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# MILITARY JUSTICE HANDBOOK

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## TRIAL GUIDE FOR THE SPECIAL COURT-MARTIAL PRESIDENT



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HEADQUARTERS, DEPARTMENT OF THE ARMY

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## MILITARY JUSTICE

### UNIFORM GUIDE FOR THE COURTS-MARTIAL

#### INTRODUCTION

Scope and scope

Reference

#### KEY TO REFERENCES

Reference *In parentheses or in open text* in a similar context

Manual for Courts-Martial, United States, 1951. *the Manual* (MCM)

An Article of the Uniform Code of Military Justice. *Article 38* (Art. 38)

A paragraph of the Manual. *Paragraph 46 of the Manual* (MCM 46)

An appendix of the Manual. *Appendix 8 of the Manual* (MCM, app. 8)

An appendix of this guide. *Appendix III* (App. III)

A paragraph of this guide. *Paragraph 12* (12)

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.

Scope and scope of service

UNIFORM GUIDE FOR THE COURTS-MARTIAL

UNIFORM GUIDE FOR THE COURTS-MARTIAL

UNIFORM GUIDE FOR THE COURTS-MARTIAL

# TRIAL GUIDE FOR THE SPECIAL COURT-MARTIAL PRESIDENT

## SECTION I

### INTRODUCTION

#### 1. Purpose and Scope

This guide is intended as a practical trial guide for presidents of special courts-martial. It contains information relating to their functions and responsibilities during trial and detailed instructions for applying the rules of trial procedure generally employed in the trial of cases by special courts-martial in the United States Army.

It is not the purpose of this guide to answer all questions of procedure which may arise during the trial of a special court-martial case. When doubtful questions of law or procedure arise during the course of a trial, legal authority should be requested from the trial counsel in open court and the defense counsel should be given an opportunity to present his views on the matter. It is the responsibility of the president, subject to objection by any other member of the court with respect to interlocutory questions (see 3), to choose between conflicting views of the law presented by opposing counsel.

#### 2. References

The basic provisions of law relating to trial procedure are contained in the *Manual for Courts-Martial, United States, 1951*. However, these provisions have been modified by later procedural concepts now in general use and by decisions of the Federal courts and the United States Court of Military Appeals in a number of respects. These changes are included in this guide.

#### 3. Functions and Duties of the President of a Special Court-Martial

The senior court member present at a trial, whether or not he is the senior member appointed to the court, is president of the court for the trial of that case. During a special court-martial trial, he is responsible for the fair and orderly conduct of the proceedings. Except for challenges for cause, he rules on all interlocutory questions, but his rulings on these questions are subject to objection by any other member of the court. Interlocutory questions include all questions ~~arising during~~ <sup>arising and</sup> the trial except (1) the findings and sentence, (2) the contents of the president's ~~instructions to the court~~ regarding the law applicable to the case, and (3) ordinary administrative matters such as declaring recesses and adjournments of the court not amounting to continuances at the request of a party to the trial. As to the last two exceptions, the ruling of the president is final and not subject to objection by other court members. Some examples of interlocutory questions are matters concerning the admissibility of evidence and the competency of witnesses, requests for continuances, motions raising defenses and objections, and the propriety of any argument or statement of the trial or defense counsel. In view of the right which members have to object to interlocutory

rulings, prospective presidents of special courts-martial should, in preparing themselves for their duties, be familiar with the procedures contained in Section III of this guide, entitled "Voting Procedure in Special Courts-Martial."

#### 4. Limitations on the Appointment of Reporters for Special Courts-Martial

Army regulations limit the appointment of reporters for special courts-martial to those cases in which the Secretary of the Army has authorized the appointment of a reporter in advance (para 1, AR 22-145). When the appointment of a reporter has not been authorized a special court-martial lacks jurisdiction to impose a sentence which includes a bad conduct discharge. The absence of authorization for an appointed reporter, however, does not preclude the trial counsel from utilizing clerical personnel to assist him in making notes of the proceedings that will enable him to prepare an accurate summarized record of the trial.

#### 5. Attendance of Members

All appointed court members are expected to be present when the court convenes for the trial of a case. Prior to and after arraignment of an accused, the convening authority may excuse a member for good cause. If the court is at any time reduced in number below a quorum (three members), the court should adjourn and refer the matter to the convening authority. Similar action is taken when the accused has, prior to the convening of the court, requested that enlisted persons serve on the court and the number of enlisted persons sitting on the court is, for any reason, reduced below one-third of the actual trial membership. In the event a new member is added to the court after the trial has commenced, the trial will proceed as if no evidence had been previously introduced unless the alternative requirement provided in the Manual is met (MCM 41f).

#### 6. Instructions to the Court

a. *General.* All instructions to the court must be given by the president in open session in the presence of the accused and counsel for both sides.

b. *Preliminary Instructions.* At the opening of the first case tried by the court, immediately after the court is convened, the president of the court should read in open court the preliminary instructions contained in paragraph 11. The fact that this instruction was given should be shown in the summarized record of trial. At the opening of each case thereafter tried by the court, these preliminary instructions should again be read in open court unless the defense agrees to dispense with such a reading and no new members are on the court. If the defense agrees to dispense with the repetition of the preliminary instructions, the record should contain a statement indicating that such instructions were given to the court in a previous case in the terms set forth in an appellate exhibit in the instant case and that, there being no new members, the defense did not desire that these instructions be repeated.

c. *Instructions on Findings.* Before the court closes to vote on its findings, the president must instruct the court as to the elements of each offense concerning which a plea of not guilty stands and of each lesser included offense in issue, as to affirmative defenses in issue, and as to words of special legal connotation. He must also instruct the court as to the burden of proof, the presumption of innocence, and reasonable doubt. With respect to an offense as to which an accused's plea of guilty properly stands before the court, the foregoing instructions need not be given as to that offense, although an instruction

effect of the guilty plea is appropriate. Detailed information to assist in preparing such instructions and in the performance of other court duties by the president of a special court-martial is contained in DA Pam 27-9, The Law Officer, which, if not otherwise available, may be obtained from the office of the staff judge advocate of the command.

*d. Instructions on Sentence.* If the accused is found guilty, the president must, prior to closing the court to determine the sentence, give an instruction on the maximum sentence which may be imposed. In this regard, a special court-martial may not adjudge confinement at hard labor in excess of six months, hard labor without confinement in excess of three months, nor forfeiture of pay in excess of two-thirds pay per month for a period of six months. The court will, in every case, be instructed as to the maximum sentence which it, as a *special court-martial*, may adjudge in the particular case. In no instance will the instruction recite a maximum punishment in excess of that which the special court-martial may actually adjudge. Further, the attention of the court will not be invited to the Table of Maximum Punishments (MCM 127c) in any case in which the punishment authorized therein is in excess of that which may be adjudged by a special court-martial.

## 7. Limitations on the Use of Legal Authorities by Court Members

No court member other than the president may use or have access to the Manual for Courts-Martial or any other legal authority during the course of a trial, nor may the president use or have access to the Manual or other legal authorities during closed session.

## 8. Use of Findings and Sentence Worksheets

A Findings Worksheet (App. II) and a Sentence Worksheet (App. III) should be utilized by the court in closed session in order to record its findings and sentence and to assist in placing such findings or sentence in proper form. The form or forms used will be appended to the record of trial as appropriately numbered appellate exhibits. The court may not request the trial counsel or any other person to appear before it in closed session to assist in putting the findings or sentence in proper form or otherwise to assist the court.

## 9. Use of Trial Procedure Guide

Section II is a procedural guide designed for use by presidents of special courts-martial in carrying out their responsibilities and functions in the courtroom. It consists of an outline of procedure and includes footnoted information and references in a form suitable for use during trial proceedings. If carefully followed, the guide will aid in avoiding procedural errors and in facilitating trial proceedings.

## SECTION II

# PROCEDURES FOR OPENING THE COURT; RECEIVING PLEAS, PRESENTING EVIDENCE AND ARGUMENTS; FINDINGS

### 10. Purpose of Section

The primary purpose of this section is to prescribe procedures to be used in assembling and opening the court and to provide examples of procedures to follow in some of the typical situations which may be expected to arise during the trial.

### 11. Assembling and Opening the Court

NOTE: Prior to calling the court-martial to order, the president should examine the appointing order and determine that the accused, counsel, and a quorum of the court membership are present, including one-third enlisted persons if they have been requested. Witnesses should be excluded from the courtroom except when they testify.

**Seating arrangement** Members are seated alternately to the right and left of the president according to rank. An acceptable seating arrangement appears in Appendix I.

**Trial counsel functions** The trial counsel of a special court-martial keeps a record of the hour and date of each opening and closing of the court, whether for recess, adjournment, or otherwise, for insertion in the record. Although reporters normally are not authorized to be appointed for Army special courts-martial, the trial counsel may have a clerical assistant present with him in the courtroom to take notes for use in the preparation of the record of trial.

**Court called to order** PRES: The court will come to order.

**Preliminary instructions** PRES: (to court members) I shall now instruct generally on the duties of the president and members of the court.

It is our duty as members of this court, and our duty alone, to determine the guilt or innocence of the accused as to the charges upon which he will be arraigned and, if the accused is found guilty, to determine an appropriate sentence. Neither the fact that charges have been preferred against the accused nor the fact that such charges have been referred to this court is any evidence of his guilt. With respect to any offense to which there is a plea of not guilty, the determination of the court as to guilt or innocence must be based upon the entire evidence in the case and can only be arrived at after resolving all material issues of fact and

applying the rules of law to those facts. Thus, as to any such offense, it is important to keep an open mind until all the evidence and applicable law have been presented.

In the course of the trial, it may be necessary to recess or adjourn the court. During any such recess or adjournment, you must, except for purely administrative matters, avoid communicating with counsel, the accused, witnesses, or other persons, including the other members, concerning the trial.

It is my duty as president of the court to instruct you on the law applicable to the case. In this connection, the court is advised that no member of the court other than the president may use or have access to the Manual for Courts-Martial or other legal authorities during the course of the trial and that I may use or have access to the Manual or other legal authorities only in open session. Instructions to the court on legal questions will be presented only by me in open session. If, while the court is in closed session, I find that it will be necessary to refer to legal authorities, I will open the court prior to making any such reference. At any time in open session, I may require the trial counsel to present, in open session, legal authorities relative to the matter under consideration. The defense counsel, if he so desires, may also present legal authorities for my consideration.

My instructions with respect to the law applicable to the case are final and binding on the members of the court and are not subject to objection by any member of the court. However, a ruling of mine on any interlocutory question, such as a ruling on the admissibility of evidence, may be objected to by any member of the court. Upon such an objection, the matter will be determined by vote in closed session.

As I have previously stated, you must keep an open mind during the course of the trial. In particular, no member must ever depart from an impartial, judicial role in asking questions of a witness. The examination of witnesses is primarily the duty and function of counsel, and any member desiring to question a witness must first obtain my permission. I may, if I so desire, require the member to submit his question to me either orally or in writing so that a ruling may be made as to the propriety of the question or course of questioning.

A verbatim copy of this instruction will be included in the record of trial.<sup>1</sup>

NOTE: If this instruction is not given, the record should contain the following at this point: "Preliminary instructions were given to the court in a previous case in the terms set forth in Appellate Exhibit.....hereto. There being no new members on the court, the defense did not desire that these instructions be repeated."

Reference to  
appointing  
orders

PRES: The trial will proceed.

TC: The court is appointed by  
a copy of which has been furnished to the president, each

<sup>1</sup>This instruction should be read to the court from a copy thereof that will subsequently be attached to the record.

Count-Martial Appointing Order Number 2, Headquarters, dated

....., amended by Count-Martial Appointing Order Number 3, same Headquarters, dated

....., counsel not desired.

member of the court, counsel, and the accused.<sup>3</sup> A copy of the appointing orders will be inserted at this point in the record.

Persons present

TC: The following persons named in the appointing orders are present:

Persons absent

TC: The following persons named in the appointing orders are absent:

Presence of accused

TC: The prosecution is ready to proceed with the trial in the case of the United States against ..... , who (is) (are) present in court.

Qualifications of prosecution

TC: The legal qualifications of all members of the prosecution are correctly stated in the appointing orders (except that ..... ).<sup>4</sup> No member of the prosecution named in the appointing orders has acted as investigating officer, law officer, court member, or as a member of the defense in this case, or as counsel for the accused at a pretrial investigation or other proceedings involving the same general matter.

Introduction of defense counsel

TC: By whom will the accused be defended?

DC: The accused is to be defended by (....., the appointed defense counsel) (and ..... , the appointed assistant defense counsel) [introduced as individual counsel, ..... ]

<sup>3</sup> Although under para 1, AR 22-1 (b) a reporter is not appointed on sworn for a special court-martial unless specifically authorized by the Secretary of the Army, stenographic or clerical help may be utilized by the trial counsel in connection with the preparation of the required summarized record.

<sup>4</sup> Example: "Members: Captain John J. Smith, Lieutenant Bruce L. Jones, Lieutenant Hubert L. Henry. Trial Counsel: Lieutenant James H. D. [redacted]."

<sup>5</sup> The name, grade, and organization of each accused as shown on page 1 of the Charge Sheet.

If an appointed member of the prosecution has any of the legal qualifications indicated in Article 27(c), the corresponding appointment to the defense must be similarly qualified. Further, if any member of the prosecution present at the trial has legal qualifications, the accused is entitled to be represented by a counsel having equivalent legal qualifications. In the event both of the foregoing conditions are not clearly met, see MCM '61, and the instructions contained in the Manual.

TC: Will counsel representing the accused state whether the legal qualifications of the appointed members of the defense are other than as stated in the appointing orders? (And will individual counsel state whether he has been certified as counsel by an appropriate Judge Advocate General, and, if not, whether he has any of the legal qualifications enumerated in Article 27(b)(1) of the Uniform Code of Military Justice?)

Qualifications of defense counsel

DC: The legal qualifications of all appointed members of the defense are correctly stated in the appointing orders (except that .....).<sup>6</sup>

TC: Has any member of the defense (including individual counsel) acted as the accuser, a member of the prosecution, investigating officer, law officer, or member of the court, in this case?

Prior participation in the case by defense counsel

DC: (No counsel for the defense has so acted). (....., a member of the defense, has acted as .....).

NOTE: When a member of the defense has previously acted in the same case as a member of the prosecution he will be excused forthwith (MCM 61f(4)).

NOTE: When a member of the defense has previously acted as the accuser, investigating officer, law officer, or member of the court in the case, the trial counsel makes the following announcement:

TC: ..... (the regularly appointed defense counsel) (.....) previously has acted as ..... in this case. He may not now act as a member of the defense unless expressly requested by the accused. Does the accused expressly request his services in this case?

ACCUSED: I do (not).<sup>7</sup>

NOTE: If appropriate, the accused may state: "I (do not) desire the regularly appointed defense counsel (and) (assistant defense counsel) to act (as associate counsel) in this case."<sup>8</sup>

<sup>6</sup> For footnote 6, see p. 8.

<sup>7</sup> Not applicable unless a member of the defense is subject to disqualification because of prior participation.

<sup>8</sup> If he does so request, the proceedings continue; if he does not, the president will excuse the disqualified counsel. If, as a result of the excusing of a member of the defense, the accused is left without counsel, or he is without counsel having the requisite qualifications, the court will be adjourned and the matter reported to the convening authority (MCM 61f(4)).

<sup>9</sup> Counsel not desired by the accused will be excused at this time.

PRES: It appears that counsel for both sides have the requisite qualifications.

Accused's desires as to having enlisted members

<sup>10</sup> TC: Has the accused been informed of his rights with respect to enlisted members and, if so, has the accused made a request in writing that the membership of this court include enlisted persons?

<sup>10</sup> DC: The accused was advised of his rights in this respect prior to trial and does (not) desire enlisted persons as court members.<sup>11</sup>

Convening of court

PRES: Proceed to convene the court.

Oaths administered to counsel and members

TC: The court will be sworn.<sup>12</sup>

TC: You, Lieutenant Colonel . . . . . , Major . . . . . , ( . . . . . ) do swear (or affirm) that you will faithfully perform all the duties incumbent upon you as a member of this court; that you will faithfully and impartially try, according to the evidence, your conscience, and the laws and regulations provided for trials by courts-martial, the case of (the) (each) accused now before this court; and that if any doubt should arise not explained by the laws and regulations, then according to the best of your understanding and the custom of war in like cases; that you will not divulge the findings and sentence in any case until they shall have been duly announced by the court; and that you will not disclose or discover the vote or opinion of any particular member of the court upon a challenge or upon the findings or sentence unless required to do so before a court of justice in due course of law. So help you God.<sup>12</sup>

Prosecution sworn

EACH MEMBER OF THE COURT: I do.

PRES (to trial counsel): You, Captain . . . . .

<sup>10</sup> Not applicable unless the accused is an enlisted person.

<sup>11</sup> If the accused has made such a request, the trial counsel states: "The accused has made such a request which is herewith submitted to the court." The president then states: "This request will be attached to the appointing orders which are to be inscribed in the record." Thereafter, if the required number of qualified enlisted members are present, the trial may proceed. If not or if at any time during the trial the requirements as to enlisted members are not met, the president will adjourn the court and direct the trial counsel to refer the matter to the convening authority for appropriate action. When enlisted members have been requested, they should not, if it can be avoided, be called to the accused in rank or grade and must number at least one-third of the total membership of the court all times.

<sup>12</sup> All persons stand during the administration of oaths. Each member raises his right hand as the trial counsel calls his name. With regard to affirmations, see MCM 112 *a* and *d*.

(and Lieutenant ..... do swear (or affirm) that you will faithfully perform the duties of trial counsel in the case now in hearing. So help you God.<sup>12</sup>

TC (and Asst TC): I do.

Defense

sworn

PRES (to defense counsel): You, Captain ..... (and Lieutenant ..... (and Mr. ..... do swear (or affirm) that you will faithfully perform the duties of defense (and individual) counsel in the case now in hearing. So help you God.<sup>12</sup>

DC (and Asst and Indiv DC): I do.

Convening  
completed

Witnesses to withdraw  
from courtroom

Nature of  
charges

*Pass out charge  
sheet to every  
body* *Exhibit 2*  
TC: The general nature of the charges in this case is (absence without leave in violation of Article 86) (assault upon ..... in violation of Article 128) (.....); the charges were preferred by 1ST LT LYNN N Kendrick; forwarded with recommendations by .....  
(and) (investigated by .....).

*showing that this witness will not be called*  
No member of the court will be a witness for the prosecution /  
or defense. *showing that this witness will not be called*

Advice to court  
concerning challenges  
*showing that this witness will not be called*  
TC: The records of this case disclose (no) grounds for (the) challenge *(offer cause)* for the following reasons:

*showing that this witness will not be called*  
TC (to court members): If any member of the court is aware of any matters which he believes may be a ground for challenge by either side against him, he should now state such matters. In relating such matters, only the ultimate ground for challenge should be stated. The stating of any facts which if heard by other members might prejudice or disqualify them from acting in this case should be avoided.

Qualifications of  
enlisted members  
*showing that this witness will not be called*  
TC (Records indicate that the accused is a member of the ..... If any en-

<sup>10, 12</sup> For footnotes 10 and 12, see p. 10

<sup>13</sup> For footnote 13, see p. 12.

listed member of the court is now a member of the same company or corresponding unit, it is requested that he so state.)<sup>18</sup>

PRES: If there are no further disclosures, the trial will proceed.

TC: The prosecution has no challenges for cause.

or

The prosecution challenges for cause . . . . .  
on the ground that . . . . .

TC: The prosecution has no peremptory challenge (desires to challenge peremptorily .....).<sup>15</sup> Does (any of) the accused desire to challenge any member of the court for cause?

DC: (No.) (The accused, challenges for cause on the ground that )<sup>14</sup>

TC (to accused): Does (any of) the accused wish to exercise his right to one peremptory challenge against any member? <sup>15</sup> <sup>16</sup>

<sup>19</sup> For footnote 12, see p. 10.

<sup>18</sup> If a member discloses grounds for challenge against him in answer to this inquiry, and such grounds are *undisputed* and are among the first eight grounds enumerated in MCM 62f, the president will excuse the member immediately. All challenges for cause made by counsel for either side, however, should be voted upon by the members. In this regard, contrary procedure suggested in the Manual should be disregarded. Challenges for cause should be made before arraignment, but the court may permit a challenge for cause to be presented at any stage of the proceedings (MCM 62d).

<sup>14</sup> For grounds, see MCM 62f. For procedure on challenges, see MCM 62b and footnote 13. A challenged member will be given the right to make a statement with respect to the challenge. If the president takes the stand to testify as to his competency, he continues to rule on interlocutory questions, subject to objection by any member of the court. The TC will administer the following oath to a challenged member who is to be examined as to his competency: "You swear (or affirm) that you will answer truthfully to the questions touching upon your competency as a member of the court in this case. So help you God."<sup>12</sup> Voting upon a challenge is by secret written ballot in closed session after both sides have been heard. Prior to closing the president states: "The court will be closed to deliberate and vote, by secret written ballot, on whether the challenge against ..... should be sustained or not sustained. The challenged member will take no part in the deliberation or vote and will be excluded from the closed session. A majority vote is controlling. A tie vote will disqualify the challenged member. When the court has finally voted on the challenge, it will open and announce whether the challenge is sustained or not sustained. The court will be closed." A member against whom a challenge for cause is sustained is excused immediately. If as the result of challenges, the membership of the court falls below the remaining members or, if applicable, less than one-third enlisted members, the president directs the trial counsel to report the matter to the convening authority and then adjourns the court.

<sup>16</sup> No reason is stated for *pereemptory* challenge. Any member *pereemptorily* challenged is excused immediately. Trial counsel is entitled to one *pereemptory* challenge.

<sup>16</sup> Each accused is entitled to one peremptory challenge against any member.

Arraignment

DC: The accused, ..... (has no peremptory) challenges (..... peremptorily).<sup>16</sup>

TC: The charges have been properly referred to this court for trial, (and, with their specifications, are as follows:) (with the consent of the accused, I shall omit the reading of the charges, a copy of which is before each member of the court and the accused.)<sup>17</sup> The charges are signed by ..... , a person subject to the code, as accuser; are properly sworn to before an officer of the armed forces authorized to administer oaths; and are properly referred to this court for trial by ..... ,<sup>18</sup> the convening authority. The charges and specifications, the name and description of the accuser, his affidavit, and the reference for trial will be copied verbatim into the record.

DC: The accused consents to the omission of the reading of the charges.

PRES: The reading of the charges may be omitted.

TC: The charges were served on the accused by (me) ..... on ..... , 19.....

TC (to accused): ..... , how do you plead?<sup>19</sup><sup>20</sup> Before receiving your pleas, I advise you that any motions to dismiss any charges or to grant other relief should be made at this time.

DC: The defense (has no motions to be made) (moves that specification, Charge ..... , be dismissed because ..... ) (moves that ..... ).<sup>21</sup>

<sup>16</sup> For footnote 16, see p. 12.

<sup>17</sup> If the accused consents, the reading of the charges may be omitted. Copies of each of the charges and specifications on plain paper are distributed to each member of the court and to the accused. Only those charges and specifications upon which the accused is to be arraigned are distributed to the court members. The attention of the court members should not be drawn to the fact that other charges against the accused have been withdrawn by the convening authority.

<sup>18</sup> The name of officer by whose order the charges have been referred to trial as shown on the indorsement on page 3 of the Charge Sheet.

<sup>19</sup> This completes the arraignment.

<sup>20</sup> Unless at least three complete days have elapsed between the date of service and the date of trial, except in time of war, the accused may object to this defect. If he so objects, the court must grant an appropriate continuance.

<sup>21</sup> For procedure regarding motions, see MCM, Chapter XII.

PRES: Subject to objection by any member of the court, the motion is (denied) (granted) (.....).<sup>22</sup>

DC: The accused, ....., pleads:<sup>23</sup>

To all Specifications and Charges (Not guilty)  
(Guilty)

or

To Specification 1 of the Charge: Guilty

To Specification 2 of the Charge: Not guilty

To the Charge: Guilty

or

To Specification ....., Charge .....: Guilty,  
except the words "....." and "....."

(, substituting therefore, respectively, the words  
"....." and "....." to the excepted  
words, not guilty, to the substituted words, guilty).

To Charge .....: (Guilty) (Not guilty, but  
guilty of a violation of Article .....).

Explanation to accused of  
effect of guilty plea

*Superseded by  
charge attached*

\* PRES (to accused): ..... you have  
pleaded guilty to (Specification ....., Charge .....)  
(the lesser included offense of .....)  
(all the specifications and charges). By so doing, you have  
admitted every act or omission and every element alleged  
with respect to the offense (offenses) to which you have  
pledged guilty. Your plea subjects you to (a) finding(s) of  
guilty without further proof of (that) (those) offense(s), in  
which event you may be sentenced by the court to the maxi-  
mum punishment authorized for (it) (them). You are  
legally entitled to plead not guilty and place the burden  
upon the prosecution of proving your guilt of (that) (those)  
offense(s). Your plea will not be accepted unless you  
understand its meaning and effect! Do you understand?

ACCOMPLID (to President): Presume to be held no 20

<sup>22</sup> If a member objects to such a ruling, the following instruction by the president is appropriate: "The court will be closed to determine by majority vote whether the ruling of the president should be sustained or not sustained. The vote will be oral, beginning with the junior in rank. A tie vote on this question shall be a determination (against) \* (in favor of) the accused." \* A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused; otherwise, a tie vote is a determination in favor of the accused. *As to rulings concerning relevancy & materiality, see*

<sup>23</sup> In joint and common trials, the accused will plead separately. *See note 22 as changed*

<sup>24</sup> If an accused pleads guilty to only one of the specifications, the president will instruct him on the meaning and effect of his plea. For procedure when the statute of limitations has run against any offense to which the accused has pleaded guilty, see MCM 500, paragraph 1.

PRES (to accused): ~~Understanding this, do~~ you persist in your plea of guilty?

ACCUSED: (Yes, sir.) (I desire to change my plea(s) to not guilty.)

NOTE: The presentation of evidence on the merits of the case normally follows at this point with respect to offenses as to which a plea of *not guilty* has been entered. With respect to an offense as to which there has been a plea of *guilty*, no further proof of the offense to which the plea relates need be introduced by the prosecution. If a plea of guilty has been entered as to all offenses, the president will give the following instruction in open court in lieu of the usual instructions on the elements of the offense, presumption of innocence, reasonable doubt, and burden of proof:

<sup>25</sup> PRES (to court): *The court is instructed that a plea of guilty, standing before the court, is a complete confession of guilt of the offense(s) to which the plea relates and justifies a finding of guilty of (that) (those) offense(s). A plea of guilty admits each and every element of the offense(s), removes the presumption of innocence, eliminates the requirement that the Government establish its case beyond a reasonable doubt, and does away with the necessity of offering proof to sustain the degree of guilt. In this case, the accused has entered a plea of guilty to (all the specifications and charges) (all specifications and the charge) (the specification and the charge), which plea stands. No further issue as to the guilt or innocence of the accused as to (this) (those) offenses remains to be resolved. However, the court is required to make findings in closed session as to all charges and specifications, even if the accused has pleaded guilty to them. Accordingly, the court will be closed to vote upon the findings.*

Instructions to the court concerning effect of guilty plea

## 12. Presentation of Case by Prosecution and Defense; Reception of Evidence; Miscellaneous Procedural Matters

Segments of the questioning of various witnesses, the advice that the president should give to the accused under certain circumstances, and procedures for the reception of evidence and for recesses and adjournments are set forth below.

### PRESENTATION OF PROSECUTION CASE

NOTE: For general procedural rules relating to the introduction of evidence, see MCM 54. For the rules of evidence, see MCM Chapter XXVI.

TC: The prosecution has (no) (an) opening statement.

<sup>25</sup> Applicable when the accused persists in a plea of guilty to all offenses.

<sup>50, 53</sup> For footnotes 50 and 53, see p. 25.

<sup>26</sup> No opening statement is required. If one is made, its purpose should be to clarify the procedure to be followed by the trial counsel.

## EXAMINATION OF PROSECUTION WITNESS

TC: The prosecution calls as a witness .....

TC (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>27</sup>

WITNESS. I do.

TC (to witness): State your full name (grade, organization, and armed force) (occupation and residence).

WITNESS: .....

TC (to witness): Do you know the accused?<sup>28</sup>

WITNESS: .....

### OBJECTIONS

TC (to witness): Did you notice what the accused was wearing at the time you have just mentioned?

WITNESS: Yes.

TC (to witness): What was he wearing at that time?

DC: Objection. Any answer to the question would be immaterial and irrelevant.

NOTE: After hearing pertinent argument, if any, the ruling should be made by the president in substantially the following manner:

PRES: ~~Subject to objection by any member of the court, the objection of defense counsel is (sustained) (overruled).~~<sup>29</sup>

TC (to witness): Did you see the accused in the mess hall during the time you say you were there?

WITNESS: No, but my friend, Pvt. Smith said—

DC: I object on the ground of hearsay.

PRES: ~~Subject to objection by any member of the court, the objection of the defense counsel is sustained.~~<sup>30</sup>

<sup>27</sup> With regard to affirmations, see MCM 112d. When testimony is given through an interpreter, the latter must first be sworn (MCM 114). The interpreter translates questions and answers in verbatim form.

<sup>28</sup> If the witness says he knows the accused, he will normally be asked to point to the accused if he sees him in the courtroom and to state the name and organization of the accused, if he knows.

<sup>29</sup> For procedure when a member objects, see footnote 22.

<sup>30</sup> If the witness had been allowed to testify that Pvt Smith had said that he had seen the accused in the mess hall, and the defense counsel either did not object at all or had not objected until after the testimony was given, the president should rule: "Subject to objection by any member of the court, the last answer of the witness will be stricken and the court is instructed to disregard it."

<sup>31</sup> Questions of relevance and materiality are always questions of law and rulings of the president on these questions are not subject to objection by members of the court.

## *REAL EVIDENCE (PHYSICAL OBJECTS)*

TC: I have here Prosecution Exhibit 1 for identification.<sup>81</sup>

NOTE: The exhibit is now shown to the other side, which is given an opportunity to examine it.

TC (to witness): Do you recognize Prosecution Exhibit 1 for identification?

WITNESS: I do. It is a billfold I found in the coat the accused was wearing when I searched him.

TC (to witness): How do you recognize it as being the same one?

WITNESS: .....

TC: Prosecution Exhibit 1 for identification is offered in evidence as Prosecution Exhibit 1 and permission is requested to withdraw it at the conclusion of the trial and substitute a (written description) (photograph) therefor.<sup>82</sup>

DC: (No objection) (I object because .....

PRES: Subject to objection by any member of the court, (the objection is sustained) (the objection is overruled. Prosecution Exhibit 1 for identification is admitted in evidence as Prosecution Exhibit 1. A (description) (photograph) may be substituted.)<sup>83</sup>

\* \* \* \* \*

## *AUTHENTICATED OFFICIAL RECORDS*

TC (after showing exhibit to DC): Prosecution Exhibit 2 for identification, a duly authenticated extract copy of the morning report of ....., is offered in evidence as Prosecution Exhibit 2.

\* \* \* \* \*

## *ARTICLES OF AGREEMENT (STIPULATIONS)<sup>84</sup>*

TC (after showing exhibit to DC): Prosecution Exhibit 3 for identification, a written stipulation as to fact entered into between the prosecution and defense, with the consent of the accused, is offered in evidence as Prosecution Exhibit 3.

DC: No objection.

PRES (to accused): Private ....., have you read this stipulation?

ACCUSED: Yes, sir.

PRES: Do you understand what it says?

ACCUSED: Yes, sir.

<sup>81</sup> Prosecution exhibits are numbered consecutively. Defense exhibits are lettered consecutively. The numerical or alphabetical designation of an exhibit remains the same throughout the trial. For administrative procedures regarding exhibits, see MCM app. 8a, p. 512.

<sup>82</sup> Opposing counsel is again given an opportunity to examine the exhibit. Cross-examination may be conducted by opposing counsel and other evidence may be offered and arguments conducted by either side prior to a ruling by the president as to whether the exhibit will be admitted in evidence.

<sup>83</sup> Any description or photograph substituted for real evidence should be accepted by both sides. If there is any disagreement as to the description or photograph, the president should rule as to the acceptability of the same, subject to objection by any member.

<sup>84</sup> See MCM 154b. Prior to acceptance of any stipulation, the president should determine that the accused understands and joins in the stipulation.

PRES (to accused): Do you also understand that if you do not agree to this stipulation the prosecution will be required to introduce other competent evidence of the facts contained in this stipulation?

ACCUSED: Yes, sir.

PRES (to accused): Understanding this, do you agree to this stipulation?

ACCUSED: I do.

PRES: Subject to objection by any member of the court, the stipulation is accepted and Prosecution Exhibit 3 for identification is admitted in evidence as Prosecution Exhibit 3. The trial counsel will read the stipulation to the court.

TC: The prosecution and the defense, with the consent of the accused, desire to stipulate orally concerning the (value of the camera alleged in the specification to have been wrongfully appropriated) (.....).

PRES (after ascertaining that the accused understands and joins in the stipulation as in the case of a written stipulation): Subject to objection by any member of the court, the stipulation will be accepted. The trial counsel will state the stipulation.

### **CONFessions AND ADMISSIONS**

*Substitute c 3*  
NOTE: Before a confession, or an admission to which the defense objects on the grounds of involuntariness, may be received in evidence, the prosecution must show that it was voluntary. For explanation of the distinction between confessions and admissions, see MCM 140.

TC (to witness after introductory questions): Did you make any explanation of his rights to the accused concerning the making of a statement?

WITNESS: Yes, sir, I did.

TC (to witness): What explanation did you make?

WITNESS: I told him that he was suspected of wrongfully appropriating a one quarter ton four by four truck, U.S. No. ...., belonging to his company, which he used as a unit mail carrier, on ...., 19...., by driving to Seattle with it without authority. I then told him he did not have to make any statement at all regarding the offense and that if he did make any statement it could be used as evidence against him in a trial by court-martial.

TC (to witness): Did you make any promises or threats or employ any force or violence in connection with the obtaining of a statement?

WITNESS: No, sir, I did not.

TC (to witness): Did the accused make a statement to you?

WITNESS: Yes, sir, he did.

TC (to witness): Describe fully the manner in which the statement was obtained.

TC (to witness): I hand you Prosecution Exhibit 4 for identification. Do you recognize it?

WITNESS: I do.

TC (to witness): What is it?

WITNESS: It is the written statement which the accused signed on 9 March.

TC (to witness): How do you recognize it as the same statement?

WITNESS: (.....).

TC (after showing statement to DC): Prosecution Exhibit 4 for identification is offered in evidence as Prosecution Exhibit 4.

NOTE: When a statement of the accused is offered in evidence by the prosecution, the president normally will explain to the accused his rights in the form indicated below.

PRES (to accused): ...., the prosecution has offered in evidence a statement allegedly made by you and has introduced evidence to show that it was voluntarily made by you. As the accused in the case, you have the right at this time to introduce any evidence you may desire relevant to the circumstances under which the statement was obtained or relevant as to whether the statement was or was not 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 the court just as is the testimony of other witnesses. You may be cross-examined 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 or was not in fact made by you, you cannot be cross-examined on the question of your guilt or innocence of the offense itself, nor can you be asked on cross-examination whether the statement is true or false. In other words, you can only be cross-examined upon the issues concerning which you testify and upon your credibility, but not upon anything else.

On the other hand, you need not take the 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 that the statement was voluntary or that it was in fact made by you, nor can your silence be commented upon in any way by the trial counsel in addressing the court. Do you understand your rights?

ACCUSED: Yes, sir.

DC: The defense (has no objection) (objects) to Prosecution Exhibit 4 for identification (on the ground .....).  
[The defense has evidence to submit pertaining to (the voluntary nature of the accused's statement) (the fact that he did not make the statement) (and) (calls as a witness).]

PRES: Subject to objection by any member of the court, the objection is (sustained).

(overruled). (Prosecution Exhibit 4 for identification is admitted in evidence as Prosecution Exhibit 4.)

<sup>36</sup> PRES (to court members): The members of the court are advised that (my ruling) (the ruling of the court) admitting in evidence Prosecution Exhibit 4 relates only to the question of admissibility. The ruling merely places the statement before the court; it (does not establish the voluntary nature of the statement) (and) (does not establish that the statement was in fact made by the accused). Each member of the court, in his deliberation upon the findings of guilt or innocence, must come to his own conclusion (s) as to (the voluntary nature of the statement) (and) (as to whether the statement was actually made by the accused). He may accept the statement as evidence against the accused only if he determines that it (was voluntary) (and) (was actually made by the accused). If he does not determine beyond a reasonable doubt that the statement (was voluntary) (and) (was in fact made by the accused), he must disregard the statement entirely as evidence against the accused. Each member is also advised that any evidence adduced as to (the voluntary or involuntary nature of the accused's out-of-court statement) (and) (as to whether the accused in fact made the statement) should be considered by him in determining the weight to be given to the statement in the event he is convinced beyond a reasonable doubt that it was (voluntary) (and was) (in fact made by the accused), and that he should give weight to the statement only to the extent that he believes it to be truthful.

(When evidence has been introduced contesting the voluntariness of the statement, the president should tailor his instructions to that evidence. He may use the following instruction as a guide in tailoring his instructions: You are further advised in this connection that this statement of the accused may not be considered to be voluntary if it was obtained (through the use of coercion, unlawful influence, or unlawful inducement, such as ..... ((or) if, at a time when the accused was accused or suspected of the offense(s), it was obtained from him by interrogation or request during a formal or informal military investigation which was conducted by a person subject to the Uniform Code, or acting for a person subject to the code, and in which the accused was not first informed of the nature of the accusation and advised that he did not have to make any statement regarding the offense of which he was accused or suspected, and that any statement made by him might be used as evidence against him in a trial by court-martial) .....))

(When the statement admitted in evidence is oral and evidence has been introduced contesting the assertion that it was made by the accused, the president should give the following instruction: It will be noticed that the statement asserted to have been made by the accused is oral. You are advised in this connection that the evidence that the accused in fact made this oral statement is to be regarded with caution.)

<sup>36</sup> This instruction should be given when a confession or admission asserted to have been made by the accused has been received in evidence and there has been evidence introduced contesting the voluntariness of the statement or that the accused had in fact made the statement. See DA Pam 27-9, The Law Officer, for further discussion of this matter and for other pertinent sample instructions.

<sup>35</sup> This instruction should be given in open session when a confession or admission asserted to have been made by the accused has been received in evidence and there has been evidence introduced raising an issue as to the voluntariness of the statement or as to whether the statement was in fact made by the accused. See DA Pam 27-9, the Law Officer, for further discussion of this matter and for other pertinent sample instructions.

PRES (continuing): The trial will proceed.

\* \* \* \* \*

### APPOINTMENT OF NEW COURT MEMBER

TC: Captain ..... is now present and has been appointed to the court by <sup>36</sup> .....

TC: A copy of the orders appointing Captain ..... will be attached to the orders appointing the court which are to be inserted in the record.

\* \* \* \* \*

PRES: As (a) new member (s) of the court (has) (have) been sworn, the trial will proceed as if no evidence had previously been introduced. <sup>37</sup>

\* \* \* \* \*

### CONCLUDING THE EXAMINATION OF A PROSECUTION WITNESS

TC: The prosecution has no further questions. <sup>38</sup>

DC: The defense has no (further) questions. <sup>39</sup>

TC: Are there any questions by the court? <sup>40</sup>

PRES: The witness is excused (subject to recall). <sup>41</sup>

<sup>42</sup> [PRES: (Private ..... ) (Mr. ..... ) you are instructed not to discuss your testimony in this case with anyone except the counsel or the accused. 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 counsel or the accused, attempts to talk to you about your testimony in this case, you should make the circumstances known to the counsel for the side originally calling you as a witness.]

\* \* \* \* \*

### RECALL OF WITNESS WHO HAS PREVIOUSLY TESTIFIED

TC (to witness): Are you the same ..... who has previously testified in this case?

<sup>36</sup> The order by which the member was appointed is cited. Procedures for excusing, swearing, and challenging of new members are substantially as for original members. For pertinent references, see footnotes 2 and 14-17.

<sup>37</sup> In the event there is a stipulation of the testimony previously received, it may be read to the new members of the court (MCM 41f) in lieu of this procedure.

<sup>38</sup> This statement is made at the conclusion of direct examination.

<sup>39</sup> This announcement is made at the conclusion of cross-examination. If appropriate, redirect and recross-examination follow at this point.

<sup>40</sup> Any member desiring to question the witness must first secure the permission of the president. The president may require the member to submit his question to him either orally or in writing so that a ruling may be made as to the propriety of the question or course of questioning. *The court and its members must never depart from an impartial, judicial role in asking questions of a witness.* See also note 48.

<sup>41</sup> When the testimony of a witness is concluded.

<sup>42</sup> In an appropriate case (MCM 53f) the witness may be warned in this manner.

WITNESS: I am.

TC (to witness): You are reminded that you are still under oath.<sup>48</sup>

\* \* \* \* \*

**PRESENTATION OF CASE BY DEFENSE**

TC: The prosecution rests.<sup>49</sup>

DC: The defense has (no) (an) opening statement.

NOTE: The defense may present an opening statement and introduce stipulations, witnesses, and material evidence in a manner similar to that followed by the trial counsel, except that the trial counsel administers the oath to all witnesses. After asking formal questions relating to the witness's identity and occupation or organization, the defense counsel conducts the direct examination. The prosecution may then cross-examine the witness, and, when appropriate, this may be followed by redirect and recross-examination.

\* \* \* \* \*

**ACCUSED AS A WITNESS**

DC: The rights of the accused as a witness have been explained to him and he (elects to remain silent) (wishes to take the stand as a witness).<sup>50</sup>

**EXPLANATION OF ACCUSED'S RIGHTS AS A WITNESS**

PRES (to accused): ..... as the accused in this case you have these rights:

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

(The following should be used if there is only one specification: and you can be cross-examined about the whole subject of the offense and about your worthiness of belief by the trial counsel and may be asked proper questions by the court concerning these matters.)

(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 cross-examined by the trial counsel and asked proper questions by the court about the whole subject of those offenses concerning which you do testify and concerning your worthiness of belief, but you will not be questioned about any offense concerning which you do not testify.)

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 that, it will not count against you in any way with the

<sup>48</sup> The party calling the witness now proceeds with his examination. See also note 48.

<sup>49</sup> The prosecution rests when it has completed its case on the question of guilt or innocence.

<sup>50</sup> At this time, the president should explain to the accused his rights as a witness in the form indicated. If an accused who is represented by *legally qualified* counsel does not desire an explanation of such rights, it may be omitted.

court. It will not be considered as an admission that you are guilty, nor can it be commented on in any way by the trial counsel in addressing the court.

Do you wish to testify or remain silent? Before answering the question, you may, if you wish, take time to consult with your counsel.

\* \* \* \* \*

### *SWEARING THE ACCUSED*

TC (to accused): 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>27</sup>

ACCUSED: I do.

DC: State your full name, grade, organization and station.

ACCUSED: .....

DC: Are you the accused in this case?

ACCUSED: Yes, sir.

\* \* \* \* \*

### *DEFENSE RESTS*

DC: The defense rests.<sup>28</sup>

\* \* \* \* \*

### *RECESS, ADJOURNMENT, CLOSING, AND RECONVENING*

PRES: The court will ((adjourn)) (recess) until ..... hours  
(..... 19. ....) (be closed).

\* \* \* \* \*

PRES: The court will come to order.

TC: All parties to the trial who were present when the court ((adjourned)) (recessed) (closed) are again present in court (except).<sup>29</sup>

\* \* \* \* \*

### *CONCLUDING THE TAKING OF EVIDENCE ON THE QUESTION OF GUILT OR INNOCENCE*

TC: The prosecution has no further evidence to offer. Does the defense have any further evidence to offer?

DC: It does not.

TC: Does the court wish to have any witness called or recalled?

<sup>27</sup> For footnote 27, see p. 16, *supra*.

<sup>28</sup> When the defense has completed its case and rests, the trial counsel may call or recall witnesses to rebut matters brought out by the defense. The defense may, if there has been prosecution rebuttal, initiate surrebuttal.

<sup>29</sup> If there is an absence *after arraignment*, the absence must be shown to have been the result of challenge, physical disability, or the order of the convening authority for good cause (MCM 41a).

<sup>30</sup> For footnote 48, see p. 24.

### 13. Procedures Relating to Findings and Sentence

The proceedings relating to arguments by counsel, instructions to the court on the law, findings, presentencing matters, and the sentence are set forth.

#### *ARGUMENTS BY COUNSEL PRIOR TO DELIBERATIONS ON THE FINDINGS*

TC: The prosecution (will make a) (waives) opening argument.

\* \* \* \* \*

DC: The defense (will make a) (waives) final argument.

\* \* \* \* \*

TC: The prosecution will make (a) (no) closing argument.

\* \* \* \* \*

PRES: Has the prosecution anything further to offer?

TC: It has (not).

PRES: Has the defense anything further to offer?

DC: It has (not).

\* \* \* \* \*

#### *INSTRUCTIONS TO COURT<sup>48</sup>*

Footnote 49 here → PRES: The court is further advised:

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

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

<sup>48</sup> If any member desires that a witness be called or recalled, the president rules on his request, subject to objection by any other member. If such a witness is called or recalled, the examination is ordinarily conducted on behalf of the court by *trial counsel*. However, if the court desires, it may take over the examination of the witness after trial counsel has qualified and identified the witness. With respect to a witness called by the court, both trial and defense counsel have right of cross-examination, but questions asked on behalf of the court, whether by trial counsel or the court, may be such as might properly be asked on direct examination had the witness been called by a party. With respect to a recalled witness, both parties have the right of cross-examination with respect to any new matter brought out by questions asked on behalf of the court, and these questions may be such as might properly be asked by either side. After all witnesses, including any called or recalled by the court, have been disposed of and both sides have rested, arguments may be made by counsel.

<sup>49</sup> Before the court closes to vote on its findings in a case in which a plea of not guilty stands to any offense, the president must, as to each such offense, instruct the court as to the elements of the offense and of each lesser included offense in issue, any affirmative defenses in issue, and words of legal connotation. He must also instruct the court as to the burden of proof, presumption of innocence, and reasonable doubt. Such instructions are not required with respect to offenses to which an accused has pleaded guilty; however, an instruction on the meaning and effect of the guilty plea in the form shown on page 14 is appropriate.

Information and guidance to assist the president in preparing such instructions (including instructions on a plea of guilty to a lesser included offense) and in performing his other court duties, is contained in DA Pam 27-9, *The Law Officer*. (When available, this pamphlet may be obtained from the office of the staff judge advocate.

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

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

PRES: The court will be closed.

NOTE: All persons now leave the room except the members of the court. As an alternative, the court members may withdraw to a separate deliberation room.

*Pass to Pres  
Findings work sheet  
(Exhibit 3)*

\* \* \* \* \*  
**DELIBERATING AND VOTING ON FINDINGS**  
\* \* \* \* \*

\* \* \* \* \*  
**ANNOUNCEMENT OF FINDINGS**

PRES: The court will come to order.

TC: All parties to the trial who were present when the court closed are now present (except .....).

<sup>50</sup> PRES (to accused): ..... it is my duty as president of the court to advise you that the court in closed session and upon secret written ballot has found you not guilty of (the) (all) specification(s) and charge(s). (The court will adjourn to meet at my call.)

<sup>51</sup> PRES (to accused): ..... it is my duty as president of this court to inform you that the court in closed session and upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds you:

NOTE: The president may announce the finding of the court by reading from a Findings Worksheet, for example, see app. II, which will have been completed by the court in closed session. The Findings Worksheet used by the court will be appended to the record of trial.

\* \* \* \* \*  
**PRESENTENCE PROCEDURE**

PRES: The court will now hear the personal data concerning the accused shown on the Charge Sheet and will receive evidence of previous convictions, if any. *CN 6*

<sup>49</sup> When the court has been closed, the members vote on the findings. For a detailed discussion of the method of voting on the findings, see paragraph 17, Section III. A two-thirds vote is essential to a finding of guilty of any offense. When there is more than one accused, separate findings will be made as to each accused. Voting is by secret written ballot and is obligatory. During the deliberation and voting on findings, influence or superiority in rank will not be employed in any manner in an attempt to control the independence of members in the exercise of their judgment.

<sup>50</sup> If a deposition or recorded former testimony (see MCM 143) has been received in evidence, the deposition on former testimony will have been read in evidence and the documents themselves will not be taken into closed session when the court deliberates on the findings.

<sup>51</sup> When the accused is found not guilty of all specifications. The trial is completed with this announcement.

<sup>52</sup> When the accused is found guilty of any offense.

TC: The first page of the Charge Sheet shows the following data concerning the accused: ..... Are these data correct? <sup>54</sup>

DC: They are correct.

or

The accused objects to .....

TC: I have no evidence of previous convictions.<sup>55</sup>

or

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 ..... <sup>56</sup>

DC: No objection.

or

The accused objects to ..... on the ground that .....

PRES: Subject to objection by any member of the court (the objection is overruled and Prosecution Exhibit ..... for identification is admitted in evidence as Prosecution Exhibit ..... ) (the objection is sustained).<sup>57</sup>

\* \* \* \* \*

#### **MATTERS IN EXTENAUATION AND MITIGATION**

<sup>58</sup> PRES (to accused): ..... you are advised that you may now present matter in extenuation or mitigation of the offense(s) of which you stand convicted. You may, if you wish, testify under oath as to such matter, or you may remain silent, in which case the court will not draw inferences from your silence. In addition, you may, if you wish, make an unsworn statement in mitigation or in extenuation of the offense(s) of which you stand convicted. You cannot be cross-examined upon this unsworn statement, but the prosecution may offer evidence to rebut anything contained in the statement. The statement may be oral, or in writing, or both. You

<sup>59</sup> If in error, corrections should be made. Errors claimed by the accused which the trial counsel is not able readily to verify, will, if of minor importance, be noted in the record and no further action taken upon them by the court; if of material importance, the court may direct verification of the error claimed before proceeding to vote upon the sentence.

<sup>60</sup> To be properly the subject of consideration by a court-martial, previous convictions must actually be offered and received in evidence. Ordinarily, this is done by offering and having admitted in evidence a duly authenticated extract copy of accused's military personnel record pertaining to previous convictions (DD Form 493). Rules for determining admissibility of previous convictions are set out on the back of DD Form 493.

<sup>61</sup> This is the proper time for trial counsel to introduce evidence, showing aggravation of an offense to which a guilty plea has been entered (MCM 75b(3)).

<sup>62</sup> Unless there is an affirmative showing of record that the accused understands his right to make an unsworn statement in mitigation or extenuation of the offenses of which he stands convicted, this advice will be given.

may make it yourself, or it may be made by your counsel, or by both of you. Consult with your counsel and advise the court what you desire to do.

DC: The accused .....

58

\* \* \* \* \* PRES: Has the prosecution anything further to offer?

TC: It has (not).

\* \* \* \* \* PRES: Has the defense anything further to offer?

DC: It has (not).

### ARGUMENTS BY COUNSEL

#### PRIOR TO DELIBERATIONS ON THE SENTENCE

TC: The prosecution (will make a) (waives) opening argument.

DC: The defense (will make a) (waives) final argument.

TC: The prosecution will make (a) (no) closing argument.

PRES: Has the prosecution anything further to offer?

TC: It has (not).

PRES: Has the defense anything further to offer?

DC: It has (not).

### INSTRUCTIONS TO COURT

PRES: The court is advised that the maximum punishment which may be adjudged for the offense(s) of which the accused (.....) has been found guilty is: (Confinement at hard labor for ..... months) (and) (Forfeiture of two-thirds of his pay (per month for ..... months)).<sup>59</sup>

PRES: The court will be closed.

### DELIBERATING AND VOTING ON SENTENCE<sup>60</sup>

*Pass to Pres  
Sentencing worksheet  
Exhibit #4*

<sup>57</sup> This is the proper time for the defense to introduce matters in extenuation or mitigation and for the accused to testify as a witness or make an unsworn statement if he desires to do so. <sup>58</sup> Only

Before closing, the president must advise the court of the maximum permissible limits of punishment which may be imposed for the offenses of which the accused has been found guilty (MCM 76c), but the president will not recite a sentence or refer to a sentence specified by MCM 127c, Table of Maximum Punishments, that is greater than that which the special court-martial is authorized to impose.

<sup>59</sup> When the court has been closed, the members vote on the sentence. During the deliberation and voting on the sentence, influence or superiority in rank will not be employed in any manner in an attempt to control the independence of members in the exercise of their judgment. For a detailed discussion of the method of voting on the sentence, see paragraph 18, Section III. Voting is by secret written ballot and is obligatory. Trial counsel may call the attention of the court to an apparently illegal or ambiguous sentence. See MCM 76c. After concurrence has been reached, the court is reopened. A sentence worksheet (app. III) is an administrative aid which should be used in recording and announcing the court's sentence.

## ANNOUNCEMENT OF SENTENCE

PRES: The court will come to order.

TC: All parties to the trial who were present when the court closed are now present (except .....).

W<sup>or</sup> PRES: ..... it is my duty as president of this court to inform you that the court in closed session and upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring, sentences you:

..... confirmed my; forfifteen (15) mon

PRES: Has the prosecution any other case to try at this time?

TC: I have nothing further.

or

I have another case to be tried. I request a ..... minute recess.

PRES: The court will adjourn to meet at my call.

or

The court will recess until ..... hours.

60 The accused and his counsel normally stand before the president when the sentence is pronounced.

NO DIVISION BY: WITHIN

\*\*\*\*\*

## SECTION III

# VOTING PROCEDURE IN SPECIAL COURTS-MARTIAL

### 14. Purpose of Section

The purpose of this section is to describe correct procedures to follow in voting on interlocutory questions, challenges, and the findings and sentence and in reconsidering the findings or sentence.

### 15. Voting on Interlocutory Questions Other Than Challenges for Cause

Interlocutory questions include all questions arising during the trial except (1) the findings and sentence, (2) the contents of the president's instructions to the court regarding the law applicable to the case, and (3) ordinary administrative matters such as declaring recesses and adjournments of the court not amounting to continuances at the request of a party to the trial. As to the last two exceptions, the ruling of the president is final and not subject to objection by other court members.

*a. When vote taken.* The president rules initially on interlocutory questions and his rulings are subject to objection by any member of the court as indicated above. If no member objects to the ruling of the president, it becomes the ruling of the court. If any member does object, the court is closed and the question is decided by vote.

*b. Method of voting.* Orally, beginning with the junior in rank.

*c. Number of votes required.* These questions are decided by a majority vote. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question of this kind, for example, on an objection by either side to the admissibility of certain evidence, is a determination in favor of the accused.

### 16. Voting on Challenges for Cause

*a. When vote taken.* All challenges for cause are determined by vote. Only one member may be challenged for cause at a time.

*b. Method of voting.* In closed session by secret written ballot, the challenged member being excluded. The ballot may be in the form "Sustained" or "Not Sustained." The junior member counts the votes, the count is checked by the president, and the president immediately announces the result of the ballot to the members.

*c. Number of votes required.* A majority of the ballots cast by the members present at the time the vote is taken decides the question of sustaining or not sustaining the challenge. A tie vote on the challenge disqualifies the member challenged. When only three members of the court are present and one is challenged, the remaining two may vote on the challenge.

## 17. Voting on the Findings

a. *Method of voting.* In closed session by secret written ballot. The order in which the several charges and specifications are to be voted on will be determined by the president, except that voting on the one or more specifications under a charge precedes voting on that charge. The members normally vote upon a specification or charge by marking on the ballots: "Guilty;" "Not Guilty;" "Guilty except the words ..... (substituting therefor the words .....);" or, with respect to a charge, "Not Guilty, but guilty of a violation of Article .....". The junior member counts the votes, the count is checked by the president, and the president announces the result of the ballot to the members.

b. *Number of votes required.* A conviction of an offense by special court-martial requires the concurrence of two-thirds of the members present at the time the vote is taken. If, in computing the number of votes required, a fraction results, such fraction is counted as one. Thus, if five members are to vote, a requirement that two-thirds concur is not met unless four concur. A finding of not guilty results as to any specification or charge if no other valid finding is reached thereon.

c. *Reconsideration of findings.* See 19, below.

## 18. Voting on the Sentence

a. *Method of voting.* In closed session by secret written ballot. After discussion has been completed, any member who desires to propose a sentence will write his proposal on a slip of paper. The junior member collects the proposed sentences and submits them to the president, who selects the lightest proposed sentence and conducts the voting by secret written ballot. If two-thirds of the members concur, this becomes the sentence of the court. If there is not two-thirds concurrence, a vote is conducted on the next highest sentence. Voting continues in the same manner until the required concurrence is reached. If, however, the proposed sentences are voted upon and none adopted, further discussion may be had and any new sentences proposed, together with those sentences previously proposed and again retained, are put to vote beginning with the lightest. The junior member collects and counts the votes after each ballot. The president checks the count and immediately announces the result of the ballot to the members of the court.

b. *Number of votes required.* A special court-martial sentence requires the concurrence of two-thirds of the members present at the time the vote is taken. If, in computing the number of votes required, a fraction results, such fraction is counted as one. Thus, if five members are to vote, a requirement that two-thirds concur is not met unless four concur.

c. *Reconsideration of sentence.* See 19, below.

## 19. Reconsideration of Findings of Sentence

a. *When reconsideration allowed.* A court may reconsider any finding before it is announced in open court. A court may reconsider any finding of guilty on its own motion at any time before it has first announced the sentence in open court. A court may reconsider a sentence on its own motion at any time before the record of trial has been authenticated and transmitted to the convening authority, except that the court may not reconsider the sentence with a view to increasing its severity after the sentence has been announced in open court. All personnel of the court who voted thereon must be present if the court is reconvened to reconsider a sentence which has been announced in open court.

*b. Number of votes required for reconsideration.* Within the limitations as to time set forth in *a*, above, any member may request that another ballot be taken on any finding or on the sentence. If any member makes such a request, the members of the court vote by secret written ballot and the question as to whether to take another ballot is decided as follows:

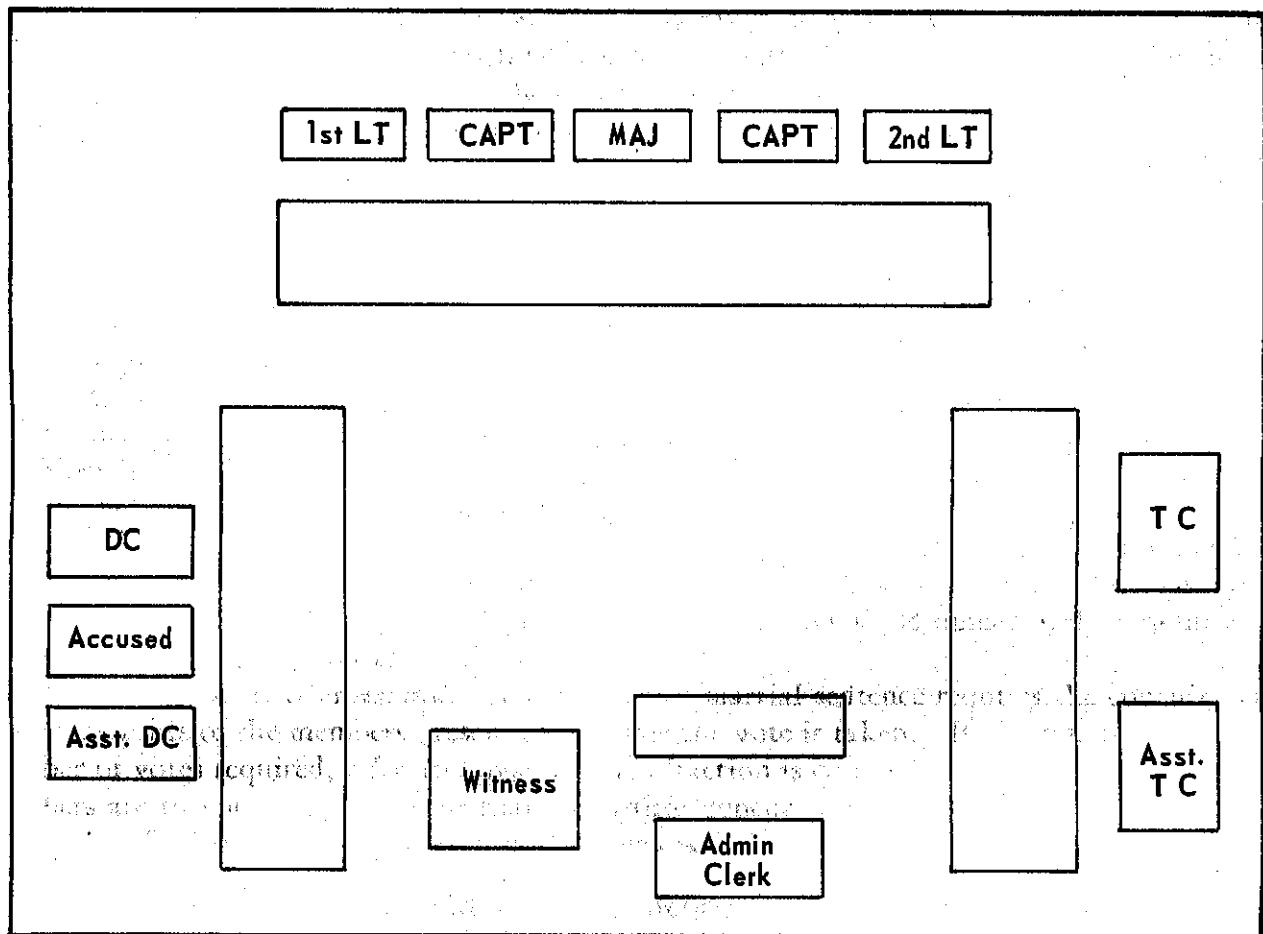
(1) If the request relates to a preceding ballot which resulted in a finding of not guilty or if the request is made with a view to increasing the severity of the sentence, another ballot may be taken only if a majority of the members present vote in favor thereof.

(2) If the request relates to a preceding ballot which resulted in a finding of guilty or if the request is made with a view to decreasing the severity of the sentence, another ballot will be taken if more than one-third of the members present vote in favor thereof.

*c. Reconsideration of a finding of guilty of a lesser included offense.* With respect to the procedural rules set forth in *a* and *b*, above, a reconsideration of a finding of guilty of a lesser included offense with a view to arriving at a finding of guilty of the offense charged or of any offense greater than that found is treated in the same manner as a reconsideration of a finding of not guilty.

## APPENDIX I

### ARRANGEMENT OF COURTROOM FOR TRIAL



## APPENDIX II

### FINDINGS WORKSHEET FOR SPECIAL COURTS-MARTIAL

#### Acquittal

....., it is my duty as president of this court to advise you that the court in closed session and upon secret written ballot has found you not guilty of (the) (all) Specification(s) and Charge(s).

#### Other Findings

....., it is my duty as president of this court to inform you that the court in closed session and upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds you:

1. Of (the) (all) Specification(s) and Charge(s): Guilty.
2. Of Specification ...., Charge ....: Guilty. Of Specification ...., Charge ....: Not Guilty. Of Charge ....: Guilty. Of (the) (all) Specification(s) of Charge ....: Guilty. Of Charge ....: Guilty.
3. Of the Specification: Guilty except the word(s) "....."

.....  
..... Of the excepted words: Not Guilty. Of the Charge: (Guilty) (Not Guilty but Guilty of a violation of Article ....).

4. Of the Specification: Guilty except the words "....." and ".....", substituting therefor, respectively, the 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 ....)

#### Example of Combination

....., it is my duty as president of this court to inform you that the court in closed session and upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds you:

---

<sup>1</sup> The court should be furnished a Findings Worksheet which may be completed by the court in closed session by striking out inapplicable language and inserting appropriate words and figures. The Findings Worksheet will be appended to the record of trial as an exhibit.

**Of Specification 1, Charge I: Not Guilty.**

Of Specification 2, Charge I: Guilty, except the words "of a value of \$37.50," substituting therefor, respectively, the words "of some value less than \$20.00", of the excepted words, not guilty, of the substituted words, guilty.

Of Charge I: Guilty.

Of Specification 1, Charge II: Not Guilty. Of Specification 2, Charge II: Guilty.  
Of Charge II: Guilty.

## APPENDIX III

### SENTENCE WORKSHEET FOR SPECIAL COURTS-MARTIAL<sup>1</sup>

....., it is my duty as president of this court to inform you that the court in closed session and upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring, sentences you:

To have \$..... (per month for .. months) detained.  
To forfeit \$.....  
To forfeit \$..... per month for .. months.  
To perform hard labor for .. (days) (months).  
To be confined at hard labor for .. (days) (months).  
To be reduced to the grade of ....., E-....  
To be reprimanded.  
To be restricted to the limits of .....  
for .... (days) (months).

#### Combinations

To be reduced to the grade of ....., E- ...., to forfeit ...., and to be restricted to the limits of ..... for ..... (days) (months).  
To be reduced to the grade of ....., E-...., and to forfeit .... per month for ..... months.  
To perform hard labor for .. (days) (months) and to forfeit .....  
To perform hard labor for .... (days) (months) and to forfeit ..... per month for ..... months.  
To be confined at hard labor for .... (days) (months) and to forfeit .....  
To be confined at hard labor for .... (days) (months) and to forfeit ..... per month for .... months.  
To be reduced to the grade of ....., E-...., to forfeit ..... and to be reprimanded.  
To be reduced to the grade of ....., E-...., to forfeit ..... per month for .... months and to be reprimanded.

---

<sup>1</sup> A sentence adjudged by court-martial should follow substantially one of the following forms or any necessary modification or combination or equivalent of such forms. A Sentence Worksheet of this sort will be completed by the court in closed session by striking out inapplicable language and inserting appropriate words and figures.

*C 3 Add:* The completed form will be marked as an appellate exhibit and attached to the record of trial.

*On determining whether or not to adjudge a reduction of any kind as a part of the sentence, the court shall keep in mind that a court martial sentence of an enlisted member in a pay grade above E-1, which, as approved by the convening authority, includes confinement or hard labor without confinement, results in reduction of the member to pay grade E-1, under Art 58a UCMJ, unless the convening authority takes certain authorized action to prevent that result. The court should not anticipate or rely on any action which the convening authority might take but should adjudge a sentence which deems appropriate.*

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.

RECORDED

RECORDED

RECORDED

CHANGE

No. 3

HEADQUARTERS  
DEPARTMENT OF THE ARMY  
Washington, D.C., 18 August 1967

## MILITARY JUSTICE HANDBOOK

## TRIAL GUIDE FOR THE SPECIAL COURT-MARTIAL PRESIDENT

DA Pamphlet 27-15, 30 June 1965, is changed as follows:

1. The following pen and ink changes will be made:
  - a. Pages 24-28. Delete footnote 49 and renumber the remaining footnotes accordingly.
  - b. Page 30, paragraph 19, main heading. Change second "of" to "or".
2. Pages 18-21. Delete the material included under the heading, "CONFessions AND AD-MISSIONS", and substitute the following:

NOTE: To be admissible against him, a confession or admission of the accused must be voluntary. A confession or admission is not voluntary if it was obtained through the use of coercion, unlawful influence, or unlawful inducement, including obtaining the statement by questioning an accused without complying with the warning requirements of Article 31(b) and without advising the accused of his right to counsel during the interrogation. Before such a statement may be received in evidence it must appear affirmatively of record that the accused was warned of the nature of the offense of which he was accused or suspected; that he had the right to remain silent; that any statement he made could be used as evidence against him; that he had the right to consult counsel and have counsel with him during the interrogation; and that counsel could be civilian counsel provided by him, military counsel of his own selection if reasonably available, or military counsel appointed for him. After the above explanation, the accused or suspect should have been asked if he desired counsel. If he answered in the affirmative, the record must show that the interrogation ceased until counsel was obtained. If he answered in the negative, he should have been asked if he desired to make a statement. If he answered in the negative, the record must show that the interrogation ceased. If he affirmatively indicated that he desired to make a statement, the statement is admissible against him. However, the record must show that the accused did not invoke any of these rights at any stage of the interrogation. The following dialogue illustrates the method for showing compliance with the warning requirements.

TC (to witness after introductory questions): Did you make any explanation of his rights to the accused concerning the making of a statement?

WITNESS: Yes, sir, I did.

TC (to witness): What explanation did you make?

WITNESS: I told him that he was suspected of wrongfully appropriating a one quarter ton four by four truck, U.S. No. ...., belonging to his company, which he used as a mail carrier, on ...., 19..., by driving to Seattle with it without authority. I then told him he did not have to make any statement at all regarding the offense; that if he did make any statement it could be used as evidence against him in a trial by court-martial; that he had the right to consult counsel and have counsel with him during the interrogation; and that counsel could be civilian counsel provided by him, military counsel of his own selection if reasonably available, or military counsel appointed for him.

<sup>21</sup> \*This change supersedes G-2, 7 October 1966.

TC (to witness): Did you ask the accused if he desired to have or consult with counsel?

WITNESS: Yes, sir, I did.

TC (to witness): Did the accused indicate that he did desire counsel?

WITNESS: No, sir, he stated he did not desire counsel.

NOTE: If the witness states that the accused did request counsel, the prosecution must show that the interrogation ceased until counsel was obtained for the accused.

TC (to witness): Did you ask if he wanted to make a statement at that time?

WITNESS: Yes, sir. I asked him if he wished to make a statement.

TC (to witness): Did he respond to the question?

WITNESS: Yes, sir. He said he wanted to talk to me about the incident.

TC (to witness): Did you make any promises or threats or employ any force or violence in connection with the obtaining of a statement?

WITNESS: No, sir, I did not.

TC (to witness): Did the accused make a statement to you?

WITNESS: Yes, sir, he did.

TC (to witness): Describe fully the manner in which the statement was obtained.

TC (to witness): At any time during the interrogation of the accused, did he indicate that he wished to invoke any of his rights either with regard to the making of any statement or with regard to counsel?

WITNESS: No, sir, he did not.

NOTE: If the witness indicates that the accused did invoke any of his rights at any stage of the interrogation, the prosecution must show that the interrogation ceased at that time and was not continued until such time as there had been compliance with the request of the accused concerning the rights invoked.

TC (to witness): I hand you Prosecution Exhibit 4 for identification. Do you recognize it?

WITNESS: I do.

TC (to witness): What is it?

WITNESS: It is the written statement which the accused signed on 9 March.

TC (to witness): How do you recognize it as the same statement?

WITNESS: (.....).

TC (after showing statement to DC): Prosecution Exhibit 4 for identification is offered in evidence as Prosecution Exhibit 4.

NOTE: When a statement of the accused is offered in evidence by the prosecution, the president normally will explain to the accused his rights in the form indicated below.

PRES (to accused): ..... the prosecution has offered in evidence a statement allegedly made by you and has introduced evidence to show that it was

voluntarily made by you after you had been fully warned of your rights. As the accused in the case, you have the right at this time to introduce any evidence you may desire relevant to the circumstances under which the statement was obtained or relevant as to whether the statement was or was not 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 the court just as is the testimony of other witnesses. You may be cross-examined 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 or was not in fact made by you, you cannot be cross-examined on the question of your guilt or innocence of the offense itself, nor can you be asked on cross-examination whether the statement is true or false. In other words, you can only be cross-examined upon the issues concerning which you testify and upon your credibility, but not upon anything else.

On the other hand, you need not take the 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 that the statement was voluntary or that it was in fact made by you, nor can your silence be commented upon in any way by the trial counsel in addressing the court. Do you understand your rights?

**ACCUSED:** Yes, sir.

DC: The defense (has no objection) (objects) to Prosecution Exhibit 4 for identification (on the ground . . . . .). [The defense has evidence to submit pertaining to (the voluntary nature of the accused's statement) (the fact that he did not make the statement) (and) (calls . . . . . as a witness).]

\* \* \* \* \* (RULING OF THE COURT) \* \* \* \* \*  
 PRES: Subject to objection by any member of the court, the objection is (sustained) (overruled). (Prosecution Exhibit 4 for identification is admitted in evidence as Prosecution Exhibit.)

\* \* \* \* \* (RULING OF THE COURT) \* \* \* \* \*  
 PRES (to court members): The members of the court are advised that (the ruling) (the ruling of the court) admitting in evidence Prosecution Exhibit 4 relates only to the question of admissibility. The ruling merely places the statement before the court; it (does not establish the voluntary nature of the statement) (and) (does not establish that the statement was in fact made by the accused). Each member of the court, in his deliberation upon the findings of guilt or innocence, must come to his own conclusion(s) as to (the voluntary nature of the statement) (and) (as to whether the statement was actually made by the accused). He may accept the statement as evidence against the accused only if he determines that it (was voluntary) (and) (was actually made by the accused). If he does not determine beyond a reasonable doubt that the statement (was voluntary) (and) (was in fact made by the accused), he must disre-

gard the statement entirely as evidence against the accused. Each member is also advised that any evidence adduced as to (the voluntary or involuntary nature of the accused's out-of-court statement) (and) (as to whether the accused in fact made the statement) should be considered by him in determining the weight to be given to the statement in the event he is convinced beyond a reasonable doubt that it was (voluntary) (and was) (in fact made by the accused), and that he should give weight to the statement only to the extent that he believes it to be truthful.

(When evidence has been introduced contesting the voluntariness of the statement, the president should tailor his instructions to that evidence. He may use the following instruction as a guide in tailoring his instructions: You are further advised in this connection that this statement of the accused may not be considered to be voluntary (if it was obtained through the use of coercion, unlawful influence, or unlawful inducement, such as . . . . . ); ((or) if the accused did not affirmatively waive his rights to remain silent or to have the assistance of counsel after he was first informed of the nature of the offense and advised that he did not have to make any statement regarding the offense of which he was accused or suspected; that any statement made by him might be used as evidence against him in a trial by court-martial; that he had the right to consult with counsel and have counsel with him during the interrogation; and that counsel could be civilian counsel provided by him, military counsel of his own selection if reasonably available, or military counsel appointed for him); ((or) if any of the accused's rights concerning the making of a statement or the opportunity to consult with or have counsel were not observed upon request by the accused at any stage of the interrogation) . . . . .).

(When the statement admitted in evidence is oral and evidence has been introduced contesting the assertion that it was made by the accused, the president should give the following instruction: It will be noticed that the statement asserted to have been made by the accused is oral. You are advised in this connection that the evidence that the accused in fact made this oral statement is to be regarded with caution.)

PRES (continuing): The trial will proceed."

3. Page 24. Delete "49" after "Instructions to Court" and add the following "Note" immediately under that subtitle:

NOTE. Before the court closes to voteth its findings in a case in which a plea of not guilty stands to any offense, the president must, as to each such offense, instruct the court as to the elements of the offense and of each lesser included offense in issue, any affirmative defenses in issue, and words of legal connotation. He must also instruct the court as to the burden of proof, presumption of innocence, and reasonable doubt. Such instructions are not required with respect to offenses to which an accused has pleaded guilty; however, an instruction on the meaning and effect of the guilty plea in the form shown on page 14 is appropriate. Information and guidance to assist the president in preparing such instructions (including instructions on a plea of guilty to a lesser included offense) and in performing his other court duties, is contained in DA Pam 27-9, The Law Officer. If not otherwise available, this pamphlet may be obtained from the office of the staff judge advocate."

*Page 35. (As changed by C 2, 7 Oct 66) Add at the end of footnote 1 the following:*

"In determining whether or not to adjudge a reduction of any kind as a part of the sentence, the court should keep in mind that a court-martial sentence of an enlisted member in a pay grade above E-1, which, as approved by the convening authority, includes confinement or hard labor without confinement, results in reduction of the member to pay grade E-1 under Article 58a of the Uniform Code of Military Justice, unless the convening authority takes certain authorized affirmative action to prevent that result. The court should not anticipate or rely on any action which the convening authority might take but should adjudge a sentence which it deems appropriate."

By Order of the Secretary of the Army:

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

Official:

KENNETH G. WICKHAM,  
*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.*

CHANGE

No. 1

HEADQUARTERS  
DEPARTMENT OF THE ARMY  
WASHINGTON, D.C., 30 November 1965

## MILITARY JUSTICE HANDBOOK

## TRIAL GUIDE FOR THE SPECIAL COURT-MARTIAL PRESIDENT

DA Pamphlet 27-15, 30 June 1965, is changed as follows:

1. The following pen and ink changes will be made:

- a. *Page 3, paragraph 3, line 8.* Insert the words "rulings and" after the word "president's" and before the word "instructions", and delete the words "to the court" following the word "instructions".
- b. *Page 12, footnote 14, line 13.* Change the word "challenger" to "challenge".
- c. *Page 13, footnote 18, first line.* After the word "of" where it first appears, insert the word "the".
- d. *Page 14, footnote 22.* At the end of the footnote, add the sentence: "As to rulings concerning relevancy and admissibility, see footnote 29, as amended."
- e. *Page 15, first line.* Delete the words "Understanding this," and capitalize the "D" in "do".
- f. *Page 15, first "NOTE".* On line 13 thereof, change the word "(those)" to "(those)", and on line 24, change the word "it" to "though".
- g. *Page 18, line 9 under "Preliminary".* Delete the words "Subject to objection by any member of the court," and capitalize the "T" in "the".
- h. *Page 23, second line from the bottom before the footnotes.* Change "does" to "does".
- i. *Page 23.* Omit the marginal note "Explanation to accused of effect of guilty plea", delete the portion of the dialogue beginning with "MR. PRES. (to accused):" and ending with "Yes, sir.", and substitute the following therefor:

"MR. PRES. (to accused): . . . . . , you have pleaded guilty to Specification . . . . . , Charge . . . . ) (the lesser included offense of . . . . . ) (all the specification and charges). By so doing, you have admitted every act or omission and every element alleged with respect to the offense (offenses) to which you have pleaded guilty. Your plea subjects you to (a) finding (s) of guilty without further proof of (that) (those) offense(s), in which event you may be sentenced by the court to the maximum punishment authorized (by law) (statute). You are legally entitled to plead not guilty and to be tried upon the prosecution of proving you guilty (of the offense(s)) of offense(s). Your plea of guilty will not be accepted unless it appears that you understand its meaning and effect and that you are voluntarily pleading guilty because you are convinced that you are in fact guilty. If you are not convinced that you are in fact guilty, you should not allow any other considerations to influence you.

PRES: Do you understand this explanation of the meaning and effect of a plea of guilty?

ACCUSED: (Yes, sir) ( ).

PRES: Are you voluntarily pleading guilty?

ACCUSED: (Yes, sir) ( ).

PRES: Are you convinced that you are in fact guilty?

ACCUSED: (Yes, sir) ( )."

3. *Page 16.* Delete footnote 29 and substitute the following therefor:

"Questions of relevancy and materiality are always questions of law, and rulings of the president on these questions are not subject to objection by members of the court."

4. *Page 20.* Delete footnote 35 and substitute the following therefor:

"This instruction should be given in open session when a confession or admission asserted to have been made by the accused has been received in evidence and there has been evidence introduced raising an issue as to the voluntariness of the statement or as to whether the statement was in fact made by the accused. See DA Pam 27-9, The Law Officer, for further discussion of this matter and for other pertinent sample instructions."

By Order of the Secretary of the Army:

Official:

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

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

Distribution:

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