



MILITARY and VETERANS LAW SECTION CLE

Military Justice Act of 2016

“Gateway” A Practical Application

COL Doug Watkins



Primary References

- Manual for Courts-Martial, 2019 ed.
 - JSC website
- Interim AR 27-10, dtd 1 January 2019
- Rules of Practice for Army Lawyers, dtd 1 January 2019
- Benchbook – Web Based



New Issues in Discovery

T-Mobile





New Issues in Discovery

- Art 30a
- R.C.M. 309
- Interim AR 27-10
- Rules of Practice: Section II



Art 30a

- **Art 30a empowers detailed military judges to review / act on:**
 - Pre-referral investigative subpoenas
 - **Pre-referral warrants/orders for electronic communications**
 - Pre-referral matters referred by an appellate court
 - Requests to quash/modify a subpoena or other process on grounds that compliance is unreasonable, oppressive or prohibited by law (see Art 46(e))
 - Pre-referral matters under Art 6b(c) or (e) (see NDAA 2018)

* Detailed military judges may designate military magistrate to preside except over proceedings regarding warrants/orders for electronic communications



Art 30a

- **Warrants / Order for Electronic Communications:**
 - Pre-MJA 2016: Military courts not part of the definition of “courts of competent jurisdiction” under Stored Communications Act
 - **Post-MJA 2016: 18 USC 2703, 2711 amended. Military Courts included under SCA as “courts of competent jurisdiction.”**
 - **Happening now!**
 - **Results so far?**



Preferral Packets

- **Charge Sheets**
 - New Articles / Reorganization
 - Check Date of Offenses
 - EO Pending for more new offenses
 - Check for Art 30a proceedings
- Benchbook



Preferral Packets

- Charge Sheets
 - New Articles / Reorganization
 - Check Date of Offenses
 - EO Pending for more new offenses
 - Check for Art 30a proceedings
- Benchbook



Benchbook

https://www.jagcnet.army.mil/Sites/JAGC.nsf


jagcnet.army.mil

File Edit View Favorites Tools Help

The United States Army Judge Advocate General's (JAG) Corps

Home Help Contact Search...

Leadership Careers Legal Services Courts Legal Center and School Public Doc Libraries FOIA Access Personnel Login to JAGCNet



Announcements

**** Scheduled JAGCNet Server Maintenance ****

20180626 - JAGCNet server maintenance will occur every Friday morning between 0900-1100 EST, starting 29 June 2018. [more...](#)

Upcoming Paralegal Warrior Training Course

20190322 - The Paralegal Warrior Training Course is currently accepting enrollment for the course scheduled for 12 to 26 July 2019. [more...](#)

The Legal Administrator and Paralegals Studies Department Upcoming Courses

20190321 - Announcing the following courses: 29th Advanced Law for Paralegal Course, 512-27D/30/40, 30th Law for Paralegal Course, 512-20/30, and 59th Basic Court Reporter Course, 512-27DC5. [more...](#)

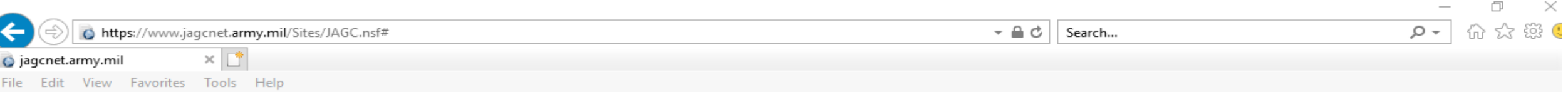
Regimental Ball Waitlist Instructions

20190319 - Currently, there are three tickets remaining for the 2019 JAG Regimental Ball on 06 April 2019 at the Fort Belvoir Officer's Club. [more...](#)

Negotiation and Appropriate Dispute Resolution Course



Benchbook



The United States Army Judge Advocate General's (JAG) Corps

[Home](#) [Help](#) [Contact](#)

Leadership

Careers

Legal Services

Courts

Legal Center and School

Public Doc Libraries

FOIA

Access

Personnel

Login to JAGCNet

U.S. Army Trial Judiciary

- Website
- eDocket
- Random Number Generator

U.S. Army Court of Criminal Appeals

- Website
- Opinions
- Rules of the Court

U.S. Court of Appeals for the Armed Forces

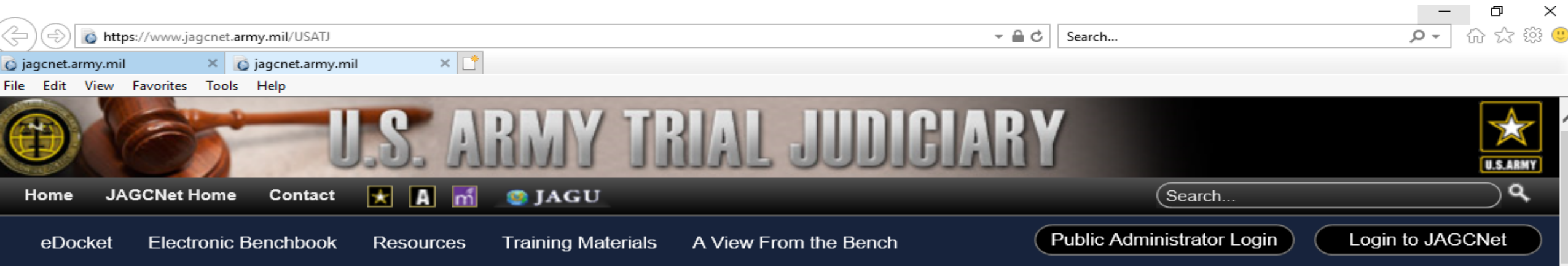
- Website

U.S. Supreme Court

- Website



Benchbook



Posted: 04/09/2013 11:47:07 AM EDT



The position of military judge was created in 1969 with the implementation of the Military Justice Act of 1968. Prior to that time, the legal advisor to court-martial panels (juries) was called a law officer, and the law officer did not have the authority and powers of today's military judges.

Military judges preside over general and special courts-martial and have many of the powers of federal judges including the authority to preside at judge alone trials when an accused elects that option. Military judges instruct court-martial panels on the law and apply the Military Rules of Evidence, patterned closely after the Federal Rules of Evidence. Military judges, like federal judges, may issue search and seizure authorizations based on probable cause and review the necessity for continuances.



Benchbook

Posted: 06/08/2018 02:23:05 PM EDT

Current Online Version:

Click to Launch Electronic Benchbook



Legacy Office (no longer supported)

[2018 Electronic Benchbook \(201\) - ARMY](#)

[2018 Electronic Benchbook \(201\) - AIR FORCE](#)

[2018 Electronic Benchbook \(201\) - COAST GUARD](#)

[2018 Electronic Benchbook \(201\) - NAVY + MARINE CORPS](#)

[Electronic Benchbook Installation instructions](#)

If you are having issues with Electronic Benchbook in Word 2013, please check that your macro security settings are set to allow macros to run.

1. Click File in the top left corner of Word.
2. Click Options on the bottom left list of options
3. Click Trust Center and Trust Center Settings... to bring up the Security options
4. Under Macro Settings, if "Disable all macros without notification" is selected, you will not be able to run the EBB. Select any of the other options in order to run the EBB.



Benchbook

jagcnet.army.mil x jagcnet.army.mil x jagcnet.army.mil x

File Edit View Favorites Tools Help



Electronic Benchbook 2.5

Last Updated: 05 FEB 2019

Download: [Download EBB \(ZIP\)](#)



Prefatory

Scripts

Offenses (before 1 JAN 19)

Offenses (on and after 1 JAN 19)

Defenses

Evidentiary

Confessions

Mental Resp

Voting/Concluding

Appendices

Shells

GP Inquiries



Show Notes



Restore Backup



Benchbook



Elect

05 FEB 2

Download

Prefatory

Scri

Voting/Concluding

Mental Resp

3a-44a-1. MAIL—DEPOSIT OF OBSCENE MATTER (ARTICLE 120a)

a. MAXIMUM PUNISHMENT: DD, TF, 3 years, E-1.

b. MODEL SPECIFICATION:

In that _____ (personal jurisdiction data), did, (at/on board—location) on or about _____, wrongfully and knowingly (deposit) (cause to be deposited) in the (United States) _____ mails, for mailing and delivery a (letter) (picture) _____ (containing) (portraying) (suggesting) _____ certain obscene matters, to wit: _____.

c. ELEMENTS:

(1) That (state the time and place alleged), the accused (deposited) (caused to be deposited) in the (United States) _____ mails, for mailing and delivery, a (letter) (picture) _____ (containing) (portraying) (suggesting) _____ certain matter, to wit: (state the matter alleged);

(2) That the act was done wrongfully and knowingly; and

Charged Offense

1st LIO

Subsequent LIO

Care Inquiry

Care Header

Care Footer

Care 2d Person

Paste to Editor

Hide Notes

Close



Changing Articles - Example

CHARGE I: Article 134

The Specification: In that Private (E-1) John Doe, U.S. Army, did, at or near Fort Hood, Texas, on or about **20 December 2018, willfully and wrongfully** seize and hold Susan Jones, a person not a minor, against her will, **such conduct being to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.**

CHARGE II; Article 125

The Specification: In that Private (E-1) John Doe, U.S. Army, did, at or near Fort Hood, Texas, on or about **3 January 2019, wrongfully** seize and hold Samantha Doe, a minor whose parent or legal guardian the accused was not, against her will.

CHARGE III: Article 128b

The Specification: ??? Domestic violence ??? (Pending EO)



Electronic Docket Request

SECTION A

Pre-referral subpoenas/warrants/orders were sought from Judge _____ on (date).

SECTION B

Objections to trial of any specification by SPCM-JA, with explanation (must be signed by accused):

SECTION C

Response to objections by accused to trial of any specification by SPCM-JA:

SECTION D

(To be completed by the judge and delivered to the convening authority if the judge determines, without the need for an Article 39(a) session, that the accused has properly objected to trial of specifications by SPCM-JA)

The accused has properly objected to trial of the following specifications by SPCM-JA:

The referred charges are returned to the convening authority for his consideration, pursuant to RCM 201(f)(2)(E)(ii).

Signature of judge: _____.



Arraignment

- Notice of Art 30a Proceedings
 - (TC: (An) Article 30a proceeding(s) (was) (were) held in connection with this case on _____.)
- Forum Rights
 - Special Court-Martial Consisting of Military Judge Alone
 - Special Court-Martial
 - General Court-Martial



Arraignment – Forum Rights

- Special Court-Martial Consisting of Military Judge Alone – Art 16(c)(2)(A) (No punitive discharge) (Confinement Limit 6 months)
 - Straddling Offenses: Must agree to new sentencing rules prior to arraignment. If not, MJ returns charges to CA for *disposition*.
 - All Post 1 Jan 19 offenses: Cannot object
 - Exceptions:
 - (1) the maximum authorized confinement for the offense alleged in the specification would be greater than two years if the offense were tried by a general court-martial, with the exception of a specification alleging wrongful use or possession of a controlled substance in violation of Article 112a, UCMJ or an attempt thereof under Article 80, UCMJ; or
 - (2) the specification alleges an offense for which sex offender notification would be required under regulations issued by the Secretary of Defense.



Arraignment – Forum Rights

- General and Special Courts-Martial
 - Right to be tried by (four) (eight) members
 - GCM Only: After excusals and impanelment, court can be reduced to 6 members
 - Three-fourths have to agree to convict/sentence
- Sentencing Forum:
 - All pre-1 Jan 19 Offenses: If elect panel for findings, panel sentences
 - All post-1 Jan 19 Offenses: After findings announced, elect panel or MJ for sentencing
 - Straddling Offenses: Default: If elect panel for findings, panel sentences
 - If elect new sentencing rules, and elect panel for findings, can elect panel or MJ for sentencing after findings announced



Trial

- New R.C.M.s
 - E.g., RCM 917
 - Old: Before findings announced
 - New: Before Entry of Judgment
- New M.R.E.s
- Panel Selection
 - Venire of 14?

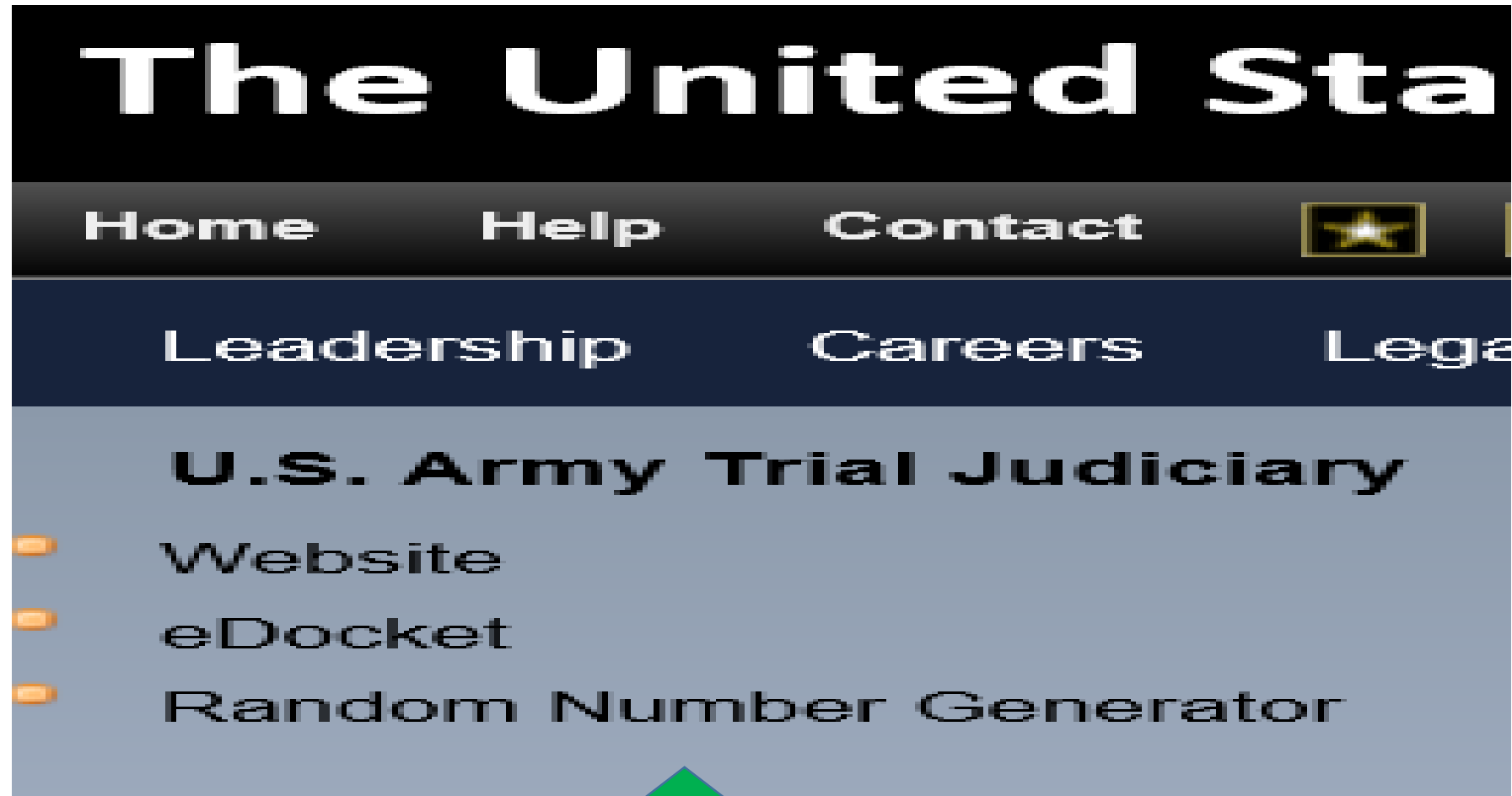


Panel Selection

- Group and Individual Voir Dire
- Challenges for Cause
- Randomization of Surviving Members. RCM 912A, 912(f)(5)
- Peremptory Challenges
 - If (4) (8), quorum.
 - If more than (4) (8), highest numbers become alternatives if authorized by CMCO, or are excused if alternates not authorized
 - Enlisted Panels: Officers excused first to maintain enlisted quorum



Randomization





Alternates

- Alternates are Notified Before Merits
- Hear all evidence
- Do not participate in deliberations



Sentencing

- PANEL: Unitary Sentencing
 - MJ announces panel sentence
 - No Government Appeal
 - ❖ If convicted, accused can elect sentencing by MJ
- Military Judge: Segmented Sentencing
 - Sentence of confinement and fines for each offense
 - MJ elects whether concurrent or consecutive
 - MJ can make suspension recommendation
 - Government Appeal
 - Sentence violates the law
 - Sentence is *plainly unreasonable*



Plainly Unreasonable

Must identify the facts in the record that demonstrate by clear and convincing evidence that the sentence announced was **plainly unreasonable** because no reasonable sentencing authority would adjudge such a sentence in view of the record before the sentencing authority at the time sentence was announced.



Pretrial / Plea Agreements

- Tied to election of old or new sentencing rules
- Plea Agreements:
 - No quantum
 - Minimum or Maximum or both
 - EO pending for “sum certain”
 - MJ can reject if:



Rejection of Plea Agreements

The military judge of a general or special court-martial shall reject a plea agreement that—

- contains a provision that has not been accepted by both parties;
- *contains a provision that is not understood by the accused;*
- except as provided in subsection (c), contains a provision for a sentence that is less than the mandatory minimum sentence applicable to an offense referred to in Art. 56(b)(2);
- is prohibited by law; or
- is contrary to, or is inconsistent with, a regulation prescribed by the President with respect to terms, conditions, or other aspects of plea agreements.



Post Trial Processing

- Statement of Trial Results. RCM 1101
 - Audio of open sessions to accused and victim!
 - Recommendation for suspension?
- Assembly of Record (and verbatim transcript prepared)
- Matters Submitted
 - By Accused. RCM 1106
 - By Victim. RCM 1106A
 - Rebuttal by Accused. RCM 1106(d)(2)
- Consultation With SJA. RCM 1109(d)(2)
- Action by CA. RCM 1110
- Entry of Judgment. RCM 1111
- Certification by Court Reporter. RCM 1112
- Certification of ROT by MJ
- Appellate Review. RCM 1116



Post Trial Processing

- Transcript is NOT part of ROT.
- Preparing Transcript does NOT stop Matters Submitted
- Army: Verbatim Transcript if: death, discharge, or 6 months confinement
- Transcript attached to ROT at “Certification by Court Reporter



Post Trial Processing

- Matters Submitted
 - By Accused. 10 days after sentence announced. Extendable for 20 more days for good cause shown. *Failure to submit is waiver.*
 - By Victim. 10 days after sentence announced. Extendable for 20 more days for good cause shown. Failure to submit is waiver.
 - Rebuttal by Accused. 5 days after victim matters



Post Trial Processing

- Convening Authority Action
- The convening authority **may not** act if:
 - the authorized maximum confinement exceeds two years;
 - the adjudged sentence includes a dismissal, DD, or BCD;
 - the adjudged confinement is more than six months; or,
 - the offense for which the accused was convicted of is a violation of the sexual offenses listed in Articles 120(a)–(b), 120b, or any other offense specified by the Secretary of Defense
- The convening authority **may not** reduce, commute, or suspend a sentence of confinement exceeding six months or a sentence of dismissal, DD, BCD, or death
 - Except when the accused has provided substantial assistance in the investigation or prosecution of another person (recommendation from the trial counsel)
- The convening authority may suspend a sentence when recommended by a military judge



Post Trial Processing

- Entry of Judgment

- Purpose: reflects result of court-martial; accounts for any modification of the court-martial by post-trial actions, rulings, or orders; terminates trial proceedings

- Content:

- Findings & Sentence

- “Additional Information”

- Deferment – MJ shall specify the nature of the request, CA action on request, and the effective and end dates (if ended before judgment)

- Waiver of automatic forfeitures – MJ shall specify the nature of the request, CA action on request, the effective date and the length of approval

- Suspension – Specify the action of the convening authority

- Reprimand – Contents of the reprimand by convening authority

- Rehearing – Specify any sentence limitations

- “Other Information” (as prescribed by Service Secretary)



Post Trial Processing

- Certification of Record of Trial
- Following Entry of Judgment, the **court reporter** prepares and **certifies** the RoT, which must include:
 - A substantially verbatim recording of the court-martial proceedings
 - The original charge sheet or a duplicate
 - Copy of the convening order and any amending order
 - The forum request
 - Election of sentencing by members in lieu of military judge sentencing
 - All exhibits
 - Appellate exhibits
 - Statement of Trial Results
 - Any action taken by the convening authority (if any)
 - Entry of Judgment
- The certification shall happen as soon as practical



Post Trial Processing

- Verification / Transcript

Army: Interim AR 27-10

- The court reporter compiles the ROT and verbatim transcript and notifies lead trial counsel
- Pre-certification review occurs by lead trial counsel or SJA designee
- Military judge reviews the ROT for accuracy and signs an authentication
- Court reporter re-certifies the ROT.



Post Trial Sessions

- Old: R.C.M. 1102
 - Proceedings in revision to correct technical errors
 - Article 39(a) sessions: legal sufficiency issues
 - By MJ pre-authentication
 - By CA post-authentication
- New: R.C.M. 1104
 - Article 39(a) sessions: legal sufficiency issues (e.g., RCM 917) and technical issues
 - By MJ anytime before Entry of Judgment
 - By MJ when returned by Appellate Court (DuBay)
 - Motions Timing:
 - NLT 14 days after STR. Extendable for good cause
 - To correct error in CA's action: Within 5 days after receipt
 - To correct error in EOJ: Within 5 days after receipt



Post Trial Sessions

- Prohibited Matters
 - Reconsideration of finding of not guilty of a specification
 - Reconsideration of finding of not guilty of a charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article
 - Increasing the severity of the sentence unless the sentence is mandatory



Questions?