





Interservice Cooperation in Military Justice

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Each military service has unique customs and rules that make it difficult for members of one service to efficiently participate in military justice matters related to another service. An Army officer serving as a panel member (military juror) in a Coast Guard court-martial for negligent hazarding of a vessel¹ may not fully understand the rules the accused allegedly neglected. Similarly, a Navy commander administering nonjudicial punishment to an Air Force officer for fraternization² may not fully understand the Air Force customs in this area.

As Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen increasingly serve together in large military communities and joint commands, the military's ability to operate jointly is becoming more important. Unfortunately, military justice is one area where cooperation between the services can be extremely difficult. This article discusses the differences between the services, including their different missions and histories. The article then discusses how each service administers military justice differently. The article concludes that, while there are some areas where military justice practitioners from the different services can and do cooperate, each service needs a separate military justice system.

Differences in Armed Services' Missions

The military missions of each of the services are fundamentally different. With its focus on land, the Army has the greatest need for jointness because it relies on the other services to transport its units by sea or air to the sites where they conduct operations.³ When deployed on large installations, Army brigade and battalion commanders and their legal advisers are able to review military justice actions taken by subordinate commanders with relative ease, making junior Army commanders less independent. The Army also relies to a great extent on its noncommissioned officers and needs them to be recognized and legally protected as leaders.⁴

The Air Force is focused on air operations and the pilots and crews that fly its aircraft. The Air Force is less reliant on other services since it can usually obtain its resources from the rear areas where the bulk of its personnel are stationed.⁵ It is easy for Air Force wing, group, and squadron commanders and their lawyers to review military justice actions taken by lower-level commanders; like their Army counterparts, junior commanders tend to be less independent. Unlike their Army counterparts, Air Force noncommissioned officers tend to be technicians rather than leaders.⁶

The Navy, with its focus on vessels and the sea, is the most independent of the services⁷ since it obtains its resources at the ports where its units are based and where its vessels are docked. Its units, especially those embarked on vessels, tend to be smaller and more isolated. It is difficult for senior fleet and task force commanders and their legal advisers to review military justice actions of junior commanders who are embarked on vessels at sea. Discipline and obedience to the commander of the vessel are critical. As a result, naval commanding officers, including junior officers, have greater powers and are more independent than their counterparts in the other services.⁸

The Coast Guard's focus is similar to that of the Navy. Like the Navy, the Coast Guard does not rely on the other services for its resources. However, because its mission is often carried out in U.S. territorial waters,⁹ its junior commanders tend to be less isolated and, therefore, less independent than their counterparts in the Navy.

Marine units are self-contained with organic ground, air, and combat service support elements. As a result, they rely less on the other services for support than similar Army units.¹⁰ Marine units are often deployed on vessels or in remote areas. As a result, discipline within the Marine Corps is extremely important. During such deployments, it is also more difficult for Marine division, regiment, and battalion commanders to review actions of company commanders, making junior commanding officers more independent than their Army and Air Force counterparts. In other ways, the Marine Corps is similar to the Army because of its focus on land. Its reliance on strong noncommissioned officers is similar to the Army's.¹¹

The differences between the services have blurred in recent years. For example, Navy personnel were extensively engaged in land operations in Afghanistan and Iraq. In 2011, the Navy deployed more than 14,000 active and reserve Sailors on the ground to support operations in Iraq and Afghanistan.¹² However, there are still important differences between the services' missions that affect the way each service administers military justice.

Differences in Armed Services' Histories

The American Army was formed on June 14, 1775, by the Continental Congress after the beginning of the siege of British forces in Boston that precipitated the American Revolution.¹³ The Continental Congress authorized creation of the American Navy on Oct. 13, 1775,¹⁴ and authorized creation of the Marine Corps as part of the Navy on Nov. 10, 1775.¹⁵ The Coast Guard traces its history to Aug. 4, 1790, when Congress authorized construction of 10 vessels to enforce tariff and trade laws.¹⁶ The Air Force was created as a separate service after World War II on Sept. 18, 1947.¹⁷ The same act that created the Air Force also combined all of the services under a single secretary of defense.¹⁸

The earliest military justice rules applicable to the U.S. Army were the Articles of War, adopted by the Continental Congress in 1775 and based on pre-existing British articles of war.¹⁹ With the adoption of the U.S. Constitution, Congress was given the power to "make rules for the government and regulation of the land and naval forces"²⁰ and the president was designated as the "commander and chief of the Army and Navy of the United States."²¹ Based upon this authority, Congress expressly recognized the existing Articles of War applicable to the Army in 1789.²² Subsequently, the secretary of war promulgated regulations further defining the duties of Army personnel.²³

The military justice rules applicable to the U.S. Navy come from the Rules for the Regulation of the Navy of the United Colonies of

North America, enacted by the Continental Congress in 1775.²⁴ After the adoption of the U.S. Constitution, Congress officially enacted the Articles for the Government of the Navy in 1799.²⁵ The courts have long recognized that the different missions of the Army and Navy required different rules for their governance.²⁶

World War I and World War II exposed weaknesses in the Articles of War and the Articles for the Government of the Navy that led to the adoption of the Uniform Code of Military Justice in 1950.²⁷ For the first time there was a single source of law applicable to the Army, Navy, Marine Corps, Coast Guard, and the newly formed Air Force. The code authorized the president to promulgate further rules applicable to all of the services, which are contained in the *Manual for Courts-Martial*.²⁸

Differences in Armed Services' Military Justice Practices

As a result of their different missions and histories, each service developed its own procedures for administering military justice.²⁹ Some are codified in the Uniform Code of Military Justice, the *Manual for Courts-Martial*, and the service regulations implementing these documents. Some differences are inherent in the organizational structures of each service. Other differences are neither codified nor inherent in existing organizational structures, but are simply part of the customs of the services. These unwritten philosophical differences between the services, while difficult to identify, can be among the most important.

Different Definitions and Treatment of Crimes

Two crimes listed in the Uniform Code of Military Justice were originally designed for the sea services: (1) improper hazarding of a vessel³⁰ and (2) jumping from a vessel into water.³¹ While these two offenses apply to all of the services, Navy, Marine, and Coast Guard personnel, who are frequently deployed on vessels, are more likely to be concerned with them than Army and Air Force personnel.

Improperly hazarding a vessel means putting a vessel in danger of loss or injury, including damage by collision, stranding, or running it upon a shoal or rock.³² The elements of improperly hazarding a vessel are similar to the elements for wrongful destruction or damage to military property, an offense of more general application to all of the services.³³ However, the maximum penalty for willfully hazarding a vessel is death,³⁴ while the maximum penalty for wrongful destruction of military property is a dishonorable discharge and 10 years confinement.³⁵

Jumping from a vessel into water requires an intentional and wrongful jumping from a vessel in use by the armed forces to the prejudice of good order and discipline or to the discredit of the service.³⁶ The elements of jumping from a vessel are similar to the elements of willful dereliction of duty, another offense of general application to all of the services and the maximum punishment for these two offenses is identical.³⁷ The creation of two offenses specifically applicable to the sea services reflects the historical differences in discipline in these services.

Each service also has its own "punitive" regulations defining prohibited conduct for its service members.³⁸ Because of differing customs and needs for discipline, each service takes unique approaches in these regulations.

Hazing new members of a unit is one type of prohibited conduct defined in punitive regulations. Hazing has, unfortunately, long been a part of military life.³⁹ Each of the services has regulations specifically dealing with hazing.⁴⁰

The Air Force regulation dealing with hazing simply prohibits the practice, without providing a detailed definition or examples.⁴¹ The Army regulation addressing hazing defines the practice as unnecessarily causing a service member to suffer activity that is “cruel, abusive, humiliating, oppressive, demeaning, or harmful” and contains a list of examples.⁴² The regulation on this subject applicable to the Navy and Marine Corps contains an identical definition and a list of examples that includes specific practices such as “pinning,” “tacking on,” and “blood wings.”⁴³ The applicable Coast Guard regulation has the same definition but includes an even longer list of examples and specific practices.⁴⁴ The more detailed treatment of hazing by the sea services suggests that it is a greater problem in these services. Personnel in the sea services are often deployed in remote locations or on vessels where hazing is harder to control.

Fraternization is another type of conduct defined in punitive regulations and has also long been a problem in the military.⁴⁵ Fraternalization is a violation Article 134 of the Uniform Code of Military Justice⁴⁶ and is defined as a violation of the “custom of the accused’s service that officers shall not fraternize with enlisted members on terms of military equality.”⁴⁷ The *Manual for Courts-Martial* points out that service regulations may also govern conduct between personnel of different ranks.⁴⁸ Each service has promulgated regulations that provide more detailed prohibitions on relations between personnel of differing ranks, proscribing conduct beyond that defined in the manual.⁴⁹

The Air Force regulation dealing with fraternization prohibits officers from gambling with, lending money to or from, engaging in sexual relations with, sharing living accommodations with, and engaging in business enterprises with enlisted members.⁵⁰ The applicable Army regulation contains similar prohibitions; it also prohibits business relationships, dating, shared living accommodations, marriages (with certain exceptions), and gambling between officers and enlisted personnel.⁵¹ The sea service regulations contain even broader proscriptions on fraternization. The applicable Navy regulation prohibits personal relationships between officer and enlisted members that are unduly familiar and that do not respect differences in grade or rank.⁵² The Navy regulation specifically prohibits relations between senior enlisted personnel (E-7 to E-9) and junior enlisted personnel.⁵³ The applicable Coast Guard regulation provides an even more detailed description of relations that are prohibited; among other things, it prohibits romantic relations between supervisors and subordinates (including those subject to periodic supervision), between members assigned to the same small shore unit (less than 60 members), between members assigned to the same cutter, and between chief petty officers (E-7 and above) and junior enlisted personnel (E-4 and below).⁵⁴ Only the sea service regulations contain specific prohibitions on relations between enlisted personnel that are tied to specific ranks. The more specific fraternization prohibitions contained in the sea service regulations reflect concern for inappropriate relations in the isolated environments on board vessels.

In addition to the statutory and regulatory differences mentioned above, each service has different customs dictating how harshly certain military offenses are treated. For example, the Air Force is perceived to treat drug offenses more harshly than the Army.⁵⁵ Airmen work with more expensive and sensitive equipment than Soldiers,⁵⁶ which arguably should lead to less tolerance for drug use.⁵⁷ These unwritten differences are difficult to identify or quantify. However, they follow logically from the different missions and needs for discipline in each service.

Differences in Nonjudicial Punishment Under Article 15

Another difference between the services is found in the implementation of Article 15 of the Uniform Code of Military Justice, which permits commanders to impose nonjudicial punishment upon members of their command.⁵⁸ Although most service members can refuse such punishment by demanding trial by court-martial, this right is not extended to members “attached to or embarked in a vessel.”⁵⁹ In addition, the nonjudicial punishment of confinement on bread and water or diminished rations is only available for service members attached to or embarked on a vessel.⁶⁰ While these provisions do not mention a specific service, the Navy, Marine Corps, and Coast Guard are most likely to have personnel attached to or embarked on a vessel. These provisions provide the commanders of vessels with a more robust disciplinary tool, corresponding to the increased need for discipline and command authority in the sea services.

Each of the services has its own regulations defining the administration of nonjudicial punishment under Article 15.⁶¹ No joint nonjudicial punishment regulation exists.⁶² Even the name for this punishment differs among the services: the Army and Air Force refer to it as nonjudicial punishment,⁶³ the Marine Corps refers to it as “office hours,”⁶⁴ and the Navy and Coast Guard refer to it as “Mast.”⁶⁵ Each service also has its own forms⁶⁶ and procedures⁶⁷ for the imposition of nonjudicial punishment. While some of these differences are more cosmetic than substantive, they demonstrate the importance of the differing service traditions in the imposition of this punishment.

The burden of proof at nonjudicial punishment proceedings differs between the services.⁶⁸ The burden in Army nonjudicial punishment proceedings is proof beyond a reasonable doubt.⁶⁹ The Air Force regulations do not stipulate a burden but point out that since members can demand trial by court-martial, nonjudicial punishment may not be appropriate if proof beyond a reasonable doubt is lacking.⁷⁰ In the Navy, Marine Corps, and Coast Guard, the standard is preponderance of the evidence.⁷¹ The lesser burden demonstrates the need for greater discipline in the sea services.

The services also have differing rules on the right to consult with a defense counsel prior to imposition of nonjudicial punishment.⁷² In the Air Force, airmen generally have the right to consult with an attorney prior to imposition of nonjudicial punishment.⁷³ In the Army, commanders can impose limited “summarized” nonjudicial punishment without affording the Soldier the opportunity to consult with a defense attorney; however, the maximum punishment is limited and the record of the proceedings may not be used later in aggravation at a court-martial.⁷⁴ Soldiers must be permitted to consult with an attorney before imposition of “formal” nonjudicial punishment, where the authorized punishment exceeds 14 days extra duties, 14 days restriction, and a reprimand.⁷⁵ In the Navy, Marine Corps, and Coast Guard, there is no right to consult with an attorney for service members attached to or embarked in a vessel.⁷⁶ In addition, in the Navy and Marine Corps, there is no right to consult with an attorney if the record of the proceedings will not be later used at a court-martial.⁷⁷ The Air Force provides those pending punishment under Article 15 with the greatest rights to consult an attorney; the sea services, with their greater focus on discipline, provide less opportunity to consult an attorney.

The maximum punishments under Article 15 also vary among the services.⁷⁸ Only Navy, Marine Corps, and Army regulations permit confinement on bread and water or diminished rations for personnel attached to or embarked on a vessel.⁷⁹ This punishment is not

authorized by the Air Force or the Coast Guard regulations.⁸⁰ In the Navy, Marine Corps, and Coast Guard, service members can be reduced through nonjudicial punishment by only one grade; Marines in pay grade E-6 and above cannot be reduced at all; and Sailors and Coast Guardsmen in pay grade E-7 and above cannot be reduced.⁸¹ In the Army, senior commanders can reduce Soldiers in pay grade E-4 to the lowest enlisted grade and can reduce E-5s and E-6s one grade.⁸² In the Air Force the reduction authority is more robust: senior commanders can reduce E-4s to the lowest enlisted grade and can reduce E-5s, E-6s, E-7s, E-8s, and E-9s one grade.⁸³ The greater reduction authority of Army and Air Force commanders mirrors the greater rights that service members in these services have during nonjudicial punishment proceedings.

Differences in Procedural Rules for Courts-Martial

As the most independent of the services, the Navy had the most difficult time adjusting to the adoption of the Uniform Code of Military Justice.⁸⁴ The Navy was concerned that the highest military appellate court was creating too many new rights for accused service members in courts-martial.⁸⁵ The Navy has also shown the greatest concern for the role of the commander in courts-martial.⁸⁶ This concern stems from the need to maintain strict discipline aboard vessels. The Army and Air Force have been more willing to embrace new doctrines lessening the commander's authority. For example, both services have experimented with random selection of court-martial panel members (military jurors), rather than relying on the traditional means of leaving the selection of such members to the commander.⁸⁷

A number of exceptions for personnel on vessels have been written into the Rules for Court-Martial dealing with pre-trial confinement. When the command confines a member prior to trial, the confinee must be provided with a defense counsel and advised of his rights to remain silent and to request counsel; his commander must prepare a written memorandum within 72 hours documenting that certain requirements have been met; and two separate reviews by neutral and detached officers must be conducted within 48 hours and seven days.⁸⁸ All of these requirements are waived while a service member is on board a vessel at sea.⁸⁹ This provides sea service commanders with greater authority to confine service members prior to trial and is consistent with the greater need for discipline on the isolated environment of a vessel at sea.

One important role of a judge advocate is to provide advice to senior commanders before they send a case to trial by convening a general court-martial.⁹⁰ As discussed above, many military crimes involve service-specific factors that this judge advocate must take into account. Only a judge advocate properly trained in a service's mission and history can adequately provide this advice. This training is best provided by separate service legal schools.⁹¹ The Army, Navy, and Air Force all have separate legal schools that provide service-specific courses for entry-level judge advocates and senior judge advocates.⁹² These service-specific schools are an effective repository of the unique aspects of military justice in each service.

Areas Where the Services Can Cooperate in Military Justice Fair and Equal Treatment

All military justice practitioners should work together to ensure that members of the different services receive fair and equal treatment in criminal cases. Often, members of two services are involved in a single criminal incident. Because different commanders are respon-

sible for the prosecution decisions in each service and because each service has different trial procedures and sentencing philosophies, disparities can develop in the handling of the cases. A system that encourages coordination between the commanders and prosecutors involved in such cases may help alleviate these disparities.

There are a number of areas in the United States and overseas where large populations of members of different services live and work in close proximity to one another.⁹³ In these areas it is more likely that members of different services will be involved in a single incident of misconduct⁹⁴ or that members of the community will compare the disposition of similar crimes by different services. Coordination between the legal offices of the different services in these communities will help avoid unnecessary differences in treatment.

Disparity in military justice may pose a special problem at "joint bases" where members of two or more services live and work on the same military installation.⁹⁵ When members of one service are treated more harshly in military criminal cases than members of a sister service at the same base, the community may lose confidence in the fairness of the entire military justice system. Coordination between the various military justice offices at these bases can alleviate this problem.

Joint Commands

Military justice practitioners in joint commands comprising members from more than one service must ensure that justice is applied fairly to all members of the command. Article 17 of the Uniform Code of Military Justice allows commanders from one service to exercise court-martial jurisdiction over members of other services.⁹⁶ This reciprocal jurisdiction was a relatively new concept when the code was enacted in 1951.⁹⁷ Article 22 of the Uniform Code of Military Justice gives commanders of "a unified or specified combatant command" the authority to convene general courts-martial (the highest level of military criminal trials)⁹⁸ and Article 23 provides the authority to convene special courts-martial (lower-level criminal trials) to "the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose."⁹⁹ The Uniform Code of Military Justice also permits secretaries of the services to give other joint commanders the authority to convene general and special courts-martial by special appointment.¹⁰⁰

In addition, Rule for Court-Martial 201 permits the secretary of defense to give commanders of "joint commands or joint task forces" the authority to convene general courts-martial.¹⁰¹ The definition of a "joint" organization includes any organization in which "elements of more than one military service of the same nation participates."¹⁰² Rule for Court-Martial 201 also permits commanders of combatant commands to give their subordinate commanders the authority to convene special court-martial.¹⁰³ Joint commanders given the authority to convene general courts-martial by the secretary of defense have the same power.¹⁰⁴

Joint commanders also have the authority to exercise nonjudicial punishment authority over members of other services.¹⁰⁵ Each of the services' regulations provides this authority.¹⁰⁶ As noted above, there are significant differences between the services in the procedures and maximum punishments at such proceedings. The commander of a joint unit must take these differences into consideration when administering nonjudicial punishment, especially when members of different services are being punished for the same or similar offenses.¹⁰⁷ In addition, joint commanders and their legal advisers

should coordinate with the parent organization of the members being punished to sort out any issues of concurrent jurisdiction.¹⁰⁸

Judge advocates assigned to joint units must be prepared to manage an ad-hoc jurisdiction.¹⁰⁹ They must assess their commanders' need for court-martial jurisdiction and, in appropriate cases, request a special appointment to obtain convening authority. Such judge advocates should coordinate with sister-service units to ensure that service members in their unit are properly assigned for military justice purposes.¹¹⁰ They should also ensure that commanders and service members in their units are properly briefed on the military jurisdictional structure and that uniform disciplinary procedures are applied to all members of the command.¹¹¹

Efficiency

Proper coordination by military justice practitioners of the different services can promote efficiency. It is often advantageous for the services to share facilities, training, and military justice personnel, especially when resources are limited.

Prosecutors, defense counsel, military judges, and panel members (military jurors) are occasionally shared between the services.¹¹² The Rules for Courts-Martial provide that “[n]othing . . . prohibits detailing to a court-martial a military judge, member, or counsel who is a member of an armed force different from that of the accused or the convening authority.”¹¹³ This authority should be exercised in appropriate circumstances.

The Rules for Court-Martial provide that detailing of military judge and counsel will be in accordance with the regulations of the “secretary concerned.”¹¹⁴ Determining which service regulations to use can be difficult when the commander who convenes the court and the accused are from different services.¹¹⁵ Judge advocates working on joint cases must ensure that the detailing is done properly.

There are limited numbers of highly trained military prosecutors to try complex cases such as sexual assaults. In recognition of this fact, the military has designated special victim prosecutors who have expertise in trying cases involving sexual misconduct.¹¹⁶ The military courts have also recognized the need for counsel with specialized experience in capital cases.¹¹⁷ Because there are few counsel with such expertise, it is appropriate to develop procedures to share these counsel between the services.

Detailing panel members from one service to the court-martial of a member of another service should be done with caution. Criminal cases involving service-specific customs may not lend themselves to such cross-service detailing, since the panel members may not be familiar with the appropriate customs. In addition, there may be unique problems in determining the panel members' qualifications. The Uniform Code of Military Justice provides the accused the right to request enlisted personnel serve as members in his or her court-martial, as long as they are not from the accused's “unit.”¹¹⁸ Determining what constitutes the accused's unit for these purposes can be difficult since the services use different definitions for this term.¹¹⁹

Sharing courtrooms between the services ensures that each service has the best possible facility for the trial of its cases. This is already being done in a number of jurisdictions.¹²⁰ The expectations for modern courtrooms are increasing and now include requirements for state-of-the-art computer and audiovisual equipment.¹²¹ It may be impracticable for each service to build such a courtroom, but two or three installations located in close proximity may be able to combine their resources to build one.

Sharing courtrooms requires close coordination between the services to avoid conflicts. These conflicts can be mitigated by the use of publicly published dockets.¹²² The services can share courtrooms effectively only if each service is willing to give other services equal priority in docketing cases in their courtrooms. Because criminal trials often involve the coordination of the schedules of dozens of trial participants, including judges, attorneys, and expert witnesses, the service that owns the courtroom must be willing to permit other services to firmly book their facility well in advance, even if this means delaying its own cases.

The services already share military justice training. All of the services send military judges to an initial three-week course at the Army Judge Advocate General's Legal Center and School in Charlottesville, Va.¹²³ The Air Force and Navy share the responsibility for hosting an annual seminar for the military judges of all the services.¹²⁴ There are also a number of joint training opportunities for military prosecutors and defense counsel. The Naval Justice School in Newport, R.I., offers a number of military justice courses on topics including trial advocacy and litigating sexual assault cases.¹²⁵ The Army Judge Advocate General's Legal Center and School also offers a number of military justice courses on topics including trial advocacy and case management.¹²⁶ The Air Force Judge Advocate General's School at Maxwell Air Force Base in Montgomery, Ala., offers a similar variety of military justice courses.¹²⁷ Many of these courses are already open to judge advocates of all of the services.

Military legal offices located near legal offices of sister-services should consider combining their local training, to the extent practicable. A large Air Force legal office may be able to provide better training than smaller Army or Navy legal offices located nearby. All services can benefit by sharing their resources.

Joint Regulations

Joint punitive regulations would be helpful, at least in areas where there is no reason for the services to define or treat offenses differently. The regulations defining sexual harassment provide one such example. Since sexual harassment, in its extreme form, can constitute the offense of cruelty and maltreatment in violation of Article 93 of the Uniform Code of Military Justice,¹²⁸ the *Manual for Courts-Martial* contains a definition of the term that is applicable to all of the services.¹²⁹ However, each service has a regulation that provides more detailed definitions and broader prohibitions.¹³⁰

The applicable Air Force regulation defines sexual harassment to include “unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature particularly when submission to such conduct is made directly or indirectly as a term or condition of employment and/or when submission to or rejection of such conduct is used as a basis for an employment decision affecting the person” and “creating an intimidating, hostile working environment.”¹³¹ The applicable Army regulation defines sexual harassment as “a form of gender discrimination that involves unwelcome[] sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature between the same or opposite genders when: (1) submission to, or rejection of, such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, [or] career; (2) submission to, or rejection of, such conduct by a person is used as a basis for career or employment decisions affecting that person; [or] (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or

creates an intimidating, hostile, or offensive working environment.”¹³² The applicable Navy regulation defines sexual harassment in the same way as the Army regulation.¹³³ The applicable Coast Guard regulation contains the same definition, although it adds that sexual harassment “also encompasses unwelcome display or communication of sexually offensive materials.”¹³⁴ These regulations are all based on the same principles. Having four slightly different definitions of sexual harassment provides unnecessary confusion. A single punitive regulation dealing with this issue would be helpful.

Conclusion

It is important to recognize and respect the differences between the armed services. Because of their disparate missions and histories, each service has different needs for discipline. As a result, each service has crafted unique definitions of crimes and different procedures for nonjudicial and judicial punishment. Courts-martial and other disciplinary actions often require different treatment depending on whether the offender is a Soldier, Airman, Sailor, Marine, or Coast Guardsman.

There are areas where the services can and do cooperate in military justice. Military justice practitioners should coordinate to ensure that offenders from the different services receive equal treatment, where possible. Military attorneys for joint commands must ensure that discipline is administered fairly and efficiently to all members of the command, regardless of their service. Joint military justice regulations may be appropriate in a limited number of areas. The services should also share military justice personnel, facilities, and training, to the extent possible. However, because of the important differences between the services, it would not be wise to fully integrate their military justice operations. ☉



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Endnotes

¹10 U.S.C. § 910 (2016).

²10 U.S.C. § 936 (2016); MANUAL FOR COURTS-MARTIAL, UNITED STATES (2012), pt. IV, ¶ 83 [hereinafter MCM].

³Maj. Michael J. Berrigan, *The UCMJ and the New Jointness: A Proposal to Strengthen the Military Justice Authority of Joint Task Force Commanders*, 44 NAVAL L. REV. 59, 78 (1997).

⁴*Id.* at 79.

⁵*Id.* at 81.

⁶*Id.* at 79.

⁷*Id.* at 79-80.

⁸*Id.*

⁹See 14 U.S.C. § 2 (2016).

¹⁰Berrigan, *supra* n.3, at 79.

¹¹*Id.*

¹²FY 2012 Department of Navy Posture: Hearing Before the H. Armed Servs. Comm., 112th Cong. 2 (Mar. 1, 2011) (statement of Adm. Gary Roughead, Chief of Naval Operations), available at www.navy.mil/navydata/people/cno/Roughead/Testimony/CNO%20

[Roughead_Testimony_030111.pdf](http://www.navy.mil/navydata/people/cno/Roughead/Testimony/CNO%20Roughead_Testimony_030111.pdf).

¹³ROBERT K. WRIGHT JR., THE CONTINENTAL ARMY 23, available at www.history.army.mil/books/RevWar/ContArmy/CA-fm.htm.

¹⁴Michael J. Palmer, *The Navy: The Continental Period, 1775-1890*, NAVAL HISTORY & HERITAGE COMMAND (May 8, 2014, 3:54 PM), available at www.history.navy.mil/research/library/online-reading-room/title-list-alphabetically/h/history-of-the-us-navy/continental-period.html.

¹⁵*A Pictorial History: The Marines in the Revolution*, U.S. MARINE CORPS (1975), available at www.marines.mil/News/Publications/ELECTRONIC-LIBRARY/Electronic-Library-Display/Article/899766/a-pictorial-history-the-marines-in-the-revolution.

¹⁶U.S. Coast Guard History, U.S. COAST GUARD, available at www.uscg.mil/history/web/USCGbriefhistory.asp.

¹⁷STEPHEN L. MACFARLAND, A CONCISE HISTORY OF THE AIR FORCE 41 (1997), available at newpreview.afnews.af.mil/afhso/booksandpublications/titleindex.asp.

¹⁸*Id.* at 40. During peacetime, the Coast Guard falls under the secretary of homeland security. U.S. Coast Guard History, *supra* n.16.

¹⁹WILLIAM WINTHROP, MILITARY LAW AND PRECEDENTS 7 (2d ed. 1920), available at www.loc.gov/rr/frd/Military_Law/ML_precedents.html.

²⁰U.S. CONST. art. I, § 8.

²¹*Id.* art. II § 2.

²²WINTHROP, *supra* n.19 at 15-16.

²³*Id.* at 24.

²⁴*Rules for the Regulation of the Navy of the United Colonies of North-America* (Nov. 28, 1775), NAVAL HISTORY & HERITAGE COMMAND (Sept. 2, 2016, 12:54 PM), available at www.history.navy.mil/research/library/online-reading-room/title-list-alphabetically/r/navy-regulations-17751.html. See Lt. Michael J. Marinello, *Convening Authority Clemency: Is It Really an Accused's Best Chance of Relief?*, 54 NAVAL L. REV. 169, 174 (2007).

²⁵An act for the Government of the Navy of the United States, ch. 24, 1 Stat. 709 (1799).

²⁶*United States v. Dunn*, 120 U.S. 249 (1887) (“The military establishment of this country is divided by the general laws of the United States into the army and the navy....”).

²⁷10 U.S.C. §§ 801-946 (2016) [hereinafter UCMJ, arts. 1-146]. See Brigadier Gen. (ret.) John S. Cooke, *Introduction: Fiftieth Anniversary of the Uniform Code of Military Justice Symposium Edition*, 165 MIL. L. REV. 1 (2000), available at www.jagcnet.army.mil/DOCLIBS/MILITARYLAWREVIEW.NSF/MLRDisplay?.

²⁸UCMJ, art. 36; MCM, *supra* n.2.

²⁹Mark W. Holzer, *Purple Haze: Military Justice in Support of Joint Operations*, ARMY LAW 1 (July 2002), available at www.jagcnet.army.mil/DOCLIBS/ARMYLAWYER.NSF/TALDisplay?.

³⁰UCMJ art. 110 (2016). This article was recently amended to include aircraft. National Defense Authorization Act for Fiscal Year 2017 [hereinafter 2017 N.D.A.A.] §5422, 10 U.S.C. §910 (2016). This change will become effective no later than Jan. 1, 2019. Id. §5542.

³¹UCMJ art. 134 (2016); MCM, *supra* n.2, pt. IV, ¶91. This offense was recently moved to UCMJ art. 87 and the element “to the prejudice of good order and discipline or to discredit of the service” was eliminated. 2017 N.D.A.A. *supra*, §5406, 10 U.S.C. §887 (2016). The change will be effective no later than Jan. 1, 2019. Id. §5542.

³²MCM, *supra* n. 2, pt. IV, ¶ 34(c)(1). *United States v. Adams*, 42 C.M.R. 911 (N.C.M.R. 1970); *United States v. MacLane*, 32 C.M.R.

732 (C.G.B.R. 1962); *United States v. Day*, 23 C.M.R. 651 (N.B.R. 1957).

³²MCM, *supra* n.2, pt. IV, ¶¶ 34(b), 32(b)(2).

³⁴MCM, *supra* n.2, pt. IV, ¶ 34(e)(1). For the death penalty to be authorized, the accused must also be found guilty of at least one “aggravating factor” and a number of procedural requirements must be met. MCM, *supra* n.2, R.C.M. 1004.

³⁵MCM, *supra* n.2, pt. IV, ¶ 32(e)(3).

³⁶*Id.* MCM, *supra* n.2, pt. IV, ¶ 91(b). *United States v. Sadinsky*, 34 C.M.R. 343 (1964).

³⁷MCM, *supra* n.2, pt. IV, ¶¶ 91(b), 16(b)(3). The maximum punishment for both offenses includes a bad-conduct discharge and six months confinement. *Id.*, ¶¶ 16(e)(3)(B), 91(e).

³⁸Engaging in such conduct may be prosecuted under Article 92 of the Uniform Code of Military Justice, which prohibits violations of lawful general regulations. UCMJ art. 92 (2016). Regulations which only supply general guidelines or advice for conducting military functions may not be prosecuted under this provision. MCM, *supra* n.2, pt. IV, ¶ 16c(1)(a). See *United States v. Scott*, 46 C.M.R. 25 (C.M.A. 1972).

³⁹Lucille M. Ponte, *United States v. Virginia: Reinforcing Archaic Stereotypes About Women in the Military Under the Flawed Guise of Educational Diversity*, 7 HASTINGS WOMEN’S L.J. 1 (1996), n. 426 (discussing hazing at military academies).

⁴⁰In its most extreme form, hazing can be prosecuted as cruelty and maltreatment in violation of Article 93 or assault under Article 128 of the Uniform Code of Military Justice. UCMJ arts. 93 and 128 (2016); MCM, *supra* n.2, pt. IV, ¶¶ 17 and 54.

⁴¹DEP’T OF AIR FORCE, INST. 1-1, AIR FORCE STANDARDS (Aug. 7, 2012), ¶ 2.2.8., available at www.e-publishing.af.mil.

⁴²DEP’T OF ARMY, REG. 600-20, ARMY COMMAND POLICY (Nov. 16, 2014), ¶ 4-19 [hereinafter AR 600-20], available at armypubs.army.mil.

⁴³DEP’T OF NAVY, SEC. NAVY INST. 1610.2A, DEP’T OF NAVY (DON) POLICY ON HAZING, ¶ 6b (Jul. 15, 2005), available at doni.daps.dla.mil/default.aspx.

⁴⁴DEP’T OF HOMELAND SECURITY, U.S. COAST GUARD, COMMANDANT INST. MANUAL 1600.2, DISCIPLINE AND CONDUCT (Sep. 29, 2011), ¶ 2.A.4 [hereinafter CG INST. MANUAL 1600.2], available at www.uscg.mil/directives/.

⁴⁵See Maj. David S. Jonas, *Fraternization: Time for a Rational Department of Defense Standard*, 135 MIL. L. REV. 37 (1992), available at www.jagcnet.army.mil/DOCLIBS/MILITARYLAWREVIEW.NSF/MLRDisplay?.

⁴⁶UCMJ art. 134 (2016).

⁴⁷MCM, *supra* n.2, pt. IV, ¶ 83b(4). Courts have expanded this prohibition to include fraternization by enlisted personnel of different ranks and fraternization by officers of different ranks. *United States v. March*, 32 M.J. 740 (A.C.M.R. 1991); *United States v. Callaway*, 21 M.J. 770 (A.C.M.R. 1986); *United States v. Carter*, 23 M.J. 683 (N.M.C.M.R. 1986); *United States v. Clarke*, 25 M.J. 631 (A.C.M.R. 1987), *affirmed*, 27 M.J. 361 (C.M.A. 1989).

⁴⁸MCM, *supra* n.2, pt. IV, ¶ 83c(2).

⁴⁹DEP’T OF AIR FORCE, INST. 36-2909, PROFESSIONAL AND UNPROFESSIONAL RELATIONSHIPS (May 1, 1999) [hereinafter AF INST. 36-2909], available at www.e-publishing.af.mil; AR 600-20, *supra* n.42; DEP’T OF NAVY, CHIEF OF NAVAL OPERATIONS, INST. 5370.2D, NAVY FRATERNIZATION POLICY (Jan. 6, 2016), ¶ 5, [hereinafter OPNAV INST. 5370.2D], available at doni.daps.dla.mil/default.aspx; CG INST. MANUAL 1600.2, *supra* n.44.

See *United States v. Adams*, 19 M.J. 996 (A.C.M.R. 1985) (trainee and noncommissioned officer violated fraternization regulation).

⁵⁰AF INST. 36-2909, 9, *supra* ¶ 5.1.; see also AF INST. 1-1, *supra* n.41, ¶ 2.2.

⁵¹AR 600-20, *supra* n.42, ¶ 4-14c.

⁵²OPNAV INST. 5370.2D, *supra* n.49, ¶ 5.

⁵³*Id.* ¶ 5b.

⁵⁴CG INST. MANUAL 1600.2, *supra* n.44, ¶ 2.A.2.f.

⁵⁵See Capt. William H. Walsh & Capt. Thomas A. Dukes Jr., *The Joint Commander as Convening Authority: Analysis of a Test Case*, 46 A.F. L. REV. 195 (1999). This article described a court-martial of an Army soldier for drug use; the court was convened by an Air Force commander of a joint unit. Among other things, the accused objected that the “Air Force has an appearance of an intolerance of drug use ... which is different than the Army.” *Id.* at 209.

⁵⁶By way of comparison, the Apache AH-64 Attack Helicopter used by the Army costs \$22 million each, while an F-35 Joint Strike Fighter Aircraft used by the Navy and Air Force costs \$167 million each. U.S. DEP’T OF DEFENSE, OFFICE OF THE UNDERSECRETARY OF DEFENSE (COMPTROLLER)/CHIEF FINANCIAL OFFICER, FISCAL YEAR 2016 BUDGET REQUEST, PROGRAM ACQUISITION COST BY WEAPONS SYSTEM (Feb. 2016), pp. 1-7, 1-9 (based on Fiscal Year 2016 procurement requests), available at comptroller.defense.gov/Portals/45/Documents/defbudget/fy2017/FY2017_Weapons.pdf.

⁵⁷Potential damage to aircraft is an argument used in Air Force drug cases. *United States v. Simmons*, 31 M.J. 884 (A.F.C.M.R. 1990).

⁵⁸UCMJ art. 15 (2016).

⁵⁹UCMJ art. 15(a) (2016).

⁶⁰UCMJ art. 15(b)(2)(A) (2016). This punishment may not exceed three days. The words “on bread and water or diminished rations” was recently deleted from this punishment. 2017 N.D.A.A. *supra* n.30, §5141, 10 U.S.C. §815 (2016). The change will be effective no later than Jan. 1, 2019. *Id.* §5542.

⁶¹DEP’T OF ARMY, REG. 27-10, MILITARY JUSTICE (May 11, 2016), available at armypubs.army.mil [hereinafter AR 27-10]; DEP’T OF AIR FORCE, INST. 51-202, NONJUDICIAL PUNISHMENT (Mar. 31, 2015), available at www.e-publishing.af.mil [hereinafter AF INST. 51-202]; DEP’T OF NAVY, MANUAL OF THE JUDGE ADVOCATE GENERAL (Jun 26, 2012), available at doni.daps.dla.mil/default.aspx [hereinafter JAGMAN]; DEP’T OF HOMELAND SECURITY, U.S. COAST GUARD, COMMANDANT INST. MANUAL 5810.1E, MILITARY JUSTICE MANUAL (Apr. 13, 2011), available at www.uscg.mil/directives [hereinafter CG MILITARY JUSTICE MANUAL].

⁶²Holzer, *supra* n.29, at 16.

⁶³AR 27-10, *supra* n.61, ch. 3; AF INST. 51-202, *supra* n.61, ¶ 1.1.

⁶⁴JAGMAN, *supra* n.61, ¶ 0110a.

⁶⁵*Id.*; CG MILITARY JUSTICE MANUAL, *supra* n.61, ¶ 1.A.6.a. The term “mast” originated in the days of sail when the captain of a vessel would hold ceremonies under the mainmast. The Navy Department Library, Origin of Navy Terminology, available at www.history.navy.mil/research/library/online-reading-room/title-list-alphabetically/o/origin-navy-terminology.html.

⁶⁶The Army has two different forms for nonjudicial punishment, depending on the maximum punishment and whether the document can later be used as aggravation at a court-martial under *United States v. Booker*, 5 M.J. 238 (C.M.A. 1978). AR 27-10, *supra* ¶¶ 3-16, 3-17, 3-36. The Air Force uses three forms depending on the rank of the offender. AF INST. 51-202, *supra* ¶ 1.2. The Navy and Marine Corps use three different forms, depending on whether

the subject is embarked or attached to a vessel and whether the document can later be used as aggravation at a court-martial. JAGMAN, *supra* n.61, apps. A-1-b, A-1-c, and A-1-d; ¶ 0109. The Coast Guard uses four different forms depending on whether the subject is an officer or enlisted member and whether the subject is on shore or afloat. CG MILITARY JUSTICE MANUAL, *supra* n.61, encls. 3(a), 3(b), 4(a), and 4(b).

⁶⁷AR 27-10, *supra* n.61, app. B; AF INST. 51-202, *supra* n.61, ch. 3; JAGMAN, *supra* n.61, app. A-1-f; CG MILITARY JUSTICE MANUAL, *supra* n.61, ¶ 1D2 and encl. 1.

⁶⁸Holzer, *supra* n.29, at 18.

⁶⁹AR 27-10, *supra* n.61, ¶¶ 3-16d(4), 3-18l.

⁷⁰AF INST. 51-202, *supra* n.61, ¶ 3.4.

⁷¹JAGMAN, *supra* n.61, ¶ 0110b; CG MILITARY JUSTICE MANUAL, *supra* n.61, ¶ 1.D.1.f.

⁷²Holzer, *supra* n.29, at 18.

⁷³AF INST. 51-202, *supra* n.61, ¶ 3.12.2.

⁷⁴AR 27-10, *supra* n.61, ¶¶ 3-16c(2), 3-16a(1), 3-36.

⁷⁵*Id.* ¶ 3-18c.

⁷⁶JAGMAN, *supra* n.61, ¶ 0109b; CG MILITARY JUSTICE MANUAL, *supra* n.61, ¶ 1.C.2.b.

⁷⁷JAGMAN, *supra* n.61, ¶ 0109c.

⁷⁸Holzer, *supra* n.29, at 19.

⁷⁹JAGMAN, *supra* n.61, ¶ 0111c; AR 27-10, *supra* ¶¶ 3-19b(2).

⁸⁰AF INST. 51-202, *supra* n.61, tbl. 3.1; CG MILITARY JUSTICE MANUAL, *supra* n.61, ¶ 1.E.1.c.

⁸¹JAGMAN, *supra* n.61, ¶ 0111e; CG MILITARY JUSTICE MANUAL, *supra* n.61, ¶ 1.E.1.c.

⁸²AR 27-10, *supra* n.61, tbl. 3.1. These reductions can be made by field grade commanders in the grade of 0-4 and above.

⁸³AF INST. 51-202, *supra* n.61, tbl. 3.1.

⁸⁴Maj. Gen. George S. Prugh Jr., *Observations on the Uniform Code Of Military Justice: 1954 And 2000*, 165 MIL. L. REV. 21, 39 (2000), available at www.jagcnet.army.mil/DOCLIBS/MILITARYLAWREVIEW.NSF/MLRDisplay?

⁸⁵Maj. Walter M. Hudson, *Two Senior Judges Look Back and Look Ahead: An Interview With Senior Judge Robinson O. Everett and Senior Judge Walter T. Cox III*, 165 MIL. L. REV. 42, 58 (2000), available at www.jagcnet.army.mil/DOCLIBS/MILITARYLAWREVIEW.NSF/MLRDisplay?. This is based on the observation of Judge Cox referring to the Navy's reaction to *United States v. Care*, 18 C.M.R. 535 (C.M.A. 1969), which required trial judges to conduct detailed providence inquiries before accepting guilty pleas. In a subsequent case, *United States v. Johnson*, 21 M.J. 211, 216-17 (C.M.A. 1986), Judge Cox stated in his concurrence that "The [Navy-Marine Corps] Court of Military Review's decisions ... evince concern that this court is ... paternalistic."

⁸⁶Hudson, *supra* n.85, at 45-46.

⁸⁷Hudson, *supra* n.85, at 87. See Lt. Col. Bradley J. Heustis, *Anatomy of a Random Court-Martial Panel*, ARMY LAW 22 (Oct. 2006), available at www.jagcnet.army.mil/DOCLIBS/ARMYLAWYER.NSF/TALDisplay.

⁸⁸MCM, *supra* n.2, R.C.M. 305(f), 305(e)(2)-(3), 305(h)(2)(C), and 305(i).

⁸⁹*Id.* R.C.M. 305(m).

⁹⁰MCM, *supra* n.2, R.C.M. 406.

⁹¹In the past there have been proposals to consolidate the service legal schools to save money. See Dwight Sullivan, *To Quote the*

Beach Boys, Be True to Your School, CAAFLOG (Oct. 28, 2008), available at caaflog.blogspot.com/2008/10/to-quote-beach-boys-be-true-to-your.html.

⁹²See 2015-2016 Course Information, UNITED STATES ARMY JUDGE ADVOCATE GENERAL'S LEGAL CENTER & SCHOOL, available at tjaglcspublic.army.mil/courses [hereinafter Army JAGLCS Course Information]; Judge Advocate General's School, United States Air Force, ANN. BULL.16 (2015-2016), available at www.afjag.af.mil/Portals/77/documents/AFD-151002-017.pdf [hereinafter Air Force JAGS ANN. BULL.]; Naval Justice School FY 17 Course Schedule, U.S. NAVY JUDGE ADVOCATE GENERALS' CORPS, available at www.jag.navy.mil/njs_curriculum.htm [hereinafter Naval Justice School Course Schedule].

⁹³The most obvious example is the Washington, D.C., area, which has a number of military installations, including the Pentagon (all services), Joint Base Myer-Henderson Hall (Army and Marine Corps), Joint Base Andrews-Naval Air Facility Washington (Air Force and Navy), Fort Belvoir (Army), Naval Support Activity Bethesda and Walter Reed National Military Medical Center (Army, Navy and Air Force), Fort McNair (Army), Joint Base Anacostia-Bolling (Navy and Air Force), the Washington Navy Yard, and Marine Corps Base Quantico.

⁹⁴One example is the beating death of Air Force Sgt. Juwan Johnson in 2005; seven soldiers and four airmen were involved in the crime. Steve Mraz, *Sgt. Juwan Johnson: His death and what it's meant for a gang*, STARS & STRIPES (May 13, 2007), available at www.stripes.com/news/sgt-juwan-johnson-his-death-and-what-it-s-meant-for-a-gang-1.63944.

⁹⁵In 2005 Congress directed that a number of military bases be consolidated with nearby or adjacent bases of another military service. This "joint basing" was designed to gain efficiencies by consolidating base management functions under one service. *Joint Basing*, 2009 Army Posture Statement, U.S. ARMY (May 7, 2009), available at www.army.mil/aps/09/information_papers/joint_basing.html.

⁹⁶UCMJ art. 17(a) (2016). This article provides "Each armed force has court-martial jurisdiction over all persons subject to this chapter. The exercise of jurisdiction by one armed force over personnel of another armed force shall be in accordance with regulations prescribed by the president."

⁹⁷Berrigan, *supra* n.3, 108-109.

⁹⁸UCMJ art. 22 (2016).

⁹⁹UCMJ art. 23(a)(6) (2016). See Holzer, *supra* n.29 at 8.

¹⁰⁰UCMJ art. 22(a)(8) (2016) (general courts-martial); UCMJ art. 23(a)(7) (special courts-martial). The "secretary concerned" is vested with the power to designate convening authorities. *Id.* This term is defined as "(A) the secretary of the Army, with respect to matters concerning the Army; (B) the secretary of the Navy, with respect to matters concerning the Navy, Marine Corps, and the Coast Guard when it is operating as a service in the Navy; (C) the secretary of the Air Force, with respect to matters concerning the Air Force; and (D) the secretary of Homeland Security, with respect to matters concerning the Coast Guard when it is not operating as a service in the Navy." MCM, *supra* n.2, R.C.M. 103(20) discussion. Unfortunately, this definition does not indicate whether a court-martial is a "matter concerning" the service of the convening authority or the accused. See Holzer, *supra* n.29, at 9.

¹⁰¹MCM, *supra* n.2, R.C.M. 201(e)(2)(B).

¹⁰²MCM, *supra* n.2, R.C.M. 103.

¹⁰³MCM, *supra* n.2, R.C.M. 201(e)(2)(C).

¹⁰⁴*Id.* *United States v. Egan*, 53 M.J. 570 (A. Ct. Crim. App., 2000) (special court-martial of Army soldier convened by Air Force commander of joint command was upheld, although BCD was disapproved because the directive providing convening authority was ambiguous). *See* Walsh & Dukes, *supra* n.55, for a discussion of this case.

¹⁰⁵MCM, *supra* n.2, pt. V.

¹⁰⁶AR 27-10, *supra* n.61, ¶¶ 3-7b, 3-8c; AF INST. 51-202, *supra* n.61, ¶ 2.5.1; JAGMAN, *supra* n.61, ¶ 0106d; CG MILITARY JUSTICE MANUAL, *supra* n.61, ¶ 1.A.4.e, 1.A.4.f.

¹⁰⁷Holzer, *supra* n.29, at 23.

¹⁰⁸*Id.* at 15.

¹⁰⁹Holzer, *supra* n.29, at 5.

¹¹⁰Holzer, *supra* n.29, at 6.

¹¹¹JOINT CHIEFS OF STAFF, JOINT PUB. 1-04, LEGAL SUPPORT TO MILITARY OPERATIONS (Aug. 2, 2016), fig. 1-4, *available at* www.dtic.mil/doctrine/new_pubs/jointpub.htm

¹¹²Walsh & Dukes, *supra* n.55, at 205.

¹¹³MCM, *supra* n.2, R.C.M. 201(e)(4).

¹¹⁴MCM, *supra* n.2, R.C.M. 503(b)(1) and (c)(1).

¹¹⁵Walsh & Dukes, *supra* n.55, at 205.

¹¹⁶C. Todd Lopez, *Army's Special Victims Prosecutors Bring Enhanced Expertise to Courtroom*, ARMY NEWS SERVICE (Oct. 16, 2013), *available at* www.army.mil/article/113253/Army_s_special_victims_prosecutors_bring_enhanced_expertise_to_courtroom/.

¹¹⁷*United States v. Gray*, 51 M.J. 1, 46 (1999).

¹¹⁸UCMJ art. 25(c)(1) (2016). This limitation was recently deleted. 2017 N.D.A.A. *supra* n.30, §5182, 10 U.S.C. §825 (2016). This deletion will be effective no later than Jan. 1, 2019. *Id.* §5542.

¹¹⁹UCMJ art. 25(c)(2) (2016). *See* Walsh & Dukes, *supra* n.55, at 207.

¹²⁰Walsh & Dukes, *supra* n.55, at 205.

¹²¹Fredric I. Lederer, *The Courtroom 21 Project: Creating the Courtroom of the Twenty-First Century*, 43 JUDGES J. 39 (2004), *available at* scholarship.law.wm.edu/popular_media/289.

¹²²The Army's public docket is located on the U.S. Army Judge Advocate General's Corps website at www.jagcnet.army.mil/Apps/eDocket/eDocketPublic.nsf. The Air Force's public docket is located on the U.S. Air Force Judge Advocate General's Corps website at www.afjag.af.mil/About-Us/Docket.

¹²³Army JAGLCS Course Information, *supra* n.92, p. 54.

¹²⁴Air Force JAGS ANN. BULL., *supra* n.92, p. 16.

¹²⁵Naval Justice School Course Schedule, *supra* n.92.

¹²⁶Army JAGLCS Course Information, *supra* n.92, pp. 42-46.

¹²⁷Air Force JAGS ANN. BULL. *supra* n.92, pp. 10-26.

¹²⁸UCMJ art. 93 (2016); MCM, *supra* n.2, pt. IV, ¶ 17c(2); *United States v. Dear*, 40 M.J. 196 (C.M.A. 1994) (conviction of cruelty and maltreatment upheld where accused made repeated comments of sexual nature to victim).

¹²⁹The *Manual for Courts-Martial* defines sexual harassment for these purposes as the "influencing, offering to influence, or threatening the career, pay, or job of another in exchange for sexual favors." MCM, *supra* n.2, pt. IV, ¶ 17c(2).

¹³⁰DEP'T OF AIR FORCE, POLICY DIR. 36-27, EQUAL OPPORTUNITY (EO), ¶ 10 (Apr. 9, 2012) [hereinafter AF POLICY DIR. 36-27], *available at* www.e-publishing.af.mil; AR 600-20, *supra* n.42, ch. 7; DEP'T OF NAVY, SEC. NAVY INST. 5300.26D, DEP'T OF NAVY (DON) POLICY ON SEXUAL HARASSMENT (Jan. 3, 2006) [hereinafter SECNAV INST. 5300.26D], *available at* doni.daps.dla.mil/default.aspx; DEP'T OF HOMELAND SECURITY, U.S. COAST GUARD, COMMANDANT INST. M5350.4C, COAST GUARD CIVIL RIGHTS MANUAL 2-C.9 (May 20, 2010) [hereinafter CG CIVIL RIGHTS MANUAL], *available at* www.uscg.mil/directives.

¹³¹AF POLICY DIR. 36-27, *supra* ¶ 10.

¹³²AR 600-20, *supra* n.42, ¶ 7-4a.

¹³³SECNAV INST. 5300.26D, *supra* n.130, encl. 1.

¹³⁴CG CIVIL RIGHTS MANUAL, *supra* n.130, p. 2-C.9.

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