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## Synopsis of Military Appeals Cases

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# SYNOPSIS OF MILITARY APPEALS CASES\*

This issue of the *Military Synopsis* contains a selection of the decisions of the Court of Military Appeals decided from November 14, 1952, through December 31, 1952. The Uniform Code of Military Justice, 64 Stat. 108 (1950), 50 U.S.C. §§ 551-736 (Supp. 1951), will hereinafter be cited as UCMJ, and the *Manual for Courts-Martial, United States*, 1951, as MCM, 1951. The decisions of the Court of Military Appeals do not, as yet, appear in bound form so that it is necessary to cite them without reference to volume and page numbers and to include in the citation the date of the decision. The title heads employed in the *Synopsis* are assimilated to the title heads in the uniform Code of Military Justice.

**GENERAL PROVISIONS.** *Persons subject to the code.* An individual does not become amenable to military law until he has taken the oath and been sworn into the service.<sup>1</sup>

**PRE-TRIAL PROCEDURE.** *Charges and specifications.* An unnecessary reference to a statute in a specification is surplusage, and the pleading will be valid so long as the offense is fully stated otherwise.<sup>2</sup>

**PUNITIVE ARTICLES.** *General Article.* An assault upon an individual because of his previous testimony at a court-martial is clearly an act "to the prejudice of good order and discipline of the armed forces"<sup>3</sup> and is, therefore, punishable under the General Article.<sup>4</sup>

*Larceny.* To support a conviction for larceny there must be substantial evidence in the record as to *all* of the elements of the crime including proof that specific, identified property was wrongfully taken by the accused.<sup>5</sup>

**REVIEW OF COURTS-MARTIAL.** *Review by Board of Review.* A Board of Review does not have the authority to suspend a sentence or any part thereof.<sup>6</sup>

*Review by the Court of Military Appeals.* The fact that the accused has already served his sentence does not make review by the Court of Military Appeals moot if the accused might be affected by the question in

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\*This issue of the *Military Synopsis* was prepared for publication by Lewis L. Cosor.

1. *United States v. Ornelas*, \_\_\_\_\_USCMA\_\_\_\_\_, December 31, 1952. See *Billings v. Truesdell*, 321 U.S. 542 (1944).

2. *United States v. Long, et al.*, \_\_\_\_\_USCMA\_\_\_\_\_, December 3, 1952.

3. Article 134, UCMJ.

4. *United States v. Long, et al.*, \_\_\_\_\_USCMA\_\_\_\_\_, December 3, 1952.

5. *United States v. Dodd*, \_\_\_\_\_USCMA\_\_\_\_\_, December 19, 1952.

6. *United States v. Simmons*, \_\_\_\_\_USCMA\_\_\_\_\_, December 31, 1952.

such matters as computation of leave or computation of longevity increases in pay and re-enlistment allowances.<sup>7</sup>

**SENTENCES.** A punitive discharge is not a condition precedent to the adjudging of increased confinement and forfeitures as authorized by the Manual upon proof of two or more previous convictions.<sup>8</sup>

**TRIAL PROCEDURE. Challenges for cause.** It is error for the law officer to express his opinion on the validity of a challenge for cause of a member of the court-martial.<sup>9</sup> The Code provides that this matter is to be decided by the court, by secret ballot, in closed session.<sup>10</sup> Whether such error is materially prejudicial to the rights of the accused and would, therefore, require a reversal is dependent upon the facts of each case.<sup>11</sup>

**Depositions.** The fact that a witness refuses to answer trial counsel's questions does not justify the admission in evidence of a deposition previously obtained from him.<sup>12</sup>

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7. *United States v. Prescott*, \_\_\_\_\_USCMA\_\_\_\_\_, December 31, 1952.

8. Section B, Paragraph 127c, MCM, 1951; *United States v. Prescott*, \_\_\_\_\_USCMA\_\_\_\_\_, December 31, 1952.

9. *United States v. Shaffer*, \_\_\_\_\_USCMA\_\_\_\_\_, December 15, 1952; *United States v. Stewart*, \_\_\_\_\_USCMA\_\_\_\_\_, December 15, 1952.

10. Articles 41(a), 51(a), UCMJ.

11. *Supra* note 9.

12. Article 49(d), UCMJ; *United States v. Barcomb*, \_\_\_\_\_USCMA\_\_\_\_\_, December 19, 1952.