



NATIONAL INSTITUTE  
*of* MILITARY JUSTICE

BOARD OF DIRECTORS

Prof. Rachel E. VanLandingham  
Lt Col, USAF (ret.)  
*President*

Prof. Brenner M. Fissell  
*Vice-President*

Hon. Walter Slocombe  
*Treasurer*

Prof. Joshua Kastenberg  
Lt Col, USAF (ret.)  
*Secretary*

Ronald W. Meister  
*Board Chair*

David M. Brahms  
BGen, USMC (ret.)  
*Director*

Philip D. Cave  
CDR, JAGC, USN (ret.)  
*Director*

Hon. Mary M. Cheh  
*Director*

Eugene R. Fidell  
*Director*

Hardy Vieux  
*Director*

PROSECUTORIAL DISCRETION UNDER THE  
UNIFORM CODE OF MILITARY JUSTICE

May 12, 2021

The National Institute of Military Justice, a nonprofit organization established in 1991, has reviewed press accounts of the initial recommendations of the Independent Review Commission on Sexual Assault in the Military. These recommendations come as Congress considers legislative proposals relating to the role of the commander in the administration of military justice.

The decision whether to prosecute serious crimes under the Uniform Code of Military Justice should be transferred from non-lawyer commanders to military lawyers independent of the chain of command. The time has come for this structural change.

NIMJ recommends transferring prosecutorial discretion not only for all sex offenses, but also for all serious offenses – those for which the authorized maximum punishment exceeds one year's confinement. This dividing line is a familiar feature of American criminal justice. Additionally, commanders should play no role in selecting court-martial members.

These changes will strengthen the fairness of military justice and bolster public confidence in its administration.