7211.90.00, 7212.40.50. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Termination of Administrative Reviews

We determine that we do not have the authority to assess countervailing duties for the period September 20, 1991 through December 31,1994, for the reasons stated in the preliminary results (61 FR 68713). Thus, we are terminating administrative reviews covering the periods 1992, 1993, and 1994, for the countervailing duty order on OCTG from Argentina, and the periods 1992 and 1993, for the countervailing duty order on Cold-Rolled Steel from Argentina.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from Argentina entered during those periods.

The requirement for cash deposits of estimated countervailing duties of zero percent of the f.o.b. invoice price on all shipments of OCTG from Argentina, entered, or withdrawn from warehouse, for consumption on or after January 1, 1995 will remain in effect pending the outcome of the changed circumstances reviews of the four Argentine countervailing duty orders currently being conducted by the Department. See Changed Circumstances Reviews. The order on Cold-Rolled Steel was revoked effective January 1, 1995; thus, the suspension of liquidation and cash deposit requirements were discontinued effective that date.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: April 29, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–11755 Filed 5–5–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of proposed amendments.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, (1995 ed.) [MCM]. The proposed changes are the 1997 draft annual review required by the MCM and DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 8, 1996. With one exception, the proposed changes concern the rules of procedure and evidence applicable in trials by courts-martial. One proposed change adds an offense to Part IV of the MCM. More specifically, the proposed changes would: (1) Delete the requirement that judges be on ''active duty'' at the time of trial; (2) permit the referral and trial of additional charges at any time until entry of pleas; (3) set forth rules for taking the testimony of children by remote closed-circuit television; (4) clarify that ''hate motivation'' can be considered as aggravation evidence in sentencing; (5) eliminate the punishment of loss of numbers; (6) add the youth of the victim as an aggravating factor in capital cases; (7) clarify the length of time during which sentences may be suspended; (8) clarify the limitations on post-trial contact with court members; (9) recognize a limited, qualified psychotherapist-patient privilege; and (10) recognize the offense of reckless endangerment.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, ''Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon,'' May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 8, 1996. This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

DATES: Comments on the proposed changes must be received no later than July 20, 1997 for consideration by the JSC.

ADDRESSES: Comments on the proposed changes should be sent to LTC Paul P. Holden, Jr., U.S. Army, Office of the Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Washington, DC, 20310–2200.

FOR FURTHER INFORMATION CONTACT: LTC Paul P. Holden, Jr., US Army, Office of the Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Washington, DC, 20310–2200; 703-695–1891; FAX 703–693–5086.

Manual for Courts-Martial Proposed Amendments

The full text of the affected sections follows:

R.C.M. 502(c) is amended by deleting the words ''on active duty'' in the second line of the rule.

The analysis accompanying R.C.M. 502(c) is amended by adding the following:

199__ Amendment: R.C.M. 502(c) was amended to delete the requirement that military judges be ''on active duty'' to enable Reserve Component judges to conduct trials during periods of inactive duty for training (IDT/IADT) and inactive duty training travel (IATT). The active duty requirement does not appear in Article 26, UCMJ which prescribes the qualifications for military judges. It appears to be a vestigial requirement from paragraph 4e of the 1951 and 1969 MCM. Neither the current MCM nor its predecessors provide an explanation for this additional requirement. It was deleted to enhance efficiency in the military justice system.

R.C.M. 601(e)(2) is amended by deleting the words ''arraignment'' and substituting the words ''the entry of pleas'', in the second sentence, and by deleting the words ''arraignment of the accused upon charges'' and inserting the words ''the entry of pleas'' in the last sentence.

The analysis accompanying R.C.M. 601(e)(2) is amended by adding the following:

199__ Amendment: R.C.M. 601(e)(2) was amended to permit the adding of charges until the entry of pleas in general and special courts-martial without the consent of the accused, provided that all necessary procedural requirements concerning the additional charges have been complied with. Prior to this amendment, arraignment had always been the point of demarcation, after which new charges could not be added without the accused's consent. *United States* v. *Davis*, 11 USCMA 407, 29 C.M.R. 223 (1960).

In the Federal civilian system, arraignment was the preliminary stage where the accused was informed of the indictment and pled to it, thereby formulating the issues to be tried. *Hamilton* v. *Alabama,* 368 U.S. 52 (1961). In the military, arraignment symbolized formal notice to the accused and often was followed closely by pleas. Id. However, arraignment has become the event whereby the court-martial is formally placed under the cognizance of the military judge, and the entry of pleas is oftentimes now deferred. Precluding the addition of charges at arraignment no longer serves a useful purpose.

This amendment extends the period of time during which charges can be served on the accused at courts-martial to the taking of pleas. Provided that procedural safeguards with respect to the additional charges are accorded, (i.e. Article 32 hearing, or the 3/5 day statutory waiting period, voir dire of the military judge, and challenge of the qualifications of counsel), the original purpose of the rule is fulfilled.

R.C.M. 804 is amended by redesignating the current subsection (c) as subsection (d) and inserting the following as subsection (c)

(c) Absence for Limited Purpose of Child Testimony

(1) *Election by accused.* Following a determination by the military judge in a child abuse case that remote testimony of a child is appropriate pursuant to M.R.E. 611(d)(2), the accused may elect to voluntarily absent himself from the courtroom in order to preclude the use of procedures described in R.C.M. 914A.

(2) *Procedure.* The accused's absence will be conditional upon his being able to view the witness' testimony from a remote location. A two-way closed circuit television system will be used to transmit the child's testimony from the courtroom to the accused's location. The accused will also be provided contemporaneous audio communication with his counsel, or recesses will be granted as necessary in order to allow the accused to confer with counsel. The procedures described herein will be employed unless the accused has made a knowing and affirmative waiver of these procedures.

(3) *Effect on accused's rights generally.* Exercise by the accused of the procedures under subsection (c)(2) will not otherwise affect the accused's right to be present at the remainder of the trial in accordance with this rule.

The analysis accompanying R.C.M. 804 is amended by adding the following:

199__ Amendment: The amendment provides for two-way closed circuit television to transmit the child's testimony from the courtroom to the accused's location. The use of two-way television, to some degree, may defeat the purpose of these alternative procedures, which is to avoid trauma to the victim who must view his or her alleged abuser. In such cases, the judge has discretion to direct one-way television communication. The use of one-way television was approved by the Supreme Court in *Maryland* v. *Craig,* 497 U.S. 836 (1990). This amendment also gives the accused the election to absent himself from the courtroom to prevent remote testimony. Such a provision gives the accused a greater role in determining how this issue will be resolved.

R.C.M. 914A is created as follows:

Rule 914A. Use of Remote Live Testimony in Child Abuse Cases

(a) *General procedures.* A child witness in a case involving abuse shall be allowed to testify out of the presence of the accused after appropriate findings have been entered in accordance with M.R.E. 611(d)(2). The procedure used to take such testimony will be determined by the military judge based upon the exigencies of the situation. However, such testimony should normally be taken via a two-way closed circuit television system. When a television system is employed, the following procedures will be observed:

(1) The witness will testify from a closed location outside the courtroom;

(2) The only persons present at the remote location will be the witness, counsel for each side (not including an accused pro se), equipment operators, and other persons, such as an attendant for the child, whose presence is deemed necessary by the military judge;

(3) The military judge, the accused, members, the court reporter, and all other persons viewing or participating in the trial will remain in the courtroom;

(4) Sufficient monitors will be placed in the courtroom to allow viewing of the testimony by both the accused and the fact finder;

(5) The voice of the military judge will be transmitted into the remote location to allow control of the proceedings;

(6) The accused will be permitted audio contact with his counsel, or the court will recess as necessary to provide the accused an opportunity to confer with counsel.

(b) *Prohibitions.* The procedures described above will not be used where the accused elects to absent himself from the courtroom pursuant to R.C.M. 804(c).

The analysis accompanying R.C.M. 914A is as follows:

199__*Amendment:* This rule allows the military judge to determine what procedure to use when taking testimony under Mil. R. Evid. 611(d)(2). It states that normally such testimony should be taken via a two-way closed circuit television system. The rule further prescribes the procedures to be used if a television system is employed. The use of two-way television, to some degree, may defeat the purpose of these alternative procedures, which is to avoid trauma to the victim who must view his or her alleged abuser. In such cases, the judge has discretion to direct one-way television communication. The use of one-way television was approved by the Supreme Court in *Maryland* v. *Craig,* 497 U.S. 836 (1990). This amendment also gives the accused an election to absent himself from the courtroom to prevent remote testimony. Such a provision gives the accused a greater role in determining how this issue will be resolved.

Military Rule of Evidence 611 is amended by adding the following subsection:

(d) Remote examination of child witness.

(1) In a case involving abuse of a child under the age of 16, the military judge shall, subject to the requirements of section (2) of this rule, allow the child to testify from an area outside the courtroom as prescribed in R.C.M. 914A.

(2) Remote examination will be used only where the military judge makes a finding on the record, following expert testimony, that either:

(A) The child witness is likely to suffer substantial trauma if made to testify in the presence of the accused; or

(B) The prosecution will be unable to elicit testimony from the child witness in the presence of the accused.

(3) Remote examination of a child witness will not be utilized where the accused elects to absent himself from the courtroom in accordance with R.C.M. 804(c).

The analysis accompanying Mil. R. Evid. 611 is amended by adding the following:

199__*Amendment:* This amendment to Mil. R. Evid. 611 gives substantive guidance to military judges regarding the use of alternative examination methods for child abuse victims. The use of two-way television, to some degree, may defeat the purpose of these alternative procedures; which is to avoid trauma to the victim who must view his or her abuser. In such cases, the military judge has discretion to

direct one-way communication. The use of one-way television was approved by the Supreme Court in *Maryland* v. *Craig,* 497 U.S. 836 (1990). This amendment also gives the accused an election to absent himself from the courtroom to prevent remote testimony. Such a provision gives the accused a greater role in determining how this issue will be resolved.

Rule for Courts-Martial 1001(b)(4), regarding the introduction of evidence in aggravation during the presentencing procedure, is amended by adding between the first and second sentences, the following:

Evidence in aggravation includes, but is not limited to, evidence of financial, social, psychological, and medical impact on or cost to any person or entity who was the victim of an offense committed by the accused and evidence of significant adverse impact on the mission, discipline, or efficiency of the command directly and immediately resulting from the accused's offense. In addition, evidence in aggravation may include evidence that the accused intentionally selected any victim or any property as the object of the offense because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person.

The Discussion to R.C.M. 1001(b)(4) is amended by striking the first paragraph thereof.

The analysis to R.C.M. 1001(b)(4) is amended by adding the following:

199__*Amendment:* R.C.M. 1001(b)(4) was amended by elevating to the Rule language that heretofore appeared in the Discussion to the Rule. The Rule was further amended to recognize that evidence that the offense was a ''hate crime'' may also be presented to the sentencing authority. The additional ''hate crime'' language was derived in part from § 3A1.1 of the Federal Sentencing Guidelines, in which hate crime motivation results in an upward adjustment in the level of the offense for which the defendant is sentenced. Courts-martial sentences are not awarded upon the basis of guidelines, such as the Federal Sentencing Guidelines, but rather upon broad considerations of the needs of the service and the accused and on the premise that each sentence is individually tailored to the offender and offense. The upward adjustment used in the Federal Sentencing Guidelines does not directly translate to the court-martial presentencing procedure. Therefore, in order to adapt this concept to the court-martial process, this amendment was made to recognize that ''hate crime'' motivation is admissible in the court-martial presentencing procedure. This amendment also differs from the Federal Sentencing Guideline in that the amendment does not specify the burden of proof required regarding evidence of ''hate crime'' motivation. No burden of proof is customarily specified regarding aggravating evidence admitted in the presentencing procedure, with the notable exception of aggravating factors under R.C.M. 1004 in capital cases.

R.C.M. 1003 is amended by deleting ''(4) Loss of numbers, lineal position, or seniority. These punishments are authorized only in cases of Navy, Marine Corps, and Coast Guard officers;'' by deleting the ''Discussion'' thereto, and by correcting subsequent numbered paragraphs to reflect this deletion.

The analysis accompanying R.C.M. 1003 is amended by adding the following:

199__Amendment: Although loss of numbers had the effect of lowering precedence for some purposes, e.g., quarters priority, board and court seniority, and actual date of promotion, loss of numbers did not affect the officer's original position for purposes of consideration for retention or promotion. Accordingly, this punishment was deleted because of its negligible consequences and the misconception that it was a meaningful punishment.

Appendix 11 of the MCM is amended by deleting ''Loss of numbers, Etc., paragraphs (6) and (7) thereunder, by correcting subsequent numbered paragraphs to reflect this deletion, and deleting the notation at the end of Appendix 11 which states ''Numbers 6 and 7 apply only in the Navy, Marine Corps, and Coast Guard.'' Rule for Courts-Martial 1004(c)(7) is amended by adding at the end thereof, the following aggravating factor applicable in the case of a violation of Article 118(1): ''(K) The victim of the murder was 14 years of age or younger.''

The Analysis to R.C.M. 1004 is amended by adding the following:

199__Amendment: R.C.M. 1004(c)(7)(K) was added to afford greater protection to victims who are especially vulnerable due to their age.

R.C.M. 1108(d) is amended by adding after the second sentence the following:

A period of suspension equal to the time served in confinement, plus 2 years thereafter, or a period of suspension of 5 years from the date of convening authority's action, whichever is greater, shall not be deemed ''unreasonably long'' for a sentence adjudged by a general court-martial. A period of suspension of 2 years from the date of convening authority's action shall not be deemed ''unreasonably long'' for a sentence adjudged by a special court-martial. Notwithstanding the foregoing, a period of suspension agreed to by the parties in a pretrial agreement (R.C.M. 705) ordinarily shall not be deemed ''unreasonably long.''

The analysis accompanying R.C.M. 1108(d) is amended by adding the following:

199__Amendment: This amendment clarifies the term ''not unreasonably long'' by defining the maximum period of suspension which is reasonable and lawful, thereby assisting convening authorities, those who advise them, and courts as to the maximum length of time the unexecuted portion of a sentence may be suspended. Thus, convening authorities are guided in fixing a period of suspension which bears a rational relationship to the severity of the sentence adjudged and approved. This amendment does not address any other term of suspension than time. Further, the amendment will most often be applied to suspended, unexecuted confinement. A convening authority may, however, in the exercise of discretionary powers, suspend all or any part of an adjudged sentence, and may impose reasonable and lawful conditions upon the accused as provision of that suspension. UCMJ, Arts. 60, 71, 10 U.S.C.A. §§ 860, 871 (1994); *United States* v. *Cowan,* 34 M.J. 258 (C.M.A. 1992). The service Secretaries may further restrict the periods of suspension.

Rule for Court-Martial 1012 is created as follows:

Rule 1012. Interviewing Members Following Adjournment

Except as provided in R.C.M. 1105(b)(4), following adjournment, no attorney or any party to a court-martial shall themselves or through any investigator or other person acting for them, interview, examine, or question any member of a court-martial, after the member has been excused from the court-martial, about any matter pertaining to the court-martial, except at a session held under Article 39(a). Any such session shall be limited to inquiring into whether extraneous prejudicial information was improperly brought to the attention of the members of the court-martial, whether any outside influence was improperly brought to bear upon any member, or whether there was unlawful command influence.

The analysis accompanying R.C.M. 1012 is created as follows:

199__Amendment: Prior to adjournment, contacts with court-

members are already adequately regulated by the military judge. This rule was added to address post-trial contacts with members. It prevents anyone from disturbing the sanctity of deliberations by questioning members about matters associated with their duties as members. Such questioning results in lessened public confidence in the court-martial system and intrudes into a process that must remain secret in order to grant court members the independence and discretion needed to arrive at a verdict free from fear of public or private criticism or retribution. See *United States* v. *Turner,* 42 M.J. 783 (N.M.Ct.Crim.App. 1995); *United States* v. *Thomas,* 39 M.J. 626 (N.M.C.M.R. 1993). Also, this amendment brings the military practice in line with most Federal courts. See *United States* v. *Hooshmand,* 931 F.2d. 725, 736–37 (11th Cir. 1991); *United States* v. Davila, 704 F.2d. 749, 753–54 (5th Cir. 1983).

Military Rule of Evidence 501(d) is amended to read as follows:

(d) Except as provided in Rule 513, information not otherwise privileged does not become privileged on the basis that it was acquired by a military or civilian health care provider acting in a professional capacity.

Military Rules of Evidence 513 is created as follows

Rule 513. Psychotherapist-Patient Privilege

(a) *General rule of privilege.* A patient, as that term is defined in this rule, has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made by the patient to a psychotherapist or an assistant to a psychotherapist, as those terms are defined in this rule, if such communication was made for the purpose of facilitating diagnosis or treatment of the patient's mental or emotional condition.

(b) Definitions. As used in this rule:

(1) A ''patient'' is a person who consults with or is examined or interviewed by a psychotherapist, but the term does not include a person who, at the time of such consultation, examination or interview, is subject to the Uniform Code of Military Justice under Article 2(a)(1), (2), (3), (7), (8), (9), or (10).

(2) A ''psychotherapist'' is a psychiatrist or psychologist who is licensed or certified in any state, territory, the District of Columbia or Puerto Rico to perform professional services as such and, if such person is a member of, employed by, or serving under contract with the armed forces, who holds credentials to provide such services from any military health care facility, or is a person reasonably believed by the patient to have such qualifications.

(3) An ''assistant to a psychotherapist'' is a person employed by or assigned to assist a psychotherapist in providing professional services, or is reasonably believed by the patient to be such.

(4) A communication is ''confidential'' if not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional services to the patient or those reasonably necessary for the transmission of the communication.

(5) ''Evidence of a patient's records or communications'' is testimony of a psychiatrist, psychologist, or assistant to the same, or patient records that pertain to communications by a patient to a psychiatrist, psychologist, or assistant to the same for the purposes of diagnosis or treatment of the patient's mental or emotional condition.

(c) Who may claim the privilege. The privilege may be claimed by the patient or the guardian or conservator of the patient. The psychotherapist or assistant to a psychotherapist who received the communication may claim the privilege on behalf of the patient. The authority of such a psychotherapist or assistant to so assert the privilege is presumed in the absence of evidence to the contrary.

(d) Exceptions. There is no privilege under this rule under the following circumstances:

(1) Death of patient. The patient is dead;

(2) Crime or fraud. If the communication clearly contemplated the future commission of a fraud or crime or if the services of the psychotherapist were sought or obtained to enable or aid anyone to commit or plan to commit what the patient knew or reasonably should have known to be a crime or fraud;

(3) Spouse abuse or child abuse or neglect. When the communication is evidence of spouse abuse, or child abuse or neglect;

(4) Mandatory reports. When a federal law, state law, or military regulation imposes a duty to report information contained in a communication;

(5) Patient is dangerous to self or others. When a psychotherapist or assistant to a psychotherapist has a reasonable belief that a patient's mental or emotional condition makes the patient a danger to any person, including the patient, or to the property of another person;

(6) Military necessity. When necessary to ensure the safety and security of military personnel, military dependents, military property, classified information, or the accomplishment of a military mission.

(e) Procedure to determine admissibility of patient records or communications:

(1) In any case in which the production or admission of records or communications of a patient other than the accused is a matter in dispute, a party may seek an interlocutory ruling by the military judge. In order to obtain such a ruling, the party shall:

(A) file a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is sought or offered, or objected to, unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial; and

(B) serve the motion on the opposing party, the military judge and, if practicable, notify the patient or the patient's guardian or representative of the filing of the motion and of the opportunity to be heard as set forth in subparagraph (e)(2).

(2) Before ordering the production or admission of evidence of a patient's records or communications, the military judge shall conduct a hearing. Upon the motion of counsel for either party and upon good cause shown, the military judge may order the hearing closed. At the hearing, the parties may call witnesses, including the patient, and offer other relevant evidence. The patient will be afforded a reasonable opportunity to attend the hearing and be heard at the patient's own expense unless the patient has been otherwise subpoenaed or ordered to appear at the hearing. However, the proceedings will not be unduly delayed for this purpose. In a case before a court-martial composed of a military judge and members, the military judge shall conduct the hearing outside the presence of the members.

(3) If the military judge determines on the basis of the hearing described in subparagraph (2) of this subdivision that the evidence that the party seeks to acquire, offer, or exclude is privileged, irrelevant, or otherwise inadmissible, no further proceedings will be conducted on the issue and the military judge shall not order the production or admission of the evidence.

(4) If the military judge is unable to determine whether the evidence is privileged or relevant, the military judge shall examine the evidence or a proffer thereof in camera.

(A) If the military judge determines on the basis of the in camera examination that the evidence is privileged, irrelevant, or otherwise inadmissible, the military judge shall not order the production or admission of the evidence.

(B) If the military judge determines that the evidence is relevant and not privileged, such evidence, or pertinent portions thereof, shall be produced and/or admitted in the trial to the extent specified by the military judge.

(5) To prevent unnecessary disclosure of evidence of a patient's records or communications, the military judge may issue protective orders or may admit only portions of the evidence.

(6) The motion, related papers, and the record of the hearing shall be sealed and shall remain under seal unless the military judge or an appellate court orders otherwise.

The analysis to Mil. R. Evid. 501 is amended by adding:

''*199 Amendment:* The amendment of Mil. R. Evid 501(d), and the related creation of Mil. R. Evid. 513, clarify the state of military law after the Supreme Court decision in *Jaffee* v. Redmond, _____ U.S. _____ [116 S. Ct. 1923, 135 L.Ed. 2d. 337] (1996). *Jaffee* interpreted Fed. R. Evid. 501, which refers federal courts to state law to determine the extent of privileges in civil proceedings. Although Mil. R. Evid. 501(d), as it existed at the time of the *Jaffee* decision, precluded application of such a privilege in courts-martial, Rule 501(d) was amended to prevent misapplication of a privilege. The language of Mil R. Evid 513 is based in part on Proposed Fed. R. Evid. (not enacted) 504 and state rules of evidence. Mil. R. Evid. 513 was created to establish a limited psychotherapist-patient privilege for civilians not subject to the UCMJ and military retirees. In keeping with the practice of American military law since its inception, there is still no doctor-patient or psychotherapist-patient privilege for members of the Armed Forces.

The analysis to Mil. R. Evid. 513 is created as follows:

''*199 Amendment:* Mil. R. Evid. 513 was created to establish a limited psychotherapist-patient privilege for civilians not subject to the UCMJ and military retirees. In keeping with the practice of American military law since its inception, there is still no doctor-patient or psychotherapist-patient privilege for members of the Armed Forces. Rule 513, and the related amendment to Mil. R. Evid 501(d), clarify the state of military law after the Supreme Court decision in *Jaffee* v. *Redmond, U.S.* _____ [116 S. Ct. 1923, 135 L.Ed. 2d. 337] (1996). *Jaffee* interpreted Fed. R. Evid. 501, which refers federal courts to state law to determine the extent of privileges in civil proceedings. Although Mil. R. Evid. 501(d), as it existed at the time of the *Jaffee* decision, precluded application of such a privilege in courts-martial, Rule 501(d) was amended to prevent misapplication of a privilege. The language of Mil R. Evid 513 is based in part on Proposed Fed. R. Evid. (not enacted) 504 and state rules of evidence.

The following new paragraph is inserted in MCM, part IV after paragraph 100:

100a. Article 134 (Reckless Endangerment)

a. Text. See paragraph 60.

b. Elements.

(1) That the accused did engage in conduct;

(2) That the conduct was wrongful and reckless or wanton;

(3) That the conduct was likely to produce death or grievous bodily harm to another person;

(4) That under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. Explanation.

(1) In general. This offense is intended to prohibit and therefore deter reckless or wanton conduct which wrongfully creates a substantial risk of death or serious injury to others.

(2) Wrongfulness. Conduct is wrongful when it is without legal justification or excuse.

(3) Recklessness. ''Reckless'' conduct is conduct that exhibits a culpable disregard of foreseeable consequences to others from the act or omission involved. The accused need not intentionally cause a resulting harm or know that his conduct is substantially certain to cause that result. The ultimate question is whether, under all the circumstances, the accused's conduct was of that heedless nature which made it actually or imminently dangerous to the rights or safety of others.

(3) Wantoness. ''Wanton'' includes ''reckless,'' but may connote willfulness, or a disregard of probable consequences, and thus describe a more aggravated offense.

(4) Likely to produce. When the natural or probable consequence of particular conduct would be death or grievous bodily harm, it may be inferred that the conduct is ''likely'' to produce that result. See paragraph 54c(4)(a)(ii).

(5) Grievous bodily harm. ''Grievous bodily harm'' means serious bodily injury. It does not include minor injuries, such as a black eye or a bloody nose, but does include fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other serious bodily injuries.

(6) Death or injury not required. It is not necessary that death or grievous bodily harm be actually inflicted to prove reckless endangerment.

d. Lesser included offenses. None.

e. Maximum punishment. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

f. Sample specification. In that _____ (personal jurisdiction data), did, (at/on board _____ location) (subject-matter jurisdiction data, if required), on or about _____ 19____, wrongfully and recklessly engage in conduct, to wit: (he/she) (describe conduct) and that the accused's conduct was likely to cause death or serious bodily harm to _____.

The following paragraph is added to the analysis of the punitive articles, A23, MCM:

100a. Article 134 (Reckless Endangerment).

c. Explanation. This paragraph is new and is based on *United States* v. *Woods,* 28 M.J. 318 (C.M.A. 1989); see also Md. Ann. Code art. 27, sect. 120. The definitions of ''reckless'' and ''wanton'' have been taken from Article 111, drunken or reckless driving. The definition of ''likely to produce grievous bodily harm'' has been taken from Article 128, assault.

Dated: April 29, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–11601 Filed 5–5–97; 8:45 am]

BILLING CODE 5000–04–P

DEPARTMENT OF DEFENSE

Department of the Army

Committee Meeting Notice

AGENCY: School of the Americas, Training and Doctrine Command.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463), announcement is made of the following committee meeting:

Name of Committee: School of the Americas (SOA) Subcommittee of the Army Education Advisory Committee.