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# MILITARY JUSTICE HANDBOOK

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## GUIDE FOR SUMMARY COURT- MARTIAL TRIAL PROCEDURE



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	Paragraph	Page
<b>SECTION I. INTRODUCTION</b>		
Purpose and Scope .....	1	3
General Instructions .....	2	3
Maximum Sentence Imposable .....	3	4
<b>II. PREPARING FOR THE TRIAL</b>		
General Considerations .....	4	5
Study of the Case .....	5	5
Preparation for Opening Session and Procurement of Witnesses .....	6	7
<b>III. OPENING SESSION OF THE TRIAL PROCEEDINGS</b>		
General .....	7	9
Procedure for Opening Session .....	8	9
<b>IV. ARRANGEMENTS BEFORE FURTHER PROCEEDINGS</b>		
General Arrangements .....	9	17
Resumption of Proceedings .....	10	17
<b>V. PROCEDURES FOR RECEIVING EVIDENCE ON PLEAS OF NOT GUILTY; FINDINGS.</b>		
Purpose of Section .....	11	18
Oath and Introductory Questions .....	12	18
Questioning of Witnesses, Reception of Evidence, and Findings .....	13	19
<b>VI. PROCEDURES PERTAINING TO THE SENTENCE</b>		
Purpose of Section .....	14	28
Presentencing and Sentencing Procedure .....	15	28
<b>VII. POST-TRIAL DUTIES</b>		
Completion of the Charge Sheet .....	16	31
Report of Result of Trial .....	17	31
Return of File to Convening Authority .....	18	31
Recommendations for Clemency .....	19	31
<b>APPENDIX I. ARRANGEMENT OF COURTROOM FOR TRIAL</b> .....	..	32
<b>II. REPORT OF RESULT OF TRIAL BY SUMMARY COURT-MARTIAL</b> .....	..	33

## KEY TO REFERENCES

<i>Reference</i>	<i>In open text</i>	<i>In parentheses or similar context</i>
Manual for Courts-Martial, United States, 1951.	The Manual.....	MCM.
An Article of the Uniform Code of Military Justice.	Article 15.....	Art. 15.
A paragraph of the Manual.....	Paragraph 143 of the Manual.	MCM 143.
An appendix of the Manual.....	Appendix 5 of the Manual.	MCM, App. 5.
An appendix of this guide.....	Appendix II.....	App. II.
A paragraph of this guide.....	Paragraph 2 of this guide.	Para. 2.

All references to the Manual for Courts-Martial refer to the provisions of the Manual as revised by the Addendum to the Manual for Courts-Martial, United States, 1951, dated January 1963.

# GUIDE FOR SUMMARY COURT-MARTIAL TRIAL PROCEDURE

## SECTION I INTRODUCTION

### 1. Purpose and Scope

This guide for summary court-martial trial procedure is published for the use of officers who have been appointed summary courts-martial. It is designed to provide summary courts-martial with the essential procedural guidelines to assure that accused persons to be tried before them are given a fair trial in accordance with the requirements of law.

### 2. General Instructions

When this guide and other legal materials available to the summary court-martial fail to provide sufficient information concerning law or procedure, he may seek advice on these matters from the judge advocate office serving his command. For example, he may desire information from a judge advocate as to what lesser offenses are included in an offense charged or concerning the use of the Table of Equivalent Punishments (MCM 127c). The summary court-martial should not, however, ask or accept advice from a judge advocate or any other person concerning what factual conclusion he should draw from the evidence in the case or concerning the amount or nature of a sentence within legal limits which should be received by the accused. These are matters solely and wholly within the responsibility of the summary court-martial, without recourse to the opinions or recommendations of any other person. The proceedings of a summary court-martial are open, and, unless they are to appear as witnesses in the case, individuals desiring to attend as spectators must be permitted to be present at any portion of the proceedings not involving the disclosure of classified information.

The accused may be represented during the summary court-martial proceedings by a civilian lawyer provided by him or by military counsel if one has been made available for that purpose by competent authority. Civilian or military counsel representing the accused should be allowed to examine witnesses for the defense, cross-examine witnesses for the Government, state his objections to the reception of evidence and questions asked of witnesses by the summary court-martial, make argument concerning the weight or sufficiency of the evidence or the appropriateness of a sentence, and otherwise perform the normal functions of counsel.

An officer who is appointed a summary court-martial should be familiar with the entire contents of this guide. If he is not, he runs the risk of committing error unintentionally through lack of knowledge or through oversight. Needless error in the conduct of trials by summary court-martial reflects adversely on the Armed Forces and on the operation of the system of justice provided by the Congress in the Uniform Code of Military Justice. In preparing for and conducting a trial by summary court-martial, an officer who is a summary court-martial must be impartial, both in appearance and actuality, for he is performing a *judicial* function.

### 3. Maximum Sentence Imposable

The maximum punishment authorized for any offense in violation of the Uniform Code of Military Justice equals or exceeds the punitive jurisdiction of a summary court-martial. Therefore, the maximum sentence which a summary court-martial may impose in any case will depend on the pay grade of the accused.

The maximum sentence imposable by a summary court-martial falls into two categories: (a) that imposable upon enlisted persons in the fourth pay grade or lower, and (b) that imposable upon enlisted persons above the fourth pay grade. Although it should be kept in mind that a lesser sentence may be imposed and that the Table of Equivalent Punishments (MCM 127c) may be used, the *maximum* sentence, in addition to admonition or reprimand, which may be imposed by a summary court-martial is as follows:

a. Enlisted persons *above* the fourth pay grade:

- (1) Reduction to the next inferior pay grade; and
- (2) Forfeiture of two-thirds pay per month for one month;<sup>1</sup> and
- (3) Restriction to specified limits for 60 days.

b. Enlisted persons in the fourth pay grade or lower:

- (1) Reduction to the lowest pay grade; and
- (2) Forfeiture of two-thirds pay per month for one month;<sup>1</sup> and
- (3) Confinement at hard labor for 30 days; or, instead of (3),
- (4) Hard labor without confinement for 45 days; or, instead of (3) or (4),
- (5) Restriction to specified limits for 60 days.

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<sup>1</sup> See current *Table of Maximum Daily and Monthly Forfeitures of Pay Which May be Adjudged by Courts-Martial*.

## SECTION II

### PREPARING FOR THE TRIAL

#### 4. General Considerations

Upon receipt of the charges and their accompanying papers, you, as a summary court-martial, should act immediately in the sequence indicated below. The file as received by you will normally include several copies of the charge sheets; the written statements of the witnesses or summaries thereof; any documentary evidence, such as extract copies of morning reports in cases involving absence without leave; and copies of the record of previous convictions, if any. *You must keep in mind* that statements of witnesses which accompany the file may be used by you *only* for the purpose of preparing for trial, that is, to determine the order of witnesses and the questions you are going to ask them, and for certain other legitimate purposes, as, for example, impeachment of witnesses by previous inconsistent statements (MCM 153b(2)(c)). You may consider as evidence in the case only that testimony and other evidence admissible under the rules of evidence (MCM, Ch. XXVII) which you actually receive in evidence at the trial in the presence of the accused. A record of previous convictions will rarely be admissible on the question of guilt or innocence (see MCM 138g), and when it is not, you may consider previous convictions only for the purpose of determining what sentence is appropriate in the event you have found the accused guilty. *Remember* that as to any offense to which the accused has pleaded not guilty, *you must presume that he is innocent until you are convinced of his guilt of the offense beyond a reasonable doubt by legal and competent evidence received by you at the trial in his presence.*

#### 5. Study of the Case

##### a. *Examine the charge sheet.*

- (1) Determine whether the pay of the accused entered on page 1 of the charge sheet is consistent with that shown on pay tables for an individual of the accused's grade and length of service. If the pay of the accused as reflected on the charge sheet appears to be inaccurate, determine the facts and make appropriate corrections on all copies of the charge sheet. You should initial any changes you make.
- (2) Correct any obvious administrative, clerical, or typographical errors on the charge sheet and initial each. Corrections of the charges and specifications which involve the inclusion of any person, offense, or matter not fairly included in the charges, as referred to you for trial, will not be made (MCM 79c). If the charges or specifications are faulty in some material respect, return the file to the convening authority, explaining the reasons for returning it.
- (3) Ascertain whether the endorsement by which the case has been referred for trial is administratively correct, including the designation of the court-martial order by which you were appointed a summary court-martial. If you determine that the referral for trial is incorrect, return the file to the convening authority, explaining your reasons for doing so.

- (4) Ascertain whether the charges are sworn. If they are not, confer with the accuser to determine whether he desires to swear to the truth of the charges. An accused may not be tried on unsworn charges over his objection.
- (5) Ascertain whether page 4 of the charge sheet indicates that the accused has been permitted and has elected to refuse punishment under Article 15 as to *all* charges and specifications. If not, make inquiries of the headquarters of the convening authority to make sure that the entries on the charge sheet concerning this matter are correct. An accused may not be tried by summary court-martial over his objection for *any* offense charged, unless he has been permitted and has elected to refuse punishment under Article 15 for *all* offenses charged.

*b. Determine the law applicable to the case.*

- (1) Familiarize yourself with the elements (essential facts) of the offense charged. Read the discussion of the offense or offenses in chapter XXVIII of the Manual, particularly the paragraphs entitled "Proof." If the offense is charged as a violation of Article 134 and no discussion of the *specific* elements appears in the Manual, the elements of the offense can be identified by breaking the specification down into its essential, component allegations. Each of these allegations is an element of the offense. For example, if the offense charged is careless discharge of a weapon, the offense will be charged in substantially the following language:

"In that Private (E-2) John Doe, U.S. Army, Company B, . . . . ., did, at Fort . . . . ., on or about 3 September 19 . . ., through carelessness, discharge a rifle in the barracks of Company B, . . . . . " (MCM, App. 6a and b.)

The elements of the offense are:

1. At the time and place alleged, the accused discharged a rifle.
  2. The discharge of the rifle was the result of the accused's carelessness.
- (2) Assure yourself that each specification actually alleges an offense (see MCM 28) and that each offense is charged as a violation of the proper article of the Code. If you conclude that the wording of a specification departs so materially from an applicable form specification (MCM, App. 6c) that either no offense is alleged or the specification is ambiguous, return the file to the convening authority stating your reasons for returning it.
  - (3) If the accused is charged with a failure to obey a regulation or written order and a copy of the directive is not included in the file, obtain copies of the directive and familiarize yourself with its provisions.
  - (4) Determine the admissibility and authentication of any documentary evidence, such as extract copies of morning reports and copies of records of previous convictions (see MCM 143 and 144). Assign exhibit numbers to all documentary evidence and any real evidence (physical objects) in the order in which you intend to use them at the trial (see Sec. V). When you actually receive (admit) an exhibit in evidence at the trial, mark it "Received in evidence," followed by your initials.

*c. Plan an orderly procedure.*

- (1) Determine the order in which you plan to call the witnesses. Witnesses for the Government should be called first, normally in an order which will permit the facts of the case to be presented, as near as possible, in a chronological manner.

- (2) You may not take the testimony of any witness by telephone at the trial. However, if in preparing the case or during the trial you feel a need to make further inquiry, you may communicate by telephone or otherwise with prospective witnesses or others, except the accused, for the purpose of determining the extent of their knowledge concerning the case, whether you will call them as witnesses, whether they are in possession of admissible documentary or real evidence, or whether they know of witnesses or evidence that should be presented at the trial. You *must not* consider such an out-of-court communication as evidence in the case unless it becomes the subject of a stipulation of fact or testimony (see MCM 154b) specifically and knowledgeably made by the accused at the trial, in which event you may consider the stipulation as evidence. Also, in preparing for the trial, you may locate and obtain for use at the trial any relevant documentary or real evidence, even if it was not contained or mentioned in the file as received by you.

*d. Determine whether there are any reasons which would prevent you from conducting a fair and impartial trial.* If there are, as when you have personal knowledge of the incident involved in the charge because of having been an eyewitness to the event or otherwise, notify the convening authority of this fact.

## 6. Preparation for Opening Session and Procurement of Witnesses

Arrange for a place where the opening session (Sec. III) may be held and where the testimony of the witnesses may be heard, and set a time and date for the opening session.

*a.* Notify the accused, through his commanding officer, to be at the place at the time set for the opening session.

*b.* Notify all witnesses whom you intend to call to be ready to appear at the place of trial upon further notification by you. For planning purposes, you should notify the witnesses of a tentative time and date at which they may be required to appear. However, if the accused pleads guilty to the charges, you may have no need to call the witnesses. Furthermore, if the accused requests additional witnesses to testify in his behalf or if he is granted a continuance to obtain additional evidence, the date on which the witnesses will be called to testify may have to be postponed. By alerting the witnesses to be ready to appear, if needed, but by not requiring their appearance until you notify them, you permit them to continue to perform their regular duties without interruption and without requiring them to appear needlessly for the trial at the time set.

*c.* If individuals who are not subject to the Uniform Code of Military Justice (civilians) are essential witnesses and they are unable or unwilling to appear in the absence of a subpoena and the advancement of fees and travel allowances, you will have to issue a subpoena (MCM 115; Sec. III, AR 37-106). Before doing so, you should consult with the judge advocate office serving your command and the local disbursing officer. You will also have to arrange for the service of the subpoena on the witness and the advancement of funds to him. If the witness resides in the local area, you may arrange to do this yourself or you may arrange for another to do this. In some instances, local civilian witnesses will be willing to appear without having their fees and costs of transportation advanced to them. Under these circumstances, you may deliver the subpoena to the witness when he appears at the trial and, after he has acknowledged service of the subpoena in writing, you may arrange to have his fees and allowances paid by the disbursing officer after he has testified. Many civilian witnesses are willing to testify without subpoena, without reimbursement for costs and transportation, and without receipt of witness fees.



d. Although you may take depositions from witnesses in proper cases (MCM 79b), you should *always* obtain advice from the judge advocate office serving your command before attempting to do so.

e. If the charge sheet reflects that the accused has been offered and has elected to refuse punishment under the provisions of Article 15 as to *all* offenses charged, that portion on page 4 of each copy of the charge sheet entitled "Specifications and Charges" should be completed as indicated in appendix 11 of the Manual.

## SECTION III

### OPENING SESSION OF THE TRIAL PROCEEDINGS

#### 7. General

The opening session of the trial proceedings will be held pursuant to arrangements you have made in accordance with paragraph 6a. This session should be conducted with dignity and decorum, inasmuch as the opening session is a part of the formal trial proceedings, even though no witnesses are called to testify.

#### 8. Procedure for Opening Session

The following portrays the procedure that should be used in a typical opening session of the trial of a summary court-martial case. Variations in this procedure which may occur because of special circumstances are reflected in notes which have been inserted at appropriate points in the text.

SUM CM (to accused): I am (Major) ..... I was appointed a summary court-martial by Summary Court-Martial Appointing Order Number ....., Headquarters, ....., dated ..... Certain charges against you have been referred to me for trial by summary court-martial by (command of) (order of) ..... The court is now in session for the trial of your case. The charges are signed by ....., a person subject to the Code, as accuser, and are properly sworn to before an officer of the armed forces authorized to administer oaths.<sup>2</sup> The charges allege, in general, (the offense(s) of ..... ) (that you did ..... ).

Identity of Summary CM

Referral of charges for trial

Court in session

I am now going to advise you of the rights you have in this trial. Until I have completed my explanation, I do not want you to say anything except to answer specific questions that I will ask you. Do you understand?

Cautioning the accused

As a summary court-martial, it is my duty to produce all the evidence concerning any offense charged to which you plead not guilty, and this includes evidence both for and against you. It is also my duty to consider any evidence you may wish to pre-

Duties as Summary CM

<sup>2</sup> *Unsworn Charges.* If the charges are not sworn, advise the accused substantially as follows:

*SUM CM (to accused): (Captain) ....., who has signed the charges as accuser, has not sworn to the truth of the charges which he has signed. You may not be tried on unsworn charges over your objection. Therefore, if you object to being tried on unsworn charges, I will return the charges to the convening authority without trial. Do you object to being tried on unsworn charges?*

If the accused objects to trial on unsworn charges, return the file to the convening authority explaining the reasons for returning it.

sent in mitigation and extenuation, that is, any evidence which might lessen the severity of the sentence if you are found guilty. I must evaluate and weigh the evidence impartially, determine your guilt or innocence of any offense to which you plead not guilty only on the basis of the evidence received in court in your presence during this trial, and, if you are found guilty, adjudge an appropriate sentence. As to any offense to which you plead not guilty, you will be presumed to be innocent until your guilt is established by legal and competent evidence beyond a reasonable doubt.

Witnesses for the  
Government

The following witnesses will probably appear and testify against you: (Captain) . . . . ., (Sergeant) . . . . ., (Private First Class) . . . . ., and (Private First Class) . . . . .

Right to cross-examine

After these witnesses have testified in response to my questions, you will have a right to cross-examine them, that is, you may ask them any questions which relate to this case, or, if you prefer, I will do this for you.<sup>a</sup>

Right to present evidence

You also have the right to call witnesses and to produce other evidence in your behalf. I will arrange for the attendance of any witnesses needed by you or the production of any evidence relating to your case or help you in any other way possible. [I notice that (Sergeant . . . . .), (Private First Class . . . . .) and (Mr. . . . . .) are listed as witnesses for you on the charge sheet and I have arranged to have them present to testify at the trial.]

Right to testify concerning  
the offense or offenses

As the accused in this case, you also have these rights:

First, you may be sworn and testify as a witness concerning the offense(s) charged against you. If you do that, whatever you say will be considered and weighed as evidence by me just as is the testimony of other witnesses.

(The following should be used if there is only one specification: You can be questioned by me about the whole subject of the offense and about your worthiness of belief.)

Right to testify concerning  
less than all offenses

(The following should be used if there is more than one specification: If your testimony should concern less than all of the offenses charged against you and you do not desire to or do not testify concerning the others, then you may be questioned by me about the whole subject of those offenses concerning which you do testify and concerning your worthiness of belief, but I will not question you about any offense concerning which you do not testify.)

Right to remain silent

Second, you may remain silent, that is, say nothing at all. You have a right to do this if you wish, and if you do this, it will not

<sup>a</sup> If the accused has counsel, counsel will conduct the cross-examination.

count against you in any way and I will not consider it as an admission that you are guilty. If you remain silent, I am not permitted to question you about the offense(s).

Third, if you are found guilty, you will have the right to testify under oath concerning matters in extenuation or mitigation, or you may remain silent, in which case I will not draw any inferences from your silence. In addition you may, if you wish, make an unsworn statement in extenuation or mitigation. The statement may be oral or in writing, or both. If you testify, I may question you on your testimony. If you make an unsworn statement, I am not permitted to question you upon it but I may receive evidence to contradict anything contained in the statement.

Right to testify, remain silent, and make an unsworn statement in extenuation or mitigation

If I find you guilty of (the offense) (any of the offenses) charged, the maximum sentence which I am authorized to impose is .....

Maximum punishment

If the accused has been offered but has elected to refuse punishment under Article 15 as to *all* offenses charged, advise him as follows:

SUM CM (to accused): As you have been offered and have elected to refuse punishment under Article 15 of the Uniform Code of Military Justice as to (the) (all of the) offense(s) charged, I will proceed with the trial regardless of any objection you may have to trial by summary court-martial.

Accused offered nonjudicial punishment

NOTE: If the accused has *not* been offered punishment under Article 15 of the Uniform Code of Military Justice for *all* offenses charged, advise him as follows:

*SUM CM (to accused): The charge sheet reflects that you have not been offered punishment under Article 15 of the Uniform Code of Military Justice for (the offense charged) (any of the offenses charged) (the offense(s) alleged in Specification(s) .....). Under these circumstances, you have the right to object to trial by summary court-martial. If you object to trial by summary court-martial, I will have you note your objection at the appropriate place on the charge sheet and I will return the file to the convening authority. In this event, appropriate authority may decide to refer your case to a special or general court-martial for trial (and either of these courts has the authority to adjudge a greater sentence upon a finding of guilty of the offense(s) charged against you than does a summary court-martial).<sup>5</sup> If you have any questions concerning*

<sup>4</sup> See paragraph 3 of this guide.

<sup>5</sup> The statement inclosed in parentheses may be used whenever it is correct. It is correct in *any* case involving an accused with two or more admissible previous convictions or involving an accused above the fourth enlisted pay grade, as well as in cases in which the maximum sentence which could be imposed by a special or general court-martial is, under the Table of Maximum Punishments (MCM 127c), obviously in excess of the maximum sentence imposable by a summary court-martial.

Reading the charges to  
the accused

*the matter of objecting to trial, I will be glad to answer them.  
If you desire some time to consider whether you object to trial  
by summary court-martial, I will postpone the case for a period  
long enough for you to decide. Do you want some additional  
time to make up your mind? <sup>6</sup>*

When the trial is to proceed as a result of the accused's consent to trial by summary court-martial or because the accused has been offered and has elected to refuse punishment under Article 15 as to *all* offenses charged, proceed as indicated below:

SUM CM (to accused): The charge(s) and specification(s) against you which have been referred to me for trial are as follows:

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

Specification (1): In that .....

Specification (2): In that .....

(.....).

((Charge (II) (Additional Charge): Violation of the Uniform Code of Military Justice, Article .....

(Specification 1: In that .....

(.....).

I will now show you the charge(s) and specification(s), and I ask you if you understand them.<sup>7</sup>

Motions to dismiss and to  
grant other relief

Before I ask you whether you are going to plead guilty or not guilty to the charge(s) and specification(s) and explain these pleas to you, I must advise you that any motion to dismiss (the) (any of the) charge(s) and specification(s) or to grant other relief should be made at this time.<sup>8</sup>

<sup>6</sup> If the accused desires additional time to consider whether he will object to trial by summary court-martial, recess or adjourn the proceedings for a reasonable period, advising the accused how long the period will be (see footnote 21). If the accused objects to trial by summary court-martial, have the accused mark the appropriate box and sign his name on page 4 of each copy of the charge sheet and return the file to the convening authority after placing your signature in the appropriate space provided. If the accused consents to trial by summary court-martial, have him reflect that fact by marking the appropriate box on page 4 of each copy of the charge sheet and signing his name in the space provided.

<sup>7</sup> Make certain that the accused understands the charges and specifications. It may be necessary to explain each specification in as simple language as possible, breaking it down into its essential components, or elements, and to ask the accused if he understands the explanation. Any additional explanation needed by the accused should be given.

<sup>8</sup> At this point you should advise the accused concerning any motions (MCM, Ch. XII) which from your examination of the file you feel he may desire to make. An example follows:

*Advising Two or More Accused of Right to Move for Separate Trials.* If the cases of two or more accused have been referred to you for either a joint (MCM 26d) or common (MCM 33l) trial, advise them substantially as follows:

*SUM CM (to accused): This case has been referred to me for a (joint) (common) trial.*

*You have the right to move for separate trials. However, I am not required to grant a motion for a separate trial unless there is good cause for granting your motion.*

Grounds on which motions for separate trials should be granted are set forth in paragraph 69d of the Manual. If a (Footnote continued on next page.)

NOTE: If the accused makes a motion to dismiss or to grant other relief, the trial may not proceed until you have disposed of the motion.

When the accused has no motions to make or if all motions have been disposed of and termination of the trial has not resulted, proceed with the trial as indicated below:

SUM CM (continuing): Before you enter your pleas to the (remaining) charge(s) and specification(s), I will explain your rights concerning the pleas you may make. First, you may plead not guilty to the charge(s) and specification(s) (or to any of them<sup>9</sup>). You have a moral and legal right to plead not guilty even though you may believe that you are guilty. A plea of not guilty merely means that you are requiring that your guilt be proved beyond a reasonable doubt in this trial before you may be found guilty. If you plead not guilty to (the charge and specification) (one or more of the charges and specifications), I will proceed to hear and consider the evidence as to (the charge and specification) (each charge and specification as to which you plead not guilty). Second, you may plead guilty to the charge(s) and specification(s) (or to any of them<sup>9</sup>). If you plead guilty to a charge and specification, you thereby admit every essential fact, or element, of the offense stated in that specification. I am authorized to find you guilty of any charge and specification to which you plead guilty because of your plea alone without calling any witnesses or considering any evidence. However, you will still have the opportunity to have witnesses testify, or introduce other evidence, in mitigation or extenuation, that is, for the purpose of lessening the severity of the sentence. Any plea of guilty you desire to make should be made only because you are convinced that you really are guilty and not for any other reason whatsoever.

Explanation of pleas of guilty and not guilty

NOTE: *Explanation of Plea of Guilty to Lesser Included Offense.* If a less serious offense is included in an offense charged (see App. 12 of the Manual, Table of Commonly Included Offenses), advise the accused substantially as follows:

*SUM CM (to accused): Third, you may plead guilty to a lesser included offense, that is, to an offense included in (an) (the) offense charged which is less serious than the offense charged. (Included in the offense alleged (in Specification . . . . of Charge . . . .) is the lesser offense of . . . .) If you plead*

separate trial is granted in cases which have been referred to you for a *common* trial, the files in the case or cases which you do not plan to try at this time should be returned to the convening authority explaining that you have granted a separate trial. If a separate trial is granted in a case which has been referred to you for a *joint* trial, excuse the accused person or persons not to be tried and proceed with the trial of the accused whom you have elected to try. The findings and sentence, if any, which result should be reflected in the appropriate spaces provided on page 4 of the charge sheet in such a manner that it will be clear that they apply only to the accused whom you tried, and a remark should be made stating which of the accused were *not* tried.

<sup>9</sup> This phrase *must* be used when more than one offense is charged.

*guilty to a lesser included offense, you thereby admit every essential fact, or element, of that offense. With respect to any lesser included offense to which you plead guilty, I may find you guilty of that offense without any proof. However, I will call witnesses and will produce any other evidence available for the purpose of determining whether you are guilty of the greater, rather than the lesser, offense.*

Explanation of maximum sentence on the plea of guilty

SUM CM (continuing): If you plead guilty to (the) (any) offense, I may sentence you to the maximum sentence that I am authorized to impose, which is .....<sup>10</sup>

I will not accept any plea of guilty unless you understand its meaning and effect.

If you desire some time to consider what your pleas will be, I will postpone the proceedings for a period long enough for you to decide. Do you understand the various pleas and the rights you have in connection with them, and do you want some additional time to make up your mind? <sup>11</sup>

SUM CM (to accused): How do you plead?

ACCUSED: I plead (Guilty) (Not Guilty) (to all charges and specifications) (to Specification ..... of Charge ..... ) (.....)

NOTE: If the accused pleads guilty to one or more offenses, advise and question him as follows:

*SUM CM (to accused): You have pleaded guilty to ..... (The essential facts, or elements, of (the) (each) offense to which you have pleaded guilty are ..... ) (I have already explained to you the essential facts, or elements, of (the) (each) offense to which you have pleaded guilty). As I said before, when you plead guilty to any offense you thereby admit every essential fact, or element, of that offense and I may find you guilty of the offense without any proof and sentence you to the maximum punishment that I am authorized to impose. Do you understand this explanation of the meaning and effect of a plea of guilty and do you still wish to plead guilty to (this) (these) offense(s)?*

If the accused does not appear to understand the meaning and effect of a plea of guilty made by him or if he desires to change that plea to one of not guilty, enter a plea of not guilty to the affected offense and proceed accordingly. Also, if the accused refuses or fails to plead guilty or not guilty to an offense charged, enter a plea of not guilty to that offense for him.

<sup>10</sup> See paragraph 3 of this guide.

<sup>11</sup> Do not proceed further until you are convinced that the accused understands his rights as to the pleas he may enter. If the accused desires some time to decide how he wants to plead, recess or adjourn the proceedings for a reasonable period, advising the accused how long the period will be (see footnote 21). When the period has elapsed, call the accused before you, advise him that the court is again in session, and ask him how he pleads.

All pleas should be noted at this time in the space provided on page 4 of the charge sheet.

If the accused has entered a plea of not guilty to any offense charged, advise the accused as follows:

SUM CM (to accused): (The names of \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ are listed on the charge sheet as being witnesses for you, and they have been notified to appear to testify for you.) If you know of any (other) witnesses you desire to have called to testify in your defense, give me their names and organizations or addresses and I will try to arrange to have them called as witnesses. You may also wish to arrange for the attendance of another group of witnesses. For example, if I should find you guilty (of one or more of the offenses), you would have the right to call witnesses or to introduce other matter in mitigation or extenuation, that is, for the purpose of lessening the severity of the sentence.

NOTE: *Permissible Procedure on Plea of Guilty to All Charges.* If the accused has entered a plea of guilty to *all* charges and specifications and you have accepted these pleas, you may proceed at once to announce your findings of guilty of these charges and specifications. In announcing the findings, request the accused to stand before you and announce the findings substantially as follows:

*SUM CM (to accused): I find you of (the charge and specification) (all charges and specifications): Guilty.*

The findings of guilty should immediately be noted in the space provided for findings on page 4 of the charge sheet. Next advise the accused as follows:

*SUM CM (to accused): (I do not intend to call any witnesses.) (I am going to call (some of) the witnesses to testify in order to obtain a better knowledge of what occurred to help me in determining the sentence.) (However,) you may desire to call witnesses or to introduce other matter in extenuation or mitigation, that is, for the purpose of lessening the severity of the sentence. (The names of \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ are listed on the charge sheet as being witnesses for you and they have been notified to appear to testify for you.)*

Regardless of how the accused may plead, proceed as follows:

SUM CM (to accused): I will now advise you more particularly as to the meaning of extenuation and mitigation. You may introduce matter tending to show that you have a good character generally or tending to establish your good character, reputation, or record for efficiency, fidelity, subordination, temperance, courage, or any other traits that go to make up a good enlisted per-

Explanation of mitigation  
or extenuation



son.<sup>12</sup> (You may also introduce evidence of the character given you on a former discharge from the military service.) This is called matter in mitigation. Matter in extenuation of an offense serves to explain the circumstances surrounding the commission of the offense, including the reasons that caused you to act as you did but not amounting to a defense. Matter in mitigation or extenuation of an offense may be introduced through the testimony of witnesses, official records, or letters, affidavits, or any other written documents. If you introduce matter in mitigation or extenuation of an offense, I will have the right to call witnesses to testify, or to receive and consider other evidence, for the purpose of contradicting the matter you have introduced.

Do you want me to call witnesses for the purpose of testifying in mitigation or extenuation on your behalf (in the event you are found guilty of (the) (an) offense)? If so, furnish me with a list of their names and organizations or addresses. If you want me to get some military records that you would otherwise be unable to obtain, provide me with a list of these documents also.

If you desire to introduce letters, affidavits, or other documents in mitigation or extenuation and these documents are not now in your possession, please advise me so that I can postpone the date I have tentatively set for proceeding with the trial.<sup>13</sup>

NOTE: If the accused has been found guilty of *all* charges and specifications on pleas of guilty and it appears that no evidence regarding the sentence is to be produced other than that already in your possession, proceed immediately in accordance with Section VI of this guide.

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<sup>12</sup> Evidence of general good character or, under certain circumstances, good traits of character is also admissible on the question of guilt or innocence (see MCM 138f(2)).

<sup>13</sup> If the accused desires to have witnesses called or to have certain documents or records obtained, arrange, if possible, to have the witnesses present and the documents or records produced at the time and place set for the next session of the trial. However, if the accused indicates a desire to obtain letters, affidavits, or other documents not now in his possession, ordinarily he will be unable to do so by the date you had originally planned to proceed with the case. In this event or in the event you are unable to arrange for the attendance of certain witnesses or the production of certain documents requested by the accused by the date originally planned, set a new date sufficiently far in the future to permit the attendance of the witnesses and the production of the documents. In either event, inform the accused when and where you intend to resume the proceedings and arrange for his attendance. Also, notify the witnesses of the date and place you have set for the further proceedings and arrange for their attendance.

## SECTION IV

### ARRANGEMENTS BEFORE FURTHER PROCEEDINGS

#### 9. General Arrangements

Before the next session commences:

*a.* Make certain that you have in your possession all essential documentary and real evidence and that all witnesses who are to be called are present or that arrangements have been made for them to appear in time to testify.

*b.* Arrange the courtroom so that, as far as practicable, the chair any witness might occupy while testifying faces both you and the accused (see App. I).

#### 10. Resumption of Proceedings

Ask the accused if he is ready to proceed with the trial. If he is not and he has reasonable grounds for requesting a delay in the commencement of the proceedings, grant him a continuance for a sufficient period of time to meet his needs (MCM 58). If he is ready to proceed, call the first witness for the Government, administer the oath, and proceed as indicated in Section V of this guide. If only witnesses for the accused in mitigation and extenuation are to be called, proceed as indicated in Section VI of this guide.

## SECTION V

# PROCEDURES FOR RECEIVING EVIDENCE ON PLEAS OF NOT GUILTY; FINDINGS

### 11. Purpose of Section

The primary purpose of this section is to prescribe the procedure to be used in that portion of the trial concerning the question of the accused's guilt or innocence of one or more specifications to which he has pleaded not guilty. Some portions of the procedure, however, are also appropriate for use in connection with the presentation of matter in mitigation and extenuation and receiving evidence in rebuttal thereof (Sec. VI).

### 12. Oath and Introductory Questions

The procedure for administering the oath to a witness and for the introductory questioning of the witness is set forth below.

SUM CM (to witness): You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. (So help you God.)<sup>14</sup>

WITNESS: I do.<sup>15</sup>

SUM CM: State your full name (grade, organization, and armed force) (occupation and residence).

WITNESS: .....

SUM CM: Do you know the accused?<sup>16</sup>

WITNESS: I (do) (do not).

<sup>14</sup> The word "affirm" should be substituted for the word "swear" and the phrase "So help you God" should be deleted when administering the oath to persons who have conscientious scruples against taking an oath or to persons who do not believe in a Supreme Being (MCM 112d). When testimony is given through an interpreter, he must first be sworn (MCM 114). *The interpreter must translate questions and answers in verbatim form.* When administering the oath, direct the witness or interpreter to stand before you and to raise his right hand. You should also raise your right hand while you administer the oath.

<sup>15</sup> After the oath has been administered, request the witness to be seated in the chair provided. Witnesses other than the accused should ordinarily be excluded from the courtroom until called to testify (MCM 53f, 79d(3)).

<sup>16</sup> If identification of the accused is not an essential part of the expected testimony of the witness, this question may be omitted. If the witness identifies the accused, you should normally ask him to state the accused's name and organization, if he knows it. If the witness does not appear to be well acquainted with the accused and identification of the accused is relevant to and part of his testimony, you should inquire concerning the basis for his identification of the accused.

### 13. Questioning of Witnesses, Reception of Evidence, and Findings

Segments of the questioning of various witnesses by the summary court-martial in a summary court-martial case, the reception of certain evidence, the advice that a summary court-martial should give to the accused under the circumstances indicated, and matters pertaining to the findings are set forth below.

#### *EXAMINATION OF GOVERNMENT WITNESS*

SUM CM (to witness, after introductory questions): Did you see the accused on the morning of 3 June 1964?

WITNESS: I did.

SUM CM: Where were you at the time you saw him?

WITNESS: I was in the dayroom of Company B, . . . . ., Fort . . . . .

SUM CM: About what time was this?

WITNESS: It was approximately 0930 hours.

SUM CM: Who else, if anyone, was present?

WITNESS: Sergeant John Smith was there.

SUM CM: What did the accused do, if anything, at this time?

WITNESS: He was arguing with Sergeant Smith and (witness continues with details of incident).

\* \* \* \* \*

#### *CROSS-EXAMINATION OF GOVERNMENT WITNESS*

When you have completed your examination of a witness for the Government, advise the accused substantially as follows:

SUM CM (to accused): You may now cross-examine this witness concerning any of his testimony, any knowledge he may have of the offense(s), or concerning his worthiness of belief. If you wish, I will do this for you if you will inform me in a general way of the matters about which you want me to question the witness.<sup>17</sup>

ACCUSED: Sir, I wish you would ask him if he heard everything that Sergeant Smith said to me in the dayroom.

SUM CM (to witness): Did you hear the whole conversation between the accused and Sergeant Smith in the dayroom?

WITNESS: No, sir. They were arguing at the time I came into the dayroom, and I don't know what was said before I got there.

SUM CM (to accused): Do you have any more questions you want this witness to answer?

ACCUSED: No, sir.

\* \* \* \* \*

<sup>17</sup> The accused, if he so requests, should be permitted to see any statement of the witness which may be in the file to aid him in determining what questions he desires to ask, or have you ask, the witness.

## *REAL EVIDENCE (PHYSICAL OBJECTS)*

SUM CM (to witness): I have here a knife which I have designated as Exhibit No. ....

NOTE: At this point in the proceedings, you should permit the accused to examine the exhibit.

SUM CM (to witness): Do you recognize this knife?

WITNESS: I do.

SUM CM: How do you recognize it?

WITNESS: I recognize it by the broken small blade on it and by the scratches I saw Captain Roe place on it when I handed it to him.

SUM CM: How did it come into your possession?

WITNESS: I found it under the accused's bunk.

SUM CM (to accused, after questioning the witness further as to the circumstances under which the knife was found and after cross-examination, if any, of the witness): Do you have any objection to my receiving this exhibit in evidence?

ACCUSED: (Yes, sir (stating reasons)) (No, sir).

SUM CM: (Your objection is sustained) (Your objection is overruled and) (The exhibit will be received in evidence).

\* \* \* \* \*

## *DOCUMENTARY EVIDENCE AUTHENTICATED OFFICIAL RECORDS*

SUM CM: I have here an extract copy of the morning reports of Company B, ....., for 29 May 1964 and for 3 June 1964 which I have designated Exhibit No. .... It appears to be certified as a true copy by .....

SUM CM (to accused, after permitting him to examine the document): Do you have any objection to my receiving this exhibit in evidence?

ACCUSED: (Yes, sir (stating reasons)) (No, sir).

SUM CM: (Your objection is sustained) (Your objection is overruled and) (The exhibit will be received in evidence).

\* \* \* \* \*

## *CONFESSIONS AND ADMISSIONS*

Before you can consider a self-incriminating statement of the accused as evidence against him, you must be convinced beyond a reasonable doubt from evidence received at the trial that the statement was voluntary and not the result of promises, threats, coercion, or any violation of Article 31 of the Code. You must also keep in mind that an accused cannot be convicted on the basis of his out-of-court self-incriminating statement alone, even if it is voluntary, for such a statement must be corroborated if it is to be used as a basis for a conviction. For a detailed discussion of the admissibility of self-incriminating statements of accused persons, see paragraph 1402 of the

Manual. In all cases in which you are considering the reception in evidence of a self-incriminating statement of the accused, you should call the person who obtained the statement to testify as a witness and question him substantially as follows:

SUM CM (to witness, after introductory questions): Did you (interrogate) (ask any questions of) the accused?

WITNESS: Yes, sir, I did.

SUM CM: Before doing so, did you make any explanation of his rights to the accused concerning the making of any statement?

WITNESS: Yes, sir, I did.

SUM CM: What explanation did you make?

WITNESS: I told him that I suspected him of stealing on 2 June 1964 a gallon of paint which was the property of the United States and which was stored in the supply room of his company. I then told him that he did not have to make any statement at all about the offense and that if he did make a statement it could be used as evidence against him in a trial by court-martial.

SUM CM: Did you make any promises to him, threaten him, or employ any force or violence in connection with obtaining a statement?

WITNESS: No, sir, I did not.

SUM CM: Did the accused make a statement to you?

WITNESS: Yes sir, he did.

SUM CM: Describe fully the manner in which the statement was obtained.

NOTE: If the witness testifies that he obtained a written statement from the accused, he should be asked if and how he can identify it as a written statement of the accused. When a number of persons have participated in obtaining the statement, you may find it necessary to call several or all of them as witnesses in order to inquire adequately into the circumstances under which the statement was taken.

SUM CM (to accused, after permitting him to examine the statement when it is in writing): The Uniform Code of Military Justice provides that no person subject to the Code may compel you to incriminate yourself or answer any question which may tend to incriminate you. The Code also provides that no person subject to the Code may interrogate or request any statement from you if you are accused or suspected of an offense without first informing you of the nature of the offense of which you are suspected and advising you that you need not make any statement regarding the offense of which you are accused or suspected and that any statement you do make may be used as evidence against you in a trial by court-martial. Finally, the Code provides that any statement obtained from you through the use of coercion, unlawful influence, unlawful inducement, or any violation of Article 31 may not be used in evidence against you in a trial by court-martial. In addition, any statement made by you that was actually the result of any promise or that was made by you after you had requested and still desired, but had been denied, an opportunity to consult with counsel is inad-

missible and cannot be used against you. Before I consider receiving this statement in evidence, you have the right at this time to introduce any evidence you desire concerning the circumstances under which the statement was obtained or concerning whether the statement was in fact made by you. You also have the right to take the stand at this time as a witness for the limited purpose of testifying as to these matters. If you do that, whatever you say will be considered and weighed as evidence by me just as is the testimony of other witnesses. I will have the right to question you upon your testimony, but if you limit your testimony to the circumstances surrounding the taking of the statement or as to whether the statement was in fact made by you, I may not question you on the question of your guilt or innocence of the offense itself, nor may I ask you whether the statement is true or false. In other words, you can only be questioned upon the issues concerning which you testify and upon your worthiness of belief, but not upon anything else.

On the other hand, you need not take the witness stand at all. You have a perfect right to remain silent, and the fact that you do not take the stand yourself will not be considered as an admission by you that the statement was made by you under circumstances which would make it admissible or that it was in fact made by you.

You also have the right to cross-examine this witness concerning his testimony, just as you have this right with other witnesses, or, if you prefer, I will cross-examine him for you along any line of inquiry you indicate. Do you understand your rights?

ACCUSED: .....

SUM CM: Do you wish to cross-examine this witness?

ACCUSED: .....

SUM CM: Do you wish to introduce any evidence concerning the taking of the statement or concerning whether you in fact made the statement?

ACCUSED: .....

SUM CM: Do you wish to testify yourself concerning these matters?

ACCUSED: .....

SUM CM: Do you have any objection to my receiving the statement in evidence?

ACCUSED: (Yes, sir (stating reasons)) (No, sir).

SUM CM: (Your objection is sustained) (Your objection is overruled and) (The statement will be received in evidence (as Exhibit No. ....)).

\* \* \* \* \*

### *CONCLUDING THE EXAMINATION OF A WITNESS*

SUM CM (to accused): I have no more questions to ask this witness. Are there any additional questions you desire to ask or to have me ask the witness?

ACCUSED: No, sir.

SUM CM (to witness): You are excused, but remain in the vicinity of the courtroom because you may be needed again.<sup>18</sup>

*RECALL OF WITNESS WHO HAS PREVIOUSLY TESTIFIED*

SUM CM (to witness): You are reminded that you are still under oath.

*CLOSING THE GOVERNMENT'S EVIDENCE*

SUM CM (to accused): This completes the Government's evidence. (I will now proceed to call the witnesses who will testify for you.) (Do you have any witnesses to testify for you on the question as to whether you are guilty or not guilty?)

*OPENING THE ACCUSED'S DEFENSE AND  
EXAMINATION OF DEFENSE WITNESSES*

If witnesses are to be called to testify on the accused's behalf on the question of guilt or innocence, advise the accused substantially as follows:

SUM CM (to accused): You may question each of the witnesses who are to testify for you or, if you prefer, I will question them if you will tell me generally what you want me to question them about.

ACCUSED: I would prefer to have you question them, sir. I would like you to call Sergeant Jones as my first witness. He was with me at the time and he can tell you how the fight started.

SUM CM (to accused): Very well.<sup>19</sup>

<sup>18</sup> If the witness is a civilian or an officer with important duties, desires to return to his work, and you are convinced that no further testimony from him will be needed, you may excuse him permanently from the trial. If you have reason to fear that the testimony of a witness who has not testified may be influenced as a result of hearing a witness who has testified recount his experiences on the witness stand, you should instruct the latter witness before excusing him substantially as follows:

*SUM CM (to witness): You are instructed not to discuss your testimony in the case with anyone except the accused (or his counsel). You will not allow any witness in this case to talk to you about the testimony he has given or which he intends to give. If anyone, other than the accused (or his counsel), attempts to talk to you about your testimony in this case, you should make the circumstances known to me.*

<sup>19</sup> The procedure for administering the oath and for the introductory questioning of the witness set forth in paragraph 12 of this guide should be followed for defense as well as Government witnesses. After the accused has completed his examination of the defense witness or you have done so for him, you may cross-examine the witness if cross-examination seems to be warranted. Continue to examine each witness until all relevant testimony has been obtained and the accused has expressed satisfaction that all pertinent testimony has been given. The rules prohibiting leading questions on direct examination (MCM 149c) should be relaxed when the accused desires to conduct his own examination of defense witnesses.



## CALLING ADDITIONAL WITNESSES

When all witnesses who were initially called have testified, determine whether other witnesses should be called in the interests of justice and fairness to both the Government and the accused and whether any of the witnesses who have testified should be recalled. In addition, inquire of the accused substantially as shown below.

SUM CM (to accused): (I do not intend to call any additional witnesses.) (I intend to call ..... and ..... as additional witnesses.) (I am going to recall ..... to the witness stand for further questioning.) Are there any witnesses you desire to recall to the stand or are there any additional witnesses who have not been called whom you wish to testify? <sup>20</sup>

ACCUSED: .....  
\* \* \* \* \*

## CALLING ADDITIONAL WITNESSES REQUESTED BY THE ACCUSED

If the accused desires to call additional witnesses and the nature of their testimony is not apparent, inquire of the accused substantially as follows:

SUM CM (to accused): What do you expect Private First Class Brown (the witness the accused desires to have called) will testify to concerning this case?

ACCUSED: .....

SUM CM (to accused): I will arrange for Private First Class Brown to testify.) (The expected testimony of Private First Class Brown does not appear to be relevant to any issue in this case. For this reason, I will not call him as a witness.)

\* \* \* \* \*

## RECESSES AND ADJOURNMENTS

At any time during the proceedings at which you find it necessary or desirable to recess or adjourn the court, as when you have granted a continuance (see MCM 58), an announcement in substantially the following form should be made.

SUM CM (to accused): (I have been called on an alert.) (The additional witness(es) will not be able to appear to testify until .....). (.....). The court is (recessed) (adjourned) until ..... hours (on .....), at which time the court will again be in session (at .....). You must be (here) (there) at that time. <sup>21</sup>

\* \* \* \* \*

<sup>20</sup> If you desire to call additional witnesses, either on your own motion or at the accused's request, you should attempt to arrange for their immediate presence if that is possible. If arrangements cannot be made to have the witnesses testify on the date of the trial, you should continue the case to a date on which the witnesses will be able to attend (see footnote 21).

<sup>21</sup> A recess is a temporary cessation of the proceedings which are resumed later on the same day. An adjournment is a cessation of the proceedings for a period extending beyond the same day. If you recess the court and (Footnote continued on next page.)

## RESUMPTION OF PROCEEDINGS

If the court has been recessed or adjourned, the following announcement should be made when the court is again in session.

SUM CM (to accused): The court is again in session. Are you ready to proceed? <sup>22</sup>

\* \* \* \* \*

## EXPLANATION OF ACCUSED'S RIGHTS AS A WITNESS

After all the witnesses for the Government and the accused have testified on the question of guilt or innocence in a case in which the accused has pleaded not guilty to one or more specifications, advise the accused as follows:

SUM CM (to accused): Earlier in this trial, I advised you concerning your right to testify under oath concerning the offense(s) charged against you or to remain silent.

I will repeat this advice if you want me to. Do you want me to repeat this advice?

ACCUSED: (No, sir.) (Yes, sir.)

If the accused answers in the affirmative, repeat the advice in this respect ("First" and "Second" rights to testify or remain silent) set forth in paragraph 8, pages 10 and 11, of this guide. If the accused indicates that he does not want to have you repeat this advice or when the accused indicates that he understands his rights after you have repeated it, you should inquire substantially as shown below.

SUM CM (to accused): Do you wish to testify (concerning the specification) (concerning one or more of the specifications and, if so, concerning which specification or specifications do you wish to testify)?

ACCUSED: (Yes, sir. I want to testify (concerning .....).) (No, sir. I do not wish to testify.) <sup>23</sup>

\* \* \* \* \*

## CLOSING THE TRIAL ON THE QUESTION OF GUILT OR INNOCENCE

When all the evidence concerning guilt or innocence for the Government and the accused has been received, announce the close of this portion of the trial in substantially the following form:

SUM CM (to accused): The taking of evidence in this case on the question of guilt or innocence is closed.

\* \* \* \* \*

plan to leave the courtroom for an appreciable length of time, you should inform the accused of the fact and the hour when you will return. If you adjourn the court, you should so inform the accused and advise him of the hour, date, and, if a change in the place of trial is necessary, the place at which you will resume the proceedings. If during the period of a continuance you learn that a witness will be unable to attend at the date appointed for resuming the proceedings, a new trial date should be set by you and you should inform the accused, through his commanding officer, and any witnesses that may be needed on the new date.

<sup>22</sup> Unless the accused has some good reason for not proceeding at this time, the trial of the case should proceed.

<sup>23</sup> If the accused elects to testify, administer the oath to him and permit him to testify concerning any offense about which he desires to testify. You may, and ordinarily should, question him concerning every relevant fact and element of any offense about which he testifies.

## DELIBERATING ON THE FINDINGS

After that portion of the trial relating to the question of guilt or innocence has been completed, review the evidence in your mind.<sup>24</sup> If it is immediately apparent that none of the evidence is in conflict and establishes the guilt of the accused beyond a reasonable doubt or if, on the other hand, it is immediately apparent that the evidence is not sufficient to establish the accused's guilt beyond a reasonable doubt, you may announce your findings immediately. If, however, you need time to consider what the evidence establishes or does not establish, recess or adjourn the court in substantially the following form:

SUM CM (to accused): The court is (recessed) (adjourned) so that I may review the evidence. (Withdraw from the courtroom, and I will recall you when I am ready to announce my findings.) (You will be notified as to when the court will again be in session for the announcement of my findings.)

\* \* \* \* \*

## ANNOUNCING THE FINDINGS

When you have reached your findings, recall the accused, direct him to stand before you, and announce your findings substantially in accordance with one of the following forms, as appropriate:<sup>25</sup>

SUM CM (to accused):

Not guilty of all  
offenses charged

(1) I find you: Of (the) (all) Specification(s) and Charge(s): Not guilty.

Guilty of all offenses  
charged

(2) I find you: Of (the) (all) Specification(s) and Charge(s): Guilty.

Guilty of some but not  
all offenses charged

(3) I find you: Of (the) Specification (....) of (the) Charge (....): (Not guilty). Of (the) Specification (....) of (the) Charge (....): (Guilty); Of (the) Charge (....): (Guilty) (Not guilty).

Guilty of lesser included  
offense or with exceptions  
and substitutions

(4) I find you: Of (the) Specification (....) of (the) Charge (....): Guilty, except the words "....." and "....." (substituting therefor, respectively, the

<sup>24</sup> In deliberating on the findings, you should keep in mind that before you can find the accused guilty of any offense you must be convinced beyond a reasonable doubt by the evidence you have received in court in the presence of the accused that he is guilty of that offense. You may not consider any alleged facts or data which you did not receive in evidence, such as a confession of the accused which you did not receive because it was taken in violation of Article 31 of the Code. Furthermore, you may find the accused guilty only of the offense or offenses charged, a lesser offense included in an offense charged, or, by exceptions or exceptions and substitutions, an offense which does not change the identity of an offense charged or a lesser included offense thereof (MCM 74b and c). You may either recess or adjourn the court while you are deliberating on the findings.

<sup>25</sup> For further instructions as to the form of findings, see MCM 74b and c, and 158.

words "....." and "....."; of the excepted words, not guilty; of the substituted words, guilty). Of (the) Charge (....): (Guilty) (Not guilty, but guilty of a violation of Article ....).

NOTE: In a case in which the accused has pleaded guilty to some but not all of the charges and specifications, any findings of guilty resulting from the guilty pleas should also be announced at this time. If the accused has been found not guilty of all charges and specifications, take action in accordance with Section VII of this guide.

All findings should immediately be noted in the space provided on page 4 of the charge sheet.

## SECTION VI

### PROCEDURES PERTAINING TO THE SENTENCE

#### 14. Purpose of Section

The purpose of this section is to set forth an orderly presentencing and sentencing procedure.

#### 15. Presentencing and Sentencing Procedure

After all findings of guilty, if any, have been announced, proceed in the following sequence:

Verification of personal  
data on the charge sheet

a. Furnish the accused with a copy of the charge sheet and ask him if the personal data appearing on page 1 of the charge sheet, including data as to restraint, are correct. If the accused alleges that any of the personal data are incorrect, you must determine the issue after obtaining any official verification available to you.

Receiving evidence of  
previous convictions

b. Receive and consider any evidence of one or more previous convictions, making sure each conviction is admissible on the question of the sentence (see back of DD Form 493, Extract of Military Records of Previous Convictions) and showing the evidence of previous convictions to the accused and asking him if it is correct before you do so. If the accused claims that it is not correct, you must determine the issue from official sources available to you. *Evidence of the imposition of nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice may not be considered by you as matter unfavorable to the accused in determining the sentence, except when the accused attempts to give the impression that he has not previously been in trouble in the service, without the question having been initiated by you, and evidence of nonjudicial punishment thus becomes admissible to contradict this impression.*

Witnesses in mitigation  
or extenuation

c. Ask the accused whether he desires to call witnesses in mitigation or extenuation in addition to any witnesses you may know are waiting to testify for this purpose. If witnesses are to testify in mitigation or extenuation, call each in turn.<sup>20</sup>

Documentary matter in  
mitigation or extenuation

d. Receive in evidence any letters, affidavits, or other documents which the accused desires you to consider in mitigation or extenuation (see MCM 75c(1)).

<sup>20</sup> Witnesses in extenuation and mitigation are sworn and examined in the same manner as other defense witnesses. See footnote 19.

e. Advise the accused substantially as follows:

SUM CM (to accused): Earlier in this trial, I advised you concerning your right to testify under oath in your own behalf as to matters in mitigation or extenuation, to remain silent, and to make an unsworn statement about these matters. I will repeat this advice if you want me to. Do you want me to repeat this advice?

If the accused answers in the affirmative, repeat the advice set forth in paragraph 8, page 11, of this guide concerning his right to testify as to matters in mitigation or extenuation, to remain silent, and to make an unsworn statement about these matters. If the accused indicates that he does not want to have you repeat this advice or when the accused indicates that he understands his rights after you have repeated it, ask him what he desires to do in this respect.

f. If the accused elects to testify under oath, administer the oath to him or remind him that he is still under oath, as appropriate. You may cross-examine the accused on his testimony. If the accused elects to make an unsworn statement, permit him to do so. Also receive any unsworn written statement that the accused may furnish to you.

g. If you conclude that you should call witnesses in rebuttal of matters presented in mitigation or extenuation, do so, continuing the case if necessary to arrange for their attendance. If witnesses in rebuttal are called, they should be sworn and examined in the same manner as any other Government witness and the accused should be extended the right to cross-examine or to request you to cross-examine them along lines indicated by him.

h. If upon the conclusion of the taking of all evidence, if any, you have determined what sentence is appropriate, you may announce the sentence immediately. If you desire to give further consideration to the matter of the sentence, recess or adjourn the court.

NOTE: If, as a result of testimony or other evidence received on the question of mitigation or extenuation, including testimony or an unsworn statement of the accused, any matter is disclosed which contradicts or is inconsistent with a plea of guilty of the accused, you must immediately inform the accused that matters have been disclosed at the trial which are contrary to that plea of guilty and that you are going to substitute a plea of not guilty unless he states that these matters are not true. If he does not so state, change the affected plea of guilty on page 4 of the charge sheet to a plea of not guilty, deleting any finding of guilty based thereon, and then proceed as to that offense in accordance with Section IV of this guide as though the accused had initially entered a plea of not guilty. Also, the accused may of his own volition change a plea of guilty to one of not guilty at any time before the sentence is announced, and, if he does so, you must proceed as though he had initially pleaded not guilty.

Right of accused to testify, remain silent, and make unsworn statement in mitigation or extenuation

Testimony or unsworn statement of accused

Witness in rebuttal

Determining sentence

i. When you have determined an appropriate sentence, require the accused to stand before you and announce the sentence as follows:

SUM CM (to accused): I sentence you to .....<sup>27</sup>

The sentence should immediately be noted in the space provided on page 4 of the charge sheet.

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<sup>27</sup> For forms for sentences, see MCM, App. 13. For the maximum sentence that can be adjudged by summary courts-martial, see paragraph 3 of this guide.

## SECTION VII

### POST-TRIAL DUTIES

#### 16. Completion of the Charge Sheet

On each copy of the charge sheet, line out and initial the name of any witness listed on page 1 who did not testify at the trial. If witnesses other than those listed on the charge sheet testified at the trial, insert their names and addresses in the spaces provided on page 1 and note whether they were called for or against the accused. On page 4 of each copy of the charge sheet, fill in all applicable blanks in the section entitled "Record of Trial by Summary Court-Martial" which you have not already filled in, and sign your name in the appropriate blank in that section. If you have followed this guide, you may answer in the affirmative the printed question on page 4 of the charge sheet which reads, "Was the accused advised in accordance with paragraph 79d, MCM, 1951?"

#### 17. Report of Result of Trial

Prepare, sign, and dispatch a sufficient number of copies of a report of result of trial by summary court-martial (App. II) to make distribution of one copy to the immediate commander of the accused, one copy to the convening authority if he is other than the accused's immediate commander, one copy to the commanding officer of the confinement facility if the accused was in pretrial confinement or if the sentence adjudged includes confinement, and such other copies as may be required by local directives.

#### 18. Return of File to Convening Authority

When all of the procedures indicated above have been completed, return the file to the convening authority, including, in addition to all papers originally accompanying the file, any documentary or other exhibits received or offered in evidence at the trial (or copies or descriptions thereof certified by you, see MCM 54d) which were not included in the original file. These should be listed and briefly described on page 1 of each copy of the charge sheet in the blank entitled "Documents and Objects."

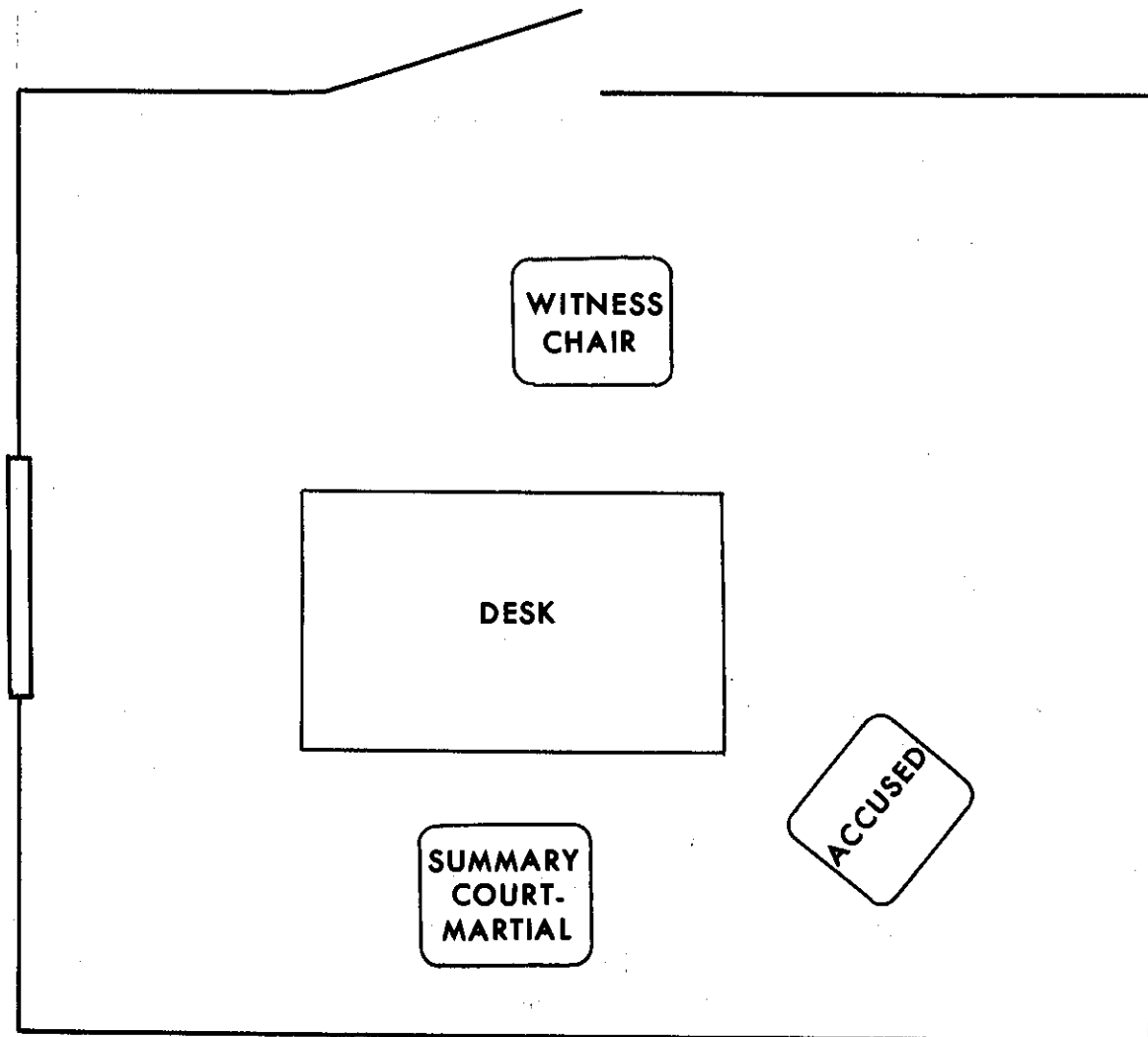
#### 19. Recommendations for Clemency

You may, if you consider it appropriate, recommend to the convening authority that clemency, in the form of a suspension of part or all of the sentence or in any other form, be extended to the accused. Any recommendation for clemency should be in writing.



# APPENDIX I

## ARRANGEMENT OF COURTROOM FOR TRIAL



## APPENDIX II

### REPORT OF RESULT OF TRIAL BY SUMMARY COURT-MARTIAL

(Date) .....

SUBJECT: Report of Result of Trial by Summary Court-Martial  
TO: .....

On this date, the trial by summary court-martial of .....

First Name	M.I.	Grade	Service No.	Organization	Last Name
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was concluded and the findings indicated below were made concerning the offenses indicated.

GIST OF OFFENSES (including charge and specification  
numbers)

	PLEA	FINDINGS
a. AWOL (Sp and Ch II)	NG	G
b. Wrongful appropriation (Sp and Ch II)	NG	NG

The accused was sentenced to .....

#### DISPOSITION OF ACCUSED:

The accused was in confinement prior to trial and was returned thereto immediately following trial.

The accused was not in confinement prior to trial but, having been sentenced to confinement, was returned to his organization (under guard) for disposition under paragraph 21d, MCM, 1951.

The accused was returned to his organization for duty.

NOTE: Cross out inapplicable paragraphs.

.....  
Name  
Rank and Branch of Service  
Organization  
Summary Court-Martial

By Order of the Secretary of the Army:

HAROLD K. JOHNSON,  
*General, United States Army,  
Chief of Staff.*

Official:

J. C. LAMBERT,  
*Major General, United States Army,  
The Adjutant General.*

Distribution:

To be distributed in accordance with DA Form 12-9 requirements for Administration:

*Active Army: A. NG: B. USAR: A.*