Enclosures for

# The Summary Court-Martial Handbook

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APPENDIX 9, MANUAL FOR COURTS-MARTIAL, TRIAL GUIDE

General Note to SCM: It is not the purpose of this guide to answer all questions which may arise during a trial. When this guide, chapter 13 of the Rules for Courts-martial, and other legal materials available fail to provide sufficient information concerning law or procedure, the summary court-martial should seek advice on these matters from a judge advocate. *See* R.C.M. 1301(b). If the accused has obtained, or wishes to obtain, defense counsel, *see* R.C.M. 1301(e). The SCM should examine the format for record of trial at appendix 15. It may be useful as a checklist during the proceedings to ensure proper preparation after trial. The SCM should become familiar with this guide before using it. Instructions for the SCM are contained in brackets, and should not be read aloud. Language in parentheses reflects optional or alternative language. The SCM should read the appropriate language aloud.]

# Preliminary Proceeding

Identity of SCM

SCM: I am\_\_\_\_\_\_\_\_\_\_.I have been detailed to conduct a summary court-martial (by Summary Court-martial Convening Order (Number \_\_\_\_\_), dated [*see* detailing order]).

Referral of charges to trial

Charges against you have been referred to me for trial by summary court-martial by ([*name and title of convening authority*]) on ([*date of referral*]) [*see* block IV on page 2 of charge sheet].

[Note 1. Hand copy of charge sheet to the accused.]

Providing the accused with charge sheet

I suggest that you keep this copy of the charge sheet and refer to it during the trial. The charges are signed by [*see* preferral block of charge sheet], a person subject to the Uniform Code of Military Justice, as accuser, and are properly sworn to before a commissioned officer of the armed forces authorized to administer oaths. (\_\_\_\_\_\_\_ ordered the charges to be preferred.) The charges allege, in general, violation of Article \_\_\_\_\_ , in that you (and Article , in that you \_\_\_\_\_\_\_\_\_ ). I am now going to tell you about certain rights you have in this trial. You should carefully consider each explanation because you will soon have to decide whether to object to trial by summary court-martial. Until I have completed my explanation, do not say anything except to answer the specific questions which I ask you. Do you understand that?

ACC: \_\_\_\_\_\_\_\_\_\_.

Duties of SCM

SCM: As summary court-martial it is my duty to obtain and examine all the evidence concerning any offense(s) to which you plead not guilty, and to thoroughly and impartially inquire into both sides of the matter. I will call witnesses for the prosecution and question them, and I will help you in cross-examining those witnesses. I will help you obtain evidence and present the defense. This means that one of my duties is to help you present your side of the case. You may also represent yourself, and if you do, it is my duty to help you. You are presumed to be innocent until your guilt has been proved by legal and competent evidence beyond a reasonable doubt. If you are found guilty of an offense, it is also my duty to consider matters which might affect the sentence, and then to adjudge an appropriate sentence. Do you understand that?

ACC: \_\_\_\_\_\_\_\_\_\_.

Right to object to SCM

SCM: You have the absolute right to object to trial by summary court-martial. If you object the appropriate authority will decide how to dispose of the case. The charges may be referred to a special or general court-martial, or they may be dismissed, or the offenses charged may be disposed of by (nonjudicial punishment [if not previously offered and refused] or) administrative measures. [*See* R.C.M. 306.] Do you understand that?

ACC: \_\_\_\_\_\_\_\_\_\_.

Right to inspect allied papers and personnel records.

SCM: You may inspect the allied papers and personnel records [Hand those documents which are available to the accused for examination in your presence.] (You may also inspect [*identify personnel records or other documents which are not present*] which are located at\_\_\_\_\_\_\_\_\_\_. You may have time to examine these if you wish.)

Witnesses/other evidence for the government

SCM: The following witnesses will probably appear and testify against you: \_\_\_\_\_\_\_\_\_\_. The following documents and physical evidence will probably be introduced: \_\_\_\_\_\_\_\_\_\_.

Right to cross-examine

After these witnesses have testified in response to my questions, you may cross-examine them. If you prefer, I will do this for you after you inform me of the matters about which you want the witness to be questioned. Do you understand that?

ACC: \_\_\_\_\_\_\_\_\_\_.

Right to present evidence

SCM: You also have the right to call witnesses and present other evidence. This evidence may concern any or all of the charges. (I have arranged to have the following witnesses for you present at the trial.) I will arrange for the attendance of other witnesses and the production of other evidence requested by you. I will help you in any way possible. Do you understand that?

ACC: \_\_\_\_\_\_\_\_\_\_.

Evidence to be considered

SCM: In deciding this case, I will consider only evidence introduced during the trial. I will not consider any other information, including any statements you have made to me, which is not introduced in accordance with the Military Rules of Evidence during the court-martial. Do you understand that?

ACC: \_\_\_\_\_\_\_\_\_\_.

Right to remain silent

SCM: You have the absolute right during this trial to choose not to testify and to say nothing at all about the offense(s) with which you are charged. If you do not testify, I will not hold it against you in any way. I will not consider it as an admission that you are guilty. If you remain silent, I am not permitted to question you about the offense(s).

Right to testify concerning the offense(s)

However, if you choose, you may be sworn and testify as a witness concerning the offense(s) charged against you. If you do that, I will consider your testimony just like the testimony of any other witness.

[Note 2. Use the following if there is only one specification.]

If one specification

If you decide to testify concerning the offense, you can be questioned by me about the whole subject of the offense. Do you understand that?

ACC: \_\_\_\_\_\_\_\_\_\_.

[Note 3. Use the following if there is more than one specification.]

If more than one specification

SCM: If you decide to testify, you may limit your testimony to any particular offense charged against you and not testify concerning any other offense(s) charged against you. If you do this, I may question you about the whole subject of the offense about which you testify, but I may not question you about any offense(s) concerning which you do not testify. Do you understand that?

ACC: \_\_\_\_\_\_\_\_\_\_.

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

SCM: In addition, if you are found guilty of an offense, you will have the right to testify under oath concerning matters regarding an appropriate sentence. You may, however, remain silent, and I will not hold your silence against you in any way. You may, if you wish, make an unsworn

statement about such matters. This statement may be oral, in writing, or both. If you testify, I may cross-examine you. If you make an unsworn statement, however, I am not permitted to question you about it, but I may receive evidence to contradict anything contained in the statement. Do you understand that?

ACC: \_\_\_\_\_\_\_\_\_\_.

Maximum punishment

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

[Note 4. For an accused of a pay grade of E–4 or below, proceed as follows.]

E4 and below

(l) reduction to lowest enlisted pay grade; and

(2) forfeiture of two-thirds of 1 month’s pay; and

(3) confinement for l month

[Note 5. For an accused of a pay grade above E–4, proceed as follows.]

E5 and above

(1) reduction to the next inferior pay grade; and

(2) forfeiture of two-thirds of 1 month’s pay; and

(3) restriction to specified limits for 2 months.

SCM: Do you understand the maximum punishment which this court-martial is authorized to adjudge?

ACC: \_\_\_\_\_\_\_\_\_\_.

Plea options

SCM: You may plead not guilty or guilty to each offense with which you are charged. You have an absolute right to plead not guilty and to require that your guilt be proved beyond a reasonable doubt before you can be found guilty. You have the right to plead not guilty even if you believe you are guilty. Do you understand that?

ACC: \_\_\_\_\_\_\_\_\_\_.

SCM: If you believe you are guilty of an offense, you may, but are not required to, plead guilty to that offense. If you plead guilty to an offense, you are admitting that you committed that offense, and this court-martial could find you guilty of that offense without hearing any evidence, and could sentence you to the maximum penalty I explained to you before. Do you understand that?

ACC: \_\_\_\_\_\_\_\_\_\_.

Lesser included offenses

SCM: [Examine the list of lesser included offenses under each punitive article alleged to have been violated. *See* Part IV. If a lesser included offense may be in issue, give the following advice.] You may plead not guilty to Charge \_\_\_\_\_\_\_\_\_, Specification , as it now reads, but plead guilty to the offense of \_\_\_\_\_\_\_\_\_, which is included in the offense charged. Of course, you are not required to do this. If you do, then I can find you guilty of this lesser offense without hearing evidence on it. Furthermore, I could still hear evidence on the greater offense for purposes of deciding whether you are guilty of it. Do you understand that?

ACC: \_\_\_\_\_\_\_\_\_\_.

SCM: Do you need more time to consider whether to object to trial by summary court-martial or to prepare for trial?

ACC: \_\_\_\_\_\_\_\_\_\_.

SCM: [If time is requested or otherwise appropriate.] We will convene the court-martial at\_\_\_\_\_\_\_\_\_\_. When we convene, I will ask you whether you object to trial by summary court-martial. If you do not object, I will then ask for your pleas to the charge(s) and specification(s), and for you to make any motions you may have.

# Trial Proceedings

Convene

SCM: This summary court-martial is now in session.

Objection/consent to trial by SCM

SCM: Do you object to trial by summary court-martial?

ACC: \_\_\_\_\_\_\_\_\_\_.

Entries on record of trial

[Note 6. If there is an objection, adjourn the court-martial and return the file to the convening authority. If the accused does not object, proceed as follows. The accused may be asked to initial the notation on the record of trial that the accused did or did not object to trial by summary court-martial. This is not required, however.]

Readings of the charges

SCM: Look at the charge sheet. Have you read the charge(s) and specification(s)?

ACC: \_\_\_\_\_\_\_\_\_\_.

SCM: Do you want me to read them to you?

ACC: [If accused requests, read the charge(s) and specification(s).]

Arraignment

SCM: How do you plead? Before you answer that question, if you have any motion to dismiss (the) (any) charge or specification, or for other relief, you should make it now.

ACC: \_\_\_\_\_\_\_\_\_\_.

Motions

[Note 7. If the accused makes a motion to dismiss or to grant other relief, or such a motion is raised bythe summary court-martial, do not proceed with the trial until the motions have been decided. *See* R.C.M. 905–907, and R.C.M. l304(b)(2)(c). After any motions have been disposed of and if termination of the trial has not resulted, have the accused enter pleas and proceed as indicated below.]

Pleas

ACC: I plead: \_\_\_\_\_\_\_\_\_\_.

[Note 8. If the accused refuses to plead to any offense charged, enter pleas of not guilty. If the accused refuses to enter any plea, evidence must be presented to establish that the accused is the person named in the specification(s) and is subject to court-martial jurisdiction. *See* R.C.M. 202, 1301(c)]

[Note 9. If the accused pleads not guilty to all offenses charged, proceed to the section entitled“Procedures -Not Guilty Pleas.”]

[Note 10. If the accused pleads guilty to one or more offenses, proceed as follows.]

Procedure guilty pleas

SCM: I will now explain the meaning and effect of your pleas, and question you so that I can be sure you understand. Refer to the charge(s) and specification(s). I will not accept your pleas of guilty unless you understand their meaning and effect. You are legally and morally entitled to plead not guilty even though you believe you are guilty, and to require that your guilt be proved beyond a reasonable doubt. A plea of guilty is the strongest form of proof known to the law. On your pleas of guilty alone, without receiving any evidence, I can find you guilty of the offense(s) to which you have pleaded guilty. I will not accept your pleas unless you realize that by your pleas you admit every element of the offense(s) to which you have pleaded guilty, and that you are pleading guilty because you really are guilty. If you are not convinced that you are in fact guilty, you should not allow anything to influence you to plead guilty. Do you understand that?

ACC: \_\_\_\_\_\_\_\_\_\_.

SCM: Do you have any questions?

ACC: \_\_\_\_\_\_\_\_\_\_.

SCM: By your pleas of guilty you give up three very important rights. (You keep these rights with respect to any offense(s) to which you have pleaded not guilty.) The rights which you give up when you plead guilty are: First, the right against self-incrimination. This means you give up the right to say nothing at all about (this) (these) offense(s) to which you have pleaded guilty. In a few minutes I will ask you questions about (this) (these) offense(s), and you will have to answer my questions for me to accept your pleas of guilty. Second, the right to a trial of the facts by this court-martial. This means you give up the right to have me decide whether you are guilty based upon the evidence which would be presented. Third, the right to be confronted by and to cross-examine any witnesses against you. This means you give up the right to have any witnesses against you appear, be sworn and testify, and to cross-examine them under oath. Do you understand these rights?

ACC: \_\_\_\_\_\_\_\_\_\_.

SCM: Do you understand that by pleading guilty you give up these rights?

ACC: \_\_\_\_\_\_\_\_\_\_.

SCM: On your pleas of guilty alone you could be sentenced to\_\_\_\_\_\_\_\_\_\_.

[Note 11. Reread the appropriate sentencing section at notes 4 or 5 above unless the summary court-martial is a rehearing or new or other trial, in which case *see* R.C.M. 810(d).]

Do you have any questions about the sentence which could be imposed as a result of your pleas of guilty?

ACC: \_\_\_\_\_\_\_\_\_\_.

SCM: Has anyone made any threat or tried in any other way to force you to plead guilty?

ACC: \_\_\_\_\_\_\_\_\_\_.

Pretrial agreement

SCM: Are you pleading guilty because of any promises or understandings between you and the convening authority or anyone else?

ACC: \_\_\_\_\_\_\_\_\_\_.

[Note 12. If the accused answers yes, the summary court-martial must inquire into the terms of such promises or understandings in accordance with R.C.M. 910. *See* Appendix 8, Note 35 through acceptance of plea.]

[Note 13. If the accused has pleaded guilty to a lesser included offense, also ask the following question.]

Effect of guilty pleas to lesser included offenses\

SCM: Do you understand that your pleas of guilty to the lesser included offense of confess all the elements of the offense charged except , and that no proof is necessary to establish those elements admitted by your pleas?

ACC: \_\_\_\_\_\_\_\_\_\_.

SCM: The following elements state what would have to be proved beyond a reasonable doubt before the court-martial could find you guilty if you had pleaded not guilty. As I read each of these elements to you, ask yourself whether each is true and whether you want to admit that each is true, and then be prepared to discuss each of these elements with me when I have finished.

The elements of the offense(s) which your pleas of guilty admit are\_\_\_\_\_\_\_\_\_\_.

[Note 14. Read the elements of the offense(s) from the appropriate punitive article in Part IV. This advice should be specific as to names, dates, places, amounts, and acts.]

Do you understand each of the elements of the offense(s)?

ACC: \_\_\_\_\_\_\_\_\_\_.

SCM: Do you believe, and admit, that taken together these elements correctly describe what you did?

ACC: \_\_\_\_\_\_\_\_\_\_.

[Note 15. The summary court-martial should now question the accused about the circumstances of the offense(s) to which the accused has pleaded guilty. The accused will he placed under oath for this purpose. *See* oath below. The purpose of these questions is to develop the circumstances in the accused’s own words, so that the summary court-martial may determine whether each element of the offense(s) is established.]

Oath to accused for guilty plea inquiry

SCM: Do you (swear) (affirm) that the statements you are about to make shall be the truth, the whole truth, and nothing but the truth (so help you God)?

ACC: \_\_\_\_\_\_\_\_\_\_.

SCM: Do you have any questions about the meaning and effect of your pleas of guilty?

ACC: \_\_\_\_\_\_\_\_\_\_.

SCM: Do you believe that you understand the meaning and effect of your pleas of guilty?

ACC: \_\_\_\_\_\_\_\_\_\_.

Determination of providence of pleas of guilty

[Note 16. Pleas of guilty may not be accepted unless the summary court-martial finds that they are made voluntarily and with understanding of their meaning and effect, and that the accused has knowingly, intelligently, and consciously waived the rights against self incrimination, to a trial of the facts by a court-martial, and to be confronted by the witnesses. Pleas of guilty may be improvident when the accused makes statements at any time during the trial which indicate that there may be a defense to the offense(s), or which are otherwise inconsistent with an admission of guilt. If the accused makes such statements and persists in them after questioning, then the summary court-martial must reject the accused’s guilty pleas and enter pleas of not guilty for the accused. Turn to the section entitled “Procedures Not Guilty Pleas” and continue as indicated. If (the) (any of the) accused’s pleas of guilty are found provident, the summary court-martial should announce findings as follows.]

Acceptance of guilty pleas

SCM: I find that the pleas of guilty are made voluntarily and with understanding of their meaning and effect. I further specifically find that you have knowingly, intelligently, and consciously waived your rights against self-incrimination, to a trial of the facts by a court-martial, and to be confronted by the witnesses against you. Accordingly, I find the pleas are provident, and I accept them. However, you may ask to take back your guilty pleas at any time before the sentence is announced. If you have a sound reason for your request, I will grant it. Do you understand that?

ACC: \_\_\_\_\_\_\_\_\_\_.

If any not guilty pleas remain

[Note 17. If no pleas of not guilty remain, go to note 26. If the accused has changed pleas of guilty to not guilty, if the summary court-martial has entered pleas of not guilty to any charge(s) and specification( s), or if the accused has pleaded not guilty to any of the offenses or pleaded guilty to a lesser included offense, proceed as follows.]

Witnesses for the accused

SCM: If there are witnesses you would like to call to testify for you, give me the name, rank, and organization or address of each, and the reason you think they should be here, and I will arrange to have them present if their testimony would be material. Do you want to call witnesses?

ACC: \_\_\_\_\_\_\_\_\_\_.

[Note 18. The summary court-martial should estimate the length of the case and arrange for the attendance of witnesses. The prosecution evidence should be presented before evidence for the defense.]

Calling witnesses

SCM: I call as a witness\_\_\_\_\_\_\_\_\_\_.

Witness oath

SCM: [To the witness, both standing] Raise your right hand.

Do 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)? [Do not use the phrase, “so help you God,” if the witness prefers to affirm.]

WIT: \_\_\_\_\_\_\_\_\_\_.

SCM: Be seated. State your full name, rank, organization, and armed force ([or if a civilian witness] full name, city and state of residence, and occupation).

WIT: \_\_\_\_\_\_\_\_\_\_.

[Note 19. The summary court-martial should question each witness concerning the alleged offense(s). After direct examination of each witness, the accused must be given an opportunity to crossexamine. If the accused declines to crossexamine the witness, the summary court-martial should ask any questions that it feels the accused should have asked. If crossexamination occurs, the summary court-martial may ask questions on redirect examination and the accused may ask further questions in recrossexamination.]

[Note 20. After each witness has testified, instruct the witness as follows.]

SCM: Do not discuss this case with anyone except the accused, counsel, or myself until after the trial is over. Should anyone else attempt to discuss this case with you, refuse to do so and report the attempt to me immediately. Do you understand that?

WIT: \_\_\_\_\_\_\_\_\_\_.

SCM: [To the witness]You are excused.

Recalling witnesses [Note 2l. Witnesses may be recalled if necessary. A witness who is recalled is still under oath and should be so reminded.] [Note 22. After all witnesses against the accused have been called and any other evidence has been presented, the summary court-martial will announce the following.]

SCM: That completes the evidence against you. I will now consider the evidence in your favor.

Presentation of defense case [Note 23. Witnesses for the accused should now be called to testify and other evidence should be presented. Before the defense case is terminated the summary court-martial should ask the accused if there are other matters the accused wants presented. If the accused has not testified, the summary court-martial should remind the accused of the right to testify or to remain silent.]

Closing argument

SCM: I have now heard all of the evidence. You may make an argument on this evidence before I decide whether you are guilty or not guilty.

Deliberations on findings

[Note 24. The court-martial should normally close for deliberations. If the summary court-martial decides to close, proceed as follows.]

SCM: The court-martial is closed so that I may review the evidence. Wait outside the courtroom until I recall you.

[Note 25. The summary court-martial should review the evidence and applicable law. It must acquit the accused unless it is convinced beyond a reasonable doubt by the evidence it has received in court in the presence of the accused that each element of the alleged offense(s) has been proved beyond a reasonable doubt. *See* R.C.M. 918. It may not consider any facts which were not admitted into evidence, such as a confession or admission of the accused which was excluded because it was taken in violation of Mil. R. Evid. 304. The summary court-martial may find the accused guilty of only the offense(s) charged, a lesser included offense, or of an offense which does not change the identity of an offense charged or a lesser included offense thereof.]

Announcing the findings

[Note 26. The summary court-martial should recall the accused, who will stand before the court-martial when findings are announced. All findings including any findings of guilty resulting from guilty pleas, should be announced at this time. The following forms should be used in announcing findings.]

Not guilty of all offenses

SCM: I find you of (the) (all) Charge(s) and Specification(s): Not Guilty.

Guilty of all offenses

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

Guilty of some but not all offenses

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

Guilty of lesser included offense or with exceptions and substitutions

I find you of (the Specification ( ) of (the) Charge( ): 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 ,UCMJ, a lesser included offense).

Entry of findings

[Note 27. The summary court-martial shall note all findings on the record of trial.]

Procedure if total acquittal

[Note 28. If the accused has been found not guilty of all charges and specifications, adjourn the court-martial, excuse the accused, complete the record of trial, and return the charge sheet, personnel records, allied papers, and record of trial to the convening authority.]

Procedure if any findings of guilty

[Note 29. If the accused has been found guilty of any offense, proceed as follows.]

Presentence procedure

SCM: I will now receive information in order to decide on an appropriate sentence. Look at the information concerning you on the front page of the charge sheet. Is it correct?

[Note 30. If the accused alleges that any of the information is incorrect, the summary court-martial must determine whether it is correct and correct the charge sheet, if necessary.]

[Note 31. Evidence from the accused’s personnel records, including evidence favorable to the accused, should now be received in accordance with R.C.M. 1001(b)(2). These records should be shown to the accused.]

SCM: Do you know any reason why I should not consider these?

ACC: \_\_\_\_\_\_\_\_\_\_.

[Note 32. The summary court-martial shall resolve objections under R.C.M. 1002(b)(2) and the Military Rules of Evidence and then proceed as follows. *See also* R.C.M. 1001(b)(3), (4), and (5) concerning other evidence which may be introduced.]

Extenuation and mitigation

SCM: In addition to the information already admitted which is favorable to you, and which I will consider, you may call witnesses who are reasonably available, you may present evidence, and you may make a statement. This information may be to explain the circumstances of the offense(s), including any reasons for committing the offense(s), and to lessen the punishment for the offense(s) regardless of the circumstances. You may show particular acts of good conduct or bravery, and evidence of your reputation in the service for efficiency, fidelity, obedience, temperance, courage, or any other trait desirable in a good service-member. You may call available witnesses or you may use letters, affidavits, certificates of military and civil officers, or other similar writings. If you introduce such matters, I may receive written evidence for the purpose of contradicting the matters you presented. If you want me to get some military records that you would otherwise be unable to obtain, give me a list of these documents. If you intend to introduce letters, affidavits, or other documents, but you do not have them, tell me so that I can help you get them. Do you understand that?

ACC: \_\_\_\_\_\_\_\_\_\_.

Rights of accused to testify, remain silent, and make an unsworn statement

SCM: I informed you earlier of your right to testify under oath, to remain silent, and to make an unsworn statement about these matters. Do you understand these rights?

ACC: \_\_\_\_\_\_\_\_\_\_.

SCM: Do you wish to call witnesses or introduce anything in writing?

ACC: \_\_\_\_\_\_\_\_\_\_.

[Note 33. If the accused wants the summary court-martial to obtain evidence, arrange to have the evidence produced as soon as practicable.]

[Note 34. The summary court-martial should now receive evidence favorable to the accused. If the accused does not produce evidence, the summary court-martial may do so if there are matters favorable to the accused which should be presented.]

SCM: Do you wish to testify or make an unsworn statement?

ACC: \_\_\_\_\_\_\_\_\_\_.

Questions concerning pleas of guilty

[Note 35. If as a result of matters received on sentencing, including the accused’s testimony or an unsworn statement, any matter is disclosed which is inconsistent with the pleas of guilty, the summary court-martial must immediately inform the accused and resolve the matter. *See* Note 16.]

Argument on sentence

SCM: You may make an argument on an appropriate sentence.

ACC: \_\_\_\_\_\_\_\_\_\_.

Deliberations prior to announcing sentence

[Note 36. After receiving all matters relevant to sentencing, the summary court-martial should normally close for deliberations. If the summary court-martial decides to close, proceed as follows.]

Closing the court-martial

SCM: This court-martial is closed for determination of the sentence. Wait outside the courtroom until I recall you.

[Note 37. *See* Appendix 11 concerning proper form of sentence. Once the summary court-martial has determined the sentence, it should reconvene the court-martial and announce the sentence as follows.]

Announcement of sentence SCM:

Please rise. I sentence you to\_\_\_\_\_\_\_\_\_\_.

[Note 38. If the sentence includes confinement, advise the accused as follows.]

SCM: You have the right to request in writing that [name of convening authority] defer your sentence to confinement. Deferment is not a form of clemency and is not the same as suspension of a sentence. It merely postpones the running of a sentence to confinement.

[Note 39. Whether or not the sentence includes confinement, advise the accused as follows.]

SCM: You have the right to submit in writing a petition or statement to the convening authority. This statement may include any matters you feel the convening authority should consider, a request for clemency, or both. This statement must be submitted within 7 days, unless you request and convening authority approves an extension of up to 20 days. After the convening authority takes action, your case will be reviewed by a judge advocate for legal error. You may suggest, in writing, legal errors for the judge advocate to consider. If, after final action has been taken in your case, you believe that there has been a legal error, you may request review of your case by The Judge Advocate General [*in Navy and Marine Corps proceedings*] of the Navy. Do you understand these rights?

ACC: \_\_\_\_\_\_\_\_\_\_.

Adjourning the court-martial

SCM: This court-martial is adjourned.

Entry on charge sheet

[Note 40. Record the sentence in the Record of Trial, inform the convening authority of the findings, recommendations for suspension, if any, and any deferment request. If the sentence includes confinement, arrange for the delivery of the accused to the accused’s commander, or someone designated by the commander, for appropriate action. Ensure that the commander is informed of the sentence. Complete the record of trial and forward to the convening authority via the Legal Officer.]

**SAMPLE INQUIRY INTO THE FACTUAL BASIS OF A PLEA**

**OF GUILTY TO THE OFFENSE OF UNAUTHORIZED ABSENCE**

1. **Assumption**. Assume the accused has entered pleas of guilty to the following charge and specification:

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

Specification: In that Seaman Virgil A. Tweedy, U.S. Navy, on active duty, Naval Justice School, Newport, Rhode Island, did, on or about 5  July 19--, without authority, absent himself from his unit, to wit: Naval Justice School, Newport, Rhode Island, and did remain so absent until on or about 23 July 19--.

2. **Procedure**. The summary court-martial officer, after he has completed the inquiry indicated in the TRIAL GUIDE as to the elements of the offense, should question the accused substantially as follows:

SCM: State your full name and rank.

ACC: Virgil Armond Tweedy, Seaman.

SCM: Are you on active duty in the U.S. Navy?

ACC: Yes, sir.

SCM: Are you the same Seaman Virgil A. Tweedy

who is named in the charge sheet?

ACC: Yes, sir.

SCM: Were you on active duty in the U.S. Navy on 5

July 19--?

ACC: Yes, sir.

SCM: What was your unit on that date?

ACC: The Naval Justice School.

SCM: Is that located in Newport, Rhode Island?

ACC: Yes, sir.

SCM: Tell me in your own words what you did on 5

July that caused this charge to be brought against you.

ACC: I stayed at home.

SCM: Had you been at home on leave or liberty?

ACC: Yes, sir.

SCM: Which one was it?

ACC: I had liberty on the 4th of July.

SCM: When were you required to report back to the

Naval Justice School?

ACC: At 0800 on the 5th of July.

SCM: And did you fail to report on 5 July 19--?

ACC: Yes, sir.

SCM: When did you return to military control?

ACC: On 23 July 19--.

SCM: How did you return to military control on that

date?

ACC: I took a bus to Newport and turned myself in

to the duty officer at the Naval Justice School.

SCM: When you failed to report to the Naval Justice

School on 5  July, did you feel you had permission from anyone to be absent from your unit?

ACC: No, sir.

SCM: Where were you during this period of absence?

ACC: I was at home, sir.

SCM: Where is your home?

ACC: In Blue Ridge, West Virginia.

SCM: Is that where you were for this entire period?

ACC: Yes, sir.

SCM: During this period, did you have any contact

With military authorities? By "military

authorities" I mean not only members of your

unit, but anyone in the military.

ACC: No, sir.

SCM: During this period, did you go on board any

military installations?

ACC: No, sir.

SCM: Were you sick or hurt or in jail, or was there

anything which made it physically impossible for you to return?

ACC: No, sir.

SCM: Could you have reported to the Naval Justice

School on 5  July 19-- if you had wanted to?

ACC: Yes, sir.

SCM: During this entire period, did you believe you

Were an unauthorized absentee from theNaval

Justice School?

ACC: Yes, sir; I knew I was UA.

SCM: Do you know of any reason why you are not

guilty of this offense?

ACC: No, sir.

**SUMMARY COURT-MARTIAL ACKNOWLEDGMENT OF RIGHTS AND WAIVER**

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, acknowledge the following facts and rights regarding summary courts-martial:

1. I have the right to consult with a lawyer, either military or civilian, prior to deciding whether to accept or refuse trial by summary court-martial. Should I desire to consult with civilian counsel, I understand this consultation will be at my own expense.
2. My rights at a summary court-martial would include:
   1. the right to confront and cross-examine all witnesses against me;
   2. the right to plead not guilty and the right to remain silent, thus placing upon the government the burden or proving my guilty beyond a reasonable doubt;
   3. the right to have the summary court-martial call, or subpoena, witnesses to testify on my behalf;
   4. the right, if found guilty, to present matters which may mitigate the offense or demonstrate extenuating circumstances as to why I committed the offense(s); and
   5. the right to be represented at trial by a civilian lawyer provided by me at my own expense, if such appearance will not unreasonably delay the proceedings and if military exigencies do not preclude it.
3. I understand that the maximum punishment which may be imposed at a summary court-martial is:

E-4 and Below: E-5 and Above:

Confinement for one month 60 days restriction

45 days hard labor w/o confinement \*Forfeiture of 2/3 pay for one month

60 days restriction Reduction to the next inferior pay grade

\*Forfeiture of 2/3 pay for one month

Reduction to the lowest pay grade

\*If a reduction is also imposed, the forfeiture is based off of the reduced rank.

SUMMARY COURT-MARTIAL ACKNOWLEDGMENT OF RIGHTS AND WAIVER

1. I understand that the effective dates of the adjudged sentence are:
   1. Confinement: A sentence of confinement begins to run the day of the summary court-martial unless the convening authority agrees to defer the confinement.
   2. Forfeiture of Pay and Reduction: A sentence of forfeiture of pay and/or reduction takes effect on the earlier of 14 days after the summary court-martial or the date on which the convening authority approves the sentence.
   3. All other punishment: All other punishments begin on the date the convening authority approves the sentence.
2. Should I refuse trial by summary court-martial, the commanding officer may refer the charge(s) to trial by special court-martial. At a special court-martial, in addition to those rights set forth above with respect to a summary court-martial, I also have the following rights:
   1. the right to be represented at trial by a military lawyer, free of charge including a military lawyer of my own selection if he/she is reasonably available. I would also have the right to be represented by a civilian lawyer at my own expense.
   2. the right to be tried by a special court-martial composed of at least three officers as members or, at my request, at least one-third of the court members would be enlisted personnel. If tried by a court-martial with members, two-thirds of the members, voting by secret written ballot, would have to agree in any finding of guilty, and two-thirds of the members would also have to agree on any sentence to be imposed should I be found guilty.
   3. the right to request trial by a military judge alone. If tried by a military judge alone, the military judge alone would determine my guilt or innocence and, if found guilty, he/she alone would determine the sentence.
3. I understand that the maximum punishment which can be imposed at a special court-martial for the offense(s) presently charged against me is:
   1. discharge from the naval service with a bad-conduct discharge (if applicable);
   2. confinement for \_\_\_\_\_\_ months;
   3. forfeiture of 2/3 pay per month for \_\_\_\_\_\_ months;
   4. reduction to the lowest enlisted pay grade (E-1); and
   5. a fine.

SUMMARY COURT-MARTIAL ACKNOWLEDGMENT OF RIGHTS AND WAIVER

Knowing and understanding my rights as set forth above, I do/do not (circle one) desire to consult with counsel before deciding whether to accept trial by summary court-martial.

Knowing and understanding my rights as set forth above, I hereby consent/object (circle one) to trial by summary court-martial.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Signature of Accused

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Signature of Witness

**ADDENDUM PAGE TO THE RECORD OF CONVICTION BY COURT-MARTIAL (NAVMC 118(3) (REC 9-88))**

I certify that I have been given the opportunity to consult with a lawyer, provided by the Government at no cost to me, in regard to a pending Summary Court-Martial for violation of Article(s) of the UCMJ. I understand that I have the right to refuse the Summary Court-Martial. I do/do not (circle one) choose to exercise that right. I further understand that acceptance of trial by Summary Court-Martial does not preclude my command from taking other adverse administrative action against me. I will/will not (circle one) be represented by a civilian/military (circle one) lawyer.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Signature of Accused

**UNITED STATES MARINE CORPS**

Your Header

Marine Corps Air Station

Cherry Point, North Carolina 28533-0007

IN REPLY REFER TO:

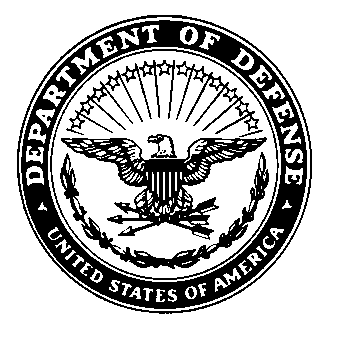
5800

Legal

From: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Summary Court Martial Officer

To: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Convening Authority

# Subj: REPORT OF RESULTS OF TRIAL



1. Pursuant to R.C.M. 1101(a) (R.C.M. 1304(b)(2)(E)(v)), M.C.M. 2002, notification is hereby given in the case of United States v.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

2. Trial by Summary Court-Martial at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, convened by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Commanding Officer.

1. Offenses, Pleas, and Findings

Charges & Specifications Pleas Findings

4. Sentence Adjudged: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

5. Date sentence was adjudged: .

6. Credits to be applied to confinement, if any:

a. Pretrial Confinement days

b. Judicially ordered credits: days

**TOTAL CREDITS**  **days**

7. Terms of pretrial agreement concerning sentence, if any: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

8. Deferment request, if any: \_\_\_\_\_\_\_\_\_\_\_\_\_.

# Summary Court-Martial Officer

Distribution List:

Convening Authority

Commanding Officer of the Accused

CO/OIC of the Brig/Confinement Facility

ROT

Dir, JLC

PAO

Files

ACKNOWLEDGEMENT OF R.C.M. 1105 RIGHTS

I understand that, pursuant to R.C.M. 1105 of the Manual for Courts-Martial, 2002, I have seven (7) days after the sentence is announced in which to submit any written matters to the Convening Authority that may reasonably tend to affect his/her decision on whether to disapprove any findings of guilty or to approve the sentence.

I understand that such matters are not subject to the Military Rules of Evidence and may include:

1. Allegations of errors affecting the legality of the findings or sentence;
2. Portions or summaries of the record and copies of documentary evidence offered or introduced at trial;
3. Matters in mitigation which were not available for consideration at the court-martial; and
4. Clemency recommendations from any person.

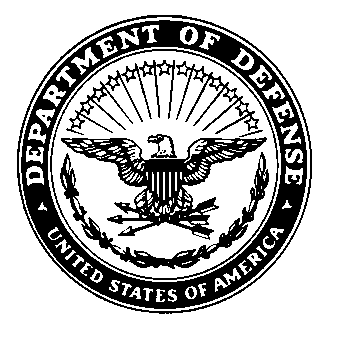
Further, I also understand that I may expressly waive, in writing, this right to submit matters and that one files, such a waiver may not be revoked.

I intend to execute/waive (circle one) my rights under R.C.M. 1105, Manual for Courts-Martial 2002.

\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Signature of the Accused

**UNITED STATES MARINE CORPS**



Your Header

Marine Corps Air Station

Cherry Point, North Carolina 28533-0007

IN REPLY REFER TO:

5800

Legal

From: Accused

To: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Convening Authority

Subj: WAIVER OF RIGHT TO SUBMIT POST TRIAL MATTERS ICO UNITED

STATES v. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Ref: (a) Rules for Court Martial, R.C.M. (2002)

(b) Manual for Court Martial, M.C.M. (2002)

1. The Sentence in my Summary Court-Martial was adjudged on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Date).

1. I do not have any matters under R.C.M. 1105, Reference (a), which I desire to submit to the convening authority prior to his taking action in my case.

Date (Subject Named Marine)

Witnessed by:

Date Summary Court Martial Officer

SUMMARY COURT-MARTIAL

**SERVICE OF COPY OF RECORD OF TRIAL ON THE ACCUSED**

In accordance with the provisions of R.C.M. 1305(d)(1)(A), M.C.M. 2002, I caused a copy of the record of trial in the case of United States v. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to be served on the accused/accused’s defense counsel (circle one) on the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

20 \_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Summary Court-Martial Officer

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the accused/accused’s defense counsel (circle one) have received one copy of the Record of Trial for the case of United States v. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ from the Summary Court-Martial officer of the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Accused/Accused’s Defense Counsel

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

SUMMARY OF PROCEEDINGS ICO

UNITED STATES V. LCPL XXXXX

At 1100, 19 May 2004 I initially met with LCpl Marine for the purpose of discussing his upcoming summary court-martial. I gave the Accused a copy of the charge sheet and informed him that the charges against him had been referred to a summary court-martial on 18 May 2004. I informed him that Lieutenant Colonel Jarhead was the convening authority and that Cpl Devil Dog was the accuser (see block 11a of the charge sheet). I explained to the Accused that the general nature of the charges in this case were unauthorized absence and missing movement, and that he had a right to inspect the allied papers and available personnel records. I then formally served a copy of the charge sheet upon LCpl Marine and gave him a copy of the Summary Court-Martial Rights Form. He informed me that he intended to plead guilty as required by his Pre-Trial Agreement. I then informed him that I would not call any witnesses during the merits portion or the sentencing portion of the court-martial. I told the Accused that I planned to consider his SRB in determining an appropriate sentence. I told the Accused he had the right to cross-examine any witnesses and to have me cross-examine witnesses on his behalf. I also told LCpl Marine that he had the right to call witnesses and produce evidence with my assistance.

Following the initial meeting, LCpl Marine completed the Summary Courts-Martial Rights Form, which is attached to the Record of Trial. We began the Preliminary Proceeding and I again informed the Accused of all of his rights as laid out on DD Form 2329. LCpl Marine told me that he did not have any witnesses to call or any evidence to present. I told the accused that I would not consider any evidence that was not admitted in accordance with the Military Rules of Evidence. I explained the Accused’s right to testify on the merits or remain silent. I also explained to the Accused that he could testify, make an unsworn statement, or remain silent during sentencing. I told LCpl Marine that the maximum sentence was confinement for 30 days, reduction to E-1, and forfeiture of 2/3 pay for one month. I told him that he had the right to plead not guilty or guilty, but I also informed him that since his Pre-Trial Agreement required him to plead guilty, that I would stop the proceedings if he pled not guilty. We concluded the Preliminary Proceeding.

At 1115, 19 May 2004 I conducted the summary court-martial. Prior to proceeding I had LCpl Marine sign his *Booker* rights form. We then began. LCpl Marine told me that he consulted with a lawyer about whether to accept a summary court-martial and that he wanted to accept a summary court-martial. LCpl Marine was not represented by counsel during the summary court-martial. The Accused pled guilty to both charges and the specifications there under. In discussing the first charge, unauthorized absence, with the Accused he said that sometime before 29 December 2003 he took a bus from Cherry Point, NC to his hometown of Brooklyn, NY. He said that he knew he had a duty to be with his unit, MWSS 274 on 29 December 2003. He did not have authority to leave or be absent from his unit on 29 December 2003. Nothing forced LCpl Marine to leave his unit. LCpl Marine made a conscious decision to leave his unit and when he did so he knew that he was beginning a period of unauthorized absence. LCpl Marine returned to his unit, MWSS 274, via bus on 2 February 2004 when he turned himself in. The Accused could have returned sooner if he had wanted to. During his period of unauthorized absence the Accused did not have any contact with military or civilian authorities. During the unauthorized absence, the Accused did believe that he was in fact on a period of unauthorized absence. The Accused also stated that he did not have a physical or medical reason that caused his absence or prevented him from returning to his unit sooner.

Next I discussed the second charge, missing movement, with LCpl Marine. The Accused stated that on 21 December 2003, MSgt Dezalia, the Accused’s Staff NCOIC, told the Accused that he might be going to CAX with MWSS 271 on 1 January 2004. CAX is in 29 Palms, California. The Accused had enough time to prepare for this movement. The Accused stated that when he began his period of unauthorized absence on 29 December 2003, he thought that he might miss the movement of MWSS 271. The Accused felt that he missed this movement through neglect. He knew that CAX would last for two months and that the movement would be via aircraft. MWSS 271 did move to CAX on 11 January 2004 and LCpl Marine did miss the movement because he was on a period of unauthorized absence and was in Brooklyn, NY. If the Accused had used more care and had not begun a period of unauthorized absence, the Accused could have made the movement with MWSS 271. No one gave the Accused permission or authority to miss the movement to CAX. It was not physically impossible for the Accused to make the movement. And if the Accused had wanted to make the movement, he could have made it.

I announced that I found the Accused guilty of unauthorized absence and missing movement. During sentencing I asked the Accused if he had any reason why I should not consider anything in his SRB in determining an appropriate sentence. He said he did not. I said I would consider the SRB and I included a copy of it as Prosecution Exhibit 1. There were no witnesses or other documents for sentencing. LCpl Marine did make an unsworn statement during sentencing. He stated that the Marine Corps has been a good learning experience for him. He feels that he works hard and people have called on him a lot and depended on him. He went to Kuwait and his CWO said he worked very hard there. LCpl Marine gives 110%. He’s a good person and a hard worker. He has been harassed by Staff NCOs, but he blames only himself for his mistakes. He feels he has done as much as he could and has worked harder than any other LCpl in the chow hall.

LCpl Marine next made an argument on sentence. He stated that he has made bad decisions and he will deal with the consequences, whatever they are. He will always make the best of hard times.

At 1155 I recessed the court-martial for deliberation on sentence. At 1335 I reconvened the court-martial. I informed LCpl Marine that I sentenced him to 20 days confinement, reduction to pay grade E-1, and forfeiture of 2/3 pay for 1 month. I informed him that he had the right to request that confinement be deferred and of his right to submit matters to the convening authority and to the Judge Advocate General. The proceedings ended at 1340.

X. X. SMITH