

109. (ALL) How do the Services’ prosecutors and military defense counsel compare the rules surrounding the accused’s character evidence as part of the “Good Soldier Defense” with the rules of evidence applied in civilian courts.

DoD	<p>Response: Good military character evidence is admissible for findings purposes only to the extent that it may be considered under Military Rule of Evidence 404. Military Rule of Evidence 404(a) provides that “[e]vidence of a person’s character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.” That rule contains several exceptions, one of which provides that an “accused may offer evidence of the accused’s pertinent trait.” Mil. R. Evid. 404(a)(1); see, e.g., <i>United States v. Humpherys</i>, 57 M.J. 83, 92 (C.A.A.F. 2002) (“Mil.R.Evid. 404(a)(1) allows the accused to present evidence of his good military character if that trait is pertinent to the charged offense. The rule also allows the Government to present character evidence in rebuttal of the good-military-character evidence presented by the defense.”). Except for referring to a “defendant” rather than “accused,” Federal Rule of Evidence 404 is identical. Thus, the rules under which good military character evidence is admitted are, for all practical purposes, the same as the rules that are applied in federal civilian trials, as well as those in most states.</p> <p>In the federal civilian context, “Courts have held that the general character trait of law-abidingness is pertinent to almost all criminal offenses.” <i>In re Sealed Case</i>, 352 F.3d 409, 412 (D.C. Cir. 2003).</p> <p>Similarly, evidence concerning a defendant’s honesty “has been held admissible . . . when the defendant is charged with an offense in which fraud or falsehood is one of its statutory elements.” <i>Id.</i> Thus, federal courts have recognized the general admissibility of evidence going to certain traits, such as law- abidingness, under rules comparable to those under which military courts consider the admissibility of good military character evidence.</p>
USA	<p>Military Rule of Evidence 404 is modeled on Federal Rule of Evidence 404 and is virtually the same for criminal proceedings. Admissibility of character evidence under these rules and analogous state rules depends on the unique facts and circumstances of any individual case.</p>
USAF	<p>DoD is collecting and consolidating the answer to this question from all of the services and will provide a single response.</p>
USN	<p>Responses are to be provided by OSD.</p>
USMC	<p>DoD Office of General Counsel will provide this answer.</p>
USCG	<p>The Supreme Court long has recognized that, in some circumstances, character evidence alone “may be enough to raise a reasonable doubt of guilt,” as “the jury may infer that” an accused with such a good character “would not be likely to commit the offense charged.” <i>Michelson v. United States</i>, 335 U.S. 469 (1948). The Court of Appeals for the Armed Forces has reaffirmed the right of an accused to present good character evidence to bolster a defense. <i>United States v. Gagan</i>, 43 M.J. 200 (C.A.A.F. 1995).</p>

Narrative responses have been consolidated by the Response Systems Panel (RSP). Please forgive formatting errors in text and data. Source documents for narrative responses can be obtained by contacting the RSP.

<p>The rules regarding the admissibility of evidence of the defendant's good character are M.R.E. 404(a)(1) and M.R.E. 405. These two rules are almost identical to the federal rules of evidence of the same number. The differences are stylistic, not substantive. In practice, a military accused is more likely to have evidence of his or her good character than an average civilian criminal defendant. This is because, as a baseline, the military defendant has previously met all requirements for enlistment or commissioning, which would include meeting the moral standards established by the service. Also, the military defendant is much less likely to have prior criminal convictions. Lastly, the military accused has more of an opportunity to demonstrate integrity than the average criminal defendant, as they are faced with challenging circumstances every day in which their character is tested. But with respect to the application of the defense at trial, the differences between the civilian and military system are almost non-existent.</p>
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