

AMERICAN  
CASEBOOK  
SERIES

MODERN MILITARY  
JUSTICE  
CASES AND MATERIALS

Second Edition



Gregory E. Maggs  
Lisa M. Schenck

**MODERN  
MILITARY JUSTICE  
CASES AND MATERIALS**

**Second Edition**



by

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**AMERICAN CASEBOOK SERIES®**

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*With great admiration and many thanks to members of the U.S. Army  
Judge Advocate General's Corps who have devoted countless hours to teach-  
ing me about Military Justice. —GEM*

*To my family and my students for their consistent support, encouragement,  
and inspiration.—LMS*

## PREFACE TO THE SECOND EDITION

This textbook is about the modern military justice system of the United States. It covers court-martial procedures, substantive criminal law, and non-judicial punishment under the Uniform Code of Military Justice, in addition to other administrative and disciplinary measures. The book also addresses both the Military Extraterritorial Jurisdiction Act, which gives the federal courts jurisdiction over certain acts committed abroad, and the Military Commissions Acts of 2006 and 2009, which created military tribunals for trying enemy belligerents. The Second Edition includes several recent cases and addresses some of the significant changes that Congress has recently made to the Uniform Code of Military Justice and that the President has made to the Manual for Courts-Martial.

The military justice system serves the nation as a whole by helping to establish and maintain good order and discipline in the Armed Forces, making our military power more reliable and effective. The system also strives to treat fairly and appropriately the millions of American servicemembers who are subject to it. For these reasons, we have sought to make the textbook accessible to a wide audience. We believe that it is suitable for all law students, whether or not they hope to pursue military careers, and also for non-law students such as cadets, midshipmen, officer candidates, and others who have an interest in the subject of military justice. The book focuses on what is common to all of the Armed Forces—the Air Force, the Army, the Coast Guard, the Marine Corps, and the Navy—while noting certain differences among them. To make this book especially relevant to cadets and midshipmen, we have addressed a number of cases arising out of the U.S. Air Force Academy, U.S. Coast Guard Academy, U.S. Military Academy, and U.S. Naval Academy.<sup>1</sup> No prior knowledge of military matters, however, is necessary for using this book.

Each of the authors has extensive practical experience with the military justice system. Dean Lisa Schenck served on active duty in the U.S. Army Signal Corps and Judge Advocate General's Corps for more than 25 years, retiring with the rank of colonel. Following various assignments as a military lawyer and assistant professor at the U.S. Military Academy, she was appointed an appellate military judge on the U.S. Army Court of Criminal Appeals. In 2003 and that same year, she received the Judge Advocates Association's Outstanding Career Armed Services Award (Army). In 2005, she became the first female

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<sup>1</sup> The cases involving cadets and midshipmen are *United States v. Perry*, 48 M.J. 197 (C.A.A.F. 1998) [p. 340]; *United States v. Van Vliet*, 64 M.J. 539 (A.F. Ct. Crim. App. 2006) [p. 358]; *United States v. Smith*, 68 M.J. 445 (C.A.A.F. 2010) [p. 425]; *United States v. Gibson*, 39 M.J. 319 (C.M.A. 1994) [p. 435]; *United States v. Green*, 58 M.J. 855 (Army Ct. Crim. App. 2003) [p. 452]; *United States v. Conliffe*, 67 M.J. 127 (C.A.A.F. 2009) [p. 511]; and *United States v. Powell*, 55 M.J. 633 (A.F. Ct. Crim. App. 2001) [p. 538].

Senior Judge on that court. In 2007, the Secretary of Defense appointed her to serve concurrently as an Associate Judge on the U.S. Court of Military Commission Review. After retiring from the military, Dean Schenck served as Senior Advisor to the Defense Task Force on Sexual Assault in the Military Services. She now teaches Military Justice at the George Washington University Law School, where she is also a senior administrator.

Professor Gregory E. Maggs has taught at the George Washington University Law School since 1993. He was commissioned as an officer in the U.S. Army Reserve in 1990, and has been assigned as a trial or appellate military judge since 2007. He is a graduate of the U.S. Army War College, the Military Judge Course, the Command and General Staff Officer Course, the Judge Advocate Officer Advanced and Basic Courses, the Air Assault School, and the Infantry Weapons Specialist Course. He was called to active duty in 2007-2008. In 2002, he received the Judge Advocates Association's Outstanding Career Armed Services Attorney Award. In addition, both Dean Schenck and Professor Maggs have served as civilian members of the Code Committee, a body established by Congress to oversee the military justice system. *See* Article 146, UCMJ, 10 U.S.C. § 946.

The views expressed in this book are the personal views of the authors, and are not intended to represent the views of the U.S. Army, the Department of Defense, or the U.S. government. The textbook contains several cases in which we have had personal involvement as military judges. We find that these cases are of particular interest to our students. But by including them, we do not mean to suggest that they are the definitive words on the subjects that they address.

Throughout this book we have used the following editorial conventions. When editing cases, we have used three asterisks (\* \* \*) to indicate an omitted paragraph or paragraphs. We have used ellipses (. . .) to indicate omitted words or sentences within a paragraph. We also have slightly changed the format of certain citations within quoted materials to promote uniformity throughout the textbook. We recommend that anyone citing the materials included in this book consult the original sources.

The book cites the Manual for Courts-Martial (MCM) in numerous places. The MCM contains the Rules for Courts-Martial, the Military Rules of Evidence, the Uniform Code of Military Justice, and many other relevant materials. While this book is available for purchase in printed form, we recommend that students download it for free (as most military attorneys do). It is available at <http://armypubs.army.mil/epubs/pdf/mcm.pdf>.

We are extremely grateful for the assistance of Colonel (ret.) Mark Harvey, formerly a senior judge on the U.S. Army Court of Criminal Appeals and mentor to both of us, for carefully reading the entire manuscript and making invaluable suggestions. We thank Alexis McClellan and Erica Geiser of the George Washington University Law School staff for help in preparing this manuscript. We also heartily thank George Washington Law School students and

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In completing the second edition, we are grateful for the assistance of George Washington University Law School student Robert Baxter for his assistance. We also thank Suffolk University Adjunct Professor James E. Gallagher, Michigan State University Adjunct Professor Paul W. Jones, and Colonel Robert D. Gifford for identifying a number of substantive and typographical errors in the first edition. Finally, we express our great appreciation to Louis Higgins of West Academic Publishing for his support and encouragement throughout the process.

We hope that you will find this book both useful and interesting. We would be happy to hear your reactions so that we may make improvements to future editions.

Gregory E. Maggs  
Lisa M. Schenck  
Washington, D.C.  
March 2015





**MODERN  
MILITARY JUSTICE  
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