

The DoD Times (Redacted)

NEWSLETTER

SATURDAY, 29TH NOVEMBER 2025

ISSUE 99.

THE BEAR, POKED



U.S. Department of War

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OFFICIAL STATEMENT:

The Department of War has received serious allegations of misconduct against Captain Mark Kelly, USN (Ret.). In accordance with the Uniform Code of Military Justice, 10 U.S.C. § 688, and other applicable regulations, a thorough review of these allegations has been initiated to determine further actions, which may include recall to active duty for court-martial proceedings or administrative measures. This matter will be handled in compliance with military law, ensuring due process and impartiality. Further official comments will be limited, to preserve the integrity of the proceedings.

The Department of War reminds all individuals that military retirees remain subject to the UCMJ for applicable offenses, and federal laws such as 18 U.S.C. § 2387 prohibit actions intended to interfere with the loyalty, morale, or good order and discipline of the armed forces. Any violations will be addressed through appropriate legal channels.

All servicemembers are reminded that they have a legal obligation under the UCMJ to obey lawful orders and that orders are presumed to be lawful. A servicemember's personal philosophy does not justify or excuse the disobedience of an otherwise lawful order.



Lt Col (Ret) Ryan Sweazey (Retired, Air Force – United States Air Force Academy), President and Founder of the [Walk the Talk Foundation](#), authored this article. (Published November 8th 2025)

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The Bear, Poked

[Last week's announcement by the Secretary of War](#) did something unprecedented—not in its substance, but in its brazenness. By declaring that the Department would “look into serious allegations” against Senator Mark Kelly and invoking the obscure statute that allows retirees to be recalled for court-martial, the administration crossed a line it has long tiptoed around. It reached not for justice, but for jurisdiction.

The announcement went even further, proclaiming that the Department was committed to “ensuring due process and impartiality.” For those familiar with the military justice system as it actually functions—not as it is marketed—this claim borders on comedic. The notion that the same system long criticized for command influence, opaque proceedings, and structurally constrained rights would suddenly transform into a model of neutral adjudication is difficult to take seriously. If anything, invoking “due process and impartiality” in this context only underscored how far the system stands from those ideals.

And in making that assertion publicly, the Department inadvertently shined a light on a system it has relied upon remaining largely out of sight: the deeply flawed, structurally insular machinery of military “justice.”

For decades, Congress has grappled with the challenges of overseeing that system. Competing priorities, deference to military leadership, and an understandable reluctance to micromanage the armed forces led many lawmakers to trust that existing safeguards were adequate—or at least functioning well enough. The voices raising concerns often came from constituencies without political visibility, making the



problems easier to miss or harder to elevate.

But this time, the Department pointed that same system at a sitting U.S. Senator and former naval officer. And that single decision forced into daylight a set of issues that had long remained beneath the surface.

A System Built for Control, Not Justice

The military justice system is not malfunctioning; it is functioning exactly as designed. It is an architecture optimized for command prerogative rather than independent truth-finding. Due process bends. Evidence standards tilt. And command influence—officially prohibited but structurally ingrained—permeates.

Behind the uniformed judges and formal procedures stands the real engine of the system: [a vast cadre of JAG officers whose institutional role is often to “get to yes” for commanders.](#) Their careers depend on alignment with command priorities, not independence from them. Many are deeply capable and conscientious, but the system they operate in rewards concurrence, not challenge.

For decades, the Department has relied on exactly that dynamic: a legal corps incentivized to advance the command’s desired outcome and shield the institution from friction.

That structure works—right up until the moment it is trained on someone with a national profile.

Why the Administration Would Try to Drag Senator Kelly Onto Active Duty

Understanding the administration’s attempt to recall Senator Kelly requires looking at the incentives built into the system.



1. The Star Chamber–esque flexibility of the military justice system

Unlike federal courts, the military justice system provides a pliable legal environment with fewer procedural protections. Rights that civilians take for granted—speech, due process, access to civil remedies—are more limited or conditional. Proceedings occur in closed settings. Outcomes can be subtly shaped through command influence.

And the Department has at its disposal a legal workforce—the ever-present “get-to-yes” JAG corps—whose institutional mission is to validate, not challenge, command decisions. In a politically sensitive case, that becomes an appealing asset.

2. The Feres Doctrine shields government authority

The [Feres Doctrine](#) bars service members—active or recalled—from suing the government for harms “incident to service.” It significantly restricts civil accountability and keeps disputes within military channels.

Together, these structural incentives make the military justice system attractive to any administration seeking maximum control and minimum oversight.

Congress Confronts a Long-Standing Blind Spot

Until now, concerns about military justice tended to arise from cases involving service members without institutional power or political reach. Those issues often struggled to gain traction—not out of malice, but because they competed with urgent national security demands, limited legislative bandwidth, and the longstanding tradition of trusting military leaders to police their own ranks.

The Kelly situation has changed the landscape. Suddenly, the system’s shortcomings are visible in a context impossible for Congress or the public to ignore. What was once viewed as an internal military matter is now a question of constitutional balance, civilian authority, and basic fairness.



This moment gives Congress an opportunity to reassess—not to assign blame for the past, but to update oversight for a system that has evolved dramatically since its last comprehensive review.

What Happens Next

Despite the noise, Senator Kelly will not be court-martialed. The legal foundation is tenuous, and the political costs too great. A precedent that broad would be destabilizing to the military itself.

But once the Department retreats from pursuing Kelly, the instinct to reaffirm authority will remain.

Someone else—less visible, less protected—may likely be targeted next.

Not for a quiet, bureaucratic disposition, but to serve as a public example—a deliberate demonstration meant to reassert the Department's authority after its very public overreach. The same system that faltered when applied to a sitting senator may be deployed, loudly and purposefully, against a veteran without comparable stature or political insulation.

That moment will raise a defining question:

Will Congress now choose to strengthen much-needed protections for all service members, currently serving and formerly, or only safeguard the high-profile few who attract national attention?

This is not a judgment about past choices—it is recognition that new circumstances demand a broader, more consistent approach.

With the bear now poked and the nation finally watching, the path forward is clearer than it has been in decades. The only question is whether lawmakers will seize this rare moment to ensure a fair system for **all** who served.



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Feel free to reach out privately at francescagraham@walkthetalkfoundation.org or in the comments.

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