



Bridging the Gap

Judge Rob Shuck

Circuit Judge, 4th Judicial Circuit

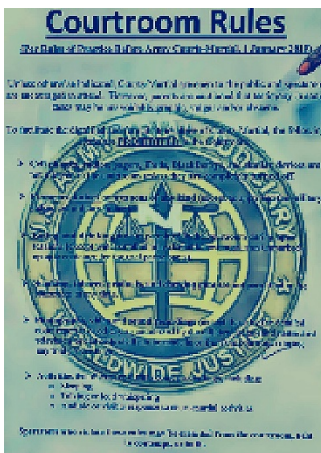


AVOID CREATING DISTRACTIONS

“Counsel for both sides must assist the judge with maintaining a solemn and dignified atmosphere throughout the trial.”

Rule 9.1, Rules of Practice before Army Courts-Martial, 1 January 2019

Distractions distract. We often think of them as involving gallery spectators (Ringing cell phones! Texting!), and Rule 9.3 prohibits several items and conduct.



Distractions also include trial participants violating Army cultural norms. For example, pay attention to panel members when Servicemember witnesses are not using proper military courtesy when addressing counsel (and vice versa) or the witness experiences a uniform malfunction similar to that pictured on the right. A panel member will probably pay attention more to a dangling nametape than to your brilliant PowerPoint closing argument.



Remember, panel members adopted and thrived in our common military culture. The

proper wear of our uniform is a part of our common culture. Much like when you see a memorandum not in AR 25-50 format or when you see a Soldier outside not wearing a cover---such actions are taboo in our culture. These taboos become noticeable and distracting. As Marshall McLure famously stated, “The medium is the message.” Speech, behavior, grooming standards and dress not conforming to our military standards inadvertently reduce credibility in front of a fact finder or may completely drown out the evidence presented.

As part of your pretrial checklist (have one), use experienced NCOs to check yourself, co-counsel, the Accused, and testifying witnesses. Tell testifying military witnesses how property to address counsel, opposing counsel, and the military judge. Brief the bailiffs on how to quickly and professionally address disruptive behavior by spectators. Finally, if there is a uniform issue that you cannot quickly fix, inform the military judge so he or she can take any necessary, proper remedial measures to keep panel members focused on the evidence.

Remember, a disrespectful Soldier, needing a haircut and wearing a poorly tailored uniform communicates a message. But will that be the message you intended?

Approved by CTJ/15 Nov 2019