



Written by [Brigadier General Albert E. Brewster, USMC \(Ret.\)](#) on May 7, 2021
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Top Brass Not Above The Law

When does a law become *not* a law? When the lawbreaker has reached such a high level in our society, or government, that his friends in government decide simply to ignore that law, as if nothing has happened.

Can this happen in our American Republic, or is it limited to those third-world countries where the rule of law is not always followed?

Up until September 2020, I would have said, “Ranking U.S. military leaders would not flagrantly disregard the law; that cannot happen in America.” But all that has now changed, since, clearly, if you are or were in a position of power, you may be above the law.

Unfortunately, in America today, active-duty and retired military officers are violating the law and appear to be getting away with it. After bringing this to the attention of the appropriate governmental authorities to no avail, I am convinced that public pressure might be the only hope to get Congress to act to remedy this problem.

The law in question is extremely clear, and there is no doubt that it is being violated. Career members of the U.S. military, like all who have taken the oath in our Armed Forces, are subject to the jurisdiction of the Uniform Code of Military Justice (UCMJ), and that jurisdiction and certain duties continue, even once they retire and draw pay. As to who is subject to the Code, Article 2 of that Code specifically states that it includes “retired members of a regular component of the armed forces who are entitled to pay.” This places them under all laws in that Code for as long as they live.

As early as 1880, in the case of *United States v. Tyler*, the Supreme Court held that officers on the retired list still remained in the service. This situation has been before the Supreme Court a number of times, and in *Parker v. Levy* (1974) the court made its position crystal clear with this statement: “While the members of the military are not excluded from the protection granted by the First Amendment, the different character of the military community and of the military mission requires a different application of those protections. *The fundamental necessity for obedience, and the consequent necessity for imposition of discipline, may render permissible within the military that which would be constitutionally impermissible outside it.*” (Emphasis added.) And the court then “nailed it to the wall” in 1992 in *Barker v. Kansas* when it said, “Military retirees unquestionably remain in the service and are subject to restrictions and recall — *as well as ongoing punishment by military court-martial.*” (Emphasis added.)

As recently as February 2021, the Supreme Court refused to review, for the second time in two years, a case based on this principle — thereby reaffirming their earlier decisions! Some may not like that situation — and there are additional cases working their way through lower civil courts attempting to have this “retired recall for trial” issue reversed. There is no way to predict that outcome. But, unless



AP Images

He should have taken his own advice: General James Mattis, a former Secretary of Defense, disparaged President Trump in the media over his handling of the George Floyd riots. This was out of character for Mattis, as someone who has traditionally stayed out of politics and commanded his men to do the same.



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and until this article of the UCMJ is reversed or revised, it remains the existing law of the land and must be enforced. Simply put, retired members of the U.S. military must comply with all laws included in the UCMJ, or face recall to duty and trial by court martial.

Because he understood the importance of obedience down the chain of command, George Washington ensured that the original “Articles of War” included a law and punishment for any “ill words” spoken publicly about both military or civil government leaders. This has been retained in all versions of U.S. military law since that time, and in 1947, when Congress wrote the original version of the current UCMJ, it was included as Article 88, “Contempt toward officials.” It remains as such in the latest (December 20, 2019) UCMJ revision. Article 88 states, “*Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Homeland Security, or the Governor or legislature of any State, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.*” (Emphasis added.)

Congress has always considered this a very serious crime, providing punishment up to “Dismissal, forfeiture of all pay and allowances, and confinement for 1 year.” For instance, a four-star general, retired on 40 years of service, would lose over \$250,000 per year; and in 1958, a retired flag officer, Admiral Selden Hooper, USN, was recalled and tried and convicted by a general court-martial with that maximum penalty. More than 150 service members have been tried and convicted since the Articles of War first carried these penalties.

The UCMJ also requires, under Article 137, “Articles to be explained: (c) TRAINING FOR CERTAIN OFFICERS. — Under regulations prescribed by the Secretary concerned, *officers with the authority to convene courts-martial or to impose non-judicial punishment shall receive periodic training regarding the purposes and administration of this chapter.*” (Emphasis added.) All senior officers have been deeply involved in carrying out the UCMJ during the later years of their service, and cannot claim “no knowledge of the law.”

One would think that such clear wording in the UCMJ would prevent senior officers from disparaging our nation’s leaders. In the past, this certainly was the case. Things have changed, apparently. In 2006, four senior retired officers “tested the waters” by making some damning public comments regarding then-Secretary of Defense Donald Rumsfeld. Unfortunately, they were not charged, and escaped courtmartial.

Some high-ranking military officers seem to uphold the UCMJ, only to violate it when it suits them. Consider the case of General James Mattis, USMC (Ret.). On June 13, 2018, while serving as secretary of defense under President Trump, Mattis wrote a “Memorandum for Secretaries of the Military Departments, Chiefs of the Military Services and Commanders of the Combatant Commands,” in which he emphasized, “It is incumbent on our leaders to ensure that American Forces are always the most disciplined on the battlefield.” “Enforcing standards is a critical component of making our force more lethal,” the Mattis memo noted. “Leaders must uphold proven standards. They should know the difference between a mistake and a lack of discipline.” Mattis insisted, “We must not tolerate or ignore lapses in discipline.” “The military justice system is a powerful tool that preserves good order and discipline while protecting the civil rights of Service members,” the Mattis memo continued. “It is a commander’s duty to use it.” Mattis went on to admonish commanders against the trend to forgo the UCMJ for easier administrative procedures. “Leaders must be willing to choose the harder right over



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the easier wrong," he stated. "Administrative actions should not be the default method to address illicit conduct simply because it is less burdensome than the military justice system." Finally, Mattis declared, "let *nothing* prevent us from becoming the most disciplined force this world has ever known." (Emphasis in original.)

However, after resigning from his position as secretary of defense, General Mattis then ignored his own emphatic directive, and on June 3, 2020, issued an extraordinary criticism of President Trump's leadership in a statement in *The Atlantic* magazine. "Donald Trump," wrote Mattis, "is the first president in my lifetime who does not try to unite the American people — does not even pretend to try. Instead he tries to divide us. We are witnessing the consequences of three years of this deliberate effort. We are witnessing the consequences of three years without mature leadership." The Mattis attack was published one day after a similarly contemptuous article in the *Atlantic* by Admiral Mike Mullen, former chairman of the Joint Chiefs of Staff, as part of a well-coordinated political attack.

Should current leaders follow General Mattis' earlier advice and charge him with violating Article 88 of the UCMJ?

Another example: In June 1993, Air Force Chief of Staff General Merrill Anthony "Tony" McPeak moved swiftly to protect his friend, Major General H. N. Campbell, who called President Bill Clinton a "dope smoking," "skirt chasing," "draft dodging" commander-in-chief. Instead of receiving a court martial, the 53-year-old General Campbell was ordered to pay a fine of \$7,000, take an immediate retirement, and have an official letter of reprimand placed in his file. "This is not a trivial matter," General McPeak said at a Pentagon news conference. "There should be no doubt about the lesson learned. The chain of command has to be almost pollution-free. It runs from the President all the way down to the corporal who pulls the trigger."

It may come as a surprise that the now-retired General McPeak, along with a significant number of other high-ranking retired military officers, affixed his signature to "An Open Letter to America" that spoke contemptuously of then-President Donald Trump during the 2020 presidential campaign. This letter, written by a group of 489 individuals calling themselves "National Security Leaders for Biden," received favorable coverage in most of the major media. It declared that President Trump "has demonstrated he is not equal to the enormous responsibilities of his office; he cannot rise to meet challenges large or small. Thanks to his disdainful attitude and his failures, our allies no longer trust or respect us, and our enemies no longer fear us. Climate change continues unabated, as does North Korea's nuclear program. The president has ceded influence to a Russian adversary who puts bounties on the heads of American military personnel, and his trade war against China has only harmed America's farmers and manufacturers." Had General McPeak totally forgotten about Article 88 of the UCMJ?

One might ask, "Do such statements have any impact on the outcome of elections?" I believe they do, *especially in a close election!* According to polls, the military as a profession has historically been highly respected by some 80 percent of the U.S. population, although recent polls have shown that number gradually sliding down to around 60 percent. When a number of high-ranking retired officers speak out in a partisan manner — not just as citizens, but using their military rank as part of their title — it certainly will have an impact on the members of the military, both active and retired, who perhaps knew, or served under, the officer making the damning statements. A few votes can swing an election one way or the other.



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Other generals, in a group of 28 that I have identified, have either signed the above-mentioned document or have written or spoken “contemptuous words” against the then-sitting president. While there had been a few such incidents during the 2016 election, the dam broke in 2020, and frankly it appeared to me that the Department of Defense (DoD) would surely move to stop such open disregard for the law, which could destroy the highly cherished military discipline. After all, if high-ranking officers can ignore the law, how can a commanding officer possibly discipline an enlisted man who speaks openly against his leaders?

When the DoD did not take action, I wrote on September 18, 2020 what I thought was to be a one-time letter asking the secretary of defense and the chairman of the Joint Chiefs of Staff to “restore discipline to the forces.” Much to my amazement, I got absolutely no response until November 13, when an Army lieutenant colonel JAG officer indicated that I needed to affix my signature to the charges before an “active duty” officer serving as a witness. On December 11, a deputy general counsel at DoD advised me that “such charges were more appropriately forwarded to the separate Services.”

During this time frame, I had begun a major letter-writing campaign, trying to get someone to take legal action against the four-star generals whom I had identified as violating Article 88 of the UCMJ. Between my September 18, 2020 letter to Defense Secretary Mark Esper and the end of 2020, I had sent a total of 29 letters to such principals as the service secretaries and their chiefs of service, including the Coast Guard, which had two retired admirals on the list; then-Attorney General William Barr and FBI Director Christopher Wray, asking that an agent be assigned to follow each service’s process, as other charges might result if they failed to take action; Senator James Inhofe (R-Okla.), chairman of the Senate Armed Services Committee; Senator Lindsey Graham (R-S.C.), chairman of the Senate Judiciary Committee; my two Texas Republican senators, John Cornyn and Ted Cruz; Acting Secretary of Defense Christopher Miller; and Acting Attorney General Jeffrey Rosen.

In all of my letters to these officials, I extensively quoted from the UCMJ on specific issues, while acknowledging the magnitude of the problem, suggesting that to restore order and discipline to the Armed Services, an appropriate approach could be to try by court martial all four-star generals identified as speaking out against the sitting president. I suggested that perhaps Administrative Letters of Reprimand should be sent to all those below a four-star rank who had followed their superiors’ lead and violated the Code. Incredibly, *none* of the Republican officials to whom I sent letters chose to do *anything* in response to these serious UCMJ violations. The scant replies I received were non-specific, and mostly thanked me for my service.

As 2021 began, I realized that the outgoing Trump administration was unlikely to take any action, so I waited until February 8 and sent a detailed, eight-page letter (with 10 complete copies of previous letters for reference) to new Secretary of Defense Lloyd Austin and Representative Adam Smith (D-Wash.), the chairman of the House Armed Services Committee. As of early May, I have had no acknowledgment from either, not even an acknowledgement of receipt!

Realizing that the Biden administration was probably not going to pursue disciplinary action against people who might have helped defeat Donald Trump, on March 13 I sent a letter to 10 Texas Republican members on the House Armed Services Committee, as well as related committees, such as Appropriations and Judiciary. I provided them the background, a copy of my letters to Defense Secretary Austin and Representative Smith, a list of the officers I had identified, plus examples of some of the comments these officers had made about President Trump. I also provided them with a short bio



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of my military service, so they would understand that I was an authoritative voice on the subject. I asked them to take immediate action, since I felt that we were running out of time with this. As of early May, I have received no response, nor have I observed any news regarding this issue. Consequently, I have decided to take it to the public to generate the support needed to get action.

I have no idea what the persons to whom I have addressed my letters think they are doing by not addressing this matter openly and promptly, since I have brought it *officially* to their attention. Perhaps they are hoping it will just fade away, or that perhaps the law will be changed to allow retired military personnel to disparage government officials. This is not likely. In fact, a major case over whether a retired military officer may be court-martialed, *Larrabee v. United States*, made its way through the courts and was scheduled to be considered by the Supreme Court in February of 2021. Not surprisingly, the court elected not to take the case, thereby maintaining its firm position, held since 1880, that *retirees on pay are members of the force and subject to recall and trying under the UCMJ if they violate an article therein.*

The UCMJ is very specific in that anyone may report a suspected crime under the Code, to any military authority, who must then pass it to the officer having “court convening authority” over the suspect. I reported the crimes directly to the convening authority for the retired officers. The Code also specifies that on receipt of a complaint, the convening authority must *immediately* consider if the crime warrants a general court martial-level trial (the sentence for Article 88 demands such), and if so, must immediately commence an Article 32 investigation, with a number of specific requirements. As a part of the investigation, the convening authority may consider and decide upon a variety of courses of action, including dismissal of all charges. Such dismissal must, however, meet certain requirements and considerations by the convening authority: “In determining the appropriate type of court martial, a convening authority should consider: a. The advice of a judge advocate; b. The interests of justice and good order and discipline”; and a number of other issues, including “the views of the victim [former President Trump in this case] concerning an alternative disposition of the case.” The UCMJ holds that the disposition determination “must not be influenced by” a number of things, including “Political pressure to take or not to take specific actions in the case.”

Additionally, the Code requires that both the accused and the victim “be notified and allowed to participate” in this initial investigation. I doubt there is any record of an Article 32 investigation in any of the five service branches, and that is precisely the reason I notified the FBI of the matter. If there is no such record, each service chief needs to be officially charged with Article 131b, Obstructing Justice: “Any person subject to this chapter who engages in conduct in the case of a certain person against whom the accused had reason to believe there were or would be criminal or disciplinary proceedings pending, with intent to influence, impede, or otherwise obstruct the due administration of justice shall be punished as a court-martial may direct.” And, potentially, charged with Article 131f, Noncompliance with Procedural Rules: “Any person subject to this chapter who — (1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter; or (2) knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused; shall be punished as a court-martial may direct.”

Military crimes have been committed, and a large number of those have officially been brought, by me, to the proper authorities’ attention. Since there have been no apparent charges resulting to date, the



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chiefs of all Services — General James C. McConville, U.S. Army; Admiral Michael M. Gilday, U.S. Navy; General David H. Berger, U.S. Marine Corps; General Charles Q. Brown, Jr., U.S. Air Force; and Admiral Karl L. Schultz, U.S. Coast Guard — should *all* be considered for charges under Articles 88, 131b, and 131f. If found guilty, they could face dishonorable discharge, forfeiture of all pay and allowances, and confinement for five years.

I hold no personal malice against any of these officers — actually, I was a close friend of one them — but I am disappointed that any officer allowed himself to get involved in politics to the point of disrespect to the president, or any other government official. At issue is this: Are all laws to be obeyed, or are some to be ignored when they concern the politically privileged?

So, while a thorough search may add additional names, I have currently called out some 28 retired four-star generals and officially reported them to their respective authorities, with clear evidence that they have violated Article 88 (and possibly Article 92, Failure to Obey Lawful Orders). There is no indication that the current service chiefs have taken the required actions. These officials have a duty and responsibility to enforce the existing laws under the UCMJ, when such crimes are officially brought to their attention. Therefore, the secretary of defense or the U.S. Congress needs to consider if the service chiefs are to be *officially* charged under Articles 131b, 131f, and 88.

Will public awareness that these crimes may well have affected the outcome of the 2020 presidential election create the necessary pressure to demand that Congress hold those responsible to laws that have existed for centuries? And does the news media have enough integrity, courage, and influence to bring this about during the Biden administration, when the violators certainly appear to have been supportive agents that may have brought in the winning ballots to that election?

If reading this article leaves you concerned that no actions have been taken against these officers (including the current chiefs of service), write to your members of Congress and ask why these officials are seemingly exempt from these long-standing laws.

***Brigadier General Albert E. Brewster, USMC (Ret.)** was commissioned as a second lieutenant in the U.S. Marine Corps in 1952 and served as a platoon leader in the Korean War. He served for two years as the Marine Corps briefing officer at the Headquarters Marine Corps and the Pentagon, before going to Vietnam, where he flew 108 combat missions. Brewster served as Legislative Assistant to the Commandant of the Marine Corps, obtaining Congressional funding for the start of the AV-8B aircraft program and changes to Title 10 Law- making the Commandant a “full time” member of the Joint Chiefs, before retiring in 1980. He then worked for 10 years as Legislative Vice President for a major Defense Contractor obtaining funding for the F/A-18, B-2 Bomber and other large defense programs.*

Brass Politics

28 Four-star Generals and Admirals Who Violated the UCMJ:

General Peter W. Chiarelli, USA (Ret.)

General Johnnie E. Wilson, USA (Ret.)

General David M. Maddox, USA (Ret.)

General Robert W. Sennewald, USA (Ret.)



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- General Wesley Clark, USA (Ret.)
 - Admiral William H. McRaven, USN (Ret.)
 - Admiral James Stavridis USN (Ret.)
 - Admiral Steve Abbot, USN (Ret.)
 - Admiral Samuel J. Locklear, USN (Ret.)
 - Admiral John Nathman, USN (Ret.)
 - Admiral Bobby Inman, USN (Ret.)
 - Admiral Henry G. Ulrich, III, USN (Ret)
 - General James Mattis USMC (Ret)
 - General John R. Allen USMC (Ret)
 - General Richard D. Hearney, USMC (Ret.)
 - General Michael Williams, USMC (Ret.)
 - General Joe Went, USMC (Ret.)
 - General Anthony C. Zinni, USMC (Ret.)
 - General John P. Jumper USAF (Ret)
 - General Chuck Boyd, USAF (Ret)
 - General Merrill A. McPeak, USAF (Ret)
 - General Paul J. Selva, USAF (Ret.)
 - General Lloyd Newton, USAF (Ret.)
 - General Michael Hayden, USAF (Ret.)
 - General Stanley McChrystal, USA (Ret.)
 - Admiral Paul Zukunft, USCG (Ret.)
 - Admiral James Loy, USCG (Ret.)
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Select Quotes

Admiral Michael G. Mullen, U.S. Navy (Ret.), wrote for *The Atlantic*: “It sickened me yesterday to see security personnel — including members of the National Guard — forcibly and violently clear a path through Lafayette Square to accommodate the president’s visit outside St. John’s Church.” “I have to date been reticent to speak out on issues surrounding President Trump’s leadership.... I remain confident in the professionalism of our men and women in uniform.... But I am less confident in the soundness of the orders they will be given by this commander in chief.” “This is not the time for stunts. This is the time for leadership.”

General Wesley Clark, U.S. Army (Ret.); Admiral Paul Zukunft, U.S. Coast Guard(Ret.); Admiral Harry Ulrich,U.S. Navy (Ret.); Admiral Samuel Locklear U.S. Navy (Ret.); Admiral Steve Abbot, U.S. Navy



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(Ret.); General Paul J. Selva, U.S. Air Force (Ret.); and, as reported in the press, 22 additional four-star military officers signed the “National Security Leaders for Biden” letter, which included contemptuous words against the president in violation of the UCMJ. For example: “The current President has demonstrated he is not equal to the enormous responsibilities of his office; he cannot rise to meet challenges large or small. Thanks to his disdainful attitude and his failures, our allies no longer trust or respect us, and our enemies no longer fear us.”

General Michael Hayden, U.S. Air Force (Ret.), former director of the CIA and NSA, retweeted a tweet calling the president a “thoroughly despicable human being.”

General Chuck Boyd, U.S. Air Force (Ret.), said in a video released to the public, “I fervently believe that military officers should not be involved in presidential politics, even when retired. But this year is different. Donald Trump’s assault on the rule of law that makes a democracy possible has been so egregious I’ve decided to speak out.... We need to vote for Joe Biden this year. I’m going to vote for him. I hope you do, too.”



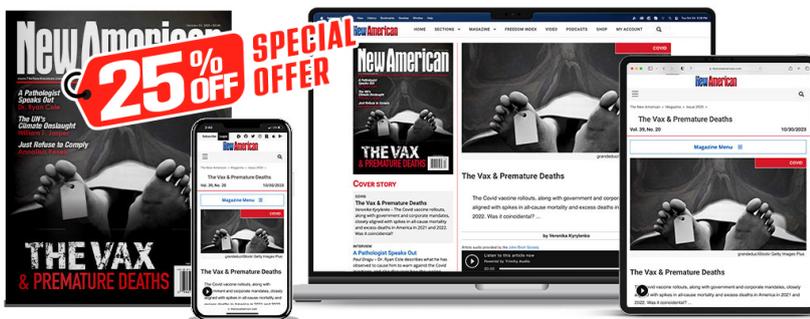
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