

DEPARTMENT OF THE ARMY PAMPHLET

NO. 27-16

LEGAL CLERK'S HANDBOOK



HEADQUARTERS, DEPARTMENT OF THE ARMY

FEBRUARY 1969

TAGO 6866A

Users are cautioned that this Pamphlet implements the *Manual For Courts-Martial, United States, 1969* and references herein are keyed to that publication.

Users of this Handbook are encouraged to submit recommended changes or comments. Comments should be keyed to specific page, paragraph, and line number of the text to which they refer. Reasons should be provided for each comment to insure understanding and thorough evaluation. Comments should be sent to the Commandant, The Judge Advocate General's School, U.S. Army, Charlottesville, Virginia 22901.

The following changes in terminology are applicable throughout the Legal Clerk's Handbook:

1. *Manual for Courts-Martial, United States, 1969*, paragraph 6a, now states "For each general and special court-martial the authority convening the court shall *detail* a trial counsel and a defense counsel, together with such assistants as he deems necessary or appropriate." (Emphasis added.) Therefore, the term "detailed" counsel should be used in lieu of "appointed" counsel.
2. Paragraph 36b now states "A court-martial is created by a convening order issued by the convening authority." Therefore, the terms, "convened," "court-martial convening order," and "CMCO" should be used in lieu of "appointed," "court-martial appointing order," and "CMAO" respectively.
3. Paragraph 59 states that "A general or special court-martial assembles at its first session . . ." Therefore the terminology "a court was 'assembled' " should be used in lieu of "a court was 'convened.' "
4. AR 27-10, paragraph 9-3b, defines military judge as a judge advocate officer assigned to U.S. Army Judiciary and designated to perform duty as a member of the Trial Judiciary Division. Therefore, the term "military judge" should be used in lieu of "law officer."

PAMPHLET

No. 27-16

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, D.C., 20 February 1969

LEGAL CLERK'S HANDBOOK

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CHAPTER 1

NONJUDICIAL PUNISHMENT

1-1. References.

- a. Article 15, Uniform Code of Military Justice (UCMJ).
- b. Chapter XXVI, *Manual for Courts-Martial, United States, 1969* (MCM).
- c. AR 27-10.
- d. AR 310-10.

1-2. Forms and Guides.

- a. DA Form 201.
- b. DA Form 2627.
- c. DA Form 2627-1.
- d. DA Form 2627-2.
- e. TC 313 (Reduction), appendix I, AR 310-10.
- f. TC 315 (Reduction—Suspension/Mitigation/Setting Aside), appendix I, AR 310-10.
- g. TC 385 (Forfeiture or Detention of Pay), appendix I, AR 310-10.
- h. TC 386 (Restoration of Forfeited or Detained Pay), appendix I, AR 310-10.

1-3. Purpose of Nonjudicial Punishment.

Nonjudicial punishment is designed to provide commanders with an effective means of enforcing discipline without resorting to trials by courts-martial. It is used to punish persons for minor offenses in those instances in which the best interests of the Army and the offender are met by the prompt and personal action of the commanding officer, thereby avoiding, for the government, the time and expense of a court-martial and, for the accused, the stigma of a court-martial conviction. For a discussion of the term "minor offenses," see (para 3-3d, AR 27-10). Do not confuse nonjudicial punishment with nonpunitive disciplinary measures. See paragraph 3-5 AR 27-10, for a discussion of this distinction.

1-4. Authority.

- a. Article 15 may be imposed by any com-

manding officer (subject to the provisions of para 3-2a, AR 27-10), including a warrant officer in command, provided that a superior commander has not restricted or withheld his authority to impose punishment on certain categories of military personnel (para 3-2c, AR 27-10). (See para 3-2b, AR 27-10, for discussion of authority to delegate power to impose article 15.)

b. If a commander who believes that punishment should be imposed upon an accused cannot impose nonjudicial punishment or cannot impose what he believes would be an appropriate punishment in the case (para 3-6, AR 27-10), he should refer the case to an appropriate superior authority. No recommendation will be made concerning the nature or extent of punishment to be imposed. The suggested format in figure 3-1, AR 27-10, should be used for transmitting the case to the superior.

c. A commanding officer whose authority has not been withheld may impose Article 15 upon any member of his command who has committed a minor offense and who *has not* demanded trial by court-martial. The right to demand trial by court-martial *does not* exist if the offender is attached to or embarked in a vessel.

1-5. Procedure.

a. If imposed upon an officer or warrant officer, or upon enlisted personnel and the punishment includes reduction in grade, confinement on bread and water or diminished rations, correctional custody, restriction or extra duties for more than 14 days, or forfeiture or detention of pay, the Article 15 will be in writing, utilizing DA Form 2627-1 (app A, chap. 1). All other proceedings may be conducted orally, but must be recorded on DA Form 2627 (app B, chap. 1).

b. The notification of intent to impose non-judicial punishment, whether written or oral, must advise the offender of:

(1) His rights under Article 31(b), UCMJ;

(2) The specific acts for which punishment is to be imposed (which acts must constitute an offense under the UCMJ);

(3) His right to demand trial by court-martial (unless offender is attached to or embarked in a vessel);

(4) The time for reply to the notification (must be "reasonable," para 3-12a, AR 27-10); and

(5) His right to submit matters in extenuation, mitigation, or defense.

c. If the Article 15 is to be in writing, DA Form 2627-1 is addressed through each intermediate commander to the offender. Each intermediate commander will, providing no action is to be taken by him, line out the "Thru" address that pertains to his command, initial the deletion, and forward to the next commander.

d. Upon receipt of the DA Form 2627-1 the offender should, within the time prescribed, make his election to accept the Article 15 or to demand trial by court-martial and, providing trial by court-martial is not demanded, submit any matters in mitigation, extenuation, or defense. This is accomplished by completing section II, DA Form 2627-1, and returning it through channels. At this time the accused may request a personal appearance before the officer conducting the proceedings and may request that officer to interview witnesses or obtain statements by witnesses.

e. Upon return of DA Form 2627-1, provided demand for trial by court-martial is not made, the commander must determine the guilt or innocence of the accused, whether punishment is warranted, and if so the type to be imposed. In making this decision he should consider the curative effect of punishment on the offender; the deterrent effect of punishment in the command; and the desirability of suspending probationally all or part of the punishment to be imposed.

f. In section V of DA Form 2627-1 the commander *may*, in cases involving enlisted mem-

bers, provide that the record of punishment will be filed and administered in such a way that it will not be known to persons considering the member for promotion; and he *must*, in cases involving commissioned or warrant officers, indicate whether the record is to be filed in the efficiency or in the personnel section of the member's Military Personnel Records Jacket, U.S. Army (DA Form 201) (para 3-15d(1) and (2), AR 27-10).

g. The offender is then advised of the exact punishment imposed, of his right to appeal within a specified reasonable time period, and of the commander to whom any such appeal should be addressed.

1-6. Appeals.

a. Appeals are made in writing on section II of DA Form 2627, or section IV, DA Form 2627-1, and may include appellant's reasons for regarding the punishment unjust or disproportionate.

b. Appeals should be made within a reasonable length of time, normally 15 days, after imposition of the punishment (para 135, MCM, 1969, para 3-27, AR 27-10).

c. Normally an appeal is decided by the authority next superior to the officer who imposed the punishment. However, the commander who imposed the punishment, or his successor in command, may take any action with respect to the punishment that the authority who may act on the appeal could take. (See para 134, MCM, 1969, and section VII, AR 27-10, for a discussion of the actions which may be taken. For an explanation of the term "successor in command," see para 3-16, AR 27-10.)

d. If the commander who imposed the punishment, or his successor in command, takes some kind of supplementary action with respect to the punishment, the offender may wish to withdraw his appeal (para 3-24, AR 27-10.) If so, a statement signed by the offender should be entered in section III, DA Form 2627, or section V, DA Form 2627-1, to the effect that in view of the supplementary action taken the appeal has been withdrawn voluntarily.

e. If the commander who imposed the pun-

ishment, or his successor in command, does not take supplementary action with respect to the punishment, or if supplementary action is taken but the appeal is not withdrawn voluntarily by the offender, the file will be forwarded to the superior authority who is to act on the appeal. This is accomplished in writing on section I, part I, DA Form 2627-2 (app C, chap. 1). (See para 3-22, AR 27-10, as to who may act on an appeal.)

f. Upon forwarding an appeal to the superior authority who is to act on the appeal, the commander who imposed the punishment, or his successor in command, may attach matters which he desires to be considered by the superior authority in taking action on the appeal, such as matters in rebuttal of assertions made by the appellant (para 3-24, AR 27-10). This is particularly desirable where matters considered by the officer who imposed the punishment are not otherwise reflected in the file.

g. Before acting on an appeal from any punishment imposed under Article 15, the authority who is to act on the appeal may refer the case to a judge advocate for consideration and advice, utilizing section I, part I, DA Form 2627-2, for the referral. He *must*, prior to taking action, refer the case to a judge advocate if the appeal is from any of the punishments listed in Article 15(e), UCMJ. The judge advocate will consider the case and advise, either orally or in writing, the authority who is to act on the appeal. This advice is recorded in section II, part I, DA Form 2627-2, and will include the opinion of the judge advocate as to the appropriateness of the punishment and whether the proceedings were in accordance with law and regulations. The judge advocate may submit any additional advice he deems appropriate.

h. The superior authority who acts on the appeal may take any action with respect to the punishment that the officer who imposed the punishment could take. (See para 134, MCM, 1969, and section VII, AR 27-10, for a discussion of the actions which may be taken.)

i. As to the authority of the officer who acts on the appeal to take action with regard to the filing of the record so as to preclude its being known to persons considering the member for promotion, see paragraph 3-15d, AR 27-10.

1-7. Supplementary Actions Other Than on Appeal.

a. The officer who imposes the punishment, or his successor in command, may at any time take action to suspend, remit, mitigate, or set aside punishment as authorized in Article 15(d), UCMJ. (But see para 134, MCM, 1969, which limits time within which certain punishments may be suspended.) In addition, any superior authority may also take any of those actions at any time regardless of whether an appeal has been made from the punishment (para 3-28, AR 27-10). These supplementary actions are recorded on section I, part II, DA Form 2627-2.

b. Section II, part II, DA Form 2627-2, is used for recording vacations of suspensions. A suspension may be vacated at any time within the period of suspension because of further misconduct by the member within that period (para 3-17, AR 27-10).

1-8. Maximum Punishments.

The maximum punishments which may be imposed under Article 15 in a particular case depend upon such factors as the grade of the offender and the rank and level of command of the officer imposing the punishment. Authorized punishments and rules relating thereto are set forth in section IV, AR 27-10.

1-9. Effective Dates of Punishments.

All punishments imposed under Article 15 are effective on the date the punishment is imposed, unless suspended or otherwise prescribed by the officer imposing the punishment or superior authority. (See para 3-10, AR 27-10, for a discussion of the authority of the officer imposing the punishment or of superior authority to prescribe the effective date of certain types of punishment.) Accordingly, it is essential that appeals be processed expeditiously; otherwise certain types of punishment, such as extra duties or restriction, may be fully performed prior to action on the appeal. (See para 3-10, AR 27-10, for a discussion of effective dates and execution of punishments.)

1-10. Distribution of Records of Punishment.

Proper and timely distribution of DA Forms 2627, 2627-1, and 2627-2 should be accom-

published in accordance with paragraph 3-15b and c, AR 27-10.

1-11. Orders Announcing Certain Punishments.

Orders must be published to announce reduction in grade or restoration to a pay grade from which an individual was reduced (para 3-8e(3), AR 27-10) and to announce for-

feitures and detentions of pay or restoration of pay forfeited or detained (para 3-8f(4), AR 27-10). (For transaction codes and formats used for these orders, see TC 313, TC 315, TC 385, and TC 386, included in app I, AR 310-10; for distribution of these orders, see para 3-8g, AR 27-10.)

APPENDIX A

RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ <small>For use of this form, see AR 27-10; proponent agency is Office of The Judge Advocate General.</small>				
This form will be used in ALL cases involving officers and warrant officers, and in those cases involving enlisted personnel when punishment OTHER THAN oral admonition or reprimand, restriction for 14 days or less, extra duties for 14 days or less, or a combination thereof is considered appropriate punishment.				
NAME <u>GARRAND, Browning S.</u> (SSAN:)	SERVICE NUMBER/SSAN <u>RA 00 000 000</u>	BASIC PAY PER MONTH <u>\$251.10</u>	SEA OR FOREIGN DUTY PAY <u>N/A</u>	TOTAL PAY <u>\$251.10</u>
ORGANIZATION <u>9th Bn (105, T), 99th Arty</u>	DATE OF BIRTH <u>4 Sep 1935</u>	GRADE <u>SGT (E-5)</u>	CONTRIBUTION TO QUARTERS ALLOWANCE <small>(Class O) (Para 131c (8) and (9) MCM, 1969)</small> <u>N/A</u>	
SECTION I - NOTIFICATION				
ORGANIZATION AND STATION OF NOTIFYING OFFICIAL <u>Headquarters, 9th Bn (105,T), 99th Arty, Fort Blank, Missouri</u>				
THRU <u>4 January 1965</u> <small>(Date)</small>				
TO: <u>SGT Browning S. Garrand, RA 00 000 000 (SSAN: 888-77-6666)</u> <small>(Grade, first name, middle initial, last name, Service No./SSAN)</small>				
<u>Btry A, 9th Bn (105,T), 99th Arty</u> <small>(Organization)</small>				
1. It has been reported that, on or about <u>2300 hrs, 2 January</u> <u>19 65</u> , at <u>Sundown, Mo.</u> , you <u>were drunk and disorderly in a public place known as "Ernie's Bar and Grill."</u> It has also been reported that on or about <u>2315 hrs on the same date</u> , you resisted lawful apprehension by the military police.				
<div style="font-size: 2em; font-weight: bold; border: 1px solid black; padding: 10px; display: inline-block;">SAMPLE</div>				
2. It is <u>the</u> ³ intention <u>of the</u> ³ Commanding <u>Officer</u> ³ of this organization <u>(has delegated his Article 15 authority)</u> ³ to impose nonjudicial punishment upon you as to such offense(s) ⁴ under the provisions of Article 15, UCMJ unless you expressly demand trial by court-martial. ⁵				
3. You are directed to acknowledge receipt of this communication in Section II of this form within <u>48 hours</u> ³ after your receipt thereof. ⁶ You may submit any matter in mitigation, extenuation, or defense. That is to say you may present any excuses, explanations, or reasons for your actions whatever.				
4. You are hereby informed that under the provisions of Article 31, UCMJ, you are not required to make any statement regarding the offense(s) ⁴ described above, and that any statement you may desire to make concerning the offense(s) ⁴ may be used as evidence against you in a trial by court-martial.				
FOR THE COMMANDER: ⁷ <u>Henry V. King, CPT, Arty</u> <small>(Typed or printed name, grade and branch)</small>				
<u>Adjutant, 9th Bn (105,T), 99th Arty</u> <u>/s/ Henry V King</u> <small>(Title)</small>				

DA FORM 2627-1

1 MAR 68

REPLACES EDITION OF 1 MAR 65, WHICH WILL BE USED.

1

SECTION II - ACKNOWLEDGMENT OF NOTIFICATION

THRU: CO, Btry A, 9th Bn (105,T), 99th Arty ¹ 5 January 1965
 THRU: CO, Btry A, 9th Bn (105,T), 99th Arty ¹ (Date)
 TO: CO 9th BN (105,T), 99th Arty ⁸
 (Organization)

I acknowledge receipt of the foregoing communication. Trial by court-martial is not ³ demanded. ⁵
 (is) (is not)
Matters ³ in extenuation, mitigation, or defense are ³ submitted herewith
 (The following matters) (Matters) (are) (are not)
and are contained in Section V. ³
 (and are attached hereto) (and are contained in Section V)

Browning S. Garrand,
 (SSAN: SGT (E-5), RA 00 000 000 ¹⁰ Browning S. Garrand
 (Typed or printed name, grade and Service No./SSAN)

SECTION III - IMPOSITION OF PUNISHMENT

(If, at this time, it is determined that no punishment is warranted, the individual concerned shall be notified of this fact and the record destroyed.)

THRU: CO Btry A, 9th Bn (105,T), 99th Arty ¹ 7 January 1965
 THRU: CO Btry A, 9th Bn (105,T), 99th Arty ¹ (Date)
 TO: SGT Browning S. Garrand, RA 00 000 000 (SSAN: 888-77-6666)
 (Grade, first name, middle initial, last name, Service No./SSAN.)
Btry A, 9th Bn (105,T), 99th Arty
 (Organization)

1. The following punishment(s) ⁴ are ³ hereby imposed:
 (is) (are)

Forfeiture of \$75.00 and reduction to the grade of Corporal (E-4).

S A M P L E

2. You are advised of your right to appeal in accordance with para 135, MCM, 1969. You are directed to indicate on Section IV of this form the date of receipt of this communication within 7 days ³ after your receipt thereof and to make any appeal you may desire to make. ⁶ If you exercise your right to appeal, your appeal should be addressed

to Commanding Officer, 20th Inf Div Arty Hq, 20th Inf Div Arty, Fort Blank, Mo. ¹⁰

Incl
Richard T. Bastogne, LTC, Arty
 (Typed or printed name, grade and branch)

Commanding Officer, 9th Bn (105,T), 99th Arty ¹⁰ Richard T. Bastogne
 (Title)

SECTION IV - ACKNOWLEDGEMENT OF IMPOSITION OF PUNISHMENT

THRU: ~~CO Btry A, 9th Bn (105, M), 99th Arty~~ 11/11 9 January 1965
 THRU: ~~CO 9th Bn (105, M), 99th Arty~~ RTB 1 (Date)
 THRU: 1
 TO: CO 20th Inf Div Arty 11

I received the foregoing communication (Section III) on 8 January 1965

(Date)

I do ³ appeal from this punishment. ¹²

(Do) (do not)

I have been in the US Army for a little over seven years and my personnel records will clearly show that this is the first time that I have received any kind of punishment. I have tried to be diligent in all of my military duties and expected what I considered to be a well earned promotion in the near future. However, because of a relatively small indiscretion on my part, I have not only lost this opportunity, but I have had my hopes for an Army career seriously damaged. I cannot agree that the punishments, particularly the reduction, imposed truly reflect the degree of my alleged misconduct. I admittedly had too much to drink, but my misconduct was not grossly disorderly. So far as the charge of resisting arrest is concerned, I merely resisted while arguing about the reason I was being arrested and only wanted to clarify that fact before being taken back to the post. I did not offer any violent resistance to the military police. Because of the severity of the punishments imposed, I will appreciate any assistance or consideration you might give to this appeal.

13

Incl

Browning S. Garrand

(SSAN: 888-77-6666) CPL RA 00 000 000

(Grade, first name, middle initial, last name, Service No./SSAN)

/s/ Browning S Garrand

SECTION V

THIS SPACE MAY BE USED FOR ADDITIONAL REMARKS AND CONTINUATION OF SECTIONS. THE CORRESPONDING SECTION BEING CONTINUED SHOULD BE INDICATED. THIS SPACE ALSO MAY BE USED FOR SUMMARIZING AND ORAL PROCEEDINGS. (See 133a, MCM, 1969.) IF ADDITIONAL SPACE IS REQUIRED, USE REVERSE SIDE OF THIS PAGE OR ATTACH ADDITIONAL SHEETS NUMBERING EACH SHEET CONSECUTIVELY STARTING WITH PAGE 5.

Section II (cont'd)

My unit had just returned to garrison after a two week field problem, and a group of us went to town to celebrate the high rating achieved by the Battery. I am not used to drinking and was tired out from maneuvers and this accounts for my condition. I have learned my lesson and this will not happen again.

S A M P L E

(See Reverse Side)

SECTION V (CONTINUED)

S A M P L E

USE THE FOLLOWING INSTRUCTIONS WHERE THE CORRESPONDING NUMBER APPEARS ON THE FORM.

1/ Complete only if applicable. If record is transmitted through channels, intermediate commanders need only line out and initial.

2/ Insert language describing the nature of the alleged misconduct in the form of a concise statement of the offense charged in such terms that a specific violation or violations of the UCMJ is clearly stated. If more than one offense is involved, add language substantially as follows: "It has also been reported that on or about _____ at _____ you..." If additional space is required, use Section V.

3/ Insert applicable word(s).

4/ Strike out inapplicable word or letter.

5/ If the alleged offender is attached to or embarked in a vessel, he is not permitted to demand trial by court-martial in lieu of nonjudicial punishment. In such cases, all reference to a demand for trial by court-martial shall be lined out and an appropriate remark will be made in Section V indicating the official name of the vessel and that the alleged offender was attached to, or embarked in such vessel at the time nonjudicial punishment was imposed.

6/ The time within which acknowledgment of receipt is to be made should be determined in light of the circumstances of the case. The addressee may request an extension of time.

7/ If signed personally, strike out command line.

8/ Insert title of officer who is to impose the punishment and his organization.

9/ If punishment includes correctional custody, the officer imposing the punishment will state where the correctional custody will be served. (See para 3-8c(2), AR 27-10.) If a punishment is suspended, the action should so state and should specify the duration of the suspension. (See para 134, MCM, 1969.) If punishment includes a written admonition or reprimand, this should be attached to this form and listed as an inclosure. If punishment includes a reduction, the reduction order (See para 3-8e(3), AR 27-10) should be attached to this form and listed as an inclosure.

10/ Designate by title the next superior authority to whom the appeal should be directed. (See para 135, MCM, 1969 and AR 27-10.)

11/ When no appeal is made, address to the officer who imposed the punishment(s). If an appeal is made, address to the officer specified in para 2, Section III.

12/ If desired, state the reasons for the appeal. If additional space is required, use Section V. Attach any documents desired to be considered to the back of this form and list the number of inclosures. If none, leave blank.

13/ In the event the person punished exercises his right to appeal, the superior authority shall utilize DA Form 2627-2 which, when completed, will be attached to this form.

APPENDIX B

SUMMARIZED RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ		
For use of this form, see AR 27-10; proponent agency is Office of The Judge Advocate General.		
This form will be used ONLY in cases involving enlisted personnel and then ONLY when no punishment OTHER THAN oral admonition or reprimand, restriction for 14 days or less, extra duties for 14 days or less, or a combination thereof has been imposed.		
NAME REMINGTON, Winchester Q. (SSAN: 998-76-5554)	SERVICE NUMBER/SOCIAL SECURITY ACCOUNT NUMBER RA 00 000 000	GRADE PFC (E-3)
ORGANIZATION Co A, 9th Bn, 20th Inf	DATE OF BIRTH 1 April 1941	BASIC PAY PER MONTH \$124.00
SECTION I - IMPOSITION OF PUNISHMENT		
UNIT DESIGNATION AND STATION Company A, 9th Bn, 20th Inf, Ft. Blank, Missouri		
<p>1. On <u>4 February</u>, 19<u>63</u>, the above described individual, then appearing before me, was informed that a report had been made that (he) was did on or about 0900 hrs, 2 Feb, 1963, at Co A, 9th Bn, 20th Inf, Ft Blank, Mo. <u>wrongfully appear at company inspection with an unclean rifle and uniform.</u></p> <p style="text-align: center; font-size: 2em; font-weight: bold;">SAMPLE</p> <p>2. After having been advised of (his) (her) rights under the provisions of Article 31, UCMJ, and being informed of my intention to impose nonjudicial punishment upon (him) (her) as to such offense(s) under the provisions of Article 15 unless (he) (she) expressly demanded trial by court-martial,³ (he) (she) was further informed that if (he) (she) did not demand trial by court-martial,³ (he) (she) should submit any matters in extenuation, mitigation, or defense, that is any excuses, explanations, or reasons for (his) (her) actions which (he) (she) desired me to consider.</p> <p>2. No demand for trial by court-martial for the offense(s)¹ described above was made.³ Matters in extenuation, mitigation, or defense were <u>not submitted</u> 4, 5 (not submitted) (submitted and considered)</p> <p>3. On <u>4 February</u>, 19<u>63</u>, the punishment(s)¹ specified below (was) (were)¹ imposed:</p> <p style="margin-left: 40px;"><u>Oral reprimand</u> 4 (Oral (admonition) (reprimand))</p> <p style="margin-left: 40px;">Restriction to <u>Co A area</u> for <u>10</u> days, 4 (suspended until —)</p> <p style="margin-left: 40px;">Extra duties for <u>—</u> days, 4 (suspended until —)</p> <p style="margin-left: 40px;">Restriction to <u>—</u> for <u>—</u> days and extra duties for <u>—</u> days to run concurrently 4 (suspended until —)</p> <p>4. <u>PFC Remington</u> was advised of (his) (her) right to appeal in accordance with para 135, MCM, 1969 and informed if (he) (she) desired to appeal, (his) (her) appeal should be directed to</p> <p style="margin-left: 40px;"><u>Commanding Officer, 9th Bn, 20th Inf</u>, <u>Ft Blank, Mo.</u> 6</p> <p style="margin-left: 40px;"><u>Weston I. Smith, CPT, Inf</u> (Typed or printed name, grade and branch of officer imposing punishment)</p> <p style="margin-left: 40px;">Commanding Officer, Co A, 9th Bn, 20th Inf /s/ <i>Weston I. Smith</i> (Title)</p>		

DA FORM 2627

1 MAR 68

REPLACES EDITION OF 1 FEB 63, WHICH WILL BE USED.

1

SECTION II - ACKNOWLEDGEMENT OF IMPOSITION OF PUNISHMENT	
THRU: _____	7 <u>6 February 1963</u> (Date)
TO: <u>CO Co A, 9th Bn, 20th Inf</u>	
I have examined the foregoing record of proceedings which resulted in the imposition of punishment under the provisions Article 15 UCMJ.	
I <u>do not</u> ⁴ appeal from this punishment. (do) (do not)	
Incl Winchester Q. Remington (SSAN: 998-76-5554), PFC (E-3), RA 00 000 000, <u>Winchester Q Remington</u> (Typed or printed name, grade and service no./SSAN)	
SECTION III	
THIS SPACE MAY BE USED FOR ADDITIONAL REMARKS AND CONTINUATION OF SECTIONS. THE CORRESPONDING SECTION BEING CONTINUED SHOULD BE INDICATED. IF ADDITIONAL SPACE IS REQUIRED, ATTACH ADDITIONAL SHEETS, NUMBERING EACH SHEET CONSECUTIVELY STARTING WITH PAGE 3.	
S A M P L E	
USE THE FOLLOWING INSTRUCTIONS WHERE THE CORRESPONDING NUMBER APPEARS ON THE FORM	
<p>1/ Strike out inapplicable word or letter.</p> <p>2/ Insert language describing the nature of the alleged misconduct in the form of a concise statement of the offense charged in such terms that a specific violation or violations of the UCMJ is clearly stated. If additional space is required, use Section III.</p> <p>3/ If the alleged offender is attached to or embarked in a vessel, he is not permitted to demand trial by court-martial in lieu of nonjudicial punishment. In such cases, all reference to a demand for trial by court-martial shall be lined out and an appropriate remark will be made in Section III indicating the official name of the vessel and that the alleged offender was attached to or embarked in such vessel at the time non-judicial punishment was imposed.</p> <p>4/ Insert applicable word(s).</p>	<p>5/ Written material which is submitted for consideration should be attached to this form.</p> <p>6/ Designate by title the next superior authority to whom the appeal should be directed (see para 135, MCM, 1962 and AR 27-10).</p> <p>7/ In the event the person punished exercised his right to appeal, this form should be transmitted to the next superior authority specified in para 4, Section I. The superior authority acting on the appeal shall utilize DA Form 2627-2, which when completed will be attached to this form.</p> <p>8/ Here, if desired, state the reasons for the appeal. If additional space is required, use Section III. Attach any documents desired to be considered to this form and list the number of inclosures. If none, leave blank.</p>

APPENDIX C

RECORD OF APPELLATE OR OTHER SUPPLEMENTARY ACTIONS UNDER ARTICLE 15, UCMJ		
For use of this form, see AR 27-10; proponent agency is Office of The Judge Advocate General.		
NAME <u>GARRAND, Browning S.</u> (SSAN: 888-77-6666)	SERVICE NUMBER / SSAN RA 00 000 000	GRADE CPL (E-4)
ORGANIZATION Btry A, 9th Bn (105,T), 99th Arty	DATE OF BIRTH 4 Sep 1935	BASIC PAY PER MONTH \$220.50
DATE PUNISHMENT IMPOSED 7 January 1965	PUNISHMENT(S) IMPOSED Forfeiture of \$75.00 and reduction to CPL (E-4)	
PART I—RECORD OF ACTION ON APPEAL		
SECTION I—TRANSMITTAL TO JUDGE ADVOCATE (To be completed only if the appeal is to be forwarded to a judge advocate. See para 135, MCM, 1969, for a discussion of when an appeal MUST be forwarded to a judge advocate.)		
TO: <u>CG, 20th Inf Div</u> <u>Hq, 20th Inf Div</u> (Organization)		<u>11 January 1965</u> (Date)
ATTN: Judge Advocate Forwarded herewith for consideration and advice pursuant to the provisions of Article 15(e), UCMJ. FOR THE COMMANDER: ² <u>James T. Davis, MAJ, Arty</u> (Typed or printed name, grade and branch) <u>Adjutant, 20th Inf Div Arty</u> (Title) <i>/s/ James T. Davis</i>		
SECTION II - ACTION BY JUDGE ADVOCATE (To be completed only if the appeal is forwarded to a judge advocate)		
TO: <u>CG, 20th Inf Div Arty</u> <u>Hq, 20th Inf Div Arty</u>		<u>13 January 1965</u> (Date)
I have considered the appeal in this case and <u>it is my opinion that the proceedings were con-</u> (have advised you orally thereon) (it is my opinion that _____) ducted in accordance with law and regulations and that the punishments imposed were not unjust or disproportionate to the offenses committed. However, on inquiry I have <u>Oliver W. Blackstone, CPT, JAGC</u> (Typed or printed name, grade and branch) <u>Hq, 20th Inf Div</u> (Organization) <u>Asst Staff Judge Advocate</u> (Title) <i>/s/ Oliver W. Blackstone</i>		
SECTION III - ACTION BY SUPERIOR ACTING ON THE APPEAL		
THRU: CG, 9th Bn (105,T), 99th Arty <u>RTB</u> THRU: CG, Btry A, 9th Bn (105,T), 99th Arty <u>JAR</u> THRU: _____ TO: <u>CPL Browning S. Garrand, RA 00 000 000</u> (SSAN: 888-77-6666)		<u>15 January 1965</u> (Date)
Appeal <u>granted in part</u> (denied) (granted) (granted in part)		<u>The punishment of reduction to</u> <u>CPL (E-4) is suspended until 6 April 1965.</u>
SAMPLE		
Incl ⁶ <u>Robert L. Normandy, COL, Arty</u> (Typed or printed name, grade and branch) <u>Commanding Officer, 20th Inf Div Arty</u> (Title) <i>/s/ Robert L. Normandy</i>		

DA FORM 2627-2 REPLACES EDITION OF 1 FEB 63, SUPPLIES OF WHICH WILL BE
1 MAR 65 ISSUED AND USED UNTIL 1 MAR 66 UNLESS SOONER EXHAUSTED.

SECTION IV - ACKNOWLEDGMENT OF ACTION ON APPEAL

TO: CO, Btry A, 9th Bn (105,T), 99th Arty 818 January 1965

(Organization)

(Date)

Received on 16 January 1965

(Date)

Contents noted.

Browning S. Garrand, SGT (E-5), RA 00 000 000 /s/Browning S. Garrand

9

(Typed or printed name, grade and Service No.) (SSAN: 888-77-6666)

PART II - RECORD OF SUPPLEMENTARY ACTIONS OTHER THAN ON APPEAL

SECTION I - SUSPENSION, MITIGATION, REMISSION OR SETTING ASIDE OTHER THAN BY SUPERIOR ACTING ON AN APPEAL

On _____, the punishment(s)¹⁰ of _____

(Date)

(was) (were) (suspended until _____) (mitigated to) (remitted) (set aside and all rights, privileges, and property affected restored)

(by my order) (by order of) ¹⁰

(_____, the officer who imposed the punishment) (_____, the successor in command to the officer who

imposed the punishment) (_____, as superior authority)

Incl⁶

(Typed or printed name and official designation)

/s/

SECTION II - VACATION OF SUSPENSION

The suspension of the punishment(s)¹⁰ of _____

(Date)

Imposed against _____

(Name of offender)

(Current organization)

(is) (are)¹⁰hereby vacated. The unexecuted portion(s)¹⁰ of the punishment(s)¹⁰ will be duly executed.Incl⁶

(Typed or printed name, grade and branch)

¹¹

(Title and Organization)

/s/

SAMPLE

PART III

THIS SPACE MAY BE USED FOR ADDITIONAL REMARKS AND CONTINUATION OF SECTIONS. IF ADDITIONAL SPACE IS REQUIRED, ATTACH ADDITIONAL SHEETS, NUMBERING EACH SHEET CONSECUTIVELY, STARTING WITH PAGE 3. determined that prior to this incident the appellant was considered an excellent SGT and that his records contain no evidence of other disciplinary matters. I therefore recommend that the reduction be suspended until 6 April 1965.

USE THE FOLLOWING INSTRUCTIONS WHERE THE CORRESPONDING NUMBER APPEARS ON THE FORM.

1/ If the authority acting on the appeal does not have a judge advocate assigned to his staff, the appeal should be forwarded to a judge advocate on the staff of the first superior authority whose staff includes a judge advocate.

2/ If signed personally, strike out command line.

3/ Complete only if applicable. If record is transmitted through channels, intermediate commanders need only line out and initial.

4/ Insert applicable word(s).

5/ State nature of action, if any, such as remission, suspension, mitigation, or setting aside and restoration. (See para 134, MCM, 1969.)

6/ Any other documents reflecting the action taken, such as

reduction or restoration orders (See para 3-8e(3), AR 27-10) should be attached hereto and listed as an inclosure.

7/ If appeal is acted on by an officer who has been delegated this authority, insert the following phrase:

"Acting under delegation of authority made by Commanding _____,"

(Organization)

8/ Insert title of immediate commanding officer of the appellant.

9/ To be signed by appellant and dispatched to immediate commanding officer.

10/ Strike out inapplicable word(s) or letter(s).

11/ Insert the name, grade, and branch of the officer who vacated the suspended punishment.

CHAPTER 2

PREPARATION OF CHARGE SHEETS, DD FORM 458

2-1. Reference.

Manual for Courts-Martial, United States, 1969 (MCM).

2-2. Forms and Guides.

DD Form 458.

2-3. Discussion.

A charge sheet (DD Form 458) is the instrument used throughout the military for initiating formal charges against an accused. It is a sworn, written accusation charging one or more persons with the commission of a crime. Accordingly, it must accurately reflect the exact information it is designed to convey.

To assist in preparing charge sheets, a completed charge sheet including marginal notes for clarification is included in the body of the chapter and at appendix A, chapter 2.

2-4. Preparation.

a. Page 1 of the charge sheet contains important personal data concerning the accused. As this data can affect the sentence given an accused, extreme care must be exercised to insure the accuracy of the data. This data should be obtained from the personnel section responsible for the records of the accused.

Information necessary to complete the parts of page 1 entitled "Data as to Witnesses," "Documents and Objects," and "Data as to Restraint" may be obtained from the accuser and the commanding officer of the accused (in most cases the same person).

b. Page 2 of the charge sheet contains the charges and specifications. The charge merely indicates the article the accused is alleged to have violated, while the specification sets forth the specific facts and circumstances relied upon as constituting the violation. Appendix 2 of the *Manual for Courts-Martial, United States,*

1969, contains in Articles 77 through 134 the punitive portion of the Uniform Code. For an accused to be tried by court-martial, the offense alleged to have been committed must be charged under one of these articles. Chapter VI of the Manual contains general rules and suggestions for drafting charges. Appendix 6c of the Manual contains model specifications under each article to fit most offenses. Extreme care should be exercised in the checking of charges and specifications against the sample forms in appendix 6c to insure accuracy and avoid vagueness, excessive wordiness, or multiplicity (i.e., unfairly multiplying the number of violations charged for a single offense). For instance, when a violation of Article 121 is alleged, the specification should state an exact value of the stolen or wrongfully appropriated property only when the exact value is known and may readily be proven. If the exact value is unknown, but an accurate estimation of the value can be made, the words "of a value of about" should be used. Where the value is unknown and an accurate estimation cannot be made the following procedure is recommended: In cases alleging property value at less than \$50.00, the specification should simply state "of some value less than \$50.00." Where the property is obviously valued at more than \$50.00 but less than \$100.00, the specification should state "of a value more than \$50.00 but less than \$100.00." Where the value of the property exceeds \$100.00, the specification should state "of a value in excess of \$100.00" The trial counsel is then at liberty to prove the exact value if practicable but is not strictly bound to do so. If an offense has been committed which does not fit within one of the model specifications, do not attempt to create a specification to fit the crime but consult your organizational judge advocate. When

ALL ADMINISTRATIVE ERRORS SHOULD BE CORRECTED AND INITIALED BY THE
OFFICER SO DIRECTING

ALL BLOCKS MUST
CARRY AN ENTRY

Geographical Location Only

See Para 7d, AR 600-20,
for proper grade designations.

Do not include any
special pays such as
Proficiency-Hazard-
or Performance

Determine whether pay
of accused is consistent
with that shown on pay
tables in accord with
grade and length of
service. If not, cor-
rect it.

Does not apply in
CONUS

Only that contribution
required by law is
shown. An E-4 with
over 4 years service,
and all higher grades
should show "None".

The Armed Force must
be shown here

Date of last enlist-
ment or induction

If "None" so
indicate

CHARGE SHEET			
PLACE Fort Bliss, Texas		DATE 20 December 1964	
ACCUSED (Last name, First name, Middle initial) (List aliases when material) ELKINS, George T. (SSAN:)		SERVICE NUMBER RA 54971362	GRADE OR RANK Specialist Four AND PAY GRADE E-4
ORGANIZATION AND ARMED FORCE (If the accused is not a member of any armed force, state other appropriate description showing that he is subject to military law) Battery A, 1st Battalion, 27th Artillery, U.S. Army		DATE OF BIRTH 10 November 1941	PAY PER MONTH
		CONTRIBUTION TO FAMILY OR QUARTERS ALLOWANCE (MCM, 126b (2)) \$40.00 Class Q	BASIC \$ 184.50
			SEA OR FOREIGN DUTY \$ NA
			TOTAL \$ 184.50
RECORD OF SERVICE			
INITIAL DATE OF CURRENT SERVICE 5 June 1963		TERM OF CURRENT SERVICE Three (3) years	
PRIOR SERVICE: 1 3 10 (As to each prior period of service, give inclusive dates of service and Armed Force, if available.) YEARS MONTHS DAYS 3d Service Fleet, U.S. Navy			

DATA AS TO WITNESSES
(Summary Court Officer will line out and insert names as applicable (MCM, 79g) and initial changes)

NAME OF WITNESS	ADDRESS	WITNESSES FOR	
		PROSECUTION	ACCUSED
1SG John L. Toms	Btry A, 1st Bn, 27th Arty, Ft Bliss	X	
SGT Joe M. Ziles	Hq USAG (4001), Ft Bliss	X	
Allan E. Downs	6th CID Det, Ft Bliss	X	
PFC Tom S. Leas	Btry B, 2d Bn, 27th Arty, Ft Bliss		X

If "None" so
indicate →

Never attach
original object
or original of
document (e.g.,
checks, confes-
sions, etc)
when forwarding
charges. Always
use description
and location of
an object and
reproduce copies
(Xerox) or du-
plicates of
documents →

DOCUMENTS AND OBJECTS	
<p>LIST AND DESCRIBE (If not attached to charges, note where it may be found)</p> <p>DA Fm 188 - Extract Copy of MR, dtd 20 Dec 64</p> <p>1 Sport Shirt; 1 Tweed Sweater; in custody of 6th CI Det, Ft Bliss</p> <p>American Currency (\$62.00) in Btry Comdrs safe, Bldg 131, Ft Bliss</p>	

If "None" so
indicate →

It is possible for
this block to have
more than one
entry. If so,
show all types. →

DATA AS TO RESTRAINT		
NATURE OF ANY RESTRAINT OF ACCUSED	DATE	LOCATION
Restriction	20 December 64	Btry A, 1st Bn, 27th Arty, Ft Bliss

DD FORM 458
1 JUL 62

PREVIOUS EDITION WILL BE USED

If terminated, show date imposed and terminated

Additional charges are normally preferred on separate charge sheets and are designated "Additional Charge" (if more than one, use Roman numerals such as Additional Charge I, II, etc.). Do not use the term "Additional" on any of the specifications.

If there is more than one specification under a charge, number them with Arabic numerals, such as 1, 2, 3, etc.

Charge I : Violation of the Uniform Code of Military Justice, Article 86

Specification: In that Specialist Four (E-4) George T. Elkins, U.S. Army, Battery A, 1st Battalion, 27th Artillery, did, on or about 18 December 1964, without proper authority, absent himself from his organization, to wit: Battery A, 1st Battalion, 27th Artillery, located at Fort Bliss, Texas, and did remain so absent until on or about 19 December 1964.

~~CHARGE II: Violation of the Uniform Code of Military Justice, Article 121~~

~~Specification 1: In that Specialist Four (E-4) George T. Elkins, U.S. Army, Battery A, 1st Battalion, 27th Artillery, did, at Headquarters US Army Garrison, Ft Bliss, Texas, on or about 18 December 1964, steal one (1) sport shirt, of a value of less than \$20.00, the property of SGT Joe M. Ziles.~~

~~Specification 2: In that Specialist Four (E-4) George T. Elkins, U.S. Army, Battery A, 1st Battalion, 27th Artillery, did, at Headquarters US Army Garrison, Ft Bliss, Texas, on or about 18 December 1964, steal one (1) tweed sweater, of a value of less than \$20.00, the property of SGT Joe M. Ziles.~~

~~Specification 3: In that Specialist Four (E-4) George T. Elkins, U.S. Army, Battery A, 1st Battalion, 27th Artillery, did, at Headquarters US Army Garrison, Ft Bliss, Texas, on or about 18 December 1964, steal one (1) wallet, leather, brown, of a value of less than \$20.00, the property of SGT Joe M. Ziles.~~

~~Specification 4: In that Specialist Four (E-4) George T. Elkins, U.S. Army, Battery A, 1st Battalion, 27th Artillery, did, at Headquarters US Army Garrison, Ft Bliss, Texas, on or about 18 December 1964, steal United States Currency, of a value of more than \$50.00, the property of SGT Joe M. Ziles.~~

CHARGE II: Violation of the Uniform Code of Military Justice, Article 121

Specification: In that Specialist Four (E-4) George T. Elkins, U.S. Army, Battery A, 1st Battalion, 27th Artillery, did, at Headquarters US Army Garrison, Ft Bliss, Texas, on or about 18 December 1964, steal one (1) sport shirt; one (1) tweed sweater; one (1) brown leather wallet; and United States Currency, of a total value in excess of \$50.00, the property of SGT Joe M. Ziles.

SAMPLE

If this space is insufficient for all charges and specifications, they will be set forth numerically, front to back, on separate sheets attached to this page.

NOTE: The test for multiplicity is that, in cases where more than one offense arises out of a single transaction, if proof of one offense results in proof of another then the offenses are considered multiplicitous for sentencing purposes. (US v Cunningham, 30 CMR 710).

For "Do and Don't" on the preparation of a charge sheet, see App 6a, MCM, 1969.

NEVER show serial number of accused in a specification.

The example used here is to show when to avoid the setting forth of multiplicitous specifications when the incident was the theft of several articles from the same person at the same time and place. However, this is not always the case so consult your SJA first. (See Note below.)

A specification which fails to allege every essential element of the offense charged is fatally defective (US v Parrish, 26 CMR 504). If there is no model of a specification to a particular offense charged, do not attempt to create one, see your SJA.

See App 6c, MCM, 1969, for model type specifications.

Any person subject to the Code may be an accuser but he must be junior in rank to the Convening Authority who will convene the court.

NAME, GRADE, AND ORGANIZATION OF ACCUSER LAWRENCE L. SILVER CPT, Arty, Btry A, 1st Bn, 27th Arty	SIGNATURE <i>Lawrence L. Silver</i>
--	--

AFFIDAVIT

Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above-named accuser this 21st day of December, 1964, and signed the foregoing charges and specifications under oath that he is a person subject to the Uniform Code of Military Justice, and that he either has personal knowledge of or has investigated the matters set forth therein, and that the same are true in fact, to the best of his knowledge and belief.

CPT, Hq, 1st Bn, 27th Arty
GRADE AND ORGANIZATION OF OFFICER

Ray J. Masters
SIGNATURE

Adjutant

OFFICIAL CHARACTER, AS ADJUTANT, SUMMARY COURT, ETC.
(MCM, 29g, and Article 30g and 136)

RAY T. MASTERS
TYPED NAME

Officer administering oath must be a commissioned officer.

Charges must be sworn to in all cases. In no case may an accused be tried on unsworn charges over his objection.

The word "officer" when used in the Code means a commissioned officer, not a warrant officer.

more than one accused is involved in an offense the question of joint or common trial arises. The wording of the specification, page 1 of the charge sheet, and the "1st Indorsement" are all affected by common and joint trials. You should consult your organizational judge advocate on these and related matters.

c. (1) Page 3 of the charge sheet contains a block for the signature of the accuser who signs under oath and *in the presence of a commissioned officer* authorized to administer oaths. See Articles 30(a), 136(a), UCMJ.

(2) Immediately under the signature block of the accuser is a block to be completed by the *commissioned officer* before whom the accuser signs.

(3) The next block is completed by the individual who informs the accused of the charges against him. This duty is normally performed by the immediate commanding officer of the accused by personally reading the charges to the accused. It is imperative that the charges thusly explained to the accused have already been sworn to.

(4) The next block is filled in at the time the charges are received at the headquarters of the officer exercising summary court-martial jurisdiction. The exact time of receipt must be indicated for it determines whether trial for the offense is barred by the statute of limitations (Art 43, UCMJ).

(5) The block entitled "1st Indorsement" is used by the headquarters which refers the case for trial. It should be complete and make specific reference to the type of court-martial to which the charges are referred and the court-martial convening order which appoints the court.

(6) The final block on page 3 of the charge sheet is completed by the trial counsel after he has served a copy of the charge sheets on the accused (Art 35, UCMJ).

d. Page 4 of the charge sheet will be dis-

cussed in greater detail in chapter 3 of this handbook. In all cases the first block at the top of page 4 should be completed to indicate whether the accused has been offered and has refused punishment under Article 15, UCMJ. This is particularly important should the case be referred to trial by summary court-martial since an accused may not be tried by summary court-martial without his consent unless he has first been offered and has refused punishment under Article 15, UCMJ (Art 20, UCMJ).

2-5. Copies.

The charge sheet is always prepared in triplicate whenever a summary or special court-martial is recommended. When a general courtmartial is recommended, the charge sheet is prepared in quintuplicate. If there is more than one accused, one additional copy of the charge sheet should be prepared for each accused in excess of one. To avoid legal questions, all copies of the charge sheet should be signed whenever one copy is signed as required.

2-6. Allied Papers.

In addition to the charge sheets, the allied papers enumerated in paragraph 32f(4) of the Manual are forwarded in the file to the officer exercising summary court-martial jurisdiction over the accused. In certain jurisdictions additional allied papers may be required.

2-7. Miscellaneous.

In preparing charge sheets many problem areas can be resolved by consulting your organizational judge advocate. Examples of such areas are: proper wording in "bad check" charges under article 123a; the reproduction of checks, vouchers, passes, etc, for use in specifications; and the proper method of preferring and attaching additional charges.

If informed by other than the CO, explain.

I have this date informed the accused of the charges against him (MCM, 32f(1)).

HOWARD M. BUTCH

2LT, Btry A, 1st Bn, 27th Arty

NAME, GRADE AND ORGANIZATION OF OFFICER EXERCISING SUMMARY COURT-MARTIAL JURISDICTION

Executive Officer

Howard M. Butch

SIGNATURE

21 December 1964

DATE

If charges are recommended for GCM, do not go below this block.

Headquarters, 1st Battalion, 27th Artillery, Ft Bliss, Texas

DESIGNATION OF COMMAND OF OFFICER EXERCISING SUMMARY COURT-MARTIAL JURISDICTION

PLACE

21 December 1964

DATE

The sworn charges above were received at 1300 hours, this date (MCM, 33b).

FOR THE COMMANDER:

I. W. BLANK, CWO W-4, Asst AG

NAME, GRADE, AND OFFICIAL CAPACITY OF OFFICER SIGNING

I. W. Blank

SIGNATURE

The "time" here is extremely important since it is used as the time element in the statute of limitations, Art 43.

2-8

If charges are withdrawn from one court and referred to a different court, line out the old indorsement, have initialed then make new first indorsement and paste over old one.

If the CA is below the grade of Brigadier General use the word "ORDER"; if his grade is that of Brigadier General or higher use the word "COMMAND".

1ST INDORSEMENT		
Headquarters, 27th Artillery	Fort Bliss, Texas	22 December 1964
<small>DESIGNATION OF COMMAND OR CONVENING AUTHORITY</small>	<small>PLACE</small>	<small>DATE</small>
Referred for trial to the <u>special</u> court-martial appointed by <u>Court-Martial Appointing</u>		
Order Number 6, Headquarters, 27th Artillery, Fort Bliss, Texas		
, 27 October 19 <u>64</u> , subject to the following instructions:		
BY <u>ORDER</u> of <u>COLONEL WASHER</u> :		
<small>COMMAND OR ORDER</small>		
ROBERT S. WHISK, Major, Arty, Adjutant		<i>Robert S. Whisk</i>
<small>NAME, GRADE, AND OFFICIAL CAPACITY OF OFFICER SIGNING</small>		<small>SIGNATURE</small>

List amending CMAO's in numerical sequence. All must be listed.

List any instructions directed by Convening Authority such as: "To be tried in common with ___" or "To be tried jointly with ___," etc.

See Art 35, UCMJ, for time limitations for service of charges on an accused after they are referred for trial.

I have served a copy hereof on each of the above-named accused, this 23d day of December, 1964.

WRIGHT JUSTICE, Captain, Hq Btry 2d Bn, 27th Arty

Wright Justice

NAME, GRADE, AND ORGANIZATION OF TRIAL COUNSEL

SIGNATURE

1/ When an appropriate commander signs personally, inapplicable words are stricken out. 2/ Relative to proper instructions which may be included in the indorsement of referred for trial, see MCM, 33j(1). If none, so state.

This block is not used in a trial by Summary Court.

The appointed assistant TC is also authorized to serve the charges.

To preclude any subsequent questions or doubt, wherever a signature is required all copies of the charge sheet should be signed.

When this block is completed

This happens in a Summary court-martial case. Despite this

If accused consents to trial, trial proceeds.

Fill in blank numbers of pertinent charges and specifications or "all specifications and charges," as may be appropriate for use unless departmental regulations prevent such election (MCM, 32f(2)).	
<input checked="" type="checkbox"/> THE ACCUSED HAS BEEN PERMITTED AND HAS ELECTED TO REFUSE PUNISHMENT UNDER ARTICLE 15 AS TO all charges and specifications.	
<input checked="" type="checkbox"/> THE ACCUSED HAS NOT BEEN OFFERED PUNISHMENT UNDER ARTICLE 15 AS TO all Charges and Specifications.	
NAME, GRADE, AND ORGANIZATION OF OFFICER EXERCISING ARTICLE 15 JURISDICTION LAWRENCE L. SILVER Captain, Btry A, 1st Bn, 27th Arty	SIGNATURE
<div style="display: flex; justify-content: space-between;"> <div>RECORD OF TRIAL BY SUMMARY COURT-MARTIAL</div> <div>CASE NUMBER</div> </div> <div style="text-align: center; font-size: small;">(Inserted by convening authority)</div>	
TO BE FILLED IN BY SUMMARY COURT AS APPLICABLE	
1. WAS THE ACCUSED ADVISED IN ACCORDANCE WITH PARAGRAPH 79d, MCM? <input type="checkbox"/> YES	
When an accused has been permitted and has elected to refuse punishment under Article 15, trial by summary court-martial may proceed despite his objection.	
2. THE ACCUSED, HAVING REFUSED TO CONSENT IN WRITING TO TRIAL BY SUMMARY COURT-MARTIAL AND NOT HAVING BEEN PERMITTED TO REFUSE PUNISHMENT UNDER ARTICLE 15, THE CHARGES ARE HEREWITH RETURNED TO THE CONVENING AUTHORITY.	
NAME, GRADE, AND ORGANIZATION OF SUMMARY COURT OFFICER JOHN R. WELTON, LTC Headquarters, 27th Arty	SIGNATURE
TO BE FILLED IN BY THE ACCUSED	
SIGNATURE OF ACCUSED	
<input checked="" type="checkbox"/> CONSENT <input checked="" type="checkbox"/> OBJECT TO TRIAL BY SUMMARY COURT-MARTIAL	

When this block is completed and the accused objects to trial by Summary court-martial,

This MUST happen

However, if the accused consents to a trial it may proceed.

APPENDIX A

ALL ADMINISTRATIVE ERRORS SHOULD BE CORRECTED AND INITIALED BY THE
OFFICER SO DIRECTING

ALL BLOCKS MUST
CARRY AN ENTRY

Geographical Location Only

See Para 7d, AR 600-20,
for proper grade
designations.

The Armed Force must
be shown here.

Date of last enlistment
or induction

If "None" so indicate.

If "None" so indicate

If "None" so indicate

It is possible for this
block to have more than
one entry. If so, show
all types.

Do not include any
special pays such as
Proficiency-Hazard-or
Performance.

Determine whether pay of
accused is consistent
with that shown on pay
tables in accord with
grade and length of
service. If not, cor-
rect it.

Does not apply in COMUS

Only that contribution
required by law is shown.
An E-4 with over 4 years
service and all higher
grades should show "None".

Never attach original
object or original of
document (e.g., checks,
confessions, etc.) when
forwarding charges.
Always use description
and location of an object
and reproduced copies
(Xerox) or duplicates
of documents.

CHARGE SHEET			
PLACE Fort Bliss, Texas		DATE 20 December 1964	
ACCUSED (Last name, first name, middle initial) (Last aliases when material) ELKINS, George T. (SSAN: 263-17-9455)		SERVICE NUMBER RA54971362	
ORGANIZATION AND ARMED FORCE (If the accused is not a member of any armed force, state other appropriate description showing that he is subject to military law) Battery A, 1st Battalion, 27th Artillery, U.S. Army		GRADE OR RANK Specialist Four AND PAY GRADE E-4	
DATE OF BIRTH 10 November 1941		PAY PER MONTH \$184.50	
CONTRIBUTION TO FAMILY OR QUARTERS ALLOWANCE (MCM, 12a (2)) \$40.00 Class Q		BASIC \$184.50	
		SEA OR FOREIGN DUTY \$ NA	
		TOTAL \$184.50	
RECORD OF SERVICE			
INITIAL DATE OF CURRENT SERVICE 5 June 1963		TERM OF CURRENT SERVICE Three (3) years	
PRIOR SERVICE: 1 3 10 (As to each prior period of service, give inclusive dates of service and Armed Force, if applicable.) 3d Service Fleet, U.S. Navy			
DATA AS TO WITNESSES (Summary Court Officers will line out and insert names as applicable (MCM, 7g) and initial changes)			
NAME OF WITNESS		ADDRESS	
1SG John L. Toms		Btry A, 1st Bn, 27th Arty, Ft Bliss	
SGT Joe M. Ziles		Hq USAG (4001), Ft Bliss	
Allan E. Downs		6th CID Det, Ft Bliss	
PFC Tom S. Isaac		Btry B, 2d Bn, 27th Arty, Ft Bliss	
		WITNESSES FOR PROSECUTION ACCUSED	
		X X	
DOCUMENTS AND OBJECTS LIST AND DESCRIBE (If not attached to charges, note where it may be found) DA FM 180 - Extract Copy of MR, dtd 20 Dec 64 1 Sport Shirt; 1 Tweed Sweater; in custody 6th CI Det, Ft Bliss American Currency (\$62.00) in Btry Comdr's safe, Bldg 131, Ft Bliss			
DATA AS TO RESTRAINT			
NATURE OF ANY RESTRAINT OF ACCUSED Restriction		DATE 20 December 64	
		LOCATION Btry A, 1st Bn, 27th Arty, Ft Bliss	

DD FORM 458
1 JUL 61

PREVIOUS EDITION WILL BE USED

If terminated, show
date imposed and
terminated.

Additional charges are normally preferred on separate charge sheets and are designated "Additional Charge" (if more than one, use Roman numerals such as Additional Charge I, II, etc.). Do not use the term "Additional" on any of the specifications.

If there is more than one specification under a charge, number them with Arabic numerals, such as 1, 2, 3, etc.

All changes, corrections, additions, deletions, must be initialed by the officer who makes them.

<p>Charge I : Violation of the Uniform Code of Military Justice, Article 86</p> <p>Specification: In that Specialist Four (E-4) George T. Elkins, U.S. Army, Battery A, 1st Battalion, 27th Artillery, did, on or about 18 December 1964, without proper authority, absent himself from his organization, to wit: Battery A, 1st Battalion, 27th Artillery, located at Fort Bliss, Texas, and did remain so absent until on or about 19 December 1964.</p> <p>CHARGE II: Violation of the Uniform Code of Military Justice, Article 121</p> <p>Specification 1: In that Specialist Four (E-4) George T. Elkins, U.S. Army, Battery A, 1st Battalion, 27th Artillery, did, at Headquarters US Army Garrison, Ft Bliss, Texas, on or about 18 December 1964, steal one (1) sport shirt of a value of less than \$20.00, the property of SGT Joe M. Ziles.</p> <p>Specification 2: In that Specialist Four (E-4) George T. Elkins, U.S. Army, Battery A, 1st Battalion, 27th Artillery, did, at Headquarters US Army Garrison, Ft Bliss, Texas, on or about 18 December 1964, steal one (1) Tweed sweater, of a value of less than \$20.00, the property of SGT Joe M. Ziles.</p> <p>Specification 3: In that Specialist Four (E-4) George T. Elkins, U.S. Army, Battery A, 1st Battalion, 27th Artillery, did, at Headquarters US Army Garrison, Ft Bliss, Texas, on or about 18 December 1964, steal one (1) wallet, leather, brown, of a value of less than \$20.00, the property of SGT Joe M. Ziles.</p> <p>Specification 4: In that Specialist Four (E-4) George T. Elkins, U.S. Army, Battery A, 1st Battalion, 27th Artillery, did, at Headquarters US Army Garrison, Ft Bliss, Texas, on or about 18 December 1964, steal United States Currency, of a value of more than \$50.00, the property of SGT Joe M. Ziles.</p> <p>CHARGE II: Violation of the Uniform Code of Military Justice, Article 121</p> <p>Specification: In that Specialist Four (E-4) George T. Elkins, U.S. Army, Battery A, 1st Battalion, 27th Artillery, did, at Headquarters US Army Garrison, Ft Bliss, Texas, on or about 18 December 1964, steal one (1) sport shirt; one (1) tweed sweater; one (1) brown leather wallet; and United States Currency; of a total value in excess of \$50.00, the property of SGT Joe M. Ziles.</p>	<p>For "Do and Don't" on the preparation of a charge sheet, see App 6a, MCM, 1969.</p> <p>NEVER show serial number of accused in a specification.</p> <p>The example used here is to show when to avoid the setting forth of multiplicative specifications when the incident was the theft of several articles from the same person at the same time and place. However, this is not always the case so consult your SJA first. (See Note below.)</p> <p>A specification which fails to allege every essential element of the offense charged is fatally defective (US v. Parrish, 26 CMR 904). If there is no model of a specification to a particular offense charged, do not attempt to create one; see your SJA.</p> <p>See App 6c, MCM, 1969, for model type specifications.</p>
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SAMPLE

NOTE: The test for multiplicity is that, in cases where more than one offense arises out of a single transaction, if proof of one offense results in proof of another then the offenses are considered multiplicative for sentencing purposes. (US v. Canning, 30 CMR 710)

Any person subject to the Code may be an accuser but he must be junior in rank to the Convening Authority who will convene the court.

The word "Officer" when used in the Code means a commissioned officer, not a warrant officer.

If informed by other than the C.O., explain.

If charges are recommended for GCM, do not go below this block.

If charges are withdrawn from one court and referred to a different court, line out the old indorsement, have initialed, then make new first indorsement and paste over old one.

If the CA is below the grade of BG use the word "ORDER"; if his grade is that of BG or higher use the word "COMMAND".

See Art 35, UCMJ.

The appointed assistant TC is also authorized to serve the charges.

NAME, GRADE, AND ORGANIZATION OF ACCUSER LAWRENCE L. SILVER CPT, Arty, Btry A, 1st Bn, 27th Arty		SIGNATURE
AFFIDAVIT		
Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above-named accuser this <u>21st</u> day of <u>December</u> , 19 <u>64</u> , and signed the foregoing charges and specifications under oath that he is a person subject to the Uniform Code of Military Justice, and that he either has personal knowledge of or has investigated the matters set forth therein, and that the same are true in fact, to the best of his knowledge and belief.		
Captain, Hq, 1st Bn, 27th Arty		SIGNATURE
GRADE AND ORGANIZATION OF OFFICER		TYPED NAME
Adjutant		RAY T. MASTERS
OFFICIAL CHARACTER, AS ADJUTANT, SUMMARY COURT, ETC. (MCM, 29, and Article 30g and 33g)		
Officer administering oath must be a commissioned officer.		
		21 December 1964 DATE
I have this date informed the accused of the charges against him (MCM, 32(1)).		
HOWARD M. BUTCH 2LT, Btry A, 1st Bn, 27th Arty		SIGNATURE
NAME, GRADE, AND ORGANIZATION OF OFFICER EXERCISING SUMMARY COURT-MARTIAL JURISDICTION		DATE
Headquarters, 1st Battalion, 27th Artillery, Ft Bliss, Texas		21 December 1964
The sworn charges above were received at <u>1300</u> hours, this date (MCM, 33h).		
FOR THE COMMANDER: S A M P L E		
I. W. BLANK, CWO W-4, Asst AG		SIGNATURE
NAME, GRADE, AND OFFICIAL CAPACITY OF OFFICER SIGNING		
1ST INDORSEMENT		
Headquarters, 27th Artillery		Fort Bliss, Texas
DESIGNATION OF COMMAND OF CONVENING AUTHORITY		22 December 1964 DATE
Referred for trial to the <u>special</u> court-martial appointed by <u>Court-Martial Appointing</u>		
Order Number 6, Headquarters, 27th Artillery, Fort Bliss, Texas		
<u>27</u> October 19 <u>64</u> , subject to the following instructions:		
BY <u>ORDER</u> of <u>COLONEL WASHNER</u> :		
ROBERT S. WHISK, Major, Arty, Adjutant		SIGNATURE
NAME, GRADE, AND OFFICIAL CAPACITY OF OFFICER SIGNING		
I have served a copy hereof on each of the above-named accused, this <u>23d</u> day of <u>December</u> , 19 <u>64</u> .		
WRIGHT JUSTICE, Captain, Hq Btry 2d Bn, 27th Arty		SIGNATURE
NAME, GRADE, AND ORGANIZATION OF TRIAL COUNSEL		

Charges must be sworn to in all cases. In no case may an accused be tried on unsworn charges over his objection.

The "time" here is extremely important since it is used as the time element in the statute of limitations, Art. 43.

List amending CMAO's in numerical sequence. All must be listed.

List any instruction directed by Convening Authority such as: "To be tried in common trial with _____"

This block is not used in a trial by Summary Court.

To preclude any subsequent questions or doubt, wherever a signature is required all copies of the charge sheet should be signed.

An accused may not be tried by summary court-martial over his objection for any offense charged, unless he has been permitted and has elected to refuse punishment under Article 15, for all offenses charged.

When this block is completed

This happens in a Summary court-martial case. Despite this

If accused consents to trial, trial proceeds.

Fill in blank numbers of pertinent charges and specifications or "all specifications and charges," as may be appropriate for use unless departmental regulations prevent such election (MCM, 32(c)).			
<input checked="" type="checkbox"/> THE ACCUSED HAS BEEN PERMITTED AND HAS ELECTED TO REFUSE PUNISHMENT UNDER ARTICLE 15 AS TO all charges and specifications.			
<input checked="" type="checkbox"/> THE ACCUSED HAS NOT BEEN OFFERED PUNISHMENT UNDER ARTICLE 15 AS TO all Charges and Specifications.			
NAME, GRADE, AND ORGANIZATION OF OFFICER EXERCISING ARTICLE 15 JURISDICTION LAWRENCE L. SILVER Captain, Btry A, 1st Bn, 27th Arty		SIGNATURE <i>Lawrence L. Silver</i>	
RECORD OF TRIAL BY SUMMARY COURT-MARTIAL		CASE NUMBER	
TO BE FILLED IN BY SUMMARY COURT AS APPLICABLE			
1. WAS THE ACCUSED ADVISED IN ACCORDANCE WITH PARAGRAPH 79g, MCM? <input type="checkbox"/> YES			
When an accused has been permitted and has elected to refuse punishment under Article 15, trial by summary court-martial may proceed despite his objection.			
2. THE ACCUSED, HAVING REFUSED TO CONSENT IN WRITING TO TRIAL BY SUMMARY COURT-MARTIAL AND NOT HAVING BEEN PERMITTED TO REFUSE PUNISHMENT UNDER ARTICLE 15, THE CHARGES ARE HEREWITH RETURNED TO THE CONVENING AUTHORITY.			
NAME, GRADE, AND ORGANIZATION OF SUMMARY COURT OFFICER JOHN R. WERTON, LTC Headquarters, 27th Arty		SIGNATURE	
TO BE FILLED IN BY THE ACCUSED		SIGNATURE OF ACCUSED	
<input checked="" type="checkbox"/> CONSENT <input checked="" type="checkbox"/> OBJECT TO TRIAL BY SUMMARY COURT-MARTIAL			
SPECIFICATIONS AND CHARGES	PLEAS	FINDINGS	SENTENCE OR REMARKS
SAMPLE			
NUMBER OF PREVIOUS CONVICTIONS CONSIDERED (MCM, 75g(2))			
PLACE AND DATE OF TRIAL		DATE SENTENCE ADJUDGED	
NAME, GRADE, ORGANIZATION, AND ARMED FORCE OF SUMMARY COURT OFFICER (MCM, 79g)		SIGNATURE	
Enter after signature, "Only officer present with command", if such is the case.			
TO BE FILLED IN BY CONVENING AUTHORITY (MCM, 89, and app. 14a.)			
ORGANIZATION	PLACE	DATE	
ACTION OF CONVENING AUTHORITY			
NAME, GRADE, AND ORGANIZATION OF CONVENING AUTHORITY		SIGNATURE	
ENTERED ON APPROPRIATE PERSONNEL RECORDS IN CASE OF CONVICTION. (MCM, 91g)			
NAME, GRADE, AND DESIGNATION OF OFFICER RESPONSIBLE FOR ACCUSED'S RECORDS		SIGNATURE	
NOTE: Summary of evidence, if required by the convening or higher authority, will be attached on separate pages.			

When this block is completed and the accused objects to trial by Summary court-martial,

This MUST happen

However, if the accused consents to a trial, it may proceed.

For the completion of this page see following chapter.

This portion of the Charge Sheet (page 4) is completed when a case is referred to a summary court for trial.

24-

CHAPTER 3

PREPARATION AND PROCESSING OF SUMMARY COURT-MARTIAL CASES

3-1. References.

- a. Article 20, Uniform Code of Military Justice (UCMJ).
- b. *Manual for Courts-Martial, United States, 1969* (MCM).
- c. DA Pam 27-5.
- d. DA Pam 27-7.
- e. AR 27-10.

3-2. Forms and Guides.

- a. DD Form 458 (Charge Sheet).
- b. Summary Court-Martial Docket.
- c. Court-Martial Convening Order.
- d. Report of Result of Trial.
- e. Summary Court-Martial Order.
- f. DD Form 497 (Confinement Order).

3-3. General.

A summary court-martial is the lowest court-martial to which a case may be referred. It is limited in jurisdiction with regard to the persons and offenses which it may try and as to sentences it may impose (Art 20, UCMJ). Generally, summary courts-martial try only minor offenses under the Uniform Code of Military Justice. Accordingly, the legal clerk should advise his convening authority to give careful consideration to the guidelines set out in paragraph 33h of the *Manual for Courts-Martial, United States, 1969* (MCM), before referring a case for trial by summary court-martial.

3-4. Procedures.

a. When an offense has been committed by a person subject to the Uniform Code of Military Justice and, after an informal investigation, the immediate commanding officer of the accused has determined that trial by court-martial is necessary, a charge sheet is prepared in triplicate in the manner set forth in chapter 2 of this handbook. The legal clerk may be

called upon to assist in the preparation of the charge sheet.

b. After the charge sheet and allied papers are completed they are forwarded to the officer exercising summary court-martial jurisdiction over the accused. If the commanding officer who forwards the charge sheet believes that trial by summary court-martial is warranted, no written recommendation need accompany the file unless required by a pertinent command directive.

c. Upon receipt of the charge sheet and allied papers, the legal clerk should enter the time and date of receipt in the appropriate box on page 3 of the charge sheet and enter the case in an active case log. (The log may be adapted from the format in annex H, appendix I, DA Pam 27-5.)

d. It is the responsibility of the legal clerk to insure that the entire file is then presented without delay to the summary court-martial convening authority for decision as to whether trial by summary court-martial is appropriate. If a summary court-martial is decided upon, the case is returned to the legal clerk for completion of the "1st Indorsement" on page 3 of the charge sheet which is the referral for trial. Normally, the summary court-martial convening authority will also have special court-martial authority. However, if he does not have special court-martial authority and believes trial by special court-martial is appropriate, or if he believes trial by general court-martial is appropriate, the charges are forwarded with the appropriate recommendation to higher authority for disposition. If a general court-martial is recommended, there must be an Article 32 investigation. The procedures to be followed in processing charges recommended for trial by special or general court-martial are set out in this handbook in

chapter 4 (Preparation and Processing of Special Court-Martial Cases) and in chapter 5 (The Article 32 Investigation). At all times those concerned with the disposition of charges must remember that charges should be referred to the lowest court capable of imposing an appropriate sentence.

e. After the legal clerk has prepared the referral for trial by completing the "1st Indorsement," he should submit it to the proper officer for signature. Normally, this will be the adjutant. If a summary court-martial has not been convened, the legal clerk is responsible for insuring that the necessary court-martial convening order is published (para 6-3) (Court-Martial Convening Orders). He should then *hand-carry* the charges to the summary court-martial officer and make sure that the summary court-martial officer has a copy of DA Pam 27-7 (Guide for Summary Court-Martial Trial Procedure).

f. During the period that the file is in the hands of the summary court-martial, the legal clerk should render all possible clerical assistance to the court. He should insure that all personnel connected with the case as witnesses are notified of the place and date of trial and should make available to the court a Report of Result of Trial (app II, DA Pam 27-7).

g. For a discussion of the right of the accused to refuse a summary court-martial and the responsibilities of the summary court-martial, see DA Pam 27-7.

h. Normally a summary court-martial does not adjudge confinement. However, if the sentence as adjudged does include confinement, the legal clerk should complete a DD Form 497 (Confinement Order) (app A to this chapter), for the signature of the summary court-martial officer or other designated officer. This latter provision may be modified by local policy regarding the confinement of first offenders.

i. In acting on the findings and sentence of

the court-martial, the convening authority shall approve only such findings of guilty and the sentence, or such part or amount of the sentence, as he finds correct in law and fact and as he in his discretion determines should be approved. The legal clerk will be responsible for preparing the action of the convening authority for his signature, reflecting the action he has decided upon, in accordance with the appropriate form in appendix 14a, MCM.

j. After the summary court-martial convening authority has taken his action by signing his name on page 4 of the charge sheet, and the remainder of the convening authority section has been completed, one copy of the record of trial is given to the accused as his personal copy. The legal clerk will then prepare for publication a summary court-martial order. A summary court-martial order must be published even when the trial has resulted in an acquittal. Information on content, format, and distribution of summary court-martial orders may be found in AR 27-10 and chapter 6 (Orders). The last blank line on page 4 of the charge sheet need not be completed.

k. After the order has been published, the original of the charge sheet, together with four copies of the summary court-martial order, is forwarded to the supervisory authority (officer exercising general court-martial authority over the command), "Attention: Staff Judge Advocate," for review. No transmittal letter need be used.

l. The supervisory authority determines whether the proceedings are correct in law and fact. After completion of his review, one copy of the summary court-martial order will be returned to the convening authority for transmittal to the custodian of the personnel records of the accused. If any corrective order is published, a copy of the order will be given the accused.

APPENDIX A

CONFINEMENT ORDER			DATE	
Prepare in duplicate. Original is retained by Confinement Officer; duplicate is returned to officer directing the confinement. The normal period for preferring court-martial charges following restraint of accused is 24 hours. (As to who may direct confinement, see paragraph 21a, MCM)				
TO: Confinement Officer		INSTALLATION		
THE PERSON NAMED BELOW WILL BE CONFINED				
LAST NAME - FIRST NAME - MIDDLE INITIAL		GRADE	SERVICE NUMBER	DEPARTMENT OF MILITARY SERVICE
ORGANIZATION				
TYPE OF CONFINEMENT <input type="checkbox"/> PRETRIAL <input type="checkbox"/> RESULT OF COURT-MARTIAL		OFFENSE(S) AND UCMJ ARTICLE(S) VIOLATED		
TYPED OR PRINTED NAME, GRADE AND TITLE OF OFFICER ORDERING CONFINEMENT (Or authorized representative)		SIGNATURE OF OFFICER ORDERING CONFINEMENT (Or authorized representative)		
RECEIPT FOR PRISONER				
THE PRISONER NAMED ABOVE WAS RECEIVED FOR CONFINEMENT AT:		HOUR	DATE	
TYPED OR PRINTED NAME AND GRADE OF CONFINEMENT OFFICER (Or authorized representative)		SIGNATURE OF CONFINEMENT OFFICER (Or authorized representative)		
		ORGANIZATION		

DD FORM 497
1 MAY 66

REPLACES DD FORM 497, 1 SEP 53, WHICH IS OBSOLETE.

CHAPTER 4

PREPARATION AND PROCESSING OF SPECIAL COURT-MARTIAL CASES

4-1. References.

- a. Article 19, Uniform Code of Military Justice (UCMJ).
- b. *Manual for Courts-Martial, United States, 1969* (MCM).
- c. DA Pam 27-15.
- d. AR 27-10.

4-2. Forms and Guides.

- a. DD Form 491.
- b. DD Form 494.
- c. DD Form 458.
- d. DD Form 493.
- e. Findings Worksheet (app II, ref c).
- f. Sentence Worksheet (app III, ref c).
- g. Report of Result of Trial.

4-3. Discussion.

a. A special court-martial is resorted to when the alleged offenses are of such a nature that the commander determines that they may not properly be disposed of by nonjudicial punishment or summary court-martial. The procedures in preferring charges are the same as those used in a summary court-martial. Charge sheets, documentary evidence, and other miscellaneous papers (para 32f(4), MCM, 1969) are prepared and transmitted to the convening authority for his action. The charges are always transmitted by a formal letter signed by the forwarding authority (app B, chap 4). In no case will less than three copies of the charge sheet and one copy of the documentary evidence be prepared.

b. The legal clerk will be responsible for the preparation and transmittal of these charges; therefore, he should thoroughly familiarize himself with the references and forms cited in paragraphs 1 and 2 above.

4-4. Procedure.

- a. When the necessary information and

documents to prepare a charge sheet are received, the legal clerk will follow the procedure outlined in chapter 3 (Preparation and Processing of a Summary Court-Martial) up to the point of actual referral for trial.

b. When the convening authority determines that the charges are to be referred for trial to a special court-martial, he will so direct. If a special court-martial has not been appointed, the legal clerk should take necessary action to have the convening authority issue a convening order and refer the case to the court so appointed (para 6-3). Close liaison with the unit personnel office will be of great value in the proper selection of a court list for the approval of the convening authority.

c. After the above has been accomplished, the legal clerk will in all probability be called upon to render clerical assistance to the court and counsel.

(1) His first duty will be to transmit the charges and allied papers to the appointed trial counsel who must serve a copy on the accused and so note on page 3 of the charge sheet (chap 2). The service on the accused may also be accomplished by the appointed assistant trial counsel.

(2) When the legal clerk has been informed by the trial counsel of the date for trial, he may be called upon by the trial counsel to notify the court members. He may also be required to notify the confinement officer (if the accused is confined) of the date of trial. On the date of trial he should insure that adequate facilities and equipment are available for the trial. If practicable, the seating arrangement shown in appendix I, DA Pam 27-15, should be used. A sufficient amount of expendable supplies and forms must be made available to the court and counsel (i.e., pen-

cils, paper, sentence and findings worksheets, report of result of trial, etc).

(3) As a reporter for this trial is prohibited (para 5-1a, AR 27-10), the legal clerk will function as a recorder only and will be required to prepare a summarized record of trial (para 83b, MCM, 1969). The trial procedure guide in DA Pam 27-15 is followed in this type of trial. The format of the record of trial is shown at appendix 10, MCM, 1969. A sample summarized record of trial is included in this chapter as appendix A.

(4) Following the trial, the legal clerk will prepare a Report of Result of Trial for the trial counsel's signature (3-4f).

d. After the legal clerk has transcribed the proceedings and assembled the record of trial, the record will be transmitted to the trial counsel, or assistant trial counsel, should complete the applicable items in section A, DD Form 494, (Court-Martial Data Sheet). The trial counsel completes only the first column of the checklist, the remaining columns being for use of the convening authority, the reviewing authority, and in some cases the Office of the Judge Advocate General (app A, chap 4). Upon completion of the checklist, if no errors are found in the record of trial, the trial counsel signs at the bottom of the checklist, authenticates the record by signing on the authentication sheet and forwards the record to the president of the court for his authentication (para 83c, MCM, 1969). Although the defense counsel does not authenticate the record of trial he must be permitted an opportunity to review the record before it is forwarded to the convening authority for his action. After the record of trial has been examined and authenticated, a copy, including copies of all documents received as exhibits, will be served on the accused (normally by the trial counsel) who must sign the receipt on the first page of the Summarized Record of Trial (app A, chap 4). When the record of trial is returned to the legal clerk, he should insure that the above described actions have been completed and recorded.

e. If the trial resulted in an acquittal, no further action is necessary except to issue a court-martial order and forward the record of

trial to the supervisory authority. However, if a conviction resulted, the case is transmitted to the convening authority who will determine whether the findings and sentence should be approved, disapproved, or modified. The function of the legal clerk at this stage is to prepare a disposition form indicating the maximum punishment permissible under each charge and specification, and to indicate whether the sentence of the court has exceeded those maximums. An Army special court-martial may not adjudge a sentence in excess of reduction to private E-1, confinement at hard labor for 6 months and forfeiture of two-thirds pay per month for 6 months despite the maximum punishment for any charge or charges tried before it (art 19, UCMJ).

f. When the convening authority has reviewed the record (in accordance with para 86 through 89, MCM, 1969), he will indicate to the legal clerk the type of action which he desires to take. It is then the responsibility of the legal clerk, through the use of forms 10 through 27, appendix 14b, MCM, 1969, and the forms set out in appendix 14 of the Addendum thereto, to prepare the appropriate action for the signature of the convening authority. The action is recorded on the record of trial, personally signed by the convening authority and dated as of the date it is signed (app A, chap 4).

g. In accordance with paragraph 90a, MCM, 1969, and chapter 12, AR 27-10, an order promulgating the results of the trial will be issued by the command of the convening authority who took the action in the case. The promulgating order will be published whether the trial resulted in conviction or acquittal. Distribution of court-martial orders will be made in accordance with para 12-6, AR 27-10. (See chap 6 for a sample court-martial order.)

h. When the record of trial is complete, it will be returned to the convening authority or his designated representative for completion of sections A, B, and C of DD Form 494. The signature of the convening authority or his representative and the date of completion must appear at the bottom of page 3, DD Form 494 (app A, chap 4).

i. The chronology sheet is completed by the

legal clerk and submitted to the convening authority, or his representative, for signature.

j. The original record of trial, complete with four copies of the promulgating order, is forwarded to the supervisory authority, ATTN: Staff Judge Advocate, for review. No transmittal letter need be used.

k. If upon review of the case the supervisory authority determines that it is correct in law and fact, one copy of the court-martial order

with appropriate markings will be returned to the convening authority for transmittal to the custodian of the personnel records of the accused.

l. If the record is found to contain material errors, the supervisory authority will issue, or direct the convening authority to issue, a supplemental court-martial order correcting the deficiency noted, or to take other corrective action.

APPENDIX A

SUMMARIZED RECORD OF TRIAL¹

(and accompanying papers)

of

Day, John F. RA 18756592 (SSAN:) Private (E-2)
 (Last name, first name, middle initial) (Service number) (Grade)
 Company F, 998th Infantry Regiment, U. S. Army Fort Amherst, Ohio 86507
 (Organization and armed force) (Station or ship)

By

SPECIAL COURT-MARTIAL

Appointed by Commanding Officer
 (Title of convening authority)
 998th Infantry Regiment
 (Command of convening authority)

Tried at

Fort Amherst, Ohio on 18 June 1968
 (Place or places of trial) (Date or dates of trial)

ACTION OF SUPERVISORY AUTHORITY

(Par. 94a (1), (2), MCM)

..... 19.....
 (Command and location of supervisory authority) (Date record received)

Date

Remarks

FINAL DISPOSITION:

Findings and sentence, as approved by
 convening authority, correct in law and
 fact; to file

Or

Findings and sentence, as modified or
 corrected (see remarks), correct in law
 and fact; to file

SAMPLE

Or

Acquittal or sentence set aside (see re-
 marks); to file

COPIES OF SCMO DISPOSED OF IN ACCORD-
 ANCE WITH DEPARTMENTAL REGULA-
 TIONS

.....
 (Signature and Grade of judge
 advocate or law specialist)

¹ See back cover for instructions as to preparation and arrangement.

DD FORM 491
 1 JUN 64

PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE.

CHRONOLOGY SHEET¹

In the case of John F. Day
(Name of accused)

Date of alleged commission of earliest offense tried: 9 June 1968

Date record forwarded to supervisory authority: 22 June 1968

Allen B. Peillen MAJ, Inf, Adjutant
(Signature and Grade of convening authority or his representative)

¹ The convening authority is responsible for completion of the Chronology Sheet. The trial counsel should report any authorized deductions and any unusual delays in the trial of the case.

² Unless otherwise prescribed in departmental regulations, the supervisory authority is the officer exercising general court-martial jurisdiction over the command. See par. 94a (1), (2), MCM.

³ In computing days between two dates, disregard first day and count last day. The actual number of days in each month will be counted.

⁴ Item 1 is not applicable when accused is not arrested or confined or when he is in confinement under a sentence of court-martial at time charges preferred. Item 2 will be the zero date if item 1 is not applicable.

⁵ Only this item may be deducted.

	Date 19 <u>68</u>	Cumulative Elapsed Days ³
1. Accused arrested or confined by military authority of command in which trial held ⁴		0
2. Charges preferred (date of affidavit)	12 June	0
3. Charges received by convening authority	14 June	2
4. Charges referred for trial	14 June	2
5. Sentence or acquittal	18 June	6
Less days:		
Accused sick, in hospital, or AWOL	0	
Delay at request of defense	0	
Total authorized deductions ⁵	0	6
6. Net elapsed days to sentence or acquittal		6
7. Record received by convening authority	21 June	9
Action of convening authority	21 June	9

REMARKS:

COURT-MARTIAL DATA SHEET				OJAG NUMBER							
LAST NAME - FIRST NAME - MIDDLE INITIAL		SERVICE NUMBER	RANK OR GRADE	ORGANIZATION							
Day, John F. (SSAN:)		RA 18756592	Private (E-2)	Co F, 998th Inf							
INSTRUCTIONS											
All items are applicable to a record of trial by general or special court-martial, except as follows:											
BOLD FACE - Items in BOLD FACE are applicable to a GENERAL, but not to a SPECIAL, court-martial.											
ITALIC - Items in ITALICS are applicable to a SPECIAL, but not to a GENERAL, court-martial.											
When an item is not applicable to the record of trial being reviewed, the proper square will be marked with a diagonal line similar to the ones which appear in the SPCMCA squares for items 1, 5, etc:											
KEY TO USE											
TC - Counsel for the prosecution. This column will be completed in all cases.			concerned. If a record of trial by special court-martial is not forwarded to the Judge Advocate General, this column will be completed by the judge advocate or law specialist of the supervisory authority (par. 94a(1) and (2)).								
SPCMCA - Special court-martial convening authority who is not empowered to convene a general court-martial. This column will be completed in each special court-martial case by the SPCMCA or his designated representative.			OJAG - Appropriate appellate agency in the Office of the Judge Advocate General of the armed force concerned. This column will be disregarded if a record of trial by special court-martial is not forwarded to the Judge Advocate General.								
SJA OR LEGO - Staff judge advocate or legal officer of commander exercising general court-martial jurisdiction. This column will be completed in any case in which the record is forwarded by the commander exercising general court-martial jurisdiction to the Judge Advocate General of the armed force			References - All references are to paragraphs or pages of the Manual for Courts-Martial, United States, and to opinions of the United States Court of Military Appeals.								
SECTION A - PRETRIAL AND TRIAL PROCEDURE				TC		SPCMCA		SJA OR LEGO		OJAG	
				YES NO		YES NO		YES NO		YES NO	
1. a. IF A GENERAL COURT-MARTIAL WAS THE ACCUSED REPRESENTED IN THE ARTICLE 32 INVESTIGATION BY CIVILIAN OR MILITARY COUNSEL OF HIS OWN SELECTION OR BY COUNSEL QUALIFIED WITHIN THE MEANING OF ARTICLE 27a UCMJ?				/		/					
b. IF NOT, DID THE ACCUSED WAIVE HIS RIGHT TO SUCH REPRESENTATION (United States v. Tomaszewski, 8 USCMA 266, 24 CMR 76; United States v. Wilson, 7 USCMA 656, 23 CMR 120)?				/		/					
2. DOES THE RECORD SHOW PLACE, DATE, AND HOUR THE COURT CONVENED AND EACH OPENING AND CLOSING THEREAFTER (p. 501)?				✓		✓					
3. a. ARE ALL APPOINTING AND AMENDING ORDERS OF COURTS TO WHICH CHARGES WERE REFERRED BY INDORSEMENT OR OTHERWISE ENTERED IN THE RECORD (pp. 526 and 531)?				✓		✓					
b. ARE ALL PERSONS NAMED IN THE APPOINTING ORDERS AND THE ACCUSED ACCOUNTED FOR AS PRESENT OR ABSENT (para. 60 and 61c; p. 501)?				✓		✓					
c. WAS LESS THAN A QUORUM DETAILED OR PRESENT AT ANY MEETING (para. 46 and 41d(1))?				/		/					
d. DOES THE RECORD SHOW THAT AFTER EACH ADJOURNMENT, RECESS, OR CLOSING DURING THE TRIAL, THE "PARTIES TO THE TRIAL" WERE ACCOUNTED FOR WHEN THE COURT REOPENED (par 61c; pp. 515, 519, 521)?				/		/					
e. IF THE LAW OFFICER OR ANY MEMBER PRESENT AT THE ARRAIGNMENT WAS THEREAFTER ABSENT, WAS SUCH ABSENCE THE RESULT OF CHALLENGE, PHYSICAL DISABILITY OR ORDER OF THE CONVENING AUTHORITY BASED ON GOOD CAUSE AS SHOWN IN THE RECORD OF TRIAL (para. 37b, 39e and 41d(4); Boyson, 29 CMR 147; Greenwell, 31 CMR 146)?				/		/					
4. WERE THE REPORTER AND INTERPRETER, IF ANY, SWORN (par 61d; p. 502)?				/		/					
5. a. IF A GENERAL COURT-MARTIAL, WAS THE LAW OFFICER PROPERLY CERTIFIED (par. 4e; p. 462)?				/		/					
b. WAS THE LAW OFFICER PRESENT DURING ALL OPEN SESSIONS OF THE COURT (par. 39d)?				/		/					
6. a. IF A GENERAL COURT-MARTIAL, WERE THE APPOINTED TRIAL COUNSEL AND DEFENSE COUNSEL PROPERLY CERTIFIED (par. 6b; p. 462)?				/		/					
b. WAS A PROPERLY CERTIFIED MEMBER OF THE PROSECUTION PRESENT DURING ALL OPEN SESSIONS OF THE COURT AND OUT-OF-COURT HEARINGS (para. 45a, 57d(2), 61f, and 73c(2); pp. 514-515)?				/		/					
c. WAS A PROPERLY CERTIFIED MEMBER OF THE DEFENSE OR A QUALIFIED LAWYER ACTING AS INDIVIDUAL DEFENSE COUNSEL PRESENT DURING ALL OPEN SESSIONS OF THE COURT AND OUT-OF-COURT HEARINGS (para. 47, 57d(2), 61e and 73c(2); pp. 514-515. United States v. Kraekouskas, 9 USCMA 607, 26 CMR 387)?				/		/					
7. a. IF A SPECIAL COURT-MARTIAL: WERE THE LEGAL QUALIFICATIONS OF THE APPOINTED DEFENSE COUNSEL EQUIVALENT TO THOSE OF THE APPOINTED TRIAL COUNSEL IN THE SENSE OF ARTICLE 27c (para. 6c and 61f)?				✓		✓					
b. IF ANY MEMBER OF THE PROSECUTION WAS LEGALLY QUALIFIED IN THE SENSE OF ARTICLE 27c, WAS A SIMILARLY QUALIFIED MEMBER OF THE DEFENSE, OR COUNSEL EXPRESSLY REQUESTED BY THE ACCUSED, PRESENT DURING ALL OPEN SESSIONS OF THE COURT (par. 61f; p. 503)?				/		/					
1 Summarized record of trial by special court-martial does not require the record to reflect that parties to the trial were accounted for after each closing.											

DD FORM 494

REPLACES EDITION OF 1 JUNE 1958, WHICH MAY BE USED.

SECTION A - PRETRIAL AND TRIAL PROCEDURE (Continued)		TC		SPCMCA		SJA OR LEGO		OJAG	
		YES	NO	YES	NO	YES	NO	YES	NO
8. DID ANY PERSON WHO ACTED AS INVESTIGATING OFFICER, STAFF JUDGE ADVOCATE, LAW OFFICER, COURT MEMBER, OR MEMBER OF THE DEFENSE IN THE SAME CASE, OR AS COUNSEL FOR THE ACCUSED AT A PRETRIAL INVESTIGATION OR OTHER PROCEEDINGS INVOLVING THE SAME GENERAL MATTER, SUBSEQUENTLY ACT AS A MEMBER OF THE PROSECUTION (par. 61a; p. 502)?			✓		✓				
9. IF ANY MEMBER OF THE DEFENSE HAD ACTED AS A MEMBER OF THE PROSECUTION IN THE SAME CASE, WAS HE EXCUSED (par. 61f(4); p. 503)?									
10. a. IF ANY MEMBER OF THE DEFENSE HAD ACTED AS THE ACCUSER, INVESTIGATING OFFICER, LAW OFFICER, OR MEMBER OF THE COURT, WERE HIS SERVICES EXPRESSLY REQUESTED BY THE ACCUSED (par. 61f(4); p. 503)?									
b. IF NOT, WAS HE EXCUSED (par. 61f(4); p. 503)?									
11. a. IF ACCUSED W'S AN ENLISTED PERSON, DID HE MAKE A PROPER REQUEST THAT ENLISTED PERSONS BE INCLUDED IN COURT MEMBERSHIP (par. 36c(2) & 61g & i; p. 504)?			✓		✓				
b. IF SO, WERE AT LEAST ONE-THIRD OF THE MEMBERS WHO TRIED THE CASE ENLISTED PERSONS, OR DID THE CONVENING AUTHORITY DIRECT THE TRIAL WITHOUT ENLISTED PERSONS (par. 36c(2))?									
c. DID ANY ENLISTED MEMBER OF THE COURT BELONG TO THE SAME UNIT AS THE ACCUSED (par. 4e)?									
12. WERE THE MEMBERS OF THE COURT, THE LAW OFFICER (IF ANY), AND THE PERSONNEL OF THE PROSECUTION AND DEFENSE SWORN (par. 61h; pp. 504, 505 and 528)?		✓		✓					
13. a. WAS ANY PERSON SITTING AS A MEMBER OF THE COURT, OR THE LAW OFFICER (IF ANY), THE ACCUSER, A WITNESS FOR THE PROSECUTION, THE INVESTIGATING OFFICER, STAFF JUDGE ADVOCATE, OR COUNSEL, OR, UPON REHEARING OR NEW TRIAL, WAS HE A MEMBER OF THE FORMER TRIAL (para. 4a, 62a, and i)?			✓		✓				
b. IF SO, DID THE ACCUSED WAIVE SUCH DISQUALIFICATION (United States v. Hurt, 8 USCA 224, 24 CMR 34; United States v. Wilson, 7 USCA 656, 23 CMR 120)?									
14. a. WAS EACH ACCUSED EXTENDED THE RIGHT TO CHALLENGE THE LAW OFFICER (IF ANY), AND ANY MEMBER OF THE COURT FOR CAUSE AND TO EXERCISE ONE PER-EMPTORY CHALLENGE AGAINST ANY MEMBER (par. 62a; p. 507)?		✓		✓					
b. WAS ACTION BY COURT UPON CHALLENGES PROPER (par. 62h; pp. 506 - 507; United States v. Jones, 7 USCA 283, 22 CMR 73)?		✓		✓					
c. DOES THE RECORD SHOW THAT A MEMBER EXCUSED AS A RESULT OF A CHALLENGE WITHDREW FROM THE COURT (par. 62h(4))?		✓		✓					
15. a. WAS THE ACCUSED PROPERLY ARRAIGNED (par. 65; pp. 507 - 508)?		✓		✓					
b. DO THE FOLLOWING APPEAR ON THE RECORD: THE CHARGES AND SPECIFICATIONS, THE NAME, GRADE AND ORGANIZATION OF THE PERSON SIGNING THE CHARGES, THE AFFIDAVIT, AND THE ORDER OF REFERENCE FOR THE TRIAL (pp. 507 & 533)?		✓		✓					
c. EXCEPT IN TIME OF WAR, WAS THE ACCUSED BROUGHT TO TRIAL BY GENERAL COURT-MARTIAL WITHIN FIVE DAYS (BY SPECIAL COURT-MARTIAL WITHIN THREE DAYS) SUBSEQUENT TO SERVICE OF CHARGES UPON HIM (par. 68c; p. 52)?			✓		✓				
d. IF SO, DID THE ACCUSED OBJECT TO SUCH TRIAL?									
16. a. WERE ANY CHARGES OR SPECIFICATIONS AFFECTED BY THE STATUTE OF LIMITATIONS (par. 68c)?			✓		✓				
b. IF SO, WAS ACCUSED ADVISED OF HIS RIGHT TO ASSERT THE STATUTE AND WAS HIS RESPONSE RECORDED (par. 68c)?									
17. DID THE COURT TAKE PROPER ACTION WITH RESPECT TO MOTIONS RAISING DEFENSES AND OBJECTIONS (par. 67; p. 508)?		✓		✓					
18. a. WERE PLEAS OF ACCUSED REGULARLY ENTERED (pp. 509 and 533)?		✓		✓					
b. IF PLEAS OF GUILTY WERE EXPLAINED, WAS ACCUSED'S RESPONSE RECORDED (pp. 509 and 533)?									
19. DOES THE RECORD SHOW THAT ALL WITNESSES WERE SWORN (par. 112b; pp. 510, 527, 533 and 534)?		✓		✓					
20. DID THE LAW OFFICER OR PRESIDENT ADVISE THE COURT CONCERNING THE ELEMENTS OF EACH OFFENSE, EACH LESSER INCLUDED OFFENSE REASONABLY RAISED BY THE EVIDENCE, AND THE PRESUMPTION OF INNOCENCE, REASONABLE DOUBT, AND BURDEN OF PROOF, PURSUANT TO ARTICLE 31C (para. 73a and b; pp. 518 and 534)?		✓		✓					
21. a. DID THE PRESIDENT ANNOUNCE THAT THE VOTE ON EACH FINDING WAS IN CLOSED SESSION AND BY SECRET WRITTEN BALLOT (pp. 518, 519 and 534)?		✓		✓					
b. UNLESS THE DEATH PENALTY WAS MANDATORY, DID THE PRESIDENT ANNOUNCE THAT AT LEAST TWO-THIRDS OF THE MEMBERS PRESENT AT THE TIME THE VOTE WAS TAKEN ON EACH FINDING OF GUILTY CONCURRED THEREIN (par. 74d(3); pp. 519 and 534)?		✓		✓					
22. WERE THE FINDINGS IN PROPER FORM (pp. 519 - 520)?		✓		✓					
23. a. WAS THE EVIDENCE, IF ANY, OF PREVIOUS CONVICTIONS ADMISSIBLE AND PROPERLY INTRODUCED IN EVIDENCE (par. 75b(2))?		✓		✓					
b. WAS THE DEFENSE PERMITTED TO INTRODUCE EVIDENCE IN EXTENUATION AND MITIGATION AFTER THE COURT ANNOUNCED FINDINGS OF GUILTY (par. 75c; pp. 520 and 534)?		✓		✓					
24. a. DID THE PRESIDENT ANNOUNCE THAT THE VOTE ON THE SENTENCE WAS IN CLOSED SESSION AND BY SECRET WRITTEN BALLOT (pp. 521 and 534)?		✓		✓					
b. DID THE PRESIDENT ANNOUNCE THAT THE MEMBERS PRESENT CONCURRED IN THE SENTENCE AS FOLLOWS: TO DEATH, ALL MEMBERS; TO LIFE IMPRISONMENT OR CONFINEMENT IN EXCESS OF TEN YEARS, AT LEAST THREE-FOURTHS OF MEMBERS; TO ANY OTHER PUNISHMENT, AT LEAST TWO-THIRDS (par. 75b(3); pp. 521 and 534)?		✓		✓					

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SECTION A - PRETRIAL AND TRIAL PROCEDURE (Continued)		TC	SCMCA	SJA OR LEGO	OJAG
		YES	NO	YES	NO
26. WAS THE SENTENCE IN PROPER FORM (pp. 541 - 542)?		✓			
26. IS THE RECORD PROPERLY AUTHENTICATED (para. 82f and 83c; p. 528)?		✓			
27. a. DID ALL MEMBERS WHO PARTICIPATED IN PROCEEDINGS IN REVISION VOTE ON ORIGINAL FINDINGS AND SENTENCE (par. 80; p. 522)?					
b. AT PROCEEDINGS IN REVISION, WERE THE LAW OFFICER (IF ANY), THE ACCUSED, AND COUNSEL FOR THE PROSECUTION AND DEFENSE PRESENT (par. 80; p. 522)?					
28. WAS EACH ACCUSED FURNISHED A COPY OF THE RECORD (para. 82g(1) and 83d; pp. 525, 529 and 535)?		✓			
29. WAS CLEMENCY RECOMMENDED BY THE COURT (par. 77a)?					
SECTION B - PROCEDURE AFTER TRIAL		SCMCA	SJA OR LEGO	OJAG	
		YES	NO	YES	NO
30. WAS THE COURT CONVENED BY PROPER AUTHORITY (par. 86b)?		✓			
31. DID THE COURT HAVE JURISDICTION OF PERSON AND OFFENSE (par. 86b)?		✓			
32. DOES EACH SPECIFICATION STATE AN OFFENSE UNDER THE CODE (par. 86b)?		✓			
33. DID THE ACCUSED HAVE THE REQUISITE MENTAL CAPACITY AT THE TIME OF TRIAL AND THE REQUISITE MENTAL RESPONSIBILITY AT THE TIME OF THE COMMISSION OF EACH OFFENSE (par. 86b)?		✓			
34. a. DOES THE EVIDENCE SHOW THE ACCUSED GUILTY BEYOND A REASONABLE DOUBT (United States v. Jenkins, 8 USCMA 274, 24 CMR 84)?		✓			
b. WAS THE CONVENING AUTHORITY PROPERLY ADVISED IN THE STAFF JUDGE ADVOCATE'S REVIEW AS TO THE PROPER STANDARD OF SUFFICIENCY OF THE EVIDENCE (United States v. Johnson, 8 USCMA 173, 23 CMR 397; United States v. Jenkins, 8 USCMA 274, 24 CMR 84)?					
35. DID ANY RULING DURING TRIAL ON THE ADMISSION OF EVIDENCE OR ON OTHER MATTERS MATERIALLY PREJUDICE THE SUBSTANTIAL RIGHTS OF THE ACCUSED (par. 86b)?		✓			
36. IS THE SENTENCE WITHIN LEGAL LIMITS, AND IS IT SUSTAINED BY THE APPROVED FINDINGS OF GUILTY (par. 86b)?		✓			
37. IS THE ACTION OF THE CONVENING AUTHORITY PROPERLY ENTERED IN THE RECORD AND SIGNED (par. 88)?		✓			
38. IF APPROPRIATE, IS A PROPER PLACE OF CONFINEMENT OR TEMPORARY CUSTODY DESIGNATED (para. 89c(3) and (6); pp. 546 - 548)?		✓			
39. IF DEROGATORY INFORMATION CONCERNING THE ACCUSED IS IN THE STAFF JUDGE ADVOCATE'S REVIEW BUT NOT IN THE RECORD OF TRIAL, WAS THIS INFORMATION PRESENTED TO THE ACCUSED FOR HIS EXPLANATION, AND WAS SUCH EXPLANATION SET FORTH IN THE REVIEW (United States v. Griffin, 8 USCMA 206, 24 CMR 16)?					
40. IS THE ACTION, IF ANY, WITH RESPECT TO CLEMENCY DEEMED ADEQUATE (par. 88b)?					
41. a. DO THE ALLIED PAPERS INDICATE THAT THE ACCUSED WAS ADVISED OF HIS APPELLATE RIGHTS?					
b. DO THE ALLIED PAPERS CONTAIN A STATEMENT INDICATING THE DESIRES OF THE ACCUSED WITH RESPECT TO APPELLATE REPRESENTATION IN THE EVENT HIS CASE IS REFERRED TO A BOARD OF REVIEW?					
SECTION C - COURT MARTIAL ORDERS (See par. 90 and pp. 549 - 551)					
42. DOES THE CMO BEAR THE SAME DATE AS THE ACTION OF THE CONVENING AUTHORITY WHO PUBLISHED IT?		✓			
43. ARE ALL THE ORDERS APPOINTING THE COURT WHICH TRIED THE CASE CORRECTLY CITED IN THE CMO?		✓			
44. ARE THE ACCUSED'S NAME, RANK OR GRADE, SERVICE NUMBER, ORGANIZATION AND ARMED FORCE CORRECTLY SHOWN IN THE CMO?		✓			
45. ARE ALL CHARGES AND SPECIFICATIONS (including amendments) UPON WHICH THE ACCUSED WAS ARRAIGNED CORRECTLY SHOWN IN THE CMO?		✓			
46. ARE THE PLEAS, FINDINGS, AND SENTENCE CORRECTLY SHOWN IN THE CMO?		✓			
47. DOES THE CMO INDICATE THE NUMBER OF PREVIOUS CONVICTIONS CONSIDERED?		✓			
48. DOES THE CMO SHOW THE DATE THE SENTENCE WAS ADJUDGED, OR ACQUITTAL ANNOUNCED?		✓			
49. IS THE ACTION OF THE CONVENING AUTHORITY (and of the officer exercising general court-martial jurisdiction, when appropriate under article 63b) CORRECTLY SHOWN IN THE CMO?		✓			
50. IS THE CMO PROPERLY AUTHENTICATED?		✓			
DATE	SIGNATURE OF TRIAL COUNSEL				
20 Jun 68	Horace J. Keys				
DATE	SIGNATURE AND GRADE OF CONVENING AUTHORITY OR HIS REPRESENTATIVE				
21 Jun 68	Allen B. Quillen MAJ, Inf, Adjutant				
DATE	SIGNATURE OF STAFF JUDGE ADVOCATE OR LEGAL OFFICER				
APPELLATE ACTION - OFFICE OF THE JUDGE ADVOCATE GENERAL					
DATE	ACTION		SIGNATURE & DESIGNATION OF INDIVIDUAL COMPLETING DATA SHEET		

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* U.S. GOVERNMENT PRINTING OFFICE : 1965 O-693-179

INSERT FOUR COPIES OF PROMULGATING ORDER AND ALLIED PAPERS AT THIS POINT

SUMMARIZED

RECORD OF TRIAL

(Proper)

of

Day, John F. RA 18756592 (SSAN:) Private (E-2)
 (Last name, first name, middle initial) (Service number) (Grade)
 Co F, 998th Inf, U. S. Army Fort Amherst, Ohio
 (Organization and armed force) (Station or ship)

By

SPECIAL COURT-MARTIAL

Appointed by Commanding Officer
 (Title of convening authority)
 998th Infantry Regiment
 (Command of convening authority)

Tried at

Fort Amherst, Ohio on 18 June 1968
 (Place or places of trial) (Date or dates of trial)

COPIES OF RECORD¹

.....1..... copy of record furnished the accused as per attached receipt.
1..... copy(ies) of record forwarded herewith.

RECEIPT FOR COPY OF RECORD²

I hereby acknowledge receipt of a copy of the above-described record of trial, delivered
 to me at Fort Amherst, Ohio
 this 20th day of June, 1968.

SAMPLE

(Signature of accused)

I hereby acknowledge receipt of a copy of the above-described record of trial, delivered
 to me at
 this day of, 19.....

(Signature of accused)

¹ If copy of record prepared for accused contains matters requiring security protection, see paragraph 82g, MCM.

² If personal delivery to accused is impossible, see paragraph 82g (1) and page 525, MCM.

PROCEEDINGS OF A SPECIAL COURT-MARTIAL

The court met (at) (on board) Fort. Amherst, Ohio, at 0830 hours,
18 June, 1968, pursuant to the following orders: ¹

STAPLE COPIES OF APPOINTING ORDERS, AMENDMENTS THERETO AND ANY REQUEST
 OF THE ACCUSED FOR ENLISTED COURT MEMBERS ON THIS PAGE. FOR PURPOSES
 OF THIS HANDBOOK, ALL ORDERS FOLLOW THIS PAGE.

S A M P L E

Colonel William B. Stock was in com-
 (Name and rank)
 mand on the date of the appointing orders.

¹ Insert here literal copies of all appointing and amending orders of courts to which the charges have been referred. Any request of an enlisted accused for enlisted court members, together with any declaration of the nonavailability of such enlisted persons, will be inserted immediately following the orders.

Page

DEPARTMENT OF THE ARMY
HEADQUARTERS 998TH INFANTRY REGIMENT
Fort Amherst, Ohio 86507

COURT-MARTIAL CONVENING ORDER
NUMBER 150

1 June 1968

A special court-martial is hereby ordered to convene at this Headquarters at 0900 hours on 1 June 1968, or as soon thereafter as practicable, for the trial of such persons as may properly be brought before it. The court will be constituted as follows:

MEMBERS

MAJ JACK Q GOODMAN, 0207420 (SSAN:), Inf, 998th Inf
MAJ NOEL M HOWARD, 0208176 (SSAN: 234-46-7891), Inf, 998th Inf
CPT HOWARD H JONES, 0236941 (SSAN: 345-67-8912), Inf, 998th Inf
CPT LEWIS R ROSE, 050046 (SSAN: 456-78-9123), Inf, 998th Inf
1LT WILLIAM C CANNON, 0470903 (SSAN: 567-89-1234), Inf, 998th Inf
1LT PETER HOWARD, 0995711 (SSAN: 678-91-2345), Inf, 998th Inf

COUNSEL

CPT ALFRED O EAGLES, 0688788 (SSAN: 789-12-3456), Inf, 998th Inf,
TRIAL COUNSEL, not a lawyer in the sense of Article 27
1LT WILBER N BROWN, 0214218 (SSAN: 912-34-6789), Inf, 998th Inf,
ASSISTANT TRIAL COUNSEL, not a lawyer in the sense of Article 27
CPT PAUL H SMITH, 0265382 (SSAN: 934-67-9854), Inf, 998th Inf,
DEFENSE COUNSEL, member of Bar of Supreme Court of Ohio
1LT LOUIS P JORDAN, 0291211 (SSAN: 912-68-4589), Inf, 998th Inf,
ASSISTANT DEFENSE COUNSEL, not a lawyer in the sense of Article 27

All unarraigned cases in the hands of the trial counsel of the special court-martial convened by CMC0 120, this Headquarters, dated 15 April 1968, will be brought to trial before the court hereby convened.

BY ORDER OF COLONEL STOCK:

s/Allen B. Quillen
t/ALLEN B. QUILLEN
MAJ, Inf
Adjutant

DISTRIBUTION:

X

DEPARTMENT OF THE ARMY
HEADQUARTERS 998TH INFANTRY REGIMENT
Fort Amherst, Ohio 86507

COURT-MARTIAL CONVENING ORDER
NUMBER 151

2 June 1968

2. CAPTAIN HORACE J. KEYS, 080090 (SSAN:), Inf, 998th Inf, not a lawyer in the sense of Article 27, is appointed trial counsel of the special court-martial convened by CMC 150, this Headquarters, dated 1 June 1968, vice CAPTAIN ALFRED O. EAGLES, 0688788 (SSAN:), Inf, 998th Inf, relieved.

BY ORDER OF COLONEL STOCK:

OFFICIAL:

ALLEN B. QUILLEN
MAJ, Inf
Adjutant

/s/George S. Hart
/t/GEORGE S. HART
1LT, Inf
Asst Adjutant

DISTRIBUTION:

X

PERSONS PRESENT¹

MAJ	JACK Q GOODMAN	
MAJ	NOEL M HOWARD	
CPT	LEWIS R ROSE	
1LT	WILLIAM C CANNON	
CPT	HORACE J KEYS	Trial Counsel
1LT	WILBER N BROWN	Asst Trial Counsel
CPT	PAUL H SMITH	Defense Counsel
1LT	LOUIS P JORDAN	Asst Defense Counsel

PERSONS ABSENT²

CPT	HOWARD H JONES
1LT	PETER HOWARD

SAMPLE

The accused and the following (regularly appointed defense counsel and assistant defense counsel) (~~cannot be introduced by him~~) were present:

~~The following appointed (reporter) (an) (interpreter) (was) (were) (were) :~~

The trial counsel stated that the legal qualifications of all members of the prosecution were correctly stated in the appointing orders, ~~except as indicated below~~.

The trial counsel further stated that no member of the prosecution had acted as investigating officer, law officer, court member, or as a member of the defense in this case, or as counsel for the accused at a pretrial investigation or other proceeding involving the same general matter ~~except as indicated below~~.

¹ List members and counsel by rank or grade and name.

² Reasons for absence before arraignment will not be shown (par. 41d, MCM).

³ Delete if not applicable.

⁴ If a member of the prosecution is disqualified by reason of prior participation, the disqualifying fact will be shown, together with the action that was taken under paragraph 61d, MCM.

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The defense counsel stated that the legal qualifications of all members of the defense were correctly stated in the appointing orders ~~except as indicated below~~¹

The defense counsel stated that no member of the defense had acted as the accuser, a member of the prosecution, investigating officer, law officer, or member of the court in this case ~~except as indicated below~~²

The following appointed members of the defense were excused at the express request of the accused:³ None.

The trial counsel announced that the accused had (not) made a request in writing that the membership of the court include enlisted persons. The defense counsel announced that the accused had been advised of his rights in this respect prior to trial and had stated he did (not) desire enlisted persons as court members.⁴

The members of the court and the personnel of the prosecution and defense were sworn.

Each accused was extended the right to challenge any member of the court for cause and to exercise one peremptory challenge against any member.

The following members of the court were excused and withdrew for the reasons stated opposite their respective names:

Lieutenant William C. Cannon (excused upon peremptory challenge by the accused).

There was no contest with respect to the challenging of any of the members for cause except as indicated below.

Prior to being excused upon peremptory challenge by the accused, Lieutenant William C. Cannon was challenged for cause by the accused on the grounds that Lieutenant Cannon was a brother-in-law and close friend of the accuser and had discussed this case with him. Lieutenant Cannon stated that he was not familiar with any of the facts of this case and had not formed an opinion as to the guilt or innocence of the accused. The challenge for cause was not sustained by the court.

The accused was then arraigned upon the following charges and specifications:⁵

S A M P L E

¹ If individual counsel is present, show his legal qualifications or lack of legal qualifications.

² If a member of the defense is disqualified by reason of prior participation, the disqualifying fact will be shown together with the action that was taken under paragraph 61(4), MCM.

³ If inapplicable write, "None." See page 504, MCM.

⁴ See *United States v. Parker*, 6 USCMA 75, 19 CMR 201.

⁵ Insert, following this page, the charge sheet. Use the accused's copy of the charge sheet to prepare his copy of the record.

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CHARGE SHEET			
PLACE Fort Amherst, Ohio 86507		DATE 12 June 1968	
ACCUSED (Last name, First name, Middle Initial) (List aliases when material) Day, John F. (SSAN:)		SERVICE NUMBER RA 18756592	GRADE OR RANK Private AND PAY GRADE E-2
ORGANIZATION AND ARMED FORCE (If the accused is not a member of any armed force, state other appropriate description showing that he is subject to military law) Company F, 998th Infantry Regiment, U S. Army	DATE OF BIRTH 13 August 1945	PAY PER MONTH	
	CONTRIBUTION TO FAMILY OR QUARTERS ALLOWANCE (MCM, 126g (2)) None	BASIC \$141.00	
		SEA OR FOREIGN DUTY \$ none	
		TOTAL \$141.00	
RECORD OF SERVICE			
INITIAL DATE OF CURRENT SERVICE 3 July 1966		TERM OF CURRENT SERVICE 3 years	
PRIOR SERVICE: None (As to each prior period of service, give inclusive dates of service and Armed Force, if available.) YEARS MONTHS DAYS			
DATA AS TO WITNESSES (Summary Court Officer will line out and insert names as applicable (MCM, 79g) and initial changes)			
NAME OF WITNESS	ADDRESS	WITNESSES FOR	
		PROSECUTION	ACCUSED
CPT Lauren A. Dill	Co F, 998th Inf, Ft Amherst, Ohio	X	
1LT James A. Cleaves	127th Medical Det, Ft Amherst, Ohio	X	
SFC Harry H. Butler	Co F, 998th Inf, Ft Amherst, Ohio	X	
PVT John P. Snooker	Co F, 998th Inf, Ft Amherst, Ohio	X	
DOCUMENTS AND OBJECTS			
LIST AND DESCRIBE (If not attached to charges, note where it may be found) Extract of Military Records of Previous Convictions <div>SAMPLE</div>			
DATA AS TO RESTRAINT			
NATURE OF ANY RESTRAINT OF ACCUSED Restriction	DATE 9 June 1968	LOCATION Post Limits, Fort Amherst, Ohio	

DD FORM 1 JUL 62 458 PREVIOUS EDITION WILL BE USED