

Article 120s from a Defense Perspective

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Overview

- **Timeline of an Investigation and Career Ramifications**
- **Article 120s Charging Scheme--*Mendoza***
- **Article 32s**
- **MRE 412**
- **OSTC Effects**

Timeline and Career Effects

- 8-14 months...on the short end
- No PCS, TDY (questionable), trainings, promotions, etc.
- Titling
- Reputation/Stigma
- Follow on actions...

Article 120s

- One of the most common Courts-Martial
- Four Offenses:
 - Rape
 - Sexual Assault
 - Aggravated Sexual Contact
 - Abusive Sexual Contact
- Common Defense Theme:
 - Alcohol/Blackout
 - Delayed Reporting with Custody/Divorce
 - Significant Other Involved
 - Embarrassment/Disrespect

Article 120— Effects of *Mendoza*

- **Without Consent vs Incapable of Consenting**
 - Charge without consent but argue incapable of consenting—lessening the burden (mens rea)
 - Charge in the alternative
 - Is this allowed? Should it be?
 - Does it make Gov't look weaker?

Article 32s— What is the Point?

- **Probable Cause Hearing**
- **No examination of witnesses**
- **Recommendations are non-binding**

MRE 412

- Ever Changing Case Law—*St Jean; Leonhardt; Banker; Gaddis*
- Protection of the Complaining Witness vs Rights of Accused
- Presentation of Evidence
- Stipulating vs Arguing

OSTC Effects

- **Still premature but....**
- **Less cases going forward?**
- **Binding recommendation?**
- **Stronger litigation for Gov't?**

What is next...

- How many 120s proceed?
- Will Article 32s become useful?
- Will Defendant's have more rights?

Questions?

