AMENDMENT TO RULES COMMITTEE PRINT 116–57

OFFERED BY MS. SPEIER OF CALIFORNIA

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

SEC. 5. QUALIFICATIONS OF JUDGES AND STANDARD OF REVIEW FOR COURTS OF CRIMINAL APPEALS.

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

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

“(1) IN GENERAL.—Each Judge”; and

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

“(2) ADDITIONAL QUALIFICATIONS.—In addition to any other qualifications specified in paragraph (1), any commissioned officer or civilian assigned as an appellate military judge to a Court of Criminal Appeals shall have not fewer than 12 years of experience in the practice of law before such assignment.”.
(b) STANDARD OF REVIEW.—Paragraph (1) of section 866(d) of title 10, United States Code (article 66(d) of the Uniform Code of Military Justice), is amended to read as follows:

“(1) CASES APPEALED BY ACCUSED.—

“(A) IN GENERAL.—In any case before the Court of Criminal Appeals under subsection (b), the Court may act only with respect to the findings and sentence as entered into the record under section 860c of this title (article 60c). The Court may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the Court finds correct in law, and in fact in accordance with subparagraph (B), and determines, on the basis of the entire record, should be approved.

“(B) FACTUAL SUFFICIENCY REVIEW.—

“(i) In an appeal of a finding of guilty or sentence under paragraphs (1)(A), (1)(B), or (2) of subsection (b), the Court may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.
“(ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to—

“(I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and

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

“(iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty or sentence was against the weight of the evidence, the Court may dismiss or set aside the finding, or affirm a lesser finding.

“(C) Review by full court.—Any determination by the Court that a finding was clearly against the weight of the evidence under subparagraph (B) shall be reviewed by the Court sitting as a whole.”.

(e) Inclusion of additional information in annual reports.—Section 946a(b)(2) of title 10, United
States Code (article 146a(b)(2) of the Uniform Code of Military Justice), is amended—

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

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

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

“(D) An analysis of each case in which a Court of Criminal Appeals made a final determination that a finding of a court-martial was clearly against the weight of the evidence, including an explanation of the standard of appellate review applied in such case.”.