

Events

April 8, 2022, JUSTICE IN WAR: Accountability for Battlefield Misconduct. Co-hosted with The Judge Advocate General's Legal Center and School (TJAGLCS) at Charlottesville, VA. (**Note**, vaccination proof required of those attending in person.)

Forthcoming. Univ. Maryland at Baltimore. Hugh. In preparation, we recommend Hugh McClean, Discharged and Discarded: The Collateral Consequences of a Less-Than-Honorable Discharge. 121 COLUMBIA L. REV. 2203 (2021) and Patricia Kime, 'Bad Paper' Discharges of Some Marines and Sailors to Get Second Look. Military.com, February 15, 2022.

March 9 – 10, U.S.C.A.A.F. annual CLE & Training at American Univ.

March 10, 2022: NIMJ Zoom webinar: Accountability for American War Crimes, Up Close and Personal: A Conversation

Policy Statements

February 28, 2022. NIMJ submission to the Office of The High Commissioner for Human Rights Working Group on the Use of Mercenaries.

People

Litigation and Cases



Phil Cave and Frank Rosenblatt gave an oral presentation for NIMJ as amicus in *Prosecutor v. Ongwen* at the ICC on February 16, 2022. We discussed the issue of cumulative convictions. We had also briefed a lack of mental responsibility. Paul Behrens, Edinburgh Univ. was there on the same issue. The ICC received over 30 requests for amicus status in response to their outreach. Of those, 18 were granted and argued over a five-day period. So, the ICC set a precedent for itself.

In re Abd Al-Rahim Muhammed Al-Nashiri. A new C.A.D.C. filing suggests the government is reassessing the admissibility of evidence obtained through torture. (Thanks to Michel Paradis for this.)

Unanimous court-martial verdicts

United States v. Scott, Petition at the CAAF denied March 3, 2022. There is no review at the Supreme Court. District Court next?

Writs in *United States v. Dial* and *United States v. Ferriera*, are pending at ACCA with the trial proceedings stayed. CAAFlog covers the issue at <https://www.caaflog.org/home/unanimity-ruling-of-note>. The loser does not have Supreme Court access. See NIMJ position paper on Supreme Court access for servicemembers.

Updating the MANUAL FOR COURTS-MARTIAL

The President has signed an Executive Order creating a specific offense of sexual harassment. Prior practice of charging sexual harassment as an orders violation. (Still not available on the JSC website.)

Worth a look (new and old)

Cave, Christensen, Fidell, Fissell, and Maurer, *The Division of Authority Between the Special Trial Counsel and Commanders Under the Uniform Code of Military Justice: Planning Now for the Next Phase of Reform*. Lawfare, February 28, 2022.

Yes, *Chevron* comes up in military cases (at least 42). See, e.g., *United States v. Alkazahg*. 81 M.J. 764 (N-M Ct. Crim. App. 2021); *United States v. Johnson*, 76 M.J. 673 (A. F. Ct. Crim. App. 2017) rev. denied 77 M.J. 17 (C.A.A.F. 2017); Amy Semet, *Statutory Interpretation and Chevron Defense in the Appellate Courts: An Empirical Analysis*. 12 U.C. IRVINE L. REV. 621 (2022).

Eric Bjorge, *Unilateral and Extraterritorial Sanctions Symposium: The Human Rights Dimension of Unilateral Sanctions*. OpinioJuris, February 3, 2022.

Tom Dannenbaum, *The Legal Obligation to Recognize Russian Deserters as Refugees*. JustSecurity, March 2, 2022.

Charlie Dunlap, *The Ukraine crisis and the international law of armed conflict (LOAC): some Q & A*, Lawfire, February 27, 2022.

Geoffrey S. Corn, *Congress Needs to Amend the War Crimes Act 1966*. Lawfare, March 2, 2022.

Last word

Feel free to pass The Gazette on to anyone you think may be interested in our work and what is happening in the world of military law. Also, caaflog.org publishes a weekly (usually Friday) update of military justice cases and events as a Week in Review.

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