

cific offense set forth in this Manual, the elements of proof are the same as those set forth in the paragraph which treats that specific offense, with the additional requirement that the act or omission constitutes conduct unbecoming an officer and gentleman.

(3) *Examples of offenses.* Instances of violation of this article include knowingly making a false official statement; dishonorable failure to pay a debt; cheating on an exam; opening and reading a letter of another without authority; using insulting or defamatory language to another officer in that officer's presence or about that officer to other military persons; being drunk and disorderly in a public place; public association with known prostitutes; committing or attempting to commit a crime involving moral turpitude; and failing without good cause to support the officer's family.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Dismissal, forfeiture of all pay and allowances, and confinement for a period not in excess of that authorized for the most analogous offense for which a punishment is prescribed in this Manual, or, if none is prescribed, for 1 year.

f. *Sample specifications.*

(1) *Copying or using examination paper.*

In that _____ (personal jurisdiction data), did, (at/on board—location), on or about ____ 20 __, while undergoing a written examination on the subject of _____, wrongfully and dishonorably (receive) (request) unauthorized aid by ((using) (copying) the examination paper of __)) (__).

(2) *Drunk or disorderly.*

In that _____ (personal jurisdiction data), was, (at/on board—location), on or about ____ 20 __, in a public place, to wit: _____, (drunk) (disorderly) (drunk and disorderly) while in uniform, to the disgrace of the armed forces.

60. Article 134—General article

a. *Text of statute.*

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according

to the nature and degree of the offense, and shall be punished at the discretion of that court.

b. *Elements.* The proof required for conviction of an offense under Article 134 depends upon the nature of the misconduct charged. If the conduct is punished as a crime or offense not capital, the proof must establish every element of the crime or offense as required by the applicable law. If the conduct is punished as a disorder or neglect to the prejudice of good order and discipline in the armed forces, or of a nature to bring discredit upon the armed forces, then the following proof is required:

(1) That the accused did or failed to do certain acts; and

(2) That, under the circumstances, the accused's conduct was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *In general.* Article 134 makes punishable acts in three categories of offenses not specifically covered in any other article of the code. These are referred to as “clauses 1, 2, and 3” of Article 134. Clause 1 offenses involve disorders and neglects to the prejudice of good order and discipline in the armed forces. Clause 2 offenses involve conduct of a nature to bring discredit upon the armed forces. Clause 3 offenses involve noncapital crimes or offenses which violate Federal law including law made applicable through the Federal Assimilative Crimes Act, *see* subsection (4) below. If any conduct of this nature is specifically made punishable by another article of the code, it must be charged as a violation of that article. *See* subparagraph (5)(a) below. However, *see* paragraph 59c for offenses committed by commissioned officers, cadets, and midshipmen.

(2) *Disorders and neglects to the prejudice of good order and discipline in the armed forces (clause 1).*

(a) *To the prejudice of good order and discipline.* “To the prejudice of good order and discipline” refers only to acts directly prejudicial to good order and discipline and not to acts which are prejudicial only in a remote or indirect sense. Almost any irregular or improper act on the part of a member of the military service could be regarded as prejudicial in some indirect or remote sense; however, this article does not include these distant effects. It is confined to cases in which the prejudice is reasonably

direct and palpable. An act in violation of a local civil law or of a foreign law may be punished if it constitutes a disorder or neglect to the prejudice of good order and discipline in the armed forces. However, *see* R.C.M. 203 concerning subject-matter jurisdiction.

(b) *Breach of custom of the service.* A breach of a custom of the service may result in a violation of clause 1 of Article 134. In its legal sense, “custom” means more than a method of procedure or a mode of conduct or behavior which is merely of frequent or usual occurrence. Custom arises out of long established practices which by common usage have attained the force of law in the military or other community affected by them. No custom may be contrary to existing law or regulation. A custom which has not been adopted by existing statute or regulation ceases to exist when its observance has been generally abandoned. Many customs of the service are now set forth in regulations of the various armed forces. Violations of these customs should be charged under Article 92 as violations of the regulations in which they appear if the regulation is punitive. *See* paragraph 16c.

(3) *Conduct of a nature to bring discredit upon the armed forces (clause 2).* “Discredit” means to injure the reputation of. This clause of Article 134 makes punishable conduct which has a tendency to bring the service into disrepute or which tends to lower it in public esteem. Acts in violation of a local civil law or a foreign law may be punished if they are of a nature to bring discredit upon the armed forces. However, *see* R.C.M. 203 concerning subject-matter jurisdiction.

(4) *Crimes and offenses not capital (clause 3).*

(a) *In general.* State and foreign laws are not included within the crimes and offenses not capital referred to in this clause of Article 134 and violations thereof may not be prosecuted as such except when State law becomes Federal law of local application under section 13 of title 18 of the United States Code (Federal Assimilative Crimes Act— *see* subparagraph (4)(c) below). For the purpose of court-martial jurisdiction, the laws which may be applied under clause 3 of Article 134 are divided into two groups: crimes and offenses of unlimited application (crimes which are punishable regardless where they may be committed), and crimes and offenses of local application (crimes which are punish-

able only if committed in areas of federal jurisdiction).

(b) *Crimes and offenses of unlimited application.* Certain noncapital crimes and offenses prohibited by the United States Code are made applicable under clause 3 of Article 134 to all persons subject to the code regardless where the wrongful act or omission occurred. Examples include: counterfeiting (18 U.S.C. § 471), and various frauds against the Government not covered by Article 132.

(c) *Crimes and offenses of local application.*

(i) *In general.* A person subject to the code may not be punished under clause 3 of Article 134 for an offense that occurred in a place where the law in question did not apply. For example, a person may not be punished under clause 3 of Article 134 when the act occurred in a foreign country merely because that act would have been an offense under the United States Code had the act occurred in the United States. Regardless where committed, such an act might be punishable under clauses 1 or 2 of Article 134. There are two types of congressional enactments of local application: specific federal statutes (defining particular crimes), and a general federal statute, the Federal Assimilative Crimes Act (which adopts certain state criminal laws).

(ii) *Federal Assimilative Crimes Act (18 U.S.C. § 13).* The Federal Assimilative Crimes Act is an adoption by Congress of state criminal laws for areas of exclusive or concurrent federal jurisdiction, provided federal criminal law, including the UCMJ, has not defined an applicable offense for the misconduct committed. The Act applies to state laws validly existing at the time of the offense without regard to when these laws were enacted, whether before or after passage of the Act, and whether before or after the acquisition of the land where the offense was committed. For example, if a person committed an act on a military installation in the United States at a certain location over which the United States had either exclusive or concurrent jurisdiction, and it was not an offense specifically defined by federal law (including the UCMJ), that person could be punished for that act by a court-martial if it was a violation of a noncapital offense under the law of the State where the military installation was located. This is possible because the Act adopts the criminal law of the state wherein the military installation is located and applies it as though it were federal law. The text of the Act is as

follows: Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(5) *Limitations on Article 134.*

(a) *Preemption doctrine.* The preemption doctrine prohibits application of Article 134 to conduct covered by Articles 80 through 132. For example, larceny is covered in Article 121, and if an element of that offense is lacking—for example, intent—there can be no larceny or larceny-type offense, either under Article 121 or, because of preemption, under Article 134. Article 134 cannot be used to create a new kind of larceny offense, one without the required intent, where Congress has already set the minimum requirements for such an offense in Article 121.

(b) *Capital offense.* A capital offense may not be tried under Article 134.

(6) *Drafting specifications for Article 134 offenses.*

(a) *In general.* ~~A specification alleging a violation of Article 134 need not expressly allege that the conduct was “a disorder or neglect,” that it was “of a nature to bring discredit upon the armed forces,” or that it constituted “a crime or offense not capital.”~~ The same conduct may constitute a disorder or neglect to the prejudice of good order and discipline in the armed forces and at the same time be of a nature to bring discredit upon the armed forces.

Discussion

The first sentence in paragraph 60c(6)(a) above is inaccurate, as set forth in *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011). See also *United States v. Ballan*, 71 M.J. 28 (C.A.A.F. 2012). Amending subparagraph (6)(a) requires an Executive Order, hence the strikethrough font. To state an offense under Article 134, practitioners should expressly allege at least one of the three terminal elements, i.e., that the alleged conduct was: prejudicial to good order and discipline; service discrediting; or a crime or offense not capital. See *Fosler*, 70 M.J. at 226 and R.C.M. 307(c)(3). See also the analysis related to this paragraph in Ap-

pendix 23. For an explanation of clause 1, 2, and 3 offenses under Article 134, see paragraph 60c(1)-(4).

A generic sample specification is provided below with the terminal element(s) for a clause 1 or 2 offense:

“In that _____, (personal jurisdiction data), did (at/on board—location), on or about (date), (commit elements of Article 134, clause 1 or 2, offense), and that said conduct was (to the prejudice of good order and discipline in the armed forces) (or) (and was) (of a nature to bring discredit upon the armed forces).”

Lesser included offenses are defined and explained under Article 79; however, in 2010, the Court of Appeals for the Armed Forces examined Article 79 and clarified the legal test for lesser included offenses. See *United States v. Jones*, 68 M.J. 465 (C.A.A.F. 2010). Under *Jones*, an offense under Article 79 is “necessarily included” in the offense charged only if the elements of the lesser offense are a subset of the elements of the greater offense alleged. 68 M.J. at 472. See also discussion following paragraph 3b(1)(c) in this part and the related analysis in Appendix 23 of this Manual. This change in the law has particularly broad impact on Article 134 offenses, and practitioners should carefully consider lesser included offenses using the elements test in conformity with *Jones*. See paragraph 3b(4) in Appendix 23 of this Manual. If it is uncertain whether an Article 134 offense is included within a charged offense, the government may plead in the alternative, or with accused consent, the government may amend the charge sheet. *Jones*, 68 M.J. at 472-3 (referring to R.C.M. 603(d) for amending a charge sheet).

(b) *Specifications under clause 3.* When alleging a clause 3 violation, each element of the federal or assimilated statute must be alleged expressly or by necessary implication. In addition, the federal or assimilated statute should be identified.

Discussion

There is risk in assuming an element is alleged “by necessary implication;” therefore, practitioners should expressly allege every element of the charged offense. See *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011); *United States v. Ballan*, 71 M.J. 28 (C.A.A.F. 2012). To state an offense under Article 134, practitioners should expressly allege at least one of the three terminal elements, i.e., that the alleged conduct was: prejudicial to good order and discipline; service discrediting; or a crime or offense not capital. See *Fosler*, 70 M.J. at 226. An accused must be given notice as to which clause or clauses he must defend against, and including the word and figures “Article 134” in a charge does not by itself allege the terminal element expressly or by necessary implication. *Fosler*, 70 M.J. at 229. See also discussion following paragraph 60c(6)(a) above the related analysis in Appendix 23.

(c) *Specifications for clause 1 or 2 offenses not listed.* If conduct by an accused does not fall under any of the listed offenses for violations of Article

134 in this Manual (paragraphs 61 through 113 of this Part) a specification not listed in this Manual may be used to allege the offense.

61. Article 134—(Abusing public animal)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused wrongfully abused a certain public animal; and

(2) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* A public animal is any animal owned or used by the United States; and animal owned or used by a local or State government in the United States, its territories or possessions; or any wild animal located on any public lands in the United States, its territories or possessions. This would include, for example, drug detector dogs used by the government.

d. *Lesser included offenses.* Article 80—attempts

e. *Maximum punishment.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20 __, wrongfully (kick a public drug detector dog in the nose) (_____).

62. Article 134—(Adultery)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused wrongfully had sexual intercourse with a certain person;

(2) That, at the time, the accused or the other person was married to someone else; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

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.

d. *Lesser included offense*. Article 80—attempts

e. *Maximum punishment*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

f. *Sample specification*.

In that _____ (personal jurisdiction data), (a married man/a married woman), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, wrongfully have sexual intercourse with _____, a (married) (woman/man) not (his wife) (her husband).

63. Deleted—See Appendix 27

Indecent assault was deleted by Executive Order 13447, 72 Fed. Reg. 56179 (Oct. 2, 2007). See Appendix 25.

64. Article 134—(Assault—with intent to commit murder, voluntary manslaughter, rape, robbery, sodomy, arson, burglary, or housebreaking)

a. *Text of statute*. See paragraph 60.

b. *Elements*.

(1) That the accused assaulted a certain person;

(2) That, at the time of the assault, the accused intended to kill (as required for murder or voluntary

manslaughter) or intended to commit rape, robbery, sodomy, arson, burglary, or housebreaking; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation*.

(1) *In general*. An assault with intent to commit any of the offenses mentioned above is not necessarily the equivalent of an attempt to commit the intended offense, for an assault can be committed with intent to commit an offense without achieving that proximity to consummation of an intended offense which is essential to an attempt. See paragraph 4.

(2) *Assault with intent to murder*. Assault with intent to commit murder is assault with specific intent to kill. Actual infliction of injury is not necessary. To constitute an assault with intent to murder with a firearm, it is not necessary that the weapon be discharged. When the intent to kill exists, the fact that for some unknown reason the actual consummation of the murder by the means employed is impossible is not a defense if the means are apparently adapted to the end in view. The intent to kill need not be directed against the person assaulted if the assault is committed with intent to kill some person. For example, if a person, intending to kill Jones, shoots Smith, mistaking Smith for Jones, that person is guilty of assaulting Smith with intent to murder. If a person fires into a group with intent to kill anyone in the group, that person is guilty of an assault with intent to murder each member of the group.

(3) *Assault with intent to commit voluntary manslaughter*. Assault with intent to commit voluntary manslaughter is an assault committed with a specific intent to kill under such circumstances that, if death resulted therefrom, the offense of voluntary manslaughter would have been committed. There can be no assault with intent to commit involuntary manslaughter, for it is not a crime capable of being intentionally committed.

(4) *Assault with intent to commit rape*. In assault with intent to commit rape, the accused must have intended to complete the offense. Any lesser intent will not suffice. No actual touching is necessary, but indecent advances and importunities, however earnest, not accompanied by such an intent, do not constitute this offense, nor do mere preparations to rape not amounting to an assault. Once an assault

with intent to commit rape is made, it is no defense that the accused voluntarily desisted.

(5) *Assault with intent to rob.* For assault with intent to rob, the fact that the accused intended to take money and that the person the accused intended to rob had none is not a defense.

(6) *Assault with intent to commit sodomy.* Assault with intent to commit sodomy is an assault against a human being and must be committed with a specific intent to commit sodomy. Any lesser intent, or different intent, will not suffice.

d. *Lesser included offenses.*

(1) *Assault with intent to murder.*

(a) Article 128—assault; assault consummated by a battery; assault with a dangerous weapon; assault intentionally inflicting grievous bodily harm

(b) Article 134—assault with intent to commit voluntary manslaughter; willful or careless discharge of a firearm

(2) *Assault with intent to commit voluntary manslaughter.*

(a) Article 128—assault; assault consummated by a battery; assault with a dangerous weapon; assault intentionally inflicting grievous bodily harm

(b) Article 134—willful or careless discharge of a firearm

(3) *Assault with intent to commit rape or sodomy.* Article 128—assault; assault consummated by a battery; assault with a dangerous weapon

(4) *Assault with intent to commit burglary.*

(a) Article 128—assault; assault consummated by a battery; assault with a dangerous weapon

(b) Article 134—assault with intent to commit housebreaking

(5) *Assault with intent to commit robbery, arson, or housebreaking.* Article 128—assault; assault consummated by a battery; assault with a dangerous weapon

e. *Maximum punishment.*

(1) *Assault with intent to commit murder or rape.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(2) *Assault with intent to commit voluntary manslaughter, robbery, sodomy, arson, or burglary.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(3) *Assault with intent to commit housebreaking.*

Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, with intent to commit (murder) (voluntary manslaughter) (rape) (robbery) (sodomy) (arson) (burglary) (housebreaking), commit an assault upon _____ by _____ .

65. Article 134—(Bigamy)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused had a living lawful spouse;

(2) That while having such spouse the accused wrongfully married another person; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* Bigamy is contracting another marriage by one who already has a living lawful spouse. If a prior marriage was void, it will have created no status of “lawful spouse.” However, if it was only voidable and has not been voided by a competent court, this is no defense. A belief that a prior marriage has been terminated by divorce, death of the other spouse, or otherwise, constitutes a defense only if the belief was reasonable. See R.C.M. 916(j)(1).

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, at _____, (subject-matter jurisdiction data, if required), on or about ____ 20 __, wrongfully marry _____, having at the time of his/her said marriage to _____ a lawful wife/husband then living, to wit: _____ .

66. Article 134—(Bribery and graft)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) *Asking, accepting, or receiving.*

(a) That the accused wrongfully asked, ac-

cepted, or received a thing of value from a certain person or organization;

(b) That the accused then occupied a certain official position or had certain official duties;

(c) That the accused asked, accepted, or received this thing of value (with the intent to have the accused's decision or action influenced with respect to a certain matter)* (as compensation for or in recognition of services rendered, to be rendered, or both, by the accused in relation to a certain matter)**;

(d) That this certain matter was an official matter in which the United States was and is interested; and

(e) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(*Note: This element is required for bribery.)

**Note: This element is required for graft.)

(2) *Promising, offering, or giving.*

(a) That the accused wrongfully promised, offered, or gave a thing of value to a certain person;

(b) That this person then occupied a certain official position or had certain official duties;

(c) That this thing of value was promised, offered, or given (with the intent to influence the decision or action of this person)* (as compensation for or in recognition of services rendered, to be rendered, or both, by this person in relation to a certain matter)**;

(d) That this matter was an official matter in which the United States was and is interested; and

(e) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(*Note: This element is required for bribery.)

**Note: This element is required for graft.)

c. *Explanation.* Bribery requires an intent to influence or be influenced in an official matter; graft does not. Graft involves compensation for services performed in an official matter when no compensation is due.

d. *Lesser included offenses.*

(1) *Bribery.* Article 134—graft

(2) *Bribery and graft.* Article 80—attempts

e. *Maximum punishment.*

(1) *Bribery.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(2) *Graft.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

f. *Sample specifications.*

(1) *Asking, accepting, or receiving.*

In that _____ (personal jurisdiction data), being at the time (a contracting officer for _____) (the personnel officer of _____) (_____), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, wrongfully (ask) (accept) (receive) from _____, (a contracting company) engaged in _____ (_____), (the sum of \$ _____) (_____, of a value of (about) \$ _____) (_____), (*with intent to have his/her (decision) (action) influenced with respect to) ((as compensation for) (in recognition of)) service (rendered) (to be rendered) (**rendered and to be rendered) by him/her the said _____ in relation to) an official matter in which the United States was and is interested, to wit: (the purchasing of military supplies from _____) (the transfer of _____ to duty with (_____) (_____).

[*Note: This language should be used to allege bribery.]

**Note: This language should be used to allege graft.]

(2) *Promising, offering, or giving.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, wrongfully (promise) (offer) (give) to _____, (his/her commanding officer) (the claims officer of _____) (_____), (the sum of \$ _____) (_____, of a value of (about \$ _____) (_____, (*with intent to influence the (decision) (action) of the said _____ with respect to) ((as compensation for) (in recognition of)) services (rendered) (to be rendered) (**rendered and to be rendered) by the said _____ in relation to) an official matter in which the United States was and is interested, to wit: (the granting of leave to _____) (the processing of a claim against the United States in favor of _____) (_____).

[*Note: This language should be used to allege bribery.]

**Note: This language should be used to allege graft.]

67. Article 134—(Burning with intent to defraud)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused willfully and maliciously

burned or set fire to certain property owned by a certain person or organization;

(2) That such burning or setting on fire was with the intent to defraud a certain person or organization; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* See paragraph 49c(14) for a discussion of “intent to defraud.”

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, willfully and maliciously (burn) (set fire to) (a dwelling) (a barn) (an automobile), the property of _____, with intent to defraud (the insurer thereof, to wit: _____) (_____).

68. Article 134—(Check, worthless, making and uttering—by dishonorably failing to maintain funds)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused made and uttered a certain check;

(2) That the check was made and uttered for the purchase of a certain thing, in payment of a debt, or for a certain purpose;

(3) That the accused subsequently failed to place or maintain sufficient funds in or credit with the drawee bank for payment of the check in full upon its presentment for payment;

(4) That this failure was dishonorable; and

(5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* This offense differs from an Article 123a offense (paragraph 49) in that there need be no intent to defraud or deceive at the time of making, drawing, uttering, or delivery, and that the accused

need not know at that time that the accused did not or would not have sufficient funds for payment. The gist of the offense lies in the conduct of the accused after uttering the instrument. Mere negligence in maintaining one’s bank balance is insufficient for this offense, for the accused’s conduct must reflect bad faith or gross indifference in this regard. As in the offense of dishonorable failure to pay debts (see paragraph 71), dishonorable conduct of the accused is necessary, and the other principles discussed in paragraph 71 also apply here.

d. *Lesser included offenses.* None.

e. *Maximum punishment.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, make and utter to _____ a certain check, in words and figures as follows, to wit: _____, (for the purchase of _____) (in payment of a debt) (for the purpose of _____), and did thereafter dishonorably fail to (place) (maintain) sufficient funds in the _____ Bank for payment of such check in full upon its presentment for payment.

68a. Article 134—(Child endangerment)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused had a duty for the care of a certain child;

(2) That the child was under the age of 16 years;

(3) That the accused endangered the child’s mental or physical health, safety, or welfare through design or culpable negligence; and

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *In general.* This offense is intended to prohibit and therefore deter child endangerment through design or culpable negligence.

(2) *Design.* Design means on purpose, intentionally, or according to plan and requires specific intent to endanger the child.

(3) *Culpable negligence.* Culpable negligence is a

degree of carelessness greater than simple negligence. It is a negligent act or omission accompanied by a culpable disregard for the foreseeable consequences to others of that act or omission. In the context of this offense, culpable negligence may include acts that, when viewed in the light of human experience, might foreseeably result in harm to a child, even though such harm would not necessarily be the natural and probable consequences of such acts. In this regard, the age and maturity of the child, the conditions surrounding the neglectful conduct, the proximity of assistance available, the nature of the environment in which the child may have been left, the provisions made for care of the child, and the location of the parent or adult responsible for the child relative to the location of the child, among others, may be considered in determining whether the conduct constituted culpable negligence.

(4) *Harm.* Actual physical or mental harm to the child is not required. The offense requires that the accused's actions reasonably could have caused physical or mental harm or suffering. However, if the accused's conduct does cause actual physical or mental harm, the potential maximum punishment increases. See Paragraph 54c(4)(a)(iii) for an explanation of "grievous bodily harm".

(5) *Endanger.* "Endanger" means to subject one to a reasonable probability of harm.

(6) *Age of victim as a factor.* While this offense may be committed against any child under 16, the age of the victim is a factor in the culpable negligence determination. Leaving a teenager alone for an evening may not be culpable (or even simple) negligence; leaving an infant or toddler for the same period might constitute culpable negligence. On the other hand, leaving a teenager without supervision for an extended period while the accused was on temporary duty outside commuting distance might constitute culpable negligence.

(7) *Duty required.* The duty of care is determined by the totality of the circumstances and may be established by statute, regulation, legal parent-child relationship, mutual agreement, or assumption of control or custody by affirmative act. When there is no duty of care of a child, there is no offense under this paragraph. Thus, there is no offense when a stranger makes no effort to feed a starving child or an individual/neighbor not charged with the care of

a child does not prevent the child from running and playing in the street.

d. *Lesser included offenses.*

(1) *Child Endangerment by Design.* Article 134-Child endangerment by culpable negligence

(2) *Article 80—Attempts*

e. *Maximum punishment.*

(1) *Endangerment by design resulting in grievous bodily harm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 8 years.

(2) *Endangerment by design resulting in harm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(3) *Other cases by design.* Dishonorable discharge, forfeiture of all pay and allowances and confinement for 4 years.

(4) *Endangerment by culpable negligence resulting in grievous bodily harm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(5) *Endangerment by culpable negligence resulting in harm.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(6) *Other cases by culpable negligence.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

f. *Sample specification.*

(1) *Resulting in grievous bodily harm.*

In that _____ (personal jurisdiction data), (at/on board-location) (subject matter jurisdiction data, if required) on or about ____ 20 __, had a duty for the care of _____, a child under the age of 16 years and did endanger the (mental health) (physical health) (safety) (welfare) of said _____, by (leaving the said _____ unattended in his quarters for over _____ hours/days with no adult present in the home) (by failing to obtain medical care for the said _____'s diabetic condition) (_____), and that such conduct (was by design) (constituted culpable negligence) (which resulted in grievous bodily harm, to wit:) (broken leg) (deep cut) (fractured skull) (_____).

(2) *Resulting in harm.*

In that _____ (personal jurisdiction data), (at/on board-location) (subject matter jurisdiction data, if required) on or about ____ 20 __, had a duty for the care of _____, a child under the age of 16 years, and did endanger the (mental health) (physical

health) (safety) (welfare) of said _____, by (leaving the said _____ unattended in his quarters for over _____ hours/days with no adult present in the home) (by failing to obtain medical care for the said _____'s diabetic condition) (_____), and that such conduct (was by design) (constituted culpable negligence) (which resulted in (harm, to wit:) (a black eye) (bloody nose) (minor cut) (_____).

(3) *Other cases.*

In that _____ (personal jurisdiction data), (at/on board-location) (subject matter jurisdiction data, if required) on or about _____ 20 __, was responsible for the care of _____, a child under the age of 16 years, and did endanger the (mental health) (physical health) (safety) (welfare) of said _____, by (leaving the said _____ unattended in his quarters for over _____ hours/days with no adult present in the home) (by failing to obtain medical care for the said _____'s diabetic condition) (_____), and that such conduct (was by design) (constituted culpable negligence).

68b. Article 134—(Child pornography)

a. *Text of Statute.* See paragraph 60.

b. *Elements.*

(1) *Possessing, receiving, or viewing child pornography.*

(a) That the accused knowingly and wrongfully possessed, received, or viewed child pornography; and

(b) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) *Possessing child pornography with intent to distribute.*

(a) That the accused knowingly and wrongfully possessed child pornography;

(b) That the possession was with the intent to distribute; and

(c) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(3) *Distributing child pornography.*

(a) That the accused knowingly and wrongfully distributed child pornography to another; and

(b) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(4) *Producing child pornography.*

(a) That the accused knowingly and wrongfully produced child pornography; and

(b) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) “Child Pornography” means material that contains either an obscene visual depiction of a minor engaging in sexually explicit conduct or a visual depiction of an actual minor engaging in sexually explicit conduct.

(2) An accused may not be convicted of possessing, receiving, viewing, distributing, or producing child pornography if he was not aware that the images were of minors, or what appeared to be minors, engaged in sexually explicit conduct. Awareness may be inferred from circumstantial evidence such as the name of a computer file or folder, the name of the host website from which a visual depiction was viewed or received, search terms used, and the number of images possessed.

(3) “Distributing” means delivering to the actual or constructive possession of another.

(4) “Minor” means any person under the age of 18 years.

(5) “Possessing” means exercising control of something. Possession may be direct physical custody like holding an item in one’s hand, or it may be constructive, as in the case of a person who hides something in a locker or a car to which that person may return to retrieve it. Possession must be knowing and conscious. Possession inherently includes the power or authority to preclude control by others. It is possible for more than one person to possess an item simultaneously, as when several people share control over an item.

(6) “Producing” means creating or manufacturing. As used in this paragraph, it refers to making child pornography that did not previously exist. It does not include reproducing or copying.

(7) “Sexually explicit conduct” means actual or simulated:

(a) sexual intercourse or sodomy, including

genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

- (b) bestiality;
- (c) masturbation;
- (d) sadistic or masochistic abuse; or
- (e) lascivious exhibition of the genitals or pubic area of any person.

(8) “Visual depiction” includes any developed or undeveloped photograph, picture, film or video; any digital or computer image, picture, film, or video made by any means, including those transmitted by any means including streaming media, even if not stored in a permanent format; or any digital or electronic data capable of conversion into a visual image.

(9) “Wrongfulness.” Any facts or circumstances that show that a visual depiction of child pornography was unintentionally or inadvertently acquired are relevant to wrongfulness, including, but not limited to, the method by which the visual depiction was acquired, the length of time the visual depiction was maintained, and whether the visual depiction was promptly, and in good faith, destroyed or reported to law enforcement.

(10) On motion of the government, in any prosecution under this paragraph, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography or visual depiction or copy thereof shall not be admissible and may be redacted from any otherwise admissible evidence, and the panel shall be instructed, upon request of the Government, that it can draw no inference from the absence of such evidence.

d. *Lesser included offenses.*

(1) *Possessing, receiving, or viewing child pornography.* Article 80—attempts.

(2) *Possessing child pornography with intent to distribute.*

- (a) Article 80—attempts.
- (b) Article 134—possessing child pornography.
- (3) *Distributing child pornography.*
 - (a) Article 80—attempts.
 - (b) Article 134—possessing child pornography.

(c) Article 134—possessing child pornography with intent to distribute.

(4) Producing child pornography.

(a) Article 80—attempts.

(b) Article 134—possessing child pornography.

e. *Maximum punishment.*

(1) *Possessing, receiving, or viewing child pornography.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(2) *Possessing child pornography with intent to distribute.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

(3) *Distributing child pornography.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(4) *Producing child pornography.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 30 years.

f. *Sample specification.*

Possessing, receiving, viewing, possessing with intent to distribute, distributing, or producing child pornography.

In that _____ (personal jurisdiction data), did (at/on board-location), on or about ____ 20 ____ knowingly and wrongfully (possess) (receive) (view) (distribute) (produce) child pornography, to wit: a (photograph) (picture) (film) (video) (digital image) (computer image) of a minor, or what appears to be a minor, engaging in sexually explicit conduct (, with intent to distribute the said child pornography), and that said conduct was (to the prejudice of good order and discipline in the armed forces) (or) (and was) (of a nature to bring discredit upon the armed forces).

69. Article 134—(Cohabitation, wrongful)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That, during a certain period of time, the accused and another person openly and publicly lived together as husband and wife, holding themselves out as such;

(2) That the other person was not the spouse of the accused;

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* This offense differs from adultery (see paragraph 62) in that it is not necessary to prove that one of the partners was married or that sexual intercourse took place. Public knowledge of the wrongfulness of the relationship is not required, but the partners must behave in a manner, as exhibited by conduct or language, that leads others to believe that a marital relationship exists.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Confinement for 4 months and forfeiture of two-thirds pay per month for 4 months.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), from about ____ 20 __ , to about ____ 20 __ , wrongfully cohabit with _____, (a woman not his wife) (a man not her husband).

70. Article 134—(Correctional custody—offenses against)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) *Escape from correctional custody.*

(a) That the accused was placed in correctional custody by a person authorized to do so;

(b) That, while in such correctional custody, the accused was under physical restraint;

(c) That the accused freed himself or herself from the physical restraint of this correctional custody before being released therefrom by proper authority; and

(d) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) *Breach of correctional custody.*

(a) That the accused was placed in correctional custody by a person authorized to do so;

(b) That, while in correctional custody, a certain restraint was imposed upon the accused;

(c) That the accused went beyond the limits of the restraint imposed before having been released from the correctional custody or relieved of the restraint by proper authority; and

(d) That, under the circumstances, the conduct of the accused was to the prejudice of good order

and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *Escape from correctional custody.* Escape from correctional custody is the act of a person undergoing the punishment of correctional custody pursuant to Article 15, who, before being set at liberty by proper authority, casts off any physical restraint imposed by the custodian or by the place or conditions of custody.

(2) *Breach of correctional custody.* Breach of restraint during correctional custody is the act of a person undergoing the punishment who, in the absence of physical restraint imposed by a custodian or by the place or conditions of custody, breaches any form of restraint imposed during this period.

(3) *Authority to impose correctional custody.* See Part V concerning who may impose correctional custody. Whether the status of a person authorized that person to impose correctional custody is a question of law to be decided by the military judge. Whether the person who imposed correctional custody had such a status is a question of fact to be decided by the factfinder.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.*

(1) *Escape from correctional custody.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) *Breach of correctional custody.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

f. *Sample specifications.*

(1) *Escape from correctional custody.*

In that _____ (personal jurisdiction data), while undergoing the punishment of correctional custody imposed by a person authorized to do so, did, (at/on board—location), on or about ____ 20 __ , escape from correctional custody.

(2) *Breach of correctional custody.*

In that _____ (personal jurisdiction data), while duly undergoing the punishment of correctional custody imposed by a person authorized to do so, did, (at/on board—location), on or about ____ 20 __ , breach the restraint imposed thereunder by _____ .

71. Article 134—(Debt, dishonorably failing to pay)

- a. *Text of statute.* See paragraph 60.
- b. *Elements.*

(1) That the accused was indebted to a certain person or entity in a certain sum;

(2) That this debt became due and payable on or about a certain date;

(3) That while the debt was still due and payable the accused dishonorably failed to pay this debt; and

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* More than negligence in nonpayment is necessary. The failure to pay must be characterized by deceit, evasion, false promises, or other distinctly culpable circumstances indicating a deliberate nonpayment or grossly indifferent attitude toward one’s just obligations. For a debt to form the basis of this offense, the accused must not have had a defense, or an equivalent offset or counterclaim, either in fact or according to the accused’s belief, at the time alleged. The offense should not be charged if there was a genuine dispute between the parties as to the facts or law relating to the debt which would affect the obligation of the accused to pay. The offense is not committed if the creditor or creditors involved are satisfied with the conduct of the debtor with respect to payment. The length of the period of nonpayment and any denial of indebtedness which the accused may have made may tend to prove that the accused’s conduct was dishonorable, but the court-martial may convict only if it finds from all of the evidence that the conduct was in fact dishonorable.

- d. *Lesser included offenses.* None.
- e. *Maximum punishment.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.
- f. *Sample specification.*

In that _____ (personal jurisdiction data), being indebted to _____ in the sum of \$ _____ for _____, which amount became due and payable (on) (about) (on or about) _____ 20 __, did (at/on board—location) (subject-matter jurisdiction data, if

required), from _____ 20 __, to _____ 20 __, dishonorably fail to pay said debt.

72. Article 134—(Disloyal statements)

- a. *Text of statute.* See paragraph 60.
- b. *Elements.*

(1) That the accused made a certain statement;

(2) That the statement was communicated to another person;

(3) That the statement was disloyal to the United States;

(4) That the statement was made with the intent to promote disloyalty or disaffection toward the United States by any member of the armed forces or to interfere with or impair the loyalty to the United States or good order and discipline of any member of the armed forces; and

(5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* Certain disloyal statements by military personnel may not constitute an offense under 18 U.S.C. §§ 2385, 2387, and 2388, but may, under the circumstances, be punishable under this article. Examples include praising the enemy, attacking the war aims of the United States, or denouncing our form of government with the intent to promote disloyalty or disaffection among members of the armed services. A declaration of personal belief can amount to a disloyal statement if it disavows allegiance owed to the United States by the declarant. The disloyalty involved for this offense must be to the United States as a political entity and not merely to a department or other agency that is a part of its administration.

- d. *Lesser included offense.* Article 80—attempts
- e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.
- f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location), on or about _____ 20 __, with intent to (promote (disloyalty) (disaffection) (disloyalty and disaffection)) ((interfere with) (impair) the (loyalty) (good order and discipline)) of any member of the armed forces of the United States communicate to _____, the following statement, to wit: “ _____,” or

words to that effect, which statement was disloyal to the United States.

73. Article 134—(Disorderly conduct, drunkenness)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused was drunk, disorderly, or drunk and disorderly on board ship or in some other place; and

(2) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *Drunkenness.* See paragraph 35c(6) for a discussion of intoxication.

(2) *Disorderly.* Disorderly conduct is conduct of such a nature as to affect the peace and quiet of persons who may witness it and who may be disturbed or provoked to resentment thereby. It includes conduct that endangers public morals or outrages public decency and any disturbance of a contentious or turbulent character.

(3) *Service discrediting.* Unlike most offenses under Article 134, “conduct of a nature to bring discredit upon the armed forces” must be included in the specification and proved in order to authorize the higher maximum punishment when the offense is service discrediting.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.*

(1) *Disorderly conduct.*

(a) *Under such circumstances as to bring discredit upon the military service.* Confinement for 4 months and forfeiture of two-thirds pay per month for 4 months.

(b) *Other cases.* Confinement for 1 month and forfeiture of two-thirds pay per month for 1 month.

(2) *Drunkenness.*

(a) *Aboard ship or under such circumstances as to bring discredit upon the military service.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

(b) *Other cases.* Confinement for 1 month and forfeiture of two-thirds pay per month for 1 month.

(3) *Drunk and disorderly.*

(a) *Aboard ship.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(b) *Under such circumstances as to bring discredit upon the military service.* Confinement for 6 months and forfeiture of two-thirds pay per month for 6 months.

(c) *Other cases.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

f. *Sample specification.*

In that _____ (personal jurisdiction data), was, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __ , (drunk) (disorderly) (drunk and disorderly) (which conduct was of a nature to bring discredit upon the armed forces).

74. Article 134—(Drinking liquor with prisoner)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused was a sentinel or in another assignment in charge of a prisoner;

(2) That, while in such capacity, the accused unlawfully drank intoxicating liquor with a prisoner;

(3) That the prisoner was under the charge of the accused;

(4) That the accused knew that the prisoner was a prisoner under the accused’s charge; and

(5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *Prisoner.* A “prisoner” is a person who is in confinement or custody imposed under R.C.M. 302, 304, or 305, or under sentence of a court-martial who has not been set free by proper authority.

(2) *Liquor.* For the purposes of this offense, “liquor” includes any alcoholic beverage.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

f. *Sample specification.*

In that ____ (personal jurisdiction data), a (sentinel) (____) in charge of prisoners, did, (at/on board—location), on or about ____ 20 __ , unlaw-

fully drink intoxicating liquor with _____, a prisoner under his/her charge.

75. Article 134—(Drunk prisoner)

- a. *Text of statute.* See paragraph 60.
- b. *Elements.*

- (1) That the accused was a prisoner;
- (2) That while in such status the accused was found drunk; and
- (3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

- (1) *Prisoner.* See paragraph 74c(1).
- (2) *Drunk.* See paragraph 35c(6) for a discussion of intoxication.

- d. *Lesser included offenses.* None.
- e. *Maximum punishment.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

f. *Sample specification.*

In that _____ (personal jurisdiction data), a prisoner, was (at/on board— location), on or about _____ 20 __, found drunk.

76. Article 134—(Drunkenness—incapacitation for performance of duties through prior wrongful indulgence in intoxicating liquor or any drug)

- a. *Text of statute.* See paragraph 60.
- b. *Elements.*

- (1) That the accused had certain duties to perform;
- (2) That the accused was incapacitated for the proper performance of such duties;
- (3) That such incapacitation was the result of previous wrongful indulgence in intoxicating liquor or any drug; and
- (4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

- (1) *Liquor.* See paragraph 74c(2).
- (2) *Incapacitated.* Incapacitated means unfit or

unable to perform properly. A person is “unfit” to perform duties if at the time the duties are to commence, the person is drunk, even though physically able to perform the duties. Illness resulting from previous overindulgence is an example of being “unable” to perform duties. For a discussion of “drunk” see paragraph 35c(6).

(3) *Affirmative defense.* The accused’s lack of knowledge of the duties assigned is an affirmative defense to this offense.

- d. *Lesser included offense.* Article 80—attempts
- e. *Maximum punishment.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

f. *Sample specification.*

In that _____ (personal jurisdiction data), was, (at/on board—location), on or about _____ 20 __, as a result of wrongful previous overindulgence in intoxicating liquor or drugs incapacitated for the proper performance of his/her duties.

77. Article 134—(False or unauthorized pass offenses)

- a. *Text of statute.* See paragraph 60.
- b. *Elements.*

(1) *Wrongful making, altering, counterfeiting, or tampering with a military or official pass, permit, discharge certificate, or identification card.*

(a) That the accused wrongfully and falsely made, altered, counterfeited, or tampered with a certain military or official pass, permit, discharge certificate, or identification card; and

(b) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) *Wrongful sale, gift, loan, or disposition of a military or official pass, permit, discharge certificate, or identification card.*

(a) That the accused wrongfully sold, gave, loaned, or disposed of a certain military or official pass, permit, discharge certificate, or identification card;

(b) That the pass, permit, discharge certificate, or identification card was false or unauthorized;

(c) That the accused then knew that the pass, permit, discharge certificate, or identification card was false or unauthorized; and

(d) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(3) *Wrongful use or possession of a false or unauthorized military or official pass, permit, discharge certificate, or identification card.*

(a) That the accused wrongfully used or possessed a certain military or official pass, permit, discharge certificate, or identification card;

(b) That the pass, permit, discharge certificate, or identification card was false or unauthorized;

(c) That the accused then knew that the pass, permit, discharge certificate, or identification card was false or unauthorized; and

(d) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

[Note: When there is intent to defraud or deceive, add the following element after (c) above: That the accused used or possessed the pass, permit, discharge certificate, or identification card with an intent to defraud or deceive.]

c. *Explanation.*

(1) *In general.* “Military or official pass, permit, discharge certificate, or identification card” includes, as well as the more usual forms of these documents, all documents issued by any governmental agency for the purpose of identification and copies thereof.

(2) *Intent to defraud or deceive.* See paragraph 49c(14) and (15).

d. *Lesser included offenses.*

(1) *Wrongful use or possession of false or unauthorized military or official pass, permit, discharge certificate, or identification card, with the intent to defraud or deceive.* Article 134—same offenses, except without the intent to defraud or deceive.

(2) *All false or unauthorized pass offenses.* Article 80—attempts

e. *Maximum punishment.*

(1) *Possessing or using with intent to defraud or deceive, or making, altering, counterfeiting, tampering with, or selling.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(2) *All other cases.* Bad-conduct discharge, for-

feiture of all pay and allowances, and confinement for 6 months.

f. *Sample specifications.*

(1) *Wrongful making, altering, counterfeiting, or tampering with military or official pass, permit, discharge certificate, or identification card.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, wrongfully and falsely (make) (forge) (alter by _____) (counterfeit) (tamper with by _____) (a certain instrument purporting to be) (a) (an) (another’s) (naval) (military) (official) (pass) (permit) (discharge certificate) (identification card) (_____) in words and figures as follows: _____ .

(2) *Wrongful sale, gift, loan, or disposition of a military or official pass, permit, discharge certificate, or identification card.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, wrongfully (sell to _____) (give to _____) (loan to _____) (dispose of by _____) (a certain instrument purporting to be) (a) (an) (another’s) (naval) (military) (official) (pass) (permit) (discharge certificate) (identification card) (_____) in words and figures as follows: _____, he/she, the said _____, then well knowing the same to be (false) (unauthorized).

(3) *Wrongful use or possession of a false or unauthorized military or official pass, permit, discharge certificate, or identification card.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, wrongfully (use) (possess) (with intent to (defraud) (deceive)) (a certain instrument purporting to be) (a) (an) (another’s) (naval) (military) (official) (pass) (permit) (discharge certificate) (identification card) (_____), he/she, the said _____, then well knowing the same to be (false) (unauthorized).

78. Article 134—(False pretenses, obtaining services under)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused wrongfully obtained certain services;

(2) That the obtaining was done by using false pretenses;

(3) That the accused then knew of the falsity of the pretenses;

(4) That the obtaining was with intent to defraud;

(5) That the services were of a certain value; and

(6) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* This offense is similar to the offenses of larceny and wrongful appropriation by false pretenses, except that the object of the obtaining is services (for example, telephone service) rather than money, personal property, or articles of value of any kind as under Article 121. See paragraph 46c. See paragraph 49c(14) for a definition of “intent to defraud.”

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Obtaining services under false pretenses.

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

(2) *Of a value of more than \$500.00.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, with intent to defraud, falsely pretend to _____ that _____, then knowing that the pretenses were false, and by means thereof did wrongfully obtain from _____ services, of a value of (about) \$ _____, to wit: _____.

79. Article 134—(False swearing)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused took an oath or equivalent;

(2) That the oath or equivalent was administered to the accused in a matter in which such oath or equivalent was required or authorized by law;

(3) That the oath or equivalent was administered by a person having authority to do so;

(4) That upon this oath or equivalent the accused made or subscribed a certain statement;

(5) That the statement was false;

(6) That the accused did not then believe the statement to be true; and

(7) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *Nature of offense.* False swearing is the making under a lawful oath or equivalent of any false statement, oral or written, not believing the statement to be true. It does not include such statements made in a judicial proceeding or course of justice, as these are under Article 131, perjury (see paragraph 57). Unlike a false official statement under Article 107 (see paragraph 31) there is no requirement that the statement be made with an intent to deceive or that the statement be official. See paragraphs 57c(1), c(2)(c) and c(2)(e) concerning “judicial proceeding or course of justice,” proof of the falsity, and the belief of the accused, respectively.

(2) *Oath.* See Article 136 and R.C.M. 807 as to the authority to administer oaths, and see Section IX of Part III (Military Rules of Evidence) concerning proof of the signatures of persons authorized to administer oaths. An oath includes an affirmation when authorized in lieu of an oath.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, (in an affidavit) (in _____), wrongfully and unlawfully (make) (subscribe) under lawful (oath) (affirmation) a false statement in substance as follows: _____, which statement he/she did not then believe to be true.

80. Article 134—(Firearm, discharging—through negligence)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused discharged a firearm;

(2) That such discharge was caused by the negligence of the accused; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* For a discussion of negligence, see paragraph 85c(2).

d. *Lesser included offenses.* None

e. *Maximum punishment.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, through negligence, discharge a (service rifle) (___) in the (squadron) (tent) (barracks) (____) of _____ .

81. Article 134—(Firearm, discharging—willfully, under such circumstances as to endanger human life)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused discharged a firearm;

(2) That the discharge was willful and wrongful;

(3) That the discharge was under circumstances such as to endanger human life; and

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* “Under circumstances such as to endanger human life” refers to a reasonable potentiality for harm to human beings in general. The test is not whether the life was in fact endangered but whether, considering the circumstances surrounding the wrongful discharge of the weapon, the act was unsafe to human life in general.

d. *Lesser included offenses.*

(1) Article 134—firearm, discharging—through negligence

(2) Article 80—attempts

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, wrongfully and willfully discharge a firearm, to wit: _____, (in the mess hall of _____) (_____), under circumstances such as to endanger human life.

82. Article 134—(Fleeing scene of accident)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) *Driver.*

(a) That the accused was the driver of a vehicle;

(b) That while the accused was driving the vehicle was involved in an accident;

(c) That the accused knew that the vehicle had been in an accident;

(d) That the accused left the scene of the accident without (providing assistance to the victim who had been struck (and injured) by the said vehicle) or (providing identification);

(e) That such leaving was wrongful; and

(f) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) *Senior passenger.*

(a) That the accused was a passenger in a vehicle which was involved in an accident;

(b) That the accused knew that said vehicle had been in an accident;

(c) That the accused was the superior commissioned or noncommissioned officer of the driver, or commander of the vehicle, and wrongfully and unlawfully ordered, caused, or permitted the driver to leave the scene of the accident without (providing assistance to the victim who had been struck (and injured) by the said vehicle) (or) (providing identification); and

(d) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *Nature of offense.* This offense covers “hit and run” situations where there is damage to property other than the driver’s vehicle or injury to

someone other than the driver or a passenger in the driver’s vehicle. It also covers accidents caused by the accused, even if the accused’s vehicle does not contact other people, vehicles, or property.

(2) *Knowledge.* Actual knowledge that an accident has occurred is an essential element of this offense. Actual knowledge may be proved by circumstantial evidence.

(3) *Passenger.* A passenger other than a senior passenger may also be liable under this paragraph. See paragraph 1 of this Part.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

f. *Sample specification.*

In that _____ (personal jurisdiction data), (the driver of) (*a passenger in) (the senior officer/noncommissioned officer in) (_____ in) a vehicle at the time of an accident in which said vehicle was involved, and having knowledge of said accident, did, at _____ (subject-matter jurisdiction data, if required), on or about _____ 20 ____ (wrongfully leave) (*by _____, assist the driver of the said vehicle in wrongfully leaving) (wrongfully order, cause, or permit the driver to leave) the scene of the accident without (providing assistance to _____, who had been struck (and injured) by the said vehicle) (making his/her (the driver’s) identity known).

[*Note: This language should be used when the accused was a passenger and is charged as a principal. See paragraph 1 of this part.]

83. Article 134—(Fraternization)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused was a commissioned or warrant officer;

(2) That the accused fraternized on terms of military equality with one or more certain enlisted member(s) in a certain manner;

(3) That the accused then knew the person(s) to be (an) enlisted member(s);

(4) That such fraternization violated the custom of the accused’s service that officers shall not fraternize with enlisted members on terms of military equality; and

(5) That, under the circumstances, the conduct of

the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *In general.* The gist of this offense is a violation of the custom of the armed forces against fraternization. Not all contact or association between officers and enlisted persons is an offense. Whether the contact or association in question is an offense depends on the surrounding circumstances. Factors to be considered include whether the conduct has compromised the chain of command, resulted in the appearance of partiality, or otherwise undermined good order, discipline, authority, or morale. The acts and circumstances must be such as to lead a reasonable person experienced in the problems of military leadership to conclude that the good order and discipline of the armed forces has been prejudiced by their tendency to compromise the respect of enlisted persons for the professionalism, integrity, and obligations of an officer.

(2) *Regulations.* Regulations, directives, and orders may also govern conduct between officer and enlisted personnel on both a service-wide and a local basis. Relationships between enlisted persons of different ranks, or between officers of different ranks may be similarly covered. Violations of such regulations, directives, or orders may be punishable under Article 92. See paragraph 16.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Dismissal, forfeiture of all pay and allowances, and confinement for 2 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20 ____ , knowingly fraternize with _____ , an enlisted person, on terms of military equality, to wit: _____ , in violation of the custom of (the Naval Service of the United States) (the United States Army) (the United States Air Force) (the United States Coast Guard) that officers shall not fraternize with enlisted persons on terms of military equality.

84. Article 134—(Gambling with subordinate)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused gambled with a certain servicemember;

(2) That the accused was then a noncommissioned or petty officer;

(3) That the servicemember was not then a noncommissioned or petty officer and was subordinate to the accused;

(4) That the accused knew that the servicemember was not then a noncommissioned or petty officer and was subordinate to the accused; and

(5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* This offense can only be committed by a noncommissioned or petty officer gambling with an enlisted person of less than noncommissioned or petty officer rank. Gambling by an officer with an enlisted person may be a violation of Article 133. *See also* paragraph 83.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __ , gamble with _____ , then knowing that the said _____ was not a noncommissioned or petty officer and was subordinate to the said _____ .

85. Article 134—(Homicide, negligent)

a. *Text of statute.* *See* paragraph 60.

b. *Elements.*

(1) That a certain person is dead;

(2) That this death resulted from the act or failure to act of the accused;

(3) That the killing by the accused was unlawful;

(4) That the act or failure to act of the accused which caused the death amounted to simple negligence; and

(5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *Nature of offense.* Negligent homicide is any

unlawful homicide which is the result of simple negligence. An intent to kill or injure is not required.

(2) *Simple negligence.* Simple negligence is the absence of due care, that is, an act or omission of a person who is under a duty to use due care which exhibits a lack of that degree of care of the safety of others which a reasonably careful person would have exercised under the same or similar circumstances. Simple negligence is a lesser degree of carelessness than culpable negligence. *See* paragraph 44c(2)(a).

d. *Lesser included offenses.* None

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __ , unlawfully kill _____ , (by negligently _____ the said _____ (in) (on) the _____ with a _____) (by driving a (motor vehicle) (_____) against the said _____ in a negligent manner) (_____).

86. Article 134—(Impersonating a commissioned, warrant, noncommissioned, or petty officer, or an agent or official)

a. *Text of statute.* *See* paragraph 60.

b. *Elements.*

(1) That the accused impersonated a commissioned, warrant, noncommissioned, or petty officer, or an agent of superior authority of one of the armed forces of the United States, or an official of a certain government, in a certain manner;

(2) That the impersonation was wrongful and willful; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

[Note 1: If intent to defraud is in issue, add the following additional element after (2), above: That the accused did so with the intent to defraud a certain person or organization in a certain manner;].

[Note 2: If the accused is charged with impersonating an official of a certain government without an intent to defraud, use the following additional element after (2) above: That the accused committed one or more acts which exercised or asserted the authority of the office the accused claimed to have;].

c. *Explanation.*

(1) *Nature of offense.* Impersonation does not

depend upon the accused deriving a benefit from the deception or upon some third party being misled, although this is an aggravating factor.

(2) *Willfulness*. “Willful” means with the knowledge that one is falsely holding one’s self out as such.

(3) *Intent to defraud*. See paragraph 49c(14).

d. *Lesser included offense*. Article 80—attempts

e. *Maximum punishment*. Impersonating a commissioned, warrant, noncommissioned, or petty officer, or an agent or official.

(1) *With intent to defraud*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(2) *All other cases*. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

f. *Sample specification*.

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __ , wrongfully and willfully impersonate (a (commissioned officer) (warrant officer) (noncommissioned officer) (petty officer) (agent of superior authority) of the (Army) (Navy) (Marine Corps) (Air Force) (Coast Guard)) (an official of the Government of _____) by (publicly wearing the uniform and insignia of rank of a (lieutenant of the _____) (_____)) (showing the credentials of _____) (_____) (*with intent to defraud _____ by _____) (**and (exercised) (asserted) the authority of _____ by _____).

[*See subsection b note 1.]

**See subsection b note 2.]

87. Deleted—See Appendix 27

Indecent acts or liberties with a child was deleted by Executive Order 13447, 72 Fed. Reg. 56179 (Oct. 2, 2007). See Appendix 25.

88. Deleted—See Appendix 27

Indecent exposure was deleted by Executive Order 13447, 72 Fed. Reg. 56179 (Oct. 2, 2007). See Appendix 25.

89. Article 134—(Indecent language)

a. *Text of statute*. See paragraph 60.

b. *Elements*.

(1) That the accused orally or in writing communicated to another person certain language;

(2) That such language was indecent; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

[Note: In appropriate cases add the following element after element (1): That the person to whom the language was communicated was a child under the age of 16.]

c. *Explanation*. “Indecent” language is that which is grossly offensive to modesty, decency, or propriety, or shocks the moral sense, because of its vulgar, filthy, or disgusting nature, or its tendency to incite lustful thought. Language is indecent if it tends reasonably to corrupt morals or incite libidinous thoughts. The language must violate community standards. See paragraph 45 if the communication was made in the physical presence of a child.

d. *Lesser included offenses*.

(1) Article 117—provoking speeches

(2) Article 80—attempts

e. *Maximum punishment*. Indecent or insulting language.

(1) *Communicated to any child under the age of 16 years*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(2) *Other cases*. Bad-conduct discharge; forfeiture of all pay and allowances, and confinement for 6 months.

f. *Sample specification*.

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __ , (orally) (in writing) communicate to _____ , (a child under the age of 16 years), certain indecent language, to wit: _____ .

90. Deleted—See Appendix 27

Indecent acts with another was deleted by Executive Order 13447, 72 Fed. Reg. 56179 (Oct. 2, 2007). See Appendix 25.

91. Article 134—(Jumping from vessel into the water)

a. *Text of statute*. See paragraph 60.

b. *Elements.*

(1) That the accused jumped from a vessel in use by the armed forces into the water;

(2) That such act by the accused was wrongful and intentional; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* “In use by” means any vessel operated by or under the control of the armed forces. This offense may be committed at sea, at anchor, or in port.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, on board _____, at (location), on or about ____ 20 ____, wrongfully and intentionally jump from _____, a vessel in use by the armed forces, into the (sea) (lake) (river).

92. Article 134—(Kidnapping)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused seized, confined, inveigled, decoyed, or carried away a certain person;

(2) That the accused then held such person against that person’s will;

(3) That the accused did so willfully and wrongfully; and

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *Inveigle, decoy.* “Inveigle” means to lure, lead astray, or entice by false representations or other deceitful means. For example, a person who entices another to ride in a car with a false promise to take the person to a certain destination has inveigled the passenger into the car. “Decoy” means to entice or lure by means of some fraud, trick, or temptation. For example, one who lures a child into a trap with candy has decoyed the child.

(2) *Held.* “Held” means detained. The holding must be more than a momentary or incidental detention. For example, a robber who holds the victim at gunpoint while the victim hands over a wallet, or a rapist who throws his victim to the ground, does not, by such acts, commit kidnapping. On the other hand, if, before or after such robbery or rape, the victim is involuntarily transported some substantial distance, as from a housing area to a remote area of the base or post, this may be kidnapping, in addition to robbery or rape.

(3) *Against the will.* “Against that person’s will” means that the victim was held involuntarily. The involuntary nature of the detention may result from force, mental or physical coercion, or from other means, including false representations. If the victim is incapable of having a recognizable will, as in the case of a very young child or a mentally incompetent person, the holding must be against the will of the victim’s parents or legal guardian. Evidence of the availability or nonavailability to the victim of means of exit or escape is relevant to the voluntariness of the detention, as is evidence of threats or force, or lack thereof, by the accused to detain the victim.

(4) *Willfully.* The accused must have specifically intended to hold the victim against the victim’s will to be guilty of kidnapping. An accidental detention will not suffice. The holding need not have been for financial or personal gain or for any other particular purpose. It may be an aggravating circumstance that the kidnapping was for ransom, however. See R.C.M. 1001(b)(4).

(5) *Wrongfully.* “Wrongfully” means without justification or excuse. For example, a law enforcement official may justifiably apprehend and detain, by force if necessary (see R.C.M. 302(d)(3)), a person reasonably believed to have committed an offense. An official who unlawfully uses the official’s authority to apprehend someone is not guilty of kidnapping, but may be guilty of unlawful detention. See paragraph 21. It is not wrongful under this paragraph and therefore not kidnapping for a parent or legal guardian to seize and hold that parent’s or legal guardian’s minor child.

d. *Lesser included offense.* Article 80—attempts

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

f. *Sample specification.*

In that _____, (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20 __, willfully and wrongfully (seize) (confine) (inveigle) (decoy) (carry away) and hold _____ (a minor whose parent or legal guardian the accused was not) (a person not a minor) against his/her will.

93. Article 134—(Mail: taking, opening, secreting, destroying, or stealing)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) *Taking.*

- (a) That the accused took certain mail matter;
- (b) That such taking was wrongful;
- (c) That the mail matter was taken by the accused before it was delivered to or received by the addressee;

(d) That such taking was with the intent to obstruct the correspondence or pry into the business or secrets of any person or organization; and

(e) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) *Opening, secreting, destroying, or stealing.*

- (a) That the accused opened, secreted, destroyed, or stole certain mail matter;
- (b) That such opening, secreting, destroying, or stealing was wrongful;
- (c) That the mail matter was opened, secreted, destroyed, or stolen by the accused before it was delivered to or received by the addressee; and

(d) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* These offenses are intended to protect the mail and mail system. “Mail matter” means any matter deposited in a postal system of any government or any authorized depository thereof or in official mail channels of the United States or an agency thereof including the armed forces. The value of the mail matter is not an element. See paragraph 46c(1) concerning “steal.”

d. *Lesser included offenses.*

- (1) Article 121—larceny; wrongful appropriation

(2) Article 80—attempts

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specifications.*

(1) *Taking.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20 __, wrongfully take certain mail matter, to wit: (a) (letter(s)) (postal card(s)) (package(s)), addressed to _____, (out of the (_____ Post Office _____) (orderly room of _____) (unit mail box of _____) (_____)) (from _____) before (it) (they) (was) (were) (delivered) (actually received) (to) (by) the (addressee) with intent to (obstruct the correspondence) (pry into the (business) (secrets)) of _____.

(2) *Opening, secreting, destroying, or stealing.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____, 20 __, (wrongfully (open) (secret) (destroy)) (steal) certain mail matter, to wit: (a) (letter(s)) (postal card(s)) (package(s)) addressed to _____, which said (letters(s)) (_____) (was) (were) then (in (the _____ Post Office _____) (orderly room of _____) (unit mail box of _____) (custody of _____) (_____)) (had previously been committed to _____, (a representative of _____, (an official agency for the transmission of communications)) before said (letter(s)) (_____) (was) (were) (delivered) (actually received) (to) (by) the (addressee).

94. Article 134—(Mails: depositing or causing to be deposited obscene matters in)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused deposited or caused to be deposited in the mails certain matter for mailing and delivery;

(2) That the act was done wrongfully and knowingly;

(3) That the matter was obscene; and

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and

discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* Whether something is obscene is a question of fact. “Obscene” is synonymous with “indecent” as the latter is defined in paragraph 89c. The matter must violate community standards of decency or obscenity and must go beyond customary limits of expression. “Knowingly” means the accused deposited the material with knowledge of its nature.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, wrongfully and knowingly (deposit) (cause to be deposited) in the (United States) (_____) mails, for mailing and delivery a (letter) (picture) (_____) (containing) (portraying) (suggesting) (_____) certain obscene matters, to wit: _____ .

95. Article 134—(Misprision of serious offense)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That a certain serious offense was committed by a certain person;

(2) That the accused knew that the said person had committed the serious offense;

(3) That, thereafter, the accused concealed the serious offense and failed to make it known to civilian or military authorities as soon as possible;

(4) That the concealing was wrongful; and

(5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *In general.* Misprision of a serious offense is the offense of concealing a serious offense committed by another but without such previous concert with or subsequent assistance to the principal as would make the accused an accessory. See paragraph 3. An intent to benefit the principal is not necessary to this offense.

(2) *Serious offense.* For purposes of this para-

graph, a “serious offense” is any offense punishable under the authority of the code by death or by confinement for a term exceeding 1 year.

(3) *Positive act of concealment.* A mere failure or refusal to disclose the serious offense without some positive act of concealment does not make one guilty of this offense. Making a false entry in an account book for the purpose of concealing a theft committed by another is an example of a positive act of concealment.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), having knowledge that _____ had actually committed a serious offense to wit: (the murder of _____) (_____), did, (at/on board—location) (subject-matter jurisdiction data, if required), from about ____ 20 __, to about ____ 20 __, wrongfully conceal such serious offense by _____ and fail to make the same known to the civil or military authorities as soon as possible.

96. Article 134—(Obstructing justice)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused wrongfully did a certain act;

(2) That the accused did so in the case of a certain person against whom the accused had reason to believe there were or would be criminal proceedings pending;

(3) That the act was done with the intent to influence, impede, or otherwise obstruct the due administration of justice; and

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* This offense may be based on conduct that occurred before preferral of charges. Actual obstruction of justice is not an element of this offense. For purposes of this paragraph “criminal proceedings” includes nonjudicial punishment proceedings under Part V of this Manual. Examples of obstruction of justice include wrongfully influencing, intimidating, impeding, or injuring a witness, a person acting on charges under this chapter, an in-

investigating officer under R.C.M. 406, or a party; and by means of bribery, intimidation, misrepresentation, or force or threat of force delaying or preventing communication of information relating to a violation of any criminal statute of the United States to a person authorized by a department, agency, or armed force of the United States to conduct or engage in investigations or prosecutions of such offenses; or endeavoring to do so. *See also* paragraph 22 and Article 37.

d. *Lesser included offenses.* None.

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, wrongfully (endeavor to) (impede (a trial by court-martial) (an investigation) (____)) [influence the actions of ____ , (a trial counsel of the court-martial) (a defense counsel of the court-martial) (an officer responsible for making a recommendation concerning disposition of charges) (____)] [(influence) (alter) the testimony of ____ as a witness before a (court-martial) (an investigating officer) (____)] in the case of ____ by [(promising) (offering) (giving) to the said ____ , (the sum of \$ ____) (____ , of a value of about \$ ____)] [communicating to the said ____ a threat to ____] [____], (if) (unless) he/she, the said ____ , would [recommend dismissal of the charges against said ____] [(wrongfully refuse to testify) (testify falsely concerning ____) (____)] [(at such trial) (before such investigating officer)] [____].

96a. Art 134—(Wrongful interference with an adverse administrative proceeding)

a. *Text of statute.* *See* paragraph 60.

b. *Elements.*

(1) That the accused wrongfully did a certain act;

(2) That the accused did so in the case of a certain person against whom the accused had reason to believe there was or would be an adverse administrative proceeding pending;

(3) That the act was done with the intent to influence, impede, or obstruct the conduct of such ad-

ministrative proceeding, or otherwise obstruct the due administration of justice;

(4) That under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* For purposes of this paragraph “adverse administrative proceeding” includes any administrative proceeding or action, initiated against a servicemember, that could lead to discharge, loss of special or incentive pay, administrative reduction in grade, loss of a security clearance, bar to reenlistment, or reclassification. Examples of wrongful interference include wrongfully influencing, intimidating, impeding, or injuring a witness, an investigator, or other person acting on an adverse administrative action; by means of bribery, intimidation, misrepresentation, or force or threat of force delaying or preventing communication of information relating to such administrative proceeding; and, the wrongful destruction or concealment of information relevant to such adverse administrative proceeding.

d. *Lesser included offenses.* None.

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, (wrongfully endeavor to) [impede (an adverse administrative proceeding) (an investigation) (____)] [influence the actions of ____ , (an officer responsible for making a recommendation concerning the adverse administrative action) (an individual responsible for making a decision concerning an adverse administrative proceeding) (an individual responsible for processing an adverse administrative proceeding) (____)] [(influence)(alter) the testimony of ____ a witness before (a board established to consider an administrative proceeding or elimination) (an investigating officer) (____)] in the case of ____ , by [(promising) (offering) (giving) to the said ____ , (the sum of \$ ____) (____ , of a value of about \$ ____)] [communicating to the said ____ a threat to ____] [____], (if) (unless) the said ____ , would [recommend dismissal of the action against said ____] [(wrongfully refuse to testify) (testify falsely concerning ____) (____)]

[(at such administrative proceeding) (before such investigating officer) (before such administrative board)] [_____].

97. Article 134—(Pandering and prostitution)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) *Prostitution.*

(a) That the accused had sexual intercourse with another person not the accused's spouse;

(b) That the accused did so for the purpose of receiving money or other compensation;

(c) That this act was wrongful; and

(d) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) *Patronizing a prostitute.*

(a) That the accused had sexual intercourse with another person not the accused's spouse;

(b) That the accused compelled, induced, enticed, or procured such person to engage in an act of sexual intercourse in exchange for money or other compensation; and

(c) That this act was wrongful; and

(d) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(3) *Pandering by inducing, enticing, or procuring act of prostitution.*

(a) That the accused induced, enticed, or procured a certain person to engage in an act of sexual intercourse for hire and reward with a person to be directed to said person by the accused;

(b) That this inducing, enticing, or procuring was wrongful;

(c) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(4) *Pandering by arranging or receiving consideration for arranging for sexual intercourse or sodomy.*

(a) That the accused arranged for, or received valuable consideration for arranging for, a certain

person to engage in sexual intercourse or sodomy with another person;

(b) That the arranging (and receipt of consideration) was wrongful; and

(c) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* Prostitution may be committed by males or females. Sodomy for money or compensation is not included in subparagraph b(1). Sodomy may be charged under paragraph 51. Evidence that sodomy was for money or compensation may be a matter in aggravation. See R.C.M. 1001(b)(4).

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.*

(1) *Prostitution and patronizing a prostitute.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) *Pandering.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specifications.*

(1) *Prostitution.*

In that _____ (personal jurisdiction data), did, (at/on board-location) (subject-matter jurisdiction data, if required), on or about ____ 20 __ , wrongfully engage in (an act) (acts) of sexual intercourse with _____ , a person not his/her spouse, for the purpose of receiving (money) (_____).

(2) *Patronizing a prostitute.*

In that _____ (personal jurisdiction data), did, (at/on board location) (subject-matter jurisdiction data, if required), on or about ____ 20 __ , wrongfully (compel) (induce) (entice) (procure) _____ , a person not his/her spouse, to engage in (an act) (acts) of sexual intercourse with the accused in exchange for (money) (_____).

(3) *Inducing, enticing, or procuring act of prostitution.*

In that _____ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about ____ 20 __ , wrongfully (induce)(entice)(procure) _____ to engage in (an act)(acts) of (sexual intercourse for hire and reward) with persons to be directed to him/her by the said _____ .

(4) *Arranging, or receiving consideration for arranging for sexual intercourse or sodomy.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __ , wrongfully (arrange for) (receive valuable consideration, to wit: _____ on account of arranging for) _____ to engage in (an act) (acts) of (sexual intercourse) (sodomy) with _____ .

97a. Article 134—(Parole, Violation of)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused was a prisoner as the result of a court-martial conviction or other criminal proceeding;

(2) That the accused was on parole;

(3) That there were certain conditions of parole that the parolee was bound to obey;

(4) That the accused violated the conditions of parole by doing an act or failing to do an act; and

(5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) “Prisoner” refers only to those in confinement resulting from conviction at a court-martial or other criminal proceeding.

(2) “Parole” is defined as “word of honor.” A prisoner on parole, or parolee, has agreed to adhere to a parole plan and conditions of parole. A “parole plan” is a written or oral agreement made by the prisoner prior to parole to do or refrain from doing certain acts or activities. A parole plan may include a residence requirement stating where and with whom a parolee will live, and a requirement that the prisoner have an offer of guaranteed employment. “Conditions of parole” include the parole plan and other reasonable and appropriate conditions of parole, such as paying restitution, beginning or continuing treatment for alcohol or drug abuse, or paying a fine ordered executed as part of the prisoner’s court-martial sentence. In return for giving his or her “word of honor” to abide by a parole plan and conditions of parole, the prisoner is granted parole.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Bad-conduct discharge,

confinement for 6 months, and forfeiture of two-thirds pay per month for 6 months.

f. *Sample specifications.*

In that _____ (personal jurisdiction data), a prisoner on parole, did, (at/on board—location), on or about ____ 20 __ , violate the conditions of his/her parole by _____ .

98. Article 134—(Perjury: subornation of)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused induced and procured a certain person to take an oath or its equivalent and to falsely testify, depose, or state upon such oath or its equivalent concerning a certain matter;

(2) That the oath or its equivalent was administered to said person in a matter in which an oath or its equivalent was required or authorized by law;

(3) That the oath or its equivalent was administered by a person having authority to do so;

(4) That upon the oath or its equivalent said person willfully made or subscribed a certain statement;

(5) That the statement was material;

(6) That the statement was false;

(7) That the accused and the said person did not then believe that the statement was true; and

(8) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* See paragraph 57c for applicable principles. “Induce and procure” means to influence, persuade, or cause.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __ , procure _____ to commit perjury by inducing him/her, the said _____ , to take a lawful (oath) (affirmation) in a (trial by court-martial of _____) (trial by a court of competent jurisdiction, to wit: _____ of _____) (deposition for use in a trial by _____ of _____) (_____) that he/she, the said _____ , would (testify) (depose) (_____) truly,

and to (testify) (depose) (_____) willfully, corruptly, and contrary to such (oath) (affirmation) in substance that _____, which (testimony) (deposition) (_____) was upon a material matter and which the accused and the said _____ did not then believe to be true.

99. Article 134—(Public record: altering, concealing, removing, mutilating, obliterating, or destroying)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused altered, concealed, removed, mutilated, obliterated, destroyed, or took with the intent to alter, conceal, remove, mutilate, obliterate, or destroy, a certain public record;

(2) That the act of the accused was willful and unlawful; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* “Public records” include records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth the activities of the office or agency, or matters observed pursuant to duty imposed by law as to which matters there was a duty to report. “Public records” includes classified matters.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20 __, willfully and unlawfully ((alter) (conceal) (remove) (mutilate) (obliterate) (destroy)) (take with intent to (alter) (conceal) (remove) (mutilate) (obliterate) (destroy)) a public record, to wit: _____ .

100. Article 134—(Quarantine: medical, breaking)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That a certain person ordered the accused into medical quarantine;

(2) That the person was authorized to order the accused into medical quarantine;

(3) That the accused knew of this medical quarantine and the limits thereof;

(4) That the accused went beyond the limits of the medical quarantine before being released therefrom by proper authority; and

(5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* None.

d. *Lesser included offenses.*

(1) Article 134—breaking restriction

(2) Article 80—attempts

e. *Maximum punishment.* Confinement for 6 months and forfeiture of two-thirds pay per month for 6 months.

f. *Sample specification.*

In that _____ (personal jurisdiction data) having been placed in medical quarantine by a person authorized to order the accused into medical quarantine, did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20 __, break said medical quarantine.

100a. Article 134—(Reckless endangerment)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused did engage in conduct;

(2) That the conduct was wrongful and reckless or wanton;

(3) That the conduct was likely to produce death or grievous bodily harm to another person; and

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *In general.* This offense is intended to prohibit and therefore deter reckless or wanton conduct that wrongfully creates a substantial risk of death or grievous bodily harm to others.

(2) *Wrongfulness.* Conduct is wrongful when it is without legal justification or excuse.

(3) *Recklessness*. “Reckless” conduct is conduct that exhibits a culpable disregard of foreseeable consequences to others from the act or omission involved. The accused need not intentionally cause a resulting harm or know that his conduct is substantially certain to cause that result. The ultimate question is whether, under all the circumstances, the accused’s conduct was of that heedless nature that made it actually or imminently dangerous to the rights or safety of others.

(4) *Wantonness*. “Wanton” includes “Reckless” but may connote willfulness, or a disregard of probable consequences, and thus describe a more aggravated offense.

(5) *Likely to produce*. When the natural or probable consequence of particular conduct would be death or grievous bodily harm, it may be inferred that the conduct is “likely” to produce that result. See paragraph 54c(4)(a)(ii).

(6) *Grievous bodily harm*. “Grievous bodily harm” means serious bodily injury. It does not include minor injuries, such as a black eye or a bloody nose, but does include fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other serious bodily injuries.

(7) *Death or injury not required*. It is not necessary that death or grievous bodily harm be actually inflicted to prove reckless endangerment.

d. *Lesser included offenses*. None.

e. *Maximum punishment*. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

f. *Sample specification*.

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, wrongfully and (recklessly) (wantonly) engage in conduct, to wit: (describe conduct), conduct likely to cause death or grievous bodily harm to _____ .

101. Deleted—See Executive Order 12708

Requesting commission of an offense was deleted pursuant to Executive Order 12708, effective 1 April 1990.

102. Article 134—(Restriction, breaking)

a. *Text of statute*. See paragraph 60.

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b. *Elements*.

(1) That a certain person ordered the accused to be restricted to certain limits;

(2) That said person was authorized to order said restriction;

(3) That the accused knew of the restriction and the limits thereof;

(4) That the accused went beyond the limits of the restriction before being released therefrom by proper authority; and

(5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation*. Restriction is the moral restraint of a person imposed by an order directing a person to remain within certain specified limits. “Restriction” includes restriction under R.C.M. 304(a)(2), restriction resulting from imposition of either nonjudicial punishment (see Part V) or the sentence of a court-martial (see R.C.M. 1003(b)(6)), and administrative restriction in the interest of training, operations, security, or safety.

d. *Lesser included offenses*. Article 80—attempts

e. *Maximum punishment*. Confinement for 1 month and forfeiture of two-thirds pay per month for 1 month.

f. *Sample specification*.

In that _____ (personal jurisdiction data), having been restricted to the limits of _____, by a person authorized to do so, did, (at/on board—location), on or about ____ 20 __, break said restriction.

103. Article 134—(Seizure: destruction, removal, or disposal of property to prevent)

a. *Text of statute*. See paragraph 60.

b. *Elements*.

(1) That one or more persons authorized to make searches and seizures were seizing, about to seize, or endeavoring to seize certain property;

(2) That the accused destroyed, removed, or otherwise disposed of that property with intent to prevent the seizure thereof;

(3) That the accused then knew that person(s) authorized to make searches were seizing, about to seize, or endeavoring to seize the property; and

(4) That, under the circumstances, the conduct of

the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* See Mil. R. Evid. 316(e) concerning military personnel who may make seizures. It is not a defense that a search or seizure was technically defective.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about ____ 20 __, with intent to prevent its seizure, (destroy) (remove) (dispose of) _____, property which, as _____ then knew, (a) person(s) authorized to make searches and seizures were (seizing) (about to seize) (endeavoring to seize).

103a. Article 134—(Self-injury without intent to avoid service)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused intentionally inflicted injury upon himself or herself;

(2) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

[Note: If the offense was committed in time of war or in a hostile fire pay zone, add the following element]

(3) That the offense was committed (in time of war) (in a hostile fire pay zone).

c. *Explanation.*

(1) *Nature of offense.* This offense differs from malingering (see paragraph 40) in that for this offense, the accused need not have harbored a design to avoid performance of any work, duty, or service which may properly or normally be expected of one in the military service. This offense is characterized by intentional self-injury under such circumstances as prejudice good order and discipline or discredit the armed forces. It is not required that the accused be unable to perform duties, or that the accused actually be absent from his or her place of duty as a result of the injury. For example, the accused may

inflict the injury while on leave or pass. The circumstances and extent of injury, however, are relevant to a determination that the accused's conduct was prejudicial to good order and discipline, or service-discrediting.

(2) *How injury inflicted.* The injury may be inflicted by nonviolent as well as by violent means and may be accomplished by any act or omission that produces, prolongs, or aggravates a sickness or disability. Thus, voluntary starvation that results in a debility is a self-inflicted injury. Similarly, the injury may be inflicted by another at the accused's request.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.*

(1) *Intentional self-inflicted injury.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(2) *Intentional self-inflicted injury in time of war or in a hostile fire pay zone.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (in a hostile fire pay zone) on or about ____ 20 __, (a time of war,) intentionally injure himself/herself by _____ (nature and circumstances of injury).

104. Article 134—(Sentinel or lookout: offenses against or by)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) *Disrespect to a sentinel or lookout.*

(a) That a certain person was a sentinel or lookout;

(b) That the accused knew that said person was a sentinel or lookout;

(c) That the accused used certain disrespectful language or behaved in a certain disrespectful manner;

(d) That such language or behavior was wrongful;

(e) That such language or behavior was directed toward and within the sight or hearing of the sentinel or lookout;

(f) That said person was at the time in the execution of duties as a sentinel or lookout; and

(g) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) *Loitering or wrongfully sitting on post by a sentinel or lookout.*

(a) That the accused was posted as a sentinel or lookout;

(b) That while so posted, the accused loitered or wrongfully sat down on post; and

(c) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

[Note: If the offense was committed in time of war or while the accused was receiving special pay under 37 U.S.C. § 310, add the following element after element (a): That the accused was so posted (in time of war) (while receiving special pay under 37 U.S.C. § 310).]

c. *Explanation.*

(1) *Disrespect.* For a discussion of “disrespect,” see paragraph 13c(3).

(2) *Loitering or wrongfully sitting on post.*

(a) *In general.* The discussion set forth in paragraph 38c applies to loitering or sitting down while posted as a sentinel or lookout as well.

(b) *Loiter.* “Loiter” means to stand around, to move about slowly, to linger, or to lag behind when that conduct is in violation of known instructions or accompanied by a failure to give complete attention to duty.

d. *Lesser included offenses.*

(1) *Disrespect to a sentinel or lookout.* Article 80—attempts

(2) *Loitering or wrongfully sitting on post by a sentinel or lookout.* Article 80—attempts

e. *Maximum punishment.*

(1) *Disrespect to a sentinel or lookout.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

(2) *Loitering or wrongfully sitting on post by a sentinel or lookout.*

(a) *In time of war or while receiving special pay under 37 U.S.C. § 310.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(b) *Other cases.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

f. *Sample specifications.*

(1) *Disrespect to a sentinel or lookout.*

In that _____ (personal jurisdiction data), did, (at/on board—location), on or about ____ 20 __, then knowing that _____ was a sentinel or lookout, (wrongfully use the following disrespectful language “ _____ ,” or words to that effect, to _____) (wrongfully behave in a disrespectful manner toward _____ , by _____) a (sentinel) (lookout) in the execution of his/her duty.

(2) *Loitering or wrongfully sitting down on post by a sentinel or lookout.*

In that _____ (personal jurisdiction data), while posted as a (sentinel) (lookout), did, (at/on board—location) (while receiving special pay under 37 U.S.C. § 310) on or about ____ 20 __, (a time of war) (loiter) (wrongfully sit down) on his/her post.

105. Article 134—(Soliciting another to commit an offense)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused solicited or advised a certain person or persons to commit a certain offense under the code other than one of the four offenses named in Article 82;

(2) That the accused did so with the intent that the offense actually be committed; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was a nature to bring discredit upon the armed forces.

c. *Explanation.* See paragraph 6c. If the offense solicited was actually committed, see also paragraph 1.

d. *Lesser included offenses.* Article 80—attempts.

e. *Maximum punishment.* Any person subject to the code who is found guilty of soliciting or advising another person to commit an offense which, if committed by one subject to the code, would be punishable under the code, shall be subject to the maximum punishment authorized for the offense solicited or advised, except that in no case shall the death penalty be imposed nor shall the period of confinement

in any case, including offenses for which life imprisonment may be adjudged, exceed 5 years. However, any person subject to the code who is found guilty of soliciting or advising another person to commit the offense of espionage (Article 106a) shall be subject to any punishment, other than death, that a court-martial may direct.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, wrongfully (solicit) (advise) _____ (to disobey a general regulation, to wit: _____) (to steal _____, of a value of (about) \$ _____, the property of _____) (to _____), by _____.

106. Article 134—(Stolen property: knowingly receiving, buying, concealing)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused wrongfully received, bought, or concealed certain property of some value;

(2) That the property belonged to another person;

(3) That the property had been stolen;

(4) That the accused then knew that the property had been stolen; and

(5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *In general.* The actual thief is not criminally liable for receiving the property stolen; however a principal to the larceny (see paragraph 1), when not the actual thief, may be found guilty of knowingly receiving the stolen property but may not be found guilty of both the larceny and receiving the property.

(2) *Knowledge.* Actual knowledge that the property was stolen is required. Knowledge may be proved by circumstantial evidence.

(3) *Wrongfulness.* Receiving stolen property is wrongful if it is without justification or excuse. For example, it would not be wrongful for a person to receive stolen property for the purpose of returning it to its rightful owner, or for a law enforcement officer to seize it as evidence.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Stolen property, knowingly receiving, buying, or concealing.

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

(2) *Of a value of more than \$500.00.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, wrongfully (receive) (buy) (conceal) _____, of a value of (about) \$ _____, the property of _____, which property, as he/she, the said _____, then knew, had been stolen.

107. Article 134—(Straggling)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused, while accompanying the accused's organization on a march, maneuvers, or similar exercise, straggled;

(2) That the straggling was wrongful; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* "Straggle" means to wander away, to stray, to become separated from, or to lag or linger behind.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, at _____, on or about ____ 20 __, while accompanying his/her organization on (a march) (maneuvers) (_____), wrongfully straggle.

108. Article 134—(Testify: wrongful refusal)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused was in the presence of a court-martial, board of officer(s), military commission, court of inquiry, an officer conducting an in-

vestigation under Article 32, or an officer taking a deposition, of or for the United States, at which a certain person was presiding;

(2) That the said person presiding directed the accused to qualify as a witness or, having so qualified, to answer a certain question;

(3) That the accused refused to qualify as a witness or answer said question;

(4) That the refusal was wrongful; and

(5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* To “qualify as a witness” means that the witness declares that the witness will testify truthfully. See R.C.M. 807; Mil. R. Evid. 603. A good faith but legally mistaken belief in the right to remain silent does not constitute a defense to a charge of wrongful to testify. See also Mil. R. Evid. 301 and Section V.

d. *Lesser included offenses.* None.

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), being in the presence of (a) (an) ((general) (special) (summary) court-martial) (board of officer(s)) (military commission) (court of inquiry) (officer conducting an investigation under Article 32, Uniform Code of Military Justice) (officer taking a deposition) (_____) (of) (for) the United States, of which _____ was (military judge) (president), (_____), (and having been directed by the said _____ to qualify as a witness) (and having qualified as a witness and having been directed by the said _____ to answer the following question(s) put to him/her as a witness, “ _____ ”), did, (at/on board—location), on or about _____ 20 __ , wrongfully refuse (to qualify as a witness) (to answer said question(s)).

109. Article 134—(Threat or hoax designed or intended to cause panic or public fear)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) *Threat.*

(a) That the accused communicated certain language;

(b) That the information communicated amounted to a threat;

(c) That the harm threatened was to be done by means of an explosive; weapon of mass destruction; biological or chemical agent, substance, or weapon; or hazardous material;

(d) That the communication was wrongful; and

(e) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) *Hoax.*

(a) That the accused communicated or conveyed certain information;

(b) That the information communicated or conveyed concerned an attempt being made or to be made by means of an explosive; weapon of mass destruction; biological or chemical agent, substance, or weapon; or hazardous material, to unlawfully kill, injure, or intimidate a person or to unlawfully damage or destroy certain property;

(c) That the information communicated or conveyed by the accused was false and that the accused then knew it to be false;

(d) That the communication of the information by the accused was malicious; and

(e) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *Threat.* A “threat” means an expressed present determination or intent to kill, injure, or intimidate a person or to damage or destroy certain property presently or in the future. Proof that the accused actually intended to kill, injure, intimidate, damage, or destroy is not required.

(2) *Explosive.* “Explosive” means gunpowder, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electrical circuit breakers), detonators, and other detonating agents, smokeless powders, any explosive bomb, grenade, missile, or similar device, and any incendiary bomb or grenade, fire bomb, or similar device, and any other explosive compound, mixture, or similar material.

(3) *Weapon of mass destruction.* A weapon of mass destruction means any device, explosive or

otherwise, that is intended, or has the capability, to cause death or serious bodily injury to a significant number of people through the release, dissemination, or impact of: toxic or poisonous chemicals, or their precursors; a disease organism; or radiation or radioactivity.

(4) *Biological agent*. The term “biological agent” means any micro-organism (including bacteria, viruses, fungi, rickettsiac, or protozoa), pathogen, or infectious substance, and any naturally occurring, bioengineered, or synthesized component of any such micro-organism, pathogen, or infectious substance, whatever its origin or method of production, that is capable of causing—

(a) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(b) deterioration of food, water, equipment, supplies, or materials of any kind; or

(c) deleterious alteration of the environment.

(5) *Chemical agent, substance, or weapon*. A chemical agent, substance, or weapon refers to a toxic chemical and its precursors or a munition or device, specifically designed to cause death or other harm through toxic properties of those chemicals that would be released as a result of the employment of such munition or device, and any equipment specifically designed for use directly in connection with the employment of such munitions or devices.

(6) *Hazardous material*. A substance or material (including explosive, radioactive material, etiologic agent, flammable or combustible liquid or solid, poison, oxidizing or corrosive material, and compressed gas, or mixture thereof) or a group or class of material designated as hazardous by the Secretary of Transportation.

(7) *Malicious*. A communication is “malicious” if the accused believed that the information would probably interfere with the peaceful use of the building, vehicle, aircraft, or other property concerned, or would cause fear or concern to one or more persons.

d. *Lesser included offenses*.

(1) *Threat*.

(a) Article 134—communicating a threat

(b) Article 80—attempts

(c) Article 128—assault

(2) *Hoax*. Article 80—attempts

e. *Maximum punishment*. Dishonorable discharge,

forfeitures of all pay and allowances, and confinement for 10 years.

f. *Sample specifications*.

(1) *Threat*.

In that _____ (personal jurisdiction data) did, (at/on board—location) on or about ____ 20 __, wrongfully communicate certain information, to wit: _____, which language constituted a threat to harm a person or property by means of a(n) [explosive; weapon of mass destruction; biological agent, substance, or weapon; chemical agent, substance, or weapon; and/or (a) hazardous material(s)].

(2) *Hoax*.

In that _____ (personal jurisdiction data) did, (at/on board—location), on or about ____ 20 __, maliciously (communicate) (convey) certain information concerning an attempt being made or to be made to unlawfully [(kill) (injure) (intimidate) _____] [(damage) (destroy) _____] by means of a(n) [explosive; weapon of mass destruction; biological agent, substance, or weapon; chemical agent, substance, or weapon; and/or (a) hazardous material(s)], to wit: _____, which information was false and which the accused then knew to be false.

110. Article 134—(Threat, communicating)

a. *Text of statute*. See paragraph 60.

b. *Elements*.

(1) That the accused communicated certain language expressing a present determination or intent to wrongfully injure the person, property, or reputation of another person, presently or in the future;

(2) That the communication was made known to that person or to a third person;

(3) That the communication was wrongful; and

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation*. To establish the threat it is not necessary that the accused actually intended to do the injury threatened. However, a declaration made under circumstances which reveal it to be in jest or for an innocent or legitimate purpose, or which contradict the expressed intent to commit the act, does not constitute this offense. Nor is the offense committed by the mere statement of intent to commit an

unlawful act not involving injury to another. *See also* paragraph 109 concerning bomb threat.

d. *Lesser included offenses.*

(1) Article 117—provoking speeches or gestures

(2) Article 80—attempts

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, wrongfully communicate to _____ a threat (injure ____ by ____) (accuse ____ of having committed the offense of ____) (____).

111. Article 134—(Unlawful entry)

a. *Text of statute.* *See* paragraph 60.

b. *Elements.*

(1) That the accused entered the real property of another or certain personal property of another which amounts to a structure usually used for habitation or storage;

(2) That such entry was unlawful; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* *See* paragraph 55 for a discussion of “entry.” An entry is “unlawful” if made without the consent of any person authorized to consent to entry or without other lawful authority. No specific intent or breaking is required for this offense. *See* paragraph 56 for a discussion of housebreaking. The property protected against unlawful entry includes real property and the sort of personal property which amounts to a structure usually used for habitation or storage. It would usually not include an aircraft, automobile, tracked vehicle, or a person’s locker, even though used for storage purposes. However, depending on the circumstances, an intrusion into such property may be prejudicial to good order and discipline.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, unlawfully enter the (dwelling house) (garage) (warehouse) (tent) (vegetable garden) (orchard) (stateroom) (_____) of _____ .

112. Article 134—(Weapon: concealed, carrying)

a. *Text of statute.* *See* paragraph 60.

b. *Elements.*

(1) That the accused carried a certain weapon concealed on or about the accused’s person;

(2) That the carrying was unlawful;

(3) That the weapon was a dangerous weapon; and

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *Concealed weapon.* A weapon is concealed when it is carried by a person and intentionally covered or kept from sight.

(2) *Dangerous weapon.* For purposes of this paragraph, a weapon is dangerous if it was specifically designed for the purpose of doing grievous bodily harm, or it was used or intended to be used by the accused to do grievous bodily harm.

(3) *On or about.* “On or about” means the weapon was carried on the accused’s person or was within the immediate reach of the accused.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, unlawfully carry on or about his/her person a concealed weapon, to wit: a _____ .

113. Article 134—(Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button)

a. *Text of statute.* *See* paragraph 60.

b. *Elements.*

(1) That the accused wore a certain insignia, decoration, badge, ribbon, device, or lapel button upon the accused's uniform or civilian clothing;

(2) That the accused was not authorized to wear the item;

(3) That the wearing was wrongful; and

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* None.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location), on or about _____ 20 __, wrongfully and without authority wear upon his/her (uniform) (civilian clothing) (the insignia or grade of a (master sergeant of _____) (chief gunner's mate of _____)) (Combat Infantryman Badge) (the Distinguished Service Cross) (the ribbon representing the Silver Star) (the lapel button representing the Legion of Merit) (_____).