

A photograph of a courtroom, likely in Lubbock, Texas. The judge's bench is at the top center, with an American flag to the left. Several people are seated at desks in the foreground, facing the bench. The room has high ceilings and large windows with curtains.

**MILITARY & VETERANS LAW SECTION
FALL 2024 CLE, LUBBOCK TEXAS**

**MILITARY JUSTICE UPDATE
COLONEL (RETIRED) RICHARD D. ROSEN**

LEAD SPECIAL TRIAL COUNSEL

- (a) The lead special trial counsel is a judge advocate in a grade no lower than O-7 (brigadier general or rear admiral lower half).**
- (b) The lead special prosecutor reports directly to the service secretary “without intervening authority.”**
- (c) Special trial counsel assigned to the office of the lead special trial counsel must be independent of the commands of both the alleged victim and the accused.**

ARMY LEAD SPECIAL TRIAL COUNSEL



LEAD SPECIAL TRIAL COUNSEL

Brig. Gen. Christopher A. Kennebeck

[VIEW BIO](#)



DEPUTY LEAD SPECIAL TRIAL COUNSEL FOR OPERATIONS, POLICY, AND TRAINING

Col. Robert A. Rodrigues

[VIEW BIO](#)



DEPUTY LEAD SPECIAL TRIAL COUNSEL – EAST

Col. Catherine L. Brantley

[VIEW BIO](#)



DEPUTY LEAD SPECIAL TRIAL COUNSEL – WEST

Col. Robert (Rob) C. Stelle

[VIEW BIO](#)



SENIOR LEGAL ADMINISTRATOR, OPERATIONS OFFICER

Chief Warrant Officer 4 Hector X. Colon

[VIEW BIO](#)



OSTC CHIEF PARALEGAL NCO

Master Sgt. Kelly Slaughterbeck

[VIEW BIO](#)

NAVY LEAD SPECIAL TRIAL COUNSEL



Lead Special Trial Counsel

**Rear Admiral
Jonathan T.
Stephens**

MARINE CORPS LEAD SPECIAL TRIAL COUNSEL



Lead Special Trial Counsel of the U.S. Marine Corps

OFFICE OF SPECIAL TRIAL COUNSEL

Brigadier General Kevin S. Woodard serves as the Lead Special Trial Counsel of the U.S. Marine Corps....



Deputy Lead Special Trial Counsel of the U.S. Marine Corps

OFFICE OF SPECIAL TRIAL COUNSEL

Colonel Terrance J. Reese serves as the Deputy Lead Special Trial Counsel of the U.S. Marine Corps. ...

AIR FORCE/SPACE FORCE LEAD SPECIAL TRIAL COUNSEL



Brigadier General Christopher A. Brown

COAST GUARD CHIEF PROSECUTOR



Rear Admiral William (Bill) G. Dwyer

Chief Prosecutor of the Coast Guard

A photograph of a courtroom, likely in Lubbock, Texas. The judge's bench is at the front, with an American flag to the left. Several people are seated at desks in the foreground, facing the bench. The room has high ceilings and large windows with curtains.

**MILITARY & VETERANS LAW SECTION
FALL 2024 CLE, LUBBOCK TEXAS**

**MILITARY JUSTICE UPDATE
COLONEL (RETIRED) RICHARD D. ROSEN**

ARMY SPECIAL TRIAL COUNSEL



Brigadier General Warren Wells

ARMY SPECIAL TRIAL COUNSEL

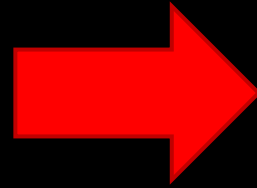
In 2013, in his role as a regional military defense counsel, then-LTC Wells emailed his staff:

- ❁ “Expect no commander to be able to make objective decisions involving [sexual assault] allegations as long [as] Congress and our political masters are dancing by the fire of misleading statistics and one-sided, repetitive misinformation by those with an agenda.”**
- ❁ “[H]opefully a Soldier will be able to get a fair trial. You and your teams are now the ONLY line of defense against false allegations and sobriety regret. You literally are the personal defenders of those no one will now defend, even when all signs indicate innocence.”**

ARMY SPECIAL TRIAL COUNSEL



**Secretary of the Army
Christine Wormuth**



**Removed “based on a loss
of trust and confidence+”**

ARMY SPECIAL TRIAL COUNSEL

“The lead special trial counsel position was created to take cases out of the chain of command in order to remove bias from the process of justice for survivors. That the military’s pick to fill this role has clear bias against victims is beyond alarming.... This news raises concerns as to systemic issues that perpetuate a broken decision-making process allowing Wells to be elevated to this position to address the sexual assault crisis.”

— Josh Connolly, *Lead Special Prosecutor Fired Following Emails Reavled Disparaging Survivors’ Assault Allegations*, PROTECT OUR DEFENDERS NEWS BLOG (Dec. 7, 2023)

ARMY SPECIAL TRIAL COUNSEL

Wells’ “email was the essence of leadership. Wells exhorted defense counsel to do their job and remain independent from outside influence. Service members deserve nothing less from appointed defense counsel. What American would want otherwise? [By] firing Wells, the Secretary of the Army endangers the professional ethos that is the cornerstone of our armed forces. Political commissars operating in Joseph Stalin’s Russia or implementing Vladimir Putin’s personal desires would understand her desire to control independent thinking and professional practice among sworn public servants.”

— Michael Newton, *The Army’s First Ever Lead Special Trial Counsel Just Got Fired for Behaving Ethically*, THE HILL (Dec. 27, 2023)

ARMY SPECIAL TRIAL COUNSEL

“The irony is that Wells’s removal vindicates his caution from a decade ago to his subordinate attorneys, that they should perform their duties in the face of criticism by ‘those with an agenda.’ [The] ethical calling of defense attorneys is to zealously represent their clients. Secretary Wormuth has signaled that compliance with professional and ethical duties is insufficient.”

— Michael Newton, *The Army’s First Ever Lead Special Trial Counsel Just Got Fired for Behaving Ethically*, THE HILL (Dec. 27, 2023)

ARMY SPECIAL TRIAL COUNSEL

“Wormuth’s decision to fire Wells raises serious concerns about the future of defense counsel and the integrity of the military justice system. This is not just about one email or one person; it represents a concern that shifts towards a system where challenging the status quo or questioning narratives can come at the cost of one’s career. [There] will undoubtedly be litigation related to the firing. It is uncertain whether litigation will cause cases to be dismissed. Over the next few months, we will start to see defense counsel filing motions and requests for action to discover essential information about the firing, examine the possibility of unlawful influences, and seek dismissal of charges. Should that happen, no one really wins, long or short term, and there will be a shadow of doubt cast upon the integrity and independence of the military justice system.”

— Philip Cave, *Under a Shadow of a Doubt: Why Wormuth’s Firing of Wells Threatens Defense Counsel in the Military Justice System*, Law Office of Law & Military Justice, Jan. 13, 2024

A photograph of a courtroom, likely in Lubbock, Texas. The room features a judge's bench at the front, flanked by two American flags. Several people are seated at desks in the foreground, facing the bench. The text is overlaid on the image in white, bold, sans-serif font.

**MILITARY & VETERANS LAW SECTION
FALL 2024 CLE, LUBBOCK TEXAS**

**MILITARY JUSTICE UPDATE
COLONEL (RETIRED) RICHARD D. ROSEN**

SPECIAL TRIAL COUNSEL AUTHORITY

A special trial counsel has the exclusive authority to determine if a reported offense is a covered offense. MCM, 2024, RCM 303A(a). If a special trial counsel determines that a reported offense is a covered offense or receives a preferred charge alleging a covered offense(s):

- (a) **Covered offenses.** The special trial counsel *must* exercise exclusive authority over the covered offense(s). UCMJ art. 24(c)(1)(A); MCM, 2014, RCM 303A(b).
- (b) **Related offenses.** The special trial counsel *may also* exercise authority over related offenses, UCMJ art. 24(c)(1)(B); MCM, 2014, RCM 303A(b), and .
- (c) **Known offenses.** The special trial counsel *may also* exercise authority over any offense or charge alleged to have been committed by the suspect of the covered offense. UCMJ art. 24(c)(1)(B); MCM, 2024, RCM 303A(c).
- (d) **Offenses committed before the effective date of the act.** The special trial counsel *may* exercise sole and exclusive authority over certain covered offenses, as well as related and known offenses committed before December 27, 2023. UCMJ art. 24(d)

SENTENCING REFORM: SENTENCING AUTHORITY

- (a) **Non-Capital Cases.** If the accused is convicted in a trial by special or general court-martial, military judges (not members) sentence the accused. UCMJ art. 53(b)(1).

- (b) **Capital Cases.** Members shall determine (i) whether the sentence for that offense shall be death or life in prison without eligibility for parole; or (ii) whether the matter shall be returned to the military judge for determination of a lesser punishment; and the military judge shall sentence the accused for that offense, UCMJ art. 53(c)(1)(A)

SENTENCING REFORM: SENTENCING DETERMINATION

- (a) **Offenses Subject to Sentencing Parameters.** For each offense, the military judge must sentence the accused within the applicable parameter, unless the military judge finds specific facts warranting a sentence outside the parameter. If so, the military judge must include in the record a written statement of the factual basis for the sentence. UCMJ art. 56(c)(2); MCM, 2024, RCM 1002(a)(2)(B).

- (b) **Offenses Subject to Sentencing Criteria.** The military judge must consider the applicable sentencing criteria in determining the sentence. UCMJ art. 56(c)(3); MCM 2024, RCM 1002(a)(2)(A).

SENTENCING REFORM: PLEA AGREEMENTS

The military judge of a general or special court-martial shall accept a plea agreement submitted by the parties, except that:

- (1) For offenses with a sentencing parameters, the military judge may reject a plea agreement that proposes a sentence that is outside the sentencing parameter if the military judge determines that the proposed sentence is plainly unreasonable. UCMJ art. 53a(b)(1), MCM, 2024, RCM 1002(a)(3)(A).**
- (2) For offenses without sentencing parameters, the military judge may reject a plea agreement that proposes a sentence if the military judge determines that the proposed sentence is plainly unreasonable. UCMJ art. 53a(b)(2), MCM, 2024, RCM 1002(a)(3)(B)**

COURTS OF CRIMINAL APPEALS (CCAs): APPELLATE REVIEW

- (1) **Factual Sufficiency.** The 2021 National Defense Authorization Act limited the power of the CCAs to review and modify factual findings of a court-martial. Last month, in *United States v. Harvey*, --- M.J. ---, 2024 WL 4128457 (C.A.A.F., Sep. 6, 2024), the Court of Appeals for the Armed Forces (CAAF) defined, in part, the nature of the review to be undertaken by the CCAs.
 - *See United States v. Whisenhunt*, 2019 WL 2368568 (A.C.C.A. 2019) (case motivating, at least in part, Congress' modification of the CCA's authority to review factual findings. The court overturned a rape conviction at the U.S. Military Academy based upon factual insufficiency.)
- (2) **Sentencing Review.** In *United States v. Flores*, 84 M.J. 277 (C.A.A.F. 2024), CAAF interpreted pre-sentencing reform appellate review of offense-based sentencing. The case seemingly applies to the post-reform provisions.

DIRECT SUPREME COURT REVIEW OF COURTS-MARTIAL

(1) Current Statutes.

UCMJ 867a(a), 10 U.S.C. § 867a(a): “Decisions of the United States Court of Appeals for the Armed Forces are subject to review by the Supreme Court by writ of certiorari as provided in 28 [U.S.C. § 1259]. *The Supreme Court may not review by a writ of certiorari under this section any action of the United States Court of Appeals for the Armed Forces in refusing to grant a petition for review.*”

28 U.S.C. § 1259: Decisions of the Court of Appeals for the Armed Forces [“CAAF”] may be reviewed by the Supreme Court by writ of certiorari in the following cases: (1) Cases reviewed by CAAF under UCMJ art. 67(a)(1); (2) Cases certified to the CAAF by the Judge Advocate General under UCMJ art. 67(a)(2); (3) *Cases in which CAAF granted a petition for review under section UCMJ art. 67(a)(3);* (4) *Other cases in which the CAAF granted relief*

DIRECT SUPREME COURT REVIEW OF COURTS-MARTIAL

(1) Amended Statutes (effective 24 Dec 2024).

UCMJ 867a(a), 10 U.S.C. § 867a(a): “Decisions of the United States Court of Appeals for the Armed Forces are subject to review by the Supreme Court by writ of certiorari as provided in 28 [U.S.C. § 1259].”

28 U.S.C. § 1259: Decisions of CAAF may be reviewed by the Supreme Court by writ of certiorari in the following cases: (3) Cases in which CAAF granted *or refused to grant* a petition for review under section UCMJ art. 67(a)(3); (4) Other cases in which the CAAF granted *or refused to grant* relief.

A photograph of a courtroom, likely in Lubbock, Texas. The judge's bench is at the far end, with an American flag to the left. Several people are seated at long wooden desks in the foreground, facing the bench. The room has high ceilings and large windows with red curtains.

**MILITARY & VETERANS LAW SECTION
FALL 2024 CLE, LUBBOCK TEXAS**

**MILITARY JUSTICE UPDATE
COLONEL (RETIRED) RICHARD D. ROSEN**

RULE FOR COURT-MARTIAL (RCM) 914(A)—"JENCKS ACT"

- (1) *United States v. Palik*, 84 M.J. 284 (C.A.A.F. 2024):** Defense counsel deemed ineffective because they failed failed to make a motion under RCM 914(a) for prior statements of the complaining witness purportedly recorded and negligently lost by Air Force OSI. Under CAAF precedent, government negligence did not serve as an excuse for the loss of the recordings. If the government failed to comply with an order to deliver, under RCM 914(e) the military judge would have had to “strike” the witness’ testimony or declare a mistrial.
- (2) In 2023, the President amended RCM 914:**

“In the event that the other party cannot comply with this rule because the statement is lost, and can prove, by a preponderance of evidence, **that the loss of the witness statement was not attributable to bad faith or gross negligence**, the military judge may exercise the sanctions set forth in paragraph (e)(1) of this rule **only if**—(A) the statement is of such central importance to an issue that it is essential to a fair trial, and (B) there is no adequate substitute for the statement .”

A photograph of a courtroom, likely in Lubbock, Texas. The judge's bench is at the top center, with an American flag to the left. Several people are seated at desks in the foreground, facing the bench. The room has high ceilings and large windows with curtains.

**MILITARY & VETERANS LAW SECTION
FALL 2024 CLE, LUBBOCK TEXAS**

**MILITARY JUSTICE UPDATE
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A historical black and white photograph showing a large group of African American men in military uniforms, likely members of the Central Postal Directory Company, sitting in rows in a room. They are looking towards the camera with various expressions. In the foreground, two white men in suits are seated at a table, facing away from the camera. The text "THE HOUSTON RIOT OF 1917" is overlaid in large, bold, white letters with a black outline across the center of the image.

**THE HOUSTON
RIOT OF 1917**

CAMP LOGAN AND THE 1917 "HOUSTON RIOTS"



CAMP LOGAN AND THE 1917 "HOUSTON RIOTS"



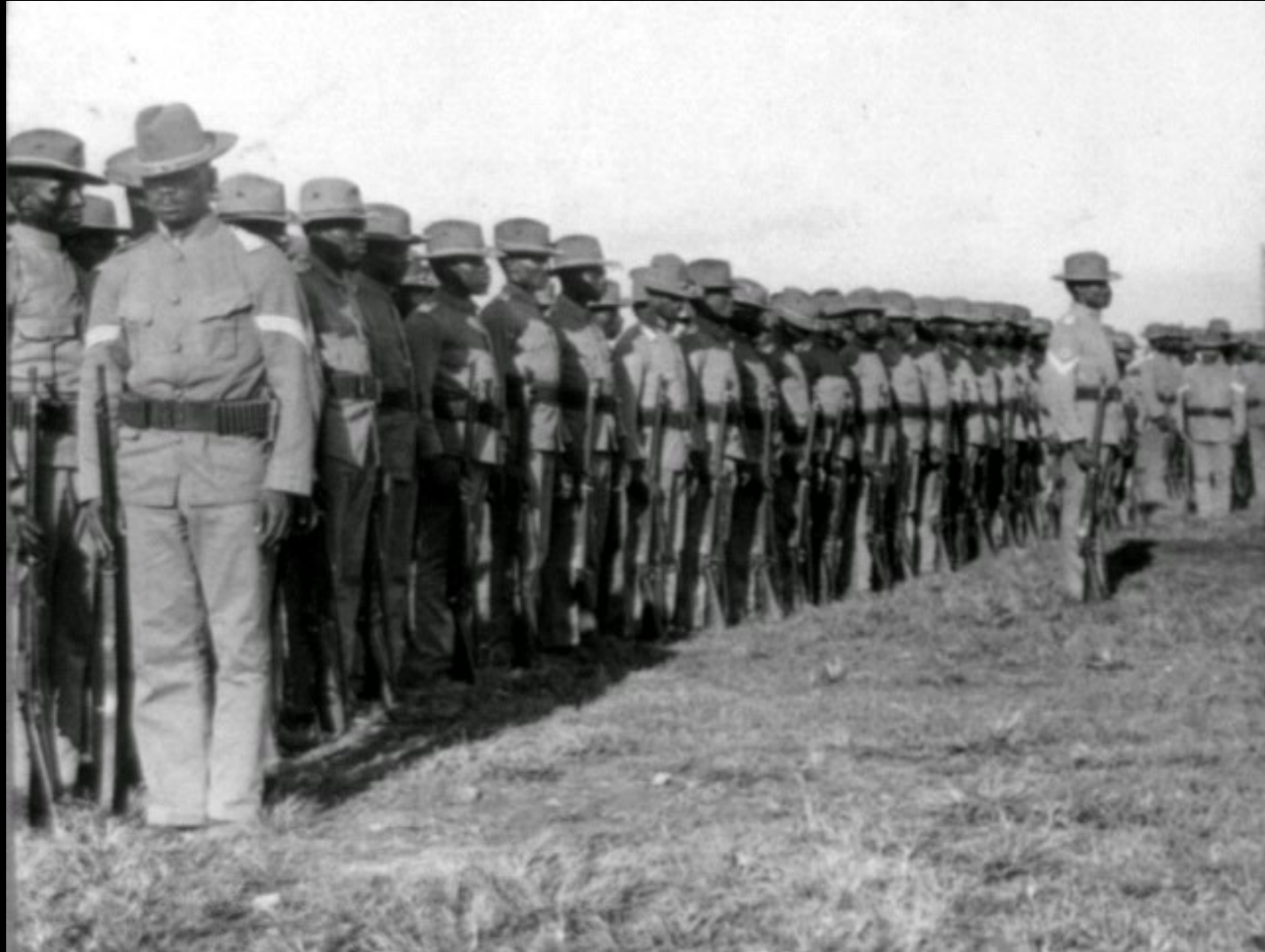
4 HOUSTON HISTORY Vol. 14 • No. 2

CAMP LOGAN AND THE 1917 “HOUSTON RIOTS”



24th Infantry Regiment (1867-1951)

CAMP LOGAN AND THE 1917 “HOUSTON RIOTS”



24th Infantry Regiment, Camp Walker, Philippine Islands 1902

CAMP LOGAN AND THE 1917 "HOUSTON RIOTS"



24th Infantry Regiment, Cuba, 1898

CAMP LOGAN AND THE 1917 "HOUSTON RIOTS"



24th Infantry Regiment, Mexican Expedition, 1917

A photograph of a courtroom interior. In the center, a judge is seated on a raised wooden bench. The judge is wearing a dark robe. Behind the judge, an American flag is visible. The courtroom has high ceilings with arched windows and wooden paneling. In the foreground, several people are seated at long wooden desks, facing the judge. The desks are arranged in a U-shape. The overall atmosphere is formal and professional.

**MILITARY & VETERANS LAW SECTION
FALL 2024 CLE, LUBBOCK TEXAS**

**MILITARY JUSTICE UPDATE
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CAMP LOGAN AND THE 1917 "HOUSTON RIOTS"

16 DEAD-22 INJURED FROM RIOT

City Under Martial Law

All citizens will remain in their homes or other places of business at once. No citizen not an officer will appear on the streets with arms. Parties will not assemble on the streets. Saloons will get be permitted to open. Places of business where arms and ammunition are sold, kept or stored will remain closed.

I call upon every citizen of Houston, white and colored, to preserve the peace, to be orderly about their business and to rest assured that there is going to be full liberty and proper punishment for the crime committed here.

It is the time for order and for careful avoidance of further trouble.

The city is under martial law, a condition which is most regrettable, but it is necessary.

There will be no further rioting if every citizen will observe the law and conduct themselves in a proper manner. The situation will be handled unless there be studied effort to cause more trouble.

DAN MOODY, Acting Mayor.

SENATE NOW TO TRY JIM ON CHARGES

House Votes to Sustain Fuller's Charges; More Accusations Against Governor by Committee of Nine

August, Aug. 23—The senate today voted to sustain the charges against Governor Fuller. The vote was 17 to 12. The senate also voted to refer to a committee of nine the charges against Governor Fuller. The committee will report on the charges against Governor Fuller. The charges against Governor Fuller are: 1. That he had allowed the city of Houston to be the scene of a riot. 2. That he had allowed the city of Houston to be the scene of a riot. 3. That he had allowed the city of Houston to be the scene of a riot.

Many Negroes Rounded Up—More Than 100 Still At Large—Illinois National Guard, Police and Civilians Searching For Them—Leader Is Killed—Negro Troops To Be Moved From Houston

Sixteen persons are dead and 22 wounded, as a result of an uprising among the negro soldiers at Camp Logan at 3 p. m. Thursday.

The negroes terrorized the city all night. Four policemen, Durbin, Menick, Moody and Roney, were killed. Three were wounded. One of the dead, 12 are white, two negro and one a Mexican.

From 100 to 200 negro troops participated in the riot. Some of them were captured and taken to Camp Logan. There are at the county jail, two were killed and it is reported that 100 are still at large. The troops are being searched for by the Illinois National Guard, police and civilians.

Of the dead, 12 are white, two negro and one a Mexican.

TROOPS WHO MUTINIED TO BE REMOVED

Washington, Aug. 23—Governor Wood has ordered that the negro troops who mutinied be removed from Houston. The troops are being searched for by the Illinois National Guard, police and civilians.

THE DEAD

It is P. H. Durbin, 40 years old, a police officer, killed by a shot from the rioters. He was killed at the intersection of Main and Houston streets. He was killed at the intersection of Main and Houston streets. He was killed at the intersection of Main and Houston streets.

One Negro Soldier Tells What Precipitated Riot

The complete story of how the rioting at Camp Logan was precipitated is given in a report by one of the negro soldiers who participated in the riot. The report is given in the following paragraphs:

The rioting at Camp Logan was precipitated by the actions of the officers of the camp. The officers of the camp were the cause of the riot. The officers of the camp were the cause of the riot. The officers of the camp were the cause of the riot.

RIOTERS NOW SEEM DROGGE; ARRESTS EASY

It is believed that the rioters are now drogged and that arrests will be easy. The rioters are now drogged and that arrests will be easy. The rioters are now drogged and that arrests will be easy.

THE WOUNDED

William J. Dray, 4010 Lillian, shot in right arm, an occasion necessary, was taken to the hospital. He was taken to the hospital. He was taken to the hospital.

Police Pursue "Boatload of Negroes"

An automobile filled with negroes was pursued by police officers. The automobile was filled with negroes. The automobile was filled with negroes.

Army Trucks Haul Rioters to Prison

Army trucks were used to haul the rioters to prison. The rioters were hauled to prison. The rioters were hauled to prison.

Heights Mayor Is On Job During Riot

Mayor J. M. Stewart was on his job during the riot. The riot was on his job. The riot was on his job.

Martial Law Declared By Governor Near Midnight

Martial law was declared by Governor Wood at midnight. The martial law was declared. The martial law was declared.

Jim's Governor Until House Is Officially Told

Governor Wood will remain in office until the house is officially told. The house is not yet officially told. The house is not yet officially told.

Move On 'Law Is Enforced'

The move on the law is being enforced. The law is being enforced. The law is being enforced.

WAR SECRETARY TO WITHDRAW NEGROES

The war secretary has announced that he will withdraw the negro troops from Houston. The war secretary has announced that he will withdraw the negro troops from Houston.

Funerals For Root Victims Next in Order

Funerals for the victims of the riot will be held next. The funerals will be held next. The funerals will be held next.

"Lock Me Up," Pleads Negro

A negro man has pleaded to be locked up. The man has pleaded to be locked up. The man has pleaded to be locked up.

WEATHER

The weather is clear and sunny. The weather is clear and sunny. The weather is clear and sunny.

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17 KILLED; 21 ARE INJURED IN WILD NIGHT

CITY AND COUNTY UNDER MARTIAL LAW, WITH REGULARS FROM GALVESTON AND SAN ANTONIO HERE TO HELP RESTORE ORDER; CONFESSIONS IN SECURED AND RINGLEDERS LOCATED; WITH ONE OF THEM KILLED

Police officers are shot to death; captain matters of illinois guard killed with bullets and bayonets; military war department orders troops moved from Houston immediately.

Negro Soldier in Custody Admits Participation; Says Henry Ringleader

The man who is believed to be the ringleader of the riot at Camp Logan, a negro soldier, has admitted his participation in the riot. He has admitted his participation in the riot.

Plans Are Forming for Speedy Courtmartial, Capt. Snow Announces

Plans are being formed for a speedy courtmartial of the rioters. The plans are being formed for a speedy courtmartial of the rioters.

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CAMP LOGAN AND THE 1917 "HOUSTON RIOTS"

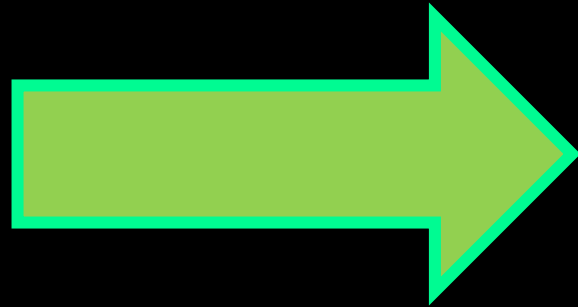


Fort Sam Houston Post Chapel

CAMP LOGAN AND THE 1917 "HOUSTON RIOTS"

Representing

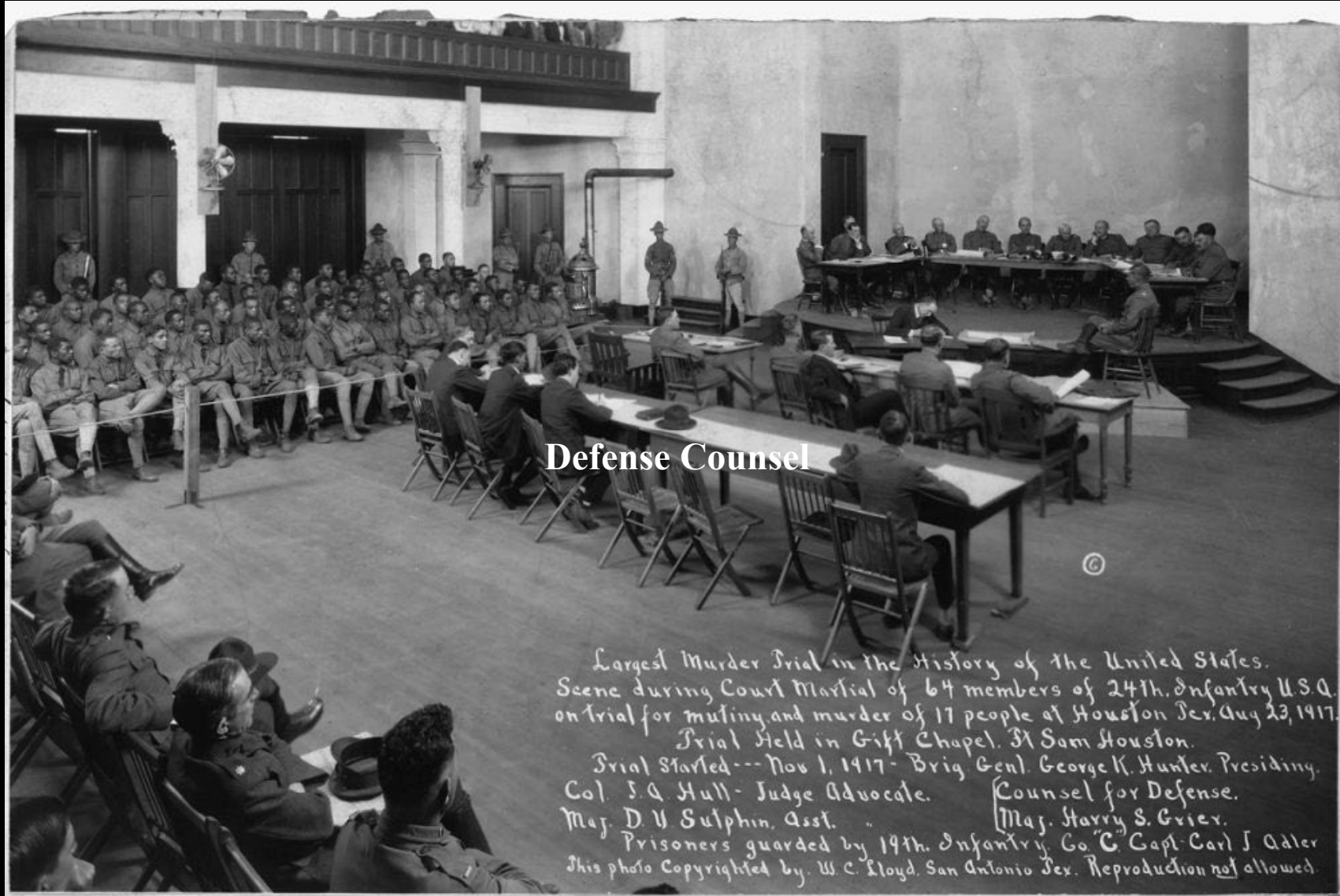
Harry S. Grier
Infantry Officer
Defense Counsel*



118 accused
3 courts-martial

*No investigative support
Less than two weeks to prepare for trial

CAMP LOGAN AND THE 1917 "HOUSTON RIOTS"



United States v. Nesbit, et al.: 63 accused

CAMP LOGAN AND THE 1917 “HOUSTON RIOTS”

United States v. Nesbit, et al.

23 Aug 1917: Riot in downtown Houston.

25 Aug 1917: Most of battalion sent to Columbus, NM.

Aug-Nov 1917: Regimental Board of Investigation + investigations by Southern Department’s and Army IGs.

1 Nov 1917: Court-martial commenced.

30 Nov 1917: Trial completed.

2 Dec 1917: Court members deliver findings and sentence 13 men sentenced to death. Convening authority orders verdicts and sentences not be made public. SJA reviewed findings & sentences.

10 Dec 1917: Convening authority approves findings and sentences; orders sentences to be immediately executed.

11 Dec 1917: 13 condemned men hanged together and buried in unmarked graves.

The War department did not learn of the trial until after the executions were carried out.

CAMP LOGAN AND THE 1917 “HOUSTON RIOTS”



SJA, Southern Department



**MG John W. Rickman
Commander, Southern Department**

SENTENCING REFORM: PLEA AGREEMENTS

[C]onfirmation by the President is required in the following cases before the sentence of a court-martial is carried into execution, namely: ... (d) Any sentence of death, *except in the cases of persons convicted in time of war of murder [or] mutiny* ..., and in such excepted cases a sentence of death may be carried into execution upon confirmation by the commanding general of the Army in the field or by the commanding general of the Territorial department or division.”

— Art. 48, Articles of War of 1916, 39 Stat. 558

War Dep’t, Gen. Order 169 (Dec. 29, 1917): requiring all sentences of death be sent to the Judge Advocate General for review.

THIRTEEN NEGROES HANGED IN TEXAS

FOUND GUILTY OF COMPLICITY
IN THE RIOT AND MU-
TINY AT HOUSTON.

FORTY-ONE SENTENCED FOR LIFE

Only the Army Officers and Sheriff
Were Present—Execution Was
Kept Secret.

San Antonio, Texas, Dec. 11.—Thir-
teen negroes of the Twenty-fourth
Infantry, found guilty of complicity
in the riot and mutiny at Houston
on August 23, were hanged this
morning.

Only the army officers and sheriff
were present. The execution was
kept secret until nine o'clock.

Of the sixty-three tried by court
martial, forty-one were sentenced to
life imprisonment.

EXTRA—9:30 A. M.—EXTRA

Fairbanks Scales
San Antonio Wholesale & Supply Co.

San Antonio Express.

Clay Furnaces
F. W. HETTMANN CO.

VOLUME 118—No. 344

SAN ANTONIO, TEXAS, TUESDAY MORNING, DECEMBER 11, 1917—SIXTEEN PAGES.

ESTABLISHED 1885.

13 NEGROES EXECUTED

SOLDIERS GUILTY OF HOUSTON RIOT HANG AT 7:17 A. M.

Taken Before Daybreak to Place of Execution From the Guard House at Ft. Sam Houston

41 GET LIFE SENTENCES. 5 FREED

Thirteen negroes of the Twenty-fourth Infantry, found guilty of complicity in the riot and mutiny at Houston, August 23, 1917, were executed by hanging at 7:17 a. m. this morning at the execution place at Ft. Sam Houston, Texas. The execution was kept secret until nine o'clock this morning.

Advertisement of the execution was made this morning at Ft. Sam Houston by Maj. Gen. J. W. Radford, commander of the Southern Department.

The men executed were:

Sergeant Nathan, Corporal Moses, Wheeler, Moore and Bellmore.

Private first class, Woodbridge, Hamilton, Grogan, Davis, Brown, Johnson, Young and Ben Thomas.

At the rear of the gallows of the execution was built a gallows structure that hung over the gallows and had been removed to the gallows of the Federal penitentiary. The gallows was built to hold one and six bodies, those in the penitentiary, but this was not used.

The negroes were taken from the Central Post gallows where they had been kept in the place of execution since the morning of August 23, 1917, and were taken to the gallows at Ft. Sam Houston, which was erected by the army without delay.

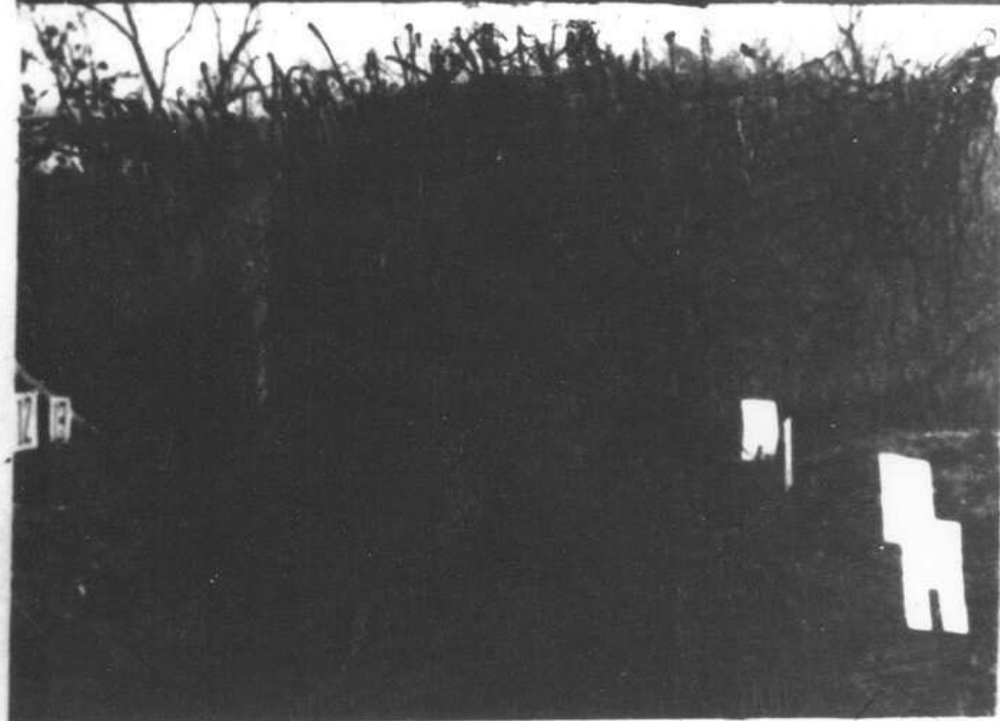
Following the execution and the placing in caskets of the bodies, the gallows structure was removed to the penitentiary.

All negroes in regard to the execution had been kept secret, and the gallows structure was not known to the public until the execution was held.

The bodies of the executed were placed in caskets and taken to the penitentiary where they will be buried by the United States Department of Justice.



In this plot of Ground
are buried 18 members
of the 24th U.S. Infantry
Hanged near this site for mutiny
at Houston Texas Aug. 23rd 1917



CAMP LOGAN AND THE 1917 “HOUSTON RIOTS”



**BG Samuel T. Ansell,
Acting TJAG 1917-1918**



**MG Enoch H. Crowder
TJAG 1911-1923**

A photograph of a courtroom, likely in Lubbock, Texas. The judge's bench is at the top center, with an American flag to the left. Several people are seated at desks in the foreground, facing the bench. The room has high ceilings and large windows with curtains.

**MILITARY & VETERANS LAW SECTION
FALL 2024 CLE, LUBBOCK TEXAS**

**MILITARY JUSTICE UPDATE
COLONEL (RETIRED) RICHARD D. ROSEN**

CAMP LOGAN AND THE 1917 "HOUSTON RIOTS"



**LTG William Benjamin Kean, Jr.
Commanded 25 Infantry Division
1948-1951**

24th Infantry Regiment, 25th Infantry Division, Korea 1950

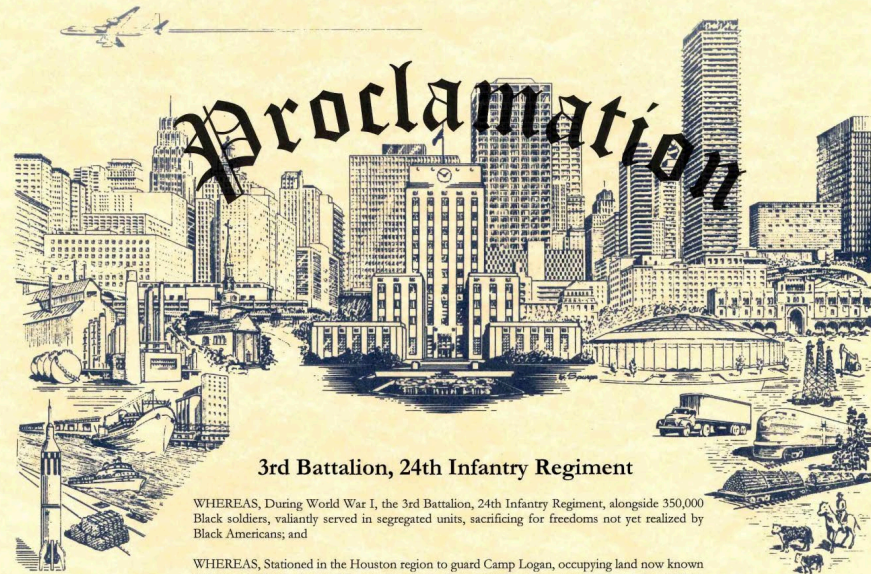
CAMP LOGAN AND THE 1917 “HOUSTON RIOTS”



1-24th Infantry, 25th Infantry Division







3rd Battalion, 24th Infantry Regiment

WHEREAS, During World War I, the 3rd Battalion, 24th Infantry Regiment, alongside 350,000 Black soldiers, valiantly served in segregated units, sacrificing for freedoms not yet realized by Black Americans; and

WHEREAS, Stationed in the Houston region to guard Camp Logan, occupying land now known as Memorial Park, these soldiers endured relentless racist harassment and violence from White residents, Houston police, and fellow military personnel under the oppressive Jim Crow system; and

WHEREAS, Tensions culminated in the Camp Logan Riot on August 23, 1917, sparked by the mistreatment of a Black soldier and a subsequent violent confrontation, resulting in tragic loss of life; and

WHEREAS, The subsequent court martial of 118 soldiers, conducted by all-White panels without adequate legal representation, led to convictions and harsh sentences, including death for many, in a grave miscarriage of justice; and

WHEREAS, Recognizing the injustice, the Houston NAACP Armed Forces and Veterans Affairs Committee, in collaboration South Texas College of Law Houston, STCL Houston professors Dru Brenner-Beck, Geoffrey Corn, and Catherine Greene Burnett, STCL Houston law students, and various other organizations, tirelessly pursued clemency for the wrongfully convicted soldiers; and

WHEREAS, On November 13, 2023, the Honorable Christine Wormuth, Secretary of the Army, granted clemency to the 110 African American soldiers, affirming that it is never too late to rectify past wrongs; and

WHEREAS, Let it be known that we acknowledge the sacrifices and injustices endured by the soldiers of the 3rd Battalion, 24th Infantry Regiment. The City of Houston honors their memory and legacy as we strive for equality and justice for all.

THEREFORE, I, John Whitmire, Mayor of the City of Houston, hereby proclaim February 20, 2024, as

3rd Battalion, 24th Infantry Regiment Day

in Houston, Texas.



In Witness Whereof, I have hereunto set my hand and have caused the Official Seal of the City of Houston to be affixed this 15th day of February, 2024.

John Whitmire
Mayor of the City of Houston

A photograph of a courtroom, likely in Lubbock, Texas. The judge's bench is at the front, with an American flag to the left. Several people are seated at desks in the foreground, facing the bench. The room has high ceilings and large windows with curtains.

**MILITARY & VETERANS LAW SECTION
FALL 2024 CLE, LUBBOCK TEXAS**

**MILITARY JUSTICE UPDATE
COLONEL (RETIRED) RICHARD D. ROSEN**

DIGITAL DISRESPECT: *UNITED STATES V. BROWN*

Assigned to the Coast Guard Cutter *Polar Star*, Brown sent three disrespectful texts to a group created by the senior chief petty officer to pass along work-related information to the ship's petty officers while the cutter was in dry dock:

- (1) The first petty officer received a disrespectful text sent by Brown while the petty officer was with the cutter in dry dock.
- (2) The second petty officer received a disrespectful text Brown sent outside of normal duty hours.
- (3) The third petty officer received a disrespectful text Brown sent while she was on while convalescent leave.

CAAF overturned the accused's conviction for the second and third texts because **the government failed to show that either petty officer was in the execution of her duties when the disrespectful texts were sent.**

A photograph of a courtroom, likely in Lubbock, Texas. The room features a judge's bench at the front, flanked by two American flags. Several people are seated at desks in the foreground, facing the bench. The text is overlaid on the image in white, bold, sans-serif font.

**MILITARY & VETERANS LAW SECTION
FALL 2024 CLE, LUBBOCK TEXAS**

**MILITARY JUSTICE UPDATE
COLONEL (RETIRED) RICHARD D. ROSEN**

VICTIM'S RIGHTS: PSYCHOTHERAPIST-PATIENT PRIVILEGE & ABATEMENT OF COURT MARTIAL-PROCEEDINGS

UCMJ art. 6b(e)(1): “If the victim of an offense under this chapter believes that a preliminary hearing ruling under section 832 of this title (article 32) or a court-martial ruling violates the rights of the victim afforded by a section (article) or rule specified in paragraph (4), the victim may petition the Court of Criminal Appeals for a writ of mandamus to require the preliminary hearing officer or the court-martial to comply with the section (article) or rule.”

UCMJ art. 6b(e)(4): Paragraph (1) applies with respect to the protections afforded by the following ... (D) Military Rule of Evidence 513, relating to the psychotherapist-patient privilege.

VICTIM'S RIGHTS: PSYCHOTHERAPIST-PATIENT PRIVILEGE & ABATEMENT OF COURT MARTIAL-PROCEEDINGS

Victim sought mandamus to:

- (1) Seal or destroy the mental health records.** Military judge already ordered the records sealed.
- (2) Lift the abatement order.** UCMJ article 6b(4)(D) does not give the victim standing to challenge the military judge's abatement order. The abatement order neither violated the privilege afforded by Military Rule of Evidence 513(a). "The abatement order served only to stop the court-martial proceedings; it did not vitiate her privilege or require her to waive the privilege."

A photograph of a courtroom, likely in Lubbock, Texas. The room features a judge's bench at the front, flanked by two American flags. Several people are seated at desks in the foreground, facing the bench. The text is overlaid on the image in white, bold, sans-serif font.

**MILITARY & VETERANS LAW SECTION
FALL 2024 CLE, LUBBOCK TEXAS**

**MILITARY JUSTICE UPDATE
COLONEL (RETIRED) RICHARD D. ROSEN**

**ARTICLE 134 PREEMPTION & THE FIRST AMENDMENT:
*UNITED STATES V. GRIJALVA, 84 M.J. 433 (C.A.A.F. 2024)***

UCMJ art. 134: “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....”

**ARTICLE 134 PREEMPTION & THE FIRST AMENDMENT:
UNITED STATES V. GRIJALVA, 84 M.J. 433 (C.A.A.F. 2024)**

“The initial phrase of the article expressly restricts its reach only to conduct ‘not specifically mentioned in this chapter.’ This Court has interpreted this phrase as prohibiting the charging of conduct as an offense under Article 134, UCMJ, if Congress has already codified the conduct as an offense in Articles 80 through 132, UCMJ....”

**— *Grijalva* 84 M.J. at 435
(citing *U.S. v. Avery*, 79 M.J. 363, 366 (C.A.A.F. 2020))**

**ARTICLE 134 PREEMPTION & THE FIRST AMENDMENT:
UNITED STATES V. GRIJALVA, 84 M.J. 433 (C.A.A.F. 2024)**

“The act of distributing nonobscene visual images is a form of speech.” Therefore, the court considered the relationship between the First Amendment’s protection of speech and the conduct alleged in the specification.

— *Grijalva* 84 M.J. at 436

(quoting *New York v. Ferber*, 458 U.S. 747, 764-765 (1982))

**ARTICLE 134 PREEMPTION & THE FIRST AMENDMENT:
UNITED STATES V. GRIJALVA, 84 M.J. 433 (C.A.A.F. 2024)**

“While the members of the military are not excluded from the protection granted by the First Amendment, the different character of the military community and of the military mission requires a different application of those protections.”

— *Parker v. Levy*, 417 U.S. 733, 758 (1974)

CAAF has “‘narrowed the very broad reach of the literal language’ of the first clause of Article 134, UCMJ, such that it only applies to conduct that is ‘directly and palpably—as distinguished from indirectly and remotely—prejudicial to good order and discipline.’”

— *Grijalva* 84 M.J. at 436 (quoting *Parker*, 417 U.S. at 753-754))

**ARTICLE 134 PREEMPTION & THE FIRST AMENDMENT:
*UNITED STATES V. GRIJALVA, 84 M.J. 433 (C.A.A.F. 2024)***

Accused charged under Article 134 with broadcasting intimate visual images of another, “**an act which is of a nature to bring discredit upon the armed forces.**”

Issue: Whether the specification is preempted by UCMJ art. 117a, which deals with accused who broadcast intimate images and “**whose conduct ... had a reasonably direct and palpable connection to a military mission or military environment.**” *Is the offense charged composed of a residuum of the elements of the specific offense?*

**ARTICLE 134 PREEMPTION & THE FIRST AMENDMENT:
UNITED STATES V. GRIJALVA, 84 M.J. 433 (C.A.A.F. 2024)**

The reach of the first clause of Article 134—all conduct of a nature to bring discredit upon the armed forces—is subject to the delimiting interpretation the court has placed on the clause. That is, in a First Amendment challenge to the specification the government that the accused conduct had a reasonably direct and palpable connection to a military mission or military environment—the same “terminal” element under UCMJ article 117a.

— *Grijalva* 84 M.J. at 438-439

A photograph of a courtroom, likely in Lubbock, Texas. The judge's bench is at the far end, with an American flag to the left. Several people are seated at long wooden desks in the foreground, facing the bench. The room has high ceilings and large windows with red curtains.

**MILITARY & VETERANS LAW SECTION
FALL 2024 CLE, LUBBOCK TEXAS**

**MILITARY JUSTICE UPDATE
COLONEL (RETIRED) RICHARD D. ROSEN**

ARTICLE 134 PREEMPTION & THE FIRST AMENDMENT: ***UNITED STATES V. SMITH, — M.J. —, 2024 WL 4206794 (C.A.A.F., SEP. 13, 2024)***

- (1) CAAF limited the categories of unprotected speech to those specified by the Supreme Court: CAAF identified the “historic and traditional categories” of unprotected speech: “(1) incitement to imminent lawless action; (2) obscenity; (3) defamation; (4) speech integral to criminal conduct; (5) fighting words; (6) child pornography; (7) fraud; (8) true threats; and (9) speech presenting some grave and imminent threat the Government has the power to prevent.” The court held that “[i]f a content-based restriction on speech does not fall within one of these historically recognized categories, the restriction is presumed to be unconstitutional.” It rejected the Air Force court’s balancing test (whether the speech was “an essential part of any exposition of ideas”).
- (2) CAAF held that it will apply the same First Amendment law that applies in civilian courts where the speech occurs in a civilian setting, while the accused is wearing civilian clothes and without any visible indications of the accused’s military status.

A photograph of a courtroom, likely in Lubbock, Texas. The judge's bench is at the top center, with an American flag to the left. Several people are seated at desks in the foreground, facing the bench. The room has high ceilings and large windows with curtains.

**MILITARY & VETERANS LAW SECTION
FALL 2024 CLE, LUBBOCK TEXAS**

**MILITARY JUSTICE UPDATE
COLONEL (RETIRED) RICHARD D. ROSEN**

CAAF DECIDES *UNITED STATES V. HASAN*

United States v. Hasan, 84 M.J. 181 (C.A.A.F. 2024),
pet. for cert. filed, No. 24-5225 (U.S., Aug. 5, 2024)



CAAF DECIDES *UNITED STATES V. HASAN*

United States v. Hasan, 84 M.J. 181 (C.A.A.F. 2024),
pet. for cert. filed, No. 24-5225 (U.S., Aug. 5, 2024)

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

NIDAL M. HASAN, *Petitioner*,

v.

UNITED STATES, *Respondent*.

*APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES*

To the Honorable John G. Roberts, Jr., Chief Justice of the United States:

Petitioner, Major Nidal M. Hasan, U.S. Army, a soldier court-martialed at Fort Hood, Texas, respectfully requests an enlargement of time within which to file a petition for a writ of certiorari to and including August 1, 2024. The order of the United States Court of Appeals for the Armed Forces (“CAAF”) that denied in part and granted in part the petition for reconsideration, was entered on March 4, 2024. Petitioner’s time to petition for certiorari in this Court expires June 2, 2024. This application is being filed more than 10 days before that date.

Copies of the majority opinion in the CAAF are attached hereto. The jurisdiction of this Court is invoked under 28 U.S.C. § 1259(1). *See also* 10 U.S.C. § 867a(1).

This is a capital case with important questions that could affect service members across the world. Thus, counsel requires additional time to craft the petition in this case because the undersigned counsel have limited experience drafting and filing petitions for certiorari to the Supreme Court of the United States. The sixty-day extension is also necessary because the undersigned counsel are the equivalent of public appellate defense counsel in a jurisdiction where all

soldiers convicted at court-martial enjoy an appeal as a matter of right. Counsel are operating with limited resources and a large caseload. Thus, the undersigned counsel request the additional time to perform the necessary legal research and drafting so that the questions raised by the lower court’s decision can be properly framed and presented to this Court.

Wherefore, Petitioner respectfully requests that an order be entered extending his time to petition for certiorari to and including August 1, 2024.

Respectfully submitted,

May 20, 2024



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A photograph of a courtroom, likely in Lubbock, Texas. The room features a judge's bench at the front, flanked by two American flags. Several people are seated at desks in the foreground, facing the bench. The room has high ceilings and large windows with curtains.

**MILITARY & VETERANS LAW SECTION
FALL 2024 CLE, LUBBOCK TEXAS**

**MILITARY JUSTICE UPDATE
COLONEL (RETIRED) RICHARD D. ROSEN**

DOUBLE JEOPARDY & ARTICLE 134 OFFENSES

United States v. Driskell, 84 M.J. 248 (C.A.A.F. 2024)

Accused charged in Italy with violating 18 U.S.C. § 1466A(b)(1) under Article 134, clause 3, by possessing obscene cartoons. *After the close of evidence*, the military judge dismissed the case without prejudice finding there was no jurisdiction in Italy under the federal statute (the statute requires evidence that the paction moved in interstate commerce or was committed within the special maritime and territorial jurisdiction of the United States). The accused was later charged with the same conduct under Article 134, clause 2. The accused moved to dismiss the specification based on Double Jeopardy under the Constitution and UCMJ article 44(a). Both the military judge denied the motion and the Air Force Court of Criminal Appeals affirmed because the first specification was dismissed for lack of jurisdiction.

DOUBLE JEOPARDY & ARTICLE 134 OFFENSES

United States v. Driskell, 84 M.J. 248 (C.A.A.F. 2024)

- (1) Jeopardy attaches to an offense when the Government introduces evidence on the general issue of guilt. UCMJ art. 44(c); RCM (07(b)(C)(i)(I); *U.S. v. Easton*, 71 M.J. 168, 172 (C.A.A.F. 2021). The parties do not dispute that this happened in the first court-martial.**
- (2) CAAF agreed with “the general proposition that jeopardy cannot attach if the court-martial lacks jurisdiction because RCM 907(b)(2)(C)(iv) provides that “[n]o court-martial proceeding which lacked jurisdiction to try the accused for the offense is a trial in the sense of [the rule against double jeopardy].”**

DOUBLE JEOPARDY & ARTICLE 134 OFFENSES

United States v. Driskell, 84 M.J. 248 (C.A.A.F. 2024)

Issue: Whether the first court-martial lacked jurisdiction to try the accused for the offense because the government could not prove a jurisdictional element of 18 U.S.C. § 1466A(b)(1).

CAAF held that the first court-martial did **not** lack jurisdiction because (1) it had personal jurisdiction over the accused under UCMJ art. 2(a)(1) who was a member of the regular component of the armed forces, and (2) it had jurisdiction to determine whether the accused had violated UCMJ article 134.

“The question of whether the court-martial had personal and subject matter jurisdiction **is distinct** from the merits question of whether the Government alleged and proved a fact necessary to show a violation of [18 U.S.C.] § 1466A, namely, that the alleged conduct occurred in a location to which the statute applies.”

A photograph of a courtroom, dimly lit, with a judge seated on the bench in the background. In the foreground, several people are seated at long wooden desks, facing the bench. The room features high ceilings, wood paneling, and an American flag on the wall behind the judge.

**MILITARY & VETERANS LAW SECTION
FALL 2024 CLE, LUBBOCK TEXAS**

**MILITARY JUSTICE UPDATE
COLONEL (RETIRED) RICHARD D. ROSEN**

PRESENTENCING PROCEDURE: PRESENTATION BY THE VICTIM

United States v. Harrington, 83 M.J. 408 (C.A.A.F. 2023)

“Once again, this Court is presented with the question whether a novel approach toward the delivery of a victim’s unsworn statement exceeds what the President has authorized under R.C.M. 1001(c)(5), and again we conclude that it does. Presentation of the ‘unsworn statement via a question-and-answer format with trial counsel violates the Rules for Courts-Martial because it contravenes the principle that an unsworn victim statement belongs solely to the victim or the victim’s designee [not the government].”

PRESENTENCING PROCEDURE: PRESENTATION BY THE VICTIM

United States v. Hamilton, 78 M.J. 335, 342 (C.A.A.F. 2019)

The victim statement “is not a mechanism whereby the government may slip in evidence in aggravation that would otherwise be prohibited by the Military Rules of Evidence, or information that does not relate to the impact of the offense for which the accused is convicted.”

PRESENTENCING PROCEDURE: PRESENTATION BY THE VICTIM

United States v. Edwards, 82 M.J. 239, 241 (C.A.A.F. 2022)

The trial counsel may not produce a video of the victim's unsworn statement and on behalf of the victim's family.

<https://www.youtube.com/watch?v=4hqlaMdNgcc>



**MILITARY & VETERANS LAW SECTION
FALL 2024 CLE, LUBBOCK TEXAS**

**MILITARY JUSTICE UPDATE
COLONEL (RETIRED) RICHARD D. ROSEN**

CONSTITUTIONALITY OF JUDGE-ALONE SPECIAL COURTS-MARTIAL

United States v. Wheeler, --- M.J. ---, 2024 WL 3932500 (C.A.A.F., Aug. 22, 2024)

District of Columbia v. Clawans, 300 U.S. 617, 662 (1937): “[T]he right of trial by jury, thus secured, does not extend to every criminal proceeding. At the time of the adoption of the Constitution there were numerous offenses, commonly described as ‘petty,’ which were tried summarily without a jury, by justices of the peace in England, and by police magistrates or corresponding judicial officers in the Colonies, and punished by commitment to jail, a workhouse, or a house of correction.”

Baldwin v. New York, 399 U.S. 66, 69 (1970): “[A] possible six-month penalty is short enough to permit classification of the offense as ‘petty’” *See also Blanton v. City of North Las Vegas*, 489 U.S. 538, 543 (1989) (presumption that a maximum jail sentence of six months or less is a petty offense); *Lewis v. United States*, 518 U.S. 322, 328 (1996) (“it is now settled that a legislature’s determination that an offense carries maximum prison term of six months or less indicates its view that an offense is ‘petty.’”).



**MILITARY & VETERANS LAW SECTION
FALL 2024 CLE, LUBBOCK TEXAS**

**MILITARY JUSTICE UPDATE
COLONEL (RETIRED) RICHARD D. ROSEN**

CONSTITUTIONALITY OF JUDGE-ALONE SPECIAL COURTS-MARTIAL

United States v. Moore, 84 M.J. 695 (N.M.C.C.A. 2024)

“An affirmative defense to a charged offense would, by definition, constitute matter inconsistent with a plea of guilty and a military judge must resolve the apparent inconsistency or reject the plea.... [I]f a party sets up matter raising a possible defense, then the military judge is required to make further inquiry and resolve any apparent ambiguity or inconsistency.”

A photograph of a courtroom, likely in Lubbock, Texas. The judge's bench is at the top center, with an American flag to the left. Several people are seated at desks in the foreground, facing the bench. The room has high ceilings and large windows with curtains.

**MILITARY & VETERANS LAW SECTION
FALL 2024 CLE, LUBBOCK TEXAS**

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