The DoD Times (Redacted)

NEWSLETTER

SATURDAY, PUBLISHED 21ST FEBRUARY 2026 ISSUE 111.

GOOD TO SEE YOU, CONSTITUTION — IT'S BEEN A WHILE!

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Good to See You, Constitution — It's Been a While!

The Department has wandered so far from the rule of law, it's no longer in the same ZIP code.

There was a time when invoking the Constitution in matters of military justice would have been redundant. The armed forces swear an oath not to a monarch, not to a party, not to a president — but to the Constitution. Today, that oath feels more ceremonial than operational, where service members who swore to defend that sacred document enjoy fewer and fewer rights from it.

For years — really, for decades — the United States Department of Defense, as well as the DHS' Coast Guard, have functioned as if they occupy parallel legal universes. One with its own courts, its own rules, its own standards of evidence, and too often, its own definitions of fairness. Civilian oversight exists in theory. Constitutional constraints exist on paper. But in practice, accountability has been sporadic at best.

The Department of Defense — Where Policy Memos Override the Law

Not every example of detachment from constitutional norms involves dramatic headlines. Some show up in the quiet machinery of internal policy — where memoranda begin to eclipse statutes.

Recent reporting highlighted allegations from military whistleblowers that the Defense Health Agency's Office of Inspector General required service members to sign nondisclosure agreements before pursuing investigations into their complaints — a condition critics argue has no basis in statute and risks chilling protected disclosures.

Under Title 10 U.S.C. §1201, disabilities for active-duty members are presumed to be incurred "in the Line of Duty" unless "clear and unmistakable evidence" proves the condition pre-existed service and was not aggravated by it — a standard reinforced in DoD and Air Force instructions, including DAFI 36-2910, which requires that such evidence be furnished to the service member for appeal.

Yet, as described by advocate and Air Force veteran Jeremy Sorenson, a December 2024 memorandum issued through SAF/MR directed officials to provide only summarized language rather than the required evidence itself — effectively substituting policy guidance for binding law. Critics argue that such a maneuver sidesteps due process protections attached to disability retirement benefits and attempts to override statutory requirements with administrative convenience.

When internal memos begin to supersede enacted law, something fundamental has broken. Policy does not outrank statute. Guidance does not nullify due process. And no official — however senior — possesses authority to rewrite federal law by memorandum.

When the Courts Say "Enough"

The recent clash involving Senator Mark Kelly exposed this parallel legal universe to daylight.

According to reporting by Reuters, a federal judge blocked the Pentagon's attempt to punish Kelly by reducing his retired rank and pension after he publicly urged service members to resist unlawful orders. The Associated Press and PBS NewsHour likewise reported that the court found serious First Amendment concerns with the Pentagon's actions and warned against chilling the speech rights of military retirees.

In other words, once the Pentagon's action was subjected to genuine constitutional scrutiny in an independent federal court, it collapsed.

That episode was not merely a procedural embarrassment; it was illustrative. Military disciplinary mechanisms often function like modern-day Star Chambers — insulated, insular, and resistant to meaningful external review. Within that system, rules are interpreted expansively when it benefits the institution and narrowly when it benefits the individual service member.

"Service members now enjoy less benefits and entitlements from our Constitution than a criminal does" --taken from an interview in a recent *Star Chamber* episode, to air next month.

It is a jarring statement — but structurally difficult to dismiss. A civilian defendant enjoys robust constitutional safeguards: independent courts, strict evidentiary standards, and appellate review insulated from career consequences. A service member, by contrast, operates within a chain of command that can be both prosecutor and power structure.

Command influence — subtle or overt — remains the elephant in the courtroom. Promotions, assignments, and reputations hover over proceedings that are supposed to be impartial. Even absent explicit coercion, the imbalance is systemic.

Over time, the gap between constitutional ideals and military practice has widened. Administrative punishments expand. Definitions of misconduct grow elastic. Due process becomes negotiable.

The Constitution was not drafted with a military exemption clause. It does not say "except in matters of inconvenience." It does not carve out special territories where fundamental rights dim at the gates of a base.

Yet culturally and procedurally, parts of the defense establishment have behaved as though they operate above and beyond the document they claim to defend.

This is not an argument against discipline. It is an argument against detachment. The armed forces are strongest when anchored to constitutional governance — not when drifting from it.

The crushed disciplinary effort against a sitting senator, and the growing body of whistleblower allegations about internal policy workarounds, present a moment of clarity.

Perhaps it is time for the Department of Defense to reacquaint itself with the document every service member swears to uphold.

Good to see you again, Constitution.

It's been a while.

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