

AMENDMENT TO RULES COMMITTEE PRINT 116-

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OFFERED BY MS. SPEIER OF CALIFORNIA

At the end of subtitle D of title V, add the following new section:

1 **SEC. 5__ . QUALIFICATIONS OF JUDGES AND STANDARD**
2 **OF REVIEW FOR COURTS OF CRIMINAL AP-**
3 **PEALS.**

4 (a) **QUALIFICATIONS OF CERTAIN JUDGES.**—Section
5 866(a) of title 10, United States Code (article 66(a) of
6 the Uniform Code of Military Justice), is amended—

7 (1) by striking “Each Judge” and inserting:

8 “(1) **IN GENERAL.**—Each Judge”; and

9 (2) by adding at the end the following new
10 paragraph:

11 “(2) **ADDITIONAL QUALIFICATIONS.**—In addi-
12 tion to any other qualifications specified in para-
13 graph (1), any commissioned officer or civilian as-
14 signed as an appellate military judge to a Court of
15 Criminal Appeals shall have not fewer than 12 years
16 of experience in the practice of law before such as-
17 signment.”.

1 (b) STANDARD OF REVIEW.—Paragraph (1) of sec-
2 tion 866(d) of title 10, United States Code (article 66(d)
3 of the Uniform Code of Military Justice), is amended to
4 read as follows:

5 “(1) CASES APPEALED BY ACCUSED.—

6 “(A) IN GENERAL.—In any case before the
7 Court of Criminal Appeals under subsection (b),
8 the Court may act only with respect to the find-
9 ings and sentence as entered into the record
10 under section 860c of this title (article 60c).
11 The Court may affirm only such findings of
12 guilty, and the sentence or such part or amount
13 of the sentence, as the Court finds correct in
14 law, and in fact in accordance with subpara-
15 graph (B), and determines, on the basis of the
16 entire record, should be approved.

17 “(B) FACTUAL SUFFICIENCY REVIEW.—

18 “(i) In an appeal of a finding of guilty
19 or sentence under paragraphs (1)(A),
20 (1)(B), or (2) of subsection (b), the Court
21 may consider whether the finding is correct
22 in fact upon request of the accused if the
23 accused makes a specific showing of a defi-
24 ciency in proof.

1 “(ii) After an accused has made such
2 a showing, the Court may weigh the evi-
3 dence and determine controverted ques-
4 tions of fact subject to—

5 “(I) appropriate deference to the
6 fact that the trial court saw and
7 heard the witnesses and other evi-
8 dence; and

9 “(II) appropriate deference to
10 findings of fact entered into the
11 record by the military judge.

12 “(iii) If, as a result of the review con-
13 ducted under clause (ii), the Court is clear-
14 ly convinced that the finding of guilty or
15 sentence was against the weight of the evi-
16 dence, the Court may dismiss or set aside
17 the finding, or affirm a lesser finding.

18 “(C) REVIEW BY FULL COURT.—Any de-
19 termination by the Court that a finding was
20 clearly against the weight of the evidence under
21 subparagraph (B) shall be reviewed by the
22 Court sitting as a whole.”.

23 (c) INCLUSION OF ADDITIONAL INFORMATION IN AN-
24 NUAL REPORTS.—Section 946a(b)(2) of title 10, United

1 States Code (article 146a(b)(2) of the Uniform Code of
2 Military Justice), is amended—

3 (1) in subparagraph (B), by striking “and” at
4 the end;

5 (2) in subparagraph (C), by striking the period
6 at the end and inserting “; and”; and

7 (3) by adding at the end the following new sub-
8 paragraph:

9 “(D) An analysis of each case in which a
10 Court of Criminal Appeals made a final deter-
11 mination that a finding of a court-martial was
12 clearly against the weight of the evidence, in-
13 cluding an explanation of the standard of appel-
14 late review applied in such case.”.

