

members, if any.

(e) *Lowest number.* The lowest number is the number with the lowest numerical value.

(f) *Announcement.* After identifying the members to be impaneled in accordance with this rule, and after excusing any excess members, the military judge shall announce that the members are impaneled.”

(nnnn) R.C.M. 912B(a) is amended to read as follows:

“(a) *In general.* Prior to the start of deliberations, a member who has been excused after impanelment shall be replaced in accordance with this rule. Alternate members excused after impanelment shall not be replaced.”

(oooo) R.C.M. 912B(b) is amended to read as follows:

“(b) *Alternate members impaneled.* Prior to the start of deliberations, an excused member shall be replaced with an impaneled alternate member. The alternate member with the lowest random number assigned pursuant to R.C.M. 911(a) shall replace the excused member, unless in the case of an enlisted accused, the use of such member would be inconsistent with the specific panel composition established under R.C.M. 903. Alternate members who have not replaced impaneled members prior to deliberations on findings shall be excused at the time the court closes for deliberations.”

(pppp) A new R.C.M. 912B(d) is inserted immediately after R.C.M. 912B(c) to read as follows:

“(d) *After the start of deliberations.* Once the military judge has closed the court for deliberations, if the number of members is reduced below the requirements of Article 29, trial may not proceed and the military judge shall declare a mistrial.”

(qqqq) R.C.M. 914(e)(1) is amended to read as follows:

“(1) *Party refusal to comply.* If the other party elects not to comply with an order to deliver a statement to the moving party, the military judge shall order that the testimony of the witness be disregarded by the trier of fact and that the trial proceed, or, if it is the Government that elects not to comply, shall declare a mistrial if required in the interest of justice.”

(rrrr) R.C.M. 914A(b) is amended to read as follows:

“(b) *Definition.* As used in this rule, “remote live testimony” includes, but is not limited to, testimony by video teleconference, closed circuit television, or similar technology.”

(ssss) R.C.M. 914B(b) is amended to read as follows:

“(b) *Definition.* As used in this rule, testimony via “remote means” includes, but is not limited to, testimony by video teleconference, closed circuit television, telephone, or similar technology.”

(tttt) R.C.M. 918(a)(1)(B) is amended to read as follows:

“(B) not guilty of an offense as charged, but guilty of a lesser included offense;”.

(uuuu) R.C.M. 920(g) is amended to read as follows:

“(g) *Waiver.* Instructions on a lesser included offense shall not be given when both parties waive such an instruction. After receiving applicable notification of those lesser included offenses of which an accused may be convicted, the parties may waive a lesser included offense instruction. A written waiver is not required. The accused must affirmatively acknowledge that the accused understands the rights involved and affirmatively waive the instruction on the record. The accused’s waiver must be made freely, knowingly, and intelligently. In the case of a joint or common trial, instructions on a lesser included offense shall not be given as to an individual accused when that accused and the Government agree to waive such an instruction.”

(vvvv) R.C.M. 924(c)(2) is amended to read as follows: