



Supreme Court Considers Statute of Limitations for Military Rape Cases

December 4, 2020

In the consolidated cases *United States v. Briggs* and *United States v. Collins*, argued on October 13, 2020, the government asks the Supreme Court to overturn two lower court decisions that reversed the rape convictions of three former servicemembers. The cases turn on the proper statute of limitations under the Uniform Code of Military Justice (UCMJ) for prosecuting rapes committed by military servicemembers between 1986 and 2006. Before 1986, the statute of limitations—the **time** after which an offense cannot be punished—was **three years**; since 2006, there is **no statute of limitations** under the UCMJ for rape. But between 1986 and 2006, the length of the statute of limitations depended on whether rape was interpreted as an offense “**punishable by death**” under the UCMJ. If rape was punishable by death during this period, as the UCMJ stated at the time, then there was **no statute of limitations** during that period. If not, then the statute of limitations was **five years**.

This Sidebar begins by discussing the relevant legislative history and judicial interpretations of the UCMJ’s statute of limitations and punitive provisions for rape. It then summarizes the factual and procedural history in *Briggs* and *Collins*, outlines the parties’ arguments before the Supreme Court, and discusses several potentially applicable legal doctrines. The Sidebar concludes with some considerations for Congress. (For more information about courts-martial under the UCMJ, see [CRS Report R46503](#), *Military Courts-Martial Under the Military Justice Act of 2016*, by Jennifer K. Elsea and Jonathan M. Gaffney. For more information on statutes of limitations in criminal cases, see [CRS Report RL31253](#), *Statute of Limitation in Federal Criminal Cases: An Overview*, by Charles Doyle. And for more information on the availability of the death penalty for specific federal crimes, see [CRS Report R42095](#), *Federal Capital Offenses: An Overview of Substantive and Procedural Law*, by Charles Doyle.)

The UCMJ: Relevant Legal Background

The UCMJ **governs** crimes committed by military servicemembers. It **defines offenses**, sets out the **jurisdiction** and **procedures** for courts-martial, and as relevant here, sets **statutes of limitations** and **authorizes certain punishments**, such as the death penalty, for offenses. Three sections of the UCMJ are especially relevant to *Briggs* and *Collins*:

- [Article 43](#) defines the statutes of limitations for offenses under the UCMJ;

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- [Article 55](#) prohibits cruel and unusual punishment; and
- [Article 120](#) defines *rape* and *sexual assault* under the UCMJ.

This section first describes the legislative history of these provisions before turning to relevant judicial interpretations.

Legislative History

Congress [enacted](#) the UCMJ in 1950, and it [entered into force](#) in 1951. At the time of enactment, Article 43 [provided that there was](#) no statute of limitations for “desertion or absence without leave in time of war, or with aiding the enemy, mutiny, or murder” and set a three-year statute of limitations for most other offenses, including rape. Article 120 [provided](#) that a person guilty of rape “shall be punished by death or such other punishment as a court-martial may direct.” Article 55, then as now, [prohibits](#) “[p]unishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment.”

Amendments to Article 43

As relevant to *Briggs* and *Collins*, Congress has amended Article 43 three times. In 1986, Congress provided that there was [no statute of limitations](#) for “any offense punishable by death” and set a five-year statute of limitations for most other offenses. These statutes of limitations mirrored their civilian counterparts, which are codified at [18 U.S.C. § 3281](#) for offenses punishable by death, and [§ 3282](#) for other offenses. Congress [again amended](#) Article 43 in 2003, setting a [twenty-five-year](#) statute of limitations for child abuse offenses, including rape of a child under Article 120. Most recently, Congress [amended](#) Article 43 in the National Defense Authorization Act for Fiscal Year 2006 (2006 NDAA) in a [section](#) titled “Extension of Statute of Limitations for Murder, Rape, and Child Abuse Offenses under the [UCMJ].” The [2006 amendments](#) provided that there is no statute of limitations for “murder or rape, or [for] any other offenses punishable by death” and modified the twenty-five-year statute of limitations for child abuse offenses other than rape. In an [accompanying report](#), the Senate Committee on Armed Services described the amendments as “clarify[ing] that all murders are included in the class of offenses that has an unlimited statute of limitations . . . [and] includ[ing] rape in that class of offenses.”

Amendments to Article 120

As with Article 43, Congress has amended Article 120 several times since its enactment. Of note, in the 2006 NDAA, Congress [amended Article 120](#) to specify that a person guilty of rape “shall be punished as a court-martial may direct,” removing the statutory authority to punish rape by death.

Judicial Interpretations

Although the Supreme Court has not yet interpreted Articles 43, 55, or 120, several lower courts, including the U.S. Court of Appeals for the Armed Forces (CAAF), have done so. Three cases are particularly relevant to *Briggs* and *Collins*. First, in the 1983 case [United States v. Matthews](#), the CAAF (then known as the U.S. Court of Military Appeals) addressed whether Article 55 protected servicemembers from cruel and unusual punishment in the same manner as the Eighth Amendment to the U.S. Constitution. Specifically, the court considered whether the [Eighth Amendment](#)’s prohibition on cruel and unusual punishment barred the imposition of the death penalty on a servicemember found guilty of rape and murder. The [court held](#) that “a servicemember is entitled both by statute [under Article 55] and under the Eighth Amendment to protection against ‘cruel and unusual punishments.’” It recognized, however, that, “since in many ways the military community is unique, . . . there may be circumstances under which the rules governing capital punishment of servicemembers will be different from those applicable to civilians.”

In *dicta*, the *Matthews* court further observed that, while “Congress obviously intended that in cases where an accused servicemember is convicted of . . . rape, the court-martial members should have the option to adjudge a death sentence,” this intent “[p]robably . . . cannot be constitutionally effectuated in a case where the rape of an adult female is involved, . . . at least, where there is no purpose unique to the military mission that would be served by allowing the death penalty for this offense.” The court based its reasoning on the Supreme Court’s 1977 holding in *Coker v. Georgia* that “a sentence of death is grossly disproportionate and excessive punishment for the crime of rape and is therefore forbidden by the Eighth Amendment as cruel and unusual punishment.”

Second, in the 1998 case *Willenbring v. Neurauter*, the CAAF held there was no statute of limitations for rape, relying on the contemporaneous language of [Articles 43\(a\)](#) (“A person charged . . . with any offense punishable by death, may be tried and punished at any time without limitation”) and [120\(a\)](#) (any person “guilty of rape . . . shall be punished by death or such other punishment as a court-martial may direct”). The CAAF considered its decision in *Matthews* and the Supreme Court’s decision in *Coker* but held that the 1986 amendment to Article 43 “was meant to apply to the most serious offenses without listing each one in the statute.” The CAAF concluded that rape under Article 120 was an offense that Congress deemed punishable by death, regardless of whether such a sentence constitutionally could be imposed.

Third, and most recently, in the 2018 case *United States v. Mangahas*, the CAAF overruled *Willenbring*. Relying on *Coker*, the CAAF reasoned that where “there is no set of circumstances under which the death penalty could constitutionally be imposed for the rape of an adult woman, that offense is simply not ‘punishable by death.’” Recognizing that “*Willenbring* gave short shrift to this highly salient point,” the court overruled its prior decision. The CAAF concluded that because rape was not constitutionally punishable by death, rapes committed between 1986 and 2006 are subject to a five-year statute of limitations under Article 43.

Briggs and Collins

Factual and Procedural History

The cases pending before the Supreme Court involve similar facts as the preceding cases. In *Briggs*, Air Force Officer Michael Briggs was charged in February 2014 with a May 2005 rape. In *Collins* (the consolidation of two cases), Air Force Servicemember Richard Collins was charged in March 2016 with an August 2000 rape, and Air Force Officer Humphrey Daniels III was charged in 2015 with a July 1998 rape. The victims in all three cases were adults. All three accused were convicted by general courts-martial and sentenced to imprisonment and discharge or dismissal from service, and all three appealed their convictions to the U.S. Air Force Court of Criminal Appeals (AFCCA).

During his court-martial, Briggs did not raise a statute of limitations defense, instead raising that argument for the first time on appeal to the AFCCA. The AFCCA declined to entertain the argument and affirmed his conviction; in a 2017 summary decision, the CAAF likewise affirmed the AFCCA’s decision. Briggs petitioned for a writ of certiorari with the Supreme Court. While his petition was pending, the CAAF issued its decision in *Mangahas*. The Supreme Court granted certiorari and remanded Briggs’s case for the CAAF to apply *Mangahas*. In February 2019, the CAAF held that *Mangahas* controlled because the 2006 amendments to Article 43’s statute of limitations did not apply retroactively. Because the Air Force did not charge Briggs until after the five-year statute of limitations in effect in 2005 had run, the CAAF reversed the AFCCA decision and dismissed the rape charge.

In Collins’s and Daniels’s appeals, the AFCCA relied on *Mangahas* to set aside their rape convictions and dismiss those charges. The government appealed the AFCCA’s decisions to the CAAF, which, relying on its decision in *Briggs*, summarily affirmed those decisions in March 2019 and July 2019, respectively.

The government sought review of all three CAAF decisions in the Supreme Court, which [granted certiorari](#) in November 2019 and consolidated the cases. The Court [heard oral argument](#) on October 13, 2020.

Supreme Court Arguments

In [their briefs](#) and at [oral argument](#), the parties focused on three issues. First, the parties disagree as to the correct interpretation of “offense punishable by death” in the 1986 version of Article 43, including whether the CAAF correctly decided *Mangahas*. The [government argues](#) the phrase “punishable by death” in the 1986 version of Article 43 means any offense for which, by statute, Congress authorized the death penalty, regardless of whether the Constitution would actually permit the imposition of that sentence. The respondents, in turn, [contend](#) that for an offense to be punishable by death under Article 43, that penalty must be both legally authorized and constitutionally available.

Second, the parties debate whether the Eighth Amendment prohibits imposition of the death penalty for rapes committed by military servicemembers, including whether *Coker* applies to rape under the UCMJ. The [government asserts](#) that, because of the unique nature of the military justice system, the Constitution does not prohibit imposition of the death penalty for rape committed by military servicemembers. But the [respondents argue](#) that military courts, including the CAAF, have consistently applied the Eighth Amendment in the military justice system except in “cases of ‘military necessity’” and there is no such necessity here.

Finally, assuming the Court holds there was a five-year statute of limitations for rape under the 1986 version of Article 43, the parties dispute whether the 2006 amendment to Article 43’s statute of limitations was retroactive—that is, whether it could be applied to actions that occurred before its enactment. If so, then Briggs’s charge and court-martial were timely, because the 2006 amendment [occurred before](#) the existing five-year statute of limitations had run, effectively extending that period indefinitely. Collins’s and Daniels’s appeals likely [would not be affected](#), however, because the 2006 amendment came after the five-year statute of limitations had run in those cases. (The Court has not expressly ruled on whether Congress can revive a statute of limitations that has run but has rejected states’ ability to do so, holding in *Stogner v. California* that such revivals violate the Constitution’s [ex post facto clause](#).)

Legal Analysis

The Supreme Court’s decision in this case will turn on its interpretation of Articles 43, 55, and 120. Several judicial [canons of statutory construction](#) could guide the Court’s analysis. (For more information on these and other canons of construction, see [CRS Report R45153](#), *Statutory Interpretation: Theories, Tools, and Trends*, by Valerie C. Brannon.)

- The Court may invoke the [doctrine of constitutional avoidance](#), under which the Court will [generally avoid](#) ruling on a constitutional question if it can decide a case without doing so. This doctrine could influence the Court’s ruling on the meaning of “offense punishable by death” in Article 43. A ruling that this phrase means offenses that Congress has deemed punishable by death would sidestep the question of whether the Constitution prohibits the imposition of the death penalty for rape in the military justice system.
- The Court may also apply the [rule of lenity](#), which [counsels](#) courts to resolve ambiguities in criminal statutes in a defendant’s favor. If the Court finds Articles 43, 55, or 120 ambiguous, it could invoke this rule to hold that the Eighth Amendment prohibits the imposition of the death penalty in military rape cases or that the statute of limitations in the 1986 version of Article 43 should be five years.

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- Finally, the Court may consider the *presumption against retroactive legislation*, under which courts **generally will not** apply a new law to conduct that occurred before its date of enactment unless Congress has unambiguously stated the law should so apply. Under this canon, the Court could hold that, absent clear congressional intent, the 2006 amendments to Article 43 do not apply retroactively to Briggs’s case.

Considerations for Congress

Although the resolution of Briggs’s, Collins’s, and Daniels’s cases rests with the Court, the legal issues at play highlight several considerations for Congress should it decide to amend the UCMJ. First, if Congress seeks to clarify that it intends a future UCMJ amendment to apply retroactively, it could include an “**unambiguous**” statement to that effect. Second, Congress could consider amending the UCMJ to clarify whether Article 55’s prohibition on “cruel and unusual punishment” is congruent with the Eighth Amendment’s similar prohibition. Finally, to avoid future uncertainty as to the proper statute of limitations for offenses “punishable by death,” Congress might define statutes of limitations under Article 43 by categories of crimes, rather than by the type of authorized punishment.

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