

## CLE: Plea Agreements Under the UCMJ: A Comparative Service Approach

Panel Length: 60 minutes

Panel Participants: LTC Steve Dray, JA, USA  
LCDR Shannon Gearhart, JAGC, USN  
Col E. Dane Horne, USAF  
CAPT Robert Monahan, JAGC, USN (Ret.)

Prior to 1984, there was no explicit statutory or regulatory authority for plea agreements in the military justice system. However, in practice, parties had been negotiating pleas since 1953, relying on a proposal of the Assistant Judge Advocate General of the Army meant to clear dockets clogged by a combination of a nascent UCMJ and the Korean War. While the Court of Military Appeals initially took a cautious approach toward these plea agreements, over time, each branch of the military would adopt the practice.

Because of the unique role of the convening authority in the military justice system, the rules and procedures for plea agreements developed much differently in the military as compared with the federal civilian system. This resulted in a “beat the deal” system in the military, where a “pretrial agreement” consisted of two parts—Part I, containing the terms and conditions; and Part II, containing a sentence cap. In 2015, the Military Justice Review Group (MJRG) issued a comprehensive report, which, among other things, recommended reforming military plea agreements. Congress enacted the changes as Article 53a, UCMJ, which provided for the sentencing authority to adjudge a sentence within an agreed-upon sentencing range or sentence limitation negotiated by the parties. Congress subsequently amended the UCMJ to mandate military-judge-alone sentencing in all non-capital cases, and placed more limits on military judges’ discretion through the establishment of sentencing parameters and criteria.

Against this historical background, the panel will discuss the various military services’ views toward utilizing a model plea agreement (MPA). The “Sea Services” (Navy, Marine Corps, and Coast Guard) have used a MPA for many years. Conversely, the Army and the Department of the Air Force (Air Force and Space Force) do not currently use a MPA and are not actively moving toward implementing one. The panel participants will discuss the pros and cons of MPAs and hope to engage with the audience in a robust question and answer period prior to the completion of the session.

Sources:

Report of the Military Justice Review Group, Part 1 (Dec. 22, 2015)

*United States v. Gordon*, 2 C.M.A. 632, 10 C.M.R. 130 (1953)

*United States v. Allen*, 8 C.M.A. 504, 25 C.M.R. 8 (1957)

Article 53a, UCMJ / 10 U.S.C. § 853a

Rule for Courts-Martial 705

National Defense Authorization Act for Fiscal Year 2022 (Public Law 117-81)

Sea Services' model plea agreement (attached)

Army model plea agreement working draft (attached)

Department of the Air Force non-model plea agreement template (attached)