

ANNEX 1

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:**(a) R.C.M. 104 is amended to read as follows:****“Rule 104. Command influence****(a) *General prohibitions.*****(1) *Convening authorities and commanders.***

(A) No court-martial convening authority, nor any other commanding officer, may censure, reprimand, or admonish a court-martial or other military tribunal or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court-martial or tribunal, or with respect to any other exercise of the functions of the court-martial or tribunal or such persons in the conduct of the proceedings.

(B) No court-martial convening authority, nor any other commanding officer, may deter or attempt to deter a potential witness from participating in the investigatory process or testifying at a court-martial. The denial of a request to travel at government expense or refusal to make a witness available shall not by itself constitute unlawful command influence.

(2) *All persons subject to the UCMJ.* No person subject to the UCMJ may attempt to coerce or, by any unauthorized means, attempt to influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case or the action of any preliminary hearing officer or convening, approving, or reviewing authority with respect to such preliminary hearing officer's or authority's acts concerning the following: any decision to place a Servicemember into pretrial confinement; disposition decisions; rulings on pre-referral matters; findings at a preliminary hearing; convening a court-martial; decisions concerning plea agreements; selecting members; decisions concerning witness requests;

taking action on any clemency or deferment request; or any appellate or post-trial review of a case.

(3) *Scope.*

(A) *Instructions.* Paragraphs (a)(1) and (2) of this rule do not prohibit general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing personnel of a command in the substantive and procedural aspects of courts-martial.

(B) *Court-martial statements.* Paragraphs (a)(1) and (2) of this rule do not prohibit statements and instructions given in open session by the military judge or counsel.

(C) *Professional supervision.* Paragraphs (a)(1) and (2) of this rule do not prohibit action by the Judge Advocate General concerned under R.C.M. 109.

(D) *Offense.* Paragraphs (a)(1) and (2) of this rule do not prohibit appropriate action against a person for an offense committed while detailed as a military judge, counsel, or member of a court-martial, or while serving as individual counsel.

(E) *General statements regarding criminal activity or offenses.* Paragraphs (a)(1) and (2) of this rule do not prohibit statements regarding criminal activity or a particular criminal offense that do not advocate a particular disposition, do not advocate a particular court-martial finding or sentence, and do not relate to a particular accused.

(b) *Communication between superiors and subordinates.*

(1) A superior convening authority or officer may generally discuss matters to consider regarding the disposition of alleged violations of the UCMJ with a subordinate convening authority or officer, and a subordinate convening authority or officer may seek advice from a superior convening authority or officer regarding the disposition of an alleged offense under the UCMJ.