

The final determination as to the weight of the evidence and the credibility of the witnesses (~~in this case~~) in this case rests solely upon you as members of the court. In determining the weight and value to be given to the testimony which you have heard, you should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether the witness is worthy of belief. Consider each witness's intelligence, the acuteness of his powers of observation, the accuracy and retentiveness of his memory, his apparent candor, his appearance and deportment, his friendships and prejudices (and his character as to truth and veracity). Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence. You should consider the probability

of each witness's statements; the opportunity the witness had to observe and to be informed as to the matters respecting which he gave testimony; and the inclination of the witness to speak the truth or otherwise as to the matters within his knowledge.

Other evidentiary matters:

The court is further advised, in accordance with Article 51(c):

First, that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt;

Second, that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt shall be resolved in favor of the accused and he shall be acquitted;

Third, that if there is a reasonable doubt as to the degree of guilt, the finding must be in the lower degree as to which there is no reasonable doubt; and

Fourth, that the burden of proof to establish the guilt of the accused beyond a reasonable doubt is upon the Government.

The words "reasonable doubt" as I have used them in these instructions mean a doubt founded upon reason. It does not mean a fanciful or a whimsical or capricious doubt, for anything relating to human affairs and depending upon human testimony is open to some possible or imaginary doubt. It is such a doubt as would cause a person to pause and hesitate before acting in matters of the highest importance relating to his own affairs.

When all of the evidence in the case carefully analyzed, compared and weighed by you, produces in your mind a settled conviction or belief of the accused's guilt, such conviction as leaves your minds in the condition that you feel an abiding conviction amounting to a moral certainty of the truth of the charge, then, and in that event you would be free from a reasonable doubt.

Absolute or mathematical certainty is not required, but there must be such certainty as satisfies your reason and judgment, and such that you feel conscientiously bound to act upon.

As members of the court you should bear in mind that only matters properly before the court as a whole may be considered. You are not to be influenced by any knowledge of the acts, character or service of the accused not based on evidence or other matter properly before the court, or by any opinion not properly in evidence, or by motives of partiality, favor or affection.

You should observe the following rules in voting on the findings. Deliberation by the court may properly include free and full discussion of the merits of the case. Discussion may follow as well as precede the voting.

All members should have a full and fair opportunity to exchange their points of view and to persuade others to join them in their beliefs. It is generally desirable to have the theories of both the prosecution and the defense weighed and debated thoroughly before final judgment. Each member has an equal voice and vote with other members in deliberating upon and deciding all questions pertaining to the guilt or innocence of the accused, the senior member having no greater rights in these matters than any other member. The influence of superiority in rank shall not be employed in any manner in an attempt to control the independence of the members in the exercise of their judgment.

Voting on the findings must be accomplished by secret written ballot, and all members of the court are required to vote. Voting on the specification shall precede voting on the charge.

Each member should have a clear understanding of the way he is voting. One useful method of accomplishing this is for the president to make an announcement of the possible alternatives on each ballot. The junior member shall in each case collect and count the votes. The count shall be checked by the president who shall forthwith announce the results of the ballot to the members of the court. The junior member is responsible for the destruction at the end of the session of all ballots and tabulations. The concurrence of at least two-thirds of the members present at the time the vote is taken is required to find the accused guilty of any offense. If, in computing the number of votes required, a fraction results, such fraction is counted as one. Thus, if all \_\_\_\_\_ members now present are present at the time the vote is taken, as you must be, the requirement that two-thirds concur will not be met unless \_\_\_\_\_ members concur. A finding of not guilty results as to any specification or charge if no other valid finding is reached thereon.

As soon as the court has determined the findings, the president shall announce them in open court in the presence of all parties to this trial. Only the required percentage of the members concurring in findings of guilty should be announced. If a verdict of not guilty results, no reference will be made to the percentage of votes for or against the verdict.

As an aid in putting the findings in proper form, the court may utilize this findings work sheet which has been marked Appellate Exhibit Number\_\_\_\_\_, and which will be presented to the president of the court after it has been again examined by the accused and counsel for both sides.

(The trial counsel handed Appellate Exhibit\_\_\_\_\_to the president of the court.)

This findings work sheet contains guides for properly announcing the court's findings. It also contains language which may or may not be appropriate, depending upon the findings of the court. Great care should be used in striking out the language which does not apply and using only such words as properly reflect the finding of the court. Article 39 UCMJ, prohibits me or anyone else from entering the closed session while the court is deliberating and voting on the findings. You may seek my advice when necessary, but you should open the court and ask the advice in open court. However, the president may, but need not, after opening the court present Appellate Ex \_\_\_\_\_, your findings, to me to be examined for any defects as to form only.

The final determination as to the weight of the evidence and the credibility of the witnesses in this case rests solely upon you members of the court. You must disregard any comment or statement made by me during the course of the trial which may seem to indicate an opinion as to the guilt or innocence of the accused, for you alone have the independent responsibility of deciding this issue. Each of you must impartially resolve the ultimate issue as to the guilt or innocence of the accused in accordance with the law, the evidence admitted in court, and your own conscience.

The only law which you may consider is that explained in my instructions to you. By this I mean you must accept and apply the law as explained in my instructions, and you must not consult the Manual for Courts-Martial or any other publication or writing which has not been admitted in evidence during the course of the trial. It is necessary for all members of the court to be present at all times during the deliberations. Therefore, if any member should desire to leave the deliberations, even temporarily, it will be necessary for the president to open the court so that a recess might be taken.

LA. OFFICER: If counsel for either side have any additional instructions not previously requested or any objections not previously made to the instructions given, they should so state at this time.