

ACKNOWLEDGMENT OF RIGHTS-ACCEPTANCE OF SCM

I, _____, attached to _____, acknowledge the following facts and rights regarding summary court-martial.

1. I have the right to refuse trial by summary court-martial.
2. I have the right to consult with an attorney prior to deciding whether to accept or refuse trial by summary court-martial. Should I desire to consult with an attorney, I understand that a military attorney will be made available to advise me, free of charge, or I may consult with a civilian attorney at my own expense. I do not have the right to be represented by a military attorney at summary court-martial.
3. If I accept trial by summary court-martial, I have the following rights:
 - a. To be represented at trial by a civilian attorney provided by me at my own expense, or to be assisted by a non-attorney representative;
 - b. To remain silent, and to plead not guilty, thus placing upon the government the burden of proving my guilt beyond a reasonable doubt;
 - c. To have the summary court-martial call, or subpoena, witnesses to testify on my behalf;
 - d. To confront and cross examine all witnesses against me; and
 - e. If found guilty, to present matters which may mitigate the offense or demonstrate extenuating circumstances as to why I committed the offense(s).
4. I understand that the maximum punishment that may be adjudged by a summary court-martial is:
 - a. E-4 or below:
 - (1) One month confinement
 - (2) Forty-five days hard labor without confinement;
 - (3) Two months restriction;
 - (4) Forfeiture of 2/3 of one month's pay, or a fine not exceeding the amount of 2/3 of one month's pay, or both fine and forfeiture but the combination not to exceed 2/3 of one month's pay;
 - (5) Reduction to the lowest pay grade; and
 - (6) Reprimand.

b. SCM on an E-5 or above:

(1) Two months restriction;

(2) Forfeiture of 2/3 of one month's pay, or a fine not exceeding the amount of 2/3 of one month's pay, or both fine and forfeiture but the combination not to exceed 2/3 of one month's pay;

(3) Reduction to the next inferior pay grade; and

(4) Reprimand.

5. Should I refuse trial by summary court-martial, my commanding officer may refer the charge(s) to trial by special court-martial or general court-martial. At a special court-martial, in addition to those rights set forth in paragraph 3, I would have the following rights:

a. To be represented at trial by a military attorney, free of charge, including a military attorney of my own selection, if that attorney is reasonably available. In addition to a military attorney, I may have a civilian attorney at my own expense;

b. To be tried by a court-martial composed of at least three officers as members or, at my request, at least one-third of the court members would be enlisted personnel. If tried by a court-martial with members, two-thirds of the members, voting by secret ballot, would have to agree in any finding of guilty, and two-thirds of the members would also have to agree on any sentence to be imposed, should I be found guilty; and

c. To request trial by military judge alone. If tried by military judge alone, the military judge alone would determine my guilt or innocence and, if I were found guilty, he alone would determine the sentence imposed.

6. I understand that the maximum punishment which can be imposed at a special court-martial for the offense(s) charged against me is:

a. Discharge from the Coast Guard with a bad-conduct discharge (delete as appropriate);

b. Confinement for _____ months [not to exceed six months];

c. Hard labor without confinement [not to exceed three months];

d. Restriction to specified limits [not to exceed two months];

e. Reduction to the lowest enlisted pay grade.

f. Forfeiture of 2/3 pay per month for _____ months [not to exceed six months];

g. Fine in addition to or in lieu of a forfeiture [not to exceed maximum forfeiture amount]; and

- h. Reprimand.

[See, RCM 1003; punishment limits for each offense listed in Part IV, MCM.]

7. I understand that the maximum punishment that can be imposed at a general court-martial for the offense(s) charged against me is:

- a. Discharge from the service with a (dishonorable) (bad conduct) discharge (delete as appropriate);
- b. Confinement for _____ (years) (months);
- c. Hard labor without confinement [not to exceed three months];
- d. Restriction to specified limits [not to exceed two months];
- e. Reduction to the lowest enlisted pay grade;
- f. Forfeiture of all pay and allowances;
- g. Fine; and,
- h. Reprimand.

[See, RCM 1003; punishment limits for each offense listed in Part IV, MCM.]

KNOWING AND UNDERSTANDING MY RIGHTS AS SET FORTH ABOVE, I DO NOT DESIRE TO CONSULT WITH AN ATTORNEY, AND THEREFORE WAIVE THIS RIGHT, BEFORE DECIDING WHETHER TO ACCEPT OR REJECT TRIAL BY SUMMARY COURT-MARTIAL.

- 1. () I DO NOT accept summary court-martial.
- 2. () I accept summary court-martial.

ACCUSED'S SIGNATURE AND DATE: _____

SIGNATURE OF WITNESS: _____

HAVING **CONSULTED** WITH _____, A MILITARY OR CIVILIAN ATTORNEY, REGARDING MY RIGHT TO ACCEPT OR REJECT SUMMARY COURT-MARTIAL, I HEREBY MAKE THE FOLLOWING ELECTION:

- 1. () I DO NOT accept summary court-martial.
- 2. () I accept summary court-martial.

ACCUSED'S SIGNATURE AND DATE: _____

SIGNATURE OF WITNESS: _____

SUMMARY COURT-MARTIAL TRIAL PROCEDURES

All sessions must be conducted with dignity and decorum. Conduct by any person, military or civilian, that violates Article 48 of the UCMJ may be punished as contempt. A procedure for dealing with conduct that may be contempt is included at the end of this enclosure.

PART I - Preliminary Procedures

SCM: THE COURT WILL COME TO ORDER.

(If a reporter is used):

(NAME) HAS BEEN APPOINTED REPORTER FOR THIS COURT REPORTER AND WILL BE (SWORN) (AFFIRMED).

DO YOU (SWEAR) (AFFIRM) THAT YOU WILL PERFORM THE DUTIES OF REPORTER TO THIS COURT (SO HELP YOU GOD)?

CR: I DO.

(If accused is represented by counsel):

DO YOU, (NAME), (SWEAR) (AFFIRM) THAT YOU WILL FAITHFULLY PERFORM THE DUTIES OF DEFENSE COUNSEL IN THIS CASE (SO HELP YOU GOD)?

DC: I DO.

SCM: THE ACCUSED, (NAME), IS PRESENT, AND THE COURT IS NOW ASSEMBLED.

I AM _____. I HAVE BEEN APPOINTED A SUMMARY COURT-MARTIAL BY COMMANDING OFFICER,____, (LETTER SERIAL)(ORDER NO.)

DATED _____, SIGNED BY____, THE CONVENING AUTHORITY.

CERTAIN CHARGES AGAINST YOU HAVE BEEN PROPERLY REFERRED TO ME FOR TRIAL BY SUMMARY COURT-MARTIAL. THE COURT IS NOW IN SESSION FOR THE TRIAL OF YOUR CASE.

THE CHARGES ARE SIGNED BY,_____ A PERSON SUBJECT TO THE UNIFORM CODE OF MILITARY JUSTICE, AS ACCUSER, AND ARE PROPERLY SWORN TO BEFORE A COMMISSIONED OFFICER OF THE ARMED FORCES AUTHORIZED TO ADMINISTER OATHS.

THE CHARGES ALLEGE, IN GENERAL, THE OFFENSE(S) OF _____.

SCM: I NOW HAND YOU A COPY OF THE CHARGES, PREVIOUSLY SERVED UPON YOU BY (ME AT THE PRETRIAL CONFERENCE HELD ON _____) (_____)

I AM GOING TO ADVISE YOU OF THE RIGHTS YOU HAVE AT THIS TRIAL. UNTIL I

HAVE COMPLETED MY EXPLANATION, I DO NOT WANT YOU TO SAY ANYTHING EXCEPT TO ANSWER SPECIFIC QUESTIONS THAT I WILL ASK YOU. DO YOU UNDERSTAND?

ACC: ().

SCM: YOU HAVE A RIGHT TO CIVILIAN COUNSEL AT YOUR OWN EXPENSE. DO YOU INTEND TO EXERCISE THIS RIGHT?

ACC: ().

SCM: AS A SUMMARY COURT-MARTIAL, IT IS MY DUTY TO PRODUCE AND EXAMINE ALL THE EVIDENCE CONCERNING ANY OFFENSE CHARGED TO WHICH YOU PLEAD NOT GUILTY. WHEN I SAY "ALL THE EVIDENCE," I MEAN EVIDENCE BOTH FOR AND AGAINST YOU. IT IS ALSO MY DUTY TO CONSIDER ANY EVIDENCE THAT YOU MAY WISH TO PRESENT IN MITIGATION AND EXTENUATION, THAT IS ANY EVIDENCE WHICH MIGHT LESSEN THE SEVERITY OF THE SENTENCE IF YOU ARE FOUND GUILTY. I MUST EVALUATE AND WEIGH THE EVIDENCE IMPARTIALLY. I MUST DETERMINE YOUR GUILT OR INNOCENCE OF ANY OFFENSE TO WHICH YOU PLEAD NOT GUILTY ON THE BASIS OF THE EVIDENCE RECEIVED IN COURT, IN YOUR PRESENCE, AND DURING THIS TRIAL. IF YOU ARE FOUND GUILTY, I MUST ADJUDGE AN APPROPRIATE SENTENCE.

AS TO ANY OFFENSE TO WHICH YOU PLEAD NOT GUILTY, YOU WILL BE PRESUMED TO BE INNOCENT UNTIL YOUR GUILT HAS BEEN PROVED BY LEGAL AND COMPETENT EVIDENCE BEYOND A REASONABLE DOUBT.

THE FOLLOWING WITNESSES WILL PROBABLY APPEAR AND TESTIFY:

(LIEUTENANT_____)

(CHIEF PETTY OFFICER_____)

(YEOMAN FIRST CLASS_____)

AND (MR._____)

SCM: AFTER THESE WITNESSES HAVE TESTIFIED IN RESPONSE TO MY QUESTIONS, YOU WILL HAVE THE RIGHT TO CROSS-EXAMINE THEM, THAT IS, YOU (OR YOUR COUNSEL) MAY ASK THEM ANY QUESTIONS WHICH RELATE TO THIS CASE OR, IF YOU PREFER, I WILL DO THIS FOR YOU.

AS THE ACCUSED IN THIS CASE, YOU ALSO HAVE THESE RIGHTS:

FIRST, YOU MAY BE SWORN AND TESTIFY AS WITNESS CONCERNING THE OFFENSE (S) CHARGED AGAINST YOU. IF YOU DO THAT, WHATEVER YOU SAY WILL BE CONSIDERED AND WEIGHED AS EVIDENCE BY ME JUST AS IS THE TESTIMONY OF OTHER WITNESSES.

NOTE: The following should be used if there is more than one specification:

IF YOU DO NOT TESTIFY ABOUT SOME OF THE OFFENSES CHARGED, THEN I WILL ONLY QUESTION YOU ABOUT THE OFFENSES YOU TESTIFY TO AND ABOUT YOUR CREDIBILITY. I WILL NOT QUESTION YOU ABOUT ANY OFFENSE CONCERNING WHICH YOU DO NOT TESTIFY.

SCM: SECOND, YOU MAY REMAIN SILENT, THAT IS, SAY NOTHING AT ALL. YOU HAVE A RIGHT TO DO THIS AND IF YOU DO SO, IT WILL NOT COUNT AGAINST YOU IN ANY WAY AND I WILL NOT CONSIDER IT AS AN ADMISSION THAT YOU ARE GUILTY. IF YOU REMAIN SILENT, I AM NOT PERMITTED TO QUESTION YOU ABOUT THE OFFENSE (S).

THIRD, IF YOU ARE FOUND GUILTY, YOU WILL HAVE THE RIGHT TO TESTIFY UNDER OATH CONCERNING MATTERS IN EXTENUATION OR MITIGATION, OR YOU MAY REMAIN SILENT, IN WHICH CASE I WILL NOT DRAW ANY INFERENCES FROM YOUR SILENCE. IN ADDITION, YOU MAY, IF YOU WISH, MAKE AN UNSWORN STATEMENT IN EXTENUATION OR MITIGATION. THE STATEMENT MAY BE ORAL OR IN WRITING, OR BOTH. IF YOU TESTIFY UNDER OATH, I MAY QUESTION YOU CONCERNING YOUR TESTIMONY AND YOUR WORTHINESS OF BELIEF IF YOU MAKE AN UNSWORN STATEMENT, I AM NOT PERMITTED TO QUESTION YOU ABOUT IT, BUT I MAY RECEIVE EVIDENCE TO CONTRADICT ANYTHING CONTAINED IN THE STATEMENT.

IF I FIND YOU GUILTY OF (THE OFFENSE) (ANY OF THE OFFENSES) CHARGED, THE MAXIMUM SENTENCE WHICH I AM AUTHORIZED TO IMPOSE IS:

(If the accused is in the fourth pay grade, E-4, or lower)

- (1) REDUCTION TO THE LOWEST ENLISTED PAY GRADE; AND
- (2) FORFEITURE OF TWO-THIRDS PAY PER MONTH FOR ONE MONTH, OR A FINE NOT TO EXCEED THE AMOUNT OF 2/3 OF ONE MONTH'S PAY; AND
- (3) CONFINEMENT AT HARD LABOR FOR ONE MONTH OR RESTRICTION TO SPECIFIED LIMITS FOR TWO MONTHS; AND
- (4) A REPRIMAND.

-OR-

(If the accused is above the fourth pay grade, E-5, or above)

- (1) REDUCTION TO THE NEXT INFERIOR PAY GRADE; AND
- (2) FORFEITURE OF TWO-THIRDS PAY PER MONTH FOR ONE MONTH, OR A FINE NOT TO EXCEED THE AMOUNT OF 2/3 OF ONE MONTH'S PAY; AND
- (3) RESTRICTION TO SPECIFIED LIMITS FOR TWO MONTHS; AND

(4) A REPRIMAND.

YOU HAVE ALREADY BEEN GIVEN AN OPPORTUNITY TO CONSULT WITH A LAWYER CONCERNING WHETHER YOU WILL ACCEPT TRIAL BY A SCM. THE FORM THAT I HAVE HERE INDICATES YOU HAVE AGREED TO ACCEPT TRIAL BY A SCM. DO YOU OBJECT TO TRIAL BY SUMMARY COURT-MARTIAL?

ACC: ().

NOTE: After informing the accused of his right to object to trial by SCM, check the appropriate block in item 5e of the Record of Trial Form (DD-2329) (RCM 1304(b)(1)(N))

NOTE: If the accused desires additional time to consider whether he will object to trial by summary court-martial, recess or adjourn the proceedings for a reasonable period, advising the accused how long the period will be. If the accused objects to trial by summary court-martial, have the accused mark the appropriate block in item 6 of the Record of Trial Form (DD-2329) and have him or her initial in the space provided and return the file to the convening authority after placing your signature in the appropriate space provided. If the accused consents to trial by summary court-martial, have the accused reflect that fact by marking the appropriate block in item 6 of the Record of Trial Form (DD-2329) and place his or her initials in the space provided. (RCM1304(b)(2)(A)).

NOTE: When the trial is to proceed as a result of the accused's consent to trial by summary court-martial, proceed as indicated below:

SCM: THE CHARGE (S) AND SPECIFICATION (S) AGAINST YOU THAT HAVE BEEN REFERRED TO ME FOR TRIAL ARE AS FOLLOWS:

CHARGE (1): VIOLATION OF THE UNIFORM CODE OF MILITARY JUSTICE, ARTICLE____.

SPECIFICATION (1): "IN THAT_____."

DO YOU UNDERSTAND THE CHARGE (S) AND SPECIFICATION (S)?

ACC: ().

NOTE: Make certain that the accused understands the charges and specifications. it may be necessary to explain each specification in as simple language as possible, breaking it down into its essential components, or elements, and to ask the accused if he or she understands the explanation. Any additional explanation needed by the accused should be given.

SCM: BEFORE I ASK YOU FOR YOUR PLEAS I ADVISE YOU THAT ANY MOTION TO DISMISS (THE) (ANY OF THE) CHARGE (S) AND SPECIFICATIONS (S) OR TO GRANT OTHER RELIEF SHOULD BE MADE AT THIS TIME.

NOTE: At this point the accused should be advised concerning any motions that examination of the file indicates the accused may desire to make (RCM 1304 (b)(2)(C)). When the accused has no motions to make or if all motions have be disposed of and termination of trial has not resulted,

proceed with the trial as indicated below:

SCM: I NOW CALL UPON YOU TO PLEAD TO THE CHARGE (s).

BEFORE YOU ENTER YOUR PLEA (S) TO THE CHARGE (S) AND SPECIFICATIONS (S), I WILL EXPLAIN YOUR RIGHTS CONCERNING THE PLEAS YOU MAY MAKE.

SCM: FIRST, YOU MAY PLEAD NOT GUILTY TO THE CHARGE(S) AND SPECIFICATION (S) (OR TO ANY OF THEM). YOU HAVE AN ABSOLUTE RIGHT TO PLEAD NOT GUILTY EVEN THOUGH YOU MAY BELIEVE THAT YOU ARE GUILTY. A PLEA OF NOT GUILTY MERELY MEANS THAT YOU REQUIRE YOUR GUILT TO BE PROVED BY LEGAL AND COMPETENT EVIDENCE BEYOND A REASONABLE DOUBT IN THIS TRIAL BEFORE YOU MAY BE FOUND GUILTY. IF YOU PLEAD NOT GUILTY TO (THE CHARGE AND SPECIFICATION), I WILL PROCEED TO HEAR AND CONSIDER THE EVIDENCE AS TO (THE CHARGE AND SPECIFICATION) (EACH CHARGE AND SPECIFICATION TO WHICH YOU PLEAD NOT GUILTY).

SECOND, YOU MAY PLEAD GUILTY TO THE CHARGE (S) AND SPECIFICATION (S) (OR TO ANY OF THEM). IF YOU PLEAD GUILTY TO A CHARGE AND SPECIFICATION, YOU THEREBY ADMIT EVERY ESSENTIAL FACT, OR ELEMENT OF THE OFFENSE STATED IN THAT SPECIFICATION. A PLEA OF GUILTY AUTHORIZES ME TO FIND YOU GUILTY WITHOUT CALLING ANY WITNESSES OR CONSIDERING ANY EVIDENCE. HOWEVER, YOU WILL STILL HAVE THE OPPORTUNITY TO HAVE WITNESSES TESTIFY AND TO INTRODUCE OTHER EVIDENCE IN MITIGATION OR EXTENUATION, FOR THE PURPOSE OF LESSENING THE SEVERITY OF THE SENTENCE. ANY PLEA OF GUILTY YOU DESIRE TO MAKE MUST BE ENTIRELY VOLUNTARY AND SHOULD BE MADE ONLY BECAUSE YOU ARE CONVINCED THAT YOU REALLY ARE GUILTY AND NOT FOR ANY OTHER REASON WHATSOEVER.

NOTE: Explanation of a plea of guilty to a lesser included offense. If a lesser included serious offense is included in an offense charged (some examples are contained in PART IV, under the Article charged.), advise the accused substantially as follows:

SCM: THIRD, YOU MAY PLEAD GUILTY TO A LESSER OFFENSE INCLUDED IN (AN) (THE) OFFENSE CHARGED. INCLUDED IN THE OFFENSE ALLEGED (IN SPECIFICATION ____ OF CHARGE____) IS THE LESSER OFFENSE____. IF YOU PLEAD GUILTY TO A LESSER INCLUDED OFFENSE, YOU THEREBY ADMIT EVERY ESSENTIAL FACT, OR ELEMENT, OF THAT OFFENSE. WITH RESPECT TO A LESSER INCLUDED OFFENSE TO WHICH YOU PLEAD GUILTY, I MAY FIND YOU GUILTY OF THAT OFFENSE WITHOUT ANY PROOF. HOWEVER, I WILL CALL WITNESSES AND WILL PRODUCE ANY OTHER EVIDENCE AVAILABLE FOR THE PURPOSE OF DETERMINING WHETHER YOU ARE GUILTY OF THE GREATER, RATHER THAN THE LESSER, OFFENSE.

FOURTH, YOU MAY PLEAD GUILTY TO THE CHARGE (S) AND SPECIFICATION (S) AS MODIFIED BY EXCEPTION (S) (AND SUBSTITUTIONS). (SEE R.C.M. 918 AND DISCUSSION). IF YOU ARE PLEADING GUILTY, DOING SO BY EXCEPTIONS AND SUBSTITUTIONS ALLOWS ME TO CONFORM THE CHARGE TO THE FACTS OF WHAT HAPPENED. AN EXAMPLE OF WHEN A PLEA BY EXCEPTIONS AND SUBSTITUTIONS

MIGHT BE APPROPRIATE WOULD BE AN CHARGE THAT A MEMBER STOLE \$20 WHEN HE KNOWS HE ONLY STOLE \$10; OR A CHARGE WHERE THE MEMBER IS ACCUSED OF BEING ABSENT FOR 5 HOURS WHEN SHE KNOWS SHE WAS ONLY GONE FOR THREE HOURS.

IF YOU PLEAD GUILTY TO (THE) (ANY) OFFENSE, I MAY SENTENCE YOU TO THE MAXIMUM SENTENCE OF WHICH I HAVE PREVIOUSLY ADVISED YOU THAT I AM AUTHORIZED TO IMPOSE.

I WILL NOT ACCEPT ANY PLEA OF GUILTY UNLESS YOU UNDERSTAND ITS MEANING AND EFFECT. IF YOU DESIRE SOME TIME TO CONSIDER WHAT YOUR PLEAS WILL BE, I WILL POSTPONE THE PROCEEDINGS FOR A PERIOD LONG ENOUGH FOR YOU TO DECIDE. DO YOU UNDERSTAND THE VARIOUS PLEAS AND THE RIGHTS YOU HAVE IN CONNECTION WITH THEM?

ACC: ().

SCM: DO YOU WANT SOME ADDITIONAL TIME TO MAKE UP YOUR MIND?

ACC: ().

NOTE: Do not proceed further until convinced that the accused understands. If the accused desires some time to decide how he wants to plead, recess or adjourn the proceedings for a reasonable period, advising the accused how long the period will be. When the period has elapsed, call the accused before the court, advise that the court is again in session, and continue.

SCM: HOW DO YOU PLEAD?

ACC: I PLEAD (GUILTY) (NOT GUILTY) (TO ALL CHARGES AND SPECIFICATIONS) (TO SPECIFICATION ___ OF CHARGE ____)

NOTE: If the accused has pleaded NOT GUILTY to any offense make the following statement:

SCM: ARE THERE ANY WITNESSES OR DOCUMENTS THAT YOU DESIRE TO BE MADE AVAILABLE TO YOU IN PREPARING A DEFENSE AGAINST THE CHARGE TO WHICH YOU HAVE PLEADED NOT GUILTY?

NOTE: If the accused desires to have witnesses called, or to have certain documents or records obtained, arrange, if possible, to have the witnesses present and the document or records produced at the time and place set for the appropriate session of the trial. However, if the accused indicates a desire to obtain letters, affidavits, or other documents, a reasonable time to do so may be allowed. In this event or in the event you are unable to arrange for the attendance of certain witnesses or the production of certain documents it will be necessary to adjourn for an appropriate period of time. In such event inform the accused when and where you intend to resume the proceedings and arrange for the accused's attendance. Also, notify the witnesses of the date and place you have set for the further proceedings and arrange for their attendance.

If the accused has pleaded NOT GUILTY to all specifications, skip to Part III.

If the accused pleaded GUILTY to any specification, the SCM will proceed with Part II.

PART II - Procedure for a GUILTY plea to any Specification

SCM: (NAME), I AM ABOUT TO ASK YOU SEVERAL QUESTIONS CONCERNING YOUR PLEA OF GUILTY TO _____. YOU ARE ADVISED THAT YOU NEED NOT ANSWER ANY OF THE QUESTIONS THAT I AM ABOUT TO ASK YOU. YOU MAY REMAIN SILENT, IF YOU WISH. HOWEVER, IF YOU DO REMAIN SILENT, I WILL BE FORCED TO ENTER A PLEA OF NOT GUILTY FOR YOU. IT IS MY PURPOSE TO EXPLAIN FULLY THE MEANING AND EFFECT OF YOUR GUILTY PLEA (S), AND TO CONDUCT AN INQUIRY SO THAT I MAY DETERMINE WHETHER YOU FULLY UNDERSTAND ITS MEANING AND EFFECT. I SUGGEST THAT YOU HOLD A COPY OF THE CHARGE (S) AND SPECIFICATION (S) IN YOUR HAND SO THAT YOU MAY REFER TO THEM READILY DURING THIS INQUIRY. YOUR PLEA OF GUILTY WILL NOT BE ACCEPTED UNLESS YOU UNDERSTAND ITS MEANING AND EFFECT. YOU ARE LEGALLY ENTITLED TO PLEAD NOT GUILTY EVEN THOUGH YOU BELIEVE YOU ARE GUILTY, AND THUS PLACE UPON THE GOVERNMENT THE BURDEN OF PROVING YOUR GUILT BEYOND A REASONABLE DOUBT. A PLEA OF GUILTY IS EQUIVALENT TO A CONVICTION. ON YOUR PLEA ALONE, WITHOUT RECEIVING ANY EVIDENCE, THIS COURT CAN FIND YOU GUILTY OF THE OFFENSE (S) TO WHICH YOU PLEAD GUILTY. YOUR PLEA WILL NOT BE ACCEPTED UNLESS YOU REALIZE THAT BY YOUR PLEA YOU ADMIT EVERY ACT OR OMISSION AND EVERY ELEMENT WITH RESPECT TO THE OFFENSE (S) TO WHICH YOU PLEAD GUILTY, AND THAT YOU ARE PLEADING GUILTY BECAUSE YOU REALLY ARE GUILTY. IF YOU ARE NOT CONVINCED THAT YOU ARE IN FACT GUILTY, YOU SHOULD NOT ALLOW ANY OTHER CONSIDERATION TO INFLUENCE YOU TO PLEAD GUILTY.

DO YOU UNDERSTAND WHAT I HAVE JUST TOLD YOU?

ACC: ().

SCM: DO YOU HAVE ANY QUESTIONS AT THIS TIME?

ACC: ().

SCM: BY YOUR PLEA OF GUILTY, YOU WAIVE - AND BY "WAIVE" I MEAN "GIVE UP" - CERTAIN IMPORTANT RIGHTS. HOWEVER, YOU WAIVE THESE RIGHTS ONLY AS TO THE FINDING OF THE OFFENSE (S) TO WHICH THE PLEA IS ENTERED. YOU RETAIN THESE RIGHTS AS TO ANY OFFENSE (S) TO WHICH YOU PLEAD NOT GUILTY AND OTHER PROCEEDINGS IN THIS CASE. DO YOU UNDERSTAND WHAT I HAVE JUST TOLD YOU?

ACC: ().

SCM: THESE RIGHTS ARE:

FIRST, THE RIGHT AGAINST SELF-INCRIMINATION -- THAT IS, THE RIGHT TO SAY NOTHING AT ALL.

SECOND, THE RIGHT TO A TRIAL OF THE FACTS BY THIS COURT -- THAT IS, THE

RIGHT TO HAVE THIS COURT DECIDE WHETHER OR NOT YOU ARE GUILTY BASED UPON EVIDENCE WHICH IS PRESENTED.

THIRD, THE RIGHT TO BE CONFRONTED BY AND TO CROSS-EXAMINE ANY WITNESSES AGAINST YOU.

DO YOU UNDERSTAND WHAT THESE RIGHTS ARE?

ACC: ().

SCM: I AM GOING TO LIST THE ELEMENTS OF THE OFFENSE (S) TO WHICH YOU HAVE PLEADED GUILTY. THESE ARE THE FACTS THAT THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT BEFORE THE COURT CAN FIND YOU GUILTY IF YOU PLEAD NOT GUILTY. AS I STATE EACH OF THESE ELEMENTS, ASK YOURSELF WHETHER IT IS ABSOLUTELY TRUE AND WHETHER YOU WISH TO ADMIT THAT IT IS TRUE, AND THEN BE PREPARED TO DISCUSS EACH OF THESE ESSENTIAL FACTS WITH ME WHEN I HAVE FINISHED. THE ELEMENTS OF THE OFFENSE (S) THAT YOUR PLEA OF GUILTY WOULD ADMIT ARE:

(Read the elements of the offense (s). These should be specific as to alleged names, dates, places, amounts, and acts. The elements are stated in PART IV from the appropriate Punitive Articles, MCM, in the subparagraph designated "ELEMENTS.")

SCM: DO YOU UNDERSTAND EACH OF THE ELEMENTS OF THE OFFENSE (S)?

ACC: ().

SCM: DO YOU HAVE ANY QUESTIONS ABOUT ANY OF THEM?

ACC: ().

SCM: DO YOU UNDERSTAND THAT YOUR PLEA OF GUILTY WOULD ADMIT THAT EACH OF THESE ELEMENTS ACCURATELY DESCRIBES WHAT YOU DID?

ACC: ().

SCM: DO YOU BELIEVE AND ADMIT THAT TOGETHER THESE ELEMENTS CORRECTLY DESCRIBE WHAT YOU DID?

NOTE: The SCM should now question the accused about the circumstances of the offense(s) to which the accused has pleaded guilty. The accused will be placed under oath for this purpose. See oath below. The purpose of these questions is to develop the circumstances in the accused's own words so that the summary court-martial may determine which each element of the offense is established.

SCM: DO YOU (SWEAR) (AFFIRM) THAT THE STATEMENTS YOU ARE ABOUT TO MAKE SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH (SO HELP YOU GOD)?

ACC: ().

SCM: (NAME), ON YOUR PLEA OF GUILTY ALONE, YOU COULD LAWFULLY BE SENTENCED TO THE MAXIMUM PUNISHMENT AUTHORIZED. THE MAXIMUM PUNISHMENT AUTHORIZED IS:

DO YOU HAVE ANY QUESTIONS AS TO THE SENTENCE THAT COULD BE IMPOSED AS A RESULT OF A PLEA OF GUILTY?

ACC: ().

SCM: ARE YOU PLEADING GUILTY VOLUNTARILY AND OF YOUR OWN FREE WILL?

ACC: ().

SCM: HAS ANYONE MADE ANY THREAT OR TRIED IN ANY OTHER WAY TO FORCE YOU TO PLEAD GUILTY?

ACC: ().

NOTE: When the accused pleads guilty, after a motion for appropriate relief has been denied, the SCM should inquire as to whether the plea was prompted by the denial of the motion. In appropriate cases, the accused should be reminded that a plea of guilty may preclude appellate review of the SCM'S action in denying the motion.

SCM: DO YOU UNDERSTAND THAT EVEN THOUGH YOU FEEL THAT YOU ARE GUILTY, YOU HAVE A LEGAL AND A MORAL RIGHT TO PLEAD NOT GUILTY AND PLACE THE BURDEN ON THE GOVERNMENT TO PROVE YOUR GUILT BY LEGAL AND COMPETENT EVIDENCE BEYOND A REASONABLE DOUBT?

ACC: ().

NOTE: In the event the accused has pleaded guilty to a lesser offense, add the following question.

SCM: DO YOU UNDERSTAND THAT YOUR PLEA OF GUILTY TO THE LESSER INCLUDED OFFENSE OF _____ CONSTITUTES A JUDICIAL CONFESSION OF ALL THE ELEMENTS OF THE OFFENSE CHARGED WITH THE EXCEPTION OF _____, AND NO FURTHER PROOF IS NECESSARY TO ESTABLISH THOSE ELEMENTS ADMITTED BY YOUR PLEA?

ACC: ()

SCM: DO YOU HAVE ANY FURTHER QUESTIONS AS TO THE MEANING AND EFFECT OF A PLEA OF GUILTY?

ACC:()

SCM: TAKE TIME NOW TO CONSIDER YOUR PLEA OF GUILTY AND THEN ADVISE ME WHETHER YOU UNDERSTAND THE THINGS WE HAVE DISCUSSED AND IF YOU STILL DESIRE TO PLEAD GUILTY.

NOTE: A plea of guilty is not provident and must not be accepted unless the SCM makes findings that the plea of guilty is made voluntarily and with full knowledge of its meaning and effect, and specifically that the accused has knowingly, intelligently, and consciously waived his or her rights against self-incrimination, to a trial of the facts by a court-martial, and to be confronted by the witnesses against the accused. If the plea of guilty would be improvident, the SCM should advise the accused to plead not guilty as the guilty plea will not be accepted. The SCM should further advise the accused that if the accused persists in entering a guilty plea, it will be rejected, a plea of not guilty will be entered in the record by the court, and the trial will proceed as though the accused had pleaded not guilty. If the plea is provident, the SCM should announce the court's findings as follows:

SCM: I FIND THAT THE PLEA (S) OF GUILTY IS (ARE) MADE VOLUNTARILY AND WITH FULL KNOWLEDGE OF ITS MEANING AND EFFECT. I FURTHER SPECIFICALLY FIND THAT YOU HAVE KNOWINGLY, INTELLIGENTLY, AND CONSCIOUSLY WAIVED YOUR RIGHTS AGAINST SELF-INCRIMINATION, TO A TRIAL OF THE FACTS BY A COURT-MARTIAL, AND TO BE CONFRONTED BY THE WITNESSES AGAINST YOU. ACCORDINGLY, THE PLEA IS PROVIDENT AND IS ACCEPTED. HOWEVER, YOU ARE ADVISED THAT YOU MAY REQUEST A WITHDRAWAL OF SUCH PLEA AT ANY TIME BEFORE SENTENCE IS ANNOUNCED, AND IF YOU HAVE ANY SOUND REASON FOR YOUR REQUEST, I WILL GRANT IT.

NOTE: In a case in which the accused has pleaded guilty providently to an alleged offense, such plea is sufficient basis for conviction of the offense to which it relates. A finding of guilty may be entered immediately when a plea of guilty is accepted by the SCM.

SCM: (NAME), IT IS MY DUTY AS SUMMARY COURT TO INFORM YOU THAT, IN ACCORDANCE WITH YOUR PLEA OF GUILTY, THIS COURT FINDS YOU

NOTE: If the accused has been found guilty of all charges and specifications on pleas of GUILTY and it appears that no evidence regarding the sentence is to be produced other than that already possessed, the court may proceed in accordance with Part IV (Proceedings Pertaining to the Sentence). In other situations, proceed with Part III at the time set for further proceedings.

PART III - Procedure for NOT GUILTY plea

RECEIPT OF GOVERNMENT EVIDENCE

SCM: I will now consider evidence for the government.

NOTE: SCM should consult Part III, MCM, Testimonial and other applicable legal references evidence for any rules of evidence which may affect the trial.

SCM: I CALL AS A WITNESS _____.

(to the witness) RAISE YOUR RIGHT HAND. DO (SWEAR) (AFFIRM) THAT THE EVIDENCE YOU SHALL GIVE IN THE CASE NOW IN HEARING SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH (SO HELP YOU GOD)?

WIT: I DO.

SCM: STATE YOUR FULL NAME, GRADE, ORGANIZATION AND ARMED FORCE. -OR- STATE YOUR FULL NAME, OCCUPATION, AND ADDRESS

WIT: ()

SCM: DO YOU KNOW THE ACCUSED?

WIT: I DO (NOT).

NOTE: If affirmative, SCM continues:

SCM: POINT TO HIM (HER) IF YOU SEE HIM (HER) AND STATE HIS (HER) NAME.

WIT: HE (SHE) IS _____ (pointing to accused).

NOTE: SCM proceeds with direct examination of the witness. SCM then allows the accused (or defense counsel) to cross-examine the witness. Be certain that the accused is afforded the opportunity to cross-examine witnesses against the accused, and if redirect examination is used for the prosecution, the accused must be permitted recross-examination. Upon conclusion of all testimony by the witness, the witness should be advised as follows:

SCM: YOU ARE INSTRUCTED NOT TO DISCUSS YOUR TESTIMONY IN THIS CASE WITH ANYONE EXCEPT (THE COUNSEL OR) THE ACCUSED. YOU WILL NOT ALLOW ANY WITNESS IN THIS CASE TO TALK TO YOU ABOUT THE TESTIMONY HE OR SHE HAS GIVEN OR WHICH HE OR SHE INTENDS TO GIVE. IF ANYONE, OTHER THAN (THE COUNSEL OR) THE ACCUSED, ATTEMPTS TO TALK TO YOU ABOUT YOUR TESTIMONY IN THIS CASE, YOU SHOULD MAKE THE CIRCUMSTANCES KNOWN TO ME. YOU ARE EXCUSED.

I INTEND TO ADMIT INTO EVIDENCE THIS DOCUMENT AS PROSECUTION EXHIBIT (1). I WILL NOW SHOW THIS DOCUMENT TO YOU (AND YOUR COUNSEL) TO ALLOW YOU AN OPPORTUNITY TO OBJECT TO THE ADMISSION OF THIS EXHIBIT.

ACC: (NO) OBJECTION.

CAUTION: SCM must be very careful to use only documentary evidence that is relevant, material and competent.

NOTE: After all prosecution witnesses have testified and all prosecution evidence is in, SCM should announce that the prosecution rests its case. If the prosecution has not produced evidence bearing on all elements or the offense (s) the court may grant a defense motion for a finding of not guilty (see RCM 917, MCM).

RECEIPT OF DEFENSE EVIDENCE

SCM: THE DEFENSE MAY PRESENT EVIDENCE.

NOTE: SCM will administer the oath to witnesses. The accused or counsel for the accused may ask questions in direct examination, or the SCM may question the witnesses on behalf of the accused. After direct examination, the SCM may cross-examine. Redirect and recross-examination are permitted. Witnesses should be warned at the conclusion of their testimony.

SCM: (To the accused) YOU HAVE THE FOLLOWING LEGAL RIGHTS AS THE ACCUSED IN THIS CASE.

YOU MAY BE SWORN AND TAKE THE STAND AS A WITNESS ONLY AT YOUR OWN REQUEST. IF YOU DO, WHATEVER YOU SAY WILL BE CONSIDERED AND WEIGHED AS EVIDENCE BY THE COURT JUST AS IS THE TESTIMONY OF OTHER WITNESSES AND YOU CAN BE CROSS-EXAMINED ONLY ABOUT THOSE OFFENSES CONCERNING WHICH YOU DO TESTIFY AND YOUR WORTHINESS OF BELIEF, BUT YOU WILL NOT BE CROSS-EXAMINED ABOUT ANY OFFENSES CONCERNING WHICH YOU DO NOT TESTIFY.

SCM: YOU MAY REMAIN SILENT, THAT IS, SAY NOTHING AT ALL. IF YOU DO SO, THE FACT OF YOUR SILENCE WILL NOT COUNT AGAINST YOU IN ANY WAY WITH THIS COURT. YOUR SILENCE IN OPEN COURT IS NOT AN ADMISSION THAT YOU ARE GUILTY AND I CANNOT INFER YOUR GUILT FROM IT. WHAT IS YOUR DESIRE?

ACC: I DESIRE TO (REMAIN SILENT) (TESTIFY AS A WITNESS) ().

NOTE: After all defense witnesses have testified and all defense exhibits are admitted, and the defense has rested, the SCM may offer prosecution evidence in rebuttal and then offer the accused the opportunity to present defense evidence in rebuttal.

CAUTION: The SCM shall not make argument. However, the accused should be offered an opportunity to present argument.

SCM: THE COURT WILL BE CLOSED.

NOTE: The SCM will close the court to arrive at the court's findings. The SCM may not convict the accused of any offense unless each element of the offense has been established by legal and competent evidence beyond reasonable doubt. (See DISCUSSION, R.C.M. 918(c), MCM, 1984 for a definition of "Reasonable Doubt.")

SCM: THE COURT WILL COME TO ORDER.

FINDINGS

(See, examples in Appendix 10, MCM.)

SCM: PLEASE RISE.

(NAME), I FIND YOU (GUILTY/NOT GUILTY) OF ALL CHARGES AND SPECIFICATIONS

OR

I FIND YOU (GUILTY/NOT GUILTY) OF SPECIFICATION 1 OF THE CHARGE, (GUILTY/NOT GUILTY) OF SPECIFICATION 2 OF THE CHARGE, AND OF THE CHARGE, GUILTY.

OR

OF THE SPECIFICATION OF THE CHARGE, I FIND YOU GUILTY, EXCEPTING THE WORDS "....." SUBSTITUTING THEREFOR THE WORDS ".....;" OF THE EXCEPTED WORDS, NOT GUILTY, OF THE SUBSTITUTED WORDS, GUILTY, AND OF THE CHARGE, GUILTY.

NOTE: There must be a finding as to each specification under each charge and also as to the charge itself. The examples above are not exhaustive. The SCM must be sure that the findings are recorded correctly in abbreviated form in the Record of Trial Form (DD-2329) in Part 8.

CAUTION: Do not explain the reasons for the findings to the accused or allow argument about them.

NOTE: If the accused has been found not guilty of all charges and specifications, the court shall adjourn. If any findings of guilty have been made, proceed in accordance with Part IV.

PART IV - Proceedings Pertaining to the Sentence

PRESENTENCING PROCEDURE

SCM: THE FOLLOWING PERSONAL DATA IS FOUND ON PAGE 1 OF THE CHARGE SHEET:

NAME:

SOCIAL SECURITY NUMBER:

RANK/GRADE

BRANCH OF SERVICE:

ORGANIZATION:

TOTAL PAY PER MONTH:

INITIAL DATE OF CURRENT SERVICE:

TERM OF CURRENT SERVICE:

PRIOR SERVICE:

RESTRAINT:

SCM: IS THIS DATA CORRECT?

ACC: ()

NOTE: If the accused states that any of the personal data is incorrect, the SCM should seek an official determination of the challenged data and correct that which is demonstrated erroneous.

SCM: () I HAVE NO EVIDENCE OF PREVIOUS CONVICTIONS.

- or -

() I INTEND TO INTRODUCE EVIDENCE OF PREVIOUS CONVICTION (S) BY COURT-MARTIAL OF (AN) OFFENSE (S) COMMITTED WITHIN SIX YEARS PRECEDING THE COMMISSION OF ANY OFFENSE (S) OF WHICH THE YOU HAVE BEEN CONVICTED AT THIS TRIAL.

CAUTION: To be admissible as a previous conviction there must have been a final approval of the conviction. If the prior conviction was a result of a SCM conducted subsequent to 11 October 1977, it should only be considered if the accused was represented by a lawyer, or refused representation by a lawyer.

SCM: DO YOU HAVE ANY OBJECTION TO THIS EVIDENCE OF PREVIOUS CONVICTION (S) BY COURT-MARTIAL?

ACC: ()

CAUTION: Evidence of the imposition of nonjudicial punishment (Captain's Mast) under the provisions of Article 15, UCMJ, may not be considered as matter unfavorable to the accused in determining the sentence.

SCM: IT IS YOUR RIGHT AT THIS TIME TO SUBMIT FOR THE COURT'S CONSIDERATION ANY MATTERS IN MITIGATION OR EXTENUATION OF THE OFFENSE (S) OF WHICH YOU STAND CONVICTED. YOU MAY CALL WITNESSES AND SUBMIT ANY LETTERS, AFFIDAVITS, DOCUMENTS AND ANY OTHER MATTERS THAT YOU SO DESIRE. I WILL NOW ADVISE YOU PARTICULARLY AS TO THE MEANING OF EXTENUATION AND MITIGATION. YOU MAY INTRODUCE MATTER TENDING TO SHOW THAT YOU HAVE A GOOD CHARACTER GENERALLY, OR TENDING TO ESTABLISH YOUR GOOD CHARACTER, REPUTATION, OR RECORD FOR EFFICIENCY, TEMPERANCE, COURAGE, OR ANY OTHER TRAITS THAT GO TO MAKE UP A GOOD COAST GUARDSMAN. (YOU MAY ALSO INTRODUCE EVIDENCE OF THE CHARACTER OF ANY OF YOUR FORMER DISCHARGES FROM THE MILITARY SERVICE.) THESE ARE CALLED MATTERS IN MITIGATION. MATTERS IN EXTENUATION OF AN OFFENSE SERVE TO EXPLAIN THE CIRCUMSTANCES SURROUNDING THE COMMISSION OF THE OFFENSE, INCLUDING THE REASONS THAT CAUSED YOU TO ACT AS YOU DID BUT NOT AMOUNTING TO A DEFENSE. MATTERS IN MITIGATION OR EXTENUATION OF AN OFFENSE MAY BE

INTRODUCED THROUGH THE TESTIMONY OF WITNESSES, OFFICIAL RECORDS, OR LETTERS, AFFIDAVITS, OR ANY OTHER WRITTEN DOCUMENTS. IF YOU INTRODUCE MATTERS IN MITIGATION OR EXTENUATION OF AN OFFENSE, I WILL HAVE THE RIGHT TO CALL WITNESSES TO TESTIFY, OR TO RECEIVE AND CONSIDER OTHER EVIDENCE, FOR THE PURPOSE OF CONTRADICTING THE MATTERS YOU HAVE INTRODUCED. DO YOU WANT TO CALL ANY WITNESSES THAT I'M NOT ALREADY AWARE OF FOR THE PURPOSE OF TESTIFYING IN MITIGATION OR EXTENUATION ON YOUR BEHALF?

ACC: ().

SCM: (IF SO, FURNISH ME WITH A LIST OF THEIR NAMES AND ORGANIZATIONS OR ADDRESSES.) IF YOU WANT ME TO GET SOME MILITARY RECORDS THAT YOU WOULD OTHERWISE BE UNABLE TO OBTAIN, PROVIDE ME WITH A LIST OF THESE DOCUMENTS ALSO. IF YOU DESIRE TO INTRODUCE LETTERS, AFFIDAVITS, OR OTHER DOCUMENTS IN MITIGATION OR EXTENUATION AND THESE DOCUMENTS ARE NOT NOW IN YOUR POSSESSION, PLEASE ADVISE ME SO THAT I CAN DETERMINE THE TIME FOR FURTHER PROCEEDINGS IN THIS TRIAL. DO YOU DESIRE ANY SUCH MATERIAL TO BE MADE AVAILABLE?

ACC: ().

SCM: EARLIER IN THIS TRIAL, I ADVISED YOU CONCERNING YOUR RIGHT TO TESTIFY UNDER OATH IN YOUR OWN BEHALF AS TO MATTERS IN MITIGATION OR EXTENUATION, TO REMAIN SILENT, AND TO MAKE AN UNSWORN STATEMENT ABOUT THESE MATTERS. I WILL REPEAT THIS ADVICE IF YOU WANT ME TO. DO YOU WANT ME TO REPEAT THIS ADVICE?

ACC: ())

NOTE: If the accused indicates no desire for this advice to be repeated or when the accused indicates an understanding of the rights after it has been repeated, ask what evidence in extenuation and mitigation the accused desires to present.

If the accused elects to testify under oath, administer the oath or remind the accused that the oath taken earlier unsworn still applies, as appropriate. The court may cross-examine the accused on sworn testimony. If the accused elects to make an unsworn statement, permit the accused to do so. Also receive any unsworn written statement that the accused may present. Do not question the accused concerning the unsworn statement. If the court desires witnesses in rebuttal or witnesses in matters of mitigation or extenuation, they may be called. If witnesses in rebuttal are called, they should be sworn and examined in the same manner as any other Government witness and the accused should be extended the right to cross-examine or to request the court to cross-examine them along lines indicated by the accused.

ACC: I DESIRE TO _____.

CAUTION: If the accused now presents matters inconsistent with the pleas of guilty, the SCM must explain to the accused that such statement is inconsistent with the plea of guilty and determine whether the accused still desires to plead guilty. If the accused does not withdraw the inconsistent matter, or it appears that the pleas of guilty were made improvidently, the SCM must

withdraw the pleas of guilty, enter pleas of not guilty, and proceed in accordance with Part III.

SCM: DOES THE ACCUSED HAVE ANYTHING FURTHER TO OFFER?

ACC: ().

SCM: THE COURT WILL BE CLOSED.

SENTENCING

NOTE: The SCM may consult RCM 1003(b)(6), MCM for equivalent punishments.

SCM: THE COURT WILL COME TO ORDER.

PLEASE RISE. (NAME), THE COURT SENTENCES YOU:

Examples:

() TO BE CONFINED FOR (ONE MONTH)(__DAYS). (E-4 AND BELOW)

() TO BE RESTRICTED TO THE SPECIFIED LIMITS OF _____ FOR_____ MONTHS (S) DAY(S).

() TO PERFORM HARD LABOR WITHOUT CONFINEMENT FOR ____ DAYS. (E-4 AND BELOW)

() TO FORFEIT \$____ PAY PER MONTH FOR ONE MONTH.

() TO BE REDUCED TO PAY GRADE E-__.

() TO BE REPRIMANDED.

() TO BE FINED \$____.

() TO NO PUNISHMENT.

NOTE: Appropriate combinations may be adjudged. (RCM 1003(b)(6), MCM)

If the sentence includes confinement, advise the accused as follows:

SCM: YOU HAVE THE RIGHT TO REQUEST IN WRITING THAT (NAME OF CONVENING AUTHORITY) DEFER YOUR SENTENCE TO CONFINEMENT. DEFERMENT IS NOT A FORM OF CLEMENCY AND IS NOT THE SAME AS SUSPENSION OF A SENTENCE. IT MERELY POSTPONES THE RUNNING OF A SENTENCE TO CONFINEMENT.

NOTE: Whether or not the sentence includes confinement, advise the accused as follows:

SCM: YOU HAVE THE RIGHT TO SUBMIT IN WRITING A PETITION OR STATEMENT TO THE CONVENING AUTHORITY. THIS STATEMENT MAY INCLUDE ANY MATTERS YOU FEEL THE CONVENING AUTHORITY SHOULD CONSIDER, A

REQUEST FOR CLEMENCY, OR BOTH. THIS STATEMENT MUST BE SUBMITTED WITHIN 7 DAYS, UNLESS YOU REQUEST AND THE CONVENING AUTHORITY APPROVES AN EXTENSION OF UP TO 20 DAYS. AFTER THE CONVENING AUTHORITY TAKES ACTION, YOUR CASE WILL BE REVIEWED BY A LAW SPECIALIST OR LEGAL OFFICER. YOU MAY SUGGEST, IN WRITING, LEGAL ERRORS FOR THE LAW SPECIALIST OR LEGAL OFFICER TO CONSIDER. IF, AFTER FINAL ACTION HAS BEEN TAKEN IN YOUR CASE, YOU BELIEVE THAT THERE HAS BEEN A LEGAL ERROR, YOU MAY REQUEST REVIEW OF YOUR CASE BY THE JUDGE ADVOCATE GENERAL OF THE COAST GUARD. DO YOU UNDER THESE RIGHTS?

ACC: ().

SCM: THE COURT IS ADJOURNED.

NOTE: If the SCM believes further mitigation is warranted, the SCM may make a recommendation for clemency to the convening authority in specific terms and should give reasons. However, the SCM should never award an excessive sentence in reliance upon the mitigating action of higher reviewing authorities.

CAUTION: The SCM should not attempt to explain reasons for the sentence awarded.

NOTE: Record the sentence on the record of trial, inform the convening authority of the findings, recommendations for suspension, if any, and any deferment request. If the sentence includes confinement arrange for the delivery of the accused to the accused's commander, or someone designated by the commander, for appropriate action. Ensure that the commander is informed of the sentence. Complete the record of trial and forward to the convening authority.

CONTEMPT PROCEDURE

1. When a person's conduct is bordering upon contempt, the SCM will advise that the conduct is improper and that persistence therein may cause the court to hold the person in contempt. Such warning should be made a part of the record of trial in order to show a proper foundation for contempt proceedings. Such proceedings may often be avoided by causing the offender to be removed from the courtroom.

2. When the conduct of a person before the court warrants action under Article 48, UCMJ, the regular proceedings should be suspended as follows:

a. The proceedings in the case now before the court will be suspended. (State the name of the person), you appear to (have used menacing (words) (signs) (and) (gestures) in the presence of this court) (have disturbed the proceedings of this court by (riotous) (disorderly) conduct (). For example, you appear to (have threatened the court with action you will take against it because of its rulings) (have been contemptuous and insolent in your objections and arguments) (). (In this regard, Article 48 of the Uniform Code of Military Justice provides that any person who uses any menacing (words) (signs) (and) (gestures) in the presence of a court-martial or who disturbs its proceedings by a (riot) (disorder), may be punished for contempt.)

b. You now have an opportunity to show cause why you should not be held in contempt.

NOTE: After giving the offender an opportunity to present pertinent argument and evidence, if any, to show cause why he or she should not be held in contempt, the following ruling will be made:

c. It is my ruling that you should (not) be held in contempt.

NOTE: If it is ruled that the offender should not be held in contempt, the regular proceedings should continue at the point where they were terminated by this contempt procedure.

d. As the court has determined that (state name of the person) should not be held in contempt, the regular proceedings will be resumed.

NOTE: If it is ruled that the offender should be held in contempt, the following procedure should be used:

e. The court will be closed.

NOTE: The summary court-martial shall determine an appropriate punishment. Such punishment may not exceed confinement at hard labor for 30 days or a fine of \$100, or both.

**BLANK RECORD OF TRIAL
BY SUMMARY COURT-MARTIAL (DD-2329)**

RECORD OF TRIAL BY SUMMARY COURT-MARTIAL

1a. NAME OF ACCUSED (<i>Last, First, MI</i>)	b. GRADE OR RANK	c. UNIT OR ORGANIZATION OF ACCUSED	d. SSN
2a. NAME OF CONVENING AUTHORITY (<i>Last, First, MI</i>)	b. RANK	c. POSITION	d. ORGANIZATION OF CONVENING AUTHORITY
3a. NAME OF SUMMARY COURT-MARTIAL (<i>If SCM was accuser, so state.</i>)	b. RANK	c. UNIT OR ORGANIZATION OF SUMMARY COURT-MARTIAL	
<i>(Check appropriate answer)</i>			YES NO
4. At a preliminary proceeding held on _____, the summary court-martial gave the accused a copy of the charge sheet.			
5. At that preliminary proceeding the summary court-martial informed the accused of the following:			
a. The fact that the charge(s) had been referred to a summary court-martial for trial and the date of referral.			
b. The identity of the convening authority.			
c. The name(s) of the accuser(s).			
d. The general nature of the charge(s).			
e. The accused's right to object to trial by summary court-martial.			
f. The accused's right to inspect the allied papers and immediately available personnel records.			
g. The names of the witnesses who could be called to testify and any documents or physical evidence which the summary court-martial expected to introduce into evidence.			
h. The accused's right to cross-examine witnesses and have the summary court-martial cross-examine on behalf of the accused.			
i. The accused's right to call witnesses and produce evidence with the assistance of the summary court-martial if necessary.			
j. That during the trial the summary court-martial would not consider any matters, including statements previously made by the accused to the summary court-martial, unless admitted in accordance with the Military Rules of Evidence.			
k. The accused's right to testify on the merits or to remain silent, with the assurance that no adverse inference would be drawn by the summary court-martial from such silence.			
l. If any findings of guilty were announced, the accused's right to remain silent, to make an unsworn statement, oral or written or both, and to testify and to introduce evidence in extenuation or mitigation.			
m. The maximum sentence which could be adjudged if the accused was found guilty of the offense(s) alleged.			
n. The accused's right to plead guilty or not guilty.			
6. At the trial proceeding held on _____, the accused, after being given a reasonable time to decide, <input type="checkbox"/> did <input type="checkbox"/> did not object to trial by summary court-martial. <i>(Note: The SCM may ask the accused to initial this entry at the time the election is made.)</i>			
			<u> </u> <i>(Initial)</i>
7a. The accused <input type="checkbox"/> was <input type="checkbox"/> was not represented by counsel. (<i>If the accused was represented by counsel, complete b, c, and d below.</i>)			
b. NAME OF COUNSEL (<i>Last, First, MI</i>)			c. RANK (<i>If any</i>)
d. COUNSEL QUALIFICATIONS			

8. The accused was arraigned on the attached charge(s) and specification(s). The accused's pleas and the findings reached are shown below:

CHARGE(S) AND SPECIFICATIONS	PLEA(S)	FINDINGS (Including any exceptions and substitutions)

9. The following sentence was adjudged:

10. The accused was advised of the right to request that confinement be deferred. (Note: When confinement is adjudged.)

YES NO

11. The accused was advised of the right to submit written matters to the convening authority, including a request for clemency, and of the right to request review by the Judge Advocate General.

YES NO

12. AUTHENTICATION

Signature of Summary Court-Martial

Date

13. ACTION BY CONVENING AUTHORITY

Typed Name of Convening Authority

Position of Convening Authority

Rank

Signature of Convening Authority

Date

**SAMPLE RECORD OF TRIAL
BY SUMMARY COURT-MARTIAL (DD-2329)**

RECORD OF TRIAL BY SUMMARY COURT-MARTIAL			
1a. NAME OF ACCUSED (<i>Last, First, MI</i>) Cee, A. B.	b. GRADE OR RANK SN (E-3)	c. UNIT OR ORGANIZATION OF ACCUSED U. S. Coast Guard Group Boston	d. SSN 123 45 6789
2a. NAME OF CONVENING AUTHORITY (<i>Last, First, MI</i>) Able, I. M.	b. RANK CDR (O-5)	c. POSITION Group Commander	d. ORGANIZATION OF CONVENING AUTHORITY U. S. Coast Guard Group Boston
3a. NAME OF SUMMARY COURT-MARTIAL (<i>If SCM was accuser, so state.</i>) Shaw, R. T.	b. RANK LT (O-3)	c. UNIT OR ORGANIZATION OF SUMMARY COURT-MARTIAL First Coast Guard District (dl)	
<i>(Check appropriate answer)</i>			
			YES NO
4. At a preliminary proceeding held on <u>14 January</u> <u>00</u> , the summary court-martial gave the accused a copy of the charge sheet.			X
5. At that preliminary proceeding the summary court-martial informed the accused of the following:			
a. The fact that the charge(s) had been referred to a summary court-martial for trial and the date of referral.			X
b. The identity of the convening authority.			X
c. The name(s) of the accuser(s).			X
d. The general nature of the charge(s).			X
e. The accused's right to object to trial by summary court-martial.			X
f. The accused's right to inspect the allied papers and immediately available personnel records.			X
g. The names of the witnesses who could be called to testify and any documents or physical evidence which the summary court-martial expected to introduce into evidence.			X
h. The accused's right to cross-examine witnesses and have the summary court-martial cross-examine on behalf of the accused.			X
i. The accused's right to call witnesses and produce evidence with the assistance of the summary court-martial if necessary.			X
j. That during the trial the summary court-martial would not consider any matters, including statements previously made by the accused to the summary court-martial, unless admitted in accordance with the Military Rules of Evidence.			X
k. The accused's right to testify on the merits or to remain silent, with the assurance that no adverse inference would be drawn by the summary court-martial from such silence.			X
l. If any findings of guilty were announced, the accused's right to remain silent, to make an unsworn statement, oral or written or both, and to testify and to introduce evidence in extenuation or mitigation.			X
m. The maximum sentence which could be adjudged if the accused was found guilty of the offense(s) alleged.			X
n. The accused's right to plead guilty or not guilty.			X
6. At the trial proceeding held on <u>14 January</u> <u>00</u> , the accused, after being given a reasonable time to decide, <input type="checkbox"/> did <input checked="" type="checkbox"/> did not object to trial by summary court-martial. <i>(Note: The SCM may ask the accused to initial this entry at the time the election is made.)</i>			<u>ABC</u> <i>(initial)</i>
7a. The accused <input type="checkbox"/> was <input checked="" type="checkbox"/> was not represented by counsel. (<i>If the accused was represented by counsel, complete b, c, and d below.</i>)			
b. NAME OF COUNSEL (<i>Last, First, MI</i>) N/A		c. RANK (<i>if any</i>) N/A	
d. COUNSEL QUALIFICATIONS N/A			

DD FORM 2329
84 AUG

8. The accused was arraigned on the attached charge(s) and specification(s). The accused's pleas and the findings reached are shown below:

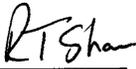
CHARGE(S) AND SPECIFICATIONS	PLEA(S)	FINDINGS (Including any exceptions and substitutions)
Charge I: Article 92 Specification: Failure to obey a lawful order.	Not Guilty Not Guilty	Guilty Guilty
Charge II: Article 107 Specification 1: False official statements.	Not Guilty Not Guilty	Guilty Guilty, except for the word "mine", substituting therefore the word "yours". To the excepted word not guilty. To the substituted word, guilty.
Specification 2:	Not Guilty	Guilty

9. The following sentence was adjudged:
Restriction to ISC Boston for 45 days, forfeit one-half of one month's pay for one month (\$563.00), and reduction to pay-grade E-2.

10. The accused was advised of the right to request that confinement be deferred. (Note: When confinement is adjudged.)
 YES NO

11. The accused was advised of the right to submit written matters to the convening authority, including a request for clemency, and of the right to request review by the Judge Advocate General.
 YES NO

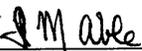
12. AUTHENTICATION

LT R. T. Shaw  14 January 2000
Signature of Summary Court-Martial Date

13. ACTION BY CONVENING AUTHORITY

In the case of SN A. B. Cee, USCG, the sentence is approved and will be executed.

I. M. ABLE, CDR, USCG Group Commander, USCG Group Boston
Typed Name of Convening Authority Position of Convening Authority

Commander (O-5) Rank
 21 January 2000
Signature of Convening Authority Date

DD Form 2329 Page 2, 84 AUG