

5. POST TRIAL MATTERS

5.A. PREPARATION OF RECORDS OF TRIAL [ROT]

5.A.1. General and Special Courts-Martial

5.A.1.a. Verbatim Records of Trial [ROT]

A complete and verbatim record of trial [ROT] shall be prepared in certain general and special courts-martial as required by Article 54, UCMJ, RCM 1103, and Appendix 14, MCM (except as modified herein), and the orders of the trial court. When a verbatim ROT is prepared, the trial counsel shall retain or cause to be retained any notes or recordings from which the ROT was prepared until such time as the conviction is final under RCM 1209(a). For disposition of records, see section 5.H below.

5.A.1.b. Summarized ROT

With the concurrence of the responsible SJA and the military judge presiding over the case, a summarized ROT may be prepared in lieu of a verbatim ROT, so long as a verbatim ROT is not required. Appendix 13, MCM shall be used as a guide when preparing a summarized ROT. When a summarized ROT is prepared, the trial counsel shall retain or cause to be retained any notes or recordings from which the ROT was prepared until such time as the conviction is final under RCM 1209(a). For disposition of records, see section 5.H below.

5.A.1.c. Acquittals and Findings of Not Guilty

At the conclusion of a court-martial resulting in an acquittal, finding of not guilty by reason of lack of mental responsibility, or termination of the proceedings prior to findings as to all charges and specifications, there is no need to prepare either a summarized or verbatim ROT. Only the requirements set forth in RCM 1103(e) must be met. The trial counsel's notes, reporter's notes, and recordings shall be retained for three years from the date the trial is adjourned. At that time, such notes, recordings, and local copies of the ROT (if prepared) are considered non-record material and may be destroyed. If the accused is found not guilty by lack of mental responsibility and subsequently placed in the care of a Department of Justice [DOJ] facility in accordance with procedures agreed to between the Coast Guard and Federal Bureau of Prisons, there may be a requirement to

create an abbreviated ROT for administrative purposes. In such instances, the servicing legal office should contact Commandant (G-LMJ) for current guidance.

5.A.1.d. Manner of Recording Proceedings

The preferred method for recording trial proceedings is by audio tape recorded by a qualified Coast Guard court reporter, civilian contractor court-reporter, or qualified court-reporter from another armed service. The methods set forth in RCM 1103(j)(1) and (3), which allow for video tape, audio tape or similar method of recording without the presence of a certified court reporter may not be used in the Coast Guard without prior authorization from Commandant (G-LMJ).

5.A.1.e. Trial Counsel Responsibilities in the Immediate Aftermath of Trial

(1) Report of Results of Trial

After final adjournment of the court-martial, the trial counsel shall promptly notify the accused's commanding officer, the convening authority, and, if appropriate, the officer-in-charge of the confinement facility of the findings and sentence. [See, RCM 1101.] Enclosure (18a) is a sample Report of Results of Trial. Trial counsel shall also provide a copy of the Report or Results of Trial to the defense counsel, military judge, servicing PERSRU for the accused and, if CGIS was involved in any aspect of the case, to the servicing CGIS office.

(2) Cases Resulting in Adjudged or Automatic Forfeitures or Adjudged Reduction in Pay Grade

In all cases resulting in adjudged forfeitures or reduction in pay grade or administrative forfeitures compelled by operation of Article 58b, UCMJ, trial counsel shall include in the Results of Trial letter required by RCM 1101(a), a statement substantially as follows:

Adjudged and/or automatic forfeitures, under Article 58b, UCMJ, and/or adjudged reduction in pay grade will be effective (*effective date*), unless they are deferred or waived by the convening authority.

(3) Confinement Order

The trial counsel must be familiar with the brig rules regarding admitting confinees. A sample confinement order (post-trial) can be found at enclosure (18j).

5.A.2. Preparation, Arrangement, and Authentication of ROT

In the preparation of both verbatim and summarized ROTs, the preparation, arrangement, and authentication of ROTs and allied papers, to the extent possible, shall be in accordance with RCM 1103, Appendices 13 and 14, MCM, and the rules contained in this section. A helpful checklist to assist the trial counsel and legal staff prepare the ROT is found at enclosure (18c).

5.A.2.a. Charge Sheets

The original charge sheet should be inserted into the original ROT in lieu of copying into the ROT the charges and specifications upon which the accused is to be tried, the name and description of the accuser, the affidavit, and the reference for trial. When minor changes to the charge sheet are made after arraignment, any such changes must be fully detailed in the ROT [*see*, RCM 603].

5.A.2.b. Request for Trial Before Military Judge Alone

If the accused was tried before the military judge alone, include an executed copy of the written request, if one was submitted, in the ROT as an appellate exhibit.

5.A.2.c. Detailing Letters

The detailing letters for the military judge and counsel, if submitted, shall be included in the ROT as appellate exhibits.

5.A.2.d. Court-Martial Data Sheet (DD Form-494)

Unless otherwise directed by the OEGCMJ, the use of the Court-Martial Data Sheet (DD Form 494) is not required.

5.A.2.e. Exhibits

(1) If an exhibit consists of video or audio tape(s), affix clear and complete labels to the original of the tape and to the tape's box or protective sleeve. The label shall indicate the case name, the exhibit number, and any relevant witness or event names (*i.e.*, "U.S. v. Smith, Prosecution Exhibit ____, Interview of SN Jones 2/13/98" or "U.S. v. Jones, Defense Exhibit ____, Videotape of Scene Following 2/13/98 Automobile Accident").

(2) The first page of a document shall be marked to indicate the point in the ROT where the exhibit was marked, offered (or not), and admitted (or not). Draw a line through the parts of the marking(s) that do not apply. For example:

Prosecution Exhibit ____ for identification,
page 1 of ____ page(s). Marked at R ____,
offered at R ____, admitted at R ____.

(3) Second and subsequent pages of exhibits shall be marked with the exhibit number and, in the case of multiple page exhibits, the page number. Draw a line through the parts of the marking that do not apply. For example:

Prosecution Exhibit ____,
page ____ of ____ pages.

(4) All documentary or photographic exhibits shall be mounted on standard size 8 1/2" x 11" paper. Originals of larger exhibits shall be folded, to the extent

possible, to 8 1/2" x 11" in size. Copies of larger exhibits shall, if feasible, be reduced to 8 1/2" x 11" size.

(5) Even though exhibits are "sealed", two copies should be prepared and sealed in the same manner as the original and accompany the original ROT. The pages of a "sealed" exhibit shall be marked in the same way as other exhibits.

5.A.2.f. General Instructions

- (1) Do not use plastic document protectors.
- (2) Complete and sign the chronology sheet, Form DD 490 or DD 491.
- (3) Use only "slide" fasteners (with compressors) and bind ROTs at the top. Two-inch capacity fasteners are preferred [stock number 7510-00-235-6068]. Do not use "book style" or "left-hand" binding, 3-ring binders, "screw and post" type fasteners, or report covers.
- (4) All copies shall be copied one sided; *do not copy* "2-sided" or "back to back."
- (5) Copies shall be as legible as originals.
- (6) Copies of the ROT shall appear, to the extent possible, substantially as the original appears. For example: if the original has 5 one-inch thick volumes, the copies should each have 5 one-inch thick volumes. Copies of video or audiotapes, charts, photographs, etc., shall appear substantially as they appear in the original.
- (7) Do not exceed size limitations for individual volumes in multi-volume ROTs.
- (8) Do not forward the original ROT without the required number of copies.
- (9) Fill empty space in shipping boxes with packing material to avoid damage to the ROT and copies.
- (10) Provide a complete copy of the ROT by traceable means to all defense counsel (including IMC and civilian defense counsel (if any)).
- (11) Ensure return receipts for service of documents to the accused and counsel (*i.e.*, ROT, SJARs, etc.) are included in the ROT.
- (12) Include one extra copy of the court-martial promulgating order and the action of the convening authority separate from those contained in the ROT and required complete copies.

(13) Forward a copy of the promulgating order directly to the servicing CGIS office in accordance with Criminal History Reporting for Military Suspects, COMDTINST 5580.1 (series).

(14) Shipment of the ROT, required copies, and other materials should be through the current General Services Administration (GSA) contractor for domestic express delivery service instead of certified mail. Include the name, room number, and telephone number of the addressee on the express delivery label. The use of registered mail is not authorized. This rule does not apply to ROTs shipped from overseas. Such ROTs should be sent by the most reliable and expeditious means.

5.A.2.g. Arrangement of the ROT

(1) When forwarded to Commandant (G-LMJ), a verbatim ROT (and all of its copies) shall be arranged in the following sequence as is appropriate:

- (a) Front cover and chronology sheet.
- (b) Records of proceedings in connection with vacation of suspension.
- (c) Conditions of suspensions and proof of service on probationer under RCM 1108.
- (d) Waivers or withdrawal of appellate review under RCM 1110.
- (e) Promulgating order.
- (f) Action of OEGCMJ.
- (g) Dated and signed action of convening authority or substitute convening authority or, statement why it is impracticable for the convening authority to act. Attach a copy of any letter of reprimand.
- (h) Matters submitted by accused under RCM 1105, or written waivers, and any brief submitted under Article 38(c), UCMJ.
- (i) Recommendations and other matters relative to clemency not contained in subparagraph (h).
- (j) Certificate of service of SJA or law specialist recommendation on defense counsel [*see*, RCM 1106(f)(1)].
- (k) Signed SJA or law specialist recommendation [*see*, RCM 1106].
- (l) Verification of receipt by defense counsel of the RCM 1106 recommendation and any response by defense counsel to SJA or law specialist recommendations.
- (m) Any deferment request and action taken on such request.

- (n) Explanation for any substitute authentication under RCM 1104(a)(2)(B).
- (o) Other appropriate matters, including items set forth in RCM 1103(b)(3)(F).
- (p) Article 32, UCMJ investigation, if any. If waived, include documentation of waiver.
- (q) Article 34, UCMJ SJA advice [*see*, RCM 406]; if waived, include documentation of waiver.
- (r) Records of former trial (in the case of a rehearing).
- (s) Counsel requests and action taken (*e.g.*, requests concerning delay, depositions, etc.).
- (t) The transcript portion of the ROT compiled in the following order:
 - i. Index sheet;
 - ii. Receipt of accused, or certificate of trial counsel indicating delivery of a copy of the ROT to accused;
 - iii. Record of court proceedings;
 - iv. Exhibits admitted in evidence - When an exhibit is in the form of an audio or videotape, chart, photograph, or other non-written testimony a copy of the exhibit must be made and attached to each ROT copy;
 - v. Appellate exhibits;
 - vi. Offered exhibits not received in evidence.

(2) Summarized ROTs will be arranged in the same sequence as verbatim ROTs, so far as may be appropriate.

(3) If an item required above is available in full in another part of the ROT a “filler page” identifying the location of the item in the record may be used in place of a second copy. A “filler page” may also be used in copies of the ROT to refer to documents found only in the original ROT (*e.g.*, sealed exhibits).

5.A.2.h. Number and Distribution of ROT copies

- a. The original ROT is filed with Commandant (G-LMJ). Seven additional and complete copies are required for courts-martial cases in which Coast Guard Court of Criminal Appeals review is required under RCM 1201(a); these additional copies are also filed with Commandant (G-LMJ).
- b. One copy for each accused.
- c. One copy for the convening authority.

- d. One copy for the OEGCMJ.
- e. Additional copies as required by trial counsel or the convening authority.
- f. In all cases where approved confinement is for a period of 12 months or more, provide a complete copy of the ROT by traceable means directly to the Naval Clemency and Parole Board. [See, Department of the Navy Clemency and Parole Systems, SECNAVINST 5815.3H, paragraph 304.] The address of the Naval Clemency and Parole Board is:

Naval Clemency and Parole Board
Washington Naval Yard
901 M St. SE, Building 36, Room 322
Washington, D.C. 20374-5023
Phone: (202) 685-6455

5.A.3. Distribution of SJA Recommendation [SJAR]

The original SJA recommendation shall be attached to the original ROT. A copy shall be served on counsel for the accused as set forth in RCM 1106(f). Receipt of the recommendation by the defense counsel shall be verified by use of a receipt. A copy of the recommendation and the verification of receipt by the defense counsel must be attached to each copy of the ROT.

5.A.4. Disposition of ROTs after Convening Authority Action

5.A.4.a. GCM or SPCM with Approved Death Sentence, Punitive Discharge, or Confinement for One Year or Longer

A convening authority, upon acting on a general or special court-martial ROT with a sentence including an approved death sentence, punitive discharge (regardless of whether the discharge was suspended), or confinement for one year or longer, shall forward the ROT as follows:

- (1) If the sentence includes death or otherwise if there is no waiver or withdrawal of appellate review under RCM 1110, the ROT shall be sent directly to Commandant (G-LMJ) for review by the Coast Guard Court of Criminal Appeals. [See, paragraph 5.A.2.h above for required number of copies; see paragraph 5.G.6 below for required number of copies of the promulgating order.] The convening authority shall notify the SJA when he or she takes action and provide a copy of the action and promulgating order to the OEGCMJ.

(2) If the sentence does not include death and there is a waiver under RCM 1110, the ROT shall be referred to a law specialist for review under RCM 1112 [see, paragraph 5.F.3 below].

(3) The convening authority shall provide the accused's last known address and phone number in the letter of transmittal forwarding the ROT to Commandant (G-LMJ) for referral to the Coast Guard Court of Criminal Appeals [see, RCM 1201].

5.A.4.b. GCM Including a Conviction and a Sentence

(1) In a case in which there has been a finding of guilty and a sentence, and there is not a waiver under RCM 1110, but the case is not subject to review under subparagraph 5.F.2.a below, the ROT shall be sent directly to Commandant (G-LMJ) for review by the Judge Advocate General of the Coast Guard (DoT General Counsel) under RCM 1201(b)(1).

(2) In cases in which there is a waiver under RCM 1110, the ROT shall be referred to a law specialist for review under RCM 1112 [see, paragraph 5.F.3 below].

5.A.4.c. SPCM Not Including Approved BCD and SCM

In special court-martial cases not including an approved bad conduct discharge and all summary courts-martial the ROT shall be referred to a law specialist for review under RCM 1112 [see, paragraph 5.F.3 below]. following action by the convening authority.

5.A.4.d. GCM and SPCM Resulting in Acquittal

In all such cases the ROT shall be forwarded directly to Commandant (G-LMJ) for filing upon issuance of the promulgating order by the convening authority.

5.B. ADMINISTRATIVE POST-TRIAL MATTERS

5.B.1. Military Judge Record and Report

Upon final adjournment in each case, or if no trial is held upon withdrawal of the charges from court-martial or discharge of the accused, the military judge shall forward a "Military Judge Record and Report" to Commandant (G-L-4) with a copy to Commandant (G-LMJ). This report should include substantially the same information as shown on the sample report contained in enclosure (18b). The specification(s) information may be provided by submitting a copy of the charges and specifications annotated to show pleas and findings or other convenient means to show the disposition of each specification(s). Upon authentication of the ROT the military judge shall inform Commandant (G-L-4) of the amount of post-trial time expended on the case.