

APPENDIX

In a contested case with panel members in which the accused is charged with a sexual assault offense and evidence of the accused's commission of other sexual assault offenses is properly admitted under Military Rule of Evidence 413 prior to findings—as an exception to the general rule excluding such evidence—the military judge should give appropriately tailored instructions.

(NOTE: Those portions in **bold lettering** are required instructions when such evidence is admitted into evidence. The other portions are discretionary instructions and should be given when requested by counsel and when otherwise raised by the evidence.)

You have heard evidence concerning allegations that the accused may have committed (another) (other) uncharged offense(s) of sexual assault. The accused is not charged with (this) (these) other offense(s) involving (this) (these) individual(s). This evidence should have no bearing on your deliberations unless you determine (this) (these) event(s) occurred. If you determine by a preponderance of the evidence that the other uncharged offense(s) occurred, you may consider the evidence for its bearing on any matter to which it is relevant in relation to the _____ charged offense(s). (It has no bearing on any of the other offenses charged.)

You may also consider the evidence of such other act(s) of sexual assault for (its) (their) tendency, if any, to show the accused's propensity to engage in sexual assault, as well as (its) (their) tendency, if any, to (_____):

(NOTE: The military judge should only include the following additional factors when requested by counsel and when they are supported by the evidence and facts in the case at bar. The military judge, at his or her discretion, may also include any additional factors for the panel to consider, upon counsel request.)

(identify the accused as the person who committed the offense(s) alleged in _____)

(prove a plan or design of the accused to _____)

(prove knowledge on the part of the accused that _____)

(prove that the accused intended to _____)

(show the accused's awareness of (his) (her) guilt of the offense(s) charged)

(determine whether the accused had a motive to commit the offense(s))

(show that the accused had the opportunity to commit the offense(s))

(rebut the contention of the accused that (his) (her) participation in the offense(s) charged was the result of (accident) (mistake) (entrapment))

(rebut the issue of _____ raised by the defense); (and) (_____)

You may not, however, convict the accused solely because you believe (he) (she) committed (this) (these) other offense(s) (or solely because you believe the accused has a propensity to engage in sexual assault.)

You may not use this evidence as a substitute for evidence that the accused actually committed the crimes for which (he) (she) stands charged. In other words, you cannot use this evidence to overcome a failure of proof in the government's case, if you perceive any to exist, as the accused may be convicted of an offense only if you are satisfied the government has proven every element of each charged offense beyond a reasonable doubt.

Each offense must stand on its own and you must keep the evidence of each offense separate. The burden is on the prosecution to prove the accused's guilt beyond a reasonable doubt as to each and every element of (each) (the) offense(s) charged.