



THE NIMJ GAZETTE

No. 132—1 September 2023

New Rules

The President has issued an Executive Order amending the Manual for Courts-Martial. The changes in Annex 1 are immediate. Those in Annex 2 will become effective later this year. [You can find the new rules here.](#)

You can find much of the new rules in the now published [MANUAL FOR COURTS-MARTIAL \(2023\)](#), effectively a temporary measure. The JSC promises the 2024 edition “no later than the end of the year.” The USMC prepared a [floe chart to accompany the manual](#) on how to navigate the ice of a reported offense through referral under the new STC system.

Meetings and Symposia (Save the date)

1100, 8 September 2023: NIMJ (Zoom) "*The U.S. Relationship with the International Criminal Court in 2023: a NIMJ Expert Roundtable Discussion.*" The event is sold out.

6 October 2023: NIMJ [Conference on Transparency in Military Justice.](#)

Litigation

The Court of Appeals for the Armed Forces has decided [United States v. Gilmet](#). 83 M.J. ___, 2023 CAAF LEXIS 564, WL 5029229 (C.A.A.F. Aug. 3, 2023). NIMJ submitted an [amicus pleading](#) in this case. A unanimous court holds that Gilmet was prejudiced because of unlawful influences affecting his defense counsel and their representation.

During [a] November 2021 meeting at Camp Lejeune, North Carolina, with the Marine Corps JAGs, Col S. explained the impending creation of a new billet in which a senior judge advocate, as opposed to a convening authority, would be the referral authority for certain crimes. In response to the explanation of the new billet, [Gilmet’s DC] asked what would be done to protect the attorney acting as a convening authority from outside influences. To illustrate his point, [the DC] referenced the existing measures that protect defense counsel from similar pressures.

In response, Col S. stated that defense attorneys "may think they are shielded, but they are not protected." He continued, "[y]ou think you are protected but that is a legal fiction," or words to that effect. Col S. then squared his shoulders to [the DC] and said "[DC}, I know who you are and what cases you are on, and you are not protected." Finally, Col S. alluded to the fact that the Marine Corps JAG community is small and that superiors sitting on promotion boards will know what "you did." To illustrate his point, Col S. referenced judge advocates who had served as defense counsel for extended periods of time who, in his view, should have been promoted but were not.

Following the meeting, [the DC] believed that continuing to represent Appellant would put his military career in jeopardy. Although [the ADC] was not at the meeting, after hearing about what Col S. said, he also believed that he could no longer zealously represent Appellant without putting his career in jeopardy. [The DC's] shared their concerns with Appellant, which caused him to doubt their loyalty to him and his defense.

2023 CAAF LEXIS 564 *3. The court avoided deciding whether the doctrine of apparent unlawful influence exists because of recent changes the Article 37, UCMJ.

In *U.S. Navy Seals, et. al. v. Biden. et. al.*, the court has dismissed the case.

This appeal involves the Navy's near-categorical refusal to accommodate servicemembers' inability to receive a vaccine due to their religious convictions. The district court twice enjoined the Navy's policies as likely illegal under RFRA. After entry of those injunctions, however, Congress ordered the military branches to rescind their mandates. The Navy complied with that directive and then went above and beyond it—rescinding all the challenged policies and formally announcing that COVID-19 vaccines would not be imposed on any servicemember.

The Navy's actions moot this appeal. So, despite the overwhelming importance of the issues presented, we lack jurisdiction to address them. In reaching that conclusion, we join other circuits that have dismissed similar challenges as moot.

Reports

[NIMJ Gitmo Reports, Vol. 8](#)

Worth a look (new and old)

Catherine Mumford, [Spotlight on Stealthing](#). JAG Reporter, 12 July 2023. The author suggests how sexual intercourse without a condom might be a nonconsensual act. She references developments of this theory in several countries and in several U.S. states.

Geoff Corn, 2023 [DoD Manual Revision—What’s in a Presumption](#). Articles of War, Lieber Institute, West Point, 3 August 2023.

Vanessa Guillén is a name familiar to military justice practitioners. Her death was one of the major events leading to substantial changes in the UCMJ.

“A Texas woman who helped hide the remains of Army Specialist Vanessa Guillén in 2020 was sentenced to 30 years in prison — the maximum penalty allowed — late Monday.” Matt White, [Woman sentenced to 30 years in Vanessa Guillén murder](#). Task & Purpose, 15 August 2023. Ren Larson, [New law named for Vanessa Guillén, will revamp military investigations into sexual assault, harassment](#). The Texas Tribune, 29 December 2021.

Kiran Mohandas Menon, [International Criminal Justice’s Nostalgia](#). OpinioJuris, 28 August 2023.

Cheers, Phil Cave, Editor