

MANUAL
FOR
COURTS-MARTIAL
UNITED STATES
(2002 EDITION)

The 2002 Edition of the MCM is a complete revision of the 2000 MCM incorporating all Executive Orders (EO) through 11 Apr 2002 (EO 12473 promulgating the 1984 MCM; EO 12484, 15 Nov 84; EO 12550, 19 Feb 86; EO 12586, 3 Mar 87; EO 12708, 23 Mar 90; EO 12767, 27 Jun 91; EO 12888, 23 Dec 93; EO 12936, 10 Nov 94; EO 12960, 12 May 95; EO 13086, 27 May 98; EO 13140, 6 Oct 99; EO 13262, 11 Apr 02). Copies of each Executive Order can be found in Appendix 25.

PREFACE

The Manual for Courts-Martial (MCM), United States (2002 Edition) updates the MCM, (2000 Edition). It is a complete reprinting and incorporates the MCM (2000 Edition), the amendment to articles 54 and 74 of the UCMJ made by the National Defense Authorization Act for the Fiscal Year (FY) 2001, the amendment to Article 111 of the UCMJ made by the National Defense Authorization Act for the Fiscal Year (FY) 2002, and the 2002 amendments to the MCM Rules for Courts-Martial, Military Rules of Evidence, and Punitive Articles made by the President in Executive Order (EO) 13262. The EO can be found in Appendix 25.

JOINT SERVICE COMMITTEE
ON MILITARY JUSTICE

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10. Forms of Findings
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13. Guide for Preparation of Record of Trial by General Court-Martial and by Special Court-Martial When a Verbatim Record is Not Required
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PART I

PREAMBLE

1. Sources of military jurisdiction

The sources of military jurisdiction include the Constitution and international law. International law includes the law of war.

2. Exercise of military jurisdiction

(a) *Kinds*. Military jurisdiction is exercised by:

(1) A government in the exercise of that branch of the municipal law which regulates its military establishment. (Military law).

(2) A government temporarily governing the civil population within its territory or a portion of its territory through its military forces as necessity may require. (Martial law).

(3) A belligerent occupying enemy territory. (Military government).

(4) A government with respect to offenses against the law of war.

(b) *Agencies*. The agencies through which military jurisdiction is exercised include:

(1) Courts-martial for the trial of offenses against military law and, in the case of general courts-martial, of persons who by the law of war are subject to trial by military tribunals. *See* Parts II, III, and IV of this Manual for rules governing courts-martial.

(2) Military commissions and provost courts for the trial of cases within their respective jurisdictions. Subject to any applicable rule of international law or to any regulations prescribed by the President or by other competent authority, military commissions and provost courts shall be guided by the appropriate principles of law and rules of procedures and evidence prescribed for courts-martial.

(3) Courts of inquiry for the investigation of any matter referred to such court by competent authority. *See* Article 135. The Secretary concerned may prescribe regulations governing courts of inquiry.

(4) Nonjudicial punishment proceedings of a commander under Article 15. *See* Part V of this Manual.

3. Nature and purpose of military law

Military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent au-

thority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States.

4. Structure and application of the Manual for Courts-Martial

The Manual for Courts-Martial shall consist of this Preamble, the Rules for Courts-Martial, the Military Rules of Evidence, the Punitive Articles, and Nonjudicial Punishment Procedures (Part I–V). This Manual shall be applied consistent with the purpose of military law.

The Manual shall be identified as “Manual for Courts-Martial, United States (2002 edition).” Any amendments to the Manual made by Executive Order shall be identified as “2002” Amendments to the Manual for Courts-Martial, United States, “2002” being the year the Executive Order was signed. If two or more Executive Orders amending the Manual are signed during the same year, then the second and any subsequent Executive Orders will be identified by placing a small case letter of the alphabet after the last digit of the year beginning with “a” for the second Executive Order and continuing in alphabetic order for subsequent Executive Orders.

Discussion

The Department of Defense, in conjunction with the Department of Transportation, has published supplementary materials to accompany the Manual for Courts-Martial. These materials consist of a Discussion (accompanying the Preamble, the Rules for Courts-Martial, and the Punitive Articles), an Analysis, and various appendices. These supplementary materials do not constitute the official views of the Department of Defense, the Department of Transportation, the Department of Justice, the military departments, the United States Court of Appeals for the Armed Forces, or any other authority of the Government of the United States, and they do not constitute rules. *Cf.*, for example, 5 U.S.C. § 551 (1982). The supplementary materials do not create rights or responsibilities that are binding on any person, party, or other entity (including any authority of the Government of the United States whether or not included in the definition of “agency” in 5 U.S.C. § 551(1)). Failure to comply with matter set forth in the supplementary materials does not, of itself, constitute error, although

¶4.

these materials may refer to requirements in the rules set forth in the Executive Order or established by other legal authorities (for example, binding judicial precedents applicable to courts-martial) which are based on sources of authority independent of the supplementary materials.

The 1995 amendment to paragraph 4 of the Preamble is intended to eliminate the practice of identifying the Manual for Courts-Martial, United States, by a particular year. As long as the Manual was published in its entirety sporadically (*e.g.*, 1917, 1921, 1928, 1949, 1951, 1969 and 1984), with amendments to it published piecemeal, it was logical to identify the Manual by the calendar year of publication, with periodic amendments identified

as “Changes” to the Manual. The more frequent publication of a new edition of the Manual, however, means that it is more appropriately identified by the calendar year of edition. Amendments made in a particular calendar year will be identified by publishing the relevant Executive order containing those amendments in its entirety in a Manual appendix.

The amendment to paragraph 4 of the Preamble is intended to address the possibility of more frequent amendments to the Manual and the arrival of the 21st century. In the event that multiple editions of the Manual are published in the same year, the numbering and lettering of the edition should match that of the most recent Executive Order included in the publication.
