

war declared by Congress, or the factual determination by the President that the existence of hostilities warrants a finding that a “time of war” exists for purposes of R.C.M. 1004(c)(6) and Parts IV and V of this Manual.

(30) The terms “writings” and “recordings” have the same meaning as in Mil. R. Evid. 1001.

(31) The definitions and rules of construction in 1 U.S.C. §§ 1 through 5 and in 10 U.S.C. §§ 101 and 801.”

(b) R.C.M. 104(b)(2) is amended to read as follows:

“(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) 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 case; or

(B) any preliminary hearing officer or convening, referral, approving, or reviewing authority with respect to such preliminary hearing officer’s or authority’s acts concerning the following:

- (i) any decision to place a service member into pretrial confinement;
- (ii) disposition decisions;
- (iii) rulings on pre-referral matters;
- (iv) findings at a preliminary hearing;
- (v) convening a court-martial;
- (vi) decisions concerning plea agreements;
- (vii) selecting members;
- (viii) decisions concerning witness requests;

(ix) taking action on the findings or sentence;

(x) taking action on any clemency or deferment request; or

(xi) any appellate or post-trial review of a case.”

(c) R.C.M. 104(c) is amended to read as follows:

“(c) *Prohibitions concerning evaluations.*

(1) *Evaluation of members, defense counsel, and special victims’ counsel.* In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty, no person subject to the UCMJ may:

(A) Consider or evaluate the performance of duty of any such person as a member of a court-martial; or

(B) Give a less favorable rating or evaluation of any defense counsel or special victims’ counsel because of the zeal with which such counsel represented any client. As used in this rule, “special victims’ counsel” are judge advocates and civilian counsel, who, in accordance with 10 U.S.C. § 1044e, are designated as Special Victims’ Counsel.”

(d) R.C.M. 105 is amended to read as follows:

“Rule 105. Direct communications: convening authorities and staff judge advocates; among staff judge advocates; with special trial counsel

(a) *Convening authorities and staff judge advocates.* Convening authorities shall at all times communicate directly with their staff judge advocates in matters relating to the administration of military justice, and may communicate directly with special trial counsel, although any input by