

deliberations of that court-martial; the effect of anything on that member's or another member's vote; or any member's mental processes concerning the finding or sentence. The military judge may not receive a member's affidavit or evidence of a member's statement on these matters.

(2) *Exceptions.* A member may testify about whether:

- (A) extraneous prejudicial information was improperly brought to the members' attention;
- (B) unlawful command influence or any other outside influence was improperly brought to bear on any member; or
- (C) a mistake was made in entering the finding or sentence on the finding or sentence forms.

#### **Rule 607. Who May Impeach a Witness**

Any party, including the party that called the witness, may attack the witness's credibility.

#### **Rule 608. A Witness's Character for Truthfulness or Untruthfulness**

(a) *Reputation or Opinion Evidence.* A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. Evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

(b) *Specific Instances of Conduct.* Except for a criminal conviction under Mil. R. Evid. 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. The military judge may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

- (1) the witness; or
- (2) another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

(c) *Evidence of Bias.* Bias, prejudice, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.

#### **Rule 609. Impeachment by Evidence of a Criminal Conviction**

(a) *In General.* The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

(1) For a crime that, in the convicting jurisdiction, was punishable by death, dishonorable discharge, or by imprisonment for more than one year, the evidence:

- (A) must be admitted, subject to Mil. R. Evid. 403, in a court-martial in which the witness is not the accused; and
- (B) must be admitted in a court-martial in which the witness is the accused, if the probative value of the evidence outweighs its prejudicial effect to that accused; and

(2) For any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving – or the witness's admitting – a dishonest act or false statement.

(3) In determining whether a crime tried by court-martial was punishable by death, dishonorable discharge, or imprisonment in excess of one year, the maximum punishment prescribed by the President under Article 56 at the time of the conviction applies without regard to whether the case was tried by general, special, or summary court-martial.

(b) *Limit on Using the Evidence After 10 Years.* Subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

- (1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and
- (2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

(c) *Effect of a Pardon, Annulment, or Certificate of Rehabilitation.* Evidence of a conviction is not admissible if:

(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death, dishonorable discharge, or imprisonment for more than one year; or

(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) *Juvenile Adjudications*. Evidence of a juvenile adjudication is admissible under this rule only if:

(1) the adjudication was of a witness other than the accused;

(2) an adult's conviction for that offense would be admissible to attack the adult's credibility; and

(3) admitting the evidence is necessary to fairly determine guilt or innocence.

(e) *Pendency of an Appeal*. A conviction that satisfies this rule is admissible even if an appeal is pending, except that a conviction by summary court-martial or special court-martial without a military judge may not be used for purposes of impeachment until review has been completed under Article 64 or Article 66, if applicable. Evidence of the pendency is also admissible.

(f) *Definition*. For purposes of this rule, there is a "conviction" in a court-martial case when a sentence has been adjudged.

#### **Rule 610. Religious Beliefs or Opinions**

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

#### **Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence**

(a) *Control by the Military Judge; Purposes*. The military judge should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

(1) make those procedures effective for determining the truth;

(2) avoid wasting time; and

(3) protect witnesses from harassment or undue embarrassment.

(b) *Scope of Cross-Examination*. Cross-examination should not go beyond the subject matter of the direct examination and matters affecting the witness's credibility. The military judge may allow inquiry into additional matters as if on direct examination.

(c) *Leading Questions*. Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the military judge should allow leading questions:

(1) on cross-examination; and

(2) when a party calls a hostile witness or a witness identified with an adverse party.

(d) *Remote live testimony of a child*.

(1) In a case involving domestic violence or the abuse of a child, the military judge must, subject to the requirements of subdivision (d)(3) of this rule, allow a child victim or witness to testify from an area outside the courtroom as prescribed in R.C.M. 914A.

(2) *Definitions*. As used in this rule:

(A) "Child" means a person who is under the age of 16 at the time of his or her testimony.

(B) "Abuse of a child" means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child.

(C) "Exploitation" means child pornography or child prostitution.

(D) "Negligent treatment" means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to endanger seriously the physical health of the child.

(E) "Domestic violence" means an offense that has as an element the use, or attempted or threatened use of physical force against a person by a current or former spouse, parent, or guardian of the victim; by a person with whom the victim shares a child in common; by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian; or by a person similarly situated to a spouse, parent, or guardian of the victim.

(3) Remote live testimony will be used only where the military judge makes the following three findings on the record:

(A) that it is necessary to protect the welfare of the particular child witness;

(B) that the child witness would be traumatized, not by the courtroom generally, but by the presence of the defendant; and