

**Appendix E: Bibliography on Reform and Military Law**

**Appendix E: Bibliography on Reform and Military Law**

# Military Justice Reform under the Uniform Code of Military Justice

## Selected Bibliography

*compiled for the Cox Commission on the 50<sup>th</sup> Anniversary of the UCMJ*

Arranged in reverse chronological order within each these subject headings:

- I. Recent Scholarship**
- II. Military Justice Beyond the United States**
- III. Perspectives on Reform and Military Law**
- IV. The Constitution and the UCMJ**
- V. The Court of Appeals for the Armed Forces**
- VI. Origins of the UCMJ**
- VII. General Background**

### **I. Recent Scholarship (since 1994)**

John F. O'Connor, *The Origins and Application of the Military Deference Doctrine*, 35 GA. L. REV. 161 (2000).

Colonel James A. Young, III, *Revising the Court Member Selection Process*, 163 MIL. L. REV. 91 (2000).

Major General William A. Moorman, *Fifty Years of Military Justice: Does the Uniform Code of Military Justice Need to Be Changed?*, 48 A.F.L. REV. 185 (2000).

Major Walter M. Hudson, *Two Senior Judges Look Back and Look Ahead: An Interview with Senior Judge Robinson O. Everett and Senior Judge Walter T. Cox, III*, 165 MIL. L. REV. 42 (2000).

Kevin J. Barry, *Modernizing the Manual for Courts-Martial Rule-Making Process: A Work in Progress*, 165 MIL. L. REV. 237 (2000).

Eugene R. Fidell, *A World-Wide Perspective on Change in Military Justice*, 48 A.F.L. REV. 195 (2000).

The Honorable Walter T. Cox III, *The Twenty-Seventh Annual Kenneth J. Hodson Lecture: Echoes and Expectations: One Judge's View*, 159 MIL. L. REV. 183 (1999).

Captain Gregory E. Maggs, *Judicial Review of the Manual for Courts-Martial*, 160 MIL. L. REV. 96 (1999).

Michael I. Spaks & Jonathan P. Tomes, *Courts-Martial: Time to Play Taps*, 28 S.W. UNIV. L. REV. 481 (1999).

Comment, *Reforming Court-Martial Panel Selection: Why Change Makes Sense for Military Commanders and Military Justice*, 7 GEO. MASON L. REV. 1013 (1999).

Elizabeth Lutes Hillman, Note, *The "Good Soldier" Defense: Character Evidence and Military Rank at Courts-Martial*, 108 YALE L. J. 879 (1999).

Brigadier General John S. Cooke, *The Twenty-Sixth Annual Kenneth J. Hodson Lecture: Manual for Courts-Martial 20X*, 156 MIL. L. REV. 1 (1998).

Major Guy P. Glazier, *He Called for His Pipe, and He Called for His Bowl, and He Called for His Members Three--Selection of Military Juries by the Sovereign: Impediment to Military Justice*, 157 MIL. L. REV. 1 (1998).

Dwight H. Sullivan, *Playing the Numbers: Court-Martial Panel Size and the Military Death Penalty*, 158 MIL. L. REV. 1 (1998).

Christine Daniels, Note, *Capital Punishment and the Courts-Martial: Questions Surfacing Following Loving v. United States*, 55 WASH. & LEE L. REV. 577 (1998).

Eugene R. Fidell, *Going on Fifty: Evolution and Devolution in Military Justice*, 32 WAKE FOREST L. REV. 1213 (1997).

Stephen Cox, *The Military Death Penalty: Implications for Indigent Service Members*, 3 LOY. POV. L.J. 165 (1997).

Nicole E. Jaeger, Note, *Maybe Soldiers Have Rights After All!*, 87 J. CRIM L. & CRIMINOL. 895 (1997).

Lieutenant Colonel Lawrence J. Morris, "Our Mission, No Future: The Case for Closing the United States Army Disciplinary Barracks," *Kansas Journal of Law and Public Policy*, pp. 77-121 (Fall, 1996).

Kathleen A. Duignan, *Military Justice: Not an Oxymoron*, FED LAW., Feb. 1996, at 22.

Jonathan Lurie, *Military Justice 50 Years After Nuremberg: Some Reflections on Appearance v. Reality*, 149 MIL. L. REV. 189 (1995).

Dwight H. Sullivan, *The Last Line of Defense: Federal Habeas Review of Military Death Penalty Cases*, 144 MIL. L. REV. 1 (1994).

Kevin Barry, *Reinventing Military Justice*, PROCEEDINGS, July 1994, at 54.

Frederic Lederer & Barbara Hundley, *Needed: An Independent Military Judiciary—A Proposal to Amend the Uniform Code of Military Justice*, 3 WM. & MARY BILL OF RTS. J. 629 (1994).

Major James Kevin Lovejoy, *Abolition of Court Member Sentencing in the Military*, 142 MIL. L. REV. 1 (1994).

Andrew M. Ferris, Comment, *Military Justice: Removing the Probability of Unfairness*, 63 U. CINN. L. REV. 439 (1994).

## II. Military Justice Beyond the United States

Andrew D. Mitchell & Tania Voon, *Defence of the Indefensible? Reassessing the Constitutional Validity of Military Service Tribunals in Australia*, 27 FED. L. REV. 499 (1999).

Rubsun Ho, *A World that Has Walls: A Charter Analysis of Military Tribunals*, 54 U. TORONTO FAC. L. REV. 149 (1996).

Ann Lyon, *After Findlay: A Consideration of Some Aspects of Military Justice*, 1998 CRIM. L. REV. 109.

John Mackenzie, *A Fair and Public Trial*, 150 NEW L.J. 516 (2000).

Brigadier-General Jerry S.T. Pitzul & Commander John C. Maguire, *A Perspective on Canada's Code of Service Discipline in 1 MODERN LEGAL SYSTEMS CYCLOPEDIA* § 1.30.5 (Kenneth Robert Redden & Linda L. Schlueter eds., 2000).

The Honorable J. W. Rant, *The British Courts-Martial System: It Ain't Broke, But It Needs Fixing*, 152 MIL. L. REV. 179 (1996).

### III. Perspectives on Reform and Military Law

David A. Schlueter, *Military Justice in the 1990s: A Legal System in Search of Respect*, 133 MIL. L. REV. 1 (1991).

Colonel Frederick Bernays Wiener, *American Military Law in the Light of the First Mutiny Act's Tricentennial*, 126 MIL. L. REV. 1 (1989).

Eugene R. Fidell, *The Culture of Change in Military Law*, 126 MIL. L. REV. 125 (1989).

The Honorable Walter T. Cox III, *The Army, the Courts, and the Constitution: The Evolution of Military Justice*, 118 MIL. L. REV. 1 (1987).

William C. Westmoreland and George S. Prugh, *Judges in Command: The Judicialized Uniform Code of Military Justice in Combat*, 3 HARV. J. L. & PUB. POL'Y 1 (1980).

James B. Jacobs, *Legal Change Within the United States Armed Forces Since World War II*, 4 ARMED FORCES & SOC'Y 391 (1978).

Sam Ervin, *Military Administrative Discharges: Due Process in the Doldrums*, 10 SAN DIEGO L. REV. 49 (1976).

Major General Kenneth J. Hodson, *Military Justice: Abolish or Change?*, 22 KAN. L. REV. 31 (1973).

Major General Kenneth J. Hodson, *The Manual for Courts-Martial —1984*, 57 MIL. L. REV. 1 (1972).

Edward F. Sherman, *The Civilianization of Military Law*, 22 MAINE L. REV. 3 (1970).

Sam Ervin, *The Military Justice Act of 1968*, 5 WAKE FOREST INTRAMURAL L. REV. 223 (1969).

### IV. The Constitution and the UCMJ

Keith M. Harrison, *Be All You Can Be (Without the Protection of the Constitution)*, 8 HARV. BLACKLETTER J. 221 (1991).

Stephanie A. Levin, *The Deference that Is Due: Rethinking the Jurisprudence of Judicial Deference to the Military*, 35 VILL. L. REV. 1009 (1990).

Sam Nunn, *The Fundamental Principles of the Supreme Court's Jurisprudence in Military Cases*, 29 N. C. L. REV. 177 (1984).

Joseph W. Bishop, Jr., *Constitutional Rights of Servicemembers Before Courts-Martial*, 64 COLUM. L. REV. 127 (1964).

Earl Warren, *The Bill of Rights and the Military*, 37 N.Y.U. L. REV. 181 (1962).

The Honorable Robert E. Quinn, *The United States Court of Military Appeals and Military Due Process*, 35 ST. JOHN'S L. REV. 225 (1960-61).

Frederick Bernays Wiener, *Courts-Martial and the Bill of Rights: The Original Practice I*, 72 HARV. L. REV. 1 (1958); *Courts-Martial and the Bill of Rights: The Original Practice II*, 72 HARV. L. REV. 266 (1958).

Gordon D. Henderson, *Courts-Martial and the Constitution: The Original Understanding*, 71 HARV. L. REV. 293 (1957).

Seymour Wurfel, *Military Due Process: What is It?*, 6 VAND. L. REV. 251 (1953).

## V. The Court of Appeals for the Armed Forces

JONATHAN LURIE, *ARMING MILITARY JUSTICE: THE ORIGINS OF THE UNITED STATES COURT OF MILITARY APPEALS, 1775-1950* (Princeton, NJ, Princeton University, 1992); *PURSUING MILITARY JUSTICE: THE HISTORY OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES, 1951-1980* (Princeton, NJ, Princeton University, 1998).

John T. Willis, *The United States Court of Military Appeals: Its Origins, Operation, and Future*, 55 MIL. L. REV. 39 (1972).

Paul W. Brosman, *The Court: Freer Than Most*, 6 VAND. L. REV. 166 (1953).

## VI. Origins of the UCMJ

WILLIAM T. GENEROUS, JR., *SWORDS AND SCALES: THE DEVELOPMENT OF THE UNIFORM CODE OF MILITARY JUSTICE* (Port Washington, N.Y., Kennikat Press, 1973).

Edmund M. Morgan, *The Background of the Uniform Code of Military Justice*, 6 VAND. L. REV. 161 (1953).

Rear Admiral Robert J. White, CHC, USN (ret), *The Uniform Code of Military Justice—Its Promise and Performance, The First Decade, 1951-1961, A Symposium, The Background and the Problem*, 35 ST. JOHN'S L. REV. 197 (1961).

## VII. General interest

CAPTAIN JAY M. SIEGEL, ORIGINS OF THE NAVY JUDGE ADVOCATE GENERAL'S CORPS: A HISTORY OF LEGAL ADMINISTRATION IN THE UNITED STATES NAVY, 1775-1967 (Washington, D.C., U.S. Government Printing Office, 1997).

LIEUTENANT COLONEL GARY D. SOLIS, U.S.M.C., MARINES AND MILITARY LAW IN VIETNAM: TRIAL BY FIRE (Washington, D.C., History and Museums Division, Headquarters, U.S. Marine Corps, 1989).

THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL'S CORPS, 1775-1975 (Washington, D.C., U.S. Government Printing Office, 1975).

JOSEPH W. BISHOP, JR., JUSTICE UNDER FIRE: A STUDY OF MILITARY LAW (New York, Charterhouse, 1974).

HOMER E. MOYER, JR., JUSTICE AND THE MILITARY, (Washington, D.C., Public Law Education Institute, 1972).

Department of Defense, REPORT OF THE TASK FORCE ON THE ADMINISTRATION OF JUSTICE WITHIN THE ARMED FORCES (Washington, D.C., Nov. 30, 1972).

ROBERT SHERRILL, MILITARY JUSTICE IS TO JUSTICE AS MILITARY MUSIC IS TO MUSIC (Harper rev. ed. 1970).

REPORT TO HONORABLE WILBER M. BRUCKER, SECRETARY OF THE ARMY, BY THE COMMITTEE ON THE UNIFORM CODE OF MILITARY JUSTICE, GOOD ORDER AND DISCIPLINE IN THE ARMY (18 January 1960).

Robert N. Strassfeld, *The Vietnam War on Trial: The Court-Martial of Dr. Howard B. Levy*, 1994 WISC. L. REV. 829.

## Appendix F: Military Justice Websites

## Military Justice Web Sites

*compiled for the Cox Commission on the 50<sup>th</sup> Anniversary of the UCMJ*

[www.nimj.org](http://www.nimj.org) (The National Institute of Military Justice)

[www.aspals.com](http://www.aspals.com)

[www.court-martial.com](http://www.court-martial.com)

[www.IAA.org](http://www.IAA.org)

[www.militaryinjustice.org](http://www.militaryinjustice.org) (Citizens Against Military Justice)

[www.uscova.org](http://www.uscova.org) (United States Council on Veterans Affairs)

<http://communities.msn.com/SAILORSUNITEDFORSELFDEFENSE>

<http://www.gulfwarvets.com>

[www.militarycorruption.com](http://www.militarycorruption.com)