
Defense Report

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Giving Service Members the Right to Sue Their Superiors—A Real Threat to Military Discipline

The U.S. Supreme Court has recently agreed to hear a case involving a suit by five former sailors who claim their superiors violated their Constitutional rights. The suit alleges that because they are black the sailors were given the dirtiest, most dangerous jobs on board a landing ship, were denied access to training programs and were punished excessively for minor infractions.

If the allegations are provable they reflect a situation which should never have occurred. They also reflect a failure of the system built into all the military services to provide a channel through which the most junior sailor, soldier, airman or Marine can register a justified complaint against superiors and have a real expectation that the wrong will be redressed. While a service member, by law and regulation, gives up certain of his or her personal freedoms because of the very nature of military service, basic Constitutional protections remain intact, supposedly secured by an inspector general system which was established in part to maintain the proper balance between rights and military necessity.

One of the lower courts which has already heard this case ruled that military members should have to prove that they had exhausted all possible internal remedies before turning to the courts. This ruling, and the expectation that the Supreme Court would agree with it, is crucial to the preservation of good order and discipline in the military establishment. If this requirement were not enforced the services could well be inundated by lawsuits claiming some real or imagined violation of Constitutional rights. The government attorneys took the correct path when they went directly to the Supreme Court, asking that the issue be settled, once and for all.

As was true when the Army, Navy, Air Force and Marine Corps expressed their collective abhorrence to the idea of unionizing the services, the leaders of the armed forces, from flag rank to the most junior noncommissioned officer, have the inescapable duty to make the existing system work—and in almost every case it does. Aberrations like the case headed for the Supreme Court underline that duty.