

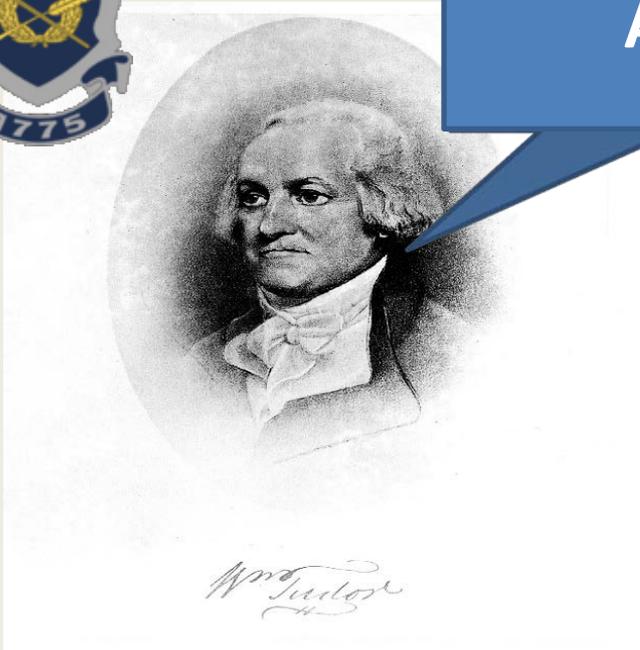
Military Justice and Federal Criminal Justice: A Procedural Comparison

Chief Judge Frank Whitney



The PLAINTIFF is the same in both federal systems.

“I represent the
United States of
America”

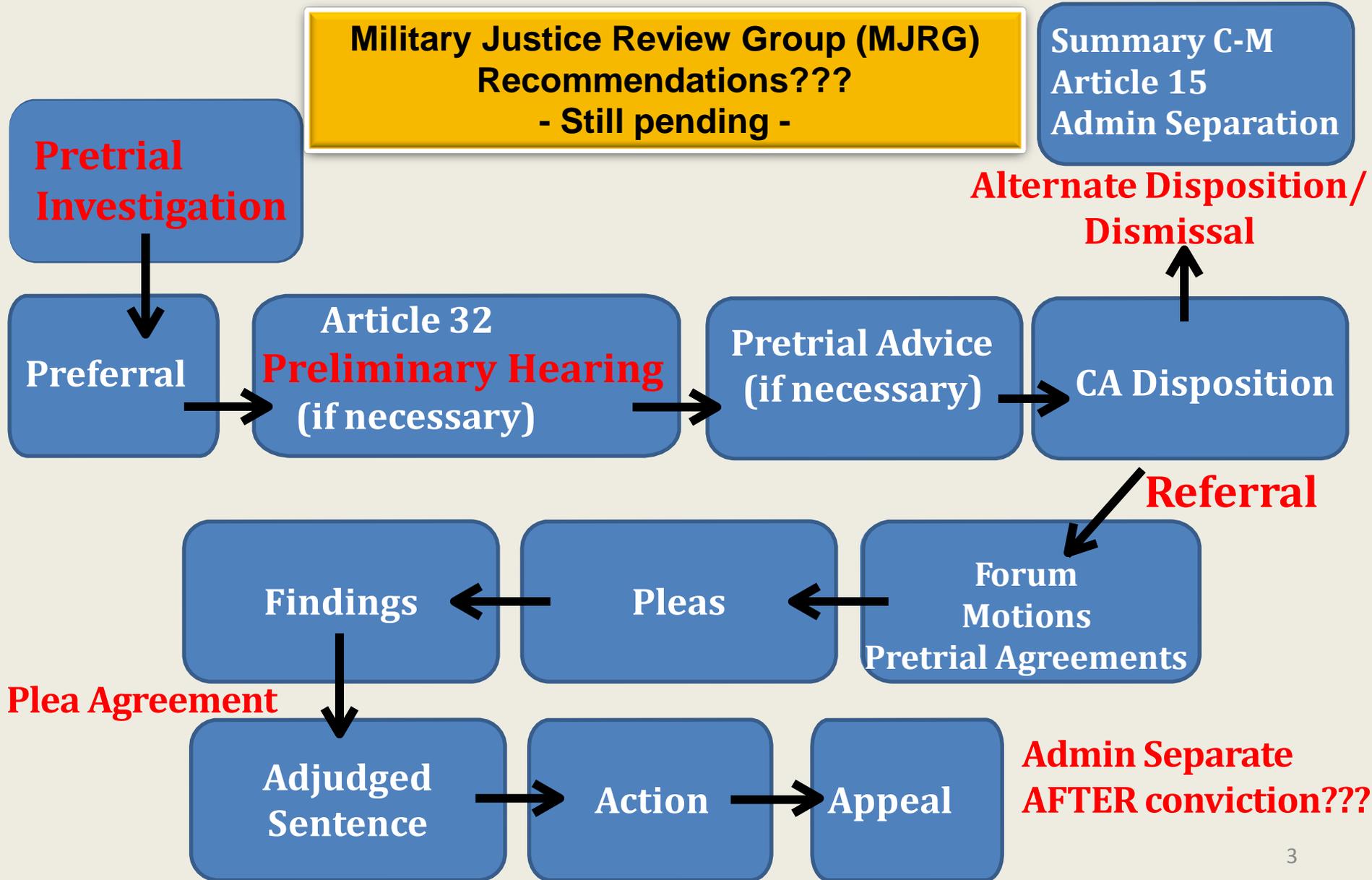


Lieutenant Colonel William Tudor
First Judge Advocate General
July 29, 1775-1777



Edmund Jennings Randolph
First Attorney General
September 26, 1789-1794

Court-Martial Process



VALIDITY & LEGITIMACY

- Discipline Downrange -

CPT Stiff	PV2 Zimprich	MSG Cain
SSG Perez	SPC Carrasquillo	SPC Kelley
SPC Raines - drugs	SGT Martinez	SPC Skates
PFC Edwards -drugs	SGT Lynch - fraud	PFC McIver
SPC Jones - robbery	SFC Barber	
PV2 Irons	SPC Belcher - drugs	
SPC Hirschert	SGT Fenrick - shooting	

DOD Sexual Assault Prevention and Response (SAPR) Strategic Plan

SAPR Mission, Lines of Effort and Objectives

Mission: The Department of Defense prevents and responds to the crime of sexual assault in order to enable military readiness and reduce—with a goal to eliminate—sexual assault from the military.

Lines of Effort

Objectives



Figure 3: The Lines of Effort and Objectives of the 2013 DoD SAPR Strategic Plan

Courts

Federal

- Article III Courts
- Other courts beyond scope of this presentation....

Military

- **Article I Courts**
- Congress created several Article I, or legislative courts, that do not have full judicial power. Judicial power is the authority to be the final decider in all questions of Constitutional law, all questions of federal law and to hear claims at the core of habeas corpus issues. Article I Courts are:

Counsel



Federal

- Assistant U.S. Attorneys
- Federal Defender
- Community Defender

Military

- Trial Defense Counsel
 - **Trials; Boards, NJP advice is large volume**
 - **Senior Defense Counsel, Regional DC**
- Trial Counsel (TC)
 - Senior TC, Chief of Justice
- Special Victim Prosecutors
 - Special Victim Paralegals (2014)
- Special Victim Counsel (SVC)/Victim Legal Counsel
- Trial Counsel Assistance Program (TCAP)
- Highly Qualified Experts
- Defense Counsel Assistance Program (DCAP)

Purpose

Federal

- Attorney General, 1789
- DOJ Mission Statement:

To enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.

Military

- The Judge Advocate General, 1775
- The Uniform Code of Military Justice (UCMJ) manual states that the purpose of military law is "to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States."

Jurisdiction

Federal

- All sexual assault cases under the special maritime and territorial jurisdiction of the United States
- **“Indian Tribes” (under Interstate Commerce Clause, Art. I, Sec. 8, cl. 2)** crimes committed within Indian Country as defined by 18 U.S.C. § 1151(a) reservations, (b) dependent Indian communities, and (c) Indian allotments held in trust.
- **MEJA & PATRIOT ACT - reach civilians accompanying the force or on overseas military bases....**
- **USA v. David Passaro**

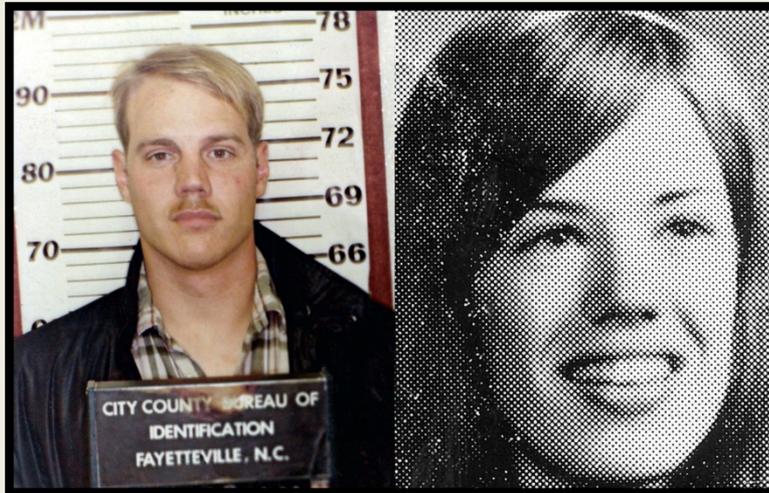
Military

- **§ 802. Art. 2. Persons subject to this chapter**
- **§ 803. Art. 3. Jurisdiction to try certain personnel**
- **§ 805. Art. 5. Territorial applicability of this chapter ...*This chapter applies in all places.***

Case Studies of Jurisdiction

- Separate Sovereign -

1985



2006



Judges

Federal

- Art. III
- Art. I (Magistrate Judges for preliminary matters only)
- Federal Judicial Center (FJC)

Military

- Art. I {Art. 26, UCMJ}
- Trial Judiciary
 - 3 week course
- Appellate Courts
- Court of Appeals of the Armed Forces

Initiation of Charges

Federal

- Complaint
- Grand Jury Indictment
(or Presentment)
- Bill of Information

United States of America
v.
Mr. John Smith

Military

- Preferral of charges
(RCM 307)

United States of America
v.
Private John Smith

Review of Initial Charges

Federal

- Indictment/Presentment/Bill of Information = no review
- Complaint
 - Preliminary Hearing before a Magistrate Judge

Military

- Summary/Special Court-Martial = no review of the charges required
- General Court-Martial
 - Article 32 Investigation (if GCM)
 - Preliminary Hearing Officer (PHO)*
 - Must be a Judge Advocate in cases with Art. 120(a), (b), Art. 120b (on a child); Art. 125 (forcible sodomy);
 - + Art. 80, Attempts of the above...

* Art. 32 revisions in 2014 modeled after Fed. R. Crim. Pro. 5.1

Case Study of Art. 32, UCMJ Review



Final Charges

Federal

- Indictment returned by a Grand Jury

Military

- Pretrial Advice (RCM 406)
Referral by Convening Authority
- ***Unlawful Command Involvement?***
- ***Involvement of the Commander in Prosecutorial Functions (Garrison vs. Area of Operations)***

Right to Counsel

Federal

- Appointed if unable to afford
- BUT no appointed counsel until charges brought

Military

- TDS detailed in all cases from beginning/request
- Right to hire qualified civilian attorney or request Individual Military Counsel

Pretrial Confinement

Federal

- Magistrate Judge must hold hearing within three (3) business days
- Must find that no combination of conditions will reasonably assure the appearance of the person or the safety of another person/community
18 U.S.C. 3161

Military

- Ordered by Commander
- Military Magistrate must hold hearing within seven (7) days
- Must find probable cause of crime, flight risk or risk of serious criminal misconduct, and less severe forms or restraint are inadequate
RCM 305 (h) & (i)

Speedy Trial

Federal

- Seventy (70) days from initial appearance
 - But continuances frequently granted for ends of justice
- 18 U.S.C. 3161

Military

- One hundred twenty (120) days from preferral or arrest
- RCM 707(a)

Discovery

Federal

- Statements of Defendant
- Relevant documents and objects
- Reports of examinations and tests
- Prior criminal record
- Reciprocal discovery to Government

Military

- All statements related to the case
- Relevant documents and objects
- Reports of examinations and tests
- Prior criminal record
- Reciprocal discovery to Government

Pretrial Motions

Federal

- Ruled on by District Judge
(with referral to Magistrate
Judge possible)

Military

- Ruled on by Military Judge
(Article 39)

Plea Agreements

Federal

- Terms must be accepted by Judge who knows all terms before imposing sentence
- *Alford* Plea – defendant proclaims he is innocent of the crime, and admits that the prosecution has enough evidence to prove that he is guilty beyond a reasonable doubt.

Military

- Contract is with Convening Authority
- **Sentencing Authority (military judge or panel) does not know terms of agreement**
- Accused gets lesser sentence

Jury Composition

Federal

- Twelve (12) citizens as primary jurors
- Alternates (usually two) at discretion of Court

Military

- GCM: Five (5) or more officers, or one third (1/3) enlisted if Accused is enlisted and so requests
- SPCM: Three (3) or more

Jury Selection

Federal

- Government receives six (6) peremptory challenges
- Defense receives ten (10) peremptory challenges
- In multi-Defendant case, Court may allow additional peremptory challenges
- “For cause” challenges unlimited
- One (1) peremptory challenge for alternates

Military

- One (1) peremptory challenge per side
- “Liberal grant mandate” for accused in “for cause” challenges

Rules of Evidence

Federal

- Federal Rules of Evidence

Military

- Military Rules of Evidence
- Substantially the FRE
- Some civil rules do not apply (301, 302, 415, 902(12))
- If FRE change, then MRD automatically change 18 months later
- Rules can be relaxed in defense sentencing case (RCM 1001(c)(3))

Trial Procedures

Federal

- Federal Rules of Criminal Procedure (FRCrP)

Military

- Rules for Court Martial (RCM)
- Substantially the same as FRCrP
- Exception:
 - Panel does sentencing unless accused selects judge alone

Verdict

Federal

- Unanimous
- Must have at least eleven jurors still sitting

Military

- Two thirds (2/3)

Voting Procedure

Federal

- Must vote until unanimous whether Guilty or Not Guilty
- Hung jury leads to mistrial

Military

- One vote only
- If less than two thirds ($< 2/3$), then Not Guilty

Sentencing Authority

Federal

- Judge alone

Military

- Fact finder (panel is default)
- Accused may opt for Judge alone if plea or bench trial

Sentencing Options

Federal

- Imprisonment
- Fine
- Mandatory restitution
- Probation with conditions
- Supervised release following release from imprisonment

Military

- Confinement
- Fine (w/ extra confinement if not paid)
- Forfeiture of pay & allowances
- No restitution (but Art. 139)
- Reduction in rank
- Hard labor without confinement
- Restriction
- Reprimand
- Punitive discharge

Sentencing Instructions

2-6-9. SENTENCING INSTRUCTIONS

MJ: Members of the Court, you are about to deliberate and vote on the sentence in this case. It is the duty of each member to vote for a proper sentence for the offense(s) of which the accused has been found guilty. Your determination of the kind and amount of punishment, if any, is a grave responsibility requiring the exercise of wise discretion. Although you must give due consideration to all matters in mitigation and extenuation, (as well as to those in aggravation), you must bear in mind that the accused is to be sentenced only for the offense(s) of which (he) (she) has been found guilty.

Sentencing Instructions

(MAXIMUM PUNISHMENT:) MJ: The maximum punishment that may be adjudged in this case is:

- a. Reduction to the grade of _____,
- b. Forfeiture of ((2/3ds) (___) pay per month for (12) (___) months) (all pay and allowances),
- c. Confinement for _____, (and),
- d. (A dishonorable discharge) (A bad-conduct discharge) (dismissal from the service).

The maximum punishment is a ceiling on your discretion. You are at liberty to arrive at any lesser legal sentence.

MJ: In adjudging a sentence, you are restricted to the kinds of punishment which I will now describe ((IF NO MANDATORY MINIMUM SENTENCE:)) or you may adjudge no punishment). There are several matters which you should consider in determining an appropriate sentence. You should bear in mind that our society recognizes five principal reasons for the sentence of those who violate the law. They are rehabilitation of the wrongdoer, punishment of the wrongdoer, protection of society from the wrongdoer, preservation of good order and discipline in the military, and deterrence of the wrongdoer and those who know of (his) (her) crime(s) and (his) (her) sentence from committing the same or similar offenses. The weight to be given any or all of these reasons, along with all other sentencing matters in this case, rests solely within your discretion.

Types of Punishment – Stigma???

(PUNITIVE DISCHARGE:) MJ: You are advised that the stigma of a punitive discharge is commonly recognized by our society. A punitive discharge will place limitations on employment opportunities and will deny the accused other advantages which are enjoyed by one whose discharge characterization indicates that (he) (she) has served honorably. A punitive discharge will affect an accused's future with regard to (his) (her) legal rights, economic opportunities, and social acceptability.

NOTE: Effect of punitive discharge on retirement benefits. The following instruction must be given, if requested and the evidence shows any of the following circumstances exist: (1) The accused has sufficient time in service to retire and thus receive retirement benefits; (2) In the case of an enlisted accused, the accused has sufficient time left on his current term of enlistment to retire without having to reenlist; (3) In the case of an accused who is a commissioned or warrant officer, it is reasonable that the accused would be permitted to retire but for a punitive discharge. In other cases, and especially if the members inquire, the military judge should consider the views of counsel in deciding whether the following instruction, appropriately tailored, should be given or whether the instruction would suggest an improper speculation upon the effect of administrative or collateral consequences of the sentence. A request for an instruction regarding the effect of a punitive discharge on retirement benefits should be liberally granted and denied only in cases where there is no evidentiary predicate for the instruction or the possibility of retirement is so remote as to make it irrelevant to determining an appropriate sentence. The military judge should have counsel present evidence at an Article 39(a) session or otherwise to determine the probability of whether the accused will reach retirement or eligibility for early retirement. Any instruction should be appropriately tailored to the facts

Types of Punishment 2

(In addition, a punitive discharge terminates the accused's status and the benefits that flow from that status, including the possibility of becoming a military retiree and receiving retired pay and benefits.)

NOTE: Legal and factual obstacles to retirement. If the above instruction is appropriate, evidence of the legal and factual obstacles to retirement faced by the particular accused is admissible. If such evidence is presented, the below instruction should be given. United States v. Boyd, 55 MJ 217 (CAAF 2001).

(On the issue of the possibility of becoming a military retiree and receiving retired pay and benefits, you should consider the evidence submitted on the legal and factual obstacles to retirement faced by the accused.)

NOTE: Vested benefits. Before giving the optional instruction concerning vested benefits contained in the below instructions, see United States v. McElroy, 40 MJ 368 (CMA 1994).

(DISHONORABLE DISCHARGE ALLOWED:) MJ: This court may adjudge either a dishonorable discharge or a bad-conduct discharge. Such a discharge deprives one of substantially all benefits administered by the Department of Veterans Affairs and the Army establishment. (However, vested benefits from a prior period of honorable service are not forfeited by receipt of a dishonorable discharge or a bad-conduct discharge that would terminate the accused's current term of service). A dishonorable discharge should be reserved for those who, in the opinion of the court, should be separated under conditions of dishonor after conviction of serious offenses of a civil or military nature warranting such severe punishment. A bad-conduct discharge is a severe punishment, although less severe than a dishonorable discharge, and may be adjudged for one who in the discretion of the court warrants severe punishment for bad conduct (even though such bad conduct may not include the commission of serious offenses of a military or civil nature.)

(ONLY BAD-CONDUCT DISCHARGE ALLOWED:) MJ: This court may adjudge a bad-conduct discharge. Such a discharge deprives one of substantially all benefits administered by the Department of Veterans Affairs and the Army establishment. (However, vested benefits from a prior period of honorable service are not forfeited by receipt of a bad-conduct discharge that would terminate the accused's current term of service.) A bad-conduct discharge is a severe punishment and may be

Sentence of “No Punishment”

adjudged for one who in the discretion of the court warrants severe punishment for bad conduct (even though such bad conduct may not include the commission of serious offenses of a military or civil nature.)

(DISMISSAL:) MJ: This court may adjudge a dismissal. You are advised that a sentence to a dismissal of a (commissioned officer) (cadet) is, in general, the equivalent of a dishonorable discharge of a noncommissioned officer, a warrant officer who is not commissioned, or an enlisted service member. A dismissal deprives one of substantially all benefits administered by the Department of Veterans Affairs and the Army establishment. It should be reserved for those who, in the opinion of the court, should be separated under conditions of dishonor after conviction of serious offenses of a civil or military nature warranting such severe punishment. Dismissal, however, is the only type of discharge the court is authorized to adjudge in this case.

(NO PUNISHMENT:) MJ: Finally, if you wish, this court may sentence the accused to no punishment.

In selecting a sentence, you should consider all matters in extenuation and mitigation as well as those in aggravation, (whether introduced before or after your findings). (Thus, all the evidence you have heard in this case is relevant on the subject of sentencing.)

Extenuation and Mitigation

2-6-11. OTHER INSTRUCTIONS

MJ: You should consider evidence admitted as to the nature of the offense(s) of which the accused stands convicted, plus:

- 1. The accused's age.**
- 2. The accused's good military character.**
- 3. The accused's (record) (reputation) in the service for (good conduct) (efficiency) (bravery).**
- 4. The prior honorable discharge(s) of the accused.**
- 5. The combat record of the accused.**
- 6. The (family) (domestic) difficulties experienced by the accused.**
- 7. The financial difficulties experienced by the accused.**
- 8. The accused's (mental condition) (mental impairment) (behavior disorder) (personality disorder).**
- 9. The accused's (physical disorder) (physical impairment) (addiction).**
- 10. The duration of the accused's pretrial confinement or restriction.**
- 11. The accused's GT score of _____.**
- 12. The accused's education which includes: _____.**
- 13. That the accused is a graduate of the following service schools: _____.**
- 14. That the accused's (OER's) (NCOER's) (_____) indicate: _____.**
- 15. That the accused is entitled to wear the following medals and awards: _____.**
- 16. Lack of previous convictions or Article 15 punishment.**
- 17. Past performance and conduct in the Army as reflected by _____.**
- 18. Character evidence—testimony of _____.**
- 19. (Accused's testimony _____.)**
- 20. (The accused's expression of his desire to remain in the service.)**
- 21. (That the accused has indicated that (he/she) does not desire a (BCD) (DD) (Dismissal).)**

Sentencing Instructions 2

22. (Testimony of _____, _____, _____.)

MJ: Further you should consider:

(Previous convictions) _____.

(Prior Article 15s) _____.

(Prosecution exhibits, stipulations, etc.)

(Rebuttal testimony of _____).

(Nature of the weapon used in the commission of the offense.)

(Nature and extent of injuries suffered by the victim.)

(Period of hospitalization and convalescence required for victim.)

Rehabilitative Potential

NOTE: When evidence of rehabilitative potential, defense retention evidence, or government rebuttal to defense retention evidence is introduced, the military judge should consider the following instructions, tailored to the specific evidence. See United States v. Eslinger, 70 MJ 193 (CAAF 2011); United States v. Griggs, 61 MJ 402 (CAAF 2005).

(IF REHABILITATIVE POTENTIAL EVIDENCE IS PRESENTED:) MJ: You have heard testimony from (name witness(es)) indicating an opinion regarding the accused's rehabilitative potential. "Rehabilitative potential" refers to the accused's potential to be restored, through vocational, correctional, or therapeutic training or other corrective measures to a useful and constructive place in society. You may consider this evidence in determining an appropriate sentence for the accused.

(IF DEFENSE RETENTION EVIDENCE IS PRESENTED:) MJ: You have (also) heard testimony from (name witness(es)) indicating (a desire to continue to serve with the accused) (a desire to deploy with the accused) (_____). The testimony of a witness indicating (a desire to continue to serve with the accused) (a desire to deploy with the accused) (_____) is a matter in mitigation that you should consider in determining an appropriate sentence in this case.

(IF THERE IS REBUTTAL TO DEFENSE RETENTION EVIDENCE:) MJ: In response to this evidence offered by the defense, you have heard testimony from (name witness(es)) indicating that the witness does not (desire to continue to serve with the accused) (desire to deploy with the accused) (_____). This evidence can only be considered for its tendency, if any, to rebut the defense evidence on this issue.

(CONCLUDING INSTRUCTION FOR ALL REHABILITATIVE POTENTIAL/RETENTION EVIDENCE:) MJ: You may not consider testimony about (an accused's rehabilitative potential) (and) (whether a witness does (or does not) (desire to continue to serve with the accused) (desire to deploy with the accused) (_____)) as a recommendation regarding the appropriateness of a punitive discharge or any other specific sentence in this case, because no witness may suggest a specific

Rehabilitative Potential 2

punishment or sentence. (This rule does not apply to (statements) (testimony) by the accused regarding personal requests he/she may make in relation to specific punishments.). Whether the accused should receive a punitive discharge or any other authorized legal punishment is a matter for you alone to decide in the exercise of your independent discretion based on your consideration of all the evidence.

(ARGUMENT FOR A SPECIFIC SENTENCE:) MJ: During argument, trial counsel recommended that you consider a specific sentence in this case. You are advised that the arguments of the trial counsel and (her) (his) recommendations are only (her) (his) individual suggestions and may not be considered as the recommendation or opinion of anyone other than such counsel. In contrast, you are advised that the defense counsel is speaking on behalf of the accused.

Sentencing Procedure

Federal

- Judge alone
- Must first consider advisory sentencing guidelines and impose statutory minimum where applicable
- Usually conducted three (3) months after guilty finding
- Presentence Report prepared by US Probation Office

Military

- Two thirds (2/3) must concur in sentence if less than ten (<10) years
- Three fourths (3/4) must concur in sentence if greater than ten (>10) years
- Unanimous for death
- Hearing held immediately after finding of guilt

Pre-appellate Post Trial Review

Federal

- None

Military

- SJA post-trial review, clemency submissions, and CA action
- 120 days; *US v. Moreno*

Direct Appellate Review

Federal

- US Court of Appeals for appropriate Circuit
- Appeal only if Notice of Appeal filed within ten (10) business days

Military

- Service specific court of appeals
- Sentence includes punitive discharge, confinement of one year or more, or death; interlocutory appeals by the government; sub-jurisdictional cases sent by the Judge Advocate; petitions for new trials; and extraordinary writs filed under the All Writs Act.
- Art. 62, US interlocutory appeal

Appellate Counsel

Federal

- Main Justice
- Federal Public Defender
- Community Defender

Military

- GAD
- DAD

Review of Direct Appeal

Federal

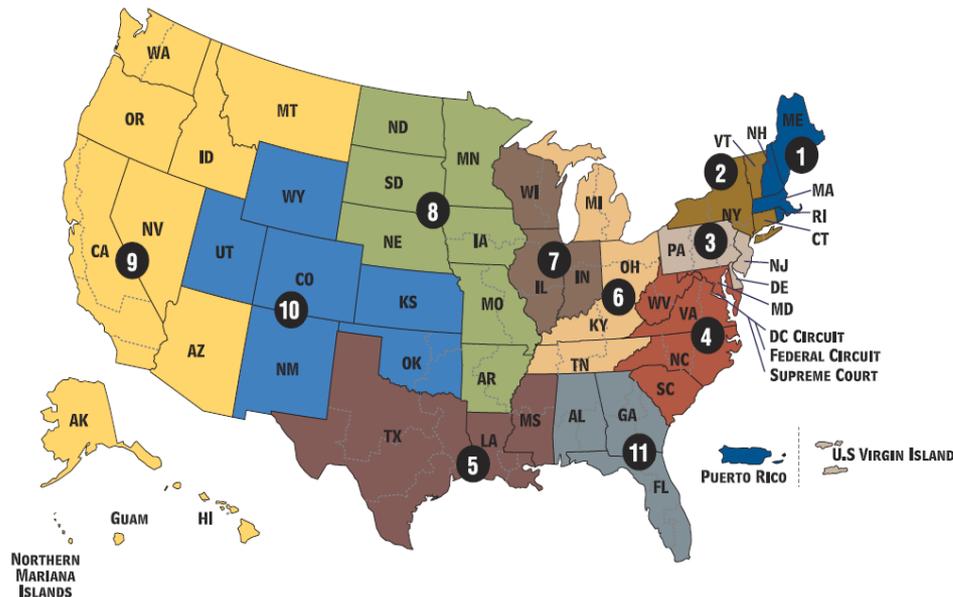
- US Supreme Court

Military

- US Court of Appeals for the Armed Forces
- Then US Supreme Court

Geographic Boundaries

of United States Courts of Appeals and United States District Courts



2014 Annual Report & Sourcebook Statistics - U.S. Sentencing Commission -

Table 12

OFFENDERS RECEIVING SENTENCING OPTIONS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2014

PRIMARY OFFENSE	TOTAL	TOTAL RECEIVING IMPRISONMENT						TOTAL RECEIVING PROBATION							
		N		%		Prison/Community Split Sentence ²		N		%		Probation and Confinement		Probation Only	
		N	%	N	%	N	%	N	%	N	%	N	%	N	%
TOTAL	75,175	67,630	90.0	65,407	87.0	2,223	3.0	7,545	10.0	2,104	2.8	5,441	7.2		
Murder	75	75	100.0	71	98.7	1	1.3	0	0.0	0	0.0	0	0.0		
Sexual Abuse	545	539	98.9	516	94.7	23	4.2	6	1.1	3	0.6	3	0.6		
Assault	769	661	86.0	617	80.2	44	5.7	108	14.0	27	3.5	81	10.5		

2014 Annual Report & Sourcebook Statistics - U.S. Sentencing Commission -

Table 13

SENTENCE LENGTH IN EACH PRIMARY OFFENSE CATEGORY¹ Fiscal Year 2014

PRIMARY OFFENSE	Mean Months	Median Months	N
TOTAL	44	24	75,836
Murder	273	240	75
Sexual Abuse	134	120	545
Assault	31	18	775
Drugs - Communication Facility	31	24	344
Drugs - Simple Possession	5	6	2,344
Firearms	82	57	7,925
Burglary/B&E	30	21	37
Auto Theft	61	42	86
Larceny	10	2	1,408
Fraud	27	14	7,614
Embezzlement	10	6	334
Forgery/Counterfeiting	18	12	713
Bribery	21	12	241
Tax	13	9	649
Money Laundering	32	18	886
Racketeering/Extortion	88	58	864

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Table 3

CHANGE IN GUIDELINE OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹ Fiscal Year 2013 - 2014

PRIMARY OFFENSE	Fiscal Year 2013		Fiscal Year 2014		Number Change
	N	%	N	%	
TOTAL	80,035	100.0	75,836	100.0	-4,199
Murder	89	0.1	75	0.1	-14
Manslaughter	63	0.1	49	0.1	-14
Sexual Abuse	423	0.5	545	0.7	122
Assault	724	0.9	775	1.0	51

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Figure C

GUILTY PLEAS AND TRIAL RATES¹
Fiscal Years 2010 - 2014

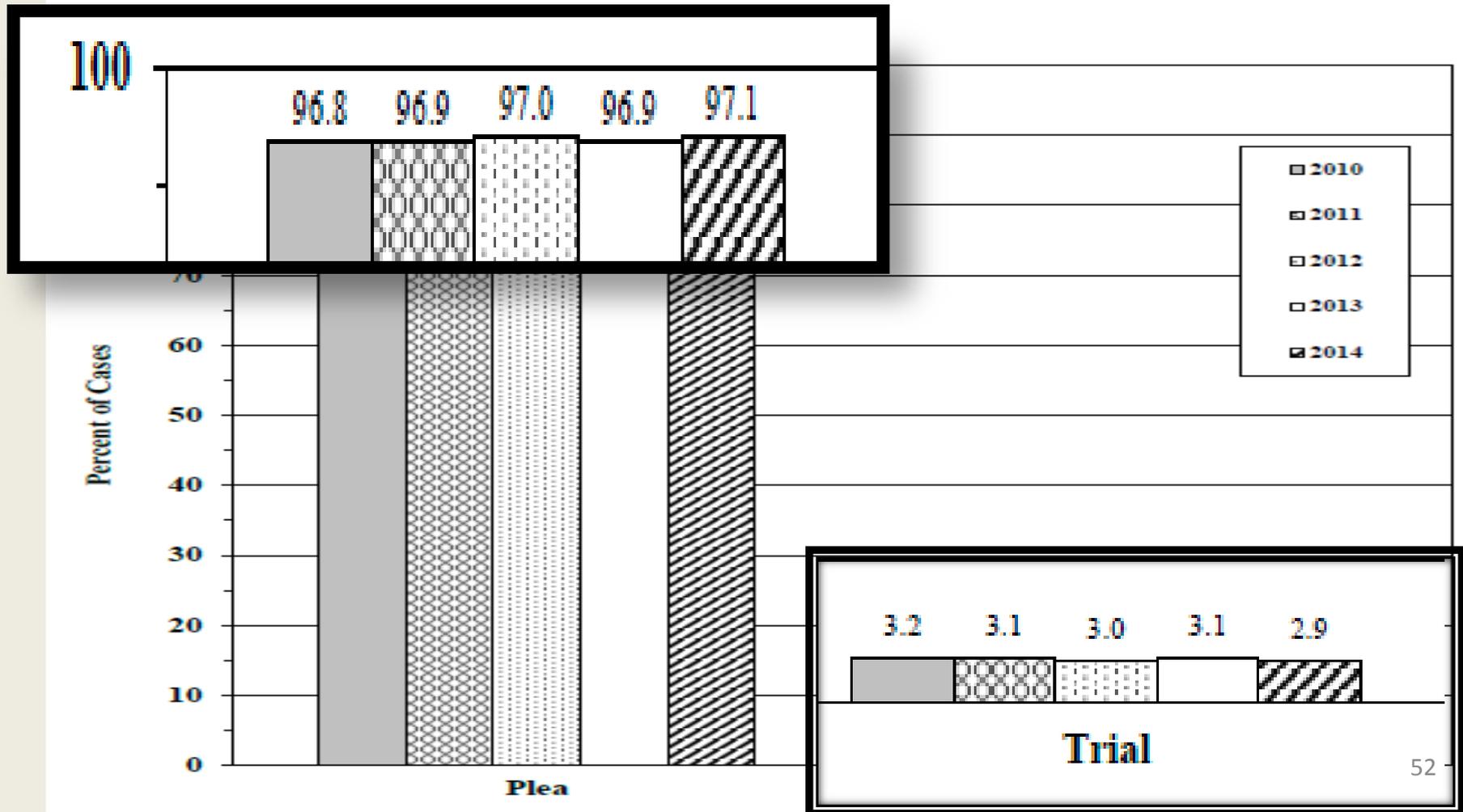


Table 19

**OFFENDERS RECEIVING ACCEPTANCE OF RESPONSIBILITY REDUCTIONS
IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2014**

PRIMARY OFFENSE	TOTAL	3-LEVEL ADJUSTMENT		2-LEVEL ADJUSTMENT		NO ACCEPTANCE ADJUSTMENT	
		N	%	N	%	N	%
TOTAL	67,671	43,430	64.2	21,165	31.3	3,076	4.5
Murder	71	53	74.6	1	1.4	17	23.9
Sexual Abuse	531	427	80.4	29	5.5	75	14.1
Assault	659	371	56.3	224	34.0	64	9.7
Arson	50	39	78.0	2	4.0	9	18.0
Drugs - Trafficking	20,636	18,338	88.9	1,444	7.0	854	4.1
Drugs - Communication Facility	330	266	80.6	50	15.2	14	4.2

3. CRIMINAL SEXUAL ABUSE AND OFFENSES RELATED TO REGISTRATION AS A SEX OFFENDER

Historical Note: Effective November 1, 1987. Amended effective November 1, 2007 (see Appendix C, amendment 701).

§2A3.1. Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse

(a) Base Offense Total:

§2A3.1

GUIDELINES MANUAL

November 1, 2014

- | | |
|--------|--|
| (1) | (1) If the offense involved conduct described in 18 U.S.C. § 2241(a) or (b), increase by 4 levels. |
| (2) | (2) If subsection (a)(2) applies and (A) the victim had not attained the age of twelve years, increase by 4 levels; or (B) the victim had attained the age of twelve years but had not attained the age of sixteen years, increase by 2 levels. |
| (b) Sp | (3) If the victim was (A) in the custody, care, or supervisory control of the defendant; or (B) a person held in the custody of a correctional facility, increase by 2 levels. |
| | (4) (A) If the victim sustained permanent or life-threatening bodily injury, increase by 4 levels; (B) if the victim sustained serious bodily injury, increase by 2 levels; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels. |
| | (5) If the victim was abducted, increase by 4 levels. |
| | (6) If, to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, or if, to facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct, the offense involved (A) the knowing misrepresentation of a participant's identity; or (B) the use of a computer or an interactive computer service, increase by 2 levels. |
| | (c) Cross References |
| | (1) If a victim was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply §2A1.1 (First Degree Murder), if the resulting offense level is greater than that determined above. |
| | (2) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply §2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), if the resulting offense level is greater than that determined above. |
| | (d) Special Instruction |
| | (1) If the offense occurred in the custody or control of a prison or other correctional facility and the victim was a prison official, the offense shall be deemed to have an official victim for purposes of subsection (c)(2) of §3A1.2 (Official Victim). |

2014 Annual Report & Sourcebook Statistics - U.S. Sentencing Commission -

Table 11

GUILTY PLEAS AND TRIALS IN EACH PRIMARY OFFENSE CATEGORY¹ Fiscal Year 2014

PRIMARY OFFENSE	TOTAL	PLEA		TRIAL	
		N	%	N	%
TOTAL	75,836	73,612	97.1	2,224	2.9
Murder	75	62	82.7	13	17.3
Sexual Abuse	545	475	87.2	70	12.8
Assault	775	723	93.3	52	6.7
Drugs - Communication Facility	344	343	99.7	1	0.3
Drugs - Simple Possession	2,344	2,342	99.9	2	0.1
Firearms	7,925	7,466	94.2	459	5.8
Burglary/B&E	37	36	97.3	1	2.7
Auto Theft	86	81	94.2	5	5.8

VALIDITY & LEGITIMACY



QUESTIONS?



FRONT TOWARD ENEMY



A SLAIN SOLDIER'S WIDOW DETAILS
HER HUSBAND'S **MURDER** AND
HOW MILITARY COURTS ALLOWED
THE KILLER TO ESCAPE JUSTICE



BARBARA ALLEN