

Table of Contents

Volume 1

CHAPTER 1. INTRODUCTION TO MILITARY LAW

I. THE NATURE OF MILITARY LAW

- § 1:1 What is military law
- § 1:2 The role of the military commander
- § 1:3 Courts-martial
- § 1:4 Purposes of the military justice system
- § 1:5 —Enforce discipline
- § 1:6 —Promote justice

II. HISTORY OF THE MILITARY JUSTICE SYSTEM

- § 1:7 Early military codes and military tribunals
- § 1:8 Early naval codes and naval tribunals
- § 1:9 British military codes and military tribunals
- § 1:10 —Articles of war and courts-martial
- § 1:11 —Naval codes and courts-martial
- § 1:12 American military codes and military tribunals
- § 1:13 —Articles of war and courts-martial
- § 1:14 — —1775 to 1917
- § 1:15 — — —Types and composition of courts-martial
- § 1:16 — — —Courts-martial offenses
- § 1:17 — — —Courts-martial procedures
- § 1:18 — — —Courts-martial sentences and
punishments
- § 1:19 — — —Review of courts-martial
- § 1:20 — —1917 to 1950
- § 1:21 — — —The Ansell Crowder Dispute of 1917 to
1920
- § 1:22 — — —The Articles of War of 1920
- § 1:23 — — —The impact of World War II

MILITARY CRIMINAL JUSTICE

- § 1:24 — — —The Elston Act of 1948
- § 1:25 —American naval codes and naval courts: 1775 to 1950
- § 1:26 —Military justice in the Coast Guard
- § 1:27 —Military justice in the Air Force
- § 1:28 Uniform Code of Military Justice
- § 1:29 Military Justice Act of 1968
- § 1:30 Military Justice Act of 1983
- § 1:31 Amendments to the UCMJ: 1983–2016
- § 1:32 Military Justice Act of 2016
- § 1:33 Limits on Courts of Criminal Appeals’ factual review authority: 2021
- § 1:34 Military Justice Reform Amendments of 2022
- § 1:35 Expanded Supreme Review of Courts-Martial (2024)

III. LEGAL BASES OF THE MILITARY JUSTICE SYSTEM

- § 1:36 United States Constitution
- § 1:37 Statutes
- § 1:38 Executive orders: Manual for Courts-Martial
- § 1:39 Service regulations
- § 1:40 Judicial decisions
- § 1:41 International law: The law of war

IV. OVERVIEW OF THE MILITARY JUSTICE SYSTEM

- § 1:42 Administrative discipline and nonjudicial punishment
- § 1:43 Courts-martial
- § 1:44 Appellate courts
- § 1:45 Collateral challenges to courts-martial sentences

V. MILITARY ETHICS

- § 1:46 Rules of professional responsibility
- § 1:47 Joint ethics regulations
- § 1:48 Service value systems
- § 1:49 Code of Conduct

TABLE OF CONTENTS

CHAPTER 2. JURISDICTION

I. INTRODUCTION

- § 2:1 Courts-martial jurisdiction defined
- § 2:2 Jurisdictional prerequisites for courts-martial
- § 2:3 Territorial application and venue
- § 2:4 Scope of jurisdiction

II. PERSONAL JURISDICTION: WHO IS SUBJECT TO COURT-MARTIAL AND WHEN

- § 2:5 General
- § 2:6 Members of a regular component of the armed forces
 - § 2:7 —Enlistees
 - § 2:8 —Inductees
 - § 2:9 Reservists
 - § 2:10 —What are the Reserve Components?
 - § 2:11 —Active duty
 - § 2:12 —Inactive duty for training
 - § 2:13 —Involuntary activation of Reservists for UCMJ proceedings
 - § 2:14 Cadets and midshipmen
 - § 2:15 Military retirees
 - § 2:16 Military prisoners
 - § 2:17 Prisoners of War (POWs)
 - § 2:18 Members of the National Oceanic and Atmospheric Administration, Public Health Service, and other organizations
- § 2:19 Civilians
 - § 2:20 —General rule: Civilians are not subject to courts-martial
 - § 2:21 —The “jurisdictional gap”
 - § 2:22 —Exception to the general rule: Civilians accompanying the armed forces in the field
 - § 2:23 —Civilian criminal prosecutions of civilians
 - § 2:24 — —Special Maritime and Territorial Jurisdiction (SMTJ) Act
 - § 2:25 — —Military Extraterritorial Jurisdiction Act (MEJA)
 - § 2:26 — —War Crimes Act of 1996

III. PERSONAL JURISDICTION: WHEN TERMINATED

- § 2:27 General rule: Court-martial jurisdiction terminates upon complete discharge from the armed forces
- § 2:28 When is a service member discharged?
- § 2:29 Exceptions to the general rule that discharge terminates jurisdiction
- § 2:30 —Discharge for purpose of reenlistment
- § 2:31 —Discharge for purpose of service in another component
- § 2:32 —Discharges from prior term of service
- § 2:33 —Fraudulent discharge
- § 2:34 —Persons in custody imposed by court-martial sentence
- § 2:35 —Deserters discharged in later term of service

IV. SUBJECT-MATTER JURISDICTION

- § 2:36 Introduction
- § 2:37 *O'Callahan v. Parker*: Service-connection requirement
- § 2:38 Application of *O'Callahan's* service-connection test
- § 2:39 *Solorio v. United States*: Return to status-based jurisdiction
- § 2:40 Service-connection in capital cases
- § 2:41 Members of the Reserve and National Guard
- § 2:42 Limits on special and summary court-martial jurisdiction
- § 2:43 Properly Convened and Composed Court-Martial

V. PROCEDURAL CONSIDERATIONS

- § 2:44 Pleading jurisdiction
- § 2:45 Burden of proof
- § 2:46 Waiver

CHAPTER 3. MILITARY OFFENSES

I. INTRODUCTION

- § 3:1 General
- § 3:2 Charges and specifications

TABLE OF CONTENTS

- § 3:3 Lesser-included offenses (LIOs)
- § 3:4 Attempts
- § 3:5 Punishments

II. ABSENCE OFFENSES

- § 3:6 General
- § 3:7 Article 86: Absence without leave
- § 3:8 Articles 86(1-2): Absence without leave—Failure to repair
 - § 3:9 — —Elements of the offense
 - § 3:10 — —Punishments
- § 3:11 Article 86(3): Absence without leave—Absence without leave (AWOL)
 - § 3:12 — —Elements of the offense
 - § 3:13 Article 86: Absence without leave—Absence without leave (AWOL)—Elements of the offense—Absence without authority
 - § 3:14 — — —Unit, organization, or place of duty
 - § 3:15 — —Duration of absence
 - § 3:16 — —Termination of AWOL
 - § 3:17 — — —Voluntary termination
 - § 3:18 — — —Termination by apprehension
 - § 3:19 — — — —Apprehension by military authorities
 - § 3:20 — — — —Apprehension by civilian authorities
 - § 3:21 — —Defenses
 - § 3:22 — — —Physical inability
 - § 3:23 — — —Civilian custody
 - § 3:24 — — —Statute of limitations
 - § 3:25 — —Aggravated forms
 - § 3:26 — —Maximum punishments
 - § 3:27 Article 87: Missing movement and jumping from vessel
 - § 3:28 Article 87: Missing movement—Nature of offense
 - § 3:29 Article 87(a): Missing movement—Elements of the offense
 - § 3:30 — —Movement
 - § 3:31 — —Mode of movement
 - § 3:32 — —Design or neglect
 - § 3:33 — —Knowledge of the movement
 - § 3:34 — —Defenses
 - § 3:35 — —Lesser-included offense and multiplicity
 - § 3:36 — —Punishments

MILITARY CRIMINAL JUSTICE

- § 3:37 Article 87(b): Jumping from vessel
- § 3:38 —Elements of the offense
- § 3:39 —Punishment
- § 3:40 Article 87a: Resistance, flight, breach of arrest, and escape
- § 3:41 Articles 87a(1-2): Resistance, flight, breach of arrest, and escape—Resisting and fleeing apprehension
- § 3:42 Article 87a(3): Resistance, flight, breach of arrest, and escape—Breaking arrest
- § 3:43 Article 87a(4): Resistance, flight, breach of arrest, and escape—Escape from custody or confinement
- § 3:44 Article 87a: Resistance, flight, breach of arrest, and escape—Punishment and presidentially prescribed lesser-included offense
- § 3:45 Article 87b: Offenses against correctional custody and restriction
- § 3:46 Articles 87(a-b): Offenses against correctional custody and restriction—Escape from and breaches of correctional custody
- § 3:47 Article 87b(c): Offenses against correctional custody and restriction—Breach of restriction
- § 3:48 Article 87b: Offenses against correctional custody and restriction—Punishment
- § 3:49 Article 84: Breach of a medical quarantine
- § 3:50 Article 85: Desertion
- § 3:51 —Desertion with intent to remain away permanently
- § 3:52 — —Formation of intent
- § 3:53 — —Nature of the intent
- § 3:54 — —Example: Desertion with intent to remain away
- § 3:55 —Desertion with intent to shirk important service
- § 3:56 — —“Important” service
- § 3:57 — —Actual knowledge of important service
- § 3:58 — —Intent to shirk
- § 3:59 — —Example: Desertion with intent to shirk important service
- § 3:60 —Desertion with intent to avoid hazardous duty
- § 3:61 — —Hazardous duty
- § 3:62 — —Knowledge of hazardous duty
- § 3:63 — —Intent to avoid
- § 3:64 — —Example: Desertion with intent to avoid hazardous duty

TABLE OF CONTENTS

- § 3:65 —Attempted desertion
- § 3:66 —Commissioned officer quits post after tender of resignation but before its acceptance
- § 3:67 —Lesser-included offenses
- § 3:68 —Defenses
- § 3:69 —Punishments
- § 3:70 Article 82(a): Soliciting desertion (Article 82(b))
- § 3:71 Article 104a(2): Fraudulent separation
- § 3:72 —Elements and nature of the offense
- § 3:73 —Fraudulent discharge and other offenses—
Process
- § 3:74 — —Punishment
- § 3:75 Article 83: Malingering
- § 3:76 —Elements and nature of the offense
- § 3:77 — —Self-injury or feigning illness
- § 3:78 — —Intent to avoid work, service, or duty
- § 3:79 — —Knowledge of work, duty, or service
- § 3:80 —Lesser-included offenses
- § 3:81 —Punishments

III. DISRESPECT OFFENSES

- § 3:82 Introduction
- § 3:83 Article 88: Contempt toward officials
- § 3:84 —History
- § 3:85 —Elements of the offense
- § 3:86 — —Officials encompassed by Article 88
- § 3:87 — —Nature of punishable words and conduct
- § 3:88 —Punishments
- § 3:89 Article 134: Disloyal speech
- § 3:90 Article 134: Disloyal statements—Elements of the offense
- § 3:91 Article 134: Disloyal speech—Nature of speech and its impact
- § 3:92 —Punishment
- § 3:93 Contemptuous words and disloyal speech: First Amendment concerns
- § 3:94 —The First Amendment and the military in the federal courts
- § 3:95 —The First Amendment and the military in the military courts
- § 3:96 Disrespect toward superiors
- § 3:97 Article 89: Disrespect toward superiors—

MILITARY CRIMINAL JUSTICE

- Disrespect toward superior commissioned officers
- § 3:98 — — Elements of the offense
- § 3:99 — — — Superior commissioned officer
- § 3:100 — — — Disrespect
- § 3:101 — — — Knowledge requirement
- § 3:102 — — Divestiture defense
- § 3:103 — — Lesser-included offenses
- § 3:104 — — Punishment
- § 3:105 Article 91(3): Disrespect toward superiors—
Disrespect toward warrant and noncommissioned officers in execution of office
- § 3:106 — — Elements of the offense
- § 3:107 Article 93(3): Disrespect toward superiors—
Disrespect toward warrant and noncommissioned officers in execution of office—Within the presence of the warrant or noncommissioned officer
- § 3:108 Article 91(3): Disrespect toward superiors—
Disrespect toward warrant and noncommissioned officers in execution of office—Elements of the offense—Warrant, noncommissioned, or petty officer in execution of office
- § 3:109 — — — Contempt or disrespect
- § 3:110 — — — Knowledge requirement
- § 3:111 — — Divestiture defense
- § 3:112 — — Lesser-included offenses
- § 3:113 — — Punishment
- § 3:114 Article 95a: Disrespect toward sentinel or lookout
- § 3:115 — Elements of the offenses
- § 3:116 — Sentinel or lookout
- § 3:117 — Disrespect
- § 3:118 — Lesser-included offenses
- § 3:119 — Punishment

IV. DISOBEDIENCE OFFENSES

- § 3:120 Introduction
- § 3:121 Articles 90 and 91(2): Disobeying a superior commissioned officer, warrant officer, noncommissioned officer, or petty officer
- § 3:122 — Elements of the offenses

TABLE OF CONTENTS

§ 3:123	Articles 90(2) and 91(2): Disobeying a superior commissioned officer, warrant officer, noncommissioned officer, or petty officer—Elements of the offenses—Who may issue the order
§ 3:124	Articles 90 and 91(2): Disobeying a superior commissioned officer, warrant officer, noncommissioned officer, or petty officer—Elements of the offenses—Form and nature of the order
§ 3:125	— — Knowledge requirement
§ 3:126	— — Nature of disobedience: “willfulness”
§ 3:127	— — Lawfulness of the order
§ 3:128	Articles 90(2) and 91(2): Disobeying a superior commissioned officer, warrant officer, noncommissioned officer, or petty officer—Elements of the offenses—Lawfulness of the order—Relation to military duties
§ 3:129	— — — Surrender of constitutional or statutory rights
§ 3:130	— — — Inconsistent with Constitution, statute, or orders of higher headquarters
§ 3:131	— — — Conscientious objectors
§ 3:132	— — — Patently illegal orders and the “Nuremberg Defense”
§ 3:133	— Lesser-included offenses
§ 3:134	— Punishments
§ 3:135	Articles 99(2) and 91(2): Disobeying a superior commissioned officer, warrant officer, noncommissioned officer, or petty officer—Defenses
§ 3:136	Article 92: Failure to obey lawful orders or regulations
§ 3:137	Article 92(1): Failure to obey lawful orders or regulations—Violation of a general order or regulation
§ 3:138	— — Elements of the offense
§ 3:139	— — — Authority to issue a general order or regulation and method of publication
§ 3:140	— — — Proving the general order or regulation and its violation
§ 3:141	— — — Knowledge not required
§ 3:142	— — — Pleading requirements
§ 3:143	— — Enforceability: Punitive nature of general order or regulation

MILITARY CRIMINAL JUSTICE

- § 3:144 — —Lawfulness of general order or regulation
- § 3:145 — —Lesser-included offenses
- § 3:146 — —Punishments
- § 3:147 Article 92(2): Violation of a lawful order
- § 3:148 — —Elements of the offense
- § 3:149 — —Knowledge requirement
- § 3:150 — —Duty to obey order
- § 3:151 — —Lawfulness of the order
- § 3:152 — —Lesser-included offenses
- § 3:153 — —Punishments
- § 3:154 Article 94: Mutiny or Sedition
- § 3:155 Article 94(a)(1): Mutiny—Elements of the offense
- § 3:156 — —Mutiny by refusing to obey orders or perform duties
- § 3:157 — —Mutiny by creating violence or disturbance
- § 3:158 Article 94(a)(2): Mutiny—Sedition
- § 3:159 Article 94(a)(3): Mutiny—Failure to suppress or report mutiny or sedition
- § 3:160 Article 94(b) Mutiny or Sedition—Attempted mutiny or sedition
- § 3:161 Article 94: Mutiny or Sedition—Lesser-included offenses
- § 3:162 — —Punishments
- § 3:163 Article 82(b): Mutiny or Sedition—Solicitation to commit mutiny or sedition (Article 82(b))

V. BREACHES OF THE PEACE

- § 3:164 Assaults on officers and noncommissioned officers
- § 3:165 Article 89(b): Assaults on officers and noncommissioned officers—Assaults on commissioned officers
- § 3:166 — —Elements of the offense
- § 3:167 — — —Definitions of culpable actions
- § 3:168 — — —“Superior commissioned officer”
- § 3:169 — — —“Execution of office”
- § 3:170 — — —“Knowledge” requirement
- § 3:171 — —Defenses
- § 3:172 — —Lesser-included offenses
- § 3:173 Article 89(b): Assaults on officers and noncommissioned officers—Assaults on commissioned officers—Punishments

TABLE OF CONTENTS

§ 3:174	Article 91(1): Assaults on officers and noncommissioned officers—Assaults on warrant and noncommissioned officers
§ 3:175	— — —Elements of the offense
§ 3:176	— — —Definitions of culpable actions
§ 3:177	— — —Warrant, noncommissioned, or petty officer in execution of office
§ 3:178	— — —“Knowledge” requirement
§ 3:179	— — —Defenses
§ 3:180	— — —Lesser-included offenses
§ 3:181	— — —Punishments
§ 3:182	Article 114(b): Dueling
§ 3:183	—Elements of the offenses
§ 3:184	—Lesser-included offenses
§ 3:185	—Punishments
§ 3:186	Article 117: Provoking speech and gestures
§ 3:187	—Elements of the offenses
§ 3:188	— — —“Provoking” or “reproachful”
§ 3:189	— — —Knowledge requirement
§ 3:190	—Lesser-included offenses
§ 3:191	—Punishments
§ 3:192	Article 116: Riot and breach of the peace
§ 3:193	—Riot: Elements and nature of the offense
§ 3:194	—Breach of the peace: Elements and nature of the offense
§ 3:195	—Lesser-included offenses
§ 3:196	—Punishments

VI. DERELICTION OFFENSES

§ 3:197	Article 92(3): Dereliction of duty
§ 3:198	—Elements of the offense
§ 3:199	— — —Duty
§ 3:200	— — —Knowledge of the duty
§ 3:201	— — —Dereliction
§ 3:202	—Ineptitude
§ 3:203	—Lesser-included offense
§ 3:204	—Punishments
§ 3:205	Article 110: Hazarding a vessel or aircraft
§ 3:206	—Elements of the offense
§ 3:207	— — —Hazard
§ 3:208	— — —Willfully and wrongfully
§ 3:209	— — —Negligently

- § 3:210 —Lesser-included offenses
- § 3:211 —Punishments
- § 3:212 Article 112: Drunkenness and other incapacitation offenses
- § 3:213 —Elements of the offenses
- § 3:214 — —Drunk and incapacitated.
- § 3:215 — —Duty
- § 3:216 — —Drunkenness “on duty”
- § 3:217 — —Defenses
- § 3:218 — —Lesser-included offenses
- § 3:219 — —Punishments

VII. WAR-TIME AND COMBAT-RELATED OFFENSES

- § 3:220 Article 99: Misbehavior before the enemy
- § 3:221 —Elements of the offenses
- § 3:222 — —“Enemy” defined
- § 3:223 — —“Before or in the presence of the enemy”
- § 3:224 — —Article 99(1): Running away
- § 3:225 — —Article 99(2): Shamefully abandoning, surrendering, or delivering up command
- § 3:226 — —Article 99(3): Endangering safety of a command, unit, place, ship, or military property
- § 3:227 — —Article 99(4): Casting away arms or ammunition
- § 3:228 — —Article 99(5): Cowardly conduct
- § 3:229 — —Article 99(6): Quitting place of duty to plunder or pillage
- § 3:230 — —Article 99(7): Causing false alarms
- § 3:231 — —Article 99(8): Willfully failing to do utmost to encounter enemy
- § 3:232 — —Article 99(9): Failing to afford relief and assistance
- § 3:233 —Lesser-included offenses
- § 3:234 —Punishments
- § 3:235 Article 82(b): Misbehavior before the enemy—Soliciting misbehavior
- § 3:236 Article 100: Subordinate compelling surrender
- § 3:237 —Elements of the offenses
- § 3:238 — —Compelling surrender
- § 3:239 — —Attempting to compel surrender
- § 3:240 — —Striking the colors or flag

TABLE OF CONTENTS

§ 3:241	—Lesser-included offenses
§ 3:242	—Punishments
§ 3:243	Article 101: Improper use of countersign
§ 3:244	—Elements of the offenses
§ 3:245	— —Disclosing a countersign or parole
§ 3:246	— —Giving an unauthorized countersign or parole
§ 3:247	—Lesser-included offenses
§ 3:248	—Punishments
§ 3:249	Article 102: Forcing a safeguard
§ 3:250	—Elements of the offense
§ 3:251	— —Nature of a safeguard
§ 3:252	— —Knowledge requirement
§ 3:253	— —Means of forcing the safeguard
§ 3:254	—Lesser-included offenses
§ 3:255	—Punishments
§ 3:256	Article 108a: Captured or abandoned property
§ 3:257	—Elements of the offenses
§ 3:258	— —Failing to secure public property taken from the enemy
§ 3:259	— —Failing to report and turn over captured or abandoned property
§ 3:260	— —Dealing in captured or abandoned enemy property
§ 3:261	— —Looting and pillaging
§ 3:262	—Lesser-included offenses
§ 3:263	—Punishments
§ 3:264	Article 103b: Aiding the enemy
§ 3:265	—Elements of the offenses
§ 3:266	— —Enemy defined
§ 3:267	— —Aiding the enemy with arms, ammunition, supplies, money, or other things
§ 3:268	— —Harboring the enemy
§ 3:269	— —Giving intelligence to the enemy
§ 3:270	— —Communicating or corresponding with the enemy
§ 3:271	—Lesser-included offenses
§ 3:272	—Maximum punishments
§ 3:273	Article 98: Misconduct as a prisoner
§ 3:274	—Elements of the offenses
§ 3:275	— —“Enemy” defined
§ 3:276	— —“Time of war” defined

MILITARY CRIMINAL JUSTICE

- § 3:277 — —Acting without authority to the detriment of another for the purpose of securing favorable treatment
- § 3:278 — —Maltreating prisoners while in a position of authority
- § 3:279 —Coercion as a defense
- § 3:280 —Lesser-included offenses
- § 3:281 —Punishments
- § 3:282 Article 95: Offenses by a sentinel or lookout
- § 3:283 —Elements of the offenses
- § 3:284 — —Sentinel or lookout
- § 3:285 Article 95: Offenses by a sentinel or lookout)—
Elements of the offenses—“Post” and “on post”
- § 3:286 Article 95: Offenses by a sentinel or lookout—
Elements of the offenses—Leaving post
- § 3:287 — —Drunk upon post
- § 3:288 — —Sleeping upon post
- § 3:289 — —“Found” drunk or sleeping upon post under
Article 113
- § 3:290 — —Loitering or wrongfully sitting on post
- § 3:291 —Lesser-included offenses
- § 3:292 —Punishments

VIII. SPYING AND ESPIONAGE

- § 3:293 Article 103: Spies
- § 3:294 —Spies under international humanitarian law
- § 3:295 —Elements of the offense
- § 3:296 — —“Enemy” defined
- § 3:297 — —“Time of war” defined
- § 3:298 — —Jurisdiction over “any person”
- § 3:299 — —Nature of the activity
- § 3:300 — —Intent requirement
- § 3:301 — —Persons not included as spies
- § 3:302 —Lesser-included offenses
- § 3:303 —Punishment
- § 3:304 Article 103a: Espionage
- § 3:305 —Elements of the offenses
- § 3:306 — —“Intent” requirement
- § 3:307 — —National defense information
- § 3:308 — —Communication, delivery, or transmittal
- § 3:309 —Attempted espionage
- § 3:310 —Espionage as a capital offense

TABLE OF CONTENTS

- § 3:311 —Lesser-included offenses
- § 3:312 —Punishments

IX. ABUSE OF AUTHORITY

- § 3:313 Article 93: Cruelty and maltreatment
- § 3:314 —Elements of the offense
- § 3:315 — —“Subject to the orders” of the accused
- § 3:316 — —Nature of the act and the harm
- § 3:317 — —Intent
- § 3:318 —Lesser-included offenses
- § 3:319 —Punishments
- § 3:320 Sexual harassment
- § 3:321 Fraternalization and improper senior-subordinate relationships
- § 3:322 —Improper senior-subordinate relationships under service regulations
- § 3:323 — —Army regulation
- § 3:324 — —Navy regulation
- § 3:325 — —Marine Corps regulation
- § 3:326 — —Air Force regulation
- § 3:327 — —Coast Guard regulation
- § 3:328 —Fraternalization under Article 134, UCMJ
- § 3:329 — —Violation of custom
- § 3:330 — —Punishments
- § 3:331 Article 93a: Prohibited activities with military recruit or trainee by persons in position of special trust
- § 3:332 —Nature of the offenses
- § 3:333 —Elements
- § 3:334 —Knowledge
- § 3:335 Article 93a: Prohibited activities with military recruit or trainee by persons in position of special trust—Lesser included offenses
- § 3:336 Article 93a: Prohibited activities with military recruit or trainee by persons in position of special trust—Punishments
- § 3:337 Article 132: Retaliation
- § 3:338 —Elements
- § 3:339 — —Nature of the offense
- § 3:340 — —Intent
- § 3:341 — —Personnel action
- § 3:342 —Lesser included offenses
- § 3:343 —Punishments

X. PUBLIC RECORDS OFFENSES

- § 3:344 Articles 104a(1) and 104b: Fraudulent enlistment or appointment and effecting a fraudulent enlistment or appointment
- § 3:345 —Elements of the offenses
- § 3:346 Articles 104a(1) & 104b: Fraudulent enlistment or appointment and effecting a fraudulent enlistment or appointment—Elements of the offenses—Fraudulent enlistment or appointment
- § 3:347 Articles 104a(1) and 104b: Fraudulent enlistment or appointment and effecting a fraudulent enlistment or appointment—Elements of the offenses—Effecting a fraudulent enlistment or appointment
- § 3:348 —Lesser-included
- § 3:349 —Punishments
- § 3:350 Article 105a: False or unauthorized pass offenses
- § 3:351 —Elements of the offenses
- § 3:352 —Elements—Wrongfully making or altering
- § 3:353 — —Wrongful sale, etc.
- § 3:354 — —Wrongful use or possession
- § 3:355 —Lesser included offenses
- § 3:356 —Punishments

XI. IMPERSONATION/UNIFORM OFFENSES

- § 3:357 Article 106: Impersonation of officer, noncommissioned officer, petty officer, or agent or official
- § 3:358 —Elements
- § 3:359 — —Willfulness
- § 3:360 — —Overt act requirement
- § 3:361 — —Intent to defraud
- § 3:362 —Lesser-included offenses
- § 3:363 —Punishments
- § 3:364 Article 106a: Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel pin
- § 3:365 —Elements
- § 3:366 —Nature of the offense
- § 3:367 —Stolen Valor Act
- § 3:368 —Lesser-included offenses

TABLE OF CONTENTS

§ 3:369 —Punishments

XII. GENERAL ARTICLES

- § 3:370 Article 133: Conduct unbecoming an officer
- § 3:371 Article 133: Conduct unbecoming an officer—
Elements of the offense
- § 3:372 Article 133: Conduct unbecoming an officer—
Nature of the offense
- § 3:373 Article 133: Conduct unbecoming an officer—
Constitutionality of Article 133
- § 3:374 Article 133: Conduct unbecoming an officer—
Examples of actionable misconduct
- § 3:375 Article 133: Conduct unbecoming an officer—
Lesser-included offenses
- § 3:376 Article 133: Conduct unbecoming an
officer—Punishments
- § 3:377 Article 134: The General Article
- § 3:378 —Elements of the offenses
- § 3:379 — —Clause 1: Disorders and neglects to the
prejudice of good order and discipline in the
armed forces
- § 3:380 — —Clause 2: Conduct of a nature to bring
discredit upon the armed forces
- § 3:381 — —Clause 3: Crimes and offenses not capital
- § 3:382 — —Assimilative Crimes Act, 18 U.S.C.A. § 13
- § 3:383 —Limits on Article 134 jurisdiction
- § 3:384 — —Preemption doctrine
- § 3:385 — —Capital offenses
- § 3:386 —Constitutionality of Article 134

CHAPTER 4. INVESTIGATING ALLEGED MISCONDUCT

I. GENERAL

- § 4:1 Scope
- § 4:2 Role of the commander
- § 4:3 The preliminary inquiry
- § 4:4 Right against self-incrimination—Generally
- § 4:5 —Article 31—General
- § 4:6 —Article 31, UCMJ—Who must warn?
- § 4:7 — —When must warnings be given?
- § 4:8 — —What is an interrogation or request for
statement?

- § 4:9 —Custodial interrogations—*Miranda* and *Tempia*
- § 4:10 —Voluntariness
- § 4:11 —Litigating the right
- § 4:12 Search and seizure—Generally
- § 4:13 —The Fourth Amendment and the military
- § 4:14 —The exclusionary rule and procedural considerations
- § 4:15 —Application of the Fourth Amendment—When does it apply (“reasonable expectation of privacy”)
- § 4:16 — —To whom does it apply
- § 4:17 — —Probable cause and authorization or warrant to search
- § 4:18 — —Probable cause and authorization to search—Good-faith exception
- § 4:19 — — —Inevitable discovery and independent source exceptions
- § 4:20 — — —Reliance on statute or binding precedent.
- § 4:21 — — —Exigent circumstances
- § 4:22 — —Searches not requiring probable cause
- § 4:23 — —Interception of wire and oral communications
- § 4:24 — —Seizures
- § 4:25 Military-unique exceptions—Administrative inspections
- § 4:26 —“Health and welfare” inspections—General
- § 4:27 —“Health and welfare inspections”—Lawful inspections—The primary purpose test
- § 4:28 —Health and welfare inspections—Lawful Inspections—The subterfuge rule
- § 4:29 —Gate inspections
- § 4:30 —Urinalysis
- § 4:31 —Inventories
- § 4:32 —Combat-zone investigations, generally
- § 4:33 —Investigating civilian casualties
- § 4:34 —Issues and best practices

CHAPTER 5. DISCIPLINARY MEASURES OUTSIDE THE COURT-MARTIAL SYSTEM

I. INTRODUCTION

- § 5:1 Policy governing disposition of offenses

TABLE OF CONTENTS

§ 5:2 Means of disposing of offenses

II. ADVERSE ADMINISTRATIVE ACTIONS

§ 5:3	Suspension of favorable personnel actions
§ 5:4	Extra training or instruction
§ 5:5	Administrative denial of privileges
§ 5:6	Adverse personnel evaluations
§ 5:7	Administrative censure, admonition, and reprimand
§ 5:8	—Army
§ 5:9	—Air Force
§ 5:10	—Navy and Marine Corps
§ 5:11	—Coast Guard
§ 5:12	Bars to continued service
§ 5:13	Relief or detachment for cause
§ 5:14	—Army
§ 5:15	—Navy
§ 5:16	—Air Force
§ 5:17	—Coast Guard
§ 5:18	Suspension and revocation of security clearance
§ 5:19	Removal from promotion/advancement lists
§ 5:20	—Army
§ 5:21	— —Enlisted personnel
§ 5:22	— —Commissioned and warrant officers
§ 5:23	—Navy and Marine Corps
§ 5:24	— —Enlisted personnel
§ 5:25	— —Commissioned and warrant officers
§ 5:26	—Air Force
§ 5:27	— —Enlisted personnel
§ 5:28	—Air Force/Space Force—Commissioned officers
§ 5:29	—Coast Guard
§ 5:30	— —Enlisted personnel
§ 5:31	— —Commissioned and warrant officers
§ 5:32	Enlisted reductions/demotions in rank or rate
§ 5:33	—Army
§ 5:34	—Navy
§ 5:35	—Marine Corps
§ 5:36	—Air Force
§ 5:37	Enlisted reductions in rank or rate—Coast Guard
§ 5:38	Administrative separations
§ 5:39	—Officers
§ 5:40	—Grounds for separation commissioned officers

- § 5:41 —Procedures for separation of commissioned officers
- § 5:42 Enlisted personnel

CHAPTER 6. NONJUDICIAL PUNISHMENT (UCMJ ART. 15)

- § 6:1 Nonjudicial punishment defined—Generally
- § 6:2 —Authority to impose nonjudicial punishment
- § 6:3 —Who may receive nonjudicial punishment
- § 6:4 Punishments—Authorized maximum punishments under the Manual for Courts-Martial
- § 6:5 —Nature of punishments—Admonition and reprimand
- § 6:6 — —Restrictions on movement and liberty
- § 6:7 — —Extra duties
- § 6:8 — —Reduction in grade
- § 6:9 — —Forfeiture of pay
- § 6:10 Nonjudicial punishment procedure— Servicemembers' rights—Notice
- § 6:11 — —Right to demand trial
- § 6:12 — —Right to confer with an attorney
- § 6:13 — —Rights when nonjudicial punishment is accepted
- § 6:14 —Rules of evidence and burden of proof
- § 6:15 Post-punishment procedures—Clemency
- § 6:16 —Appeals
- § 6:17 —Filing records of nonjudicial punishment
- § 6:18 —Publicizing nonjudicial punishment

Volume 2

CHAPTER 7. COURT-MARTIAL PERSONNEL

- § 7:1 The commander
- § 7:2 —Commander's authority
- § 7:3 —Unlawful command influence (UCI)
- § 7:4 —Nature of UCI
- § 7:5 —Who can commit UCI
- § 7:6 —Types of UCI
- § 7:7 — —Accusatory UCI

TABLE OF CONTENTS

§ 7:8	— — —	Preferral of charges
§ 7:9	— — —	Disposition of charges
§ 7:10	— — —	Referral of charges
§ 7:11	— — —	Adjudicatory UCI
§ 7:12	— — —	Interference with witnesses
§ 7:13	— — —	Interference with the military judge
§ 7:14	— — —	Interference with the court-martial members
§ 7:15	— — — —	“Court packing”
§ 7:16	— — — —	Pretrial command briefings
§ 7:17	— — — —	Command disciplinary policies
§ 7:18	— — — —	Commander’s presence in courtroom
§ 7:19	— — — —	Commander’s testimony on sentencing
§ 7:20	— — — —	Statements and inquiries by political and military leadership
§ 7:21	— — — —	Exercise of rank in deliberations
§ 7:22	— — — —	Interference with counsel
§ 7:23	— — — —	Interference with convening authority’s action
§ 7:24	— — — —	Litigating unlawful command influence
§ 7:25	— — — —	Shifting burdens
§ 7:26	— — — —	Litigating UCI on appeal
§ 7:27	— — — —	Forfeiture and waiver
§ 7:28	— — — —	Remedies
§ 7:29	— — — —	The special trial counsel—General
§ 7:30	— — — —	Authority and duties
§ 7:31	— — — —	The staff judge advocate/legal officer
§ 7:32	— — — —	Article 32 preliminary hearing officer
§ 7:33	— — — —	Military judge
§ 7:34	— — — —	History
§ 7:35	— — — —	Detail to courts-martial
§ 7:36	— — — —	Roles and responsibilities
§ 7:37	— — — —	Military magistrate
§ 7:38	— — — —	Court members
§ 7:39	— — — —	History
§ 7:40	— — — —	Military codes before the American Revolution
§ 7:41	— — — —	The American Articles of War
§ 7:42	— — — —	The American Articles for the Government of the Navy
§ 7:43	— — — —	Uniform Code of Military Justice
§ 7:44	— — — —	Who may serve
§ 7:45	— — — —	Selection process

- § 7:46 —Quorums
- § 7:47 —Excusal and replacement of members
- § 7:48 —Member duties
- § 7:49 Counsel
- § 7:50 —History
- § 7:51 — —Army
- § 7:52 — —Navy
- § 7:53 — —UCMJ
- § 7:54 —Trial counsel
- § 7:55 —Defense counsel
- § 7:56 — —Detailed defense counsel
- § 7:57 — —Individual military counsel (IMC)
- § 7:58 — —Civilian defense counsel
- § 7:59 — —Duties
- § 7:60 — —Competent and effective representation
- § 7:61 Victims
- § 7:62 —Victims' rights
- § 7:63 —Special victims' counsel
- § 7:64 —Victims' roles in court-martial proceedings
- § 7:65 Other personnel
- § 7:66 —Reporters
- § 7:67 —Interpreters/translators
- § 7:68 —Miscellaneous

CHAPTER 8. PRE-TRIAL PROCEDURE

I. INITIAL ACTIONS

- § 8:1 Reporting court-martial offenses
- § 8:2 Apprehension
- § 8:3 Preliminary inquiry into reported offenses

II. PRETRIAL RESTRAIN AND CONFINEMENT

- § 8:4 Pretrial restraint
- § 8:5 —Types of pretrial restraint
- § 8:6 —Who may order pretrial restraint
- § 8:7 —When may a person be restrained
- § 8:8 —How is pretrial restraint imposed
- § 8:9 —Punishment is prohibited
- § 8:10 —Release from pretrial restraint
- § 8:11 Pretrial confinement
- § 8:12 —Historical perspective

TABLE OF CONTENTS

- § 8:13 — —Pretrial confinement in the Army
- § 8:14 — —Pretrial confinement in the Navy
- § 8:15 — —Contemporary pretrial confinement procedure
- § 8:16 — —Who may order confinement
- § 8:17 — —When may a person be confined
- § 8:18 — —Advice to the accused upon confinement
- § 8:19 — —Notification to special trial counsel
- § 8:20 — —Appointment of military counsel
- § 8:21 — —Who may release from confinement
- § 8:22 — —24-hour notification and 72-hour
commander’s action
- § 8:23 — —Review of pretrial confinement
- § 8:24 — — —48-hour probable cause determination
- § 8:25 — — —Seven-day review of confinement
- § 8:26 — — —“Neutral and detached officer”
- § 8:27 — — —Review of confinement by the military
judge
- § 8:28 — —Confinement after release
- § 8:29 — —Exceptions
- § 8:30 — —Sentence credits for pretrial confinement
- § 8:31 — —Credit for lawful pretrial confinement (*Allen*
credit)
- § 8:32 — —Credit for restriction tantamount to pretrial
confinement (*Mason* credit)
- § 8:33 — —Credit for Noncompliance with Rule for
Courts-Martial 305 (RCM 305(k)/*Suzuki* credit)
- § 8:34 Unlawful pretrial punishment (UCMJ Art. 13)
- § 8:35 — —What conduct constitutes pretrial punishment
under Art. 13
- § 8:36 — —Public humiliation or ridicule
- § 8:37 — —Deprivation of pay or rank
- § 8:38 — —Commingling with sentenced prisoners
- § 8:39 — —Unlawful confinement or restriction
conditions
- § 8:40 — —Punitive work details
- § 8:41 — —Burdens, appellate review, and waiver
- § 8:42 — —Remedies for unlawful punishment
- § 8:43 Nonjudicial punishment: *Pierce* credit

III. SPEEDY TRIAL

- § 8:44 Sources of the right to a speedy trial
- § 8:45 Historical perspective

- § 8:46 Regulatory standard: Rule for Court-Martial 707
- § 8:47 —Accountability
- § 8:48 —Excludable delays
- § 8:49 —Remedy
- § 8:50 —Forfeiture/waiver
- § 8:51 Statutory standard: UCMJ Art. 10
- § 8:52 —Triggering the speedy-trial clock
- § 8:53 —Speedy-trial standard
- § 8:54 —Remedy
- § 8:55 —Waiver
- § 8:56 Sixth Amendment speedy trial
- § 8:57 Fifth Amendment speedy trial

IV. PREFERRAL AND DISPOSITION OF CHARGES

- § 8:58 Preferral of charges
- § 8:59 —Who may prefer charges
- § 8:60 —How are charges preferred
- § 8:61 —Pleading considerations
- § 8:62 — —Duplicity
- § 8:63 — —Multiplicity
- § 8:64 — —Unreasonable multiplication of charges
- § 8:65 — —Multiplicity and unreasonable multiplication of charges—Illustrated
- § 8:66 — — —Waiver and forfeiture
- § 8:67 — — —Appellate review
- § 8:68 Informing the accused of charges
- § 8:69 Amending pleadings
- § 8:70 Pre-referral judicial proceedings
- § 8:71 Disposition of charges
- § 8:72 —Commanders' actions on charges
- § 8:73 —Convening courts-martial—Who may convene courts-martial
- § 8:74 — —How courts-martial are convened
- § 8:75 —Referral of charges
- § 8:76 — —When charges may be referred
- § 8:77 — —How charges are referred
- § 8:78 — —What charges may be referred
- § 8:79 —Special trial counsel
- § 8:80 —Service of charges
- § 8:81 Preliminary hearing under Article 32, UCMJ—General

TABLE OF CONTENTS

- § 8:82 —Military Justice Act of 2016 amendments
- § 8:83 —Post-January 1, 2019, process
- § 8:84 Article 34, UCMJ—Advice to convening authority
before referral for trial

V. MENTAL CAPACITY AND RESPONSIBILITY

- § 8:85 Definitions
- § 8:86 Inquiry into mental capacity or mental
responsibility

VI. DISCOVERY AND PRODUCTION

- § 8:87 Opportunity to obtain witnesses and other
evidence
- § 8:88 Mandatory disclosure
- § 8:89 —Trial counsel—General
- § 8:90 — —Initial disclosures
- § 8:91 — —Discovery
- § 8:92 — —“*Brady* Evidence”
- § 8:93 —Defense counsel
- § 8:94 Matters not subject to disclosure
- § 8:95 Regulation of discovery
- § 8:96 Depositions
- § 8:97 Experts—Witnesses and consultants
- § 8:98 Witness production
- § 8:99 —Government witnesses
- § 8:100 —Defense witnesses
- § 8:101 —Procedure for production of witnesses
- § 8:102 —Immunity

CHAPTER 9. TRIAL

- § 9:1 Introduction

I. INITIAL PROCEEDINGS

- § 9:2 Opening session
- § 9:3 Disqualification of the military judge
- § 9:4 Accused’s election of court-martial composition
- § 9:5 Arraignment

II. MOTIONS

- § 9:6 Motions generally

- § 9:7 Pretrial motions
- § 9:8 Motions for appropriate relief
- § 9:9 Motions to dismiss

III. MENTAL CAPACITY TO STAND TRIAL

- § 9:10 Mental capacity
- § 9:11 Mentally incompetent accused: Procedures

IV. PLEAS AND PLEA AGREEMENTS

- § 9:12 Pleas
- § 9:13 —Refusal to plea and irregular pleas
- § 9:14 —Guilty pleas
- § 9:15 — —Effect: Waiver of rights and rights not waived
- § 9:16 — —Conditional pleas
- § 9:17 — —The providence inquiry
- § 9:18 — — —Historical basis
- § 9:19 — — —Substance and procedure
- § 9:20 — —Withdrawal of guilty plea
- § 9:21 — —Findings on the plea
- § 9:22 Plea agreements (formerly pretrial agreements)
- § 9:23 —Procedure
- § 9:24 —Withdrawal
- § 9:25 —Providence inquiry

V. ASSEMBLY, *VOIR DIRE* AND CHALLENGES

- § 9:26 Randomization and assembly of the court-martial panel
- § 9:27 Pretrial information about members
- § 9:28 Challenges to the selection of the members
- § 9:29 Voir dire
- § 9:30 Challenges to members
- § 9:31 —Challenges for cause—Bases
- § 9:32 — —Procedure
- § 9:33 —Peremptory challenges
- § 9:34 —Challenges creating an absence of a quorum—
Cases referred before January 1, 2019
- § 9:35 Standard-size court-martial panels under the
Military Justice Act of 2016
- § 9:36 Impanelment of members and alternate members
- § 9:37 Excusal and replacement of members after
impanelment

TABLE OF CONTENTS

- § 9:38 Referral to special court-martial consisting of a military judge alone

VI. TRIAL TO DETERMINE FINDINGS AND SENTENCE

- § 9:39 Introduction
§ 9:40 Proceedings on the findings
§ 9:41 —Military Rules of Evidence
§ 9:42 —Framework of the findings proceeding
§ 9:43 —Defenses
§ 9:44 —Defenses procedure
§ 9:45 —Special defenses: Examples
§ 9:46 — —Justification
§ 9:47 — —Obedience to orders
§ 9:48 — —Self-defense
§ 9:49 — —Defense of others
§ 9:50 — —Accident
§ 9:51 — —Entrapment
§ 9:52 — —Coercion or duress
§ 9:53 — —Inability
§ 9:54 — —Ignorance or mistake of fact
§ 9:55 — —Lack of mental responsibility
§ 9:56 — —Conduct *not* constituting special defenses
§ 9:57 —Mistrials
§ 9:58 —Motion for a finding of not guilty (directed verdicts)

VII. FINDINGS

- § 9:59 Findings—Closing arguments
§ 9:60 —Instructions
§ 9:61 —Form
§ 9:62 —Deliberation and voting
§ 9:63 — —Voting procedure
§ 9:64 — —Reconsideration of findings
§ 9:65 Deliberation and voting on the findings—
Announcement of findings
§ 9:66 —Correction or impeachment of findings
§ 9:67 —Post-trial proceedings for persons found not
guilty only by reason of lack of mental
responsibility

VIII. SENTENCING

- § 9:68 General

MILITARY CRIMINAL JUSTICE

- § 9:69 Presentencing procedure
- § 9:70 —Presentation by the government
- § 9:71 —Presentation by the victim
- § 9:72 —Presentation by the defense
- § 9:73 Other presentencing matters
- § 9:74 Argument
- § 9:75 Permissible sentences
- § 9:76 Sentence determination generally
- § 9:77 Sentencing under the Military Justice Reform amendments of 2021
- § 9:78 Sentencing before the effective date of the Military Justice Reform amendments of 2021
- § 9:79 Punishments
- § 9:80 —Reprimand
- § 9:81 —Forfeitures of pay and allowance
- § 9:82 —Fines
- § 9:83 —Reduction in pay grade
- § 9:84 —Restriction to specified limits
- § 9:85 —Hard labor without confinement
- § 9:86 —Confinement
- § 9:87 —Punitive separation
- § 9:88 —Death
- § 9:89 —Violations of the law of war
- § 9:90 Circumstances permitting increased punishments

IX. CAPITAL CASES

- § 9:91 Capital crimes
- § 9:92 Capital cases—Procedures
- § 9:93 Capital case—Procedures—Aggravating factors
- § 9:94 — — —Background
- § 9:95 — — —The special factors
- § 9:96 Capital cases—Procedures—Aggravating factors—Proving and finding special factors
- § 9:97 — — —Instructions
- § 9:98 — — —Deliberations and voting
- § 9:99 — — —Sentence reconsideration
- § 9:100 — — —Sentencing by the military judge
- § 9:101 — — —Impeachment of sentence determination
- § 9:102 — — —Announcement of a death sentence
- § 9:103 Appeal of sentences by the United States

X. APPELLATE RIGHTS AND ADJOURNMENT

- § 9:104 Notice concerning post-trial and appellate rights

TABLE OF CONTENTS

§ 9:105 Adjournment

CHAPTER 10. SUMMARY COURTS-MARTIAL

- § 10:1 Levels of courts-martial
- § 10:2 History
- § 10:3 —Army
- § 10:4 —Navy and Marine Corps
- § 10:5 —Uniform Code of Military Justice
- § 10:6 Nature of the summary court-martial
- § 10:7 Convening authorities
- § 10:8 Jurisdictional limits
- § 10:9 Procedure—Composition
- § 10:10 —Objection to trial by summary court-martial
- § 10:11 —Right to counsel
- § 10:12 —Preferral and referral of charges
- § 10:13 —Pretrial duties
- § 10:14 —Preliminary proceeding
- § 10:15 —Trial procedure
- § 10:16 — —Opportunity to object to trial by summary court-martial
- § 10:17 — —Arraignment, motions, and pleas
- § 10:18 — —Presentation of the evidence
- § 10:19 — —Findings and sentence
- § 10:20 —Post-trial responsibilities
- § 10:21 —Post-trial proceedings—Submissions by the accused and victim
- § 10:22 — —Convening authority’s action
- § 10:23 — —Judge advocate review and subsequent action
- § 10:24 — —Appellate review

CHAPTER 11. COURT-MARTIAL POST-TRIAL PROCEDURE

- § 11:1 Purpose of the post-trial process
- § 11:2 Statement of trial results
- § 11:3 Execution of sentences
- § 11:4 Deferral of sentences
- § 11:5 Post-trial motions and proceedings
- § 11:6 Post-trial hearing for person found not guilty only by reason of lack of mental responsibility

- § 11:7 Post-trial actions—Matters submitted by the accused and victim
- § 11:8 Staff judge advocate/legal officer post-trial review—Offenses committed before January 1, 2019
- § 11:9 Post-trial actions—Role of the convening authority—Scope and exercise of authority
- § 11:10 — —Suspension of sentences
- § 11:11 — —Reduction in sentence for substantial assistance of an accused
- § 11:12 —Timeliness of the actions
- § 11:13 Entry of judgment
- § 11:14 Records of Trial—Preparation, certification, and transmittal
- § 11:15 Judge advocate review of findings of guilt in summary courts-martial
- § 11:16 Waiver or withdrawal of appeal
- § 11:17 Government appeals—General
- § 11:18 Government appeal of sentence
- § 11:19 Appeal—Review in the Office of the Judge Advocate General
- § 11:20 —Service Courts of Criminal Appeals
- § 11:21 —Court of Appeals for the Armed Forces
- § 11:22 —Review by the United States Supreme Court
- § 11:23 Petition for a new trial
- § 11:24 Extraordinary writs
- § 11:25 Correction of military records
- § 11:26 Clemency and parole

CHAPTER 12. COLLATERAL REVIEW OF COURTS-MARTIAL

I. INTRODUCTION

- § 12:1 Nature of collateral review
- § 12:2 Historical background
- § 12:3 —Collateral review of courts-martial in Great Britain
- § 12:4 —Collateral review of courts-martial in the United States
- § 12:5 — —Collateral review before the Civil War
- § 12:6 — —Collateral review from the Civil War to World War II

TABLE OF CONTENTS

- § 12:7 — —Collateral review from 1941 to 1953
- § 12:8 — — —The development of civilian habeas corpus
- § 12:9 — — —Expansion of collateral review of courts-martial in the lower federal courts
- § 12:10 — —*Burns v. Wilson*
- § 12:11 — —Lower court application of *Burns*: lack of uniformity

II. CONTEMPORARY COLLATERAL REVIEW

- § 12:12 Current standard of collateral review
- § 12:13 —Evolution of collateral review of courts-martial
- § 12:14 —Standard review of courts-martial in the lower courts
- § 12:15 Exhaustion of remedies, abstention, and waiver
- § 12:16 —Doctrines of exhaustion of remedies and abstention
- § 12:17 —Doctrine of waiver (procedural default)
- § 12:18 Means of collaterally challenging courts-martial

APPENDICES

- Appendix A. Table of United States Commissioned Officer Ranks & Grades
- Appendix B. Table of United States Noncommissioned Officer Ranks & Grades
- Appendix C. DAF Form 4363 (Record of Promotion Proprietary Action)
- Appendix D. DA Form 2627 (Record of Proceedings under Article 15, (UCMJ))
- Appendix E. DA Form 2627-1 (Summarized Record of Proceedings under Article 15, UCMJ)
- Appendix F. DD Form 458 (Charge Sheet)
- Appendix G. DA Form 5112 (Checklist for Pretrial Confinement)
- Appendix H. Coast Guard 72-Hour Pretrial Confinement Memo
- Appendix I. DD Form 453 (Subpoena to Testify and/or to Produce Inspection of Items in a Court-Martial)
- Appendix J. DD Form 454 (Writ of Attachment)

MILITARY CRIMINAL JUSTICE

- Appendix K. DD Form 458 (Complete Charge Sheet:
U.S. v. Bradley (now Chelsea) Manning)
- Appendix L. DD Form 457 (Preliminary Hearing
Officer's Report: U.S. v. Robert B.
Bergdahl)
- Appendix M. DA Form 5111 (Summary Court-Martial
Rights Notification Waiver Statement)
- Appendix N. DD Form 2329 (Record of Trial by
Summary Court-Martial)
- Appendix O. DD Form 1722 (Request for Trial Before
Military Judge Alone)
- Appendix P. Findings Worksheet (Military Judges
Benchbook 2025)
- Appendix Q. DD Form 2791 (Notice of Release/
Acknowledgement of Convicted Sex
Offender Registration Requirements)
- Appendix R. Sentencing Parameters
- Appendix S. Sentencing Criteria
- Appendix T. Post-Trial Clemency Matters & Convening
Authority Action (*United States Miller*,
82 M.J. 204, 210 (C.A.A.F. 2022)
(Appendix))
- Appendix U. DD Form 493 (Extract of Military Records
of Previous Convictions)

Table of Cases

Index