

ABSTRACT

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IN MILITARY SENTENCING? A STUDY OF
THE TRIAL PENALTY IN AIR FORCE
COURTS-MARTIAL

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Prior sentencing research has largely ignored the military justice system even though over two million people are subject to its jurisdiction. Studying the military justice system advances knowledge of the military population and offers an opportunity to explore criminal justice issues and theoretical perspectives in a different legal system that includes jury sentencing. The present study applies organizational efficiency, uncertainty avoidance, and court community perspectives to investigate whether military offenders who assert their Sixth Amendment right to a jury trial are penalized with harsher sentences than offenders who plead guilty. Using Air Force court-martial data from 2005 and 2006, the results of the study found no support for a trial penalty effect and also found that juries are less likely to impose severe types of punishment compared to judges. The study offers possible explanations for these findings and discusses implications for public policy, theory, and the direction for future research.

DOES PROCESS MATTER IN MILITARY SENTENCING?
A STUDY OF THE TRIAL PENALTY IN
AIR FORCE COURTS-MARTIAL

By

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CHAPTER 1: INTRODUCTION

The military justice system is a part of the overall American legal system with over two million people, including some civilians, subject to its jurisdiction (Office of Under Secretary of Defense, 2007; Secretary of Defense, 2008).¹ Despite the far jurisdictional reach of this court system, criminal justice researchers have largely ignored the military system and the offenders that are processed through it. Only a handful of studies exist in the published literature examining military courts-martial, and these studies do not apply theoretical perspectives found in the civilian sentencing literature. Furthermore, the civilian court studies are not generalizable to the military because of differences in the populations and legal systems. The military population is predominately male, has a smaller proportion of Hispanics, is more educated and younger, and has a very small proportion of members with any criminal history (Department of Defense, 2005).² Moreover, the military justice system has the additional purpose of maintaining good order and discipline in the military, limits the prosecutor's discretion, permits jury sentencing, and offers broad types of punishments and punishment ranges. Thus, studying the military is not only important for advancing knowledge of a neglected population, it also offers the opportunity to explore criminal justice issues and theoretical perspectives within a legal system that has some differences from its civilian counterparts.

¹ In 2006, Congress amended the Uniform Code of Military Justice to allow prosecution of civilians working in military operations (Secretary of Defense, 2008).

² According to the 2005 Department of Defense report on Social Representation in the U.S. Military Service, females account for 15% of the military, 99% of all recruits have a high school diploma or equivalent, 47% of the enlisted force is between the ages of 17 and 24, and although African Americans are representative of the civilian population (13%), Hispanics are underrepresented (10%). In 2004, waivers were granted for felony convictions by the respective services as follows: Air Force 0.011%; Army 5.7%, Navy 0.1%, and Marines 0.6% (Defense Manpower Data Center, 2006).

An issue that has received considerable attention by researchers and criminal justice officials is whether an offender is penalized with a more severe sentence when he asserts his Sixth Amendment right to a jury trial. This phenomenon is frequently referred to as a “trial penalty” or “process discount” in criminal justice studies. Although research is somewhat mixed on whether a trial penalty or process discount actually exists, most studies have found a trial penalty effect (e.g. Ulmer and Bradley, 2006; Zatz and Hagan, 1985; Ulmer, 1997; Uhlman and Walker, 1979; Brereton and Casper, 1982; Walsh, 1990; King, Soule, Steen, and Weidner, 2005; Johnson, 2003). Furthermore, research has focused almost exclusively on civilian jurisdictions that do not permit juries to sentence offenders in non-capital cases. Only a small number of published studies have examined the trial penalty question in jury sentencing jurisdictions and none of them are the military (e.g. King and Noble, 2004, 2005; Weninger, 1994; Baab and Ferguson, 1967). Thus, the present study addresses this empirical void in the literature by examining whether a process discount exists in military sentencing.

Although this investigation is exploratory in nature, it also seeks to apply civilian court based theoretical perspectives to military sentencing. Aspects of organizational efficiency, uncertainty avoidance, and court community perspectives are particularly relevant to the trial penalty issue and have found some empirical support in sentencing research. For example, several studies have asserted that court actors induce guilty pleas via plea bargaining to reduce the use of court resources (Dixon, 1995; Engen and Steen, 2000; e.g. King and Noble, 2004, 2005; King et al., 2005). As a result, this court process rewards offenders who plead guilty with less severe punishments than offenders who go to trial. Moreover, court community studies have suggested that court actors are part of

an interrelated workgroup that develops “going rates” based on past cases to reduce uncertainty in the outcome and to facilitate plea bargaining (Ulmer, 1997; Eisenstein and Jacob, 1977; Eisenstein et al., 1988; Nardulli et al., 1988). These going rates have resulted in less severe punishments for offenders who plead guilty than those who assert their right to trial (Eisenstein et al., 1988). Finally, other studies incorporate aspects of the uncertainty avoidance perspective (Albonetti, 1991) by asserting that judges use “patterned responses” when faced with more limited information regarding the likelihood of future offending (e.g. Steffensmeier, Ulmer, and Kramer, 1998; Ulmer and Bradley, 2006). In guilty pleas, judges are less likely to be exposed to aggravating facts and make situational imputations from case and offender characteristics that produce a trial penalty effect (Ulmer and Bradley, 2006). Although these theoretical perspectives have been used to explain sentencing disparity, research has not fully addressed their applicability to jury sentencing and has never extended these perspectives to the military.

Therefore, this study intends to advance the quantitative research on military as well as civilian sentencing by exploring the trial penalty question within military courts. First, I examine some of the major differences between the military and civilian court systems that are most likely to affect sentencing, and then I review the military, trial penalty, and jury sentencing literature. Second, I apply concepts from the theoretical perspectives of uncertainty avoidance, organizational efficiency, and court communities to the military system and develop specific hypotheses. Third, using Air Force courts-martial data, I expand on previous research by examining whether military offenders receive a process discount when they select a mode of conviction that reduces uncertainty

and minimizes the use of court resources. Finally, I discuss the findings of this research and its implications for policy and future studies.

Military Justice System

Before exploring the trial penalty issue, understanding some of the differences between civilian and military courts is essential. One of the most fundamental distinctions between civilian and military legal systems lies in their purposes. The military justice system is not only a justice system designed to protect individual rights and promote due process, fairness, and impartiality like civilian justice systems, but it is also a disciplinary tool designed to maintain good order and discipline—a necessity for the effectiveness of all military units (Manual for Court Martial, 2005; Moorman, 2000). For the military to function successfully, commanders must ensure that military members in their units will perform their duties and follow orders even in situations involving life and death (Moorman, 2000). Because the military justice system has an additional purpose of maintaining good order and discipline, the Uniform Code of Military Justice (UCMJ) contains military specific offenses such as absence without leave (AWOL), desertion, mutiny, failure to obey an order, and dereliction of duty. For instance, a military member could be prosecuted for not showing up for work or failing to perform his core job duties. Moreover, because the commander is responsible for maintaining order and discipline, the commander controls aspects of the military justice system that ordinarily would fall within the purview of the civilian prosecutor (Perdue, 1999; Moorman, 2000).

The role of prosecutorial discretion has been the subject of several studies in the civilian court systems (e.g. Albonetti, 1986, 1987; Miethe, 1987; Wooldredge and

Griffin, 2005). Unlike civilian courts, the military limits the discretion of prosecutors by placing the decisions about which cases to prosecute and plea bargain in the hands of a non-lawyer, known as the convening authority. The convening authority is a commander that holds a specific command position designated with the power to convene courts-martial, enter into plea agreements, and reduce or approve adjudged sentences (Manual for Courts-Martial, 2005). Consequently, the plea bargaining process in the military also differs slightly from the process in civilian courts.

In the military, plea agreements are formal written agreements made between the accused and the convening authority, not the prosecutor (Manual for Courts-Martial, 2005). The negotiated sentence limitations contained in the agreements are not revealed to the sentencing authority (judge or jury) prior to imposing punishment. The existence of an agreement is disclosed to the judge because she has to question the accused regarding his knowledge of the agreement, voluntariness, and any rights he is waiving. In contrast, if a jury is the sentencing authority, it has no knowledge of whether an agreement exists prior to determining sentence (Manual for Courts-Martial, 2005).

Military offenders have the right to have a jury determine their punishments regardless if they plead guilty or assert their right to a trial. Although civilian jurisdictions use jury sentencing in death penalty cases, only six states provide jury sentencing in non-capital cases (King and Noble, 2004, Texas Ann. Code, 2007). Similar to jury sentencing states, the military system also provides the accused with the right to have a jury determine his punishment even in non-capital cases (Manual for Court-Martial, 2005).³ Even though this right has been the subject of regular debate in UCMJ

³ “Court members” is the term used for “jury” under the Uniform Code of Military Justice (Manual for Court-Martial, 2005).

reform discussions, jury sentencing remains a part of the military justice system today (Jackson, 2004; Department of Defense, 1984).

Just as the additional right of jury sentencing is provided in the military, a bifurcated trial/sentencing process also exists in the military justice system that is similar to civilian capital cases. In all courts-martial, a presentencing hearing is held in which mitigating and aggravating evidence is presented for the sentencing authority to consider before determining the appropriate punishment. Moreover, as in the federal sentencing process, the prosecution and defense may enter into stipulations of fact to avoid lengthy witness testimony and presentation of physical evidence (Manual for Courts Martial, 2005; Vowell, 1986).

In military sentencing, the sentencing authority retains a great deal of discretion in what type of punishment to impose. Sentencing guidelines, three strikes laws, mandatory minimums, probation, and restitution do not exist in the military system. Additionally, several types of punishments are available and may be combined for one sentence depending on the type of court-martial and offense (Manual for Courts Martial, 2005). Some of the military punishments are analogous to civilian punishments (e.g. confinement, fines), but the punitive discharge is a punishment unique to the military. A punitive discharge terminates the offender's status in the military and indicates that he was discharged due to bad conduct or under conditions of dishonor depending on the type of punitive discharge imposed (Manual for Courts Martial, 2005:RCM 1003(b)(8)).⁴ These types of discharges as opposed to administrative discharges may only be imposed in a court-martial and are considered a severe punishment because they result in loss of

⁴ There are three types of punitive discharges—Bad Conduct Discharge (BCD), Dishonorable Discharge (DD), and Dismissal. Enlisted receive BCDs and DDs with BCD being less severe than DD. Officers may only receive a Dismissal if a punitive discharge is adjudged and is the equivalent to a DD for enlisted.

veteran benefits, retirement benefits, and block opportunities for certain types of employment (Department of Army, 2002; Manual for Courts Martial, 2005).

Consequently, receiving a punitive discharge for an offense that would otherwise be considered a misdemeanor in civilian jurisdictions not only removes the offender from military service, but also may result in some of the same collateral consequences as civilian felony convictions.

Despite the sentencing authority's broad discretion in determining a sentence, some punishment limitations exist depending on the type of court-martial. Three different types of court-martial exist in the military justice system including summary court-martial, special court-martial, and general court-martial. Summary courts-martial are not considered convictions outside of the military because the accused does not have a right to counsel or a jury trial.⁵ These courts are utilized less frequently than special and general courts-martial and are reserved for minor offenses. Special courts-martial carry a maximum punishment of 12 months confinement and the least severe punitive discharge, Bad Conduct Discharge (Manual for Court Martial, 2005). This type of court-martial is rarely used to prosecute officers because a punitive discharge for officers is not an authorized punishment in a special court-martial. For general courts-martial, the maximum punishment is whatever is permissible under the UCMJ for that specific offense (Manual for Court Martial, 2005). Thus, officers and more serious offenses are more likely to be prosecuted in general courts-martial. The types of court-martial may be somewhat analogous to civilian jurisdictions that designate different types of courts based on misdemeanor or felony classifications of offenses. However, the convictions received

⁵ By regulation, the Air Force provides the accused with a defense counsel, but they are still not considered convictions (Air Force Instruction 51-201).

in military courts-martial are not always comparable in these terms because a punitive discharge is authorized in special courts-martial. Moreover, civilian jurisdictions vary in which offenses are classified as felonies or misdemeanors.

In sum, although the military and civilian court systems are similar, clearly several differences remain that limit the generalizability of findings in civilian trial penalty studies to military sentencing. The military system serves as a justice system as well as a tool for the commander to maintain good order and discipline. Because of this dual purpose, a prosecutor's discretion in deciding to prosecute a case and plea bargain is substantially curtailed and placed in the hands of the convening authority, a non-lawyer. Moreover, military offenders enjoy additional due process protections that are typically only seen in capital cases in civilian courts such as a sentencing phase and jury sentencing. Finally, the military justice system grants the sentencing authority a great deal of discretion in determining the appropriate punishment with broad ranges and types available. Because of the unique aspects of this legal system, an investigation into military sentencing is warranted. Thus, the present study provides a valuable contribution to the literature by exploring the trial penalty or process discount within the military.

CHAPTER 2: LITERATURE REVIEW

Few published empirical studies exist on sentencing in the military justice system, thus, this study is also guided by research on the civilian court systems. First, a review of the military sentencing literature is necessary to provide a baseline for what has been studied in previous military sentencing research.⁶ Second, studies on the existence of a trial penalty in civilian jurisdictions reveal the mixture of results and various methods that have been employed to study this issue. Finally, research on jury sentencing will further guide this investigation and provide insight into the effect of jury sentencing on the presence of a process discount or trial penalty.

Military Justice Research

Despite many articles discussing possible reforms to the military justice system (e.g. Sylkatis, 2006; Vowell, 1986; Moorman, 2000; Gierke, 2005; Essex & Pickle, 2002) few empirical studies have been published. The following review of the military justice literature discusses the three studies found in the published literature (Landis, Dansby, and Hoyle, 1997; Perry, 1977; Verdugo, 1998) and one unpublished dissertation (Burchett, 1983). All of these studies have focused on race effects in sentencing rather than the existence of a process discount, but the findings seem to consistently suggest that black offenders are less likely to plea bargain. Despite this general finding in the literature, most of the studies found no significant difference in sentence lengths between white and black offenders.

⁶ The Department of Defense, Army and Navy have conducted some military justice studies over the years. However, these technical reports are not discussed in this literature review because they are not a part of the published empirical literature, not subject to peer review, and not methodologically rigorous with many relying on descriptive statistics to draw conclusions. Furthermore, none of these studies explored the trial penalty question. In contrast, this literature review includes a discussion of an unpublished dissertation (Burchett, 1983) because it contains a finding regarding the effect of mode of conviction and employs a multivariate analysis.

Landis, Dansby, and Hoyle (1997) examined the effects of race regarding the length of processing time in the system and whether it had an effect on the length of confinement adjudged. Landis et al. used a sample of Army court-martial cases in which charges were preferred for aggravated assault, drug crimes, and sex crimes between June 30, 1986 and January 1, 1992. By exploring bivariate relationships, the study found that black offenders spent significantly more time in the system than whites and that the total time spent in the system was positively related to the length of sentence imposed. Additionally, the authors found that black offenders were less likely to plea bargain than white offenders, but the study did not specifically examine the effects of race or mode of conviction on sentence length.

Similar to Landis et al. (1997), Verdugo (1998) used Army court-martial data from July 1986 to December 1992, but only examined aggravated assaults. Relying solely on descriptive statistics, the study found that whites were more likely to plead guilty (87%) than blacks (72%), and whites were more likely to enter into plea agreements (69% compared to 51%). Regarding choice of forum, white offenders were also more likely to choose a judge over a jury (74%) than black offenders (64%). Despite these differences, however, Verdugo found no significant difference in mean confinement length for blacks and whites.

As opposed to Landis et al. (1997) and Verdugo (1998), Burchett (1983), an unpublished dissertation, used a multiple regression model that included prior convictions, type of court, and mode of conviction as control variables. This study examined the effects of race in Army absence without leave (AWOL) cases tried between 1971 and 1974. Burchett found that race did not have a significant effect on the sentence

imposed and major determinants of sentence were the type of court (special court-martial and general court-martial), a prior conviction for desertion, mode of conviction, and the number of charges. Specifically, those who chose a jury trial received longer confinement sentences, holding everything else constant, than those with pretrial agreements. Therefore, although Burchett did not address whether a trial penalty existed for all types of offenses, his study provides some indication that a trial penalty may exist at least for the offense of AWOL.

An older study conducted by Perry (1977) examined the effects of race on sentences in the Navy and Marine Corp based on a census of all enlisted grade prisoners in confinement during the last quarter of 1972. The study found no statistically significant differences in the mean sentence length between black prisoners and white prisoners across all four offense classes examined--major military and civilian equivalent offenses, confrontation or status offenses, unauthorized absence, and other military offenses equivalent to civilian offenses. Even though the study did not address mode of conviction, it provided an analysis of race across a broader range of offense-types than Landis et al. (1987), Verdugo (1998) and Burchett (1983).

Overall, the military justice studies have found that black offenders are less likely to plead guilty with a pretrial agreement than white offenders, but most studies also found that race has no effect on the mean sentence length. Although the literature focuses on race, this may provide some indication that a process discount does not exist in military sentencing. Nonetheless, these studies are methodologically weak and none of the data include Air Force courts-martial. Burchett (1983), the only study to utilize a multivariate analysis, found the existence of a trial penalty in his study of AWOL offenses despite the

absence of a race effect. Also worth noting is the time period of the court-martial data used in these studies. Two of the studies (Burchett, 1983 and Perry, 1977) use data from the early 1970s—the later years of the conflict in Vietnam and prior to the conversion to an all-volunteer force. Although Landis et al. (1997) and Verdugo (1998) use more recent data (1986 to 1992), significant downsizing of the military forces occurred after 1991 when Congress called for a 25 percent reduction in force by the end of fiscal year 1995 (United States General Accounting Office, 1993). A reduction in force may have resulted in more restrictive enlistment policies. Therefore, although these studies provide some insight into the military justice system, they have substantial limitations.

Trial Penalty Sentencing Research

Due to the sparseness of the military justice literature, a review of the trial penalty literature using civilian criminal justice data is necessary for guiding the current research. The majority of studies have found that defendants receive more severe sentences when they are convicted by jury trial in comparison to those convicted by guilty plea (e.g. Ulmer and Bradley, 2006; Johnson, 2003; Uhlman and Walker, 1979; Brereton and Casper, 1982; Walsh, 1990; King, Soule, Steen, and Weidner, 2005). Additionally, other studies using mode of conviction as a control variable have found significant positive effects for trials as opposed to guilty pleas when examining sentence severity (e.g. Peterson and Hagan, 1984; Dixon, 1995; Engen and Gainey, 2000; Spohn and Holleran, 2000; Steffensmeier and Demuth, 2000). Finally, significantly fewer studies have found that mode of conviction has no significant effect on the sentencing outcome, with most of these studies positing that the probability of acquittal negates the more severe

punishments imposed after a trial (Rhodes, 1979; Smith, 1986; Eisenstein and Jacob, 1977; LaFree, 1985).

The earlier trial penalty research was conducted by Uhlman and Walker (1979, 1980) which studied major felony cases in a metropolitan city from 1968 to 1974. Uhlman and Walker found that defendants who pleaded guilty were substantially less likely to receive incarceration than defendants convicted at a jury trial. Defendants that were convicted with a bench trial, however, were more likely to be acquitted and if convicted, they received sentences marginally more severe than defendants that pleaded guilty. A few years later, Brereton and Casper (1982) conducted a study limited to robbery and burglary cases in three large California jurisdictions from 1974 to 1978. Using chi-square analysis, the study found that trial cases resulted in prison sentences more often than guilty plea cases. As in Uhlman and Walker (1979), this study lacked variables that addressed preconviction information, but unlike Uhlman and Walker (1979) did not address the probability of acquittal.

Walsh (1990) analyzed a random sample of felony cases processed in one Ohio county during 1978 to 1983. Walsh's study did not just examine the final disposition charges, but also studied a difference between the arraigned charges and the final charges (i.e. plea bargained charge reductions). Walsh found that the mode of conviction was insignificant in a two-tailed test when examining the final charge, however, when considering the arraigned charges, he found going to trial had a significant positive effect on sentence severity.

The most recent trial penalty research was conducted by King, Soule, Steen and Weidner (2005) and Ulmer and Bradley (2006). King et al., studied five states with

sentencing guidelines to determine whether defendants who waive their right to a jury trial receive less severe sentences. To examine sentence severity, King et al. explored whether the probability of receiving incarceration was lower for bench trials and guilty pleas in comparison to jury trials and whether significant differences existed in sentence length when incarcerated. Although the study found a significant plea discount in all five states, the results were mixed regarding the effect of bench trials.

Ulmer and Bradley (2006) not only attempted to answer the primary research question of whether a trial penalty exists, but also tried to determine how trial penalties might vary. The article explored differences in sentencing between those that pled guilty and those convicted by jury trial using Pennsylvania sentencing data from 1997 to 2000. The study found that odds of incarceration following a bench trial or jury trial were 2.2 and 2.7 times the odds respectively of a guilty plea. Additionally, jury trials resulted in significantly longer sentences than guilty pleas, controlling for court caseloads; however, the study did not control for the likelihood of conviction, which studies have shown mitigates trial penalties (e.g. Smith, 1986; Rhodes, 1979; LaFree, 1985).

Despite these numerous studies finding support for the existence of a trial penalty, other studies have either found no effect or a minimal effect. Eisenstein and Jacob (1977) examined a sample comprised of 1,500 defendants convicted of felonies in three cities—Chicago, Detroit, and Baltimore—in 1972. The study found that the mode of conviction's effect on sentence substantially diminished in both the decision to incarcerate and sentence length. Similarly, Rhodes (1979) and Smith (1986) found little support for a significant trial penalty when taking into account the likelihood of acquittal. Rhodes studied felony cases prosecuted in 1974 from the District of Columbia and found

no significant differences, with the exception of robbery, between the decision to incarcerate and sentence for defendants convicted of assault, larceny, and burglary. Furthermore, Rhodes referred to the discount for pleading guilty as “a myth,” and further found that if the guilty plea defendants had gone to trial, the probability of being convicted would have been between .66 and .82 depending on the type of offense.

Smith (1986) examined a sample of felony robbery and burglary cases from five sites—New Orleans, Norfolk, Seattle, Tucson, and Delaware County, Pennsylvania. The study found that defendants were less likely to receive a sentence of incarceration for a year or more when the offenses were less serious and have less evidence against them. Conversely, offenders with prior records that were convicted of serious offenses did not reduce their probability of receiving incarceration by pleading guilty.

LaFree (1985) analyzed a sample of 3,269 male defendants prosecuted for robbery or burglary in six jurisdictions from 1976 to 1977. When controlling for case variables such as eyewitness testimony, confession, and physical evidence, LaFree found that mode of conviction had no effect when including acquittals in the analysis, which further supports the contention that acquittals are an important factor in trial penalty research.

A review of the trial penalty research illustrates how varied the methods and findings of the research in this area have been, but in general, research has shown empirical support for the existence of a trial penalty. Nevertheless, most of the studies in the literature use data with case dispositions in the 1970s and the most recent studies analyze data in states with sentencing guidelines. Finally, these studies do not address the added element of jury sentencing, which is present in the military justice system.

Jury Sentencing Research

Jury sentencing in felony non-capital cases is permitted in six states, but only a handful of published empirical studies have examined the impact of jury sentencing on sentence outcomes (King and Noble, 2004; King and Noble, 2005; Baab and Furgeson, 1967; Smith and Stevens, 1984; Weninger, 1994).⁷ Overall, the studies have found that a defendant incurs a more severe sentence when a jury rather than a judge determines his sentence. Nevertheless, these studies were conducted in different jurisdictions that vary in when a defendant has a right to have a jury decide his sentence, and some studies are more methodologically rigorous than others.

Smith and Stevens (1984) compared robbery sentences in published appellate opinions from jurisdictions with jury sentencing and jurisdictions with judge alone sentencing from 1957-1982. The study found that judges imposed more severe sentences than juries. However, the results of the study should be taken with caution because the sample used in the study suffered from selection bias. The sampling frame did not include all of the robbery cases—only those that chose to appeal and for which the appellate decision was published. Cases that are appealed are more likely to be convictions through a trial, and appeals that are published opinions generally have new or important legal questions requiring written discussion (Neubauer, 1985). Additionally, the sample size was small (N=160) and did not control for mode of conviction, prior criminal history, age, or race.

⁷ The following states allow some form of jury sentencing in felony non-capital cases: Virginia, Kentucky, Missouri, Arkansas, Texas, and Oklahoma. Although jury sentencing is prevalent in capital cases throughout the United States, capital juries only determine whether a defendant receives death or life in prison. At least one study has found that judges are more likely to impose death than juries (Kalven and Zeisel, 1966); however, because of the limited sentencing choices and sentencing process, judge-jury differences in capital cases are not comparable to non-capital felony cases (Kalven and Zeisel, 1966; Haney, Sontag, Costanzo, 1994; Sweeney and Haney, 1992).

King and Noble's (2004) study was more comprehensive and methodologically sound than Smith and Stevens (1984) because it included all non-capital felony cases in three states during the studied time frames and incorporated qualitative data along with the quantitative analyses.⁸ The quantitative analyses revealed that in Kentucky, the average length of incarceration within offense types was longer for those defendants that had a jury trial (sentenced by jury) than those who plead guilty and a judge sentenced. In Virginia, a sentencing guidelines state, the average sentences after a jury trial were more severe than average sentences after bench trial or guilty plea. This was especially true for drug offenses, but the effect was insignificant for some offenses such as rape. The findings for Arkansas were similar to Virginia—for drug cases, the average sentence length was longer for jury trials than for bench trial sentences even when controlling for case seriousness. The differences were insignificant for other offenses such as robbery, battery, and rape.

King and Noble (2005) was a more extensive quantitative analysis of the sentencing data from Arkansas and Virginia from 1995 to 2001. Sentence severity was measured with a severity scale rather than comparing average length of incarceration. King and Noble found consistent results with their preliminary analyses contained in King and Noble (2004). The juries in Arkansas and Virginia selected more severe sentences than sentences selected by judges after bench trial and guilty plea, at least for the serious felony offenses the study examined.

Although King and Noble's studies (2004, 2005) provide much needed insight into the existence of a trial penalty in states with jury sentencing, both of the studies fail to examine states in which a jury may impose a sentence after the defendant enters a

⁸ Kentucky was from 2000 to 2001; Virginia and Arkansas were from 1995 to 2001.

guilty plea. Weninger (1994) and Baab and Furguson (1967) studied jury sentencing in Texas—a state that permits jury sentencing even after pleading guilty. These studies had mixed results.

Weninger (1994) conducted a case study of El Paso county and included qualitative survey data as well as quantitative sentencing data. The dataset was composed of a random sample of 1,395 noncapital felony prosecutions in district courts between 1974-1977. The study examined whether juries when compared to judges were more likely to incarcerate rather than give probation and whether the length of incarceration was longer. Overall, Weninger found juries imposed more severe sentences than judges. Nevertheless, the study had limitations such as El Paso County's use of a voluntary guidelines sentencing system when the defendant chose to plead guilty and be sentenced by a judge. Furthermore, even if a defendant chose a jury trial, he was permitted to choose whether a judge or a jury imposed sentence. Thus, the findings in Weninger are not generalizable to all jurisdictions with jury sentencing because the sentencing process had some procedural differences.

Baab and Furgeson (1967) conducted a broader study of Texas sentencing than Weninger (1994) when they collected a sample of cases sentenced in 1966 from 27 courts located across a cross-section of 19 counties. The study measured sentence severity using a scale, and found that mode of conviction (guilty plea or trial) and sentencing authority (jury or judge) had no effect on sentence severity. Thus, even when controlling for the sentencing authority, the study found no trial penalty was imposed for defendants that chose to assert their right to a trial, the opposite finding of Weninger (1994).

In summary, a review of the literature reveals empirical support for a trial penalty or process discount in sentencing, however, whether this trial penalty effect is in the military or jury sentencing jurisdictions is unknown. Moreover, some research suggests that the presence of a trial penalty effect found in prior studies is largely due to the failure to include acquittals in the analyses (Smith, 1986; LaFree, 1985; Rhodes, 1979; cf. Zatz and Hagan 1985). Therefore, the current study expands on the literature by examining military sentencing outcomes and exploring whether a trial penalty exists in the military, which is also a jury sentencing jurisdiction.

CHAPTER 3: THEORETICAL PERSPECTIVE

Given the lack of research on the military justice court system, it is not surprising that researchers have never attempted to apply theoretical perspectives found in the sentencing literature to the military. Although this study is exploratory in nature, utilizing existing theoretical concepts in the present investigation can provide some valuable insight into the scope of these theoretical perspectives. Several theoretical frameworks have been used to explain sentencing disparity such as racial threat, conflict theory, and focal concerns (e.g. Hagan, 1974; Peterson and Hagan, 1984; Steffensmeier, Ulmer, and Kramer, 1998); however, uncertainty avoidance, organizational efficiency, and court community perspectives are the most relevant to the trial penalty or process discount question.⁹ Organizational efficiency has been frequently offered as an explanation for a trial penalty or process discount effect (e.g. Dixon, 1995; Engen and Steen, 2000; King et al., 2005) while other studies indicate that uncertainty avoidance influences prosecutorial and judicial decisions (Albonetti, 1986, 1987, 1991). Furthermore, court community studies have found a trial penalty effect because courts utilize going rates in disposing of cases (Eisenstein et al., 1988; Nardulli et al, 1988; Ulmer, 1997). Therefore, the current study uses these perspectives to explore whether the trial penalty or process discount found in the majority of civilian studies exists in the military as well.

⁹ Racial threat and conflict theory focus on status characteristics as a source of sentencing disparity by hypothesizing racial minorities and lower class offenders are more harshly punished. Focal concerns asserts that judges make decisions concerning the offender's likelihood for future criminal behavior in terms of three general categories of focal concerns: (1) offender blameworthiness and harm caused to the victim, (2) protection of the community, and (3) practical implications such as organizational efficiency. Focal concerns has applicability to the trial penalty but primarily through its incorporation of organizational efficiency and uncertainty avoidance.

In the court community literature, Eisenstein and Jacob (1977) applied an organizational paradigm to courts and posited that judges, defense attorneys, and prosecutors are part of an interdependent workgroup. Although the workgroup may have several goals, all of the workgroup members have the common goals of disposing of case load and reducing uncertainty in outcomes. “The desire to reduce uncertainty leads to the development of several norms designed to make behavior predictable” (Eisenstein and Jacob, 1977:28). The most significant norm is the informal “going rate” that facilitates the disposition of routine cases (Ulmer, 1997; Eisenstein et al., 1988; Nardulli et al., 1988). Going rates reflect past outcomes for particular crimes and defendants that have become incorporated into the courtroom community norms (Sudnow, 1965; Eisenstein et al., 1988; Nardulli et al., 1988; Ulmer, 1997). This informal norm reduces uncertainty in outcomes by facilitating guilty plea negotiations and influencing judicial sentencing decisions (Nardulli et al., 1988; Ulmer and Kramer, 1998). To reduce uncertainty, the workgroup induces guilty pleas by setting going rates less than sentences imposed after trials, thus, producing a process discount effect (e.g. Eisenstein et al., 1988).

Similar to the courtroom workgroup perspective, Albonetti’s (1986, 1987) uncertainty avoidance theory also suggests that court actors seek to eliminate or reduce uncertainty of a preferred outcome. Prosecutors desire a conviction (Albonetti, 1986), defense attorneys prefer an acquittal or the least severe sentence possible for their clients (Eisenstein and Jacob, 1977), and judges seek to reduce the likelihood of offender recidivism (Albonetti, 1991). Uncertainty is derived from limited information regarding the likelihood of the preferred outcome. Court actors attempt to reduce uncertainty in achieving their desired outcomes by routinizing their decision making based on their

beliefs about cause and effect relationships from past outcomes (Albonetti, 1986, 1987, 1991). In other words, faced with limited information, court actors develop “patterned responses” to dispose of cases and determine sentences based on prior outcomes in cases with similar case and offender characteristics. For instance, prosecutors and defense attorneys attempt to avoid trials, a source of uncertainty, by relying on past outcomes for similar cases in the plea bargaining process. Judges also have patterned responses developed from similar cases to minimize their uncertainty regarding the likelihood of recidivism in deciding sentences (Albonetti, 1991). Because aggravating or “bad” facts are more likely to be presented in a trial, judges impose more severe sentences in trials than in guilty pleas where they rely more on patterned responses (Ulmer and Bradley, 2006).

Also consistent with the courtroom workgroup notion, the organizational efficiency perspective asserts that courtroom actors are part of an interrelated workgroup that emphasizes the shared goal of efficient case disposal. To minimize the use of time and costly court resources, the workgroup rewards those who plead guilty and penalizes those who go to trial (Dixon, 1995; Engen and Steen, 2000). Court actors induce offenders to plead guilty through a plea bargaining process that administers less severe punishments for those who choose a mode of conviction that meets the goal of efficient case disposition (Dixon, 1995). Although other goals may exist, efficient case disposal dominates all other goals (Engen and Steen, 2000). Thus, plea bargaining and going rates are instrumental in not only reducing uncertainty, but also in efficiently disposing of cases.

Merging these theoretical perspectives, arguably the court community has two primary goals—reducing uncertainty in preferred outcomes and efficient case disposal to minimize the use of time and court resources. The offender’s choice for mode of conviction (guilty plea vs. trial) affects the degree to which uncertainty and court resources are minimized. Plea bargaining and going rates are tools the court actors use to reward offenders with more lenient sentences when they select a mode of conviction that is more likely to achieve the court community’s goals. For instance, guilty pleas as opposed to trials provide certainty in conviction and sentence and use fewer court resources. Thus, according to this theoretical framework, guilty pleas should result in less severe sentences when compared to trials, a prediction that has found some empirical support in the literature (see Chapter 2).

Applicability to Military Sentencing

These theoretical perspectives have never been applied to military sentencing. Although differences exist between the civilian and military court systems, uncertainty avoidance, organizational efficiency, and court community are likely to have some applicability to the present study. The differences between civilian and military court processes that are most relevant to the trial penalty question are (1) limitations on the prosecutor’s discretion, (2) the sentencing process, (3) the dual purpose of the military justice system, and (4) jury sentencing.

First, in civilian courts, the prosecutor possesses discretion in case disposition; however, in the military justice system this discretion is vested with the convening authority, a military commander. Nevertheless, the theoretical framework for case processing in this study does not hinge on who has the discretion for case disposition; it

simply requires that whoever possesses the discretion desires to reduce uncertainty in conviction and efficiently dispose of cases. Similar to the civilian prosecutor, the convening authority also has these goals. By referring a case to court-martial, the convening authority has determined that sufficient evidence exists of the offender's guilt. Low conviction rates cast doubt on the convening authority's ability to properly assess cases worthy of prosecution and ultimately the overall fairness of the military justice system. In addition to a preference for convictions, the convening authority desires efficient case disposition from a resource perspective. The convening authority is responsible for many costs associated with a trial, including some of the expenses for the defense such as expert consultants (Air Force Instruction, 51-201:6.5.3). These expenses can be several thousands of dollars that are paid from the convening authority's limited budget, not to mention the personnel resources needed to conduct a trial (Manual for Courts Martial, 2005:RCM 703).

Also similar to the civilian prosecutor, the convening authority uses plea bargaining and going rates to achieve these goals. The convening authority enters into pretrial agreements that require the offender to waive his right to a trial in exchange for some limitation on sentence (e.g. sentence cap, withdrawal of charges, lesser type of court). The negotiated sentence limitations are influenced by going rates determined by prior case dispositions and specific case and defendant characteristics (Kelves, 1980).

A second difference in the court systems is in the sentencing procedure itself. Negotiated sentence limitations are not revealed to the sentencing authority before determining sentence. However, this is not completely incompatible with civilian court systems especially where prosecutors are not permitted to recommend sentences (e.g.

Flemming, Nardulli, Eisenstein 1992; Eisenstein et al., 1988). As in those civilian jurisdictions, military judges are likely to use going rates established by the court community to determine sentences.

The third difference between the systems is the military justice system has the additional purpose of preserving good order and discipline. Although this purpose exists, it is unlikely to alter the primary goals of the military justice court community. Reducing uncertainty in conviction and efficiently disposing of cases assists the commander in maintaining good order and discipline. After a case has been referred for court-martial, the convening authority has determined sufficient evidence exists that the accused committed a crime likely to be detrimental to good order and discipline in the military. Obtaining a conviction and disposing of cases as quickly as possible deters other military members from engaging in similar behavior and prevents the offenders from further affecting good order and discipline within their units. To illustrate this nexus, an Air Force regulation regarding court-martial case management states, “The impartial and timely administration of military justice helps sustain good order and discipline” (Air Force Instruction, 51-201:12.9.3). Thus, the court actors and convening authority will continue to have the two primary goals of reducing uncertainty and efficient case disposal despite the dual purpose of the military justice system.

Finally, the fourth difference between military and civilian courts relevant to this study is the availability of jury sentencing. The effect of juries on sentencing is the most likely of all the differences to have an effect on the predicted outcomes. First, prior trial penalty research has been primarily conducted in civilian jurisdictions where judges impose sentences after a non-capital jury trial (King and Noble, 2004). Second,

uncertainty avoidance, organizational efficiency, and court community perspectives have not explicitly addressed the possible effects of jury sentencing on case processing. Juries are not part of the courtroom workgroup and are unfamiliar with the shared expectations of the court actors regarding the appropriate penalty for a particular type of case and defendant. In fact, advocates of jury sentencing assert that jury sentences “mirror community norms concerning retribution, deterrence, incapacitation, and rehabilitation” rather than the norms of legal professionals (King and Noble, 2004:888).

Nevertheless, prior qualitative research indicates that the court community’s going rates are influenced by the sentences that juries impose and that going rates for guilty pleas are less than the sentences expected to be imposed by a jury (King and Noble, 2004). If this is the case, then uncertainty avoidance and organizational efficiency perspectives suggest that the court community will establish going rates less than jury sentences to encourage offenders to select modes of conviction that maximize efficiency and predictability in outcome. Consequently, a process discount should continue to be present even in jury sentencing jurisdictions as well as the military justice system.

Therefore, even though the military legal system differs somewhat from civilian jurisdictions, theoretical perspectives in the sentencing literature may still apply. By extending these concepts to military sentencing, this research hopes to provide more insight into these theoretical perspectives. Thus, the present study is guided by uncertainty avoidance, organizational efficiency, and court community perspectives in developing specific hypotheses that explore whether a process discount exists in military sentencing.

Hypotheses

As in other trial penalty and jury sentencing studies, the current research examines mode of conviction categories to determine whether offenders who plead guilty are rewarded with process discounts in their sentences. In the military, mode of conviction determines the sentencing authority; thus, this study examines four mode of conviction categories: (1) judge guilty plea, (2) jury guilty plea, (3) judge trial, and (4) jury trial.¹⁰ Drawing upon the theoretical perspectives of uncertainty avoidance, organizational efficiency, and court communities, the following hypotheses are presented regarding these specific modes of conviction.

Jury trials are least likely to meet the goals of the courtroom workgroup because they are the most costly and uncertain of all modes of conviction. Jury trials require considerable time and expense associated with the presentation of evidence, witness expenses, personnel resources, and preparation. Not only are jury trials the most inefficient mode of conviction for case disposal, they are also a source of uncertainty in conviction and sentence. Juries are susceptible to group dynamics (Kalven and Zeisel, 1966; Sandys, 1995), more likely to be driven by emotion (King and Noble, 2004) and less likely to follow the law when considering mitigating and aggravating evidence (e.g. Eisenberg and Wells, 1993; Bentele and Bowers, 2001). In contrast, judge trials have been referred to as “slow pleas,” because they are more efficient than jury trials and more predictable in outcome (Nardulli et al, 1988). Judge trials have more predictable sentences because judges are influenced by the court community norms. Consequently, uncertainty avoidance and organizational efficiency suggest that these going rates should

¹⁰ Although in jury guilty pleas the offender’s guilty plea is accepted by the judge prior to sentencing by the jury, the offender must select whether he wants to be sentenced by the judge or jury (i.e. select forum) prior to his plea.

be more lenient than jury trial sentences to induce guilty pleas. Similarly, jury guilty pleas should have more severe sentences than judge guilty pleas because they are more uncertain and less efficient.

H1: Jury trial sentences will be more severe than judge trial sentences.

H2: Jury guilty plea sentences will be more severe than judge guilty plea sentences.

Even though juries are not part of the courtroom workgroup, they continue to have a desire for an efficient use of organizational resources. In the military setting, juries are comprised of other military members that are temporarily removed from their active duty missions to serve on a court-martial. From an organizational standpoint, military jury members recognize that they are an organizational asset that is being diverted. Because many of them are currently commanders or have been commanders in the past, they share the concern of the military court community for efficiency in case disposal to minimize the use of time and organizational resources. Additionally, the jury is instructed by the judge in sentencing that a guilty plea may be considered a matter in mitigation because the government has been saved the time, effort and expense associated with a trial (Department of Army, 2002:8-3-35). Therefore, juries will impose more lenient sentences for offenders who plead guilty as opposed to going to trial.

H3: Jury guilty plea sentences will be less severe than jury trial sentences.

Judge guilty pleas are most likely to satisfy the courtroom workgroup goals of reducing uncertainty and efficient case disposition. A guilty plea substantially reduces, if not entirely eliminates, uncertainty in conviction, and judges provide more predictability in sentence with their use of going rates in routine cases. In an effort to reduce uncertainty in the likelihood of future offending, judges will apply the court community

going rate for a guilty plea that is established in relationship to sentences imposed by juries. Moreover, a judge guilty plea uses the smallest amount of organizational resources to dispose of a case. Thus, the going rate that a judge imposes for a guilty plea as opposed to a trial is likely to reflect a discount.

H4: Judge guilty pleas will result in less severe sentences than judge trials.

Finally, judge trials and jury guilty pleas each satisfy aspects of certainty and efficiency but in different ways. Judge trials possess some uncertainty in conviction, but, once an offender is convicted, judge trials are more predictable in sentence when compared to jury guilty pleas. Judge trials are more efficient than jury trials, however, they are no more or less efficient than jury guilty pleas. Although the sentencing portion of a judge trial requires less time and resources than a jury guilty plea, judge trials require the presentation of evidence in a guilt phase. Furthermore, the going rates utilized by judges are established based on the sentences imposed in similar cases (jury and judge cases). Hence, sentences imposed by judges after a trial are not likely to be less than what would have been imposed by a jury after a guilty plea because of this tradeoff between predictability and efficiency.

H5: Judge trials and jury guilty pleas will result in equally severe sentences.

If these specific hypotheses are supported, then this study will lend some support for a process discount in military sentencing that is predicted by a theoretical framework derived from uncertainty avoidance, organizational efficiency, and court community perspectives. For ease of comparison, these predictions and rationale are also summarized in Table 1. Finally, regardless of whether these hypotheses are supported,

this study will provide a significant contribution to the sparse military justice literature and expand the existing trial penalty and jury sentencing literature.

Table 1. Modes of Conviction and Expected Effects on Sentencing Outcomes

	Judge Guilty Plea	Jury Guilty Plea	Judge Trial	Jury Trial
Certainty in Outcome	Going rates, more predictable—conviction certain	No going rates, less predictable—conviction certain	Going rates, more predictable—conviction uncertain	No going rates, less predictable—conviction uncertain
Use of Organizational Resources	Avoid time and expense for jury and trial	Avoid time and expense for trial, cost remains for jury	Avoid time and expense for jury, cost remains for trial	No savings for organizational resources
Expected Effect on Sentence	Negative effect on severity	Negative effect on severity—smaller than judge guilty plea	Negative effect on severity—smaller than judge guilty plea	Positive effect on severity compared to all other modes

CHAPTER 4: DATA AND METHODS

Data

This study uses secondary, archival data obtained from the Automated Military Justice Analysis and Management System (AMJAMS) database maintained by the United States Air Force. The subjects in this research are Air Force members that went to trial or pled guilty on court-martial charges in the calendar years 2005 and 2006. The sample consists of 1,505 convicted members and 140 members acquitted of all charges for a total sample size of 1,645. Two subjects are dropped from the analysis. First, one subject was not sentenced because she died prior to sentencing; second, one case was a death penalty case.¹¹ After dropping these cases, the final sample size for analysis is 1,643. The data do not contain personal identifiers such as names and social security numbers; however, each record has a case identification number assigned by the database program that facilitates records checks. Approximately 24 percent of the data provided by the AMJAMS database were missing data related to mode of conviction. Because mode of conviction is the independent variable of interest for this study, almost all of the missing data were obtained from the trial transcripts stored at the Military Justice Division on Bolling Air Force Base. Additionally, criminal history data are not maintained in the database, thus, this information was also collected directly from the trial transcripts. To ensure the reliability of the data for the present study, random records checks were conducted throughout collection of the criminal history data.¹²

¹¹ Because death penalty cases proceed through a more complex process, this case is non-comparable to the other courts-martial contained in the sample.

¹² In January 2008, the Air Force conducted a study examining the error rates in particular data fields. Although the specific results of that study may not be disclosed in this thesis, the data utilized for the present study includes data drawn from fields with error rates below 0.05.

Dependent Variables

The sentence offenders receive is the outcome of interest for this research. Civilian trial penalty studies typically measure sentencing outcomes as the decision to incarcerate and the length of incarceration or the studies develop a severity scale combining these two factors (e.g. Ulmer and Bradley, 2006; Zatz and Hagan, 1985; Ulmer, 1997; Uhlman and Walker, 1979; Brereton and Casper, 1982; Walsh, 1990; King, Soule, Steen, and Weidner, 2005; Rhodes, 1979; Smith, 1986; Eisenstein and Jacob, 1977; LaFree, 1985). Although the incarceration decision and length of confinement are possible outcomes in military sentencing, several other types of punishment exist.

The possible punishments in the military are no punishment, reprimand, fine, forfeiture of pay, reduction in rank, restriction to base limits, hard labor without confinement, confinement, and a punitive discharge. These punishments can be collapsed into six categories and may be combined in 32 different ways to form one sentence (see Appendix A). Some of these punishments may be dependent upon others. For instance, forfeiture of pay is automatic with a confinement sentence greater than six months (Manual for Court Martial, 2005). Additionally, some punishment types depend on the rank of the individual (i.e. hard labor, reduction in rank, forfeiture of pay). Given the large number of conditions and complexity surrounding the less severe punishment types—reprimand, fine, forfeiture of pay, reduction in rank, restriction to base, hard labor without confinement—military justice researchers as well as judge advocates have concentrated on the two most severe types of punishment when evaluating sentence severity (e.g. Burchett, 1983).

Other than death, confinement and punitive discharge are the most severe punishment types under the Uniform Code of Military Justice (UCMJ) and are independent punishments (Manual for Court Martial, 2005). Prior military justice studies have either focused exclusively on confinement length (Perry, 1977; Landis et al., 1997) or have examined the imposition of a punitive discharge and confinement separately (Burchett, 1983). The problem with measuring military sentencing outcomes in this manner is that it only measures one type of punishment within the entire sentence. Sentences that contain either of these severe types of punishments are considered more severe than sentences without them. For example, some sentences may contain a punitive discharge without confinement. An analysis of the decision to impose confinement without consideration for the punitive discharge would result in the punitive discharge only sentence being considered less severe than a sentence that includes confinement. Consequently, this type of analysis would incorrectly measure sentence severity because these two types of punishments are considered equally severe. The equality in severity prevents the development of a severity scale similar to some civilian sentencing studies (e.g. LaFree, 1985). Thus, the better measures of sentence severity in military sentencing are (1) the decision to impose either the punitive discharge or confinement, and (2) the adjudged length of confinement.¹³

The decision to impose either a punitive discharge or confinement is a binary variable with the reference category including sentences without these two types of

¹³ Supplemental analyses were performed using multinomial regression with a categorical dependent variable (lenient punishments, discharge only, confinement only, and both discharge and confinement); however, too few observations existed in the discharge only category to provide adequate statistical power for analysis (n=67). Additionally, the multinomial model provided similar results to the binary model in the confinement only and confinement and discharge categories. Thus, for parsimony, only the binary model is discussed and presented in this thesis.

punishments. For instance, the sentence could include any combination of the less severe types of punishment such as hard labor without confinement and a reprimand. The second dependent variable, confinement length, is a continuous variable measuring the number of confinement days for the subsample of offenders sentenced to confinement. The analysis uses days as opposed to months or years because military sentences for shorter confinement lengths (less than one year) have varying number of days. Because confinement length is skewed to the right, the analysis is conducted on the logged confinement days.

Independent Variable

The primary independent variable of interest for this study is the mode of conviction. Operationalizing mode of conviction in the military justice system is not as simple as in some civilian court systems. In military justice sentencing, the sentencing authority imposes one sentence for all of the charges rather than a sentence for each charge that runs concurrently or consecutively. Consequently, offenders frequently enter “mixed pleas” in their cases meaning that offenders plead guilty for some charges and not others. The types of pleas available on each charge are guilty, not guilty, and guilty to a lesser included offense. For cases in which the offender pleads guilty to a lesser included offense without a plea agreement, a trial occurs on the more serious originally charged offense. To determine mode of conviction, the present study examines the type of plea entered on the most serious offense charged and the choice of forum (jury or judge).¹⁴

Three dummy variables are generated that represent whether the mode of conviction was

¹⁴ The offender has to select jury or judge for both the guilt phase and sentencing phase. He does not have the option to have a jury determine guilt and a judge determine sentence. Thus, the mode of conviction dummy variables are not interactions, but they do capture the sentencing authority because the body that determines guilt also decides sentence. “Choice of forum” is the phrase used by judge advocates to indicate the accused’s decision between a judge or jury.

a judge trial, jury trial, or jury guilty plea with judge guilty plea as the reference category. All negotiated plea cases are considered guilty pleas to account for charge reductions through the plea bargaining process. Finally, because mode of conviction determines the sentencing authority, a separate variable for sentencing authority is not utilized.

Control Variables

Extralegal and legal variables are included as control variables to isolate the effects of the mode of conviction. This study uses legal control variables for offense type, offense severity, type of court, and criminal history. Type of offense is a categorical variable developed based on a conversion table in Department of Defense Directive 7730.47-M that translates UCMJ offenses to the National Incident Based Reporting System (NIBRS) classification of offenses (see Appendix B). The categories of offenses are person, property, drug, society, and military.¹⁵ Dummy variables are utilized for these offense categories with property as the reference category.¹⁶

Case severity is operationalized by the statutory maximum punishment of the most serious convicted offense, the number of counts, and the type of court. Statutory seriousness is represented by an interval scale with a range of 1 to 21 based on the authorized maximum punishments in the UCMJ. The scale captures the punitive discharge as well as the confinement maximum (see Appendix C). The number of counts is the total number of convicted charges transformed by taking the natural

¹⁵ NIBRS has an additional broad category, “person, society, property,” for hybrid offenses. For this study, these offenses are collapsed into either person, society, or property depending on the nature of the offense. NIBRS does not have the military or drug categories. Offenses that do not have a corresponding NIBRS code have been coded as a military offense. Drug offenses are considered society offenses under NIBRS, but for this study, these offenses have been made a separate category.

¹⁶ Due to the small number of observations in the military (n=146) and society (n=31) categories, these are collapsed into one category (“other”) for the analyses.

logarithm because each additional charge is likely to have less impact on sentence than the charge preceding it.

Type of court is a dummy variable indicating the court is a general court-martial as opposed to a special court-martial. Cases adjudged in a special court-martial have an automatic sentence limitation of 12 months despite the maximum sentence authorized under the UCMJ. Although no type of offense is required to be tried in a special or general court-martial, more serious cases are likely to be tried in a general court-martial because of the broader punishment range. Controlling for the sentence limitation is also critical in comparing sentencing outcomes across all cases. In Burchett (1983), court type was a significant predictor for sentence.

This study includes a measure of criminal history that is operationalized by a dummy variable indicating whether the offender has any prior convictions or administrative disciplinary actions.¹⁷ Because this study examines a military population, less than 2 percent of the sample includes individuals with at least one prior felony or court-martial conviction. Few individuals are admitted into the military with a prior criminal record due to entrance qualification requirements (Landis et al., 1997).¹⁸ Additionally, when a military member commits a crime, he is likely to be removed from the military through the discharge process (administratively or through court-martial). Nevertheless, military offenders may incur administrative actions for crimes such as AWOL, driving while intoxicated, underage drinking, and simple assault. These administrative actions have relatively low evidentiary standards similar to probable cause

¹⁷ A criminal history index and separate variables for each type of discipline were examined, but neither improved the model fit over a simple dummy variable indicating contact with the military justice system or civilian convictions.

¹⁸ In fiscal year 2003, the Air Force admitted 5 applicants with felony convictions out of approximately, 32,000 recruits (Department of Defense, 2007).

for civilian arrests and are considered an aggravating factor in sentencing. Thus, the criminal history measure includes these administrative actions as well as prior convictions to better control for criminal history.

In addition to legal factors, prior studies have found extra-legal factors influence sentencing decisions, and thus, should be controlled to determine the effects of mode of conviction (see Zatz, 2000; Johnson, 2003; Kramer and Steffensmeier 1993; Spohn and Holleran, 2000). The extralegal variables represent individual offender characteristics for race, age, gender, and rank. Race is operationalized with a dummy variable for black defendants and a dummy variable for other and unknown races with the reference category being white defendants.¹⁹ Age is a continuous variable representing age on the day the offender entered his plea. Gender is a dummy variable indicating the offender is male with the reference category as female.

In the military, rank is a type of social status with the potential to affect the offender's sentence and decision to plead guilty or go to trial. A military offender's rank includes an indicator of his income level as well as the degree of power and control he possesses within the military. Similar to civilian studies that examine class effects in sentence, the income and power differential that rank represents is also likely to affect sentencing outcomes and the offender's mode of conviction. Thus, military rank is operationalized with a dummy variable indicating the offender is junior enlisted as opposed to a non-commissioned or commissioned officer.²⁰

¹⁹ The data only include race rather than ethnicity, thus, Hispanic could not be included in the analysis. The "other race" category includes American Indian, Asian, and Hawaiian. These cases were collapsed with the cases in which race is unknown because of the small number of observations.

²⁰ Ranks were collapsed into two categories due to the relatively small proportion of officers (0.04) and non-commissioned officers (0.22) in the sample. Additionally, the junior enlisted have the least amount of power and lowest incomes in the military.

Analytical Framework

The analysis begins with a discussion of descriptive statistics, cross tabulations, and bivariate correlations to examine the relationships between the independent variables with each of the dependent variables. To test the hypotheses, however, this study uses logistic regression and ordinary least squares (OLS) regression. Two models are examined for each type of regression. The first model is an aggregate measure of mode of conviction with a dummy variable indicating trial as opposed to guilty plea and a second dummy variable indicating jury as opposed to judge. This simpler model provides a broad view of the trial and jury effects on sentencing outcomes. The second model uses more specific mode of conviction dummy variables to examine the hypothesized relationships among the various modes of conviction categories.

Due to the binary nature of the dependent variable for the decision to impose a punitive discharge or confinement, many of the assumptions of the classical linear regression model are violated. The generalized linear model of logistic regression, which uses maximum likelihood estimation rather than ordinary least squares, is necessary to examine the decision to impose a punitive discharge or confinement (Long, 1997). For each of the models, the statistical significance and odds ratios are presented and interpreted. To examine confinement length, the analysis uses ordinary least squares regression on the portion of the sample that received confinement.

Sample Selection Bias

Sample selection bias is frequently a concern in sentencing research because of potential sample selection within the court process with the decisions to convict and to incarcerate. Most sentencing studies do not account for the selection process in the

decision to convict and provide conditional estimates on the convicted subsample. This weakness in prior research is due to the unavailability of acquittal data. The present study does not have this data limitation. Thus, the logistic regression results presented in this thesis include the acquittals to provide unconditional estimates of the independent variables. Because acquittals do not result in punishment, they are coded as no punishment and included in the lenient punishment category of the binary dependent variable. Although, the inclusion of acquittals in the logistic regression analysis accounts for sample selection resulting from the decision to convict, it is also correlated with the mode of conviction. In other words, an acquittal is only possible for cases that go to trial. Supplemental analyses on the convicted subsample reveal substantively identical results for mode of conviction. Consequently, the unconditional estimates, which include acquittals, are presented and discussed in this thesis for the logistic regression results.

The second potential source of sample selection occurs in the decision to incarcerate. Over the last 20 years most sentencing research examining confinement length has attempted to correct for sample selection bias resulting from the decision to incarcerate (Bushway, Johnson, and Slocum, 2007). Most frequently, a Heckman two-step correction procedure has been utilized although other models such as Tobit have been used (e.g. Albonetti, 1991; Bushway and Piehl, 2001). Nonetheless, a Heckman correction as opposed to conducting ordinary least squares regression on the incarcerated subsample is not always preferred because of the model's sensitivity to assumption violations and high degrees of collinearity. The correction can often do more harm than good when the amount of censoring is small (Bushway et al., 2007; Stolzenberg and Relles, 1997; Kennedy, 2003). Heckman is especially vulnerable to collinearity when an

exclusion restriction is not included in the selection equation that is not also present in the primary equation resulting in instability. Even in the absence of the exclusion restriction, the Heckman correction may be preferred if the regression equation with the independent variables is not sensitive to small changes in the data, which is measured with the condition number (Bushway et al., 2007). When the condition number is less than 20, the corrected estimates may be preferable (Bushway et al., 2007). In the present study, only 13 percent of the convicted subsample did not receive confinement, the data do not include a possible exclusion restriction, and the condition number is 42 indicating an ill-conditioned model. Thus, given the unreliable estimates produced by the Heckman correction, the current study presents the uncorrected OLS estimates on the incarcerated subsample.

CHAPTER 5: RESULTS

Table 2 summarizes the descriptive statistics for the independent and dependent variables used in the analyses. The majority of cases were judge guilty pleas (60%) while the smallest proportion were judge trials (8%). By collapsing categories according to jury/judge and trial/guilty plea, 31% of the sample consists of jury cases and 29% went to trial, indicating that overall jury and trial cases are the minority.²¹ The binary dependent variable indicates that 83% of the cases resulted in severe sentences (i.e. confinement or punitive discharge imposed). Of the 272 cases that did not receive these severe punishments, 140 were acquittals. Thus, an overwhelming majority (91%) of the 1,503 convicted offenders received at least one of the most severe types of punishment. For the continuous dependent variable, convicted offenders receive on average 382 days of confinement when confinement is imposed.

²¹ In civilian studies with acquittal data, most cases that are prosecuted result in a guilty plea, however, the proportion of cases that go to trial is smaller in civilian courts compared to the proportion of trials in this Air Force sample (e.g. Holmes et al., 1992; LaFree, 1985; Smith, 1986).

Table 2. Descriptives of Variables for Air Force Courts-Martial in 2005-2006

Variable	Coding	N	%/Mean (SD)
Dependent Variables			
Sentence Severity ^a	0 Lenient Punishments	272	16.6
	1 Severe Punishments	1,371	83.4
Confinement Length (in days)	Log transformation (0 – 9.8)	1,303	5.12 (1.11)
Independent Variable			
Mode of Conviction ^b	0 Guilty Plea	1,164	71.3
	1 Trial	468	28.7
	0 Judge	1,120	68.6
	1 Jury	512	31.4
	0 Judge guilty plea	989	60.2
	1 Judge trial	131	8.0
	1 Jury guilty plea	175	10.7
	1 Jury trial	337	20.5
Control Variables			
Race	0 White	1,152	70.1
	1 Black	332	20.2
	1 Other/Unknown	159	9.7
Gender	0 Female	201	12.2
	1 Male	1,442	87.8
Age	Continuous (17.4 – 52.2)	1,643	25.6 (5.96)
Rank	0 Officers	420	24.6
	1 Enlisted	1,223	74.4
Type of Court	0 Special Court-Martial	945	57.5
	1 General Court-Martial	698	42.5
Statutory Seriousness	Interval Scale (1-21)	1,643	12.7 (3.38)
Number of Counts	Log transformation (0 – 3.9)	1,643	0.77 (0.73)
Offense Type ^c	0 Property	274	16.7
	1 Person	330	20.1
	1 Drug	862	52.5
	1 Other	177	10.8
Criminal History	0 No Prior Discipline or Conviction	554	33.7
	1 Prior Discipline or Conviction	889	54.1
	1 Discipline/Conviction Missing	200	12.2
Acquittals	Convicted	1,503	91.5
	Acquitted	140	8.5
Total		1,643	100.0

^a Lenient punishments include acquittals coded as no punishment as well as convicted offenders that did not receive a punitive discharge or confinement. Severe punishments are sentences that include either a punitive discharge and/or confinement.

^b Eleven cases are missing mode of conviction.

^c “Other” consists of military and society offenses.

Cross Tabulations

Cross tabulations of the mode of conviction with the binary dependent variable indicate that between 73 and 97 percent of judge trials, jury guilty pleas, and judge guilty pleas receive either a punitive discharge and/or confinement, while only 48 percent of jury trial cases result in these types of punishments (see Table 3). Additionally, a higher proportion of jury trials (33%) result in an acquittal compared to judge trials (21%). Even when acquittals are omitted, a lower proportion of jury trials (72%) receive severe punishments compared to judge guilty pleas (97%), judge trials (92%) and jury guilty pleas (82%). This gives some indication initially that jury trial cases may not result in more severe types of punishment.

Table 3: Cross Tabulations for Mode of Conviction, Sentence, and Acquittals

Mode of Conviction	Acquittals		Lenient Punishment *		Severe Punishment		Total	
	n	%	n	%	n	%	n	%
Judge Guilty Plea	0	0	28	2.8	961	97.2	989	60.2
Judge Trial	27	20.6	8	6.1	96	73.3	131	8.0
Jury Guilty Plea	0	0	31	17.7	144	82.3	175	10.7
Jury Trial	110	32.6	64	19.0	163	48.4	337	20.5
Missing	3	27.3	1	9.1	7	63.6	11	0.7
Total	140	8.5	132	8.0	1371	83.4	1643	100.0

*Does not include acquittals coded as lenient punishment.

Bivariate Correlations

Prior to examining results from the multivariate regressions, bivariate correlations are also explored. Table 4 provides the correlations for the binary (severe punishment) and continuous (logged confinement length) dependent variables with each of the independent variables. These correlations indicate a negative correlation (-0.485) between jury trials and the likelihood of receiving a severe sentence, which is in the opposite direction of what is predicted. Additionally, judge guilty pleas have a positive correlation (0.455), opposite of the predicted direction. Similarly, the correlations for jury and trial are negative (-0.431 and -0.483, respectively). For length of confinement, the correlations between mode of conviction types are much smaller, but more consistent with the hypothesized directions. As predicted, trial and judge trial have positive correlations with length of confinement and jury guilty plea has a significant negative correlation. Nevertheless, jury trial and judge guilty plea do not have significant relationships with the length of confinement.

The effect of acquittals on the correlations for the binary dependent variable and mode of conviction warrants some discussion because acquittals are only possible if the offender went to trial. If acquittals are coded as no punishment, then the correlation with receiving a severe sentence will be more likely to be negative for trials. Correlations on the convicted subsample reveal that although the size of the correlations are reduced, the direction remains negative for jury, trial, jury trial, and jury guilty plea (see Table 5). Additionally, jury guilty plea in the full sample does not have a significant correlation, but does in the convicted subsample (-0.115), and judge trials have a significant correlation in the full sample but not in the subsample. Thus, inclusion of acquittals has

some affect on the bivariate correlations, however, they are not responsible for the failure to find correlations in the expected direction.

Table 4. Bivariate Correlations for Full Sample^a

Independent Variable	Correlations with Dependent Variables	
	Likelihood of Receiving Discharge/Confinement	(ln) Confinement Days
Jury	- 0.431***	- 0.055**
Trial	- 0.483***	0.071**
Judge Guilty Plea	0.455***	- 0.005
Judge Trial	- 0.082***	0.095***
Jury Guilty Plea	- 0.012	- 0.086***
Jury Trial	- 0.485***	0.010
Age	- 0.165***	0.127***
Male	- 0.011	0.139***
White	0.039	0.023
Black	- 0.028	- 0.014
Other/Unknown Race	- 0.054**	- 0.041*
Enlisted	0.156***	- 0.141***
General Court-Martial	- 0.011	0.528***
Statutory Seriousness	0.080***	0.495***
(ln) Counts	0.239***	0.409***
Property Offense	0.046*	0.040
Person Offense	- 0.083***	0.370***
Drug Offense	0.107***	- 0.265***
Other Offense	- 0.120***	- 0.142***
Criminal History	0.116***	0.020

*p<0.10, **p<0.05, ***p<0.01, two-tailed t-tests

^a The full sample is used for correlations with likelihood of receiving a severe sentence, and the confinement subsample is used for correlations with logged confinement days.

Table 5. Bivariate Correlations for Mode of Conviction, Convicted Subsample^a

Independent Variable	Correlations with Dependent Variables	
	Likelihood of Receiving Discharge/Confinement	(ln) Confinement Days
Jury	- 0.319***	- 0.055**
Trial	- 0.245***	0.071**
Judge Guilty Plea	0.293***	- 0.005
Judge Trial	0.010	0.095***
Jury Guilty Plea	- 0.115***	- 0.086***
Jury Trial	- 0.291***	0.010

*p<0.10, **p<0.05, ***p<0.01, two-tailed t-tests

^a Acquittals are removed for correlations with likelihood of receiving a severe sentence, and the confinement subsample is used for correlations with logged confinement days.

Correlations for the legal control variables for both dependent variables are overall in the expected direction, but General Court-Martial is negative and not significant, and Person Offense is significant in the opposite direction.²² However, when examining the length of confinement, most of the legal variables are positively and strongly correlated as would be expected.

The correlations for the extra-legal control variables largely do not reveal significant relationships with either of the dependent variables as would be expected. Contrary to findings in the civilian sentencing literature, the correlations are not statistically significant for gender and race in the likelihood of receiving a severe sentence (Zatz, 2000). However, the lack of correlation for race is consistent with some of the military justice studies in the literature (Perry, 1977; Burchett, 1983; Verdugo, 1998). None of the prior military justice studies include women in their samples, but a positive correlation between male and sentence severity would be expected in the military

²² This opposite direction for these two legal variables is likely due to inclusion of the acquittals because General Courts-Martial and Person Offenses are correlated with receiving an acquittal. The bivariate correlations for the convicted subsample showed significant correlations of 0.051 for General Court-Martial and 0.048 for Person Offenses with the likelihood of receiving a severe type of sentence.

similar to civilian populations. Although the correlation for length of confinement reveals a correlation more consistent with civilian sentencing literature for males (0.139), the correlation for the binary dependent variable is not significant.²³

Multivariate Results

Table 6 presents the results from the logistic regression model that examines the likelihood of receiving a sentence with a punitive discharge or confinement. To see the overall effects of the offender's plea and his choice of forum, this first model collapses mode of conviction into a dummy variable indicating whether the offender pled guilty or went to trial and a dummy variable for the offender's choice of jury or judge. Hypotheses 1 and 2 predict that jury sentences compared to judge sentences will result in more severe sentences. More specifically, jury cases should be more likely to impose sentences with the two most severe types of punishment (punitive discharge and confinement) than judges, controlling for legal and extra-legal factors. According to the results in Table 6, clearly this is not the case. Not only is the effect significant in the opposite predicted direction, but it is quite large. For jury cases, the odds of receiving a severe type of punishment decrease by a factor of 0.16 when compared to judge cases. In other words, the odds of receiving severe types of punishment are 6.43 times greater for judge cases than jury cases. Hypotheses 3 and 4 predict that trials compared to guilty pleas will result in more severe sentences. The results from Model 1 do not support these hypotheses because going to trial decreases the odds of receiving a severe punishment by a factor of 0.30 or 70 percent. This initially provides a clear indication that not only does

²³ This lack of a relationship with the binary dependent variable is likely due to collapsing sentence types into a binary dependent variable. Crosstabs show a higher proportion of females compared to males receive sentences with confinement only or punitive discharge only, while a lower proportion of females compared to males receive both types of punishment.

a trial penalty not exist when controlling for jury sentencing, but that jury sentencing also has a significant negative effect on sentence severity.²⁴

Table 6. Logistic Regression Results for Full Sample -- Model 1^a

Variable	Logit	z	Odds Ratio
Jury	- 1.861***	- 8.11	0.16
Trial	- 1.220***	- 5.27	0.30
Age	0.014	0.69	1.01
Male	- 0.318	- 1.08	0.73
Black	- 0.075	- 0.32	0.93
Other/Unknown Race	- 0.320	- 1.12	0.73
Enlisted	0.741***	2.62	2.10
General Court-Martial	0.957***	4.04	2.61
Statutory Seriousness	0.061**	1.96	1.06
(ln) Counts	0.984***	5.79	2.68
Person Offense	0.602*	1.72	1.83
Drug Offense	0.900***	3.00	2.46
Other Offense	- 0.550	- 1.61	0.58
Criminal History	0.516**	2.33	1.67
Constant	0.790	0.94	----
N = 1632			
Log Likelihood	- 380.443		
Pseudo R ²	0.4780		

* p<0.10, **p<0.05, ***p<0.01, two-tailed tests

^a The model also includes a dummy variable for missing data in the criminal history variable. Dummy variables were not included for the 11 cases missing mode of conviction because of collinearity, thus, these observations were dropped from the analysis.

To more clearly see the relationship between jury and trial, Table 7 presents the results of the second logistic regression model that examines the four specific types of mode of conviction—judge guilty plea, judge trial, jury guilty plea, and jury trial. The

²⁴ Results for the convicted subsample are substantively identical. The odds ratio for jury is 0.13 and trial is 0.50 with p-values <0.01.

magnitudes and significance of the legal and extra-legal variables are very similar to Model 1, however, the relationships among the specific types of mode of conviction more clearly demonstrate that jury trials, jury guilty pleas, and judge trials all have significantly large negative effects on the probability of receiving a severe type of punishment when compared to judge guilty pleas. Selecting a jury trial reduces the odds of receiving a severe sentence by a factor of 0.04 or 96 percent as opposed to pleading guilty with a judge. Similarly, jury guilty pleas reduce the odds by 90 percent, and judge trials reduce the odds by 83 percent.

The legal factors—type of court-martial, statutory seriousness, number of counts, type of offense, and criminal history—are positively and significantly related to the likelihood of receiving a severe punishment. The two legal factors that have the largest effect on the odds are the type of court and the logged number of counts. General courts-martial have a 2.67 times greater odds of receiving a punitive discharge or confinement than special courts-martial, and for a percentage increase in the number of counts, the odds increase by a factor of 2.69. Although criminal history does not have the largest effect of the legal variables, it increases the odds of receiving a severe type of punishment by 69 percent. Person offenses and statutory seriousness were expected to have larger effects, however, this is likely due to the inclusion of acquittals in the analysis.²⁵

²⁵ In the convicted subsample, the p-values for person offense and statutory seriousness were less than 0.05 in a two-tailed test and the odds ratios increased to 2.56 for person offense and 1.10 for statutory seriousness.

The extra-legal factors revealed findings contrary to the civilian sentencing literature regarding the effects of race and gender, but are consistent with prior military justice studies. The only significant factor is the offender's rank indicating that junior enlisted offenders are more likely to receive severe types of punishment than non-commissioned and commissioned officers. Additionally, the logits for blacks and males are negative; however, these results should be taken with caution because they are not statistically significant.

Table 7. Logistic Regression Results for Cases Tried -- Model 2^a

Variable	Logit	z	Odds Ratio
Jury Trial	- 3.203***	- 11.95	0.04
Jury Guilty Plea	- 2.330***	- 7.44	0.10
Judge Trial	- 1.800***	- 5.17	0.17
Age	0.016	0.79	1.02
Male	- 0.359	- 1.22	0.70
Black	- 0.102	- 0.43	0.90
Other/Unknown Race	- 0.319	- 1.11	0.73
Enlisted	0.731***	2.60	2.08
General Court-Martial	0.983***	4.17	2.67
Statutory Seriousness	0.060*	1.93	1.06
(ln) Counts	0.991***	5.83	2.69
Person Offense	0.621*	1.78	1.86
Drug Offense	0.916***	3.04	2.50
Other Offense	- 0.564	- 1.64	0.57
Criminal History	0.523**	2.36	1.69
Constant	0.978	1.16	---
N = 1632			
Log Likelihood	- 378.03		
Pseudo R ²	0.4813		

* p<0.10, **p<0.05, ***p<0.01, two-tailed tests

^a The model includes a dummy variable for missing data in criminal history. Dummy variables were not included for the 11 cases missing mode of conviction because of collinearity, thus, these observations were dropped from the analysis.

In terms of the hypothesized relationships among the modes of conviction, Table 8 presents the odds ratios with the change in reference category for mode of conviction. Hypotheses 1 through 4 are not supported and the effects are significant in the opposite direction with relatively large magnitudes. Hypothesis 1 predicts that jury trial sentences will be more severe than judge trial sentences, yet, unequivocally the data do not support this. Instead of increasing the odds of receiving a severe punishment, a jury trial decreases the odds by a factor of 0.25 or 75 percent. In other words, the odds of receiving a severe punishment are 4 times greater for judge trials than jury trials. According to Hypothesis 2, jury guilty plea sentences should be more severe than judge guilty plea sentences, and as with Hypothesis 1, the opposite is found. Jury guilty pleas decrease, instead of increase, the odds of receiving a severe punishment by factor of 0.10. Hypothesis 3 predicts that jury guilty plea sentences will be less severe than jury trial sentences, yet the data show the odds of receiving a severe punishment are 2.48 times greater for jury guilty pleas than jury trials. As with the jury cases, Hypothesis 4 predicts judge guilty plea sentences will be more lenient than judge trial sentences. The data, however, show that judge guilty pleas increase the odds of receiving a severe sentence by a factor of 6.04. Finally, according to Hypothesis 5, no significant difference is expected between judge trial and jury guilty plea sentences. In examining the types of punishments imposed, this hypothesis found some support. However, for this particular hypothesis, the inclusion of acquittals in the analyses alters the results.²⁶ In a supplemental analysis of the convicted subsample, judge trials are significantly ($p < 0.05$) more likely to result in severe punishments compared to jury guilty pleas (odds ratio

²⁶ The results for Hypotheses 1-4 were substantively identical in the convicted subsample analysis and showed significant effects in the opposite predicted directions.

2.93). This further supports the importance of including acquittals in a trial penalty analyses. A trial penalty appears to be present when comparing judge trials and jury guilty pleas when the estimates are conditional on being convicted.

Table 8. Odds Ratios for Mode of Conviction Comparisons^a

Mode of Conviction Comparisons	Logit	z	Odds Ratio
Jury Trial vs. Judge Trial (H1)	- 1.404***	- 4.66	0.25
Jury GP vs. Judge GP (H2)	- 2.330***	- 7.44	0.10
Jury GP vs. Jury Trial (H3)	0.873***	3.21	2.40
Judge GP vs. Judge Trial (H4)	1.800***	5.17	6.04
Judge Trial vs. Jury GP (H5)	0.531	1.44	1.70

***p<0.01, two-tailed test

^a The same model that produced the results in Table 7 was used to produce these results with only the reference category for mode of conviction changed.

In addition to the probability of receiving a punitive discharge or confinement, this thesis also examines the length of confinement when imposed. As in the initial logistic regression analysis, Model 3 aggregates the mode of conviction (see Table 9), and the second model shows the more detailed mode of conviction categories (see Tables 10 and 11).²⁷ Both models explain almost half of the variance in logged confinement lengths.

²⁷ A Heckman two-step model to correct for selection bias was also explored but had a high degree of multicollinearity and was particularly high for mode of conviction. Additionally, the inverse mills ratio was insignificant (p>0.05) indicating no selection bias. Nonetheless, it should be noted that the corrected estimates for mode of conviction were in the same direction, but the magnitudes of the coefficients were reduced.

Table 9. OLS Regression Results for (ln)Length of Confinement, Confinement Subsample, Model 3^a

Variable	b	t	β
Jury	- 0.284***	- 4.01	- 0.104
Trial	- 0.100	- 1.19	- 0.034
Age	0.004	0.60	0.020
Male	0.113*	1.70	0.033
Black	- 0.010	- 0.18	- 0.004
Other/Unknown Race	0.065	- 0.69	0.168
Enlisted	- 0.068	- 0.84	- 0.025
General Court-Martial	0.719***	13.74	0.321
Statutory Seriousness	0.100***	10.36	0.289
(ln)Counts	0.336***	9.80	0.224
Person Offense	0.367***	4.18	0.131
Drug Offense	- 0.134**	- 2.29	- 0.060
Other Offense	- 0.080	- 0.83	- 0.020
Criminal History	0.110**	2.24	0.047
Constant	3.073	11.20	---
N = 1297			
R ²	0.4942		

* p<0.10, **p<0.05, ***p<0.001, two-tailed tests

^a The model also includes a dummy variable for missing data in criminal history. Dummy variables were not included for the 11 cases missing mode of conviction because of collinearity, thus, these observations were dropped from the analysis.

Table 10. OLS Regression Results for (ln) Length of Confinement, Confinement Subsample, Model 4^a

Variable	b	t	β
Jury Trial	- 0.326***	- 3.52	- 0.092
Jury Guilty Plea	- 0.376***	- 4.66	- 0.100
Judge Trial	- 0.218*	- 1.94	- 0.051
Age	0.005	0.66	0.022
Male	0.108	1.63	0.032
Black	- 0.020	- 0.31	- 0.006
Other/Unknown Race	0.061	0.65	0.016
Enlisted	- 0.071	- 0.88	- 0.026
General Court-Martial	0.723***	13.77	0.323
Statutory Seriousness	0.100***	10.39	0.288
(ln) Counts	0.337***	9.83	0.225
Person Offense	0.366***	4.16	0.130
Drug Offense	- 0.138**	- 2.35	- 0.062
Other Offense	- 0.087	- 0.91	- 0.022
Criminal History	0.106**	2.20	0.047
Constant	3.086	11.34	---
N = 1297			
R ²	0.4958		

* p<0.10, **p<0.05, ***p<0.001, two-tailed tests

^a The model also includes a dummy variable for missing data in criminal history. Dummy variables were not included for the 11 cases missing mode of conviction because of collinearity, thus, these observations were dropped from the analysis.

Similar to the logistic regression models examining type of punishment, the legal factors in both OLS models are positive and significant. For instance, in Model 3, being tried in a general court-martial increases the length of confinement by 72 percent, and person offense compared to property offense increases the length of confinement by 37 percent. In contrast to the logistic regression models, however, the extra-legal variables

reveal that males receive significantly longer lengths of confinement while rank has no significant effect. In Model 3, jury continues to have a significant, negative effect that decreases the length of confinement by 28 percent, but trial has no significant effect. In other words, when controlling for whether an offender is tried and convicted by a jury, there is no significant difference between guilty pleas and trials in the percentage change in confinement length. Thus, although in Model 1 trials are less likely than guilty pleas to result in a punitive discharge or confinement, when confinement is imposed, Model 3 shows the confinement length is no more severe in trials than in guilty pleas.

The mode of conviction variable is further refined in Model 4 and the results are presented in Table 10. With judge guilty plea as the reference category, jury trial and jury guilty plea are significant and in the negative direction. Judge trial is also negative but not significant. Compared to judge guilty pleas, jury trials decrease the length of confinement by 33 percent and jury guilty pleas decrease the length by 38 percent.

For ease of comparison in terms of the hypothesized relationships, Table 11 presents the mode of conviction coefficients with the reference category changed. Similar to the logistic regression models, Hypotheses 1 through 4 are not supported. If Hypothesis 1 were supported, then confinement length would be significantly longer for jury trials than judge trials, however, the results show no significant difference between jury and judge trial sentences. Hypothesis 2 predicts that jury guilty pleas will result in more severe sentences than judge guilty pleas, but the data show that jury guilty pleas reduce confinement length by 38 percent rather than increase it. Hypotheses 3 and 4 predict that trials will result in more severe sentences than guilty pleas among jury cases (H3) and judge cases (H4). Yet, no significant differences are found between the

confinement lengths imposed in guilty pleas in trials for jury as well as judge cases.

Unlike Hypotheses 1 through 4, Hypothesis 5 has some support because it predicted there would be no significant difference between judge trial and jury guilty plea sentences.

Thus, as in the decision to impose a severe punishment, there is no significant difference in the logged sentence lengths when comparing jury guilty pleas and judge trials.

Table 11. OLS Regression Results--Mode of Conviction Comparisons^a

Mode of Conviction Comparisons	b	t	β
Jury Trial vs. Judge Trial (H1)	- 0.108	- 0.77	- 0.030
Jury GP vs. Judge GP (H2)	- 0.376**	- 4.66	- 0.100
Jury GP vs. Jury Trial (H3)	- 0.050	- 0.42	-0.013
Judge GP vs. Judge Trial (H4)	0.218*	1.94	0.088
Judge Trial vs. Jury GP (H5)	0.157	1.18	0.037

* $p < 0.10$; ** $p < 0.001$, two-tailed tests

^aThe same model that produced the results in Table 10 was used to produce these results with only the reference category for mode of conviction changed.

CHAPTER 6: DISCUSSION/CONCLUSION

Discussion

According to the organizational efficiency perspective, court actors induce guilty pleas to reduce the use of court resources resulting in a process discount for offenders who plead guilty (Dixon, 1995; Engen and Steen, 2000; e.g. King and Noble, 2004, 2005; King et al., 2005). An aspect of the court community perspective that also argues for a trial penalty or process discount effect is that the court community develops “going rates” based on workgroup interactions in past cases to reduce uncertainty in the outcome and to facilitate plea bargaining (Ulmer, 1997; Eisenstein and Jacobs, 1977; Eisenstein et al., 1988; Nardulli et al., 1988). Consistent with the notion of a going rate, uncertainty avoidance posits that judges use “patterned responses” when faced with more limited information regarding the likelihood of future offending and will make situational imputations from case and offender characteristics that may produce a trial penalty effect (Ulmer and Bradley, 2006). Taken together then, these theoretical perspectives suggest that offenders will be rewarded with less severe sentences when they select a mode of conviction that reduces uncertainty for the court actors and minimizes court resources. Although the present study is exploratory in nature, it applied these theoretical perspectives to military sentencing—a jury sentencing court system—in order to test these propositions.

Contrary to the majority of trial penalty studies, the present study found no support for its hypotheses which predicted a trial penalty effect. Because judges are likely to use going rates and promote organizational efficiency, judge trials and judge guilty pleas should have resulted in less severe sentences than jury trials (H1) and jury

guilty pleas (H2). The results of this study found no support for these hypotheses and found that sentences imposed by juries are less likely to include the two most severe types of punishment, punitive discharge and confinement. Furthermore, when confinement is imposed, the lengths of confinement for jury guilty pleas are less than judge guilty pleas.

These interesting findings initially suggest the availability of jury sentencing is a key component in whether a trial penalty exists and how the court community develops its going rates. Prior jury sentencing research in non-capital cases revealed mixed findings regarding whether judges impose more or less severe sentences than juries (Weninger, 1994; King and Noble, 2005, 2006). In King and Noble (2005), the prosecutors in Virginia indicated that they take into consideration the sentences that juries impose when plea bargaining, however, the prosecutors in Arkansas also acknowledged that jury sentences for particular types of offenses are generally lower than the going rates for negotiated pleas. Given the empirical findings in the present study and the mixture of evidence in prior jury sentencing research, the court community may have its own view of what is an appropriate punishment.

As in the civilian jury sentencing jurisdictions, the difference in information regarding collateral consequences of sentences has been asserted as a source of disparity between judge and jury sentences in the military. In 1983-84, Congress explored the possibility of removing jury sentencing from military courts among other major reforms to the UCMJ. A Congressional Advisory Commission conducted a large scale survey of judge advocates that included judges, prosecutors and defense attorneys as well as convening authorities (Department of Defense, 1984). The study revealed that most

members of the military legal community believe that jury members impose inappropriate sentences. Additionally, testimony and position papers confirm a firmly held perception exists that jury sentences are too lenient because they do not understand the collateral consequences of their sentences such as good time credit, parole, and the administrative discharge process (Department of Defense, 1984; see also Vowell, 1986).²⁸ Thus, some qualitative evidence supports the idea that the military legal community disregards the sentences imposed by juries and develops its own going rates independent of jury sentences.

Although the development of going rates may account for the finding that judges impose more severe sentences than juries, this cannot explain why among jury sentences (H3), trials are less likely to include a severe punishment and the lengths of confinement are no different between guilty pleas and trials. Even though juries do not impose the court community's going rates, military juries should provide some discount in sentence for guilty pleas (H3). Military juries are likely to have an organizational resource concern and are instructed by the court to consider in mitigation that a guilty plea saves the government time and expense. Nevertheless, the data clearly do not support this hypothesis.

A few possible explanations exist for this null finding. First, military juries likely do not have the same sense for the community punishment norm as judges might for the court community's going rates. If juries have no true sense for the average sentence imposed in similar trial cases, then it would be difficult for them to impose a less severe

²⁸ Although the current study's methodology is quantitative, I also interviewed former and current Air Force judge advocates regarding their perceptions of judge and jury sentencing and found that the perceptions present in the 1983 Congressional Report continue to exist in the Air Force judge advocate community.

sentence. In other words, guilty plea jurors may think they are imposing a discount but they have no frame of reference from which to calculate the discount. Another possible explanation may be related to the group dynamics inherent in jury decision-making. In a trial, jurors must first find the offender guilty before deciding punishment. Despite a finding of guilt, some jurors may not be as firmly convinced of guilt as other jurors. As a result, these jurors may argue during the sentencing phase that the conviction is punishment enough. The 1983 Congressional study found support for a perception among judge advocates that jury sentences are the product of a “compromise” between the guilt and sentencing phases in cases with weaker evidence.²⁹ This argument would then suggest that strength of the evidence may be an important factor to control and is a limitation of the data in the current study worthy of exploration in future military sentencing studies.

Even though the findings for jury cases may be the result of data limitations, judge sentences are not subject to the group decision-making process like juries, and thus, cannot explain why judges impose more severe sentences in guilty pleas than trials. From an organizational efficiency perspective, judges should reward offenders with less severe sentences for guilty pleas than trials (H4). However, the data show that the odds of receiving a sentence with one of the two most severe types of punishments are 6.04 times greater for judge guilty pleas than judge trials, and when confinement is adjudged, the sentence is 22 percent longer.

²⁹ I found this same perception among the judge advocates I interviewed. They believed this most frequently occurred in close cases such as sexual assault cases without strong physical evidence. Unfortunately, the data for this study did not include a measure for strength of the evidence, so this could not be examined quantitatively.

Most of the prior sentencing studies that include an analysis of judge trials (aka “bench trials”) have found a trial penalty effect compared to guilty pleas, although a few studies have either found no difference or an opposite effect as in the present research (King et al., 2005). This finding suggests several possibilities in how military judges arrive at a sentence. First, if judges apply going rates determined by the court community, then the going rate or patterned response that judges use in guilty pleas may not represent a sentencing floor as it might in civilian courts. Second, after a bench trial, judges may feel freer to deviate from the court community norms than in guilty pleas.³⁰ By imposing the going rate in a guilty plea, judges encourage offenders to plead guilty and convening authorities to enter into plea agreements by reducing uncertainty in the outcome rather than through less severe sentences. Hence, judges may still be imposing the going rate for organizational efficiency reasons because offenders are induced to plead guilty through uncertainty reduction, not a process discount.³¹ Regardless, this finding is particularly interesting and should be explored in future military sentencing research.

Finally, if jury guilty pleas and judge trials each have some degree of efficiency and uncertainty reduction, then the sentences adjudged after these modes of conviction should be no less or more severe than the other (H5). This hypothesis was the only one in which I found some support. The type of punishment and confinement length analysis both showed no significant difference in judge trial and jury guilty plea sentences.

³⁰ Interviews with judge advocates indicated a belief that when judges determine sentences in cases with plea agreements, they attempt to impose sentences close to the agreed upon sentence limitation. Judge advocates even refer to this as “hitting the cap.” Thus, in bench trials, judges may feel less constrained in determining sentence.

³¹ Former defense attorneys indicated that despite advising their clients that they would be more likely to receive harsher punishments with a negotiated guilty plea before a judge, their clients insisted on the certainty that accompanies a pretrial agreement as an “insurance policy.”

Conclusion

Research on military sentencing is virtually non-existent in the sentencing literature, and the studies that have been published focus on the effects of race in sentencing rather than the trial penalty. Although the civilian sentencing literature generally supports the existence of a trial penalty, research has been limited to court systems without jury sentencing. The present study expands on the military justice and civilian sentencing literature by exploring whether a trial penalty or process discount exists in military courts. Unlike prior military sentencing research, this study also applies theoretical sentencing perspectives found in the civilian sentencing literature.

The results from the present study indicate little support for a trial penalty in military sentencing. Furthermore, significant and consistent findings in the opposite direction challenge the idea that guilty pleas are induced solely through reductions in sentence as suggested by the organizational efficiency model. Although sentence reductions may induce guilty pleas in civilian jurisdictions, clearly this is not the case in the Air Force population. Nevertheless, in civilian jurisdictions, the offender's desire for certainty should not be discounted as the primary motivation for negotiated guilty pleas. Because of the manner in which jury sentencing is utilized in the military, an offender's desire for certainty may be more apparent quantitatively in military sentencing than in civilian jurisdictions. Thus, given the large proportion of guilty pleas (71%), this study challenges the notion that guilty pleas are induced solely through plea rewards as suggested by the organizational efficiency hypothesis.

The findings in this study also suggest that further research should be conducted on how court communities develop going rates in jury sentencing jurisdictions. The jury

and judge sentencing differences indicate that Air Force court communities develop going rates independent of the punishments imposed by juries. Whether this is true only for the Air Force, applies to the entire military, or is characteristic of all jury sentencing jurisdictions is unknown.

Although some qualitative evidence exists that all of the services develop going rates independent of the sentences juries impose, the results of the current research are not generalizable to the Army, Marines, and Navy and is a limitation of this study. Sentences in general may vary significantly because of differences in the military populations across branches of service. For instance, the Air Force has a smaller population than the Army (316,616 vs. 499,543), and has fewer members with a prior criminal record (Department of Defense, 2007; Defense Manpower Data Center, 2006). Furthermore, certain types of crimes may occur more frequently in some branches as opposed to others due to service specific policies, military cultural norms, and individual characteristics of their recruits. Therefore, future research should be conducted with data from other branches of the military before drawing any definitive conclusions about the existence of a trial penalty in military sentencing.

Despite this study's limitations, it has interesting public policy implications especially for the military justice system. Congress revises portions of the Uniform Code of Military Justice every year with some years encompassing broader changes than others. Whether to retain the right to jury sentencing is frequently debated and many members in the military legal community advocate abolishment because of the alleged disparity it causes in sentences for similarly situated offenders (Jackson, 2004;

Department of Defense, 1984).³² According to the current research, a great deal of disparity is attributable to the mode of conviction differences, with jury trials and jury guilty pleas resulting in less severe punishment. Nonetheless, jury sentencing has a long history in the military system, and military tradition is not likely to be abandoned without something more persuasive than “juries are too soft.” The current study shows a disconnect exists between what legal professionals and juries view as appropriate punishments. From a public policy perspective, the cause for this difference of opinion may be worth exploring before deciding whether to abandon jury sentencing. Are jury sentences truly reflective of the military community’s punishment norms or would jury sentences become more severe in light of information about parole eligibility, good time credit, and the administrative discharge process?³³

Furthermore, the lack of a trial penalty effect in the military also has potential public policy implications for civilian courts. If this finding is due to sentencing process differences (jury sentencing in particular), then changes in civilian court systems to more closely resemble military processes may alleviate a trial penalty effect. However, these results should be taken with extreme caution when attempting to make comparisons between military and civilian populations. In the Air Force data, less than 2 percent of the offenders had a prior felony or court-martial conviction. Thus, in essence this study of military sentencing may be limited to a population of less serious offenders that cannot be compared to a civilian study which is likely to include a much higher proportion of

³² Although not the subject of this study, the data showed little evidence of disparity according to extra-legal factors such as race, gender, and age, and the significant rank effect was found in judge as well as jury cases.

³³ When reviewing the records of trial, I often found that jurors had asked the court questions surrounding parole eligibility, good time credit, and administrative discharge proceedings, but the court-martial rules prohibit jurors from considering these collateral issues.

offenders with prior records. Moreover, some studies have found that the presence of a trial penalty is more pronounced for offenders with substantial criminal histories (e.g. Smith, 1986; Ulmer, 1997). Therefore, the lack of a trial penalty effect in the military population could be due more to the military and civilian population differences than any difference in the court systems.

Although the present study is hardly adequate to fill the gaping hole in the literature on military courts, it serves as a valuable stepping stone for future research on military sentencing. Furthermore, this research provides more insight into the trial penalty as well as highlights potential weaknesses and limitations in the scope of existing theoretical sentencing perspectives when faced with a different type of court system.

Appendix A: Punishment Type Combinations

1	Punitive Discharge				
2	Confinement				
3	Reduce Rank				
4	Financial ^a				
5	Restraint/not ^b confinement				
6	Punitive Discharge	Confinement			
7	Punitive Discharge	Reduce Rank			
8	Punitive Discharge	Financial			
9	Punitive Discharge	Restraint/not confinement			
10	Punitive Discharge	Confinement	Reduce Rank		
11	Punitive Discharge	Confinement	Financial		
12	Punitive Discharge	Confinement	Restraint/not confinement		
13	Punitive Discharge	Confinement	Reduce Rank	Financial	
14	Punitive Discharge	Confinement	Reduce Rank	Restraint/ not confinement	
15	Punitive Discharge	Confinement	Restraint/not confinement	Financial	
16	Punitive Discharge	Confinement	Reduce Rank	Financial	Restraint/not confinement
17	Punitive Discharge	Reduce Rank	Financial		
18	Punitive Discharge	Reduce Rank	Financial	Restraint/not confinement	
19	Punitive Discharge	Reduce Rank	Restraint/not confinement		
20	Punitive Discharge	Financial	Restraint/not confinement		
21	Confinement	Reduce Rank			
22	Confinement	Financial			
23	Confinement	Restraint/ not confinement			
24	Confinement	Reduce Rank	Financial		
25	Confinement	Reduce Rank	Financial	Restraint/ not confinement	
26	Confinement	Financial	Restraint/ not confinement		
27	Confinement	Reduce Rank	Restraint/not confinement		
28	Reduce Rank	Financial			
29	Reduce Rank	Financial	Restraint /not confinement		
30	Reduce Rank	Restraint/ not confinement			
31	Restraint/not confinement	Financial			
32	No Punishment/Reprimand				

^a Forfeiture of pay and fines

^b Restriction to base and hard labor without confinement

Appendix B: Offense Type Classification

UCMJ	Offense
PERSON OFFENSES	
090-A1	Striking or assaulting a superior commissioned officer
090-A2	Striking or assaulting a superior commissioned officer in time of war
091-A1	Striking or assaulting warrant officer by warrant officer or enlisted
091-A2	Striking or assaulting superior NCO by warrant officer or NCO
091-A3	Striking or assaulting other NCO by warrant officer or NCO
095-A-	Resisting apprehension
097---	Unlawful apprehension, arrest, or confinement of another
114---	Dueling
117---	Provoking speeches or gestures
118-A-	Premeditated murder
118-B-	Murder with intent to kill or inflict great bodily harm
118-C-	Killing another when engaged in an inherently dangerous act
118-D-	Killing another when engaged in the perpetration of burglary, sodomy, rape, robbery, or aggravated arson
119-A-	Voluntary manslaughter
119-B1	Involuntary manslaughter
119-B2	Involuntary manslaughter when engaged in perpetration of burglary, sodomy, rape, robbery, or aggravated arson
120-A-	Rape
120-B1	Carnal knowledge-child 12 to 16 years of age
120-B2	Carnal knowledge-child under 12 years of age
124---	Maiming
125-A-	Forcible sodomy
125-B1	Sodomy with a child 12 to 16 years of age
125-B2	Sodomy with a child under 12 years of age
128-A-	Simple assault
128-A1	Assault with a dangerous weapon
128-B-	Assault consummated by a battery
128-C-	Assault upon a commissioned officer not in the execution of his office
128-D-	Assault upon a warrant officer not in the execution of his office
128-E-	Assault upon a noncommissioned or petty officer not in execution of office
128-F-	Assault upon a person in the execution of law enforcement duties
128-G-	Assault consummated by a battery upon a child under the age of 16
128-H1	Assault with a firearm with intent to produce death or grievous bodily harm
128-H2	Assault with a dangerous weapon with intent to produce death or grievous bodily harm

128-J1	Assault in which grievous bodily harm is intentionally inflicted, with a firearm
128-J2	Assault in which grievous bodily harm is intentionally inflicted, with or without a weapon
134--	Possession of Child Pornography
134--	Receipt of Child Pornography
134-C1	Assault-indecent
134-C2	Assault-with intent to commit murder
134-C3	Assault-with intent to commit voluntary manslaughter
134-C4	Assault-with intent to commit rape
134-C5	Assault-with intent to commit robbery
134-C6	Assault-with intent to commit sodomy
134-C7	Assault-with intent to commit housebreaking
134-C8	Assault-with intent to commit burglary
134-C9	Homicide, negligent
134-N4	Reckless endangerment
134-R1	Indecent acts or liberties with child under the age of 16
134-R2	Indecent exposure
134-R3	Indecent language--communicating indecent language to a child under 16
134-R5	Indecent or lewd acts with another
134-S1	Kidnapping
134-X1	Bomb threat
134-X2	Threat, communicating
134-Y0	Computer crimes in violation of state law

PROPERTY OFFENSES

092A11	Fail to obey general order: Misuse of Government Purchase Card
092-A2	Fail to obey general order: Black marketing activities
103-B1	Failure to report or turn over captured or abandoned property-\$100 or less
103-B2	Failure to report or turn over captured or abandoned property-more than \$100
103-C1	Dealing in captured or abandoned property-\$100 or less
103-C2	Dealing in captured or abandoned property-more than \$100
103-D-	Looting or pillaging
108-A1	Selling or disposing of military property-\$500 or less
108-A2	Selling or disposing of military property-more than \$500
108-A3	Selling or disposing of military property-Firearm or Explosive
108-B1	Suffering military property to be lost, damaged, destroyed-\$500 or less
108-B2	Suffering military property to be lost, damaged, destroyed-more than \$500
108-C1	Damaging, destroying, or losing military property-\$500 or less
108-C2	Damaging, destroying, or losing military property-more than \$500

108-C3	Damaging, destroying, or losing military property-Firearm or Explosive
109-A1	Wasting, spoiling, destroying, or damaging non-military property-\$500 or less
109-A2	Wasting, spoiling, destroying, or damaging non-military property-more than \$500
109-B1	Destroying or damaging non-military property-\$500 or less
109-B2	Destroying or damaging non-military property-more than \$500
110-A-	Hazarding of vessel-willful
110-B-	Hazarding of vessel-neglect
121-A1	Larceny of military property of a value of \$500 or less
121-A2	Larceny of military property of a value of more than \$500
121-B1	Larceny of non-military property of a value of \$500 or less
121B1A	Larceny of non-military property \$500 or less: Misuse of Govt purchase card
121-B2	Larceny of non-military property more than \$500
121B2A	Larceny of non-military property more than \$500: Misuse of Govt purchase card
121-C1	Wrongful appropriation of property of value less than \$500
121-C2	Wrongful appropriation of property of value more than \$500
121-C3	Wrongful appropriation of motor vehicle, aircraft or vessel
122-A-	Robbery with a firearm
122-B-	Robbery
123-A-	Forgery-falsely making or altering a signature or any part of a writing
123AA1	Worthless check in the amount of \$500 or less, with intent to defraud
123AA2	Worthless check in the amount of more than \$500 with intent to defraud
123AB-	Worthless check with intent to deceive
123-B-	Forgery--uttering, offering, issuing, or transferring a falsely made or altered writing
126-A-	Aggravated arson: structure
126-B1	Simple arson where the property is of a value of \$500 or less
126-B2	Simple arson where the property is of a value of more than \$500
127---	Extortion
129---	Burglary
130---	Housebreaking
132-A-	Making a false or fraudulent claim against the U.S.
132-B-	Presenting a false or fraudulent claim against the U.S.
132-C-	Fraud: False document with claim
132-D-	Fraud: False oath in connection with claim
132-E-	Fraud: Forgery of signature
132-F-	Fraud: Use forged signature
132-G1	Paying amount less than called for by receipt-\$500 or less

132-G2	Paying amount less than called for by receipt-more than \$500
132-H1	Making receipt without knowledge of the facts-\$500 or less
132-H2	Making receipt without knowledge of the facts-more than \$500
134-D1	Bribery and graft
134-E1	Burning with intent to defraud
134-F1	Check-making and uttering worthless check, by dishonorably failing to maintain funds
134-H1	Debt, dishonorably failing to pay
134-K1	False or unauthorized pass/permit/ID: Wrongful making, altering
134-K2	False or unauthorized pass/permit/ID: Wrongful sale, gift, etc
134-K3	False or unauthorized pass/permit/ID: Wrongful use or possession
134-K4	False or unauthorized document-other cases
134-L1	False pretenses, obtaining services of value \$500 or less
134-L2	False pretenses, obtaining services of value more than \$500
134-Q1	Impersonating an officer, warrant officer, or NCO with intent to defraud
134-Q2	Impersonating an officer, warrant officer, or NCO with no intent to defraud
134-Q3	Other wrongful impersonations with intent to defraud
134-Q4	Other wrongful impersonations with no intent to defraud
134-T1	Mail-destroy, steal, take or open
134-T3	Mail: other offenses
134-U5	Public record: altering, concealing, removing, mutilating
134-V1	Unlawful entry
134-V2	Property: Unlawful seizure, destruction or removal
134-V3	Stolen property: knowingly receiving-\$500 or less
134-V4	Stolen property: knowingly receiving-more than \$500

DRUG OFFENSES

092-A4	Fail to obey general order: Possession of drug paraphernalia
112AA1	Wrongful possession of amphetamine, cocaine, heroin, Sch I,II,III controlled substance
112AA2	Wrongful possession of Sch IV or V controlled substance
112AA3	Wrongful possession of marijuana less than 30 grams
112AA4	Wrongful possession of marijuana more than 30 grams
112AB1	Wrongful possession with intent to distribute amphetamine, cocaine, etc.
112AB2	Wrongful possession with intent to distribute Sch IV or V controlled substance
112AB3	Wrongful possession with intent to distribute marijuana
112AC1	Wrongful use of amphetamine, cocaine, heroin, Sch 1, II, III controlled substance
112AC2	Wrongful use of Sch IV or V controlled substance
112AC3	Wrongful use of marijuana

112AD1	Distribution of amphetamine, cocaine, heroin, Sch 1, II, III controlled substance
112AD2	Distribution of Sch IV or V controlled substance
112AD3	Distribution of marijuana
112AE1	Manufacture of amphetamine, cocaine, heroin, Sch I, II, III controlled substance
112AE2	Manufacture of Sch IV or V controlled substance
112AE3	Manufacture of marijuana
112AF1	Manufacture with intent to distribute of amphetamine, cocaine, heroin, Sch I, II, III controlled substance
112AF2	Manufacture with intent to distribute of Sch IV or V controlled substance
112AF3	Manufacture with intent to distribute marijuana
112AG1	Wrongful introduction amphetamine, cocaine, heroin, Sch I, II, III controlled substance
112AG2	Wrongful introduction Sch IV or V controlled substance
112AG3	Wrongful introduction of marijuana
112AH1	Wrongful introduction with intent to distribute amphetamine, cocaine, heroin, Sch I, II, III
112AH2	Wrongful introduction with intent to distribute Sch IV or V controlled substance
112AH3	Wrongful introduction with intent to distribute marijuana
112AI1	Wrongful importation or exportation of Sch I, II, III controlled substances into US
112AI2	Wrongful importation or exportation of Sch IV or V controlled substances into US
112AI3	Wrongful importation or exportation of marijuana into US

SOCIETY OFFENSES

092-A9	Fail to obey general order: Possession of unauthorized weapons
095-B-	Breaking arrest
095-C-	Escape from custody
095-D1	Escape from pretrial confinement
095-D2	Escape from post trial confinement
096-A-	Releasing a prisoner without proper authority
096-B1	Suffering a prisoner to escape through neglect
096-B2	Suffering a prisoner to escape through design
106---	Spying
106-A-	Espionage
111-A1	Drunken driving resulting in personal injury
111-A2	Drunken driving otherwise
111-B1	Reckless driving resulting in personal injury
111-B2	Reckless driving otherwise
112---	Drunk on duty

116-A1	Riot
116-B-	Breach of the peace
125-C-	Sodomy-other cases
131-A-	Giving false testimony-perjury
133-B-	Conduct unbecoming an officer-drunk or disorderly
134-B1	Adultery
134-B2	Bigamy
134-B5	Pandering
134-B6	Compelling, inducing, enticing, or procuring act of prostitution
134-G5	Violation of Parole
134-G6	Allowing prisoner to do unauthorized act
134-J0	Drunkenness--incapacitation for performance of duties
134-J1	Drunk on station
134-J2	Drunk under circumstances to bring discredit upon the military
134-J3	Drunk and disorderly on station
	Drunk and disorderly under circumstances to bring discredit upon
134-J4	military
134-J5	Drunk and disorderly-other
134-J6	Drinking liquor with prisoner
134-J7	Drunk prisoner
134-J8	Disorderly conduct to bring discredit upon military
134-J9	Disorderly on station
134-M1	False swearing
134-N1	Firearm, discharge-through negligence
134-N2	Firearm, discharge-willfully endangering human life
134-N3	Weapon: concealed, carrying
134-O1	Fleeing the scene of accident
134-R4	Indecent language-communicating indecent language all other
134-T2	Mail: depositing or causing obscene matters to be deposited
134-U1	Misprison of serious offense
134-U2	Obstructing justice
134-U3	Perjury: subornation of
134-U8	Wrongfully refusing to testify

MILITARY OFFENSES

082-B1	Solicitation to desert
082-B2	Solicitation to mutiny
082-B3	Solicitation to commit an act of misbehavior before the enemy
082-B4	Solicitation to commit an act of sedition
083-A-	Fraudulent enlistment or appointment
083-B-	Fraudulent separation
084-A-	Effecting an unlawful enlistment or appointment
084-B-	Effecting an unlawful separation
085-A-	Desertion with intent to avoid hazardous duty, etc.

085-B1	Desertion terminated by apprehension
085-B2	Desertion terminated otherwise
085-C1	Desertion prior to acceptance of resignation terminated by apprehension
085-C2	Desertion prior to acceptance of resignation terminated otherwise
085-D-	Desertion in time of war
086-A1	Going from appointed place of duty without authority
086-A2	Failure to go to appointed place of duty at the time prescribed
086-B1	Unauthorized absence, three days or less
086-B2	Unauthorized absence, more than three but less than 30 days
086-B3	Unauthorized absence, over 30 days
086-B4	Unauthorized absence over 30 days terminated by apprehension
086-C1	Unauthorized absence from a guard or watch
086-C2	Unauthorized absences from a guard or watch with intent to abandon
086-D-	Unauthorized absence with intent to avoid maneuvers or field exercises
087-A-	Missing movement through design
087-B-	Missing movement through neglect
088---	Contempt toward officials by a commissioned officer
089---	Disrespect toward a superior commissioned officer
090-B1	Willful disobedience of a lawful command of a superior commissioned officer
090-B2	Willful disobedience of a lawful command of a superior commissioned officer in time of war
091-B1	Willful disobedience of warrant officer by a W.O. or enlisted person
091-B2	Willful disobedience of an NCO by a W.O. or NCO
091-C1	Contempt or disrespect toward warrant officer in execution of office
091-C2	Contempt or disrespect toward NCO in execution of office
091-C3	Contempt or disrespect toward other NCO in execution of office
092-A0	Fail to obey general order: Other
092-A1	Fail to obey general order: Appearance
092A10	Fail to obey general order: Misuse of Government Travel Card
092-A3	Fail to obey general order: Unprofessional relationship
092-A5	Fail to obey general order: Violation of security regulations
092-A6	Fail to obey general order: Sexual harassment
092-A7	Fail to obey general order: Conflict of interest violations
092-A8	Fail to obey general order: Traffic violations
092-B-	Failure to obey other lawful written order or regulation
092-B1	Government computer violation--Pornography
092-B2	Government computer violation--Other
092-C1	Dereliction in the performance of duties: Neglect
092-C2	Dereliction in the performance of duties: Willful
092C2A	Dereliction in the performance of duties: Misuse of Government

Travel Card

	Dereliction in the performance of duties: Misuse of Government
092C2B	Purchase Card
093---	Cruelty or maltreatment of a person subject to one's orders
094-A1	Mutiny: By violence or disturbance
094-A2	Mutiny: Refusing to obey orders or perform duty
094-A3	Mutiny: Failure to suppress or report a mutiny
094-A4	Mutiny: Failure to report
094-B1	Sedition
094-B2	Failure to suppress or report an act of sedition
094-B3	Sedition: Failure to report
098-A-	Unnecessary delay in disposing of case
098-B-	Failure to comply with or enforce procedural rules
099-A-	Running away in the presence of the enemy
099-B-	Shamefully abandoning, surrendering, or delivering up command
099-C-	Endangering safety of a command, unit, place, etc
099-D-	Casting away arms or ammunition
099-E-	Cowardly conduct before the enemy
099-F-	Quitting place of duty to plunder or pillage
099-G-	Causing false alarms
099-H-	Willfully failing to do utmost to encounter enemy
099-I-	Failing to afford relief and assistance
100-A-	Compelling surrender or attempting to compel surrender
100-B-	Striking the colors or flag before the enemy
101-A-	Unauthorized disclosure or improper use of a countersign
102---	Forcing a safeguard
103-A1	Failure to secure captured or abandoned property-\$100 or less
103-A2	Failure to secure captured or abandoned property-more than \$100
104-A-	Aiding the enemy
104-B-	Harboring or protecting the enemy
104-C-	Giving intelligence to the enemy
104-D-	Communicating with the enemy
105-A-	Misconduct as a prisoner in the hands of the enemy
105-B-	Maltreatment of another prisoner
107-A-	Signing a false official statement
107-B-	Making a false official statement
113-A1	Misbehavior of a sentinel or lookout in time of war
113-A2	Misbehavior of sentinel or lookout in areas designated for special pay
113-A3	Misbehavior of sentinel or lookout - other
115-A1	Malingering-time of war
115-A2	Malingering-feigning illness or disability
115-B1	Malingering-intentionally inflicting self-injury in time of war
115-B2	Malingering-intentionally inflicting self injury

131-B-	Subscribing false statement
133-A-	Conduct unbecoming an officer-copying or using examination paper of another
133-C-	Conduct unbecoming an officer-unprofessional relationship
133-D-	Conduct unbecoming an officer-other
134-A1	Abusing a public animal
134-B3	Cohabitation, wrongful
134-B4	Fraternization
134-G1	Correctional custody--Escape
134-G2	Correctional custody--Breach
134-G3	Quarantine: medical, breaking
134-G4	Restriction, breaking
134-H2	Debt, dishonorably failing to pay gov't travel card
134-H2	Fail to pay debt: Government Travel Card
134-I1	Uttering disloyal statements undermining discipline and loyalty
134-P1	Gambling by an NCO with subordinate
134-P3	Straggling
134-P4	Wearing unauthorized insignia, decoration, badge, ribbon
134-U4	Obstructing proceedings before departments, agencies or committees
134-W1	Sentinel or lookout: Disrespect to a sentinel or lookout in execution of duty
134-W2	Sentinel or lookout: Loitering or wrongfully sitting down on post in time of war
134-W3	Sentinel or lookout: Loitering or wrongfully sitting down on post
134-Y1	Crimes and offenses not capital
134-Y2	Offenses under the Assimilated Crimes Act
134-Y3	Other crimes in violation of State Laws
134-Z-	Other offenses Article 134

Appendix C: Maximum Punishment Scale

Code	Maximum Punishment
1	1 month
2	3 months
3	4 months
4	6 months
5	Bad Conduct Discharge, 6 months
6	Bad Conduct Discharge, 9 months
7	Bad Conduct Discharge, 1 year
8	Dismissal or Dishonorable Discharge, 1 year
9	Dismissal or Dishonorable Discharge, 1.5 years
10	Dismissal or Dishonorable Discharge, 2 years
11	Dismissal or Dishonorable Discharge, 3 years
12	Dismissal or Dishonorable Discharge, 5 years
13	Dismissal or Dishonorable Discharge, 6 years
14	Dismissal or Dishonorable Discharge, 7 years
15	Dismissal or Dishonorable Discharge, 8 years
16	Dismissal or Dishonorable Discharge, 10 years
17	Dismissal or Dishonorable Discharge, 15 years
18	Dismissal or Dishonorable Discharge, 20 years or greater, but less than Life*
19	Dismissal or Dishonorable Discharge, Life with or without parole
20	Death or Life with or without parole
21	Death, Mandatory Minimum Life with parole

*For UCMJ specific offenses, no maximum punishment exists that is greater than 20 years but less than life; however, federal and state crimes may be assimilated under the UCMJ that carry maximum punishments within this range.

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