**Change 15-03 (Aggravated Assault in light of US v. Gutierrez)**

**Replace the 4th paragraph in paragraph *d. Definitions and Other Instructions* for Instruction 3-54-8 with the following:**

A (weapon) (means) (force) is used in a manner “likely” to produce death or grievous bodily harm when the natural and probable consequence of its particular use would be death or grievous bodily harm (although this may not be the use to which the object is ordinarily put).

The question is not whether the (weapon) (means) (force) itself is likely to produce death or grievous bodily harm, but instead whether the manner in which it is used is likely to produce death or grievous bodily harm. Ultimately, therefore, you must decide whether the charged use of the (weapon) (means) (force) was “likely” to bring about death or grievous bodily harm, using the plain meaning of the word “likely.” It is not necessary that death or grievous bodily harm actually result.

**Replace the current NOTE 4 with the following:**

NOTE 4: Deleted.

**Replace the current NOTE 12 with the following:**

NOTE 12: Deleted.

**Insert a new NOTE 12.1 and the instruction following it:**

NOTE 12.1: Consent as a defense. Under certain circumstances, consent may be a defense to simple assault or assault consummated by a battery. In aggravated assault cases, assault law does not recognize the validity of an alleged victim’s consent to an act that is likely to result in grievous bodily harm or death.

A victim may not lawfully consent to an assault in which a (weapon) (means) (force) is used in a manner likely to produce death or grievous bodily harm. Under those circumstances, consent is not a defense.

**Replace the current paragraph *e. REFERENCES* for instruction 3-54-8 with the following:**

e. REFERENCES:Likelihood of death or grievous bodily harm: United States v. Weatherspoon, 49 MJ 209 (CAAF 1998); United States v. Gutierrez,74 MJ 61 (CAAF 2015).

**Replace the current NOTE 7 for Instruction 3-54-9 with the following:**

NOTE 7: Deleted.

**Insert a new NOTE 7.1 and the instruction following it:**

NOTE 7.1: Consent as a defense. Under certain circumstances, consent may be a defense to simple assault or assault consummated by a battery. In aggravated assault cases, assault law does not recognize the validity of an alleged victim’s consent to an act intended to cause grievous bodily harm.

An alleged victim may not lawfully consent to an intentional infliction of grievous bodily harm. Consent is not a defense to this offense.