



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
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E.R.P.

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GENERAL COUNSEL

Eugene R. Fidell, Esquire
Feldesman, Tucker, Leifer, Fidell & Bank, LLP
2001 L Street, N.W.
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Dear Mr. Fidell:

On behalf of the Secretary of Defense, I appreciate your providing a copy of the "Report of the Commission on the 50th Anniversary of the Uniform Code of Military Justice," dated May 2001. On June 22, 2001, I forwarded the report to the Chair of the Joint Service Committee (JSC) on Military Justice. I asked the JSC to consider whether the matters addressed in the report should be subjects for the annual review of the Manual for Courts-Martial conducted pursuant to Department of Defense Directive 5500.17, "Roles and Responsibilities of the Joint Service Committee (JSC) on Military Justice." The JSC's next annual review cycle began on June 1, 2001. The Chair of the JSC has advised that the JSC has completed its review of the report.

One of the commission's recommendations involved the size of the court panel in capital cases. The recommendation was that a minimum of twelve members be required. At virtually the same time that I requested the JSC review the commission's report, a bill was introduced in the House of Representatives that would require twelve members in capital cases. This legislation essentially preempted the process by which the JSC would conduct its annual review of this issue. Section 582 of the National Defense Authorization Act for Fiscal Year 2002, Pub. L. 107-107, 115 Stat. 1124 (December 28, 2001) adopted this change as Article 25a, UCMJ. Thereafter, the JSC turned to identifying, drafting, and proposing corresponding changes to the Rules of Courts-Martial and Manual for Courts-Martial.

That same National Defense Authorization Act called upon the Department of Defense to review a proposal whereby the accused, upon conviction in a trial before members, would be given the right to elect sentencing by judge alone. As is normally the case in such circumstances, the JSC was assigned the responsibility for this review. The JSC completed its review and the Department forwarded its report to Congress on May 31, 2002.

The JSC also considered the commission's other recommendations, recognizing that in many regards the recommendations were previously considered in one form or another over the past several years. The JSC had examined the pretrial role of court-martial convening authorities in response to Section 522 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 which called upon the Department to study the "Method of Selection of Members of The Armed Forces To Serve on Courts-Martial." The Department forwarded the resulting JSC report to Congress on October 11, 1999. In 2001, the JSC completed a year-long study of the "Independent Judiciary," requested by then-Chief Judge Walter T. Cox III on behalf of the Code

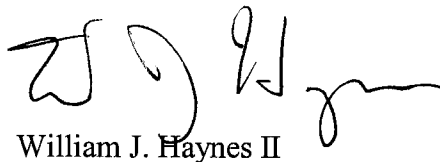


Committee. That JSC review was augmented by an *ad hoc* Independent Judiciary Working Group (IJWG) comprised of 10 trial and appellate military judges and a judge advocate assigned to the Navy Appellate Government Division. All Services were represented on the IJWG.

As you are aware, many of the report's recommendations are not new concepts, but rather have been previously addressed by the JSC and the Military Services. The JSC considered the report's recommendations and again concluded that its principal recommendations do not warrant adoption as changes to the current rules and procedures of the Manual for Courts-Martial. I agree with the JSC assessment.

In closing, I am grateful to you and the commission for your interest in the military justice system.

Sincerely,

A handwritten signature in black ink, appearing to read "W. J. Haynes II". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

William J. Haynes II