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**Elizabeth Lutes Hillman: Defending America**

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## INTRODUCTION

This is a book about the American military, its system of justice, and its criminals. It tells of ordinary mistakes and extraordinary violence, of what happened when things went wrong as the Cold War military defended an anxious nation. The military criminals of the Cold War were deserters, rapists, spies, and bigamists. They included a company commander, one of very few African American officers, sentenced to death by a panel of white officers for refusing to advance on a Korean War battlefield; a much-decorated, long-retired admiral spied upon in his San Diego home and then court-martialed for being gay; a petty officer prosecuted for unauthorized absence after going home to Virginia to care for his ailing mother; a private, angry at his Vietnamese girlfriend for her attentions to other GIs (she was a prostitute), convicted for shooting and killing her.<sup>1</sup> These crimes offer a glimpse into the internal world of military service in the decades after World War II, when a fierce battle to preserve a cherished culture was waged against the encroachment of class, racial, and sexual diversity. Hardship and violence, humor and romance, the harsh reality of military service and the awkward process of enforcing law during war: all were part of American military justice. The court-martial exposes the fault lines of the United States during the Cold War, when demographic change and legal reform made the state of the armed forces a telling echo of the state of the nation.

Yet military justice has been almost completely overlooked by scholars of American history and law.<sup>2</sup> Apart from a handful of courts-martial that attracted media attention, military justice has sustained the interest of only judge advocates and a few historians.<sup>3</sup> Its processes have been portrayed as caricatures of modern criminal procedure, its prosecutions a simple reflection of the quality of troops recruited into military service.<sup>4</sup> As a body of law and as a source of history, military justice has been doubly neglected.

This book remedies that neglect. It uses court-martial records to deepen our understanding of how criminal justice worked, how servicemembers lived, and why legal reform mattered in the post-World War II United States. This is a study of “Cold War” military justice not because it covers every year of the conflict or because it details every shift in foreign and military policy.<sup>5</sup> “Cold War” refers instead to the atmosphere of political and cultural anxiety that reshaped the U.S. military and American society more generally. The U.S. military was in a state of transition after World War II, when victory brought glory but also new challenges.<sup>6</sup> The personnel needs of World War II had broadened the spectrum of Americans from which servicemembers were drawn, making the military a more accurate mirror

of American society but lowering its exclusivity, and, in the eyes of many, downgrading its social status.<sup>7</sup> Meanwhile, civil rights, feminism, open homosexuality, and political dissent posed fundamental challenges to military authority. The political and social changes of the Cold War rippled through the armed forces with special intensity because of the racial hierarchies, class distinctions, and models of masculinity that had distinguished military culture in the past.<sup>8</sup> The social orders that had regulated American military life were suddenly fragile.

The court-martial registers the insecurity of the Cold War years in especially vivid fashion. A key part of that insecurity was the conflict between legal and political principles in the governance of the armed forces, apparent throughout the process of military justice. Asked to preserve the freedom of American citizens, the armed forces were starkly undemocratic, composed of many nonvolunteers and governed in authoritarian fashion. If the great political divide of the Cold War years was the Soviets' dependence on coercion versus the Americans' emphasis on consent, then the mere existence of the U.S. military disrupted a simple narrative of West versus East. Nowhere was the tension between military tradition and liberal democratic values more apparent than at court-martial, where the Cold War armed forces punished the gravest violations of military rules and regulations. The military prosecuted men who refused to defer to superiors, who spoke out against the war in Vietnam or in favor of communism, who got married without permission or had homosexual affairs. The military's separate criminal justice system, improved but preserved by post-World War II reforms, put those who fought to protect the U.S. Constitution beyond the reach of some of its most basic protections. And until the end of the draft in 1973, many Americans in uniform served reluctantly, compelled to join the military not by a sense of duty but by force of law.

This book traces the ways in which legal reform progressed—and faltered—in a particularly telling arena of criminal justice and social control. Its chapters explore the conflicts that divided the armed forces, and the nation, during the Cold War. The tension between the authority granted commanding officers and the process due at court-martial, along with the clash between the military's increasing heterogeneity and its commitment to an exclusive, archaic culture, tested the very structure of the American military. Protecting individual rights, both in the United States and around the world, became a higher priority in the 1950s and 1960s, colliding with the military practice of enforcing conformity and imposing involuntary service.<sup>9</sup> In this era of political strife, conscription, and war, legal reformers tried to standardize the definition of military crime and regularize its prosecution. They hoped to bring justice to American citizens in uniform much like those uniformed troops hoped to bring freedom and prosperity to the United States' allies around the world.

From the advent of a reformed military justice system in 1951 until the end of the Vietnam War, millions of Americans stood accused before military courts, charged with crimes defined by their commanders and tried according to special procedures set out in the Uniform Code of Military Justice (UCMJ).<sup>10</sup> The greatest reform in the history of American military law, the UCMJ granted accused servicemembers for the first time basic procedural rights, including access to counsel and the opportunity to appeal their cases to a court of civilian judges.<sup>11</sup> The previous regime of military law had been attacked as harsh and unfair during World War II, leading veterans and politicians to demand change. As a result, Cold War troops, whether charged with going AWOL, disobeying orders, or frequenting gay bars, had greater legal protections than had earlier generations of American soldiers. But because the UCMJ granted commanding officers broad discretion to define crime and control its prosecution, the success of its reforms was sharply limited by the military culture in which courts-martial took place.

At the same time that statutory reform brought new standards of justice to military criminal procedure, the military itself grew in authority, significance, and visibility. Until after World War II, the United States military was small and isolated except in times of war.<sup>12</sup> Although most Americans accepted the necessity of a well-prepared, disciplined armed force, they were uncomfortable with the implications of a standing professionalized military establishment. Yet the Cold War made the armed forces a central and permanent element of American society, and military culture took on a prominent role in many Americans' self-definition. Military spending quadrupled between 1948 and 1953.<sup>13</sup> As military operations attracted more funding, personnel, and scrutiny, the armed forces promoted American culture as they protected U.S. interests overseas.<sup>14</sup> The military itself became increasingly politicized. Commanding officers were well versed in public relations, ready to contest efforts to cut military spending and likely to blame others for failures of policy or tactics.<sup>15</sup> Washington, D.C., became a hub of American military activity, with Capitol Hill as attuned to military issues as military officers were to the nation's political climate.<sup>16</sup> In 1950, President Truman declared an "Armed Forces Day" of parades, fly-bys, and exhibits to celebrate the recently unified services.<sup>17</sup> Military displays like the F-84 Thunderjet in New York's City Hall Plaza in 1956 appeared around the country.<sup>18</sup> Enthusiasm for such public displays waned relatively quickly after the late 1950s, but a military presence remained at the center of American culture throughout this period.<sup>19</sup> Television shows brought servicemen into American living rooms as heroes in popular series and in documentaries. Consumers bought \$16.9 million worth of "G.I. Joe" dolls and equipment in the first year after their 1964 release.<sup>20</sup>

This convergence of American and military culture was also reflected in the diminishing gap between military and civilian justice during the Cold

War.<sup>21</sup> Because postwar legal reform edged military law closer to civilian law and procedure, the history of the court-martial helps to illuminate the path of civilian criminal law. The UCMJ moved military criminal procedure in the same direction as other systems of American criminal justice after World War II by recognizing the rights of accused persons and articulating the elements of military crimes.<sup>22</sup> Both changes echoed the shift toward specified crimes and higher procedural standards that occurred in many civilian criminal jurisdictions.

But procedure could not keep cultural norms from influencing the outcomes of either military or civilian criminal trials and appeals. Military criminal records document the continuing impact of racial prejudice, socio-economic distinctions, and assumptions about gender roles and sexual behavior on the process and outcomes of American criminal justice after World War II. The court-martial reveals that defending America involved not just fighting wars, but policing the political ideologies, sexual intimacies, and social interactions of the nation's citizen-soldiers. Official pronouncements declared equality of treatment across race lines, but racism in personnel policies, criminal justice outcomes, and portrayals of enemy forces continued. Recruiters were desperate to find competent troops but ignored women as a viable resource. The military forbade homosexuality but mandated same-sex environments, lionized sexual vigor but touted sexual restraint. The armed forces also participated in the widespread political repression that characterized American political culture during this period. The need to identify and eliminate communists was of paramount importance within the armed forces, where disloyalty could directly undermine national security interests.<sup>23</sup> The possibility of subversion from within the ranks of the military was a particularly galling thought to citizens already wary of the burgeoning Department of Defense. Military courts struggled to balance demands for reform and democratization against a long-standing culture of masculine privilege, racial exclusivity, and authoritarian leadership. Military justice reveals the power and depth of that struggle. It demonstrates not only how judges and judge advocates resolved legal issues and how politics and culture influenced military leaders, but also how soldiers on the ground lived out the conflicts created by the United States' role in fighting the ideological and actual battles of the Cold War.

By seeking insight into military life and American values through the court-martial, *Defending America* argues for the importance of service-members' chaotic, disparate lives, and the policies and culture of the military itself, to broader narratives of twentieth-century American and Cold War history. Court-martial records prove that military policies mattered. They also prove that prejudice and discrimination tainted criminal justice

even when courts enforced procedural norms, and that living and working in the Cold War military was often brutalizing and frustrating even as it opened new doors of opportunity to so many young Americans. These records, however, do not “prove” the guilt or innocence of the persons accused, nor the guilt or innocence of the institution that recruited, trained, deployed, and prosecuted them. Instead, they show the consequences of war and military culture during years in which military service was a life-changing experience for millions of Americans. Courts-martial for rape, cowardice, and collaboration, for example, make the human toll of the often forgotten Korean War painfully apparent; military crimes related to prostitution reveal the damaging secondary effects of military occupation on local communities and families; vague laws and arbitrary enforcement permitted the armed forces’ prejudice against homosexuals to destroy the careers of countless dedicated servicemembers. Military judges, judge advocates, and commanding officers were no more, or less, culpable than many civilians in creating a criminal justice system that operated at times in arbitrary, unjust ways. But the exigencies of war and the pressure to conform to military standards of behavior made striking a balance between legal process and cultural norms even more difficult in the ranks of the armed forces than in civilian jurisdictions.

Chapter 1 examines the Cold War military justice system as a whole, exploring the new use of the court-martial as a less common but more stigmatizing tool of military discipline. Subsequent chapters trace the prosecution of military crime and the evolution of legal doctrine, in the context of the sometimes harrowing realities of military life. Chapter 2 focuses on a central dilemma of military crime and society, the difficulty of enforcing discipline in an institution in which the line between “good” and “bad” behavior was not easy to draw. Chapter 3 considers how the Cold War military, charged with defending self-determination and political autonomy, treated dissent and difference within its ranks as not only undesirable, but potentially criminal. Chapter 4 examines the courts-martial that grew out of the tension between family and military responsibilities, revealing how gendered assumptions about behavior clashed with the military’s expectations of its troops. Chapter 5 analyzes how commanders’ prosecutorial discretion contributed to racial disparities in military justice, especially in the prosecution of sex crimes. Chapter 6 focuses on the often contentious trials of high-ranking officers, revealing how the privileged status of officers made them less likely to be prosecuted for most crimes but especially vulnerable to punishment for acts that tarnished the military’s public image. The afterword sketches the post-Vietnam landscape of military justice, highlighting the changes in military justice that have occurred since the mid-1970s and looking beyond the court-martial to another subset of mil-

itary justice, the new military commissions intended to try suspected terrorists.

Post-World War II American history has lost the story of the modern court-martial, a drama full of global intrigue, personal tragedy, and grim insight into American politics and culture. This book begins to tell that story.