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NAVAL JUSTICE

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PREFACE

Naval Justice has been published for use as a textbook on the subject of naval law and also for use as a practical manual in the administration of naval discipline. Consequently, while it was designed with the needs of the curriculum of the newly established U. S. Naval School (Naval Justice) in view, its character is such that it should find wide utility throughout the service as a practical handbook and guide to trial procedures, preparation of records, and many other phases of the disciplinary process.

Naval Justice in no sense replaces *Naval Courts and Boards, 1937*, nor does it have the force of law or regulation. It is intended as a supplement and as an aid in the use of that book. For this reason emphasis has been placed on the mast, the deck court, and the summary court-martial since these tribunals are more frequently used for the enforcement of naval discipline than the general court-martial which is completely covered in *Naval Courts and Boards, 1937*.

This publication is based on materials developed at the School of Naval Justice, Advance Base Receiving Barracks, Port Hueneme, California, the predecessor of U. S. Naval School (Naval Justice), and was prepared under the direction and supervision of the Military Law Division of the Office of the Judge Advocate General.

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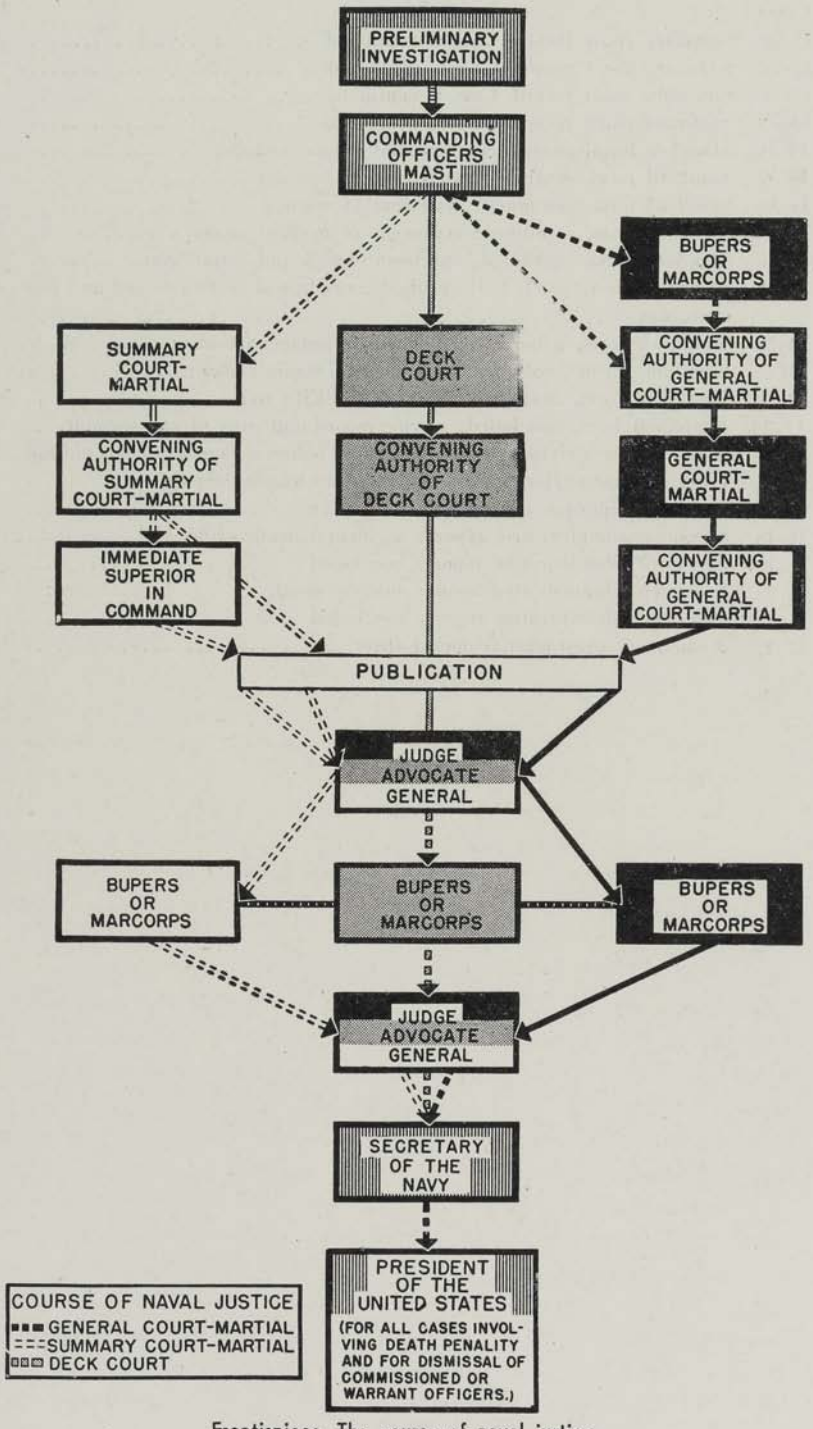


Frontispiece. The course of naval justice.

1. INTRODUCTION

1–1. Purpose of naval justice. Naval justice is the disciplinary and court-martial system of the Navy. Its purpose is the maintenance of naval discipline, without which the Navy cannot function as an efficient fighting organization. Naval justice must always be administered with its primary purpose in view—the efficient functioning of the Navy. Unnecessary resort to courts-martial, delays in trial and the automatic imposition of sentences of confinement serve to waste vital manpower and to destroy naval discipline and efficiency.

1–2. Responsibility. The rapid growth and expansion of the Navy have placed responsibilities upon persons which were not normally theirs in peace time. The commanding officer of any ship, however small, is a commander of naval personnel, the officers and men of the crew. In that capacity he is responsible for their proper performance of duty, for their health and welfare, and for their security. In this latter responsibility he is obligated to protect them not only from the enemy they are fighting, but also from any detrimental influences that might strike within his command.

Thus naval officers who are privileged to hold mast and those who are called upon to serve on courts-martial have a special trust placed in them. It is necessary that they be thoroughly familiar with the rules and procedures governing courts-martial so that justice can be administered effectively and impartially.

1–3. Instruction. The rapid growth and expansion of the Navy also mean a corresponding increase in personnel who do not understand the fundamental concepts of naval discipline, officers often being as inexperienced in matters of naval justice as the men in their charge. One of the first tasks to be undertaken by a commanding officer is to insure that proper instruction is given in this field.

When a man comes into the Navy, he must be made to realize that he gives up certain of his civil liberties and is placed under naval law, his conduct then being governed by the rules and regulations of the Navy to which he belongs. Although at first he may feel that he is more closely regulated than formerly, he will finally come to realize that the restrictions and penalties imposed in the naval service for disobedience are generally about the same as in the civil government. Punishments have been tem-

pered immeasurably from the cruelties of former days. No longer is the cat-o'-nine-tails or keel-hauling a means of discipline, but instead, definite limitations have been placed on the severity of disciplinary action. Therefore, not only should men have the *Articles for the Government of the Navy* read and explained to them and be instructed as to the nature of offenses thereunder, but an effort must be made to inculcate in them a conception of the meaning and the necessity for discipline.

1–4. Meaning of discipline. To the average person the word *discipline* carries with it the connotation of severity, unreasonable curtailment of freedom, unnecessary restraints on personal conduct, endless restrictions, and required adherence to arbitrary and unreasonable demands of authority. Actually, discipline is the basis of true democracy, for it means adherence by the individual to the set of rules which has been found best suited to govern relations between individual members of society in order to protect the interests of the whole. Some of these rules are made by duly constituted authority and are laid down in writing—these are called *laws*. Others have been sanctioned by custom and usage, and are called *conventions*. Everyone is subject to some sort of discipline.

One of the primary responsibilities of a leader is to inculcate discipline in his organization. Discipline implies subjection to a control exerted for the good of the whole—adhering to rules or policies intended for the orderly coordination of effort. Obviously, orderliness is indispensable to a military organization. In fact, without the requisite degree of orderliness, a military organization ceases to be such and becomes merely a mob. A ship's company may be said to have been brought to an ideal state of discipline when there exists in it a maximum of efficiency and contentment with a minimum of punishment.

1–5. Theory of punishment. Largely, men are controlled by two motives—the fear of punishment and the hope of reward. The latter is immeasurably the stronger of the two in the long run and the one generally to be evoked, but fear of punishment has its role in obtaining desirable results in certain cases. Punishment, like dynamite, is potent but dangerous, useful but destructive; astonishingly effective when rightly used, alarmingly destructive when used wrongly. It is, however, the normal result of disregarding the law.

Under the Navy's concepts, punishment is not personal; it is not vindictive; nor is it inflicted as revenge for misconduct. It is realized that punishment cannot make right the wrong that has resulted from an act of dereliction. The Navy considers that the value of punishment lies in the object lesson it furnishes the wrongdoer, and others, that the offense must not be repeated. This is referred to as the *deterrent* theory of punishment.

In order to accomplish its purpose a punishment must be just, and must be recognized as just by the recipient and his shipmates. It should not be of such a nature that it lowers the man's self respect, nor should it be so severe as to be out of proportion to the offense.

1–6. Commendation. No meritorious act of a subordinate should escape attention or be allowed to pass without its reward, even if the reward is only one word of approval. An officer should be universal and impartial in his rewards and approval of merit. He should also be judicial and unbending in his punishment or reproof of misconduct. It has been the practice aboard some ships to hold *commendation masts*, or *meritorious masts*, in order to express appreciation under circumstances as formal as when punishment is awarded.

1–7. The Articles for the Government of the Navy. The present *Articles for the Government of the Navy* consist of a series of articles numbered from 1 to 70. Many of the articles describe various crimes and offenses and how they shall be punished. These are known as the *punitive articles*. Most of the remaining articles deal with the procedure by which the punitive articles are to be enforced. They provide for a system of courts-martial, and establish the procedure of such courts in limited detail—including the means and methods by which they may be convened and the review to be made of the proceedings. There are also miscellaneous provisions not dealing with naval justice but with other aspects of naval service, such as courts of inquiry and separation from the service.

1–8. Naval Courts and Boards, 1937. Congress, in the *Articles for the Government of the Navy*, defined by statute the crimes and offenses which are punishable, and the general system for imposing punishment. No statute, however, can provide for all the numerous details encountered in the operation of any judicial or administrative system. The laws establishing the procedure of the civil courts, for example, are often supplemented by detailed rules of court. Accordingly, in providing for the court-martial system, Congress authorized the President to prescribe the detailed procedure to be followed before naval tribunals, the manner of proof and rules of evidence; and also to establish maximum limits of punishment for most offenses in time of peace.

These rules and regulations are found in *Naval Courts and Boards, 1937*, which covers the operation of the entire court-martial system—from the initial steps to be taken before trial through the completion of the case. It deals fully with the various crimes and offenses, the evidence which can be used to prove them, and the sentences which can be imposed. It has all the force of law and changes can be made only after their approval by the President.

1–9. Crimes and offenses. The crimes and offenses made punishable by the *Articles for the Government of the Navy* can be divided into three general groups: (1) those with which everyone is familiar, such as murder, rape, arson, burglary, theft, and frauds against the United States; (2) those which are strictly military in nature, arising out of military duties and having no counterpart in civilian life, of which desertion, absence without leave, absence over leave, wilful disobedience of lawful orders of superior officers, and sleeping on watch are examples; (3) all those offenses which are not otherwise specified in the *Articles for the Government of the Navy*, made punishable as a court-martial may direct by Article 22.

Examples of offenses under Article 22 are disorders and neglects which are directly prejudicial to good order and the maintenance of military discipline; conduct unbecoming an officer and gentleman; and conduct, not of a scandalous nature, which is in violation of local laws in a country, state, territory, or district. The purpose of this general article is to cover offenses not expressly made punishable in the more specific articles and thus to prevent the possibility of a failure of justice. In practice, perhaps a greater number of charges and specifications are based upon this article than upon any other.

1–10. Agencies through which crimes and offenses are punished. Having defined the various offenses and authorized punishments for them, Congress provided the means whereby punishment could be imposed. It established a system of naval courts-martial to try offenders, and conferred upon the commanding officer the power to impose limited punishment without trial. The commanding officer's punishment is often referred to as *mast punishment*, because it is ordinarily administered immediately following, or as a result of, the investigation and examination conducted by the commanding officer known as *captain's mast* or, merely, *the mast*. The courts-martial are designated as *the deck court*, *the summary court-martial*, and *the general court-martial*.

1–11. Nature of the mast. As in civil justice, the first step in naval justice looking to the prosecution of a person accused of an offense is to conduct an investigation of the offense allegedly committed and to subject the accused to an examination. In the Navy this function is called *captain's mast* or *the mast*. It derives its name from the fact that in the days of the sailing ships the usual setting for its administration was at the foot of the ship's mainmast.

Article 197, Chapter 4 of *U. S. Navy Regulations*, prescribes the procedure for the investigation of reports against persons for misconduct. The careful inquiry prescribed contemplates that the commanding officer shall obtain from all eyewitnesses statements setting forth the pertinent

facts, and call upon the accused for such statement as he may desire to make together with any statements his witnesses may make. Both the accused and the accuser should be given an impartial hearing. This investigation and examination has for its purpose to determine whether an offense has been committed by the accused, and whether the nature of the offense is such that the accused deserves punishment. If the offense is a very minor one, the commanding officer has the authority to dismiss the entire case by merely warning the accused. If he is of the opinion that an offense has not been committed, he may excuse the accused. However, if the commanding officer is of the opinion that an offense has been committed and that the nature of the offense is such that it deserves punishment, he may: (1) punish then and there under his own punishment power; (2) refer the case to a court-martial which he is empowered to convene; or (3) make recommendation to higher authority as to what further action he may consider appropriate. A similar function in civil law is performed by the *grand jury*, except that the grand jury has no choice in the selection of the trial court and has no inherent punishment power.

The importance of this preliminary investigation and examination cannot be overstressed in view of the fact that the *Articles for the Government of the Navy* do not specifically assign the exact punishment which shall be meted out for the commission of the offenses therein defined. The determination of the punishment or the punishment body is thus one of the primary responsibilities of naval command and, although the announced policies of the Navy Department will substantially aid the commanding officer in making this decision, the exact gravity of the offense will become known only by full utilization of the investigation and examination prescribed.

1–12. The commanding officer's punishment power. In any command the number of trials by court-martial can be materially reduced without lowering desired standards of discipline, through proper use, by the commanding officer, of other measures authorized by the *Articles for the Government of the Navy*. Most important is the power, vested in the commanding officer by Article 24 *AGN*, to impose disciplinary punishment upon officers and men of his command. Commanding officers are enjoined to utilize the power conferred by this article for all offenses that may be properly disposed of thereunder, but it should be noted that this disciplinary power is an attribute of command and may not be delegated to a subordinate.

Only minor offenses should be disposed of under the punishments of Article 24 *AGN*. Whether or not an offense may be considered as minor depends upon its nature, the time and place of its commission, and the person committing it. Generally speaking, the term includes derelictions

not involving moral turpitude, nor of any greater degree of seriousness than is involved in the average offense tried by deck court. In other words, the nature of the offense and the customary punishment for it must be taken into consideration.

In the case of enlisted men, for a single offense or at any one time, the commanding officer may inflict one of the following punishments: (1) reduction of any rating established by himself; (2) solitary confinement on bread and water not exceeding five days; (3) solitary confinement not exceeding seven days; (4) confinement not exceeding ten days; (5) deprivation of liberty on shore; (6) extra duties.

In the case of officers, either warrant or commissioned, the commanding officer may inflict the following punishment: (1) private reprimand; (2) suspension from duty not exceeding ten days; (3) arrest not exceeding ten days; (4) confinement not exceeding ten days.

1–13. Nature of courts-martial. A court-martial is a court composed of one or more commissioned officers, the number depending upon the class of court. The function of a court-martial is to decide whether a person subject to naval law has committed a violation of the *Articles for the Government of the Navy* and, if it finds him guilty, to adjudge an adequate punishment. It is an instrumentality through which naval authorities enforce discipline and punish offenders.

Unlike the criminal courts of a state of the United States, it is not a permanent judicial body. It comes into existence only when ordered by competent naval authority. Its members are selected by the officer who appoints it, and its sentences are carried out only when they are approved by the authority who appointed it, or, in some cases by higher authority. It is, however, a court of law and justice, determining each case only after hearing witnesses and receiving evidence. Similarly it is bound by certain rules of evidence and fundamental rules of criminal law, and is empowered to adjudge only such sentences as the *Articles for the Government of the Navy* permit.

1–14. Classes of courts-martial. There are three classes of naval courts-martial: (1) deck courts; (2) summary courts-martial, and (3) general courts-martial.

The deck court. The lowest court is known as a deck court and consists of but one commissioned officer who performs functions similar to a court and prosecuting attorney. It may try any person subject to naval law from a chief petty officer down to an apprentice seaman. Only minor offenses are referred to it. It is authorized to impose any punishment prescribed for a summary court-martial, except that it may not adjudge discharge from the service, nor adjudge confinement nor loss of pay for a longer period than twenty days. Any commissioned officer under

the command of the convening authority may act as deck-court officer. An officer empowered to order deck courts may at his discretion designate himself as deck-court officer irrespective of his rank, if commissioned, and irrespective of the rank of other officers attached to his command. The accused must consent to trial before he may be so tried. Should he be unwilling to be tried by deck court, trial shall be ordered by summary court-martial or general court-martial as the case may warrant. A person convicted by deck court may, within thirty days, make an appeal from the conviction to the Secretary of the Navy.

The summary court-martial. The intermediate court is known as a summary court-martial and consists of three officers not below the rank of ensign as *members*, and of a *recorder* who is similar to a prosecuting attorney. The convening authority may order any officer under his command to act as recorder. The senior officer of the court always presides and is referred to as the *senior member*. This court like the deck court may try any person subject to naval law from a chief petty officer down to an apprentice seaman. It may impose any one of the following punishments: (1) discharge from the service with a bad-conduct discharge; (2) solitary confinement on bread and water or diminished rations not exceeding thirty days; (3) solitary confinement not exceeding thirty days; (4) confinement not exceeding two months; (5) reduction to the next inferior rating; (6) deprivation of liberty on shore on foreign station. Extra police duties, and loss of pay not to exceed three months, may be added to any of the aforementioned punishments.

The general court-martial. The highest court is known as a general court-martial and consists of not less than five nor more than thirteen commissioned officers together with a *judge advocate* who, like the summary court-martial recorder, is similar to a prosecuting attorney. The senior officer of the court always presides and is referred to as *the president*. This court has the power to try any person subject to naval law for violation of any article of the *Articles for the Government of the Navy*. However, it should be noted that commissioned and warrant officers can only be brought to trial before a general court-martial. It may impose any punishment which a summary court-martial is authorized to inflict and may adjudge any authorized punishment from mere reprimand to dishonorable discharge, life imprisonment, or even death itself. The court has all the powers of the summary court-martial and in addition has the power to punish for contempt and to subpoena civilian witnesses as well as naval personnel.

1–15. Nature of investigations and courts of inquiry. In addition to *the mast* which is essentially an investigation and inquiry by the commanding officer into reports of misconduct, there are more formal investigations and

courts of inquiry provided for, which are not limited to inquiry into facts pertaining to disciplinary action. These bodies are known as *investigations, boards of investigation,* and *courts of inquiry*. They are not necessarily a component part of the disciplinary system and as the names indicate, they are primarily fact-finding bodies. They are convened solely for the purpose of informing a convening authority in a preliminary way as to the facts involved in an inquiry and, when directed, to aid him with opinions and recommendations; their conclusions are merely advisory and their proceedings are in no sense a trial of an issue or of an accused person; they perform no real judicial function. It is not contemplated that commanding officers will ordinarily resort to these formal bodies unless the conditions should be such as are described in Sections 723 to 726, *Naval Courts and Boards, 1937*. The mast, if thoroughly conducted, will many times prevent unnecessary recourse to these more formal bodies.

1–16. Form of disciplinary action. A fundamental consideration is that in every case the lowest form of disciplinary action which meets the requirements of discipline should be used. Resort to any type of disciplinary action for trivial offenses, whether by court-martial or by the commanding officer under Article 24 *AGN*, should not be had until less drastic methods have been tried and failed. If the offense is of such nature as to make necessary some disciplinary action, punishment by the commanding officer under Article 24 *AGN* should be used in every case where such action will accomplish the ends of discipline. If trial by court-martial is necessary, the offender should be tried by the lowest court that has the power to adjudge an appropriate and adequate punishment.

1–17. Necessity for prompt action. It is the duty of commanding officers to see that no unnecessary delay is permitted in the preparation, investigation, forwarding or other disposition of reports of misconduct. Celerity of punishment is essential. A recent survey by the Secretary of the Navy indicated that, on the over-all average, court-martial proceedings were not being completed with dispatch. Such delay not only adversely affects the Navy from the standpoint of man-days lost, but also is detrimental to morale. In supervising the administration of naval justice, the commanding officer should see that offenders are tried both promptly and thoroughly.

1–18. Administrative measures distinguished from punishment under Article 24 AGN. Neither trial by court-martial nor punishment under Article 24 *AGN* is to be resorted to for trivial offenses until after less drastic methods have been tried without success. Article 24 does not limit and is not intended to supplant the use of those non-punitive measures which a commanding officer is authorized and expected to use to further the efficiency of his command, such as administrative admonitions, reprimands, exhor-

tations, disapprovals, censures, reproofs, and reduction in rating when such action is not intended as a punishment for an offense.

1–19. Administrative reduction in rating. Administrative reduction of enlisted men is not punishment. While administrative reduction in rating cannot be used as a substitute for disciplinary action, it is often an effective means of maintaining efficiency within a command. It is utilized where a man lacks the qualifications to perform the duties of his rating. This is an inherent power of a commanding officer and is unrestricted except by regulations issued by the Navy Department. The conditions governing administrative reduction in rating are set forth in Part D, Chapter 5 of the *Bureau of Naval Personnel Manual.*

1–20. Administrative discharge. Under the provisions of the *Bureau of Naval Personnel Manual,* an enlisted man may be administratively discharged from the service if he is inapt, that is, where he has demonstrated his inability to cope with service conditions and when there is no evidence of his being able to adapt himself to the requirements of naval life in the future; or if he is unfit, that is, where he has already demonstrated that he is totally unfitted for further retention. A man who repeatedly commits petty offenses not necessitating trial by court-martial, an habitual shirker, or a man of unclean habits would fall into this category. Such administrative discharge cannot, of course, be resorted to in lieu of punishment for a crime or offense; nor may it be based upon the commission of a specific offense, whether before or after trial and punishment. However, the elimination of undesirables who have no potential value to the Navy through proceedings under Part D, Chapter 9 of the *Bureau of Naval Personnel Manual* may prevent the necessity for disciplinary action later. The policy with respect to discharge proceedings in the case of homosexuals is set out in *SecNav ltr. P13-7 83443 of 1 January 1943* and *BuPers ltr. P13-7 of 28 January 1944.*

1–21. Equal justice under the law. The words *equal justice under the law* have a deep meaning for all Americans. They symbolize a vitally important aspect of the democratic heritages for which our men are fighting all over the world. Generally construed as referring to civil law, equal justice is, nevertheless, the prerogative of the men and women who serve today in the U. S. Navy. The procedure of the naval courts-martial, though different in many respects from that of Federal and State courts, is based on the same general principles and is quite as careful of the rights of the accused. The nature of the military calling makes it necessary that some forms of misconduct, such as absenteeism (AWOL and AOL), quitting the job (desertion) and talking back to the boss (disrespect to an officer), which in civil life are considered as trivial misdemeanors or no concern

of courts at all, be regarded as serious offenses and punished accordingly. These offenses aside, punishments are in general no more severe than those imposed by Federal or State courts for like offenses. The Navy operates outside of civilian jurisdiction, with a system based on disciplinary code and procedure, operated solely by and for naval personnel. One of the outstanding features of naval justice is that it grants automatically and without a request, to all defendants found guilty—to those who plead guilty and to those who plead their innocence—more reviews (in effect, more appeals) than are ever accorded a defendant under civil law. This fundamental fairness of the naval disciplinary system should not, however, be confused with leniency. Naval justice is designed to be speedy and efficient, and the guilty may expect adequate and fair punishment consistent with the nature of the offense.

2. A BRIEF HISTORY OF NAVAL LAW

2–1. General. The *Rules for the Regulation of the Navy of the United Colonies*, which were adopted by the Continental Congress in November, 1775, became the basis of the articles formulated in 1798, when the establishment of a navy was undertaken by the new government of the United States. They were, therefore, the American source and origin from which, with innumerable modifications and additions, the present articles have been drawn or developed. Those rules were framed by the great patriot, John Adams, who took them, with such changes as he thought expedient, from the *Articles for the Government of the British Navy* which were in force at that period. This method of procedure on the part of Adams and the Continental Congress was the obvious and natural course to pursue. It simply retained and made authoritative the traditions and laws of naval service with which the seafaring population of the Colonies had long been familiar. The British articles on which Adams drew were those which had been adopted by Parliament in 1749. In the most important respects the Adams articles follow their British originals, not only in substance, but also in language and in sequence of topics. But these British articles of 1749 did not originate in that year. They had a long history of development behind them. Therefore, in order to secure a historic background for our present naval law, it is necessary to investigate the development of customs and laws of the sea that merged into the British naval regulations in force at the time of the American Revolution.

2–2. The earliest navies. Due to the fact that Great Britain is an island, there was doubtless never a period of time when Britons did not on occasion put to sea with warlike purpose. But to the very end of the Middle Ages there was no regularly constituted navy that had a continuous existence. In return for certain commercial privileges, the Cinque Ports along the Channel —Hastings, Romney, Hythe, Dover, and Sandwich, to which other nearby ports were later added—were under obligation to furnish the king on his demand with fifty-seven vessels for war use. These were to serve for fifteen days in any one year at their own expense. They could be retained in service at a moderate fixed rate of pay as long as they were needed. In addition to this, the king could draft or impress into his service any ships—even those of foreign nations—that happened to be in any port of the realm. It was, therefore, possible to assemble quickly a sort of naval militia when

an emergency arose. The king usually had a few ships of his own. They were literally his own property, built and maintained out of his privy purse. In times of peace they were hired out for purposes of trade. A king at his death disposed of them by will, sometimes directing that they be sold in settling up his private estate.

2–3. Early naval concepts. The early kings apparently had no concept of the value of a navy as a military instrumentality like an army; or of the importance of its continuous maintenance and readiness for use. Military thought then current recognized no use for a navy except in a subordinate and dependent character. Fleets were improvised, as occasion demanded, to transport troops, to keep open communications, or to meet enemy fleets already at sea; but the real work of defense or conquest was the duty of the men at arms. There was no comprehension of the ceaseless pressure that a navy can exercise, and the disbanding of a fleet followed promptly on its return from a successful exploit.

2–4. Absence of early administrative machinery. Because the operations of the early British naval force were of a temporary and spasmodic character wholly subordinate to the military service of the kingdom, and because the ships employed were for the most part commercial vessels, only withdrawn from peaceful pursuits to serve the state in an emergency there was no need for permanent naval administrative machinery. Thus, no special laws were required for the government, or control, of the officers and men who sailed these temporary warships. These officers and men, just as when engaged in commerce, were governed by the general maritime law of the time and by the ancient customs and usage of the sea.

2–5. Code of Cleron. A compilation, or code, of maritime law was made in the twelfth century by Eleanor of Guise, the mother of Richard, Coeur de Lion. These laws were known as the *Laws of Oleron*, taking their title from the name of a large island off the west coast of France which was an important shipping center of the time. This code was long held to be authoritative in defining and regulating the rights and duties of shipowners, masters, and seamen; and the maritime power of England was governed for many years by the general tenets of the *Code of Oleron*.

These laws were based upon the sea law of the Republic of Rhodes, derived from Roman law long before, and codified just as had been done by other Mediterranean cities and states. Although this code was one of the five or six existing codes of the time, it is recorded that Richard, Coeur de Lion used it at Marseilles in 1190 while awaiting transport for his Crusade to the Holy Land. William de Forze of Oleron, who was one of the five commanders of Richard I on this expedition, and who after-

ward became one of the justiciaries of the English Navy, was probably instrumental in urging its adoption. Alphonso X introduced and adopted the same code in Castile in the thirteenth century. Richard I after his return from the Crusades introduced the *Code of Oleron* with additions in England.

2–6. First rules of naval discipline. The very first rules made by an English king to apply specifically to discipline on naval ships were issued by Richard, Coeur de Lion in 1190, when he was passing through France on his way to join his fleet at Marseilles in order to sail for the Holy Land. The most important rules number only six, and, very likely, merely gave definite expression to customs already well established. They are sufficiently curious and interesting to be set forth as illustrating the punishment of that day. The barbarity of the penalties was in entire keeping with the contemporaneous methods of executing justice. In effect, they were:

1. *Anyone that should kill another on board ship should be tied to the dead body and thrown into the sea.*
2. *Anyone that should kill another on land should be tied to the dead body and buried with it in the earth.*
3. *Anyone lawfully convicted of drawing a knife or other weapon with intent to strike another, or of striking another so as to draw blood, should lose his hand.*
4. *Anyone striking another with the hand, no blood being shed, should be dipt thrice in the sea.*
5. *Anyone uttering opprobrious or contumelious words to the insulting or cursing of another should, on each occasion, pay one ounce of silver to the injured person.*
6. *Anyone lawfully convicted of theft should have his head shaved and boiling pitch poured upon it, and feathers or down should then be strewn upon it, for the distinguishing of the offender; and upon the first occasion he should be put on shore.*

2–7. Keeper of the King's Ships. About the beginning of the thirteenth century we have the first definite sign of anything like naval administration when King John appointed a *Keeper of the King's Ships*. It is not unlikely that some similar functionary had previously been designated to have charge of the king's ships. This *keeper* of King John is the remote ancestor, or prototype, of the present *Lords of the Admiralty*. This is the oldest known administrative office of the navy. Known later as *Keeper and Governor of the King's Ships* and as *Clerk of the King's Ships*, he exercised control until the middle of the sixteenth century. But during all this time it is to be remembered that the king's ships were not really a national navy.

2–8. The Black Book of the Admiralty. About the middle of the fourteenth century what is known as the *Black Book of the Admiralty* was compiled. It was written in Norman French, which at that time was the language of the court as well as the language of judicial and legal proceedings. This book defined with great detail the duties of an admiral. He was to appoint his lieutenants and other officers; was to get his fleet together by impressing ships found at the various ports; and was to enlist crews to man the ships. In other words, the entire power of creating a navy was for the time being entrusted to him. It was made his duty to administer justice *according to the law and ancient custom of the sea*—a phrase which is constantly recurring through the centuries. It was ordered that no seaman was to be beaten or ill-used. Offenders were to be brought by the captain or master to the admiral to be dealt with according to the law of the sea. Search for thieves who stole ship's gear was to be made in ports entered. A man convicted by a jury of twelve men of stealing an anchor or a boat worth 21*d* was to be hanged; one that stole a buoy rope fastened to an anchor was to be hanged, whatever the value. If a man that began a quarrel injured his opponent he had, with other amends, to pay a fine of £5 to the King or lose the hand which struck the blow, unless the King or the high admiral granted grace. The *Black Book* was lost at the end of the eighteenth century but fortunately was found in 1874 in an old chest. The first part of the book dates from Edward III; the latter belongs to the reigns of Henry IV, Henry V, and Henry VI. It is considered to be the basis for British sea law, and has been described as having developed order out of chaos.

2–9. The Book of Orders for War. The sixteenth century saw the beginning of the British Navy as a thoroughly established and continuous force. This was during the reigns of Henry VIII and his daughter Elizabeth. Continuity of policy and efficient administration were made possible by Henry VIII's creation in 1546 of the *Navy Board* which became a vigorous governmental instrumentality under Elizabeth. During her reign the brilliant achievements of the navy in war and the distant voyages of bold navigators founded the school of successful seamanship of which was born the confident daring and self-reliance still prescriptive in the royal and merchant services. In all this time, however, no special code of law was adopted by the Government for regulating and controlling the service of the navy. Ships still sailed under the ancient law and customs of the sea.

Evidently there did exist, or there were formulated by individual commanders, certain particular regulations for the maintenance of order on shipboard. Under Henry VIII it was ordered that these regulations should be framed and entitled, *Book of Orders for War*. It was also instructed that they should be "set in the mainmast in parchment to be read as occasion shall serve." In these regulations we have the ancient rules of Richard

that a murderer should be tied to the corpse of his victim and thrown into the sea; and that a man who drew a weapon on the captain should lose his right hand. And there was this fiendish penalty for a man guilty of sleeping for the fourth time on watch: he was to be tied to the bowsprit, furnished with a biscuit, a can of beer and a knife. There he was to be left, having the choice of starvation or of cutting his bonds and dropping into the sea. A thief was simply to be ducked two fathoms under and then to be towed ashore at the stern of a boat and ignominiously dismissed.

2–10. Special instructions and regulations. It became the custom for admirals on assuming command or setting out on a particular enterprise to issue a series of instructions, or regulations, for the ships of their fleet. Just when this custom originated is not known. One of the earliest documents of this sort now in existence was promulgated in 1596 by the Earl of Essex and Lord Howard of Effingham, joint commanders of the Cadiz Expedition. No doubt it was modelled on former regulations by other admirals. It consisted of twenty-nine articles, which were to be *openly read* twice each week. The first article ordered that religious exercises take place twice each day. Another quaint article was that the watch was *to be set every night by eight of the clock, either by trumpets or drum and singing the Lord's Prayer, some of the Psalms of David, or clearing the glass.*

The proclaiming of rules and regulations for the government of their fleets by admirals on their assumption of authority continued to be the regular and accepted custom. Indeed, the custom prevailed until the early years of the eighteenth century when the importance of it had long ceased to exist. Such instructions or regulations became ineffective when the occasion which had brought them forth passed, or when their author laid down his office.

Admirals undoubtedly followed in the main the proclamations of their predecessors, repeating their rules and regulations. Equally, no doubt, there were multitudinous changes in modes of expression reflecting the personal taste of the author and the new fashions of speech, as well as changes of emphasis to meet new conditions. There were bound to be modifications, as old abuses disappeared and new arose, besides constant additions made necessary by the development of the service, the growth of new needs, and new ideas of discipline. Thus, gradually there came into existence a great body of these admirals' codes or articles, very similar, to be sure, in their main features, but growing clearer and more precise with the lapse of time. In them were to be found the essential principles of naval discipline.

2–11. Authorization of naval courts-martial. The court-martial is the present day heir of the *curia-militaris*, or court of chivalry, called also the *Marshal's court.* This was originally the only military court that was established by the laws of England. It was at first held by the Lord High

Constable and the Earl Marshal jointly, being purely a military court, or court of honor, when held before the Earl Marshal; and a criminal court when held before the Lord High Constable. In the reign of Henry VIII, the office of Lord High Constable was made extinct and all cases regarding civil matters of the military were held before the Earl Marshal. Due to its weak jurisdiction, its lack of power to enjoin its judgments, and since it was not a court of record, it fell into disuse. The constitution of military courts as we know them was adopted in the reign of Charles I. Their adoption was expedited by the mutiny of a number of English and Scotch dragoons that had been ordered to Holland for replacement of certain Dutch troops ordered to England.

The first regular naval tribunal was instituted by the leaders of the Long Parliament in 1645. They passed a measure called *An Ordinance and Article of Martial Law for the Government of the Navy*. It was this act that for the first time authorized general and ships' courts-martial with written records; the former for captains and commanders, and the latter for subordinate officers and men. It was in a later law (Art. 13, *Charles II*, c. 9) that the Lord High Admiral was given the power to issue commissions (precepts) to officers to hold courts-martial.

2–12. The first British Articles of War, or The Cromwell Articles. It was not until Cromwell's time that Parliament passed a law for the general government of the navy. In March, 1649, it adopted rules for the government of the Earl of Warwick's fleet. Three years later these rules were somewhat recast and modified, and made to apply to the whole navy. These, therefore, were the first British *Articles of War* specifically to be characterized as such, though they contained nothing that had not, in substance at least, already been enforced in the navy under the authority of commanding officers. Here was a code of law, formally adopted by Parliament, to be of universal and continuing authority. It had the sanction not only of the commander-in-chief, but of the nation. This code, then, is the remotest formal ancestor of our American articles.

The articles number thirty-nine. The first enjoins religious services—just as former instructions and all later enactments have done. The second forbids words or actions *in derogation of God's honour and corruption of good manners*. Religion and good morals have thus always been put at the forefront of discipline in both the British and the American navies. Of Cromwell's thirty-nine articles, thirteen prescribe the death penalty for specified offenses, and twelve others make death an optional penalty. However, while the code was severe in its terms it was enforced with mercy and discretion, and up to the time of the Restoration there is no known instance of the death penalty being carried out. Not long after the Restoration—in 1661—these articles, with some few changes and additions, were reenacted.

2–13. Original Mutiny Act. The first statutes setting forth the army courts-martial, as distinguished from the naval courts-martial, are found in the original *Mutiny Act*, 1689 (1 *William and Mary*, c. 5). This act was annually renewed for the regulation of the Army. By this act the sovereign was authorized to grant, when he desired, a commission, under his royal sign manual, giving to any officer, not under the rank of a field-officer, authorization for holding a general court-martial. It further provided that he could, by warrant, give the Lord Lieutenant of Ireland, the governor of Gibraltar, or governors of any of the dominions beyond the sea necessary authority to appoint courts-martial. Although it has been more than two hundred and fifty years since the original *Mutiny Act* was enacted, it is still a source of military law for the English-speaking peoples. It exists in modified form in the United States, and many striking similarities will be found in a comparison of these statutes of 1689, and our own courts-martial system of precepts and jurisdiction.

It may be thus seen that naval law and military law in England had originally made wide divergences. In his early days, the Lord High Admiral issued the instructions and regulations of both the Royal and the Merchant Navy, and commanders administered naval law at their discretion under the instructions of the Lord High Admiral.

2–14. The King's Regulations and Admiralty Instructions. Even after *The Cromwell Articles* were adopted, commanders of fleets kept on issuing codes of instructions and rules covering details of service and discipline. Finally, effort was made to digest and codify these innumerable rules, and to make a clear and comprehensive set of regulations conformable to accepted principles of naval usage. Thus, in 1731 the first issue of *The King's Regulations and Admiralty Instructions* appeared. This code has been revised from time to time to conform with modern ideas and conditions, but remains in substance much what it was when first issued. Naturally, this code has had its influence on the development of similar regulations for the American Navy.

2–15. The new articles of war. In 1749, just one hundred years after the adoption of Cromwell's first articles, Parliament, mainly through the efforts of Lord Anson, adopted new articles. These were the articles on which John Adams drew. Nearly one hundred years passed again before Parliament, in 1847, enacted the present articles of war which are today contained in the *Naval Discipline Act*. But the groundwork of all subsequent modifications, which experience has shown to be necessary down to the present day, was laid by the first articles adopted in Cromwell's time. Even much of the phraseology of the earliest articles recurs in the British and American articles of today.

2–16. Rules for the Regulation of the Navy of the United Colonies. The first American articles were adopted by the Continental Congress on November 28, 1775, more than seven months before the Declaration of Independence. They were styled *Rules for the Regulation of the Navy of the United Colonies.* Every commander of a naval vessel received copies and was required to post them in public places of the ship and cause them to be read to the ship's company once a month. Considered with reference to the needs and conditions at the time of their promulgation, the articles of 1775 may be characterized as reasonably comprehensive and satisfactory. If fairly obeyed and administered according to their spirit as well as their letter, they were sufficient to define the rights and duties of officers, to secure fair and just treatment of the men, and to procure honest and faithful service for the Government. The articles, which were referred to as *The Blue Book,* consisted of something more than forty paragraphs. Altogether they filled not much more than a third of the space occupied by the present articles, and, taken as a whole, they were more general in their terms. Neither did they go into as much detail in defining the duties of officers, or in specifying the various possible crimes, misdemeanors, and breaches of discipline that might occur on shipboard.

John Adams. The *Rules for the Regulation of the Navy of the United Colonies,* the source, or basis, of all subsequent *Articles for the Government of the Navy,* were compiled by John Adams, always a devoted and intelligent advocate of a navy. He had had no maritime experience, but he was a very eminent lawyer and, doubtless, in his legal practice at the important port of Boston, had had occasion to learn much of the laws of the sea. At any rate, he had great good sense and knew where to look for information and precedents.

He did not attempt to frame a code of rules out of hand. Laws usually are based upon, or grow out of, previous enactments or court interpretations; or they put into formal expression well-established rules of conduct that have almost gained the force of law; or they extend the application of accepted legal principles to correct new abuses or to meet novel conditions. Very naturally, therefore, John Adams had recourse to the articles governing the British Navy—the navy, up to that time, of the American Colonies as much as of the British Isles.

Many Americans had served in the British Navy. British maritime law, like the common law, was the law of the Colonies. British naval law and traditions must have been familiar, in a general way at least, to most of the seafaring population of America—the population from which the officers and men of the new navy were to be drawn. In the absence of any legislation by the Continental Congress, therefore, the officers of American war vessels would, doubtless, as a matter of course, have followed the rules and precedents of the British service. What John Adams did was to adopt

from the British articles the rules that he considered essential, modifying them where necessary to meet American exigencies or ideas. John Paul Jones is sometimes spoken of as the father of the American Navy. But John Adams was certainly its father on the administrative side. It was under his administration, as President of the United States, that the Navy Department was created and the foundation of the United States Navy was laid.

Comparison with present articles. The fundamental law of the *Articles for the Government of the Navy* has remained, in its essential quality, much the same as at the very beginning of the American Navy. The present articles are more numerous and more detailed, the arrangement of them is more orderly and logical, and they display greater precision in language and definition; but there are few subjects dealt with in the very first articles that are not treated in the present articles, and, in many instances, in practically the same language. The most striking instance of practical identity is in the case of the first article, which expresses the keynote of the animating spirit of the naval service. The wording of 1775 was:

> The commanders of all ships and vessels belonging to the thirteen United Colonies are strictly required to shew in themselves a good example of honor and virtue to their officers and men, and to be very vigilant in inspecting the behaviour of all such as are under them, and to discountenance and supress all dissolute, immoral, and disorderly practices, and also such as are contrary to the rules of discipline and obedience, and to correct those who are guilty of the same, according to the usage of the sea.

This is so nobly expressed that it was not easy to make any improvement. It appears as the present first article with hardly more than absolutely necessary changes. Now it reads:

> The commanders of all fleets, squadrons, naval stations, and vessels belonging to the Navy are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them; and any such commander who offends against this article shall be punished as a court-martial may direct.

Similarity of present articles. Many of the present articles, like the one just quoted, are in almost exactly the same language as the corresponding articles of 1775. Further illustrations will make this clear. An article of 1775 reads: "Any master-at-arms who shall refuse to receive such prisoner or prisoners as shall be committed to his charge, or having received them, shall suffer him or them to escape, or dismiss them without orders for so doing, shall suffer in his or their stead, as a court-martial shall order and direct." A paragraph of the present Article 8 makes subject to "such punishment as a court-martial may adjudge" any person who,

"when rated or acting as a master-at-arms, refuses to receive such prisoners as may be committed to his charge, or, having received them, suffers them to escape, or dismisses them without orders from the proper authority." The latter is more precise and grammatical than the former, but is clearly the same article worked over.

The same is true of Article 25, which reads: "No man who may command by accident, or in the absence of the commanding officer, except when such commanding officer is absent for a time by leave, shall inflict any other punishment than confinement." This is hardly better expressed than the sixth article of 1775 from which it is taken, namely: "The officer who commands by accident of the captain's or commander's absence (unless he be absent for a time, by leave) shall not order any correction but confinement."

2–17. Letters of instruction augmenting the 1775 articles. The new navy was directed and administered by a committee of Congress, the most active member of which was Robert Morris. The committee, in assigning officers to duty, repeatedly enjoined upon them the duty of strictly obeying the articles, and usually ended its letters of instruction with some such injunction as this: "Use your people well, but preserve strict discipline; treat prisoners, if any you make, with humanity; and in all things be duly attentive to the honor and interest of America." These words are taken from a letter of August 23, 1776, to Lieutenant John Baldwin, commander of the schooner, *Wasp*, one of the earliest letters of the committee still preserved in the Library of Congress. Similar injunctions are found in many other letters. At the same time, commanders were encouraged and exhorted to be bold. A letter of November 1, 1776, to Captain Elisha Warren, of the Continental sloop *Fly*, urges: "Although we recommend your taking good care of your vessel and people, yet we should deem it more praiseworthy in an officer to lose his vessel in a bold enterprise than to lose a good prize by too timid a conduct." These quotations afford a very noble impression of the spirit of discipline, humanity, and enterprise which the Fathers desired should permeate and characterize the Continental Navy. They would be entirely appropriate admonitions to naval officers at any time.

2–18. Articles for the Government of the U. S. Navy—1798. At the end of the Revolutionary War the navy simply began to fade away, the emergency for which it was created having passed. By 1785 the last ship of the fleet had been disposed of. In the establishment of the new Government of the United States, no provision was made for the creation of a navy. It was not till 1798, when the activities of French privateers in the West Indies stirred the country and Congress to the need for defensive action and re-

prisal, that a Navy Department was formed and a Secretary of the Navy was added to the Cabinet. That year marks the beginning of the United States Navy.

The *Articles for the Government of the Navy* which were then adopted, were based on the articles of 1775; and the present articles, with numerous modifications, additions, and amendments, to meet the changing conditions and requirements of the vastly enlarged service, have been developed out of the articles of 1798.

2–19. Articles for the Government of the U. S. Navy—1862. The Army and the Navy are governed by separate laws. The code of the U. S. Army is known as *The Articles of War*. There were originally 101 articles which were approved 10 April, 1806. The code of the U. S. Navy is known as *The Articles for the Government of the U. S. Navy*, originally *The Articles for the Better Government of the Navy*. They comprised originally 25 articles (now 70 articles) approved 17 July, 1862. Both Army and Navy codes are incorporated in the *Revised Statutes*. The present *Articles for the Government of the U. S. Navy* are completely set forth in Appendix A of this text. The *Articles* may also be found in Chapter 1 of the *U. S. Navy Regulations*, and in Appendix B of *Naval Courts and Boards, 1937*. They contain, as previously stated, a naval penal code and a schedule of limitation of punishments which may be adjudged by the various agencies charged with the administration of justice. They also prescribe the tribunals authorized to hear and determine criminal cases arising within the naval service, the means and methods by which tribunals may be convened, how the proceedings shall be conducted, who shall be answerable to trial before naval tribunals, and the review that shall be made of the proceedings of courts and boards.

2–20. Comparison of present British law with present Articles for the Government of the U. S. Navy. In the present *Articles for the Government of the U. S. Navy* we find no reference to custom or the *ancient common law of the sea*. In this connection, it is noted that in keeping with the British legal system and the fact that British common law is unwritten law, the present *King's Regulations and Admiralty Instructions*, as well as the *Naval Discipline Acts* (corresponding to *Articles for the Government of the U. S. Navy*) refer to *customs of the sea*. Section 44 of *Naval Discipline Acts* states that persons shall be proceeded against and punished *according to the laws and customs used at sea*. Again, in Part III of *Naval Discipline Acts* there is found the phrase, *according to the custom of the Navy*. One finds a general cover-all in the *Naval Discipline Acts*, known as the *Captain's Cloak*: "Every person subject to the act who shall be guilty of any act, disorder, or neglect to the prejudice of good order

and naval discipline not hereinbefore specified, shall be dismissed from His Majesty's Service with disgrace, or suffer such other punishment as is hereinafter mentioned."

2–21. Conclusion. It is not surprising that the two greatest navies in the world are practically alike in their organization, in the principles that animate and control their efforts, and in their ideals of service. Until less than a century and a half ago they had a common history and ancestry, stretching back into the dimness of the Middle Ages. Britons and Americans have constantly, though sometimes unconsciously, absorbed much from each other; and the development of their navies has been in nearly all respects along parallel lines. The rules of our Navy are not a thing of yesterday or the day before. They are the result of centuries of experience and experiment; tested and proven by great heroes of the sea. To recall that he is obeying the same laws that Rodney and Nelson and Napier obeyed; that he is under the same discipline that Decatur, Macdonough, Perry, Dahlgren, Porter, Farragut, Dewey, and a host of other patriots have honored and made illustrious, must be an inspiration to every man in the Naval Service.

3. SOURCES OF U. S. NAVAL LAW

3–1. Necessity for working knowledge of naval law. It is important that a naval officer have a working knowledge of naval law. In varying degree, depending upon his rank and position, an officer may, by virtue of the legal authority which goes with his commission and his orders, make certain laws himself by issuing regulations, instructions, and orders to be obeyed by those under his authority. He plays an important part in the enforcement of naval law by participating in the functions of the various courts and boards which are convened to investigate offenses or to punish offenders. For example, as a member of a court of inquiry or a board of investigation, he may act in a capacity comparable to that of a member of a grand jury in civil procedure; as a judge advocate or recorder, he will act as a prosecuting attorney; as a defense counsel, he may aid an accused person in the preparation and presentation of his case before the court. As a member of a court-martial he will act in a dual capacity of judge and juror. As a convening or reviewing authority he will review cases submitted to him much as a court of review or appeal in civil cases. If officers lack familiarity with naval law or are not properly vigorous in enforcing it, discipline will suffer, since naval laws are designed to enable a large number of men to live and work efficiently and in harmony with each other as a separate community.

It is hardly to be expected that all officers and men will have a complete knowledge of naval law in all its ramifications, It is, however, important that officers should have a good knowledge of the sources of naval law and know where specific points may be found.

3–2. Knowledge of Navy Regulations and general orders presumed. Each officer and enlisted man is presumed to have knowledge of the contents of *Navy Regulations* and *General Orders;* and although ignorance of them may be considered as an extenuating circumstance, it does not excuse one guilty of an infraction thereof, nor relieve him from the consequences of his acts.

3–3. Military law. Although in the strict sense *military law* is considered as the specific body of law governing the Army as a separate community, in the broad sense it comprises the whole body of law which governs the Army, Navy, Marine Corps, Coast Guard, and any other organization under

military discipline and forming a part of the military establishment of the United States. The fact that these organizations are each governed by a somewhat different code, and that the jurisdiction each exerts does not, in general, extend beyond its own organization, in no sense affects the fact that all are equally governed and administered under military law. Military law thus governs the Navy as well as the Army, but while the government of the latter is based upon the *Articles of War*, that of the former is based upon the *Articles for the Government of the Navy*.

3–4. Naval law. The term naval law is used to refer to, and distinguish, the naval code, courts, and laws from the broad term *military law*. It is that branch of military law which specifically governs the Navy as a separate community; or, more precisely, it is the body of rules prescribed by competent authority for the government and regulation of the naval forces.

Naval law is chiefly statutory, but regulations and orders issued by the President and customs generally applicable to military law are also given the force and effect of law where they do not conflict with statutory rules. The civil courts or authorities have no power to interfere with the functioning of military courts, but those amenable to military law do not thereby become freed from their civil obligations. Any violations of the civil rights of the civilian population, or any act amounting to a crime according to the local criminal law, is cognizable in the ordinary civil and criminal courts. Arrests for such offenses ordinarily cannot be made within the confines under control of naval authorities, but if the offender is arrested outside such territory, or is surrendered for trial by the naval authorities, he may be tried like any other citizen. Military courts are called *courts-martial*. Procedure in these courts is unlike that of the civil or criminal courts, being generally free from the restrictions imposed upon the civilian courts.

3–5. Naval courts-martial. Naval courts-martial are the tribunals by means of which naval law is administered. They are courts convened, pursuant to naval law, for the adjudication of offenses against the naval code. Naval courts-martial are established by virtue of the authority conferred by the Constitution on Congress to make rules for the government and regulation of the naval forces. Naval courts-martial, although sanctioned by the Constitution, are not a part of the judiciary of the United States. They are not the *inferior courts* which Congress may from time to time ordain and establish under the authority of Article III of the Constitution. The Supreme Court, in discussing this matter, said: "These provisions show that Congress had the power to provide for the trial and punishment of military and naval offenses in the manner then and now practiced by civilized nations;

and that the power to do so is given without any connection between it and the 3d Article of the Constitution defining the judicial power of the United States; indeed, that the two powers are entirely independent of each other."

An analogy may be drawn between our courts-martial, established under the power of Congress to make rules and regulations for the government of the naval forces, and the so-called legislative courts. Some of the more important of the latter class are: (1) the *Court of Claims* established under the power to pay the debts of the United States; (2) the *Court of Customs and Patent Appeals* created under the power to lay and collect taxes on imports and the power to regulate patents; (3) *Territorial Courts* established under the power of Congress to govern the Territories.

Judicial safeguards. Not all the judicial safeguards found in the Bill of Rights such as trial by jury, the requirement for a charge by indictment or presentment, etc., are rights given by the Constitution to persons triable by these legislative courts or naval tribunals. Only individuals on trial before Federal courts established under the judiciary power, the so-called constitutional courts, must be accorded such rights. However, by law, regulation, or departmental ruling many of the judicial safeguards that the Constitution expressly required for defendants triable in the constitutional courts have been extended to defendants triable in the naval tribunals. Rights thus extended must be observed, and failure to do so is considered to be a denial of due process of law guaranteed by the Fifth Amendment to the Constitution. Such rights include the right of an accused to counsel, to be informed of the charges against him, to be confronted with the witnesses against him, to be present at the trial; and the guarantee against self-incrimination. All the constitutional safeguards are not provided for, and some that have been provided for are different from those required by due process in constitutional courts. The safeguards enacted vary, depending on the type of court, and some of those required in a naval tribunal are not found in any other court.

Effect of naval status. It can thus be seen that on entering the naval service a person changes his legal status. In effect, he becomes subject to a different legal system. The courts are different, the method of trial is different, the law which governs him is different. He loses certain constitutional rights but gains others. For instance, if a person who is not in the naval forces commits a Federal crime, the Fifth Amendment gives the constitutional right to a speedy and public trial by an impartial jury in a Federal civil court. If such an offender be a member of the naval forces, however, and the proper governmental agency wishes to deny him such a trial he is tried by a naval court-martial, and instead he could not successfully demand the jury trial guaranteed by the Fifth Amendment. In the latter case Congress prescribes the safeguards and procedure for a fair

trial before a naval tribunal. Such a procedure constitutes due process of law as to that naval defendant, although it may differ from due process which must be afforded to one in a civilian status.

Nature of the naval tribunal. Strictly speaking, a naval court-martial is not a court in the full sense of the term. It is simply an instrumentality of the executive power of the President for the enforcement of discipline in the naval forces. In this regard, a naval court-martial merely acts for the President or naval commander who, under the *Articles for the Government of the Navy*, is empowered to convene it and refer cases to it. Such an officer is called a convening, or reviewing, authority. Normally, after reference, he retains the discretion to quash the charges; or after the court-martial has reached a finding and sentence, except in the case of an acquittal, to disapprove either the finding or sentence or both, in whole or in part. If he does not disapprove, he may mitigate, remit, or suspend a sentence. In other words, the convening authority is not bound, except in the case of an acquittal, by the decision of the court-martial he appoints. He is authorized to take the type of action which he believes will promote the discipline and, therefore, the military efficiency in his command. Thus, the general rule is stated that the finding and sentence of a court-martial are never final until approved by the proper reviewing authority, except in the case of an acquittal.

Effect of court-martial decisions. Even though a naval court-martial in a certain phase is merely an instrumentality of the executive power and in another aspect is analogous to a legislative court, it is a lawful tribunal with authority to determine any case over which it has jurisdiction; and is the only and highest court by which a naval offense may be punished. Its proceedings are open to review by only one civil tribunal, the Federal civil court, and then only for the purpose of determining whether the naval court-martial was properly appointed and constituted, whether it had jurisdiction of the person and subject matter, and whether, though having such jurisdiction, it had exceeded its power in the sentence pronounced. So far as it is a court at all, it is bound, like any court, by the fundamental principles of law and the established rules of evidence.

3–6. General sources of naval law. Very generally, there are two sources of naval law: (1) written sources, and (2) unwritten sources.

The sources of written naval law are:

1. The Constitution of the United States.
2. Statutory enactments including *The Articles for the Government of the Navy.*
3. *Navy Regulations.*
4. Orders and instructions including *Naval Courts and Boards, 1937.*

The sources of unwritten naval law are:

1. Decisions of the courts.
2. Decisions of the President and the Secretary of the Navy and the opinions of the Attorney General and the Judge Advocate General of the Navy.
3. Court-martial orders.
4. Customs and usages of the service.

3–7. The Constitution of the United States. Historically, much of our naval law existed before the adoption of the Constitution or the formation of the United States. With the Constitution, however, all our public law began either to exist or to operate anew, and this instrument, therefore, is generally referred to as the source of the military law of the United States. The provisions of the Constitution which may be regarded as the source or sanction of, or authority for, our existing naval law may be divided into two broad categories: (1) provisions of Congressional empowerment, and (2) provisions of executive empowerment.

Provisions of Congressional empowerment. Congress is empowered:

1. To define and punish . . . offenses against the law of nations.
2. To declare war, grant letters of marque and reprisal; and make rules concerning captures on land and water.
3. To raise and support armies.
4. To provide and maintain a Navy.
5. To make rules for the government and regulation of the land and naval forces.
6. To provide for calling forth the militia to execute the laws of the Union, suppress insurrection and repel invasions.
7. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States.
8. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States or in any department or officer thereof.

Provisions of executive empowerment. The President, as the executive power, is constituted *Commander-in-Chief* of the Army and Navy of the United States, and of the militia of the several states when called into the actual service of the United States. He is empowered to appoint, and is required to commission, the officers of the Navy, etc.; and it is made his duty to take care that the laws be faithfully executed.

3–8. Statutory enactments. In accordance with the power of Congress to make rules for the government and regulation of the land and naval forces, it has enacted various statutes concerning the Navy. The most important of these enactments is the *Articles for the Government of the U. S. Navy.* The articles appear in Appendix A of this text; in Chapter 1 of *Navy Regulations*, and in Appendix B of *Naval Courts and Boards, 1937.* However, there are many important statutory provisions respecting the administration of the Navy which are not embraced in these articles but are to be found in the *Revised Statutes* and in the volumes of the *Statutes at Large;* the former being a codification of the laws of the United States which were in existence prior to December 1, 1873, and the latter containing statutes subsequently enacted. The code of the laws of the United States (*U. S. Code*) contains a codification of all the general and permanent laws of the United States in force on the date of its enactment. The statutes relating to the Navy are collected in a departmental publication entitled *Laws Relating to the Navy, Annotated.*

3–9. Navy Regulations. The authority for *Navy Regulations* is to be sought, primarily, in the distinctive functions of the President as Commander-in-Chief and as the executive head of the government. His function as Commander-in-Chief authorizes him to issue, personally or through his military subordinates, such orders and directions as are necessary and proper to insure order and discipline in the Navy. His function as executive empowers him, personally or through the Secretary of the Navy, to prescribe rules, where requisite, for the due execution of the statutes relating to the naval establishment. In naval matters the President speaks and acts through the Secretary of the Navy, and regulations issued by the latter are, in legal contemplation, the regulations of the President. In some instances the President expressly approves; in others his approval is implied; but the legal effect is the same, all regulations promulgated by the Secretary of the Navy being equally binding and having the full force and effect of law whether or not expressly approved by the President.

3–10. Orders and instructions. In addition to *Navy Regulations*, there are other regulations and instructions issued by the Secretary of the Navy for the information and guidance of persons in the naval establishment, and which have full force and effect as regulations on all such persons. Among these are *Naval Courts and Boards, 1937*, general orders, uniform regulations, signal and drill books, manuals of the separate bureaus of the Navy Department, and other similar publications. In one context the description of *regulations* scarcely differs from *orders* except that they are of a more permanent character. Often originated merely as orders, they have become regulations by being incorporated as such in authorized publications. In a

strict context *regulations* are considered as being especially in aid or complement of statutes.

Naval Courts and Boards, 1937 covers the operation of the court-martial system, deals fully with the various crimes and offenses, the evidence which can be used to prove them, and the sentences which can be imposed. The original text as well as the changes thereto were issued by the Secretary of the Navy with the express approval of the President of the United States, and with the following statement of promulgation: "*Naval Courts and Boards, 1937*, is issued for the government of all persons attached to the naval service. It is hereby required and directed that all officers and other persons belonging to the Navy, so far as the duties of each are concerned, make themselves acquainted with, observe, and comply with the provisions contained herein."

Another volume that should be an invaluable reference source for the Navy and which well deserves a place on the reference shelf is the *Navy Department Bulletin*. Its purpose is to include all unclassified and restricted circular letters and *Alnavs*. This volume supersedes all semi-monthly restricted issues of the *Bulletin*.

3–11. Decisions of the courts. The decision of a court which establishes or declares a rule of law may be reduced to writing and published in the reports; but this report is not the law. It is merely evidence of the law. It is only a written account of one application of a legal principle, which principle, in the theory of the common law, is still unwritten. This applies as well to the decisions of executive authorities, opinions of law officers of the Government, and court-martial orders.

The Constitution provides for a judicial branch of our Government for the purpose of interpreting the laws. This function is exercised by means of the Federal courts before which doubtful questions of law arising under the Federal Government are brought for decision. Of these, the Supreme Court ranks first in point of authority; but the decision of an inferior Federal court, while not equal in weight to that of the Supreme Court, is none the less authoritative in the absence of a reversal by a superior tribunal. Accordingly, when a law relating to the Navy has been authoritatively interpreted by the proper courts, such interpretation becomes in effect a part of the law as fully as though it had been specifically written therein by Congress. Decisions of State courts also frequently relate to the interpretation of laws affecting the Navy, but such decisions are not controlling on the Federal Government and are merely instructive.

3–12. Decisions and opinions. Closely related to the decisions of courts in point of authority are the decisions of the President and the Secretary of the Navy. Under this classification fall also the opinions of the Attorney

General, the chief legal adviser of the executive branch of the Government, and of the Judge Advocate General of the Navy. While the Navy Department is bound by interpretations placed on statutes by the Federal courts, this limitation does not restrict the department in making authoritative decisions on matters coming within its jurisdiction not governed by statute. No statute lays down the rules of evidence to govern naval courts-martial and the decisions of the department on such a question are the highest authority for a naval court-martial to follow.

Distinction between decisions and opinions. When the Attorney General or the Judge Advocate General renders an opinion, he states his inference or conclusion of what, in contemplation of law, *would or should follow* from a given state of facts; and where an opinion of the Attorney General or Judge Advocate General is received, it may be followed, or not, in the judgment of the person whose duty it is to act in the premises. A decision, however, is a ruling, or command, that certain things *shall follow* from a given state of facts, and departmental decisions are made by the head of the Department. Where a decision has been rendered in any case by the Secretary of the Navy, it is an authoritative ruling, or instruction, which has all the force and effect of an order or command. As with a court decision, an opinion or statement of the reasons which influenced the head of the Department in arriving at his conclusions and which influenced him in rendering his decision may be presented with it. In other cases the decision may stand alone. In either case, it is the decision, and not the opinion, which is binding upon all persons in the naval establishment whose cases come within its terms. From the above it will be observed that the Attorney General and the Judge Advocate General do not render decisions, and that the President and the Secretary of the Navy do not render opinions.

3–13. Court-martial orders. The decisions of the department on questions of law and evidence are promulgated to the service through the medium of court-martial orders. Article 74 of *Navy Regulations* provides that court-martial orders shall have full force and effect as regulations for the guidance of all persons in the Naval Establishment. Officers of the naval service are responsible for the observance of instructions contained therein, just as they are responsible for the observance of other lawful regulations. It naturally follows that in the application of naval law there arise, from time to time, questions which have to be decided by the Navy Department. The more important of such decisions are published in court-martial orders for the information of the naval service.

In this connection it is to be noted that the following publications are highly essential for the proper administration of naval law and should, therefore, be contained in the library of every command. They may be

obtained from the office of the Judge Advocate General, Navy Department, Washington, D. C.: (1) *Naval Digest, 1916;* (2) *Compilation of Court-Martial Orders, 1916-1937,* consisting of volumes 1 and 2 and cumulative index; (3) *Court-Martial Orders, 1938-1944,* consisting of cumulative pamphlet editions with yearly indexes. Through these publications it is possible for officers, called upon to apply naval law, readily to find the decisions of the department affecting the application of this law. Since it occasionally becomes necessary to overrule or to restrict or enlarge the scope of prior court-martial orders, the latest court-martial order is generally the best authority and should be followed.

3–14. Customs and usages of the service. Circumstances from time to time arise for which there are no written rules to be found. In such cases customs of the service govern. Customs of the service may be likened, in their origin and development, to the portions of the common law of England similarly established. But *custom* is not to be confused with *usage;* the former has the force of law, the latter is merely a fact. There may be usage without custom, but there can be no custom unless accompanied by usage. Usage consists merely of the repetition of acts, while custom is created out of their repetition.

Custom. The following are the principal conditions to be fulfilled in order to constitute a valid custom: (1) it must be long continued, (2) it must be certain and uniform, (3) it must be compulsory, (4) it must be consistent, (5) it must be general, (6) it must be known, (7) it must not be in opposition to the terms and provisions of a statute or lawful regulation or order.

As usage constantly observed for a long period results in the establishment of a custom, so long-continued nonusage will operate to destroy a particular custom; that is, to deprive it of its obligatory character.

The field of operation of the unwritten naval law is extensive. It is applied in defining certain offenses against naval law and in determining whether certain acts or omissions are punishable as such—as in cases coming under Article 22 of the *Articles for the Government of the Navy.* At times, also, custom is appealed to as a rule of interpretation for terms technical to the naval service. Custom as used in the military service is found, for example, in the procedures of military courts; whether facts alleged in a particular specification constituted a military offense, such as *was it a lawful order,* or was the accused *on duty* at the time alleged; did the words or acts of the accused constitute *conduct unbecoming an officer and a gentleman.*

Usage. Mere practices or usages of service, although long-continued, are not customs and have none of the obligatory force which attaches to customary law. The fact that such usages exist, therefore, can never be

pleaded in justification of conduct otherwise criminal or reprehensible, nor be relied upon as a complete defense in a trial by court-martial. With the permission of the court, however, they may be introduced in evidence, with a view to diminishing to some extent the degree of criminality involved in the offense charged. An example of such a usage can be found in the practice of persons smoking tobacco in unauthorized places or at unauthorized times. The fact that such usage exists cannot be pleaded in justification by one who is apprehended in such an act.

3–15. Naval law and the exercise of authority. Where law confers authority on an individual, it should define the extent and the limitations of that authority and provide the means whereby he is enabled to exercise his authority. These definitions appear in the *Articles for the Government of the Navy* and, in greater detail, are stated in the *Navy Regulations.* The laws and regulations concerning the manner in which one exercises authority are as specific as those laws and regulations which require that this authority shall be respected. Officers in authority are enjoined to exercise that authority with justice and humanity. Cruel and unusual punishments are positively forbidden and only those punishments authorized by the *Articles for the Government of the Navy* are to be resorted to, and then only when the guilt of an accused person has been fully established. *Navy Regulations,* Article 97, provides that "Superiors of every grade are forbidden to injure those under their command by tyrannical or capricious conduct, or by abusive language. Authority over subordinates is to be exercised with firmness, but with justice and kindness." If any person in the Navy considers himself oppressed by his superior or observes in him any misconduct he is required to represent such oppression, or misconduct, to the proper authority, as set forth in *Navy Regulations,* Article 98. For redress of wrongs, Article 99, *Navy Regulations,* details the manner in which the application may be made. Thus, individuals are safeguarded from the caprice or injustice of a superior.

While much is to be expected of an individual's sense of justice and reason, it is to be remembered that specific laws and regulations exist to govern the Navy. A thorough knowledge and understanding of them is definitely required of each member of the naval establishment.

4. JURISDICTION

4–1. Jurisdiction of naval courts-martial. The jurisdiction of a particular court is the legal power, right, or authority of such court to hear and determine cases legally referred to it, and to adjudge sentences within prescribed limitations.

The Fifth Amendment of the Constitution, which in effect provides that persons charged with crimes shall be proceeded against by indictment, etc., except in military or naval cases, has sometimes been viewed as a source of authority for naval courts-martial. The better view, however, is that it is a declaratory recognition and sanction of an existing military jurisdiction rather than a source or original provision initiating such a jurisdiction. The jurisdiction of naval courts-martial is statutory and is limited to offenses that are provided for in, or are within the purview of, the *Articles for the Government of the Navy* and other enactments of Congress. The jurisdiction thus conferred is exclusively criminal in character, being solely for the purpose of the maintenance of naval discipline. Courts-martial have no power to adjudge the payment of damages or to collect private debts. As naval courts-martial are courts of limited jurisdiction, their records must show affirmatively that they have authority to hear and determine cases coming before them for trial, and should clearly establish their jurisdiction. A particular court-martial has authority only to try men specifically ordered tried before it, and has no authority to try a man ordered tried before another court.

4–2. Conditions necessary to show jurisdiction. The following are necessary conditions to the jurisdiction of every naval court-martial: (1) it must be convened by an officer duly empowered to do so, and (2) it must be legally constituted; that is, it must be composed of members authorized by statute to sit upon such court. In addition, there must be jurisdiction as regards to (1) place, (2) time, (3) person, and (4) offense.

4–3. Convened by an officer empowered to do so. The officers who are empowered to convene courts-martial are named in the *Articles for the Government of the Navy* and subsequent statutes. When an officer is specially authorized by the Secretary of the Navy to convene a court-martial, the precept must cite the authorization in order to show affirmatively the jurisdiction of the court. No one other than the Secretary of the Navy

can give such authority. The reviewing power, as well as the convening power, of a court-martial vests in the office, not in the person of the authority so acting. When the officer who has convened the court has been relieved or is absent, it is competent for his successor in office, whether temporary or permanent, to act as reviewing authority. In the case of a summary court-martial the court must be convened by the commanding officer of the accused. The precept and the specification must both be signed by the commanding officer of the ship, station, etc., to which the accused is attached at the time of trial. This holds true although the accused be attached to the ship or station only temporarily.

Deck courts—Article 64 AGN. All officers who are authorized to order either general or summary courts-martial may order deck courts.

Summary courts-martial—Article 26 AGN. Summary courts-martial may be ordered by (1) the commanding officer of any vessel, (2) the commandant of any navy yard or naval station, (3) the commanding officer of any brigade, regiment, or separate or detached battalion, or other separate or detached command, or marine barracks, and (4) when empowered by the Secretary of the Navy, by the commanding officer or officer in charge of any command not specifically mentioned in the foregoing.

General courts-martial—Article 38 AGN. General courts-martial may be convened: (1) by the President, the Secretary of the Navy, the commander-in-chief of a fleet or squadron, and the commanding officer of a naval station beyond the continental limits of the United States; and (2) when empowered by the Secretary of the Navy, by the commanding officer of a squadron, division, flotilla, or larger naval force afloat, and of a brigade or large force of the naval service on shore beyond the continental limits of the United States; and (3) in time of war, if then so empowered by the Secretary of the Navy, by the commandant of any navy yard or naval station, and by the commanding officer of a brigade or larger force of the Navy or Marine Corps on shore not attached to a navy yard or naval station.

Absence of duly appointed commanding officer. During the absence of the regularly assigned commanding officer, the command with all its authority and precedence devolves and rests upon the officer eligible to command next in rank who may be present and on duty with such command. If one of the attributes of a commanding officer is the power to convene, order, and approve courts-martial, in the absence of that officer the same power is vested in the officer eligible to command next in rank who may be present and on duty with such command. This is true even though the regular commanding officer is temporarily absent on official business and, in the legal sense, is not on leave. It is true that Article 25 of *AGN* provides that: "No officer who may command by accident, or in the absence of the commanding officer, except when such commanding

officer is absent for a time by leave, shall inflict any other punishment than confinement." However, the foregoing article has no bearing on the power to convene a court-martial or to order an accused tried by a court-martial, as such action does not inflict a punishment but convenes or orders a court to hear and determine the issues, and to adjudge a sentence in case of a finding of guilt. If the commanding officer is absent from his command during a period of time or under such circumstances that the command devolves upon another convening authority, the latter officer should convene, order and approve courts as *commanding officer*, without reference to the absence of the regular commanding officer. This holds true even though he is approving a court convened by the regular commanding officer or is ordering an accused tried by a court convened by the regular commanding officer.

Temporary command without actual transfer of records. In the case of a man temporarily within a command without *actual transfer* from his permanent station (i.e., his accounts and records are not transferred from his permanent station during his temporary absence), concurrent jurisdiction exists in two officers to order the man's trial by court-martial if he is, in fact, under the command of both. The question as to which should order the trial in such cases involves consideration of policy only. The statute requires no more than that the man on trial shall be under the command of the officer ordering the court. There is no condition or limitation based upon the duration, or the permanent or temporary character of the official relation existing between the accused and his commanding officer. Whether or not the accused is actually under the command of the officer ordering the court is a question of fact for consideration of the convening authority in the first instance, and properly to be alleged and proved in the case of each individual brought to trial. From a legal standpoint, no objection would be made to cases where the specification, as found proved by the court, set forth that the accused was under the command of the officer ordering the trial, unless the record disclosed facts which contradicted or wholly failed to support such allegation. As pointed out, there is a question of policy involved in deciding which of two officers having concurrent jurisdiction should bring the accused to trial. This question is properly one for consideration by the administrative officers concerned, and not to be confused with questions of law.

Extrinsic evidence in support of jurisdiction. Where the jurisdiction of a court-martial is attacked in a collateral proceeding, it is sufficient to establish the court's jurisdiction by extrinsic evidence; that is, evidence not contained in the court-martial record and introduced for the first time in the collateral proceedings in which the jurisdiction of the court-martial has been attacked. It has therefore been the practice of the Navy Department, where deck court and summary court-martial specifications have

omitted the attachment allegation, or the officer signing a precept or specification has failed to sign as *commanding officer*, to accept, from the convening authority, a report that the accused was, in fact, attached to his command at the time the specification was preferred; or, as the case may be, that the officer signing the precept or specification was in fact the commanding officer. Such jurisdictional facts being so shown, the Secretary of the Navy will not disapprove the proceedings because of the court's lack of jurisdiction.

Construction battalions and units. Authority of *officers-in-charge* of naval construction battalions to convene summary courts-martial and deck courts is contained in *SecNav letter SO3205 C over ROS:jmg*, dated 8 April 1942, as follows: "Pursuant to the authority vested in me by provisions of the *U. S. Code*, Title 34, Section 1200, Article 26 (Act of August 29, 1916, Chap. 417; 39 Stat. 586), the Officers-in-Charge of Construction Battalions or Construction Battalion Units are hereby authorized to convene summary courts-martial for the trial of enlisted men in the naval service under their charge. The authority to order deck courts automatically follows from the authority to order summary courts-martial. Article 64(a), *Articles for the Government of the Navy*."

4–4. Legally constituted. The officers who may be members of a court-martial are named in the *Articles for the Government of the Navy*. The judge advocate of a general court-martial should be an officer who is skilled in law. Where there is none such available, an officer to officiate as such may be designated. A retired officer may be ordered as a member of a court-martial, and it need not appear specifically on the record that he has been ordered to active duty.

Deck courts—Article 64 AGN. Deck courts shall consist of one commissioned officer only.

The provisions of Section 692 (2), *Naval Courts and Boards, 1937*, that a deck court officer be of the rank of lieutenant in the Navy or captain in the Marine Corps and of not less than six years' experience, were intended to insure that this phase of the administration of discipline would be generally in capable hands. However, if exigencies of the service make it impracticable to adhere to the above qualifications, the convening authority may deviate therefrom and order *any commissioned officer under his command* as deck court officer.

Summary courts-martial—Article 27 AGN. A summary court-martial shall consist of three officers not below the rank of ensign, as members, and of a recorder. The commander of a ship may order any officer under his command to act as recorder.

The above provisions admit of a commissioned warrant officer being ordered as a member of a summary court-martial, and a warrant officer

as a recorder thereof. When a trial by summary court-martial is decided upon, and a sufficient number of officers of the proper rank to compose the court are not under the command of the convening authority, the latter shall request the senior officer present to detail the additional officers necessary. The senior officer present shall, if practicable, comply with such request, in which case he shall, orally or in writing, notify the officers detailed. Where the exigencies of the service make it impossible to appoint at least one officer as a member of a summary court-martial of the rank of lieutenant in the Navy or captain in the Marine Corps as set out in Sections 346 and 651 (5) *Naval Courts and Boards, 1937*, the convening authority of a summary court-martial may deviate therefrom and order an officer as senior member thereof, whose rank is below that of lieutenant in the Navy or captain in the Marine Corps, without setting forth the circumstances in a letter to the Department or attaching copies of such a letter to each case tried by a court so constituted.

General courts-martial—Article 39 AGN. A general court-martial shall consist of not more than thirteen nor less than five commissioned officers as members; and as many officers, not exceeding thirteen, as can be convened without injury to the service shall be summoned on every such court. But in no case, where it can be avoided without injury to the service, shall more than one-half, exclusive of the president, be junior to the officer to be tried.

Except in cases where officers of the rank of lieutenant in the Navy and captain in the Marine Corps, or above, are not available, the circumstances of which shall be reported to the Department by the convening authority, no officer shall be ordered as a member of a general court-martial who is below the rank of lieutenant in the Navy or captain in the Marine Corps. In case an officer is to be tried, Article 39 *AGN* requires that, except where it cannot be avoided without injury to the service, at least one-half of the members be senior to the accused. As a matter of policy in such a case all should be senior. The convening authority is justified in departing from this rule only under the most unusual circumstances. It is the policy of the Navy Department to require the president to be a line officer. In detailing officers for the trial of a staff or marine officer it is proper, if the exigencies of the service permit, that at least one-third of the court be composed of officers of the same corps as, and senior to, the person to be tried.

4–5. Jurisdiction as to place. The jurisdiction of a naval court-martial, except for the offense of murder, extends not only to every part of the United States but also covers all offenses of which it is authorized to take cognizance committed by persons in the Navy, whether within or beyond such territorial limits. But when the *place* is necessary to make an offense, as for instance,

having a narcotic aboard ship in violation of Article 118 of *Navy Regulations*, the place must be alleged in order to give jurisdiction to the court.

Article 6 *AGN* provides that "*if* any person belonging to any public vessel of the United States commits the crime of murder without the territorial jurisdiction thereof, he may be tried by court-martial and punished with death." This precludes a court-martial taking jurisdiction of murder committed within the territorial jurisdiction of the United States. If the crime is committed on the high seas or within a foreign country there is no doubt that courts-martial, having assumed jurisdiction thereof, may proceed to a final judgment.

4–6. Jurisdiction as to time. As courts-martial do not depend upon a state of war for their jurisdiction, except in the case of a limited number of offenses which pertain solely to a state of war, the jurisdiction of naval courts is restricted in point of time only by the operation of the statutes of limitation.

Statute of limitation: offenses in general—Article 61 AGN. No person shall be tried by court-martial or otherwise punished for any offense, except as provided in the following article, which appears to have been committed more than two years before the issuing of the order for such trial or punishment, unless by reason of having absented himself, or of some other manifest impediment he shall not have been amenable to justice within that period.

Statute of limitation—desertion in time of peace—Article 62 AGN. No person shall be tried by court-martial or otherwise punished for desertion in time of peace committed more than two years before the issuing of the order for such trial or punishment, unless he shall meanwhile have absented himself from the United States, or by reason of some other manifest impediment shall not have been amenable to justice within that period, in which case the time of his absence shall be excluded in computing the period of the limitation; provided, that said limitation shall not begin until the end of the term for which said person was enlisted in the service.

Offense of desertion. The act of desertion is done and completed at the moment a person absents himself with the requisite intent. It is not a continuing offense. The two-year period of limitations prescribed by Article 61 *AGN* commences to run, in the case of desertion in time of war, from the date on which the offender first absents himself without leave; the limitation for desertion in time of peace, however, by Article 62 *AGN* begins to run from the end of the term for which enlisted.

4–7. Jurisdiction as to persons. The classes of persons in the naval service and subject to the naval jurisdiction of the United States include all members of the following organizations: (1) the Regular Navy, active and retired, midshipmen, and the Navy Nurse Corps; (2) officers and enlisted

personnel of the Naval Reserve, and the Marine Corps Reserve, when employed on active duty, authorized training duty, with or without pay, drill, or other equivalent instruction or duty, or when employed in authorized travel to and from such duty, drill, or instruction, or during such time as they may by law be required to perform active duty in accordance with their obligations, or while wearing a uniform prescribed for the Naval Reserve, or Marine Corps Reserve; and, at all times, enlisted men transferred in accordance with law from the regular Navy or Marine Corps to the Fleet Naval Reserve or Fleet Marine Corps Reserve or retired list; and officers transferred to the retired list of the Naval Reserve Forces or the Naval Reserve or the Marine Corps Reserve with pay; (3) the Marine Corps, when not detached for duty with the Army by order of the President; (4) the Coast Guard, the Lighthouse Service, the Coast and Geodetic Survey, and the Public Health Service of the United States, while serving as a part of the Navy in time of war or national emergency.

De facto enlisted men. *De facto* enlisted men are subject to the jurisdiction of a court-martial. A fraudulent enlistment is still an enlistment, and a man so enlisting may be tried by court-martial. But where the man at the time of his enlistment was under an absolute disability to enlist, that is to say, was under the age of fourteen years, or was insane or intoxicated, he cannot be legally tried for desertion, nor for fraudulent enlistment if he received no pay or allowances.

When jurisdiction over person terminates. The jurisdiction of naval courts-martial over officers, midshipmen, nurses, and enlisted personnel ordinarily ends when they become regularly separated from the service by acceptance of resignation or discharge. However, a discharge obtained by fraud does not oust the jurisdiction of a court-martial. The mere expiration of the period of enlistment of an enlisted person, without the concurrence of any other circumstances whatsoever, does not operate to dissolve his status and does not of itself relieve him of liability to military law for offenses committed during the period of enlistment. Discharge by expiration of enlistment does not take effect, notwithstanding delivery of the discharge certificate, until midnight of the last day of service. Discharge at any other time or for any other cause takes effect on delivery of the certificate. An officer dropped from the rolls by order of the President for absence without leave for three months or more, in accordance with the act of 2 April 1918, cannot thereafter be tried by court-martial, he having by this act become fully separated from the service and become a civilian.

The general rule is subject to the following exceptions: If any person, being guilty of any of the offenses of fraud, embezzlement, etc., against the United States, while in the naval service of the United States, receives his discharge or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the

same manner and to the same extent as if he had not received such discharge nor been dismissed. Except for offenses provided for in Article 14 *AGN*, a court-martial may not try an individual who has been formally separated from the Navy and is no longer in the service unless proceedings were instituted against him while he was in the service. However, if an officer reenters the service and his trial is not barred by the statute of limitations, it has been judicially decided that he may be tried by court-martial and punished for an offense committed during his previous service, whether or not the offense is one for which trial by court-martial after separation from the service is specifically authorized by statute. Similarly, the Navy Department has passed cases as legal in which enlisted men have been convicted by court-martial of offenses committed in a previous enlistment, although such offenses were not provided for in Article 14 *AGN*. An officer dismissed from the service by the President in time of war may be tried by court-martial on his own application, in accordance with the provisions of Article 37 *AGN;* where jurisdiction has once attached it cannot be divested by mere subsequent change of status. An officer or man sentenced to dismissal or discharge and imprisonment may be held by the military authorities to serve out the period of imprisonment notwithstanding that the sentence of dismissal or discharge is first executed.

Extension of naval courts-martial jurisdiction. In addition, those persons named in the 5th (spies), 14th, 37th, and 62nd *Articles for the Government of the Navy*, are subject to the provisions of the *Articles for the Government of the Navy* and amenable to trial by court-martial. Under the laws of war and the provisions of the Geneva (Prisoners of War) Convention of 1929, prisoners of war are subject to the jurisdiction of a naval court-martial. Prisoners of war are entitled to the special rights set forth in the Geneva Convention and punishments awarded them should not be any more severe than punishments awarded persons in the naval service for similar offenses.

Also, civilians outside the continental limits of the United States accompanying or serving with the United States Navy, the Marine Corps, or the Coast Guard when serving as a part of the Navy, including officers, members of crews, and passengers on board merchant ships of the United States, and including those employed by the Government, or by contractors and sub-contractors engaged on naval projects, and persons within an area leased to the United States which is without the territorial jurisdiction thereof and which is under the control of the Secretary of the Navy, are, in time of war or national emergency subject to the *Articles for the Government of the Navy* except insofar as those articles define offenses of such a nature that they can be committed only by naval personnel. Jurisdiction to try civilians by court-martial under the foregoing conditions does not, however, extend to Alaska, the Canal Zone, the Hawaiian Islands, Puerto Rico, or the

Virgin Islands, except the islands of Palmyra, Midway, Johnston, and that part of the Aleutian Islands west of longitude one hundred and seventy-two degrees west.

4-8. Jurisdiction as to offenses. As naval courts-martial are courts of statutory jurisdiction, statutory authority must be found for offenses chargeable before such courts. Such authority is contained in the *Articles for the Government of the Navy*, which define specific offenses against naval law and comprehend other offenses by one broad provision (Article 22a). Article 22a *AGN* provides for the punishment of "all offenses . . . not specified in the foregoing articles." This provision leaves within the jurisdiction of courts-martial cases not so specified, but recognized as military offenses by the usages of the naval service. The jurisdiction of courts-martial extends to the trial and punishment of acts of military or naval officers which tend to bring disgrace and reproach upon the service of which they are members, whether those acts are done in the performance of military duties, or in a civil position, or in a social relation, or in private business.

4–9. Jurisdiction cannot be divested by act of accused. A court-martial having once duly assumed jurisdiction of a case cannot, by any wrongful act of the accused, be ousted of its authority or discharged from its duty to proceed fully to try and determine according to law and its oath. Thus the fact that, after arraignment and during the trial, the accused has escaped from military custody furnishes no ground for not proceeding to a finding, and, in the event of conviction, to a sentence in the case; and the court may and should find and sentence as in any other case. During such absence it is proper for counsel to continue to represent the accused in all respects as though present.

4–10. Appelate jurisdiction. When a court-martial is lawfully constituted, has jurisdiction of the person and of the offense of an accused, and the sentence imposed is a legal one, civil courts are without power to review its proceedings. When the proceedings, findings, and sentence in such case have been approved by the proper naval authority, such approval is final and there is no other tribunal to which an appeal can be taken. But when a court-martial is not legally constituted, is without jurisdiction, or adjudges an illegal sentence, its proceedings may be attacked in the proper Federal civil court either by means of a writ of habeas corpus, where there is unlawful restraint, or, in the case of illegal dismissal, by bringing suit for pay thereby withheld.

4–11. Jurisdiction of Army courts-martial to try persons in the Navy, and vice versa. There is no authority to try a man in the naval service before

an Army court-martial, as, for instance, for an offense committed on an Army transport, except where the jurisdiction is especially conferred by 10 *U. S. Code* 1473, and 34 *U. S. Code* 715 and 716, over marines and members of the Medical Department. Conversely, a Navy court-martial cannot try a person in the Army.

4–12. Double jeopardy. When an act, prohibited both by naval law and the civil law of the Federal Government, is committed within Federal jurisdiction, and the offender is tried either by a court-martial or a Federal civil court, both of which derive their jurisdiction from the same source—the Federal Government—then the same act constitutes but one offense, namely, an offense against the United States, and trial by either is a bar to trial by the other on the ground of double jeopardy.

One of the well known judicial safeguards, expressly guaranteed by the constitution to an accused, is that he shall not twice be put in jeopardy for the same offense. It was originally thought that military jurisdiction of military tribunals being separate and apart from the criminal jurisdiction of Federal courts, trial of an accused person by one tribunal would not bar trial by the other, and that the problem of double jeopardy was not involved. However, the Supreme Court in a case where an accused was tried by a Federal court of the Philippine Islands after an acquittal by court-martial held: "If a person be tried for an offense in a tribunal deriving its jurisdiction and authority from the United States and is acquitted or convicted, he cannot again be tried for the same offense in another tribunal deriving its jurisdiction and authority from the United States."

4–13. Double amenability. Courts-martial have exclusive jurisdiction to try offenders only for acts constituting offenses against naval law. They also have authority to try offenders for certain acts which, besides constituting offenses against naval law, are also civil crimes of which civil courts may take cognizance. In such cases the same act may be an offense both against naval law and against a State or foreign government. Therefore, when such offender has been brought to trial in a State or foreign court, he may, nevertheless, thereafter be brought to trial by naval court-martial, notwithstanding his conviction and punishment, or his acquittal by such civil court, and vice versa.

When the same act constitutes two offenses, that is, one offense against the sovereignty of a State and another against that of the Federal Government, prosecution and punishment by the Federal Government after prosecution by the State, or vice versa, does not amount to double jeopardy. Thus, if one feloniously kills a United States marshal, an acquittal in the State court of a charge of murder under the State law cannot be pleaded in bar of trial in a Federal court for a charge of murder under the Federal

law, even though the same evidence supports both charges. In such a case the laws of two sovereigns have been violated by a single act, and the offender is therefore amenable to trial by the tribunals of both.

4–14. Federal immunity. Where an agent, civil or military, of the Federal Government is held by a State to answer for an act done pursuant to the actual or apparent authority of his office, he is immune to State prosecution. It is an established doctrine that one cannot be tried for an offense committed against a State in performance of a Federal duty. The government of the United States and the government of a State are distinct and independent of each other within their respective spheres of action, although existing and exercising their powers within the same territorial limits. Whenever any conflict arises between the enactments of the two sovereignties, or in the enforcement of their asserted authorities, those of the Federal Government have supremacy until the conflict is resolved by the tribunals of the United States. To illustrate, if a person is held by an officer of the United States under claim of authority of the United States, a State court cannot entertain a writ of habeas corpus to determine the validity of the claim of the United States. Only the United States itself can determine the validity of its claim.

4–15. Power of civil authorities over naval personnel. Except for the immunity arising for acts done by virtue of their office, in time of peace naval personnel are answerable to civil authorities for any offense which they commit. In other words, civil courts have jurisdiction to punish naval personnel for offenses against civil laws. There is nothing inherent in war that deprives the civil courts of jurisdiction over naval personnel, but expediency and necessity dictate that in time of war the military forces shall have the right to withhold men from civil authorities. The military forces have, upon a proper showing, been given the further right to demand and obtain custody of their personnel already held by the civil authorities. Irrespective of this right, it is the policy of the Navy Department to cooperate with the civil authorities of the various states in cases where persons in the naval service are charged with the commission of crimes, and it is only in exceptional cases that the Navy Department has demanded custody of such persons or declined to deliver them to the civil authorities.

4–16. Delivery of men to civil authorities. It should be noted that when a person is in naval custody, his commanding officer does not have the authority to deliver him to the civil authorities until the consent of the Secretary of the Navy has first been had. After consent has been obtained the person may be delivered to civil authorities upon certain terms laid down by the Secretary of the Navy. This includes the demand to produce under a writ of habeas corpus.

Commanding officer must notify Department. In no case will commanding officers of vessels or shore stations of the Navy or Marine Corps deliver to the civil authorities, State or Federal, any person in their custody or under their control without first communicating with the Secretary of the Navy and awaiting his instructions. The Secretary of the Navy will promptly issue the necessary orders in the case, or make request upon the Attorney General, in accordance with Title 5, Chapter 5, *U. S. Code*, to furnish such legal assistance to the commanding officer concerned, as the interests of the United States involved in such case may demand.

Refers to all cases. The words *in no case*, as used in the above paragraph, are intended to refer to every case in which the civil authorities, Federal or State, request or demand the delivery to them of any officer or enlisted man in the Navy or Marine Corps, whether for the purpose of determining the legality of his detention by the naval authorities, or of trying him for a violation of the Federal or State laws, or of securing the testimony of a naval prisoner as a witness in a civil court. The instructions contained in the above paragraph accordingly apply to and include all cases in which writs of habeas corpus, requisitions of the governor or chief executive of any State, *warrants ad testificandum*, or other civil process of any kind are served on commanding officers of the Navy or Marine Corps, afloat or ashore, including navy yards where the State has retained jurisdiction for service of process, for the purpose of securing the delivery of any person under their control to such civil authorities.

Alnav 95, 1942. Blanket permission to deliver a person in custody to civil authorities was granted by the Secretary of the Navy in *AlNav* 95, 1942, which modifies the preceding paragraph as follows:

> Pursuant to provisions of appendix C 4 and 8, Naval Courts and Boards, authority is granted to deliver in continental United States, Alaska, Hawaii, and Canal Zone enlisted men Navy, Marine Corps, and Coast Guard to civil authorities, Federal, State, Territorial, or local, without procuring further authority from Navy Department, where proper warrant presented. Report of delivery in each case will be forwarded to Navy Department with copy to BuNav, Marine Corps, or Coast Guard. Delivery will not be made without prior specific authority of Navy Department, where disciplinary proceedings are pending or man is undergoing sentence or where man is wanted by civil authorities other than Federal outside State, in which case provisions appendix C–9, Naval Courts and Boards, continue to apply, or where unusual circumstances exist that in opinion commanding officer warrants reference of case to Department.

Delivery of men to State authorities for trial. Appendix C-4, *Naval Courts and Boards, 1937* provides:

> In every case in which the Secretary of the Navy authorizes the delivery of any person in the Navy or Marine Corps to the civil authorities of a State, for trial, such person's commanding officer will, before making such delivery, obtain

from the Governor or other duly authorized officer of such State a written agreement that he will be informed of the outcome of the trial and that the person so delivered will be returned to the naval authorities at the place of his delivery or issued transportation to the nearest receiving ship (or marine barracks in the case of Marines) without expense to the United States or to the person delivered immediately upon the completion of his trial for the alleged misconduct which occasioned his delivery to the civil authorities, in the event that he is acquitted upon said trial, or immediately upon satisfying the sentence of the court in the event that he is convicted and a sentence imposed, or upon other disposition of his case, provided that the naval authorities shall then desire his return.

Form of agreement as to expenses. The following is suggested as a form of agreement acceptable to the Department in the cases referred to in Appendix C-4, *Naval Courts and Boards, 1937:*

In consideration of the delivery of . . . . , United States Navy (or United States Marine Corps), to . . . . , at . . . . , for trial upon the charge of . . . . , I hereby agree, pursuant to the authority vested in me as . . . . , that the commanding officer of the U. S. S. . . . . will be informed of the outcome of the trial and that said . . . . will be returned to the naval authorities at the aforesaid place of his delivery or issued transportation to the nearest receiving ship (or marine barracks, in the case of Marines) without expense to the United States or the person delivered immediately upon the completion of his trial upon the charge aforesaid in the event that he is acquitted upon said trial, or immediately upon satisfying the sentence of the court in the event that he is convicted and a sentence imposed, or upon other disposition of his case, provided that the naval authorities shall then desire his return.

The Department considers this agreement substantially complied with when the man is furnished transportation back to his station, and necessary cash to cover his incidental expenses en route thereto, and the Navy Department so informed.

Agreement not required of Federal authorities. Appendix C–8, *Naval Courts and Boards, 1937*, provides:

An agreement as to expenses will not be exacted as a condition to the delivery of men to the Federal authorities either in response to writs of habeas corpus, as witnesses, or for trial. However, in such cases the expenses will be defrayed as follows: The person who produces a man in a Federal court in response to a writ of habeas corpus or as a witness will keep an accurate account of expenses, and present same to the United States marshal for the district in which the court is sitting, who is the proper officer to settle such account, including the expenses of the return trip. Men desired by the Federal authorities for trial will be called for and taken into custody by a United States

marshal or deputy marshal; in such case the expense of transporting the man to the place of trial will, of course, be defrayed by the marshal. If the man is not convicted, or the case is dismissed, the man will be returned to the Navy and the necessary expenses paid from an appropriation under the control of the Department of Justice.

Governor's requisition necessary in certain cases. Appendix C–9, *Naval Courts and Boards, 1937,* provides:

> In cases in which the delivery of any person in the Navy or Marine Corps for trial is desired by the civil authorities of a State, and such person is not attached to or serving at a navy yard or other place within the limits of said State, requisition for the delivery of the party must be made by the Governor or chief executive of such State, addressed to the Secretary of the Navy, showing that the party desired is charged with a crime in that State for which he could be extradited under the Constitution of the United States, the enactments of Congress, or the laws of the State desiring his delivery. Such requisition should be forwarded to the Secretary of the Navy by mail for preliminary examination, together with the appointment of the agent of the State to whom it is desired that delivery be made. Thereupon, if the papers are found to be in due form, the Secretary of the Navy will send the necessary authorization to the designated agent permitting him to take the party into custody upon compliance with Section C–4.

Action where men are convicted by civil authorities. Whenever men delivered to the civil authorities for trial are convicted, the commanding officer will make full report of the offense and sentence to the Chief of Naval Personnel or the Commandant of the Marine Corps, as the case may be, with recommendation as to whether the man should be discharged as undesirable.

Additional instruction. In any case where the problem of delivery of men to civil authorities is involved, a complete and thorough study should be made of the instructions contained in Appendix C of *Naval Courts and Boards, 1937.*

4–17. Service of subpoena or other process on persons in the Navy. Commanding officers afloat or ashore are authorized to permit the service of subpoena, or other process, upon the person named therein, provided such person is within the jurisdiction of the court out of which the process issues; but such service will not be allowed without permission of the commanding officer first being obtained. Where the person in the naval service is on board ship, or at a naval station beyond the jurisdiction of the court, it is necessary that the process be presented to the man's commanding officer who will deliver the process to the person named therein and inform him that, if he is willing voluntarily to accept such service, he should indicate his acceptance in the manner provided. In the event the man declines to accept service, the commanding officer will return said warrant

with a statement to that effect. In cases in which service by mail is legally sufficient, the papers may be addressed to the man.

The above deals with the service of process and obtaining testimony in matters which are in litigation.

4–18. Interviewing and taking statements of naval personnel. Requests for permission to interview naval personnel or to obtain their statements, and inquiries relating thereto, concerning collisions between merchant vessels, shall be forwarded to the Office of the Judge Advocate General. That office will then arrange, insofar as it is practicable, to have the personnel requested available for interview by counsel representing all parties in interest, or such of them as may desire to attend at the same time. All interviews of naval personnel arranged in accordance with this provision will be conducted in the presence of an officer designated by the Judge Advocate General. If, during an arranged interview, an attempt is made to develop security matters, the disclosure of which would be detrimental to the interests of the United States, the officer present will immediately preclude that line of inquiry. It is intended that the procedure provided shall be administered in a manner that will preserve at all times the Navy Department's complete impartiality and total disinterestedness in any litigation arising out of the subject matter of the interview.

If any of the parties in interest desires statements from naval personnel, each statement shall be prepared under the direction of the officer present for the purpose of preventing the disclosure of any information that may be classified. A copy of the statement as signed by the maker shall be furnished to each party in interest, the person making the statement, and the Office of the Judge Advocate General (Admiralty Section).

The above deals with matters preliminary to litigation, that is, when counsel, agents, or investigators for steamship companies or underwriters seek to interview naval personnel and to obtain their statements, and is restricted to cases of collision between merchant vessels and cases involving damage caused by merchant vessels. *It does not apply where the interests of the United States are involved.*

4–19. The Marine Corps. Both by law and by its primary and fundamental character the Marine Corps belongs to, and is a part of, the Navy. It is subject to all laws pertaining to naval justice, excepting when detached for service with the Army by order of the President, when it is amenable to the *Articles of War*.

5. CONCEPTS OF NAVAL DISCIPLINE

5–1. Phases of discipline. *Naval Courts and Boards* can be said to establish the Navy's system for dealing with those charged with offenses, that is, the machinery of naval discipline. However, in considering the question of discipline, it is necessary to examine two included problems: (1) the cause of offenses, and (2) the treatment of convicted offenders. Discipline and punishment are not always synonymous, and an officer can prescribe the proper curative action for misconduct only if he understands the cause underlying such misconduct. In other words, he must combat the cause by action which is accurately calculated to produce the desired result. The question of punishment can be considered only when the cause of the offense has been correctly determined. The proper application of the punishment, or any other measures which the facts may warrant, completes *disciplinary action.*

5–2. General categories of offenders. The majority of the offenses, which by civil criminal law would be classified as serious misdemeanors or felonies, are attributable to a relatively small number of men. It is estimated that not more than three per cent of all naval offenders fall within this group. The only recourse with these men is to hold the discredit they bring to the Navy to a minimum by pursuing a policy of effective detection, prompt trial, and adequate sentence providing for discharge after a suitable period of confinement. A few may be rehabilitated while in confinement, but such a development is the only adequate reason for retention in the service.

There is a second group of offenders for whom no corrective action is feasible because their difficulties are attributable entirely to mental deficiencies. They are mental defectives, who, even with good intentions, will never be of any use in the naval service, and whose enlistment or induction is partially due to inadequate screening techniques under the press of wartime conditions. Separation from the service, by administrative discharge, or otherwise, is the only recourse.

There remains the major group, approximately eighty-five per cent of all offenders, not fundamentally criminals, and of adequate intelligence, who for one reason or another do not conform to the standards of naval discipline. Broadly speaking, these are the absentees. They are made up of casual offenders, of wilful evaders, and of the erratic and the irresponsible,

some of whom are classified by psychiatrists and psychologists as having psychopathic personalities. This section of the naval population presents a real disciplinary problem, but this problem is subject in a large part to solution if the underlying causes for the offenses are determined and appropriate countermeasures taken.

5–3. The cause of offenses. Approximately three-quarters of all disciplinary cases have their genesis in unauthorized absence. The remaining cases consist principally of other military offenses. A small percentage of cases relates to offenses which would constitute crimes of varying degrees of gravity in civilian life. The Navy is more concerned with the absence cases, because of their numerical importance and because the frequency with which they occur is more susceptible of being reduced by remedial measures. The basic or underlying causes for the commission of these and other military offenses are here considered.

Inadequate indoctrination. In peace time the normal training for recruits, before assignment to general service, is twelve weeks. During war time this period has of necessity, been on occasion reduced. Brevity of the recruit training period is apt to provide inadequate initial indoctrination. However, training is a continuous process in the service and recruit training is merely a foundation which requires further development throughout a man's entire naval career.

There appears to be a substantial unanimity of opinion in the service that the lack of respect for authority and the irresponsibility of many youths in the service is due to serious lack of home training. While the Navy can do little to improve these home conditions, the fact that they are assumed to exist indicates that naval training should be pointed toward overcoming this initial handicap. The obligation of the service in this respect was not always fully recognized. Although all stations were provided with chaplains to care for the spiritual welfare of these young men, and to advise them, there was often a lack of instruction as to the availability and advisability of using these and other services, such as the Red Cross and the Navy Relief Society. However, remedial action has been taken, where necessary, with results that are gratifying.

Inexperience of officers. Much of the excessive absenteeism results because many officers lack experience and knowledge in the art of handling enlisted men. The inexperience of practically all the younger officers, time and training alone can remedy. However, the fault has not lain entirely with these younger officers. Some older and experienced officers have been lax in observing the conditions which prevailed and in taking steps to correct them. Positive steps have been taken to improve the officer training programs in this respect, both in the indoctrination stage and in continuation of training in active service. The high command has directed that

senior officers give consideration to the education of junior officers in military leadership at least equal to that given to technical and operational fitness, and, in particular, that captains, executives, and heads of departments not only instruct inexperienced officers in the art of handling men but also maintain a close supervision in such matters. It may be confidently said that strict compliance with these orders and follow-ups to insure continued observation will reduce disciplinary infractions as well as produce beneficial results in the form of improved morale.

Homesickness. Many thousands of recruits have never before been away from home. It is natural that a large percentage of these men suffer from nostalgia, which, in the case of the weaker ones, results in unauthorized absence. Unfortunately, in many cases, they are encouraged in this by their mothers, wives, or other relatives, who, lacking familiarity with the difference between military absenteeism and industrial absenteeism, or scholastic truancy, do not appreciate the seriousness from the military viewpoint, or do not realize the consequences which are sure to follow. There is no question but that the entrance into a new and strange environment, together with the sudden change in the mode of life from individual irresponsibility to the rigors of naval discipline, involves a process of adjustment which may cause strong yearnings for home. This must be realized and counteracted as far as possible.

Domestic and marital troubles. Domestic and marital troubles, both real and imagined, are not infrequent causes of unauthorized absences. Some of this cannot be helped. But there are things which can be done to alleviate the situation. This requires a sympathetic attitude on the part of those immediately in charge of the recruits. It is implemented by giving clear and repeated instructions covering the granting of leave and liberty, by allowing requests to be presented at mast, by making officers available for advice, by the functioning of chaplains and morale and welfare officers, by enlarging the scope of the legal assistance program, and by the work done by various charitable and welfare organizations. It cannot be assumed that instruction in recruit training on these matters will suffice for all time. It must be amplified at duty stations.

Lack of instruction on presentation of leave requests. Many men guilty of absence over leave and absence without leave, when questioned as to whether or not they had asked for any leave or extra leave, frequently answer that they did not. Lack of sufficient instruction in presenting leave requests is responsible for a considerable amount of absenteeism. Leaving these matters in the hands of division petty officers and office yeomen invites favoritism and abuses, risk of which would be eliminated by proper supervision.

Complaints and bad news from home. Complaints and bad news in letters from home are responsible for much of the difficulty. In this case,

of course, a program of education for the general public is possibly the only cure. Short of that the Navy can only take steps to advise men that home troubles should be discussed with officers and agencies who can render assistance, and that unauthorized absence will inevitably do no more than add to the difficulties in the long run.

Improper administration of the leave and liberty system. Improper administration of leave and liberty contributes fundamentally to absenteeism. Much of the administration of leave and liberty is linked with the questions of homesickness and marital or domestic difficulties, previously discussed. But this is only a part of the story. A lack of appreciation, on the part of some officers, of the basic importance of leave and liberty results in many infractions which are avoidable.

Defects in punishment. There has been complaint from the service with respect to the inadequacy and inappropriateness of the punishments meted out for the commission of military offenses, especially that of absenteeism. Complaints that punishment is inadequate may at times have justification, but some of the complaint is caused by insufficient appreciation of the entire problem, which is one of many complexities and ramifications presenting a situation that must be considered in its entirety. It might be well to remember the fact, established by the experience of centuries, that severity of punishment alone has never provided an answer to penal and disciplinary problems.

Miscellaneous causes. Of the less important causes for absenteeism, all of which taken together result in a goodly number of offenses, may be cited chronic seasickness, dislike for the service, dislike for the immediate duty to which assigned, failure to get expected rating or desired duty, poor transportation facilities, oversleeping, overindulgence in liquor, and fondness for women; and various minor reasons which are not of sufficient importance to enumerate, and which are thoroughly understandable without any discussion and explanation. A bad feature of absenteeism resulting from some of these causes is that the offenders, leaving their ships or stations without any intention of overstaying liberty, are overtaken by temptation, and finding they will be late in returning, fail to consider that the magnitude of the offense increases with the length of absence. Hence, they decide to make a day of it and extend their time on shore, not only for hours, but often for days. Proper instruction and avoidance of overly harsh penalties for those who have not erred too far would do much to combat this.

5–4. Current policy on wartime offenses. The current policy of the Navy Department with regard to trials of wartime offenses involving absences and desertion is outlined in SecNav Circular Letter of 29 May 1945 and is reprinted in Appendix C of this text. It is to be noted, however, that modifi-

cations and revisions of this policy are necessary from time to time. Therefore, in all cases of this nature it is extremely important that reference be made to the most recent pertinent directives.

5–5. Missing ship. There has been complaint from various sources that missing ship by remaining absent at the time of sailing has become a common practice owing to the inadequate punishment for this very serious offense. In these instances the offenders were meted out the same mast punishments or awarded the same kind of court as if they had not missed the sailing of their ships. This news, like all news which has to do with punishments, spread rapidly through the ships of the fleet with the result that many men, who might not have taken the risk of a severe punishment, remained absent and reported in shortly after their ship had sailed. This was a fault in administration by the responsible officers of the commands involved. Action has now been taken by the Bureau of Naval Personnel in an effort to combat the practice of missing ship. It has been unequivocally stated that a general court-martial should try all such offenses, except in most unusual circumstances.

5–6. Variations in punishment. There is a wide divergence in viewpoint with respect to the relative appropriateness of various punishments such as the bad-conduct discharge, confinement, reduction in rating, and pay losses. An attempt has been made to regulate and standardize these differences through departmental directives. These directives do not always meet with compliance, and in a number of instances are deviated from without justification by convening or reviewing authorities. This causes variations in punishment for the same offenses and is not conducive to good discipline.

These variations in punishments are noted in the Department and corrective measures are taken when deemed appropriate. They are discussed here because they indicate a wide variance of opinion by officers of the Navy as to just what are appropriate punishments. Many of the complaints and suggestions tend to show that those making them have been influenced by a few isolated cases and are unfamiliar with, or have failed to consider in proper perspective, the many phases of the disciplinary problem. No one line of approach will provide a universal panacea. Success will be achieved only by intelligent disposition of individual cases, with due consideration for varied and sometimes conflicting factors such as the particular offense, the particular offender, the force of example to others, the available facilities for confinement and rehabilitation, the need for minimizing the loss of manpower, and the advisability of maintaining some degree of uniformity.

The Department has been extremely careful, in formulating the guides for convening authorities and commanding officers, to avoid limiting the

exercise of discretion, while setting forth general principles which have been found by experience to be practical from all standpoints. If all commanding officers and reviewing authorities will consistently exercise the utmost care in evaluating offenders, in awarding courts and in taking mitigating action, all with a view to maintaining discipline but without overlooking the maximum potential usefulness of the offender, the Navy can confidently expect marked improvement.

5–7. The bad-conduct discharge. There is a divergence in opinion as to whether or not summary courts-martial should adjudge bad-conduct discharges for purely so-called military offenses. However, a bad-conduct discharge is seldom an appropriate punishment in time of war. If executed, it results in a loss in manpower while placing both the offender and the service in anomalous positions under the Selective Service Law. Moreover, if the offender is not reinducted in some branch of military service, the ultimate result is restoration to civil life with little difficulty in obtaining a safe and comparatively lucrative position.

There is no doubt that there is a class of men, who, motivated by fear or otherwise, have sought to escape military service by *working for a BCD*. As for a time there was a general opinion in the service that the best action was to get rid of these men, many bad-conduct discharges were executed. This resulted in an increase rather than a diminution in the occurrence of offenses, as it became general knowledge that all one had to do in order to get discharged was to be guilty of several unauthorized absences. The Navy has now learned by experience that it is better for discipline in general to punish this class of offenders by loss of pay and confinement. It is noteworthy that the Army special court-martial, which corresponds to the Navy summary court-martial, has no power to adjudge discharge.

5–8. Confinement. In the past there has been one pronounced defect in confinement as a punishment, which caused frequent criticism and is now being corrected. In many, but by no means all, of the naval places of confinement, prisoners were held in comparative idleness. There are not many who would profit from such confinement, but aside from that there is a class of offenders to whom confinement of such a character, far from having a punitive effect, is preferred to combat duty. The chronic liberty breakers who seek to be discharged, preferably without confinement, but with confinement under a regimen lacking rigor if need be, are not deterred by the prospect of a period of restricted inactivity. Hard labor and intensive naval and remedial training and exercise would combine the advantages of improving the casual offenders and permanently discouraging the confirmed shirkers. Every effort is being made to put such programs in operation at the major places of confinement. At the smaller brigs, where organized activities

administered by permanent complements are not possible, the Navy depends upon the interest and cooperation of commanding officers to see that the men confined do not enjoy a daily schedule less taxing than that to which duty personnel are subject.

5–9. Standards of discipline. There is general agreement that low standards of discipline in more serious matters are caused, in part, by what to many seem trivialities, such as exchange of salutes, military courtesy, wearing of the uniform, and the like. A failure to salute a superior does not, in itself, matter very much. What does matter is that tolerating or encouraging its omission breeds a lack of respect for authority, which in turn has serious repercussions in general discipline. The Russians attempted to eliminate distinctions in rank and uniform and to abolish the salute. The experiment was far from a success, and it was found necessary to revert to all the traditional requirements of a military organization.

5–10. Treatment of convicted offenders. At the present time there are thousands of men in confinement each day, some of whom are awaiting disposition of their cases or are held for transfer, but the majority of whom are serving sentences of confinement. The annual loss of effective man-days resulting from such confinement is in excess of four million per year. Since by far the greater number of those in confinement are, notwithstanding their derelictions, of potential value to the naval service, the primary concern of the Navy is the return to active duty of these men at the earliest practicable time. Those who have been convicted by deck court or by summary court-martial and sentenced to confinement are, of course, restored to duty upon completion of their sentences. In general, it may be assumed that they have not been convicted of the more serious offenses and that the primary object of their confinement is individual punishment and example to others. It should be borne in mind that punishment should be designed for corrective and deterrent effect and not for mere retribution. Any other course can only lead to increase in the number of multiple offenders with a consequent additional loss of manpower. General court-martial prisoners present a more complicated problem. The majority of them are not inherently bad, and hence restoration to duty is also indicated. In many cases, so far as the individual offender is concerned, such restoration could properly be effected after relatively short confinement. Hence, in the treatment of prisoners, endeavor is made to reach a balance between the welfare of the individual and the welfare of the service as a whole which will bring about the best result from a disciplinary point of view.

5–11. Confinement activities. The Bureau of Naval Personnel (Corrective Services Division) has direct cognizance over the Navy's confinement

activities. These units consist of brigs, prisons, disciplinary barracks, and retraining commands. As of 1 May 1945, two naval prisons, seven disciplinary barracks, two retraining commands, and approximately 350 brigs of varying size were being operated by the Navy. Brigs are generally under the immediate command of larger shore stations, while the major places of confinement are separate commands under the commandant of the immediate naval district. In several instances the major activities are subordinate to the administrative commands of naval training and distribution centers, naval operating bases, etc.

Classification of activities. The various types of confinement activities are each intended to serve a specific function. Brigs are generally small units for temporary detention or confinement for short sentences resulting from captain's mast, deck court, and summary court-martial. Prisons house those prisoners serving general court-martial sentences of two years or over and those who present difficult behavior problems necessitating maximum security and close custody, the majority of whom will not be restored to duty. Disciplinary barracks confine those sentenced by general court-martial to serve less than two years and who may or may not be restored to naval duty. *Retraining commands* are a new departure from the traditional Navy confinement activities. They are designed as minimum security units for the most tractable offenders, all of whom will be restored to duty. Careful selection of offenders is made by convening authorities and by appropriate officers at other places of confinement in keeping with basic requirements established by the Bureau of Naval Personnel. Those selected are subsequently transferred.

Basic program. The basic program at the naval prisons places major emphasis on industrial activities. In view of the fact that the majority of prisoners at these activities are discharged from the service upon the termination of their sentence, less importance is placed on training in Navy skills. A schedule of voluntary evening courses is available for those desiring to increase their knowledge of certain skills applicable in civilian life. In the naval disciplinary barracks equal emphasis is placed on the industrial program and education and training. The retraining commands place greatest emphasis upon training in Navy skills, physical fitness and the other requisites necessary for preparing prisoners for restoration to duty.

Basic objectives. The basic objectives of the Navy's correctional program are (1) to carry out the sentences of courts-martial as approved by the Secretary of the Navy, and (2) to so train offenders that they will be restored to duty benefited, rather than damaged, by their period of confinement. In the cases of men whose sentences provide for discharge from the naval service following the expiration of their sentences of confinement, the Navy relates its objective to civilian life rather than restoration to duty.

In order to assure both the naval service and society in general that

the released naval prisoner will be an asset rather than a detriment, a constructive program has been developed covering the entire confinement period. The program embraces work, education and training, physical fitness and military drill, etc.

Work. A diversified work program is a major aspect of each prisoner's confinement period. The work schedule has been developed for the dual purpose of combating idleness and providing useful equipment and services for the Navy. In addition to responsibility for the general maintenance of the place of confinement, prisoners are assigned to the production of such items as hammock clews, camouflage nets, cargo nets, wooden pallets, swabs, brushes, fenders, etc. In addition, prisoners are used in such projects as the dismantling of obsolete radio gear, salvage operations, renovation of athletic gear, repair of Quonset huts, loading ships, yard repair details, warehouse work, etc. The utilization of prisoners relieves the critical civilian manpower shortage usually prevalent in naval centers.

In addition to the monetary savings to the Government, it is obvious that the formation of habits of work and industry and the full occupation of a prisoner's time with stimulating and constructive activity is of extreme importance in the preparation of prisoners for return to active duty.

Education and training. A broad program of education and training has been instituted in the major places of confinement. The basic elements of the program include general training in Navy customs and organization, seamanship, gunnery, advanced training for those who qualify, such as navigation, machine trades, cooks and bakers, yeomen, storekeepers, etc. In addition, military drill and physical training are included. This program has been coordinated with the industries schedule, and basic curricula have been developed and made available to the various activities. Education and training officers have been assigned to all activities for general supervision and administration.

Classes for illiterates are available with compulsory attendance required on the part of those failing to meet the required Navy standards. Evening classes are available in a variety of subjects together with correspondence courses through USAFI. Library facilities are available for prisoners at all major places of confinement.

Individualization. Every effort is made to deal as far as possible with the individual prisoner. This process has its beginning with the screening of the prisoner. Examinations by medical officers, psychiatrists, psychologists, and others are included as part of the initial report relative to the man. Screening officers compile social data including comments concerning prior offenses, naval service, personal background, etc. Reports of this nature are compiled for each individual and on the basis of their findings, place of confinement is designated. Copies of the report are forwarded to the commanding officer of the confinement unit and form the basis for

subsequent progress reports submitted during the balance of the period of confinement.

Personnel. The Bureau of Naval Personnel has made available a number of qualified officers experienced in civilian correctional fields and nearly seventy-five officers are assigned to the various confinement units in key billets. These officers are on duty as education and training officers, assignment officers, industries officers, district prison administration officers, and in other specialized billets. The billet of district prison administration officer has been included on the staff of the commandant of each naval district. This officer is the direct representative of the Bureau in matters having to do with the confinement of naval personnel. The security of all naval places of confinement is generally the responsibility of officers and enlisted personnel of the Marine Corps.

Confinement records and statistics. For the purpose of providing accurate information regarding the number and status of prisoners confined, as well as to furnish data for statistical analyses of the prison population, a system of records and reports has been established. Every naval place of confinement in the continental United States each week submits to the Chief of Naval Personnel a detailed report of persons confined. In addition, there is prepared in duplicate for every general court-martial prisoner a commitment card showing the offense, sentence, date of release, previous delinquencies, and the usual personal data. The original of this card is forwarded to the Bureau of Naval Personnel. These data are coded for analysis by tabulating machines and statistical information is kept current through this means.

Confinement policy. The policy has been established by the Navy Department that men are placed in confinement *as* punishment rather than *for* punishment. The dual mission of every place of confinement is to carry out sentences, as approved, and to so develop, regulate and coordinate its program that those prisoners who demonstrate their fitness for further service shall be restored to active duty, and the remainder discharged in condition to meet successfully the duties and obligations of good citizens.

6. THE SHORE PATROL

6–1. Mission of the shore patrol. The mission of the *shore patrol* is to maintain order, to suppress any unseemly conduct on the part of naval personnel ashore on liberty, and to prevent trouble, where possible, before arrest becomes necessary. In addition, the shore patrol is charged with assisting all naval personnel ashore and protecting them in their relations with civilians. A clear relationship to naval justice is established in carrying out this mission and it is extremely important that all naval personnel have a clear understanding of the organization, administration, operation, jurisdiction, and regulations of the shore patrol.

While this chapter sets forth certain general principles of policy and operation, as expressed in the *Bureau of Naval Personnel Shore Patrol Manual*, the supreme authority of the senior officer present afloat and of the district commandant to administer the shore patrol in the area under their jurisdiction is recognized. Their instructions concerning conduct, authority, duties, and organization of the shore patrol may, in special situations, differ from the general policies herein set forth.

6–2. Ship shore patrol. The *ship shore patrol* is the force of petty officers landed by the commander-in-chief, when liberty is granted to any considerable number of men, to maintain order and suppress any unseemly conduct on the part of any member of the liberty party (Article 698, *Navy Regulations*). The *beach guard* generally functions as a unit of the shore patrol in a similar manner at boat landings. The ship shore patrol lands prior to the landing of liberty parties and is generally withdrawn after the expiration of regular liberty, functioning for the duration of a visit to a particular port. The officer ordering the ship shore patrol designates a disbursing officer to furnish funds in accordance with Articles 698 and 1803, *Navy Regulations* and Article D–10112, *Bureau of Naval Personnel Manual*, and provides the necessary arrest slips and report forms.

6–3. Permanent shore patrol. (1) The *permanent shore patrol* is a force composed of officers and petty officers (Specialists (S)), or of any other petty officer ratings that may be assigned by a commandant or commanding officer for shore patrol duties under orders, in each case, which do not specify the termination thereof. In the absence of Specialist (S) ratings, a permanent shore patrol may consist of any other petty officer ratings

available, and the permanence of duty shall be determined by existing conditions and the orders of the commandant, or commanding officer.

Where a permanent shore patrol exists ashore, the *senior shore patrol officer afloat* contacts the *senior permanent shore patrol officer ashore* to determine what, if any, augmenting patrol from the ship will be needed ashore. When several ships from a fleet are in port, the administration of shore patrol activities by either the senior shore patrol officer afloat or the senior permanent shore patrol officer is a matter for decision between the senior officer present afloat and the commandant or senior officer present ashore.

6–4. Temporary shore patrol. A *temporary shore patrol* is that augmenting force of petty officers assigned by a commandant or commanding officer to the permanent shore patrol to meet the needs of special or emergency conditions. The duration of such temporary duty is determined by existing conditions and the orders of the commandant or commanding officer.

6–5. Administration. Within the continental United States, the district commandant has cognizance of all shore patrol within his district. The commandant acts as the representative of the Bureau of Naval Personnel in the over-all supervision of personnel activities within his district and insures that they conform to Bureau policies, and that they are accomplishing their mission. The commandant, when he deems it necessary, requests augmentation of the district shore patrol by petty officers and officers from activities within the jurisdiction of the district. Under the commandant, the *assistant chief of staff for personnel* serves and acts in his capacity as the direct representative of the Navy Department, including its Bureaus and offices. Under the commandant, the *director of discipline* serves as the primary representative of the Bureau of Naval Personnel on all matters of discipline, shore patrol and prison administration. It is his duty to (1) coordinate discipline, shore patrol and prison administration problems and (2) recommend action to the Bureau of Naval Personnel on all discipline matters within the district.

District shore patrol officer. A billet for a *district shore patrol officer* has been established in each naval district and river command, under the director of discipline. The duties of the district shore patrol officer, acting for the commandant, are: (1) coordinate and administer the shore patrol affairs of the district and (2) serve as the primary representative, in the district, of the Corrective Services Division of the Bureau of Naval Personnel on shore patrol matters.

Specifically, the foregoing duties involve:

1. Establishing under direction of the commandant, a *district shore patrol headquarters* with such administrative and clerical assistance as may be necessary to the efficient operation of the patrol.

2. Accounting to the commandant for the maintenance of order and discipline among Naval, Marine and Coast Guard personnel ashore in the district.
3. Detailing personnel of the shore patrol in such a manner as to insure the effective supervision and assistance of Naval, Marine and Coast Guard personnel on liberty.
4. Authorizing the use of such force as may be necessary to maintain order among naval personnel ashore.
5. Causing the arrest of naval personnel who are absent from their ship or station without authority and those charged with other offenses and disturbances.
6. Handling cases involving the arrest or detention of an officer, or authorizing an officer under his direction to handle such cases.
7. Attending, or authorizing a qualified representative, to appear in his stead, during hearings and civil court proceedings in all cases affecting Naval, Marine and Coast Guard personnel as defendants, for purposes of observation and reporting to appropriate authority on matters pertinent to the Navy.
8. Assisting or authorizing assistance in the investigation of all cases of enlisted personnel of the Navy, Marine Corps and Coast Guard involving offenses committed by such personnel while on liberty or leave outside the immediate jurisdiction of ships or stations.
9. Maintaining a regular program of in-service training for personnel of the permanent shore patrol; such training to include drill, instruction in the duties of the shore patrol generally, and in the district, the proper methods and techniques of approaching and handling offenders, the provisions of *Navy Regulations*, *Naval Courts and Boards*, provisions of the *Shore Patrol Manual*, and such local ordinances as may be indicated. Such training of shore patrol personnel includes the requirement of exemplary conduct, and emphasizes the seriousness of offenses committed by personnel of the shore patrol while on duty.
10. Developing and maintaining accurate and detailed information concerning areas and places, such as boat landings, railroad stations, bus terminals, and places of entertainment, which are frequented by men on liberty and leave.
11. Establishing and maintaining of such watch bills as may be necessary for the protection of men and equipment.
12. Developing and maintaining accurate and detailed records of the operation of the patrol, within the district, including arrest report and operational report summaries for periods as may be desired by the commandant.

Officer-in-charge, area shore patrol headquarters. While the *area shore patrol* is administered by the senior naval officer of the activity to which it is attached, it is under the general supervision of the district shore patrol officer. The operation of an area shore patrol headquarters is under the immediate direction of the officer-in-charge. The number of officers required to assist him as duty officers in the operation of the headquarters is determined by the scope of activities and the necessary administrative functions of the office. The officer-in-charge of an area shore patrol headquarters is directly responsible for all operations of the patrol as well as the personal appearance, conduct and in-service training of its members.

Operations officer. Except in communities where the shore patrol unit is relatively small, the officer-in-charge appoints an officer, or petty officer, as *operations officer* and/or *duty officer* to make daily assignments of shore patrol throughout the area and to assist in supervising the operations of the patrol. The operations officer maintains a map showing the route covered by each patrol, establishments where trouble is apt to occur, places of importance such as police precinct stations, railroad and bus terminals, out-of-bounds areas, prophylactic stations, and military police headquarters. In addition to portraying the geographic situation in the community to shore patrol personnel, the map is used for instruction of patrol members. Patrol areas are numbered on the map and assignments made by number. A record is kept of daily patrol assignments.

The operations officer also maintains a bulletin board. Special orders covering each patrol, photographs and descriptions of wanted persons, and items of information and interest to all patrols are posted on the bulletin board. Where local facilities include a shore patrol brig, the operations officer designates a brig guard and supervises his activities. In addition the operations officer supervises all records, arrest reports and files, and is responsible for the correctness and completeness of all pertinent information pertaining to his activities.

6–6. Primary duties. The primary duties of the shore patrol are (1) to maintain good order and discipline among personnel of the armed forces ashore, to arrest all persons AWOL or AOL and other offenders as necessary and process them to ships or stations; (2) to render appropriate assistance to members of the armed forces; (3) to report to proper authority the conditions or practices observed in areas patrolled, which appear prejudicial to the welfare of the personnel of the armed forces; and, (4) to assist in the investigation of cases of death, injury or offenses of the armed forces ashore off station.

6–7. Assignment and disposition of patrols. Foot patrols are assigned to cover a definite route within, or around, a specified area. The degree of coverage desired and the number of establishments to be visited determine

the length of the patrol route for each patrol. Patrol areas in congested liberty areas are laid out so that they may be covered at frequent intervals. Foot patrols are rotated frequently among the various details and among the various sections of the community. They are not posted within private establishments no matter what percentage of the patronage consists of naval personnel. Private establishments wherein trouble appears with regularity are covered more frequently by foot patrol or recommended for out-of-bounds restriction. Foot patrols are posted in pairs except where opportunity exists, and conditions make necessary, the pairing of individual shore patrolmen with military police. Where temporary shore patrols are assigned from a ship or naval shore establishment, they are paired with members of the permanent shore patrol.

Motor patrols supplement foot patrols and are of particular advantage in supervising foot patrols and covering large areas and outlying districts of the town, to check places of amusement not covered by foot patrols. Motor patrols do not maintain a fixed route or schedule but are in effect roving patrols. Motor patrols, where possible, are assigned vehicles equipped with two-way radios.

6–8. Shore patrol on public carriers. Whenever considered necessary, and provided arrangements for such have been made with the carriers concerned, commandants of naval districts and river commands may authorize the assignment of shore patrol on public carriers for the purpose of maintaining discipline and order among naval personnel on board. Train patrols consist of high-rated Specialists (S) whose abilities have been carefully screened to make sure of their fitness for such duties. The authority of the patrol on public carriers applies to all naval personnel whether in drafts under the charge of officers or men, or traveling singly. The patrol, as far as possible, works through those detailed in charge of drafts, without unnecessarily interfering with the draft. When occasion requires action, courtesy and tact are observed in dealing with those in charge of drafts.

Transportation and subsistence. The public carrier concerned furnishes the necessary transportation, and on trains, such sleeping accommodations as may be necessary, for members of the shore patrol assigned to duty on public carriers. Cash for subsistence of shore patrol while on train duty is advanced by the disbursing officer of the activity to which the shore patrol is assigned at the rate of $1.00 per meal in all cases. Cash for lodging, when involved, is advanced at the rate of $2.00 per day.

General procedure. Where practicable, military police and shore patrol personnel on trains are assigned to work together as a team. In this case military police handle all cases involving army personnel and the shore patrol handles all cases involving naval personnel. Each assists the other as the situation demands.

The train patrol reports to the senior naval line officer as soon as possible after boarding the train and informs him that he is senior officer present. The train patrol gives the officer their names and explains briefly the duties of train patrol. Thereafter the train patrol does not intrude upon the senior officer present unless an emergency situation warrants so doing. The train patrol also notifies the conductor of the train of their presence for the purpose of maintaining the order of service personnel and enforcing their conformance with any train regulations which may be issued by or through the conductor.

Checking of credentials. The train patrol checks the credentials of all enlisted personnel of the Navy, Marine Corps and Coast Guard, including women, by examining identification cards, liberty and leave papers, unless overcrowded conditions prevent such procedure. When trains are overcrowded, the train patrol spot checks as many naval personnel as is possible without undue disturbance. Naval personnel found without proper credentials are detained until their status is determined. If not over five days AWOL or AOL and on a train returning to their home station, they are issued a provisional *shore patrol pass* authorizing them to proceed directly to their home stations, and they are not removed from the train. A report of the incident is sent to the appropriate command. When available information indicates that an enlisted man is in the status of a deserter, or unlikely to return to the appropriate command, an arrest is made and arrangements are initiated to remove the enlisted man at the next station where he can be turned over to a shore patrol or military police unit for return to proper authority under guard.

Sleep. Frequent patrol of the train is made between the hours of 0630 and 0030, the frequency depending on existing conditions aboard. The train patrol does not sleep during these hours but may do so outside of these hours if the train conditions are favorable. The train patrol however, is responsible at *all hours* for the behavior of service personnel aboard.

Train stops. At all train stops occurring within duty hours, the train patrol polices the station platforms and keeps service personnel, who may detrain, in proper uniform. They prevent service personnel from bringing liquor aboard the train if liquor is openly displayed and not in a wrapped package.

Control of drinking of intoxicating beverages. The control of drinking of intoxicating beverages by naval personnel on trains is carried on with considerable discretion on the part of train patrols. Where drinking of intoxicants by naval personnel on any part of the train becomes unduly conspicuous, or excessive, and there is a reasonable basis of belief that continued drinking will be indulged in to the point of creating disorder, the train patrol issues a warning order. If not obeyed, the train patrol then exercises whatever jurisdiction is given it by competent authority relative

to seizure and destruction of intoxicants. At all times the train patrol enforces restrictions that may have been issued by the conductor or railroad company for all passengers on the use of intoxicants in any part of the train.

In enforcing the restrictions on the use of intoxicants, baggage is not searched to ascertain whether liquor is being carried, and drawing rooms and compartments, etc., are not entered unless in the opinion of the train patrol there is well substantiated evidence of a disturbance or misconduct involving service personnel, and then entrance is made, ordinarily, only in the presence of the conductor.

Enforcement of railroad regulations. The train patrols enforce the compliance by service personnel with all regulations of the railroad. Heads or limbs are not allowed to protrude from car windows or doors while the train is in motion. Service personnel are not allowed to ride on car platforms, steps or tops of cars.

Failure to correct behavior. When an enlisted man fails to correct behavior which has been the subject of a train patrol warning, the train patrol obtains the serial number, organization and station of the offender, verifies them by examination of papers, and records them. If an offending officer persists in the violation of regulations or rules of conduct after being duly and politely warned by the train patrol, he is addressed as follows: *Sir, it is necessary that I obtain your name, organization and station, and see your identification card.* After obtaining the information the train patrol salutes and says, *Thank you, sir.* If an officer refuses to give this information and is not amenable to correction, is creating a disturbance, or is found in an intoxicated condition, the train patrol telegraphs ahead to the nearest shore patrol unit and requests that a shore patrol officer meet the train and take whatever action is necessary. In any case, where the misconduct of an officer is involved, the assistance of a senior officer, if available, is requested in carrying out the necessary duties. When required, officers and noncommissioned officers of the military services assist in maintaining order and making arrests. Boisterous and unbecoming conduct, or the annoyance of civilians (particularly women) or of other military personnel by naval personnel is not tolerated, and is dealt with quickly and firmly. Card games may be permitted for service personnel if conducted in an orderly fashion and without display of money.

Reports. Train patrols make a detailed report, including any actions taken on account of sickness, on the completion of each assignment of train patrol duty, which is submitted to the shore patrol headquarters from which they were assigned. An individual arrest report, or misconduct report, is filled out for each offender, containing complete information of the action taken and names and addresses of witnesses. All reports are signed by both members of the train patrol and forwarded to the district

shore patrol officer who routes the arrest reports to the offender's commanding officer.

Removal of offenders from trains for misconduct. Train patrols, if possible, avoid putting men off trains short of their destination. The paramount duty of patrolling trains precludes the train patrols from guarding prisoners longer than is necessary to make other provision. When necessary for good order, train patrols may put any offending service personnel off the train, place them under arrest and in the custody of any convenient naval or military activity, or, if neither be convenient, in the custody of any civil law enforcement activity which will accept the prisoner and hold him subject to Navy or military orders.

Arrangements for transportation of removed persons. In all cases where men are put off the train short of their destination, including cases of sickness, arrangements are made through the conductor for subsequent transportation to the destination of ticket. Normally where naval personnel are put off the train for sickness or for misconduct, except in serious cases of misconduct warranting a general court-martial, the shore patrol arranges with the activity taking custody of such naval personnel for their release and the continuation of their journey when their condition warrants.

6–9. Station and terminal patrols. Where possible, shore patrols, assigned to duty at railroad stations and bus terminals, are part of the regular train patrol detachment. In any event their qualifications are the same as those outlined for train patrols. Station and terminal patrols should be present during the peak hours of travel as indicated, and at all times when special drafts are known to be arriving. Naval personnel who loiter about a terminal or station for long periods of time are checked for the possession of leave papers, travel orders and identification. Enlisted personnel found intoxicated, annoying women, or boisterous and profane within stations or on loading platforms, are arrested and, if necessary, confined. Where such confinement would result in a delayed reporting for duty and if the offender's condition permits, the station patrol will obtain all necessary information for preparing and forwarding an arrest report to the offender's commanding officer, and permit resumption of travel. In any event, intoxicated service personnel who are obnoxious or incompetent are not permitted to board trains. Arrangements are made with local officials for the use of a detention room, where possible, within the station or terminal for temporary confinement of personnel arrested by the station and terminal patrols.

Station and terminal patrols are equipped with all necessary information to aid and assist enlisted personnel in transit. Particular attention is given to aid and assistance of military service casualties, such as obtaining

local transportation, seat accommodations, stretcher and wheelchair accommodations, etc.

6–10. Identification. Definite and regular plans for checking identification are followed, particularly in large cities and at bus and railroad stations. The identification of enlisted men appearing unkempt is always checked. The examination of liberty and identification cards often leads to the apprehension of enlisted men who are over leave, ashore without leave, stragglers or deserters. It also leads to discovery of illegal wearing of the uniform. In trying to establish identification where the enlisted man's picture is not available, further study is made of clothing marks, contents of wallets, identification tags, etc. Unless identification by these means appears absolutely clear, enlisted men are taken to patrol headquarters for further checking.

Every officer and enlisted man in the Navy, Coast Guard and Marine Corps, is required to give his name, rank (rate) and ship, when such information is requested by a member of the shore patrol and is required to show his liberty card, leave papers, or identification card, upon demand by the shore patrol. When information relative to ship location has been ordered concealed as a security measure, such information is not required unless the officer or enlisted man is to be taken into custody of the shore patrol for good and sufficient reasons.

6–11. Absentees and deserters. When apprehending an absentee (AOL or AWOL), other than a deserter as established under Article 1692, *Navy Regulations*, who is enroute to his ship or station, the shore patrol allows him to proceed upon presentation of reasonable evidence that his intention is so to proceed. Reasonable evidence is constituted by possession of railroad tickets to the proper destination, presence on the proper train, or at a station awaiting the proper train, evidence of contacting or attempting to contact commanding officer, and orderly condition and appearance of the absentee. The shore patrol does not detain personnel longer than is necessary to determine their intentions, and avoids detention which might result in missing vital transportation connections.

Absentees who surrender to the shore patrol, other than stragglers and deserters as defined in Article 1692, *Navy Regulations*, are, when possible, transferred or returned to their ship or station under orders, and without delay unless it is reasonably certain that such offenders will not or cannot comply with the orders. Absentees whose status appears to be that of a straggler or deserter and those who appear unlikely to comply with orders to return to ship or station are transferred or returned under guard to the appropriate naval command. Subject to the foregoing, the following absentees are returned to their former command: (1) those absent from

shore stations in the district or river command where apprehended, whose period of absence does not exceed 29 days; (2) those absent from shore stations outside the district or river command where apprehended, if their station is substantially closer to the place of apprehension than is the nearest receiving station within the district or river command where apprehended; (3) those absent from ships or mobile units if it is known or can be reasonably ascertained within 24 hours of apprehension, that the ship or unit is available and in the vicinity so that the offender can reach the ship or unit before its departure.

All other absentees, and deserters as defined in Article 1692, *Navy Regulations*, are transferred by the shore patrol to the appropriate naval command without delay. In the processing of all stragglers and deserters, the shore patrol unit which apprehends, or to which the straggler or deserter surrenders, on the day of occurrence, prepares form *NavPers 641* and distributes it as per instructions written on this form.

Personnel of the United States Coast Guard or Marine Corps when returned to naval jurisdiction, or apprehended by the shore patrol are transferred to the nearest Coast Guard or Marine Corps activity for further disposition unless otherwise specifically provided for. Where a Coast Guard or Marine activity is not within a distance practicable for returning such personnel, they are transferred to a nearer naval activity.

6–12. Transportation of prisoners. District commandants or commandants of river commands issue such regulations as may be necessary, concerning the use of the shore patrol, in connection with the transportation of prisoners, stragglers and deserters. Upon request through proper channels, district or area senior shore patrol officers are furnished books of transportation requests and/or meal tickets for use in transportation and subsistence for guards and prisoners. Requests are addressed to the Bureau of Naval Personnel, Director of Transportation Division (Service Section).

Shore patrolmen on duty as prisoner guards do not wear the shore patrol brassard, nor do they carry loaded weapons except when actually escorting prisoners. They check their arms at local shore patrol headquarters during stopover periods when awaiting prisoners, or while prisoners are confined. When delayed enroute, prisoner guards may turn their prisoners over to the nearest shore patrol headquarters, or other naval activity having brig accommodations, and will obtain a receipt for the prisoner. If it becomes necessary for a prisoner guard to rest at a place where no shore patrol facility is available, the prisoner may be placed in a civilian jail for safekeeping, provided that suitable conditions exist for such confinement and providing proper arrangements are made for feeding the prisoner should such period of confinement extend over a meal period. In all cases, the prisoner guard will obtain a receipt for the prisoner. Prisoner

guards are responsible for the appearance and conduct of prisoners in their custody. Arrangements are made, where possible, for local shore patrol station guards to escort prisoner guards with prisoners through special gates to and from trains, in order to avoid crowds.

Any prisoner guard found to be in an intoxicated condition, or unable to guard his prisoner properly, is placed under arrest and turned over to the nearest shore patrol headquarters for proper disposition. The prisoner is turned over to the same headquarters and steps are taken immediately to notify the proper authorities of the action taken.

6–13. Assistance to enlisted personnel. All patrols are constantly alert to be of service and aid to naval personnel in supplying (1) information as to train and bus schedules; (2) assistance in checking or locating baggage; (3) assistance, when required, to personnel in AOL status due to missing connections; (4) information on lodging accommodations; (5) assistance in recovering lost or stolen property; (6) information on curfew, out-of-bounds and uniform regulations; and (7) general assistance to any naval personnel in trouble.

The shore patrol is particularly observant of disabled members of the armed forces on trains, in stations, or towns, and will render all possible assistance without causing them embarrassment. Assistance in handling luggage and in avoiding crowds is of particular importance.

6–14. Jurisdiction of shore patrol. The shore patrol has jurisdiction over Navy, Marine Corps and Coast Guard personnel ashore unless otherwise amplified by competent authority. It has no jurisdiction over personnel of the Merchant Marine or personnel of the Water Division of the Army Transportation Corps. In accordance with a joint agreement of the Secretary of War and the Secretary of the Navy (*AlNav* 251–42), members of the Army military police, the Navy, Marine Corps and Coast Guard shore patrols, and officers, noncommissioned officers and petty officers of these services, are authorized and directed to take corrective measures, including arrest, if necessary, in the case of any member of the armed forces committing a breach of the peace, disorderly conduct, or any other offense which reflects discredit upon the services. Personnel so arrested are returned to the jurisdiction of their respective services as soon as practicable. Those exercising authority are enjoined to do so with judgment and tact. Arrest, particularly, should not be resorted to where other corrective measures will suffice.

Marine and Coast Guard personnel. Marine or Coast Guard personnel, when apprehended by the shore patrol or turned over to naval jurisdiction by other authority, are transferred to the nearest Marine Corps or Coast Guard activity for further disposition unless otherwise specifically pro-

vided for; except that such personnel are transferred to a nearer naval activity when the distance to a Marine Corps or Coast Guard activity would make the transfer impracticable.

Women of the military service. Although the authority of the shore patrol includes taking necessary corrective measures over women members of the Army, Navy, Marine Corps and Coast Guard, the following modifications, as necessary due to the difference in sex, are observed: (1) Women members of the military service are not confined by the shore patrol in brigs, guardhouses or similar places of detention; (2) in cases where the conduct of any women of the military services requires restraint, such action is taken with the greatest possible care and only when absolutely necessary. Restraint is employed only until such time as an officer of the Women's Reserve of the particular service to which the subject personnel is attached is notified and arrives to assist in the disposition of the case, or until such time as the offender can be returned to the jurisdiction of her particular service. In the event no officer of the Women's Reserve is available from the particular service to which the subject personnel is attached, an officer of the Women's Reserve from another service shall be called.

Personnel of friendly foreign forces. A member of a friendly foreign force who is accompanying or serving with or under some command in the U.S. Navy, including the Marine Corps and Coast Guard, may be arrested by the shore patrol, under circumstances which would justify the arrest of American naval personnel, even though an officer of the friendly foreign force has not requested his arrest and delivery. Any member of a friendly foreign force, whether or not accompanying or serving with the U.S. Navy, may be arrested when the commanding officer of such force within the United States or of a nearby unit of such foreign force within the United States so requests. The shore patrol may arrest any member of a friendly foreign force under circumstances justifying arrest by a private individual.

Civilians. The shore patrol has no authority to arrest or to assist in the arrest of anyone not in the naval service, except as provided in *AlNav* 251–42. In case a man is in the uniform of the Navy, Marine Corps, or Coast Guard, he may be arrested on the presumption that he is in the naval service. When a man in the uniform of the Navy, Marine Corps, or Coast Guard denies being a member of the naval service, the civil police are asked to detain him until his service connection can be determined.

6–15. Cooperation with Naval Intelligence. Personnel of the shore patrol, in the performance of duty, are of invaluable aid to Naval Intelligence by being constantly alert to the possibility of espionage and the compromise of military security. The observation of unusual questioning of Navy personnel by civilians, is reported immediately to the senior shore patrol officer for appropriate referral. Extravagant and thoughtless boasting of

naval personnel regarding their exploits in combat, or the careless discussion of vital information is curbed at once, by calling the offender aside and warning him of his actions.

6–16. Cooperation with civil authorities. The shore patrol cooperates fully with local, state and Federal civil authorities in cases involving infractions of civil laws and local ordinances by naval personnel. It has no authority to release to civil authority any person in the naval service placed under arrest by the shore patrol. The release of naval personnel to civil authority, in all cases, is effected in accordance with the provisions of *AlNav* 95–42 and *CMO*-July-September 1943; file *JAG:D3:CS:ac*, dated 18 September 1943. Acceptance by the shore patrol of naval personnel, arrested by the civil police, for delivery to their commands for disciplinary action is governed by instructions of the command having authority over the shore patrol. In accepting naval personnel delivered by civil authorities, the shore patrol cannot guarantee that such personnel will be made available at a later date for civil indictment or trial.

Entering private establishments. Ordinarily the shore patrol does not enter private establishments, including dwellings and hotel rooms, in the performance of official duties except when accompanied by civil authorities who are authorized to make such entries, and then only when naval personnel may be involved. Under exceptional circumstances, when specifically requested by the owner or lessee, or in emergencies involving safety to life or the good of the community, the shore patrol may enter private establishments to quell disturbances or take other indicated action where naval personnel are involved. In such cases, appropriate civil authorities are summoned immediately and the shore patrol, if practicable, remains on the premises until such civil authorities arrive.

Use of shore patrol in developing evidence. Although it is desirable that the shore patrol cooperate with civil authorities, as far as possible, in all cases involving naval personnel, the shore patrol does not assist in obtaining evidence for use against civilians except such as may be required for naval purposes. Evidence against civilians outside naval jurisdiction, relating to violations of civil laws or other administrative regulations, which may be reported to or observed by the shore patrol is transmitted to appropriate civil authorities by the commandant, the senior officer present afloat, or their authorized representatives, but no member of the shore patrol is directed or allowed to enter into any transaction or pursuit for the express purpose of obtaining information or evidence against civilians.

Riding in civil police cars. The shore patrol may accompany civil police in civil police cars in cases of emergency, where Navy vehicles are

not available, for the purpose of handling cases involving naval personnel only. In no case does the shore patrol assist in the arrest of civilians.

6–17. Personal conduct and appearance. When on duty, members of the shore patrol are representatives of the Navy Department insofar as their appearance before the public is concerned. It is the desire of the Navy Department, that, as individuals and as units, they build and maintain a reputation in action and appearance, for being the smartest military unit ashore. Such a reputation can be attained only by strict and constant adherence to all regulations, to all customs of military etiquette and conduct, and by regular military drill and training. Members of the shore patrol are forbidden to partake of any intoxicating liquor, including beer and wine, at any time when their performance of duty might be affected thereby. This prohibition applies at all times when in a duty status or when subject to call for duty. Being under the influence of intoxicating liquor or drinking intoxicating liquor while on duty is a court-martial offense.

6–18. Liberty parties; prevention of trouble. The shore patrol is always mindful that liberty parties ashore are on liberty in the fullest sense of the word. Any demands upon liberty time or on the time of any naval personnel ashore which become necessary in the performance of shore patrol duties are made courteously and promptly. Care is used not to provoke arguments which may lead to subsequent trouble. The shore patrol always strives to anticipate and prevent naval personnel from becoming involved in trouble. If naval personnel become involved in situations which will obviously result in trouble, the patrol takes indicated action before arrest becomes necessary.

6–19. Arrests. Arrests, when necessary, are made quickly, impersonally and quietly, and the offender is removed at once to some spot away from public attention. When making an arrest, the shore patrol places a hand on the arm or shoulder of the offender and says in a clear voice, *You are under arrest.* The shore patrol does not punish violators of naval laws or regulations, nor does it allow mistreatment or abuse of personnel in its charge. The night stick is used only for self-protection or when the offender cannot be subdued otherwise and then it is used only to strike the back of the legs, arms, or shoulders.

Whenever identification and liberty cards are taken from naval personnel arrested by the shore patrol, they are not returned to the offender but are returned with an arrest report to the offender's commanding officer. The shore patrol is furnished with a chit form to fill out and present to offenders from whom identification or liberty cards have been taken to

serve as a temporary identification and as a written order authorized by the district commandant, directing the offender to report to his ship or station. Failure of the offender to obey the written order thus presented results in the additional charge of disobeying the lawful order of his superior officer. Naval personnel are not arrested for minor violations of regulations. In cases where warning will suffice the offender is given a warning order. A warning is not given in the form of a formal reprimand.

The exercise of great discretion on the part of enlisted members of the shore patrol is enjoined in cases of commissioned or warrant officer offenders. Only in cases where there is no alternative and such action is necessary to prevent disgrace to the service or the commission of a serious offense or the escape of one who has committed a serious offense, does an enlisted member of the shore patrol arrest a commissioned or warrant officer. In all cases involving officers, an officer of the patrol is summoned to take action. In cases of emergency requiring immediate action, the assistance of any officer available may be requested.

6–20. Search of prisoners. When it is necessary for the shore patrol to search a prisoner, two members of the shore patrol are present, one of whom is a commissioned officer or chief petty officer. A statement of the prisoner's effects, including the amount of cash, is made and signed by both parties. Existing regulations regarding the effects of prisoners are strictly observed. Officers are searched only under the personal supervision of an officer. Members of a Women's Reserve Service are searched only by members of their sex.

6–21. Confinement in civil institutions. When suitable arrangements have been made in advance with local authorities, naval personnel arrested by the shore patrol are, when necessary, confined temporarily in civil jails or similar places of detention for safekeeping until transfer to appropriate naval custody can be effected. Such confinement, whenever authorized, is limited to the minimum time required to effect such transfer. Whenever confinement of naval personnel in civil jails or similar places of detention is authorized and such confinement extends through a meal hour, suitable arrangements are made by the shore patrol to feed such personnel.

6–22. Handling of injury cases. Great care is taken in the handling of injured personnel, so that injury will not be aggravated. In most cases, no attempt is made to move the injured person until arrival of competent naval or civilian hospital personnel who are summoned at once. However, approved first-aid procedure is initiated when the need is apparent. The shore patrol, standing by, prevents crowding about the injured person.

6–23. Security. Arrested personnel are not questioned as to the identity or location of their ship or station except by duly authorized personnel or officers at shore patrol headquarters, and at no time when in the presence of persons not members of the armed forces. Such information, when indicated is handled with the proper security restrictions.

6–24. Patrol reports. A report is made to the commanding officer of the offender in each case where custody is taken by the shore patrol through arrest, surrender or transfer of the offender to the patrol by others. The report (see Figure 6–1) contains information as follows:

1. Station of issue, date of issue.
2. Name of offender, rank or rate, service, and if available, service number.
3. Ship or station.
4. Offenses.
5. Time and place of arrest.
6. By whom arrested.
7. Disposition of prisoner by shore patrol with time and date thereof.
8. List of witnesses with addresses and, if of the armed forces, rank or rate and ship or station.
9. Information of all facts and circumstances relating to the offense so as to furnish the commanding officer a complete picture and understanding thereof.
10. Copies of statements of witnesses, if obtainable.

This form is, in all cases, made out in such a manner that it will enable all concerned to acquire a clear understanding of what transpired at the time of arrest of the offender. The officer on duty at shore patrol headquarters checks all reports for accuracy, clearness and detailed narration of all circumstances of the case. The report is read and signed by the patrols involved in the case, before securing from duty, and is countersigned by the shore patrol officer on duty. Space is provided on the report form for endorsement by the commanding officer of the offender, of the action taken by him. Such space contains a printed request that the endorsement be returned to the district commandant or his indicated representative within twenty-four hours.

6–25. Delivery of prisoners to stations. All prisoners are processed for delivery to their commands as soon as practicable after booking. If it appears that delivery of any prisoner to the command to which he is attached cannot be effected within twenty-four hours, the command is notified at once by whatever means are practicable.

PATROL REPORT

Naval Shore Patrol Headquarters,

....., ...
(city) (state)

Offender, name and rate

Ship or station

Offense

Arrested

Sent to Ship

Witnesses

Remarks

.....
(Patrol Officer)

Action taken by Commanding Officer

.....

Commanding Officers will forward report with notation of action to Commandant ..... Naval District, Commands of forces afloat, via SOP of own force.

DISTRIBUTION:
Original to C. O. of offender.
Copies to C. O. of offender.
File.

Figure 6–1. A shore patrol report form.

6–26. Patrols. The area to be patrolled is walked in a military manner by two shore patrolmen keeping abreast of each other. The night stick is not swung or used playfully, but is attached at all times to the belt in a manner permitting quick release if needed. Lounging, leaning against buildings or posts, and smoking on patrol are prohibited. If a rest or smoke is desired, such is taken away from the public view for periods not exceeding ten minutes. Prolonged periods of conversation with enlisted personnel, civilians or friends are prohibited. No congregating of shore patrolmen during periods of duty, except in line of duty, is permitted.

6–27. Public establishments. When entering public places such as barrooms, restaurants, dance halls and other places of entertainment for inspection, the members of the shore patrol enter and remain together during the course of the inspection. Members of such details acquaint themselves with all trouble spots in the patrol area and check them frequently. The shore patrol does not become over friendly with owners and personnel of establishments in any patrol area, and reports to the senior shore patrol officer any continued violations not in the best interests of naval personnel patronage.

6–28. Abuse of authority. The authority vested in the shore patrol by the senior shore patrol officer afloat, or the commandant, is represented by the uniform and brassard that is worn. This authority is exercised only in the performance of official duties, as assigned. The use of brassards or other shore patrol credentials to obtain special favors, or the acceptance of gifts, gratuities, or promises of gifts by any member of the shore patrol is strictly forbidden. This prohibition applies while on duty, on liberty, or during periods of leave.

6–29. Performance of duty. The performance of shore patrol duties is one which requires attention to duty, intelligence, patience, courtesy, tact and an abundance of good judgment. Every member of the shore patrol is imbued with the idea that in his relations with other military personnel and with civilians he must be well mannered, dignified and obliging. When necessary, he will act with quiet force. He is not supposed to enter into arguments in regard to the performance of his duties. The code of the shore patrol seeks to maintain a high degree of orderly conduct with the fewest number of arrests.

7. ARREST AND CONFINEMENT

7–1. Arrest in general. A person under arrest is restrained within certain legal limitations by his moral and legal obligations to obey an order of arrest. The *Articles for the Government of the Navy* provide for two arrests—one, where necessary in an emergency, and the other, an arrest for trial.

7–2. Arrest where necessary in an emergency. Where necessary in an emergency, arrest is employed to apprehend and restrain an offender in the first instance.

Who may arrest. For the preservation of good order all officers, including petty officers, are always on duty and are vested with the necessary authority to arrest offenders. The exercise of great discretion, on the part of petty officers, is enjoined in cases of commissioned or warrant officer offenders. A petty officer should arrest a commissioned or warrant officer only in cases where there is no alternative, and where such action is necessary to prevent disgrace to the service, the commission of a serious offense, or the escape of one who has committed a serious offense. In all cases involving officers, shore patrol headquarters should be notified immediately so that an officer may be summoned to take action.

Assistance may be requested of any officer available. However, no officer should assist personally in the arrest of a drunken man further than may be absolutely necessary. Such an arrest should be made by persons not above the grade of petty officer, who are to be instructed to use no greater force than required if it is necessary to confine the offender.

Procedure for making arrest. No person should be placed in arrest unless the authority so ordering has personal knowledge of the offense or has made inquiry into it. The purpose of this requirement is to prevent a person from being restrained on mere suspicion. A full and exhaustive investigation is, of course, not required. Such investigation should be sufficient to furnish *reasonable grounds* for believing that an offense has been committed by the person to be restrained. An arrest is imposed by notifying the person to be arrested that he is under arrest and informing him of the limits of his arrest. The order of arrest may be oral or in writing. No particular formality is required. It is desirable to explain the meaning of arrest and the penalty which may be imposed if the person breaks his arrest.

Status of person in arrest. A person in arrest is restrained within certain limitations, such as his quarters, or other limits as may be specified in the order of arrest. A change of status from duty to arrest having occurred, the person in arrest should not be required to perform his full military duty. This, however, does not prevent his being required to do ordinary cleaning or policing of the area within the limits of his arrest. If the person breaks his arrest by going beyond the prescribed limits, he is subject to trial therefor.

Duration and termination of arrest. When a person is placed in arrest, immediate steps should be taken with a view to bringing him to trial or releasing him. The Navy Department has repeatedly stressed the importance of speedy trial in its announced policies. The law, however, does not prescribe a definite time limit within which he must be released if charges are not preferred. Normally charges can and should be preferred promptly. The accused is not automatically released from restraint, however, because of delay in preferring the charges. He must remain in arrest until released by proper authority.

7–3. Arrest for trial. The arrest for trial is used to ensure the presence of the accused at trial and to give him a reasonable opportunity to prepare his defense. *Navy Regulations* provide that, in general, the accused shall not be placed under arrest until just prior to the trial, except when it may be advisable as a precaution against his escape; to enable him to prepare his defense; or, when owing to the nature of the offense and the character or condition of the accused, his confinement is necessary in the interests of good order and discipline. However, in the case of trial by general court-martial, it is provided that the accused shall be placed formally under arrest for trial at the time he is furnished with a copy of the charges and specifications.

7–4. Confinement in general. A person in confinement is in a status of arrest and is physically restrained to certain limits. The *Articles for the Government of the Navy* and *Navy Regulations* provide for two types of confinement—one, confinement while awaiting trial, and the other, confinement imposed as punishment.

7–5. Confinement while awaiting trial. An accused person is confined while awaiting trial as a measure of restraint additional to the arrest in order to further ensure his presence at trial or when, owing to the nature of the offense and the character or condition of the accused, it is deemed necessary in the interests of good order and discipline.

Distinguished from confinement imposed as punishment. Confinement while awaiting trial is wholly distinguishable from confinement imposed

as punishment. The purpose of the former is merely to secure an accused person who is presumed to be innocent until duly convicted, whereas the latter is in the nature of an imprisonment and is strictly administered. It is not the intention of the Department that the provisions of *The Manual of Rules and Procedures for the Administration of Naval Places of Confinement* should be applied strictly to members of the naval personnel held under arrest awaiting trial, inasmuch as such personnel are not in the status of men who have been regularly tried, convicted, and sentenced by court-martial. Communications between an accused under arrest awaiting trial and his counsel are privileged and not subject to any interference on the part of those in charge of his detention.

Degree of restraint pending trial. It is not at all mandatory that an accused be restrained until the formal arrest required just prior to trial; or, in the case of trial by general court-martial, at the time he is furnished with the charges and specifications. The necessity for any restraint prior to the formal arrest must be determined in the light of the offense charged and the character of the offender. Any restraint exercised over an accused person at any time, pending trial, should be no more rigorous than the circumstances require. Further, an accused held while awaiting trial should be given every opportunity, consistent with his safe detention, to communicate with his counsel and prepare his defense. Restraint may be imposed by placing the accused in the brig, by placing him under the charge of a sentry, or merely by detaining him within certain limits prescribed by the commanding officer. This latter type of restraint is in many cases sufficient to ensure the presence of the accused at trial and may be effected either by an *open arrest*, in which case the accused is known as a *prisoner at large*, or by confinement to the ship or station.

Unless such physical restraint is necessary, an accused should not be placed in the brig pending trial. Confinement to the brig results in loss of manpower. Not only is the person confined unavailable for duty during his confinement, but the more persons there are in the brig, the greater is the number of guards who must be taken from other duties to control them.

For minor offenses, restraint in any form prior to the formal arrest for trial may be unnecessary. For example, there is usually no need to restrain a man who has voluntarily returned after a few days absence over leave. The fact that he has returned on his own accord is a good indication that he intends to stay with the command. His availability for trial a few days later can safely be assumed. On the other hand, a man who breaks arrest and remains absent without leave until apprehended probably requires confinement to the brig, since his past conduct indicates that only physical restraint will hold him with the command. Even a person who commits a serious military offense, such as a sentry who sleeps on watch,

is not necessarily to be confined to the brig awaiting trial unless there is some basis for believing that otherwise he will flee before trial. In each instance it is necessary to decide what restraint, if any, is necessary to ensure the presence of the accused at the trial and to prevent him from doing harm to persons or property in the meantime.

Protracted confinement while awaiting trial. *Navy Regulations* provide that: "When any enlisted person is confined for a longer time than ten days to await trial by court-martial, the commanding officer shall keep in view the fact that his confinement is protracted simply to ensure the appearance of the prisoner before the court by which he is to be tried." Detaining officers or men for long and unreasonable periods when it is practicable to bring them to trial is arbitrary and oppressive, and is in contravention of both the letter and spirit of the announced policies of the Navy Department pertaining to speedy trials. Where persons are detained in confinement for unreasonable periods prior to trial, or after trial and before promulgation of the sentence, and have in their sentences been awarded terms of confinement, the period of detention cannot legally be credited upon the term of confinement in executing the latter. However, the sentence may well be mitigated and reduced by the reviewing authority by a period equal to that of the protracted confinement. This action has been repeatedly taken in practice.

Confinement of intoxicated persons. Intoxicated persons should not be confined in any place or manner that may be dangerous to them in their condition.

7–6. Confinement imposed as punishment. The restraint imposed upon an offender as a punishment, unless it be a deprivation of liberty, or restriction to ship or station, must take the form of confinement. The word *confinement* when utilized to express punishment, either by a commanding officer or by a court-martial, indicates more than restriction to ship or station. It should be in the nature of an imprisonment. A restraint that includes the placing of a prisoner by himself where he can communicate with no unauthorized person nor with fellow prisoners, is solitary confinement, and not properly simple confinement. Article 30 *AGN*, in prescribing the punishments of the summary court-martial, provides only for three kinds of restraint as punishment: (1) solitary confinement, (2) confinement, (3) deprivation of liberty on shore on foreign station. In the case of a court-martial sentence adjudging confinement, the convening authority may extend the limits of confinement during working hours or at other times that he may deem expedient. He may even extend the limits of confinement to the limits of the ship or station, thus in effect making it restriction to the ship or station. No such power is given to the court itself, which must adhere strictly to the statutory form of punishment. The sen-

tence of a deck court or summary court-martial to *confinement to ship or station* or, *restriction to ship or station* is not legal. A general court-martial, however, may impose a sentence of *restriction to ship, post or station.*

Schedule of maximum confinement. The following is a schedule which indicates the maximum confinement that may be imposed on enlisted men as punishment by a commanding officer, a deck court, or a summary court-martial. It should be noted that Article 25 *AGN* provides that no officer who may command by accident, or in the absence of the commanding officer, except where such commanding officer is absent for a time by leave, shall inflict any other punishment than confinement.

	Commanding Officer	*Deck Court*	*Summary Court-Martial*
Confinement	10 days	20 days	2 months
Solitary confinement	7 days	20 days	30 days
Solitary confinement on bread and water	5 days	20 days	30 days
Solitary confinement on diminished rations	No	20 days	30 days

Phraseology to be employed in sentences imposing confinement. The exact phraseology of Article 30 *AGN* is to be followed in the sentence of a summary court-martial. Thus, sentences involving confinement on bread and water, or on diminished rations, are illegal unless it is expressly provided that such confinement is to be *solitary;* although solitary confinement may be adjudged by itself without diminished rations. As thirty days of solitary confinement is the legal maximum for a summary court-martial, the exact phraseology should be employed in adjudging a sentence involving confinement for the maximum period. A sentence of *solitary confinement for one month,* for example, would be irregular and improper, as the article prescribes 30 days as the maximum, whereas one month might be in excess of the legal limit.

Confinement to the limits of the ship or station distinguished from deprivation of liberty. A man who is deprived of liberty as a punishment is not, *per se,* under arrest, and the restraint which he suffers is only the result of his obedience to an order denying him his normal privilege of going ashore. In this respect he is not undergoing confinement nor is he in the status of arrest. Therefore, if he should disobey the order depriving him of his privilege, by going ashore, he cannot legally be charged with *breaking arrest.* The same distinction applies between *confinement* and a general court-martial may inflict in time of peace are, in accordance other hand, where a person has been confined and the confinement is extended to the limits of the ship or station, he is in a status of arrest, and if he should go ashore without authority he may be charged with *breaking arrest.*

Confinement imposed by general court-martial. The punishments that a general court-martial may inflict in time of peace are, in accordance

with Article 63 *AGN*, limited to those prescribed by the President. The limitations are expressed in Section 457, *Naval Courts and Boards, 1937*. In time of war these limitations do not apply, and the punishment of a general court-martial is within the discretion of the court, unless the offense is charged as a violation of a Federal statute wherein the punishment is prescribed. In such a case, the punishment cannot exceed the limitations of the statute. A general court-martial is also authorized to adjudge any punishment authorized for a summary court-martial.

It is the practice of the Department to cause all summary court-martial sentences adjudged by general courts-martial to be carried into execution at the place where the prisoner may be serving, and in the same manner as if the sentence had been adjudged by a summary court-martial. A sentence of confinement must express distinctly the period for which it shall continue. If the period of confinement adjudged be less than three years, it should be expressed in months; if three years or more, in years and fractions thereof. The meaning of *other accessories of said sentence*, when used in the sentence of a general court-martial in the case of an enlisted man, shall be understood to include the following: (1) the person so sentenced shall perform hard labor while confined pursuant to such sentence, and (2) shall forfeit all pay (and allowances, in the case of an enlisted man of the Marine Corps sentenced to dishonorable or bad-conduct discharge) that may become due him during a period equivalent to the term of such confinement (or if sentenced to dishonorable or bad-conduct discharge, during his current enlistment). In all cases involving confinement at hard labor for more than three months, the accused is to be reduced to the lowest rating of that branch of the service to which he belongs. In all cases where an officer is sentenced to imprisonment, the sentence shall provide for his dismissal prior thereto.

When adjudged confinement should take effect. Where confinement has been adjudged, it shall take effect from the date the sentence is approved by the highest reviewing authority required by law to approve it. However, where the accused has been previously sentenced to confinement for another offense, the confinement shall not take effect until the former sentence has been served; nor shall a discharge, if adjudged, be executed until both sentences have been served. In such case, care should be taken, in approving the later sentence, to state that the period of confinement shall not begin to run until the former sentence has been served. Where discharges have also been adjudged in both cases, the first should be remitted in approving the second. If a discharge has been adjudged in the first sentence only, the action on the second case should direct that the discharge be withheld until the second sentence has been served. Should an unusual length of time elapse between the date the accused is confined for trial and the date the sentence is approved, the convening authority,

in acting upon the case, should consider this period as a ground for mitigation. Should the sentence be to solitary confinement or to confinement on reduced rations, the time of such conditional confinement must be fulfilled unless such provision of the sentence be remitted or mitigated by the convening or higher authority. It is erroneous to antedate the period of confinement so that it starts before being reviewed by the immediate superior in command. However, the convening authority may take into consideration the length of time during which the accused was in confinement prior to trial as a ground for mitigation and may remit or mitigate the confinement.

Exercise of mitigating power. In connection with the exercise of the power to mitigate, it is to be noted that as much of a sentence as requires confinement to be solitary or on diminished rations may be remitted; or, in sentences involving bread and water, the frequency of full rations may be increased.

Confinement of a witness adjudged guilty of contempt. Article 42 *AGN* gives a court authority to punish contempts. The article is not, however, construed as extending this authority to a summary court-martial or deck court. The place of confinement for a witness in the naval service who is adjudged guilty of contempt and is sentenced to confinement should be left to the commanding officer of the person concerned. A communication, signed by the president of the court, to such commanding officer should state the offense, the sentence, and the authority therefor. The authority is the fact that the court was duly and regularly authorized, and was acting within its authority.

Confinement as punishment for failure to pay debts—policy. An enlisted man who has failed to pay a just indebtedness should not be sentenced to confinement upon conviction.

7–7. Solitary confinement on bread and water. Solitary confinement on bread and water should be reserved as a punishment for insubordination and recalcitrant offenders. Courts-martial should, therefore, exercise care and discretion in resorting to such punishment, and should not adjudge it in any case for a longer period than five consecutive days even though the total sentence to be so served is in a greater amount. As a shorter interval on bread and water is less liable to work injury to health, the maximum interval allowed should be adjudged only in extreme cases. A court, in adjudging a sentence of solitary confinement on bread and water or on diminished rations, should specify the days on which a full ration is to be allowed; for example, every third or every fifth day. If the court fails to do this, the convening authority should specify in his action the day a full ration is to be allowed. A full ration consists of the morning, noon, and evening meals, or other rations served on the general mess.

Diminished rations are something short of the rations served on the general mess, but not bread and water. A sentence of bread and water should not be limited as to the amount either of bread or water.

Certificate of medical officer. Whenever any person is sentenced to confinement on diminished rations or on bread and water for a period exceeding ten days, the record of proceedings must include the certificate of the senior medical officer under the immediate jurisdiction of the convening authority, to the effect that such sentence will not be seriously injurious to the health of the prisoner. A man sentenced to solitary confinement on bread and water should be required to serve the entire period of the sentence, unless it is mitigated by the *immediate superior in command* or the Navy Department. If, while undergoing sentence, the senior medical officer states, in writing, that he believes the sentence will produce serious injury, the man should be immediately released, and the officer ordering the court should remit the unexecuted portion of the sentence. If it becomes necessary to interrupt a sentence to place the man in a hospital for some injury, ailment, or disease not directly resulting from the nature of the confinement, the sentence should be interrupted immediately and he should serve the balance of the sentence thereafter. If the convening authority feels that the ends of justice have been served, he may request the Navy Department to remit the unexecuted portion of the sentence, but he may not do so himself.

Policy in regard to petty officers. The Navy Department considers it inappropriate and undesirable to sentence a petty officer to solitary confinement on bread and water because (1) a man who merits such punishment does not possess the qualities to be expected of a petty officer and accordingly should be disrated, (2) the discipline and morale of any military organization must of necessity suffer where nonrated subordinates witness the subjection of a superior to punishment of this nature, and (3) it tends to have a demoralizing effect on the petty officer himself.

7–8. Payment and issues to men in confinement status. In general, each member of the crew and of the Marine detachment of a ship, except men in confinement as punishment or awaiting trial, shall be allowed to draw twice a month such money as he may have due him.

While awaiting trial. Each member of the crew awaiting trial, upon the approval of his commanding officer, shall be allowed to draw on or before the day the trial commences such money as he may have due him. The commanding officer's order showing the date trial will commence will be filed as a payroll voucher.

Between commencement and completion of trial. Between the date the trial commences and the day the sentence is approved or disapproved no payments shall be made.

After sentence. Any money due and unpaid on the day preceding that on which the sentence is approved, and pay due subsequent thereto and not forfeited by the sentence may be used to offset charges for allotments or clothing issues, or may be paid to the man in the usual manner. Each man shall be permitted to draw $5.00 per month for necessary expenses, irrespective of court-martial sentences involving loss of pay.

Clothing and small stores. An enlisted man of the Navy or Marine Corps sentenced by court-martial to confinement with loss of pay should not be deprived of such clothing and small stores as the officer commanding the ship, or other place of confinement, may deem necessary to the prisoner's health and comfort.

To permit the issue of the above necessaries to enlisted men in a non-pay status, including those in debt to the Government for any reason, commanding officers are authorized to direct, in writing, the transfer, from the *ship's store stock* to the *clothing and small stores account*, for issue as contemplated by the above paragraph, of such articles as may be necessary for the health and comfort of the men requiring such issue. The value of such articles to be issued to any one person shall not exceed $3.00 in any one month. These transfers from the ship's store account to the clothing and small stores account should be covered by the usual transfer invoices prepared monthly and approved by the commanding officer. In instances where there is no ship's store, purchase of the necessary items may be made on approved open-purchase requisitions under the *clothing and small stores fund* in the usual manner and without prior reference to the Department for approval. Articles so transferred or purchased should be issued and charged to the account of the man concerned in the same manner as other items of clothing and small stores usually carried in stock.

7–9. Treatment of prisoners. A commanding officer should assure himself that persons in confinement suffer no cruel or unusual treatment at the hands of his subordinates. He should direct the release of every person when the term of confinement expires. He will send to the Navy Department, on the 30th of each month, a report showing all the facts in any case where irons have been used on any man in the naval service. Confinement of this character is not to be employed except where it is absolutely necessary with violent prisoners, and not at any time as a punishment inflicted by a commanding officer.

7–10. Prisons and places of confinement. Cells for the confinement of prisoners will not be less than six feet long and three and one-half feet broad, with the full height between decks, and shall be properly ventilated. They will not be altered without the authority of the Navy Department.

Prisoners will not be confined in any other spaces than those which have been designated by the Navy Department as prisons or spaces proper to be used as such. In case of necessity, extra spaces may be authorized by a commander-in-chief on a foreign station, by a senior officer present, or by the commanding officer of a ship acting singly, and the medical officer of the ship shall be called upon to report whether such spaces are fit for prison use.

7–11. Regulations for naval places of confinement. The Bureau of Naval Personnel is charged with the supervision and control of naval prisons and prisoners. Coordination of policies and regulations affecting naval prisons and brigs and their administration are the responsibilities of the Prison Administration Section of the Welfare Division of that bureau. A few of the general rules and policies announced by the Prison Administration Section for places of confinement, as well as some of the instructions now in use by naval places of confinement, may well be considered in the interests of establishing regulations which will discriminate between sound and unsound practices. These regulations and instructions are intended only as aids for commanding officers. It is emphasized that they are not exhaustive and that further reference should be made to the *Manual of Rules and Procedures for the Administration of Naval Places of Confinement,* which is available from the Bureau of Naval Personnel for the guidance of all concerned. Instructions on such matters as the employment of prisoners, military conduct, drill, exercise, educational programs, censoring of mail, maintenance of security, clothing supply, and privileges of reading, writing, smoking, visiting, and recreation are thoroughly discussed therein.

Conduct of prisoners.

1. All prisoners shall obey without reply or argument, the orders of all officers and enlisted men in authority over them and shall speak only concerning duty or need.
2. Prisoners shall perform the work assigned to them in a quiet, orderly and diligent manner. While at work there shall be no communication between prisoners except to give warning of danger, and when at work under the charge of sentry, prisoners shall always remain where they can be seen unless otherwise directed.
3. Prisoners shall be orderly and quiet at all times. When in their cells they may converse with prisoners in adjoining cells in low tones, except when placed in solitary confinement. They shall not at any time whistle or make unnecessary noise.
4. A prisoner shall be decent in manner toward other prisoners. Hazing of other prisoners is strictly prohibited. He shall not make insulting gestures or use insulting or indecent language or josh or

push against another prisoner with intention to annoy him or foment a quarrel.

5. A prisoner shall keep his person, clothing and bedding clean. He shall not spit, mark, draw, paint or in any manner deface the wall or floors of a cell or of the brig. Prisoners shall be clean shaven at all times, shaving daily during the hours allotted to shaving. Prisoners' haircuts will be of the regulation military cut.
6. Prisoners shall not at any time have in their cells or on their persons money, jewelry, watch, postage stamps, stationery, matches, razor, knife, tools, food, bottles, playing cards, dice, or sporting or sensational reading matter, and shall not hide or secrete any article. Prisoners not in solitary confinement may be permitted to have certain of the above-mentioned articles in their cell at the discretion of the warden.
7. Letters may be written only at such hours as are designated under such regulations as may be prescribed.
8. Smoking will be permitted only at specified times when the smoking lamp is lit. Cigarettes and lights are to be issued to those desiring to smoke by the brig bailiff or other authorized person. Excessive noise or loud talk during smoking or reading lamp will result in having the lamp put out.
9. Request for visits to Chaplain or Dispensary at other than scheduled time may be made orally to the Provost Marshal or the Warden.
10. Prisoners shall not salute or pay military compliments except to stand at attention. When at work they shall not cease work on the approach of or in the presence of an officer unless ordered to do so.
11. Prisoners violating any of the above rules and regulations shall in addition to other authorized punishments have their privileges, such as smoking and reading, taken away from them.

Conduct of brig guards.

1. Familiarity between brig guards and prisoners should not be tolerated.
2. Brig guards shall not lay a hand on prisoners except as follows: in cases of sickness or injury; when a prisoner defiantly refuses to stand or march as ordered; or in defense of themselves or others if attacked.
3. No guard is to leave his post until properly relieved.
4. No cell is to be opened unless so directed by competent authority.
5. At the change of each watch, the guards will account for each prisoner placed in their custody.

Suggested plan of the day. A suggested plan of the day for the brig is as follows:

0600 Reveille.
0630 Muster of prisoners.
0715 Draw morning meal.
0750 Sick call.
0800 Smoking lamp lit.
0820 Work squads out, smoking lamp out.
1130 Work squads in.
1220 Draw noon meal.
1300 Smoking lamp lit.
1320 Work squads out, smoking lamp out.
1630 Work squads in.
1715 Draw evening meal.
1800 Shave and shower.
1845 Light all lamps.
2100 All lamps out.
2115 Muster of prisoners.
2130 Lights out, and see that all is secure.

7–12. Places of confinement classified. There are only two U. S. Naval Prisons, officially classified as such, and these are located at Portsmouth, New Hampshire, and Mare Island, California. In general, the prisons are used to confine general court-martial prisoners who have been sentenced for periods in excess of twelve months. Other prisoners are confined in places variously denominated as brigs, disciplinary barracks, and detention barracks. In addition, one retraining command for prisoners has been established at Camp Peary, Williamsburg, Va., and it is the intention that one or more similar commands be established in the near future. Men will be sent to these retraining camps who, as indicated by the screening processes established at the naval prisons and brigs, are not inherently bad and are of suitable caliber for performing efficient naval service.

Certain brigs have been designated as authorized places to confine general court-martial prisoners. The principal brigs so designated are located at Hart's Island, New York; Navy Yard, Philadelphia, Pa.; Naval Repair Base, San Diego, Calif.; Terminal Island, San Pedro, Calif.; and Navy Yard, Bremerton, Wash. In addition there are a number of large brigs which are not used for general court-martial prisoners. The more important of these, all of which usually confine from 300 to 1000 or more prisoners, are at the Receiving Station, Boston, Mass.; Armed Guard Center, Brooklyn, N. Y.; Receiving Station, Norfolk, Va.; Naval Training Center, Great Lakes, Ill.; Naval Station, New Orleans, La.; Receiving Station, San Francisco, Calif.; Training and Distribution Center, Shoemaker,

Calif.; and, for Marine activities, Camp Lejeune, N. C. There are in addition a number of brigs ranging in capacity from 50 to 250, and a large number of small station brigs which usually have from 2 to 20 prisoners.

7–13. Restraint of officers. It is provided in the *Articles for the Government of the Navy* that no commander of a vessel shall inflict upon a commissioned or warrant officer any other punishment than private reprimand, suspension from duty, arrest or confinement. Such suspension, arrest or confinement shall not continue longer than ten days unless a further period is necessary to bring the offender to trial by a court-martial. All officers of the Navy and Marine Corps who are authorized to order either general or summary courts-martial have the same authority to inflict minor punishments as is conferred by law upon the commander of a naval vessel. A clear understanding of the regulations pertaining to the exercise of this authority is necessary for the administration of this phase of naval justice.

Arrest of officer. An officer when placed under arrest, either as punishment or to await further disciplinary action, shall not visit his commanding or other superior officer officially unless sent for; but in case of business requiring attention, he shall make it known in writing. He may be restored temporarily to duty by his commanding officer when conditions warrant it, but such action shall not be construed as a bar to any disciplinary action pending.

Suspension of officer. An officer suspended from duty shall confine himself to the limits assigned him at the time of his suspension, or afterwards, and his failure to do so shall be regarded as a breach of arrest.

Confinement or restraint of officers. An officer placed under arrest or suspension on board ship shall not be confined to his room or restrained from the proper use of any part of the ship to which before his arrest or suspension he had a right, except the quarter-deck, poop, and bridges, unless such confinement or restraint shall be necessary for the safety of the ship or of the officer or for the preservation of good order and discipline; but such confinement shall not be imposed for a longer time than absolutely necessary. Similarly, at a naval station or other place on shore, the confinement or restraint imposed shall not be unduly rigorous.

Arrest or suspension of an officer of the Supply Corps. Whenever a commanding officer, commandant, or other senior officer orders an officer of the Supply Corps under suspension or arrest, he shall take possession of the safe and of the keys of the storerooms under the charge of such officer, and shall immediately cause a seal to be placed on the safe in the presence of the officer suspended. The senior officer present shall immediately thereupon direct a board, consisting of at least three officers, to take an inventory of the money, papers, clothing, provisions, and small stores

in charge of such officer; shall take such steps in regard to other stores under the charge of the officer concerned as may be practicable for the purpose of safeguarding the interests of the Government, of the officer relieved, and of such officer as may be then or later ordered to take charge thereof, without unduly interfering with the progress of work, and shall appoint a suitable person to take immediate charge thereof, who shall be present at such inventory. Should the officer of the Supply Corps concerned be released from suspension or arrest and restored to duty, the senior officer present shall, in the same manner and under the same conditions as stated above, cause a second inventory of the money, papers, clothing, provisions, and small stores to be taken, and the officer restored to duty shall be held responsible only for the money and stores then on hand, as thus ascertained. The officer in question and the person appointed to take charge shall both be present when the above inventories are taken, and they shall each be furnished with copies of the same. Whenever in either of the above cases the senior officer present deems it impracticable to have an inventory taken of the stores, he shall furnish the officers concerned with a certificate to that effect. If the officer restored to duty after temporary suspension is satisfied with the vouchers for expenditures of all kinds furnished by the officer who has acted in his stead, he shall state the fact in writing, which will relieve the officer who has so acted from rendering accounts to the General Accounting Office and to the Navy Department.

Before an officer of the Supply Corps under suspension or arrest is taken permanently from the ship or station to which he has been attached he shall be allowed a reasonable time in which to close his books and complete his vouchers; and no books or vouchers necessary to the perfect settlement of his accounts shall, under any circumstances, be taken from his personal charge unless absolutely necessary for the public interest, in which case a detailed receipt for the same shall be furnished him by the person appointed to take charge of, or to relieve him from his duties.

7–14. Effect of arrest by Army Military Police on AOL or AWOL. The period of an unauthorized absence in the offenses of AOL or AWOL is the period from the unauthorized departure, or from the expiration of leave, as the case may be, until return to naval authority. By *AlNav* 251, 1942, it was promulgated to the naval service that the War and Navy Departments have agreed that members of the Army Military Police shall be authorized and directed to take corrective measures, including arrest if necessary, in the case of any member of the armed forces committing any offense which reflects discredit upon the services. Personnel so arrested are to be returned to the jurisdiction of their respective service as soon as practicable.

In view of the foregoing provisions, members of the Army Military Police in arresting a person AOL or AWOL from the naval service, regardless of whether the arrest follows surrender or apprehension, would be acting for naval authority in the status of members of the Navy, Marine Corps, or Coast Guard Shore Patrols. Consequently, the accepted date of return from desertion of a naval deserter who is arrested or apprehended by, or surrenders to the Army Military Police, is the date of such arrest, apprehension, or surrender.

7–15. Effect of arrest by civil authorities on AOL or AWOL. If it is proved that an unauthorized absence was due solely to arrest and detention by the civil authorities, which detention was followed by an acquittal in the civil court, the accused should be acquitted in the court-martial proceedings. If, however, the unauthorized absence was caused by the misconduct of the accused, as evidenced by his conviction in the civil court or in the court-martial proceedings for such misconduct or by proof of such misconduct through the introduction of evidence during his trial for absence over leave, such facts do not constitute a legal defense to the unauthorized absence. If the accused was without leave when detained by the civil authorities, he is absent without leave for the entire period. Where an accused, through no fault of his own, has been arrested before the expiration of his leave, detained by civil authorities, acquitted and released, and thereupon has returned to his station and duty as promptly as the circumstances permitted, he is not guilty of absence from station and duty after leave had expired.

7–16. Computation of general court-martial sentences of confinement. Only general court-martial prisoners can be credited with time off of their approved sentences of confinement for good behaviour. The sentence of every general court-martial prisoner except dismissed officers becomes effective and starts to operate on the date the sentence is approved by the convening authority. Immediately following the commitment of a general court-martial prisoner to the designated place of confinement the sentence and release date shall be computed in accordance with the following provisions. Thereafter, it may become necessary to recompute the sentence if the promulgating letter of the Secretary of the Navy in finally approving the sentence modifies the action of the convening authority, if probation is revoked, if any of the *good conduct allowance* is forfeited or not earned, or if the prisoner escapes .

Straight sentence. A general court-martial prisoner serving a *straight* sentence who completes the first two-thirds of his approved period of confinement in a manner satisfactory to his commanding officer, shall be credited with the remaining one-third thereof as a good conduct allowance.

Example: To be reduced to the rating of apprentice seaman, to be confined for a period of 2 years, then to be discharged from the U. S. naval service with a bad-conduct discharge.

Computation: Sentence approved 1/1/45. 1/3 of 2 years is 8 months, to be credited as good conduct allowance. Balance to serve is 16 months. 16 months from 1/1/45 is 4/30/46, date of release with a BCD.

The same allowance is credited on a sentence which provides for the prisoner's restoration to duty at expiration of sentence, if his conduct has been satisfactory.

Example: To be reduced to the rating of apprentice seaman, to be confined for a period of 2 years, then to be discharged from the U. S. naval service with a bad-conduct discharge. If (the prisoner's) conduct is satisfactory to his commanding officer during the period of confinement, the bad-conduct discharge shall be remitted upon the successful completion of a probationary period of 6 months.

Computation: Sentence approved 1/1/45. 1/3 of 2 years is 8 months, to be credited as a good conduct allowance. Balance to serve is 16 months. 16 months from 1/1/45 is 4/30/46, date of release and restoration to duty on 6 months probation.

Probation after serving portion of sentence. A general court-martial prisoner who, because of action taken by the convening or a reviewing authority, is to be restored to duty on probation after serving a portion of his approved sentence of confinement shall not be awarded a good conduct allowance unless the portion of confinement to be served exceeds two-thirds of the sentence of confinement as approved, in which case the good conduct allowance shall be such as to reduce the time to be served to two-thirds of the approved sentence of confinement.

Example (1): To be reduced to the rating of apprentice seaman, to be confined for a period of 2 years, then to be discharged from the U. S. naval service with a bad-conduct discharge. If (the prisoner) during the first 6 months of confinement conducts himself in a manner satisfactory to his commanding officer, the remainder of the sentence will be held in abeyance with a view to withholding its execution entirely upon the successful completion of a probationary period of 6 months.

Computation: Sentence approved 1/1/45. Prisoner is required to serve the entire 6 months. Will be released 6/30/45 and restored to duty on 6 months probation.

Example (2): To be reduced to the rating of apprentice seaman, to be confined for a period of 12 months, then to be discharged from the U. S. naval service with a bad-conduct discharge. If (the prisoner) during the first 9 months of confinement conducts himself in a manner satisfactory to his commanding officer, the remainder of the sentence will be held in abeyance with a view to withholding its execution entirely upon the successful completion of a probationary period of 6 months.

Computation: Sentence approved 1/1/45. Since confinement portion exceeds two-thirds of total approved sentence (9 months of 12), a good conduct allowance of one month is credited, bringing the actual time to be served to 8

months, which is two-thirds of the total approved sentence. Will be released 8/31/45 and restored to duty on 6 months probation.

Forfeiture for unsatisfactory conduct. If a prisoner's conduct during the first period of confinement is unsatisfactory to his commanding officer, such conduct may be the basis for both the termination of the probation and the forfeiture of all or part of the good conduct allowance that the prisoner might have earned on the total approved sentence.

Recommendation to clemency after unsatisfactory conduct. Any general court-martial prisoner whose sentence of confinement is approved by the convening authority on or after 1 November 1944 and whose probation is revoked or terminated, either for misconduct while in confinement in accordance with the provisions of the above paragraph or because of unsatisfactory conduct while on probation following his restoration to duty, shall serve the unexecuted portion of the approved sentence of confinement without credit of any good conduct allowance. However, he may be recommended for clemency and restoration to duty when he has completed two-thirds of his approved sentence of confinement.

8. THE MAST

8–1. Nature and function of the mast. The mast is essentially a formal investigation or inquiry by the commanding officer for the purpose of enabling him to make certain determinations necessary to properly exercise his authority to maintain discipline.

The determinations which the commanding officer must make in order to dispose of a report of misconduct are as follows: (1) a determination of the facts, (2) a determination of the offense committed, and (3) a determination of action to be taken. These three determinations and the action predicated upon them constitute the exercise of authority to maintain discipline. Although in a strict sense the action taken is not a part of the investigation, it can best be considered in connection with the mast, and, generally speaking, is referred to as *mast action*, or in case it takes the form of commanding officer's punishment, as *mast punishment*. The exercise of this authority is only quasi-judicial in nature, and the investigation or inquiry is in no sense a trial; the determinations do not result in an acquittal or conviction, and the mast action or mast punishment is not a sentence.

8–2. The report of misconduct. Article 198 of *Navy Regulations* provides that:

> Officers making reports or complaints shall confine themselves exclusively to facts; and statements submitted in reply to or in explanation thereof must be couched in temperate language and relate specifically to the matter referred to therein. Officers to whom such reports or complaints are submitted for statement must not reply by making counter-charges. Officers desiring to prefer charges against others should make them independently. Opinions must not be expressed, nor the motives of others impugned.

Article 197 of *Navy Regulations*, in prescribing the inquiry to be made into reports of grave misconduct, directs that the commanding officer "call upon the complainant for a written statement of the case, together with a list of his witnesses, mentioning where they may be found, and a memorandum of any documentary evidence bearing upon the case which may be obtainable."

The foregoing provisions should be strictly complied with. An intelligent and comprehensive report of the offense committed will obviate the necessity for much minor investigative detail. Commanding officers should

REPORT SLIP

..... (Ship or Station)

....., 19.... (date)

MEMORANDUM:

TO: Commanding Officer.

I desire to place on report the following named man:

..... (Name) ..... (Rate) ..... (Service No.)

.....

NATURE OF OFFENSE: .....

DATE OF OFFENSE: .....

PLACE: .....

WITNESSES:

..... (Name) ..... (Rate) ..... (Division)

..... (Name) ..... (Rate) ..... (Division)

..... (Name) ..... (Rate) ..... (Division)

Signed:.....

Rate or Rank.....

Title .....

Figure 8–1. A report slip.

insist that reports of misconduct be prepared and submitted in a manner and style which will facilitate an analytical investigation of the offense. The report may be on the form used by the shore patrol as shown in Figure 6–1, or may be on an informal slip such as is indicated in Figure 8–1. No specific form is required except by local regulations.

8–3. The investigation. Article 213 of *Navy Regulations* provides that:

> All reports of misconduct shall be investigated by the commanding officer before punishment is adjudged. After morning inspection he shall be furnished by the executive officer with a list of persons reported for offenses during the preceding day. After inquiring into the facts in each case at the mast, giving to both the accuser and accused an impartial hearing, he shall assign a punishment, when necessary, and affix his signature in the report book. The investigation of a report, except where summary action is deemed necessary, shall be deferred until the morning following the day on which the report is made; but longer delay shall be avoided.

Where grave misconduct is involved, the commanding officer is required by Article 197 of *Navy Regulations* to:

> (1) institute a careful inquiry into the circumstances upon which the complaint is founded; (2) call upon the complainant for a written statement of the case, together with a list of his witnesses, mentioning where they may be found, and a memorandum of any documentary evidence bearing upon the case which may be obtainable; (3) call upon the accused for such counter-statement or explanation as he may wish to make, and for a list of the persons he desires to have questioned in his behalf; if the accused does not desire to submit a statement, he shall set forth that fact in writing.

Purpose and scope. The purpose of the investigation is to enable the commanding officer to determine whether an offense has been committed and to make a sound disposition of the case. It is not the commanding officer's function to build up a case against the accused, but to ascertain and impartially weigh all facts in arriving at his final conclusions. He should conduct a thorough and impartial investigation. All possible evidence should be examined. The commanding officer is not limited to examination of the witnesses and documentary information indicated on the report of misconduct; he should extend his investigation as far as may be necessary to make it thorough. Failure of commanding officers to discharge this duty in a careful and conscientious manner may result in an unnecessary recourse to a more formal investigation or court-martial.

Some offenses will be readily admitted by the accused or will be easily susceptible of proof. In such cases the investigation will consist principally of confirming the original report through the statements of the accused and witnesses. For example, offenses of absence over or without leave, or breaking arrest can ordinarily be substantiated by the official person-

nel records. Unless the accused offers a plausible defense which, if supported by competent evidence, would be grounds for his acquittal, the investigation need only confirm that such records are authentic. Other cases involve sharp disputes over facts which can be satisfactorily resolved only through careful questioning and cross-questioning of the accused, the accuser and witnesses.

Preparation. An information sheet similar in form to Figure 8–2 should be prepared prior to the investigation. The information sheet ought to contain sufficient information concerning the accused and the offense to enable the commanding officer to proceed intelligently with the investigation. The report slip, the information sheet, the service record and any accompanying papers should be examined by the commanding officer prior to the investigation with particular attention paid to the witnesses and proposed evidence (documentary and real) relied upon by the accuser to substantiate the report of misconduct. The commanding officer should also familiarize himself with the essential elements of the offense or offenses circumscribed by the report prior to the investigation, so that he will be able to determine whether the information obtained at the investigation will legally support an offense known to naval law.

Chapter 2, *Naval Courts and Boards, 1937*, contains a discussion of the more common offenses under the *Articles for the Government of the Navy*, and gives in detail the necessary elements of proof in each case. In order to properly conduct the mast investigation and thereby dispense justice, the commanding officer must be thoroughly familiar with the contents of this chapter.

Examination of witnesses. The commanding officer is not bound by technical rules of evidence in the interrogation of witnesses at mast. He is, therefore, permitted to ask certain types of questions which are precluded at a trial. However, he should conduct the examination in such a manner that a witness may not later claim that his statements were made under duress, threat, or promise of reward. The character of the witness and his manner of offering his information should be carefully noted by the commanding officer, in order that the information obtained can be properly weighed. Witnesses are generally examined separately but in the presence of the accused. In the event the accused desires that witnesses be called in his behalf, the commanding officer shall, if possible, secure the witnesses and examine them.

Examination of accused. The accused person should be given every opportunity to explain his side of the case. It must be remembered that no person can be required to admit his guilt or to make any statement which will incriminate him. In examining the accused, therefore, the commanding officer must be careful not to indicate that he must make a statement. On the contrary, he should explain to the accused that he is free to

MAST INFORMATION SHEET

....., ..., 19....
(place) (date)

Name of Accused:..... Rate:.....

Service No....., USN, USNR. Age:..... Enlistment date:.....

Pay per month (Base Pay plus Longevity): $..... Marital Status:.....

Allotments to dependents: $..... per month. Government Insurance: $..... per month. Present duty assignment:.....

Data as to service: (Enlistment periods previously terminated, organizations served, vessels, engagements, citations, etc.).....

.....

.....

Synopsis of previous offenses and action:.....

.....

.....

Present Offense: (Furnish a concise account of acts constituting offense).....

.....

.....

.....

Possible charges under A.G.N.: (1).....

(2)..... (3).....

Remarks of Division Officer: (Performance of duty, etc.).....

.....

Witnesses:.....

.....

.....

Figure 8–2. A mast information sheet.

remain silent if he chooses, but that if he does say anything it may be used against him. The accused should be encouraged to make any statement which will tend to mitigate or justify his actions.

In investigations pertaining to grave misconduct, if the accused desires to make no statement whatsoever, he should submit a statement to that effect in writing. A commanding officer should not take the position that the accused's denial of his guilt is false unless the facts adduced by the investigation so indicate. He should judge the accused's credibility strictly in relation to the weight of opposing evidence and his apparent character. A verbal denial of misconduct made during the investigation cannot be made the basis of a specification for falsehood.

8–4. The determination of facts. After the commanding officer has heard all the witnesses and the accused, has examined all records and other matters, and is satisfied that all the available facts in the case have been brought to light, he must then determine what he believes the facts to be. This determination will be the result of the investigation or inquiry and will mark its conclusion.

Statements of witnesses. Where the investigation involves a report of grave misconduct or the facts are various and complicated, the statements of the witnesses should be reduced to writing. Although witnesses need not sign or swear to their statements, it is advisable to secure signed and sworn statements, if practicable.

Summaries of expected testimony. In addition to the written statements of the witnesses, it is sometimes advisable to prepare summaries of expected testimony. This is especially true where the offense is one which will require trial by court-martial. Such summaries will be of inestimable value in the preparation for trial.

8–5. The determination of offense. After the commanding officer has made the determination of facts, he will check the facts as he has determined them with the essential elements of the pertinent offense or offenses in order to decide whether an offense against naval law has been committed. It will often be impossible for him to find direct evidence of every element of an offense, but the elements may be established by reasonable inference from other facts. Thus, for example, all the essential elements of a larceny may be proved by showing: (1) the disappearance of the article from the possession of its owner without his consent (from which it is inferred that it was taken and carried away by trespass); and (2) the unexplained possession by the accused of this same article shortly thereafter (from which it is inferred that it was the accused who committed the trespass and carried the article away); and (3) the fact that the accused had made no report of having the property of another in his

possession, well knowing the incriminating nature of such possession, plus the fact that he used the property as his own, or asserted ownership of it through pawning it or otherwise (from which it is inferred that he had the intention to deprive the owner permanently of his property). Wherever the intention of the accused is an essential element, as for example, in desertion, theft, burglary, or murder, it almost always must be inferred from the circumstances.

Lesser included offenses. Sometimes the information obtained at the mast will not be sufficient to legally establish the offense indicated in the report of misconduct, but will tend to establish a lesser included offense. By lesser included offense is meant an offense which must be shown to prove the principal offense, but which lacks some of the additional elements of the principal offense. For example, absence without leave or absence over leave must be proved to establish desertion, but such offenses, in themselves, do not contain the element of intent to remain away permanently, which is required to establish desertion.

Different but related offense. The information adduced at mast sometimes may not indicate a lesser included offense, but it may indicate a different and related offense. For example, the report may indicate a charge of sleeping on watch, but the investigation may show that the accused, when found asleep, was not on his post and had left his post before falling asleep. In such case the offense of *leaving his post before being regularly relieved* has been committed.

8–6. The determination of action. Having concluded his determination of the offense, the commanding officer may take one of four courses of action. (1) He can dismiss the accused by excuse or warnings; (2) he can mete out punishment as prescribed by Article 24, *AGN;* (3) he can order the accused tried by a deck court or a summary court-martial; or (4) if the offense is sufficiently serious, he can recommend to the appropriate convening authority that the accused be tried by a general court-martial.

If the commanding officer has determined that the accused committed no offense, the appropriate action would, of course, be to excuse him. If he determines that an offense was committed by the accused, but is one which because of its trivial nature does not merit punishment, the commanding officer may dismiss the accused but issue him a warning. If he determines that the offense warrants punishment, he will carefully deliberate upon whether he should effect the punishment then and there under the authority granted him by Article 24, *AGN*, or whether the nature of the offense is such that it deserves punishment by a naval tribunal.

As a rule, the tribunal ordered by the commanding officer is determined by the punishment sought to be inflicted. The important consideration here is that the offense can be sustained at a court-martial only if there is sufficient

legal evidence for its proof. If the commanding officer is satisfied that there is insufficient legal evidence to support a finding of guilty, he should not order trial by court-martial. If he is in doubt as to whether the offense can be sustained, he can consistently order a trial, particularly if the offense is of a serious nature. This decision requires a familiarity with the rules of evidence which prevail in naval courts-martial. The rules are set forth in Chapter 3 of *Naval Courts and Boards, 1937*, and reference should be made to them in order to intelligently decide whether the mast information contains the legal proof required at trial in order to establish guilt. The punishments which a commanding officer at mast is authorized to impose are fairly light ones, whereas, generally speaking, the punishments of the deck court, summary court-martial, and the general court-martial are of increasing severity. It is not necessarily the type of offense that governs the determination of the body that will try the case, except indirectly—it is rather the seriousness of the offense. That is to say, the same offense, AOL for instance, may be punished by the commanding officer at mast if it is only a few hours in duration, or it may be the subject of a summary court-martial if it is lengthy or made with no possible justification. The Navy Department advocates the use of the commanding officer's punishment in every possible case where the ends of justice or naval discipline may be attained by its use. Factors to be considered are the previous conduct record of the accused, his age, length of time in the service, and the value the punishment will have as a deterrent effect upon the other men in the command.

Offenses punishable by Article 24 AGN. Article 197(3) of *Navy Regulations* prescribes that: "In the infliction of punishment upon enlisted men for lesser offenses, commanding officers of vessels and marine barracks, should, in ordinary cases, resort to the authority conferred upon them by the provisions of Article 24, *AGN*, instead of convening summary courts-martial or deck courts for the trial thereof. The certainty of prompt punishment is more conducive to discipline than punishment deferred long after the offense." Whether an offense is a lesser one, is often a question of judgment which cannot be settled by rule of thumb. Everyone easily recognizes some offenses as being very serious. Whether an offense is *lesser* depends upon its nature, the time and place of its commission and the person committing it. Generally speaking, the term includes derelictions not involving moral turpitude or any greater degree of criminality or seriousness than is involved in the average minor offense tried by deck court. In other words, the nature of the offense and the customary punishment for it must be taken into consideration.

Offenses triable by deck court. The jurisdiction of a deck court is expressly limited to *minor offenses* of enlisted personnel. Offenses such as larceny, an attempt to commit sodomy, or fraudulently passing a bad check, involve moral turpitude and so are not properly to be treated as minor.

Escape from confinement, wilful disobedience of officers, threatening or assaulting a sentry, are offenses which, while not involving moral turpitude, are serious and should not be regarded as minor. On the other hand, first offenses of unaggravated absence over leave for a short period of time, or late hammock, are offenses which may be tried by deck court or properly may be punished under Article 24, *AGN*. Of course, an offense which on its face seems minor may be considered a serious one in the light of the circumstances of the particular case and the person committing it. Drunkenness on the part of a man who constantly overindulges and who has not changed his ways despite repeated attempts at correction and the use of disciplinary punishment, may cease to be a minor dereliction. The question is one in which the commanding officer must use his best judgment taking into account the nature of the offense, its effect upon the organization as a whole, the manner in which such offenses are customarily punished in the Navy, the circumstances of the particular case and the record of the offender.

It has been repeatedly held that a man found guilty of theft or embezzlement should not be retained in the naval service. Inasmuch as it is not within the power of a deck court to award a sentence involving discharge it is considered that the award of a deck court is contrary to the Navy Department's policy where a man is charged with theft or embezzlement. However, care should be taken to distinguish cases of theft from cases of petty pilfering.

Offenses triable by summary court-martial. Article 26 *AGN* makes triable by summary court-martial those offenses committed by enlisted men which in the opinion of an officer empowered to order a summary court-martial deserve greater punishment than those presented in Article 24, *AGN*, but which are not sufficient to require trial by general court-martial.

Offenses triable by general court-martial. When the nature of an offense charged is of such character that the punishment which a summary court-martial is authorized to inflict is not adequate, the offender should be brought to trial before a general court-martial. (See Article 12–14 of this text.)

Policy. Commanding officers should bear in mind that it is the certainty of punishment as well as the degree which deters men from committing offenses, and that punishment which immediately follows an offense has a greater deterrent effect than punishment which follows a considerable time after an offense. The Navy Department's statement of policy in this regard is contained in *AlNav* 83, 1942, which reads as follows:

> In interest of reducing paper work and better administration of naval justice, Department directs that all commands utilize to a greater degree mast punishments rather than summary or deck courts-martial and trial by deck rather than summary courts-martial and by summary rather than general courts-

martial in cases of infractions by enlisted men of the Navy, Marine Corps, and Coast Guard when such action will accomplish the ends of discipline. . . .

In construing *AlNav* 83, action which will accomplish the ends of discipline is considered to be action which will deter other men of the command from committing the offense with which the accused is charged as well as deter the accused from again committing the offense.

Absences and desertion. The current policy of the Navy Department with regard to trials of wartime offenses involving absences and desertion is outlined in SecNav Circular Letter of 29 May 1945 and is reprinted in Appendix C of this text. It is to be noted, however, that modifications and revisions of this policy are necessary from time to time. Therefore, in all cases of this nature it is extremely important that reference be made to the most recent pertinent directives.

Table of legal punishment limitations. The table shown in Figure 8–3 indicates the legal limitations on punishment which may be imposed by the commanding officer, the deck court and the summary court-martial. It is set forth as a visual aid to facilitate the determination of action necessary for appropriate disposition of a case.

PUNISHMENT	MAST	DECK	SUMMARY
1. Bad conduct discharge	No	No	Yes
2. Reduction to next inferior rating	Yes	Yes	Yes
3. Solitary confinement on bread and water or diminished rations	5 Days	20 Days	30 Days
4. Solitary confinement	7 Days	20 Days	30 Days
5. Confinement	10 Days	20 Days	2 Months
6. Deprivation of liberty on shore	Yes	No	No
7. Extra duty	Yes	No	No
8. Deprivation of liberty on shore on foreign station	No	Yes	Yes
9. Loss of pay	No	20 Days	3 Months
10. Extra police duty	No	3 Months	3 Months

Mast: No combination of punishments permitted.
Re 2 above—Rate must have been established by the commanding officer or his predecessor in command.
Re 3 above—Limited to solitary confinement on bread and water.
Re 8 above—Phraseology of 6 should be used even on foreign station.
Deck: 9 and 10 may be combined.
9 and 10, or 9 or 10 may be combined with 2-3-4-5, or 8.
Summary: 9 and 10 may be combined.
9 and 10, or 9 or 10 may be combined with 1-2-3-4-5, or 8.
May disrate any rated person for incompetency.
1 above may not be carried into effect in a foreign country.

Figure 8–3. Legal limitations on punishment.

8–7. Excuse or warning. An offense which is excused, or for which a warning but no punishment is given, is never entered in a service record, but is entered in the smooth book of records of reports and punishments for reference. A memorandum as to a warning is sometimes temporarily held in the service record as a reminder for the commanding officer. It is preferable to remove the memorandum at the expiration of the quarterly or semi-annual marks period, provided the accused has maintained a mark of 4.0 conduct during such a period. The memorandum should always be removed from the service record prior to transferring the man to another command.

8–8. Function and use of mast punishment. Many infractions of the law occur from time to time in any command which require some punishment but which are not sufficiently serious to warrant trial by court-martial. To provide a prompt and efficient method of disposing of such offenses, commanding officers are empowered to impose limited forms of disciplinary punishment directly upon persons of their command without the intervention of a court-martial. Such disciplinary punishment is commonly known as *mast punishment* inasmuch as it usually follows immediately upon the mast investigation without intervention of time. In invoking this punishment a commanding officer must carefully adhere to the provisions of Article 24, *AGN*, since it is a provision of law restrictive in its character, prescribing the limits within which the disciplinary power inherent in command may be exercised.

8–9. Article 24 AGN. Disciplinary punishment under Article 24 *AGN* may be imposed on either officers or men.

> **Officers.** No commanding officer shall inflict upon a commissioned or warrant officer any other punishment than private reprimand, suspension from duty, arrest, or confinement, and such suspension, arrest or confinement shall not continue longer than ten days unless a further period is necessary to bring the offender to trial by a court-martial.
>
> **Enlisted men.** A commanding officer shall not inflict, or cause to be inflicted, upon any petty officer, or person of inferior rating, or Marine, for a single offense, or at any one time, any other than one of the following punishments, namely, (1) reduction of any rating established by himself, (2) confinement not exceeding ten days unless further confinement be necessary, in the case of a prisoner to be tried by court-martial, (3) solitary confinement on bread and water not exceeding five days, (4) solitary confinement not exceeding seven days, (5) deprivation of liberty on shore, and (6) extra duties.

8–10. Who may punish under Article 24 AGN. The commander of any naval vessel has power to impose disciplinary punishment upon all persons of his command. All officers of the Navy or Marine Corps who are authorized to order either general or summary courts-martial also possess

such power. The disciplinary power of a commanding officer cannot be delegated to a subordinate. A commanding officer cannot, therefore, authorize his executive officer to dispose of cases under Article 24 *AGN*; he must handle the matter himself.

Article 25(b), *AGN*, specifically provides that: "No officer who may command by accident, or in the absence of the commanding officer, except when such commanding officer is absent for a time by leave, shall inflict any other punishment than confinement." This prohibition is limited to direct punishment and does not include the convening or ordering of courts-martial to determine the guilt of an accused.

8–11. Persons punishable. Any person under the command of the commanding officer is subject to disciplinary punishment. This includes not only enlisted men but also warrant officers and commissioned officers. There is often more occasion for utilizing Article 24, *AGN* in the case of officers than in the case of enlisted men. A commissioned officer can be tried only by a general court-martial. Unless his misconduct is such as to warrant or require dismissal from the service, disciplinary punishment is usually sufficient and preferable to trial.

8–12. Mast punishment considered. A clear understanding of punishments under Article 24, *AGN*, is necessary in order to administer discipline effectively. To produce the proper deterrent effect, a punishment must be judiciously selected and strictly enforced. Certain punishments may be indicated from the character of the offense or the circumstances under which it was committed.

Reduction of any rating established by himself. The provisions of Article 24, *AGN*, pertaining to *reduction of any rating established by himself* apply to the office of the commanding officer of the particular ship or station. A commanding officer cannot legally reduce a man in rating, under Article 24, *AGN*, below that of the next inferior rating. For example, if an enlisted man attached to a submarine base is rated by his commanding officer, Capt. John Doe, that man may be later reduced as a punishment, in accordance with Article 24, by Capt. John Doe. If Capt. John Doe is relieved of his command, his successor in office may also reduce the man as a punishment in accordance with Article 24. If, however, the aforementioned man, rated by the commanding officer of the submarine base, is transferred to another ship or station, he may not then be reduced in rating under the provisions of Article 24, as the power of the commanding officer to reduce in rating as a punishment is restricted to the command in which the man received his rating.

Except by sentence of court-martial, chief petty officers with permanent appointments may only be disrated and have their appointments revoked

by authority of the Bureau of Naval Personnel. Commanding officers shall refer to the Bureau for action the cases of men with permanent appointments who prove themselves unqualified or unfit for their rating. Full information shall accompany the recommendation, together with pages 9–10 of the service record entered to date, and a statement from the man concerned. The effective date of revocation of a permanent appointment will be determined by the Bureau. When permanent appointment is revoked by the Bureau, the man concerned reverts to the next inferior rating. If, in the opinion of his commanding officer, he is qualified to perform the duties under an acting appointment of the rating in which the permanent appointment is revoked, the commanding officer is authorized to issue such acting appointment as of the day following the date the permanent appointment is revoked.

Confinement, not exceeding ten days. Confinement as a punishment, within the meaning of Article 24, *AGN*, is in the nature of an imprisonment and should be strictly administered. It cannot be imposed for a period longer than ten days. However, confinement exceeding ten days may be imposed by a commanding officer in the case of a prisoner to be tried by court-martial; although in such case the confinement is not for the purpose of punishment and should not be as strictly administered.

A person so confined should be committed to the brig, or other authorized place of confinement. *Restriction to ship or station* is not a punishment under Article 24, *AGN*, although in effect such a punishment is provided for by *deprivation of liberty*. The exact terminology of Article 24, *AGN*, should be used by a commanding officer in administering disciplinary punishment.

Solitary confinement, on bread and water, not exceeding five days. Solitary confinement on bread and water involves confinement in a place where the prisoner can communicate with no other person. The daily rations, of course, consist solely of bread and water. This punishment cannot be imposed by a commanding officer for a period longer than five days. The Navy Department disapproves of the imposition of this punishment upon petty officers due to the fact that it has a degrading effect upon the man and results in the loss of man hours.

Solitary confinement, not exceeding seven days. The nature of solitary confinement is identical to that of solitary confinement on bread and water, except that the prisoner receives his full day's ration. The period of solitary confinement under Article 24, *AGN*, cannot extend beyond seven days. Announced policies of the Navy Department also disapprove the imposition of this type of punishment upon petty officers.

Deprivation of liberty on shore. When a man is punished by being deprived of liberty, he is restrained to his ship or station. However, the restraint which he suffers is only the result of his obedience to an order

denying him the normal privilege of going ashore. In this respect he is not undergoing confinement nor is he in the status of arrest, and cannot legally be charged with *breaking arrest* in the event he disobeys such an order. *Deprivation of liberty* should not be recorded as *restriction to ship or station,* or *confinement to the limits of ship or station.* It is noted that Article 24, *AGN,* does not limit the period of deprivation of liberty. However, it is required by departmental interpretation that the period be reasonable and determinate. The article does not restrict the place where deprivation of liberty on shore shall be carried into execution, and it may, therefore, be imposed and carried into effect either in the United States, its territories, or on a foreign station.

Extra duties. The punishment of *extra duties* is not subject to a precise and exact definition; nor can a definite distinction be assigned between *extra duties* and *extra police duties* as set out in Article 30, *AGN.* However, it can be said that no distinction should be made in their application. In neither case should military duties usually performed by enlisted men, such as watch standing, regular cleaning details, drills, etc., be imposed. Ordinarily extra duties consist of the performance, outside of regular working hours, of undesirable, but necessary work which does not fall within the above prohibitions. Further, the *Navy Regulations* provide that "under no circumstances shall an offender be required to perform guard duty over personnel or material as punishment, whether serving afloat or ashore," and that "extra duty as a punishment shall be discontinued on Sunday." Mess duty should not be ordered as extra duty inasmuch as enlisted men of the naval service are entitled to receive extra compensation for this duty. Like deprivation of liberty, the period of extra duties should be reasonable and determinate.

8–13. Procedure for imposing mast punishment. After the commanding officer has determined that he will punish the accused under Article 24, *AGN,* and has decided the appropriate punishment, he advises the accused of the offense which he believes has been committed and of the punishment to be imposed therefor. In the case of enlisted men, notification of the punishment should be furnished the executive officer, officer of the day, the man's division officer, the provost marshal, or other agency, as deemed necessary. An *action sheet,* similar in form to Figure 8–4, is utilized to furnish this notification, and constitutes an order to the appropriate officer to enforce the punishment.

8–14. Records of reports and commanding officer's punishments. *Navy Regulations* require that a log shall be kept of all reports and commanding officer's punishments, and that the commanding officer shall affix his signature in the report book. Article D–8017(1), *Bureau of Naval Per-*

sonnel Manual, 1942, requires that a record of all punishments awarded shall be entered in the service record of an offender.

Smooth book of records of reports and punishments. The report book which is referred to in Article D–8017, *Bureau of Naval Personnel Manual, 1942*, as the *Smooth Book of Records of Reports and Punishments* is often called the *mast log* or *mast book*. While no specific style for such a log is required, it may consist of an ordinary journal-type book containing entry blanks similar in form to Figure 8–5. The book, or log, is usually divided so that one side contains information pertaining to the report and the other side the indication of action taken by the commanding officer. Although *Navy Regulations* and the *Bureau of Naval Personnel Manual* require this record only for excuses, warnings and punishments, it is also used to indicate other mast action, such as an order for trial by court-martial. That part of the book which pertains to the report is generally completed prior to mast from information furnished by the report slip and information sheet. The part which pertains to the action of the commanding officer is completed after mast by entry of the action taken and signature of the commanding officer.

Service record entry. The *NavPers* Form 601 (service record page 9), reproduced in Figure 8–6, illustrates the type of entry to be made in the man's service record when he has been assigned punishment by the commanding officer.

8–15. The effect of punishment by the commanding officer. The fact that punishment under Article 24, *AGN*, has been imposed upon an enlisted man or an officer may be taken into account by his commanding officer in connection with other matters affecting him in the future. Ordinarily in the case of an enlisted man the effect will not extend beyond his current enlistment or current extension thereof.

Future disciplinary action. Record of a previous punishment under Article 24, *AGN*, will often be an important factor to be considered by the commanding officer in deciding what disciplinary action would be appropriate for a subsequent offense. Likewise, the commanding officer, in his capacity as convening authority of a court-martial, will take into account such prior punishment in determining whether a subsequent sentence by court-martial should be mitigated.

As a bar to trial. No person under naval law may, without his consent, be tried twice for the same offense. It has been held that the action of a commanding officer in imposing punishments under Article 24, *AGN*, does not take the status of a court-martial, that his investigation of an offense is in no sense a trial, that his finding is not a conviction or acquittal, and that the punishment which he imposes is not a sentence. The commanding officer's power in this respect has been likened to the power of a

MAST ACTION SHEET

15 January 1945
.....
(Date of Mast)

MEMORANDUM:

1. The following action was taken at mast held at 0900 this date: DOE, Richard John, 000-00-00, S2c, USNR.

OFFENSE: 1-14-45, Neglect of duty. (Failure to perform routine duty of painting bulkheads.)

ACTION: "Mast Punishment": Twenty hours extra duty.

James A. Roe

JAMES A. ROE,
Captain, USN,
Commanding Officer.

File*
Executive Officer
Division Officer
O.O.D.
Personnel Officer
Disbursing Officer
Provost Marshal

Figure 8–4. A mast action sheet.

BOOK OF RECORDS OF REPORTS AND PUNISHMENTS

RATE	NAME	OFFENSE			Action of the Commanding Officer			
			Time	Date	Time	Date	Action	Signature
S2c	DOE, John Richard	Neglect of duty.	0800	1-14-45	0900	1-15-45	Twenty hours extra duty	James A. Roe
S1c	SMITH, Paul Amos	AOL five hours	1200	1-14-45	0910	1-15-45	Ten days deprivation of liberty.	James A. Roe
S1c	JONES, Ben Allen	AWOL five days, two hours	1700	1- 9-45	0940	1-15-45	Trial by Deck court.	James A. Roe
S2c	BROWN, Jack	Drunken-ness	2100	1-14-45	0930	1-15-45	Five days confine-ment.	James A. Roe
S2c	MOORE, Sam Arnold	(1) False-hood	1000	1-14-45	0955	1-15-45	Trial by Summary Court-Martial.	James A. Roe
		(2) Dis-obeying the law-ful order of his superior officer.	1000	1-14-45				

Figure 8–5. A smooth book of records of reports and punishments.

parent over his child, or of a master over his apprentice, or of a school teacher over his scholar. To constitute former jeopardy, there must have been a trial by a duly constituted court, and, therefore, punishment imposed by the commanding officer, under the provisions of Article 24, *AGN*, does not bar subsequent proceedings by court-martial for the same offense. However, the same fundamental principle of fairness which precludes double jeopardy should be the basis for any determination of the commanding officer as to whether he will order the convening of a court-martial for the trial of a man for an offense which has been properly punished by him, under Article 24, *AGN*.

As a previous conviction. As noted in the preceding paragraph, punishment by the commanding officer under Article 24, *AGN*, does not constitute a conviction for any offense. It logically follows, therefore, that a record of a punishment under Article 24, *AGN*, cannot be introduced in evidence in a subsequent trial by court-martial nor considered by the court against the accused.

Conduct marks. Conduct marks for an enlisted man in any period must be based solely upon the man's behaviour during that period. A record of an offense for which punishment is awarded by a commanding officer under Article 24, *AGN*, during a period under consideration will affect the conduct mark in accordance with the standard established in Article D–8020, *Bureau of Naval Personnel Manual, 1942*. Since an advancement to any rating requires 4.0 conduct for a specified period, a record of punishment under Article 24, *AGN*, during such period will preclude an advancement in rating.

Punishment of an officer under the provisions of Article 24, *AGN*, may be taken into account by the commanding officer in his preparation of the officer's fitness report.

8–16. Order for trial by deck court or summary court-martial. Should the commanding officer determine that an offense which has been committed is, in consideration of all pertinent circumstances, deserving of greater punishment than that which he is authorized to inflict under the provisions of Article 24, *AGN*, he may order the accused brought to trial before a deck court or a summary court-martial, as he may deem appropriate. His authority in this respect is conferred by Articles 26 and 64, *AGN*. If the accused is to be tried by a deck court or summary court-martial, the order for trial should be announced to him by the commanding officer upon making the determination.

After trial has been ordered, the next step is the preparation of the precept convening the court and the preparation of the specification or specifications setting forth the offenses upon which the accused is to be tried. Trial of the accused should commence as soon thereafter as practi-

NAVPERS-601

9

Name DOE, John Richard
(Name in Full, Surname to the Left)

000-00-00 Rate S2c, USNR
(Service No.)

Date Reported Aboard: 1 January 1945

USS TENNESSEE
(Present Ship or Station)

USNTC, Norfolk, Virginia
(Ship or Station Received From)

15 January 1945:

MAST

OFFENSE: NEGLECT OF DUTY. (Failure to perform routine duty of painting bulkheads.)

DATE: 14 January 1945

PUNISHMENT: Twenty hours extra duty.

James A. Roe
JAMES A. ROE,
Captain, USN,
Commanding.

Date Transferred

To

Signature and Rank of Officer Authorized to Sign

Date Received Aboard:

(New Ship or Station)

(Last Ship or Station)

Signature and Rank of Officer Authorized to Sign

ORIGINAL
FOR SERVICE RECORD

Figure 8–6. A service record entry.

cable, due consideration being given the accused for the proper preparation of his case for trial. In the case of a deck court, the order to convene the court and the specification are both contained on the deck-court card (*Form NJA 166*). The signature of the commanding officer on the face of the deck-court card, therefore, constitutes an approval of the specification as well as an order appointing the deck-court officer. In the case of a summary court-martial, a separate precept or order convening the court is necessary. After a summary court-martial has once been convened by the commanding officer's precept, it will continue as a court until dissolved by the commanding officer, adjourning after each case, over an indefinite period of time. Thus, when a summary court-martial is already in existence by virtue of a prior precept, it is only necessary for the commanding officer to have the specification, or specifications, prepared, approve them and deliver the original and several copies thereof to the recorder of the court. The recorder will deliver a copy of the specifications to the accused, and make all necessary arrangements with the members of the court for its meeting.

Article 204, *Navy Regulations*, prescribes that offenses shall not be allowed to accumulate in order that sufficient matter may thus be collectively obtained for a trial without giving due notice to the offender. It has been held that the spirit of this article is violated when a commanding officer assigns a deck court or a summary court-martial, and then holds in abeyance the orders for trial of the offenders contingent upon their good behaviour.

8–17. Recommendation for trial by general court-martial. When, after the careful inquiry required of the commanding officer, the commanding officer decides that the circumstances require trial by general court-martial, he shall submit to such superior officer as may be authorized to convene a general court-martial, the statement of the complainant if there is one, the statements of the witnesses, and the counter-statement or explanation of the accused, together with specimen charges and specifications covering the offense or offenses for which he recommends trial and, in the case of an enlisted man, a certified transcript of his service record, unless directed by the convening authority to forward the original, including therein date of birth and enlistment, a statement of accounts, and a statement of the medical officer as to whether or not he is physically fit for retention in the naval service. The letter should report fully and accurately in detail and in order of their occurrence the circumstances on which the charge, or charges, may be founded, and when words constitute the substance of the offense, those words used are to be set out as fully and exactly as possible in the letter. The letter is not in any way to refer to accompanying reports for the circumstances constituting the offense, but is, in itself, to be

so circumstantial as to afford a full account of the nature and extent of the offense charged, to the allegations of which the offender would be held to confess should he plead guilty.

8–18. Administrative action. While administrative action cannot be taken by a commanding officer in lieu of disciplinary action, where disciplinary action is clearly indicated, it often occurs that some administrative action will best serve the interests of the Navy. The appropriate action, in many cases, is an administrative reduction in rating or an administrative discharge.

Administrative reduction in rating. Although administrative reduction in the rating of an enlisted man cannot be resorted to for the purpose of punishment, it is often an effective and a necessary means of maintaining maximum efficiency within a command. It is utilized where a man lacks the qualifications to perform the duties of his rate. Article D–5113, *Bureau of Naval Personnel Manual, 1942*, provides that the commanding officer may disrate any petty officer or non-rated man and revoke the acting appointment of any chief petty officer should the man concerned prove not qualified to hold the rating. This authority of the commanding officer to disrate a man for lack of qualifications to perform the duties of his rating is inherent and is unrestricted, except by regulations issued by the Navy Department. In effecting reductions in rating in accordance with the foregoing provisions, the following conditions shall govern: (1) An entry in the service record must show the authority for the reduction in rating. (2) The reason for reduction must be supported by the preceding quarterly marks as shown on the service record. (3) No man will be reduced more than one rating in any one quarter. (4) Cases where the reason for reduction is not supported by the preceding quarterly marks as shown on the service record shall be referred to the Bureau for action.

In effecting reductions in rating in accordance with the above provisions, the following entry shall be made in the service record: "Date proved not qualified for rating of ..... Reduced in rating to ..... in accordance with Article D–5113 (3) B.N.P.M." (Signature of commanding officer.)

Administrative discharge. After a person has been reported for an act of misconduct, investigation may develop the existence of certain facts which render him undesirable for retention in the service. Under the provisions of the *Bureau of Naval Personnel Manual*, an enlisted man may be administratively discharged from the service if he is inapt, that is, where he has demonstrated his inability to cope with service conditions and when there is no evidence of his being able to adapt himself to the requirements of naval life in the future; or if he is unfit, that is, where he has already demonstrated that he is totally unfit for further retention. In this category are men who repeatedly commit petty offenses not necessitating trial by court-martial, habitual shirkers, or men of unclean habits. An administra-

tive discharge cannot be resorted to in lieu of punishment for a crime or offense, nor may it be based upon the commission of a specific offense, whether before or after trial and punishment. However, the elimination of undesirables who have no potential value to the Navy through administrative procedure of this nature may prevent the necessity of disciplinary action later. The policy with respect to discharge proceedings in the case of homosexuals is set out in *SecNav letter P13–7 83443 of 1 January 1943* and *BuPers letter P–137 of 28 January 1944*. Cases involving mental deficiency become the subject for a Board of Medical Survey.

8–19. Other masts. There are two other masts: (1) request mast may be held by the commanding officer at a scheduled time to listen to men's complaints or requests for special privileges or special consideration; (2) meritorious mast may be held by the commanding officer to commend publicly the action of an enlisted man.

Request mast. Article 1326 of *Navy Regulations* directs that:

> The commanding officer shall prescribe the means, with reasonable restrictions as to time and place, by which the members of the crew may make any request, or statement to him, which he shall receive and consider. Frivolous vexations, or intentionally false reports or statements shall be considered misdemeanors. Men of lower ratings shall be encouraged to consult their petty officers and division officers in regard to their requests, reports, and statements, but such procedure should not operate as a restriction.

Meritorious mast. Commanding officers often hold special masts in order to formally express their appreciation for acts worthy of commendation. This practice is highly desirable and is encouraged by the Navy Department.

8–20. Graphic summary. Figure 8–7 graphically summarizes the various possible steps in the exercise of authority to maintain discipline.

The one-officer investigation, board of investigation and the court of inquiry, as indicated in the illustration, are the more formal fact-finding bodies which may be convened to inform the convening authority in a preliminary way when conditions and circumstances are such as indicated in Chapter 16. They are not a component part of the disciplinary system.

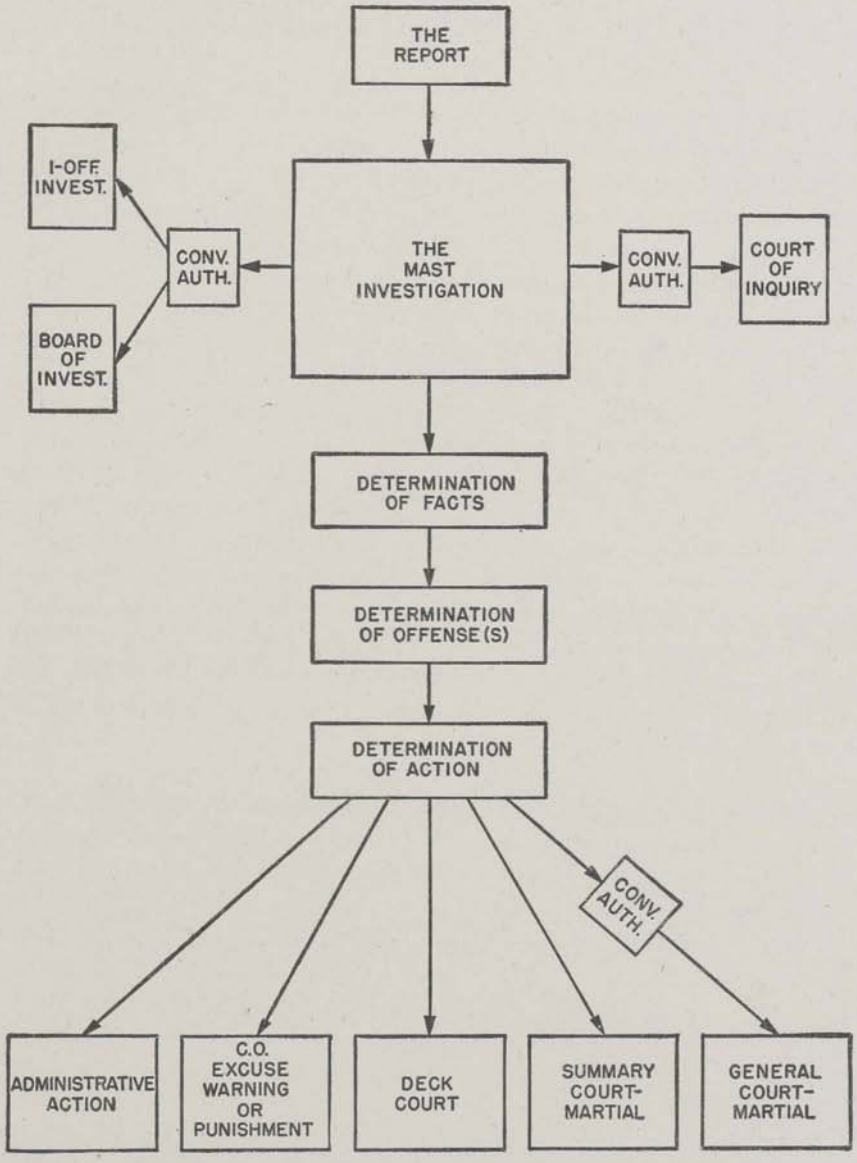


Figure 8–7. Graphic summary of the disciplinary process.

9. CHARGES AND SPECIFICATIONS

9–1. Object and purpose. If, because of the seriousness of an offense, trial by court-martial is decided upon, a formal written accusation must be preferred in order to bring the accused person to trial, just as in state and federal courts it is necessary that the defendant be brought to trial on an indictment or complaint. The object and purpose of the formal written accusation is to inform the accused of the offense allegedly committed by him so that he may intelligently prepare his defense. It also serves to advise the court, and reviewing authority, of the nature of the accusation so that the case may be judiciously tried and reviewed.

9–2. General court-martial procedure. In general court-martial procedure the formal written accusation consists of two parts: the *charge*, which is a statement of the offense in general terms; and the *specification*, which is a full and sufficient statement of the facts constituting the offense charged. It is requisite that the charge name an offense provided for by, or within the purview of, the *Articles for the Government of the Navy* or other enactment of Congress; and that the specification set forth in simple and concise language facts sufficient to constitute the particular offense charged and in such manner as to enable a person of common understanding to know what is intended.

9–3. Summary court-martial and deck-court procedure. In summary court-martial and deck-court procedure, the formal written accusation consists only of the specification; there is no charge stated. The specification must nevertheless, set forth facts sufficient to constitute the particular offense just as though it were laid under a charge. In other words, a charge is present by implication rather than by expression. The practical effect is that a deck-court or summary court-martial specification need only allege facts sufficient to constitute a charge known to naval law; whereas, a general court-martial specification must set forth facts sufficient to constitute the charge designated.

9–4. By whom preferred. The authority causing the accused to be tried prefers the specifications, or charges and specifications. Thus, in a deck court, or summary court-martial, the commanding officer of the accused will himself prefer the specifications. In a general court-martial, the charges

and specifications are preferred by the superior officer authorized to convene the court and to whom the recommendation for trial is forwarded. *Naval Courts and Boards, 1937*, directs that, in a letter recommending trial by general court-martial, the commanding officer of the accused will submit specimen charges and specifications.

9–5. Promptness. Undue delay in preferring specifications, or charges and specifications, not only is an injustice to the accused, but has an adverse effect upon the discipline of the command. Although no definite time limit is set by law or regulation, they should be preferred as soon as practicable after the offense is discovered in order to assure compliance with the Navy Department's announced policies requiring speedy trials. Promptness is particularly necessary if the accused is in arrest or confinement. The accumulation of offenses, that is, allowing various offenses to pass without taking any disciplinary action and then preferring specifications, or charges and specifications, for such past offenses if the accused is later guilty of further misconduct, is an improper practice. If an offense warrants punishment at all, punishment should be imposed at once. Punishment long after an offense has occurred hurts, rather than helps, the discipline of the command.

9–6. Withdrawal power of convening authority. It is entirely within the discretion of the officer empowered to convene a court-martial to direct what specifications, or charges and specifications, an accused shall be tried upon. When the competent officer has decided to have a person tried by court-martial, he shall cause the specifications, or charges and specifications, against the offender to be prepared, and transmit a true copy of them to the proper officer, who shall deliver a copy thereof to the offender. If, at any time, the original specifications, or charges and specifications, are withdrawn and new ones made out, a copy of the latter should be delivered to the accused.

9–7. Alterations. After the specifications, or charges and specifications, have been signed by the proper authority, and trial ordered, it is not competent for any person to make alterations therein without first having obtained the consent of such authority, except that the judge advocate or recorder, with the approval of the court, or the deck-court officer, may correct manifest clerical errors. If the court-martial considers other alterations necessary in specifications, or charges and specifications, laid before it, they must be submitted to the convening authority for his approval.

9–8. Errors. Errors in specifications, or charges and specifications, are of three classes: (1) clerical errors; (2) technical errors other than clerical; (3) errors of substance.

Clerical errors are those of spelling, punctuation, etc., correction of which does not alter facts. Such errors may, with the approval of the court, be corrected by the judge advocate or recorder, or by the deck-court officer. Under such circumstances the corrections shall be neatly made in red ink and initialed by the officer making them. *Technical errors*, also known as errors in form, are those which would be sufficient to sustain an objection by the accused, such as uncertainty as to the time or place of occurrence of the alleged offense, name of the accused misspelled, etc. If the court is in doubt as to whether an error in specifications, or charges and specifications, is clerical or technical, it should treat it as a technical error and thus avoid any possibility of having the case disapproved on a technicality of this nature. *Errors in substance* are those of such a nature as to vitiate the entire proceedings and render them liable to review by civil tribunals; such, for example, as failure to show jurisdiction on the part of the court. It is not within the discretion of the judge advocate, the recorder, the court, or any other person to correct technical errors and errors in substance in the specifications, or charges and specifications, without the consent of the convening authority.

9–9. Amendment of defects. Should the convening authority authorize the judge advocate, recorder, or deck-court officer to amend legal defects in the specifications, or charges and specifications, before the accused is called on to plead, it is to be understood that in so doing the judge advocate, recorder, or deck-court officer is responsible that the amendments are made strictly in accordance with the instructions of the convening authority. He shall see that the accused's copy is corrected accordingly.

9–10. Trial in joinder. A joint offense is one committed by two or more persons acting together in pursuance of a common intent. If, for example, Seamen X and Y plan to rob a service station, and pursuant to that plan X holds up the proprietor with a gun while Y removes money from the till, a joint offense of robbery has been committed.

Accused persons will not be joined in the same specification, or charge and specification, unless for concert of action in an offense. The mere fact that several persons happen to have committed the same offense at the same time does not authorize their being joined in trial. Thus, where two or more persons take occasion to desert, or absent themselves without leave, in company, but not in pursuance of a common unlawful design and concert, the case is not one of a single joint offense, but of several separate offenses of the same character, which are no less several in law though committed at the same moment. When the convening authority does not join the accused in the specifications, or charges and specifications, but indicates that he desires them tried separately, courts-martial shall not try

them in joinder. If the convening authority does desire to try men in joinder, he should prefer but one set of specifications, or charges and specifications.

9–11. Nolle prosequi. A *nolle prosequi*, or discontinuance, is an entry made on the record by which the prosecutor, or plaintiff, declares that he will proceed no further. After specifications, or charges and specifications, have been formally referred by competent authority to a court-martial for trial, the court is not authorized, at its discretion and upon its own motion, to strike out a specification, or a charge and specification, or to direct or permit the judge advocate, recorder, or deck-court officer to drop or withdraw such specification, or charge and specification, or to enter a *nolle prosequi* to it. For such action the authority of the convening officer is necessary, but such action is not equivalent to an acquittal or to a grant of pardon and cannot be so pleaded. Inasmuch as a *nolle prosequi* does not constitute an acquittal and the government has the right to order a new trial for the offense, a transcript of the trial should be made and entered in the ship's log and the service record of the accused in order that they may show the facts and nature of termination of the trial, but the accused's conduct marks should not be lowered since he has not been convicted of any offense.

9–12. Consolidation. All the specifications, or charges and specifications, against the accused should be consolidated into one set, and one trial had upon the consolidated set instead of having two or more trials. Where there have been a number of offenses of a character usually tried by a summary court-martial or deck court which in the aggregate, in the opinion of the convening authority, should be more severely punished than can be done by a summary court-martial, it is proper to order the offender tried on them by a general court-martial.

In case trial has been ordered but not commenced when knowledge of another offense is received, this latter should be sent to the court as an additional specification, or charge and specification. Such new and separate specifications, or charges and specifications, may relate to offenses not known at the time the original ones were preferred or, as is more frequent, they may relate to offenses committed after the original ones were preferred. Specifications, or charges and specifications, of this character do not require a separate trial, but, subject to the usual procedure, may be tried with the original ones if submitted to the court before sentence is adjudged.

9–13. Charges. If an offense is one specifically provided for, it should be preferred under a specific rather than a general charge. In order to deter-

mine this point the following sources should be consulted: (1) the sample charges and specifications in Chapter 2 of *Naval Courts and Boards, 1937;* (2) the schedule of offenses and limitations of punishments in Chapter 4 of *Naval Courts and Boards, 1937*; (3) *The Articles for the Government of the Navy.*

When an offense is not specially provided for in the above sources, it shall be preferred under one of the general charges. *Scandalous conduct tending to the destruction of good morals, conduct to the prejudice of good order and discipline,* and *conduct unbecoming an officer and a gentleman* constitute the general charges. All other charges are specific charges. In determining which of the general charges should be used, the following general rule should be observed: Acts are of a scandalous nature and, consequently, are properly so charged, that give offense to the conscience or moral feelings; call out condemnation; involve scandal or disgrace to reputation; bring shame or infamy; or because of their evil nature are *malum in se.* Since most attempted (but not consummated) offenses have to be laid under a general charge, it follows that one of the general charges is a lesser included offense in most of the specific charges.

Different offenses the subject of distinct charge. Care should be exercised to insure that offenses of a different nature are not laid under the same charge. Different offenses, however, if of the same nature, should be included in separate specifications under the same charge.

Duplication of charges. The law permits as many charges to be preferred as may be necessary to provide for every possible contingency in the evidence. Where the offense falls, apparently, equally within the scope of two or more articles of the *Articles for the Government of the Navy,* or where the legal character of the offense cannot be precisely known or defined until developed by the proof, it is quite proper to specify the offense under two or more charges but there is, of course, no reason for doing this if one charge is lesser than, and included in, the other. In such case the specification should be laid under the more serious charge.

Numbering of charges. Charges should be numbered consecutively with roman numerals. However, when there is only one charge it should not be numbered. So far as practicable, charges should be placed in chronological order.

9–14. Specifications. A specification should contain allegations of all the essential elements of the offense in simple, accurate, and concise language. An essential element is one the omission of which in a specification would be ground for sustaining a timely objection on the part of the accused, or if not objected to and the evidence adduced does not supply the omission, will constitute a fatal defect. For example, a specification of theft should allege: (1) taking and carrying away of the property in question, and

manner thereof; (2) description and value of the personal property; (3) from the actual or constructive possession of the owner or person entitled to possession as against the accused; (4) place and time of taking; (5) description of owner or person entitled to possession; (6) intent to deprive the owner permanently of his property.

For the elements of any particular offense the applicable section under sample charges and specifications in Chapter 2, *Naval Courts and Boards, 1937*, should be consulted.

When it is necessary to allege offense committed in breach of law or statute. It is not essential to state in a specification that an offense was committed in breach of any Federal statute, article of the *Articles for the Government of the Navy*, law of the State in which the court is sitting, or general regulation, as the court takes judicial notice of such statute, article, State law, or regulation, under which the charge is laid; but whenever the offense comes directly under any other enactment (foreign law, municipal ordinance, or local ship or station order), the same should be set forth verbatim in the specification and proved like any other fact.

Must distinctly allege one offense. A specification must, on its face, allege facts which constitute a violation of some law, regulation, or custom of the service. It is not sufficient that the accused be charged, generally, with having committed an offense, but the particular acts or circumstances attending a specific offense must be distinctly set forth in the specification. Each specification must be complete and, in itself, state an offense, but should allege only one offense. It is not sufficient that several specifications taken together may do so.

Must show jurisdiction and adequately describe offense alleged. It is not necessary that a specification be framed with the technical precision of a common law indictment, so long as it clearly shows jurisdiction in the court over the accused and over the offense with which he is charged. In addition, the offense must be sufficiently described to advise the accused of the time and place and circumstances under which it is claimed he committed the crime, to enable him to make any defense he may have. The statement of a mere conclusion of law instead of facts will not make a good specification. Thus, it would not be a good specification which merely stated that theft was committed by a certain man at a certain time and place, or that a man unlawfully had in his possession certain property without alleging facts showing wherein the possession was unlawful. Each specification must support the charge under which it is laid.

Where offense requires specific intent and act, both must be set out. To constitute a crime both criminal intent and a prohibited act must concur. Where the offense specified is one which requires both a specific intent and an act, both must be set out. For example, a specification alleging that the accused *did feloniously have in his possession with the intention*

of removing same from said ship certain Government property fails to state an offense. The criminal intent is properly alleged, but the word *feloniously* is a mere conclusion of law, and the only facts alleged are that the accused had Government property in his possession and had the intention of removing it from the ship. The mere possession of Government property is not in itself a violation of any law, regulation, or custom of the service; nor is it illegal in itself to take Government property from the ship.

Intent should be expressed by the technical word prescribed. In cases where the law has adopted certain expressions to show the intent with which an offense is committed, the intent shall be expressed by the technical word prescribed; as *wilfully*, *knowingly*, *corruptly*, *maliciously*, *intentionally*, *wrongfully*. Certain of the foregoing words appear in the *Articles for the Government of the Navy* and should be used to express fully the offense alleged. For example, a charge made against an officer for making, or for signing, a false muster must be alleged as having been done *knowingly*.

Evidence not to be stated. In alleging an offense it is not technically good pleading to state the circumstances or evidence proving or tending to prove it, such as the acts, occurrences, and matters of description, which should properly form part of the testimony of witnesses; but there is no objection to stating very briefly in the specification the immediate result or effect of the act charged as a circumstance or description illustrating the character and extent of the offense committed. For instance, in alleging *striking another* it is advisable, in a case where the blow was severe, to add in the specification the aggravated result of the blow or other injury inflicted. Pleading the evidence unnecessarily does not render the specification fatally defective. But the circumstances thus alleged in detail, even though unnecessarily, must be proved as alleged, or exceptions must be made in the finding. There is also danger of variance, as to the details, between the specification and the proof. Unnecessary allegations in a specification increase the burden placed on the prosecution and the chance of error in the trial.

Where higher criminality attaches to acts under particular circumstances. Whenever the law attaches higher criminality to an act committed under particular circumstances, the act must, to bring the person within the higher degree of punishment, be alleged with certainty and precision to have been committed under those circumstances.

Facts must be stated with certainty. It is not sufficient that the offender be accused generally with having committed an offense, as, for instance, *having habitually violated orders or neglected his duty*, or *having attempted to commit an immoral act in and upon the body of one named*, or *having acted in a disorderly manner thereby reflecting discredit upon the uniform of the naval service*; but the particular acts or circumstances attending a specific offense must be distinctly set forth in the specification

with certainty and precision. Where intent is an ingredient of the offense, it, also, must be set forth with equal care.

Certainty as to the party accused. The accused should be described by his rank or rating, and Christian name and surname, written at full length, with the name of his vessel or station at the time the offense took place. Christian names other than the one commonly used may be indicated by initial letters. An error in the name of the accused, if unobjected to, and *idem sonans* (having the same sound) with his true name, is not fatal. As the rate or rank is merely descriptive, an error therein, if not objected to, is not material. If the accused is known by more than one name, as frequently happens in cases of fraudulent enlistment, the specification should describe him by the name he admits to be his true name. If there be no such admission, his true name will be assumed as that first appearing in his official record. He will also be described under his assumed name, or names, as an alias, or aliases.

Certainty as to the person against whom the offense was committed. In the case of offenses against the person or property of individuals, the Christian name and surname, with the rank and station or duty of such person, if he has any, must be stated, if known. If not known, the party injured must be described as a person *by name to the relator unknown.*

Allegations as to time and place. The time and place of the commission of the offense alleged must be averred in the specification. They must be stated with sufficient precision clearly to identify the offense and enable the accused to understand what particular act or omission he is called upon to defend. It is proper pleading to allege in a specification that a certain offense occurred *on or about* a certain day *at or near* a certain place; or, if necessary to be more explicit as to the time, *at or about* a certain hour. These phrases have no precise meaning, but are to be construed reasonably in the light of the circumstances of each particular case. There are cases where precision as to time or place is essential and these are covered in the sample charges and specifications contained in Chapter 2, *Naval Courts and Boards, 1937.* Where the specified act or acts extend over a considerable period of time it is proper to allege them as having occurred, for example, *during the period from October 1, 1944, to March 4, 1945.* Also, it is proper to allege that an offense was committed while *en route* between certain points.

Abbreviations authorized. Dates and times may be expressed in figures. The following abbreviations are authorized: *U.S.*, *U.S.S.*, *a.m.*, and *p.m.* Christian names other than the first, or one commonly used, may be indicated by initial letters. Sums of money mentioned in a specification should be set out in both words and figures, the latter in parentheses. Except as indicated in this paragraph, the use of figures or abbreviations in charges or specifications is prohibited.

Written instruments. Written instruments, or such portions thereof as form part of the gist of the offense alleged, must be set out verbatim. A written instrument may be set out in substance when it is not part of the gist of the offense, or if it has been lost or destroyed, or is in the hands of the accused. When set out verbatim it should be introduced by the words *in tenor as follows;* when set out in substance, by the words *in substance as follows.* There is no incorporation by reference, as is found in civil pleading.

Oral statements. Oral statements forming the gist of the offense must be set out in as nearly the exact words as possible and always be followed by the words *or words to that effect,* since proof will generally vary as to a word or words.

Surplusage. In drawing up specifications all extraneous matter is to be carefully avoided, and nothing shall be alleged except that which is essential to set forth all the material elements of the offense. Unnecessary averments in a specification may ordinarily be rejected as surplusage, or treated as struck out, if without them the pleading remains adequate. Such allegations do not render the specification fatally defective, but are not required by law and only serve to increase the burden on the prosecution.

9–15. Alternative specifications. A specification should not allege two or more offenses in the alternative or disjunctive. Even when a specification is predicated upon a statute, the words of which are in the alternative, then the alternative offenses thus provided for should, if it be desired to allege more than one offense, be set out in separate specifications. In general it may be said that the word *or,* appearing in the part of the specification which states the offense, is incorrect except where it is used in the sense of *to wit.*

9–16. Aider of defective specification. If a specification, while defective because of failure to allege some particular fact or element essential to the offense, nevertheless contains sufficient information fairly to apprise the accused of the offense intended to be alleged, then, if the accused makes no objection to the specification on the ground of such omission, and if the evidence adduced supplies the omission, or if the accused pleads guilty, a finding by the court that the specification is proved will generally cure such defect. To the foregoing rule there are the following exceptions: (1) When it appears from the record that the accused was in fact misled by such failure, (2) that his substantial rights were in fact prejudiced thereby, or (3) the existence of such omitted fact or element is negative by the language of the specification.

9–17. Principals and accessories. No distinction is to be made in alleging principals and accessories before the fact; or as might be said, an acces-

sory before the fact is a principal and is charged in exactly the same manner as the principal. An accessory after the fact should be charged under the seventeenth paragraph of Article 8, *AGN*, which provides that such punishment as a court-martial may adjudge may be inflicted on any person in the Navy who "refuses, or fails to use, his utmost exertions to detect, apprehend, and bring to punishment all offenders, or to aid all persons appointed for that purpose."

9–18. What constitutes an attempt. An attempt to commit a crime consists of three elements: (1) the intention to commit the crime, (2) performance of some act toward the commission of the crime, and (3) the failure to consummate the crime. It follows that one proved actually to have committed an offense cannot be found guilty of an attempt to do so and that a specification alleging such commission does not support a charge of attempt.

9–19. Allegation of "serving on active duty" where accused is member of Naval or Marine Corps Reserve. A specification alleging the commission of an offense by a member of the Naval or Marine Corps Reserve should show that the accused was *serving on active duty* at the time the offense was committed. In deck-court or summary court-martial specifications the allegation is placed thus: *In that John Jones, seaman second class, U.S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware . . .* This allegation is, of course, not pleaded if the accused is a member of the Regular Navy.

9–20. Additional clause to be added in time of war. In time of war, there is to be added to the end of each specification the averment, *the United States then being in a state of war.*

9–21. Preparation of specifications. In drafting a specification, the person assigned to that duty should first turn to Chapter 2, *Naval Courts and Boards, 1937*, for the appropriate form. There he will find 206 sample specifications written under the appropriate charges and covering almost every offense known to naval law. In Article 9D4 of this text, these forms are alphabetically indexed by description of offense. If there is a sample specification for the offense, as there will be in most cases, it should be carefully followed. Any attempt to improve on the sample or to add new words, may result in failure to allege an offense or create an error in the specification. In a rare case where there is no sample exactly covering the offense, the sample for the offense which seems most like it should be followed as a guide.

Deck court and summary court-martial specifications. The sample specifications in Chapter 2, *Naval Courts and Boards, 1937*, are furnished as

guides in the preparation of specifications for trial by general courts-martial as well as by deck courts and summary courts-martial. However, they do not contain the jurisdictional allegation which is required in all deck-court and summary court-martial cases. It is not necessary for a general court-martial specification to allege that the accused was attached to the command of the convening authority at the time the specification was preferred, since such attachment is not necessary to the jurisdiction of the court. Articles 26 and 64, *AGN*, however, empower a commanding officer to order deck courts and summary courts-martial only upon enlisted men under his command. Consequently, since courts-martial are special courts of limited jurisdiction and have no presumptions to aid them, the specification of a deck court or summary court-martial must, in order to show the jurisdiction of the convening authority to order the trial of the accused, allege that the accused was, on the date the specification was preferred, attached to the command of the officer ordering the court. Thus, in utilizing the sample specifications, contained in Chapter 2, *Naval Courts and Boards, 1937*, it must be remembered that an attachment allegation should precede the form as shown.

Attachment allegations. There are two forms for alleging attachment to the command illustrated in *Naval Courts and Boards, 1937*: (1) *In that John Jones, seaman second class, U.S. Navy, while attached to and so serving on board the U.S.S. . . .*, and (2) *In that John Jones, seaman second class, U.S. Navy, attached to the U.S.S. . . , while so serving on board the U.S.S. . . .* The Judge Advocate General has held that either allegation is sufficient to allege jurisdiction, but, that as a matter of form, the latter allegation is clearer and should be preferred.

9–22. Introduction to selected offenses and sample specifications. In the following sections, a group of selected offenses are discussed, and sample specifications set forth. The appropriate reference to *Naval Courts and Boards, 1937*, is listed for each offense with the abbrebviation *NCB*. For purpose of classification and reference, the offenses have been divided into four categories as follows: A. Offenses which are principally military in character; B. Offenses which are principally personal or proprietary in character; C. Offenses which are violations of state statutes; and D. Offenses which are violations of territorial statutes. While it is recognized that this classification is based on distinctions which are somewhat anomalous, it is offered as a reference aid.

In no case should a specification be drawn or patterned after a specimen contained herein without first examining the designated reference to *Naval Courts and Boards, 1937*. No attempt has been made to indicate the charge for each specification, although in some instances the offense is discussed under the title of the charge. In any case, the charge may be

obtained from the reference indicated. The attachment allegation has been included in order to show the exact form for deck court and summary court-martial specifications.

A. OFFENSES WHICH ARE PRINCIPALLY MILITARY IN CHARACTER

9A1. Absence without or over leave; Section 74, NCB. In most naval commands, perhaps four out of five specifications written will be for offenses consisting of unauthorized absence; either absence from station and duty without leave (AWOL), or after leave had expired (AOL). A thorough understanding of these two offenses and the allegations which must be averred in setting them out is, therefore, absolutely essential. The gist of either of the offenses is unauthorized absence. However, AWOL involves the additional element of an unauthorized departure and is the more serious of the two. It should be noted that unauthorized absence means *unauthorized absence from the U. S. naval service*, and not from the command to which the accused is attached. An unauthorized absence is, therefore, terminated upon the return of the offender to any naval activity, or as is explained hereafter, to any United States military activity.

Computation of the period of unauthorized absence. The period of unauthorized absence is the period from the unauthorized departure, or from the expiration of liberty or leave, as the case may be, until the first return to naval or military authorities, regardless of the time at which the accused is returned to the command from which he absented himself.

Apprehension. In the event the accused is apprehended rather than having surrendered himself, it connotes an aggravation of the offense and should be alleged, namely: *at the expiration of which he was apprehended by the U. S. Navy Shore Patrol at Los Angeles, California;* or *at the expiration of which he was apprehended by United States naval authorities at Los Angeles, California.*

Delivery. In the event the accused is apprehended by, or surrendered to, civilian authorities and is then delivered to naval authorities, the termination of the unauthorized absence should be alleged accordingly, namely: *at the expiration of which he was delivered to said receiving barracks at the place aforesaid;* or *at the expiration of which he was delivered to the U. S. Naval Receiving Station, Terminal Island (San Pedro), California;* or *at the expiration of which he was delivered to United States naval authorities at Los Angeles, California.*

Return to military authority. In the event the accused is apprehended by, or surrenders to, or is delivered to the military police, or to any United States military activity, the termination of the unauthorized absence should be alleged accordingly, namely: *at the expiration of which he was apprehended by the United States military authority at Los Angeles, California;*

or *at the expiration of which he was delivered to United States military authority at Los Angeles, California;* or *at the expiration of which he surrendered himself to United States Military authority at Camp Roberts, California.*

Liberty and leave. It is proper to allege that the accused *had been granted leave of absence from his station and duty on board said ship* even though in fact he had been granted liberty and not leave, since in a legal sense liberty amounts to a leave of absence.

Days, hours, and minutes. If the period of unauthorized absence is several days in duration, the period may be expressed in days only as, *about twenty days.* If the period of unauthorized absence is short and the seriousness of the offense cannot properly be indicated without alleging the hours, then the exact period to the hour should be shown.

Failure to obey orders and absence without leave. Frequently a man is given orders, either written or verbal, at one station ordering him to another station, and thereafter he deviates from his orders and fails to report in obedience to his orders until a later time. In such a case the convening authority has a choice of preferring either a specification for *AWOL* or one for negligence in obeying orders. However, it has been held that the accused in such a case cannot be found guilty of both offenses for the reason that an accused cannot be found guilty of both an unauthorized absence from duty and non-performance of duty during the same period.

Missing ship or mobile unit. Where a man misses his ship or mobile unit as a result of being absent over leave or absent without leave rather than because of his specific intent to do so, the same should be alleged as an aggravation of the *AOL* or *AWOL* specification rather than as a separate offense. The phraseology of the allegation in aggravation should be worded somewhat as follows: *and he, the said Smith, as a result of said absence, missed said ship when she sailed on March 5, 1944.* It is to be noted that an accused cannot be convicted on a specification alleging *missing ship or mobile unit* as an aggravation, and also on a separate specification of missing ship or mobile unit. In other words, so that it cannot be said that an accused was twice convicted for the same offense, the accused can only be convicted of one or the other.

Sample specifications.

Absence without leave (surrendered).

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware, did, on or about May 1, 1944, without leave from proper authority, absent himself from his station and duty on board said ship, to which he had been regularly assigned, and did remain so absent from the U. S. naval

service for a period of about twenty days, at the expiration of which he surrendered himself on board said ship, the United States then being in a state of war.

Absence over leave (surrendered).

In that Roger Carl Haskell, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Section Base, Bar Harbor, Maine, having, while so serving on active duty at said section base, been granted leave of absence from his station and duty at said section base, to which he had been regularly assigned, said leave to expire on May 1, 1944, did fail to return to his station and duty as aforesaid upon the expiration of said leave, and did remain absent from the U. S. naval service, without leave from proper authority, for a period of about twenty days, at the expiration of which he surrendered himself at the aforesaid section base, the United States then being in a state of war.

9A2. Missing ship or mobile unit; deliberate intent; Section 98, NCB. Where deliberate intent to miss ship or mobile unit exists, the offense should be charged as a separate specification under the general charge of *conduct to the prejudice of good order and discipline* if trial is by general court-martial. Where deliberate intent does not exist, the offense should be charged as *AWOL* or *AOL* alleging as a matter of aggravation the fact that the accused missed the sailing of his ship or mobile unit as shown above.

Sample specifications.

Missing ship; deliberate intent.

In that William Alvin White, seaman first class, U. S. Navy, attached to the U.S.S. Delaware, while so serving on board the U.S.S. Delaware, at the U. S. Naval Operating Base, San Diego, California, well knowing that said ship was due to sail on or about August 20, 1943, did, then and there, without authority, deliberately and wilfully, miss said ship when she sailed as aforesaid, the United States then being in a state of war.

Missing mobile unit; deliberate intent.

In that George Hubert Black, carpenter's mate first class, U. S. Naval Reserve, attached to the Sixty-seventh U. S. Naval Construction Battalion, while so serving on active duty with said battalion at the Advance Base Receiving Barracks, U. S. Naval Base, Port Hueneme, California, well knowing that said battalion was due to depart for overseas duty on or about May 5, 1943, did, then and there, without authority, deliberately and wilfully, miss

said battalion when it departed for overseas duty as aforesaid, the United States then being in a state of war.

9A3. Disobeying the lawful order of his superior officer; Section 47, NCB. The type of offense intended to be covered by the charge *disobeying the lawful order of his superior officer* is a direct disobedience of orders, that is, a deliberate refusal to obey, either expressed verbally or by conduct. Such an offense contains the elements of wilfulness and insubordination and should be distinguished from mere non-performance or neglect of duty, which do not necessarily contain that element and ordinarily occur as the result of a failure to obey some order to be executed in the future. In brief, the order must be a lawful one, it must be given by a superior officer of the accused, and the disobedience must be wilful. It is to be noted that petty and non-commissioned officers are officers within the meaning of the offense.

Sample specifications.

Disobeying order to report to officer of deck.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware, having, on or about January 15, 1944, on board said ship, been lawfully ordered by one John Joseph Doe, ensign, U. S. Naval Reserve, the assistant Gunnery Officer of said ship, to report immediately to the officer of the deck of said ship, did then and there refuse to obey and did wilfully disobey the said lawful order, the United States then being in a state of war.

Disobeying order to stack lumber.

In that Robert Edward Jones, private first class, U. S. Marine Corps, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving at said marine barracks, having, on or about February 5, 1944, at said barracks, been lawfully ordered by one James R. Rowe, lieutenant colonel, U. S. Marine Corps, the executive officer of said barracks, to superintend the work of stacking lumber at or near the dock area of said barracks, did then and there refuse to obey and did wilfully disobey said lawful order, the United States then being in a state of war.

Disobeying order to cease being disorderly.

In that James Paul Brown, seaman second class, U. S. Navy, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving at said section base, having, on or about May 15, 1945, at said section base, been lawfully ordered by one Robert

L. Roane, lieutenant (junior grade), U. S. Naval Reserve, the Personnel Officer of said section base, to cease being noisy and disorderly, did then and there refuse to obey and did wilfully disobey said lawful order, the United States then being in a state of war.

9A4. Negligence in obeying orders; Section 66, NCB. Negligence in obeying orders consists of a non-compliance or a failure to obey some order, usually to be executed in the future. The gist of the offense is negligence rather than wilfulness. There is no practical distinction between negligence and carelessness. The order must, of course, be lawful. The distinction between *wilfully disobeying the lawful order of his superior officer* and *negligence in obeying orders* is discussed at length in *CMO* 2-1932, pp. 12-13. Therein it is stated, "Negligence is negative in its nature implying the omission of duty and excludes the idea of wilfulness. Negligence and wilfulness are the opposites of each other. They indicate radically different mental states." Negligence in obeying orders is distinguishable from neglect of duty in that it is the failure and neglect to obey some positive and direct order, rather than the non-performance of a subordinate or routine duty.

Sample specifications.

Neglecting to report to officer in charge.

In that George Hubert Black, carpenter's mate first class, U. S. Naval Reserve, attached to the Sixty-seventh U. S. Naval Construction Battalion, while so serving on active duty with said battalion, at the Advance Base Receiving Barracks, U. S. Naval Base, Port Hueneme, California, having, on or about January 1, 1944, at the U. S. Naval Receiving Station, Terminal Island (San Pedro), California, been lawfully ordered by the commanding officer of said receiving barracks to proceed on said date to said receiving barracks and to report to the officer in charge of said battalion on or about January 2, 1944, did neglect and fail to report in obedience to said order until on January 10, 1944, the United States then being in a state of war.

Neglecting to proceed.

In that Roger Carl Haskell, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Section Base, Bar Harbor, Maine while so serving on active duty at said section base, having, on or about January 1, 1944, at the U. S. Naval Training Station, Great Lakes, Illinois, been lawfully ordered by one George Harrison, lieutenant, U. S. Navy, personnel officer of the aforesaid training station, to proceed on said date to said section base, and having thereafter proceeded as far as the city of New York, New

York, did, on or about January 3, 1944, at said city of New York, neglect and fail to proceed farther in obedience to said order, the United States then being in a state of war.

Neglecting to report to sick bay.

In that William Alvin White, seaman first class, U. S. Navy, attached to the U.S.S. Delaware, while so serving on board the U.S.S. Delaware, having, on or about January 30, 1944, on board said ship, been lawfully ordered by one James Jackson, lieutenant (junior grade), U. S. Naval Reserve, officer of the deck of the aforesaid ship, to report to the sick bay of said ship on February 1, 1944, did, during the period from February 1, 1944, until about 4:30 p.m., February 4, 1944, neglect and fail to report in obedience thereto, the United States then being in a state of war.

9A5. Neglect of duty; Section 105, NCB. *Neglect of duty* implies a failure to perform some duty by never entering upon it in whole or in part. It is an omission and failure to perform some duty and does not contain the element of wilfulness or insubordination. This offense ordinarily consists of the nonperformance of a subordinate or routine duty although it is immaterial how the duty is imposed, whether by law, regulation or custom of the service. Instances of such offenses are failures to stand guard duty or to appear for muster. The facts constituting the neglect must be set forth with precision and certainty.

Sample specifications.

Failing to muster.

In that John Albert Doe, corporal, U. S. Marine Corps Reserve, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving on active duty at said marine barracks, having been regularly detailed to appear for muster at 8:00 a.m. on January 15, 1944, and well knowing that he had been so detailed, did, on said date, at said marine barracks, without proper authority, neglect and fail to appear for muster as aforesaid, as it was his duty to do, the United States then being in a state of war.

Failing to stand watch.

In that Roger Carl Haskell, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving on active duty at said section base, having been regularly detailed to stand the watch from 5:00 p.m. to 10:00 p.m. on November 5, 1943, as a sentry at the Bachelor Officers' Quarters Area at said section base, and well knowing that he had been so detailed, did, on said date, at said section base, without proper

authority, neglect and fail to stand the aforesaid watch as it was his duty to do, the United States then being in a state of war.

Failing to instruct relief.

In that Robert Edward Jones, private first class, U. S. Marine Corps, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving at said marine barracks, having, on or about September 6, 1943, while on duty as a member of the guard over prisoners confined in the brig at said marine barracks, been lawfully ordered by one John K. Long, sergeant, U. S. Marine Corps, who was then and there in the execution of his duties as sergeant of the guard, to instruct his relief to release no prisoners to go to the head during the night, did, on said date, at the said brig, upon being relieved by one Manuel M. Ottawa, sergeant, U. S. Marine Corps, neglect and fail to give the said Ottawa the instructions aforesaid, as it was the duty of the said Jones to do, the United States then being in a state of war.

9A6. Disobedience of orders not of a superior officer; Section 98, NCB. Offenses of this category are properly charged as *conduct to the prejudice of good order and discipline* and include any disobedience of orders not of a superior officer, such as a wilful disobedience of orders of the shore patrol, or of a master at arms, or of some other person with authority to give orders. In brief, the order must be a lawful one and the disobedience must be wilful.

Sample specifications.

Disobeying order of sentinel to leave a crowd.

In that James Paul Brown, seaman second class, U. S. Navy, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving at said section base, and while a prisoner in the brig at said section base, having, on or about December 8, 1944, at said brig, been lawfully ordered by one James L. Fish, seaman second class, U. S. Naval Reserve, who was then and there regularly on duty as a sentinel on the post, as he, the said Brown, well knew, to leave a crowd of prisoners congregated around a spiral staircase at said brig, and go down into the new brig, did, then and there, refuse to obey, and did wilfully disobey the said lawful order of the said Fish, the United States then being in a state of war.

Disobeying order of shore patrol to present identification card.

In that John Amos Smith, boatswain's mate second class, U. S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware, having, on or about

January 1, 1945, in the city of Santa Monica, California, been lawfully ordered by one John F. Shift, coxswain, U. S. Naval Reserve, who was then and there regularly on duty as a member of the U. S. Navy Shore Patrol, to present his identification card, did then and there refuse to obey, and did wilfully disobey the said lawful order of the said Shift, the United States then being in a state of war.

Disobeying order of master at arms to cease smoking.

In that George Hubert Black, carpenter's mate first class, U. S. Naval Reserve, attached to the Sixty-seventh U. S. Naval Construction Battalion, while so serving on active duty with said battalion at the Advance Base Receiving Barracks, U. S. Naval Base, Port Hueneme, California, having, on or about January 1, 1944, in the crew mess hall of said battalion at said receiving barracks, been lawfully ordered by one James J. Gown, seaman first class, U. S. Naval Reserve, who was then and there regularly on duty as a master at arms, to cease and desist from smoking a cigarette, did then and there, refuse to obey and did wilfully disobey the said lawful order of the said Gown, the United States then being in a state of war.

9A7. Neglecting and failing to obey an order to be executed at a specific future time; Section 98, NCB. There is a certain type of order, the execution of which is predicated upon a future receipt by the person ordered or the occurrence of a future event. Wilful disobedience thereto would be difficult to prove because of the lack of unity in the time of issuance and the time of required compliance. The disobedience is rather one of a hybrid nature consisting of a neglect and failure and thereby a disobedience. The distinguishing feature between this offense and the offense of negligence in obeying orders is the complete non-compliance or failure rather than a partial non-compliance or negligent compliance. Hence the additional allegation *and did therein and thereby wilfully disobey the said lawful order.* The offense is usually indicated where there is a failure to obey an order which by its terms was to have been executed at a specific time after its issue, that is, where the neglect and failure at the specific time *ipso facto* constitute the disobedience.

Sample specifications.

Failing to immediately acknowledge receipt of letter.

In that James Paul Brown, seaman second class, U. S. Navy, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving at said section base, having, on or about August 21, 1943, at said section base, received a letter addressed to him by

the Chief of Naval Personnel in tenor as follows: ". . . . . ," did, notwithstanding the lawful order of the Chief of Naval Personnel contained therein to immediately acknowledge the receipt of said letter, then and there, neglect and fail and has ever since neglected and failed to make such acknowledgment and did therein and thereby, wilfully disobey said lawful order of the Chief of Naval Personnel, the United States then being in a state of war.

Failing to immediately report upon receipt of order.

In that George Hubert Black, carpenter's mate first class, U. S. Naval Reserve, attached to the Sixty-seventh U. S. Naval Construction Battalion, while so serving on active duty with said battalion, at the Advance Base Receiving Barracks, U. S. Naval Base, Port Hueneme, California, having, on or about June 15, 1945, at said receiving barracks, received a written order from the officer in charge of said receiving barracks in tenor as follows: ". . . ." did, notwithstanding the lawful order of the officer in charge of said receiving barracks contained therein, immediately to report to the said officer in charge, then and there, neglect and fail and has ever since neglected and failed to report to the said officer in charge, and did, therein and thereby, wilfully disobey the said lawful order of the officer in charge of said receiving barracks, the United States then being in a state of war.

9A8. Violation of general orders or regulations; Section 75, NCB. A regulation or general order issued by the Secretary of the Navy that is not in conflict with the Constitution or the provisions of an act of Congress is lawful. No specific intent to violate need be shown. It is noted that where a regulation issued by the Secretary of the Navy is also covered by a local station or command order, an offense thereunder should be alleged as a violation of the regulation rather than the station or command order. The practical effect is that in drawing the specification as a violation of a regulation, it is not necessary to quote the order verbatim, whereas in drawing it as a violation of a local station or command order the order must be set out verbatim. The rule in this respect is stated as follows: *An offense should be laid under the general charge only where there is no specific charge to cover it.*

Sample specifications.

Use of intoxicating liquor at shore establishments; Violation of General Order 59.

In that James Paul Brown, seaman second class, U. S. Navy, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving at said section base, did, on or about September 27,

1943, knowingly, wilfully, and without proper authority, use intoxicating liquor for beverage purposes in an unauthorized place at said section base, to wit, the parking area in the vicinity of Theatre "A", the United States then being in a state of war.

Possession of intoxicating liquor at shore establishment; Violation of General Order 59.

In that Robert Edward Jones, private first class, U. S. Marine Corps, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving at said marine barracks, did, on or about August 25, 1943, at said marine barracks, knowingly, wilfully, and without proper authority, have in his possession intoxicating liquor for beverage purposes in an unauthorized place at said marine barracks, to wit, the enlisted men's barracks in Area "E", the United States then being in a state of war.

Pledging of uniform clothing; Violation of Article 122 (2), Navy Regulations.

In that Robert Edward Jones, private first class, U. S. Marine Corps, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving at said marine barracks, did, on or about October 16, 1944, in the city of Los Angeles, California, knowingly, unlawfully, and without competent authority, pledge to one Marlin N. Smith, a merchant of said city, the following articles of clothing lawfully furnished by the United States to the said Jones as a part of his, the said Jones' prescribed uniforms and outfit, for the amounts in United States money hereinafter stated, to wit: One overcoat for two dollars and fifty cents ($2.50), one flannel shirt for one dollar and twenty-five cents ($1.25), and one pair of russet shoes for one dollar and seventy-five cents ($1.75) which said amounts as above set forth, he, the said Jones, did receive into his possession and appropriate to his own use, the United States then being in a state of war.

Possession of wearing apparel of another person in the Navy; Violation of Article 122 (3), Navy Regulations.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware, did, on or about April 5, 1945, on board said ship, knowingly, wilfully, and without proper authority, have in his possession wearing apparel belonging to another person in the Navy, to wit, one dress blue uniform, the property of one Louis N. Mazuma, fireman first class, U. S. Naval Reserve, the United States then being in a state of war.

Concealing dangerous weapon on person; Violation of Article 119, Navy Regulations.

In that James Paul Brown, seaman second class, U. S. Navy, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving at said section base, did, on or about February 28, 1945, at said section base, it not being necessary to the proper performance of his duty, wilfully, knowingly, and without proper authority, have concealed about his person a dangerous weapon, namely, a sandbag, the United States then being in a state of war.

Possession of narcotic substance at shore establishment; Violation of Article 118 (3), Navy Regulations.

In that Roger Carl Haskell, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving on active duty at said section base, did, on or about October 6, 1944, knowingly, wilfully, and without proper authority, and not for authorized medical purposes, have in his possession at said section base, a narcotic substance, to wit, cocaine, the United States then being in a state of war.

9A9. Violation of local orders; Section 98, NCB. Where a specification is predicated upon the violation of a local order, it is necessary that the pertinent portion of the order be set out verbatim together with a statement that the order was duly promulgated by an officer empowered to do so.

In many instances, it is necessary that a commanding officer promulgate an order to his command so that discipline therein may be properly maintained; as, for example, where petty pilfering is frequently occurring. The Navy Department has repeatedly indicated that a thief should be discharged from the naval service, but has also stated that care must be taken to distinguish between petty pilfering and theft. The distinguishing characteristic of theft is that the element of intent to deprive the owner permanently of his property is present, whereas in petty pilfering such intent is not necessarily present and the value of the property is trivial. The promulgation of a local order making it unlawful for men of the command to have in their possession property of other persons or of the United States, will make possible the prosecution and trial of persons committing petty pilfering. Under such an order, a specification for possession alone can be preferred where the theft intent is lacking or cannot be proved. An example of this type of order is as follows: *Enlisted men attached to this vessel are forbidden to have possession, to grant possession to another person or to assist another person to take possession, directly or indirectly, without permission from proper authority, of property belonging to the United States or of any personal property belonging to another person.*

A violation of a local order is preferred under the general charge of *conduct to the prejudice of good order and discipline.* However, as heretofore stated, it is a rule of pleading that if a specification can be preferred under a specific charge, it should be so preferred rather than under the general charge. Thus, if a local order sets out certain prohibitions which are also set out by *Navy Regulations*, an offense thereunder should be preferred as a violation of the *Navy Regulations*. The practical effect in a deck-court or summary court-martial specification is that the *Navy Regulation* does not have to be alleged verbatim, whereas the local order does. An example of this situation occurs where a local order prohibits enlisted men from having possession of property belonging to another person or to the United States. Where the property in possession is wearing apparel or bedding, and belongs to another person in the Navy, the specification should be preferred as a violation of Article 122 (3) of *Navy Regulations*, but if the property is other than wearing apparel or bedding, or belongs to the United States or to a person other than another person in the Navy, the specification should be drawn as a violation of the local order.

Sample specifications.

Unauthorized possession of personal property of another person.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware, did, on or about March 29, 1945, on board said ship, in violation of a lawful ship's order duly promulgated by the commanding officer thereof, on or about March 1, 1944, providing in paragraph two thereof in tenor as follows:

"2. Enlisted men on board this ship are forbidden to have possession, to grant possession to another person or to assist another person to take possession, directly or indirectly, without permission from proper authority, of property belonging to the United States or of any personal property belonging to another person,"

wilfully and knowingly have in his possession, without permission from proper authority, personal property belonging to another person, to wit, one wallet of the value of about three dollars ($3.00), said wallet being the property of one James Jackson, storekeeper third class, U. S. Naval Reserve, the United States then being in a state of war.

Traveling prohibited distance while on liberty.

In that George Hubert Black, carpenter's mate first class, U. S. Naval Reserve, attached to the Sixty-seventh U. S. Naval Construction Battalion, while so serving on active duty with said battalion, at the Advance Base Receiving Barracks, U. S. Naval Base, Port

Hueneme, California, having been granted liberty from his station and duty with said battalion, and while quartered at said receiving barracks, did, on or about May 2, 1944, in violation of a lawful station order duly promulgated by the officer in charge of said receiving barracks on or about March 1, 1944, providing in paragraph one thereof in tenor as follows:

"1. In compliance with reference (a), it is prohibited for all enlisted men quartered at this station, when granted liberty, to travel beyond the 'general vicinity' of this station without permission in writing. The term 'general vicinity' as used in this order will be interpreted to mean within fifty (50) miles from this station, and also the cities of Hollywood, Beverly Hills, Santa Monica, Venice, Inglewood, Huntington Park, Alhambra, Pasadena, Glendale, Burbank, and all of Los Angeles and environs; except the area West and South of Lincoln Boulevard; South of the Imperial Highway; East of Atlantic Boulevard and South of Huntington and Sierra Madre Boulevards",

wilfully, unlawfully, and without permission in writing, travel beyond the general vicinity of said receiving barracks, by traveling a distance of about four hundred fifty miles from said receiving barracks, to the City of Napa, California, the United States then being in a state of war.

Possession of forged liberty pass.

In that William Alvin White, seaman first class, U. S. Navy, attached to the U.S.S. Delaware, while so serving on board the U.S.S. Delaware, did, on or about January 1, 1944, in the city of San Pedro, California, in violation of a lawful ship's order duly promulgated by the commanding officer of said ship on or about March 1, 1943, providing in paragraph one thereof in tenor as follows:

"1. It is prohibited for enlisted men on board this ship to use or have in their possession, without permission from proper authority, a liberty pass of another person in the Navy or a forged or altered one",

wilfully and knowingly have in his possession, without permission from proper authority, a regular liberty pass of said ship, which said liberty pass had thereon, as the name of the officer validating said liberty pass, the signature "James S. Kent," which said signature was wholly false and forged, the United States then being in a state of war.

Possession of liberty pass of another.

In that James Paul Brown, seaman second class, U. S. Navy,

attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving at said section base, did, on or about March 1, 1945, in the city of Bangor, Maine, in violation of a lawful base order duly promulgated by the commanding officer of said section base on or about July 20, 1943, providing in paragraph one thereof in tenor as follows:

"1. It is prohibited for enlisted men quartered at this section base to use or to have in their possession, without permission from proper authority, a liberty pass of another person in the Navy or a forged or altered one",

wilfully and knowingly have in his possession, without permission from proper authority, a regular liberty pass of another person in the Navy, to wit, Carl Robert Rowe, yeoman second class, U. S. Naval Reserve, the United States then being in a state of war.

Possession of identification card of another.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware, did, on or about September 15, 1944, in the city of Long Beach, California, in violation of a lawful ship's order duly promulgated by the commanding officer of said ship on or about July 20, 1943, providing in paragraphs one and three thereof in tenor as follows:

"1. It is prohibited for enlisted men on board this ship to use or to have in their possession, without permission from proper authority, a liberty pass of another person in the Navy or a forged or altered one.

"3. Paragraph 1 above applies in like manner to identification cards",

wilfully and knowingly have in his possession, without permission from proper authority, an identification card of another person in the Navy, to wit, John Richard Ellison, yeoman second class, U. S. Naval Reserve, the United States then being in a state of war.

9A10. Forging, etc., a naval or military pass or permit; possession thereof with wrongful intent; Section 113, NCB. The possession or use of a forged or altered liberty pass, the possession or use of a liberty pass of another person, and the possession or use of an unauthorized liberty pass are common offenses in the Navy. They are almost invariably accompanied by an offense of absence over leave or absence without leave inasmuch as the accomplishment of unauthorized absence is generally the purpose. In a state such as California, which by law prohibits the sale of intoxicants to minors, the birth date on an identification card is sometimes illegally altered in order that liquor may be purchased by a man who is still a minor.

Section 113, *Naval Courts and Boards, 1937*, deals with these offenses and quotes 18 *U. S. Code 138* as follows: "Whoever shall (1) falsely make, forge, counterfeit, alter, or tamper with any naval, military, or official pass or permit, issued by or under the authority of the United States, or (2) with wrongful or fraudulent intent shall use or have in his possession any such pass or permit, or (3) shall personate or falsely represent himself to be or not to be a person to whom such pass or permit has been duly issued, or (4) shall wilfully allow any other person to have or use any such pass or permit, issued for his use alone, shall be fined not more than $2,000 or imprisoned not more than five years, or both."

The above statute would seem to cover all possible offenses involving naval passes or permits. However, it is always difficult and generally impossible to prove that a man did the actual making, forging, counterfeiting, altering or tampering, or to prove that the pass or permit was used or possessed with wrongful or fraudulent intent. In order to cover the mere *possession cases*, it is necessary to have promulgated an order to the command making it an offense to possess or use the liberty pass or identification card of another person; to possess or use a liberty pass or identification card which has been forged, counterfeited, altered or tampered with; or to possess or use a liberty pass or identification card which is otherwise unauthorized. Specifications predicated on violations of such orders are easily proved since proof of mere possession without the specific intent required by the statute is sufficient. Specifications based on local orders are illustrated in Article 9A9 of this text. The specifications in this section are preferred under the Federal Statute and contain the averment pertaining to wrongful or fraudulent intent.

Sample specifications.

Forging a liberty pass.

In that James Paul Brown, seaman second class, U. S. Navy, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving at said section base, did, on or about March 1, 1945, at said section base, upon a regular liberty pass of said section base, in tenor as follows: "U. S. Naval Section Base, Bar Harbor, Maine. Date, 3–1–45. Name, James Paul Brown, Rate, S2c. Liberty begins 4 p.m.; expires 8 a.m. ..... O.O.D.", wilfully, without proper authority, and with intent thereby to deceive for the purpose of thereby obtaining unauthorized liberty from his station and duty at said section base, make and forge the name and rank "Howard T. Conklin, Lieutenant, U.S.N.R.", as the person authorizing said liberty, the United States then being in a state of war.

Possession of forged liberty pass with wrongful intent.

In that Roger Carl Haskell, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving on active duty at said section base, did, on or about March 1, 1944, at said section base, wilfully, without proper authority, and with intent thereby to deceive for the purpose of thereby obtaining unauthorized liberty from his station and duty with said section base, have in his possession a regular liberty pass of said section base, which said liberty pass had thereon, as the name of the officer validating said liberty pass, the signature "John R. Wells," which said signature was wholly false and forged, as he, the said Haskell, well knew, the United States then being in a state of war.

Possession of liberty pass of another with wrongful intent.

In that John Albert Doe, corporal, U. S. Marine Corps Reserve, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving on active duty at said marine barracks, did, on or about February 1, 1945, at said marine barracks, wilfully, without proper authority, and with intent thereby to deceive for the purpose of thereby obtaining unauthorized liberty from his station and duty with said marine barracks, have in his possession a regular liberty pass of said marine barracks theretofore lawfully issued to one John Carl White, corporal, U. S. Marine Corps Reserve, the United States then being in a state of war.

9A11. Falsehood; Section 54, NCB. The false representation must be made officially with intent to deceive, must be such as to deceive a reasonably prudent person and must be material and pertinent matter which the accused does not believe to be true, as to some past or existing fact or circumstance and not a mere expression of opinion or promise or frivolity. Equivocation or failure squarely to answer is not falsehood. The specification should include direct and specific allegations negating the truth of the alleged false statements together with affirmative averments setting up the truth by way of antithesis. Where the accused has falsely stated his name, rate, or command, it is unnecessary to make a separate allegation as to the truth inasmuch as the true name, rate, and command of the accused must have been pleaded in the introductory allegations of the specification.

It is an error, after having preferred a specification against an accused for an offense, to prefer another specification against him for making false statements concerning that offense. Such action usually amounts to charging the accused in one specification with the offense of falsehood because of his verbal denial of the misconduct alleged in the other. An allegation of falsehood based upon a verbal denial of misconduct

made during an investigation, when the procedure prescribed by Article 197, *Navy Regulations*, has not been followed, is considered inappropriate. When confronted with an accusation of an offense at *captain's mast*, the accused is placed in the position of incriminating himself regardless of whether he replies in the affirmative, the negative, or remains silent. A denial of guilt is of the same effect as a repudiation of an unsworn confession, which has been held to constitute no offense known to the naval service. Of course, if the false statement concerns a purely collateral matter and in no way consists of a denial of guilt of the offense being investigated, then a specification for falsehood is appropriate, even though the statement is made at *captain's mast* or during the course of some other investigation.

Sample specifications.

Falsely stating that jumper had not been removed from seabag.

In that James Paul Brown, seaman second class, U. S. Navy, attached to the U. S. Naval Base, Bar Harbor, Maine, while so serving at said section base, did, on or about September 4, 1944, upon being questioned by the officer of the day of said section base, state that on August 25, 1944, he, the said Brown, did not remove from a seabag in Hut "A" at said section base, a dress blue jumper belonging to one James Finnegan, seaman first class, U. S. Naval Reserve, whereas in truth and in fact, the said Brown did remove said dress blue jumper from said bag in said hut on said day at the aforesaid section base; which said statement was knowingly false and intended to deceive, as he, the said Brown, well knew, the United States then being in a state of war.

Falsely stating name and rate.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U. S. S. Delaware, while so serving on active duty on board the U. S. S. Delaware, did, on or about May 25, 1944, on board said ship, upon a statement made to the executive officer of said ship, represent his true name to be David E. Frank, and his rate to be boatswain's mate first class, U. S. Navy, which said representation was knowingly false and intended to deceive as he, the said Smith, well knew, the United States then being in a state of war.

9A12. Gambling; Section 56, NCB. Gambling is not a common-law offense. It is not defined in any statute of the United States. Congress must have used the word in this article in its commonly accepted meaning, which, according to Webster, is, properly, the act of playing or gambling for stakes. In the strict sense of the term gambling implies a playing or gaming, as at checkers, dice, cards, horse racing, cock-fighting, or some other sport

or contest, as well as a staking or risking of money to be lost or won on the issue. In this sense it does not include cases of mere wager or betting on the issue of an uncertain event, not involving any game or contest conducted in order that its event may determine the result of the wager, as lotteries, bets upon elections, and other forms of wagering contracts, etc.

Sample specification

Gambling for money with cards.

In that Roger Carl Haskell, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving on active duty at said section base, did, on or about May 15, 1945, in the mess hall of said section base, gamble for money with cards, the United States then being in a state of war.

9A13. Drunkenness; Sections 55 and 98, NCB. To constitute the offense of drunkenness, it is not necessary that the accused be completely insensible or even that he be "so drunk that he didn't know what he was doing." As stated in *Naval Courts and Boards, 1937*, any intoxication from intoxicating liquor which is sufficient sensibly to impair the rational and full exercise of the mental and physical faculties to a degree that will incapacitate for the proper performance of any duty which the accused may be properly called upon to perform, will constitute the offense. The offense is committed even though the drunkenness occurs while the accused is on liberty and though he will not necessarily be called upon to perform any duties at the time or in the immediate future. If the drunkenness occurs while the accused is on duty, it is an aggravation, and will make the offense more serious. In the event the accused becomes intoxicated without having been on liberty, it is probable that the intoxicants were drunk while the accused was within the naval activity. Since it would be impossible in most cases to prove as a fact that the intoxicants were drunk within naval activity, the words *not having been on liberty* are added, as a means of bringing to the attention of the court the seriousness of the offense.

An offense closely allied to that of *drunkenness* but different in character is that of *incapacitation by reason of previous indulgence in intoxicating liquors*. Since the gravamen of the offense is the incapacitation subsequent to the drunkenness, rather than the condition of drunkenness, the offense does not fall within Article 8, *AGN*, and is pleaded under the charge *conduct to the prejudice of good order and discipline.*

Sample specifications.

Drunk while on liberty.

In that William Alvin White, seaman first class, U. S. Navy, attached to the U. S. S. Delaware, while so serving on board the

U. S. S. Delaware, was, on or about January 1, 1945, in or near the city of Hollywood, California, under the influence of intoxicating liquor, and thereby incapacitated for the proper performance of duty, the United States then being in a state of war.

Drunk while on duty.

In that John Albert Doe, corporal, U. S. Marine Corps Reserve attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving on active duty at said marine barracks, was, on or about January 1, 1945, at said marine barracks, while on duty as corporal of the guard of said marine barracks, under the influence of intoxicating liquor, and thereby incapacitated for the proper performance of duty, the United States then being in a state of war.

Drunk; not having been on liberty.

In that Roger Carl Haskell, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving on active duty at said section base, was, on or about January 1, 1945, at said section base, not having been on liberty, under the influence of intoxicating liquor, and thereby incapacitated for the proper performance of duty, the United States then being in a state of war.

Incapacitation to the extent of being placed on sick list.

In that William Alvin White, seaman first class, U. S. Navy, attached to the U. S. S. Delaware, while so serving on board the U. S. S. Delaware, was, on or about June 4, 1944, on board said ship, from previous indulgence in intoxicating liquors, incapacitated for the proper performance of his duties to such an extent as to necessitate his being placed on the sick list, the United States then being in a state of war.

9A14. Resisting arrest; Section 106, NCB. A specification for resisting arrest should be preferred only where there has been resistance while being placed under arrest. Once an offender is placed under arrest he cannot commit the offense of resisting arrest. In the event force is used subsequent to the arrest for the purpose of breaking arrest, the proper offense to be alleged is *attempting to break arrest.*

Sample specification.

Resisting arrest by petty officer.

In that James Paul Brown, seaman second class, U. S. Navy, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving at said section base, did, on or about August 9,

1943, at said section base, while being lawfully placed under arrest by one Jack Robert White, boatswain's mate first class, U. S. Naval Reserve, forcibly resist arrest, the United States then being in a state of war.

9A15. Breaking arrest; Section 94, NCB. There are three essentials to arrest: authority, intention, and restraint. There must have been an intention to arrest and such intention must have been understood by the person arrested. The accused must be cognizant of having been placed under arrest by order of an officer authorized to do so. A prisoner at large is a person under arrest and the entry in the accused's service record that he was absent without leave while a prisoner at large is sufficient to prove the offense. One merely restricted to his ship or station is not necessarily under arrest.

Sample specifications.

Breaking arrest while prisoner at large.

In that James Paul Brown, seaman second class, U. S. Navy, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving at said section base, did, on or about August 25, 1944, while a prisoner at large at said section base by lawful order of his commanding officer, break his arrest and leave the aforesaid section base, the United States then being in a state of war.

Breaking arrest while under sentry charge.

In that Robert Edward Jones, private first class, U. S. Marine Corps, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving at said marine barracks, and while a prisoner under the charge of a sentry at said marine barracks, by lawful order of the commanding officer thereof, did, on or about September 4, 1944, break his arrest and leave said marine barracks, the United States then being in a state of war.

Breaking arrest while confined in the brig.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U. S. S. Delaware, while so serving on active duty on board the U. S. S. Delaware, did, on or about September 6, 1944, while a prisoner confined in the brig on board said ship by lawful order of his commanding officer, break his arrest and leave said ship, the United States then being in a state of war.

9A16. Aiding escape of person under arrest; Section 116, NCB. Section 246, Title 18 of the *U. S. Code* reads: "Whoever shall rescue or attempt

to rescue, from the custody of any officer or person lawfully assisting him, any person arrested upon a warrant or other process issued under the provisions of any law of the United States, or shall, directly or indirectly, aid, abet, or assist any person so arrested to escape from the custody of such officer or other person, or shall harbor or conceal any person for whose arrest a warrant or process has been so issued, so as to prevent his discovery and arrest, after notice or knowledge of the fact that a warrant or process has been issued for the apprehension of such person, shall be fined not more than one thousand dollars, or imprisoned not more than six months, or both."

Sample specification.

Aiding escape by furnishing clothes.

In that John Albert Doe, corporal, U. S. Marine Corps Reserve, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving on active duty at said marine barracks, well knowing that one John Jones, private, U. S. Marine Corps Reserve, a prisoner confined in the brig at said marine barracks, intended to break arrest, did, on or about December 22, 1944, at said marine barracks, knowingly and wilfully furnish and provide dungaree clothing for the use of the said Jones, for the purpose of aiding and abetting the said Jones to break arrest; as a result of which the said Jones did then and there escape and break arrest from the said brig, the United States then being in a state of war.

9A17. Failure to use utmost exertions to detect, apprehend and bring to punishment all offenders; Section 73, NCB. The phrase *utmost exertions* is to be understood in a reasonable sense with reference to the circumstances of the particular case. A mere inadvertent neglect to take some necessary step toward detecting, etc., will not constitute the offense. It is not proper to prefer a specification for this offense against one who is himself a principal.

Sample specification.

Failing to use utmost exertions to detect, etc., persons known to have committed theft.

In that James Paul Brown, seaman second class, U. S. Navy, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving at said section base, having, on or about June 3, 1945, witnessed certain persons, by name to the relator unknown, break into and enter the storeroom of the Supply Officer at said section base, and remove therefrom certain property of the United States,

and well knowing that said persons had committed therein a theft of property of the United States, did then and there fail to use his utmost exertions to detect, apprehend and bring to punishment the perpetrators of said theft, the United States then being in a state of war.

9A18. Knowingly making false muster; Section 70, NCB. Muster is the assembling, the inspecting, entering upon the formal rolls, and officially reporting as a component part of the command, of persons or public animals.

Sample specification.

Mustering as present a person AWOL.

In that George Hubert Black, carpenter's mate first class, U. S. Naval Reserve, attached to the Sixty-seventh U. S. Naval Construction Battalion, while so serving on active duty with said battalion, at the Advance Base Receiving Barracks, U. S. Naval Base, Port Hueneme, California, did, on or about July 4, 1944, knowingly make a false muster of the Third Company of said battalion by reporting one Donald E. Ford, boatswain's mate second class, U. S. Naval Reserve, as present, when the said Ford, as he, the said Black, then well knew, was not present, but was absent without leave, the United States then being in a state of war.

9A19. Waste of public property; Section 71, NCB. Waste may consist in not taking proper care of the ammunition, etc., and thus allowing it to be lost or damaged; in recklessly expending in firings; giving it away, etc.

Sample specification.

Wasting ammunition.

In that Roger Carl Haskell, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving on active duty at said section base, and while a member of a firing party on the target range at said section base, having had one hundred twenty rounds of rifle ammunition, property of the United States duly issued to him for use in the naval service, did, on or about May 3, 1945, at the target range aforesaid negligently waste the same by firing away the said ammunition without orders and without sufficient cause, the United States then being in a state of war.

9A20. Destruction of private property; Section 111, NCB. This offense consists of any wilful physical injury to property of another from ill will or resentment toward the owner or from wantonness. If the property be-

longs to the United States, the offense is alleged under the sample specification indicated in Section 52, *Naval Courts and Boards, 1937*, under the charge of *destruction of public property.*

Sample specification.

Destroying window glass in train.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U. S. S. Delaware, while so serving on active duty on board the U. S. S. Delaware, did, on or about May 10, 1944, in the city of Savannah, Georgia, wilfully and maliciously break a window in a car of the Atlantic Coast Line Railroad Company, the United States then being in a state of war.

9A21. Destruction of public property; Section 52, NCB. A specification for destroying or setting on fire public property must be pleaded under Art. 4, *AGN*, par. 11, which provides for the offense of one who . . . *unlawfully sets on fire, or otherwise unlawfully destroys, any public property not at the time in the possession of an enemy, pirate, or rebel.* The intent to set on fire or destroy must be proved. The word *unlawfully* is necessary in the specification because it appears in the statute.

Sample specifications.

Destroying provisions.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U. S. S. Delaware, while so serving on active duty on board the U. S. S. Delaware, did, on or about June 15, 1945, while regularly detailed as a member of the landing forces of said ship, wilfully and unlawfully destroy about fifty pounds of canned corned beef, public property of the United States, not at the time in the possession of an enemy, pirate, or rebel, the United States then being in a state of war.

Destroying window glass in brig.

In that William Alvin White, seaman first class, U. S. Navy, attached to the U.S.S. Delaware, while so serving on board the U.S.S. Delaware, having, on, or about September 25, 1944, been placed in confinement in the brig of said ship, did, on said date in said brig, wilfully and unlawfully break the glass in the port of the cell in which he was confined, the United States then being in a state of war.

9A22. Miscellaneous military offenses; Sections 50, 51, 97, and 98, NCB. The following specifications cover various military offenses which are self-explanatory but occur frequently. *Sleeping on watch* and *leaving station*

before being regularly relieved are discussed in Sections 50 and 51 respectively, *Naval Courts and Boards, 1937; carelessly or negligently endangering the lives of others* is discussed in Section 97 thereof; the other specifications shown are pleaded under *conduct to the prejudice of good order and discipline* which is discussed in Section 98, *Naval Courts and Boards, 1937.*

Sample specifications.

Sleeping on watch.

In that James Paul Brown, seaman second class, U. S. Navy, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving at said section base, having, on October 7, 1944, been regularly posted as a sentinel on watch on Post Number Five at said section base, did, at or about 10:00 p.m., on said date, sleep while on said watch, the United States then being in a state of war.

Leaving station before being regularly relieved.

In that William Alvin White, hospital apprentice first class, U. S. Navy, attached to the U.S.S. Delaware, while so serving on board the U.S.S. Delaware, having, on or about October 10, 1944, been regularly detailed and stationed on duty as the corpsman on watch in the Sick Bay of said ship, did, while regularly detailed and stationed on duty as the corpsman on watch at the time and place aforesaid, without authority, leave his station before being regularly relieved, the United States then being in a state of war.

Unauthorized exchange of watch.

In that John Albert Doe, corporal, U. S. Marine Corps Reserve, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving on active duty at said marine barracks, having on September 4, 1944, been regularly detailed as a member of the guard over prisoners in E-3 barracks at the said marine barracks on the 6 p.m. to 10 p.m. watch on said date, did, then and there, wilfully, knowingly, and without proper authority, exchange the said 6 p.m. to 10 p.m. watch for the 2 a.m. to 6 a.m. watch on September 5, 1944, with one Jones, an enlisted man in the U. S. Marine Corps, given name and rank to the relator unknown, the United States then being in a state of war.

Carelessly or negligently endangering the lives of others.

In that Robert Edward Jones, private first class, U. S. Marine Corps, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving at said marine barracks, and while posted as a sentinel in the post prison at said marine barracks, said prison at said time having ten prisoners confined therein, having in

his possession a loaded forty-five caliber automatic pistol, and it being his duty to handle said pistol with due caution and circumspection, did, on or about October 15, 1945, in said prison neglect and fail to handle said pistol with due caution and circumspection in that he, the said Jones, did fire and cause to be fired a shot from said pistol, and did, therein and thereby, then and there, endanger the lives of the prisoners confined in said prison, the United States then being in a state of war.

Wearing unauthorized rating insignia.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware, in the rating of seaman first class, did, on or about May 15, 1945, in the mess hall of the aforesaid ship, wilfully, unlawfully, and without proper authority, wear other than the regulation insignia of his said rating, by then and there wearing a dress blue jumper with the rating insignia of a machinist's mate first class thereon, the United States then being in a state of war.

Wearing unauthorized uniform.

In that James Paul Brown, seaman second class, U. S. Navy, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving at said section base, in the rating of seaman second class, did. on or about February 1, 1945, at the Wet Canteen of said section base, wilfully, unlawfully, and without proper authority, wear other than the regulation uniform of said rating by then and there wearing a steward's uniform with the rating insignia of a steward first class thereon, the United States then being in a state of war.

Wearing other than naval uniform; violation of AlNav 29-42.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware, did, on or about May 5, 1945, at or near the city of Norfolk, Virginia, knowingly, wilfully, and without proper authority, wear clothing other than his naval uniform, to wit, civilian clothing, the said Smith not then being engaged in exercise and not then being in his home with less than three guests present, the United States then being in a state of war.

Concealment of venereal disease.

In that John Albert Doe, corporal, U. S. Marine Corps Reserve, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving on active duty at said marine barracks,

well knowing that he, the said Doe, was suffering from a contagious venereal disease, did, on or about July 1, 1945, at said marine barracks, conceal the presence of the said disease by failing to report same to the medical officer of said marine barracks, and did continue to so conceal said disease until on or about July 10, 1945, when the presence of said disease was disclosed by examination of the said Doe prior to transfer, the United States then being in a state of war.

Under the influence of a narcotic substance.

In that Roger Carl Haskell, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving on active duty at said section base, was, on or about July 1, 1945, at said section base, under the influence of a narcotic substance, to wit, cocaine, and thereby incapacitated for the proper performance of duty, said narcotic substance having been knowingly used by the said Haskell not for authorized medical purposes, the United States then being in a state of war.

Possession of intoxicating liquor on board ship.

In that William Alvin White, seaman first class, U. S. Navy, attached to the U.S.S. Delaware, while so serving on board the U.S.S. Delaware, did, on or about August 25, 1944, on board said ship, knowingly, wilfully, and without proper authority, and not for authorized medical purposes, keep in his possession alcoholic liquor, to wit, whiskey, the United States then being in a state of war.

Self maiming.

In that John Albert Doe, corporal, U. S. Marine Corps Reserve, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving on active duty at said marine barracks, did, on or about November 21, 1944, in the city of Boston, Massachusetts, with intent to thereby escape the full performance of his duty and to make himself unfit for service, shoot himself with a shot fired by him, the said Doe, from a twenty-two caliber rifle, in his left leg at or near the knee, and as a result thereof, he, the said Doe, was disabled to such an extent as to render himself unfit for the full performance of military service, the United States then being in a state of war.

B. OFFENSES WHICH ARE PRINCIPALLY PERSONAL OR PROPRIETARY IN CHARACTER

9B1. Use of reproachful or provoking words, gestures, and menaces toward another person in the Navy; Section 62, NCB. The words of this offense

must be taken in their usual acceptation. To constitute the offense, it is essential that the person to whom the words, gestures, or menaces were directed, was actually present at the time. Reproachful words are those which bring imputations or disgrace upon the person to whom they are spoken. Provoking words are those which arouse anger, cause resentment, or offend. It is noted that the use of reproachful and provoking words to civilians is, of itself, not an offense known to naval law. In order that the use by an enlisted man of provoking and reproachful words toward another constitute an offense, the words must be spoken toward others in the naval service, unless it can be shown that the uttering of the words created a disorder, in which case the specification would be pleaded under Charge III, Section 92, *Naval Courts and Boards, 1937.*

Sample specifications.

Using provoking words.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware, and while a prisoner in the brig on board said ship, did, on or about December 8, 1944, at said brig, say to one Donald E. Forrest, seaman second class, U. S. Naval Reserve, who was then and there in the execution of his duties, acting as brig guard, "You dirty stool pigeon," or words to that effect, the United States then being in a state of war.

Using reproachful words.

In that Roger Carl Haskell, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving on active duty at said section base, did, on or about May 5, 1945, at the mess hall of said section base, say to one Howard I. Jones, steward's mate third class, U. S. Naval Reserve, "If you'd put all the brains you have in a humming bird's head, he'd fly backwards," or words to that effect, the United States then being in a state of war.

Using provoking and reproachful words, gestures, and menaces.

In that George Hubert Black, carpenter's mate first class, U. S. Naval Reserve, attached to the Sixty-seventh U. S. Naval Construction Battalion, while so serving on active duty with said battalion, at the Advance Base Receiving Barracks, U. S. Naval Base, Port Hueneme, California, and while so serving as petty officer in charge of a work detail at said receiving barracks, did, on or about August 8, 1944, at or near the Master Galley of said receiving barracks, use provoking and reproachful words, gestures, and menaces toward one James R. Jones, seaman second class, U. S.

Naval Reserve, by shaking his fist in the face of the said Jones and saying to him, "That thing there reported me. That snake is watching me and just waiting to report me for drinking," or words to that effect, he, the said Black, meaning and intending when uttering the words "That thing there" and "That snake" to refer to the said Jones, the United States then being in a state of war.

9B2. Contempt of superior officer; disrespectful in language or deportment to his superior officer; Sections 63 and 98, NCB. It is essential that the superior officer be present and in the execution of his office at the time to constitute an offense under the charge set forth in Section 63, *Naval Courts and Boards, 1937*, but it is immaterial whether the words or acts be directed toward him in his official or private capacity. The accused must know that the person to whom the language or deportment was directed was, in fact, his superior officer. Disrespect by deportment may be exhibited in a variety of modes, as by neglecting the customary salute, by a marked disdain, indifference, impertinence, undue familiarity, or other rudeness in the presence of his superior officer. Contempt is defined as an act or statement connoting despise, disdain, disgrace, shame or scorn. Disrespect connotes a lack of respect and want of courtesy.

In the event that abusive or obscene language is used toward a superior officer at a time when the superior officer is not in the execution of his office, the offense is pleaded under the general charge of *conduct to the prejudice of good order and discipline*, as shown in Section 98, Specification 16, *Naval Courts and Boards, 1937*.

Sample specifications.

Treating his superior officer with contempt.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware, did, on or about May 1, 1945, on board said ship, say in a disrespectful and contemptuous manner to one Donald Edward, lieutenant, U. S. Naval Reserve, who was then and there in the execution of his office, "You are about the most incompetent misfit in the Navy; it is a disgrace to the Navy to let you carry on; what mistake let you in," or words to that effect, the United States then being in a state of war.

Disrespectful in language to his superior officer.

In that Roger Carl Haskell, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving on active duty at said section base, and while under a sentry's charge, upon hearing his superior officer, one John K. Lord, lieutenant, U. S. Naval Reserve, who was then and there

in the execution of his office, ask the sentry in charge of the said Haskell, who had broken the light in the brig, did, on or about December 19, 1944, at said section base, say to the said Lord in a disrespectful manner, "I broke it and I'd like to know what you are going to do about it," or words to that effect, the United States then being in a state of war.

Disrespectful in deportment to his superior officer.

In that Robert Edward Jones, private first class, U. S. Marine Corps, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving at said marine barracks, did, on or about May 15, 1945, in Area "F" of said marine barracks, assume a disrespectful attitude toward his superior officer, one Donald E. Frank, staff sergeant, U. S. Marine Corps, who was then and there in the execution of his office, by placing his, the said Jones' thumb, to his nose and extending his fingers toward the said Frank, the United States then being in a state of war.

9B3. Use of threatening words; Sections 48 and 98, NCB. In regard to threatening a superior officer while in the execution of the duties of his office, an officer may be in the execution of the duties of his office without being on duty in the strictly military sense. The phrase, *execution of the duties of his office*, may be properly defined as the performance of an act or duty, either pertaining or incident to his office, or legal or appropriate for an officer of his rank or office to perform. An officer is deemed to be in the execution of his office when engaged in any act or service required or authorized to be done by him by statute, regulation, order of a superior, or usage of the service. It is immaterial that the offender is not in a position to consummate the threatened injury.

Threatening language toward a superior officer not in the execution of the duties of his office and threatening words about another person in the Navy, in retaliation for acts performed in the execution of the duties of his office, are pleaded under the general charge of *conduct to the prejudice of good order and discipline*, as shown in Section 98, Specifications 10 and 16, *Naval Courts and Boards, 1937*.

Sample specifications.

Threatening to strike a superior officer while in the execution of the duties of his office.

In that William Alvin White, seaman first class, U. S. Navy, attached to the U.S.S. Delaware, while so serving on board the U.S.S. Delaware, when brought to the mast by the order of the officer of the deck, one Thomas U. Volera, lieutenant, U. S. Navy, to explain his, the said White's absence from anchor watch, did,

on or about March 11, 1945, in the office of the commanding officer of said ship, say to him, the said Volera, "I may get a court-martial for it but I am going to knock your block off," or words to that effect, the United States then being in a state of war.

Threatening language toward a superior officer not in the execution of the duties of his office.

In that James Paul Brown, seaman second class, U. S. Navy, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving at said section base, did, on or about March 11, 1945, in the city of Portland, Maine, wilfully and knowingly, use abusive, obscene, and threatening language toward his superior officer, in that he, the said Brown, did say to one Robert S. Teedle, ensign, U. S. Navy, then on leave of absence, "I did it, and if you don't like it I'll break your —— head," or words to that effect, the United States then being in a state of war.

Threatening words about another person in the Navy in retaliation for acts performed by the person in the execution of the duties of his office.

In that William Alvin White, seaman first class, U. S. Navy, attached to the U.S.S. Delaware, while so serving on board the U.S.S. Delaware, did, on or about February 15, 1945, on board said ship, referring to one George C. Holloway, chief machinist's mate, U. S. Navy, attached to said ship, say in the presence of one or more other enlisted men of the Navy, "We'll get Holloway yet and make him pay for what he has done," or words to that effect, meaning thereby that he would compromise or otherwise injure the said Holloway in retaliation for an act or acts performed by the said Holloway in the execution of the duties of his office, the United States then being in a state of war.

9B4. Affray (fighting); Section 92, NCB. An affray is the fighting of two or more persons, by mutual consent, or otherwise, in a public place, to the terror of the people.

Sample specification.

Fighting with a civilian.

In that Roger Carl Haskell, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving on active duty at said section base, did on or about July 17, 1944, on a public street in the city of Portland, Maine, wilfully, violently, and without justifiable cause, engage in a fight with a civilian, name to the relator unknown, and did then and

there, in the manner aforesaid, do violence against the peace and good order of the city aforesaid, the United States then being in a state of war.

9B5. Disorder (disturbance of the peace); Section 92, NCB. A disorder is any conduct of such a character that it disturbs and annoys the peace and quiet of the community. Instances are, loud crying out or singing or other noisy conduct, swearing or cursing, indecent exposure of the person, etc.

Sample specification.

Creating a disorder in a restaurant.

In that Robert Edward Jones, private first class, U. S. Marine Corps, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving at said marine barracks, did, on or about July 4, 1944, in a public restaurant in the city of Northampton, Massachusetts, wilfully, knowingly, and without justifiable cause, create a disturbance against the peace and order of the city aforesaid by shouting in a loud and boisterous manner and by overturning chairs and tables in said restaurant, the United States then being in a state of war.

9B6. Assaulting; Sections 48, 61, 98 and 120, NCB. An assault is an unlawful offer or attempt with force or violence to do a corporal hurt to another. Rushing, aiming a blow, or pointing a weapon at another is an assault. It is the apprehension of hurt, not the real design of the offender, that constitutes the offense. There must be intent, actual or apparent, to inflict corporal hurt on another. There must be some overt act toward carrying out such intent as opposed to mere preparation. The force or violence must be physical; mere words, however threatening, or insulting gestures are not in themselves sufficient to constitute an assault. It is immaterial that the offender is not in a position to consummate the threatened injury, provided that the person believes there is a present ability to injure him. For example, although a weapon pointed at a person is unloaded, this may still constitute an offense.

If the person assaulted is in the naval service, the offense is pleaded under Charge II, Section 61, *Naval Courts and Boards, 1937*. However, should the person assaulted be a superior officer in the execution of the duties of his office, the offense is pleaded under Charge II, Section 48, thereof.

If the person assaulted is not in the naval service, the offense is pleaded under the charge of *conduct to the prejudice of good order and discipline*, as shown in Section 98, Specification 19, *Naval Courts and Boards, 1937*. There is no such offense as *attempt to assault*, and a specification using these

words will be set aside (C.M.O. 190-1918, pp. 15, 16). The attempt to do an injury to another is included within the meaning of assault as evidenced by the definition.

The offenses of assaulting with intent to commit murder or rape are pleaded under the charges in Section 120, *Naval Courts and Boards, 1937.*

Sample specifications.

Assaulting superior officer while in the execution of the duties of his office.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware, did, on or about May 5, 1945, on board said ship, wilfully, maliciously and without justifiable cause, assault one Charles Black, gunner's mate second class, U. S. Navy, who was then and there in the execution of his duties, acting as petty officer of the watch, the United States then being in a state of war.

Assaulting another person in the Navy.

In that Roger Carl Haskell, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving on active duty at said section base, did, on or about May 5, 1945, at or about 4:00 p.m., in "E-3" Barracks at said section base, wilfully, maliciously, and without justifiable cause, assault one John Long, seaman second class, U. S. Navy, who was then and there regularly on duty as a sentinel on post at the said section base, the United States then being in a state of war.

Assaulting a civilian.

In that John Albert Doe, corporal, U. S. Marine Corps Reserve, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving on active duty at said marine barracks, did, on or about August 29, 1944, on a street in the city of Quincy, Massachusetts, wilfully, maliciously, and without justifiable cause, assault one Charles Everts, a civilian, the United States then being in a state of war.

Assaulting another person in the Navy with a dangerous weapon.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware, did, on or about January 5, 1945, on board said ship, wilfully, maliciously, and without justifiable cause, assault with a dangerous weapon, to wit, a wrench, one Myron K. Bisbee, seaman first class, U. S. Navy, serving on board said ship, the United States then being in a state of war.

Assaulting a civilian with a dangerous weapon.

In that William Alvin White, seaman first class, U. S. Navy, attached to the U.S.S. Delaware, while so serving on board the U.S.S. Delaware, did, on or about May 5, 1944, in the city of Philadelphia, Pennsylvania, with intent to do bodily harm and without just cause or excuse, assault with a dangerous weapon, to wit, a pistol, one Manuel R. Jacobs, a civilian, the United States then being in a state of war.

Assaulting another person in the Navy with intent to commit murder.

In that James Paul Brown, seaman second class, U. S. Navy, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving at said section base and while a prisoner in the brig at said section base, did, on or about September 5, 1944, at said brig, wilfully, maliciously, and without justifiable cause, assault and fire a shot from a pistol at one David E. Friend, seaman second class, U. S. Naval Reserve, and did therein and thereby, then and there, attempt to kill the said Friend, the United States then being in a state of war.

Assaulting a civilian with intent to commit rape.

In that John Albert Doe, corporal, U. S. Marine Corps Reserve, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving on active duty at said marine barracks, did, on or about March 9, 1945, in the city of Boston, feloniously, forcibly, and against her will, assault one Sally R. Roe, with intent to commit the crime of rape upon her, the said Roe, the United States then being in a state of war.

9B7. Striking; Sections 48, 61, 98, and 120, NCB. Striking is the inflicting of an intentional blow. In civil law, a striking is referred to as a battery.

If the victim of the striking is in the naval service, the offense should be pleaded under Charge I, Section 61, *Naval Courts and Boards, 1937.* However, should the victim of the striking be a superior officer in the execution of the duties of his office, the offense is pleaded under Charge I, Section 48.

If the victim is not in the naval service, the offense is pleaded under the charge of *conduct to the prejudice of good order and discipline,* as shown in Section 98, Specification 18, *Naval Courts and Boards, 1937.*

As a matter of aggravation, it may be alleged that certain injuries were sustained by the victim of the striking.

The aggravated offenses of striking with a dangerous weapon, or striking with intent to commit murder or rape, are pleaded the same as aggravated assaults, but substituting the word *strike* for *assault.*

Sample specifications.

Striking a superior officer while in the execution of the duties of his office.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware, did, on or about May 5, 1945, on board said ship, wilfully, maliciously, and without justifiable cause, strike one Jack Smith, chief boatswain's mate, U. S. Naval Reserve, who, in the execution of his duties as police petty officer of said ship, was then and there placing said Smith in confinement, the United States then being in a state of war.

Striking another person in the Navy.

In that Roger Carl Haskell, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving on active duty at said section base, did, on or about April 5, 1945, at or near the Wet Canteen of said section base, wilfully, maliciously, and without justifiable cause, strike one Donald Edwards, seaman first class, U. S. Naval Reserve, the United States then being in a state of war.

Striking a civilian.

In that Robert Edward Jones, private first class, U. S. Marine Corps, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving at said marine barracks, did, on or about August 29, 1944, on a street in the city of Boston, Massachusetts, wilfully, maliciously, and without justifiable cause, strike and catch hold of and pull one Charles Donalds, a civilian, the United States then being in a state of war.

9B8. Rape and statutory rape; Section 121, NCB. Section 457, Title 18 of the *U. S. Code* reads: "Whoever shall commit the crime of rape shall suffer death." (A court-martial cannot adjudge death for this offense.) Section 458 of the *Code* reads: "Whoever shall carnally and unlawfully know any female under the age of sixteen years, or shall be accessory to such carnal and unlawful knowledge before the fact, shall, for a first offense, be imprisoned not more than fifteen years, and for a subsequent offense be imprisoned not more than thirty years."

Rape is the having of unlawful carnal knowledge by a man of a woman, forcibly, where she does not consent. Carnal knowledge is constituted by penetration, without regard to extent. Emission is not necessary. The force involved in the act of penetration alone is sufficient where there is in fact no consent. If there be actual consent, although obtained by fraud, the act is not rape. If the woman, to the knowledge of the man, is of unsound

mind, or unconscious from sleep, or drink, etc., to such an extent as to be incapable of giving consent, the act is rape. If the female is under the age of sixteen years, unlawful carnal knowledge of her completes the offense set out in Section 458, and her consent is immaterial. Carnal knowledge will be unlawful in such case unless the female is the wife of the man.

Sample specifications.

Rape.

In that James Paul Brown, seaman second class, U. S. Navy, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while serving at said section base, did, on or about July 25, 1945, in the city of Bar Harbor, Maine, forcibly make an assault in and upon the body of one Jane R. Doe, who was not the wife of him, the said Brown, and did feloniously and against her, the said Doe's will, forcibly ravish, and carnally and unlawfully know her, the said Doe, the United States then being in a state of war.

Statutory rape.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware, being then a married man, did, on or about July 25, 1944, in the United States Navy Yard, in the city of New York, New York, carnally and unlawfully know one Mary R. Doe, a female then under the age of sixteen years, the United States then being in a state of war.

9B9. Manslaughter; Section 119, NCB. Section 453, Title 18 of the *U. S. Code* reads: "Manslaughter is the unlawful killing of a human being without malice. It is of two kinds: (1) voluntary; upon a sudden quarrel or heat of passion, and (2) involuntary; in the commission of an unlawful act amounting to a felony, or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection."

The imprisonment authorized by the Code for voluntary manslaughter is not to exceed ten years; for involuntary, not to exceed three years. Voluntary manslaughter is distinguished from murder by the fact that it is committed, not with malice aforethought, express or implied, but in the heat of passion or heat of blood caused by reasonable provocation. When a man, in killing another, acts under the influence of sudden passion caused by a reasonable provocation, but not in necessary defense of his life, nor in order to prevent bodily harm, the law does not excuse him because of the provocation; but it does not hold him guilty of murder. To reduce a homicide from murder to manslaughter, the provocation must be adequate in the eyes of the law, and to be so it must be so great as reasonably to

excite passion and heat of blood. Passion without adequate provocation is not enough. Reasonableness is the test. The law contemplates the case of a reasonable man and requires that the provocation shall be such as might naturally induce such a man, in the anger of the moment, to commit the deed.

In involuntary manslaughter in the commission of an unlawful act, the act must be *malum in se* and not *malum prohibitum*. Thus, the driving of an automobile in slight excess of the speed limit fixed by ordinance, is not the kind of unlawful act contemplated, but voluntarily engaging in an affray is such an act. Instances of culpable negligence in performing a lawful act are: negligently conducting small-arms target practice so that the bullets go in the direction of an inhabited house within range; pointing a pistol in fun at another and pulling the trigger, believing, but without taking reasonable precautions to ascertain, that it would not be discharged; but to constitute criminality the carelessness must be aggravated and gross, implying indifference to consequences.

Sample specifications.

Voluntary manslaughter.

In that John Albert Doe, corporal, U. S. Marine Corps Reserve, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving on active duty at said marine barracks, did, on or about October 23, 1944, in a house occupied by one Donald E. Frank, in the city of Quincy, Massachusetts, feloniously, wilfully, and without justifiable cause, assault and strike one Gerald H. Ingram, seaman second class, U. S. Navy, with a certain blunt instrument, further description to the relator unknown, which he, the said Doe, then and there had held in his hands, therein and thereby, then and there, inflicting a mortal wound in and upon the left side of the head of said Ingram, of which said mortal wound so inflicted as aforesaid, the said Ingram died at about 1:20 a.m. on October 31, 1944, the United States then being in a state of war.

Involuntary manslaughter.

In that George Hubert Black, carpenter's mate first class, U. S. Naval Reserve, attached to the Sixty-seventh U. S. Naval Construction Battalion, while so serving on active duty with said battalion, at the Advance Base Receiving Barracks, U. S. Naval Base, Port Hueneme, California, having in his possession a loaded rifle, and it being his duty to handle said rifle with due caution and circumspection, did, on or about April 2, 1945, near the rifle range at said receiving barracks, feloniously neglect and fail to handle said rifle with due caution and circumspection in

that he, the said Black, did cause said rifle to be discharged, and did assault and strike in and upon the head with a bullet fired from said rifle by means of said discharge, one Jack M. Oram, machinist's mate third class, U. S. Naval Reserve, and did therein and thereby, then and there, mortally wound the said Oram, as a result of which said mortal wound so inflicted as aforesaid, he, the said Oram, at or about 10:30 p.m. on said date at said place, did die, the United States then being in a state of war.

9B10. Theft; Section 58, NCB. In larceny, there must be a taking and carrying away. When actual possession is obtained and the property moved the least distance, the taking and carrying away is complete. The taking must be from the actual or constructive possession of the owner without his consent. Ownership may be in any person who is in peaceable possession of the property. The actual condition of the legal title is immaterial. The possession of goods may be in one person, although the goods themselves be in the actual manual control of another. One retains the constructive possession of property, although it is actually out of his control until someone else takes possession, except in the case of abandoned property. Acceptance of possession, with the required intent, knowing that a mistake is being made, is larceny.

The felonious intent in larceny is that entertained by a thief; that is, a fraudulent intent to deprive the owner permanently of his property in the goods or of their value or a part of their value. Unless such a purpose exists with the taking and carrying away by trespass there is no larceny.

Value under a charge of theft should, if possible, always be alleged for two reasons, the first being in order that it may appear specifically that the property is of some value, for property of no value is not the subject of larceny, and secondly, in order that the degree of the offense may be determined, as the punishment for the crime of theft varies according to the value of the property stolen. It is not necessary that the exact value of the property stolen be set out, the approximate value thereof being sufficient. The law (18 *U. S. Code* 466) provides that the value of a written instrument is the amount of money which in any contingency might be collected thereon.

Sample specification.

Theft of wallet, fountain pen, and cash.

In that Roger Carl Haskell, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving on active duty at said section base, did, on or about February 5, 1945, at or near Hut Five in Area "E"

of said section base, feloniously take, steal, and carry away from the possession of one Manuel N. Ottawa, machinist's mate second class, U. S. Naval Reserve, one brown leather wallet of the value of about two dollars ($2.00), a fountain pen of the value of about five dollars ($5.00), and a sum of about thirty dollars ($30.00) in lawful money of the United States, said wallet, fountain pen, and money of the amounts, quantities and values aforesaid being the property of the said Ottawa, and he, the said Haskell, did then and there appropriate the same to his own use, the United States then being in a state of war.

9B11. Theft of military property of the United States; Section 88, NCB. The elements of theft are set forth in Section 58, *Naval Courts and Boards, 1937*. Post exchange funds, ship's service funds, and money appropriated for other than military or naval service, as postal funds, do not come within the description of military property of the United States.

Sample specification.

Theft of gasoline of the United States intended for the naval service.

In that George Hubert Black, carpenter's mate first class, U. S. Naval Reserve, attached to the Sixty-seventh U. S. Naval Construction Battalion, while so serving on active duty with said battalion, at the Advance Base Receiving Barracks, U. S. Naval Base, Port Hueneme, California, did, on or about June 14, 1945, at said receiving barracks, feloniously take, steal, and carry away from the possession of the United States, to wit, from the paint shop at said receiving barracks, about fifty gallons of gasoline, of the total value of about fifteen dollars ($15.00), the property of the United States intended for the naval service thereof, and he, the said Black, did, then and there appropriate the same to his own use, the United States then being in a state of war.

9B12. Misappropriation of military property of the United States; Section 90, NCB. Misappropriation is assuming to oneself or assigning to another the ownership of the property, where the same is not entrusted to the party in a fiduciary capacity and the act is, therefore, not an embezzlement. Applying to one's own use is distinguishable in that it is an appropriation not of the ownership of the property but of its use; and, to constitute the offense, this misapplication must be for the personal use or benefit of the offender. The more general offense of *wrongfully and knowingly disposing of* should be favored. Where damage occurs, it should be alleged as an aggravation.

Sample specifications.

Applying to his own use a pick-up truck of the United States intended for the naval service.

In that Robert Edward Jones, private first class, U. S. Marine Corps, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving at said marine barracks, did, on or about March 5, 1945, wilfully, knowingly, and without proper authority apply to his own use a Chevrolet pick-up truck, the property of the United States intended for the naval service thereof, by driving said pick-up truck from the parking lot in front of the Security Office of said marine barracks to the city of Boston, Massachusetts, and did damage said pick-up truck to the extent of about one hundred eleven dollars ($111.00), the United States then being in a state of war.

Disposing of an automatic pistol of the United States intended for the naval service.

In that William Alvin White, seaman first class, U. S. Navy, attached to the U.S.S. Delaware, while so serving on board the U.S.S. Delaware, did, on or about March 15, 1945, in the city of Oxnard, California, wrongfully, knowingly, and without proper authority dispose of one automatic forty-five caliber pistol of the value of about thirty-five dollars and seventy-two cents ($35.72), property of the United States intended for the naval service thereof, to one Donald E. Frank, a civilian of said city, the United States then being in a state of war.

9B13. Unauthorized use of an automobile of another (joy riding); Section 109, NCB. This offense is commonly called *joy riding*, and is short of larceny in that the intent permanently to deprive the owner of his property is lacking. The word *offense* is here used in its technical sense. To constitute such an offense, there must be a violation of a statute, Federal or State, of the place where the act was committed, in which latter event the specification should be alleged in the words of the statute concerned. The court-martial may take judicial notice of the statutory provision of the state within which it sits. The pleading of violations of state and territorial statutes is discussed generally in Articles 9C1 and 9D1 of this text. If the property is of the United States, the offense should be charged as shown in Section 90, *Naval Courts and Boards, 1937*. Damage to the automobile may be alleged as an aggravation.

Section 109, *Naval Courts and Boards, 1937*, contains a sample charge and specification for the offense of *unauthorized use of an automobile of another*. The use of such a charge as given in this section presupposes a

statute making such act a criminal offense in the state, territory, or district where such act takes place, and the specification should be alleged in the words of the statute concerned. As an illustration, in the State of California there are two statutes which can be said to set out the offense of joy riding; one is Section 499b of the *California Penal Code* and the other is Section 503 of the *California Vehicle Code*. The offense set forth in the penal code is termed a misdemeanor, whereas the offense set forth in the vehicle code is termed a felony. The distinction between the two statutes lies in the element of intention. The statute in the penal code does not require the intention of temporarily depriving the owner of his possession, and, therefore, could be proved even though the defendant claimed that he was drunk to such a degree that he could not formulate the intention, whereas the statute in the vehicle code requires proof of the intention of temporarily depriving the owner of his possession. The two California statutes are herewith set out verbatim:

> 499b. Taking Auto, Motorcycle or Vehicle Temporarily. Any person who shall, without the permission of the owner thereof, take any aircraft, automobile, bicycle, motorcycle, or other vehicle, for the purpose of temporarily using or operating the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars, or by imprisonment not exceeding three months, or by both such fine and imprisonment.
>
> 503. Theft and Unlawful Driving or Taking of a Vehicle. Any person who drives or takes a vehicle not his own, without the consent of the owner thereof and in the absence of the owner, and with intent to either permanently or temporarily deprive the owner thereof of his title to or possession of such vehicle, whether with or without intent to steal the same, or any person who is a party or accessory to or an accomplice in any such driving or unauthorized taking or stealing is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the State prison for not less than one year nor more than five years or in the county jail for not more than one year or by a fine of not more than five thousand dollars ($5,000) or by both such fine and imprisonment. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of such vehicle by the same or a different person.

Sample specifications.

Joy riding in private auto (misdemeanor); Violation of Section 499b, California Penal Code; court sitting in California.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware, did, on or about August 25, 1945, at or near the city of Santa Monica, California, take an automobile, to wit, a Mercury coupe, from the possession of one Richart T. Oldham, a civilian, the owner thereof, without the

permission of the said Oldham, for the purpose of temporarily using and operating said automobile, the United States then being in a state of war.

Joy riding in private auto (felony); Violation of Section 503, California Vehicle Code; court sitting in California.

In that William Alvin White, seaman first class, U. S. Navy, attached to the U.S.S. Delaware, while so serving on board the U.S.S. Delaware, did, on or about August 15, 1945, at or near the city of Ventura, California, take and drive a vehicle not his own, to wit, a Chevrolet sedan, owned by and in the possession of one John J. Jones, a civilian, without the consent of the said Jones and in his absence, and with the intent of temporarily depriving the said Jones of his possession of said vehicle, the United States then being in a state of war.

9B14. Robbery; Section 123, NCB. Section 463, Title 18 of the *U. S. Code* reads: "Whoever, by force and violence, or by putting in fear, shall feloniously take from the person or presence of another anything of value, shall be imprisoned not more than fifteen years."

Robbery is the taking, with intent to steal, of the personal property of another, from his person or in his presence, against his will, by violence or intimidation. The taking, although wrongful and violent, does not amount to robbery if it was in good faith under a claim of right to the specific thing taken, but the claim of right must not be a mere pretext covering an intent to steal.

Sample specifications.

Robbery of a civilian by means of deadly weapons.

In that James Paul Brown, seaman second class, U. S. Navy, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving at said section base, did, on or about July 15, 1945, in the city of Portland, Maine, being armed with certain deadly weapons, to wit, a pistol and a blackjack, feloniously make an assault upon one Donald E. Ford, a civilian, living in said city and State, and did, then and there, by means of and use of said pistol and said blackjack, feloniously put the said Ford in bodily fear and danger of his life, and did, then and there, by so putting the said Ford in fear, feloniously rob, take, steal, and carry away from the person and against the will of the said Ford the sum of about one hundred fifty dollars ($150.00) in lawful money of the United States, the property of the said Ford, and did then and there appropriate the same to his own use, the United States then being in a state of war.

Robbery of a civilian by violence.

In that John Albert Doe, corporal, U. S. Marine Corps Reserve, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving on active duty at said marine barracks, did, on or about June 30, 1945, in the city of Northampton, Massachusetts, with force and violence, feloniously make an assault upon one James K. Lord, and did then and there against the will of and by violence to the person of the said Lord, feloniously rob, take, steal, and carry away from the person of the said Lord the sum of about twelve dollars ($12.00) in lawful money of the United States, the property of the said Lord, and did then and there appropriate the same to his own use, the United States then being in a state of war.

9B15. Burglary or housebreaking; Section 96, NCB. Burglary at common law is the breaking and entering, in the night, of another's dwelling house, with intent to commit a felony therein. Five elements are essential to this offense: (1) The house must be the dwelling house of another, i.e., a house in the status of being occupied at the time of breaking and entering (dwelling house includes outhouses within the common inclosure); (2) breaking, actual or constructive, of some part of the house itself (the requirements of constructive breaking are met if entry is effected by trick, fraud, false pretenses, intimidation, or conspiracy with a servant or other inmate who opens the door); (3) an entry, but the entry of any part of the body is sufficient; (4) a breaking and entering at night, but not necessarily on the same night; and (5) an intent to commit a felony at the time of breaking and entering; but the felony need not be consummated or even attempted.

Both burglary and the intended felony should be charged. Thus, where a person breaks into a house at night with intent to commit rape, both *burglary* and *rape*, or *scandalous conduct tending to the destruction of good morals* (for the attempted rape) should be charged. If all the elements of burglary are present except that the act is not done in the nighttime, or that the building is not a dwelling house, the offense is housebreaking.

Sample specifications.

Burglary.

In that Roger Carl Haskell, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving on active duty at said section base, did, on or about April 13, 1945, in the city of Augusta, Maine, in the nighttime, feloniously and burglariously break and enter the dwelling house of one Donald E. Ford, with intent feloniously, to

take, steal, and carry away goods and chattels therein, the United States then being in a state of war.

Housebreaking.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware, did, on or about May 28, 1945, in the city of Anaheim, California, feloniously and unlawfully break and enter the store of the Valley Lumber Company, located at number 456 Second Street, in said city, with intent feloniously to take, steal, and carry away goods and chattels therein, the United States then being in a state of war.

9B16. Indecent exposure; Section 59, NCB. Offenses of this nature are properly preferred under the charge *scandalous conduct tending to the destruction of good morals.* Such offenses are so diverse that it is impractical to set forth the elements of each.

Sample specification.

Exposure of private parts.

In that George Hubert Black, carpenter's mate first class, U. S. Naval Reserve, attached to the Sixty-seventh U. S. Naval Construction Battalion, while so serving on active duty with said battalion, at the Advance Base Receiving Barracks, U. S. Naval Base, Port Hueneme, California, did, on or about May 5, 1943, in a public place, to wit, the City Park, in the city of Oxnard, California, wilfully and knowingly expose himself in an indecent manner before a female civilian, name to the relator unknown, by exposing his private parts and urinating upon the pavement at the place aforesaid, in the presence of said female, the United States then being in a state of war.

9B17. Polygamy, unlawful cohabitation, adultery, and fornication; Section 127, NCB. Section 513, Title 18, of the *U. S. Code* reads:

> Every person who has a husband or wife living, who marries another, whether married or single, and any man who simultaneously, or on the same day, marries more than one woman, is guilty of polygamy, and shall be fined not more than $500 and imprisoned not more than five years. This section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five successive years, and is not known to such person to be living, and is believed by such person to be dead, nor to any person by reason of any former marriage which shall have been dissolved by a valid decree of a competent court, nor to any person of any former marriage which shall have been pronounced void by a valid decree of a competent court, on the ground of nullity of the marriage contract.

Section 514 of the *Code* reads:

> If any male person cohabits with more than one woman, he shall be fined not more than $300, or imprisoned not more than six months, or both.

Section 516 of the *Code* reads:

> Who ever shall commit adultery shall be imprisoned not more than three years; and when the act is committed between a married woman and man who is unmarried, both parties to such act shall be deemed guilty of adultery; and when such act is committed between a married man and a woman who is unmarried, the man shall be deemed guilty of adultery.

Section 518 of the *Code* reads:

> If any unmarried man or woman commits fornication, each shall be fined not more than $100, or imprisoned not more than six months.

The weight of authority is to the effect that the crime of unlawful cohabitation as defined in the statute, is made out without proof of sexual intercourse, and that proof of nonintercourse is not a defense. A man *cohabits* with more than one woman when, by his language or conduct, or both, he holds out to the world two or more women as his wives, and when he lives in the same house with them and eats at the table of each a portion of the time, although he may not occupy the same bed, sleep in the same room, or actually have sexual intercourse with either of them.

Adultery comprises voluntary sexual intercourse.

Fornication is unlawful carnal knowledge by an unmarried person of another.

Sample specifications.

Polygamy.

In that William Alvin White, seaman first class, U. S. Navy, attached to the U.S.S. Delaware, while so serving on board the U.S.S. Delaware, having theretofore married and had for his wife one Sarah Tile, did, on or about February 15, 1945, in the city of San Pedro, California, under the name of Donald E. Frank, while he was so married, unlawfully and feloniously marry and take to wife one Nora Roe, said Sarah Tile being then alive, as he, the said White, then and there, well knew, the United States then being in a state of war.

Unlawful cohabitation.

In that James Paul Brown, seaman second class, U. S. Navy, attached to the U. S. Naval Section Base, Bar Harbor, Maine, while so serving at said section base, did, during the period of about seven months beginning on or about July 15, 1945, in the city of Bar Harbor, Maine, unlawfully cohabit and live with more than one woman, to wit, one Wilma Vost and one Una Roe, the United States then being in a state of war.

Adultery by unmarried man.

In that George Hubert Black, carpenter's mate first class, U. S. Naval Reserve, attached to the Sixty-seventh U. S. Naval Construction Battalion, while so serving on active duty with said battalion, at the Advance Base Receiving Barracks, U. S. Naval Base, Port Hueneme, California, did, on or about August 7, 1945, near the town of Santa Paula, California, commit adultery by having voluntary sexual intercourse with one Olive P. Que, the lawful wife of Samuel R. Que, the United States then being in a state of war.

Adultery by married man.

In that Robert Edward Jones, private first class, U. S. Marine Corps, attached to the U. S. Marine Barracks, Navy Yard, Boston, Massachusetts, while so serving at said marine barracks, being then a married man, did, on or about August 7, 1944, near the town of East Hampton, Massachusetts, commit adultery by having voluntary sexual intercourse with a woman not his wife, to wit, one Ola P. Que, the United States then being in a state of war.

Fornication.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware, being then an unmarried man, did, on or about August 7, 1944, near the town of Wilmington, California, commit fornication by having carnal knowledge of a woman, by name to the relator unknown, the United States then being in a state of war.

C. OFFENSES WHICH ARE VIOLATIONS OF STATE STATUTES

9C1. Pleading of violations of state statutes. In alleging an offense predicated upon the violation of a statute of a state within the territorial limits of which the court is sitting, the words used in the statute should be used to describe the offense. It is not necessary to quote the statute, but the language used should make it apparent upon comparison of the specification with the statute that the statutory offense has been alleged. Although it is unnecessary to allege that the offense was committed in breach of the statute or to cite the statute in any way, it is helpful to the reviewing authority if a certified copy of the statute is attached to the record of the case.

On the other hand, a specification predicated upon a violation of a municipal ordinance or a statute of a state outside the territorial limits of which the court is sitting, like a local or station order, cannot support an offense unless the pertinent part of the statute or ordinance is quoted

verbatim. Also, it must be alleged that the offense was committed in breach of such municipal ordinance or statute.

Punishment. Hard and fast rules relative to punishment are not prescribed by naval laws but when the accused is tried and found guilty of a violation of a state statute the punishment prescribed by the statute should be indicative of the relative seriousness of the offense alleged. The criminal laws of a particular state apply only within the territorial limits of such state.

Judicial notice. When a court-martial sits within the jurisdiction of a particular state, the court is bound to take judicial notice of the laws of that state and the court need only be shown a trustworthy copy of the statute allegedly violated in order that it may compare the language of the statute with that of the specification. When a court-martial sits outside the territorial limits of a particular state to try an offense which has been committed within the territorial limits of such state, the state law is treated as foreign law and must be set out verbatim in the specification in the same manner as municipal ordinances, and proved like any other fact. Irrespective of where the court-martial may be sitting, an offense predicated upon a violation of a statute of a state other than the one in which the court is sitting must be alleged and proved to have been committed within the criminal jurisdiction of the state whose statute has been violated and upon which the specification is predicated. The following examples indicate when the court should and when it should not take judicial notice of statutes:

1. X commits a crime in California in violation of a California statute and is then transferred to Connecticut where a summary court is convened to try him. In this case, the statute must be set out in the specification and proved by introducing in evidence a certified copy thereof. The court sitting in Connecticut does not take judicial notice of the California statute inasmuch as it is sitting in another state and is therefore outside the territorial jurisdiction of California.
2. X commits a crime in violation of a California statute and is tried in California. In this case, the offense is pleaded in the words of the statute and the court takes judicial notice of the California statute.
3. X commits a crime in Arizona which if committed in California would be a violation of a California statute. In this case, the California statute is not involved because the crime was committed outside the territorial jurisdiction of the State of California and irrespective of where the case is tried, whether New York, Arizona, or California or elsewhere, the statute is not applicable.

Double jeopardy. A person in the naval service convicted or acquitted in a state court may subsequently be put on trial for the same offense before a naval court-martial. The same is not true where the person has been tried in a territorial or Federal court. A person in the naval service convicted in a territorial or Federal court for an offense against the United States may not subsequently be put on trial for the same offense before a naval court-martial. The Federal and naval laws and courts are creations emanating from the same sovereignty—the Federal Government—and the same criminal act constitutes but one offense, an offense against the United States. Conviction or acquittal in the Federal court, therefore, is a bar to trial by naval court-martial for the same offense on the ground of former jeopardy.

9C2. Violation of a statute of a state within the territorial limits of which the court is sitting. For the purpose of illustrating the manner of pleading a violation of a statute of a state within the territorial limits of which the court is sitting, the following sample specification, pleading a violation of Section 502 of the *California Vehicle Code*, is set forth. Although the statute is not quoted and there is no allegation that the offense was committed in breach of a statute, by comparing the language of the specification with the statute it would be apparent that the statutory offense has been alleged.

It is noted that the pleading of the statutory offense of *joy riding* has heretofore been discussed in Article 9B13 of this text.

Sample specification.

Drunk driving in violation of California statute; court sitting in California.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware, did, on or about July 5, 1943, while under the influence of intoxicating liquor, wilfully, wrongfully, and unlawfully drive and operate an automobile, to wit, a 1936 Plymouth sedan, over a public highway, to wit, Highway Number One Hundred One, in the city of Bakersfield, California, the United States then being in a state of war.

9C3. Violation of a statute of a state outside the territorial limits of which the court is sitting. In the event the court is sitting outside the territorial limits of the state, the statute of which has been violated, the specification must quote the pertinent part of the statute and it must be alleged that the offense was committed within the criminal jurisdiction of such state. For the purpose of illustrating this type of pleading, the following sample

specification, pleading a violation of Section 435.31, *State of Nevada Compiled Laws*, is set forth.

Sample specification.

Joy riding in violation of Nevada statute; court sitting in California.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware, did, on or about April 21, 1943, at or near the city of Las Vegas, Nevada, in violation of Section Four Hundred Thirty-five and Thirty-one Hundredths of State of Nevada Compiled Laws, Supplement, 1931-1941, providing in tenor as follows:

"Any person who shall drive a vehicle, not his own, without the consent of the owner thereof, and with intent temporarily to deprive said owner of his possession of such vehicle, without intent to steal the same, shall be guilty of a misdemeanor. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of such vehicle by the same or a different person. Any person who assists in, or is a party to or an accomplice in any such unauthorized taking or driving shall also be guilty of a misdemeanor",

drive a vehicle not his own, to wit, a Ford pick-up automobile, year and model 1942, owned by and in the possession of one Charles A. Hamilton, a civilian, without the consent of the said Hamilton, and with intent temporarily to deprive the said Hamilton of his possession of said automobile, the United States then being in a state of war.

D. OFFENSES WHICH ARE VIOLATIONS OF TERRITORIAL STATUTES

9D1. Pleading of violations of territorial statutes. In alleging an offense predicated upon the violation of a territorial statute, the words used in the statute should be used to describe the offense. If the court is sitting within the territory it is not necessary to quote the statute, but the language used should make it apparent, upon comparison of the specification with the statute, that the statutory offense has been alleged. Although it is not necessary to state that the offense was committed in breach of such statute, nor to cite it in any way, it is helpful to the reviewing authority if a certified copy of the statute is attached to the record of the case.

On the other hand, a specification predicated upon a violation of an ordinance of a municipality within the territory, or of a territory within which the court is not sitting, like a command or station order, cannot support an offense unless the pertinent part of the ordinance or statute is

quoted verbatim and it must be alleged that the offense was committed in breach of the ordinance or statute.

Care in pleading. Inasmuch as some of the offenses created by territorial statutes are differently defined than the same offenses were defined at common law, it is essential that care be taken to include in the specification all of the elements which go to make up the statutory offense. Conversely, it will be noted that some of the elements of proof, necessary to establish a crime or offense at common law, are not included in the statutory definitions.

Punishment. Under territorial law, the maximum punishment prescribed for a particular offense is determinative of the gravity thereof. Hard and fast rules, relating to punishments, are not prescribed by naval law, but when an accused is tried and found guilty of a violation of a territorial statute, the punishment prescribed by the statute should be indicative of the relative seriousness of the offense alleged.

9D2. Territory of Hawaii. Since there are numerous naval activities in the Territory of Hawaii, that Territory will be used to illustrate the concepts and principles involved in the pleading of territorial offenses.

Nature of Hawaiian offenses. With the exception of certain offenses created by municipal ordinances (such as the Revised Ordinances of the City and County of Honolulu), the criminal law for the Territory is contained in the *Revised Laws of Hawaii*, 1935, as amended. The amendments are contained in biennial-session laws of the Hawaii Legislature (1935, 1937, 1939, 1941, 1943). Inasmuch as there are no common law crimes recognized in the Territory of Hawaii, all criminal offenses against the Territory are based upon statute and it is necessary that a specification therefor be predicated upon a violation of a particular criminal statute. Such offenses become violations of naval law, under Article 22 of the *Articles for the Government of the Navy*.

Judicial notice. The criminal laws of the Territory of Hawaii do not extend to all of the islands included within the Fourteenth Naval District. They extend only to the Hawaiian Islands proper and to Palmyra. When a court-martial sits within the criminal jurisdiction of Hawaii, the court is bound to take judicial notice of the *Revised Laws of Hawaii*, 1935, as amended by subsequent Session Laws. The court should be shown a trustworthy copy of the statute allegedly violated, in order that it may compare the language of the statute with that of the specification. The record of proceedings should show that the court took judicial notice of the statute, and although a copy of the statute is not introduced as evidence, it is helpful to the reviewing authority if a certified copy thereof is attached to the record.

When a court-martial sits outside the three-mile limit of those islands

under the criminal jurisdiction of the Territory of Hawaii, to try an offense which has been committed within territorial jurisdiction, the territorial laws are treated as foreign laws, must be set out verbatim in the specification in the same manner as municipal ordinances, and proved like any other fact. Johnston, Midway, Wake, Kure, and Sands Islands, and Kingman Reef are within the Fourteenth Naval District (*Navy Regulations*, Article 1480(2)), but outside the Territory of Hawaii, so that offenses committed at these places cannot be offenses against territorial laws. Irrespective of where the court-martial may be sitting, an offense predicated upon territorial statute must be alleged and proved to have been committed at a place within the criminal jurisdiction of the Territory of Hawaii. The following examples indicate when the court should and when it should not take judicial notice of the statutes of the Territory of Hawaii.

1. X commits a crime in violation of a territorial statute in Honolulu and is then transferred to Midway, where a summary court is convened to try him. In this case, the statute must be set out in the specification and proved by introducing in evidence a certified copy thereof. The court does not take judicial notice of the territorial statute when it sits at a place such as Midway, which is outside the jurisdiction of the territory.
2. X commits a crime in violation of a territorial statute in Honolulu and is tried at Pearl Harbor. In this case, the court takes judicial notice of the territorial statute in question.
3. X commits a crime on Midway Island, which if committed in Honolulu would be a violation of a territorial statute. In this case, the territorial statute is not involved because the crime was committed outside the jurisdiction of the territory, and, irrespective of where X is tried, whether at Midway or in Honolulu or Pearl Harbor, the statute is not applicable.

Double jeopardy. Naval personnel are usually not tried by civil courts in the city of Honolulu, for the commission of offenses ashore, other than traffic violations. If arrested by civil police, the accused is ordinarily turned over to the shore patrol for disposition. This procedure is made possible by a tacit agreement with and the close cooperation of the civil authorities. There have been some cases, however, where naval personnel have been tried by civil courts and convicted or acquitted of the offenses charged. The question then arises whether naval personnel so tried, convicted, or acquitted by civil courts may subsequently be tried by a naval court-martial for the same offense. A person in the naval service, convicted or acquitted in a state court, may subsequently be put on trial for the same offense before a naval court-martial. This rule does not apply where the accused has been tried in a territorial court. A person in the naval service, convicted

or acquitted in a Federal court for an offense against the United States, may not subsequently be put on trial for the same offense before a naval court-martial. The Federal and naval laws and courts are creations emanating from the same sovereignty, the Federal Government, and the same criminal act constitutes but one offense, an offense against the United States. A conviction or acquittal in the Federal Court, therefore, is a bar to trial by naval court-martial for the same offense, on the ground of former jeopardy (*Naval Courts and Boards, 1937*, Section 338). The courts of the Territory of Hawaii have been held to be Federal courts within the meaning of the constitutional prohibition against double jeopardy (*U. S. vs. Perez*, 3 *U.S.D.C. Haw.* 295, (1908)). A person having been placed on trial and acquitted or convicted in a territorial court, may not subsequently be placed on trial for the same offense by a naval court-martial for the reason that such second trial constitutes double jeopardy.

Sample specifications predicated upon the criminal laws of the Territory of Hawaii.

Trespassing in violation of Hawaiian statute; court sitting within Territory of Hawaii.

In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U.S.S. Delaware, while so serving on active duty on board the U.S.S. Delaware, did, on or about November 10, 1942, in the city of Honolulu, Territory of Hawaii, without right, wilfully, knowingly, and unlawfully enter upon the yard surrounding the dwelling of one George Jones, a civilian, located at 1213 Cherry Lane in said city, after having been forbidden to do so by the said Jones, who was the person then and there in lawful control thereof, the United States then being in a state of war.

Trespassing in violation of Hawaiian statute; court sitting outside Territory of Hawaii.

In that William Alvin White, seaman first class, U. S. Navy, attached to the U.S.S. Delaware, while so serving on board the U.S.S. Delaware, did, on or about August 10, 1944, within the city and county of Honolulu, Territory of Hawaii, in violation of section sixty-three hundred of the Revised Laws of Hawaii, 1943, providing in tenor as follows:

"Whoever, without right, enters or remains in or upon the dwelling house, buildings or improved or cultivated lands of another or the land of another about or near any buildings used for dwelling purposes, after having been forbidden to do so by the person who has lawful control of such premises, either directly or by notice posted thereon, and any person who wilfully tears

down or defaces any such notice, shall be guilty of a misdemeanor and upon conviction shall be punished by fine of not more than two hundred fifty dollars or by imprisonment of not more than three months, or by both fine and imprisonment",
without right, wilfully, knowingly, and unlawfully enter upon the yard surrounding the dwelling of one George Jones, a civilian, located at 1213 Cherry Lane in said city, after having been forbidden to do so by the said Jones, who was the person then and there in lawful control thereof, the United States then being in a state of war.

9D3. Form for the record. That part of a summary court-martial or a general court-martial record setting forth the specifications, or charges and specifications, is separate and documentary in character, whereas a deck-court record includes the specifications as an integral part of the deck-court card. The figures which follow illustrate the styling prescribed by *Naval Courts and Boards, 1937*, for presentation of specifications, or charges and specifications, in the records of the various courts.

Deck-court specifications. Since the entire record of a deck-court trial, except for the testimony of witnesses and the statement of the accused, is contained on the deck-court card (N.J:A. Form 166 X), the specifications are not presented as a separate document. The signature of the convening authority on the face of the deck-court card serves to authenticate the precept convening the court and the order for trial, as well as to approve the specifications.

The specification is typewritten on the deck-court card, as illustrated in Figure 9–1. If additional space is necessary for the typing of the specification or specifications, a separate piece of thin bond paper, uniform in size with the deck-court card, as shown in Figure 9–2, is used. This piece of paper is then attached, by pasting, to the deck-court card near the specification area. Figure 9–3 illustrates an additional specification prepared for attachment to the card.

Summary court-martial specifications. The specification document for a summary court-martial contains: (1) a heading which designates the nature of the document and the name, rate and branch of service of the accused, (2) the specification or specifications, (3) the date of approval by the convening authority, (4) the order for trial, and (5) the signature, rank and title of the convening authority. This document is marked with the letter B in the lower right-hand corner when it consists of only one page. In the event that it consists of more than one page, each page, beginning with the first, is marked B1, B2, etc.

The form for a single specification document is shown in Figure 9–4. Figure 9–5 illustrates the form where the document contains two speci-

fications. The difference in these documents lies in the headings and the specification numbering. In the former, the words *specification of an offense* are used in the heading and the specification is not numbered, whereas in the latter the words *specifications of offenses* are used in the heading and the specifications are chronologically numbered by arabic numerals. The form for a page containing an additional specification, that is, one which is preferred subsequent to the approval of the original or originals, is indicated in Figure 9–6. A specification in joinder, that is, a specification of an offense against two or more persons, is illustrated in Figure 9–7.

General court-martial charges and specifications. The document setting forth the charges and specifications for trial by a general court-martial is drawn in the style of a letter and is addressed specifically to the judge advocate of the general court-martial which is ordered to try the accused. The order includes instructions to the judge advocate to notify the president, inform the accused of the date set for his trial and summon all witnesses, both for the prosecution and the defense. The charges and specifications upon which the accused is to be tried are contained in the body of the letter and the signature of the convening authority to the letter constitutes his approval of the charges and specifications as well as his authentication of the orders contained therein. As in a summary court-martial, this document is marked B in the lower right-hand corner where it consists of only one page, and in the event that it consists of more than one page, each page, beginning with the first, is marked B1, B2, etc.

Where but a single charge and specification is preferred, as shown in Figure 9–8, neither the charge nor specification is numbered. Where more than one specification is preferred under a single charge, as in Figure 9–9, the specifications are chronologically numbered but the charge is not. If more than one charge is preferred, each charge is chronologically numbered. The form for an additional charge and specification is illustrated in Figure 9–10. A charge and specification in joinder (alleging a single offense against two or more persons) is shown in Figure 9–11.

U. S. S. DELAWARE

RECORD OF DECK COURT No. 7-45
(New series each calendar year)

Smith, John Amos, S2c, U. S. N.
(Name of accused, surname first) (Rate or rank)

Lieutenant Joseph R. Jones, U. S. N.

is hereby ordered as Deck Court to try the above-named man for the following offense(s):* **SPECIFICATION:**

In that John Amos Smith, seaman second class, U.S. Navy,
attached to the U.S.S. Delaware,

~~while~~ *while so serving* on board the U.S.S. Delaware, was, on or about June 19, 1945, in the city of Portsmouth, Virginia, under the influence of intoxicating liquor, and thereby incapacitated for the proper performance of duty, the United States then being in a state of war.

James P. Allen, Yic, U. S. N.
will act as recorder.

Approved: June 20, *1945*
Capt., U. S. N. *Comdg.*

I consent to trial by Deck Court as above:

U. S.

Date of birth

Date of present enlistment *Ext.*

Pay: Present rating, $ *N. I. R.* $

Record of previous convictions:

*See sec. 692(3), var. 1, NCB. 1937, if commanding officer is deck court officer. In such case strike out the words "is hereby ordered as Deck Court to try" and substitute for them these words, "Trial of."

Send direct to the office of the Judge Advocate General for additional copies of this form. For the sake of uniformity none should be printed on board ship.

Fill in this form on a typewriter equipped with *elite* type, if one is available.

N. J. A. 166 X 16—10497-3

Figure 9–1. Deck court: one specification.

U. S. S. DELAWARE

RECORD OF DECK COURT No. 16-45
(Year series each calendar year)

Smith, John Amos, S2c, U. S. N.
(Name of accused, surname first) (Rate or rank)

Lieutenant Joseph R. Jones, U. S. N.

is hereby ordered as Deck Court to try the above-named man for the following offense(s):* SPECIFICATION: 1:

In that John Amos Smith, seaman second class, U. S. Navy,
attached to the U.S.S. Delaware, having

while so serving on board the U.S.S. Delaware, been granted leave of absence from his station and duty on board said ship, to which he had been regularly assigned, said leave to expire on November 22, 1945, did fail to return to his station and duty as aforesaid upon the expiration of said leave, and did remain absent from the U. S. naval service, without leave from proper authority, for a period of about two days, at the expiration of which he was delivered on board the aforesaid ship, the United States then being in a state of war

James P. Allen, Y1c, U. S. N.,
will act as recorder. *Approved:* November 25, 1945
Capt., U. S. N., *Comdg.*

I consent to trial by Deck Court as above:

U. S.

Date of birth

Date of present enlistment *Est.*

Pay: Present rating, $ *N. I. R.* *$*

Record of previous convictions:

SPECIFICATION 2: In that John Amos Smith, seaman second class, U. S. Navy, attached to the U.S.S. Delaware, while so serving on board the U.S.S. Delaware, having been regularly detailed to stand the watch from 8:00 p.m. to 12:00 midnight on June 20, 1945, in the engine-room of said ship, and well knowing that he had been so detailed, did, on said date, on board said ship, without proper authority, neglect and fail to stand the aforesaid watch as it was his duty to do, the United States then being in a state of war.

NOTE: If additional space is required in order to complete the specification or specifications, a slip of thin bond paper, similar to that shown above and uniform in size with the deck court card, may be attached to the card near the specification area by pasting.

*See sec. 692(3), var. 1, NCB, 1927, if commanding officer is deck court officer. In such case strike out the words "is hereby ordered as Deck Court to try" and substitute for them these words, "Trial of."
Send direct to the office of the Judge Advocate General for additional copies of this form. For the sake of uniformity none should be printed on board ship.
Fill in this form on a typewriter equipped with *elite* type, if one is available.

N. J. A. 166 X 18—10497-3

Figure 9–2. Deck court; more than one specification with attachment slip.

U. S. S. DELAWARE

RECORD OF DECK COURT No. 8-45
(New series each calendar year)

Smith, John Amos, S2c, U. S. N.
(Name of accused, surname first) (Rate or rank)

Lieutenant Joseph R. Jones, U. S. N.
is hereby ordered as Deck Court to try the above-named man for the following offense(s):* SPECIFICATION:

In that John Amos Smith, seaman second class, U. S. Navy,
attached to the U.S.S. Delaware, having,

~~duly~~while so serving on board the U.S.S. Delaware, been granted leave of absence from his station and duty on board said ship, to which he had been regularly assigned, said leave to expire on June 15, 1945, did fail to return to his station and duty as aforesaid upon the expiration of said leave, and did remain absent from the U. S. naval service, without leave from proper authority, for a period of about three days, at the expiration of which he surrendered himself on board the aforesaid ship, the United States then being in a state of war.

James P. Allen, Y1c, U. S. N.
will act as recorder. *Approved:* June 20, 1945
Capt., U. S. N., *Comdg.*

I consent to trial by Deck Court as above
U. S.

Date of birth
Date of present enlistment *Est.*
Pay: Present rating, $ *N. I. R.* $
Record of previous convictions:

Specification of an additional offense preferred against John Amos Smith, seaman second class, U. S. Navy, intelligence of which did not reach the convening authority until this day.

Specification: In that John Amos Smith, seaman second class, U. S. Navy, attached to the U.S.S. Delaware, while so serving on board the U.S.S. Delaware, did, on or about June 20, 1945, knowingly, wilfully, without proper authority, and not for authorized medical purposes, use alcoholic liquor, to wit, gin, as a beverage on board said ship, the United States then being in a state of war.

Approved June 21, 1945. To be tried before Lieutenant Joseph R. Jones, U. S. Navy, as Deck Court, at the same time the accused is tried on the specification approved June 20, 1945.

Capt., USN, Comdg.

*See sec. 692(3), var. 1, NCB. 1937, if commanding officer is deck court officer. In such case strike out the words "is hereby ordered as Deck Court to try" and substitute for them these words, "Trial of."
Send direct to the office of the Judge Advocate General for additional copies of this form. For the sake of uniformity none should be printed on board ship.
Fill in this form on a typewriter equipped with *elite* type, if one is available.

N. J. A. 166 X 16—10497-3

Figure 9–3. Deck court; one specification with attachment slip for additional specification.

Specification of an offense preferred against James Paul Smith, seaman first class, United States Navy.

SPECIFICATION: In that James Paul Smith, seaman first class, U. S. Navy, attached to the U. S. Naval Repair Base, San Diego, California, having, while so serving at said repair base, been granted leave of absence from his station and duty at said repair base, to which he had been regularly assigned, said leave to expire on June 6, 1944, did fail to return to his station and duty as aforesaid upon the expiration of said leave, and did remain absent from the U. S. naval service, without leave from proper authority, for a period of about ten days, at the expiration of which he was apprehended by United States naval authority at San Diego, California, the United States then being in a state of war.

Approved June 18, 1944.

To be tried before the summary court-martial of which Lieutenant James W. Harris, U. S. Navy, is senior member.

CLARENCE A. DOBBS,
Captain, U. S. Navy,
Commanding, U. S. Naval Repair Base,
San Diego, California

B

Figure 9–4. Summary court-martial; one specification.

Specifications of offenses preferred against James Paul Smith, seaman first class, United States Naval Reserve.

SPECIFICATION 1: In that James Paul Smith, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Repair Base, San Diego, California, while so serving on active duty at said repair base, having, on or about June 15, 1945, at said repair base, been lawfully ordered by one Clyde C. Cates, Lieutenant, U. S. Navy, the officer of the day of said repair base, to superintend the work of breaking out supplies in warehouse "C" of said repair base, did then and there refuse to obey and did wilfully disobey said lawful order, the United States then being in a state of war.

SPECIFICATION 2: In that James Paul Smith, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Repair Base, San Diego, California, while so serving on active duty at said repair base, having, on or about June 15, 1945, at said repair base, been lawfully ordered by one Clyde C. Cates, lieutenant, U. S. Navy, who was then and there in the execution of his office, to superintend the work of breaking out supplies in warehouse "C" of said repair base, did, at the time and place aforesaid, say to the said Cates, in a disrespectful manner, "I haven't time to do that now", or words to that effect, the United States then being in a state of war.

Approved June 18, 1945.

To be tried before the summary court-martial of which Lieutenant James W. Harris, U. S. Navy, is senior member.

CHARLES A. MEADOWS,
Captain, U. S. Navy,
Commanding, U. S. Naval Repair Base,
San Diego, California.

B

Figure 9–5. Summary court-martial; more than one specification.

Specification of an additional offense preferred against James Paul Smith, seaman first class, United States Naval Reserve, intelligence of which did not reach the convening authority until this day.

SPECIFICATION: In that James Paul Smith, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Repair Base, San Diego, California, while so serving on active duty at said repair base, was, on or about June 19, 1945, at said repair base, not having been on liberty, under the influence of intoxicating liquor, and thereby incapacitated for the proper performance of duty, the United States then being in a state of war.

Approved June 20, 1945.

To be tried before the summary court-martial of which Lieutenant James W. Harris, U. S. Navy, is senior member at the same time the accused is tried on the specifications approved June 18, 1945.

CHARLES A. MEADOWS,
Captain, U. S. Navy
Commanding, U. S. Naval Repair Base,
San Diego, California.

B2

Figure 9–6. Summary court-martial; one additional specification.

Specification of offense preferred aganist John Amos Jones, seaman second class, United States Navy, and William Carl Smith, seaman second class, United States Navy.

SPECIFICATION: In that John Amos Jones, seaman second class, U. S. Navy, attached to the U. S. Naval Receiving Station, Terminal Island, San Pedro, California, and William Carl Smith, seaman second class, U. S. Navy, attached to the U. S. Naval Receiving Station, Terminal Island, San Pedro, California, while so serving at said receiving station, did, each and together, on or about June 15, 1945, in the city of Los Angeles, California, with force and violence, feloniously make an assault upon one Henry P. Duncan, a civilian, living in said city and state, and did then and there against the will of and by violence to the person of the said Duncan, feloniously rob, take and steal, and carry away from the person of the said Duncan the sum of about seventy-five dollars ($75.00), in lawful money of the United States, the property of the said Duncan, and did then and there appropriate the same to their use, the United States then being in a state of war.

Approved June 20, 1945.

To be tried before the summary court-martial of which Lieutenant Commander Arthur M. Brown, U. S. Navy, is senior member.

BURT F. BATES,
Captain, U. S. Navy,
Commanding, U. S. Naval Receiving Station,
Terminal Island, San Pedro, California.

B

Figure 9–7. Summary court-martial; one specification in joinder.

UNITED STATES FLEET
BATTLESHIPS, BATTLE FORCE
U.S.S. WEST VIRGINIA, FLAGSHIP

/A17–20
Serial A–1000

SAN DIEGO, CALIF.,
June 20, 1945.

From: Commander Battleships, Battle Force.

To: Captain Andrew A. Fowler, U. S. Navy, Judge Advocate, General Court-Martial, U.S.S. Colorado.

Subject: Charge and specification in the case of John Amos Smith, seaman second class, U. S. Navy.

1. The above-named man will be tried before the general court-martial of which you are judge advocate upon the following charge and specification. You will notify the president of the court accordingly, inform the accused of the date set for his trial, and summon all witnesses, both for the prosecution and the defense.

CHARGE

DESERTION IN TIME OF WAR

SPECIFICATION

In that John Amos Smith, seaman second class, U. S. Navy, while so serving on board the U.S.S. Delaware, did, on or about March 1, 1945, desert from said ship and from the U. S. naval service, and did remain a deserter until he was apprehended by a U. S. naval guard at San Diego, California, on or about June 5, 1945, the United States then being in a state of war.

WILLIAM L. STEAMER,
Vice Admiral, U. S. Navy,
Commander Battleships, Battle Force,
U. S. Fleet.

B

Figure 9–8. General court-martial; one charge and one specification.

COMMANDANT'S OFFICE
ELEVENTH NAVAL DISTRICT
SAN DIEGO, CALIFORNIA

ND11/A17–20
Serial J–8000

JUNE 20, 1945.

From: The Commandant, Eleventh Naval District, San Diego, Calif.

To: Captain Otis G. Lansford, U. S. Navy, Judge Advocate, General Court-Martial, U. S. Naval Operating Base, San Diego, Calif.

Subject: Charge and specifications in the case of John Amos Smith, seaman second class, U. S. Navy.

1. The above-named man will be tried before the general court-martial of which you are judge advocate upon the following charges and specifications. You will notify the president of the court accordingly, inform the accused of the date set for his trial, and summon all witnesses, both for the prosecution and the defense.

CHARGE

ABSENCE FROM STATION AND DUTY WITHOUT LEAVE

SPECIFICATION 1

In that John Amos Smith, seaman second class, U. S. Navy, while so serving at the U. S. Naval Operating Base, San Diego, California, did, on or about April 1, 1945, without leave from proper authority, absent himself from his station and duty at said operating base, to which he had been regularly assigned, and did remain so absent from the U. S. naval service for a period of about seventy days, at the expiration of which he surrendered himself to U. S. naval authorities at San Francisco, California, the United States then being in a state of war.

SPECIFICATION 2

In that John Amos Smith, seaman second class, U. S. Navy, while so serving at the U. S. Naval Operating Base, San Diego, California, did, on or about June 12, 1945, without leave from proper authority, absent himself from his station and duty at said operating base, to which he had been regularly assigned, and did remain so absent from the U. S. naval service for a period of about four days, at the expiration of which he was apprehended by the U. S. Navy Shore Patrol at Los Angeles, California, the United States then being in a state of war.

JAMES T. COLVERT,
Rear Admiral, U. S. Navy,
Commandant, Eleventh Naval District.

B

Figure 9–9. General court-martial; one charge and more than one specification.

COMMANDANT'S OFFICE
ELEVENTH NAVAL DISTRICT
SAN DIEGO, CALIFORNIA

ND11/A17–20
Serial J–8001

JUNE 22, 1945.

From: The Commandant, Eleventh Naval District, San Diego, Calif.

To: Captain Otis G. Lansford, U. S. Navy, Judge Advocate, General Court-Martial, U. S. Naval Operating Base, San Diego, Calif.

Subject: Additional charge and specification in the case of John Amos Smith, seaman second class, U. S. Navy.

1. The subject-named man will be tried before the general court-martial of which you are judge advocate upon the following additional charge and specification, intelligence of which did not reach me until June 21, 1945. You will notify the president of the court accordingly, inform the accused of the date set for his trial and summon all witnesses, both for the prosecution and the defense.

CHARGE

BREAKING ARREST

SPECIFICATION

In that John Amos Smith, seaman second class, U. S. Navy, while so serving at the U. S. Naval Operating Base, San Diego, California, did on or about June 12, 1945, while a prisoner confined in the brig at said station by lawful order of his commanding officer, break his arrest and leave said station, the United States then being in a state of war.

JAMES T. COLVERT,
Rear Admiral, U. S. Navy,
Commandant, Eleventh Naval District.

B2

Figure 9–10. General court-martial; one additional charge and one specification.

COMMANDANT'S OFFICE
ELEVENTH NAVAL DISTRICT•
SAN DIEGO, CALIFORNIA

ND11/A17–20
Serial J–8002

JUNE 20, 1945.

From: The Commandant, Eleventh Naval District, San Diego, Calif.

To: Captain Otis G. Lansford, U. S. Navy, Judge Advocate, General Court-Martial, U. S. Naval Operating Base, San Diego, Calif.

Subject: Charge and specification in the case of John Amos Smith, seaman second class, U. S. Navy and William Carl Jones, seaman second class, U. S. Navy,

1. The above-named men will be tried before the general court-martial of which you are the judge advocate upon the following charge and specification. You will notify the president of the court accordingly, inform the accused of the date set for their trial, and summon all witnesses, both for the prosecution and the defense.

CHARGE

STEALING PROPERTY OF THE UNITED STATES INTENDED FOR THE NAVAL SERVICE THEREOF

SPECIFICATION

In that John Amos Smith, seaman second class, U. S. Navy, and William Carl Jones, seaman second class, U. S. Navy, while so serving at the U. S. Naval Operating Base, San Diego, California, did, each and together, on or about June 5, 1945, feloniously take, steal, and carry away from the possession of the United States, to wit, from the copper pile in the vicinity of the foundry at said operating base, a pig of lead weighing one hundred and ninety-three pounds, more or less, of the value of about nine dollars and sixteen cents ($9.16), the property of the United States intended for the naval service thereof, and they, the said Smith and Jones, did then and there appropriate the same to their own use, the United States then being in a state of war.

MORRIS A. JACKSON,
Rear Admiral, U. S. Navy,
Commandant, Eleventh Naval District.

B

Figure 9–11. General court-martial; one charge and one specification in joinder.

9D4. Alphabetical index to sample charges and specifications in Naval Courts and Boards, 1937. The following is an alphabetical index to the sample charges and specifications contained in Chapter 2 of *Naval Courts and Boards, 1937*. The references include both *Naval Courts and Boards* section and page numbers and the appropriate article in the *Articles for the Government of the Navy*. It is noted that the terminology used in denoting the offenses is not technical but is merely descriptive. The purpose of the index is to provide a quick reference aid for use in connection with the preparation of specifications, or charges and specifications.

General Description of Offense	*Naval Courts and Boards*		*AGN*
	Section	*Page*	*Art.*
Absence from command (officer)	79	50	9
Absence over leave	74	48	8(19)
Absence without leave	74	48	8(19)
Adultery	127	123	22
Affray	92	76	22
Agreement concerning false claims	82	61	14(2)
Aiding desertion	78	50	8(21)
Aiding escape of person under arrest	116	110	22
Apprehending offenders	73	48	8(17)
Arson	124	119	22
Assaulting another person in the Navy	61	36	8(3)
Assaulting his superior officer	48	18	4(3)
Assaulting a person not in the Navy	98	83	22
Assaulting with intent to commit murder or rape	120	115	22
Attempting to desert	77	58	8(21)
Blackmail	93	78	22
Breaking arrest	94	79	22
Breaking quarantine	95	80	22
Bribery	114	107	22
Burglary	96	81	22
Carelessly endangering lives of others	97	82	22
Circulating obscene literature	126	122	22
Combinations against commanding officer	64	39	8(7)
Conduct unbecoming an officer and a gentleman	99	89	22
Conduct to prejudice of good order and discipline	98	83	22
Conspiracy	112	103	22
Contempt of superior officer	63	37	8(6)
Culpable inefficiency in the performance of duty	67	41	8(9)
Desertion in time of peace	76	56	8(21)
Desertion in time of war	49	20	4(6)
Disobedience of orders of a superior officer	47	16	8(21)
Disobedience of orders not of a superior officer	98	83	22
Disorder	92	76	22
Drunkenness	55	25	8(1)
Embezzlement	100	92	22
Embezzling military property of the U. S.	89	68	14(8)
Extortion	93	78	22

General Description of Offense	*Naval Courts and Boards*		*AGN*
	Section	*Page*	*Art.*
Failure to apprehend offenders	73	48	8(17)
Falsehood	54	24	8(1)
False imprisonment	101	93	22
False muster	70	46	8(14)
False oath	84	63	14(4)
False papers	83	62	14(3)
Forgery	102	94	22
Forging of a claim	85	64	14(5)
Forging, etc., naval pass or certificate	113	105	22
Fornication	127	123	22
Fraud (not against the U. S.)	57	26	8(1)
Fraudulent enlistment	103	95	22(b)
Gambling	56	25	8(1)
Giving receipts without knowing their truth	87	66	14(7)
Housebreaking	96	81	22
Incapacitation due to drinking intoxicating liquor	58	83	22
Leaving station	51	21	4(9)
Maiming	122	117	22
Malingering	104	97	22
Manslaughter	119	113	22
Misappropriating military property of the U. S.	90	71	14(8)
Missing ship	98(4)	83	22
Murder	53	22	6
Mutiny	46	14	4(1)
Neglect of duty	105	97	22
Negligence in obeying orders	66	41	8(9)
Negligently endangering the lives of others	97	82	22
Offenses against the U. S. Commerce Laws	118	113	22
Offenses against the U. S. Narcotic Laws	128	125	22
Offenses against the U. S. Postal System	117	111	22
Offenses against the U. S. Revenue Acts	129	127	22
Perjury and subordination thereof	115	109	22
Plundering, etc., on shore	72	47	8(16)
Polygamy	127	123	22
Possession, etc., of naval certificate or pass	113	105	22
Presenting false claims	81	60	14(1)
Preventing destruction of public property	68	43	8(10)
Quarreling	61	35	8(3)
Rape and carnal knowledge	121	116	22
Resisting arrest	106	99	22
Riot	92	76	22
Robbery	123	118	22
Receiving stolen goods	125	120	22
Reproachful words and gestures	62	36	8(3)
Scandalous conduct	59	29	8(1)
Seditious or mutinous words	65	40	8(8)
Seduction	107	99	22
Sleeping on watch	50	21	4(8)
Sodomy (scandalous conduct)	108	100	22

General Description of Offense	*Naval Courts and Boards*		*AGN*
	Section	*Page*	*Art.*
Stealing military property of the U. S.	88	67	14(8)
Stranding	69	43	8(11)
Striking another person in the Navy	61	36	8(3)
Striking another person not in the Navy	98	83	22
Striking his superior officer	48	18	4(3)
Theft	58	27	8(1)
Threatening to strike his superior officer	48	18	4(3)
Unauthorized use of vehicles (joy riding)	109	101	22
Unlawful assembly	92	76	22
Unlawful cohabitation	127	123	22
Use of threatening language	98	83	22
Uttering	110	102	22
Violation of local orders	98	83	22
Violation of general orders or regulations	75	51	8(20)
Violation of local laws	98	83	22
Waste of public property	71	47	8(15)
Wilful destruction of public property	52	22	4(11)
Wilful destruction of property other than U. S.	111	103	22

10. THE DECK COURT

10–1. Nature and function of deck court. The function of a deck court is to dispense justice promptly for relatively minor offenses under a simple form of procedure. A deck court consists of a single officer, called the *deck-court officer*, who performs the functions not only of a court, but of a trial prosecutor, and in the event that the accused has no counsel, as a protector of his interests. The deck court must hear both sides of the matter impartially and see that the interests of both the Government and the accused are fully served. While the same formality is not required in the conduct of a trial by deck court as is prescribed for trials by general or summary courts-martial, a deck court is nevertheless a judicial tribunal, and the general provisions applicable to courts-martial as set out in Chapter 4, *Naval Courts and Boards, 1937* apply to deck courts, except where manifestly inapplicable; likewise, those of Chapter 7 pertaining to the summary court-martial apply, when not otherwise specially provided in Chapter 8, pertaining to the deck court. The provisions of law governing deck courts are set forth in Article 64, *AGN*.

The proceedings of a deck court are to be taken promptly, and speedily completed. The officer ordering the court shall determine when cases shall be brought to trial; but, whenever practicable, the trial shall take place within forty-eight hours after the offense is committed. Under the announced policies of the Navy Department pertaining to speedy trials, the sentence of a deck court should be published to the accused no later than five days from the time the offense is first known, or in the case of unauthorized absence, from the date of his return to naval jurisdiction.

10–2. Punishments. A deck court may impose any punishment that a summary court-martial is empowered to impose, with the exceptions that it cannot (1) adjudge a bad-conduct discharge; (2) adjudge any type of confinement in excess of twenty days, or (3) adjudge loss of pay in excess of twenty days. The punishments are tabulated below. These punishments are ascertained by reference to Articles 30 and 64, *AGN*. The punishments of the summary court-martial are set forth in Article 30, *AGN*. It is provided in Article 64, *AGN*, that the summary court-martial punishments are the same for the deck court with the exceptions above noted.

Deck-court punishments:

1. Reduction to next inferior rating.
2. Solitary confinement on bread and water or diminished rations not exceeding twenty days.
3. Solitary confinement not exceeding twenty days.
4. Confinement not exceeding twenty days.
5. Deprivation of liberty on shore on foreign station.
6. Loss of pay not exceeding twenty days.
7. Extra police duty not exceeding three months.

Legal combinations:

6 may be combined with 7.
Either 6 or 7 may be combined with 1, 2, 3, 4, or 5.
Both 6 and 7 may be combined with 1, 2, 3, 4, or 5.

10–3. Convening authority. Article 64, *AGN*, provides that a deck court may be ordered by any officer of the Navy or Marine Corps who may order either a summary or general court-martial. Therefore, deck courts may be convened by (1) the commanding officer of any vessel; (2) the commandant of any navy yard or naval station; (3) the commanding officer of any brigade, regiment, or separate or detached battalion, or other separate or detached command, or marine barracks; (4) when empowered by the Secretary of the Navy to convene summary courts-martial, the commanding officer or officer in charge of any command not specifically mentioned in the foregoing; and (5) such other officers as are empowered to convene general courts-martial under Article 38, *AGN*.

10–4. Composition. A deck court is composed of one commissioned officer who performs his duty under the sanction of his oath of office and is, therefore, not sworn. His duties are: (1) to conduct the trial; (2) to summon the witnesses; (3) to administer the oaths to the recorder and the witnesses; (4) to conduct the examination of witnesses; and (5) to record the sentence in his own handwriting. He may not be a witness either for the prosecution or the defense. The deck-court officer is not appointed for any period of time, but must be designated as such for each trial by the commanding officer. His authority is shown by the signature of the commanding officer on the deck-court card.

Who may act as deck-court officer. According to Article 64(b) of the *Articles for the Government of the Navy*, a deck court may consist of any commissioned officer. *Naval Courts and Boards, 1937*, Section 692(2), provides that officers shall not be ordered as deck-court officers who are below the rank of lieutenant in the Navy or captain in the Marine Corps, and who have had less than six years' service as a commissioned officer, except

that, in cases where there is no officer of such rank or of higher rank attached to the vessel or command, the commanding officer (if a commissioned officer) may act as deck-court officer. The Judge Advocate General of the Navy has held that the provisions of the foregoing section were intended to insure that this phase of the administration of discipline would be generally in capable hands, that if the exigencies of the service make it impracticable to adhere to the above qualifications, the convening authority may deviate therefrom and order any commissioned officer under his command as deck-court officer, as provided in the *Articles for the Government of the Navy*.

Warrant officers. A warrant officer, not being a commissioned officer, cannot act as deck-court officer. The provisions of Article 64, *AGN*, admit of a commissioned warrant officer being ordered as a deck-court officer.

Commanding officer as deck-court officer. An officer empowered to order deck courts may at his discretion designate himself as deck-court officer, irrespective of his rank, if commissioned, and irrespective of the rank of other officers attached to his command.

10–5. Selection of the deck-court officer. Since far more enlisted men are tried by deck courts than by all other types of naval tribunals combined, the fairness and efficiency of the entire court-martial system may be judged by the manner in which its proceedings are conducted. It is of utmost importance that each deck-court officer not only possess qualities of leadership, fairness and dignity, but that he be so well grounded in rules of deck-court procedure as to enable him to maintain a judicial atmosphere in his proceedings at all times. The appointment of inexperienced junior officers with little or no background in naval law or the handling of men, defeats the very purpose of a deck-court trial. The duty of acting as deck-court officer is not one, therefore, that should be rotated indiscriminately among officer personnel of a command. The explanatory notes in Chapter 8 of *Naval Courts and Boards, 1937*, which prescribe the procedure for deck courts, are not set forth in as great detail as those applicable to summary courts-martial, for the reason that deck-court officers should be familiar with the procedure of summary courts-martial and other sources of information required in deciding questions that may arise. Thus, officers selected for this important duty should familiarize themselves with the rules of summary court-martial procedure as an indoctrination for the responsibilities of conducting the deck court. Deck-court officers have been frequently criticized in court-martial orders for their lack of familiarity with the provisions of *Naval Courts and Boards, 1937*.

As the deck court must act impartially, any close personal knowledge of the man or the offense is a handicap. It is thus inadvisable to refer to a deck-court officer specifications against personnel under his immediate

supervision with whom he has had close personal contact. Although there is no legal prohibition against the accusing officer serving as deck-court officer, a fairer trial will result if such cases are referred for trial to someone having no knowledge of the persons or offenses involved. Of course, in small commands, with a single officer or with a very limited number of officers present, if the maintenance of discipline requires immediate trial and punishment, the offenses may have to be tried by an officer familiar with the case, even the accusing officer. Where possible, however, such a result should be avoided.

10–6. The recorder. Article 64(c), *AGN*, prescribes that any person in the Navy under the command of the officer by whose order a deck court is convened may be detailed to act as recorder thereof. A civilian is not qualified to act as recorder. The recorder in a deck court performs in general the duties of a reporter in a summary court-martial He shall be sworn to keep a true record of the proceedings of the deck court. He is not empowered to conduct any examination of witnesses. The deck-court officer shall administer to the recorder the same oath as is prescribed for the recorder of a summary court-martial. The recorder in a deck court is not a prosecutor, but actually is a stenographer and should usually be a yeoman. His principal duty is that of aiding the deck-court officer in making up the record of proceedings. The testimony of witnesses is not recorded by him verbatim, it being only necessary to record the facts established by the testimony. Such facts are recorded on a separate sheet and later submitted to the convening authority by the deck-court officer.

10–7. Offenses triable by deck court. The jurisdiction of a deck court is expressly limited to *minor offenses*, that is, those offenses not deemed sufficiently serious to warrant trial by a summary court-martial, but nevertheless, deserving punishment in excess of that which the commanding officer is authorized to inflict at mast.

Minor offenses. The meaning of the term *minor offenses* has heretofore been discussed in Article 8–6. It was pointed out, (1) that offenses such as an attempt to commit sodomy or fraudulently passing a bad check involve moral turpitude and are, consequently, not properly to be treated as minor; (2) that escape from confinement, wilful disobedience of superior officers, while not involving moral turpitude, are serious and should not be regarded as minor; and also (3) that an offense which on its face seems minor may be considered as a serious one in the light of the circumstances of the particular case and the person committing it. It may be said that the question is one in which the commanding officer must use his best judgment, taking into account the nature of the offense, its effect upon the organization as a whole, the manner in which such offenses are customarily punished in

the Navy, the circumstances of the particular case, and the record of the offender.

Theft and embezzlement. It has been repeatedly held that a man found guilty of theft or embezzlement should not be retained in the naval service. Inasmuch as it is not within the power of a deck court to award a sentence involving discharge, it is considered that the award of a deck court is contrary to the Navy Department's policy where a man is accused of theft or embezzlement. However, care should be taken to distinguish cases of theft from cases of petty pilfering.

10–8. Persons triable by deck court. Any enlisted man of the Navy or Marine Corps is triable by a deck court which has been legally convened by his commanding officer.

Consent required. A deck court may not assume its jurisdiction over the objection of a person ordered tried before it since Article 64(g), *AGN*, states that no person who objects thereto shall be brought to trial before a deck court. When an enlisted man is brought before a deck court for trial, he shall signify his willingness to be so tried by affixing his signature to a statement to that effect on the record.

Action when trial by deck court is refused. When the person accused objects to trial by deck court, trial shall be ordered by summary or by general court-martial, as may be appropriate, but refusal of trial by deck court shall not be mentioned in the record of such latter court.

10–9. Right of appeal. Under Article 64(f), *AGN*, an accused has a right to make an appeal from the decision of a deck court to the Secretary of the Navy within a period of thirty days after the decision has become known to him.

Method for making appeal. Should the accused desire to make an appeal to the Secretary of the Navy within a period of thirty days, as prescribed by law, such statements as he may wish to make shall be submitted in writing and appended to the record of testimony, separately therefrom, and shall be forwarded therewith to the Navy Department (office of the Judge Advocate General). As the Secretary of the Navy reviews such appeal, no action by any intermediate authority shall be required.

Testimony to be forwarded only in cases of appeal. Except in cases of appeal, separate sheets containing the testimony of witnesses called in a deck court should not be forwarded to the department as part of such records, as the testimony thus recorded is intended only for the guidance of the convening authority in his approval or disapproval of the finding and sentence.

10–10. The deck-court card. The record in all deck-court cases should be made on the Navy Department (JAG) form N.J.A. 166X. This form is a

U. S. _____

RECORD OF DECK COURT No. _____
(New series each calendar year)

_____, _____, *U. S.* _____
(Name of accused, surname first) (Rate or rank)

_____, *U. S.* _____
is hereby ordered as Deck Court to try the above-named man for the following offense(s):* **SPECIFICATION:**
In that _____

attached to

and while so serving

_____, *U. S.* _____
will act as recorder. *Approved:* _____, *194*__
_____, *U. S.* _____ *Comdg.*

I consent to trial by Deck Court as above:

_____, *U. S.* _____

Date of birth _____
Date of present enlistment _____ *Ext.* _____
*Pay: Present rating, $*_____ *N. I. R.* ____ *$*_____
Record of previous convictions:

*See sec. 692(3), var. 1, NCB. 1937, if commanding officer is deck court officer. In such case strike out the words "is hereby ordered as Deck Court to try" and substitute for them these words, "Trial of."

Send direct to the office of the Judge Advocate General for additional copies of this form. For the sake of uniformity none should be printed on board ship.

Fill in this form on a typewriter equipped with *elite* type, if one is available.

N. J. A. 166 X 16—10497-3

Figure 10–1a. A deck-court card, obverse.

Additional information necessary to the completeness of this record, and which has to be forwarded to the Department, should be typewritten on thin bond paper, uniform in size with this sheet, and attached by pasting on this area. This does not apply to testimony etc., which is usually retained on board. (Secs. 698, 704 (17), NCB 1937.)

U. S. S. ----------, *19*----

The accused was arraigned and pleaded as follows:

The following witnesses appeared for the prosecution:

The following witnesses appeared for the defense:

FINDING: (N. C. B. Sec. 699 (10))

SENTENCE: (A. G. N. 30 & 64 (b))

PREVIOUS CONVICTION(S) CONSIDERED NONE
(Proper deletion shall be made in the above entry to show whether previous convictions have been considered. Sec. 700, NCB 1937.)

----------, *U. S.* ---------*Deck Court.*

Having examined accused and place of his confinement, I am of opinion that execution of sentence would ---------- *produce serious injury to his health.*

----------, *Medical Corps, U. S. N.*

----------, *19*----

The sentence is approved and the accused informed this day.

----------, *U. S.* --------- *Comdg.*

Loss of pay adjudged has been entered on the pay accounts of this man and will be checked in accordance with the terms of the sentence as approved.

----------, *U. S.* ------

FORWARDED TO THE JUDGE ADVOCATE GENERAL

REVIEWED BY ----------

U. S. GOVERNMENT PRINTING OFFICE X 16—10497-2

Figure 10–1b. A deck-court card, reverse.

printed card 3½ by 8 inches in size, and is furnished to all ships and stations by the department (JAG). Should cards not be on hand and not immediately available from other commands, a copy of the form shown in Figure 10–1 should be made on the typewriter on heavy paper of the proper size. For the sake of uniformity, none should be printed on board ship.

Additional information. Additional information necessary to the completeness of the record, and which has to be forwarded to the department, should be typewritten on thin bond paper, uniform in size with the deck-court card, and attached thereto by pasting on the appropriate area. This does not apply to testimony, etc., which is retained on board except in the case of an appeal.

Instructions where commanding officer acts as deck-court officer. In case the commanding officer acts as deck-court officer, the words *is hereby ordered as deck court to try* are stricken from the obverse side of the deck-court card, and the words *trial of* are substituted therefor.

Recommended type. The blank spaces on a deck-court card, except the spaces for signatures and the sentence, should be filled in with a typewriter. Inasmuch as the spaces on the card are restricted in size, a typewriter equipped with elite type should be used, if one is available.

10–11. Specifications. The specifications for a deck court should be brief, but in each specification it is necessary to set forth: (1) attachment to the command of the convening authority, (2) the name and rate of the accused, (3) the offense and date of commission thereof, and (4) all material facts connected with the offense.

While a specification for a deck court may be less formal than one for a summary or general court-martial, yet the general principles set forth in Chapter 2, *Naval Courts and Boards, 1937*, except such as refer to the charge, apply. In every case the convening authority should take care to see that the statement of facts as set forth therein actually constitutes an offense against naval law. The offense should be set forth clearly, explicitly, and not left to be implied. Specifications should be drawn with as much particularity and care as specifications for summary courts-martial. If but one specification is preferred, it is not numbered. If more than one specification is preferred, the specifications are numbered chronologically with arabic numerals. Figures 9–1 and 9–2 illustrate the form prescribed for single and multiple deck-court specifications. Specifications are discussed generally in Chapter 9 of this text.

Sample specifications; Chapter 2, Naval Courts and Boards, 1937. As explained in Article 9–21 hereof, the sample specifications in Chapter 2, *Naval Courts and Boards, 1937*, do not contain the jurisdictional allegation which is required in all deck-court and summary court-martial specifica-

tions. In order to show the jurisdiction of the convening authority to order the trial of the accused, the specification must allege that the accused was, on the date the specification was preferred, attached to the command of the convening authority. Thus, in utilizing the sample specifications contained in Chapter 2, *Naval Courts and Boards, 1937*, an attachment allegation must precede the averments as shown. The preferred form for this allegation is as follows: *In that John Amos Jones, seaman second class, U. S. Navy, attached to the U.S.S. Delaware, while so serving on board the U.S.S. Delaware . . .*

Joinder of specifications. A separate specification shall be used for each distinct offense. Two or more specifications may be preferred for a single trial and must be so preferred if the offenses are known before trial begins. It is improper, and will be grounds for disapproval, to order a man tried in separate trials for separate offenses, all of which were known before the first trial began. This procedure, in effect, multiplies the sentence adjudged. In such a case, additional specifications must be drawn, or if the punishment which a deck court may adjudge is deemed inadequate, the specifications should be withdrawn from the deck court and a summary court-martial awarded, or recommendation made for trial by general court-martial. In case the additional offense occurs before trial, but after the deck-court card has been prepared setting forth the specifications covering the offenses known at the time of the drawing thereof, the form shown in Figure 9–3 should be used in presenting the additional specification.

Copy of specification not required for accused. Section 364, *Naval Courts and Boards, 1937*, provides that in the case of a deck court a copy of the specification is not required for the accused, his signature on the deck-court card, consenting to trial by deck court, affirmatively showing that he has seen the specification.

10–12. Duties of deck-court officer before trial. The first knowledge that a deck-court officer ordinarily will have of a case, will be upon his actual receipt of the deck-court card containing the specifications referred to him for trial. Since, usually, neither a letter of transmittal, nor a report of the mast investigation, will accompany the deck-court card, his only information of the case may be the contents of the specifications themselves. These he will carefully examine, both to determine the offenses to be tried and the evidence, witness and documentary, that may be necessary to prove them. Although he may and should correct manifest clerical errors in the specifications, he has no authority to correct any technical errors or errors in substance (see Article 9–8, this text) without specific instructions from the convening authority. As soon as the specifications and accompanying papers, if any, have been examined and a knowledge obtained as to the

proof necessary to sustain the specifications, immediate arrangements should be made for trial. This is of especial importance if the accused is in arrest or confinement. The trial should take place as soon as practicable after receipt of the specifications. The deck-court officer then notifies all witnesses and the accused of the time and place set for trial. The division officers of naval witnesses should be requested (informally, by telephone or otherwise) to have them available in the event the accused pleads *not guilty*. If the accused is in confinement, arrangements for his attendance may be made with the appropriate brig officer. Civilian witnesses may be notified, by letter or telephone, of the time of the trial.

Record entries prior to trial. Prior to trial the deck-court officer will have entered on the obverse side of the deck-court card in the appropriate spaces therefor, as shown in Figures 10–5 and 10–6: (1) date of birth of the accused; (2) date of accused's present enlistment, showing date of any extension thereof; (3) the accused's rate of pay in his present rating and in the next inferior rating; and (4) record of the accused's previous convictions. The foregoing information is secured from the accused's service record and from the disbursing office.

The general rule is that the record of previous convictions, in order to be admissible, must relate to the accused's current enlistment or current extension of enlistment. On the other hand, when the last enlistment was terminated by sentence of court-martial, or by discharge as undesirable by order of the department, or when the accused deserted and subsequently fraudulently enlisted, all convictions occurring in the present enlistment are admissible. *Court Martial Orders*, Volume 2, 1943, pages 152-153, holds that where an enlistment is extended by virtue of *AlNav* 155–1941 (extension under act approved December 13, 1941, for a period not later than six months after termination of war), records of previous convictions prior to such an extension are inadmissible for the court's consideration. The decision was reached on the theory that the extension of enlistment occurs by operation of law.

The record of the accused's previous convictions should be recorded in an abbreviated manner. Section 697, *Naval Courts and Boards, 1937* indicates that the following will suffice: *10-16-45, aol 6 hrs. DC, sent. lp $18. Appvd. by c.a. 10-18-45.* Where there are no previous convictions, the word *none* should be recorded.

Only a properly approved conviction by a duly constituted court-martial may be considered by a court as a previous conviction. Punishment awarded at mast does not constitute a previous conviction and cannot properly be considered as such.

Explanation of the accused's rights. At the time appointed for trial, but prior to the beginning of the proceedings, the deck-court officer should call in the accused, show him the specifications contained on the deck-court

card, and advise him of the following matters: (1) the nature of the proceedings, including his right to divest the court of jurisdiction by objecting to trial; (2) the right of appeal to the decision of a deck court within thirty days; (3) the right to counsel; (4) the right to plead guilty or not guilty; (5) the names of the witnesses to be called so far as is known where it is indicated that the accused will plead not guilty; (6) the right to call witnesses in his behalf and cross-examine witnesses appearing against him; (7) the right to remain silent or to make an unsworn statement at the proper time. In general, the substance of Sections 356 and 359, *Naval Courts and Boards, 1937*, should be carefully explained to the accused with the assurance that the deck-court officer will assist him in every way possible.

If the accused desires to produce additional witnesses or needs additional time in which to prepare his case, the court should not begin the trial until the witnesses can be summoned or the accused has had ample opportunity to prepare his case.

10–13. Trial procedure. After making certain that the accused understands his rights and is as much at ease as possible under the circumstances, the deck court should proceed with the trial. In general, the procedural steps follow those of the summary court-martial, and are more elaborately considered in Chapter 12, to which reference should be made for a more complete statement of any step. Except for the signature of the accused indicating his consent to trial by deck court, no record is kept on the deck-court card of the procedural steps prior to the arraignment. However, a memorandum may be kept by the deck-court officer indicating that they were observed. The ensuing paragraph headings may be used as a guide for conducting a deck court in accordance with the procedural steps outlined as follows:

1. *Court is opened.* The formality of opening the court consists merely of the deck-court officer announcing: *The court is opened.*

2. *Orderly enters with the accused.* If an orderly is in attendance, he enters with the accused. The deck-court officer signs a memorandum setting forth the exact time the court convened and hands it to the orderly for transmittal to the convening authority.

3. *Inquiry as to counsel.* The accused is asked by the deck-court officer if he desires counsel, and if he does or has counsel, the accused's counsel enters. Should the accused state that he does not desire counsel, he shall be informed by the deck-court officer that counsel will be assigned him should he so desire, and he shall be advised to consult counsel before deciding to proceed with the case without counsel.

4. *Reading of precept.* The deck-court officer reads aloud that part of the deck-court card which sets forth that he has been ordered as deck-court officer to try the accused.

5. *Inquiry as to challenge.* The deck-court officer asks the accused if he has any objection to make to the deck-court officer, as such; that is, the accused is afforded the right of challenge. The grounds for challenges are contained in Section 388, *Naval Courts and Boards, 1937.* If objected to, the deck-court officer should have the objection recorded, recess the court and present the recorded objection to the convening authority who will make a decision as to the validity thereof. If the challenge is sustained, a new deck-court officer is appointed by the convening authority. If the convening authority and deck-court officer are one and the same, the decision on the challenge will of necessity be made by the same personality as the court. In the case of small ships, where the only officer qualified as a deck-court officer is the commanding officer and he sustains a challenge to himself, application should be made to the immediate superior in command for a qualified officer to act as deck court.

6. *The recorder sworn.* The recorder is sworn by the deck-court officer with the following oath: *You, John Smith, yeoman first class, U. S. Naval Reserve, do swear that you will keep a true record of the evidence which shall be given before this court and the proceedings thereof.*

7. *Tendering of the specifications.* The deck-court card containing the specifications is tendered to the accused in order that he may read them and thereby become apprised of the accusations against him.

8. *Inquiry as to consent to trial by deck court.* The deck-court officer asks the accused whether he objects to being tried by deck court. If the accused has no objection he will signify his willingness to be so tried by affixing his signature to a statement to that effect on the obverse side of the deck-court card. If the accused voices an objection or refuses to signify his willingness, the convening authority shall be notified, whereafter trial shall be ordered by summary or by general court-martial as may be appropriate.

9. *Inquiry as to specification objections.* The deck-court officer asks the accused whether he has any objections to make to the specifications. The accused may object if he believes that any specification does not state an offense, because it is not definite enough, or because there is some error such as a misnomer, but he must state in what particular he deems the specifications defective.

10. *Specifications announced in due form and technically correct.* If the accused has no objection to make to the specifications and the court finds no defect in them, the court then pronounces them in due form and technically correct. If there are objections, the deck court will consider the specifications in the light of the objections made or defects known. Should the deck-court officer not find the specifications in due form and technically correct, he will send a communication to that effect to the convening authority and the court will be recessed awaiting further instructions. The convening authority will return the specifications for trial either corrected or as originally prepared. In the latter case, appropriate note is made thereof for the record by the deck-court officer.

11. *Inquiry as to readiness for trial.* After the specifications have been pronounced in due form and technically correct, the deck-court officer asks the accused whether he is ready for trial. The accused may request a postponement of the trial stating his reasons for the request, but an application to suspend the proceedings of the court for a longer period than from day to day, Sundays excepted, must be referred to the convening authority, who alone has the authority to grant such a request. The court should be liberal in granting a postponement requested by the accused.

12. *Witnesses separated.* If there are any persons present who are to be witnesses in the case, they are at this time separated and seated outside the court to await the time for giving their testimony. They should not be present during the reading of the specifications and should be examined apart from each other.

13. *Arraignment.* The deck-court officer arraigns the accused by reading the specification aloud and asking: (*Name, rate, service*), *you have heard the specification* (*or specifications*) *preferred against you; how say you to the specification, guilty or not guilty? or* (*how say you to the first specification, guilty or not guilty?*). The order pursued in case of several specifications is to arraign on the first, second, etc. Both the deck-court officer and the accused stand during the arraignment and plea. The reverse side of the deck-court card contains a printed statement that *The accused was arraigned and pleaded as follows*: This printed statement is a sufficient entry for the record, the actual words not being recorded.

14. *The plea.* The accused's response to the arraignment constitutes his plea to the general issue. The pleas to the general issue are *guilty* and *not guilty*. By a plea of guilty, the accused admits without proof the averments of the specifications. The plea of not guilty, on the other

hand, calls upon the prosecution to prove the averments of the specifications. A plea of guilty or not guilty may be qualified in so far that the accused may except from the application of his answer certain words or allegations in the specification indicated by him. A plea of *nolo contendere*, although recognized by naval courts-martial, is no different in legal effect from a plea of guilty. The distinction lies in that such a plea cannot be used against the accused as an admission of guilt in a civil suit for the same act. If the accused stands mute, the court shall direct the trial to proceed as if he had pleaded *not guilty*. In addition to the general issue pleas of guilty and not guilty, there are certain special pleas which may be advanced prior to arraignment on the general issue. They are discussed in Sections 404-410, *Naval Courts and Boards, 1937*. Figure 10–2 is a table which lists the various pleas which may be made. The pleas are entered on the reverse side of the deck-court card in the space following the printed statement: *The accused was arraigned and pleaded as follows*:

15. *Warning on plea of guilty.* If the accused pleads guilty to any specification, he is warned by the deck-court officer that he thereby precludes himself from the benefits of a regular defense in so pleading, although he may introduce matters in mitigation and extenuation and make an oral statement not to be considered as evidence. After this explanation, the accused is asked whether he persists in such a plea. The court should change the plea of *guilty* to *not guilty* if the accused requests it, or if there is any doubt of his understanding, or desire to plead guilty. If the accused persists in his plea of guilty after the warning, the trial proceeds on that plea. The warning is not recorded nor reference made thereto on the deck-court card but appropriate memorandum may be kept that it was given.

16. *Proof.* If the accused pleads not guilty to any specification, the deck-court officer, assuming a role similar to that of a prosecutor, has the burden of proving the averments contained in such specification beyond a reasonable doubt before a conviction may be had thereon. The required proof is presented by the introduction of competent evidence through examination of witnesses. Witnesses called by the deck-court officer for the purpose of establishing this proof are called witnesses for the prosecution. The accused is entitled to cross-examine all such witnesses. After the witnesses for the prosecution have been examined, the prosecution rests and the accused then has an opportunity to call witnesses to testify in his behalf. The evidence adduced by the accused's witnesses is for the purpose of establishing his innocence of the accusations against him or to detract from the weight

Pleas

I

To the General Issue

Variation 1—Guilty.

Variation 2—Not guilty.

Variation 3—Guilty except to the words "....," to which words not guilty.

Variation 4—Nolo contendere.

When only one specification is preferred the plea thereto is recorded as shown. When more than one specification is preferred the words "To the first (second, etc.) specification," are prefixed to the pleas as shown. (See Figures 10–7 and 10–8.) If the accused stands mute, the fact is so recorded by the entry "The accused stood mute."

II

Special Pleas

A. *Pleas to the Jurisdiction*

Variation 1—That the court was convened by an officer having no legal authority to convene it.

Variation 2—That the court is not legally constituted.

Variation 3—That the accused is not subject to the court's jurisdiction.

Variation 4—That the offense is not one cognizable by naval court-martial.

B. *Pleas in Bar of Trial*

Variation 1—Running of the statute of limitations.

Variation 2—Former jeopardy.

Variation 3—Pardon.

C. *Plea in Arrest of Trial*

1—Insanity at time of trial.

Figure 10–2. Specimen pleas.

of evidence offered by the prosecution. If the accused is without counsel, the deck-court officer is bound to insure that all testimony favorable to the accused is brought out. The order for examination of witnesses and the rules of evidence are the same as for summary courts-martial, the deck-court officer performing the duties of the summary court-martial recorder.

The name, rate and branch of service of each service witness, and the name, address and occupation of each civilian witness should be recorded in the spaces therefor on the reverse side of the deck-court card. If no witness appears for the prosecution, or the accused, the word *none* should be recorded in the appropriate space. The witness spaces should never be left blank. Only the facts established by the testimony need be recorded, and the same shall be recorded on a separate sheet and thereafter submitted to the convening authority with the deck-court card.

Each witness is sworn by the deck-court officer as follows: *You do solemnly swear that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the charges. So help you God.*

The accused may be a witness in his own behalf at his option. If he takes the stand he must be first warned that he is not required to testify, and that if he does, it will be at his own request. However, once he takes the stand and testifies, he is subject to cross-examination like any other witness.

17. *Statement of accused.* At this stage of the proceedings the deck-court officer asks the accused whether he desires to make a statement, either orally or in writing. Such statement by the accused is a personal declaration and cannot legally be acted upon as evidence by the court; nor can it be a vehicle of evidence or argument thereon, nor properly embrace documents or other writings or even averments of material facts, which, if duly introduced, would be evidence; and if such things be improperly embraced in a statement, they are entitled to no evidential weight. A statement may operate in two ways: (1) to modify the plea of the accused when inconsistent therewith; and (2) as a plea for leniency, which may not be considered by the court except in recommending the accused to the elemency of the reviewing authority. If the accused is not represented by counsel and makes a statement, the deck-court officer will, upon the completion of such statement, note the fact that the substance of Section 359, *Naval Courts and Boards, 1937*, has been carefully explained to the accused.

It sometimes happens that an accused will plead guilty, and then submit a statement containing matter which, had it been established

by evidence following a plea of not guilty, would have supported or tended to support that plea. Such statement is inconsistent with the plea of guilty. In such case, the deck-court officer should reject the plea, enter a plea of not guilty for the accused, and proceed with the trial on that basis. Failure to reject the inconsistent plea will not render the proceedings void, but will render them voidable at the discretion of the convening authority if it occurs to him that the interest of the accused has suffered substantial prejudice.

If the statement is made orally and the recorder is a competent stenographer, it is recorded verbatim on a separate sheet. If the recorder is not a competent stenographer and the accused is willing, the substance of the statement is recorded on a separate sheet and certified by the deck-court officer. The statement and the notation that the substance of Section 359, *Naval Courts and Boards, 1937*, had been carefully explained to the accused, are forwarded with the deck-court card to the convening authority for guidance in making his review or exercising clemency.

18. *Argument.* Both the prosecution and the defense are afforded an opportunity to present an argument, although it may be said that little purpose is served for the deck-court officer to make an argument when he will decide the issues of the case himself. The accused is not required to make an argument; however, the proper presentation of his case, for the benefit of the court as well as of the convening authority, would suggest that he avail himself of his right to make an argument. If the court has the services of a recorder who is a competent stenographer, the argument may be given orally. When so given, it is recorded on a separate sheet. If the recorder is not a competent stenographer, the argument must be written before delivery and signed by the party making it. If argument is made, it should be transmitted with the facts established by the testimony to the convening authority.

19. *The findings.* A finding is the verdict of the court as to whether the averments contained in a specification have been proved. There must be a separate and distinct finding as to each specification. The court is closed to deliberate upon its findings, except where the accused has pleaded guilty to all specifications and it is patent that the specifications have been proved by plea. In arriving at the findings, the plea of the accused, the evidence adduced, and the arguments made are to be carefully considered. No specification should be found proved unless the court is convinced that the averments therein have been proved beyond a reasonable doubt. The determination must be made solely on the evidence in the case.

When one specification is preferred against the accused and he

Findings

1. *One specification—Guilty Plea*

"The specification proved by plea."

2. *Two Specifications—Guilty Pleas*

"The first specification proved by plea.
The second specification proved by plea."

3. *One Specification—Not Guilty Plea—Proved*

"The specification proved."

4. *Two Specifications—Not Guilty Pleas—Proved*

"The first specification proved.
The second specification proved."

5. *One Specification—Not Guilty Plea—Not Proved*

"The specification not proved, and the court does, therefore, acquit the said John Jones, seaman second class, U. S. Naval Reserve, of the offense specified."

6. *Two Specifications—Not Guilty Pleas—One Not Proved, One Proved*

"The first specification not proved, and the court does, therefore, acquit the said John Jones, seaman second class, U. S. Naval Reserve, of the offense specified.
The second specification proved."

7. *One Specification—Not Guilty Plea—Proved in Part*

"The specification proved in part; proved except the words '.....,' which words are not proved."

8. *One Specification—Not Guilty Plea—Proved in Part, Words Substituted*

"The specification proved in part; proved except the words '.....,' which words are not proved, and for the excepted words the court substitutes the words '.....,' which words are proved."

Figure 10–3. Specimen findings.

pleads guilty, the proper finding is: *The specification proved by plea.* When the accused pleads guilty to more than one specification, the findings thereon are: *The first specification proved by plea; the second specification proved by plea; etc.* These and other variations of findings are presented in Figure 10–3.

If the court is of the opinion that any portion of the allegations in a specification is not proved, it is authorized to find the specification proved in part only, excepting the remainder; or, in finding the entire specification proved (or any part), to substitute correct words or allegations in the place of such as are shown by the evidence to be incorrect. The exceptions or substitutions must leave the specification still stating the same or a lesser included offense. Familiar instances of the exercise of this authority occur when there is a mistake in name and rank or rating, or an erroneous averment of time or place, or an incorrect statement as to amount or value. But the authority to find guilty of a lesser included offense, or to make exceptions and substitutions in the findings, does not justify convicting the accused of an offense entirely separate and distinct in its nature from that specified. Care must be taken in all such findings not to except the words which express the gravamen of the offense in law. In making exceptions and substitutions, the court must see that the specification as found proved is grammatically complete.

When any specification is not proved, the finding should include a statement that the court acquits the accused of the offense specified. Should the accused be acquitted of all specifications, the deck-court officer, in addition to recording the findings on the record, draws up an additional copy of the findings and signs it. The court is then reopened and the deck-court officer in the presence of the accused reads aloud the findings of the court. Thereupon, the additional copy of the findings, having been first duly signed by the deck-court officer, together with a memorandum containing the substance of the specifications against the accused, is transmitted to the commanding officer of the accused, who immediately releases the accused from arrest and restores him to duty. Should the court find one or more specifications proved and others not proved, the accused is called before the court and informed of the specifications found not proved.

After the deck court has arrived at its findings, the deck-court officer must record them. Although findings were formerly required to be entered on the deck-court card in the handwriting of the deck-court officer, they now may be typewritten. They must be free from interlineations and erasures. This direction applies to the entire findings. This includes everything which properly forms a part of the findings, commencing with the words: *The (first) specification.* No abbrevia-

tions should be used in the findings other than the ones authorized to be used in a specification.

20. *Matter in aggravation.* In practice, testimony in aggravation is rarely offered in deck-court trials, principally because of the character of offenses triable thereby and the limitation of punishments prescribed. However, a plea of guilty does not necessarily exclude testimony for the prosecution. The court has discretionary power as to the punishment to be awarded. It is proper that it should have full knowledge of all the circumstances attending the offense. Therefore, when the deck-court officer, in the role of prosecutor, has knowledge that the offense as actually committed was of a graver nature than appears on the face of the specification, it is his duty to offer such testimony as tends to show the aggravating nature of the offense; but this should not relate to a separate and distinct offense. Matter of this type is introduced after the finding. However, should matter in aggravation be introduced, the accused has the right to cross-examine the witness and offer evidence in rebuttal.

21. *Matter in mitigation or extenuation.* After the deck court has arrived at its finding, following either a plea of guilty or not guilty, the accused may introduce (1) matter in mitigation of the punishment, and (2) matter in extenuation of the offense.

Matter in mitigation has for its purpose the lessening of the punishment to be assigned by the court or the furnishing of grounds for a recommendation to clemency. As thus offered it has a wide latitude and is not limited to the general good character of the accused nor to the nature of the specification. Such matter may include particular acts of good conduct, bravery, etc., and may exhibit the reputation or record of the accused in the service for efficiency, fidelity, subordination, temperance, courage, or any of the other traits that go to make a good enlisted man. *Matter in extenuation of the offense* explains the circumstances surrounding the commission of the offense, including the reasons that actuated the accused, but not extending to a legal justification. If matter purporting to be in extenuation or mitigation is introduced after a plea of guilty and is found to controvert any element of the offense, the court should reject the plea of the accused, enter a plea of not guilty, and proceed with the trial on that basis. The accused may also at this time introduce matter from his service record and testimony as to past character. After matter in mitigation or extenuation has been introduced, the deck-court officer, just as the summary court-martial recorder, has the right to cross-examine the witness and offer evidence in rebuttal. Matter in mitigation, extenua-

tion or aggravation is recorded on a separate sheet like other deck-court testimony.

22. *Previous convictions.* The deck-court officer, after the findings, except where such findings have resulted in acquittal, states whether or not he has any record of previous convictions by courts-martial. If not, a record to this effect is made by deleting the word *considered* on the reverse side of the deck-court card. If there is such record, it will have previously been entered on the obverse side of the deck-court card in the appropriate space provided therefor (see Article 10–12). The court is then opened and the record of previous convictions is submitted to the accused who is given an opportunity to object to its admissibility. If there is no valid objection, it is read by the deck-court officer in the presence of the accused and the deck-court officer records his consideration thereof by deleting the word *none* on the reverse side of the deck-court card, thereby incorporating into evidence the extract on the obverse side of the card. When one of several previous convictions is not considered because an objection to it has been sustained, that particular conviction is deleted from the entry on the obverse side of the card and the word *none* is deleted on the reverse side.

23. *The sentence.* The deck court is closed for the purpose of deliberating on the sentence. It is by law the duty of courts-martial, in all cases of conviction, to adjudge a sentence adequate to the nature of the offense committed. As heretofore noted, a deck court may adjudge the punishments prescribed by Article 30, *AGN*, except (1) bad-conduct discharge, (2) any type of confinement in excess of twenty days, or (3) loss of pay in excess of twenty days (see Article 10–2).

No combination of punishments is permitted by the deck court, except (1) loss of pay may be combined with extra police duties, (2) either loss of pay or extra police duties may be combined with any other punishment the court may adjudge, or (3) both loss of pay and extra police duties may be combined with any other punishment the court may adjudge. Thus, a deck-court sentence of reduction to the next inferior rating *and* confinement is unauthorized.

Sentences which include loss of pay shall state the rate and total amount of pay to be lost and the period of time over which such loss shall extend. Loss of pay shall be stated in dollars and not in number of days' pay. The loss of pay per month should not, in deck-court sentences, exceed one-half of the actual pay per month, not including extras for mess cook, gun pointers, etc. The Navy Department does not look with favor on deck-court sentences that involve both reduction in rating and loss of pay, because of the fact that men so sentenced, in

the absence of mitigating action, are penalized with both a fixed and continuous loss of pay. In general, this form of sentence should not be used. But if the sentence of the court includes both reduction in rating and loss of pay in any case, the loss of pay adjudged must be figured on the rate of pay for the reduced rating.

Except where the offender is serving in a receiving ship or at a shore station, sentences involving extra police duties are, as a general rule, undesirable, but this will not be construed as prohibiting the imposition of this sentence on board ships where circumstances render it desirable.

A sentence of *deprivation of liberty* is illegal, unless the words *on shore on foreign station* are added. The period shall not exceed three months. A possession of the United States is not a foreign station.

Deck courts should exercise care and discretion in resorting to the punishment of solitary confinement on bread and water, and should not adjudge it in any case for a longer period, consecutively, than five days. As a shorter interval on bread and water is less liable to work injury to health, the maximum interval allowed should be adjudged only in extreme cases. A court in adjudging a sentence on bread and water or on diminished rations shall specify the days a full ration is to be allowed; for example, every third or every fifth day.

When a sentence has been determined, the deck-court officer draws up the sentence, specifying the exact nature and degree of the punishment adjudged, and enters it on the deck-court card in the space provided. The sentence must be recorded in the deck-court officer's own handwriting and must be free from erasures and interlineations.

Although ordinarily in any court-martial sentence numbers are expressed both by words and figures, an exception is made in deck-court sentences involving loss of pay. Because of the limited space for the sentence on the deck-court card, amounts of pay need only be expressed by numerals. Specimen deck-court sentences are shown in Figure 10–4. Delay in trial of an accused should be considered by a deck-court officer in adjudging sentence. For the general provisions and policies relating to sentences, reference should be made to Sections 443–448, *Naval Courts and Boards, 1937*, and Chapter 13 of this text.

The accused is not informed of the sentence until it is formally published to him after having been reviewed by the convening authority. This is true even though the deck-court officer is the convening authority, and is not legally required to make a special notation of approval. (See Article 10–16.)

24. *Recommendation to clemency.* Clemency is to be effected only by the convening authority who is expressly clothed with the power to remit

Sentences

1. *Reduction to Next Inferior Rating*

"To reduction to the next inferior rating."

2. *Solitary Confinement on Bread and Water*

"To solitary confinement on bread and water for a period of ten (10) days, with full ration every third (3rd) day."

3. *Solitary Confinement*

"To solitary confinement for a period of fifteen (15) days."

4. *Confinement*

"To be confined for a period of twenty (20) days."

5. *Deprivation of Liberty on Shore on Foreign Station*

"To deprivation of liberty on shore on foreign station for a period of three (3) months."

6. *Loss of Pay*

"To lose $18.00 per month of his pay for a period of two (2) months, total loss of pay amounting to $36.00."

7. *Extra Police Duties*

"To perform extra police duties for a period of forty (40) days."

Legal Combinations

Effected by placing the word "and" between the combined punishments.

6 may be combined with 7.

Either 6 or 7 may be combined with 1, 2, 3, 4, or 5.

Both 6 and 7 may be combined with 1, 2, 3, 4, or 5.

Figure 10–4. Specimen deck-court sentences.

or mitigate any sentence or to pardon any punishment the court may adjudge. If mitigating circumstances have appeared during trial which could not be taken into consideration in determining the degree of guilt found, the deck-court officer may avail himself of such circumstances as grounds for recommending the accused to clemency. In so doing, he should set forth his reason for making such recommendation. The recommendation is recorded on a separate sheet and transmitted with the deck-court card to the convening authority. Such recommendation should never be based on a doubt as to the guilt of the accused.

Inasmuch as it is the duty of a deck court to adjudge a sentence adequate to the nature of the offense committed, a deck-court officer, who is also the convening authority, may properly adjudge a sentence and then effect clemency by remitting or mitigating a part of his own sentence.

25. *Court is adjourned.* The convening authority is notified when the court is adjourned. No entry is made on the deck-court card. The accused is not present after the court is cleared for a determination of sentence, and generally the deck-court officer simply adjourns court by stating: *Court is adjourned.*

10–14. The record of trial. The duties of the deck-court officer are not over after the trial is concluded. The record of trial must be accurately completed. The record commences at the top of the reverse side of the deck-court card with an entry setting forth the place and date of trial. The pleas, the witness list, the findings, the sentence, the consideration of previous convictions, and the signature of the deck-court officer follow. If rough notes have been kept during trial, the pertinent entries must be transcribed therefrom. Each entry on the deck-court card should be carefully checked for error. The common errors are listed and classified in Article 10–22. A specimen record of a *guilty* case wherein one specification is preferred is shown in Figure 10–5. This figure illustrates the most common type of record. A specimen record of a *not guilty* case wherein two specifications are preferred and testimony is recorded is shown in Figures 10–6 and 10–7.

10–15. Medical statement. Whenever a person is sentenced by court-martial to solitary confinement on bread and water or diminished rations, for a period exceeding ten days, there must appear on the record of proceedings the certificate of the senior medical officer under the immediate jurisdiction of the convening authority to the effect that such sentence will not be seriously injurious to the health of the prisoner. This certificate is printed on the reverse side of the deck-court card with the word *not* omitted and

U. S. S. DELAWARE

RECORD OF DECK COURT No. 21-45
(New series each calendar year)

Smith, John Amos, S2c, U. S. N.
(Name of accused, surname first) (Rate or rank)

Lieutenant Joseph R. Jones, U. S. N.

is hereby ordered as Deck Court to try the above-named man for the following offense(s):* **SPECIFICATION:**

In that John Amos Smith, seaman second class, U. S. Navy,
attached to the U.S.S. Delaware,

~~and~~ *while so serving* on board the U.S.S. Delaware, did, on or about July 17, 1945, on a public street in the city of Baltimore, Maryland, wilfully, violently, and without justifiable cause, engage in a fight with a civilian, name to the relator unknown, and did then and there, in the manner aforesaid, do violence against the peace and good order of the city aforesaid, the United States then being in a state of war.

James P. Allen, Y1c, U. S. N.,
will act as recorder. *Approved:* July 18, *1945*
George Shaw Capt., U. S. N. *Comdg.*

I consent to trial by Deck Court as above.
John Amos Smith S2c, U. S. N.

Date of birth April 1, 1922
Date of present enlistment May 15, 1944 *Ext.*
Pay: Present rating, $ 54 *N. I. R.* $ 50
Record of previous convictions: 9-18-44, aof 8 hrs. DC, sent. 1p $18. Appvd. by c.a. 9-20-44.

*See sec. 692(3), var. 1, NCB. 1937, if commanding officer is deck court officer. In such case strike out the words "is hereby ordered as Deck Court to try" and substitute for them these words, "Trial of."
Send direct to the office of the Judge Advocate General for additional copies of this form. For the sake of uniformity none should be printed on board ship.
Fill in this form on a typewriter equipped with *elite* type, if one is available.

N. J. A. 166 X 16—10497-3

Figure 10–5a. A deck-court record; guilty case.

Additional information necessary to the completeness of this record, and which has to be forwarded to the Department, should be typewritten on thin bond paper, uniform in size with this sheet, and attached by pasting on this area. This does not apply to testimony etc., which is usually retained on board. (Secs. 698, 704 (17), NCB 1937.)

U. S. S. DELAWARE, July 19, , 1945

The accused was arraigned and pleaded as follows:

Guilty

The following witnesses appeared for the prosecution:

None

The following witnesses appeared for the defense:

None

FINDING: (N. C. B. Sec. 699 (10))

The specification proved by plea.

SENTENCE: (A. G. N. 30 & 64 (b)) To be confined for a period of fifteen (15) days, and to lose $16.00 per month of his pay for a period of two (2) months, total loss of pay amounting to $32.00.

PREVIOUS CONVICTION(S) CONSIDERED ~~NONE~~

(Proper deletion shall be made in the above entry to show whether previous convictions have been considered. Sec. 700, NCB 1937.)

Joseph R Jones Lt., U. S. N. Deck Court.

Having examined accused and place of his confinement, I am of opinion that execution of sentence would ..... produce serious injury to his health.

....., *Medical Corps, U. S. N.*

U.S.S. Delaware, July 20, , 19 45

The sentence is approved and the accused informed this day.

George Shaw Capt., U. S. N. Comdg.

Loss of pay adjudged has been entered on the pay accounts of this man and will be checked in accordance with the terms of the sentence as approved.

Frank Kidd Lieut., S.C., U. S. N.

FORWARDED TO THE JUDGE ADVOCATE GENERAL

REVIEWED BY .....

U. S. GOVERNMENT PRINTING OFFICE X 16—10497-2

Figure 10–5b. A deck-court record; guilty case.

U. S. S. Delaware

RECORD OF DECK COURT No. 15-45
(New series each calendar year)

Smith, John Amos, S1c, U. S. N.
(Name of accused, surname first) (Rate or rank)

Lieutenant James T. Brown, U. S. N.

is hereby ordered as Deck Court to try the above-named man for the following offense(s):* **SPECIFICATION: 1:**

In that John Amos Smith, seaman first class, U.S. Navy, attached to the U.S.S. Delaware, while so ~~attached to~~ serving on board the U.S.S. Delaware having, on or about February 18, 1945, on board said ~~vessel while~~ ship, been lawfully ordered by one James Jackson, lieutenant, U.S. Navy, to report immediately to the officer of the deck of said ship, did then and there refuse to obey and did wilfully disobey the said lawful order, the United States then being in a state of war.

SPECIFICATION 2: In that John Amos Smith, seaman first class, U.S. Navy, attached to the U.S.S. Delaware, while so serving on board the U.S.S. Delaware, did, on or about February 18, 1945, on board said ship, gamble for money with cards, the United States then being in a state of war.

Walter S. Wilson, Y2c, U. S. N.R., *will act as recorder.* *Approved:* February 19, *1945*

Lee Dalton Capt., U. S. N. *Comdg.*

I consent to trial by Deck Court as above:

John Amos Smith S1c, U. S. N.

Date of birth August 30, 1923

Date of present enlistment Oct. 2, 1944 *Est.* None

Pay: Present rating, $ 66 *N. I. R.* $ 54

Record of previous convictions: 1-5-45, Drunkenness; DC, sent. 10 days conf., Appvd. by C.A. 1-9-45.

*See sec. 692(3), var. 1, NCB. 1937, if commanding officer is deck court officer. In such case strike out the words "is hereby ordered as Deck Court to try" and substitute for them these words, "Trial of."

Send direct to the office of the Judge Advocate General for additional copies of this form. For the sake of uniformity none should be printed on board ship.

Fill in this form on a typewriter equipped with *elite* type, if one is available.

N. J. A. 166 X 16—10497-3

Figure 10–6a. A deck-court record; not-guilty case.

Additional information necessary to the completeness of this record, and which has to be forwarded to the Department, should be typewritten on thin bond paper, uniform in size with this sheet, and attached by pasting on this area. This does not apply to testimony etc., which is usually retained on board. (Secs. 698, 704 (17), NCB 1937.)

U. S. S. Delaware February 20, 1945.

The accused was arraigned and pleaded as follows:

To the first specification, not guilty.

To the second specification, guilty.

The following witnesses appeared for the prosecution:

Lieut. James Jackson, U. S. Navy;

John R. Sams, PhM1c, U. S. Naval Reserve.

The following witnesses appeared for the defense:

William A. Bonner, S1c, U. S. Navy.

FINDING: (N. C. B. Sec. 699 (10))

The first specification proved.

The second specification proved by plea.

SENTENCE: (A. G. N. 30 & 64 (b)) To solitary confinement on bread and water for a period of fifteen (15) days with full ration every third (3rd) day.

PREVIOUS CONVICTION(S) CONSIDERED ~~XXXXXX~~

(Proper deletion shall be made in the above entry to show whether previous convictions have been considered. Sec. 700, NCB 1937.)

James T. Brown Lieut., U. S. N. *Deck Court.*

Having examined accused and place of his confinement, I am of opinion that execution of sentence would not *produce serious injury to his health.*

Carl Talon Lieut., *Medical Corps, U. S. N.*

U.S.S. Delaware February 21, 1945.

The sentence is approved and the accused informed this day.

Lee Dalton Capt., U. S. N. *Comdg.*

Loss of pay adjudged has been entered on the pay accounts of this man and will be checked in accordance with the terms of the sentence as approved.

_____, *U. S.* _____

FORWARDED TO THE JUDGE ADVOCATE GENERAL

REVIEWED BY _____

U. S. GOVERNMENT PRINTING OFFICE X 16—10497-2

Figure 10–6b. A deck-court record; not guilty case.

U. S. S. DELAWARE

Record of facts adduced by testimony of witnesses

Deck Court Trial No. 15–45

Smith, John Amos, S1c, USN

.....

For the prosecution:

James Jackson, lieutenant, USN

Recognized the accused as John Amos Smith, S1c, USN.

On February 18, 1945, at or about 2:30 p.m., on board U. S. S. Delaware, gave verbal order to accused to report to officer of the deck immediately.

Accused stated he would report later as he had liberty.

Repeated order and accused refused to obey and left ship.

John R. Sams, PhM1c, USNR

Recognized accused as John Amos Smith, S1c, USN.

Heard order given by Lieut. Jackson to accused on February 18, 1945, on board ship, to report to officer of the deck.

Heard accused state he would report later.

Heard Lieut. Jackson repeat order to report to officer of the deck immediately and thereupon saw accused turn away from Lieut. Jackson and leave the ship.

For the defense:

William A. Bonner, S1c, USNR

Recognized accused as John Amos Smith, S1c, USN.

Heard Lieut. Jackson order the accused, on February 18, 1945, on board ship, to report to officer of the deck immediately.

Heard accused state that he would report later and heard no reply from Lieut. Jackson. Impression was that Lieut. Jackson agreed.

Figure 10–7. A record of deck-court testimony.

a blank space left in its place. Thus, the senior medical officer on board completes the certificate by filling in the word *not* and signing his name. If he considers that the sentence will be seriously injurious to the health of the prisoner, he signs the certificate without inserting the word *not*. The deck-court officer should notify the brig officer to send the accused to the senior medical officer as soon as possible after the sentence has been determined so that the deck-court card may be transmitted to the convening authority for his action without unnecessary delay. When a sentence other than solitary confinement on bread and water or diminished rations for more than ten days is adjudged, the certificate is unnecessary and the spaces in the certificate on the deck-court card are left blank. Although the certificate is not dated, it must be signed prior to the date of the convening authority's action, otherwise the convening authority cannot act upon the sentence.

10–16. Convening authority's action in review. The deck-court card, with accompanying sheets containing the facts adduced by testimony, the statement of the accused, etc., is transmitted to the convening authority after the record has been completed as heretofore described. The convening authority, or his successor in office, has full power as reviewing authority to remit or mitigate, but not to commute a sentence, and to pardon any punishment the court may adjudge. No sentence of a deck court may be carried into effect until it has been so approved or mitigated. Although Section 702, footnote 15, *Naval Courts and Boards, 1937*, provides that when the officer empowered to order a deck court himself acts as a deck-court officer the signature of such officer upon the record of trial is sufficient without special notation of approval, it is considered better practice for such an officer to sign the approval, inasmuch as the statement of publication is connected therewith in the printed matter on the deck-court card, and without his signature thereto, or special notation of publication, the date on which the sentence is published will not be authenticated.

In the space provided on the deck-court card for the convening authority's action, the date is placed immediately above the printed matter which reads: *The sentence is approved and the accused informed this day.* In case of approval, the convening authority need only sign the card. In case of disapproval, the convening authority strikes out the word *approved* in the printed matter, and types in its place the word *disapproved*, initialling the change in red ink in the right-hand margin. If the convening authority wishes to take mitigating action, he inserts a comma in place of the period after the printed matter, and then records his action. Specimen forms for the convening authority's action are shown in Figure 10–8. Although his action may be typewritten, the convening authority must sign in his own handwriting the action taken by him. His rank and official position should

appear after his signature. The following paragraphs briefly discuss the convening authority's action in review. For a more complete presentation, reference should be made to Sections 471 to 483, inclusive, *Naval Courts and Boards, 1937*, and to Chapter 13 of this text.

1. *Reviewing authority defined.* When the proceedings of a deck court are regularly submitted to the convening authority for review, such officer becomes a reviewing authority. However, in order to avoid confusion, he is termed the convening authority even while exercising the functions of a reviewing authority.

2. *Reviewing power vested in office.* The reviewing power as well as the convening power of a deck court vests in the office, not in the person, of the authorities so acting. Consequently, when the officer who has ordered the court has been relieved and is absent, it is competent for his successor in office, whether temporary or permanent, to act as reviewing authority. The review cannot be delegated to another officer.

3. *Matters to be specially considered.* In reviewing a deck court: (a) objections to the jurisdiction of the court should be carefully considered, whether or not made at trial or on review; (b) objections to the specification should not be considered unless made at the trial, except where the specification fails to state an offense; (c) sufficiency of the evidence to sustain the findings of the court should always be considered by the reviewing authority, keeping in mind the duties of the court in weighing the evidence before it; (d) all objections made at the time of the trial and the rulings of the court on these objections should be carefully considered; (e) if there has been no miscarriage of justice, the findings of the court should not be set aside or a new trial granted because of technical errors or defects which do not affect the substantial rights of the accused.

4. *Action on acquittal.* No action should be taken by a convening authority which purports to approve or disapprove an acquittal or a finding of *not proved*. Approval in such cases is not required and disapproval cannot affect the finality of the proceedings, if legal, as a bar to a second trial for the same offense.

5. *Returning record.* The power of a convening authority in returning any record to the court is limited to a revision of its findings and sentence or the correction of clerical errors or omissions in the record of proceedings, and, in the event of the court's adherence to its former conclusions, to disapproval of such action. The convening authority, unless specifically authorized by the Secretary of the Navy, will not return a record of trial to any court for reconsideration of an acquittal, or the sentence originally imposed with a view to increasing its severity.

6. *Conditional remission.* Sentences of a deck court may, in the discretion of the convening authority, be conditionally remitted in lieu of being summarily executed and, as a general rule, this type of reviewing authority action produces a salutary effect, especially where the sentence contains a combination of two punishments and one is conditionally remitted. The period during which a sentence is held in abeyance is a probationary period, and the commanding officer may execute the sentence at any time during such period if he deems the probationer's conduct warrants such action. In such a case, the commanding officer of the accused should make a full report to the Navy Department (Judge Advocate General) of the reason therefor. By policy a probationary period should not exceed six months. If a man serves his probationary period, the remission of the sentence becomes unconditional without further action.

7. *Commutation.* The power to commute sentences, that is, to change the nature of the punishment, is not vested in any officer of the Navy. In this connection, however, the Judge Advocate General has ruled that action by a convening authority remitting that part of a sentence which requires confinement to be solitary, on bread and water, is legal even though the effect is to change the character of the sentence to confinement.

8. *Solitary confinement on bread and water.* It is the duty of the convening authority either to remit any part or the whole of any sentence, the execution of which would, in the opinion of the senior medical officer aboard, given in writing, produce serious injury to the health of the person sentenced, or to submit the case again, without delay, to the same or to another deck court, which shall have power, upon the testimony orally taken, to assign some other of the authorized punishments in the place thereof.

   If a deck court fails to specify the days a full ration is to be allowed in a sentence involving solitary confinement on bread and water, as for example, every third or every fifth day, the convening authority shall specify in his action the day a full ration is to be allowed. Increasing the frequency of full rations is proper action in mitigation.

9. *Loss of pay and reduction in rating.* When a convening authority approves a deck-court sentence involving both reduction in rating and loss of pay, he must, in taking action on the record, state that the policy of the Navy Department as set forth in Section 446, *Naval Courts and Boards, 1937*, has been considered and state his reasons for deviating therefrom. The Navy Department does not look with favor on such sentences because of the fact that men so sentenced, in

Convening Authority Action

Approval

The sentence is approved and the accused is informed this day.

Remission

1. ....., but the loss of pay is remitted.
2. ....., but the confinement is remitted.
3. ....., but the reduction to the next inferior rating is remitted.
4. ....., but the solitary confinement on bread and water, with full ration every third (3rd) day, is remitted.
5. ....., but that part of the sentence which requires the solitary confinement to be on bread and water, with full ration every third (3rd) day, is remitted.
6. ....., but that part of the sentence which requires the confinement to be solitary on bread and water, with full ration every third (3rd) day, is remitted.

Mitigation

1. ....., but the loss of pay is reduced to the loss of $16.00 per month of his pay for a period of two (2) months, total loss of pay amounting to $32.00.
2. ....., but the period of confinement is reduced to fifteen (15) days.
3. ....., but the period of solitary confinement on bread on water, with full ration every third (3rd) day, is reduced to twelve (12) days.
4. ....., but the period of extra police duties is reduced to fifteen (15) days.
5. ....., but the limits of confinement are extended to the limits of the ship (or station).
6. ....., but the frequency of full ration is increased to every third (3rd) day.

Conditional Remission

1. ....., but the reduction to the next inferior rating is remitted on condition that Jones maintain a record satisfactory to his commanding officer during a period of six (6) months, otherwise he is to be reduced to the next inferior rating.

Acquittal

The proceedings which resulted in an acquittal are approved.

Disapproval

The sentence is disapproved and the accused is informed this day.

Figure 10–8. Specimens of actions by the convening authority of a deck court.

the absence of mitigating action, are penalized with both a fixed and continuous loss of pay.

10. *Ordering new trial.* If the deck court was without jurisdiction or if none of the specifications alleges an offense, the reviewing authority should disapprove the proceedings, findings, and sentence and convene a new court for the trial of the case. The new trial should be had upon the same specifications, unless the disapproval is based on fatal defects therein, in which event, new specifications should be drawn correctly setting forth the offenses intended to be alleged at the previous trial, provided that such new specifications are not barred by the statute of limitations.

10–17. Revision. Upon the receipt of the record of a deck court, the convening authority must proceed at once to examine it in order that it may be returned for revision if such course be necessary. The only case in which a revision may be had by a deck court, other than the one which sat originally, is where the medical officer certifies that the execution of the original sentence of the court would be seriously injurious to the health of the accused. In such a case, the new court is restricted in its action to review of the record of the former trial and a redetermination of the sentence. No further testimony will be admitted. In no case may new evidence be admitted when a court is ordered to revise its proceedings.

During a revision an entirely separate record is to be kept, in accordance with Sections 458 to 468 inclusive, *Naval Courts and Boards, 1937*, and Chapter 13 of this text. The record in revision is made on thin bond paper of the same size as the deck-court card, and is pasted to it. Corrections in the record are not made in an informal manner by erasure or interlineation. The sentence in revision must be in the handwriting of the deck-court officer. If the trial originally resulted in conviction, but on revision in acquittal, the acquittal will be announced in open court in accordance with the usual procedure.

10–18. Publication. The result of a trial by deck court need be published to the accused only, but when publication cannot be made to the accused, by reason of his absence, as by desertion subsequent to trial, publication to the command is necessary in order to complete the record. Publication of a deck court, thus, consists of merely informing the accused of the findings and sentence of the court as approved. The publication entry is contained in the printed matter on the deck-court card relating to the convening authority's approval; therefore, the signature of the convening authority below this printed matter not only authenticates his action but also the date of publication.

10–19. Notation of checkage. Records of the proceedings of deck courts must show, over the signature of the supply officer having the accounts of the accused, that the loss of pay, if there be any adjudged and approved, has been checked. At the bottom of the deck-court card on the reverse side a certificate to this effect is printed, and where loss of pay has been adjudged the certificate must be signed prior to forwarding the deck-court card to the Judge Advocate General.

10–20. Transcript for the log and service record. Before a deck-court card is transmitted to the Judge Advocate General a brief transcript is taken therefrom (except in case of acquittal) and furnished to the officer of the deck and the executive officer for entry, respectively, in the ship's log and upon the service record of the man concerned. In the case of a marine the transcript shall be furnished to the marine's commanding officer. This transcript comprises (1) the offense(s) and dates(s) thereof, (2) the fact and nature of the trial with the date thereof, (3) the finding(s), (4) the sentence as approved, and (5) approval of convening authority and date thereof. If the said punishment be disapproved or mitigated subsequently by the department, an entry to that effect is made as soon as notice thereof is received. The transcript and entries are authenticated by the signature of the commanding officer or his duly authorized representative.

10–21. Disposition of the record. The record of a deck court, when completed, is at once forwarded by the convening authority to the Judge Advocate General by ordinary mail service, unless the forwarding officer considers that means providing a higher security should be used. Should the accused desire to make an appeal to the Secretary of the Navy within the period of thirty days, as prescribed by law, such statement as he may wish to make is submitted in writing and appended to the record of testimony, separately therefrom, and is forwarded therewith to the Navy Department (Office of the Judge Advocate General). As the Secretary of the Navy reviews such appeal, no action by any intermediate authority is required. Except in cases of appeal separate sheets containing the testimony of witnesses called in a deck court should not be forwarded to the department as a part of such records, as the testimony thus recorded is intended only for the guidance of the convening authority in his approval or disapproval of the finding and sentence.

10–22. Common errors. The following is a list of the more common errors found by the Office of the Judge Advocate General in reviewing deck courts. They are primarily the result of unwarranted deviation from approved procedure.

The consequences of numerous errors such as those listed will readily

be seen. It is frequently necessary to return records for correction. The additional handling involved increases the risk of misplacing or losing records. When such records are not promptly returned, follow-up letters must be addressed to those responsible. If such a record has been lost, it is necessary to obtain a new record, preparation of which is often attended with difficulties. Moreover, an individual whose action or presence is a legal requisite to corrective measures is sometimes no longer available. In such a case, correction is long delayed, if not impossible, and a miscarriage of justice is the probable result.

Numbers in parentheses refer to sections in *Naval Courts and Boards, 1937*, except where otherwise indicated.

1. *Specifications.*
   a. Rating of accused omitted. (693 (4))
   b. Jurisdiction not shown when accused is not alleged to be serving under command of convening authority at time specification was preferred. (*Court-Martial Orders* 8, 1930, p. 16)
   c. Time or place of offense omitted. (35)
   d. Date of approval omitted. (695). (*Naval Digest*, 1916, 68, par. 91)
   e. Approval unsigned. (695)

2. *Before trial.*
   a. Consent to trial unsigned. (696 (7))
   b. Rate of pay of accused omitted. (697)
   c. Previous convictions:
      (1) Punishments by commanding officer erroneously listed under this head. (*Naval Digest*, 1916, 91, par. 31)
      (2) Section 438, Naval Courts and Boards (regarding extension of enlistment) not observed.
      (3) Not recorded properly. (440)

3. *Record of trial.*
   a. Date or place of trial omitted. (698)
   b. Plea omitted. (698 (9))
   c. Pleas not recorded separately. (663 and 698 (9))
   d. Witness list left blank instead of indicating *none* when appropriate.
   e. Deck-court officer called as witness. (698 (9) *Duties*)
   f. Statement inconsistent but plea not rejected. (*Court-Martial Orders* 9, 1932, p. 10)
   g. Finding phrased improperly. (699 (11))
   h. Finding on each specification not recorded separately. (676 (66) and 699 (10)).
   i. Previous convictions:
      (1) Stated to have been considered when none are recorded.

(2) No statement whether or not considered when such is shown on face of deck-court card. (700 (13))

4. *Sentence.*
   a. Phraseology or abbreviations improperly used. (700 (12) and 678 (70))
   b. Confinement on bread and water or on diminished rations not adjudged to be *solitary*. (700 (12) and 678 (70))
   c. Confinement when solitary not expressed in days. (*AGN*, Art. 30) (678 (70))
   d. Period over which loss of pay is to extend not stated. (446)
   e. Exceeding legal limits. (*AGN*, Arts. 30 and 64). (678 (70))
   f. Loss of pay at excessive rate. (446)
   g. Unauthorized combinations of forms of punishment. (*Court-Martial Orders* 5, 1932, p. 11; 8, 1932, p. 10)
   h. Not in handwriting of deck-court officer. (700 (12))
   i. Altered by interlineations or erasures. (448)
   j. Not signed by deck-court officer. (700)

5. *Action of convening authority.*
   a. Taken without having certificate completed by medical officer when required. (701 (14))
   b. Date omitted. (702)
   c. Revision ordered in violation of 474, *Naval Courts and Boards, 1937.*
   d. Sentence increased in part. (*Court-Martial Orders* 9, 1924, p. 4, modified by *Court-Martial Orders* 5, 1931, p. 17)
   e. Unsigned. (702 (15))
   f. Sought to be modified when once taken. (*Court-Martial Orders* 5, 1927, p. 11; *Court-Martial Orders* 7, 1933, p. 11)

6. *Revision.*
   a. Corrections made by changing original record. (463, 464, and 702 (15)) (See also *Court-Martial Orders* 74, 1920, pp. 17 and 18.)
   b. Evidence received. (462)
   c. Finding or sentence not in handwriting of deck-court officer. (467)
   d. Action thereon not taken by convening authority. (463)

7. *Disposition subsequent to final approval.*
   a. Checkage not signed. (703 (16) and 686 (92))
   b. Testimony forwarded to office of Judge Advocate General, when not required. (704 (17))
   c. Sentence revised but accused not informed of approval thereof.
   d. Extra sheets not properly attached. (463 and 698)
   e. Record not forwarded promptly.

10–23. Similarity between deck-court and summary court-martial records. While in general the procedure of a deck court is considerably less formal than that of the summary court-martial, the same essential steps are observed and recorded. A study of the records of a typical deck and a typical summary court will reveal the similarity of the records for the two courts and facilitate an understanding of the relative formality required in recording their procedure.

11. THE SUMMARY COURT-MARTIAL

A. INTRODUCTION

11A1. Nature and function of the summary court-martial. The summary court-martial is a formal naval tribunal concerning which every naval officer should have a professional working knowledge. The court is composed of three officers, not below the rank of ensign as members, and an officer designated as a *recorder* who performs duties in trial similar to those of a prosecuting attorney. The presiding member of the court is called the *senior member*, and as such speaks and acts for the court. The entire proceeding, including the testimony of witnesses, is recorded. But for a few exceptions, the provisions in Chapter 4, *Naval Courts and Boards, 1937*, relating to instruction for courts-martial apply to the summary court-martial as well as the general court-martial. Article 26, *AGN*, prescribes the officers who are empowered to convene the court; Article 30, *AGN*, sets forth the punishments it is empowered to impose; and Article 32, *AGN*, provides for its review. The punishments which are tabulated below include a bad-conduct discharge and in general are more severe than those of a deck court. Thus, offenses which are deemed deserving of greater punishment than a deck court may award, but not sufficiently serious to require trial by general court-martial, are tried by summary court-martial. No sentence of a summary court-martial may be carried into effect until it has been approved by the convening authority and by the immediate superior in command; unless the convening authority is the senior officer present and he approves the sentence in that capacity.

11A2. Summary court-martial punishments.

1. Discharge from the service with a bad-conduct discharge; but the sentence shall not be carried into effect in a foreign country.
2. Solitary confinement, not exceeding thirty days, on bread on water, or on diminished rations.
3. Solitary confinement not exceeding thirty days.
4. Confinement not exceeding two months.
5. Reduction to next inferior rating.
6. Deprivation of liberty on shore on foreign station.
7. Loss of pay not to exceed three months.
8. Extra police duties not to exceed three months.

Legal combinations:

7 may be combined with 8.
Either 7 or 8 may be combined with 1, 2, 3, 4, 5, or 6.
Both 7 and 8 may be combined with 1, 2, 3, 4, 5, or 6.
In addition, a summary court-martial may disrate any rated person for incompetency.

11A3. The precept and the specifications. The summary court-martial comes into being through the issuance of an order convening the court. The order is called a *precept*, and must be signed by the convening authority. The convening authority is the commanding officer of the command to which the accused is attached. The precept specifies the time and place of meeting, is addressed to the senior member of the court, and sets forth the officers composing the court as well as the recorder.

The first step in contemplation of trial after issuance of the precept is the preparation of the specifications on which the accused is to be tried. A specification sets forth in writing the facts constituting the offense with which a man is charged. In general, it corresponds to an indictment at common law, although it is not as technical. It is not sufficient to state only the nature of the offense. Facts must be set forth which are sufficient if substantiated, to conclusively show that the offense with which the accused has been charged has been committed. The drawing of specifications is extensively covered in Chapter 9 of this text.

11A4. The court and the recorder. The members of the court act both as judge and jury, passing upon and determining all questions of law and of fact. Their functions are similar to those of a civilian judge sitting in a court of equity, or in a case where both sides have waived a trial by jury. The vote of each member upon a question arising during the progress of a trial has equal weight. The members of the court, as well as the recorder, are responsible for the correctness of the record of proceedings.

The recorder at the trial acts as prosecuting attorney and as adviser to the court on questions of law and procedure. In the event the accused has no counsel, it is incumbent upon the recorder to see that the interests of the accused are at all times protected. For these reasons, the recorder, who is usually a junior officer, should make a conscientious study of all material available in order to discharge his duties in a creditable manner.

11A5. The preliminary interview with the accused. When the precept for the court and the specifications for the trial of a particular man have been handed to the recorder, he should promptly examine them for possible errors. He should next send for the accused in order to deliver to him a copy of the specifications on which he will be tried. The recorder will read

the specifications to the accused and hand him a copy with the date and hour of delivery written on it. The accused should sign a receipt to the recorder for the specifications. The recorder will then explain to the accused that he will have an opportunity to plead guilty or not guilty before the court, and that he may have counsel to assist him in preparing and presenting his defense. If, in discussing the case with the accused, it develops that he might have any good defense whatever, or the accused believes he has, discussion of the merits of the case should be terminated at once and the accused advised to secure counsel. Any advice to plead guilty should be scrupulously avoided. Whenever the accused has secured counsel, all negotiations by the recorder must be conducted through counsel. If the accused does not have counsel, the recorder should carefully explain to the accused that he may, besides introducing witnesses in his behalf, either (1) take the stand and testify under oath, or (2) make a statement not under oath.

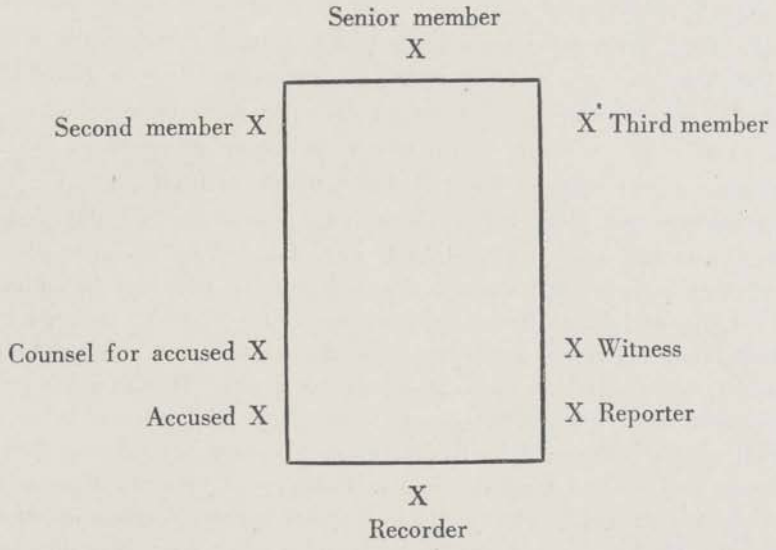
11A6. Trial procedure. The purpose of the trial procedure is to provide an exact method whereby the court may determine whether a person has committed an alleged offense and, if it is found that he has, adjudge a proper sentence. The trial procedure may be broken down into ten distinct stages, as follows:

1. Organization of the court.
2. Consideration of the specifications.
3. Arraignment and pleas.
4. Presentation of evidence.
5. Statement of the accused.
6. Argument.
7. Findings.
8. Matter in aggravation, mitigation, and extenuation.
9. Previous convictions.
10. Sentence.

The entire procedure of the summary court-martial is covered in detail in Chapter 12, Section B, and a step-by-step outline of procedure is contained in Chapter 12, Section A. The following paragraphs are a concise summary which establishes a basic pattern for an understanding of this court.

Organization of the court. At the commencement of the trial, there will be present the senior member at the head of the table, with the other two members sitting at his right and left, respectively, according to rank. The only other person present will be the recorder. The court is opened by the senior member announcing: *The court meets.* The accused, the orderly, and the reporter are then called into the room, and after introducing the reporter and orderly, the accused is asked if he desires counsel. If he

replies in the negative, the recorder must advise the court to the effect that the accused has been informed of his right to have counsel and the benefits which may accrue from the exercise of his right. If the accused already has counsel, the officer acting as such is formally introduced to the court and takes seat as such. A suitable arrangement of table and chairs for the conduct of trial is shown below.



The accused, after being informed of the membership of the court, is asked if he objects to any members serving thereon. An objection will be sustained if it is shown that any member of the court has personally investigated the offense and expressed an opinion as to the guilt of the accused. In addition, other objections will be considered which tend to show that a member of the court would be biased while acting in his judicial capacity. In the event of objection, the court is cleared and the challenged member withdraws from the courtroom, leaving the two remaining members of the court to decide on the challenge. If the objection is sustained, the court adjourns until the convening authority designates another member to serve. If no objection is made, or if the objection is not sustained, the trial proceeds, and each member, the recorder, and the reporter are duly sworn. While the members of the court and the recorder are being sworn, all persons in the courtroom are required to stand.

The court having met, the accused being present and his counsel, if any, having been introduced, the accused having been informed of the membership of the court, the right of challenge accorded, and the court and recorder sworn, the organization of the court is complete for the trial of the case.

Consideration of the specifications. Immediately after the court is sworn, the accused is asked whether he has received a copy of the specifications preferred against him and upon what date. After the fact that the accused has received a copy of the specifications has been admitted or shown, the accused is asked if he has any objection to make to them. If the accused does not object to any feature of the specifications, if the recorder reports no defect in them, and if the members of the court find no defect, the court pronounces them to be in due form and technically correct. After this stage of the proceedings, the accused will not be heard to object to the charges and specifications except upon an error of substance, that is, upon a defect which would vitiate the entire proceedings. This may be noted at any stage of the trial that it manifests itself.

Arraignment and pleas. After the court has been organized, the specifications considered, and special pleas, if any, disposed of, the accused is asked whether he is ready for trial; if so, all persons who may be called upon to testify are cleared from the courtroom. The recorder then reads the specifications separately and in order to the accused, and arraigns him by asking how he pleads to each, *guilty* or *not guilty*. The accused's response constitutes his plea to the general issue. The order pursued in case of several specifications will be to arraign on the first, second, etc. Both the recorder and accused stand during the reading of the specifications and the arraignment. Should the accused plead *guilty* to any specification, and should such plea be accepted, the senior member must warn him that he thereby precludes himself from the benefits of a regular defense and must ask him if he persists in such plea.

Presentation of evidence. If the accused pleads *not guilty* to any specification, the prosecution must prove by introduction of evidence all the allegations contained in the specification beyond a reasonable doubt in order for the court to find the specifications proved. If the accused pleads *guilty*, his plea constitutes a judicial admission of the allegations contained in the specification and proof thereof by evidence is unnecessary. The proper order and sequence for the introduction of evidence are as follows: First, by the prosecution; second, by the defense; third, rebuttal by the prosecution; fourth, surrebuttal by the defense. After the examinations of all the prosecution's witnesses, the recorder informs the court that the prosecution rests. The accused then calls his witnesses, and after their examinations have been completed, he will inform the court that the defense rests. Witnesses are subject to cross-examination and, of course, subject to questioning by the court. Rebutting evidence, that is, evidence offered in rebuttal and surrebuttal, is evidence in reply to that produced by the other side. All evidence, whatever its nature, is recorded in the order that it is received by the court.

Statement of the accused. At this stage of the proceedings, the accused may, if he so desires, make an unsworn statement, orally or in writing, which may be considered by the court in recommending the accused to the clemency of the reviewing authority. Such statement of the accused is a personal declaration and cannot legally be acted upon as evidence by the court, nor can it be a vehicle of evidence, or argument thereon, nor properly embrace documents or other writings or even averments of material facts, which, if duly introduced, would be evidence; and if such things be improperly included in a statement, they are entitled to no evidential weight. It sometimes happens that an accused will plead guilty and then submit a statement containing matter which had it been established by evidence following a plea of not guilty, would have supported or tended to support that plea. Such statement is inconsistent with a plea of guilty. In such cases the plea of the accused should be rejected, a plea of not guilty entered, and the trial should proceed on that basis.

Argument. The prosecution and defense are accorded an opportunity to present an argument to the court. Although it is not mandatory that either make an argument, it is advisable to do so in order to clarify the issues in the case for the benefit of the court and the reviewing authorities. The argument may be oral if there is a competent reporter, or it may be submitted in written form. The recorder has the right to make the opening and closing arguments, and the defense makes the intermediate argument.

Findings. The court is closed to deliberate upon its findings, except where the accused has pleaded guilty to all specifications and it is patent that the specifications have been proved by plea. In arriving at the findings, the plea of the accused, evidence if adduced, and arguments, if made, are to be carefully considered. When an accused pleads guilty to a specification, the proper finding is *The specification proved by plea.* In case the finding is *The specification not proved,* an explicit statement should immediately follow that the court acquits the accused of the offense specified. Should the accused be acquitted on all specifications, the court is reopened, and the recorder, in the presence of the accused, reads aloud the findings of the court. Should the court find one or more specifications proved and others not proved, the accused must be called before the court and informed of the specifications not proved. After the court has arrived at its findings, the recorder is recalled and directed to record them. The findings are to be typewritten or in the handwriting of the recorder.

Matter in aggravation, mitigation, and extenuation. After the findings, if the recorder has knowledge that the offense as actually committed was of graver nature than appears on the face of the specification, it is his duty to offer such testimony as tends to show the aggravated nature of the offense, but in doing this he should be careful not to introduce testimony relating to a separate and distinct offense. The accused, after the findings,

may introduce matter in mitigation of the punishment or extenuation of the offense, or matter from his service record and testimony as to past character. Both sides may cross-examine and offer evidence in rebuttal to this type of testimony. If matter purporting to be in extenuation or mitigation is introduced after a plea of guilty and is found to controvert any element, the plea of the accused should be rejected, a plea of not guilty entered, and the trial should proceed on that basis.

Previous convictions. The recorder, after recording the findings, except where such findings have resulted in an acquittal, states whether or not he has any record of previous convictions by courts-martial. If not, an entry to this effect is made in the record, but the court need not be reopened. If there be such record, the court is opened and the record is submitted to the accused for opportunity to object to its admission. If there be no valid objection, it is read by the recorder in the presence of all parties to the trial.

Sentence. The court is closed for the purpose of determining the sentence. It is made by law the duty of courts-martial in all cases of conviction to adjudge a punishment adequate to the nature of the offense committed. In cases where there has been evidence in mitigation or extenuation, a court-martial may recommend the person convicted to clemency. This clemency, however, may be exercised only by the convening and reviewing authorities who are expressly empowered to mitigate or remit punishment. When a sentence has been determined upon, the recorder is called before the court and under its direction he draws up the sentence specifying the exact nature and the degree of the punishment adjudged, and, after approval by the court, enters this on the record. The sentence must be recorded in the handwriting of the recorder. After the sentence has been recorded, the proceedings in each separate case tried by the court must be signed by all the members of the court and also the recorder. These signatures are for authentication and do not necessarily import unanimous concurrence in rulings, findings, decisions, and other action taken. If the accused is recommended to clemency, the recommendation is recorded immediately after the signature of the members of the court and the recorder to the sentence, and is signed by the members concurring in it. The court is adjourned by the senior member announcing *The court is adjourned.*

11A7. Procedure after trial. After trial, the record is prepared by the recorder, who has taken an oath to keep a true record of the evidence and proceedings of the court. Although a yeoman generally types the record under the recorder's supervision, the recorder is responsible for its accuracy. The members of the court are likewise responsible. When a sentence of solitary confinement on bread and water or diminished rations for more than ten days has been adjudged, it is necessary that a medical certificate

signed by the senior medical officer aboard, reciting that the health of the accused will not be seriously injured by execution of the sentence, be attached to the record. The senior member transmits the finished record to the convening authority for his action in review.

Review by convening authority and immediate superior in command. Before the sentence may be executed, the approval of the convening authority and the immediate superior in command is required. However, should the convening authority of the court be the senior officer present, the sentence may be carried into execution upon his approval alone.

Under Article 33, *AGN*, the convening authority may approve or disapprove the proceedings and sentence, or remit or mitigate the sentence or any part thereof, but he cannot commute the sentence. To *remit* means to give back. For example, in sentences involving loss of pay and confinement, the loss of pay is frequently remitted. Mitigate means to make less severe. For example, a sentence of thirty days' confinement may be mitigated to twenty days. To commute a sentence means to change the nature of the punishment; for example, to change a sentence of confinement to reduction in rating. The Secretary of the Navy may commute a sentence, but no other reviewing authority may do so. The immediate superior in command has the same power as that vested in the convening authority by Article 33, *AGN*.

Publication and checkage. After the necessary review has been completed and the action in review placed in the record, the convening authority causes the sentence to be published. Publication is to the command, and is made although the accused has deserted subsequent to trial, or is not present through some other cause, and whether the trial has resulted in acquittal or conviction. If a sentence of pay loss has been adjudged and approved, an order is sent to the supply officer for checkage of the accused's accounts, and a statement to the effect that the accused's accounts have been checked is appended to the record. A brief transcript is then taken from the record and furnished to the officer of the deck and the executive officer, respectively, for the ship's log and the service record of the man concerned.

Transmittal of the record. After the transcript of the record is taken, the record of proceedings is forwarded to the office of the Judge Advocate General by the convening authority without a letter of transmittal. In the office of the Judge Advocate General, the record is again reviewed, this time for the Secretary of the Navy who is the final reviewing authority. The authority of the Secretary of the Navy in this regard is set forth in Article 54(b), *AGN*, which provides that he may set aside the proceedings or remit or mitigate, in whole or in part, the sentence imposed by any naval court-martial convened by any officer of the Navy or Marine Corps.

B. THE PRECEPT, COMPOSITION, AND SESSIONS OF THE COURT

11B1. The precept. The precept is the order convening the court. It is addressed to the senior member of the court and is signed by the convening authority. In his signature to the precept, the convening authority should set forth the position which he occupies empowering him to convene the court. A summary court-martial cannot try cases referred to it by other than its own convening authority. The convening authority will deliver the precept to the senior member, and, orally or in writing, notify the other members and the recorder of their appointment. Supplementary to the precept, individual orders may be issued to the officers named therein directing them to perform the duties set forth in the precept. Such are not orders authorizing an officer to sit upon the court, but for him to report to the senior member thereof for that purpose; the precept or its modifications signed by the proper authority convening the court is the document authorizing an officer to take part in the proceedings thereof. It is incumbent upon an officer having official knowledge of his having been named in a precept convening a summary court-martial to report to the senior member of the said court for that duty even though he may not have received specific orders so directing. If the convening authority desires to authorize the court to adjourn over holidays, the precept should specifically state that such authority has been granted.

Date. It is obvious that the precept must have been drawn before the order for trial and the reference of the specifications to the recorder, as otherwise the latter is issued to an officer nonexistent. Consequently, care should be taken that the precept is not dated later than the order and reference which are contained in the document setting forth the specifications. However, where the precept is dated subsequent to the specifications, the irregularity will not invalidate the proceedings.

Recitation of authority. Where the convening authority derives his authority from the Secretary of the Navy in accordance with Article 26, *AGN*, the precept begins: *Pursuant to the authority vested in me by the Secretary of the Navy (Navy Department's file.....of.....19), a summary court-martial is hereby ordered to convene within the command . . . .* For example, the authority of officers in charge of construction battalions and units to convene summary courts-martial is contained in the Navy Department's file SO3205C of 8 April 1942. This reference is always cited in a precept convening a summary court-martial issued by an officer in charge of a naval construction battalion or unit. Where authority is otherwise given by Article 26, *AGN*, the precept begins: *A summary court-martial is hereby ordered to convene . . . .* Figure 11–1 illustrates the latter type of precept and Figure 11–2 the former.

Authorization to take up cases pending before another court. Where the court is to be authorized and directed to take up cases pending before another court, that is, a court convened by a different precept, the following should be inserted as paragraph three. *3. This court is hereby authorized and directed to take up such cases, if any, as may be now pending before the summary court-martial of which Commander.....,*
U.S. Naval Reserve, is a senior member, appointed by my precept of ....., *19.....,* *except such cases the trial of which may have been commenced.* This paragraph is utilized in Figure 11–2.

Changes in composition of the court. Changes in the composition of the court can legally be made only by the convening authority, and no officer is empowered to sit as a member, or recorder, except in obedience to an order signed by such authority and addressed to the court. It is undesirable to change the membership of a court during the progress of a trial. Although changes may be made by modification of the original precept (as shown in Figure 11–3), where changes are necessitated in the composition of a summary court-martial, they should ordinarily be made by issuing a new precept. Changes in the composition of, or instructions to, courts-martial may be made by signal, but the signal shall be followed by a written confirmation. Similarly, such changes or instructions may be made by other forms of dispatch. When so made, if touching on the court's jurisdiction, the dispatch shall be signed with the name of the convening authority and his proper title. Such dispatches shall be followed by written confirmation signed by the convening authority.

Disposition at trial. At the first session of the first trial by a newly convened court, the precept, together with any orders from the convening authority directing a change in the composition of the court set forth therein, is read aloud by the recorder in court in the presence of the accused, the recorder and the accused standing during the reading. Thereafter at subsequent trials, copies of the precept and of those orders from the convening authority previously read are submitted to the accused for his information, and inspection. Orders from the convening authority directing a change in the membership of the court received after the reading of the precept, and modifying orders are read in the manner prescribed, and at the sessions of succeeding trials copies thereof are submitted to the accused along with copies of the precept and similar orders which have been read.

Disposition in the record. The original precept is prefixed to the record of the first case tried thereunder and, if more than one case is tried thereunder, the first case is referred to in the record of each case subsequent to the first and a copy prefixed. When a copy is prefixed, it must be certified as a true copy by the recorder in the manner illustrated in Figure 11–2.

U. S. S. DELAWARE
Hampton Roads, Virginia,
March 1, 1945.

From: Commanding Officer.

To: Lieutenant Commander William C. Clark, U. S. Navy.

Subject: Convening summary court-martial.

1. A summary court-martial is hereby ordered to convene on board this vessel on Friday, March 2, 1945, or as soon thereafter as practicable, for the trial of such persons as may be legally brought before it.

2. The court will be constituted as follows:

Lieutenant Commander William C. Clark, U. S. Navy, senior member; Lieutenant Joseph R. Heath, Medical Corps, U. S. Navy; and Liuetenant (junior grade) Harold M. Vance, U. S. Naval Reserve, members; and Ensign Richard B. Hale, U. S. Navy, recorder.

Samuel A. Potts

SAMUEL A. POTTS,
Captain, U. S. Navy,
Commanding U. S. S. Delaware.

A

Figure 11–1. An original summary court-martial precept (issued by CO of vessel).

RESTRICTED

SIXTY-NINTH U. S. NAVAL CONSTRUCTION BATTALION,
ADVANCE BASE RECEIVING BARRACKS,
U. S. Naval Base, Port Hueneme, California,
March 1, 1945.

From: Officer in Charge.

To: Lieutenant John P. Jackson, Civil Engineer Corps, U. S. Naval Reserve.

Subject: Convening summary court-martial.

1. Pursuant to the authority vested in me by the Secretary of the Navy (Navy Department's file S03205 C of April 8, 1942), a summary court-martial is hereby ordered to convene within this command on Friday, March 1, 1945, or as soon thereafter as practicable, for the trial of such persons as may be legally brought before it.

2. The court will be constituted as follows:

Lieutenant John P. Jackson, Civil Engineer Corps, U. S. Naval Reserve, senior member; Lieutenant Howard J. Allen, Supply Corps, U. S. Naval Reserve; and Lieutenant (junior grade) Robert K. Rowan, U. S. Navy, members; and Ensign Willard N. Watts, U. S. Naval Reserve, recorder.

3. This court is hereby authorized and directed to take up such cases, if any, as may be now pending before the summary court-martial of which Lieutenant Howard S. Brooks, U. S. Navy, is senior member, appointed by my precept of January 5, 1945, except such cases the trial of which may have been commenced.

(S) Oscar B. Bates
OSCAR B. BATES,
Lieutenant Commander, Civil Engineer Corps, U. S. Naval Reserve,
Officer in Charge, Sixty-ninth U. S. Naval Construction Battalion.

A true copy. Attest:

Willard N. Watts

WILLARD N. WATTS,
Ensign, U. S. Naval Reserve,
Recorder.

A

Figure 11–2. A copy of a summary court-martial precept (issued by OinC of construction battalion).

U. S. NAVAL SECTION BASE,
Bar Harbor, Maine,
July 10, 1945.

From: Officer in Charge.

To: Lieutenant John P. Jackson, U. S. Naval Reserve, Senior Member, Summary Court-Martial, U. S. Naval Section Base, Bar Harbor, Maine.

Subject: Change in membership of court.

1. Lieutenant Avery R. Summitt, U. S. Naval Reserve, is hereby appointed a member of the summary court-martial of which you are senior member, convened by my precept of July 1, 1945, vice Lieutenant Howard J. Allen, Supply Corps, U. S. Naval Reserve, hereby relieved.

(S) Oscar B. Bates
OSCAR B. BATES,
Captain, U. S. Navy,
Commanding, U. S. Naval Section Base,
Bar Harbor, Maine.

A true copy. Attest:

Willard N. Watts

WILLARD N. WATTS,
Ensign, U. S. Naval Reserve,
Recorder.

B

Figure 11–3. A modification of a precept.

11B2. Convening authority. Article 26, *AGN*, provides that summary courts-martial may be ordered upon petty officers and enlisted men in the naval service under his command by the commanding officer of any vessel, the commandant of any navy yard or naval station, the commanding officer of any brigade, regiment, or separate or detached battalion, or other separate or detached command, or marine barracks, and, when empowered by the Secretary of the Navy, by the commanding officer, or officer in charge of any command not specifically mentioned in the foregoing, for the trial of offenses which such commanding officer or commandant may deem deserving of greater punishment than he is authorized to inflict, but not sufficient to require trial by a general court-martial.

"Commanding officer of any vessel" construed. The words *commanding officer of any vessel*, as used in Article 26, *AGN*, have been construed to include a warrant officer when he is actually commanding a naval vessel, and this notwithstanding the fact that a warrant officer (noncommissioned) is not competent to serve as a member of a court-martial.

Senior officer present. The senior officer present, or the commander of a division, etc., as such, cannot order a summary court-martial. The precept must show the jurisdiction of the convening authority; it must show that the convening authority is the immediate commanding officer of the accused.

Temporary attachment. An accused on detached duty may be tried by a summary court-martial convened by the commanding officer of the command to which he is attached temporarily, even though his records have not been formally transferred. In this connection see Article 4–5 of this text.

11B3. Composition of the court. Article 27, *AGN*, provides that a summary court-martial shall consist of three officers not below the rank of ensign, as members, and of a recorder. The article also provides that the commander of a ship may order any officer under his command to act as such recorder. The provisions of this article thus admit of a commissioned warrant officer being ordered as a member of a summary court-martial and of a warrant officer being ordered as a recorder. The senior officer ordered as a member of a summary court-martial is designated as the *senior member*. It is advisable that in all cases at least the senior member of a summary court-martial have the qualifications of a member of a general court-martial, that is, an officer of the rank of lieutenant in the Navy or captain in the Marine Corps, or above. However, where the exigencies of the service make it impossible to appoint at least one officer as a member of a summary court-martial with the qualifications noted, the convening authority may deviate therefrom. (See Article 4–5.)

Personnel of the court. No officer should be named as a member to whom either the recorder or the accused can reasonably object when called upon to exercise the privilege of challenge. An officer who is ordered to duty as a member of a court-martial and who knows, or has due reason to believe, that he will be called as a material witness in a case to be tried before the court of which he is made a member, should so advise the convening authority and upon receipt of such information such officer should be relieved from duty on said court. No officer is competent to serve as a member of a summary court-martial the proceedings and sentence of which must later be reviewed by him as convening authority or immediate superior in command.

Deficiency of members. When a trial by summary court-martial is decided upon, and a sufficient number of officers of the proper rank to compose the court are not under the command of the convening authority, the latter shall request the senior officer present to detail the additional officers necessary. The senior officer present shall, if practicable, comply with such request, in which case he shall, orally or in writing, notify the officers detailed.

Trial of a marine. When a marine is to be tried by a summary court-martial, one or more marine officers shall, if practicable, be detailed as members of the court.

Officers of the Naval Reserve, Coast Guard, etc., as members. When actively serving under the Navy Department in time of war or during the existence of an emergency pursuant to law as a part of the naval forces of the United States, commissioned officers of the Naval Reserve, Marine Corps Reserve, Coast Guard, Lighthouse Service, Coast and Geodetic Survey, and Public Health Service may be ordered to serve on summary courts-martial in the same manner and to the same extent as commissioned officers of the regular Navy or Marine Corps for the trial of enlisted men of the regular Navy or Marine Corps or of any of the services above enumerated, subject to the following restrictions: (1) In so far as possible, no enlisted man of the regular Navy or Marine Corps, or of any of the services enumerated, shall be tried by a summary court-martial unless the majority of the members thereof are of the regular Navy, Naval Reserve, Marine Corps, or Marine Corps Reserve, or of the same service as the accused. (2) Commissioned officers of the Naval Militia in the service of the United States, the Lighthouse Service, the Coast and Geodetic Survey, and the Public Health Service shall not serve on summary courts-martial, except for the trial of members of their own services.

11B4. Sessions of the court. Courts-martial are held in a convenient part of the ship (generally the wardroom) or navy yard, or other place as may be ordered. No naval court or assembly of a judicial character shall be

ordered or permitted to assemble or conduct any part of its proceedings in any place subject to foreign jurisdiction, except by consent of the foreign country. When, however, United States forces are in foreign territory for military purposes, that part of the foreign territory actually occupied by such forces is not subject to foreign jurisdiction within the meaning herein expressed.

Sessions to be public. The sessions of courts-martial shall be public, and, in general, all persons, except such as may be required to give evidence, shall be admitted. The accused himself may expressly waive his right to a public trial. In cases where it may seem desirable that certain classes of spectators, such as women, children, and others, should be excluded during the trial, the court should communicate with the convening authority requesting permission therefor and giving a full statement of the reasons. It is proper at any time, however, for the court to *advise* spectators of such classes as the above to withdraw on account of the nature of the testimony anticipated.

Deliberations to be in closed court. Deliberations upon any question arising between the parties to the trial, and upon challenges, the sufficiency of the specifications, the findings, the sentence, etc., shall be conducted in closed court; except, that it is not necessary for the court to go into closed sessions where it is manifest that the action of the court will be unanimous, as upon a challenge where the challenged member admits that he cannot be impartial, or for findings upon a plea of guilty, and in any other cases, where, in the discretion of the senior member, closing the court would be merely perfunctory. Care will be taken in such cases that no votes are taken in open session. If any member believes that the matter should be passed upon in closed session, it is proper for him to move that the court be closed, whereupon the senior member will clear the court. When the doors are opened, the accused will be informed of the action the court has taken upon any challenge, question of evidence, etc., and upon an acquittal.

Whenever the court is closed, the recorder shall withdraw and the expression *the court was cleared* shall be understood as including such withdrawal.

If for any reason it is desired to call the recorder before the court while it is closed to advise it, the accused and his counsel should also be present.

In important cases where delay would ensue because of the number of spectators present the court itself may withdraw to another room prepared for the purpose for deliberating in closed sessions.

Court view. It is discretionary with the court whether it will view the place where the alleged crime was committed, or where some fact or transaction material thereto occurred. If it does so, the court must be at-

tended by the accused and his counsel. No evidence should be taken while viewing the place and the court shall hold no communication with others while so doing, except as necessary to have witnesses point out objects about which they have testified, or to have the recorder or counsel point out objects about which they will produce testimony.

Hours of session. Naval courts-martial may hold sessions at any hour of the day, but they are not to meet at unusual hours, nor should the duration of sittings be unusually protracted, unless the court is informed by the convening authority that the case is one of extraordinary urgency and that such a measure is therefore warranted. Hours for holding sessions of a summary court-martial, however, shall be selected with a view to as little interference with the performance of routine duties as the administration of justice and the interests of the accused and the service permit.

The senior member reports when the court meets and when it adjourns through routine channels to the convening authority. The meeting, adjourning and recessing of summary courts-martial shall be entered in the log. The name and rank of the senior member shall also be entered.

Dissolution of court. A summary court-martial is dissolved by the order of the authority who convened it. Such order may be oral. When so dissolved, the court cannot legally be reconvened.

11B5. Clerical assistance and interpreter. In all trials by courts-martial, where practicable and necessary, the convening authority shall provide for the furnishing of clerical assistance. In cases where there is no competent stenographer assigned, the court may require that all communications, motions, and questions be reduced to writing and read to the court. Wherever practicable the convening authority, if not present at the place where the court is to meet, shall direct some officer present there to detail clerical assistance from either the enlisted or civilian personnel under his jurisdiction. If a reporter or interpreter be employed, he should be sworn. He should be present when the court is open but should not be allowed to be present during closed court.

No expense to the Government by the employment of a reporter, interpreter, or other person to assist in a trial by court-martial should be allowed by the court except when authorized by the convening authority. When necessary, the convening authority may authorize the recorder of a summary court-martial to employ an interpreter or clerical assistance at market rates or less. However, the convening authority, before authorizing the employment at Government expense of an interpreter or reporter, should exhaust all local governmental sources, including civilian employees, and, if this proves unavailing, he should communicate with the Navy Department, requesting advance authority to employ the required assistance. When such employment is authorized, an agreement is drawn up in dupli-

cate between the recorder and the stenographer. One copy of this agreement is retained by the stenographer and the other is forwarded by the recorder together with the bills of the stenographer in duplicate, certified correct, and a certified copy of the letter of the convening authority, to the disbursing officer of the navy yard or naval district in which the trial is held. Such disbursing officer will prepare the necessary public bills and pay the account upon receiving the proper signatures. A report of all expenditures, made in accordance with the above instructions, shall be made by the recorder to the Judge Advocate General.

11B6. Guard, orderly, and provost marshal. The duties of the guard and orderly in a court-martial trial are those normally associated with these terms as used in the naval service. A provost marshal is not generally used in the ordinary trial, but his employment, as a rule, is confined to cases of importance. At the request of the recorder, the necessary guard and orderlies are detailed by the commanding officer of the ship or station where the court is ordered to convene.

C. MEMBERS OF THE COURT

11C1. Duties in general. Members of a summary court-martial perform the functions of judge and jury. They hear, discuss and weigh the evidence, determine the guilt or innocence of the accused and, if the accused is found guilty, adjudge a proper sentence. They are sworn to try the case pending before them *well and truly . . . without prejudice or partiality . . . according to the evidence which shall be adduced.* The liberty, or even the entire future life of an accused may be seriously affected by their decisions. Service as a member of a summary court-martial is, therefore, a most important duty which must be conscientiously performed. All members, irrespective of rank, have an equal vote and an equal responsibility in deciding the question of guilt or innocence and in determining the sentence. The senior member has no greater power than any other member in this respect. He does, however, have some special functions to perform which are discussed in the following article.

11C2. Duties of the senior member. The senior officer in rank of a summary court-martial becomes senior member thereof by virtue of his rank. He is so denominated in the precept and so signs the record of proceedings. Besides his duties and privileges as a member, the senior member is responsible for the dignified and orderly conduct of the proceedings of the court and is empowered to keep order. He is the organ of the court and as such speaks for the court, acts for the court, and in every case announces the rulings of the court. He is also responsible that all persons

called before the court are treated in a becoming manner and in all cases of impropriety, whether in language or behavior, he should report the offender to the convening authority. He should recognize the equality of members in deciding questions presented to the court in the course of its proceedings. In all cases where such questions arise he shall order the court cleared for the purpose of reaching a decision thereon, except where in his opinion this would be merely perfunctory. It is his duty to administer the oath to the recorder and to all witnesses called to testify before the court. (See Article 11C6 and Appendix B, of this text, for forms of oath.) The senior member reports the fact and time of the meeting of the court and its adjournment through routine channels to the convening authority and transmits the finished record to him.

Admonitions to accused. Should the accused state that he does not desire counsel he shall be informed by the senior member of the court that counsel will be assigned him should he so desire, and he shall be advised to consult counsel before deciding to proceed with the case without counsel.

Should the accused plead *guilty* to any specification and should such plea be accepted, the senior member shall warn him that he thereby precludes himself from the benefits of a regular defense and ask him if he persists in such a plea.

Admonitions to witnesses. When the parties indicate that they have no more questions to ask a witness who has testified before a summary court-martial, the senior member of the court will inform the witness that he took an oath to state everything within his knowledge in relation to the specifications and that he is now privileged to make any further statement necessary to fulfill his oath; that if he is not sure what the specifications are, they will be explained to him.

The senior member should especially direct any witness who has testified in the case to refrain from disclosing either directly or indirectly any part of the testimony he has given and from conversing with any person whatsoever. This admonition, however, is not issued to the recorder, a member of the court or the accused after testifying.

11C3. Duties of members. In general, the members of the court as a body finally decide upon all questions as to the admissibility of evidence, and pass upon all questions presented to the court during the course of the proceedings. The members of the court, as well as the recorder, are responsible for the correctness of the record of proceedings. The court cannot with propriety attempt to rise above the law of which it is a creature and disregard the provisions of law. It cannot announce by its findings that offenses with which Congress has seen fit to deal as crimes of a very grave nature are, in its opinion, too trivial and insignificant to be seriously re-

garded. If the members of the court believe that because of good motive on the part of the accused when he committed the offense, or because of unusual circumstances, the accused should not be severely punished, it is none the less the duty of the court to find according to the law and the evidence and to adjudge a sentence commensurate with the offense proved. In such case, ample provision for the protection of the accused is provided in the recommendation to clemency which it becomes the duty of the members of the court to make, and the court should not presume upon the prerogative of the reviewing authority in exercising clemency. Such action would be, in effect, a reflection upon the judgment of the reviewing authority.

Voting upon interlocutory questions. The vote of each member upon a question arising during the progress of a trial as, for instance, the competency of members or witnesses, has equal weight, and, in taking the opinion of the court, the junior member shall vote first, *viva voce*, and then the others in inverse order of their seniority. Where evidence is taken upon such question the issue is determined by a preponderance of the evidence, that is, by the evidence which best accords with reason and probability, and the party having the affirmative need not prove beyond a reasonable doubt. The view of the majority becomes the decision of the court.

It is customary for a member objected to, to withdraw when the court is cleared to deliberate upon the challenge, and he should always do so. Although this leaves but two members in the court, it still leaves a legal minimum as the member who has withdrawn has not yet ceased to be a member. The court, after being cleared, proceeds to deliberate and decide upon the validity of the objection. In case of a tie the challenge is not sustained.

Voting upon findings. In arriving at the findings, the plea of the accused, the evidence adduced, and the arguments made are to be carefully considered. The accused shall not be found guilty of any specification or of any offense included in it unless a majority of the court is convinced of his guilt beyond a reasonable doubt. After the court has sufficiently deliberated, the senior member shall, upon each specification, beginning with the first, put the question whether the specification is *proved*, *not proved*, or *proved in part*. Each member shall write *proved*, *not proved*, or *proved in part*, and if the latter, what part, over his signature, and shall hand his vote to the senior member. The latter, after he has received all the votes upon each specification, shall read them aloud without disclosing how each member voted. No written minutes of the votes shall be preserved, unless so ordered by the unanimous vote of the court. The decision of a majority becomes the finding of the court.

Voting upon sentence. In determining the sentence each member shall write down and subscribe the measure of punishment which he thinks the accused ought to receive and hand his vote to the senior member, who

shall, after receiving all the votes, read them aloud. The sentence is determined by the majority vote. If the requisite number does not agree upon the nature and degree of the punishment to be inflicted, the senior member proceeds in the following manner to obtain a decision: He shall begin with the mildest punishment that has been proposed and, after reading it aloud, shall ask the members successively, beginnning with the junior in rank, *Shall this be the sentence of the court?* And every member shall vote *viva voce*, and the senior member shall note the votes. Should there be no decision, the senior member shall, in the same manner as before, obtain a vote on the next mildest punishment, and shall so continue until a sentence is decided upon.

11C4. Seating of members. The members are named in the precept in order of their rank and take seat accordingly, the senior member at the head or center of the table and other members at his right and left alternately. If the names should inadvertently not appear in the precept in order of rank, the members shall nevertheless take seats, vote, and sign in the order of their actual rank. In the case of a new member of the court being appointed after the trial has begun, he shall take his seat as such, subject to challenge in the same manner as other members, the reading of the record of proceedings of the trial to date, and the requirements of Article 47, *AGN*. The record shall affirmatively show the presence of such new member.

11C5. Absence of members. Article 46, *AGN*, provides that a member of a general court-martial shall not, after the proceedings are begun, absent himself therefrom, except in case of sickness or order from a superior. A member of a summary court-martial absenting himself except under similar circumstances, commits a grave military offense. Except in the case of sickness, absence from duty by a member of a court-martial is not warranted unless with the knowledge and approval of the convening authority, or except in an emergency to be judged by his commanding officer or immediate superior. A mere approved request for leave is not sufficient; nor is the fact that such member be the commanding officer of a vessel about to sail. In the event a member of a summary court-martial absents himself, an adjournment should be taken until the next day or over Sunday, as the case may be, unless it appears that the absence of the member may be protracted, in which case the senior member should inform the convening authority of the facts.

Article 47, *AGN*, requires that whenever any member of a court-martial, from any legal cause, is absent from the court after the commencement of a case, all the witnesses who have been examined during his absence must, when he is ready to resume his seat, be recalled by the court, and the recorded testimony of each witness so examined must be

read over to him, and such witness must acknowledge the same to be correct and be subject to such further examination as the said member may require. Without a compliance with this rule, and an entry thereof upon the record, a member who shall have been absent during the examination of the witness shall not be allowed to sit again in that particular case.

11C6. Oaths. A single oath cannot be taken by the members of a summary court-martial which will cover the trial of more than one case. When more than one case is tried by the same court, the oath must be administered anew in each case. Until the court is duly sworn, according to law, it is incompetent to perform any function except to hear and determine challenges against the members. The examination of a challenged member may be under oath on *voir dire*, administered by the senior member at the time of the examination.

The procedure for administering the duly prescribed oaths is as follows: (1) all persons in the courtroom rise; (2) the members are sworn by the recorder; and (3) the recorder is then sworn by the senior member.

Reporters and interpreters are sworn by the recorder; all witnesses are sworn at the time of testimony by the senior member.

Although the forms of oaths prescribed for naval courts-martial are contained in Appendix B, those for the summary court-martial are set forth in the following paragraphs for instant reference in this section.

Oath for members. *You ....., and ....., do swear (or affirm) that you will well and truly try, without prejudice or partiality, the case now depending, according to the evidence which shall be adduced, the laws for the government of the Navy, and your own conscience.*

Oath for recorder. *You ....., swear (or affirm) that you will keep a true record of the evidence which shall be given this court and of the proceedings thereof.*

Oath for reporter. *You ....., swear (or affirm) faithfully to perform the duties of reporter in aiding the recorder to take and record the proceedings of the court, either in shorthand or ordinary manuscript.*

Oath for interpreter. *You ....., swear (or affirm) faithfully and truly to interpret or translate in all cases in which you shall be required so to do between the United States and the accused.*

Oath for witness. *You do solemnly swear (or affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the charges. So help you God (or, this you do under the pains and penalties of perjury).*

Oath on voir dire. *You ....., swear (or affirm) that you will make true answers to questions touching your competency as a member of the court (witness) in this case.*

11C7. Procedural aspects. Members of a court-martial cannot be urged too strongly to follow the procedure for court-martial trials laid down in *Naval Courts and Boards, 1937*. If a contrary procedure is followed, it will often result in invalidating what would otherwise have constituted a valid trial had the regular procedure been followed. The purpose of this section has been primarily to establish the duties and responsibilities of the members of the court. In order that a more complete understanding may be had of the duties and responsibilities discussed, reference should be made to Chapter 12 of this text for the appropriate procedural aspects pertaining thereto.

11C8. Liability of members. A summary court-martial has no power to punish its members, but a member is liable for improper conduct as for any other offense against naval discipline. The members of a duly constituted and organized court-martial cannot be interfered with in their proceedings by naval authority, yet they may be responsible in civil courts for any abuse of power or illegal proceedings.

D. THE RECORDER

11D1. Appointment of the recorder. The recorder of a summary court-martial is appointed by the convening authority in the precept convening the court. The authority for the appointment is specifically given in Article 27, *AGN*. The recorder may be any commissioned or warrant officer under the command of the convening authority and, if possible, should not be liable to summons as a material witness in the case.

11D2. Functions and duties in general. The recorder is the prosecuting attorney who represents the United States in the trial of offenses referred to the court and, under the direction of the court, prepares the record of trial. It is his duty when specifications are referred to him, to bring the accused to trial promptly, to make a full, systematic and fair presentation of the case, to execute the orders of the court, to advise the court in all matters of form and law, and to see that the record of its proceedings is accurate and in proper form. Upon the recorder, as well as the court, rests a distinct responsibility for a fair and complete trial, free from prejudicial error. Although his primary duty is to prosecute the case for the government, proper prosecution does not mean obtaining a conviction. It means presenting the facts to the court fully so that the truth may be ascertained. Any act inconsistent with a genuine desire to have the whole truth revealed is improper. The recorder must at all times be fair and free from bias, prejudice, or hostility. He must conduct himself as a representative of the United States, not simply as an attorney determined to win a

case. By the same token he must never let his sympathy for the accused prevent him from performing his duties as the prosecuting attorney. If for any reason, he cannot perform his duties in this manner, he should promptly report the fact to the convening authority.

11D3. Familiarity with Naval Courts and Boards, 1937, required. A recorder's first task is to determine what his duties are. They are described in detail in *Naval Courts and Boards, 1937*, and may be found by looking under the word *recorder* in the index. He should fully acquaint himself with all sections therein bearing upon his duties and study particularly the excerpts from the *Canons of Ethics of the American Bar Association* (see Article 11E6 of this text). The discussions in Chapter 12 and Chapter 15 of this text deal with the trial procedure and evidence, and furnish explanatory and supplementary material as to some of the principal functions of the recorder. There is, however, no adequate substitute for a study of *Naval Courts and Boards, 1937*.

If the recorder has any doubt or difficulty as to his duties in general or as to a problem in a particular case, he should never hesitate to ask his commanding officer or other superior officer for advice. It is far easier to avoid errors by obtaining instructions before trial than to try to correct them after the proceedings are completed.

11D4. Familiarity with naval law required. One of the important duties of recorder is to advise the court in all matters of form and of law. On every occasion when the court demands his opinion he is bound to give it freely and fully; and, even when it is not requested, to caution the court against any deviation from the essential form of its proceedings or against any act or rule in violation of law or material justice. It is thus necessary that the recorder be familiar with all matters of form and of law that bear upon the trial of cases before courts-martial. However, it is not as easy to definitely ascertain the rules of naval law, as those of civil law for the reason that naval law has not been as elaborately codified as civil law and is sometimes interwoven with regulations, custom and precedent. The recorder must, therefore, have a good practical knowledge of the Navy itself. The volumes listed in Appendix F will be helpful and sometimes necessary depending upon the particular problem involved. *Naval Courts and Boards, 1937*, and the court-martial orders to date are almost mandatory. In attempting to find the information he desires, the recorder should not be content with researching one key-word in a volume index. He should think over all the headings possible and exhaust them in the index before he leaves the problem, unless he is sure that he has the answer. This is quite important because naval law has not been subjected to the detailed descriptive word indexing and cross-indexing found in civil law.

The information contained in *Naval Courts and Boards, 1937*, on a particular point should always be exhausted before researching other volumes.

11D5. Counsel for recorder. Although it is neither required nor customary, in summary court-martial trials counsel may be authorized to assist the recorder and must be so authorized in order to have standing before the court. If counsel be appointed or detailed by the convening authority to assist the recorder, the court shall give equal facilities with the counsel of the accused in the performance of his duties. Such counsel should be present when the court first meets, or if detailed after the trial has begun, he should report as soon afterward as possible. Appropriate duties include taking care of details and arranging for trial and securing the attendance of witnesses, assisting in the preparation of cases and conducting the trial in particular phases of the case. Ultimate responsibility for the prosecution of the government's case, however, rests upon the recorder.

11D6. Outline of duties before trial. Upon receipt of specifications which have been preferred against an accused, the recorder of a summary court-martial must perform certain required duties which are preliminary to and necessary for the commencement of the trial. Briefly, these duties, in the order which they are normally performed, are as follows:

1. Examination of the specifications and accompanying papers.
2. Service of a copy of the specifications upon the accused and explanation of his rights in the premises.
3. Analysis of the case.
4. Interview with the witnesses.
5. Arrangement of evidence.
6. Preparation of questions.
7. Securing depositions, when necessary.
8. Notification to members, witnesses and the accused for trial attendance.
9. Preparation of the courtroom.

11D7. Examination of the specifications and accompanying papers. When a case is referred to a summary court-martial for trial, there will be forwarded to the recorder the specifications and accompanying papers. These papers should include the commanding officer's report of investigation, if any, with its summary of the expected testimony of witnesses, the service record of the accused, and, in some cases, documentary evidence such as straggler notices, etc. In the event a court of inquiry or board of investigation in which testimony was taken was held upon the case, the record of proceedings thereof should also be transmitted to him. In short, the recorder

should be furnished with any papers or documents which may be considered necessary for his guidance.

The recorder should first carefully examine the specifications to determine whether (1) they are in due form and technically correct, (2) they allege the offenses which the commanding officer believes the accused has committed, and (3) they are properly referred to the court which has jurisdiction over the accused and for which the recorder has been duly appointed. Types of errors in specifications are discussed in Article 9–8. The recorder may correct manifest clerical errors, such as errors in spelling, punctuation, etc., with the approval of the court, by making the corrections in red ink and initialing them in the right-hand margin. However, it is considered better practice at this stage when such corrections are necessary to return the specifications to the convening authority in order that they may be rewritten. Technical errors or errors in substance in the specifications should always be corrected by the convening authority. By comparing the specifications with the sample forms in Chapter 2, *Naval Courts and Boards, 1937*, technical errors and errors in substance are easily discerned, and such a procedure provides a method for determining whether the specifications are in due form and technically correct. If the recorder is satisfied that the specifications are in due form and technically correct, he should next compare each specification with available reports and information concerning the matters at issue. If it appears that any specification is at variance with facts represented by the report of investigation or other papers which have formed the basis of the accusations, the convening authority should be apprised immediately and instructions requested. A fundamental allegation that must not be overlooked in a specification is the one pertaining to jurisdiction. It is vitally important inasmuch as the proceedings of a court are null and void without proper jurisdiction. In this connection see Article 9–21.

11D8. Serving specifications upon the accused and explaining his rights. Immediately after the specifications have been received and checked, the recorder should serve a copy of them upon the accused. This is usually accomplished at a preliminary interview with the accused, and consists in delivering to the accused a copy of the specifications showing date of delivery and securing from him a signed receipt therefor. Before the recorder interviews the accused, during the time he is talking with him, and throughout the trial he must bear in mind the fact that one of the most important concepts in trials by courts-martial is that the rights of the accused must be safeguarded. The specifications should be read aloud to the accused and if it is apparent that he does not understand their contents or requests an explanation of them, the recorder should very carefully explain the meaning thereof. The recorder should then inform the accused that

he may plead guilty or not guilty before the court, and that he is entitled to a counsel. When the accused does not desire counsel he should also explain to him that he may have witnesses called in his behalf; that he may take the stand and testify under oath; and that he may make a statement, not under oath.

Right to plead guilty or not guilty. The recorder should fully explain to the accused the meaning and effect of the pleas of guilty and not guilty; that in the event he pleads guilty to any specification, he will deprive himself of the benefits of a regular defense to the specification thus admitted; that he cannot after such a plea of guilty go ahead and prove that he is not guilty; that he may, however, introduce evidence of mitigating circumstances, in extenuation, or of previous good character. The recorder should scrupulously avoid even the slightest suggestion to the accused that he plead guilty to anything charged against him. Such a suggestion can only properly be made by the accused's own counsel when it is felt that the best interests of the accused will thus be served.

Right to counsel. The recorder should inform the accused that he is entitled to counsel and that he may have a reasonable time to prepare his defense. In many cases the accused will not know whether he wants or needs counsel. In that event the recorder must explain to him the general duties of counsel for the defense. If, in discussing the case with the accused, it develops that he may have any good defense whatever, or the accused believes he has, discussion of the merits of the case should be terminated at once and the accused advised to plead not guilty and secure counsel. Thereafter, all negotiations should be conducted through the counsel.

In the event the accused announces an intention to plead not guilty to a specification, the recorder should strongly urge him to secure the services of a counsel to assist him in preparing his defense.

The accused is entitled to counsel as a right, and whenever practicable to counsel of his choice. The court cannot properly deny him the assistance of a professional or other adviser. Enlisted men to be tried shall be advised particularly of their rights, and should be represented by counsel, if practicable, unless they explicitly state in open court that they do not desire such assistance.

If the accused requests counsel, the recorder should ascertain whether he has a choice and, if so, he will endeavor, through the convening authority, to secure the services of the counsel desired. If the accused desires a civilian counsel he will be advised that he must personally bear the cost involved. When the counsel of the accused's choice is not available due to exigencies of the service or when the accused has no particular choice of counsel, the convening authority must detail a suitable officer to that duty. When available an officer skilled in law should be utilized as counsel for the

accused and, if practicable, he should have the qualifications required for membership in a general court-martial.

Right to have witnesses called. If the accused does not have counsel, the recorder must advise him of his right to introduce witnesses in his behalf, obtain from him a list of his necessary witnesses and summon them at the appropriate time. Where necessary, he should arrange for the availability of service witnesses through their commanding officers. The recorder must also inform the accused as to the probable witnesses to be called for the prosecution, although it is unnecessary to inform him as to the testimony expected from them.

Right to take the stand and testify under oath. The recorder must explain to the accused where he does not have counsel that he is entitled to take the stand and testify under oath as a witness in his behalf, but that if he does so he may be subjected to a vigorous cross-examination. In advising the accused as to his right to take the stand, the recorder should carefully refrain from influencing the accused in this respect, unless he believes that such testimony is necessary to the proper presentation of the facts upon which the accused's defense is based, including evidence in extenuation or mitigation as well as previous good conduct and character.

Right to make unsworn statement. When the accused does not have counsel, the recorder must explain to him that he may, besides introducing witnesses in his behalf and testifying under oath, make a statement not under oath; that such a statement is a personal declaration and cannot legally be acted upon as evidence by the court, nor can it be a vehicle of evidence nor argument thereon, nor properly embrace documents or other writings or even averments of material facts, which, if duly introduced, would be evidence; and if such things be improperly embraced in a statement that they are entitled to no evidential weight.

He should further explain to the accused that the purpose of the statement is to provide a means whereby matters in extenuation and mitigation may be introduced into the record, upon which the court may recommend him to the clemency of the reviewing authority; that should the statement contain matters which would support or tend to support a plea of guilty if established by evidence, such statement would be inconsistent with a plea of guilty and the court would be required to reject his plea of guilty, require that a plea of not guilty be entered, and proceed with the trial on that basis.

11D9. Analysis of the case. After the specifications have been served upon the accused and his rights explained, the recorder begins the preparation of the case for trial.

Complete and painstaking preparation before trial is essential to successful prosecution of his duties. Before the recorder can plan an effective

prosecution of the case, it is essential that he know the character of the proof required to be presented to the court. This can only be ascertained through a careful analysis of all aspects of the case and the offenses stated in the specifications. An excellent method for determining what elements must be proved in order to establish a *prima facie* case is to study the sections in Chapter 2, *Naval Courts and Boards, 1937*, which discuss the offenses alleged in the specifications. Having done this, the recorder should make a list of the factual matters which will be required as proof to support the necessary elements of the offenses alleged. In order to clearly determine whether the available facts will constitute the required proof, it is usually necessary and always advisable for the recorder to research the court-martial orders pertaining to the offenses alleged and other accessible reference material such as that suggested in Appendix F of this text.

11D10. Interview with the witnesses. After having analyzed his case and reached a clear understanding of the pertinent evidentiary matters he must present to the court, the recorder should decide, from an examination of the report of investigation and other papers available, what witnesses will be required in the trial of the accused. All such witnesses should then be summoned for a preliminary interview so that the recorder may determine the exact nature of the testimony to be expected from them and as far as possible systematize his plans for presenting the case. In conducting this interview the recorder must exercise tact and patience, realizing that naval personnel may be reluctant to give testimony against their shipmates. It may be advisable to have the witnesses recite their knowledge of the offense several times, interposing questions at points where they appear uncertain, in order to secure an accurate outline of the evidence they are in a position to offer. It can be readily understood that this procedure at the preliminary interview will not only afford the recorder an opportunity to prepare his direct examination but will also serve to eliminate many extraneous questions and answers which often result in an unnecessary waste of trial time.

11D11. Arrangement of evidence. The recorder's next problem is to decide just how he is going to present his case through the testimony of the witnesses. The general method of presenting a case is to prove each offense in the order specified and to prove the events relating to each offense chronologically in the order in which they occurred. In other words, the case should be presented to the court in the manner in which a story would be told, beginning with the first event. By turning to the elements of the offenses, the recorder will be able to select the first element to be proved. He should then consider, reflecting upon his preliminary interview with witnesses, which witness would best present the proof of this

element by his testimony and plan to call him as the first witness. In the same manner the order of calling other witnesses should be arranged, having in mind which witnesses are best capable of clearly remembering the events and expressing themselves. The recorder should also consider whether the accused will offer in his defense evidence which may tend to detract from the credibility of prosecution witnesses, and should seek to corroborate the testimony of any witnesses who will be thus affected by calling additional witnesses, if available, to testify to substantially the same facts. However, the recorder should not unnecessarily prolong the trial and waste the time of the court by the examination of witnesses whose testimony adds nothing to that already in evidence when corroboration is not believed to be necessary. If there is documentary evidence to be introduced it should be offered in its appropriate place, according to its chronology.

11D12. Preparation of questions. Having determined the method by which he will present the case and the order in which he will call his witnesses, the recorder should write out the principal questions he will ask each witness. These questions should be phrased and arranged in a manner calculated to elicit the desired testimony and as such they will serve as a valuable guide to the recorder during trial. Questions which go to the gravamen of the offense should be phrased so that they may be squarely put to the witness. In preparing questions the recorder should select and use words that may be clearly understood. He should avoid the use of leading questions, except where permitted. A leading question means what its name indicates, one which leads the witness to a desired answer; that is, one which is put in such a way as to suggest to the witness the answer which is expected or wanted. Although there is no particular form which will save a question from being leading, questions beginning with the words *who*, *what*, *where*, *when*, and *why* are usually not leading. Judicious inquiry at the trial not only gets better results with fewer words but also indicates to the court, the convening authority and reviewing authority a serious attempt on the recorder's part to do his assigned task well. In phrasing questions, the recorder should carefully consider the rules of evidence contained in Chapter 3, *Naval Courts and Boards, 1937*, and in particular familiarize himself with the rules relating to leading questions, double questions, hearsay evidence, opinion evidence, documentary evidence, and real evidence. These and other rules of evidence having common application in trial are dealt with in Chapter 15 hereof.

11D13. Securing depositions. A deposition is the testimony of a witness, put, or taken down, in writing, under oath or affirmation, before an officer

empowered to administer oaths, in answer to interrogatories and cross-interrogatories submitted by the party desiring the deposition and the opposite party. The conditions under which a deposition may be taken and used in a court-martial are set forth in Article 68, *AGN*, and are further discussed, with completed forms, in Chapter 15 of this text. Should it develop that testimony of any witness for the prosecution must be secured by a deposition, the recorder must initiate the procedure for obtaining it in accordance with instructions contained in Section 213, *Naval Courts and Boards, 1937*.

11D14. Notification to members, witnesses, and accused for trial attendance. The recorder should arrange with the senior member of the court as to the time of the trial, and give adequate notice to the members of the court and all others concerned, such as witnesses, of the hour, date, and exact place of meeting. If the witness is in the naval service and stationed near the place of trial, the recorder will informally notify him to attend, either orally or in writing. In case the witness is an enlisted man, such notice should be given to his commanding officer so that he can arrange for his presence. Ordinarily a witness should be notified at least twenty-four hours before the time he will be required to start for the trial. The recorder should formally summon all witnesses whose presence will not be insured by informal notification, both for the prosecution and the defense. The provisions of Section 245 to 260, inclusive, *Naval Courts and Boards, 1937*, pertaining to the summoning of witnesses are applicable to the recorder of a summary court-martial, except that the statutory authority to compel the attendance of civilian witnesses within the jurisdiction therein specified is not construed as extending to summary courts-martial. The attendance of a civilian witness before a summary court-martial is, therefore, optional and the subpoena (see Chapter 15), should not include mention of a penalty for failure. Such witness can be subpoenaed by the recorder at government expense only with the approval of the convening authority, and the approval of the Secretary of the Navy is necessary to subpoena such witness from a distance that would require such authority if the attendance of the witness were desired before a general court-martial.

The recorder must also make arrangements to insure the presence of the accused at the trial. This will require notice to the brig officer if the accused is in confinement.

11D15. Preparation of the courtroom. The recorder is responsible for obtaining a suitable room for the trial and having it supplied with the necessary tables, chairs, stationery and the like. Some minutes prior to the time of the court's scheduled meeting the recorder should have the following persons and material ready for the place of trial:

1. Just outside of the courtroom:
   a. An orderly.
   b. The accused.
   c. The witnesses.
   d. The stenographer or reporter.
2. In the courtroom:
   a. Original and several copies of the specifications.
   b. Scratch paper and pencils for the members.
   c. A Bible.
   d. The service record of the accused.
   e. An information sheet containing (1) rate of pay of the accused in his present and his next inferior rating, (2) date of the accused's enlistment and duration thereof, and (3) accused's date of birth.
   f. Cards setting forth the appropriate oaths to be administered.
   g. Step by step outline of procedure for senior member and recorder.
   h. Copy of *Naval Courts and Boards, 1937.*
   i. Copies of volumes containing *Court-Martial Orders* to date.

11D16. Duties during trial. At the trial it is the duty of the recorder to present the case against the accused. He should be familiar with the provisions of *Naval Courts and Boards, 1937*, dealing with trial procedure. A complete analysis of each step in summary court-martial trial procedure is contained in Chapter 12, Section B. An outline of the procedural steps to be taken is contained in Chapter 12, Section A. Accordingly, reference should be made to these sections for descriptive details of the recorder's duties during trial. Use throughout the trial of the procedural outline in Chapter 12, Section A will enable any recorder to cover all the formal procedure and guide him in the presentation of his case. In addition to trial procedure, a recorder must have some knowledge of the rules of evidence. Chapter 3, *Naval Courts and Boards, 1937*, compresses into some sixty pages a concise workable treatise on those rules. A trial recorder should consider such portions of that chapter as bear upon problems raised in his particular case. A few of the more common problems of evidence which arise are discussed in Chapter 15 of this text.

A student who carefully prepares his lesson finds the examination to be an easy one; and so it is with a court-martial trial. The recorder should go into court with his mind as free as possible from procedural worries and from distraction by other duties. A recorder should never go into the court only partially prepared. If he does, he will find that instead of concentrating upon the testimony being given by witnesses and the adducing of necessary proof, he will be worrying about extraneous matters that

should have been prepared in advance. If the recorder has properly prepared his case, he probably will have uncovered any legal defense a counsel may urge. If a question of law is close or not readily apparent, he will have prepared a trial brief of the law so that he may readily inform the court upon questions of law arising at the trial and also in order that he may urge his position as to the law in argument.

11D17. Presentation. The recorder should never go into court with the idea that he will try a case by showing the weakness of the defense. An accused is regarded as innocent until proved guilty, and the recorder cannot prove guilt by merely showing the weakness of the defense. Witnesses should be called in a logical, methodical sequence, so that the recorder may present to the court an orderly pattern of evidence surrounding the commission of the offense. He should take sufficient time to perform each step of the trial. If he tries to rush his case through, even though he may have a comprehensive grasp of naval law, he is apt to fail to prove some vital part of the specification or make other errors of omission or commission.

11D18. Conduct of recorder. The recorder must not try his case out of court with the members. He should not usurp the functions of the court by weighing evidence outside of the court or by weighing the evidence in the case as shown by the original papers and withholding evidence which should be submitted to the court for its consideration. This is unfair not only to the accused but to the court as well and is highly unethical. The recorder should not speak *off the record* when he is in court. When a remark is worth making in the court at all it is worth including in the record. He should bear in mind that he is not a member of the court and has no vote concerning the findings or sentence. Whenever the court is closed for discussions or for arriving at the findings or sentence, or for any purpose, the recorder must retire. He should not engage in personalities with counsel. If he believes that a question asked by counsel is improper, he should state his objection in plain concise terms. Objections and arguments are to be made to the court, not to counsel. If the recorder has readily on hand the section number of *Naval Courts and Boards, 1937*, bearing upon a point in issue, he should present it to the court.

11D19. Cross-examination. Blackstone was father to the thought that cross-examination is the best means yet devised by man for ascertaining the truth. The ability to properly cross-examine is an art in itself. Many books have been written on the subject. The recorder will do well to get a book from the library on the subject of cross-examination. Its use is an everyday occurrence not confined solely to examination of witnesses in court-

martial proceedings. A good cross-examiner must first be a good psychologist, adept in analyzing men. The manner in which the questions are put may vary from friendly to almost hostile in attitude, depending upon the personality of the individual being cross-examined; they may be plainly or ingeniously worded; they may be repetitious in order to test the credibility of a witness. The skilled cross-examiner also knows when to stop cross-examining. The length to which the recorder may go and the manner in which he may proceed in cross-examination are discussed in Sections 282 to 284, inclusive, *Naval Courts and Boards, 1937*. If the accused takes the stand, he should be subjected to a rigid, searching cross-examination.

11D20. Argument. In every case, both the accused (counsel) and the recorder will be afforded an opportunity to present an argument before submitting their respective cases to the court. The recorder has the right to make the opening and closing argument. Should the prosecution waive its opening argument, the defense thereupon may or may not make an argument, as it desires. Should the defense make no argument, the prosecution loses its right to make a closing argument. Both parties should be accorded adequate opportunity fairly to present their respective cases by argument, yet the court may, in the employment of its sound discretion, so limit the time allowed for argument by each side as to avoid prolixity. Neither the prosecution nor the defense is required to make an argument; however, the proper presentation of the case, as well for the benefit of the court as of the reviewing authority, would suggest that both prosecution and defense avail themselves of their respective rights to make argument.

A good argument is extremely beneficial to the court, but a poor one has the opposite effect. If the facts are relatively simple and the case is short, the recorder should not comment on the testimony at length in his opening argument but should confine himself to a few words on the facts and dwell mainly on the law. It is good practice for the recorder in his opening argument to explain the elements which constitute the offense and point out the testimony which has established the *prima facie* case for the prosecution. The recorder should speak slowly and understandably. He should avoid personalities in his arguments. He should not interrupt counsel when he is making his argument unless he manifestly abuses the latitude allowed him. Even then, the recorder should be overcautious in this regard because he has a right to make the closing argument and then explain the accused's untenable argument. While the accused is making his argument, the recorder should jot down notes on the points with which he disagrees in order to give the court his version of them in his closing argument.

In his closing argument, the recorder should in general confine himself to matters of law raised by the defense. It should be borne in mind

that if the recorder is permitted by the court to introduce any new matter in his closing argument, the defense, at the discretion of the court, will be allowed an opportunity for argument on such new matters. This does not, however, deny the recorder the right of a final argument.

11D21. Making up the record. The record of proceedings is covered in Chapter 12, Section C of this text. Three specimen summary court-martial records are contained in Chapter 13 as a further aid. A recorder should read these sections carefully. It is possible to condone mistakes on matters of technical law, but there is no excuse for faulty preparation of a record. Chapter 5, *Naval Courts and Boards, 1937*, sets forth clearly and concisely what is expected and the recorder should be guided accordingly. Common errors have frequently occurred in summary court-martial cases. By the inverse method of ascertaining the errors of courts-martial, the recorder's knowledge of naval law will become greater. These common errors are set forth in Chapter 13, Section E of this text. If a recorder will review the citations given he will acquire valuable knowledge of the common pitfalls. He should not try to review them in their entirety, but rather should review them a few at a time. In that manner he will be more likely to fix the information permanently in his mind.

E. COUNSEL FOR THE ACCUSED

11E1. Right of accused to counsel. The accused is entitled to counsel as a right, and whenever practicable to counsel of his choice. The court cannot properly deny him the assistance of a professional or other adviser. Enlisted men to be tried shall be advised particularly of their rights, and should be represented by counsel, if practicable, unless they explicitly state in open court that they do not desire such assistance. Immediately after the accused is brought before the court he should be asked if he desires counsel, and if he does, counsel should take seat as such. If the counsel for the accused is absent at any stage of the proceedings, the record should show affirmatively that the accused waives the privilege of having counsel present at that time. Otherwise, the court should adjourn for a reasonable time if it appears that the counsel will then be present, or until the convening authority appoints another counsel.

11E2. Requirements when accused does not desire counsel. Should the accused state that he does not desire counsel he shall be informed by the court that counsel will be assigned him should he so desire, and he shall be advised to consult counsel before deciding to proceed with the case without counsel. Section 356, *Naval Courts and Boards, 1937*, sets forth the rights of the accused in this respect and in the event the accused states

that he does not desire counsel a statement that the requirements of that section have been complied with shall be entered upon the record of proceedings. It should be borne in mind, however, that the convening authority has no power to force counsel upon the accused unless the accused is mentally incompetent and thereby unable to look after his own interests. In such a case, when mental incompetency becomes known, the case becomes one for a doctor rather than a court. Failure to comply with request of accused that counsel be provided him is a fatal error.

11E3. Detailing of counsel. When the accused before a court-martial has no legal adviser, the commandant of the navy yard or station, the convening authority, or the senior officer present within whose jurisdiction the court sits shall, if the accused so requests, detail a suitable officer to act as his counsel. Where available, an officer skilled in law should be detailed as counsel for the accused, and, if practicable, he should have the qualifications required for membership on a general court-martial. An officer so detailed shall perform such duties as usually devolve upon the counsel for the defense before civil courts in criminal cases. As such counsel he shall use all legal means to protect the interests of the accused and to present to the court such defense as the accused may have, and to offer such evidence in extenuation, mitigation, etc., as he may be able to obtain. Ordinarily, when so requested by the accused, counsel should be detailed a sufficient time in advance of trial to enable him properly to prepare the accused's case. He should, so far as practicable, be relieved of all other duties which interfere with this. If the accused does not request counsel until he enters the court, the court is powerless to appoint one, but should adjourn from day to day until the appointment is made by one of the officers named above. It is never proper in such case to detail the recorder as counsel. The recorder may act in an advisory capacity as counsel to the accused, rendering him both in and out of court such assistance as may be compatible with his primary duty of conducting the prosecution, but he cannot act in a personal capacity as counsel for the accused.

11E4. Requirements when requested counsel is refused for cause. Sometimes the request of the accused to have a certain person act as counsel is refused for cause and someone else is appointed. Under such circumstances the record should show the grounds for refusing the original request of the accused. Wherever practicable the accused should be allowed such person as he requests for counsel. A trial, of course, will not be delayed unreasonably until the particular counsel desired by the accused is available to serve. In a trial on board ship or overseas, for example, the accused would not be entitled to a continuance, for the purpose of obtaining civilian counsel of his own choice, until his ship or unit returned to this country.

Expenses attendant to representation by civilian counsel must be provided for by the accused.

11E5. Duties of counsel in general. Duties of the counsel for the accused are similar to those of a counsel for a defendant in a criminal case before the civil courts, that is, to represent him at the trial and to present his side of the case. Regardless of his personal opinion as to the guilt of the accused, he must guard his interests by all legitimate and honorable means and present any proper ground of defense or extenuation. While he must never resort to any fraud or trickery, he has the duty of presenting to the court everything favorable to the accused. He should disclose promptly to the accused any personal interest or prejudice he may have, however slight; and, of course, if such prejudice, bias, or personal interest is so strong as to prevent him from representing the accused conscientiously and fairly, he should ask to be relieved before undertaking the defense. He should not ask, however, to be relieved merely because he may believe that the accused is guilty. An accused who admits his guilt is nevertheless entitled to be represented by counsel and to a fair and impartial trial. It is the function of the court, not counsel, to determine the question of guilt or innocence.

11E6. Legal ethics. Excerpts from the *Canons of Ethics of the American Bar Association,* with certain deletions, are set forth herein for information and guidance.

1. *Attempts to exert personal influence on the court.* A lawyer should not communicate or argue privately with the judge as to the merits of a pending cause.

2. *The defense or prosecution of those accused of crime.* It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law.

   The primary duty of a lawyer engaged in public prosecution is not to convict but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible.

3. *Adverse influences and conflicting interests.* It is the duty of a lawyer at the time of retainer to disclose to the client any interest in or connection with the controversy, which might influence the client in the selection of counsel.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids subsequent employment from others in matters adversely affecting the client.

4. *Advising upon the merits of a client's cause.* A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon. The miscarriages to which justice is subject, by reason of surprises and disappointments in evidence and witnesses, admonish lawyers to beware of bold and confident assurances to clients.

5. *Negotiations with opposite party.* A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel but should deal only with his counsel.

6. *How far a lawyer may go in supporting a client's cause.* It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause.

   The lawyer owes the client warm zeal in the maintenance and defense of his rights, and the exertion of his utmost learning and ability. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But the office of attorney does not permit violation of law or any manner or fraud or chicane.

7. *Restraining clients from improprieties.* A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not do, particularly with reference to their conduct towards courts, judicial officers, witnesses, and suitors.

8. *Ill feeling and personalities between advocates.* Clients not lawyers, are the litigants. All personalities between counsel should be scrupulously avoided. It is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel which cause delay and promote unseemly wrangling should also be carefully avoided.

9. *Treatment of witnesses and litigants.* A lawyer should always treat adverse witnesses and suitors with fairness and due consideration.

10. *Candor and fairness.* It is not candid or fair for the lawyer knowingly to misquote the contents of a paper, the testimony of a witness, the language or argument of opposing counsel, or the language of a decision or a textbook; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has

been repealed; or in argument to assert as a fact that which has not been proved, or in those jurisdictions where a side has the opening and closing arguments to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

A lawyer should not offer evidence, which he knows the court should reject. Neither should he introduce into an argument, addressed to the court, remarks or statements intended to influence the jury or bystanders.

11. *Confidences of a client.* The duty to preserve his client's confidence outlasts the lawyer's employment.

12. *Withdrawal from employment as attorney or counsel.* The right of an attorney or counsel to withdraw from employment, once assumed, arises only from good cause. Even the desire of consent of the client is not always sufficient.

11E7. Duties before trial. A clear understanding of the duties a defense counsel is expected to perform prior to trial is essential for a complete discharge of the responsibility placed in him. The general duties of the counsel for the accused have been discussed in Article 11E5. Articles 11E8 to 11E12, inclusive, deal specifically with duties required of counsel before trial. There can be no substitute for painstaking preparation. The counsel for the accused should always feel free to call upon his commanding officer or other superior officer to discuss his general duties or to present a problem encountered in preparing the defense of a particular case.

11E8. Receipt and examination of specifications and accompanying papers. Upon being notified that he is to serve in a particular case, a defense counsel should first secure a copy of the specifications upon which the accused is being tried, together with accompanying papers such as arrest reports, reports of investigations, etc., and carefully examine them. This step is necessary for an intelligent interview with the accused and in order to plan the defense effectively.

11E9. Interview with the accused. As soon as the counsel is acquainted with the case, he should at once arrange to interview the accused. Even if the accused is in confinement, he will be allowed to have such interviews with his counsel as may be required. The accused should be advised that everything he discloses to counsel will be held in strictest confidence and that counsel cannot serve his best interests unless he tells the whole truth, even though it amounts to a confession of guilt. Counsel should ascertain whether the accused knows of any other witnesses or evidence

not disclosed by the papers forwarded. A close questioning frequently reveals details or lines of defense that may not at first be apparent. Even if there is no defense to the specifications there may be reliable testimony as to the accused's good character and record of service, or as to circumstances tending to lessen the seriousness of the offenses, which should be presented.

11E10. Explanation of accused's rights. Counsel for the accused must, prior to trial, carefully explain to the accused that he may, besides introducing witnesses in his behalf, take the stand and testify under oath or make a statement not under oath.

Often the most important question which must be decided in the course of a trial is whether or not the accused shall testify. The defense counsel must make certain that the accused fully understands the courses of action which are open to him, that is, to remain silent, to testify as a witness, or to make an unsworn statement, and the possible consequences of following each of these courses. If the accused testifies under oath, he is not only subject to cross-examination like any other witness, but a greater latitude may be allowed in cross-examining him. It is, therefore, well to consider the possibility that in testifying as a witness the accused may make admissions either on direct or cross-examination, as to matters essential to the prosecution's case, thus establishing facts which the prosecution might otherwise be unable to prove. No inference of guilt can be drawn from the failure of the accused to testify and no comment can be made by the prosecution of his silence. If he is on trial for a number of offenses, he has the right to testify about only a part of them and remain silent as to the others. Unless the accused can testify fully and frankly to facts which constitute defense to one or more of the specifications, or which show extenuating or mitigating circumstances, it is usually best that he remain silent. The counsel for the accused should dissuade him from testifying to an unsubstantiated story which appears incredible and which cannot stand up under cross-examination.

The third possible choice, the unsworn statement, should also be carefully explained to the accused. He should understand that such a statement is a personal declaration and cannot legally be acted upon as evidence by the court, that it cannot be a vehicle of evidence nor argument thereon, nor properly embrace documents or other writings or even averments of material facts, which, if duly introduced, would be evidence; and if such things be improperly embraced in a statement that they are entitled to no evidential weight. It should also be explained to the accused that the purpose of the statement is to provide a means whereby matters in extenuation and mitigation may be introduced into the record, upon which the court may recommend him to the clemency of the reviewing

authority; that should the statement contain matters which would support or tend to support a plea of not guilty if established by evidence, such statement would be inconsistent with a plea of guilty and the court would be required to reject his plea of guilty, require that a plea of not guilty be entered, and proceed with the trial on that basis.

11E11. Advice as to plea. In an appropriate case the defense counsel will explain to the accused his right to plead the statute of limitations in bar of trial. If, for example, it appears from the specifications that they are barred by the statute of limitations, that is, that two years have elapsed in a case involving absence without leave, the defense counsel should explain to the accused his right to enter such a plea. This and other special pleas that may be made are discussed in Sections 407 to 409, inclusive, *Naval Courts and Boards, 1937*, and in Chapter 12, Section B of this text. A decision as to whether the accused will plead guilty or not guilty should always be reached before trial. After a full discussion of the facts of the case with the accused, he should be asked how he desires to plead to each offense. If he indicates that he desires to plead guilty to one or more offenses, the counsel should advise him that he will thereby admit the offense or offenses alleged. He should be told that he has a perfect legal and moral right to enter a plea of not guilty and that if there is any doubt in his mind as to whether he is guilty he should enter such a plea; that by a plea of not guilty he calls upon the prosecution to prove the averments in the specification or specifications to which he has so pleaded. He should never be encouraged to plead guilty to an offense in the hope that by so doing he may receive a less severe sentence. If he desires to plead guilty, little can be done but to offer mitigating or extenuating evidence or, in a proper case, assist the accused in preparing an unsworn statement as a plea for clemency.

11E12. Preparation of the case. By way of preparation, the defense counsel will follow substantially the same procedure as the recorder in studying the specifications and allied papers, analyzing the case and interviewing witnesses. (See Article 11D9 to 11D12, inclusive, of this chapter.) It is well to interview not only witnesses for the defense but also those for the prosecution and to prepare to cross-examine them in the light of the expected testimony for the defense. Counsel should make timely request of the recorder to secure the attendance of defense witnesses if he is doubtful that they will otherwise be present, and should collaborate with the recorder in the preparation of depositions in proper cases. (See Article 11D13.) Counsel may properly interview any witness or prospective witness for the prosecution without the consent of the recorder. In doing so, however, he should scrupulously avoid any suggestion calculated to induce

the witness to suppress or deviate from the truth or in any degree to affect his free and untrammeled conduct when appearing at the trial of the accused.

11E13. Duties of counsel during trial. It is the duty of counsel to present the case for the defense, just as the recorder presents the case for the prosecution. Like the recorder, he must be familiar with court-martial procedure and should be acquainted with the provisions of *Naval Courts and Boards, 1937*, dealing with such matters. As heretofore noted a complete analysis of each step in summary court-martial procedure is contained in Chapter 12 of this text, together with a step-by-step outline of procedure. Thus reference should be made to these sections for the description details of counsel's duties during trial. The defense counsel must also have some knowledge of the rules of evidence, dealt with in Chapter 3, *Naval Courts and Boards, 1937*, and discussed generally in Chapter 15 of this text.

An officer who acts as counsel for an accused should take great care to preserve the dignity and respect of the court. No matter should be allowed to pass unnoticed which would tend to destroy the confidence which an enlisted man should feel in the competency of the tribunal trying him. Except for pleas to the issue, admissions, and the statement of the accused, counsel may always speak for the accused. A counsel should avoid personalities and allusions to personal history or personal peculiarities of persons connected with the trial. Personal colloquies between counsel and the recorder which cause delay and promote unseemly wrangling should be carefully avoided. Counsel should treat all witnesses with fairness and due consideration.

11E14. Argument. In every case, the counsel for the accused will be given an opportunity to make an argument before submitting his case to the court. Ordinarily the counsel will make his argument immediately following the opening argument made by the recorder. However, should the recorder waive his right to make an opening argument, the defense may or may not make an argument, and in the event the defense makes no argument the recorder loses his right to make a closing argument. Neither the prosecution nor the defense is required to make an argument; however, the proper presentation of the case, as well for the benefit of the court as of the reviewing authority, would suggest that the defense avail itself of its right to make argument.

A reasonable latitude is allowed the counsel in his argument. The testimony and any animus on the part of witnesses, the conduct, motives and evidence of malice on the part of those upon whose complaint the accused is being prosecuted, may, so far as disclosed by the proceedings, be commented upon, but the court will not permit such arguments to be

made the vehicle of abuse. It is improper to state in an argument any matter of fact as to which there has been no evidence. A party may, however, argue as though the testimony of his own witness conclusively established facts related by them. It is improper to misstate any matter of law in an argument, but on matters about which the authorities differ a party may properly state only the views favorable to his side. It is improper to state in argument that a much greater number of witnesses might have been called, or that witnesses unavailable would have testified thus and so. In short, an argument cannot be made a vehicle of getting evidence before the court. It is not evidence.

The argument may be presented orally or may be written and read by the counsel to the court. When the court does not have the services of a competent reporter the arguments must be written before delivery, except that the counsel may, if he be willing to have only the substance of his argument recorded, make it orally.

11E15. Examination of record. Counsel for the accused shall, when he so requests, be allowed to examine the record of proceedings, exclusive of the findings and sentence, as it is prepared. Therefore, before the record of trial is authenticated, the defense counsel should examine it and make certain that it accurately reflects the proceedings of the court.

12. THE SUMMARY COURT-MARTIAL: CONTINUED

A. STEP-BY-STEP OUTLINE OF TRIAL PROCEDURE

12A1. Purpose. A record of trial by summary court-martial showing each paper and entry in the order in which it should appear in the completed record is provided in Chapter 7, *Naval Courts and Boards, 1937*. Variation entries and appropriate references to pertinent procedural instructions are indicated in the footnotes of the chapter. In order that the steps of procedure therein represented may be smoothly accomplished during trial, it is necessary that the senior member and recorder of a summary court-martial be thoroughly familiar with the statements and interrogations contemplated by the steps as well as their proper sequence. To facilitate such familiarity, a step-by-step outline of procedure for summary court-martial trials is herein presented. Detailed discussion of each step in the outline and the record entries therefor will be found in Section B of this chapter.

12A2. Explanation. In the outline that follows, in the first two columns words descriptive of the procedural steps appear with abbreviations denoting the parties initiating or effecting the steps. In the next two columns the statement or interrogation expressed by the party effecting the step appears with variation action. Pertinent references to *Naval Courts and Boards, 1937*, are contained in the last column. The abbreviations *S.M.*, *Rec.*, and *Ord.* are utilized to denote *Senior Member*, *Recorder*, and *Orderly*.

Certain steps are not included in the outline because of their infrequent occurrence at trial, such as those pertaining to (1) special pleas in bar of trial which may be regularly, but not necessarily, made immediately prior to the reading of the specifications and arraignment of the accused; (2) reading of *nolle prosequi* which may be regularly, but not necessarily, read prior to the inquiry as to objections to the specifications; (3) administering of oath to interpreter which may be regularly, but not necessarily, made immediately following the administering of the recorder's oath; (4) reading of order detailing counsel to assist recorder which may be regularly, but not necessarily, read following disposition of the inquiry as to counsel for the accused; and (5) admissions of the accused which may be regularly, but not necessarily, made immediately before the prosecution begins its case.

In order that one outline may serve as a guide for the trial of both *guilty* and *not guilty* cases and in view of the multiple variations and possibilities implicit in the examination of witnesses and arguments, these phases of the trial procedure are treated more generally in the outline with appropriate cross-reference to specific descriptions of the steps in Section B hereof.

12A3. Step-by-step outline of trial procedure.

Procedural step	Party	Interrogation or statement	Variation action	Section in NCB
Court Meets (Convening Authority Notified).	S.M.	"The court will be opened."	.....	653
Reporter Introduced (When Employed).	Rec.	". . . . will act as reporter."	.....	653
Orderly enters with the Accused.	Ord.	"Sir, . . . , reporting as orderly."	.....	653
Inquiry as to Counsel.	Rec.	"Does the accused desire counsel?"	If the accused has counsel or counsel is appointed, counsel takes seat as such.	654
Accused is informed re: Section 356, NCB (When accused does not desire counsel.)	S.M.	"Counsel will be assigned you should you so desire, and you are advised to consult counsel before deciding to proceed with the case."	.....	356
Presentation of Precept. (Recorder and accused standing.)	Rec.	"The precept is herewith submitted to the accused for his information and inspection."	At the first session of the first trial the precept must be read aloud to the accused.	655 655(20)
Inquiry as to Challenge.	Rec.	"Does the accused object to any member of the court?"	If objection is made, opportunity is afforded accused to examine member on voir dire; court is cleared, challenged member withdrawing, and vote is taken. Court then opens and announces decision. It is not necessary for the court to go into closed session where the challenged member admit that he cannot be impartial.	656 391

Procedural step	Party	Interrogation or statement	Variation action	Section in NCB
			If objection is sustained, convening authority is notified and court is adjourned to await appointment of a new member. If objection is not sustained, and no further objection is made, the case proceeds.	
Court is Sworn (Everyone Standing).	Rec.	"You, ..., ..., and . . . , do swear (or affirm) that you will well and truly try, without prejudice or partiality, the case now depending, according to the evidence which shall be adduced, the laws for the government of the Navy, and your own conscience."	.....	App. E–3(2)
Recorder is Sworn (Everyone Standing).	S.M.	"You, . . . , swear (or affirm) that you will keep a true record of the evidence which shall be given before this court and of the proceedings thereof."	.....	App. B–30
Reporter is Sworn (When Employed).	Rec.	"You, . . . , swear (or affirm) faithfully to perform the duties of reporter in aiding the recorder to take and record the proceedings of the court, either in shorthand or ordinary manuscript."	.....	App. E–1(f)
Inquiry as to receipt of specification(s).	Rec.	"Has the accused received a copy of the specification(s) preferred against him, and if so, when?"	If the accused denies receipt and the recorder fails to prove receipt, accused is furnished with copy and court is adjourned until accused has had ample time to prepare his case.	658 564(55)

Procedural step	Party	Interrogation or statement	Variation action	Section in NCB
Inquiry as to objections to specification(s).	Rec.	"Has the accused any objection to make to the specification(s)?"	.....	659
Court is cleared to examine specification(s).	S.M.	"The court will be cleared."	Clearing the court may be dispensed with when it is manifest that the finding will be unanimous.	660 373
Court is opened.	S.M.	"The court will be opened."	.....	660
Pronouncement as to form and correctness of specification(s).	S.M.	"The court finds the specification(s) in due form and technically correct."	The court may direct the recorder to correct manifest clerical errors in the specification(s) and pronounce them to be otherwise in due form and technically correct; or, the court may find the specification(s) not in due form and technically correct and direct the recorder to advise the convening authority, adjourning to await reply.	660 567
Inquiry as to accused's readiness for trial.	Rec.	"Is the accused ready for trial?"	If accused requests postponement, the court should be liberal in granting the request.	661 399
Separation of witnesses.	S.M.	"All witnesses not otherwise connected with the trial will withdraw."	.....	662
Specification(s) read and accused arraigned.	Rec.	"....." " . . . , you have heard the specification(s) preferred against you; how say you to the (first) specification, guilty or not guilty?" ("To the second specification, guilty or not guilty?, etc.")	.....	663

Procedural step	Party	Interrogation or statement	Variation action	Section in NCB
Warning on plea(s) of guilty.	S.M.	". . . , it is my duty as senior member of this court to warn you that by your plea of guilty to the (first, second, etc.) specification, you deprive yourself of the benefits of a regular defense (as to the specification thus admitted). That is to say, you can not after such a plea of guilty go ahead and prove that you are not guilty (on this specification). You may, however, introduce evidence of mitigating circumstances, in extenuation, or of previous good character. Do you understand what I have just explained? (In case of a negative answer, the explanation must be amplified.) Understanding this, do you persist in your plea?"	.....	664 664(34)
Prosecution Begins.	These steps of procedure involving examination of witnesses occur only when a plea of "not guilty" is entered to any specification and are discussed and illustrated in complete detail in Section 12B19. The proper order for the examination of a witness is as follows: First, direct examination by the party who calls him; second, cross-examination by the opposite party; third, redirect examination; fourth, recross-examination. Any member of the court may put questions to the witness; such questions are subject to objection in the same manner as are questions by parties to the trial. All questions presented to the court in the course of its proceedings, such as by objection, motion, etc., are decided by a majority vote of the court in closed session, unless clearing the court for this purpose would be merely perfunctory.			665
Prosecution Rests.				668
Defense Begins.				670
Defense Rests.				673
Rebuttal Begins.				610
Rebuttal Ends.				610
Surrebuttal Begins.				612

Procedural step	Party	Interrogation or statement	Variation action	Section in NCB
Surrebuttal Ends.	The senior member administers the following oath to each witness: "You do solemnly swear (or affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the charges. So help you God (or, this you do under the pains and penalties of perjury)." The recorder asks each witness the preliminary questions: "State your name, rate, (rank) and present station? If you recognize the accused, state as whom?" The senior member admonishes each witness at the conclusion of his testimony, as follows: "You took an oath to state everything within your knowledge in relation to the specification(s). You are now privileged to make any further statement necessary to fulfill your oath. If you are not sure what the specification(s) is (are), it (they) will be explained to you. Do you desire to make any further statement?" Before excusing any witness (except the recorder, the accused or a member when testifying) the senior member issues the following warning: "You are instructed not to converse with any person, other than parties to the trial, concerning any feature of the case whatsoever, and you will not communicate in any manner anything to them concerning testimony which you have given on the stand."			612
Inquiry as to Statement of Accused.	Rec.	"Does the accused desire to make a statement?"	.....	674
Court is Informed re: Sec. 359, NCB (When accused makes statement without counsel)	Rec.	"The substance of Section 359, Naval Courts and Boards, has been carefully explained to the accused."	.....	674(61)

Procedural step	Party	Interrogation or statement	Variation action	Section in NCB
Opening Argument by the Recorder.	Arguments are completely covered in Article 12B21 of this text.			674(61) 615 421 424
Argument by the Accused.	Both the accused (counsel) and the recorder are afforded an opportunity to present an argument before submitting their respective cases to the court. The recorder has a right to make the opening and the closing argument.			
Closing Argument by the Recorder.	Should the prosecution waive its opening argument, the defense may or may not make an argument, as it desires. Should the defense make no argument, the prosecution loses its right to make a closing argument. Neither the prosecution nor the defense is required to make an argument.			
Court is cleared to arrive at finding(s).	S.M.	"The court will be cleared."	When the accused has pleaded guilty throughout, clearing the court to deliberate on the findings may be dispensed with.	676 676(64)
Recorder recalled and directed to record the finding(s).	S.M.	"The recorder will record the finding(s) of the court as follows: ...."	If the court has not been cleared to arrive at the finding(s), it is not necessary to recall the recorder and he is directed in open court to record the finding(s).	676 676(65)
			Should the accused be acquitted of all specifications, the court is opened and the finding(s) are read to the accused by the recorder. Whereafter the convening authority is notified and court is adjourned or proceeds to the trial of the next case.	433 676(66)
			Should the court find one or more specifications proved and others not proved, the court is opened and the accused	433 619

Procedural step	Party	Interrogation or statement	Variation action	Section in NCB
			is informed by the court of the specification(s) not proved.	
Court is opened to receive matters in aggravation, extenuation, mitigation or record of previous conviction.	S.M.	"The court will be opened."	If it is not desired to present matter in aggravation, mitigation or extenuation and the accused has no record of previous conviction, it is unnecessary to open the court merely for the statement of the accused's personal service data.	677(69) 620
Matter in Aggravation.	The presentation of matter in aggravation and matter in mitigation or extenuation is discussed in detail in Article 12B24 of this text.			620 167
Matter in Extenuation and Mitigation.	Such evidence may be introduced after the finding(s) regardless of the character of the general issue pleas of the accused. After the matter in aggravation, extenuation or mitigation has been introduced, the recorder or accused has the right to cross-examine the witness and offer evidence in rebuttal.			
Statement of Accused's Personal Service Data.	Rec.	"The accused has (no) record of previous conviction(s); his rate of pay in his present rating (rank) is $ . . . a month and in his next inferior rating (rank) $ . . . a month; he enlisted on . . . . 19 . . , to serve for . . . years, and gave as his date of birth . . . . , 19 . . "	When accused has no record of previous conviction(s), the court is cleared to determine the sentence, i.e., the recorder withdraws after presenting the statement of the accused's personal service data.	677 677(69)
Announcement of Court's readiness to receive record of previous conviction.	S.M.	"The court is ready to receive the record of previous conviction(s)."		677(69)

Procedural step	Party	Interrogation or statement	Variation action	Section in NCB
Submission of Record of previous conviction(s) to accused.	Rec.	"Record of the accused's previous conviction(s) is submitted to the accused."		677(69)
Submission of Record of previous conviction(s) to the Court.	Rec.	"Record of the accused's previous conviction(s) is submitted to the Court."		677(69)
Inquiry as to objections to introduction of record of previous conviction(s).	Rec.	"Are there any objections to the introduction of the accused's record of previous conviction(s)?"	If objection is made, court must rule on the admissibility of the record, clearing and opening court if desired.	677(69) 621(17)
Record of Previous Conviction(s) Read.	Rec.	". . . (Offense and date committed) . . . (Nature and date of trial) . . . (Finding) . . . (Sentence) . . . (Approval by proper authorities and dates thereof)."		677(69) 621(17)
Court is cleared to determine sentence.	S.M.	"The court will be cleared."		678
Recorder recalled and directed to record sentence.	S.M.	"The recorder will record the sentence of the court as follows: . . . "		678
Court is adjourned.	S.M.	"The court will be adjourned to await the orders of the convening authority."	"The court will be opened and will proceed with the case of . . . . "	680

B. ANALYSIS OF TRIAL PROCEDURE AND RECORD ENTRIES

12B1. The court meets. When the court is ready to meet, there should be no one in the courtroom except the members of the court and the recorder. The formality of opening the court consists merely in the annnouncement by the senior member that *The court will be opened.* The senior member signs a memorandum setting forth the date and time the court met and dispatches it through routine channels to the convening authority.

Entry for the record.

U. S. Naval Section Base,
Bar Harbor, Maine,
Friday, July 13, 1945.

The court met at 10 a.m.

Present:

Lieutenant Aron R. Kramer, U. S. Naval Reserve;
Lieutenant John M. Daniels, Medical Corps, U. S. Navy;
First Lieutenant James H. Rowan, U. S. Marine Corps, members; and
Ensign Kenneth R. Appleby, U. S. Naval Reserve, recorder.

1st variation.

Lieutenant John M. Daniels, Medical Corps, U. S. Navy, a member, was absent on account of illness (or other cause), and as the court was reduced below the nu.nber authorized by law, it adjourned until 10 a.m., tomorrow, Saturday.

2nd variation.

The court, being reduced below the number authorized by law, informed the convening authority to that effect, and then took a recess until 11:30 a.m., the same date, when it reconvened. Present: Lieutenant Aron R. Kramer, U. S. Naval Reserve, First Lieutenant James H. Rowan, U. S. Marine Corps, members, Ensign Kenneth R. Appleby, U. S. Naval Reserve, recorder; and Ensign Theodore Smith, U. S. Naval Reserve, appointed a member by the convening authority, vice Lieutenant John M. Daniels, Medical Corps, U. S. Navy, relieved.

12B2. Reporter introduced and orderly enters with accused. If a reporter is to be employed, he enters and is introduced to the court by the recorder. The orderly then enters with the accused and reports to the senior member.

Entry for the record.

The recorder introduced James Edgar Oldham, yeoman second class, U. S. Naval Reserve, as reporter. (This entry is omitted when a reporter is not employed.)

Nathan O. Potter, seaman second class, U. S. Naval Reserve, entered with the accused and reported as orderly.

12B3. Counsel for the accused. The accused is asked by the recorder if he desires counsel, and if he does, or has counsel, the accused's counsel enters. Should the accused state that he does not desire counsel, he shall be informed by the court that counsel will be assigned him should he so desire, and he shall be advised to consult counsel before deciding to proceed with the case without counsel. A statement that Section 356, *Naval*

Courts and Boards, has been complied with shall be entered upon the record of proceedings.

Entry for the record.

The accused stated that he did not wish counsel.

The requirements of Section 356, Naval Courts and Boards, were complied with.

1st variation.

The accused requested that Ensign Lawrence Nagle, U. S. Naval Reserve, act as his counsel. Ensign Nagle took seat as such.

2nd variation.

The accused was informed that his request to have Ensign Lawrence Nagle act as his counsel was not approved for the reason that (give reason); he then requested that Lieutenant Oscar Pattiman, U. S. Naval Reserve, act as his counsel. Lieutenant Pattiman took his seat as such. (Or, He thereupon requested that counsel be detailed for him, and the court so notified the convening authority and took a recess until 1 p.m., the same date, when it reconvened. Present: All the members, the recorder and the accused. Ensign Nagle, U. S. Naval Reserve, having been detailed as counsel for accused, reported as such.)

12B4. Counsel for the recorder. In order that a counsel for the recorder may have standing before a court, it is necessary that he be detailed or authorized by the convening authority. If so detailed the court shall give him equal facilities with the counsel for the accused in the performance of his duties. Although it is neither customary nor required to appoint counsel for the recorder in summary court-martial trials, in case counsel is appointed the order appointing him must be read aloud and prefixed to the record.

Entry for the record.

The recorder read an order from the convening authority, original prefixed marked 'B,' detailing Lieutenant Boris B. Bronson, U. S. Naval Reserve, to act as counsel to assist the recorder. Lieutenant Bronson took seat as such.

12B5. Presentation of the precept. At the first session of the first trial by a newly convened court, the precept, together with any orders from the convening authority directing a change in the composition of the court set forth therein, will be read aloud by the recorder in court in the presence of the accused, the recorder and the accused standing during the reading. Thereafter, at subsequent trials, copies of the precept and of those orders from the convening authority previously read will be submitted to the accused for his information and inspection. Orders from the convening authority directing a change in the membership of the court received after the reading of the precept and modifying orders will be read in the manner prescribed above and at the sessions of succeeding trials copies thereof will be submitted to the accused along with the copies of the precept and of similar orders which have been read.

Entry for the record.

The recorder submitted a copy of the precept, hereto prefixed marked 'A', to the accused for his information and inspection, original prefixed to the record in the case of Samuel Peter Brown, seaman second class, U. S. Naval Reserve.

1st variation.

The recorder read the precept, original hereto prefixed marked 'A'.

2nd variation.

The recorder submitted a copy of the precept, hereto prefixed marked 'A', to the accused for his information and inspection, original prefixed to the record in the case of Samuel Peter Brown, seaman second class, U. S. Naval Reserve, and read a modification of the precept, original hereto prefixed marked 'B'.

12B6. Challenges. The accused and the recorder have equal rights of challenge. A member has no such right, but it is his duty to lay any facts of which he may have knowledge, tending to show that another member is disqualified, before the court for its action. It is the duty of the recorder to challenge in turn any members to whom the prosecution objects, and after these challenges are determined, to ask the accused if he objects to any member of the court appointed to try him, and a minute of this inquiry and the answer thereto are invariably to be entered on the record. As a general rule, whatever objection either party may make to any member shall be decided upon before the court is sworn, but at any stage of the proceedings prior to the findings challenges may be made, either by the recorder or by the accused, for cause not previously known. No right of challenge exists against anyone other than a member of the court.

What constitutes a valid challenge. A positive declaration by a challenged member that he is not prejudiced against the accused nor interested in the case is ordinarily satisfactory to the accused, and, in the absence of material evidence in support of the objection, will justify the court in overruling it. However, a challenge upon any one of the following grounds, if admitted by the challenged member or proved, shall be sustained despite any declaration the challenged member may make:

1. That he sat as a member of a court of inquiry or board which investigated the charges.
2. That he has personally investigated the charges and expressed an opinion thereon, or that he has formed a positive and definite opinion as to the guilt or innocence of the accused.
3. That he is the accuser (this does not include an officer who merely refers for trial charges preferred by another, unless he has formed a definite opinion).
4. That he will be a material witness for the prosecution or for the defense, except only as to the previous good character of the accused.

5. That he sat as a member of a court or board which tried or investigated another person upon charges based on the same transaction concerning which the accused is on trial.
6. That he is related by blood or marriage to the accused.
7. That he has a declared enmity against the accused.

When a member testifies as a witness. When a member is called and has testified as a witness for the prosecution or for the court, on any matter material to the issue or prejudicial to the accused, he shall thereupon be considered as challenged by the accused, unless the accused expressly requests that he be not so considered, which should appear affirmatively on the record, and he shall be forthwith excused by the court from further attendance as a member thereof.

Court decides on challenges. A challenge on any of the grounds set forth above, if properly supported by the facts, shall be sustained by the court. Where, however, the basis for challenge is other than one of such grounds, it is for the court to determine the question of the member's alleged disqualification. This is done by a majority vote based upon the preponderance of the evidence, but in case of a tie the challenge is not sustained. Courts should be liberal in passing upon challenges, but they will not entertain an objection that is not specific or that is based upon the mere assertion of the accused, or recorder if it is not admitted by the challenged member or proved. In a case of challenge, the decision of the court is final, and the party who challenges cannot insist upon his challenge in opposition to the decision of the court. Members of courts are liable to challenge at the beginning of each distinct trial.

Procedure on challenge. In case the challenged member makes no response or makes a response unsatisfactory to the challenger, the latter may offer testimony in support of his challenge or may subject the challenged member to an examination under oath as to his competency as a member. An examination on a challenge may be under oath on *voir dire* administered by the senior member. Witnesses may be introduced in rebuttal and arguments may be made. It is customary for a member who is objected to, to withdraw when the court is cleared to deliberate on the challenge, and he should always do so. Although this may leave but two members in the court, it still leaves a legal minimum as the member who has withdrawn has not yet ceased to be a member. The court, after being cleared, proceeds to deliberate and decide upon the validity of the objection. A majority vote of the members voting determines. In case of a tie, the challenge is not sustained. The court is then opened and the decision announced. The objection, the cause assigned, the statement, if any, of the challenged member, the testimony of witnesses examined on *voir dire*, and the decision of the court shall be regularly and specifically entered on the record. When a challenge

is sustained, the challenged member ceases, from the announcement of the result in open court, to be a member for that trial. In case more than one member is to be challenged, the junior one shall be challenged first.

When a member not challenged considers himself disqualified. The court of itself cannot excuse a member in the absence of a challenge. An unchallenged member who thinks himself disqualified can be relieved only by application to the convening authority. He should announce in open court that he thinks himself disqualified so as to afford the proper party an opportunity to challenge.

When challenge is sustained. When a challenge is sustained, the convening authority should be notified as soon as practicable and the court adjourned awaiting the appointment of a new member by the convening authority. A copy of the communication notifying that authority of the adjournment and the reasons therefor must be prefixed to the record.

Entry for the record.

The accused stated that he did not object to any member.

(If the recorder makes no challenge, no entry need be made. However, if the recorder does make a challenge, the entry reflecting the challenge precedes the entry pertaining to challenge by the accused.)

1st variation.

The recorder objected to Lieutenant John M. Daniels, Medical Corps, U. S. Navy, because he had personally investigated the charges and expressed a positive opinion that the accused was innocent.

The challenged member replied as follows:

. . . . . (reply of member) . . . .

Upon the request of the recorder the challenged member took the stand and was examined on his voir dire as follows:

. . . . . (examination) . . . . . .

George K. Swann, seaman second class, U. S. Navy, a witness for the recorder, was called, duly sworn and examined as follows:

. . . . . (examination) . . . . . .

The court was cleared. The challenged member withdrawing.

The court was opened. All parties to the trial entered; the court announced that the objection of the recorder was sustained and that Lieutenant Daniels was excused from sitting as a member in this case. (Or, ... the court announced that the objection was not sustained.)

Lieutenant Daniels withdrew from his seat as a member.

The recorder did not object to any other member.

2nd variation.

The accused objected to First Lieutenant James H. Rowan, U. S. Marine Corps, because he had sat as a member of a court-martial which tried Homer L. Tate, seaman first class, U. S. Navy, on charges growing out of the identical incident on which the charges in this case are based, and for which the accused could properly have been tried in joinder with Tate.

The challenged member replied as follows:

The statement of the accused is substantially correct.

The court announced that the challenge of the accused was sustained and that Lieutenant Rowan was excused from sitting as a member in this case. Lieutenant Rowan withdrew from his seat as a member.

The accused did not object to any other member.

12B7. Swearing the court. Until a court is duly sworn according to law, it is incompetent to perform any judicial action except to hear and determine challenges against its members. The procedure for administering the prescribed oaths is as follows: (1) the recorder administers the prescribed oath to the members; (2) the senior member administers the prescribed oath to the recorder; (3) reporters and interpreters are then sworn by the recorder. While the members and the recorder are being sworn, all persons present will stand. While any others are being sworn, the person taking and the officer administering the oath will stand.

Entry for the record.

Each member, the recorder, and the reporter were duly sworn.

(Entry when reporter is employed.)

Variation.

Each member and the recorder were duly sworn.

(Entry when reporter is not employed.)

12B8. Accused's acknowledgment of receipt of specifications. Immediately after the court is sworn, the accused shall be asked whether he has received a copy of the specifications preferred against him, and if so, on what date. If the accused denies having received a copy of the specifications, the fact that he has received it or that he refused to take it when duly offered to him, must be established by evidence in an interlocutory proceeding before proceeding with the trial proper. In such case, the recorder will call witnesses or will himself take the stand and shall prove the receipt or offer by a preponderance of the evidence. The accused may call witnesses to disprove this. Upon the conclusion of the evidence the court shall be cleared, and upon reopening the finding shall be announced and recorded: *The court finds as a fact that the accused received a copy of the specifications on November 1, 1944* (or . . . *that the accused was duly offered and refused a copy of the specifications on November 1, 1944*). If the finding be to the contrary, the court must see that the accused is furnished a copy and must adjourn from day to day (or by permission of the convening authority for a longer period) until the accused has had ample time to prepare his defense.

Entry for the record.

The accused stated that he received a copy of the specifications preferred against him on July 15, 1945.

Variation.

The accused stated that he had received a copy of the specifications preferred against him on November 1, 1944, and that on November 3, 1944, he received a copy of the additional specifications preferred against him.

12B9. Changes in specifications announced. Should the convening authority authorize the recorder to amend legal defects in the specifications before the accused is called upon to plead, the recorder reads the letter from the convening authority authorizing him to make such changes.

Entry for the record.

The recorder read a letter from the convening authority, prefixed marked 'E', authorizing and directing him to make a change in the specifications, and stated that the same had been made both in the original and in the copy in the possession of the accused.

12B10. Nolle prosequi announced. A *nolle prosequi* (or withdrawal or discontinuance) is an entry made on the record by which the convening authority declares that he will proceed no further. The recorder should announce any *nolle prosequi* received by him prior to trial before the accused is asked whether he objects to the specifications, although a *nolle prosequi* may be legally announced at any time prior to the findings.

Entry for the record.

The recorder read a letter from the convening authority, prefixed marked 'F', directing him to enter a nolle prosequi as to specifications 1 and 2 preferred against the accused on July 1, 1944. A nolle prosequi was so entered.

12B11. Inquiry as to objections to specifications. After the accused admits having received a true copy of the specifications preferred against him, he is asked whether he has any objection to make to them. It is proper to object if the accused does not think the specifications state an offense, because they are not definite enough, or because there is some error, such as a misnomer, but the accused must state in what particular he deems the specifications defective.

Entry for the record.

The recorder asked the accused if he had any objections to make to the specifications.

The accused replied in the negative.

1st variation.

The accused replied in the affirmative, stating that in the specifications he is charged by the name of Xavier Y. Zehner, whereas he is now and from earliest childhood has been known by the name of Xavier Y. Zenher, and this he is ready to verify.

12B12. Specifications pronounced in due form and technically correct. If the accused has no objection to make to the specifications, the recorder

reports no defect, and the court finds no defect, the court then pronounces the specifications in due form and technically correct. It is customary for the senior member to clear the court while it is examining the specifications. After this stage of the proceedings, the accused will not be heard to object to the specifications except upon an error of substance, that is, upon a defect which would vitiate the entire proceedings. This may be noted at any stage of the trial that it manifests itself.

Entry for the record.

The court was cleared. The court was opened and all parties to the trial entered. The court announced that it found the specifications in due form and technically correct.

1st variation.

The court was opened and all parties to the trial entered. The court directed the recorder to correct the manifest clerical errors in spelling pointed out by him both in the original specifications and in the copy in the hands of the accused. The court announced that it, having found the specifications otherwise not in due form and technically correct, directed the recorder to send a communication to the convening authority, copy prefixed marked 'G' and would await a reply.

The court then took a recess until 2 p.m., the same date, when it reconvened. Present: The members and all parties to the trial.

The recorder read an order from the convening authority, prefixed marked 'H' directing changes in the specifications. The recorder was directed by the court to correct the original specifications, and the copy in the hands of the accused, in accordance with the directions of the convening authority.

The recorder asked the accused if he had any objections to make to the specifications as corrected. (If further objection is made, proceed as in Article 12B11, 1st variation.)

The accused replied in the negative.

The court was cleared.

The court was opened. All parties to the trial entered and the court announced that it found the specifications in due form and technically correct.

2nd variation.

The recorder read a letter from the convening authority, prefixed marked 'H', stating that in his opinion the specifications were correct as drawn, and directing the court to reconsider its finding thereon.

The letter should state fully the reasons for believing the specifications to be in due form. The court may not properly arraign the accused and proceed to a finding on any specification until it has found the said specification to be in due form and technically correct and this fact has been noted in the proceedings; accordingly, if the court adheres to its previous finding, the convening authority cannot direct it to proceed with the trial, but he should reframe the specification, or he may refer the entire case to another court or direct the recorder to enter a *nolle prosequi* to the specification in controversy.

12B13. Inquiry as to accused's readiness for trial. When the specifications have been pronounced in due form and technically correct, the recorder shall ask the accused, *Are you ready for trial?* Either the recorder or the accused may request a postponement of the trial stating his reasons for the request. But an application to suspend the proceedings of a court for a longer period than from day to day, Sundays excepted, must be referred to the officer convening the court, who alone has authority to grant such a request. The court should be liberal in granting a postponement requested by the accused. A court having granted a postponement in one case is not precluded from taking up another case during such postponement.

Entry for the record.

The accused stated that he was ready for trial.

1st variation.

The recorder (accused) requested a postponement of the trial. (State reason.)

The court was cleared. The court was opened and all parties to the trial entered.

The court then at 11 a.m. adjourned until 10 a.m., tomorrow, Friday.

(Or, The court was opened. All parties to the trial entered, and the senior member announced that the court had decided to proceed with the trial.)

When the suspension of business is from one day to the next, or for a longer period, it should be recorded as an adjournment; when from one part of a day to another part of the same day, as a recess.

2nd variation.

The court then at 3 p.m., adjourned until 10 a.m., tomorrow, Saturday.

SECOND DAY

U. S. Naval Section Base,
Bar Harbor, Maine,
Saturday, July 14, 1945.

The court met at 10 a.m.

Present:

Lieutenant Aron R. Kramer, U. S. Naval Reserve;
Lieutenant John M. Daniels, Medical Corps, U. S. Navy;
First Lieutenant James H. Rowan, U. S. Marine Corps, members; and
Ensign Kenneth R. Appleby, U. S. Naval Reserve, recorder.
James Edgar Oldham, yeoman second class, U. S. Naval Reserve, reporter.
Accused and his counsel.

When counsel for the accused is absent, the record shall show affirmatively that accused waived his right to have counsel present. For example: The accused stated that he waived his right to have counsel present during this session of the court.

The record of proceedings of the first day of the trial was read and approved.

(Or, The recorder stated that the record of proceedings of the first day of the trial was not ready. At the request of the recorder, the court then, at 11 a.m., took a recess until 1 p.m., at which time it reconvened.)

(Or, The court decided to postpone the reading of this record until such time as it shall be reported ready, and in the meantime to proceed with the trial.)

12B14. Witnesses separated. If there are any witnesses in the courtroom, they should be separated and kept outside the courtroom until time for their testimony. They should not be present during the reading of the specifications and should be examined apart from each other. The witnesses may be summoned in a body at this time and instructed not to converse with any other person, other than parties to the trial, concerning any feature of the case whatsoever, and not to allow any witness who has testified to communicate to them in any manner anything concerning testimony given on the stand.

Entry for the record.

No witnesses not otherwise connected with the trial were present.

1st variation.

In accordance with the direction of the court, all witnesses not otherwise connected with the trial withdrew.

2nd variation.

The court summoned all witnesses in the case and instructed them not to converse with any person, other than parties to the trial, concerning any feature of the case whatsoever, and not to allow any witness who has testified to communicate in any manner anything to them concerning testimony given on the stand.

12B15. Special pleas. The pleas recognized by a naval court-martial and the order in which they should be made are pleas to jurisdiction, pleas in bar of trial, and pleas to the general issue. Pleas to jurisdiction and pleas in bar of trial are known as special pleas.

Plea to the jurisdiction. This plea should regularly be made prior to pleading the general issue, but as lack of jurisdiction is a fatal defect, the plea may be made at any time. An objection on the ground of lack of jurisdiction involves a question as to the legal authority of the court, such as: (1) that it was convened by an officer having no legal authority to convene it; (2) that it is not legally constituted; (3) that the accused is not subject to the court's jurisdiction; (4) that the offense is not one cognizable by naval court-martial. Even though the accused fails to make objection to the jurisdiction of a court, if the court did for any reason lack jurisdiction, the defect is fatal and the findings and sentence of the court must be set aside. Waiver of objection will never avail to confer jurisdiction upon a court not legally possessing it.

Plea in bar of trial. A plea in bar of trial, if sustained is a substantial and conclusive answer to the specification to which it is addressed. Such a plea may be made on one of the following grounds: (1) the statute of limitations; (2) double jeopardy; (3) pardon.

The statute of limitations, as affecting persons subject to trial by naval courts-martial, is contained in Articles 61 and 62, *AGN*. These articles do not operate to extinguish the offenses in cases where they apply, but merely give the accused in such cases a defense against trial therefor. It consequently follows that the burden falls upon the accused in every case in which he desires to avail himself of these articles, in addition to establishing that he comes within the provisions of them, affirmatively to establish that he is not within their exceptions. Since these statutes of limitations are matters of defense only, they may be waived by the accused. A plea of guilty operates as such a waiver. But it is not imperative that the accused, in order to avail himself of this defense, do so by means of a special plea; the limitation may equally be taken advantage of under a plea of not guilty by establishing this defense by evidence during the trial. The fact that an accused offers as a defense the statute of limitations in no way challenges the jurisdiction of a court-martial to hear and determine the matter, but goes to the merits of the case and is a matter to be determined by the court in exercise of its jurisdiction. The court-martial has final determination of the question, and its decision thereon is not reviewable in habeas corpus proceedings in the civil courts.

The Fifth Amendment to the Constitution of the United States provides that no person shall *for the same offense be twice put in jeopardy of life or limb*. This provision is the authority for the principle that no person shall be tried a second time for the same offense. In order, however, that a person on trial before a court-martial may be given the benefit of this principle, it is necessary that he should have been actually acquitted or convicted on a former trial. After the proceedings in a former trial have been carried to an acquittal or conviction, the jeopardy is complete and it does not matter whether any action, or, if any, what action has been taken upon the proceedings by the reviewing authority. But proceedings upon a *fatally defective* specification do not constitute double jeopardy. Likewise, to constitute double jeopardy, the court before which the former proceedings have been conducted must have been a duly constituted and legally competent court. A commanding officer is not a court-martial and punishment inflicted by him is not a bar to trial. Also, the term *same offense* does not mean the *same act*. The same act may be an offense against more than one Government, as, for example, when one enlisted man assaults another within the territory of one of the States, it is an offense both against that State and against the United States. Moreover, the same act may be an offense against civil law and at the same time a separate and distinct offense against naval law. When a person has been once acquitted or convicted by a court-martial of a certain offense, he is not subject to trial subsequently for a minor offense included therein. Likewise, when once tried by court-martial for a minor offense, an accused cannot later be

tried for a major offense of which it is a part, because to do so would be to place him twice in jeopardy for the minor offense. In order that an accused may avail himself of the defense of double jeopardy, he must take advantage of it and plead it in bar of trial at the proper time. If he waives it, as by pleading to the general issue, the court will proceed with the case. When he wishes to avail himself of it, the production of the record of the former trial is the proper way to sustain such objection.

A pardon is an act of the President that exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed, and may be offered in evidence to sustain a plea in bar of trial.

Action upon special pleas. A plea to the jurisdiction or in bar of trial, the grounds therefor, and evidence introduced both in support of and against the motion should be fully entered in the record. The burden of supporting a special plea rests on the accused. The evidence necessary to establish such a plea need not prove it beyond a reasonable doubt, but only by a preponderance of the evidence. If the motion be sustained, an extract of the proceedings of the court shall be forwarded to the convening authority and the court will meet from day to day awaiting further instructions from the convening authority, who may either accept the court's ruling and direct that the prosecution on the matter involved be discontinued or may return the record to the court for a reconsideration, with a statement of reasons therefor.

Entry for the record.

The accused made a plea in bar of trial to the first specification on the ground that he had been previously tried and acquitted of this same offense by a civil court.

In support of this plea the accused desired to call a witness.

(Or, The accused stated that he had no evidence to introduce in support of his plea.)

A witness in behalf of the accused entered and was duly sworn.

Testimony is taken. The recorder may call witnesses to disprove the accused's contention. The oath is the same as for a witness on a general issue. The evidence is fully recorded.

The recorder replied:

(Or, The recorder did not desire to reply.)

(Or, The recorder requested until 4 p.m. in order to prepare his reply. The court then took a recess until 4 p.m. at which time it reconvened. Present: The members and all parties to the trial. The recorder read an argument in reply to the plea of the accused, copy appended marked 'T.')

(Or, The court denied the request of the recorder and directed him to reply at this time. The recorder replied: . . . .)

The court was cleared.

The court was opened, and all parties to the trial entered. The court announced that the plea of the accused was overruled. (Or, The court announced that the plea of the accused was sustained. The recorder was directed to address a communication to the convening authority, copy appended marked 'J' transmitting a summary of the proceedings of the court relative to the plea. Pending a reply from the convening authority, the court then at 4 p.m. adjourned until 10 a.m., tomorrow.)

The recorder asked the accused if he had any further plea to offer.

The accused replied in the negative.

If further plea is offered, proceed as before.

12B16. Arraignment and plea to the general issue. After the court has been organized, special pleas, if any, disposed of, and both parties are ready to proceed, the recorder will read the specifications separately and in order to the accused and ask him how he pleads to each, *guilty* or *not guilty*. The accused's response constitutes his plea to the general issue. The order pursued in case of several specifications will be to arraign on the first, second, etc., specifications. Both recorder and the accused stand during the reading of the specifications and the arraignment. By a plea of guilty, the accused admits without proof the averments of the specifications. A plea of not guilty on the other hand calls upon the prosecution to prove the averments of the specifications.

Procedure on plea of guilty. Should the accused plead *guilty* and should such plea be accepted, the senior member shall warn him that he thereby precludes himself from the benefits of a regular defense and ask if he persists in such plea. (See Article 12B17.)

Standing mute. If the accused stands mute, the court shall direct the trial to proceed as if he had pleaded *not guilty*. This same procedure shall be followed if the accused answers foreign to the purpose, or makes any other irregular answer.

Plea of insanity. Insanity at the time of the commission of the acts charged is a defense that should properly be made under a plea of not guilty. Insanity at the time of arraignment, or at a later stage of the trial, is a proper ground for the arrest of further proceedings. In case such a plea is made, or in case the court entertains any doubt as to the mental capacity of the accused at any stage of the trial, it should properly communicate with the convening authority, requesting a postponement of the trial, and that the accused be placed under observation of medical officers.

Entry for the record.

The recorder read the specification, original prefixed marked 'B', and arraigned the accused as follows:

Q. John Jones, seaman second class, U. S. Navy, you have heard the specifications preferred against you; how say you to the specification, guilty or not guilty?

A. Not guilty.

1st variation.

Q. John Jones, seaman second class, U. S. Navy, you have heard the specifications preferred against you; how say you to the first specification, guilty or not guilty?
A. Guilty.

Q. To the second specification, guilty or not guilty?
A. Guilty except as to the words "seven days," to which words, not guilty.

Q. To the third specification, guilty or not guilty?
A. The accused stood mute.

Q. To the additional specification, guilty or not guilty?
A. Not guilty.

12B17. Warning on plea; change of plea; rejection of plea. Whenever the accused has pleaded guilty to any specification or part of a specification, the following warning must be given by the senior member of the court: *Jones, it is my duty as senior member of the court to warn you that by your plea of guilty to the specification (or first specification) you deprive yourself of the benefits of a regular defense as to the specification (or first specification). That is to say, you cannot, after such a plea of guilty, go ahead and say that you are not guilty on the specification. You may, however, introduce evidence of mitigating circumstances, in extenuation, or of previous good character. Do you understand what I have just explained? (In case of a negative answer the explanation must be amplified.) Understanding this, do you persist in your plea?*

The request of an accused, prior to the completion of trial, that his plea be changed from guilty to not guilty should always be granted. A plea of not guilty should not be changed to a plea of guilty unless the accused personally requests the change, or affirmatively assents to such request by his counsel. When it appears that the accused entered a plea of guilty through lack of understanding of its meaning and effect, the court should direct that the plea be changed to not guilty and the trial proceed on that basis. At whatever stage in the trial a change of plea is made, it vitiates all prior proceedings on the specification to which it relates and as a result of it there must be a recommencement of the trial.

In the following cases the plea of the accused will be rejected, a plea of not guilty entered, and the trial will proceed on that basis: (1) accused persists in a plea of (a) guilty but without criminality, or (b) guilty in a less degree than charged; (2) accused after plea of guilty sets up matter inconsistent with his plea by means of his statement, his testimony, or the testimony of a witness in his behalf. This procedure is to be followed even though the court has already arrived at its finding.

Entry for the record.

The accused was duly warned as to the effect of his pleas and persisted therein.

1st variation.

The accused withdrew his plea to the additional specification and substituted a plea of not guilty. He persisted in his other pleas.

Action on pleas need only be taken when in the discretion of the court it is advisable.

2nd variation.

The accused was duly warned as to the effect of his pleas to the first and second specifications and persisted therein.

The court was cleared.

The court was opened, and all parties to the trial entered. The court announced that the plea of the accused to the second specification was rejected, and that the trial would proceed as if a plea of not guilty had been entered thereto.

3rd variation.

The accused informed the court that he desired to change his plea of not guilty to the third specification to guilty.

The accused was duly warned as to the effect of such plea and persisted therein.

The recorder stated that he had no objection to the request of the accused being granted. (Or, The recorder objected to granting the request of the accused on the ground that . . . .)

The court was cleared. The court was opened and all parties to the trial entered. The court announced that the request of the accused was (or was not) granted.

The recorder reread the third specification and rearraigned the accused as follows:

Q. John Jones, seaman second class, U. S. Navy, you have heard the third specification preferred against you; how say you to this specification, guilty or not guilty?

A. Guilty.

12B18. Admission in open court. An admission in open court, when such admission is voluntarily made by the accused or by his counsel in his presence and with his express or implied authority, is a judicial acknowledgment of the matter admitted and dispenses with the necessity of evidence to establish it. When the admission is made by counsel, it must appear affirmatively on the record that the accused acquiesced in the admission.

Entry for the record.

The counsel for the accused stated that the accused admitted that he was John Jones, seaman second class, U. S. Navy, and that he was on the third, fourth, and fifth of October 1942, attached to and serving with the U. S. Naval Section Base, Bar Harbor, Maine.

The accused stated that this admission was made by his authority.

12B19. Examination of witnesses and introduction of evidence. Normally the prosecution will call its first witness and after the witness is sworn by the senior member the recorder will ask him the preliminary questions, namely: *State your name, rate (rank), and present station. If you recognize the accused, state as whom.* If the witness is called to obtain his general knowledge of the offense with which the accused is charged, a good ques-

tion to lead off with is, *The accused is charged with certain irregularities on (date) and (place); state what you know about them.*

When the examination of all the prosecution witnesses has been completed, the recorder will inform the court that *The prosecution rests.* The defense will call its witnesses. The recorder will ask them the two preliminary questions and the examination will be continued by the accused (counsel). When the defense has called its witnesses and their examinations have been completed, he will inform the court that *The defense rests.*

At the conclusion of the examination of each witness, for the prosecution, the record must contain the entry: *Neither the recorder, the accused, nor the court desired further to examine this witness.* Likewise, at the conclusion of the examination of a witness for the defense, the record must contain the entry: *Neither the accused, the recorder, nor the court desired further to examine this witness.* The witness will then be advised by the senior member of the court that he took an oath to state everything within his knowledge in relation to the specifications and that he is privileged to make any further statement necessary to fulfill his oath; that if he is not sure what the specifications are they will be explained to him. The witness is then warned and withdraws.

Oral arguments upon the admissibility of evidence and upon interlocutory proceedings shall be allowed, but shall not be recorded; briefs of such arguments may be prepared at the expense of the party making them, and subsequently submitted to the court and shall then be appended to the record.

A member or recorder of the court is a competent witness. If required to testify, such witness should be the first called, except in the case of the recorder called as the official custodian of a document. Should the senior member of the court become a witness, the oath or affirmation shall be administered to him by the member next in rank, who shall preside during the progress of his examination. If the recorder becomes a witness, he shall record his own testimony, unless a reporter has been employed. When a member, the recorder, the accused, or his counsel has completed his testimony, an entry shall be made to the effect that the witness resumed his seat as a member, recorder, accused, or counsel. In the event a member of the court is called as a witness, this will not affect the validity of the proceedings, since, in so testifying, the witness does not cease to be a member.

When a member has so testified as a witness, he shall be considered as challenged under the conditions of Section 389, *Naval Courts and Boards, 1937.*

Prosecution begins; entry for the record.

The prosecution began.

Variation.

The prosecution offered no evidence.

The prosecution properly offers no evidence only where the accused has pleaded guilty throughout, and the specifications set forth the facts so fully as to show all the circumstances of aggravation. When evidence in aggravation is offered, it is introduced after the findings, but if it is the only evidence to be offered, the above entry is made in the record at this stage of the procedure.

Recorder as a witness for the prosecution; entry for the record.

The recorder was called as a witness for the prosecution and was duly sworn.

The oath of a recorder or a member as a witness is the same as for any other witness.

Examined by the recorder.

1. Q. State your name, rank, and present station.

A. Kenneth R. Appleby, Ensign, U. S. Naval Reserve, U. S. Naval Section Base, Bar Harbor, Maine.

Questions are to be numbered consecutively. If, however, the first examination of the witness is completed and later he is recalled, the questions begin anew. Questions and answers are paragraphed.

2. Q. If you recognize the accused, state as whom.

A. John Jones, seaman second class, U. S. Navy.

3. Q. Are you the legal custodian of the service record of John Jones, seaman second class, U. S. Navy, the accused? If so, produce it.

A. I am; here it is.

4. Q.....?

A. .....

Cross-examined by the accused:

5. Q.....?

A. .....

Except in pleas to the issue, admissions, and the statement of the accused, counsel for the accused (or the recorder when acting as such) may speak for the accused. The entry shall be made as though the accused himself were speaking.

Examined by the court:

6. Q.....?

A. .....

A question by a member may be put directly to a witness without submitting it first to the court; if, however, it is objected to and ruled out, it must be recorded as *by a member*. If received, it is recorded as *by the court*.

Re-examined by the recorder:

7. Q.....?

A. .....

The accused did not desire to recross-examine this witness.

The fact that the party whose turn it is to examine does not desire to ask any questions shall be recorded.

Neither the recorder, the accused, nor the court desired further to examine this witness.

The witness said that he had nothing further to state. (Or, The witness made the following statement:.....)

After this statement, if any, further examination will be allowed in the discretion of the court.

The witness resumed his seat as recorder.

The recorder, a member, or the accused is not warned after testifying.

Witness for the prosecution; entry for the record.

A witness for the prosecution entered and was duly sworn.

Examined by the recorder:

1. Q. State your name, rate, and present station. (Or, in case of a civilian witness: State your name, residence, and occupation.)

A. John W. Smith, boatswain's mate second class, U. S. Naval Reserve, U. S. Naval Section Base, Bar Harbor, Maine.

2. Q. If you recognize the accused, state as whom.

A. As John Jones, seaman second class, U. S. Navy.

3. Q.....?

This question was objected to by the accused on the ground that it was leading.

The recorder replied.

The court was cleared. The court was opened. All parties to the trial entered, and the court announced that the objection was sustained.

4. Q.....?

A. .....

5. Q.....?

This question was objected to by the court on the ground that it was irrelevant.

The recorder replied.

The court announced that the objection was sustained.

6. Q.....?

A. .....

The accused moved to strike out this answer on the ground that it was hearsay.

The recorder replied.

The senior member directed that the answer be stricken out. A member moved that the court be cleared. The court was cleared. The court was opened. All parties to the trial entered, and the court announced that the senior member's ruling was revoked, and that the court did not sustain the motion to strike out the answer.

When the senior member speaks for the court the ruling is recorded as by the court. When it develops that he did not speak for the court the ruling is recorded as by the senior member.

7. Q.....?

This question was objected to by a member on the ground that it was double.

The recorder made no reply.

The court was cleared. The court was opened. All parties to the trial entered, and the court announced that the objection was not sustained.

The question was repeated.

A. .....

8. Q.....?

A. .....

Cross-examined by the accused:

9. Q.....?

A. .....

10. Q.....?

This question was objected to by the recorder on the ground that it was beyond the scope of the direct examination.

The accused replied.

The court announced that the objection was sustained.

11. Q.....?

A. .....

12. Q.....?

This question was objected to by the recorder on the ground that it called for an opinion of the witness.

The accused withdrew the question.

13. Q.....?

A. .....

The witness was duly warned. (This is given in view of a recess decided upon by the court.)

The court then, at 11:45 a.m., took a recess until 1 p.m., at which time it reconvened. Present: All the members, the recorder, the reporter, the accused and his counsel. No witnesses not otherwise connected with the trial were present.

John W. Smith, boatswain's mate second class, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

14. Q.....?

A. .....

Re-examined by the recorder:

15. Q.....?

A. .....

Recross-examined by the accused:

16. Q.....?

A. .....

Examined by the court:

17. Q.....?

A. .....

By a member:

18. Q.....?

This question was objected to by the recorder on the ground that it went beyond the scope of the direct examination and that if answered the court would be originating evidence.

The member withdrew the question.

19. Q.....?
A. .....

The accused moved to strike the words '.....' out of the answer on the ground that they were the mere opinion of the witness.

The court directed that the words be stricken out.

20. Q.....?
A. .....

The accused requested that the recorder make a minute in the record at this point that the witness answered in a confused and hesitant manner.

Neither the recorder, the accused, nor the court desired further to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew. (Or, The accused (recorder) (a member) requested that the witness verify his testimony.)

The witness verified his testimony, was duly warned, and withdrew. (Or, The witness corrected his testimony as follows: Page 8, answer to question No. 10, the words '.....' changed to '.....' The testimony, thus amended, was read. The witness pronounced it correct, was duly warned, and withdrew. (Or, At the request of the recorder the witness was directed to report tomorrow at 10 a.m. (later in the trial when recalled), to correct or verify his testimony, was duly warned, and withdrew.)

Member called as a witness; entry for the record.

A member was called as a witness for the prosecution and was duly sworn.

Examined by the recorder:

1. Q. State your name, rank, and present station.
A. John M. Daniels, lieutenant, Medical Corps, U. S. Navy, U. S. Naval Section Base, Bar Harbor, Maine.

2. Q. If you recognize the accused, state as whom.
A. As John Jones, seaman second class.

3. Q.....?
A. .....

The examination is completed in the same way as for any other witness except that at the close of his testimony a member is not warned.

The court announced that Lieutenant Daniels was excused from sitting as a member in this case. Lieutenant Daniels withdrew from his seat as a member.

Testifying on any matter of fact material to the issues, *ipso facto*, challenges a member.

Variation.

The accused stated that he wished Lieutenant Daniels not to be considered challenged.

Lieutenant Daniels resumed his seat as a member.

View by the court; entry for the record.

The court asked the parties if either objected to the court taking a view of the officers' mess galley, Area 'G', of the U. S. Naval Section Base.

Neither the recorder nor the accused objected to the court taking this view.

If objection is made, the court may, upon evidence introduced in a collateral proceeding, proving that the scene is in the same condition as when the alleged offense was committed, overrule the objection. No evidence is to be taken while taking a view.

The court, accompanied by the recorder, the accused, and counsel, proceeded to the officers' mess galley, Area 'G', of the U. S. Naval Section Base.

Upon completion of the view the court returned to its regular place of meeting.

Witness for prosecution called and objected to; entry for the record.

A witness for the prosecution entered and was objected to by the accused on the ground.....

The witness was examined on his voir dire as follows:

Examined by the accused:

1. Q.....?

A. .....

The court sustained the objection and the witness was excused. (Or, The court was cleared. The court was opened and all parties to the trial entered. The court announced that the objection was overruled. The witness was duly sworn.)

Witness introduces documentary evidence; entry for the record.

The recorder was called as a witness for the prosecution and was duly sworn.

Examined by the recorder:

1. Q. State your name, rank, and present station.

A. Kenneth R. Appleby, Ensign, U. S. Naval Reserve, U. S. Naval Section Base, Bar Harbor, Maine.

2. Q. If you recognize the accused, state as whom.

A. As John Jones, seaman second class.

3. Q. Are you the legal custodian of the proceedings of the Court of Inquiry convened by the commandant of the First Naval District at the U. S. Naval Section Base, Bar Harbor, Maine, to inquire into.....? If so, produce it.

A. I am; here it is.

4. Q. Are the proceedings duly authenticated by the signatures of the president of the Court of Inquiry and of the Judge Advocate?

A. They are.

5. Q. What parts of these proceedings do you desire to introduce into evidence?

A. So much thereof as contains the testimony of Samuel B. Green, lieutenant commander, U. S. Navy, and of Oliver T. Davis, boatswain's mate first class, U. S. Navy.

6. Q. Cannot testimony of these witnesses be obtained?

A. It cannot. I have sent summonses for these witnesses to the convening authority, and his reply, which I have here, states that they cannot appear before this court.

The reply of the convening authority is appended marked 'K'.

The proceedings of the Court of Inquiry were submitted to the accused and to the court, and by the recorder, so much thereof as contains the testimony of the beforenamed witnesses, was offered in evidence.

There being no objection, it was so received.

Should there be objection, argument is allowed as on any other objection to evidence.

7. Q. Refer to those documents and read such portions thereof as relate to the offense for which the accused is now on trial.

Each witness' testimony, each exhibit, etc., in the proceedings of a Court of Inquiry is a separate document.

The witness read from the testimony of Lieutenant Commander Samuel B. Green:

'.....'

The testimony as read by the recorder should be recorded in the body of the court-martial record, together with objections and rulings of the court thereupon, in the same manner as though such testimony were given before the court-martial in person by the witness who appeared before the Court of Inquiry.

Cross-examined by the accused:

8. Q. Read from the testimony of Lieutenant Commander Samuel B. Green before the Court of Inquiry, questions and answers numbered 92 to 143, inclusive.

The witness read from the testimony of Lieutenant Commander Samuel B. Green:

'.....'

The accused asked if, in order to avoid having to recall this witness as a witness for the defense, he might have him introduce a deposition for the defense.

The court may, in its discretion, allow the introduction of evidence out of regular order.

There being no objection, the request of the accused was granted.

Examined by the accused:

9. Q. If you are legal custodian of the deposition of one Joseph L. Lincoln, chief boatswain's mate, U. S. Navy, a witness for the defense, produce it.

The witness produced the deposition of Joseph L. Lincoln, chief boatswain's mate, U. S. Navy, and it was submitted to the recorder and to the court by the accused offered in evidence. There being no objection, it was so received, and is appended marked 'Exhibit 1'. The recorder read the deposition.

Neither the recorder, the accused, nor the court desired further to examine the witness; the witness resumed his seat as recorder.

1st variation. In case the witness is not the legal custodian.

Examined by the recorder:

Q. I show you a book; can you identify it?

A. I can; it is the official log book of the U. S. Naval Section Base, Bar Harbor, Maine.

2nd variation.

Q. I show you a letter; can you identify it?

A. I can.

Q. In whose handwriting is it?

A. In that of John Jones, seaman second class.

3rd variation. In case of an official copy under seal.

The recorder produced a copy of a document (letter, order) under seal of the Navy Department, the original of which, he informed the court, could not be produced, as it was lost (part of a permanent record, on official file, etc.), and submitted it to the accused and the court, and offered it in evidence.

Prosecution rests; entry for the record. (Omitted when the prosecution offers no evidence.)

The prosecution rested.

Defense begins; entry for the record.

The defense began.

Variation.

The defense offered no evidence.

Accused as a witness; entry for the record.

The accused was, at his own request, duly sworn as a witness in his own behalf.

When the accused is without counsel, the following additional entry should here appear:

The recorder stated to the court that the substance of Section 359, Naval Courts and Boards, had been carefully explained to the accused.

Examined by the recorder:

The recorder asks the introductory questions of all witnesses.

1. Q. Are you the accused in this case?
A. I am.

Examined by the accused:

2. Q.....?
A. .....

Cross-examined by the recorder:

3. Q.....?
A. .....

The witness said that he had nothing further to state.

The witness resumed his status as accused.

The accused is not warned.

Witness for the defense; entry for the record.

A witness for the defense entered and was duly sworn.

Examined by the recorder:

The recorder asks the introductory questions of all witnesses.

1. Q. State your name, rank, and present station.
A. Private Henry Johnson, U. S. Marine Corps, U. S. Naval Section Base, Bar Harbor, Maine.

2. Q. If you recognize the accused, state as whom.
A. John Jones.

Examined by the accused:

3. Q.....?
A. .....

Cross-examined by the recorder:

4. Q.....?
A. .....

Re-examined by the accused:

5. Q.....?
A. .....

The recorder did not desire to recross-examine this witness.

Examined by the court:

6. Q.....?

A. .....

The accused did not desire to re-examine this witness.

Recross-examined by the recorder:

7. Q.....?

A. .....

Neither the accused, the recorder, nor the court desired further to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

Use of memoranda; entry for the record.

15. Q.....?

The witness requested permission to refresh his memory from a memorandum made at the time.

The recorder requested permission to cross-examine the witness as to the memorandum. The permission was granted.

Cross-examined by the recorder:

16. Q. Under what circumstances was this memorandum made?

A. .....

17. Q.....?

A. .....

The recorder stated that he had no objection to the witness inspecting the memorandum.

The request of the witness was granted. Having inspected the memorandum, the witness was asked if could now testify of his own knowledge.

The witness replied in the affirmative.

18. Q. (15. Q. repeated).

A. .....

Variation.

The witness stated that he could not remember the facts, but that he had made a memorandum at the time of the occurrence which correctly set forth the facts. The accused requested that the memorandum be received in evidence, and submitted same to the recorder and the court.

Cross-examined by the recorder:

Q. Under what circumstances was this memorandum made?

A. .....

Q. Can you testify that it was correct when made?

A. .....

There being no objection, the memorandum was received in evidence, copy appended marked 'Exhibit 4', and the witness read same.

Cross-examined by the recorder:

19. Q.....?

A. .....

The above entries are set forth as appearing in the testimony of a witness for the defense and examination will continue as in such a case.

Witness as to character; entry for the record.

A witness for the defense as to character entered and was duly sworn.

Examined and testimony recorded as previously indicated.

A member was called as a witness for the defense as to character and was duly sworn.

Examined and testimony recorded as previously indicated. Testifying only as to previous good character of the accused does not challenge a member.

Real evidence introduced; entry for the record.

5. Q. I show you a knife. Do you recognize it?
A. I do.
6. Q. Where and under what circumstances have you seen it before?
A. .....

The knife was submitted to the recorder and to the court and by the accused offered in evidence. There being no objection, it was so received and marked 'Exhibit 5'.

NOTE: The knife was returned to the owner upon completion of the trial. A description of the knife is appended marked 'Exhibit 5'.

7. Q.....?
A. .....

The above entries occur as in the testimony of a witness for the accused. Real evidence, when introduced in the examination of a witness for the prosecution, will be submitted to the accused instead of to the recorder, when offered in evidence. The record will continue as previously indicated.

Record corrected; entry for the record.

The record of proceedings of the first day of the trial was read and objected to by the accused since the record on page 10 now reads '.....,' whereas it should read '.....'

The testimony need not necessarily be read. The recorder or court or member, if the objection is not sustained, may also make this objection.

The court was cleared. The court was opened, and all parties to the trial entered. The court announced that the objection was sustained.

If the objection is not sustained, the two entries following this are omitted from the record.

The recorder was directed to correct the record so that '.....,' on page 10 shall read '.....'

With this correction the record was read and approved.

No witnesses not otherwise connected with the trial were present.

Testimony verified; entry for the record.

John W. Smith, boatswain's mate second class, who had previously testified, was called before the court, informed that his oath previously taken was still binding, and,

upon having his testimony read to him, pronounced it correct, was duly warned, and withdrew.

Variation.

John W. Smith, boatswain's mate second class, who had previously testified, was called before the court, informed that his oath previously taken was still binding, and stated he had read over (or had had read over to him) the testimony given by him on the first day of the trial, pronounced it correct, was duly warned, and withdrew. (Or, and stated that he desired to make the following correction in his testimony, page 10, answer to question No. 8, line No. 2, strike out the words '.....' and insert the words '.....' With this correction, he pronounced the testimony correct, was duly warned, and withdrew.)

Defense rests; entry for the record.

The defense rested.

This entry is omitted when the defense has offered no evidence.

Rebuttal; entry for the record.

The rebuttal began.

Omitted where no rebuttal is made.

John W. Smith, boatswain's mate second class, U. S. Naval Reserve, a witness for the prosecution, was recalled and warned that the oath previously taken by him was still binding.

In general, evidence in rebuttal must be limited to that replying to the evidence produced by the defense. However, it is provided that the court may, prior to arrival at its findings, permit a case to be reopened. In such case the proper entry is, *The prosecution reopened.*

Examined by the recorder:

1. Q.....?

A. .....

Begin numbering questions anew. The introductory questions need not be repeated. Examination and testimony to be recorded as previously indicated.

Neither the recorder, the accused, nor the court desired further to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The rebuttal ended.

Surrebuttal; entry for the record.

The accused did not desire to offer any evidence in surrebuttal.

Variation.

The surrebuttal began.

.....

The surrebuttal ended.

Witness for the court; entry for the record.

The court was cleared. The court was opened and all parties to the trial entered.

The court announced that it desired further testimony, and directed that Ivan King, boatswain's mate second class, U. S. Navy, be called as a witness for the court.

Variation.

.... and directed that Maurice L. Newman, Ensign, U. S. Navy, be recalled as a witness for the court.

A witness for the court entered and was duly sworn.

Examined by the recorder:

1. Q. State your name, rate, and present station.

A. Ivan King, boatswain's mate second class, U. S. Naval Section Base, Bar Harbor, Maine.

2. Q. If you recognize the accused, state as whom.

A. John Jones.

Examined by the court:

3. Q.....?

A. .....

Cross-examination and rebuttal of such a witness will be allowed as previously indicated.

Neither the recorder nor the accused desired to examine this witness.

(Or, in case cross-examination has been made, Neither the recorder, the accused, nor the court desired further to examine this witness.)

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

12B20. Statement of the accused. At this stage of the proceedings, the accused may, if he so desires, make a statement. Such statement by the accused is a personal declaration and cannot legally be acted upon as evidence by the court, nor can it be a vehicle of evidence, or argument thereon, nor properly embrace documents or other writings or even averments of material facts, which, if duly introduced, would be evidence; and if such things be improperly included in a statement, they are entitled to no evidential weight.

A statement may operate in two ways: (1) to modify the plea of guilty of the accused when inconsistent therewith; and (2) as a plea for leniency, which may not be considered by the court except in recommending the accused to the clemency of the reviewing authority.

It is irregular and improper to have a statement sworn to. In order to bring out facts or averments as sworn testimony in defense, it is necessary that the accused himself, or a witness in his behalf, regularly take the stand and subject himself to cross-examination.

If the accused does not desire to make a statement, the record should affirmatively so state. It is not the function of counsel to make a statement, and it must not be made into an argument of counsel.

It sometimes happens that an accused will plead guilty and then submit a statement containing matter which, had it been established by evidence

following a plea of not guilty, would have supported or tended to support that plea. Such statement is inconsistent with the plea of guilty. Examples of this often occur where the accused, having pleaded guilty to desertion, submits a statement that he did not intend permanently to abandon the service, or where, having pleaded guilty to theft, he states that he intended to return the property to its owner. Failure to reject the inconsistent plea will not render the proceedings void; but will render them voidable at the discretion of the convening authority if it appears to him that the interests of the accused have suffered substantial prejudice. In such a case the plea of the accused will be rejected, a plea of not guilty entered, and the trial will proceed on that basis.

Entry for the record.

The accused read a written statement in his defense, appended, marked 'T'.

When the accused makes a written statement, the original thereof should be appended to record and it should be signed by the accused.

If the accused be without counsel, immediately following the entry indicating a statement was made, should appear:

The recorder informed the court that the substance of Section 359, Naval Courts and Boards, had been carefully explained to the accused.

If no statement is made this entry is unnecessary.

1st variation.

The accused made an oral statement as follows: .....

When the court has the services of a competent stenographer, the statement may be oral. When so made, it is entered in the record as a part of the proceedings.

2nd variation.

The accused made an oral statement, the substance of which is appended marked 'C'.

The above entry is used when the court is without the services of a competent stenographer and the statement is recorded in substance only. In such a case, the substance of the statement shall be appended and certified by the recorder.

3rd variation.

The accused did not desire to make a statement and submitted his case to the court.

4th variation.

The accused did not desire to make a statement.

This variation should be used when the accused intends to make an argument or to introduce evidence as to character in mitigation.

5th variation.

The accused requested a delay until ..... to prepare his written statement. The request was granted, and the court then, at 4:00 p.m., adjourned to meet tomorrow, Friday, at 10 a.m.

6th variation. In case the statement is more than a request for clemency.

The court was cleared. The court was opened and all parties to the trial entered. The court announced that it considered the statement to be more than a mere request for clemency, and directed the recorder to proceed as though pleas of guilty had been entered.

12B21. Arguments. In every case, both the accused (counsel) and the recorder will be afforded an opportunity to present an argument before submitting their respective cases to the court. The recorder has the right to make the opening and closing argument. Both prosecution and defense should be accorded adequate opportunity fairly to present their respective cases by argument, yet the court may, in the employment of its sound discretion, so limit the time allowed for argument by each side as to avoid prolixity.

The prosecution in its closing argument should in general be limited to the discussion of propositions or matters argued by the defense. In case the recorder is permitted by the court to introduce any new matter in his closing argument, the defense should be afforded an opportunity for an argument on such new matter, but this does not deny the recorder his right to the final argument. Should the prosecution waive its opening argument, the defense thereupon may or may not make an argument, as it desires. Should the defense make no argument, the prosecution loses its right to make a closing argument. Neither the prosecution nor the defense is required to make an argument; however, the proper presentation of the case, as well for the benefit of the court as of the reviewing authority, would suggest that both prosecution and defense avail themselves of their respective rights to make argument.

Character of arguments. A reasonable latitude should be allowed the recorder and accused (counsel) in their arguments. The testimony and any animus on the part of witnesses, the conduct, motives, and evidence of malice on the part of those upon whose complaint the accused is being prosecuted, may, so far as disclosed by the proceedings, be commented upon, but the court should not permit such arguments to be made the vehicle of abuse.

It is improper to state in an argument any matter of fact as to which there has been no evidence. A party may, however, argue as though the testimony of his own witness conclusively established facts related by them. It is highly improper for the recorder to comment on a failure of the accused to testify in his own behalf, but he may properly comment upon the failure of an accused, who has appeared as a witness, to deny or explain specific facts of an incriminating nature that the evidence of the prosecution's witnesses tends to establish against him. It is improper to misstate any matter of law in an argument, but on matters about which the authorities differ a party may properly state only the views favorable to his side. It is improper to state in argument that a much greater number

of witnesses might have been called, or that witnesses unavailable would have testified thus and so. In short, an argument cannot be made a vehicle of getting evidence before the court. It is not evidence.

When argument must be written. If the court has the services of a reporter who is a competent stenographer, the arguments may be given orally. When given, they are entered in the record as part of the proceedings.

When the reporter is not a competent stenographer, the arguments must be written before delivery, except that the accused may, if he is willing to have only the substance of his argument recorded, make it orally. The written argument so made shall be appended to the record and signed by the party making it. When only the substance of the statement is recorded, it shall be appended and certified by the recorder.

Entry for the record.

The recorder made the following opening argument:.....

The accused made the following argument:.....

The recorder made the following closing argument:.....

1st variation.

The recorder desired to make no opening argument.

The accused made the following argument:.....

The recorder made the following argument:.....

If neither the recorder nor the accused makes an argument, no record entry in this respect is required.

2nd variation.

The recorder read his written opening argument, appended, marked 'U'.

The accused read a written argument, appended, marked 'V'.

The recorder read his written closing argument, appended, marked 'W'.

3rd variation.

The recorder made the following opening argument:.....

The accused desired to make no argument.

This entry to be used when the accused, after argument by the recorder, desires to make no argument but intends to introduce a character witness in mitigation.

4th variation.

The recorder made the following opening argument:.....

The accused desired to make no argument, and submitted his case to the court.

This entry to be used when the accused, after argument by the recorder, desires to make no argument and does not intend to introduce character witness or evidence as to matters in extenuation after the findings.

5th variation.

The accused requested a delay until ..... to prepare his written argument.

The request was granted and the court then at 11:00 a.m., took a recess until 1:00 p.m., at which time it reconvened.

Present.....

12B22. Trial finished. This is not a formal step of procedure but is noted in the record to indicate that the trial on the issues is terminated in so far as the presentation of evidence and matters connected therewith are concerned. In the event that the recorder or the accused desires to present further evidence after this stage of the proceedings, the court may permit the case to be reopened for the introduction of evidence previously omitted, or newly discovered, if convinced that such evidence is so material that its omission would leave the record incomplete. In all such cases, both parties must be present, and any evidence thus received will be subject to cross-examination and rebuttal by the parties to whom it may be adverse.

Entry for the record.

The trial was finished.

Variation.

The accused requested that the court allow the defense to introduce further evidence, as he had just been informed that Kenneth Larkin, seaman second class, had made a confession that.....

The court announced that the defense would be allowed to introduce further evidence.

The defense reopened.

Kenneth Larkin, seaman second class, a witness for the defense, was recalled and warned that the oath previously taken by him was still binding.

Examined by the accused:

1. Q. .....?

A. .....

12B23. The findings. When the trial proper is finished, the court is closed to deliberate upon its findings. When the accused has pleaded guilty throughout, closing the court at this stage of the proceedings may be dispensed with. When the accused pleads guilty, the proper finding is *The specification proved by plea.* When the accused pleads not guilty, the court may find that the specification is proved, that the specification is not proved, or that the specification is proved in part, with or without substitution of correct words or allegations. As to the latter finding, care should be taken not to except the words which express the gravamen of the offense in law. In making exceptions and substitutions, the court must see that the specification as found proved is grammatically complete. Evidence, except in extenuation, mitigation, or aggravation, should not be received after a finding has been reached.

Method of arriving at findings. The court is closed to deliberate upon its findings, except where the accused has pleaded guilty to all specifica-

tions, and it is patent that the findings will be simply *proved by plea.* In arriving at the findings the plea of the accused, the evidence adduced, and the arguments made are to be carefully considered. After the court has sufficiently deliberated, the senior member of the court shall, upon each specification, beginning with the first, put the question whether the specification is *proved, not proved,* or *proved in part.* Each member shall write *proved, not proved,* or *proved in part,* and, if so, what part, over his signature, and shall hand his vote to the senior member of the court. The latter, after he has received all the votes upon each specification, shall read them aloud without disclosing how each member voted. No written minutes of the notes shall be preserved, unless so ordered by the unanimous vote of the court. The decision of a majority becomes the finding of the court.

Reasonable doubt. The accused shall not be found guilty of any specification, or of an offense included in it, unless a majority of the court is convinced of his guilt beyond a reasonable doubt.

When specification is found proved in part. It is a peculiarity of the finding at military law that a court-martial, where of opinion that any portion of the allegations in a specification is not proved, is authorized to find the accused guilty of a part of the specification only, excepting the remainder; or, in finding him guilty of the whole (or any part), to substitute correct words or allegations in the place of such as are shown by the evidence to be incorrect. Provided the exceptions or substitutions leave the specification still stating the same or a lesser included offense, the court may then find the accused guilty. Familiar instances of the exercise of this authority occur when there is a mistake in name and rank or rating, or an erroneous averment of time or place, or an incorrect statement as to amount or value. But the authority to find guilty of a lesser included offense, or to make exceptions and substitutions in the findings, does not justify convicting the accused of an offense entirely separate and distinct in its nature from that specified.

Findings on joint specifications. When two or more persons are tried in joinder, the findings, and sentence (or acquittal) in the case of each person arraigned and tried shall be separately recorded.

If one (or more) of the accused persons is acquitted, and one (or more) is convicted, the findings in case of conviction must by proper exceptions eliminate the words showing that the acquitted person was a joint participant in the offense.

When finding is "The specification not proved." When the finding on any specification is *the specification not proved,* the statement should follow that the court acquits the accused of the offense specified. If the accused is found to have committed the act and done the things alleged in the specification, but without the guilty intent or knowledge essential to con-

stitute the offense, the finding on the specification should be *the specification not proved.*

Acquittal to be announced in open court. Should the accused be acquitted of all specifications, the recorder, in addition to recording the findings on the record in the manner shown below, shall forthwith draw up an additional copy of the findings. This latter copy shall be duly signed by all the members and the recorder. The court shall then be reopened and the recorder shall, in the presence of the accused read aloud the findings of the court.

Thereupon, the additional copy of the findings, having been first duly signed as explained above, together with a memorandum containing the substance of the specifications against the accused, shall be transmitted to the commanding officer of the accused, who shall immediately release the accused from arrest and restore him to duty.

Should the court find one or more specifications proved and others not proved, the accused shall be called before the court and informed of the specifications found not proved.

Forms of acquittal. The following forms of acquittal, and no others, are permitted in naval procedure:

1. *The court does, therefore, acquit.* This form, known as a simple acquittal, should be used in all cases, except in the few special cases mentioned below under other forms of acquittal.

2. *The court does, therefore, fully acquit.* The use of this form of acquittal indicates that a court not only fails to find a specification proved beyond a reasonable doubt, but that it finds no facts whatever, as brought out by the evidence introduced in the case, which reflected adversely on the conduct of the accused in matters pertaining to the specification. In other words, the court should not *fully acquit* in cases where the record shows any uncontroverted facts whatever reflecting unfavorably upon the accused.

3. *The court does, therefore, honorably acquit.* This form is to be employed only in cases where the offense specified is, besides being an offense against military authority, of such character that a conviction thereon would tend to dishonor the accused. This acquittal, as in the case of a full acquittal, should never be used if the record shows any adverse reflection whatever upon the accused.

4. *The court does, therefore, most fully and honorably acquit.* This form should be used only in extreme cases in which not only have the requirements of a *full* and an *honorable* acquittal been fulfilled, but in which the court wishes to place the highest stamp of approval upon the actions of the accused in connection with matters covered by the specifications. The use of this form of acquittal might, for example, be justified in the case of a person charged with unbecoming conduct in battle if the court wished to make it a matter of record that, far from considering the

conduct of such person censurable, it both approved and commended his conduct.

It is to be noted that there is no legal distinction between a simple acquittal and one to which any of the additional expressions above quoted has been added. Only in exceptional cases is the use of any form of acquittal, other than the simple *acquit*, justified.

Recording the findings. After the court has arrived at its findings, the recorder is recalled and directed to enter them on the record. They are to be typewritten or in the handwriting of the recorder and must be free from interlineations and strikeovers. This direction applies to the entire findings. This includes everything which properly forms a part of the findings, commencing with the words, *the (first) specification.* No abbreviations should be used in the findings other than the ones authorized to be used in a specification.

Entry for the record.

The court was cleared.

The recorder was recalled and directed to record the following finding (or, findings.)

The specification proved.

1st variation.

The specification proved by plea.

2nd variation.

The specification not proved, and the court does, therefore, acquit (fully acquit) (honorably acquit) (most fully and honorably acquit) the said John Jones, seaman second class, U. S. Navy, of the offense specified.

The court was opened and all parties to the trial entered. The recorder read the finding(s) of the court.

Should the accused be acquitted of all specifications, the findings are read in open court.

3rd variation.

The first specification proved.

The second specification not proved, and the court does, therefore, acquit the said John Jones, seaman second class, U. S. Navy, of the offense specified.

The court was opened and all parties to the trial entered. The court informed the accused that it had found the second specification not proved.

4th variation.

The specification proved in part; proved except the words '.....,' which words are not proved (and for the excepted words the court substitutes the words '.....,' which words are proved).

5th variation.

The first specification proved by plea.

The second specification proved by plea.

12B24. Introduction of matter in aggravation, mitigation, and extenuation. A plea of guilty does not necessarily exclude testimony for the prosecution. As the court has discretionary power as to the punishment to be awarded, it is proper that it should have full knowledge of all the circumstances attending the offense. Therefore, when the recorder has knowledge that the offense as actually committed was of a more grave nature than appears merely on the face of the specification, it is his duty to offer such testimony as tends to show the aggravating nature of the offense, but this should not relate to a separate and distinct offense. Matter of this type is introduced after the finding.

After the court has arrived at its finding, following either a plea of guilty or not guilty, the accused may introduce (1) matter in mitigation of the punishment, and (2) matter in extenuation of the offense. This latter may properly explain the circumstances surrounding the commission of the offense, including the reasons that actuated the accused, but not extending to a legal justification. If matter purporting to be in extenuation or mitigation is introduced after a plea of guilty and is found to controvert any element of the offense, the court should proceed by rejecting the plea of the accused, entering a plea of not guilty and proceeding thereon. The accused may also at this time introduce matter from his service record and testimony as to past character.

Character evidence. Character evidence which is introduced after the finding is not, strictly speaking, evidence, but is more properly termed matter in mitigation. Such matter in mitigation has for its purpose the lessening of the punishment to be assigned by the court or the furnishing of grounds for a recommendation to clemency. As thus offered it has a wide latitude and is not limited to the general good character of the accused nor to the nature of the specifications. Such matter may include particular acts of good conduct, bravery, etc., and may exhibit the reputation or record of the accused in the service for efficiency, fidelity, subordination, temperance, courage, or any of the other traits that go to make a good enlisted man.

Opposite party may cross-examine. After matter in extenuation, aggravation, or mitigation has been introduced, the recorder or accused has the right to cross-examine the witness and offer evidence in rebuttal.

Entry for the record.

A witness for the defense as to matters in mitigation (or as the case may be) entered and was duly sworn.

Examination and testimony recorded as previously indicated.

.....

Variation.

The recorder was recalled as a witness for the defense in mitigation and was warned that the oath previously taken was still binding.

Examined by the accused:

1. Q. If you are the legal custodian of the current service record of the accused, produce it.

The witness produced the current service record of the accused and it was submitted to the recorder and to the court, and by the accused offered in evidence for the purpose of reading into the record extracts therefrom in mitigation.

There being no objection, it was so received.

2. Q. Refer to that record and read such portions thereof as relate to the proficiency in rating, sobriety, and obedience of the accused, as also award of good conduct medal and commendations.

The witness read extracts from the said record, copy appended marked 'Exhibit 6'.

Cross-examined by the recorder:

3. Q. Read from the record such portions as show the offenses committed by the accused during his current enlistment.

.....

12B25. Introduction of record of previous convictions. The recorder shall, immediately after recording the findings, except where such findings have resulted in an acquittal, state whether or not he has any record of previous convictions by courts-martial and present the personal service data of the accused. If the accused has no record of previous convictions an entry to this effect shall be made in the record, but the court need not be reopened. If there be such record, the court shall be opened and the record shall be submitted to the accused for opportunity to object to its admission. If there be no valid objection, it shall be read by the recorder in the presence of all parties to the trial. A certified copy of the record of previous convictions shall be appended to the record of proceedings.

The courts-martial here referred to include general and summary courts-martial and deck courts. Punishments by a commanding officer (mast punishment) are not admissible in that they are not prior convictions by courts-martial.

Must have been approved by proper authority. The record of a previous conviction, to be admissible, must show that such conviction was approved by the authorities whose action was requisite to give effect to the sentence. If the conviction was approved by such authority and was not subsequently disapproved by the Secretary of the Navy, it is admissible even though the sentence of the court may have been remitted either in whole or in part.

Must relate to current enlistment or current extension of enlistment. The general rule is that the record of previous convictions, in order to be admissible, must relate to the accused's current enlistment or current extension of enlistment. On the other hand, when the last enlistment was terminated by sentence of court-martial or by discharge as undesirable by order

of the department or when the accused deserted and subsequently fraudulently enlisted, all convictions occurring in the present enlistment are admissible.

CMO 2–1943, pages 152-153, holds that where an enlistment is extended by virtue of *AlNav* 155–1941 (extension under act approved 13 December 1941, for a period not later than six months after termination of war), records of previous convictions prior to such an extension are inadmissible for the court's consideration. The decision was reached on the theory that the extension of enlistment occurs by operation of law.

While serving with Army. Record of previous convictions by courts-martial while serving an enlistment in the Army is not admissible as record of previous convictions before naval courts-martial. But when officers and men of the Marine Corps or of the Medical Department of the Navy have been detached for service with the Army by order of the President, convictions by Army courts shall be regarded as previous convictions, subject to the provisions governing record of previous convictions set forth above.

What record must show. The extract from the current service record of the accused showing record of previous convictions should, in the absence of objection, or where objection is overruled by the court, be read by the recorder, and it should include the offense committed, the fact and nature of the trial, findings, sentence, and approval by the proper authorities, together with the dates of the offense, trial, and approval. An official court-martial order is prima facie evidence of its contents and may, where it names the accused, be introduced as record of previous convictions.

How record is introduced when objected to. Record of previous convictions, if objected to by the accused, should be introduced in the same manner as evidence and is subject to the rules of evidence; it is generally documentary in form, and as a rule, is forwarded by the convening authority to the recorder, together with the other papers in the case. The court will rule whether or not the record shall be admitted.

Entry for the record.

The recorder stated that he had no record of previous convictions, that the rate of pay of the accused in his present rating is $54 a month and in his next inferior rating $50 a month, and that he enlisted on March 4, 1941, to serve for four years, and gave as his date of birth April 1, 1913.

Where accused has apparently completed his enlistment, or extension(s) thereof, the record should show that he is serving to make up time lost owing to his own misconduct.

1st variation.

The recorder stated that he had record of previous conviction(s), that the rate of pay of the accused in his present rating is $54 a month and in his next inferior rating $50 a month, and that he enlisted on March 4, 1941, to serve for four years, and gave as his date of birth April 1, 1913.

The court was opened, and all parties to the trial entered. (If the court has not been closed, the preceding sentence in this entry is omitted.) The court announced that it was ready to receive the record of previous conviction(s).

Such record having been submitted to the accused and to the court and there being no objection, the recorder read from the current service record of the accused an extract (extracts) showing previous conviction(s), copy (copies) appended marked 'D' ('D1', 'D2', etc.).

2nd variation.

The court was opened and all parties to the trial entered. The court announced that it was ready to receive the record of previous conviction(s).

The accused (or the recorder or the court) objected to the introduction of his (the) trial by summary court-martial, approved June 12, 1942, on the ground that the record had not been approved by the convening authority.

The court was cleared. The court was opened and all parties to the trial entered. The court announced that the objection was sustained.

12B26. The sentence. When the court has been closed for the purpose of determining the sentence, each member shall write down and subscribe the measure of punishment which he may think the accused ought to receive and hand his vote to the senior member, who shall, after receiving all the votes, read them aloud. If the requisite number do not agree upon the nature and degree of the punishment to be inflicted, the senior member proceeds in the following manner to obtain a decision: He shall begin with the mildest punishment that has been proposed, and after reading it aloud, shall ask the members successively, beginning with the junior in rank, *Shall this be the sentence of the court?* And every member shall vote *viva voce,* and the senior member shall note the votes. Should there be no decision, the senior member shall, in the same manner as before, obtain a vote on the next mildest punishment, and shall so continue until a sentence is decided upon. The members of a general court-martial are sworn not to *divulge or by any means disclose the sentence of the court until it shall have been approved by the proper authority,* and not at any time to *divulge or disclose the vote or opinion of any particular member of the court, unless required to do so before a court of justice in due course of law.* Subject to the exception in regard to judicial proceedings noted in the statute prescribing the oath for members of general courts-martial, the vote or opinion of each member of a summary court-martial, either as to the sentence of the court, or as to any other matter except recommendation to clemency, shall not be disclosed.

Punishment to be adjudged. It is by law the duty of courts-martial, in all cases of conviction, to adjudge a punishment adequate to the nature of the offense committed. In cases where there has been evidence in mitigation or extenuation, a court-martial may recommend the person convicted to clemency; this clemency, however, is to be exercised only by the reviewing authorities, who are expressly clothed with the power to mitigate or

remit punishment. The *Articles for the Government of the Navy* do not make any sentence mandatory.

Authorized punishments. A summary court-martial or deck court must be careful to adjudge only one of the first six enumerated punishments authorized by Article 30. Thus, a summary court-martial sentence of confinement for two months, loss of pay, and bad-conduct discharge is unauthorized. Article 30, *AGN*, provides as follows: Summary courts-martial may sentence petty officers and persons of inferior ratings to either a part or the whole, as may be appropriate, of any one of the following punishments, namely: (1) Discharge from the service with bad-conduct discharge; but the sentence shall not be carried into effect in a foreign country. (2) Solitary confinement, not exceeding thirty days, on bread and water, or on diminished rations. (3) Solitary confinement not exceeding thirty days. (4) Confinement not exceeding two months. (5) Reduction to next inferior rating. (6) Deprivation of liberty on shore on foreign station. (7) Extra police duties, and loss of pay, not to exceed three months, may be added to any of the above-mentioned punishments.

Summary courts-martial are restricted in their sentences to the punishments specifically authorized in Article 30, *AGN*. The effect of the provision of said act authorizing a court to *adjudge either a part or the whole, as may be appropriate, of any one of the punishments* enumerated in Article 30, is construed as permitting the imposition of a sentence, under Article 30, involving either extra police duties, or loss of pay, or both, without other punishment. But only one, or parts of only one, of the punishments enumerated in the first six numbered paragraphs of the article may be imposed in any one sentence of a summary court-martial. Particular care is to be taken that this last provision is not violated. (See Figure 8–4 and Article 11A2.)

Policies on punishment. The Navy Department approves and disapproves of certain types of sentences under certain conditions. These approvals and disapprovals are generally referred to as policies of the Department. Inasmuch as they are of extreme importance in the determination of a proper sentence for a given offense, they are treated separately in Chapter 13, Section D of this text. That section should, therefore, be referred to and thoroughly digested as a component of the subject of summary court-martial sentences.

Solitary confinement on bread and water or diminished rations. Courts-martial shall exercise care and discretion in resorting to the punishment of solitary confinement on bread and water, and shall not adjudge it in any case for a longer period, consecutively, than five days. As a shorter interval on bread and water is less liable to work injury to health, the maximum interval allowed should be adjudged only in extreme cases. A court in adjudging a sentence on bread and water or on diminished rations shall

specify the days a full ration is to be allowed; for example, every third or every fifth day. If the court fails to do this, the convening authority shall specify in his action the day the full ration is to be allowed. By *full ration* is meant a full day's ration and not only a single meal of the day. In adjudging a sentence of solitary confinement on diminished rations, the court should specify the exact amount of rations to be allowed. Otherwise the sentence is indeterminate.

Loss of pay. Sentences which include loss of pay shall state the rate and total amount of pay to be lost and the period of time over which such loss shall extend. Loss of pay shall be stated in dollars and not in days' pay.

Reduction in rating coupled with loss of pay. In case of reduction in rating coupled with loss of pay, care shall be observed that the loss is based on the pay for the reduced rating. In general, this form of sentence should not be used. (See Chapter 13, Section D.)

Extra police duties. Except where the offender is serving in a receiving ship or at a shore station, sentences involving extra police duties are, as a general rule, undesirable, but this will not be construed as prohibiting the imposition of this sentence on board ships where circumstances render it desirable.

Deprivation of liberty. A sentence of *deprivation of liberty* is illegal, unless the words *on shore on foreign station* are added. The period shall not exceed three months. A possession of the United States is not a foreign station.

Disrating for incompetency. Article 31, *AGN*, gives a summary court-martial authority to disrate for incompetency. In the case of a person found to be incompetent, disrating is the only authorized action the summary court-martial may take.

Revocation distinguished from reduction. Revocation of the permanent appointment of a chief petty officer is not a reduction to the next inferior rating. It is a change in status, not in rating, and is, therefore, not a legal form for a summary court-martial sentence.

Phraseology to be employed in sentences. The exact phraseology of Article 30 is to be followed in the sentence. Thus, sentences involving confinement on bread and water or on diminished rations are illegal unless it is expressly provided that such confinement is to be *solitary*, although solitary confinement may be adjudged by itself without diminished rations. Similarly, a sentence to *extra duties* instead of *extra police duties* is illegal. As the legal term of confinement is limited to *thirty days*, the exact phraseology should be employed in adjudging a sentence involving confinement for such maximum period. A sentence of *solitary confinement for one month*, for example, would be irregular and improper, as the article prescribes 30 days as the maximum.

Recording and authentication of sentence. When a sentence has been determined upon, the recorder shall be called before the court, and, under its direction, shall draw up the sentence, specifying the exact nature and degree of the punishment adjudged, and, after approval by the court, shall enter this on the record. But it must not appear on the record what number of members voted for the sentence.

The sentence must be recorded in the recorder's own handwriting and must be free from erasures and interlineations. Numbers in the sentence shall be expressed both by words and by figures.

After the sentence has been recorded, the proceedings in each separate case tried by the same court shall be signed by all the members present when judgment is pronounced, and also by the recorder. These signatures are for authentication and do not necessarily import unanimous concurrence in rulings, findings, decisions, and other action taken. In case a member dies before signing, the signatures of the remaining members will be sufficient. Signatures should appear on the same page as the sentence.

Entry for the record.

The court was cleared.

The recorder was recalled and directed to record the sentence of the court as follows:

The court, therefore, sentences him, John Jones, seaman second class, U. S. Navy, to be confined for a period of two (2) months and to lose twenty-four dollars ($24) per month of his pay for a period of six (6) months, total loss of pay amounting to one hundred forty-four dollars ($144).

Aron R. Kramer.
Lieutenant, U. S. Naval Reserve, Senior Member.

John M. Daniels,
Lieutenant, Medical Corps, U. S. Navy, Member.

James K. Rowan,
First Lieutenant, U. S. Marine Corps, Member.

Kenneth R. Appleby,
Ensign, U. S. Naval Reserve, Recorder.

1st variation: bad-conduct discharge.

The court, therefore, sentences him, John Jones, seaman second class, U. S. Navy, to be discharged from the U. S. naval service with a bad-conduct discharge.

2nd variation: loss of pay and bad-conduct discharge.

The court, therefore, sentences him, John Jones, seaman second class, U. S. Navy, to lose twenty-seven dollars ($27) per month of his pay for a period of two (2) months, total loss of pay amounting to fifty-four dollars ($54), and to be discharged from the U. S. naval service with a bad-conduct discharge.

3rd variation: solitary confinement on bread and water.

The court, therefore, sentences him, John Jones, seaman second class, U. S. Navy, to solitary confinement on bread and water for a period of thirty (30) days, with full ration every third (3rd) day.

4th variation: solitary confinement on bread and water and loss of pay.

The court, therefore, sentences him, John Jones, seaman second class, U. S. Navy, to solitary confinement on bread and water for a period of thirty (30) days, with full ration every third (3rd) day, and to lose twenty-seven dollars ($27) per month of his pay for a period of six (6) months, total loss of pay amounting to one hundred sixty-two dollars ($162).

5th variation: solitary confinement on diminished rations.

The court, therefore, sentences him, John Jones, seaman second class, U. S. Navy, to solitary confinement on diminished rations, to wit, three-fourths (3/4) ration, for a period of thirty (30) days, with full ration every third (3rd) day.

6th variation: confinement.

The court, therefore, sentences him, John Jones, seaman second class, U. S. Navy, to be confined for a period of two (2) months.

7th variation: reduction to next inferior rating.

The court, therefore, sentences him, John Amos Smith, seaman first class, U. S. Navy, to reduction to the next inferior rating.

8th variation: reduction to next inferior rating and loss of pay.

The court, therefore, sentences him, John Amos Smith, seaman first class, U. S. Navy, to reduction to the next inferior rating and to lose twenty-seven dollars ($27) per month of his pay for a period of six (6) months, total loss of pay amounting to one hundred sixty-two dollars ($162).

In case of reduction in rating coupled with loss of pay, care shall be observed that the loss is based on the pay for the reduced rating. In general, this form of sentence should not be used.

9th variation: reduction to next inferior rating and extra police duties.

The court, therefore, sentences him, John Amos Smith, seaman first class, U. S. Navy, to reduction to the next inferior rating and to perform extra police duties for a period of one (1) month.

10th variation: loss of pay.

The court, therefore, sentences him, John Jones, seaman second class, U. S. Navy, to lose twenty-seven dollars ($27) per month of his pay for a period of (6) months, total loss of pay amounting to one hundred sixty-two dollars ($162).

11th variation: extra police duties and loss of pay.

The court, therefore, sentences him, John Jones, seaman second class, U. S. Navy, to perform extra police duties for a period of one (1) month, and to lose twenty-seven dollars ($27) per month of his pay for a period of six (6) months, total loss of pay amounting to one hundred sixty-two dollars ($162).

12th variation: extra police duties.

The court, therefore, sentences him, John Jones, seaman second class, U. S. Navy, to perform extra police duties for a period of twenty-five (25) days.

Extra police duties should be expressed in days or months rather than in hours.

13th variation: deprivation of liberty on shore on foreign station.

The court, therefore, sentences him, John Jones, seaman second class, U. S. Navy, to deprivation of liberty on shore on foreign station for a period of three (3) months.

12B27. Recommendation to clemency. It is made by law the duty of courts-martial, in all cases of conviction, to adjudge a punishment adequate to the nature of the offense committed. However, in cases where there has been evidence in mitigation or extenuation, a court-martial may recommend the person convicted to clemency; this clemency, however, is to be exercised only by the reviewing authorities, who are expressly clothed with the power to mitigate or remit punishment. The statement of the accused, as a plea of leniency, may not be considered by the court except in recommending the accused to the leniency of the reviewing authority.

If mitigating circumstances have appeared during the trial which could not be taken into consideration in determining the degree of guilt found, the members of the court, as individuals and not as a body, may avail themselves of such circumstances as grounds for recommending the accused to clemency. In so doing, the members signing the recommendation should set forth sufficiently their reasons for making such recommendation. This recommendation is recorded immediately after the signatures of the members of the court and the recorder to the sentence, and is signed by the members concurring in it. It is improper for the recorder to sign this recommendation. Such recommendation should never be based on a doubt as to the guilt of the accused. If there be doubt as to the guilt of the accused, he should be acquitted. If a minority of the court had such doubt and voted for acquittal, and then made a recommendation to clemency based on this doubt, they in effect, violated their oath not to divulge the vote or opinion of any particular member. A vague and indefinite recommendation is of no practical use. The facts on which it is based should be succinctly stated.

Entry for the record.

In consideration of his previous good record, his youth, and short time in the service, we recommend John Jones, seaman second class, U. S. Navy, to the clemency of the reviewing authority.

Aron R. Kramer,
Lieutenant, U. S. Naval Reserve, Senior Member.

John M. Daniels,
Lieutenant, Medical Corps, U. S. Navy, Member.

James K. Rowan,
First Lieutenant, U. S. Marine Corps, Member.

12B28. Adjournment. The final step in the proceedings of trial is the adjournment. An entry to the effect that the court has adjourned to await the action of the convening authority, is entered in the record of proceedings. In case another trial is to follow immediately, the entry would be to the effect that the court was opened and proceeded with the trial of . . . . . .

This final entry is signed by the senior member of the court and the

recorder and following this entry, the record of proceedings is transmitted to the convening authority for his action.

Entry for the record.

The court then adjourned to await orders from the convening authority.

Aron R. Kramer,
Lieutenant, U. S. Naval Reserve, Senior Member.

Kenneth R. Appleby,
Lieutenant, U. S. Naval Reserve, Recorder.

1st variation.

The court was opened and proceeded with the trial of George V. Mosely, seaman second class, U. S. Navy.

Aron R. Kramer,
Lieutenant, U. S. Naval Reserve, Senior Member.

Kenneth R. Appleby,
Lieutenant, U. S. Naval Reserve, Recorder.

2nd variation.

The court then adjourned to meet tomorrow at 10 a.m. (or as the case may be).

Aron R. Kramer,
Lieutenant, U. S. Naval Reserve, Senior Member.

Kenneth R. Appleby,
Lieutenant, U. S. Naval Reserve, Recorder.

C. ORGANIZATION AND MAKE-UP OF THE RECORD OF PROCEEDINGS

12C1. Record of proceedings. Every summary court-martial must keep an accurate record of its proceedings, and the recorder is directly responsible for seeing that this is done. The record of proceedings in each case tried shall set forth the names of the members of the court who were present during the trial; that the accused was furnished a copy of the specifications preferred against him; that the precept was submitted or read to the accused; that he was afforded an opportunity to challenge members; and that the members, recorder, reporter, interpreter, and witnesses were duly sworn. It shall further show the arraignment, preliminary motions, pleas, objections, and grounds therefor, all testimony and documentary evidence received, decisions and orders of the court, adjournments, statements and closing arguments, findings, and sentence or acquittal; in short, the entire proceedings of the court which are necessary to a complete understanding by the reviewing authority of the whole case and every incident material thereto.

Each case is thus made complete in itself, and the record continuous. When all the cases laid before the court have been finished and severally authenticated and forwarded, the senior member shall, unless otherwise directed by the convening authority, inform said authority that all business

before the court has been completed, and the court shall adjourn to await the action of the convening authority.

12C2. Record of proceedings to be typewritten. Except under extraordinary and unusual conditions of service, records of summary court-martial shall be typewritten. Reporting may be in shorthand.

12C3. Format. The record shall be typewritten on paper 8 by 13 inches in size. One side of the paper shall be used, leaving a margin of 1 inch on the left, ½ inch on the right, and 2½ inches at the top of each leaf. Each page shall be numbered in the middle of the margin at the lower edge. In making up the record, it sometimes happens that the pages are not numbered consecutively, as, for example, where a page is inserted and numbered 73-a, 360½, etc. Where this occurs a notation shall be placed at the bottom of the preceding page calling attention to this fact, as, for example, *next page numbered 73-a*, or *next page numbered 360½*, etc. When the conditions mentioned in the preceding article render it necessary that the record be written in longhand, the penmanship must be clear and legible and the record free from unauthorized erasure or interlineation. Before the record is forwarded to the convening authority, all pages, documents, and exhibits must be securely bound together by through fasteners at the top margin, and care shall be taken to insure against detachment. Where the record is long, it should be bound in volumes, each having a proper cover sheet, and marked near the lower margin *Vol. 1*, etc. Should the exhibits be objects that do not permit being secured in the manner indicated, they shall be otherwise attached to the record so as to prevent the possibility of loss, or, if necessary, forwarded under separate cover.

12C4. Cover sheets. A neat cover sheet shall be prefixed to the whole record. In a summary court-martial case the front cover sheet shall be the one furnished by the Navy Department. At the end of the record, following all appended documents, there shall be attached a heavy blank sheet to act as a protection to the record. The date on the front sheet shall be the date when the court first convened for the case in question.

12C5. Index for lengthy cases. If a record exceeds 20 pages in length, it shall be preceded by an index showing upon what page each step of the proceedings and of the examination of the witness, designating them by name, may be found; also, in case a witness corrects his testimony the index shall show the pages where such corrections may be found. There shall also be an index of exhibits offered and received in evidence, giving a brief description of the document, etc., and at what page of the record it was admitted in evidence. (See Figure 12–2.)

12C6. Order in which documents are prefixed or appended. In making up records, documents modifying or relating to the precept and to the specifications are prefixed immediately following the precept or the specifications, as the case may be. Documents relating to occurrences during the procedure are appended immediately following the record of the trial in the order in which they occur. Exhibits are appended after these latter documents in the order in which they were introduced into evidence.

12C7. Modification of precept. The modifications of the precept are those which are signed and issued by the convening authority, and they must not be confused with the personal individual orders to officers to perform duty on the court. These modifications of the precept must appear immediately after it as a part of every record where changes have been made in the composition of the membership. These are not instruments of evidence and are marked *B*, *C*, etc. In case a court is convened by dispatch, a confirmation copy signed by the convening authority is required.

12C8. Numbering and marking of pages and documents. All documents other than instruments of evidence shall be marked with capital letters. as *A*, *B*, *C;* instruments of evidence shall be marked *Exhibit 1*, *Exhibit 2*, etc. When a single document or instrument of evidence is more than one page in length, each page thereof must be marked, for example, *A* (*1*), *A* (*2*), etc., *Exhibit 1* (*1*), *Exhibit 1* (*2*), etc. All such marks must be boldly and distinctly made and placed in the lower right-hand corner of the page or sheet. All copies of documents which may be appended to the record shall be certified to be *a true copy* by the recorder. When an officer certifies over his signature that a document is a true copy of some other writing, it should be an exact copy of said other writing, and not a summary of the substance thereof.

12C9. Questions numbered and paragraphed. The questions asked each witness shall be numbered consecutively throughout the examination. If the examination is interrupted by recess or adjournment and is resumed when the court reassembles or reconvenes, the numbering shall be continued. If, however, the first examination of the witness is completed, and later in the trial he is recalled, the numbering of the questions asked on this later examination shall begin anew. Each question and answer of a witness shall begin a new paragraph.

12C10. Recess or adjournment. When the business of the court is suspended from one day to the next, or for a longer period, the record shall show that the court adjourned until the time agreed upon; but when the period of suspension of business is from one part of a day to another part

of the same day, the record should show that a recess was taken for the time mentioned. Article 45, *AGN*, enjoins a general court-martial to sit from day to day, Sundays excepted, unless temporarily adjourned by the authority which convened it. A summary court-martial shall also observe these provisions.

12C11. Reading of record. In reading the record of the previous day upon the opening of the court on each successive day, only the salient features of the proceedings need be read. It is not necessary at this time to read the testimony recorded. The ruling of the court on questions submitted for decision should be read. Before the proceedings are finished, the record up to that point must have been approved.

12C12. Manner in which corrections are made. If corrections should be necessary, they shall be made by the recorder in red ink and initialed by him in the right-hand margin. An undue number of corrections, or a lack of neatness in making them, will be sufficient cause for returning a record for rewriting.

12C13. When a witness corrects his testimony. The following instructions will be observed whenever a witness corrects or amends his testimony: (1) in every case the original testimony must remain in the record as originally given; (2) enclose in parentheses, in red ink, that portion of the original testimony• that has been corrected or amended by the witness; (3) in the left-hand margin of the record, opposite the original testimony, enclosed in parentheses, as directed in (2), enter, in red ink, a note referring to the page of the record where the correction to testimony is to be found. For example, *See correction, page 1*; or (4) where corrections are short, enclose the original testimony in parentheses, as directed in (2), and enter the correction, in red ink, close to the original testimony which it corrects; (5) typographical corrections in testimony will be in red ink and initialed by the recorder, as indicated above.

12C14. Striking matter from record. Should the court determine that matter objected to should be stricken from the record, such decision shall be so recorded, but the matter referred to shall not, itself, be physically stricken from the record.

12C15. Reading of papers. Where the record states that a paper, document, or testimony was read, it is to be understood that it was read aloud.

12C16. Presence of accused during subsequent reading of record. If the court adjourns after arriving at a finding and sentence (or acquittal) to

meet the next day for the purpose of verifying the record, the record of proceedings of the succeeding day should distinctly show that the accused was present during the reading of so much thereof as referred to the proceedings in open court, that he then withdrew, and that the court was cleared, the recorder remaining, whereupon that part of the record which pertained to the proceedings in closed court was read.

12C17. Medical certificate required. Whenever any person is sentenced for a period exceeding ten days to solitary confinement on diminished rations or on bread and water, there must appear on the record of proceedings the certificate of the senior medical officer under the immediate jurisdiction of the convening authority to the effect that such sentence will not be seriously injurious to the health of the prisoner. (See Figure 12–13.)

12C18. Completion of record. After the proceedings and sentence, with the recommendation to clemency, if any, have been signed, the action of the court, whether an adjournment or the taking up of a new case, shall be recorded; after this entry has been authenticated by the signature of the senior member and the recorder, the record is completed.

12C19. Letters of transmittal not required. Letters of transmittal are not required in forwarding to the Navy Department records of proceedings of courts-martial and other courts and boards.

12C20. Shorthand notes. The recorder will retain all notes, including shorthand notes, if any, from which the record was made up. The recorder may destroy the notes when sufficient time has elapsed to allow final action on the case by the Judge Advocate General.

12C21. Final disposition of record. The records of proceedings of all courts-martial shall be forwarded, unfolded, direct to the office of the Judge Advocate General by the convening authority. Records of summary courts-martial are forwarded after the proper reviewing authorities have taken action thereon, effected the necessary publication, and caused the notation of checkage to be signed. The above applies equally in cases of revision.

12C22. Action to be taken in case of loss of record. When, prior to action by the reviewing authority, a record of trial by court-martial is lost or destroyed, a new record of trial in the case will, if practicable, be prepared and will become the record of trial in the case. Such new record will, if practicable, be prepared only when the extant original notes or other sources are such as to enable the preparation of a complete and accurate record of the case. In any case of the loss of a record of trial by court-

martial, the convening authority will be fully informed as to the facts and as to the action, if any, taken.

In case the stenographic notes or other report of the trial be lost before the record has been written up, the record shall be prepared so as to show that the interests of all parties to the trial have been safeguarded; who were witnesses for and against the accused and a summary of their testimony; the substance of all evidence admitted over the objections of the accused or his counsel; that the accused was given an opportunity for cross-examination; and any other steps required by law to be shown. The record thus prepared will be drawn up in all respects as nearly as may be like the record required by the foregoing sections of this chapter, and will be submitted in due course to the convening authority in the regular manner together with a letter attached thereto stating the reasons for such procedure.

12C23. Organization of the record of proceedings. A general outline indicating the prescribed order for organization of a summary court-martial record of proceedings is herein presented. In utilizing the outline, reference should be made to the figures immediately following and the specimen cases contained in Chapter 13, Section F of this text.

1. *Cover page*—(Form NAVJAG 109).
2. *Index*—(For records in excess of twenty pages).
3. *Documents prefixed to the record of procedure.*
   a. Precept.
      i. Documents modifying or relating to the precept.
   b. Specification(s).
      i. Documents modifying or relating to the specifications(s).
4. *Record of procedure.*
5. *Documents appended to the record of procedure.*
   a. Statement of the accused (written or oral substance).
   b. Arguments (written or oral substance in order of presentation).
   c. Record of previous conviction (extracts).
   d. Other documents relating to occurrences during the procedure.
6. *Exhibits*—(Appended in order received in evidence).
7. *Medical certificate*—(Required only where sentence of solitary confinement on bread and water or on diminished rations for more than ten days adjudged).
8. *Opinion of convening authority.*
9. *Opinion of immediate superior in command*—(Not required when convening authority is senior officer present and signs as such).
10. *Publication.*
11. *Checkage*—(Required only where sentence of pay loss adjudged).

The figures on the following pages do not represent a specimen case, but may serve generally to illustrate the form and content of various parts of the record. They should be used and assembled in the light of preceding instructions.

12C24. Use of specimen "guilty case" record of procedure "fill-in" forms. The *guilty case* record of procedure *fill-in* forms contained in Figures 12–5, 12–6, and 12–7 may be duplicated for use in recording the procedure of a summary court-martial where the accused does not have counsel, pleads *guilty*, and no matter in aggravation or mitigation is introduced in court. It will be noted that spaces have been allowed for the common type of minor variations such as singular or plural specifications, pleas, findings, and the introduction of previous convictions.

Underlining appears in these forms for the purpose of emphasizing that the space indicated must be filled in with an appropriate entry. If the forms are duplicated, the underlining should, of course, be excluded. Reference to the complete specimen cases in Chapter 13, Section F of this text will clarify any questions arising from the use of the forms. The wording of the fill-in entries may be determined from the entries and variations indicated in Section B of this chapter.

In the event that the accused makes a statement, the following additional entry should be made in the space immediately above the entry, *The trial was finished*, in Figure 12–6:

The recorder informed the court that the substance of Section 359, Naval Courts and Boards, had been carefully explained to the accused.

When record of previous conviction(s) is introduced in court, the following additional entries should be made in the space immediately above the entry *The court was cleared*, in Figure 12–6.

The court announced that it was ready to receive the record of previous conviction(s).

Such record having been submitted to the accused and to the court and there being no objection the recorder read from the current service record of the accused an extract showing previous conviction(s), copy (copies) appended marked 'D' ('D1', 'D2', etc.).

In the event that the court makes a recommendation to clemency, the appropriate entry is made in the space following the signature of the recorder to the sentence in Figure 12–7. Such a recommendation is signed only by the members agreeing therein, and never by the recorder. If this entry is made, it usually takes considerable space and makes necessary the use of an additional page in order to complete the closing entry and signatures thereto.

NAVJAG 109

RECORD OF PROCEEDINGS

OF A

SUMMARY COURT MARTIAL

To insure uniformity, forms furnished by the Judge Advocate General will be used exclusively.

SUMMARY COURT MARTIAL

Jones, John
(Full name, surname first)

Seaman second class
(Rate or rank)

U. S. Naval Section Base
(Ship or station where tried)

Bar Harbor, Maine
(Location)

July 15, 1945
(Date of trial)

No remarks nor stamps of any kind to be placed below:

AOL from: ...../...../..... .....d. .....h. .....m.
AWOL from: ...../...../..... .....d. .....h. .....m.

Abus. Thrtg. Language	Missing Ship
Asleep on Watch	Neglect of Duty
Assault	Obs. or Prof. Language
Breaking Arrest	Resisting Arrest
C to P	
Disob. Lawful Order	Scan. Conduct
Disresp. to S. O.	Strkg. Another in Navy
Drunkenness	Theft
Falsehood	VLRSN
Lv. Sta. before Relieved	VL ..... Order

PLEA: Guilty / Not Guilty

Prev. Courts (..... None) (..... D) (..... S) (..... G)

BCD	LP $..... (..... mos.)
Conf.	Reduction to NIR
Dep. lib.	Sol. conf. ..... days
EPD	SC B&W ..... days (.....)

BCD remitted	Probation ..... mos.
Conf. remitted	RNIR remitted
Conf. red. to	Dep. lib. red. to .....
EPD remitted	LP remitted
EPD red. to	LP red. to $..... (.....)
Dep. lib. remitted	SC B&W remitted
SC B&W red. to	
CA Appd. ...../...../.....	ISIC—SOP
Disappd.	Appd. ...../...../.....
	Disappd.

Reviewed by:

GPO 16—96832-1

Figure 12–1. A specimen cover page.

John Jones,
seaman second class, U. S. Naval Reserve

Trial by summary court-martial at the U. S. Naval Section Base, Bar Harbor, Maine, July 15, 1945.

INDEX

TESTIMONY

EXHIBITS

Figure 12–2. A specimen index (when record exceeds 20 pages).

U. S. Naval Section Base,
Bar Harbor Maine,
July 1, 1945.

From: Officer in Charge.

To: Lieutenant John P. Jackson, U. S. Naval Reserve.

Subject: Convening summary court-martial.

1. A summary court-martial is hereby ordered to convene within this command on Friday, July 15, 1945, or as soon thereafter as practicable for the trial of such persons as may be legally brought before it.

2. The court will be constituted as follows:

Lieutenant John P. Jackson, U. S. Naval Reserve, senior member; Lieutenant Howard J. Allen, Supply Corps, U. S. Naval Reserve; and Ensign Robert K. Rowan, U. S. Naval Reserve, members; and Ensign Williard N. Watts, U. S. Naval Reserve, recorder.

(S) Oscar B. Bates,
Oscar B. Bates,
Captain, U. S. Navy,
Commanding, U. S. Naval Section Base,
San Diego, California.

A true copy. Attest:

Willard N. Watts

Willard N. Watts,
Ensign, U. S. Naval Reserve,
Recorder.

A

Figure 12–3. A specimen precept page. (See Section B, Chapter 11.)

Specification of an offense preferred against John Jones, seaman second class, United States Naval Reserve.

SPECIFICATION: In that John Jones, seaman second class, U. S. Naval Reserve, attached to the U. S. Naval Section Base, Bar Harbor, Maine, having, while so serving on active duty at said section base, been granted leave of absence from his station and duty at said section base, to which he had been regularly assigned, said leave to expire on June 15, 1945, did fail to return to his station and duty as aforesaid upon the expiration of said leave, and did remain absent from the U. S. naval service, without leave from proper authority, for a period of about five days, at the expiration of which he surrendered himself at said section base at the place aforesaid, the United States then being in a state of war.

Approved July 1, 1945.

To be tried before the summary court-martial of which Lieutenant John P. Jackson, U. S. Naval Reserve, is senior member.

Oscar B. Bates

Oscar B. Bates,
Captain, U. S. Navy,
Commanding, U. S. Naval Section Base,
San Diego, California.

C

Figure 12–4. A specimen specification page (see Chapter 9).

.....

.....

.....

The court met at.....

Present:

.....

entered with the accused and reported as orderly.

The accused stated that he did not wish counsel.

The requirements of section 356, Naval Courts and Boards, were complied with.

The recorder .....

.....

.....

The accused stated that he did not object to any member.

Each member.....

The accused stated that he had received a copy of the specification..... preferred against him on.....

The recorder asked the accused if he had any objection to make to the specification.....

The accused replied in the negative.

The court was cleared. The court was opened and all parties to the trial entered. The court announced that it found the specification..... in due form and technically correct.

The accused stated that he was ready for trial.

No witnesses not otherwise connected with the trial were present.

1

Figure 12–5. A specimen guilty case record; fill-in form, page 1.

The recorder read the specification....., original prefixed marked "B", and arraigned the accused as follows:

Q. .....
.....
.....?

A. .....

The accused was duly warned as to the effect of his plea..... and persisted therein.

The prosecution offered no evidence.

The defense offered no evidence.

The accused.....
.....

The trial was finished.

The recorder was directed to record the following finding.....:

The recorder stated that he had ..... record of previous conviction....., that the rate of pay of the accused in his present rating is $..... a month and in his next inferior rating $..... a month and that he.....
.....
.....

The court was cleared.

2

Figure 12–6. A specimen guilty case record; fill-in form, page 2.

The recorder was recalled and directed to record the sentence of the court as follows:

.....,
..... Senior Member.

.....,
....., Member.

.....,
....., Member.

.....,
....., Recorder.

The court .....
.....

.....,
....., Senior Member.

.....,
....., Recorder.

3

Figure 12–7. A specimen guilty case record; fill-in form, page 3.

The accused respectfully called the attention of the court to his youth, short service, and previous good record. He stated that he sends half of his pay each month home to his mother, who needs it badly. He requested the court and the convening authority to be lenient with him.

Certified the true substance of the statement made by the accused.

Attest:

Willard N. Watts

Willard N. Watts,
Ensign, U. S. Naval Reserve,
Recorder.

D

Figure 12–8. A specimen statement by an accused; oral substance.

I respectfully call the attention of the court to my youth, short service, and previous good record. I send half of my pay each month home to my mother who needs it badly. I request the court and the convening authority to be lenient with me.

John Jones
John Jones.

D

Figure 12–9. A specimen statement by an accused; written.

Extract of previous conviction from the current enlistment record of John Jones, seaman second class, U. S. Naval Reserve.

U. S. Naval Section Base,
Bar Harbor, Maine.

6 June 44 awol to 18 June 44, 12 days. SCM sol. conf. B&W 10 days, f.r. every 3rd day, lose pay $11. App. 21 June 44 by C.A. 22 June by I.S.I.C.

A true copy. Attest:

Willard N. Watts

Willard N. Watts,
Ensign, U. S. Naval Reserve,
Recorder

E

Figure 12–10. A specimen extract of record of a previous conviction.

U. S. Naval Section Base, Bar Harbor, Maine.
Jones, John, S2c, USNR, 000 00 00.
21 June 1945.

While a prisoner at large, by lawful order of his commanding officer, broke arrest and left the U. S. Naval Section Base, Bar Harbor, Maine.

(S) ARTHUR S. KENNEY,
Arthur S. Kenney,
Lieutenant, U. S. Naval Reserve,
Executive Officer.

A true copy. Attest:

Willard N. Watts

Willard N. Watts,
Ensign, U. S. Naval Reserve,
Recorder.

Exhibit 1

Figure 12–11. A specimen exhibit; extract from current enlistment record.

Uniform Overcoat

A regulation issue enlisted man's double-breasted, blue cloth overcoat, size 38.

"J. B. Fischer" stitched in yellow silk on lining on left, front side.

"J. B. Fischer" stenciled with white paint on lining in the regulation manner.

Certified the true description of the uniform overcoat introduced in evidence by the prosecution.

Attest.

Willard N. Watts

Willard N. Watts,
Ensign, U. S. Naval Reserve,
Recorder.

Exhibit 2

Figure 12–12. A specimen exhibit; description of real evidence.

U. S. Naval Section Base,
Bar Harbor, Maine,
July 16, 1945.

From an examination of John Jones, seaman second class, U. S. Naval Reserve, and of the place where he is to be confined, I am of the opinion that the execution of the sentence would (not) produce serious injury to his health.

Boyd N. Andrews

Boyd N. Andrews,
Commander, Medical Corps, U. S. Navy,
Senior Medical Officer on Board.

Figure 12–13. A specimen opinion of a senior medical officer.

U. S. Naval Section Base,
Bar Harbor, Maine,
July 17, 1945.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Naval Reserve, are approved, but the limits of confinement are extended to the limits of the station.

Oscar B. Bates

Oscar B. Bates,
Captain, U. S. Navy,
Commanding, U. S. Naval Section Base,
San Diego, California.

Figure 12–14. A specimen action of convening authority.

North Station Office Building,
150 Causeway Street,
Boston 14, Massachusetts,
July 18, 1945.

The proceedings, finding(s), and sentence, as mitigated, in the foregoing case of John Jones, seaman second class, U. S. Naval Reserve, are approved.

Charles M. Kelley

Charles M. Kelley,
Rear Admiral, U. S. Navy,
Commandant, First Naval District,
Immediate Superior in Command.

Figure 12–15. A specimen action of immediate superior in command.

U. S. Naval Section Base,
Bar Harbor, Maine,
July 21, 1945.

Published.

Daniel C. Butler

Daniel C. Butler,
Commander, U. S. Navy,
Executive Officer.

Loss of pay adjudged has been entered on the pay accounts of this man and will be checked in accordance with the terms of the sentence as approved.

Nathan W. Davis

Nathan W. Davis,
Lieutenant, S. C., U. S. Navy.

Figure 12–16. A specimen publication and checkage page.

13. THE SUMMARY COURT-MARTIAL: CONCLUDED

A. REVISION

13A1. Power of reviewing authority; returning record. The power of a convening authority in returning any record to the court is limited to a revision of its findings, or sentence, or the correction of clerical errors, or omissions in the record of proceedings, and in the event of the court's adherence to its former conclusions, to disapproval of such action. It is not in the power of the convening authority to compel a court to reverse its decision upon a motion or plea when the court's ruling has terminated the trial; or to change its findings or sentence, when, upon being reconvened by him, it has declined to modify them; nor either directly or indirectly to enlarge the measure of punishment imposed by a court-martial; nor to coerce a court to adopt his view upon any question arising in the course of its proceedings. When the proceedings, findings, or sentence of a court are illegal, the convening authority should set them aside.

The convening authority in his remarks returning a record for revision should not, in effect, threaten disciplinary action against the members of the court.

13A2. When reviewing authority should not return record. Unless specifically authorized by the Secretary of the Navy in each case, no authority will return a record of trial to any court for reconsideration of (1) an acquittal, (2) a finding of *not guilty* to any specification, or (3) the sentence originally imposed with a view to increasing its severity. Furthermore, no court in any proceedings in revision shall reconsider its finding or sentence in any particular in which a return of the record of trial for such reconsideration is herein prohibited. In rare cases, reviewing authorities, when they consider that strict adherence to the provisions of this section would result in a miscarriage of justice, may withhold action and report the circumstances to the Navy Department with request for authority to reconvene the court for any of the purposes above mentioned.

13A3. Revision must be before same court. Upon receipt of the record of a court-martial, the reviewing authority shall proceed at once to examine it in order that it may be returned for revision, if such course be necessary,

before the dissolution of the court. If the reviewing authority returns the record for revision the letter returning it must be signed by him, and must be bound in with the record. Jurisdiction in revision must be affirmatively shown the same as jurisdiction originally. When a court has been dissolved, it ceases to exist and cannot be resurrected. Consequently, a record cannot be returned for revision after the court has been dissolved, although the same members constitute the new court as constituted the old.

13A4. Exception where sentence would injure health of the accused. The only case in which revision may be had by a court-martial other than the one which sat originally is where the medical officer certifies that the execution of the original sentence of a summary court-martial would be seriously injurious to the health of the accused. In such a case the new court is restricted in its action to review of the record of the former trial and a redetermination of the sentence. No further testimony shall be admitted.

13A5. Record must show same court. Should the reviewing authority decide to reconvene the court in order to amend or otherwise remedy a defect or omission in the record, or for a reconsideration of its findings or sentence, which may be done when the facts warrant, the record shall show that all the original members, except as noted in the preceding paragraph, are present.

13A6. Recorder on revision. It is not necessary that the same recorder officiate on the revision of a case as took part in the original proceedings. If a new recorder be detailed, however, the orders of the convening authority, modifying the precept in that respect, shall be read and a copy prefixed to the record in revision. Also, the order convening the court in revision shall not be read until after the new recorder has been sworn.

13A7. No new evidence admissible. When a court is ordered to revise its proceedings, new evidence shall not be admitted.

13A8. Clerical errors or omissions, how corrected. Clerical errors or omissions in the original record may be amended by the court in revision without the presence of the accused, but are not to be corrected in an informal manner by erasure or interlineation. The legal procedure is for the proper officer to reconvene the court, calling its attention in the order for reassembling to the error requiring correction, and for the court, on reassembling, to decide as to the correction to be made, and to incorporate it as a part of the record of proceedings in revision.

13A9. Presence of accused. It is not in general necessary or desirable that the accused be present at a revision. When, however, any possible injus-

tice may result from his absence, he should be permitted to be present with counsel, if desired. Thus, where the defect to be corrected consists of an omission properly to set forth a motion made or an objection taken by the accused, it may be desirable that he should be present in order that he may be heard as to the proper form of the proposed correction. But where the error consists of the omission of a formal statement only, or a reconsideration of the findings or sentence, the presence of the accused is not in general called for.

13A10. Findings and sentence revised in closed court. The court will be closed during a revision of the findings and sentence.

13A11. Sentence in revision must be in handwriting of recorder. The sentence in revision must be in the handwriting of the recorder. In a revision of a case the statement, *The court does respectfully adhere to its former sentence*, is equivalent to a rewriting of the sentence, and shall be in the handwriting of the recorder.

13A12. Where revision of findings results in acquittal. If the trial originally resulted in conviction, but on revision in acquittal, the acquittal will be announced in open court in accordance with usual procedure.

13A13. Sentence not effective until approved. No sentence of a court-martial may be carried into execution until the entire proceedings have been reviewed and the sentence duly approved in accordance with law. The law governing a summary court-martial in this regard is given in Article 32, *AGN*. Upon completion of the record of proceedings in revision, the entire record will be forwarded to the next higher reviewing authority by the convening authority with his approval endorsed thereon.

13A14. Record in revision. During a revision an entirely separate record shall be kept, to which the order for reassembling must be prefixed, and which shall itself be prefixed to the record of which it is a revision. A full entry shall be made of all the proceedings, verified in the ordinary manner by the signature of all the members of the court present, and the recorder, and transmitted, as before, to the reviewing officer for his approval. The record of proceedings in revision is prefixed to the original proceedings and is made up in the same manner as the original record, with separate cover page. After prefixing the letter returning the record for revision to the record in revision, the entire proceeding, original and revision should be forwarded to the convening authority for his approval. Figures 13–1, 13–2, and 13–3, respectively, show the proper form for the cover page, the letter returning the record for revision, and entries for the record in revision.

Case of
John Jones,
Seaman second class,
U. S. Naval Reserve.
August 1, 1945.

RECORD OF PROCEEDINGS IN REVISION

of a

SUMMARY COURT-MARTIAL

Convened at the

U. S. NAVAL SECTION BASE
Bar Harbor, Maine

By order of

The Commanding Officer
U. S. Naval Section Base, Bar Harbor, Maine.

Figure 13–1. A specimen cover page of a record in revision.

U. S. NAVAL SECTION BASE
Bar Harbor, Maine.

NT4–59/MM/A17–21
Serial 00

JULY 30, 1945.

From: Commanding Officer.

To: Lieutenant John P. Jackson, U. S. Naval Reserve, senior member, summary court-martial, U. S. Naval Section Base, Bar Harbor, Maine.

Subject: Trial of John Jones, seaman second class, U. S. Naval Reserve.

1. The record of proceedings of the summary court-martial of which you are senior member, in the case of the above-named man, is herewith returned to the court.

2. The convening authority notes that the court found certain words of the second specification not proved and substituted for these words certain other words which it found proved. The specification as thus amended is not grammatically correct. Furthermore, it is vague and indefinite in that the time and place of the commission of the offense are not specified in the specification as amended.

3. The court will reconvene for the purpose of reconsidering the findings and sentence and correction of clerical errors on pages 4 and 9 in the record of proceedings. At the conclusion of the proceedings in revision, the record will be returned to the convening authority.

Oscar B. Bates,
Captain, U. S. Navy,
Commanding, U. S. Naval Section Base,
Bar Harbor, Maine.

A

Figure 13–2. A specimen letter returning a record for revision.

U. S. Naval Section Base,
Bar Harbor, Maine,
Monday, August 1, 1945.

The court reconvened at 10 a.m., pursuant to an order hereto prefixed marked "A", which was read by the recorder.

Present:

Lieutenant John P. Jackson, U. S. Naval Reserve,
Lieutenant Howard J. Allen, Supply Corps, U. S. Naval Reserve,
Ensign Robert K. Rowan, U. S. Naval Reserve, members; and
Ensign Willard N. Watts, U. S. Naval Reserve, recorder.
William J. Goodman, yeoman first class, U. S. Navy, reporter.

The court having decided that the presence of accused was necessary to the ends of justice, the accused (with counsel) was called before the court and the convening order was reread.

The court was cleared.

The recorder was recalled and directed to record that the court decided to revoke its former finding on the second specification in the case of John Jones, seaman second class, U. S. Naval Reserve, and to substitute therefor the following finding:

The specification proved in part, proved except the words ".....", which words are not proved and for which the court substitutes the words ".....", which words are proved.

The recorder was directed to record that the court decided to correct the following errors:

(a) On page 4, by inserting between lines 10 and 11, the following: "....."

(b) On page 9, by omitting from lines 16 and 17, the following: "....."

The court decided respectfully to adhere to the remainder of its former findings and to its former sentence.

John P. Jackson
John P. Jackson,
Lieutenant, U. S. Naval Reserve, Senior Member.

Howard J. Allen
Howard J. Allen,
Lieutenant, Supply Corps, U. S. Naval Reserve, Member.

Robert K. Rowan
Robert K. Rowan,
Ensign, U. S. Naval Reserve, Member.

Willard N. Watts
Willard N. Watts,
Ensign, U. S. Naval Reserve, Recorder.

The court then adjourned to await orders from the convening authority.

John P. Jackson
John P. Jackson,
Lieutenant, U. S. Naval Reserve, Senior Member.

Willard N. Watts
Willard N. Watts,
Ensign, U. S. Naval Reserve, Recorder.

Figure 13–3. A specimen record in revision.

B. REVIEWING AUTHORITY ACTION

13B1. Reviewing authority defined. Any officer to whom the proceedings of a court-martial are regularly submitted for review in accordance with law is a reviewing authority. When such officer is the convening authority, this latter term should, in order to avoid confusion, be used in referring to him, even while exercising the function of a reviewing authority.

13B2. Reviewing power vests in office of authority so acting. The reviewing power, as well as the convening power, of a court-martial vests in the office, not in the person, of the authority so acting. Thus, when the reviewing power is vested in the convening authority and the officer who has ordered the court has been relieved or is absent, it is competent for his successor in office, whether temporary or permanent, to act as reviewing authority.

13B3. Function as reviewing authority may not be delegated to inferior. The reviewing authority cannot delegate to an inferior or other officer his function as reviewing authority as conferred by the *Articles for the Government of the Navy*, nor can he authorize a staff or other officer to subscribe for him his decision and orders on the proceedings. He will sign in his own hand the action taken by him on the proceedings. His rank and official position should appear after his signature. A staff officer, inferior officer or other officer may, however, write a formal review of the case and specifically recommend the action to be taken by the reviewing authority.

13B4. Sentence not effective until approved in accordance with law. No sentence of a court-martial may be carried into execution until the entire proceedings have been reviewed and the sentence duly approved in accordance with law. When the confirmation of a sentence requires the approval of higher authority, the record should be forwarded to the next higher reviewing authority by the convening authority with his approval endorsed thereon. Article 32, *AGN*, provides for the execution of a summary court-martial sentence upon the approval of the immediate superior in command of the convening authority except that where the convening authority is senior officer present his own approval is sufficient. Upon the approval, therefore, of the convening authority and except where the convening authority is senior officer present, upon the further approval of the immediate superior in command, any authorized sentence of a summary court-martial, except a bad-conduct discharge in certain cases, may be carried into execution immediately. (See Article 13C4.)

13B5. Effective date and review of sentences involving confinement. Where confinement has been adjudged by a summary court-martial it shall take

effect from the date of approval of the sentence by the immediate superior in command unless the convening authority has approved the sentence as senior officer present where it takes effect upon the approval of the convening authority. However, if the accused has been previously sentenced to confinement for another offense, the confinement shall not take effect until the former sentence has been served. In such a case, care should be taken in approving the later sentence to state that the period of confinement shall not begin to run until the former sentence has been served. Should an unusual time elapse between the date of confinement of the accused for trial and the date of approval of the sentence, this period should be considered by the convening authority in acting upon the case as a ground for mitigation. Should the sentence be to solitary confinement or to solitary confinement on bread and water or diminished rations, the time of such confinement must be fulfilled unless such provision of the sentence be remitted or mitigated by the convening or higher authority.

It is the duty of the convening authority either to remit any part or the whole of any sentence, the execution of which would, in the opinion of the senior medical officer on board, given in writing, produce serious injury to the health of the person sentenced, or to submit the case again, without delay, to the same or to another summary court-martial, which shall have power, upon the testimony already taken, to remit the former punishment and to assign some other of the authorized punishments in the place thereof.

13B6. Action of reviewing authority on acquittals. No action shall be taken by a reviewing authority which purports to approve or disapprove an acquittal or finding of not proved. Approval in such cases is not required and disapproval cannot change the final effect. If a reviewing authority does not concur in the finding of the court, he may so state in his action upon the record, giving such reasons as he may deem appropriate for the information of the members of the court and other reviewing authority. Where the case is deemed to be illegal because of a jurisdictional defect or a fatally defective specification, the reviewing authority shall so state in his action upon the record for consideration of the Secretary of the Navy, who is empowered to set aside the entire proceedings.

13B7. Examination of record in review. Before action is taken on the sentence the record must be examined to determine that the procedure was legally correct and that the findings and sentence of the court are lawful. It is incumbent on the reviewing authority to determine not merely that the proper procedural steps were taken and recorded, but that the findings of the court are supported by competent proof. In this connection he should consider the elements of proof required to establish the offense as set out

in Chapter 2, *Naval Courts and Boards, 1937*, and decide whether those elements have been established by proper evidence. He must then determine whether the sentence imposed is a legal one. Having carefully examined the record to determine its validity, the reviewing authority must then decide what action he will take upon the sentence.

13B8. Matters to be specially considered by the reviewing authority. In reviewing courts-martial the following factors should be considered:

1. Objections to the jurisdiction of the court should always be considered whether or not made at the trial or on review.
2. Objection to the specifications should not be considered unless made at the trial, except where a specification fails to state an offense.
3. Sufficiency of the evidence to sustain the finding of the court should always be considered by the reviewing authority, keeping in mind the duties of the court in weighing the evidence before it.
4. All objections made at the time of the trial and the ruling of the court on these objections should be carefully considered, especially if adverse to the accused.
5. If there has been no miscarriage of justice, the finding of the court should not be set aside or new trial granted because of technical errors or defects which do not affect the substantial rights of the accused.

Reviewing authorities in acting upon a record should bear in mind the maxim that *the law does not regard small matters*, and should not disapprove on account of deviations in immaterial ways not tending to prejudice the rights of any individual.

13B9. Evidence not to be weighed in review. The reviewing authority should not attempt to weigh the evidence, remembering that this depends largely on manner of testifying and that the court is better able to decide on this than he is. If, however, the recorded evidence is insufficient to establish a prima facie case, the reviewing authority may properly disapprove a conviction on this ground. The court, having personally heard the witnesses, is, ordinarily, more competent to arrive at the facts from the evidence presented than is a reviewing authority, even though said reviewing authority may by long experience be more expert in weighing evidence than is the court. Moreover, the court which hears the witness is best qualified to scrutinize and balance the testimony, possessing, as it does, the advantage of personal contact and observation, so essential in reaching a just conclusion from lengthy and conflicting statements. After the deliberate consideration given to the case by the court it is not unreasonable to assume that the specific facts found represent the truth of the case so far as it is ascertainable. Where there is any evidence to support the finding of the

court, that finding should be accepted by the convening authority even though, from the record, he arrives at an opposite conclusion.

13B10. Approval of the sentence. Unless the whole or part of the sentence is expressly approved, the sentence of the court has no legal effect. Approval does not indicate that the reviewing authority is satisfied with the sentence. He may regard it as grossly inadequate, but without approval the sentence is without any force or effect. If the proceedings, findings, and sentence are legal, the reviewing authority should approve the sentence. If part of the sentence is unlawful, he should approve that part which is lawful and thereby make that portion effective. Thus, if a summary court-martial sentenced an accused to be confined for three months (which exceeds by one month the amount of confinement it has jurisdiction to impose), the reviewing authority would approve only that part of the sentence which provided for confinement for two months and disapprove the illegal portion. In approving any sentence a reviewing authority should carefully consider the policies of the Navy Department which are discussed in Section D of this chapter.

13B11. Effect of disapproval of the sentence. The disapproval of the sentence of a court-martial by the reviewing authority is not a mere expression of disapprobation, but has the legal effect of entirely nullifying it. In case of disapproval, the accused must be immediately released from arrest. A reviewing authority cannot disapprove a sentence and then proceed to mitigate it, or place the accused on probation, or carry it into effect in any way, for, after disapproval, there is nothing left to mitigate or carry into effect.

13B12. Remission and mitigation. Although a sentence may be legal and proper for the offense of which the accused has been found guilty, for reasons of policy the reviewing authority may wish the accused to be less severely punished. If, for example, the accused had been confined for an undue length of time before trial, or there were extenuating circumstances such as his youth, his good record, or exemplary conduct in battle, or the court recommended clemency, it might be desirable to make the punishment less severe. If the reviewing authority decides on this course of action, he can approve the sentence and then remit or mitigate it, that is, relieve the accused of all or part of the punishment by reducing it in quantity or quality. Such action by the reviewing authority does not destroy the effect of the conviction, but the accused does not have to undergo that part of the punishment which is remitted or mitigated. It is essential that the reviewing authority expressly approve the sentence and then reduce it. Until approved the sentence has no legal effect and there is nothing to be reduced.

Where the convening authority has mitigated the sentence imposed by the court, the action of the immediate superior in command is limited to the sentence as mitigated. Such higher authority cannot disapprove the mitigation of the convening authority and thus restore the original sentence. Reviewing authorities in mitigating or remitting sentences should not thereby keep an accused guilty of an offense involving moral turpitude in the service.

Reduction in quantity. In the case, for example, of a sentence of confinement for a period of two months and loss of $33 pay per month for a like period, the reviewing authority might approve the sentence and remit it in its entirety (in which case the accused would undergo no punishment); or he might remit all or part of the confinement (leaving the entire loss of pay in effect); or he might remit all or part of the loss of pay (leaving the confinement in effect); or he might remit part of both the confinement and loss of pay.

Reduction in quality. Instead of cutting down the quantity of punishment by remitting all or part of it, the reviewing authority may mitigate the punishment, that is, reduce it to a less severe degree of the same general type of punishment. For example, the convening authority may extend the limits of confinement during working hours or at other times that he may deem expedient. He may even extend the limits of confinement to the limits of the ship or station, thus in effect making it restriction to the ship or station. No such power is given to the court itself, which must adhere strictly to the statutory form of punishment. A sentence of a summary court to *confinement or restriction to a ship or station* is not legal.

In connection with the exercise of the power to mitigate, it is to be noted that so much of a sentence as requires confinement to be solitary or on bread and water or on diminished rations may be remitted; or, in sentences involving bread and water, the frequency of full rations may be increased. Where the loss of pay is a certain amount per month, it should be mitigated by cutting down the amount, or the number of months during which it shall be lost, or both.

13B13. Conditional remission. Summary court-martial sentences may, in the discretion of the reviewing authority, be conditionally remitted in lieu of being summarily executed, and, as a general rule, it is desirable that this be done with respect to sentences of discharge adjudged for first offenses not of a serious nature. The accused is thus given an opportunity to redeem himself. If he does so, he may never undergo the punishment. If he does not, the sentence may be ordered executed, that is, the sentence may be put into effect. *Conditional remission* differs from *remission* in

that a conditionally remitted sentence may later be ordered executed, whereas by remission the accused is completely relieved of the punishment for all time. The period during which a sentence is held in abeyance is a probationary period and the commanding officer may execute the sentence at any time during such period if he deems the probationer's conduct warrants such action. In such case, the commanding officer of the accused should be directed to make full report to the Navy Department (JAG) of the reason therefor. If a man serves his probationary period as herein specified, the remission of the sentence becomes unconditional without further action.

Probationary period may extend beyond enlistment. In view of *AlNav* 155 of 15 December 1941, issued in pursuance of public law 137, 77th Congress, approved 13 December 1941, providing that all enlistments of all men, except those who are discharged and re-enlisted, are to be extended for a period of not later than six months after the termination of the war, probationary periods may accordingly be extended beyond the date of expiration of a man's current enlistment as originally determined. In the event a man is serving a probationary period which extends beyond the expiration date of his current enlistment and is discharged on or before the expiration date of his current enlistment and is re-enlisted, the discharge operates as an unconditional remission of the balance of the probationary period yet to be served, and upon re-enlistment that portion of the probationary period not served is canceled.

Action subsequent to conditional remission. Where a reviewing authority places a man on probation, and during this probationary period the man commits a new offense, his commanding officer has three possible courses of action. He may (1) execute the suspended sentence; (2) award a court-martial; or (3) execute the suspended sentence and award a court-martial. The third course of action does not result in double punishment for the second offense. Though the accused receives two punishments at about the same time, the first punishment is for the first offense and the second punishment is for the second offense. While the second offense not only causes the probation to be removed in connection with the sentence for the first offense, but also results in a second punishment for the second offense, the former action is purely administrative on the part of the convening authority and cannot be said to result in double punishment for the second offense. The convening authority may therefore execute the suspended sentence and also award a court-martial, both as a result of the second offense.

13B14. Commutation. Although the severity of the punishment may be mitigated, the reviewing authority may not change its general nature. He could not, for example, change a sentence of bad-conduct discharge to a

specified loss of pay or change a sentence of reduction to the next inferior rating to confinement. The power to commute sentences, that is, to change the general nature of a punishment, is not vested in any officer of the Navy. In summary court-martial cases, the immediate superior in command has the same power as that vested in the convening authority by Article 33, *AGN*, which is in terms confined to remitting or mitigating the whole or a part of the sentence adjudged by the court and does not include power to commute a sentence.

13B15. Returning record. The power of a convening authority in returning any record to the court is limited to a revision of its findings or sentence or the correction of clerical errors or omissions in the record of proceedings, and, in the event of the court's adherence to its former conclusions, to disapproval of such action. It is not in the power of the convening authority to compel a court to reverse its decision upon a motion or plea, when the court's ruling has terminated the trial, or to change its findings or sentence, when, upon being reconvened by him, it has declined to notify them, nor either directly or indirectly to enlarge the measure of punishment imposed by a court-martial, nor to coerce a court to adopt his view upon any question arising in the course of its proceedings. When the proceedings, findings, or sentence of a court are illegal, the convening authority should set them aside. The convening authority in his remarks returning a record for revision should not, in effect, threaten disciplinary action against the members of the court.

When record is not to be returned. Unless specifically authorized by the Secretary of the Navy in each case, no authority will return a record of trial to any court for reconsideration of (1) an acquittal, (2) a finding of not guilty to any specification, or (3) the sentence originally imposed with a view to increasing its severity, and no court in any proceedings in revision shall reconsider its finding or sentence in any particular in which a return of the record of trial for such reconsideration is herein prohibited. In rare cases, where reviewing authorities consider that strict adherence to the provisions of this section would result in a miscarriage of justice, they may withhold action and report the circumstances to the Navy Department with request for authority to reconvene the court for any of the purposes above mentioned.

Return of record by immediate superior in command. The court cannot, after it has once duly completed and forwarded the record, recall it for modification, nor can the convening authority, after he has acted upon the record and forwarded it. But the immediate superior in command may return the record to the convening authority, requesting that the court be reconvened. An immediate superior in command cannot properly return the record of a summary court-martial directly to the court for action thereon

in revision. The proper procedure, when an immediate superior in command deems action by the court in revision necessary, is for him to transmit the record to the convening authority with the suggestion that the convening authority revoke his action in the first instance and transmit the record to the court with an order for revision. Then, when the proceedings in revision have been acted upon by the convening authority, the record should be transmitted to the immediate superior in command for final action. In case of a record so returned, the court and the convening authority may, and if their sense of duty dictates, should, adhere to the action originally taken. A record is not to be returned with a view to increasing the sentence.

13B16. Ordering new trial. If the court was without jurisdiction or if none of the specifications alleges an offense, the reviewing authority should disapprove the proceedings, findings, and sentence, and convene a new court for the trial of the case. The new trial should be had upon the same specifications, unless the disapproval is based on fatal defects therein, in which event, new specifications should be drawn correctly setting forth the offenses intended to be charged at the previous trial, provided that such new specifications are not barred by the statute of limitations.

In cases not covered by the foregoing paragraph, if the record discloses errors to the substantial injury of the accused and timely objection was made by him at the trial, the reviewing authority before action upon the record should afford the accused an opportunity to request a new trial, provided the record irrespective of the errors disclosed is sufficient to sustain the finding of the court. Should the accused decline or fail to apply for a new trial within the time allowed by the reviewing authority, the latter should take action upon the proceedings, findings, and sentence without regard to such errors.

If the reviewing authority grants a new trial upon petition of the accused, he should order the accused before a new court on the same specifications originally preferred against him unless the reasons for retrial were based on defects in the specifications, in which case new specifications should be prepared correcting the pleading previously objected to, if such new specifications are not barred by the statute of limitations; but the accused should not be tried for any offense of which he was found not guilty by the first court. New trial being granted, the proceedings, findings, and sentence of the previous trial should be set aside.

13B17. Synopsis of conduct spread upon record when bad-conduct discharge is adjudged. In every case where a bad-conduct discharge has been imposed, it is the duty of the convening authority in acting upon the proceedings to spread upon the record a brief synopsis of the service of the

person tried and the offenses committed by him during his current enlistment or current extension. Although not required, this may properly be done in other cases.

13B18. Specimen convening authority action; entries for the record. The following specimens of convening authority action are presented as aids in preparation of the formal action for the record. As previously noted, the convening authority must sign in his own hand the action taken by him on the proceedings, and his rank and official position should appear after his signature. Section 683, *Naval Courts and Boards, 1937*, indicates the appropriate form for such action to be as follows:

U. S. Naval Section Base,
Bar Harbor, Maine,
April 10, 1945.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved.

Harold P. Henry,
Captain, U. S. Navy,
Commanding,
U. S. Naval Section Base,
Bar Harbor, Maine.

For the manner of appending the action of the convening authority to the record, see Section C of Chapter 12.

1. Specimen action on bad-conduct discharge.

Approval.

The service record of John Jones, seaman second class, U. S. Navy, shows that he has served in the Navy five years and four months, and is now in his second enlistment. During his current enlistment he has committed the following offenses: March 2, 1943, 48 hours over liberty; May 1, 1943, clothes in lucky bag; June 18, 1943, absence from quarters; July 1, 1943, shirking.

The proceedings, finding(s), and in view of the above, the sentence in the foregoing case are approved.

Conditional remission.

The service record of John Jones, seaman second class, U. S. Navy, shows that he has served in the Navy eight years and four months, and is now in the first extension of his second enlistment. During his current extension beginning July 5, 1943, he has committed the following offenses: August 1, 1943, 24 hours over leave; September 5, 1943, use of profane language; December 1, 1943, unlawful use of liberty card.

The proceedings, finding(s), and in view of the above, the sentence in the foregoing case are approved, but the bad-conduct discharge is remitted on condition that Jones maintain a record satisfactory to his commanding officer during a period of six

(6) months, otherwise he is to be discharged with a bad-conduct discharge in accordance with the provisions of Section 476, Naval Courts and Boards.

Remission.

The service record of John Jones, seaman second class, U. S. Navy, shows that he has served in the Navy four months and twelve days. During this current enlistment beginning March 4, 1944, he has committed no offense prior to the one for which he was tried in this case.

The proceedings, finding(s), and sentence in the foregoing case are approved, but in view of the above, the bad-conduct discharge is remitted.

2. Action in mitigation.

Reduction of pay loss.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the loss of pay is reduced to the loss of twenty dollars ($20) per month of his pay for a period of six (6) months, total loss of pay amounting to one hundred twenty dollars ($120).

Reduction of confinement.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the period of confinement is reduced to twenty-five (25) days.

Reduction of solitary confinement.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the period of solitary confinement is reduced to twenty (20) days.

Reduction of solitary confinement on bread and water.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the period of solitary confinement on bread and water with full ration every third (3rd) day is reduced to ten (10) days.

Reduction of extra police duties,

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the period of extra police duties is reduced to thirty (30) days.

Extension of limits of confinement.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the limits of confinement are extended to the limits of the station.

Frequency of full ration increased.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the frequency of full ration is increased to every third (3rd) day.

3. Action in remission.

Remission of reduction to next inferior rating.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the reduction to the next inferior rating is remitted.

Remission of pay loss.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the loss of pay is remitted.

Remission of confinement.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the confinement is remitted.

Remission of solitary confinement.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the solitary confinement is remitted.

Remission of solitary confinement on bread and water.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the solitary confinement on bread and water, with full ration every third (3rd) day, is remitted.

Remission of extra police duties.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the extra police duties are remitted.

Remission of solitary confinement on bread and water but retaining confinement.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but that part of the sentence which requires the confinement to be solitary, on bread and water, with full ration every third (3rd) day, is remitted.

Remission of solitary confinement on bread and water but retaining solitary confinement.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but that part of the sentence, which requires the solitary confinement to be on bread and water, with full ration every third (3rd) day, is remitted.

4. Combination action in mitigation and remission.

Reduction of pay loss and remission of confinement.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the loss of pay is reduced to the loss of twenty-seven dollars ($27) per month of his pay for a period of four (4) months, total loss of pay amounting to one hundred eight dollars ($108), and the confinement is remitted.

Remission of reduction to next inferior rating and reduction of pay loss.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the reduction to the next inferior rating is remitted and the loss of pay is reduced to the loss of thirteen dollars and fifty cents ($13.50) per month of his pay for a period of five (5) months, total loss of pay amounting to sixty-seven dollars and fifty cents ($67.50).

Reduction of confinement and remission of pay loss.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the period of confinement is reduced to twenty (20) days, and the loss of pay is remitted.

Remission of bad-conduct discharge and reduction of pay loss.

The service record of John Jones, seaman second class, U. S. Navy, shows that he has served in the Navy four months and twelve days. During his current enlistment beginning March 4, 1944, he has committed no offense prior to the one for which he was tried in this case.

The proceedings, finding(s), and sentence in the foregoing case are approved, but the bad-conduct discharge is remitted and the loss of pay is reduced to the loss of twenty-seven dollars ($27) per month of his pay for a period of three (3) months, total loss of pay amounting to eighty-one dollars ($81).

Remission of extra police duties and reduction of pay loss.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the extra police duties are remitted and the loss of pay is reduced to the loss of thirteen dollars and fifty cents ($13.50) per month of his pay for a period of three (3) months, total loss of pay amounting to forty dollars and fifty cents ($40.50).

5. Action in conditional remission (probation).

Reduction to the next inferior rating.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the reduction to the next inferior rating is remitted on condition that Jones maintain a record satisfactory to his commanding officer during a period of six (6) months, otherwise he is to be reduced to the next inferior rating.

Confinement.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the confinement is remitted on condition that Jones maintain a record satisfactory to his commanding officer during a period of six (6) months, otherwise he is to be confined for a period of twenty (20) days.

Solitary confinement.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the solitary confinement is remitted on condition that Jones maintain a record satisfactory to his commanding officer during a period of six (6) months, otherwise he is to be solitarily confined for a period of twenty (20) days.

Solitary confinement on bread and water.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the solitary confinement on bread and water for a period of twenty-five (25) days, with full ration every third (3rd) day, is remitted on condition that Jones maintain a record satisfactory to his commanding officer during a period of six (6) months, otherwise he is to be solitarily confined on bread and water for a period of twenty-five (25) days, with full ration every third (3rd) day.

Deprivation of liberty on shore on foreign station.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the deprivation of liberty on shore on foreign station is remitted on condition that Jones maintain a record satisfactory to his commanding officer during a period of six (6) months, otherwise he is to be deprived of liberty on shore on foreign station for a period of thirty (30) days.

Pay loss.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the loss of pay is remitted on condition that Jones maintain a record satisfactory to his commanding officer during a period of six (6) months, otherwise he is to lose twenty-seven dollars ($27) per month of his pay for a period of six (6) months, total loss of pay amounting to one hundred sixty-two dollars ($162).

Extra police duties.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the extra police duties are remitted on condition that Jones maintain a record satisfactory to his commanding officer during a period of six (6) months, otherwise he is to perform extra police duties for a period of thirty-five (35) days.

6. Combination action in conditional remission and mitigation or remission.

Reduction of pay loss and conditional remission of reduction to next inferior rating.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the loss of pay is reduced to the loss of thirteen dollars and fifty cents ($13.50) per month of his pay for a period of six (6) months, total loss of pay amounting to eighty-one dollars ($81), and the reduction to the next inferior rating is remitted on condition that Jones maintain a record satisfactory to his commanding officer during a period of six (6) months, otherwise he is to be reduced to the next inferior rating.

Reduction of pay loss and conditional remission of confinement.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the loss of pay is reduced to the loss of twenty-seven dollars ($27) per month of his pay for a period of four (4) months, total loss of pay amounting to one hundred eight dollars ($108), and the confinement is remitted on condition that Jones maintain a record satisfactory to his commanding officer during a period of six (6) months, otherwise he is to be confined for a period of thirty-five (35) days.

Remission of solitary confinement and conditional remission of pay loss.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the solitary confinement on bread and water, with full ration every third (3rd) day is remitted, and the loss of pay is remitted on condition that Jones maintain a record satisfactory to his commanding officer during a period of four (4) months, otherwise he is to lose twenty-seven dollars ($27) per month of his pay for a period of four (4) months, total loss of pay amounting to one hundred eight dollars ($108).

Remission of pay loss and conditional remission of reduction to next inferior rating.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but the loss of pay is remitted and the reduction to the next inferior rating is remitted on condition that Jones maintain a record satisfactory to his commanding officer during a period of three (3) months, otherwise he is to be reduced to the next inferior rating.

7. Action on recommendation to clemency.

Reduction of pay loss.

The service record of John Jones, seaman second class, U. S. Navy, shows that he has served in the Navy four months and twelve days. During his current enlistment beginning March 4, 1944, he has committed no offense prior to the one for which he was tried in this case.

The proceedings, finding(s), and sentence in the foregoing case are approved, but in view of the above and the recommendation to clemency made by two members of the court, the loss of pay is reduced to the loss of ten dollars ($10) per month of his pay for a period of six (6) months, total loss of pay amounting to sixty dollars ($60).

Reduction of confinement.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but in view of the recommendation to clemency, the period of confinement is reduced to twenty-five (25) days.

8. Action on policy deviation.

Approval of sentence combining pay loss and reduction to next inferior rating.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved. In approving the sentence, the convening authority has taken into consideration the policy of the Navy Department as set forth in Section 446, Naval Courts and Boards, but for the following reasons believes that a deviation is warranted in this case: (State reasons).

Remission of reduction to next inferior rating in sentence combining pay loss and reduction to next inferior rating.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved, but in view of the policy of the Navy Department, as set forth in Section 446, Naval Courts and Boards, the reduction to the next inferior rating is remitted.

Remission of solitary confinement in sentence involving solitary confinement of petty officer.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, yeoman second class, U. S. Navy, are approved, but in view of the announced policy of the Navy Department disapproving of the solitary confinement of petty officers, the solitary confinement is remitted. (Or, that part of the sentence which requires the confinement to be solitary is remitted.)

9. Action of disapproval.

Disapproval of sentence.

The proceedings and finding(s) in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved. The sentence is disapproved for the following reasons: (State reasons). The accused will be released from confinement and restored to duty.

Disapproval of finding and sentence.

The proceedings in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved. The finding(s) and sentence are disapproved for the following reasons: (State reasons).

10. Action on acquittal.

Approval of proceedings.

The proceedings which resulted in an acquittal on the first specification in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved.

13B19. Specimen convening authority action where convening authority is senior officer present. Where the convening authority is the senior officer present, the words, *and senior officer present*, should appear after his name and official position. Section 684(90), Variation 4, *Naval Courts and Boards, 1937*, indicates the appropriate form to be as follows:

U. S. Naval Section Base,
Bar Harbor, Maine,
April 10, 1945.

The proceedings, finding(s), and sentence in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved.

Harold P. Henry,
Captain, U. S. Navy,
Commanding,
U. S. Naval Section Base,
Bar Harbor, Maine,
and Senior Officer Present.

13B20. Specimen immediate superior in command action; entries for the record. All powers of mitigation vested in the convening authority may be exercised by the immediate superior in command. However, the action of the immediate superior in command is limited to the sentence mitigated by the convening authority. He cannot disapprove the mitigation and thus restore the original sentence. He must sign in his own hand the action taken by him on the proceedings. His rank, official position, and the words, *Immediate Superior in Command*, should appear after his signature. Section 684, *Naval Courts and Boards, 1937*, indicates the following as the appropriate form for such action:

North Station Office Building,
150 Causeway Street,
Boston (14), Massachusetts,
April 11, 1945.

The proceedings and finding(s) in the foregoing case of John Jones, seaman seaman second class, U. S. Navy, are approved.

Charles M. Kelley,
Rear Admiral, U. S. Navy,
Commandant,
First Naval District,
Immediate Superior in Command.

Action on sentence which has been mitigated by convening authority.

Approval as mitigated.

The proceedings, finding(s), and sentence, as mitigated, in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved.

Action of disapproval.

Disapproval of sentence.

The proceedings and finding(s) in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved. The sentence is disapproved for the following reason: (State reason). The accused will be released from arrest and restored to duty.

C. PUBLICATION, CHECKAGE, AND FINAL DISPOSITION

13C1. Publication. The convening authority will cause the sentence to be published after the immediate superior in command has placed his action upon the record and returned it to the convening authority (or, when the convening authority is senior officer present, after he has placed his action upon the record as senior officer present). Publication is to be to the command (including the accused if he is present). It is to be made although the accused has deserted subsequent to the trial, or is not present through some other cause, and whether the trial has resulted in an acquittal or conviction. Figure 12–16 illustrates the publication entry which is signed by the officer effecting same and appended to the record of proceedings.

13C2. Notation of checkage. Records of proceedings of summary courts-martial shall show, over the signature of the supply officer having the accounts of the accused, that the loss of pay, if there be any adjudged and approved, has been checked. In order to enable the supply officer to make the necessary certificate, the commanding officer shall forward with the record the requisite order for the checkage. The order shall contain the following information: Name, rate, date of trial, offense (briefly stated), and sentence as finally approved. If the offense is desertion or absence over leave or absence without leave, the dates of the beginning and ending of the unauthorized absence should be stated. In the case of a marine, certificate shall be made by the commanding officer of the marine that the checkage has been entered in the service record book, or on the pay roll, as the case may be. A specimen entry of the supply officer's certificate to be appended to the record is shown in Figure 12–16.

13C3. Transcript from record. Before a summary court-martial record is transmitted to the Judge Advocate General a brief transcript, as shown in Figure 13–4, shall be taken therefrom (except in case of acquittal) and furnished to the officer of the deck and the executive officer for entry, respectively, in the ship's log and upon the service record of the man con-

U. S. S. DELAWARE

TRANSCRIPT OF RECORD OF A SUMMARY COURT-MARTIAL

In the case of

SMITH, John Amos, 000 00 00, S1c, USNR.

OFFENSES: (1) Disobeying order of superior officer, 5/5/45.
(2) Neglect of duty, 5/5/45

TRIED: 5/7/45

FINDINGS: The first specification proved by plea.
The second specification proved.

SENTENCE: 30 days solitary confinement.

APPROVED: By Convening Authority, 5/10/45.
By Immediate Superior in Command, 5/12/45.

Stephen C. Lang

Stephen C. Lang,
Captain, U. S. Navy,
Commanding Officer.

Figure 13–4. A specimen transcript of record of a summary court-martial.

cerned. In the case of a marine, the transcript shall be furnished to the marine's commanding officer. This transcript shall comprise:

1. The offense(s) and date(s) thereof.
2. The fact and nature of the trial with the date thereof.
3. The finding(s).
4. The sentence as approved.
5. Approval of convening authority and date thereof.
6. Approval of reviewing authority and date thereof.

If the said punishment be disapproved or mitigated subsequently by the department, an entry to that effect shall be made as soon as notice thereof is received. If bad-conduct discharge be included in the sentence, the final action in each case shall be similarly entered. The transcript and entries shall be authenticated by the signature of the commanding officer or his duly authorized representative.

13C4. Execution of sentence of bad-conduct discharge. The current policy of the Navy Department provides that commanding officers shall carry out the approved sentences of summary courts-martial involving immediate dishonorable and bad-conduct discharges of naval enlisted men (no confinement to be served) only on instructions of the Chief of Naval Personnel, Commandant, Marine Corps, or Commandant, U. S. Coast Guard. These instructions shall be requested without delay in order that undesirable men may not be retained in the service any longer than necessary. Pages 9 and 10 of service record completed to date and properly signed shall accompany the request. As the Bureau cannot act upon such a request until the record of proceedings of the court-martial has been received and reviewed by the Department, the convening authority or commanding officer can expedite action by forwarding the record of proceedings of the court-martial immediately to the Office of the Judge Advocate General.

Commanding officers of ships and stations within the continental limits of the United States shall transfer men who are to be discharged with bad-conduct discharges to the receiving ship or receiving station nearest their homes for discharge. This does not apply to vessels in the same port as the receiving ship or receiving station. Transportation by Government conveyance shall be utilized, if practicable.

Clothing and allowances. In all cases of bad-conduct discharges, outer garments of the uniform will be retained by the Government and an outfit of civilian clothes furnished in lieu thereof. Men so discharged will not be regarded as *discharged naval prisoners* within the meaning of 34 *U. S. Code* 961 and 962, providing for allowances to prisoners on discharge, but men discharged with a bad-conduct discharge, or any other discharge for the good of the service shall, under 34 *U. S. Code* 197, upon discharge

be paid a sum not to exceed $25 or such portion thereof as will, together with other funds available to the man, exclusive of travel allowance or transportation in kind, total $25. 34 *U. S. Code* 722 also provides that the appropriation, *General expenses, Marine Corps*, shall be available for the purchase of civilian outer clothing, not to exceed $15 per man, to be issued, when necessary, to marines discharged for bad conduct.

Marines. When a marine enlisted man is sentenced by a court-martial to bad-conduct discharge his accounts will be closed and transmitted for discharge at such time as date of discharge is decided upon unless he is to be transferred to another ship for discharge in which case his staff returns will be transmitted from his new station. No marine enlisted man shall be discharged with a bad-conduct discharge in accordance with the sentence of a summary court-martial either in time of war or in time of peace, until an order for discharge is received from the Commandant of the Marine Corps.

13C5. Two or more sentences involving loss of pay. When there are two or more sentences involving loss of pay, the total amount of the first loss will be completely liquidated under the terms of the sentence, and deductions under sentences subsequently approved will then be made in the order in which approved. All checkages under one sentence will be completed before commencing checkages under a subsequent sentence.

13C6. Effective date of reduction in rating. The pay of the rating to which an enlisted man is reduced by sentence of a summary court-martial commences on the date of approval of the sentence by the immediate superior in command or the senior officer present. A disbursing officer having notice of the sentence of a court-martial directing disrating is not entitled to credit for payments made in a rating higher than that legally held by the enlisted man.

13C7. Effective date of sentences involving confinement. Where confinement has been adjudged by a summary court-martial, it shall take effect from the date of approval of the sentence by the immediate superior in command, unless the convening authority has approved the sentence as senior officer present, in which case it takes effect upon the approval of the convening authority. However, if the accused has been previously sentenced to confinement for another offense, the confinement shall not take effect until the former sentence has been served. Should the sentence be to solitary confinement or to solitary confinement on bread and water or diminished rations, the time of such confinement must be fulfilled.

13C8. Disposition of the record of proceedings. Upon completion of all required action upon the record of proceedings, it shall be forwarded in its

entirety to the Judge Advocate General, Navy Department, Washington, D. C. No letter of transmittal is required. Ordinary mail service may be used in forwarding the record unless the forwarding officer considers that means providing a higher security should be used.

D. POLICIES PERTAINING TO PUNISHMENT

13D1. Rationale. Articles 24, 30, and 64, of the *Articles for the Government of the Navy* establish the legal punishment limitations of the mast, deck court and summary court-martial, as shown in Figure 8–3. Inasmuch as these bodies are created by statutory enactment, their powers are no greater than the limitations set forth in the statutes creating them. If one of the bodies awards an unauthorized punishment, or a punishment in excess of its limitations, the punishment or that part of it which is illegal will be set aside by appropriate reviewing authority. The Judge Advocate General is charged with the responsibility of the final review of court-martial records for the Secretary of the Navy. The review, although principally directed toward the legality of the proceedings, finding and sentence, also contemplates matters of policy. If a case, in final review, presents a matter for determination of policy, the record is forwarded to the Bureau of Naval Personnel for consideration and recommendation to the Secretary of the Navy regarding action thereupon. By means of this final review, the Navy Department has approved and disapproved of certain disciplinary action and punishment under given conditions. When the approvals and disapprovals are announced to the service, they are generally referred to as *Policies Pertaining to Punishment.* Inasmuch as the policies are important in the determination of disciplinary action, or a proper sentence for a particular offense, they should always be considered by the court and the reviewing authority. Some of the policies have frequent application, others less frequent. The following paragraphs are considered to embody the principal policies having frequent application. They are not intended to be exhaustive and careful examination of *Naval Courts and Boards, 1937, Court-Martial Orders, Navy Department Bulletins,* and *BuPers Directives* should always be made.

13D2. Confinement of petty officers. The Bureau of Naval Personnel considers the confinement of petty officers as undesirable on the basis that such confinement is degrading and results in a loss of man work hours. It is realized that in some instances a deviation from this policy is justified, and when such deviation appears warranted, the Bureau of Naval Personnel, in its action on the court-martial proceedings, recommends no change in the sentence. However, solitary confinement of a petty officer on bread and water does not meet with the approval of the Department be-

cause (1) a man who merits such punishment is not in possession of qualities to be expected of a petty officer and accordingly should be disrated; (2) the discipline and morale of any military organization must of necessity suffer where non-rated subordinates are witnesses to their superior officers being subjected to punishment of this nature, to say nothing of the demoralizing effect on the petty officer himself.

Attention is invited to Note 72, Section 678, *Naval Courts and Boards, 1937*, wherein authority is given convening authorities to extend simple confinement to the limits of the ship or station. This is particularly applicable when courts have sentenced petty officers to be confined. (See *CMO* 2–1936, p. 3, and *Navy Department Bulletin*, 15 Sept. 1943, R–1388.)

13D3. Combination of reduction in rating and loss of pay. The Navy Department does not look with favor on summary court-martial and deck-court sentences that involve both reduction in rating and loss of pay because of the fact that men so sentenced, in the absence of mitigating action, are penalized with both a fixed and continuous loss of pay. But if the sentence of such court includes both reduction in rating and loss of pay, in any case, the loss of pay adjudged must be figured on the rate of pay for the reduced rating. In those cases where both reduction in rating and loss of pay have been approved, the convening authority in taking action on the record will state that the policy of the Navy Department as set forth in Section 446, *Naval Courts and Boards, 1937*, has been considered and will state his reasons for deviating therefrom. In other words, this policy may be stated as follows: Where both reduction in rating and loss of pay are adjudged, either the reduction in rating or the loss of pay should be remitted entirely unless it is stated in the convening or reviewing authority's action that the offense is sufficiently serious to warrant both punishments or only the conditional remission of one or the other. (See Sec. 446, *NCB*, and *Navy Department Bulletin*, 15 Sept. 1943, R–1388.)

13D4. Loss of pay per month exceeding one half of the actual monthly pay (base and longevity pay). In order that a man's pay will not be forfeited to a degree that his living expenses and allowances will be seriously jeopardized, the loss of pay per month should not, in summary courts-martial and deck-court sentences, exceed one half of the actual pay per month not including extras for mess cook, gun pointers, etc., except that where the sentence includes a bad-conduct discharge, the court and reviewing authorities should take into consideration the length of time that will elapse until the accused is transported to the receiving ship nearest to the place of enlistment. The court may then adjudge and the reviewing authority approve, a sentence that will include the loss of all pay per month, less an amount for necessary expenses while awaiting and during transportation and a further amount required for his immediate needs after his

separation from the service as set forth in Section 470, *Naval Courts and Boards, 1937.*

In view of the confusion that results in a man's pay accounts, where he is sentenced by a summary court-martial or deck court to a loss of pay and the sentence includes the 20 per cent additional allowance for men serving on ships or beyond the continental limits of the United States and in Alaska, it has been suggested that convening and reviewing authorities remit the loss of pay adjudged in excess of base pay plus longevity increase in those cases where the additional allowance has been included in the sentence. Where the loss of pay is based on the man's total pay including the 20 per cent additional allowance, and the man is then transferred to a shore activity within the continental limits of the United States before the checkage is completed, he is in fact being checked, in some cases, in excess of one half of his monthly pay.

Although a reviewing authority cannot mitigate one part of a sentence and increase another part even though such action in its final analysis operates to reduce the sentence, he may where the loss of pay per month adjudged exceeds one half of the actual pay of the accused per month, increase the number of months over which the checkage may be distributed in order to limit the monthly loss of pay to one half the pay of the accused. (See Sec. 446, *NCB; BuPers* circ. ltr. 57–43, 23 April 1943; *CMO* 10, 1930, p. 16; *CMO* 7, 1930, p. 13; and *CMO* 5, 1931, p. 17.)

13D5. Solitary confinement on bread and water. The Department disapproves of the frequency with which punishment, by solitary confinement on bread and water, or on diminished rations, is imposed by summary courts-martial. This punishment is a severe one; and it was not, probably, contemplated that it should be generally resorted to for the correction of offenders. It is believed that other authorized punishments will, in most cases, prove more effectual. Because of the serious nature of the punishment, courts-martial should exercise care and discretion in resorting to solitary confinement on bread and water and shall not adjudge it in any case for a longer period consecutively than five days as a shorter interval on bread and water is less liable to work injury to health. The provision in a court-martial sentence providing for full ration contemplates the morning, noon and evening meals or other rations served on the general mess. The maximum interval should be adjudged only in extreme cases. The usual interval adjudged is every third day. The Navy Department further considers that such a sentence should be reserved for certain types of insubordinate and recalcitrant offenders. Cases involving insubordination should be dealt with immediately and not held over. (See Sec. 447, *NCB; Navy Department Bulletin*, 15 Sept. 1943, R–1388; and *CMO* 2, 1936, p. 4.)

13D6. Theft. The best interests of the naval service demand that, whatever the mitigating circumstances, a man found guilty of theft shall not be retained therein.

In view of the Department's policy of separating a thief from the Navy, it is considered undesirable to prefer such a charge against a man and then try him by deck court inasmuch as a deck court is not empowered to adjudge a discharge from the Navy. In those cases where a man is tried on such a charge by summary court-martial and the court does not adjudge a discharge, or if adjudged, it is conditionally remitted by either the convening or reviewing authority, appropriate comment in the action of the officer concerned should be made as to why that officer believes the facts do not warrant discharge from the naval service.

It is important to bear in mind that it is also the announced policy of the Navy Department that commanding officers should not bring to trial by summary court-martial petty cases where it is evident that the accused is not at heart a thief and that the charge should not be preferred for *petty pilfering.*

In connection with the determination of the Navy Department's disciplinary policy of not retaining persons convicted of theft in the naval service, it is remarked that the offense of violating the provisions of Article 122(3), *Navy Regulations* (possession of property of another), is less serious in nature than that of theft. The fundamental difference between the two offenses, on which the announced policy of the Navy Department regarding separation from the service is based, is that theft necessarily involves moral turpitude, whereas a violation of *Navy Regulations* does not necessarily include this element. While in certain cases the evidence may show that the possession of the clothing of another enlisted man may resemble that of a theft, it does not by any means follow that this is universally true, since possession in the former case may be, and in numerous cases is, based upon the consent of the lawful owner or acquired from the latter by way of purchase, loan, or gift. (See *Navy Department Bulletin,* 1 May 1943, R–923; *CMO* 1, 1936; p. 11; and *CMO* 1, 1936, p. 12.)

13D7. Bad-conduct discharge. Article D–9114, *Bureau of Naval Personnel Manual,* decentralizes the authority for dishonorable and bad-conduct discharges of men serving in their first enlistment. However, it is the opinion of the Bureau of Naval Personnel that some commands have effected the discharge of men who are worthy of retention.

As the Bureau of Naval Personnel is confronted with the necessity of conserving manpower, it has been requested that convening and reviewing authorities approve sentences of bad-conduct discharge, to be effected immediately only in those cases where the men's records show conclusively that they are not fit for retention and where retention is clearly not in the

government's interest. Great care and judgment should be exercised in those cases involving charges of theft; that is, petty pilfering should be distinguished from theft.

Loss of pay by sentence of court-martial does not include pay that may have accrued prior to the day of approval of the sentence, therefore, no loss of pay should be included in a sentence which adjudges a discharge that is to be executed immediately and if it has been included it should be remitted as set forth in Section 470, *Naval Courts and Boards, 1937*, unless the convening authority remits the bad-conduct discharge conditional upon good conduct during a probationary period, in which case that part of the sentence involving loss of pay may properly be approved. (See Sec. 448, *NCB; Navy Department Bulletins*, 1 Sept. 1943, R–155, and 15 Sept. 1943, R–1388.)

13D8. Consideration of compulsory family allowance, insurance allotment and $5 for health and comfort issues of money and clothing. To protect an enlisted person's dependents in so far as is practicable, naval courts-martial should take into consideration the fact that there is compulsory checkage for family allowance in a great many cases and they should extend the period of liquidation of the pay loss imposed sufficiently to allow for checking the family allowance, insurance allotment, and a small amount (at least $5 per month) for *health and comfort issues* of clothing and money. In this connection, it is noted that the period of time over which monthly checkages involving loss of pay imposed by courts-martial sentences are to extend is not limited, but a reviewing authority may not extend the period set by the court (except as indicated in Article 13D4) even though he may mitigate the sentence by reducing the monthly rate. It is, therefore, necessary that the court give this matter consideration, when it imposes sentence involving loss of pay, in these cases where the men concerned have insurance allotments and/or family allowance checkages. (See *Navy Department Bulletin*, 15 June 1944, 44–694.)

13D9. Women's Reserve. The Bureau of Naval Personnel ordinarily disapproves of sentence by court-martial involving confinement of members of the Women's Reserve. Where confinement is adjudged by a summary court-martial, it should be remitted by the convening or reviewing authority. Punishment by confinement should not be imposed at *mast*. Deprivation of liberty on shore should be limited to periods not in excess of thirty days. Temporary detention, under guard if necessary, while awaiting disciplinary action is permitted but such temporary detention should be limited to barracks or quarters. It is contrary to the policy to confine members of the Women's Reserve in a naval prison, brig or detention barracks.

In cases where the conduct of personnel of the Women's Reserve requires action by the *Shore Patrol*, physical restraint shall be exercised, only

if necessary, with the greatest possible care, and only until such time as the *WAVE* officer on call disposes of the case.

13D10. Increasing the severity of a sentence in revision. Unless specifically authorized by the Secretary of the Navy, no authority will return records of trial to any court for reconsideration of the sentence originally imposed with a view to increasing its severity, and no court in any proceedings in revision shall reconsider its sentence in any particular in which a return of the record of trial for such reconsideration is prohibited. The action of a court in revision in modifying and changing the sentence originally imposed to such extent to increase its severity is contrary to established policy and is erroneous. In such a case a sentence imposed by the court in revision should be reduced to one of no greater severity than that originally imposed. (See Sec. 474, *NCB;* and *CMO* 1, 1942, p. 268.)

13D11. Cases handled by civil authorities. A tendency has arisen in some commands to take no action on cases handled by civil courts, but to accept the verdict of such courts as a final disposition of the case. Although no further action may be indicated, such decision should not be determined entirely by the action of the civil court. Commanding officers should investigate fully all offenses committed ashore, by the men of their command, which come to their attention. Such offenders should be brought to mast and appropriate action taken in so far as naval discipline is concerned. Action of a civil court may be taken into consideration, but the commanding officer's action must be based on his own investigation. Further, whenever men are convicted by civil trial, the commanding officer should make a full report of the offense and sentence to the Chief of Naval Personnel or Major General Commandant of the Marine Corps, as the case may be, with recommendation as to whether the man should be discharged as undesirable.

Enlisted men arrested by civil authority for civil criminal offenses should be tried by civil courts, and commanding officers should not attempt to obtain the release of a man so arrested for the purpose of trying him by naval courts. The policy, as stated, means that the Navy desires trial by the civil authorities of personnel charged with committing violations of civil law. This to include felonies and misdemeanors of a high grade (serious) classification, such as theft, robbery, sexual offenses, and offenses involving moral turpitude.

13D12. Use of conditional remission. Section 476, *Naval Courts and Boards, 1937*, provides for the conditional remission by reviewing authorities of sentences adjudged by courts-martial. This conditional remission, otherwise referred to as probation, has a particularly salutary effect upon wrongdoers. Use of the conditional remission in appropriate cases should be considered by convening and reviewing authorities. This is especially true when a court-

martial awards a coupled sentence such as loss of pay and confinement. It should be recognized, however, that where a bad-conduct discharge is conditionally remitted, the probation may fail in its purpose and the probationer may indicate a desire for the discharge by deliberately committing a subsequent offense for the purpose of effecting the bad-conduct discharge. In such a case, the commanding officer should consider the possibility of recommending a general court-martial rather than effecting the bad-conduct discharge. In other words, it is not mandatory that a punishment which has been put on probation be effected as a result of a subsequent offense. The convening authority may (1) execute the probationary sentence; (2) award a new court-martial; or (3) execute the suspended sentence and award a court-martial where a punishment other than a bad-conduct discharge has been suspended.

13D13. Lack of uniformity in punishment. It is true that the *Articles for the Government of the Navy* do not include a penal code defining the exact measure of punishment to be meted out for a particular offense. In view of this fact, it is acknowledged that some lack of uniformity in the punishment of similar offenses throughout the service will exist. However, this is not considered to be inequitable so long as a particular command maintains a consistency of justice in the administration of its own discipline. In furtherance of this concept, it is considered good practice for a convening authority to hold a meeting with his court so that the general policies and schedules of punishment within the command become understood and known. It is emphasized, however, that a convening authority cannot direct or order a court to bring in a sentence he desires in a particular case.

13D14. Inconsistent action. If the policies and schedules of punishment are understood, the court-martial will in most cases award punishments within its own brackets. That is to say, where the convening authority awards a summary court-martial for a given offense, the court will adjudge a punishment in excess of the deck-court limitations. If this does not occur, it reveals an inconsistency between the action of the convening authority in awarding the summary court-martial and the action of the court in adjudging a punishment not in excess of deck-court limitations. This is especially true in the light of *AlNav* 83, 1942, hereinafter quoted, which directs the convening authority to award the lower body when such action will accomplish the ends of discipline. Further, it is inconsistent for the convening authority to award a summary court-martial and then mitigate the sentence of such court to that of a deck court or a commanding officer's punishment, unless the proceedings reveal matter in mitigation of the punishment and/or in extenuation of the offense. Punishment adequate to the offense should be considered when adjudging the offense at mast.

13D15. Utilization of appropriate punishment body. Commanding officers should bear in mind that it is the certainty of rather than the degree of punishment which deters men from committing offenses and that punishment which immediately follows an offense has a greater deterrent effect than punishment which follows a considerable time after an offense. The Navy Department's statement of policy in this regard is contained in *AlNav* 83, 1942, which reads as follows: *In interest of reducing paper work and better administration of naval justice, department directs that all commands utilize to a greater degree mast punishments rather than summary or deck courts-martial and by summary rather than general courts-martial in cases of infractions by enlisted men of the navy, marine corps and coast guard when such action will accomplish the ends of discipline.* In construing *AlNav* 83, 1942, action which will accomplish the ends of discipline is considered to be action which will deter other men of the command from committing the offense with which the accused is charged as well as deter the accused from again committing the offense.

13D16. Recommended disciplinary action in cases involving AOL and AWOL. The current policy of the Navy Department with regard to trials of wartime offenses involving absences and desertion is outlined in *SecNav Circular Letter* of 29 May 1945 and is reprinted in Appendix C of this text. It is to be noted, however, that modifications and revisions of this policy are necessary from time to time. Therefore, in all cases of this nature it is extremely important that reference be made to the most recent pertinent directives.

13D17. Disciplinary action where AOL or AWOL results in missing ship or mobile unit. Most unauthorized absences from ships or mobile units should be considered in a serious light. Some commands continue to award inadequate punishments for unauthorized absence contrary to the directive contained in *BuPers Circ. Ltr.* 172–43. Where a man has missed the sailing of his ship or mobile unit, adequate disciplinary action is mandatory and, except under most unusual circumstances, trial by general court-martial is considered appropriate, regardless of the length of absence. (See *BuPers circ. ltr.* 127–44.)

13D18. Speedy trial of court-martial cases. A recent survey by the Secretary of the Navy shows that many court-martial proceedings are not being completed with dispatch. Unnecessary delays result in loss of a tremendous number of man days at a time when the war effort requires the full use of the services of all naval personnel. This delay not only adversely affects the Navy but also is detrimental to morale. The great majority of all court-martial cases are for *unauthorized absence* (desertion excepted)

and *breaking arrest*, the accused pleading *guilty*. Such cases should present no difficulty of proof.

The Secretary of the Navy, therefore, announced that commencing 1 May 1944, in cases of unauthorized absence and where the accused pleads *guilty* total time elapsing between the return of the accused to naval jurisdiction and the publication of his sentence should not exceed ten days in summary court-martial cases, and five days in deck-court cases. In general court-martial cases, *SecNav ltr. JAG:I:LHCJ:mhw* dated 25 February 1944 to convening authorities of general courts-martial, within continental limits of the United States, will govern (that is, within continental United States the time elapsing should not exceed twenty days).

In certain cases, extraordinary circumstances, such as non-availability of service records, may not permit publication within the time indicated. In each case, the convening authority (except those on sea duty) will append to his final action a summary of the reasons therefor. It is not the intention that any man be tried by a court-martial which is not empowered to award a sentence adequate for the seriousness of the offense, merely to meet the requirements of the above schedule. No such summary of reasons need be submitted by any convening authority on sea duty; however, where the exigencies of the situation permit, convening authorities on sea duty will adhere to the elapsed times indicated for each respective type of court. Where an accused is returned to his former ship or station for disciplinary action, he should be enroute within three days.

E. COMMON ERRORS

13E1. Explanation. The following is a list of the more common errors found by the office of the Judge Advocate General in reviewing summary courts-martial. These do not comprise all errors found in summary courts-martial. The errors listed are primarily the result of unwarranted deviation from approved procedure. The consequences of numerous errors such as those listed will readily be seen. It is frequently necessary to return records for correction. The additional handling involved increases the risk of misplacing or losing records. When such records are not promptly returned, follow-up letters must be addressed to those responsible. If such a record has been lost, it is necessary to obtain a new record, preparation of which is often attended with difficulties. Moreover, an individual whose action or presence is a legal requisite to corrective measures is sometimes no longer available. In such a case correction is long delayed if not impossible and a miscarriage of justice is the probable result.

Numbers in parentheses are citations to sections in *Naval Courts and Boards, 1937*, except where otherwise indicated.

1. Precept.

Date omitted. (345).

Authorization omitted in certain cases where required. (329, 542, par. 1, and 651, note (4)). (*CMO* 4, 1934, p. 9).

Convening authority orders himself as a member. (*CMO* 9, 1932, p. 11).

Member not named. (*CMO* 7, 1933, p. 10).

Signed over title other than that of office wherein authority to order trial is vested. (*CMO* 12, 1931, p. 22).

Authenticated neither by signature of convening authority nor by attestation. (508 and 651 (6) (7)).

2. Specifications.

Jurisdiction not shown when accused is not alleged to be serving under command of convening authority at time specification was preferred. (*CMO* 8, 1930, p. 16). (329).

Time or place of offense omitted. (35).

Unauthorized abbreviations. (25).

Date anterior to that of precept. (652, note (12)).

Date of approval omitted. (652, note (12)).

Particular court to try case not designated following approval. (327, 652), and (*CMO* 10, 1931, p. 14)

Unsigned. (652 (13)).

Signed over title other than that of office wherein authority to order trial is vested. (*CMO* 12, 1931, p. 22).

Not consolidated for one trial. (*CMO* 11, 1933, p. 9). (652 (13)).

3. Record of trial.

Meeting for first time not at place designated by convening authority. (366). (*CMO* 5, 1934, p. 7).

Accused, presence not shown. (341, 557, (37), and 653 (18)).

Oath not administered to members, recorder, or interpreter. (657).

Specification, receipt of copy not acknowledged by accused. (658).

Objection to specification, opportunity to make, not afforded accused. (659).

Specification not examined by the court for errors. (660).

Pleas not recorded separately. (411 and 663).

Plea of guilty, warning omitted. (664).

Witnesses not separated. (662).

Oath to witness not shown to have been administered. (667 and 666 (36)).

Questions not properly numbered. (504).

Member, after testifying, not regarded as challenged. (666, note (36), 237 and 389).

Evidence of character in mitigation improperly received before the finding. (*CMO* 12, 1931, p. 16).

Statement; when accused desired to make none, entry to that effect omitted from record. (674, note (61)).

Statement made but accused not then informed of his rights. (359 and 674, note (61)).

Statement inconsistent with plea, plea not rejected. (*CMO* 9, 1932, p. 10, and citations thereunder).

Reading and approval omitted when trial occupies more than one day. (569 (67)).

4. Findings.

Phrased improperly. (676).

Not in handwriting of recorder. (435).

Altered by interlineations or erasures. (435).

Finding on each specification not recorded separately. (676 (66)).

5. Procedure after findings.

Acquittal not announced in open court. (433).

Rate of pay of accused omitted. (677).

Convictions, previous:

Punishments by commanding officer erroneously considered under this head. (*Naval Digest*, 1916, 91, par. 31).

Section 438, *Naval Courts and Boards, 1937* (regarding extension of enlistment) not observed.

Not recorded properly. (440).

Signature of a member or recorder omitted. (448).

6. Sentence.

Phraseology or abbreviations improperly used. (678 (70)).

Confinement on bread and water or on diminished rations not adjudged to be "solitary." (678 (70)).

Confinement, when solitary, not expressed in days. (*AGN* Art. 30). (678 (70)).

Period over which loss of pay is to extend not stated. (446).

Loss of pay, or confinement, running beyond expiration of enlistment as extended. (*CMO*'s 12, 1924, p. 4; 2, 1925, p. 10; 8, 1930, p. 18).

Exceeding legal limits. (*AGN*, Art. 30). (678 (70)).
Loss of pay at excessive rate. (446).
Unauthorized combinations of forms of punishment. (*CMO*'s 5, 1932, p. 11; 8, 1932, p. 10).
Not in handwriting of recorder. (448).
Altered by interlineations or erasures. (448).
Clemency recommended by court instead of members. (*CMO* 1, 1932, p. 10). (450).
Adjudged contrary to policy of Navy Department. (*CMO*'s 3, 1936, p. 9; 2, 1936, p. 3; 9, 1936, p. 23).

7. Action of reviewing authority.

Omitted entirely.
Reference to one or more specifications omitted therein.
Taken without obtaining certificate of medical officer. (519 and 682 (80)).
Date omitted.
Revision ordered in violation of Section 474, *Naval Courts and Boards, 1937.*
Probationary period set to run beyond expiration of enlistment as extended. (*CMO* 8, 1932, p. 10). (476).
Titles I.S.I.C. and S.O.P. misused. (683 (86) and 684 (90)). *Naval Digest* 1916, p. 569, par. 5; p. 615, par. 38; *CMO* 2, 1934, p. 5; *CMO* 4, 1934, p. 9).
Sentence increased in part. (*CMO* 9, 1924, p. 4, modified by *CMO* 5, 1931, p. 17).
Convening authority fails to send record to immediate superior in command for action. (*AGN*, Art. 32) (469).
Sought to be modified after same authority has once taken action on proceedings, finding and sentence. (*CMO*'s 5, 1927, p. 11; 7, 1933, p. 11).
Synopsis of conduct not spread on record when bad-conduct discharge adjudged. (683 (84)).

8. Revision.

Corrections made by changing original record. (463 and 464).
Evidence received. (462).
Finding or sentence not in handwriting of recorder. (467).

9. Disposition subsequent to final approval.

Publication omitted or not signed. (685 (91)).
Checkage omitted or not signed. (686 (92)).

Checkage dated prior to approval of I.S.I.C. (or S.O.P.). (684 (88)).
Checkage improperly recorded. (686).
Record not properly bound. (502).
Record not made up in order. (507 and Chapter VII (1)).
Record folded.
Record not forwarded promptly.

F. SPECIMEN RECORDS

13F1. Object. In this section three typical summary court-martial records are illustrated showing the entries and papers in the order they should appear in completed records. Before any entry shown in these illustrations is used as a guide, reference should be made to Chapter 12, and the appropriate section in *Naval Courts and Boards, 1937*. All three records illustrated are fictitious, and the names of officers and men contained therein are imaginary. The purpose of setting forth these records is to offer a visual aid to those persons charged with the responsibility of preparing summary court-martial records of proceedings.

Case A. The first record presented is a typical *guilty plea* case wherein one specification is preferred. The accused does not have counsel, pleads guilty, and makes a written statement. It is this type of case that a recorder is most frequently called upon to prepare and the one for which the *fill-in form* shown in Chapter 12, Section C of this text may be used to expedite preparation.

Case B. The second record presented is of a short *not guilty plea* case wherein a specification of drunkenness is preferred. The accused has counsel, pleads not guilty, and does not make a statement. This record illustrates a finding of *proved in part*. It also illustrates the proof of *drunkenness* by testimony of competent witnesses as to the condition of the accused at the time of the offense; such as the odor of intoxicating liquor on his breath, that the accused was unsteady in gait, that he was incoherent in speech, that his eyes were red and swollen and his sight impaired, that he was either wholly or partially oblivious of conditions about him, and other conduct or symptoms indicating intoxication.

Where possible, in this type of offense, it is deemed advisable to have a doctor make an examination as soon as possible after the condition of the accused is noted. The testimony of a medical officer is desirable although it is not necessary in order to establish drunkenness.

Incapacity for the proper performance of duty as alleged in the specification is not a question that must be proved by direct testimony of a medical officer or other person in authority, but is a fact that the court

itself may find to be proved by taking into account all the testimony as to the condition of the accused at the time in question. In other words, if evidence is offered to prove satisfactorily that the accused is under the influence of intoxicating liquor, the court is then justified in arriving at a finding, on its own initiative, that the accused is incapacitated for the proper performance of duty.

Case C. The third record presented is a combination *guilty* and *not guilty plea* case wherein the following specifications are preferred: (1) out of uniform, (2) unauthorized possession of clothing of another, and (3) theft. It is noted that should the accused have been found guilty of *theft* in this case, he could not also have been found guilty of the offense alleged in the second specification, since that offense is necessarily included in the greater offense of *theft*. However, in order to meet the exigencies of proof it is permissible to plead both specifications where it cannot be determined, prior to trial, which offense will be proved by the evidence to be adduced from the testimony of the witnesses.

NAVJAG 109

RECORD OF PROCEEDINGS
OF A
SUMMARY COURT MARTIAL

To insure uniformity, forms furnished by the Judge Advocate General will be used exclusively.

SUMMARY COURT MARTIAL

Smith, John Amos
(Full name, surname first)

seaman second class
(Rate or rank)

U.S.S. Delaware
(Ship or station where tried)

Hampton Roads, Virginia
(Location)

April 9, 1944
(Date of trial)

No remarks nor stamps of any kind to be placed below:

AOL from: ...../...../.....	.....d. .....h. .....m.
AWOL from: ...../...../.....	.....d. .....h. .....m.
Abus. Thrtg. Language	Missing Ship
Asleep on Watch	Neglect of Duty
Assault	Obs. or Prof. Language
Breaking Arrest	Resisting Arrest
C to P	
Disob. Lawful Order	Scan. Conduct
Disresp. to S. O.	Strkg. Another in Navy
Drunkenness	Theft
Falsehood	VLRSN
Lv. Sta. before Relieved	VL ..... Order

PLEA	
	Guilty
	Not Guilty

Prev. Courts (..... None) (..... D) (..... S) (..... G)

BCD	LP $..... (..... mos.)
Conf.	Reduction to NIR
Dep. lib.	Sol. conf. ..... days
EPD	SC B&W ..... days (.....)

BCD remitted	Probation ..... mos.
Conf. remitted	RNIR remitted
Conf. red. to	Dep. lib. red. to .....
EPD remitted	LP remitted
EPD red. to	LP red. to $..... (.....)
Dep. lib. remitted	SC B&W remitted
SC B&W red. to	
CA Appd. ...../...../.....	ISIC—SOP
Disappd.	Appd. ...../...../.....
	Disappd.

Reviewed by:

o-r-o 16—90522-1

Figure 13–5a. Summary court record, Case A.

RESTRICTED

U. S. S. Delaware,
Hampton Roads, Virginia,
April 7, 1944.

From: Commanding Officer.

To: Lieutenant Burt F. Bates, U. S. Naval Reserve.

Subject: Convening summary court-martial.

1. A summary court-martial is hereby ordered to convene on board this vessel on Friday, April 9, 1944, or as soon thereafter as practicable, for the trial of such persons as may be legally brought before it.

2. The court will be constituted as follows:

Lieutenant Burt F. Bates, U. S. Naval Reserve, senior member; Lieutenant Howard J. Allen, Supply Corps, U. S. Naval Reserve; and Ensign Robert K. Rowan, U. S. Navy, members; and Ensign Willard N. Watts, U. S. Naval Reserve, recorder.

(S) ANTHONY R. KRAMER
Anthony R. Kramer,
Captain, U. S. Navy,
Commanding U. S. S. Delaware.

A true copy. Attest:

Willard N. Watts

Willard N. Watts,
Ensign, U. S. Naval Reserve,
Recorder.

A

Figure 13–5b. Summary court record, Case A, continued.

Specification of an offense preferred against John Amos Smith, seaman second class, United States Naval Reserve.

SPECIFICATION: In that John Amos Smith, seaman second class, U. S. Naval Reserve, attached to the U. S. S. Delaware, having, while so serving on active duty on board the U. S. S. Delaware, been granted leave of absence from his station and duty on board said ship, to which he had been regularly assigned, said leave to expire on March 24, 1944, did fail to return to his station and duty as aforesaid upon the expiration of said leave, and did remain absent from the U. S. naval service, without leave from proper authority, for a period of about twelve days, at the expiration of which he surrendered himself on board said ship, the United States then being in a state of war.

Approved April 8, 1944.

To be tried before the summary court-martial of which Lieutenant Burt F. Bates, U. S. Naval Reserve, is senior member.

Anthony R. Kramer

Anthony R. Kramer,
Captain, U. S. Navy,
Commanding U. S. S. Delaware.

B

Figure 13–5c. Summary court record, Case A, continued.

U. S. S. Delaware,
Hampton Roads, Virginia,
Friday, April 9, 1944.

The court met at 10:15 a.m.

Present: Lieutenant Burt F. Bates, U. S. Naval Reserve;
Lieutenant Howard J. Allen, Supply Corps, U. S. Naval Reserve;
Ensign Robert K. Rowan, U. S. Navy, members; and
Ensign Willard N. Watts, U. S. Naval Reserve, recorder.

Robert M. Sparks, boatswain's mate second class, U. S. Navy, entered with the accused and reported as orderly.

The accused stated that he did not wish counsel.

The requirements of section 356, Naval Courts and Boards, were complied with.

The recorder submitted a copy of the precept, hereto prefixed marked "A", to the accused for his information and inspection, original prefixed to the record in the case of Peter S. Stoal, seaman first class, U. S. Navy.

The accused stated that he did not object to any member.

Each member and the recorder were duly sworn.

The accused stated that he had received a copy of the specification preferred against him on April 8, 1944.

The recorder asked the accused if he had any objection to make to the specification.

The accused replied in the negative.

The court was cleared. The court was opened and all parties to the trial entered. The court announced that it found the specification in due form and technically correct.

The accused stated that he was ready for trial.

No witnesses not otherwise connected with the trial were present.

1

Figure 13–5d. Summary court record, Case A, continued.

The recorder read the specification, original prefixed marked "B", and arraigned the accused as follows:

Q. John Amos Smith, seaman second class, U. S. Naval Reserve, you have heard the specification preferred against you; how say you to the specification, guilty or not guilty?

A. Guilty.

The accused was duly warned as to the effect of his plea and persisted therein.

The prosecution offered no evidence.

The defense offered no evidence.

The accused read a written statement in his defense, appended marked "C."

The recorder stated to the court that the substance of section 359, Naval Courts and Boards, had been carefully explained to the accused.

The trial was finished.

The recorder was directed to record the following finding:

The specification proved by plea.

The recorder stated that he had record of previous conviction, that the rate of pay of the accused in his present rating is $54 a month and in his next inferior rating $50 a month, and that he enlisted on January 1, 1943, to serve two years, and gave as his date of birth July 4, 1925.

The court announced that it was ready to receive the record of previous conviction.

Such record having been submitted to the accused and to the court and there being no objection the recorder read from the current service record of the accused an extract showing previous conviction, copy appended marked "D."

The court was cleared.

2

Figure 13–5e. Summary court record, Case A, continued.

The recorder was recalled and directed to record the sentence of the court as follows:

The court therefore sentences him, John Amos Smith, seaman second class, U. S. Naval Reserve, to be confined for a period of thirty (30) days, and to lose twenty-seven dollars ($27) per month of his pay for a period of three (3) months, total loss of pay amounting to eighty-one dollars ($81).

Burt F. Bates
Burt F. Bates,
Lieutenant, U. S. Naval Reserve, Senior Member.

Howard J. Allen
Howard J. Allen,
Lieutenant, Supply Corps, U. S. Naval Reserve, Member.

Robert K. Rowan
Robert K. Rowan,
Ensign, U. S. Navy, Member.

Willard N. Watts
Willard N. Watts,
Ensign, U. S. Naval Reserve, Recorder.

The court then adjourned to await orders from the convening authority.

Burt F. Bates
Burt F. Bates,
Lieutenant, U. S. Naval Reserve, Senior Member.

Willard N. Watts
Willard N. Watts,
Ensign, U. S. Naval Reserve, Recorder.

3

Figure 13–5f. Summary court record, Case A, continued.

I would like to state that the reason I failed to return was that my mother was seriously ill and I was upset about her and didn't want to return until she was better. I realize I should have asked for additional leave, but I was so worried I didn't think of that. I should also like to state that I allot half of my pay for my mother's support.

I respectfully request the clemency of the court and the convening authority.

John Amos Smith
John Amos Smith.

C

Figure 13–5g. Summary court record, Case A, continued.

Extract of previous conviction from the current service record of John Amos Smith, seaman second class, U. S. Naval Reserve.

U. S. S. Delaware.

12 Feb. 1944, AOL 9 days, surrendered. DC 20 days confinement & L.P. $36. App. 13 Feb. 1944, by C.A., but confinement red. to 15 days.

A true copy. Attest:

Willard N. Watts

Willard N. Watts,
Ensign, U. S. Naval Reserve,
Recorder.

D

Figure 13–5h. Summary court record, Case A, continued.

U. S. S. Delaware,
Hampton Roads, Virginia,
April 10, 1944.

The proceedings, finding, and sentence in the foregoing case of John Amos Smith, seaman second class, U. S. Naval Reserve, are approved, but the loss of pay is reduced to the loss of twenty-seven dollars ($27) per month of his pay for a period of two (2) months, total loss of pay amounting to fifty-four dollars ($54).

Anthony R. Kramer

Anthony R. Kramer,
Captain, U. S. Navy.
Commanding U. S. S. Delaware.

Figure 13–5i. Summary court record, Case A, continued.

U. S. S. Texas,
Hampton Roads, Virginia.
April 11, 1944.

The proceedings, finding, and sentence, as mitigated, in the foregoing case of John Amos Smith, seaman second class, U. S. Naval Reserve, are approved.

Henry J. Mattern

Henry J. Mattern,
Rear Admiral, U. S. Navy,
Commander, Battleship Division Two,
Battle Force, U. S. Fleet,
Immediate Superior in Command.

Figure 13–5j. Summary court record, Case A, continued.

U. S. S. Delaware,
Hampton Roads, Virginia,
April 12, 1944.

Published.

Walter S. Soaring

Walter S. Soaring,
Lieutenant Commander, U. S. Navy,
Executive Officer.

Loss of pay adjudged has been entered on the pay accounts of this man and will be checked in accordance with the terms of the sentence as approved.

Thomas S. Dolly

Thomas S. Dolly,
Ensign, S. C., U. S. Naval Reserve.

Figure 13–5k. Summary court record, Case A, concluded.

NAVJAG 109

RECORD OF PROCEEDINGS

OF A

SUMMARY COURT MARTIAL

To insure uniformity, forms furnished by the Judge Advocate General will be used exclusively.

SUMMARY COURT MARTIAL

Sams, Harry
(Full name, surname first)

private first class
(Rate or rank)

U. S. Marine Barracks
(Ship or station where tried)

Naval Air Station, Alameda, California
(Location)

August 6, 1944
(Date of trial)

No remarks nor stamps of any kind to be placed below:

AOL from: ...../...../.....	.....d. .....h. .....m.
AWOL from: ...../...../.....	.....d. .....h. .....m.
Abus. Thrtg. Language	Missing Ship
Asleep on Watch	Neglect of Duty
Assault	Obs. or Prof. Language
Breaking Arrest	Resisting Arrest
C to P	
Disob. Lawful Order	Scan. Conduct
Disresp. to S. O.	Strkg. Another in Navy
Drunkenness	Theft
Falsehood	VLRSN
Lv. Sta. before Relieved	VL ..... Order

PLEA	Guilty
	Not Guilty

Prev. Courts (..... None) (..... D) (..... S) (..... G)

BCD	LP $..... (..... mos.)
Conf.	Reduction to NIR
Dep. lib.	Sol. conf. ..... days
EPD	SC B&W ..... days (.....)

BCD remitted	Probation ..... mos.
Conf. remitted	RNIR remitted
Conf. red. to	Dep. lib. red. to .....
EPD remitted	LP remitted
EPD red. to	LP red. to $..... (.....)
Dep. lib. remitted	SC B&W remitted
SC B&W red. to	
CA Appd. ...../...../.....	ISIC—SOP
Disappd.	Appd. ...../...../.....
	Disappd.

Reviewed by:

16—36222-1

Figure 13–6a. Summary court record, Case B.

U. S. Marine Barracks,
Naval Air Station,
Alameda, California,
July 18, 1944.

From: Commanding Officer.

To: Major Timothy J. Riley, U. S. Marine Corps.

Subject: Convening summary court-martial.

1. A summary court-martial is hereby ordered to convene within this command on Monday, July 21, 1944, or as soon thereafter as practicable, for the trial of such persons as may be legally brought before it.

2. The court will be constituted as follows:

Major Timothy J. Riley, U. S. Marine Corps, senior member; Captain George Knight, U. S. Marine Corps; and First Lieutenant Malcolm K. Dole, U. S. Marine Corps, members; and First Lieutenant Peter M. Kane, U. S. Marine Corps Reserve, recorder.

Robert S. Keen,
Lieutenant Colonel, U. S. Marine Corps,
Commanding, U. S. Marine Barracks,
Naval Air Station, Alameda, California.

A true copy. Attest:

Frank Horn

Frank Horn,
First Lieutenant, U. S. Marine Corps,
Recorder.

A

Figure 13–6b. Summary court record, Case B, continued.

U. S. Marine Barracks,
Naval Air Station,
Alameda, California,
August 1, 1944.

From: Commanding Officer.

To: Major Timothy J. Riley, U. S. Marine Corps.

Subject: Appointment of First Lieutenant Frank Horn, U. S. Marine Corps, as recorder of court in place of First Lieutenant Peter M. Kane, U. S. Marine Corps Reserve, hereby relieved.

1. First Lieutenant Frank Horn, U. S. Marine Corps, is hereby appointed recorder of the summary court-martial of which you are senior member, convened by my precept of July 18, 1944, vice First Lieutenant Peter M. Kane, U. S. Marine Corps Reserve, hereby relieved.

Robert S. Keen

Robert S. Keen,
Lieutenant Colonel, U. S. Marine Corps,
Commanding, U. S. Marine Barracks,
Naval Air Station, Alameda, California.

B

Figure 13–6c. Summary court record, Case B, continued.

Specification of an offense preferred against Harry Sams, private first class, United States Marine Corps.

SPECIFICATION: In that Harry Sams, private first class, U. S. Marine Corps, attached to the U. S. Marine Barracks, Naval Air Station, Alameda, California, while so serving at said marine barracks, was, on or about August 2, 1944, on a public street in the city of Long Beach, California, under the influence of intoxicating liquor, and thereby incapacitated for the proper performance of duty, the United States then being in a state of war.

Approved August 4, 1944.

To be tried before the summary court-martial of which Major Timothy J. Riley, U. S. Marine Corps, is senior member.

Robert S. Keen

Robert S. Keen,
Lieutenant Colonel, U. S. Marine Corps,
Commanding, U. S. Marine Barracks,
Naval Air Station, Alameda, California.

C

Figure 13–6d. Summary court record, Case B, continued.

U. S. Marine Barracks,
Naval Air Station,
Alameda, California,
Tuesday, August 6, 1944.

The court met at 12:58 p.m.

Present: Major Timothy J. Riley, U. S. Marine Corps,
Captain George Knight, U. S. Marine Corps,
First Lieutenant Malcolm K. Dole, U. S. Marine Corps, Members; and
First Lieutenant Frank Horn, U. S. Marine Corps, recorder.

The recorder introduced Harry Hall, staff sergeant, U. S. Marine Corps Reserve, as reporter.

Raymond Fitch, private first class, U. S. Marine Corps, entered with the accused and reported as orderly.

The accused requested that Captain Albert C. Shank, U. S. Marine Corps Reserve, act as his counsel. Captain Shank took seat as such.

The recorder submitted a copy of the precept, hereto prefixed marked "A", to the accused for his information and inspection, original prefixed to the record in the case of John Arthur Beaver, private, U. S. Marine Corps Reserve, and read a modification thereof, original hereto prefixed marked "B".

The accused stated that he did not object to any member.

Each member, the recorder, and the reporter were duly sworn.

The accused stated that he had received a copy of the specification preferred against him on August 5, 1944.

The recorder asked the accused if he had any objection to make to the specification.

The accused replied in the negative.

The court was cleared. The court was opened and all parties to the trial entered. The court announced that it found the specification in due form and technically correct.

The accused stated that he was ready for trial.

No witnesses not otherwise connected with the trial were present.

The recorder read the specification, original prefixed marked "C", and arraigned the accused as follows:

Q. Harry Sams, private first class, U. S. Marine Corps, you have heard the specification preferred against you; how say you to the specification, guilty or not guilty?
A. Not guilty.

The prosecution began.

A witness for the prosecution entered and was duly sworn.

Examined by the recorder:

1. Q. State your name, residence, and occupation.
A. Charles Waters, police officer in the city of Signal Hill, California.

2. Q. If you recognize the accused, state as whom.
A. As Mr. Harry Sams.

3. Q. Were you employed as a police officer on or about the night of August 2, 1944?
A. I was.

Figure 13–6e. Summary court record, Case B, continued.

4. Q. How long have you been employed as a police officer?
A. A fraction over five years.

5. Q. Have you ever arrested a person for being under the influence of intoxicating liquor?
A. I have.

6. Q. Approximately how many cases of intoxication have you arrested?
A. Possibly one hundred and seventy-five.

7. Q. Are you capable of recognizing the symptoms of intoxication?
A. I am.

8. Q. Are you capable of knowing whether or not a man is incapacitated for duty?
This question was objected to by the accused on the ground that it called for an opinion.
The recorder did not reply.
The court announced that the objection was sustained.

9. Q. The accused is charged with certain irregularities on or about August 2, 1944. State what you know about them.
A. I found a Stutz roadster on Cherry Avenue, just south of Twentieth Street. This car, from all indications, had been traveling north on Cherry Avenue and had jumped the west curb and run about a car length up a guy wire leading from a telegraph pole and was balanced on this guy wire. When I opened the door of the car, Mr. Sams was asleep in the seat. I called Mr. Sams and he immediately tried to start the car. I informed him of the predicament of the car for fear of turning the car over. I then took Mr. Sams by the arm and helped him down out of the car to the police car. He was then taken by me to the Signal Hill Police Department.

10. Q. What was the general appearance of the accused?
A. The accused was dressed in marine uniform; the uniform had vomit upon it; the accused was bareheaded.

11. Q. What did the accused do when you awakened him from his slumber?
A. He tried to start the car at that time.

12. Q. Did you examine the accused?
A. I did.

13. Q. What was the appearance of the eyes of the accused?
A. They were bloodshot and watery.

14. Q. What was the appearance of the face of the accused?
A. His face was flushed.

15. Q. Did you give the accused a Romberg's Test or any balance test?
A. Yes. The accused swayed. His balance was unsteady.

16. Q. Was the accused able to walk without attracting any undue attention?
A. He staggered considerably.

17. Q. Describe the manner in which the accused spoke.
A. His speech was thick. His orientation was poor. The accused did not know the time or date, or the town that he was in. He remembered his car stopping but didn't know why the car stopped.

18. Q. Did you notice the odor of the breath of the accused?
A. I did.

Figure 13–6f. Summary court record, Case B, continued.

19. Q. What was the odor?
A. Alcoholic.

Cross-examined by the accused:

20. Q. Is the city of Signal Hill part of the city of Long Beach?
A. No, sir.

21. Q. Was this man arrested in the city of Long Beach or the city of Signal Hill?
A. Signal Hill.

Examined by the court:

22. Q. What is the dividing line of the city of Long Beach and Signal Hill on Cherry Avenue?
A. The Pacific Electric tracks just south of Nineteenth Street on Cherry Avenue.

23. Q. You have stated that you examined the accused; what was the purpose of that examination and what did you discover?
A. The purpose of the examination was to satisfy me, as arresting officer, in my own mind that he was under the influence of intoxicating liquor and form my own opinion and to see that he was booked for intoxication. I discovered that he had alcoholic breath. In his talk, his mind seemed to wander. He had difficulty with his speech at times and could not tell me a coherent story as to where he was or where he had been. He staggered considerably; eyes were bloodshot and watery. The accused swayed considerably when he stood up. He was very unsteady. That is the regular routine that takes place for simple intoxication where an automobile is involved, and, where there is personal or property damage, we have a physician make the examination for intoxication.

24. Q. In your previous testimony, you have mentioned the words "Romberg's Test." What is the Romberg's Test?
A. When a person is being examined, the person examining knows when he sways or his balance is unsteady.

25. Q. A test to determine his steadiness?
A. Yes, sir.

Recross-examined by the accused:

26. Q. What time was this arrest made?
A. 2:30 a.m., August 2, 1944.

Neither the recorder, the accused, nor the court desired further to examine this witness.

The witness said that he had nothing further to state.
The witness was duly warned and withdrew.
The prosecution rested.
The defense offered no evidence.
The accused did not desire to make a statement.

The recorder made the following opening argument: The accused is charged as being intoxicated and was put on report by the shore patrol for that offense. The defense brought up the fact that the accused was arrested outside the city limits of Long Beach. What I want to make clear is that the accused, I believe, was proved guilty of intoxication. I do not say where. It makes no difference if the accused was arrested in Signal Hill or in Long Beach, because the report was made by the shore patrol on the evidence of the police of Signal Hill.

Figure 13–6g. Summary court record, Case B, continued.

The accused made the following argument: The defense contends in the first instance that every allegation of the specification must be proved or the accused found not guilty of the offense charged. The averment that he was drunk in a public street in the city of Long Beach, by testimony, has been shown untrue. In the second instance, the defense contends that there has been no evidence that the accused was actually under the influence of intoxicating liquor. Certain tests were made at the time of the arrest. Unless the accused's counsel is greatly at fault, the witness failed to state any conclusions drawn from these tests. The accused had liquor on his breath; had vomit on his blouse; was asleep in his car and swayed. These things might very well have been present by reason of a sudden attack of dizziness or illness. The fact that he had an alcoholic breath in itself is no offense. The defense would remind the court that the criterion is adjudging whether or not he is incapacitated for the duties of his rating. The defense contends that such showing has not been made, this being due to prior indulgence in intoxicating liquor. The defense requests an acquittal.

The recorder desired to make no closing argument.

The trial was finished.

The court was cleared.

The recorder was recalled and directed to record the following finding:

The specification proved in part; proved except the words "Long Beach", which words were not proved, and for the excepted words the court substitutes the words "Signal Hill", which words were proved.

The recorder stated that he had no record of previous conviction, that the rate of pay of the accused in his present rank is $54 a month, and in his next inferior rank $50 a month, and that he enlisted on July 7, 1941, to serve for four years, and gave as his date of birth January 16, 1912.

Figure 13–6h. Summary court record, Case B, continued.

The recorder was recalled and directed to record the sentence of the court as follows:

The court therefore sentences him, Harry Sams, private first class, U. S. Marine Corps, to be confined for a period of fifteen (15) days, and to lose twenty-seven dollars ($27) per month of his pay for a period of two (2) months, total loss of pay amounting to fifty-four dollars ($54).

Timothy J. Riley

Timothy J. Riley,
Major, U. S. Marine Corps, Senior Member.

George Knight

George Knight,
Captain, U. S. Marine Corps, Member.

Malcolm K. Dole

Malcolm K. Dole,
First Lieutenant, U. S. Marine Corps, Member.

Frank Horn

Frank Horn,
First Lieutenant, U. S. Marine Corps, Recorder.

The court then adjourned to await orders from the convening authority.

Timothy J. Riley

Timothy J. Riley,
Major, U. S. Marine Corps, Senior Member.

Frank Horn

Frank Horn,
First Lieutenant, U. S. Marine Corps, Recorder.

Figure 13–6i. Summary court record, Case B, continued.

U. S. Marine Barracks,
Naval Air Station,
Alameda, California,
August 8, 1944.

The proceedings, finding, and sentence in the foregoing case of Harry Sams, private first class, U. S. Marine Corps, are approved.

Robert S. Keen

Robert S. Keen,
Lieutenant Colonel, U. S. Marine Corps,
Commanding, U. S. Marine Barracks,
Naval Air Station, Alameda, California.

Figure 13–6j. Summary court record, Case B, continued.

U. S. Naval Air Station,
Alameda, California,
August 10, 1944.

The proceedings, finding, and sentence in the foregoing case of Harry Sams, private first class, U. S. Marine Corps, are approved.

James Larsen

James Larsen,
Captain, U. S. Navy,
Commanding, U. S. Naval Air Station,
Alameda, California,
Immediate Superior in Command.

Figure 13–6k. Summary court record, Case B, continued.

U. S. Marine Barracks,
Naval Air Station,
Alameda, California,
August 12, 1944.

Published.

Michael C. Post

Michael C. Post,
Captain, U. S. Marine Corps Reserve,
Executive Officer.

Loss of pay adjudged has been entered on the pay accounts of this man and will be checked in accordance with the terms of the sentence as approved.

Gerald W. Richards

Gerald W. Richards,
Second Lieutenant, U. S. Marine Corps Reserve,
Disbursing Officer.

Figure 13–6l. Summary court record, Case B, concluded.

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RECORD OF PROCEEDINGS
OF A
SUMMARY COURT MARTIAL

To insure uniformity, forms furnished by the Judge Advocate General will be used exclusively.

SUMMARY COURT MARTIAL

Brown, John P.
(Full name, surname first)

seaman first class
(Rate or rank)

U. S. Naval Section Base
(Ship or station where tried)

San Diego, California
(Location)

Nov 30, 1945
(Date of trial)

No remarks nor stamps of any kind to be placed below:

AOL from: ____/____/____	____d. ____h. ____m.
AWOL from: ____/____/____	____d. ____h. ____m.
Abus. Thrtg. Language	Missing Ship
Asleep on Watch	Neglect of Duty
Assault	Obs. or Prof. Language
Breaking Arrest	Resisting Arrest
C to P	
Disob. Lawful Order	Scan. Conduct
Disresp. to S. O.	Strkg. Another in Navy
Drunkenness	Theft
Falsehood	VLRSN
Lv. Sta. before Relieved	VL ____ Order

PLEA	Guilty
	Not Guilty

Prev. Courts (____ None) (____ D) (____ S) (____ G)

BCD	LP $____ (____ mos.)
Conf. ____	Reduction to NIR
Dep. lib. ____	Sol. conf. ____ days
EPD ____	SC B&W ____ days (____)

BCD remitted	Probation ____ mos.
Conf. remitted	RNIR remitted
Conf. red. to ____	Dep. lib. red. to ____
EPD remitted	LP remitted
EPD red. to ____	LP red. to $____ (____)
Dep. lib. remitted	SC B&W remitted
SC B&W red. to ____	
CA Appd. ____/____/____	ISIC—SOP
Disappd.	Appd. ____/____/____
	Disappd.

Reviewed by:

Figure 13–7a. Summary court record, Case C.

U. S. Naval Section Base,
San Diego, California,
May 8, 1945.

From: Commanding Officer.

To: Lieutenant John P. Jackson, U. S. Navy.

Subject: Convening summary court-martial.

1. A summary court-martial is hereby ordered to convene within this command on Wednesday, May 9, 1945, or as soon thereafter as practicable, for the trial of such persons as may be legally brought before it.

2. The court will be constituted as follows:

Lieutenant John P. Jackson, U. S. Navy; senior member; Lieutenant Howard J. Allen, Supply Corps, U. S. Naval Reserve; and Ensign Robert K. Rowan, U. S. Naval Reserve, members; and Ensign Willard N. Watts, U. S. Naval Reserve, recorder.

(S) OSCAR B. BATES
Oscar B. Bates,
Captain, U. S. Navy,
Commanding, U. S. Naval Section Base,
San Diego, California.

A true copy. Attest:

Willard N. Watts

Willard N. Watts,
Ensign, U. S. Naval Reserve,
Recorder.

A

Figure 13–7b. Summary court record, Case C, continued.

Specifications of offenses preferred against John P. Brown, seaman first class, United States Naval Reserve.

SPECIFICATION 1: In that John P. Brown, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Section Base, San Diego, California, while so serving on active duty at said section base, did, on or about May 20, 1945, at said section base, knowingly, unlawfully, and without proper authority, wear clothing other than his naval uniform, to wit, one civilian sweater of a yellow color, the said Brown not then being engaged in exercise and not then being in his home with less than three guests present, the United States then being in a state of war.

SPECIFICATION 2: In that John P. Brown, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Section Base, San Diego, California, while so serving on active duty at said section base, did, on or about May 20, 1945, at said section base, wilfully, knowingly, and without proper authority have in his possession wearing apparel belonging to another person in the Navy, to wit, one uniform overcoat, said overcoat being the property of one Jacob B. Fischer, metalsmith third class, U. S. Naval Reserve, the United States then being in a state of war.

SPECIFICATION 3: In that John P. Brown, seaman first class, U. S. Naval Reserve, attached to the U. S. Naval Section Base, San Diego, California, while so serving on active duty at said section base, did, on or about May 20, 1945, at said section base, feloniously take, steal and carry away from the possession of one Jacob B. Fischer, metalsmith third class, U. S. Naval Reserve, one uniform overcoat, of the value of about sixteen dollars ($16.00), said overcoat being the property of the said Fischer, and he, the said Brown, did then and there appropriate the same to his own use, the United States then being in a state of war.

Approved May 22, 1945.

To be tried before the summary court-martial of which Lieutenant John P. Jackson, U. S. Navy, is senior member.

Oscar B. Bates

Oscar B. Bates,
Captain, U. S. Navy,
Commanding, U. S. Naval Section Base,
San Diego, California.

B

Figure 13–7c. Summary court record, Case C, continued.

First Day

U. S. Naval Section Base,
San Diego, California,
Wednesday, May 30, 1945.

The court met at 10 a.m.

Present:

Lieutenant John P. Jackson, U. S. Navy;
Lieutenant Howard J. Allen, Supply Corps, U. S. Naval Reserve;
Ensign Robert K. Rowan, U. S. Naval Reserve, members; and
Ensign Willard N. Watts, U. S. Naval Reserve, recorder.

The recorder introduced Wendel F. Cowan, yeoman first class, U. S. Naval Reserve, as reporter.

Raymond Saunders, boatswain's mate first class, U. S. Navy, entered with the accused and reported as orderly.

The accused requested that Chief Machinist Frank M. Hendricks, U. S. Naval Reserve, act as his counsel. Chief Machinist Hendricks took seat as such.

The recorder submitted a copy of the precept, hereto prefixed marked "A", to the accused for his information and inspection, original prefixed to the record in the case of Roy E. Baus, seaman first class, U. S. Naval Reserve.

The accused objected to Ensign Robert K. Rowan, U. S. Naval Reserve, on the ground that he was the division officer of the accused.

The challenged member replied as follows:

The statement of the accused is correct. However, I have formed no opinion of the accused's guilt or innocence and I am certain that I can try the accused impartially.

The recorder asked the accused if he desired to examine the member on his voir dire.

The accused said that he did not wish to examine the member on his voir dire and was willing to have the court rule on the statement as given.

The court was cleared. The challenged member withdrawing.

The court was opened. All parties to the trial entered; the court announced that the objection of the accused was not sustained.

The accused did not object to any other member.

Each member, the recorder, and the reporter were duly sworn.

The accused stated that he had received a copy of the specifications preferred against him on May 24, 1945.

The recorder asked the accused if he had any objection to make to the specifications.

The accused replied in the negative.

The court was cleared. The court was opened and all parties to the trial entered.

Figure 13–7d. Summary court record, Case C, continued.

The court announced that it found the specifications in due form and technically correct.

The accused stated that he was ready for trial.

No witnesses not otherwise connected with the trial were present.

The recorder read the specifications, original prefixed marked "B", and arraigned the accused as follows:

Q. John P. Brown, seaman first class, U. S. Naval Reserve, you have heard the specifications preferred against you; how say you to the first specification, guilty or not guilty?

A. Guilty.

Q. To the second specification, guilty or not guilty?

A. Not guilty.

Q. To the third specification, guilty or not guilty?

A. Not guilty.

The accused was duly warned as to the effect of his plea to the first specification and persisted therein.

The prosecution began.

A witness for the prosecution entered and was duly sworn.

Examined by the recorder.

1. Q. State your name, rate, and present station.

A. Dale R. Dawson, seaman second class, U. S. Naval Reserve, U. S. Naval Section Base, San Diego, California.

2. Q. If you recognize the accused, state as whom.

A. Brown, seaman first class.

3. Q. I show you a uniform overcoat, Dawson, do you recognize it?

A. Yes, sir.

4. Q. Tell the court under what circumstances this coat first came to your notice.

A. On last Sunday, May 20th, I was eating early chow in the mess hall. This man came in wearing a submarine coat and a non-regulation sweater. I told him to remove the submarine coat and sweater and he informed me that he had no blue shirt underneath. I told him that he couldn't eat chow in that uniform. He ran back to the barracks and returned very shortly wearing this coat. I saw then that it wasn't his coat. I finished my chow and went over to where he was sitting and told him that I would have to take him over to the master-at-arms office to see the chief. On the way over to the master-at-arms office he asked me to drop the charges and forget it as he was already in trouble. He then informed me that he didn't have his own coat on. We went to the master-at-arms office and the chief came in and I informed him of the charges. The chief asked to see the coat. Brown took it off and then he saw Fischer's name in it.

The uniform overcoat was submitted to the accused and to the court and by the recorder offered in evidence. There being no objection it was so received and marked "Exhibit 1."

NOTE: The uniform overcoat was returned to the owner upon completion of the trial. A description of the overcoat is appended marked "Exhibit 1."

5. Q. On what facts did you base your conclusion that the accused was not wearing his own coat?

The accused objected to this question on the ground that it called for an opinion of the witness.

Figure 17–7e. Summary court record, Case C, continued.

The recorder replied.

The court announced that the objection was overruled and directed the witness to answer the question.

A. One fact was that the coat did not fit him very well, and then once I stood behind him at Captain's inspection and I heard Mr. Carter call him on a cigarette hole in the collar of his coat, and this coat didn't have a hole in it.

Cross-examined by the accused:

6. Q. Dawson, you stated that when you told Brown he could not eat out of uniform, that he left, ran to the barracks and back. How do you know he went to the barracks?

A. I couldn't say that he went to the barracks, but he came right back.

7. Q. How long was he gone?

A. It couldn't have been five minutes. He was waiting in the middle of the line and came back just as the line was finishing.

8. Q. You say you can identify this coat as the one he had on that day when he came back?

A. That is the coat that he took off in the master-at-arms office when the chief told him to remove the coat.

9. Q. Did Brown, upon his return to the mess hall, say anything to you about this coat?

A. No, sir. He returned to the mess hall and went to the steam table and proceeded right down to the south end of the mess hall. On the way to the master-at-arms office, about abreast of the clothes line, he told me that he did not have his own coat on.

10. Q. But you do admit that Brown told you voluntarily and without questioning by you that he did not have his own coat on. Is that right?

A. Yes, sir.

11. Q. Do you know who owns this coat?

A. I know the man.

12. Q. Had he reported his coat missing?

A. No, sir.

Re-examined by the recorder:

13. Q. Did Brown of his own volition state that he had someone else's coat on?

A. Yes, sir.

14. Q. By that you mean that he did not make the statement in response to a question from you?

The accused objected to this question on the grounds that it was leading.

The recorder replied.

The court announced that the objection was sustained.

15. Q. Wasn't there something which impelled Brown to make this statement to you?

A. Yes, sir, I believe there was. I think that he believed that by telling me this, that I would not take him over to the master-at-arms' office.

The accused moved to strike out this answer on the grounds that it expressed an opinion of the witness.

The court was cleared. The court was opened. All parties to the trial entered, and the court directed that the words be stricken out.

Figure 13–7f. Summary court record, Case C, continued.

Neither the recorder, the accused, nor the court desired further to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

A witness for the prosecution entered and was duly sworn.

Examined by the recorder:

1. Q. State your name, rate, and present station.

A. Paul Cook, chief boatswain's mate, U. S. Naval Reserve, U. S. Naval Section Base, San Diego, California.

2. Q. If you recognize the accused, state as whom.

A. Brown, seaman first class.

3. Q. I show you a coat, do you recognize it?

A. Yes, sir.

4. Q. Inform the court where you first saw this coat.

A. The first time I saw the coat was in the bowling alley. A man wore it in there and took it off to bowl and I looked at it then.

5. Q. When did you next have occasion to particularly take notice of this coat?

A. The next time was when the accused had it on.

6. Q. Tell the court the circumstances.

A. On Sunday, the twentieth of May, as I came in the master-at-arms' office, Brown was in there. I asked him to remove the coat. Brown took the coat off. I saw it was Fischer's coat. I asked him how he happened to have it on. He said he had taken it out of the barracks to wear to the mess hall. I told him to put it back on and at one o'clock I had him put on report.

7. Q. Why did you ask the accused to remove his coat?

A. So I could see the name in it; to see whose coat he had on.

8. Q. Why did you wish to establish the identity of the coat?

A. To see whose coat he really had on. The master-at-arms had said he had on another man's coat.

Cross-examined by the accused:

9. Q. Who was this master-at-arms?

A. Dawson.

10. Q. Did he tell you officially that he had discovered the coat or that Brown had informed him that he had another man's coat on?

A. He reported to me that Brown had on another man's coat.

11. Q. Did he say that he had asked Brown first or had Brown voluntarily reported the fact to him?

A. Voluntarily reported the fact to him.

Examined by the court:

12. Q. In case of uniform irregularities is it regular procedure to check all the other articles of clothing?

A. Yes, sir.

13. Q. Did you know who the man was who had the coat on in the bowling alley?

A. Yes, sir, Fischer.

Figure 13–7g. Summary court record, Case C, continued.

Recross-examined by the accused:

14. Q. You have informed the court that you checked on the other articles of clothing; you mean of the accused's clothing?

A. Yes, sir, the rest of his clothes that day.

15. Q. Did you find any other articles of clothing in his possession?

A. Yes, sir.

16. Q. That were not his?

A. Yes, sir. His name was not on them.

17. Q. Whose name was on them?

A. Dunn's.

18. Q. Was the fact satisfactorily explained to your knowledge?

A. Yes, sir.

Neither the recorder, the accused, nor the court desired further to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

A witness for the prosecution entered and was duly sworn.

Examined by the recorder:

1. Q. State your name, rate, and present station.

A. Jacob B. Fischer, metalsmith third class, U. S. Naval Reserve, U. S. Naval Section Base, San Diego, California.

2. Q. If you recognize the accused, state as whom.

A. I only know him as Brown.

3. Q. I show you a coat, do you recognize it?

A. Yes, sir.

4. Q. To whom does this coat belong?

A. It belongs to me.

5. Q. Did you, on 20 May, authorize anyone to wear this coat?

A. No, sir.

6. Q. Where do you keep your coat when you are not wearing it?

A. In the coat locker in the barracks where I sleep.

7. Q. What proceedings do you have to go through to draw your coat from the coat locker?

A. There are no proceedings for drawing it out. The locker is open and we just take them out.

The accused did not desire to cross-examine this witness.

Neither the recorder, the accused, nor the court desired further to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

A witness for the prosecution entered and was duly sworn.

Examined by the recorder:

1. Q. State your name, rate and present station.

A. Gilbert Hobbs, seaman first class, U. S. Naval Reserve, U. S. Naval Section Base, San Diego, California.

Figure 13–7h. Summary court record, Case C, continued.

2. Q. If you recognize the accused, state as whom.

A. We all called him Brownie. I think his name must be Brown. I am in the same squad room with him.

3. Q. Where were you about chow time, evening chow, last Sunday, May 20th?

A. I was in the barracks. I didn't go to chow because I wasn't feeling so well. I spent the evening on my bunk.

4. Q. Did you see Brown that night?

A. Yes, sir.

5. Q. Tell the court what transpired.

A. Well, I heard Brownie near the coat locker. He was complaining because somebody had taken his coat. He said that was the second time that someone had taken his coat. He was just kind of talking to himself. Then he stuck his head out and yelled for Fischer. Somebody said that Fischer had gone ashore. Then Brown said something about "I'll bet he took my coat." Then he grabbed a coat and ran out.

Cross-examined by the accused:

6. Q. Didn't Brown say something about, "Well, I've got to have a coat," or something like, "I'll borrow this one?"

The recorder objected to the question on the ground that it was leading.

The accused replied.

The court announced that the objection was not sustained and directed the witness to answer the question.

A. No, sir, he didn't say anything like that, he said . . .

The accused informed the witness that he had answered the question.

Examined by the court:

7. Q. What did the accused say?

The accused objected to this question on the grounds that the court was hereby originating evidence.

The recorder joined the accused in this objection.

The court was closed. The court was opened and all parties to the trial entered. The court announced that the objection was not sustained and directed the witness to answer the question.

A. He said as he went out that "He was going to get even with Fischer; that he would fix him."

Neither the recorder, the accused, nor the court desired further to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The prosecution rested.

The defense began.

A witness for the defense entered and was duly sworn.

Examined by the recorder:

1. Q. State your name, rate, and present station.

A. James W. Woodrow, seaman first class, U. S. Naval Reserve, U. S. Naval Section Base, San Diego, California.

Figure 13–7i. Summary court record, Case C, continued.

2. Q. If you recognize the accused, state as whom.
A. Brown, seaman first class.

Examined by the accused:

3. Q. Where were you between eleven and twelve o'clock the morning of May 20?
A. In the mess hall.

4. Q. Did you see Brown at that time?
A. Yes, sir.

5. Q. Did you see him and overhear him speak to anyone at that time?
A. Yes, sir.

6. Q. Whom did he speak to?
A. Dawson, the master-at-arms.

7. Q. Why did you particularly take note of this conversation?
A. He was sitting beside me eating chow.

8. Q. What did he say to the master-at-arms?
A. Before Brown went to the master-at-arms' office he told Dawson that he had on another man's coat.

9. Q. Did the master-at-arms question Brown about this coat prior to that?
A. No, sir.

The recorder did not desire to cross-examine this witness.

Examined by the court:

10. Q. Where was Brown when he told Dawson that he had on another man's coat?
A. At the mess table.

11. Q. Was he seated?
A. Yes, sir.

12. Q. Had Dawson said anything to Brown at the mess table before Brown told him about the coat?
A. He came up and told him he was taking him to the master-at-arms' office when he finished eating.

Neither the accused, the recorder, nor the court desired further to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The accused was, at his own request, duly sworn as a witness in his own behalf.

Examined by the recorder:

1. Q. Are you the accused in this case?
A. Yes, sir.

Examined by the accused:

2. Q. Brown, you know the specifications against you?
A. Yes, sir.

3. Q. Tell the court what you know about the offenses with which you are charged.
A. About 11:15 on last Monday I went to the mess hall to eat dinner. I was out of uniform. The master-at-arms asked me to remove the non-regulation clothing, which I did. I immediately went up to the barracks and took the end coat in the coat locker and went back to the mess hall to eat. I drew my chow and went to the south end of

Figure 13–7j. Summary court record, Case C, continued.

the mess hall. Dawson came over to the same table where I was eating and waited until I finished eating. I told him I had on another man's coat at this time. When I finished eating he took me to the master-at-arms' office.

4. Q. When the master-at-arms came over to the table, did he say anything to you?

A. No, he didn't say anything to me until I was through eating and then he took me over to the master-at-arms' office.

5. Q. How many coats have you?

A. I have two coats, sir.

6. Q. Do you have a coat with a cigarette burn in it?

A. I have.

7. Q. Is the other one a new or old coat?

A. The other coat is cut down. I can't wear it for inspection.

8. Q. Does it look anything like the coat there? (Indicating Exhibit 1.)

A. Yes, it does.

9. Q. Brown, you heard what Hobbs had to say, didn't you?

A. Yes, sir, but it is not true.

10. Q. Does Hobbs have any reason to dislike you?

A. Yes, sir. Sometime back here, I had a fight with him. He accused me of stealing his girl and he said he was going to get even with me.

11. Q. Did anyone hear Hobbs make this accusation and threat against you?

A. No, sir.

12. Q. Have you had any trouble with Hobbs?

The recorder objected to this question on the grounds that it was leading.

The accused replied.

The court announced that the objection was not sustained, and directed that the question be answered.

A. Yes, sir; I thought I caught him cheating in a card game once. The other fellows in the game did not think he was so I just got out and that was all there was to it. There were five other men in the game but they are all transferred now.

Cross-examined by the recorder:

13. Q. You know it is against regulations to have another man's clothing in your possession do you not?

A. Yes, sir.

14. Q. But you wore the coat just the same.

A. I put the coat on thinking it was my own.

15. Q. If you thought the coat was your own, why did you tell the master-at-arms that you had another man's coat?

A. I noticed in the mess hall for the first time that I had on another man's coat.

16. Q. Did you consider reporting to the master-at-arms that you had on another man's coat as an excuse for violating a lawful regulation of the Secretary of the Navy?

A. No, sir.

Re-examined by the accused:

17. Q. When you discovered that you had on another man's coat, why didn't you take it back immediately?

A. If I had left the mess hall at that time, I would have been late for early chow.

Figure 13–7k. Summary court record, Case C, continued.

18. Q. Did you think that by informing the master-at-arms that you had this coat on that you were turning the matter over to the proper authority?

A. Yes, sir.

Examined by the court:

19. Q. When you entered the mess hall the first time when you admitted wearing non-regulation clothing, did you have a coat on over this sweater?

A. I had a submarine coat on.

20. Q. You stated in your testimony that you took the end coat. Why the end coat?

A. I work in that compartment and stow my coat in this locker during working hours. I always put my coat on the end of the rack.

21. Q. Are they always on that end?

A. Yes, sir, I keep them on that end.

22. Q. Could anyone use any hook in that locker?

A. Yes, sir.

23. Q. At what point in all this did you discover that you did not have your own coat on?

A. When I was eating at the table.

24. Q. Did you eat with the coat on?

A. Yes, sir.

25. Q. What caused you to discover that you had someone else's coat on?

A. I put my hand in the pocket and found a letter with another man's name on it.

26. Q. But you still went on eating with the coat on?

A. Yes, sir.

Neither the accused, the recorder, nor the court desired further to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his status as accused.

The defense rested.

The rebuttal began.

Gilbert Hobbs, seaman first class, U. S. Navy, a witness for the prosecution was recalled and warned that the oath previously taken by him was still binding.

Examined by the recorder:

1. Q. Hobbs, have you ever had any trouble with Brown?

A. No, sir; nothing that amounted to anything.

2. Q. Did Brown ever steal your girl?

A. No, sir. He was going around with a girl I used to go around with but he didn't steal her.

3. Q. Didn't you ever threaten to get even with him for taking your girl?

A. No, sir. I was through with her, he might as well have had her as the next person.

Cross-examined by the accused:

4. Q. Hobbs, were you ever caught cheating at cards by Brown?

A. No, sir.

Figure 13–7l. Summary court record, Case C, continued.

5. Q. Did you ever play cards with Brown?

A. Yes, sir.

6. Q. Did Brown ever accuse you of cheating?

A. Yes, sir, he did. But I wasn't and the other men in the game did not believe him.

Re-examined by the recorder:

7. Q. What is the general reputation of the accused?

A. He is a poor sport. Every time he gets in trouble he tries to get out by putting the blame on someone else.

The accused moved to strike this answer from the record on the grounds that it was the personal opinion of the witness and not general reputation.

The court directed that the answer be stricken out.

8. Q. Have you ever heard other people in your division express their opinion as to the character of the accused?

A. Yes, sir, many times. As a matter of fact, the master-at-arms just said the other day that he bet when Brown came up for trial that he would probably try to say that Fischer stole his own coat and put it on Brown just because he wanted to get Brown in trouble.

The accused moved to strike that portion of the testimony given above as to what the master-at-arms said because it was hearsay.

The recorder replied.

The court announced that the motion was sustained and directed that the words be stricken out.

Neither the recorder, the accused, nor the court desired further to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The rebuttal ended.

The accused read a written statement in his defense, appended marked "C."

The recorder made the following opening argument:

The accused is herein charged with three specifications: Out of uniform, possession of another man's clothing, and theft. The prosecution submits that all of these are proved beyond a reasonable doubt. It is the duty of the court to evaluate the weight to be accorded the testimony of the witnesses. It may accept as true any or all of a witness' testimony, or on the other hand, reject as an outright falsehood any or all of a witness' testimony. If after such weighing of the evidence there remains in the court's mind a reasonable doubt, the court in accordance with the principles of Anglo-American jurisprudence must not convict. By a reasonable doubt I do not mean a mere possibility. The proof need not eliminate all possibility of innocence. If such were the case, there would be few convictions in the absence of a plea of guilty. To justify an acquittal there must be a reasonable possibility of the accused's innocence in the mind of the court. As to the existence of that possibility I shall say nothing. I have no intention of infringing on the province of the court.

A word about theft. Without the specific intent necessary to constitute theft, there can be no conviction. In this case, if the accused took the coat, with the intention of permanently depriving the owner thereof, that is, if at the time he left the barracks he intended to so deprive Fischer of the coat, the theft is complete. The fact that when he was accosted by the master-at-arms he had a change of heart and even voluntarily

Figure 13–7m. Summary court record, Case C, continued.

informed the master-at-arms that he had the coat of another does not alter the fact that he had stolen the coat.

On the other hand, if the court chooses to disbelieve Hobbs, and believes that the accused did pick up the coat thinking it was his coat and then later finding that it was not, continued to wear it, there was no theft, because the taking was not with the requisite intent to permanently deprive the owner of his possession.

Notwithstanding, the court is faced with an entirely different offense in the second specification, an offense malum prohibitum. As such, there is no requirement of proof of specific intent. The general intent which is raised by the fact that the accused did the act with which he is charged suffices. Accordingly, proof of the fact that the accused had possession of the clothing of another is a violation of Article 122(3), Navy Regulations.

The accused made the following argument:

The accused has shown the witness, Hobbs, to have reason to want to fabricate testimony which will damage the accused. Hobbs admits the basis of such prejudice. The recorder himself apparently questions Hobbs' veracity, otherwise why did he put him on the stand last and then question the credibility of his testimony in argument? Gentlemen, there can be no doubt that everything Hobbs says is false.

The accused has testified openly. He has tried to tell the truth to the very best of his ability. He has in fact told the truth in every detail. Can such a man be the sort of person that Hobbs pictures him to be?

In accordance with the principles of Anglo-American jurisprudence invoked by the recorder, the accused is entitled to a presumption of innocence. It is incumbent on the prosecution to prove each and every allegation of the specifications. If the prosecution has failed to do so, it is true that it may be pieced out from the evidence of the accused. But where it is necessary to take any of that evidence it must be taken in its entirety. The court may not select certain morsels it needs to convict and then discard the exculpatory portion as untrue.

The recorder says that you need find intent only in the theft specification, that if such intent is not present, you can then convict the accused without such intent on the second specification. But gentlemen, do we punish offenses in this country by mere mistakes? To err is human, to forgive divine. I am not asking this court to assume divinity—but this is all a ghastly mistake. How many of you have picked up another person's coat or hat? You know uniforms look alike. It isn't very hard to mix them up. And besides, the accused was hungry. He had been working all day and he needed food. He wasn't thinking about anything but food. It is easy to take the wrong coat under such circumstances.

There is very little that I can say in closing except that I am firmly convinced that justice demands, that your consciences dictate, and that you must and will acquit the accused on the specifications to which he has pleaded not guilty.

The recorder made the following closing argument.

The recorder fails to perceive the relevance of the accused's remarks about the acceptance of the accused's testimony for the purposes of piecing out a prima facie case but wishes to elaborate on his remarks a bit. The accused's statements in this connection are in the main accurate. However, where evidence may be taken from the testimony of another witness it thereby does not become incumbent on the court to accept as true the exculpatory portion of the testimony of the accused. However, it is apparent that in this case this question will not arise. Manifestly the turning point of the case insofar as the third specification is concerned is whether the testimony of Hobbs is to be

Figure 13–7n. Summary court record, Case C, continued.

believed. The recorder has offered Hobbs as a witness. In so doing he vouches for the witness' veracity. If the recorder did not believe Hobbs he would not have put him on the stand. The reason he mentioned his testimony in particular is because it was believed to be vitally important, that the outcome of this case is dependent on whether he is or is not to be believed.

These questions are within the province of the court. It is improper for either recorder or counsel to voice his beliefs in the matter. The recorder feels it necessary to voice his in rebuttal of the accused's averment that the recorder does not believe his own witness.

The trial was finished.

The court was cleared.

The court was opened. All parties to the trial entered and the court then at 11:50 a.m., adjourned until 9:10 a.m., tomorrow, Thursday, May 31, 1945.

Figure 13–7o. Summary court record, Case C, continued.

Second Day

U. S. Naval Section Base,
San Diego, California,
Thursday, May 31, 1945.

The court met at 9:10 a.m.

Present:

Lieutenant John P. Jackson, U. S. Navy;
Lieutenant Howard J. Allen, Supply Corps, U. S. Naval Reserve;
Ensign Robert K. Owen, U. S. Naval Reserve, members; and
Ensign Willard N. Watts, U. S. Naval Reserve, recorder.
Wendel F. Cowan, yeoman first class, U. S. Naval Reserve, reporter;
The accused and his counsel.

The record of proceedings of the first day of the trial was read and approved.

The court was cleared.

The recorder was recalled and directed to record the following findings:

The first specification proved by plea.
The second specification proved.
The third specification not proved, and the court does, therefore, acquit the said John P. Brown, seaman first class, U. S. Naval Reserve, of the offense specified.

The court was opened and all parties to the trial entered. The court informed the accused that it had found the third specification not proved.

The recorder stated that he had record of previous conviction, that the rate of pay of the accused in his present rating is $66 a month and in his next inferior rating $54 a month, and that he enlisted on September 4, 1942, to serve four years, and gave as his date of birth October 25, 1911.

The court announced that it was ready to receive the record of previous conviction.

Such record having been submitted to the accused and to the court and there being no objection the recorder read from the current service record of the accused an extract showing previous conviction, copy appended marked "D."

The court was cleared.

19

Figure 13–7p. Summary court record, Case C, continued.

The recorder was recalled and directed to record the sentence of the court as follows:

The court therefore sentences him, John P. Brown, seaman first class, U. S. Naval Reserve, to be confined for a period of twenty-four (24) days, and to lose thirty-three dollars ($33) per month of his pay for a period of three (3) months, total loss of pay amounting to ninety-nine dollars ($99).

John P. Jackson
John P. Jackson,
Lieutenant, U. S. Navy, Senior Member.

Howard J. Allen
Howard J. Allen,
Lieutenant, Supply Corps, U. S. Naval Reserve, Member.

Robert K. Rowan
Robert K. Rowan,
Ensign, U. S. Naval Reserve, Member.

Willard N. Watts
Willard N. Watts,
Ensign, U. S. Naval Reserve, Recorder.

The court then adjourned to await orders from the convening authority.

John P. Jackson
John P. Jackson,
Lieutenant, U. S. Navy, Senior Member.

Willard N. Watts
Willard N. Watts,
Ensign, U. S. Naval Reserve, Recorder.

20

Figure 13–7q. Summary court record, Case C, continued.

I didn't steal the coat. It was all a mistake. I merely picked up the wrong coat. If I had gone back to exchange it I would have missed chow. I never had any intention of taking another person's coat. The entire incident occurred because I was in such a hurry. For the above reasons, I respectfully request the clemency of the court and the reviewing authority.

John P. Brown
John P. Brown

C

Figure 13–7r. Summary court record, Case C, continued.

Extract of previous conviction from the current enlistment record of John P. Brown, seaman first class, U. S. Naval Reserve.

U. S. Naval Section Base,
San Diego, California.

10 December 1942, Leaving his post before being regularly relieved, at about 2:45 a.m., 12/9/42. DC 20 days confinement. App. 12 December 1942, by C.A.

(S) OSCAR B. BATES
Oscar B. Bates,
Captain, U. S. Navy,
Commanding.

A true copy. Attest:

Willard N. Watts

Willard N. Watts,
Ensign, U. S. Naval Reserve,
Recorder.

D

Figure 13–7s. Summary court record, Case C, continued.

Uniform Overcoat

A regulation issue double-breasted, blue cloth overcoat.

"J. B. Fischer" stitched in yellow silk on lining on left front side.

"J. B. Fischer" stenciled with white paint on lining in the regulation manner.

Attest:

Willard N. Watts

Willard N. Watts,
Ensign, U. S. Naval Reserve,
Recorder.

Exhibit 1

Figure 13–7t. Summary court record, Case C, continued.

U. S. Naval Section Base,
San Diego, California,
June 2, 1945.

The proceedings, findings, and sentence in the foregoing case of John P. Brown, seaman first class, U. S. Naval Reserve, are approved, but the limits of confinement are extended to the limits of the station.

Oscar B. Bates

Oscar B. Bates,
Captain, U. S. Navy,
Commanding, U. S. Naval Section Base
San Diego, California.

Figure 13–7u. Summary court record, Case C, continued.

U. S. Naval Operating Base,
San Diego, California,
June 4, 1945.

The proceedings, findings, and sentence, as mitigated, in the foregoing case of John P. Brown, seaman first class, U. S. Naval Reserve, are approved.

James J. Buchannon

James J. Buchannon,
Rear Admiral, U. S. Navy,
Commanding, U. S. Naval Operating Base,
Immediate Superior in Command.

Figure 13–7v. Summary court record, Case C, continued.

U. S. Naval Section Base,
San Diego, California,
June 5, 1945.

Published.

Ernest J. Mabry

Ernest J. Mabry,
Lieutenant Commander, U. S. Navy,
Executive Officer.

Loss of pay adjudged has been entered on the pay accounts of this man and will be checked in accordance with the terms of the sentence as approved.

Thomas B. King

Thomas B. King,
Lieutenant (junior grade), S. C., U. S. Naval Reserve,
Disbursing Officer.

Figure 13–7w. Summary court record, Case C, concluded.

14. THE GENERAL COURT-MARTIAL

14–1. Introduction. In the two preceding chapters all aspects of the deck court and the summary court-martial were presented in a way that would render assistance to persons charged with carrying out the responsibilities connected therewith. This presentation was accomplished with recourse to chapters of *Naval Courts and Boards, 1937*, only by way of cross-reference. The purpose of Chapter 14, on the other hand, is not to offer a complete presentation of the general court-martial, but merely to discuss certain distinctive characteristics, and the manner of recommending a person for trial. This difference in presentation is occasioned by the fact that Chapters 4 and 6, *Naval Courts and Boards, 1937*, offer adequate instruction and guidance for officers charged with the conduct and review of general court-martial trials. In the main, such officers are legal specialists or persons particularly qualified for the duty by virtue of their naval background and experience.

14–2. Nature and function. The general court-martial is the highest tribunal in naval law. It may be convened for the trial of officers and enlisted men. Officers may be brought to trial only before a general court-martial. Article 35, *AGN*, provides that a general court-martial may inflict any punishment which a summary court-martial is authorized to inflict. In addition, the general court-martial may adjudge sentences of death, dismissal, dishonorable discharge, and confinement at hard labor in prison. Whenever, by any of the *Articles for the Government of the Navy*, a punishment upon conviction is left to the discretion of the court-martial, the maximum punishment that it may inflict therefore, in time of peace, may not be in excess of a limit prescribed by the President.

With certain exceptions hereinafter noted the proceedings of a general court-martial follow closely those of a summary court-martial. Inasmuch as they are considered in detail in Chapter 6, *Naval Courts and Boards, 1937*, and in view of the instructions contained in Chapter 12 pertaining to summary court-martial proceedings, a step by step presentation will not be made. It is emphasized however, that the proceedings are extremely formal and that the trial is conducted with the maximum of dignity and decorum.

14–3. Convening authority. General courts-martial may be convened: (1) by the President, the Secretary of the Navy, the commander in chief of a fleet or squadron, and the commanding officer of a naval station beyond the continental limits of the United States; (2) when empowered by the Secretary of the Navy, by the commanding officer of a squadron, division, flotilla,

or larger naval force afloat, and of a brigade or larger force of the naval service on shore beyond the continental limits of the United States; (3) in time of war, if then so empowered by the Secretary of the Navy, by the commandant of any navy yard or naval station, and by the commanding officer of a brigade or larger force of the Navy or Marine Corps on shore not attached to a navy yard or naval station.

14–4. Constitution. A general court-martial consists of not more than thirteen nor less than five commissioned officers as members, and a judge advocate, all being appointed in the precept convening the court. The judge advocate acts in a capacity similar to that of a prosecutor. When more than the required minimum of five members are appointed, the precept contains a provision to the effect that any five of the members are empowered to act. The number of members may be reduced by various causes, such as challenge, absence, etc., during a trial, but so long as five members remain, the court is a legal court and can proceed. If reduced below the number of five, the court must still meet and adjourn from day to day until the absent members return or until such time as sufficient members are detailed, or until the court is authorized to convene for a longer period, or is dissolved by the convening authority who should be notified of the condition of affairs.

14–5. Composition. Except in cases where officers of the rank of lieutenant in the Navy and captain in the Marine Corps, or above, are not available, the circumstances of which shall be reported to the Department by the convening authority, no officer may be ordered as a member of a general court-martial who is below the rank of lieutenant in the Navy or captain in the Marine Corps. In case an officer is to be tried, Article 39, *AGN*, requires that, except where it cannot be avoided without injury to the service, at least one half of the members be senior to the accused. As a matter of policy in such a case all should be senior. The convening authority is justified in departing from this rule only under the most unusual circumstances. It is the policy of the Navy Department to require the president to be a line officer. In detailing officers for the trial of a staff or marine officer, it is proper, if the exigencies of the service permit, that at least one third of the court be composed of officers of the same corps as and senior to the person to be tried.

14–6. President. The senior officer in rank of a naval general court-martial is denominated the *president* thereof. His duties are similar to those of the *senior member* of a summary court-martial. In adition to his duties and privileges as a member, he speaks and acts for the court, and in every case announces the ruling of the court. He is responsible for the dignified and orderly conduct of the proceedings of the court and is empowered to keep order. He is also responsible that all persons called before the court are treated in a becoming manner, and in all cases of impropriety, whether in

language or behavior, shall, if necessary, report the offender to the convening authority.

14–7. Judge advocate. The judge advocate of a general court-martial has duties to perform which correspond in general with those of a recorder in a summary court-martial. During the trial, he conducts the case for the Government. He executes all orders for the court; reads the convening order; administers the oath to the members, reporter, and interpreter; arraigns the accused; examines witnesses; and is responsible for the keeping of a complete and accurate record of the proceedings. One of the variations in procedure between the summary court-martial and the general court-martial is that the judge advocate is sworn first and then the members are sworn, whereas in a summary court-martial the members are sworn first and then the recorder is sworn.

While the court is in open session, it is the duty of the judge advocate to advise the court in all matters of form and of law. On every occasion when the court demands his opinion, he is bound to give it freely and fully; and, even when it is not requested, to caution the court against any deviation from essential form in its proceedings, or against any act or ruling in violation of law or material justice. In the event the accused has no counsel, the judge advocate must also protect the interests of the accused, having in mind, however, at all times his duties as prosecutor.

14–8. Use of the charge and specification. One of the distinctive characteristics of a general court-martial is that the formal written accusation consists of two parts, the *charge* which is a statement of the offense in general terms, and the *specification* which is a full and sufficient statement of the facts constituting the offenses charged. In summary court-martial and deck-court procedure, the formal written accusation consists only of the specification; there is no charge stated. The specification must, in the latter cases however, set forth facts sufficient to constitute the particular offense charged. In other words, a charge is present by implication rather than by expression.

14–9. Determination of the findings. One of the practical effects of the use of charges and specifications in the general court-martial is that after the members have voted upon the specifications of any charge, they must in the same manner vote as to whether the accused is guilty or not guilty of such charge, or guilty in a less degree than charged, and, if so, in what degree. If the evidence proves the commission of an offense less in degree than that specified, yet included in it, the court may except words of the specification, substitute others, pronounce what words are not proved and what words are proved, and then find the accused guilty in a less degree than charged, or guilty of the lesser included offense. Of this form of finding, the most familiar example is the finding of guilty of *absence from station and duty without*

leave (or after leave has expired) upon a charge of *desertion.* Where one of the articles of the *Articles for the Government of the Navy* does not include *attempt* in its express terms, if the specification is found proved so as to show an attempt to commit the offense charged, and not the completed offense, the accused should be found guilty of the charge in a less degree than charged, or guilty of one of the general charges. In a general court-martial case where there are two or more specifications under a charge and some specifications are found proved, and others proved in part, and as thus proved these latter support a charge of a lesser included offense, the findings on the charge should be recorded, for example: . . . *of the first charge guilty by the findings on the first and third specifications, and of the first charge guilty in a less degree than charged, guilty of . . . by the findings on the second and fourth specifications.* In case the finding is *not guilty* upon any charge, the explicit statement should immediately follow that the court acquits the accused of such charge.

In determining the findings, the decision of a majority becomes the finding of the court. When there is a tie vote upon any of the findings, the accused is given the benefit thereof, and the result is recorded in that way which is the more favorable to the accused.

14–10. Determination of the sentence. No person shall be sentenced by general court-martial to suffer death except in the cases where such punishment is expressly provided in the *Articles for the Government of the Navy* and then only by the concurrence of two thirds of the members present. All other sentences may be determined by a majority of votes.

14–11. Reviewing authority. No sentence of a general court-martial extending to the loss of life or to the dismissal of a commissioned or warrant officer may be carried into execution until confirmed by the President. All other sentences of a general court-martial may be carried into execution upon the confirmation of the officer ordering the court. Every officer who is authorized to convene a general court-martial has the power to remit or mitigate but not to commute any sentence which he is authorized to approve and confirm.

Article 54(b), *AGN*, confers upon the Secretary of the Navy the power to set aside the proceedings or remit or mitigate in whole or in part the sentence imposed by any naval court-martial convened by his orders or by that of any officer of the Navy or Marine Corps. This broad power includes the power to commute a death sentence to life imprisonment; and dismissal to loss of pay or numbers or to suspension from duty on one-half pay.

14–12. Contempts of court. Article 42, *AGN*, provides that any person who refuses to give his evidence or to give it in the manner provided for by the *Articles for the Government of the Navy*, or prevaricates or behaves with contempt to the court, may be imprisoned by the court for any time not

exceeding two months. This authority to punish contempts is construed as extending only to general courts-martial.

14–13. Process for compelling attendance of witnesses. A general court-martial has the power to issue process to compel witnesses to appear and testify identical with that which United States courts of criminal jurisdiction within the state, territory or district where such naval court shall be ordered to sit may lawfully issue. The authority to compel the attendance of civilian witnesses within the jurisdiction specified is not construed as extending to a summary court-martial or deck court.

14–14. Offenses triable by general court-martial. Article 26, *AGN*, makes triable by summary court-martial offenses committed by enlisted men which an officer empowered to order a summary court-martial may deem deserving of greater punishment than those prescribed in Article 24, *AGN*, but which are not sufficient to require trial by general court-martial. Thus, when the nature of an offense charged is of such character that the punishment which a summary court-martial is authorized to inflict is not adequate, the offender should be brought to trial before a general court-martial unless it is impracticable to do so. However, in the interest of reducing paper work and better administration of naval justice, the Department has directed in *AlNav* 83, 1942, that all commands utilize to a greater degree trial by summary rather than general courts-martial in cases of infractions by enlisted men of the Navy, Marine Corps and Coast Guard when such action will accomplish the ends of discipline.

Fraudulent enlistment. The offense of *fraudulent enlistment and the receipt of any pay or allowance thereunder*, is, by statute, declared an offense against naval discipline and made punishable by general court-martial. Jurisdiction over this offense, therefore, is expressly limited to a general court-martial.

Desertion. While the law does not limit trials under the charge of *desertion*, it is considered highly desirable that such cases be tried only by general courts-martial, since *desertion* is generally looked upon as being much more serious than *absence without leave* or *absence over leave.*

The current policy of the Navy Department with regard to trials of wartime offenses involving absences and desertion is outlined in *SecNav Circular Letter* of 29 May 1945 and is reprinted in Appendix C of this text. It is to be noted, however, that modifications and revisions of this policy are necessary from time to time. Therefore, in all cases of this nature it is extremely important that reference be made to the most recent pertinent directives.

AOL and AWOL resulting in missing ship or mobile unit. Where a man has missed the sailing of his ship or mobile unit, adequate disciplinary action

is mandatory and, except under most unusual circumstances, trial by general court-martial is considered appropriate regardless of the length of absence.

Murder. Article 6, *AGN*, provides, that if any person belonging to any public vessel of the United States commits the crime of murder without the territorial jurisdiction thereof, he may be tried by court-martial and punished with death. This precludes a court-martial adjudging the death penalty for murder committed within the territorial jurisdiction of the United States. If the crime is committed on the high seas or within a foreign country, there is no doubt that courts-martial having assumed jurisdiction thereof may proceed to a final judgment and award death as the punishment.

14–15. Preliminary inquiry. Under the provisions of Article 197, *Navy Regulations*, a commanding officer shall institute a careful inquiry into the circumstances on which complaints of grave misconduct are founded. He shall call upon the complainant, if there is one, for a written statement of the case, together with a list of witnesses, mentioning where they may be found, and a memorandum of any documentary evidence bearing upon the case which may be obtainable. He shall also call upon the accused for such counterstatement or explanation as he may wish to make, and for a list of the persons he desires to have questioned in his behalf. If the accused does not desire to submit a statement, he shall set forth that fact in writing. It is noted in this connection that a commanding officer cannot legally compel any subordinate under his command to make a statement relative to the accusations against such subordinate. Thus, the right of silence or refusal to incriminate oneself is accorded to the person whose conduct is the subject of preliminary investigation as well as to the witness or accused at a trial. The accused should always be warned before making a statement that anything he says therein may be used against him.

14–16. The letter of recommendation. When, after the careful inquiry prescribed, the commanding officer decides that the circumstances require trial by general court-martial, he shall submit to such superior officers as may be authorized to convene a general court-martial, the statement of the complainant if there is one, the statements of the witnesses, and any counterstatement or explanation by the accused, together with specimen charges and specifications covering the offense or offenses for which he recommends trial and, in the case of an enlisted man, a certified transcript of his service record, unless directed by the convening authority to forward the original, including therein date of birth and enlistment, a copy of his pay account, and a statement of the medical officer as to whether or not he is physically fit for retention in the naval service. The letter should report fully and accurately in detail and in the order of their occurrence the circumstances on which the charge or charges may be founded and when words constitute the substance of the offense, those words used are to be set out as fully and

exactly as possible in the letter. The letter should not in any way refer to accompanying reports for the circumstances constituting the offense, but should in itself be so circumstantial as to afford a full account of the nature and extent of the offense or offenses charged, to the allegations of which the offender would be held to confess should he plead guilty.

Simplified recommendation for offenses of AOL, AWOL, breaking arrest and desertion. With a view to reducing clerical work in connection with discipline, throughout the service, the Bureau of Naval Personnel, keeping in mind that the certainty of prompt punishment is more conducive to discipline than punishment deferred long after the offense, desires that the following temporary wartime procedure be adopted to cover certain specific offenses when the necessity arises for recommending them for trial by general court-martial. This procedure is to be adopted only for the specific offenses of (1) absence over leave; (2) absence without leave; (3) desertion; (4) breaking arrest; or (5) a combination of one or more of these four offenses with absolutely no aggravation. The procedure should not be applied to other offenses, which offenses should continue to be handled in accordance with the basic instructions. The simplified procedure contemplates the preparation of a brief letter of transmittal addressed to the convening authority of the general court-martial, stating charges and recommending the man for trial by general court-martial, forwarding:

1. Service record, complete and correct to date containing signed entries on pages 9-10 showing offense or offenses; that is, absent over or without leave, date and hour of commencement and date of expiration, whether surrendered or delivered, and all facts establishing the offense.
2. Form NAVPERS 641, in duplicate, for each separate and distinct offense, completely filled out and signed. Duplicates and copies of Form NAVPERS 641 must be signed.
3. Statement of medical officer as to whether or not man is physically fit for retention in the service.
4. By separate paragraph in letter of transmittal, a statement as to what naval activity, having a permanent general court-martial, the man was or is being transferred to await trial, unless directed by convening authority in supplemental instructions to hold the man until recommendation is approved, in which case, a statement that the man is being so held.

The form NAVPERS 641 *(Report of Return of Straggler or Deserter)* referred to above, means the Form NAVPERS 641 which is submitted by the naval activity to which a man was first delivered, or to which a man first surrendered, and not a Form NAVPERS 641 made out by a subsequent activity; that is, if a man is absent from a command and later surrenders, or is delivered, to a recruiting station (or other naval activity) and subsequently

transferred to a receiving ship or station (or other naval activity) for disposition, the Form NAVPERS 641 required is either the signed original or signed duplicate which was made out and signed by the officer in charge of the recruiting station (or other naval activity). A copy of such Form NAVPERS 641 certified or signed by other than originator cannot be accepted.

Supplementary instructions. The Secretary of the Navy in granting the authority to commandants of naval districts to convene general courts-martial, contemplated that although certain courses of procedure in connection with recommendations of commanding officers for trial by general court-martial of personnel under their commands had been promulgated, instructions supplementing those already issued would be set forth for guidance by the commandants. Therefore, the commandant of the various districts have from time to time issued supplementary instructions to those already issued.

Service record entries. Cases of *desertion, absence from station and duty without leave, absence from station and duty after leave had expired,* and *breaking arrest,* are often proved entirely by introducing proper entries in the service record books of the men concerned during trial. In order to afford a speedy trial and preclude return of service records for the making of proper entries therein, all activities recommending men for trial by general court-martial on any of the above charges should make proper entries in the service records in order to provide for proof of the offenses. The entries should be substantially similar to the following forms:

1. *Absence from station and duty without leave*

   15 June 1945.
   Declared a straggler this date from the naval service, having been absent without leave from 0730, 14 June 1945. Intentions unknown. Form NAVPERS 641 submitted.

   Charles T. Kelley,
   Captain, U. S. Navy,
   Commanding Officer.

2. *Absence over leave*

   15 June 1945.
   Declared a straggler this date from the naval service, having been absent over leave from 0700, 14 June 1945. Intentions unknown. Form NAVPERS 641 submitted.

   Charles T. Kelley,
   Captain, U. S. Navy,
   Commanding Officer.

3. *Breaking arrest*

   15 June 1945.
   Declared a straggler this date from the naval service, having been absent without leave from 1430, 14 June 1945. Smith, while confined by lawful order of his commanding officer, broke his arrest and left his station and duty without

leave from proper authority. Intentions unknown. Form NAVPERS 641 submitted.

Charles T. Kelley,
Captain, U. S. Navy,
Commanding Officer.

4. *AOL or AWOL and missing ship*

15 June 1945.

Declared a straggler this date from the naval service, having been (AOL or AWOL) from 0700, 14 June 1945, and missed ship when she sailed on this date. Form NAVPERS 641 submitted.

Charles T. Kelley,
Captain, U. S. Navy,
Commanding Officer.

Availability of accused and witnesses for trial. In all cases wherein the proof of the allegation recommended is not dependent upon service record entries, the commanding officer making the recommendation should assure the convening authority that in addition to the accused and his records, all witnesses will be transferred to an activity within the jurisdiction of the convening authority.

14–17. Expediting recommendations. The Secretary of the Navy has directed that in unauthorized absence cases, where the accused pleads *guilty*, the total elapsed time between the return of the accused to naval jurisdiction and the publication of his sentence should not exceed 20 days for general court-martial cases within the continental limits of the United States. Recommendations for the trial of men by general court-martial should therefore be forwarded to the convening authority as expeditiously as possible.

14–18. Specimen forms of recommendations. To assist in visualizing the form and assembly of the completed letter of recommendation and enclosures thereto, the following pages illustrate two supposititious recommendations for trial. It is emphasized that the information contained in such letters and the enclosures thereto may vary according to supplemental instructions issued from time to time by respective convening authorities and the subject forms are not offered with a view to superseding such instructions.

Standard form of recommendation. The first recommendation illustrates the basic form provided in Appendix F-2, *Naval Courts and Boards, 1937*. The accused in this case is charged with one specification under the charge of bribery and the enclosures include (1) statement of the accused, (2) statement of a witness, (3) statement of the medical officer to the effect that the accused is physically fit for retention in the service, (4) specimen charge and specification, and (5) a certified transcript of the service record of the accused and a copy of his pay account. It will also be noted that this style of recommendation advises the convening authority that the accused,

his records and witness are being retained in the command submitting the recommendation pending trial. This latter procedure is required by some convening authorities.

Simplified form of recommendation. The second case illustrates a simplified form for recommending the trial of an accused by general court-martial, which may be utilized only in cases of *AWOL, AOL, desertion,* or *breaking arrest,* as indicated in Article 14-16. *BuPers Circular Letter* 46-43, authorizing the use of this form, is cited in the letter of recommendation as "reference (a)." The illustration involves a recommendation upon a charge of AOL for a period of 61 days and 18 hours. It will be noted that specimen charges and specifications, statement of the accused, and statements of witnesses in this type of recommendation are not required. The only enclosures required are (1) statement of the examining medical officer, (2) signed copy of *NavPers Form* 641 (*Report of Return of Straggler or Deserter*), and (3) the original service record of the accused, complete with entries to substantiate the offense, together with a certified copy of pay account.

U. S. NAVAL SECTION BASE
Bar Harbor, Maine

3 April 1945

From: Officer in Charge.

To: Commandant First Naval District.

Subject: Recommend trial by general court-martial in the case of Arthur Bonn, seaman first class, U. S. Naval Reserve.

1. It is recommended that Arthur Bonn, seaman first class, U. S. Naval Reserve, be brought to trial before a general court-martial on the following charge: Bribery—one specification.

2. From the investigation which I have made, I believe the following to be the facts:

That Arthur Bonn, seaman first class, U. S. Naval Reserve while on temporary duty at this station on or about March 4, 1945, promised to give Carl Dole, mail specialist first class, U. S. Naval Reserve, the sum of five hundred dollars ($500) and an automobile for his aid in facilitating a transfer from the U. S. S. Colorado to the Ship's Company post office of the U. S. Naval Section Base, Bar Harbor, Maine.

3. The accused, his records and the witness in this case will be retained at this command pending trial.

G. T. McCord

G. T. McCord,
Captain, U. S. Navy.

Encls.
(1) Statement of Arthur Bonn, S1c, USNR.
(2) Statement of Carl Dole, Sp(M)1c, USNR.
(3) Statement of Cmdr. C. W. Reid, Medical Corps, USNR.
(4) Specimen charge and specification.
(5) Certified transcript of service record and copy of pay account of Arthur Bonn, S1c, USNR.

Figure 14–1a. Standard form, general court-martial recommendation.

STATEMENT OF ARTHUR BONN, SEAMAN FIRST CLASS
U. S. NAVAL RESERVE

1 April 1945.

Having been warned that anything I say may be used against me, I hereby voluntarily make the following statement relative to the accusations contained in the specimen charge and specification upon which I have been recommended for trial by general court-martial:

About the fourth of March, 1945, about eleven o'clock I asked a clerk in the post office who the head postal clerk was. He told me, "Mr. Dole." So, I asked to see Dole. I said: "Dole, what is the chance of getting to work in the post office of Ship's Company?" I told him that I had had some experience in postal work and that I thought I was well suited for that type of work. I told Dole that I wanted to get in Ship's Company so that I could stay here for a while to look after my wife who had been threatened by her ex-husband who had been a convict. I told him I would be obligated in any way and that if he would get me in Ship's Company I had five hundred dollars in the bank and an automobile and that I would make it worth his while. Dole told me he didn't care about the money but that I might come in and see him after my leave. When I returned from leave I dropped in on him and asked him if he had done anything for me in regards to getting me in the Ship's Company post office. He said that he hadn't had a good chance to talk to me about my qualifications and asked me some more about my experience. I told him about my experience and then he told me that he couldn't get me in.

Arthur Bonn
Arthur Bonn

Witnesses:

John R. Kays
John R. Kays, Lt. (jg), U.S.N.R.

Albert S. Stone
Albert S. Stone, Ens., U.S.N.R.

Enclosure (1)

Figure 14–1b. Standard form, continued. Statement of accused.

STATEMENT OF CARL DOLE, MAIL SPECIALIST FIRST CLASS,
U. S. NAVAL RESERVE

1 APRIL 1945.

On or about March 4, 1945, at 1000 or 1100 at the rear end of Ship's Company Post Office, U. S. Naval Section Base, Bar Harbor, Maine, a man came up to me and asked if my name was Dole and whether I was in charge of the post office. I told him I was, and he said, "I would sure like to get in Ship's Company badly," and "I have worked in the post office in Los Angeles." I explained that our men were recruited as mail specialists. He then said, "Well, Dole, I'll make it worth your while if you get me into Ship's Company." I told him I couldn't accept anything, that all I expected of the men was that they do their work. I said that there was a lot of work to do. He said he would work long hours. I explained I didn't want one man to work longer than the others. He then stated again, "Well, Dole, I'll make it worth your while, and what I mean is that I'll really make it worth your while." He said, "I would go as high as five hundred dollars." I told him as I had before that I didn't want anything, but merely expected a man to do his work. He then said, "Well Dole, I'd even go so far as to give you my automobile." He said, "I'll tell you why I want to get in there so badly. My wife's ex-husband is a convict and is getting out of San Quentin. I'm afraid he'll kill my wife and baby while I'm gone." He said, "I'm going on a nine days' leave today, and I'll stop and see you when I get back." As he was leaving he said, "Oh, you don't know my name?" I said, "Well, your dog tag is hanging out from under your undershirt." He then walked away.

On March 15, about 1100 he came back again and stood at the back door until he got my attention. He said "Have you done anything about that?" I said, "No, I haven't." He said, "I'd sure like to get in there and will make it worth your while." Then he said, "We can have someone act as our go-between," or words to that effect. This made me suspicious and made me think that there might be subversive activity involved—especially in relation to confidential mail. So, I told him, "No, there would be nothing I could do about it." Then he said, "Well, if you change your mind, let me know," and walked away.

Carl Dole
Carl Dole,
Mail Specialist, First Class, U.S.N.R.

Witnesses:

John R. Kays
John R. Kays, Lt. (jg), U.S.N.R.

Albert S. Stone
Albert S. Stone, Ensign, U.S.N.R.

Enclosure (2)

Figure 14–1c. Standard form, continued. Statement of witness.

U. S. NAVAL SECTION BASE,
Bar Harbor Maine

1 April 1945

From an examination of Arthur Bonn, seaman first class, U. S. Naval Reserve, I am of the opinion that he is physically fit for retention in the service.

Charles W. Reid
Charles W. Reid,
Lieutenant, Medical Corps, U. S. Naval Reserve.

Enclosure (3)

Figure 14–1d. Standard form, continued. Statement of medical officer.

SPECIMEN CHARGE AND SPECIFICATION

CHARGE

Bribery

SPECIFICATION

In that Arthur Bonn, seaman first class, U. S. Naval Reserve, while so serving on active duty on board the U. S. S. Colorado, did, on or about March 4, 1945, at the U. S. Naval Section Base, Bar Harbor, Maine, with the intent and for the purpose of therein and thereby bribing one Carl Dole, male specialist first class, U. S. Naval Reserve, the navy mail clerk of said section base, offer and promise to pay the said Dole the sum of five hundred dollars ($500) and to give to the said Dole an automobile, if he, the said Dole, would aid in procuring and accomplishing the transfer of him, the said Bonn, from his station and duty on board said ship to the station force of said section base for duty at the Navy post office, the United States then being in a state of war.

Enclosure (4)

Figure 14–1e. Standard form, continued. Specimen charge and specification.

CERTIFIED TRANSCRIPT OF SERVICE RECORD

AND

COPY OF PAY ACCOUNT

Enclosure (5)

Figure 14–1f. Standard form, concluded. Certified transcript of service record and pay account.

U. S. NAVAL RECEIVING STATION
New York, N. Y.

14 June 1945.

From: Commanding Officer.

To: Commandant, Third Naval District.

Subject: Recommend trial by general court-martial in the case of Peter John Salazar, S1c, USNR.

Ref.: (a) BuPers circ. ltr. 46–43.

1. It is recommended that Peter John Salazar, seaman first class, U. S. Naval Reserve, be brought to trial before a general court-martial on the following charge: Absence from station and duty after leave had expired—one specification.

2. From the investigation which I have made, I believe the following to be the facts:

Peter John Salazar, seaman first class, U. S. Naval Reserve, surrendered at 0130, 11 June 1945, to the office of the Officer of the Day at this station after having been AOL from this command since 0730, 10 April 1945, a period of sixty-one days and eighteen hours.

3. Subject-named man is being transferred to the U. S. Naval Disciplinary Barracks, New York (Hart's Island), N. Y., the nearest naval activity having a permanent general court-martial, to await trial.

G. T. McCord
G. T. McCord,
Captain, U. S. Navy.

Encls.
(1) Statement of Medical Officer.
(2) Copy NAVPERS Form 641, dated 11 June 1945.
(3) Service record and copy of pay account of Peter John Salazar, S1c, USNR.

Figure 14–2a. Simplified form, general court-martial recommendation.

RESTRICTED

U. S. NAVAL RECEIVING STATION
New York, N. Y.

13 June 1945

From an examination of Peter John Salazar, seaman first class, U. S. Naval Reserve, I am of the opinion that he is physically fit for retention in the service.

Arthur R. Woodridge

Arthur R. Woodridge,
Lieutenant, Medical Corps, U. S. Naval Reserve.

Enclosure (1).

Figure 14–2b. Simplified form, continued. Statement of medical officer.

RESTRICTED

REPORT OF RETURN OF STRAGGLER OR DESERTER
NAVPERS-641 (REV. 11-44)

URGENT

U. S. Naval Receiving Station,
New York, N. Y.
(Place)
11 June 1945.
(Date)

FROM: COMMANDING OFFICER

TO: COMMANDANT, NAVAL DISTRICT

I HAVE TO REPORT THAT

NAME IN FULL (Last)	(First)	(Middle)	RATE	(Check one)	SERVICE No.
SALAZAR,	Peter	John	S1c	☐ USN ☒ USNR	000 00 00

WAS (Check one)	(Check one)	AT PLACE	TIME	DATE IN FULL
☐ Delivered to	☐ Naval Guard			
☐ Apprehended by	☐ Civil Authorities			

AND WAS		THIS		TIME	DATE IN FULL
☐ Delivered on board	☒ Surrendered on board	☐ Vessel	☒ Station	0130	11 June 1945

AS A (Check one)	FROM (NAME OF SHIP OR STATION)	(Check one)	TIME	DATE IN FULL
☒ Deserter	U. S. Naval Receiving Station, New York, N. Y.	☒ AOL		
☐ Straggler		☐ AWOL	0730	10 April 1945

NOTE: *Descriptive List (NAVPERS-680) made from examination since arrival on board is appended.*

DISPOSITION MADE:

TRANSFERRED (Check one)	NAME OF COMMAND
☐ Under guard ☐ Orders to	Retained on board this station.

COST OF HIS PERSONAL TRANSPORTATION $ none

NOTE: This item has been checked against his accounts and credited to appropriation "Pay, subsistence, and transportation, Navy."

HAS REWARD BEEN PAID?	IF NOT, STATE ALL THE FACTS
☐ Yes ☒ No	Surrendered.

NAME OF NEXT OF KIN	RELATIONSHIP
Anthony C. Salazar	Father

PRESENT ADDRESS OF NEXT OF KIN
206 Java Street, Brooklyn, N. Y.

WHEREABOUTS OF SERVICE RECORD, PAY ACCOUNTS, AND EFFECTS (*See NOTE below*)
On board this station.

NOTE: *Enter all available information which may lead to the location of service record, pay accounts, and effects.*

G. T. McCord
G. T. McCord, Captain, U. S. Navy, COMMANDING

INSTRUCTIONS:

1. *AOL or AWOL and date must be obtained from absentee upon return.*
2. *This form shall be prepared in quintuplicate and all copies signed and submitted on day man reports by first naval activity (regardless of size or location) to which man first surrenders or is delivered subsequent to an absence. It must be submitted on day of occurrence as follows in every case of a returned straggler or deserter.*
   (a) *Signed original to the Commandant of the District in which man returns to naval jurisdiction.*
   (b) *Signed copy to the Bureau of Naval Personnel (with Form NAVPERS-680 attached).*
   (c) *Signed copy to the activity or command from which man is absent.*
   (d) *Signed copy to the activity or command to which man is transferred for disposition.*
   (e) *Signed copy for file.*
   (f) *If absent from ship, signed copy to receiving ship or station nearest port where the man missed ship.*
3. *Enter on reverse side of this form (over signature of reporting officer) any additional data pertinent to this man's case and which will give the Bureau better knowledge of his status.*
4. *It is of utmost importance that date, hour, and place of first contact with naval authorities be clearly stated.*
5. *This form to be prepared, signed, and mailed as directed above on date man surrenders or is delivered.*
6. *Original and duplicates must be signed.*

U. S. GOVERNMENT PRINTING OFFICE 16—42560-1

Enclosure (2)

Figure 14–2c. Simplified form, continued. Form NAVPERS 641.

SERVICE RECORD

AND

COPY OF PAY ACCOUNT

Enclosure (3)

Figure 14–2d. Simplified form, continued. Service record and copy of pay account.

15. EVIDENCE

A. INTRODUCTION

15A1. Evidence defined. Evidence is that which tends to prove or disprove any matter in question, or to influence the belief respecting it. It includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved; also that which is legally submitted to a court, to enable it to decide upon the questions in dispute, or the issue, as pointed out by the pleadings, and distinguished from all comment and argument.

15A2. Nature and purpose of rules of evidence. Like civil courts, naval courts-martial are required to determine the cases before them according to the evidence, that is, solely on the basis of matters introduced before them at the trial and facts of which the court may take judicial notice. Evidence must be presented in open court. If courts were allowed to decide on information they obtained from other sources, their decisions might be based on mere rumor or opinion. The information which can be introduced before a court upon which to base its decision and the method of presenting it are governed by rules of evidence. From experience, the courts have determined that certain kinds of evidence are too untrustworthy even to be considered. Rules of evidence have therefore been developed excluding such kinds of evidence. No statute, other than Articles 29, 60 and 68, *AGN*, lays down rules of evidence to govern naval courts and boards. The rules governing such are made by the Navy Department and are published in *Naval Courts and Boards, 1937*, and in court-martial orders. These rules, in so far as the naval service is concerned, have the force of law and are binding upon naval courts and boards. If a question of evidence which cannot be determined by a reference to the above rules confronts a court, it should then look to the rules of evidence applied by the Federal Courts and follow them if applicable.

15A3. Summoning witnesses. The written instrument that serves to summon a witness who is in the naval service is termed a *summons;* a witness who is not in the service, a *subpoena.* Within jurisdictional limits, a general court-martial may compel the attendance of civilian witnesses, whereas a summary court-martial or deck court may not. In the case of a general court-martial, the subpoena *commands* the witness to appear at a certain time and

UNITED STATES
v.
John Amos Smith, seaman first class, U. S. Navy } Request to Appear

THE PRESIDENT OF THE UNITED STATES TO JAMES B. HENRY:

You are requested to appear as a witness for the prosecution, at 10 o'clock a.m., June 15, 1945, before a summary court-martial of the United States, convened at the U. S. Naval Section Base, Bar Harbor, Maine, by an order of the Commanding Officer of said section base, dated June 10, 1945.

You are further requested to bring with you this precept, and depart not the court without leave.

Witness: Lieutenant Commander Arthur B. Cain, U. S. Navy, senior member of the said court, this 12th day of June, 1945.

Raymond L. Hackett,
Lieutenant (junior grade), U. S. Navy,
Recorder.

Figure 15–1. A request for a civilian witness to appear before a summary court-martial.

place, as a witness for the prosecution, or defense, as the case may be, and also recites the penalty (a fine and/or punishment) in the event of noncompliance. Although a summary court-martial may not compel attendance of civilian witnesses it may request attendance, and the form of subpoena furnished in Appendix F-12, *Naval Courts and Boards, 1937*, for the general court-martial may be utilized by substituting the word *requested* for the word *commanded* and omitting reference to the penalty for noncompliance, as shown in Figure 15–1.

15A4. Depositions. A deposition is the testimony of a witness, put, or taken down, in writing, under oath or affirmation, before an officer empowered to administer oaths, in answer to interrogatories and cross-interrogatories submitted by the party desiring the deposition and the opposite party. An affidavit differs from a deposition in that it is taken *ex parte* and offers the opposite party no opportunity to cross-examine the maker thereof. An affidavit, therefore, is not admissible in evidence for the purpose of proving the subject matter with which it deals, whereas a deposition, if properly taken and introduced, is so admissible.

The method of procedure in obtaining a deposition is as follows: The party, prosecutor or defendant, desiring the deposition submits to the court a list of interrogatories to be propounded to the absent witness. The opposite party, after he has been allowed a reasonable time for this purpose, then prepares and submits a list of cross-interrogatories. After the court has assented to the interrogatories and cross-interrogatories thus submitted, it adds whatever in its judgment, may be necessary to elucidate the whole subject of the testimony to be given by the witness. Depositions may also be taken before the court assembles by mutual agreement between the recorder (judge advocate) and the accused (counsel), subject to objections when read in court. The provisions of Sections 211-217, inclusive, Chapter 3, *Naval Courts and Boards, 1937*, and Article 68, *AGN*, prescribe the rules of law governing the taking and introducing of depositions in naval courts-martial. Figures 15–2 and 15–3, respectively, illustrate the forms for interrogatories and a deposition which might be used in a summary court-martial trial.

15A5. Scope of text. Full instruction in the substantive law and rules of evidence is not within the scope of this text. This chapter deals with only some of the rules commonly encountered in trials. Because of this limitation, reference must be had to *Naval Courts and Boards, 1937*, for further study. To facilitate such reference and to enable citation at trial, the headings of the paragraphs hereafter include appropriate section references to the basic manual. The headings are alphabetically arranged according to the subject matter contained thereunder and are grouped into four divisions as follows: B. Evidence in General; C. Documentary Evidence; D. Intent; E. Proof.

INTERROGATORIES

UNITED STATES

v.

John Amos Smith, seaman first class, U. S. Navy

The following interrogatories and cross-interrogatories to be propounded under article 68 of the Articles for the Government of the Navy (34 U. S. Code 1200, art. 68), to James B. Henry, residing at Augusta, Maine, a witness for the prosecution (defense) in the above-entitled case now pending and to be tried before the summary court-martial convened by an order of the Commanding Officer, U. S. Naval Section Base, Bar Harbor, Maine, dated June 10, 1945, are accepted by the court in open session, the defense (prosecution) having been given reasonable opportunity to submit cross-interrogatories (or are agreed upon by both parties in advance of the assembling of the court and subject to exceptions when read in court), and are respectfully forwarded to the Commandant of the First Naval District with the request that some suitable officer may be designated to take, or cause to be taken, the deposition of the said witness thereon:

First interrogatory: Are you in the United States Navy? If yes, what is your full name, rank, and vessel or station? If no, what is your full name, occupation, and residence?

Second interrogatory: Do you know the accused? If yes, how long have you known him?

Third interrogatory: .....?

Etc.

First cross-interrogatory: .....?

Etc.

First interrogatory by the court: .....?

Etc.

Dated on board the U. S. Naval Section Base, Bar Harbor, Maine, June 12, 1945.

Arthur B. Cain,
Lieutenant Commander, U. S. Naval Reserve,
Senior Member of the Court.

Raymond B. Hackett,
Lieutenant (junior grade), U. S. Naval Reserve,
Recorder.

(Or if taken in advance of the assembling of the court, the signatures should be those of the recorder and the accused thus:)

Raymond B. Hackett,
Lieutenant (junior grade), U. S. Naval Reserve,
Recorder.

John Amos Smith,
Seaman first class, U. S. Navy.

Figure 15–2. Form of interrogatories for summary court-martial deposition.

DEPOSITION

James B. Henry, the witness above named, having been first duly sworn by me, Lieutenant Thomas A. Downey, U. S. Navy, in charge of U. S. Naval Recruiting Station, Augusta, Maine, doth depose and say for full answers to the foregoing interrogatories, as follows:

To the first interrogatory: .....

Etc.

To the first cross-interrogatory: .....

Etc.

To the first interrogatory by the court: .....

Etc.

James B. Henry

Subscribed and sworn to before me this 13th day of June, 1945.

Thomas A. Downey,
Lieutenant, U. S. Navy,
in charge of U. S. Naval Recruiting Station,
Augusta, Maine.

Figure 15–3. Form for summary court-martial deposition.

As a further aid during trial, Article 15A6 provides a concise alphabetical index of the rules herein discussed and the appropriate authority therefor in *Naval Courts and Boards, 1937*.

15A6. Reference index for rules of evidence.

Article in Naval Justice	Subject Headings	Section in Naval Courts & Boards
	A. Evidence in General	
15B1	Admissions	182 to 186, incl.
15B2	Character evidence	164
15B3	Circumstantial evidence	143 to 145, incl.
15B4	Competency and relevancy of evidence	160 to 162, incl.
15B5	Confessions	174 to 181, incl.
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	B. Documentary Evidence	
15C1	Authentication	199
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15C13	Voluminous documents	195

C. Intent

D. Proof

B. EVIDENCE IN GENERAL

15B1. Admissions; Sections 182 to 186, incl., NCB. In many instances an accused has made statements which fall short of being acknowledgments of guilt, but which, nevertheless, constitute important admissions as to his connection or possible connection with the offense charged. Likewise, any voluntary statement by one accused of or suspected of crime, relating to some particular fact or circumstance and not the whole charge, which indicates a consciousness of guilt and tends to connect him with the crime charged and to incriminate him is admissible as an admission against interest. An *admission* is something less than a *confession* (See Article 15B5), as it acknowledges only some particular fact or circumstance, pertinent to the issues and tending to prove guilt in connection with other circumstances, while a *confession* covers the whole transaction, admitting guilt.

Admissions in open court. An admission in open court, when such admission is voluntarily made by the accused or by his counsel in his presence and with his express or implied authority, is a judicial acknowledgment of the matter admitted and dispenses with the necessity of evidence to establish it.

By conduct. Admissions may consist of conduct, such as flight, concealment, destruction, or fabrication of evidence, bribery, or even of silence.

By silence. The silence of a party when he would naturally be expected to speak may be evidence against him. It must be shown that the accused heard, or was in a position to have heard, the statements against him, and the circumstances must have been such as naturally and reasonably to have called for a reply from him.

Admissions against others engaged in a joint criminal undertaking. Admissions of one joint conspirator are available against the others. Only where such statements fall within the *res gestae* rule (See Article 15B14) could they be admissible for the defense. The acts and statements of a conspirator, however, made after the common design is accomplished or abandoned, are not admissible against the others, except acts and statements in furtherance of an escape. It is immaterial whether such acts or statements were made in the presence or hearing of the other parties. They are binding upon all parties if they are in furtherance of the common design. Foundation must first be laid by either direct or circumstantial evidence sufficient to establish prima facie the fact of conspiracy between the parties, unless the recorder (judge advocate) states that the conspiracy will later appear from evidence to be adduced. While in Federal courts and courts-martial corroboration of the testimony of a co-conspirator, or accomplice need not be required, yet from the character of the associations formed, the uncorroborated testimony of a co-conspirator or accomplice should be received with great caution.

15B2. Character evidence; Section 164, NCB. Character evidence is of two types, namely: (1) that introduced before the finding and tending to prove the guilt or innocence of the accused and (2) that which is introduced after the finding and which is, strictly speaking, not evidence but is more properly termed matter in mitigation.

Referring to (1), the accused may introduce evidence of his good character but this must be confined to the accused's general reputation in the community in which he is known and must relate to those traits which are brought into question by the charges under which he is being tried. The prosecution may not evidence the doing of the act charged by invoking the accused's bad character but, the accused having first offered evidence of his good character, the prosecution may then offer evidence in rebuttal under the same limitations as to any other kind of evidence.

Matter in mitigation, referred to in (2) above, has for its purpose the lessening of the punishment to be assigned by the court or the furnishing of grounds for a recommendation to clemency. As thus offered it has a wide latitude and is not, as in (1), limited to the general good character of the accused nor to the nature of the charge. Such matter may include particular acts of good conduct, bravery, etc., and may exhibit the reputation or record of the accused in the service for efficiency, fidelity, subordination, temperance, courage, or any of the other traits that go to make a good officer or enlisted man.

15B3. Circumstantial evidence; Sections 143 to 145, incl., NCB. Direct evidence tends directly to establish a fact in issue; circumstantial evidence tends to establish a fact from which the fact in issue can be inferred.

Evidential value of circumstantial evidence. Circumstantial evidence is not an inferior or secondary kind of evidence. It is frequently better than direct evidence. Its weakness lies in the fact that circumstances may be very strong against an innocent man. In a case depending on circumstantial evidence, the court, in order to convict, must find the circumstances to be satisfactorily proved as facts, and must also find that these facts clearly and unequivocally imply the guilt of the accused and cannot reasonably be reconciled with any hypotheses of his innocence.

Illustrations of good and bad circumstantial evidence. In a case where the accused is charged with stealing clothes from the locker of another man, the following circumstances would not be admissible as circumstantial evidence by the prosecution: (1) The accused is very much disliked by his shipmates. (2) A number of thefts have taken place on board the ship, and the general belief in the ship is that he was connected with them. (3) He was tried once before for larceny of clothes and was convicted. (4) He is suspected of being a deserter from a foreign navy. (5) He belongs to a race or enlisted in a locality that does not entertain very strict notions of right and wrong as to the manner of acquiring possession of property.

But the following series of circumstances should be admitted in evidence: (1) The clothes were taken while the owner was at drill, and there was no one known to have been around the locker. (2) The accused was not at drill, but was detailed as mess cook. (3) He was absent from his duty as mess cook a short while during the time when the clothes disappeared. (4) One of the articles stolen was found in the locker of the accused. (5) The accused was known to be without money the day before the larceny, and that evening left the ship with a bundle under his arm and was seen to enter a certain house, and the same night had money in his possession. (6) Upon the house being searched next day most of the missing clothes were found there. (7) The person found in the house identified the accused as the one from whom he had purchased the missing clothes.

15B4. Competency and relevancy of evidence; Sections 160 to 162, incl., NCB. Evidence to be admissible must be satisfactory from two standpoints: (1) the standpoint of subject matter, and (2) that of form. *Relevant evidence* is evidence the subject matter of which relates to the issues, and in a court-martial this means that to be admissible the evidence must tend to prove or disprove the guilt of the accused. The relationship of the evidence to the question of the guilt of the accused must be sufficiently close to warrant consuming the court's time in hearing it. *Competent evidence* is evidence complying with the rules of law as to form, irrespective of subject matter; it is evidence offered in a form that the courts will admit.

Degree of relevance required. The degree of relevance required depends largely on each particular case. Roughly the principle may be stated that those matters are admissible which are not trivial and which are more

likely to help toward the correct decision of the issues of fact than to mislead. Matters which have only a slight or conjectural bearing on the issues are inadmissible, especially if such as may create prejudice. A close relation between the evidence and the issues should be at all times enforced.

Evidence of similar facts. When the analogy is so close that differences are practically eliminated, evidence of similar facts may be allowed. If *A* were arrested for breaking the speed limit, evidence that he had on that same day broken the speed limit at a point a mile away would be inadmissible. But evidence that he was going fifty miles an hour at another point close to the one in question a moment before would be admissible if there were no crossing or obstruction between the two points. There is a reasonable probability that the speed was maintained. Thus, also, in a case involving drunkenness it cannot be shown that the accused was often drunk at prior times (except in rebuttal of the accused's evidence to the contrary), but it may be shown that he had been drinking a short time before that specified.

15B5. Confessions; Sections 174 to 181, incl., NCB. A confession is an acknowledgment of guilt. If admissible, corroborated, and believed, nothing further is necessary for a finding of guilt. A confession, strictly speaking, is hearsay. However, it may be repeated in evidence by a person hearing it if it was given voluntarily.

It must be affirmatively shown that the confession was entirely voluntary on the part of the accused. A confession is, in a legal sense, *voluntary* when it is not induced or materially influenced by hope of release or other benefit or fear of punishment or injury inspired by one in authority, or, more specifically, where it is not induced or influenced by words or acts, such as promises, assurances, threats, harsh treatment, or the like, on the part of an official or other person competent to effectuate what is promised, threatened, etc., or at least believed to be thus competent by the party confessing. And the reason of the rule is that where the confession is not thus voluntary there is always ground to believe that it may not be true. Statements, by way of confession, made by an inferior under charges to a commanding officer, recorder (judge advocate), or other superior whom the accused could reasonably believe capable of making good his words upon even a slight assurance of relief or benefit by such superior should not in general be admitted. Thus in a case where a confession was made to his captain by a man upon being told by the former that if he did so, "matters would be easier for him," or "as easy as possible," the confession was held not to have been voluntary and therefore improperly admitted. And it has been similarly ruled in cases of confessions made by men upon assurances being held out or intimidation resorted to by noncommissioned officers. Confessions made by enlisted men to officers or petty officers, though not shown to have been made under the influence of promises or threats, etc., should, yet, in view of the military relations of the parties, be received with

caution. The above principles apply to a written confession as well as to an oral one. In some cases before courts-martial it appears that the accused has signed a paper confessing his guilt, stating in the paper that he confesses freely without hope of reward or fear of punishment, etc. Such statements are not conclusive that the confession was voluntary. Evidence to the contrary may be introduced. If the evidence shows that the statement was not in fact voluntary, it should not be considered by the court.

A confession must be offered in its entirety. A confession must be offered in its entirety, so that the accused receives the benefit of having all of his statements construed together to reach their full and actual meaning. But this rule only applies to all the statements made at a single interview or in a single document; statements made by the accused at a separate time or in another document need not be used.

Confessions and the corpus delicti. An accused may not be convicted on his extrajudicial confession alone. It must be corroborated by independent evidence. This evidence, however, need not be such as alone to establish the *corpus delicti* beyond a reasonable doubt; it is sufficient if, when considered in connection with the confession, it satisfies the court beyond a reasonable doubt that the offense was committed and that the accused committed it.

That the evidence of the *corpus delicti* should be introduced before a confession is good practice, but the court in its discretion may determine the order of evidence. Thus, within the discretion of the court, a confession may be received, subject to being stricken out upon failure subsequently to prove the *corpus delicti.*

Court decides admissibility. The burden is upon the side wishing to introduce a confession to show that it was voluntarily made. Evidence should be introduced to establish the conditions under which a confession was made, and, where facts shown by preliminary examination are conflicting, the question of whether the confession was voluntary is for the court to decide.

Examples of voluntary and involuntary confessions. A confession is voluntary and admissible though elicited by questions put to a prisoner by a constable, magistrate, or other person, even though the questions assume the prisoner's guilt.

The commandant of a naval district obtained a confession from an accused person by promising that, if the accused would confess his guilt, he would urge the Department to mitigate such sentence as might be adjudged by the general court-martial which was to be convened in the accused's case. It was held that this confession was inadmissible since it was not voluntary in the legal sense of the word.

Any information obtained through a confession is admissible. Although the confession may not be admissible, if any information given in it leads to the discovery of facts which can be proved by other evidence, these facts may be shown. Thus, in a prosecution for murder, evidence of the discovery in a certain place of the remains, money, or clothing of the deceased, or of

the weapon by which he was killed, with so much of an involuntary confession as relates directly to such facts, is admissible.

Confessions obtained through artifice are admissible. The employment of any artifice or fraud not calculated to produce an untrue statement in obtaining a confession does not render it inadmissible.

Warning or caution not essential. The fact that a voluntary confession was made without the accused having been warned or cautioned that it might be used against him does not affect its admissibility. The better course, however, where the confession is made to a superior officer, is to require proof that he understood the confession was entirely voluntary and was not influenced by promises or threats.

15B6. Double questions; Section 278, NCB. Double questions are questions embodying two or more separate elements or questions, and should never be permitted. For example, the question, *Did you see the accused leave his quarters with a bundle under his arm* is, besides being leading, a double question. It consists really of three questions, namely: (1) Did you see the accused? (2) If so, was he leaving his quarters when you saw him? and (3) if so, did he have a bundle under his arm? Manifestly the witness may have seen the accused at the particular time in question and yet not have seen him leave his quarters and not have seen him with a bundle under his arm; or he may have seen him leave his quarters but without a bundle under his arm, or he may have seen him with a bundle under his arm but not leaving his quarters; or, again, he may have seen him (either leaving his quarters or otherwise) with a bundle, but not under his arm. Each of these various circumstances may very possibly have a material bearing on the case. The injustice of such a question, both to the witness and to the accused, and its misleading effect, is apparent from a consideration of the fact that if the witness be required to answer *yes* or *no* to such a question, which requirement may be insisted on in cross-examination to a question that may properly be so answered, he may, for instance, answer *no*, meaning simply that the accused, when he saw him, did not have a bundle under his arm, or perhaps meaning that although he saw the accused with a bundle under his arm, he was not then in the act of leaving his quarters. But the negative answer may be construed as a complete denial of having seen the accused at all. On the other hand, if he should answer *yes*, he might mean simply that he saw the accused at the time, or saw him leaving his quarters, whereas his answer would be construed as meaning that he not only saw him, but also leaving his quarters, and with a bundle under his arm. Such a question must never be permitted to be asked of a witness at any time or under any circumstances.

15B7. Expert testimony; Sections 229 and 230, NCB. In cases involving questions requiring for their solution a knowledge of some specialty, the opinions of qualified experts in such specialty may be given in evidence.

Such opinions are admissible for the reason that they are based upon experience and knowledge which is beyond that of the average member of a court. But the rule permitting the admission of *expert testimony* is subject to certain limitations. Before a witness can testify as an expert he must qualify as such. The burden of so qualifying a witness rests upon the party introducing him as an expert. But the mere fact that a person who witnessed a certain act, which is a violation of the law, happens to be a professional man, does not constitute him an expert when he testifies as to his observation of the act. In addition to qualifying as an expert, the necessity for his appearance must be established before his opinion should be received. A court may not permit an expert witness to be present during the trial and ascertain the facts directly from the evidence.

The opinion of an expert witness may be obtained by means of a hypothetical question, and in putting such a question, facts may be assumed which there is evidence on either side tending to establish, but the facts must be stated without comment. While a hypothetical question must not assume facts outside of the evidence, it need not necessarily take into account all the testimony. Each party usually considers only his own evidence in framing his hypothetical questions, and this is entirely proper. The other party may, on cross-examination, put a hypothetical question to the same witness based on the evidence of his witnesses contradicting the other. While an expert witness may be allowed to assume facts, as above, to be true in order to base an opinion thereon, it remains for the court, in the last analysis, to determine whether such facts are true. The law, therefore, allows an expert to state an opinion upon an assumed state of facts, but does not permit him to express an opinion upon the specific question whether or not, upon the evidence, the accused is guilty, for this is the very question that the court is sworn to determine upon its own opinion.

1588. Hearsay evidence; Sections 168 to 173, incl., NCB. Hearsay evidence is secondhand evidence. It is evidence that rests, in part at least, upon the credibility of others, and not upon what a witness knows himself. The term may be used with reference to that which is written as well as that which is spoken. The general rule is that hearsay evidence is not admissible.

Why hearsay evidence is objectionable. Hearsay evidence is objectionable, first, because it is not original evidence; second, the real witness is not testifying in court under the sanction of an oath; and, third, the accused has no opportunity to be confronted with the witness against him or to exercise his right of cross-examination.

Hearsay evidence distinguished from original facts. It does not necessarily follow that all evidence in respect to *what a witness had heard* is hearsay. Such evidence may constitute original facts, directly bearing on the issue, and as such be original. For example, when an accused is charged with having spoken certain words, the testimony of a witness to the effect

that he had heard the accused speak the words in question is original and not hearsay evidence. So also a writing may be *hearsay* if offered to prove the fact stated therein, and yet be admissible if offered for another purpose. The distinction must be clearly kept in mind.

Illustrations of hearsay.

1. A man is being tried for desertion. *A* is able to testify that *B* told *A* that the accused told *B* that he (the accused) intended to desert at the first opportunity. *A's* testimony is hearsay and is inadmissible.

2. A man is being tried for larceny of clothes from a locker. *A* is able to testify that *B* told *A* that he (*B*) about the time the clothes were stolen saw the accused leave the quarters with a bundle resembling clothes. Such testimony from *A* would be hearsay and would be inadmissible.

3. A man is being tried for selling clothing. Policeman *A* is able to testify that, while on duty as policeman, he saw the accused with a bundle under his arm go into a shop; that he (the policeman) entered the shop and the accused ran away and the policeman was unable to catch him. The policeman the next day asked the proprietor of the shop what the accused was doing there, and the proprietor replied that the accused sold him some clothes issued by the Government and that he paid the accused $2.50 for them. The testimony of the policeman as to the reply of the proprietor would be hearsay and would be inadmissible. The fact that the policeman was acting in line of his duty at the time the proprietor made the statement would not render the evidence admissible.

In the foregoing instances the fact that the accused said he intended to desert, that the accused left the quarters with a bundle, and that the accused sold the proprietor the clothes, constitute most important evidence and can be proved in the first two instances by *B*, and in the third instance by the proprietor, but they can not be proved by hearsay evidence.

Hearsay not admissible merely because made officially. If evidence is hearsay the fact that it was made to an officer in the course of an official investigation does not make it admissible. For instance, in illustration (1) of the preceding paragraph, if *B* had made his statement to *Captain C* in the course of an official investigation by *Captain C*, the statement would still be hearsay and inadmissible.

Official statement and opinion as to either guilt or innocence expressed by an officer, as, for instance, a commanding officer, in an endorsement, is not admissible in evidence by reason of its official character or the rank or position of the officer making it, as it would be hearsay. Nor is such a statement or opinion evidence because it is among papers referred to the recorder (judge advocate) with the charges. It would be irregular to permit such statements or opinions to come to the attention of the court. If they do become known to the court they should, of course, not be considered in arriving at a finding or sentence.

Exceptions to the hearsay rule. The principal exceptions to the hearsay

rule likely to be met in the administration of naval law are as follows: admissions (see Article 15B1), confessions (see Article 15B5), dying declarations (see Section 188, *Naval Courts and Boards, 1937*), pedigree evidence (see Article 15B12), and *res gestae* (see Article 15B14).

15B9. Judicial notice; Section 309, NCB. The evidence introduced in the trial is supplemented by facts of which the court takes judicial notice; that is, by facts which the court knows to be true without any evidence to prove them. Courts should take judicial notice of:

1. Facts forming part of the common knowledge of every person of ordinary understanding and intelligence, such as qualities and properties of matter; well-known scientific, historical, physiological, and geographical facts; time, days, and dates; the composition and use of articles in common use; the character of a weapon as deadly or not; nature of familiar games and terminology thereof; existence, appearance, and value of money; well-known facts as to the characteristics of animals in general but not of a particular animal; language, words and phrases, well-known slang expressions, and abbreviations.

2. Matters which are so easily ascertainable in authentic form that the court may readily inform itself by reference to some authentic, accessible source of information, such as the name of the present United States ambassador to Italy; the time of sunrise on a given day from the Nautical Almanac, etc.

3. Matters which the court is bound to know as a part of its own special duty and function, such as the United States Constitution, treaties, and statutes, and the statutes of the State, Territory, District of Columbia, or possession of the United States within which the court is sitting; Navy regulations, general orders, and bureau manuals, including the Marine Corps Manual; the organization of the Navy Department, of United States fleets, and the names of officers connected therewith in the higher positions; prices of articles furnished by the Government when published in general orders; court-martial orders; official drill books; general orders of the command in which the court is sitting, etc.

Matters of which courts may take judicial notice need neither be charged nor proved. Where the court entertains any doubt as to the propriety of taking judicial notice of a fact, it should require it to be proved like any other fact.

A court may not take judicial notice of a foreign law, or of a law of another State, etc., than that within which the court is sitting. The existence of such law is a question of fact which must be proved by competent evidence the same as any other fact; that is, the purport or the actual wording of the law must be introduced into the evidence, and it must be further shown that the law or regulation was in force at the time when the alleged act in violation thereof took place.

The proper way to have the court take judicial notice of a fact not carried in mind by all intelligent men is for the party desiring it to request that the court take judicial notice, for example, of "2 *U. S. Code* 118," and to furnish the court at the time with an official or otherwise trustworthy copy thereof.

15B10. Leading questions; Sections 275 to 277, incl., NCB. On the examination in chief, leading questions are generally improper. A leading question means, as its name indicates, one which leads the witness up to the desired answer; that is, one which is put in such a way as to suggest to the witness the answer which is expected or wanted. There is no particular form which will make a question leading, or will save it from being such. The fact that the question is put so as to require a categorical answer does not necessarily make it leading, though it may do so; nor does the fact that the question is prefaced by *whether or not,* so as to avoid a categorical answer, save it from being leading. A question is not necessarily leading because it may be answered *yes* or *no.*

Illustrations of leading questions. The question, *State whether or not you, in substance or effect, addressed the defendant as one of those concerned in the transaction,* is clearly leading and is also a double question. It was then changed to, *How did you address the defendant in respect to his being one of the persons concerned?* and still held to be leading. The question, *Did you hear the accused say he did not intend to come back?* is leading. The proper form would be, *Did the accused say anything?* If the answer is in the affirmative, the interrogator may add, *State what he said.* On a knife being introduced into evidence a witness should not be asked on direct examination, *Is this the knife you saw the accused stab deceased with?* He should first be asked whether he recognizes the knife, and if he answers that he does, then he may be asked where he saw it before, and what was done with it.

When leading questions are allowed. Leading questions are allowed:

1. To abridge the proceedings the witness may be held at once to points on which he is to testify. The rule as to leading questions is not applicable to that part of the examination of the witness which is purely introductory. For example, in a desertion case where the accused admits that on a certain day at a certain place he was apprehended as a deserter by a policeman, the latter on the stand may have his attention directed at once to the occasion by such a question as whether at a certain time and place he arrested the accused as a deserter. The witness having answered the question in the affirmative, in the next question he might properly be asked to state the details connected with the arrest. So in a case of disobedience of orders where there is no dispute that the alleged disobedience took place at a certain time and place, and that it involved certain persons, the witness might properly be asked whether he was present at the place where and time when

the accused was placed in arrest by a certain officer for not carrying out a certain order. The witness having answered in the affirmative, he may be asked to state all the circumstances.

2. When the witness appears to be hostile to the party calling him or is manifestly unwilling to give evidence.

3. When there is an erroneous statement in the testimony of the witness, evidently caused by want of recollection, which a suggestion may assist, as, for instance, where he misstates a date or an hour.

4. Where, from the nature of the case, the mind of the witness cannot be directed to the subject of the inquiry without a particular specification of it, as where he is called to contradict another witness who has testified that the accused made a certain statement on a certain occasion in the hearing of a number of enlisted men.

5. In order to expedite the trial, if this will not prejudice the rights of the accused, or the prosecution.

6. By the court, in its discretion, when necessary to elicit facts.

15B11. Opinion evidence; Sections 224 to 228, incl., NCB. It is a general rule of law that inferences are for the jury or the court and that witnesses must confine themselves to facts and to matters within their own knowledge.

Distinction between fact and opinion. The general distinction between fact and opinion is that a fact is something cognizable by the senses, whereas opinion involves a mental operation. What a witness thinks in respect to matters in issue is a matter of opinion and he cannot state it.

Exceptions to the rule that witnesses cannot state opinions. There are three principal exceptions to the general rule excluding opinion evidence. These exceptions are as follows: (1) opinions arising from facts of daily observation and experience forming the basis of conclusions of fact; (2) opinions as to handwriting; (3) opinions of experts.

Opinions which are practically instantaneous conclusions drawn from numerous facts within the daily observation and experience of a witness are admissible. In this class are opinions, based upon the demeanor or appearance of a person, as to his sanity, sobriety, identity, or resemblance to another, his physical condition; or his temperamental condition, whether cool or excited, and the like. Any intelligent witness may testify as to his opinions of this character, which are merely conclusions of fact drawn from matters of everyday occurrence.

When there is a question as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the supposed writer, to the effect that it was or was not written or signed by him, is admissible in evidence. A person is deemed to be acquainted with the handwriting of another person when he has, at any time, seen that person write, or when he has received documents purporting to have been written by

that person in answer to documents written by himself, or under his authority and addressed to that person, or when in the ordinary course of business documents purporting to have been written by such person have been actually submitted to him. In any proceeding before a court or judicial officer of the United States where the genuineness of the handwriting of any person may be involved, any admitted or proved handwriting of such person shall be competent evidence as a basis for comparison by witnesses, or by the jury, court, or officer conducting such proceeding, to prove or disprove such genuineness.

In regard to the third exception indicated above, to wit, opinions of experts, see Article 15B7.

15B12. Pedigree evidence; Section 187, NCB. A man may testify to his own age, although his testimony must be clearly hearsay. Likewise, any fact of family history such as birth, parentage, relationship, marriage, age, etc., or the date or place thereof, is admissible, as a matter of general family repute.

15B13. Real evidence; Sections 231 and 232, NCB. Real evidence is a term applied loosely to indicate objects of all sort material to the issue, or almost any kind of evidence, except the testimony of witnesses or writings. Common instances are the weapons with which crimes are committed, articles stolen, and, in general, all objects which are relevant to the case. When objects, such as buildings, cannot themselves be exhibited, photographs are admissible. If necessary or advisable, in order better to understand testimony given, the court may adjourn to the scene of the crime. In such a case the accused and his counsel must be present, and the court should take no testimony on the scene, and should allow no statements in the nature of testimony to be made further than is necessary to point out places already referred to in testimony given.

In general, the same rules apply to real evidence that apply to verbal testimony. Primarily, it must be relevant. It must throw some light on the issues. Thus it is proper in a case of assault and wounding to allow the witness to show the wound or scar resulting.

15B14. Res gestae; Sections 189 and 190, NCB. *Res gestae* consists of involuntary exclamations made contemporaneously with the main occurrence, and inspired by sudden excitement or fright. It has been defined to be declarations of the individual made at the moment of a particular occurrence, when the circumstances are such that we may assume that his mind is controlled by the event, and may be received in evidence, because they are supposed to be expressions involuntarily forced out of him by the particular event and thus have an element of truthfulness which they might otherwise not have. For declarations on this ground to be admissible, they must not have been mere narratives of past occurrences, but must have been made at the time

the act was done which they are supposed to characterize, and have been well calculated to unfold the nature and quality of the acts they were intended to explain, and to so harmonize with them as to constitute a single transaction. Examples are threats or declarations of the accused in connection with his commission of the crime that indicate his intent or knowledge; declarations or exclamations of a party injured that go to indicate the nature of the violence and the parties responsible; language of accomplices; cries of bystanders; facts; circumstances, and declarations showing premeditation and preparation for the crime. All such may be established by the testimony of persons who heard the utterances, etc. All such declarations and statements must be made so near in time to the principal transaction as to preclude the idea of deliberate design or afterthought in making them, but it is not essential that they should have been made in the presence or hearing of the accused. Nor does it matter that the party making them would be incompetent to testify in the case. For instance, the statements of a wife under such circumstances would be admissible against her husband. Where the crime committed is the culmination of a series of acts, such as in riots, etc., the *res gestae* rule applies to all acts and declarations of the rioters and bystanders that would tend to indicate purpose, motive, etc.

The *res gestae* is considered as an act connected with, or an incident of, a main transaction, and not as testimony. As soon as it assumes the character of a narration, rather than a spontaneous exclamation, and there is probable ground for belief that it was inspired by a desire to influence the case, it is inadmissible as falling under the hearsay rule. The application of the rule of *res gestae* is not limited strictly to circumstances and occurrences contemporaneous with the principal facts at issue, nor with the transactions leading up to the principal facts, but would extend to a case of identification, as when, for instance, a party who has seen the commission of a crime and afterwards sees the accused and spontaneously identifies him by some such exclamation as "There's the man that did the killing," although such statement as to identification may have been made days after the principal act was committed.

The following examples illustrate what constitute the *res gestae*: Where a man is charged with murder, manslaughter, or assault, and the person against whom the violence is offered is another man, and the wife of the former, while walking with the latter, exclaims, *Run, here comes my jealous husband and he will kill you!* her exclamations would be admitted as part of the *res gestae*. If the man had then fled to his house pursued by her husband, and she had followed to deter him from injuring the other man and later had run from the house shouting, *My husband is killing Jones!* or *has just killed Jones!* her exclamations would be admissible as constituting part of the *res gestae*. If a party in the next room had heard a shot and then a voice that he recognized as Jones's say, *You shot me for revenge and nothing else*, the declaration would be considered as a part of the *res gestae*.

C. DOCUMENTARY EVIDENCE

15C1. Authentication; Section 199, NCB. Every document or other writing offered in evidence must be authenticated; that is to say, its genuineness must be proved. This may be proved like any other fact, by calling a witness who saw it executed, or to testify as to handwriting. It may also be done under the exception to the hearsay rule for official documents, as where a notary's certificate of an absent party's acknowledgment is used, or where an official copy by the custodian is used. In all such cases of the use of official documents proof of authenticity is facilitated by the presumption of genuineness which attaches to an official seal or signature, with recital of the official title of the person signing. No further evidence of authenticity is needed, where this presumption applies, unless the other side rebuts it. This does not apply, however, where the document appears on its face as of doubtful veracity. It is proper to call witnesses to show that a writing offered in evidence is not competent in that it cannot be relied upon owing to the way it was prepared, or for any other reason that may render it incompetent. Also it may be shown that entries in a document have been made by unauthorized persons, or that the document is a forgery. The party producing a document which has been altered in a part material to the question in dispute, and which appears to have been altered after its execution, must satisfactorily account for the appearance of the alteration before the document will be received in evidence.

15C2. Best evidence rule; Section 194, NCB. This rule, briefly, forbids secondary evidence of the contents of a writing so long as the original is unaccounted for. Exception is made, however, where it is satisfactorily shown that the original has been lost or destroyed without fault of the party offering the evidence. When the door is thus opened to secondary evidence it may be of any kind available. A copy of the original would be the best, but verbal testimony as to the contents would be admitted from a person who had knowledge of the document. Where the original is in the possession of the party against whom the evidence is offered and the latter fails to produce it after reasonable notice, either a duly authenticated copy, or *parol evidence* by someone knowing the contents of the original, may be received.

15C3. Definition of documentary evidence; Section 192, NCB. Legal evidence is not confined to the human voice or oral testimony, but includes every tangible object capable of making a truthful statement, such latter class of evidence being roughly classified as *documentary evidence.* In oral evidence the witness is the man who speaks; in documentary evidence the witness is the thing that speaks. In either case the witness must be competent, that is, must be deemed competent to make a truthful statement, and in either case the competency of the witness must be proved before the evidence is

admitted, the difference being that in oral evidence the competency is proved by a legal presumption, and in documentary evidence the competency must be proved by actual testimony; and the further difference that in oral evidence the credit of the witness is tested by his own cross-examination, while in documentary evidence the credit of the witness is tested by the cross-examination of those who must be called to prove its competency.

15C4. Entries in the regular course of business; Section 202, NCB. Courts and boards in the Navy will be governed by the following rule of evidence laid down by the act of 20 June 1936 (28 *U. S. Code Supp.* 695): Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of said act, transaction, occurrence, or event, if it shall appear that it was made in the regular course of any business, and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but they shall not affect its admissibility. The term *business* shall include business, profession, occupation, and calling of every kind.

15C5. Hearsay rule as applied to documentary evidence; Sections 201 and 203, NCB. Where the author of a document does not appear as a witness, it remains only a hearsay statement and can be received only under some exception to the hearsay rule. Thus, in general, *ex parte* affidavits, letters from members of the family of an accused, certificates from a physician that an accused has been under medical treatment, etc., the admission of which would, in effect, permit the author to testify without submitting him to cross-examination, are mere hearsay statements and are inadmissible in evidence. Entries in books of account of a deceased person, entries in the regular course of business, and official records and certificates are the most common examples of statements admissible as an exception to the hearsay rule.

The distinction between cases in which a document is offered as evidence of the truth of the facts stated therein, and those in which it is not so offered must be recognized. As, for example, in a case where the specification alleged that certain conduct brought scandal and disgrace upon the naval service, it was held that a newspaper was properly admissible in evidence, not as evidence of the facts stated therein in regard to the conduct of the accused which must be otherwise established, but as evidence of the publicity which was given the alleged misconduct, for which purpose it was not hearsay but was the best evidence.

15C6. Introduction of documentary evidence; Section 198, NCB. When documentary evidence is offered before courts-martial, it must be in public

session of the court, and the proper procedure is as follows: The proper custodian (the recorder, judge advocate or other person properly having the document in his possession) takes the stand as a witness to identify such document; the party offering the document presents it to the opposite party and to the court for inspection and opportunity to interpose objection to its admission; and then, if there be no reasonable objection interposed, the witness reads therefrom such entries as may be pertinent to the issue. Should objection be interposed by either party to the trial, the court will rule upon the objection, and the decision of the court thereon will be final, subject to consideration by the reviewing authorities.

15C7. Letters and telegrams; Section 205, NCB. If competent (see Article 13C5) and relevant a letter or telegram is admissible. Before a letter can be received against the accused it must be shown that he wrote, dictated, or signed it. A letter written by other persons is not admissible either for or against the accused until its authenticity is established, and if written to the accused it must appear that he replied thereto or acted on its contents. These same remarks apply to a telegram. When its genuineness is shown, a telegram may be received in evidence although unsigned or not in the accused's handwriting. In court-martial cases the original telegram, and consequently the one that must be produced to satisfy the *best evidence* rule, is the one deposited at the sending office. The received copy can only be given in evidence on a showing that the original is lost, etc., as stated in Section 194, *Naval Courts and Boards, 1937.*

15C8. Offer of document in full; Section 200, NCB. Although only a part of a document may have been read to the court, or only a general result deduced therefrom may have been testified to, the document in full must have been offered and received in evidence before such testimony can be received. The opposite party is thus afforded an opportunity to call upon the witness to read such additional entries as may be pertinent to the issue, and for which the party introducing the document failed to call. Thus, if the question before the court at the time is the character of an accused, and the defense has introduced in evidence his service record from which it has been shown that the accused has an average of 4.0 in markings in sobriety, the recorder (judge advocate), by cross-examination, can require the witness to read the marks of the accused in obedience, in order to show that the accused has a number of low marks therein or that his average therein is low. In other words, the rule provides an opportunity for the court to have before it all the information contained in the document, and the party introducing it in evidence cannot pick and choose therefrom the points he desires to set forth, and suppress the remainder. However, documentary evidence offered to a court need not necessarily be a record complete in itself. For example, when, under Article 60, *AGN*, the record of the testi-

mony of a witness given before a court of inquiry, from whom oral testimony cannot be obtained, is offered in evidence before a general court-martial, the full document admissible in evidence is the record of the entire testimony of such witness before the court of inquiry and not the whole record of proceeding of such court.

15C9. Official records and certificates; exception to best evidence rule; Section 196, NCB. The law (28 *U. S. Code* 661) provides that copies of records, etc., of the Government, duly authenticated under official seal shall be admitted in evidence equally with the originals thereof.

It must be borne in mind that the mere fact that the document is an official report does not of itself make it admissible in evidence. This law merely makes copies of any records or papers in the Navy Department or any bureau thereof, or in the official files of a commander in chief, fleet, squadron, division, flotilla, or smaller unit commander, or in the official files of the commanding officer of a ship, brigade, regiment, or separate or detached battalion, or of a navy yard or naval station, if authenticated by the signature of the chief of bureau, commander or commanding officer or commandant, as the case may be, and the impressed stamp of the bureau, office, ship, etc., having custody of the originals, admissible into evidence equally with the originals thereof before any naval court or board, or in any administrative matter under the Navy Department.

The act of June 20, 1936 (28 *U. S. Code* 695e), provides that a copy of any foreign document of record or on file in a public office of a foreign country, certified by the lawful custodian, when authenticated by a certificate of a consular officer of the United States under seal, shall be admissible in evidence equally with the original in any court of the United States. This rule may be followed by a naval court-martial.

15C10. Parol evidence rule; Section 197, NCB. This rule is that the contents of a written instrument cannot be altered by oral declarations, and that evidence tending to show such alterations will not be received or heard. This rule, however, does not exclude testimony for the purpose of explaining any ambiguity in a document or of throwing light on the circumstances attending its making. Such testimony does not controvert the writing. But it cannot be used to add terms to the writing. The *parol evidence* rule is binding, of course, only on the parties to the documents.

In general, a document is prima facie only and is not conclusive evidence of the facts stated therein. The opposite party may introduce evidence to rebut it or show that the contrary is the truth.

15C11. Private documents; Section 204, NCB. It is a general rule that private documents of an *ex parte* nature, such as affidavits, are not admissible, if objected to, as evidence of the subject matter therein contained. They are

mere self-serving statements. However, an affidavit is admissible as to collateral or ancillary matters, as, for instance, to establish the loss or destruction of a document in order to prepare the way for secondary evidence, and to impeach a witness. But the original authenticated entries and writings of a person who was in a position to know the facts therein stated, made at about the time such facts occurred, are admissible as evidence of such facts under the following circumstances, provided the entrant is unavailable as a witness, as in case of subsequent death or insanity: (1) When the entry or writing is against the interest of the maker; and (2) when it was made in due course of business, in a professional capacity, or in the course of the person's ordinary and regular duties.

15C12. Registers, muster sheets, photographs, sketches, etc.; Section 206, NCB. Attendance records at any place, such as roll calls or muster sheets, hotel registers, and the like, made in the regular course of business (see Section 202, *Naval Courts and Boards, 1937*), are admissible as evidence. A stub may be admitted if identified by the person who made it out and if testified to have been correctly made and to have corresponded with the check or other writing which has been lost. A newspaper record of a ball game or other occurrence is not competent evidence. A photograph proved to be a true representation of the thing it represents is competent. The essential foundation for a photograph of a person, for instance, may be laid by testimony that it looks like that person. An X-ray photograph verified by proof that it is a true representation is admissible. An official chart is admissible as an official document. An unofficial chart or sketch, diagram, plan, or drawing, representing things which cannot be as conveniently and as clearly described by witnesses, when proved to be correct or when offered in connection with the testimony of a witness, is admissible as a legitimate aid to the court; a showing of approximate correctness is sufficient.

15C13. Voluminous documents; exception to the best evidence rule; Section 195, NCB. Where the original consists of numerous accounts or other documents that cannot be examined by the court without great loss of time, and the fact sought to be established from them is only the general result of the whole, parol evidence may be received to establish the general result without reading the records; as, for example, where an officer's official record, embracing numerous individual reports, letters, etc., is introduced to prove that he has never been reported for certain misconduct. In such a case a witness who has carefully examined the reports may be permitted to testify as to the general result; that is, that the official record contains no remarks to the effect that the accused was intemperate, etc. Likewise, where it is desired to prove from a document, such as a service record, that an enlisted man has received an average mark of 4.0 in sobriety, it is unnecessary to read all his marks under this heading, but the general result may be stated

by the witness who has examined the record. In such cases it must be shown that:

1. The writings are so numerous or bulky that they cannot conveniently be examined by the court.
2. The fact to be proved is the general result of the whole collection.
3. The result is capable of being ascertained by calculation or examination.
4. The witness is a person skilled in such matters, and capable of making the calculation or examination.
5. He has examined the whole collection and has made such a calculation or examination.
6. The opposite party has had access to the books and papers from which the calculation or examination is made.
7. Opportunity is afforded the opposite party to cross-examine the witness upon the books and papers in question, and to have them, or such of them as the cross-examiner may desire (or properly authenticated or proved copies), available in court for the purposes of the cross-examination.

D. INTENT

15D1. Criminal intent; Section 151, NCB. In respect to the element of intent, crimes are distinguished as follows: Those in which a distinct and specific intent, independent of the mere act, is essential to constitute the offense, as murder, larceny, burglary, desertion, and mutiny, etc.; and those in which the act is the principal feature, the existence of the wrongful intent being simply inferable therefrom, as rape, sleeping on watch, drunkenness, neglect of duty, etc. In cases of the former class the characteristic intent must be established affirmatively as a separate fact; in the latter class of cases it is only necessary to prove the unlawful act.

15D2. Drunkenness as showing absence of intent; Section 152, NCB. It is a general rule of law that voluntary drunkenness is not an excuse for crime committed in that condition. But the question whether or not the accused was drunk at the time of the commission of the criminal act may be material as going to indicate what species or kind of offense was actually committed. Thus, there are crimes that can be consummated only where a peculiar and distinctive intent, or a conscious deliberation, or premeditation has concurred with the act, which could not well be possessed or entertained by an intoxicated person. In such cases evidence of the drunken condition of the party at the time of the commission of the alleged crime is held admissible, not to excuse or extenuate the act as such, but to aid in determining whether, in view of the state of his mind, such act amounted to the specific crime charged; or which of two or more crimes similar but distinguished in degree it really was in law. Thus, in cases of such offenses as

larceny, robbery, burglary, and passing counterfeit money, which require for their commission a certain specific intent, evidence of drunkenness is admissible as indicating whether the offender was capable of entertaining this intent or whether his act was anything more than a mere battery, trespass, or mistake. So, upon an indictment for murder, testimony as to the drunkenness of the accused at the time of the killing may ordinarily be admitted as indicating a mental excitement, confusion, or unconsciousness incompatible under the circumstances of the case with premeditation or a deliberate intent to take life, and as reducing the crime to the grade of manslaughter. On the other hand, where, to constitute the legal crime, there is required no peculiar intent, no wrongful intent other than that inferable from the act itself, as in cases of assault and battery, rape, or arson, evidence that the offender was intoxicated would, strictly, not be admissible in defense.

15D3. Negligence; Section 153, NCB. The degree of care and caution to avoid mischief required to save from criminal responsibility, for instance, one who accidentally kills another, is that which a man of ordinary prudence would have exercised under like circumstances; mere slight negligence, with no intent to do harm, under such circumstances that it could not reasonably be supposed that injury would result, does not furnish a foundation for criminal responsibility for a resulting death. The degree of negligence necessary to support criminal liability must be gross and culpable.

15D4. Similar acts as showing intent or motive; Section 163, NCB. In cases requiring a specific intent, evidence of similar acts previously done by the accused may be admissible to show the intent or motive with which the other act was done. In an English case a man was being tried for pawning an imitation diamond as genuine. Evidence that he had shortly before tried to pawn other false articles was admitted. The rule set forth in this section is an exception to the general rule that a distinct crime, unconnected with that alleged in the specification, cannot be given in evidence against the accused. It is not proper to raise a presumption of guilt on the ground that, having committed one crime, the depravity it exhibits makes it likely that he would commit another. But where the felonious intent or guilty knowledge is a material part of the crime, as in cases of forgery, uttering false notes, fraud, etc., evidence of similar acts of the accused at different prior times, is admissible if such acts tend to prove the existence of such guilty knowledge or felonious intent. Crimes involving illicit sexual intercourse either in incest, adultery, or rape, at prior times, constitute another exception to the general rule.

E. PROOF

15E1. Burden of proof; Sections 154 and 155, NCB. The law presumes every man innocent of crime. The prosecution has in each case the burden

of overcoming this presumption. The accused's guilt must be established by substantive proof. By the plea of *not guilty* every element of the crime specified is debated, and the prosecution must affirmatively prove it, even though it be a matter of negative averment in the specification, proof of which is peculiarly within the knowledge of the accused. The burden of proof never shifts to the accused. It is immaterial that the accused sets up a defense by way of justification or excuse, as insanity, or an alibi.

In collateral issues arising in the course of the trial as to the competency of witnesses, the admissibility of testimony, and the like, the burden of proof rests upon the party who alleges incompetency or objects to the admission of particular testimony.

15E2. Burden of proceeding; Section 157, NCB. A prima facie case (see Article 15E3) has no effect on the burden of proof. It shifts the burden of going forward, or of proceeding, because if the accused does nothing he will be convicted. The burden of proceeding is sometimes loosely called the burden of proof, but is really something very different. The question for the court at the end of the trial remains, *Has the recorder (judge advocate) proved the guilt of the accused beyond a reasonable doubt?* and not, *Has the accused proved his innocence?*

15E3. Prima facie case; Section 156, NCB. *Prima facie* and *sufficient evidence* are synonymous. A prima facie case is one that is established by sufficient evidence and can be overthrown only by rebutting evidence adduced on the other side; the amount of evidence that would be sufficient to counterbalance the general presumption of innocence, and warrant a conviction, if not encountered and controlled by evidence tending to contradict it, and render it improbable, or to prove facts inconsistent with it.

15E4. Proof that the act was really committed; Section 149, NCB. *Corpus delicti*, literally *the body or substance of the crime*, may be defined in its primary sense as the fact that a crime has actually been committed. It is the general fact without which there could be no guilt, either in the accused or in anyone else, and must be established before anyone can be convicted of the perpetration of the alleged crime; otherwise, the accused might be convicted of murder, for example, when the person alleged to have been murdered was still alive, or of theft when the owner had not lost the goods, or of arson when the house had not been burned.

Usually the *corpus delicti* is evidenced before any other main fact, but this is not the mandatory rule. The court may determine the order of evidence on the general principles otherwise prevailing. Thus, in some offenses such as sodomy, uttering a forged instrument knowing it to be false, etc., the question whether a crime has been committed is frequently so intimately connected with the question whether or not the accused is guilty of the crime

charged that there can be no separation in the evidence, the proof of the *corpus delicti* depending entirely upon the acts and intent of the accused. Accordingly in such cases evidence of acts and intent, if admissible at all, are admissible at any stage of the proceedings upon the trial. The order of proof may also be varied for the convenience of the witnesses or the court.

15E5. Proof that the accused committed the act and had the requisite criminal intent at the time; Section 150, NCB. There must first be proof that the person in court as the accused is the person named in the charges and specifications. This may be established from his descriptive list or by testimony of those who know the accused by name. It must then be clearly and affirmatively shown that the person in court as the accused is the person who did the act specified and to which the testimony of the witness will refer. It must also be proved that the accused had the requisite criminal intent at the time he committed the act. In this regard see Article 15D1.

15E6. Proof beyond a reasonable doubt; Section 158, NCB. If there is a reasonable doubt as to the guilt of the accused, he must be acquitted. If there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree on which there is no such doubt. In making its finding the court must strictly observe the rule that it must reach its conclusion solely from the evidence adduced. It is not necessary that each particular fact advanced by the prosecution should be proved beyond a reasonable doubt; it is sufficient to warrant conviction if, on the whole evidence, the court is satisfied beyond such doubt that the accused is guilty.

15E7. Reasonable doubt defined; Section 159, NCB. By *reasonable doubt* is meant an honest, substantial misgiving generated by insufficiency of proof. It is not a captious doubt, not a doubt suggested by the ingenuity of counsel or court and unwarranted by the testimony, nor is it a doubt born of a merciful inclination to permit the accused to escape conviction nor prompted by sympathy for him or those connected with him. Proof beyond a reasonable doubt is not proof to a mathematical demonstration. It is not proof beyond the possibility of a mistake. A reasonable doubt is a doubt based on reason, and which is reasonable in view of all the evidence. And if, after an impartial comparison and consideration of all the evidence, one can candidly say that one is not satisfied of the defendant's guilt, he has a reasonable doubt; but if, after such impartial comparison and consideration of all the evidence, one can truthfully say that one has an abiding conviction of the defendant's guilt such as one would be willing to act upon in the more weighty and important matters relating to one's own affairs, he has no reasonable doubt. A moral certainty of guilt persuaded by the proof calls for conviction. When such has been established, a court can no more properly acquit than could it convict when there has been an insufficiency of proof.

16. THE FACT-FINDING BODIES

16–1. Purpose of investigations and courts of inquiry. Courts of inquiry and investigations, as the names signify, are primarily fact-finding bodies, and, unless specifically directed by the convening authority in the precept to express opinions or to make recommendations, will confine themselves to findings of fact. The proceedings of these bodies are in no sense a trial of an issue or of an accused person; they perform no real judicial function; they are convened solely for the purpose of informing the convening authority in a preliminary way as to the facts involved in the inquiry, and when directed, to aid him with opinions and recommendations; their conclusions are merely advisory. Convening authorities should remember that any action taken in a matter subsequent to its investigation is taken upon the initiative of the convening authority in his administrative capacity. The function of these bodies is merely to aid such officer in the performance of his administrative duties, and not to relieve him of responsibility for his administrative acts.

16–2. The administrative report. Where matters requiring investigation present little doubt as to the facts involved and there is no reason to preserve sworn testimony, administrative reports as outlined in Section 722, *Naval Courts and Boards, 1937*, should be submitted instead of convening one of the more formal investigations. An administrative report need not consist of more than a letter addressed to the Secretary of the Navy (Office of the Judge Advocate General) by the commander concerned, containing a narrative of the facts, and such opinions and recommendations as are deemed advisable, covering all the points usually contained in the report of a more formal body. To this letter may be appended as enclosures such signed statements, affidavits, photographs, etc., as are necessary to substantiate and clarify the report.

16–3. Investigation—by one officer. An *investigation* is composed of one officer and is constituted by the precept of the convening authority which should refer to 5 *U. S. Code* 93, the statutory authority therefor. Whether or not an investigation shall be by a board of officers or by one officer is entirely within the discretion of the convening authority, but in important cases where the facts are various and complicated, where there appears to be reason for suspecting criminality, or where crime has been committed with uncertainty as to the perpetrator, or where serious blame has been incurred without certainty on whom it ought chiefly to fall, a court of inquiry or a board of investigation affords the best means of collecting, sifting, and

methodizing information for the purpose of enabling the convening authority to decide upon the necessity and expediency of further judicial proceedings. An investigation may be ordered by any officer empowered to convene a court of inquiry, by the commander of a division or larger force afloat, and by the senior officer present afloat or ashore.

Sections 815 to 830, inclusive, *Naval Courts and Boards, 1937*, set out the procedural steps and a specimen record of proceedings of an investigation.

16–4. Investigation—by board of officers. A board of investigation shall ordinarily consist of three officers as members. A separate recorder need not be named on a board of investigation if there is no likelihood of there being any defendants. In such cases, the junior member acts as recorder. A board of investigation may be ordered by any officer empowered to convene a court of inquiry, by the commander of a division, or larger force afloat, and the senior officer present afloat or ashore. The question as to who is the senior officer present is one of fact.

Sections 782 to 814, inclusive, *Naval Courts and Boards, 1937*, set out the procedural steps and a specimen record of proceedings of a board of investigation. The procedure when a board performs the functions of an inquest is illustrated in Section 788, variation (11), *Naval Courts and Boards, 1937*.

16–5. The court of inquiry. A court of inquiry shall consist of not more than three commissioned officers as members and of a judge advocate, or person officiating as such. A court of inquiry has power to compel the attendance of civilian witnesses, and should be convened or requested where testimony of civilians will likely be desired. The proceedings of a court of inquiry may under certain conditions be evidence before a court-martial; otherwise, there is no vital distinction in the power or effectiveness of a court of inquiry and an investigation, and the question of which to convene is entirely within the discretion of the convening authority. Courts of inquiry may be convened by the President, the Secretary of the Navy, the commander of a fleet or squadron, and by any officer of the naval service authorized by law to convene general courts-martial.

Sections 739 to 781, inclusive, *Naval Courts and Boards, 1937*, set out the procedural steps and a specimen record of proceedings of a court of inquiry.

16–6. Determination of the appropriate investigative procedure. The attention of the service has been invited to the desirability of saving paper work as well as the time and effort of personnel through the use of administrative reports in appropriate cases, instead of the more formal investigations. Types of cases which should ordinarily be covered by courts of inquiry or boards of investigation are specified in Sections 723 to 726, inclusive, *Naval*

Courts and Boards, 1937, as follows: (1) Loss of life from accident or under peculiar circumstances. (2) Serious casualties to or deficiencies in ships. (3) Accidental explosions in which ammunition or other explosives are destroyed. (4) Loss or stranding of a ship of the Navy. (5) Collision with a merchant ship.

The following general principles may be applied to determine which of the investigative procedures to employ in any case: (1) Convening authorities have broad discretion in determining which of the investigative procedures should be employed (see Section 720, *Naval Courts and Boards, 1937*). (2) An administrative report is permitted where there is no doubt as to the facts of any particular incident or occurrence and no reason why sworn testimony should be preserved (see Section 722, *Naval Courts and Boards, 1937*). (3) Administrative reports should be used generally, except where there is loss of life or personal injuries resulting from an accident under unusual circumstances; or where the facts connected with the occurrence are various and complicated; or where a crime has been committed; or where there is reason to suspect criminality; or where serious blame has been incurred.

When it has been determined that the facts should be reported, a complete administrative report will be fully as satisfactory as a more formal record in cases of accidents, property damage, injuries, fires, loss of equipment and similar cases where: (1) the occurrence is within the contemplation of Sections 720 and 722, *Naval Courts and Boards, 1937;* or (2) the ultimate facts and evidence which could be developed by more formal proceedings would be identical with those which could be contained in an administrative report. Although no exact form is prescribed for an administrative report, Figures 16-1 and 16-2 indicate a style which may be utilized. Whatever style is used, the findings of fact should be recorded as such and the opinions as such. Matters of opinion should not be stated in the findings of fact nor should findings of fact be stated in the opinions.

Not even an administrative report is required in the case of minor injuries and misadventures of daily occurrence not within the purview of any of the investigative procedures, such as sickness, death from enemy action or natural causes, death or injury to civil service or contractors' employees when U. S. naval personnel or property are not involved, and those matters normally covered by routine reports or forms to appropriate bureaus. Regardless of whether formal or informal investigative procedure or a routine report is made, in any case involving potential civil claims against the Government for either personal injury or property damage, appropriate instructions will be issued to insure: (1) that whatever form of report is chosen will fairly present all the facts relevant to the issue of civil liability; and (2) that the question of civil liability be not confused with the question of whether or not disciplinary action should be taken against any naval personnel involved.

U. S. NAVAL SECTION BASE
San Diego, California

9 September 1944

From: Commanding Officer.

To: Secretary of the Navy (Office of the Judge Advocate General).

Via: Commandant, Eleventh Naval District.

Subject: HILL, Albert Carl, 000 00 00, S1c, USNR—Report of death.

Ref: (a) Naval Courts and Boards, Secs. 720 and 722.
(b) SecNav ltr. (A17-24(411008)(D)), 21 March 1942.

1. This report is submitted in accordance with references (a) and (b).

2. The following facts are established by enclosure (1), enclosure (2), records and other evidence available at this activity.

(a) Albert Carl Hill, seaman first class, U. S. Naval Reserve, was transferred to this activity from the U. S. S. Delaware on 2 August 1942.

(b) On 24 August 1944 about 2:35 p.m., while in a status of absence over leave from this command, Hill was struck by a truck on 58th Place between Collins and 6th Streets, Los Angeles, California. As a result thereof he sustained injuries which resulted in instant death. The truck was operated by Fred Smith, a civilian, who first saw Hill sitting in a doorway about 40 feet south of Collins Street and later saw him get up and stagger south on 58th Place in a manner to indicate that he was intoxicated. Smith had been parked on 58th Place unloading articles from the truck. As Hill approached Smith's truck he waited for him to pass. He then started his truck. But after going a few feet forward, felt the right rear wheel of his truck rise in the air and then hit the pavement. He stopped the truck at once, got out and found Hill lying on the street. Navy Shore Patrol responded to call and arrived at 2:50 p.m. Hill's body was lying in the middle of the roadway, head to south and feet pointing north. Identification was established by the U. S. Navy Shore Patrol. The body was removed from the scene of the accident by ambulance to the Los Angeles City Central Police Station and from there to the Los Angeles County Morgue where further identification was made. At a civilian inquest in Los Angeles, California, it was held that the driver of the truck was not intoxicated and was absolved from blame by the Coroner's jury. At this inquest it was also revealed that an autopsy had indicated a sufficient amount of alcohol in Hill's blood to produce intoxication.

3. The following opinions are supported by the available evidence.

(a) As a result of the accident above described and the injuries sustained Albert Carl Hill, seaman first class, U. S. Naval Reserve, died on 25 August 1944, at or about 2:35 p.m., not in the line of duty and not as a result of his own misconduct.

Figure 16–1a. Specimen administrative report; accidental death while AOL.

RESTRICTED

(b) The accident was apparently caused by the deceased's failure to exercise reasonable caution. However, there is no evidence of actual misconduct and neither the unauthorized absence nor the intoxication can be held to be the proximate cause of Hill's death.

(c) Subject to the foregoing, the accident which resulted in the death of Hill was not a result of violation of law or naval regulations, and was not caused by the intent, fault, negligence or inefficiency of any person in the naval service or connected therewith.

H. M. Smythe

H. M. Smythe,
Captain, U. S. Navy,
Commanding Officer.

Encls.
1. U. S. Navy Shore Patrol File re subject death dated 30 August 1944.
2. Copy of Page 9 entry in subject man's service record.

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Figure 16–1b. Specimen administrative report, concluded.

U. S. S. DELAWARE

15 April 1945.

From: Commanding Officer.

To: The Secretary of the Navy (Office of the Judge Advocate General).

Subject: WILLIAMS, Jesse Clark, 000 00 00, S2c, USNR—Death of.

Ref: (a) Naval Courts and Boards, Secs. 720 and 722.
(b) SecNav ltr. (A17-24(411008)(D)), dated 21 March 1942.

1. This report is submitted in accordance with references (a) and (b).

2. The following facts are established by enclosures (1) to (5), inclusive, records and other evidence available aboard this ship:

(a) Jesse Clark Williams, seaman second class, U. S. Naval Reserve, was inducted into the U. S. Navy on 1 March 1944, at Boston, Massachusetts, thereafter voluntarily enlisting after induction into the U. S. Naval Reserve for a period of two years. He was transferred to this ship on 6 November 1944 for duty.

(b) At approximately 0500, 10 April 1945, Isaac Hudson, S1c, USNR, discovered subject-named man suspended from the starboard deck rail of the ship, outboard, by means of a half-inch line, one end of which had been knotted around his neck and the other end secured to the rail. Hudson immediately notified the petty officer on watch and Williams was brought on deck and removed immediately to the sick bay where he was examined by Lieutenant Dewey A. Hollis, (MC), USNR, and pronounced dead from strangulation. According to Lieutenant Hollis' opinion, death occurred approximately at 0445.

(c) Williams was last seen alive by Jack Warren, BM2c, USNR, at approximately 0430, when Warren observed him walking aft along the deck in the direction of the spot where his body was later discovered. At the time, Williams was alone and made no reply when a greeting was addressed to him by Warren. There were no eyewitnesses to the act which resulted in Williams' death.

(d) Investigation developed that during a period of approximately one month prior to his death the decedent was antisocial in his demeanor and refused to take part in the ship's recreational program. Insofar as can be determined, he was not in domestic or financial difficulty and his health record reflects no physical disqualification. His conduct during his entire enlistment period has been 4.0 and his proficiency has been slightly above average. None of Williams' shipmates have heard him voice any complaints or make any statements which would assign a motive for his actions.

3. The following opinions are supported by available evidence:

(a) As a result of respiratory strangulation, Jesse Clark Williams, seaman second class, U. S. Naval Reserve, died on 10 April 1945 at approximately 0445.

Figure 16–2a. Specimen administrative report; suicidal death.

(b) The cause of decedent's death was self-inflicted with suicidal intent.

(c) The evidence discloses no motive for suicide which can be held to be reasonable or adequate. In the absence of such evidence it has been held in C.M.O. 1–1943, p. 103, that the act of suicide itself overcomes the normal presumption of sanity. The evidence further discloses no positive evidence of sanity. It has further been held in C.M.O. 1–1941, p. 148, that mere lack of acts indicating insanity is not sufficient to support a finding that the deceased was sane. Therefore, the presumption of the Navy Department that no sane man would take his own life without reasonable or adequate motive is not controverted and the death of Jesse Clark Williams, seaman second class, U. S. Naval Reserve, is held to have been incurred in the line of duty and not as a result of his own misconduct.

(d) Subject to the foregoing, the incident aforesaid which resulted in the death of Williams was not the result of a violation of law or Navy regulation and was not caused by the intent, fault, negligence, or inefficiency of any person in the naval service or connected therewith.

John B. Compton
John B. Compton,
Captain, U. S. Navy.
Commanding Officer.

Encls. HW:
1. Certificate of Death (NMS Form N).
2. Statement of Isaac Hudson, S1c, USNR.
3. Statement of Jack Warren, BM2c, USNR.
4. Statement of Oliver W. Horne, CBM, USN.
5. Statement of Cecil M. Thompson, S1c, USNR.

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Figure 16–2b. Specimen administrative report; concluded.

16–7. Manner of requesting the convening of investigations or courts of inquiry. Activities requesting the convening of investigations or courts of inquiry should furnish the convening authority as soon as practicable with: (1) a succinct and brief account of the incident which will include when and where it occurred and the circumstances of death or injury, if any; (2) full name, service number, rating (or rank) and station of individual under investigation, injured or deceased; (3) full names, service numbers, ratings (or ranks) and stations of any parties defendant or interested parties; (4) full names and ranks of officers nominated as members of the courts or boards and of the judge advocate or recorder.

Unless prevented by the exigencies of the service, the activity concerned should nominate to the convening authority the investigating officer, or the members of the board or court, and the recorder or judge advocate, and state that necessary clerical assistance will be furnished. Where there is loss of life from accident under peculiar circumstances, the medical officer should be nominated as a member of the board or court.

16–8. The precept of an investigation or court of inquiry. The precept of a court of inquiry or investigation shall, in addition to naming the membership thereof and setting the time and place of meeting, state clearly and concisely the matter that is to be investigated, and shall give explicit instructions as to what the report of the court or investigation shall include and as to any other matters of procedure deemed necessary. Neither the record of an investigation previously held in reference to the same subject matter nor official opinions of any kind shall be attached to or made a part of the precept. Such records or papers may, however, as a separate matter, be sent to the judge advocate or recorder for the purpose of assisting him to bring out all the facts in regard to the matter under investigation. The precept shall also specifically name as defendants and interested parties all persons who appear to be such from the outset. The convening authority should cause to be notified the complainant and persons who appear to be defendants and interested parties from the outset of their right to be present during the investigation. A confirmation copy, signed by the convening authority, is required when the court or investigation is convened by dispatch. In addition to the above, the precept, or letters to an investigating officer, shall refer to the statutory authority therefor.

Unless the power is expressly given by the convening authority in the precept, investigations will take no testimony under oath. When such power is given by the convening authority, however, all testimony shall be taken under oath.

16–9. The composition of a board of investigation or court of inquiry. The composition of a court of inquiry or board of investigation, both in regard to rank of members and the corps to which they belong, shall be regulated

by the circumstances to be investigated. The number of officers to constitute such bodies is within the discretion and judgment of the convening authority, who must consider the importance of the matter to be investigated and the availability of officers for the purpose. When important material under the cognizance of one of the material bureaus of the Navy Department is involved, an officer especially trained or experienced in such material shall, whenever practicable, be appointed a member. In case the conduct or character of an officer may be implicated in the investigation, no member of the court or investigation shall, if practicable, be his junior in rank; and should such officer not be of the line, it is proper, if the exigencies of the service permit, that one or more officers of the corps to which he belongs be detailed for duty on the court or investigation. If it can possibly be avoided, no officer shall be named as a member who has personal knowledge of the subject matter of the investigation. An officer who is ordered to duty as a member and who knows or has due reason to believe that he will be designated as a defendant should immediately so advise the convening authority, and upon receipt of such information such officer should be relieved from duty on said body.

Whenever, in the judgment of the convening authority, it may be necessary or desirable, a counsel to the judge advocate may be appointed. A separate recorder need not be named on a board of investigation if there is no likelihood of there being any defendants. In such case the junior member acts as recorder.

16–10. Clerical assistance, interpreter, and orderly. The provisions for courts-martial with respect to clerical assistance and services of interpreters govern a court of inquiry or investigation. At the request of the judge advocate or recorder, the commanding officer of the immediate command within which the body is to sit shall direct an orderly to attend upon its meetings and execute its orders.

16–11. Rule of assembling. Courts of inquiry and investigations shall assemble at the place and, as nearly as practicable, at the time named in the order convening them, but may adjourn, when desirable, to such place as may be convenient to the inquiry. The members thereof shall take their seats in the same order of rank or seniority as on courts-martial; that is, the senior member at the head or center of the table and the other members in order of rank at his right and left alternately.

16–12. Duties of president or senior member. In a court of inquiry the president administers the oath to the judge advocate and to the witnesses, preserves order, decides upon matters relating to the routine of business, such as recess, and may adjourn the court from day to day, at and to such hours as in his judgment will be most convenient and proper for the trans-

action of the business before him; but should an objection be made by any other member, a vote shall be taken with regard to it, and the decision of the majority shall govern. The same duties and responsibilities apply to the senior member of a board of investigation, except that he does not administer an oath to the recorder as there is no provision of law which authorizes the administering of an oath to a recorder of a board of investigation.

16–13. Duties of the judge advocate or recorder. The following are the duties of the judge advocate of a court of inquiry: (1) to summon all the witnesses required for the inquiry and to lay before the court a list of them; (2) to administer the oath or affirmation to the members; (3) to record the proceedings and to make up the record; (4) to conduct the examination of witnesses; (5) to assist in systematizing the information received, to minute in the proceedings the opinion and recommendation, if called for, and to render such assistance as will enable the court or investigation to lay all the circumstances of the case before the convening authority in a clear and explicit manner; (6) in conjunction with the president, to authenticate the proceedings by his signature. In general, he is the prosecutor and is responsible for bringing out all the facts.

The same duties and responsibilities apply to the recorder of a board of investigation, except that he does not administer an oath to the members of the board as there is no provision of law which authorizes the administering of an oath to the members of a board of investigation. In case the junior member of a board of investigation is acting as recorder (a recorder not having been designated in the convening order), he will not act in any sense as prosecutor, but the board will act in an unbiased manner to obtain all pertinent information available.

16–14. General rules and procedure. Courts of inquiry and investigations are usually cleared until the order constituting them and the instructions contained therein are read and the mode of procedure has been decided upon. The judge advocate or recorder does not withdraw when the court or investigation is cleared. Whether the investigation shall be held with closed or open doors must depend on the nature of the matter to be investigated, and, if not specified by the convening authority, must be decided by the court or investigation. The fact that the investigation is held with closed doors can not work to exclude parties to the inquiry and their counsel. The body may be cleared at any time for deliberation, whereupon the parties and their counsel will withdraw. Clearing the court may be dispensed with under the general principles of Section 373, *Naval Courts and Boards, 1937.*

Boards of investigation, although they shall collect material information from apparent or known facts, or from written evidence which they may possess, and shall record the declarations of persons examined before them, will not take testimony under oath except in important cases in which the

precept expressly states that such board is authorized to administer oaths in accordance with the provisions of 5 *U. S. Code* 93, in which case all testimony shall be taken under oath.

When a board of investigation is not required by its precept to take testimony under oath, the record of such board cannot be introduced as evidence in subsequent proceedings, except as provided in Section 222, *Naval Courts and Boards, 1937.* Therefore, a wider latitude is permissible and the rules of evidence need not be strictly observed; the function of such board being solely to obtain information for the convening and higher authority. The same rule applies to an investigation not under oath made by an investigation officer or clerk.

Reading of precept. After the mode of procedure has been decided upon, the complainant and defendants, if any, must be called before the court and the precept read to them by the judge advocate or recorder.

Need not meet daily. Courts of inquiry and investigations need not meet from day to day, but have power to adjourn for such period as may be necessary without requesting permission of the convening authority. When the suspension of business is from one part of a day to another part of the same day it should be recorded as a recess; when from one day to another, as an adjournment.

Challenges. Parties to an inquiry have the right to challenge any member, as set forth in Sections 561 and 562, *Naval Courts and Boards, 1937.*

Members must determine according to the evidence. The oath taken by the members of a court of inquiry requires them to examine and inquire *according to the evidence* the matter before them.

Witnesses shall be examined apart from each other. It is improper for witnesses, unless they are otherwise connected with the inquiry, to hear the testimony of other witnesses. The court shall inform each witness, other than a member of the court, the judge advocate, or a party to the inquiry, immediately after the witness has been sworn, of the subject matter of the inquiry. All witnesses, except the judge advocate, a member, or a party to the inquiry shall be warned, after testifying, in accordance with the provisions of Section 297, *Naval Courts and Boards, 1937.* While it is not legally necessary that defendants should be warned that what they say may be used against them (when a witness under oath), it is desirable that in practice this be done and that they be further informed of their rights, particularly when they are without counsel.

Summoning and examination of witnesses. The summoning and examination of witnesses is conducted in the same manner as before a court-martial, except that a board of investigation and an investigation cannot compel the attendance of civilian witnesses. The attendance of such witnesses, therefore, is optional, and the subpoena for same should not include mention of a penalty for failure. Such witnesses can be subpoenaed by the recorder at Government expense only with the approval of the convening

authority, and the approval of the Secretary of the Navy is necessary to subpoena such witnesses from a distance which would require such authority if the attendance of the witnesses were desired before a general court-martial.

The judge advocate or recorder first calls witnesses; the complainant, if there be one, is then entitled, when the judge advocate or recorder rests his case, to introduce evidence; defendants may then introduce evidence, and after they rest their cases, interested parties may call witnesses. If, at the end of the testimony of the above witnesses, the court or investigation desires further information, it may call witnesses. All witnesses shall be examined in accordance with court-martial procedure; that is, the order of their examination shall be direct, cross, redirect, and recross.

When majority of members must be present. No business other than an adjournment shall be transacted unless a majority of the members be present, except when the convening authority so orders.

Attendance of members. No member shall fail in his attendance at the appointed time unless prevented by illness or some insuperable difficulty, ordered away by competent authority or excused by the convening authority, except that a short temporary absence may be allowed by the president or senior member of the court or investigation; nor shall a member leave the vicinity of the assembly place unless authorized to do so by the convening authority or his superior. In case of the absence of a member, the senior officer shall inform the convening authority of the fact, and also of the reasons for the absence, if known to him, in order that the vacancy may be filled, if deemed necessary. A member absent during the investigation of any matter or case shall not vote upon a decision with regard to it unless, if necessary to arrive at a conclusion, a reinvestigation takes place in the presence of that member and of the parties.

The record of proceedings. Instructions regarding the make-up and disposition of the record of proceedings of boards of investigation and courts of inquiry are contained in Chapter 5 of *Naval Courts and Boards, 1937.*

16–15. Parties. The parties who because of attendant circumstances may become involved in a court of inquiry, board of investigation or investigation are designated (1) complainant, (2) defendant, and (3) interested party.

Complainant. When an inquiry is ordered into facts in connection with an accusation or complaint made by any person to the convening authority, such person is known as the complainant and may be allowed to remain in court during the inquiry and make suggestions.

Defendant. A person whose conduct is the subject of investigation is a defendant. Should it appear at any time that any person in the naval service or employ not named as a defendant in the precept becomes involved in such a way that an accusation against him may be implied, it is the duty of the court or investigation to inform such person through official channels

that he is a defendant. In informing a person that he is a defendant, he shall be notified of the gist of the evidence that tends to implicate him and instructed that he will be accorded the rights of an accused before a court-martial, namely, the right to be present, to have counsel, to challenge members, to introduce and cross-examine witnesses, to introduce new matter pertinent to the inquiry, to testify or declare in his own behalf at his own request, and to make a statement and argument. He has the right of any witness to refuse to answer incriminating or degrading questions. Conversely, should it become apparent at any time that a person who has been designated a defendant is involved in an insignificant degree, he should be informed that he is no longer a defendant. No person outside of the naval service or employ may be named a defendant.

Interested party. Any person, not a complainant or defendant, who has an interest in the subject matter of the inquiry may, within the discretion of the convening authority, be designated in the precept as an interested party. Should it at any time during the course of the inquiry appear that any person not named in the precept has such interest, he may, within the discretion of the investigative body, be designated an interested party. In either case the person shall be notified that he will be allowed to be present during the inquiry, examine witnesses, and introduce new matter pertinent to the inquiry in the same manner as a defendant. The granting of these privileges to such a person may, but need not be at his own request. A person granted the privileges of an interested party may be called as a witness, but of course, cannot be required to incriminate himself. The foregoing provisions do not apply to collision cases, which are governed by Section 726, *Naval Courts and Boards, 1937.*

It should be borne in mind that the status of a party to the inquiry is at all times subject to change, depending on the evidence adduced. Thus, a person not named in the precept might be designated an interested party during the course of the inquiry, at some later stage of the proceedings become implicated in the matter under investigation in such a way as to make him a defendant thereto, and subsequently cease to be a defendant because of being involved in an insignificant degree.

If the rights of a defendant be not accorded when they should be, the record of proceeding of the court of inquiry or investigation, so far as concerns the person denied his rights, will be held of no evidential effect. This is one of the most important rules to be observed.

16–16. Right to counsel. The complainant, defendants, and interested parties before a court of inquiry or investigation have the right to the aid of counsel. Should a defendant waive his right to counsel, the president or senior member shall warn him that sworn testimony is admissible as evidence before courts-martial, as provided in Article 60, *AGN*, or the general rules of evidence, and again advise him to provide himself with counsel

informing him that counsel will be assigned him should he so desire. A statement that Section 734, *Naval Courts and Boards, 1937*, has been complied with shall be entered upon the record of proceedings in any case where an enlisted man so involved waives this right.

16–17. **Deliberations.** After all the evidence is in and statements and arguments, if any, have been received, the court of inquiry or investigation should be cleared, the proceedings read over, and the instructions contained in the convening order carefully examined and scrupulously followed.

After mature deliberation on the testimony recorded during the inquiry, the body shall proceed to report the facts, and, if so directed, an opinion or conclusion drawn from the facts and a recommendation as to what further action, if any, should be had. (A fact is an action; a thing done; a circumstance.) Unless an opinion is called for, care shall be taken to state only facts. The body must weigh the evidence and include in its findings of facts those things which it believes the evidence establishes to have been done, and nothing further. If the body recommends that further proceedings be had in the matter, it should state in its recommendations the name of the person or persons against whom, and the specific matter upon which the proceedings should be conducted, together with the nature of the proceedings.

Report shall include full statement of injuries and damage incurred. The report of the court or investigation shall include a full statement of injuries received by personnel and damages to material and an opinion regarding line of duty and misconduct in accordance with Section 723, *Naval Courts and Boards, 1937*.

Non-concurring member shall append reasons for dissent. If a member does not concur with the findings, opinion, or recommendations of the court or investigation, he shall append his reasons for dissent and subscribe his name thereto. The report shall be based on the opinion of the majority.

Proceedings to be kept inviolate. It is held to be a breach of discipline on the part of any member to disclose or publish the opinion, findings, or recommendation of the court or investigation, or of the individual members thereof, without the sanction of the convening authority.

Opinion should not be requested from an investigation. Ordinarily an opinion should not be requested of an investigation in view of the fact that but one officer constitutes such investigation.

Authentication of proceedings. The proceedings of a court of inquiry (board of investigation) must be authenticated by the signatures of the president (senior member) and the judge advocate (recorder) but only the concurring members should sign the record. In the case of a minority report the respective reports must be signed by all members of the court (board) and the record must be authenticated by the signatures of the president (senior member) and the judge advocate (recorder). The record of proceedings is then to be submitted to the convening authority for his considera-

tion, after which the court (board) may adjourn temporarily to await his further instructions.

16–18. Reviewing authority. Court of inquiry and investigation records are reviewed by the convening authority and by those officers, if any, through whom the record is forwarded (the record is forwarded through regular channels), who shall take such further action upon the matters disclosed by the inquiry as they may deem appropriate, and shall submit the proceedings to the Judge Advocate General. If any disciplinary action is taken, or will be taken by the convening or reviewing authority, a statement thereof shall be made in his action.

Recording approval or disapproval of reviewing authority. The reviewing authority may record his disapproval of the proceedings in whole or in part or may return the record to the convening authority with recommendation to the latter to change his action or to have the court revise the record. Such recommendation, however, is purely advisory. The general principles of Section 473, *Naval Courts and Boards, 1937*, apply.

Failure to accord rights of a defendant to person. In case of failure to accord the rights of a defendant to a person who should properly have been made such, the convening authority should return the record to the court or investigation for revision, and direct that in such revision these rights be accorded. If for any reason this cannot be accomplished the record of proceedings shall be referred to such person for a statement before any action on the proceedings is taken by the convening authority or other reviewing authority which reflects adversely upon such person's official record. Such statement shall be attached to and made a part of the record of proceedings.

Revision of proceedings. The proceedings of a court of inquiry or investigation may be revised as often as the convening authority may deem necessary. New evidence may be received and recorded on every such revision and any of the previous witnesses may be recalled and re-examined with a view to eliciting further information, provided that all parties to the inquiry are afforded an opportunity to be present.

16–19. Dissolution. A court of inquiry or investigation is dissolved by order of the convening authority.

16–20. Determinations to be made where there is loss of life from accident or under peculiar or doubtful circumstances. Regardless of the investigative procedure determined upon in such cases it must be determined, if possible: (1) Whether the death was caused in any manner by the intent, fault, negligence, or inefficiency of any person or persons in the naval service or connected therewith. (2) Where the decedent was in the naval service or connected therewith, whether or not death was in the line of duty and due to

misconduct (in this connection see Article 16–22), and will always find and record the facts as to the status of the deceased as to duty, authorized liberty, or otherwise.

When court or board will perform the duties of an inquest. Unless the body has been lost the court of inquiry or board of investigation will perform the duties of an inquest. The advisability of having a medical officer on the court or board in such a case is apparent. After convening, the court or board will first proceed to the place where the body may be, carefully identify it, and note the surroundings if pertinent; the court or board will summon such medical witnesses as may be advisable, including always, if possible, the doctor who performed the autopsy if one was made, or a doctor who assisted in or witnessed it, and will ascertain from them the exact condition of the body and the medical opinion of the cause of death. If homicide is indicated, the moment suspicion points toward any person, he should be accorded the rights of a defendant.

Where death occurs away from ship or station. Where death results from causes contracted away from ship or station, a transcript of testimony of a coroner's inquest or a doctor's death certificate, recorded in the country where death occurred, has proved most helpful in making the determinations called for by *Naval Courts and Boards, 1937*. Frequently a conference with a coroner will be of great benefit to the investigation officer, recorder or judge advocate, in learning the names and addresses of witnesses, statements made by them and opinion as to cause of death.

Where death results from motor vehicle accident. Where death resulted from a motor vehicle accident, the following facts, while not exhaustive, are nearly always pertinent: (1) speed of vehicle(s) involved; (2) condition of road; (3) condition of traffic; (4) traffic laws and regulations in force; (5) weather conditions; (6) mechanical condition of the vehicle(s), including brakes, steering gear, lights, tires, etc.; (7) sobriety of driver(s).

16–21. Misconduct and line of duty. Whenever death or injury has befallen naval personnel under peculiar or doubtful circumstances, as indicated in the foregoing paragraph, an opinion must be expressed as to whether such death or injury occurred in the line of duty and whether it was caused by the victim's own misconduct. The rules under which this opinion is to be made are contained in Chapter 9, *Naval Courts and Boards, 1937*, and court-martial orders. The following paragraphs reflect the decisions of the Navy Department in matters pertaining to misconduct and line of duty.

16–22. Reason for determining misconduct and line of duty. The purpose of the Navy Department's determination as to whether death was due to misconduct is to ascertain whether the gratuity statutes apply. This determination is made by the Judge Advocate General of the Navy and his ruling is final. These statutes provide for payment of an amount equal to six

months' pay (at the rate of pay to which the deceased was entitled at the time of death) to the beneficiary of a deceased whose death was not the result of his own misconduct. They apply to officers (including nurses), and enlisted personnel, both regular and reserve, Navy, Marine Corps and Coast Guard, on active duty. Whether reserve personnel are, in fact, in an active duty status at the time of their death is determined by the Navy Department. Midshipmen are officers in a qualified sense, and the gratuity statutes apply to them.

The purpose of determining whether injury or disease was due to misconduct is to ascertain whether pay should be checked, time lost should be made good, and whether a finding of not in line of duty is mandatory.

The purpose of determining the question of line of duty is to ascertain whether an honorable discharge for physical disability may be issued and whether hospitalization, pension, and other benefits apply. The Navy Department usually makes no determination of this question until it is presented in a case requiring such determination. Cases involving members of the reserve not on extended active duty in excess of 30 days, and of civilian employees are not under the jurisdiction of the Navy Department, but its opinion is frequently requested. Investigating bodies (including officers who submit administrative reports), therefore, are required to express opinions on these questions in all cases for the information of the Navy Department for possible future determination, and to aid the Veterans' Administration.

It is a legal proceeding when a formal investigation is made into the injury or death of a member of another branch of the U. S. service or of a member of a foreign service. In such cases, however, any opinion by the investigating body relating to line of duty or misconduct is inappropriate, and is not binding on the service to which the person belongs.

16–23. Misconduct. Misconduct is a wrongful act and implies a wrongful intention. The misconduct must be wilful, but wilfulness may be expressed or implied. Mere negligence or carelessness does not imply wilfulness, and is not misconduct. Negligence, to be misconduct, must be so gross and culpable as to imply a reckless and wanton disregard for the safety of life or property.

An inquiry or investigation into injury, disease, or death must determine first whether any act of wilful misconduct on the part of the victim was a proximate cause of the injury, disease, or death. Proximate cause is that cause which naturally led to and which might have been expected to produce the result. It may not be the immediate cause, but may set other causes in operation. The causes that are merely incidental or instruments of a superior or controlling agency are not proximate or responsible ones, though they may be nearer in time to the result. For example, where present disability can be traced to delay in treatment due to the negligence of others, a prior act of misconduct on the patient's part, if insufficient to cause that

disability, cannot be a determining factor. On the other hand where delay in treatment does not aggravate the patient's condition, such delay is not an intervening cause. It is only when the causes are independent of each other that the nearest is to be charged with the disability or death.

If wilful misconduct proximately causing the injury, disease, or death has been established, a finding of *not in line of duty* is mandatory, since no act of wilful misconduct can legally be committed in line of duty. If such wilful misconduct has not been clearly and convincingly established, the investigating body proceeds to determine whether or not the requirement for line of duty has been met. Such injury, disease, or death not the result of own wilful misconduct is deemed to have been incurred in line of duty when the person was, at the time, in active service in the naval forces, whether on active duty or on authorized leave, unless it appears that, at the time, he was avoiding duty by deserting the service, or absenting himself without leave materially interfering with the performance of military duties, or was confined under sentence of court-martial or civil court. If the person was not thus avoiding duty and was not confined under sentence, a finding of line of duty is mandatory, whether or not the injury, disease or death grew out of relations unconnected with the service.

16–24. Benefit of doubt. Where there are no clear and convincing facts of record showing that injury, disease, or death was due to an act of misconduct, there is a legal presumption that it was not due to misconduct. Although there may be evidence of an act of misconduct, if there is doubt whether that act was a proximate cause of the injury, disease, or death, the doubt should be resolved in favor of the victim. Even where a presumption of misconduct arises, a doubt created by rebutting evidence should be resolved in the victim's favor.

An opinion that injury, disease, or death was not due to misconduct, based upon a finding of facts on which evidence was conflicting, should be accepted by reviewing authorities although there may be a reasonable difference of opinion.

16–25. Self-defense. Where an injury is caused by the unjustified attack of another, it is not misconduct. The holding is the same where the injury is sustained by a person while defending himself against an aggressor. Even where the injured person struck first, it is not misconduct if his assumption that he was about to be attacked was not unwarranted.

Where the facts tend to indicate that the injured person was the aggressor, or that an act of misconduct on his part was the proximate cause of his injury, his statement alone that the injury was incurred in self-defense is insufficient; it must be corroborated. Where there are no facts to evidence an act of misconduct, or to rebut the injured person's contention that he was not the aggressor in the fight, a case of misconduct is not proved, and

the injury must be held not misconduct. Injury to an unjustified aggressor is misconduct, unless the injury was proximately caused by an intervening act or circumstance which could not have been anticipated as a logical result of the injured person's misconduct. If a prudent man would have anticipated the intervening act which was the immediate cause of injury, the chain of causation from the original act of aggression to the resulting injury is complete. Mere words are not justification for assault, and an injury sustained by the person who used the words is to be held not misconduct, while an injury to the assailant inflicted by the one who used the provocative words is to be held misconduct.

16–26. Authorized and unauthorized absence. The fact that a person was on authorized leave or liberty at the time of injury, disease, or death is not material either as to misconduct or as to line of duty. Mere negligence or error of judgment on the part of the man injured or killed while on leave or liberty will not change to not line of duty what would otherwise be considered line of duty. Admission to a naval hospital automatically terminates leave.

The requirement for line of duty will generally not be met if injury or disease is incurred while the person is in the status of an unauthorized absentee. If the person was avoiding duty by deserting the service, or by absenting himself without leave materially interfering with the performance of military duties, his injury or disease is considered not line of duty. It by no means follows, however, that it was due to misconduct. The unauthorized absence will seldom be found to be a proximate cause, and misconduct is to be determined in the same manner as in other cases. A finding of not line of duty and not misconduct is not inconsistent. Where an act of misconduct is a proximate cause, the board finds misconduct without regard to the unauthorized absence.

In a case where death was not the result of misconduct, the payment of the death gratuity is based upon the pay status of the deceased. Where the rate of pay, due to an unauthorized absence, is zero, however, no gratuity accrues to the beneficiary of the deceased, and the Navy Department need make no present determination of the misconduct status. Therefore, a person who begins an unauthorized absence at midnight and is killed at noon while still so absent is not paid for that day, and was in non-pay status at the time of death. The death gratuity cannot be paid in such a case. Where, however, a person begins an unauthorized absence at 0100 and is killed at noon while still so absent, he is not checked for that day, and was in a pay status at the time of death. The death gratuity is paid in such a case. Neither death, however, may be considered line of duty if, at the time of death, the deceased was avoiding duty by deserting or by absenting himself without leave where such absence materially interfered with his duties.

The place of death may be material in determining pay status. A man injured during unauthorized absence who dies after admission to a naval hospital or after return to other naval jurisdiction died while in a pay status. Admission to an Army hospital, during the progress of joint Army-Navy operations, constitutes return to jurisdiction and such a person is thereafter in a pay status.

16–27. Intoxication. To hold that intoxication resulted in an injury or death, two separate elements must be proved. First, there must be affirmative evidence of intoxication. Second, the intoxication must be a proximate cause, or at least a contributing factor, of the injury or death. Intoxication may be a proximate cause, even though there were other contributory causes. Where it sets other causes in operation, intoxication may be the proximate, though not the immediate, cause.

The mere fact that a person was intoxicated at the time of injury or death is never sufficient, by itself, to show misconduct. Theories, however probable, are not enough; the evidence must show the casual connection. Where the same kind of accident may have overtaken a sober person, the fact that the victim of the accident was intoxicated will not change to misconduct what would otherwise be considered not misconduct.

Where doubt of intoxication exists, intoxication cannot be considered a possible cause. Where intoxication is established and doubt exists that it was a proximate cause or contributing factor, the person should be given the benefit thereof in accordance with the general rule of liberal construction.

The disease caused by over-indulgence in alcoholic liquor is diagnosed as alcoholism. Evidence of over-indulgence raises a presumption of misconduct on the part of a person suffering from alcoholism. This presumption may be rebutted by the patient, but an uncorroborated statement denying over-indulgence is not sufficient to overcome evidence of over-indulgence.

The fact that the drinking of liquor was done during authorized leave or liberty does not make a disability or death resulting therefrom any the less due to misconduct because the disability or death occurred after a return to duty.

Where an intoxicated man commits an offense, the degree of intoxication may be material in determining the intent to commit the offense. If the injury was incurred in the commission of the offense, and the degree of intoxication was not sufficient to nullify the criminal intent, the injury is due to misconduct. If it was sufficient to nullify the intent, it is still misconduct unless it be shown that the injury might have been incurred by a sober person. A man has a right to defend himself, and this right is not diminished by the fact that he was intoxicated, or had been drinking in a place where drinks were illegally sold, or in a place which was out of bounds. To show misconduct in such a case, it must appear that an ordinary, prudent man in a similar situation would be bound to anticipate that his conduct would be

followed by an assault of the nature of the assault which actually was made against him.

A presumption of responsibility is raised by evidence that a person was operating a motor vehicle while intoxicated, and this presumption is not overcome by the rebutting statement of the driver alone. Unless there was an intervening cause over which the driver had no control, the intoxicated driver is guilty of misconduct.

Misconduct is an administrative determination, and is independent of the findings of courts-martial. An entry of misconduct is not changed by the mere fact that the man was subsequently tried and acquitted of a charge of drunkenness based upon the same circumstances. The facts brought out in a trial, however, may show that the medical record is in error, and the misconduct entry may then be corrected. The dismissal of charges against a man by a civil court is not binding on the Navy Department, but should be given weight in determining whether the man was, in fact, drunk at the time of his injury.

16–28. Drugs and poisons. Where injury, disease, or death results from the use of a drug for improper purposes, as for the intoxicating effect or to counteract the effects of previous indulgence in alcoholic liquor, it is misconduct. A mistake or mere error of judgment, however, in using a drug for proper medical purposes will not support a finding of misconduct.

An increasingly frequent type of case is that in which disability or death is caused by the drinking of a beverage containing a poison, usually methyl alcohol. The determination of the misconduct status often depends upon the knowledge or notice of the source of the beverage. When a person partakes of a beverage which he either knows or has good reason to suspect was obtained from an illegitimate or unauthorized source, it is presumed that he willingly assumed any and all of the natural consequences of his act. Where the circumstances are such as to put a reasonably prudent person on notice that a beverage did not come from a legitimate or authorized source, his disability or death resulting from drinking that beverage is misconduct. Without positive evidence of knowledge or reasonable notice of the nature of the source, however, a person cannot be considered to have assumed a risk, and his subsequent poisoning is not misconduct, even if he thought the mixture was intoxicating and intended by drinking it to get drunk. The mere fact that the drinking occurred in a prohibited place or in violation of orders or regulations is not, in itself, conclusive of misconduct. Disability or death in such cases is proximately caused, not by drinking an alcoholic beverage in violation of orders or regulations, but by the fact that, unaware, the person drank poison. Where evidence of knowledge or notice is not clear and convincing, the victim should be given the benefit of the doubt.

16–29. Surgical and medical treatment. The policy of the Navy Department is not to require a person to undergo a surgical operation without his consent.

In case of refusal to submit to surgery, the determination of the misconduct status depends upon whether the refusal is reasonable or unreasonable. Refusal of minor surgery deemed necessary by competent medical officers is considered unreasonable in the absence of substantial indications to the contrary. Refusal of major surgery requires careful appraisal. The age of the patient, any existing physical contra-indications, record of previous unsuccessful operations, and any special risks must be considered. The refusal may be reasonable or unreasonable, according to individual circumstances. If a board of medical survey considers the refusal unreasonable, the person may be subjected to disciplinary action. While surgery will not be performed over his protest, the continuance of his disability, even if the disability originally arose in line of duty, is considered misconduct and not line of duty from and after the time of his unreasonable refusal.

Where prescribed medical treatment is the proximate cause of disability or death, it is not misconduct even if the injury or disease for which the person was admitted for treatment was incurred as a result of misconduct. So too, if failure of timely treatment, occasioned by the medical officer's delay, resulted in an otherwise avoidable disability, such disability is not misconduct.

16–30. Violations of law or regulation. Misconduct is always an act for which the actor could have been court-martialed. It does not necessarily follow that every violation of law or regulation for which the actor could be court-martialed is misconduct. The violation, to be misconduct, must be such an act as reasonably and logically could be calculated to cause the disability or death. The term misconduct implies a wrongful intention and not a mere error of judgment or an unintentional or ignorant infraction of duty.

Where operation of a vehicle in an unlawful manner is shown to be a proximate cause of an accident, the driver is guilty of misconduct. Such violation is not to be imputed to a passenger unless an act of misconduct on his part contributed to the cause of the accident. Other violations of law, if proximate causes, have like effect. Where a law or regulation requires express permission to do a certain act, the person who fails to obtain the permission and is injured or killed in a way which it was the purpose of the law or regulation to prevent, is guilty of misconduct. An argument arising out of an illegal enterprise may be a proximate cause of injury, hence misconduct. An act which shows such gross negligence as to imply a reckless and wanton disregard for the safety of life or property is misconduct. Reckless violation of safety orders is misconduct. Failure to take proper precaution to prevent a casualty can be mere carelessness, however, hence not misconduct, and the fact that such failure is a violation of existing instructions

is not, in itself, conclusive. There are always some borderline cases where rigid formulas must fail. No definite dividing line between degrees of negligence is possible. The judgment of the investigating body must, however, be based not upon the mere fact that instructions have been violated, nor upon the resultant amenability to disciplinary action, but upon the intention, wrongful or otherwise, to be implied from all the circumstances of the case. Where the injury or death was not the natural and probable result of the violation, that violation will not support a finding of misconduct.

Many accidents are due to dangers inherent in modern traffic conditions and not to any act of misconduct. Where the cause was poor judgment, accidental mishap, violation of traffic law by the driver of the other vehicle, or negligence not amounting to recklessness, misconduct is not to be imputed to the driver.

To constitute gross negligence in falling asleep while driving, there must have been such prior warning of the likelihood of sleep that a continuance at the wheel implies a reckless disregard of the consequences. There must be an appreciation of the danger of falling asleep, or circumstances which would cause a reasonably prudent person to appreciate it, followed by a continuance at the wheel in defiance of results.

16–31. Suicide and insanity: misconduct. Before the rules applicable to suicides are applied, it must be established that the death *was* the result of an act of suicide by evidence that is clear, convincing, and inconsistent with any other reasonable conclusion. There must be evidence of suicidal intent. In case of doubt, as when the sobriety of the deceased is questionable, the death should be found the result of accident rather than of suicide. The statute under which determination of misconduct status is made necessary is a beneficial one, and should be liberally construed.

Once the fact of suicide is established, the investigating body proceeds to determine the misconduct status. Evidence of a motive is first sought. If a reasonable and adequate motive is shown by convincing evidence to have existed, the suicide is properly to be held misconduct. The deceased may have committed suicide to avoid naval duty, or impending serious disciplinary action, or ill health. In these rare cases, the deceased elected to take what appeared to him to be the easier way out of his troubles, and the suicides may be classed as sane. A note left by the deceased rationally explaining his act is evidence tending to support sanity.

There is a general rule that all persons are presumed sane until proved otherwise. The Navy Department further presumes that no sane man will kill himself unless he has a reasonable and adequate motive. When such a motive is not supplied by the evidence, the act of suicide itself overcomes the presumption of sanity. In other words, the negative evidence of absence of motive, coupled with the act of suicide, rebuts the presumption of sanity, on the theory that the act is wholly unexplained except by mental condition.

Sanity or insanity is a determination to be made and recorded by the investigating body in every case of suicide. If the finding is not unreasonable, in view of the whole of the evidence, it should not be disturbed by reviewing authorities. If the deceased was sane at the time of suicide a finding of misconduct is proper. If the deceased was insane at the time of suicide, and the insanity was not the direct result of an act of misconduct on the part of the deceased, the deceased is considered mentally irresponsible for his act of suicide, and a finding of not misconduct is proper. Where insanity is established, but this insanity was the direct result of an act of misconduct on the part of the deceased, a finding of misconduct is proper. Where the evidence raises a doubt as to sanity, the deceased should be given the benefit thereof, and his death held not due to misconduct.

16–32. Suicide and insanity: line of duty. If misconduct has been established, a finding of not line of duty is mandatory. If insanity not due to misconduct has been established, the death by suicide may have been incurred either in line of duty or not in line of duty. If the deceased was a prisoner under sentence of a court-martial or civil court, a finding of not line of duty is proper. If the deceased was in the status of an unauthorized absentee (regardless of pay status) at the time of suicide, and there is no evidence that he may have been insane at the time he began the unauthorized absence, a finding of not line of duty is proper. Insanity occurring during an unauthorized absence does not necessarily establish insanity at the time such absence began. Yet when a comparatively short time elapses between the unauthorized absence and the suicide caused by insanity or when evidence shows a history of mental disease, the presumption that the man had the requisite intent to commit the offense of unauthorized absence may be rebutted. In such a rare case, his status of unauthorized absentee would not be considered an element in determining line of duty. With this exception, however, whether the suicide was misconduct or not, the status of unauthorized absentee clearly shows not line of duty.

Where the deceased was not on unauthorized absence or confined under sentence, and his insanity was not the result of his own misconduct, the line of duty status may depend upon the medical record. If there is no record of any mental defects noted upon his entry into the service, he must be held to have been sound upon entry, and his later insanity must be found to have been incurred in line of duty. Constitutional psychopathic inferiority without psychosis is held to be insanity for purposes of determining line of duty and misconduct.

16–33. Venereal disease. Venereal disease is not misconduct unless the person fails to comply with then existing Navy regulations requiring him to report and receive treatment for such disease. This requirement does not involve prophylaxis. It refers to treatment for disease. A finding of misconduct should be made only in a case where the person knows he is suffering

with venereal disease and who fails, while in the service, to report and receive prescribed treatment. This situation cannot, of course, apply to a person who contracted a venereal disease prior to his entry into the service unless he again breaks out with the disease while in the service, and then fails to report and receive treatment if required to do so by regulations in force at that time.

When a person is to be discharged for venereal disability, the inquiry should be restricted to whether, while in the service, the person knowingly suffered with the venereal disease the sequel of which is to result in discharge, and failed to comply with any then existing regulations requiring him to report and receive treatment for that disease.

Venereal disability should be held to be in line of duty if it was contracted while in active military or naval service and not as the result of misconduct, unless the disease was contracted while the person was a deserter, absent without leave materially interfering with the performance of duties, or confined under sentence of a court-martial or civil court. For the purpose of determining an officer's eligibility for retirement for physical disability, the rule stated above applies except that the disability must not be the result either of misconduct or of vicious habits in order to be considered *service connected.*

A venereal disease contracted prior to entry into the service and resulting in disability after such entry, cannot be held service connected or line of duty, whether or not due to misconduct. Where a person was found sound upon entry, however, and no notation was made at that time relating to venereal disease, it must be presumed that a later venereal disability was the result of disease contracted after entry into the service.

The rules applicable to men are also applied to women in the service.

16–34. Time lost and checkage of pay. Pay is checked for an absence from duty for more than one day at any one time on account of the effects of a disease which is directly attributable to and immediately follows the person's own intemperate use of alcoholic liquor or habit-forming drugs. This rule does not apply to injury, as distinguished from disease, or to venereal disease. No loss of pay is involved for time lost due to pregnancy. Loss of pay for alcoholism occurs in cases of absence from duty for more than one day at a time when the following elements concurrently exist: (1) the absence must be on account of the effects of a disease; (2) the disease must be directly attributable to own use of alcoholic liquor; (3) the disease must immediately follow such use; and (4) such use of alcoholic liquor must be intemperate. Loss of pay applies equally to a person who was inducted into the service and to one who voluntarily enlisted.

Time lost must be made good by all enlisted personnel for either injury or disease, including venereal disease, which is the result of misconduct, unless the absence is one day or less. The fact that the injury or disease was

incurred prior to entry into the service does not alter the application of this rule, provided, of course, it was misconduct. An extended enlistment begins on the date found by adding to the original date of termination of enlistment the time lost in excess of one day. When a person on leave is admitted to a naval hospital, leave is terminated on the date of admission, and time lost due to misconduct begins on that date. If a person is in a misconduct status in the hospital at the time his enlistment would otherwise expire, his enlistment does not automatically terminate, even though he is denied any further pay while in that status.

When an entry of misconduct is placed in the medical record of a person he must be notified and given an opportunity to make a statement in rebuttal. Failure to make a timely statement may preclude subsequent reopening of the case to consider such statement. Where the medical officer made an entry of misconduct based upon misleading information, however, the entry in error will be corrected. Determination of misconduct status is an administrative procedure independent of a court-martial finding, and will not be changed unless the basis of the misconduct entry be shown to have been in error. The Navy Department is without authority, however, to change the character of a legal discharge after it has been executed. In any case where it is contended that a discharge which might legally have been given under certain conditions was illegal, the man must promptly assert his rights or it will be presumed that the discharge was in accordance with law.

16–35. Whether disability existed prior to entry. There is a presumption that a man was in sound condition at the beginning of his active service except as to defects officially recorded at that time, and that any disability discovered during his service was incurred in line of duty unless it was due to his own misconduct, or was incurred while he was a deserter, absent without leave materially interfering with his duties, or while confined under sentence of a court-martial or civil court. In the absence of evidence rebutting this presumption, such disability must be held to have been incurred while in active service and therefore in line of duty. The presumption may be rebutted by sufficient evidence that the cause of the present disability existed prior to entry, but the testimony of the man himself is not conclusive unless no other plausible explanation is possible. The fact that an injury which occurred prior to entry is similar to one which occurred after entry will not rebut the presumption of line of duty where no defects were found on entry.

Where the medical record shows that the disability existed prior to entry, it is not line of duty. But where an injury or disease existed prior to entry, was aggravated due to service, and then becomes a disability, such aggravation is a sufficient basis for holding line of duty.

16–36. Presumption of death. The mere disappearance of a person involves no presumption of death. A legal presumption of death arises from seven

years' unexplained absence. Evidence of a motive may rebut this presumption. If the absence is unexplained, and the evidence indicates the probability of death on the date the person was missing, the Navy Department will hold that he met his death on that date. In the absence of such indicative evidence, while the presumption of death arises, the Navy Department will not hold that the person died on the day he disappeared or on any other specific date during the seven-year period.

Where the period of absence exceeds one year, and additional information indicates loss of life, the Navy Department may declare the person dead for purposes of naval administration. In cases where evidence establishes exposure of a missing person to some impending or immediate peril which might reasonably destroy life, and in cases where the circumstances are inconsistent with the continuance of life, it is not necessary to resort to the presumption of death after seven years' unexplained absence, and prior to that time death may legally be held to have occurred.

Under the Act of 7 March 1942, the Secretary of the Navy may make a determination of death in the case of missing persons. Within the first year of the missing status, however, a determination of death must be based upon official evidence. Where such evidence is lacking, the person is carried on the rolls as missing. When no official report of death or of being a prisoner of war has been received, and whenever warranted by information received or other circumstances, the case of a person missing for twelve months is reviewed by the Secretary of the Navy, who may continue the missing status, or may make a finding of death based upon any authentic evidence. In the latter event, the death is presumed to have occurred on the day following the day of expiration of the twelve months' absence. Where the missing status has been continued upon the first review of the case, and a later finding of death is made, the presumed date of death is determined by the Secretary of the Navy according to any authentic evidence, not necessarily official, which may then be available. In the absence of a specific date of death, the date which will be accepted is the earliest date on which a person is known to be deceased.

Whenever the facts found fail to show any misconduct proximately causing death, there is a legal presumption that death was not the result of misconduct.

16–37. Boards of medical examiners, examining boards, and retiring boards. In addition to the fact-finding bodies of the Navy herein discussed, there are boards of medical examiners, examining boards, and retiring boards. Inasmuch as these boards are infrequently convened in most naval commands, they will not be considered in this text. Chapters 11 to 14, inclusive, of *Naval Courts and Boards, 1937*, present the necessary information for their constitution and proceedings.

17. APPENDIX

A. ARTICLES FOR THE GOVERNMENT OF THE NAVY

17A1. Conduct and morals in general.

Article 1. Commanders' duties of example and correction. The commanders of all fleets, squadrons, naval stations, and vessels belonging to the Navy, are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them; and any such commander who offends against this article shall be punished as a court-martial may direct.

Article 2. Divine service. The commanders of vessels and naval stations to which chaplains are attached shall cause divine service to be performed on Sunday, whenever the weather and other circumstances allow it to be done; and it is earnestly recommended to all officers, seamen, and others in the naval service diligently to attend at every performance of the worship of Almighty God.

Article 3. Irreverent behavior. Any irreverent or unbecoming behavior during divine service shall be punished as a court-martial may direct.

17A2. Offenses punishable by death.

Article 4. Persons to whom applicable. The punishment by death, or such other punishment as a court-martial may adjudge, may be inflicted on any person in the naval service—

First (*Mutiny*).—Who makes, or attempts or unites with any mutiny or mutinous assembly, or, being witness to or present at any mutiny, does not do his utmost to suppress it; or knowing of any mutinous assembly or of any intended mutiny, does not immediately communicate his knowledge to his superior or commanding officer;

Second (*Disobedience of orders*).—Or disobeys the lawful orders of his superior officers;

Third (*Striking superior officer*).—Or strikes or assaults, or attempts or threatens to strike or assault, his superior officer while in the execution of the duties of his office;

Fourth (*Intercourse with an enemy*).—Or gives any intelligence to, or holds or entertains any intercourse with, an enemy or rebel, without

leave from the President, the Secretary of the Navy, the commander in chief of the fleet, the commander of the squadron, or, in case of a vessel acting singly, from his commanding officer;

Fifth (*Messages from an enemy*).—Or receives any message or letter from an enemy or rebel, or, being aware of the unlawful reception of such message or letter, fails to take the earliest opportunity to inform his superior or commanding officer thereof;

Sixth (*Desertion in time of war*).—Or, in time of war, deserts or entices others to desert;

Seventh (*Deserting trust*).—Or, in time of war, deserts or betrays his trust, or entices or aids others to desert or betray their trust;

Eighth (*Sleeping on watch*).—Or sleeps upon his watch;

Ninth (*Leaving station*).—Or leaves his station before being regularly relieved;

Tenth (*Wilful stranding or injury of vessels*).—Or intentionally or wilfully suffers any vessel of the Navy to be stranded, or run upon rocks or shoals, or improperly hazarded; or maliciously or wilfully injures any vessel of the Navy, or any part of her tackle, armament, or equipment, whereby the safety of the vessel is hazarded or the lives of the crew exposed to danger;

Eleventh (*Unlawful destruction of public property*).—Or unlawfully sets on fire, or otherwise unlawfully destroys, any public property not at the time in possession of an enemy, pirate, or rebel;

Twelfth (*Striking flag or treacherously yielding*).—Or strikes or attempts to strike the flag to an enemy or rebel, without proper authority, or, when engaged in battle, treacherously yields or pusillanimously cries for quarter;

Thirteenth (*Cowardice in battle*).—Or, in time of battle, displays cowardice, negligence, or disaffection, or withdraws from or keeps out of danger to which he should expose himself;

Fourteenth (*Deserting duty in battle*).—Or, in time of battle, deserts his duty or station, or entices others to do so;

Fifteenth (*Neglecting orders to prepare for battle*).—Or does not properly observe the orders of his commanding officer, and use his utmost exertions to carry them into execution, when ordered to prepare for or join in, or when actually engaged in, battle, or while in sight of an enemy;

Sixteenth (*Neglecting to clear for action*).—Or, being in command of a fleet, squadron, or vessel acting singly, neglects, when an engagement is probable, or when an armed vessel of an enemy or rebel is in sight, to prepare and clear his ship or ships for action;

Seventeenth (*Neglecting to join on signal for battle*).—Or does not, upon signal for battle, use his utmost exertions to join in battle;

Eighteenth (*Failing to encourage men to fight*).—Or fails to encourage, in his own person, his inferior officers and men to fight courageously;

Nineteenth (*Failing to seek encounter*).—Or does not do his utmost to overtake and capture or destroy any vessel which it is his duty to encounter;

Twentieth (*Failing to afford relief in battle*).—Or does not afford all practicable relief and assistance to vessels belonging to the United States or their allies, when engaged in battle.

Article 5. Spies. All persons who, in time of war, or of rebellion against the supreme authority of the United States, come or are found in the capacity of spies, or who bring or deliver any seducing letter or message from an enemy or rebel, or endeavor to corrupt any person in the Navy to betray his trust, shall suffer death, or such other punishment as a court-martial may adjudge.

Article 6. Murder. If any person belonging to any public vessel of the United States commits the crime of murder without the territorial jurisdiction thereof, he may be tried by court-martial and punished with death.

Article 7. Imprisonment in lieu of death. A naval court-martial may adjudge the punishment of imprisonment for life, or for a stated term, at hard labor, in any case where it is authorized to adjudge the punishment of death; and such sentences of imprisonment and hard labor may be carried into execution in any prison or penitentiary under the control of the United States, or which the United States may be allowed, by the legislature of any State, to use; and persons so imprisoned in the prison or penitentiary of any State or Territory shall be subject, in all respects, to the same discipline and treatment as convicts sentenced by the courts of the State or Territory in which the same may be situated.

17A3. Offenses punishable at discretion of court-martial.

Article 8. Persons to whom applicable. Such punishment as a court-martial may adjudge may be inflicted on any person in the Navy—

First (*Scandalous conduct*).—Who is guilty of profane swearing, falsehood, drunkenness, gambling, fraud, theft, or any other scandalous conduct tending to the destruction of good morals;

Second (*Cruelty*).—Or is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders;

Third (*Quarreling*).—Or quarrels with, strikes, or assaults, or uses provoking or reproachful words, gestures, or menaces toward, any person in the Navy;

Fourth (*Fomenting quarrels*).—Or endeavors to foment quarrels between other persons in the Navy;

Fifth (*Duels*).—Or sends or accepts a challenge to fight a duel or acts as a second in a duel;

Sixth (*Contempt of superior officer*).—Or treats his superior officer with contempt, or is disrespectful to him in language or deportment, while in the execution of his office;

Seventh (*Combinations against commanding officer*).—Or joins in or abets any combination to weaken the lawful authority of, or lessen the respect due to, his commanding officer;

Eighth (*Mutinous words*).—Or utters any seditious or mutinous words;

Ninth (*Neglect of orders*).—Or is negligent or careless in obeying orders, or culpably inefficient in the performance of duty;

Tenth (*Preventing destruction of public property*).—Or does not use his best exertions to prevent the unlawful destruction of public property by others;

Eleventh (*Negligent stranding*).—Or, through inattention or negligence, suffers any vessel of the Navy to be stranded, or run upon a rock or shoal, or hazarded;

Twelfth (*Negligence in convoy service*).—Or, when attached to any vessel appointed as convoy to any merchant or other vessels, fails diligently to perform his duty, or demands or exacts any compensation for his services, or maltreats the officers or crews of such merchant or other vessels;

Thirteenth (*Receiving articles for freight*).—Or, takes, receives, or permits to be received, on board the vessel to which he is attached, any goods or merchandise for freight, sale, or traffic, except gold, silver, or jewels, for freight or safe-keeping; or demands or receives any compensation for the receipt or transportation of any other article than gold, silver, or jewels without authority from the President or Secretary of the Navy;

Fourteenth (*False muster*).—Or knowingly makes or signs, or aids, abets, directs, or procures the making or signing of, any false muster;

Fifteenth (*Waste of public property*).—Or wastes any ammunition, provisions, or other public property or having power to prevent it, knowingly permits such waste;

Sixteenth (*Plundering on shore*).—Or, when on shore, plunders, abuses, or maltreats any inhabitant, or injures his property in any way;

Seventeenth (*Refusing to apprehend offenders*).—Or refuses, or fails to use, his utmost exertions to detect, apprehend, and bring to punishment all offenders, or to aid all persons appointed for that purpose;

Eighteenth (*Refusing to receive prisoners*).—Or, when rated or acting as master-at-arms, refuses to receive such prisoners as may be committed to his charge, or, having received them, suffers them to escape, or dismisses them without orders from the proper authority;

Nineteenth (*Absence from duty without leave*).—Or is absent from his station or duty without leave, or after his leave has expired;

Twentieth (*Violating general orders or regulations*).—Or violates or refuses obedience to any lawful general order or regulation issued by the Secretary of the Navy;

Twenty-first (*Desertion in time of peace*).—Or, in time of peace, deserts or attempts to desert, or aids and entices others to desert;

Twenty-second (*Harboring deserters*).—Or receives or entertains any deserter from any other vessel of the Navy, knowing him to be such, and does not, with all convenient speed, give notice of such deserter to the commander of the vessel to which he belongs, or to the commander in chief, or to the commander of the squadron.

17A4. Special provisions applicable to officers.

Article 9. Officer absent without leave reduced. Any officer who absents himself from his command without leave, may, by the sentence of a court-martial, be reduced to the rating of seaman, second class.

Article 10. Desertion by resignation. Any commissioned officer of the Navy or Marine Corps, who, having tendered his resignation, quits his post or proper duties without leave, and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of such resignation, shall be deemed and punished as a deserter.

17A5. Restrictions on private property.

Article 11. Dealing in supplies. No person in the naval service shall procure stores or other articles or supplies for, and dispose thereof to, the officers or enlisted men on vessels of the Navy, or at navy yards or naval stations, for his own account or benefit.

Article 12. Importing dutiable goods in public vessels. No person connected with the Navy shall, under any pretense, import in a public vessel any article which is liable to the payment of duty.

Article 13. Distilled spirits only as medical stores. Distilled spirits shall be admitted on board of vessels of war only upon the order and under the control of the medical officers of such vessels, and to be used only for medical purposes.

17A6. Offenses punishable by fine and imprisonment.

Article 14. Persons to whom applicable. Fine and imprisonment or such other punishment as a court-martial may adjudge, shall be inflicted upon any person in the naval service of the United States—

First (*Presenting false claims*).—Who presents or causes to be presented to any person in the civil, military, or naval service thereof, for approval or payment, any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

Second (Agreement to obtain payment of false claims).—Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

Third (False paper).—Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing, or other paper, knowing the same to contain any false or fraudulent statement; or

Fourth (Perjury).—Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes, or procures or advises the making of, any oath to any fact or to any writing or other paper, knowing such oath to be false; or

Fifth (Forgery).—Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures or advises the forging or counterfeiting of, any signature upon any writing or other paper, or uses, or procures or advises the use of, any such signature, knowing the same to be forged or counterfeited; or

Sixth (Delivering less property than receipt calls for).—Who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the naval service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

Seventh (Giving receipt without knowing truth of).—Who, being authorized to make or deliver any paper certifying the receipt of any money or other property of the United States, furnished or intended for the naval service thereof, makes, or delivers to any person, such writing, without having full knowledge of the truth of the statements therein contained, and with intent to defraud the United States; or

Eighth (Stealing, wrongfully selling, etc.).—Who steals, embezzles, knowingly and wilfully misappropriates, applies for his own use or benefit, or wrongfully and knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money or other property of the United States, furnished or intended for the military or naval service thereof; or

Ninth (Buying public military property).—Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any other person who is a part of or employed in said service, any ordnance, arms, equipments, ammunition, clothing, subsistence stores, or other property of the

United States, such other person not having lawful right to sell or pledge the same; or

Tenth (Any other fraud against United States).—Who executes, attempts, or countenances any other fraud against the United States.

Eleventh (Trial of offender after discharge).—And if any person, being guilty of any of the offenses described in this article while in the naval service, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentenced by a court-martial, in the same manner and to the same extent as if he had not received such discharge nor been dismissed.

17A7. Provisions applicable to prize.

Article 15. Prize money. The proceeds of vessels or any property hereafter captured, condemned as prize, shall not be distributed among the captors, in whole or in part, nor shall any bounty be paid for the sinking or destruction of vessels of the enemy hereafter occurring in time of war.

Article 16. Removing property from a prize. No person in the Navy shall take out of a prize, or vessel seized as a prize, any money, plate, goods, or any part of her equipment, unless it be for the better preservation thereof, or unless such articles are absolutely needed for the use of any of the vessels or armed forces of the United States, before the same are adjudged lawful prize by a competent court; but the whole, without fraud, concealment, or embezzlement, shall be brought in, in order that judgment may be passed thereon; and every person who offends against this article shall be punished as a court-martial may direct.

Article 17. Maltreating persons on board prize. If any person in the Navy strips off the clothes of, or pillages, or in any manner maltreats, any person taken on board a prize, he shall suffer such punishment as a court-martial may adjudge.

17A8. Special provisions applicable to deserters and recruiting.

Article 18. Forfeiture of citizenship rights for desertion. Every person who in time of war deserts the naval service of the United States shall be deemed to have voluntarily relinquished and forfeited his rights of citizenship, as well as his right to become a citizen, and shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof.

Article 19. Enlisting deserters, minors, etc. Any officer who knowingly enlists into the naval service any person who has deserted in time of war from the naval or military service of the United States, or any insane or intoxicated person, or any minor between the ages of fourteen and eighteen years, without the consent of his parents or guardian, or any minor under the age of fourteen years, shall be punished as a court-martial may direct.

17A9. Duties of commanding officers.

Article 20. Rules to be obeyed by. Every commanding officer of a vessel in the Navy shall obey the following rules:

First (*Men received on board*).—Whenever a man enters on board, the commanding officer shall cause an accurate entry to be made in the ship's books, showing his name, the date, place, and term of his enlistment, the place or vessel from which he was received on board, his rating, his descriptive list, his age, place of birth, and citizenship, with such remarks as may be necessary.

Second (*List of officers, men, and passengers*).—He shall, before sailing, transmit to the Secretary of the Navy a complete list of the rated men under his command, showing the particulars set forth in rule 1, and a list of officers and passengers, showing the date of their entering. And he shall cause similar lists to be made out on the first day of every third month and transmitted to the Secretary of the Navy as opportunities occur, accounting therein for any casualty which may have happened since the last list.

Third (*Deaths and desertion*).—He shall cause to be accurately minuted on the ship's books the names of any persons dying or deserting, and the times at which such death or desertion occurs.

Fourth (*Property of deceased persons*).—In case of the death of any officer, man, or passenger on said vessel, he shall take care that the paymaster secures all the property of the deceased, for the benefit of his legal representatives.

Fifth (*Accounts of men received*).—He shall not receive on board any man transferred from any other vessel or station to him, unless such man is furnished with an account, signed by the captain and paymaster of the vessel or station from which he came, specifying the date of his entry on said vessel or at said station, the period and term of his service, the sums paid him, the balance due him, the quality in which he was rated, and his descriptive list.

Sixth (*Accounts of men sent from the ship*).—He shall, whenever officers or men are sent from his ship, for whatever cause, take care that each man is furnished with a complete statement of his account, specifying the date of his enlistment, the period and term of his service, and his descriptive list. Said account shall be signed by the commanding officer and paymaster.

Seventh (*Inspection of provisions*).—He shall cause frequent inspections to be made into the condition of the provisions on his ship, and use every precaution for their preservation.

Eighth (*Health of crew*).—He shall frequently consult with the surgeon in regard to the sanitary condition of his crew, and shall use all proper means to preserve their health. And he shall cause a convenient

place to be set apart for sick or disabled men, to which he shall have them removed, with their hammocks and bedding, when the surgeon so advises, and shall direct that some of the crew attend them and keep the place clean.

Ninth (*Attendance at final payment of crew*).—He shall attend in person, or appoint a proper officer to attend, when his crew is finally paid off, to see that justice is done to the men and to the United States in the settlement of the accounts.

Tenth (*Articles for the government of the Navy*).—He shall cause the articles for the government of the Navy to be hung up in some public part of the ship and read once a month to his ship's company.

Eleventh (*Punishment for offending against this article*).—Every commanding officer who offends against the provisions of this article shall be punished as a court-martial may direct.

Article 21. Authority of officers after loss of vessel. When the crew of any vessel of the United States are separated from their vessel by means of her wreck, loss, or destruction, all the command and authority given to the officers of such vessel shall remain in full force until such ship's company shall be regularly discharged from or ordered again into service, or until a court-martial or court of inquiry shall be held to inquire into the loss of said vessel. And if any officer or man, after such wreck, loss, or destruction, acts contrary to the discipline of the Navy, he shall be punished as a court-martial may direct.

17A10. Punishment of offenses not specified.

Article 22. (*a*) *Offenses not specified.*—All offenses committed by persons belonging to the Navy which are not specified in the foregoing articles shall be punished as a court-martial may direct.

(*b*) *Fraudulent enlistment.*—Fraudulent enlistment, and the receipt of any pay or allowance thereunder, is hereby declared an offense against naval discipline and made punishable by general court-martial, under this article,

Article 23. Offenses committed on shore. All offenses committed by persons belonging to the Navy while on shore shall be punished in the same manner as if they had been committed at sea.

Article 24. Punishments by order of commander. No commander of a vessel shall inflict upon a commissioned or warrant officer any other punishment than private reprimand, suspension from duty, arrest, or confinement, and such suspension, arrest, or confinement shall not continue longer than ten days unless a further period is necessary to bring the offender to trial by a court-martial; nor shall he inflict, or cause to be inflicted, upon any petty officer, or person of inferior rating, or marine, for a single

offense, or at any one time, any other than one of the following punishments, namely:

First. Reduction of any rating established by himself.

Second. Confinement not exceeding ten days, unless further confinement be necessary, in the case of a prisoner to be tried by court-martial.

Third. Solitary confinement, on bread and water, not exceeding five days.

Fourth. Solitary confinement not exceeding seven days.

Fifth. Deprivation of liberty on shore.

Sixth. Extra duties.

No other punishment shall be permitted on board of vessels belonging to the Navy, except by sentence of a court-martial. All punishments inflicted by the commander, or by his order, except reprimands, shall be fully entered upon the ship's log.

Article 25. Punishments by other officers. (a) All officers of the Navy and Marine Corps who are authorized to order either general or summary courts-martial shall have the same authority to inflict minor punishments as is conferred by law upon the commander of a naval vessel.

(b) No officer who may command by accident, or in the absence of the commanding officer, except when such commanding officer is absent for a time by leave, shall inflict any other punishment than confinement.

17A11. Summary courts-martial.

Article 26. Convening authority. Summary courts-martial may be ordered upon petty officers and enlisted men in the naval service under his command by the commanding officer of any vessel, the commandant of any navy yard or naval station, the commanding officer of any brigade, regiment, or separate or detached battalion, or other separate or detached command, or marine barracks, and, when empowered by the Secretary of the Navy, by the commanding officer or officer in charge of any command not specifically mentioned in the foregoing, for the trial of offenses which such commanding officer or commandant may deem deserving of greater punishment than he is authorized to inflict, but not sufficient to require trial by a general court-martial.

Article 27. Constitution of summary courts-martial. A summary court-martial shall consist of three officers not below the rank of ensign, as members, and of a recorder. The commander of a ship may order any officer under his command to act as such recorder.

Article 28. Oath of members and recorder. Before proceeding to trial the members of a summary court-martial shall take the following oath or affirmation, which shall be administered by the recorder: "I, A B, do swear (or affirm) that I will well and truly try, without prejudice or partiality, the case now depending, according to the evidence which shall be adduced,

the laws for the government of the Navy, and my own conscience." After which the recorder of the court shall take the following oath or affirmation, which shall be administered by the senior member of the court: "I, A B, do swear (or affirm) that I will keep a true record of the evidence which shall be given before this court and of the proceedings thereof."

Article 29. Testimony. Except as provided in articles 60 and 68, all testimony before a summary court-martial shall be given orally, upon oath or affirmation, administered by the senior member of the court.

Article 30. Punishments by summary courts-martial. Summary courts-martial may sentence petty officers and persons of inferior ratings to either a part or the whole, as may be appropriate, of any one of the following punishments, namely:

First. Discharge from the service with bad-conduct discharge; but the sentence shall not be carried into effect in a foreign country.

Second. Solitary confinement, not exceeding thirty days, on bread and water, or on diminished rations.

Third. Solitary confinement not exceeding thirty days.

Fourth. Confinement not exceeding two months.

Fifth. Reduction to next inferior rating.

Sixth. Deprivation of liberty on shore on foreign station.

Seventh. Extra police duties, and loss of pay, not to exceed three months, may be added to any of the above-mentioned punishments.

Article 31. Disrating for incompetency. A summary court-martial may disrate any rated person for incompetency.

Article 32. Execution of sentence of summary court. No sentence of a summary court-martial shall be carried into execution until the proceedings and sentence have been approved by the officer ordering the court, or his successor in office, and by his immediate superior in command: Provided, That if the officer ordering the court, or his successor in office, be the senior officer present, such sentence may be carried into execution upon his approval thereof, subject to the provisions of article 54 (b).

Article 33. Remission of sentence. The officer ordering a summary court-martial shall have power to remit, in part or altogether, but not to commute, the sentence of the court. And it shall be his duty either to remit any part or the whole of any sentence, the execution of which would, in the opinion of the surgeon or senior medical officer on board, given in writing, produce serious injury to the health of the person sentenced, or to submit the case again, without delay, to the same or to another summary court-martial, which shall have power, upon the testimony already taken, to remit the former punishment and to assign some other of the authorized punishments in the place thereof.

Article 34. Proceedings and record of summary court. The proceedings of summary courts-martial shall be conducted with as much conciseness

and precision as may be consistent with the ends of justice, and under such forms and rules as may be prescribed by the Secretary of the Navy, with the approval of the President, and all such proceedings shall be transmitted in the usual mode to the Navy Department, where they shall be kept on file for a period of two years from date of trial, after which time they may be destroyed in the discretion of the Secretary of the Navy.

17A12. General courts-martial.

Article 35. Authority to inflict summary court-martial punishments. Any punishment which a summary court-martial is authorized to inflict may be inflicted by a general court-martial.

Article 36. Dismissal of officers. No officer shall be dismissed from the naval service except by the order of the President or by sentence of a general court-martial; and in time of peace no officer shall be dismissed except in pursuance of the sentence of a general court-martial or in mitigation thereof: Provided, That the President is authorized to drop from the rolls of the Navy or Marine Corps any officer thereof who is absent from duty without leave for a period of three months or more, or who, having been found guilty by the civil authorities of any offense, is finally sentenced to confinement in a State or Federal penitentiary: Provided further, That no officer so dropped shall be eligible for reappointment.

Article 37. Officer dismissed by President may demand trial. When any officer, dismissed by order of the President, makes, in writing, an application for trial, setting forth, under oath that he has been wrongfully dismissed, the President shall, as soon as the necessities of the service may permit, convene a court-martial to try such officer on the charges on which he shall have been dismissed. And if such court-martial shall not be convened within six months from the presentation of such application for trial, or if such court, being convened, shall not award dismissal or death as the punishment of such officer, the order of dismissal by the President shall be void: Provided, That the accounting officers are prohibited from making any allowance to any officer of the Navy who has been, or may hereafter be, dismissed from the service and restored to the same under the provisions of this article, to exceed more than pay as on leave for six months from the date of dismissal, unless it shall appear that the officer demanded in writing, addressed to the Secretary of the Navy, and continued to demand as often as once in six months, a trial as provided for in this article.

Article 38. Convening authority. General courts-martial may be convened:

First. By the President, the Secretary of the Navy, the commander in chief of a fleet or squadron, and the commanding officer of a naval station beyond the continental limits of the United States; and

Second. When empowered by the Secretary of the Navy, by the commanding officer of a squadron, division, flotilla, or larger naval force afloat, and of a brigade or larger force of the naval service on shore beyond the continental limits of the United States; and

Third. In time of war, if then so empowered by the Secretary of the Navy, by the commandant of any navy yard or naval station, and by the commanding officer of a brigade or larger force of the Navy or Marine Corps on shore not attached to a navy yard or naval station.

Article 39. Constitution of general court-martial. A general court-martial shall consist of not more than thirteen nor less than five commissioned officers as members; and as many officers, not exceeding thirteen, as can be convened without injury to the service, shall be summoned on every such court. But in no case, where it can be avoided without injury to the service, shall more than one-half, exclusive of the president, be junior to the officer to be tried. The senior officer shall always preside and the others shall take place according to their rank.

Article 40. Oaths of members and judge advocate. The president of the general court-martial shall administer the following oath or affirmation to the judge advocate or person officiating as such:

"I, A B, do swear (or affirm) that I will keep a true record of the evidence given to and the proceedings of this court; that I will not divulge or by any means disclose the sentence of the court until it shall have been approved by the proper authority; and that I will not at any time divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law."

This oath or affirmation being duly administered, each member of the court, before proceeding to trial, shall take the following oath or affirmation, which shall be administered by the judge advocate or person officiating as such:

"I, A B, do swear (or affirm) that I will truly try without prejudice or partiality, the case now depending, according to the evidence which shall come before the court, the rules for the government of the Navy, and my own conscience; that I will not by any means divulge or disclose the sentence of the court until it shall have been approved by the proper authority; and that I will not at any time divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law."

Article 41. Oath of witness. An oath or affirmation in the following form shall be administered to all witnesses, before any court-martial, by the president thereof:

"You do solemnly swear (or affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your

knowledge in relation to the charges. So help you God (or 'this you do under the pains and penalties of perjury')."

Article 42. (*a*) *Contempts of court.*—Whenever any person refuses to give his evidence or to give it in the manner provided by these articles, or prevaricates, or behaves with contempt to the court, it shall be lawful for the court to imprison him for any time not exceeding two months: Provided, That the person charged shall, at his own request but not otherwise, be a competent witness before a court-martial or court of inquiry, and his failure to make such request shall not create any presumption against him.

(*b*) *Witnesses; process for.*—A naval court-martial or court of inquiry shall have power to issue like process to compel witnesses to appear and testify which United States courts of criminal jurisdiction within the State, Territory, or District where such naval court shall be ordered to sit may lawfully issue.

(*c*) *Refusal of witness to appear or testify; privilege.*—Any person duly subpoenaed to appear as a witness before a general court-martial or court of inquiry of the Navy, who wilfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or produce documentary evidence, which such person may have been legally subpoenaed to produce, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the United States; and it shall be the duty of the United States district attorney, on the certification of the facts to him by such naval court to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than $500 or imprisonment not to exceed six months, or both, at the discretion of the court: Provided, That this shall not apply to persons residing beyond the State, Territory, or District in which such naval court is held, and that the fees of such witness and his mileage at the rates provided for witnesses in the United States district court for said State, Territory, or District shall be duly paid or tendered said witness, such amounts to be paid by the Bureau of Supplies and Accounts out of the appropriation for compensation of witnesses: Provided further, That no witness shall be compelled to incriminate himself or to answer any question which may tend to incriminate or degrade him.

Article 43. Charges and specifications; arrest of accused. The person accused shall be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest; and no other charges than those so furnished shall be urged against him at the trial, unless it shall appear to the court that intelligence of such other charge had not reached the officer ordering the court when the accused was put under arrest, or that some witness material to the support of such charge was at that time

absent and can be produced at the trial; in which case reasonable time shall be given to the accused to make his defense against such new charge.

Article 44. Duty of officer arrested. Every officer who is arrested for trial shall deliver up his sword to his commanding officer and confine himself to the limits assigned him, on pain of dismissal from the service.

Article 45. Suspension of proceedings. When the proceedings of any general court-martial have commenced, they shall not be suspended or delayed on account of the absence of any of the members, provided five or more are assembled; but the court is enjoined to sit from day to day, Sundays excepted, until sentence is given, unless temporarily adjourned by the authority which convened it.

Article 46. Absence of members. No member of a general court-martial shall, after the proceedings are begun, absent himself therefrom, except in case of sickness, or of an order to go on duty from a superior officer, on pain of being cashiered.

Article 47. Witnesses examined in absence of a member. Whenever any member of a court-martial, from any legal cause, is absent from the court after the commencement of a case, all the witnesses who have been examined during his absence must, when he is ready to resume his seat, be recalled by the court, and the recorded testimony of each witness so examined must be read over to him, and such witness must acknowledge the same to be correct and be subject to such further examination as the said member may require. Without a compliance with this rule, and an entry thereof upon the record, a member who shall have been absent during the examination of a witness shall not be allowed to sit again in that particular case.

Article 48. Suspension of pay. Whenever a court-martial sentences an officer to be suspended, it may suspend his pay and emoluments for the whole or any part of the time of his suspension.

17A13. Punishments and sentences; in general.

Article 49. Prohibited punishments. In no case shall punishment by flogging, or by branding, marking, or tattooing on the body be adjudged by any court-martial or be inflicted upon any person in the Navy. The use of irons, single or double, is abolished, except for the purpose of safe custody, or when part of a sentence imposed by a general court-martial.

Article 50. Sentences, how determined. No person shall be sentenced by a court-martial to suffer death, except by the concurrence of two-thirds of the members present, and in the cases where such punishment is expressly provided in these articles. All other sentences may be determined by a majority of votes.

Article 51. Adequate punishment; recommendation to mercy. It shall be the duty of a court-martial, in all cases of conviction, to adjudge a

punishment adequate to the nature of the offense; but the members thereof may recommend the person convicted as deserving of clemency, and state, on the record, their reasons for so doing.

Article 52. Authentication of judgment. The judgment of every court-martial shall be authenticated by the signature of the president, and of every member who may be present when said judgment is pronounced, and also of the judge advocate.

Article 53. Confirmation of sentence. No sentence of a court-martial extending to the loss of life, or to the dismissal of a commissioned or warrant officer, shall be carried into execution until confirmed by the President. All other sentences of a general court-martial may be carried into execution on confirmation of the commander of the fleet or officer ordering the court.

Article 54. (*a*) *Remission and mitigation of sentence.*—Every officer who is authorized to convene a general court-martial shall have power, on revision of its proceedings, to remit or mitigate, but not to commute, the sentence of any such court which he is authorized to approve and confirm.

(*b*) *Power of Secretary of Navy over proceedings and sentences of courts-martial.*—The Secretary of the Navy may set aside the proceedings or remit or mitigate, in whole or in part, the sentence imposed by any naval court-martial convened by his order or by that of any officer of the Navy or Marine Corps.

17A14. Courts of inquiry.

Article 55. By whom convened. Courts of inquiry may be convened by the President, the Secretary of the Navy, the commander of a fleet or squadron, and by any officer of the naval service authorized by law to convene general courts-martial.

Article 56. Constitution. A court of inquiry shall consist of not more than three commissioned officers as members, and of a judge advocate, or person officiating as such.

Article 57. Powers. Courts of inquiry shall have power to summon witnesses, administer oaths, and punish contempts, in the same manner as courts-martial; but they shall only state facts, and shall not give their opinion, unless expressly required so to do in the order for convening.

Article 58. Oath of members and judge advocate. The judge advocate, or person officiating as such shall administer to the members the following oath or affirmation: "You do swear (or affirm) well and truly to examine and inquire, according to the evidence, into the matter now before you, without partiality." After which the president shall administer to the judge advocate or person officiating as such, the following oath or affirmation: "You do swear (or affirm) truly to record the proceedings of this court and the evidence to be given in the case in hearing."

Article 59. Rights of party or attorney. The party whose conduct shall be the subject of inquiry, or his attorney, shall have the right to cross-examine all the witnesses.

Article 60. Proceedings; authentication; use in evidence. The proceedings of courts of inquiry shall be authenticated by the signature of the president of the court and of the judge advocate, and shall, in all cases not capital, nor extending to the dismissal of a commissioned or warrant officer, be evidence before a court-martial, provided oral testimony cannot be obtained.

17A15. Limitation of trial and punishment.

Article 61. Limitation of trials; offenses in general. No person shall be tried by court-martial or otherwise punished for any offense, except as provided in the following article, which appears to have been committed more than two years before the issuing of the order for such trial or punishment, unless by reason of having absented himself, or of some other manifest impediment he shall not have been amenable to justice within that period.

Article 62. Desertion in time of peace. No person shall be tried by court-martial or otherwise punished for desertion in time of peace committed more than two years before the issuing of the order for such trial or punishment, unless he shall meanwhile have absented himself from the United States, or by reason of some other manifest impediment shall not have been amenable to justice within that period, in which case the time of his absence shall be excluded in computing the period of the limitation: Provided, That said limitation shall not begin until the end of the term for which said person was enlisted in the service.

Article 63. Punishment for offenses in time of peace. Whenever, by any of the articles for the government of the Navy of the United States, the punishment on conviction of an offense is left to the discretion of the court-martial, the punishment therefor shall not, in time of peace, be in excess of a limit which the President may prescribe.

17A16. Deck courts.

Article 64. (*a*) *Officers authorized to order.*—All officers of the Navy and Marine Corps who are authorized to order either general or summary courts-martial may order deck courts upon enlisted men under their command, for minor offenses now triable by summary court-martial.

(*b*) *Constitution and powers.*—Deck courts shall consist of one commissioned officer only, who, while serving in such capacity shall have power to administer oaths, to hear and determine cases, and to impose either a part or the whole, as may be appropriate, of any one of the punishments prescribed by article 30 of the articles for the government of the

Navy: Provided, That in no case shall such courts adjudge discharge from the service or adjudge confinement or forfeiture of pay for a longer period than twenty days.

(*c*) *Recorder.*—Any person in the Navy under command of the officer by whose order a deck court is convened may be detailed to act as recorder thereof.

(*d*) *Approval of sentence of deck court.*—All sentences of deck courts may be carried into effect upon approval of the convening authority or his successor in office, who shall have full power as reviewing authority to remit or mitigate, but not to commute, any such sentence and to pardon any punishment such court may adjudge; but no sentence of a deck court shall be carried into effect until it shall have been so approved and mitigated.

(*e*) *Rules governing.*—Deck courts shall be governed in all details of their constitution, powers, and procedure, except as herein provided, by such rules and regulations as the President may prescribe.

(*f*) *Records of proceedings; filing and review.*—The records of the proceedings of deck courts shall contain such matters only as are necessary to enable the reviewing authorities to act intelligently thereon, except that if the party accused demands it within thirty days after the decision of the deck court shall become known to him, the entire record or so much as he desires shall be sent to the reviewing authority. Such records, after action thereon by the convening authority, shall be forwarded directly to, and shall be filed in, the office of the Judge Advocate General of the Navy, where they shall be reviewed, and, when necessary, submitted to the Secretary of the Navy for his action.

(*g*) *Objection to trial by deck court.*—No person who objects thereto shall be brought to trial before a deck court. Where such objection is made by the person accused, trial shall be ordered by summary or by general court-martial, as may be appropriate.

17A17. Miscellaneous provisions.

Article 65. Courts-martial; officers of auxiliary naval forces. When actively serving under the Navy Department in time of war or during the existence of an emergency, pursuant to law, as a part of the naval forces of the United States, commissioned officers of the Naval Reserve, Marine Corps Reserve, Naval Militia, Coast Guard, Lighthouse Service, Coast and Geodetic Survey, and Public Health Service are empowered to serve on naval courts-martial and deck courts under such regulations necessary for the proper administration of justice and in the interests of the services involved, as may be prescribed by the Secretary of the Navy.

Article 66. Courts-martial and punishments in hospital and hospital ships. When empowered by the Secretary of the Navy pursuant to article 26

to order summary courts-martial, the commanding officer of a naval hospital or hospital ship shall be empowered to order such courts and deck courts, and inflict the punishments which the commander of a naval vessel is authorized by law to inflict upon all enlisted men of the naval service attached thereto, whether for duty or as patients.

Article 67. Authority of officers of separate organization of marines. When a force of marines is embarked on a naval vessel, or vessels, as a separate organization, not a part of the authorized complement thereof, the authority and powers of the officers of such separate organizations of marines shall be the same as though such organization were serving at a navy yard on shore, but nothing herein shall be construed as impairing the paramount authority of the commanding officer of any naval vessel over the vessel under his command and all persons embarked thereon.

Article 68. Depositions in naval courts. The depositions of witnesses may be taken on reasonable notice to the opposite party, and when duly authenticated, may be put in evidence before naval courts, except in capital cases and cases where the punishment may be imprisonment or confinement for more than one year as follows:

First, depositions of civilian witnesses residing outside the State, Territory, or District in which a naval court is ordered to sit.

Second, depositions of persons in the naval or military service stationed or residing outside the State, Territory, or District in which a naval court is ordered to sit, or who are under orders to go outside of such State, Territory, or District.

Third, where such naval court is convened on board a vessel of the United States, or at a naval station not within any State, Territory, or District of the United States, the depositions of witnesses may be taken and used as herein provided whenever such witnesses reside or are stationed at such a distance from the place where said naval court is ordered to sit, or are about to go to such a distance as, in the judgment of the convening authority, would render it impracticable to secure their personal attendance.

Article 69. Oaths for purpose of naval justice, etc. Judges advocate of naval general courts-martial and courts of inquiry, and all commanders in chief of naval squadrons, commandants of navy yards and stations, officers commanding vessels of the Navy, and recruiting officers of the Navy, and the adjutant and inspector, assistants adjutant and inspector, commanding officers, recruiting officers of the Marine Corps, and such other officers of the regular Navy and Marine Corps, of the Naval Reserve, and of the Marine Corps Reserve, as may be hereafter designated by the Secretary of the Navy, are authorized to administer oaths for the purposes of the administration of naval justice and for other purposes of naval administration.

Article 70. Investigations; oaths of witnesses. Any officer of the Navy or Marine Corps detailed to conduct an investigation, and the recorder, and if there be none the presiding officer, of any naval board appointed for such purpose, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation.

B. OATHS

17B1. Administering of oaths. Forms of oaths or affirmations used by various naval courts and boards are given in Sections E–4 to E–12, inclusive, *Naval Courts and Boards, 1937*. These forms will be used, where appropriate, and must be administered in each case, by one authorized to do so, to each member, judge advocate, recorder, reporter, interpreter, and witness. Failure to administer the prescribed oaths constitutes a fatal error. If, in fact, the oaths were duly taken, but the entry to that effect was omitted from the record, this error may be corrected in the following manner: (1) if the court has not been dissolved, by proceedings in revision, or (2) if the court has been dissolved, by affidavits of members of the court and the judge advocate setting forth the fact that the oaths were duly administered.

There is no especially provided procedure which must be used in administering an oath. Any procedure which appeals to the conscience of the person to whom the oath is administered and which binds him to speak the truth is sufficient. In addition to the prescribed oath there should be such additional ceremony or acts as will make the oath binding on the conscience of the person taking it. The usual manner of administering an oath is to require the person taking it to keep one hand upon a Bible while doing so. Persons who have peculiar forms which they recognize as obligatory and believers in other than the Christian religion may be sworn in their own manner, or according to the peculiar ceremonies of the religion which they profess and which they declare to be binding.

When the same court or board sits in more than one case the oaths must be administered anew in each case. While the members and judge advocate or recorder are being sworn, all persons present will stand. While any others are being sworn, the person taking and the officer administering the oath will stand.

In a general court-martial the judge advocate is sworn first and then the members. In a summary court-martial the members are sworn first and then the recorder.

17B2. Forms of oaths for deck courts.

Oath for recorder. You, Andrew Brown, do swear (or affirm) that you will keep a true record of the evidence which shall be given before this court and of the proceedings thereof.

Oath for witness. You do solemnly swear (or affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the charges. So help you God (or, this you do under the pains and penalties of perjury).

17B3. Forms of oaths for summary courts-martial.

Oath for members. You, Arthur R. Kane, John M. Dow, and John H. Raine, do swear (or affirm) that you will well and truly try, without prejudice or partiality, the case now depending, according to the evidence which shall be adduced, the laws for the government of the Navy, and your own conscience.

Oath for recorder. You, Allan Blane, swear (or affirm) that you will keep a true record of the evidence which shall be given before this court and of the proceedings thereof.

Oath for reporter. You, John Charles, swear (or affirm) faithfully to perform the duties of reporter in aiding the recorder to take and record the proceedings of the court, either in shorthand or ordinary manuscript.

Oath for interpreter. You, Samuel Bow, swear (or affirm) faithfully and truly to interpret or translate in all cases in which you shall be required so to do between the United States and the accused.

Oath for witness. You do solemnly swear (or affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the charges. So help you God (or, this you do under the pains and penalties of perjury).

Oath on voir dire. You, Donald E. Ford, swear (or affirm) that you will true answers make to questions touching your competency as a member of the court (witness) in this case.

17B4. Forms of oaths for general courts-martial.

Oath for the judge advocate. You, Calvin B. Abe, do swear (or affirm) that you will keep a true record of the evidence given to and the proceedings of this court; that you will not divulge or by any means disclose the sentence of the court until it shall have been approved by the proper authority; and that you will not at any time divulge or disclose the vote or opinion of any particular member of the court unless required so to do before a court of justice in due course of law.

Oath for members. You, Arthur B. Cain, Donald E. Ford, etc., and Vern U. White, do each and severally swear (or affirm) that you will truly try without prejudice or partiality, the case now depending, according to the evidence which shall come before the court, the rules for the government of the Navy, and your own conscience; that you will not by any means divulge

or disclose the sentence of the court until it shall have been approved by the proper authority; that you will not at any time divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law.

Oath for reporter. You, Arthur E. Downe, swear (or affirm) faithfully to perform the duty of reporter in aiding the judge advocate to take and record the proceedings of the court, either in shorthand or ordinary manuscript.

Oath for interpreter. You, Edwin Brock, swear (or affirm) faithfully and truly to interpret or translate in all cases in which you shall be required so to do between the United States and the accused.

Oath for a witness. You do solemnly swear (or affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the charges. So help you God (or, this you do under the pains and penalties of perjury).

Oath on voir dire. You, Dale E. Friend, swear (or affirm) that you will true answers make to questions touching your competency as a member of the court (witness) in this case.

17B5. Forms of oaths for boards of investigation and investigations (when authorized).

Oath for reporter. You, Fred E. Dunn, swear (or affirm) faithfully to perform the duty of reporter in taking and recording the proceedings of this investigation, either in shorthand or in ordinary manuscript.

Oath for interpreter. You, Allen Bos, swear (or affirm) faithfully and truly to interpret or translate in all cases in which you shall be required so to do between the United States and the party whose conduct is the subject of this investigation (or, in the matter under investigation).

Oath for witness. You, Abel Blake, do solemly swear (or affirm) that the testimony you shall give in the matter of . . . . now in hearing shall be the truth, the whole truth, and nothing but the truth, so help you God (or, this you do under the pains and penalties of perjury).

17B6. Forms of oaths for courts of inquiry.

Oath for members. You, Alan B. Crane, Dwain E. Ford, and Galvin H. Ingrahm, do swear (or affirm) well and truly to examine and inquire, according to the evidence, into the matter now before you, without partiality.

Oath for judge advocate. You, John K. Laine, do swear (or affirm) truly to record the proceedings of this court and the evidence to be given in the case in hearing.

Oath for reporter. You, Frank E. Dean, do swear (or affirm) faithfully to perform the duty of reporter in aiding the judge advocate to take

and record the proceedings of the court, either in shorthand or in ordinary manuscript.

Oath for interpreter. You, James Darling, swear (or affirm) faithfully and truly to interpret or translate in all cases in which you shall be required so to do between the United States and the party whose conduct is the subject of this inquiry (or in the matter under inquiry).

Oath for witness. You do solemnly swear (or affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the matter under inquiry, so help you God (or this you do under the pains and penalties of perjury).

17B7. Oath for a deposing witness.

You do solemnly swear (or affirm) that you will make true answers to the following interrogatories and cross-interrogatories to be propounded to you in the case of United States v. Arthur Brown.

C. POLICY IN REGARD TO TRIALS OF WARTIME OFFENSES

17C1. Absences, desertion, and mitigation of GCM sentences. The current policy of the Navy Department in regard to trials of wartime offenses involving absences and desertion, and mitigation of general court-martial offenses was set forth by the Secretary of the Navy in SecNav ltr. 45–529 dated 29 May 1945. This order is quoted in full below.

29 May 1945

ACTION: ALL SHIPS AND STATIONS

(Ref.: (a) BuPers Manual, art. D-9114.
(b) SecNav ltr. A17-11(1)/A17-20, of 27 Nov. 1944.)

1. This order cancels and supersedes references (a) and (b), and all other existing directives in conflict herewith.

2. To promote uniformity in disposition of absence offenses, the following policies are to be strictly adhered to, except:

In cases where preliminary investigation, or evidence adduced at the trial indicates circumstances in the particular case which in the opinion of the commanding officer or convening authority indicate the ends of justice would be better served by a lesser or greater punishment than that prescribed herein, such action is authorized. The reason for the departure from these policies will be affirmatively stated by separate letter attached to the record of the case.

3. A. First offenses:

(1) Absence over leave

Less than 11 days:	Mast or deck court
Between 11 and 30 days:	Summary court
Over 30 days:	General court

(2) Absence without leave

Less than 1 day:	Mast or deck court
Between 1 and 10 days:	Summary court
Over 10 days:	General court

(3) Desertion: All men absent over leave or without leave for more than 45 days will be tried for desertion. The charge of desertion shall be made in cases involving less than 46 days if there is evidence of desertion other than length of absence and/or apprehension and/or breaking arrest.

B. Second absence offense: (a) Offenders who for first absence have been punished at mast or convicted by deck court, will be tried by summary court; (b) offenders who for first absence offense have been convicted by summary court will be tried by general court unless the second offense is absence less than 48 hours, in which event the type of court will be discretionary but not less than a summary court.

C. Third absence offense: Third offenders shall be tried by general court unless the absence is less than 48 hours, in which event the type of court shall be discretionary but not less than a summary court.

D. None of the foregoing shall preclude the trial by general court-martial of repeated absence offenders regardless of the length of absence.

E. In determining the type of court an offender shall receive, only the following punishments and convictions shall be considered:

Those punishments (mast) and convictions for absence that occurred within 2 years prior to the current offense; provided that no punishment or conviction in a previous enlistment or prior to an extension of an enlistment shall be considered. Men retained under Alnav 155-41 are in fact serving in extension of enlistment.

F. Reduction in rating of noncommissioned and petty officers by deck courts and summary courts-martial for absence offenses is considered appropriate as part or all of the punishment.

G. Punishment by mast, deck court, and summary court-martial shall be in accordance with SecNav letter of 25 August 1943 where not inconsistent or in conflict with this order.

4. Missing ship or mobile unit: Where a man has missed the sailing of his ship or mobile unit, adequate disciplinary action is mandatory and, except under extenuating circumstances trial by general court-martial is considered appropriate, regardless of the length of absence.

(a) In cases involving missing ship where the ship has moved from one pier or anchorage to another, or has only gone on a trial or post repair run or local shakedown, or in similar cases, trial by general court-martial is discretionary subject to the provision of paragraph 3.

(b) An absentee from a ship or mobile unit shall be returned to his ship or unit immediately for disciplinary action if the ship or unit is still available and in the immediate vicinity. Steps shall be taken to insure his arrival on board.

(c) If the ship or unit is not available, disciplinary action shall be taken by the command concerned in accordance with the provisions of this order.

5. In all cases of desertion a plea of not guilty must be entered for the accused; evidence will be taken, and if the accused does not desire to take the stand such fact must appear affirmatively.

6. The Department considers that for desertion cases a sentence of at least 3 years confinement plus the length of absence is appropriate, subject to the increases indicated in paragraph 8 of this order.

7. Convening authorities should take the following action, as appropriate, in cases where men are found guilty of absence over or without leave (as distinguished from desertion):

A. Confinement as adjudged to be mitigated so that the part of the sentence relating to confinement will be:

For absence up to 59 days	12 months
For absence of 60 to 89 days	18 months
For absence of 90 to 119 days	24 months
For absence of 120 to 149 days	30 months
For absence of 150 days and over	3 years

B. As all men confined by sentence of a general court-martial are qualified to apply to the Naval Clemency Board for restoration to duty on completion of one-third of their sentence, the practice of convening authorities of directing restoration to duty on probation on completion of a part of the sentence is a duplication of the efforts of the Clemency Board and is not looked upon with favor. The foregoing is not intended to impair in any way the authority of convening authorities to remit all or part of a general court sentence on probation in worthy cases.

8. In general court-martial absence cases (including desertion), increases in the period of confinement over those set forth in paragraphs 6 and 7A are considered appropriate as follows:

1 month when the offender is apprehended or delivered to naval jurisdiction.

1 month for each prior conviction by deck or summary court-martial, prior convictions to be considered in accordance with paragraph 3E.
2 months when the offender missed ship or mobile unit.
3 months for each prior conviction by general court-martial. Paragraph 3E.

9. In general court-martial trials the accused shall be afforded counsel of his own choosing whenever practicable; if not practicable then competent counsel shall be assigned to represent him, regardless of the plea.

10. When a probationer commits an offense of sufficient gravity to warrant termination of probation, such probation will be terminated promptly. If the remaining period of confinement and other punishment provided in the sentence on which probation has been terminated be suitable punishment for and commensurate with the gravity of the new offense committed, no further disciplinary action need be taken. Otherwise, the offender will be tried by appropriate court in order that a new sentence may be imposed. In appropriate cases, the convening authority, in his letter of action on general court-martial proceedings, will indicate the fact of probation termination and provide whether the new sentence is to run concurrently with or consecutively to any prior sentence.

11. The practice of carrying out sentences of dishonorable and bad-conduct discharges which are to be effected immediately (no confinement to be served) without recourse to the Bureau of Naval Personnel, Commandant, U. S. Marine Corps, or Commandant, U. S. Coast Guard, will be discontinued.

12. The effective date hereof is 1 July 1945.

13. The first four paragraphs of this order will be published at quarters on three successive days and posted on all bulletin boards.

—*SecNav.* RALPH A. BARD.

17C2. Administration of offenses involving unauthorized absence. Further clarification of current policy in connection with offenses involving unauthorized absence was furnished by Bureau of Personnel Circular Letter No. 206-45 which is quoted in full below.

CIRCULAR LETTER NO. 206-45
45-817—Offenses Involving Unauthorized Absence, Administration of Pers-650-B1, P13-9, 12 July 1945

ACTION: ALL SHIPS AND STATIONS

(Ref: (a) BuPers Circ. Ltr. 172-43; N.D. Bul. Cum. Ed. 1943, 43-1404, p. 848.
(b) BuPers Circ. Ltr. 180-44; AS&SL Jan.-June 1944, 44-753, p. 624.
(c) BuPers Manual, art. D-8002(2).

(d) BuPers Manual, art. D-8005(1).

(e) SecNav ltr. 45-529, of 29 of May 1945; N.D. Bul. of 31 May 1945.

(f) BuPers ltr. Pers-651-JB, A17-20, of 19 Feb. 1943, to CO, RecSta, RecShips, NAS, and other activities in continental U. S. having a permanent G.C.M.)

1. References (a) and (b) are hereby canceled. The provisions of references (c) and (d) relative to ships declaring absentees 'deserters' upon sailing are held in abeyance.

2. When an unauthorized absentee surrenders or is apprehended, the command concerned will take immediate steps to insure that he is expeditiously and adequately disciplined.

3. The following steps shall be taken in the case of each unauthorized absentee:

(A) ABSENTEE FROM SHIP OR MOBILE UNIT:

(1) If ship or unit is available and in the immediate vicinity, he shall be returned immediately for disciplinary action. Steps shall be taken to insure his arrival on board.

(2) If ship or unit is not available and in the immediate vicinity, disciplinary action shall be taken by the command to which the man surrenders or is delivered, or by the commandant of the naval district, as appropriate.

(3) Upon restoration to duty after completion of disciplinary measures, the man shall be returned, if practicable, to his former command; otherwise he shall be assigned to duty comparable to that from which he absented himself. In no case shall he be assigned to shore duty. Such a man shall not be granted leave, liberty, or any special privileges while in the continental U. S. prior to reporting to his first regular duty station, except in extreme emergencies, such as a death or serious illness in the immediate family.

(B) ABSENTEE FROM SHORE STATION:

(1) Disciplinary action shall be taken by the command to which the man surrenders or is delivered.

(2) Upon restoration to duty after completion of disciplinary action, he shall be assigned immediately to the nearest receiving station for assignment to general detail for further transfer to overseas duty afloat or ashore. Exceptions:

(a) A man who is guilty of an absence offense not requiring trial by general or summary court-martial in accordance with reference (e), and whose case is disposed of by the same command from which he absented himself, may be retained on

duty in that command at the discretion of the commanding officer.

(b) Men not physically qualified for sea duty, men in special ratings which cannot be utilized at sea or at bases overseas, and men in recruit training shall be returned to their former commands, and checkage for transportation shall be made in accordance with current instructions.

(3) Such a man shall not be granted leave, liberty, or any special privileges while in the continental U. S. prior to reporting (or returning) to his permanent duty station, except in extreme emergencies, such as death or serious illness in the immediate family.

4. In order to accomplish the above procedures, the following must be observed:

(a) Commanding officers of ships and mobile units shall, prior to sailing, transfer service records, pay accounts, and health records of absentee by mail, or deliver them, to the nearest receiving station or other large naval activity. Absentees' effects should be delivered also, if practicable.
Exceptions: Cases where it is known that the ship will return shortly to the same port.

(b) A copy of the letter of transmittal of these records shall be sent to BuPers, such letter to show the date of absence in each man's case.

(c) The final entry in the service record shall describe the offense. This shall include the words "Missed Ship", if applicable. This entry must be authenticated by the commanding officer or other officially designated authority; facsimile signatures must be initialed as provided in BuPers Manual, art. D–4004. Any station receiving a record with incomplete or improperly authenticated entries shall immediately inform BuPers of these facts.

(d) Should a ship or mobile unit sail with an absentee's records, accounts, and effects, they shall be forwarded at the first opportunity to the receiving station or other large naval activity at the port from which the ship or unit sailed, and a copy of the letter of transmittal sent to the commandant of the naval district concerned and to BuPers. Declaration as a deserter by reason of having missed ship shall not be made by the ship, but by the command which receives his records, when and as appropriate.

(e) In the case of an absentee from a shore station who surrenders or is delivered at other than his own command, a dispatch shall be sent immediately, via NTX, to his former command requesting that his records, accounts, and personal effects be forwarded.

(f) No man shall be tried by general court-martial without his service record.

(g) No man shall be tried by summary court-martial without his service record, except in cases where the delay occasioned is likely to defer the initiation of disciplinary action for a period of more than 20 days. Reference (f) is modified hereby.

(h) When an absentee is brought to mast without his record, the commanding officer must give due consideration to the possibility of awarding inadequate punishment to repeated offenders in accordance with reference (e), should take prompt action to obtain his record, and should defer judgment until the record is available. Only in a most unusual and deserving case will an offense of unauthorized absence be excused or the accused merely warned. Where such action is taken, a signed statement of the facts attending will be placed in the pocket of the man's service record, with copy to BuPers.

(i) A man restored to duty after completion of disciplinary action for unauthorized absence should not be held at a receiving station or receiving ship within the continental United States for a period of more than 6 days for the purpose of returning him to his former command, or longer than 48 hours for transfer to any other command. Should circumstances preclude compliance with this provision, the appropriate controlling superior shall be notified by dispatch. However, no ship shall be assigned personnel under this directive in numbers greater than 2% of complement within a 3-month period, except by approval of the commanding officer.

5. This revision of Circ. Ltr. 172-43 makes important modifications to certain features of the original letter. The principal changes and the reasons therefor are, briefly:

(a) The return of an absentee to his own ship after completion of disciplinary action, while desirable, is no longer made mandatory. Prior to the issuance of circular letters 172-43 and 172-44, some absentees escaped adequate punishment and obtained preferential duty assignments. As a result, commanding officers desired return of these men to own ship for purposes of maintaining morale and insuring adequate discipline. However, this initial situation has been largely remedied. Only in exceptional cases (usually through disregard of directives) are absentees escaping adequate disciplinary action, and the return of a man to his former command, while still desirable, is no longer considered to be practicable in many cases. The loss of manpower, demands on transportation, congestion of barracks, unpredicted movements of ships, and the rehabilitation of the man himself dictate against

the continuance of the previous policy. Any instances in which a man has apparently escaped adequate punishment shall be brought to the attention of BuPers.

(b) It is now required that an absentee from a shore station shall, upon completion of punishment, and if physically qualified, be sent to sea. One reason for this is to open a shore billet for a man having lengthy overseas service.

(c) It is now required that absentees from shore stations be disciplined by the command to which surrendered or delivered. It is considered more expeditious and less costly to transfer records than to transfer a man under guard.

6. Unauthorized absences from ships or mobile units should be considered in a serious light. Where a man has missed the sailing of his ship or mobile unit, adequate disciplinary action is mandatory and, except under the most unusual circumstances, trial by general court-martial is considered appropriate, regardless of the length of absence. Probation violators should normally be tried by court martial in accordance with paragraph (10) of reference (e).—*BuPers.* RANDALL JACOBS.

D. OFFICER DISCIPLINE

17D1. Officers of the line of the regular Navy or the Naval Reserve, on active duty, who have been commissioned subsequent to 23 June 1938. Officers of the line of the regular Navy or the Naval Reserve, on active duty, who have been commissioned subsequent to 23 June 1938, are subject to the following types of administrative disciplinary action:

1. Recommendation for trial by general court-martial.
2. General Order No. 117 (Revocation and Discharge).
3. Letters of:
   a. Caution
   b. Admonition
   c. Reprimand
4. Release from active duty:
   a. Officers Regular Navy—Furlough.
   b. Officers Retired and Reserve—Inactive duty.
5. Transfer to other duty:
   a. With change of officer's classification, or
   b. Without change of officer's classification.
6. In appropriate cases, the officer concerned may be permitted to tender his resignation:
   a. Without comment.
   b. Under honorable conditions.
   c. For the good of the service.

d. For the good of the service and to escape trial by general court-martial, or
e. Other appropriate language.

17D2. Officers of the line of the regular Navy or the Naval Reserve, on active duty, who have been commissioned on or before 23 June 1938. Officers of the line of the regular Navy or the Naval Reserve, on active duty, who have been commissioned on or before 23 June 1938, are subject to all types of administrative disciplinary action as outlined in Article 17D1 except (2), General Order No. 117.

17D3. Staff officers, on active duty, whenever commissioned. Staff officers, on active duty, whenever commissioned, are subject to all types of administrative disciplinary action as outlined in Article 17D1 except (2), General Order No. 117. All commissions in the lowest commissioned grades of the Staff Corps of the Navy with the rank of ensign may be revoked by the Secretary of the Navy in accordance with General Order No. 115. This applies to staff officers of the Reserve when on active duty.

17D4. All officers of the Navy, when on inactive duty. All officers of the Navy, when on inactive duty, are subject to the following types of administrative disciplinary action:

1. Recommendation that he be ordered to active duty for trial by general court-martial in appropriate cases.
2. Letters of:
   a. Caution
   b. Admonition
   c. Reprimand
3. In appropriate cases, the officer concerned may be permitted to tender his resignation:
   a. Without comment.
   b. Under honorable conditions.
   c. For the good of the service.
   d. For the good of the service and to escape trial by general court-martial, or
   e. Other appropriate language.

17D5. Officers of the Naval Reserve in an inactive duty status. Officers of the Naval Reserve in an inactive duty status may be discharged for cause under Article H–6202, *Bureau of Naval Personnel Manual:*

1. When the cause arises while the officer is:
   a. Not a commissioned officer, or
   b. In an inactive duty status, and

2. When the officer concerned has:
   a. Never been called to active duty, or
   b. Has not been returned to an inactive duty status for the cause for which he is to be discharged.

17D6. In general. None of the foregoing disciplinary actions except as set forth in Articles 17D1 (1), 17D4 (1), and 17D5 can be taken without complying with General Order No. 62 which provides that unfavorable matter shall not be filed in connection with an officer's record without his knowledge and an opportunity to reply thereto. No revocation of commission of an officer of the line can be accomplished without compliance with General Order No. 117, or of a staff officer without compliance with General Order No. 115.

No final action under General Order No. 117 or No. 115 for disciplinary reasons shall be taken in the Bureau without:

1. Notice to the officer concerned as to the basis for contemplated action, and
2. The officer concerned being ordercd to the Bureau of Naval Personnel for a hearing before an officer of the Bureau.

All possibilities for salvage of the services of the officer concerned shall be examined.

Ordinarily, an officer whose service is terminated for disciplinary or other reasons, shall be ordered home with a reasonable opportunity to arrive there prior to the effective date of separation.

17D7. All officers on active duty; punishment by commanding officer. In regard to punishment of a warrant or commissioned officer by his commanding officer, see Article 7–13 of this text.

17D8. Report of misconduct. Article 8–2 of this text is applicable in the case of reports of misconduct directed against warrant and commissioned officers. Whenever an accusation is made against an officer, either by report or by indorsement upon a communication, a copy of such report or indorsement shall be furnished him at the time. (See Article 202 of *Navy Regulations.*)

E. SUMMARY COURT-MARTIAL DOCKET SHEET

17E1. Instructions. A docket sheet as illustrated in Figure 17–1 should be maintained by all convening authorities with respect to all cases ordered tried by summary courts-martial. The following are instructions for filling out a summary court-martial docket sheet and monthly report of summary courts-martial published.

1. In column 1 enter the name of the accused (last name first) and rate (or rank).
2. In column 2 enter the offenses with which the accused is charged. Accepted abbreviations (AOL, AWOL, C to P, etc.) may be used.
3. In column 3 enter the date the accused surrendered to, or was apprehended by your command.
4. In column 4 enter the date the accused was brought to mast.
5. In column 5 enter the date the specifications were approved by the convening authority.
6. In column 6 enter plea or pleas to each specification—*guilty* or *not guilty*.
7. In column 7 enter the date trial was completed.
8. In column 8 enter the date of action by the convening authority on the proceedings, findings, and sentence.
9. In column 9 enter the number of days elapsing between the date the accused surrendered to, or was apprehended by, your command (column 3), and the date of the action by the convening authority on the proceedings, findings, and sentence (column 8).
10. In column 10 enter the date of the final action by the immediate superior in command or senior officer present.
11. In column 11 enter the number of days elapsing between the date of action by the convening authority on the proceedings, findings, and sentence (column 8), and the date of the final action by the immediate superior in command, or senior officer present (column 10).
12. In column 12 enter the date sentence was published.
13. In column 13 enter the total number of days elapsing between the date the accused surrendered to, or was apprehended by, your command (column 3), and the date sentence was published (column 12).
14. In column 14 record sentence, as finally approved.
15. Enter on these docket sheets *only cases published during the month.* Begin a new sheet the first day of each month. It is recommended that the docket be maintained and the entries for each case be recorded by the officer handling the publication of sentence, and that the entries be made at the same time each case is published.
16. This docket will be maintained in a permanent folder on sheets approximately 20″ x 12″ with spaces for 20 names to a page. The following sample form will be reproduced as necessary by the various commands.

SUMMARY COURT DOCKET SHEET

.....
Name of Activity

(1) Name and Rate (Rank)	(2) Offense	(3) Date Confined at this Command	(4) Date of Mast	(5) Date specification Approved	(6) Plea	(7) Date Tried

(The following columns will continue across the docket sheet, on the same line with the above 7 columns.)

(8) Date of C.A. Action	(9) Days Elapsed between 3 and 8	(10) Date of ISIC or SOP Action	(11) Days Elapsed between 8 and 10	(12) Date Sentence Published	(13) Total Days Elapsed between 3 and 12

(14)
Sentence as finally approved and remarks

(This form should be reproduced on sheets approximately 20 inches by 12 inches, with spaces for 20 names to a page.)

Figure 17–1. A summary court-martial docket sheet.

F. REFERENCE PUBLICATIONS

17F1. Required publications. The following publications are mandatory for the proper administration of naval law and should therefore be contained in the library of every naval command. They may be obtained from the Office of the Judge Advocate General, Navy Department, Washington, D. C.

1. *Naval Courts and Boards, 1937.*
2. *Naval Digest, 1916.*
3. *Compilation of Court-Martial Orders, 1916-1937* (3 volumes; Volumes 1 and 2 and Cumulative Index).
4. *Court-Martial Orders, 1938-1943* (Cumulative pamphlet editions).

17F2. Collateral references. The rules, regulations, and instructions contained in these publications are also necessary for the administration of naval law and are therefore included as collateral references. They may be obtained from the Chief of Naval Personnel, Navy Department, Washington, D. C.

1. *U. S. Navy Regulations, 1920,* with Changes to date.
2. *Navy Department General Orders.*
3. *Bureau of Naval Personnel Manual.*
4. *Bureau of Supplies and Accounts Manual.*
5. *Landing Force Manual.*
6. Other Bureau Manuals.

17F3. U. S. Statutes. These publications contain the statutes of the United States pertaining to naval law and may be obtained from the Government Printing Office. *The Laws Relating to the Navy Annotated* and *Supplement* thereto by George Melling are presently out of print and are currently being revised in the Office of the Judge Advocate General.

1. *The United States Code* and *Supplement.*
2. *Laws Relating to the Navy Annotated* and *Supplement* by George Melling.

17F4. Publications of Naval Institute. The following publications available from and published by the U. S. Naval Institute, Annapolis, Maryland, contain valuable information of a general character pertaining to the administration of discipline and naval justice.

1. *Naval Administration, 1942.*
2. *Naval Leadership, 1939.*
3. *Naval Customs, Traditions, and Usage,* by Leland P. Lovette, Captain, USN.

17F5. Army publications. These publications although dealing directly with the law governing the Army are often useful in the administration of naval law by way of comparison and analogy. They may be obtained from the Government Printing Office, Washington, D. C.

1. *A Manual for Courts-Martial*, U. S. Army, 1936.
2. *Digest of Opinions of the Judge Advocate General of the Army, 1912-1940.*
3. *Bulletins of the Judge Advocate General of the Army, 1941-1944.*
4. *Military Law and Precedents*, by William Winthrop.

17F6. General references. These texts are recognized as authority in their respective fields and are often cited in court-martial orders. If available, they offer excellent collateral reference.

1. *A Treatise on the Law of Crimes*, by William L. Clark and William L. Marshall.
2. *A Treatise on Criminal Law*, by Francis Wharton.
3. *Criminal Trial Practice*, by Austin Abbott.
4. *The Law of Evidence*, by Henry Wigmore.
5. *Criminal Evidence*, by George Underhill.
6. *Principles of Judicial Administration*, by W. F. Willoughby.

G. COMMON ABBREVIATIONS

17G1. Abbreviations informally used. Frequently in legal memoranda, letters and directives, as well as in the summary court-martial cover page issued by the Department, abbreviations are used in an effort to conserve space and time. With the exceptions of *U. S.*, *U. S. S.*, *a. m.*, and *p. m.*, abbreviations are not authorized in the formal records of courts-martial and are prohibited in charges and specifications. They may be utilized to advantage, however, in informal administrative procedure in connection with naval courts-martial.

AGN	Articles for the Government of the Navy
AOL	Absent over leave
APPD	Approved
AWOL	Absent without leave
BCD	Bad-conduct discharge
CA	Convening authority
CHG	Charge
CMO	Court-Martial Orders
CONF	Confinement
C to P	Conduct to the prejudice of good order and discipline

CUOG	Conduct unbecoming to an officer and a gentleman
DC	Deck court
DEP LIB	Deprivation of liberty
DISSAPPD	Disapproved
EPD	Extra police duty
GCM	General court-martial
ISIC	Immediate superior in command
JAG	Judge Advocate General
LP	Loss of pay
NCB	Naval Courts and Boards, 1937
RED	Reduced
RNIR	Reduction to next inferior rating
SC	Scandalous conduct tending to the destruction of good morals
SC B&W	Solitary confinement on bread and water
SCM	Summary court-martial
SENT	Sentence
SOL CONF	Solitary Confinement
SOP	Senior Officer Present
SPEC	Specification
VLGOSN	Violation of a lawful general order of the Secretary of the Navy
VLRSN	Violation of a lawful regulation issued by the Secrtary of the Navy

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