

CHAPTER 9

UNITED STATES ARMY JUDICIARY—MILITARY JUDGE PROGRAM

9-1. Purpose and scope. This chapter governs the Army-wide operation of the Military Judge Program and provides information setting forth administrative procedures to be followed in administering the program.

9-2. Responsibility of Chief Judicial Officer. The Chief Judicial Officer, U.S. Army Judiciary, will serve under the supervision and direction of The Judge Advocate General as the administrator of the U.S. Army Judiciary, with overall responsibility for its organization and functioning in accordance with law.

9-3. Explanation of terms. *a. Military Judge Program.* A system in which military judges are made available for appointment as law officers of general courts-martial.

b. Military judge. A judge advocate officer assigned to U.S. Army Judiciary and designated to perform duty as a member of the Trial Judiciary Division.

c. Judicial circuit. One or more general courts-martial jurisdictions, or the geographical area wherein the headquarters of such jurisdictions are situated, as designated by The Judge Advocate General of the Army.

d. Judicial area. One or more judicial circuits as designated by The Judge Advocate General of the Army. The senior military judge of each judicial area is known as the Area Judicial Officer.

9-4. Areas and circuits. Judicial areas and circuits will be established, altered, and dissolved by The Judge Advocate General of the Army, as indicated by caseloads, courts-martial rates, and time and place of trials by courts-martial, to meet service requirements, at which times all affected convening authorities will be noti-

fied. He will also designate one or more duty stations within each judicial circuit. Military judges will be given duty stations at an installation within each judicial circuit, but will be responsible for administrative matters through the Area Judicial Officer, U.S. Army Judiciary. No judicial circuit will be activated until a military judge has reported for duty at his duty station therein.

9-5. Duties and functions. *a. General.* The primary function of all military judges is to serve as law officers of general courts-martial. Such duty entails pretrial research in the special legal problems of each individual case, presiding at the trial, drafting of instructions, correction and authentication of records of trial, and the maintenance of personal legal proficiency by the reading and digesting of current appellate decisions and other pertinent legal publications. To permit maximum application of such activities and the maintenance of an impartial judicial status, military judges will not be assigned other duties not compatible therewith.

b. Military judge. Each military judge will be responsible for—

(1) Acting as law officer for general courts-martial cases within his circuit.

(2) Maintaining an orderly trial calendar which will make efficient use of available time and provide to the maximum extent possible for scheduling of trials as requested by convening authorities serviced.

(3) Cooperating closely with staff judge advocates within his circuit. In this regard, he must exercise every legitimate and appropriate effort to assist the convening authority in the expeditious handling of general court-martial cases. Further, he must avoid any act which

might be viewed as a usurpation of the powers, duties, or prerogatives of a staff judge advocate.

(4) Seeking assistance from the Area Judicial Officer in case of conflict in trial dates or in any other situation when another military judge may be required in the circuit.

c. *Area Judicial Officer.* The Area Judicial Officer, in addition to the above, will be responsible for—

(1) General administration of the program within his judicial area.

(2) Recommendations to the Chief Judicial Officer, U.S. Army Judiciary, relating to the operation of the program within his area.

(3) Obtaining necessary military judges by conferring with other area judicial officers or the Chief Judicial Officer, U.S. Army Judiciary.

(4) Assisting in the training of Reserve officers in aspects related to the U.S. Army Judiciary.

9-6. Assignment of military judges. a. Military judges will sit as law officers for all general courts-martial convened in their respective circuits, or elsewhere as they may from time to time be assigned by either the Area Judicial Officer or the Chief Judicial Officer, U.S. Army Judiciary.

b. Prior to the trial of each case by general court-martial and as early as practicable, the convening authority or his representative will contact the military judge of the circuit in which his headquarters is located and inform him of—

(1) The nature of the charge.

(2) The estimated duration of the trial.

(3) The proposed date and place of the trial.

c. Based on this information, and dependent upon work load and availability, the military judge will confirm the date of trial and notify the convening authority of the name of the military judge who will be available to act as law officer. To the extent practicable, pending

cases should be set for trial on the same, or succeeding days.

d. Upon his appointment as law officer, the military judge will be furnished a copy of the appointing order, a copy of the charges, and other related documents as required by him. Thereafter, pretrial, trial, and post trial arrangements will be made between the military judge and the staff judge advocate or counsel, as appropriate.

9-7. Administrative and logistical support. a. *General.* Commands selected as duty stations will provide administrative and logistical support for respective military judges, to include—

(1) Private office space.

(2) Office furniture, equipment, and supplies.

(3) Class A telephone service.

(4) Stenographic, clerical, and administrative assistance as required in the expeditious performance of his duties.

(5) Army transportation facilities, including aircraft, as far as is practicable.

(6) Permanent quarters for himself and his dependents to the same degree as are provided regularly assigned officers of like grade and rank and similar responsibility.

(7) Issuance of such temporary duty orders, at the request of the military judge concerned, as may be necessary in the exercise of his duties.

(a) Authority for commanders to issue temporary duty orders for travel of military judges within continental United States and to issue temporary duty orders involving travel of military judges from locations within the continental United States to destinations outside the continental United States is governed by AR 310-10.

(b) Where AR 310-10 does not delegate authority to commanders to issue temporary duty orders for military judges assigned to U.S. Army Judiciary to travel from locations within the continental United States to areas outside the continental United States, orders will be issued by the Department of the Army

when travel to destinations outside the continental United States is necessary.

(c) Orders involving travel outside the continental United States will direct use of military aircraft when available and will authorize use of other modes in event military aircraft is not available. When a convening authority has scheduled a court-martial case for trial for a certain date, the military judge who has been designated law officer of the trial of the case must arrange his travel to arrive in sufficient time before commencement of the trial. Military aircraft generally should be considered not available whenever such aircraft cannot arrive at the situs of the trial within a reasonable time before the date of trial, usually 1 day preceding such date. The military judge concerned should be furnished commercial air transportation under such circumstances.

(d) Orders will state that authority is granted to make such changes in itinerary and to proceed to such additional places as may be necessary for accomplishment of his mission.

(e) Travel costs and per diem for military judges will be budgeted and funded by The Judge Advocate General, Department of the Army, Washington, D.C.

(f) Distribution of travel orders will include two copies of the travel orders to Fi-

nance and Accounts Office, U.S. Army, Pentagon Branch, ATTN: Funds Control Section, Washington, D.C. 20310, for each individual on the orders.

(8) Preparation of pay vouchers and payment of military judges.

(9) Maintenance of field 201 files, officer qualification records, leave records, and all other personnel records.

(10) Completion of entries by the personnel officer on DA Form 67-6 (U.S. Army Officer Efficiency Report) and forwarding of the efficiency report at the appropriate time to the Chief Judicial Officer, U.S. Army Judiciary, Washington, D.C. 20315, for action by the rater, indorser, and reviewer.

b. *Leaves and passes.* When time permits, forms will be executed by the military judge desiring leave or pass and forwarded to the Area Judicial Officer for signature and return. Area Judicial Officers will similarly forward their personal requests to the Chief Judicial Officer, U.S. Army Judiciary. In emergency situations, clearance and authority may be obtained by electrically transmitted messages or telephone. It will be assumed unless otherwise affirmatively noted that a requested absence will not interfere with the timely administration of military justice in the serviced circuit.

CHAPTER 10

REPORT OF NONJUDICIAL PUNISHMENTS AND SUMMARY AND
SPECIAL COURT-MARTIAL CASES (Reports Control Symbol JAG-2 (R7))

10-1. Preparing agencies. DA Form 3169-R (Report of Nonjudicial Punishments and Summary and Special Court-Martial Cases) (Reports Control Symbol JAG-2(R7)) will be prepared by the staff judge advocate of each command having general court-martial jurisdiction.

10-2. Frequency. The report will be prepared—

a. Quarterly, based on nonjudicial punishment data to be obtained by the preparing agency from assigned or attached commands, and on records of trial by summary and special court-martial received in the office of the preparing agency during the periods 1 January through 31 March, 1 April through 30 June, 1 July through 30 September, and 1 October through 31 December; and

b. As of the date a general court-martial

jurisdiction ceases to exist, unless the records are transferred to the office of the staff judge advocate of another general court-martial jurisdiction.

10-3. Routing and due date. The report will be forwarded by the staff judge advocate through his commander to The Judge Advocate General, ATTN: Records Control and Analysis Branch, U.S. Army Judiciary, Department of the Army, Washington, D.C. 20315, not later than 7 working days after the close of the reporting period.

10-4. Format. DA Form 3169-R (image size 7 by 9 4/6 inches) will be reproduced locally on 8- by 10 1/2-inch paper as illustrated in figure 10-1.

| REPORT OF NONJUDICIAL PUNISHMENTS AND SUMMARY AND SPECIAL COURT-MARTIAL CASES (AR 27-10) | | Reports Control QUARTER ENDING | Symbol JAG-2(R7) REPORT DATE |
|---|--|---|---------------------------------|
| THRU: (Forwarding command, include ZIP Code) | TO: The Judge Advocate General Department of the Army ATTN: Records Control and Analysis Branch U.S. Army Judiciary Washington, D.C. 20315 | FROM: (Preparing office, include ZIP Code) | |
| SECTION A - NONJUDICIAL PUNISHMENTS | | | |
| ITEM (a) | NUMBER OF PERSONS (b) | | |
| 1. a. Total Persons Punished (items 2 thru 6) | | | |
| b. Total Persons in Correctional Custody at the End of the Reporting Period | | | |
| 2. Enlisted Personnel | a. E-4 or below | | |
| | b. E-5 or above | | |
| 3. Officer Personnel | a. Commissioned | | |
| | b. Warrant | | |
| 4. Reserve Component Enlisted Personnel Serving on Active Duty for Training | | | |
| 5. Sentenced Prisoners | | | |
| 6. Other Personnel Not Included in Items 2 thru 5 (Specify in Remarks) | | | |
| 7. Personnel Who Were Offered and Refused to Accept Non- judicial Punishment Under Article 15, UCMJ | | | |
| 8. TOTAL Number of Appeals (items 9 and 10) | | | |
| 9. Referred to Judge Advocate | a. Granted in Whole or In Part | | |
| | b. Denied | | |
| 10. Not Referred to Judge Advocate | a. Granted in Whole or In Part | | |
| | b. Denied | | |
| 11. TOTAL Supplementary Actions Taken (items 12 and 13) | | | |
| 12. Favorable to Person Punished (i.e., Suspension, Remission, Mitigation, Setting Aside) | | | |
| 13. Unfavorable to Person Punished (i.e., Vacatin of Suspension) | | | |
| SECTION B - SUMMARY COURTS-MARTIAL | | | |
| ITEM (a) | NUMBER OF PERSONS Tried (b) Convicted (c) | | |
| 14. TOTAL (items 15 thru 18) | | | |
| Enlisted Personnel | a. Male | | |
| 15. Serving on AD | b. Female | | |
| 16. Reserve Component Enlisted Personnel Serving on Active Duty for Training | | | |
| 17. Sentenced Prisoners | | | |
| 18. Other Personnel Not Included in Items 15 thru 17 (Specify in Remarks) | | | |
| 19. Enlisted Pers Included in Items 15 thru 18 Who Refused to Accept Nonjudicial Punishment Under Article 15, UCMJ | | | |
| 20. TOTAL Number Included in Item 14 Who Pledged Guilty to All Charges and Specifications | | | |

DA Form 3169-R, 1 Dec 67 Edition of 1 Nov 66, will not be used.

Figure 10-1.

| SECTION C - SPECIAL COURTS-MARTIAL | | |
|--|-------------------|------------------|
| ITEM (a) | NUMBER OF PERSONS | |
| | Tried (b) | Convicted (c) |
| 21. TOTAL (Items 22 thru 26) | | |
| Officer Personnel | a. Commissioned | |
| 22. Serving on AD | b. Warrant | |
| Enlisted Personnel | a. Male | |
| 23. Serving on AD | b. Female | |
| 24. Reserve Component Personnel Serving on Active Duty for Training (Include Officer and Enlisted) | | |
| 25. Sentenced Prisoners | | |
| 26. Other Personnel Not Included in Items 22 thru 25 (Specify in Remarks) | | |
| TOTAL Number of Enlisted Pers Included in Item 21 Who | | |
| 27. Were Tried by Special Court-Martial After Objecting to Trial by Summary Court-Martial Pursuant to Art 20, UCMJ | | |
| 28. TOTAL Number Included in Item 21 Who Pleaded Guilty to All Charges and Specifications | | |
| REMARKS | | |
| TYPED NAME, GRADE AND TITLE | | SIGNATURE |

Page 2, DA Form 3169-R

Figure 10-1—Continued.

10-3

CHAPTER 11

COURTS OF INQUIRY

11-1. General. This chapter applies only to courts of inquiry convened under the authority of the Uniform Code of Military Justice, Article 135.

11-2. Jurisdiction. *a. Statutory provisions.* Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any other person designated by the Secretary of the Army for that purpose, whether or not the persons involved have requested such an inquiry (UCMJ, Art 135(a)).

b. Policy. A court of inquiry is a formal, fact-finding tribunal. The policy of the Department of the Army is that a court of inquiry not be convened to investigate a particular matter if there are other satisfactory means, prescribed by law or regulation or authorized by the customs of the service, of ascertaining the true facts in the case. Under this policy, it is proper to convene a court of inquiry only when—

(1) The matter to be investigated is one of grave importance to the military service or to an individual thereof, and

(2) The testimony is expected to be so multifarious, complicated, conflicting, or difficult to obtain that a court of inquiry can best procure the pertinent evidence, ascertain the true facts, and assist the convening or superior authority in determining what action should be taken.

c. Persons whose conduct may be subject to inquiry. As a court of inquiry may be convened to investigate any matter (UCMJ, Art 135(a)), it may lawfully investigate the conduct of any person. As a matter of policy, however, a court of inquiry shall not, without the prior approval of the Secretary of the Army,

be convened to investigate the conduct of a person who is not a member of the Army unless the convening authority exercises general court-martial jurisdiction over such person.

d. Effect of application for court of inquiry. Any person subject to the Uniform Code of Military Justice who believes himself wronged by any accusation or imputation against him may, if he cannot secure adequate redress by any other means prescribed by law or regulation or authorized by the customs of the service, submit an application through his immediate commanding officer to the officer exercising general court-martial jurisdiction over the command for the convening of a court of inquiry to investigate and report on the alleged accusation or imputation. The officer exercising general court-martial jurisdiction may, in accordance with the policy in *b* above, convene a court of inquiry to investigate the matter or may take such other action as he deems appropriate. In the event he refuses to convene such a court, he shall so advise the applicant who shall have the right to appeal to superior authority.

11-3. Composition. *a. Number of members.* A court of inquiry shall consist of three or more members. The senior member shall be the president.

b. Qualifications of members. Any commissioned officer on active duty shall be eligible to serve on a court of inquiry. Unless exigencies of the service do not permit, which decision by the convening authority, as indicated by the order appointing the court, is final, no member shall be junior in temporary or permanent grade to, nor lower on the promotion list than, any officer who is initially designated as a party to the inquiry. The convening authority should appoint as members of a court of in-

26 November 1968

quiry such persons as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. One or more members having experience or training in the subject of the inquiry, should, when practicable, be appointed when that special experience or training will be of material benefit in the inquiry. When a female officer or enlisted person is initially designated a party to the inquiry, a female officer, senior to and of the same branch as such party, shall, if practicable, be appointed as a member of the court. Neither a party to the inquiry, nor his counsel, nor a witness against such party shall be eligible to serve as a member of the court.

c. Counsel. For each court of inquiry the convening authority shall appoint a commissioned officer as counsel for the court, together with such assistant counsel as he deems necessary or appropriate. If practicable, the counsel appointed for the court should be an officer who is certified by The Judge Advocate General to be qualified as counsel of a general court-martial under the provisions of the Uniform Code of Military Justice, Article 27(b). Neither a party to the inquiry, nor his counsel, nor a witness against such party shall be eligible to serve as counsel for the court.

d. Reporter; interpreter. For each court of inquiry the convening authority shall provide a qualified court reporter, who shall record the proceedings of an testimony taken before such court. When necessary, the convening authority shall provide an interpreter who shall interpret for the court. *See Uniform Code of Military Justice, Article 28. For provisions as to pay of reporters and interpreters, see AR 37-106.*

11-4. Convening order. *a. Form.* The form of the order convening a court of inquiry shall be similar to that for a court-martial. *See Manual for Courts-Martial, United States, 1969, appendix 4.*

b. Content. In addition to naming the members and counsel and setting the time and place of assembly of the court, the initial convening order will clearly specify the matter to be in-

vestigated and the scope of the findings required. It will also prescribe the number of copies of the record that are to be prepared. If in addition to making findings of fact it is desired that the court express opinions or make recommendations the order must specifically so state. When appropriate, the convening order shall designate the parties whose conduct is subject to inquiry.

11-5. Designation of parties. *a. Person "whose conduct is subject to inquiry."* Any person subject to the Uniform Code of Military Justice whose conduct is subject to inquiry shall be designated as a party (UCMJ, Art 135(c)). The conduct of a person is "subject to inquiry" when the court of inquiry is directed in the convening order to inquire into any of his past transactions or into any accusation or imputation against him.

b. Person who has "a direct interest in the subject of inquiry." Any person subject to the Uniform Code of Military Justice or employed by the Department of Defense who has a direct interest in the subject of inquiry shall have the right to be designated as a party upon request to the court (UCMJ, Art 135(c)). A person has a direct interest in the subject of inquiry when the findings, opinions, or recommendations of the court may, in view of his relation to the incident or circumstances being inquired into, reflect questionable or unsatisfactory conduct, efficiency, fitness, or performance of duty; or affect his pecuniary responsibility. The determination of the question of whether a person has a direct interest in the subject of the inquiry rests in the discretion of the court. Any doubts should be resolved in favor of the person claiming such an interest.

c. Designation of parties by court. When it appears to the court during the course of an inquiry that a person subject to the Uniform Code of Military Justice or employed by the Department of Defense has a "direct interest in the subject of inquiry," as that term is defined in *b* above, the court, before completing its inquiry, will inform the person concerned, orally or in writing, of the precise nature of his interest in the case and of his right to be

designated as a party to the inquiry. The fact that the person was so notified and his desires with respect to being designated as a party will be made a part of the record.

d. Procedure upon designation of party by court. When the court designates a person as a party, it will take appropriate action to insure that he understands his rights as such and that he is fully informed of the evidence pertaining to him that was received by the court prior to his designation. Any reasonable request by him for recall of previous witnesses for the purpose of cross-examination will be granted by the court if practicable. If the witness cannot be recalled, cross-examination may be accomplished by written interrogatories if necessary. Any testimony already given by such a party remains in the record but, after his designation as a party, his rights as a witness are governed by paragraph 11-7b.

11-6. Rights of party. A party to the inquiry, whether designated initially or during the course of the inquiry, has the following rights:

a. To be given due notice of such designation.

b. After his designation, to be present and to have counsel present during all proceedings in open court.

c. To be represented by civilian counsel if provided by him, or by military counsel of his own selection if such counsel be reasonably available, or by counsel appointed by the convening authority.

d. To challenge members, but only for cause stated to the court.

e. To cross-examine witnesses.

f. To introduce evidence.

g. To testify as a witness in accordance with the rules set forth in paragraph 11-7b.

h. To make a voluntary statement in any form, personally or through his counsel, when he is charged with or suspected of an offense which is then the subject of inquiry by the court.

i. To submit a written brief at the conclusion of the inquiry.

11-7. Witnesses. *a. General.* Witnesses may be summoned to appear and testify and be examined before courts of inquiry as provided for courts-martial (UCMJ, Art 135(f)). A court of inquiry and counsel for such court have the same powers with respect to obtaining the attendance of witnesses as a court-martial and the trial counsel of a court-martial. *See Manual for Courts-Martial, United States, 1969, paragraphs 115 and 116.*

b. Party to the inquiry. In * * * all proceedings in * * * courts of inquiry * * * the person charged shall, at his own request, be a competent witness. His failure to make such a request shall not create any presumption against him. *See section 1, act 25 June 1948 (62 Stat. 833; 18 U. S. C. 3481; M. L. 1949, sec. 754).* Any party to the inquiry who is charged with or suspected of an offense, which is then the subject of inquiry by the court, is deemed to be "charged" within the meaning of the above act, and is at his own request, but not otherwise, a competent witness. A party to the inquiry who is not charged with or suspected of an offense may be called as a witness and required to testify under oath upon any matter concerning which he might be a material witness, subject always to the limitations imposed by the Uniform Code of Military Justice, Article 31. *See Manual for Courts-Martial, United States, 1969, paragraphs 148-150.*

c. Examination.

(1) The examination of a witness may be conducted, in the discretion of the court, by the members and counsel for the court.

(2) Any person designated as a party to the inquiry and his counsel shall have the right to examine and cross-examine witnesses. *See Uniform Code of Military Justice, Article 135(c).*

(3) The Uniform Code of Military Justice, Article 31, and the Manual for Courts-Martial, United States, 1969, paragraphs 148-150, are applicable to the examination of witnesses before a court of inquiry.

26 November 1968

d. Fees. For provisions with respect to the payment of witness fees, see AR 37-106.

11-8. Procedure. *a. General.* Except as otherwise provided by this regulation, the procedure before courts of inquiry will be governed by the provisions of AR 15-6.

b. Duties of counsel for court. The counsel for a court of inquiry shall perform substantially the same duties as are prescribed by AR 15-6 for the recorder of a board of officers. Counsel will be present during all proceedings in open court and may be present when the court is closed. An assistant counsel for the court is competent to perform any duty of counsel for the court. He shall perform such duties in connection with the inquiry as counsel for the court may designate.

c. Quorum. Three members of the court will constitute a quorum and must be present at all its sessions, except that a member who was previously absent from, or who has been newly appointed to, a court may participate in the proceedings if the substance of all proceedings had and the evidence introduced previously have been made known to him.

d. Challenges. Members of a court of inquiry may be challenged by a party, but only for cause stated to the court (UCMJ, Art 135(d)). The procedure for presenting and determining challenges shall be substantially the same as that provided for presenting and determining challenges for cause in special courts-martial. *See Manual for Courts-Martial, United States, 1969, paragraph 62.*

e. Oaths.

(1) Before a court commences the inquiry directed by the convening order, the counsel for the court shall administer to the *members* the following oath or affirmation:

You, AB, CD * * * and YZ, do swear (or affirm) that you will faithfully perform all the duties incumbent upon you as members of this court of inquiry, and that you will examine and inquire, according to the evidence, into the matter now before you without partiality. So help you God.

(2) When the oath or affirmation has been administered to the members of the court,

the president of the court shall administer to the *counsel* (and *assistant counsel*, if any) the following oath or affirmation:

You, AB (and YZ), do swear (or affirm) that you will faithfully perform the duties of counsel for this court. So help you God.

(3) Every *reporter* and *interpreter* shall, before entering upon his duties, make oath or affirmation, administered by the counsel for the court, in the following form:

You, AB, do swear (or affirm) that you will faithfully perform the duties of reporter (interpreter) to this court. So help you God.

(4) All *persons who testify* before a court of inquiry shall be examined on oath or affirmation, administered by the counsel for the court, in the following form:

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.

(5) The counsel for the court shall administer the following oath to a *challenged member* who is to be examined under oath as to his competency:

You swear (or affirm) that you will answer truthfully to the questions touching your competency as a member of the court in this case. So help you God.

f. Presence of party. Although a party to the inquiry has the right to be present during all proceedings in open court, his presence is not essential and his absence does not affect the authority of the court to proceed with the inquiry. An absent party may be represented by counsel. If a party is absent because of sickness or other good reason, and is not represented by his counsel during such absence, the court should, if practicable, adjourn the inquiry until the party can be present in person or by counsel. Otherwise the court shall, upon request of such absent party, make known to him the evidence pertaining to him that was received during his absence and give him a reasonable opportunity to cross-examine available witnesses and to present evidence in his own behalf.

g. Rules of evidence. Although not bound by the rules of evidence contained in the Manual for Courts-Martial, United States, 1969, courts of inquiry shall, as far as practicable, observe such rules in order to insure an orderly procedure and a full, fair, and impartial investigation. Thus a court may consider certificates of officers or affidavits of enlisted personnel or civilians if it is impossible or impracticable to secure their personal testimony or their depositions. Similarly, if it is impracticable to produce a witness to authenticate a document, the court may dispense with formal proof of its authenticity, provided it is satisfied that the document is what it purports to be. When a deposition is taken pursuant to the provisions of the Uniform Code of Military Justice, Article 49 (MCM, 1969, para 117), all known parties to the inquiry shall be given notice thereof and permitted to submit cross-interrogatories. In determining the materiality of evidence, the court should consider that the scope of the inquiry is limited by the directions contained in the convening order or in subsequent communications of the convening authority.

11-9. Report. *a. General.* After all the evidence has been presented, and briefs, if any, submitted, the court will close to consider the evidence and formulate its findings and, if any are required, its opinions and recommendations. Only the members and counsel for the court may be present during its closed sessions. The findings, opinions, and recommendations of the court shall not be divulged to anyone other than the convening authority; nor shall the vote or opinion of any member thereon be disclosed unless such disclosure is required by these regulations or by a court of justice in due course of law.

b. Findings. After careful consideration of the evidence of record and the instructions contained in the convening order, the court will record its findings. Upon request of the court, the counsel for the court will assist the court in putting the findings in proper form. Each finding must be supported by evidence of record. A finding is a clear and concise statement of a fact or a conclusion of the court which may reasonably be inferred from the evidence.

In arriving at its findings with respect to disputed facts, the members of the court should use their professional knowledge and their best judgment and common sense in weighing the evidence, considering the probability or improbability thereof, and, with this in mind, should regard as established facts those which are supported by evidence deemed most worthy of belief.

c. Opinions. If the convening order directs the submission of opinions, the court will set forth the opinions which it believes may reasonably be inferred from the facts. The opinions consist of a concise summary of the results of the inquiry consequent from and supported by the facts. They may, however, include consideration of matters in extenuation or mitigation. Depending upon the nature of the inquiry and the provisions of the convening order, the court may set forth opinions on such subjects as the manner of performance of duty by individuals or the functioning of equipment; they may also include conclusions of law, e.g., whether the facts found establish the commission of an offense that is punishable by the Uniform Code of Military Justice.

d. Recommendations. If the convening order requires the submission of recommendations, the court will make such recommendations as are specifically directed and any others that, in its opinion, are appropriate and advisable in view of the nature of the inquiry and the facts found. Recommendations must be appropriate to and warranted by the findings and opinions and, in general, should cover the punitive, pecuniary, and corrective phases of the matter under investigation. If any member of the court recommends trial by court martial, a charge sheet, signed and sworn to by such member, will be prepared and submitted to the convening authority with the record of proceedings. Such charges may be signed and sworn to before the counsel for the court.

e. Minority report. The report of the court shall be based upon the opinion of the majority of the members sitting at the inquiry. If a member does not concur with the findings, opinions, or recommendations of the majority of the court, he shall prepare a minority report

26 November 1968

which shall contain an explicit statement of the parts of the majority report with which he disagrees and the reasons therefor.

11-10. Preparation and submission of record. a.

Contents. The record of proceedings of a court of inquiry will include the convening order and any other communication from the convening authority, an accurate transcript of the proceedings, including a verbatim report of the testimony, the findings of fact, the opinions and recommendations, if any were required, and the exhibits that were received in evidence.

b. Form. The provisions of appendixes 8a and 9a, Manual for Courts-Martial, United States, 1969, so far as they are applicable, will serve as a general guide for the preparation of the record of the proceedings of a court of inquiry.

c. Copies. The convening authority ordinarily will provide in the convening order for the preparation of sufficient copies of the record to permit distribution to agencies directly concerned with the subject of the inquiry. If the convening order fails to prescribe the number of copies that are to be prepared, the record will be prepared in duplicate.

d. Authenticating and forwarding. All copies of the record will be authenticated below the findings, opinions, and recommendations of the court, including any minority report, by the signature of the president and counsel for the court. In case the record cannot be authenticated by the president it shall be authenticated by a member in lieu of the president, and in case the record cannot be authenticated by the counsel for the court it shall be authenticated by a member in lieu of counsel (UCMJ, Art 135(h)). After the record is authenticated, all copies will be forwarded to the convening authority or, in the case of a court convened by the President or the Secretary of the Army, to The Judge Advocate General.

11-11. Action of convening authority. a. Revision. If not satisfied with the investigation,

or with the facts, opinions, or recommendations, the convening authority may return the record to the court with explicit instructions—

(1) To have the investigation pursued further, or the facts, opinions, or recommendations stated in greater detail, more comprehensively, or in more definite and unequivocal terms; or

(2) To correct some other error or defect or supply some omission.

b. Review and formal action. After reviewing the record of proceedings of a court of inquiry and considering the findings, opinions, and recommendations, the convening authority will state at the end of the record, over his own signature, his approval or disapproval, or whole or in part, of the findings, opinions, and recommendations. In taking his action, the convening authority is not bound by the findings, opinions, or recommendations of the court.

11-12. Disposition of record. a. Statutory provisions. The Judge Advocate General shall receive, revise, and have recorded the proceedings of all * * * counts of inquiry * * *. Sec. 2, act 23 June 1874 (18 Stat. 244; 10 U. S. C. 62; M. L. 1949, sec. 63).

b. Forwarding. Immediately after taking his action upon a record of the proceedings of a court of inquiry, the convening authority will forward the original copy of the record, with his action thereon, by letter of transmittal, through normal command channels, to The Judge Advocate General. The letter of transmittal will contain a statement as to what action the convening authority has taken or proposes to take with respect to the matter investigated by the board. Superior commanders may take such action as they deem appropriate with respect to the subject of the inquiry and the action as they deem appropriate with respect to the subject of the inquiry and the action of subordinate commanders thereon. A notation of any action taken by such a commander will be included in the indorsement forwarding the record.

CHAPTER 12

COURT-MARTIAL ORDERS

12-1. Transmittal of charges. The forwarding of charges by the commander exercising immediate jurisdiction over the accused under Article 15, Uniform Code of Military Justice, unaccompanied by a formal letter of transmittal, will be considered as a recommendation for trial by summary court-martial. However, when charges are submitted with a view to trial by special or general court-martial they will be forwarded by a letter of transmittal signed personally by the forwarding officer. Instructions regarding the forwarding of charges are contained in the Manual for Courts-Martial, United States, 1969. They may be supplemented by directives issued by appropriate commanders.

12-2. Referral of charges. The convening authority will personally determine whether to refer the charges for trial and the kind of court to which the charges shall be referred. This function may not be delegated. The endorsement or other directive referring the charges to a court-martial for trial will be signed personally by the convening authority or will be authenticated with his command line. Use of the command line indicates that the commander has personally acted.

12-3. Appointing and promulgating orders. An order appointing a general, special, or summary court-martial will be issued as soon as practicable after the convening authority personally has determined the membership thereof. An order promulgating the result of a trial by general, special, or summary court-martial, although not necessary to the validity of the trial, will be issued whether the trial resulted in an acquittal or otherwise. Any subsequent action taken by the convening authority or higher authority with respect to the finding or sentence of a general, special, or summary court-martial will be promulgated in general,

special or summary court-martial orders as appropriate (para 12-5 *b*, *c*, and *d*).

a. Appointing orders. Orders appointing courts-martial will be issued by the convening authority for each general, special, and summary court-martial. Oral appointing orders will be confirmed by written orders as soon as practicable. Appointing orders may be amended by amendatory appointing orders.

b. Initial promulgating orders. An order promulgating the result of trial by a general, special, or summary court-martial and the initial action of the convening authority will be issued by the convening authority in all cases except those in which a record of trial by special court-martial involving an approved bad conduct discharge is forwarded to the officer exercising general court-martial jurisdiction over the command under the provisions of Article 65(b), Uniform Code of Military Justice. In the latter case, the promulgating order will be issued by the officer exercising general court-martial jurisdiction who takes action on the record.

c. Orders issued subsequent to initial action of the convening authority. Action taken on the findings or sentence of a general, special, or summary court-martial case subsequent to the initial action thereon by convening authority shall be promulgated, as may be appropriate under the circumstances, by the convening authority who took the initial action in the case, the commanding officer of the accused who is authorized to take the action being promulgated, as officer exercising general court-martial jurisdiction over the accused at the time of the action, or by the Secretary of the Army.

12-4. Types. Four types of court-martial orders are issued.

a. An appointing order is used to appoint, or to confirm the appointment of, a general, special, or summary court-martial.

b. A general court-martial order is used to promulgate the result of a trial by a general court-martial and the initial action of the convening authority thereon. A general court-martial order is used also to promulgate any subsequent action taken by the convening or higher authority with respect to the findings or sentence of a general court-martial case.

c. A special court-martial order is used to promulgate the result of a trial by a special court-martial and the initial action of the convening authority thereon. (In the event of an approved bad conduct discharge, see paragraph 98, MCM, 1969.) A special court-martial order is used also to promulgate any subsequent action taken by the convening or higher authority with respect to the findings or sentence of a special court-martial.

d. A summary court-martial order is used to promulgate the result of a trial by a summary court-martial and the initial action of the convening authority thereon. A summary court-martial order is used also to promulgate any subsequent action taken by the convening or higher authority with respect to the findings or sentence of a summary court-martial.

12-5. Form. a. Heading. The heading of court-martial orders is the same as that used for special orders, except that the words "Court-Martial Appointing Order," "General Court-Martial Order," "Special Court-Martial Order," or "Summary Court-Martial Orders" are substituted for the words "Special Orders." Dates will be indicated as follows:

(1) An order promulgating the proceedings and the initial action of convening authority will bear the date of the action of the convening authority on the record of trial except when the order promulgating the result of a trial by special court-martial involving a bad conduct discharge is issued by the officer exercising general court-martial jurisdiction over the command (para 12-3b). In the latter case, the order will bear the date such officer took action on the record of trial,

but will recite in the body of the order the action of the convening authority and the date thereof.

(2) An order promulgating an acquittal of action on the findings or sentence taken subsequent to the initial action of the convening authority will bear the date of its publication.

b. Body.

(1) *General.* Detailed instructions regarding court-martial orders are contained in the Manual for Courts-Martial, United States, 1969.

(2) *Court-martial appointing orders* (fig. 12-1). The body of an appointing order normally contains the following elements:

(a) Designation of the kind of court-martial to be appointed and, if appropriate, a citation of authority therefor. In the latter connection, see note 5, appendix 4a, MCM, 1969.

(b) In the case of a general or special court-martial, the place and time it is to meet, designation of members of the court, the personnel of the prosecution and the defense, and, when appropriate, the law officer. Designations are by grade, name, service number/SSAN, branch of service, and organization, and include in the case of counsel or law officer, a statement concerning his legal qualifications. If enlisted persons are appointed as members of the court, their unit, as well as organization, will be designated. See paragraph 4, MCM, 1969.

(c) In the case of a summary court-martial, designation by grade, name, service number/SSAN, branch of service, and organization of the summary court-martial.

(3) *Initial general, special, and summary court-martial orders* (fig. 12-2). The body of the order contains the following elements:

(a) Fact of trial. If the order promulgates the proceedings of a rehearing, it will recite that fact together with the number and date of the court-martial orders publishing the former proceedings.

(b) Class of court-martial and place convened.

(c) Designation of the court-martial appointing order, including any amendatory orders.

(d) Headquarters issuing the court-martial appointing order.

(e) Grade, pay grade name, service number/SSAN, military service, and organization of the accused.

(f) Charges and specifications exactly as they appear on the charge sheet, unless withdrawn before arraignment, amended after arraignment and before the findings, or objectionable matter (MCM, para 90c) is contained therein. Matters unfit for publication will be set forth only in the orders retained for unfit files, those copies which accompany the record of trial, such copies as may be furnished to The Adjutant General, to the authorities of the post or other place where the accused is located, and to the commanding officer of the place where the accused is to be confined, if confinement is involved. When a specification was withdrawn by the convening authority before arraignment, it should not be copied in full, but its number should be given followed by a statement to that effect. If a specification was amended after arraignment, the order will reflect the specification as amended.

(g) Pleas, including any changes.

(h) Findings, including the granting of a motion for a finding of not guilty. The findings should be copied verbatim from the record. When a specification is withdrawn by order of the convening authority after evidence on the merits has been received, such fact and the reasons for withdrawal will be stated.

(i) Sentence or acquittal. The sentence should be copied verbatim from the record. A statement concerning the number of previous convictions considered by the court is included in parentheses after the statement of the sentence; if no previous convictions were considered, that fact will be similarly indicated.

(j) Date on which the sentence was adjudged or the acquittal was announced by the court.

(k) Action by the convening authority copied verbatim from the action sheet, includ-

ing the heading, date, signature, and full statement of any reprimand.

(4) *General, special, and summary court-martial orders issued subsequent to initial action of convening authority* (fig. 12-3).

(a) Description of the accused by grade, pay grade, name, service number/SSAN, military service, and organization.

(b) Citation of previous order, including date and issuing headquarters.

(c) Specific findings and sentence as affirmed, including effective date of forfeitures and other actions by appellate agencies.

(d) Reference to the Article of the Uniform Code of Military Justice under which the sentence is affirmed or other action by appellate agency is taken.

(e) Order of execution of sentence, suspension, or restoration of rights, as appropriate.

(f) Designation of place of confinement if confinement is involved.

(g) General court-martial case number (CM 000000).

Note. In order to provide necessary data to confinement officers for computation of time to be served in confinement, additional information, as indicated in 1, 2, and 3 below, should be included in certain court-martial orders.

1. Where the initial promulgating order suspends the sentence to confinement and it is desired to vacate the suspension, the order of vacation should, in addition to the information contained in appendix 15e, Manual for Courts-Martial, United States, 1969, include the date the sentence was adjudged, the term of confinement as approved and any modification thereof, and the effective date of the suspension.

2. Where the sentence to confinement is suspended by a separate order and it is desired to vacate the suspension, the vacation order should, in addition to the information contained in appendix 15e, MCM, 1969, include the effective date of suspension, the term of confinement as approved and any modification thereof, the date the sentence was adjudged, and identifying data as to the promulgating and subsequent orders affecting the sentence to

26 November 1968

confinement and their dates. For example, the body of an order vacating a suspension under Article 72(c) may be worded as follows:

So much of the order published in Special Court Martial Order No. _____ ((this headquarters) (Headquarters _____)) 19_____, as suspends, effective _____ 19_____, execution of the approved sentence to confinement at hard labor for _____ months (and _____) in the case of _____, adjudged _____ 19_____, (and) promulgated in Special Court-Martial Order No. _____ ((this headquarters) (Headquarters _____)) 19_____, (not subsequently modified,) (and modified by Special Court-Martial Order No. _____ (this headquarters) (Headquarters _____), 19_____, to confinement at hard labor for _____ months) is vacated. The unexecuted portion of the sentence to confinement (and _____) will be duly executed. The prisoner will be confined in _____ and the confinement will be served therein, or elsewhere as competent authority may direct.

3. Likewise, the date the sentence was adjudged should be included in supplementary orders promulgating the results of affirming action (app 15b, MCM, 1969) and court-martial orders suspending the unexecuted portions of the sentence (app 15c, MCM, 1969).

c. Authentication.

(1) Court-martial orders are authenticated in the same manner as other orders discussed in paragraph 10c, AR 310-10, with the exception of the authority line. The authority line in appointing orders indicates that the commander has personally acted with respect to the selection of the personnel named in the order.

(2) The authority line for court-martial orders varies from that used for other types of orders (para 10c(1), AR 310-10). In court-martial orders the authority line reads "BY COMMAND OF (grade and last name)" when the commander is a general officer and "BY ORDER OF (grade and last name)" when the commander is below the grade of brigadier general.

d. Distribution designation. The distribution designation is as indicated in paragraph 10d, AR 310-10.

12-6. Distribution of court-martial orders.

Official copies of court-martial orders issued from the various headquarters are distributed as follows:

a. Appointing orders.

- (1) Each individual named in the order; one copy.
- (2) Officer exercising general court-martial jurisdiction; one copy (inferior courts only).
- (3) Record of trial; one copy (app 9a, MCM, 1969).

b. All initial general court-martial orders and special court-martial orders involving an approved punitive discharge or dismissal whether or not suspended. In all cases to—

- (1) Individual tried; one copy.
- (2) Law officer, trial counsel, and defense counsel of the court-martial before which the case was tried; each one copy.
- (3) The disbursing officer responsible for the pay accounts of the individual concerned; one copy.
- (4) Individual's immediate commanding officer and to each intermediate commander; a copy of the order pertaining to that individual.

(5) Commanding officer and to the prison officer of the installation at which the individual tried is in custody; each one copy.

(6) Records of the individual tried, for delivery by the guard under seal, at the time of delivery of the prisoner to the commandant of the disciplinary barracks, or the warden of a Federal penal or correctional institution, or the commanding officer of the installation or rehabilitation center in which the individual tried is to be confined under sentence; 12 copies.

(7) Commanding general of the major command in whose area the designated place of confinement is located; one copy.

(8) The Adjutant General, ATTN: AGPF-F, Department of the Army, Washington, D.C. 20310; one copy for each officer affected. Commanding Officer, U.S. Army Personnel Services Support Center, ATTN:

AGPE-F, Fort Benjamin Harrison, Ind. 46249; one copy for each enlisted person affected.

(9) The Provost Marshal General, Department of the Army, Washington, D.C. 20315; two copies for each person affected.

(10) The Judge Advocate General, Department of the Army, Washington, D.C. 20310; 10 copies as to each person accused (included in the record of trial).

(11) Veterans Administration Insurance Center, Post Office Box 8079, Philadelphia, Pa. 19101; two copies of general or special court-martial orders announcing approved findings of guilty of mutiny, treasonable acts in violation of Articles 99, 104, or 134, UCMJ, spying, desertion, or because of conscientious objections, refusal to perform service in the Army of the United States or refusal to wear the uniform of the Army of the United States.

(12) Professor of Law, United States Military Academy, in the cases of officers only; two copies of general court-martial orders only.

(13) Chief, Examination Division, Military Pay Operations, Finance Center, U.S. Army, Indianapolis, Ind. 46249; one copy.

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

c. Summary court-martial orders and all initial general and special court-martial orders not involving a punitive discharge or dismissal. In all cases to—

(1) Individual tried; one copy.

(2) Individual's immediate commanding officer and to each intermediate commander; a copy of the order pertaining to that individual.

(3) Commanding officer and to the prison officer of the installation at which the individual tried is in custody; each one copy.

(4) Records of the individual tried, for delivery by the guard under seal, at the time of delivery of the prisoner to the commanding officer of the installation or rehabilitation center in which the individual tried is to be confined under sentence; two copies.

(5) In summary and in special court-martial cases, the officer exercising general court-martial jurisdiction over the command to whom the record of trial is forwarded; four copies as to each accused (included in the record of trial). See chapter 5.

(6) In general court-martial cases; 10 copies as to each accused to The Judge Advocate General (included in the record of trial).

(7) Chief, Examination Division, Military Pay Operations, Finance Center, U.S. Army, Indianapolis, Ind. 46249; one copy.

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

(9) The Adjutant General, ATTN: AGPF-F, Department of the Army, Washington, D.C. 20310; one copy for each officer affected. Commanding officer, U.S. Army Personnel Support Center, ATTN: AGPE-F, Fort Benjamin Harrison, Ind. 46249; one copy for each enlisted personnel affected.

d. General and special court-martial orders of prisoners. Two copies of all general and special court-martial orders of prisoners with approved sentences to confinement (totaling one year or more) without punitive discharge will be forwarded to The Provost Marshal General, Department of the Army, Washington, D.C. 20315.

e. Supplementary orders involving a punitive discharge or dismissal. The distribution of supplementary general court-martial orders involving an approved or disapproved punitive discharge or dismissal, whether suspended or ordered executed, and supplementary special court-martial orders involving an approved punitive discharge whether suspended or ordered executed, will be the same as indicated in b(1) and (3) through (13) above. Supplementary special court-martial orders which involve a disapproved punitive discharge will be distributed as provided in b(1), (3) through (9), and (11) through (13) above. In addition, if the authority issuing the supplementary orders is different from the authority who issued the initial order, the authority who issued the initial order will be furnished two copies of the

26 November 1968

supplementary order. The Settlements Operations, Finance Center, U.S. Army, Indianapolis, Ind. 46249 and the Chief, Examination Division, Military Pay Operations, Finance Center, U.S. Army, Indianapolis, Ind. 46249, will each be furnished a copy of the supplementary orders promulgating results of affirming action in all cases where the original order approved a punitive discharge or dismissal and either ordered the sentence to forfeitures executed or provided that the forfeitures should apply to pay and allowances becoming due on and after the date of the convening authority's action.

f. Supplementary general and special court-martial orders modifying findings or sentence. Copies of every supplementary order modifying the whole or any part of the findings or sentence of a general or special court-martial in which the initial order involved an approved punitive discharge or dismissal will be distributed as provided in b(1), and (3) through (13) above. Copies of every supplementary general court-martial order modifying the whole or any part of the findings or sentence of a general court-martial in which the initial order did not involve an approved punitive discharge or dismissal will be distributed as provided in c

HEADQUARTERS, 1ST BATTLE GROUP, 69th INFANTRY
Fort Polk, Louisiana

COURT-MARTIAL APPOINTING ORDER
NUMBER 148

21 July 1968

A special court-martial is hereby ordered to convene at this HQ at 0900 hours on 27 July 1968, or as soon thereafter as practicable, for trial of such persons as may be properly brought before it. The Court will be constituted as follows:

MEMBERS

MAJ JACK Q. GOODMAN, 02074200, SSAN: 121 00 6431, Inf, 1st Battle Group, 69 Inf
CPT LEWIS R. ROSE, 0500561, SSAN: 221 33 4062, Inf, 1st Battle Group, 69 Inf
1LT WILLIAM C. CANNON, 0470903, SSAN 331 08 4119, Inf, 1st Battle Group, 39 Inf
SFC(E-7) McDONALD A. COLE, RA 13216580, SSAN: 565 77 8010, Co B, 1st Battle Group,
69 Inf
SGT(E-5) HERBERT H. LEE, RA 15216391, SSAN: 061 44 3253, Co D, 1st Battle Group,
69 Inf

COUNSEL

CPT JOHN M. ITAMS, 02161321, SSAN: 040 63 7131, Inf, 1st Battle Group, 69 Inf,
TRIAL COUNSEL, Member of Bar of Supreme Court of Nebraska
1LT WILBERT N. BROWN, 02142180, SSAN: 313 78 0411, Inf, 1st Battle Group, 69 Inf,
ASSISTANT TRIAL COUNSEL, not a lawyer in the sense of Art 27
CPT PAUL H. SMITH, 02653822, SSAN: 323 01 6432, Inf, 1st Battle Group, 69 Inf,
DEFENSE COUNSEL, member of Bar of Supreme Court of Missouri
1LT LOUIS P. JORDON, 02912111, SSAN: 444 11 0610, Inf, 1st Battle Group, 60 Inf,
ASSISTANT DEFENSE COUNSEL, not a lawyer in the sense of Art 27

BY ORDER OF COLONEL WILSON:

/s/George C. Grove
/t/GEORGE C. GROVE
Major, Inf
Adjutant

DISTRIBUTION:

Figure 12-1. Order appointing a special court-martial.

above. Copies of every supplementary special court-martial order modifying the whole or any part of the findings or sentence of special court-martial in which the initial order did not involve an approved punitive discharge will be distributed as provided in c(1) through (5), and (7) through (9) above.

12-7. Modification of findings or sentence. Orders modifying the findings or remitting, mitigating, or suspending the whole or any part of

the sentence of a general or special court-martial issued subsequent to the final order promulgating the result of a trial are published in appropriate supplementary general or special court-martial orders (MCM, 1969). Action modifying the findings or the whole or any part of a sentence of a summary court-martial which is taken subsequent to the initial action of the convening authority is published in a summary court-martial order.

HEADQUARTERS, 20TH INFANTRY DIVISION
Fort Dix, New Jersey

GENERAL COURT-MARTIAL ORDER
NUMBER 84

8 October 1968

Before a general court-martial which convened at Fort Dix, New Jersey, pursuant to Court-Martial Appointing Order No. 128, Headquarters 20th Infantry Division, 27 August 1968, as amended by Court-Martial Appointing Order No. 129, Headquarters 20th Infantry Division, 3 September 1968, was arraigned and tried:

Private(E-2) John Doe, RA 16824364, SSAN: 102 23 6017, U.S. Army Company A, 1st Battle Group, 29th Infantry.

Charge I: Violation of the Uniform Code of Military Justice, Article 85.

Specification: In that Private(E-2) John Doe, U.S. Army, Company A, 1st Battle Group, 29th Infantry, did, on or about 6 June 1968, without proper authority and with intent to remain away therefrom permanently, absent himself from his organization, to wit: Company A, 1st Battle Group, 29th Infantry, and did remain so absent in desertion until he was apprehended on or about 9 September 1968.

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

Specification: In that Private(E-2) John Doe, U.S. Army, Company A, 1st Battle Group, 29th Infantry, did, at Fort Dix, New Jersey, on or about 6 June 1968, steal a camera, of a value of about \$200, the property of Private(E-2) Henry Morgan.

PLEAS

To all the Specifications and Charges: Not guilty.

FINDINGS

Of the Specification, Charge I: Guilty.

Of Charge I: Guilty.

Of the Specification, Charge II: Not guilty.

Of Charge II: Not guilty.

SENTENCE

To be dishonorably discharged from the service, to forfeit all pay and allowances, and to be confined at hard labor for 1 year and 6 months. (No previous convictions considered.)

The sentence was adjudged on 28 September 1968.

Figure 12-2. Initial general court-martial order.

26 November 1968

ACTION

HEADQUARTERS, 20TH INFANTRY DIVISION
Fort Dix, New Jersey

8 October 1968

In the foregoing case of Private (E-2) John Doe, RA 16824364, SSAN: 102 23 6017, U.S. Army Company A, 1st Battle Group, 29th Infantry, the sentence is approved. The forfeitures shall apply to pay and allowances becoming due on and after the date of this action. The record of trial is forwarded to The Judge Advocate General of the Army for review by a board of review. Pending completion of appellate review, the accused will be confined in the United States Disciplinary Barracks, Fort Leavenworth, Kansas, or elsewhere as competent authority may direct.

/s/ John T. Crowley
/t/ JOHN T. CROWLEY
Major General, US Army
Commanding

BY COMMAND OF MAJOR GENERAL CROWLEY:

OFFICIAL:

GEORGE C. SMITH
Colonel, GS
Chief of Staff

/s/ George B. Howe
/t/ GEORGE B. HOWE
LTC, AGC
Adjutant General

DISTRIBUTION:

Figure 12-2—Continued.

HEADQUARTERS, UNITED STATES DISCIPLINARY BARRACKS
Fort Leavenworth, KansasGENERAL COURT-MARTIAL ORDER
NUMBER 5

3 December 1968

In the general court-martial case of Private(E-2) John Doe, RA 16834364, SSAN: 102 23 6017, Company A, 1st Battle Group, 29th Infantry, U.S. Army, the sentence to dishonorable discharge, forfeiture of all pay and allowances becoming due on and after the date of the convening authority's action, and confinement at hard labor for 1 year and 6 months, adjudged 28 September 1968, as promulgated in General Court-Martial Order No. 84, Headquarters, 20th Infantry Division, date 8 October 1968, has been affirmed pursuant to Article 66. The provisions of Articles 71c having been complied with, the sentence will be duly executed. The prisoner will be confined in the United States Disciplinary Barracks, Fort Leavenworth, Kansas, and the confinement will be served therein, or elsewhere as competent authority may direct.

BY COMMAND OF MAJOR GENERAL MILNER:

OFFICIAL:

GEORGE C. SMITH
Colonel, GS
Chief of Staff

/s/ James T. Brown
/t/ JAMES T. BROWN
LTC AGC
Adjutant General

(CM 4000000)

DISTRIBUTION:

Figure 12-3. Supplementary general court-martial order.

APPENDIX A

CROSS-REFERENCING BETWEEN PARAGRAPHS OF THE MCM, 1969, AND
APPLICABLE ARMY REGULATIONS

IMPORTANT—The references indicated below are only as current as the date of the latest revision.

Appropriate references to paragraphs of the MCM, 1969, are as follows:

| Paragraph | Cross-reference |
|-----------|---|
| 4g | Appointment of members and law officers from other armed forces—See paragraph 10c (17), AR 27-1. Paragraph 10c (17) of AR 27-1 states: “(17) The Judge Advocate General, by and for the Secretary of the Army, authorizes the appointment of Army personnel to serve on courts-martial convened by commanders of the Navy and Air Force.” |
| 18a | Definitions Concerning Apprehension and Restraint—See paragraph 3a, b, and c, AR 633-1. (Definitions of apprehension, arrest and confinement.) |
| 18b | Basic Considerations Concerning Apprehension and Restraint—See paragraph 5a and g, AR 633-1. (General policy concerning arrest or confinement and punishment prohibited before trial.) |
| 18b(3) | Restraint—See paragraph 4b(2), AR 633-5. (Disposition of an officer prisoner.) |
| 19a | Who May Apprehend—See paragraph 4a and d, AR 633-1. (Who may apprehend and statements and reports by persons authorized to apprehend.) |
| 19b | Who May Apprehend in Quarrels, Frays, or Disorders—See paragraph 4c, AR 633-1. (Commissioned officers, warrant officers and noncommissioned officers authority to quell quarrels, frays, and disorders.) |
| 19c | Procedural Steps to Apprehend—See paragraph 4b, AR 633-1. (How apprehension is effected.) |
| 19d | Securing Custody of Alleged Offender—See paragraph 3d, AR 633-1. (Distinction between authority to apprehend and authority to order into arrest or confinement.) |
| 20a | Status of Person in Arrest—See paragraph 3b, AR 633-1. (Definition of arrest.) |
| 20b | Restriction in lieu of Arrest—See paragraph 5f, AR 633-1. (Restriction to specified areas of a military command.) |
| 20c | Confinement Prior to Trial—See paragraph 5a, AR 633-1. (General procedures concerning arrest or confinement.) |
| 20d | Procedure for Arresting or Confining—See paragraph 5a and c, AR 633-1 and paragraph 18b, AR 633-5. (Duration and termination of confinement.) |
| 21d | Responsibility for Restraint after Trial—See paragraph 9b, AR 633-5. (Restraint after trial of commissioned and warrant officers.) |
| 22 | Duration and Termination of Restraint—See paragraph 18d, AR 633-5. (Termination of restraint by proper authority.) |
| 29d | Preparation of Charge Sheet—See paragraph 2-2 of this regulation. |
| 33i | Forwarding of Charges—See paragraph 2-3 of this regulation. |

Paragraph *Cross-reference*

35 Action by Officer Exercising GCM Jurisdiction—See paragraph 14b, AR 27-1.

(a) Paragraph 14b of AR 27-1 states:

“b. *Military Justice.* The duties of a staff judge advocate include those prescribed by the Uniform Code of Military Justice, Articles 6, 34(a), and 61, and the Manual for Courts-Martial, United States, 1951, paragraphs 35b and c, 52, and 85. General courts-martial may be convened only by those persons described in the Uniform Code of Military Justice, Article 22. Convening authorities shall at all times communicate directly, and not through intermediaries, with their staff judge advocates in matters relating to the administration of military justice (Art. 6(b), UCMJ). No person who has acted as member, law officer, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in any case shall subsequently act as a staff judge advocate or legal officer to any reviewing authority upon the same case (Art. 6(c), UCMJ).”

43 Suspension of Counsel of Courts-Martial—See chapter 4 of this regulation.

52 Reference to Convening Authority—See paragraph 14b, AR 27-1 (see subparagraph (18), *supra*).

79a Procedure of Summary Courts-Martial—See paragraph 2-4 of this regulation.

82a Responsibility for Preparation of Records of General Courts-Martial—See paragraph 2-5 of this regulation.

83b Special Court-Martial Records Not Involving Bad Conduct Discharges—See paragraph 2-6 of this regulation.

85 Reference of Record of Trial to SJA—See paragraph 14b, AR 27-1 (see subparagraph (18), *supra*).

85d Disposition of Review—See paragraph 2-7 of this regulation.

88 Powers of the Convening Authority with Respect to the Sentence—See paragraph 4, AR 633-5. (Designation of places of confinement.)

89c Action on Findings and Sentence—See paragraph 9b, AR 633-5. (Confinement of commissioned or warrant officer pending final action.)

90d Distribution of Orders—See paragraph 12-6 of this regulation. (Distribution of official copies of court-martial orders.)

91c Record of Trial of Summary Courts-Martial—See paragraph 2-8 of this regulation.

92 Ordering Rehearing—See paragraph 4e, AR 633-30. (Sentences adjudged at “another trial.”)

93 Place of Confinement—See paragraph 13, AR 633-5. (Confinement procedures.)

94b Filing of Records—See paragraph 2-9 of this regulation.

96 Reports in Certain Cases—See paragraph 9e, AR 633-5. (Notice of change of status of a commissioned or warrant officer in temporary custody.)

97 Miscellaneous Matters Pertaining to Action after Promulgation of Orders—See paragraphs 1, 2, and 3, AR 633-10, and paragraph 10d, AR 633-5. (Policies for the mitigation, remission, and suspension of sentences.)

(a) Paragraph 2a and b of AR 633-10 states:

“a. Subject to b below, any commanding officer of a person convicted by court-martial who has the authority to appoint a court of the kind that imposed the sentence, or any superior military authority, may mitigate, remit, or suspend, in whole or in part, any unexecuted portion of a sentence (including all uncollected forfeitures) adjudged by court-martial, other than a sentence extending to death or dismissal or affecting a general officer. At any time prior to completion of ap-

Paragraph

Cross-reference

pellate review, The Judge Advocate General may mitigate, remit, or suspend, in whole or in part, any unexecuted portion of a sentence other than a sentence extending to death or dismissal or affecting a general officer (including all uncollected forfeitures) adjudged by a court-martial.

b. The authority to mitigate, remit, or suspend any unexecuted portion of the sentence of a prisoner confined in a United States disciplinary barracks or in an institution under the control of the Attorney General, whether or not the sentence has been ordered executed, may be exercised only by the Secretary of the Army, except that—

- (1) The officer who convened the court or the supervisory authority shall not be limited in the exercise of their clemency authority at the time of initial action on the findings and sentence of the court-martial pursuant to the Uniform Code of Military Justice.
- (2) Any commanding officer, as defined in a above, may suspend the execution of a punitive discharge until release from confinement or until completion of appellate review, which ever is the later date, with a provision for automatic remission, unless the suspension is sooner vacated.
- (3) The Judge Advocate General may mitigate, remit, or suspend as provided in a above.
- (4) The Commandant, United States Disciplinary Barracks, and any branch thereof, may mitigate, remit, or suspend, in whole or in part, any unexecuted portion of the sentence (including all uncollected forfeitures) adjudged by a special or summary court-martial. This authority does not apply to any sentence adjudged by general court-martial nor aggregate sentence which includes a general court-martial."

98 Execution of Sentences—See paragraph 37b, AR 633-5. (Completion of confinement prior to completion of appellate process and affirmation of sentence.)

100c(1) ... Action When Sentence is Affirmed in Whole or in Part—See paragraphs 9f, 10b, AR 633-5 and chapter 5 of this regulation. (Notice of expiration of appeals period for an officer and procedures for disposition of enlisted personnel.)

115d(3) ... Warrant of Attachment—See paragraph 2-10 of this regulation.

116 Employment of Experts—See paragraph 13-46, AR 37-106. (Advance authorization is required for the employment of an expert witness.)

125 General Limitations on Punishment—See paragraph 4b, AR 633-5, (Determining place of confinement for an officer prisoner.)

128-135 ... Nonjudicial Punishment—See chapter 3 of this regulation.

215b Former Jeopardy—See chapter 6 of this regulation.

The above references do not purport to exhaust all relevant sources of cross-referencing between the MCM and regulations.

APPENDIX B

CROSS-REFERENCING OF THE UNIFORM CODE OF MILITARY JUSTICE
WITH APPLICABLE ARMY REGULATIONS

IMPORTANT—The references indicated below are only as current as the date of the latest revision of this regulation.

| <i>Article</i> | <i>Cross-reference</i> |
|----------------|---|
| 6(a) | Assignment of Judge Advocates and Legal Officers—See paragraph 10c, AR 27-1. (Military justice duties of The Judge Advocate General.) |
| 6(b) | Communications Between Convening Authorities and Staff Judge Advocates—See paragraph 14a, AR 27-1. (Duties and functions of the staff judge advocate.) |
| 7(a) | Definition of Apprehension—See paragraph 3a, AR 633-1. (The taking of a person into custody.) |
| 7(b) | Authority to Apprehend—See paragraph 4a, AR 633-1. (Who may apprehend.) |
| 7(c) | Authority to Quell Quarrels, Frays, and Disorders—See paragraph 4c, AR 633-1. (Persons with authority to quell frays and disorders.) |
| 8 | Apprehension of Deserters—See paragraphs 7, 8, and 29, AR 630-10. (Absence without leave and desertion.) |
| 9(a) | Arrest and Confinement—See paragraph 3b and c, AR 633-1. (Definition of arrest and confinement.) |
| 9(b) | Restraining Enlisted Men—See paragraph 5b and d, AR 633-1. (Who may order into arrest or confinement and statements and reports by persons authorized to arrest or confine.) |
| 9(d) | Probable Cause Needed for Imposition of Restraint—See paragraph 5a, b, and f, AR 633-1. (Who may order into arrest or confinement and restriction in lieu of arrest.) |
| 10 | Restraint of Persons Charged with Offenses—See paragraph 5f, AR 633-1 and paragraph 13b, AR 633-5. (Restriction in lieu of arrest and notification to accused.) |
| 11(a) | Reports and Receiving of Prisoners—See paragraph 6c, AR 190-2. (Properly executed Confinement Order (DD Form 497) is necessary at the time the individual is confined.) |
| 13 | Punishment Prohibited Before Trial—See paragraph 5g, AR 633-1. (Punishment prohibited before trial but an individual may be subject to minor punishment during such period for infractions of discipline.) |
| 14 | Delivery of Offenders to Civil Authorities—See paragraph 9a, AR 633-1. (An officer exercising general court-martial jurisdiction or a commanding officer designated by him may authorize the delivery of a member of his command to civil authorities.) |
| 15 | Nonjudicial Punishment—See paragraph 14c(3)(d), AR 600-31. (Flagging action.) |
| 24 | Who May Convene Summary Courts-Martial—See paragraph 5b, AR 633-1. (Authority to order a commissioned officer, a warrant officer, or a civilian subject to UCMJ into arrest or confinement.) |
| 27(b) | Qualification of Counsel—See paragraph 1-3, AR 635-200. (Counsel for certain administrative proceedings.) |
| 33 | Forwarding of Charges—See paragraph 5g, AR 633-1. (Report in writing the reason for delay of forwarding of charges.) |

| <i>Article</i> | <i>Cross-reference</i> |
|----------------|--|
| 43 | Statute of Limitations—See paragraph 45d, AR 635-206. (Administrative discharge by reason of desertion or absence without leave.) |
| 57 | Effective Date of Sentences—See paragraph 5g, AR 633-1. (Punishment prohibited before trial except for minor punishment for infractions of discipline.) |
| 58(a) | Sentences; reduction in enlisted grade upon approval—See paragraph 7-30h(2) and 7-32c(2), AR 600-200. (Reduction by operation of law.) |
| 66 | Review by Board of Review—See paragraph 37b, AR 633-5. (Completion of confinement prior to completion of appellate process.) |
| 67 | Review by the Court of Military Appeals—See paragraphs 10c(7) and (8), AR 27-1 and 37b, AR 633-5. (Affirmation of sentence and actions of The Judge Advocate General.) |
| 68 | Branch offices—See paragraph 10c(15) of AR 27-1. (The Judge Advocate General may by direction of the President establish a branch office under an Assistant Judge Advocate General.) |
| 69 | Review in the Office of The Judge Advocate General—See paragraph 10c (9) of AR 27-1. (The Judge Advocate General causes to be examined in his office all records of trial by general court-martial in which there has been a finding of guilty and a sentence for which appellate review is not otherwise provided.) |
| 71 | Execution of Sentence; Suspension of Sentence—See paragraphs 10b(1) and (2) and 37b, AR 633-5 and paragraph 4f, AR 633-30. (Action pending appellate review.) |
| 72 | Vacation of Suspension—See paragraph 10b(1)(d), AR 633-5; paragraph 4f, AR 633-30; and paragraph 1b, AR 633-35. (Procedure to be followed upon vacation of suspension.) |
| 73 | Petition for a New Trial—See paragraph 4d, AR 633-30 and 10c(11), AR 27-1. (The Judge Advocate General acts upon petitions for a new trial.) |
| 74 | Remission and Suspension—See paragraph 4f, AR 633-30, paragraph 2a, AR 633-10 and 10c(12), AR 27-1. (At any time prior to completion of appellate review, The Judge Advocate General may mitigate, remit, or suspend, in whole or in part, any unexecuted portion of a sentence other than a sentence extending to death or dismissal or affecting a general officer.) |
| 83 | Fraudulent Enlistment, Appointment, or Separation—See paragraphs 16 and 30, AR 635-206. (Trial by courts-martial for fraudulent enlistment.) |
| 96 | Releasing Prisoner without Proper Authority—See paragraph 7e(5)(c), AR 633-5. (Insure that guards understand the penalty for allowing a prisoner to escape.) |
| 139 | Redress of Injuries to Property—See AR 27-27. (Claims Under Article 139, UCMJ.) |

APPENDIX C

LIST OF ARMY REGULATIONS DEALING WITH THE
ADMINISTRATION OF MILITARY JUSTICE

IMPORTANT—The references indicated below are only as current as the date of the latest revision of this regulation.

| <i>AR No.</i> | <i>Title</i> |
|---------------|---|
| 1-32 | Disciplinary Control of U.S. Army Personnel Stationed Overseas. |
| 1-55 | Suspected Criminal Conduct, Wrongdoing, or Mismanagement in the Army. |
| 15-185 | Army Board for Correction of Military Records. |
| 22-25 | Uniform Rules of Procedure for Proceedings In and Before Boards of Review. |
| 27-1 | Judge Advocate Legal Service. |
| 27-45 | Release of Information and Appearance of Witnesses. |
| 27-27 | Claims Under Article 139, Uniform Code of Military Justice. |
| 37-106 | Financial Administration, Finance and Accounting for Installations—Travel and Transportation Allowances. |
| 135-173 | Relief of Officers and Warrant Officers from Active Duty. |
| 135-316 | Judge Advocate Training. |
| 190-1 | The Army Correction Program. |
| 190-2 | Installation Confinement Facilities. |
| 190-9 | Apprehension of Absentees. |
| 190-22 | Seizure and Disposition of Property. |
| 195-12 | Department of the Army Polygraph Activities. |
| 345-20 | Release of Information and Records from Army Files. |
| 345-60 | Release of Information Pertaining to Persons Accused of Offenses and Disciplinary Actions Taken. |
| 350-212 | Training in Military Justice Matters. |
| 381-17 | Wiretap, Investigative Monitoring, and Eavesdrop Activities. |
| 614-106 | Classification, Assignment, and Reassignment of Officers and Warrant Officers—Conscientious Objectors. |
| 630-10 | Absence Without Leave and Desertion. |
| 632-380 | Petty Offenses Committed on Federal Reservations. |
| 633-1 | Apprehension and Restraint. |
| 633-5 | Prisoners—General Provisions. |
| 633-10 | Mitigation, Remission, and Suspension of Sentences. |
| 633-15 | Procedure for Military Executions. |
| 633-20 | Parole of Prisoners from United States Disciplinary Barracks. |
| 633-21 | Conditional Release of Prisoner on Commandant's Parole from United States Disciplinary Barracks. |
| 633-30 | Military Sentences to Confinement. |
| 633-35 | Restoration of Military Prisoners Sentenced to Confinement and Discharge. |
| 633-50 | Prisoners of War. |
| 633-56 | Notification to Parents, Spouse, or Guardian when Trial by Court-Martial or Foreign Court Appears Probable. |
| 635-120 | Officer Resignations and Discharges. |
| 635-200 | Personnel Separations—Enlisted Personnel. |
| 635-206 | Discharge—Misconduct (Fraudulent Entry, Conviction by Civil Court, and Absence Without Leave or Desertion). |
| 635-212 | Discharge—Unfitness and Unsuitability. |

The proponent agency of this regulation is the Office of The Judge Advocate General. Users are invited to send comments and suggested improvements to The Judge Advocate General, ATTN: JAGJ, Department of the Army, Washington, D.C. 20310.

By Order of the Secretary of the Army:

W. C. WESTMORELAND,
General, United States Army,
Chief of Staff.

OFFICIAL:

KENNETH G. WICKHAM,
Major General, United States Army,
The Adjutant General.

Distribution:

Active Army, NG, and USAR: To be distributed in accordance with DA Form 12-9 requirements for Legal Services—A (Qty Rqr Block No. 50).