

# **MILITARY JUSTICE CLINIC 1: SYLLABUS**

## **Spring 2023**

Professor Jason Marquez

Email: jrmarque@central.uh.edu

Phone: 713-743-9226 (office)

832-907-0372 (mobile)

Office: University of Houston Law Center

Clinical Programs

4170 Martin Luther King Blvd

Houston, Texas 77204-6060

Weekly Class schedule: 2x 75 min classes or 1x 150 min class - TBD

### **COURSE INFORMATION**

The Military Justice Clinic 1 introduces students to criminal justice under the Uniform Code of Military Justice (UCMJ). Students will receive classroom instruction on the applicable substantive law, case investigation techniques, witness identification and preparation, administrative board proceedings, pretrial motions practice, case strategy and trial practice.

In addition to classroom lecture, students will be assigned to defense teams representing military clients facing courts-martial, administrative hearings, non-judicial punishment, other adverse administrative actions, as well as former service members appealing adverse actions stemming from their military service. As members of the defense team, students will conduct case investigations, witness interviews, draft pretrial motions, and assist in all aspects of trial preparation. With client consent and instructor supervision, students may represent clients before administrative hearings.

### **LEARNING OBJECTIVES**

Through in-class instruction and practical experience with real clients in judicial and administrative proceedings, students will:

1. Demonstrate understanding of substantive and procedural law under the UCMJ and applicable administrative regulations;
2. Analyze a military client's case and prepare an investigation strategy/roadmap of the case;
3. Understand the process of investigation and witness preparation;
4. Engage in legal analysis and reasoning, legal research, written and oral advocacy before military tribunals and administrative hearings;
5. Prepare the client's case for trial/hearing or appellate practice;
6. Evaluate and internalize the ethical and professional considerations of defense counsel and officers of the court.

### **LEARNING OUTCOMES**

From taking this course, students will be able to (1) understand the laws governing military criminal justice and adverse administrative actions; (2) build a cohesive team of student-attorneys with experience representing military members and veterans in legal proceedings; and (3) internalize the ethical obligations and real-world practice realities of representing those facing criminal allegations in the military context.

## ATTORNEY-CLIENT COMMUNICATIONS AND ATTORNEY WORK-PRODUCT

During class instruction, case investigation and representation, students will serve as members of the defense team in cases where maturity and professional discretion are paramount to effective and ethical advocacy. Students may not share privileged information regarding assigned cases without written consent of both Professor Marquez and the affected client.

## CLASS MATERIALS

Materials will be provided to students at least one week prior to scheduled classes via SharePoint and/or via e-mail. Supplemental material may be provided less than one week prior to scheduled classes accounting for client needs.

## ATTENDANCE

In accordance with UHLC policy, students must attend at least 80% of regularly scheduled classes. Class time and day will be formulated after students and instructor collaborate on an optimal schedule. Classes will be held at the new John M. O'Quinn Law Building, with allowance for instructor to adjust to remote attendance via Zoom given the changing COVID-19 environment. Any student unable to attend scheduled in-person class sessions will coordinate with the instructor and will be given access to remote-in via Zoom. Given the unpredictability of the COVID-19 pandemic, students should attempt to notify the instructor of the need for individual remote access via Zoom at least 24 hours in advance.

If you are experiencing any COVID-19 symptoms that are not clearly related to a pre-existing medical condition, do not come to class. Please see Student Protocols for what to do if you experience symptoms and Potential Exposure to Coronavirus for what to do if you have potentially been exposed to COVID-19.

## COVID-19 INFORMATION

Students are encouraged to visit the University's COVID-19 website for important information including diagnosis and symptom protocols, on-campus testing, and vaccine information. Please check the website throughout the semester for updates.

## VACCINATIONS

Data suggests that vaccination remains the best intervention for reliable protection against COVID-19. Students are asked to familiarize themselves with pertinent vaccine information and to consult with their health care provider. The University strongly encourages all students, faculty and staff to be vaccinated.

## OFFICE HOURS

Office hours will be available Monday-Friday by appointment. To allow the course instructor time for flexibility in scheduling, please request appointments at least 24 hours in advance.

## CLASS REQUIREMENTS & UHLC GRADE POLICIES

As a graded course, students will be evaluated on a variety of factors, including attendance, participation during class instruction, three 10 question quizzes throughout the semester, four journal entries, and quality of work representing clients.

Students are expected to complete two-page journal entry every three weeks that will be graded on a 10 point scale. Journal entries are due beginning on the first class day of the third week of instruction.

Journal entries should focus on case preparation notes, potential avenues of investigation and general case strategy, and any topics related to the UCMJ or the military criminal justice system the student would like to discuss. Journal entries will omit specific client identifying information, including names and other identifying information (DOB, specific locations, etc). Journal entries are due at the start of classroom instruction and will be returned to students by the beginning of the next class.

50 hours of clinic instruction and work are required for each credit hour. A minimum of 3 credit hours are required for this course, with a maximum of 4 credit hours. Hours are awarded for classroom instruction, legal research, case investigation, trial/hearing preparation, time spent in trial or hearing proceedings, and administrative tasks associated with the course. Students with questions regarding additional duties not listed above should discuss the matter with the instructor prior to undertaking the task.

Course overall grades will be broken down as follows:

Client case work: 60%

Class participation: 20%

Quiz results: 10%

Journal entries: 10%

Please refer to UHLC Clinic Student Manual for additional guidance.

## REASONABLE ACADEMIC ADJUSTMENTS/AUXILIARY AIDS

The University of Houston complies with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, pertaining to the provision of reasonable academic adjustments/auxiliary aids for disabled students. In accordance with Section 504 and ADA guidelines, UH strives to provide reasonable academic adjustments/auxiliary aids to students who request and require them. If you believe that you have a disability requiring an academic adjustments/auxiliary aid, please contact the Justin Dart Jr. Student Accessibility Center (formerly the Justin Dart, Jr. Center for Students with DisABILITIES).

## COUNSELING AND PSYCHOLOGICAL SERVICES (CAPS)

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS ([www.uh.edu/caps](http://www.uh.edu/caps)) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let's Talk” program, a drop-in consultation service at convenient locations and hours around campus.

[http://www.uh.edu/caps/outreach/lets\\_talk.html](http://www.uh.edu/caps/outreach/lets_talk.html)

## RECORDING OF CLASS

Recording of Class Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the Justin Dart, Jr. Student Accessibility Center. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with

requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

### SYLLABUS CHANGES

Due to the changing nature of the COVID-19 pandemic, please note that the instructor may need to make modifications to the course syllabus and may do so at any time. Notice of such changes will be announced as quickly as possible via email from the course instructor.

### PREFERRED NAME(S)/PRONOUN(S)/PREFIX STATEMENT

If you have preferred name(s)/pronoun(s) and/or would favor a particular prefix, I will gladly honor your request. Please advise me early in the semester, so I may make appropriate changes to my records. Any lapses should be attributed to failings of memory, as your preferences are respected in this class.

### SENSITIVITY TO CULTURAL ISSUES AND/OR DIVERSITY

The University of Houston does not tolerate any behavior by administrators, faculty, staff, or students, which constitutes unlawful harassment of students on the basis of race, color, sex, religion, national origin, disabled veteran status, age, sexual orientation, or physical or mental disability whether or not the level of conduct rises to unlawful harassment or discrimination. Such forms of harassment have been recognized as discriminatory and as such violate University policy as well as state and federal statutes. Exposure to discrimination, harassment (including sexual and/or religious harassment), and/or insensitivity to cultural issues impairs UH's goals of transmitting and creating knowledge and enhancing student education.

If you feel that you have been exposed to discriminatory practices and/or insensitivity to cultural issues in this or any other setting affiliated with UH, you have the right to have your concerns addressed. One way to address these concerns would be to meet with me, either privately after class or outside of class - by appointment.

### TITLE IX/SEXUAL MISCONDUCT

Per the UHS Sexual Misconduct Policy, your instructor is a “responsible employee” for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>.

### SECURITY ESCORTS AND COUGAR RIDE

UHPD continually works with the University community to make the campus a safe place to learn, work, and live. Our Security escort service is designed for the community members who have safety concerns and would like to have a Security Officer walk with them, for their safety, as they make their way across campus. Based on availability either a UHPD Security Officer or Police Officer will escort students, faculty, and staff to locations beginning and ending on campus. If you feel that you need a Security Officer to walk with you for your safety please call 713-743-3333. Arrangements may be made for special needs.

Parking and Transportation Services also offers a late-night, on-demand shuttle service called Cougar Ride that provides rides to and from all on-campus shuttle stops, as well as the MD Anderson Library, Cougar Village/Moody Towers and the UH Technology Bridge. Rides can be requested through the UH Go app. Days and hours of operation can be found at <https://uh.edu/af-university-services/parking/cougar-ride>.

**COURSE SCHEDULE (see attached Appendix)**

Week/Date	Reading Assignments	Topics	Assignments
Week 1 Day 1: Instruction Day 2: Case Work	See Appendix.	Intro to Military Justice Clinic Policies and Procedures.	Case assignments.
Week 2 Day 1: Instruction Day 2: Case Work	See Appendix.	Investigations.	Initial case conferencing.
Week 3 Day 1: Instruction Day 2: Case Work	See Appendix.	Nonjudicial Punishment	*Journal entry due; Case Strategies.
Week 4 Day 1: Instruction Day 2: Case Work	See Appendix.	Adverse Administrative Separations.	Quiz 1; Case Update.
Week 5 Day 1: Instruction Day 2: Case Work	See Appendix	Adverse Administrative Actions	Case Update
Week 6 Day 1: Instruction Day 2: Case Work	See Appendix	Administrative Appeals	*Journal entry due; Case Update
Week 7 Day 1: Instruction Day 2: Case Work	See Appendix.	The UCMJ in Constitutional Context. The Court-Martial Process.	Case Update.
Week 8 Day 1: Instruction Day 2: Case Work	See Appendix.	Discovery, Witnesses and Expert Witnesses.	Quiz 2; Case Update.
Week 9 Day 1: Instruction Day 2: Case Work	See Appendix.	<i>Voir Dire</i> and Jury Selection.	*Journal entry due; Case Update.
Week 10 Day 1: Instruction Day 2: Case Work	See Appendix.	Presentation on Merits and Presentencing Procedure/ Sentence Determination.	Case Update.
Week 11 Day 1: Instruction Day 2: Case Work	See Appendix.	UCMJ Punitive Article 77 (Principals) through Article 109 (Destroying or Damaging Nonmilitary Property)	Case Update.
Week 12 Day 1: Instruction Day 2: Case Work	See Appendix.	UCMJ Punitive Article 109a (Mail-Taking) through 120c (Indecent Exposure)	*Final journal entry; Case Update.
Week 13 Day 1: Instruction Day 2: Case Work	See Appendix.	UCMJ Punitive Article 121 (Larceny) through 134 – (Stragglings)	Case Update.

Week 14 Day 1: Instruction Day 2: Case Work	See Appendix.	Professional Conduct and Case Closeout.	Client closeout/transfer meeting Final Quiz (3)
---	---------------	--	--

#### CLIENT AND CASE LOCATION

Cases will be primarily drawn from three U.S. Army Trial Defense Service Field Offices located at Fort Hood, Fort Sam Houston, and Fort Polk. Each military installation is approximately 200 miles from the University of Houston’s central campus. As the MJC continues to expand, cases may be drawn from other branches of service and locations. Except for trials and administrative board hearings, all casework can be accomplished locally at the UHLC. Students will not be required to travel to any military installation during the semester, but accommodations will be made available if students wish to be present for board hearings or trials. Students should expect that board hearings and trials could take-up 3-4 days (total) during the semester. These days may be replaced with trips to observe Courts-Martial, administrative separation hearings, and Article 15 proceedings.

## APPENDIX

### **Week 1: Introduction, syllabus review, and reviewee/client assignments**

### **Week 2: Investigations**

Army Regulation (AR) 15-6, April 2016 - Chapter 1 - pg. 1-3; Chapter 2 - pg. 4-5, 13-19; Chapter 3 – pg. 20-25; Chapter 4 – pg. 31; Chapter 5 – pg. 33; Chapter 6 – pg. 34; Chapter 7 – pg. 35-39.

Army Regulation (AR) 195-2, July 2020 - Chapter 3 - Para 3-20 through Para 3-31, pg. 13-16; Chapter 6 – Para 6-1 through Para 6-6, pg. 23-24.

Army Regulation (AR) 20-1, March 2020 - Chapter 6 – pg. 44-54; Chapter 7 – pg. 55-64.

Manual for Courts-Martial (MCM), 2019 – UCMJ Article 31, MCM Appendix 2, A2-11; Mil R. Evid. (MRE) 304, Pg. III-4 through III-6; MRE 305, pg. III-6 through III-8.

### **Week 3: Nonjudicial Punishment and Adverse Administrative Action**

Manual for Courts-Martial (MCM), 2019 - UCMJ Article 15, MCM Part V, V-1 through V-9; MCM Appendix 2, A2-5 through A2-6; MCM Appendix 18, A18-1 through A18-2.

Army Regulation (AR) 27-10, November 2020 – Chapter 3, Nonjudicial Punishment, pg.3 through pg.24.

### **Week 4: Adverse Administrative Separations**

Army Regulation (AR) 635-200, December 2016 – Chapter 2, Section I and Section II, pg. 21 through 30; Chapter 3, Section II, pg. 45 through 49; Chapter 13, Section I and Section II, pg. 98 through 100; Chapter 14, Section 1, Section II, and Section III, pg. 100 through 105.

Army Regulation (AR) 600-8-24, February 2020 – Chapter 4, Section I, Section II, and Section III, pg. 60 through pg. 75.

### **Week 5: Adverse Administrative Actions**

Army Regulation (AR) 600-37, October 2020 - Chapter 3, pg. 3 thorough pg. 7; Chapter 6, pg. 9 through pg. 10; Chapter 7, pg. 11 through 14.

Army Regulation (AR) 623-3, June 2019 – Chapter 3. Specific attention to sections VI, VII, VIII, IX.

Army Regulation (AR) 15-80, February 2020. Entire regulation (21 pages).

### **Week 6: Administrative Appeals**

Army Regulation (AR) 623-3, June 2019 – Chapter 4.

Army Regulation (AR) 15-180, July 2021. Entire regulation (20 pages).

Army Regulation (AR) 15-185, March 2006. Entire regulation (15 pages)

Hagal Memo (2014)

Carson Memo (2016)

Kurta Memo (2017)

Wilkie Memo (2018)

#### **Week 7:**

##### **The Uniform Code of Military Justice in Constitutional Context:**

Military Criminal Justice, Seventh Edition, Excerpt, pg. 3-12.

##### **The Court-Martial Process:**

Manual for Courts-Martial (MCM), 2019 – Rule for Courts-Martial (RCM) 307, pg. II-29 through II-33; RCM 309, pg. II-33 through II-34; RCM 401, pg. II-35; RCM 404, pg. II-37; RCM 404A, pg. II-38; RCM 405, pg. II-39 through II-47; RCM 406, pg. II-47; RCM 406A, pg. II-48; RCM 407, pg. II-48; UCMJ Article 32, MCM Appendix 2, A2-12.

Courts-Martial Flow-Chart and Diagram (in SharePoint)

Rules for Practice Before Army Courts-Martial, 2022

#### **Week 8: Discovery, Witnesses and Expert Witnesses**

Manual for Courts-Martial (MCM), 2019 – UCMJ Article 46, MCM Appendix 2, A2-16 through A2-17.

Manual for Courts-Martial (MCM), 2019 – Rule for Courts-Martial (RCM) 701, pg. II-67 through II-70; RCM 703, pg. II-74 through II-76.

Manual for Courts-Martial (MCM), 2019 – Mil. R. Evid. (MRE) 702, pg. III-43; MRE 703, pg. III-43; MRE 704, pg. III-43; MRE 705, pg. III-43; MRE 706, pg. III-43 through III-44; MRE 707, pg. III-44.

*United States v. Walker*, 66 M.J. 721 (N-M. Ct. Crim. App. 2008); *United States v. Jackson*, 59 M.J. 330 (C.A.A.F. 2004); *United States v. King*, 32 M.J. 709 (A.C.M.R. 1991); *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *United States v. Behenna*, 71 M.J. 228 (C.A.A.F. 2012); *Giglio v. United States*, 405 U.S. 150 (1972); *United States v. Mahoney*, 58 M.J. 346 (C.A.A.F. 2003); *United States v. Houser*, 36 M.J. 392 (C.A.A.F. 1993); *United States v. McElhaney*, 54 M.J. 120 (C.A.A.F. 2000); *United States v. Katso*, 74 M.J. 273 (C.A.A.F. 2015); *United States v. Blazier*, 69 M.J. 218 (C.A.A.F. 2010); *Daubert v. Merrell Dow*



*Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *United States v. Stellato*, 74 M.J. 473 (C.A.A.F. 2015); *United States v. Short* (including dissent), 77 M.J. 148 (C.A.A.F. 2018).

*\*Individual student assigned readings for class discussion TBD*

### **Week 9: Voir Dire and Impaneling Members**

Manual for Courts-Martial (MCM), 2019 - Rule for Courts-Martial (RCM) 912, pg. II-120 through II-123; RCM 912A, pg. II-123 through II-125; RCM 912B, pg. II-125; Article 41, UCMJ, pg. A2-15.

*United States v. Bragg*, 66 M.J. 325 (C.A.A.F. 2008); *United States v. James*, 61 M.J. 132 (C.A.A.F. 2005); *United States v. Terry*, 64 M.J. 295 (C.A.A.F. 2007); *United States v. Napolitano*, 53 M.J. 162 (C.A.A.F. 2000); *United States v. Clay*, 64 M.J. 274 (C.A.A.F. 2007); *United States v. Elfayoumi*, 66 M.J. 354 (C.A.A.F. 2008); *United States v. Schlamer*, 52 M.J. 80 (C.A.A.F. 1999).

*\*Individual student assigned readings for class discussion TBD*

### **Week 10: Presentation on Merits and Presentencing Procedure/Sentence Determination**

Manual for Courts-Martial (MCM), 2019 - Rule for Courts-Martial (RCM) 913, pg. II-125 through II-126; RCM 1001, pg. II-140 through II-144; RCM 1002, pg. II-145 through II-147; RCM 1003, pg. II-147 through II-151.

### **Week 11: UCMJ Punitive Article 77 (Principals) through Article 109 (Destroying or Damaging Nonmilitary Property)**

DA Pamphlet 27-9, Military Judges' Benchbook, 22 MAR 2021 – pg. 997 through 1235.

*\*individual student assigned readings for class discussion TBD.*

### **Week 12: UCMJ Punitive Article 109a (Mail-Taking) through Article 120c – (Indecent Exposure)**

DA Pamphlet 27-9, Military Judges' Benchbook, 22 MAR 2021 – pg. 1236 through 1431.

*\*Individual student assigned readings for class discussion TBD.*

### **Week 13: UCMJ Punitive Article 121 (Larceny) through Article 134 – (Stragglings)**

DA Pamphlet 27-9, Military Judges' Benchbook, 22 MAR 2021 – pg. 1432 through 1647.

*\*Individual student assigned readings for class discussion TBD.*

### **Week 14: Professional Conduct**

Army Regulation (AR) 27-26, June 2018 – Rule 1.1 through Rule 1.18; Rule 2.1 through 2.4; Rule 3.1 through 3.9; Rule 4.1 through 4.4.