJ offense prohibiting social retaliation.

R-35: The Secretary of Defense and Service Secretaries develop targeted and innovative training on retaliation for commanders and all other Service members.

R-36: The Secretary of Defense revise the Military Whistleblower Protection Act elements and burdens of proof for reprisal claims to align with those in the federal Whistleblower Protection Act.
## Retaliation

<table>
<thead>
<tr>
<th>Retaliation</th>
<th>Congressional and DoD Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subsequent to the JPP recommendations, Congress enacted FY17 NDAA, § 545, which requires DoD SAPRO to establish metrics to evaluate the efforts of the Armed Forces to prevent and respond to retaliation in connection with sexual assault and to identify best practices to be used by the Military Departments in the prevention of and response to retaliation.</td>
<td></td>
</tr>
<tr>
<td>Congress enacted FY17 NDAA, § 543, which requires DoD to include in the annual SAPRO report to Congress detailed information on each claim of retaliation in connection with a report of sexual assault made by or against a Service member.</td>
<td></td>
</tr>
<tr>
<td>On July 28, 2016, the DoD Office of Inspector General (DoD IG) announced that a newly created team of seven DoD IG investigators and a supervisor would directly handle sexual assault reprisal cases from across the Services rather than overseeing investigations at the branch level.</td>
<td></td>
</tr>
<tr>
<td>Congress enacted FY17 NDAA, § 546, which requires DoD personnel who investigate claims of retaliation to receive training on the nature and consequences of retaliation and, in cases involving reports of sexual assault, on the nature and consequences of sexual assault trauma.</td>
<td></td>
</tr>
<tr>
<td>Congress enacted FY17 NDAA, § 547, which requires the Secretary of Defense to develop regulations requiring a Service member who reports retaliation to be informed in writing of the results of the investigation, including whether the complaint was substantiated, unsubstantiated, or dismissed.</td>
<td></td>
</tr>
</tbody>
</table>
## SEXUAL ASSAULT ADJUDICATION TRENDS

<table>
<thead>
<tr>
<th>Adjudication Trends</th>
<th>Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Review and evaluate current trends in response to sexual assault crimes whether by courts-martial proceedings, non-judicial punishment and administrative actions, including the number of punishments by type, and the consistency and appropriateness of the decisions, punishments, and administrative actions based on the facts of individual cases. (FY13 NDAA, § 576(d)(2)(B))</td>
<td></td>
</tr>
<tr>
<td>Identify any trends in punishments rendered by military courts, including general, special, and summary courts-martial, in response to sexual assault, including the number of punishments by type, and the consistency of the punishments, based on the facts of each case compared with the punishments rendered by Federal and State criminal courts. (FY13 NDAA, § 576(d)(2)(C))</td>
<td></td>
</tr>
<tr>
<td>Review and evaluate court-martial convictions for sexual assault in the year covered by the most-recent report required of the JPP and the number and description of instances when punishments were reduced or set aside upon appeal and the instances in which the defendant appealed following a plea agreement, if such information is available. (FY13 NDAA, § 576(d)(2)(D))</td>
<td></td>
</tr>
<tr>
<td>Adjudication Trends</td>
<td>6 Recommendations</td>
</tr>
<tr>
<td>---------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>JPP Reports and Recommendations</td>
<td>JPP Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses (April 2016)</td>
</tr>
<tr>
<td>R-37: DoD collect and analyze case adjudication data using a standardized, document-based collection model, similar to those used by the JPP or U.S. Sentencing Commission, that incorporates uniform definitions and categories across all of the military Services.</td>
<td></td>
</tr>
<tr>
<td>R-38: DoD include legal disposition information related to all adult sexual assault complaints in one annual DoD report, changing its policy that excludes adult-victim cases that are handled by the Family Advocacy Program (FAP) from the annual SAPRO reports to Congress.</td>
<td></td>
</tr>
<tr>
<td>JPP Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses for Fiscal Year 2015 (September 2017)</td>
<td></td>
</tr>
<tr>
<td>R-52: DoD and the military Services use a standardized, document-based collection model for collecting and analyzing case adjudication data in order to implement Article 140a, UCMJ, regarding case management and data collection and accessibility.</td>
<td></td>
</tr>
<tr>
<td>R-53: The new military justice data collection system required to be developed under Article 140a, UCMJ, should be designed so as to become the exclusive source of sexual assault case adjudication data for DoD's annual report to Congress on DoD's sexual assault prevention and response initiatives.</td>
<td></td>
</tr>
<tr>
<td>R-54: The Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) should consider continuing to analyze adult-victim sexual assault court-martial data on an annual basis as the JPP has done, including patterns that the JPP discovered in its analysis of fiscal year 2015 court-martial data.</td>
<td></td>
</tr>
<tr>
<td>JPP Report on Panel Concerns Regarding the Fair Administration of Military Justice in Sexual Assault Cases (September 2017)</td>
<td></td>
</tr>
<tr>
<td>R-60: The Secretary of Defense and the DAC-IPAD continue to gather data and other evidence on disposition decisions and conviction rates of sexual assault courts-martial to supplement information provided to the JPP Subcommittee during military installation site visits and to determine future recommendations for improvements to the military justice system.</td>
<td></td>
</tr>
</tbody>
</table>
# SEXUAL ASSAULT ADJUDICATION TRENDS

<table>
<thead>
<tr>
<th>Adjudication Trends</th>
<th>Congressional and DoD Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Congress enacted FY 17 NDAA, § 5504, which created a new Article 140a, UCMJ (Case management; data collection and accessibility), requiring the Secretary of Defense to prescribe uniform standards and criteria using, insofar as practicable, the best practices of federal and state courts for collection 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.</td>
<td>Congress enacted FY 17 NDAA, § 574, requiring FAP to produce an annual report that includes the number of intimate partner, spousal, and child physical and sexual abuse incidents reported and substantiated each year, including analyses of types of abuse reported and characteristics of the victims and perpetrators. Another provision (§ 544) requires that the FAP and SAPRO annual reports be submitted together to Congress. However, the statute does not require intimate partner and spousal sexual assault case adjudication data to be included in either the FAP or SAPRO annual reports.</td>
</tr>
</tbody>
</table>
Building on the adjudication data compiled by the JPP, assess the trends in the training and experience levels of military defense and trial counsel in adult sexual assault cases and the impact of those trends in the prosecution and adjudication of such cases. (FY13 NDAA, § 576(d)(2)(G))

JPP Reports and Recommendations

**4 Recommendations**


- **R-39:** The military Services provide defense counsel with access to independent and deployable defense investigators.

- **R-40:** The military Services immediately review Service defense organizations’ staffing and augment current levels in order to alleviate the reported understaffing. The Secretary of Defense should direct an independent audit of defense staffing across all military Services to determine the optimal level of staffing for the Service defense organizations.

- **R-41:** The Secretary of Defense direct that defense organizations be given approval and funding authority for their own expert witnesses.

- **R-42:** The military Services permit only defense counsel with prior military justice or civilian criminal litigation experience to serve as lead defense counsel in sexual assault cases, and defense counsel should have two or more consecutive years of experience in the role.

**JPP Final Report (October 2017)**

The JPP submitted questions on this topic to DoD and the Services in its Request for Information Sets 6 and 9. The JPP also received testimony at its May 13, 2016, public meeting session titled “Overview of Judge Advocate Training Programs.” The JPP Subcommittee gathered information about trial and defense counsel training and experience in practice during site visits from July to September 2016.
### TRAINING AND EXPERIENCE OF MILITARY DEFENSE AND TRIAL COUNSEL

<table>
<thead>
<tr>
<th>Counsel Training and Experience</th>
<th>Congress and DoD Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>In the FY17 NDAA, § 542, Congress enacted a provision requiring the Service Secretaries to establish a system of military justice skill and experience identifiers to ensure that judge advocates with sufficient skills and experience in military justice are assigned to prosecute and defend cases and are assigned to develop less experienced judge advocates. The provision also requires the Service Secretaries to carry out a five-year pilot program to assess the feasibility and advisability of establishing a deliberate process of professional development in military justice for judge advocates.</td>
<td></td>
</tr>
</tbody>
</table>
**Victims’ Appellate Rights**

Issues related to victims’ appellate rights came to the attention of the JPP during the testimony of the Services’ special victims’ counsel/victims’ legal counsel program managers at the April 8, 2016, JPP public meeting. The Panel reviewed this issue pursuant to FY13 NDAA, § 576(d)(2)(J), which provides that the JPP may review other issues it considers appropriate.

<table>
<thead>
<tr>
<th>5 Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>JPP Initial Report (February 2015)</td>
</tr>
<tr>
<td>R-8: The Secretary of Defense consider establishing expedited procedures for mandatory interlocutory review to Courts of Criminal Appeals for Article 6b issues.</td>
</tr>
<tr>
<td>JPP Report on Victims’ Appellate Rights (June 2017)</td>
</tr>
<tr>
<td>R-43: The Joint Service Committee on Military Justice revise R.C.M. 1103A to provide victims with notice and an opportunity to be heard prior to appellate counsel review of certain sealed materials.</td>
</tr>
<tr>
<td>R-44: The Services formalize procedures to provide victims in sexual assault cases with timely notice of significant appellate matters and with convenient access to any unsealed documents filed in the case, if requested.</td>
</tr>
<tr>
<td>R-45: Congress revise Section 547(a) of S. 2943, the Senate version of the FY17 NDAA, to provide victims with standing to protect their Article 6b rights in post-conviction appellate proceedings for issues as to which a victim previously had standing and was heard.</td>
</tr>
<tr>
<td>R-46: Congress amend Article 6b, UCMJ, to grant the Court of Appeals for the Armed Forces (CAAF) jurisdiction to hear a victim’s appeal if a Service Court of Criminal Appeals denies the victim’s petition for a writ of mandamus under Article 6b.</td>
</tr>
</tbody>
</table>
## VICTIMS’ APPELLATE RIGHTS

<p>| Congressional and DoD Implementation | Congress enacted FY15 NDAA, § 535, granting victims the right to petition the Courts of Criminal Appeals for a writ of mandamus for violations of victims’ rights afforded by Military Rules of Evidence 412 (Sex offense cases: The victim’s sexual behavior or predisposition) and 513 (Psychotherapist–patient privilege), providing for expedited, but not mandatory, review. Congress expanded this right in the FY16 NDAA, § 531, to include additional protections under Article 6b, UCMJ; however, such interlocutory review remains discretionary. The Senate version of the FY17 NDAA, S.2943, § 547, would have amended Article 6b, UCMJ, to provide for victim standing in post-conviction appellate proceedings and victim notice of appellate matters; however, this section was not passed in the final version of the FY17 NDAA. The conference committee report noted that the conferees would reconsider the issue after receipt of the JPP’s recommendations. The BE HEARD (Building an Environment for Helpful, Effective, and Accessible Representation and Decision-making) Act, introduced in the House of Representatives by Congressman Mike Turner (OH-10) and Congresswoman Niki Tsongas (MA-3) in May 2017, would grant CAAF jurisdiction to hear victims’ Article 6b appeals. |
|---|
| Victims’ Appellate Rights |  |</p>
<table>
<thead>
<tr>
<th>SVIP Capabilities</th>
<th>Monitor trends in the development, utilization and effectiveness of the special victims capabilities required by section 573 of this Act. (FY13 NDAA, § 576(d)(2)(H))</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Task</strong></td>
<td></td>
</tr>
<tr>
<td><strong>JPP Reports and Recommendations</strong></td>
<td>5 Recommendations</td>
</tr>
<tr>
<td><strong>JPP REPORT ON SEXUAL ASSAULT INVESTIGATIONS IN THE MILITARY (September 2017)</strong></td>
<td></td>
</tr>
<tr>
<td>R-47: DAC-IPAD monitor the effects of the DoD policy that allows Service law enforcement agencies to assist the military criminal investigative organizations (MCIOs) with sexual assault investigations.</td>
<td></td>
</tr>
<tr>
<td>R-48: The Secretary of Defense take the necessary steps to ensure that special victims’ counsel and victims’ legal counsel (1) have the resources to schedule and attend the initial victim interview promptly after a report of sexual assault and (2) receive the training necessary to recognize the importance of a prompt initial victim interview by the MCIO to an effective and just prosecution.</td>
<td></td>
</tr>
<tr>
<td>R-49: The Secretary of Defense identify and remove barriers to thorough questioning of a sexual assault victim by the MCIOs or other law enforcement agencies.</td>
<td></td>
</tr>
<tr>
<td>R-50: The Secretary of Defense remove impediments to MCIOs’ obtaining tangible evidence from a sexual assault victim, particularly information contained on a cell phone or other digital devices, and develop appropriate remedies that address victims’ legitimate concerns about turning over this evidence to ensure that sexual assault investigations are complete and thorough.</td>
<td></td>
</tr>
<tr>
<td>R-51: The Secretary of Defense review the resources, staffing, procedures, and policies at forensic laboratories within the Department of Defense to ensure expeditious testing of evidence by forensic laboratories.</td>
<td></td>
</tr>
<tr>
<td><strong>JPP FINAL REPORT (October 2017)</strong></td>
<td>The JPP submitted questions on this topic to DoD and the Services in its Request for Information Sets 2 and 6. The JPP also received testimony on SVIP at its April 8, 2016, public meeting session titled “MCIO Overview and Perspective of the SVIP Policies, Practices, and Procedures” and at its May 13, 2016, public meeting session titled “Overview of Training and Experience of Attorneys Prosecuting Sexual Assault Cases.” The JPP Subcommittee gathered information about SVIP in practice during site visits from July to September 2016.</td>
</tr>
</tbody>
</table>
### SPECIAL VICTIM INVESTIGATION AND PROSECUTION (SVIP) CAPABILITIES

<table>
<thead>
<tr>
<th>SVIP Capabilities</th>
<th>Congressional and DoD Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>DoD issued a directive-type memorandum in February 2014 (DTM 14-003) establishing special victim capability prosecution and legal support; the memorandum was most recently updated in April 2017. In February 2015 DoD issued an instruction establishing the SVIP capability within the MCIOs (DoDI 5505.19), which was most recently updated in March 2017. Also in March 2017, DoD reissued its instruction on the investigation of adult sexual assault (DoDI 5505.18) to incorporate SVIP requirements. These policies require MCIO lead investigators to notify each SVIP member (judge advocates and victim assistance personnel) within 24 hours of receiving an allegation, collaborate with the SVIP members within 48 hours, and consult with respective SVIP members at least monthly to assess progress in the investigation or prosecution of a covered offense and to help ensure that all aspects of the victim's needs are being met. They also require specialized training for all SVIP members and ensure integrated capability during all stages of the process.</td>
<td></td>
</tr>
</tbody>
</table>
### SEXUAL ASSAULT DISPOSITION WITHHOLDING POLICY

<table>
<thead>
<tr>
<th>Withholding Task</th>
<th>Withholding JPP Reports and Recommendations</th>
<th>Withholding Congressional and DoD Implementation</th>
</tr>
</thead>
</table>
| Monitor the implementation of the April 20, 2012, Secretary of Defense policy memorandum regarding withholding initial disposition authority under the Uniform Code of Military Justice in certain sexual assault cases. (FY13 NDAA, § 576(d)(2)(I)) | JPP Final Report (October 2017)  
The JPP submitted questions on this topic to DoD and the Services in its Request for Information Set 6. In addition, the JPP Subcommittee gathered information about how the withholding policy is working in practice during site visits from July to September 2016. | No further legislative action has been taken on this topic by Congress, and the JPP is not aware of any additional action taken by DoD. |
<table>
<thead>
<tr>
<th>Mandatory Minimum Sentencing Task</th>
<th>JPP Final Report (October 2017)</th>
</tr>
</thead>
<tbody>
<tr>
<td>An assessment of the implementation and effect of the mandatory minimum sentences established by section 856(b) of title 10, United States Code (Article 56(b) of the Uniform Code of Military Justice), as added by section 1705, and the appropriateness of statutorily mandated minimum sentencing provisions for additional offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice). (FY14 NDAA, § 1731(b)(1)(C))</td>
<td></td>
</tr>
<tr>
<td>The JPP did not conduct further assessment or make recommendations on this issue in light of the Military Justice Review Group’s (MJRG) recommended revision to Article 56, UCMJ (Sentencing), which would have replaced broad sentencing authority with sentencing guided by predetermined parameters and criteria. Under the MJRG proposal, once sentencing parameters and criteria took effect, they would replace the mandatory punitive discharge provisions in Article 56(b), eliminating an incongruity in the system whereby designated sex offenses result in mandatory discharge, but other serious crimes such as murder do not.</td>
<td></td>
</tr>
<tr>
<td>In the Military Justice Act of 2016, Congress enacted § 5301, which amended Article 56, UCMJ (Sentencing), but did not adopt the MJRG’s proposed sentencing parameters and criteria for all offenses, or alter the current mandatory punitive discharge provisions for certain sexual assault offenses.</td>
<td></td>
</tr>
</tbody>
</table>
| **Safe Helpline Task** | **Conduct a review and assessment regarding the establishment of a privilege under the M.R.E. against the disclosure of communications between—**  
| (A) users of and personnel staffing the Department of Defense Safe Helpline; and  
| (B) users of and personnel staffing the Department of Defense Safe HelpRoom. (FY15 NDAA, § 545(a)(2)) |  |
| **Safe Helpline JPP Reports and Recommendations** | **JPP Final Report (October 2017)**  
| The JPP did not conduct further assessment or make recommendations on this issue in light of Executive Order 13696, which established such a privilege. |  |
| **Safe Helpline Congressional and DoD Implementation** | **Executive Order 13696, signed June 17, 2015, amended M.R.E. 514(a)–(c) to establish a privilege for confidential communications with DoD Safe Helpline staff.** |  |
## DEPOSITIONS

<table>
<thead>
<tr>
<th>Dispositions Task</th>
<th>JPP Final Report (October 2017)</th>
</tr>
</thead>
<tbody>
<tr>
<td>JPP Reports and Recommendations</td>
<td>The JPP did not make further assessment or recommendations on this issue in light of the legislative provisions enacted in the FY15 NDAA and the Military Justice Act of 2016.</td>
</tr>
<tr>
<td>Congressional and DoD Implementation</td>
<td>Congress enacted FY15 NDAA, § 532, which requires a party requesting a deposition to demonstrate that there are “exceptional circumstances” and that it is “in the interest of justice” to take a deposition. It also provided that the convening authority may designate commissioned officers as counsel.</td>
</tr>
<tr>
<td></td>
<td>In the Military Justice Act of 2016, Congress enacted § 5231, which amended Article 49, UCMJ (Depositions), to codify and expand on the FY15 NDAA provision, including a requirement that deposition officers be judge advocates “whenever practicable.”</td>
</tr>
</tbody>
</table>
## PLEA BARGAINING

<table>
<thead>
<tr>
<th>Plea Bargaining Task</th>
<th>The Judicial Proceedings Panel study whether the military plea bargaining process should be modified. (RSP Recommendation 117)</th>
</tr>
</thead>
</table>
| JPP Reports and Recommendations | JPP Final Report (October 2017)  
The JPP did not make further assessment or recommendations on this issue in light of the legislative provisions enacted in the Military Justice Act of 2016. |
| Plea Bargaining Congressional and DoD Implementation | In the Military Justice Act of 2016, Congress enacted § 5237, creating a new Article 53a, UCMJ (Plea agreements), that provides basic rules for (1) the construction and negotiation of plea agreements concerning the charges, the sentence, or both; (2) the military judge’s determination of whether to accept a proposed plea agreement; and (3) the operation of plea agreements containing sentence limitations with respect to the military judge’s sentencing authority. |

Note 1: A list of all JPP recommendations in their entirety is provided in Appendix E to this report.  
Note 2: A list of all JPP tasks in their entirety is provided in Appendix C to this report.  
Note 3: This chart does not include recommendations 55–59, 62–63 from the JPP Report on Panel Concerns Regarding the Fair Administration of Military Justice in Sexual Assault Cases (September 2017), because these recommendations are based on information received by the JPP Subcommittee during site visits and were not directly related to a task assigned to the JPP. Since they were issued only weeks before this report, no report on the status of their implementation can yet be made.
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### APPENDIX H: Acronyms and Abbreviations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BE HEARD</td>
<td>Building an Environment for Helpful, Effective, and Accessible Representation and Decision-making</td>
</tr>
<tr>
<td>CAAF</td>
<td>United States Court of Appeals for the Armed Forces</td>
</tr>
<tr>
<td>CCA</td>
<td>Court of Criminal Appeals</td>
</tr>
<tr>
<td>CGCCA</td>
<td>Coast Guard Court of Criminal Appeals</td>
</tr>
<tr>
<td>DoD</td>
<td>Department of Defense</td>
</tr>
<tr>
<td>DoD IG</td>
<td>Department of Defense Office of Inspector General</td>
</tr>
<tr>
<td>DTF-SAMS</td>
<td>Defense Task Force on Sexual Assault in the Military Services</td>
</tr>
<tr>
<td>DTM</td>
<td>directive-type memorandum</td>
</tr>
<tr>
<td>FAP</td>
<td>Family Advocacy Program</td>
</tr>
<tr>
<td>FY</td>
<td>fiscal year</td>
</tr>
<tr>
<td>HQE</td>
<td>highly qualified expert</td>
</tr>
<tr>
<td>JAG</td>
<td>Judge Advocate General</td>
</tr>
<tr>
<td>JPP</td>
<td>Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (Judicial Proceedings Panel)</td>
</tr>
<tr>
<td>MCIO</td>
<td>military criminal investigative organization</td>
</tr>
<tr>
<td>MCM</td>
<td>Manual for Courts-Martial</td>
</tr>
<tr>
<td>MJRG</td>
<td>Military Justice Review Group</td>
</tr>
<tr>
<td>M.R.E.</td>
<td>Military Rule of Evidence</td>
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<tr>
<td>NDAA</td>
<td>National Defense Authorization Act</td>
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<tr>
<td>PHO</td>
<td>preliminary hearing officer</td>
</tr>
<tr>
<td>R.C.M.</td>
<td>Rules for Courts-Martial</td>
</tr>
<tr>
<td>RFI</td>
<td>request for information</td>
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<tr>
<td>RSP</td>
<td>Response Systems to Adult Sexual Assault Crimes Panel (Response Systems Panel)</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
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<td>--------------------------------------------</td>
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<tr>
<td>SAPRO</td>
<td>Sexual Assault Prevention and Response Office</td>
</tr>
<tr>
<td>SVC</td>
<td>special victims’ counsel</td>
</tr>
<tr>
<td>SVIP</td>
<td>special victim investigation and prosecution capability</td>
</tr>
<tr>
<td>SVP</td>
<td>special victim prosecutor</td>
</tr>
<tr>
<td>TCAP</td>
<td>Trial Counsel Assistance Program</td>
</tr>
<tr>
<td>UCMJ</td>
<td>Uniform Code of Military Justice</td>
</tr>
<tr>
<td>VLC</td>
<td>victims’ legal counsel</td>
</tr>
<tr>
<td>VWL</td>
<td>victim witness liaison</td>
</tr>
</tbody>
</table>
APPENDIX I: Sources Consulted

1. LEGISLATIVE SOURCES

a. Enacted Statutes
10 U.S.C. §§ 801-946 (Uniform Code of Military Justice)

b. Proposed Statutes
H.R. 2739, 115th Cong. (2017), BE HEARD Act

2. JUDICIAL DECISIONS

a. U.S. Court of Appeals for the Armed Forces
Randolph v. HV, 76 M.J. 27 (C.A.A.F. 2017)

b. Service Courts of Criminal Appeals

3. RULES AND REGULATIONS

a. Executive Orders
b. Department of Defense


4. MEETINGS

a. Public Meetings of the Judicial Proceedings Panel


5. POLICY AND GUIDANCE

a. Department of Defense

U.S. Dep’t of Def., Memorandum from the Secretary of Defense on Withholding Initial Disposition Authority under the Uniform Code of Military Justice in Certain Sexual Assault Cases (Apr. 20, 2012), available at http://jpp.whs.mil/Public/docs/03_Topic-Areas/09-Withholding_Authority/20160408/01_SecDef_Memo_WithholdingAuthority_20120420.pdf

APPENDIX I: SOURCES CONSULTED

b. Services


MARINE CORPS ORDER 5800.14, VICTIM-WITNESS ASSISTANCE PROGRAM (Mar. 15, 2013)

Policy Memorandum 16-01, The Office of the Judge Advocate General, U.S. Army, subject: Special Victim Prosecution Program (Aug 8, 2016)


U.S. Army Information Paper, Trial Counsel Assistance Program, subject: Army Special Victim Non-Commissioned Officer Paralegals (Mar. 15, 2016)

6. REPORTS


c. Reports of the Subcommittee of the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel


d. Department of Defense Reports


c. Other Reports

7. RESPONSES TO JUDICIAL PROCEEDINGS PANEL REQUESTS FOR INFORMATION

Navy Response to RSP Request for Information 50 (Nov. 21, 2013)
Services’ Responses to RSP Request for Information 76 (Nov. 21, 2013)
Services’ Responses to JPP Requests for Information 104–121 (Mar. 31, 2016)
Services’ Responses to JPP Request for Information 160 (Dec. 29, 2016)

8. ONLINE RESOURCES

a. Government Websites

9. OTHER SOURCES

a. Law Review Articles

b. Letters and E-mails
Email from Mr. Stephen McCleary, Attorney, Headquarters, U.S. Coast Guard (Jun. 21, 2017, 09:49 EST)(on file with the JPP)

c. News Articles