

“(4) *Convening Authority and Special Trial Counsel Notice and Action.* If a claim of privilege has been made under this rule with respect to government information that apparently contains evidence that is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence in the court-martial proceeding, the matter must be reported to the convening authority and special trial counsel, as applicable.

(A) The convening authority may institute action to obtain the information for use by the military judge in making a determination under Mil. R. Evid. 505(j);

(B) The convening authority or special trial counsel, as applicable, may:

(i) dismiss the charges;

(ii) dismiss the charges or specifications or both to which the information relates; or

(iii) take such other action as may be required in the interests of justice.”

(c) Mil. R. Evid. 507(e)(3) is amended to read as follows:

“(3) *Action by the Convening Authority or Special Trial Counsel.* If the military judge determines that disclosure of the identity of the informant is required under the standards set forth in this rule, and the prosecution elects not to disclose the identity of the informant, the matter must be reported to the convening authority. The convening authority or the special trial counsel, as applicable, may institute action to secure disclosure of the identity of the informant, terminate the proceedings, or take such other action as may be appropriate under the circumstances.”

Section 4. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 77.b.(4)(d)(ii) is amended to read as follows:

“(ii) That the accused did so by strangulation or suffocation; and”.

(b) Paragraph 77.d.(1)(b) is amended to read as follows:

“(b) *When committed with a firearm or other dangerous weapon.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.”

Section 5. Part V of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 1.h. is amended to read as follows:

“h. *Burden of proof.* The burden of proof to be utilized by commanders throughout the nonjudicial punishment process shall be a preponderance of the evidence. This means the commanding officer must determine it is “more likely than not” the member committed the offense defined by the UCMJ. Each element of each offense, as defined in the Manual for Courts-Martial, must be supported by a preponderance of the evidence (*i.e.*, “more likely than not”). This standard is more rigorous than a “probable cause” standard of proof used by law enforcement to obtain a warrant but a lower standard of proof than the “beyond a reasonable doubt” standard used at a court-martial.”

Section 6. Appendix 12A of the Manual for Courts-Martial, United States, is revised to read as follows:

“PRESIDENTIALLY-PRESCRIBED LESSER INCLUDED OFFENSES PURSUANT TO ARTICLE 79(b)(2), UNIFORM CODE OF MILITARY JUSTICE”

This authoritative list provides actual notice of factually similar lesser included offenses designated by the President, pursuant to Article 79(b)(2), that are “reasonably included” in the greater offense. The military justice system has unique, but closely related, military offenses, which are not “necessarily included” lesser offenses under the “elements test.” *See United States v. Teters*, 37 M.J. 370 (C.A.A.F. 1993); *see also United States v. Jones*, 68 M.J. 465 (C.A.A.F. 2009). This list is exhaustive as to those lesser included offenses (called “reasonably included