

August 30, 2013

The Honorable Carl Levin, Chairman
The Honorable James M. Inhofe, Ranking Member
United States Senate Committee on Armed Services
SR-228 Russell Senate Office Building
1st and C Streets, NE
Washington, DC 20510

Dear Chairman Levin and Senator Inhofe:

We urge that S. 967, the “Military Justice Improvement Act of 2013” not be included by amendment in S. 1197, the Fiscal Year 2014 National Defense Authorization Act. The proposed changes to the Uniform Code of Military Justice (UCMJ) in S. 967 would weaken a criminal justice system that prosecutes aggressively, cares for victims of crimes, and protects fully the constitutional rights of those accused of crimes. The changes directed by S. 967 will compromise the combat readiness of our Armed Forces to defend the nation—a readiness that depends on units that are disciplined, cohesive, and well led.

Commanders’ central role in the administration of military justice has evolved since 1950 as the role of military lawyers increased so that commanders at every level work closely with military lawyers to ensure the exercise of appropriate prosecutorial discretion. Commanders today are meticulously trained in their military justice responsibilities by military lawyers before—and throughout—every command assignment. At higher levels of command, training by military lawyers focuses especially on the quasi-judicial responsibilities inherent in Convening Authority duties. There simply is no civilian equivalent to these responsibilities and authority, just as there is no civilian equivalent to the gravity attached to preparing and leading our Nation’s men and women in armed conflict.

The proposition by some that “non-lawyers” (commanders) should not decide issues that lawyers usually decide in the civilian sector does not account for the unique responsibilities, training, education, and experiences of military commanders who have Convening Authority responsibilities. Commanders are responsible for everything their units do or fail to do. The interwoven responsibilities of command and convening authority enhances commanders’ ability to create and maintain disciplined, combat ready units—accountable to the Commander-in-Chief and to the American people. We served with and advised commanders at every level of our Military Departments throughout our many years of service. The dialogue between commanders and judge advocates is constant, candid, and productive. Judge Advocates advise commanders on legal issues, legal responsibilities, and statutory authority while commanders provide judge advocates with insight into morale and disciplinary needs directly related to combat readiness and unit cohesion. Commanders who fail to recognize that the bias and discordance generated by sexual assault seriously undermines combat readiness and unit cohesion should never command at any level.

Two hundred and thirty-eight years of courts-martial practice prove the proposition that military justice is key to discipline and readiness. The intersection of a skilled warrior-leader and highly trained judge advocate analyzing allegations of crime together to determine appropriate disposition is a near ideal collaboration of leader and experienced technical expert.

The success of our Armed Forces in war is a direct result of our culture and systems of discipline that generate a focused, deliberate, and formidable warrior ethos. The martial qualities that enable operational success are not creatures of happenstance. They are the product of an environment established and reinforced by commanders that maintains the balance between that ethos and the discipline critically needed to conduct combat operations in a legal and moral way.

The comparison to the Military Justice systems of allies fails to appreciate the unique breadth and complexities of U.S. military operations worldwide. No other nation has assumed a comparable responsibility. Since World War II, the United States has deployed or stationed hundreds of thousands of troops around the globe. Even today, excluding troops in Afghanistan, there are over 100,000 Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen deployed or stationed overseas. This fact makes the responsibilities of command – and the critical need to maintain good order and discipline – that much more complex and challenging for commanders. Removing the authority of commanders to deal with some of the most serious criminal offenses in these circumstances severely undermines those who bear ultimate responsibility for whatever their units do or fail to do.

Our Allies' decisions to reduce commanders' military justice responsibilities have been based on the perceived or real lack of due process protections for military personnel accused of crimes. In contrast, the U.S. Congress' oversight and periodic UCMJ amendments, together with commanders' and judge advocates' effective exercise of their military justice responsibilities over generations of time ensure that the U.S. military justice system is a model for all criminal justice systems. This model is especially crucial to the U.S.; even our best allies do not have fighting forces with the diversity, discipline, and worldwide reach of the American military. We need to heed the lesson provided by the challenges the Australian military is experiencing with their disciplinary system caused by not well-considered changes five years ago to their military justice system.

S. 967 would create more change in the administration of military justice than the combined effects of the 1950, 1968, and 1983 military justice legislation. All three of the named major UCMJ legislative acts were preceded by years of careful and considered analysis by Department of Defense officials, officials of the military departments, multiple commissions and panels, and extensive congressional hearings. Today's haste to fix the perceived problem could require years of corrective action.

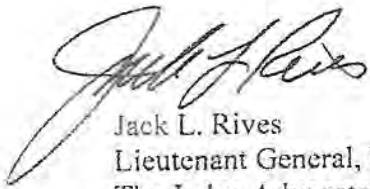
For example, the most recent modification of the UCMJ was the well-intended 2007 legislation addressing sexual assault. The 2007 legislation modified the sexual assault statute, Article 120, UCMJ, in an effort to modernize the UCMJ with a progressive, offender-focused statute. The statute, as modified, was held to be unconstitutional within three years. Congress modified Article 120 again in 2012 to correct the unanticipated consequences of the 2007 legislative change. Because of the rush to modify the UCMJ in 2007, prosecutors now must consider carefully the date of an offense to determine which of the three versions of Article 120 are applicable to the case under consideration.

The delicately balanced UCMJ, essential to good order and discipline of the U.S. Armed Forces, should undergo careful study and extensive congressional hearings whenever substantive

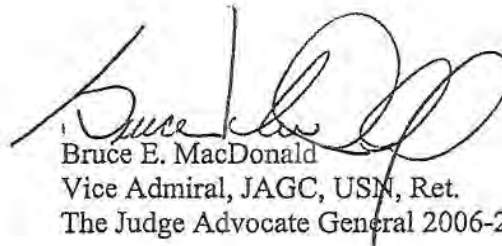
changes are contemplated. We are concerned that S. 967 is among several proposed bills that address the issue of sexual assault in the military, yet S. 967 is the only bill that would completely transform the military justice system. Of deepest concern to us is that this legislation, which goes far beyond the issue of sexual assault, has not received the thoughtful analysis and careful consideration that preceded all previous major UCMJ legislation.

The 2013 National Defense Authorization Act, Section 576, provided for the appointment of the Response Systems to Adult Sexual Assault Crimes Panel to conduct an independent review and assessment of the systems used to investigate, prosecute, and adjudicate offenses under Article 120, UCMJ for the purpose of developing recommendations concerning how to improve those systems. In addition, the Defense Legal Policy Board (DLPB) recently issued a subcommittee report on military justice in combat zones. DLPB could be yet another entity to analyze military justice, especially as regards sexual assault, and make recommendations regarding potential changes to the UCMJ. Expert, professional panels like these will be able to assess the changes of the last several years that addressed sexual assault in the military in order to determine whether to recommend further changes to the UCMJ. We recommend that in addition to reports from such entities there be extensive congressional hearings before further substantive changes to the UCMJ are considered. Careful study protects the rights of all parties involved, including the victims.

Thank you for your key leadership on this very important issue. We reaffirm our resolve that commanders of United States forces remain of vital importance to the administration of military justice, especially when fulfilling roles as Convening Authorities.



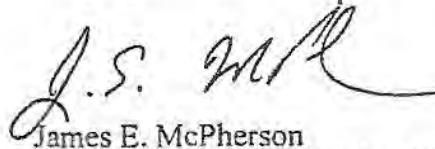
Jack L. Rives
Lieutenant General, USAF, Ret.
The Judge Advocate General 2004-2010




Bruce E. MacDonald
Vice Admiral, JAGC, USN, Ret.
The Judge Advocate General 2006-2009



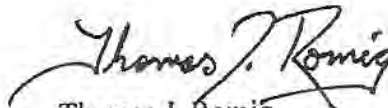
Scott C. Black
Lieutenant General, USA, Ret.
The Judge Advocate General 2005-2009



James E. McPherson
Rear Admiral, JAGC, USN, Ret.
The Judge Advocate General 2004-2006



John E. Crowley
Rear Admiral, USCG, Ret.
The Judge Advocate General 2003-2006



Thomas J. Romig
Major General, USA, Ret.
The Judge Advocate General 2001-2005

Donald J. Guter
Rear Admiral, JAGC, USN, Ret.
The Judge Advocate General 2000-2002

Bryan G. Hawley
Major General, USAF, Ret.
The Judge Advocate General 1996-1999

Michael J. Nardotti, Jr.
Major General, USA, Ret.
The Judge Advocate General 1993-1997

Harold Erick Grant
Rear Admiral, JAGC, USN, Ret.
The Judge Advocate General 1993-1997

James C. Walker
Brigadier General, USMC Ret.
SJA to the Commandant 2006-2009

Kevin M. Sandkuhler
Brigadier General, USMC, Ret.
SJA to the Commandant 2001-2006

Joseph Composto
Brigadier General, USMC, Ret.
SJA to the Commandant 1999-2001

Theodore G. Hess
Brigadier General, USMC, Ret.
SJA the Commandant 1996-1999