

Charge I : Violation of the Uniform Code of Military Justice, Article 128.

Specification: In that Private (E-2) John F. Day, U. S. Army, Company F, 998th Infantry, did, at Fort Amherst, Ohio, on or about 9 June 1968, unlawfully strike Private John P. Snooker on the face and body with his fists.

CHARGE II: Violation of the Uniform Code of Military Justice, Article 134.

Specification: In that Private (E-2) John F. Day, U. S. Army, Company F, 998th Infantry, having been duly restricted to the limits of Fort Amherst, Ohio, did, at Fort Amherst, Ohio, on or about 10 June 1968, break said restriction.

S A M P L E

*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.*

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AGO 6866A

4-17

NAME, GRADE, AND ORGANIZATION OF ACCUSER <b>LAUREN A. DILL, CPT Co F, 998th Inf</b>		SIGNATURE <i>Lauren A. Dill</i>
AFFIDAVIT		
Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above-named accuser this <u>12th</u> day of <u>June</u> , <u>1968</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.		
Major, Hq, 998th Infantry GRADE AND ORGANIZATION OF OFFICER		SIGNATURE <i>Allen B. Quillen</i>
Adjutant OFFICIAL CHARACTER, AS ADJUTANT, SUMMARY COURT, ETC. (MCM, 29g, and Article 30g and 136)		ALLEN B. QUILLEN TYPED NAME
Officer administering oath must be a commissioned officer.		
12 June 1968 DATE		
I have this date informed the accused of the charges against him (MCM, 32f(1)).		
LAUREN A. DILL, CPT Co F, 998th Infantry NAME, GRADE, AND ORGANIZATION OF IMMEDIATE COMMANDER		SIGNATURE <i>Lauren A. Dill</i>
Hq, 998th Inf Regt DESIGNATION OF COMMAND OF OFFICER EXERCISING SUMMARY COURT-MARTIAL JURISDICTION		Fort Amherst, Ohio PLACE 14 June 1968 DATE
The sworn charges above were received at <u>1000</u> hours, this date (MCM, 33b).		
ALLEN B. QUILLEN MAJ, Inf Adjutant NAME, GRADE, AND OFFICIAL CAPACITY OF OFFICER SIGNING		FOR THE / COMMANDER <i>Allen B. Quillen</i> SIGNATURE
1ST INDORSEMENT		
Hq, 998th Inf Regt DESIGNATION OF COMMAND OF CONVENING AUTHORITY		Fort Amherst, Ohio PLACE 14 June 1968 DATE
Referred for trial to the <u>special</u> court-martial appointed by <u>CMAO 150</u> , this Hq, <u>1 June 1968</u> , as amended by <u>CMAO 151</u> , this Hq		
, <u>2 June</u>		<u>1968</u> , subject to the following instructions: <sup>2</sup>
S A M P L E BY / ORDER COMMAND OR ORDER of <u>COLONEL STOCK</u> :		
ALLEN B. QUILLEN MAJ, Inf Adjutant NAME, GRADE, AND OFFICIAL CAPACITY OF OFFICER SIGNING		<i>Allen B. Quillen</i> SIGNATURE
I have served a copy hereof on each of the above-named accused, this <u>14th</u> day of <u>June</u> , <u>1968</u> .		
HORACE J. KEYS CPT, Inf, 998th Inf NAME, GRADE, AND ORGANIZATION OF TRIAL COUNSEL		<i>Horace J. Keys</i> SIGNATURE
<sup>1</sup> When an appropriate commander signs personally, inapplicable words are stricken out. <sup>2</sup> Relative to proper instructions which may be included in the indorsement of reference for trial, see MCM, 33f(1). If none, so state.		

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(f)(2)).

THE ACCUSED HAS BEEN PERMITTED AND HAS ELECTED TO REFUSE PUNISHMENT UNDER ARTICLE 15 AS TO

THE ACCUSED HAS NOT BEEN OFFERED PUNISHMENT UNDER ARTICLE 15 AS TO any of the charges and specifications.

NAME, GRADE, AND ORGANIZATION OF OFFICER EXERCISING ARTICLE 15  
JURISDICTION

LAUREN A. DILL, CPT, Co F, 998th Infantry

SIGNATURE

*Lauren A. Dill*

RECORD OF TRIAL BY SUMMARY COURT-MARTIAL

CASE NUMBER

(Inserted by convening authority)

TO BE FILLED IN BY SUMMARY COURT AS APPLICABLE

1. WAS THE ACCUSED ADVISED IN ACCORDANCE WITH PARAGRAPH 79f, MCM?

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 HEREWITHE RETURNED TO THE CONVENING AUTHORITY.

NAME, GRADE, AND ORGANIZATION OF SUMMARY COURT OFFICER

SIGNATURE

TO BE FILLED IN BY THE ACCUSED

SIGNATURE OF ACCUSED

CONSENT  OBJECT TO TRIAL BY SUMMARY COURT-MARTIAL

SPECIFICATIONS AND CHARGES	PLEAS	FINDINGS	SENTENCE OR REMARKS
			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, 40)

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		

S A M P L E

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.

U. S. GOVERNMENT PRINTING OFFICE 1963 O-683412

Colonel William B. Stock  
NAME AND RANK  
was in command on the date of the  
reference for trial.

The defense had no motions to present ~~except as indicated below.~~

The accused pleaded as follows:<sup>2</sup>

To all the Specifications and Charges: Not guilty.

# S A M P L E

## PRESENTATION OF PROSECUTION CASE

The trial counsel made ~~(#1)~~ (no) opening statement.

The following witnesses for the prosecution were sworn and testified in substance as follows:<sup>3</sup>

PVT John P. Snooker, Co F, 998th Inf, Fort Amherst, Ohio

### DIRECT EXAMINATION

I know the accused, Private John Day. He is in the military service and a member of my company; we live in the same barracks. That is Private Day over there (indicating accused). His bunk is two bunks down the aisle from mine. On Saturday, 9 June 1968, about 1400 hours, I went to sleep on my bunk. No one else was there in the squad room then. When I woke up, about a half hour later, I couldn't find my wrist watch. I guess I had misplaced it because I found it later. I told the accused my watch was missing and asked him who else had been around there, and accused told me that he didn't know and didn't care. Then he said he would teach me something and began hitting me with his fists. He

<sup>1</sup> The substance of any motions made by the defense before pleas are entered will be recorded here, together with the ruling of the court thereon. The substance of any motions made by the defense after pleas are entered will be recorded at the proper chronological point in the record, together with the ruling of the court thereon.

<sup>2</sup> If the president explains the meaning and effect of a plea of guilty, the record will show the explanation as indicated at page 533, MCM.

<sup>3</sup> Unless otherwise prescribed by departmental regulations, the convening authority may direct that testimony be recorded verbatim if a reporter is present. If a witness testifies through an interpreter, that fact will be shown. For manner of recording presentation of defense case, see page 534, MCM. Additional testimony will be shown on blank pages immediately following this page.

Page .....

punched me on the face and on my body without any warning. The accused blackened both my eyes, bled my nose, tore my shirt, and caused several bruises on my arms and chest. I didn't hit him or threaten to hit him before he started punching me. The next day I went on sick call and the officer on duty at the dispensary examined the injuries which Day had given me. He gave me some medicine for them.

#### CROSS EXAMINATION

The fight occurred after my remarks to him. I never had any previous trouble with the accused.

The witness was excused, subject to recall, and withdrew from the courtroom.

L1T James A. Cleaves, 127th Medical Det, Fort Amherst, Ohio.

#### DIRECT EXAMINATION

I am a doctor of medicine and have been a member of the Army Medical Corps for about two years. On 10 June 1968, I was medical OD at Dispensary No. 3 at Fort Amherst and examined Private John P. Snooker at about 1030 hours. I found that Snooker had two black eyes and multiple contusions on his face, arms, and chest; he was given liniment and released to duty.

#### CROSS EXAMINATION

A contusion is a bruise, without laceration of the flesh. It may be accompanied by a tearing of the skin. The contusions on Snooker were mostly minor, although a part of the skin on the right side of his jaw was abraded somewhat. Such contusions would cause pain for only a very short time, although they might be sore to the touch for several days.

The witness was excused from further attendance during the trial and withdrew from the court.

CPT Lauren A. Dill, Co F, 998th Inf, Fort Amherst, Ohio.

#### DIRECT EXAMINATION

I am the commanding officer of Company F, 998th Infantry. I know the accused. His name is Private John F. Day. He is a member of my company. He is sitting over there (indicating accused). I saw him on Saturday afternoon, 9 June 1968, after my acting first sergeant, Sergeant Butler, came into my office and reported that the accused had started a fight with Private Snooker.

Upon objection by the defense, so much of the answer of the witness as pertained to what had been reported to the witness was stricken.

I had the accused report to my office that afternoon and, after making a preliminary inquiry, I told him that he was suspected of wrongfully striking Private Snooker on the face and body with his fists. I told him he didn't have to say anything at all concerning this matter and that if he did say anything, it could be used as evidence against him in a trial by court-martial. He said he understood his rights and that he wished to make a statement.

The president explained to the accused his right to testify or present other evidence with respect to the circumstances under which the statement was obtained. The accused stated that he understood his rights. The defense counsel stated that he did not desire to present any evidence at that time concerning the voluntariness of the statement,

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DIRECT EXAMINATION (continued)

and that if he did say anything, it could be used as evidence against him in a trial by court-martial. I told him that he had the right to consult with counsel and to have counsel present with him during questioning; that he could retain counsel at his own expense or counsel would be appointed for him at no expense to him, and that since he was subject to the UCMJ, appointed counsel could be military counsel of his own selection if reasonably available. I advised him that even if he decided to answer questions now without having counsel present, he could stop answering questions at any time. Also, that he could request counsel at any time during questioning. He said he understood his rights, did not want counsel, and that he wished to make a statement.

The president explained to the accused his right to testify or present other evidence with respect to the circumstances under which the statement was obtained. The accused stated that he understood his rights. The defense counsel stated that he did not desire to present any evidence at that time concerning the voluntariness of the statement.

After Private Day told me he desired to make a statement, he said he hit Snooker because Snooker had accused him of taking a watch. I ordered him restricted to the post until Monday, 11 June 1968.

CROSS EXAMINATION

I don't dislike the accused, and I am not prejudiced against him.

EXAMINATION BY THE COURT

I had the accused and Snooker report to my office at the same time. I personally told the accused of his restriction. When I got through telling him, he said "Yes, sir," and I dismissed him.

REDIRECT EXAMINATION

I dismissed Snooker before advising the accused of his rights. Sergeant Butler was present during the preliminary inquiry and when I explained the accused's rights to him.

The witness was excused, subject to recall, and withdrew from the courtroom.

SFC Harry H. Butler, Co F, 998th Inf, Fort Amherst, Ohio.

DIRECT EXAMINATION

I have known the accused, Private Day, ever since he joined the outfit sometime last November. He is sitting over there (indicating accused). As I entered Barracks 3 about 1430 hours on 9 June 1968, I saw the accused hitting Private Snooker with his fists. After stopping the fight, I reported it to our CO. I was acting first sergeant then and understood that accused was restricted to the post as of 1500 hours that same day. On Sunday, 10 November 1968, I went to a movie with my wife in Stanton, Ohio, about three miles from the post. The movie was at the Bijou Theater. As we were leaving the theater, I saw Private Day entering the foyer with a girl. I followed him, but lost him in the darkness before I could catch up with him.

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DIRECT EXAMINATION (continued)

The witness was cautioned not to discuss his testimony with other than authorized persons and was excused, subject to recall, and withdrew from the courtroom.

The prosecution rested.

The court recessed at 1030 hours, 18 June 1968.

The court opened at 1045 hours, 18 June 1968.

All parties to the trial who were present when the court recessed were again present.

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PRESENTATION OF DEFENSE CASE

The defense counsel made (A/H) (no) opening statement.

The accused was advised by the president of his right to testify or remain silent. The following witnesses for the defense were sworn and testified in substance as follows:

PTV John F. Day, Co F, 998th Inf, Fort Amherst, Ohio

DIRECT EXAMINATION

I am the accused, Private John F. Day. On Saturday, 9 June 1968, at about 1400 hours I was sitting on my bunk in the ~~squad~~ room writing a letter to my girl when I heard someone shout my name very loudly. I looked up and saw Private Snooker sitting up in his bunk glaring at me and saying that some dirty rat had stolen his wrist watch. As I was the only person in the room at the time I assumed he was accusing me of the theft. I told him I had no idea what had happened to his watch and that I didn't appreciate being accused as a thief. Snooker then said something to the effect that if the shoe fits wear it and I became extremely angry and struck him on the shoulder. He then shouted that I was a thief and I hit him several times on the face. I feel that I was justified in hitting him because he had falsely accused me of being a barracks thief.

CROSS EXAMINATION

No, I do not think I can take the law into my own hands. I was extremely angry. No, I would not strike a military police if he questioned me concerning a theft. I did not dislike Private Snooker before this <sup>Mon. AM</sup> ~~incident~~ -- I was not looking for an excuse to settle old scores with him.

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The prosecution made (A) (no) argument.  
The defense made (A) (no) argument.  
The prosecution made (A) (no) closing argument.

Pursuant to Article 51c, the president instructed the court as to the elements of each offense charged, the presumption of innocence, reasonable doubt, and burden of proof.

Neither the prosecution nor the defense having anything further to offer, the court was closed. Thereafter, the court opened<sup>1</sup> and the president announced that, in closed session and upon secret written ballot, (the accused was found not guilty). (two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, the accused was found) :

Of all the Specifications and Charges: Guilty.

The trial counsel read the data as to age, pay, service, and restraint of the accused as shown on the charge sheet. The defense counsel stated that (the data was correct) (The trial counsel stated that he had no objections to submit.). (The attached evidence of previous convictions was offered) (and admitted) (in evidence as Prosecution Exhibit .....). The defense counsel stated that (the accused had no objection to the evidence of previous convictions). ( ).

## S A M P L E

After the accused was advised by the president of his right to present evidence in extenuation or mitigation, including the right to remain silent or to make a sworn or unsworn statement, (the defense counsel stated that he had nothing further to add). (the defense presented the following matters):

The accused made an unsworn statement through his counsel to the following effect: The accused likes the Army and plans to reenlist. He was provoked into fighting Snooker because Snooker appeared to suspect him of stealing. He returned voluntarily to his barracks after breaching his restriction and would like to have a chance to make a career of the Army. The accused has been restricted to the post since 9 June.

<sup>1</sup> "Parties to the trial" must be accounted for when court opens after being in closed session, but the accounting need not be shown in a summarized record. After a recess or adjournment, record should show, "All parties to the trial who were present when the court (adjourned) (recessed) were again present (except)." The reason for the subsequent absence of any member who was present at the arraignment must be shown (par. 41d(4), MCM).

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MCM, U.S., 1969, App. 10, now states in the instructions paragraph of the section on presentation of defense case that: "The president instructed the court in accordance with paragraph 73 of the MCM, including the elements of each offense, the presumption of innocence, reasonable doubt, and burden of proof as required by Article 51(c)."

The president instructed the court on the maximum permissible punishment which could be adjudged for the offense(s) of which the accused had been found guilty.

Neither the prosecution nor the defense having anything further to offer, the court was closed. Thereafter, the court opened and the president announced that in closed session and, upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring, the accused was sentenced:

To be confined at hard labor for three months and to forfeit \$50.00 per month for three months.

The court adjourned at 1130 hours, 18 June 1968.

#### AUTHENTICATION OF RECORD<sup>1</sup>

*Horace J. Keys*  
HORACE J. KEYS  
CPT, Inf, 998th Inf Trial Counsel  
20 June 1968

*Jack Q. Goodman*  
JACK Q. GOODMAN  
MAJ, Inf, 998th Inf President  
20 June 1968

I have examined the record of trial in the foregoing case.<sup>2</sup>

*Paul H. Smith*  
PAUL H. SMITH  
CPT, Inf, 998th Inf Defense Counsel  
20 June 1968

#### ACTION OF CONVENING AUTHORITY<sup>3</sup>

**S A M P L E**

Headquarters 998th Infantry Regiment  
(Command of convening authority)  
Fort Amherst, Ohio  
(Station or ship)

21 June 1968

In the foregoing case of Private John F. Day, RA 18756592 (SSAN: ), U. S. Army, Company F, 998th Infantry, the sentence is approved and will be duty executed. The prisoner will be confined in the Fort Amherst Stockade and the confinement will be served therein, or elsewhere as competent authority may direct.

*William B. Stock*  
WILLIAM B. STOCK  
Colonel, Infantry  
Commanding

<sup>1</sup> See paragraph 83c and appendix 9b (2), MCM.  
<sup>2</sup> See paragraph 82c, MCM.  
<sup>3</sup> See appendix 14b, MCM.

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EXTRACT OF MILITARY RECORDS OF PREVIOUS CONVICTIONS			
IDENTIFICATION			
LAST NAME - FIRST NAME - MIDDLE INITIAL DAY, John F. (SSAN: 1)	SERVICE NO. RA 18756592	GRADE Private E-2	ORGANIZATION Co F, 998th Inf Fort Amherst, Ohio
RECORD OF PREVIOUS CONVICTIONS BY COURTS-MARTIAL <sup>1</sup>			
TYPE OF COURT-MARTIAL Summary	CM ORDER OR SCM NO. 47	HEADQUARTERS 998th Inf	ARTICLE(S) 86
SYNOPSIS OF SPECIFICATION(S) INCLUDING DATE OF OFFENSE AWOL from 3 May 67 to 6 May 67			
SENTENCE AS APPROVED Reduction to lowest pay grade and forf of \$10.00			
DATE SENTENCE ADJUDGED 9 May 67	DATE SENTENCE APPROVED 11 May 67	I CERTIFY THE FOREGOING IS CORRECT <sup>2</sup> SIGNATURE <i>David R. Hale</i> TYPED OR PRINTED NAME, GRADE, ORGANIZATION OF PERSON SIGNING ENTRY DAVID R. HALE, CW2, USA, 998th Inf	
TYPE OF COURT-MARTIAL	CM ORDER OR SCM NO.	HEADQUARTERS	ARTICLE(S)
SYNOPSIS OF SPECIFICATION(S) INCLUDING DATE OF OFFENSE			
SENTENCE AS APPROVED			
DATE SENTENCE ADJUDGED	DATE SENTENCE APPROVED	I CERTIFY THE FOREGOING IS CORRECT <sup>2</sup> SIGNATURE	
TYPED OR PRINTED NAME, GRADE, ORGANIZATION OF PERSON SIGNING ENTRY			
TYPE OF COURT-MARTIAL	CM ORDER OR SCM NO.	HEADQUARTERS	ARTICLE(S)
SYNOPSIS OF SPECIFICATION(S) INCLUDING DATE OF OFFENSE			
SAMPLE			
SENTENCE AS APPROVED			
DATE SENTENCE ADJUDGED	DATE SENTENCE APPROVED	I CERTIFY THE FOREGOING IS CORRECT <sup>2</sup> SIGNATURE	
TYPED OR PRINTED NAME, GRADE, ORGANIZATION OF PERSON SIGNING ENTRY			
ATTESTING CERTIFICATE			
ORGANIZATION OF CUSTODIAN Hq, 998th Infantry	PLACE OF ORGANIZATION Fort Amherst, Ohio	DATE 10 June 1968	
I CERTIFY THAT I AM THE OFFICIAL CUSTODIAN OF THE MILITARY PERSONNEL RECORDS PERTAINING TO PREVIOUS CONVICTIONS BY COURT-MARTIAL OF THE ABOVE-NAMED PERSON, AND THAT THE FOREGOING IS A TRUE COPY OF THE ENTRIES CONTAINED THEREIN. <sup>3</sup>			
TYPED NAME, GRADE, AND OFFICIAL CAPACITY OF CUSTODIAN DAVID R. HALE, CW2, USA Personnel Officer		SIGNATURE <i>David R. Hale</i>	
<small><sup>1</sup>Only admissible previous convictions will be listed. To determine admissibility, see rules on the reverse hereof.</small> <small><sup>2</sup>This block will contain separate entries on the "signature" line and "typed or printed" identification line. If the service record certification block being extracted fails to contain the required: (a) Signature of the personnel records custodian, request that officer to take immediate corrective action; (b) Identification of the custodian of the conviction record, enter remark such as "(None)", "(Grade not shown)", "(Organization not shown)", as appropriate, on the second line of this block of the extract.</small> <small><sup>3</sup>For Army Personnel, the extract will be prepared from the Service Record or DA Form 26. For Air Force Personnel, the extract will be prepared from AF Form 1226.</small>			

DD FORM 1 MAY 62 493

PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE.

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## RULES FOR DETERMINING ADMISSIBILITY OF PREVIOUS CONVICTIONS

(See MCM, Paragraphs 68d and 75b(2))

Previous convictions must relate to offenses committed during a current enlistment, voluntary extension of enlistment, appointment, or other engagement or obligation for service of the accused, and during the three years next preceding the commission of any offense of which the accused stands convicted. When the last enlistment, appointment, or other engagement or obligation for service was terminated under other than honorable conditions, or when the accused deserted and subsequently fraudulently enlisted, all convictions by court-martial of offenses committed in the prior term of service, if within the three-year period, are admissible, even though such prior term of service was in an armed force other than the one in which he is serving at the time of trial. In computing the three-year period, periods of unauthorized absence as shown by the findings in the case or by the evidence of previous convictions

should be excluded.

For the purpose of determining the admissibility of previous convictions, retention of an accused beyond the normal expiration date of his term of service by operation of law shall not be deemed to create a new enlistment, a voluntary extension of enlistment, a new appointment, or other new engagement or obligation for service.

No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification shall, as to such charge or specification, be admissible as a previous conviction, until the finding of guilty has become final after review of the case has been fully completed.

## SAMPLE

## INTRODUCING EVIDENCE OF PREVIOUS CONVICTIONS

*NOTE: To be considered by a court-martial, previous convictions must be ADMITTED in evidence. Ordinarily, they are proved by introducing in evidence a duly authenticated extract copy of accused's military personnel record (DD Form 493). After the Record of Previous Convictions has been marked for identification and shown to the defense counsel, the introduction proceeds as follows:*

TC: Prosecution Exhibit \_\_\_\_\_ for identification, a duly authenticated extract copy of the accused's military personnel record of previous conviction(s) by court-martial, is offered in evidence as Prosecution Exhibit \_\_\_\_\_.

DC: (No objection). (The accused objects to \_\_\_\_\_ on the grounds that \_\_\_\_\_.)

LO (Prose): (Subject to objection by any member of the court). Prosecution Exhibit \_\_\_\_\_ for identification is (is not) admitted in evidence as Prosecution Exhibit \_\_\_\_\_.

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MCM, U.S., 1969, paragraph 75b(2), states that evidence of previous convictions is not limited to offenses similar to the one which the accused stands convicted. The evidence must, however, relate to offenses committed during the six years next preceding the commission of any offense of which the accused stands convicted. In computing the six-year period, periods of unauthorized absence as shown by the findings in the case or by the evidence of previous convictions should be excluded.

## INSTRUCTIONS FOR PREPARING AND ASSEMBLING A RECORD OF TRIAL BY SPECIAL COURT-MARTIAL WHEN A VERBATIM RECORD IS NOT PREPARED

**USE OF FORM.**—This form for a summarized record of trial by special court-martial will be used in preparing records in cases to which it may be reasonably adapted without extensive alterations. If a particular page of the form does not provide adequate space to record the actual proceedings in accordance with appendix 10a, MCM, that page will not be used; instead that part of the record will be typed on regular legal length bond paper, using appendix 10 as a guide.

**DELETIONS.**—In preparing the record, inapplicable words of the printed text must be deleted. Deletions may be made by striking over the inapplicable word or phrase, or by ruling it out in ink. When several consecutive lines are to be deleted, a single line, ruled in ink, from upper left to lower right will suffice. No deletion or remark is necessary when there are no exceptions after an item ending "except as indicated below."

**RECORDING TESTIMONY.**—A summarized record need contain only a summarized report of the testimony as indicated in paragraph 83b (2) and page 533, MCM. However, unless otherwise prescribed by departmental regulations, the convening authority may direct that a summarized record contain a verbatim report of the testimony of witnesses if a reporter was appointed and actually served in that capacity throughout the trial.

**COPIES.**—In addition to the original record and allied papers, prepare one copy of the record of proceedings in court, including copies of all exhibits received in evidence (or description thereof), for each accused. The convening authority may direct the preparation of other copies.

**ARRANGEMENT.**—When forwarded by the convening authority, a summarized record of trial by special court-martial will be arranged and bound with allied papers as shown below. The trial counsel will arrange and bind the record as shown except for the items shown in *italics* which are to be inserted by the convening authority.

1. Front cover and chronology sheet.
2. Court-martial data sheet.
3. *Court-martial orders; four copies promulgating the result of trial as to each accused.*
4. Charge sheet (unless included in record of trial proper).
5. Any papers which accompanied the charges when referred for trial (unless included in the record proper).
6. Records of former trials.
7. Requests by counsel and action of the convening authority taken thereon (e.g., *requests concerning delay, witnesses and depositions*).
8. Record of trial proper in the following order:
  - (a) Receipt of accused, or certificate of trial counsel, showing delivery of copy of record to accused.
  - (b) Record of proceedings in court.
  - (c) *Action of convening authority.*
  - (d) Exhibits admitted in evidence.
  - (e) Clemency papers.
  - (f) Offered exhibits not received in evidence, but which are attached at request of counsel.
9. Briefs of counsel.
10. This back cover sheet.

S A M P L E

The reference in paragraph three, Recording Testimony, to page 533, MCM, 1951, has been replaced by reference to app. 10a, MCM, 1969.

## APPENDIX B

COMPANY F, 998TH INFANTRY  
FORT AMHERST, OHIO 86507

10 May 1968

CDEF/JA

SUBJECT: Court-Martial Charges in the Case of Pvt. John F. Day, RA 18756592 (SSAN:  
( ), Co F, 998th Inf

Commanding Officer  
2d Battalion  
998th Infantry  
Fort Amherst, Ohio 86507

1. In compliance with paragraph 32f(4), MCM, 1969, there are forwarded herewith (incl 1) court-martial charges which probably will not be disposed of either under Article 15 or by reference to a summary court-martial.
2. Summaries of expected testimony and documentary evidence upon which the charges are based are inclosed (incl 2).
3. All material witnesses are expected to be available at the time of trial.
4. There is evidence of one admissible previous conviction of accused (para 75b(2), MCM, 1969). A duly authenticated extract copy of accused's Military Records of Previous Convictions showing such conviction is inclosed (incl 3).
5. The character of the accused's military service prior to the offenses charged has been poor.
6. I recommend trial by special court-martial.

3 Incl	/s/ Lauren A. Dill
1. Charge Sheet (in trip)	/t/ LAUREN A. DILL
2. Summaries of Expected Testimony (in trip)	Captain, Inf
3. Record of Previous Convictions (in trip)	Commanding

## CHAPTER 5

### THE ARTICLE 32 INVESTIGATION

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#### 5-1. References.

- a. Article 32, Uniform Code of Military Justice (UCMJ).
- b. Paragraph 34, *Manual for Courts-Martial, United States, 1969* (MCM).

#### 5-2. Forms and Guides.

DD Form 457.

#### 5-3. Discussion.

- a. Upon receipt of charges involving offenses so serious that it may be appropriate to forward them for trial by general court-martial, the summary court-martial convening authority will appoint an officer to investigate the charges in accordance with paragraph 34, MCM, 1969, and article 32, UCMJ.
- b. The investigation should be conducted by a field grade officer where possible and must include a thorough inquiry into the truth of the matter set forth in the charges, the form of the charges and all other matters necessary to an intelligent and just disposition of the case.

#### 5-4. Procedures.

- a. The article 32 investigating officer is appointed by means of an indorsement to the basic letter of transmittal (see app A, chap 5). The charges and allied papers together with sufficient copies of DD Form 457 (Investigating Officer's Report) are forwarded with the indorsement directly to the investigating officer.

- b. The summary court-martial convening authority is required to forward the charges together with the completed Article 32 investigation to the officer exercising general courts-martial jurisdiction within 8 days of the date the accused is ordered into arrest or confinement, or report in writing to that officer the reason for delay. Therefore, every effort should

be made to expedite the completion of the investigation. The legal clerk may assist in this regard by arranging through the accused's unit to have him present at the investigation and by arranging for the presence of necessary witnesses. In complicated cases the investigating officer may need additional time to complete the investigation. He may explain necessary delays in the "Remarks" section of DD Form 457.

c. As indicated in the sample indorsement, the investigating officer should be advised to contact the staff judge advocate immediately to receive necessary guidance and to alert the staff judge advocate of the probable requirement for counsel to represent the accused.

d. There is no requirement that the investigation proceedings be recorded verbatim. The testimony of the witnesses is ordinarily reduced to a sworn or affirmed statement embodying the substance of the testimony. The legal clerk may be called upon to be present at the investigation to make a summarized record of the proceedings.

e. Upon completion of the investigation, the report of the investigating officer is prepared in an original and four copies (one additional copy for each accused in excess of one) for the signature of the investigating officer. All copies of the report should be identical and include all documentation. In certain cases true copies may be required and are acceptable. However, thermofax copies are considered objectionable since they tend to flake and fade.

f. The completed report of investigation is forwarded to the summary court-martial convening authority by completion of the indorsement on page 1 of DD Form 457 (app B, chap 5).

g. If the summary court-martial convening authority determines that the case should be

tried by general court-martial, the legal clerk will prepare an indorsement for the signature of the convening authority through the special court-martial convening authority, to the general court-martial convening authority, "ATTN: Staff Judge Advocate." The indorsement should contain:

- (1) the convening authority's specific recommendations as to disposition;
- (2) a statement concerning availability

of witnesses and whether depositions are required to be taken;

(3) a statement that a copy of the substance of the testimony taken on both sides has been furnished the accused; and

(4) any other matters required by command directives or which are considered to warrant the immediate attention of the general court-martial convening authority (app C, chap 5).

## APPENDIX A

ABCD-CO (31 May 68)

1st Ind

SUBJECT: Court-Martial Charges Against Private (E-3) James D. Bind, RA 99 888 777 (SS-AN: )

Headquarters Support Command, Fort Lincoln, Nebraska, 31 May 1968

TO: Major Roger A. Young, Headquarters, 3d Battalion, 99th Infantry Regiment, Fort Lincoln, Nebraska

1. You are designated to investigate the inclosed charges against Private (E-3) James D. Bind, RA 99 888 777 (SSAN: ), Headquarters and Headquarters Company, 2d Supply and Transportation Battalion, 27th Infantry Division, Fort Lincoln, Nebraska.
2. Your investigation will be conducted in conformity with paragraph 34, MCM, and Article 32, UCMJ.
3. You will contact the Office of the Staff Judge Advocate for guidance and assistance prior to the commencement of the investigation.
4. A report of your investigation will be submitted in quintuplicate on DD Form 457 (Appendix 7, MCM, 1969) to reach this headquarters not later than 72 hours after the receipt of this communication.

FOR THE COMMANDER:

LEMUEL Q. SMART  
Captain, Inf  
Adjutant

## APPENDIX B

INVESTIGATING OFFICER'S REPORT (Of charges under the provisions of Article 32, Uniform Code of Military Justice, and paragraph 34, Manual for Courts-Martial, U.S.)			2d INDORSEMENT
FROM: (Grade, name and organization of investigating officer) MAJ Roger A. Young, Hq 3d Bn, 99th Infantry Regt, Ft Lincoln, Neb			DATE OF REPORT (Date Prepared)
TO: (Title and organization of officer who directed report to be made) Commanding Officer, 99th Inf Regt, Ft Lincoln, Nebraska			
GRADE AND NAME OF ACCUSED PFC (E-3), Bind, James D. (SSAN: )	SERVICE NUMBER RA 99888777	ORGANIZATION Co J, 99th Inf Regt Fort Lincoln, Nebraska	DATE OF CHARGES (Date on page 1 of charge sheet)
(Check appropriate answer)			
1. IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 32, UNIFORM CODE OF MILITARY JUSTICE, AND PARAGRAPH 34, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES (Exhibit 1) APPENDED HERETO. (If, and as soon as, it is determined the accused elects not to be represented by counsel or by qualified counsel during the investigation, the investigating officer will complete in ink items 1 through 4, except 4f, and will ask the accused to sign item 4e.)			YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
2. AT THE OUTSET OF THE INVESTIGATION I READ TO THE ACCUSED THE PROVISIONS OF ARTICLE 31, UNIFORM CODE OF MILITARY JUSTICE, AND ALSO ADVISED HIM:			<input checked="" type="checkbox"/>
a. OF THE NATURE OF THE OFFENSE(S) CHARGED AGAINST HIM			<input checked="" type="checkbox"/>
b. OF THE NAME OF THE ACCUSER			<input checked="" type="checkbox"/>
c. OF THE NAMES OF THE WITNESSES AGAINST HIM SO FAR AS KNOWN BY ME			<input checked="" type="checkbox"/>
d. THAT THE CHARGES WERE ABOUT TO BE INVESTIGATED BY ME			<input checked="" type="checkbox"/>
e. OF HIS RIGHT, UPON HIS REQUEST, TO HAVE COUNSEL REPRESENT HIM AT THE INVESTIGATION, EITHER:			<input checked="" type="checkbox"/>
(1) CIVILIAN COUNSEL, IF PROVIDED BY HIM, OR			<input checked="" type="checkbox"/>
(2) MILITARY COUNSEL OF HIS OWN SELECTION, IF SUCH COUNSEL BE REASONABLY AVAILABLE, OR			<input checked="" type="checkbox"/>
(3) COUNSEL, QUALIFIED UNDER ARTICLE 27(b), APPOINTED BY THE OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION			<input checked="" type="checkbox"/>
f. OF HIS RIGHT TO CROSS-EXAMINE ALL AVAILABLE WITNESSES AGAINST HIM			<input checked="" type="checkbox"/>
g. OF HIS RIGHT TO PRESENT ANYTHING HE MIGHT DESIRE IN HIS OWN BEHALF, EITHER IN DEFENSE OR MITIGATION			<input checked="" type="checkbox"/>
h. OF HIS RIGHT TO HAVE THE INVESTIGATING OFFICER EXAMINE AVAILABLE WITNESSES REQUESTED BY HIM			<input checked="" type="checkbox"/>
i. OF HIS RIGHT TO MAKE A STATEMENT IN ANY FORM			<input checked="" type="checkbox"/>
j. OF HIS RIGHT TO REMAIN SILENT OR TO REFUSE TO MAKE ANY STATEMENT REGARDING ANY OFFENSE OF WHICH HE WAS ACCUSED OR CONCERNING WHICH HE IS BEING INVESTIGATED			<input checked="" type="checkbox"/>
k. THAT ANY STATEMENT MADE BY HIM MIGHT BE USED AS EVIDENCE AGAINST HIM IN A TRIAL BY COURT-MARTIAL			<input checked="" type="checkbox"/>
3. a. THE ACCUSED REQUESTED MILITARY COUNSEL BY NAME			
b. NAME AND GRADE OF SUCH COUNSEL		ORGANIZATION	<input checked="" type="checkbox"/>
c. MILITARY COUNSEL REQUESTED BY NAME WAS QUALIFIED WITHIN THE MEANING OF ARTICLE 27(b), UNIFORM CODE OF MILITARY JUSTICE			N/A
d. IF ANSWER TO PRECEDING ITEM WAS "NO", ACCUSED WAS INFORMED THAT SUCH UNQUALIFIED COUNSEL MAY NOT REPRESENT HIM AT ANY GENERAL COURT-MARTIAL			N/A
e. MILITARY COUNSEL REQUESTED BY NAME WAS REASONABLY AVAILABLE. (If not available, explain in item 18, having reference to paragraph 34c, Manual for Courts-Martial.)			N/A
f. THE ACCUSED STATED HE WOULD BE REPRESENTED BY CIVILIAN COUNSEL			<input checked="" type="checkbox"/>
g. NAME AND ADDRESS OF SUCH COUNSEL		MEMBER OF THE BAR OF	
h. (This item to be used by accused's civilian counsel only)			S A M P L E Place and date
I HEREBY ENTER MY APPEARANCE FOR THE ABOVE-NAMED ACCUSED AND REPRESENT THAT I AM A MEMBER OF THE BAR OF _____			
(Signature of Counsel)			
4. a. THE ACCUSED REQUESTED THAT COUNSEL BE APPOINTED BY THE GENERAL COURT-MARTIAL AUTHORITY TO REPRESENT HIM			
b. NAME AND GRADE OF SUCH APPOINTED COUNSEL JOHN D. LAW, Major, JAGC		ORGANIZATION Hq, 199th Inf Div, Ft Lincoln, Neb	<input checked="" type="checkbox"/>
c. APPOINTED COUNSEL (as in b above) WAS QUALIFIED WITHIN THE MEANING OF ARTICLE 27(b), UNIFORM CODE OF MILITARY JUSTICE			<input checked="" type="checkbox"/>
d. IF ANSWER TO PRECEDING ITEM (4c) IS "NO", ACCUSED SPECIFICALLY WAIVED COUNSEL WITH SUCH QUALIFICATIONS			N/A
e. (To be signed by accused if answer to 3e and 4a, or 3c, or 4c was "NO". If accused fails to sign, investigating officer will explain circumstances in detail in item 18)			
Date _____			
I HAVE BEEN INFORMED OF MY RIGHT TO REPRESENTATION AT THE INVESTIGATION BY COUNSEL QUALIFIED UNDER ARTICLE 27(b), UNIFORM CODE OF MILITARY JUSTICE. I HEREBY WAIVE MY RIGHT TO (SUCH QUALIFIED COUNSEL) (COUNSEL).			
(Signature of Accused)			
NOTE: If additional space is required for any item, enter the additional material on a separate sheet. Be sure to identify such material with the proper numerical and, when appropriate, lettered heading (Example: "3c"). Securely attach any additional sheet to the form and add a note in the appropriate item of the form: "See additional sheet." Any matters considered pursuant to paragraph 34, MCM, which are not identifiable with some other heading in the form should be entered in item 18.			

DD FORM 1 JUN 59 457

PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE.

AGO 6868A

(Check appropriate answer continued)		YES	NO
4. COUNSEL FOR THE ACCUSED WAS PRESENT THROUGHOUT THE INVESTIGATION (If the accused waives the right to have counsel present throughout all or a part of the investigation after having requested counsel, state the circumstances and the particular proceedings conducted in the absence of such counsel.)		X	
<b>S A M P L E</b>			
5. a. IN THE PRESENCE OF THE ACCUSED I HAVE INTERROGATED ALL AVAILABLE WITNESSES UNDER OATH OR AFFIRMATION AND HAVE EXAMINED ALL DOCUMENTARY EVIDENCE ON BOTH SIDES.		X	
b. I HAVE REDUCED THE MATERIAL TESTIMONY GIVEN BY EACH SUCH WITNESS UNDER DIRECT AND CROSS-EXAMINATION TO A SWORN OR AFFIRMED WRITTEN STATEMENT EMBODYING THE SUBSTANCE OF THE TESTIMONY TAKEN ON BOTH SIDES.		X	
c. THE SWORN OR AFFIRMED WRITTEN STATEMENTS OF SUCH WITNESSES ARE APPENDED HERETO AS INDICATED:		X	
NAME AND GRADE OF WITNESSES WHO WERE PRESENT	ORGANIZATION OR ADDRESS	EXHIBIT NUMBER	
CPL Joe Dokes	Co J, 99th Inf Regt	2	
Miss Mabel Schnorr	1321 Lover's Lane, Lincoln, Neb	3	
PFC William B. Yeats	Co A, 4th Transportation Bn	4	
PVT Vincent C. Farrell	Co A, 4th Transportation Bn	5	
CPT Gregory F. Yosarian	Co J, 99th Inf Regt	6	
PVT Tristam S. Windsor	Co J, 99th Inf Regt	7	
PVT Roger Shandy	Co J, 99th Inf Regt	8	
PVT Wilbur C. Miller	Co J, 99th Inf Regt	9	
6. a. THE SUBSTANCE OF THE EXPECTED TESTIMONY OF EACH OF THE FOLLOWING ABSENT WITNESSES WHOSE PRESENCE WAS NOT REQUESTED BY THE ACCUSED, OR WHO, HAVING BEEN REQUESTED, WERE NOT AVAILABLE, OR FOR WHOM THE REQUEST WAS WITHDRAWN, WAS OBTAINED FROM SUCH WITNESSES IN THE FORM OF A SWORN OR AFFIRMED WRITTEN STATEMENT, OR WAS STIPULATED TO BY THE ACCUSED IN WRITING. SUCH STATEMENTS OR STIPULATIONS ARE APPENDED HERETO AS INDICATED:		X	
NAME AND GRADE OF ABSENT WITNESSES	ORGANIZATION OR ADDRESS	EXHIBIT NUMBER	
SFC Samuel Bender	Co J, 99th Inf Regt	10	
b. A COPY OF EACH SUCH WRITTEN STATEMENT HAS BEEN SHOWN TO THE ACCUSED.		X	
c. IF AN ABSENT WITNESS IS REQUESTED BY THE ACCUSED BUT IS NOT AVAILABLE, ENTER A PROPER EXPLANATION			
SFC Samuel Bender, Co J, 99th Inf Regt, was requested by the accused at the outset of the investigation but was not available due to his absence. He is presently participating in Operation Banana Head at Banana River, Florida.			
7. a. THE FOLLOWING DOCUMENTS HAVE BEEN EXAMINED, SHOWN TO THE ACCUSED, AND ARE APPENDED AS INDICATED (describe documents)		EXHIBIT NUMBER	
Stmt of accused dated 00 Jun 19		14	
b. IF ANY DOCUMENTS MADE AVAILABLE TO THE INVESTIGATING OFFICER WERE NOT EXAMINED OR WERE EXAMINED BUT NOT SHOWN TO THE ACCUSED, OR WERE EXAMINED BUT ARE NOT APPENDED, STATE THE REASONS		N/A	
8. a. THE FOLLOWING DESCRIBED REAL EVIDENCE WAS EXAMINED, SHOWN TO THE ACCUSED, AND IS NOW PRESERVED FOR SAFEKEEPING AS INDICATED:			
1 Colt & Wesson Cal. 32 pistol (Broken firing pin) located in the office of 932 MP Det (CI), Ft Lincoln, Neb		X	
b. IF CERTAIN REAL EVIDENCE WHICH WAS EXAMINED WAS NOT SHOWN TO THE ACCUSED, STATE THE REASONS			
N/A			

Appendix B, Continued

(Check appropriate answer continued)		YES	NO
9. THE ACCUSED AFTER HAVING BEEN INFORMED OF HIS RIGHT TO MAKE A STATEMENT OR REMAIN SILENT:			
a. STATED THAT HE DID NOT DESIRE TO MAKE A STATEMENT		X	
b. MADE A STATEMENT APPENDED HERETO (Exhibit 14).		X	
c. THE CIRCUMSTANCES OF THE TAKING OF ANY CONFESSION OR ADMISSION OF ACCUSED WERE INQUIRED INTO BY ME AND SUCH CONFESSION OR ADMISSION APPEARS TO HAVE BEEN OBTAINED IN ACCORDANCE WITH ARTICLE 31, UNIFORM CODE OF MILITARY JUSTICE, AND/OR THE 5TH AMENDMENT. (Where appropriate, attach statement of person taking confession or admission showing circumstances of taking)		X	
d. THE ACCUSED, AFTER BEING ADVISED THAT HE DID NOT HAVE TO MAKE ANY STATEMENT WITH RESPECT TO IT, WAS SHOWN THE CONFESSION OR ADMISSION AND DID NOT CONTEST IT AS BEING NOT IN COMPLIANCE WITH ARTICLE 31, UNIFORM CODE OF MILITARY JUSTICE. (If the confession or admission was contested, attach accused's explanation of the circumstances.)		X	
10. a. THERE WERE REASONABLE GROUNDS FOR INQUIRING INTO THE MENTAL RESPONSIBILITY OF THE ACCUSED AT THE TIME OF THE ALLEGED OFFENSE (MCW, 120b)		X	
b. THERE WERE REASONABLE GROUNDS FOR INQUIRING INTO THE MENTAL CAPACITY OF THE ACCUSED AT THE TIME OF THE INVESTIGATION (MCW, 120c)		X	
c. IF GROUNDS FOR INQUIRY AS TO THE ACCUSED'S MENTAL CONDITION EXISTS, STATE REASONS THEREFOR AND ACTION TAKEN			
d. A REPORT OF A (BOARD OF MEDICAL OFFICERS) (PSYCHIATRIST) IS APPENDED (Exhibit )		X	
11. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL. (If any essential witness(es) will not be so available, list name, address, reason for nonavailability, and recommendation, if any, whether a deposition should be taken. List estimated date of separation and/or transfer, if pertinent and available)		X	
CPL Joe Dokes, Co J, is expected to depart this command c/a 00 Jul 19 for service in the Far East.			
Miss Mabel Schnorr, Lincoln, Nebraska, is presently being admitted as a patient at the Lincoln Center Memorial Hospital, Lincoln, Nebraska, and will not be able to testify personally in the event of trial. A deposition appears to be appropriate and should be taken.			
12. EXPLANATORY OR EXTENUATING CIRCUMSTANCES ARE SUBMITTED HEREWITH.		X	
S A M P L E			
13. a. I HAVE INVESTIGATED AND FIND 2 PREVIOUS CONVICTION(S) OF OFFENSES COMMITTED WITHIN THE THREE YEARS NEXT PRECEDING THE COMMISSION OF AN OFFENSE WITH WHICH THE ACCUSED IS NOW CHARGED (MCW, 193J, per 736(2)) AND DURING:		X	
(1) A CURRENT ENLISTMENT, VOLUNTARY EXTENSION OF ENLISTMENT, APPOINTMENT, OR OTHER ENGAGEMENT OR OBLIGATION FOR SERVICE OF THE ACCUSED, OR			
(2) THE LAST ENLISTMENT, APPOINTMENT, OR OTHER ENGAGEMENT OR OBLIGATION FOR SERVICE OF THE ACCUSED WHICH TERMINATED UNDER OTHER THAN HONORABLE CONDITIONS OR FROM WHICH THE ACCUSED DESERTED AND SUBSEQUENTLY ENLISTED.			
b. AN EXTRACT COPY OF THE ACCUSED'S MILITARY RECORDS OF PREVIOUS CONVICTIONS IS APPENDED (Exhibit 15 )		X	
14. IN ARRIVING AT MY CONCLUSIONS I HAVE CONSIDERED NOT ONLY THE NATURE OF THE OFFENSE(S) AND THE EVIDENCE IN THE CASE, BUT I HAVE LIKEWISE CONSIDERED THE AGE OF THE ACCUSED, HIS MILITARY SERVICE, AND THE ESTABLISHED POLICY THAT TRIAL BY GENERAL COURT-MARTIAL WILL BE RESORTED TO ONLY WHEN THE CHARGES CAN BE DISPOSED OF IN NO OTHER MANNER CONSISTENT WITH MILITARY DISCIPLINE.		X	
15. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM AND THE MATTERS CONTAINED THEREIN ARE TRUE, TO THE BEST OF MY KNOWLEDGE AND BELIEF. (If the answer is "NO", explain and indicate recommended action on additional sheet).		X	
16. ANY INCLOSURES RECEIVED BY ME WITH THE CHARGES AND NOT LISTED ABOVE AS AN EXHIBIT ARE SECURELY FASTENED TOGETHER AND APPENDED HERETO AS ONE EXHIBIT (Exhibit 16. If no such inclosures were received, check "NO").		X	
17. (Check appropriate box ONLY if trial is recommended) TRIAL BY <input checked="" type="checkbox"/> GENERAL <input type="checkbox"/> SPECIAL <input type="checkbox"/> SUMMARY		COURT-MARTIAL IS RECOMMENDED.	

Appendix B, continued

The reference to the MCM in item 10b has been changed to paragraph 120d in MCM, U.S., 1969.

MCM, U.S., 1969, paragraph 75b(2), states that evidence of previous convictions is not limited to offenses similar to the one which the accused stands convicted. The evidence must, however, relate to offenses committed during the six years next preceding the commission of any offense of which the accused stands convicted. In computing the six-year period, periods of unauthorized absence as shown by the findings in the case or by the evidence of previous convictions should be excluded. The previous conviction rule at item 13 on opposite page will be changed on future printings of the form.

18. REMARKS (If more space is required, attach additional sheets. Check  YES  NO if additional sheets are attached)

The Investigating Officer would continue any remarks and items here, identifying particular item number, Example:

Item 5c: \_\_\_\_\_

Item 6c: \_\_\_\_\_

Item 8a: \_\_\_\_\_

Examples of matters to be covered here are:

1. Discussion of evidence, credibility of witnesses, and sufficiency of proof.
2. Explanation of delays in completing investigation.
3. Recommendations to dismiss, reduce, or otherwise change any specification.
4. Statement of any anticipated defenses and any expected difficulties in proving specifications on which trial is recommended.
5. Any other recommendations.
6. Any other matters which should be known to the convening authority and subsequent reviewing authorities.

S A M P L E

19. I HAVE NO PREVIOUS CONNECTION WITH THIS CASE OR ANY CLOSELY RELATED CASE. (If any connection is indicated, attach a full explanation.) I AM NOT AWARE OF ANY REASONS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (If any reasons appear to exist, attach a statement giving full details.)

TYPED NAME, GRADE, AND ORGANIZATION OF INVESTIGATING OFFICER	SIGNATURE
ROGER A. YOUNG, MAJ, Inf, Hq 3d Bn, 99th Inf	<i>Roger A. Young</i>

\* U. S. GOVERNMENT PRINTING OFFICE: 1959 O - 510372

Appendix B, Continued

## APPENDIX C

ABCDSC (21 Oct 67)

3d Ind

SUBJECT: Court-Martial Charges Against Private First Class E-3 Elias A. Phillips, US 78 565  
498 (SSAN: )

Headquarters Support Command, 5th Infantry Division, Camp Runamuck, Louisiana 60251, 30  
October 1967

TO: Commanding General, 5th Infantry Division, ATTN: ABCDJA, Camp Runamuck, Louisiana 60251

1. I have considered the attached charges against Private First Class E-3 Elias A. Phillips, US 78 565 498 (SSAN: ), Headquarters and Headquarters Company, 5th Supply and Transport Battalion, 5th Infantry Division, and the report of investigation made in accordance with paragraph 34, Manual for Courts-Martial, United States, 1969, and Article 32, UCMJ.
2. A copy of the substance of the testimony on both sides during the investigation has been furnished to the accused.
3. To the best of my knowledge, all material witnesses will be available in the event of trial by court-martial.
4. Subject EM has been counseled by Chaplain Eric M. Mass, Headquarters Support Command, 5th Infantry Division, in compliance with AR 633-56 (Incl 5).
5. In my opinion, Private First Class Phillips should be discharged from the service. I recommend trial by general court-martial.

5 Incl

Added 2 incl

4. Report of Investigation

5. Statement of Chaplain

ALLEN F. ETHAN

Colonel, Inf

Commanding

## CHAPTER 6

### ORDERS

#### 6-1. References.

- a. Uniform Code of Military Justice (UCMJ).
- b. *Manual for Courts-Martial, United States, 1969* (MCM).
- c. DA Pam 27-5.
- d. AR 310-10.
- e. AR 27-10.

#### 6-2. Discussion.

Army Regulation 27-10, Chapter 12, prescribes the format to be used in the preparation of courts-martial and convening orders. Appendix 4, MCM, 1969, shows the contents of a convening order.

There are five different types of orders which are used in the administration of military justice:

- a. court-martial convening orders;
- b. summary court-martial orders;
- c. special court-martial orders;
- d. general court-martial orders; and
- e. nonjudicial punishment orders.

#### 6-3. Court-Martial Convening Orders.

These orders are used to convene each of the three types of courts-martial. A court-martial may be convened by verbal orders; however, if this does occur, a confirming order should be

published as soon thereafter as practicable. Court-martial convening orders are numbered consecutively, beginning at the start of each calendar year, and bear the date of publication. The first numbered publication in a series issued in any calendar year will bear a notation above the heading of the first page showing the number of the last order issued for that series for the past year (para 9a(2), AR 310-10). A separate order should be used to appoint each court and for each amendment. There is no limit to the number of orders which may be published per day. When, because of an error, an order must be corrected, the corrected order, bearing the same number as the faulty order, should bear the phrase "CORRECTED COPY—DESTROY ALL OTHERS" at the top and bottom of the order. Convening orders should not be amended more than twice because of the margin of error involved. If there are two changes to a convening order and a third change becomes necessary, a new court-martial should be convened withdrawing any unarraigned cases from the previous court and referring them to the new court. For obvious reasons of proceedings in revision, an order convening a court-martial should never be revoked.

a. *Opening Paragraph.* The opening paragraph of general and special court-martial convening orders will specify the kind of court being appointed and the place and time it is to meet, and may include special instructions or limitations.

#### *Example 1:*

A special court-martial is hereby ordered to convene at Fort Blank, Missouri, at 0900 hours, 23 September 1968, or as soon thereafter as practicable, for the trial of such persons as may be properly brought before it. The court will be constituted as follows:

*Example 2:*

A special court-martial is hereby ordered to convene at Camp Swampy, Kansas, at 0900 hours, 1 October 1968, or as soon thereafter as practicable, for the trial of Private E-1 Horatio M. Lightfinger, RA 12 345 678 (SSAN: 112-21-2353), Co M, 6180th Inf, ONLY. The court will be constituted as follows:

*Example 3:*

A special court-martial is hereby ordered to convene at Fort Potomac, Virginia, at 0900 hours, 3 February 1968, or as soon thereafter as practicable, for the trial of enlisted persons who make a timely request pursuant to Article 25(c), UCMJ, that enlisted persons serve on it. The court will be constituted as follows:

*b. Members.* The court-martial members are listed in the order of grade and rank, including the service number, social security account number, organization of each person, and branch of service. An order detailing enlisted persons as members of a court must show the company, battery, troop, detachment, or corresponding unit of each enlisted member of the court.

*Example:*

MEMBERS

LTC Ralph M. Herron, 083361 (SSAN: \_\_\_\_\_), INF, 803d INF.  
LTC Robert D. Peckhen, 062819 (SSAN: \_\_\_\_\_), ARMOR, 803d INF.  
MAJ Cornelius C. Dobbins, 0206371 (SSAN: \_\_\_\_\_), QMC, 803d INF.  
SGM (E-9) Billy S. Rose, RA 1874733 (SSAN: \_\_\_\_\_), A BTRY, 6th HOW BN.  
MSG (E-8) Luna J. Brown, RA 13422166 (SSAN: \_\_\_\_\_), B BTRY, 6th HOW BN.

*c. Counsel.* After the list of court members, the designation of the trial counsel and defense counsel and each of their assistants, together with their legal qualifications, are shown.

*Example:*

COUNSEL

CPT JOHN M ITAMS, 021161321 (SSAN: \_\_\_\_\_), Inf, 1st BN, 69th Inf,  
TRIAL COUNSEL, not a lawyer in the sense of Art 27  
1LT WILBERT N BROWN, 02142180 (SSAN: \_\_\_\_\_), Inf, 1st BN, 69th Inf, ASSISTANT TRIAL COUNSEL, not a lawyer in the sense of Art 27  
CPT PAUL H SMITH, 02653822 (SSAN: \_\_\_\_\_), Inf, 1st Bn, 69th Inf, DEFENSE COUNSEL, member of Bar of Supreme Court of Missouri  
1LT LOUIS P JORDAN, 02912111 (SSAN: \_\_\_\_\_), Inf, 1st Bn, 69th Inf, ASSISTANT DEFENSE COUNSEL, not a lawyer in the sense of Art 27

*d. Closing and Authentication.*

(1) *Closing.* When a new court-martial is convened and it is intended to have it try charges previously referred to another court, the new convening order should include a provision withdrawing such charges from the old court and referring them to the new court.

*Example:*

All unarraigned cases in the hands of the trial counsel of the special court-martial convened by CMCO 120, this Headquarters, dated 1 August 1968, will be brought to trial before the court hereby convened.

**BY ORDER OF COLONEL STOCK:**

(2) *Authentication.* Court-martial orders are authenticated by placing at the bottom either the personal signature of the convening authority or, more commonly, a command line and an "official" section. The command line gives the name of the individual who is issuing the directive.

*Examples:***BY COMMAND OF MAJOR GENERAL JONES:**

(When commander is a general officer)

**BY ORDER OF COLONEL WILSON:**

(When commander is below grade of brigadier general)

The "official" section includes:

- (a) the typed signature block of the chief of staff, adjutant general or adjutant.
- (b) the word "OFFICIAL" in capital letters at the left margin on the same line as the first line of the signature block of the chief of staff—adjutant general or adjutant.
- (c) the typed signature block of the adjutant general, adjutant or executive officer placed five lines below the word "OFFICIAL" and indented two spaces from the left of margin.
- (d) either the written signature of the adjutant general, adjutant or executive officer, as appropriate, or the official impression and seal of the headquarters placed over the word "OFFICIAL" (para 10c(6), AR 310-10).

*Examples:***OFFICIAL:**

HENRY Y. SMITH  
Colonel, GS  
Chief of Staff

ROGER R. ROSE  
LTC, AGC  
Adjutant

**OFFICIAL:**

JOHN J. JONES  
LTC, AGC  
Adjutant General

WAYNE W. WILLIAMS  
CW2, USA  
Assistant Adjutant General

e. *Amendments.* The amending order may relieve the person concerned and appoint his successor. It should not merely delete certain names and add others.

*Example 1:*

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

COURT-MARTIAL CONVENING ORDER  
NUMBER 151

2 November 1968

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

BY ORDER OF COLONEL STOCK:

*Example 2:*

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

COURT-MARTIAL CONVENING ORDER  
NUMBER 158

15 November 1968

The following members are detailed to SPCM convened by CMCO 150 this Headquarters, dated 1 November 1968, as amended by CMCO 151, this Headquarters, dated 2 November 1968, for the trial of PVT (E-2) JOHN F. DAY, RA 18756592 (SSAN: ), Co F, 998th INF, only:

MSG (E-8) DWAN V KORNIG, RA 13216580 (SSAN: ), Hq & Hq Co, 998th Inf

MSG (E-8) OTHO BARNES, RA 12516391 (SSAN: ), Co G, 998th Inf

MSG (E-8) SAMUEL A SERTER, RA 15373864 (SSAN: ), Co A, 998th Inf

BY ORDER OF COLONEL STOCK:

*f. Summary court-martial convening orders may follow the following format:*

DEPARTMENT OF THE ARMY  
HEADQUARTERS 14TH ENGINEER BATTALION  
Fort Marshall, Iowa 61250

COURT-MARTIAL CONVENING ORDER  
NUMBER 6

19 May 1968

Effective this date Major Jacob E. Muller, 094041 (SSAN: ), CE, 14th Engineer Battalion, is detailed a summary court-martial.

BY ORDER OF COLONEL NEWMAN:

OFFICIAL:

J. R. HARRYTON  
Major, AGC  
Adjutant

s/Wayne E. Alkey  
t/WAYNE E. ALKEY  
CW3, USA  
Asst Adjutant General

#### 6-4. Court-Martial Orders.

Court-martial orders are used to promulgate the results of trial and initial action of the convening authority for summary, special, or general court-martial, and any subsequent action taken on the case. They are titled respectively summary, special, or general court-martial orders. The order which announces the result of trial and initial action of the convening authority is referred to as an "initial" or "promulgating" order. Orders issued subsequent to the initial order are referred to as "supplementary" orders. Orders within each category (summary, special, or general) are numbered consecutively beginning with the start of each calendar year. An order promulgating the result of trial by each summary, special, or general court-martial and any action by the convening or higher authorities on the record of trial, although not necessary to the validity of the trial, will be issued whether such result was an acquittal or otherwise and regardless of the action of the convening or higher authorities thereon. Initial orders bear the date of action of the convening authority. An order promulgating an acquittal or action on the findings or sentence taken subsequent to the initial action of the convening authority will bear the date of its publication. In the case

of a joint or common trial, even though one record of trial is prepared, a separate order will be issued for each accused. There is no limit to the number of orders which may be published per day. It should be remembered that orders are distributed and utilized by many agencies not having access to the record of trial. Accuracy in the promulgation of orders can be assured by careful and painstaking attention in preparation followed by faultless checking. The only certain method to use in "proofing" a draft order is to take nothing for granted as each portion of the order is examined. The record of trial and allied papers should be consulted, item by item, as each essential element is verified.

*a. Initial Court-Martial Orders.* Every initial court-martial order contains the following part of elements:

- (1) Heading;
- (2) Opening paragraph;
- (3) Charges and specifications;
- (4) Pleas;
- (5) Findings;
- (6) Sentence;
- (7) Action of the convening authority;

and

- (8) Authentication.

(a) *Heading.* Same as for court-martial convening order. A separate series is maintained for each type of court-martial but initial and supplementary orders are not distinguished.

*Example:*

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

SPECIAL COURT-MARTIAL ORDER  
NUMBER 37

1 August 1968

(b) *Opening paragraph.* The opening paragraph identifies the type of court-martial which tried the case, the place it convened, the order which appointed the court with any amending orders, and the accused. If the proceeding is a rehearing, the order announces this fact and identifies by number, headquarters, and date, the order that announced the original proceedings. The accused is identified by grade, pay grade, name, service number, social security account number, armed force, and organization.

*Example:*

Before a special court-martial which convened at Fort Amherst, Ohio, pursuant to Court-Martial Convening Order No. 112, this Headquarters, dated 1 June 1968, as amended by Court-Mar-

tial Convening Order No. 114, this Headquarters, dated 26 June 1968, was arraigned and tried [on a rehearing, the former proceedings have been published in Special Court-Martial Order No. 15, this Headquarters, dated 1 March 1968 and Special Court-Martial Order No. 29, this Headquarters, dated 10 June 1968]:

Private (E-2) John A. Dowdy, RA 47412564 (SSAN: ), U.S. Army, Company A, 62d Infantry.

(c) *Charges and specifications.* With certain exceptions hereafter noted, the charges and specifications are copied verbatim from the charge sheet in summary and special court-martial cases and from the verbatim transcript of the arraignment in a general court-martial case. When a specification has been withdrawn prior to arraignment, the remaining specifications will be renumbered and the fact of withdrawal will not be brought to the attention of the court (information to the contrary in MCM, 1969, and AR 27-10 notwithstanding). When the specification contains classified security information only the order retained in the files of the issuing headquarters and those copies which accompany the record of trial are verbatim. When the specification contains obscene matter, unfit for general publication, only those copies of the order which are retained in the headquarters file, which accompany the record of trial, which are furnished the chief custodian of the personnel records of the armed force concerned and which are furnished the authorities where the accused is or will be held or confined, are verbatim.

When the specification has been amended prior to the court-martial's announcement of its findings, the order will show the specification as amended.

(d) *Pleas.* The pleas are copied verbatim from the transcript of the arraignment, e.g., "To the Specification and Charge: Not Guilty." In addition, any change in the plea is reported, e.g., "To the Specification and Charge: Guilty, changed to Not Guilty." When the accused stands mute, a plea is entered by the law officer of a general court-martial or president of a special court-martial, e.g., "To all Specifications and Charges: Accused stood mute. Plea of Not Guilty entered by the (Law Officer) (President)." When the specification is dismissed on motion *prior* to the accused's plea, the specification is reported verbatim in the order, and under "Pleas," the dismissal is shown thus: "To the Specification of Charge I and Charge I: Dismissed on motion of the defense on ground of former jeopardy."

(e) *Findings.* The findings must be copied verbatim from the record of trial even though the announcement is incomplete or ambiguous. Any subsequent attempt by the court-martial to modify or reannounce its findings should also be copied verbatim. When a specification to which the accused has pleaded is subsequently disposed of other than by submission to the court-martial on the general verdict, such disposition must be shown.

*Example 1:* Of the Specification and the Charge: Guilty.

*Example 2:* Of all the Specifications and Charges: Not guilty.

*Example 3:* Of Specification 1, Charge I: Motion for finding of not guilty sustained.

*Example 4:* Of Specification 2, Charge I: Dismissed on motion of the defense on the grounds of *res judicata*.

*Example 5:* Of the Specification and the Charge: Withdrawn by order of the convening authority after evidence on the merits had been received because of military necessity occasioned by enemy action.

When the accused has been acquitted of *all* charges and specifications, in addition to reporting the findings of not guilty, the order will show the date the findings were announced, e.g., "The findings were announced on 25 July 1968." In such a case, of course, there is no sentence nor action by the convening authority to be announced.

(f) Sentence. The sentence, also, must be copied verbatim from the record of trial even though the announcement is incomplete or ambiguous. Any subsequent attempt by the court-martial to modify or reannounce its sentence must also be copied verbatim. In parentheses following the sentence, the number of previous convictions considered by the court-martial should be noted, or if none were considered, this fact should be noted. The date the sentence was adjudged is then reported.

*Example 1:* To forfeit \$50.00 per month for 6 months, to be confined at hard labor for 6 months and to be reduced to the grade of Private (E-1). (No previous convictions considered.)

The sentence was adjudged on 25 July 1968.

*Example 2:* To forfeit \$50.00 per month for 6 months, to be confined at hard labor for 6 months and to be reduced to the grade of Private (E-1).

Upon inquiry by the law officer, the president stated that the foregoing announcement did not accurately state the sentence imposed by the court-martial in closed session and upon secret written ballot. The president then announced to the accused that the sentence actually imposed by the court-martial was:

To forfeit \$50.00 per month for 6 months, to be confined at hard labor for 6 months, and to be reduced to the grade of Private (E-1). (One previous conviction considered.)

The sentence was adjudged on 25 July 1968.

(g) Action of the convening authority. The convening authority's action is copied verbatim, including the heading, date, and signature. The body of the action will include verbatim any reprimand administered pursuant to the sentence of the court-martial as approved.

*Example:*

ACTION  
DEPARTMENT OF THE ARMY  
HEADQUARTERS 1ST ENGINEER BATTALION  
Fort Pecos, Texas 21605

15 August 1968

In the foregoing case of Private (E-2) Lenny F. Ball, RA 21784561 (SSAN: ), U.S. Army, Company A, 1st Engineer Battalion, the sentence is approved and will be duly executed. The Fort Pecos Stockade is designated as the place of confinement and the confinement will be served therein or elsewhere as competent authority may direct.

/s/ William T. Jones  
/t/ WILLIAM T. JONES  
LTC, CE  
Commanding

When the convening authority has recalled and withdrawn his first action and substituted a second action prior to publication of the first, only the second is reproduced in the order.

Example:

ACTION  
DEPARTMENT OF THE ARMY  
HEADQUARTERS 1ST ENGINEER BATTALION  
Fort Pecos, Texas 21605

16 August 1968

In the foregoing case of Private (E-2) Lenny F. Ball, RA 21784561 (SSAN: ), U.S. Army, Company A, 1st Engineer Battalion, the action taken by me on 15 August 1968 is withdrawn and the following substituted therefor: In the foregoing case of Private (E-2) Lenny F. Ball, RA 21784561 (SSAN: ), U.S. Army, Company A, 1st Engineer Battalion, the findings of guilty of Specification 1, Charge I, are disapproved. Only so much of the sentence as provides for confinement at hard labor for 3 months and reduction to the grade of Private E-1 is approved and will be duly executed. The Post Stockade, Fort Pecos, Texas, is designated as the place of confinement and the confinement will be served therein or elsewhere as competent authority may direct.

/s/ William T. Jones  
/t/ WILLIAM T. JONES  
LTC, CE  
Commanding

If, pursuant to paragraph 94a(2), MCM, 1969, the convening authority withdraws his previous action in a case in which a promulgating order of execution has previously been published, he shall publish a new promulgating order. The action shall be followed by the following notation:

Special Court-Martial Order No. \_\_\_\_\_, this headquarters, \_\_\_\_\_ 19\_\_\_\_\_, is rescinded.

(h) Authentication. Court-martial orders are authenticated in the manner indicated in 6-3d(2) above.

(i) Acceptable examples of completed initial court-martial orders are as follows:

DEPARTMENT OF THE ARMY  
HEADQUARTERS 1ST BATTALION 75TH INFANTRY  
Fort Blank, Missouri 72178

SUMMARY COURT-MARTIAL ORDER  
NUMBER 4

22 July 1968

Before a summary court-martial which convened at Fort Blank, Missouri, pursuant to Court-Martial Appointing Order Number 7, Headquarters, 1st Battalion, 75th Infantry, 18 July 1968, was arraigned and tried:

Private (E-1) Lawrence A. Monko, RA 21821755 (SSAN: ), U.S. Army Company B, 1st Battalion, 75th Infantry.

Charge: Violation of the Uniform Code of Military Justice, Article 113.

Specification: In that Private (E-1) Lawrence A. Monko, U.S. Army, Company B, 1st Battalion, 75th Infantry, on or about 15 July 1968, at Fort Blank, Missouri, being posted as a sentinel, was found sleeping on his post.

PLEAS

To the Specification and Charge: Not Guilty.

FINDINGS

Of the Specification and Charge: Guilty.

## SENTENCE

To be confined at hard labor for 30 days and to forfeit \$50.00 per month for one month. (One previous conviction considered.)

The sentence was adjudged on 19 July 1968.

## ACTION

DEPARTMENT OF THE ARMY  
HEADQUARTERS 1ST BATTALION 75TH INFANTRY  
Fort Blank, Missouri 72178

22 July 1968

In the foregoing case of Private (E-1) Lawrence A. Monko, RA 21821755 (SSAN: \_\_\_\_\_), U.S. Army, Company B, 1st Battalion, 75th Infantry, the sentence is approved and will be duly executed, but that portion thereof adjudging confinement at hard labor for 30 days is suspended until 21 August 1968, at which time unless the suspension is sooner vacated the suspended portion shall be remitted without further action.

/s/ Martin N. Marks  
/t/ MARTIN N. MARKS  
Colonel, Inf  
Commanding

BY ORDER OF COLONEL MARKS:

OFFICIAL: RUSSEL A. PAPES  
Major, Inf  
Adjutant

DISTRIBUTION:  
(Pursuant to AR 27-10)

DEPARTMENT OF THE ARMY  
HEADQUARTERS 22D INFANTRY DIVISION  
Fort Blank, Missouri 72178

GENERAL COURT-MARTIAL ORDER  
NUMBER 15

14 April 1968

Before a general court-martial which convened at Fort Blank, Missouri, pursuant to Court-Martial Convening Order No. 204, Headquarters, 22d Infantry Division, 8 December 1967, as amended by Court-Martial Convening Order No. 1, Headquarters, 22d Infantry Division, 3 March 1968, was arraigned and tried:

Private (E-2) Harold D. Wennerfeldt, RA 43211234 (SSAN: \_\_\_\_\_), U.S. Army, Battery A, 4th Field Artillery Battalion, 60th Artillery.

Charge: Violation of the Uniform Code of Military Justice, Article 91.

Specification: In that Private (E-2) Harold D. Wennerfeldt, U.S. Army, Battery A, 4th Field Artillery Battalion, 60th Artillery, did, at Fort Blank, Missouri, on or about 4 March 1968 assault Sergeant Milton L. Yarbrought, his superior noncommissioned officer, who was then in the execution of his office, by pointing a loaded carbine at him and saying, "One more trick like that and you end up with your nose in the mud," or words to that effect.

## PLEAS

To the Specification and the Charge: Not Guilty.

FINDINGS

Of the *Specification* and the Charge: Not Guilty.

The findings were announced on 25 March 1968.

BY COMMAND OF MAJOR GENERAL BISMADE:

OFFICIAL:

SIMS M. YOUNG  
Colonel, GS  
Chief of Staff

s/Page H. Rogers

t/PAGE H. ROGERS

LTC, AGC

Adjutant General

DISTRIBUTION

(Pursuant to AR 27-10)

DEPARTMENT OF THE ARMY  
HEADQUARTERS 1ST BATTALION 75TH INFANTRY  
Fort Blank, Missouri 72178

SPECIAL COURT-MARTIAL ORDER  
NUMBER

32

14 August 1968

Before a special court-martial which convened at Fort Blank, Missouri, pursuant to Court-Martial Convening Order Number 132, Headquarters, 1st Battalion, 75th Infantry, 18 July 1968, was arraigned and tried:

Private (E-2) Frank L. Korne, RA 76548212 (SSAN: ), U.S. Army, Company B, 1st Battalion, 75th Infantry.

Charge I: Violation of the Uniform Code of Military Justice, Article 113.

*Specification 1:* In that Private (E-2) Frank L. Korne, U.S. Army, Company B, 1st Battalion, 75th Infantry, on or about 5 August 1968, at Fort Blank, Missouri, being posted as a sentinel, was found sleeping on his post.

*Specification 2:* In that Private (E-2) Frank L. Korne, U.S. Army, Company B, 1st Battalion, 75th Infantry, on or about 5 August 1968, at Fort Blank, Missouri, being posted as a sentinel did leave his post before he was regularly relieved.

Charge II: Violation of the Uniform Code of Military Justice, Article 89.

*Specification:* In that Private (E-2) Frank L. Korne, U.S. Army, Company B, 1st Battalion, 75th Infantry, did, at Fort Blank, Missouri, on or about 5 August 1968, behave himself with disrespect towards First Lieutenant James P. Dodds, his superior officer, by saying to him, "You First Johns are all alike. You'd think the Army couldn't run without you sticking your noses into matter that don't concern you," or words to that effect.

PLEAS

To all the *Specifications* and Charges: Not Guilty.

FINDINGS

Of *Specification 1*, Charge I: Guilty.

Of *Specification 2*, Charge I: Not Guilty.

Of Charge I: Guilty.

Of the *Specification*, Charge II: Guilty.

Of Charge II: Guilty.

## SENTENCE

To be confined at hard labor for 6 months and to forfeit \$50.00 per month for 6 months. (One previous conviction considered.)

The sentence was adjudged on 12 August 1968.

## ACTION

DEPARTMENT OF THE ARMY  
HEADQUARTERS 1ST BATTALION 75TH INFANTRY  
Fort Blank, Missouri 72178

14 August 1968

In the foregoing case of Private (E-2) Frank L. Korne, RA 76548212 (SSAN: ), U.S. Army, Company B, 1st Battalion, 75th Infantry, the sentence is approved and will be duly executed. The Post Stockade, Fort Blank, Missouri, is designated as the place of confinement and the confinement will be served therein, or elsewhere as competent authority may direct.

/s/ Martin N. Marks  
/t/ MARTIN N. MARKS  
Colonel, Inf  
Commanding

BY ORDER OF COLONEL MARKS:

OFFICIAL: /s/ Russel A. Papes  
/t/ RUSSEL A. PAPES  
Major, Inf  
Adjutant

## DISTRIBUTION:

(Pursuant to AR 27-10)

*b. Supplementary Court-Martial Orders.* Contrary to the requirement in the case of initial court-martial orders, no formal "Action" personally signed by the commander is necessary to support publication of a supplementary order.

## (1) Form.

(a) General. The general form of the supplementary court-martial order is set out in the Manual for Courts-Martial and Army Regulation 810-10. The order includes three elements—the heading, the body and the authentication.

(b) Heading. The heading is the same as for the initial court-martial order. It states the headquarters, its address, the type of order and number, and the date—which is the date of publication.

*Example:*

DEPARTMENT OF THE ARMY  
HEADQUARTERS 49TH INFANTRY DIVISION  
Fort Pecos, Texas 21605

GENERAL COURT-MARTIAL ORDER  
NUMBER 38

30 August 1968

(c) Body. In most orders the body consists of one paragraph without caption or heading. Even where, because of the quantity of the material to be included, the body is divided into a number of paragraphs for ease of reading, no marginal headings or captions are used.

(d) Authentication. Supplementary orders are authenticated in exactly the same manner as initial orders.

(2) Content. The body always contains an introductory sentence identifying the case and the initial court-martial order. Additional data, as appropriate, is included to:

- (a) Announce the affirmance of the sentence on appellate review (GCM);
- (b) Order the sentence executed (GCM);
- (c) Designate a place of confinement or announce that the confinement has been served (GCM);
- (d) Remit or suspend all or a part of the sentence;
- (e) Vacate a previous suspension;
- (f) Set aside findings or sentence and order a rehearing or dismiss the charges and restore all rights, privileges and property affected;
- (g) Apply the forfeitures (GCM);
- (h) Credit the accused with confinement served under the sentence adjudged at a former trial in the same case;
- (i) Promulgate action on the sentence by The Judge Advocate General, the Secretary of the Department, or the President (GCM);
- (j) Promulgate the action of a convening authority who has dismissed the charges in lieu of holding a new trial under Article 73 of the Code.

(3) Acceptable examples of accomplishing some of the above actions are as follows:

*SAMPLE ORDER—REMISSION OR SUSPENSION*

DEPARTMENT OF THE ARMY  
HEADQUARTERS 1ST BATTALION 22D ARTILLERY  
Fort Amherst, Ohio 86507

SPECIAL COURT-MARTIAL ORDER  
NUMBER 12

14 April 1968

The unexecuted portion of the sentence to forfeiture of \$50.00 per month for 6 months and confinement at hard labor for 6 months in the case of Private (E-1) Fiorello Guardian, RA 51505332 (SSAN: 476-95-2368), U.S. Army, A Battery, 1st Battalion, 22d Artillery, adjudged on 2 March 1968 and promulgated in Special Court-Martial Order No. 11, this Headquarters, dated 3 March 1968, is (remitted) (suspended for 6 months, at which time unless the suspension is sooner vacated, the unexecuted portion of the sentence will be remitted without further action).

BY ORDER OF COLONEL MARKS:

OFFICIAL: /s/ Russel A. Papes  
/t/ RUSSEL A. PAPES  
Major, Inf  
Adjutant

DISTRIBUTION:  
(Pursuant to AR 27-10)

*SAMPLE ORDER—VACATION OF SUSPENSION*

DEPARTMENT OF THE ARMY  
HEADQUARTERS 1ST BATTALION 22D ARTILLERY  
Fort Amherst, Ohio 86507

SPECIAL COURT-MARTIAL ORDER  
NUMBER 15

5 July 1968

So much of the order published in Special Court-Martial Order No. 12, this headquarters, dated 14

April 1968, as suspends, effective 14 April 1968, execution of the approved sentence to forfeiture of \$50.00 per month for 6 months and confinement at hard labor for 6 months in the case of Private (E-1) Fiorello Guardian, RA 51505332 (SSAN: [redacted]), U.S. Army, A Battery, 1st Battalion, 22d Artillery, adjudged on 2 March 1968 and promulgated in Special Court-Martial Order No. 11, this headquarters, 3 March 1968, and not subsequently modified, is vacated. The unexecuted portion of the sentence will be duly executed. The prisoner will be confined in the Fort Amherst Stockade and the confinement will be served therein, or elsewhere as competent authority may direct.

BY ORDER OF COLONEL SNYDER:

OFFICIAL:

/s/ Russel A. Pinn  
 /t/ RUSSEL A. PINN  
 Major, Inf  
 Adjutant

DISTRIBUTION:  
 (Pursuant to AR 27-10)

**6-5. Nonjudicial Punishment Orders.**

a. Changes to AR 27-10 and AR 310-10 require the publication of special orders to announce Article 15 punishments of reduction in grade, forfeiture and detention of pay. Actions to set aside, mitigate or suspend such punishments or vacate suspension of punishment must also be published in special orders.

(1) AR 310-10 provides the following transaction codes for preparation of orders:

- (a) TC 313—Reduction.
- (b) TC 315—Reduction-Suspension/Mitigation/Setting Aside.
- (c) TC 385—Forfeiture or Detention of Pay.

(d) TC 386—Restoration of Forfeited or Detained Pay.

(2) In preparing orders to suspend, mitigate or set aside an Article 15 punishment, or to vacate a suspension, in the absence of a specific transaction code number provided by AR 310-10, transaction code number TC 999 will be utilized in accordance with appendix II, AR 310-10.

b. The following orders may be used as examples in publishing various actions under Article 15, UCMJ.

**SAMPLE ORDER—REDUCTION-SETTING ASIDE**

DEPARTMENT OF THE ARMY  
 HEADQUARTERS 2D ENGINEER BATTALION  
 Fort Swampy, Kansas 38366

SPECIAL ORDER  
 NUMBER 148

30 June 1968

000. TC 315. UP Art 15 UCMJ and AR 27-10, the reduction for misconduct announced in (insert aprop order) is modified as indic below.

BRAVO, ROMEO P. RA 13395846 (SSAN:  
 Kan 38366

) PFC E3 Co A 2d Engr Bn Ft Swampy,

Grade (from-to)

\*Act: Reduction set aside. (Include language from part I, section III, DA Form 2627-2, or part II, section I, DA Form 2627-2.) All rights, privileges and property of which indiv has been deprived by virtue of punishment so set aside WB restored.

Eff Date: (Insert date aprop section of DA Form 2627-2 was signed.)

DOR: (see para 3-8e(5), AR 27-10)

FOR THE COMMANDER:

OFFICIAL:

G. E. PRATT  
Major, AGC  
Adjutant

s/D. L. Pick

t/D. L. Pick

CW2, USA

Asst Adjutant

DISTRIBUTION:

(Pursuant to AR 27-10)

**SAMPLE ORDER—REDUCTION-SUSPENSION**

DEPARTMENT OF THE ARMY  
HEADQUARTERS 2D ENGINEER BATTALION  
Fort Swampy, Kansas 38366

SPECIAL ORDER

NUMBER 149

20 June 1968

000. TC 315. UP Art 15 UCMJ and AR 27-10, the reduction for misconduct announced in (insert aprop order) is modified as indic below.

BRAVO, ROMEO P. RA 13895846 (SSAN: ) PFC E3 Co A 2d Engr Bn Ft Swampy, Kan 38366

Grade (from-to)

Act: Reduction suspended. (Include language from part I, section III, DA Form 2627-2, or part II, section I, DA Form 2627-2.)

Eff Date: (Insert date aprop section of DA Form 2627-2 was signed.)

DOR: (See para 3-8e(5), AR 27-10)

FOR THE COMMANDER:

OFFICIAL:

G. E. PRATT  
Major, AGC  
Adjutant

s/D. L. Pick

t/D. L. PICK

CW2, USA

Asst Adjutant

DISTRIBUTION:

(Pursuant to AR 27-10)

\*For examples of other actions, see p. 108, C7, AR 310-10.

**SAMPLE ORDER—FORFEITURE OR DETENTION OF PAY**

DEPARTMENT OF THE ARMY  
 HEADQUARTERS 2D ENGINEER BATTALION  
 Fort Swampy, Kansas 38366

SPECIAL ORDER  
 NUMBER 151

20 June 1968

000. TC 385. UP UCMJ, Article 15 AR 27-10 the fol forfeiture or detention of pay is announced.

BRAVO, ROMEO P. RA 13395846 (SSAN: ), PFC (E3) Co A 2d Engr Bn Ft Swampy, Kan 38366

Act: *Forfeiture*

Eff date: *20 June 68*

Imposed by: *CO, 2d Engr Bn, Ft Swampy, Kan*

Amt: *\$25.00 per mo for 2 mo*

Rsn: *Misconduct*

FOR THE COMMANDER:

OFFICIAL:

G. E. PRATT  
 Major, AGC  
 Adjutant

s/D. L. Pick

t/D. L. PICK

CW2, USA

Asst Adjutant

DISTRIBUTION:

(Pursuant to AR 27-10)

**SAMPLE ORDER—SETTING ASIDE FORFEITED OR DETAINED PAY**

DEPARTMENT OF THE ARMY  
 HEADQUARTERS 2D ENGINEER BATTALION  
 Fort Swampy, Kansas 38366

SPECIAL ORDER  
 NUMBER 152

30 June 1968

000. TC 386. UP Art 15 UCMJ and AR 27-10, the forfeiture or detention of pay announced in (insert aprop SO) is modified as indic below.

BRAVO, ROMEO P. RA 13395846 (SSAN: ) PFC E3 Co A 2d Engr Bn Ft Swampy, Kan 38366

Act: Forfeiture set aside. (Include language from part I, section III, DA Form 2627-2, or part II, section I, DA Form 2627-2.)

Eff date: 30 June 1968

Amt restored: \$20 per mo for 2 mo

FOR THE COMMANDER:

OFFICIAL:

G. E. PRATT  
 Major, AGC  
 Adjutant

s/D. L. Pick  
t/D. L. PICK  
CW2, USA  
Asst Adjutant

DISTRIBUTION:  
(Pursuant to AR 27-10)

*SAMPLE ORDER—REDUCTION*

DEPARTMENT OF THE ARMY  
HEADQUARTERS 2D ENGINEER BATTALION  
Fort Swampy, Kansas 38366

SPECIAL ORDER

NUMBER 153

20 June 1968

000. TC 313. Fol indiv REDUCED as indic.

BRAVO, ROMEO P. RA 13395846 (SSAN:  
Kan 38366) PFC E3 Co A 2d Engr Bn, Ft Swampy,

GR red to: *PVT E2 Perm*  
Red by: *CO 2d Engr Bn*  
Eff date: *20 June 68*  
DOR: *20 June 68*  
Rsn: *Misconduct*  
Auth: *Art 15 UCMJ and AR 27-10*

FOR THE COMMANDER:

OFFICIAL:

G. E. PRATT  
Major, AGC  
Adjutant

s/D. L. Pick  
t/D. L. PICK  
CW2, USA  
Asst Adjutant

DISTRIBUTION:

(Pursuant to AR 27-10)

*SAMPLE ORDER—REDUCTION-MITIGATION*

DEPARTMENT OF THE ARMY  
HEADQUARTERS 2D ENGINEER BATTALION  
Fort Swampy, Kansas 38366

SPECIAL ORDER

NUMBER 154

29 June 1968

000. TC 315. UP Art 15 UCMJ and AR 27-10, the reduction for misconduct announced in (insert aprop order) is modified as indic below.

BRAVO, ROMEO P. RA 13395846 (SSAN:  
Kan 38366) PFC E3 Co A 2d Engr Bn Ft Swampy,

Grade (from-to)

Act: Reduction mitigated. (Include language from part I, section III, DA Form 2627-2, or part II, section I, DA Form 2627-2.)

Eff Date: (Insert date aprop section of DA Form 2627-2 was signed.)

GOR: (See para 3-8e(5), AR 27-10)

FOR THE COMMANDER:

OFFICIAL:

G. E. PRATT  
Major, AGC  
Adjutant

s/D. L. Pick  
t/D. L. PICK  
CW2, USA  
Asst Adjutant

DISTRIBUTION:

(Pursuant to AR 27-10)

**6-6. Distribution.**

a. Current provisions. The current distribution requirements appear in paragraph 12-6, AR 27-10.

b. Special and Summary Court-Martial Orders are distributed as follows:

- (1) Individual tried, one copy.
- (2) Individual's immediate commanding officer and to each intermediate commander, a copy of the order pertaining to that individual.
- (3) Commanding officer and prison officer of the installation at which the individual tried is in custody, each one copy.
- (4) Records of the individual tried, for delivery by the guard under seal, at the time of delivery of the prisoner to the commanding officer of the installation or rehabilitation center in which the individual tried is to be confined under sentence, two copies.
- (5) Officer exercising general court-martial jurisdiction over the command to whom the record of trial is forwarded, four copies as to each accused (included in the record of trial). See AR 27-12.

(6) Chief, Examination Division, Military Pay Operations, Finance Center, U.S. Army, Indianapolis, Indiana 46249, one copy.

(7) Individual's unit personnel officer, to be filed in the financial data records folder, one copy.

(8) The Adjutant General, ATTN: AGPF-F, Department of the Army, Washington, D.C. 20310, one copy for each officer affected.

(9) Commanding Officer, U.S. Army Personnel Support Center, ATTN: AGPE-F, Fort Benjamin Harrison, Indiana 46249; one copy for each enlisted personnel affected.

c. Nonjudicial Punishment Orders. Orders announcing actions under article 15, UCMJ, will be distributed in the same manner as DA Forms 2627, 2627-1, and 2627-2, but with additional distribution to the immediate commanding officer of the persons punished, each intermediate commander, and to the Chief, Examination Division, Military Pay Operations, Finance Center, U.S. Army, Indianapolis, Indiana 46249.

## CHAPTER 7

### MILITARY BOARDS

#### **7-1. References.**

- a. Uniform Code of Military Justice (UCMJ).*
- b. Manual for Courts-Martial, United States, 1969 (MCM).*
- c. DOD Military Pay and Allowances Entitlements Manual.*
- d. AR 15-6.*
- e. AR 40-501.*
- f. AR 600-200.*
- g. AR 635-5.*
- h. AR 635-89.*
- i. AR 635-200.*
- j. AR 635-206.*
- k. AR 635-212.*
- l. 10 U.S.C. § 972.*

#### **7-2. Forms and Guides.**

- a. DA Form 201.*
- b. DA Form 1049.*
- c. DA Form 1574.*
- d. DA Form 2627.*
- e. DA Form 2627-1.*
- f. DA Form 2627-2.*
- g. DD Form 214.*
- h. DD Form 493.*

#### **7-3. Discussion.**

Occasionally a commanding officer will determine, due to an incident, series of incidents, or course of conduct, that an individual should no longer be retained in the service. In such instances, the commanding officer may desire to initiate action for administrative elimination. The legal clerk is often called upon to assist in the preparation and processing of such a request. If the case is ultimately heard by a board of officers, the legal clerk may be made available to the board to act as its administrative or clerical assistant. This chapter deals with the procedural requirements for initiating and processing various types of re-

quests for administrative elimination, as well as the procedures to be followed in case of a board hearing. Care must be exercised in all instances to insure that the recommendation for elimination is being processed under the appropriate regulation and that the procedures outlined by such regulation are being complied with explicitly.

#### **7-4. Boards of Officers.**

*a. Appointment of the Board.* The board is appointed by a letter order or a paragraph of a special order, signed by the adjutant for the commander. To expedite investigation, a board may be appointed verbally; however, this verbal authority must be later confirmed in writing. The appointing orders must specify clearly the matter to be investigated and the scope of the findings required. If the board is appointed under an Army regulation, the specific regulation must be cited in the order; however, if the board is appointed for a purpose not specifically covered by an Army regulation, the purpose of the board must be stated in the order in sufficient detail to enable the board to carry out its mission.

*b. Composition of the Board.* Each regulation provides specific requirement with respect to the composition of boards convened thereunder. The following requirements are common to all boards convened under AR 635-89, AR 635-206, and AR 635-212:

(1) Board will consist of not less than three commissioned officers, at least one of whom is rank of major or higher, and a non-voting recorder.

(2) Board will be composed of experienced officers of mature judgment.

(3) Board will be composed of officers fully cognizant of the applicable regulations and policies pertaining to such cases.

(4) Board will include at least one WAC officer, if an enlisted WAC is respondent.

(5) Board will include a majority of reserve officers (if reasonably available, but in no case less than one), if respondent has reserve enlisted status.

(6) If respondent has a Reserve commission or warrant, board will be an uneven number of commissioned officers senior in permanent grade to reserve grade held by respondent, with one board member being RA and remainder being reserve officers on active duty; if respondent is also ARNGUS officer, board will include at least one ARNGUS officer, if reasonably available.

(7) Board will be provided a competent reporter or stenographer.

c. *Titles of Board Members and Other Personnel.* Personnel concerned with board hearings and their titles include the following:

(1) *President*—the senior voting member of the board.

(2) *Members*—all persons specifically appointed to hear the case and to vote upon findings and recommendations.

(3) *Recorder*—a commissioned or warrant officer usually designated by the orders appointing the board. A designated recorder does not vote on board actions unless otherwise provided in the orders. If a recorder is not specifically designated, the junior member of the board acts as the recorder and retains his vote.

(4) *Respondent*—the person appearing before the board.

(5) *Respondent's counsel*—the person designated to assist the respondent in presenting the case.

(6) *Reporter*—the person designated to record and transcribe the board hearing. A civilian contract reporter is employed only if authorized by the specific regulation under which the board is convened and then only if an enlisted member or government civilian employee is not available to record the board hearings.

d. *Notice.* Advance written notice is one of the respondent's rights, prescribed by Army regulations. It is perhaps the most important procedural requirement. A minimum of 15 days written notice prior to date of hearing will normally be given an individual who is to

appear before a board of officers in order that he or his counsel may prepare his case (para 6a, AR 15-6). When for overriding reasons the minimum of 15 days cannot be granted, the president of the board will insure that the reason for action prior to that time is fully explained and recorded in the proceedings of the board. Requests for an additional delay (normally not to exceed a total of 30 days after notice) will be granted if in the judgment of the convening authority or the president of the board such delay is warranted to insure that the respondent receives a full and fair hearing. The letter of notification states the date, hour, and place of the hearing; the specific matter to be investigated; and the names of witnesses whose testimony is expected to be used. It further states that the recorder, upon timely written request, will arrange for the presence of any available witness desired by the individual being investigated. In the case of an enlisted member holding a Reserve commission or warrant, the board will notify the individual that the action involves his Reserve status and may result in the termination of that status.

e. *Hearing Procedure.* The following procedures are common to all boards convened under AR 635-89, AR 635-206, and AR 635-212.

(1) Rules of procedure and evidence (AR 15-6).

(2) Swearing of witnesses (AR 15-6).

(3) Rights of respondent at hearing. In addition to his right to advance written notice, an enlisted person appearing before a board of officers convened under these regulations is entitled to be present at all hearings, to be confronted with the witnesses against him to the maximum extent practicable, and to military counsel of his own selection, if reasonably available. He may also be represented by civilian counsel at his own expense. If counsel of the enlisted person's choosing is not available, counsel will be furnished by the convening authority. Respondent's counsel will be an experienced officer of mature judgment who is aware of his responsibility with regard to the preparation and presentation of the respondent's case. When personnel appear before boards of officers without counsel, the record will show

that the president or the recorder of the board counseled the respondent as to the type of discharge that he may receive as a result of the board action, the effects of such discharge in later life and that he may request representation by counsel. *The record will reflect the answer of the respondent.*

(4) Duties of president. The president of the board will insure that sufficient testimony is presented to enable the board to evaluate fairly the usefulness of the individual. The testimony will be factual and is transcribed in a summarized format unless competent authority directs that a verbatim record be prepared.

(5) Duties of recorder. The duties of the recorder during the hearing are as follows:

(a) Execute all orders of the board and keep or supervise the keeping of the record.

(b) Read the appointing order at the initial session, and at all sessions note for the record the presence or absence of members of the board, the individual concerned, and his counsel.

(c) Under the supervision of the president, conduct the presentation of evidence and examination of witnesses (including those of the respondent if he is not represented by counsel).

(6) Duties of board reporter. As board reporter, the duties of the legal clerk are as follows:

(a) Before the hearing, the reporter assists the recorder and studies the important regulations and the format of the board report.

(b) During the hearing he records testimony and keeps exhibits and the transcript of the proceedings. Testimony is recorded verbatim—that is, word for word—if required by regulations or the appointing authority; otherwise, testimony may be summarized.

(c) After the hearing, prepare the record in approved format and submit all copies to the recorder.

*f. Limitations on Administrative Discharge and Board Hearings.* (para 1-13, AR 635-200)

(1) Discharges pursuant to AR 635-200 should not be based upon conduct which has already been considered at a prior administrative or judicial proceeding and disposed of in a manner indicating that discharge is not war-

ranted. Accordingly, administrative discharges under the provisions of AR 635-89, 635-206, and 635-212 are subject to the following limitations. No member will be considered for administrative discharge because of conduct which has been the subject of—

(a) Judicial proceedings resulting in an acquittal or action having the effect thereof; or,

(b) Administrative proceedings resulting in a final determination that the member should be retained in the service; or,

(c) A general court-martial if a sentence to a punitive discharge was authorized but not adjudged, or was disapproved or suspended on review by the convening authority or any appellate agency, and remains suspended.

(2) The limitations set forth in (1) above, are not applicable when—

(a) Substantial new evidence, fraud, or collusion is discovered which was not known at the time of the original proceeding; or,

(b) Subsequent conduct by the member warrants considering him for discharge; or,

(c) An express exception has been granted by Headquarters, Department of the Army.

(3) No convening authority will direct discharge if a board recommends retention, nor will he authorize the issuance of a discharge of less favorable character than that recommended by the board. However, a convening authority may direct retention when discharge is recommended, or he may issue a discharge of a more favorable character than that recommended.

(4) If, in his review of a case in which separation has been recommended by the board, the convening authority notes a substantial defect in the proceedings, he may take one of the following actions:

(a) Direct retention.

(b) If the board has failed to make required findings or recommendations, return the case to the same board for compliance with the regulations concerned.

(c) If there is apparent procedural error or omission which may be corrected without reconsideration of the findings and recom-

mendations, return the case to the same board for corrective action.

(d) If the board committed an error which materially prejudiced a substantial right of the respondent, set aside the findings and recommendations and refer the case to a new board for a rehearing.

(e) No more than one rehearing may be directed without approval from Headquarters, Department of the Army.

#### 7-5. Elimination for Unfitness or Unsuitability (AR 635-212).

a. *General.* When a unit commander has determined that one of his enlisted personnel has demonstrated that he is no longer fit or suitable for further service, he will initiate a recommendation for elimination under AR 635-212. The circumstances under which an individual will be considered for elimination under AR 635-212 are discussed in paragraph 6 of that regulation.

b. *Initial Action—Commanding Officer's Report.* The first step in proceeding under AR 635-212 is the recommendation for elimination by the unit commander, also referred to as the commanding officer's report (see app A for sample report). This report must include the following items:

(1) Exact paragraph of the regulation which is the basis for the recommendation, e.g., paragraph 6b(2), AR 635-212 (character and behavior disorders), or paragraph 6a(1), AR 635-212 (frequent incidents of a discreditable nature).

(2) Name, grade, service number, age, date of enlistment or induction, length of term for which enlisted (if applicable), and prior service. (Reduction in grade is not a prerequisite to board action.)

(3) Statement indicating whether the individual has a Reserve commission or warrant. (If so, show service number, grade, and date of appointment.)

(4) Brief statement as to reason for action recommended. (The use of general, non-descriptive terms will be avoided.) This statement contains the allegations against the respondent and should be supported by independent statements and/or documents. This

statement is, in itself, a summary of the independent statements or documents.

(5) AFQT Score, all aptitude area scores, and duty MOS.

(6) Results of MOS evaluation testing, to include MOS in which evaluated and evaluation score.

(7) Record of counseling.

(8) Description of attempts made to rehabilitate the individual. (Include whether the individual has been given varied assignments and duties under different officers and non-commissioned officers in a different organization or unit, and time spent in such status.) The descriptions should be those of the immediate superiors or associates of the individual. They should contain their observations with respect to the allegations made against the individual and any counseling or other corrective action taken. The commander, immediate superiors, and associates of any former unit should be requested to submit statements concerning the allegations.

(9) Statement indicating why he does not consider it feasible or appropriate to recommend elimination for unsuitability (not applicable where elimination for unsuitability is recommended) or to accomplish other disposition.

(10) Conduct and efficiency ratings. (Ensure ratings were determined by proper rating officers pursuant to AR 600-200.)

(11) Record of trials by court-martial.

(12) Record of other disciplinary action. Include nonjudicial punishment (DA Forms 2627, 2627-1, and 2627-2) from present and former unit, if applicable, and any record of civilian court action.

(13) Report of psychiatrist or medical officer with specialized psychiatric training if a psychiatrist is not available. This report should include a medical opinion concerning:

(a) A description of the essential points of the individual's mental and physical condition in relation to the conduct under consideration;

(b) The probable effectiveness of further rehabilitative efforts;

(c) The individual's mental responsibility, ability to distinguish right from wrong

and adhere to the right, and whether he has the mental capacity to understand and participate in the board proceedings; and

(d) Whether the individual meets or does not meet the retention standards prescribed in chapter 3, AR 40-501.

(14) A statement signed by the individual (app B for sample statement) indicating that he:

(a) Has been advised in writing of the basis for the action recommended and its effect;

(b) Has been advised of his right to present his case before a board of officers, and whether he requests or waives such a hearing (individual who has completed 18 or more years of active Federal service may not waive the hearing) (individual who holds Reserve status as commissioned or warrant officer will include in his statement whether waiver applies to his Reserve status);

(c) Has been advised of his right to submit statements in his own behalf, and whether he does or does not desire to do so (individual may append any such statements to his statement or may defer submission until the hearing); and

(d) Has been advised of his right to be represented by counsel, and whether he accepts or declines the opportunity (individual who has completed 18 or more years of active Federal service may not waive representation by counsel) (para 4e, *infra*, concerning appointment of counsel).

*Note.* The individual must be given a reasonable time (at least 48 hours) in which to make the decisions contained in his statement.

(15) Any other information pertinent to the case, such as an extract of the health record when it is to be used to support the allegations.

c. *Action by Intermediate Commander and Convening Authority—Unfitness Cases.* If elimination is recommended under paragraph 6a, AR 635-212 (unfitness), the commander who has *general court-martial jurisdiction* is the convening authority.

(1) Intermediate commanders through whom the recommendation is forwarded may take the following action:

(a) Disapprove the recommendation and—

1. Direct reassignment of the individual to another unit and forward a copy of the commanding officer's report to the commander of the new unit; or

2. Return the case to the originator for disposition by other means; or

3. Recommend elimination under paragraph 6b, AR 635-212 (unsuitability) and forward the case to the commander who has special court-martial jurisdiction. (Special court-martial convening authority may take further action as described in para 4d(2), *infra*.) Or,

(b) Approve the recommendation and forward the commanding officer's report to the commander who has general court-martial jurisdiction.

(2) The general court-martial convening authority may take the following action:

(a) Disapprove the recommendation and—

1. Direct reassignment of the individual to another unit and forward a copy of the commanding officer's report to the commander of the new unit; or

2. Return the case to the originator for disposition by other means; or

3. Convene a board of officers (or return the case to the special court-martial convening authority to do so) to determine whether the individual should be eliminated under paragraph 6b, AR 635-212 (unsuitability) (see NOTE following para 4d, *infra*); or,

(b) Convene a board of officers to determine whether the individual should be eliminated under paragraph 6a, AR 635-212 (unfitness) (*Note* following para 4d, *infra*). Or,

(c) If the individual waives the board hearing—

1. Direct elimination of the individual under paragraph 6a or 6b, AR 635-212 (unfitness or unsuitability); or

2. Approve elimination of the individual under paragraph 6a or 6b, AR 635-212 (unfitness or unsuitability) and suspend execution of the separation for not more than six months; or,

(d) Direct that the case be disposed of through medical channels, if appropriate. (This action must be taken if the individual has an incapacitating physical or mental illness which was the direct or a contributing cause of the conduct for which elimination is recommended and if action under the UCMJ is not initiated.)

*d. Action by Intermediate Commander and Convening Authority—Unsuitability Cases.* If elimination is recommended under paragraph 6b, AR 635-212 (unsuitability), the commander who has *special court-martial jurisdiction* is the convening authority.

(1) Intermediate commanders through whom the recommendation is forwarded may take the following action:

(a) Disapprove the recommendation and—

1. Direct reassignment of the individual to another unit and forward a copy of the commanding officer's report to the commander of the new unit; or

2. Return the case to the originator for disposition by another means; or,

(b) Approve the recommendation and forward the commanding officer's report to the commander who has *special court-martial jurisdiction*.

(2) The special court-martial convening authority may take the following action:

(a) Disapprove the recommendation and—

1. Direct reassignment of the individual to another unit and forward a copy of the commanding officer's report to the commander of the new unit; or

2. Return the case to the originator for disposition by other means. Or,

(b) Convene a board of officers to determine whether the individual should be eliminated under paragraph 6b, AR 635-212 (unsuitability) (see *Note, infra*). Or,

(c) If the individual waives the board hearing—

1. Direct elimination of the individual under paragraph 6b, AR 635-212 (unsuitability); or

2. Approve elimination of the individual under paragraph 6b, AR 635-212 (un-

suitability) and suspend execution of the separation for not more than 6 months. Or,

(d) Direct that the case be disposed of through medical channels, if appropriate. (This action must be taken if the individual has an incapacitating physical or mental illness which was the direct or a contributing cause of the conduct for which elimination is recommended and if action under the UCMJ is not initiated.)

*Note.* When a board of officers is convened to determine whether an individual should be eliminated under paragraph 6a or 6b, AR 635-212 (unfitness or unsuitability), immediate steps should be taken to determine the status and assure the availability of essential military witnesses. No witness will be transferred or separated prior to the board hearing except by reason of expiration of enlistment or term of service fixed by law, in which case an attempt will be made to obtain witness' consent to be retained on active duty until the hearing; if witness will not consent to retention, an appropriate deposition or affidavit will be obtained.

*e. Counsel.* An individual recommended for elimination under AR 635-212 must be given an opportunity to consult with counsel, if he so desires, *prior* to making the decisions contained in the statement described in paragraph 4b(14), *supra*. If the case is heard by a board of officers, the individual must be given an opportunity to have counsel prepare and present his case. In both instances, the individual has the following options with respect to counsel, depending upon the basis for the recommendation:

(1) Where the recommendation for elimination is under paragraph 6a, AR 635-212 (unfitness), the individual may—

(a) Request judge advocate counsel furnished by the Army (if judge advocate counsel is not reasonably available, the general court-martial convening authority must certify in writing to that effect and set forth the qualifications of counsel furnished. The original of this certificate must be appended to the report of proceedings); or

(b) Request non-judge advocate counsel furnished by the Army (counsel furnished must be a commissioned officer of the rank of first lieutenant or higher, unless requested by name); or

(c) Retain civilian counsel at own expense; or

(d) Waive counsel (individual having 18 or more years active Federal service may not waive counsel).

(2) Where the recommendation for elimination is under paragraph 6b, AR 635-212 (unsuitability), the individual may—

(a) Request counsel furnished by the Army (counsel furnished, if not a judge advocate, must be a commissioned officer of rank of first lieutenant or higher, unless requested by name); or

(b) Retain civilian counsel at own expense; or

(c) Waive counsel (individual having 18 or more years active Federal service may not waive counsel).

#### 7-6. Elimination for Homosexuality (AR 635-89).

a. *Initial Action.* Upon receipt of information indicating that a member of his command is a homosexual, the commanding officer will conduct an inquiry into the matter. If the information is found to be supported by fact, the commander will:

(1) Refer the individual for medical evaluation.

(2) If no major psychiatric disorder is found, determine from the facts whether the case is class I, II, or III.

(3) If class I, initiate court-martial charges in those instances in which punitive action is deemed appropriate.

(4) If court-martial charges are not felt to be appropriate, dispose of the case as class II by:

(a) Affording officer personnel an opportunity to resign for the good of the service. See figure 1, AR 635-89, for format of resignation. (Officer resignations are forwarded through channels to The Adjutant General, Department of the Army, Washington, D.C. 20315, ATTN: AGPO, for final action. Commanders through whom the resignation is forwarded shall make recommendations for approval or disapproval.)

(b) Affording enlisted personnel the opportunity to waive a hearing before a board of officers and resign (only individuals who

have served 3 or more years of a current unspecified term enlistment) or request discharge (change 1, para 16a, AR 635-89, for format).

1. A statement will be included with the individual's resignation or request for discharge indicating that he—

(a) Has been counseled and advised of the basis for the action recommended;

(b) Has been afforded the opportunity to be represented by counsel, who, if reasonably available, should be a lawyer, and whether he accepted or declined the opportunity;

(c) Does or does not desire to submit written statements in his own behalf (if so; the statement may be appended or deferred for later submission to the board at respondent's option).

2. The signed statement or resignation and documentation are forwarded to the officer exercising general court-martial jurisdiction over the individual. That officer may take the following actions:

(a) Direct the individual's retention in the service (EM);

(b) Order the individual discharged for homosexuality (EM);

(c) Direct the individual's appearance before a board of officers (EM);

(d) Initiate elimination action against an officer or warrant officer pursuant to AR 635-105.

(e) Initiate disciplinary action under the UCMJ;

(f) Initiate action under AR 635-212, if unfit or unsuitable for service and homosexual activity is deemed insufficient to warrant separation for homosexuality (EM);

(g) Refuse to accept a resignation and forward it with recommendations through channels to The Adjutant General, ATTN: AGPO, Department of the Army, Washington, D.C. 20315.

b. If the investigation indicates the case is class III, a detailed signed statement will be obtained from the individual concerning his homosexual tendencies and activities. (The individual must first be advised of his rights under Article 31, UCMJ.)