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## <sup>1</sup> The Confusion That Exists Between the Uniform Code of Military Justice and Federal Law

The criminal conduct, courts jurisdiction, criminal procedures and issues that are in the criminal justice system are commonly interpreted by individuals as the state and federal civilian system.<sup>1</sup> Majority of the citizens are not aware that all members who are on active duty service some civilian contracts<sup>2</sup> are guided <sup>7</sup> by the Uniform Code of Military Justice. Therefore the active duty service members are placed in a unique position with the law. For example, if a civilian is found hitting themselves with a rock on their foot, they wouldn't be charged with a crime. However, if a military man is found doing the same act as the civilian, he can be convicted of a crime <sup>1</sup> under the Uniform Code of Military Justice for mutilating government property.<sup>3</sup> Therefore the purpose of this literature review is to review and look into the <sup>1</sup> uniform code of military justice and compare and contrast with <sup>1</sup> the civilian judicial system.

### **Uniform Code of Military Justice**

The Uniform Code of Military Justice (UCMJ) “defines the military justice system and lists criminal offenses under military law.”<sup>4</sup> The United States Constitution directly authorized the implementation of a military justice system. This authorization can be found in Article I, Section 8, of the United States Constitution and this authorized Congress to “make rules for the

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<sup>1</sup> Federal laws apply to all citizens of the United States. State laws apply to all citizens within said states jurisdiction.

<sup>2</sup> DFARS Clause 252.225-7040. This clause addresses Contractor Personnel Authorized to Accompany United States Armed Forces who are deployed outside the United States of America. This clause specifically says that all contractor personnel are subject to the Uniform Code of Military Justice.

<sup>3</sup> Title 10 United States Code et seq.

<sup>4</sup> Absher, Jim. “The Uniform Code of Military Justice (UCMJ).” Military.com, July 30, 2021. <https://www.military.com/join-armed-forces/the-uniform-code-of-military-justice-ucmj.html>.

government and regulation of the land and naval forces.”<sup>5</sup> The Articles of War<sup>6</sup> and later the Lieber Code<sup>7</sup> was then both introduced by Congress as a way of regulating the conduct of said military members. However, it was not until 1951, that Congress superseded both the Lieber Code and the Articles of War with the Uniform Code of Military Justice.<sup>8</sup> For the first time since the inception of the United States Constitution all branches of the armed forces will now be subject to the same military code uniform in construction, interpretation, and substance.<sup>9</sup> So, without question the Uniform Code of Military Justice is federal law and it has been codified in **1** Title 10 of the United States Code Chapter 47.<sup>10</sup>

In addition when an individual joins the united state military, they wave some of their constitutional right and they are not perceived as civilians in the eye of the law. This happens because they get enlisted with the military.<sup>11</sup>

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<sup>5</sup> Art.1, Sec. 8, Cl. 14.1 Power to Govern and Regulate ... - Congress.gov.” Accessed October 22, 2021. [https://constitution.congress.gov/browse/essay/artl\\_S8\\_C14\\_1/](https://constitution.congress.gov/browse/essay/artl_S8_C14_1/).

<sup>6</sup> The Articles of War introduced in 1806. “Articles of War (1912-1920).” Articles of War (1912-1920): Military Legal Resources (Federal Research Division: Customized Research and Analytical Services, Library of Congress). Accessed October 22, 2021. [https://www.loc.gov/rr/frd/Military\\_Law/AW-1912-1920.html](https://www.loc.gov/rr/frd/Military_Law/AW-1912-1920.html).

<sup>7</sup> The Lieber Code was introduced in 1863. Gesley, Jenny. “The ‘Lieber Code’ – the First Modern Codification of the Laws of War.” The “Lieber Code” – the First Modern Codification of the Laws of War I In Custodia Legis: Law Librarians of Congress, April 24, 2018. <https://blogs.loc.gov/law/2018/04/the-lieber-code-the-first-modern-codification-of-the-laws-of-war/>.

<sup>8</sup> Myers, Meghann. “Here’s What You Need to Know about the Biggest Update to UCMJ in Decades.” Military Times. Military Times, January 16, 2019. <https://www.militarytimes.com/news/your-army/2019/01/15/heres-what-you-need-to-know-about-the-biggest-update-to-ucmj-in-decades/>.

<sup>9</sup> Absher, Jim. “The Uniform Code of Military Justice (UCMJ).” Military.com, July 30, 2021. <https://www.military.com/join-armed-forces/the-uniform-code-of-military-justice-ucmj.html>.

<sup>10</sup> “U.S. Code: Title 10. Armed Forces.” Legal Information Institute. Legal Information Institute. Accessed October 22, 2021. <https://www.law.cornell.edu/uscode/text/10>.

<sup>11</sup> Beaumont, Elizabeth. “Rights of Military Personnel.” Rights of Military Personnel. Accessed October 23, 2021. <https://www.mtsu.edu/first-amendment/article/1131/rights-of-military-personnel>.

The individual falls under the jurisdiction of the UCMJ regardless of where the member may be located. This covers all military men who are either in the country or outside the country. Therefore their conduct falls under the said jurisdiction based on the "status" of said service member.<sup>12</sup>

### **Federal Law**

Federal law can be defined as, "the rights and rules for all citizens of the United States."<sup>13</sup> Federal law can be found in the United States Code Manual, and said manual is essentially a compilation of most federal public laws.<sup>14</sup> These laws are then organized by subject matter and are organized into 54 individual titles.<sup>15</sup> In addition, federal courts have limited jurisdiction.<sup>16</sup> To have absolute jurisdiction of a matter, federal court needs to have jurisdiction over the parties bringing the matter to court and the subject matter in question.<sup>17</sup>

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<sup>12</sup> "10 U.S. Code § 934 - Art. 134. General Article." Legal Information Institute. Legal Information Institute. Accessed October 22, 2021. <https://www.law.cornell.edu/uscode/text/10/934>. Also referred to as the "Catch all Article." See also, *Solorio v United States* (1987).

<sup>13</sup> US Legal, Inc. "Find a Legal Form in Minutes." Federal Law and Legal Definition | US Legal, Inc. Accessed October 22, 2021. <https://definitions.uslegal.com/f/federal-law/>.

<sup>14</sup> OLRC Home. Accessed October 22, 2021. <https://uscode.house.gov/>.

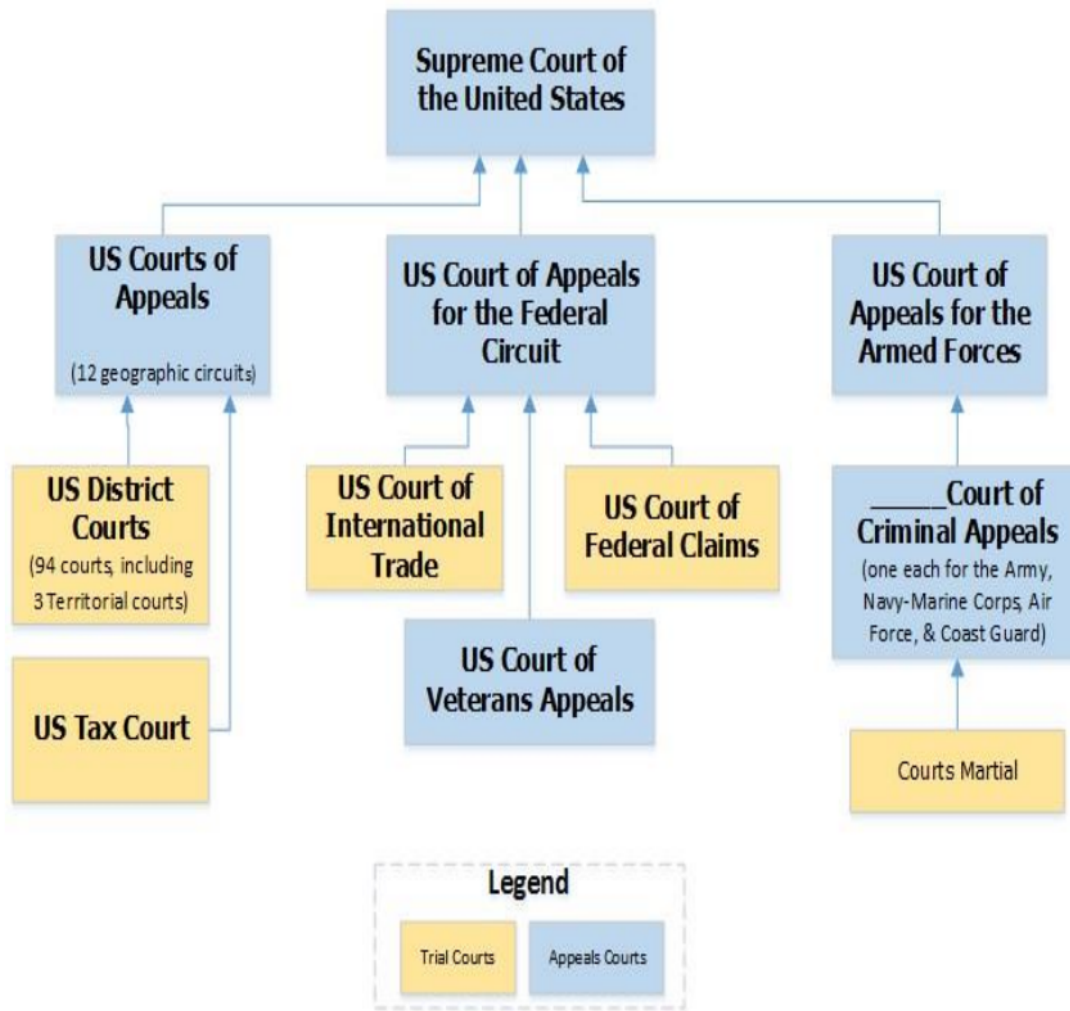
<sup>15</sup> Detailed guide to the United States code content and features. Accessed October 22, 2021. [https://uscode.house.gov/detailed\\_guide.xhtml](https://uscode.house.gov/detailed_guide.xhtml).

<sup>16</sup> *Lowdermilk v. United States Bank Nat'l Assoc.*, 479 F.3d 994, 998 (9th Cir. 2007). "...federal courts are courts of limited jurisdiction, and we will strictly construe our jurisdiction."

<sup>17</sup> "Introduction to the Federal Court System." The United States Department of Justice, March 12, 2021. <https://www.justice.gov/usao/justice-101/federal-courts>.

Table 1: Diagram of the United States Federal Court System<sup>18</sup>

# United States Federal Court System



<sup>18</sup> "How Do I: Do Legal Research? Case Law." LibGuides. Accessed October 25, 2021. [https://libguides.marshall.edu/basic\\_legal\\_research/case\\_law](https://libguides.marshall.edu/basic_legal_research/case_law).

## State Law

States law can be defined as, “the body of law for that and/or in that particular state.”<sup>19</sup> Each state in the United States of America have their own set of laws and courts that handle said matters.<sup>20</sup> Most state laws can be found at one’s local law library or depending on the state primarily online.<sup>21</sup> State law also applies to all organizations (operating or base in that state), corporations, visitors, and residents of that state.<sup>22</sup>

However, it is important to remember that most state laws are completely different from other states. For example, some states have the death penalty while others have abolished the penalty.. Unlike federal law<sup>23</sup> (UCMJ included)<sup>24</sup> states have independent laws and there is no uniformity.<sup>25</sup> therefore with all fifty the states in America, there are different laws guiding each state.<sup>26</sup>

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<sup>19</sup> “State Law Legal Definition.” Merriam-Webster. Accessed October 23, 2021. <https://www.merriam-webster.com/legal/state%20law>.

<sup>20</sup> “District of Columbia Law.” Justia Law. Accessed October 23, 2021. <https://law.justia.com/district-of-columbia/>. “The District of Columbia is not a state, nor does it have its own constitution. However, it does have other sources of laws.”

<sup>21</sup> “State Laws.” Findlaw. Accessed October 25, 2021. <https://www.findlaw.com/state.html>.

<sup>22</sup> MasterClass. “Understanding the Difference between Federal and State Law - 2021.” Masterclass, April 8, 2021. <https://www.masterclass.com/articles/federal-law-vs-state-law-explained#what-is-federal-law-in-the-united-states>.

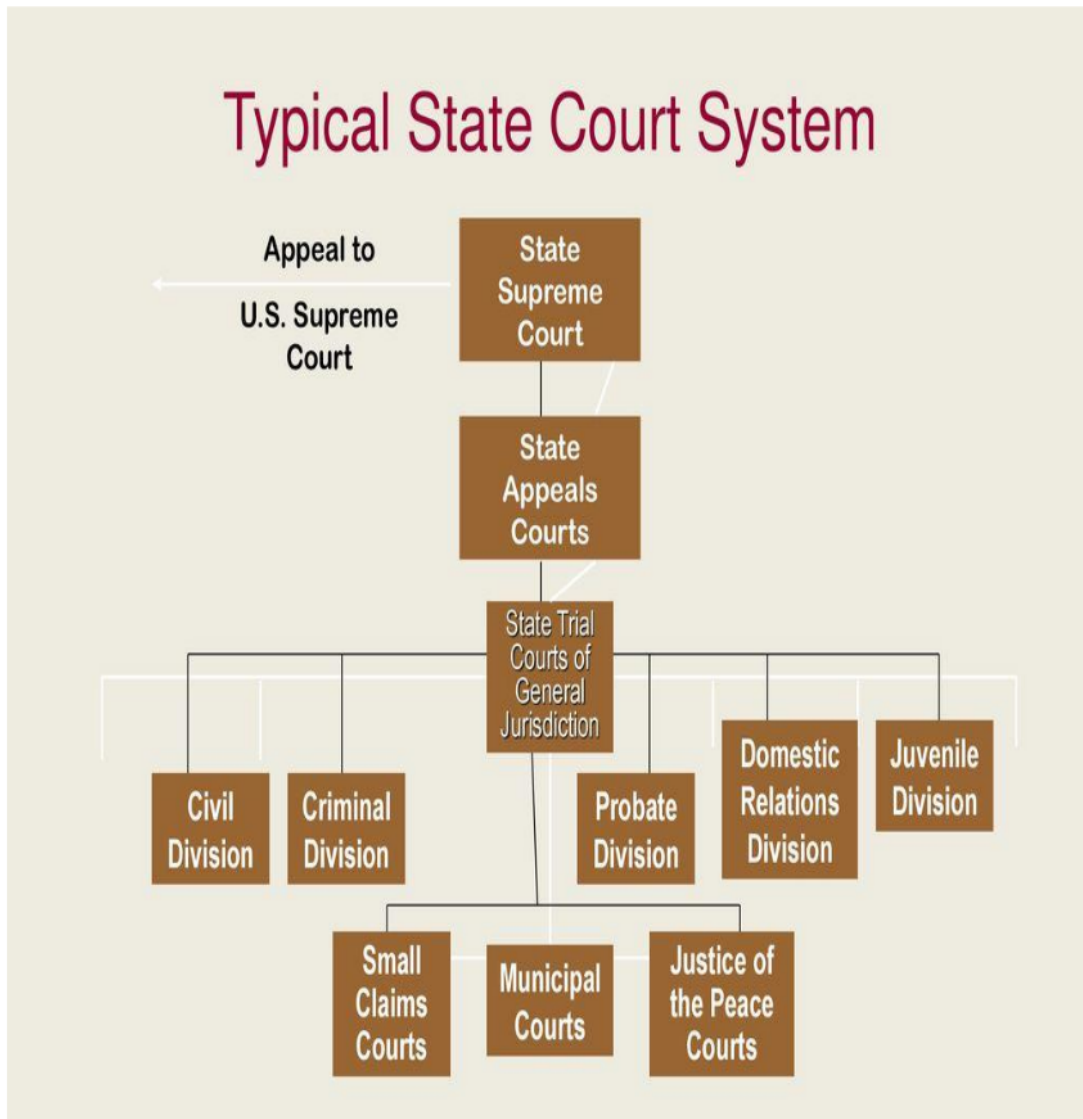
<sup>23</sup> “United States Law.” Justia Law. Accessed October 25, 2021. <https://law.justia.com/us/>. “Federal law applies to all residents of the United States.” “State law only applies to individuals within said state borders.”

<sup>24</sup> Absher, Jim. “The Uniform Code of Military Justice (UCMJ).” Military.com, July 30, 2021. <https://www.military.com/join-armed-forces/the-uniform-code-of-military-justice-ucmj.html>. “UCMJ applies to all active-duty service members, military academy students, and activated guard and reserve members.”

<sup>25</sup> “Home.” ihlresearch.org, May 29, 2019. <https://ihlresearch.org/different-states-different-laws/>.

<sup>26</sup> Bada, Ferdinand. “How Many States Are There in the United States?” WorldAtlas, September 12, 2018. <https://www.worldatlas.com/articles/how-many-states-are-there-in-the-united-states.html>.

Table 2: Diagram of most States' Court System in the United States<sup>27</sup>



### Hierarchy of Law in The United States

<sup>27</sup> Plaintiff, Sue, and Defendant. "Court Systems and Jurisdiction - Ppt Download." SlidePlayer. Accessed October 26, 2021 . <https://slideplayer.com/slide/13394731/>.

In the United States of America, as in all countries, there is a hierarchy of both the nations courts and laws.<sup>28</sup> This is important for one to know, because it allows an individual to understand the current system and which authorities supersedes the other. In the United States of America, the hierarchy of law is as followed:<sup>29</sup>

1. United States Constitution
2. Federal Statutes (i.e., Treaties, Executive Orders, Federal Agency Rules, Federal Case Law, Federal Common Law)
3. States Constitution
4. State Statutes (i.e., State Statutes, Court Rules, State Agency Rules, State Case Law, State Common Law)<sup>30</sup>

The courts have a hierarchy, which interprets, maintains and enforces the laws.

## **1** Procedural Safeguards for Military, Federal, and State Courts

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<sup>28</sup> "The Hierarchy of Laws - IFES." Accessed October 26, 2021.  
[https://ifes.org/sites/default/files/2016\\_ifes\\_hierarchy\\_of\\_laws.pdf](https://ifes.org/sites/default/files/2016_ifes_hierarchy_of_laws.pdf).

<sup>29</sup> "Sources of Law." Foundations of Law. Accessed October 27, 2021.  
<https://lawshelf.com/coursewarecontentview/sources-of-law-judicial/#:-:text=The%20primary%20sources%20of%20law,case%20law%2C%20and%20administrative%20law.>

<sup>30</sup> *Id.*

In the United States of America federal, state, and UCMJ courts have constitutional safeguards in place to protect the rights of the accused. The below table will summarize some of those safeguards and compare all three.

Table 4: Constitutional safeguards for Military, Federal, and State Courts

<b>Constitutional Safeguards</b>	<b>UCMJ Courts</b>	<b>Federal Courts</b>	<b>State Courts</b>
<p><b>Presumption of Innocence</b></p> <p>In <i>Coffin v. United States</i>,<sup>31</sup> “...there is a presumption of innocence in favor of the accused.”</p>	<p><b>R.C.M. 920(e)</b><sup>32</sup> states that “accused must be presumed to be innocent until the accused’s guilt is established by competent and legal evidence beyond a reasonable doubt.”</p>	<p>In <i>Taylor v. Kentucky</i>,<sup>33</sup> “...the accused is entitled to jury instructions explaining that guilt must be proven on the evidence beyond a reasonable doubt.”</p>	<p><i>State v. Bennett</i>,<sup>34</sup> “... a defendant in a criminal case is to be presumed innocent until the contrary is proved.”</p>
<p><b>Right to Remain Silent</b></p> <p>Under the fifth amendment one cannot be a witness against themselves in criminal proceedings.<sup>35</sup></p>	<p><b>Art. 31 UCMJ</b><sup>36</sup> “...confessions made without statutory equivalent of Miranda warning are not admissible as evidence.”<sup>37</sup></p>	<p>In <i>Miranda v. Arizona</i>,<sup>38</sup> “...statements made by a defendant without prior <i>Miranda</i> warning are inadmissible as evidence of guilt in a criminal trial.”</p>	<p><i>Miranda</i> applies to all state cases as well...</p>

<sup>31</sup> *Coffin v. United States*, 156 U.S. 432, 453 (1895).

<sup>32</sup> R.C.M. means Rule for Court Martials. “Part II Rules for Courts Martial Chapter I ... - JSC Home.” Accessed October 29, 2021. <https://jsc.defense.gov/Portals/99/Documents/RCMsJun15.pdf>.

<sup>33</sup> *Taylor v. Kentucky*, 436 U.S. 478 (1978).

<sup>34</sup> *State v. Bennett*, 165 P.3d 1241 (2007).

<sup>35</sup> U.S. Const. Amend. V

<sup>36</sup> 10 U.S.C. § 831

<sup>38</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

<p><b><u>Freedom from Unreasonable Searches &amp; Seizures</u></b></p> <p>The Fourth Amendment states that, “the right of the people to be secure...against unreasonable searches and seizures, shall not be violated; no Warrants shall issue, but upon probable cause...”<sup>39</sup></p>	<p><b><u>Mil. R. Evid. 315</u></b><sup>40</sup></p> <p>“...permission to search may be written or oral and may be issued by a military officer in command or military judge in command of the area to be searched, or if the area is under military control, with authority over the persons subject to the UCMJ or the law of war. Furthermore, probable cause must exist.”</p>	<p>In <i>Katz v. United States</i>,</p> <p>“...probable cause must exist for a warrant to be issued by a magistrate and this is required in order for law enforcement to conduct searches of a specific area...”<sup>41</sup></p>	<p>The Fourth Amendment and the ruling of <i>Katz</i> applies to all state cases.</p>
<p><b><u>Assistance of Effective Counsel</u></b></p> <p>The Sixth Amendment provided that all accused persons in criminal proceedings have a right to have a counsel for their defense.<sup>42</sup></p>	<p><b><u>Art 38-UCMJ</u></b><sup>43</sup></p> <p>“...all accused servicemembers has a right to military counsel at the government expense.” Therefore a service member can have an attorney who is a civilian if they can.</p>	<p><b><u>FED. R. Crim. P. 44</u></b><sup>44</sup></p> <p>Accused persons have the right to have a counsel in their defense and if they cannot afford one, they shall be given by the state.</p>	<p>The Sixth amendment looks at the right to have a counsel in state cases</p>

<sup>39</sup> U.S. Const. Amend. IV

<sup>40</sup> “Part III Military Rules of Evidence - JSC Home.” Accessed October 29, 2021. <https://jsc.defense.gov/Portals/99/Documents/MREsRemoved412e.pdf>.

<sup>41</sup> *Katz v. United States*, 389 U.S. 347 (1967).

<sup>42</sup> U.S. Const. Amend. VI

<sup>43</sup> 10 U.S.C. § 838

<sup>44</sup> “Fed. R. Crim. p. 44 - Right to and Appointment of Counsel.” Justia, October 16, 2021. <https://www.justia.com/criminal/docs/frcrimp/rule44/>.

<p><b>1</b></p> <p><b>Right to Indictment and Presentment</b></p> <p>The Fifth Amendment of the United States Constitution states that, “no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger...”<sup>45</sup></p>	<p>The right to indictment by grand jury is explicitly excluded in “cases arising in the land or naval forces.”<sup>46</sup></p>	<p><b>Fed. R. Crim. P. 7<sup>47</sup></b></p> <p>If an accused person is faced with an infamous punishment, they may insist on not being tried unless there is a grand jury accusation..</p>	<p>All state cases are guided by The Fifth Amendment. All state constitutions address the matter too. In some states charges are brought by the prosecutor while in other states there is a grand jury before a criminal indictment.</p>
<p><b>1</b></p> <p><b>Right to Written Statement of Charges</b></p> <p>The Sixth Amendment states that, “in all criminal prosecutions, the accused shall enjoy the right...to be informed of the nature and causes of the accusation against him or her...”<sup>48</sup></p>	<p><b>Art. 30 UCMJ<sup>49</sup></b></p> <p>“...all specifications and charges must be signed under oath and must be made known to the accused as soon as possible.”</p>	<p><b>In Cook v. United States,<sup>50</sup></b> “...all defendants have the right to be informed of the nature of the charges against them in order to prepare a defense.”</p>	<p>State cases are governed by The Sixth Amendment. The accused attends initial hearings and preliminary hearings and he is made aware of the charges against them.</p>

<sup>45</sup> U.S. Const. Amend. V

<sup>46</sup> Id.

<sup>47</sup> “Rule 7. the Indictment and the Information.” Legal Information Institute. Legal Information Institute. Accessed October 29, 2021. [https://www.law.cornell.edu/rules/frcrmp/rule\\_7](https://www.law.cornell.edu/rules/frcrmp/rule_7).

<sup>48</sup> U.S. Const. Amend. VI

<sup>49</sup> 10 U.S.C § 830: Art 30. charges and specifications

<sup>50</sup> Cook v. United States, 138 U.S. 157 (1891).

<p style="text-align: center;"><b>2</b></p> <p><b>Prohibition Against Ex Post Facto Crimes</b></p> <p><b>Article 1, Section 9</b> “...prohibits Congress from passing any laws which apply ex post facto...”</p> <p><b>Article 1, Section 10</b> “...prohibits all states from passing any laws which apply ex post facto...”<sup>51</sup></p>	<p><b>In <i>United States v. Gorski</i>,</b> “...Court martial will not enforce any ex post facto laws...”<sup>52</sup></p>	<p>In federal courts it’s established that no ex post facto laws may be enforced nor</p> <p>1. The congress passing a law to punish a conduct that was not crime perpetrated.          (2) reduce the government’s evidentiary burden for a crime; or          (3) increasing the possible sentence for the crime.<sup>53</sup></p>	<p><b>Article 1, Section 10 of</b> prohibits states from passing any laws which apply ex post facto</p>
<p><b>Double Jeopardy</b></p> <p><b>The Fifth Amendment</b> “...prohibits anyone from being prosecuted twice for substantially the same crime...”<sup>54</sup></p>	<p style="text-align: center;"><b>1</b></p> <p><b>ART. 44 UCMJ</b> “...prohibits double jeopardy.”<sup>55</sup></p>	<p><b>In <i>Illinois v. Somerville</i>,</b> “...jeopardy attaches once the jury is sworn...”<sup>56</sup></p>	<p><b>1</b> The Fifth Amendment applies to all state cases.</p>

<sup>51</sup> “Ex Post Facto Laws.” Justia Law. Accessed October 31, 2021. <https://law.justia.com/constitution/us/article-1/70-ex-post-facto-laws.html>.

<sup>52</sup> *United States v.* 47 M.J. 370 (C.A.A.F. 1997).

<sup>53</sup> *Calder v. Bull*, 3Dall. (3. U.S.) 386 (1798); *Ex Parte Garland*, 71 U.S. 333 (1867).

<sup>54</sup> U.S. Const. Amend. V

<sup>55</sup> 10 U.S.C. § 844

<sup>56</sup> *Illinois v. Somerville*, 410 U.S. 458 (1973).

<p><b><u>Right to be Present at Trial</u></b></p> <p>In <i>Illinois v. Allen</i><sup>3</sup> the court held that, an accused person has the right to attend his or her trial at every stage. This is guaranteed by the confrontation clause.<sup>57</sup></p>	<p><b><u>R.C.M. 804</u></b></p> <p>“...the accused is required to be present during his or her arraignment, at the plea, and at every stage of the court martial...”<sup>58</sup></p>	<p><b><u>FED. R. Crim. P. 43</u></b></p> <p>Forbids “the trial (in absentia) of a defendant who is not present...”<sup>59</sup></p>	<p><sup>10</sup> The state cases are governed by The Sixth Amendment. Individuals being tried in the state courts can demand to be in court during <sup>1</sup> all stages of their trial.</p>
<p><b><u>Speedy &amp; Public Trial</u></b></p> <p>The Sixth Amendment states, “that in all criminal prosecution, the accused shall enjoy the right to a speedy and public trial”<sup>60</sup></p>	<p><b><u>R.C.M. 707(a)</u></b></p> <p>“...the accused service member must be brought to trial within 120 days of the referral of charges or the imposition of restraint...”<sup>61</sup></p>	<p>“trial must begin within 70 days of indictment or original appearance before court.”<sup>62</sup>under the federal law</p>	<p><sup>1</sup> The Sixth Amendment applies to all state cases in regards to Speedy Trials.</p>

<sup>57</sup> *Illinois v. Allen*, 397 U.S. 337 (1970).

<sup>58</sup> “Manual for Courts-Martial United States - Library of Congress.” Accessed October 31, 2021. [https://www.loc.gov/rr/frd/Military\\_Law/pdf/MCM-2012.pdf](https://www.loc.gov/rr/frd/Military_Law/pdf/MCM-2012.pdf).

<sup>59</sup> “Rule 43. Defendant’s Presence - 2021 Federal Rules of Criminal Procedure.” Federal Rules of Criminal Procedure. Accessed October 31, 2021. <https://www.federalrulesofcriminalprocedure.org/title-ix/rule-43-defendants-presence/>.

<sup>60</sup> U.S. Const. Amend. VI

<sup>61</sup> Miscellaneous matters: Speedy trial: Rule for courts-martial 707. Accessed October 31, 2021. <https://www.armfor.uscourts.gov/digest/VB2.htm>.

<sup>62</sup> 18 U.S.C. § 3161

<p><b>Privilege Against Self-Incrimination</b></p> <p>“No persons...shall be compelled in any criminal case to be a witness against him or herself...”<sup>63</sup></p>	<p><b>ART. 31(a) UCMJ</b></p> <p>“No person subject to the Uniform Code of Military Justice may compel any person to answer incriminating questions.”<sup>64</sup></p>	<p><b>According to this federal statute</b></p> <p>“witnesses may not be compelled to give testimony that may be incriminating unless given immunity.”<sup>65</sup></p>	<p><b>The Fifth Amendment</b></p> <p>governs state cases against self-incrimination of the accused.</p>
<p><b>Burden and Standard of Proof</b></p> <p><b>In re Winship, the supreme court</b> of the United States held “due process demand that all defendants must be proven guilty of each element of said crime.”<sup>66</sup></p>	<p><b>R.C.M. 920(e)</b></p> <p>The burden of proof in establishing guilt in court martial is laid on the government.<sup>67</sup></p>	<p><b>In Cool v. United States</b> “...jury instructions should state that the government has the burden of presenting proof of guilt beyond a reasonable doubt”<sup>68</sup></p>	<p><b>The basic principle of criminal cases</b> is that the prosecutor needs to prove the case beyond reasonable doubt. All states in America follow this principle.</p>

<sup>63</sup> U.S. Const. Amend. V

<sup>64</sup> 10 U.S.C. § 831(a)

<sup>65</sup> 18 U.S.C. § 6002

<sup>66</sup> “Case Western Reserve Law Review.” Accessed November 6, 2021. <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2849&context=caselrev>.

<sup>67</sup> “Manual for Court Martial.” Joint Service Committee on Military Justice > Military Law > current publications and updates. Accessed November 6, 2021. <https://jsc.defense.gov/Military-Law/Current-Publications-and-Updates/>.

<sup>68</sup> *Cool v. United States*, 409 U.S. 100 (1978).

<p><b>1</b></p> <p><b>Right to Trial by Impartial Judge and Jury</b></p> <p>Article III § 1 ensures that the judges in the courts are impartial. The constitution provides that all the accused persons in have a right to be tried under a jury that is impartial.<sup>69</sup></p>	<p><b>ART. 26 UCMJ</b></p> <p>Qualified military judge shall preside over court martial. In <b>United States v. Lambert</b> "...the Sixth Amendment requirement that a jury be impartial applies to court martial member..."<sup>70</sup></p>	<p>Its provided in the federal statute that judges who have pecuniary interest on a matter or have a conflict of interest they are disqualified and they are required to recues before the proceedings commence.<sup>71</sup></p> <p><b>1</b></p> <p>In <b>Taylor v. Louisiana</b>, "...juries must represent a fair cross section of the community"</p>	<p><b>The Sixth Amendment</b> provides that the accused in state courts have the right to be tried under an impartial judge.</p>
<p><b>1</b></p> <p><b>Right to Appeal to Independent Reviewing Authority</b></p> <p>The Constitution ensure <b>6</b> that it shall not suspend the privilege of the writ of Habeas Corpus<sup>72</sup></p>	<p>service members who <b>1</b> have been convicted can challenge the courts martial convictions (after they have exhausted military appeals) through writ of habeas corpus in a civilian court.<sup>73</sup></p>	<p><b>8</b></p> <p>In federal courts through writ of habeas corpus one can challenge federal and state convictions.<sup>74</sup></p>	<p>One can bring a Writ of Habeas in a state court provided that they have exhausted all state remedies<sup>75</sup></p>

Based on the above, it is well documented that state, federal, and UCMJ courts have the same constitutional safeguards in place to protect the rights of the accused.

<sup>69</sup> U.S. Const. Amend. VI

<sup>70</sup> United States v. Lambert, 55 M.J. 293 (C.A.A.F. 2001); 10 U.S.C. § 826

<sup>71</sup> 28 U.S.C. § 455; Taylor v. Louisiana, 419 U.S. 522 (1975).

<sup>72</sup> Art 1 § 9 cl. 2

<sup>73</sup> Burns v. Wilson, 346 U.S. 137 (1953).

<sup>74</sup> 28 U.S.C. §§ 2241-2255

<sup>75</sup> Chapter 7.36 RCW: Habeas corpus. Accessed November 6, 2021. <https://app.leg.wa.gov/rcw/default.aspx?cite=7.36&full=true>.

## Article 134 of the Uniform Code of Military Justice

Unlike state law and civilian federal law, the UCMJ allows for the import of civilian federal statutes.<sup>76</sup> This is done under Article 134 of the UCMJ, and this article is commonly referred to as the “catch-all article.”<sup>77</sup> Essentially, any offense that a service member commits that:

- Discredits the armed forces.
- Crimes that Involve non- capital offenses, federal crimes that are assimilated and violation of federal law and
- That brings disorder or neglect to the discipline of the armed forces.

So, this article allows JAG prosecutors to import any non-capital civilian federal criminal statute, and then hold the said person liable in accordance with said statute.

### Discussion

After a looking into constitution, federal and state statutes, it’s fair to conclude that service men enjoy rights like that of the civilians. However, court martial asserts jurisdiction over an offense committed by the service men despite their location. This is quite different from the state and federal courts that require certain elements so as to establish jurisdiction.<sup>78</sup> After the above comparisons I conclude, that despite the similarities in the UCMJ and the federal and state law, they all serve entirely different purposes.

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<sup>76</sup> “Manual for Courts-Martial United States - SAPR.” Accessed November 25, 2021. [https://www.sapr.mil/public/docs/ucmj/UCMJ\\_Manual.pdf](https://www.sapr.mil/public/docs/ucmj/UCMJ_Manual.pdf).

<sup>77</sup> “Faculty Scholarship - Duke Law Research.” Accessed November 25, 2021. [https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1292&context=faculty\\_scholarship](https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1292&context=faculty_scholarship).

<sup>78</sup> *Solorio v. United States*, 483 U.S. 435, 499-51; *United States v. Barberi*, 71 M.J. 127, 134 (C.A.A.F. 2012). “Article 134 third clause has also been held to encompass civilian federal criminal offenses”

Furthermore, in the current literary review, a major limitation discovered is the lack of knowledge regarding the Uniform Code of Military Justice by civilian attorneys. For example, between 2016 to 2021, several members who are on active duty service were prosecuted in civilian federal court. The below members who are on active duty service were arrested, indicted, and prosecuted in civilian federal court:

1. Sergeant Christopher A. Mann with stealing military property.<sup>79</sup>
2. Colonel Anthony Tyrone Roper with bribery of \$20 million bribery and fraud.<sup>80</sup>
3. Army Captain Kevin J. Gorbsky got with enticing <sup>1</sup> of a minor to engage in unlawful sexual activity.<sup>81</sup>
4. Emmanuel Oppongagyare and Ralph Gregory with smuggling <sup>1</sup> undocumented immigrants to Texas.<sup>82</sup>
5. West Point Staff Sergeant Patrick Edwin Gorychka with distributing child pornography.<sup>83</sup>

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<sup>79</sup> "Army Soldier Sentenced for Theft of Military Property." The United States Department of Justice, October 26, 2016. <https://www.justice.gov/usao-ednc/pr/army-soldier-sentenced-theft-military-property>.

<sup>80</sup> "Army Colonel, Others Indicted in \$20M Bribery, Fraud Scheme." Bryan County News - Bryan County News. Accessed November 22, 2021. <https://www.bryancountynews.com/news/military/army-colonel-others-indicted-in-20m-bribery-fraud-scheme/>.

<sup>81</sup> "Army Captain Sentenced to Almost 20 Years in Federal Prison after Pleading Guilty to Enticement of Minors to Engage in Unlawful Sexual Activity." The United States Department of Justice, May 29, 2019.

<sup>82</sup> "Soldiers Charged with Alien Smuggling." The United States Department of Justice, June 15, 2021. <https://www.justice.gov/usao-sdtx/pr/soldiers-charged-alien-smuggling>.

<sup>83</sup> "U.S. Attorney Announces Charges against West Point Staff Sergeant for Distributing Child Pornography." The United States Department of Justice, December 5, 2019. <https://www.justice.gov/usao-sdny/pr/us-attorney-announces-charges-against-west-point-staff-sergeant-distributing-child>.

Interestingly, in *United States v. Duncan*<sup>84</sup> the court stated that, “[t]he attorney general and each United States Attorney...is subject to the proviso, except as otherwise authorized by law. One such law is the Uniform Code of Military Justice.”<sup>85</sup> So, how can one not call into question those convictions.

### Conclusion

In conclusion the purpose of this literary review was to look at the uniform code of military justice whilst comparing the military judicial system with the state and federal judicial system.

The paper looked at the UCMJ, federal and state law. The paper also looked at the jurisdiction of the court martial, federal state courts. In addition the paper looked at the hierarchy of laws and the courts. Lastly the paper looked at the procedural safeguards of the three courts as provided for in the constitution. The paper looked at the uniqueness of each court and the purpose. In addition the UCMJ needs to be understood by the defense lawyers and prosecutors as it will prevent violation of service member’s rights.

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