

CLE: A New Era of Military Justice

Class Length: 60 minutes

Instructor: Hon. Caroline Krass, General Counsel of the Department of Defense

Event: U.S. Court of Appeals for the Armed Forces, CLE, May 16, 2024

In February 2021, Secretary of Defense Lloyd J. Austin III established an Independent Review Commission on Sexual Assault in the Military (“IRC”) to study the issue of sexual assault in the military. The IRC found extensive evidence of this scourge, as well as of a substantial disconnect between what senior military leaders think is happening under their commands when it comes to sexual assault and harassment and what Service members actually experience. The IRC recommended several measures to help combat sexual assault in the military, including that critical prosecutorial decisions about sexual assault cases should be made by highly trained special prosecutors who are independent from the military chain of command.

Department of Defense leadership, in coordination with the White House, submitted legislation reflecting the core of the IRC’s recommendations to Congress for consideration in July 2021. Congress passed a revised version of this bill enacting historic reforms in December 2021. That bill was signed into law by President Biden with the full support of Secretary Austin and other departmental leadership. And on December 28, 2023, the reforms became fully effective.

This class begins with a lecture analyzing how these historic reforms change the landscape of military justice. The lecture starts by reviewing the need for reform and the problems within the military revealed by the IRC’s report. It then discusses the most important change made by the reforms: the shifting of prosecutorial discretion for “covered offenses,” including sexual assault, from military commanders to specialized and independent prosecutors working under civilian leadership, housed in four “Offices of Special Trial Counsel.” The lecture explains these changes in the context both of victims and of the broader set of stakeholders in the military justice system, and reviews how the Department intends to measure whether the reforms have been successful.

The class then moves into a question-and-answer format, in which Ruth Vetter, the Deputy General Counsel for Personnel and Health Policy at the Department, leads a deep dive into specific aspects of the reforms with Ms. Krass.

The class concludes with a discussion between Ms. Krass and Ms. Vetter of a variety of general military justice issues and legal topics relevant to the operation of the U.S. Court of Appeals for the Armed Forces.