

## Chapter 12

### **CASE STUDIES: Litigation Theory to Practice**

#### **Sentencing Argument**

*Sentencing is about maintaining the momentum of findings and then, for the prosecution, continuing the strategy (the theme and theory) that got you to that point. And again, public review of an actual case—sentencing on a murder conviction.*



## Chapter 12 – CASE STUDIES: Sentencing



On a cold night in December 2013, Air Force Staff Sergeant Sean Oliver strangled to death Navy Petty Officer Second Class (PO2) Dmitry “Chep” Chepusov. That murder might have gone unsolved had not chance intervened. A local Polizei patrol randomly pulled SSgt Oliver’s car over while he was on his way to dump Dmitry’s body in a wooded area outside Kaiserslautern Germany and discovered Dmitry’s lifeless body strapped into the passenger seat.



Petty Officer 2nd Class Dmitry Chepusov, a military broadcaster, was found strangled to death in the passenger seat of a car during a traffic stop in December 2013.

The twists and turns of the ensuing multi-nation investigation and then murder trial of *United State v. Staff Sergeant Sean Oliver* had all the makings of a made-for-TV movie: a cast of colorful characters of service members from the Armed Forces Network (AFN); a torrid affair involving SSgt Oliver and PO2 Chepusov’s wife; disturbing pre-murder discussions of the financial “benefit” to his estranged wife from Dmitry’s death; allegations of involvement in the murder by another AFN colleague, an Army Private; a plan to kill a potential witness to the murder, another AFN colleague, an Air Force Staff Sergeant; an elaborate effort to create a ready alibi for when Dmitry’s body was eventually discovered in the woods; discovery of a previous strangulation/assault (not death) committed by SSgt Oliver; and the strange circumstances of the discovery of the murder.

After a three-week trial in January 2015, SSgt Oliver was found guilty of, among other things, PO2 Chepusov’s unpremeditated murder. While the hard-fought case presented many excellent examples (from both the prosecution and defense) of how the theories of litigation can expertly be put into battlefield practice, the focus of this article is on sentencing—in particular, the prosecution’s case.

## Theory

Truth be told, the sentencing case is all too often treated as the “red-headed stepchild” of trial practice. Unless it is a guilty plea and all you are “litigating” is the sentence, the vast majority of both parties’ energies at trial is devoted to their ultimate goal of conviction or acquittal (or somewhere on each parties’ side of that spectrum). Once that is achieved, the momentum built up during findings tends to wane and particularly prosecution sentencing cases often fall flat. [Of course, once the defense goal--acquittal--is achieved that momentum does not need to be preserved for a sentencing case and can be translated into a post-acquittal celebratory beer.]

But even in cases of conviction, the defense community is much better at maintaining and accelerating their findings momentum. Prosecutors too often seem to assume the facts will speak for themselves and alone guide the fact finder to the “right” sentence. This manifests itself in primarily paper presentations, failure to call useful witnesses, passing on cross-examination of defense witnesses, meandering arguments, and general lack of “vectored passion”™ for the requested sentence. Yes, the facts dictate the outcome, but how you present those facts can nudge the outcome in your preferred direction. Now, “poor sentencing efforts” could certainly describe some of this author’s sentencing cases back in the day, but you younglings are better and you can do better.



**Know generally what you are eventually going to want as a sentence. But not only know what you want, as that is not the hard part, but know why you want it.**



You can do better if you contemplate your eventual sentencing case when you first sit down to consider a strategy for your entire case. Know generally what you are eventually going to want as a sentence. But not only know what you want, as that is not the hard part, but know why you want it. If you do that, then you can craft a theme and theory for your case that works not just for findings, but also translates well into your sentencing presentation. A consistent narrative enhances your teams’ credibility with the fact finder and often credibility of counsel, just like credibility of witnesses, helps carry the day. In sentencing, this hopefully manifests itself by the fact finder giving more credence and consideration to your sentence ask during deliberations.

You can also do better if you hew closely, but not slavishly, to the sentencing instructions in constructing your argument. Members, even if they are not pilots, love to have checklists or “official” guidance on how to proceed. They get this from the one person in the court who has inherent credibility—the judge. Pander a little by parroting some of the judge’s instruction and maybe some of that credibility will wear off on you as it is not just “the prosecutor said” back in the deliberations room, now it is “the prosecutor and the judge said.” At a minimum, referencing the sentencing instructions will give your argument some structure and thus make it smoother and more persuasive; it will help you answer the “why” your requested sentence is appropriate.

Remember, in every sentencing case the judge is going to instruct the members (or remind himself or herself), of the five principles of sentencing that they “should” consider:

**“ Do not oversaturate your argument canvas by mixing in every instruction from the palette, but chose a few that fit your overall case theme and theory ”**

There are several matters which you should consider in determining an appropriate sentence. You should bear in mind that our society recognizes five principal reasons for the sentence of those who violate the law. They are rehabilitation of the wrongdoer, punishment of the wrongdoer, protection of society from the wrongdoer, preservation of good order and discipline in the military, and deterrence of the wrongdoer and those who know of his/her crime(s) and his/her sentence from committing the same or similar offenses. The weight to be given any or all of these reasons, along with all other sentencing matters in this case, rests solely within your discretion.

And that their sentence determination should take into account three, big-picture concerns:

[Y]ou alone are responsible for determining an appropriate sentence in this case. In arriving at your determination, you should select the sentence which will best serve the ends of good order and discipline, the needs of the accused, and the welfare of society.

And that they “must give due consideration to all matters in mitigation and extenuation, as well as to those in aggravation . . .” Do not oversaturate your argument canvas by mixing in every instruction from the palette, but chose a few that fit your overall case theme and theory.

You can also do better if you do not just anticipate what your opponent’s sentencing case is going to be solely for preparing to argue against it, but anticipate it to prepare to meet it aggressively with your own evidence presentation (during findings and sentencing), and through careful cross-examination of your opponent’s witnesses. “Careful,” of course, because that cross-examination will be of the crying and distraught, and thus sympathetic, spouse, or parent, or even child. These cross-examinations require a light touch. But a “light touch” is not a “phantom touch” and you should not be afraid to ask a crying spouse a question that is going to help your later argument—though again you need to do so carefully, sympathetically, and apologetically. Even start that way: “Ma’am, I am so very sorry that you have been put in this position, but [whatever you need, e.g. am I correct that your son did not tell you about his arrest].” There is a great reluctance to cross-examine family defense witnesses for the fear of “turning off” the members by appearing cold-hearted or downright mean. Get over yourself, you are not as intimidating as you think you are, find a way to cross the right way to advance your case. Indeed, you can even explain to the members in your argument why you needed to ask those questions of that witness—after all, if you did not have a reason to ask a particular question, you should not be asking it. But if you have a reason, ask the question and tell the members why it was important.

The prosecution’s sentencing case in *United States v. SSgt Oliver* illustrates these key concepts. Brought onto the prosecution team with a primary focus on sentencing, Major Grethe Hahn’s masterful sentencing strategy, presentation, and tear-inducing argument secured a life sentence for SSgt Oliver.<sup>1</sup>

### **Background**<sup>2</sup>

In 2012, while on leave in Ohio, the Accused let himself into his then ex-wife’s house in order to catch her in bed with another man. He attacked that man, placed

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<sup>1</sup> The author extends special thanks to Major Jeremy Gehman, Major Grethe Hahn, Major Marisol Salviejo, and Major Nathan Royer, for their outstanding work at the trial of *United States v. SSgt Sean Oliver*, and their contributions to this article.

<sup>2</sup> SSgt Oliver’s appeal was denied in full on 27 January 2017 by the Air Force Court of Criminal Appeals in an unpublished decision. You can read the opinion, to include additional facts at *United States v. Oliver*, 2017 CCA LEXIS 59 (A.F.C.C.A., January 27, 2017)(unpublished). References are to the Record of Trial (herein “R”) on file with the author; editorial revisions made to enhance readability and protect identification of witnesses and individuals.

him in a strangle hold, and squeezed until his victim could not breathe and continued to squeeze until his victim started to turn blue. Only at the urging of his ex-wife and another roommate in the home did SSgt Oliver release his hold and did so only after his victim promised not to call the police.

The next time SSgt Oliver strangled someone, he did not release his hold until his victim was dead.

That victim was PO2 Dmitry Chepusov. The two worked together at AFN in Germany. Dmitry's marriage was, at his insistence, coming to an end and SSgt Oliver graciously agreed to take Dmitry's wife off his hands. Dmitry frankly did not care and thus SSgt Oliver and the estranged wife began a relationship that became sexual while Dmitry was out of the country visiting Ukraine. When he returned, SSgt Oliver invited Dmitry out to drink with a group of friends from the AFN community, which they did on December 13, 2013.

As the evening ended, Dmitry along with several others returned to a fellow AFN member's apartment, Army Staff Sergeant S. At some point, SSgt Oliver and Dmitry were in the kitchen while the others were in the living room. While it is unclear what *exactly* happened in the next few moments, the evidence was that SSgt Oliver attacked Dmitry, Dmitry fell to the ground with a badly cut ear, and SSgt Oliver then climbed on top of him and strangled him to death with his hands over the next few minutes. SSgt Oliver then dragged Dmitry's dead body to SSgt S's bathroom. At one point SSgt Oliver had a discussion with Army Specialist K, one of his AFN colleagues who was present at the apartment that night, which another AFN colleague, Air Force SSgt P, who was also present, overheard. During that conversation, SSgt Oliver confirmed that Dmitry was dead, "dead dead" in his words. SSgt P did not overhear the rest of the conversation in which SSgt Oliver and Spc K briefly contemplated killing SSgt P as well, to tie up the loose end.



SSgt Oliver immediately began concocting an alibi and covering up the murder. He left Dmitry's body in the bathroom and went home to send "fake" text messages to his AFN friends and Dmitry's estranged wife about where he was and what he had been doing that night (including that he was going to go to sleep). He also logged into his computer to surf adult websites so that if there was ever a search of his computer (which there was) it would appear that he had been at home rather than with Dmitry at the time of death. He then grabbed some household cleaner, returned to SSgt S's apartment, cleaned the blood up in the kitchen and bathroom, dragged Dmitry's beaten and bloodied body down the stairs into his car, buckled Dmitry into the passenger seat, set his GPS for a destination out of town, and started driving to the woods to dump the body.

**STARS AND STRIPES**

**Video shows airman implicating himself in death of AFN broadcaster**

By Matt Milham  
Stars and Stripes  
Published: January 14, 2015

RAMSTEIN AIR BASE, Germany — A panel of officers and enlisted personnel watched video evidence Wednesday in which Air Force Staff Sgt. Sean Oliver changes his story and implicates himself in the death of Navy Petty Officer 2nd Class Dmitry Chepusov, whom he is charged with killing.



There is a saying about the cruelty of karma, and it applies to SSgt Oliver. A German Polizei patrol just happened to spot him out driving at about 2 a.m., nearly out of Kaiserslautern proper, and given the late hour the Polizei pulled him over to check if he had been drinking. When they realized

Dmitry was not breathing and had a bluish coloration, the officers began to suspect he was not just passed out drunk as SSgt Oliver had claimed. The officers pulled Dmitry's body out of the car and attempted life-saving efforts to no avail, all while SSgt Oliver looked on and feigned shock, to include fake tears (as he later was forced to admit on cross-examination at trial).

Subsequently, SSgt Oliver was arrested by German authorities and ultimately lied repeatedly and inconsistently trying to explain how he had a dead body in his car. He lied first to the German police, then to agents with the Office of Special Investigations once the Germans released SSgt Oliver back to military control, and ultimately to the members at his trial.

The Government charged SSgt Oliver with aggravated assault for the Ohio strangulation and premeditated murder for PO2 Chepusov's death, as well as obstruction of justice and making false official statements for his many, many lies and

an effort to cover-up his crime.<sup>3</sup> Surprisingly SSgt Oliver elected to testify in his own defense—it was not a wise decision. The members did not believe his ever-changing stories of what had happened that night and convicted him of murder.

### Sentencing Case

With 29 German and American witnesses, a month of trial, almost a dozen experts, hours and hours of video, hundreds of pages of exhibits, and the intrigue and drama of the colorful cast of character involved, it was important for the prosecution

to focus on a simple theme and theory to which they could anchor the case from start to end. Not hard to figure out here. Essentially it was that SSgt Oliver was a violent, calculating killer who, as such individuals typically are, was also a “lying liar who lies.”<sup>4</sup>

As to the violent-killer aspect, the prosecution was

unsurprisingly consistent—leading with it at the start of the findings case, ending the findings case with it, and importantly continuing the theme at the start of the sentencing argument:

OPENING: Colonel M., Members, with malice in his heart, and forethought in his mind, Staff Sergeant Sean M. Oliver wrapped his hands around Petty Officer Dmitry Chepusov’s neck and squeezed with all his might. He continued to squeeze even after the loss of oxygen caused Petty Officer Chepusov to fall into unconsciousness. He continued to squeeze for another 5 minutes while Petty Officer Chepusov lay on the cold kitchen floor immobile. He continued to squeeze for minutes and minutes after that until the lack of blood and air to the brain resulted in Petty Officer Dmitry Chepusov’s death. He squeezed until Petty Officer Chepusov was dead and then for good measure, to celebrate his accomplishment, in an action to show he was the victor, he got up and kicked Petty Officer Chepusov’s lifeless body. That is premeditated murder. . . . This is Dmitry Chepusov [showing



<sup>3</sup> The issue of joinder of the two strangulation-related charges was hotly contested in pretrial motions, with the military judge denying the Defense motion for severance. The military judge did impose substantial limitations on the order of proof to guard against spillage and provided the members detailed instructions to not conflate the two strangulation incidents. Failing to sever was not challenged on appeal and only in sentencing argument, and then only briefly, were the two strangulations referenced together.

<sup>4</sup> Trial Counsel applied this description to one of the witnesses in the case during findings argument, which drew a prosecutorial misconduct claim on appeal (which was denied). The description also applies to SSgt Oliver given the evidence presented at trial.



photo on Smart board], known as Chep, a Petty Officer Second Class of the United States Navy. He is dead. Murdered.<sup>5</sup>

CLOSING: For the minutes, the minutes that the accused had his hands wrapped around Petty Officer Dmitry Chepusov's neck and squeezed with all his might, he had a choice to make. As the seconds ticked off the clock and the minutes ticked off the clock, he had a choice to make. As Chep passed from consciousness to unconsciousness, he had a choice to make. And as death approached, he had a choice to make. He could have stopped. He could have reflected on what he was doing and made the choice to stop. He could have put aside his anger at Chep. He could have put aside his relationship with Chep's wife. He could have put aside his fear of getting in trouble with Command, and he could have put aside his belief that she and he would be better off financially and emotionally if Chep was dead.<sup>6</sup>

He had the ability. He had the time. He was able to think. He was able to contemplate. He was able to make the right decisions. He didn't do that. He didn't choose life. He chose death. That day with his hands wrapped around Chep's neck, squeezing with all of his might for minute after minute, he chose death. He killed Chep. He killed him "dead-dead." With malice in his heart and forethought in his mind, he committed murder, premeditated murder. You should find him guilty of that and every other charge in this case.<sup>7</sup>

SENTENCING: In 2012, the accused stormed into [his ex-wife's] apartment, lunged at [her paramour], wrapped his hands around his neck and he squeezed. He squeezed until he turned blue and he didn't stop until [a roommate] pulled him off. In 2013, the accused stormed into [SSgt S's] kitchen, lunged at Dmitry Chepusov, wrapped his fingers around Dmitry's neck and he squeezed. He squeezed and he squeezed, but this time he didn't stop. He squeezed until he murdered Dmitry Chepusov.<sup>8</sup>

Nor did trial counsel shy away from asking for the members to take their "pound of flesh," to punish harshly for punishment's sake for the act itself. First, though, she borrowed some of the judge's inherent credibility by echoing his instructions, while bringing focus to those that best advanced her theme:

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<sup>5</sup> R. at 736.

<sup>6</sup> R. at 2494.

<sup>7</sup> R. at 2495.

<sup>8</sup> R. at 2764.

There are many different reasons why we punish criminals once we found that they have broken the law. That might not be something that you think about often, but the judge talked to you a little bit about that yesterday. There are things that are called facts in aggravation. Aggravating facts about the crime itself that make it so bad. What is it about this murder that makes it worse than your “average” murder? What is it about this assault that makes it worse than your “average” assault? And we’re going to get into that.

After we’re done arguing the judge is going to tell you that you need to consider three things; the effect on good order and discipline, the needs of the accused, and the welfare of society. And so we’re going to talk about those, too. And then yesterday the judge talked to you about different principles of sentencing. . . . Well, I’m going to highlight two of them for you. One is general deterrence and the other is retribution, but members, as we go through all of these you will see a prevailing pattern and that is all signs point to life without parole.<sup>9</sup>

Trial counsel then supported the ask for that “pound of flesh” (punishment for punishment’s sake) by demonstrating the aggravated nature of the offense-- focusing directly on the accused’s heinous acts:

When the accused had his hands around Dmitry’s neck, was Dmitry struggling? Well, forensically speaking, it looks like he had some defensive wounds, but did Dmitry know, as the accused was choking him that his coworker Sean Oliver was murdering him? We never know these . . . we may never know . . . may never have the answers to these questions, but we do know this members: We know that the manner of death [by] which he killed Dmitry Chepusov. He killed him by manual strangulation.

Take a moment and think about that. Think about the intimate manner in which he killed another human being. We’re not talking about some impersonal way of killing like firing guns from 50 feet away or hiring a hit man to do your dirty work for you. We’re talking about hand[s] in the face of your victim, close and personal, and squeezing. Members, you remember the demonstration in court where Major Gehman got on top of Captain Royer and remember how uncomfortable it was even just to watch it and see how close he was, even if his arms were fully extended we’re talking inches away from his victim. Maybe he was looking into Dmitry’s eyes as his veins were exploding due to the increasing pressure to his head. Maybe he was excited. Maybe he was scared. Maybe he was just plain angry.

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<sup>9</sup> R. at 2764-65.

But we do know this, [] he squeezed until he murdered Dmitry Chepusov in the most intimate way he could murder another man and that's with your bare hands. And that is a fact in aggravation.

Now, it's just not the gruesome manner in which he killed Dmitry, it's how he treated Dmitry after he had just murdered him. We have the accused squeezing his for [at least] a minute until he decides he's good and dead, "dead, dead." And what does he do? He stands up tramping over his victim and he gives [him] two quick kicks just for good measure. What contempt. What disrespect for the lifeless vulnerable corpse of your victim ...

This isn't a sarcastic comedy like *Weekend at Bernie's*, members. We're talking about a real person, a human being, Dmitry Chepusov, and he treated him like garbage and what do you do with garbage? You throw it out. And that is exactly what the accused was going to do. He was going to drive him to some woods, kick him out of his car and hope that the elements or maybe the animals would get to him. He treated his body like garbage and that is a fact in aggravation.<sup>10</sup>

Though in a sense the violent-killer theme was self-evident in the nature of the offense and "easy" to tie to the sentencing instructions, pursuing the other theme—that SSgt Oliver was a "lying liar who lies"—required trial counsel to more creatively weave that theme into the other instructions.

It helped this process that charging decisions made relevant SSgt Oliver's penchant for lying at literally every opportunity in failed efforts to deflect responsibility to others. It also helped this process that the volume of lies SSgt Oliver told, presented in detail through the prosecution's case-in-chief, oriented the members to SSgt Oliver's character for untruthfulness long before he took the stand and long before he cried his crocodile tears in sentencing.



It also helped this process that, again, the judge instructed the members that the lying from the witness box to them was relevant for their sentencing deliberations—the mendacity instruction, aka “the prosecutor’s best friend”:

The evidence presented and the sentencing argument of trial counsel raised the question of whether the accused testified falsely before this court under oath. No person, including the accused, has a right to seek

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<sup>10</sup> R. at 2765-66 (emphasis added).

to alter or affect the outcome of a court-martial by false testimony. You are instructed that you may consider this issue only within certain constraints. First, this factor should play no role whatsoever in your determination of an appropriate sentence unless you conclude that the accused did lie under oath to the court. Second, such lies must have been, in your view, willful and material, meaning important, before they can be considered in your deliberations. Finally, you may consider this factor insofar as you conclude that it, along with all the other circumstances in the case, bears upon the likelihood that the accused can be rehabilitated. You may not mete out additional punishment for the false testimony itself.

By the time trial counsel presented her argument there was an overabundance of evidence (more than can be catalogued in this article) that SSgt Oliver was not credible primarily because of his pathological inability to tell the truth. Thus, she catalogued the most glaring of those lies and tied them to SSgt Oliver's lack of remorse, which she argued undercut the anticipated defense argument that the SSgt Oliver possessed rehabilitative potential:

**“The mendacity instruction, aka  
'the prosecutor's best friend'”**

The judge told you the mendacity instruction yesterday. And that instruction tells you that no person, including the accused, has a right to seek or alter the [outcome] of the court-martial by false testimony, which is exactly, exactly what the accused did. He had a year to go through all the evidence. He had the weeks in court to see the [perceived] holes and then he crafted, he tweaked his story to try to make it better for him, because it's all about him . . . His tears were so obvious and self-serving. His tears were so clearly fake and yet he expected you to swallow that garbage.<sup>11</sup>

And throughout, trial counsel focused her argument on how SSgt Oliver's "remorse" could not be trusted and how a person without true remorse for committing such a heinous act should not be credited with rehabilitative potential:

Next, let's talk about the accused's lack of remorse. He's not sorry Dmitry's dead. Let's go way back to December when he got called into OSI. What did he tell [the Special Agents]? And we have that up on the screen for you to read along. He says, "That's another reason why I feel really bad, because I really don't have a lot of remorse about him being dead. It's all just fear, all fear about what the fuck is going to happen to me." That is another recurring theme you're going to see,

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<sup>11</sup> R. at 2769.

members. It's all about Sergeant Oliver. It's not about his victim. It's not about the man that he just murdered. He's not sorry. . . . He wasn't sorry because he wanted him dead. He got up here yesterday in his unsworn statement and he said things like "I can never apologize enough." Well, that is true, he can't. "But I'm filled with regret and I am truly sorry."

Members, there is a difference between being sorry because you have a guilty conscience about what you did and being sorry because you got caught. There is just no way around it. The accused is only sorry because he got caught and you didn't believe his lies [when he testified]. This is what he is sorry about. He has no remorse. He is not sorry he is dead, because he wanted him dead, which is why he killed him.

And the lies, the lie after lie after lie. [Two pages describing the lies]. Members, he straight up lied to you, he lied to you. He took the stand . . . just seven days ago, raised his right hand, swore to tell you the truth and he lied, he lied to reduce his criminal liability. He hoped to pull the wool over all your—over all your eyes and get away with it. And guess what? Not even the accused gets to lie. . . . [His lies] show you how little regard he had for his victim, how little remorse he felt and how he has absolutely no rehabilitative potential. . . . A person with no rehab potential does not deserve a second chance at freedom, which is why the accused deserves life without parole. It's as simple as that.<sup>12</sup>

STARS  STRIPES.

Defendant testifies in killing of AFN broadcaster

Trial counsel also anticipated a standard defense sentencing argument. SSgt Oliver had three young children. While it was not difficult to anticipate that the thrust of the defense's plea

for leniency would revolve around imploring the members to "think of the children," counsel effectively anticipated that line of argument and prepared to meet it by her own evidence presentation and through cross-examination of the defense's witnesses. First, she delved deeply into the effect of the crime on Dmitry's family, including this exchange with Dmitry's Ukrainian mother (who also testified that she referred to Dmitry also as "her Mita," a Ukrainian pet name):

Q. And where was the funeral held at, ma'am?

A. The funeral was in New Jersey. We buried him with all military honors in the cemetery where my father is laying. Of course, nobody prepared for this, so we didn't have any other best ideas. We had to bury Dmitry, so we buried him over there. And because he was dead for so long, I couldn't recognize him. I couldn't hug him or kiss him.

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<sup>12</sup> R. at 2767-70.

What can I tell you; that's all.

Q. Ma'am, I want to show you a photograph. Does Dmitry have any grandparents that are still alive?

A. Yes, from all set of four grandparents only one babushka, grandmother.

Q. And where does she currently live?

A. She lives in Odessa, Ukraine, where originally we came from.

Q. Does Dmitry go and visit her?

A. Yes, many times. He was very close to her. He loved her very much. She -- she doesn't know he passed. She doesn't know he murdered. The family decided to not tell her. She still cries at the death of her son Hugo, who died from cancer two years before Dmitry. And they decided to not tell her about Dmitry's passing, because it would just kill her. So she -- they told her he's on a lengthy overseas deployment and he just cannot call you.<sup>13</sup>

During the defense sentencing case, SSgt Oliver's ex-wife and mother of his children testified. She had ham-handedly created a video in which she appeared to have coached the children to cry on cue as each of them told the camera how much they loved and missed their daddy. Trial counsel honed in during cross-examination, carefully and sympathetically in tone (notice the non-directive form of the questions), on a point she would then use to great effect in her argument:

Q: Ms. Oliver, during the time that Sergeant Oliver has been in pretrial confinement, have you had an opportunity to speak with him?

A: Yes.

Q: To speak with him on the phone?

A: Yes.

Q: Have you had an opportunity to write him letters?

A: Yes.

Q: And does he write you back?

A: Yes.

Q: And how about the kids, you mentioned that there was a letter that he had sent to one of the children. Have they had an opportunity to write him letters?

A: Yes.

Q: And has he had the opportunity to write them all letters?



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<sup>13</sup> R. at 2682.

A: Yes.

Q: You also mentioned that they had met [him] when he was out for the deposition at Wright Patterson. You had a couple chances to meet with Sergeant Oliver during that deposition [time], correct?

A: Correct.

Q: I think you also made arrangements to have his mother meet with him during this time?

A: Yes.

Q: Into the future is it your intent that the children will try to maintain a relationship with Sergeant Oliver?

A: Yes.

Q: And, therefore, to the extent it's possible and [he's] accessible, will you make efforts to ensure that he has an opportunity to meet with his children?

A: Yes.

Q: And to talk with them on the telephone?

A: Yes.

Q: And to write them letters?

A: Yes.

TC: Thank you, ma'am.<sup>14</sup>

From all of this, trial counsel drove home two points in her argument to undermine the argument she had expected, and got, from the defense. The first point that SSgt Oliver losing his family was his own fault and second that Dmitry's family's loss was so much worse than the loss SSgt Oliver's family suffered. Counsel began by a full-throated challenge to the video:

And let's talk about his kids for a bit. He has three beautiful children and he played a video of his three kids talking about their daddy and that video should make you think . . . feel two things. First, just utter sympathy. These are innocent children and it's not their fault that their father's going through this.

But you should've felt angry, too. Angry that the accused would put his kids through that. Putting a camera in front of their face and saying "kids go ahead and cry. Your tears really sell well, so ham it up for the camera. Daddy needs to get out of jail." He's using his children as a pawn to try to manipulate you into feeling sorry for the kids and thus giving him a pass in his punishment. It is not his kids' fault that he strangled [his ex-wife's paramour] until he turned blue. It is not his kids' fault that he strangled Dmitry Chepusov until he died. And it's not your fault that you are called upon to give him the appropriate sentence that he deserves for these criminal actions and that includes

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<sup>14</sup> R. at 2732-34.

life.<sup>15</sup>

Then trial counsel compared the two families' losses:

Yes, he will play a small role in his children's life when he is in jail, absolutely. But they'll still get to call him. They can still write him letters. They can still visit him. Where does Dmitry's family go when they want to visit him? . . . A graveyard in New Jersey. What number do they call when they want to talk to their brother or their son for just five minutes?<sup>16</sup>

And then towards the end of her argument trial counsel re-emphasizes the devastating effect of the murder of their loved one:

You heard from his grieving family. You heard from his mother. The devastating loss. The gap that would never be filled. The hole in her heart. She is never going to go a day, a day without thinking of her Mita. Her own son. They haven't even had the heart to tell his 97-year-old babushka that he's dead, let alone murdered, because they think the news might kill her.<sup>17</sup>

Finally, to tie it all together, to return to her requested sentence, to re-focus the members on the principle of retribution, the "pound of flesh," the punishment for punishment's sake, Major Hahn closed with this:

He's a person, members. He is Dmitry Chepusov. Dmitry Chepusov will never be a Chief Petty Officer. He will never be a father. He will never be anything, but dead. Dead dead, because of this accused. And so when you think about your pound of flesh, members, you think about Mita. You think about Dmitry Chepusov and you give him that pound of flesh. You sentence Sean Oliver to life without parole, because that's what he deserves. . . . [I]he facts in aggravation in this case, for every factor you must consider; all signs point to life without parole. Do the right thing. Now is your time. You go in there, you come out and you give the sentence that we all know he deserves, life without parole.<sup>18</sup>

“**Discerning what carries the day with members in their sentencing deliberation delves into the realm of voodoo science**”

This is the “why” that supported the “what”—the “what” being life imprisonment. Based primarily on the family plea, the Defense suggested a sentence of no more than 25 years

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<sup>15</sup> R. at 2171-72.

<sup>16</sup> R. at 2171-72.

<sup>17</sup> R. at 2171.

<sup>18</sup> R. at 2776.



confinement. Though discerning what carried the day with members in their sentencing deliberation delves into the realm of voodoo science, this consistent approach to theme, tied to the judge's sentencing instructions, assuredly buttressed the prosecution's and trial counsel's credibility with the members.

In no small part, the resulting sentence was assuredly the product of Major Hahn's excellence in converting litigation theories into practice. This was a "big" case and the egregious facts dictated some obvious strategic decisions. But there are no "small" cases, only "small" litigators. While the facts of a case will in the end dictate your strategy (your theme and theory), you must develop one. And take a lesson from Major Hahn, one of the finest, in how that can best be done.

Only three hours after closing the court for deliberations the members sentenced SSgt Oliver to life with the possibility of parole.

## STARS AND STRIPES.

Oliver sentenced to life with parole for killing of  
AFN broadcaster

