192d
OFFICER BASIC COURSE
CRIMINAL LAW

2 – 20 DECEMBER 2013

ABOUT THIS COURSE

The purpose of the criminal law block of instruction is simple: to introduce you to the military justice system, and through advocacy training and plenary instruction, give you the tools necessary to be successful trial counsel or defense counsel in a court-martial.

We will accomplish these tasks through a variety of methods of instruction to include:

- Plenary blocks of instruction (blue blocks)
  - These classes will be delivered in a traditional lecture format.
- Student problem solving (SPS) (orange blocks)
  - These classes will encourage group participation and problem solving by breaking the students up into groups.
- Workshops (WS) (purple blocks)
  - This is "on your feet" time. The instructions for the workshops are included in this packet.
- Exercises (red blocks)
  - These are graded events (grades are discussed in the syllabus). You are assigned roles in the exercises- either as a trial/defense counsel, assistant trial/assistant defense counsel, or as a witness.
- Group/Individual preparation time (GIP) (green blocks)
  - This is time that has been given to you (during the duty day) to complete some of the coursework. Note: this is not "free time." Additionally, though you are provided GIP time, that does not mean you will not be expected to also complete coursework after the end of the duty day. This time is to assist you in getting that work done without becoming overloaded.

We will be using the case of *United States v. Archie* as a vehicle for this course. You will try this case at the end of this block of instruction. This case is a sexual assault case, with a victim (PV2 Vance) and an Accused (SGT Archie). You will learn a lot about prosecuting sexual assault cases, but everything you learn, particularly when it comes to advocacy, can be applied to any court-martial you encounter in your practice. Also, please note that because this is a course in basic trial advocacy, you will not be conducting direct/cross of the victim in this case-- that is an intermediate task and this is a beginner course. You will receive an extensive amount of training on interviewing techniques at the Intermediate Trial Advocacy Course (ITAC) in order to prepare you for working with sexual assault victims. However, throughout the workshops, you might find yourself working with PV2 Vance and developing questions for her. Additionally, we will provide instruction regarding victims' programs and ways to think about sexual assault prosecutions.

CRIMINAL LAW COURSE MANAGEMENT

If you have a question about the course, stop by and see MAJ Wakefield or Maj Durden in the Criminal Law office. You can also email them at megan.s.wakefield.mil@mail.mil or jayson.l.durden.mil@mail.mil. If you have a question about a specific class or specific quiz question, feel free to come by the Criminal Law offices and ask the professor who taught the class about which you have a question.

If you need to miss a class, please bring your class excusal to MAJ Wakefield. If MAJ Wakefield is not available, then you can submit your request to Maj Durden.

WORKSHOPS

Case Analysis and Theme Development

In this workshop, students will begin thinking about themes for the Archie case that will motivate a panel member to decide the case in their favor.

Witness Interview Workshop

In this workshop, students will practice the two-phase interview process. During the first phase, students will orient the witness, use open-ended questions to elicit a timeline, and hold on to any new information. During the second phase, students will "unpack" interesting events, develop the theory of his or her case, and ask credibility questions.

Direct Examination

In this workshop, students will practice crafting open-ended direct examination questions. Students will also practice asking direct exam questions, focusing on the form of their questions, maintaining eye contact with the witnesses, voice inflection, and ordering their questions to achieve maximum storytelling potential.

Laying Foundations and Handling Exhibits

In this workshop, students will become familiar with Army court-martial procedure for moving evidence around the courtroom. They will also become familiar with laying foundations for a wide variety of evidence, to include fungible and non-fungible items.

Witness Memory

In this workshop, students will practice assisting their witnesses by refreshing their witness' recollection (helping them remember, in other words). Students will also learn how to "admit" recorded recollection evidence, should their witness not be able to remember something even after his or her memory has been refreshed.

Hearsay

In this workshop, students will identify hearsay within the Archie case file and brainstorm arguments for/against letting those statements in to evidence. Additionally, students will practice objecting to hearsay statements and making an argument for the admission of certain statements.

Cross Examination

In this workshop, students will practice cross-examination using the techniques taught in class: using short statements, dropping tags, using downward inflection, and avoiding "danger words."

Impeachment- 608

In this workshop, students will practice impeaching the credibility of opposing witnesses (using evidence of: opinion and reputation for veracity, specific instances of conduct, and bias) and rehabilitating their own witness' credibility (using evidence of reputation and opinion for veracity, or specific instances of conduct).

Impeachment, Prior Inconsistent Statements and Factual Contradiction

In this workshop, students will practice impeaching witnesses using a prior inconsistent statement or factual contradiction. Students will identify inconsistent statements and practice impeaching the witness using the "3 Cs" learned in class.

Opening Story

In this workshop, students will practice delivering an opening story using the storytelling techniques they learned in class. Students will focus on engaging the panel through eye contact, word choice, and inflection.

Delivering Arguments

In this workshop, students will practice delivering a closing argument. Students will focus on engaging the panel and convincing them to go into the panel room and "fight the good fight."

Sentencing Argument

In this workshop, students will practice delivering an effective sentencing argument. Students will be instructed on R.C.M. 1001 and focus on the appropriate sentencing principles (punishment of the wrongdoer, specific deterrence, general deterrence, protection of society, rehabilitation of the wrongdoer).

Criminal Group Assignments

Student Number	Criminal Group					
	Tudor	Holt	Winthrop	Lejeune	Ansell	Crowder
1	CPT Colacicco	CPT Colclough	CPT Diefenbach	1LT Hartsfield	1LT Jagusch	CPT Kettl
2	1LT Peetz	1LT Saginti	1LT Schlichtman	1LT Daraitis	1LT Staples	1LT Zator
3	CPT Allen	CPT Amore	CPT Barnett	CPT Bartholomew	1LT Blattner	CPT Borkenhagen
4	1LT Bhardwaj	CPT Burnham	1LT Capovilla	1LT Conrad	CPT Kanno	1LT Dauschmidt
5	1LT Demille	1LT Dunbar	1LT Erb	1LT Flannery	CPT Gallagher	1LT Garfias
6	1LT Goering	CPT Gower	1LT Green	1LT Henderson	1LT Herbst	CPT Hollman
7	CPT Hornick	CPT Isham	CPT Jackson	1LT Keller	1LT Kennedy-Shaffer	1LT Lewis
8	CPT Lujan	1LT Marvin	CPT McCullough	1LT McIntosh	CPT Miller	1LT Mitchell
9	1LT Murphy	1LT Pakrikh	1LT Palko	CPT Peterson	1LT Polyakov	1LT Province
10	MAJ Remus	CPT Roberts	1LT Sansone	1LT Silecchia	CPT Sledgister	1LT Vu
11	CPT Sullivan	1LT Sweeney	1LT Symons	CPT Textor	CPT Trudell	1LT Turner
12	2LT Ganbold	Volunteer*	Volunteer*	Volunteer*	Volunteer*	Volunteer*

*Note: In the spaces where *Volunteer appears, one member of the group will be asked to play the assigned role for any exercise where either a Defense or Trial Counsel, or witness is needed.

Workshop Room Assignments

Workshop	Criminal					
	Tudor	Holt	Winthrop	Lejeune	Ansell	Crowder
Case Analysis and Theme Development	140A	140B	142A	142B	169/170	263/264
Witness Interviews	263/264	140A	140B	142A	142B	169/170
Direct Exam	169/170	263/264	140A	140B	142A	142B
Foundations and Exhibits	142B	169/170	263/264	140A	140B	142A
Witness Memory	142A	142B	169/170	144A	140A	140B
Hearsay	140B	142A	142B	169/170	144A	140A
Cross Exam	140A	140B	142A	142B	169/170	263/264
Impeach – MRE 608	263/264	140A	140B	142A	142B	169/170
Impeach – Prior Inconsistent Statement	169/170	263/264	140A	140B	142A	142B
Opening Story	142B	169/170	167/168	140A	140B	142A
Delivering Arguments	142A	142B	169/170	167/168	140A	140B
Ask the Professor*	140B	142A	142B	169/170	167/168	140A
Sentencing Argument	140A	140B	142A	142B	169/170	263/264

*Trial Counsel and Defense Counsel will meet together. Tudor and Holt TCs in 140B, Tudor and Holt DCs in 142A, Winthrop and Lejeune TCs in 142B, Winthrop and Lejeune DCs in 169/170, Ansell and Crowder TCs in 167/168 and Ansell and Crowder DCs in 140A.

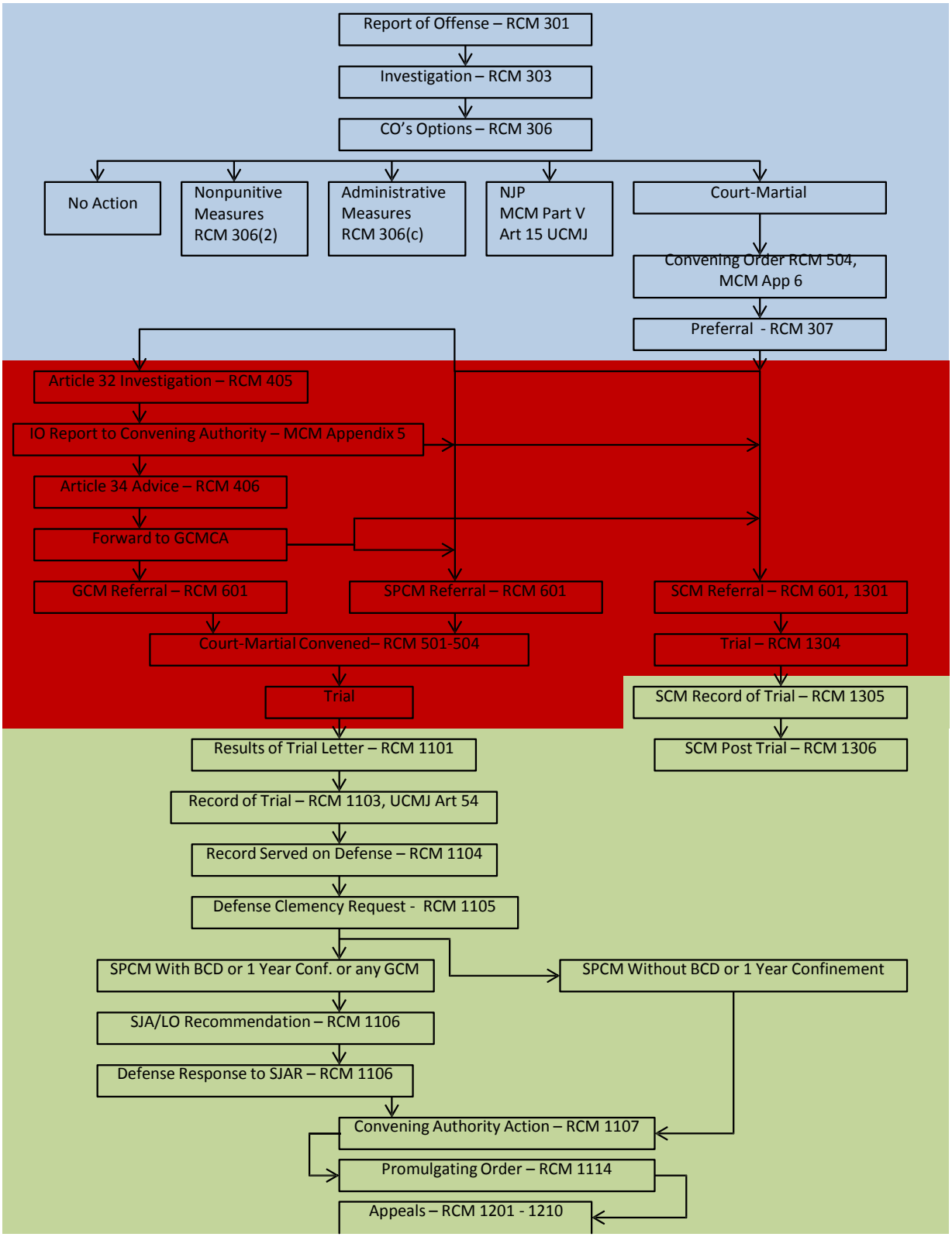
Exercise Room Assignments

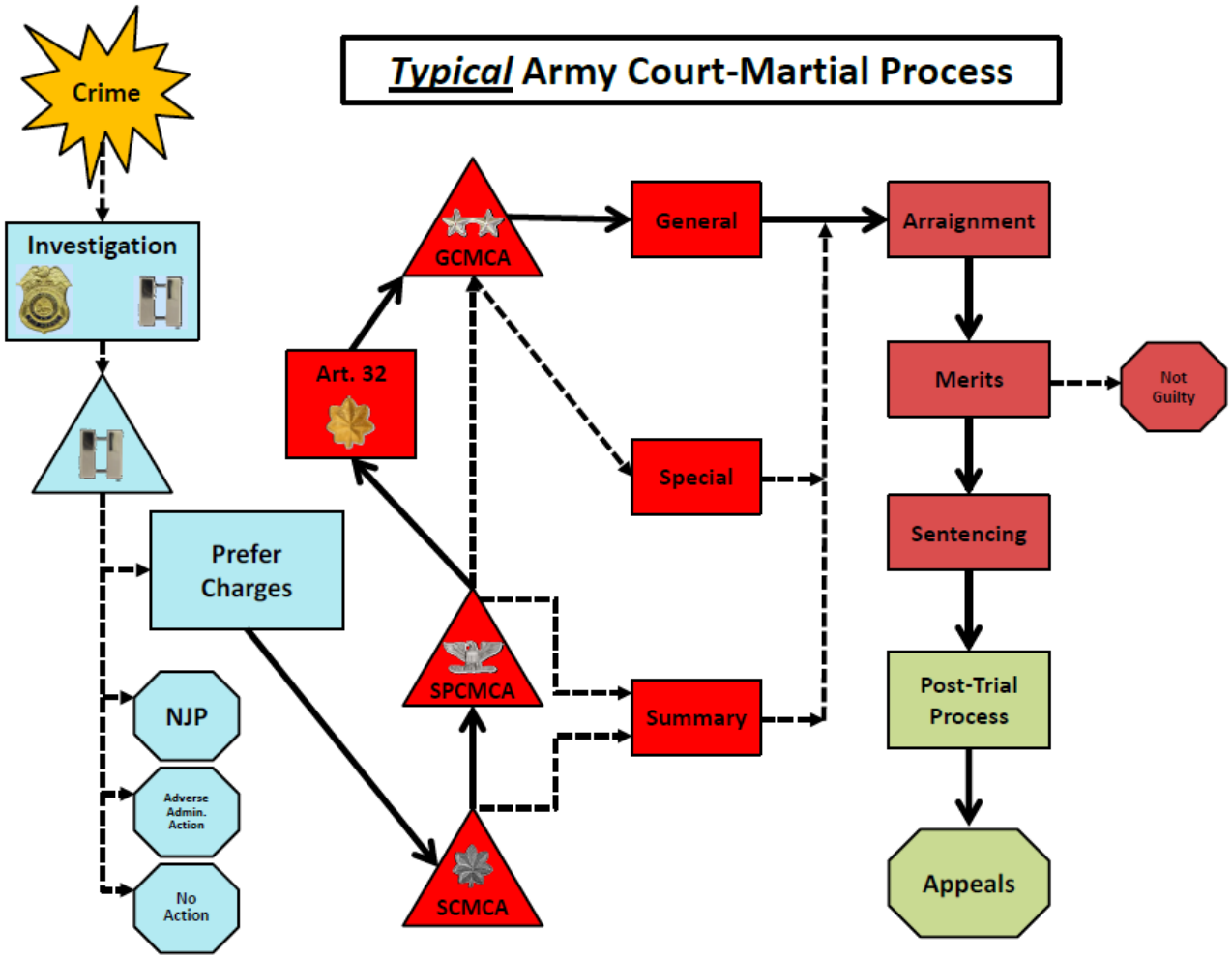
Exercise	Trial Group					
	Tudor	**Holt**	**Winthrop**	**Lejeune**	**Ansell**	**Crowder**
Pre-Trial Confinement Review	140A	140B	142A	142B	169/170	263/264
Article 32 Investigation	263/264	140A	140B	142A	142B	169/170
Motions Hearing	169/170	263/264	140A	140B	142A	142B
U.S. v Archie Case (1)	142B	169/170	263/264	140A	140B	142A
U.S. v Archie Case (2)	142A	142B	169/170	263/264	140A	140B

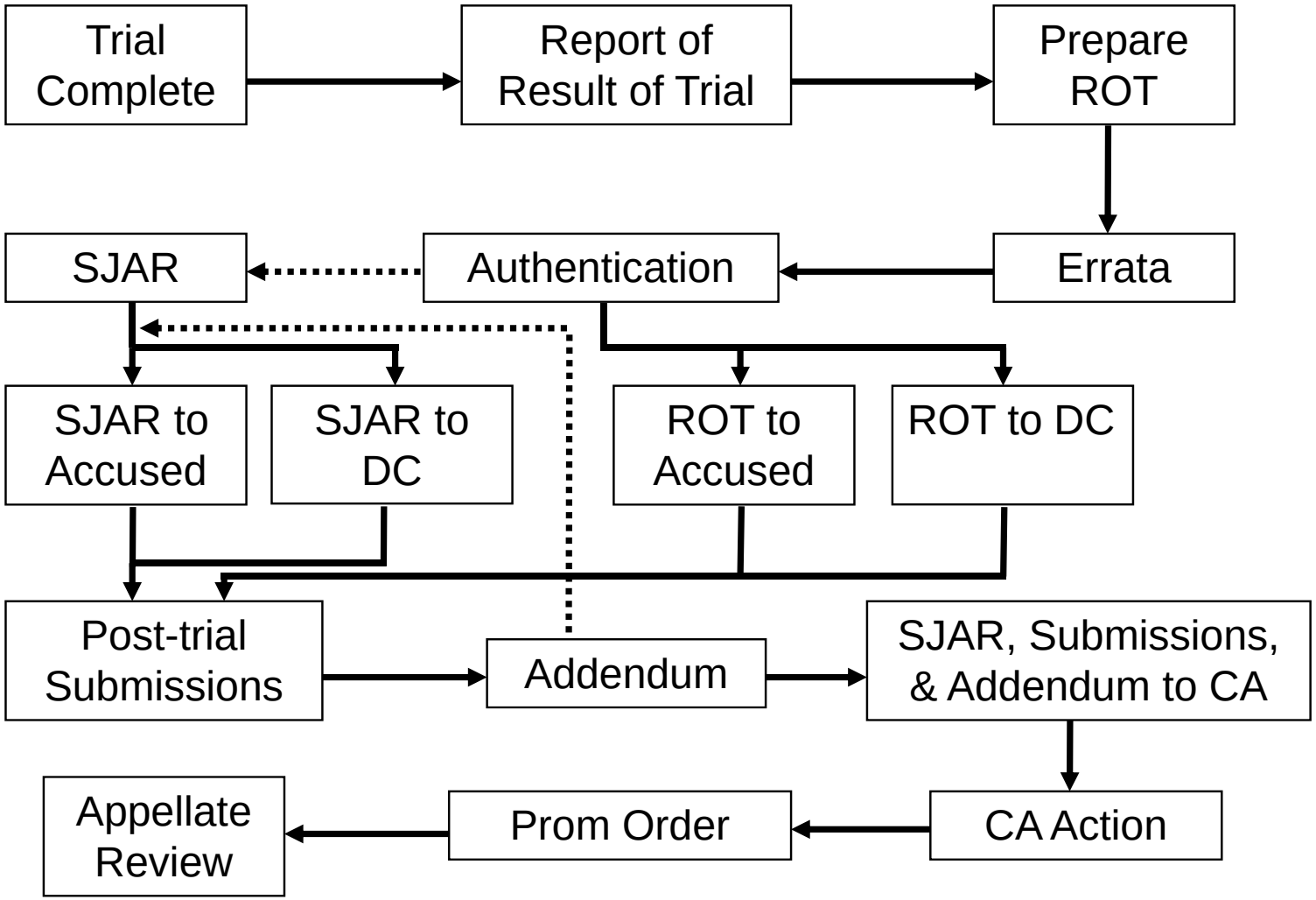
Exercise Roles

Exercise					
Student Number	**Pre-Trial Confinement Review**	**Article 32 Investigation**	**Motions Hearing**	**US v. Archie Case 1**	**US v. Archie Case 2**
1	**Group A Trial Counsel**	Govt. Witness: PFC Taylor		**Asst. Def. Co – Opening Statement, Direct SPC Jacobs, and Cross SA Henderson**	Govt. Witness - Merits and Sentencing: PFC Taylor
2		**Trial Counsel –Direct PFC Taylor and present argument**		Govt. Witness – Merits Case: PFC Taylor	**Asst. Def. Co – Opening Statement, Direct SGT Archie, and Cross SGT Fredrickson**
3			**Trial Counsel – Cross Maroney, present argument**	**Sentencing Case Defense Counsel**	Govt. Witness - Merits: SGT Fredrickson
4	**Group B Defense Counsel**			**Trial Counsel – Direct SA Henderson (must admit SGT Archie's statements) Cross SGT Archie, and closing argument**	Def Witness – Sentencing: SSG Vernon Haught
5		**Asst. Defense Counsel – Direct SSG Vernon Haught, Cross PFC Taylor**	Def. Witness – SPC Dirks	Def. Witness - Merits: SPC Jacobs	**Trial Counsel –PFC Taylor (must admit room diagram), Cross SGT Archie, and closing argument**
6			**Asst. Defense Counsel – Direct Maroney**	**Sentencing Case Trial Counsel**	
7	**Group B Trial Counsel**			**Defense Counsel – Direct SGT Archie, Cross PFC Taylor, closing argument**	Def. Witness - Merits: SPC Randolf
8		**Asst. Trial Counsel – Cross SSG Vernon Haught**	Def. Witness - Maroney	Govt. Witness – Merits: SA Henderson	**Defense Counsel – Direct SPC Randolf (get in CQ Log), Cross PFC Taylor, and closing argument**
9			**Asst. Trial Counsel – Cross SPC Dirks**	Def. Witness – Merits and Sentencing: SGT Archie	**Sentencing Case Defense Counsel**
10	**Group A Defense Counsel**	Def. Witness: SSG Vernon Haught (E&M)		**Asst. Trial Counsel – Opening Statment, Direct PFC Taylor, Cross SPC Jacobs**	Def. Witness - Merits: SGT Archie
11		**Defense Counsel – Present Argument**		Govt. Witness - Sentencing: 1SG Leonard Funk (A's Current 1SG)	**Asst. Trial Counsel – Opening Statement, Direct SGT Fredrickson, and Cross SPC Randolf**
12			**Defense Counsel – Direct SPC Dirks, present argument**		**Sentencing Case Trial Counsel**

MILITARY JUSTICE OVERVIEW




Typical Army Court-Martial Process
Crime
Investigation
Prefer Charges
NJP
Adverse Admin. Action
No Action
Art. 32
GCMCA
SPCMCA
SCMCA
General
Special
Summary
Arraignment
Merits
Not Guilty
Sentencing
Post-Trial Process
Appeals


Trial Complete
Report of Result of Trial
Prepare ROT
Errata
Authentication
SJAR
SJAR to Accused
SJAR to DC
ROT to Accused
ROT to DC
Post-trial Submissions
Addendum
SJAR, Submissions, & Addendum to CA
CA Action
Prom Order
Appellate Review

Pre-Trial Confinement Review

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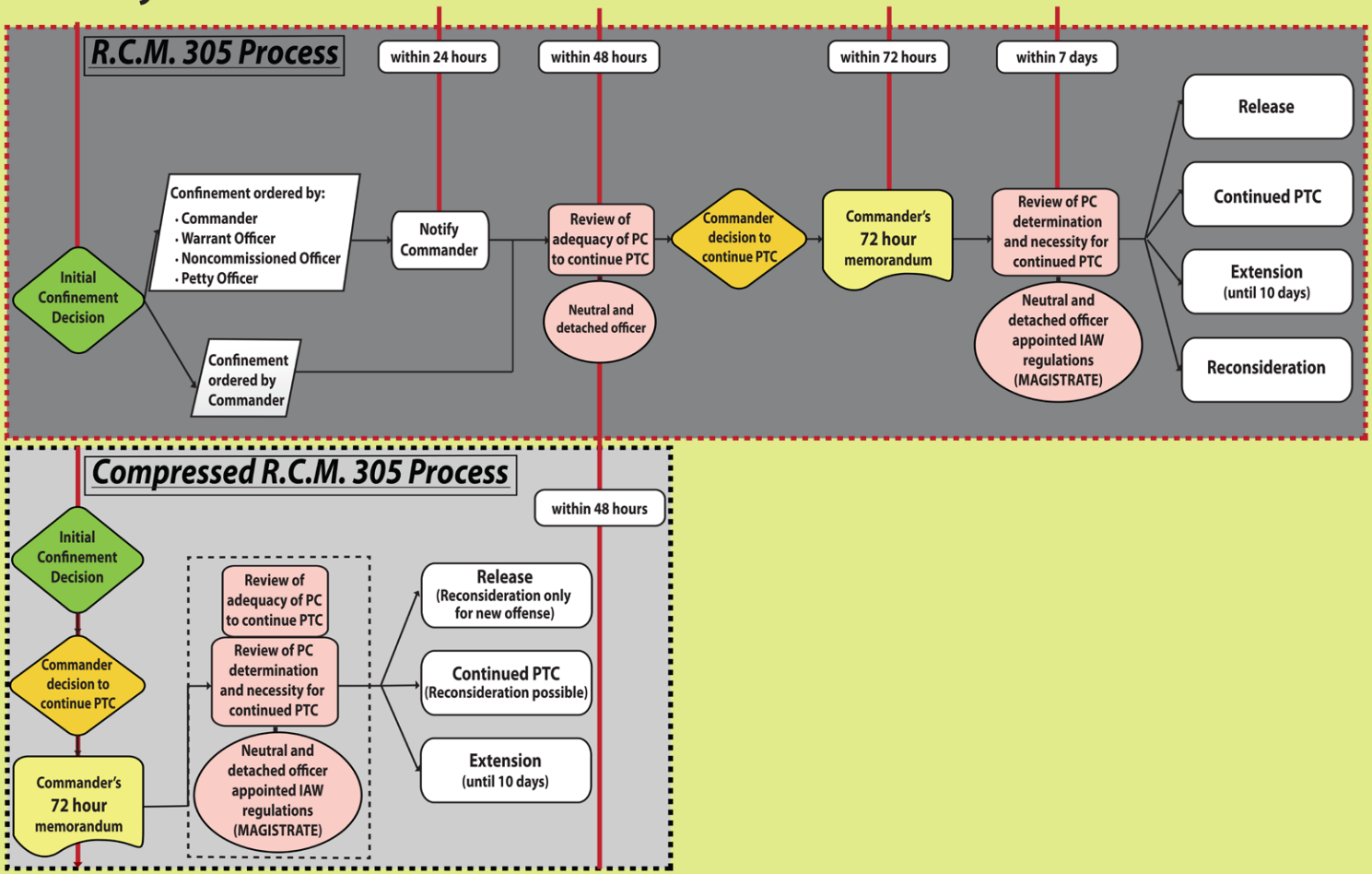

Pre-Trial Confinement Decision

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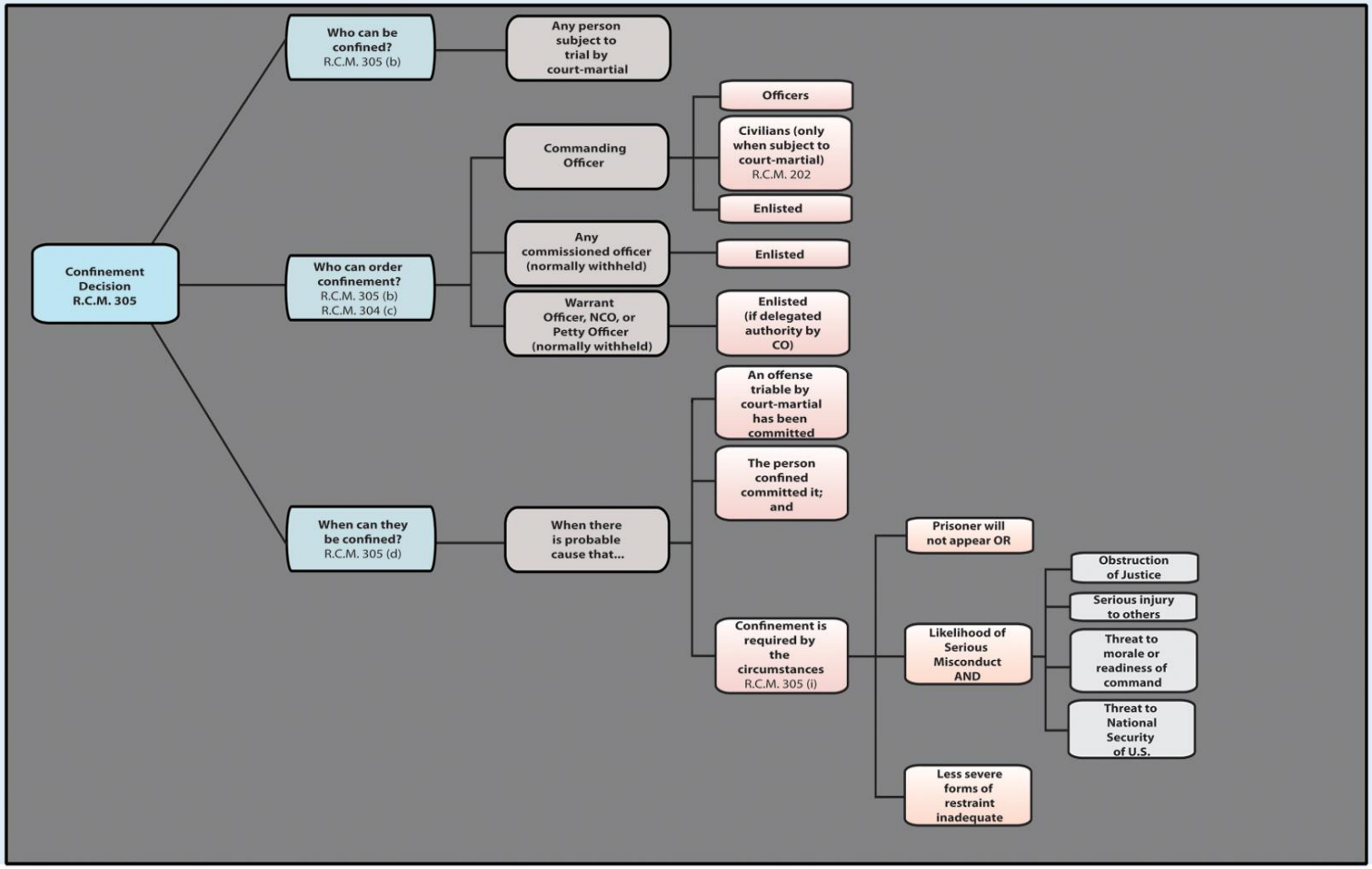
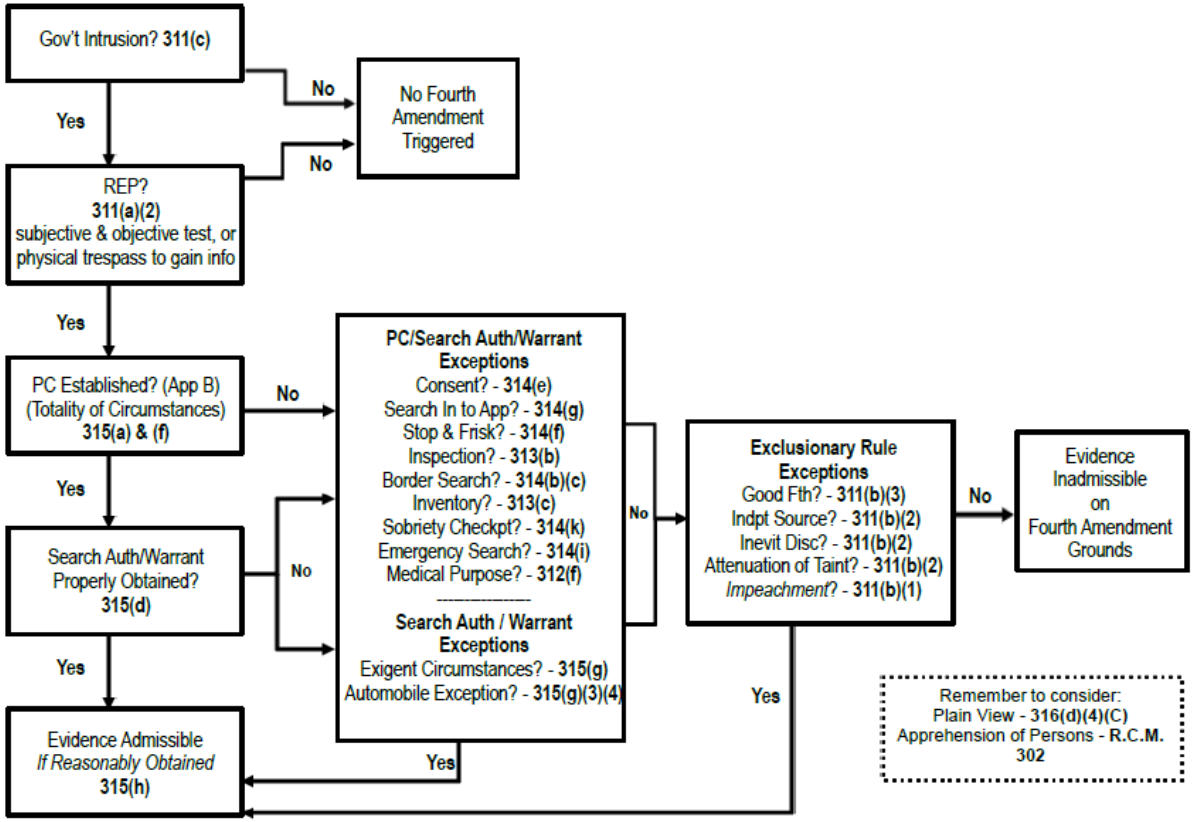


Fourth Amendment Flowchart



Questions to Ask & Areas to Explore

The Intuitive Guide to Foundations ™*

What is that?

How do you know?
How else?

Where did it come from?

Where else did it go?
How did it get here?
How do you know?

What does it have to do with this case?

How do you know?
Why is it important?

Is it accurate?

How do you know?
How else?

Is that the original?

How do you know?
If not, is it a good copy?
Why don't you have the original?

What is My Witness Problem?

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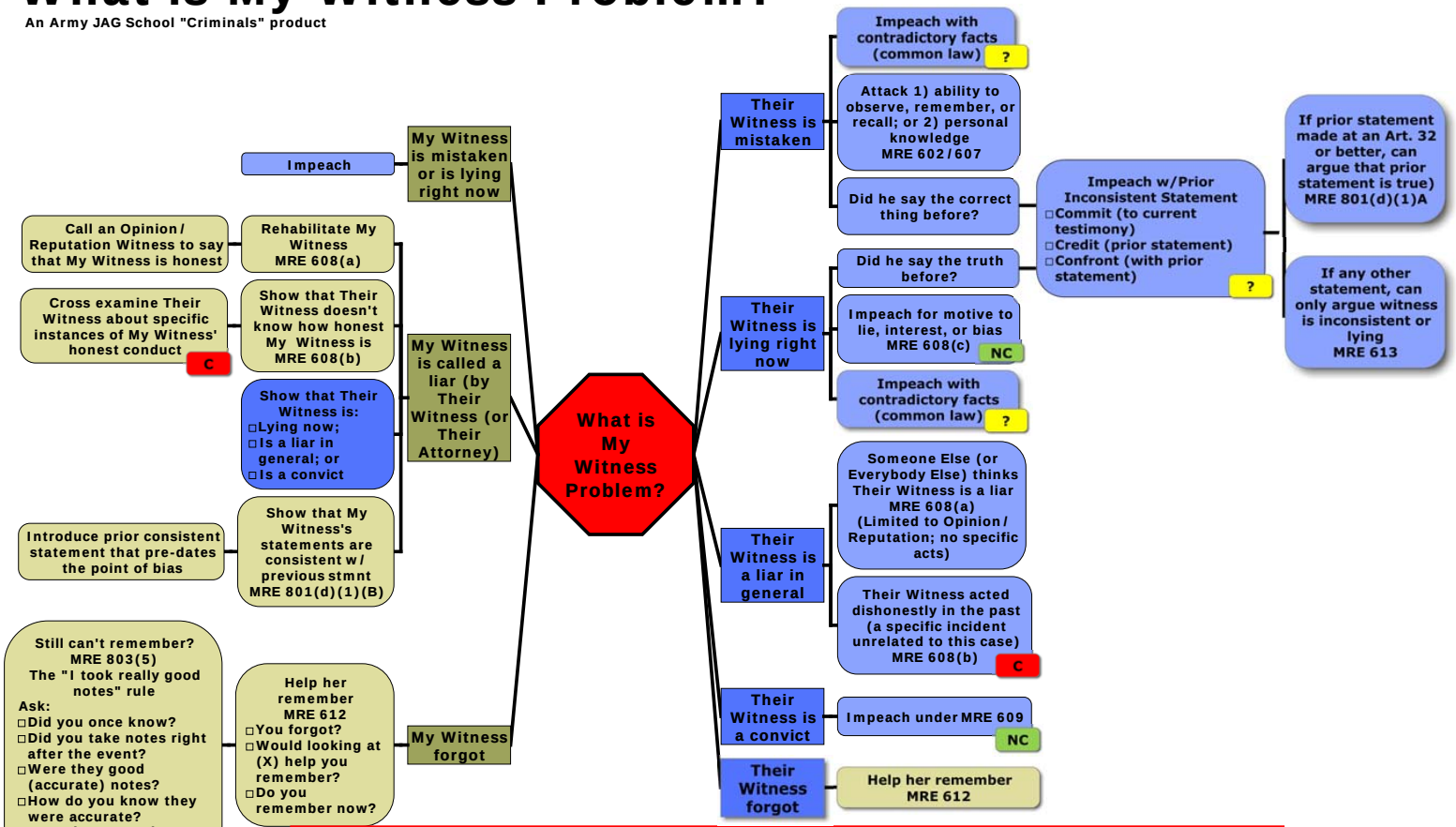


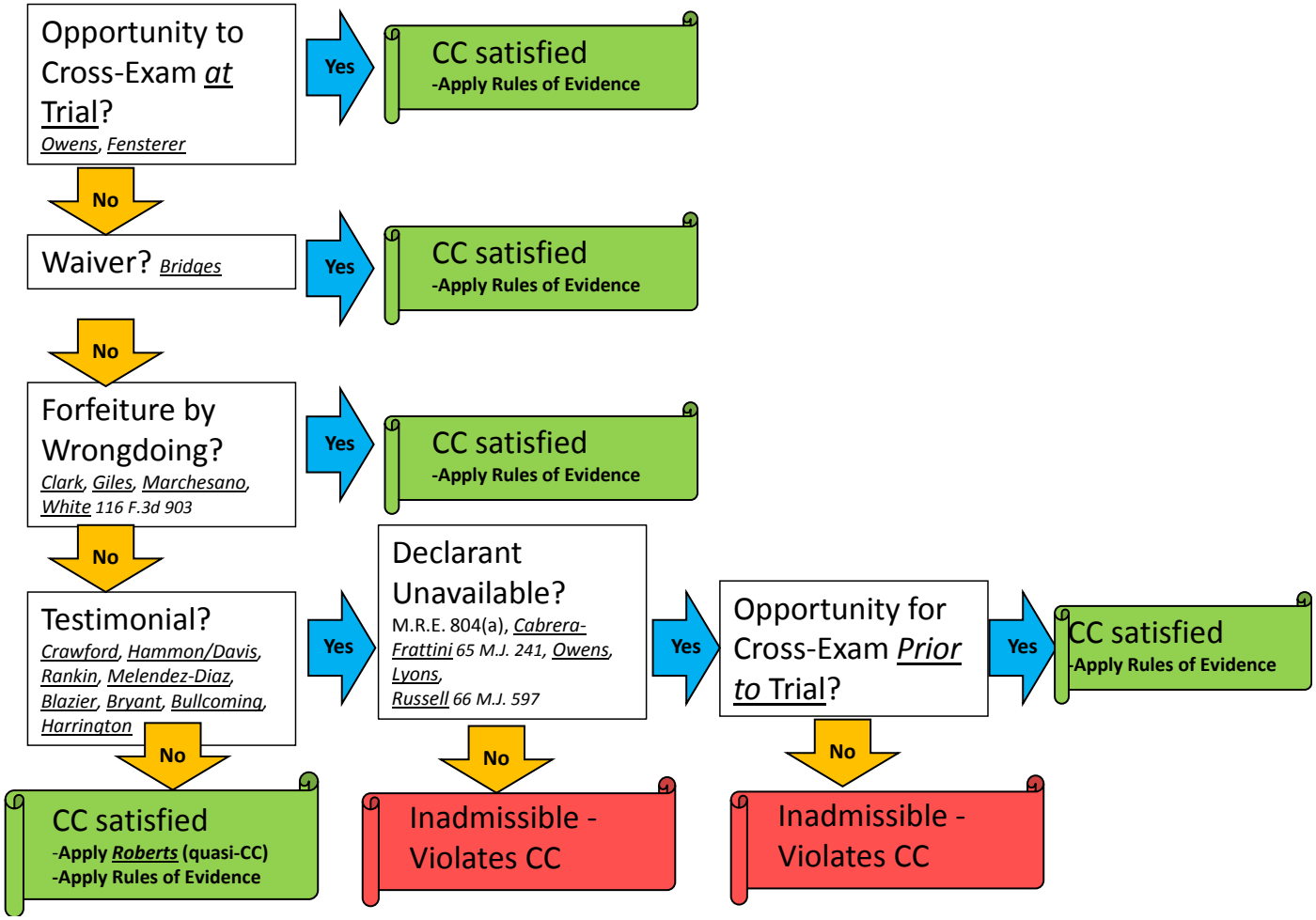
Note: Some forms of impeachment require that you "prove up"*noncollateral* matters (that is, those matters important enough to hold a mini-trial. Remember that impeachment may be limited byMRE 403 as well.

C = collateral - you are "stuck with the witness' answer."

? = possibly noncollateral - proponent must demonstrate it is important enough to have a "mini-trial."

NC = noncollateral - you should "*prove up*" with *extrinsic evidence* (other witnesses or exhibits) if the witness denies or equivocates.

Confrontation Analysis – Hearsay Statements



Ohio v. Roberts "Quasi-Confrontation" Analysis – **Nontestimonial** Statements

Is the Hearsay Exception "Firmly Rooted"?

See, 4 Federal Evidence § 8:31 (3d ed.)

Firmly rooted (generally):

- 801(d)(2)(E) – Co-conspirator statement
- 803(1) – Present sense impression
- 803(2) - Excited utterance
- 803(3) – Then existing mental, emotional, or physical condition
- 803(4) - Medical diagnosis & treatment
- 803(5) – Recorded recollection
- 803(6) – Records of regularly conducted activity*
- 803(8) – Public records and reports*
- 804(b)(1) – Former testimony
- 804(b)(2) – Statement under belief of impending death

Not firmly rooted:

- 804(b)(3) – Statement against interest
- 807 – Residual exception

Yes → "CC" satisfied

No ↓

Does the Statement Show "Particularized Guarantees of Trustworthiness?

[Shown from the totality of circumstances surrounding the making of the statement *Idaho v. Wright, 497 U.S. 805 (1990)]*

Yes → "CC" satisfied

No ↓

Inadmissible - Violates "CC"

Intuitive Guide to Basic Hearsay

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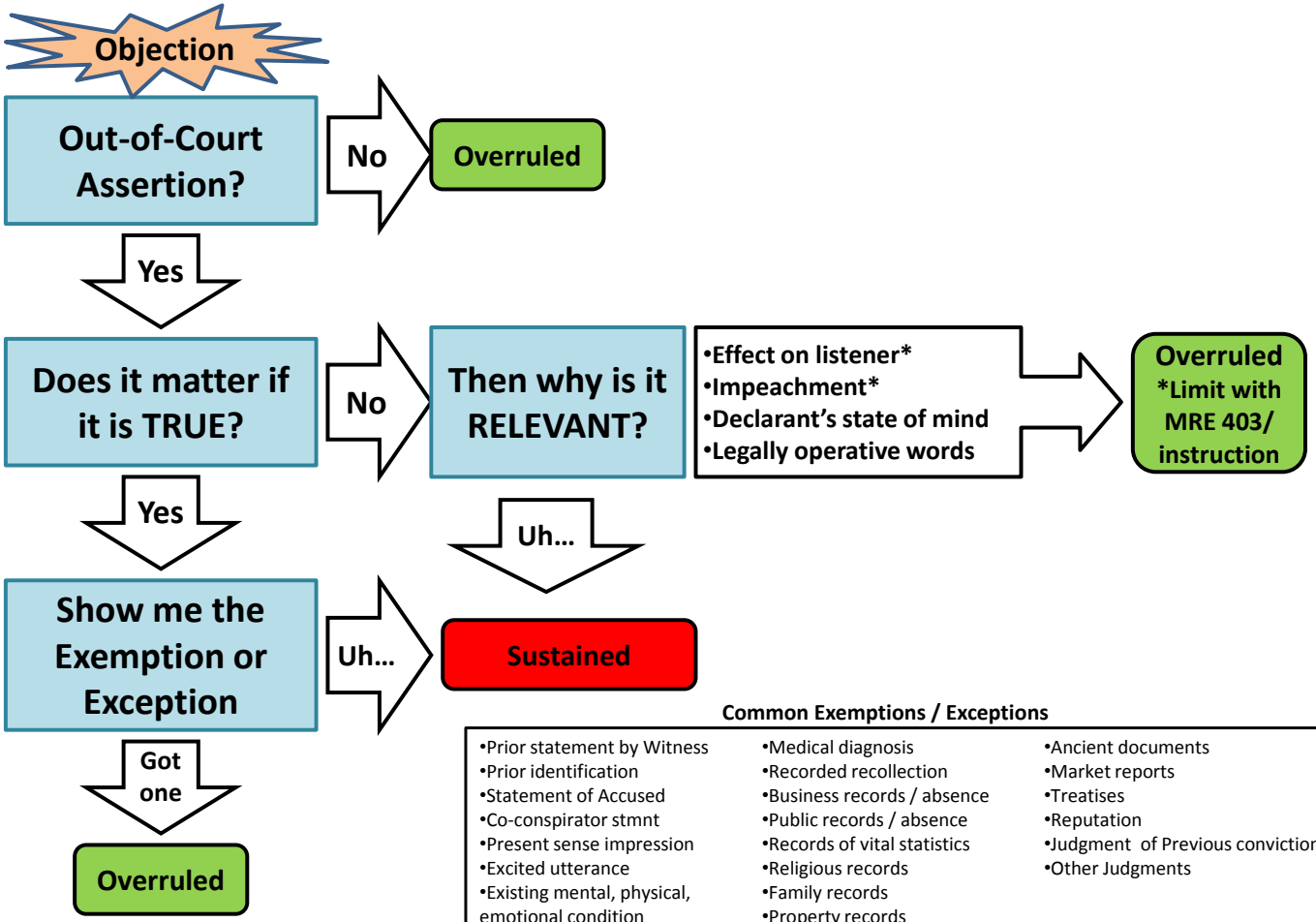

Common Exemptions / Exceptions

•Prior statement by Witness	•Medical diagnosis	•Ancient documents
•Prior identification	•Recorded recollection	•Market reports
•Statement of Accused	•Business records / absence	•Treatises
•Co-conspirator stmnt	•Public records / absence	•Reputation
•Present sense impression	•Records of vital statistics	•Judgment of Previous conviction
•Excited utterance	•Religious records	•Other Judgments
•Existing mental, physical, emotional condition	•Family records	
	•Property records	

192nd Officer Basic Course – Criminal Law Instruction

Student Prob. Solving | Exercise | Lecture | Workshop | Individual / Group Prep

TIME	MONDAY – 2 Dec	TUESDAY – 3 Dec	WEDNESDAY – 4 Dec	THURSDAY – 5 Dec	FRIDAY – 6 Dec
		Finance Brief (0730)		PDP #2 (0810-0900)	
0910	Intro to Military Justice; Jurisdiction and C-M Personnel 0910-1200 LTC Calarco LtCol Winklosky MAJ Wakefield	Unlawful Command Influence 0910-1000 LTC Calarco	G/IP: Charge Sheet 0910-1000	Case Analysis 0910-1000 LtCol Winklosky	Direct Examination 0910-1000 MAJ Sykes
0930					
1010		Military Crimes & Defenses and Article 120 1010-1200 MAJ Bateman	REVIEW: Charge Sheet and Preferral DEMO 1010-1100 MAJ Bateman	Theme Development 1010-1100 MAJ Stephens	WS: Direct Exam 1010-1200 Faculty
1030					
1110			Speedy Trial & Pretrial Restraint (Part I) 1110-1200 MAJ Steward	WS: Case Analysis and Theme Development 1110-1200 Faculty	
1130					
1200	Lunch	Lunch	Lunch	Lunch	Lunch
1330	Intro to Victim & Witness Programs 1330-1420 MAJ Sykes	SPS: Charging 1330-1420 MAJ Bateman	Speedy Trial & Pretrial Restraint (Part II) 1330-1420 MAJ Steward	Instructions 1330-1420 MAJ Bateman	Foundations and Handling Exhibits 1330-1420 MAJ Kliem
1400					
1430	Offender-Centric Prosecution 1430-1520 MAJ Sykes	MJO, Benchbook, and Digital Resources 1430-1520 LTC Grimes	G/IP: CDR's PTC Memo 1430-1520	Witness Interviews 1430-1500 MAJ Sykes	WS: Foundations and Exhibits 1430-1520 Faculty
1500					
1530	Professional Responsibility 1530-1720 LTC Grimes	Article 15s , Non-Judicial Punishment , and Summary Courts-Martial 1430-1720 MAJ Steward	Exercise: PTC REVIEW 1530-1700 Faculty	WS: Witness Interview 1510-1630 Faculty	Search and Seizure 1530-1720 Maj Durden
1600					
1630				Research and Study	
1700			Research and Study	ASU Inspection (1700-1800)	
1720					

192nd Officer Basic Course – Faculty Calendar

Student Prob. Solving | Exercise | Lecture | Workshop | Individual / Group Prep

TIME	MONDAY- 9 Dec	TUESDAY – 10 Dec	WEDNESDAY – 11 Dec	THURSDAY – 12 Dec	FRIDAY – 13 Dec
				PDP #3 (0810-0900)	
0910	Witness Memory 0910-0930 MAJ Kliem	Confrontation 0910-1100	Self-Incrimination 0910-1100	ARTICLE 32 0910-1100	Motions, Motions Advocacy, and Form of Objections 0910-1100
0930					
1010	WS: Witness Memory 0940-1100 Faculty	MAJ Kliem	MAJ Steward	Faculty	MAJ Stephens
1030					
1110	Character and Uncharged Misconduct 1110-1200 MAJ Kliem	Cross-Examination 1110-1200 MAJ Sykes	Impeachment – Prior Inconsistent Statement 1110-1200 MAJ Kliem	SPS: Article 32 Wrap-Up 1110-1200 MAJ Steward	Pleas 1110-1200 MAJ Wakefield
1130					
1210	Lunch	Lunch	Lunch	Lunch	Spouses' Lunch (1200-1330)
1330	Hearsay Basics 1330-1420 MAJ Kliem	WS: Cross-Examination 1330-1420 Faculty	SPS: Impeachment – Prior Inconsistent Statement 1330-1420	Referral and Arraignment 1330-1420 LTC Grimes	1330-1530 AFTB Training
1400					
1430	SPS: Hearsay 1430-1520 MAJ Kliem	Impeachment – MRE 608 1430-1520 MAJ Kliem	WS: Impeachment – Prior Inconsistent Statement 1430-1520 Faculty	MRE 412-414 1430-1620 MAJ Kliem	
1500					
1530	WS: Hearsay 1530-1620 Faculty	WS: Impeachment – MRE 608 1530-1720 Faculty	Article 32 Basics 1530-1720 MAJ Steward		Research and Study
1600					
1630	Research and Study			Research and Study	
1700					
1720					Blues Reception 1730

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192nd Officer Basic Course – Faculty Calendar

Student Prob. Solving | Exercise | Lecture | Workshop | Individual / Group Prep

TIME	MONDAY – 16 Dec	TUESDAY – 17 Dec	WEDNESDAY – 18 Dec	THURSDAY – 19 Dec	FRIDAY – 20 Dec
		Class Photo (0800)		PDP #4 (0810-0900)	
0910	PPTO Brief & Student Loan Repayment	Production 0910-1000 Maj Durden	Punishments and R.C.M. 1001 0910-1100 MAJ Wakefield	US v. ARCHIE – CASE 1 0910-1520 Faculty	US v. ARCHIE – CASE 2 0910-1520 Faculty
0930					
1010		Opening Story 1010-1100 MAJ Stephens			
1030					
1110	Discovery (Part I) 1110-1200 Maj Durden	WS: Opening Story 1110-1200 Faculty	Sentencing Argument 1110-1200 MAJ Stephens		
1130					
1200	Lunch	Lunch	Lunch	Lunch	
1330	Discovery (Part II) 1330-1420 Maj Durden	Delivering Arguments 1330-1420 MAJ Stephens	WS: Sentencing Argument 1330-1420 Faculty	US v. ARCHIE – CASE 1 (cont'd)	US v. ARCHIE – CASE 2 (cont'd)
1400					
1430	MOTIONS HEARING 1430-1620 Faculty	WS: Delivering Arguments 1430-1520 Faculty	Post-Trial 1430-1520 MAJ Wakefield		
1500					
1530		WS: Ask the Professor (Preparation for CASE 1 & 2) 1530-1720 Faculty	G/IP: Case 1 1530-1720	G/IP: Case 2 1530-1720	ADC Course AAR 1530-1620 Instructor
1600					
1630					Research and Study
1700					
1720					

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