

TABLE OF CONTENTS

Preface	i
Summary of Contents	v
Table of Contents	ix
List of Charts	xv
Table of Cases and Other Authorities.....	xv

PART I: INTRODUCTION AND OVERVIEW OF THE MILITARY JUSTICE SYSTEM

Chapter 1. Overview of the Military Justice System.....	1
1-1. History of the Military Justice System and Sources of Law	1
<i>United States v. Lazauskas</i>	8
1-2. Overview of the System from Start to End	11
<i>United States v. Tittel</i>	27
<i>United States v. Schap</i>	29
1-3. Jurisdiction Over Military Persons and Offenses.....	37
<i>Reid v. Covert</i>	40
<i>Solorio v. United States</i>	52
Overlapping Jurisdiction	57
<i>United States v. Schneider</i>	58
1-4. Role of the Commander and Unlawful Command Influence.....	62
<i>United States v. Horne</i>	64
<i>United States v. Baldwin</i>	73
Chapter 2. Judge Advocate Professional Responsibility	77
2-1. Military Lawyers for the Government, the Accused, and Victims.....	77
<i>United States v. Steele</i>	79
Separate Military Lawyers for Sexual Assault Victims	83
<i>LRM v. Kastenber</i>	85
2-2. Standards Regarding Advocacy and Sixth Amendment Right to Effective Counsel	90
<i>United States v. Quintanilla</i>	90
<i>Strickland v. Washington</i>	98
<i>United States v. Baker</i>	103
<i>United States v. Cain</i>	114
2-3. Supervisory Responsibility	127
2-4. Restrictions in Communications to the Media and Other Third Parties.....	128
Chapter 3. Alternatives to Adversary Criminal Trials by Court- Martial.....	129
3-1. Administrative Corrective Measures	129
<i>United States v. Wolfson</i>	133

3-2. Administrative Separations from the Service	140
Sample Record of Administrative Separation.....	143
<i>Clifford v. United States</i>	147
3-3. Nonjudicial Punishment.....	152
Nonjudicial Punishments Authorized	155
<i>United States v. Pierce</i>	160
3-4. Summary Courts-Martial	162
<i>Middendorf v. Henry</i>	164

PART II. THE PRETRIAL PHASE OF MILITARY JUSTICE

Chapter 4. Pretrial Issues	171
4-1. Self-Incrimination and Article 31(b), UCMJ, Rights	171
<i>United States v. Ramos</i>	172
4-2. Apprehension and Pretrial Restraint, Confinement, and Punishment.....	180
<i>United States v. Gilchrist</i>	181
<i>United States v. Cruz</i>	190
4-3. Searches Versus Inspections	195
<i>Katz v. United States</i>	196
Government Searches in the Military Context.....	201
<i>United States v. Weston</i>	203
<i>United States v. Larson</i>	207
Military Inspections.....	212
<i>United States v. Campbell</i>	214
4-4. Immunity: Testimonial, Transactional, <i>De Facto</i>	224
<i>United States v. McKeel</i>	226
Chapter 5. Pretrial Procedural Requirements	235
5-1. Preferral and Forwarding of Charges	235
<i>United States v. Nix</i>	238
5-2. Article 32, UCMJ, Preliminary Hearings	241
<i>United States v. Payne</i>	244
5-3. Staff Judge Advocate Pretrial Advice to the Convening Authority.....	247
<i>United States v. Mercier</i>	249
5-4. Referral of a Case to Court-Martial	252
<i>Secretary of the Army v. Curry</i>	256
Chapter 6. Pretrial Decisions	262
6-1. The Accused's Plea	262
6-2. Forum Options.....	264
6-3. Plea Agreements	266
<i>United States v. Dunbar</i>	268
6-4. Military Panel (Jury) Requirements and Selection.....	272
<i>United States v. Bartlett</i>	275
<i>United States v. Jeter</i>	281

PART III. MOTIONS AND TRIAL PHASE

Chapter 7. Pretrial Motions and Interlocutory Appeals	299
7-1. Pretrial Motions in General	299
7-2. Examples of Common Pretrial Motions	301
Motion for a Speedy Trial	301
<i>United States v. Mizgala</i>	301
Motion for a Sanity Board	312
<i>United States v. James</i>	314
Motion in Limine	317
<i>United States v. Spata</i>	317
7-3. Article 62 Interlocutory Appeals by the United States	321
<i>United States v. Daly</i>	322
<i>United States v. Rittenhouse</i>	323
7-4. Petitions for Extraordinary Writs.....	329
<i>United States v. Denedo</i>	330
<i>McKinney v. Jarvis</i>	335
Chapter 8. Findings	343
8-1. Providence Inquiry for Guilty Pleas	343
<i>United States v. Care</i>	344
<i>United States v. England</i>	351
8-2. Instructions on Findings	358
<i>United States v. Upham</i>	359
8-3. Findings with Exceptions and Substitutions	365
<i>United States v. Marshall</i>	366
8-4. Military Judge's Special Findings	370
<i>United States v. Roderick</i>	371
Chapter 9. Military Sentencing	375
9-1. Introduction and Purposes	375
<i>United States v. Snelling</i>	382
9-2. Lawful Punishments	383
<i>United States v. Gorski</i>	389
9-3. Matters in Aggravation and Extenuation and Mitigation.....	393
<i>United States v. Rosato</i>	394
<i>United States v. Perry</i>	400
9-4. The Death Penalty in the Military	403
<i>Loving v. United States</i>	407

PART IV. POST-TRIAL PROCEDURES

Chapter 10. Post-Trial Review Procedures	416
10-1. Overview	416
10-2. Matters Submitted by the Crime Victim and the Accused	418
10-3. Convening Authority Action	419

	<i>United States v. Davis</i>	421
	<i>United States v. McAlhaney</i>	425
10-4.	Post-Trial Processing Time	430
	<i>United States v. Tardif</i>	431
	<i>United States v. Moreno</i>	439
	<i>United States v. Allende</i>	456

Chapter 11. Appellate Review Procedures	459	
11-1. Review by the Judge Advocate General.....	459	
11-2. Appeal to the Service Courts of Criminal Appeals.....	460	
	<i>United States v. Sales</i>	463
11-3. The U.S. Court of Appeals for the Armed Forces and Supreme Court Review.....	468	
	<i>Clinton v. Goldsmith</i>	469
11-4. Parole, Boards for Correction of Military Records, and Pardons.....	474	
	<i>United States v. Pena</i>	476

PART V. SUBSTANTIVE MILITARY CRIMINAL LAW

Chapter 12. Military Crimes in General	486	
12-1. Overview of the Punitive Articles	486	
	Problem from <i>United States v. Smith</i>	490
12-2. The General Article—Article 134 and the Federal Assimilative Crimes Act.....	490	
	Clauses 1 & 2 of Article 134.....	492
	<i>United States v. Richard</i>	494
	Problem from <i>United States v. Gibson</i>	503
	Clause 3 of Article 134 and the Federal Assimilative Crimes Act	504
	<i>United States v. Robbins</i>	505
12-3. Military Offenses.....	510	
	Contempt Toward Officials.....	510
	<i>Sanford v. Callan</i>	511
	<i>United States v. Howe</i>	515
	Failing to Obey a Lawful General Order—Article 92	520
	<i>United States v. Leverette</i>	521
	<i>United States v. Green</i>	526
	Failing to Obey Other Lawful Order—Article 92(2).....	529
	<i>United States v. Warren</i>	530
	Dereliction of Duty & Maltreatment of Subordinates.....	531
	<i>United States v. Harman</i> (Army Ct. Crim. App.)	533
	<i>United States v. Harman</i> (C.A.A.F.)	543
	Disrespect, Willful Disobedience, Insubordinate Conduct—Articles 89-91.....	546
	<i>United States v. Traxler</i>	550
	<i>United States v. Brown</i>	555
12-4. Absence and Duty-Related Offenses	566	
	Desertion—Article 85.....	566

<i>United States v. Mackey</i>	570
Absence Without Leave—Article 86	571
<i>United States v. Rogers</i>	571
Missing Movement	576
Chapter 13. Inappropriate Conduct Offenses	578
13-1. Conduct Unbecoming an Officer	578
<i>Parker v. Levy</i>	579
<i>United States v. Conliffe</i>	589
<i>United States v. Lofton</i>	592
13-2. Fraternalization.....	596
<i>United States v. Free</i>	599
<i>United States v. Harwood</i>	604
13-3. Other Improper Conduct	610
<i>United States v. Oramas</i>	611
Article 134 Sexual Harassment.....	615
Referral of Sexual Harassment Complaints	616
13-4. Extramarital Sexual Conduct and Other Sexual Improprieties	617
<i>United States v. Orellana</i>	618
Indecent Conduct.....	623
<i>United States v. Rollins</i>	624
Sodomy.....	626
Chapter 14. Rape and Other Sex Crimes	627
14-1. Introduction and Recent History	627
<i>United States v. Robinson</i>	627
Trend of Recent Amendments.....	632
<i>United States v. Riesbeck</i>	633
14-2. Definitions of Sexual Offenses.....	643
<i>United State v. Coe</i>	646
14-3. Evidentiary Issues in Trying Sexual Offenses	657
<i>United States v. Hills</i>	660
14-4. Child Sexual Abuse and Child Pornography	667
<i>United States v. Warner</i>	668
Chapter 15. Military Defenses	673
15-1. Superior Orders	673
<i>United States v. Calley</i>	674
15-2. Duress.....	694
15-3. Mental Responsibility	695
<i>United States v. Estes</i>	697
<i>United States v. Axelson</i>	709
15-4. The Good Soldier Defense.....	730
<i>United States v. Clemons</i>	732
<i>United States v. Belz</i>	739

PART VI. EXPANDING MILITARY JUSTICE

Chapter 16. Expanding Military Justice	742
16-1. Trial of Civilians	742
<i>United States v. Averette</i>	743
<i>United States v. Ali</i>	746
Trial of Civilians Under the Military Extraterritorial Jurisdiction Act of 2000	752
<i>United States v. Green</i>	753
16-2. Trial of Servicemembers in State and Federal Courts.....	763
<i>United States v. MacDonald</i>	764
16-3. Status of Forces Agreements in Foreign Countries.....	771
Status of Forces Agreement: United States and Republic of Korea	771
<i>United States v. Murphy</i>	774
16-4. Courts of Inquiry.....	778
Report of Court of Inquiry: the Greenville (SSN 772) and Japanese M/V Ehime Maru	779
Index.....	787