



THE NIMJ GAZETTE

No. 130—1 July, 2023

Litigation

The Court of Appeals for the Armed Forces has decided [*United States v. Anderson*](#) and holds that a servicemember is not entitled to a unanimous vote for findings of guilty at court-martial. The 90 window to file a petition for a writ of certiorari is now on the countdown.

Larrabee continues to progress at the Supreme Court. Prof. Robert Leider of George Mason University's Antonin Scalia Law School has filed [this amicus curiae brief](#) in support of the petitioner in *Larrabee v. Del Toro* (U.S. No. 22-1082). The government has until July 7 in which to respond to the petition.

Reports

Tyler McBrien, [*UN Special Rapporteur Releases Guantánamo Report*](#). LawFare, 27 June 2023.

[*Federal Offenders Who Served in the Armed Forces*](#). U.S. Sentencing Commission, October 2021.

June 2023: DCAF Geneva Center for Security Sector Governance has published [Military Justice Fundamentals](#) in collaboration with NIMJ.

June 2023: Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces: [*Report on Reforming Pretrial Procedures and Establishing Uniform Prosecution Standards, Recommendations for Article 32, UCMJ, and the Secretary of Defense's Disposition Guidance*](#).

June 2023: Deputy Secretary of Defense Kathleen H. Hicks issued [this](#) memorandum setting out steps to be evaluated with a view to reducing racial disparities in the investigative and military justice systems. The 17 recommendations are based on the work of a DoD Internal Review Team, and will now be reviewed by cognizant offices within the department. The IRT's report can be found [here](#).

[*Federal Offenders Who Served in the Armed Forces*](#). U.S. Sentencing Commission, October 2021.

The Department of Veterans Affairs estimates that there are more than 19 million Americans who are veterans. Since 9/11, almost four million Americans have served in uniform, with about 2.5 million deployed

overseas to a combat zone. As of end of 2016, the Bureau of Justice Statistics of the U.S. Department of Justice estimated that there were 107,400 veterans in federal and state prisons, including local jails. Over 10,000 veteran offenders were in the custody of the Federal Bureau of Prisons at the end of 2019, accounting for almost six percent of all BOP inmates. Veterans in state prisons accounted for 7.9 percent of all state prisoners, a decrease from a high of 24.0 percent of all persons incarcerated in state prisons and 25.0 percent of all persons incarcerated in jails in 1978.

Books

Megan MacKenzie, [*Good Soldiers Don't Rape*](#). Cambridge Univ. Press, 2023. A preview is available on Google Books. “Ms. MacKenzie is one of the world’s leading experts on gender and the military. Her book “Beyond the Band of Brothers: The US Military and the Myth That Women Can’t Fight (2015) was a landmark contribution that shaped debates on gender integration and military culture. Since then she has led international studies on military suicide, sexual violence, and women in combat roles.”

[THE NEWPORT MANUAL ON THE LAW OF NAVAL WARFARE](#). “The Newport Manual on the Law of Naval Warfare is the first effort to restate the law of naval warfare as a purely *lex lata* exercise since 1955. It is designed to provide a practical guide for commanders and seafarers, lawyers and officials, and educators and students. In doing so, the Manual also factors in the developments in warfighting technologies in recent decades, which have significantly influenced the nature of war at sea.”

(State) Legislation

You may now be familiar with legislative changes to the [Indiana military law code](#). The changes got attention because the new law removed the right to refuse Article 15 punishment. Now GMJR reports on proposed changes in Wisconsin. The [changes appear designed to align](#) the state code with the UCMJ more. NIMJ links to the various state codes [here](#).

Worth a look (new and old)

GMJR has drawn attention to Jara & Campos, [*Military Courts and Human Rights Violations in Brazil from the Perspective of the Inter-American Human Rights System*](#). EJIL:Talk, 23 June 2023. (The Supreme Federal Court of Brazil will soon rule whether members of the armed forces that commit crimes against civilians during peacetime should be tried before civilian or military courts.)

Kyle & Reiter, [*Military Courts, Civil-Military Relations, and the Legal Battle for Democracy: The Politics of Military Justice*](#). Routledge, 2020.

Roe Bloch, [*Should Have Known Better? The Standard of Knowledge for Command Responsibility in International Criminal Law*](#). 100 Int. L. Stud. 314 (2023).

Cheers, Phil Cave, Editor