who is serving in an office listed in section 2(a)–(i) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.'';

(d) Section 3(a) of Executive Order 13244 of December 18, 2001, entitled ''Providing an Order of Succession Within the Department of the Interior,'' is replaced with the following: ''(a) No individual who is serving in an office listed in section 2(a)–(f) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.'';

(e) Section 3(a) of Executive Order 13245 of December 18, 2001, entitled ''Providing an Order of Succession Within the Department of Labor,'' is replaced with the following: ''(a) No individual who is serving in an office listed in section 2(a)–(l) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.'';

(f) Section 3(a) of Executive Order 13246 of December 18, 2001, entitled ''Providing an Order of Succession Within the Department of the Treasury,'' is replaced with the following: ''(a) No individual who is serving in an office listed in section 2(a)–(c) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.'';

(g) Section 3(a) of Executive Order 13247 of December 18, 2001, entitled ''Providing an Order of Succession Within the Department of Veterans Affairs,'' is replaced with the following: ''(a) No individual who is serving in an office listed in section 2(a)–(h) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.'';

(h) Section 3(a) of Executive Order 13250 of December 28, 2001, entitled ''Providing an Order of Succession Within the Department of Health and Human Services,'' is replaced with the following: ''(a) No individual who is serving in an office listed in section 2(a)–(c) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.'' and;

(i) Section 3(b) of Executive Order 13251 of December 28, 2001, entitled ''Providing an Order of Succession Within the Department of State,'' is replaced with the following: ''(b) No individual who is serving in an office listed in section 2(a)–(m) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.''.

GEORGE W. BUSH

THE WHITE HOUSE,
March 19, 2002.

Executive Order 13262 of April 11, 2002

2002 Amendments to the Manual for Courts-Martial, United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801–946), and in order to prescribe amendments to the Manual for Courts-Martial, United States, prescribed by Executive Order 12473, as amended, it is hereby ordered as follows:

Section 1. Thirty days after the date of this Executive Order, the provisions of Federal Rule of Evidence 415, adopted September 13, 1994, will no longer be applicable to the Military Rules of Evidence. This evidentiary rule became applicable to courts-martial on January 6, 1996, pursuant to Military Rule of Evidence 1102.

Sec. 2. The last subparagraph of paragraph 4, of Part I, of the Manual for Courts-Martial, United States, is amended as follows:

''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.''.

Sec. 3. Part II of the Manual for Courts-Martial, United States, is amended as follows:

a. R.C.M. 201(f)(2)(B) is amended to read as follows:

''(i) Upon a finding of guilty, special courts-martial may adjudge, under limitations prescribed by this Manual, any punishment authorized under R.C.M. 1003 except death, dishonorable discharge, dismissal, confinement for more than 1 year, hard labor without confinement for more than 3 months, forfeiture of pay exceeding two-thirds pay per month, or any forfeiture of pay for more than 1 year.

''(ii) A bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, may not be adjudged by a special court-martial unless:

''(a) Counsel qualified under Article 27(b) is detailed to represent the accused; and

''(b) A military judge is detailed to the trial, except in a case in which a military judge could not be detailed because of physical conditions or military exigencies. Physical conditions or military exigencies, as the terms are here used, may exist under rare circumstances, such as on an isolated ship on the high seas or in a unit in an inaccessible area, provided compelling reasons exist why the trial must be held at that time and at that place. Mere inconvenience does not constitute a physical condition or military exigency and does not excuse a failure to detail a military judge. If a military judge cannot be detailed because of physical conditions or military exigencies, a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, may be adjudged provided the other conditions have been met. In that event, however, the convening authority shall, prior to trial, make a written statement explaining why a military judge could not be obtained. This statement shall be appended to the record of trial and shall set forth in detail the reasons why a military judge could not be detailed, and why the trial had to be held at that time and place.''

b. R.C.M. 701(b)(4) is amended to read as follows:

''(4) Reports of examination and tests. If the defense requests disclosure under subsection (a)(2)(B) of this rule, upon compliance with such request by the Government, the defense, on request of trial counsel, shall (except as provided in R.C.M. 706, Mil. R. Evid. 302, and Mil. R. Evid. 513) permit the trial counsel to inspect any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, that are within the possession, custody, or control of the defense that the defense intends to introduce as evidence in the defense case-in-chief at trial or that were prepared by a witness whom the defense intends to call at trial when the results or reports relate to that witness' testimony.''

c. R.C.M. 806 is amended by adding at the end the following new subsection (d):

''(d) Protective orders. The military judge may, upon request of any party or sua sponte, issue an appropriate protective order, in writing, to prevent parties and witnesses from making extrajudicial statements that present a substantial likelihood of material prejudice to a fair trial by impartial members. For purposes of this subsection, ''military judge'' does not include the president of a special court-martial without a military judge.''.

d. R.C.M. 1001(b)(3)(A) is amended to read as follows:

''(A) In general. The trial counsel may introduce evidence of military or civilian convictions of the accused. For purposes of this rule, there is a ''conviction'' in a court-martial case when a sentence has been adjudged. In a civilian case, a ''conviction'' includes any disposition following an initial judicial determination or assumption of guilt, such as when guilt has been established by guilty plea, trial, or plea of *nolo contendere*, regardless of the subsequent disposition, sentencing procedure, or final judgment. However, a ''civilian conviction'' does not include a diversion from the judicial process without a finding or admission of guilt; expunged convictions; juvenile adjudications; minor traffic violations; foreign convictions; tribal court convictions; or convictions reversed, vacated, invalidated or pardoned because of errors of law or because of subsequently discovered evidence exonerating the accused.''.

e. R.C.M. 1003(b)(3) is amended to read as follows:

''(3) Fine. Any court-martial may adjudge a fine in lieu of or in addition to forfeitures. Special and summary courts-martial may not adjudge any fine or combination of fine and forfeitures in excess of the total amount of forfeitures that may be adjudged in that case. In order to enforce collection, a fine may be accompanied by a provision in the sentence that, in the event the fine is not paid, the person fined shall, in addition to any period of confinement adjudged, be further confined until a fixed period considered an equivalent punishment to the fine has expired. The total period of confinement so adjudged shall not exceed the jurisdictional limitations of the court- martial;''

f. R.C.M. 1003(b)(7) is amended to read as follows:

''(7) Confinement. The place of confinement shall not be designated by the court-martial. When confinement for life is authorized, it may be with or without eligibility for parole. A court-martial shall not adjudge a sentence to solitary confinement or to confinement without hard labor;''.

g. R.C.M. 1004(e) is amended to read as follows:

''(e) Other penalties. Except for a violation of Article 106, when death is an authorized punishment for an offense, all other punishments authorized under R.C.M. 1003 are also authorized for that offense, including confinement for life, with or without eligibility for parole, and may be adjudged in lieu of the death penalty, subject to limitations specifically prescribed in this Manual. A sentence of death includes a dishonorable discharge or dismissal as appropriate. Confinement is a necessary incident of a sentence of death, but not a part of it.''

h. R.C.M. 1006(d)(4)(B) is amended to read as follows:

''(B) Confinement for life, with or without eligibility for parole, or more than 10 years. A sentence that includes confinement for life, with or without eligibility for parole, or more than 10 years may be adjudged only if at least three-fourths of the members present vote for that sentence.''

i. R.C.M. 1009(e)(3)(B)(ii) is amended to read as follows:

''(ii) In the case of a sentence which includes confinement for life, with or without eligibility for parole, or more than 10 years, more than one-fourth of the members vote to reconsider; or''.

j. R.C.M. 1103(b)(2)(B)(i) is amended to read as follows:

''(i) Any part of the sentence adjudged exceeds six months confinement, forfeiture of pay greater than two-thirds pay per month, or any forfeiture of pay for more than six months or other punishments that may be adjudged by a special court-martial; or''.

k. R.C.M. 1103(c) is amended to read as follows:

''(c) Special courts-martial.

''(1) Involving a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months. The requirements of subsections (b)(1), (b)(2)(A), (b)(2)(B), (b)(2)(D), and (b)(3) of this rule shall apply in a special court-martial in which a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, has been adjudged.

''(2) All other special courts-martial. If the special court-martial resulted in findings of guilty but a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, was not adjudged, the requirements of subsections (b)(1), (b)(2)(D), and (b)(3)(A)–(F) and (I)–(M) of this rule shall apply.''.

l. R.C.M. 1103(f)(1) is amended to read as follows:

''(1) Approve only so much of the sentence that could be adjudged by a special court-martial, except that a bad-conduct discharge, confinement for more than six months, or forfeiture of two-thirds pay per month for more than six months, may not be approved; or''.

m. R.C.M. 1104(a)(2)(A) is amended to read as follows:

''(A) Authentication by the military judge. In special courts-martial in which a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, has been adjudged and in general courts-martial, except as provided in subsection (a)(2)(B) of this rule, the military judge present at the end of the proceedings shall authenticate the record of trial, or that portion over which the military

judge presided. If more than one military judge presided over the proceedings, each military judge shall authenticate the record of the proceedings over which that military judge presided, except as provided in subsection (a)(2)(B) of this rule. The record of trial of special courts-martial in which a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, was not adjudged shall be authenticated in accordance with regulations of the Secretary concerned.''

n. R.C.M. 1104(e) is amended to read as follows:

''(e) Forwarding. After every court-martial, including a rehearing and new and other trials, the authenticated record shall be forwarded to the convening authority for initial review and action, provided that in case of a special court-martial in which a bad-conduct discharge or confinement for one year was adjudged or a general court-martial, the convening authority shall refer the record to the staff judge advocate or legal officer for recommendation under R.C.M. 1106 before the convening authority takes action.''.

o. R.C.M. 1106(a) is amended to read as follows:

''(a) In general. Before the convening authority takes action under R.C.M. 1107 on a record of trial by general court-martial or a record of trial by special court-martial that includes a sentence to a bad-conduct discharge or confinement for one year, that convening authority's staff judge advocate or legal officer shall, except as provided in subsection (c) of this rule, forward to the convening authority a recommendation under this rule.''.

p. R.C.M. 1107(d)(4) is amended to read as follows:

''(4) Limitations on sentence based on record of trial. If the record of trial does not meet the requirements of R.C.M. 1103(b)(2)(B) or (c)(1), the convening authority may not approve a sentence in excess of that which may be adjudged by a special court-martial, or one that includes a bad-conduct discharge, confinement for more than six months, forfeiture of pay exceeding two-thirds pay per month, or any forfeiture of pay for more than six months.''.

q. R.C.M. 1107(d) is amended by adding at the end the following new paragraph:

''(5) Limitations on sentence of a special court-martial where a fine has been adjudged. A convening authority may not approve in its entirety a sentence adjudged at a special court-martial when, if approved, the cumulative impact of the fine and forfeitures, whether adjudged or by operation of Article 58b, would exceed the jurisdictional maximum dollar amount of forfeitures that may be adjudged at that court-martial.''.

r. R.C.M. 1109(e) and (e)(1) are amended to read as follows:

''(e) Vacation of a suspended special court-martial sentence wherein a bad-conduct discharge or confinement for one year was not adjudged.

''(1) In general. Before vacating the suspension of a special court-martial punishment that does not include a bad-conduct discharge or confinement for one year, the special court-martial convening authority for the command in which the probationer is serving or assigned shall cause a hearing to be held on the alleged violation(s) of the conditions of suspension.''.

s. R.C.M. 1109(f) and (f)(1) are amended to read as follows:

''(f) Vacation of a suspended special court-martial sentence that includes a bad-conduct discharge or confinement for one year.

''(1) The procedure for the vacation of a suspended approved bad-conduct discharge or of any suspended portion of an approved sentence to confinement for one year, shall follow that set forth in subsection (d) of this rule.''.

t. R.C.M. 1110(a) is amended to read as follows:

''(a) In general. After any general court-martial, except one in which the approved sentence includes death, and after any special court-martial in which the approved sentence includes a bad-conduct discharge or confinement for one year, the accused may waive or withdraw appellate review.''.

u. R.C.M. 1111(b) is amended to read as follows:

''(1) Cases including an approved bad-conduct discharge or confinement for one year. If the approved sentence of a special court-martial includes a bad-conduct discharge or confinement for one year, the record shall be disposed of as provided in subsection (a) of this rule.

''(2) Other cases. The record of trial by a special court-martial in which the approved sentence does not include a bad-conduct discharge or confinement for one year shall be forwarded directly to a judge advocate for review under R.C.M. 1112. Four copies of the order promulgating the result of trial shall be forwarded with the record of trial, unless otherwise prescribed by regulations of the Secretary concerned.''.

v. R.C.M. 1112(a)(2) is amended to read as follows:

''(2) Each special court-martial in which the accused has waived or withdrawn appellate review under R.C.M. 1110 or in which the approved sentence does not include a bad-conduct discharge or confinement for one year; and''.

w. R.C.M 1305(d)(2) is amended to read as follows:

''(2) Forwarding to the convening authority. The original and one copy of the record of trial shall be forwarded to the convening authority after compliance with subsection (d)(1) of this rule.''.

Sec. 4. Part III of the Manual for Courts-Martial, United States, is amended in Mil. R. Evid. 615 by striking the period at the end of the rule and adding '', or (4) a person authorized by statute to be present at courts-martial, or (5) any victim of an offense from the trial of an accused for that offense because such victim may testify or present any information in relation to the sentence or that offense during the presentencing proceedings.''.

Sec. 5. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

a. All ''Sample specification(s)'' subparagraphs in the Punitive Articles (Part IV, M.C.M.) are amended by striking ''_____ 19____'' and inserting ''_____ 20____.''.

b. Paragraph 27e(1)(a) is amended to read as follows:

''(a) of a value of $500.00 or less. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.''.

c. Paragraph 27e(1)(b) is amended to read as follows:

''(b) of a value of more than $500.00 or any firearm or explosive. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.''.

d. Paragraph 27f(3) is amended to read as follows:

''(3) Dealing in captured or abandoned property. In that _____ (personal jurisdiction data), did, (at/on board - location), on or about _____ 20 _____, (buy) (sell) (trade) (deal in) (dispose of) (_____) certain (captured) (abandoned) property, to wit: _____, (a firearm) (an explosive), of a value of (about) $_____, thereby (receiving) (expecting) a (profit) (benefit) (advantage) to (himself/herself) (_____, his/her accomplice) (_____, his/her brother) (_____).''.

e. Strike paragraph 31c(6).

f. Paragraph 43e(1), is amended to read as follows:

''(1) Article 118(1) or (4)—death. Mandatory minimum—imprisonment for life with eligibility for parole.''.

g. Paragraph 45e(3) is amended to read as follows:

''(3) Carnal knowledge with a child under the age of 12 years at the time of the offense. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole.''.

h. Paragraph 46c(1)(h) is amended by adding at the end the following new clause:

''(vi) Credit, Debit, and Electronic Transactions. Wrongfully engaging in a credit, debit, or electronic transaction to obtain goods or money is an obtaining- type larceny by false pretense. Such use to obtain goods is usually a larceny of those goods from the merchant offering them. Such use to obtain money or a negotiable instrument (e.g., withdrawing cash from an automated teller or a cash advance from a bank) is usually a larceny of money from the entity presenting the money or a negotiable instrument. For the purpose of this section, the term 'credit, debit, or electronic transaction' includes the use of an instrument or device, whether known as a credit card, debit card, automated teller machine (ATM) card or by any other name, including access devices such as code, account number, electronic serial number or personal identification number, issued for the use in obtaining money, goods, or anything else of value.''.

i. Paragraph 51e(1) is amended to read as follows:

''(1) By force and without consent. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole.''.

j. Paragraph 51e(3) is amended to read as follows:

''(3) With a child under the age of 12 years at the time of the offense. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole.''

k. Paragraph 62c is amended to read as follows:

''c. Explanation.

''(1) Nature of offense. Adultery is clearly unacceptable conduct, and it reflects adversely on the service record of the military member.

''(2) Conduct prejudicial to good order and discipline or of a nature to bring discredit upon the armed forces. To constitute an offense under the UCMJ, the adulterous conduct must either be directly prejudicial to good order and discipline or service discrediting. Adulterous conduct that is directly prejudicial includes conduct that has an obvious, and measurably divisive effect on unit or organization discipline, morale, or cohesion, or is clearly detrimental to the authority or stature of or respect toward a servicemember. Adultery may also be service discrediting, even though the conduct is only indirectly or remotely prejudicial to good order and discipline. Discredit means to injure the reputation of the armed forces and includes adulterous conduct that has a tendency, because of its open or notorious nature, to bring the service into disrepute, make it subject to public ridicule, or lower it in public esteem. While adulterous conduct that is private and discreet in nature may not be service discrediting by this standard, under the circumstances, it may be determined to be conduct prejudicial to good order and discipline. Commanders should consider all relevant circumstances, including but not limited to the following factors, when determining whether adulterous acts are prejudicial to good order and discipline or are of a nature to bring discredit upon the armed forces:

''(a) The accused's marital status, military rank, grade, or position;

''(b) The co-actor's marital status, military rank, grade, and position, or relationship to the armed forces;

''(c) The military status of the accused's spouse or the spouse of co-actor, or their relationship to the armed forces;

''(d) The impact, if any, of the adulterous relationship on the ability of the accused, the co-actor, or the spouse of either to perform their duties in support of the armed forces;

''(e) The misuse, if any, of government time and resources to facilitate the commission of the conduct;

''(f) Whether the conduct persisted despite counseling or orders to desist; the flagrancy of the conduct, such as whether any notoriety ensued; and whether the adulterous act was accompanied by other violations of the UCMJ;

''(g) The negative impact of the conduct on the units or organizations of the accused, the co-actor or the spouse of either of them, such as a detrimental effect on unit or organization morale, teamwork, and efficiency;

''(h) Whether the accused or co-actor was legally separated; and

''(i) Whether the adulterous misconduct involves an ongoing or recent relationship or is remote in time.

''(3) Marriage. A marriage exists until it is dissolved in accordance with the laws of a competent state or foreign jurisdiction.

''(4) Mistake of fact. A defense of mistake of fact exists if the accused had an honest and reasonable belief either that the accused and the co-actor were both unmarried, or that they were lawfully married to each other. If this defense is raised by the evidence, then the burden of proof is upon the United States to establish that the accused's belief was unreasonable or not honest.''.

l. Paragraph 92e is amended to read as follows:

''e. Maximum punishment. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole.''.

m. Paragraphs 32e, 33e, 46c(1)(g)(iii), 46e, 49e, 52e, 58e, 78e and 106e are amended by striking ''$100.00'' each place it appears and inserting ''$500.00''.

Sec. 6. These amendments shall take effect on May 15, 2002.

a. The amendments made to Rules for Courts-Martial 806(d) and 1001(b)(3)(A) shall only apply in cases in which arraignment has been completed on or after May 15, 2002.

b. The amendments made to Rules for Courts- Martial 1003(b)(7), 1004(e), 1006(d)(4)(B), and 1009(e)(3)(B)(ii) shall only apply to offenses committed after November 18, 1997. In cases not involving these amendments, the maximum punishment for an offense committed prior to May 15, 2002, shall not exceed the applicable maximum in effect at the time of the commission of such offense. Provided further, that for offenses committed prior to May 15, 2002, for which a sentence is adjudged on or after May 15, 2002, if the maximum punishment authorized in this Manual is less than that previously authorized, the lesser maximum authorized punishment shall apply.

c. The amendment made to Military Rules of Evidence 615 shall apply only in cases in which arraignment has been completed on or after May 15, 2002.

d. Nothing in these amendments shall be construed to make punishable any act done or omitted prior to May 15, 2002, that was not punishable when done or omitted.

e. Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to May 15, 2002, and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

GEORGE W. BUSH

THE WHITE HOUSE,
April 11, 2002.

CHANGES TO THE DISCUSSION ACCOMPANYING THE MANUAL FOR COURTS-MARTIAL, UNITED STATES

a. The Discussion following the Preamble is amended by adding the following at the end of the Discussion:

''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.''

b. The seventh paragraph of the Discussion following R.C.M. 601(e)(1) is amended to read as follows:

''The convening authority should acknowledge by an instruction that a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, may not be adjudged when the prerequisites under Article 19 will not be met. *See* R.C.M. 201(f)(2)(B)(ii). For example, this instruction should be given when a court reporter is not detailed.''.

c. The Discussion following R.C.M. 701(a)(2)(B) is amended to read as follows:

''For specific rules concerning certain mental examinations of the accused or third party patients, *see* R.C.M. 701(f), R.C.M. 706, Mil. R. Evid. 302, and Mil. R. Evid. 513.''

d. The ninth paragraph of the Discussion following R.C.M. 806(b) is amended to read as follows:

''There are other methods of protecting the proceedings from harmful effects of publicity, including a thorough *voir dire* (*see* R.C.M. 912), and, if necessary, a continuance to allow the harmful effects of publicity to dissipate. *See* R.C.M. 906(b)(1). Other methods that may occasionally be appropriate and which are usually preferable to closing a session include: directing members not to read, listen to, or watch any accounts concerning the case; issuing a protective order under R.C.M. 806(d); and selecting members from recent arrivals in the command, or from outside the immediate area. *See* R.C.M. 503(a)(3). In more extreme cases, the place of trial may be changed (*see* R.C.M. 906(b)(11), or members may be sequestered.

e. The following Discussion is added after R.C.M. 806(d):

''A protective order may proscribe extrajudicial statements by counsel, parties, and witnesses that might divulge prejudicial matter not of public record in the case. Other appropriate matters may also be addressed by such a protective order. Before issuing a protective order, the military judge must consider whether other available remedies would effectively mitigate the adverse effects that any publicity might create, and consider such an order's likely effectiveness in ensuring an impartial court-martial panel. A military judge should not issue a protective order without first providing notice to the parties and an opportunity to be heard. The military judge must state on the record the reasons for issuing the protective order. If the reasons for issuing the order change, the military judge may reconsider the continued necessity for a protective order.''

f. The first paragraph of the Discussion following R.C.M. 808 is amended to read as follows:

''Except in a special court-martial not authorized to adjudge a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, the trial counsel should ensure that a qualified court reporter is detailed to the court-martial. Trial counsel should also ensure that all exhibits and other documents relating to the case are properly maintained for later inclusion in the record. *See also* R.C.M. 1103(j) as to the use of videotapes, audiotapes, and similar recordings for the record of trial. Because of the potential requirement for a verbatim transcript, all pro-

ceedings, including sidebar conferences, arguments, and rulings and instructions by the military judge, should be recorded.''

g. The Discussion following R.C.M. 1001(b)(3)(A) is amended by adding the following at the end of the Discussion:

''Whether a civilian conviction is admissible is left to the discretion of the military judge. As stated in the rule, a civilian ''conviction'' includes any disposition following an initial judicial determination or assumption of guilt regardless of the sentencing procedure and the final judgment following probation or other sentence. Therefore, convictions may be admissible regardless of whether a court ultimately suspended judgment upon discharge of the accused following probation, permitted withdrawal of the guilty plea, or applies some other form of alternative sentencing. Additionally, the term ''conviction'' need not be taken to mean a final judgment of conviction and sentence.''

h. The sixth paragraph of the Discussion following R.C.M. 1003(b)(2) is amended to read as follows:

''At a special court-martial, if a bad-conduct discharge and confinement are adjudged, then the operation of Article 58b results in a forfeiture of two-thirds of pay only (not allowances) during that period of confinement. If only confinement is adjudged, and that confinement exceeds six months, then the operation of Article 58b results in a forfeiture of two-thirds of pay only (not allowances) during the period of confinement. If only a bad conduct discharge is adjudged, Article 58b has no effect on pay.''.

i. The Discussion following R.C.M. 1003(b)(3) is amended by adding at the end the following paragraph:

''Where the sentence adjudged at a special court-martial includes a fine, *see* R.C.M. 1107(d)(5) for limitations on convening authority action on the sentence.''

j. The Discussion following R.C.M. 1003(b)(8) is amended by adding the following at the end of the Discussion:

''See Article 56a.''

k. The Discussion following R.C.M. 1003(c)(4) is amended by striking ''R.C.M. 1107(d)(3)'' and inserting ''R.C.M. 1107(d)(4).''

l. The Discussion following R.C.M. 1006(c) is amended to read as follows:

''A proposal should state completely each kind and, where appropriate, amount of authorized punishment proposed by that member. For example, a proposal of confinement for life would state whether it is with or without eligibility for parole. See R.C.M. 1003(b).''

m. The second paragraph of the Discussion following R.C.M. 1107(d)(1) is amended to read as follows:

''When mitigating forfeitures, the duration and amounts of forfeiture may be changed as long as the total amount forfeited is not increased and neither the amount nor duration of the forfeitures exceeds the jurisdiction of the court-martial. When mitigating confinement or hard labor without confinement, the convening authority should use the equivalencies at R.C.M. 1003(b)(6) and (7), as appropriate. One form of punishment may be changed to a less severe punishment of a different nature, as long as the changed punishment is one that the court-martial could have adjudged. For example, a bad-conduct discharge adjudged by a special court-martial

could be changed to confinement for up to one year (but not vice versa). A pretrial agreement may also affect what punishments may be changed by the convening authority.''.

n. The Discussion following R.C.M. 1109(f) is amended to read as follows:

''An officer exercising special court-martial jurisdiction may vacate any suspended punishments other than an approved suspended bad-conduct discharge or any suspended portion of an approved sentence to confinement for one year, regardless of whether they are contained in the same sentence as the bad-conduct discharge or confinement for one year. See Appendix 18 for a sample of a Report of Proceedings to Vacate Suspension of a Special Court-Martial Sentence including a bad-conduct discharge or confinement for one year under Article 72, UCMJ, and R.C.M. 1109 (DD Form 455).''.

o. The Discussion following R.C.M. 1110(a) is amended to read as follows:

''Appellate review is not available for special courts-martial in which a bad-conduct discharge or confinement for one year was not adjudged or approved or for summary courts-martial. Cases not subject to appellate review, or in which appellate review is waived or withdrawn, are reviewed by a judge advocate under R.C.M. 1112. Such cases may also be submitted to the Judge Advocate General for review. *See* R.C.M. 1201(b)(3). Appellate review is mandatory when the approved sentence includes death.''.

CHANGES TO APPENDIX 8, GUIDE FOR GENERAL AND SPECIAL COURTS-MARTIAL, MANUAL FOR COURTS-MARTIAL, UNITED STATES

Appendix 8, is amended—

a. by amending the left margin entry to Note 100 to read as follows:

''Advice in GCMs and SPCMs in which BCD or confinement for one year is adjudged'';

b. by amending Note 100 to read as follows:

''[Note 100. In cases subject to review by a Court of Criminal Appeals, the following advice should be given. In other cases proceed to Note 101 or 102 as appropriate.]'';

c. by amending the left margin entry to Note 102 to read as follows:

''SPCM not involving a BCD or confinement for one year''; and

d. by amending Note 102 to read as follows:

[Note 102. In special courts-martial not involving BCD or confinement for one year, the following advice should be given.]''.

CHANGES TO THE MAXIMUM PUNISHMENT CHART OF THE MANUAL FOR COURTS-MARTIAL, UNITED STATES

Appendix 12, the Maximum Punishment Chart, is amended—

a. by striking the item relating to Article 103 and inserting:

''103 Captured, abandoned property; failure to secure, etc. Of value of $500.00 or less . . . . . BCD 6 mos. Total

Of value of more than $500.00 . DD, BCD 5 yrs. Total

Any firearm or explosive . . . . . DD, BCD 5 yrs. Total

Looting, pillaging . . . . . DD, BCD Life4 Total''; and

b. in the items relating to Articles 108, 109, 121, 123a, 126, 132, and 134 (False Pretenses, obtaining services under; and Stolen Property, knowingly receiving, buying, concealing), by striking ''100.00'' each place it appears and inserting ''$500.00''.

CHANGES TO THE GUIDE FOR PREPARATION OF RECORD OF TRIAL WHEN A VERBATIM RECORD IS NOT REQUIRED, MANUAL FOR COURTS-MARTIAL, UNITED STATES

Appendix 13 is amended—

a. in the third subparagraph of paragraph a, by replacing ''1-inch margin'' with ''one-inch margin'' and replacing ''left hand'' with ''left-hand''.

CHANGES TO THE GUIDE FOR PREPARATION OF RECORD OF TRIAL WHEN A VERBATIM RECORD IS REQUIRED, MANUAL FOR COURTS-MARTIAL, UNITED STATES

Appendix 14, is amended—

a. at page A14–6, by amending the second bracketed format under the third note to read as follows:

''[The (court-martial) (session) was (adjourned) (recessed) at _____ hours, _____.]''.

CHANGES TO APPENDIX 17, FORMS FOR COURT-MARTIAL ORDERS, MANUAL FOR COURTS-MARTIAL, UNITED STATES

The first note to paragraph d of Appendix 17 is amended to read as follows:

''[Note. Orders promulgating the vacation of the suspension of a dismissal will be published by departmental orders of the Secretary concerned. Vacations of any other suspension of a general court-martial sentence, or of a special court-martial sentence that as approved and affirmed includes a bad-conduct discharge or confinement for one year, will be promulgated by the officer exercising general court-martial jurisdiction over the probationer (Article 72(b)). The vacation of suspension of any other sentence may be promulgated by an appropriate convening authority under Article 72(c). *See* R.C.M. 1109.]''

CHANGES TO APPENDIX 18, REPORT OF PROCEEDINGS TO VACATE SUSPENSION OF A GENERAL COURT-MARTIAL OR OF A SPECIAL COURT-MARTIAL SENTENCE INCLUDING A BAD-CONDUCT DISCHARGE UNDER ARTICLE 72, UCMJ, AND R.C.M. 1109 (DD FORM 455), MANUAL FOR COURTS-MARTIAL, UNITED STATES

The title to Appendix 18 is amended to read as follows:

''Report of Proceedings to Vacate Suspension of a General Court-Martial or of a Special Court-Martial Sentence Including a Bad-Conduct Discharge or Confinement for One Year Under Article 72, UCMJ, and R.C.M. 1109 (DD Form 455).''.

CHANGES TO THE ANALYSIS ACCOMPANYING THE MANUAL FOR COURTS-MARTIAL, UNITED STATES.

1. *Changes to Appendix 21, the Analysis Accompanying the Rules for Courts- Martial, United States (Part II, MCM).*

a. The Analysis to R.C.M. 201(f) is amended by inserting after the second paragraph the following new paragraph:

''*2002 Amendment*: Subsections (f)(2)(B)(i) and (f)(2)(B)(ii) were amended to remove previous limitations and thereby implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999). Subject to limitations prescribed by the President, the amendment increased the jurisdictional maximum punishment at special courts-martial to confinement for one year and forfeitures not exceeding two-thirds pay per month for one year, vice the previous six-month jurisdictional limitation.''.

b. The Analysis to R.C.M. 701(b) is amended by inserting after the discussion of the *1991 Amendment* to subsection (b)(2) the following new paragraph:

''*2002 Amendment*: Subsection (b)(4) was amended to take into consideration the protections afforded by the new psychotherapist-patient privilege under Mil. R. Evid. 513.''

c. The Analysis to R.C.M. 707(a) is amended by inserting after the second paragraph the following new paragraph:

''*2002 Amendment*: *Burton* and its progeny were re-examined in *United States v. Kossman*, 38 M.J. 258 (C.M.A. 1993), where the Court of Military Appeals specifically overruled *Burton* and reinstated the earlier rule from *United States v. Tibbs*, 15 C.M.A. 350, 353, 35 C.M.R. 322, 325 (1965). *See Kossman*, 38 M.J. at 262. In *Kossman*, the Court reinstated the ''reasonable diligence'' standard in determining whether the prosecution's progress toward trial for a confined accused was sufficient to satisfy the speedy trial requirement of Article 10, UCMJ.''

d. The Analysis accompanying R.C.M. 806 is amended by adding at the end the following new paragraphs:

''*2002 Amendment*: Section (d) was added to codify the military judge's power to issue orders limiting trial participants' extrajudicial statements in appropriate cases. *See United States v. Garwood*, 16 M.J. 863, 868 (N–M.C.M.R. 1983) (finding military judge was justified in issuing restrictive order prohibiting extrajudicial statements by trial participants), *aff'd on other grounds*, 20 M.J. 148 (C.M.A. 1985), *cert. denied*, 474 U.S. 1005 (1985); *United States v. Clark*, 31 M.J. 721, 724 (A.F.C.M.R. 1990) (suggesting, but not deciding, that the military judge properly limited trial participants' extrajudicial statements).

''The public has a legitimate interest in the conduct of military justice proceedings. Informing the public about the operations of the criminal justice system is one of the ''core purposes'' of the First Amendment. In the appropriate case where the military judge is considering issuing a protective order, absent exigent circumstances, the military judge must conduct a hearing prior to issuing such an order. Prior to such a hearing the parties will have been provided notice. At the hearing, all parties will be provided an opportunity to be heard. The opportunity to be heard may be extended to representatives of the media in the appropriate case.

''Section (d) is based on the first Recommendation Relating to the Conduct of Judicial Proceedings in Criminal Cases, included in the Revised Report of the Judicial Conference Committee on the Operation of the Jury System on the ''Free Press—Fair Trial'' Issue, 87 F.R.D. 519, 529 (1980), which was approved by the Judicial Conference of the United States on September 25, 1980. The requirement that the protective order be issued in writing is based on Rule for Courts-Martial 405(g)(6). Section (d) adopts a ''substantial likelihood of material prejudice'' standard in place of the Judicial Conference recommendation of a ''likely to interfere'' standard. The Judicial Conference's recommendation was issued before the Supreme Court's decision in *Gentile v. State Bar of Nev.*, 501 U.S. 1030 (1991). *Gentile*, which dealt with a Rule of Professional Conduct governing extrajudicial statements, indicates that a lawyer may be disciplined for making statements that present a substantial likelihood of material prejudice to an accused's right to a fair trial. While the use of protective orders is distinguishable from limitations imposed by a bar's ethics rule, the *Gentile* decision expressly recognized that the ''speech of lawyers representing clients in pending cases may be regulated under a less demanding standard than that established for regulation of the press in *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539 (1976), and the cases which preceded it.'' 501 U.S. at 1074. The Court concluded that ''the 'substantial likelihood of material prejudice' standard constitutes a constitutionally permissible balance between the First Amendment rights of attorneys in pending cases and the State's interest in fair trials.'' *Id.* at 1075. *Gentile* also supports the constitutionality of restricting communications of non-lawyer participants in a court case. *Id.* at 1072–73 (citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 32–33 (1984)). Accordingly, a protective order issued under the ''substantial likelihood of material prejudice'' standard is constitutionally permissible.

''The first sentence of the discussion is based on the committee comment to the Recommendations Relating to the Conduct of Judicial Proceedings in Criminal Cases. *See* 87 F.R.D. at 530. For a definition of ''party,'' *see* R.C.M. 103(16). The second sentence of the discussion is based on the first of the Judicial Conference's recommendations concerning special orders. *See* 87 F.R.D. at 529. The third sentence of the discussion is based on the second of the Judicial Conference's recommendations, *id.* at 532, and on *United States v. Salameh*, 992 F.2d 445, 447 (2d Cir. 1993) (*per curiam*), and *In re Application of Dow Jones & Co.*, 842 F.2d 603, 611 & n.1 (2d Cir.), *cert. denied*, 488 U.S. 946 (1988). The fourth sentence is based on *Salameh*, 992 F.2d at 447. The fifth sentence is based on Rule for Courts-Martial 905(d).''.

e. The Analysis accompanying R.C.M. 1001(b)(3)(A) is amended by inserting the following at the end thereof:

''*2002 Amendment*: As previously written, R.C.M. 1001(b)(3)(A) offered little guidance about what it meant by ''civilian convictions.'' *See, e.g., United States v. White*, 47 M.J. 139, 140 (C.A.A.F. 1997); *United States v. Barnes*, 33 M.J. 468, 472–73 (C.M.A. 1992); *United States v. Slovacek*, 24 M.J. 140, 141 (CMA), *cert. denied*, 484 U.S. 855 (1987). The present rule addresses this void and intends to give the sentencing authority as much information as the military judge determines is relevant in order to craft an appropriate sentence for the accused.

''Unlike most civilian courts, this rule does not allow admission of more extensive criminal history information, such as arrests. Use of such additional information is not appropriate in the military setting where court-

martial members, not a military judge, often decide the sentence. Such information risks unnecessarily confusing the members.

''The present rule clarifies the term ''conviction'' in light of the complex and varying ways civilian jurisdictions treat the subject. The military judge may admit relevant evidence of civilian convictions without necessarily being bound by the action, procedure, or nomenclature of civilian jurisdictions. Examples of judicial determinations admissible as convictions under this rule include accepted pleas of *nolo contendere*, pleas accepted under *North Carolina v. Alford*, 400 U.S. 25 (1970), or deferred sentences. If relevant, evidence of forfeiture of bail that results in a judicial determination of guilt is also admissible, as recognized in *United States v. Eady*, 35 M.J. 15, 16 (C.M.A. 1992). While no time limit is placed upon the admissibility of prior convictions, the military judge should conduct a balancing test to determine whether convictions older than ten years should be admitted or excluded on the basis of relevance and fundamental fairness.

''The two central factors in this rule are (1) judicial determination of guilt and (2) assumption of guilt. Assumption of guilt is an all-inclusive term meaning any act by the accused in a judicial proceeding accepting, acknowledging, or admitting guilt. As long as either factor is present, the ''conviction'' is admissible, if relevant. Consequently, this rule departs from the holding in *United States v. Hughes*, 26 M.J. 119, 120 (C.M.A. 1988), where the accused pleaded guilty in a Texas court, but the judge did not enter a finding of guilty under state law allowing ''deferred adjudications.'' Under the present rule, the ''conviction'' would be admissible because the accused pleaded guilty in a judicial proceeding, notwithstanding the fact that the state judge did not enter a finding of guilty.

''In contrast, ''deferred prosecutions,'' where there is neither an admission of guilt in a judicial proceeding nor a finding of guilty, would be excluded. The rule also excludes expunged convictions, juvenile adjudications, minor traffic violations, foreign convictions, and tribal court convictions as matters inappropriate for or unnecessarily confusing to courts-martial members. What constitutes a ''minor traffic violation'' within the meaning of this rule is to be decided with reference only to federal law, and not to the laws of individual states. *See* U.S. Sentencing Guidelines Manual § 4A1.2(c)(2); ''What Constitutes 'Minor Traffic Infraction' Excludable From Calculation of Defendant's Criminal History under United States Sentencing Guideline § 4A1.2(c)(2),'' 113 A.L.R. Fed. 561 (1993).

''Additionally, because of the lack of clarity in the previous rule, courts sometimes turned to Mil. R. Evid. 609 for guidance. *See, e.g., Slovacek*, 24 M.J. at 141. We note that because the policies behind Mil. R. Evid. 609 and the present rule differ greatly, a conviction that may not be appropriate for impeachment purposes under Mil. R. Evid. 609, may nevertheless be admissible under the present rule.

''The Federal Sentencing Guidelines were consulted when drafting the present rule. Although informed by those guidelines, the present rule departs from them in many respects because of the wide differences between the courts-martial process and practice in federal district court.''.

f. The Analysis to R.C.M. 1003(b)(3) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: The amendment clearly defines the authority of special and summary courts-martial to adjudge both fines and forfeitures. *See generally United States v. Tualla*, 52 M.J. 228 (2000).''

g. The Analysis accompanying R.C.M. 1003(b)(7) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: This change resulted from the enactment of Article 56a, UCMJ, in section 581 of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. No. 105–85, 111 Stat. 1629, 1759 (1997).''.

h. The Analysis accompanying R.C.M. 1004(e) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: This change resulted from the enactment of Article 56a, UCMJ, in section 581 of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. No. 105–85, 111 Stat. 1629, 1759 (1997).''.

i. The Analysis accompanying R.C.M. 1006(c) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: This change to the discussion resulted from the enactment of Article 56a, UCMJ, in section 581 of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. No. 105–85, 111 Stat. 1629, 1759 (1997).''.

j. The Analysis accompanying R.C.M. 1006(d) is amended by inserting after the analysis of subsection 3(A) following paragraph:

''*2002 Amendment*: Subsection (d)(4)(B) was amended as a result of the enactment of Article 56a, UCMJ, in section 581 of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. No. 105–85, 111 Stat. 1629, 1759 (1997).''.

k. The Analysis accompanying R.C.M. 1009 is amended by adding at the end the following new paragraph:

''*2002 Amendment*: Subsection (e)(3)(B)(ii) was amended as a result of the enactment of Article 56a, UCMJ, in section 581 of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. No. 105–85, 111 Stat. 1629, 1759 (1997).''.

l. The Analysis to R.C.M. 1103 (b)(2) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: Subsection (b)(2)(B) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial. R.C.M. 1103(b)(2)(B) was amended to prevent an inconsistent requirement for a verbatim transcript between a general court-martial and a special court-martial when the adjudged sentence of a general court-martial does not include a punitive discharge or confinement greater than six months, but does include forfeiture of two-thirds pay per month for more than six months but not more than 12 months.''.

m. The Analysis to R.C.M. 1103(c) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: Subsection (c) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum pun-

ishment at special courts-martial. R.C.M. 1103(c) was amended to conform the requirements for a verbatim transcript with the requirements of Article 19 for a 'complete record' in cases where the adjudged sentence includes a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months.''.

n. The Analysis to R.C.M. 1103(f) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: Subsection (f)(1) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106§65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial. R.C.M. 1103(f)(1) was amended to include the additional limitations on sentence contained in Article 19, UCMJ.''.

o. The Analysis to R.C.M. 1104(a) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: Subsection (a)(2)(A) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial. R.C.M. 1104(a)(2)(A) was amended to ensure that the military judge authenticates all verbatim records of trial at special courts-martial.''.

p. The Analysis to R.C.M. 1104(e) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: Subsection (e) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial. This amendment reflects the change to R.C.M. 1106 for special court- martial with an adjudged sentence that includes confinement for one year.''.

q. The Analysis to R.C.M. 1106(a) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: Subsection (a) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial. This amendment requires all special courts-martial cases subject to appellate review to comply with this rule.''.

r. The Analysis to R.C.M. 1107(d) is amended by inserting after the first paragraph the following new paragraph:

''*2002 Amendment*: The Discussion accompanying subsection (d)(1) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial. R.C.M. 1107(d)(4) was amended to include the additional limitations on sentence contained in Article 19, UCMJ.''.

s. The Analysis accompanying R.C.M. 1107(d) is amended by adding at the end the following new paragraphs:

''*2002 Amendment*: Subsection (d)(4) was amended as a result of the enactment of Article 56a, UCMJ, in section 581 of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. No. 105–85, 111 Stat. 1629, 1759 (1997).

''Subsection (d)(5) is new. The amendment addresses the impact of Article 58b, UCMJ. In special courts-martial, where the cumulative impact of a fine and forfeitures, whether adjudged or by operation of Article 58b, would otherwise exceed the total dollar amount of forfeitures that could be adjudged at the special court-martial, the fine and/or adjudged forfeitures should be disapproved or decreased accordingly. *See generally United States v. Tualla*, 52 M.J. 228, 231–32 (2000).''

t. The Analysis to R.C.M. 1109 is amended by adding at the end the following new paragraphs:

''*2002 Amendment*: Subsection (e) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial.

''(f) *Vacation of a suspended special court-martial sentence that includes a bad-conduct discharge or confinement for one year*. Subsection (f) was amended to implement the amendment to 10 U.S.C. §thnsp;819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial. This amendment reflects the decision to treat an approved sentence of confinement for one year, regardless of whether any period of confinement is suspended, as a serious offense, in the same manner as a suspended approved bad-conduct discharge at special courts-martial under Article 72, UCMJ, and R.C.M. 1109.''.

u. The Analysis to R.C.M. 1110(a) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: Subsection (a) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial.''.

v. The Analysis to R.C.M. 1111 is amended by adding at the end the following new paragraph:

''*2002 Amendment*: R.C.M. 1111(b) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial. The amendment ensures all special courts-martial not requiring appellate review are reviewed by a judge advocate under R.C.M. 1112.''.

w. The Analysis to R.C.M. 1112 is amended by adding at the end the following new paragraph:

''*2002 Amendment*: R.C.M. 1112(a)(2) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No.

106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial. The amendment ensures all special courts-martial not requiring appellate review are reviewed by a judge advocate under R.C.M. 1112.''.

x. The Analysis to R.C.M. 1305 (d) is amended to read as follows:

''(d) *Forwarding copies of the record.* Subsection (1) is based on Article 60(b)(2). Subsection (2) is based on the third paragraph of paragraph 91c of MCM, 1969 (Rev.). Subsection (3) is self- explanatory.

''*2001 Amendment*: Subsection (d)(2) was amended to strike the reference to ''subsection (e)(1)'' and insert a reference to ''subsection (d)(1)'' to reflect the 1995 amendment that redesignated R.C.M. 1305(e) as R.C.M. 1305(d).''.

2. *Changes to Appendix 22, the Analysis Accompanying the Military Rules of Evidence (Part III, MCM).*

a. The Analysis to Mil. R. Evid. 413 is amended by adding at the end the following new paragraph:

''*2002 Amendment*: Federal Rule of Evidence 415 which created a similar character evidence rule for civil cases, became applicable to the Military Rules of Evidence on January 6, 1996, pursuant to Rule 1102. Federal Rule 415, however, is no longer applicable to the Military Rules of Evidence, as stated in Section 1 of Executive Order , 2002 Amendments to the Manual for Court-Martial, United States, (date) Rule 415 was deleted because it applies only to federal civil proceedings.''.

b. The Analysis to Mil. R. Evid. 414 is amended by adding at the end the following new paragraph:

''*2002 Amendment*: Federal Rule of Evidence 415 which created a similar character evidence rule for civil cases, became applicable to the Military Rules of Evidence on January 6, 1996, pursuant to Rule 1102. Federal Rule 415, however, is no longer applicable to the Military Rules of Evidence, as stated in Section 1 of Executive Order , 2002 Amendments to the Manual for Court-Martial, United States, (date) Rule 415 was deleted because it applies only to federal civil proceedings.''

c. The analysis to Mil. R. Evid. 615 is amended by adding at the end the following new paragraph:

''*2002 Amendment*: These changes are intended to extend to victims at courts-martial the same rights granted to victims by the Victims' Rights and Restitution Act of 1990, 42 U.S.C. § 10606(b)(4), giving crime victims '[t]he right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial,' and the Victim Rights Clarification Act of 1997, 18 U.S.C. § 3510, which is restated in subsection (5). For the purposes of this rule, the term 'victim' includes all persons defined as victims in 42 U.S.C. § 10607(e)(2), which means 'a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime, including'—(A) in the case of a victim that is an institutional entity, an authorized representative of the entity; and (B) in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following (in order of preference): (i) a spouse; (ii) a legal guardian; (iii) a parent; (iv) a child; (v) a sibling; (vi) another family member; or (vii) another person designated by the court.

'The victim's right to remain in the courtroom remains subject to other rules, such as those regarding classified information, witness deportment, and conduct in the courtroom. Subsection (4) is intended to capture only those statutes applicable to courts-martial.''.

3. *Changes to Appendix 23, the Analysis accompanying the Punitive Articles (Part IV, MCM).*

a. The Analysis to paragraph 27(e) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: The monetary amount affecting the maximum punishments has been revised from $100 to $500 to account for inflation. The last change was in 1969 raising the amount to $100. The value has also been readjusted to realign it more closely with the division between felony and misdemeanor penalties in civilian jurisdictions. *See generally* American Law Institute, Model Penal Code and Commentaries § 223.1 (1980) (suggesting $500 as the value). The amendment also adds the phrase 'or any firearm or explosive' as an additional criterion. This is because, regardless of the intrinsic value of such items, the threat to the community is substantial when such items are wrongfully bought, sold, traded, dealt in or disposed.''.

b. The Analysis to paragraph 31(c)(6) is amended to read as follows:

''*2002 Amendment*: Subparagraph c(6), 'Statements made during an interrogation,' was removed in light of questions raised by the Court of Appeals for the Armed Forces in *United States v. Solis*, 46 M.J. 31, 35 (C.A.A.F. 1997). In Solis, the court said subparagraph c(6) could be viewed as serving at least three different purposes. It could be (1) an expansive description of dicta with no intent to limit prosecutions; (2) protection for an accused against overcharging; or (3) guidance for the conduct of investigations. Subparagraph c(6) was never intended to establish either procedural rights for an accused or internal guidelines to regulate government conduct. Subparagraph (c)(6) was based upon *United States v. Aronson*, 8 U.S.C.M.A. 525, 25 C.M.R. 29 (1957); *United States v. Washington*, 9 U.S.C.M.A. 131, 25 C.M.R. 393 (1958) and *United States v. Davenport*, 9 M.J. 364 (C.M.A. 1980) and was intended merely to describe the rule developed in those cases that a false statement to a law enforcement agent, when made by a servicemember without an independent duty to speak, was not 'official' and therefore not within the purview of Article 107. The subparagraph is removed because the position of the Court of Military Appeals in the three decisions noted above was abandoned in *United States v. Jackson*, 26 M.J. 377 (C.M.A. 1988) and the deleted paragraph no longer accurately describes the current state of the law.''.

c. The Analysis to paragraph 32(e) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: The monetary amount affecting the maximum punishments has been revised from $100 to $500 to account for inflation. The last change was in 1969 raising the amount to $100. The value has also been readjusted to realign it more closely with the division between felony and misdemeanor penalties in civilian jurisdictions. *See generally* American Law Institute, Model Penal Code and Commentaries § 223.1 (1980) (suggesting $500 as the value). Although the monetary amount affecting punishment in 18 U.S.C. § 1361, *Government property or contracts*, and 18 U.S.C. § 641, *Public money, property or records*, was increased from $100

to $1000 pursuant to section 606 of the Economic Espionage Act of 1996, P. L. No. 104–294, 110 Stat. 3488 (1996), a value of $500 was chosen to maintain deterrence, simplicity, and uniformity for the Manual's property offenses.''.

d. The Analysis to paragraph 33(e) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: The monetary amount affecting the maximum punishments has been revised from $100 to $500 to account for inflation. The last change was in 1969 raising the amount to $100. The value has also been readjusted to realign it more closely with the division between felony and misdemeanor penalties in civilian jurisdictions. *See generally* American Law Institute, Model Penal Code and Commentaries § 223.1 (1980) (suggesting $500 as the value).''.

e. The Analysis to paragraph 46(c) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: Subparagraph c(1)(h)(vi) is new. It was added to provide guidance on how unauthorized credit, debit, or electronic transactions should usually be charged. *See United States v. Duncan*, 30 M.J. 1284, 289 (N.M.C.M.R. 1990) (citing *United States v. Jones*, 29 C.M.R. 651 (A.B.R. 1960), *petition denied*, 30 C.M.R. 417 (C.M.A. 1960)) (regarding thefts from ATM machines). Alternative charging theories are also available, *see United States v. Leslie*, 13 M.J. 170 (C.M.A. 1982); *United States v. Ragins*, 11 M.J. 42 (C.M.A. 1981); *United States v. Schaper*, 42 M.J. 737 (A.F. Ct. Crim. App. 1995); and *United States v. Christy*, 18 M.J. 688 (N.M.C.M.R. 1984). The key under Article 121 is that the accused wrongfully obtained goods or money from a person or entity with a superior possessory interest.''.

f. The Analysis to paragraph 46(e) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: The monetary amount affecting the maximum punishments has been revised from $100 to $500 to account for inflation. The last change was in 1969 raising the amount to $100. The value has also been readjusted to realign it more closely with the division between felony and misdemeanor penalties in civilian jurisdictions. *See generally* American Law Institute, Model Penal Code and Commentaries § 223.1 (1980) (suggesting $500 as the value). Although the monetary amount effecting punishment in 18 U.S.C. § 1361, *Government property or contracts*, and 18 U.S.C. § 641, *Public money, property or records*, was increased from $100 to $1000 pursuant to section 606 of the Economic Espionage Act of 1996, P. L. No. 104–294, 110 Stat. 3488 (1996), a value of $500 was chosen to maintain deterrence, simplicity, and uniformity for the Manual's property offenses.''.

g. The Analysis to paragraph 49(e) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: The monetary amount affecting the maximum punishments has been revised from $100 to $500 to account for inflation. The last change was in 1969 raising the amount to $100. The value has also been readjusted to realign it more closely with the division between felony and misdemeanor penalties in civilian jurisdictions. *See generally* American Law Institute, Model Penal Code and Commentaries § 223.1 (1980) (suggesting $500 as the value).''.

h. The Analysis to paragraph 52(e) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: The monetary amount affecting the maximum punishments has been revised from $100 to $500 to account for inflation. The last change was in 1969 raising the amount to $100. The value has also been readjusted to realign it more closely with the division between felony and misdemeanor penalties in civilian jurisdictions. *See generally* American Law Institute, Model Penal Code and Commentaries § 223.1 (1980) (suggesting $500 as the value). A value of $500 was chosen to maintain deterrence, simplicity, and uniformity for the Manual's property offenses. 18 U.S.C. § 81, *Arson within special maritime and territorial jurisdiction*, no longer grades the offense on the basis of value.''.

i. The Analysis to paragraph 58(e) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: The monetary amount affecting the maximum punishments has been revised from $100 to $500 to account for inflation. The last change was in 1969 raising the amount to $100. The value has also been readjusted to realign it more closely with the division between felony and misdemeanor penalties in civilian jurisdictions. *See generally* American Law Institute, Model Penal Code and Commentaries § 223.1 (1980) (suggesting $500 as the value).''.

j. The Analysis to paragraph 62. Article 134 ' (Adultery) is amended to read as follows:

''c. *Explanation*. (1) Subparagraph c(2) is based on *United States. v. Snyder*, 4 C.M.R. 15 (1952); *United States v. Ruiz*, 46 M.J. 503 (A. F. Ct. Crim. App. 1997); *United States v. Green*, 39 M.J. 606 (A.C.M.R. 1994); *United States v. Collier*, 36 M.J. 501 (A.F.C.M.R. 1992); *United States v. Perez*, 33 M.J. 1050 (A.C.M.R. 1991); *United States v. Linnear*, 16 M.J. 628 (A.F.C.M.R. 1983); Part IV, paragraph 60c(2)(a) of MCM. Subparagraph c(3) is based on *United States v. Poole*, 39 M.J. 819 (A.C.M.R. 1994). Subparagraph c(4) is based on *United States v. Fogarty*, 35 M.J. 885 (A.C.M.R. 1992); Military Judges' Benchbook, DA PAM 27–9, paragraph 3–62–1 and 5–11–2 (30 Sep. 1996). *See* R.C.M. 916(j) and (l)(1) for a general discussion of mistake of fact and ignorance, which cannot be based on a negligent failure to discover the true facts.

''(2) When determining whether adulterous acts constitute the offense of adultery under Article 134, commanders should consider the listed factors. Each commander has discretion to dispose of offenses by members of the command. As with any alleged offense, however, under R.C.M. 306(b) commanders should dispose of an allegation of adultery at the lowest appropriate level. As the R.C.M. 306(b) discussion states, many factors must be taken into consideration and balanced, including, to the extent practicable, the nature of the offense, any mitigating or extenuating circumstances, the character and military service of the military member, any recommendations made by subordinate commanders, the interests of justice, military exigencies, and the effect of the decision on the military member and the command. The goal should be a disposition that is warranted, appropriate, and fair. In the case of officers, also consult the explanation to paragraph 59 in deciding how to dispose of an allegation of adultery.''.

k. The Analysis to paragraph 78(e) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: The monetary amount affecting the maximum punishments has been revised from $100 to $500 to account for inflation. The last change was in 1969 raising the amount to $100. The value has also been readjusted to realign it more closely with the division between felony and misdemeanor penalties in civilian jurisdictions. *See generally* American Law Institute, Model Penal Code and Commentaries § 223.1 (1980) (suggesting $500 as the value).''.

l. The Analysis to paragraph 106(e) is amended by adding at the end the following new paragraph:

''*2002 Amendment*: The monetary amount affecting the maximum punishments has been revised from $100 to $500 to account for inflation. The last change was in 1969 raising the amount to $100. The value has also been readjusted to realign it more closely with the division between felony and misdemeanor penalties in civilian jurisdictions. *See generally* American Law Institute, Model Penal Code and Commentaries § 223.1 (1980) (suggesting $500 as the value).''.

Executive Order 13263 of April 29, 2002

President's New Freedom Commission on Mental Health

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve America's mental health service delivery system for individuals with serious mental illness and children with serious emotional disturbances, it is hereby ordered as follows:

Section 1. *Establishment.* There is hereby established the President's New Freedom Commission on Mental Health (Commission).

Sec. 2. *Membership.* (a) The Commission's membership shall be composed of:

(i) Not more than fifteen members appointed by the President, including providers, payers, administrators, and consumers of mental health services and family members of consumers; and

(ii) Not more than seven ex officio members, four of whom shall be designated by the Secretary of Health and Human Services, and the remaining three of whom shall be designated—one each—by the Secretaries of the Departments of Labor, Education, and Veterans Affairs.

(b) The President shall designate a Chair from among the fifteen members of the Commission appointed by the President.

Sec. 3. *Mission.* The mission of the Commission shall be to conduct a comprehensive study of the United States mental health service delivery system, including public and private sector providers, and to advise the President on methods of improving the system. The Commission's goal shall be to recommend improvements to enable adults with serious mental illness and children with serious emotional disturbances to live, work, learn, and participate fully in their communities. In carrying out its mission, the Commission shall, at a minimum:

(a) Review the current quality and effectiveness of public and private providers and Federal, State, and local government involvement in the de-