

108. Article 134—(Testify: wrongful refusal)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) That the accused was in the presence of a court-martial, board of officer(s), military commission, court of inquiry, an officer conducting an investigation under Article 32, or an officer taking a deposition, of or for the United States, at which a certain person was presiding;

(2) That the said person presiding directed the accused to qualify as a witness or, having so qualified, to answer a certain question;

(3) That the accused refused to qualify as a witness or answer said question;

(4) That the refusal was wrongful; and

(5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* To “qualify as a witness” means that the witness declares that the witness will testify truthfully. See R.C.M. 807; Mil. R. Evid. 603. A good faith but legally mistaken belief in the right to remain silent does not constitute a defense to a charge of wrongful to testify. See also Mil. R. Evid.

301 and Section V.

d. *Lesser included offenses.* None.

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), being in the presence of (a) (an) ((general) (special) (summary) court-martial) (board of officer(s)) (military commission) (court of inquiry) (officer conducting a preliminary hearing under Article 32, Uniform Code of Military Justice) (officer taking a deposition) () (of) (for) the United States, of which _____ was (military judge) (president), (), (and having been directed by the said _____ to qualify as a witness) (and having qualified as a witness and having been directed by the said _____ to answer the following question(s) put to him/her as a witness, “_____”), did, (at/on board—location), on or about _____ 20 _____, wrongfully refuse (to qualify as a witness) (to answer said question(s)).