Article 134 ¶108

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 confine- ment for 5 years.
- f. Sample specification.

In that	(personal jur	isdiction dat	a), being in	the presence	of (a) (a	n) ((general)	(special)
(summary) court-mar	tial) (board of	officer(s)) (n	nilitary commi	ssion) (court	of inquiry	(officer co	nducting a
preliminary hearing u	nder Article 32,	Uniform Co	de of Militar	y Justice) (officer to	aking a de	position) (
) (of) (for) the Uni	ted States, of	which	was (military	judge) (pre	esident), (), (and ha	wing been
directed by the said	to qualify as	a witness) (and having qu	alified as a	witness and	l having bee	n directed
by the said to	o answer the fo	ollowing que	stion(s) put to	him/her as	a witness,	""),	did, (at/on
board-location), on	or about	20 , w	rongfully refu	se (to qualify	y as a wit	ness) (to an	swer said
question(s)).							