

(i) if the special trial counsel becomes aware that the sentence of a court-martial is ambiguous, the special trial counsel shall make a binding determination that the convening authority return the matter to the court-martial for clarification; or

(ii) if the sentence of the court-martial appears to be illegal, the special trial counsel shall make a binding determination that the convening authority shall return the matter to the court-martial for correction.

(3) *Reconsideration procedure.* Any member of the court-martial may propose that a determination of the members in a capital case be reconsidered.

(A) *Instructions.* When reconsideration has been requested, the military judge shall instruct the members on the procedure for reconsideration.

(B) *Voting.* The members shall vote by secret written ballot in closed session whether to reconsider a determination.

(C) *Number of votes required for aggravating factors in capital cases.* Members may reconsider a unanimous vote under R.C.M. 1004(g)(4)(A) (i) that an aggravating factor was proven beyond a reasonable doubt if at least one member votes to reconsider. Members may reconsider a unanimous vote under R.C.M. 1004(g)(4)(A)(ii) that any extenuating and mitigating circumstances are substantially outweighed by any aggravating circumstances admissible under R.C.M. 1001(b)(4), including the factors under R.C.M. 1004(c), if at least one member votes to reconsider. In all other circumstances, a vote under R.C.M. 1004(g)(4)(A)(i) or (ii) may be reconsidered only if at least a majority of the members vote for reconsideration.

(D) *Number of votes required for determinations.*

(i) *With a view toward increasing.* Members may reconsider a determination with a view toward increasing the severity of the determination only if at least a

majority votes for reconsideration. However, members may not reconsider a non-unanimous vote for a determination of death.

(ii) *With a view toward decreasing.* Members may reconsider a determination with a view toward decreasing the severity of the determination only if—

(I) In the case of a death determination, at least one member votes to reconsider; or

(II) In the case of a determination of life in prison without eligibility for parole, more than one-fourth of the members vote to reconsider.

(E) *Successful vote.* If a vote to reconsider succeeds, the members will revote in accordance with R.C.M. 1001(g)(3) and (4).

(j) *Sentencing by military judge.*

(1) The military judge shall sentence the accused in accordance with the binding determination of the members under R.C.M. 1004(g). The military judge may include in any sentence to death or life in prison without eligibility for parole any other authorized lesser punishment. When the military judge's sentence includes confinement or fines, the military judge shall determine an appropriate term of confinement and fine for each specification for which the accused was found guilty.

(2) Where there is a finding of guilty for a specification for which death may be adjudged and a finding of guilty for a specification for which death may not be adjudged—

(A) The members shall make a determination for each specification for which death may be adjudged in accordance with subsection (g);