

(11) That, only in the case of a violation of Article 103, 103a, or 103b—

(A) The accused has been convicted of another offense involving espionage, spying, or treason for which either a sentence of death or imprisonment for life was authorized by statute; or

(B) That in committing the offense, the accused knowingly created a grave risk of death to a person other than the individual who was the victim.

For purposes of R.C.M. 1004, “national security” means the national defense and foreign relations of the United States and specifically includes a military or defense advantage over any foreign nation or group of nations; a favorable foreign relations position; or a defense posture capable of successfully resisting hostile or destructive action from within or without.

(d) *Evidence in extenuation and mitigation.* The accused shall be given broad latitude to present evidence in extenuation and mitigation.

(e) *Basis for findings.* The findings specified by R.C.M. 1004(a)(4) and (a)(5) may be based on evidence introduced before or after findings under R.C.M. 921, or both.

(f) *Instructions.* Instructions shall be given after arguments by counsel and before the members close to deliberate on sentence, but the military judge may, upon request of the members, any party, or *sua sponte*, give additional instructions at a later time.

(1) *Requests for instructions.* During presentencing proceedings or at such other time as the military judge may permit, any party may request that the military judge instruct the members on the law as set forth in the request. The military judge may require the requested instruction to be written. Each party shall be given the opportunity to be heard on any proposed instruction before it is given. The military judge shall inform the parties of the proposed action on such requests before their arguments to the members.

(2) *How given.* Instructions shall be given orally on the record in the presence of all parties and the members. Written copies of the instructions or, unless a party objects, portions of them may also be given to the members for their use during deliberations.

(3) *Required instructions.* Instructions shall include—

(A) The charge(s) and specification(s) for which the members shall make a sentencing determination;

(B) The applicable aggravating factor or factors under R.C.M. 1004(c) and to which charge(s) and specification(s) the aggravating factor or factors apply;

(C) A statement of the procedures for deliberation and voting set out in R.C.M. 1004(g);

(D) A statement informing the members that they are solely responsible for selecting an appropriate determination and may not rely on the possibility of any mitigating action by the convening or higher authority;

(E) A statement that the members should consider all matters in aggravation, whether introduced before or after findings, and matters introduced under R.C.M. 1001(b)(1), (2), (3), and (5);

(F) A statement that the members may consider:

(i) Any evidence admitted by the military judge during the presentencing proceeding under R.C.M. 1001; and

(ii) Any evidence admitted by the military judge during the findings proceeding;

(G) A statement that the members shall consider all evidence in extenuation and mitigation before a sentence of death may be determined; and