



# THE NIMJ GAZETTE

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## Greetings

This will be the last edition for 2023. NIMJ wishes everyone a Happy New Year, whether it's on 1 January or a bit later according to your own calendar. We'll give you the time-honored Navy wish that you have [fair winds and following seas](#) for the coming year.

## The 1917 Project

The U.S. Army is overturning the convictions of 110 Black soldiers -- 19 of whom were executed -- after they were found guilty of murder, mutiny and assault after a riot during the summer of 1917. [Deputy Secretary of the Army Michael Mahoney directed the Army Review Boards Agency](#) to “set aside” the convictions of all soldiers from the 3rd Battalion, U.S. 24th Infantry Regiment, the [Houston Chronicle](#) reported. The records of the soldiers who were assigned to protect [Camp Logan](#) outside of Houston will now reflect that they served honorably. Early on the project [NIMJ took an interest in this issue](#).

## Legislation

GMJR has a useful report of possible changes in Canada removing sexual offenses from court-martial jurisdiction.

On November 20, 2023, the Defence Minister, the Honorable Bill Blair, announced to [CBC National News](#) that the National Defence Act, in particular section 70, will soon be amended – “hopefully by the end of 2023”, he added -- to transfer jurisdiction for the investigation and prosecution of “sexual assaults” [rape] from the military to civilian courts.

## New Rules

You can find many new rules in the now-published [MANUAL FOR COURTS-MARTIAL \(2023\)](#), which is a temporary measure. The JSC promises the 2024 edition “no later than the end of the year.” The USMC prepared a [flow chart to accompany the manual](#) on navigating from reporting an offense through referral under the new STC system.

## **Proposed New Rules**

The latest proposed Rules changes to the Manual for Courts-Martial are [here](#). The [JSC requests comments](#) on or before 18 December 2023, and a public meeting was held on 14 November 2023 at CAAF.

## **Academic Opportunity**

The U.S. Naval Academy, Vice Admiral **James B. Stockdale** Center for Ethical Leadership has announced its search for a [Stockdale Ethics Fellow](#) for the next year. Applications due by 15 January 2024 and will continue until the position is filled.

The U.S. Naval Academy's Stockdale Center invites applications for its annual Resident Fellowship Program for academic year 2024-2025. One of the Center's premier programs is the Resident Fellowship.

The Secretary of the Navy and the Superintendent of the Naval Academy established the Center in 1998 to be a thought leader in the field of ethical military leadership and serve the Naval Academy, the Naval Service and national institutions of influence. The Center's mission is "to empower leaders to make courageous ethical decisions," and the Center accomplishes this mission through research, consultation, innovation and dissemination.

The Stockdale Center anticipates selecting up to four residential fellows, whose focus will be a weekly seminar devoted to a defense-related ethics topic. Past topics have included "The Intellectual History of the Western Just War Tradition," "Civil-Military Relations," "Comparative Warfare Ethics," "Moral Virtue and Moral Injury," "Liberal Democracy: Critics and Challenges," and "The Ethics of Future Conflict Scenarios." Fellows also have the opportunity to teach and conduct personal research in cooperation with a large department of civilian philosophers and approximately forty senior military officers who teach the Academy's required core ethics course. We encourage qualified applicants from diverse backgrounds to apply.

This is an onsite, gift-funded, federal excepted service position. Health and retirement benefits are not offered. This full-time, in-residence fellowship runs from approximately mid-August 2024 until mid-May 2025.

## **Theater, absurd or not**

There may be some resonance for those of us who had clients involved in the GDMA tragedy. [From Scandal to Symphony: The Unheard Voices of Fat Leonard](#)

(ts2.space). Some may be unaware, but the movie [A Few Good Men](#) originated from a real court-martial, with lots of Hollywoodizing. The allegations stemmed from assaults, not murder, but that didn't trouble the playwright or Hollywood. The actual accused's cases were appealed, and the appellate lawyer provided the transcript to a brother--Aaron Sorkin, who then wrote the stage play.

## International

Rachel Blair, [Military Justice in Chile: Exploring its Ongoing Violation of the American Convention on Human Rights](#). 11 JACKSON SCH. J. INT'L STUDIES 19, 2022. From the conclusion.

The Chilean military justice system's jurisdiction over civilian human rights cases is an enduring manifestation of Pinochet's legacy that obstructs the country's human rights progress. When it was created in 1948, the IAHRs was intended to be a tool for citizens of formerly dictatorial Member States like Chile to hold their governments accountable for human rights abuse according to international standards.<sup>73</sup> However, the IAHRs' ability to fulfill its purpose depends on whether its procedures take the structural weaknesses left by dictatorial legacies in the Member States into account.

Pinochet's institutionalization of military power prior to his departure from office played a crucial role in protecting the military justice system from domestic accountability.

Pierre Bricard, [The Role of the Military Prosecution in France](#). XLVIII Magazine of the Military Public Ministry 175 (2023).

[I]n France in peacetime, the common penal code and law code of criminal procedure are applied to militaries who have committed a criminal offense. Common law offenses (which are described by the French penal code) and special military offenses (which remain described and punished in the military justice code) are now judged by civil courts.

...

Now in peacetime the military public prosecutor no longer depends on the Minister of Defense but on the Minister of Justice. The peacetime military courts being abolished in 1982, military criminal cases are therefore judged by common Courts composed of civilian judges and the procedure has been brought into line with common law.

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### Worth a look (new and old)

From GMJR. Compare Sikandar Noorani, [\*Raison D'etre of Military Courts\*](#). Daily Times (Pak.), 6 November 2023 and Rida Hosain, [\*Justice or discipline\*](#). Geo News, 5 November 2023.

Saikrishna B. Prakash, [\*Deciphering the Commander-in-Chief Clause\*](#). 133 YALE L. J. 418 (2023).

The conventional wisdom is that the Commander-in-Chief Clause arms the President with a panoply of martial powers. By some lights, the Clause not only equips the President with exclusive control over military operations, but also conveys the powers to start wars, create military courts, direct and remove officers, and wield emergency wartime powers. Under such readings, the meaning of “commander in chief” is as obvious as it is unequivocal—it confers some measure of absolute and unchallengeable authority upon the President. Yet, seemingly paradoxically, proponents of this stance cannot say where the Commander in Chief’s power begins and ends. Establishing the Clause’s limits is an acute and persistent problem.

Using eighteenth-century understandings as a yardstick, this Article topples the orthodox reading of the Clause and demarcates the Clause’s elusive frontiers. . .

Cheers, Phil Cave, Editor