

The Uniform Code of Military Justice and Manual for Courts-Martial

Brief History. The historical foundation for our military law and our criminal justice system is the 1774 British Articles of War. In fact, our first codes, the American Articles of War and Articles for the Government of the Navy, predated the Constitution and the Declaration of Independence.

Through the First World War, the codes and the system went through some amendments and revisions but were substantially unchanged for more than 100 years. Throughout most of this time period, we had a very small standing Army. Those who entered the military understood that they were going to fall under a different system of justice with unique and different procedures and punishments.

A large number of citizen-soldiers served in the military during World War I. Even though some people had bad experiences at the hands of the military justice system as it existed at that time, there was not an overwhelming demand to make big changes because it was the “war to end all wars.” World War I was viewed as an aberration and the United States quickly reverted to a small standing Army after the war ended. In World War II, however, the United States had over sixteen million men and women serving in the armed forces. Incredibly, there were about two million courts-martial during those war years.

There were more than sixty general courts martial convictions for every day that the war was fought: a total of about eighty thousand felony court convictions during the war. The soldiers and sailors of World War II, like those of World War I, were regular citizens who volunteered or were drafted. Many of these citizens also had some very unpleasant experiences with the military justice system. At that time, the military justice system look quite different than it does today and did not offer accused the protections afforded by the civilian courts system. It was a system that was foreign to many American citizens and they disapproved of the way criminal law was being applied in the military.

Following the war, many organizations studied and made proposals to improve the military criminal legal system, to include: the American Bar Association, the American Legion, the Judge Advocate Association, and the New York Bar Association. Congressional hearings on the military justice system were also started.

After unification of the armed services under the Department of Defense in 1947, Secretary Forrestal, the first Secretary of Defense, decided that there should not be separate criminal law rules for the different branches of service. He desired a uniform code that would apply to all services. His efforts set the stage for a new uniform system of discipline.

Role of Congress and The President. The foundation of military law is the Constitution of the United States. The Constitution provides that Congress has responsibilities to make rules to regulate the military; it also establishes the President as Commander in Chief of the armed forces.

Congress exercised its responsibilities over military justice by enacting the Uniform Code of Military Justice - the “UCMJ.” The UCMJ is legislation that is contained in Title 10 of the United States Code, Sections 801 through 946. It is the military’s criminal code. It was enacted in 1950 as a major revision of then-existing military criminal law, and became effective the following year.

The structure of the 1950 UCMJ and the 1951 Manual for Courts-Martial (MCM) provided substantial guarantees of an open and fair process that continue to exist today. The UCMJ has been amended on a number of occasions since then, with significant changes occurring in 1968 and 1983. Some of the primary changes enhanced the role of trial judges. The need for qualified military judges, who were experienced attorneys, to be in charge of the judicial process and all courts-martial was made clear. Also, the requirement to have a licensed attorney as defense counsel in courts-martial was established. In 1984, there was another substantial revision to the MCM and the military rules of evidence became substantially the same as the Federal Rules of Evidence used in our Federal court system. The procedural requirements were also changed into Rules for Courts-Martial.

The UCMJ is essentially a complete set of criminal laws. It includes many crimes punished under civilian law (e.g., murder, rape, drug use, larceny, drunk driving, etc.), but it also punishes other conduct that affects good order and discipline in the military. Those unique military crimes include, for example, such offenses as desertion, absence without leave, disrespect towards superiors, failure to obey orders, dereliction of duty, wrongful disposition of military property, drunk on duty, malingering, and conduct unbecoming an officer. The UCMJ also includes provisions punishing misbehavior before the enemy, improper use of countersign, misbehavior of a sentinel, misconduct as a prisoner, aiding the enemy, spying, and espionage. The UCMJ is implemented through Executive Orders of the President of the United States pursuant to his authority under Article 36, UCMJ (10 USC § 836). Those Executive Orders form a comprehensive volume of law known as the Manual for Courts-Martial ("MCM"). The Preamble to the MCM explains that:

"The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States."

Commanders are given significant roles in the military justice system because discipline is essential to mission readiness. At the same time, there are extensive safeguards to protect against abuse of authority. In the opinion of many legal scholars, the UCMJ has not only kept pace with innovations in civilian criminal jurisprudence, but has actually led the way, establishing more safeguards to protect the rights of those accused of criminal offenses. The UCMJ and MCM are primarily kept current with the basic principles of American jurisprudence through two standing committees, The Code Committee and the Joint Service Committee on Military Justice.

The Code Committee. Article 146 of the UCMJ, (Section 946, Title 10, United States Code), establishes a "Code Committee" that meets at least annually to prepare an annual comprehensive survey of the operation of the UCMJ. This committee consists of the judges of the United States Court of Appeals for the Armed Forces; The Judge Advocates General of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, and the Staff Judge Advocate to the Commandant of the Marine Corps. Two members of the public appointed by the Secretary of Defense are also members of the committee. A report is then submitted to the Committees on Armed Services of the Senate and the House of Representatives. This report includes information on the number and status of pending cases, as well as any recommendations relating to uniform policies regarding sentencing; amendments to the UCMJ; and any other matter the committee considers appropriate.

The Joint Service Committee on Military Justice. The Joint Service Committee on Military Justice (“JSC”) was established on 17 August 1972 by the Judge Advocates General and the General Counsel of the Department of Transportation. The primary function of the JSC is:

“To prepare and evaluate such proposed amendments and changes as may from time to time appear necessary or desirable in the interest of keeping the Uniform Code of Military Justice (UCMJ) and Manual for Courts-Martial (MCM) current with the decisions of the U.S. Supreme Court, the U.S. Court of Appeals for the Armed Forces, and established principles of law and judicial administration applicable to military justice, as well as with the changing needs of the military services.”

The JSC also performs a second function as an advisory body to the Code Committee established under Article 146, UCMJ. The JSC chairman briefs the Code Committee on the status of JSC actions when the Code Committee meets, and the Code Committee has, in the past, asked the JSC to study specific issues.

Department of Defense (DoD) Directive 5500.17 also states that it is DoD policy to review the MCM annually to assist the President in fulfilling his duties under the UCMJ. Under the direction of the General Counsel of the Department of Defense (DoD/GC), the JSC as the body to accomplish the annual review. The JSC consists of a Voting Group and a Working Group; with each service (including the Coast Guard) having a representative on each group. The JSC Voting Group members are the chiefs of their respective Service’s criminal law or military justice divisions. In addition, the United States Court of Appeals for the Armed Forces and the DoD/GC are invited to provide a staff member to serve in a non-voting capacity with the JSC. The JSC chairmanship rotates biennially among the services.

Throughout the year, the JSC reviews proposals for changes to the MCM. Any interested person may submit changes to the UCMJ and MCM to the JSC. The JSC recommends changes to the MCM along with accompanying Discussion and Analysis. The proposed changes are prepared in an annual review, and forwarded to DoD/GC in May of each year. Once the review has been completed, the chairman of the JSC ensures that notice of the proposed changes is published in the Federal Register. This notice begins a 75-day public comment period in which a public meeting is also scheduled. At the public meeting, the JSC listens to comments and proposals from members of the general public. After the public meeting and comment period, the JSC reviews the recommended proposals and the comments. Modifications may be made to a proposal or the proposal may even be eliminated. The review is then prepared as a draft Executive Order (EO) for further executive coordination and implementation by the President.