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Legislation/Policy

We have been told that the Air Force policy of referring charges to trial has or will shortly be changed. The policy will preclude referring charges to trial if there is no reasonable likelihood of a conviction. The policy follows that of the Department of Justice (in the Justice Manual) and also those listed in ¶2.1.h., Appendix 2.1, Non-Binding Disposition Guidance, Manual for Courts-Martial. (Editorial comment.) Anecdotally, practitioners have started to see the effect of cases not moving past the Article 32 stage and being disposed of through administrative actions. If the policy persists, the number of docketed cases will go down, and the workload of military judges and court staff will decrease. There may then be an "improvement" in the conviction rate. With fewer cases in the system, we may also see a reduction in case processing times.

Symposium

[*Invisible Wounds of War: Legal Issues Facing Veterans*](#). March 13, 2023, Mississippi College of Law. There is a call for related papers to be published in the law review.

The Second International Military Justice Forum convenes at Stellenbosch, South Africa—8-9 November 2023. The announcement and call for papers are [here](#).

People

We have been told that all Army staff judge advocates have been directed to closely liaise with local law schools to find ways to encourage their graduates to become Army judge advocates. The directive responds to a "need" for additional judge advocates to accommodate standing up the Office of Special Trial Counsel.

In December, President Biden pardoned one servicemember convicted at court-martial.

Vincente Ray Flores-Air Force-Reduction in rank to grade E-3 (as amended); forfeiture of \$700 pay per month for four months; confinement for four months, suspended for participation in the Air Force Return to Duty Program (May 16, 2008) Wrongfully using 3,4 methylenedioxymethamphetamine; underage drinking.

CNN reports that he "*was court-martialed when he was around 19[.].*"

Noteworthy Cases

An update—of sorts—about the MARSOC3 courts-martial. For those who had been following the *Gilmet* case, he was given immunity to testify. Jeff Schogol, [What you need to know about the 'MARSOC3' trial](#). Task&Purpose, January 27, 2023. On February 2, 2023, it was announced that two were found not guilty of the most serious offenses. See Irene Loewenson, [2 Marine Raiders, cleared of homicide, get no punishment for drinking](#). Marine Times, February 2, 2023.

Whether a court-martial conviction requires a unanimous vote is pending at CAAF, and we should see oral argument and a decision this season. Accordingly, the CAAF trailer park continues to fill up with grants sans brief on the issue.

By now, we should all be aware that the CAAF has granted several petitions challenging the civilian confinement conditions at facilities housing Air Force prisoners. For example,

No. 22-0280/AF. U.S. v. D'Andre M. Johnson. CCA 39676. WHETHER MILITARY OFFICIALS ACTED WITH DELIBERATE INDIFFERENCE IN SENDING APPELLANT TO LOWNDES COUNTY JAIL—A CIVILIAN CONFINEMENT CENTER WITH "A HISTORY OF INHUMANE LIVING CONDITIONS"—AND WHETHER APPELLANT SUFFERED CRUEL AND UNUSUAL PUNISHMENT THEREBY WHEN, INTER ALIA, CONFINEMENT OFFICIALS FAILED TO PROTECT HIM FROM PHYSICAL ATTACK, WITHHELD HIS MAIL, WITHHELD VISITORS, AND WOULD NOT LET HIM GO OUTSIDE WHILE HE LIVED IN UNSANITARY CONDITIONS.

A new GAO Report to Congressional Committees suggests the problem may not be limited to civilian facilities but includes Air Force Military Confinement Facilities. See [MILITARY CORRECTIONAL FACILITIES: Consistent Application of Standards and Improved Oversight Could Enhance Health and Safety](#). GAO-23-105082, December 22, 2022.

Worth a look (new and old)

Eleanor T. Morales and John W. Brooker, [Restoring Faith in Military Justice](#). 55 CONN L. REV. 77 (2022).

Eugene R. Fidell, [The Military Justice Provisions of the National Defense Authorization Act for Fiscal Year 2023](#). JustSecurity, January 3, 2023.

Joshua Paladino, [The First Amendment and Military Justice: Threats to Political Neutrality](#). 98 NOTRE DAME L. REV. REFLECTIONS 114 (2023).

Michael C. Reade, [Whose side are you on? Complexities arising from the non-combatant status of military medical personnel](#). 359 NEW ENGLAND J. MED. 1087, January 11 2023.

MAJ Michael D. Winn, [Command Responsibility for Subordinates' War Crimes](#). ARMY LAWYER, Issue 2, 2022.

Travis L. Eddleman, [The Posse Comitatus Act and the American Military: An Old Law Under New Light](#). Small Wars Journal, January 25, 2023.

Maria Elena Vignoli, [The Long – Yet Still Uneven - Arc of International Justice](#). OpinioJuris, January 27, 2023.

Cheers, Phil Cave, Editor