challenge to that effect. To use a metaphor, a main battle tank is no less intimidating if it is still.

Potential new challenges could include: dire courts, not Art. III, and are a military agency. Defense counsel in Abu Ghraib courts-martial have raised this motion, so far unsuccessfully.

harm wrought by command influence. Considerable pretrial coverage and statements by the higher chain of command, including the Defense and Army Secretaries, the Chairman of the Joint Analysis:

either that there was no unlawful command influence or that the unlawful command influence will not affect the proceedings, and the government may meet trial record to a convening authority other than the one that appointed the court-martial, and then on to a board of review.

UCMJ/RCM mandates in legal training for future commanders, in cadet, basic officers' course, and advanced-course training curricula.

advocate has to make similar post-trial findings under Art. 64, before approving the findings of the court and sending it on for appellate review; The Judge

By BobHarmon

Command Influence

see JAGMAN 2004 §§ 0130-0131.

Rivers,

Citation of Art. 32(e) normally keeps a defective Art. 32 investigation from invalidating a trial. U.S. v. Clark, 11 M.J. 179, 181-2 (CMA, 1981).

At the trial of SP4 Charles Graner, “Abu Ghraib Soldier Loses His Bid to Dismiss Trial,”

And strictly liable, under command-responsibility doctrine, for any atrocities committed by his soldiers even if he didn't order them. Application of Yamashita, 327 U.S. 1 (1946).

failed to abate the legal damage.


qualification of court members and defense counsel, sentencing, review; The APA exempts courts-martial and military commissions, and military actions in the field in time of war, from civilian court review. 5 U.S.C. § 701(b)(1)(F) & (G).

All in accordance with Arts. 61, 64, and 67, UCMJ.

might have to defer to them. FYI.

investigation; also command intrusion into a criminal investigation, even well meant, can poison a chain of evidence, see

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¶¶ 73 & 76.

temptation to abuse is enough of a danger that a court may either question the underlying statute, Art. 25(d)(2), or, more likely, see a need for a firewall between the

staffs, may be unaware of this concept. This is both a danger to justice and an opportunity for a challenge, if not a mandamus.

chain of command, to TJAG. This is an inherent conflict of interest even if improper command influence itself, on TJAG, isn't proven.

Though Art. 36 may be constitutional; a flaw in the MCM or in service regulations permitting command influence in violation of due process, though technically proper

UCMJ procedurally, not merely exerted influence.

investigator, say, to flout the procedural requirements of Art. 32(c) and (d) would not be judicial error under Art. 32(e). This conflicts with

Appointing Authority for Military Commissions, Feb. 10, 2004 (JAG INSTR 5803.1C, Feb. 5, 2004, which provides for monitoring of the accused and their counsel; Military Commission Instructions

Manual for Courts Martial