



MILITARY JUSTICE MANUAL

COMDTINST M5810.1E

May 2011



COMDTINST M5810.1E

13 APRIL 2011

COMMANDANT INSTRUCTION M5810.1E

Subj: MILITARY JUSTICE MANUAL

Ref: (a) Uniform Code of Military Justice, 10 U.S.C. §§ 801 – 946 (as amended)
(b) Manual for Courts-Martial (MCM), United States (current edition)

1. **PURPOSE.** This Manual prescribes the Judge Advocate General of the Coast Guard policies, regulations, and procedures applicable to the administration of military justice in the Coast Guard pursuant to, and in support of, references (a) and (b).
2. **ACTION.** All Coast Guard unit commanders, commanding officers, officers-in-charge, deputy/assistant commandants, and chiefs of headquarters staff elements shall comply with the provisions of this Manual. Internet release is authorized.
3. **DIRECTIVES AFFECTED.** Military Justice Manual, COMDTINST M5810.1D, of 17 August 2000 is cancelled.
4. **BACKGROUND.** The Uniform Code of Military Justice [UCMJ] was first passed into law on May 5, 1950 and became effective on May 31, 1951. The UCMJ as the first unified military criminal justice system applicable to all five United States military services, has been kept current through significant legislative changes in 1968 and 1983 and frequent minor changes. Through the Manual for Courts-Martial [MCM] the President of the United States, as Commander in Chief, implements the UCMJ. The MCM similarly has undergone frequent review and change. The Coast Guard Military Justice Manual implements the Judge Advocate General of the Coast Guard [TJAG or TJAG CG], and Coast Guard policies, regulations, and procedures pursuant to the UCMJ and MCM.

DISTRIBUTION – SDL No. 158

	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s	t	u	v	w	x	y	z
A	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1					
B		1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
C	1	1		1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
D		1	1	1	1							1	1			1						1				1
E		1			1										1			1	1							
F																										
G																										
H																										

NON-STANDARD DISTRIBUTION: General Counsel, DHS (2); TJAGs USA, USN, USAF (1); SJA to COMDT, USMC (1); NAVJSTCOL (25); TJAGLCS (1); AFJAG SCHOOL (1); FLETRACEN, CODE 50 San Diego (6), University of Minnesota Law Library (1).

5. **DISCUSSION.** As is stated in paragraph 3 to Part I, Preamble to the Manual for Courts-Martial (2008 ed.):

Military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States.

This Manual furthers the balance reflected in the U.S. Constitution, UCMJ, and MCM to provide justice for the individual and good order and discipline in a demanding and flexible military environment. The Coast Guard military system demands this balance be successfully maintained in every venue from major metropolitan office building to rural small boat station; from men and women assigned in all 50 states, territories, and foreign shores to those deployed at sea and in the air; to personnel performing mainstream Coast Guard duties to those assigned to other military and civilian agencies, foreign and domestic; to our active duty, reserves, and retirees.

6. **PROCEDURES.** The policies, regulations, and procedures contained in this Manual are applicable to all military justice system actions taken concerning Coast Guard members subject to the UCMJ. This Manual may be cited as “Coast Guard Military Justice Manual” or, when the context is clear, as “Military Justice Manual,” or “MJM.” The signed and original version of this Manual is maintained in the Judge Advocate General’s Office of Military Justice.
- a. Accurate and complete versions of this Manual will be distributed or made available to units as follows: To all units indicated in this letter’s SDL distribution block in the next Coast Guard Directives System.
 - b. The [Coast Guard Directives System](#) web site will contain a copy of this Manual identical to the original Manual maintained on file in the Judge Advocate General’s Office of Military Justice (CG-0946). An unaltered display or printout of the browser file in its default form will be considered an accurate copy of this Manual.
 - c. All units desiring all or part of this Manual in printed form shall print and reproduce their requirements locally.
 - d. This Manual is binding on members of the Coast Guard, and may affect non-Coast Guard members in their interactions with the Coast Guard on military justice matters, but it is not intended to and does not impose any

new legally binding requirements or responsibilities on non-Coast Guard members except insofar as those persons are subject to military judicial jurisdiction under the Uniform Code of Military Justice or are otherwise subject to contractual arrangement or court order.

7. REQUESTS FOR CHANGES. Units and individuals may recommend changes to this Manual via the chain of command to the Office of Military Justice (CG-0946). Units and individuals may recommend Coast Guard sponsored changes to references (a) or (b) via the chain of command to the Office of Military Justice (CG-0946).
8. MAJOR CHANGES. This Manual has been extensively revised from its earlier edition in substance, organization, and form. It is current through legislative changes contained in the 2008 National Defense Authorization Act and the Manual for Courts-Martial (2008 Edition). Major changes to the prior version of this Manual are detailed in the Summary of Major Changes immediately following this promulgation letter.
9. FORMS/REPORTS. The forms referenced in this Manual are available in USCG Electronic Forms on the Standard Workstation or on the internet:
<http://www.uscg.mil/forms/> ;CGPortal at
<https://cgportal.uscg.mil/delivery/Satellite/uscg/References>. Department of Defense (DD) forms are available at
<http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>. Navy forms are available through the Navy at <http://navalforms.daps.dla.mil/web/public.home>. Click on Forms from the menu and do a keyword search using the number portion of the form number.

F. J. KENNEY
Rear Admiral
Judge Advocate General
/S/

SUMMARY OF CHANGES

A. General

This version of the Military Justice Manual, COMDTINST M5810.1E has been substantially revised and updated. References to the Chief Counsel have been changed to Judge Advocate General, the phrase “law specialist” has been replaced with “judge advocate”, and references to the Department of Transportation changed to the Department of Homeland Security throughout the Manual. The Manual has also been updated to reflect changes brought about by Coast Guard Modernization and transition to numbered staff elements. Changes in policy are noted below with a summary of all major changes.

B. Summary of Changes

This is a summary and not an exhaustive list of changes to the Manual.

1. Purpose and Use of this Manual

- a. To provide advice and guidance to Commanding Officers and Officers in Charge.

2. Chapter 1 - Nonjudicial Punishment

- a. Paragraph 1.A.3.a (Persons Authorized to Impose NJP): Clarifies that a superior Commanding officer in a commanding officer’s chain of command can limit the authority to impose nonjudicial punishment on an enlisted member of that command.
- b. Paragraph 1.A.4.a (Military Members of the Command): Updates the types of units which may have Commanding Officers of Enlisted or Military Personnel to reflect units created by Coast Guard Modernization. c. Paragraph 1.A.4.d (Civilians): Clarifies that even with recent changes to the UCMJ making civilians accompanying the armed forces in support of contingency operations subject to the UCMJ. They are not subject to non-judicial punishment.
- c. Paragraph 1.A.6.b (Imposition of Punishment): Adds to the list of potential adverse administrative consequences of NJP the potential for recoupment of selective reenlistment bonuses.
- d. Paragraph 1.B.5.e (Right to Demand Trial by Court-Martial In Lieu of NJP By Member Not Attached To or Embarked in a Vessel): Clarifies that vessel precommissioning detachment and teams are not members attached to or embarked upon a vessel, and neither are members TAD to a shore unit from an

afloat unit, and thus both categories of people must be afforded the opportunity to refuse NJP.

- e. Paragraph 1.B.5.f (No Right to Demand Trial by Court-Martial In Lieu of NJP By Member Attached To or Embarked in a Vessel): Adds temporarily relieved commanding officers and officers in charge of afloat units are still attached to or embarked upon a vessel, permanently relieved individuals are not.
- f. Paragraph 1.C.2.a (Pre-Mast Consultation with Counsel): Reflecting the dissolution of the MLCs, the servicing legal office for the command of the member facing NJP is responsible for coordinating pre-mast consultation with counsel.
- g. Paragraph 1.D.8.a (Examination of Witnesses by Commanding Officer and Member): Clarifies that Coast Guard civilian employees and military members may be ordered to attend mast proceedings and the scope of their refusal to provide statements is limited to those circumstances where they can invoke their right against self-incrimination.
- h. Paragraph 1.E.2.c (Arrest in Quarters): Adds the requirement, previously missing from the Manual, that only flag officers can impose arrest in quarters as NJP.
- i. Paragraph 1.E.2.d (Correctional Custody): Updated information to reflect closure of Department of Defense Correctional Custody Units.
- j. Paragraph 1.E.3.d (Deferral of Punishment): Gives Commanding Officers the discretion to determine what qualifies as arrival in port for purposes of ending deferral of punishment. Also additional punishment from subsequent NJP always run consecutively, not concurrently.
- k. Paragraph 1.E.7.b (Successor in Command): Clarifies that the Commanding Officer of a unit to which a member has been reassigned, either permanently or temporarily, is not a successor in command.
- l. Paragraph 1.G.3.a (Personnel Record Entries): Updated to reflect actual practice with regard to use of Direct Access to make personnel record entries following NJP.
- m. Paragraph 1.G.5 (Administrative Consequences of NJP): Adds a new paragraph that describes the administrative consequences that follow imposition of NJP as a result of Coast Guard personnel policies separate and apart from the UCMJ.
- n. Paragraph 1.I (Subsequent Court-Martial for Offense Punished at NJP): Adds a reference to R.C.M. 907(b)(2)(D)(iv) to ensure commands are aware that

charges referred to court-martial after imposition of NJP are potentially subject to a motion to dismiss if those charges were “minor”.

3. Chapter 2- Summary Courts-Martial

No major changes were made to Chapter 2.

4. Chapter 3 - Pretrial Matters

- a. Paragraph 3.A.1 (General Court-Martial Convening Authorities): Updates the list of Secretarially designated General Court-Martial Convening Authorities to reflect the designations of 6 February 2009 including new, post-Modernization commands and the dissolution of the MLCs.
- b. Paragraph 3.A.2 (Special Court-Martial Convening Authorities): Updates the list of Special Court-Martial Convening Authorities to include Sectors and commands created by Modernization.
- c. Paragraph 3.A.3 (Primary General Court-Martial Jurisdiction): Lists FORCECOM as the primary officer exercising general court-martial jurisdiction for previously subject to other OEGCMJ’s units, and designates the Personnel Service Center as the convening authority for several types of units that formerly went to the MLCs to convene a general court-martial.
- d. Paragraph 3.B.3.d (Civilians): Adds a paragraph making clear that no charges against a civilian under the broadened jurisdiction provided by the amendments to Section 2(a)(10) of the UCMJ can be referred to trial by court-martial without the express permission of the Judge Advocate General. The Section also makes clear that the Coast Guard will follow the same processes and procedures as the Department of Defense in determining whether to exercise court-martial jurisdiction over a civilian.
- e. Paragraph 3.C.4.b (Designating IROs): Eliminates the reference to OEGCMJ with a DoD correctional facility in their AOR to designate an IRO. With the closure and consolidation of many DoD correctional facilities, and the nationwide AOR of some new Coast Guard commands, it makes more sense to have every OEGCMJ be prepared to send an IRO to wherever a member over whom they exercise primary general court-martial jurisdiction may be held.
- f. Paragraph 3.F.4 (Reporter): Changes the regulations on the decision whether to provide a reporter to an Article 32 hearing to one left to the discretion of the officer who convened the Article 32 hearing. The previous edition made the default not to appoint a reporter, and one could be appointed only for unusual or complex cases. While reference to unusual or complex cases is retained, the new section clearly makes the decision a discretionary one with the convening authority and states no default position. It also clarifies what was previously

not specified: that the officer who convenes the Article 32 hearing decides whether to appoint a reporter.

- g. Paragraph 3.H.1.g (Detail Pursuant to R.C.M. 503(b)(1)): Changes the docketing process to reflect the fact there is only one general court-martial judge who designates an alternate docketing judge who is authorized to detail military judges in the absence of the Chief Trial Judge.
- h. Paragraph 3.H.6.d (Detailing of Court-Martial Members): Adds new subparagraph that permits convening authorities to detail court-martial members from any command in the vicinity of the convening authority's command, or where the accused is located, regardless of command relationships.
- i. Paragraph 3.L.2.b (Requests for Investigative Assistance): Refers commands and defense counsel to the Coast Guard Investigations Manual, 5520.5(series) for additional guidance on requests for defense investigatory assistance.
- j. Paragraph 3.M.1 (Concern for Victims and Witnesses): Eliminates the reference to a proposed, but at the time of the last revision, not yet promulgated instruction, on VWAP and directs commands and judge advocates to the Sexual Assault Prevention and Response instruction which does cover victim and witness responsibilities for sexual assault cases.
- k. Paragraph 3.M.4 (Keeping the Victim Informed): Updates the references to the Attorney General Guidelines for Victim and Witness Assistance and the Sexual Assault Prevention and Response instruction.

5. Chapter 4 - Trial Matters

- a. Paragraph 4.B.1.c (Release of Information): Adds guidance regarding considerations of an active versus passive public affairs stance for some courts-martial.
- b. Paragraph 4.E.2 (Hard Labor without Confinement): Applies the same rules governing execution of a sentence of hard labor without confinement as those for extra duties imposed via NJP.

6. Chapter 5 - Post Trial Matters

- a. Paragraph 5.A.1.a (Verbatim Records of Trial): R.C.M. 1103 is unclear as to whether other forms of punitive discharge than a bad conduct discharge trigger a requirement for a verbatim transcript; this change clarifies that point to ensure verbatim records and prepared in all cases where any form of punitive discharge is adjudged, regardless of whether the discharge is disapproved by the Convening Authority.

- b. Paragraph 5.A.1.b (Summarized ROT): Explicitly permits either the military judge or Convening Authority to order a verbatim record even if not required.
- c. Paragraph 5.A.2.e(6) (Exhibits): Adds this subparagraph to describe the process for handling exhibits in a Record of Trial containing child pornography to ensure compliance with 18 U.S.C. § 3509(m)(the Adam Walsh Act).
- d. Paragraph 5.A.2.f(6) (General Instructions): Adds a subparagraph to instruct legal offices to prepare electronic Records of Trial and a single paper copy for forwarding to the Office of Military Justice (CG-0946) by a DHS approved commercial carrier (e.g. FedEx or UPS).
- e. Paragraph 5.A.2.g (Arrangement of the ROT): Clarifies that records of any Article 32 investigation must include that investigation's enclosures and exhibits; that a waiver of an Article 32 hearing can be found either in a separate waiver document or memorialized in a pre-trial agreement; and that photographs can be substituted for physical evidence in the ROT with the permission of the military judge.
- f. Paragraph 5.A.2.h (Number and Distribution of ROT Copies): Consistent with the changes to 5.A.2.f(6), eliminates the need for seven paper copies of the ROT to be forwarded to the Office of Military Justice (CG-0946).
- g. Paragraph 5.D.4 (Punitive Discharges): Updates the Manual to reflect amendments to R.C.M. 1113(d) that make, for punitive discharges approved after 23 August 2008, punitive discharges self-executing without need for a post-finality promulgating order from the Convening Authority to execute.
- h. Paragraph 5.D.5.b (Statutory Administrative Forfeitures): Adds clarification that one of the events that can result in stoppage of pay is a sentence adjudged after the expiration of a member's enlistment where they have been involuntarily retained on active duty.
- i. Paragraph 5.F.3.b (Forwarding): Consistent with the elimination of multiple paper copies of Records of Trial, only the original R.C.M. 1112 review is required to be sent to the Office of Military Justice (CG-0946).
- j. Paragraph 5.J.1 (Statutory Provisions): Eliminates an outdated reference to delegated authority to refer cases to the Court of Criminal Appeals.
- k. Paragraph 5.L (Residual Clemency: Authorized Officials): Adds reference to HQINST 5814.1 on the Coast Guard Clemency Board.

7. Chapter 6 - Court-Martial Miscellaneous Matters

- a. Paragraph 6.A.3 (Unlawful Command Influence Defined): Provides a definition with specific examples taken from military case law of what constitutes unlawful command influence.
- b. Paragraph 6.A.4 (Leadership Responsibilities Regarding Unlawful Command Influence): Adds paragraph discussing leadership and individual member responsibilities with regard to avoiding unlawful command influence.
- c. Paragraph 6.A.5 (Protection of Individual Whistleblowers): clarifies that whistleblower protection, via 5 U.S.C. § 2302(a)(2) and (b)(8) for civilians and 10 U.S.C. § 1034 for military personnel, applies to reports of unlawful command influence.
- d. Paragraph 6.A.6 (Judge Advocate General Communication with Convening Authorities): states that TJAG visits to convening authorities are a part of the Article 6 review process with a particular emphasis on issues of unlawful command influence.
- e. Paragraph 6.A.7 (Independence of Judges): adds provisions emphasizing the independence of judges, to include collateral duty judges and the importance of that independence in reference to unlawful command influence.
- f. Paragraph 6.B (Court Rules of Practice and Procedure): substantially shortens this section as R.C.M. 108 already specifies the policies with regard to promulgation of court rules.
- g. Paragraph 6.C (Standards of Conduct): revises this section to include reference to the Coast Guard Legal Professional Responsibility Program, COMDTINST 5800.1 (series), which did not exist as a separate program and instruction at the time of the last revision to the Manual.
- h. Paragraph 6.D.1 (Certification of Military Trial Judges): revises the process for applying and the qualifications to become a military trial judge.
- i. Paragraph 6.D.2 (Administration and Oversight of Military Trial Judges): clarifies that military trial judges other than the Chief Trial Judge are part-time, collateral duty judges, the TJAG will act as the Reviewer on the OER of all Military Trial Judges, and the importance of military judge duties in relation to the primary duties of the collateral duty judges.
- j. Paragraph 6.E.1 (General Court-Martial Military Trial Judges): revises the circumstances under which the Chief Trial Judge can be reassigned.

- k. Paragraph 6.E.2 (Collateral Duty Special Court-Martial Military Trial Judges): adds a paragraph discussing the circumstances under which collateral duty military judges may be removed from assignment as a military judge.
- l. Paragraph 6.E.3 (Appellate Judges): revises the discussion of reassignment of appellate judges.
- m. Paragraph 6.E.4 (Chief Appellate Judge): adds a paragraph dealing with the assignment of the Chief Judge of the Coast Guard Court of Criminal Appeals.
- n. Paragraph 6.G (Professional Supervision of Military Trial and Appellate Judges and Attorneys Practicing in Proceedings Governed by the UCMJ and MCM): substantially revises this section to reflect much of what was contained in this section is now covered in Coast Guard Legal Professional Responsibility Program, COMDTINST 5800.1.

8. Chapter 7 - Military Justice Miscellaneous Matters

- a. Paragraph 7.C.1.b(2)(c) (Limitations) Clarifies that the person seeking a search authorization may be working either with the servicing legal office for the command involved with the search, or may be working with a different legal office. Either is acceptable, but coordination with the most appropriate legal office is required prior to seeking a search authorization.
- b. Paragraph 7.C.2.a(3)(c) (Procedure): deleted as obsolete given its references to the two Area geographic boundaries.
- c. Paragraph 7.C.2.b(3) (Signature): updates section to allow exchange of signed search authorization forms via scanning and e-mail as well as faxing.
- d. Paragraph 7.C.3.a(1) (Time Limit): deletes comparative reference to the meaning of probable cause as “more likely than not” as incorrect.

9. Enclosures

Encl (2c) **Administrative Nonjudicial Punishment Checklist:** Provides a checklist to ensure all of the required steps and documentation for nonjudicial punishment are completed and the record generated for the Unit Punishment Log is complete.

Encl (4c) **Administrative Consequences of NJP Desk Reference:** Reference in column form with summary and list of authorities for the various administrative consequences that flow from nonjudicial punishment.

Encl (9) **Designation of Convening Authorities:** Includes the 6 February 2009 designation including post-modernization commands.

Encl (10c) **Instructions for Completing Charge Sheet DD 458:** Requires use of EMPLID, not SSN, on DD 458.

Encl (12a) **Article 32 Investigating Officer's Guide:** Requires use of EMPLID, not SSN, on DD 457.

Encl (16a) **Court Rules of Practice and Procedure:** The Court Rules are completely revised, and renumbered following the Navy Court Rules numbering method.

Encl (16f) **Sample Pre-Trial Agreement:** Replaces the sample with the version currently in use.

Encl (16g) **Court-Martial member Questionnaire:** Replaces former version of questionnaire.

Encl (23b) **Application for Search Authorization:** Replaces former version of application.

TABLE OF CONTENTS

	PURPOSE AND USE OF THIS MANUAL	
CHAPTER 1	NONJUDICIAL PUNISHMENT [NJP]	1-1
	A. Purpose and Effect of NJP	1-1
	B. Preliminary Actions	1-8
	C. Member Representation at NJP	1-16
	D. NJP Procedures	1-19
	E. Punishment at NJP	1-28
	F. NJP Appeal	1-41
	G. Administrative Matters Related to NJP	1-45
	H. NJP Without a Hearing	1-52
	I. Subsequent Court-Martial for Offense Punished at NJP	1-53
CHAPTER 2	SUMMARY COURTS-MARTIALS [SCM]	2-1
	A. Function, Jurisdiction, and Convening of SCM	2-1
	B. SCM at One Officer Commands	2-2
	C. Right to Refuse SCM	2-2
	D. Right to Counsel at SCM	2-3
	E. SCM Procedures	2-4
	F. SCM Punishments	2-5
	G. SCM Post Trial Matters	2-7
	H. Review and Forwarding SCM Record	2-9
CHAPTER 3	PRETRIAL MATTERS	3-1
	A. Courts-Martial Convening Authorities	3-1
	B. Restriction on Exercise of Court-Martial Jurisdiction	3-3
	C. Pretrial Restraint and Confinement	3-7
	D. Preparation and Forwarding Charges	3-13
	E. Order to Active Duty of a Reservist	3-16
	F. Pretrial Investigations under Article 32, UCMJ	3-16
	G. Referral of Charges to Special or General Courts-Martial	3-19
	H. Courts-Martial Personnel	3-20
	I. Administrative Pretrial Matters	3-30
	J. Pretrial Agreements	3-31
	K. Authority to Grant Immunity from Prosecution	3-32

	L. Assistance to Defense Counsel	3-35
	M. Victim and Witness Protection	3-37
	N. Witness Fees and Payment	3-40
CHAPTER 4	TRIAL MATTERS	4-1
	A. Proceedings Involving Classified Matter (MRE 505) or Disclosure Detrimental to National Security (MRE 506)	4-1
	B. Spectator and Release of Information Trial	4-2
	C. Article 39(a), UCMJ Sessions	4-5
	D. Presentencing Procedures, Personal Data, and Character of Prior Service	4-9
	E. Court-Martial Punishment Limitations	4-9
	F. Government Appeal from Adverse Ruling at Trial	4-10
	G. Appellate Rights	4-12
CHAPTER 5	POST TRIAL MATTERS	5-1
	A. Preparation of Record of Trial [ROT]	5-1
	B. Administrative Post-Trial Matters	5-8
	C. Post-Trial Duties of Defense Counsel	5-9
	D. Effective Date of Court-Martial Sentences	5-11
	E. Suspension of Courts-Martial Sentence(s)	5-15
	F. Courts-Martial Action and Review	5-16
	G. Promulgating Orders for GCM and SPCM	5-22
	H. Disposition of Court-Martial Records of Trial [ROT]	5-23
	I. Service of Coast Guard Court of Appeals Decisions	5-24
	J. Application for Relief under Article 69(b), UCMJ	5-25
	K. Petition for New Trial under Article 73, UCMJ	5-27
	L. Residual Clemency: Authorized Officials	5-28

CHAPTER 6	COURTS-MARTIAL MISCELLANEOUS	6-1
	A. Unlawful Influence in Military Justice Proceedings	6-1
	B. Court Rules of Practice and Procedure	6-3
	C. Standards of Conduct	6-3
	D. Certification and Designation of Military Judges	6-4
	E. Tenure for Military Trial and Appellate Military Judges	6-8
	F. Certificate of Counsel Under Article 27(b), UCMJ	6-10
	G. Professional Supervision of Military Trial And Appellate Judges and Attorneys Practicing in Proceedings Governed by The UCMJ and MCM	6-11
	H. Designating and Changing of Place of Confinement	6-11
	I. Submitting Proposed Changes to this Manual	6-12
	J. Submitting Proposed Changes to the Manual for Courts-Martial [MCM]	6-12
CHAPTER 7	MILITARY JUSTICE MISCELLANEOUS	7-1
	A. Article 138, UCMJ Complaints	7-1
	B. Delivery of Personnel to Civil Authorities	7-7
	C. Search Authorizations	7-11

ENCLOSURES

1. Suggested Mast Scripts
2. Report of Offense and Disposition (CG-4910)
3. Acknowledgement of Rights & Acceptance/Rejection of NJP (Ashore)
4. Acknowledgement of Rights & Acceptance/Rejection of NJP (Afloat)
5. Suggested Format for Article 31 Rights
6. NJP Punishment
7. Pretrial Confinement
8. Secretary, Department of Transportation Designation of Convening Authorities
9. Charge Sheet
10. Convening Order
11. Article 32, UCMJ
12. Immunity
13. CG Media Relations in High Visibility Court-Martial Cases
14. Trial Practice
15. Appellate Rights
16. Sample Motion for Relief of Trial Defense Counsel Duties
17. Sample Format for Certificate of Attempted Service
18. Summary Court Martial
19. Delivery of Personnel
20. Search Authorization
21. Memorandums of Understanding (MOU)
22. DoD Directive for Providing for Annual Review of MCM
23. Military Judge Certification Request

Purpose and Use of This Manual: Advice for Commanding Officers and Officers in Charge.

The military is, by necessity, a specialized society separate from civilian society. The internal discipline necessary to carry out military missions has always been maintained through a system of justice unique to the armed forces, in which the Commander oversees the administration of justice as a key attribute of command. The justice system for the U.S. armed forces is codified in the Uniform Code of Military Justice (UCMJ).

This Manual is designed to guide Coast Guard Convening Authorities, Commanders, Staff Judge Advocates, Trial and Defense Counsel, and those who support them in applying the UCMJ. In many cases, it supplements the UCMJ and the Manual for Courts-Martial by establishing binding procedures for Coast Guard matters. *Use of this Manual requires thoughtful reflection and obtaining sound advice before any action is taken. While military justice action taken by a Commander should be swift and deliberate, action taken thoughtlessly and hastily can result in a diminution of command authority and the right of all Coast Guard men and women to justice.*

The UCMJ entrusts Commanders with a spectrum of tools as an extension of their command authority. Although there are linkages to administrative and personnel actions, the military justice system is not administrative in nature. Instead, its goal is to ensure justice and, through justice, good order and discipline. The application of military justice, using the UCMJ's tools, is integral to the exercise of command, and Commanders should never shrink from their use. Commanders have a responsibility to use these tools with care, employing them with consistency and uniformity when acting on offenses of a similar nature and gravity. There are many sources of information from which to determine whether contemplated action is consistent, including personal experience, advice from judge advocates, and published data on good order and discipline.

However, Command actions must also take into account the unique circumstances of every case by appraising the severity of the offense; the character and record of the accused; any impact on good order and discipline, deterrence; and the need to reinforce Coast Guard core values. Commanders, counsel, investigators, and others also have an obligation to the Coast Guard, accused, and victims of crime to inquire and act speedily while acting with thoroughness and fairness.

Effective and efficient use of this Manual anticipates consultation with Coast Guard counsel when thinking about or formulating a military justice action. Staff Judge Advocates are critically important to successful use of the military justice system. The timely and thoughtful advice of the Staff Judge Advocate or other Coast Guard counsel in all of a Commander's military justice decisions, including the imposition of non-judicial punishment, is essential to the correct application of the UCMJ, the Manual for Courts-Martial and this Manual. The assistance of Coast Guard Staff Judge Advocates and other counsel thus serves to enhance command authority, by ensuring that justice is done. Therefore, legal advice should be sought whenever practicable.

CHAPTER 1

1. NONJUDICIAL PUNISHMENT [NJP]	1-1
1.A. Purpose and Effect of NJP	1-1
1.A.1. Authority	1-1
1.A.2. Purpose.....	1-1
1.A.3. Persons Authorized to Impose NJP.....	1-1
1.A.4. Persons Subject to NJP	1-3
1.A.5. Offenses For Which NJP May Be Imposed.....	1-4
1.A.6. Punishment.....	1-5
1.A.7. Limitations on the Exercise of NJP	1-6
1.B. Preliminary Actions	1-7
1.B.1. Report of Offense.....	1-7
1.B.2. Predisposition Restraint Not Authorized	1-8
1.B.3. Initial Action	1-8
1.B.4. Preliminary Inquiry Officer [PIO]	1-9
1.B.5. Final Review	1-12
1.B.6. Reservists: Additional Considerations Prior to NJP	1-14
1.B.7. Public Health Service Officers: Additional Considerations Prior to NJP.....	1-15
1.C. Member Representation at NJP	1-15
1.C.1. General.....	1-15
1.C.2. Pre-Mast Consultation With Counsel	1-15
1.C.3. Mast Representative.....	1-16
1.C.4. Spokesperson	1-17
1.D. NJP Procedure	1-18
1.D.1. General.....	1-18
1.D.2. Mast Script.....	1-21
1.D.3. Commanding Officer’s Opening Statement.....	1-21
1.D.4. Right to Demand Trial by Court-Martial in Lieu of NJP.....	1-21
1.D.5. Informing the Member of the Reported Offense(s)	1-21
1.D.6. Right to Assistance of Mast Representative or Spokesperson	1-22

1.D.7.	Inquiry of Member	1-22
1.D.8.	Examination of Witnesses by the Commanding Officer and Member	1-22
1.D.9.	Dismissing Unsupported Allegations	1-23
1.D.10.	Opportunity for Member’s Statement.....	1-23
1.D.11.	Resolving Discrepancies or Inconsistencies	1-24
1.D.12.	Extenuation and Mitigation.....	1-24
1.D.13.	Consideration of Prior Documented Performance	1-24
1.D.14.	Comments by Executive Officer/Department Head/Division Officer/Chief, or Command Chief.....	1-24
1.D.15.	Findings.....	1-25
1.D.16.	Vacation of Earlier Suspended Punishment.....	1-25
1.D.17.	Dismissal with a Warning.....	1-25
1.D.18.	Referral to Court-Martial	1-25
1.D.19.	Imposition of Nonjudicial Punishment	1-25
1.D.20.	Further Investigation or Proceedings	1-26
1.D.21.	Member’s Right to Appeal.....	1-26
1.D.22.	Publication to Unit Personnel	1-26
1.E.	Punishment at NJP	1-27
1.E.1.	Maximum Punishment	1-27
1.E.2.	Types of Authorized Punishments	1-29
1.E.3.	Effective Date of Punishment	1-32
1.E.4.	Suspension of Punishment	1-35
1.E.5.	Vacation of Suspension.....	1-36
1.E.6.	Mitigating Punishment.....	1-38
1.E.7.	Remission, Restoration, and Setting Aside.....	1-38
1.F.	Appeal of NJP.....	1-40
1.F.1.	Bases for and Time Limit to Appeal.....	1-40
1.F.2.	Who Acts on Appeal.....	1-41
1.F.3.	Format of Appeal	1-41
1.F.4.	Intermediate Action on NJP Appeal	1-42
1.F.5.	Punishment Pending Decision on Appeal.....	1-43
1.F.6.	Action on Appeals.....	1-43
1.G.	Administrative Matters Related to NJP	1-44

1.G.1.	Administrative Measures Independent of Article 15, UCMJ.....	1-44
1.G.2.	Conduct Marks.....	1-47
1.G.3.	Personnel Record Entries.....	1-47
1.G.4.	Unit Punishment Log (or Unit Punishment Book)	1-48
1.H.	NJP Without a Hearing.....	1-51
1.H.1.	Member Afforded the Rights of a Party	1-51
1.H.2.	Member Not Afforded the Rights of a Party	1-52
1.I.	Subsequent Court-Martial for Offense Punished at NJP	1-52

1. NONJUDICIAL PUNISHMENT [NJP]

1.A. PURPOSE AND EFFECT OF NJP

1.A.1. Authority

Article 15, Uniform Code of Military Justice [UCMJ], provides commanding officers with the authority to impose NJP without resort to the judicial forum of a courts-martial. Part V, Manual for Courts-Martial [MCM], supplements Article 15, UCMJ, and provides procedural guidance.

1.A.2. Purpose

1.A.2.a. Maintenance of Discipline

Each commanding officer is responsible for the maintenance of discipline within his or her command. In the great majority of cases, discipline can be maintained through effective leadership, including, when required, the use of available administrative measures. [See, paragraph 1.G.1 below.] Allegations of offenses should be disposed of in a timely manner at the lowest appropriate level of disposition. When a minor offense has been committed and lesser administrative measures are considered insufficient to meet the needs of good order and discipline, a commanding officer should consider invoking his or her authority under Article 15, UCMJ, to impose NJP. This disposition decision rests within the sound discretion of the commanding officer and shall be made on an individual basis considering the nature of the offense(s), any mitigating or extenuating circumstances, the member's character and military service, any recommendations made by subordinate commanding officers, the interest of justice, military exigencies, and the effect of the decision on the member and the command.

1.A.2.b. Rehabilitation

NJP has an important rehabilitative component. It not only provides a commanding officer with an essential and prompt means of maintaining good order and discipline, but may also promote positive behavioral changes.

1.A.3. Persons Authorized to Impose NJP

1.A.3.a. Commanding Officers and Officers-in-charge of Coast Guard Units

All commanding officers may impose NJP upon personnel assigned to their units. All officers-in-charge may impose NJP upon enlisted members assigned to their unit, unless

their authority is limited by a superior commanding officer. Throughout this chapter, references to commanding officers as NJP or mast authorities include officers-in-charge, except where specifically noted. The authority of a commanding officer to impose NJP for certain types of offenses for certain categories of members, or in specific cases, to impose certain types of punishment, may be limited or withheld by a superior commanding officer or the Secretary concerned. A Coast Guard unit is a separately identified Coast Guard organizational entity, under a duly assigned commanding officer or officer-in-charge, provided with personnel and material for the performance of a prescribed mission.

1.A.3.b. Commanding Officers of Enlisted or Military Personnel

Organizational entities established and headed by a commanding officer of enlisted or military personnel pursuant to Section 3-2-5, Coast Guard Regulations, COMDTINST M5000.3 (series), are Coast Guard units for the purpose of this chapter.

1.A.3.c. Successor in Command

The power to impose NJP is inherent in the office and not in the individual. Any officer who succeeds to command in the absence of the assigned commanding officer because of death, incapacitation, illness, Temporary Additional Duty (TAD), relief for cause or leave has the power of the assigned commanding officer to impose punishment, but the maximum punishment is limited by the rank of the successor. For example, a LT who succeeds to command in the absence of the assigned commanding officer who is a LCDR, may impose the amount of punishment allowed a commanding officer in the grade of LT or below.

1.A.3.d. Principal Assistant

Any officer of flag rank in command may delegate his or her powers under Article 15, UCMJ, to a “principal assistant.” A “principal assistant” includes any O-5, O-6, or flag officer on the flag officer in command’s staff. The officer to whom such powers are delegated shall have the same authority as the officer who delegated the powers (unless the delegation was otherwise limited). Maximum limitations on punishments will be determined by the grade of the officer delegating this authority.

1.A.3.e. Superior Commanding Officer

In some cases, the member’s commanding officer may refer a matter to the next superior officer in the chain of command for disposition. Although a commanding officer is not disqualified from imposing NJP because of a personal interest or involvement in the case, he or she may desire to forward the matter to maintain the appearance of fairness. Forwarding a matter may also be appropriate when the appropriate punishment may be beyond the limits of the commanding officer’s NJP authority. If the commanding officer decides to refer the offense to the next superior officer, he or she shall forward all pertinent documents, including the Report of Offense and Disposition, CG-4910, any written statements, a brief explanation of the reasons for referring the matter, and a recommendation for disposition. [See, RCM 306(c)(5).]

1.A.3.f. Subsequent Commanding Officer

If the member is transferred to a new unit after an alleged offense is committed, but before NJP is imposed, all information concerning the alleged offense should be referred for appropriate action to the commanding officer of the member's new unit or a competent authority in the member's new chain of command.

1.A.4. Persons Subject to NJP

1.A.4.a. Military Members of the Command

At the time NJP is imposed, the member being punished must be a member of the command of the commanding officer who imposes the punishment. A member is "of the command" if he or she is assigned or attached thereto. A member may be "of the command" of more than one command at the same time, such as members assigned or attached to commands or units for the purpose of performing TAD. A member assigned to a Coast Guard Force Readiness Command (FORCECOM), Area, District, or Sector unit with a designated commanding officer or officer-in-charge is not "of the command" of a commanding officer of enlisted or military personnel for the FORCECOM, Area, District, or Sector staff.

1.A.4.b. TAD Personnel

NJP may be imposed upon TAD personnel by the commanding officer of the member's permanent unit or by the commanding officer of the unit to which the member is temporarily assigned. Since a member may not be punished by both commanding officers for the same offense, it is desirable, if circumstances permit, for the respective commanding officers to confer and reach agreement as to which one will exercise NJP authority. A member shall not be assigned TAD from a shore unit to a vessel for the primary purpose of thwarting the member's right to demand trial by court-martial in lieu of NJP.

1.A.4.c. Reservists

A member of the Reserve is subject to the UCMJ while performing Inactive Duty for Training [IDT], Active Duty for Training [ADT], or active duty. Accordingly, all offenses committed by a reservist while on active duty, IDT or ADT, may subject the reservist to discipline, including NJP. Reservists performing IDT or ADT with an active service unit are considered under that augmented unit's control in the same manner as TAD personnel. [See, Chapter 3, Reserve Policy Manual, COMDTINST M1001.28 (series).]

1.A.4.d. Civilians

Civilians are never subject to NJP, even if otherwise persons subject to the Code under Article 2(a)(10) of the UCMJ.

1.A.4.e. Members of Other Armed Forces Serving with the Coast Guard

There is no legal prohibition against a Coast Guard commanding officer exercising NJP authority over a member of another armed force attached to his or her command. Exercise of NJP authority by an appropriate officer within the member's armed force is usually preferable, however, because of the differing regulations and administrative procedures among the armed forces. Any exercise of NJP over a member of another armed force is subject to the member's service regulations, applicable directives and inter-service agreements. Such documents, and the servicing legal office, should be consulted if imposition of NJP on members of other services is contemplated. The member's service regulations shall govern the rights and procedures for imposition of NJP.

1.A.4.f. Members of the Coast Guard Serving with Other Armed Forces

Before an officer in another Armed Force imposes NJP on a Coast Guard member under his or her command, that commanding officer should review applicable agreements and directives and determine if the Coast Guard member should be permanently or temporarily reassigned to a Coast Guard command. If the commanding officer decides to impose NJP, the member shall be afforded all rights provided under this Manual. Following the imposition of NJP, the commanding officer shall forward a report of the offense and punishment awarded to Commandant (CG-0946) and the member's Coast Guard program manager. A commanding officer of another armed force with multiple Coast Guard members assigned may also request that a Coast Guard officer assigned to that command be designated as commanding officer, Coast Guard Military Personnel, in accordance with Section 3-2-5, Coast Guard Regulations, COMDTINST M5000.3 (series).

1.A.4.g. Retirees

A retiree may not be recalled to active duty solely for the imposition of NJP.

1.A.5. Offenses For Which NJP May Be Imposed

1.A.5.a. Minor Offenses

NJP may be imposed for minor offenses made punishable by the UCMJ as defined in Part IV, MCM. Factors to be considered to determine whether an offense is minor: the nature of the offense and the circumstances surrounding its commission; the offender's age, rank, duty assignment, record and experience; and the maximum sentence permitted for the offense if tried by general court-martial [see, paragraph 1.e., Part V, MCM]. Ordinarily, an offense should be considered minor if the maximum sentence that could be awarded at a general court-martial does not include a dishonorable discharge or confinement for more than 1 year. This general rule, however, does not prohibit imposing NJP for offenses that do not meet the definition of "minor" in this subparagraph. Questions whether an alleged offense is minor can be directed to the servicing legal office.

1.A.5.b. Determining That An Offense Was Committed

A commanding officer must find the member committed a criminal offense, as defined under the UCMJ and the MCM, before he or she may impose NJP. Many Coast Guard policies are not enforceable as punitive orders, so not every failure to follow Coast Guard policy may be the basis for NJP. Since NJP is nonjudicial, the commanding officer should not announce that the member is “guilty” if he or she determines that the member committed a criminal offense, but instead, should announce that an offense has been committed and, if appropriate, announce the punishment that is appropriate and authorized under Article 15, UCMJ [see, subparagraph 1.D.19 below.].

1.A.6. Punishment

1.A.6.a. Nonjudicial in Nature

Punishment imposed under Article 15, UCMJ is called “Nonjudicial Punishment” to distinguish it from punishment imposed by court-martial, which is “judicial punishment.” Nonjudicial punishment may also be referred to as “NJP,” “Captain’s Mast,” “Mast,” or “Article 15 Punishment.” A commanding officer’s decision to impose NJP does not constitute a judicial finding of guilt and is not a “conviction.” A member does not have a “criminal record” as a result of the imposition of NJP. This distinction preserves a member’s record from the stigma of conviction while still giving a commanding officer a prompt and efficient tool to maintain good order and discipline at the unit. It is equally important to note that while NJP is an administrative process, as opposed to a criminal process, in order to punish an individual under Article 15, UCMJ the mast authority must determine that the member committed an offense (or crime) as defined by the UCMJ.

1.A.6.b. Imposition of NJP

Once a commanding officer finds that an offense was committed, he or she must consider the appropriate punishment. The following factors should be considered by the commanding officer in choosing the appropriate punishment:

- (1) Seriousness of the offense;
- (2) Circumstances surrounding the offense;
- (3) Member’s prior performance and potential;
- (4) Potential rehabilitative effect of punishment on the particular member;
- (5) Mitigating and extenuating circumstances;
- (6) Effect of offense upon the good order and discipline within the command;
- (7) Beneficial effect of immediate punishment;
- (8) Deterrent effect of punishment on potential offenders;
- (9) Recommendations from any subordinate commanders; and

- (10) Potential adverse administrative consequences (*e.g.*, loss of eligibility for good conduct award; eligibility for reenlistment or promotion; show cause board; recoupment of selective reenlistment bonus; administrative discharge).

The maximum authorized NJP punishments are based on the rank of the commanding officer, the rank or pay grade of the member being punished, and, in the case of minor unauthorized absences under Article 86, UCMJ, the maximum punishment authorized to be imposed under that offense.

1.A.6.c. Suspension of Punishment

When imposing NJP, the commanding officer should also consider whether to suspend all or part of the punishment imposed. Suspension of punishment may be especially appropriate when it is the member's first offense or where there are extenuating or mitigating circumstances. Suspension provides the member with an additional incentive for proper behavior.

1.A.7. Limitations on the Exercise of NJP

1.A.7.a. Multiple Offenses

All known offenses determined to be appropriate for disposition by NJP and ready to be considered at the time, including all such offenses arising from a single incident or course of conduct, shall be considered together at a single mast. They shall not be made the basis for multiple punishments. If one or more offenses are determined to be appropriate for trial by courts-martial, NJP should not be imposed and all pending charges should be referred for trial. Charges and offenses may not be split for adjudication without conferring with the command's servicing legal office. A commanding officer is not required to delay NJP to complete an investigation into unrelated conduct.

1.A.7.b. Increased or Double Punishment

After NJP is imposed, the amount of punishment may not be increased on appeal or for any other reason, nor may NJP be imposed again for the same offense(s). Misconduct punished at NJP may, in rare circumstances, subsequently form the basis for charges at court-martial. [See, section 1.I below; paragraph 1.e., Part V, MCM.]

1.A.7.c. Civil Offenses

NJP may not be imposed for an offense prosecuted in a United States federal court. As a matter of Coast Guard policy, authorization from the Judge Advocate General (CG-094) must be obtained before NJP may be imposed for an offense pending trial or tried by a state or foreign criminal court. "Pending trial" means that state or foreign government has issued an indictment or information or has taken similar steps toward prosecution.

Requests for such authorization must be in writing and provide a thorough justification why NJP should be authorized. [See, paragraph 3.B.4 below.]

1.A.7.d. Offenses Previously Tried by Court-Martial

NJP may not be imposed for an offense previously tried by court-martial and resulting in a finding of guilty or not guilty.

1.B. PRELIMINARY ACTIONS

1.B.1. Report of Offense

1.B.1.a. Initial Report

A command may receive an allegation of misconduct from any source. Another member of the command may inform a superior that he or she witnessed an act of misconduct, the command may receive a report from another command or local authorities, or a member of the public may report an offense. Any report of misconduct may serve as the basis for initiating a preliminary inquiry [see, subparagraph 1.B.3.c below].

1.B.1.b. Report of Offense and Disposition, CG-4910

Completion of a Report of Offense and Disposition, (CG-4910) (often called a “booking” or “report” chit) is often the first step in the NJP process. Completion of a Report of Offense and Disposition, CG-4910 is not required to initiate a preliminary inquiry [see, subparagraph 1.B.3.c below]. Report of Offense and Disposition, CG-4910 provides a step-by-step approach to document the actions taken by the command. A copy of a completed Report of Offense and Disposition, CG-4910 is provided in enclosure (2a). This form is available on the standard workstation, or the blank copy provided in enclosure (2b) may be reproduced locally. Once the member has been placed on report, the procedure to be followed may vary with the size and type of unit and the desires of the commanding officer.

1.B.1.c. Persons Authorized to Submit a Report of Offense and Disposition, CG-4910

Any member of the armed forces who is aware of an offense may submit a Report of Offense and Disposition, CG-4910. The person submitting the Report of Offense and Disposition, CG-4910 may rely upon information received from other sources and does not have to have personally witnessed the alleged act of misconduct.

1.B.1.d. Allegations of Serious Misconduct

If the allegation of misconduct involves a serious offense of the type not normally disposed of through NJP, a Report of Offense and Disposition, CG-4910 should not be completed. The command should consult its servicing legal office to determine if an offense should be considered serious. If necessary, the command should request investigative assistance from the regional Coast Guard Investigative Service (CGIS) office in accordance with Investigative Assistance, COMDTINST 5520.5 (series).

Serious offenses must also be reported as required by Criminal History Reporting for Military Suspects, COMDTINST 5580.1 (series). Allegations of rape or sexual assault must be reported in accordance with Sexual Assault Prevention and Response Program, COMDTINST 1754.10 (series).

1.B.2. Predisposition Restraint Not Authorized

Pre-mast confinement or restriction is not authorized. A member may be placed in pretrial restraint only if the command is considering referring the charges against the member for trial by special or general court-martial. A command may not automatically place a member in restraint solely because he or she has been placed on report. Pretrial restraint, including pretrial restriction or confinement, may be imposed only in very limited circumstances [*see*, RCM 304 and 305]. Generally, pretrial restraint may be imposed only if necessary to ensure an accused's presence at trial or to prevent the commission of additional serious offenses. The member must be immediately released from restraint if the command decides to dispose of the offense(s) other than at court-martial.

1.B.3. Initial Action

1.B.3.a. Review of Report of Offense and Disposition, CG-4910

The Report of Offense and Disposition, CG-4910 should be forwarded for review. Normally, it is reviewed by the executive officer (and will be discussed using that title throughout this section), but, depending on the command's organization, this function (as well as the final review, see paragraph 1.B.5 below) may also be performed by the command's chief of military personnel, administrative officer, or any officer or petty officer designated by the commanding officer. If designated, a civilian employee in a supervisory position may also perform this ministerial function. If the Report of Offense and Disposition, CG-4910 involves a serious offense of the type for which NJP is not normally imposed, action should be taken as discussed in subparagraph 1.B.1.d above. If the executive officer determines that NJP may be appropriate, he or she should advise the member of the general nature of the offense that he or she is suspected of committing and that the command is considering imposition of NJP. The executive officer should designate a preliminary inquiry officer to conduct a preliminary inquiry. If appropriate, the executive officer may dismiss the matter, if delegated this authority by the commanding officer.

1.B.3.b. Appointment of Mast Representative

Depending on the circumstances, a command may desire to appoint a mast representative, described in paragraph 0 below, at one of two stages during the preliminary actions. One option is to appoint the mast representative prior to or simultaneously with forwarding the Report of Offense and Disposition, CG-4910 to the Preliminary Inquiry Officer. Alternatively, a mast representative may be appointed during the final review [*see*, subparagraph 1.B.5.d below].

1.B.3.c. Designation of Preliminary Inquiry Officer [PIO]

The executive officer normally designates a member of the command to conduct a preliminary inquiry. The designation may be made orally or in writing. As mentioned in subparagraph 1.B.1.b, a Report of Offense and Disposition, CG-4910 is not required to initiate a preliminary inquiry (see Administrative Investigations Manual, COMDTINST M5830.1 (series)).

1.B.4. Preliminary Inquiry Officer [PIO]

1.B.4.a. PIO Duties

(1) The PIO shall become familiar with this entire paragraph [paragraph 1.B.4 above.].

(2) The PIO shall ensure the section of the Report of Offense and Disposition, CG-4910 entitled “Information Concerning Accused” is properly completed.

(3) The PIO shall review the description of each of the suspected offenses in Part IV, MCM, and address each of the listed elements during the inquiry.

(4) The PIO shall question any witnesses and collect any documents (log entries, receipts, etc.), statements, and other evidence of the suspected offense(s). The PIO should obtain a signed written statement from each witness who has information about the alleged offense(s). If a witness refuses to provide a written statement, the PIO should prepare a summary of the interview. It is usually recommended that the PIO not question the suspect until after collecting available evidence and questioning other witnesses. By doing so, the PIO is better prepared to interview the suspect, formulate questions, confront issues in contention and ascertain the suspect’s credibility.

(5) The PIO shall correct the Report of Offense and Disposition, CG-4910 as necessary to ensure the Details of Offenses are supported by evidence. A copy of any amended Report of Offense and Disposition, CG-4910 shall be provided to the member.

(6) At the conclusion of the preliminary inquiry, the PIO shall complete the section of the Report of Offense and Disposition, CG-4910 entitled “Preliminary Inquiry Officer’s Report” and return the form and any supporting materials obtained during the inquiry to the executive officer. The report shall include the PIO’s summarization as to what, in his or her opinion, actually occurred along with a recommendation as to the appropriate disposition of the matter [*see*, subparagraph 1.B.4.c below]. Though it is not required, a PIO may wish to use the Sample Report of Investigation format, found in the Administrative Investigations Manual,

COMDTINST M5830.1 (series), to report his or her findings, opinions, and recommendations.

(7) The PIO may conduct portions of the inquiry remotely, though in most circumstances, an on-site investigation yields superior results. If the inquiry is conducted remotely, the PIO must take extra care when advising a member of the alleged offenses, providing a rights warning, and obtaining a waiver and statement from the member.

1.B.4.b. Offense(s) Previously Investigated

If the alleged offenses are the subject of a CGIS Report of Investigation or administrative investigation report, the PIO should review and adopt the facts from that report. The PIO should only conduct an additional investigation only if he or she believes that additional information is needed before making a recommendation for disposition.

1.B.4.c. New or Different Offense(s)

If during the course of the inquiry, the PIO becomes aware of a new or different offense(s) that may have been committed by the member, the PIO should inquire into the new or different offense(s). The PIO should make a recommendation concerning the disposition of the new or different offense(s).

1.B.4.d. Suspected Serious or Significant Offenses

If the preliminary inquiry reveals at any time that a criminal investigation as discussed in subparagraph 1.B.1.d above, may be appropriate, the PIO should stop the inquiry and request further guidance from the authority ordering the investigation. Ordinarily, there is no reason to continue the PIO inquiry if a criminal investigation is commenced.

1.B.4.e. Rights Warning

Under Article 31(b), UCMJ a military member suspected of an offense may not be questioned unless he or she is informed of the nature of the offense, advised that he or she does not have to make a statement, and informed that any statement made may be used as evidence. The PIO must advise the person named as the suspect on the Report of Offense and Disposition, CG-4910 of his or her rights under Article 31(b) before asking that person any questions. Enclosure (5) should be used. The PIO should have another person sign the rights advisement and any written statement given by the suspect as a witness. Other military members must also be advised of their rights before questioning if they are suspected of any offenses.

1.B.4.f. Right to Consult with an Attorney

If the suspect says that he or she desires to consult with an attorney at any time during the questioning, questioning must stop immediately. The right to consult with an attorney is

distinct from and does not include an obligation on behalf of the government to provide an attorney. The PIO should note that the suspect asked to consult with an attorney. Questioning may not resume until after the member has been provided the opportunity to consult with an attorney. In most cases, sufficient information about the offense(s) may be obtained through other sources, and it will not be necessary to question the suspect. The command should consult its servicing legal office if it believes that it cannot properly dispose of the charges without obtaining information directly from the suspect, necessitating the assignment of an attorney at the investigation stage.

1.B.4.g. Aggravation, Extenuation, and Mitigation

If the PIO ultimately recommends the matter be referred to NJP or court-martial, the PIO's report should also include information appropriate to be considered in aggravation, extenuation, or mitigation [see, definitions in appendix I]. The PIO should keep this requirement in mind as the inquiry progresses.

1.B.4.h. PIO Recommended Disposition

The PIO shall not recommend a type or amount of punishment. It is appropriate, however, for the PIO to note important factors for the commanding officer to consider when determining an appropriate punishment in the event that NJP is awarded. The PIO report shall include a recommendation for one of four possible dispositions:

(1) **Dismissal**

If the facts indicate that an offense under the UCMJ has not been committed or punishment is not appropriate, the PIO should recommend that the matter be dismissed.

(2) **NJP**

If the PIO believes the facts support a conclusion that the member committed an offense under the UCMJ [see, subparagraph 1.D.1.f below regarding burden of proof at NJP] and NJP appears appropriate, the PIO should recommend NJP and, as the executive officer may direct, make arrangements for any witnesses, statements, documents, and other physical evidence that bear on both sides of the case to be brought to the attention of the commanding officer.

(3) **Court-Martial**

If the facts appear to warrant referral to trial by court-martial, the PIO should so recommend.

(4) **Other Administrative Measures**

The PIO may recommend any administrative measures that might seem appropriate. [See, section 1.G below for examples of administrative measures that the PIO may recommend.]

1.B.4.i. Member's Opportunity to Inspect Documents and Evidence

At the command's election, the PIO may provide the member a brief summary of the information on which the allegations are based and inform the member that he or she will be given an opportunity to examine all documents and evidence upon which the commanding officer intends to rely in deciding whether and how much NJP to impose. This opportunity will be given either prior to or during the NJP hearing, at the commanding officer's option. The commanding officer may, though he or she is not required to, also allow the member to copy all or parts of the PIO's report and other supporting materials.

1.B.5. Final Review

1.B.5.a. Review of Preliminary Inquiry

The executive officer should review the PIO's report as well as the Report of Offense and Disposition, CG-4910. The executive officer may dismiss the matter, if delegated this authority by the commanding officer, or refer the matter to the commanding officer recommending that the offense(s) be dismissed, disposed of at mast, or referred to trial by court-martial. If the offenses are dismissed or addressed administratively, it is normally good practice to advise the member initiating the Report of Offense and Disposition, CG-4910 of the disposition of the offense(s). Amending the Report of Offense and Disposition, CG-4910

1.B.5.b Amending the Report of Offense and Disposition, CG-4910

The executive officer may amend the Report of Offense and Disposition, CG-4910 as necessary to ensure the Details of Offenses are supported by evidence. A copy of any amended Report of Offense and Disposition, CG-4910 shall be provided to the member.

1.B.5.c Executive Officer and Executive Petty Officers Have No NJP Authority

Neither an executive officer nor an executive petty officer has any authority to impose NJP. The authority to impose NJP resides solely with the commanding officer. If delegated the authority, the executive officer or executive petty officer may dismiss a report of offense. Subordinate officers may administratively rebuke, censure, criticize, or warn a suspected offender, however, and, if authorized by the commanding officer, may initiate other administrative action not amounting to NJP. [See, subparagraph 1.G.1.b below regarding limitations on awarding extra military instruction (EMI).]

1.B.5.d Notice to Member of Intended Action

If the executive officer decides a matter should be disposed of at mast, he or she will cause the member to be notified of the recommendation and intended action [see, paragraph 4.a., Part V, MCM]. Enclosures (3a), (3b), (4a), or (4b), as applicable, should be used for this notification. At this point a mast representative should be appointed if one has not already been appointed. [See, subparagraph 1.C.3.a below.]

1.B.5.e Right to Demand Trial by Court-Martial In Lieu of NJP By Member Not Attached To or Embarked in a Vessel

If the matter will be forwarded for NJP, a member who is not attached to or embarked in a vessel [see, paragraph 3, Part V, MCM] must be informed that he or she has a right to demand trial by court-martial in lieu of NJP. He or she must also be informed of the right to consult with an attorney before accepting or rejecting NJP. Enclosure (3a) (enlisted) or (3b) (officer) should be used to document that the member was notified of his or her rights and whether the member demanded court-martial in lieu of NJP. Vessel precommissioning teams or detachments are not attached to or embarked upon a vessel within the meaning Part V of the MCM. Members assigned TAD ashore from a vessel are not attached to or embarked upon a vessel and therefore must be afforded the right to demand trial by court-martial.

1.B.5.f No Right to Demand Trial by Court-Martial In Lieu of NJP By Member Attached To or Embarked in a Vessel

A member attached to or embarked in a vessel does not have the right to demand trial by court-martial in lieu of NJP. The term "vessel" is defined in 1 U.S.C. § 3; RCM 103 (Discussion); and the definition Appendix of this Manual. The command may, in its sole discretion and if it will not unreasonably delay the proceedings, arrange for the member to consult with a military attorney or provide the member the opportunity to consult with a civilian attorney at his or her own expense prior to imposing NJP to allow the member to obtain information about the NJP process. Commanding officers or officers-in-charge of vessels are attached to or embarked upon a vessel, even if temporarily relieved of duties and temporarily assigned ashore. A commanding officer or officer-in-charge of a vessel who has been permanently relieved for cause prior to the imposition of NJP is not attached to or embarked upon a vessel. Enclosure (4a) or (4b) shall be used to document the member was notified of his or her rights.

1.B.5.g Effect of Demand for Court-Martial In Lieu Of NJP

A demand for trial by court-martial in lieu of NJP by a member not assigned to or embarked in a vessel does not require that charges be preferred, transmitted, or forwarded. The determination to refer a matter to courts-martial resides solely with the command and superior commanders despite a member's demand. NJP may not be imposed, however, while the demand is in effect. The transfer of a member from a shore unit to a vessel after refusing NJP does not invalidate the exercise of this right for those offenses for which a demand for courts-martial was made. A demand for trial by court-martial does not limit the command's authority to implement administrative measures [see, section 1.G below].

1.B.5.h Refusal of Summary Court-Martial

Article 20, UCMJ, gives an enlisted member of the armed forces the right, in all cases, to refuse trial by summary court-martial. Thus, if a member refuses both NJP and trial by summary court-martial, he or she may be tried, if at all, only by special court-martial or

general court-martial. Officers may not be tried by summary court-martial. [see, Chapter 2].

1.B.5.i Examination of Documents and Evidence

Prior to imposition of NJP, the member must be allowed to examine documents and other evidence that the NJP authority will examine and consider in determining whether to impose NJP. To avoid delays during the mast itself, the member and his or her designated mast representative should be provided the opportunity to review such materials, including the PIO's report and witness statements, prior to the mast if the case will be forwarded recommending NJP. This may have been accomplished at some commands by the PIO [see, subparagraph 1.B.4.i above]. Alternatively, the commanding officer may review the documents and evidence with the member during the mast hearing [see, enclosure (1b) or (1c)]. The regional CGIS office should be consulted prior to disclosure of a CGIS Report of Investigation.

1.B.5.j Forwarding the Report

Except where the matter has been dismissed in accordance with subparagraph 0 above, the executive officer should forward the completed Report of Offense and Disposition, CG-4910 together with all other information concerning the reported offense(s) to the commanding officer for disposition.

1.B.6. Reservists: Additional Considerations Prior to NJP

1.B.6.a. Scheduling of NJP

A member of the Reserve is subject to the UCMJ while performing Inactive Duty for Training [IDT], Active Duty for Training [ADT], or other forms of reserve duty status, or active duty [see, subparagraph 1.A.4.c above]. A reservist may not be retained on IDT or ADT solely for the purpose of maintaining NJP authority. If a command intends to impose NJP on a reservist who is not on active duty for an offense committed while that reservist was subject to the UCMJ, and a mast cannot be held during the member's current ADT or IDT, the mast should be held during the member's next scheduled ADT or IDT period.

1.B.6.b. Involuntary Order to Active Duty

If, due to special circumstances, it is impractical to wait for a member's next scheduled ADT or IDT period, or the member fails to report for his or her next scheduled ADT or IDT period, the commanding officer may request, by message or letter, that the officer exercising general court-martial jurisdiction [OEGCMJ] over that reservist order the reservist to involuntary active duty. Whenever practical, the requested period of active duty should coincide with the member's regular IDT schedule (e.g., same day of the week as normal IDT).

1.B.6.c. Cancellation of Orders when NJP is Refused

If a reservist notifies the OEGCMJ, in writing, that he or she is exercising a right to demand trial by court-martial in lieu of NJP before the reporting date of the order to active duty, the order shall be rescinded.

1.B.7. Public Health Service Officers: Additional Considerations Prior to NJP

Prior to taking action under the UCMJ against an active duty member of the Public Health Service [PHS] assigned to duty and serving with the Coast Guard, the convening authority should contact his or her servicing legal office to obtain a copy of the current USCG - USPHS Memorandum of Understanding, which may contain procedural guidance concerning military justice and disciplinary proceedings involving PHS personnel.

1.C. MEMBER REPRESENTATION AT NJP

1.C.1. General

A mast is not an adversarial proceeding. It is different from courts-martial; a member has no right to be represented by an attorney at mast. No military attorney will be detailed to represent a member at mast unless the mast authority is a flag officer and he or she requests an attorney for the member. It is possible, however, that the member may obtain the services of an attorney or any other person, at no expense to the government, to appear as his or her spokesperson [see, paragraph 0 below; paragraph 4.c.(1)(B), Part V, MCM].

1.C.2. Pre-Mast Consultation With Counsel

1.C.2.a. Members Not Attached to or Embarked in a Vessel

(1) Prior to making an election to accept NJP or demand trial by court martial in lieu of NJP, a member not attached to or embarked in a vessel will be afforded the opportunity to consult with counsel subject to the availability of counsel, the delay involved, operational commitments, and military exigencies. Failure to offer the member an opportunity to consult with counsel prior to making an election to accept or refuse NJP precludes the use of that NJP for sentence enhancing purposes in any future court-martial of the member. [See, *United States v. Booker*, 5 M.J. 238, 243 (CMA 1977).] For purposes of consultation with an attorney, a military attorney may be made available for the consultation (usually by telephone) by the servicing legal office in accordance with established procedures at no cost to the member, or, in lieu of a military attorney made available, and provided the proceeding is not unduly delayed thereby, the member may retain a civilian attorney at no expense to the government. A member does not have a right to the assignment of any particular military attorney by the Coast Guard, and the attorney assigned need not be certified in accordance with Article 27(b), UCMJ.

(2) An attorney-client relationship shall attach when the right to consult is exercised, but for attorney-client privilege purposes only. Military attorneys assigned for consultation purposes shall not undertake to represent the member unless directed to do so by proper authority. Whether or not the member exercises the right to confer, any decision to accept NJP must be in writing, signed by the member, and indicating it was a knowing and voluntary decision [see, subparagraph 0 above and enclosures (3a) or (3b)]. The completed enclosure, or a copy thereof, shall be attached to the record and maintained in the unit punishment log [see, paragraph 1.G.4 below].

(3) The attorney assigned by the Coast Guard may be an attorney from another military service assigned by that service through its normal procedures pursuant to inter-service agreement or memorandum of understanding. [See, enclosure (24b)].

1.C.2.b. Members Attached to or Embarked in a Vessel

A member attached to or embarked in a vessel has no right to demand trial by court-martial in lieu of NJP or, consequently, to consult with a military or civilian attorney prior to NJP regarding the option to demand trial by court-martial. [See, enclosure (4a) or (4b)]. A commanding officer, at his or her sole discretion, and if it does not unduly delay proceedings, may permit the member to consult with an attorney similar to the right provided in subparagraph 1.C.2.a above.

1.C.3 Mast Representative

1.C.3.a. Appointment

A mast representative shall be appointed to assist the member in preparing for and participating in the mast proceedings, unless the member declines appointment of a mast representative. The representative should be an officer or petty officer and must, if practicable, be attached to the unit of the commanding officer conducting the mast. Appointment of the representative should be made by the executive officer either at the time he or she takes initial action on the Report of Offense and Disposition (CG-4910) [see, subparagraph 1.B.3.b above] or prior to forwarding the Report of Offense and Disposition to the commanding officer [see, paragraph 1.B.5 above].

1.C.3.b. Request for Particular Mast Representative

If there is an individual attached to the unit whom the member desires to have as a mast representative, such individual should be appointed, if practicable and reasonably available, provided that he or she is neither involved in the matter that is the subject of the mast nor expected to be a witness in the proceedings. The command is not required to assign a particularly requested mast representative in every situation (e.g., if the requested mast representative is deemed incapable of providing mature advice to the member, etc.), and may, in those situations where a requested representative is not assigned, assign as a mast representative an individual deemed capable of best assisting the member to present his or her case.

1.C.3.c. Role of the Mast Representative

The mast representative serves primarily to assist the member in preparing for and presenting his or her side of the matter and to speak for the member, if the member desires. It is Coast Guard policy that the mast representative may question witnesses, submit questions to be asked of witnesses, present evidence, and make statements inviting the commanding officer's attention to those matters he or she feels are important or essential to an appropriate disposition of the matter. In addition, the mast representative may make a plea for leniency, and to that end, may solicit and submit statements regarding the reputation of the member at the unit as well as other matters in extenuation or mitigation.

1.C.3.d. Declining Appointment of Mast Representative

Even if a member declines appointment of a mast representative, the command may, but is not required to, appoint one and inform the member. This option provides the member someone with whom he or she can discuss his or her case should the member reconsider before mast. The mast representative appointed when the member declines one should be informed of the fact the member declined a mast representative and advised that the member may prefer to not have the benefit of the mast representative's advice.

1.C.3.e. Communications Between Mast Representative and Member

By policy, communications between a member and his or her mast representative shall be privileged in the same manner as the communications between an attorney and client. Commanding officers or their designees shall so advise mast representatives at the time of appointment.

1.C.4. Spokesperson

1.C.4.a. Entitlement

In lieu of a mast representative, the member may elect to be accompanied at mast by a spokesperson. A spokesperson is different from a mast representative and does not perform the same role at a mast. A spokesperson does not have to be a crewmember or even a member of the Coast Guard. A spokesperson is provided or arranged for solely by the member at no cost to the government. A command need not allow a spokesperson to accompany the member so long as the punishment to be imposed will not exceed extra duty for 14 days, restriction for 14 days, and/or an oral reprimand. [see, paragraph 4.c.(1)(B), Part V, MCM.] . A spokesperson is not entitled to travel or similar expenses.

1.C.4.b. In Lieu of Mast Representative

A spokesperson may attend the mast in lieu of a mast representative appointed by the command [see, paragraph 0 above]. At the sole discretion of the commanding officer, a member may be accompanied by an assigned mast representative in addition to the spokesperson. A spokesperson is an individual selected and arranged for by the member who, at the member's election, speaks for him or her at those times during the mast when the member's responses are invited by the commanding officer. A spokesperson may be anyone, including an attorney retained by the member. Any acknowledgement of rights

should be made personally by the member, however, and not acknowledged on behalf of the member by the spokesperson.

1.C.4.c. Qualifications

Such spokesperson need not be qualified under RCM 502(d) (i.e., does not have to be qualified as an attorney). The commanding officer may not exclude the spokesperson from the mast solely because he or she is an attorney.

1.C.4.d. Mast Need Not Be Delayed

The reasonable scheduling of a mast need not be delayed to permit the presence of a spokesperson. A mast conducted as may be reasonably scheduled without a spokesperson present because of the spokesperson's inability to be present is not limited by the punishment caps stated in paragraph 4.c.(1)(B), Part V, MCM and in subparagraph 0 above.

1.C.4.e. Not An Adversarial Proceeding

A mast is not an adversarial proceeding. A spokesperson is not permitted to examine or cross-examine witnesses [see, paragraph 4.c.(1)(B), Part V, MCM]. The commanding officer may, as a matter of discretion, permit a spokesperson to examine or cross-examine witnesses. A spokesperson is always permitted to speak for a member when the member is otherwise entitled to speak. The purpose of precluding a spokesperson from examining witnesses is to avoid having the mast hearing become an adversarial proceeding.

1.C.4.f. Communications Between Spokesperson and Member

By policy, communications between a member and his or her spokesperson shall be confidential in the same manner as communications between a member and his or her mast representative [see, subparagraph 0 above].

1.D. NJP PROCEDURE

1.D.1. General

1.D.1.a. Place

Traditionally, mast was held on a ship's quarterdeck, or "before the mast." Although most masts are now held in a cutter's wardroom or cabin or the commanding officer's office ashore, the commanding officer may hold mast where the unit's crew can observe it. The setting should maintain appropriate dignity and decorum for such a proceeding and allow the mast to be held without interruption or distractions.

1.D.1.b. Presence of the Member

It is Coast Guard policy that the member must be present at the mast exceptions to this policy:

(1) Member Afforded Rights of a Party

A mast may be held in the member's absence where NJP is awarded on the basis of the record of a court of inquiry or an investigative body in which proceedings the member was afforded the rights of a party with respect to the offense(s) for which NJP is contemplated. [see, section 1.H below.]

(2) Member Absent Without Authority

A mast may be conducted in a member's absence for a member absent without authority if the member was previously given notice that the command was considering NJP, informed of the suspected offenses and his or her rights at mast, and, if not attached to or embarked in a vessel, did not demand trial by court-martial in lieu of NJP [see, paragraph 1.B.5 above].

(3) Member Waives Right to be Present

A member may waive this right to be present at mast by submitting in writing a statement of his or her desire to waive presence at the mast and an acknowledgement that he or she has had an opportunity to submit all matters in defense, extenuation and mitigation for the commanding officer's consideration. Even if the member properly waives this right, the commanding officer may require the member's presence.

1.D.1.c. Special Arrangements For Member at a Detached Unit

A member at a detached unit is considered "present" if the mast is held by two-way videoconference. A member assigned to a detached unit may also waive the right to be present at mast [subparagraph 1.D.1.b above] or ask to participate in the mast via telephone conference call.

1.D.1.d. Official Attendees

Normally, the unit executive officer, the unit command chief if mast is held for an enlisted member, and the member's department head, division officer, and/or chief petty officer attend the mast. A unit master-at-arms may attend and coordinate the proceeding as directed by the commanding officer. A yeoman or other clerical assistant may be directed to attend to take notes of the proceeding and prepare record entries. If the member has a mast representative, he or she shall be present unless excused by the member. If the member has a spokesperson in lieu of a mast representative [see, paragraph 0 above], the spokesperson may be present if the mast would not be unduly delayed to permit the presence of a spokesperson. All official attendees, including those listed above, attend the mast at the discretion of the commanding officer.

1.D.1.e. Proceedings Open to the Public

A mast is normally open to the public unless the commanding officer determines that it should be closed due to operational necessity, to prevent disclosure of classified information, or other good cause. In addition, the commanding officer may close the

proceedings if the maximum punishment to be imposed will not exceed extra duty for 14 days, restriction for 14 days, and an oral reprimand [see, paragraph 4.c.(1)(G), Part V,

MCM]. Any persons whom the member desires present should be allowed to attend unless the mast is closed. The command is not required to delay the mast or make special arrangements to provide public access to the proceeding. The commanding officer may take necessary steps to ensure the mast is conducted in an orderly manner. Nothing in these requirements shall preclude the alleged offender from conferring privately with the commanding officer during the alleged offender's opportunity to make a statement, at the commanding officer's discretion, to relate matters that, in the opinion of the alleged offender, are of a personal matter.

1.D.1.f. Burden of Proof

The burden of proof required in order to award punishment at NJP is a preponderance of evidence. This standard means that before NJP may be awarded, the commanding officer must determine it is "more likely than not" that the member committed an offense(s) defined by the UCMJ. Each element of each offense as defined in the Manual for Courts-Martial [MCM] must be supported by a preponderance of the evidence (i.e., it is "more likely than not that the element occurred). This is a lower standard of proof than the "beyond a reasonable doubt" standard used to find the member guilty at a court-martial.

1.D.1.g. Rules of Evidence

A member retains the right against self-incrimination at mast, and may not be forced to make a statement or answer questions. [see, Article 31(b), UCMJ]. Privileges arising from communications with a spouse, an attorney, a member of the clergy, or a psychotherapist apply at mast, with certain exceptions [Section V, Military Rules of Evidence, Part III, MCM]. Other rules of evidence applicable to courts-martial do not apply at mast. The commanding officer may consider hearsay, or statements made outside the mast proceeding, such as police reports and oral or written statements made to an investigator, whether or not the person who made the statement appears in person at the mast. When deciding whether a hearsay statement is credible and the weight it should be given, the commanding officer should carefully evaluate the circumstances under which the statement was made. Judicial exclusionary rules involving rights warnings and search and seizure do not apply at mast, and the commanding officer may consider evidence that would be inadmissible at court-martial. The commanding officer should apply a rule of fundamental fairness: under all of the circumstances, is it fair to the member to consider this evidence? The commanding officer should consult his or her servicing legal office with any questions about whether or not to consider specific evidence.

1.D.1.h. Sentence Disposition Agreements

Commanding officers are discouraged from entering into a "plea agreement" in connection with NJP, and may do so only after consulting the servicing legal office.

1.D.2. Mast Script

Enclosure (1) contains instructions and two suggested scripts (enclosure (1b), a detailed script and enclosure (1c), an abbreviated script) for use in conducting mast pursuant to Article 15, UCMJ. Following either suggested script is not required for valid action under Article 15, UCMJ; however, ensuring the member's rights are provided and preserved is required. Each script is intended to assist the mast authority to accomplish that goal. The detailed script answers the majority of questions and issues that may arise during a mast hearing. The mast authority may amend and stylize the provided scripts as necessary, or follow a different process to meet the unit's need for good order and discipline to the extent the member's rights under law (Articles 15 and 31b, UCMJ), Presidential Order (Part V, MCM), and regulations of the Judge Advocate General of the Coast Guard Chapter 1, MJM), are followed.

1.D.3. Commanding Officer's Opening Statement

[See, paragraph 1, enclosure (1b).]

The commanding officer should begin the mast by advising the member of the procedure that will be followed during the hearing. He or she should again inform the member of the right to remain silent, and that any statement may be used against the member in deciding to impose NJP or in a trial by court-martial. A member who is not attached to or embarked in a vessel should also be reminded of the right to demand trial by court-martial in lieu of NJP. The mast must be terminated if the member asserts his or her right to demand trial by court-martial at any time prior to imposition of NJP.

1.D.4. Right to Demand Trial by Court-Martial in Lieu of NJP

[See, paragraph 2, enclosure (1b).]

1.D.5. Informing the Member of the Reported Offense(s)

[See, paragraph 3, enclosure (1b).]

The commanding officer should inform the member of the identity of the person who submitted the report of offense and the offense(s) allegedly committed. The description of the offense should be sufficiently detailed to allow the member to respond to the allegations. Normally, this information may be taken directly from the Report of Offense and Disposition, CG-4910. In some cases, it may be necessary to provide additional information about the offense to ensure that the member is adequately informed of the allegations.

1.D.6. Right to Assistance of Mast Representative or Spokesperson

[See, paragraph 4, enclosure (1b).]

1.D.7. Inquiry of Member

[See, paragraph 5, enclosure (1b).]

The commanding officer should ask the member if he or she admits committing the alleged offense(s). If the member admits committing the offense(s), the commanding officer does not need to examine witnesses or receive any additional evidence about the offenses. If the member does not admit committing the alleged offense(s), the commanding officer should call witnesses and review other available evidence. The member may also invoke the right to remain silent and decline to answer any questions. The commanding officer shall not consider the member's silence as evidence that he or she committed an offense or in deciding what punishment to impose.

1.D.8. Examination of Witnesses by the Commanding Officer and Member

[See, paragraph 6-7, enclosure (1b).]

1.D.8.a. General

A witness may be questioned by speakerphone if he or she is unable to appear at the mast in person. Witnesses may be allowed to be present throughout the mast, or may, at the commanding officer's discretion, be excluded except when called for questioning. A civilian witness, other than a Coast Guard employee, may not be compelled to appear at mast, but may do so voluntarily. A military witness and/or a Coast Guard civilian employee may be ordered to be present for a mast, although may not be ordered to testify if the privilege against self-incrimination is claimed.

1.D.8.b. Questioning by the Commanding Officer

Generally, the commanding officer calls and questions each witness. He or she may call witnesses in any order or sequence. The commanding officer may also keep witnesses separated or direct them to not discuss the case among themselves or with others, but is not required to do so. The commanding officer may use any procedure to develop the facts and circumstances surrounding the alleged offenses (e.g., question and answer, open narrative). Witnesses may be questioned about any prior oral or written statements. The commanding officer may allow the executive officer or any of the other attendees to suggest questions to be asked of a witness.

1.D.8.c. Oaths

Normally, witnesses are not placed under oath, but may be if the commanding officer desires. An appropriate oath for a witness would be as follows: "Do you [swear] [affirm] that the evidence you shall give in this matter shall be the truth, the whole truth, and nothing but the truth [, so help you God]?" The use of "affirm" versus the combination of "swear" and "so help you God" is a religious preference to be taken by the witness.

1.D.8.d. Questioning by Member

After the commanding officer finishes questioning a witness, the member or his or her mast representative should be allowed to question the witness. The commanding officer may control the proceedings as necessary to ensure that any questioning helps to discover the truth of the allegations against the member, avoids wasting time, and protects a witness from harassment or unnecessary embarrassment. The commanding officer may also require the member or his or her mast representatives to submit questions in writing prior to the mast or orally at the mast for the commanding officer to ask a witness. The commanding officer may prohibit a spokesperson from questioning witnesses if in the commanding officer's opinion such questioning would turn the mast into an adversarial proceeding.

1.D.8.e. Additional Witnesses

After all planned witnesses have been questioned, the member and his or her mast representative should be asked if they desire that the commanding officer call additional witnesses. If so, those witnesses should be called if they are reasonably available and the commanding officer believes that they will provide relevant information and assist the commanding officer in arriving at a decision. If necessary, the commanding officer may temporarily suspend the mast while the additional witnesses are located.

1.D.9. Dismissing Unsupported Allegations

[See, paragraph 8, enclosure (1b).]

The commanding officer should dismiss any alleged offense not supported by a preponderance of the evidence. To accomplish this, the commanding officer should line out any dismissed offenses on the Report of Offense and Disposition, CG-4910 and inform the member. If necessary, the commanding officer may recess to consider the evidence. The mast proceeds with respect to any remaining offenses. If no offenses remain, the commanding officer terminates the mast. A mast ending in dismissal of all offenses is not punishment and no entry shall be made in the member's service record.

1.D.10. Opportunity for Member's Statement

[See, paragraph 9, enclosure (1b).]

After all of the witnesses have been questioned and other evidence considered, the member should be offered an opportunity to make a statement about the alleged offense(s). In addition to matters in defense, the member may provide information in mitigation and extenuation [see, definitions in Appendix 1.A]. The commanding officer may again remind the member of the right to remain silent, but is not required to do so because the member was advised of this right at the beginning of the mast. If the member makes a statement admitting to new or more serious offenses, an additional rights warning is appropriate [see, Article 31(b), UCMJ]. The member may make a statement personally or through the mast representative or spokesperson. The member may also submit written statements or ask that additional witnesses be called for questioning about the member's overall performance of duty or character.

1.D.11. Resolving Discrepancies or Inconsistencies

[See, paragraph 10, enclosure (1b).]

1.D.12. If necessary, the commander officer may recall any witness to resolve discrepancies or inconsistencies. Extenuation and Mitigation

[See, paragraph 11, enclosure (1b).]

The commanding officer should allow the member to present evidence in extenuation or mitigation of the offense. Extenuation evidence is information tending to explain the circumstances surrounding the commission of the offense(s). Mitigation evidence is information that might justify the imposition of a lighter punishment than might otherwise be awarded.

1.D.13. Consideration of Prior Documented Performance

[See, paragraph 12, enclosure (1b).]

The commanding officer should review the member's personal data record (PDR) and consider the member's prior performance in deciding whether to impose NJP and, if so, the appropriate punishment. He or she may consider the member's marks, prior NJP or appearances at mast, positive or negative Administrative Remarks entries, CG-3307, and court-martial convictions.

1.D.14. Comments by Executive Officer/Department Head/Division Officer/Chief, or Command Chief

[See, paragraph 13, enclosure (1b).]

The commanding officer may ask the member's department head or division officer, command chief, and the executive officer to comment on the offenses and the member's prior performance of duties. Other persons in the member's chain of command may also be asked to comment. Those asked to comment should be prepared to present favorable information along with the unfavorable to help the commanding officer reach a balanced view of the conduct under consideration. If such individual knows of information that may be helpful to the member that has not been brought out at mast, he or she should make this known to the commanding officer.

1.D.15. Findings

[See, paragraph 14, enclosure (1b).]

If the commanding officer determines, based on a preponderance of the evidence, that the member committed one or more offenses, the commanding officer should announce, in layman's terms, what offenses the member committed.

1.D.16. Vacation of Earlier Suspended Punishment

[See, paragraph 15, enclosure (1b).]

Vacation of earlier suspended punishment and reinstatement of the suspended punishment should be announced before new punishment is imposed.

1.D.17. Dismissal with a Warning

[See, paragraph 16, enclosure (1b).]

The commanding officer may decide not to punish a member and dismiss the matter with a warning. Such a decision may be based on either a lack of proof or a determination that punishment is not appropriate even though the member committed the offense(s). Dismissal with a warning is not considered NJP, and no entry shall be made in the member's service record.

1.D.18. Referral to Court-Martial

[See, paragraph 17, enclosure (1b).]

If the commanding officer determines that the alleged offense is too serious to be disposed of through NJP, he or she should not announce a finding or impose NJP. The commanding officer should inform the member that he or she intends to consider referring the matter for trial by court-martial [see, section 3.G below], or referring the matter to his or her superior commander, and that the member will be informed when a decision is made.

1.D.19. Imposition of NJP

[See, paragraph 18, enclosure (1b).]

If the commanding officer determines that, based on the evidence presented, it is more likely than not that an offense was committed and that NJP is appropriate, he or she should announce punishment at this point. If the commanding officer decides to impose NJP, he or she should choose the punishment or combination of punishments that is most appropriate for the member, the offense(s), and the good order and discipline of the unit [see, paragraph 1.E.2 below for a list of permissible punishments and

paragraph 1.E.1 below for the table of maximum punishments]. In determining the appropriate punishment, the commanding officer should consider the purposes of NJP [see, paragraph 1.A.2 above] and the general factors to be considered when awarding punishment [see, subparagraph 1.A.6.b above]. The commanding officer shall indicate the disposition of the offense(s) by completing and signing the “Action of the Commanding Officer” section on the Report of Offense and Disposition CG-4910.

1.D.20. Further Investigation or Proceedings

It is not necessary that the commanding officer dispose of a case in one mast session. In unusual circumstances, the commanding officer may continue the mast proceedings to a later session to allow more time for deliberation or to require the gathering of additional information. Also, if it appears during the mast proceedings that other persons or major offenses are involved or that further investigation is required, the commanding officer may terminate the mast proceedings and order an investigation by an appropriate investigative body. None of these actions prevent a commanding officer from disposing of the matter at a subsequent mast, unless the matter is determined to involve a serious offense. If at the time the commanding officer reopens an earlier continued mast proceeding, he or she has received reports of additional offenses of which the member is suspected, and the commanding officer has determined that these additional offenses will be disposed of at a mast proceeding, all of the offenses shall be disposed of at the same time. This is consistent with the general policy that all known offenses be disposed of at one time at the lowest appropriate forum.

1.D.21. Member’s Right to Appeal

[See, paragraph 19, enclosure (1b).]

If the commanding officer imposes NJP, he or she shall inform the member of the right to appeal [see, section 1.F below].

1.D.22. Publication to Unit Personnel

Publication of NJP results serves to deter other members of the unit from committing similar offenses and has salutary effects on unit morale. Commanding officers may, if the interests of offender rehabilitation, good order and discipline, morale, and perceptions of fairness so warrant, establish a policy to announce NJP disposition decisions. For example, announcement may be made via a Plan of the Day, posted on a bulletin board or announced at formation. If the means of publishing NJP results is accessible to or disseminated to non-military personnel, the results may be published without the member’s name.

1.E. PUNISHMENT AT NJP

1.E.1. Maximum Punishment

1.E.1.a. Limited by Rank or Grade

The maximum punishment that may be imposed depends upon the rank of the authority imposing NJP the rank or grade of the member being punished, and in some situations by the combination of punishments awarded (i.e., the number of days of restriction and extra duties awarded to run concurrently may not exceed the number of days of punishment authorized had only extra duties been awarded). The limitations shown in the following two tables apply to each instance of NJP and not to each offense. These tables are also reproduced in enclosure (1d) and enclosures (3a) and (4a) or (3b) and (4b).

1.E.1.b. Table of Maximum Punishment for Officers and Warrant Officers

Subject to the limitations in subparagraph 1.E.1.d below the following table depicts the maximum punishments that may be awarded at mast to an officer or warrant officer:

Punishment Type	Maximum Punishment(s) Imposed Upon an Officer or Warrant Officer When Imposed By a...		
	Flag Officer	LCDR (O-4) or Above	LT (O-3) or Below
Admonition or Reprimand	Yes	Yes	Yes
<i>See, d.(1), below.</i> Arrest in Quarters	30 days	No	No
<i>See, d.(3) & (5), below.</i> Restriction	60 days	30 days	15 days
Forfeiture of Pay	1/2 of 1 month pay per mos for 2 mos	No	No

1.E.1.c. Table of Maximum Punishment for Enlisted Personnel

Subject to the limitations in subparagraph 1.E.1.d below the following table depicts the maximum punishments that may be awarded at mast to an enlisted member:

Punishment Type	Maximum Punishment(s) Imposed Upon an Enlisted Member When Imposed By a(n)...		
	LCDR (O-4) or Above	LT (O-3) or Below	Enlisted Officer in Charge
Admonition or Reprimand (E-3 & below only)	Yes	Yes	No
Correctional Custody See, d.(2) & (5), below.	30 days	7 days	No
Restriction See, d.(3) & (5), below.	60 days (See, d(3), below)	14 days	14 days
Extra Duties (E-6 & below only) See, d.(3) & (4), below.	45 days	14 days	14 days
Forfeiture of Pay	1/2 of 1 month pay per mos for 2 mos	7 days pay	3 days pay
Reduction in Pay Grade (E-6 & below only) See, d.(7), below	Yes	Yes	No

1.E.1.d. Limitations and Prohibitions on Punishments

All authorized maximum punishments listed in paragraphs 1.E.2 below, may be imposed in a single mast with the following exceptions:

- (1) Arrest in quarters may not be imposed in combination with restriction;
- (2) Correctional custody may not be imposed in combination with restriction or extra duties. Correctional custody shall not be imposed upon members in pay grade E-4 and above unless an unsuspended reduction to E-3 is imposed.
- (3) Restriction and extra duties may be combined to run concurrently or consecutively. When both extra duty and restriction are awarded at the same mast, however, they form a new “combined” punishment that cannot exceed the maximum that may be imposed for extra duties [see, subparagraph 0 below].
- (4) Extra duties may only be imposed on members of the grade of E-6 and below; and

(5) Arrest in quarters, correctional custody, and restriction may not be imposed on a reservist at NJP awarded during inactive duty training or involuntary active duty pursuant to an order under subparagraph 1.B.6.b above.

(6) The following are not authorized nonjudicial punishments in the Coast Guard:

(a) Detention of pay is not listed in Part V, MCM and is not an authorized punishment; and

(b) Confinement on bread and water) (or diminished rations) is listed in Part V, MCM, but is not an authorized punishment in the Coast Guard.

(7): Enlisted members without dependents assigned to sea duty IAW the Coast Guard Pay Manual, COMDTINST M7220.29 (series) may lose entitlements to BAH upon reduction to E-3.

1.E.2. Types of Authorized Punishments

1.E.2.a. Punitive Admonition or Reprimand

[See, paragraph 5.c.(1), Part V, MCM; Article 8.E., Coast Guard Personnel Manual, COMDTINST M1000.6 (series); definitions in appendix I.]

(1) Punitive admonition and reprimand are two forms of censure intended to express adverse reflection upon or criticism of a member's conduct. A reprimand is a more severe form of censure than an admonition. Punitive admonition and reprimand should not be confused with nonpunitive censure and other forms of administrative corrective measures. [See, subparagraph 1.G.1.d below; Article 8.E., Coast Guard Personnel Manual, COMDTINST M1000.6 (series).].

(2) In the case of commissioned officers and warrant officers, admonitions and reprimands awarded at NJP must be administered in writing. In other cases, they may be administered either orally or in writing. The punitive letter of admonition or reprimand shall be similar in form to enclosure (6b).

(3) While punitive letters of admonition or reprimand are not considered generally appropriate in the case of enlisted personnel below the grade of E-7, their use against lower ranking personnel is not precluded.

(4) If a punitive letter is appealed and not sustained on appeal, a copy of the letter will not be filed in the official record of the member concerned.

1.E.2.b. Restriction

Restriction is moral restraint to specified geographical limits set by the commanding officer imposing the punishment. While the limits of restriction are usually specified to be that of the vessel or the boundaries of a shore unit, the limit can be greater or, within reasonable limits, lesser. It is recommended, especially at larger units, that a written letter be directed to the member setting forth the exact times and geographical limits of the restriction (e.g., USCGC NORTHLAND, Station Monterey). A restriction to the limits of Coast Guard Sector San Francisco would authorize the restricted member to be anywhere within the limits of Sector San Francisco (e.g., Lake Tahoe, Point Arena, Bodega Bay, Rio Vista and points in between). The sample letter contained in enclosure (6a) should serve as a guide for restriction letters.

(1) In the case of a member serving on a vessel, the execution of the punishment may be delayed until arrival of the vessel in port. The commanding officer of a vessel has the discretion to determine whether “arrival of the vessel in port” occurs at a brief stop or port call lasting only a few days or at the end of the current deployment and return to homeport.

(2) Once commenced, restriction runs continuously and cannot be interrupted, except during the service of a punishment of confinement or restriction adjudged by a court-martial, an appeal of the NJP, or emergency leave. In the event that restriction is interrupted, the remaining period of restriction shall be served in full upon termination of the interruption.(3) Unless specified by the commanding officer, a restricted member will ordinarily be required to perform his or her full military duties.(4) Restriction may, as a collateral consequence, deprive the member of other benefits. (e.g. loss of flight pay because restriction grounds a pilot or flight crewmember.) .

1.E.2.c. Arrest in Quarters

Arrest in quarters is a moral restraint of officers to specified quarters established by the commanding officer (a flag officer in command) imposing the punishment. The officer may be required to perform certain of his or her regular duties as long as the duties do not involve the exercise of authority over subordinates. Only officers of flag rank or their principal assistants (see, subparagraph 1.A.3.d, above) can award punishment of arrest in quarters.

1.E.2.d Correctional custody

Correctional custody is the physical restraint of a member during duty or non-duty hours, or both. A member undergoing correctional custody may be required to perform those regular military duties and extra duties assigned by the authority charged with administering the correctional custody facility. Correctional custody is not deductible time for any purpose. The demanding logistics and administration of correctional custody

[see, Article 8.F.10, Coast Guard Personnel Manual, COMDTINST M1000.6 (series)] should be reviewed prior to awarding correctional custody as punishment. This is particularly true as the Department of Defense no longer operates correctional custody units, and thus the command that imposed correctional custody would be responsible for meeting the requirements of PERSMAN Article 8.F.10 and Paragraph V.5.c.(4) of the Manual for Courts-Martial.

1.E.2.e Extra Duties

(1) Extra duties involve the performance of duties in addition to those normally assigned to the member being punished. Military duties of any kind may be assigned. Extra duties assigned to petty officers may not be of a type that demeans their grade or position.

(2) No extra duties may be imposed that constitute a known health or safety hazard to the member or that constitute cruel or unusual punishment. Extra duties are performed after regular working hours and do not constitute restriction except for the period of time in which the extra duties are actually being performed. No extra duties are to be performed on the member's Sabbath day. The member will receive credit for performing extra duty on the Sabbath day if it falls within the prescribed period of extra duty. For example, if the member is awarded five days extra duty at two hours per day at mast on a Thursday and he or she observes a Sabbath day within the next five days, then the member would be credited with performing two hours of extra duty on the Sabbath Day and need only perform extra duties on the remaining four days. In imposing this punishment, the extra duties shall be stated in terms of the number of days. The number of hours to be served daily, not to exceed two hours daily, should also be stated. If the number of hours to be served daily is not stated, it shall be deemed to be two hours daily. The punishment shall not be phrased in terms of total number of hours to be served, nor shall it be phrased in terms that require completion of a specific assignment.

1.E.2.f Forfeiture of Pay

Forfeiture is pay lost from the pay record before the member receives it. The term "pay" includes base pay or, in the case of reserve personnel on inactive duty, compensation for periods of inactive duty training, plus sea or foreign duty pay in the case of enlisted members, but not special pay for special qualifications.

(1) Any forfeiture of pay imposed shall be expressed in whole dollar amounts per month only, and not in dollars and cents, as a percentage of pay, or in number of day's pay.

(2) If NJP includes both reduction in pay grade and forfeiture of pay, the forfeiture must be based on the pay grade to which the member has been reduced even if the reduction is suspended.

1.E.2.g Reduction in Pay Grade

(1) The maximum reduction in pay grade at mast is to the next inferior pay grade.

(2) Commissioned officers serving in command have authority to advance enlisted personnel and exercise promotion authority within the meaning of Article 15(b)(2)(D), UCMJ. Accordingly, when exercising NJP authority, commissioned officers serving in command may reduce an enlisted member of pay grade E-6 and below to the next inferior pay grade.

(3) Commissioned officers serving in command may restore a member to his or her former pay grade subject to the provisions of Article 5.C.33, Coast Guard Personnel Manual, COMDTINST M1000.6 (series).

1.E.3. Effective Date of Punishment

1.E.3.a. General

All NJP takes effect on the date imposed, except:

(1) When the punishment is suspended.

(2) If the member is assigned to a vessel and is awarded either restriction or restriction in combination with extra duties while the vessel is underway or during a deployment away from homeport, the restriction and extra duties may be deferred pending arrival of a vessel in port. The commanding officer of a vessel has the discretion to determine whether “arrival of the vessel in port” occurs at a brief stop or port call lasting only a few days or at the conclusion of the deployment and the vessel’s return to homeport. Restriction and extra duties once commenced, however, are not deferred again if the vessel gets underway.

(3) If the member submits a timely appeal of the punishment awarded at NJP [see, section 1.F below] and action by the appeal authority is not taken on an appeal within 5 days after the appeal is submitted, the member may request that any unexecuted punishment involving restraint or extra duties be deferred until after action is taken on the appeal. [See, paragraph 1.F.5 below.] Any such request for deferment shall be granted. [See, paragraph 7.d., Part V, MCM.]

(4) When restriction and extra duties are combined to run consecutively, whichever punishment the commanding officer directs to start later will not take effect until the first of the consecutive punishments is completed.

(5) If a punishment is imposed while a prior punishment of the same type resulting from a separate punitive action is in effect, the prior punishment will be completed before the newer punishment commences. For example, if a member still has one week of restriction remaining and is awarded additional restriction at another mast, the first restriction must be completed before the second period of restriction begins to run. The two periods of restriction run consecutively, not concurrently.

1.E.3.b. Transfer of Member

(1) Generally

If a member undergoing punishment involving restraint, extra duties, or forfeiture of pay is transferred either PCS or TAD, before the punishment has been fully completed, the departure of the member from the command normally remits the remaining punishment, except as provided below.

(2) Exceptions

The punishment is not terminated or remitted when the receiving command agrees to continue the restraint, extra duties, and/or forfeiture of pay, and:

(a) The sole purpose of the transfer is to provide a suitable place to carry out the unsuspended punishment because the command awarding the punishment was determined to be unsuitable for purposes of executing the punishment;

(b) The punishment is imposed at a temporary duty station and the member is being returned to his or her permanent unit after being temporarily assigned (for a period not in excess of 60 days) to the command imposing the punishment;

(c) The member was transferred to a support command to facilitate discharge processing;

(d) The transfer was because the member missed the sailing or deployment of his or her unit without authority;

(e) The transfer was for the purpose of holding a court-martial, “show cause” board, administrative discharge or re-enlistment review board, medical board or physical evaluation board. Transfers for medical evaluation and/or treatment (inpatient or outpatient) shall neither interrupt nor terminate the service of restraint punishment, even though the member may not actually be under restraint; or

(f) The member was transferred because his or her continued presence adversely affected the good order and discipline or morale of the unit or was interfering with the unit’s ability to accomplish its operational mission.

1.E.3.c. Discharge

Any unexecuted portion of NJP is automatically remitted on the day following discharge if the member does not reenlist within 24 hours.

1.E.3.d. Deferral of Punishment

A commanding officer imposing punishment may not defer the execution of an unsuspended punishment, except as provided below:

(1) Vessel Underway at the Time of NJP. The execution of restriction or restriction with extra duties may be delayed until arrival of the vessel in port. The

commanding officer of a vessel has the discretion to determine whether “arrival of the vessel in port” occurs at a brief stop or port call lasting only a few days or at the end of the current deployment and return to homeport.

(2) Appeal. A member who appeals his or her NJP is required to serve any punishment while appeal is pending. If action by the appeal authority is not taken within 5 calendar days after submission, however, upon the member’s request, any unserved punishment involving restraint or extra duties shall be deferred until action on the appeal is taken.

(3) New Punishment. If a punishment is imposed while a prior punishment of the same type resulting from a separate punitive action is in effect, the prior punishment will be completed before the newer punishment commences. For example, if a member still has one week of restriction remaining and is awarded additional restriction at another mast, the first restriction must be completed before the second period of restriction begins to run. The two periods of restriction run consecutively, not concurrently.

(4) Medically Unfit. If the member is found by proper authority to be medically unfit to serve the punishment, the commanding officer may defer the execution of the punishment until the member is determined by proper authority to be medically fit to serve the punishment.

(5) Emergency Leave. The commanding officer may defer the execution of an unsuspended punishment if the commanding officer grants the member emergency leave. In this instance, deferral ends and the punishment commences upon the member’s return to duties.

(6) Unauthorized Absence. An unauthorized absence by a member serving NJP interrupts the service of that punishment and automatically defers continued service of that punishment. Such deferment ends, in the case of all punishments not involving restraint or extra duties, upon the member’s return to a Coast Guard unit that knows of the existence of the deferred restraint or extra duty punishment and has the facilities to carry out the punishment. If an absentee is placed in restraint for other reasons (such as restriction or confinement in anticipation of a court-martial), such restraint shall not count towards the deferred restraint punishment and the deferral of restraint punishment shall not end until the restraint for other reasons is completed.

1.E.3.e. Not Fit for Duty Status

If a member who is serving extra duties as a punishment is placed in a not fit for duty status, the not fit for duty status defers the service of extra duties. If the extra duties are being served concurrently with restriction, the restriction will continue to run in spite of the not fit for duty status (so long as the member is medically fit to serve restriction).

When the member is returned to a fit for duty status, the remaining punishment of extra duties shall be immediately reinstated. Any extra duty remaining to be served when the sentence to restriction is completed is remitted.

1.E.3.f. Reservists: Conclusion of a Period of Duty

If a reservist on active duty undergoing punishment involving restraint is released from active duty before the restraint punishment has been fully completed, the release automatically remits the remainder of the punishment. Conclusion of a period of active duty or inactive duty training does not terminate any other punishment. Except as provided above, unserved punishments may be carried over to subsequent periods of inactive duty training or active duty. [See, paragraphs 5.e. and 5.f., Part V, MCM.]

1.E.4. Suspension of Punishment

[See, paragraph 6, Part V, MCM.]

1.E.4.a. General

To suspend a punishment means to hold it in abeyance, or not execute it, for a specified period, with remission at the end of that period. Unless otherwise stated, an action suspending a punishment includes a condition that the member not violate any punitive article of the UCMJ. Other appropriate conditions of the suspension may be specified in writing by the NJP authority [see, paragraph 6.a.4., Part V, MCM]. If the member violates the conditions of the suspension, the suspension is vacated and the punishment is executed. The commanding officer who imposed NJP, or a successor in command, may, at any time, suspend any part or amount of the unexecuted punishment and may suspend a reduction in pay grade or forfeiture, even if executed. An executed punishment of reduction or forfeiture may be suspended only within a period of four months after the date of execution. The imposition of a punitive letter of admonition or reprimand may not be suspended.

1.E.4.b. Period of Suspension

(1) A suspension must be for a definite period, not to exceed six months, and this period shall be specified when the punishment is suspended.

(2) The running of the period of suspension is tolled during periods of unauthorized and unexcused absence and when proceedings to vacate suspended punishment are commenced.

1.E.4.c. Transfer of Member Remits Suspended Punishment

When a punishment is suspended for a specified period and the member is transferred before the end of the period, the punishment is automatically remitted when the member is transferred PCS or TAD except when:

- (1) The sole purpose of the transfer is to provide a place to carry out the unsuspended punishment.
- (2) The punishment is imposed at a temporary duty station and the member is being returned to his or her permanent unit after being temporarily assigned (a period not in excess of 60 days) to the command imposing the punishment.
- (3) The member is being returned to his or her ship after having missed its sailing without authority.
- (4) The member is being returned to his or her unit after having been on temporary additional duty for the purpose of a court-martial, "show cause" board, administrative discharge board, medical board, physical evaluation board, or for medical evaluation and/or treatment.
- (5) The punishment is imposed by an active service unit on a reservist who returns to his or her reserve unit or any other unit for subsequent periods of active or inactive duty training.
- (6) The member has been assigned TAD or PCS to a support command to facilitate discharge processing.
- (7) The member was transferred because his or her continued presence was adversely affecting the good order and discipline or morale of the unit or was interfering with the unit's ability to accomplish its operational mission.

1.E.4.d. Automatic Remission

Unless the suspension is sooner vacated, suspended portions of a punishment are remitted, without further action, upon the termination of the period of suspension, promotion, or advancement of the member.

1.E.5. Vacation of Suspension

[See, paragraph 6, Part V, MCM; enclosures (1b), (1c), and (7a).Persons Authorized to Vacate

Any commanding officer competent to impose upon the member punishment of the type and amount involved in the vacation of the suspension may vacate a suspended punishment during the period of suspension. If the punishment under suspension exceeds that which the commanding officer could initially award, the commanding officer may still vacate the suspension; however, only so much of the punishment may be ordered executed that is within the authority of the present commanding officer to impose. This possibility could arise where a commanding officer was replaced by an officer-in-charge, or where a commanding officer in the grade of LCDR was relieved by a LT.

1.E.5.a. Reason to Vacate NJP Punishment

Unless otherwise stated, an action suspending a punishment includes a condition that the member not violate any punitive article of the UCMJ. Vacation of a suspension may be based on an offense under the UCMJ or other appropriate conditions of the suspension specified in writing by the NJP authority [*see*, paragraph 6.a.4., Part V, MCM].

1.E.5.b. Vacation Proceedings

[See, paragraph 6.a.(5), Part V, MCM.]

It is not necessary to hold a hearing in order to vacate a prior suspended punishment. However, the member should ordinarily be notified the command is considering vacating a prior suspended punishment and given an opportunity to respond. Enclosure (7a) contains a vacation proceeding script, which may be used if a hearing is held. Alternatively, the mast proceeding contained in enclosure (1b) or (1c) [*see*, paragraph 15, enclosure (1b) or (1c)] may be used to determine if a prior punishment should be vacated prior to imposing punishment for new offense(s).

1.E.5.c. Notification

The member shall be notified if all or a portion of the suspended punishment is vacated. Enclosures (7b-c), which may be reproduced locally, or correspondence in a similar format shall be prepared to ensure that these requirements are met and to create a record of the proceedings. The completed original shall be attached to the corresponding Report of Offense and Disposition, CG-4910 in the unit punishment book after appropriate service record entries are made.

1.E.5.d. Effective Date of Vacation

Vacated punishment begins on the date the commanding officer orders the suspension vacated. The order vacating a suspension must be issued within a reasonable time after commencement of the vacation proceedings.

1.E.5.e. Effect of Vacation

Vacation of a suspension is not NJP. If proceedings to vacate a suspended punishment are combined with a new action under Article 15, UCMJ, the commanding officer must ensure it is clear to the member what portion of a prior suspension is vacated prior to imposing NJP for the new conduct. [*See*, paragraph 15, enclosure (1b) or (1c).] Action to impose NJP for the offense that formed the basis for the vacation is permitted. The decision to vacate suspension of NJP is not an issue that may be appealed under paragraph 7 of Part V, MCM.

1.E.5.f. Remitted Punishment

Remitted punishment may not be vacated. By definition, remitted punishment no longer exists in any form to be resurrected.

1.E.6. Mitigating Punishment

1.E.6.a. General

Any part or amount of an unserved portion of a punishment may be mitigated, or reduced in severity. In mitigating a punishment, neither the quantity nor quality of the punishment may be increased. This means that the mitigated punishment may not be of any type more severe than the original punishment.

1.E.6.b. Actions Authorized

A commanding officer may mitigate any part or amount of the unexecuted portion of the punishment as follows:

- (1) Arrest in quarters may be mitigated to restriction (officers);
- (2) Correctional custody may be mitigated to extra duties or restriction or both;
- (3) Extra duties may be mitigated to restriction;
- (4) Reprimand may be mitigated to admonition;

(5) Reduction in pay grade, regardless of whether the reduction has been executed, may be mitigated to forfeiture. This form of mitigation must be done within four months of imposition.

1.E.6.c. Limitations

(1) When mitigating punishments authorized in subparagraphs 1.E.6.b(1)-(3), the mitigated punishment must not last for a greater period of time than the original punishment (e.g., seven days correctional custody must not be mitigated to longer than seven days extra duties or restriction or both).

(2) As restriction is the least severe form of deprivation of liberty, it may not be mitigated to a lesser period of another form of deprivation of liberty (e.g., extra duties), because that would mean an increase in the quality of the punishment.

1.E.7. Remission, Restoration, and Setting Aside

1.E.7.a. Persons Authorized

The commanding officer who imposed the punishment, successors in command, and superior commanding officers have authority to remit or set aside punishments. [See, paragraphs 6.c. and 6.d., Part V, MCM].

1.E.7.b. Successor in Command

The term “successor in command” is defined as a commanding officer who has succeeded to the command of the commanding officer who imposed the punishment, or under whose delegated power the punishment was imposed, provided that the member

punished is still in the command. The commanding officer of a unit to which a member has been transferred, either PCS or TAD, is not a successor in command.

1.E.7.c. Initiating Action

Action to remit or set aside a part of the punishment and to restore all rights, privileges, and property affected may be taken at the commanding officer's own initiative or on application of the member punished. Any such application should be made within a reasonable period of time, generally fifteen days.

1.E.7.d. Remission

Remitting a punishment is an exercise of clemency and applies only to an unexecuted part of a punishment. The unexecuted part of the punishment that is remitted is not carried out, but that part that has already been served, forfeited, etc., is not restored. Once remitted, an unexecuted punishment may never be revived and re-imposed.

1.E.7.e. Setting Aside and Restoration

Setting aside punishment is the equivalent of the member never having been punished pursuant to Article 15, UCMJ. The power to set aside punishment and restore rights, privileges, and property affected by the executed portion of a punishment should ordinarily be exercised only when the authority considering the case believes that the ends of justice and discipline are best served by setting aside some or all of the punishment. Both executed and unexecuted portions of a punishment may be set aside. Any punishment set aside is extinguished and, unlike suspended punishment, may not be resurrected. The power to set aside executed punishment should be exercised only within a reasonable time after the punishment has been executed (four months absent unusual circumstances). If the entire punishment imposed at a mast is set aside, then:

- (1) The effective date of restoration to the former pay grade is the date of advancement to that pay grade prior to the date of the mast that effected the reduction.
- (2) The NJP that has been set aside is not considered NJP for purposes of determining the member's eligibility for a Good Conduct Medal, advancement, or appointment to warrant officer.
- (3) A conduct mark lowered as a result of the conduct that resulted in the NJP will not automatically be raised, unless the commanding officer assigning the conduct mark deems it appropriate. Assigning an appropriate conduct mark is an administrative decision that must be made as a result of awarding NJP, but NJP is not a pre-requisite to appropriately evaluating a member's conduct under personnel regulations.

1.F. APPEAL OF NJP

1.F.1. Bases for and Time Limit to Appeal

A member punished under Article 15, UCMJ, may appeal if he or she considers the punishment imposed “unjust” or “disproportionate” to the acts of misconduct for which punished. Additionally, a member who received a punitive letter may appeal, claiming that a matter raised in the letter is inaccurate or not relevant to the offense committed or the punishment imposed. The appeal must be submitted in writing within 5 calendar days of the imposition of the punishment, or the right to appeal shall be waived in the absence of good cause shown. The day the punishment is awarded does not count in the computation. The appeal period commences to run even though all or any part of the punishment imposed is suspended. An appeal is “submitted” when it is received by the member’s supervisor or any more senior individual in the member’s unit chain of command. The appeal must be temperate and factual.

1.F.1.a. Definitions

(1) Unjust

The term “unjust” denotes illegality. For example, the act of misconduct for which punishment was imposed was not a punishable offense under the UCMJ; the member was not subject to the jurisdiction of the commanding officer who imposed punishment; the commanding officer who imposed punishment was without power or authority to act in the member’s case; or, the punishment exceeded legal limitation based upon the status of the member and/or the commanding officer who imposed the punishment. Similarly, the illegality may result from the denial of a substantial right of the member at any stage of the proceedings (e.g., investigation, preliminary inquiry, interrogation, or mast). Illegality may result from the failure to comply with procedural provisions applicable to mast punishment. Finally, illegality may result from a lack of sufficient evidence to establish

that, more likely than not, the reported misconduct, the member’s involvement in the misconduct, or both, occurred.

(2) Disproportionate

The term “disproportionate” indicates that although the punishment imposed was legal, it was excessive or too severe considering all of the circumstances, (e.g., the nature of the misconduct involved; the absence of aggravating circumstances; the prior good record of the member; or, any other circumstances that tend to lessen the severity of the misconduct or explain it in a light more favorable to the member). Adverse administrative consequences of NJP such as delay in advancement or inability to reenlist are not punishment and are not a proper basis for NJP appeal.

1.F.2. Who Acts on Appeal

Appeals shall be submitted through the commanding officer who imposed the NJP and any superiors in his/her chain of command to the “superior authority” designated by this section to act upon that appeal. Unless otherwise specified in this chapter or required by law or policy, the superior authority empowered to act on an appeal of the imposition of NJP is the first flag officer in the chain of command above the commanding officer who imposed the NJP or under whose authority a principal assistant imposed NJP. The superior authority shall consult with his/her servicing legal office prior to taking action on an NJP appeal.

Specific exceptions to the general rule that the superior authority is the first flag officer in the chain of command of the commanding officer who imposed the NJP are:

a. The Assistant Commandant for Human Resources (CG-1) is the superior authority for Area Commanders, the Coast Guard Force Readiness Command, the Personnel Service Center, and the Superintendent, United States Coast Guard Academy, or a principal assistant to whom NJP authority has been delegated by them.

b. The Vice Commandant (VCG) is the superior authority for NJP imposed by the Chief of Staff; the Commanding Officer, Coast Guard Headquarters; or the Deputy Commandant for Mission Support, or a principal assistant to whom NJP authority has been delegated by them.

c. The superior authority for other commanding officers imposing NJP on Coast Guard members under subparagraph [1.A.4.f above](#) (Members of the Coast Guard Serving with Other Armed Forces), in the absence of a specific, contrary directive controlling appeals, is the first Coast Guard flag officer in the member’s chain of command, or the Assistant Commandant for Human Resources (CG-1) if there is no Coast Guard flag officer in the member’s chain of command.

An appeal authority who is an officer of flag rank may delegate the power to respond to NJP appeals under Article 15(e), UCMJ, to a principal assistant [See, subparagraph [1.A.3.d above](#)]. An officer who has delegated his NJP powers to a principal assistant may not act on an appeal from punishment imposed by that principal assistant.

1.F.3. Format of Appeal

The appeal shall be in writing, shall be temperate and factual, and shall set forth a summary of the prior proceedings in the member’s case; a detailed explanation of the basis for the appeal stating that the punishment imposed was either unjust or disproportionate, or both, and why, and the specific action that the superior officer to whom the appeal is made is requested to take. Enclosure (6c) contains a sample letter of appeal that may be followed.

1.F.4. Intermediate Action on NJP Appeal

1.F.4.a. Appeal “Granted” by NJP Authority

If upon receipt of an appeal, the commanding officer who imposed the punishment determines that the appeal has merit, he or she may either set aside the punishment or adjust the punishment to that requested by the member making the appeal. If that action is taken, the commanding officer shall so advise the member and will not forward the appeal. The unit punishment log and associated personnel record entries must be appropriately corrected.

1.F.4.b. Appeal “Denied” and Forwarded by NJP Authority

(1) If upon receipt of an appeal, the commanding officer determines that the requested relief should not be granted in total, the appeal shall be forwarded to the next superior commanding officer in the chain of command [see, paragraph 1.F.2 above]. Appeals should be forwarded as soon as possible to avoid deferments of punishment [see, paragraph 1.F.5 below]. The commanding officer shall submit an endorsement when forwarding the appeal. The commanding officer’s endorsement shall be signed personally by the commanding officer imposing punishment or the acting commanding officer and shall contain the following (Enclosure (6c) contains a sample endorsement a commanding officer may follow.):

(a) A statement summarizing the proceedings held in the matter.

(b) A statement of the facts found by the commanding officer who imposed punishment based on the information considered by him or her and those facts that formed the basis for the punishment imposed.

(c) A statement of the commanding officer’s reasons as to why the member’s appeal should not be granted.

(d) A copy of the applicable Report of Offense and Disposition, CG-4910. The original Report of Offense and Disposition CG-4910 remains in Unit Punishment Log.

(2) All written documents relating to the member’s case shall also be submitted including, but not limited to: any written report by the individual assigned to conduct the preliminary inquiry in the member’s case; any written statements of persons appearing at the mast as witnesses; and the report of any investigation or court of inquiry that served as the basis for the imposition of NJP if no mast hearing was held.

(3) A copy of the endorsement to the appeal shall be furnished to the member.

1.F.5. Punishment Pending Decision on Appeal

A member who appeals his or her NJP punishment is required to serve any punishment while the appeal is pending. If action by the appeal authority is not taken on the appeal within 5 calendar days after submission, however, upon the member's request, any unserved punishment involving restraint or extra duties shall be deferred until the action on appeal is taken.

1.F.6. Action on Appeals

1.F.6.a. Expedited Review

Appeals should be expedited whenever possible so that punishments need not be deferred [See, paragraph 1.F.5 above].

1.F.6.b. Review by a Judge Advocate

An officer acting on an appeal shall (and in other cases may) refer the appeal to a Judge Advocate for consideration and advice prior to acting on the appeal if any of the following punishments have been imposed:

- (1) Arrest in quarters for more than seven days;
- (2) Correctional custody for more than seven days;
- (3) Forfeiture of more than seven days pay;
- (4) Reduction from pay grade E-4 or higher;
- (5) Extra duties for more than 14 days; or
- (6) Restriction for more than 14 days.

The reviewing Judge Advocate is not limited to an examination of the written material that comprises the record of proceedings and may make such additional inquiry as necessary to resolve all issues.

1.F.6.c. Action That May Be Taken on Appeal

The officer acting on an appeal may exercise the same powers with respect to the punishment imposed as may be exercised by the officer who imposed the punishment or his or her successor in command. The superior officer may take this action even if no appeal has been filed. Under no circumstances may the superior official increase either the quality or quantity of punishment.

1.F.6.d. Notification

Upon completion of the action by the appeal authority, the member and the commanding officer imposing the punishment and any intermediate commanding officers shall be promptly notified of the results of the appeal.

1.F.6.e. Effective Date of Punishment That Has Been Deferred

(1) Members Assigned to Shore Units.

A punishment that has been deferred pending the decision of an appeal shall take effect on the date the member's commanding officer is advised of the appeal decision.

(2) Members Attached to or Embarked in a Vessel.

In the case of punishment imposed upon a member attached to or embarked on a vessel and deferred pending resolution of an appeal, unless the appeal authority directs otherwise, the deferred punishment shall remain deferred until arrival of the vessel in port. The commanding officer of a vessel has the discretion to determine whether "arrival of the vessel in port" occurs at a brief stop or port call lasting only a few days or at the end of the current deployment and return to homeport.

1.F.6.f. Attachments to the NJP Punishment Log

Final action on a member's appeal shall be attached to the NJP package in the unit punishment log and a copy provided to the member.

1.G. ADMINISTRATIVE MATTERS RELATED TO NJP

1.G.1. Administrative Measures Independent of Article 15, UCMJ

1.G.1.a. Administrative Measures Not Used as Punishment

Commanding officers are authorized and expected to use administrative corrective measures to further the efficiency of their commands or units. These measures are not to be imposed as punishment for any military offense(s). They may be administered either orally or in writing. A non-exhaustive list of administrative corrective measures generally fall into three areas: extra military instruction, administrative withholding of privileges, and nonpunitive censure. [See, RCM 306(c)(2), MCM.]

1.G.1.b. Extra Military Instruction [EMI]

(1) EMI is defined as instruction in a phase of military duty in which an individual is deficient. It is intended for, and directed towards, the correction of that deficiency. It is a legitimate training technique to be used for improving the efficiency of an individual within a command or unit through the correction of some deficiency in that individual's performance of duty. EMI may be assigned only if genuinely intended to accomplish that result. It is not to be used as a substitute for judicial (court-martial) punishment or NJP, and must be logically related to the deficiency in performance for which it was assigned. EMI shall be conducted within the following limitations:

(a) EMI normally will not be conducted for more than two hours per day.

(b) EMI, if awarded, or approved by the commanding officer may be conducted at a reasonable time outside normal working hours.

(c) EMI will not be conducted over a period that is longer than necessary to correct the performance deficiency for which it was assigned.

(d) EMI will not be performed on the member's Sabbath.

(e) EMI will not be used to deprive the member of normal liberty to which the member is otherwise entitled. EMI may be directed to occur outside of normal work hours, however, and such scheduling may incidentally limit a member's liberty by the time required to perform the EMI. A member who is otherwise entitled to liberty may commence normal liberty upon completion of EMI.

(f) Authority to assign EMI, which is to be performed during normal working hours, is not limited to any particular grade or rate, but is an inherent part of that authority over their subordinates that is vested in officers and petty officers in connection with duties and responsibilities assigned to them. This authority to assign EMI that is to be performed during normal working hours may be withdrawn by any superior if warranted.

(g) Authority to assign EMI to be performed after normal working hours is vested in the commanding officer. Such authority may be delegated, as appropriate, to subordinate officers and petty officers, in connection with duties and responsibilities assigned to them, but EMI may be assigned under such circumstance only with the knowledge and prior approval of the commanding officer.

(2) EMI is intended to correct a deficiency and, as such, an individual deemed by the command to be qualified must supervise the performance of EMI. EMI may be ordered to coincide with an appropriate supervisor's work or duty schedule during reasonable hours.

(3) EMI should not normally be ordered for a period exceeding fourteen sessions and if not on consecutive days, to exceed one month in total period of time before completed. If the deficiency is not correctable within the training provided under these limitations, alternative actions should be considered (e.g., performance probation, etc.).

(4) EMI is solely intended to correct a deficiency. It is automatically terminated at the end of its ordered period and is terminated sooner if the EMI supervisor determines the deficiency has been corrected.

(5) EMI is not normally considered appropriate for E-7 or above.

(6) EMI is not to be confused with the punishment of extra duties that may be awarded at NJP or hard labor without confinement awarded at court-martial. While menial labor may be awarded as a punishment, it is not appropriate for EMI. The tasks and/or training ordered to be performed as EMI must relate to and have the logical purpose of correcting the appropriate deficiency. If EMI takes the form of on-the-job training, a qualified supervisor must be available to answer questions and inspect the task or work accomplished to ensure the training objectives are achieved. That supervisor is authorized to terminate the EMI once the training objectives have been accomplished.

1.G.1.c. Administrative Withholding of Privileges

(1) A privilege is a benefit, advantage, or favor provided for the convenience or enjoyment of an individual. Examples of privileges that may be temporarily withheld as administrative corrective measures are: special liberty; scheduling of leave during a particular period (but note: reasonable opportunity to take annual leave may not be denied); exchange of duty; participation in special command programs; access to base or ship libraries, base or ship movies, or enlisted or officers' clubs; base parking; and base or ship special services events. It may also encompass the withholding of special pay as well as commissary and exchange privileges, provided such withholding complies with applicable rules and regulations, and is otherwise in accordance with law. In all instances, unless properly delegated, final authority to withhold a privilege, however temporary, must ultimately rest with the level of authority empowered to grant the privilege.

(2) Deprivation of normal liberty as a punishment, except as specifically authorized under the UCMJ, is illegal. Therefore, except as the specific result of a punishment imposed under Article 15, UCMJ, or as the result of the sentence of a court-martial, it is illegal for any officer or petty officer to deny any subordinate normal liberty, or privileges incident thereto, as *punishment* for any offense. Lawful deprivation of normal liberty may result, however, from other lawful actions (*e.g.*, authorized pretrial restraint; deprivation of normal liberty in a foreign country or in foreign territorial waters, when such action is deemed essential for the protection of foreign relations of the United States). Furthermore, reasonable conditions may be placed on liberty without the restriction resulting in punishment. For example a commanding officer of a vessel during a port-call may restrict members from renting motorcycles and mopeds, place certain facilities off-limits, or prohibit certain food or drink products as may be reasonably required for the health and well-being of the crew or the conduct of foreign relations. Advice may always be sought from the servicing legal office.

(3) It is necessary to the efficiency of the Coast Guard that official functions be performed and that certain work be accomplished in a timely manner. It is, therefore, not a punishment when members in the Coast Guard are required to remain on board and be physically present outside of normal working hours for work assignments that should have been completed during normal working hours, or for the accomplishment of additional essential work, or to achieve the currently required level of operational readiness.

1.G.1.d. Administrative Letters of Censure

Nonpunitive administrative letters of censure are not punitive and may be administered either orally or in writing. Nonpunitive letters of censure are private in nature and, other than administrative letters of censure issued by the Commandant, shall not be forwarded to the Chief of Personnel, quoted in, or appended to, performance reports, included as enclosures to investigative reports, or otherwise included in official Coast Guard records of the recipient. [See, Article 8.E.4., Coast Guard Personnel Manual, COMDTINST M1000.6 (series).]

1.G.2. Conduct Marks

1.G.2.a. General

Rules governing conduct marks are properly a subject of administrative regulation. [See, Article 10.B., Coast Guard Personnel Manual, COMDTINST M1000.6 (series).]

1.G.2.b. Policy

A low conduct mark is not a punishment for an offense, and should not be used as such. A low conduct mark merely reflects that the member has committed an offense. It is the offense (or more specifically, the wrongful conduct underlying the offense), not the holding of a disciplinary proceeding (such as NJP or court-martial), that is the basis for the low conduct mark. It rests with the sound discretion of the marking officials to determine appropriate conduct marks.

1.G.2.c. Good Conduct Medal

To determine the effect of NJP upon a member's qualifications to receive the Good Conduct Medal, see Article 5.B.1.b.(3)(c), Medals and Awards Manual, COMDTINST M1650.25 (series).

1.G.3. Personnel Record Entries

1.G.3.a. Direct Access Enlisted Employee Review Entries

For both active duty and reserve personnel, after completing the "Action of the Commanding Officer" section on the Report of Offense and Disposition, CG 4910, one copy of the completed form shall be forwarded to the Servicing Personnel Office (SPO) handling the member's record for appropriate entries in the member's Personnel Data Record and other action required for disciplinary proceedings. If a hearing was held, but no punishment was awarded, then no further action is necessary, regardless of whether the matter was dismissed, dismissed with a warning, dismissed with administrative action taken, referred to courts-martial, or resulted in a recommendation for a general court-martial.

1.G.3.b. Reduction in Pay Grade

Personnel record entries are required by section 10.B of the Personnel and Pay Procedures Manual, PPCINST M1000.2 (series) and Article 5.C.38., Coast Guard Per-

sonnel Manual, COMDTINST M1000.6 (series) when reduction in pay grade is awarded under Article 15, UCMJ, or court-martial.

1.G.3.c. Reserve Personnel

Personnel actions regarding reserve personnel shall be entered into Direct Access by the Servicing Personnel Office (SPO) that maintains the reservist's records. Accordingly, one copy of each Report of Offense and Disposition, CG-4910 documenting the imposition of NJP on reserve personnel shall be sent to the SPO that maintains the reservist's records.

1.G.3.d. Excused Absences

In an absence case, excusing a member's absence does not necessarily amount to a determination that the absence was unavoidable or that the time lost is not deductible. This is a separate administrative determination and the command is not limited in taking administrative action based upon the results of a hearing under Article 15, UCMJ. [See, Military Personnel Data Records (PDR) System, COMDTINST M1080.10 (series).]

1.G.4. Unit Punishment Log (or Unit Punishment Book)

A unit punishment log (book) shall be maintained at every unit authorized to award punishment under Article 15, UCMJ. When final action has been taken on the Report of Offense and Disposition, CG-4910, the "Final Administrative Action" section of form Report of Offense and Disposition, CG-4910 shall be appropriately completed and the form and associated mast documentation, including investigation package, final action on appeal, etc., shall be filed in the unit punishment book. These forms and supporting documents shall be retained at the unit for four years. To assist with preparation of all forms and records required to be kept in the Unit Punishment Log refer to Enclosure 2.c, Administrative Non-Judicial Punishment Checklist.

1.G.5 Administrative Consequences of NJP

The below list is provided to aid in understanding the possible administrative consequences of NJP. It does not mean that all of the possible consequences will occur in each case and the list is subject to change as the applicable manuals and instructions that are the source of the consequences change frequently. The applicable manuals and instructions should be consulted to ensure reference to current policy.

- a. Personnel receiving NJP during the previous semi-annual reporting period are not normally eligible for mutual or transfer without prior approval of PSC-epm-2. Coast Guard Personnel Manual, COMDTINST M1000.6 (series), Chapter 4.B.1.d.
- b. Personnel may not be assigned as an OIC if NJP has been imposed within the last 2 years. Coast Guard Personnel Manual, COMDTINST M1000.6 (series) , Chapter 4.C.6.g.

- c. Two or more NJP's within the preceding 24 month period preclude overseas assignment. Coast Guard Personnel Manual, COMDTINST M1000.6 (series) , Chapter 4.H.3.e.
- d. Personnel are not eligible to participate in the E-7 service wide examination if there has been imposition of NJP within the past 24 months from the date of the exam. Coast Guard Personnel Manual, COMDTINST M1000.6 (series) , Chapter 5.C.5.b.
- e. Personnel are not eligible to participate in the E-8 service wide examination if there has been any imposition of NJP within the past 24 months from the date of the exam. Coast Guard Personnel Manual, COMDTINST M1000.6(series) , Chapter 5.C.5.c.
- f. Personnel are not eligible to compete for advancement to E-9 if there has been any imposition of NJP within the past 24 months. Coast Guard Personnel Manual, COMDTINST M1000.6 (series) , Chapter 5.C.5.d.
- g. The member's command must complete a special evaluation following imposition of NJP. Coast Guard Personnel Manual, COMDTINST M1000.6 (series) , Chapter 10.B.5.b.4.
- h. Imposition of NJP requires an "Unsatisfactory" mark in Conduct and terminates Good Conduct eligibility. Coast Guard Personnel Manual, COMDTINST M1000.6 (series) , Chapter 10.B.9.b.1.
- i. Personnel E-1 through E-3 may not be advanced if there has been any imposition of NJP during the last marking period (as a result of the required "Unsatisfactory" mark in conduct). Coast Guard Personnel Manual, COMDTINST M1000.6 (series) , Chapter 5.C.6.a
- j. Personnel E-4 through E-5 are not eligible for advancement if there has been any imposition of NJP within the past 12 months. Coast Guard Personnel Manual, COMDTINST M1000.6 (series) , Chapter 5.C.13.b.
- k. Member is not eligible to apply for Officer Commissioning Programs for 36 months following the imposition of NJP. Coast Guard Recruiting Manual, COMDTINST M1100.2 (series) , Article 4.A.1.a.2.
- l. Member must be removed from any Class "A" school waiting list and is ineligible to reapply to "A" school for 6 months from the date of the imposition of punishment. Training and Education Manual, COMDTINST M1500.10 (series) , Chapter 2.A.2.a.
- m. Member cannot apply to U.S. Coast Guard Chief Petty Officer or DoD Senior Enlisted Academy for 3 years following the imposition of NJP. U.S. Coast Guard Chief Petty Officers and Department of Defense Senior Enlisted Academies, COMDTINST 1500.15 (series) .

COMDTINST M5810.1E

- n. Member is not eligible for nomination as Coast Guard Enlisted Person of the Year. Coast Guard Enlisted Person of the Year (EPOY) Program, COMDTINST 1650.36 (series) .
- o. Member may not be assigned to special duty assignments if there has been an imposition of NJP within the past 4 years. If the member is serving in a special duty billet when NJP is imposed, the member may be reassigned if the command, the program manager or PSC-epm-2 determine that the member is unsuited to continue in the billet. Coast Guard Personnel Manual, COMDTINST M1000.6 (series) , Chapter 4.E.2.a.and 4.E.4.a.
- p. The officer effecting discharge prior to a member's reenlistment may consider the severity and nature of the offense for which NJP was imposed during the current enlistment in making the required recommendation as to the member's suitability for reenlistment. Coast Guard Personnel Manual, COMDTINST M1000.6 (series) , Chapter 1.G.5.3.
- q. Upon recommendation of the command, member may be deemed ineligible for unit awards if NJP was imposed during the period of the award. Coast Guard Medals and Awards Manual, COMDTINST M1650.25 (series) , Chapter 3.A.5.b (2)(b).
- r. If the imposition of NJP was a result of a discriminatory act, the member will be entered into the Discriminator Identification and Tracking System. Coast Guard Equal Opportunity Program Manual, COMDTINST M5350.4 (series), Chapter 5.D.2.b.3.
- s. If the imposition of NJP was for certain types of sexual harassment. (quid pro quo or physical acts) administrative separation may be mandated. Coast Guard Equal Opportunity Program Manual, COMDTINST M5350.4 (series) , Chapter 5.A.4.d.
- t. The imposition of NJP may impact on a member's security clearance eligibility USCG Military Personnel Security Program, COMDTINST M5520.12 (series) , page 2-18.
- u. Imposition of NJP upon an officer requires a Special OER. Coast Guard Personnel Manual, COMDTINST M1000.6 (series) , Chapter 10.A.3.c.
- v. Imposition of NJP upon a selectee for Chief Warrant Officer requires removal of that member from the CWO eligibility list. Such removal from the eligibility list precludes reapplication for 2 years. Coast Guard Personnel Manual, COMDTINST M1000.6 (series) , Chapter 1.D.2
- w. The imposition of NJP that includes a reduction in paygrade that makes a member ineligible to serve in a billet for which a Selective Reenlistment Bonus (SRB) was awarded may be ineligible to receive SRB payments and/or may be required to remit unearned portions of advance SRB payments. Coast Guard Personnel Manual, COMDTINST M1000.6 (series) , Chapter 3.C.9

1.H. NJP WITHOUT A HEARING

1.H.1. Member Afforded the Rights of a Party

1.H.1.a. General

Punishment under Article 15, UCMJ, may be imposed on the basis of the record of a court of inquiry or an investigative body in which proceedings the member was afforded the rights of a party with respect to the offense(s) for which punishment is contemplated [see, Administrative Investigations Manual, COMDTINST M5830.1 (series)]. The report of investigation or of the court of inquiry must have recorded that the member being punished was afforded the rights of a party. A member has been “afforded” these rights when he or she has been advised of them, when he or she understands them, and when he or she has either exercised these rights or knowingly and voluntarily waived them (or some of them).

1.H.1.b. Consult Servicing Legal Office

A commanding officer considering imposing NJP based on this section should consult his or her servicing legal office prior to doing so.

1.H.1.c. Procedure

The commanding officer may direct the appearance of the member before imposing NJP, but need not do so. Whether or not the member appears before the commanding officer before punishment is imposed, the member must be advised in writing of the right to demand trial by court-martial in lieu of NJP, if appropriate, and of the right to appeal.

1.H.1.d. Referral to Superior Commanding Officer

If the commanding officer lacks the authority to impose what he or she considers to be appropriate punishment, the commanding officer will refer the report of the investigative body or court of inquiry to the next superior officer in the chain of command. That officer may then impose punishment under Article 15, UCMJ with or without the personal appearance of the member. The member must be advised of the right to demand trial by court-martial in lieu of NJP, if appropriate, and of the right to appeal. The senior commanding officer has all the options available to him or her (i.e., dismiss the case, address the matter through administrative measures, address the matter at NJP, refer the matter to court-martial, etc.).

1.H.1.e. Investigation From Prior Unit

In some instances, the report of a court of inquiry or investigative body may not be finalized until after a member has been transferred from his or her prior unit to a new unit. If that member was a party to the court of inquiry or investigative body, he or she is considered to be “of the command” of the prior unit even though transferred to a new unit before such a report was finalized or NJP imposed. The commanding officer who had jurisdiction when the member became a party shall retain jurisdiction for purposes of

issuing a punitive letter under Article 15, UCMJ. [See, subparagraph 1.E.2.a above.] Although a party is considered to be “of the command” of the prior unit, the determination of whether that party is attached to or embarked in a vessel, for the purpose of demanding trial by court-martial in lieu of NJP, is based on the party’s actual unit at the time the punitive letter is issued.

1.H.2. Member Not Afforded the Rights of a Party

If punishment under Article 15, UCMJ is contemplated in view of the facts developed at an investigative body or court of inquiry before which the member was not a party, he or she can be punished only after holding mast (a hearing) or, in the alternative, only after the record of the investigative body or court of inquiry has been returned and additional proceedings held to afford the member the rights of a party.

1.I. SUBSEQUENT COURT-MARTIAL FOR OFFENSE PUNISHED AT NJP

NJP is not a bar to a subsequent court-martial for a serious offense, or pattern of offenses that grew out of the same act or omission and that is not properly punished under Article 15, UCMJ. If a member is punished under Article 15, UCMJ and is later sentenced at court-martial for the same offense, the member may present the prior punishment as a fact in mitigation at the court-martial [see, RCM 1001(c)(1)(B)], and, if presented, the sentencing authority must consider the prior punishment under Article 15, UCMJ when determining the court-martial sentence. Charges that were the subject of NJP that are referred to court-martial are subject to a motion to dismiss under R.C.M. 907(b)(2)(D)(iv) if the offenses were minor.

CHAPTER 2

2. SUMMARY COURTS-MARTIAL [SCM].....	2-1
2.A. Function, Jurisdiction, and Convening of SCM.....	2-1
2.A.1. Function of Summary Courts-Martial [SCM].....	2-1
2.A.2. SCM Jurisdiction	2-1
2.A.3. Convening a SCM.....	2-2
2.B. SCM at One Officer Commands	2-2
2.B.1. Convening and Acting as a Summary Court.....	2-2
2.B.2. Action.....	2-2
2.C. Right to Refuse SCM	2-2
2.C.1. Right to Refuse SCM.....	2-2
2.C.2. Acceptance of Trial by SCM	2-2
2.D. Right to Counsel at SCM.....	2-3
2.D.1. Opportunity to Consult with a Military or Civilian Attorney Prior to Accepting SCM	2-3
2.D.2. Representation for Accused	2-3
2.E. SCM Procedures	2-4
2.E.1. Preparation of Charge Sheet	2-4
2.E.2. Convening Order.....	2-4
2.E.3. Pretrial Duties	2-4
2.E.4. Preliminary Proceeding.....	2-4
2.E.5. Trial.....	2-5
2.F. SCM Punishments.....	2-5
2.F.1. Maximum Punishments	2-5
2.F.2. Limitations on Punishment	2-6
2.G. SCM Post Trial Matters	2-7
2.G.1. Record of Trial [ROT]	2-7
2.G.2. Forwarding of ROT.....	2-7
2.G.3. Effective Date of Punishment	2-8
2.G.4. Suspension	2-8
2.G.5. Vacation of Suspension.....	2-8
2.G.6. Promulgating Orders.....	2-9
2.H. Review and Forwarding SCM Record.....	2-9

COMDTINST M5810.1E

2.H.1. Review by Judge Advocate..... 2-9
2.H.2. Review by The Judge Advocate General..... 2-9
2.H.3. Forwarding of record 2-9

2. SUMMARY COURTS-MARTIAL [SCM]

2.A. FUNCTION, JURISDICTION, AND CONVENING OF SCM

2.A.1. Function of Summary Courts-Martial [SCM]

a. A summary court-martial [SCM] is a judicial proceeding intended to provide prompt adjudication of minor offenses by a simple procedure. [See, subparagraph 1.A.5.a above for a definition of minor offense.] It is designed to inquire thoroughly and impartially into both sides of a matter to ensure the interests of both the government and the accused are safeguarded. [See, RCM 1301-6.]

b. A summary court-martial consists of a single commissioned officer on active duty. The officer shall be a Coast Guard officer unless specific authority for an officer from another service is granted by the Judge Advocate General (CG-094). The officer should be a lieutenant or above, whenever practicable. If more than one officer is attached to the command, the convening authority shall not be the summary court-martial. [See, section 2.B below for one-officer commands.]

2.A.2. SCM Jurisdiction

a. Summary courts-martial have the authority to try all enlisted persons subject to the UCMJ for any non-capital offense made punishable under the UCMJ.

b. Summary courts-martial may not try an offense prosecuted in a United States federal court. As a matter of Coast Guard policy, Judge Advocate General authorization must be obtained before summary court-martial may try an offense pending trial or tried by a state or foreign criminal court. "Pending trial" means that state or foreign government has issued an indictment or information or has taken similar steps toward prosecution. Requests for such authorization must be in writing and provide a thorough justification why trial by summary court-martial should be authorized. [See, paragraph 3.B.4 below.]

c. Summary courts-martial have the independent duty to determine all factual conclusions drawn from the evidence, the guilt or innocence of the accused, and the sentence to be imposed, if any.

d. Summary courts-martial may seek advice from the unit's servicing legal office on questions of law.

2.A.3. Convening a SCM

a. Any person who may convene a general or special court-martial may convene summary courts-martial. [See, paragraphs 3.A.1 and 3.A.2.]

b. If the convening authority is the accuser, victim, or a witness in a case, he or she may either convene the SCM or forward the charges to a superior authority in accordance with subparagraph 2.B below. Any decision to convene the court in lieu of forwarding the charges should be made with the accuser concept in mind. Consultation with the servicing legal office is recommended.

c. The authority to convene a SCM may be restricted by competent superior authority.

2.B. SCM AT ONE OFFICER COMMANDS

2.B.1. Convening and Acting as a Summary Court

When the commanding officer is the only commissioned officer permanently assigned to a command, he or she can act as both the convening authority of a summary court and the summary court officer. Alternatively, he or she may forward the charges to a superior authority for disposition in accordance with subparagraph 3.D.2.c below. Consultation with the servicing legal office is recommended. If the officer is also the accuser in the case, see subparagraph 2.A.3 above.

2.B.2. Action

When a SCM is held by the only officer assigned to a command, the action of the convening authority must state that the convening authority/summary court officer is the only commissioned officer permanently assigned to the command.

2.C. RIGHT TO REFUSE SCM

2.C.1. Right to Refuse SCM

All persons in the Coast Guard have the absolute right to refuse trial by SCM. If an accused refuses trial by SCM, a SCM may not be held in his or her case, unless the accused later consents to trial by summary court-martial.

2.C.2. Acceptance of Trial by SCM

An accused may accept trial by SCM with or without prior consultation with an attorney. His or her decision to accept should be reflected in writing stating on its face it is a voluntary and knowing acceptance and bearing the personal signature of the accused.

Enclosure (21a), or an equivalent form, should be used for this purpose. The original of such form should be attached to the record of trial. The absence of such a form may result in a conviction at SCM being inadmissible at a later trial by court-martial. The absence of the form, however, has no effect on the validity of the SCM itself.

2.D. RIGHT TO COUNSEL AT SCM

2.D.1. Opportunity to Consult with a Military or Civilian Attorney Prior to Accepting SCM

An accused has the right to refuse to be tried by a SCM. To assist the accused in making an informed decision regarding this right, the accused should be afforded the opportunity to consult with a military attorney, certified in accordance with Article 27(b), UCMJ, or a civilian attorney. A military attorney may be assigned to provide this consultation at no cost to the accused. An accused does not have a right to the detail of any particular military attorney [see, RCM 506(a)]. The accused may also retain a civilian attorney at no expense to the government, provided the consultation does not unduly delay the summary court-martial proceeding. An attorney-client relationship shall attach when an accused exercises this opportunity to confer, but for attorney-client privilege purposes only, not representational purposes at the SCM. Because of this attorney-client relationship, the military attorney who has consulted with the accused may not later act as SCM in the same case. Military attorneys detailed by the Coast Guard for consultation will not undertake to represent the accused unless directed to do so by proper authority. The convening authority or his or her designee is responsible for advising the accused of the opportunity to confer with a military or civilian attorney. If an accused waives this opportunity to confer, he or she must do so in writing. [See, enclosure (21a).]

2.D.2. Representation for Accused

2.D.2.a. Attorney Representation

Generally, the accused has no right to be represented by an attorney during the SCM proceeding. However, the convening authority may request a military attorney be detailed to represent the accused during the proceeding if extraordinary circumstances require the presence of a military attorney. Before making such a request, the convening authority should consult with the servicing legal office. A civilian attorney hired by the accused may be allowed to appear to represent the accused at a SCM proceeding, provided the attorney is qualified under RCM 502(d)(3) and such appearance will not unduly delay the proceeding or interfere with military exigencies.

2.D.2.b. Non-Attorney Representation

Although a summary court is charged with safeguarding the rights of the accused, including assisting him or her with the examination of witnesses, the convening authority may in certain cases provide a representative to assist the accused. Whether a representative is to be provided is a matter within the sole discretion of the convening

authority. When considering whether one should be appointed, the convening authority should consider the complexity or seriousness of the charges as well as the capability of the individual accused to understand and participate in the court proceedings. Any appointed representative shall be an officer or petty officer and should normally be attached to the same unit as the accused. The representative shall assist the accused in preparing for and participating in the court proceedings including, as necessary and appropriate, questioning witnesses, presenting the accused's case, and acting as a spokesperson for the accused. The relationship between the accused and the appointed representative is privileged in the same manner as is the relationship between an attorney and his or her client.

2.E. SCM PROCEDURES

2.E.1. Preparation of Charge Sheet

The charge sheet shall be prepared in accordance with paragraph 3.D.1 below. [See also, Appendix 4, MCM and enclosures (10b) and (10c).] Consultation with the servicing legal office prior to preferral of charges is required.

2.E.2. Convening Order

The convening order may consist of an order from the convening authority [see, enclosure (11a)], or a notation signed by the convening authority on the charge sheet [see, RCM 1302(c)]. In either case a written statement will be made as follows: "Designation of this convening authority is Secretarial and pursuant to Article 24, UCMJ." This will satisfy the requirements of RCM 504(d)(2).

2.E.3. Pretrial Duties

The summary court officer shall examine the charge sheet, all allied papers, the service record of the accused if reasonably available, and RCMs 1301 through 1306 before trial. Any substantial irregularities should be immediately reported to the convening authority.

a. The summary court officer may, subject to RCM 603, correct errors on the charge sheet by initialing them.

b. The summary court officer may discuss legal matters with the command's servicing legal office. [see paragraph 2.A.2 above.]

2.E.4. Preliminary Proceeding

After reviewing the file as above, the summary court officer shall conduct a preliminary proceeding with the accused as described in RCM 1304(b)(1). [See, Appendix 9, MCM.] After giving the accused a reasonable period of time to consider his or her right to refuse trial by SCM, the summary court officer shall record the accused's response. If the accused rejects trial by SCM, the papers shall be returned to the convening authority with no further action.

2.E.5. Trial

a. After completing the preliminary proceeding and obtaining the consent of the accused to trial by summary court-martial, the trial should proceed as per RCM 1304(b)(2). Enclosure (21b) contains a guide for the proceeding that should be followed. Enclosures (21c) and (21d) are a blank and sample Record of Trial by Summary Court-Martial, Form DD-2329, to be used by the summary court officer.

b. A reservist may be tried by summary court-martial either while on active or inactive duty training. A reservist, not on active duty, may be ordered to active duty for trial by SCM. A summary court-martial conducted during inactive duty training may be in session only during normal periods of such training. A period of inactive duty training shall not be scheduled solely for the purpose of conducting a SCM. [See, paragraph 3.E.2 below.]

2.F. SCM PUNISHMENTS

2.F.1. Maximum Punishments

a. The following maximum punishment that may be adjudged at a SCM on an E-4 or below [see, subparagraph 2.F.2 below.]:

- (1) One month confinement;
- (2) Forty-five days hard labor without confinement;
- (3) Two months restriction;
- (4) Forfeiture of $\frac{2}{3}$ of one month's pay, or a fine not exceeding the amount of $\frac{2}{3}$ of one month's pay, or both fine and forfeiture but the combination not to exceed $\frac{2}{3}$ of one month's pay;
- (5) Reduction to the lowest pay grade; and
- (6) Reprimand.

b. The following maximum punishment that may be adjudged at a SCM on an E-5 or above:

- (1) Two months restriction;
- (2) Forfeiture of $\frac{2}{3}$ of one month's pay, or a fine not exceeding the amount of $\frac{2}{3}$ of one month's pay, or both fine and forfeiture but the combination not to exceed $\frac{2}{3}$ of one month's pay;
- (3) Reduction to the next inferior pay grade; and
- (4) Reprimand.

COMDTINST M5810.1E

2.F.2. Limitations on Punishment

- a. The maximum forfeiture of pay, and the maximum reduction in pay grade may be adjudged, regardless of whether any other punishment is adjudged.
- b. A sentence imposed upon enlisted members above the pay grade of E-4 may not include confinement, hard labor without confinement, or reduction in grade except to the next inferior grade. This includes an E-5 who is reduced by the summary court-martial to E-4. [See, RCM 1301(d)(2).]
- c. Confinement on bread and water or diminished rations is not authorized in the Coast Guard.
- d. The forfeiture of pay, fine, or combination of forfeiture and fine may not exceed two-thirds of one month's basic pay. A forfeiture may be allocated to occur over a two-month period. A forfeiture or fine shall be recorded in the exact whole dollar amount. A forfeiture will also be recorded in the amount to be forfeited each month, followed by the number of months the forfeiture will last.[See, RCM 1003(b)(2).]
- e. A fine may only be adjudged in an amount equal to or less than the maximum forfeiture that could have been adjudged and should normally only be adjudged when the offense committed resulted in unjust enrichment to the accused.
- f. If a reduction in pay grade is adjudged along with a forfeiture or fine, the maximum amount of the forfeiture, fine, or both shall be based upon the pay grade to which the accused is reduced.
- g. A sentence that includes restriction and hard labor without confinement may be imposed as an appropriate punishment so long as it does not exceed the maximum limit for each. (For example: 60 days restriction and 45 days hard labor without confinement would be a proper combination of the two punishments.) The combined punishments shall be served concurrently, unless otherwise suspended or deferred.
- h. A sentence that includes a combination of confinement and restriction may be imposed as an appropriate sentence so long as it does not exceed the maximum amount of confinement authorized. Restriction can be substituted for confinement at the rate of 2 days restriction for each day of confinement. (For example: 15 days confinement and 30 days restriction would be a proper combination of the two punishments.) The combined punishments shall be served consecutively, unless otherwise suspended or deferred.
- i. A sentence that includes confinement and hard labor without confinement may be imposed as an appropriate punishment so long as it does not exceed the maximum amount of confinement authorized. Hard labor without confinement can be substituted for confinement at the rate of 1 1/2 days hard labor without confinement for each day of confinement. (For example: 16 days confinement and 21 days hard labor without confinement would be a proper combination of the two punishments.) The

combined punishments shall be served consecutively, unless otherwise suspended or deferred.

j. Records of NJP (s) and prior SCM(s) are not “convictions” and shall not be noted as convictions in the record of trial. If obtained from the accused’s personnel records and properly introduced in evidence, records of NJP and prior SCM(s) may be considered as evidence of the accused’s prior military service.

k. No confinement or restriction may be imposed on a reservist tried by SCM conducted during inactive duty training, or active duty pursuant to an order unless the order was approved by CG-13. Forfeitures imposed on a reservist at a SCM may be collected from pay received during subsequent periods of service whether active or inactive duty.

2.G. SCM POST TRIAL MATTERS

2.G.1. Record of Trial [ROT]

The record of trial [ROT] shall be prepared in accordance with RCM 1305 and Appendix 15, MCM.

a. In cases where a plea of not guilty has been entered for one or more specifications of which the accused is found guilty, the ROT shall contain a summary of all evidence received at trial used to prove each element of any offense of which the accused was found guilty. A summary of evidence considered during sentencing is not required.

b. The convening order, if any, the charge sheet and all documentary evidence shall also be attached to the ROT. Photographs of physical evidence should be obtained and attached to the ROT.

2.G.2. Forwarding of ROT

After a copy is given to the accused, the original and two copies shall be forwarded via first class/priority certified mail to the convening authority, except as noted in subparagraph 2.G.2.b below.

a. The accused may submit matters per RCM 1105 within 7 days after the sentence is announced. The convening authority may extend this period by 20 days for good cause.

b. The convening authority shall take action on the record as per RCM 1107. Consultation with the servicing legal office is strongly advised, but not required,

COMDTINST M5810.1E

prior to taking SCM action. No action may be taken by the convening authority prior to the expiration of the time allowed for the accused to submit matters under RCM 1105. No action by the convening authority is required in cases resulting in an acquittal. The ROT of an acquittal may be mailed via a DHS approved commercial carrier (e.g. Fedex or UPS directly to CG-0946 after the summary court officer authenticates the ROT.

2.G.3. Effective Date of Punishment

Confinement starts on the date announced unless otherwise deferred by the convening authority. All other approved and unsuspended punishments are effective on the date of the convening authority's action.

2.G.4. Suspension

A summary court officer may not suspend any part of a sentence. The court may recommend suspension of all or a part of a sentence to the convening authority.

2.G.5. Vacation of Suspension

2.G.5.a. Persons Authorized to Vacate

Any commanding officer authorized to convene a SCM may vacate a suspended punishment during the period of probation.

2.G.5.b. Reason for Vacating

Vacation of a suspension may only be based on an offense under the UCMJ committed during the period of suspension, or violation of a condition of suspension [see, RCM 1109].

2.G.5.c. Vacation Proceedings

Except for instances where the basis for the vacation is the current unauthorized absence of the probationer, a commanding officer shall conduct an informal hearing on the alleged violation of probation before vacating the suspension of any punishment. During the hearing the probationer shall be given the opportunity to be heard in person and to present witnesses and documentary evidence. [See, RCM 1109(e).] Enclosure (7b) or correspondence in a similar format shall be prepared to ensure these requirements are met and to record the proceedings. The completed original shall be mailed via a DHS approved commercial carrier (e.g. Fedex or UPS in the same manner as the ROT for the SCM.

2.G.5.d. When Probationer Ordered into Confinement

When the probationer has been ordered into confinement under RCM 1109(c)(1) as the result of vacation proceedings, the officer conducting the vacation hearing required by RCM 1109(e) shall normally complete the hearing within the seven-day period noted in RCM 1109(c)(4). Failure to complete the hearing within this time frame shall be immediately reported to the Officer Exercising General Court-Martial Jurisdiction (OEGCMJ).

2.G.5.e. Effective Date of Vacation

A punishment that has been suspended takes effect on the date the commanding officer orders the suspension vacated.

2.G.5.f. Effect of Vacation

Vacation of a suspension is not a bar to NJP or a court-martial for an offense that formed the basis for the vacation.

2.G.6. Promulgating Orders

An order promulgating the results of trial by SCM is not required.

2.H. REVIEW AND FORWARDING SCM RECORD

2.H.1. Review by Judge Advocate

After action by the convening authority, the record shall be forwarded by a DHS approved commercial carrier (e.g. Fedex or UPS) to the legal office of the OEGCMJ over the convening authority for review by a judge advocate in accordance with RCM 1112. A review under RCM 1112 is not required in those cases resulting in an acquittal. If upon review the judge advocate determines that there is insufficient evidence to support an element of an offense, or if any other corrective action is required as a matter of law, the judge advocate shall inform the summary court officer and provide an opportunity for the ROT to be corrected pursuant to RCM 1104(d). This notice of the need for correction shall be made to the summary court officer prior to forwarding the ROT to the OEGCMJ for any corrective action required by RCM 1112(e).

2.H.2. Review by The Judge Advocate General

The accused may request review of a final conviction by SCM by the Judge Advocate General in accordance with RCM 1306(d). Review of final convictions shall be guided by RCM 1201(b)(3).

2.H.3. Forwarding of record

All original ROTs will be forwarded via a DHS approved commercial carrier (e.g. Fedex or UPS) to the Office of Military Justice (CG-0946):

- a. When the conviction becomes final pursuant to RCM 1209(a)(2)(A) and Article 76, UCMJ;
- b. When further action by the Judge Advocate General is required pursuant to RCM 1112(g)(1); or
- c. When the record is authenticated by the summary officer in cases resulting in an acquittal.

CHAPTER 3

3. PRETRIAL MATTERS.....	3-1
3.A. Courts-Martial Convening Authorities.....	3-1
3.A.1. General Courts-Martial Convening Authorities.....	3-1
3.A.2. Special Courts-Martial Convening Authorities	3-1
3.A.3. Areas of Responsibility	3-2
3.B. Restriction on Exercise of Court-Martial Jurisdiction.....	3-3
3.B.1. Limitation on Authority by Superior Commander.....	3-3
3.B.2. Normal Convening Authority is an Accuser.....	3-3
3.B.3. Jurisdiction Limitations Under Articles 2 and 3, UCMJ	3-4
3.B.4. Cases Adjudicated or Pending Adjudication in Domestic or Foreign Criminal Courts.....	3-5
3.B.5. Other Agreements	3-5
3.B.6. Cases Involving Classified Information.....	3-6
3.B.7. Major Federal Offenses.....	3-6
3.B.8. Capital Offenses.....	3-7
3.C. Pretrial Restraint and Confinement.....	3-7
3.C.1. Definitions.....	3-7
3.C.2. Military Attorney	3-8
3.D. Preparation and Forwarding of Charges.....	3-13
3.D.1. Preparation of Charge Sheet	3-13
3.D.2. Forwarding of Charges	3-13
3.E. Order to Active Duty of a Reservist	3-16
3.E.1. Order to Active Duty for Pretrial Investigation under Article 32, UCMJ.....	3-13
3.E.2. Reservist Ordered to Active Duty for Courts-Martial.....	3-16
3.E.3. Procedure	3-16
3.F. Pretrial Investigations Under Article 32, UCMJ.....	3-16
3.F.1. General	3-16
3.F.2. Who may Direct a Pretrial Investigation.....	3-17
3.F.3. Investigating Officer	3-17
3.F.4. Reporter	3-18
3.F.5. Procedure	3-18

3.F.6	Claims of Privilege at Investigations	3-18
3.F.7	Use of Investigative Material	3-19
3.G	REFERRAL OF CHARGES TO SPECIAL OR GENERAL COURTS-MARTIAL ...	3-19
3.H	Court-Martial Personnel	3-20
3.H.6	Members	3-30
3.I	Administrative Pretrial Matters	3-30
3.I.1	Uniform for Trial	3-30
3.I.2	Court Room and Trial Facilities	3-30
3.J	Pretrial Agreements.....	3-31
3.J.1	General.....	3-31
3.J.2	Pretrial Agreement Negotiations and Content	3-31
3.K	Authority to Grant Immunity from Prosecution	3-32
3.K.1	General.....	3-32
3.K.2	Procedure	3-32
3.K.3	Civilian Witness, or Military Witness Liable to Prosecution in Federal Court	3-33
3.K.4.	Post-Testimony Procedures for Civilian Witness, or Military Witness Liable to Prosecution in Federal Court	3-34
3.K.5	Form of Grant of Immunity — Order to Testify.....	3-34
3.L	Assistance to Defense Counsel.....	3-35
3.L.1	General.....	3-35
3.L.2	Defense Investigative Assistance.....	3-35
3.M.	Victim and Witness Protection	3-37
3.M.1	Concern for Victims and Witnesses.....	3-37
3.M.2	Applicability and Scope.....	3-37
3.M.3	Definitions.....	3-38
3.M.4	Keeping the Victim Informed.....	3-39
3.M.5	Treatment of Witnesses and Victims	3-39
3.M.6	Consultation with the Victim(s) by the Convening Authority	3-40
3.N	Witnesses Fees and Payment.....	3-41
3.N.1	Financial Responsibility.....	3-41
3.N.2	Attendance of Witnesses.....	3-41
3.N.3	Fees, Per Diem, and Mileage for Civilian Witnesses	3-42
3.N.4	Expert Witnesses.....	3-43
3.N.5	Payment of Witness Fees to Foreign Nationals	3-44

3.N.6	Authorization for Payment of Civilian Fees	3-44
3.N.7	Advance Tender or Payment.....	3-44
3.N.8	Reimbursement of Witness Fees.....	3-45
3.N.9	Certificate of Person Before Whom Deposition is Taken	3-45
3.N.10	Payment of Accrued Fees	3-46
3.N.11	Civilian Witnesses at Article 32, UCMJ Investigations	3-46

3. PRETRIAL MATTERS

3.A. COURTS-MARTIAL CONVENING AUTHORITIES

3.A.1. General Courts-Martial Convening Authorities

By virtue of the authority of Article 22, UCMJ, the Secretary has designated the following commanding officers of the Coast Guard or their successors in command as general court-martial convening authorities [see, enclosure (9)]:

- a. Commandant of the Coast Guard.
- b. Commanding Officer of Coast Guard Headquarters
- c. Commander of any Coast Guard Area
- d. Commander, Coast Guard Force Readiness Command (FORCECOM)
- e. Commander, Coast Guard Personnel Service Center
- f. Commander of any Coast Guard District.
- g. Commander, Coast Guard Deployable Operations Group
- h. Superintendent, Coast Guard Academy.

3.A.2 Special Courts-Martial Convening Authorities

By virtue of the authority of Article 23, UCMJ, the Secretary has designated the following commanding officers of the Coast Guard or their successors in command as special court-martial convening authorities [see, enclosure(9)]:

- a. Commanding Officers of all Coast Guard units, some of whom have specific statutory authority
- b. Commander of any Coast Guard Sector
- c. Commanding Officer, Staff Enlisted Personnel, at each Coast

Guard Area

- d. Commanding Officer, Staff Enlisted Personnel, at each Coast Guard District office
- e. Commanding Officer, Enlisted Personnel, Coast Guard Academy
- f. Commanding Officer, Enlisted Personnel, Coast Guard Yard
- g. Commanding Officer, Military Personnel, National Pollution Funds Center
- h. Commanding Officer, Staff Enlisted Personnel, Coast Guard Force Readiness Command
- i. Commanding Officer, Staff Enlisted Personnel, Coast Guard Personnel Service Center
- j. Commanding Officer, Military Personnel, Coast Guard Command, Control, Communications, Computers, and Information Technology Center

3.A.3 Areas of Responsibility

3.A.3.a Authority Not Limited By Geography

The authority to convene general and special courts-martial is universal and is not limited by geography, unit or personnel assignment, unit location or chain of command. A properly constituted court-martial may try any person subject to the UCMJ, even if the accused is not under the command of the convening authority [see, RCM 601(b)]. Geographic areas of primary responsibility are designated for administrative purposes only and neither creates exclusive jurisdiction with any of the individual officers exercising general and special courts-martial jurisdiction nor operates as a limitation on jurisdiction. As a practical matter, however, the accused ordinarily will have to be subject to the orders of the convening authority or otherwise under the convening authority's control to assure appearance of accused at trial. It is strongly recommended that prior to referral of charges, if the member against whom charges have been preferred is not a member of or under the command of the convening authority, Coast Guard convening authorities advise the member's commanding officer of the impending referral.

3.A.3.b Primary General Court-Martial Jurisdiction

(1) District and Area Units

Area Commanders exercise primary general court-martial jurisdiction over personnel of their respective Area units. District Commanders exercise primary general court-martial jurisdiction over personnel of their respective District units. FORCECOM exercises

primary general court-martial jurisdiction over FORCECOM units. FORCECOM may forward charges at the most expeditious means to the Chief of Staff or PSC Commander for disposition.

(2) Headquarters and Other Units

The PSC Commander exercises primary general court-martial jurisdiction over personnel assigned to Headquarters, and all units not directly under the chain of command of one of the designated officers authorized to convene general courts-martial listed in 3.A.1 above. Personnel attending funded advanced education or other full-time duty under instruction under the cognizance of Headquarters program managers are assigned to Headquarters.

(3) Non-Coast Guard Commands

The PSC Commander exercises primary general court-martial jurisdiction over Coast Guard personnel assigned to all non-Coast Guard commands, such as joint commands, joint task forces, unified commands, or other specified combatant commands, operating within their respective areas, for matters forwarded for parent service disposition.

(4) Coast Guard Academy

Superintendent, Coast Guard Academy exercises general court-martial jurisdiction over all Coast Guard units and personnel assigned to the Coast Guard Academy.

3.B RESTRICTION ON EXERCISE OF COURT-MARTIAL JURISDICTION

3.B.1 Limitation on Authority by Superior Commander

Superior authority may restrict the exercise of authority to convene summary and special courts-martial. [See, RCM 504.]

3.B.2 Normal Convening Authority is an Accuser

A commanding officer who is an accuser or is otherwise disqualified in a case may not refer the charges in that case to trial by general or special court-martial. In such a case, the draft charges and accompanying paperwork shall be forwarded via a DHS approved commercial carrier (e.g. Fedex or UPS) to the next superior in the chain of command authorized to convene the type of court-martial deemed appropriate [see, section 3.A above]. The definition of an “accuser” as used in this section is broader than the individual who swears, or makes charges against another [see, Article 1(9), UCMJ, RCM 307(a) Discussion]. An “accuser” means a person who directs that charge nominally be signed and sworn to by another or is also an individual who was a victim of the alleged offense(s) or whose personal interest outweighs his or her professional responsibilities. The advice of the command’s servicing legal office should be sought in any case in which a potential convening authority believes he or she might be disqualified or might be considered an accuser in the broadest sense of that term.

3.B.3 Jurisdiction Limitations Under Articles 2 and 3, UCMJ

3.B.3.a Retired Members

No case of a retiree amenable to jurisdiction under Article 2(a)(4) or (5), UCMJ will be referred for trial by court-martial without the prior authorization of the Judge Advocate General. This rule applies to offenses allegedly committed by such persons regardless of whether they were on active duty either at the time of the alleged offense or at the time they were accused or suspected of the offense. Specific authorization from the Judge Advocate General shall also be obtained for the apprehension, arrest, or confinement of any person amenable to trial by court-martial solely by reason of the provisions of Articles 2(a)(4)-(5), UCMJ.

3.B.3.b United States Public Health Service Members

Prior to taking action under the UCMJ against an active duty member of the Public Health Service [PHS] assigned to duty and serving with the Coast Guard, the convening authority should contact his or her servicing legal office to obtain a copy of the current USCG - USPHS Memorandum of Understanding, which may contain procedural guidance concerning military justice and disciplinary proceedings involving PHS employees.

3.B.3.c Reservists

The OEGCMJ will obtain prior approval from the Director of Reserve and Training (CG-13) if confinement or other restraints on liberty are contemplated as punishments in the case of a Reservist ordered to active duty for trial. [See, Article 2(d)(5), UCMJ; section 0 below; chapter 3, Reserve Policy Manual, COMDTINST M1001.28 (series)].

3.B.3.d Civilians

No case of a civilian amenable to jurisdiction under Article 2(a)(10), UCMJ, will be referred for trial by court-martial without the prior authorization of the Judge Advocate General.

3.B.3.e Jurisdiction to Try Certain Personnel Under Article 3, UCMJ

No case in which jurisdiction is based on Article 3(a)-(c), UCMJ, will be referred for trial by court-martial without the prior authorization of the Judge Advocate General. Specific authorization from the Judge Advocate General shall also be obtained for the apprehension, arrest, or confinement of any person amenable to trial by court-martial solely by reason of the provisions of Article 3, UCMJ.

3.B.3.f Waiver of Limitation

Requests for waiver of the limitations in subparagraphs 3.B.3.a-e. shall be addressed to the Office of Military Justice (CG-0946) for further forwarding to the Director of Reserve and Training (CG-13) or the Judge Advocate General, as appropriate, and shall be forwarded by mail or other expeditions means. Requests should normally be forwarded

by mail but may, if considered necessary, be requested by message, fax, e-mail, or telephone. Each request shall contain the following information:

- (1) The nature of the offense or offenses charged;
- (2) A summary of the evidence in the case;
- (3) The facts showing amenability of the accused to trial by court-martial;
- (4) Whether civil jurisdiction exists;
- (5) The military status of the accused or suspected person at the present and at the time of the alleged offense; and
- (6) The reasons that make trial by court-martial advisable.

If authorization is withheld under this paragraph or the waiver denied, the Judge Advocate General may direct alternative action or actions, if any, to the convening authority. The foregoing rules shall not impede the referral and processing of sworn charges under Article 30, UCMJ, when such referral and processing are necessary to prevent the barring of trial by the statute of limitations [see, Article 43, UCMJ].

3.B.4 Cases Adjudicated or Pending Adjudication in Domestic or Foreign Criminal Courts

No person in the Coast Guard may be tried for the same acts that constitute an offense against state or foreign law and for which the accused has been tried or is pending trial by the state or foreign country, without first obtaining authorization from the Judge Advocate General. Letter requests for authorization shall contain complete justification as to why deviation from the general policy against second trials [see, RCM 201(d)] is appropriate. This policy is based on comity between the Federal Government and State/Foreign Governments and is not intended to confer additional rights upon the accused. "Pending trial" means that an indictment or information has been brought against the accused or that the accused is being held over for trial based on a judicial probable cause hearing. Any pretrial diversion or similar program does not amount to being "tried" or "pending trial." In any case, close coordination with officials of other jurisdictions may be necessary to ensure that the policy against second trials is followed, and because many such jurisdictions have laws prohibiting second trials for persons tried in federal courts or courts-martial. This requirement for prior approval from the Judge Advocate General applies also to trial by summary court-martial and NJP for offenses tried or pending trial by a state or foreign country.

3.B.5 Other Agreements

Overseas, international agreements, such as Status of Forces Agreements [SOFA], may affect the decision of whether to exercise court-martial jurisdiction.

3.B.6 Cases Involving Classified Information

Special procedures apply where evidence at a court-martial may be classified [see, MRE 505 for procedures relating to trial of cases involving classified information]. Early action to obtain security clearances for court personnel should be taken to avoid speedy trial issues. [See, Information Security Program, COMDTINST M5510.21 (series), for additional precautions regarding classified information handling.] Additional special procedures and policies apply where evidence at the court-martial may involve cryptographic systems and publications. [See, unit Security Manager for most current guidance.] The convening authority shall notify the Judge Advocate General of any case involving classified information. [See, section 4.A below.]

3.B.7 Major Federal Offenses

3.B.7.a Background

Federal civil authorities may have concurrent jurisdiction with military authorities over offenses committed by military personnel that violate both federal criminal law and the UCMJ. The Attorney General and the Secretary of the Department of Homeland Security agreed on guidelines for determining which authorities shall have jurisdiction to investigate and prosecute major crimes in particular cases [see, Appendix 3.1, MCM; enclosure (24a)]. Coordination between the servicing legal office and the Judge Advocate General should begin as soon as this issue is identified.

3.B.7.b Limitations on Court-Martial Jurisdiction

Commanding officers receiving information indicating that Coast Guard personnel have committed a major Federal offense (including any major criminal offense committed on a Coast Guard installation) may refrain from taking action with a view towards trial by court-martial and cause further investigation by CGIS. In the event that the investigation of any such case is referred to a Federal civilian investigative agency, the cognizant U.S. Attorney, subject to the exceptions set forth below, will normally conduct any resulting prosecution.

3.B.7.c Exceptions

(1) Where it appears Coast Guard personnel have committed several offenses, including both major federal offenses and serious but purely military offenses, Coast Guard authorities are authorized to investigate all of the suspected military offenses, and such of the civil offenses as may be practical, and to retain the accused for prosecution. Any such action should be reported immediately to the Judge Advocate General, the servicing legal office, and OEGCMJ.

(2) When, following referral of a case to a civilian federal investigative agency for investigation, the cognizant U.S. Attorney declines prosecution, the investigation may be resumed by Coast Guard military authorities. The command shall notify the Judge Advocate General and may commence court-martial proceedings if circumstances warrant.

(3) If during a federal civilian investigative agency investigation, circumstances arise that favor the exercise of jurisdiction by Coast Guard authorities, the OEGCMJ will contact the cognizant U.S. Attorney to seek approval for trial by court-martial and inform the Judge Advocate General. If agreement cannot be reached at the local level, the matter shall be referred to the Judge Advocate General for disposition.

3.B.7.d Related Matters

[See, section 7.B below for delivery of personnel to federal authorities.]

3.B.8 Capital Offenses

Coast Guard special court-martial convening authorities are not authorized to refer offenses that have a potential maximum punishment of death or life imprisonment to special courts-martial without first obtaining the written consent of the OEGCMJ. [See, RCM 201(f)(2)(A).]

3.C PRETRIAL RESTRAINT AND CONFINEMENT

3.C.1 Definitions

3.C.1.a Pretrial Restraint

Pretrial restraint is either a moral or physical restraint on a member imposed before or during disposition of offenses. No person may be ordered into restraint before trial except for probable cause. Probable cause to order pretrial restraint exists when there is a reasonable belief that:

- (1) The member committed an offense under the UCMJ; and
- (2) The restraint is required by the circumstances (generally, when the member may be a danger to the community or is a flight risk).

Pretrial restraint may not be used as a form of punishment. The restraint should not be more rigorous than the circumstances require to ensure the presence of the member restrained and to prevent foreseeable serious criminal misconduct. RCM 304 contains specific guidance regarding pretrial restraint including: types of pretrial restraint, who may order pretrial restraint, when a person may be restrained, procedures for ordering pretrial restraint, prohibition against pretrial restraint as punishment, release, and administrative restraint.

3.C.1.b Pretrial Restraint of Reservist

(1) Pretrial restraint in the form of restriction or arrest should not be imposed on a reservist who is not on active duty. If it is necessary to confine a reservist who is not on active duty, he or she should be ordered to active duty as soon as possible thereafter. [See, section 3.E below].

(2) A reservist may be retained on active duty until the completion of action in a case where the offense is such as to warrant trial by court-martial. [See, chapter 3, Reserve Policy Manual, COMDTINST M1001.28 (series).] Retaining a reservist on active duty does not constitute pretrial restraint.

3.C.1.c Pretrial Confinement

Pretrial confinement is physical restraint depriving a member of freedom pending disposition of charges. RCM 304 and 305 and this section shall be consulted in all cases in which a Coast Guard member is restrained or confined pending disposition of charges. No person may be ordered into pretrial confinement except for probable cause. Probable cause to order pretrial confinement exists when there is a reasonable belief that:

- (1) The member committed an offense under the UCMJ,
- (2) The member is either flight risk (i.e., he or she will not appear at trial absent confinement) or likely to commit additional serious criminal misconduct (i.e., future misconduct), and
- (3) Less severe forms of restraint are inadequate.

Pretrial confinement is only appropriate in contemplation of disposition at a special or general court-martial. RCM 305 contains specific guidance regarding pretrial confinement, including: who may be confined; who may order confinement; when a member may be confined; advice to the accused upon confinement; military counsel rights; who may direct release from confinement; notification and action required of the commander of the confinee; procedures for review of pretrial confinement; provision for review by the military judge; remedy for noncompliance; and exceptions to the application of the provisions of the rule. A sample letter from the member's commanding officer notifying the member of the imposition of pretrial confinement and his or her rights is in enclosure (8a) Confinees shall be afforded facilities and treatment in accordance with Article 8.F., Coast Guard Personnel Manual, COMDTINST M1000.6 (series) and applicable regulations of the confinement facility into which ordered.

3.C.1.d Ordering Pretrial Confinement

Only a commanding officer to whose authority an officer is subject may order pretrial confinement of that officer [see, RCM 304(b)(1)]. Any commissioned officer may order any enlisted member into pretrial confinement [see, RCM 304(b)(2)]. A confinement order [Form NAVPERS 1640/4] will be used. The form is available in USCG Adobe Forms or online [<http://cgweb2.comdt.uscg.mil/CGForms/Welcome.htm>] and a blank form is found at enclosure (8g). Enclosures (8f) and (8h) are a sample confinement (pretrial) order and instructions for completing the confinement order.

3.C.2 Military Attorney

A member ordered into pretrial confinement must be advised he or she is entitled to consult with a military attorney. A member who requests a military attorney shall be

provided with a detailed military attorney [see, paragraph 0 below] for the purpose of the initial review required by RCM 305(i). The member has no right to an individual military attorney of his or her own selection.

3.C.3. Commanding Officer’s Review of Pretrial Confinement

3.C.3.a Responsibilities

- (1) The commanding officer should promptly consult his or her servicing legal office;
- (2) The commanding officer must ensure that a neutral and detached officer determines within 48 hours of confinement whether probable cause exists to continue pretrial confinement; and,
- (3) The commanding officer must personally decide within 72 hours whether pretrial confinement will continue and prepare a written memorandum documenting his or her decision [see, RCM 305(h)(2)(C)].

3.C.3.b Single Determination

The 48-hour determination and 72-hour review may be combined into a single determination and written memorandum completed by the commanding officer within 48 hours of confinement [see, RCM 305(h)(2)(A)]. A commanding officer who ordered pretrial confinement is not precluded from making the 48-hour determination if he or she is otherwise neutral and detached regarding the case. Preparation of the commanding officer’s memorandum should be coordinated with the servicing legal office. A sample memorandum from the commanding officer to the initial review officer that fulfills both the 48-hour and 72-hour requirements is found in enclosure (8a).

3.C.3.c Pretrial Restriction Tantamount to Confinement

Pretrial confinement includes pretrial restriction that is tantamount to confinement. Pretrial restriction is tantamount to confinement when the restraints on the member’s liberty and freedom of movement so closely resemble confinement that their effect upon the accused is the practical equivalent of confinement. The actual nature of the restraint imposed, and not the characterization of it by the officer imposing it, will be the controlling factor in distinguishing between pretrial restriction and pretrial restriction tantamount to confinement.

3.C.4. Review of Pretrial Confinement by Initial Review Officer [IRO]

3.C.4.a General

COMDTINST M5810.1E

Under RCM 305, a review of the adequacy of probable cause to believe a member in pretrial confinement committed an offense, the necessity for continued pretrial confinement, and the conditions of confinement, must be conducted by a neutral and detached officer within 7 days of the imposition of confinement.

3.C.4.b Designating IROs

Each OEGCMJ shall designate one or more officers of the grade of O-4 or higher to act as the IRO for purposes of RCM 305(i)(2). Officers designated as IRO should be neutral and detached, should be selected for their maturity and experience, and, if practicable, should have had command experience. The OEGCMJ shall authorize each IRO to approve continued confinement or order the immediate release of pretrial confinees whose cases are referred to him or her for initial review.

3.C.4.c Using the DoD Confinement Facility IRO

The OEGCMJ may authorize and accept the RCM 305 initial review conducted by a duly designated IRO assigned to the confinement facility. Most DoD confinement facilities have permanently assigned IROs and will conduct an RCM305 review of the pretrial confinement order independent of a Coast Guard review.

3.C.4.d Procedure

(1) After a member is ordered into pretrial confinement, the member's commanding officer shall prepare a memorandum in accordance with RCM 305(h)(2)(C). This memorandum shall be forwarded, by the most expeditious means, to the appropriate servicing legal office. A copy of the memorandum shall be forwarded via most expeditious means to the military attorney assigned to represent the member at the IRO hearing. In addition to the information specifically required by RCM 305(h)(2) the commanding officer shall include in the memorandum any other information necessary for the IRO to make a complete and informed review of the commanding officer's confinement decision.

(2) The servicing legal office shall promptly pass the commanding officer's confinement memorandum to the IRO appointed to review the confinement decision.

(3) Upon receipt of the commanding officer's confinement memorandum, and in any event within 7 calendar days of the imposition of confinement, the IRO shall review the memorandum submitted by the accused's commanding officer, ensure the accused is notified of his rights [see, enclosure (8c)] and may also:

(a) Consider additional written matters submitted by the accused; or

(b) Hold either a personal or telephonic interview with the accused and the accused's attorney, if any, at which a representative of the accused's command may also appear, the purpose of which is to hear statements made by either or both parties regarding the continued pretrial confinement of the accused.

(4) The personal or telephonic interview should be informal and non-adversarial in nature. With the exception of Military Rules of Evidence [MRE], Section V (Privileges) and MRE 302 and 305, the Military Rules of Evidence shall not apply to the matters considered. An Initial Review Procedure Guide and an acknowledgment of rights form can be found in enclosures (8b) and (8c). Enclosure (8d) is a suggested format for a record of the proceeding.

(5) RCM 305 authorizes the IRO, for good cause, to extend the time limit for completion of the initial review to 10 days after the imposition of pretrial confinement.

(6) If the necessity for pretrial confinement is not proved by a preponderance of the evidence, the IRO shall promptly order the accused's release and advise the confinement facility and the command ordering the accused into confinement. That command may thereafter impose any form of pretrial restraint, other than confinement, deemed necessary in accordance with the provisions of RCM304.

(7) The IRO shall also review the conditions of the accused's pretrial confinement. The purpose of this review is to assure that the conditions of confinement do not amount to punishment in violation of Article 13, UCMJ. Conditions that are intended to punish the pretrial confinee violate Article 13, UCMJ, unless they are imposed for infractions of discipline while confined. If the IRO finds that confinement conditions violate Article 13, UCMJ, those conditions shall be brought to the attention of the commanding officer and servicing legal office for the responsible OEGCMJ. The commanding officer, in consultation with the servicing legal office, shall review those conditions and determine whether they violate Article 13, UCMJ. Upon determining that the conditions violate Article 13, UCMJ the commanding officer shall correct them, move the accused to a facility where such violations do not exist, or release the accused from pretrial confinement.

(8) Promptly after the conclusion of the informal hearing the IRO shall determine whether the accused should remain in confinement. The decision to release the member or continue confinement shall be reduced to a written memorandum and include the IRO's conclusions, including the factual findings on which they are based. Enclosure (8e) contains a sample format for the IRO's written decision. A copy of the decision memorandum shall be promptly provided to the accused, the command, and servicing legal office for the responsible OEGCMJ. The original memorandum and all documents considered by the IRO shall be delivered to the command ordering the accused into pretrial confinement where they shall be maintained until trial counsel is assigned and takes possession of the documents.

COMDTINST M5810.1E

(9) Once ordered released by the IRO, the accused may be returned to confinement only as provided by RCM 305(l). If returned to confinement, the provisions of RCM 305 and this section apply anew.

(10) The decision of the IRO is final except as provided by RCM 305(j). If release from confinement is denied, however, the accused may later petition the IRO for a new consideration of the case. Such a petition must be based on new circumstances that have arisen since the initial determination was made or on new information available concerning the legality or appropriateness of confinement. The IRO may hold a new hearing.

(11) In the rare case where the IRO to whom the OEGCMJ assigns a case is not neutral and detached with respect to the order into confinement, he or she shall promptly advise the OEGCMJ, who shall assign the case to another IRO.

(12) Any OEGCMJ is authorized to empower any IRO of the military service operating a confinement facility in which a Coast Guard member is in pretrial confinement to release a Coast Guard pretrial confinee on the terms of the regulations applicable to the pretrial confinement review system of that service. Such decision if neutral and detached and in accordance with RCM 305 satisfies the requirements of RCM 305 and this section.

(13) When Commandant (CG-121) has authorized pretrial confinement in a civilian facility pursuant to Article 8.F.4.C., Coast Guard Personnel Manual, COMDTINST M1000.6 (series), that authorization shall direct the District Commander within whose geographical area of responsibility the civilian facility is located, to provide for review by an IRO in the same manner as prescribed herein for members confined in military confinement facilities.

(14) The OEGCMJ may, at the request of a command within his or her area of responsibility, make available a neutral and detached review officer to hold a hearing in the case of an accused prior to any initial order into pretrial confinement. In that case the reviewing officer shall make the initial determination as to the appropriateness of pretrial confinement, and there need not be an additional reviewing officer's hearing except as provided in subparagraphs (9)-(10).

(15) This section does not apply to cases of Coast Guard members assigned to units of another military service who are placed in pretrial confinement by an officer of that service. The pretrial confinement review program of the military service to which the accused is assigned shall apply. It is important to note that while a member may be ordered to perform duties with another service he or she may actually be assigned to a Coast Guard commander and, in that case, the Coast Guard commander is responsible for executing the provisions of this section.

3.D. PREPARATION AND FORWARDING OF CHARGES

3.D.1 Preparation of Charge Sheet

Proper preparation of the charge sheet (Form DD-458) is the foundation of each trial and describes in precise terms the crime with which an accused is charged and must defend against and also the crime that the government must prove. [See, RCM 307.] Form DD-458 is available on the standard workstation. The servicing legal office should be consulted prior to preparing a charge sheet. Preferral of charges (i.e., signing block 11.d. of the charge sheet) has critical legal ramifications because it may constitute the start of time for speedy trial purposes. Charges shall not be signed and sworn (block 11.d.) without prior consultation with the servicing legal office. Failure to comply with the procedural requirements for preferral and notice of charges under RCMs 307, 308, and 707 may preclude military justice action, if speedy trial provisions are violated. A blank charge sheet is found at enclosure (10a). Appendix 4, MCM and enclosure (10b) contains a sample charge sheet. Enclosure (10c) contains detailed instructions for the preparation of the charge sheet. Errors in the charge sheet may be corrected in accordance with RCM 603. The officer making corrections on the charge sheet should initial them. When charges are recommended as a result of an administrative investigation under the Administrative Investigations Manual, COMDTINST M5830.1 (series), a draft charge sheet (not signed and sworn) may be submitted as an enclosure to an investigative report.

3.D.2 Forwarding of Charges

3.D.2.a Special and Summary Court-Martial Cases

When a commanding officer taking action on charges deems trial by special or summary court-martial appropriate, but is not authorized to convene the court-martial, the charges and accompanying paperwork shall be forwarded, via most expeditious means, to the next superior in the chain of command authorized to convene the type of court-martial deemed appropriate. In the case of commanding officers of headquarters units, the charges and accompanying paperwork will be forwarded to the OEGCMJ. [See, subparagraph 3.A.3 b (2)0 above.]

3.D.2.b General Courts-Martial Cases

When a commanding officer taking action on an investigation in compliance with the provisions of Article 32, UCMJ, deems trial by general court-martial to be appropriate, but is not authorized to convene such court-martial or finds the convening of such court-martial impracticable, the charges and accompanying paperwork will be forwarded via most expeditious means to the OEGCMJ, along with the commanding officer's recommendation.

3.D.2.c Forwarding with Disposition Recommendation

A commanding officer may always forward via most expeditious means the charges and accompanying paperwork to the next superior in the chain of command with a recommendation for disposition and an explanation why the matter is forwarded for disposition. [See, RCM 401(c)(2).] This may be done, for example, by a special court-martial convening authority who believes that a charge(s) should be investigated at an Article 32, UCMJ investigation and, after consulting with the servicing legal office and the superior commander, believes the superior commanding officer has more resources with which to comply with the requirements of Article 32, UCMJ and RCM 405.

3.D.3 Disposition of Investigations when a Member has Transferred

3.D.3.a Investigating Command

When a member transfers from a command prior to the completion of an investigation into matters that may form the basis for charges against that member under the UCMJ, or, a command obtains information that a member, while previously attached to the command, committed acts that may form the basis for charges against that member under the UCMJ, the command from which the member has transferred retains responsibility to determine if an investigation is warranted, and if so, promptly complete an investigation of the matter.

3.D.3.b Prosecutorial Discretion

Upon completion of an investigation, the commanding officer of the investigating command should determine an appropriate disposition of the matter. In making this determination, the matter should be discussed with the servicing legal office. The commanding officer may forward via most expeditious means the matter with a recommendation for disposition to another appropriate convening authority or to the current command of the member. The recommended disposition may be no further action, further investigation by another command, administrative action, NJP, or court-martial. If empowered, the commanding officer of the investigating command may opt to convene a court-martial. A properly constituted court-martial may try any member subject to the UCMJ, even if the accused is not under the command of the convening authority so long as the member is properly ordered to report before the court-martial. Factors that a convening authority may consider in deciding whether to convene a court-martial of a member not currently under the command of the convening authority include, but are not limited to:

- (1) The effect upon discipline at that command;
- (2) The effect upon operations;
- (3) Location of parties, evidence and witnesses; and
- (4) Costs.

Consultation between a convening authority not having the member in his or her command and the current commanding officer of the member is essential to ensure all factors are properly considered and to ensure administrative and logistical support. Lack of such consultation, while unwise, will not deprive a properly constituted court-martial of jurisdiction.

3.D.3.c Forwarding Investigation to Another Command

The investigating command may take the following actions if the commanding officer decides the matter should be disposed of by another command:

(1) Forward the investigation (e.g., CG-4608 (Report of Investigation) or CG-4910 (Report of Offense and Disposition)), via most expeditious means to his or her OEGCMJ and the receiving command's OEGCMJ, to the receiving command (typically, the commanding officer or officer-in-charge of the member who was the subject of the investigation). If the investigating command and the receiving command have the same OEGCMJ, the investigation shall be forwarded via that officer.

(2) Include with the investigation a recommended disposition of the matter, the reason for the recommended disposition, and the reason why the investigating command forwarded the investigation.

(3) Include, unless clearly unwarranted, draft and unsigned proposed charges for use by the OEGCMJ or the receiving command. Draft charges will focus the receiving command upon the relevant issues of the case. Charges should not be preferred (signed or sworn to) without consulting the servicing legal office. Charges shall not be preferred when an investigating command chooses to forward the investigation unless preferral is coordinated with the receiving command. Preferral of charges has critical legal ramifications because it may constitute the start of time for speedy trial purposes. [See, RCM 707.]

3.D.3.d Action by Receiving Command

When a command receives an investigation and draft charges concerning an attached member, the receiving command will review and analyze the investigation and draft charges to determine appropriate disposition. The receiving command may elect to do nothing, take appropriate administrative action, impose NJP or, if empowered, convene a court-martial. The command should consult with its servicing legal office to determine appropriate disposition. Consultation with the investigating command is strongly recommended. Upon determination of an appropriate disposition, the receiving command shall report that determination to its servicing legal office and the reasons for that determination.

3.E Order to Active Duty of a Reservist

3.E.1 Order to Active Duty for Pretrial Investigation under Article 32, UCMJ

If charges against a reservist not on active duty are to be submitted to an Article 32, UCMJ pretrial investigation, the reservist will be ordered to active duty for the investigation. The OEGCMJ who convenes, or approves the convening of the Article 32, UCMJ pretrial investigation, shall issue any necessary recall orders. The reservist should be released from active duty within one working day of the close of the taking of evidence. To minimize the disruption on civilian life and employment, a reservist may be released from active duty during any extended adjournment and recalled when the proceedings reconvene.

3.E.2 Reservist Ordered to Active Duty for Courts-Martial

An accused reservist must be on active duty to be tried by a special or general court-martial. [For summary courts-martial, see, paragraph 2.E.5 above.] The reservist must be recalled before arraignment [see, RCM 204(b)(1)]. If a reservist is not already on active duty, the convening authority shall request the cognizant OEGCMJ order the reservist to active duty. 3.B.3.c.] Such an order must be approved by the Director of Reserve and Training (CG-13) if confinement is to be an authorized punishment. To minimize the disruption on civilian life and employment, a reservist may be released from active duty during any extended adjournment and recalled when the proceedings reconvene. A reservist ordered to active duty may be retained on active duty to serve any adjudged confinement or other restriction on liberty if the order to active duty was approved in accordance with Article 2(d)(5), UCMJ, but such member may not be retained on active duty after service of the confinement or other restriction on liberty. [See, RCM 1003(c)(3)] All punishments remaining unserved at the time the reservist is released from active duty may be carried over to subsequent periods of inactive-duty training or active duty.

3.E.3 Procedure

An order to active duty under this chapter will be issued only by an OEGCMJ. [See, section 3-D, Reserve Policy Manual, COMDTINST M1001.28 (series).]

3.F Pretrial Investigations Under Article 32, UCMJ

3.F.1 General

Prior to referring a case to a general court-martial an investigation must be conducted to inquire into the truth of the matters set forth in the charges, the form of the charges, and the recommended disposition of the charges. [See, RCM 405.]

3.F.2 Who May Direct a Pretrial Investigation

When in receipt of charges that may warrant trial by general court-martial, a commanding officer exercising summary or special court-martial jurisdiction may order an Article 32, UCMJ pretrial investigation, or may request an OEGCMJ to order a pretrial investigation under Article 32, UCMJ, and RCM 405. [See, RCM 403 and 404.] When an OEGCMJ receives a request for an investigation of those charges, he or she may order a pretrial investigation in accordance with the provisions of RCM 405 after which additional action under RCM 407 may be taken, as appropriate. An OEGCMJ is not required to conduct an investigation under Article 32, UCMJ when matters are referred to him or her for that purpose. The convening of an Article 32, UCMJ investigation is solely a matter within the discretion of the convening authority and, in some cases, other for a for determining appropriate action might be determined more appropriate.

3.F.3 Investigating Officer

The officer convening the pretrial investigation may request assistance from the Office of Legal Policy and Program Development (CG-0948) in identifying a judge advocate available to serve as an Article 32, UCMJ investigating officer. Requests shall be made by submitting a letter or message request to the Office of Legal Policy and Program Development (CG-0948), copy to the Office of Military Justice (CG-0946). The request shall contain the following information:

- a. Case name;
- b. Tentative convening date;
- c. Estimated duration of the investigation;
- d. General nature of the charge(s);
- e. Name of any attorney, if assigned;
- f. Whether the accused is in pretrial confinement; and,
- g. The date charges were preferred, if at all.

3.F.4 Reporter

A reporter may be detailed to an investigation under Article 32, UCMJ, at the discretion of the convening authority who convened the Article 32 hearing. Normally, reporters are detailed only for unusual or complex cases. Any request that a reporter be detailed to the investigation must be forwarded via most expeditious means to the convening authority for the Article 32 investigation for decision. The convening authority for the Article 32 hearing should consult with their servicing legal office prior to making a decision on whether to detail a reporter.

3.F.5 Procedure

Enclosure (12a) is an Article 32, UCMJ procedural guide. A sample IO report in both letter and Form DD-457 format are located at enclosures (12b) and (12c), respectively. A blank Form DD-457 can be found at enclosure (12d). A sample IO letter to the accused in preparation for the hearing is found at enclosure (12e). A suggested script for an Article 32, UCMJ hearing is found at enclosure (12f). The most current versions of the procedural guide and script are posted on the Office of Military Justice (CG-0946) web page.

3.F.6 Claims of Privilege at Investigations

3.F.6.a General

Military Rules of Evidence governing privileges are found in Part III, Section V, MCM [see, MRE 501-513]. These privileges include attorney-client communications (MRE 502), communications to clergy (MRE 503), husband-wife communications (MRE 504), classified information (if disclosure would be detrimental to the national security (MRE 505), other government information (if disclosure would be detrimental to the national security) (MRE 506), identity of informant (MRE 507), disclosure of political vote (MRE 508), deliberations of courts and juries (MRE 509), and a limited psychotherapist-patience privilege (MRE 513).

3.F.6.b Mishap Investigations

Information sought or obtained from a MISHAP investigation may be privileged depending on whether the mishap report is classified as a Limited Use Report or a General Use Report. Enclosure (2) to the Safety and Environmental Health Manual, COMDTINST M5100.47(series), provides policy regarding use of information from MISHAP investigations.

(1) Limited Use Reports

(a) With the exception of factual information, Limited Use Reports are privileged from disclosure in their entirety;

(b) In accordance with the Safety and Environmental Health Manual, the decision to release any information from a Limited Use Report, including factual information obtained there from, requires the express consent of the Director of Health and Safety (CG-11), who will consult with the Judge Advocate General. In military justice proceedings, requests for release of any information from a Limited Use Report, including factual information contained therein, shall be sent to the Director of Health and Safety (CG-11), via the Office of Military Justice (CG-0946). This request shall specify the proceeding, the specific information sought from or anticipated to be contained in the Limited Use Report, why it is essential to use such information in the proceeding, why such information cannot be obtained through other means, and why release of such information would promote the interests of justice. If the issue of discovery or disclosure of a Limited Use Report arises in a court-martial, close coordination with the Office of Military Justice (CG-0946) and the Director of Health and Safety (CG-11) is required prior to any release of such information or assertion of a privilege under MRE 506.

(c) Nothing in this subparagraph should be interpreted to prohibit an investigating officer from obtaining the evidence contained in the Limited Use Report from the same sources that provided the evidence to the MISHAP investigation. The privilege with respect to Limited Use Reports does not run with the information; only the Report itself is privileged. Therefore, should a witness or party before the MISHAP investigation provide evidence at the Article 32 investigation or provide evidence or a statement in any other administrative or military justice proceeding, nothing in this subparagraph would bar the investigating officer from considering that evidence or statement.

(2) General Use Reports

General Use Reports are not privileged from disclosure.

3.F.7 Use of Investigative Material

In order to obtain necessary information on preliminary issues, such as which witnesses to question and initial determinations on witness and evidence availability, the investigating officer may refer to investigative materials, such as a PIO report or a CGIS Report of Investigation. Such materials will not be considered in making the findings required in RCM 405(j)(2)(H) and (I) unless produced at the investigation in accordance with RCM 405(g).

3.G Referral of Charges to Special or General Courts-Martial

3.G.1 Notification

COMDTINST M5810.1E

- a. After determination to refer a case to special or general court-martial, the servicing legal office of the appropriate OEGCMJ shall follow the procedures set forth in subparagraph 0 below to obtain a military judge.
- b. When charges are referred to trial by court-martial, a copy of the charge(s) and specification(s), and a copy of the convening order shall be forwarded via a DHS approved commercial carrier (e.g. Fedex or UPS) to the trial counsel, defense counsel, Chief Trial Judge (CG-094J) and military judge detailed to the court-martial.
- c. When trial is to be by general court-martial, a copy of the pretrial investigation conducted pursuant to Article 32, UCMJ, and the pretrial advice will be furnished to both trial and defense counsel at or before the time charges are referred to trial.

3.G.2 Contents of Convening Order

The text of the convening order is provided in the forms in Appendix 6, MCM and the notes therein. For convenience in adapting the forms in Appendix 6, MCM to Coast Guard format, a sample summary court-martial and special court-martial convening order and an example of amendments to a convening order are contained in enclosures

3.G.3 Signature of Convening Authority

The convening authority shall personally subscribe convening orders and amending orders Subordinate officers serving in command in an “acting” capacity qualify as a convening authority [see, RCM 601]. If during the course of a trial, the trial is unable to proceed because the court has been reduced below a legal quorum and the convening authority is still in command but unavailable to sign an amendment to the convening order due to conducting business away from the command he or she may orally amend the convening order and confirm the amendment in writing prior to authentication of the record of trial.

3.G.4 Distribution of Convening Order

A copy of the convening order and each amending order shall be provided to each member named in the order, the military judge, and defense counsel The original shall be provided to trial counsel.

3.H COURT-MARTIAL PERSONNEL

3.H.1 Detailing Military Judges to Courts-Martial

The following procedures shall be followed for detailing military judges for general and special courts-martial.

3.H.1.a Request for Detail of Military Judges to Courts-Martial

The OEGCMJ, or the convening authority, if trial counsel is on the convening authority's staff, shall request that the Chief Trial Judge detail a military judge by submitting an electronic docketing request using the online tool maintained by CG-0948. See Rule 6.1 of enclosure (16a) of this manual. The backup for the online tool is letter or e-mail to the Chief Trial Judge (CG-094J), copy to the Office of Military Justice (CG-0946). This request shall contain the following information:

- (1) Convening authority and type of court;
- (2) Case name;
- (3) Trial location;
- (4) Preferred trial date, and backup date if any;
- (5) Estimated trial duration;
- (6) General nature of charges or UCMJ Article numbers;
- (7) Names, telephone numbers, facsimile numbers, and email addresses of both trial and defense counsel;
- (8) State whether the accused is in pretrial confinement and date confined; and,
- (9) Speedy trial deadline under RCM 707.

3.H.1.b Detail Pursuant to RCM 503(b)(1)

The Chief Trial Judge shall detail military judges to general and special courts-martial. During periods of unavailability due to leave or illness, the alternate docketing judge, designated by the Judge Advocate General, may detail judges. If no alternate docketing judge is available, the Judge Advocate General will designate a certified military judge to so act.

3.H.1.c Docket Control

The Chief Trial Judge, with the assistance of Office of Legal Policy and Program Development (CG-0948), shall maintain the docket for all general and special court-martial military judges. The Chief Trial Judge will provide access to the court-martial docket to the Office of Military Justice (CG-0946). The Chief Trial Judge (CG-094J) may establish additional procedures for docketing courts-martial.

3.H.1.d Restrictions

COMDTINST M5810.1E

(1) A part-time special court-martial military judge shall not be detailed to a special court-martial if he or she is assigned to the staff of the convening authority or the OEGCMJ over the command of the convening authority or is in the performance evaluation or reviewing chain for any participating counsel.

(2) By policy, a Coast Guard special court-martial must have a military judge detailed.

3.H.1.e Continuances

Once detailed, the military judge has sole authority to grant continuances.

3.H.1.f Message Traffic

(1) Message traffic originated by the military judge shall include the phrase “JUDGE [last name] SENDS”.

(2) Message traffic addressed to the military judge shall include the phrase, “FOR JUDGE [last name]”.

3.H.2 Detailing Certified Defense Counsel to Special and General Courts-Martial

3.H.2.a General

The Office of Legal and Defense Services (CG-094M) will detail Article 27(b), UCMJ certified defense counsel in accordance with its established procedures. At the time the charges are preferred, the servicing legal office should contact the Office of Legal and Defense Services (CG-094M) to arrange for detail of defense counsel. The process for obtaining detailed defense counsel will not be delayed because doing so may delay the court-martial unnecessarily. Detailed defense counsel may be a Coast Guard judge advocate or a military attorney from any other DoD military service pursuant to an inter-service agreement [see, enclosure (24b)]. Defense counsel should not normally be detailed from the staff of the convening authority or of the OEGCMJ. Defense counsel should not normally be within the rating chain of the cognizant SJA. Any demand for detailed counsel who is not on the convening authority’s or OEGCMJ’s staff or in the rating chain of the SJA should be forwarded immediately via most expeditious means to the convening authority for action. The accused is not entitled to be represented by more than one military attorney [see, RCM 506(a)]. Normally, the Office of Legal and Defense Services (CG-094M) will fund travel for any military counsel provided at government expense to the accused.

3.H.2.b Restriction

The detailing authorities shall ensure that neither the SJA detailing trial counsel nor the trial counsel are in the rating chain of the detailed defense counsel.

3.H.2.c Excuse or Withdrawal of Detailed Defense Counsel

A detailed defense counsel may be excused only with the express consent of the accused, or by a military judge upon application for withdrawal by the detailed defense counsel for good cause shown. [See, RCM 506(c); enclosure (16a), Rule 7; CGPRP, Rule 1.16.]

3.H.3 Obtaining Individual Military Counsel [IMC]

3.H.3.a General

Article 38, UCMJ provides that an accused has a right to be represented before a general or special court-martial or at an investigation under Article 32, UCMJ, by military counsel of his own selection if that counsel is reasonably available. Counsel serving in the Coast Guard or Department of the Navy are “reasonably available” to represent a Coast Guard accused unless they are unavailable within the meaning of RCM 506, this paragraph or under regulations of the Secretary of the Navy [see, JAGMAN Section 0131].

3.H.3.b Categorical Determinations of Non-Availability

(1) Persons Deemed “Not Reasonably Available”

Under the authority of RCM 506(b)(1) the following Coast Guard personnel, in addition to those listed in RCM 506(b)(1) are, by regulation, deemed “not reasonably available” because of the nature of their assignments:

- (a) Persons on terminal leave or not on active duty;
- (b) Persons assigned to an out-of-specialty or non-legal billet;
- (c) Persons assigned as a full-time military judge or active as a part-time military judge;
- (d) Persons assigned to Coast Guard appellate advocacy duties (either government or defense) and their supervisors;
- (e) Persons assigned to an organization, activity, or agency other than any of the armed forces of the United States; and,

(f) Persons assigned to duty at the departmental level or higher.

(2) Exception

(a) Existing Attorney-Client Relationship

If an attorney in one of the categories in subparagraph 0 above has an existing attorney-client relationship with the accused regarding a charged offense, the attorney's availability must be determined under the procedures in subparagraph 0 below. [see, RCM 506(b)(2)].

(b) Defined

An attorney-client relationship exists between the accused and requested counsel when it has been properly authorized by the responsible authority, the requested counsel and the accused have had a privileged conversation relating to a charge pending before a proceeding (*e.g.*, GCM, SPCM, Article 32 investigation), and the requested counsel has engaged in active pretrial preparation and strategy with regard to that charge. A counsel will be deemed to have engaged in active pretrial preparation and strategy if that counsel has taken action on the case that materially limits the range of options available to the accused at said proceeding. Examples of active pretrial preparation include, but are not limited to: advising the accused to waive or assert a legal right, other than simply asserting the right to remain silent, where the accused followed such advice by waiving or asserting that right; representing the accused at an Article 32 investigation dealing with the same subject matter as any charge pending before the proceeding; submitting evidence for testing or analysis; offering a pretrial agreement on behalf of the accused; submitting a request for an administrative discharge in lieu of trial on behalf of the accused; or interviewing witnesses relative to any charge pending before the proceeding.

(c) Relationships That Do Not Qualify for Exception to Categorical Determination of "Not Reasonably Available"

If the attorney-client relationship were created solely to provide advice to a member pursuant to paragraph 1.C.2., (*U.S. v. Booker*), solely for representation of the accused at a pretrial confinement IRO hearing pursuant to RCM 305(f), or to represent the accused as an appellate counsel pursuant to Article 70, UCMJ [see, paragraph 5.C.T below.], this exception does not apply. Contact with a prospective IMC to discuss the IMC's availability does not create an "existing" attorney-client relationship and the exception does not apply. Simply discussing the legal and factual issues in the case with the accused, or conducting legal research concerning an issue in the case does not constitute active pretrial preparation and strategy and the exception does not apply.

3.H.3.c Submitting Individual Military Counsel [IMC] Requests

Requests for IMC shall be submitted to the convening authority via the trial counsel and the convening authority's SJA. The request shall include any matters to be considered in

favor of providing the requested counsel. If the accused has an existing attorney-client relationship with the requested attorney regarding a charged offense, the request shall include the general circumstances and authority under which the relationship was established, the approximate dates of the relationship, and the specific charged offenses that were the subject of the relationship, without revealing privileged information. If the requested attorney is one of those “not reasonably available” under subparagraph 3.H.3.d above because of the nature of that attorney’s current assignment, the request shall state whether the attorney is expected to be available at the time of the proceedings, and the reasons therefore.

3.H.3.d Action on Requests for Attorneys Categorically Deemed “Not Reasonably Available”

If an accused before a general or special court-martial requests an IMC who is deemed “not reasonably available” under subparagraph 0 above and the request does not assert an exception under s3.H.3.b.(2), the convening authority shall deny the request and state the reasons therefore, citing this section and RCM 506(b)(1).

3.H.3.e Action on Other Cases

In other cases, if an accused before a general or special court-martial requests an IMC, the convening authority shall forward the request via most expeditious means to the commander or head of the organization, activity, or agency to which the requested person is assigned. For attorneys assigned to duty with another armed service, the procedures of that service shall be used. For attorneys assigned to Coast Guard commands:

(1) The request shall be forwarded to the SJA for the requested IMC’s commanding officer (i.e., IMC’s SJA). The request should be forwarded by message, fax, approved DHS commercial carrier (e.g. Fedex or UPS), or similarly expeditious means, with copies to the Office of Legal and Defense Services (CG-094M) (the “detailing authority”) [see, paragraph 0 above], the military judge (if detailed), and other appropriate commands. The IMC’s SJA shall determine whether the requested IMC is reasonably available, using the criteria in subparagraph 3.H.3.f below.

(2) If the IMC’s SJA concludes that the requested IMC is not reasonably available, he or she shall forward the request via most expeditious means to the attorney’s commanding officer who shall determine the matter. To provide a basis for review, all determinations that a requested IMC is not reasonably available shall be in writing, shall contain the reasons therefore, and shall be provided to the accused or counsel via the convening authority.

(3) When counsel is determined to be available, the IMC’s SJA shall notify the detailing authority, who shall detail the counsel, and may excuse previously detailed counsel, in accordance with RCM506(b)(3).

3.H.3.f Factors for Determining Availability

In determining the availability of counsel to serve as IMC, all relevant factors may be considered, including, but not limited to, the following:

(1) The existence of an attorney-client relationship between the accused and the requested IMC regarding a charged offense. If the attorney was detailed as counsel to the accused, see RCM 505(d)(2)(B).

(2) Any disqualifying factors relating to the requested IMC's duty assignment; any previous involvement with the case as an investigating officer or a witness; or assignment to the same rating chain of the trial counsel or cognizant SJA (rating chain disqualification's ordinarily may be remedied with an express knowing waiver by the accused) [see, subparagraph 3.H.2.b above].

(3) The requested IMC's duty, position, responsibilities, and workload.

(4) Any ethical considerations that might prohibit or limit the participation of the requested IMC.

(5) Time and distance factors (e.g., travel to and from the sites, anticipated date, length of the trial or hearing, the nature and complexity of the charges and legal issues involved in the case, associated costs and availability of funding). Availability of funding may be determined by consultation with the detailing authority, or arrangements may be made for funding from other sources.

(6) The effect of requested IMC's absence on the proper representation of the requested IMC's other clients.

(7) Overall impact of the requested IMC's absence on the ability of the requested IMC's office to perform its required mission (e.g., personnel strength, scheduled departures or leaves, and unit training and mission requirements).

(8) The detailing authorities shall ensure that neither the SJA detailing trial counsel nor the trial counsel are in the rating chain of the IMC. The accused may waive this protection.

3.H.3.g Review of Determinations that Requested IMC is Not Reasonably Available

(1) When a request for IMC is denied in accordance with subparagraph 0 above, an accused has no right to review of this decision except by motion before a court-martial.

(2) Where a determination that an IMC assigned to duty with another service is not reasonably available is based on that service's determination of unavailability, any appeal must be submitted in accordance with that service's regulations.

(3) In other cases, an accused may, upon timely request, obtain review for abuse of discretion of a determination of unavailability by an appropriate OEGCMJ. If the OEGCMJ or higher authority made the determination, review shall be by the next higher authority in the chain of command. An accused is not entitled to such review if the reviewing authority under this subparagraph is Commandant (CCG).

(4) Any request for review of a determination of unavailability must be submitted promptly. In the absence of circumstances justifying a longer delay, review may be denied as untimely if the request is submitted more than (3) working days after the accused's receipt of the adverse determination.

(5) Requests for review of determination that requested IMC is not reasonably available shall be made in writing to the appropriate authority, with copies to the other involved commands. The request for review shall contain a copy of the determination and articulate why such determination was an abuse of discretion.

3.H.3.h Excuse or Withdrawal of IMC

Like detailed defense counsel, an approved IMC may be excused only with the express consent of the accused, or by a military judge upon application for withdrawal by the IMC for good cause shown. [See, RCM 506(c); enclosure (16a), Rule 7; CGPRP, Rule 1.16.]

3.H.4 Detail of Trial Counsel to Courts-Martial

3.H.4.a General

The SJA for the OEGCMJ shall detail trial counsel for general and special courts-martial. Such an SJA, having a deputy staff judge advocate on his staff, may delegate this authority to his or her deputy. At least one of the trial counsel detailed to a general court martial must be certified in accordance with Article 27(b), UCMJ. The detailing authorities may also detail assistant trial counsel to general and special courts-martial. Assistant trial counsel need not be certified in accordance with Article 27(b), UCMJ. Although not required by Article 27(c), UCMJ, at least one of the trial counsel detailed to a special court-martial should normally have the same qualifications under Article 27(c), UCMJ, as the detailed defense counsel.

3.H.4.b Restriction

The SJA assigned to an OEGCMJ shall not be detailed as trial counsel to a court-martial convened by a unit within the geographical limits of the command to which he or she is assigned.

3.H.4.c Trial Counsel Preparation

A procedural rights checklist found at enclosure (18i) may assist a trial counsel prepare for the court-martial process. The checklist addresses pretrial, trial, and post-trial procedures. An updated copy of the checklist will be maintained on the Office of Military Justice (CG-0946) website.

3.H.5 Court Reporters, Interpreters, Bailiffs, and Court Security Personnel

3.H.5.a Appointment

Appointment of reporters, interpreters, bailiffs, and court security personnel by the convening authority or authority directing the proceedings may be effected personally, or, at his or her discretion by any other person. Such appointment may be oral or in writing.

3.H.5.b Disqualification

Reporters, interpreters, bailiffs, and court security personnel shall be disqualified as provided in RCM 502(e)(2).

3.H.5.c Duties

The duties of reporters, interpreters, bailiffs, and court security personnel shall be as prescribed in RCM 502(e)(3), other applicable provisions of this Manual, and by the military judge or trial counsel.

3.H.5.d Court Reporters

(1) Generally

In all special and general courts-martial, the convening authority shall detail a qualified court reporter. Court reporters detailed to those courts-martial shall record verbatim, by shorthand, mechanical, electronic or other means all the proceedings of the court. A reporter may also be detailed, by the appropriate official, to a summary court-martial, a deposition, or an investigation under Article 32, UCMJ [see, section 3.F above].

(2) Court Reporter Qualification and Duty

(a) The term “qualified court reporter” as used in this chapter means a professional civilian court reporter from a commercial court reporting service or

a yeoman with the 02 or 08 Coast Guard qualification code [see, Enlisted Qualifications Manual, COMDTINST M1414.8 (series)], or any other person having equivalent qualifications. A yeoman's eligibility for the 02-qualification code attained through an on-the-job or other recognized training program must be certified in writing by the individual's district or staff legal officer.

(b) Detail of a reporter under this chapter is a full time duty until the record of the proceedings is complete. No other duties shall be assigned to the reporter that might interfere with his or her preparation of the record of trial or investigation in a timely fashion.

(c) Under the supervision and at the direction of the trial counsel of a general or special court-martial, the reporter shall prepare a record of trial [ROT], using Appendix 14, MCM as a guide [see also, section 5.A below]. The court reporter shall preserve the complete shorthand notes or mechanical record of the proceedings under the supervision of the trial counsel. Additional clerical assistants may be detailed when necessary.] Enclosure (16j) is a guide designed to assist civilian court reporters, who might not be familiar with courts-martial procedures and terminology, in carrying out their duties. [See, RCM 501(e).]

3.H.5.e Interpreters

In each court-martial case, Article 32, UCMJ investigation, or deposition the convening authority or the officer directing such proceeding shall appoint, when necessary, an Interpreter for the proceeding. Interpreters shall be qualified as set forth in MRE 604.

3.H.5.f Bailiffs and Court Security Personnel

The convening authority shall appoint a bailiff for every general and special court-martial. The bailiff shall be present at every court-martial session unless the military judge excuses his or her presence. The trial counsel shall brief the bailiff as to his or her duties well in advance of trial [see, Guide For Bailiffs, enclosure (16i)]. Trial counsel shall make an initial security risk assessment and determine whether to take special security precautions. Assistance may be obtained from CGIS. Trial counsel will notify the convening authority, military judge and defense counsel before trial of any special security arrangements deemed necessary. The convening authority will appoint court security personnel as necessary. If special security arrangements are deemed necessary, the trial counsel should coordinate the arrangements with the convening authority, bailiff, court security personnel and CGIS.[See enclosure (16a), Rule 13.]

3.H.5.g Source and Expenses

The services of reporters or interpreters for duty to a general or special court-martial, an investigation under Article 32, UCMJ, or at the taking of a deposition may be procured locally. The expenses incidental to a court-martial or Article 32 investigation are normally the responsibility of the convening authority.

3.H.6 Members

3.H.6.a Changes in Membership Before Court has been Assembled

A general court-martial or special court-martial convening authority may delegate his or her authority to excuse members under RCM 505(c)(1) to a principal assistant or to the SJA.

3.H.6.b Changes in Membership After Court has been Assembled

Article 29(a), UCMJ, and RCM 505(c)(2) provide that no member of a general or special court-martial may be absent or excused after a court-martial has been assembled except for physical disability, as a result of a challenge, or by order of the convening authority for good cause.

3.H.6.c Court-Martial Member Questionnaire

RCM 912(a)(1) permits the use of a court-martial member questionnaire to facilitate voir dire. As a matter of policy and practice, absent good cause approved by the military judge, trial counsel shall use enclosure (16g) in every general and special court-martial. Court members should be requested by the SJA's staff to complete the questionnaire and return it to the SJA's office at least five working days before the trial date. [See enclosure (16a), Rule 9.2 and 22.2.]

3.H.6.d Detailing Court-Martial Members

Convening Authorities are authorized to detail, applying the selection criteria of R.C.M. 502(a) and Article 25, any member from any command located within the geographic boundaries of the district in which the Convening Authority's command, or the accused, is located.

3.I ADMINISTRATIVE PRETRIAL MATTERS

3.I.1 Uniform for Trial

Except for the military judge, all military personnel required to be present at sessions of trial attended by members of the court shall wear the uniform prescribed by the military judge. The military judge shall wear a judicial robe. [See enclosure (16a), Rule 14.]

3.I.2 Court Room and Trial Facilities

The military judge may refuse to commence trial if the site, facilities, and security provided are not suitable. Among the factors that should be taken into account in determining the appropriateness of the site and facilities of the courtroom are:

- a. Freedom from noise or other disturbing influences;
- b. Adequacy of the bench;
- c. Adequacy of seating for the members of the court;

- d. Adequacy of space for spectators;
- e. Adequacy of lighting and ventilation;
- f. Adequacy of counsel tables;
- g. Adequacy of recording equipment;
- h. Adequacy of space for the deliberation of court members;
- i. Adequacy of space for witnesses waiting to testify;
- j. Adequacy of establishing and maintaining security; and
- k. Any other factors that create or detract from an appropriate judicial forum.

3.J PRETRIAL AGREEMENTS

3.J.1 General

The authority of Coast Guard convening authorities to enter into pretrial agreements shall be exercised in accordance with RCM 705 and the discussion there under, and the provisions of this section. Enclosure (16f), a sample agreement, must be modified as appropriate to include all of the agreements made between an accused and the convening authority. No matters “understood” between the parties should be omitted from the written agreement.

3.J.2 Pretrial Agreement Negotiations and Content

3.J.2.a Consultation with Servicing Legal Office [SJA]

Pretrial agreements may be negotiated where the potential for a significant benefit to the government by entering a pretrial agreement can be articulated. Whether to accept or reject any proposed pretrial agreement is a matter within the discretion of the parties: the accused and the convening authority. Due to the complexity and legal effects of both negotiations and the final agreement, however, Coast Guard convening authorities must consult closely with their servicing legal office [SJA] prior to and throughout the pretrial agreement negotiation process. Direct negotiations of pretrial agreements are usually conducted primarily between the trial counsel (subject to authority from the convening authority and SJA) and the defense counsel. A thorough legal review of any proposed pretrial agreement is critical to ensure that it reflects the intent of the parties and comports with the status of the law at the time of the agreement.

3.J.2.b Involving Other Parties

Pretrial agreements shall not normally include provisions purporting to bind persons or officials other than the accused and the convening authority. A convening authority has no authority to bind other governmental officials by a pretrial agreement unless the affected official has explicitly agreed to be so bound.

3.J.2.c Major Federal Offenses

Appropriate consultation with the Department of Justice will take place prior to approval of a pretrial agreement in cases of major federal offenses. [See, paragraph 3.B.7 above.]

3.J.2.d Cases Involving Classified Information

Permission from the Judge Advocate General will be obtained prior to approval of a pre-trial agreement in cases involving classified information. [See, section 4.A below]

3.J.2.e Deferral or Waiver of Automatic Forfeitures

Automatic forfeiture under Article 58b, UCMJ is a congressionally required administrative (not a courts-martial sentencing) action applicable only if a prisoner is otherwise entitled to pay. There are circumstances in which a member is convicted and sentenced to confinement and is not entitled to, or loses entitlement to military pay. Notable is the loss of entitlement to pay when a prisoner's enlistment expires while in confinement (e.g., a prior extension does not become effective if the member is confined and a prisoner is precluded from reenlisting). It is important to remember this issue during any pre-trial agreement negotiations to the extent they may address Article 58b, UCMJ deferment or waiver of automatic forfeitures. [See, subparagraph 5.D.5.b below].

3.K AUTHORITY TO GRANT IMMUNITY FROM PROSECUTION

3.K.1 General

In certain cases involving more than one participant, the interests of justice may make it advisable to grant immunity, either transactional or testimonial, to one or more of the participants in the offense in consideration for their testifying in the investigation and/or the trial of another offender. Transactional immunity, as that term is used in this section, shall mean immunity from criminal prosecution for any offense or offenses to which the compelled testimony relates. Testimonial immunity, as that term is used in this section, shall mean immunity from the use in aid of future criminal prosecution, of testimony or other information compelled under an order to testify. Ordinarily, testimonial immunity is all that is required to protect the right against self-incrimination and compel a witness to testify. The authority to grant either transactional or testimonial immunity to a witness is reserved to the cognizant OEGCMJ. This authority may be exercised in any case whether or not formal charges have been preferred and whether or not the matter has been referred for trial. The approval of the Attorney General of the United States on certain orders to testify may be required, as outlined below.

3.K.2 Procedure

The procedures outlined herein are in amplification of RCM 704, and the "Discussion" under that rule. The written recommendation that a certain witness be granted either transactional or testimonial immunity in consideration for testimony deemed essential to the public interest shall be forwarded via first class/priority certified mail to the cognizant OEGCMJ by the trial counsel in cases referred for trial, the pretrial investigating officer

conducting an investigation upon preferred charges, the counsel or recorder of any other fact finding body, or the investigator when no charges have been preferred. The recommendation shall state in detail why the testimony of the witness is deemed so essential or material that the interests of justice cannot be served without the grant of immunity. The OEGCMJ shall act upon such request after referring it to his or her legal office for consideration and advice.

3.K.3 Civilian Witness, or Military Witness Liable to Prosecution in Federal Court

If a military witness is liable to prosecution for civilian federal offenses, but is willing to testify under a grant of immunity from court-martial pursuant to RCM 704, the OEGCMJ should grant such immunity only after determining that the cognizant United States Attorney is not interested in pursuing the case. Pursuant to RCM 704, if the United States Attorney believes that authorization for immunity should be sought from the Attorney General, any proposed grant of immunity must meet the requirements of 18 U.S. C. §§ 6002 and 6004. If a grant of immunity to a civilian witness, or to a military witness who is liable to prosecution for civilian federal offenses, is necessary in the public interest, the approval of the Attorney General of the United States, or his or her designee, should be obtained prior to granting immunity by the cognizant OEGCMJ. The OEGCMJ may obtain the approval of the Attorney General in such circumstances by directing a letter to the Office of Military Justice (CG-0946) requesting assistance in obtaining a grant of immunity for the witness, and enclosing the signed grant of immunity and order to testify to be approved. The grant of immunity and order to testify should be substantially in the form set forth in enclosures (13a) through (13c). Once approved through the Department of Justice, a grant of immunity signed by the OEGCMJ extends to all federal actions. Requests to grant immunity must be in writing, allowing at least 3 weeks for consideration, and must contain the following information:

- a. Name, citation, or other identifying information, of the proceeding in which the order is to be used.
- b. Name of the person for whom the immunity is requested.
- c. Name of employer, company or unit with which the witness is associated.
- d. Date and place of birth, if known, of the witness.
- e. FBI number or local police number, if any, and if known.
- f. Whether any State or Federal charges are pending against the prospective witness and the nature of the charges.
- g. Whether the witness is currently incarcerated, under what conditions, and for what length of time.
- h. A brief resume of the background of the investigation or proceeding before the agency or department.

- i. A concise statement of the reasons for the request, including:
 - (1) What testimony the prospective witness is expected to give;
 - (2) How this testimony will serve the public interest;
 - (3) Whether the witness:
 - (a) Has invoked the privilege against self-incrimination; or,
 - (b) Is likely to invoke the privilege (if so, based on what information).
- j. An estimate as to whether the witness is likely to testify in the event immunity is granted.

3.K.4. Post-Testimony Procedures for Civilian Witness, or Military Witness Liable to Prosecution in Federal Court

After the witness has testified, the following information, together with a verbatim transcript of the witness' testimony, authenticated by the military judge, shall be provided to the Office of Military Justice (CG-0946) for further transmittal to the United States Department of Justice, Criminal Division, Immunity Unit:

- a. Name, citation, or other identifying information, of the proceeding in which the order was requested;
- b. Date of the examination of the witness;
- c. Name and residence address of the witness;
- d. Whether the witness invoked the privilege;
- e. Whether the immunity order was used;
- f. Whether the witness testified pursuant to the order; and,
- g. If the witness refused to comply with the order, whether contempt proceedings were instituted, or are contemplated, and the result of the contempt proceeding, if concluded.

3.K.5 Form of Grant of Immunity — Order to Testify

In any case in which a military witness is granted transactional immunity, and is not liable to prosecution in a federal district court, the OEGCMJ should execute a written grant and order to testify substantially in the form of enclosure (13a) of this Manual. In any case in which a military witness is granted testimonial immunity, the OEGCMJ should execute a written grant and order to testify substantially in the form of enclosure (13b) of this Manual. In any case in which a civilian witness is granted testimonial immunity, the OEGCMJ should execute a written grant and order to testify substantially in the form of enclosure (13c) of this Manual. The language of the written grant determines the scope of this immunity. The forms set out in enclosures (13a) through

(13c) should be tailored as necessary to incorporate the terms of the grant of immunity. For example, a grant conditioned on the act of testifying becomes effective only when the witness testifies. If the witness is to be granted immunity to give information during the investigation of a matter, this must be provided for in the grant of immunity.

3.L ASSISTANCE TO DEFENSE COUNSEL

3.L.1 General

When military defense counsel is assigned to represent a person before a court-martial or a matter preliminary to a court-martial, counsel should be supplied with the means to function effectively. These means include, but are not limited to, a work area, a consultation area in which privacy can be maintained, clerical assistance, access to a working library, transportation, and supplies and services needed to prepare the defense or perfect an appeal. At locations removed from district offices or other major military installations, some of these means will not be readily available or will be impossible to provide. Whenever possible, however, reasonable requests by defense counsel should be accommodated.

3.L.2 Defense Investigative Assistance

3.L.2.a General

(1) The provisions of 18 U.S.C. § 3006A(e) that provide for investigative assistance at the government's expense for the defense on behalf of an indigent defendant before United States district courts, do not apply to trials by court-martial. *United States v. Johnson*, 47 C.M.R. 402 (C.M.A. 1973). This paragraph, however, applies the policy behind those provisions to Coast Guard courts-martial if defense counsel establishes good cause and so long as assistance is reasonably available without unduly delaying trial.

(2) While preparing a case defense counsel may for good cause request investigative assistance if necessary to provide adequate assistance of counsel.

(3) While a request for investigative assistance is made to the convening authority, few convening authorities have trained investigators under their command. Therefore, when the convening authority determines that a request for investigative assistance should be granted and agrees that the assignment of a trained investigator to defense counsel is necessary for the defense of the case, the convening authority shall so recommend to the next senior in command who has trained investigators under his or her command or to the Coast Guard Investigative Service [CGIS]. Even when good cause is shown it is not always necessary that a CGIS agent trained in investigative duties be provided. Adequate assistance can often be provided by an officer or enlisted member who is not trained in investigative duties.

(4) An individual working for an attorney in the defense of a criminal case is considered an extension of the attorney. Such individual is subject to the same restrictions as an attorney on releasing information concerning the client or the case, is subject to the attorney/client privileged relationship, and any information he or she produces is considered to be part of the “attorney work product.” Therefore, unless the client and attorney consent, information obtained by an investigator assigned to the defense counsel cannot be released to the government. This restriction precludes submission of the normal investigative report to CGIS without the approval of the defense counsel. When investigative assistance is provided, the investigator’s immediate supervisor shall be the defense counsel to whom he or she is assigned.

(5) The trial judge may review the denial of a request for investigative assistance.

3.L.2.b Request for assistance

(1) Defense counsel shall make all requests for investigative assistance to the convening authority in writing. The request should include:

- (a) Name, duty station, etc., of accused.
- (b) Specific charges and type of court-martial.
- (c) Type of investigative assistance requested, *e.g.*, Coast Guard special agent, commissioned officer, enlisted member, etc.
- (d) Period of time assistance desired, including any travel requirements.
- (e) General nature of assistance required, *e.g.*, interview of witnesses, obtaining records, research, etc., and noting with particularity any required special skills.
- (f) A detailed showing of good cause why investigative assistance is necessary for the defense of the case.

(2) If the convening authority determines investigative assistance is not necessary for the defense of the case, he or she will deny the request. Such determination is not subject to appeal, except as provided in subparagraph 3.L.2.a above.

(3) If the convening authority determines pursuant to the provisions of this section that investigative assistance should be provided, he or she shall select a suitable individual under his or her command if available (without unduly delaying trial) and make the individual available to defense counsel. The convening authority’s determination as to the qualifications of the individual assigned shall not be subject to appeal, except as provided in 3.L.2 a above.

(4) If the convening authority does not have a suitable individual under his or her command, he or she shall refer the matter, by endorsement of the defense

counsel's request, to the next senior in command who would normally be expected to have a suitable individual under his or her command, or to the Director, Coast Guard Investigative Service (CGIS). That officer shall make an independent determination as to whether, pursuant to the provisions of this section, investigative assistance shall be provided. This determination as to whether investigative assistance shall be provided, and the determination as to the qualifications of the person provided, shall not be subject to appeal, except as provided in subparagraph 3.L.2.a above. Requests for investigative assistance forwarded to CGIS via most expeditious means, and the appointment of CGIS investigators, or investigators from other agencies or military services, shall be handled in accordance with this Section and the Coast Guard Investigations Manual, COMDTINST M5520.5 (series). If the officer determines that investigative assistance will not be provided, he or she will so advise the defense counsel via the convening authority.

3.L.2.c Report Required

When a CGIS agent is assigned to assist defense counsel, upon completion of the assignment he or she shall submit a report to the Director, Coast Guard Investigative Service (CG-2-CGIS), via the chain of command, containing an account of the investigative assistance provided, including any travel performed and expense involved. This report shall be subject to any restrictions imposed by defense counsel, and shall be subject to the defense counsel's prior review and approval if he or she so desires.

3.M. VICTIM AND WITNESS PROTECTION

3.M.1 Concern for Victims and Witnesses

This section provides guidance for the treatment of victims and witnesses. Increased nationwide concern for the impact of the criminal justice system on victims and witnesses led to enactment of the Victim and Witness Protection Act of 1982 (Public Law 97-291), 18 U.S.C. §§ 1512-5, 3663-4. Under that Act the Attorney General of the United States was tasked with issuing guidelines for protection and improved treatment of victims and witnesses. The Attorney General Guidelines for Victim and Witness Assistance were issued on 9 July 1983, and most recently updated in May 2005. The Sexual Assault Prevention and Response Program instruction, COMDTINST 1754.10 (series) supplements this section and where inconsistent with this section, will control. The SAPRP Instruction should be consulted for the details of the Coast Guard's implementation of the Victim and Witness Protection Act.

3.M.2 Applicability and Scope

The procedures of this section apply to the victims and witnesses of offenses that may involve Coast Guard proceedings under the UCMJ. They also apply to the victims of crimes under the jurisdiction of state or other federal authorities during any portion of the investigation or trial conducted primarily by Coast Guard personnel.

COMDTINST M5810.1E

This section provides only internal guidance to protect and assist crime victims and witnesses, and to enhance their roles in the criminal justice process without infringing on the constitutional rights of the accused. It is not intended to and does not create any rights, substantive or procedural, enforceable at law by any victim, witness, suspect, accused, or other person in any matter, civil or criminal. No limitations are hereby placed on the lawful prerogatives of the Coast Guard or its officials.

Humanitarian and practical concerns for victims of offenses under the UCMJ and for witnesses participating in criminal investigations or proceedings within the responsibility of the Coast Guard require consideration of the needs of these persons by authorities responsible for the effective functioning of the system. The physical, psychological and financial hardships suffered by victims of crimes should be mitigated within the means of available resources and in accordance with applicable law, and all reasonable efforts made to foster cooperation by victims and witnesses. When an investigation or prosecution is within the primary responsibility of another federal agency or military service, appropriate consultation with such agency shall be undertaken to ensure application of the provisions of this section.

3.M.3 Definitions

3.M.3.a Victim

A victim is a person who suffers direct or threatened physical, emotional, or financial harm as the result of an offense. The term “victim” also includes the immediate family or guardian of a minor who is a victim and the immediate family of a homicide victim. No other person or entity is included within this term. The U.S. Government may not be classified as a victim under this definition. Nothing in this section precludes classification of the Coast Guard as a victim under applicable federal law or under the implementing rules of other federal agencies.

3.M.3.b Witness

For the purposes of the Victim Witness Assistance Program (VWAP) program, a witness is a person who participates in a Coast Guard criminal investigation or proceeding for the purpose of providing information or evidence concerning an offense within the investigative jurisdiction of the Coast Guard. When the witness is a minor this term includes the minor’s parent, guardian, or any person having legal custody of the minor. The term “witness” does not include a person allegedly involved in an offense as a co-conspirator, accomplice, or other principal.

3.M.3.c Serious Offense

A serious offense is an offense involving personal violence, or attempted or threatened personal violence, or for which a maximum period of confinement of 1 year or more would be authorized under the MCM. “Serious offense” also includes an offense involving the destruction or permanent loss of property of a value of more than \$500.

3.M.4 Keeping the Victim Informed

All victims, when circumstances dictate, should be informed promptly by a representative of the cognizant commanding officer of the availability of emergency medical and social services, and when necessary, should be provided appropriate assistance in securing such services.

- a. All victims should be informed of:
 - (1) Available crime victim compensation, if any;
 - (2) Available community-based victim treatment programs;
 - (3) The stages in the military criminal justice process of significance to the victim, and the role that the victim plays in the process [see, Attorney General Guidelines for Victim and Witness Assistance, SAPRP Instruction, COMDTINST 1754.(series) and enclosure (14f)].
 - (4) How the victim can obtain additional information about the process and the case.
- b. A victim's property held for evidence should be safeguarded and returned as expeditiously as possible.

3.M.5 Treatment of Witnesses and Victims

- a. A victim or witness should be informed concerning protection from intimidation or similar threats, when appropriate.
- b. A victim or witness of a serious offense who so requests should, if he or she provides an appropriate official with a current address or telephone number, be notified by a representative of the convening authority in advance, if possible, of the following:
 - (1) The apprehension of the accused.
 - (2) The pretrial release of the accused.
 - (3) The date of trial; entry of a guilty plea, if any; findings: and completion of the sentencing proceeding.[see, enclosure (14f)].
- c. A representative of the convening authority should notify a victim or witness who has been scheduled to attend a proceeding promptly of scheduling changes affecting the proceeding.
- d. At courts-martial and other proceedings, victims and witnesses should be afforded, to the extent practicable, the opportunity to wait in an area separate

COMDTINST M5810.1E

from the accused or other witnesses, to avoid embarrassment, coercion, or similar emotional distress.

e. Upon request of a victim or witness, reasonable steps should be taken to inform the employer of the victim or witness of the reasons for his or her absence from work. In addition, in appropriate cases, a victim or witness who is subjected to serious financial strain as a direct result of crime or of cooperation in the investigation or prosecution of an offense should be assisted by responsible officials in explaining to creditors the reason for such strain.

f. Victims and witnesses should be provided with appropriate assistance to obtain available services such as transportation, parking, childcare, lodging, and courtroom translators or interpreters.

g. The extent to which witnesses are provided services or information under this paragraph will be determined on a case-by-case basis. For example, ordinarily it will be unnecessary to provide some or all of these services to active duty military witnesses, or to expert or character witnesses. Doubt as to provision of information or services should be resolved in favor of providing them.

h. A victim or witness will be provided a copy of the appropriate VWAP instructional pamphlets [see, enclosure (14f)].

i. A victim or witness will be asked whether he or she wants to be informed of the accused's release from confinement and have his or her answer and contact information, if applicable, recorded on the appropriate form [see, enclosure (14f)] for submission to the confinement facility.

3.M.6 Consultation with the Victim(s) by the Convening Authority

The victim(s) of a serious offense ordinarily should be consulted by a representative of the convening authority to obtain the victim's views about a decision not to prefer charges; dismissal of charges; pretrial restraint; and negotiations for a pretrial agreement. Consultation may be limited when justified by the circumstances, such as to avoid endangering the safety of a victim or a witness, jeopardizing an ongoing investigation, disclosing classified or privileged information, or unduly delaying the disposition of an offense. Although the victim's views should be considered, nothing in this section limits the responsibility and authority of appropriate officials to take such action as they deem appropriate in the interest of good order and discipline and of preventing service-discrediting conduct

3.N WITNESSES FEES AND PAYMENT

3.N.1 Financial Responsibility

Financial responsibility for costs incurred as the result of witnesses called before courts-martial, including Article 32, UCMJ investigations, shall normally be borne by the convening authority. In cases involving excessive costs, funding may be requested from higher authority in the chain of command.

3.N.2 Attendance of Witnesses

a. Trial counsel is required to take timely and appropriate action to ensure the presence of both prosecution and defense witnesses whose presence is required at trial. [See, RCMs 703, 801(c) and 1001(e); enclosure (16a), Rule 26.] The trial counsel shall inform the defense counsel of the trial date as soon as it is known. This may be accomplished orally or in writing.

b. Having ascertained the names of all required witnesses, the trial counsel may:

(1) Issue a subpoena to all civilian witnesses using Subpoena, DD Form-453, available on the standard workstation [see also, enclosure (14b)]. This will not only ensure their presence at trial, but will make the payment of witness fees easier [see, subparagraph 3.N.3.c below; and

(2) Inform the convening authority of the required military witnesses. This may be accomplished in writing, using the format in enclosure (14a).

c. Military witnesses attached to local commands other than that of the convening authority shall be notified of the time and place of their required attendance by the trial counsel through their commanding officers. This may be done orally, but to ensure no miscommunication as to witnesses, uniforms, times, and locations, written notifications are recommended. Formal requests, usually by message, shall be made to commands of military witnesses not within commuting distance of the trial location. Included in the request shall be travel order numbers and accounting data. A command receiving a proper request for a military witness must provide that witness as requested or promptly notify the trial counsel that the witness will not be provided so the trial counsel can report the matter to the military judge. Failure to order a military witness to the trial can have severe consequences and may delay the trial.

d. A military judge may issue a Warrant of Attachment (DD-454) [see, enclosure (14e) for sample] to obtain production of witness or evidence after a proper subpoena was ignored or refused. [See, RCM 703(e)(2)(G.)

3.N.3 Fees, Per Diem, and Mileage for Civilian Witnesses

3.N.3.a Civilian Witnesses not in Government Employ

Pursuant to 28 U.S.C. § 1821, a civilian not in government employ, who is compelled or required to testify as a witness before an Article 32, UCMJ investigation, a Coast Guard court-martial or at a place where a deposition is to be taken for use before such court-martial, shall receive the following:

- (1) An attendance fee for each day's actual attendance and for the time necessarily occupied in going and returning from the place of attendance.
- (2) A subsistence allowance (per diem or actual expense) in an amount not to exceed the maximum per diem allowance for official travel in the area of attendance by employees of the federal government when an overnight stay is required at the place of attendance because such a place is so far removed from the witness' residence as to prohibit return home from day to day.
- (3) Travel Expenses:
 - (a) If travel is by common carrier, the witness (and necessary escort, in the case of a minor or older witness in need of an escort) shall be paid for the actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled from the place of residence to and from the place of attendance by the shortest practical route. The common carrier shall be utilized at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be attached to the claim.
 - (b) If travel is by privately owned vehicle, the witness shall be paid a travel allowance equal to that prescribed for official travel of federal civilian employees.
 - (c) Toll charges for toll roads, bridges, tunnels, and ferries; taxicab fares between places of lodging and carrier terminals; and parking fees (upon presentation of valid parking receipts) shall be paid in full to a witness incurring such expenses.
 - (d) Nothing in this section shall be construed as authorizing the payment of attendance fees, mileage allowances, or subsistence fees to a witness for attendance or travel that is not performed as a direct result of being compelled or required to testify, or for travel that is performed prior to being duly summoned as a witness, or for travel returning to their place of residence if the travel from their place of residence does not qualify for payment under this section.

3.N.3.b Civilian Witnesses in Government Employ

A civilian in the employ of the government, when summoned as a witness, shall be issued temporary additional duty orders by the convening authority, if necessary, and shall receive the current mileage and per diem allowances for temporary additional duty travel for civilian employees. If the tribunal is in session at or near the place where the civilian witness in the employ of the government is stationed, he or she shall receive local travel or no allowance as appropriate. Because TAD orders are usually issued in lieu of a subpoena, notification of the witness' superiors by letter is appropriate.

3.N.3.c Procedures for Submitting Civilian Witness Travel Claims

The following documents are required to ensure a timely and accurate payment:

- (1) A copy of the subpoena (DD-453, if used) or certificate issued in lieu of subpoena directing the witness to the location of the trial or place of deposition;
- (2) The travel order (DD-453-1, if used) informing the witness of their entitlements; and,
- (3) A completed travel claim (SF-1157), showing the actual number of days in travel and attendance. All lodging receipts and receipts for any claimed items \$75 or over, are required. Include the witness' SSN and telephone number in block 1.

3.N.4 Expert Witnesses

The provisions of paragraph 0 above are applicable to expert witnesses. The expert witness fee prescribed by the convening authority, however, will be paid in lieu of the ordinary attendance fee only on those days the witness is required to attend the court.

An expert witness employed in accordance with this section may be paid compensation in advance at the rate authorized by the convening authority [see, 11 Comp. Gen. 504]. An expert witness' claim for fees and mileage, submitted in accordance with paragraph 3.N.6 below shall also contain a certified copy of the convening authority's authorization for the expert's employment. Absent such authorization, only the fees paid to an ordinary witness may be paid.

The convening authority may authorize the employment of an expert witness. Such authorization shall be in writing and shall fix the limit of compensation to be paid such expert on the basis of the normal compensation paid by United States attorneys for attendance of a witness of such standing in the United States courts in the area involved. Information concerning such normal compensation may be obtained from the servicing legal office. Convening authorities in the Fourteenth District will adhere to fees paid such witnesses in the Hawaiian area and may obtain information as to the limit of such fees from the Commander, Fourteenth Coast Guard District Legal Office. [See, paragraph 3.N.5 below for fees payable to foreign nationals.]

3.N.5 Payment of Witness Fees to Foreign Nationals

An OEGCMJ in areas other than a state of the United States shall establish rates of compensation for payment of foreign nationals who testify as witnesses, including expert witnesses, at courts-martial convened in such areas.

3.N.6 Authorization for Payment of Civilian Fees

The fees and mileage of a civilian witness shall be paid by the disbursing officer of the command of a convening authority or appointing authority or by the disbursing officer at or near the place where the tribunal sits or where a deposition is taken when such disbursing officer is presented a properly completed Claim for Fees and Mileage of Witnesses (SF-1157) [see, enclosure (14d) for sample], signed by the witness and approved by one of the following:

- (1) Trial counsel or assistant trial counsel of a court-martial;
- (2) Summary court;
- (3) Military or civil officer before whom a deposition is taken; or,
- (4) Article 32, UCMJ investigating officer.

The claim, prepared as shown in enclosure (14d), must be accompanied by the subpoena (DD-453), if used, or Certificate in Lieu of Subpoena, exhibited in enclosure (14c), and by a certified copy of the order appointing the court-martial or Article 32, UCMJ investigation. If, however, a deposition is taken before charges are referred for trial, the fees and mileage of the witness concerned shall be paid upon presentation of a claim, properly completed as previously described, and accompanied by an order from the officer who authorized the taking of the deposition and subscribed by him or her and directing the disbursing officer to pay the witness the fees and mileage supported by the claim. When the civilian witness testifies outside the United States, its territories or possessions, the claim must be accompanied by a certified copy of the order appointing the court-martial or investigation and by an order from the convening authority or appointing authority, subscribed by him or her and directing payment to the witness the fees and mileage supported by the claim.

3.N.7 Advance Tender or Payment

Any of the officers listed in subparagraph 3.N.6 above may tender to the witness advance fees. The person so receiving the fees in advance of submitting a travel claim shall furnish the officer concerned with a proper receipt. The means of obtaining the advance is not expressly provided for in the Coast Guard's financial regulations.

A preferred procedure to provide for advance fees is for the officer to receive travel, per diem, and witness fees as an advance on behalf of the witness in the form of traveler's checks. Generally, the local traveler's check issuing official should be willing to advance

travel, per diem, and witness fees in the form of traveler's checks upon presentation of a valid travel order (such as a subpoena) bearing an appropriate Standard Document Number (TONO) and an SF-1038 (Advance of Funds Application and Account). The trial counsel responsible for a witness's appearance should check with his or her local traveler's check issuing official well in advance of the court-martial for their specific requirements. The officer receiving such advances on behalf of the witness is authorized to issue some or all of the traveler's checks to the witness. Caution: the officer should ensure that a complete and accurate receipt is made for all traveler's checks subsequently transferred to a witness. The officer should annotate the original subpoena with the serial number, date of issue, and denomination of each traveler's check issued to a witness. The officer should have each such annotation initialed and dated by the witness. The officer should ensure that the advance travel allowances, advance per diem, and advance witness fees that are represented by the traveler's checks are reflected on the witness' travel claim as a deductible advance. Finally, it is recommended that the officer personally ensure that the witness' travel claim, Claim for Fees and Mileage of Witness, (SF-1157) and original subpoena are submitted to the Pay and Personnel Center for liquidation before the witness departs the court-martial location.

If the traveler's check procedure is unavailable, an alternative means of obtaining advance fees (but not witness travel or per diem) is for the officer to use a government credit card to obtain an advance from an ATM machine. The officer obtaining the advance can then issue the advance to the witness and submit a Claim for Reimbursement for Expenditures on Official Business, SF-1164 to the Finance Center, using the witness's Standard Document Number (ensure document type 33 is used), for reimbursement.

3.N.8 Reimbursement of Witness Fees

If an officer charged with serving a subpoena pays from his or her personal funds the necessary fees to a witness, taking a receipt therefore, he or she is entitled to reimbursement upon submitting such receipt, together with a certificate from the appropriate person named in subparagraph 0 above demonstrating the payment was necessary. The officer tendering the fees in advance shall annotate the original subpoena that such an advance was made and shall ensure that the witness does not claim reimbursement for such fees on their travel claim, Claim for Fees and Mileage of Witness (SF-1157). The officer shall request reimbursement using a Claim for Reimbursement for Expenditures on Official Business, SF-1164 or OF-1034 and shall attach a copy of the witness' subpoena and the original receipt for the advance fees. Follow current Finance Center SOP.

3.N.9 Certificate of Person Before Whom Deposition is Taken

The certificate of a person named in paragraph 3.N.6 above before whom the witness gave a deposition will be evidence of the fact and period of attendance of the witness and the place from which summoned.

3.N.10 Payment of Accrued Fees

The witness may be paid accrued fees at his or her request at any time during the period of attendance. Any of the officers listed in subparagraph 3.N.6 above may make such interim payment(s). If an officer charged with serving a subpoena pays from his or her personal funds the accrued fees to a witness, taking a receipt therefore, he or she is entitled to reimbursement upon submitting such receipt, together with a certificate from the appropriate person named in subparagraph 0 above demonstrating the payment was necessary. The officer tendering the accrued fees shall annotate the original subpoena that such a payment was made and shall ensure that the witness does not claim reimbursement for accrued fees on their travel claim, Claim for Fees and Mileage of Witness, (SF-1157). The officer shall request reimbursement using form Claim for Reimbursement for Expenditures on Official Business, SF-1164 or OF-1034 and shall attach a copy of the witness' subpoena and the original receipt for the accrued fees. Follow current Finance Center SOP.

3.N.11 Civilian Witnesses at Article 32, UCMJ Investigations

Payment of transportation expenses and per diem allowance to civilians requested to testify at Article 32 investigations is authorized, providing the investigating officer certifies that the witness is reasonably available [see, RCM 405(g)(3)] and that the witness appeared and testified. Fees shall be the same as if the witness testified at a court-martial [see, paragraph 3.N.3 above]. The investigating officer's certificate in the form of that shown in enclosure (14c) of this Manual, shall substitute for a subpoena in support of a claim. In the case of civilians in government employ, subparagraph 0 above shall apply.

CHAPTER 4

4. TRIAL MATTERS	4-1
4.A. Proceedings Involving Classified Matter (MRE 505) or Disclosure Detrimental to National Security (MRE 506).....	4-1
4.A.1. General.....	4-1
4.A.2. Security Clearance of Personnel	4-1
4.A.3. Procedures Concerning Spectators	4-2
4.A.4. Records of Trial Evidence	4-2
4.B. Spectators and Release of Information at Trial.....	4-2
4.B.1. Release of Information.....	4-2
4.B.2. Spectators at Courts-Martial Sessions	4-5
4.B.3. Spectators at Pretrial Investigations.....	4-5
4.C. Article 39(a), UCMJ Sessions.....	4-5
4.C.1. Pleas	4-5
4.C.2. Motions	4-5
4.C.3. Custody and Restraint of Accused.....	4-5
4.C.4. Conditional Pleas	4-5
4.C.5. Oaths	4-6
4.D. Presentencing Procedures, Personal Data, and Character of Prior Service.....	4-9
4.E. Court-Martial Punishment Limitations.....	4-9
4.E.1. No Automatic Reduction	4-9
4.E.2. Hard Labor Without Confinement.....	4-9
4.E.3. Reservists Ordered to Active Duty	4-9
4.F. Government Appeal from Adverse Rulings at Trial.....	4-10
4.F.1. General.....	4-10
4.F.2. Procedures and Persons Authorized to Act.....	4-10
4.G. Appellate Rights.....	4-12

TRIAL MATTERS

4.A. PROCEEDINGS INVOLVING CLASSIFIED MATTER (MRE 505) OR DISCLOSURE DETRIMENTAL TO NATIONAL SECURITY (MRE 506)

4.A.1. General

Convening authorities, military judges, presidents of a special court-martial without a military judge, summary courts, trial counsel, defense counsel and Article 32, UCMJ investigating officers as appropriate shall protect the security of classified matter and other government information that, if disclosed, would be detrimental to national security. If a court-martial involves classified information, the convening authority, military judge, president of a special court-martial without a military judge, summary court, and trial counsel, as appropriate, are charged with the responsibility of ensuring compliance with applicable provisions of the Classified Information Management Program, COMDTINST M5510.23 (series), RCM 401(d) and 407(b), and MRE 505-506. Article 62, UCMJ provides that the Government may appeal an order or ruling by a military judge that directs the disclosure of classified material, imposes sanctions for the nondisclosure of classified information, or refuses to issue a protective order sought by the Government to prevent the disclosure of classified information. [See, RCM 908.] The convening authority will notify the Judge Advocate General via the Office of Military Justice (CG-0946) of any case involving classified information.

4.A.2. Security Clearance of Personnel

If classified matter is to be used for prosecution, appropriate personnel security clearances in accordance with the Classified Information Management Program, COMDTINST M5510.23 (series) must be held by all members of the court, members of the prosecution and defense, court reporters and interpreters, and all other persons whose presence is required when classified matter is introduced before the court. If a civilian defense counsel represents the accused, or if civilian court reporting services are used, such counsel or court reporting service must likewise be cleared before classified matter may be disclosed to him or her. The necessity for clearing the accused, and the practicability of obtaining such clearance, rests in the sound discretion of the convening authority and may be one of the considerations in the determination to try a particular case or in determining the appropriate forum. If it appears during the course of a trial that classified matter will be disclosed, and if the provisions of this section have not been complied with, the military judge or summary court shall adjourn the court and refer the matter to the convening authority. [See, MRE 505.]

4.A.3. Procedures Concerning Spectators

Special considerations and procedures apply to prevent dissemination of classified information to other than authorized persons. [See, RCM 806 and 405 and MRE 505-506.]

4.A.4. Records of Trial Evidence

Special procedures apply to the preparation of records of trial that include classified material. [See, paragraph 5.A.4 below.]

4.B. SPECTATORS AND RELEASE OF INFORMATION AT TRIAL

The information contained in this section is a synopsis of the information provided IN U.S. COAST GUARD MEDIA RELATIONS IN HIGH-VISIBILITY COURT MARTIAL CASES; A PRACTICAL GUIDE provided to each public affairs office and to all staff judge advocates. A copy of the guide is included as enclosure (15) and should be referred to by the user for more complete information than is provided in this section.

4.B.1. Release of Information

4.B.1.a. General

There are valid reasons for making information about the administration of military justice available to the public. The task of striking a fair balance between the protection of members accused of offenses against improper or unwarranted publicity pertaining to their cases, and public understanding of the problems of controlling misconduct in the military service and the workings of military justice depends largely on the exercise of sound judgment by those responsible for administering military justice and by representatives of the press and other news media. At the heart of all guidelines pertaining to the furnishing of information concerning an accused or the allegations against him or her is the mandate that no statements or other information shall be furnished to news media for the purpose, or which could reasonably have the effect of influencing the outcome of a trial.

4.B.1.b. Applicability

These provisions apply to all persons who may obtain information as the result of duties performed in connection with the processing of an accused, the investigation of suspected offenses, or trials by court-martial. These provisions are applicable from the time of apprehension, the referral of charges, or the commencement of an investigation directed to make recommendations concerning disciplinary action, until the completion of trial or disposition of the case without trial. These provisions also prescribe guidelines for the release or dissemination of information to public news agencies, other public media, or other persons or agencies.

4.B.1.c. Release of information

(1) As a general matter, Coast Guard employees should not initiate release of information pertaining to an accused. Information of this nature should

be released only upon specific request therefore, and, subject to the following guidelines, should not exceed the scope of the inquiry concerned. In some cases, particularly those that are likely to have public and press interest, a proactive public affairs posture may be warranted. Determination of whether a case should be the subject of a proactive public affairs stance should be developed in conjunction with the convening authority, the servicing legal office, and the cognizant public affairs officer.

(2) Except in unusual circumstances, information subject to release under these provisions should be reviewed and released by the cognizant public affairs officer and requests for information received by others from the media should be referred to such officer for action. In high visibility cases a trained attorney should assist the cognizant public affairs officer. [See, enclosure (15).] When a member is suspected or accused of an offense, care should be taken to indicate that the member is alleged to have committed, or is suspected or accused of having committed an offense, as distinguished from stating or implying that the accused has committed the offense(s).

4.B.1.d. Information Subject to Release

On inquiry the following information concerning a member accused or suspected of an offense(s) **may generally be released** except as provided in subparagraph 4.B.1.f below.

- (1) The accused's name, grade, age, unit, and regular assigned duties.
- (2) The substance of the offense(s) of which the individual is accused or suspected.
- (3) The identity of the victim of any alleged or suspected offense, subject to any restrictions provided by the Victim and Witness Protection Act of 1982 (Public Law 97-291), 18 U.S.C. §§ 1512-5, 3663-4. [See, section 3.M above.]
- (4) The identity of the apprehending and investigating agency, and the identity of attorney for the accused, if any.
- (5) The type and place of custody, if any.
- (6) Information that has become a part of the record of proceedings of the court-martial in open session.
- (7) The scheduling or result of any stage in the judicial process.
- (8) The denial of the commission of any offense(s) of which he or she may be accused or suspected (when release of such information is approved by the attorney of the accused).

COMDTINST M5810.1E

4.B.1.e. Information Prohibited for Release

The following information concerning a member accused or suspected of an offense(s) **normally is not released** except as provided in subparagraph 4.B.1.f below:

- (1) Subjective opinions, observations or comments concerning the accused's character, demeanor at any time or guilt of the offense or offenses involved.
- (2) The prior criminal record (including other apprehensions, charges, or trials) or the character or reputation of the accused.
- (3) The existence or contents of any confession, admission, statement or alibi given by the accused, or the refusal or failure of the accused to make any statement.
- (4) The performance of any examination or test, such as polygraph examinations, chemical tests, ballistics tests, etc., or the refusal or the failure of the accused to submit to an examination or test.
- (5) The identity, testimony, or credibility of possible witnesses, except as authorized in subparagraph 4.B.1.d.(3).
- (6) The possibility of a plea of guilty to any offense charged or to a lesser offense and any negotiation or any offer to negotiate respecting a plea of guilty.
- (7) References to confidential sources or investigative techniques or procedures.
- (8) Any other matter when there is reasonable likelihood that its dissemination will affect the deliberations of an investigative body or the findings or sentence of a court-martial or otherwise prejudice the due administration of military justice either before, during, or after trial.

4.B.1.f. Exceptional Cases

The provisions of this section are not intended to restrict the release of information designed to enlist public assistance in apprehending an accused or suspect who is a fugitive from justice or to warn the public of any danger that a fugitive accused or suspect may present. Further, because the purpose of this section is to prescribe generally applicable guidelines, there may be circumstances that warrant the release of information normally not released in accordance with subparagraph 4.B.1.e above, or the non-release of information permitted under subparagraph 4.B.1.d above. In these cases, the servicing legal office and the convening See, authority shall be responsible for determining whether such material shall be released. [enclosure (15)]

4.B.1.g. Military Judge's Authority

The foregoing is in no way to be viewed as in derogation of the authority of the military judge, who, upon being detailed, is, in his or her discretion, empowered to regulate many of the matters discussed in this section by court order. [See, RCM 801.]

4.B.2. Spectators at Courts-Martial Sessions

The sessions of courts-martial shall be public and, in general, all persons except those who may be required to give evidence shall be admitted as spectators. The trial counsel shall post a Notice of Public Trial [see, enclosure (16h) for sample]. Whenever necessary to prevent the dissemination of classified information to other than authorized persons or for other good cause, the convening authority, the military judge of a general or special court-martial, or the president of a special court-martial without a military judge may direct that spectators be excluded from a trial or a portion thereof. In all situations, spectators or classes of spectators may be excluded only when, in the discretion of the military judge of a general or special court-martial, he or she determines such action to be legally necessary and proper. [See, RCM 806.]

4.B.3. Spectators at Pretrial Investigations

The sessions of a pretrial investigation convened in accordance with Article 32, UCMJ should ordinarily be open to the public. [See, RCM 405(h)(3)]. A convening authority will consult with the servicing legal office before restricting access to a pretrial investigation.

4.C. ARTICLE 39(a), UCMJ SESSIONS

4.C.1. Pleas

As authorized under Article 39(a), UCMJ a session of the court without the presence of the members may be called for the purpose of holding the arraignment and receiving the pleas of the accused. [See, enclosure (16a), Rule 8.2.]

4.C.2. Motions

Pretrial motions will be submitted in accordance with the orders of the military judge assigned to the case [see, enclosure (16b) for a sample Court Order No. 1]. Unless otherwise permitted or ordered by the military judge assigned to the case, pretrial motions, answers and rulings will follow the format contained in enclosures (16c-e), respectively. [See, enclosure (16a), Rule 10.]

4.C.3. Custody and Restraint of Accused

Physical restraint shall not be imposed on the accused during open sessions of the court-martial unless prescribed by the military judge. [See, RCM 804(c)(3); enclosure (16a), Rule 13.]

4.C.4. Conditional Pleas

The accused may enter a conditional plea of guilty in accordance with RCM 910(a)(2). Such plea must be in writing and must set forth the particular pretrial motion(s) to which

COMDTINST M5810.1E

the right of appeal is reserved. The government's consent to the plea may be given by trial counsel and shall be noted on the document over the signature of the trial counsel.

4.C.5. Oaths

4.C.5.a. Military Judges

A military judge, certified in accordance with Article 26(b), UCMJ may take a one-time oath to perform his or her duties faithfully and impartially in all cases to which detailed. This oath may be taken at any time and may be administered by any person authorized by Article 136, UCMJ to administer oaths. Once such an oath is taken, the military judge need not be sworn again at any court-martial to which subsequently detailed. Military judges will customarily be given a one-time oath. In the event that a military judge detailed to a particular court-martial has not been previously sworn, the trial counsel shall administer the oath to the military judge at the appropriate point in the proceedings. The following oath shall be used for the swearing in of military judges [see, Discussion to RCM 807(b)(2)]:

Do you swear (or affirm) that you will faithfully and impartially perform, according to your conscience and the laws applicable to trials by courts-martial, all the duties incumbent upon you as military judge to this court-martial, (so help you God)?

4.C.5.b. Counsel

Any military counsel, certified in accordance with Article 27(b), UCMJ, may be given a one-time oath. Such oath will customarily be administered when military counsel is certified. The oath may be given at any time and by any person authorized by Article 136, UCMJ to administer oaths. Once such an oath is taken, certified military counsel need not be sworn again at any trial to which he or she is detailed, or in any case in which he or she is serving as individual counsel at the request of the accused. Certified military counsel who have taken one-time oaths administered by armed services other than the Coast Guard need not again be sworn in courts-martial convened in the Coast Guard. Counsel who are not certified in accordance with Article 27(b), UCMJ, including all civilian counsel, must be sworn in each case. The following oath may be used in administering a one-time oath to counsel [see, Discussion, RCM 807(b)(2)]:

Do you swear (or affirm) that you will faithfully perform the duties of counsel in the case no in hearing, (so help you God)?

4.C.5.c. Court Members

Court members may be given one oath for all cases that are referred to the court in accordance with the convening order that detailed them as members. In the event the convening order is amended, a new member shall be sworn when he or she arrives. This oath may be administered by any officer authorized by Article 136, UCMJ to administer oaths. When court members are not sworn at trial, the fact that they have previously been sworn will be recorded in the transcript or record of trial. The oaths used for court

members will be those prescribed in the discussion to RCM 807(b)(2). [See also, Section II, Appendix 8, MCM.]

4.C.5.d. Reporters

Any court reporter, military or civilian, may be given a one-time oath. The oath normally will be administered by trial counsel in the first court-martial to which the court reporter is assigned. Once such oath is taken, the court reporter need not be sworn again at any trial to which assigned. When the court reporter is not sworn at trial, the fact that he or she has been previously sworn will be recorded in the transcript or record of trial. The following oath may be used in administering a one-time oath to court reporters [see, Discussion, RCM 807(b)(2)]:

Do you swear (or affirm) that you will faithfully perform the duties of reporter in any court-martial to this court-martial, (so help you God)?

4.C.5.e. Interpreters

Interpreters will be sworn by trial counsel as provided in the discussion to RCM 807(b)(2). [See also, Appendix 8, MCM.]

4.C.5.f. Recording One-time Oaths

The certified counsel who take the oath prescribed above shall transmit a signed copy to the Judge Advocate General, U.S. Coast Guard. A signed copy of the oath taken by the court reporter shall be filed in his or her official service record. The copies shall bear below the signature of the person sworn a statement signed by the person who administered the oath, in a form as follows:

[Quote the Oath and state purpose why administered; followed by]
The undersigned personally administered the foregoing oath to the above-named [Person Sworn], this ____ day of _____, 20____, at [Location].

Signature and Rank

4.C.6 REMOTE ARTICLE 39(A) SESSIONS

4.C.6.a. When Remote Article 39(a) Sessions May be Authorized

Article 39 (a), UCMJ, sessions will be called by order of the military judge. Either counsel, however, may make a request to the military judge that such a session be called. The military judge of a general or special court-martial may, at an Article 39(a) session, arraign the accused, hear argument and rule on motions, and receive the pleas of the accused. If the accused pleads guilty, the military judge may at that time make the appropriate inquiry into the providence of the accused's plea. The military judge may also at that time accept the plea of the accused. Upon acceptance of a plea of guilty, the military judge is authorized to enter a finding of guilty immediately except when the plea is to a lesser included offense and the prosecution intends to proceed to trial on a greater offense. In a case where the accused pleads guilty, the military judge may hear evidence on sentencing and sentence the accused.

4.C.6.b. Procedure for Remote Article 39(a) Sessions

Consistent with Rules for Courts-Martial 804 and 805, the military judge may order the use of audiovisual technology, such as video teleconferencing technology, among the parties and the military judge for purposes of Article 39(a) sessions if either: (1) All parties consent or (2) the benefit of conducting the remote Article 39(a) session significantly outweighs its cost. Use of such audiovisual technology will satisfy the "presence" requirement of the accused only when the accused has a defense counsel physically present at the accused's location. Such technology may include two or more remote sites as long as all parties can see and hear each other.

(1) The audiovisual technology employed must be capable of providing real time, two way communications of video images and sound such that the accused and the military judge can see all participants, and the court reporter is able to record everything said in all locations.

(2) Transcription of remote Article 39(a) sessions shall produce a verbatim written record of all proceedings, transcribing everything said in all locations.

(3) Testimony of witnesses during remote Article 39(a) session shall not take place in a location other than the location of the accused unless the accused affirmatively waives the right to have the witness present in the same location on the record, or such witness testimony is otherwise permitted under the Military Rules of Evidence or Rules for Court-Martial outside of the presence of the accused.

4.D. PRESENTENCING PROCEDURES, PERSONAL DATA, AND CHARACTER OF PRIOR SERVICE

In accordance with RCM 1001(b)(2), trial counsel may introduce certain evidence from the personnel records of the accused. [See, RCM 1001(b)(3), concerning admission of evidence concerning accused's prior convictions.] Personnel records of the accused include all those records made and maintained in accordance with the Coast Guard Personnel Manual, COMDTINST M1000.6 (series); Personnel & Pay Procedures Manual, PSCINST M1000.2 (series); and the Military Personnel Data Records (PDR) System, COMDTINST M1080.10 (series) that reflect the past military efficiency, conduct, performance, and history of the accused.

4.E. COURT-MARTIAL PUNISHMENT LIMITATIONS

4.E.1. No Automatic Reduction

The administrative action of automatic reduction to the lowest enlisted pay grade authorized under Article 58a, UCMJ, shall as a matter of policy not be effected in the Coast Guard. This policy does not preclude reduction to the lowest enlisted paygrade being adjudged and approved as part of a lawful sentence.

4.E.2. Hard Labor Without Confinement

Hard labor without confinement shall be performed in accordance with the same regulations applicable to extra duties imposed as NJP under Article 15 in paragraph 1.E.2.e above.

4.E.3. Reservists Ordered to Active Duty

4.E.3.a. Approved by Director, Reserve and Training (CG-13)

A reservist tried by court-martial after an order approved by Director, Reserve and Training (CG-13) to active duty pursuant to paragraph 3.E.2 above may receive any punishment otherwise authorized by the court-martial.

4.E.3.b. Not Approved by Director, Reserve and Training (CG-13)

Unless the order to active duty under paragraph 3.E.2 above is approved by the Director, Reserve and Training (CG-13), confinement is not an authorized punishment for a reservist ordered to active duty at court-martial. In addition, the reservist accused may not be retained on active duty to serve any other punishment [see, discussion to RCM 1003(c)(3)]. Imposed forfeitures may be collected, and imposed restrictions on liberty may be served during subsequent periods of inactive duty training or active duty.

4.F. GOVERNMENT APPEAL FROM ADVERSE RULINGS AT TRIAL

4.F.1. General

Article 62, UCMJ and RCM 908 authorize the United States to appeal a ruling or order of the military judge that terminates the proceedings with respect to a charge or specification, excludes evidence that is substantial proof of a fact material to the proceedings, or jeopardizes the security of classified material.

4.F.2. Procedures and Persons Authorized to Act

4.F.2.a. Trial Counsel

Trial counsel may request a delay in accordance with RCM 908(b)(1) when a ruling or order is issued subject to appeal under certain circumstances. In any such case, trial counsel shall confer with appellate government counsel at the Office of Military Justice (CG-0946). Trial counsel shall present a summary of the ruling or order, the issue involved, and the evidence in the case and describe the reason(s) why trial counsel believes the ruling or order is one that should be appealed. This conference shall occur as soon as practicable, but in any event shall take place within 24 hours of the military judge's ruling. The purpose of this time limit is to minimize the expense and inconvenience by allowing trial to continue after a delay of no more than one day in cases where appellate government counsel is able to immediately determine not to appeal the ruling or order.

4.F.2.b. Appellate Government Counsel

Once advised of the matter as set forth in subparagraph 4.F.2.a above, appellate government counsel shall authorize trial counsel to advise the military judge and parties that:

(1) The government will not appeal the ruling, in which case the trial should proceed;

(2) The government has decided to appeal, in which case trial counsel shall provide the written notice required by RCM 908(b)(3); or,

(3) The decision to appeal is being considered and will be made within 72 hours as provided in RCM 908. A notice of appeal shall not be filed by trial counsel without the concurrence of appellate government counsel. In the interest of economy of court-martial resources, the decision to file a Notice of Appeal shall be made as expeditiously as possible, normally within 24 hours, but may be delayed up to 72 hours as provided in RCM 908. The final decision whether to file an appeal with the Coast Guard Court of Criminal Appeals shall be made after government appellate counsel has received the matters set forth in subparagraph 4.F.2.c below.

4.F.2.c. Forwarding Notice of Appeal

Notice of appeal filed under RCM 908 shall be forwarded to appellate government counsel, Office of Military Justice (CG-0946) via First Class/Priority Certified mail with a return receipt, within 10 days after the date of the judge's ruling for decision. In addition

to those matters listed in RCM 908(b)(6) the following shall be forwarded with the appeal:

(1) Appeal

An appeal prepared substantially in the form provided in Rule 21, Courts of Criminal Appeals Rules of Practice and Procedure, to include:

- (a) A summary of the proceedings;
- (b) A statement of facts that must have been determined by the military judge and are pertinent to the error assigned (note: Under Article 62, UCMJ, the Coast Guard Court of Criminal Appeals may act only with respect to matters of law, not withstanding its fact-finding powers under Article 66, UCMJ);
- (c) The error(s) assigned followed by an argument supporting the government's position on each error;
- (d) The specific relief requested; and,
- (e) A certificate of Notice of Appeal described in RCM 908(b)(3). The certificate of service must reflect the date and time of the military judge's ruling or order from which the appeal is taken and the time and date of service upon the military judge.

(2) Record of Trial [ROT]

- (a) An authenticated ROT should accompany the appeal package. Only that portion of the ROT involving the alleged error(s) need be transcribed, authenticated, and forwarded. In extraordinary cases where undue delay would be encountered awaiting authentication, the trial counsel should forward an unauthenticated ROT with the material required under RCM 908(b)(6) to be followed by the authenticated ROT.
- (b) Trial counsel should retain an authenticated copy of the ROT so that trial may resume after the Coast Guard of Criminal Appeals issues a decision, if authorized.

(3) Letter of Justification

The appeal package must contain a letter from trial counsel indicating why the appeal is being taken and describing the anticipated impacts should the military judge's ruling be affirmed. For example, circumstances not apparent in the ROT including pendency of other cases affected or unique import of the case to discipline, morale, or the integrity of military justice should be set forth in the letter.

COMDTINST M5810.1E

4.F.2.d. Authority to Conduct Further Proceedings

After notice of a decision by the Coast Guard Court of Criminal Appeals [CGCCA] or Court of Appeals for the Armed Forces [CAAF] is provided, the trial may proceed, if authorized, in a manner consistent with the decision unless further proceedings are stayed by order of a higher court.

4.G. APPELLATE RIGHTS

Each convicted accused shall be advised of his or her appellate rights, using enclosures (17a-c), as applicable, prior to adjourning the court-martial. A completed appellate rights form shall be included as an appellate exhibit in the record of trial. [See, RCM 1010.]

CHAPTER 5

5.A.	Preparation of Records of Trial [ROT]	5-1
5.A.1.	General and Special Courts-Martial.....	5-1
5.A.2.	Preparation, Arrangement, and Authentication of ROT	5-2
5.A.3.	Distribution of SJA Recommendation [SJAR]	5-8
5.B.	Administrative Post-Trial Matters	5-8
5.B.1.	Military Judge Record and Report	5-8
5.B.2.	Mailing ROT to the Military Judge	5-8
5.C.	Post-Trial Duties Of Defense Counsel	5-9
5.C.1.	Mandatory Duties.....	5-9
5.C.2.	Other Duties	5-9
5.C.3.	Seeking Extraordinary Relief.....	5-10
5.C.4.	Termination of Duties of Defense Counsel	5-10
5.C.5.	Appointment of Appellate Defense Counsel	5-11
5.C.6.	Appointment of Counsel for Members Sentenced to Death by GCM.....	5-11
5.D.	Effective Date of Courts-Martial Sentences	5-11
5.D.1.	General	5-11
5.D.2.	Death or Dismissal	5-11
5.D.3.	Confinement.....	5-12
5.D.4.	Punitive Discharge	5-12
5.D.5.	Forfeitures, Reductions in Pay Grade, and Automatic Provisions	5-13
5.D.6.	Effective Date of Other Punishment	5-14
5.D.7.	Payment of Fines.....	5-15
5.E.	Suspension of Courts-Martial Sentence(s)	5-15
5.E.1.	Suspension of Execution of Sentences	5-15
5.E.2.	Vacation of suspension	5-15
5.E.3.	Counsel	5-16
5.F.	Courts-Martial Action and Review	5-16
5.F.1.	Action.....	5-16

5.F.2.	Disposition of ROTs after Convening Authority Action.....	5-18
5.F.3.	SJA Review and Forwarding	5-19
5.F.4.	Accounting for Delays in Review	5-20
5.F.5.	Distribution	5-21
5.G.	Promulgating Orders For GCM and SPCM	5-21
5.G.1.	Initial Order.....	5-21
5.G.2.	Supplementary Order	5-21
5.G.3.	Supplementary Orders in Cases Reviewed by the Coast Guard Court of Criminal Appeals [CGCCA]	5-22
5.G.4.	Promulgating Order Form.....	5-22
5.G.5.	Promulgating Order Numbering	5-22
5.G.6.	Distribution	5-22
5.H.	Disposition of Court-Martial Records of Trial [ROT]	5-23
5.H.1.	Disposition of the Original.....	5-23
5.H.2.	Disposition of Copies.....	5-23
5.I.	Service of Coast Guard Court of Criminal Appeals Decisions.....	5-23
5.I.1.	General.....	5-23
5.I.2.	Service of Decision Following Government Appeal or Petition for Extraordinary Relief	5-24
5.J.	Application for Relief under Article 69(b), UCMJ	5-25
5.J.1.	Statutory Provisions	5-25
5.J.2.	Time Limitations.....	5-25
5.J.3.	Submission Procedures	5-25
5.K.	Petition for New Trial under Article 73, UCMJ	5-27
5.K.1.	Statutory Provisions	5-27
5.K.2.	Time Limitations.....	5-27
5.K.3.	Submission Procedures	5-27
5.K.4.	Contents of Petitions	5-27
5.K.5.	Action on the Petition	5-27
5.L.	Residual Clemency: Authorized Officials.....	5-27

CHAPTER 5

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 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 the Office of Military Justice (CG-0946) for current guidance.

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

The preferred method for recording trial proceedings is by a multi-channel; redundant digital recording device(s) operated 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 methods of recording without the presence of a certified court reporter may not be used in the Coast Guard without prior authorization from the Office of Military Justice (CG-0946).

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 Personnel Office for the accused, the Office of Military Justice (CG-0946) 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

For 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 of the MCM, and the rules contained in this section. A 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 referral 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. The request for trial by military judge alone may be included as a provision of a pre-trial agreement.

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 49) is not required.

5.A.2.e. Exhibits

(1) If an exhibit consists of video or audio tape(s) or other digital media, affix clear and complete labels to the original media and to the media'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.

COMDTINST M5810.1E

(5) Except as noted in paragraph 5.A.2.e.6 below for exhibits containing child pornography, exhibits may be “sealed.” The pages of a “sealed” exhibit shall be marked in the same way as other exhibits.

(6) In order to ensure compliance with the Adam Walsh Act, 18 U.S.C. § 3509(m), sealed exhibits containing child pornography shall not be copied, nor shall the actual child pornography material be included with the original record of trial. At the conclusion of trial, the original sealed exhibit containing child pornography shall be turned over to the servicing Coast Guard Investigative Service office. Once the record of trial is complete and received by the Office of Military Justice (CG-0946) the original sealed exhibit containing child pornography shall be sent from the servicing CGIS office to CGIS Headquarters where it will be held pending appellate review. When the case becomes final, the Office of Military Justice shall inform CGIS Headquarters and the child pornography exhibits may then be destroyed.

5.A.2.f. General Instructions

(1) Complete and sign the chronology sheet, Form DD 490 or DD 491.

(2) Compile the record using 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.

(3) Insert original versions of all documents. To the extent copies must be used, they may be “certified as a true copy” by annotation and signature. In addition:

(a) All copies shall be copied one sided; do not copy “2-sided” or “back to back.”

(b) Copies shall be as legible as originals.

(c) Copies of video or audiotapes, charts, photographs, etc., shall appear substantially as they appear in the original.

(4) Do not exceed size limitations for individual volumes in multi-volume ROTs.

(5) Once the original record is completely assembled, a digital scan of the complete record shall be produced. The following guidelines apply:

(a) The entire record, including all prosecution exhibits, defense exhibits, appellate exhibits, and other ancillary documents shall be scanned into one complete Adobe Acrobat file (i.e. a “.pdf”).

(b) The resolution of the scan should provide a copy of equivalent quality to the original ROT. A resolution of not less than 300 dpi is recommended.

(c) The digital file shall be recorded upon a compact disk or equivalent digital media.

(d) One digital copy of the ROT shall be forwarded to the Office of Military Justice (CG-0946) along with the hard-copy original by a DHS approved commercial carrier (e.g. FedEx or UPS). It is recommended that digital copies be retained by the office preparing the ROT, either on a server, on removable media, or both, at the discretion of the preparing unit. Digital copies may be substituted, at the discretion of the preparing unit, and with the consent of the receiving party, for copies required to be distributed by other provisions of this manual or the Manual for Courts-Martial. Brig prisoners have limited access to computers, so to the extent a prisoner is required to receive a copy of the ROT, a hard-copy should be prepared and distributed.

(6) When mailing a ROT, fill empty space in shipping boxes with packing material to avoid damage to the ROT.

(7) Provide a complete copy of the ROT, either a hard-copy or digital reproduction, by traceable means to all defense counsel (including IMC and civilian defense counsel (if any)).

(8) Ensure return receipts for service of documents to the accused and counsel (e.g., ROT, SJARs, etc.) are included in the ROT.

(9) Forward a copy of the promulgating order via first class/priority certified mail with a return receipt directly to the servicing CGIS office in accordance with Criminal History Reporting for Military Suspects, COMDTINST 5580.1 (series).

(10) Shipment of the ROT and other materials should be through with a DHS approved commercial carrier (e.g. FedEx/UPS) instead of certified mail. Include the name, room number, and telephone number of the addressee on the 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 the Office of Military Justice (CG-0946), a verbatim ROT 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 recommendation (SJAR) or judge advocate review under R.C.M. 1112 on defense counsel [see, RCM 1106(f)(1)].
- (k) Signed SJA recommendation (SJAR) or judge advocate review under R.C.M. 1112 [see, RCM 1106, 1112].
- (l) Verification of receipt by defense counsel of the RCM 1106 or 1112 recommendation and any response by defense counsel to SJA or judge advocate reviewer's 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, including all enclosures and exhibits. If waived, include documentation of waiver (this may be a separate waiver or included as a provision of a pre-trial agreement).
- (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.). Depending on the circumstances, these documents may alternatively be marked as appellate exhibits and assembled as indicated in sub-paragraph (t) below.
- (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. Written, verbatim record of court proceedings or summarized record, as required by R.C.M. 1103;
 - 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. For physical evidence, with the permission of the military judge, a photograph may be substituted in the ROT, with the original evidence and chain of custody documents, if any, retained locally until the case is final (as certified by the Office of Military Justice (CG-0946));
 - 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.

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

- a. The original ROT and a digital reproduction are filed with the Office of Military Justice (CG-0946).
- b. One copy, either hard-copy or digital, for each accused.
- c. One copy, either hard-copy or digital, for the convening authority.
- d. One copy, either hard-copy or digital, for the OEGCMJ.

COMDTINST M5810.1E

e. Additional copies, either hard-copy or digital, 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:

PRESIDENT
NAVAL CLEMENCY AND PAROLE BOARD
720 KENNON ST SE RM 322
WASHINGTON NAVAL YARD
WASHINGTON, DC. 20374-5023

g. Original and copies of required records of trial [ROT] will be retained and disposed of in accordance with the Information and Life Cycle Management Manual, COMDTINST M5212.12 (series).

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.

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 the Chief Trial Judge (CG-094J) with a copy to the Office of Military Justice (CG-0946). This report should include substantially the same information as shown on the sample report contained in enclosure (18b). The information regarding the specification(s) 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 the Chief Trial Judge (CG-094J) of the amount of post-trial time expended on the case.

5.B.2. Mailing ROT to the Military Judge

Shipment of the ROT to the military judge for authentication should be through the current General Services Administration [GSA] contractor for domestic express delivery service. This method allows the package to be tracked and eliminates delay. Include the name, room number, and telephone number of the addressee on the express delivery label. The use of registered mail is not authorized.

5.C. POST-TRIAL DUTIES OF DEFENSE COUNSEL

5.C.1. Mandatory Duties

Trial defense counsel's representational duties are of a continuing nature. They do not terminate at the conclusion of the court-martial. The following duties are mandatory.

a. Trial defense counsel must advise the accused of his or her post-trial and appellate rights, the right to request counsel at such review, and the right to waive or withdraw from appellate review [see, RCM 1110]. One of the forms set forth in enclosure (17a-c), or a substantially similar form, must be executed by counsel and the accused in every special and general court-martial in which findings of guilty are announced. In a case where the accused desires to waive appellate review, one of the forms set forth in either Appendix 19 or 20, MCM, must be executed. Any waiver must be filed within 10 days after receipt by the accused or his or her counsel of a copy of the written action by the convening authority. [See, RCM 1110(f)(1).]

b. Trial defense counsel must advise the accused in cases where a sentence of confinement has been awarded of the accused's right to make application for deferment of that confinement in accordance with Article 57(d), UCMJ and assist the accused in making application to the appropriate authority. If automatic administrative forfeitures under Article 58b, UCMJ are applicable, trial defense counsel must so advise the accused and further advise the accused of his or her right to request a deferral.

c. Trial defense counsel should examine the ROT and indicate the examination on the authentication page or other form provided by the trial counsel normally within 7 calendar days of receipt of the Record of Trial. [See, RCM 1103(i)(1)(B).] If errors or omissions are discovered, trial defense counsel should recommend appropriate changes to ensure the ROT accurately reflects the proceedings. Trial defense counsel shall not directly annotate the original ROT.

d. Trial defense counsel must review and, if warranted, comment on the post-trial recommendations. [See, RCM 1106(f).]

e. Trial defense counsel must assist the accused to submit any matters desired under RCM 1105 or to waive his or her right to do so.

5.C.2. Other Duties

The following are a non-exclusive list of duties trial defense counsel may perform when appropriate if the case or facts warrant it.

a. Trial defense counsel may prepare for attachment to the ROT an Article 38(c)(1), UCMJ, brief setting forth such matters as he or she believes should be considered on behalf of the accused on review. Such brief should be submitted prior to the expiration of the time limit set forth in RCM 1106(f)(5) to ensure the convening authority will have the brief for consideration when he or she takes action. In order that

COMDTINST M5810.1E

the SJA or judge advocate, convening authority, and reviewing authorities can maintain their impartiality in the process of review and that reviewing officials will have the positions of both sides in the case, in those cases where a brief is forwarded pursuant to Article 38(c)(1), UCMJ, defense counsel shall serve, or cause to be served, a copy of such brief on trial counsel who may within 5 days submit an answering brief for attachment to the ROT. The answering brief submitted by trial counsel is limited to responding to those propositions and issues raised in the brief of defense counsel.

b. If appropriate, trial defense counsel should advise the accused of the right to submit an “Application for Relief under Article 69, UCMJ,” and if requested by accused, trial defense counsel should comply with section 5.J below. [See, paragraph 5.J.3 below.]

c. If appropriate, trial defense counsel should submit a petition for a rehearing or a new trial pursuant to Article 73, UCMJ. [See, RCM 1210 and section 5.K below.]

d. If appropriate, trial defense counsel should advise the accused concerning voluntary and required appellate leave. [See, Article 7-A-21, Coast Guard Personnel Manual, COMDTINST M1000.6 (series).]

5.C.3. Seeking Extraordinary Relief

Trial defense counsel has a duty to assist the accused in matters ancillary to the trial. In appropriate cases that duty may involve assistance in preparing a petition for extraordinary relief in accordance with the rules of the Coast Guard Court of Criminal Appeals and the Court of Appeals for the Armed Forces. Careful attention should be given to the rules of court concerning style, copies, and service. To acknowledge the respective responsibilities of trial and appellate defense counsel, petitions for extraordinary relief on behalf of an accused shall be prepared for signature by the accused and be forwarded directly to the appropriate court. Information copies of the petition shall be forwarded to trial counsel, military judge, the Office of Legal and Defense Services (CG-094M), and the Office of Military Justice (CG-0946).

5.C.4. Termination of Duties of Defense Counsel

5.C.4.a. General

Defense counsel shall continue to act until the proceedings are final under RCM 1209; that is, until any direct appeal possible is acted upon and the accused notified. Absent an approved withdrawal or release from active duty, an attorney-client relationship established at a general or special court-martial continues to exist after the trial regardless of the ultimate character of the proceedings or whether appellate defense counsel is appointed. A defense counsel does not have the right to appear at any lower forum where an accused does not have a right to counsel, but shall continue to provide the accused with general representation and advice. This does not, however, preclude the convening authority or commanding officer from permitting defense counsel to appear at either a

summary court-martial or mast at the sole discretion of that convening authority or commanding officer.

5.C.4.b. Termination of Duties in Formal Appellate Process

Enclosure (19) is a suggested format for a trial defense counsel request for judicial approval of termination of representation duties.

5.C.5. Appointment of Appellate Defense Counsel

In accordance with Article 70(c), UCMJ, appellate defense counsel will be detailed by the Judge Advocate General to represent an accused before the Coast Guard Court of Criminal Appeals, the Court of Appeals for the Armed Forces, and the U.S. Supreme Court. [See also, paragraph 5.C.6 below regarding habeas corpus representation.]

5.C.6. Appointment of Counsel for Members Sentenced to Death by GCM

Coast Guard members sentenced to death by a court-martial, who seek to file in federal civilian court(s) post-conviction habeas corpus petition(s) respecting such court-martial following the approval of their court-martial sentence to death by the President pursuant to Article 71, UCMJ, shall, upon request of the accused to the Judge Advocate General, be detailed military counsel by the Judge Advocate General to represent them in such proceedings and any appeals there from. [See, Article 70(e), UCMJ.] Designated appellate defense counsel may be a military attorney from the Coast Guard or any other DoD military service pursuant to an inter-service agreement.

5.D. EFFECTIVE DATE OF COURTS-MARTIAL SENTENCES

5.D.1. General

Except for an adjudged sentence of confinement [see, RCM 1101], adjudged reduction in pay grade [see, Article 57(a)(1), UCMJ], and/or adjudged [see, Article 57(a)(1), UCMJ] or automatic [see, Article 58b, UCMJ] forfeiture of pay and allowances, no part of a court-martial sentence may be carried out until it has been ordered executed. Those approved portions of the sentence that do not extend to death, dismissal, or dishonorable or bad conduct discharge will normally be ordered executed in the initial Convening Authority Action, unless suspended or deferred in that action.

5.D.2. Death or Dismissal

Sentences to death or dismissal may be ordered executed only by the President or the Secretary of the Department of Homeland Security respectively. The Office of Military Justice (CG-0946) shall be consulted in every trial in which death or dismissal is contemplated prior to trial and again upon the sentence of death or dismissal.

5.D.3. Confinement

5.D.3.a. Effective Date of Confinement

Unless deferred, any period of confinement included in a court-martial sentence begins on the date the sentence is adjudged, regardless of whether the accused is already confined. [See, RCM 1113(d)(2), 1107(f)(4)(C), and Article 8-F-5, Coast Guard Personnel Manual, COMDTINST M1000.6 (series), governing confinement and designation of the place of confinement.]

5.D.3.b. Deferment of Sentence to Confinement

If requested by the accused, a sentence to confinement may be deferred by the convening authority or by the OEGCMJ over the accused if the accused is no longer in the convening authority's jurisdiction. This request must originate with the accused and must be in writing. For termination of deferment, see RCM 1101(c)(6). Any request for deferment of confinement and the written action thereon shall be included in the ROT. [See, RCM 1101(c).]

5.D.4. Punitive Discharge

a. No dishonorable or bad conduct discharge may be ordered executed until the conviction is final under RCM 1209. The OEGCMJ may order the sentence executed in all cases where the accused has waived appellate review and review under RCM 1112(f) is final.

b. In all other cases, even after the conviction is final, the punitive discharge may not be ordered executed until the ROT has been reviewed for clemency in accordance with Article 8-F-6(d)(4), Coast Guard Personnel Manual, COMDTINST M1000.6 (series), and the discharge approved by Commandant. When clemency review is completed the Office of Military Justice (CG-0946) will advise whether clemency was granted or denied pursuant to Article 74(a), UCMJ, and notify the Personnel Service Center of the type of discharge to be issued.

c. For punitive discharges approved prior to 23 August 2008, if the punitive discharge is approved, the Office of Military Justice (CG-0946) will notify the OEGCMJ for the command that convened the court-martial for final action on the ROT pursuant to RCM 1113(c)(1)(B). If the advice of that officer's SJA is required under RCM 1113(c)(1)(B), the SJA shall ensure the ROT contains a statement that such advice was considered by the OEGCMJ together with a brief synopsis or copies of relevant documents reflecting the nature and character of duty of the accused since approval of the sentence. Except as noted above, the advice of the SJA required under RCM 1113(c)(1)(B) need not be in writing. The final action shall order the punitive discharge executed and shall be attached to the ROT. Once the final action is signed, the original final action shall be forwarded to the Office of Military Justice (CG-0946).

d. For punitive discharges approved after 23 August 2008, if the punitive discharge is not disapproved in the initial action, the discharge is self-executing in accordance with RCM 1113(d).

5.D.5. Forfeitures, Reductions in Pay Grade, and Automatic Provisions

5.D.5.a. Effective Date of Forfeitures and Reductions in Pay Grade

Article 57(a), UCMJ, makes adjudged forfeitures of pay and allowances and reductions in pay grade effective 14 days after being adjudged or on the date the sentence is approved by the convening authority, whichever is earlier. Upon application of the accused the convening authority may defer the effective date of forfeiture or reduction in pay grade at any time until the date the convening authority acts on the sentence. Deferment may be rescinded based on information not previously considered. The Coast Guard by policy does not affect the administrative reduction in pay grade authorized under Article 58a, UCMJ [see, paragraph 4.E. 1 above] .

5.D.5.b. Statutory Administrative Forfeitures

(1) Article 58b, UCMJ, provides for administrative forfeiture of pay and allowances during confinement for a member sentenced by a court-martial to a period of confinement exceeding 6 months or any period of confinement accompanied by a punitive discharge. Forfeitures under Article 58b, UCMJ are not an adjudged court-martial sentence.

(2) If Article 58b, UCMJ, administrative forfeitures apply in the case of a general court-martial, all pay and allowances are automatically forfeited during the period of confinement. In the case of a special court-martial, two-thirds of pay is automatically forfeited during the period of confinement. The amount forfeited by operation of Article 58b, UCMJ, is that amount above any adjudged and approved fines or forfeitures. The total adjudged fines and forfeitures and administrative forfeitures may not exceed the jurisdictional limit of the court-martial. Article 58b, UCMJ, administrative forfeitures automatically take effect, but may be deferred. [See, subparagraph 5.D.5.a above] or waived [See, subparagraph 5.D.5.a.(3) above].

(3) In cases where a member subject to Article 58b, UCMJ, administrative forfeitures has dependents, all or part of the forfeiture may be waived by the convening authority anytime after sentencing for a period not to exceed 6 months, provided that the amounts waived are paid directly to the accused's dependents.

(4) Administrative forfeiture under Article 58b, UCMJ, is a congressionally required administrative (not a courts-martial sentencing or punitive) action applicable only if a prisoner is otherwise entitled to pay. There are circumstances in which a member is convicted and sentenced to confinement and is not entitled to, or loses entitlement to military pay. Notable is the loss of entitlement to pay when a prisoner's enlistment expires while in confinement (e.g., a prior extension does not become effective if the member is confined and a prisoner is precluded from reenlisting) or if a member's enlistment has expired but he or she is involuntarily extended for purposes of courts-martial (the member is automatically released from active duty and assumes a non-pay status upon announcement of the sentence). [See, subparagraph 3. J. 2. E above.]

5.D.5.c. Procedures

(1) An order deferring any forfeitures or reduction in pay grade should be signed by the convening authority and worded substantially as follows:

The [forfeitures/reduction in pay grade] [adjudged/arising by operation of Article 58b, UCMJ from the sentence adjudged] on [date sentence adjudged] in the case of [accused's name, EMPLID, and unit] by the [Special/General] Court-Martial convened by my order number [convening order number] dated [date] are hereby deferred from [effective date of deferral] until [end date of deferral/date action is taken on the sentence].

(2) An order waiving administrative forfeitures should be signed by the convening authority or person acting under Article 60, UCMJ, and RCM 1107 and worded substantially as follows:

Any forfeitures arising by operation of Article 58b, UCMJ, as a result of the sentence adjudged [date sentence imposed] in the case of [accused's name, EMPLID, and unit] by my [Special/General] Court-Martial Order [CM Order Number] dated [date] are hereby waived as follows: Effective date of waiver, [date]; End date of waiver, [date -- not to exceed 6 months from start date]; Amount of forfeitures waived per month [stated in whole dollar amounts]. This waiver applies only to forfeitures arising by operation of Article 58b, UCMJ, and does not apply to adjudged forfeitures. All amounts waived are to be paid to the accused's dependents. [If applicable -- This waiver is granted at the request of [the accused, defense counsel, the accused's spouse, etc.]. (Attach copy of any request.)]

(3) Deferral and waiver orders may be combined in a single document. This document may be the convening authority's action; however, deferral decisions may be made prior to the action. A certified copy of any order waiving administrative forfeitures, or deferring forfeitures or reductions in pay grade, shall be provided immediately to the Servicing Personnel Office responsible for the accused's service record. Orders denying deferral requests should include the reasons for denial [see, RCM 1101(c)(3), Discussion]. All original orders shall be attached to the ROT.

5.D.6. Effective Date of Other Punishment

All other punishments adjudged by a court-martial take effect on the date ordered executed.

5.D.7. Payment of Fines

Payment of fines shall be made by check or money order payable to the U.S. Treasury and sent to the Pay and Personnel Center (PPC), Topeka, Kansas.

COMMANDING OFFICER (SES)
USCG PAY AND PERSONNEL CENTER
444 SE QUINCY ST
TOPEKA KS 66683-3591

5.E. SUSPENSION OF COURTS-MARTIAL SENTENCE(S)

5.E.1. Suspension of Execution of Sentences

a. Suspension of a court-martial sentence is governed by RCM 1108. Convening authorities are encouraged to suspend, for a probationary period, all or any part of a sentence when such action would promote discipline and when the accused's prospects for rehabilitation would more likely be enhanced by probation than the execution of all or a part of the sentence adjudged.

b. The OEGCMJ may in addition to authority otherwise granted, suspend or remit any part or amount of the unexecuted part of a sentence, other than a sentence approved by the President. No suspension may be for an unreasonably long period. Absent unusual circumstances, the period of suspension shall normally not exceed the greater of 18 months, or 1 year beyond any period of confinement adjudged.

5.E.2. Vacation of suspension

Article 72, UCMJ and RCM 1109 governs procedures and requirements for vacating the suspension of a sentence.

a. If the probationer is placed in confinement pending a vacation hearing, those officers designated under paragraph 3.C.4 b above, shall be available to review confinement under the provisions of RCM 1109(c)(4).

b. The vacation proceedings mandated by RCM 1109(d) shall be reported on the form set forth in Appendix 18, MCM, or a substantially equivalent document. For other vacation proceedings in which a record is required under RCM 1109(e)(4) or (5), Appendix 18, MCM, may be used as a guide and modified to provide a record of the proceedings. For SCM proceedings, the form set forth in enclosure (7b) may be used. In the case of Coast Guard members confined at Department of Defense confinement facilities, the commanding officer of the facility may conduct the hearings required by RCM 1109(d) and (e) if he or she is a special court-martial convening authority.

c. A supplemental promulgating order shall be issued in any case in which all or a portion of a suspended sentence is vacated. The original of this order, and

COMDTINST M5810.1E

the record of proceedings shall be forwarded to the Office of Military Justice (CG-0946) for attachment to the original ROT.

5.E.3. Counsel

Rights to military counsel for proceedings governed by RCM 1109 are set forth in RCM 1109(c)(4)(A)(iii) and (d)(1)(B)(iv). Military counsel detailed to represent the accused at these proceedings must meet the requirements of Article 27(b), UCMJ. Such military counsel need not be the same counsel who originally represented the probationer.

5.F. COURTS-MARTIAL ACTION AND REVIEW

5.F.1. Action

Action on the sentence and, in the discretion of the convening authority, on the findings shall be taken by the authority that convened the court in accordance with RCM 1107. Forms for action are contained in Appendix 16, MCM. A sample action is found at enclosure (18e). The convening authority shall adhere to applicable time limits set forth in RCM 1107(b)(2), 1105, and 1106(f). No action by the convening authority is required in those cases resulting in an acquittal. [See, section 5.G below for issuance of promulgating orders.]

5.F.1.a. Impracticable for Convening Authority to Act or OEGCMJ is Disqualified

(1) Special Court-Martial

When it is impracticable for the convening authority to act, the ROT shall be forwarded to the OEGCMJ with a statement of the reason why the convening authority did not act. The OEGCMJ may take action or, in that officer's discretion, refer the case to any other subordinate special court-martial convening authority for action.

(2) OEGCMJ

When it is impracticable for the OEGCMJ as convening authority, to act in accordance with RCM 1107, or when the OEGCMJ is disqualified to act under RCM 1112(f) or otherwise, the Office of Military Justice (CG-0946) shall be advised and requested to designate another OEGCMJ to take action. The ROT shall then be forwarded to the designated officer with a statement of the reason why the OEGCMJ did not act. The Office of Military Justice (CG-0946)'s designation of an alternate convening authority/OEGCMJ will be made part of the ROT.

5.F.1.b. SJA Recommendation [SJAR]

(1) Designation of SJA (Judge Advocate)

Prior to taking action on the ROT of a general court-martial or a special court-martial in which a bad conduct discharge was adjudged, the convening authority, or the substitute convening authority designated under subparagraph 5.F.1.a above, shall obtain the recommendation of his or her SJA [see, RCM 1106]. A sample RCM 1106

recommendation is found at enclosure (18d). When a convening authority has no SJA, he or she shall forward the ROT for action to the OEGCMJ, or request the OEGCMJ designate a judge advocate to prepare the recommendation. Such officer may be the SJA of the OEGCMJ or any judge advocate on his or her staff who is not otherwise disqualified by prior participation as counsel or investigating officer in the case or one related to it. The OEGCMJ may request the Office of Military Justice (CG-0946) designate a judge advocate if no qualified officer is available on his or her staff.

(2) Distribution of SJA Recommendation [SJAR]

The original 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.F.1.c. Designation of Place of Confinement

The convening authority of a court-martial that includes a sentence to confinement is required to originally designate the place of temporary custody or confinement. [See, section 6.H below and paragraph 5.D.3 above.]

5.F.1.d. Sentences Including Reprimand

(1) General

Reprimands issued in execution of court-martial sentences are punitive reprimands (and to be distinguished from administrative non-punitive reprimands) and are required to be in writing.

(2) By whom issued

Punitive letters of reprimand adjudged by a court-martial shall normally be issued by the convening authority as part of the action on the ROT in accordance with the provisions of RCM 1107(f)(4)(G), RCM 1003(b)(1).

(3) Contents

The punitive letter of reprimand shall include the time and place of trial, type of court, and a statement of the charges and specifications of which convicted. It shall also contain the following paragraph:

A copy of this letter will be placed in your official record at Coast Guard Headquarters. You may forward to Coast Guard Personnel Command (PSC (adm-3)) within 15 days after receipt of this action such statement concerning this letter as you may desire for inclusion in your record. In connection with your statement, you are advised that any statement submitted shall be couched in temperate language and shall be confined to pertinent facts. Opinions shall not be ex-

pressed nor the motives of other personnel impugned. Your statement shall not contain countercharges.

(4) Procedure of issuance

The original letter shall be delivered to the accused either personally or sent by First Class/Priority Certified mail with a return receipt requested. If personally delivered, the accused shall acknowledge receipt of the punitive letter of reprimand on PSC's copy of the letter to be filed in the member's official record. A copy of the letter shall be appended to the convening authority's action (or, if not issued by the convening authority, to the promulgating order of the officer subsequently directing execution of the sentence). The action (or order) should refer to the letter in the following tenor:

Pursuant to the sentence of the court, as herein approved, a letter of reprimand is this date being served upon the accused and a copy thereof is hereby incorporated as an integral part of this action.

(5) Forwarding Copy to Coast Guard Personnel Service Center (PSC)

A copy of the letter of reprimand, with either the accused's acknowledgment of receipt or the signed PS form 3811 return receipt attached, shall be forwarded to Coast Guard Personnel Service Center [PSC -adm-3].

(6) Appeals

Review, including appellate review, of letters of reprimand issued as part of an approved court-martial sentence will be accomplished as provided for by the UCMJ, the MCM, and this Manual with respect to the proceedings of the particular court-martial that imposed the sentence. No separate appeal from these letters will be considered.

5.F.1.e. Companion Cases Referred

In court martial cases where the trial of a companion case is ordered to be tried separately, jointly, or in common with the current case the convening authority shall so indicate in the action on the record in each case.

5.F.2. Disposition of ROTs after Convening Authority Action

5.F.2.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 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 the Office of Military Justice (CG-0946) for review by the Coast Guard Court of

Criminal Appeals. 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 judge advocate 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 the Office of Military Justice (CG-0946) for referral to the Coast Guard Court of Criminal Appeals [see, RCM 1201].

5.F.2.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 above, the ROT shall be sent directly to the Office of Military Justice (CG-0946) for review by the Judge Advocate General of the Coast Guard under RCM 1201(b)(1).

(2) In cases in which there is a waiver under RCM 1110, the ROT shall be referred to a judge advocate for review under RCM 1112 as set forth in paragraph 5.F.3 below

5.F.2.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 judge advocate for review under RCM 1112 as set forth in paragraph 5.F.3 below, following action by the convening authority. Following review under RCM 1112, the ROT and reviewer's findings/recommendations shall be forwarded to the Office of Military Justice (CG-0946).

5.F.2.d. GCM and SPCM Resulting in Acquittal

In all such cases the ROT shall be forwarded directly to the Office of Military Justice (CG-0946) for filing upon issuance of the promulgating order by the convening authority.

5.F.3. SJA Review and Forwarding

5.F.3.a. Review by a Judge Advocate [SJA]

(1) ROTs requiring review under RCM 1112, shall be forwarded to the SJA of the OEGCMJ. The SJA may review the ROT or cause a judge advocate on his or her staff to review it. A sample RCM 1112 review is found at enclosure (18g).

(2) If the SJA is disqualified or otherwise unavailable and no judge advocate on his or her staff is qualified or available, the SJA shall request the Office of Military Justice (CG-0946) designate an alternate SJA to review the ROT or cause the ROT to be reviewed by another judge advocate on his or her staff. The ROT will be

COMDTINST M5810.1E

forwarded by a DHS approved commercial carrier (e.g. FedEx or UPS) to the alternate SJA who shall review the ROT or cause it to be reviewed. If action is required under RCM 1112(e), the ROT and review shall be forwarded to the original OEGCMJ, or a substitute OEGCMJ if one was designated.

5.F.3.b. Forwarding

(1) In cases wherein the completion of the review required by RCM 1112 renders the conviction final under RCM 1209, the original review shall be attached to the original ROT and forwarded by a DHS approved commercial carrier (e.g. FedEx or UPS) to the Office of Military Justice (CG-0946) for filing.

(2) In cases where action is required by RCM 1112(e), the ROT shall be forwarded to the OEGCMJ for action under RCM 1112(f). The original review shall accompany the ROT. A sample RCM 1112(f) action is found at enclosure (18h). The original action shall be attached to the original ROT.

5.F.3.c. Distribution

Any RCM 1112 review or any action by the OEGCMJ under RCM 1112 shall be distributed as follows:

- (1) Original attached to original ROT.
- (2) One certified copy forwarded to the Servicing Personnel Office maintaining service record of accused.
- (3) One copy forwarded to accused.
- (4) One copy forwarded to each trial counsel, defense counsel, and military judge detailed to the court that tried the accused.

5.F.3.d. Cases Subject to Review Under RCM 1112

The accounting and a recommendation as to any appropriate action to be taken as a result of any delay in accordance with RCM 1112 (d)(3) shall be included in the judge advocate's review. The accounting and ROT shall be sent for action to the OEGCMJ in accordance with RCM 1112(e) if corrective action due to delay is recommended.

5.F.4. Accounting for Delays in Review

5.F.4.a. Delays that Require Accounting

In all cases in which there was any finding of guilty and any of the following criteria apply, the post-trial delay must be accounted for as described in this paragraph:

- (1) More than 120 days elapsed between the date the sentence was adjudged and the date the convening authority's action under RCM 1107 was taken;

(2) In a case subject to review under RCM 1112, more than 120 days elapsed between the date the sentence was adjudged and the date the judge advocate completed the review required by RCM 1112; or,

(3) The accused was in post-trial confinement for more than 90 days before the convening authority's action under RCM 1107 was taken.

5.F.4.b. Format

An accounting required by subparagraph 5.F.4.a above shall include a chronology showing post-trial processing of the case; a description of unusual delays attributable to the defense or military judge, including any significant documents not otherwise included in the ROT; a concise explanation of any other circumstances significantly contributing to the delay; and corrective action, if any, taken.

5.F.4.c. Cases Forwarded for Review by the Coast Guard Court of Criminal Appeals

The accounting shall be included in the letter of transmittal forwarding the case to the Office of Military Justice (CG-0946) for further review [see, RCM 1111(a)(1)] and signed by the convening authority or SJA.

5.F.4.d. Cases Subject to Review Under RCM 1112

The accounting and a recommendation as to any appropriate action to be taken as a result of the delay in accordance with RCM 1112 (d)(3) shall be included in the judge advocate's review. The accounting and ROT shall be sent for action to the OEGCMJ in accordance with RCM 1112(e) if corrective action due to delay is recommended.

5.F.5. Distribution

A copy of the action of the convening authority, of the review by a judge advocate, and of the action of the OEGCMJ shall be distributed to each military judge, trial counsel, and defense counsel of the court martial before which the case was tried.

5.G. PROMULGATING ORDERS FOR GCM AND SPCM

5.G.1. Initial Order

The convening authority will issue a promulgating order in every court-martial (including acquittals). A separate court-martial order will be issued for each accused tried. [See, RCM 1114 and Appendix 17, MCM.]

5.G.2. Supplementary Order

Any action taken after issuance of the initial court-martial order that changes the findings, sentence, or place of confinement requires a supplementary court-martial order. The convening authority or a superior or substitute convening authority will prepare the supplementary court-martial order with distribution the same as that of the initial order. A

change in the place of confinement as a result of an administrative decision made within the corrections system does not require a supplemental court-martial order.

5.G.3. Supplementary Orders in Cases Reviewed by the Coast Guard Court of Criminal Appeals [CGCCA]

If the sentence was ordered executed or suspended in its entirety by the convening or other authority, and the conviction has become final without modification of the findings or sentence, no supplementary court-martial order is necessary.

A supplementary promulgating order shall be issued in all other cases. Such orders shall be published as follows:

a. The Judge Advocate General issues supplementary orders in cases involving death sentences and dismissals by direction of the President, or the Secretary, Department of Homeland Security, as appropriate.

b. The cognizant OEGCMJ or convening authority shall issue other supplementary orders. In cases in which appellate review was required, supplementary orders will be issued upon notification by the Office of Military Justice (CG-0946) if any are required.

5.G.4. Promulgating Order Form

Various forms for promulgating orders are contained in Appendix 17, MCM, and an example is provided in enclosure (18f). The order shall be subscribed by the officer issuing the order or by a subordinate officer designated by him or her. In either case the name, grade, and title of the subscribing officer, including his or her unit, shall be given. Where a subordinate officer signs by direction, his or her name, title, and organization shall be followed by the words: "By direction of [name, grade, and title of issuing officer]." Certified copies of promulgating orders are copies bearing the statement: "Certified to be a true copy," over the signature, grade, and title of an officer.

5.G.5. Promulgating Order Numbering

Each promulgating order and supplementary order is unique and numbered in a separate sequence, starting with 1-FY (where "FY" is the fiscal year in which the order is signed) to identify the first promulgating order or supplementary order of the fiscal year and continuing with 2-FY, 3-FY, etc., as a subsequent promulgating order or supplementary order is issued during the same fiscal year.

5.G.6. Distribution

All initial and supplementary promulgating orders shall be distributed as follows:

a. Original attached to the original ROT.

- b. One certified copy forwarded to the Servicing Personnel Office maintaining the service record of the accused for appropriate service record entries (or, in the case of a retired member, the Pay and Personnel Center).
- c. Two certified copies forwarded to the place of confinement (if the accused is still in confinement).
- d. One copy forwarded to each accused.
- e. One copy forwarded to each trial and defense counsel(s).
- f. If the accused is confined in a Navy or Marine Corps Correctional Center, one copy forwarded to the Secretary, Naval Clemency and Parole Board [see, subparagraph 5.A.2.h above].
- g. One copy forwarded to PSC (adm-3).
- h. One copy forwarded to the servicing CGIS office. [See, Mandatory Reporting of Incidents to Coast Guard Investigative Service and Requesting Investigative Assistance, COMDTINST 5520.5 (series).]
- i. Other desired local distribution.

5.H. DISPOSITION OF COURT-MARTIAL RECORDS OF TRIAL [ROT]

5.H.1. Disposition of the Original

Original ROTs by court-martial, including trials that do not result in conviction, will be transmitted to the Office of Military Justice (CG-0946) after completion of all reviews and actions required to be accomplished in the field.

5.H.2. Disposition of Copies

Convening authorities and the OEGCMJ shall retain a file copy of the ROT for three years from the date the conviction is final under RCM 1209(a)(2), or until the conviction is final under RCM 1209(a)(1) and final action has been taken on any punitive discharge under paragraph 5.D.4 above, whichever period is greater.

5.I. SERVICE OF COAST GUARD COURT OF CRIMINAL APPEALS DECISIONS

5.I.1. General

The accused shall be provided notice of the Coast Guard Court of Criminal Appeals decision once it is announced.

5.I.1.a. Accused Serving in an Active Duty Status

Where the accused is serving on active duty a service packet (including a copy of the decision, an endorsement on the copy of the decision informing accused of the right to petition for review, and receipt) shall be forwarded by First Class/Priority Certified mail

COMDTINST M5810.1E

by the Office of Military Justice (CG-0946) to the SJA for the cognizant OEGCMJ. The SJA shall forward the packet via First Class/Priority Certified mail to the accused's immediate commanding officer who shall serve the accused, procure his or her signature on the provided receipt as evidence of service and return the executed form to the Office of Military Justice (CG-0946) via the chain of command, including the OEGCMJ.

5.I.1.b. Accused Discharged, Released from Active Duty, or on Appellate Leave

Where accused has been placed on appellate leave, released from active duty, or discharged, the service packet as described in subparagraph 5.I.1.a above, shall be forwarded by the Office of Military Justice (CG-0946) directly to the accused by certified mail.

5.I.1.c. Accused Cannot Be Served

If the attempted service of the decision, as contemplated by subparagraph 5.I.1.a above, is unsuccessful, a certificate of attempted service [see, enclosure (20)] will be prepared by the officer attempting service. The certificate shall detail all attempts at service and returned along with the undelivered decision to the Office of Military Justice (CG-0946) via the chain of command, including the OEGCMJ. If service by mail was unsuccessful service by publication may be initiated by the Office of Military Justice (CG-0946) in accordance with *U.S. v. Myers*, 28 M.J. 191 (C.M.A. 1989).

5.I.1.d. Power of Attorney Executed by Accused Authorizing Service on Defense Counsel

Service of the decision may be made upon appellate or trial defense counsel in those cases where accused has executed a power of attorney authorizing service of the decision on defense counsel. [See, *U.S. v. Larnear*, 3 M.J. 76 (CMA 1977).]

5.I.2. Service of Decision Following Government Appeal or Petition for Extraordinary Relief

a. Following a decision of the Coast Guard Court of Criminal Appeals or the Court of Appeals for the Armed Forces on a government appeal or a petition for extraordinary relief, the Office of Military Justice (CG-0946) shall cause a copy of the decision to be served on trial counsel, defense counsel, the convening authority, and the military judge. Service by certified mail or other expeditious means is authorized.

b. Upon receipt of a copy of the decision trial may proceed, if authorized, consistent with the decision of the appellate court unless the trial is stayed by order of a higher court.

5.J. APPLICATION FOR RELIEF UNDER ARTICLE 69(B), UCMJ

5.J.1. Statutory Provisions

Article 69(b), UCMJ cases are either special court-martial cases in which no bad conduct discharge is adjudged or summary courts-martial. Under Article 69(b), the Judge Advocate General may review these cases upon application of the accused or, if there is no application of the accused, on a discretionary basis. The Judge Advocate General may refer Article 69(b), UCMJ, cases to the Coast Guard Court of Criminal Appeals.

5.J.2. Time Limitations

An application for relief to be considered must be placed in military channels if the applicant is on active duty, or be deposited in the mail if the applicant is no longer on active duty, on or before the last day of the two-year period beginning on the date the sentence is approved by the convening authority. An application not filed in compliance with these time limits may be considered if the Judge Advocate General determines, in his or her sole discretion, that “good cause” for failure to file within the time limits has been established by the applicant.

5.J.3. Submission Procedures

Applications for relief shall be submitted to the Judge Advocate General via the Office of Military Justice (CG-0946) by letter. If the accused is on active duty the application shall be submitted via the applicant’s commanding officer, the command that convened the court, and the command that reviewed the case under Article 64(a) or (b), UCMJ. The endorsement shall include information and specific comment on the grounds for relief asserted in the application and an opinion on the merits of the application. If the applicant is no longer on active duty the application may be submitted directly to the Judge Advocate General via the Office of Military Justice (CG-0946).

5.J.3.a. Contents of Applications

All applications for relief shall contain:

- (1) The full name of the applicant;
- (2) Social security number or Employee Identification Number and branch of service, if any;
- (3) Present grade if on active duty or retired, or “civilian” or “deceased” as applicable;
- (4) Address at time the application is forwarded;
- (5) Date of trial;
- (6) Place of trial;
- (7) Command title of the organization at which the court-martial was convened (convening authority);

- (8) Command title of the OEGCMJ over the applicant at the time of trial (if applicable);
- (9) Type of court-martial that convicted the applicant, and sentence adjudged;
- (10) General grounds for relief, which must be one or more of the following:
 - (a) Newly discovered evidence;
 - (b) Fraud on the court;
 - (c) Lack of jurisdiction over the accused or the offense;
 - (d) Error prejudicial to the substantial rights of the accused; or,
 - (e) Appropriateness of the sentence.
- (11) An elaboration of the specific prejudice resulting from any error cited. Legal authorities to support the applicant's contentions may be included and the format used may take the form of a legal brief if the applicant so desires;
- (12) Any other matter that the applicant desires to submit;
- (13) The specific relief requested;
- (14) Facts and circumstances to establish "good cause" for a failure to file the application within the time limits prescribed in paragraph 5.J.2 above, if applicable; and
- (15) If the application is signed by a person other than the applicant pursuant to subparagraph 5.J.3.b below, an explanation of the circumstances rendering the applicant incapable of making application.

5.J.3.b. Signatures on Applications

Unless incapable of making application the applicant shall personally sign the application under oath before an official authorized to administer oaths. If the applicant is incapable of making application the application may be signed under oath and submitted by the applicant's spouse, next of kin, executor, guardian, or other person with a proper interest in the matter. In this regard, applicant is considered incapable of making application for purposes of this section when unable to sign the application under oath due to physical or mental incapacity.

5.J.3.c. Consideration of Application

When an application has been properly submitted, it will be reviewed together with the original ROT in the Office of Military Justice (CG-0946). The applicant will be notified of the action taken or decision rendered in response to the application for relief.

5.K. PETITION FOR NEW TRIAL UNDER ARTICLE 73, UCMJ

5.K.1. Statutory Provisions

[See, Article 73, UCMJ; RCM 1210.]

An accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a Court of Criminal Appeals or before the Court of Appeals for the Armed Forces, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition.

5.K.2. Time Limitations

If the petition for new trial was placed in military channels within two years after approval of a sentence by the convening authority (regardless of the date of its receipt by the Judge Advocate General it shall be considered to have been timely filed. Except in extraordinary circumstances the Judge Advocate General will not act upon petitions until all reviews contemplated by Article 65, UCMJ, have been completed.

5.K.3. Submission Procedures

The petition shall be submitted directly to the Judge Advocate General for action pursuant to paragraph 5.K.5 below.

5.K.4. Contents of Petitions

The form and contents of petitions for new trial are specified in RCM 1210(c). In addition the petition shall include the command title of the OEGCMJ over the petitioner at the time of trial.

5.K.5. Action on the Petition

a. If the case is pending before the Coast Guard Court of Criminal Appeals or the Court of Appeals for the Armed Forces, the petition shall be referred for action to the appropriate court. If referred for action to the Coast Guard Court of Criminal Appeals that Court shall take action in accordance with Courts of Criminal Appeals Rules of Practice and Procedure.

b. In all other cases the Judge Advocate General shall return the petition for compliance with the procedural requirements of RCM 1210(c) and paragraph 5.K.4 above.

5.L. RESIDUAL CLEMENCY: AUTHORIZED OFFICIALS

Secretary, Department of Homeland Security has delegated the authority contained in Article 74(a), UCMJ, to remit or suspend any unexecuted portions of any sentence to certain commanding officers, under certain specific conditions [see, Article 8.F.6.d.,

COMDTINST M5810.1E

Coast Guard Personnel Manual, COMDTINST M1000.6 (series)] A copy of that authorization is contained in enclosure (9).

CHAPTER 6

COURTS-MARTIAL MISCELLANEOUS	6-1
6.A. Unlawful Influence in Military Justice Proceedings.....	6-1
6.A.1. Unlawful Command Influence Defined.....	6-1
6.A.2. Prohibition.....	6-1
6.A.3. Investigation and Response to Reports of Violations of Article 37(a), UCMJ	6-1
6.B. Court Rules of Practice and Procedure	6-3
6.C. Standards of Conduct	6-3
6.C.1. Standards of Conduct.....	6-3
6.D. Certification and Designation of Military Judges.....	6-4
6.D.1. Certification of Military Trial Judges	6-4
6.D.2. Administration and Oversight of Military Trial Judges.....	6-7
6.D.3. Procedure for Revocation of Certification of Military Judge or Counsel.....	6-8
6.E. Tenure for Military Trial and Appellate Military Judges	6-8
6.E.1. General Court-Martial Military Trial Judges.....	6-8
6.E.3. Appellate Military Judges	6-9
6.F. Certification of Counsel Under Article 27(b), UCMJ.....	6-10
6.F.1. General.....	6-10
6.F.2. Certification	6-10
6.G. Professional Supervision of Military Trial and Appellate Judges and Attorneys Practicing in Proceedings Governed by the UCMJ and MCM.....	6-11
6.G.1. General.....	6-11
6.G.2. Investigation and Discipline of Coast Guard Attorneys	6-11
6.H. Designating and Changing of Place of Confinement	6-11
6.I. Submitting Proposed Changes to This Manual.....	6-12
6.J. Submitting Proposed Changes to the Manual for Courts- Martial [MCM]	6-12
6.J.1. Joint Service Committee [JSC].....	6-12
6.J.2. Submitting Suggestion for Change to the MCM	6-13
6.J.3. UCMJ changes.....	6-14

COURTS-MARTIAL MISCELLANEOUS

6.A. UNLAWFUL INFLUENCE IN MILITARY JUSTICE PROCEEDINGS

6.A.1. Unlawful Command Influence (UCI) Defined

The military judicial system has, over time, more fully defined the scope of the prohibition in Article 37. UCI occurs when senior personnel knowingly or unknowingly influence court members, witnesses, or others participating in military justice cases to the detriment of the accused. In its most extreme forms, UCI may involve: (1) influencing, or attempting to influence, subordinate commanders taking action on a specific case; (2) influencing, or attempting to influence, the military judge or court members to reach a particular result or impose a particular sentence; (3) influencing, or attempting to influence, the witnesses; (4) discouraging or prohibiting anyone from appearing as a defense witnesses or talking to the defense counsel (or NJP mast representative); (5) introducing, or attempting to introduce, command policy into the courtroom; (6) criticizing court members, the military judge, or other court personnel for not returning the desired result, ruling, or sentence; and (7) giving less favorable performance ratings to court personnel because the court did not produce the desired result. UCI may also occur if senior officials appear to take such actions.

6.A.2 Prohibition

Article 37(a), UCMJ prohibits unlawful influence in military justice proceedings. All convening authorities, SJAs, trial counsel and others members involved in the administration of military justice must be thoroughly familiar with Article 37(a), UCMJ.

6.A.3. Investigation and Response to Reports of Violations of Article 37(a), UCMJ

6.A.3.a. General

Unlawful influence in violation of Article 37(a), UCMJ has been called the “mortal enemy of military justice” because it tends to destroy both the fact and the appearance of fairness in military justice proceedings. Unlawful influence will not be tolerated in the Coast Guard.

COMDTINST M5810.1E

6.A.3.b. Responsibilities

Any Coast Guard member who becomes aware of a suspected Article 37(a), UCMJ violation shall promptly report such information to appropriate authorities, including the command of the suspected violator, trial counsel, military judge, or convening authority of any potentially affected military justice proceeding. Coast Guard commanding officers shall be proactive in recognizing and addressing the potential for violations of Article 37(a), UCMJ. Any commanding officer who becomes aware of a suspected violation within his or her command shall consult with his or her servicing legal office about an appropriate response to the situation, regardless of whether a violation has in fact affected a military justice proceeding. Appropriate responses may include administrative or disciplinary measures. Violations of Article 37(a), UCMJ, may be punishable under Article 98, UCMJ as well as other criminal provisions. This section is not intended to create rights not otherwise provided by law for members who are the subject of military justice proceedings.

6.A.4 Leadership Responsibilities Regarding Unlawful Command Influence

6.A.4.a Command Responsibilities

All those in command positions must be proactive in recognizing and addressing potential UCI and upon becoming aware of a suspected violation shall consult with his or her servicing legal office about an appropriate response to the situation, regardless of whether a violation has in fact affected a military justice proceeding. Appropriate responses may include administrative or disciplinary measures. Violations of Article 37(a), UCMJ, may be punishable under Article 98, UCMJ as well as other criminal provisions.

6.A.4.b Member Responsibilities

Any Coast Guard member who becomes aware of a suspected Article 37(a), UCMJ violation shall promptly report such information to appropriate authorities, including the command of the suspected violator, trial counsel, military judge, or convening authority of any potentially affected military justice proceeding. This section is not intended to create rights not otherwise provided by law for members who are the subject of military justice proceedings.

6.A.5 Protection of Individual Whistleblowers

No Coast Guard member or employee may take or fail to take, or threaten to take or fail to take, a negative personnel action with respect to any employee or military member because that person has reasonably made a good faith report of UCI. This provision is a punitive general regulation, applicable to all personnel subject to the Uniform Code of Military Justice without further implementation. A violation of this provision is punishable in accordance with the UCMJ. The purpose of this provision is to protect those who make good faith reports of UCI. It does not preclude positive recognition, when appropriate. The Whistleblower Protection Act, 5 U.S.C. §2302(a)(2) and (b)(8),

applies to reports of UCI by civilian employees and 10 U.S. C. § 1034 to those made by military members.

6.A.6 Judge Advocate General Communication with Convening Authorities

6.A.6a Article 6 Visits

Article 6, UCMJ requires the Judge Advocate General to “make frequent inspection in the field in supervision of the administration of military justice.” During these trips, the Judge Advocate General shall endeavor to meet, to the extent possible, with Convening Authorities, particularly those empowered to convene a general court-martial.

6.A.7 Independence of Judges

The position of military judge was created as an institutional check upon the Convening Authority’s central role in the court-martial process. It is, therefore, essential that military judges have complete decisional independence in every case they participate in. Judicial independence is a longstanding and highly valued principle in American law and is explicitly protected by Articles 26(c), 37(a), and 66(g) of the UCMJ. The vast majority of Coast Guard trial and appellate judges perform these duties on a collateral duty basis. Keeping these judges connected to the communities they serve offers many benefits. However, it also creates potential opportunities for unlawful or inappropriate pressures. The Judge Advocate General has statutory and regulatory authority over all military judges and is uniquely positioned to protect the decisional independence and proficiency of Coast Guard military judges. Most communications concerning trial judges will normally be through the full-time Chief Trial Judge or as part of the normal OER review process. Most communications concerning appellate judges will normally be through the Chief Judge of the Coast Guard Court of Criminal Appeals.

6.B. COURT RULES OF PRACTICE AND PROCEDURE

RCM 108 authorizes the Judge Advocate General and persons designated by him or her to issue rules of court not inconsistent with the UCMJ and MCM. RCM 801(b)(1) authorizes the military judge to promulgate and enforce rules of court. The court rules of practice and procedure before Coast Guard courts-martial are contained in enclosure (16a) to this manual.

6.C. STANDARDS OF CONDUCT

6.C.1. Standards of Conduct

The Coast Guard Legal Professional Responsibility Program, COMDTINST M5800.1 applies to all Coast Guard courts-martial and the trial participants. As far as practicable and not inconsistent with law, the MCM, and Coast Guard Regulations, COMDTINST M5000.3 (series), the following American Bar Association Standards for the

COMDTINST M5810.1E

Administration of Criminal Justice are also applicable to Coast Guard courts-martial: The Prosecution Function and the Defense Function, The Function of the Trial Judge, and Fair Trial and Free Press. The American Bar Association Standards for the Administration of Criminal Justice are published and periodically updated by the American Bar Association.

6.C.2. Additional Trial Counsel Responsibility

Coast Guard Rule of Professional Conduct 3.8 states, “[t]he trial counsel in a criminal case shall recommend the convening authority withdraw any charge or specification not warranted by the evidence”. In addition, the comment to ABA Model Rule of Professional Conduct Rule 3.8, upon which Coast Guard Rule 3.8 is modeled, states “a prosecutor has the responsibility of a minister of justice and not simply an advocate.”

a. In any case in which, after a full development and evaluation of the evidence, trial counsel is of the opinion there is a lack of merit in the case to be prosecuted, and that as a matter of ethical conscience the charge(s) and specification(s) should be reduced or dismissed, he or she shall communicate in writing such belief, together with the reasons therefor, to the convening authority together with a recommendation as to the appropriate disposition of the case.

b. In the event that the convening authority is in disagreement with trial counsel and does not approve the recommendations submitted by trial counsel, the convening authority shall state such disagreement and disapproval in writing, along with the reasons therefor and provide directions to trial counsel.

c. All matters submitted to the convening authority by trial counsel pursuant to this section and the decision of the convening authority shall be attached to the record of trial [ROT] as appellate exhibits.

6.D. CERTIFICATION AND DESIGNATION OF MILITARY JUDGES

6.D.1. Certification of Military Trial Judges

6.D.1.a. General

Coast Guard trial judges preside over special and general courts-martial. In doing so, they ensure that trial proceedings are conducted in a fair, orderly, transparent, and efficient manner, enhance public confidence in the Coast Guard’s military justice system, and develop new judge advocates and legal YN serving in courts-martial.

Judge Advocates are certified as military judges pursuant to Article 26(b), UCMJ by The Judge Advocate General of the Coast Guard [TJAG]. Judge Advocates are certified as counsel pursuant to Article 27(b), UCMJ, by TJAG. RCM 502(c) and (d) prescribe the qualifications of military judges and counsel.

6.D.1.b. Certification

(1) Factors to be Considered

Applicants will be recommended for attendance at a Military Judge Course and certification based upon the following factors:

(a) **Prior Certification as Counsel.** Certification as counsel for general courts-martial is required, unless waived. Requests for waiver of this requirement should include information on each requirement for certification [see, subparagraph 6.D.1.b(2) below].

(b) **Military Justice Experience.** A solid foundation of military justice and trial experience is required. Trial experience will preferably be in courts-martial. The baseline standard is service as the lead counsel in at least five trials, including at least one members/jury case. Moreover, at least three trials must be contested on some significant aspect of the merits. Requests for a waiver of this requirement should be accompanied by evidence, such as that specified in subparagraph 6.D.1.b(2)(g) that the applicant has exhibited reasonable courtroom competence and knowledge.

(c) **Paygrade.** Grade must be at least O-5, unless waived. Requests for waiver of this requirement should be accompanied by evidence, such as that specified in subparagraph 6.D.1.b(2)(g) that the applicant has the requisite presence and judicial bearing.

(d) **Availability to Serve.** The applicant must reasonably expect to be available to serve as a military judge at four trials per year for three years following Military Judge Course attendance and certification. They must also be available to attend the annual 5-day Inter-Service Military Judge Seminar which is frequently held at the National Judicial College (NJC). Military trial judges are expected to enroll in a NJC professional certificate program and make steady progress toward completion.

(e) **Prior Performance.** The applicant's Headquarters Personnel Data Record [PDR] will be reviewed.

(f) **Other Information.** Any relevant information provided from other sources, including but not limited to the comments of judges the applicant has practiced before, professional reputation within the Coast Guard, and performance information submitted by the applicant that is not contained in the PDR. Information from other sources may be disclosed to the applicant, upon request.

(g) **Diversity in the pool of certified military judges, and travel costs associated with the applicant's billet, will also be considered.**

(h) The number of applicants to be recommended in a given year will depend on the projected needs of the service for replacements of military judges expected to become unavailable.

(2) Procedures

Coast Guard judge advocates desiring to attend a Military Judge Course and be certified as a military trial judge will make letter application, via the chain of command, and the Chief Trial Judge (CG-094J), to the Office of Legal Policy and Program Development (CG-0948), no later than 31 January annually. The application will include the following information:

- (a) Format. [See, enclosure (26).]
- (b) Education. Include all education after high school (with names of institutions attended and year of graduation) including academic distinctions attained and approximate (if not exactly known) place in class on graduation.
- (c) Military Experience. List all military assignments, including primary duties at each.
- (d) Date(s) designated a judge advocate and certified as counsel for general courts-martial.
- (e) Legal Experience other than military justice. Identify all prior legal experience that did not involve military justice. This will include experience gained prior to becoming a member of the Coast Guard, all non-legal assignments significantly law related, and all assignments in legal billets, delineating the primary, nonmilitary justice areas of the law dealt with as required by the billet.
- (f) Military Justice Experience. State, in detail, all past experience with military justice, both prior and subsequent to being designated a law specialist. Be as specific as possible in the number, forum, type, and level of review of records of trial.
- (g) Evidence of requisite knowledge and temperament to be a military judge. Provide this information in the form of opinion by one or more qualified persons having opportunity to form such opinion by courtroom or other observation. The evidence may consist of extracts from one or more OERs, letter(s) or statement(s), endorsement on the letter application, or a combination of these. For each item, the name, qualifications, and opportunity to observe should be stated either in the item itself or separately. Judicial temperament includes, but is not limited to, patience, forbearance to avoid premature decisions, calm demeanor, respect for others, and projection of an air of authority.

(h) A statement concerning the applicant's expected availability to serve as military judge for the three years following the next Military Judge Course. The statement should cover both the likelihood of remaining in a billet from which the applicant could periodically be spared and any special restrictions on availability within the billet (e.g., any assignment that precludes military judge service during the months of July and August).

(i) A PDR Review Authorization enclosure signed and dated by the applicant [see, enclosure (26)].

(3) Selection

The Chief Trial Judge, in consultation with the Office of Legal Policy and Program Development (CG-0948), will review the application for attendance at a Military Judge Course and certification, prepare a recommendation, and forward it to the Judge Advocate General. The Judge Advocate General may select applicants for attendance at a Military Judge Course who have the requisite basic knowledge, experience, and temperament to be a military judge. Following successful completion of a Military Judge Course TJAG will certify the new judges. The Office of Legal Policy and Program Development (CG-0948) will notify the applicant when final action is taken and TJAG has signed the Military Judge Certificate of Appointment.

6.D.2. Administration and Oversight of Military Trial Judges

6.D.2.a. Designation as Military Judges

(1) General Court-Martial military trial judges. General court-martial military judges will be designated by, and located at Coast Guard units, as determined by TJAG. General court-martial military judges will at all times be assigned to and directly responsible to TJAG for all purposes. Administrative and logistics support, including office space, office equipment, stationery, and office supplies, telephone and other communication services, access to law library, and clerical assistance, will be provided by the unit where the military judge is located.

(2) Collateral Duty Special Court-Martial military trial judges. Except for the Chief Trial Judge, all personnel certified as qualified for duty as military judges by TJAG are designated as part-time special court-martial military judges. Detail of individual judges to specific cases shall be in accordance with the procedures prescribed in paragraph 3.H.1.

6.D.2.b. Officer Evaluation Reports

The Judge Advocate General is the assigned supervisor, reporting officer, and reviewing officer for the Chief Trial Judge. [See, Article 10.A.2(f)(1)(D), Coast Guard Personnel Manual, COMDTINST M1000.6 (series).]

The Judge Advocate General is assigned as the Reviewer for all active Special Court-Martial military trial judges. [See, VCG decision memo of 27 Aug 09.]

6.D.2.c. Assignment of Duties

The primary duty of general court-martial military judges is to preside at general courts-martial. No person may assign them any duties other than that of military judge without prior authorization of TJAG. TJAG has determined that general court-martial military judges will be made available for detail as military judge for special courts-martial on a not-to-interfere basis with their primary duty.

The primary duty of collateral duty special-court-martial military judges is normally in accordance with their assigned permanent billets. However, these judges serve a unique role that benefits the entire service. They are specially trained and developed, at significant expense, to fill this role. There is also a very limited pool of military judges to keep the Coast Guard's court-martial system functioning. Duty as a special court-martial military judge may, therefore, occasionally need to be considered equivalent to the officer's primary duties.

6.D.2.d. Leave and Temporary Additional Duty [TAD]

TJAG shall approve leave and TAD for general court-martial military judges.

6.D.3. Procedure for Revocation of Certification of Military Judge or Counsel

[See, section 6.G below.]

6.E. TENURE FOR MILITARY TRIAL AND APPELLATE MILITARY JUDGES

6.E.1. General Court-Martial Military Trial Judges

A General Court-Martial military trial judge, including the Chief Trial Judge, is assigned for a minimum of three years, except when he or she:

- a. Retires or otherwise separates from military service;
- b. Is reassigned, per the officer's request, to another billet, under the normal personnel assignment process based on the needs of the service and without regard to any prior performance of judicial duties; or,
- c. Is temporarily, indefinitely, or permanently suspended from practice as a military trial judge by TJAG for good cause [see section 6.G below.].

6.E.2. Collateral Duty Special Court-Martial (SPCM) Military Judges

A SPCM military trial judge is assigned for a minimum of three years and may request to serve beyond the normal three-year term. Requests shall be made to the Chief Trial Judge by no later than 1 February of the year in which the normal three-year term ends.

The minimum 3-year term does not apply whenever the Special Court-Martial Judge:

- a. Assumed the duty as a trial judge on a less than three-year basis or requests to be relieved of trial judge duties, and TJAG approves such assignment;
- b. Retires or otherwise separates from military service;
- c. Is reassigned to another billet, under the normal personnel assignment process based on the needs of the service and without regard to any prior performance of judicial duties, which billet TJAG determines is incompatible with duty as a military trial judge; or,
- d. Is temporarily, indefinitely, or permanently suspended from practice as a military trial judge by TJAG for good cause [see section 6.G below.]

6.E.3. Appellate Military Judges

An appellate judge, other than the chief judge, is assigned to collateral duty on the United States Coast Guard Court of Criminal Appeals for a minimum of three years, except when he or she:

- a. Assumed the duty as an appellate judge on a less than three year basis or requests to be relieved of duty as appellate judge, and TJAG approves such request;
- b. Retires or otherwise separates from Coast Guard service;
- c. Is reassigned to another billet, under the normal personnel assignment process based on the needs of the service and without regard to any prior performance of judicial duties, which billet TJAG determines is incompatible with duty as an appellate judge; or,
- e. Is temporarily, indefinitely, or permanently suspended from practice as an appellate judge by TJAG for good cause [see section 6.G below.].

6.E.4. Chief Appellate Judge

The chief judge of the United States Coast Guard Court of Criminal Appeals shall remain as such indefinitely, except when he or she:

- a. Retires or otherwise separates from Coast Guard service;
- b. Per the individual's request, accepts another position, under normal federal civilian employment processes; or,
- c. Is temporarily, indefinitely, or permanently suspended from practice as an appellate judge by TJAG for good cause [see section 6.G below.].

6.F. CERTIFICATION OF COUNSEL UNDER ARTICLE 27(b), UCMJ

6.F.1. General

In addition to the requirements stated in RCM 502, each attorney is expected to meet the qualifications listed below in order to become certified in accordance with Article 27(b), UCMJ.

6.F.1.a. Designation as Judge Advocate

Each attorney serving in a legal program billet is expected to obtain designation as a judge advocate. Authority to designate attorneys as judge advocates has been delegated to the Judge Advocate General. Requests for designation as a judge advocate shall be made to TJAG and shall include the information required by Article 6.A.6, Coast Guard Personnel Manual, COMDTINST M1000.6 (series). Requests are submitted in writing. When requesting certification, copies of the applicant's law degree and bar license or card must be faxed to the Office of Legal Policy and Program Development (CG-0948) to complete the application.

6.F.1.b. Basic Lawyer Course

Each judge advocate must successfully complete the Basic Lawyer Course conducted by the Naval Justice School or the Basic Judge Advocate Course conducted by the U.S. Army or Air Force. [Note: Designation as a judge advocate is not a prerequisite to attend the Basic Lawyer Course.] Waivers of this requirement may be granted on a case-by-case basis and must include a positive recommendation from the SJA requesting the waiver. Waiver requests should also include a listing of all military justice on-the-job training such as assistant counsel at courts-martial, comparable prior trial experience in civilian courts or previous certification in one of our sister services.

6.F.2. Certification

Personnel already designated as judge advocate will normally receive Article 27(b), UCMJ certification and be sworn in upon graduation from the Basic Lawyer Course at the Naval Justice School (or the U.S. Army or Air Force equivalent). Those attorneys who are unable to obtain designation as a judge advocate prior to the completion of the Basic Lawyer Course shall seek designation as a judge advocate and certification under Article 27(b), UCMJ as soon as the requirements in Article 6.A.6, Coast Guard Personnel Manual, COMDTINST M1000.6 (series) are met.

6.G. PROFESSIONAL SUPERVISION OF MILITARY TRIAL AND APPELLATE JUDGES AND ATTORNEYS PRACTICING IN PROCEEDINGS GOVERNED BY THE UCMJ AND MCM

[See, RCM 109.]

6.G.1. General

Subject to the limitations of Article 37, UCMJ, information as to alleged personal or professional misconduct by Coast Guard attorneys should be reported, together with appropriate supporting information, to the Judge Advocate General. For the purpose of this section, “misconduct” is defined as any act or omission that is a violation of an applicable standard of professional responsibility [see, e.g., section 6.C above] or serves to demonstrate the unfitness [see, RCM 109(c)(2)] of the respective Coast Guard attorney to perform his or her legal duties. For the purpose of this section, “Coast Guard attorney” is defined as a military trial or appellate judge or an attorney practicing in proceedings governed by the UCMJ and MCM. This section does not affect any other criminal or administrative proceedings arising from the underlying alleged misconduct. This section addresses only the authority of Coast Guard military trial and appellate judges and attorneys to practice as a judge or attorney for the Coast Guard.

6.G.2. Investigation and Discipline of Coast Guard Attorneys

6.G.2.a. General

The Judge Advocate General promulgated rules regarding the investigation of alleged misconduct by, and professional supervision of, Coast Guard attorneys in “Coast Guard Legal Professional Responsibility Program” (CGPRP), COMDTINST M5800.1. Those procedures were promulgated pursuant to RCM 109 and provide supplementary detail to the process set out in that rule.

6.G.2.b. Complaints

TJAG receives complaints under RCM 109(c)(3) and the CGPRP . Complaints need not be in any specific form, but, if possible, should be made under oath [see, RCM 109(c)(3), Discussion].

6.H. DESIGNATING AND CHANGING OF PLACE OF CONFINEMENT

The Assistant Commandant for Human Resources (CG-1) has been authorized to issue regulations as required, relating to the designation of, and change in, place of confinement for Coast Guard prisoners [see, Chapter 8.F., Coast Guard Personnel Manual, COMDTINST M1000.6 (series)]. CG-1 may designate places of confinement

COMDTINST M5810.1E

and, when necessary, approve transfer of prisoners including transfer of prisoners between DoD confinement facilities and Federal penal or correctional institutions.

6.I. SUBMITTING PROPOSED CHANGES TO THIS MANUAL

Proposals for changes to this Manual are welcome from any interested source. Proposals with justification, if appropriate, may be submitted at any time to:

OFFICE OF MILITARY JUSTICE (CG-0946)
U.S. COAST GUARD
2100 2ND ST SW STOP 7121
WASHINGTON DC 20598-7121

6.J. SUBMITTING PROPOSED CHANGES TO THE MANUAL FOR COURTS-MARTIAL [MCM]

6.J.1. Joint Service Committee [JSC]

6.J.1.a. JSC Mission

The President of the United States prescribed the current Manual for Courts-Martial [MCM]. The President in 1984 directed the Secretary, Department of Defense [DoD] to revise and update the MCM annually. [See, enclosure (25), the DoD Directive 5500.17 governing such revision.] The JSC, via the DoD General Counsel, is the organization primarily responsible for fulfilling this responsibility. Each year, the JSC performs an annual review of the MCM and proposes changes to DoD for the President's consideration. The JSC also conducts studies on military justice issues as needed. The JSC is distinct from the Code Committee, a separate body that reviews the UCMJ annually and submits a report to Congress and the Secretary DoD, pursuant to Article 146, UCMJ. In short, the JSC's focus is on the MCM while the Code Committee's focus is towards the statutory UCMJ. Necessarily, there is some overlap. For a brief compendium of the JSC's role in drafting the MCM since 1969, see Appendices 21 and 22 of the MCM.

6.J.1.b. JSC Composition

The JSC is composed of two entities: the Voting Group and the Working Group.

(1) Voting Group.

The Voting Group consists of five senior judge advocates, one each from the Navy, Marine Corps, Army, Air Force, and Coast Guard. A non-voting senior judge advocate from the DoD General Counsel's office consults with and advises the Voting Group. The Chief, Office of Military Justice (CG-0946) is the Coast Guard Voting Group representative. The Voting Group's primary function is to review the MCM annually and submit a proposed Executive Order containing amendments to the MCM for the President's signature. The Voting Group Chair rotates among the Service judge advocates biennially.

(2) Working Group

The Working Group consists of representatives of each of the services and includes a non-voting member from the Court of Appeals for the Armed Forces [CAAF]. The Working Group assists the Voting Group, mainly by researching and drafting proposals adopted by the Voting Group. The JSC Working Group representative is the Senior Government Appellate Counsel.

6.J.2. Submitting Suggestion for Change to the MCM

6.J.2.a. Coast Guard Submissions to JSC

Annually, the Judge Advocate General submits proposed changes to the MCM to the JSC. The ideas for such proposed changes may originate with the staff of the Office of Military Justice (CG-0946), but often are submitted by other interested parties from throughout the Coast Guard. Although there are no formal guidelines for the submission of a proposal, a well-researched and drafted proposal stands a better chance for submission to the JSC. Proposals from outside the Office of Military Justice (CG-0946) (preferably through the chain of command), will be reviewed, studied, and coordinated within the Coast Guard, as appropriate. If the Judge Advocate General deems the proposal warrants consideration by the JSC, it will be raised at the next JSC meeting and placed in a pool with all other proposals. The Voting Group will study the proposal. If a majority of the Voting Group finds that the proposal warrants further consideration, it will place the proposal in the Annual Review for the year. If not, the proposal will not be considered further. The JSC annual review of the MCM commences on 1 May of every year. Proposed MCM changes should be received in the Office of Military Justice (CG-0946) in time to be staffed before 1 May. Submissions are welcome anytime, but, if not placed on the JSC's agenda by May, may have to wait until the next annual cycle (the following May).

6.J.2.b. JSC Seeks Public Comment

Once the Voting Group has placed a proposal on its agenda, it will prioritize and modify the proposal as needed and place it into a draft Executive Order containing all of the year's proposed changes. Each May, the JSC publishes the draft Executive Order in the Federal Register to solicit public comment regarding the changes. The JSC then schedules and conducts a public hearing session in Washington, DC, to gather additional public comment. (For a list of historical JSC Federal Register publications, perform a search for "joint service committee" in the Federal Register database.)

6.J.2.c. JSC Proposes Executive Order

Once the public comment period closes, the JSC examines all comments received and decides whether and/or how to incorporate the comment into each proposed MCM change. The JSC has committed to provide individual or public feedback through the

COMDTINST M5810.1E

Federal Register on the public comments received. When this process is complete, the JSC finalizes the proposed Executive Order and forwards it to DoD's General Counsel. The General Counsel sends the proposed Executive Order for formal DoD coordination. Thereafter, DoD forwards it to the Office for Management and Budget [OMB]. OMB coordinates review of the proposed Executive Order throughout the executive branch, primarily a formal coordination by the Department of Justice [DoJ]. When coordination is complete, the proposed Executive Order is forwarded to the President for signature. Once the President signs the Executive Order, it becomes a part of the MCM, although each proposal contained within the order may have its own effective date. (For a list of historical Executive Orders amending the MCM, perform a search for "Manual for Courts-Martial" in a Presidential Documents database.)

6.J.2.d. Deliberate Process

Because DoD or the President may modify the proposed Executive Order after it leaves the JSC, the final Executive Order (i.e., MCM change) may differ substantially from that published in the Federal Register. Also, it is important to bear in mind that the rulemaking procedures of the Administrative Procedures Act [APA], 5 U.S.C. § 553(a)(1), do not apply to changes in the MCM (there are, however, some similarities with APA procedure). Finally, due to the significant number of steps in the process and the extensive coordination of proposed MCM changes, the process usually takes a two years to complete.

6.J.2.e. Typographical Errors

Minor typographical errors in the MCM do not require Presidential action to fix. Any reader finding one in the MCM is invited to advise the Office of Military Justice (CG-0946) so that the nonsubstantive typographical errors may be fixed in the next printing of the MCM.

6.J.3. UCMJ changes

Proposals to change the UCMJ follow a different path. If a majority of the Voting Group approves a proposal to change the UCMJ, the JSC will forward the proposal to DoD for submission to Congress. DoD will likely send all statutory changes proposed by the JSC to the Code Committee for review. Ultimately, however, the JSC has no control over the process of proposing a bill and lobbying for its passage into law, and the JSC does not solicit public comment or hold public hearings on proposed legislative changes. The JSC addresses statutory change issues only incidentally to its charter to review the MCM. Legislative functions are within the sole purview of Congress. UCMJ changes are most frequently found in the "Military Justice" section of each year's National Defense Authorization Act (NDAA). To review military justice items that Congress is considering, see www.defenselink.mil/dodgc/lrs/.

CHAPTER 7

7.	MILITARY JUSTICE MISCELLANEOUS	7-1
7.A.	Article 138, UCMJ Complaints	7-1
7.A.1.	Statutory Provision.....	7-1
7.A.2.	Definitions.....	7-1
7.A.3.	Policy	7-2
7.A.4.	Scope.....	7-2
7.A.5.	Jurisdiction.....	7-4
7.A.6.	Procedures for Filing Complaints Under Article 138, UCMJ.....	7-4
7.A.7.	Action by the OEGCMJ.....	7-5
7.A.8.	Forwarding Complaint to the Commandant	7-6
7.A.9.	Review and Final Disposition.....	7-6
7.B.	Delivery of Personnel to Civil Authorities	7-7
7.B.1.	Purpose.....	7-7
7.B.2.	Definitions and Applicability.....	7-7
7.B.3.	Policy	7-7
7.B.4.	Delivery when Personnel are Within the Territorial Limits of the Requesting State.....	7-8
7.B.5.	Delivery when Personnel are Beyond the Territorial Limits of the Requesting State.....	7-8
7.B.6.	Agreement Required Prior to Delivery to State Authorities	7-9
7.B.7.	Delivery of Personnel to Federal Authorities	7-10
7.B.8.	Deliveries Requiring Advance Approval of The Judge Advocate General	7-10
7.B.9.	Reporting Requirements	7-11
7.C.	Search Authorizations	7-11
7.C.1.	Authority to Issue Search Authorizations	7-11
7.C.2.	Issuance of Search Authorizations.....	7-13
7.C.3.	Execution and Return of Search Authorizations.....	7-16
7.C.4.	Specificity	7-17
7.C.5.	Telephonic Application Procedure and Check List	7-21

MILITARY JUSTICE MISCELLANEOUS

7.A. ARTICLE 138, UCMJ COMPLAINTS

7.A.1. Statutory Provision

“Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon.” [Article 138, UCMJ, 10 U.S.C. § 938.]

7.A.2. Definitions

For the purpose of this Chapter, terms are defined, as in Article 1, UCMJ, RCM 103, and as follows:

7.A.2.a. Member of the Coast Guard

Any person in the Coast Guard or Coast Guard Reserve performing duty that subjects him or her to jurisdiction under the UCMJ.

7.A.2.b. Wrong

A discretionary action by a commanding officer under the color of federal military authority, which was unauthorized, unfair, or discriminatory, resulting in personal detriment, harm, or injury to the complainant, and is capable of redress in command channels without resort to trial by court-martial. The wrong may consist of either affirmative action or passive inaction.

7.A.2.c. Commanding Officer

Any commissioned Coast Guard commanding officer empowered to impose NJP upon the complainant, which includes any superior commanding officer in the chain of command.

COMDTINST M5810.1E

7.A.2.d. Officer Exercising General Court-Martial Jurisdiction [OEGCMJ]

The primary officer exercising general court-martial jurisdiction [OEGCMJ] is the OEGCMJ for the unit of the commanding officer about whom the complaint is filed. [See, subparagraph 3.A.3.b. above].

7.A.2.e. Respondent

The commanding officer against whom the complaint is made.

7.A.2.f. Redress

Any lawful action taken that restores to the complainant whatever rights, privileges, property, or status he or she would have been entitled to had the wrong not occurred.

7.A.2.g. Examination into a Complaint

An investigation consisting of either a formal or an informal inquiry into all facts material to the complaint. The specific inquiry conducted depends on the nature of the alleged wrong, but will normally be of a type recognized by Coast Guard directive.

7.A.2.h. Complainant

Member submitting complaint.

7.A.3. Policy

It is the policy of the Secretary, Department of Homeland Security [DHS] to resolve complaints of wrong at the lowest possible level and to provide administrative procedures to effect such resolution. There is a presumption of administrative regularity. Therefore, a complainant in order to support the belief that he or she has been wronged should state in the complaint all pertinent facts and document them with independent evidence when possible. A commanding officer may not restrict the submission of complaints under Article 138, UCMJ and all such complaints shall be forwarded directly to the responsible Officer Exercising General Court-Martial jurisdiction over the complainant [OEGCMJ].

7.A.4. Scope

Upon due application, a complaint alleging a wrong for which redress has been sought in writing, but refused by the commanding officer, is cognizable under Article 138, UCMJ.

7.A.4.a. Time Limit

A complaint pursuant to this chapter must be submitted to a superior commissioned officer within 90 days of the date of discovery of the alleged wrong, and the complainant must have requested in writing redress from his or her commanding officer and have been refused. A complaint that on its face, or after investigation or informal inquiry, is not directed at a commanding officer as defined in subparagraph 7.A.2.c above, or in which there has been no written request for redress and denial thereof, may be returned by the OEGCMJ upon advice of his or her SJA without action and with a statement as to the reason for the return. The OEGCMJ may waive the 90-day time limit and the requirement

for written request for redress and denial thereof for good cause and action on the complaint by the OEGCMJ constitutes such waiver. The period during which the commanding officer considers the request for redress will not be included in computing the 90-day period.

7.A.4.b. Commanding Officer's Reply

The commanding officer shall reply to the request for redress without undue delay and, if redress is denied, shall inform the member that a complaint may be forwarded to the OEGCMJ.

7.A.4.c. Subsequent Action by Complainant

Article 138, UCMJ does not give complainants the right to participate in subsequent action on their complaints; the government is charged with acting for them. Complainants may be questioned in the course of the inquiry or investigation conducted as a result of their complaint and may be requested to submit clarifying or explanatory statements for consideration.

7.A.4.d. Complaints Not Cognizable Under Article 138, UCMJ

Article 138, UCMJ places principal responsibility for the resolution of complaints with the OEGCMJ and requires that he or she take proper measures for their redress. In many cases, there already exist by law or regulation specific channels to accomplish this objective. Such areas include, but are not limited to:

- (1) Actions taken pursuant to the Uniform Code of Military Justice, MCM, or military criminal law regulations subject to resolution by:
 - (a) Application to the appropriate commander, such as in cases of clemency;
 - (b) Pretrial motion to the convening authority or military trial judge; or
 - (c) Other administrative or judicial action
 - (d) **Note:** Some issues generally relating to the way a member is treated, such as conditions of confinement, are amenable to a complaint under Article 138, UCMJ.
- (2) Nonjudicial punishment imposed pursuant to Article 15, UCMJ;
- (3) Actions regarding officer fitness reports;
- (4) Actions regarding enlisted performance evaluation marks;
- (5) Actions in accordance with the Coast Guard Personnel Manual, COMDTINST M1000.6 (series), regarding withdrawal of designator or administrative reductions in enlisted grade;
- (6) Appeal from findings of pecuniary liability;

- (7) Withdrawal of flying status;
- (8) Military Civil Rights complaints; and
- (9) Officer elimination, cadet separation, and administrative discharge actions.

7.A.4.e. Action by OEGCMJ

When complaints are received by the OEGCMJ that apparently are subject to resolution in other established channels he or she shall cause an informal inquiry to be made to determine whether the complaint is, in fact, subject to resolution in other established channels. In those cases in which it is determined that such other channels exist the OEGCMJ may advise the complainant in writing of those channels. In other cases, the subject of the complaint may already be under consideration within those channels. In either case, a decision by the OEGCMJ to refer the complainant to those channels will constitute “proper measures for redressing the wrong complained of” within the meaning of Article 138, UCMJ.

7.A.5. Jurisdiction

Jurisdiction to examine into complaints lies with the primary OEGCMJ [see, subparagraph 7.A.2.d above]. In the event of the respondent’s transfer to another general court-martial jurisdiction, the action on the complaint may also be transferred if the investigation or redress will be facilitated thereby. Intermediate commanders receiving complaints will transmit the complaint and accompanying papers without delay to the appropriate OEGCMJ. They may add pertinent material to the file or grant the redress requested and so note in the transmittal to the appropriate OEGCMJ. All complaints, including those that by definition [See subparagraph 7.A.2.d above] are excluded from the scope of Article 138, UCMJ shall be forwarded to the OEGCMJ over the respondent.

7.A.6. Procedures for Filing Complaints Under Article 138, UCMJ

7.A.6.a. Application to Commanding Officers

The basis of a complaint properly brought under Article 138, UCMJ is a wrong coupled with the commanding officer’s refusal or failure to redress the wrong. Therefore, the commanding officer must be provided the opportunity to redress the wrong as a condition precedent to the filing of a complaint. A request for redress must be submitted in writing to the commanding officer complained against, via the chain of command. The respondent commanding officer shall act on the application in a timely manner and will notify the complainant of his or her action.

7.A.6.b. Form of Complaint

The complaint shall:

- (1) Be in writing, signed by the complainant, and addressed to the appropriate OEGCMJ;

- (2) Include a statement that the complaint is made pursuant to Article 138, UCMJ;
- (3) Set forth all relevant facts applicable to the complaint;
- (4) Clearly identify the respondent;
- (5) State that the complainant previously requested in writing redress from his or her commanding officer and that he or she was refused such redress. A copy of the request and reply shall be included;
- (6) Describe the specific redress desired;
- (7) Attach all available evidence including affidavits and statements of witnesses that support the complaint or provide other information pertinent to the complaint; and
- (8) Be submitted to the commanding officer or any other superior commissioned officer of the Coast Guard for forwarding to the appropriate OEGCMJ.

7.A.6.c. Legal Advice

Judge Advocates or legal counsel will provide advice upon request to members desiring to submit an Article 138, UCMJ complaint. Requests shall be made according to the established procedures of the cognizant Office of Legal and Defense services (CG-094M) [see, subparagraph 3.H.2 above]. Telephonic requests are sufficient. The advice should include an opinion whether an Article 138, UCMJ complaint is an appropriate procedure under the circumstances. If not, advice will be given concerning other authorized Coast Guard channels by which the member may seek relief. This section is not to be construed as requiring the assignment of a judge advocate to represent a complainant in any proceedings held pursuant to Article 138, UCMJ or to create a right to individual military counsel. Complainants may retain civilian counsel at no expense to the government to assist them in connection with the submission of their complaint.

7.A.7. Action by the OEGCMJ

Except in those cases wherein the original complaint is appropriately addressed to the Secretary, Department of Homeland Security because Commandant, Coast Guard is the respondent the OEGCMJ has primary responsibility for granting the necessary redress or procuring the desired relief, if warranted. Such responsibility is not delegable. Upon receipt of a complaint, the OEGCMJ over the respondent shall take one or more of the below actions.

- a. Prior to acting on a complaint, ensure that the complainant has been informed of the substance of any forwarding endorsements that have added substantive comments or new factual matter and afford the complainant the opportunity to rebut any adverse matter contained therein.

b. Examine the complaint and take any of the following actions as appropriate:

(1) Require the complainant to comply with the procedures outlined in subparagraph 7.A.6.b above;

(2) For untimely complaints, determine whether the complaint should be refused on that basis [see, subparagraph 7.A.4.a above];

(3) If there is another mechanism available more suitable for resolution of the complaint, advise the complainant of such procedure and the method by which to proceed. Advice will include the appropriate law or regulation(s) under which the member may proceed;

(4) If the complaint is already under consideration, or has been considered in another venue, the complainant shall be so advised;

(5) Deny or grant redress; or,

(6) If the OEGCMJ lacks authority to redress the complaint he or she shall forward the results of the examination along with specific recommendations concerning the appropriate redress to the officer who has authority to grant such redress. [See, paragraph 7.A.8 below.]

7.A.8. Forwarding Complaint to the Commandant

After taking any of the actions under subparagraphs 7.A.7.b.(2) through (5), the OEGCMJ shall forward the complaint, including the original request for redress and refusal thereof, the results of the investigation or informal inquiry, his or her action on the complaint together with a statement of the reasons for the action, and a copy of his or her notification to the complainant to the Judge Advocate General. The file will reflect that the action on the complaint was personally taken by the OEGCMJ, and that officer shall sign the forwarding correspondence. In cases in which the complaint is forwarded to an intermediate jurisdiction under subparagraph 7.A.7.b.(6), the commander of that jurisdiction shall grant or deny redress, and take action required under this paragraph. Action taken pursuant to subparagraph 7.A.7.b.(1), need not be forwarded to the Judge Advocate General.

7.A.9. Review and Final Disposition

In cases where Commandant, U.S. Coast Guard is the respondent, review and final disposition shall be by the Secretary, Department of Homeland Security. In all other cases the Judge Advocate General shall review complaints and actions thereon, and if he or she disagrees with the action taken, recommend a different action to the Secretary. When there is no disagreement as to the final action taken by the OEGCMJ the complaint file shall be filed for the Secretary in the Office of Military Justice (CG-0946). If the

Secretary in his or her discretion takes action on a complaint the complainant, respondent, and OEGCMJ over the respondent shall be informed.

7.B. DELIVERY OF PERSONNEL TO CIVIL AUTHORITIES

7.B.1. Purpose

This section sets forth the authority, policy, and procedures for delivery of Coast Guard military personnel to civil authorities for trial. [See, Article 14, UCMJ.]

7.B.2. Definitions and Applicability

7.B.2.a. Definitions

As used in this section:

(1) “State” includes each of the states of the United States; District of Columbia; Commonwealth of Puerto Rico; Guam; American Samoa; United States Virgin Islands; Commonwealth of the Northern Mariana Islands; and any other commonwealth, territory, or possession of the United States.

(2) “Civil authorities” are state agents or representatives acting under the authority of their respective state or jurisdiction.

(3) “Foreign” authorities are all authorities not defined as a state or federal authority.

(4) “Personnel” or “Coast Guard personnel” as used in this section refer to Coast Guard military personnel. This section does not apply to civilian personnel or civilian contractors.

7.B.2.b. Applicability

This section applies to all military personnel in the Coast Guard.

7.B.2.c. Non-Applicability to “Foreign” Authorities

This section does not apply to delivery of personnel to foreign authorities. Neither is it applicable where a state, having concurrent jurisdiction for the purpose of executing criminal process, proceeds by service of process to take custody of a Coast Guard member without making formal request to the Coast Guard for his or her delivery.

7.B.3. Policy

a. It is Coast Guard policy to cooperate with civil authorities to the maximum extent possible consistent with needs of the service and the individual rights of the service members concerned.

b. It is contrary to Coast Guard policy to transfer a Coast Guard member from a command within one state to a command within another state solely, or primarily, for the purpose of making the individual amenable to prosecution by civil authorities.

7.B.4. Delivery when Personnel are Within the Territorial Limits of the Requesting State

When the delivery of any person in the Coast Guard is requested by local civil authorities of a state for the alleged commission of an offense punishable under the laws of that jurisdiction and such person is within the requesting authority's territorial limits (including territorial waters), commanding officers are authorized to deliver such person when a proper warrant is presented and the approval of the Judge Advocate General, if necessary, has been obtained. [See, paragraph 7.A.8 above.]

7.B.5. Delivery when Personnel are Beyond the Territorial Limits of the Requesting State

7.B.5.a. General

When delivery of any member of the Coast Guard is requested by civil authorities of a state for the alleged commission of an offense punishable under the laws of that jurisdiction and the person is not within the requesting state's territorial limits (including territorial waters) the OEGCMJ or staff officer designated by him or her, over the command of the person may authorize the individual's delivery when all of the following conditions are met:

- (1) A proper warrant is presented or there has been a valid waiver of formal extradition [see, subparagraph 7.B.5.b below];
- (2) The agreement required by paragraph 7.B.6 below has been signed; and,
- (3) the approval of the Judge Advocate General if necessary, has been obtained. [See, paragraph 7.B.5.b below.]

7.B.5.b. Waiver of Extradition

(1) All persons in the Coast Guard requested to be delivered under this section shall be afforded the opportunity to consult with a law specialist or civilian attorney at no cost to the government concerning the formal extradition process of the jurisdiction in which the person is located. Once having received advice from an attorney the person may waive extradition. A waiver must be in writing and witnessed. It shall include a statement that the person signing the extradition waiver has received the advice of an attorney and include the name and address of that attorney. The waiver shall be substantially in the form suggested in enclosure (22b).

(2) An executed copy of each waiver of extradition shall be mailed to the Office of Military Justice (CG-0946) with the report required by paragraph 7.B.9 below.

7.B.5.c. Refusal to Waive Extradition

When a member declines to waive extradition, or refuses to consult with an attorney, the requesting civil authority will be notified and advised delivery may only be made to local civil authorities on the presentation of a proper warrant. In this situation a fugitive warrant issued by the requesting state and delivered by local civil authorities shall be considered a proper warrant. The member requested to be delivered would have the opportunity to contest extradition in the courts of the jurisdiction in which he or she is located. At this point, the process becomes the same as that described in paragraph 7.B.4 above, with the member's commanding officer having the authority to deliver the individual once the command has complied with paragraphs 7.B.6 and 7.B.8 below.

7.B.6. Agreement Required Prior to Delivery to State Authorities

7.B.6.a. Terms of Agreement

When delivery is authorized directly or ultimately to a state other than the one where the member is located the member's commanding officer shall, before making such delivery, obtain a written agreement providing:

- (1) The commanding officer will be informed of the outcome of the trial;
- (2) The member so delivered will be transported to the requesting state without expense to the member or the United States; and,
- (3) The member so delivered will be returned to the place of delivery, or such place as is mutually agreeable to the Judge Advocate General and the requesting state upon disposition of the case, provided the Coast Guard shall then desire the member's return.

7.B.6.b. Form of Agreement

The language of the agreement shall be substantially the same as that in enclosure (22a). Substantial deviations from the suggested language requires the advance approval of the Office of Military Justice (CG-0946).

7.B.6.c. Parties to the Agreement

When delivery is made directly to the requesting state, the Governor or authorized agent of the requesting state is required to complete the agreement. When delivery is made to local civil authorities to provide for formal extradition, process attempts shall be made to have the agreement executed by the officials of both the requesting state and the local state.

7.B.7. Delivery of Personnel to Federal Authorities

7.B.7.a. General

Commanding officers are authorized to deliver personnel to Federal authorities on presentation of a proper warrant in all cases if the approval of the Judge Advocate General if applicable, has been obtained. [See, paragraph 7.A.8 above.]

7.B.7.b. Agreement Not Required of Federal Authorities

An agreement as to expenses will not be exacted as a condition to the delivery of Coast Guard members to federal authorities either in response to writs of habeas corpus, as witnesses, or for trial. Expenses in such cases will be defrayed as follows:

(1) The person who produces an individual 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 the expenses for reimbursement 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.

(2) Members required 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 marshal will defray the expense of transporting the individual to the place of trial.

(3) If the member is not convicted or the case is dismissed, the individual will be returned to the Coast Guard and the necessary expenses are paid from an appropriation under the control of the Department of Justice.

7.B.8. Deliveries Requiring Advance Approval of The Judge Advocate General

a. Approval of the Judge Advocate General is required prior to delivery of Coast Guard personnel to federal or state authorities when:

(1) Disciplinary or judicial proceedings involving offenses in violation of the UCMJ are pending (i.e., charges have been preferred or potential charges are under investigation) against the member;

(2) The member is undergoing a sentence of a court-martial;

(3) In the opinion of the commanding officer, it is in the best interest of the Coast Guard to refuse delivery; or

(4) In the opinion of the commanding officer, certain requirements established by this section should be waived in a particular case.

b. It is expected that through informal contact with local authorities commanding officers will, in most cases, have sufficient advance notification that a request for delivery will be forthcoming to permit a letter request for advance approval

from the Judge Advocate General. When circumstances dictate a more expeditious handling of the matter a message request is authorized. In those rare cases when immediate action is an absolute must, approval may be requested and a decision communicated by telephone.

c. All requests shall include sufficiently detailed information to permit an informed decision without additional inquiry. Requests shall be submitted to the Judge Advocate General via the Office of Military Justice (CG-0946).

7.B.9. Reporting Requirements

The commanding officer concerned shall either upon delivery or refusal to deliver personnel under this section forward a letter report with pertinent documents to the Office of Military Justice (CG-0946), via the chain of command, setting forth a full statement of the facts in the following cases:

- a. When delivery is ultimately refused;
- b. When the procedures of paragraph 7.B.5 above are used; or
- c. When the advance approval of the Judge Advocate General is necessary.

7.C. SEARCH AUTHORIZATIONS

7.C.1. Authority to Issue Search Authorizations

7.C.1.a. General

(1) Purpose

This section establishes the procedure for the issuance of search authorizations. This section provides guidance and is not to be viewed as inflexible. Although the procedures and standards set out herein should be followed as appropriate under the circumstances, deviations will not invalidate an otherwise lawful search. This section does not derogate in any manner the authority of the commanding officer to authorize a search based on probable cause. [See, subparagraph 7.C.1.c below.] This section is intended to offer an alternative to reduce the risk a search may later be found to be unlawful.

(2) Scope

Due to the vast amount of case law on the subject of searches and the 4th Amendment to the U.S. Constitution, it is impossible to set out a comprehensive treatment of all aspects or possible situations that could arise. Although general guidelines and some specific suggestions have been set out it remains the responsibility of commanding officers and military trial judges to keep themselves informed of the current state of the law. Commanding officers should consult frequently with their SJA concerning issues surrounding search authorizations.

7.C.1.b. Military trial judge

(1) General

Pursuant to the authority of MRE 315(d)(2), Coast Guard military trial judges are empowered to authorize searches. This includes the authority to issue search warrants by telephone. When seeking search authorization from a military trial judge every effort should be made to avoid using the Chief Trial Judge, except as a last resort.

(2) Limitations

(a) Military trial judges may order searches pursuant to the foregoing authority only through the issuance of a search authorization.

(b) Only the following persons may obtain search authorizations from a military trial judge:

1. Individual commanding officers or officers-in-charge;
2. Responsible persons of a command who the commanding officer or officer-in-charge authorizes to obtain such search authorizations (this authorization need not be in writing, but must be communicated to military trial judge or indicated in the application); or,
3. CGIS agents assigned to investigative duties. This includes CGIS agents bearing current credentials and assigned to an investigations billet.

(c) Ordinarily, persons authorized to seek search authorizations [see, subparagraph 7.C.1.b(2) above] will coordinate their request for a search authorization with the servicing legal office having primary military justice jurisdiction over the case.

7.C.1.c. Commanding Officers and Officers-in-charge

(1) General

Pursuant to the authority of MRE 315(d)(1), Coast Guard commanding officers and officers-in-charge are empowered to authorize searches.

(2) Probable Cause

Upon a finding of probable cause a commanding officer or officer-in-charge may authorize a search of any person or place over which he or she has control. MRE 315(f) sets out the basis for determining probable cause.

(3) Procedure

Commanding officers and officers-in-charge may issue search authorizations only on the basis of a personal application. Commanding officers or officers-in-charge issuing a search authorization shall ensure that the procedures set forth in subparagraph 7.C.3.a.(2),

7.C.2.b. through 7.C.2.d., and paragraph 7.C.3., and 7.C.4., of this section are followed, substituting themselves for the military trial judge. Commanding officers and officers-in-charge should consult with their servicing legal office prior to authorizing a search, if practicable.

(4) Warning

Any decision to grant a search authorization based on probable cause will be subject to legal scrutiny. A determination by a court of law that a search authorization was not based on sufficient probable cause may prevent the use of any evidence seized under the search authorization at criminal or disciplinary proceeding(s). Commanding officers and officers-in-charge are encouraged when circumstances allow, to refer applicants seeking a search authorization to a military trial judge rather than acting on the application themselves. They should act themselves however, if resorting to a military trial judge would likely result in harm or loss of evidence.

7.C.2. Issuance of Search Authorizations

7.C.2.a. Application

(1) General

A search authorization shall be issued by a military trial judge pursuant to the requirements of MRE 315. [See, enclosures (23a, 23b, 23e).]

(2) Personal Application

If time and the circumstances permit written affidavits may be submitted in person to the military trial judge. Before ruling on a request for a search authorization, the military trial judge may require the affiant to appear personally and may examine the affiant and any witnesses he or she may produce, under oath if desired, to obtain additional information. It is normal however, that search authorizations are obtained telephonically from a military trial judge due to geographic separation. [See subparagraph 7.C.2.a(3) below.] Search authorizations from a commanding officer are normally obtained in person but may be obtained by telephone.

(3) Telephonic Application

Application for a search authorization may be made by telephonic communication between the applicant and a military trial judge. A judge advocate of the servicing legal office should ordinarily be on the telephone conference call with the applicant and military trial judge. The military trial judge will normally need either an affidavit from the applicant or a verbatim transcript of the telephone application. If necessary, the judge advocate should make arrangements for recording the telephone application and preparing the verbatim transcript. The application procedure should generally follow the script set out in enclosure (23a) as is appropriate under the circumstances. The military trial judge shall determine if a verbatim transcript shall be prepared for any recorded application and direct that any verbatim transcription of the telephone application be prepared in a timely

COMDTINST M5810.1E

manner so it may be attached to the search authorization upon its return pursuant to subparagraph 7.C.3.b below.

(a) Authentication

The military trial judge shall authenticate the transcript, if prepared, as follows:

I certify the foregoing application done by [Name], consisting of ____ pages, is a true verbatim transcript of a telephonic application taken by me at [Place], at [Time, Date].

/s/

Military trial judge

(b) Written Affidavit

A written affidavit is a suitable alternative to a verbatim transcript of the telephonic application and may be prepared and sent by electronic mail or facsimile to the military trial judge.

7.C.2.b. Issuance

(1) General

Upon the presentation, by way of personal or telephonic application, of information establishing probable cause a military trial judge shall issue a search authorization identifying the specified property or evidence to be seized and naming or describing the person or property to be searched.

(2) Scope

A military trial judge may issue a search authorization directing a search of any of the persons or property permitted under MRE 315. It is imperative that persons seeking and executing search authorizations be completely familiar with MRE 315.

(3) Signature

If personal application is made, the military trial judge shall sign the original search authorization before delivering it to the applicant. If telephonic application is made, the search authorization should be emailed or faxed to the military trial judge and then emailed or faxed back to the applicant with the military trial judge's signature. A facsimile copy of the search authorization will take the place of the original for purposes of executing a search. In the event that electronic means or a facsimile machine is unavailable, the military trial judge may orally authorize the applicant to sign the military trial judge's name above the applicant's signature on a duplicate original search authorization. This duplicate original search authorization shall be deemed to be a search authorization and it shall be returned along with the unsigned original search authorization to the military trial judge as provided in subparagraph 7.C.3.b below. In

such cases, the military trial judge shall enter on the face of the original search authorization the exact time of the issuance of the search authorization and sign and

forward the original search authorization and the duplicate original search authorization as provided in subparagraph 7.C.3.b below. The military trial judge should attach to the search authorization any affidavit or verbatim transcript of the telephonic application.

7.C.2.c. Authorization

(1) General

The search authorization issued by a military trial judge shall be directed to a named individual who will usually be the applicant or any agent of such person. If good cause is shown the military trial judge may direct the search authorization to a person other than the applicant.

(2) Contents

The search authorization should be drafted in the format contained in enclosure (23b). It shall state the names of the person or persons (include unit/organization) whose information has been taken in support thereof. It shall command the named person to conduct the search and to search forthwith the person or place named and for the property specified.

(3) Attachments

Any written statements or affidavits presented to the military trial judge shall be attached to the search authorization. When the search authorization is issued on the basis of a telephonic application, the verbatim transcript of the entire communication should be attached after transcription. Any statements are incorporated into the search authorization by reference.

(4) Night Service

If the search authorization by the military trial judge is to be executed between 2200 and 0600, the search authorization must specifically authorize this on its face. A discussion of the factors to consider before authorizing such service is included in subparagraph 7.C.4.h(2) below.

7.C.2.d. Disclosure Required for Reapplication

Any person requesting a search authorization must disclose during the application procedure any knowledge he or she has of a denial of any previous request for a search authorization or permission to search involving the same individual and the same property.

7.C.3. Execution and Return of Search Authorizations

7.C.3.a. Execution

(1) Time Limit

(a) A search authorization or search warrant may be issued on a showing that there exists probable cause (reasonable belief or more likely than not) that

certain evidence (a thing) of criminal conduct is located in a specific place (a location), presently or at a particular time in the future (time). A properly issued search authorization or warrant lapses if it is no longer probable that the object of the search is located in the place to be searched. As a result, it is always prudent to execute a search authorization as soon as possible after being issued.

(b) The search authorization issued by a military trial judge must be executed within ten days after its date of issue if execution is not required earlier. If the search authorization is not executed within that time, or for any other reason, the unexecuted search authorization shall be returned to the issuing military trial judge with an explanation as to why the search authorization was not executed.

(2) Notice to Command

The individual conducting the search shall notify the commanding officer of the person to be searched, or the commanding officer who is responsible for the premises to be searched, prior to initiating the search unless the military trial judge, in his or her discretion, concludes that such notice would impede the orderly execution of the search authorization. The military trial judge may in such a case waive the requirement for prior notice to the commanding officer; however, such a waiver shall be clearly indicated in the search authorization. The appropriate commanding officer shall be notified subsequent to the search when prior notice is not given.

(3) Notice to the Individual

The individual conducting the search shall give to the person searched or whose premises are searched a copy of the search authorization and a receipt for items seized at the place searched. It is not required that a copy of the application proceedings establishing the grounds for issuing the search authorization be attached to this copy of the search authorization.

(4) Receipt for Property Seized

A receipt shall be given for any property seized. The receipt shall contain an inventory of the property. This inventory shall be made in the presence of the person searched or whose premises are searched. If such person is not present the inventory shall be made in the presence of some other person, preferably designated by the commanding officer given notice in subparagraph 7.C.3.a(2) above.

(5) **Property That May Be Seized**

To be lawful, even when conducted under the authority of a valid search authorization, searches upon probable cause of a person's house, dwelling, automobile, effects, papers, or person without his or her freely given consent must be for instrumentalities or fruits of crime; things that might be used to resist apprehension or used to escape; property, the possession of which is itself a crime (contraband); or evidence that there is reason to believe will otherwise aid in a particular apprehension or conviction. [See, subparagraph 7.C.4.e(5) below.] Care must be taken that only property fully described in the search authorization is seized, unless other properly seizable types of evidence come into plain view or are encountered within the lawful execution of the search authorization. [See, subparagraph 7.C.4.e below.]

(6) **Administrative Inspections**

The restriction discussed above does not apply to administrative inspections or inventories conducted in accordance with law, regulation, or custom. This section is not applicable to valid administrative inspections, as contrasted with searches upon probable cause. [See, MRE 313.]

7.C.3.b. Return Disposition

After the search authorization has been executed, or at the end of the ten day period if unexecuted, the search authorization together with a copy of the inventory of property seized, if any, shall be returned to the issuing military trial judge. All documents and papers relative to a search authorized under the provisions of this section shall be retained by the unit or organization responsible for the application and the servicing legal office to be available in any future litigation or proceeding considering the results of such a search.

7.C.4. Specificity

7.C.4.a. General

(1) **Background**

Probable cause and specificity are two distinct but interrelated requirements that operate together to validate a legal invasion of individual privacy. The items discussed below are intended to provide better applications for search authorizations.

(2) **Legal Test**

Each person, item, or premises to be searched, and any property to be seized, must be particularly described in the search authorization so that each can be unmistakably identified. If there is a specific range of time during which the person or item to be seized is more likely than not to be at the place to be searched, the time limitation must also be described.

7.C.4.b. Describing the Premises to be Searched

(1) General

The areas most frequently subject to search in the Coast Guard are barracks, berthing spaces, and workspaces. The description of the area to be searched must be as specific as possible and as limited in scope as is consistent with the goals of the search.

(2) “Open Bay” Barracks or Berthing Areas

Some older units have “open bay” barracks or berthing areas. These areas consist of numerous berths that are not separated by partitions and include common living areas. In authorizing a search authorization for such areas, including the common living area, the military trial judge should be mindful of the legitimate privacy interests of occupants besides the suspect.

7.C.4.c. Describing the Person to be Searched

(1) General

The description of the person to be searched should include as much specific information about the person as possible. This should include, when known, the name, rank or rate, social security number, and physical description of the individual.

(2) Name of Individual Unknown

When the name of the suspect is not known the affidavit should contain all possible relevant information including physical description, places that he or she frequents, known associates, type of car and clothing, pattern of operation, etc.

7.C.4.d. Describing Personal Property

(1) Vehicles

The description should contain the make and model, color, license number, and any peculiarities of the vehicle. Include the vehicle identification number when possible.

(2) Lockers

Include a complete description of where the particular locker is located.

(3) Suitcases, Bags, etc.

Include a description of the color, approximate size, location, type of fastener, stencil or shipping labels, and any available information.

7.C.4.e. Describing the Property To Be Seized

(1) Types of Property That May Be Seized

The following general types of property may be seized pursuant to a lawful search authorization: instrumentalities of a crime, fruits of a crime, things that might be used to resist apprehension or to effect escape, property the possession of which is itself a crime

(contraband), and evidence that there is a reason to believe will otherwise aid in a particular apprehension or conviction. The latter category may include identification evidence.

(2) Instrumentalities of a Crime

This category encompasses property used in a crime. Often these will be items used in the consumption and transfer of drugs, but may also include such items as weapons that do not fit into the contraband category and tools used in the commission of the offense.

(3) Fruits of a Crime

This category usually consists of stolen property.

(4) Contraband

This category includes all items that it is inherently illegal to possess. Usually these items will be narcotics or controlled substances, but they might include automatic weapons, undersized lobster, sawed-off shotguns, etc.

(5) Reason to Believe Evidence Will Aid in a Apprehension or Conviction

The law dealing with this general category of evidence is extremely complex and is beyond the scope of this section as it frequently changes. The applicant for a search authorization must rely on the advice of his or her servicing legal office when faced with a question as to the extent of this provision.

(6) Identification Evidence

Whenever evidence is seized, identification evidence should also be seized if necessary to connect the suspect with the other evidence seized. This category includes items that can tie the suspect to the crime, or establish that the suspect is in control of the area or article searched. It includes such items as cancelled mail envelopes, stenciled or monogrammed clothing, vehicle registration, etc.

(7) Plain View Doctrine

Under this doctrine, incriminating evidence such as contraband or recognized fruits or tools of a crime may be seized in the course of a lawful search even if the seized item does not relate to the original purpose of the search as long as the seized item is readily apparent in "plain view." The individual making the search or seizure must be lawfully present at the scene within the proper scope of authority. The "plain view doctrine" is limited by the "elephant in a matchbox" common sense limitation. That is, a search of a locker for a submachine gun, pursuant to a search authorization could not lawfully extend to the seizure of a cigarette package containing narcotics if the package must be opened in order for the narcotics to come into view because the submachine gun could never be hidden in a cigarette package.

COMDTINST M5810.1E

7.C.4.f. Sample Descriptions

(1) General

The basic rule in describing the property is to go from the general to the specific. For example, if the purpose of the search is to discover and seize a Thompson Machine gun the search authorization should state: "Automatic firearms, including, but not limited to, one "Thompson Machine gun." It is important to fully describe property to be seized because only that property described in the search authorization, or otherwise lawfully seized, can be used in court.

(2) Contraband

Example: "Narcotics, including, but not limited to, heroin and paraphernalia for the use, packaging, and sale of said contraband, including, but not limited, to burnt spoons, hypodermic syringes and needles, balloons, cotton, lactose and rubber tubing."

(3) Fruits of a Crime

Example of stolen property: "Household appliances, including but not limited to, one General Electric clock radio, light blue in color, having an AM-FM selector, and one Sony 15" portable color TV, tan in color, with black knobs."

(4) Tools of a Crime

Example, marijuana paraphernalia: "Items used in the sale and consumption of marijuana including, but not limited to, plastic baggies, smoking pipes, scales used in the weighing of marijuana, cigarette rolling machines, and cigarette papers."

(5) Identification Evidence

Example: "Papers, documents, and effects that show possession, dominion, and control of said area or objects including, but not limited to, keys, cancelled mail envelopes, monogrammed or stenciled clothing, wallets, and receipts."

7.C.4.g. Corroboration

The application should include any information showing the suspect committed the crime or that the described property is at the described location. Corroboration is particularly important where the application is based on information supplied by an informant rather than on the personal knowledge or observation of the applicant.

7.C.4.h. Night Service

(1) General

If the search authorization is to be executed at night between 2200 and 0600 this authorization must be specifically indicated on the search authorization specifying the time outside of 0600 to 2200 in which the search may be conducted.

(2) Reasons for Authorizing Night Service

The general reason for requesting night service is that there is danger that the suspect may be alerted to the upcoming search or that the evidence may be transferred, sold, or destroyed. Some reasonable basis beyond the mere speculation of the applicant should be given that this is a possibility.

7.C.5. Telephonic Application Procedure and Check List

7.C.5.a. Advance Preparation

Before contacting the military trial judge an applicant for a search authorization should:

(1) Be thoroughly familiar with the contents of this section and the procedures set out herein. (Because it is often necessary for applications for a search authorization to be made quickly, it is advisable that potential applicants familiarize themselves with this section when first assigned to a position described in subparagraph 7.C.1.b(2)(ii).

(2) Have the facts organized.

(3) Contact the servicing judge advocate and relate the facts giving probable cause for the search authorization.

(4) With the assistance of the judge advocate fill out the search authorization application, found in enclosure (23e), to include the description of the person or location to be searched, and the property to be seized.

(5) Refer to the script for application for search authorizations contained in enclosure (23a) and write out the answers to the questions that will be asked by the military trial judge.

(6) Ensure the same verbatim description of the place or person to be searched and the articles to be seized is used in both the application and the search authorization.

(7) Applicants for search authorization must complete enclosure (23e) and be prepared to hand deliver or fax a copy to the military trial judge to whom the application will be directed. In the event that a facsimile machine is not available, see, subparagraph 7.C.2.b(3) above.

7.C.5.b. Application Procedure

After completing the preliminary steps, the applicant's staff judge advocate [SJA, or servicing legal officer] will assist the applicant in contacting the appropriate military trial judge by telephone and, if a recording and transcript of the search authorization is desired or required the SJA will make arrangements to record the three way conversation

COMDTINST M5810.1E

between the applicant, military trial judge, and applicant's SJA. The applicant should then:

(1) Tell the military trial judge that he or she wishes to apply for a telephonic search authorization. (The judge will tell the applicant when to begin the script. Thereafter, the conversation may be tape recorded and later transcribed as determined by the applicant's SJA.)

(2) Speak only in response to a question.

(3) Speak calmly and clearly.

(4) Each speaker should identify him or herself prior to making any statement.

(5) Follow the judge's instructions.

(6) Finally, if directed, sign the judge's name and the applicant's name, rank and position in the lower right hand corner of the search authorization.

7.C.5.c. Procedure for Executing the Search Authorization

After obtaining the search authorization, the applicant should take the following action:

(1) If the person whose property is to be searched is present, give him or her a copy of the search authorization and allow the person to read the original if he or she so desires.

(2) Enter the time of execution on the authorization.

(3) Detail all property seized on a receipted inventory form and give a copy to the individual if present.

(4) Forward all documents in accordance with subparagraph 7.C.3.b above.

(5) Maintain secure custody of items seized, and initiate a proper chain of custody if the items seized change hands.

**SUGGESTED MAST SCRIPTS FOR CONDUCTING A HEARING
PURSUANT TO ARTICLE 15, UCMJ**

This enclosure contains instructions and two suggested scripts for use in conducting mast pursuant to Article 15, UCMJ. The following brief description will assist a mast authority determine how to best use this enclosure and if one of the provided scripts is desirable.

- A. The first section (Section A, page 3) describes the format of both scripts.
- B. The second section (Section B, pages 4-17) is a detailed script with most events that may occur at mast described together with a proposed method of handling them. This script is 14 pages long.
- C. The third section (Section C, pages 18-25) is an abbreviated script without most of the discussion and explanation contained in the first script. Many of the less common occurrences at mast are not mentioned. In all other respects it is identical to that material contained in Section B and likely represents the most common proceeding experienced in the Coast Guard. This script should be familiar to users of previous versions of this manual and is 8 pages long.
- D. The last section (Section D, pages 26-27) contains the table of maximum punishments and limitations reproduced from Chapter 1 of this manual.

Following the suggested script is not required for valid action under Article 15, UCMJ; however, ensuring the member's rights are provided and preserved is required. The script is intended to assist the mast authority to accomplish that goal and answer the majority of questions and issues that may arise during a proceeding leading up to the awarding of punishment pursuant to Article 15, UCMJ. The mast authority may amend and stylize the provided script as necessary, or follow a different process to meet the unit's need for good order and discipline to the extent the member's rights under law (Articles 15 and 31b, UCMJ), Presidential Order (Part V, MCM), and regulations of the Judge Advocate General of the Coast Guard and Chief Counsel (Chapter 1, MJM), are followed.

Similarly, there is no one "correct way" to conduct a mast hearing. Mast has been successfully conducted in a variety of locations (*i.e.*, wardroom, cabin, office, quarterdeck, flight deck), with a wide range of attendees (from a small hearing consisting of Commanding Officer, member, and mast representative to a larger assembly including all the participants noted in the provided script with the entire crew in attendance), and with differing levels of formality (dress uniform, uniform of the day; green or blue table cloth; Master-at-Arms or Executive Officer participating as indicated; etc.). The mast authority should require a proceeding that ensures that the conduct of mast pursuant to Article 15, UCMJ contributes to the achievement of good order and discipline at the unit.

MAST SCRIPT CONVENTIONS

A. General: This is a suggested procedure, presented in script form, for conducting a mast proceeding under Article 15, UCMJ. It may be copied or printed and amended as necessary for each mast. Section 1.D contains a detailed discussion of the procedure.

1. TYPEFACE CONVENTIONS.

- a. **SECTION LABELS AND NAVIGATION POINTS ARE INDICATED BY BOLD CAPITALS.**
- b. Instructions, including navigation directions based on elections made during the proceedings, are in italic type. Significant decision points are enclosed in a box with additional directions.
- c. The script that the mast authority should read aloud and responses from other mast participants are designated by plain type.
- d. Optional sections and information that may change from one proceeding to another, are enclosed in brackets (“[“, “]”).
- e. **Double underlined** text designates a speaker; **Single Underlined** text indicates the mast authority may wish to insert an individual’s name.
- f. Items noted in paragraph A.2., below, and again at the appropriate points in the script, are preceded by a “□” and indicate matters that should be considered prior to mast.

2. PRIOR TO THE MAST : The mast authority should ensure the following items are completed prior to the mast hearing to avoid delay (items preceded by an asterisk (*)) may be performed by the Executive Officer or designee):

- Review PIO Report, Form CG-4910, and all statements and information attached to the PIO Report; *Ensure administrative data (bottom front of Form CG-4910) is complete and correct (required in order to award forfeitures in dollar amounts, as required).
- Review the elements for each alleged offense (*see*, Part IV, MCM). *It may be helpful to copy, or make a list, of the elements of each offense and, in some cases the lesser-included offenses, to refer to during the mast proceeding.
- Review the member’s PDR. *Tab significant items for reference during the mast.
- *Ensure member completed appropriate waiver and rights acknowledgment (encl. (3a)/(3b), (4a)/(4b)).
- *Ensure member and mast representative had the opportunity to examine the PIO report, documents, statements, etc., the mast authority will consider at the hearing.
- *Ask the member or mast representative if he or she wants witnesses called or specific information presented at the proceeding; arrange to have witness(es) or information available or, if not essential to the determination of the case and gaining their presence would otherwise unduly delay the mast, decide to proceed without them.
- *Have copies of the MJM and MCM available as references during the mast hearing.
- *Determine the necessary personnel required for the hearing and confirm they will be available to attend the mast. At a minimum, the member and his or her representative must be present [*but see*, subparagraph 1.D.1.b.]. If the member chose a spokesperson, he or she should be allowed to attend the proceeding if it does not unduly delay scheduling the mast. The mast party may, in the mast authority’s discretion, include the Executive Officer, Command Chief, the member’s Department Head and/or Division Officer/Chief, Master-At-Arms, Recorder, member, member’s mast representative (or spokesperson), the Preliminary Inquiry Officer, and witnesses.

B. DETAILED MAST SCRIPT

**1. OPENING STATEMENT OF THE MAST AUTHORITY
(COMMANDER, COMMANDING OFFICER, OR OFFICER-IN-CHARGE)**

Mast Authority: *Advice member of his or her rights and the mast procedure.*

- A. [Member], this is a nonjudicial proceeding under Article 15 of the Uniform Code of Military Justice. As a preliminary matter, I will advise you about the procedure I shall follow in considering the report of misconduct made against you.
- B. First, I will inform you of the offense(s) for which you have been placed on report, and the name of the individual who placed you on report.
- C. Second, I will ask you if you admit or do not admit the allegation(s).
 - 1) If you admit the allegation(s), I do not need any additional information to find that you have committed the offense(s). Additionally, anything you say may be used against you in this proceeding, at any other administrative proceeding, or in a trial by court-martial. Before I impose punishment, you will be given the opportunity to present matters in extenuation or mitigation, as will be more fully explained later.
 - 2) You are under no obligation to admit the allegation(s). If you do not admit the allegation(s), I may not impose punishment unless I find, based on a preponderance of the evidence, that you committed the alleged offense(s). I will review and receive information to allow me to make a decision in your case. I will call each of the available witnesses with relevant information and question them in your presence to determine the facts of the alleged misconduct. After I have finished reviewing the information or questioning a particular witness, I will give you [and your mast representative] an opportunity to comment on the information or question the witness.
- D. After I have questioned all of the available witnesses, I will ask if you desire to have other persons called to be questioned. If those persons are reasonably available and you can explain why their statements are important to a full and fair hearing, I will call those persons to appear for questioning.
- E. After all the witnesses have been heard, I will dismiss any alleged offenses that I determine are unsupported by a preponderance of the evidence. If I find that you did not commit any offenses, the mast will end. If I find that your commission of any of the alleged offenses is supported by a preponderance of the evidence, the mast may continue.

- F. After all the available evidence has been received I will give you an opportunity to make a statement about the allegations, the witnesses, or the evidence. You may also present information that might defend or justify your actions. You may make a statement [or your representative/spokesperson may make a statement for you].
- G. I want to make it very clear that you are not required to make any statement at all. You have the right to remain absolutely silent, and make no comments whatsoever about this matter.
- 1) If you remain silent, I shall not consider your silence as an admission of anything, and will not consider your silence against you in any way.
 - 2) On the other hand, if you make a statement, I may consider anything you say in determining whether or not to impose nonjudicial punishment. Anything you say may also be used against you in other administrative proceedings, or in a trial by court-martial.
- H. After we have finished with all of the witnesses and you have had an opportunity to make a statement, I will allow you to present information in extenuation to explain the circumstances surrounding the offenses, or in mitigation to persuade me to impose less punishment than I might otherwise award. I will then decide whether to dismiss your case, impose nonjudicial punishment, or refer your case for trial by court-martial. I may also consider other administrative actions authorized by Coast Guard regulations.
- I. I want to once again impress upon you that this hearing will be full and fair. I want to be sure that I know all the facts and circumstances about this report made against you. Therefore, I encourage you [and your most representative] to ask questions of the available witnesses and let me know if you want me to obtain additional documents or call witnesses who are not present to speak on your behalf. Do you have any questions at this time?

Member: (Reply).

The most authority should answer any questions presented by the member or the member's most representative/spokesperson.

If the member is attached to or embarked in a vessel , skip to paragraph 3 .

2. **RIGHT TO DEMAND TRIAL BY COURT-MARTIAL.** [Use this section if member is not attached to or embarked in a vessel; otherwise go to paragraph 3.]

- Note:** If the member has not been informed of his or her rights and consented in writing to NJP, the mast authority might consider recessing the proceeding and having enclosure (3a) or (3b), as appropriate, completed. While the forms are not required for valid action under Article 15, UCMJ, documenting these elections in writing is preferred, especially if the member waives the right to consult with an attorney.

Mast Authority might state the following: [Executive Officer], enclosure [(3a) or (3b)] is not complete and I desire these elections to be made in writing. I will recess these proceedings until you can have the elections made in writing [including providing consultation with an attorney or law specialist]. Take charge, and dismiss the mast party.

Mast Authority:

- [Member], because you are not attached to or embarked in a vessel, you have the right to demand trial by court-martial. I have before me an ACKNOWLEDGMENT OF RIGHTS form indicating you were given an opportunity to consult with an attorney or law specialist, that you do not demand trial by court-martial, and, therefore, you consent to have your case disposed of by nonjudicial punishment. [Member], is this your signature on the form indicating you do not demand trial by court-martial and accept having your case decided by me under Article 15, UCMJ?

Member: Yes.

Mast Authority: [Member], do you agree to have your case disposed of at nonjudicial punishment?

Member: Yes. [Proceed to paragraph 3, below.] **or...**
No. [Continue with paragraph 2A or 2,B below.]

Note: Paragraph 4.b(2), Part V, MCM, indicates “If the service member does not demand trial by court-martial within a **reasonable time** after notice [of intent to hold mast] the [mast authority] may proceed [with mast].” It is a matter of discretion for the mast authority to proceed under Article 15, UCMJ if, at the hearing, the member initiates a demand for court-martial but had not done so earlier when provided a reasonable opportunity. The mast authority should consider if the member had reasonable time before mast, and after consultation with an attorney, to demand trial by court-martial. If in doubt as to the ability to proceed with mast, the mast authority should recess the hearing and contact the servicing legal office.

If the mast authority **decides not to proceed with mast**, continue with the following:

2A. Mast Authority: Because you demand trial by court-martial, and therefore refuse nonjudicial punishment, I now must decide whether to [commence/recommend]

court-martial proceedings against you. I will notify you when I have made a decision. This proceeding is closed. [Executive Officer], dismiss the mast party and take charge of the file and evidence.

Or...

If the mast authority **decides to proceed with mast**, continue with the following:

2B. Mast Authority: [Member], after careful consideration [and consultation with the Staff Judge Advocate], I have decided to proceed with this mast and will not honor your late demand for trial by court-martial. You were given a reasonable time to demand trial by court-martial after you were informed a mast was being considered. You were advised of the report of offense(s) against you on _____ 20(__); you were advised of the opportunity to discuss your election with an attorney on _____ 20(__); and you discussed your elections with an attorney on _____ 20(__). However, you did not demand trial by court-martial until today. The President has proscribed at paragraph 4.b(2), Part V, MCM: "If the servicemember does not demand trial by court-martial within a reasonable time after notice of intent to hold mast the mast authority may proceed with mast." I find that you did not demand trial by court-martial within a reasonable time. Therefore, I will proceed with this hearing.

3. INFORMING THE MEMBER OF THE REPORTED OFFENSE AND DOCUMENTATION

Mast Authority: [Member], I have before me a report sheet charging you with the following offense(s):

- [Read allegations from Form CG-4910].
- You were placed on report by _____.
- The following persons are listed as witnesses: _____, _____, _____, and _____.
- This report of misconduct was investigated by _____, who recommended: [read PIO comments/recommendations from CG-4910; it is not necessary to read the complete investigation aloud].
- Have you [and your Mast Representative/Spokesperson] had a chance to examine the Report of Offense, the information contained with that report, and report of the Preliminary Inquiry Officer?

Member: Yes. Or...

No. [See instructions below.]

If the member was not afforded an adequate opportunity to examine the file, the Mast Authority should review the file and note the relevant information at this time or recess the proceedings until the member has had an adequate opportunity to do so.

Mast Authority might state the following:

- Contained in this file is a copy of the ship's log for _____ 20(____) indicating _____; _____'s statement dated _____ 20____ indicating _____; _____'s statement dated _____ 20____ indicating _____; and _____. Do you have any questions about these materials?

Or...

- [Executive Officer], I will recess these proceedings to allow [Member and his/her mast representative/spokesperson] a reasonable opportunity to review the materials before me. Advise me when we are ready to proceed. Take charge, and dismiss the mast party.

Mast Authority: Do you have additional documentation to present for my consideration?

Member: (Reply).

Mast Authority: [Member], do you have any questions about the exact nature and details of the report of offense(s) that has been made against you?

Member: (Reply). The mast authority should answer any questions presented by the member or the member's mast representative/spokesperson.

4. RIGHT TO ASSISTANCE OF A MAST REPRESENTATIVE OR SPOKESPERSON

Mast Authority: You have the right to the assistance of a mast representative or spokesperson at this proceeding. The Report of Offense and Disposition (Form CG-4910) indicates you [were assigned/desired] _____ as your [mast representative or spokesperson], and [he or she] is present. Is that correct?

Member: Yes.

Mast Authority: [Mast Representative/Spokesperson], you are encouraged to assist [Member] throughout this proceeding to ensure I am aware of all relevant information required to making a full and fair determination in this matter. You may ask me questions at any point in these proceedings if anything is unclear. **For a Spokesperson only...** As [Member's] Spokesperson you are not permitted to question witnesses inasmuch as these proceedings are not adversarial. **Optional for Spokesperson only...** However, I will permit you to submit questions to me to ask on [Member's] behalf if you believe there are additional matters I should inquire into. Do you understand the nature of these proceedings and your role?

Mast Representative or Spokesperson: Yes. Answer any questions presented.

If the member declined assistance and a mast representative was not appointed:

Mast Authority: The front of the Report of Offense and Disposition (Form CG-4910) indicates you declined the assistance of a mast representative. Is that correct?

Member: Yes. If the member now desires a mast representative, one may be appointed if it will not unduly delay the proceedings. If the member desires a spokesperson, the member must demonstrate he or she is immediately available or, presumptively, the proceedings will be unduly delayed and may proceed without limitation. The member is entitled to a mast representative or spokesperson, but not both.

If the member's spokesperson could not attend and the mast authority desires to continue the mast in the spokesperson's absence, use one of the following...

Mast Authority: I understand you desired [Spokesperson] to attend as your spokesperson. You were given sufficient notice of the scheduling of this proceeding to arrange for your spokesperson to attend. Therefore, I am not required to delay this hearing, and will continue the mast without a spokesperson. **Or...**

Mast Authority: I understand you desired [Spokesperson] to attend as your spokesperson. I find you were not given sufficient notice of the scheduling of this proceeding to arrange for your spokesperson to attend. I intend to proceed with this hearing. However, because your spokesperson is not present, I may impose a maximum punishment of 14 days extra duty, 14 days restriction, and an oral reprimand if I determine you committed [this/these] offense[s]. Do you understand?

Member: Yes. Answer any questions that may be presented.

5. INQUIRY OF MEMBER.

Mast Authority: Do you choose to admit or to not admit any, or all, of the allegations made against you? Before you answer, you are reminded that your decision to not admit the allegations will not be considered against you. If you admit the allegations, I may find that you committed the offenses without hearing any further information. Further, your admission may be used against you if this matter is referred to trial by court-martial or other administrative proceedings.

Member: [Reply].

- | |
|--|
| <ol style="list-style-type: none">1) If the member admits all allegations of misconduct, skip to paragraph 9.2) If the member does not admit <u>all</u> allegations of misconduct, continue with paragraph 6 for any offenses not admitted. |
|--|

6. EXAMINATION OF WITNESSES BY MAST AUTHORITY

Repeat paragraphs 6 & 7 for each witness.

- The mast authority should call each witness and question the witness about the allegations of misconduct that the member did not admit. Witnesses may be, but are not required to be, called one at a time and questioned outside the presence of other witnesses. **Mast is not an adversarial proceeding, and the mast authority should not act as prosecutor. The mast authority should seek information both favorable to, and against, the member.** The focus of the questions should be to obtain sufficient information to determine whether or not the member committed the misconduct. The need for, and number of, witnesses required to be questioned is a matter within the discretion of the mast authority in view of the documentary information available and the nature of the statements as they are obtained.

Mast Authority: [Master-at-Arms], bring in [Witness].

Witnesses may be questioned under oath, but an oath is not required. The following oath may be used and administered either by the Mast Authority or Master-at-Arms:
--

<u>Mast Authority</u> or <u>Master-at-Arms:</u> “Raise your right hand. Do you [swear or affirm] that the evidence you shall give in this matter shall be the truth, the whole truth, and nothing but the truth [, so help you God]?”

Mast Authority: [Witness], are you aware of _____ ?
Tell me what you know about this matter. Questioning follows.

Witness: Reply.

7. **EXAMINATION OF WITNESS(ES) BY THE MEMBER.** After questioning each witness, the mast authority should ask the member and/or mast representative if they have any questions for the witness. Note: A spokesperson may not question witnesses except as the mast authority may allow as a matter of discretion.

Mast Authority: [Member], do you [or your mast representative] have additional questions you would like to ask this witness? If you do, you may proceed. If you prefer, you may propose questions you would like the witness to answer to me and I will ask those questions on your behalf.

Member: (Reply/Questioning).

Call next witness and repeat paragraphs 6 & 7, to this point, for each witness. After all scheduled witnesses have been questioned, proceed as follows:

Mast Authority: [Member], are there any other witnesses whom you would like me to call for questioning?

Member: No. Proceed to paragraph 8. **Or...**
Yes (& identifies witness (es)). See instructions/suggestions below.

- Requested witnesses with relevant information and reasonably available should be called. Civilian witnesses may appear voluntarily but can not be forced to attend. It is not necessary to call witnesses to repeat information already presented; the Mast Authority might ask:

Mast Authority: [Member], if [witness] were called and questioned about the offense(s), what do you believe [he or she] would tell me?

And, either 7A or 7B, below....

- 7A.** If the Mast Authority accepts the member's response as an accurate statement of the witness' information, the Mast Authority might state:

Mast Authority: I believe it is likely that witness(es) would tell me what you just said. Therefore, in making my decision, I will consider as true what you just told me, and I will not call [that/those] witness(es).

Or...

- 7B.** If the Mast Authority decides additional witnesses are needed, they should be called forward; mast should be recessed as necessary to arrange for the witnesses not immediately available. The Mast Authority might state:

Mast Authority: [Executive Officer], I will recess these proceedings until [_____] hours to/such time as you can] obtain the presence of [witness(es)]. Advise me when [the witness(es) have been notified/are ready to proceed]. Take charge and dismiss the mast party.

If there are no further witnesses, proceed to paragraph 8.

8. DISMISSING UNSUPPORTED ALLEGATIONS

To impose punishment for an alleged offense, each element of one or more offenses must be established by a preponderance of the evidence (i.e., the facts must demonstrate **it is more likely than not that each element exists**). For some offenses, the member may be found to have committed a lesser-included offense, or an offense entirely different than indicated on Form 4910. Part IV of the MCM lists lesser-included offenses, if any, for each offense. After the Mast Authority has reviewed the evidence and witnesses, he or she should dismiss any allegations that are not established by a preponderance of the evidence. **If there are no remaining indications of misconduct** the mast should be closed:

Mast Authority: [Member], I find there is insufficient evidence to indicate that you committed the alleged misconduct. These allegations are dismissed. [Executive Officer], see that the proper entry is made in the [ship's/unit's] log. Take charge of, and dismiss the mast party.

Note: The dismissal at this point is only in cases where there was no offense. If one or more offense(s) was/were committed, the mast authority may wish to proceed with the script through paragraph 16 even if no punishment will be awarded.

9. OPPORTUNITY FOR MEMBER'S STATEMENT

Mast Authority: [Member], I have reviewed the documentation and heard from the witnesses. Before I make a decision in this matter, I will give you an opportunity to make a statement and tell me your side of the story. But, before you respond...

- a) Let me remind you again, that you are not required to make any statement. You have the right to remain silent, and make no comment about this matter. If you remain silent, I shall not consider your silence as an admission of anything, and will not count your silence against you in any way.
- b) On the other hand, if you make a statement, I may consider everything you say in determining whether or not to award punishment to you. Anything you say may also be used in a court-martial or other administrative proceeding.

Do you [or your mast representative/spokesperson] desire to make a statement?

Member: No, **or** makes statement.

10. RESOLVING DISCREPANCIES OR INCONSISTENCIES

If necessary, the mast authority may recall, or call additional, witness(es), or ask for additional documentation, to resolve discrepancies raised by the member's statement.

11. EXTENUATION AND MITIGATION

Mast Authority: [Member], at this time, you have an opportunity to present information in extenuation or mitigation. You are reminded you are not required to make any statement. Extenuating information tends to explain the circumstances surrounding the commission of the offense(s). Mitigating information might convince me to impose less punishment than I might otherwise award. Do you wish to make a statement or present other information in extenuation or mitigation, or do you want me to call any witnesses in extenuation or mitigation?

Member: No, or makes statement/request.

12. CONSIDERATION OF PRIOR DOCUMENTED PERFORMANCE

The mast authority should **examine and comment on the member's service record** and may consider the member's prior performance, both positive and negative, as shown by prior court-martial convictions, prior appearances at mast, awards, marks, and Form CG-3307 ("page 7") entries. The member may be questioned about any entry.

13. COMMENTS BY THE EXECUTIVE OFFICER, DEPARTMENT HEAD, DIVISION OFFICER/CHIEF, OR COMMAND CHIEF

The mast authority customarily asks the department head and executive officer for comments on the member's conduct and performance of duty before announcing findings and punishment. The mast authority may ask the command chief, the member's division officer/chief, etc., for comments as desired. Only the Executive Officer, when invited, would make a specific punishment recommendation(s) in those rare cases when it is deemed necessary because determining the appropriate punishment is the sole responsibility of the mast authority.

Mast Authority: Before I decide how to dispose of this case, I will ask for comments from the executive officer, your department head, [division officer/chief, command chief, etc].

[Division Officer/Chief], as [Member's] division officer/chief, do you have any comments about [Member's] performance of duty or the alleged offenses that would help me to determine an appropriate punishment?

Division Officer/Chief: (Reply). **Note:** the division officer/chief should not, unless requested, provide a specific punishment recommendation.

[Department Head] as [Member's] department head, do you have any comments about [Member's] performance of duty or the alleged offenses that would help me to determine an appropriate punishment?

Department Head: (Reply). **Note:** the department head should not, unless requested, provide a specific punishment recommendation.

- [Command Chief] as [Member's] command chief, do you have any comments about [Member's] performance of duty or the alleged offenses that would help me to determine an appropriate punishment?

Command Chief: (Reply). **Note:** the command chief should not, unless requested, provide a specific punishment recommendation.

- [Executive Officer] as this command and [Member's] executive officer, do you have any comments about [Member's] performance of duty or the alleged offenses that would help me to determine an appropriate punishment?

Executive Officer: (Reply).

14. FINDINGS

The mast authority may adjourn or recess the mast to consider the evidence and determine if any offenses were committed, whether or not to award punishment, and the appropriate punishment. Because mast is not a trial, the mast authority should not announce “guilty” or “not guilty” findings. While a determination that a criminal offense was committed is an essential precursor to awarding punishment under Article 15, UCMJ, it is not, as in a court-martial, a determination that has its own significance. **A determination at mast that an offense was committed without awarding punishment is not NJP under Article 15, UCMJ.**

Similarly, it is not normally appropriate to announce “findings” before this point in the hearing because it may be information presented in extenuation, mitigation, or by a member of the chain of command that will convince the mast authority to not award punishment under Article 15, UCMJ. Waiting to this point in the hearing to announce findings provides the greatest amount of flexibility to the mast authority.

If the mast authority determines, based on a preponderance of the evidence, that the **member committed one or more offenses**, the Mast Authority should announce:

Mast Authority: [Member], Based on the information before me, I find that you have committed the offense(s) of: _____, _____,

_____, _____.
[State offenses in layman’s terms (e.g., “You stole ____”; “You disobeyed ____’s order”; “You smoked marijuana with ____”).]

See paragraph 16 for dismissal with a warning.

15. VACATION OF EARLIER SUSPENDED PUNISHMENT

Notes:

- A) If the member is subject to suspended punishment under an approved court-martial sentence, the Mast Authority should contact his or her Staff Judge Advocate for guidance on vacating the suspension **before** imposing non-judicial punishment. See RCM 1109, MCM. The Mast Authority should also contact the SJA for guidance if a court-martial sentence has not yet been approved, but part of the sentence would be suspended in accordance with a Pre-trial Agreement.
- B) If the member is subject to suspended punishment(s) from a prior NJP, the suspension may be vacated and the suspended punishment imposed if:
 - (1) The period of suspension has not expired (e.g., not more than 3 months has passed if the prior punishment was suspended for 3 months);
 - (2) The Mast Authority is the individual, successor in command, or superior officer in command of the authority who imposed or approved the suspended punishment;
 - (3) The Mast Authority has authority to impose punishment equal to that which is to be vacated (e.g., an O-3 CO may not vacate the suspension of 60 days restriction because an O-3 may award a maximum of only 14 days restriction);
 - (4) The Mast Authority determines that the member committed an offense under the UCMJ during the period of suspension; and
 - (5) The Mast Authority determines that vacation of the suspended punishment is appropriate.
- C) Vacation of the suspension and reinstatement of the suspended punishment should be announced before new punishment is imposed. For example: if the member was previously reduced from E-4 to E-3 but the reduction was suspended; vacation of the suspension immediately makes the member an E-3. If an additional reduction is imposed as new punishment, the member would be reduced from E-3 to E-2. If the suspension is not vacated before the new punishment is imposed, the member would be reduced from E-4 to E-3. If the mast authority desires to vacate a prior suspension, he or she should announce:

Mast Authority: [Member], because I have found that you committed [an] offense[es] under the UCMJ, as a separate matter from the present mast hearing, I am vacating the suspension of [state specifically the portion, or all, of the prior suspended punishment] awarded and suspended on _____ 20(__). That punishment commences immediately.

Note: Offense(es) may be dismissed, or dismissed with a warning and no further punishment awarded even if one or more offenses were determined to have been committed and a prior suspended punishment was vacated.

16. DISMISSAL WITH A WARNING

Mast Authority: [Member], although I am convinced that you committed [an offense/these offenses/the offense of _____], I have decided that I will not impose nonjudicial punishment because _____. However, I warn you that if you appear before me at mast again and I determine that you have committed an offense, you will not get off so easily. [Executive Officer], take charge of, and dismiss, the mast party.

17. REFERRAL TO COURT-MARTIAL

Mast Authority: [Member], I consider the offense(s) you have committed too serious to be handled at mast. Therefore, I will not award nonjudicial punishment and:

If Mast Authority is a court-martial convening authority: I will consider referring this matter for trial by court-martial.

If Mast Authority is not a court-martial convening authority: I will consider forwarding the allegations to _____, my superior, with a recommendation that you be charged and tried at court-martial. You will remain in a duty status and be notified if the charges are preferred and referred for trial by court-martial.

18. IMPOSITION OF NONJUDICIAL PUNISHMENT

The Table of Maximum Punishments is located in paragraph 1.E.1. The types of punishment and punishment limitations are contained in paragraph 1.E.2. Both references are reproduced at the end of this enclosure. Any, or all, punishment awarded may be suspended now, or at a later time.

Mast Authority: [Master-At-Arms, call [Member] to attention]. [Member], I impose the following punishment.... [e.g., I order you restricted to the limits of this ship for a period of ten days without suspension of duty; such restriction will commence upon [our return to homeport] [our arrival at the next port of call] on, or about, [date]. In addition, you are ordered to perform two hours extra duty per day for ten days. I order you to be reduced one pay-grade to E-2, but the reduction in pay-grade shall be suspended for a period of 3 months.] **Note:** Restriction in excess of 45 day is not permitted when any extra duties are awarded.

- The mast authority should indicate the disposition and any punishment awarded in the appropriate section of Form CG-4910.** This may be accomplished at this point or following dismissal of the mast party.

19. MEMBER'S RIGHT TO APPEAL THE IMPOSITION OF NONJUDICIAL PUNISHMENT

Mast Authority: [Member], [At ease.] Because I have imposed nonjudicial punishment, I must inform you of your right to appeal. If you consider the punishment I have awarded unjust, or disproportionate to the offense, you may appeal in writing to _____ [insert name of first superior officer with an assigned legal officer], my superior. Your appeal must be in writing and must be forwarded through the chain of command. Any appeal that you wish to make must be made within 5 days from today. If you desire to make an appeal, see the executive officer, your department head, or division officer/chief, or any other individual whom you would like to have consult with you and help you in preparing your appeal. Your right to appeal will be waived if you do not submit it within 5 days.

If restraint or extra duties are awarded as a part of the punishment, the member must also be advised as follows:

Mast Authority: The punishment awarded involving [Restraint and/or Extra Duties] is not automatically deferred by filing an appeal. If your appeal is not acted upon by my superior within 5 days of when you submit your appeal to me, you may request that the unserved portions of the restraint or extra duties be deferred until after the action is completed. I shall grant such a request, but remember, you must request it.

Mast Authority: [Member], Do you understand your rights to appeal?

Member: (Reply). **Note:** Explain the right to appeal until the member understands.

20. CONCLUSION OF MAST

Mast Authority: This mast proceeding is concluded. [Executive Officer], see that the proper entry is made in the [ship's/unit's] log. Take charge of, and dismiss the mast party.

Normally, the Executive Officer will call the mast party to attention and, after the mast authority has departed the space, dismiss all personnel.

C. ABBREVIATED MAST SCRIPT WITH MINIMUM EXPLANATION

**1. OPENING STATEMENT OF THE MAST AUTHORITY
(COMMANDER, COMMANDING OFFICER, OR OFFICER-IN-CHARGE)**

Mast Authority:

- A) [Member], this is a nonjudicial proceeding under Article 15 of the Uniform Code of Military Justice. As a preliminary matter, I will advise you about the procedure I shall follow in considering the report of misconduct made against you.
- B) First, I will inform you of the offense(s) for which you have been placed on report, and the name of the individual who placed you on report.
- C) Second, I will ask you if you admit or do not admit the allegation(s).
 - 1) If you admit the allegation(s), I do not need any additional information to find that you have committed the offense(s). Additionally, anything you say may be used against you in this proceeding, at any other administrative proceeding, or in a trial by court-martial. Before I impose punishment, you will be given the opportunity to present matters in extenuation or mitigation, as will be more fully explained later.
 - 2) You are under no obligation to admit the allegation(s). If you do not admit the allegation(s), I may not impose punishment unless I find, based on a preponderance of the evidence, that you committed the alleged offense(s). I will review and receive information to allow me to make a decision in your case. I will call each of the available witnesses with relevant information and question them in your presence to determine the facts of the alleged misconduct. After I have finished reviewing the information or questioning a particular witness, I will give you [and your mast representative] an opportunity to comment on the information or question the witness.
- D) After I have questioned all of the available witnesses, I will ask if you desire to have other persons called to be questioned. If those persons are reasonably available and you can explain why their statements are important to a full and fair hearing, I will call those persons to appear for questioning.
- E) After all the witnesses have been heard, I will dismiss any alleged offenses that I determine are unsupported by a preponderance of the evidence. If I find that you did not commit any offenses, the mast will end. If I find that your commission of any of the alleged offenses is supported by a preponderance of the evidence, the mast may continue.
- F) After all the available evidence has been received I will give you an opportunity to make a statement about the allegations, the witnesses, or the evidence. You may also present information that might defend or justify your actions.

You may make a statement [or your representative/spokesperson may make a statement for you].

- G) I want to make it very clear that you are not required to make any statement at all. You have the right to remain absolutely silent, and make no comments whatsoever about this matter.
 - 1) If you remain silent, I shall not consider your silence as an admission of anything, and will not consider your silence against you in any way.
 - 2) On the other hand, if you make a statement, I may consider anything you say in determining whether or not to impose nonjudicial punishment. Anything you say may also be used against you in other administrative proceedings, or in a trial by court-martial.
- H) After we have finished with all of the witnesses and you have had an opportunity to make a statement, I will allow you to present information in extenuation to explain the circumstances surrounding the offenses, or in mitigation to persuade me to impose less punishment than I might otherwise award. I will then decide whether to dismiss your case, impose nonjudicial punishment, or refer your case for trial by court-martial. I may also consider other administrative actions authorized by Coast Guard regulations. Again, you are not required to make any statement.
- I) I want to once again impress upon you that this hearing will be full and fair. I want to be sure that I know all the facts and circumstances about this report made against you. Therefore, I encourage you [and your mast representative] to ask questions of the available witnesses and let me know if you want me to obtain additional documents or call witnesses who are not present to speak on your behalf. Do you have any questions at this time?

Member: (Reply).

- 2. **RIGHT TO DEMAND TRIAL BY COURT-MARTIAL.** [Use this section if member is not attached to or embarked in a vessel; **otherwise** go to paragraph 3.]

Mast Authority:

- A) [Member], because you are not attached to or embarked in a vessel, you have the right to demand trial by court-martial. I have before me an ACKNOWLEDGMENT OF RIGHTS form indicating you were given an opportunity to consult with an attorney or law specialist, that you do not demand trial by court-martial, and, therefore, you consent to have your case disposed of by nonjudicial punishment. [Member], is this your signature on the form indicating you do not demand trial by court-martial and accept having your case decided by me under Article 15, UCMJ?

Member: Yes.

Mast Authority: [Member], do you agree to have your case disposed of at nonjudicial punishment?

Member: Yes.

3. INFORMING THE MEMBER OF THE REPORTED OFFENSE AND DOCUMENTATION

Mast Authority: [Member], I have before me a report sheet charging you with the following offense(s):

- [Read allegations from Form CG-4910].
- You were placed on report by _____.
- The following persons are listed as witnesses: _____, _____, _____, and _____.
- This report of misconduct was investigated by _____, who recommended: [read PIO comments/recommendations from CG-4910; it is not necessary to read the complete investigation aloud].
- Have you [and your Mast Representative/Spokesperson] had a chance to examine the Report of Offense, the information contained with that report, and report of the Preliminary Inquiry Officer?

Member: Yes. Or...

No. [See instructions below.]

Mast Authority should review the file and might state the following:

- Contained in this file is a copy of the ship's log for _____ 20(____) indicating _____; _____'s statement dated _____ 20____ indicating _____; _____'s statement dated _____ 20____ indicating _____; and _____. Do you have any questions about these materials?

Mast Authority: Do you have additional documentation to present for my consideration?

Member: (Reply).

Mast Authority: [Member], do you have any questions about the exact nature and details of the report of offense(s) that has been made against you?

Member: (Reply).

4. RIGHT TO ASSISTANCE OF A MAST REPRESENTATIVE

Mast Authority: You have the right to the assistance of a mast representative or spokesperson at this proceeding. The Report of Offense and Disposition (Form CG-4910) indicates you [desired/were assigned _____ as your mast representative or spokesperson, and he/she is present. **or** declined a mast representative.] Is that correct?

Member: Yes. If declined a mast representative or spokesperson go to paragraph 5.

Mast Authority: [Mast Representative/Spokesperson], you are encouraged to assist [Member] throughout this proceeding to ensure I am aware of all relevant information required to making a full and fair determination in this matter. You may ask me questions at any point in these proceedings if anything is unclear. **For a Spokesperson only...** As [Member's] Spokesperson you are not permitted to question witnesses inasmuch as these proceedings are not adversarial. **Optional for Spokesperson only...** However, I will permit you to submit questions to me to ask on [Member's] behalf if you believe there are additional matters I should inquire into. Do you understand the nature of these proceedings and your role?

Mast Representative or Spokesperson: Yes.

5. INQUIRY OF MEMBER.

Mast Authority: Do you choose to admit or to not admit any, or all, of the allegations made against you? Before you answer, you are reminded that your decision to not admit the allegations will not be considered against you. If you admit the allegations, I may find that you committed the offenses without hearing any further information. Further, your admission may be used against you if this matter is referred to trial by court-martial or other administrative proceedings.

Member: [Reply].

- A) If the member **admits all allegations** of misconduct, skip to paragraph 9.
- B) If the member **does not admit all allegations** proceed with paragraph 6.

6. EXAMINATION OF WITNESSES BY MAST AUTHORITY

Repeat paragraphs 6 & 7 for each witness.

Mast Authority: [Master-at-Arms], bring in [Witness].

Mast Authority: [Witness], are you aware of _____ ?
Tell me what you know about this matter. Questioning follows.

Witness: Reply.

7. EXAMINATION OF WITNESS(ES) BY THE MEMBER. **Note:** A spokesperson may not question witnesses except as the mast authority allows.

Mast Authority: [Member], do you [or your mast representative] have additional questions you would like to ask this witness? If you do, you may proceed. If you prefer, you may propose questions to me and I will ask those questions on your behalf.

Member: (Reply/Questioning).

Call next witness and repeat paragraphs 6 & 7, to this point, for each witness

.After all scheduled witnesses have been questioned, proceed as follows:

Mast Authority: [Member], are there any other witnesses whom you would like me to call for questioning?

Member: No. Proceed to paragraph 8. **Or...**

Yes (& identifies witness(es)). Identified witnesses with relevant information and reasonably available should be called. It is not necessary to call witnesses to repeat information already presented.

8. DISMISSING UNSUPPORTED ALLEGATIONS

Mast Authority: [Member], I find there is insufficient evidence to indicate that you committed the alleged misconduct. These allegations are dismissed. [Executive Officer], take charge and dismiss the mast party.

9. OPPORTUNITY FOR MEMBER'S STATEMENT

Mast Authority: [Member], I have reviewed the documentation and heard from the witnesses. Before I make a decision in this matter, I will give you an opportunity to make a statement and tell me your side of the story. But, before you respond....

- A) Let me remind you again, that you are not required to make any statement. You have the right to remain silent, and make no comment about this matter. If you remain silent, I shall not consider your silence as an admission of anything, and will not count your silence against you in any way.
- B) On the other hand, if you make a statement, I may consider everything you say in determining whether or not to award punishment to you. Anything you say may also be used in a court-martial or other administrative proceeding.

Do you [or your mast representative/spokesperson] desire to make a statement?

Member: (No, or makes statement).

10. RESOLVING DISCREPANCIES OR INCONSISTENCIES. If necessary, the mast authority may recall, or call additional, witness(es), or ask for additional documentation, to resolve discrepancies raised by the member's statement.

11. EXTENUATION AND MITIGATION

Mast Authority: [Member], you are again reminded you are not required to make any statement. Extenuating information tends to explain the circumstances surrounding the commission of the offense(s). Mitigating information might convince me to impose less punishment than I might otherwise award. Do you wish to make a statement or present other information in extenuation or mitigation, or do you want me to call any witnesses in extenuation or mitigation?

Member: No (or makes statement/request).

12. CONSIDERATION OF PRIOR DOCUMENTED PERFORMANCE. The mast authority should examine and comment on the member's service record and may consider the member's prior performance, both positive and negative.

13. COMMENTS BY THE EXECUTIVE OFFICER, DEPARTMENT HEAD, DIVISION OFFICER/CHIEF, OR COMMAND CHIEF

Mast Authority: Before I decide how to dispose of this case, I will ask for comments from the executive officer, [your department head, division officer/chief, and/or command chief, etc].

- [Department Head or Division Officer/Chief], as [Member's] department head or division officer/chief, do you have any comments about [Member's] performance of duty or the offenses that would help me to determine an appropriate punishment?

Department Head and/or Division Officer/Chief: (Reply).

- [Executive Officer and/or Command Chief] as this command and [Member's] [executive officer or Command Chief], do you have any comments about [Member's] performance of duty or the offenses that would help me to determine an appropriate punishment?

Executive Officer and/or Command Chief: (Reply).

14. FINDINGS

If the mast authority determines, based on a preponderance of the evidence, that the member committed one or more offenses, the Mast Authority should announce:

Mast Authority: [Member], Based on the information before me, I find that you have committed the offense(s) of: _____, _____,

_____, _____.
[State offenses in layman's terms (e.g., "You stole ____"; "You disobeyed ____'s order"; "You smoked marijuana with ____")].

15. VACATION OF EARLIER SUSPENDED PUNISHMENT. If there is a prior suspended punishment the mast authorities determines is appropriate to vacate:

Mast Authority: [Member], because I have found that you committed [an] offense[es] under the UCMJ, as a separate matter from the present mast hearing, I am vacating the suspension of [state specifically the portion, or all, of the prior suspended punishment] awarded and suspended on _____ 20(__). That punishment commences immediately.

16. DISMISSAL WITH A WARNING

Mast Authority: [Member], although I am convinced that you committed [an offense/these offenses], I have decided that I will not impose nonjudicial punishment because _____. However, I warn you that if you appear before me at mast again and I determine that you have committed an offense, you will not get off so easily. [Executive Officer], take charge of, and dismiss, the mast party.

17. REFERRAL TO COURT-MARTIAL

Mast Authority: [Member], I consider the offense(s) you have committed too serious to be handled at mast. Therefore, I will not award nonjudicial punishment and:

If Mast Authority is a court-martial convening authority: I will consider referring this matter for trial by court-martial.

If Mast Authority is not a court-martial convening authority: I will forward the allegations to _____, my superior, with a recommendation that you be charged and tried at court-martial. You will remain in a duty status and be notified if the charges are preferred and referred for trial by court-martial.

18. IMPOSITION OF NONJUDICIAL PUNISHMENT. The Table of Maximum Punishments and punishment limitations are reproduced at the end of this enclosure. Any punishment awarded may be suspended now, or at a later time.

Mast Authority: [Master-At-Arms, call [Member] to attention]. [Member], I impose the following punishment.... [e.g., I order you restricted to the limits of this ship for a period of ten days without suspension of duty; such restriction will commence upon [our return to homeport] [our arrival at the next port of call] on, or about, [date]. In addition, you are ordered to perform two hours extra duty per day for ten days. I order you to be reduced one pay-grade to E-2, but the reduction in pay-grade shall be suspended for a period of 3 months.] **Note:** Restriction in excess of 45 day is not permitted when any extra duties are awarded.

- The mast authority should indicate the disposition and any punishment awarded in the appropriate section of Form CG-4910.** This may be accomplished at this point or following dismissal of the mast party.

19. MEMBER'S RIGHT TO APPEAL THE IMPOSITION OF NONJUDICIAL PUNISHMENT

Mast Authority: [Member], [At ease.] Because I have imposed nonjudicial punishment, I must inform you of your right to appeal. If you consider the punishment I have awarded unjust, or disproportionate to the offense, you may appeal in writing to _____ [insert name of first superior officer with an assigned legal officer], my superior. Your appeal must be in writing and must be forwarded through the chain of command. Any appeal that you wish to make must be made within 5 days from today. If you desire to make an appeal, see the executive officer, your department head, or division officer/chief, or any other individual whom you would like to have consult with you and help you in preparing your appeal. Your right to appeal will be waived if you do not submit it within 5 days.

If restraint or extra duties are awarded as a part of the punishment, the member must also be advised as follows:

Mast Authority: The punishment awarded involving [Restraint and/or Extra Duties] is not automatically deferred by filing an appeal. If your appeal is not acted upon by my superior within 5 days of when you submit your appeal to me, you may request that the unserved portions of the restraint or extra duties be deferred until after the action is completed. I shall grant such a request, but remember, you must request it.

Mast Authority: [Member], Do you understand your rights to appeal?

Member: (Reply).

20. CONCLUSION OF MAST

Mast Authority: This mast proceeding is concluded. [Executive Officer], see that the proper entry is made in the [ship's/unit's] log. Take charge of, and dismiss the mast party.

D. MAXIMUM PUNISHMENTS

TABLE OF MAXIMUM PUNISHMENT FOR OFFICERS AND WARRANT OFFICERS

Subject to the limitations in subparagraph 1.E.1.d., the following table depicts the maximum punishments that may be awarded at mast to an officer or warrant officer:

Maximum Punishment(s) Imposed Upon an Officer or Warrant Officer When Imposed By a...			
Punishment Type	LCDR (O-4) or Above		LT (O-3) or Below
	Flag Officer		
Admonition or Reprimand	Yes	Yes	Yes
See, (1), below.			
Arrest in Quarters	30 days	No	No
See, (5), below.			
Restriction	60 days	30 days	15 days
Forfeiture of Pay	1/2 of 1 month pay per month for 2 mos (stated in whole \$ amts)	No	No

TABLE OF MAXIMUM PUNISHMENT FOR ENLISTED PERSONNEL

Subject to the limitations in subparagraph 1.E.1.d., the following table depicts the maximum punishments that may be awarded at mast to an enlisted member:

Maximum Punishment(s) Imposed Upon an Enlisted Member When Imposed By a(n)...			
Punishment Type	LCDR (O-4) or Above	LT (O-3) or Below	Enlisted Officer in Charge
	Admonition or Reprimand	Yes	Yes	No
(E-3 & below only)			
Correctional Custody	30 days	7 days	No
See, (2) & (5), below.			
Restriction	60 days (max 45 days if w/ extra duties)	14 days	14 days
See, (3) & (5), below.			
(E-6 & below only)			
Extra Duties	45 days	14 days	14 days
See, (3) & (4), below.			
Forfeiture of Pay	1/2 of 1 month pay per month for 2 mos (stated in whole \$ amts)	7 days pay (stated in whole \$ amts)	3 days pay (stated in whole \$ amts)
(E-6 & below only)			
Reduction in Pay Grade	Yes	Yes	No

LIMITATIONS AND PROHIBITIONS ON PUNISHMENTS

All authorized maximum punishments list in preceding tables may be imposed in a single mast with the following exceptions:

- (1) Arrest in quarters may not be imposed in combination with restriction;
- (2) Correctional custody may not be imposed in combination with restriction or extra duties. It shall not be imposed upon members in pay grade E-4 and above unless an unsuspended reduction to E-3 is imposed.
- (3) Restriction and extra duties may be combined to run concurrently or consecutively. **When both extra duty and restriction are awarded at the same mast, however, they form a new “combined” punishment that cannot exceed the maximum that may be imposed for extra duties.**
- (4) Extra duties may only be imposed on members of the grade of E-6 and below; and,
- (5) Arrest in quarters, Correctional Custody, and Restriction may not be imposed on a reservist at NJP awarded during inactive duty training or involuntary active duty.
- (6) **The following are not authorized nonjudicial punishments in the Coast Guard:**
 - (a) Detention of pay is not listed in Part V, MCM and is not an authorized punishment; and,
 - (b) Confinement on bread and water (or diminished rations) is listed in Part V, MCM, but is not an authorized punishment in the Coast Guard.

SAMPLE REPORT OF OFFENSE AND DISPOSITION (CG-4910)

DEPARTMENT OF TRANSPORTATION U.S. COAST GUARD CG-4910 (Rev. 8-92)		REPORT OF OFFENSE AND DISPOSITION							
TO COMMANDING OFFICER, USCGC NORTHLAND (WMEC 904)							DATE OF REPORT 25MAR00		
I hereby report the following named person for the offense(s) noted:									
NAME OF ACCUSED SMITHY, Ivan M.				RATE/GRADE SN/E-3		DIV./DEPT. OPERATIONS			
PLACE OF OFFENSE(S) USCGC NORTHLAND, Portsmouth, VA				DATE OF OFFENSE(S) 24MAR00					
<p>DETAILS OF OFFENSE(S) (Recite article UCMJ, if known. Not necessary to use form specification in Part 4, MCM. Generally describe actions of accused which are believed to constitute offense(s) under the UCMJ.)</p> <p>Art. 86, UCMJ: Unauthorized absence from unit beginning at 0730, 24 March 2000 until 0900, 24 March 2000.</p> <p>Art. 89, UCMJ: Disrespect toward ENS WHITE, SN SMITHY's superior officer, by telling ENS WHITE, "shut up and get off my back. I'm sick and tired of your stupid orders," and calling ENS WHITE a "thick-headed child" while contemptuously turning away from and leaving ENS WHITE.</p>									
NAME OF WITNESS		RATE/ GRADE	DIV/ DEPT.	NAME OF WITNESS		RATE/ GRADE	DIV./ DEPT.		
WHITE, Frank W.		ENS	DECK	MONTOYA, Thomas M.		SK3	SUPPLY		
GREEN, John T.		BM3	DECK						
RATE/GRADE/TITLE OF PERSON SUBMITTING REPORT ENS Frank W. WHITE, USCG, Weapons Officer				SIGNATURE OF PERSON SUBMITTING REPORT <i>Frank White</i> ENS USCG					
INITIAL ACTION OF EXECUTIVE OFFICER									
<p>(When allegations apparently involve minor offenses normally handled by NJP or SCM, the accused should be advised of the allegation(s) and offered the opportunity to select a representative. If a statement is to be requested, advise accused of rights from Form CG-5188A or "Encl. (5)", MJM (COMDTINST M5810.1 Series). Thereafter the matter should be referred, with the next section of information provided, to a preliminary inquiry officer for investigation.)</p> <p>I have been informed of the Offense(s) which I am suspected of having committed, that the command is considering the imposition of nonjudicial punishment and has assigned a preliminary inquiry officer, and</p>									
<input checked="" type="checkbox"/> I DESIRE THAT SA <u>Richard S. ENG</u> BE APPOINTED AS MY REPRESENTATIVE IN THIS CASE.									
<input type="checkbox"/> I DO NOT DESIRE THE APPOINTMENT OF A REPRESENTATIVE.									
				<i>Jan Smithy</i> (Signature of accused)					
BM1 Michael C. LOYER				IS APPOINTED THE ACCUSED'S REPRESENTATIVE.					
LTJG Allison M. FAIR				IS DESIGNATED THE PRELIMINARY INQUIRY OFFICER.					
				<i>Charles Taylor</i> LCDR USCG (Signature of Executive Officer)					
INFORMATION CONCERNING ACCUSED									
CURRENT ENL. DATE	EXP. CURRENT ENL. DATE	TOTAL ACTIVE SERVICE	TOTAL SERVICE ON BOARD	EDUCATION	GCT	AGE	MARITAL STATUS	NO. OF DEPENDENTS	PAY PER MO. (including sea or foreign duty pay)
05MAY98	04MAY03	1 yr 10 mos	1 yr 6 mos	12	50	22	S	0	\$915.00
<p>RECORD OF PREVIOUS OFFENSE(S) (Date, type, action taken, etc., Nonjudicial punishment incidents are to be included.)</p> <p>9/1/99: NJP, Violation of Art. 134, 2 weeks restriction</p>									

PREVIOUS EDITION IS OBSOLETE

BLANK REPORT OF OFFENSE AND DISPOSITION (CG-4910)

DEPARTMENT OF TRANSPORTATION U.S. COAST GUARD CG-4910 (Rev. 8-92)		REPORT OF OFFENSE AND DISPOSITION							
TO						DATE OF REPORT			
I hereby report the following named person for the offense(s) noted:									
NAME OF ACCUSED					RATE/GRADE		DIV./DEPT.		
PLACE OF OFFENSE(S)					DATE OF OFFENSE(S)				
DETAILS OF OFFENSE(S) <i>(Recite article UCMJ, if known. Not necessary to use form specification in Part 4, MCM. Generally describe actions of accused which are believed to constitute offense(s) under the UCMJ.)</i>									
NAME OF WITNESS			RATE/ GRADE	DIV./ DEPT.	NAME OF WITNESS			RATE/ GRADE	DIV./ DEPT.
RATE/GRADE/TITLE OF PERSON SUBMITTING REPORT					SIGNATURE OF PERSON SUBMITTING REPORT				
INITIAL ACTION OF EXECUTIVE OFFICER									
<p><small>(When allegations apparently involve minor offenses normally handled by NJP or SCM, the accused should be advised of the allegation(s) and offered the opportunity to select a representative. If a statement is to be requested, advise accused of rights from Form CG-5168A or "Encl. (S)", MJM (COMDTINST M5810.1 Series). Thereafter the matter should be referred, with the next section of information provided, to a preliminary inquiry officer for investigation.)</small></p> <p>I have been informed of the Offense(s) which I am suspected of having committed, that the command is considering the imposition of nonjudicial punishment and has assigned a preliminary inquiry officer, and</p> <p><input type="checkbox"/> I DESIRE THAT _____ BE APPOINTED AS MY REPRESENTATIVE IN THIS CASE.</p> <p><input type="checkbox"/> I DO NOT DESIRE THE APPOINTMENT OF A REPRESENTATIVE.</p> <p style="text-align: center;">_____ <i>(Signature of accused)</i></p> <p>_____ IS APPOINTED THE ACCUSED'S REPRESENTATIVE.</p> <p>_____ IS DESIGNATED THE PRELIMINARY INQUIRY OFFICER.</p> <p style="text-align: center;">_____ <i>(Signature of Executive Officer)</i></p>									
INFORMATION CONCERNING ACCUSED									
CURRENT ENL. DATE	EXP. CURRENT ENL. DATE	TOTAL ACTIVE SERVICE	TOTAL SERVICE ON BOARD	EDUCATION	GCT	AGE	MARITAL STATUS	NO. OF DEPENDENTS	PAY PER MO. <small>(including sea or foreign duty pay)</small>
RECORD OF PREVIOUS OFFENSE(S) <i>(Date, type, action taken, etc., Nonjudicial punishment incidents are to be included.)</i>									

PREVIOUS EDITION IS OBSOLETE

ADMINISTRATIVE NON-JUDICIAL PUNISHMENT (NJP) CHECKLIST
Article 15 UCMJ

Ref: Military Justice Manual, COMDTINST M5810.10 (series)
 Manuals for Courts-Martial, MCM 2002
 Coast Guard Personnel Manual, COMDTINST M1000.6 (series)
 Personnel Pay and Procedures Manual, PSCINST M1000 (series)

Note: This tool is provided to assist with the proper administration of an NJP held at the unit level. Personnel are reminded to review the current directives concerning the process and update this "step – action" chart as appropriate to ensure proper procedures are followed.

Step	Action	Who	Completed
1	Review CG 4910 – Ensure complete/correct.	XO	
2	Complete initial action of the Executive Officer on CG 4910.	XO	
3	Inform member of alleged charges.	XO	
4	Advise member of allegations CG 4910.	Mbr	
5	Appoint Mast Representative/Preliminary Inquiry Officer (PIO).	XO	
6	Complete Enclosure 5 of the MJM – Art 31 – Miranda Rights AND Enclosure 3(a or b) of MJM - Acknowledgement of Rights – Acceptance of NJP (if there is ANY chance of NJP) – allow at least 24 hours to make election to accept or refuse NJP.	PIO/XO	
7	Receive written investigation/recommendation from PIO.	PIO	
8	Fill out ‘action of XO’ on 4910 – counsel member on recommendations. Ensure mast rep is present & Enclosure 3 – Acknowledgement of Rights/Acceptance f NJP has been completed (should have already been advised – step 6 – but ensure that mbr has made decision).	XO	
9	Mast Representative & member review copy of CG-4910, witness statements, evidence and any other pertinent information concerning case.	Mast Rep Mbr	
10	Forward entire mast package to Commanding Officer – Current Mast Script from the Military Justice Manual.	XO	
POST MAST			
1	Review CG 4910 for signatures, etc.	XO	
2	Forward a copy of CG 4910 to SPO for DA processing. (recommend CMD request “Disciplinary Action” print from SPO to confirm proper data entry made)	XO/Adm	
3	Ensure documentation of punishment awarded at mast is properly documented, i.e.: letter of restriction, extra duty, employee review, CG 3307 termination of Good Conduct eligibility, new ID card, removal of current Advancement List, Security clearance – CG5588.	XO/Adm	
4	File complete Mast Package in unit punishment log include: ✓ Original CG 4910 ✓ Disciplinary Action print out (not required) ✓ Acknowledgement of Rights ✓ Acceptance of NJP ✓ PIO Report and all report enclosures ✓ Final action on appeal (if applicable) ✓ Retention in unit punishment log 4 years from date of mast	XO/Adm	

DEPARTMENT OF HOMELAND SECURITY
ACKNOWLEDGMENT OF RIGHTS - ACCEPTANCE OF NJP
 Article 15, UCMJ (Nonjudicial Punishment)
(Enlisted Member Attached To Shore Unit)

Notification and election of rights concerning the contemplated imposition of nonjudicial punishment (NJP) pursuant to Article 15, UCMJ, in the case of:

Rate/Rank	Last Name, First Name, Middle Initial	SSN/Military ID	Unit
-----------	---------------------------------------	-----------------	------

1. NOTIFICATION

A. In accordance with the requirements of paragraph 4, Part V, MCM, you are notified that the commanding officer is considering imposing NJP pursuant to Article 15, UCMJ based on the following alleged offenses:

UCMJ Article	Offense Description

B. The allegations against you are based on the following information:

C. You are to complete the attached acknowledgment and election and return it to me no later than _____ hours, _____, 20____.

D. You are advised that adverse results of nonjudicial punishment pursuant to Article 15, UCMJ, will become a part of your military record and may be the basis for adverse personnel actions.

 Executive Officer
(or individual designated by the Commanding Officer)

2. MEMBER'S RIGHTS AND ACKNOWLEDGMENTS

- A. I acknowledge the following rights and limitations regarding NJP:
1. I have the right to **demand trial by court-martial** in lieu of NJP, which has the effect of refusing punishment under Article 15, UCMJ.
 2. I may **consult with an attorney** concerning the right to demand court-martial and NJP procedures, if it does not unduly delay the reasonable scheduling of mast, prior to deciding whether to demand trial by court-martial:
 - a. Should I desire to consult with a military attorney, one will be assigned by the Coast Guard at no cost to me, however, I have no right to the assignment of any particular military attorney by the Coast Guard; or,
 - b. I may consult with a civilian attorney at no cost to the government instead of a military attorney assigned by the Coast Guard if it does not unduly delay the reasonable scheduling of the mast.
 3. If I do not demand trial by court-martial and therefore **accept NJP**, I will be accorded the following rights at NJP:
 - a. To be accompanied by a **mast representative** or **spokesperson**;
 - (1) A **mast representative** must be approved by the command and may participate fully at mast on my behalf. I do not have the right to be represented by an attorney at mast.
 - (2) A **spokesperson** is an individual I select, civilian or military, who may assist me, speak on my behalf at mast, but may not examine witnesses. My desired attendance of a spokesperson may not delay a reasonably scheduled mast.
 - b. To be informed of my rights against compulsory **self-incrimination** under Article 31(b), UCMJ;
 - c. To be informed orally or in writing of the **information against me** relating to the offense(s) alleged;
 - d. To ensure **all relevant information is presented** concerning my case:
 - (1) To examine documents or physical objects the commanding officer considers in connection with this case, and on which he or she will rely in deciding whether, and how much, NJP to impose
 - (2) To present documents or physical evidence on my own behalf;
 - (3) To ask questions of witnesses who present evidence against me;
 - (4) To call and question witnesses if their statements are relevant and they are reasonably available;
 - (5) To present matters in defense, extenuation, and mitigation orally, or in writing, or both.
 - e. To have the **mast open to the public** unless the CO closes the mast for good cause under certain circumstances.
 - f. To **request not to appear** personally at the proceedings, subject to the approval of the commanding officer. If my request is granted, I will have the right to submit written matters for consideration by the commanding officer before any decision is made to impose NJP.
- B. I understand that the **maximum punishment** that may be imposed is:

Punishment Type	Maximum Punishment(s) Imposed Upon an Enlisted Member When Imposed By a(n)...		
	LCDR (O-4) or Above	LT (O-3) or Below	Enlisted Officer in Charge
Admonition or Reprimand	Yes	Yes	No
(E-3 & below only) Correctional Custody	30 days	7 days	No
Restriction	60 days (max 45 days if w/ extra duties)	14 days	14 days
(E-6 & below only) Extra Duties	45 days	14 days	14 days
Forfeiture of Pay	1/2 of 1 month pay per mos for 2 mos	7 days pay	3 days pay
(E-6 & below only) Reduce in Pay Grade	Yes	Yes	No

[See, Chapter 1, paragraphs 1.E.1., & 1.E.2.]

- C. If NJP is imposed, I will have the **right to appeal** to superior authority within 5 calendar days of the imposition of such punishment. The 5-day period begins to run the day after the commanding officer awards NJP. If the punishment awarded includes any form of restraint or extra duties, that punishment is not automatically deferred by filing an appeal. If my appeal is not acted upon by my commanding officer's superior within 5 days, I may request that the unserved portions of the restraint or extra duties be deferred until after the action is completed and the CO will grant such a request.
- D. I understand that **in the event I demand trial by court-martial** in lieu of NJP punishment, my commanding officer may dismiss the matter or refer the charge(s) to a summary or special court-martial, initiate the procedures to have the matter referred to a general court-martial, or initiate administrative alternatives.
1. If the charge(s) are referred to **summary court-martial**, I will have the following rights and opportunities:
 - a. To refuse trial by summary court-martial;
 - b. To consult with a military or civilian attorney prior to deciding whether to accept or refuse trial by summary court-martial if such consultation would not result in undue delay;
 - c. If I accept trial by summary court-martial:
 - (1) To be represented by a civilian attorney provided by me at no expense to the government, or be assisted by a non-attorney representative;
 - (2) To remain silent and to plead not guilty, thus placing upon the government the burden of proving my guilt beyond a reasonable doubt;
 - (3) To have the summary court-martial call, or subpoena, witnesses to testify on my behalf;
 - (4) To confront and cross-examine all witnesses against me; and,
 - (5) If found guilty, to present matters that may mitigate the offense(s) or demonstrate extenuating circumstances as to why I committed the offense(s).
 - d. I understand that the maximum punishment that may be adjudged by a summary court-martial is on an...
 - (1) E-4 or below:
 - (a) One month confinement;
 - (b) Forty-five days hard labor without confinement;
 - (c) Two months restriction;
 - (d) 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;
 - (e) Reduction to the lowest pay grade; and
 - (f) Reprimand.
 - (2) E-5 or above:
 - (a) Two months restriction;
 - (b) 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;
 - (c) Reduction to the next inferior pay grade; and
 - (d) Reprimand.
 2. If I refuse trial by summary court-martial, my commanding officer may dismiss the matter, refer the charge(s) to trial by **special court-martial**, or initiate procedures to have the matter referred to a **general court-martial**. At a special or general court-martial, in addition to those rights set forth in paragraph D.1., above, I would have the following rights:
 - a. To be represented by a military attorney at no cost to me, including a military attorney of my own selection if reasonably available. In addition to a military attorney, I may arrange for, and be represented by, a civilian attorney at no expense to the government.
 - b. To be tried by a court-martial composed of officers as members (at least three for special court-martial, five for general court-martial), or, at my request, at least one-third of the court-members would be qualified enlisted personnel. If tried by a court-martial with members, two-thirds of the members, voting by secret written ballot, would have to agree in any finding of guilty, and two-thirds of the members (three-quarters for confinement for life or more than 10 years), voting by secret written ballot, would have to agree on any sentence to be adjudged, should I be found guilty; and,
 - c. To request trial by military judge alone. If tried by military judge alone, the military judge would determine my guilt or innocence and, if I were found guilty, the military judge would determine the sentence imposed.

- d. I understand that the **maximum punishment that can be imposed at a special court-martial** for the offense(s) charged against me is [See, RCM 1003 and punishment limits for each offense listed in Part IV, MCM to fill in the blanks]:
- (1)
 - (2) Confinement for ____ months [not to exceed either six or twelve months (see RCM 1003, MCM)];
 - (3) Hard labor without confinement, not to exceed three months;
 - (4) Restriction to specified limits, not to exceed two months;
 - (5) Reduction to the lowest enlisted pay grade;
 - (6) Forfeiture of 2/3 pay per month for ____ months, not to exceed six months;
 - (7) Fine in addition to, or in lieu of forfeitures, in amounts of fines and/or forfeitures to not exceed the maximum authorized forfeitures; and
 - (8) Reprimand.
- e. I understand that the **maximum punishment that can be imposed at a general court-martial** for the offense(s) charged against me is [See, RCM 1003; and punishment limits for each offense listed in Part IV, MCM to fill in the blanks]:
- (1) Discharge from the Coast Guard with a
 - (2) Confinement for _____
 - (3) Hard labor without confinement, not to exceed three months;
 - (4) Restriction to specified limits, not to exceed two months;
 - (5) Reduction to the lowest enlisted pay grade;
 - (6) Forfeiture of all pay and allowances;
 - (7) Fine; and,
 - (8) Reprimand.

3. MEMBER'S ELECTIONS

- A. I understand the rights and information provided in this form. Any questions I had were answered to my satisfaction. I understand that I may consult with a military or civilian attorney before accepting or rejecting nonjudicial punishment.

Select & Initial either paragraph B or C and appropriate subparagraphs, below.

- B. With the understanding that I have the right and opportunity to consult with a military attorney provided at no cost to me, or a civilian attorney obtained at no expense to the government before accepting or rejecting nonjudicial punishment, **I voluntarily waive the opportunity to consult with an attorney** and make the following elections:

I demand trial by court-martial and thereby reject nonjudicial punishment.

I accept nonjudicial punishment.

_____ Member's Signature

_____ Date

_____ Witness's Signature

_____ Date

Or

- C. **HAVING CONSULTED WITH _____, A MILITARY OR CIVILIAN ATTORNEY, CONCERNING MY RIGHT TO ACCEPT NONJUDICIAL PUNISHMENT OR DEMAND TRIAL BY COURT-MARTIAL AND THEREBY REJECT NONJUDICIAL PUNISHMENT, I HEREBY MAKE THE FOLLOWING ELECTION:**

I demand trial by court-martial and thereby reject nonjudicial punishment.

I accept nonjudicial punishment.

_____ Member's Signature

_____ Date

_____ Witness's Signature

_____ Date

DEPARTMENT OF HOMELAND SECURITY
ACKNOWLEDGMENT OF RIGHTS - ACCEPTANCE OF NJP
 Article 15, UCMJ (Nonjudicial Punishment)
(Officer Member Attached To Shore Unit)

Notification and election of rights concerning the contemplated imposition of nonjudicial punishment (NJP) pursuant to Article 15, UCMJ, in the case of:

Rank	Last Name, First Name, Middle Initial	SSN/Military ID	Unit
------	---------------------------------------	-----------------	------

1. NOTIFICATION

A. In accordance with the requirements of paragraph 4, Part V, MCM, you are notified that the commanding officer is considering imposing NJP pursuant to Article 15, UCMJ based on the following alleged offenses:

UCMJ Article	Offense Description

B. The allegations against you are based on the following information:

C. You are to complete the attached acknowledgment and election and return it to me no later than _____ hours, _____, 20____.

D. You are advised that adverse results of nonjudicial punishment pursuant to Article 15, UCMJ, will become a part of your military record and may be the basis for adverse personnel actions.

 Executive Officer
(or individual designated by the Commanding Officer)

2. MEMBER'S RIGHTS AND ACKNOWLEDGMENTS

- A. I acknowledge the following rights and limitations regarding NJP:
1. I have the right to **demand trial by court-martial** in lieu of NJP, which has the effect of refusing punishment under Article 15, UCMJ.
 2. I may **consult with an attorney** concerning the right to demand court-martial and NJP procedures, if it does not unduly delay the reasonable scheduling of mast, prior to deciding whether to demand trial by court-martial:
 - a. Should I desire to consult with a military attorney, one will be assigned by the Coast Guard at no cost to me, however, I have no right to the assignment of any particular military attorney by the Coast Guard; or,
 - b. I may consult with a civilian attorney at no cost to the government instead of a military attorney assigned by the Coast Guard if it does not unduly delay the reasonable scheduling of the mast.
 3. If I do not demand trial by court-martial and therefore **accept NJP**, I will be accorded the following rights at NJP:
 - a. To be accompanied by a **mast representative** or **spokesperson**;
 - (1) A **mast representative** must be approved by the command and may participate fully at mast on my behalf. I do not have the right to be represented by an attorney at mast.
 - (2) A **spokesperson** is an individual I select, civilian or military, who may assist me, speak on my behalf at mast, but may not examine witnesses. My desired attendance of a spokesperson may not delay a reasonably scheduled mast.
 - b. To be informed of my rights against compulsory **self-incrimination** under Article 31(b), UCMJ;
 - c. To be informed orally or in writing of the **information against me** relating to the offense(s) alleged;
 - d. To ensure **all relevant information is presented** concerning my case:
 - (1) To examine documents or physical objects the commanding officer considers in connection with this case, and on which he or she will rely in deciding whether, and how much, NJP to impose
 - (2) To present documents or physical evidence on my own behalf;
 - (3) To ask questions of witnesses who present evidence against me;
 - (4) To call and question witnesses if their statements are relevant and they are reasonably available;
 - (5) To present matters in defense, extenuation, and mitigation orally, or in writing, or both.
 - e. To have the **mast open to the public** unless the CO closes the mast for good cause under certain circumstances.
 - f. To **request not to appear** personally at the proceedings, subject to the approval of the commanding officer. If my request is granted, I will have the right to submit written matters for consideration by the commanding officer before any decision is made to impose NJP.
- B. I understand that the maximum punishment that may be imposed is:

Maximum Punishment(s) Imposed Upon an Officer or Warrant Officer When Imposed By a...			
Punishment Type	Flag Officer	LCDR (O-4) or Above	LT (O-3) or Below
Admonition or Reprimand	Yes	Yes	Yes
Arrest in Quarters	30 days	No	No
Restriction	60 days	30 days	15 days
Forfeiture of Pay	1/2 of 1 month pay per mos for 2 mos	No	No

[See, Chapter 1, paragraphs 1.E.1., & 1.E.2.]

- C. If NJP is imposed, I will have the **right to appeal** to superior authority within 5 calendar days of the imposition of such punishment. The 5-day period begins to run the day after the commanding officer awards NJP. If the punishment awarded includes any form of restraint or extra duties, that punishment is not automatically deferred by filing an appeal. If my appeal is not acted upon by my commanding officer's superior within 5 days, I may request that the unserved portions of the restraint or extra duties be deferred until after the action is completed and the CO will grant such a request.

- D. I understand that in the event I **demand trial by court-martial** in lieu of NJP punishment, my commanding officer may dismiss the matter or refer the charge(s) to a special court-martial, initiate the procedures to have the matter referred to a general court-martial, or initiate administrative alternatives.
1. At a **special or general court-martial** I would have the following rights:
 - a. To be informed of my rights against compulsory **self-incrimination** under Article 31(b), UCMJ;
 - b. To be informed orally or in writing of the **information against me** relating to the offense(s) alleged;
 - c. To be represented by a military **attorney** at no cost to me, including a military attorney of my own selection if reasonably available. In addition to a military attorney, I may arrange for, and be represented by, a civilian attorney at no expense to the government.
 - d. To be **tried by a court-martial composed of officers** as members (at least three for special court-martial, five for general court-martial). If tried by a court-martial with members, two-thirds of the members, voting by secret written ballot, would have to agree in any finding of guilty, and two-thirds of the members (three-quarters for confinement for life or more than 10 years), voting by secret written ballot, would have to agree on any sentence to be adjudged, should I be found guilty; and,
 - e. To **request trial by military judge alone**. If tried by military judge alone, the military judge would determine my guilt or innocence and, if I were found guilty, the military judge would determine the sentence imposed.
 - f. To **remain silent** and to **plead not guilty**, thus placing upon the government the burden of proving my guilt beyond a reasonable doubt;
 - g. To **confront and cross-examine all witnesses** against me;
 - h. To call, or subpoena, **witnesses** to testify on my behalf; and,
 - i. If found guilty, to present matters that may **mitigate** the offense(s) or demonstrate **extenuating circumstances** as to why I committed the offense(s).
 2. I understand that the **maximum punishment that can be imposed at a special court-martial** for the offense(s) charged against me is [See, RCM 1003 and punishment limits for each offense listed in Part IV, MCM to fill in the blanks]:
 - a. Restriction to specified limits, not to exceed two months;
 - b. Forfeiture of 2/3 pay per month for ____ months, not to exceed six months;
 - c. Fine in addition to, or in lieu of forfeitures, in amounts of fines and/or forfeitures to not exceed the maximum authorized for forfeitures; and
 - d. Reprimand.
 3. I understand that the **maximum punishment that can be imposed at a general court-martial** for the offense(s) charged against me is [See, RCM 1003; and punishment limits for each offense listed in Part IV, MCM to fill in the blanks]:
 - a. Dismissal from the Coast Guard;
 - b. Confinement for _____
 - c. Restriction to specified limits, not to exceed two months;
 - d. Forfeiture of all pay and allowances;
 - e. Fine; and,
 - f. Reprimand.

DEPARTMENT OF HOMELAND SECURITY
ACKNOWLEDGMENT OF RIGHTS - ACCEPTANCE OF NJP
 Article 15, UCMJ (Nonjudicial Punishment)
(Enlisted Member Attached To, or Embarked in, a Vessel)

Notification and election of rights concerning the contemplated imposition of nonjudicial punishment (NJP) pursuant to Article 15, UCMJ, in the case of:

Rate/Rank	Last Name, First Name, Middle Initial	SSN/Military ID	Unit
-----------	---------------------------------------	-----------------	------

1. NOTIFICATION

A. In accordance with the requirements of paragraph 4, Part V, MCM, you are notified that the commanding officer is considering imposing NJP pursuant to Article 15, UCMJ based on the following alleged offenses:

UCMJ Article	Offense Description

B. The allegations against you are based on the following information:

C. You are to complete the attached acknowledgment and election and return it to me no later than _____ hours, _____, 20____.

D. You are advised that adverse results of nonjudicial punishment pursuant to Article 15, UCMJ, will become a part of your military record and may be the basis for adverse personnel actions.

 Executive Officer
(or individual designated by the Commanding Officer)

2. MEMBER'S RIGHTS AND ACKNOWLEDGMENTS

A. I acknowledge the following rights and limitations regarding NJP:

1. To be accompanied by a mast representative or spokesperson;
 - a. A **mast representative** must be approved by the command and may participate fully at mast on my behalf. I do not have the right to be represented by an attorney at mast.
 - b. A **spokesperson** is an individual I select, civilian or military, who may assist me, speak on my behalf at mast, but may not examine witnesses. My desired attendance of a spokesperson may not delay a reasonably scheduled mast.
2. To be informed of my rights against compulsory **self-incrimination** under Article 31(b), UCMJ;
3. To be informed orally or in writing of the **information against me** relating to the offense(s) alleged;
4. To **ensure all relevant information is presented** concerning my case:
 - a. To examine documents or physical objects the commanding officer considers in connection with this case, and on which he or she will rely in deciding whether, and how much, NJP to impose;
 - b. To present documents or physical evidence on my own behalf;
 - c. To ask questions of witnesses who present evidence against me;
 - d. To call and question witnesses if their statements are relevant and they are reasonably available;
 - e. To present matters in defense, extenuation, and mitigation orally, or in writing, or both.
5. To have the **mast open to the public** unless the CO closes the mast for good cause under certain circumstances.
6. To **request not to appear personally** at the proceedings, subject to the approval of the commanding officer. If my request is granted, I will have the right to submit written matters for consideration by the commanding officer before any decision is made to impose NJP.

B. I understand that the **maximum punishment** that may be imposed is:

Punishment Type	Maximum Punishment(s) Imposed Upon an Enlisted Member When Imposed By a(n)...		
	LCDR (O-4) or Above	LT (O-3) or Below	Enlisted Officer in Charge
Admonition or Reprimand <small>(E-3 & below only)</small>	Yes	Yes	No
Correctional Custody	30 days	7 days	No
Restriction <small>(E-6 & below only)</small>	60 days (max 45 days if w/ extra duties)	14 days	14 days
Extra Duties	45 days	14 days	14 days
Forfeiture of Pay <small>(E-6 & below only)</small>	1/2 of 1 month pay per mos for 2 mos	7 days pay	3 days pay
Reduce in Pay Grade	Yes	Yes	No

[See, Chapter 1, paragraphs 1.E.1., & 1.E.2.]

- C. If NJP is imposed, I will have the **right to appeal** to superior authority within 5 calendar days of the imposition of such punishment. The 5-day period begins to run the day after the commanding officer awards NJP. If the punishment awarded includes any form of restraint or extra duties, that punishment is not automatically deferred by filing an appeal. If my appeal is not acted upon by my commanding officer's superior within 5 days, I may request that the unserved portions of the restraint or extra duties be deferred until after the action is completed and the CO will grant such a request.

3. MEMBER'S ACKNOWLEDGMENT

- A. () I understand the rights and information provided in this form. Any questions I had were answered to my satisfaction.

Member's Signature

Date

Witness's Signature

Date

DEPARTMENT OF HOMELAND SECURITY
ACKNOWLEDGMENT OF RIGHTS - ACCEPTANCE OF NJP
 Article 15, UCMJ (Nonjudicial Punishment)
(Officer Attached To, or Embarked In, a Vessel)

Notification and election of rights concerning the contemplated imposition of nonjudicial punishment (NJP) pursuant to Article 15, UCMJ, in the case of:

Rank	Last Name, First Name, Middle Initial	SSN/Military ID	Unit
------	---------------------------------------	-----------------	------

1. NOTIFICATION

A. In accordance with the requirements of paragraph 4, Part V, MCM, you are notified that the commanding officer is considering imposing NJP pursuant to Article 15, UCMJ based on the following alleged offenses:

UCMJ Article	Offense Description

B. The allegations against you are based on the following information:

C. You are to complete the attached acknowledgment and election and return it to me no later than _____ hours, _____, 20____.

D. You are advised that adverse results of nonjudicial punishment pursuant to Article 15, UCMJ, will become a part of your military record and may be the basis for adverse personnel actions.

 Executive Officer
(or individual designated by the Commanding Officer)

2. MEMBER'S RIGHTS AND ACKNOWLEDGMENTS

A. I acknowledge the following rights and limitations regarding NJP:

1. To be accompanied by a mast representative or spokesperson;
 - a. A **mast representative** must be approved by the command and may participate fully at mast on my behalf. I do not have the right to be represented by an attorney at mast.
 - b. A **spokesperson** is an individual I select, civilian or military, who may assist me, speak on my behalf at mast, but may not examine witnesses. My desired attendance of a spokesperson may not delay a reasonably scheduled mast.
2. To be informed of my rights against compulsory **self-incrimination** under Article 31(b), UCMJ;
3. To be informed orally or in writing of the **information against me** relating to the offense(s) alleged;
4. To ensure all relevant information is presented concerning my case:
 - a. To examine documents or physical objects the commanding officer considers in connection with this case, and on which he or she will rely in deciding whether, and how much, NJP to impose;
 - b. To present documents or physical evidence on my own behalf;
 - c. To ask questions of witnesses who present evidence against me;
 - d. To call and question witnesses if their statements are relevant and they are reasonably available;
 - e. To present matters in defense, extenuation, and mitigation orally, or in writing, or both.
5. To have the **mast open to the public** unless the CO closes the mast for good cause under certain circumstances.
6. To **request not to appear** personally at the proceedings, subject to the approval of the commanding officer. If my request is granted, I will have the right to submit written matters for consideration by the commanding officer before any decision is made to impose NJP.

B. I understand that the maximum punishment that may be imposed is:

Maximum Punishment(s) Imposed Upon an Officer or Warrant Officer When Imposed By a...			
Punishment Type	Flag Officer	LCDR (O-4) or Above	LT (O-3) or Below
Admonition or Reprimand	Yes	Yes	Yes
Arrest in Quarters	30 days	No	No
Restriction	60 days	30 days	15 days
Forfeiture of Pay	1/2 of 1 month pay per mos for 2 mos	No	No

[See, Chapter 1, paragraphs 1.E.1., & 1.E.2.]

C. If NJP is imposed, I will have the **right to appeal** to superior authority within 5 calendar days of the imposition of such punishment. The 5-day period begins to run the day after the commanding officer awards NJP. If the punishment awarded includes any form of restraint or extra duties, that punishment is not automatically deferred by filing an appeal. If my appeal is not acted upon by my commanding officer's superior within 5 days, I may request that the unserved portions of the restraint or extra duties be deferred until after the action is completed and the CO will grant such a request.

3. MEMBER'S ACKNOWLEDGMENT

A. I understand the rights and information provided in this form. Any questions I had were answered to my satisfaction.

Member's Signature	Date
Witness's Signature	Date

ADMINISTRATIVE CONSEQUENCES OF NJP

Administrative Consequences of NJP

Unit Commanding Officers and Officers-in-Charge should consider the administrative consequences of Non-judicial Punishment that may have wide ranging effects on the member. The following are administrative concerns that may be relevant and helpful to a command in deciding whether or not to impose NJP. "Dismissal with a warning" is not considered NJP, and no Court Memorandum (CG-3303) entry need be made in the member's personnel data record.

AWARDS

GOOD CONDUCT AWARD

ELIGIBILITY

COMDTINST M1000.6A, Art. 10.B.8.a. – b.
Imposition of NJP requires an "Unsatisfactory" mark in Conduct and terminates Good Conduct Award eligibility on the effective date of NJP. A new period of eligibility begins the next day.

UNIT AWARDS

COMDTINST M1650.25B, Ch 3.A.5.b(2)(b)
Upon recommendation of the Command, member may be deemed ineligible for unit awards if NJP was imposed during the period of the award.

EVALUATIONS

ENLISTED EMPLOYEE REVIEW

(EER)

COMDTINST M1000.6A, Art. 10.B.5.b.3.
CG Personnel Manual
The member's command must submit an Unscheduled EER following imposition of NJP.

OFFICER EVALUATION REPORT

(OER)

COMDTINST M1000.6A, Art. 10.A.3.c.
Imposition of NJP upon an officer requires a Special OER.

SEPARATIONS & REENLISTMENTS

RE-ENLISTMENT

COMDTINST M1000.6A, Art. 1.G.5.3.
The officer effecting discharge prior to reenlistment may consider the severity and nature of the offense for which NJP was imposed during the current enlistment in making the required recommendation as to member's suitability for reenlistment.

SEPARATIONS "FOR CAUSE"

OFFICERS

COMDTINST M1000.6A, Art. 12.A.15.c.3
When combined with other known deficiencies, officers who have received NJP may be separated for cause.

SEPARATIONS – WARRANT

OFFICERS

COMDTINST M1000.6A, Art. 12.A.21.a.
When combined with other known deficiencies, warrant officers who have received NJP may be separated for unfitness or unsatisfactory performance.

ASSIGNMENT & TRANSFER

ASSIGNMENT AS OIC

COMDTINST M1000.6A, Art. 4.C.6.j.
Personnel are ineligible for assignment as OIC for a period of two years from the date NJP is imposed.

INELIGIBLE FOR TRANSFER

COMDTINST M1000.6A, Art. 4.B.1.d.
Personnel who have received NJP during the last regular semiannual reporting period are normally not eligible for transfer.

OVERSEAS ASSIGNMENT

COMDTINST M1000.6A, Art. 4.H.3
Personnel who have received NJP may be ineligible for overseas duty assignments for a period of two years. A one-time major offense (i.e. a felony) during the current enlistment disqualifies a member from overseas duty.

SPECIAL DUTY ASSIGNMENTS

COMDTINST M1000.6A, Art. 4.E.2.a., 4.E.4.a.
Personnel are ineligible for special duty assignments for a period of two years from the date NJP is imposed. If already serving in a special duty billet when NJP is imposed, the member may be reassigned if the command, program manager, or CGPC(epm-2) determine the member is unsuited to continue in that assignment.

Administrative Consequences of NJP

ADVANCEMENT & PROMOTION

E-1 – E-3 ADVANCEMENT

COMDTINST M1000.6A,
Art. 5.C.6.a.

Personnel who have received NJP within the last marking period are ineligible for advancement.

E-4 & E-5 ADVANCEMENT

COMDTINST M1000.6A
Art. 5.C.13.b

Personnel who have received NJP within the last 12 months are ineligible for advancement. Commanding Officers must submit a message to PSC(adv) with CGPC (epm-1) as addressee to remove individuals already recommended for advancement from the eligibility list.

E-7, E-8 & E-9 ADVANCEMENT

COMDTINST M1000.6A,
Art. 5.C.5

Personnel who have received NJP are ineligible to compete for advancement to E-7, E-8 or E-9 for a period of two years from the date NJP is imposed. Commanding Officers must submit a message to PSC(adv) with CGPC (epm-1) as addressee to remove individuals already recommended for advancement from the eligibility list.

COMMISSIONING PROGRAMS

COMDTINST M1100.2D, Art. 4.B.1.a.
CG Recruiting Manual

Individuals are ineligible to apply for Officer Commissioning Programs for 24 months from the date NJP is imposed.

APPOINTMENT TO CWO

COMDTINST M1000.6A, Art. 1.D.2.
Members may have no NJP for the 24 months immediately preceding the 1 January deadline and for the entire period from 1 January to appointment. Commanding Officers shall submit a message to CGPC (opm-1) to remove any person from the appointment eligibility list who receives NJP at any time prior to being appointed.

TRAINING

CLASS "A" SCHOOL TRNG

COMDTINST M1500.10B,
Ch.2.A.2.a/

Individuals may be removed from any Class "A" School waiting list.

SENIOR ENLISTED SCHOOLS

COMDTINST 1500.15F

USCG Chief Petty Officers and DoD Senior Enlisted Academies. Individuals are ineligible to apply to the DoD Senior Enlisted Academy for 24 months from the date NJP is awarded.

PAY & ALLOWANCES

SELECTIVE REENLISTMENT BONUS

COMDTINST M1000.6A,
Art. 3.C.9.

Enlisted members may be ineligible for continued payment of SRB if they received NJP punishment which results in loss of designator or inability to continue to perform the duties for which they received a bonus.

SECURITY CLEARANCES

COMDTINST M5520.12A, 2-18

Imposition of NJP may impact a member's security clearance eligibility.

SEXUAL HARASSMENT

COMDTINST M5350.4, Ch.5.A.4.5
CG Equal Opportunity Program

Manual

If the imposition of NJP was for certain types of sexual harassment (quid pro quo or physical acts) administrative separation may be mandated.

ENLISTED PERSON OF THE YEAR

COMDTINST 1650.36B

USCG Enlisted Person of the Year (EPOY) Program.

Individuals are ineligible for nomination for EPOY for 36 months from the date NJP is imposed.

DEPARTMENT OF HOMELAND SECURITY
UCMJ AND MIRANDA/TEMPIA RIGHTS
Article 31(B)

Instructions to the Interviewer...

This form shall be completed when anyone investigating an alleged offense(s) considers it desirable or necessary to interview an individual subject to the Uniform Code of Military Justice **who is:**

- a. **Suspected of an offense** under the Uniform Code of Military Justice, state, or other federal law; or,
- b. **In custody** (freedom of movement is limited in some significant way).

This warning is more extensive than the individual warnings required under either Article 31(b), UCMJ or the *Miranda* and *Tempia* line of court decisions. In a case in which both rights apply (a. & b. above), however, this form should be given to a military member by a military investigator or anyone acting on behalf of the military. This warning should be used at the preliminary investigation stage because no determination has been made as to the appropriate disposition of the alleged offense(s). This form may also be used in interviewing civilian suspects even though the warnings are more extensive than are required.

Other Warnings That May Be Required...

- 1. Under 10 U.S.C. § 1219, a military member must be advised that he or she is not required to make any statement relating to the origin, incurrence, or aggravation of a disease or injury. *See, Administrative Investigations Manual, COMDTINST M5830.1 (series).*
- 2. Under the Privacy Act, 5 U.S.C. § 552a, the subject of an investigation must be advised of his or her rights under the Privacy Act if required to provide protected personal information (such as social security number, home address, etc.). *See, Administrative Investigations Manual, COMDTINST M5830.1 (series).*

I, _____, _____, _____
[Suspect's Rate/Rank Name] [SSN or Military ID] [Unit]

have been advised by: _____ that he/she is investigating -
[Interviewer's Rate/Rank Name]

State briefly the matters/incidents being investigated:

I am suspected of committing the following offense(s) - *Plain language description of suspected offense(s):*

I understand that: *[Suspect should initial each paragraph]*

<i>Suspect's Initials</i>	<i>Suspect's Rights</i>
_____	1. I have the right to remain silent. I do not have to answer questions or make any statement.
_____	2. Before I decide whether I want to answer questions or make a statement, I may consult with a lawyer. If I decide to consult with a lawyer, the interviewer will stop the questioning. I may consult with a military lawyer provided without cost to me, or a civilian lawyer obtained at no expense to the government, if the government intends to continue questioning me. If I decide to consult with a lawyer, I have the right to have an appointed military lawyer, a civilian lawyer obtained at no expense to the government, or both, present during any further questioning.
_____	3. If I decide to answer questions or make a statement, anything I say may be used as evidence against me in any court-martial, nonjudicial proceeding, administrative proceeding, or civilian court.
_____	4. Even if I decide to answer questions or make a statement, I may at any time stop answering questions, refuse to make any further statements, or request to consult with a lawyer.
_____	5. I have carefully read the above. I understand my rights. Any questions I have asked concerning my rights have been answered to my satisfaction.

With full knowledge of my rights and the information contained on both pages of this form, I voluntarily make the following elections:

a. I do not desire to consult a lawyer.

c. I desire to consult a lawyer.

b. I desire to make a statement and/or answer any questions.

d. I do not desire to make a statement or answer any questions.

[Time and Date]

[Signature of Suspect]

[Signature of Witness]

Interview Instructions

1. If the suspect elects **either block c. or d.**, stop questioning. Consult the servicing legal office before reinitiating any further questioning of this suspect concerning these suspected offenses.
2. If the suspect elects **both blocks a. and b.**, the interviewer may continue questioning.
3. Any **written statements** by the suspect should be **prefaced with** the following statement: *"With full understanding of my rights, I make the following statement freely, voluntarily, and without any promises or threats made to me."* The statement should be **signed and dated by the suspect and a witness.**

SAMPLE RESTRICTION LETTER

[Command]

[Address]

Phone:

FAX:

5812

[DATE]

From: [COMMANDING OFFICER/OFFICER-IN-CHARGE]

To: [MEMBER]

Subj: LETTER OF RESTRICTION

1. As a result of the mast held on [DATE], and in compliance with the Uniform Code of Military Justice, you have been restricted. You are ordered restricted to the limits of [LIMITS]. Restriction begins [IMMEDIATELY or TIME, DATE] and will end at [TIME, DATE], a period of [#] days. During restriction, you will report daily in the proper uniform of the day to the [OOD or JOOD] at [TIME, TIME, and TIME] hours except on Sundays and holidays when you will report at [TIME and TIME] hours. While restricted, you shall not enter, take advantage of or use the following facilities and spaces: [THEATER, EXCHANGE, RECREATION DECK, ETC.].

2. The terms of this Letter of Restriction shall be enforced by the [OOD/JOOD] and may be altered only by [ME/XO/OOD/JOOD]. Your failure to comply with these terms of restriction will constitute a violation of the Uniform Code of Military Justice.

[COMMANDING OFFICER/OFFICER-IN-CHARGE]

[DATE]

FIRST ENDORSEMENT ON [UNIT] LTR 5812 DTD [DATE]

From: [MEMBER]

To: [COMMANDING OFFICER/OFFICER-IN-CHARGE]

Subj: LETTER OF RESTRICTION

1. I acknowledge and understand the terms of restriction.

[MEMBER]

SAMPLE LETTER OF REPRIMAND/ADMONISHMENT

[Command]

[Address]

Phone:

FAX:

5812

[DATE]

From: [COMMANDING OFFICER/OFFICER-IN-CHARGE]

To: [MEMBER, SSN, USCG]

Subj: PUNITIVE LETTER OF [REPRIMAND/ADMONITION]

Ref: (a) Article 15, UCMJ

(b) Military Justice Manual, COMDTINST M5810.1D, Subparagraph 1.E.2.a.

(c) Personnel Manual, COMDTINST M1000.6 (series), Article 8.E.2.

1. In accordance with references (a), (b), and (c), you are hereby [REPRIMANDED or ADMONISHED] for your conduct at [PLACE] on [DATE]. You behaved in a reproachable manner in that you [SPECIFY THE EXACT CONDUCT BEING ADMONISHED OR REPRIMANDED, EXPLAINING SURROUNDING FACTS AND CIRCUMSTANCES].

2. You are advised of your right to appeal to [APPROPRIATE NJP APPEAL AUTHORITY] in accordance with Section 1.F. of reference (b).

[COMMANDING OFFICER/OFFICER-IN-CHARGE]

Copy: PSC [epm/opm AS APPROPRIATE] for filing in [MEMBER'S] record

[DATE]

FIRST ENDORSEMENT ON [UNIT] LTR 5812 DTD [DATE]

From: [MEMBER, SSN, USCG]

To: [COMMANDING OFFICER/OFFICER-IN-CHARGE]

Subj: PUNITIVE LETTER OF [REPRIMAND/ADMONITION]

1. I acknowledge receipt of the referenced punitive letter.

[MEMBER]

Copy: PSC [epm/opm AS APPROPRIATE] for filing in [MEMBER'S] record

SAMPLE APPEAL OF NJP WITH CO'S ENDORSEMENT

[Command]

[Address]

Phone:

FAX:

5812

[DATE]

From: [MEMBER, SSN, USCG]

To: [NJP APPEAL AUTHORITY]

Via: [COMMANDING OFFICER/OFFICER-IN-CHARGE]

Subj: APPEAL OF IMPOSITION OF NONJUDICIAL PUNISHMENT

Ref: (a) Article 15, UCMJ

(b) Military Justice Manual, COMDTINST M5810.1D

1. In accordance with paragraph (e), reference (a), and section 1.F., reference (b), I appeal the nonjudicial punishment imposed upon me on [DATE] by [NJP AUTHORITY].

2. **Summary of Proceedings.** On [DATE], I was punished under Article 15, UCMJ for: (a) [REASON PLACED ON REPORT], in violation of Article[s] [###], UCMJ; and (b) [REASON PLACED ON REPORT], in violation of Article (###), UCMJ. On [DATE], I was awarded the following punishment: [PUNISHMENT AWARDED].

3. **Basis for Appeal.** The nonjudicial punishment awarded was, under the circumstances, [UNJUST and/or DISPROPORTIONATE] to the acts of misconduct that I allegedly committed. [EXPLAIN FULLY WHY THE PUNISHMENT AWARDED WAS UNJUST AND/OR DISPROPORTIONATE TO THE ACTS OF MISCONDUCT].

4. **Action Requested.** Based on the foregoing, I respectfully request the punishment awarded at the subject must be [SET ASIDE or REDUCED IN THE FOLLOWING MANNER]: [REQUEST FOR RELIEF; BE SPECIFIC].

[MEMBER]

5812
[DATE]

FIRST ENDORSEMENT ON [MEMBER'S] LTR 5812 DTD [DATE]

From: [COMMANDING OFFICER/OFFICER-IN-CHARGE]
To: [NJP APPEAL AUTHORITY]

Subj: APPEAL OF IMPOSITION OF NONJUDICIAL PUNISHMENT

1. I have reviewed [MEMBER'S] appeal of the punishment I awarded on [DATE], as well as my action in that case, and recommend the appeal be denied.

2. **Proceedings.** After [MEMBER] was placed on report on [DATE], the Executive Officer directed [PRELIMINARY INVESTIGATING OFFICER] to conduct an inquiry into the matter. [MAST REPRESENTATIVE] was appointed as representative for [MEMBER]. [PRELIMINARY OFFICER'S] report was submitted on [DATE] recommending nonjudicial punishment. I held mast pursuant to reference (a) on [DATE] [USING THE SCRIPT IN ENCLOSURE (1), REFERENCE (b)]. I had before me witness statements, excerpts from the unit log, and [MEMBER'S] service record. I heard statements from [WITNESS #1, WITNESS #2, ETC.]. Comments were provided by [MEMBER'S] [DIVISION OFFICER/CHIEF, DEPARTMENT HEAD, COMMAND CHIEF, AND EXECUTIVE OFFICER] regarding [MEMBER'S] performance and attitude as well as [MEMBER'S] prior disciplinary record. [MEMBER] and [HIS/HER REPRESENTATIVE or SPOKESPERSON] actively participated in the proceedings and [both] made statements regarding the matter.

3. **Statement of Facts.** On the basis of the documentation and written and oral evidence, I resolved the disputed issues and found as follows:

- a. [LIST FINDINGS THAT SUPPORT THE DISCIPLINARY ACTION.]
- b.

4. **Punishment Awarded.** On the basis of my resolution of the facts I awarded the following punishment:

- a. [LIST PUNISHMENT AWARDED.]
- b.

5. **Reasons for Recommendation:** In determining an appropriate punishment I considered the following factors:

a. **Prior Offenses and Information in Aggravation.** This is [MEMBER'S] [FIRST, SECOND, ETC.] confrontation with the military justice system since enlisting in the Coast Guard on [DATE]. The following describe [HIS/HER] prior offense[s] and punishment[s] imposed:

- (1) [DESCRIBE PRIOR OFFENSE(S) AND PUNISHMENT(S).]
- (2)

b. **Other Information.** [DISCUSS OTHER INFORMATION PRESENTED IN AGGRAVATION, INCLUDING PRIOR ADMINISTRATIVE ACTION, E.G., EMI, COUNSELING, ETC.] [DISCUSS ANY ADDITIONAL REASONS WHY THE PUNISHMENT IN THIS CASE IS NOT UNJUST, NOR DISPROPORTIONATE, TO THE MISCONDUCT; E.G., EFFECT OF THE MISCONDUCT UPON UNIT OR UNIT PERSONNEL.]

c. **Information Provided in Extenuation and Mitigation.** [DISCUSS EFFECT GIVEN TO INFORMATION PRESENTED, IF ANY, IN EXTENUATION OR MITIGATION.]

[COMMANDING OFFICER/OFFICER-IN-CHARGE]

Copy: [MEMBER] w/ encls

- Encl:
- (1) Copy of NJP Report (CG-4910) dtd [DATE] regarding [MEMBER]
 - (2) Report of Preliminary Inquiry Officer
 - (3) Copy of Unit Log dtd [DATE]
 - (4) Copy of [WITNESS #1] Statement
 - (5) Copy of [WITNESS #2] Statement
 - (6) Copy of relevant portions of [MEMBER'S] Service Record
 - (7) [ETC.]

SUGGESTED VACATION OF A SUSPENDED PUNISHMENT SCRIPT

This enclosure contains instructions and a suggested script to follow to vacate a prior suspended punishment under Article 15, UCMJ or Summary Court-Martial. Section 1.D. (vacation of NJP) and paragraph 2.G.5. (vacation of SCM) of this Manual provide further guidance to the conduct of a vacation hearing. For simplicity purposes, the script is written for a vacation of NJP, but can be easily modified for vacation of SCM punishment. The script provided in this enclosure is appropriate for the sole purpose of considering the vacation of a suspended punishment. Enclosure (1) should be consulted if the command desires to vacate a suspended punishment and award nonjudicial punishment under Article 15, UCMJ at the same time. The following brief description will assist a mast authority determine how to best use this enclosure and if one of the provided scripts are desirable.

- A. The first section (Section A, page 3) describes the format of the script.
- B. The second section (Section B, pages 4 - 8) is simple script that may be used in deciding whether to vacate the prior suspension of punishment.

It is not necessary to hold a hearing in order to vacate a prior suspended punishment. However, the member should ordinarily be notified the command is considering vacating a prior suspended punishment and given an opportunity to respond.

Following the suggested script is not required for a valid vacation of a suspended punishment under Article 15, UCMJ; however, ensuring the member's rights are provided and preserved is required. The script is intended to assist the mast authority to accomplish that goal. The mast authority may amend and stylize the provided script as necessary, or follow a different process to meet the unit's need for good order and discipline to the extent the member's rights under law (Articles 15 and 31b, UCMJ), Presidential Order (Part V, MCM), and regulations of the Judge Advocate General of the Coast Guard (Chapter 1, MJM), are followed.

A hearing to vacate a prior suspension of punishment is normally very brief, conducted in a more private setting than is mast, and has far fewer participants. It does not require as much explanation or participation because those rights and benefits were provided at the original mast or court-martial originally awarding the punishment presently under consideration. As such, many of the requirements of a mast hearing are not required for the vacation of a prior suspended punishment.

Also different than a mast hearing is the fact that the mast authority need not make a determination on every allegation of misconduct. It is sufficient that the mast authority determine that any misconduct or violation of a condition of suspension occurred in order to to vacate the suspension of prior punishment.

VACATION OF SUSPENDED PUNISHMENT SCRIPT CONVENTIONS

A. **General:** This is a suggested procedure, presented in script form, for conducting a vacation proceeding under Article 15, UCMJ. It may be copied or printed and amended as necessary for each mast. Section 1.D contains and paragraph 2.G.5., contain a discussion of the procedure. For simplicity purposes, the script is written for a vacation of NJP, but can be easily modified for vacation of SCM punishment.

1. TYPEFACE CONVENTIONS.

- a. **SECTION LABELS AND NAVIGATION POINTS ARE DESIGNATED BY BOLD CAPITALS.**
- b. Instructions, including navigation directions based on elections made during the proceedings, are in italic type. Significant decision points are enclosed in a box with additional directions.
- c. The script that the mast authority should read aloud and responses from other mast participants are designated by plain type.
- d. Optional sections and information that may change from one proceeding to another, are enclosed in brackets (“[“, “]”).
- e. **Double underlined** text designates a speaker; **Single Underlined** text indicates the mast authority may wish to insert an individual’s name.
- f. Items noted in paragraph A.2., below, and again at the appropriate points in the script, are preceded by a “□” and indicate matters that should be considered prior to mast.

2. **PRIOR TO THE HEARING :** The mast authority should ensure the following items are completed prior to the mast hearing to avoid delay (items preceded by an asterisk (*) may be performed by the Executive Officer or designee):

- Review the documents from the prior mast/SCM, such as the Form CG- 4910 or DD-2329, the PIO Report, and all statements and evidence attached to the PIO Report.
- Review the elements for each alleged offense (see, Part IV, MCM). *It may be helpful to copy, or make a list, of the elements of each offense and, in some cases the lesser-included offenses, to refer to during the mast proceeding.
- Review the notes in paragraph 6 of the script to identify the requirements needed to vacate an earlier suspended punishment.
- *Ensure the member has had the opportunity to examine the PIO report, documents, statements, etc., the mast authority will consider at the hearing.
- *Determine if there were any conditions of the suspension other than a new UCMJ violation.
- *Have copies of the MJM and MCM available as references during the hearing.

B. VACATION OF A SUSPENDED PUNISHMENT HEARING SCRIPT

**1. OPENING STATEMENT OF THE MAST AUTHORITY
(COMMANDER, COMMANDING OFFICER, OR OFFICER-IN-CHARGE)**

Mast Authority: Advice member of his or her rights and the mast procedure.

- [Member], On _____ 20(__), I awarded Non-Judicial Punishment under Article 15, UCMJ that included _____. I suspended _____ for a period of ____ months. I have received information that has caused me to consider vacating that suspension. Therefore, I am holding this hearing under Article 15 of the Uniform Code of Military Justice to determine if I will vacate the suspended punishment of _____ that was previously suspended. As a preliminary matter, I will advise you of the procedure I shall follow.
- First, I will inform you of the specific nature of the allegations I have received.
- Second, I will then review for you the information available to me on which I will base my decision to vacate the prior suspended punishment.
- Third, I will ask you if you desire to make a statement about the allegation(s) and conduct in question.
 - If you admit the allegation(s), no further evidence need be produced before I decide whether to vacate suspension of the punishment previously awarded. However, you will be given the opportunity to present matters in the nature of a defense, extenuation, or mitigation. Additionally, anything you say may be used against you in this proceeding, at any other administrative proceeding including nonjudicial punishment under Article 15, UCMJ, or in a trial by court-martial. Before I impose punishment, you will be given the opportunity to present matters in extenuation or mitigation, as will be more fully explained later.
 - You are under no obligation to admit the allegation(s). If you do not admit the allegation(s), I may not vacate the suspended punishment unless I find, based on the information available to me, that you committed the alleged offense(s).
- After all the available evidence has been received I will give you an opportunity to make a statement that might defend or justify your actions.
- Finally, I will allow you to present information in extenuation to explain the circumstances surrounding the offenses, or in mitigation to persuade me to vacate less than the full suspended punishment that is available to me. I will then decide whether or not to vacate the prior suspended punishment and how much of that suspended punishment to reinstate.

- I will decide if I need to hear from witnesses or receive additional information in order to make my decision. While you are free to indicate I need to hear from others or view other documents it is within my discretion to determine when I have sufficient information to make a decision.
- I want to make it very clear that you are not required to make any statement at all. You have the right to remain absolutely silent, and make no comments whatsoever about this matter.
 - If you remain silent, I shall not consider your silence as an admission of anything, and will not consider your silence against you in any way.
 - On the other hand, if you make a statement, I may consider anything you say in determining whether or not to vacate the prior suspended punishment. Anything you say may also be used against you in other administrative proceedings including nonjudicial punishment under Article 15, UCMJ, or in a trial by court-martial.
- Do you have any questions at this time?

Member: (Reply). The mast authority should answer any questions.

2. INFORMING THE MEMBER OF THE REPORTED OFFENSE AND DOCUMENTATION

Normally, sufficient information is available in document form to make a determination whether to vacate the suspension of an earlier punishment.

Mast Authority: [Member], I have before me information alleging you committed the following offense(s):

- [Synopsize allegations].
- This information was received from _____.
- If available, but not required:** The following persons are indicated to be witnesses: _____, _____, and _____.
- If available, but not required:** This report of misconduct was investigated by _____, who recommended: [read PIO comments and recommendations; it is not necessary to read the complete investigation].

Mast Authority: [Member], do you have any questions about the exact nature and details of the report of misconduct that has been made against you?

Member: (Reply). The mast authority should answer any questions.

Mast Authority: The information I have available includes (following are examples):

- 1) The ship's log for _____ 20(____) indicating _____;
- 2) _____'s statement dated _____ 20__ indicating _____;

- 3) _____'s statement dated _____ 20__ indicating _____;
- 4) A copy of _____;
- 5) Etc.

Mast Authority: Do you have additional documentation to present for my consideration?

Member: (Reply). This is not an opportunity to make a statement that follows below, after appropriate warnings.

3. INQUIRY OF MEMBER.

Mast Authority: Do you choose to admit or to not admit any, or all, of the allegations made against you? Before you answer, you are reminded that your decision to not admit the allegations will not be considered against you. If you admit the allegations, I may find that you violated the terms of the suspension of prior punishment without hearing any further information. Further, your admission may be used against you if this matter is referred to trial by court-martial or other administrative proceedings including nonjudicial punishment.

Member: [Reply].

- If the member **admits any allegation** of misconduct, skip to paragraph 5.
- If the member **does not admit any allegation**, continue with paragraph 4.

4. EXAMINATION OF WITNESSES BY MAST AUTHORITY

Note: most vacation hearings will not require witnesses.

With respect to any allegations of misconduct that the member did not admit, the mast authority may bring witnesses to the vacation hearing, normally one at a time, and through questioning, bring out the necessary details relating to the allegations. It is important to remember that not every allegation needs to be decided; it is sufficient to vacate the suspension of prior punishment if a single offense was committed or a single condition of the suspension was violated. Witness testimony may be, but is normally not, obtained under oath at the discretion of the commanding officer. If desire, an appropriate oath for a witness would be, "Raise your right hand.... Do you (swear) (affirm) that the evidence you shall give in this matter shall be the truth, the whole truth, and nothing but the truth [, so help you God]?"

Mast Authority: [Witness], tell me what you know about _____. The Mast Authority should follow up and ask any relevant questions.

Mast Authority: [Member], do you have any questions you would like me to ask this witness?

Member: (Respond).

5. OPPORTUNITY FOR MEMBER'S STATEMENT ON THE MERITS, DEFENSE, EXTENUATION, OR MITIGATION.

Mast Authority: [Member], I have reviewed the documentation [and heard from the witness(es)]. Before I make a decision in this matter, I will give you an opportunity to make a statement and tell me your side of the story. You may tell me what occurred, you may present matters in defense to the allegations, and you may present matters in extenuation or mitigation. Extenuating information tends to explain the circumstances surrounding the commission of the offense(s). Mitigating information might convince me to impose less punishment than I might otherwise award. But, before you respond....

- Let me remind you again, that you are not required to make any statement. You have the right to remain silent, and make no comment about this matter. If you remain silent, I shall not consider your silence as an admission of anything, and will not count your silence against you in any way.
- On the other hand, if you make a statement, I may consider everything you say in determining whether or not to vacate the prior suspended punishment. Anything you say may also be used in a court-martial or other administrative proceeding, including nonjudicial punishment under Article 15, UCMJ.

Do you desire to make a statement?

Member: (No; or makes statement).

6. VACATION OF EARLIER SUSPENDED PUNISHMENT

Notes:

- If the member is subject to suspended punishment under an approved court-martial sentence, the Mast Authority should contact his or her Staff Judge Advocate for guidance on vacating the suspension **before** vacating the suspension of punishment. See RCM 1109, MCM. The Mast Authority should also contact the SJA for guidance if a court-martial sentence has not yet been approved, but part of the sentence would be suspended in accordance with a Pre-trial Agreement.
- If the member is subject to suspended punishment(s) from a prior NJP, the suspension may be vacated and the **suspended punishment imposed if:**
 - (1) The period of suspension has not expired (e.g., not more than 3 months has passed if the prior punishment was suspended for 3 months). Normally, no punishment may be suspended for more than six months;
 - (2) The Mast Authority is the individual, successor in command, or superior officer in command of the authority who imposed or approved the suspended punishment;

- (3) The Mast Authority has authority to impose punishment equal to that which is to be vacated (e.g., an O-3 CO may not vacate the suspension of 60 days restriction because an O-3 may award a maximum of only 14 days restriction; in which case the O-3 would be authorized to vacate up to 14 days of the suspended restriction);
 - (4) The Mast Authority determines by a preponderance of the information reasonably available that the member committed an offense under the UCMJ during the period of suspension **or** that the member violated a condition of the suspension; and
 - (5) The Mast Authority determines that vacation of the suspended punishment is appropriate.
- The mast authority may vacate all, or a part, of the suspended punishment.
 - If the mast authority decides to vacate some, or all, of a prior suspension, he or she should announce:

Mast Authority: [Member], I find that you committed [an] offense[es] under the UCMJ, [or violated a condition of the prior suspension,]. Specifically, I believe you [provide plain language description of the misconduct]. I am vacating the suspension of [state specifically the portion, or all, of the prior suspended punishment] awarded and suspended on _____ 20(__). That punishment commences immediately. This vacation hearing is concluded. You are excused [and will return to your normal duties].

Or...

Mast Authority: [Member], based on the information I have heard here today I am not convinced that you have committed any offense or violated a condition of the suspension of the earlier punishment that would justify vacating the suspension of punishment. Therefore, the suspension remains in effect under its original terms. This vacation hearing is concluded. You are excused and will return to your normal duties.

RECORD OF PROCEEDINGS TO VACATE SUSPENSION

[Command]

[Address]

Phone:

FAX:

5812

[DATE]

From: [COMMANDING OFFICER/OFFICER-IN-CHARGE]

To: [MEMBER, SSN, USCG]

Subj: NOTICE OF PROPOSED VACATION OF SUSPENSION

Ref: (a) Military Justice Manual, COMDTINST M5810.1D, Subparagraph 1.E.2.a.

On [date] the [nonjudicial punishment of] [summary court-martial sentence to] [insert punishment that was suspended] was suspended for [number] [days/months].

2. The following information has caused me to propose vacation of this suspension. [Insert plain language description of the misconduct alleged or condition of suspension suspected to have been violated].

[Choose one of the following paragraph 3's]

3. Hearing Scheduled. A hearing as set forth in Article 15(e)(1-7), UCMJ, paragraphs 1.E.5., or 2.G.5. and enclosure 7a of reference (a) will be held before me concerning the vacation of this suspension will be held at [time], [date], at [location]. At that hearing you will have the opportunity to present your contentions as to why the suspension should not be vacated.

3. No Hearing. A hearing before me concerning the vacation of this suspension will not be held. In lieu of a hearing you may, however, present to me, in writing or orally over the phone, your contentions as to why the suspension should not be vacated. Any such statement must be received by me not later than [time], [date].

[COMMANDING OFFICER/OFFICER-IN-CHARGE]

COMDTINST M5810.1E

5812
[DATE]

FIRST ENDORSEMENT ON [UNIT] LTR 5812 DTD [DATE]

From: [MEMBER, USCG]

To: [COMMANDING OFFICER/OFFICER-IN-CHARGE]

Subj: NOTICE OF PROPOSED VACATION OF SUSPENSION

1. I acknowledge receipt of the notice of vacation of suspension of prior punishment proceedings.

[MEMBER]

ACTION OF COMMANDING OFFICER (VACATION)

[Command]

[Address]

Phone:

FAX:

5812

[DATE]

From: [COMMANDING OFFICER/OFFICER-IN-CHARGE]

To: [MEMBER, SSN, USCG]

Subj: NOTIFICATION OF ACTION TO VACATE SUSPENSION

Ref: (a) My ltr 5812 of [DATE]

1. After considering all matters presented, you are notified that the suspension of [nonjudicial punishment of] [summary court-martial sentence to] [insert punishment that was suspended] [remains suspended under the prior conditions of suspension.] [is hereby vacated. The [insert specific portion of the suspended punishment that is vacated] is effective immediately.]

[COMMANDING OFFICER/OFFICER-IN-CHARGE]

5812

[DATE]

FIRST ENDORSEMENT ON [UNIT] LTR 5812 DTD [DATE]

From: [MEMBER, USCG]

To: [COMMANDING OFFICER/OFFICER-IN-CHARGE]

Subj: NOTIFICATION OF ACTION TO VACATE SUSPENSION

1. I acknowledge receipt of the notice of vacation of suspension of prior punishment proceedings.

[MEMBER]

SAMPLE NOTIFICATION OF PRETRIAL CONFINEMENT

Subject: IMPOSITION OF PRETRIAL CONFINEMENT

Date: 25 May 2000
5811

From: [AUTHORIZED OFFICIAL]

To: [MEMBER'S RATE, NAME, SERVICE]

Reply to
Attn. of:

Ref: (a) Rules for Courts-Martial (R.C.M.) 304, 305, Manual for Courts-Martial
(b) Article 13, UCMJ

1. Under the authority conferred upon be by reference (a) you are hereby ordered into pretrial confinement.
2. There is probable cause to believe that you committed the following offense(s) that may be tried at courts-martial: (DESCRIPTION OF THE OFFENSE(S) AND ARTICLE(S) OF THE UCMJ THE ACCUSED ALLEGEDLY VIOLATED)
3. Pretrial confinement is required by the following circumstances: (INDICATE THE FOLLOWING AS APPROPRIATE: THE NATURE AND CIRCUMSTANCES OF THE OFFENSE; WEIGHT, RELIABILITY OF EVIDENCE; ACCUSED'S CHARACTER; PAST RECORD OF CONDUCT; LIKELIHOOD OF FURTHER (SERIOUS) MISCONDUCT; LIKELIHOOD OF FLIGHT; TIES OF ACCUSED TO LOCALE; LESSER FORMS OF RESTRAINT CONSIDERED INADEQUATE)
4. Pretrial confinement will be served at (PLACE).
5. My decision to order you into pretrial confinement will be reviewed by an independent officer appointed by (PERSON APPOINTING IRO). This officer, called an Initial Review Officer (IRO), will consider all the information currently known, including a memorandum I will provide stating the reasons for the conclusion that pretrial confinement is necessary, and decide if there is probable cause to believe you committed these offenses and if your continued pretrial confinement is necessary.
6. You have the right to counsel. You may retain civilian counsel at no expense to the government or you may request the assignment of military counsel. Military counsel may be assigned for the limited purpose of representing you only during the pretrial confinement review.
7. You have the right to present information to the IRO. You also have the right to consult with counsel prior to the initial review and to make a statement.
8. You have the right to remain silent. Any statement you make may be used against you.

COMDTINST M5810.1E

9. The IRO may extend the time for completion of the review to 10 days from the imposition of confinement. The IRO will prepare a written memorandum of the IRO's decision and you will receive a copy of that memorandum.

10. Reference (b) prohibits punishment prior to trial. Therefore, you should inform me if you are being required to perform duties with persons who have already been court-martialed and are being punished or if you are being subjected to conditions which amount to pretrial punishment.

11. Finally, should you be convicted and receive confinement as punishment at the court-martial, the period of pretrial confinement will be credited to your sentence.

12. If the IRO decides to leave you in pretrial confinement, you may request reconsideration of that decision based upon any significant information not previously considered. That request must be made in writing to the IRO.

5811
25 May 2000

FIRST ENDORSEMENT on [NAME] memo 5811 dtd 25 May 2000

From: [MEMBER]

To: [COMMANDING OFFICER/OFFICER-IN-CHARGE]

Subj: IMPOSITION OF PRETRIAL CONFINEMENT

1. I have read and understand the above provisions. I [DO/DO NOT] desire assignment of military counsel.

2.

WITNESS' SIGNATURE

MEMBER'S SIGNATURE

SAMPLE COMMANDING OFFICER'S 72-HOUR MEMORANDUM

Subject: PRETRIAL CONFINEMENT OF [CONFINEE], USCG Date: 27 May 2000
1000

From: [COMMANDING OFFICER]

Reply to
Attn. of:

To: Initial Review Officer

Ref: (a) Manual for Courts-Martial (1998 Ed.)
(b) Military Justice Manual, COMDTINST M5810.1D
(c) Personnel Manual, COMDTINST M1000.6A

1. This memorandum satisfies the requirements contained in reference (a) for a 48-hour probable cause determination by a neutral and detached officer as well as the requirement for a 72-hour review memorandum by the commanding officer.

2. In accordance with references (a), (b), and (c) I ordered pretrial confinement of [CONFINEE] on 25 May 2000. This confinement was ordered based upon probable cause after reviewing the matters discussed in subsection (h)(2)(B) R.C.M. 305 of reference (a). Confinement in this case should continue for the following reasons:

a. An offense triable by court-martial was committed. Specifically, violations of Article 120 – Rape, Article 125 – Sodomy, Article 128 – Assault and two specifications of Article 134 Indecent Assault.

b. [CONFINEE] committed the offense.

c. Confinement is necessary because it is foreseeable that the prisoner will not appear at trial, pretrial hearing, or investigation and the nature of these offenses indicate that he poses a serious threat to safety of women within this community.

d. Less severe forms of restraint are inadequate. No lesser restraint is sufficient to ensure that [CONFINEE] will not quit his unit or harm others.

3. [THE NATURE AND CIRCUMSTANCES OF THE OFFENSE; WEIGHT, RELIABILITY OF EVIDENCE; ACCUSED'S CHARACTER; PAST RECORD OF CONDUCT; FACTS THAT DEMONSTRATE LIKELIHOOD OF FURTHER (SERIOUS) MISCONDUCT AND LIKELIHOOD OF FLIGHT; TIES OF ACCUSED

COMDTINST M5810.1E

TO LOCALE; FACTS THAT DEMONSTRATE WHY LESSER FORMS OF RESTRAINT CONSIDERED INADEQUATE

4. [CONFINEE] began pretrial confinement on 25 May 2000 at the [BRIG].

5. Because the charges pending against [CONFINEE] show a propensity for violence toward women, I consider him a serious threat to the safety of the community. Because the assaults were against shipmates, I consider lesser forms of pretrial restraint inadequate. In addition, in light of the likelihood of conviction on the rape and forcible sodomy charge, and the prospect of further confinement being ordered as a result, I consider [CONFINEE] a significant flight risk.

[COMMANDING OFFICER]

Copy: [SJA]
[Brig]
[Detailed Defense Counsel]

INITIAL REVIEW PROCEDURE GUIDE

1. Introduction And Recitation Of Offense(s)

IRO:I am (NAME OF INITIAL REVIEW OFFICER), an Initial Review Officer designated by the (NAME OF OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION). The purpose of this review is to determine whether you should continue in pretrial confinement.

I have been informed that you are suspected of committing the following offense(s): (INSERT OFFENSE(S)).

Prior to coming here today, I have reviewed the Commanding Officer's (LETTER TO YOU/MEMORANDUM IN SUPPORT OF CONFINEMENT) dated (DATE) and other documents and reports pertaining to your service and the suspected offense(s). In addition, I have discussed your case with (NAME OF COMMAND REPRESENTATIVE). (NAME OF COMMAND REPRESENTATIVE), from your unit, is present here and will act as the command representative.

2. Advisement of Rights

IRO:Under the law, you have the right:

- (a) To present information relative to the legality and appropriateness of your confinement;
- (b) To be provided military counsel;
- (c) To have civilian counsel obtained by you at no expense to the government;
- (d) To have an opportunity for you, or your counsel to present information and make a statement on your behalf;
- (e) To remain silent and make no statement;
- (f) To receive a copy of my decision; and
- (g) If confinement is continued, to petition for reconsideration based upon new circumstances which may arise after this initial review regarding the legality or appropriateness of the confinement.

IRO:Here is a form that explains your rights during the review. (PRESENT ACCUSED WITH RIGHTS FORM) Please read it and then sign at the bottom if you understand them fully. Do you have any questions concerning your rights?

ACC: (REPLY)

IRO: What have you decided about counsel?

ACC: (REPLY)

IRO: Please note that on the form I just gave you.

(IF THE ACCUSED WAIVES COUNSEL, CONDUCT A FURTHER INQUIRY TO ENSURE IT IS A KNOWING AND INTELLIGENT WAIVER)

3. Explanation of Procedure

IRO: At this review, I am to determine:

(a) Whether there is probable cause to believe that you committed the offense(s) alleged, and

(b) Whether, under the circumstances, you should remain in pretrial confinement because you are a flight risk or a danger to engage in serious criminal misconduct and lesser forms of restraint are inadequate. This review is not governed by any rules of evidence. However, it is my duty to evaluate the reliability of the evidence presented.

4. Receipt of Additional Information From the Government

IRO: You may present any information relative to the legality and the appropriateness of your confinement. I may also seek additional information. After the review is completed, I will prepare a written decision and will provide you with a copy. This decision will be final. However, you have the right to request a reconsideration if I do not order your release and new information arises that I did not consider here today. I will explain this right in greater detail, if it is necessary. You also have the right to contest the legality of your confinement at any subsequent court-martial proceeding. I am going to receive additional information from the Government at this time.

(THE IRO SHALL HEAR ANY WITNESSES WHO MAY BE ABLE TO GIVE INFORMATION WHICH IS NEEDED BEFORE A RULING CAN BE MADE. THIS MIGHT INCLUDE WITNESSES FROM THE ACCUSED'S UNIT AND ANY REQUESTED BY THE ACCUSED. OFTEN, LIVE WITNESSES ARE NOT NEEDED FOR THE PURPOSE OF ESTABLISHING THE LEGALITY OR PROPRIETY OF CONFINEMENT. HOWEVER, THEY MAY BE NEEDED IN RESPONSE TO THE EVIDENCE OFFERED BY THE ACCUSED. ONCE THE IRO HAS FINISHED RECEIVING SUCH ADDITIONAL INFORMATION, THE ACCUSED AND THE ACCUSED'S COUNSEL HAVE AN OPPORTUNITY TO PRESENT THEIR CASE.)

5. Re-advisement Of Rights and Receipt Of Information from Accused

IRO: Do you at this time remember the warning with respect to your rights I gave you earlier and the form you signed?

ACC: (REPLY)

IRO: Do you recall that I advised you that you have the right to produce information in your own behalf, including your own statement, written or oral? Anything said or submitted by you may be used against you at a subsequent proceeding. You also have the right to say nothing, and as I explained earlier, your silence will not be held against you. Do you understand these rights?

ACC: (REPLY)

(IF THE ACCUSED APPEARS UNCERTAIN OR CONFUSED CONCERNING THE RIGHTS ADVISEMENT, THE IRO SHOULD REITERATE THEM. REMIND THE ACCUSED THAT ANYTHING SAID CAN BE USED AGAINST HIM OR HER. ALSO, NOTE THAT THE IRO MAY ASK THE ACCUSED QUESTIONS IF THE ACCUSED VOLUNTARILY TALKS. IF THE ACCUSED DECIDES TO STOP TALKING AT ANY TIME, HOWEVER, THE IRO CANNOT COMPEL FURTHER ANSWERS.)

IRO: Do you have any information which you would like presented to me relevant to whether your pretrial confinement should be ordered to continue?

ACC: (REPLY)

6. IRO Determination and Conclusion

(AT THE CONCLUSION OF THE REVIEW, OR AT A REASONABLE TIME AFTER CONCLUSION, THE IRO DETERMINES WHETHER CONTINUED CONFINEMENT IS APPROPRIATE AND ADVISES THE DETAINEE. INSERT THE FOLLOWING IF THE CONFINEMENT IS ORDERED TO CONTINUE.)

IRO: Finally, if circumstances change, or additional information develops that you believe would cause this decision to continue pretrial confinement to be reconsidered, you may request reconsideration. You would need to advise me, in writing, of your request for a reconsideration to be made. I want you to inform me if you are being required to perform duties with persons who have already been court-martialed and are being punished, or if you are being subjected to conditions which amount to pretrial punishment. Article 13, UCMJ, prohibits punishment prior to trial. Also, should you receive confinement at a court-martial the period of pretrial confinement will be credited to your sentence.

PRETRIAL CONFINEMENT ACKNOWLEDGMENT OF RIGHTS

	)	(DATE)
IN THE MATTER OF)	
	)	INITIAL REVIEW OFFICER
(NAME))	
(RATE/RANK)	)	ACKNOWLEDGEMENT OF
(SERVICE)	)	RIGHTS
_____)	

1. Pursuant to Article 31 of the UCMJ, I have been warned by the Initial Review Officer that I am suspected of having committed the following offense(s):

2. I have been advised of my right to present evidence as to whether my pretrial confinement should be continued and that such evidence may consist of my oral or written statement, any documentary evidence that I wish to present, and the oral or written statements of other individuals.

3. I understand that I have the right to remain silent and that any statement I make may be used as evidence against me in a trial by court-martial.

4. I understand that, if requested, military counsel will be provided to me for the limited purpose of representing me only during the pretrial confinement initial review. I further understand that I do not have the right to have military counsel of my own selection at this hearing. I also understand that I may retain civilian counsel at no expense to the government. Should I desire to retain civilian counsel for the purpose of this review, I agree to continue (postpone) this review until such time as civilian counsel can be present, knowing that this delay can result in my being subjected to continued pretrial confinement.

5. I also understand I may waive my right to counsel. My decision with respect to counsel is:

_____ I waive my right to counsel.

_____ I request military counsel. I have been advised that _____ has been made available to serve as my military counsel for the purposes of this review and I desire that officer to be present.

_____ I will be represented by civilian counsel.

COMDTINST M5810.1E

I have read and understand the foregoing rights.

Witness

Date

Accused

Date

INITIAL REVIEW OFFICER RECORD OF PROCEEDINGS

IN THE MATTER OF _____)
) INITIAL REVIEW OFFICER
) RECORD OF PROCEEDINGS
)
NAME _____)
RATE/RANK _____)
SERVICE _____)
_____)

Time and Date of Confinement:

Committing Officer:

	Level of Court/ Military or Civilian	Date	Offense(s)	Punishments
1				
2				
3				

	Previous Masts	Date	Offense(s)	Punishments
1				
2				
3				

COMDTINST M5810.1E

Pending Charged Offense(s):

Stated Basis for Confinement:

Hearing:

Place:

Date:

Time Commenced:

Counsel, if any:

Detainee Advised of Rights (Form Attached):

Personal Data:

Age:

Time in Service:

Marital Status:

Children:

Family in Area:

Other Information:

Other Facts Developed Relevant to Release Determination (From All Sources, Including Detainee, If Any):

Probable Cause:

Necessity of Assuring Presence for Trial:

Endangerment to Life or Property/Obstruction of Justice:

Time and Date Hearing
Completed

Initial Review Officer

SAMPLE INITIAL REVIEW OFFICER'S DECISION

IN THE MATTER OF)
) INITIAL REVIEW OFFICER
) DECISION ON
) PRETRIAL CONFINEMENT
 NAME)
 RATE/RANK)
 SERVICE)
 _____)

1. On [DATE], I reviewed the circumstances relevant to the confinement of [DETAINEE RATE/RANK, NAME, BRANCH OF SERVICE] from [DETAINEE'S UNIT]. I determined that pretrial confinement in this case (is) (is not) warranted.

2. The reasons for my decision are:

Date

Initial Review Officer

Copy: SJA
 COMMITTING OFFICER
 DETAINEE'S UNIT
 DETAINEE
 DETAINEE'S COUNSEL

**SAMPLE CONFINEMENT ORDER
(PRETRIAL)**

CONFINEMENT ORDER			
Name (Last, First, MI.)	SSN	Rate/Grade	Branch Service
JACOBS, Michael L.	123 45 6789	SN/E-3	USCG
Ship or Organization		Date	
USCGC TAMPA (WMEC 902)		8 September 2000	

STATUS	
Detained (Alleged violation of UCMJ Articles) V/UCMJ Article 86 UA 9 July - 8 Sept 00 (61 days)	Confined as result of <input type="checkbox"/> VACATED SUSPENSION <input type="checkbox"/> NJP <input type="checkbox"/> SCM <input type="checkbox"/> SPCM <input type="checkbox"/> GCM
	Charges and Specification Convicted Of
Sentence Adjudged: _____ Date _____	
If Sentence Deferred, Date Deferment Terminated: _____	
"I have been informed that I am being confined for the above alleged offense(s)" <u>8 SEP 2000</u> <u>M L Jacobs</u> Date Signature of Accused <u>8 Sept. 2000</u> <u>M. Prange, BM1 USCG</u> Date Signature of Witness	SENTENCE APPROVED APPROVED BY DATE
	_____ CA _____
	_____ SA _____
	_____ NCMR _____
	_____ USCMA _____
_____ OTHER _____	

Pre Trial Confinement Necessary -	Remarks Section
<input checked="" type="checkbox"/> BECAUSE OF THE SERIOUSNESS OF THE OFFENSE CHARGED	For Article 86 Offense Only
<input checked="" type="checkbox"/> TO ENSURE THE PRESENCE OF THE ACCUSED AT THE TRIAL	<input checked="" type="checkbox"/> SURRENDERED (VOLUNTARY RETURN)
	<input type="checkbox"/> APPREHENDED BY CIVIL/MILITARY AUTHORITIES
Confinement Directed At	Typed Name/Rank/Title
Hour Date	O. B. Wonkanobe, ENS USCG, OOD
1630 8 Sept 2000	Signature <u>O B Wonkanobe</u>

MEDICAL CERTIFICATE

The above named individual was examined by me at 1740 (Hour) on 8 Sept 2000 (Date) and found to be

FIT UNFIT for Confinement. The following irregularities were noted during the examination; (if none, so state):

Typed Name/Rank/Title	Signature
S. J. McCarthy, CAPT, USN(MC)	<u>S J McCarthy</u>

RECEIPT FOR PRISONER

The above named individual was received at _____ (Name of Correctional Center)

at _____ on _____ (Date)

Typed Name/Rank/Title	Signature

BLANK CONFINEMENT ORDER

CONFINEMENT ORDER			
Name (Last, First, M.I.)	SSN	Rate/Grade	Branch Service
Ship or Organization		Date	
STATUS			
Detained (Alleged violation of UCMJ Articles)	Confined as result of <input type="checkbox"/> VACATED SUSPENSION <input type="checkbox"/> NJP <input type="checkbox"/> SCM <input type="checkbox"/> SPCM <input type="checkbox"/> GCM		
Charges and Specification Convicted Of			
Sentence Adjudged:		Date	
If Sentence Deferred, Date Deferment Terminated:			
Date		SENTENCE APPROVED	APPROVED BY
Signature of Accused			CA
Date			SA
Signature of Witness			NCMR
			USCMA
			OTHER
Pre Trial Confinement Necessary -		Remarks Section	
<input type="checkbox"/> BECAUSE OF THE SERIOUSNESS OF THE OFFENSE CHARGED		For Article 86 Offense Only	
<input type="checkbox"/> TO ENSURE THE PRESENCE OF THE ACCUSED AT THE TRIAL		<input type="checkbox"/> SURRENDERED (VOLUNTARY RETURN)	
		<input type="checkbox"/> APPREHENDED BY CIVIL/MILITARY AUTHORITIES	
Confinement Directed At		Typed Name/Rank/Title	
Hour	Date	Signature	
MEDICAL CERTIFICATE			
The above named individual was examined by me at _____ on _____ and found to be			
(Hour) (Date)			
<input type="checkbox"/> FIT <input type="checkbox"/> UNFIT for Confinement. The following irregularities were noted during the examination; (if none, so state):			
Typed Name/Rank/Title		Signature	
RECEIPT FOR PRISONER			
The above named individual was received at _____			
(Name of Correctional Center)			
at _____ on _____			
(Hour) (Date)			
Typed Name/Rank/Title		Signature	

NAVPERS 1640/4 (Rev. 4-98)

INSTRUCTIONS FOR COMPLETING CONFINEMENT ORDER

1. The Confinement Order (NAVPERS 1640/4 or DD 497) is a basic record for each brig. Except in emergency, no person shall be confined without a written order of confinement, with the offense(s) indicated, and signed by an individual authorized to direct confinement. If the confinement is initially effected without a written order, the written order shall immediately follow the confinement. [See, RCM 304(d).]

2. Procedures

a. No member of a brig staff shall refuse to receive or to keep any prisoner committed to his or her charge by an officer of the Armed Forces when the committing officer furnishes a statement, signed by him or her, of the offense(s) charged against the prisoner. A Confinement Order signed by the duty officer, officer of the day, or other officer designated by the CO may authorize confinement.

b. The order shall clearly identify the individual to be confined and show the offense(s) of which accused or convicted, such as:

“Art. 80 Attempted escape from confinement” “Art. 86 U/A 3 June-26 July 80 (53 days)”

“Art. 91 Strike CPO w/fist”

“Art. 92 Failed to obey lawful order”

“Art. 121 Larceny-\$51 from locker”

“Art. 134 Disorder and damage gov't property”

c. Confining commands must complete the offense portion of the order, since the offense often dictates security requirements.

d. “Safekeeping” and “protective custody” are not legal reasons for confinement, and no individual shall be accepted for confinement with either of these listed in lieu of a UCMJ charge.

e. When the results of a court-martial change the basis for confinement, a Report of Results of Trial signed by the trial counsel shall be prepared, as appropriate, reflecting the change of status. This Report of Results of Trial shall be delivered to the brig at the time the prisoner is returned to the brig from the court-martial.

f. Except for pretrial confinement, the confinement orders shall show the date confinement is directed, if other than the date adjudged, and by what authority imposed. If the confinement is imposed as a result of the sentence of a court-martial, the confinement order shall be accompanied by a Report of Results of Trial, signed by the trial counsel of the special or general court-martial, or the summary court-martial, that adjudged the sentence and will reflect any pretrial agreement reached.

Secretary, Department of Homeland Security
Designation of Convening Authorities

BLANK CHARGE SHEET (DD-458)

CHARGE SHEET				
I. PERSONAL DATA				
1. NAME OF ACCUSED (<i>Last, First, MI</i>)		2. SSN	3. GRADE OR RANK	4. PAY GRADE
5. UNIT OR ORGANIZATION			6. CURRENT SERVICE	
			a. INITIAL DATE	b. TERM
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
II. CHARGES AND SPECIFICATIONS				
10. CHARGE: VIOLATION OF THE UCMJ, ARTICLE				
SPECIFICATION:				
III. PREFERRAL				
11a. NAME OF ACCUSER (<i>Last, First, MI</i>)		b. GRADE	c. ORGANIZATION OF ACCUSER	
d. SIGNATURE OF ACCUSER			e. DATE	
<p>AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this _____ day of _____, _____, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.</p>				
_____ <i>Typed Name of Officer</i>		_____ <i>Organization of Officer</i>		
_____ <i>Grade</i>		_____ <i>Official Capacity to Administer Oath</i> <small>(See R.C.M. 307(b) - must be commissioned officer)</small>		
_____ <i>Signature</i>				

DD FORM 458
84 AUG

SAMPLE CHARGE SHEET (DD-458)

CHARGE SHEET				
I. PERSONAL DATA				
1. NAME OF ACCUSED <i>(Last, First, MI)</i> JACOBS, Michael L.		2. SSN 123 45 6789	3. GRADE OR RANK SN	4. PAY GRADE E-3
5. UNIT OR ORGANIZATION USCGC TAMPA (WMEC 902)			6. CURRENT SERVICE	
			a. INITIAL DATE 5 May 1998	b. TERM 4 yrs
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL	Confinement	
\$1260.60		\$1260.60		
9. DATE(S) IMPOSED 8 SEP 2000 to present				
II. CHARGES AND SPECIFICATIONS				
10. CHARGE: VIOLATION OF THE UCMJ, ARTICLE 86; Absence without leave				
SPECIFICATION: In that Seaman Michael L. JACOBS, U.S. Coast Guard, USCGC TAMPA, on active duty, did, on or about 9 July 2000, without authority, absent himself from his unit, to wit: USCGC TAMPA, located at Portsmouth, Virginia, and did remain so absent until on or about 8 September 2000.				
III. PREFERRAL				
11a. NAME OF ACCUSER <i>(Last, First, MI)</i> MBOYA, Thomas O.		b. GRADE Lieutenant	c. ORGANIZATION OF ACCUSER USCGC TAMPA (WMEC 902)	
d. SIGNATURE OF ACCUSER 			e. DATE 11 September 2000	
AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this <u>11th</u> day of <u>September</u> , <u>2000</u> , and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.				
_____ Kittridge, Hultin A. <i>Typed Name of Officer</i>		_____ USCGC TAMPA (WMEC 902) <i>Organization of Officer</i>		
_____ Lieutenant Commander <i>Grade</i>		_____ Commissioned Officer <i>Official Capacity to Administer Oath</i> (See R.C.M. 307(b) - must be commissioned officer)		
_____  <i>Signature</i>				

DD FORM 458
84 AUG

INSTRUCTIONS FOR COMPLETING CHARGE SHEET DD-458

1. Number of copies. Prepare an original and five copies of the charge sheet.
2. Accuracy in typing. The use of correction tape or correction fluid is prohibited. Initialed line-outs are permitted if the original wording is legible.
3. Page 1 of the Charge Sheet. If available, obtain the personal data concerning the accused from the service record to be certain that the information is correct.
 - a. Block #1 — Name of the accused: Use all capital letters in the last name.
 - b. Block #2 — SSN: Enter EMPLID, not the SSN, of the accused.
 - c. Block #3 — Grade or Rank: Enter rank of the accused. (LT, SN, BM2, etc.)
 - d. Block #4 — Pay Grade: Enter the pay grade of the accused. (O-3, E-3, E-5, etc.)
 - e. Block #5 — Unit or organization: Enter unit and organization of the accused at the time the charge sheet is prepared. (USCGC TAMPA (WMEC 902), U. S. Coast Guard).
 - f. Block #6 — Current Service: See Blocks 6a and 6b.
 - g. Block #6a — Initial Date of Current Service: Enter date of current enlistment. If the accused is serving on an extension, enter the date of the original enlistment, **not the extension date.**
 - h. Block #6b — Term: Enter number of years of enlistment (2 yrs, 4 yrs, 6 yrs, INDEF, etc.), including number of years extended to current enlistment.
 - i. Block #7 — Pay Per Month: See Blocks 7a, 7b and 7c.
 - j. Block #7a — Basic Pay: Enter the basic pay of the accused. **Do not include** any allowances. (quarters, subsistence, flight pay, etc.)
 - k. Block #7b — Sea/Foreign Duty Pay: Enter Sea/Foreign Duty Pay of the accused, if applicable. (If NONE enter NONE)
 - l. Block #7c — Total Pay: Total Blocks 7a and 7b.
 - m. Block #8 — Nature of Restraint: Show type of restraint imposed. (confinement, restriction, none, etc.)
 - n. Block #9 — Dates: Enter inclusive dates of any restraint imposed. If the accused is retained by more than one type of restraint, show inclusive dates for each period.
 - o. Block #10 — General — Charges and Specifications: Pleadings in military law are called charges and specifications. It is the formal written indictment by

which an accused is charged of an offense.

- (1). Part IV, MCM contains forms for preparing specifications for most offenses that may be tried by court-martial. However, the form specifications in that part require the addition, deletion, or insertion of certain words or phrases that are sometimes confusing to the drafter or specifications. If there is any question as to the proper drafting of a specification, contact the legal officer serving your command.
- (2). Use Roman numerals for numbering charges. If there is only one charge, **do not number**.
- (3). Use Arabic numbers for numbering specifications. If there is only one specification, **do not number**.
- (4). When drafting specifications, **do not use**:
 - (i) The accused's social security number.
 - (ii) The hull number of cutters.
 - (iii) Abbreviations, except for standard ones (USCGC, U.S., SN, etc.)
- (5). When stating the time and/or date that an offense occurred, use:
 - (i). "at or about" when alleging the time and date.
(at or about 0700, 1 January 2001)
 - (ii). "on or about" when alleging the date only.
(on or about 1 January 2001)
- p. **Block #11a** — Name of Accuser: Enter the name of the accuser. (The accuser may be any person subject to the Uniform Code of Military Justice.)
- q. **Block #11b** — Grade of Accuser: Enter the grade of the accuser (LT/O-3, CWO3/W-3, etc.)
- r. **Block #11c** — Organization of Accuser: Enter the organization of the accuser.
- s. **Block #11d** — Signature of Accuser: Self-explanatory.
- t. **Block #11e** — Date: Enter the date the charge sheet is prepared.
- u. **AFFIDAVIT** — The oath must be administered by a commissioned officer or commissioned warrant officer and must actually be administered substantially as follows:

"Do you swear (or affirm) that you are a person subject to the Uniform Code of Military Justice; that you have personal knowledge of or have investigated the matters set forth in the foregoing charges(s) and specification(s); and that the same are true in fact to the best of your knowledge and belief, so help you God?"

"Official Capacity," may be shown simply as "Commissioned Officer."

4. Page 2 of the Charge Sheet.

- a. Block #12 — The immediate commanding officer of the accused shall inform the accused that charges are being preferred against the accused. The commanding officer shall also inform the accused of the identity of the person preferring the charges and the identity of the person who ordered the charges preferred. The preferral section should be documented as follows:

The name, grade, and organization of the immediate commander refers to the accused's commanding officer or officer in charge. It is not necessary that the commanding officer or officer in charge personally inform the accused so long as the commanding officer or officer in charge personally ensures that it is done.

- b. Block #13 — Part IV

"The sworn charges were received at . . ."

Immediately upon receipt of sworn charges, the officer exercising summary court-martial jurisdiction over the accused will cause the hour and date of receipt to be entered in the spaces provided. It is important that this portion of the charge sheet be completed accurately because this date fixes the end of the period of time which is to be considered in determining whether the prosecution is barred by the statute of limitations. Unless the officer exercising summary court-martial jurisdiction has authorized another officer, in writing, to receive sworn charges for him, this block must be personally signed by the officer exercising summary court-martial jurisdiction over the accused.

The words "FOR THE" shall be stricken. If the commanding officer is absent, on leave, TAD, or because of illness, the acting commanding officer may receipt for the charges.

- c. Part V. Block 14a, b, and c: Leave this section blank until the convening order is prepared and signed.

(1). "Designation of Command of Convening Authority" and "Place" refer to the name and physical location of the unit of the convening authority. "Date" refers to the date the first endorsement is signed by the convening authority.

(2). "Referred for trial . . ." This portion should be completed as shown in the following examples (adapted to fit the circumstances of the referral):

Ex. 1. Referred for trial to the special court-martial appointed by my Order No. 2—02 of 22 January 2002, subject to the following instructions: NONE."

Ex. 2. Referred for trial to the special court-martial appointed by my letter 5813 of 24 January 2002, subject to the following instructions:

(3) Signature: The convening authority must personally sign this section, therefore **the words "By ___ OF ___" shall be stricken.** If the commanding

COMDTINST M5810.1E

officer is absent, on leave, TAD, or because of illness, the acting commanding officer may refer the charges to trial.

- d. Block #15 — “On _____ , _____ , I (caused to be) served . . .”

This section will be completed by the trial counsel or, in the case of a summary court martial, by the summary court martial. If completed by summary court-martial, line out the words "Trial Counsel" and type in "Summary Court-Martial." Although the trial counsel or the summary court-martial should personally sign this section, it is not necessary that they personally serve the charges on the accused.

SAMPLE SUMMARY COURT-MARTIAL CONVENING ORDER

SUMMARY COURT-MARTIAL)	
	)	Commanding Officer
	)	USCGC TAMPA (WMEC 902)
CONVENING ORDER NO. 2-15	)	Portsmouth, Virginia 23703
)	
	)	10 September 2015
)	

COMMANDING OFFICER USCGC TAMPA (WMEC 902)

Effective this date, LCDR J. A. McTaggart is detailed as a summary court-martial and shall sit at Coast Guard Integrated Support Command, Portsmouth, VA, unless otherwise directed. Designation of this convening authority is Secretarial and pursuant to Article 24, UCMJ.

C. U. INCOURT
Commander, U. S. Coast Guard
Commanding Officer, USCGC TAMPA (WMEC 902)

(NOTE: AN ALTERNATIVE TO THIS FORM OF CONVENING ORDER IS PROVIDED IN RCM 1302(c), MCM)

**SAMPLE SPECIAL/GENERAL COURT-MARTIAL
CONVENING ORDER**

SPECIAL COURT-MARTIAL	)	Commanding Officer
	)	USCGC TAMPA (WMEC 902)
	)	Portsmouth, VA. 23703
CONVENING ORDER NO. 2-15)	
	)	10 September 2015
_____)	

COMMANDING OFFICER, USCGC TAMPA (WMEC 902)

A special court-martial is hereby convened. It may try such persons as may properly be brought before it, and shall meet at Coast Guard Integrated Support Command, Portsmouth, Virginia unless otherwise directed. Designation of this Convening Authority is Secretarial and pursuant to Article 23, UCMJ. The court-martial will be constituted as follows:

MEMBERS

Lieutenant Commander A. J. GRANGER
Lieutenant M. M. PETERSON
Chief Warrant Officer (BOSN-4) M. S. CLEAVES

C. U. INCOURT
Commander, U. S. Coast Guard
Commanding Officer, USCGC TAMPA (WMEC 902)

**SAMPLE SPECIAL/GENERAL COURT-MARTIAL
CONVENING ORDER (ADDING MEMBER)**

AMENDMENT NO. 1) Commanding Officer
SPECIAL COURT-MARTIAL) USCGC TAMPA (WMEC 902)
) Portsmouth, VA. 23703
CONVENING ORDER NO. 2-15)
) 21 September 2015
_____)

COMMANDING OFFICER, USCGC TAMPA (WMEC 902)

Lieutenant S. J. McCarthy, is detailed as a member of the special court-martial convened by my order No 2-15, this ship, dated 10 September 2015.

C. U. INCOURT
Commander, U. S. Coast Guard
Commanding Officer, USCGC TAMPA (WMEC 902)

(NOTE: USE THIS SAMPLE FOR ADDING A MEMBER TO A COURT-MARTIAL)

**SAMPLE SPECIAL/GENERAL COURT-MARTIAL
CONVENING ORDER (REPLACING MEMBER)**

AMENDMENT NO. 1) Commanding Officer
SPECIAL COURT-MARTIAL) USCGC TAMPA (WMEC 902)
) Portsmouth, Va. 23703
CONVENING ORDER No. 2-15)
) 21 September 2015
_____)

COMMANDING OFFICER, USCGC TAMPA (WMEC 902)

Lieutenant J. C. Page, is detailed as a member of the special court-martial convened by my order no. 2-15, this ship, dated 10 September 2015, vice Lieutenant A. J. Granger, relieved.

C. U. INCOURT
Commander, U. S. Coast Guard
Commanding Officer, USCGC TAMPA (WMEC 902)

(NOTE: USE THIS SAMPLE FOR REPLACING A MEMBER OF A COURT-MARTIAL)

ARTICLE 32 INVESTIGATING OFFICER'S GUIDE

OVERVIEW

This guide is the first of six enclosures designed to assist an Article 32 investigating officer (IO). This first enclosure discusses various aspects of the Article 32 investigation, including the source of authority and qualifications of the IO, the role of the other participants, the IO's responsibilities during the investigation, and preparation of a report. The second enclosure is an example of an Article 32 report. The third and fourth enclosures are a blank Investigating Officer's Report (DD-457) and a completed example. The fifth enclosure is an advisory letter to the accused. The final enclosure is a script for conducting an Article 32 investigation.

The Article 32 investigation is a unique component of military justice. Its function is to examine the available evidence pertaining to an allegation so that the CA may determine whether a court-martial is warranted. An Article 32 investigation is to be conducted as an impartial gathering of information rather than an adversarial proceeding. It is similar to a grand jury hearing, but an IO can only recommend a disposition; it is more than a report of investigation, but less than a complete prosecution.

Before you go on, stop and read the primary authorities that govern your investigation.

- Article 32, UCMJ
- RCM 405

SUGGESTED COLLATERAL READING

DA Pam 27-17, Procedural Guide for Article 32(b) Investigating Officer

Schlueter, *Military Criminal Justice* (5th ed.), ch. 7, *The Article 32 Investigation and the Pretrial Advice*.

Gaydos, *A Comprehensive Guide to the Military Pretrial Investigation*, 111 Mil. L. Rev. 49 (1986).

U.S. Coast Guard Media Relations in High-Visibility Court-Martial Cases

I. AUTHORITY. Your immediate authority for conducting an investigation comes from a letter of appointment issued by the court-martial convening authority (CA) under RCM 405. This letter is your "warrant"--it gives you the authority necessary to interview witnesses, secure documents, and obtain cooperation from commanders and other military members. It also may delegate to you the CA's power to grant a continuance. Your appointment letter should inform you that the investigation is your primary duty until its completion. You must pursue it promptly and diligently through completion unless you are relieved.

II. QUALIFICATIONS OF THE INVESTIGATING OFFICER

A. STATUS. To be qualified for appointment as an IO you must be a commissioned officer. RCM 405(d)(1). According to the Discussion accompanying RCM 405(d)(1), the investigating officer should be in the grade of lieutenant commander or higher or have legal training. It is strongly recommended that the IO be a Coast Guard Judge Advocate, and a CA should consult his or her staff judge advocate before appointing a non-lawyer. Although any commissioned officer can serve as an IO, the Court of Military Appeals disapproves of the appointment of officers junior in rank to the accused. In United States v. Reynolds, 24 MJ 261, 263 n.2 (CMA 1987), the court described the appointment of an investigating officer who was junior in rank to the accused as a "gross breach of protocol and courtesy" and something "to be avoided even if not strictly prohibited."

B. IMPARTIALITY. The Court of Military Appeals has said that an IO must be impartial, characterizing the position as that of "a quasi-judicial officer" held to a standard similar to that for military judges. United States v. Collins, 6 MJ 256 (CMA 1979), United States v. Thompson, 46 MJ 472 (CAAF 1997). Your impartiality can be questioned as a result of your knowledge of the case both before you start the investigation and by what you do during the course of the investigation.

(1) Disqualification by Prior Knowledge or Association. An accuser cannot serve as an IO. RCM 405(d)(1); United States v. Lopez, 20 USCMA 76, 42 CMR 268 (1970). Likewise, an officer who is a close personal friend of the accuser is also disqualified from serving. See United States v. Castleman, 11 MJ 562 (AFCMR 1981). Failure to disclose prior knowledge or relationships could lead an appellate court to invalidate the investigation and overturn a court-martial conviction. However, if the IO discloses all grounds for any possible bias, prejudice, or impropriety and the defense fails to object at the investigation, it is generally construed as a waiver. United States v. Lopez, supra, United States v. Martinez, 12 MJ 801 (NMCMR 1981).

a. Investigation of related cases seriatim. An IO is disqualified if he or she was previously involved in inquiring into the offense(s) to be investigated in a closely related case (e.g., another accused charged in connection with the same conduct). United States v. Lopez, supra; United States v. Parker, 6 USCMA 75, 19 CMR 201 (1955); United States v. Schreiber, 16 CMR 639 (AFBR 1954). However, this disqualification can be waived by an accused. United States v. Donaldson, 23 USCMA 293, 49 CMR 542 (1975); United States v. Nickel, 9 USCMA 324, 26 CMR 104 (1958).

b. Joint investigations. Unlike the case of seriatim investigations, a joint investigation is proper since the IO begins the investigation with no preconceived ideas of credibility, guilt, or innocence and has made no prior decisions that he or she might seek to vindicate. Thus, when two or more members are charged with a joint offense, a joint investigation is entirely proper. The mechanics of arranging for a joint investigation are more difficult, however, and the IO is required to submit a separate report with separate recommendations on each member.

c. Office associations. An IO is not disqualified solely by virtue of his or her position in the legal office. In United States v. Reynolds, supra at 263, the court said, "There is no absolute bar to all contact between an Article 32 officer and all members of a staff judge advocate's office." However, an IO who supervises the accused's defense counsel is disqualified and should be recused. United States v. Davis, 20 MJ 61 (CMA 1985).

(2) Disqualification by Subsequent Action. Anything you do during the investigation that reasonably calls your impartiality into question may be subject to later judicial scrutiny. You must also strive to avoid any appearance of partiality. Advise the CA's staff judge advocate (SJA) if you have concerns in this area.

a. Interviewing witnesses. You may not talk with or interview witnesses ex parte (without notice to or participation of both government and defense counsel) on any substantive matters related to the case. United States v. Whitt, 21 MJ 658 (ACMR 1985). You may, of course, communicate for the limited purpose of arranging witness appearances and the production of evidence within the control of witnesses.

b. Legal advice. You must not obtain legal advice from the government representative or anyone connected with the prosecution. However, your duty of impartiality does not prevent you from consulting with the local SJA on any matter, including matters of substance. United States v. Grimm, 6 MJ 890 (ACMR 1979), pet. denied, 7 MJ 135 (CMA 1979). The local SJA has a duty to be objective and impartial and to advise you accordingly. However, United States v. Payne, 3 MJ 354 (CMA 1977), has been interpreted as holding that you must give notice to all parties (i.e., defense counsel, accused, and government representative, if any) before obtaining advice from an independent source, including the local SJA, on substantive issues. United States v. Grimm, supra at 893. Failure to do so may constitute error that will be tested for prejudice if raised at trial.

c. Action on defense requests. Your response to defense requests, such as requests for a continuance, may be reviewed by appellate courts as an indicator of your impartiality.

III. QUALIFICATIONS OF OTHER PARTICIPANTS

A. **GOVERNMENT REPRESENTATIVE.** The appointment of a government representative may depend upon the availability of local Judge Advocates. However, it is common practice to appoint a government representative to present the government's side of the case.

(1) Role. The government representative's role is to establish the validity of the charges and to develop the government's case. United States v. Payne, supra at 357, adopting J. Ferguson's dissent in United States v. Young, 13 USCMA 134, 32 CMR 134 (1962). Additionally, the government representative provides logistic support for the IO. This aspect is essential where the IO is not stationed locally. As soon as the government representative has been appointed, he or she should contact the IO to determine what must be done to insure a smooth investigation. At a minimum, the government representative must assume responsibility for assembling the necessary documents for the IO. At the direction of the IO, the government representative may make arrangements for the travel of witnesses.

(2) Appointment. RCM 405(d)(3) allows the commander directing the investigation (the convening authority or CA) to appoint the government representative as a matter of discretion.

B. **DEFENSE COUNSEL.** Pursuant to RCM 405(d)(2)(A), the accused is entitled to be represented by a defense counsel certified under Article 27(b). DD Form 457, part of the IO's report, requires you to verify that detailed defense counsel is so qualified. The attached Article 32 script specifically addresses this point. Note that the accused may request self-representation, but it is not an absolute right. United States v. Bramel, 29 MJ 958 (ACMR 1990).

C. **OTHERS.** The CA may detail a reporter, interpreter, and others to aid the investigation. Likewise, the CA may assign personnel for administrative support.

IV. YOUR RESPONSIBILITIES

A. **STATUTORY.** Under Article 32(a), UCMJ, you are responsible for "inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline."

B. **IN GENERAL.** The primary purposes of an Article 32 investigation are to inquire into the truth of the allegations contained in the charges, review the form of the charges, and provide the CA with information on which to make a determination concerning appropriate disposition of the case. It also provides the accused with an opportunity for discovery. RCM 405(a) Discussion. If, during the investigation, you uncover evidence of additional misconduct, you may investigate any additional offenses and provide recommendations for disposition. However, you must inform the accused of the additional offenses under investigation and afford the same rights to cross-examine witnesses and present evidence as with the charged offenses. Article 32(d); RCM 405(e). You are not limited to examining the witnesses and evidence presented by the

government representative and defense counsel. Your goal is to compile enough information so that the CA can assess whether the admissible evidence warrants trial by court-martial. Thus, if you feel that additional evidence or testimony is necessary to make a proper and thorough recommendation to the CA, you may call those witnesses yourself or direct that the evidence be presented. RCM 405(g)(1)(A).

C. BEFORE THE INVESTIGATION.

(1) Review the Letter of Appointment. You should read your letter of appointment and make sure you understand what you are investigating. If you have been tasked to investigate more than one set of charges against the accused, make sure this is accurately reflected in the letter of appointment or that you have a second letter of appointment.

(2) Review the Evidence. In preparing for the investigation, you should consider what evidence will be necessary to complete a thorough and impartial investigation. RCM 405(g)(1)(B) Discussion. To assist you in making this determination, you may read any police reports, CGIS Reports of Investigation, or other statements. The government representative should provide this information to you prior to the hearing. CAUTION: The sole purpose of examining these materials prior to the hearing is to help you to determine what evidence will be necessary to complete a thorough and impartial investigation. See RCM 405(g) Discussion. As IO, you may not consider such matters as substantive evidence unless properly presented at the investigation and subject to cross-examination or rebuttal by the accused. RCM 405(h)(1)(B).

(3) Review the Charge Sheet. You must also read the charge sheet and make sure the information is correct and the charges are in the proper form. Compare each specification with the model specification forms found in the Military Judge's Bench Book, and Part IV of the MCM. Although RCM 603(b) prohibits an IO from making any changes to the charge sheet--even minor ones--you should recommend any necessary changes in your report.

a. Corrections to the personal data. Alert the SJA or government representative to any errors you note in the accused's personal data on the face of the charge sheet. The SJA may correct administrative defects in the personal data section at any time. If pen and ink changes are made, be sure to mention them in your report.

b. Corrections to the charges. Remember that your role is to recommend, not act! If you spot obvious deficiencies in the charges and specifications, such as missing dates, etc., notify the SJA. He or she can arrange for the accuser to correct the charges before you start your investigation. RCM 603(a). It would be best if you were not present when the changes were made to avoid the appearance of any impropriety. Remember, you should inform the defense counsel whenever you, as the IO, communicate directly with the SJA.

(4) Arrange for the Hearing.

COMDTINST M5810.1E

a. Time and date. If the appointment letter does not set a specific date and time for the investigation, you must immediately set a date to start the proceedings. Since you are tasked with the expeditious investigation of the charges and this is your primary duty, you should set the date for the Article 32 investigation soon after your appointment. Do it clearly and explicitly and in writing.

b. Public access. Ordinarily, Article 32 investigations are open to the public. Public access helps to promote public confidence in the military justice system.

(i) Potential witnesses. Although usually excluded from the proceedings prior to their testimony, you may permit potential witnesses, such as experts, investigators, or a parent of a child witness, to be present if you consider their presence helpful to the proceedings. See, e.g., MRE 615, and RCM 405(h)(3)b.

(ii) Closed proceedings. The commander who ordered the investigation may, after consulting the SJA, direct that it be closed to the public, especially if classified information may be involved. If you do not receive any instructions from the commander, the decision to restrict public access to all or part of the proceedings is within your discretion. RCM 405(h)(3). Closing the proceeding may encourage a witness to testify more fully. However, closing an Article 32 investigation to the public over defense objection may deprive the accused of a substantial pretrial right. Any decision to close the proceeding should be made on a witness-by-witness, circumstance-by-circumstance basis and the reasons for the closure should be specifically noted in your report. See, e.g. ABC v. Powell, 47 MJ 363 (CAAF 1997).

(iii) Media access. As members of the public, representatives of the media may attend the proceeding. However, to ensure that the hearing is conducted in a fair and orderly manner, you may prohibit news media or other spectators from tape recording, video taping, or taking photographs of the testimony or other parts of the hearing. If you receive inquiries from the media, you should decline to comment, refer them to the local public affairs officer, and immediately notify the SJA or CA. See RCM 405(h)(3).

c. Delay. An IO can grant a continuance only if the appointment letter delegates that authority. RCM 707(c)(1) Discussion. As IO, you should not attempt to exclude time from the government's speedy trial clock under RCM 707 even if you grant a continuance based on a defense request unless the convening authority has specifically delegated to you the authority to exclude delay in the appointing order. In United States v. Thompson, supra the court implied that an IO has no inherent, independent authority to exclude such delay from the government's speedy trial clock.

(i) A defense request for a continuance creates a potential dilemma for IOs caught between the need for speedy disposition of charges (see Articles 10 and 33, UCMJ; RCM 707) and a defense counsel's legitimate need for more preparation time. What you must do in those circumstances is to act impartially to protect both interests. To do this, you must ascertain and record in detail the legitimacy of any defense request for delay. Require defense counsel to describe in writing the basis for the

delay request and determine if it is well-founded. You should then discuss the request with the CA's SJA to obtain the command's policy. Remember to give prior notice of this communication to all parties. If the CA is not opposed to a well-supported request, you probably should grant the continuance if you are authorized to do so.

(ii) If the command is opposed, then you should have defense counsel describe in writing, "on the record," the facts that support a conclusion that the continuance is needed. At a minimum, you should ascertain and include in your report when defense counsel first learned of the case, when he or she received the case file, and why he or she is unable to proceed at the appointed time. If defense alleges that other cases require attention, find out what other cases have prevented or will prevent adequate preparation. If, after you review defense's position, you conclude that he or she needs more time in the interests of justice, then you should grant the continuance if you are so authorized. United States v. Miro, 22 MJ 509 (AFCMR 1986), held that an IO's refusal to grant a defense request for a continuance due to inadequate preparation time (less than 24 hours) was reversible error that required a new Article 32 investigation. All the command can reasonably ask is that you do your job impartially and balance the interest of timely justice against the interests of the accused.

(iii) Always remember, however, that granting a defense or government request for a continuance is not the same as excluding the delay from the government's speedy trial clock. United States v. Thompson, supra. While you may be authorized to grant a continuance in your investigation, only the CA or the military judge may exclude the time from the government's speedy trial clock (unless the authority has been delegated to you). RCM 707(c), United States v. Kossman, 38 MJ 258 (CMA 1993). Any exclusion of delay by the CA or you should be in writing signed before the excludable delay begins. You must be especially aware of the requirement to proceed with due diligence under Article 10 whenever the accused is in confinement (see, e.g., U.S. v. Laminman, 41 MJ 518 (CGCCA 1994)).

(5) Advise the Accused of His Rights. If time permits, you should write the accused in advance of the hearing to advise the accused of his rights during the investigation. This will also be an opportunity to advise the accused of the date, time, location and uniform for the hearing. A sample letter is accompanies enclosure (2), the sample report.

(6) Arrange for Witnesses.

a. With a government representative. If a government representative has been detailed, work through him or her to obtain witnesses. Be careful to limit your conversations with the government representative to administrative matters only. Don't discuss ex parte the details of any witness' expected testimony--this could result in your disqualification.

b. Without a government representative. If there is no government representative, then you will have to arrange for the presence of witnesses yourself. It is best to use the legal office personnel to contact the witnesses, rather than calling them

yourself. If necessary, however, you are not prohibited from contacting a prospective witness to arrange for the witness' presence. If you do contact a witness yourself, don't discuss the substance of the expected testimony.

c. Reluctant witnesses. Military members may be ordered to attend the proceeding. Civilian government employees, in some cases, may be required to attend an Article 32 as a condition of their employment. However, you do not have authority to subpoena witnesses or evidence. RCM 703(e)(2)(C). Your only tools for dealing with reluctant civilian witnesses are persuasion and invitational travel orders. RCM 405(g); RCM 703 (e)(2) Discussion.

D. CONDUCTING THE INVESTIGATION.

(1) Advice, Inquiries. To begin, use the Article 32 script at Part II of this guide and a copy of DD Form 457, Investigating Officer's Report, to conduct your investigation. The script covers all the important points required on the DD Form 457 and you can check them off as you go along during your inquiry of the accused. Use only the accused's EMPLID, not SSN, in the SSN block of the DD457.

a. Waiver. Although the language of Article 32 appears to require a pretrial investigation prior to referral of any case to a GCM, military courts have held that the accused may waive the right to a pre-trial investigation. United States v. Donaldson, 23 CMA 293 (1975); RCM 405(k). If the accused indicates a desire to waive the Article 32, you should immediately notify the CA. However, the government is not required to accept accused's waiver request, and the CA may direct that the investigation proceed.

b. Substitutes for the investigation. When the accused has been afforded the rights of a party before a formal board or a Court of Inquiry under the Administrative Investigations Manual, COMDTINST M5830.1 (series), such investigation may be used in lieu of an Article 32. However, the accused has the right to request additional investigation or to recall witnesses for further examination. If the accused asserts these rights, the Article 32 is the proper forum in which to perform the additional investigation. Article 32(c); United States v. Gandy, 9 CMA 355 (1958); RCM 405(b).

(2) Presentation of Evidence. The Military Rules of Evidence do not apply to Article 32 investigations, except for rules 301 (right against self-incrimination), 302 (use of statements made during mental competency exams), 303 (prohibition on degrading questions), 305 (use of statements obtained without proper rights advisement), 412 (victim's prior sexual history) and section V (privileges). RCM 405(i); MRE 1101(d). This means, quite simply, that, subject only to the evidentiary provisions of RCM 405(g), you may consider hearsay or other evidence that would be inadmissible at a court-martial. United States v. Matthews, 15 MJ 622 (NMCMR 1982). It also means that you do not rule on evidentiary objections. If a party requests, such objections must be noted in your report. Exhibits should be sequentially marked as IO Exhibit 1, 2, 3, etc. in the order in which they are received etc. using arabic numerals. A copy of the charge sheet is always Exhibit 1 – the CA should retain the original charge sheet for potential

referral for trial by court-martial. Exhibit 2 is always your appointing letter. Put page numbers on exhibits that have multiple pages (e.g., "Page 1 of 4").

(3) Testimony. With the exception of the accused, all witnesses are required to testify under oath. The accused may make an unsworn statement. The actual oath to be administered to witnesses is found in the discussion to RCM 405(h)(1)(A) and is included in the enclosed IO's Article 32 script. The IO has broad discretion in conducting the hearing, including the manner in which the witnesses are questioned. The IO should generally permit the government representative to question witnesses and present evidence, but may choose to question witnesses and receive evidence directly.

a. Taking testimony. While the IO need not perfect the case, he or she should either conduct a thorough direct examination of witnesses or ensure the counsel do so. A witness should not simply be brought to the hearing, shown a prior statement, asked to adopt the statement, and then allowed to be cross-examined by the defense. See United States v. Connor, 27 MJ 378 (CMA 1989). This process contributes nothing to the development of information that can be considered by the CA.

b. Reducing the testimony to writing. The IO is required to include a summary of the substance of all testimony in the report of investigation. You should take notes as each witness testifies. After the hearing, you should prepare a summary of the key points of each witness' testimony. In some cases, if time permits, it may be advisable to obtain the witness's signature attesting to the truth of the summary.

c. Verbatim transcripts. Generally, Coast Guard Article 32 investigations are not transcribed or recorded. However, a CA may direct that a verbatim transcript be prepared or that the investigation be recorded on video or audiotape. If so, the government representative should coordinate the transcription or taping. Any request from the defense to record the proceedings or a request for a verbatim transcript should be forwarded to the CA for action. As IO, you do not have authority to override the CA's decision. The transcript or tapes, if prepared, should be included as enclosures to the report of investigation and are, of course, subject to defense discovery. United States v. Marsh, 21 MJ 445 (CMA 1986).

d. Tape recordings by others. While there is no specific law on this subject, you may prohibit spectators or news media from tape recording, videotaping, or filming the testimony or other parts of the hearing. This can be based on the prohibition of recording testimony in federal courts or under your statutory authority to conduct the hearing in a fair and orderly manner.

(4) Alternatives to Testimony. Generally, any witness whose testimony would be relevant to the investigation and not cumulative shall be produced if reasonably available--including those requested by the accused if the request is timely. However, sometimes witnesses are unavailable to appear at the Article 32 investigation, or, even if the witness is available, the defense may find it more advantageous to submit the witness' testimony in an alternative form. RCM 405(g)(4) allows you to consider alternatives to testimony under the circumstances described below.

a. If defense does not object. With defense concurrence or in the absence of a defense objection, RCM 405(g)(4)(A) allows you to consider the following alternatives to testimony:

(i) Sworn statements;

(ii) Statements under oath taken by telephone, radio, or similar means providing each party the opportunity to question the witness under circumstances by which the investigating officer may reasonably conclude that the witness' identity is as claimed;

(iii) Prior testimony under oath;

(iv) Depositions;

(v) Stipulations of fact or expected testimony;

(vi) Unsworn statements; and

(vii) Offers of proof of expected testimony of a witness.

b. When defense objects. You are allowed to consider certain alternatives to testimony over defense objection. The key to consideration of these alternatives is the "reasonable availability" of the witness. RCM 405(g)(1)(A) provides that a witness is "reasonably available" when he or she is located within 100 miles of the situs of the investigation and the significance of the testimony and personal appearance of the witness outweighs the difficulty, expense, delay, and effect on military operations of obtaining the witness' appearance. There is no per se rule making witnesses beyond 100 miles from the site of the investigation unavailable. United States v. Marrie, 43 MJ 35 (1995). For a witness outside the 100-mile radius, the same balancing rule applies. Additionally, if a witness is unavailable under MRE 804(a)(1)-(6), that witness is also not "reasonably available." If your determination is that the witness is not reasonably available, inform all the parties. Then be sure to note this determination in your report. RCM 405(g)(2) divides witnesses into two categories for deciding availability.

(i) Military witnesses. You, as IO, make an initial determination whether a military witness is "reasonably available." If you decide that a witness is "reasonably available," you should request the witness' commanding officer to make the witness available. The witness' commanding officer then makes a final determination on the witness' availability. You may discuss factors affecting reasonable availability with the witness' immediate commander and with others, such as the local SJA.

(A) If the witness' immediate commander determines that the witness is not reasonably available, he or she is required to give the reasons for that determination to the IO. See RCM 405(g)(2)(A) Discussion. If given in writing, include that writing as an attachment to your report. If the commander does not give the reasons in writing, you must make a detailed memo for the record of the reasons and include it in

your report. Although the commander's determination is not subject to appeal by the accused, it may be reviewed by the military judge under RCM 906(b)(3). The reported reasons must show how the balancing test of RCM 405(g)(1)(A) applies.

(B) If you think that a witness' commanding officer did not provide adequate justification for a determination that a witness is not reasonably available, immediately notify the SJA.

(ii) Civilian witnesses. You alone are responsible for determining the reasonable availability of civilian witnesses. Initially, you determine availability without regard to whether the witness is willing to appear using the balancing test in RCM 405. You (or government counsel, if appointed) then invite those witnesses determined to be reasonably available to appear and, when appropriate, inform them that their necessary expenses will be paid. RCM 405(g)(3) and Discussion. If the witness refuses to appear or to testify, the witness is then not reasonably available because you cannot compel the witness to attend the pretrial investigation.

c. Alternatives to testimony for unavailable witnesses. After you (or the military commander of a military witness whom you initially found to be reasonably available) determine a witness is unavailable, you may consider over defense objection the following alternatives to that witness' testimony:

(i) Sworn statements;

(ii) Statements under oath taken by telephone, radio, or similar means providing each party the opportunity to question the witness under circumstances by which the IO may reasonably conclude that the witness' identity is as claimed. See MRE 901(b)(6) for one method of authenticating a telephone conversation.

(iii) Depositions of that witness;

(iv) In time of war, unsworn statements; and

(v) Prior testimony under oath.

d. Depositions. If an essential civilian witness refuses to appear or an essential military witness is not reasonably available, and there are no alternatives to that witness' testimony, you may suggest that the government representative or defense counsel ask the CA to order a deposition under RCM 702. If the request is approved, the CA will detail a deposition officer. Under RCM 703(e)(2)(c), a deposition officer has authority to issue a subpoena compelling a witness' attendance at a deposition. Additionally, if a witness is located at a great distance from the Article 32 investigation and the expense or delay involved in bringing the witness to the site of the investigation is prohibitive, a deposition may be taken by an officer at the witness' location. See RCM 702. Testimony from a deposition is an admissible alternative to testimony.

(5) Documents and Other Evidence. RCM 405(g)(1)(B) allows you to consider all available evidence, including documents and physical evidence that are relevant and not cumulative. "Documents" as used here does not include a prior statement of a witness (a prior statement may be considered over defense objection only if it qualifies as an alternative to testimony as discussed above). You are required to tell the parties what documents or other evidence you will consider in conducting your investigation. (This requirement is incorporated in the script at Part II of this guide.) Then you must let all parties examine this evidence. To save time, the government representative should provide the defense counsel copies of documents and an opportunity to examine any physical evidence prior to the hearing. If counsel objects to your consideration of a document or evidence, ask for the basis of the objection. Remember, hearsay rules do not apply at an Art. 32, and you may consider hearsay evidence. In evaluating the evidence, however, you must assign it whatever weight you think it deserves.

a. Accused's admissions or confession. The longstanding practice under Article 32, UCMJ, and RCM 405 is that an accused's written admissions or confession qualifies as a "document or other physical evidence" that may be considered by an IO. Admittedly, a confession doesn't qualify as an alternative to testimony under RCM 405(g)(4)(B). However, the discussion to RCM 405(e) makes it clear that an IO is often required to look into the admissibility of a confession as part of the investigation.

b. Reports. Reports are documents, notwithstanding their hearsay nature. Thus, you treat them as "other evidence" under RCM 405(h)(1)(B).

(6) Handling Objections. Your role is that of an investigator compiling evidence, not a judge presiding over a trial. The proper response to an objection depends on the nature of the objection.

a. Procedural objections. Although not required to rule on an objection, you may take corrective action in response to an objection that some aspect of the proceeding fails to comply with the procedural requirements of RCM 405. For example, you should decline to consider alternatives to testimony for a witness who is available to testify. If an objection raises a substantial question about a matter within the authority of the CA (e.g., whether you were properly appointed), you should immediately inform the CA. Unless the CA directs otherwise, you should continue with the proceeding. You may require that objections be submitted in writing. If requested to do so by the party making the objection, you must note an objection in your report. Any written responses from the CA and any documents that were not considered because of an objection should also be attached to your report (the CA is not prohibited from considering materials outside the scope of RCM 405).

b. Evidentiary objections. As previously discussed, the Military Rules of Evidence have limited applicability at an Art. 32 investigation. Again, you should not rule on any objection. If requested to do so by the party making the objection, you must note the objection in your report. You should also identify potential evidentiary problems that could occur if the case is referred for trial.

(7) Investigating Uncharged Offenses. An Art. 32 investigation often uncovers evidence of uncharged misconduct (e.g., investigation into larceny charge uncovers evidence of theft of additional items). If such evidence is uncovered, you may investigate the additional offenses and make recommendations on disposition. You must inform the accused of the general nature of the uncharged offense(s), and allow the same rights of cross-examination and presentation of evidence as for the charged offenses. Article 32(d); RCM 405(e). If the uncharged misconduct is completely unrelated to the charged offense(s) (e.g., investigation into larceny charge uncovers evidence of sexual assault), you should consult the CA before expanding the investigation.

(8) Reopening the Investigation. The CA may direct you to reopen the investigation if an uninvestigated charge or specification is preferred after the first investigation has been completed, if there has been a "major" change in a specification, or if additional evidence is desired. United States v. Louder, 7 MJ 548 (AFCMR 1979) petition denied 7 MJ 328 (CMA 1979).

a. Procedure. You should convene the hearing and readvise the accused of his or her rights and the nature of the new or changed charges. The second hearing should then proceed in the same manner as the first. If you are reconvening for an additional charge or specification, incorporate by reference all matters from the prior Article 32. It is not necessary to recall witnesses solely to repeat testimony relating to the original charges.

b. The report. If you did not submit the DD Form 457, Investigating Officer's Report, to the CA prior to reopening the investigation, include all matters presented in one report. If the first report was completed, you should submit the additional matters as an addendum to the original report. You should not complete a second DD Form 457.

E. PREPARING THE REPORT.

(1) Objective. Your primary objective of your investigation is to provide the CA with information to make an appropriate decision on disposition of the charges. Your report should be thorough and objective. It is not your function to serve as a sounding board for the government's case, but you should include comments on the sufficiency and apparent reliability of the evidence presented. You should also identify potential proof problems that are likely to occur at trial.

(2) Time of Submission. Under RCM 405(j)(1), you must submit a timely written report of the investigation to the CA. The time required to complete the written report depends primarily on the extent of the investigation. However, your report should be submitted as soon as possible after the close of the investigation. Time of submission is particularly important if the accused is in confinement or under restraint. See, e.g., U.S. v. Laminman, 41 MJ 518 (CGCCA 1994).

(3) Required Information. RCM 405(j)(2) specifies the required contents of a report of investigation. Several of these requirements may be satisfied solely by

COMDTINST M5810.1E

checking the appropriate blocks on the DD Form 457. Other requirements must be addressed in a narrative summary or other attachment to the DD Form 457. The following are required:

a. Name(s) and organization(s) of defense counsel(s), and statement that defense counsel was present throughout the taking of evidence or explanation why defense counsel was not present (see DD Form 457 blocks 5, 6, 7, 8, and 11).

b. Substance of testimony taken, including any stipulated testimony. Witnesses should be identified in block 12 of the DD Form 457. You should prepare a brief summary of the testimony of each witness, and obtain the witness' signature if time permits. If there is a verbatim transcript of the proceedings, it should be attached as an exhibit. If a written stipulation of testimony was submitted, it should also be attached as an exhibit. You should identify any significant conflicts between testimony. To assist the CA in assessing the evidence, you may also include your observations of a witness' demeanor while testifying and your opinion on the potential credibility of the witness' testimony if credibility is likely to be at issue.

c. Other statements, documents, or matters that you considered, or a brief summary of such evidence. Such items should be listed in block 13 of the DD Form 457. Statements and other documents should be attached to the report. If a statement or document is lengthy, you should also include a brief summary of the key information it contains (similar to a summary of a witness' testimony).

d. Objections raised. Upon the request of the party making an objection, you must note an objection in your report. RCM 405(h)(2). If a written objection was submitted, it should be attached. You should also note any corrective action taken in response to an objection.

e. A statement of any reasonable grounds to believe that the accused was not mentally responsible for the offense or was not competent at the time of the investigation. If mental responsibility or competency is not at issue, you may simply check "No" in block 14 of DD Form 457. However, if mental responsibility or competency issues were raised, you should summarize any relevant evidence.

f. A statement as to the availability of essential witnesses at the anticipated time of trial. Again, if witness availability will not be an issue, you may simply check "Yes" in block 15 of the DD Form 457. However, if witness availability will be an issue, you should identify any potential problems (e.g., cutter operational schedule, anticipated transfer or release from active duty).

g. An explanation of any delays in the investigation. Remember, any delays should be approved in advance by the CA. If a delay was authorized in writing, that writing should be included in your report as an exhibit. Additionally, if significant time elapsed between the time you were directed to conduct an investigation and the time you submitted your report, you should provide a chronology and identify the reason(s) for each period of delay.

h. Your conclusion whether the charges and specifications are in proper form. If the charges and specifications are in proper form, you should check “Yes” in block 17 of the DD Form 457. If you recommend that the charges or specifications should be amended, or that additional charges should be preferred, you should summarize the reasons for your recommendations. You may also recommend that one or more charges be dropped as multiplicitous, or that only a lesser-included-offense should be charged. If you recommend prefferal of additional charges, you should specifically note whether or not you investigated any recommended additional charges.

i. Your conclusion whether reasonable grounds exist to believe the accused committed the alleged offense(s). In addition to checking the appropriate box in block 18 of the DD Form 457, you should list each specification and its elements, provide a reference to the evidence that establishes the reasonable grounds for each element, and identify any elements that were not established by the evidence.

j. A recommendation for disposition. You should check the appropriate box in block 20 of the DD Form 457. Additional remarks should be included in your report.

(3) Additional recommended information. Although not expressly required under RCM 405, the following additional information helps the CA to make a decision on disposition of the charges:

a. A brief factual synopsis of the case. Generally, events should be summarized in chronological order. You should include a reference to the testimony or other evidence that provided proof of each act or event. You should also identify key factual “gaps” or conflicts. Enclosure (3) includes a sample summary.

b. Legal issues raised. Whether or not an objection was made, you may identify potential problems with the admissibility of evidence or other legal issues noted during the investigation. Those issues should be identified and briefly discussed. At a minimum, you should note the Military Rule of Evidence or RCM that applies. It is not necessary or desirable for you to prepare a full legal brief.

(4) Assembling the report. Like a record of trial, a report of investigation under Article 32, UCMJ, should be assembled in a specific order. The recommended sequence is as follows:

a. The report itself in letter format;

b. The completed DD Form 457 and supplemental pages (e.g., summaries of testimony or evidence) go immediately behind the letter report, but are not listed as exhibits.

c. Exhibits. Exhibits should be attached in the order in which they were received, with a copy of the charge sheet as Exhibit 1 and your appointing letter as Exhibit 2. A copy of the charge sheet is always IO's Exhibit 1. Do not use the original; it

should be retained by the CA and later forwarded to the GCMCA if a recommendation to refer the case to a GCM is made. The IO appointment letter is attached as IO exhibit 2. Other documents and witness statements that you considered should be marked as exhibits. You should also include as exhibits any documents that you received but did not consider as evidence with a notation that you did not consider those materials.

(5) Submitting the Report. RCM 405(j)(3) requires you to deliver your report to the commander who directed the investigation (CA). Use of overnight delivery service is recommended.

(6) Action by Convening Authority. The CA may ask you to clarify your report or direct you to reopen your investigation. However, the CA may not direct you to change your conclusions. The CA is required to provide a copy of the report to each accused. Any objections to the report must be made to the CA within 5 days of receipt, but the CA need not wait for objections before taking action. If objections are made, the CA may direct you to reopen the investigation. The CA may dismiss the charges, refer them for trial by summary or special court-martial, or, if not a General Court-Martial Convening Authority (GCMCA), forward them to a GCMCA recommending that they be referred for trial by general court-martial. Under Art. 34 and RCM 406, a GCMCA may not refer the charges for trial by general court-martial before receiving advice from his or her SJA.

CONCLUSION

By this point, you have fulfilled your responsibility as IO, and have completed an important step in the military justice process. You have provided the CA with critical information needed to make an appropriate decision on disposition of the charges. Hopefully, you found this guide helpful in satisfying the legal and procedural requirements.

SAMPLE INVESTIGATING OFFICER'S REPORT (LETTER)

[Command]

[Address]
Phone:
FAX:

5812
[DATE]

From: LCDR I. M. IO, USCG, Investigating Officer
To: [APPOINTING AUTHORITY]

Subj: REPORT OF ARTICLE 32 INVESTIGATION: U.S. V. SN A. B. DOE, USCG

Ref: (a) RCM 405(j), Manual for Courts Martial

1. As directed by enclosure (2), I conducted an Article 32 investigation at the location on date into the charges preferred against SN A. B. Doe, [EMPLID] USCG. This report is submitted in accordance with the requirements of reference (a).
2. LT B. A. Lawyer, JAGC, USNR represented the accused during the investigation. He was qualified in accordance with RCM 405(d)(2) and RCM 502(d).
3. A summary of the sworn testimony of each witness is attached to this report. SN Robert Jones, S/A Michael Smith, and BM1 Anne Brown each signed the summary of his or her testimony. However, due to time constraints, I was unable to obtain Mr. Edward Green's signature on the summary of his testimony.
4. A list of the Exhibits received during the investigation is attached.
5. The following information is provided regarding the truth of the matters set forth in the charges and the recommended form of the charges:
 - a. Charge I: Violation of Art. 121, UCMJ -- Larceny

As charged, the elements of the sole **Specification of Charge I** are:

- (1) That on or about 10 May 2012, in the vicinity of Coast Guard Station Great Harbor, the accused wrongfully took, obtained or withheld certain property, to wit: a Sony Compact Stereo, from the possession of the owner or of any other person;
 - (2) That the property belonged to another person, to wit: SN Robert Jones;
 - (3) That the property was of a certain value, to wit: \$350, or of some value;
- and,

(4) That the taking, obtaining, or withholding by the accused was with the intent to permanently deprive or defraud another person of the use and benefit of the property or permanently to appropriate the property for the use of the accused or for any other person other than the owner.

The evidence produced at the hearing relevant to this specification was as follows: On 10 May 2012, SN Jones discovered that his Sony Compact stereo was missing from his barracks room at Station Great Harbor (testimony of SN Jones). SN Jones had purchased the stereo for \$350 approximately 6 months earlier (testimony of SN Jones). He reported that the stereo was missing to BM1 Brown, who notified the officer in charge (testimonies of SN Jones and BM1 Brown). S/A Smith was later directed to investigate (testimony of S/A Smith). During his investigation, he interviewed BM3 Mark Johnson (testimony of S/A Smith). BM3 Johnson told S/A Smith that he saw the accused putting a compact stereo in the trunk of the accused's car on 10 May (testimony of S/A Smith). BM3 Johnson also told S/A Smith that the accused told BM3 Johnson that he had extra money because he pawned a stereo at a local pawnshop (testimony of S/A Smith). After further investigation, S/A Smith found a Sony Compact stereo matching the description of SN Jones' stereo at Acme Pawnshop (testimony of S/A Smith). SN Jones identified the stereo as his (testimonies of S/A Smith and SN Jones). Mr. Edward Green, a clerk at Acme Pawnshop, identified the accused as the person who had pawned the stereo for \$125 (testimony of Mr. Green).

The evidence establishes the first, second, and fourth elements. However, there was conflicting evidence as to the current value of the stereo. Were this specification to proceed to court-martial, I recommend that it be changed to read "of a value of more than \$100" vice "of a certain value, to wit: \$350 or of some value" as the exact value is not critical.

It is my opinion that reasonable grounds exist to believe the accused committed the crime of larceny as alleged. Accordingly, I recommend that this specification be referred for trial by general court-martial. The form of the charge is correct.

b. The elements of **Charge II, Specification 1** are:

(1)

(2)

The evidence produced at the hearing relevant to this specification was . . .

It is my opinion that reasonable grounds do not exist to believe that the accused committed the crime of X as alleged. Therefore, I recommend that this specification be dismissed. The form of the charge is correct.

c. During the course of the hearing, evidence was presented that the accused committed uncharged misconduct. I notified the accused, pursuant to RCM 405(e), that I would be investigating the uncharged misconduct. Reasonable grounds do exist to

believe the accused committed the uncharged misconduct. I recommend that a charge reflecting this uncharged misconduct be preferred.

6. Detailed defense counsel raised the following objections during the investigation:

a. Detailed defense counsel objected to the IO's consideration of Exhibit 14, summary portion of CGIS ROI of S/A Smith in violation of RCM 405(g)(4)(B) as an unacceptable alternative to testimony. I did not consider this document in forming my recommendations concerning the truth of the matters set forth in the charges, the form of the charges or the recommended disposition.

b. Subsequent to the admission of Exhibits 16 and 17, I limited the cross-examination of both alleged victims based on MRE 412 considerations. Detailed defense counsel then objected to my consideration of both Exhibits. I noted the objection. Detailed defense counsel had a full opportunity to cross-examine Expert witness, the author of Exhibits 16 and 17. I considered these reports acceptable alternatives to sworn testimony and considered the Exhibits.

c. Detailed defense counsel renewed his request for the witnesses listed in Exhibit 9. I reconsidered but stood by my initial determination of the availability of witnesses (Exhibit 12).

7. Recommended Disposition: General Court-Martial.

I. M. IO

Encl: (1) DD-457
(2) Summaries of Testimony
(3) List of Investigating Officer Exhibits
(4) Investigating Officer Exhibits

Copy: Defense Counsel
Government Counsel
SJA

INVESTIGATING OFFICER LIST OF EXHIBITS

- 1 Charge Sheet (4 pages)
- 2 Appointing Order (2 pages)
- 3 Investigating Officer (IO) letter to Accused dated date (2 pages)
- 4 IO letter to Detailed Defense Counsel (DC) dated date (2 pages)
- 5 IO email dated date (1 page)
- 6 Case package dated date (74 pages)*
- 7 Government Counsel (GC) letter dated date (1 page)
- 8 GC letter dated date (3 pages)
- 9 DC letter dated date (6 pages)
- 10 GC letter dated date (6 pages)
- 11 GC letter dated date (2 pages)
- 12 IO email dated date (1 page)
- 13 Statement of accused dated date (6 pages)
- 14 CGIS ROI dated date (14 pages)**
- 15 Expert Witness's C.V. (4 pages)
- 16 Victim's medical evaluation dated date (6 pages)
- 17 Victim's medical evaluation dated date (5 pages)

- 19 Chapter 8.H. of Personnel Manual, COMDTINST M1000.6 with change notices (19 pages)
- 20 Defense counsel objections

* used by IO to make the initial determination of the availability of witnesses; not used in the formation of the IO's recommendations concerning the truth of the matters set forth in the charges, form or disposition of the charges.

** not used by the IO in forming recommendations concerning the truth of the matters set forth in the charges, form or disposition of the charges.

SAMPLE INVESTIGATING OFFICER'S REPORT (DD-457)

INVESTIGATING OFFICER'S REPORT <i>(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)</i>					
1a. FROM: <i>(Name of Investigating Officer - Last, First, MI)</i>	b. GRADE	c. ORGANIZATION	d. DATE OF REPORT		
I. M. IO	LCDR/O-4	Maintenance & Logistics Command Lant	07/01/00		
2a. TO: <i>(Name of Officer who directed the investigation - Last, First, MI)</i>	b. TITLE	c. ORGANIZATION			
I. M. CO	Commander	Group Great Harbor			
3a. NAME OF ACCUSED <i>(Last, First, MI)</i>	b. GRADE	c. SSN	d. ORGANIZATION	e. DATE OF CHARGES	
A. B. DOE	SN/E-3	555-55-5555	Station Great Harbor	06/01/00	
<i>(Check appropriate answer)</i>					
4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (EXHIBIT 1)				YES	NO
				X	
5. THE ACCUSED WAS REPRESENTED BY COUNSEL <i>(If not, see 9 below)</i>				X	
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d)				X	
7a. NAME OF DEFENSE COUNSEL <i>(Last, First, MI)</i>	b. GRADE	8a. NAME OF ASSISTANT DEFENSE COUNSEL <i>(If any)</i>		b. GRADE	
B. A. LAWYER	LT				
c. ORGANIZATION <i>(If appropriate)</i>			c. ORGANIZATION <i>(If appropriate)</i>		
Naval Legal Service Office					
d. ADDRESS <i>(If appropriate)</i>			d. ADDRESS <i>(If appropriate)</i>		
Street Address City, ST ZIP					
9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)					
a. PLACE			b. DATE		
I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.					
c. SIGNATURE OF ACCUSED					
10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: <i>(Check appropriate answer)</i>				YES	NO
a. THE CHARGE(S) UNDER INVESTIGATION				X	
b. THE IDENTITY OF THE ACCUSER				X	
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31				X	
d. THE PURPOSE OF THE INVESTIGATION				X	
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE				X	
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT				X	
g. THE RIGHT TO CROSS-EXAMINE WITNESSES				X	
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED				X	
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION				X	
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING				X	
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE <i>(If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)</i>				X	
b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL					
See accompanying letter report.					
NOTE: If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c.") Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."					

COMDTINST M5810.1E

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)				
NAME (Last, First, MI)	GRADE (if any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
See accompanying letter report.				
b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.			X	
13a. THE FOLLOWING STATEMENTS, DOCUMENTS OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.				
DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (if not attached)		YES	NO
See accompanying letter report.				
b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED			X	
14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(k).)				
15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)				X
16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL			X	
17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM			X	
18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED			X	
19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d)(1).)			X	
20. I RECOMMEND:			X	
a. TRIAL BY <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input checked="" type="checkbox"/> GENERAL COURT-MARTIAL				
b. <input type="checkbox"/> OTHER (Specify in Item 21 below)				
21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)				
See accompanying letter report.				
22a. TYPED NAME OF INVESTIGATING OFFICER				
I. M. IO	b. GRADE	c. ORGANIZATION		
I. M. IO	LCDR/O-4	Maintenance & Logistics Command Lant		
d. SIGNATURE OF INVESTIGATING OFFICER			d. DATE	
I. M. IO			07/03/00	

BLANK INVESTIGATING OFFICER'S REPORT (DD-457)

INVESTIGATING OFFICER'S REPORT <i>(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)</i>				
1a. FROM: <i>(Name of Investigating Officer - Last, First, MI)</i>	b. GRADE	c. ORGANIZATION	d. DATE OF REPORT	
2a. TO: <i>(Name of Officer who directed the investigation - Last, First, MI)</i>	b. TITLE		c. ORGANIZATION	
3a. NAME OF ACCUSED <i>(Last, First, MI)</i>	b. GRADE	c. SSN	d. ORGANIZATION	e. DATE OF CHARGES
<i>(Check appropriate answer)</i>				YES NO
4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (EXHIBIT 1)				YES NO
5. THE ACCUSED WAS REPRESENTED BY COUNSEL <i>(If not, see 9 below)</i>				YES NO
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d)				YES NO
7a. NAME OF DEFENSE COUNSEL <i>(Last, First, MI)</i>	b. GRADE	8a. NAME OF ASSISTANT DEFENSE COUNSEL <i>(if any)</i>	b. GRADE	
c. ORGANIZATION <i>(if appropriate)</i>		c. ORGANIZATION <i>(if appropriate)</i>		
d. ADDRESS <i>(if appropriate)</i>		d. ADDRESS <i>(if appropriate)</i>		
9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)				
a. PLACE		b. DATE		
I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.				
c. SIGNATURE OF ACCUSED				
10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: <i>(Check appropriate answer)</i>				YES NO
a. THE CHARGE(S) UNDER INVESTIGATION				YES NO
b. THE IDENTITY OF THE ACCUSER				YES NO
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31				YES NO
d. THE PURPOSE OF THE INVESTIGATION				YES NO
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE				YES NO
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT				YES NO
g. THE RIGHT TO CROSS-EXAMINE WITNESSES				YES NO
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED				YES NO
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION				YES NO
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING				YES NO
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE <i>(If the accused or counsel were a absent during any part of the presentation of evidence, complete b below.)</i>				YES NO
b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL				
NOTE: If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c"). Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."				

DD FORM 457
84 AUG

EDITION OF OCT 69 IS OBSOLETE.

SAMPLE ADVISORY LETTER TO ACCUSED

[Command]

[Address]
Phone:
FAX:

5812

[DATE]

From: Lieutenant Commander I. M. Io, USCG, Investigating Officer
To: Seaman A. B. Doe, USCG
Via: Lieutenant B. A. Lawyer, JAGC, USNR, Detailed Defense Counsel
Subj: ARTICLE 32 RIGHTS ADVISEMENT

Ref: (a) Article 32, UCMJ
(b) R.C.M. 405, Manual for Courts Martial
(c) Article 3-F, Military Justice Manual, COMDTINST M5810.1E

1. By order of Captain I. M. Co, USCG, Commander, Coast Guard Group Great Harbor, I have been appointed investigating officer under Article 32(b) of the Uniform Code of Military Justice to investigate certain charges against you. The charges allege, in general, the offenses of violation of the UCMJ, Article 92 (violation of a lawful general order), Article 120 (rape) and Article 121 (larceny). The name of the accuser is Lieutenant I. M. Accuser, USCG.
2. In this investigation, you have the right to be present throughout the taking of evidence so long as your conduct is not disruptive. In addition, you have the right, at the proper time, to cross-examine all available witnesses against you; the right to present anything you might desire in your own behalf, either in defense, extenuation, or mitigation; the right to have a lawyer represent you at the investigation; the right to have me examine available witnesses requested by you; the right to make a statement in any form at the proper time, to remain silent, or refuse to make any statement regarding any offense that you are accused or suspected of, or concerning that which is being investigated. Further, you are advised that any statement made by you might be used as evidence against you in a trial by court-martial. It is imperative that you understand these rights.
3. As Investigating Officer, it is my duty to thoroughly and impartially investigate the charges against you. This investigation shall include inquiries into the truth of the matter set forth in the charges, form of the charges, and the disposition which should be made of the case in the interests of justice and discipline. It is my duty to impartially evaluate and weigh all the evidence. I will examine the available witnesses against you as well as any available witnesses requested by you. You and your counsel will be given full opportunity to cross-examine witnesses against you (if they are available) and to present anything either of you may desire in your behalf, either in defense or extenuation or mitigation. I can recommend that the charges

against you be referred to a general court-martial or to a different type of court-martial, or that the charges be dismissed or disposed of other than by trial by court-martial. It is not my purpose during this investigation to act as a prosecutor, but only as an impartial fact finder. It is vital that you understand this.

4. Before I begin the formal investigation and examination of any witnesses in this case, I must inform you that you have the right to be represented at all times during this investigation by legally qualified counsel. This means that you have the right to be represented by a civilian lawyer of your choice, but at no expense to the United States; by military counsel of your own selection if that counsel is reasonably available; or by counsel detailed from the detailing authority. There is no cost to you for military counsel. You also have the right to waive representation by counsel. I strongly recommend that you choose to be represented. I understand that you are already represented by Lieutenant A. B. Lawyer, JAGC, USNR, of the Naval Legal Services Office Jacksonville. If you intend to have different or additional representation, notify me as soon as possible.
5. The hearing is scheduled to begin at location on date, at time. The uniform is tropical blue long.

I. M. IO

Copy: Trial Counsel
Convening Authority

ARTICLE 32 INVESTIGATING OFFICER'S SCRIPT

INTRODUCTION & PRELIMINARY MATTERS

IO: This hearing will come to order. This hearing is convened by order of (grade and name), Commanding Officer, (organization)¹, to inquire into the truth of the allegations set forth on the charge sheet dated (date of charge sheet) in the case of (grade and name of the accused), examine the form of the charges, and secure information that will be helpful in determining the disposition of this case. Copies of the charge sheet and convening order have been furnished to the accused, defense counsel, and government counsel [and the reporter (if one is detailed)] .

Present at this hearing are myself (grade and name), the detailed investigating officer; the accused (grade and name); defense counsel (grade and name, if military; Mr. / Ms. and name, if civilian), and counsel for the government (grade and name), [and (grade and name of reporter), who has been detailed as the reporter for this hearing].

If a court-reporter has been detailed to the hearing, The investigating officer should swear in the court reporter.

IO: Do you (swear or affirm) that you will faithfully perform the duties of reporter for this investigation [so help you God]?

REP: I do.

If an interpreter has been detailed to the hearing, the investigating officer should also swear in that individual.

IO: Do you (swear/affirm) that in the case now in hearing you will interpret truly the testimony you are called upon to interpret [so help you God]?

INT: I do.

IO: (Grade and name of defense counsel), do you confirm that you are qualified to serve as defense counsel in accordance with Article 27 (b) and that you have been previously sworn under Article 42 (a) of the Uniform Code of Military Justice?

¹ The identity and organization of the convening authority may be ascertained from the appointing order.

DC: Yes, sir.

If the accused is represented by a civilian lawyer, the investigating officer should ascertain by inquiry whether such lawyer is a member of the bar of a Federal court or the highest court of a state, and that he / she is currently licensed to practice.

IO: Would civilian counsel representing the accused please identify yourself for the record and state your qualifications?

CIV: I am (Mr/Ms). I am a civilian attorney. My office is located at _____ my mailing address is _____. My office phone number is _____. I am a member in good standing of the _____ bar.

CIVILIAN COUNSEL MUST BE SWORN

IO: Do you (swear/affirm) that you will faithfully perform all the duties of defense counsel in the case now in hearing (so help you God)?

CIV: I do.

IO: It appears that counsel representing the accused has/have the requisite qualifications under RCM 405(d)(2).

IO: Before I proceed further, I would like to state that I am not aware of any reason that would disqualify me from serving as investigating officer. Is the accused or counsel for either side aware of any grounds that might disqualify me from conducting this investigation?

GC: The government is aware of none.

DC: The defense is aware of none.

PRELIMINARY ADVICE

IO: (Grade and name of accused), I going to explain to you the purpose of the hearing and the rights that you have at this hearing. If you do not understand what I am telling you, let me know and I will explain it again until you and I are both satisfied that you understand.

IO: The purpose of this hearing is to investigate the charges made against you and to recommend to (grade and name of CA) what disposition should be taken. I know nothing at all about your case except for the information contained in the charge sheet and in the

order that appointed me to investigate these charges², and I have formed no opinion as to what I will recommend. I will make my recommendation to (grade and name of CA) solely on the basis of the evidence that is introduced and I receive during this hearing.

I can make any one of a number of recommendations. I can recommend that you be tried by general court-martial; by special court-martial; by summary court-martial; that these charges be referred for disposition at a hearing convened under Article 15 of the Uniform Code of Military Justice that is, Captain's Mast, or I can recommend that all of the charges, or some of them, be dismissed and that you not undergo a trial or a mast at all.

(Grade and name of CA) is not bound by my recommendation. For example, if I recommend that a charge against you should be dismissed, he / she may still decide to send that charge to a court-martial.

Do you have any questions about what I have just told you?

ACC: No, sir.

IO SHOULD CHECK OFF BLOCK 10D ON FORM DD-457

IO: I will now advise you of the nature of the charges against you as set forth on the charge sheet. They are (describe charges in plain language that the accused will understand):

IO: The charges were preferred by (grade, name and organization of the accuser), a person subject to the Uniform Code of Military Justice.

Do you have any questions about what I have just told you?

ACC: No, sir.

IO SHOULD CHECK OFF BLOCK 10A & B ON FORM DD-457

IO: One of the rights you have at this hearing is the right to be represented, at no cost to you, by a military lawyer who has been detailed to represent you. (Grade and name of

² If the investigating officer has had pre-hearing discussions with counsel or reviewed investigatory material in order to make witness and evidentiary determinations, the investigating officer should add: ". . . except that I have met with your counsel and with Government counsel to discuss some of the legal issues that may arise during this hearing, to identify the witnesses who are expected to testify, and to mark the exhibits that may be offered. . . ." and/or ". . . except that I have reviewed _____ in order to make initial determinations regarding the availability of witnesses and evidence for this hearing . . . "

CA) has detailed (grade and name of detailed defense counsel) to represent you at this hearing.

You also have the right to ask for another free military lawyer, either to work with (grade and name of detailed defense counsel), or to represent you instead of (grade and name of detailed defense counsel). However, that other military lawyer must be reasonably available, and the determination of availability will be made by (grade and name of CA), and the commanding officer of that other military lawyer.

Finally, you have the right to be represented by a civilian lawyer, at your own expense. This civilian lawyer may work with (grade and name of detailed defense counsel) or represent you instead of (grade and name of detailed defense counsel).

Do you have any questions about what I have just told you?

ACC: No, sir.

IO: By whom do you want to be represented at this hearing?

ACC: (Grade and name of detailed defense counsel), sir.

If the accused desires civilian counsel and has not yet been able to secure such counsel, or if the accused desires a military lawyer other than the one who has been detailed to represent the accused at the Article 32 hearing, the investigating officer should adjourn the hearing for a reasonable time in order for the accused to retain civilian counsel or for the accused or his detailed counsel to submit the request for individual military counsel through the trial counsel to the CA.³

If the accused is not represented by counsel or insists on proceeding pro se, the investigating officer should caution the accused as follows:

IO: (Grade and name of accused) I caution you that the charge(s) against you are very serious and it is important that you understand all of your rights as well as the procedures that control this hearing. I suggest to you that you need the assistance of a lawyer to properly protect your rights and to otherwise help you. As I explained earlier, you have an absolute right to a qualified, free military lawyer who will provide that assistance. You are, of course, completely free to give up this right and to decide that you do not want a lawyer to assist you. But I again warn you that if you decide to proceed in this hearing without a lawyer, you do so at your peril and may, without meaning to do so, jeopardize your case.

Do you understand what I have just told you?

³ See Article 38(b)(3), UCMJ and RCM 506(b)(2).

ACC: Yes, sir.

IO: Do you wish to have a lawyer to represent you, or not?

ACC: I don't want a lawyer.

If the investigating officer is satisfied that the accused has made a knowing and intelligent waiver of the right to counsel, the officer should complete blocks 9(a) and 9(b) of the DD Form 457, and ask the accused to sign the form in block 9(c), indicating the fact of the waiver. If the accused refuses to sign, the investigating officer will explain the refusal in block 21 of the form.

If the investigating officer is not satisfied that the accused has knowingly and intelligently waived the right to counsel, the officer should proceed as follows:

IO: (Grade and name of accused) I am not satisfied that you fully appreciate the consequences of not having a lawyer at this hearing. Therefore, I will direct (grade and name of detailed defense counsel) to continue to act as your counsel.

IO: You also have the right to remain silent at this hearing and to say nothing at all about the charge(s) against you. If you decide not to make any statement, I will not hold that against you in any way.

If you wish, you may make a statement. You may make that statement orally, that is, by taking the witness stand, or you may write it out and give it to me, or you may do both.

You may make any such statement under oath, but you do not have to do so. If you make it under oath, then Government counsel, (name and grade of Government counsel), may cross-examine you on its contents, and I may ask you questions about its contents. If you make an unsworn statement, then neither Government counsel nor I can question you concerning its contents.

Do you have any questions about what I have just told you?

ACC: No, sir.

IO: You may, in any such statement, present facts that you believe constitute a defense to the charge(s), or you may present facts in what we call extenuation or mitigation. By "extenuation," I mean circumstances that might explain why the charged offense(s) happened and furnish a partial excuse. By mitigation, I mean circumstances that indicate that the charged offense(s) ought not to be treated as seriously as they might be under normal circumstances.

However, if you make any statement - sworn, unsworn, written or oral - the contents of that statement may lawfully be used against you in any court-martial or mast proceeding. Before you make any statement, you may consult with your counsel.

Do you have any questions about what I have just told you?

IO SHOULD CHECK OFF BLOCK 10C & J ON FORM DD-457

ACC: No, sir.

IO: As I understand, the persons who will testify at this hearing are (identify all witnesses of whom the investigating officer is aware):

IO: Other evidence may be presented in the form of exhibits. You have the right to examine all of these exhibits and make appropriate objections, through your defense counsel, as to my consideration of any of these exhibits.

You have the right to be present throughout the hearing unless you decide not to be here or if I decide that your conduct is disruptive. You have the right to cross-examine all witnesses who testify for the Government, and that right will be exercised for you by your defense counsel.

Do you have any questions about what I have just told you?

ACC: No, sir.

IO SHOULD CHECK OFF BLOCK 10E, F& G ON FORM DD-457

IO: You have the right to call any reasonably available witnesses whom you think may have anything relevant to say with respect to these charges, and to offer any other reasonably available evidence that you think may be relevant. I will determine whether any witness you wish to call, or other evidence that you wish to offer, is reasonably available or not.⁴

Do you have any questions about what I have just told you?

ACC: No, sir.

IO SHOULD CHECK OFF BLOCK 10H & I ON FORM DD-457

IO: Do you have any questions at all about your rights at this hearing, or about anything that I have said so far?

ACC: No, sir.

THE INVESTIGATING OFFICER HAS NOW COMPLETED HIS REQUIRED ADVICE TO THE ACCUSED. ALL BOXES UNDER BLOCK 10 SHOULD NOW BE CHECKED "YES" ON THE DD FORM 457

MENTAL RESPONSIBILITY

⁴ If the accused objects to the investigating officer's determination that a witness is unavailable, the investigating officer must give the reasons for determining unavailability in the report to the convening authority. RCM 405(g)(2)(D).

IO: (Grade and name of defense counsel), are there grounds to assert that the accused was not mentally responsible for his / her actions at the time of the offense(s) charged or that the accused is mentally incompetent to participate in the defense of his / her case?

DC: No, sir.

An affirmative answer to this question does not necessarily furnish a basis for recommending the accused be referred to a psychiatric board (RCM 706) and thereby delay the investigation. There must be some reasonable grounds for the answer other than a bare assertion, by the accused or counsel, of lack of mental responsibility or incompetence to participate in the hearing. Such grounds might include a preliminary diagnosis by a medical officer, coupled with a recommendation for a psychiatric evaluation. If the investigating officer finds that such grounds exist, based on appropriate evidence, such officer should mark the "Yes" box in block 14, explain the reasons therefor in block 21, adjourn (not close) the hearing and refer the matter to the CA. If the investigating officer receives a written medical report into evidence on the issue of mental responsibility or competency to participate in the hearing, that report should be attached to the referral letter.

On receipt of a negative answer, the investigating officer should mark the "No" box in block 14 on DD Form 457.

ARTICLE 32 PROCEDURES

IO: Now, let me go over with you the procedures I will use to conduct this investigation.

First, I / government counsel will call any available witnesses and produce any available documents that are relevant to this investigation. Defense counsel will be given an opportunity to cross-examine these witnesses after they have testified. Defense counsel will also be allowed to examine any documents. I will explain in a minute how I intend to handle objections.

Second, after these witnesses and documents have been produced, the defense will be permitted to put on any available witnesses and documents of its own that are relevant to this investigation. Any defense witness will be subject to questioning by government counsel and me.

HANDLING OBJECTIONS

IO: I will handle any objections in the following fashion. I am not a judge. I do not rule on the admissibility of evidence. I am entitled to consider any evidence that qualifies for my consideration under RCM 405. That includes testimony and other evidence, or their alternatives, if permitted under RCM 405(g)(4)&(5).

Generally, the Military Rules of Evidence do not apply in these proceedings. Those that do apply are the rule prohibiting compulsory self-incrimination, the rule of privilege for any mental examination of the accused, the rule on degrading questions, the rule requiring that a suspect who is subject to the code be warned of the rights afforded by Article 31 before being questioned, the rules on privileges contained in Section V of the Military Rules of Evidence, and the rule regarding evidence of prior sexual behavior by the victim of a sexual offense. Thus, I can and will consider hearsay evidence unless there is some other reason to prevent me from doing so.

Now that I have said that I am not going to rule on evidentiary questions, except those expressly mentioned, let me explain the type of objections I will rule on.

First, I will rule on objections that relate to relevancy. I want to keep this investigation focused on the subject matter.

Second, I expect counsel to be familiar with the alternatives to testimony and alternatives to evidence that I am entitled to consider under RCM 405. I will accept and rule on any defense objections to my consideration of alternatives to evidence or testimony. If it turns out that the alternatives to testimony is one that I cannot consider, I will so inform the parties.

OBJECTIONS MUST BE IN WRITING TO BE PRESERVED

IO: I am required to note objections in my report of investigation if a party so requests. I am also allowed to require that a party making an objection file the objection with me in writing. So, here is the rule we will follow for these proceedings: If any party makes an objection that they want me to note in the report of investigation, they must file that objection with me in writing within 24 hours after the close of this investigation. Any objection that is not reduced to writing and filed within the deadline will be discussed in my report of investigation only if I, in my discretion, choose to do so.

EXAMINATION OF WITNESSES AND EXHIBITS

The investigating officer may now direct the government counsel to proceed and call the first witness for the government. The investigating officer or government counsel will administer the oath as follows:

IO/GC: Do you swear (or affirm) that the evidence that you are about to give in the case now in hearing will be the truth, the whole truth and nothing but the truth [, so help you God]?

WIT: I do.

It is customary for the government counsel to conduct the initial examination of all government witnesses. The investigating officer may conduct the initial examination

and must do so in the unusual circumstance where no government counsel has been detailed. The defense counsel may then cross-examine (if more than one defense counsel appears, the investigating officer should permit only one to conduct the cross-examination)⁵, and the investigating officer may then pose questions. The usual rules apply to redirect and recross examination.

Counsel should ask each witness to identify himself or herself by name, rate and duty station (or, in the case of civilian witnesses, address and occupation).

Documentary evidence, and real evidence (e.g., guns, knives, drugs), should be marked for identification. The investigating officer should ensure that counsel give copies of documents, offered in evidence, to opposing counsel.

The investigating officer should keep a copy of each piece of evidence to be submitted with his or her report. Originals of all evidence, while available for inspection by the investigating officer and opposing counsel at the hearing, are retained by the counsel introducing the evidence and not the investigating officer. For example, the government may put Special Agent Jones on the stand to verify that a baggie of marijuana was found on the accused's person. The marijuana should be available at the Article 32 hearing for inspection by the investigating officer and defense counsel. A photocopy of the baggie should be made by the investigating officer to include in his or her report. Government counsel or Special Agent Jones will retain custody of the baggie of marijuana.

If government counsel offers a confession or admission of the accused, the investigating officer must look into the circumstances to determine whether the accused received proper Miranda-Tempia warnings and knowingly and intelligently waived his or her rights against self-incrimination prior to making the confession or admission.⁶

After all available witnesses called by the government counsel have testified, the investigating officer should then consider any sworn statements of witnesses who have been determined to be not reasonably available. The investigating officer may only consider unsworn statements with the consent of the accused. If such a

⁵ RCM 405(h)(1)(A) requires that the investigating officer afford the defense "wide latitude" in cross-examination during Article 32 hearings.

⁶ For a guide to the scope of the inquiry, the questions that the investigating officer should ask, and the standards for determining admissibility of a confession or other pretrial statement of an accused when the Government offers such a statement to prove an element of the offense charged, *see Military Judges' Bench book* (DA Pam 27-9), chapter 4; *see also* Military Rules of Evidence 304.

determination has been made with respect to a prosecution witness, the investigating officer should proceed as follows:⁷

IO: I do not intend to call (grade, if applicable, and name of witness) because (I have) or (his / her commanding officer has) determined that he / she is not reasonably available due to (describe circumstances; e.g., illness, deployment).⁸ However, I will consider the (UNSWORN statement of) (grade, if applicable, and name of witness) but only with the consent of the accused. ** SWORN statements may be considered over the objection of accused if witness is not reasonably available ** (Grade and name of Government counsel), please show a copy of this statement to the accused and his/her counsel. (After the accused and counsel have had the opportunity to examine the statement, then inquire:) Do you consent to my consideration of this statement as an alternative to the testimony in person of (grade, if applicable, and name of witness)?

⁷ See RCM 405(g)(4)(A) and 405(g)(4)(B).

⁸ See footnote 7, *supra*.

DEFENSE EVIDENCE

The defense may now present matters in defense, extenuation, and mitigation. Remember that the limitations in RCM 405 place limits on the form of evidence the government can offer. The defense may offer evidence in any form it chooses.

If the accused presents witnesses, the investigating officer will swear each of them. Defense counsel (or one of them, if more than one defense counsel) will examine each witness and the government counsel (or one of them, if more than one government counsel) will cross-examine. The investigating officer may then inquire of the witness.

If a requested defense witness has been determined to be not reasonably available, the investigating officer should put the following statement on the record:

IO: (Grade and name of accused), you requested that (grade, if applicable, and name of witness) be called as a witness in your behalf. Despite your request, I do not intend to call this individual as a witness because (I have)(his / her commanding officer has) determined that he / she is not reasonably available due to (state reasons for determining unavailability).⁹ Do you wish to present any alternative to the live testimony of this witness?

DC: (Yes, sir.)(No, sir.)

IO: Do you desire that any witnesses, other than those whom you previously requested, or other evidence be produced at this time? If so, I will adjourn this hearing in order to determine whether they are reasonably available and, if they are, I will arrange for their appearance.

ACC: (Yes, sir.)(No, sir.)

If the accused requests the production of additional witnesses or other evidence, the investigating officer should adjourn the hearing for a reasonable time to make availability determinations and assemble the witnesses and evidence requested.

After government counsel and defense counsel have rested, the investigating officer should inquire whether the accused desires to exercise his or her right to make a statement.

⁹ See footnote 7, *supra*.

IO: (Grade and name of accused), I previously advised you that, while you cannot be compelled to make any statement, you have the right to make a statement in any form you desire. Bearing that advice in mind, consult with your counsel and advise me whether you wish to make a statement at this time or not.

ACC: I do / do not desire to make a statement.

If the accused makes an oral statement, the investigating officer should summarize it (if there is no reporter detailed to the hearing) and append it to the DD Form 457 as an exhibit. Any written statement by the accused should be similarly appended.

CLOSING

IO: Does the Government wish to comment on the evidence?

GC: (Comments or declines to comment.)

IO: Does the defense wish to comment on the evidence?

DC: (Comments or declines to comment.)

IO: Government counsel, do you anticipate that all of your witnesses will be available in the event of trial?

In the event of a negative response from counsel, the investigating officer should inquire further into the circumstances and report the results of the inquiry to the CA (see blocks 16 and 21 on the DD Form 457) so the CA may arrange to depose, if possible, those witnesses expected to be absent at the time of trial.

IO: This investigation is closed.

If a reporter will prepare a verbatim or summarized transcript of the hearing, the investigating officer should await a copy of such transcript and review it, together with any notes that the officer may have taken during the hearing, before completing the DD Form 457. If no reporter is detailed to the hearing, the investigating officer should, using his notes, summarize in writing the testimony of each witness. Such summaries should be signed by the witness, if such signature can be obtained without delaying the investigation, and attached to the DD 457 as exhibits of the investigating officer.

After completing the DD Form 457, the investigating officer should forward it, together with a copy of the transcript (or the summaries of testimony prepared by the officer) and all documentary exhibits, to the CA via the CA's staff judge

COMDTINST M5810.1E

advocate. Although it is the CA's responsibility to furnish a complete copy of the report to the accused [see RCM 405(j)(3)], the preferred practice is for the investigating officer to furnish such copies to both government counsel and to defense counsel.

GRANT OF IMMUNITY (TRANSACTIONAL)

IN THE MATTER OF)
)
) TRANSACTIONAL GRANT
 NAME) OF IMMUNITY AND
 RATE/RANK) ORDER TO TESTIFY
 SERVICE)
) DATE
 _____)

To: (WITNESS TO WHOM IMMUNITY IS TO BE GRANTED)

1. As an officer empowered to convene general court-martial under Rule for Courts-Martial (RCM) 704, Manual for Courts-Martial, United States, I hereby make the following findings:

a. (GENERALLY DESCRIBE THE INFORMATION THE WITNESS POSSESSES AND WILL DISCLOSE PURSUANT TO THE GRANT OF IMMUNITY)

b. Presentation of this information ("PRIOR TO JUDICIAL ACTION AND SUBSEQUENTLY") at the court-martial of (NAME OF THE ACCUSED) is in the public interest.

c. It is likely that (NAME OF WITNESS) will refuse to answer and to testify on the basis of the privilege against self-incrimination, if subpoenaed to appear as a witness.

d. (REASONS WHY IT IS EXPECTED THAT THE WITNESS WILL NOT TESTIFY). [Examples: "(NAME OF WITNESS) has previously refused to answer questions regarding this matter, relying on the right to remain silent" OR "Counsel for (NAME OF WITNESS) has indicated to trial counsel that he/she would advise (NAME OF WITNESS) to invoke his/her right against self-incrimination if subpoenaed to testify as a witness at subject court-martial."]

2. Based on the foregoing facts, pursuant to RCM 704, I hereby order (NAME OF WITNESS) to appear and testify truthfully at any court-martial that may take place in this matter. (INSERT THE FOLLOWING IF NECESSARY: "I FURTHER ORDER (NAME OF WITNESS) TO PROVIDE TRUTHFUL AND COMPLETE INFORMATION CONCERNING THESE MATTERS TO MILITARY INVESTIGATORS, GOVERNMENT COUNSEL, AND DEFENSE COUNSEL.")

3. In consideration of the ("INFORMATION AND") testimony in the foregoing matter, (NAME OF WITNESS) is hereby granted immunity from prosecution, for any offense or offenses arising out of the matters about which he/she may be required to ("GIVE INFORMATION OR") testify, in a trial by court-martial, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this order.

4. This order is issued pursuant to my authority under RCM 704 and not pursuant to the

COMDTINST M5810.1E

provisions of 18 U.S.C. §§ 6001-5. It was determined on (DATE) that there is no Department of Justice interest in any potential case against (NAME OF WITNESS) concerning criminal conduct arising out of the incidents and subsequent investigation of this matter.

5. The grant of immunity embodied in this order constitutes a transactional ("FULL") grant.

/s/

Grade, Title
Officer Exercising General
Court-Martial Jurisdiction

GRANT OF IMMUNITY (TESTIMONIAL)

IN THE MATTER OF)
)
) TESTIMONIAL GRANT
 NAME) OF IMMUNITY AND
 RATE/RANK) ORDER TO TESTIFY
 SERVICE)
) DATE
 _____)

To: (WITNESS TO WHOM IMMUNITY IS TO BE GRANTED)

1. As an officer empowered to convene general courts-martial under Rule for Courts-Martial (RCM) 704, Manual for Courts-Martial, United States, I hereby make the following findings:

a. (GENERALLY DESCRIBE THE INFORMATION THE WITNESS POSSESSES AND WILL DISCLOSE PURSUANT TO THE GRANT OF IMMUNITY)

b. Presentation of this information ("PRIOR TO JUDICIAL ACTION AND SUBSEQUENTLY") at the court—martial of (NAME OF THE ACCUSED) is in the public interest.

c. It is likely that (NAME OF WITNESS) will refuse to answer and to testify on the basis of his privilege against self-incrimination, if subpoenaed to appear as a witness.

d. (REASONS WHY IT IS EXPECTED THAT THE WITNESS WILL NOT TESTIFY) [Examples: "(NAME OF WITNESS) has previously refused to answer questions regarding this matter, relying on the right to remain silent" OR "Counsel for (NAME OF WITNESS) has indicated to trial counsel that he/she would advise (NAME OF WITNESS) to invoke his/her right against self-incrimination if subpoenaed to testify as a witness at subject court-martial."]

2. Based on the foregoing facts, pursuant to RCM 704, I hereby order (NAME OF WITNESS) to appear and testify truthfully at any court-martial that may take place in this matter. ("I FURTHER ORDER (NAME OF WITNESS) TO PROVIDE TRUTHFUL AND COMPLETE INFORMATION CONCERNING THESE MATTERS TO MILITARY INVESTIGATORS, GOVERNMENT COUNSEL, AND DEFENSE COUNSEL.")

3. In consideration of the ("INFORMATION AND") testimony in the foregoing matter, (NAME OF WITNESS) is hereby granted immunity from use of the ("INFORMATION AND") testimony, or any evidence directly or indirectly derived from the ("INFORMATION OR") testimony, against him/her in a trial by court-martial, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this order.

4. This order is issued pursuant to my authority under RCM 704 and not pursuant to the provisions of 18 USC §§ 6001-5. It was determined on (DATE) that there is no

COMDTINST M5810.1E

Department of Justice interest in any potential case against (NAME OF WITNESS) concerning criminal conduct arising out of the incidents and subsequent investigation of this matter.

5. The grant of immunity embodied in this order constitutes a testimonial (USE) grant.

/s/

Grade, Title
Officer Exercising General
Court-Martial Jurisdiction

GRANT OF IMMUNITY (TESTIMONIAL/CIVILIAN)

IN THE MATTER OF)
))
) TESTIMONIAL GRANT
NAME) OF IMMUNITY AND
RATE/RANK) ORDER TO TESTIFY
SERVICE))
) DATE
_____)

To: (WITNESS TO WHOM IMMUNITY IS TO BE GRANTED)

1. As an officer empowered to convene general courts-martial under Rule for Courts—Martial (RCM) 704, Manual for Courts-Martial, United States

I hereby make the following findings:

a. (GENERALLY DESCRIBE THE INFORMATION THE WITNESS POSSESSES AND WILL DISCLOSE PURSUANT TO THE GRANT OF IMMUNITY)

b. Presentation of this information ("PRIOR TO JUDICIAL ACTION AND SUBSEQUENTLY") at the court—martial of (NAME OF THE ACCUSED) is in the public interest.

c. It is likely that (NAME OF WITNESS) will refuse to answer and to testify on the basis of his privilege against self-incrimination, if subpoenaed to appear as a witness.

d. (REASONS WHY IT IS EXPECTED THAT THE WITNESS WILL NOT TESTIFY) [Examples: "(NAME OF WITNESS) has previously refused to answer questions regarding this matter, relying on the right to remain silent" OR "Counsel for (NAME OF WITNESS) has indicated to trial counsel that he/she would advise (NAME OF WITNESS) to invoke his/her right against self-incrimination if subpoenaed to testify as a witness at subject court-martial."]

2. Based on the foregoing facts, pursuant to RCM 704, and 18 U.S.C. §6004, I hereby order (NAME OF WITNESS) to appear and testify truthfully at any court-martial that may take place in this matter. ("I FURTHER ORDER (NAME OF WITNESS) TO PROVIDE TRUTHFUL AND COMPLETE INFORMATION CONCERNING THESE MATTERS TO MILITARY INVESTIGATORS, GOVERNMENT COUNSEL, AND DEFENSE COUNSEL.")

3. In consideration of the ("INFORMATION AND") testimony in the foregoing matter, (NAME OF WITNESS) is hereby granted immunity from use of the ("INFORMATION AND") testimony, or any evidence directly or indirectly derived from the ("INFORMATION OR") testimony, against him/her in a trial by court-martial or in Federal District Court or a state court, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this order.

4. This order is issued with the approval of the Attorney General of the United States as

COMDTINST M5810.1E

set forth in Exhibit I annexed hereto.

5. The grant of immunity embodied in this order constitutes a testimonial (USE) grant.

/s/

Grade, Title
(OFFICER EXERCISING GENERAL
COURT-MARTIAL JURISDICTION)

SAMPLE LETTER TO U.S. ATTORNEY REGARDING CIVILIAN WITNESS IMMUNITY

The Honorable [U.S. Attorney Name]
United States Attorney
[] District of [state]
[address]
[city], [state] [zip]

Dear [name of US Attorney]:

The purpose of this letter is to coordinate a grant of immunity for a court-martial with your office. This coordination is required by Rule for Courts-Martial 704, the procedural rule governing immunity in courts-martial. I have been in communication with [ASUA] of your office regarding this issue.

The basic facts of the case are as follows.

The government intends to immunize XXXX and order her to testify at the trial. As stated above, we are required by the Rules for Court-Martial to coordinate with your office. Based on my discussion with [AUSA], I do not believe that the Department of Justice has any interest in this case. I request your concurrence that your office has no interest in this case and request your assistance in obtaining the approval of the Attorney General for the Coast Guard to grant testimonial immunity to XXXXX. If you need additional information prior to making a decision you may reach me at XXX-XXX-XXXX.

Sincerely,

COMDTINST M5810.1E

SAMPLE LETTER TO DOJ WITNESS IMMUNITY SECTION REGARDING CIVILIAN WITNESS
IMMUNITY

U.S. Department of Justice
Witness Immunity Unit
Criminal Division
1301 N.Y. Ave., N.W., Suite 1225
Washington, D.C. 20005

To Whom It May Concern:

The purpose of this letter is to coordinate a grant of immunity for a court-martial with your office. This coordination is required by Rule for Courts-Martial 704, the procedural rule governing immunity in courts-martial. I have been in communication with [name of AUSA], Chief of the Criminal Division for the [] District of [name of state] regarding this issue. The court-martial begins on [date].

The basic facts of the case are as follows.

The government intends to immunize XXXXX and order her to testify at the trial. She has told other people that she and [Accused] were not really married and her testimony is essential to proving the marriage certificate and other documentation was falsified. Additionally, her testimony is absolutely necessary to prove that [Accused] assaulted her.

As stated above, we are required by the Rules for Court-Martial to coordinate with your office. Based on my discussion with [AUSA], I do not believe that the Department of Justice has any interest in this case. I request your concurrence that your Department has no interest in this case. If you need additional information prior to making a decision you may reach me at XXX-XXX-XXXX.

Sincerely,

**SAMPLE LETTER FROM TRIAL COUNSEL
REQUESTING WITNESSES**

[Command]

[Address]
Phone:
FAX:

5813
[DATE]

From: LT Kenneth M. HARRISON, USCG, Trial Counsel
To: Commanding Officer, USCGC TAMPA (WMEC 902)

Subj: SPECIAL COURT-MARTIAL, UNITED STATES V. JACOBS

1. Trial in the case of the United States v. Michael L. Jacobs. USCG, has been scheduled for 0900 hours, 04 October 2012, in Room 504, Federal Building, Portsmouth, Virginia.
2. JACOB's detailed defense counsel is LTJG E. F. HARRINGTON, USCGR. I have been designated trial counsel.
3. It is requested that the following individuals, all prosecution witnesses, attend the trial.
 - a. LT L. A. INGRAHAM, USCG, USCGC TAMPA (WMEC 902);
 - b. BMC A. N. COULTER, USCG, U.S. Coast Guard Sector Hampton Roads, Virginia; and
 - c. SN L. N. GONZALEZ, USCG, USCGC TAMPA (WMEC 902).
4. As of this date, the defense has requested that one civilian witness be called to testify in their behalf. I will issue a subpoena summoning him to testify.
5. The above witnesses and the accused should arrive at the location stated in paragraph 1 above not later than 0800 hours, 04 October 2012. Insofar as the above witnesses are essential to the trial of this case, it is requested that I be notified immediately of any factors which might delay or prevent the attendance of any witnesses.
6. The members of the court appointed under your convening order dated 10 September 2012 should arrive at the trial site prior to 1000 hours, 04 October 2012, for the trial.
7. All participants to the trial, including the accused, should appear in the Coast Guard Service Dress Blue Bravo uniform.

K. M. HARRISON

SAMPLE SUBPOENA

SUBPOENA

The President of the United States, to Mr. Arnold Z. Swartz, SSN (required)

You are hereby summoned and required to appear on the 10th day of October, 19 00, at 9:00

o'clock A.M., at RM 504 Federal Bldg., (before)

designated to take your deposition) (a Special court-martial of the United States) (a court of inquiry), appointed

by Commanding Officer, USCGC NORTHLAND (WMEC 904) order, dated 5 October

19 00, to testify as a witness in the matter of

(and bring with you)

Failure to appear and testify is punishable by a fine of not more than \$500 or imprisonment for a period not more than six months, or both. 10 U.S.C. §847. Failure to appear may also result in your being taken into custody and brought before the court-martial () under a Warrant of Attachment (DD Form 454). Manual for Courts-Martial R.C.M. 703(e)(2)(G).

TONO: 11/99/G8/1/G/BL/123/000 (sample)
ACCT DATA: 2P/123/987/56/0/BL/12345/2109 (sample)

Bring this subpoena with you and do not depart from the proceeding without proper permission.

Subscribed at Portsmouth, VA this 6th day of October 19 00.

Q. M. HALE, LT, USCG Trial Counsel

The witness is requested to sign one copy of this subpoena and to return the signed copy to the person serving the subpoena.

I hereby accept service of the above subpoena.

Signature of Witness

NOTE: If the witness does not sign, complete the following:

Personally appeared before me, the undersigned authority, who, being first duly sworn according to law, deposes and says that at 19, he personally delivered to in person a duplicate of this subpoena.

Grade

Signature

Subscribed and sworn to before me at, this

day of 19

Grade

Official Status

Signature

SAMPLE CERTIFICATE IN LIEU OF A SUBPOENA

CERTIFICATE IN LIEU OF SUBPOENA

I hereby certify that, although not subpoenaed,

Mr. Arnold Z. Swartz
24 Gold Street
Creston, Iowa 23046

was requested to and did in fact appear at the trial by special court-martial in the case of United States v. Seaman Ivan M. SMITHY 000 00 0000, USCG, USCGC NORTHLAND, Portsmouth, Virginia, held in Room 504, Federal Building, Portsmouth, Virginia, on 10 October 1984.

Q. M. Hale

Q. M. HALE
Lieutenant, U. S. Coast Guard
Trial Counsel

SAMPLE CLAIM FOR WITNESS FEES AND MILEAGE

Standard Form 1157 (Rev. 4-80)
 Department of the Treasury
 1 TFRM 4-2000
 1157-107

CLAIMS FOR WITNESS ATTENDANCE FEES, TRAVEL, AND MISCELLANEOUS EXPENSES

Previous editions obsolete

PART I - ATTENDANCE CERTIFICATION

1. General Information

a. Witness Name Mr. Arnold Z. Swartz d. Case Name U. S. v. SMITHY
 b. Witness Address _____ e. Case Number _____
 Street 24 Gold Street f. District or Location Portsmouth, VA
 City Creston State IA Zip 44444
 c. U.S. Citizen: Yes (x) No () Alien: Legal () Illegal ()

2. Travel and Attendance Information

a. Dates of Travel From Residence to Case Location: From 9 / 10 / 00 To 9 / 10 / 00
 b. Dates of Travel From Case Location to Residence: From 10 / 10 / 00 To 10 / 10 / 00
 c. Dates of attendance: From 10 / 10 / 00 To 10 / 10 / 00

3. Certification

I certify that the witness named above attended in the case or matter indicated and is entitled to the statutory allowances for attendance and travel. In the proceedings before United States Magistrate where more than four witnesses were called, the Magistrate also certifies that the approval and certificate of the U.S. Attorney were first obtained.

Q. M. HALE Trial Counsel 10 October 00
 (Signature) (Title) (Date)

PART II - WITNESS CLAIM FOR FEES AND ALLOWANCES

	Rate	No. of Days	Amount Claimed	Totals
1. Attendance Fees				
a. Fact, Pretrial Conference & Detained Witness	30.00	01	\$ 30.00	
Total Attendance Fees				\$ 30.00
2. Mileage Allowance (Indicate type of privately owned vehicle: Auto) (motorcycle) (airplane)				
	Rate	No. of Miles	Amount Claimed	
a. From Residence to Case Location (and Return)			\$ 0.00	
b. From Hotel/Motel to Court (or Court to Hotel/Motel)			0.00	
Total Mileage Allowance				\$ 0.00
3. Subsistence Per Diem Rate: _____ or HRGA Rate: _____ (HRGA: High Rate Geological Area)				
	Rate	No. of Days	Amount Claimed	
a. Meals			\$ 0.00	
b. Lodging			0.00	
Total Subsistence Allowance				\$ 0.00
4. Miscellaneous Allowances (See Item 8 Below)				
a. Common Carrier			\$ 200.00	
b. Parking Fees, Tolls, Taxi Fares			55.00	
Total Miscellaneous Allowances				\$ 255.00
5. Total Amount Claimed (Items 1-4, Part II)				\$ 285.00
6. Less Outstanding Check or Cash Advances				\$ _____
7. New Amount Claimed by Witness				\$ 285.00

8. Use this space to itemize your expenses from Item 4, Part II above. Receipts are required for all common carrier and parking fees, and for all other single items in excess of \$15.00.

Item 4
 Airline Ticket: \$200.00
 Taxi Fares: \$55.00

 SSN: (required)
 TONO: 11/99/G8/1/G/BL/123/000 (sample)
 ACCT DATA: 2P/123/987/56/0/BL/12345/2109 (sample)

Paid by Check No. _____
 Paid by Cash \$ _____

 (Signature of Payee)

 (Date)

9. Witness Certification

I certify that the above data is correct and that payment has not been received, and that at the time of travel and attendance I (was) (was not) a U.S. Government employee and I (was) (was not) a citizen of the United States. (If not a citizen, present your Alien Registration Record with this form.) I (did) (did not) receive a Government Transportation Request to pay for my official travel.

SAMPLE WARRANT OF ATTACHMENT (DD-454)

WARRANT OF ATTACHMENT

(Type) Court-Martial of the United States
Coast Guard

UNITED STATES
V.
(Name and SSAN of Accused)
(Rate and Organization)

The President of the United States, to
(United States marshal or such other person as may be directed,
RCM 703(e)(2)(G)(iv), MCM, 1984)

WHEREAS, (Name of Witness), of (Address of Witness),
was on the day of 19,
at (Place Subpoenaed), duly subpoenaed to appear and attend
at (Place Witness ordered to testify), on the day of
19, at o'clock m., before a (Type)
court-martial duly convened by (Title, Unit, Order No. of Convening Authority), dated
19, to testify on the part of the (United States)/(Defendant) in the above-
entitled case; and whereas he/she has willfully neglected or refused (to appear and attend) (to produce
documentary evidence which he/she was legally subpoenaed to produce) before said (Type)
court-martial, as by said subpoena required, although sufficient time has elapsed for that purpose; and whereas
he/she has offered no valid excuse for his/her failure to appear; and whereas he/she is a necessary and material
witness in behalf of the (United States)/(Defendant) in the above-entitled case:

1 Line out inappropriate words.

VICTIM WITNESS ASSISTANCE PROGRAM FORMS (2701-2704)

MAKES UP ENCLOSURE 14f

Initial Information

For Victims and Witnesses of Crime

Introduction: We are concerned about the problems often experienced by victims and witnesses of crime. We know that as a victim or witness, you may experience anger, frustration, or fear as a result of your experience. The officer responsible for Victim/Witness Assistance (Victim Witness Liaison or Advocate) at your installation can help.

We have prepared this brochure to help you deal with the problems and questions which often surface during an investigation and to provide you with a better understanding of how the Military Criminal Justice system works. Your continued assistance is greatly needed and appreciated.

A criminal Investigation can be both complex and lengthy and may involve several agencies, some Federal and some local. If you request, you will be kept informed of the status of your case by the investigator handling your case. His or her name is on the back of this brochure.

If You Are Threatened Or Harassed: If anyone threatens you or you feel that you are being harassed because of your cooperation with this investigation, contact the investigator or the Victim Witness Responsible Official right away. It is a crime to threaten or harass a victim or witness.

If You Were Injured: If you do not have insurance to pay the cost of your medical or counseling bills, or related expenses, the state Crime Victim Compensation office may be able to assist. The

telephone number for this office is on the back of this brochure.

If You Were a Victim of Spouse or Child Abuse: For your safety, you may want a restraining order, or temporary shelter. For information about these steps or about counseling services, call the Victim-Witness Assistance Program Coordinator. If the offender is convicted or discharged for abusing you or your children, you may be eligible for "Transitional Compensation" benefits. Contact the prosecutor identified on the back of this brochure for further information.

Restitution: If an individual is arrested and prosecuted in federal court, you may be eligible for restitution. Restitution is court-ordered payment to you as a victim of crime. It is made by the offender for any out of pocket expenses caused by the crime. Restitution cannot be ordered as a sentence in a military court-martial, but it can be used as a condition of a pre-trial agreement to plead guilty to an offense, or as a condition of clemency or parole.

If Property Was Stolen: If your property was stolen, we hope to recover it as part of our investigation. If we do, we will notify you and return it to you as quickly as possible. Sometimes property needs to be held as evidence for trial. We will return your property once it is no longer needed as evidence.

If You Need Assistance With Your Employer or Command: If you have problems at work because of the crime or the investigation, we can contact your employer or commanding officer to discuss the importance of your role in the case.

If An Arrest is Made: If you ask, you will be notified if a suspect is arrested. Since criminal defendants may be released before trial, you can request a restraining order to help protect you from the suspect.

Trial: Once an offense has been referred to trial, you will be contacted by the military trial counsel (prosecutor) or the Assistant U. S. Attorney assigned to handle your case, as appropriate. Each command and U.S. Attorney has a Victim/Witnessed Responsible Official to help answer your questions and deal with your concerns during the prosecution. You have the right to be consulted at key stages in the trial and will be informed of these rights by Trial Counsel.

Confinement: If the accused is sentenced to confinement (prison), you have the right to notification of changes in the confinee's status. Use DD form 2704, "Victim/Witness Certification and Election Concerning Inmate Status", to request that the confinement facility notify you of parole hearings, escape, release, or death of the confinee.

The Emotional Impact of Crime: Many victims and witnesses are emotionally affected by the crime. Although everyone reacts differently, victims and witnesses report some common behaviors such as increased concern for their personal safety and that of their family, trouble concentrating on the job, difficulty handling everyday problems, feeling overwhelmed, and thinking of crime repeatedly.

FORM 2701

Some or all of these behaviors may occur and will ease with time. They are normal reactions but you may wish to see a counselor. State compensation funds may be available to reimburse you for such counseling. The Victim-Witness Assistance Program Coordinator will have further information.

Your Rights As A Victim:

As a Federal Crime Victim, you have the following rights:

- The right to be treated with fairness and with respect for your dignity and privacy;
- The right to be reasonably protected from the accused offender;
- The right to be notified of court proceedings;
- The right to be present at all public court proceedings related to the offense, unless the court determines that your testimony would be materially affected if you as a victim heard other testimony at trial;
- The right to confer with the attorney for the government in the case;
- The right to available restitution
- The right to information about the conviction, sentencing, imprisonment, and release of the offender.

If You Need Additional Assistance:

In regard to the status of the investigation, contact the investigator

below:

(Name & Telephone Number)

In regard to other assistance available contact the command Victim-Witness Assistance Program Coordinator, or the person identified below:

(Name & Telephone Number)

In regard to the prosecution, contact legal office below:

(Name & Telephone Number)

In regard to compensation for medical or other expenses, contact the state office for Crime Victim Compensation:

(Name & Telephone Number)

Please notify these offices of any changes of address or telephone number

For further information on crime issues, contact:

Office for Victims of Crime Resource Center 1-800-627-6872

UNITED STATES



COAST GUARD

**INITIAL
INFORMATION FOR
VICTIMS AND WITNESSES
OF CRIME**

FORM 2701

Court-Martial Information For Victims and Witnesses of Crime

Introduction:

The United States Coast Guard is concerned about the problems often experienced by victims and witnesses of crime. We know that as a victim or witness, you may feel anger, confusion, frustration, or fear as a result of your experience and then feel added frustration in the course of the trial. The information in this brochure will explain the criminal justice process, and your role as a witness.

In the military, a prosecutor is called the Trial Counsel. The Trial Counsel's office will make every effort to keep you informed of the times and places you may be needed. However, it is not unusual for the court dates to change several times before the trial. It is very important to keep the Trial Counsel informed of your current address and telephone number.

Preferral of Charges:

Like a civilian criminal "complaint," the preferral of charges begins the trial process. Upon preferral, you may participate at several points as outlined below.

Pretrial Conference:

You will be asked to speak with the Trial Counsel handling the case at least once before you testify. The Trial Counsel will answer any questions you may have at this time, and will tell you what will be expected of you as a witness.

Article 32 Hearing:

Serious crimes are dealt with in a "General" court-martial, which includes an "Article 32" Hearing. Similar to a grand jury hearing, an Article 32 Hearing is the preliminary investigation into the charges to determine if reasonable grounds exist to believe the accused committed the crimes charged. In the Article 32 Hearing, testimony is given to an Investigating Officer (IO), rather than a judge or jury. You may have to appear at the hearing and testify under oath regarding what you know about the charges. After the Article 32 Hearing, the IO recommends whether to "refer" (send) the case to trial. In less serious cases, the preliminary hearing is not required and cases are referred to a Special Court Martial.

Court-Martial:

This is a trial of the accused. It generally has two parts: findings (guilty or not guilty) and sentencing (punishment). In the findings phase the accused has the right to choose whether a Military Judge sitting alone or a panel of members" (jury) will decide whether the accused is guilty of any offenses.

Testimony:

If you testify, you will be placed under oath and asked questions by the trial counsel, and, in most cases, cross-examined by the Defense Counsel. Usually, counsel for both sides & will have spoken to you prior to testifying so there will be very few surprises. If you have concerns about embarrassing questions that could be asked, tell Trial Counsel before the trial.

Pointers When Testifying:

- Dress Appropriately: Be neat. Dress conservatively.

- Tell the Truth: Honesty is the best policy.
- Speak Clearly and Loudly: Everyone in the courtroom must be able to hear what you have to say. Do not chew gum.
- Don't Guess or Speculate: If you don't know, say you don't know. Give positive, definite answers when you remember positively.
- Be Courteous: Answer politely and address the judge as "Your Honor."
- Don't Lose Your Temper: Stay calm.

Closing Argument:

After all the evidence is received by the court, each side makes a closing argument. After argument, the judge or members will adjourn to deliberate on the issue of guilt or innocence. If there is a finding of "not guilty," the accused is released and the court-martial process ends. If there is a finding of "guilty," the trial: immediately goes to the sentencing phase.

Sentencing:

In this phase, the judge or members (jury) decide the appropriate types of and the amount of punishment. The Trial Counsel may call witnesses to show aggravating factors concerning the offenses. The defense may call witnesses to show the offense may be less serious than otherwise indicated. You may be asked to return to the witness stand and testify as how the crime has affected you. This may include the emotional, physical and financial suffering you experienced.

FORM 2702

Punishment:

The court-martial ends when the judge reads the sentence to the accused. Normally, any confinement ordered begins at the time the sentence is announced. Other parts of the sentence, such as forfeitures of pay and reduction in rank, take effect after the “convening authority”, usually a senior officer, takes “action” on the case. This generally occurs within two to three months, but could take longer in more complex cases.

If the accused is sentenced to prison, you have additional rights to notification of any changes in the inmate’s status. These will be explained to you by the Trial Counsel or a designated representative.

If the offender is convicted or discharged for abusing you or your children, you may be eligible for “transitional compensation” benefits. Contact the Trial Counsel for an application (DD Form 2707) and for further information.

Notified of the acceptance of a guilty plea; to present to the court evidence on sentencing;

Informed about the conviction, sentencing, and imprisonment of the accused.

Notes:

Points of Contact:

Your Participation:

You may choose to participate in the trial at several stages.

You may ask to be:

- Notified of and be present at all public court proceedings;
- Consulted on pre-trial confinement of accused and release of accused from pre-trial confinement;
- Contacted about the proposed dismissal of any and all charges;
- Consulted on decision not to prosecute;
- Contacted regarding the proposed terms of any negotiated plea;
- Consulted on proposed terms of any pre-trial agreement;

Victim-Witness Assistance Program Coordinator

(Name and Telephone Number)

Trial Counsel

(Name and Telephone Number)

For further information on crime issues, contact:

Office for Victims of Crime Resource Center 1-800-627-6872



COURT-MARTIAL INFORMATION FOR VICTIMS AND WITNESSES OF CRIME

UNITED STATES COAST GUARD

FORM 2703

Your Rights As A Victim:

As a victim of a crime, you have the following rights under the Victim's Rights and Restitution Act of 1990 (Public Law No. 101-647):

- To be treated with fairness and with respect for your dignity and privacy;
- To be reasonably protected from the accused;
- To be notified of court proceedings;
- To be present at all public court proceedings related to the offenses, unless the court determines that your testimony would be materially affected if you heard other testimony at trial;
- To confer with the attorney for the Government (Trial Counsel) in the case;
- To receive available restitution;
- To receive information about the conviction, sentencing, imprisonment, parole eligibility and release of the accused.

For Further information on crime issues, contact:

Office for Victim of Crime Resource Center 1-800-672-6872

UNITED STATES



COAST GUARD

***POST TRIAL
INFORMATION FOR
VICTIMS AND
WITNESSES
OF CRIME***

FORM 2703

Request for Notice

Please fill in all the blanks.

Re: United States v. _____

Court-Martial Docket Number _____

I request notification of important case events.

NAME (Print or Type)

HOME ADDRESS

BUSINESS ADDRESS

TELEPHONE: WORK

 HOME

DATE

SIGNATURE

Please return within thirty (30) days of receipt in the enclosed self-addressed, stamped envelope to:

FORM 2704

VICTIM/WITNESS CERTIFICATION AND ELECTION CONCERNING INMATE STATUS <i>(This form is exempt from Freedom of Information Act release)</i>	
PRIVACY ACT STATEMENT	
AUTHORITY: 42 U.S.C. 10606 <u>et sec.</u> , Victim's Rights and Restitution Act of 1990; 18 U.S.C. 1501 <u>et sec.</u> , Victim and Witness Protection Act of 1982.	
PRINCIPAL PURPOSES: To inform victims and witnesses of their post-trial rights; to determine whether the victim or witness of a crime elects to be notified of changes in the confinement status of a convicted	
ROUTINE USES: None	
DISCLOSURE: Voluntary, however, failure to provide identifying information will prevent the correction facility from notifying victim or witness of changes in a criminal offender's status.	
SECTION I - ADMINISTRATIVE INFORMATION <i>(Incident Number and Organizational Identifier are obtained from DD Form 1569)</i>	
Unit _____	Incident Number _____ Organizational Identifier (OR) _____
SECTION II - REPRESENTATIVE INFORMATION <i>(Complete this section only if there are no victims or witnesses who are entitled to notification under the Victim's Rights and Restitution Act of 1990)</i>	
As representative for the Government in the court-martial case of United States v. _____ <i>(Name of court-martial case)</i>	
convened by: _____ <i>(Court-martial convening order number, date, and issuing command)</i>	
I certify that this case does not involve a victim or witness entitled to receive information about the confinement status of the defendant as required by the Victim's Rights and Restitution act of 1990 (Public Law 101-647; 104 Stat. 4820).	
_____ <i>(Date)</i>	_____ <i>(Signature, grade, and title of person certifying)</i>
SECTION III - NOTIFICATION STATEMENT <i>(Complete this section when there are victims or witnesses entitled to notification.)</i>	
I certify that on this date I personally notified the victim(s) and witness(es) in the court-martial case of the United States v. _____, convened by _____, whose sentence included confinement, of their right under the Victim's Rights and Restitution Act of 1990 (Public Law 101-647, 104 Stat. 4820), to receive information about the status of the inmate, to include length of sentence, anticipated earliest release date, likely place of confinement, the possibility of transfer, and the right to receive notification of a new place of confinement. I advised of the possibility of parole or clemency with an explanation of these terms. Additionally, I advised of the right to prior notification of the inmates parole hearings, release from confinement, escape and death. Finally, I advised that to receive notification of the inmate's transfer, parole hearings, and release from confinement, the victim or witness must provide the information required in Section IV of this form.	
_____ <i>(Date)</i>	_____ <i>(Signature, grade, and title of person certifying)</i>

**CG MEDIA RELATIONS IN
HIGH VISIBILITY COURT-MARTIAL CASES**

U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

A practical guide

Provided by the Coast Guard Headquarters
Office of Public Affairs and the
Office of Military Justice
May 1999

Table of Contents

INTRODUCTION -

CHAPTER 1 P. 5 - 6

Overview on releasable information

- Coast Guard Regulations, Freedom of Information Act, Victim and Witness Protection Act
- Release of information about witnesses and the accused, Privacy Act, Coast Guard Regulations
- Approval of media releases.
- Release of information to the media and command responsibility

CHAPTER 2 P. 7-14

The Path to Success

1. Statements which generally should not be made
2. Statements that can be released under some circumstances regardless of the stage of the proceedings
3. Statements that generally can be made only after preferral of charges
4. Inaccurate and unfair or biased reporting
5. Release of courts-martial record of trial
6. Release of other military justice documents or records
7. Release of information under FOIA
8. Release of other military justice audiovisual documents or records
9. Words to "Avoid" (don't use)

CHAPTER 3 P. 15 - 18

Public Affairs Media Plans

1. Four Key Points
2. Contents for a PA Media Plan

CHAPTER 3 (CONT.)

- Purpose and mission of PA support
- Strategy to accomplish PA support
- Goals of PA support

- Key messages or themes
- Audiences
- Tactics
- Coordination and responsibilities
- Written Q's and A's
- Concept of media operation to include
 - ❑ Establishment of a media center.
 - ❑ As news reporters arrive at media center
 - ❑ Escorting the media
 - ❑ "Ground rules" for media
 - ❑ Press kits
- Evaluation

CHAPTER 4 P. 19-21

Other media considerations

1. Media in the courtroom
2. Preparing your spokesperson
3. Pre-trial background briefing
4. Tips for subject matter experts to a successful interview with the media
5. Lessons learned from experience

ANNEX A P. 24-69

Mil. Justice Fact Sheets

ANNEX B P. 70-73

Practical Pointers for Coast Guard Media Plans

Introduction

National interest in a number of recent courts-martial cases demonstrated the importance of Coast Guard Legal and Public Affairs personnel working together to respond to media about the military justice system and prevent communication of inaccuracies. This guide provides practical advice to PA personnel concerning media relations in highly visible courts-martial cases. The key to success is advance preparation for media interest and working with legal personnel to get the Coast Guard story out in an accurate, timely, and ethical fashion, without jeopardizing an accused's right to a fair trial. Your efforts to assure proper public affairs counsel during military justice proceedings will benefit all parties involved.

The purpose of this guide is to provide assistance to Coast Guard public affairs offices preparing to provide support in high-profile military courts-martial proceedings. It is adopted from those produced by the Air Force and Army. Military District of Washington and Department of Defense (DoD) materials have been referenced as well. The Military Justice Fact Sheets are provided as samples to consider in preparing your own PA plans and products. These are examples of what can work during legal proceedings. However, under those circumstances, you should coordinate each of your releases with the assigned legal spokesperson.

U. S. Coast Guard Office of Public Affairs
April 1999

Chapter 1

Overview on releasable Information

Don't forget the Victim's Rights and Restitution; Freedom of Information and Privacy Acts

Know what information you can and cannot release in a particular case. The Coast Guard Freedom of Information and Privacy Acts Manual, COMDTINST M5260.3, provides guidance on release of information to the public. As far as practicable, the American Bar Association Model Rules of Professional Conduct and Code of Judicial Conduct, which contain rules regarding publicity and the responsibilities of the judge and prosecutor, apply to courts-martial in the Coast Guard. See the Military Justice Manual, COMDTINST M5810.1E, Article G-A. Additionally, the Coast Guard has a statutory requirement to protect the privacy of crime victims under the Victim and Witness Protection Act of 1982 (Public Law 97-291). See also Article 2-R of the Military Justice Manual, COMDTINST M5810.1C and the ABA Model Rules of Professional Conduct, Rules 3.6, 3.8, and 4.4.

Don't forget that release of information about witnesses and the accused is restricted by the Privacy Act. Consulting early with your servicing legal office will prevent the inadvertent release of information protected under the Privacy Act.

COMDTINST M5810.1E

News releases of other information to members of the media relating to any case or matter that may be prosecuted at a trial by court-martial must be approved by the command legal officer.

The actual release of information to the media is a command responsibility, usually delegated to the Public Affairs Officer. The Legal Officer must provide informed advice to the commander concerning the release of information. Applicable laws, directives, security requirements, regulations, and orders of a military judge or other court all affect the release of information. Counsel must ensure that investigators, law enforcement personnel, employees, and other persons assisting or associated with counsel do not make extrajudicial statements which counsel themselves are prohibited from making. Furthermore, no staff agency may release information to the media without advance approval of the legal counsel, who will utilize the PA office as the releasing agency. In cases where substantial media interest occurs, the legal officer should request assignment of a legal spokesperson as discussed in Annex B to work with the PA office.

In appropriate situations, PAOs should warn other Federal employees that 5 CFR 2635.703, a punitive regulation, prohibits Federal employees (including military personnel) from improperly using nonpublic information, allowing another to use nonpublic information, or making a knowing unauthorized disclosure. Title 18 USC sections 793, 794, and 1905, make it a Federal offense for employees to disclose trade secrets, confidential business information, classified information or any information not available to the public the release of which would damage U.S. interests. Similarly, Title 41 USC section 423, protects sensitive procurement information from unauthorized disclosure. Disclosing information from a closed proceeding or relating to sealed documents, for example, can have serious adverse consequences. The Legal Officer or spokesperson can advise the PAO on what information is authorized for disclosure.

Chapter 2

The Path to Success

The Counsel and the PAO work together to provide advice to the commander.

The basic role of the PAO during a trial is to be up front and aggressively support media imperatives, but do nothing that will jeopardize either the Government's case or the accused's rights to a fair trial. Media expect the PAO to provide releasable information about the trial. The PAO must remain objective during a trial. Coordinate carefully with legal counsel to determine the preferred PA strategies and tactics that would provide news media support and also assure an unbiased environment for the legal proceedings.

Your supporting legal counsel can provide advice as to the kinds of information relating to a criminal proceeding that have a substantial likelihood of prejudicing the criminal proceeding.

If you have information that does not prejudice a criminal proceeding, and it is releasable under the Freedom of Information Act or the Privacy Act, you may release the information as required. The Freedom of Information Act requires release of information that is not otherwise exempt from release. Information will be exempt from release, for example, when the information is protected by the Privacy Act, the policy of protecting the privacy of victims and witnesses.

Information that may be released can be provided in the form of "extrajudicial" statements, or in the form of documents or records. Extrajudicial statements must comply with the laws about release of information. Because release of extrajudicial statements is a command responsibility, it is extremely important that the counsel and the PAO work together to provide advice to the commander.

Valuable Information: "Extrajudicial" statements are oral or written statements made outside of a criminal proceeding, (such as those made in a media interview or news release), that a reasonable person would expect to be disseminated by means of public communication.

1. Statements which generally should not be made.

Statements relating to the following matters ordinarily have a substantial likelihood of prejudicing a criminal proceeding and generally should not be made public:

- The existence or contents of any confession, admission or statement by the accused or the accused's refusal or failure to make a statement;
- Observations about the accused's character and reputation;
- Opinions regarding the accused's guilt or innocence;
- Opinions regarding the merits of the case or the merits of the evidence;
- References to the performance of any examinations, tests or investigative procedures (e.g., fingerprints, polygraph examinations and ballistics or laboratory tests) or the accused's failure to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
- Statements concerning the identity, expected testimony, disciplinary or criminal records, or credibility of prospective witnesses;
- The possibility of a guilty plea or other disposition of the case other than procedural information concerning such processes;
- Statements, admissions, confessions, or alibis attributable to a defendant, or the refusal or failure of the accused to make a statement.
- Before sentencing, facts regarding the accused's disciplinary or criminal record, including nonjudicial punishment, prior court-martial convictions, and other arrests, indictments, convictions, or charges. Do not release information about nonjudicial punishment or administrative actions even after sentencing unless admitted into evidence. (This rule does not prohibit, however, a statement that the accused has no prior criminal or disciplinary record.); and
- Information trial counsel knows or has reason to know would be inadmissible as evidence in a trial.
- Statements otherwise prohibited may be made in response to prejudicial public statements by other parties, in order to avoid prejudice to the Government or the accused. Such statements must be limited and carefully designed to lessen the resulting undue, adverse impact of the prejudicial statements of others upon the court-martial.

2. Statements that can be released under some circumstances regardless of the stage of the proceedings.

Permissible circumstances supporting release of information include:

- General information to educate or inform the public concerning military law and the military justice system;
- If the accused is a fugitive, information necessary to aid in apprehending the accused or to warn the public of possible dangers;
- Requests for assistance in obtaining evidence and information necessary to obtaining evidence;
- Facts and circumstances immediately surrounding an accused's apprehension, including the time and place of apprehension;
- The identities of investigating and apprehending agencies and the length of the investigation, only if release of this information will not impede an ongoing or future investigation and the release is coordinated with the affected agencies;
- Information contained in a public record, without further comment.

There may be valid reasons for making certain information available to the public in the form of “extrajudicial” statements. However, statements must not be used for the purpose of influencing the course of a criminal proceeding. Statements, usually, should include only factual matters and should not offer subjective observations or opinions. Statements which do not have a substantial likelihood of prejudicing a criminal proceeding and are not exempt from release under the Freedom of Information Act or the Privacy Act, and which protect the privacy of victims of crime and prospective witness may be released.

3. Statements that generally can be made only after preferral of charges.

After preferral of charges the following information may be released:

- The accused's name, unit and assignment;
- The substance or text of charges and specifications, provided there is included a statement explaining that the charge is merely an accusation and that the accused is presumed innocent until and unless proven guilty. Ensure the names of victims and witnesses, as well as social security numbers and Privacy Act protected data are deleted from the charges and specifications. Always be sensitive regarding the requirement to protect the rights and privacy of victims and witnesses;
- The scheduling or result of any stage in the judicial process, but in cases of trials with members, do not release information regarding evidence or rulings not in the presence of the court members;
- Date and place of trial and other proceedings, or anticipated dates if known; the identity and qualifications of appointed counsel;
- Identities of convening and reviewing authorities;
- Any news release will include a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty; ➤ A statement, without comment, that the accused has no prior criminal or disciplinary record or with the consent of the defense, the accused denies the charges; and
- Generally, however, seek to avoid release of the name or identity of any victim and/or victims of sex offenses, when the release would be contrary to the desire of the victim or harmful to the victim.
- The identities of court members and the military judge. Do not volunteer the identities of the court members or the military judge in material prepared for publication. This information may be released, if requested, after the court members or the military judge have been identified in the court-martial proceeding.

Release of information should not be used for the purpose of influencing the course of a criminal proceeding, and should ordinarily include only factual matters. Statements usually should not offer subjective observations or opinions. The following information ordinarily does not have a substantial likelihood of prejudicing a criminal proceeding and is not exempt from release under the Freedom of Information Act or protected under either the Privacy Act and are presumed not to be prejudicial to the accused's right to a fair trial.

Valuable Information: The release and identity of children who are victims is legally prohibited at all times.

4. Inaccurate and unfair or biased reporting.

If inaccurate, unfair or biased reporting is produced or published in the media about military justice procedures, it needs to be addressed by the PAO and perhaps a subject matter expert, with the reporter or editor.

Additionally, the PAO and the legal spokesperson (if assigned) must ensure that any information or interviews do not include speculation about the facts of the case as this can quickly become construed as unlawful command influence. PAOs and other government officials must be ever diligent in avoiding even the appearance of injecting unlawful command influence into the case. In its usual usage, "command influence" refers to a commander's unlawful attempt to influence the proceedings of a court-martial via counsel, judge, court-members or witnesses. In this context, "command influence" normally results from harmful but well intentioned or inadvertent statements, which inappropriately influence a particular proceeding. As indicated previously, statements otherwise prohibited may be made in response to prejudicial, extrajudicial public statements by other parties, in order to avoid prejudice to the Government or the accused. Again such statements to correct the record must be limited and carefully designed to lessen the resulting undue, adverse impact of the prejudicial statements of others upon the court-martial. The Government must avoid engagement in a mud-slinging contest. The temporary advantages of such actions will be outweighed in the long term by the Government's loss of public esteem.

Frequently, documents already admitted into evidence at trial will provide the best available facts and arguments for both sides. Once these documents have been lawfully released to the press, they may be explained and commented upon by attorneys familiar with the military justice system who are not associated with the proceeding. The names of civilian experts in the area of military justice, who are not acting as agents for the command or Coast Guard, may be provided upon request to the press. They can lawfully explain prosecution and defense tactics without raising the specter of unlawful command influence or of other government attempts to harm the right of the accused to a fair trial. For experts in military justice who could assist in this capacity, contact:

Judge Advocates's Association, 6800 Chapins Road, Bloomsburg, PA 17815-8751,
(570) 752-2097 or (877) 696-0677, Fax (570) 752-2097 or ABA Standing Committee on
Armed Forces Law, 750 North Lake Shore Drive, Chicago, IL 60611, (312) 988-5604,
Fax (312) 988-5628

Valuabe Information: Do not speculate about the facts of the case. Frequently, documents already admitted into evidence at trial will provide the best available facts and arguments for both sides.

5. Release of court-martial record of trial.

A court-martial record of trial is subject to release determination under the Privacy Act and Freedom of Information Act. Information marked as classified, controlled, or sealed by judicial order should not be released absent an authoritative determination of releasability. A "transcript of oral proceedings" is not a record until authentication. When releasing records of trial under this paragraph, redact all Privacy Act protected data, to include the names of victims of sex offenses, the names of children, and the identity of victims who could be harmed by disclosure of their identity.

A "transcript of oral proceedings" is not a record until authentication.

6. Release of other military justice documents or records.

All other documents or records, including documents which will, but have not yet become part of a "record of trial," and including those which are attached to the court-martial record of trial but not made a part of the record of trial under the provisions of RCM 1103 (for example, an Article 32 report and its attachments) are also subject to release determination under the Privacy and Freedom of Information Acts. However, due regard will be given to the potentially heightened privacy interests of all accused where a case has not been fully adjudicated as well as to whether any exemption, such as those included to protect ongoing deliberative processes or investigative processes should be invoked. Information marked as classified, controlled, or sealed by judicial order should not be released absent an authoritative determination of releasability. When releasing military justice documents or records under this paragraph, redact all Privacy Act protected data, to include the names of victims of sex offenses, the names of children, and the identity of victims who could be harmed by disclosure of their identity.

... due regard will be given to the potentially heightened privacy interests of all accused where a case has not been fully adjudicated.

7. Release of information under FOIA.

The Freedom of Information Act (FOIA), gives the media an alternative to going through PA to obtain information. FOIA channels are not as rapid as Public Affairs service to the media; frequently they are not as responsive to actual media needs; media get only what they ask for with no helpful explanation. For that reason, PAOs should work with the unit FOIA office to identify media requests and determine whether Public Affairs provides better media service. In addition to faster service, the PAO can find out exactly what the media are trying to locate, and can try to provide it in an understandable form. Occasionally, documents requested by media under FOIA procedures do not provide the facts or explanations the media really need. The PAO can be of genuine service to all by acting as go-between.

Note: The above does not mean that otherwise nonreleasable information can or should always be released by PAOs. If the requested documents are releasable under the Acts highlighted above, provide them to the media through Public Affairs channels if it better serves media interests. Don't make the media go through FOIA procedures to get them. Furthermore, make the documents available to the media free of charge unless they involve excessive costs to the government.

8. Release of other military justice audiovisual documents or records

Rule for Courts-Martial (RCM) 806(c) prohibits video and audio recording and the taking of photographs.

Except for the purpose of preparing the record of trial — in the courtroom during the proceedings. Radio and television broadcasting of proceedings from the courtroom are also prohibited. (However, the military judge may, as a matter of discretion, permit contemporaneous closed-circuit video or audio transmission to permit viewing or hearing by an accused removed under RCM 804 or by spectators when courtroom facilities are inadequate to accommodate a reasonable number of spectators). PAOs should work closely with their legal counsel to determine the level of media interest early on in order for the military judge to make an informed decision about audio-video accommodations. Coast Guard representatives must not encourage or assist news media in photographing or televising an accused being held or transported in custody, nor should photographs of the accused be provided to the media.

9. Words to "avoid" (don't use).

Familiarize all PA support personnel as well as any legal subject matter experts with language that they should "avoid" when talking to the media:

Do not use editorial words prejudicial to the accused before trial, such as hit-and-run driver, deserter, or murderer. Before conviction, use "the accused is charged with the crime," or "alleged to have committed."

No sensationalism or exaggeration; No slang, unless in a direct quote; Do not use the term "criminal" (in reference to the accused).

Chapter 3

Public Affairs Media Plans

1. Four Key Points

Develop a PA plan for dealing with the media

Tailored to the needs of your high visibility cases. Develop the plan in coordination with your legal counsel. Obtain a clear understanding among superior and subordinate command levels as to what command level will be the release authority and coordinate with the PAO from that command. Include this information in your PA plan. PAO "Jurisdiction". Coordination and roles should be thoroughly discussed and determined between the unit, district, area or headquarters PAOs, as well as how coordination is done with the installation staff. Include this information in your PA plan. Obtain the relevant command decisions regarding which commanders must personally approve releases.

Valuable Information: Develop a PA plan; Agree upon command levels for release authorizations; Coordinate between PAOs; Obtain relevant command decisions regarding releases.

2. Media Plan Contents

Just as operations plans are developed with the active input of those experts who must employ it, your PA plan for these events must be developed with your supporting legal officers involvement. Request input from your legal office to help develop the plan, review it, and provide the substantive legal information needed to formalize it. The commander

should approve it. Annex B is an example plan which may be adapted for use for specific cases. The plan should generally address the following:

1. **Background.** Describe circumstances and general information pertaining to the mission.
2. **Purpose and mission of PA support.** Define purpose of PA plan and the PA mission you are expected to accomplish for high visibility litigation proceedings.
3. **Strategy to accomplish PA support.** Define the general public affairs intent and approach to publicity and the means by which you intend to accomplish it. (Example: Provide timely release of information to the news media at each phase of the legal proceedings, and/or, Keep service members informed at each phase of the legal proceedings through timely command information coverage).
4. **Goals of PA support.** Think about what outcomes you would like the PA coverage to help accomplish. (Example: Accommodate news media interest without adversely impacting on the trial.)
5. **Key messages or themes.** Identify information that is central to the commander's intent to be reinforced throughout the proceedings in public releases. An example could be the commander's intent to protect the privacy of victims and/or to ensure a just trial.
6. **Audiences.** While media are often considered to be an audience, they are in fact the medium through which the audience is reached. Audiences can be internal or external and cover the spectrum from the general public, soldiers, other services and Congress, all the way to special interest groups. Identification of the interested audiences will assist PAO's in targeting the appropriate media channels.
Valuable Information: Media are the conduit through which the audience is reached.
7. **Tactics.** Tactics include the details of how you will accomplish your strategy; through which publications or media channels. Be sure to remember your own Command Information channels.
8. **Coordination and responsibilities.**

- ❑ Obtain a clear understanding among superior and subordinate command levels as to what command level will be the release authority and coordinate with the PAO from that command.

- ❑ PAO "Jurisdiction", coordination, and roles should be determined and addressed between the unit, district, area and headquarters PAOs, as well as how coordination is done with the staff of the relevant command.
- ❑ If your plan contains logistical requirements for military police, other staff, personnel for additional duties, equipment, facilities and other support, you may also need to request that your command issue an operations order to ensure the appropriate level of priority and support from all staff agencies involved.

9. **Written Q's and A's** (questions and answers) prepared for PA use in responding to standard and expected questions. The Fact Sheets contained in Appendix A may be used for more general questions about the military Justice system.

10. Concept of media operation to include

- ❑ Establishment of a media center. Plan for adequate phone lines and basic amenities such as coffee, water, etc. Identify a location convenient to the courtroom but also in an area that will not unduly interfere with trial proceedings or, more importantly, deliberations.
- ❑ As news reporters arrive at media center (consider having a PA rep to direct media to the media center), provide handouts, brief them on rules, location of restrooms, etc. Provide lots of space/phones/outlets to file stories, plug in laptop computers, etc. Don't forget cameramen camped outside.
- ❑ Escorting the media. Provide the media with badges so they can be distinguished from other civilians in the area. Clearly identify "off-limits" areas and provide escorts as needed.
- ❑ "Ground rules" for press members (e.g., where they are allowed to go on post, where photography is permitted or prohibited, "off-limits" areas, procedures for requesting interviews, including locations of "man on the street" interviews, whether they will be allowed back into the courtroom after the day's proceedings in order to do a "standup," etc.). Be sure everyone understands your ground rules in advance.
- ❑ Legal Spokesperson. An independent legal officer, specially trained as a subject matter expert, to provide information on the military justice process. Obtain a legal counsel not associated with the prosecution of the case will be assigned to provide information regarding the military justice system, such as rules of evidence, court-member voting procedures, etc. A counsel assigned to perform this function should not be provided inside information from the prosecution and should be limited to the information revealed in open court. Four such legal spokespersons, two stationed on each Coast, will be designated and trained as subject matter experts. Contact CG-0946, LSC West, LSC Ease, or CCGD13 (d1) to request the assignment of a legal spokesperson to the case from a command outside of the Staff Judge Advocate's office.

□ Press kits. Distribute a press information kit to credentialed media covering the trial and/or attending the pre-trial background briefing. Include the items that are of importance to the media, and have more general information available for them to pick up. Among items you may wish to include in such a kit may be: "Ground rules" for press members; Copy of the charges, sanitized as appropriate (no SSNs, for example); Extracts of the UCMJ and MCM as appropriate; List of names of trial participants (not including witnesses, judge or members as discussed above); Information on how to contact PA after duty hours.

11. **Evaluation.** Once trial begins, continued evaluation by both PA and legal counsel is critical. Periodic procedural updates through the use of "background" interviews can be effective in keeping the media informed about the progress of the trial. No PA plan is complete without addressing the evaluation of how well the PA goals are being met and appropriate adjustments to the plan as necessary.

Valuable Information: A PA plan is not complete without an evaluation of how well the PA goals are being met.

Chapter 4

Other media considerations

1. Media in the courtroom

Work with your supporting counsel to reserve a reasonable number of courtroom seats for the media and at least one PA escort. If the number of reporters wishing to cover the trial exceeds the number of seats that can reasonably be allocated, consider pool coverage. In extraordinary situations, it may also be appropriate to ask the judge to allow contemporaneous closed-circuit video or audio transmission to permit viewing or hearing by spectators in a separate room when courtroom facilities are inadequate to accommodate a reasonable number of spectators.

2. Preparing your spokesperson

Prepare credible Coast Guard spokespersons to deal with the media. While PA is responsible for organizing and assuring execution of the plan, commanders and counsels are most likely to be called upon to be spokespersons on military procedures, justice and command issues. People who actually work with the military justice system on a daily basis frequently have more inherent credibility than someone who has had a "crash course" in the basics of military justice. Legal staff should be used as spokespersons to explain the Uniform Code of Military Justice issues surrounding the case. Unless requested, they are, ordinarily, not to be considered spokesmen on command issues more appropriately addressed by those who have responsibility of command. Media training for the spokespeople is essential.

3. Pre-trial background briefing

Have a legal spokesperson who is a subject matter expert available throughout the course of high profile legal cases, both Article 32 proceedings and court-martials. That legal officer should be made available to explain technical UCMJ issues to reporters. Based on circumstances and your counsel's analysis of the need to conduct one, a pretrial background briefing, with written handouts, for the media can be conducted — moderated by PA but conducted by the counsel — on military justice procedures. Such a briefing should focus on the process, and steer away from substantive issues in the case, especially evidentiary issues related to guilt or innocence. The briefing can also include the kinds of releasable information discussed earlier in this document. It should also educate the media about how the UCMJ compares to the civilian system.

4. Tips for subject matter experts to a successful interview with the media

Know your key messages and take every opportunity to communicate them.

- Have a positive attitude.
- Know your subject.
- Know the limitations on information that may be released. Seek the help of your PAO on the types of interviews, the consequences of the types, and other limitations.
- Be familiar with the media and their needs (deadlines, etc.).
- Be candid and honest.
- Use concise, simple talking points on the subject, while keeping in mind:
 - You are "the Coast Guard" when doing an interview. Do not offer personal observations or opinions.
 - Take the attitude the reporter represents the public and the public has the right to know.
- Do not use technical jargon or military acronyms. Talk the public's language.
- Put your conclusions first; then expand.
- Use short quotes; long answers are seldom used.
- When you have made your point, stop!
- Do not say anything outside the interview you would not want to see in newsprint or hear broadcast the next day.
- Keep cool under fire.
- Know the up-to-the-minute breaking developments in the case.
- Do not accept a reporter's facts or figures, or answer hypothetical questions.
- If you do not know the answer, admit it; but offer to find out.
- Remember; you are the expert on the particular subject.
- Don't try to impress the reporter.
- Arrive early; talk to the reporter; offer subjects, points you want to discuss.
- Do not use "no comment" — you will sound and look guilty. Tell why you cannot answer.
- Know why you were asked for the interview.
- Establish ground rules and subjects to be covered.

- Be prepared. Even in your specialty, a brush-up is wise.
- When preparing, play devil's advocate. Justify your position. Anticipate questions and draft and coordinate proposed answers.
- The reporter is probably as prepared as you, and just as professional.

5. Lessons learned from experience

- Make sure your courtroom arrangement is conducive to spectators. (In one recent case, the judge's bench blocked the media's view of the witness stand.)
- Coordinate with your assigned legal spokesperson to ensure they appreciate that the media (and PA in turn) often have very short suspenses. Try to anticipate media queries and coordinate responses to media queries in advance. Ensure your supporting counsel understands that "Qs and As" (Questions and Answers) for PA's use are not handouts for the media. They are instead a general reply/position, not necessarily a verbatim response.
- Be prepared for "help" and requirements for coordination from higher headquarters, on both PA and legal counsel sides of the house. Save yourself time in the long run by making sure higher headquarters have received the appropriate special interest reports; providing sufficient details early may prevent higher headquarters from having to bother you with short-notice, short-suspense taskers for more information in order to answer Congressional, Secretariat or Coast Guard Staff inquiries. This is all the more true in cases with extensive national media coverage. Be sure your information is as accurate and complete as time allows.
- Be prepared to defend your decision to provide command information stories about courts-martial. One school of thought is that service members who are interested can get their information from civilian media outlets. On the other hand, personnel often view them as examples of their commander's sincerity to keep them informed. For that reason, commanders often expect to see command information stories about courts-martial printed. Regardless, stories about courtsmartial provide PAO's the opportunity to present the information accurately, timely and without bias or sensationalism.
- One final point. Intense media interest in the military justice system is not likely to end. Seek G-IP and G-LMJ assistance if you need it.

U.S. Coast Guard
Media Relations in High-Visibility
Court Martial Cases
A practical guide

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

MILITARY JUSTICE FACT SHEETS

Table of Contents

Subject	Page
The Military Justice System.....	24
Military Jurisdiction.....	28
Reporting Crime and First Stages of Investigation in the Military.....	33
Suspect Rights.....	34
Pretrial Confinement in the Military.....	35
Right to Counsel for Nonjudicial Punishment & Court-Martial Actions.....	36
Nonjudicial Punishment	37
The Commander’s Disciplinary Options.....	39
Article 32 Investigations.....	41
Referral of Charges and Convening a Court-Martial.....	45
Unlawful Command Influence.....	47
Trial Procedures in the Military.....	49
Immunity and Pretrial Agreements in the Military.....	53
Post-Trial Review Procedures.....	56
Appellate Court Review.....	58
Death Penalty Cases.....	61
Clemency, Parole, Pardons and Correction of Military Records.....	62
Release of Information (The Freedom of Information and Privacy Acts).....	63
Release of Information (Military Justice and Disciplinary Actions).....	66
Discharges, Resignations and Retirements in Lieu of Court-Martial.....	68

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

THE MILITARY JUSTICE SYSTEM

(The Uniform Code of Military Justice and Manual for Courts-Martial)

Brief History. The historical foundation for our military law and our criminal justice system is the 1774 British Articles of War. In fact, our first codes, the American Articles of War and Articles for the Government of the Navy, predated the Constitution and the Declaration of Independence. Through the First World War, the codes and the system went through some amendments and revisions but were substantially unchanged for more than 100 years.

Throughout most of this time period, we had a very small standing army. Those who entered the military understood that they were going to fall under a different system of justice with unique and different procedures and punishments.

A large number of citizen-soldiers served in the military during World War I. Even though some people had bad experiences at the hands of the military justice system as it existed at that time, there was not an overwhelming demand to make big changes because it was the “war to end all wars.” World War I was viewed as an aberration and the United States quickly reverted to a small standing army after the war ended. In World War II, however, the United States had over sixteen million men and women serving in the armed forces. Incredibly, there were about two million courts-martial during those war years. There were more than sixty general courtmartial convictions for every day that the war was fought: a total of about eighty thousand felony court convictions during the war. The soldiers and sailors of World War II, like those of World War I, were regular citizens who volunteered or were drafted. Many of these citizens also had some very unpleasant experiences with the military justice system. At that time, the military justice system look quite different than it does today and did not offer accused the protections afforded by the civilian courts system. It was a system that was foreign to many American citizens and they disapproved of the way criminal law was being applied in the military. Following the war, many organizations studied and made proposals to improve the military criminal legal system, to include: the American Bar Association, the American Legion, the Judge Advocate Association, and the New York Bar Association. Congressional hearings on the military justice system were also started.

After unification of the armed services under the Department of Defense in 1947, Secretary Forrestal, the first Secretary of Defense, decided that there should not be separate criminal law rules for the different branches of service. He desired a uniform code that would apply to all services. His efforts set the stage for a new uniform system of discipline.

Role of Congress and The President. The foundation of military law is the Constitution of the United States. The Constitution provides that Congress has responsibilities to make

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

rules to regulate the military; it also establishes the President as Commander in Chief of the armed forces. Congress exercised its responsibilities over military justice by enacting the Uniform Code of Military Justice - the "UCMJ." The UCMJ is legislation that is contained in Title 10 of the United States Code, Sections 801 through 946. It is the military's criminal code. It was enacted in 1950 as a major revision of then-existing military criminal law, and became effective the following year. The structure of the 1950 UCMJ and the 1951 MCM provided substantial guarantees of an open and fair process that continue to exist today. The UCMJ has been amended on a number of occasions since then, with significant changes occurring in 1968 and 1983. Some of the primary changes enhanced the role of trial judges. The need for qualified military judges, who were experienced attorneys, to be in charge of the judicial process and all courts-martial was made clear. Also, the requirement to have a licensed attorney as defense counsel in courts-martial was established. In 1984, there was another substantial revision to the MCM and the military rules of evidence became substantially the same as the Federal Rules of Evidence used in our Federal court system. The procedural requirements were also changed into Rules for Courts-Martial.

The UCMJ is essentially a complete set of criminal laws. It includes many crimes punished under civilian law (e.g., murder, rape, drug use, larceny, drunk driving, etc.), but it also punishes other conduct that affects good order and discipline in the military. Those unique military crimes include, for example, such offenses as desertion, absence without leave, disrespect towards superiors, failure to obey orders, dereliction of duty, wrongful disposition of military property, drunk on duty, malingering, and conduct unbecoming an officer. The UCMJ also includes provisions punishing misbehavior before the enemy, improper use of countersign, misbehavior of a sentinel, misconduct as a prisoner, aiding the enemy, spying, and espionage.

The UCMJ is implemented through Executive Orders of the President of the United States pursuant to his authority under Article 36, UCMJ (10 USC § 836). Those Executive Orders form a comprehensive volume of law known as the Manual for Courts-Martial ("MCM"). The Preamble to the MCM explains that: "The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States."

Commanders are given significant roles in the military justice system because discipline is essential to mission readiness. At the same time, there are extensive safeguards to protect against abuse of authority. In the opinion of many legal scholars, the UCMJ has not only kept pace with innovations in civilian criminal jurisprudence, but has actually led the way, establishing more safeguards to protect the rights of those accused of criminal offenses.

The UCMJ and MCM are primarily kept current with the basic principles of American jurisprudence

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

through two standing committees, The Code Committee and the Joint Service Committee on Military Justice.

The Code Committee. Article 146 of the UCMJ, (Section 946, Title 10, United States Code), establishes a “Code Committee” that meets at least annually to prepare an annual comprehensive survey of the operation of the UCMJ. This committee consists of the judges of the United States Court of Appeals for the Armed Forces; The Judge Advocates General of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, and the Staff Judge Advocate to the Commandant of the Marine Corps. Two members of the public appointed by the Secretary of Defense are also members of the committee. A report is then submitted to the Committees on Armed Services of the Senate and the House of Representatives. This report includes information on the number and status of pending cases, as well as any recommendations relating to uniform policies regarding sentencing; amendments to the UCMJ; and any other matter the committee considers appropriate.

The Joint Service Committee on Military Justice. The Joint Service Committee on Military Justice (“JSC”) was established on 17 August 1972 by the Judge Advocates General and the General Counsel of the Department of Transportation. The primary function of the JSC is:

“To prepare and evaluate such proposed amendments and changes as may from time to time appear necessary or desirable in the interest of keeping the Uniform Code of Military Justice (UCMJ) and Manual for Courts-Martial (MCM) current with the decisions of the U.S. Supreme Court, the U.S. Court of Appeals for the Armed Forces, and established principles of law and judicial administration applicable to military justice, as well as with the changing needs of the military services.”

The JSC also performs a second function as an advisory body to the Code Committee established under Article 146, UCMJ. The JSC chairman briefs the Code Committee on the status of JSC actions when the Code Committee meets, and the Code Committee has, in the past, asked the JSC to study specific issues.

Department of Defense (DoD) Directive 5500.17 also states that it is DoD policy to review the MCM annually to assist the President in fulfilling his duties under the UCMJ. Under the direction of the General Counsel of the Department of Defense (DoD/GC), the JSC as the body to accomplish the annual review. The JSC consists of a Voting Group and a Working Group; with each service (including the Coast Guard) having a representative on each group. The JSC Voting Group members are the chiefs of their respective Service’s criminal law or military justice divisions. In addition, the United States Court of Appeals for the Armed Forces and the DoD/GC are invited to provide a staff member to serve in a

non-voting capacity with the JSC. The JSC chairmanship rotates biennially among the services.

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

Throughout the year, the JSC reviews proposals for changes to the MCM. Any interested person may submit changes to the UCMJ and MCM to the JSC. The JSC recommends changes to the MCM along with accompanying Discussion and Analysis. The proposed changes are prepared in an annual review, and forwarded to DoD/GC in May of each year. Once the review has been completed, the chairman of the JSC ensures that notice of the proposed changes is published in the Federal Register. This notice begins a 75-day public comment period in which a public meeting is also scheduled. At the public meeting, the JSC listens to comments and proposals from members of the general public. After the public meeting and comment period, the JSC reviews the recommended proposals and the comments. Modifications may be made to a proposal or the proposal may even be eliminated. The review is then prepared as a draft Executive Order (EO) for further executive coordination and implementation by the President.

MILITARY JURISDICTION

Military Status Is the Key. Article 2 of the Uniform Code of Military Justice, (Section 802 of Title 10, United States Code), UCMJ, lists twelve categories of individuals that are subject to trial by court-martial. The categories of persons are: military personnel, whether active, reserve, or retired; members of certain quasi-military organizations (e.g., Public Health Service members when serving with the armed forces); military prisoners; prisoners of war; and under very limited circumstances, certain specified categories of civilians. (The U.S. Supreme Court, however, has prohibited the court-martial of any civilians accompanying the armed forces in the field during peacetime. In addition, certain punitive articles of the UCMJ, by their express terms, may only be used to punish members of the armed forces.)

Court-martial jurisdiction is most commonly exercised over active duty personnel. All active duty personnel are subject to the UCMJ and amenable to court-martial jurisdiction throughout their period of active service. Status as an active-duty service member, and hence court-martial jurisdiction over such persons, ordinarily begins with enlistment or commissioning and terminates with the delivery of a valid discharge certificate or separation order.

Members of a reserve component in federal service on active duty, as well as those in federal service on inactive-duty training, are also subject to the UCMJ. A reservist remains subject to court-martial jurisdiction without regard to any change between active and reserve service or any change within different categories of reserve service for offenses committed while on active duty or in an inactive-duty training status. This does not apply, however, to a reserve member whose military status is completely terminated after commission of an offense.

Members of the Army National Guard or the Air National Guard are not subject to the Uniform Code of Military Justice unless performing Federal service.

Worldwide Jurisdiction. The United States military deploys worldwide, often on short notice, with large numbers of military personnel and unique disciplinary requirements. Since most American criminal laws are not applicable outside of the United States, it is important to have a system of criminal justice that can wherever our troops are deployed. As such, the military services need a flexible, separate, military justice system capable of operating in times of peace or conflict, under the same standards at home or abroad. That system is the Uniform Code of Military Justice, or “the Code.” It is a system of criminal justice that is deployable and applies in all places.

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

The Uniform Code of Military Justice (UCMJ) is found at Sections 801 through 946 of Title 10, United States Code. Enacted in 1950 as a major revision of then-existing military criminal law, the UCMJ became effective the following year. The UCMJ has been amended on a number of occasions since then, with significant changes occurring in 1968 and 1983. It is promulgated by Congress pursuant to the Constitution and includes the system's jurisdictional basis, substantive offenses, and the basic procedural structure.

In the military justice system, courts-martial have the power to try any offense under the Uniform Code of Military Justice, except when prohibited from so doing by the Constitution.

The rule enunciated by the U. S. Supreme Court in *Solorio v. United States*, 483 U.S. 43 (1987), is that jurisdiction of courts-martial depends solely on the accused's military status as a person subject to the Uniform Code of Military Justice, not on a "service-connection" requirement regarding the offense charged. Any violation of the Code is now within the military's jurisdiction, regardless of whether the offense was committed at home or abroad, on or off the military installation, or while the member was on or off duty.

Offenses. The UCMJ is essentially a complete set of criminal laws. It includes many crimes punished under civilian law (e.g., murder, rape, drug use, larceny, drunk driving, etc.), but it goes beyond that to punish other conduct which affects good order and discipline in the military.

These "unique military offenses" involve conduct that need not be made criminal in civilian life, but must be made offenses in a military justice system because the misconduct goes to the heart of military duties. For example, in civilian life, if people choose to be disrespectful to a civilian supervisor, or if they choose not to go to work or to quit their job for any reason – that decision does not potentially violate any criminal laws and is a matter between them and their supervisor. Military members, however, have tremendous responsibilities and must be counted upon to perform them. These responsibilities require that the military have a disciplinary system that enables commanders to respond to such misconduct - potentially with criminal charges. When a military member doesn't report for duty, the consequences to the mission and national security can be quite severe. Unique military crimes include, for example, such offenses as desertion, absence without leave, disrespect towards superiors, failure to obey orders, dereliction of duty, wrongful disposition of military property, drunk on duty, malingering, and conduct unbecoming an officer. The UCMJ also includes provisions punishing misbehavior before the enemy, improper use of countersign, misbehavior of a sentinel, misconduct as a prisoner, aiding the enemy, spying, and espionage. Some of those offenses

are capital offenses, meaning the maximum punishment is death. The UCMJ reflects the seriousness

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

and importance of the military's mission and recognizes that ultimately the safety of our forces and the security of our nation are being protected.

Officers' Special Responsibilities. Traditionally, all military systems place additional and special responsibilities upon officers. Article 133 of the Uniform Code of Military Justice (10 USC § 933) establishes the offense of "conduct unbecoming an officer and gentleman (or gentlewoman)." This article may be violated by any action or behavior in an official capacity that, in dishonoring or disgracing the person as an officer, seriously compromises that person's character or standing as an officer.

In addition to the enumerated punitive articles of the Uniform Code of Military Justice, Article 134, (10 USC § 934), makes punishable acts in three categories of offenses not specifically covered in any other article of the code. These are referred to as "Clauses 1, 2, and 3" of Article 134. Clause 1 offenses involve disorders and neglects to the prejudice of good order and discipline in the armed forces. Clause 2 offenses involve conduct of a nature to bring discredit upon the armed forces. An act in violation of a local civil law or of a foreign law may be punished if it constitutes a disorder or neglect to the prejudice of good order and discipline in the armed forces or it is of a nature to bring discredit upon the armed forces.

Clause 3 offenses involve noncapital crimes or offenses that violate Federal law. Certain noncapital crimes and offenses prohibited by the United States Code are made applicable under clause 3 of Article 134 to all persons subject to the code, wherever the wrongful act or omission occurred. These are referred to as crimes and offenses of unlimited application.

Clause 3 offenses also involve offenses made applicable to the military through the Federal Assimilative Crimes Act. These are referred to as crimes and offenses of local application. The Federal Assimilative Crimes Act is Congress' adoption of state criminal laws for areas of "exclusive or concurrent" federal jurisdiction, in so far as the federal criminal law (including the UCMJ) has not already prescribed an applicable offense for the misconduct committed. For example, if a person committed an act on an exclusive jurisdiction area of a military installation in the United States, and it was not an offense specifically defined by federal law (including the UCMJ), the military person committing the act could be punished by a courtmartial. The additional requirements would be that the misconduct was not specified as an existing UCMJ offense and that the offense was not a capital offense under the law of the State where the military installation was located.

The UCMJ does not classify offenses as petty offenses, misdemeanors, or felonies.

Whether an offense is considered within any of these classifications is a matter of other federal or state law definitions.

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

Types of Courts-Martial. There are three types of courts-martial - summary, special and general.

Summary Court-Martial. Trial by summary court-martial provides a simplified procedure for the resolution of charges involving minor incidents of misconduct. The summary court-martial consists of one officer who, depending upon Service policies and practice, is a judge advocate (a military attorney). The maximum punishment a summary court-martial may impose is considerably less than a special or general court-martial. The accused must consent to be tried by a summary court-martial.

Special Court-Martial. A special court-martial is the intermediate court level. It consists of a military judge, trial counsel (prosecutor), defense counsel, and a minimum of three officers sitting as a panel of court members or jury. An enlisted accused may request a court composed of at least one-third enlisted personnel. An accused, officer or enlisted, may also request trial by judge alone. Regardless of the offenses involved, a special court-martial sentence is limited to no more than six months confinement (or a lesser amount if the offenses have a lower maximum), forfeiture of two-third's basic pay per month for six months, a bad-conduct discharge (for enlisted personnel), and certain lesser punishments. An officer accused in a special court-martial cannot be dismissed from the service or confined.

General Court-Martial. A general court-martial is the most serious level of military courts. It consists of a military judge, trial counsel, defense counsel, and at least five court members. Again, an enlisted accused may request a court composed of at least one-third enlisted personnel. Unless the case is one in which the death sentence could be adjudged, an officer or enlisted accused may also request trial by judge alone. In a general court-martial, the maximum punishment is that established for each offense under the Manual for Courts-Martial, and may include death (for certain offenses), confinement, a dishonorable or bad-conduct discharge for enlisted personnel, a dismissal for officers, or a number of other lesser forms of punishment. A pretrial investigation under Article 32, UCMJ, must be conducted before a case may be referred to a general court-martial, unless waived by the accused.

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

Joint Jurisdiction. Courts-martial have exclusive jurisdiction over purely military offenses. In the case of an offense that violates the Uniform Code of Military Justice and the criminal law of a State, other Federal law, or all three, it must be determined which jurisdiction will prosecute. This decision is normally made through coordination between appropriate military authorities (ordinarily the chief military lawyer at an installation (Staff Judge Advocate)) and appropriate civilian authorities (United States Attorney or District Attorney's Office).

The fact that an accused is subject to trial by court-martial does not eliminate the possibility of trial by another jurisdiction, either in addition to or in lieu of court-martial. Under the United States Constitution, a person may not be tried for the same misconduct by both a court-martial and another federal court. Such an act would violate the Constitution's double jeopardy clause.

Criminal prosecution in both federal and state courts is also a constitutional possibility. The Constitution's double jeopardy clause is not applicable because two different sovereigns are involved, i.e. the federal government and state government. As a matter of policy, however, a person who is pending trial or has been tried by a State court is ordinarily not tried by courtmartial for the same act.

Commission of an offense overseas may result in trial by the host nation. Under international law, a foreign nation has jurisdiction to punish offenses committed within its borders by members of a visiting force, unless it expressly or impliedly consents to relinquish its jurisdiction to the visiting sovereign. Generally, the United States has concluded Status of Forces agreements with host nations that indicate which sovereign will have primary jurisdiction over particular offenses. To the extent possible, efforts are made under such agreements to maximize the exercise of court-martial jurisdiction over military members or other persons subject to the Uniform Code of Military Justice.

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

REPORTING CRIME AND FIRST STAGES OF INVESTIGATION IN THE MILITARY

In the military, reporting and investigating crime differs from civilian communities. In most civilian communities, individuals report crimes to their local police departments. The police then conduct investigations and make initial decisions about whether to charge someone for minor offenses (i.e., by issuing tickets). The police refer major offenses to the local district attorney, who decides whether to file serious charges. The local district attorney, acting on behalf of the community, then decides how both minor and major cases are to be handled in court. Local courts try the cases and impose punishments.

Under the direction of the President, military commanders are responsible for maintaining law and order in the communities over which they have authority, and for maintaining the discipline of the fighting force. Reports of crimes by service members ultimately come to their commanders' attention from law enforcement or criminal investigative agencies, as well as reports from individual service members. In many minor cases involving military offenses, there has been no formal investigation by any law enforcement agency (including military police).

To help commanders decide how to resolve charges, commanders must make a "preliminary inquiry" into any allegations against a member of the command under military procedural Rules for Courts-Martial (R.C.M.) found in the Manual for Courts-Martial. These informal inquiries are sometimes referred to as R.C.M. 303 Inquiries. The commander can conduct this inquiry himself, appoint someone else in his command to do it, or, as happens in very serious cases, request assistance from civilian or military criminal investigative agencies. Although usually informal, the commander can require a more formal inquiry and a written report.

As noted, in complex or serious cases, commanders may need specialized, investigative assistance from military criminal investigative organizations to decide whether to prefer (initiate or "press") charges. Although these organizations are independent of the command and possess independent investigative authority, they also provide professional investigative support to commanders upon request.

When the commander finishes the preliminary inquiry, he must make a decision on how to resolve the case. Unlike civilian communities, where a district attorney decides whether or not to "press" charges, in the military, commanders make that decision. The commander could decide that no action at all is warranted. Or he could take administrative action, such

as an admonition or reprimand, or making an adverse comment in performance evaluations, or seeking discharge of the member from the service. The commander also possesses nonjudicial punishment authority under the

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

procedures of Article 15, UCMJ. The commander may also determine that criminal charges are appropriate. The "preferral" of charges, similar to "swearing out a complaint" in civilian jurisdictions, initiates the court-martial process.

SUSPECT RIGHTS

Self-Incrimination Protections. The military justice system provides an accused rights and due process that in many ways are superior to those provided a defendant in civilian criminal courts. Pursuant to Article 31, Uniform Code of Military Justice (Section 831 of Title 10, United States Code), servicemembers have a right against self-incrimination and an entitlement to be informed of the suspected offense(s) before questioning begins. In addition to protections against selfincrimination, servicemembers have a right to free military counsel when questioned as a suspect of committing an offense, upon preferral of court-martial charges, or initiation of arrest or apprehension.

In the military justice system, these rights are afforded much earlier in the criminal justice system than in civilian practice. These rights and protections apply whenever the servicemember is questioned as a suspect of an offense. In civilian practice, Miranda rights or warnings are not required unless there is custodial interrogation by law enforcement personnel. In fact, the U. S. Supreme Court referenced the military's "warning rights" practice under Article 31, UCMJ, when deciding to establish the "Miranda Warning" requirement. A showing of indigence is required before a defendant is provided counsel without cost in the civilian system.

Article 31, UCMJ Rights. Article 31 has two important parts:

1. No one subject to the Uniform Code of Military Justice may compel any person to incriminate himself or to answer any question the answer that may tend to incriminate him.
2. No person subject to the Uniform Code of Military Justice may interrogate, or request any statement from a person suspected of an offense without first informing him of the nature of the accusation, that he does not have to make a statement regarding the offense, and that any statement may be used against him as evidence in a trial by court-martial.

Right To Counsel. An independent military defense counsel is provided free of charge regardless of the accused's ability to pay. The accused may also employ civilian counsel at his or her own expense, or request a particular military counsel, who will assist the accused if reasonably available. The accused has the right to be represented by counsel at the magistrate hearing when a determination is made regarding continued pretrial

confinement, at the Article 32 investigation, and during all court-martial sessions. After trial, the accused has a right to free military counsel to assist with his appeal through the military appellate courts, and potentially to

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

the U.S. Supreme Court.

PRETRIAL CONFINEMENT IN THE MILITARY

Pretrial confinement in the military is similar to the civilian system in some respects and different in others. In the civilian community, police arrest serious offenders and take them to jail. In military cases, service members who are "apprehended" ("arrest" has a different technical meaning in the military) are typically turned over to a member of command authority. The command then decides whether to confine the member in a military jail (called "brig" or "stockade" or "confinement"). The command may also impose pretrial "restrictions" instead of confinement. For instance, the service member may be restricted to his post or base, pending trial. Before any service member is confined or restrained, there must be "probable cause" (a reasonable belief) that the service member committed an offense triable by courts-martial and that confinement or restriction is necessary under the circumstances.

In addition, like a civilian policeman, any military officer can order an enlisted servicemember to be confined. The decision to confine a military member is the subject of several reviews. The military justice system follows the civilian requirement that a review of the decision to confine the person be conducted within 48 hours. Within 72 hours, the military member is entitled to have his commanding officer review whether his continued confinement is appropriate. (However, if someone other than the commanding officer confined the member and the commanding officer review was actually conducted within 48 hours, then this commanding officer review can serve to satisfy both review requirements.) Thereafter, a military magistrate who is independent of the command must conduct another review within 7 days. Finally, a military member may request the military judge assigned to the case review the appropriateness of the pretrial confinement.

Throughout the confinement review process, a service member is provided a military lawyer, at no expense, to assist him or her. These reviews must confirm, in writing, that there is probable cause to believe that the service member committed an offense triable by courts-martial; that confinement is necessary to prevent the service member from fleeing or engaging in serious criminal misconduct; and that lesser forms of restraint would be inadequate. These review requirements may be suspended by the Secretary of Defense when operational necessities make them impractical. For the same reason, these requirements are not applicable to ships at sea.

When his charges are "referred" or presented to a court-martial, the confined service member may ask the military judge presiding over the court to review his pretrial confinement again. If rules were violated, the military judge can release the service

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

member, and he can reduce any subsequent sentence, giving additional credit for inappropriate confinement.

In the civilian community, persons accused of crimes who might flee or commit other crimes may also be confined prior to their trial. A civilian magistrate must review this confinement within 48 hours. In many cases, the magistrate will require confinees to post bail to ensure their return for trial. While awaiting trial, a civilian confinee usually does not receive pay and may actually lose his or her job. Service members do not have to post bail, receive their regular military pay, and do not lose their jobs while awaiting trial.

RIGHT TO COUNSEL FOR NONJUDICIAL PUNISHMENT & COURT-MARTIAL ACTIONS

Right To Counsel for Nonjudicial Punishment (NJP). The statute governing NJP (Section 815 of Title 10, United States Code) does not create a right for service members to consult with counsel after being notified of the commander's intent to dispose of an allegation by NJP. The services have different regulatory policies regarding whether service members have the absolute right to consult with counsel. These regulations differ based on the unique concerns of each of the services in balancing the need to maintain discipline and protections for service members. Air Force personnel have an absolute right to consult with a defense counsel prior to determining whether to accept NJP proceedings or demand trial by court-martial for all NJP. Army personnel have the right to consult with a defense counsel, except when the commander is utilizing Summarized NJP Proceedings. Navy, Marine Corps and Coast Guard personnel do not have a right to consult with counsel prior to NJP, however, commanders from those services strongly encourage consultation with counsel, subject to the availability of counsel, the delay involved, or operational commitments or military exigencies.

When military defense counsel services are provided, it is at no charge to the service member. Consultation with an attorney may be by telephone. Service personnel may also consult with civilian counsel at no expense to the government.

Right To Counsel for Courts-Martial. The statute governing right to counsel (Section 838(b) of Title 10, United States Code) defines the accused's right to various counsel. The accused has the right to be represented at court-martial by a detailed military defense counsel, who is provided at no expense to the accused.

The accused also has the right to request, by name, a different military lawyer. If that attorney is reasonably available, he or she is appointed to represent the accused free of charge. If the request for the other military attorney is granted, the accused does not have the right to keep

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

the services of the detailed defense counsel because the accused is only entitled to one military lawyer. However, the accused may also request to keep his or her detailed counsel, but the attorney's superiors do not have to grant such a request.

In addition, the accused has the right to be represented by a civilian lawyer at no expense to the government. If a civilian lawyer represents the accused, the accused can also keep his or her military attorney on the case to assist the civilian lawyer. Alternatively the accused could excuse his military lawyer and be represented only by the civilian lawyer. Although rarely exercised, the accused also has the right to represent himself.

NONJUDICIAL PUNISHMENT (NJP)

Command Leadership Tool. Nonjudicial punishment (NJP) is a leadership tool providing military commanders a prompt and essential means of maintaining good order and discipline. NJP proceedings may be known by different terms among the Services, such as “Article 15”, “Office Hours” or “Captain’s Mast”, but the purpose of NJP, and for the most part its procedures, are common among the Services.

For Minor Offenses. NJP is used to discipline members for minor violations of the Uniform Code of Military Justice (UCMJ) and serves to correct misconduct without attaching the stigma of a court-martial conviction to the member. The Manual for Courts-Martial defines a minor offense for NJP purposes as “ordinarily an offense which the maximum sentence imposable would not include a dishonorable discharge or confinement for longer than one year if tried by a general court-martial.” NJP is a disciplinary measure more serious than administrative action (e.g. a letter of reprimand), but less serious than trial by court-martial.

Article 15, UCMJ, And Regulations . NJP is permitted by Article 15, UCMJ (Section 815 of Title 10, United States Code) and is governed by Part V of the Manual for Courts-Martial and by service regulations. Prior to imposition of NJP, a service member must first be notified by the commander of the nature of the misconduct of which he or she is accused, of the evidence supporting the accusation, and of the commander’s intent to impose NJP. The member may then be allowed to consult with a defense counsel to determine whether to consent to a NJP proceeding, or to refuse NJP and demand instead a trial by court-martial. The major difference among the services with regard to NJP is that service members attached to or embarked in a vessel may not refuse imposition of NJP.

Accused Ultimately Chooses the Forum. Consenting to participation in a nonjudicial punishment proceeding is not an admission of guilt. By accepting, the accused declines to exercise the right to demand trial by court-martial regarding the offenses alleged. If an accused demands trial when presented with a proposed NJP action, the commander is

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

thereafter prohibited from going forward with nonjudicial punishment. Prior to imposing NJP, the commander will hold a hearing at which the member may be present. The member may also have a spokesperson attend the hearing, may present evidence to the commander, and may request that the commander hear from certain witnesses. The commander must consider any information offered during the hearing, and must be personally convinced that the member actually committed misconduct before imposing punishment.

Permissible Punishments. Permissible punishments for enlisted personnel can include such actions as reduction in rank, forfeiture of pay (up to ½ of one month's pay per month for two months), restriction to base or to the ship (up to 60 days), extra duties, correctional custody (up to 30 days), and a reprimand. For officers, permissible punishments can include forfeiture of pay (up to ½ of one month's pay per month for two months), restriction to base or to the ship (up to 60 days), arrest in quarters (up to 30 days), and a reprimand. The actual maximum punishment under the circumstances depends upon the rank of the commander who imposes the punishment. Higher-ranking commanders may impose greater punishments than lower-ranking commanders may.

Right To Appeal. If the member considers the punishment to be unjust or to be disproportionate to the misconduct committed, he or she may appeal to higher authority. The appeal authority may set aside the punishment, decrease its severity, or deny the appeal, but may not increase the severity of the punishment.

Not A Conviction Record. Receipt of a nonjudicial punishment does not constitute a criminal conviction.

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

THE COMMANDER'S DISCIPLINARY OPTIONS

Prosecutorial Discretion. In civilian communities, police and prosecutors exercise discretion in deciding whether an offense should be charged and offenders punished. In the military, commanders make this decision. Once the investigation is complete, the commander must make a decision about how to dispose of the case. Throughout the investigation, the commander has a lawyer (judge advocate) available to assist and provide advice. With the assistance of his lawyer, the commander decides whether a case will be resolved administratively, through a nonjudicial punishment action under Article 15, UCMJ, or referred to trial, and what the charges will be. The disposition decision is one of the most important and difficult decisions facing a commander. Each commander in the chain of command has independent, yet overlapping discretion to dispose of offenses within the limits of the officer's authority. The commander at the lowest level makes the initial decision regarding disposition. Under the Uniform Code of Military Justice (UCMJ), superior commanders may not seek to improperly influence the subordinate commander's exercise of independent judgment or disciplinary action. However, nothing prevents a superior commander from withholding authority to himself or herself to dispose of offenses in individual cases or types of cases (e.g., officers; drug cases, DUI).

Levels Of Disposition. Charges can be disposed of at four levels within the military justice system: (1) by the unit commander who exercises immediate Article 15, UCMJ, jurisdiction over the accused; (2) by the summary court-martial convening authority (normally a battalion or squadron commander); (3) by the special court-martial convening authority (normally a brigade or wing commander); and (4) by the general court-martial convening authority (normally a general officer who is commanding). Each commander or convening authority within the military justice chain has a range of available options and each commander exercises discretion in selecting one of the available options or makes a recommendation to a higher commander. As charges progress up the military justice chain, the convening authority has more options available. Any higher-level convening authority has all the powers and alternatives of any lower-level convening authority or commander. Thus a summary court-martial convening authority has available all the options of the immediate commander and additional alternatives as a convening authority. Similarly, a special court-martial convening authority is empowered to convene a summary court-martial as well as a special court-martial. Finally, a general court-martial convening authority possesses all the powers of the subordinate commanders and convening authorities.

Commander's Range Of Options. The commander has a number of options available for the resolution of disciplinary problems. Briefly summarized, they are as follows:

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

- 1. The commander may choose to take no action.** While this may seem to be unusual, the circumstances surrounding an event actually may warrant that no adverse action be taken. The preliminary inquiry might indicate that the accused is innocent of the crime, that the only evidence is inadmissible, or the commander may decide that other valid reasons exist not to prosecute. A subordinate commander's decision not to take action is not binding on a superior commander's independent authority to take action.
- 2. The commander may initiate administrative action against a service member.** The commander might determine that the accused committed an offense, but that the best disposition for this offense and this offender is to take administrative rather than punitive action. A commander can initiate action against the service member, alone or in conjunction with action under the UCMJ. Administrative action is not punitive in character; instead, it is meant to be corrective and rehabilitative. Administrative actions include measures ranging from counseling or a reprimand to involuntary separation.
- 3. The commander may dispose of the offense with nonjudicial punishment.** Article 15, UCMJ, is a means of handling minor offenses requiring immediate corrective action. A minor offense is one for which the maximum sentence imposable at a court-martial would not include a dishonorable discharge or confinement in excess of one year. If a commander imposes Article 15 punishment for a minor offense, trial by court-martial is barred. If a commander imposes Article 15 punishment, but the offense is not minor, later trial by court-martial is not barred. Nonjudicial punishment hearings are non-adversarial. They are not a "mini-trial" with questioning by opposing sides. The commander conducts the hearing. The service member may request an open or closed hearing, speak with an attorney about his case, have someone speak on his behalf, and present witnesses who are reasonably available. The rules of evidence do not apply. In order to find the service member "guilty," the commander must be convinced that the Service member committed the offense. Generally speaking, the UCMJ and Manual for Courts-Martial establish maximum punishment limits based on the rank of the commander imposing punishment and the rank of the service member being punished. The service member has a right to appeal the imposing commander's decision to the next-higher commander.
- 4. The commander may dispose of the offenses by court-martial.** If the commander decides that the offense is sufficiently serious under the circumstances to warrant trial by court-martial, the commander may exercise the fourth option, preferring (initiating) charges and forwarding them to a commander possessing court-martial convening authority. Whenever charges are forwarded to a superior commander for disposition, the subordinate commander must make a personal recommendation as to disposition, to

include the level of court that the subordinate commander believes to be appropriate. Here again, the commander first has the benefit of legal advice from his attorney (judge advocate).

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

The Accuser and How Charges Are Filed. The person who signs the charge sheet and attests to the accuracy of the charges is known as the accuser. Charges are filed under the Uniform Code of Military Justice by act of “preferral.” Although, any person subject to the Uniform Code of Military Justice may prefer charges, in most instances the unit commander prefers the charges.

Preferral Process. Charges are preferred (formally initiated) when the accuser, under oath, signs them before a commissioned officer of the armed forces authorized to administer oaths. The accuser must also state that he has personal knowledge or has investigated the matters set forth therein and believes they are true in fact to the best of his or her knowledge and belief. When an immediate commander acts as accuser, the commander may rely on the information developed in an investigative report.

ARTICLE 32 INVESTIGATIONS

Purpose. The Fifth-Amendment constitutional right to grand jury indictment is expressly inapplicable to the Armed Forces. In its absence, Article 32 of the Uniform Code of Military Justice (Section 832 of Title 10, United States Code), requires a thorough and impartial investigation of charges and specifications before they may be referred to a general court-martial (the most serious level of courts-martial). However, the accused may waive the Article 32 investigation requirement. The purpose of this pretrial investigation is to inquire into the truth of the matter set forth in the charges, to consider the form of the charges, and to secure information to determine what disposition should be made of the case in the interest of justice and discipline. The investigation also serves as a means of pretrial discovery for the accused and defense counsel in that copies of the criminal investigation and witness statements are provided and witnesses who testify may be cross-examined.

Procedures. An investigation is normally directed when it appears the charges are of such a serious nature that trial by general court-martial may be warranted. The commander directing an investigation under Article 32 details a commissioned officer as investigating officer, who will conduct the investigation and make a report of conclusions and recommendations. This officer is never the accuser. This officer may or may not have any legal training, although the use of military attorneys (judge advocates) is common within Service practice. If the investigating officer is not a lawyer, he or she may seek legal advice from an impartial source, but may not obtain such advice from counsel for any party.

COMDTINST M5810.1E

An investigative hearing is scheduled as soon as reasonably possible after the investigating officer's appointment. The hearing is normally attended by the investigating officer, the accused and the defense counsel. In some cases, the commander will also

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

detail counsel to represent the United States, a court reporter and an interpreter. Ordinarily, this investigative hearing is open to the public and the media.

The investigating officer will, generally, review all non-testimonial evidence and then proceed to examination of witnesses. Except for a limited set of rules on privileges, interrogation, and the rape-shield rule, the military rules of evidence (which are similar to the federal rules of evidence) do not apply at this investigative hearing. This does not mean, however, that the investigating officer ignores evidentiary issues. The investigating officer will comment on all evidentiary issues that are critical to a case's disposition. All testimony is taken under oath or affirmation, except that an accused may make an unsworn statement.

The defense is given wide latitude in cross-examining witnesses. If the commander details an attorney to represent the United States, this government representative will normally conduct a direct examination of the government witnesses. This is followed by cross-examination by the defense and examination by the investigating officer upon completion of questioning by both counsel. Likewise, if a defense witness is called, the defense counsel will normally conduct a direct examination followed by a government cross-examination. After redirect examination by the defense counsel, or completion of questioning by both counsel, the investigating officer may conduct additional examination. The exact procedures to be followed in the hearing are not specified in either the Uniform Code of Military Justice or the Manual for Court-Martial. The investigating officer, however, will generally:

- Announce the beginning of the investigation and its purpose
- Advise the accused of his or her right to counsel and ascertain whether the accused will be represented by counsel, and if so, by whom
- Formally read the charges preferred against the accused
- Advise the accused of his or her rights to make a statement or to remain silent
- Review the documentary or real evidence available against the accused
- Call any available adverse witnesses
- Review documentary or real evidence in favor of the accused
- Call available favorable witnesses for the accused
- Hear any evidence presented by the accused
- Hear any statement the accused or defense counsel may make
- Entertain, if any, arguments by counsel

Upon completion of the hearing, the investigating officer submits a written report of the investigation to the commander who directed the investigation. The report must include:

- Names and organizations or addresses of defense counsel and whether they were present throughout the taking of evidence, or if not, why not
- The substance of any witness testimony taken

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

- Any other statements, documents, or matters considered by the investigating officer
- A statement of any reasonable grounds for belief that the accused was not mentally

responsible for the offense, or was not competent to participate in the defense during the investigation, or there is a question of the accused's competency to stand trial - A statement whether the essential witnesses will be available at the time anticipated for trial or a statement why any essential witness may not then be available

- An explanation of any delays in the investigation
- The investigating officer's conclusion whether the charges and specifications are in proper form - The investigating officer's conclusion whether reasonable grounds exist to believe that the accused committed the offenses alleged
- The recommendations of the investigating officer, including disposition of the charges

Upon completion, the report is forwarded to the commander who directed the investigation for a decision on disposition of the offenses.

Rights Of the Accused. The accused at an Article 32 investigation has several important rights.

The accused also has a right to waive an Article 32 investigation and such waiver may be made a condition of a plea bargain. If the investigation is not waived, the accused is entitled to be present throughout the investigative hearing (unlike a civilian grand jury proceeding). At the hearing, the accused has the right to be represented by an appointed military defense counsel or may request an individual military defense counsel by name and may hire a civilian attorney at his or her own expense. Again, unlike a civilian grand jury proceeding, the service member, through the member's attorney, has the following rights: to call witnesses; to present evidence; to cross-examine witnesses called during the investigation; to compel the attendance of reasonably available military witnesses; to ask the investigating officer to invite relevant civilian witnesses to provide testimony during the investigation; and, to testify, although he or she cannot be compelled to do so.

The accused must be served with a copy of the investigative report and associated evidence. Within five days of receipt, the accused may submit objections or comments regarding the report to the commander who directed the investigation.

Comparison to the Civilian Preliminary Hearing and Grand Jury Process. The Article 32 investigation has often been compared to both the civilian preliminary hearing

and the civilian grand jury since it is functionally similar to both. All three of these proceedings are theoretically similar in that each is concerned with determining whether there is sufficient probable cause (reasonable grounds) to believe a crime was committed and whether the person accused of the crime committed it. The Article 32 investigation, however, is

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

broader in scope and more protective of the accused. As such, it is not completely analogous to either proceeding.

A civilian defendant at a preliminary hearing may have the right to counsel, the right to cross-examine witnesses against him or her, and the right to introduce evidence in his or her behalf. An Article 32 investigation is considered broader in scope because it serves as a mechanism for discovery by the defense, and because it supplies the convening authority (the decision authority) with information on which to make a disposition decision. While a decision by a magistrate at a preliminary hearing is generally final, the investigating officer's decision is merely advisory.

Unless waived, a civilian defendant may be prosecuted in a federal court for an offense punishable by death, imprisonment for a term exceeding one year, or imprisonment at hard labor only after indictment by a grand jury. (An indictment is a formal written accusation or charge). This Fifth Amendment constitutional right does not apply to state prosecutions - although some state constitutions and statutes have provisions that are analogous to the Fifth Amendment and require an indictment by a grand jury for a felony or other defined offenses. Accordingly, if a service member is tried in a state court, his or her right to indictment by grand jury is dependent upon the particular state's procedures.

The grand jury is a closed, secret proceeding, in which only the prosecution is represented. The body of jurors decides to indict based upon evidence frequently provided solely by the prosecutor. This may even happen without the accused even having knowledge of the proceeding. Inspection or disclosure of the transcript of the proceeding after indictment is also, generally, severely limited. Obviously, by his absence, a defendant is precluded from the opportunity to confront and cross-examine witnesses, to present evidence, call witnesses in his or her favor, or even to speak for him or herself. If a defendant is called before a grand jury, he or she has no right to have a lawyer present through or at any other part of the proceeding. If a grand jury does not indict, the decision is generally final and charges against the defendant are usually dismissed.

The Article 32 investigation, in contrast, is generally an open proceeding that may be attended by the public. Unlike a grand jury proceeding, the accused has the right to be present at the investigation; the right to be represented by an attorney; the right to present evidence; the right to review a copy of the investigative report as well as the several other important rights discussed above. Again, the recommendation of the Article 32 investigating officer is not final -it is only advisory.

Beyond Article 32 of the Uniform Code of Military Justice (Section 832 of Title 10, United States Code), additional rules on Article 32 investigations are contained at Rule for Courts-Martial (R.C.M) 405, as supplemented by case law and service regulations.

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

REFERRAL OF CHARGES AND CONVENING A COURT-MARTIAL

The Armed Forces do not have permanently established trial courts for prosecuting military members. Courts-martial (military criminal trial courts) are convened (established) by commanders possessing the authority to do so, on an “as needed” basis.

Court-Martial Convening Authority. Congress, through the Uniform Code of Military Justice (UCMJ), specifies which commanders and officials possess the authority to convene a courtmartial. A commander who possesses the authority to convene a court-martial is known as a Convening Authority (CA). The CA convenes a court-martial by issuing an order that charges previously preferred (initiated) against an accused service member will be tried by a specified court-martial. This order is called a “convening order” and shall designate the type of courtmartial (summary, special or general) that will try the charges. The convening order may designate when and where the court-martial will meet.

Detailing the Court-Martial Panel. For special and general courts-martial, the convening order will also designate the members of the court-martial panel (the military equivalent of the jury). Although the ultimate membership of the panel is determined, as in the civilian system, through voir dire, the CA initially details the panel members to the court-martial. As required by Congress in Article 25, UCMJ, the CA must choose members who are best qualified to serve based on their age, education, training, experience, length of service, and judicial temperament. However, it is the accused’s choice whether he or she will be tried by a panel of officers, a combined panel of officers and enlisted members, or by the military judge sitting alone.

Types Of Courts-Martial. The characteristics of the different types of courts-martial are described below.

SUMMARY COURT-MARTIAL

A summary court-martial has jurisdiction over all personnel, **except** commissioned officers, warrant officer, cadets, aviation cadets, and midshipmen, charged with a UCMJ offense referred to it by the convening authority.

- Composed of one commissioned officer on active duty, usually pay grade O-3 or above
- The accused member is not entitled to be represented by a military attorney, but may hire a civilian lawyer at his own expense. [In rare cases, military exigencies may preclude the

reasonable availability of civilian counsel.] As a matter of Air Force policy, all accused at summary courts-martial are afforded representation by military counsel.

- The accused member may object to trial by summary court-martial, in which case the charges are returned to the convening authority for further action (e.g., disposition other than by court-martial or action to send the charges to a special or general court-martial)
- The maximum punishment a summary court-martial may award is: confinement for 30

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

days, forfeiture of two-thirds pay for one month, and reduction to the lowest pay grade (E-1)

- In the case where the accused is above the fourth enlisted pay grade, a summary court-martial may not adjudge confinement, hard labor without confinement, or reduction except to the next lowest pay grade

SPECIAL COURT-MARTIAL

A special court-martial has jurisdiction over all personnel charged with any UCMJ offense referred to it by the convening authority.

- Composed of not less than three members, which may include commissioned officers and enlisted members (at the accused's request)
- Usually presided over by a military judge
- The military judge may conduct the trial alone, if requested by the accused
- A military lawyer is detailed to represent the accused member at no expense to the accused. The member may instead request that a particular military attorney, if reasonably available, represent him or her
- The member may also retain a civilian attorney at no expense to the government
- The prosecutor is a military lawyer (judge advocate), unless precluded by military exigencies
- The maximum punishment a special court-martial may adjudge is: confinement for six months, forfeiture of two-thirds pay for six months, reduction to the lowest pay grade (E- 1), and a bad conduct discharge

GENERAL COURT-MARTIAL

A general court-martial has jurisdiction over all personnel charged with any UCMJ offense referred to it by the convening authority.

- Unless the accused waives this right, no charge may be referred to a general court-martial until a thorough and impartial investigation into the basis for the charge has been made. This pretrial proceeding is known as an "Article 32" investigation or preliminary hearing and essentially serves the equivalent function of a grand jury hearing in civilian jurisdictions
- Composed of a military judge and not less than five members, which may include commissioned officers (and enlisted members at the accused's request)
- In non-capital cases, military judges may conduct the trial alone at the accused's request
- A military lawyer is detailed to represent the accused member at no expense to the

accused. The member may instead request that a particular military attorney, if reasonably available, represent him or her

- The member may also retain a civilian attorney at no expense to the government
- The prosecutor must be a military lawyer (judge advocate)
- A general court-martial may adjudge any sentence authorized by the Manual for Courts-Martial for the offenses that the accused is found to have committed

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

Independent Defense – Independent Judiciary. It is the duty of military defense counsel to zealously represent their clients’ legal interests. It is the duty of military judges to be fair and impartial in overseeing trials, applying the law, and if applicable, passing judgement and sentence upon an accused service member. Defense counsel and military judges are assigned to an independent judiciary within the military, with command and performance rating chains that are separate from those of the prosecutors and convening authorities. To further insure complete independence, prosecutors, defense counsel, and military judges maintain separate office facilities.

UNLAWFUL COMMAND INFLUENCE

Mortal Enemy. Unlawful Command Influence (UCI) has frequently been called the “mortal enemy of military justice.” UCI occurs when senior personnel, wittingly or unwittingly, have acted to influence court members, witnesses, or others participating in military justice cases. Such unlawful influence not only jeopardizes the validity of the judicial process, it undermines the morale of military members, their respect for the chain of command, and public confidence in the military.

While some types of influence are unlawful and prohibited by the Uniform Code of Military Justice (UCMJ), other types of influence are lawful, proper, and in certain circumstances a necessary part of leadership. The prohibition against UCI does not mean that a commander may abdicate responsibility for correcting disciplinary problems. Rather, the commander must vigilantly insure that the command action does not encroach upon the independence of the other participants in the military justice system.

Rules In General. Here are some general rules regarding Unlawful Command Influence:

- The Commander may not order a subordinate to dispose of a case in a certain way. The law gives independent discretion to each commander at every level possessing authority to convene courts-martial. A senior commander may not try to influence the exercise of that discretion. However, a senior commander may:
 - *Personally* dispose of a case at the level authorized for that offense and for that commander
 - Send a case back to a lower-level commander for that subordinate’s *independent* action
 - Send a case to a *higher* commander with a recommendation for disposition
 - *Withdraw* subordinate authority on particular types of cases

COMDTINST M5810.1E

- *Order* charges pending at a lower level transmitted up for further consideration, including, if appropriate, referral

Mentor subordinates, but do so recognizing that there exists the potential for misinterpreting the commander's intentions

- The commander must not have an inflexible policy on the disposition of a case or the punishment to be imposed. A convening authority must consider each case individually on its own merits

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

- A commander who is the accuser, may not thereafter act as a convening authority to refer the case to a court-martial. The commander is considered to be "disqualified" to act as a convening authority and must forward the charges to a superior convening authority. A commander is considered to be an accuser when he or she:

- Formally signs and swears to the charges on the charge sheet (prefers the charges), or

- Directs that the charges be signed and sworn to by another, or

- Has an interest, other than an official interest, in the prosecution of the accused

- The commander may neither select nor remove court members in order to obtain a particular result in a particular trial. Selections must be based upon the criteria contained in Article 25, UCMJ. Those criteria include: age and experience, education and training, length of service, and judicial temperament

- No pressure may be placed on the military judge or court members to arrive at a particular decision

- No person may invade the independent discretion of the military judge. Commanders may not question or seek explanation or justification for a judge's decision

- Witnesses may not be intimidated or discouraged from testifying

- The court decides punishment. An accused may not be punished before trial, but may be placed in pretrial confinement if there is a risk of flight, if the accused poses a serious threat to the community, or if the accused is likely to engage in further misconduct

Impartial Review. When a convening authority reviews the result of a court-martial and determines whether to approve the findings and sentence, he or she does so in a judicial capacity. As such, the convening authority has a duty to review impartially military justice actions. The convening authority may not have an inflexible attitude towards clemency.

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

TRIAL PROCEDURES IN THE MILITARY

The rules and procedures in courts-martial are very similar to those in civilian courts. The following discusses some of those similarities and points out some of the differences.

Pretrial Conferences (“Meeting in Chambers”). As in many civilian courts, a legally trained judge presides over most courts-martial. The "military judge" may hold informal conferences to coordinate aspects of the trial. These are similar to conferences a civilian judge might have "in chambers." Under the military rules, "RCM 802 conferences" may be in person, or by phone, but may not be used to resolve contested issues. Contested procedural or legal issues must be resolved in court, on the record.

Pretrial Hearings. The military judge usually settles contested legal or procedural issues under Article 39(a), of the Uniform Code of Military Justice, which allows him to conduct hearings for that purpose. Called "Article 39(a) sessions," the military judge may hear witnesses, take other evidence, and hear arguments, just as a civilian judge would during "motion hearings" in a civilian case. These sessions and most other proceedings of courts-martial are open to the public. As in civilian cases, Article 39(a) sessions take place outside the presence of the "court-martial members" who serve as the jury in military cases.

Arraignment. One of the first "Article 39(a) sessions" in a military case is typically "arraignment." Just as in civilian cases, the accused servicemember is informed of the charges against him and offered an opportunity to make a plea (i.e., "guilty" or "not guilty"). If the servicemember intends to plead guilty, before a formal plea may be accepted the military judge must ensure that the servicemember understands what he is doing and is acting voluntarily. This is called a "providency inquiry." Civilian judges have the same requirement, although the military inquiry is typically more extensive and fact-specific regarding the offenses.

The Court-Member Panel. Similar to civilian juries, court-martial members are officers or enlisted persons from the same community or command (“jury of peers”) as the servicemember on trial. In civilian communities, serving on a jury is a duty of citizenship, and local court officials will "summon" citizens to serve as jurors. In the military, the commander assigns members to serve as jurors, and that becomes their primary military duty.

Voir Dire and Challenges. Just as with civilian jurors, court-martial members must be impartial and may make no decisions about a case until the military judge directs them to begin deliberations. Each side -- prosecution and defense -- gets a chance to ask the court-martial members questions to ensure that members are impartial. If a court-martial

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

member's impartiality is brought into question, or if it is otherwise inappropriate for that member to serve on the court-martial, the military judge will dismiss him or her, as would a civilian judge. As is done in civilian courts, the prosecution or defense may also remove a court-martial member "peremptorily," meaning without a stated reason. In military practice, both the prosecution and defense are afforded one peremptory challenge. Also, like a civilian defendant, except in a capital case, a servicemember on trial may decide to have the judge decide his guilt or innocence, rather than court-martial members.

Trial on the Merits. Once the court-martial members are selected, the case is ready to proceed "on the merits," that is, evidence will be presented about the guilt or innocence of the servicemember. As with any civilian case, the military prosecutor (called a "trial counsel") presents evidence on the charges. The servicemember on trial (called "the accused") may confront this evidence and cross-examine any witnesses. The servicemember may also present evidence and, through the court-martial, compel witnesses to appear.

Rules Of Evidence. What evidence is admissible in a court-martial is spelled out in the Military Rules of Evidence (MRE). As required by the UCMJ, these rules are closely patterned after the Federal Rules of Evidence used in United States District Courts for civilian cases.

Defense Counsel. In all special and general court-martial cases, a military attorney, called a "defense counsel," represents the servicemember on trial. [Military attorneys are also known as "judge advocates."] This attorney is assigned free of charge to the servicemember. The servicemember may also request a specific military attorney to join his defense team and, if available, that attorney will also be assigned free of charge to the defense team. Finally, at his own expense, the servicemember may hire a civilian attorney (even so, the military attorneys remain assigned to the case).

Closing Arguments and Burden Of Proof. Mirroring the practice in civilian courts, once both prosecution and defense counsel have presented their evidence, they get to make "closing arguments." Following closing arguments, the military judge will instruct the court-martial members about the law and direct them to begin deliberations. Because all servicemembers are presumed to be innocent, the court-martial members must be satisfied that the evidence established the servicemember's guilt "beyond a reasonable doubt."

Deliberations and Voting. One departure from civilian cases arises in the way the court-martial members vote. Most civilian court systems require the jurors to vote unanimously to convict. Because of the need for expeditious resolution of cases, Congress directed that a vote of "two-thirds" of the court-martial members is needed before the accused may be found guilty of any offense charged. If the vote is less than a two-thirds to convict, a verdict of "not guilty" is required. As such, the military does not experience "hung juries," as do civilian jurisdictions.

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

However, death penalty cases require a unanimous verdict. Voting is done by secret, written ballot. Although court-martial members are usually of different ranks, they are not permitted to use superiority of rank to influence or pressure another member.

Sentencing Proceeding. If the servicemember is convicted of any offense, the case proceeds immediately to the issue of sentencing. This is different from most civilian courts, where sentencing is delayed several weeks pending the completion of a presentencing report. In military cases, there is no presentencing report. Rather the prosecution and defense are expected to be prepared for this possibility and be ready to present evidence about the convicted servicemember and the offense.

Sentencing evidence includes the impact of the crime (both on a victim, and on a unit's discipline and morale), the servicemember's duty performance history, and extenuating or mitigating circumstances. Both the prosecution and defense may call witnesses. The accused may also testify, give an unsworn statement for consideration. At the conclusion of the presentation of evidence, the prosecution and defense meet with the military judge regarding sentencing instructions to be given in court-member cases and then counsel present arguments about what the appropriate sentence should be.

If a servicemember elected to waive his right to have court-martial members participate in his case, then the military judge will impose the sentence. However, if court-martial members found the servicemember guilty, they will also decide the sentence. This is another difference from the typical practice in civilian courts where a judge imposes the sentence in almost all cases. The only exceptions in both civilian and military courts are death penalty cases that require the participation of a jury.

Once the prosecution and defense finish presenting all their evidence and arguments on sentencing, the military judge or court-martial members will deliberate on the appropriate penalty. The types of sentences that can be imposed differ significantly from those imposed in civilian cases. In civilian courts, typical sentences may include death, confinement, or fines. A civilian judge may also impose probation, and he may require the completion of community service and mandatory treatment or education programs as a condition of probation. Although probation is not possible in military cases because a court-martial is a temporary entity created to resolve a particular case and adjourned when the sentence is imposed, sentences may subsequently be suspended by the court-martial convening authority.

Military sentences can include many different punishments such as death, confinement, separation from the service, reduction in pay grade, forfeiture of pay and allowances, fine, and reprimand. The maximum limits on punishments for each offense are set by Congress in the Uniform Code of Military Justice and defined in more detail by the President in the Manual for Courts-Martial. Unlike civilian courts, where an individual will receive a

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

sentence on each count for which he is convicted (for example, if convicted of two counts of burglary, a civilian judge might sentence an individual to three years in prison for each count to run consecutively -- or a total of six years in prison). In the military, a court-martial imposes one overall sentence, no matter how many "counts" (termed "specifications") there are. The overall sentence limits are the sum of the limits on each "count" charged. For example, a servicemember charged with burglary before a general court-martial would face a maximum possible sentence of 5 years of confinement, forfeiture of all pay and allowances and dishonorable discharge. If charged and convicted of two counts of burglary, the servicemember could be sentenced to up to 10 years of confinement. [It is not legally permissible in a single case to adjudge forfeitures all pay and allowances twice, or to receive two dishonorable discharges. Only the potential confinement for each convicted offense is accumulated.] Also, there are no "sentencing guidelines" or minimum sentence requirements for military courts.

When deliberating about a sentence, any court-martial member may propose a certain sentence. The court-martial members will then vote secretly on each proposal. Notably, a sentence of death must be unanimous; a sentence for life imprisonment or confinement for more than ten years jail requires agreement by three-fourths vote; and a sentence for anything less requires a two-thirds agreement by the court-martial members. Once the sentence is announced, the court-martial is adjourned and the post-trial review processes begin.

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

IMMUNITY AND PRETRIAL AGREEMENTS **IN THE MILITARY**

Immunity. Immunity for an individual is generally sought when that individual has information necessary to the public interest, including the needs of good order and discipline, but has refused or is likely to refuse to testify or provide the information on the basis of the privilege against self-incrimination. [5th Amendment to the U.S. Constitution or Article 31 of the Uniform Code of Military Justice (Section 831 of Title 10, United States Code).]

There are two types of immunity that may be granted under the military's justice system. The first type of immunity is "testimonial immunity." Testimonial immunity, also called "use" immunity, while still permitting a criminal prosecution, bars the use of a person's testimony and statements from being used directly or indirectly against that person in a subsequent courtmartial. The prosecution must be based on evidence independent of the immunized testimony or statements. The second type of immunity is "transactional immunity." This type of immunity bars any subsequent court-martial action against the immunized person, regardless of the source of the evidence against that person. Testimonial or "use" immunity is generally preferred because it does not prevent the government from prosecuting the person based on independently acquired evidence.

Only a General Court-Martial Convening Authority (GCMCA) may grant testimonial or transactional immunity. That authority, however, only extends to grants of immunity over individuals subject to the Uniform Code of Military Justice (UCMJ). The GCMCA can disapprove an immunity request for a witness not subject to the UCMJ, but may only approve the request after receiving authorization from the Department of Justice. If a witness may be considered for Federal prosecution or the case involves national security issues, then the Department of Justice must also authorize the immunity, regardless of whether the witness is subject or not subject to the Code.

A grant of immunity must be in writing, signed by the GCMCA, must include a statement of the authority under which it is made, and must identify the matters to which it extends.

The rules on immunity are contained at Rule for Courts-Martial (R.C.M.) 704, as supplemented by case law and service regulations.

Pretrial Agreements (PTAs). A Pretrial Agreement is a formal written agreement between the accused and the Court-Martial Convening Authority. It is commonly referred to as a “PTA.” It usually involves a guilty plea by the accused in exchange for a sentence limitation. In other words, the accused agrees to plead guilty to some or all of the charges and specifications and the Convening Authority agrees not to approve an adjudged sentence in excess of a specified maximum.

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

Although not an exhaustive list, a convening authority may, as appropriate, promise: to refer the charges and specifications to a certain type of court-martial; to refer a capital offense as noncapital; to withdraw one or more charges or specifications from the court-martial; and to have trial counsel present no evidence as to one or more specifications. Likewise, the accused can also make other promises that may cause the convening authority to favorably consider a PTA. These might include promising: to enter into a stipulation of fact concerning offenses to which a plea of guilty is entered; to testify as a witness in the trial of another person; to provide restitution to victims; or to waive certain procedural requirements.

Generally, pretrial agreements are not approved unless there is some convincing reason to forego trial on the facts and issues. For example, the case may have sensitive, sensational, or classified evidence or there is a desire to avoid the traumatic examination of a child witness. These agreements are also limited to cases where the available evidence of guilt is convincing and conviction is probable, assuming the case was to be tried.

The agreements can be initiated by the accused with the assistance of counsel or by the government. If the government initiates a PTA offer, the defense counsel assists the accused in negotiating and deciding upon an agreement. A military judge also has an affirmative duty to ensure a pretrial agreement does not improperly limit the accused’s due process rights. The entire pretrial agreement must be in writing and signed by the accused, defense counsel, and the convening authority. The agreement must not involve any informal oral promises or representations. The agreement is normally prepared in two parts. The first part ordinarily contains an offer to plead guilty, a description of the offenses to which the offer extends, and a complete statement of any other agreed terms or conditions. The second part normally contains the convening authority’s agreement on limiting the sentence. Either party may void an agreement by withdrawing from it. Withdrawals by either party must also be reduced to writing.

At trial, the military judge will conduct a full inquiry into the specific terms of the agreement to ensure the accused: fully understands both the meaning and effect of each provision of the agreement; voluntarily entered into the agreement; and received no oral promises in connection with the agreement. This inquiry is in addition to the judge’s providence inquiry into the validity of the guilty plea itself without the accused’s permission.

In a trial by military judge alone, the military judge will not examine the sentencing limitation of the agreement until after he or she has independently adjudged a sentence. In a trial by court members, the members are not informed of the existence of a pretrial agreement, nor is any statement made by an accused in connection with the agreement disclosed to the judge or the court-martial members.

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

If the adjudged sentence by the military judge or court-martial members exceeds the limit of the agreement, the convening authority may only approve the lesser, agreed-upon sentence. If the adjudged sentence is less than the agreed sentence limitation, then only the lesser, adjudged sentence may be approved. In other words, the military accused always receives the lesser of the adjudged sentence or the PTA sentence agreed upon.

The rules on pretrial agreements are contained at Rule for Courts-Martial (R.C.M.) 705, as supplemented by case law and service regulations.

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

POST-TRIAL REVIEW PROCEDURES

Record Of Trial and Authentication. After trial, a record of the trial proceedings is prepared by the court reporter. It is provided to both the trial counsel (prosecutor) and the defense counsel for correction, and is then authenticated (certified as accurate) by the military judge. The nature of adjudged sentence determines the type of record of trial that is required, verbatim or summarized. For a verbatim record of trial, the sentence must include one of the following punishments: dismissal, dishonorable discharge, bad-conduct discharge, confinement for more than six months, forfeiture of more than two-thirds pay per month or forfeitures for more than six months. Other records of trial are summarized. Although some very limited post-trial actions can be taken without the authenticated record of trial, the review process requires the completed record of trial.

Effective Date of Punishments. Any period of confinement included in the sentence of a courtmartial begins to run from the date the sentence is adjudged unless deferred or suspended. Adjudged reductions in rank and adjudged forfeitures of pay and allowances are effective fourteen days after the sentence is adjudged or upon action of the convening authority, whichever is sooner. However, any sentence which includes confinement for more than six months or death, or confinement for six months or less and a dishonorable or bad-conduct discharge or dismissal results in a mandatory forfeiture of pay fourteen days after the sentence was adjudged, even if no forfeitures were adjudged. Under these requirements, a general courtmartial results in total forfeiture of pay and allowances (allowances are separate payments for housing and food) during confinement, and a special court-martial results in forfeiture of two-thirds pay (but not allowances) during confinement. When the accused (defendant) has a family, the convening authority may waive the mandatory forfeitures for up to six months and re-direct pay and allowances for support of the accused's family. Other potential punishments (*e.g.*, fines, restriction to specified limits, hard labor without confinement) are effective when approved in the convening authority's action. Dismissals, dishonorable discharges and bad-conduct discharges must be approved by the convening authority, but cannot be ordered executed (issued) until appellate review is completed.

Deferment Requests. Upon written application of the defendant, the convening authority may defer adjudged confinement, forfeitures or reduction in rank. Deferment is a postponement of the beginning of the sentence. It is not a suspension of the sentence, and it is not a form of clemency. The accused has the burden of showing that his interest and

the community's interests in deferment outweigh the community's interests in imposition of punishment. In making the decision, the convening authority may consider, among others, the following factors: the probability of flight; the probability of commission of other offenses; intimidation of witnesses; interference with the administration of justice; the nature of the offenses (including the effect on the victim); the sentence adjudged; the command's immediate need for the accused; the effect of

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

deferment on good order and discipline in the command; and, the accused's character, mental condition, family situation, and service record. Deferments end when the convening authority takes action, when the punishment is suspended, when the deferment expires by its own terms, or by other rescission.

Staff Judge Advocate (SJA) Review and Defense Response. A formal legal recommendation is required to be prepared in all general courts-martial and in special courts-martial where a badconduct discharge is adjudged. An impartial Staff Judge Advocate signs the recommendation. That recommendation is served on the accused's attorney and the accused, who have ten days to submit comments. The ten-day period can be extended for an additional twenty days. These comments can address legal errors, provide facts supporting reversal of the findings of guilty or clemency. The accused and his or her attorney determine the scope of clemency matters. Clemency matters may include a repeat of matters presented at trial, other evidence of good character, post-trial statements from friends, or relatives, evidence of financial hardship, and evidence of the adjudged sentence's effect upon the accused's family. These comments, if any, along with the recommendation of the Staff Judge Advocate are forwarded to the convening authority for action.

Convening Authority Options and Action. The convening authority performs the initial step in the review process and has extensive discretion when taking action on a case. In taking action, the convening authority either approves the findings and sentence or may change either or both of them. He or she may dismiss any offense or change the finding of guilty of any offense to one of a lesser-included offense. The convening authority may disapprove the findings of guilty or all, or any part of, a legal sentence. However, court-martial findings of "not guilty" are final when adjudged and may not be later changed by the convening authority. He or she may reduce or suspend a sentence or change the punishment to one of a different nature so long as the severity of the punishment is not increased. The convening authority may approve a sentence only if he or she determines that it is warranted by the offense(s) and appropriate for the accused soldier. For example, the convening authority may reduce or eliminate any confinement, may change a dishonorable discharge to a bad-conduct discharge, and may reduce a sentence of death to imprisonment. Prior to taking action, the convening authority must consider the results of trial, the recommendation of the Staff Judge Advocate, and any matters submitted by the defense attorney and the accused. In general, the appellate process does not begin until the convening authority has taken action.

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

APPELLATE COURT REVIEW

Automatic Review and The Article 69 Process. If there is an approved sentence which includes a sentence of death, a punitive discharge (Dishonorable Discharge or Bad Conduct Discharge for enlisted personnel; Dismissal for officers), or confinement for one year or more, the Courts of Criminal Appeals of the accused's branch of service will automatically review the case. The accused can waive this automatic review in all cases, except death penalty cases. An accused who waives his appellate rights will still have his case reviewed, pursuant to Article 69 of the Uniform Code of Military Justice, by the service Judge Advocate General for legal errors and possible referral to the appellate courts.

Military Courts of Criminal Appeals

Review By the Court of Criminal Appeals. Each military service has established a Court of Criminal Appeals which is composed of one or more panels, and each panel has not less than three appellate military judges. For the purpose of reviewing court-martial cases, the court may sit in panels or as a whole. The court, sitting as a whole, may reconsider any decision of a panel. Appellate military judges who are assigned to a Court of Criminal Appeals may be commissioned officers or civilians, each of whom must be a licensed attorney. The Judge Advocate General of each Service designates one of the appellate military judges of that Service's Court of Criminal Appeals as chief judge. The chief judge assigns the appellate judges to the various court panels and determines which military judge will serve as the senior judge on each panel.

The Court of Criminal Appeals can correct any legal error it finds, and it can reduce what it considers to be an excessive sentence. Under Article 66©, UCMJ, the Court may only affirm findings of guilty and the sentence or such parts of the sentence that it finds correct in law and fact. In considering the record, the Court may weigh the evidence, judge the credibility of witnesses, and determine disputed questions of fact, recognizing that the trial court saw and heard the witnesses. Most civilian appellate courts can only consider issues of law, not questions of fact. They are bound by the findings of fact made by the civilian trial court. The power of the Court of Criminal Appeals to also consider questions of fact is a unique and important right afforded an accused under the UCMJ. Of course, similar to civilian appellate courts, the Court of Criminal Appeals cannot change a finding of "not guilty" to a finding of "guilty," nor can it increase the severity of the sentence approved by the court-martial convening authority.

Jurisdiction of the Courts of Criminal Appeals. Each Court of Criminal Appeals has jurisdiction to review courts-martial in which the sentence, as approved: extends to death; dismissal of a commissioned officer, cadet, or midshipman; dishonorable or bad-conduct

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

discharge of enlisted personnel; or confinement for one year or more. These courts may also review cases referred to the Court by the Service's Judge Advocate General. In addition, the Courts may, in their discretion, entertain petitions for extraordinary relief including, but not limited to, writs of habeas corpus, mandamus, and prohibition. Except in a death penalty case, the right to appellate review may be waived by the accused.

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

United States Court of Appeals for the Armed Forces. Five civilian judges, appointed by the President and confirmed by Congress, comprise the Court of Appeals for the Armed Forces (CAAF) and serve for a term of 15 years. CAAF is responsible for overseeing the military justice system. In all but death penalty cases, which it reviews automatically, and cases certified by the Judge Advocate General, CAAF chooses upon petitions for review which cases it will consider, similar to Federal courts of appeal.

United States Supreme Court. Military members convicted of crimes may petition the U.S. Supreme Court for a review of their case. Decisions of the United States Court of Appeals for the Armed Forces are subject to review by the Supreme Court by writ of certiorari. However, the Supreme Court may not review a decision by the Court of Appeals for the Armed Forces which had refused to grant a petition for review. The military accused has a right, without cost, to the services of a military appellate defense counsel at all appellate review levels, including review by the Supreme Court. The military accused may petition the U. S. Supreme Court for a writ of certiorari without prepayment of fees and costs.

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

DEATH PENALTY CASES

Death is the authorized punishment for a number of very serious crimes. However, during peacetime the death penalty has only been sought and imposed in cases of felony-murder and premeditated murder. If the convening authority approves the sentence, there is a process of mandatory review of the facts, law and appropriateness of the sentence in terms of other similar cases. There is a right to petition the United States Supreme Court after the military appellate courts have reviewed a case. The President of the United States must approve all death sentences and signs the death warrant.

Capital Crimes. In order for a death penalty to be imposed the court-martial members (trial jurors) must reach a unanimous verdict that the servicemember is guilty of the crime. In the sentencing portion of a court-martial, in addition to the court-martial procedures required for other serious crimes, the members are required to make a unanimous finding that one or more specified aggravating factors exist and that they substantially outweigh any extenuating or mitigating circumstances. The military is what is called a "weighing jurisdiction." Throughout the review process, the accused is entitled to free military appellate defense counsel, in addition to retaining a civilian attorney at no expense to the government.

Review Process. A death sentence imposed by a court-martial must be approved by the convening authority and then reviewed by the appropriate Service Court of Criminal Appeals, and the U. S. Court of Appeals of the Armed Forces, prior to presidential review. The accused may also petition the U. S. Supreme Court for review. Assuming affirmation of the sentence at each stage of the review process, the Judge Advocate General (JAG) for a respective Service then forwards the case, with the JAG recommendation, to the Service Secretary. The Secretary cannot remit or suspend any part of a death sentence. The Service Secretary must forward the case to the President, usually with a recommendation by that Service Secretary. The President may request and consider input from the Attorney General, or any other executive branch department. The President then takes action approving, disapproving, or commuting the death sentence.

Habeas Corpus Petitions. After the President signs a death warrant, the accused can seek a writ of habeas corpus in the appropriate federal district court. The right of the accused to a military appellate defense counsel without cost extends to habeas corpus petitions filed in federal court, if requested by the accused.

Execution of Sentences. Only the President can order the execution of a death sentence. A sentence to death, which has been finally ordered executed, shall be carried out in the

manner prescribed by the Service Secretary concerned. Currently, executions are by lethal injection.

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

CLEMENCY, PAROLE, PARDONS AND CORRECTION OF MILITARY RECORDS

Clemency. Clemency is an action by either the court-martial convening authority or a Clemency and Parole Board which may result in the mitigation, remission, or suspension of the whole or any part of an individual's court-martial sentence. To receive clemency from the convening authority, the accused may submit a request for clemency after the sentence is announced but before the convening authority takes final action. Pursuant to the Uniform Code of Military Justice, Service Secretaries may also grant clemency on unexecuted portions of a court-martial sentence. Primarily the Service's Clemency and Parole Boards exercise these clemency powers. Each board consists of five senior officers and provides recommendations and advice to the respective Service Secretary. Automatic clemency review is available to an accused depending on the length of confinement awarded and the branch of service. Clemency review can be waived.

Parole. Parole is the conditional release of an accused from confinement. The servicemember's Service regulations should be reviewed to determine eligibility criteria. The eligible applicant must submit a parole plan to the appropriate Service's Clemency and Parole Board. The parole plan must provide at a minimum a residence requirement, a requirement that the prisoner have either guaranteed employment, an offer of effective assistance to obtain employment, or acceptance in a bona fide educational or vocational program. Military prisoners transferred to the Federal Bureau of Prisons to serve their sentence are paroled at the discretion of the Federal Bureau of Prisons. The U. S. Probation office supervises all parolees. In general, the Clemency and Parole Board looks at the following factors: the nature and circumstances of the crime; the military and civilian background of the offender; a substantial post-conviction educational or rehabilitative effort; post trial progress reports; recommendations of the military judge and legal officer; psychiatric evaluations; any statement by the victim; and, any restitution made to the victim.

Pardon. An individual may also petition for the highest form of clemency, a Presidential Pardon. Under Article II, Clause 1 of the Constitution, the President has the power to grant pardons for federal offenders. The pardon signifies forgiveness of an offense. However, a pardon will not change the nature of a discharge or expunge a record of conviction. Requests for pardons are handled through the Office of the Pardon Attorney, U. S. Department of Justice.

Correction of Military Records. Once an accused has exhausted all other possible remedies, another method for an accused to either modify or reduce a sentence may be by

petition to the Board for the Correction of Military Records. Each Service has established a Board for the Correction of Service Records in order to correct military records, where

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

such action is necessary or appropriate to correct an error or an injustice. These civilian boards are established pursuant to the statutory provisions of 10 U.S.C. § 1552. These boards cannot set aside a court-martial conviction, but may reduce or modify a sentence as a matter of clemency, even if the sentence has already been executed.

RELEASE OF INFORMATION

(The Freedom of Information and Privacy Acts)

The Freedom of Information Act. The Freedom of Information Act (FOIA) provides that any person has a right of access to federal agency records, except to the extent that such records are protected from disclosure by specific, enumerated exemptions.

Enacted in 1966, the FOIA established for the first time an effective right, based in statute (5 U.S.C. § 552), of access to government information. Principles of government openness and accountability underlie the FOIA. As stated by the Supreme Court:

“The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.”

Society’s strong interest in an open government can conflict with other important interests of the general public -- such as the public’s interest in the effective and efficient operations of government; in the prudent governmental use of limited resources; and in the preservation of the confidentiality of sensitive personal, commercial, and governmental information. The FOIA attempts to balance these interests, and allows federal agencies to exempt from disclosure:

- National security information which is properly classified;
- Certain internal personnel rules, the disclosure of which would risk circumvention of a legal requirement;
- Matters specifically exempted by other statute;
- Trade secrets and confidential commercial or financial information obtained from other persons;
- Certain pre-decisional documents, or ones protected under attorney-client privilege or as attorney-client work product;
- Records which, if released, would constitute a clearly unwarranted invasion of personal privacy; and
- Certain records compiled for law enforcement purposes.

Federal agencies are required to publish rules of procedure to assist the public in making FOIA requests. Generally, a FOIA request must be in writing, cite to FOIA as authority for the request, reasonably describe the record sought, and indicate either a willingness to pay processing/duplication fees or an explanation as to why a fee waiver would be appropriate. FOIA requests should be sent to the agency or organization believed to be in possession of the record. The FOIA provides federal agencies 20 working days in which to respond to requests, however due to the complexity of certain requests or a backlog of FOIA requests within certain agencies, final release determinations are sometimes delayed past this time period. Adverse release determinations may be appealed.

More detailed guidance on submitting FOIA requests to the Department of Defense or the military services can be found at:

Department of Defense: Title 32, Code of Federal Regulations, Parts 285, 286
Department of the Army: Title 32, Code of Federal Regulations, Part 518
Department of the Navy: Title 32, Code of Federal Regulations, Part 701
Department of the Air Force: Title 32, Code of Federal Regulations, Part 806

Most federal agencies now maintain FOIA information on public web sites (for DoD and the military services, see www.defenselink.mil).

The Privacy Act. The Privacy Act (PA) of 1974 (5 U.S.C. §552a) regulates the collection, maintenance, use, and dissemination of personal information held by federal agencies.

The purpose of the PA is to **balance** :
Government's bona fide need The rights of individuals to be to maintain certain personal **versus** protected against unwarranted information about individuals invasions of privacy

The PA focuses on **4 basic objectives**:

1. To establish a code of "**fair information practices.**" The PA requires that federal agencies only maintain such information about an individual as is relevant and necessary to accomplish an authorized agency purpose. Each individual who is asked to provide personal information must, in writing, be informed of:

- The legal authority the agency relies upon in requesting personal information;
- The principal purpose for which the information is intended to be used;
- The routine uses which may be made of such information; and
- Whether providing information is mandatory or voluntary and the effects, if any, of not providing the information requested.

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

2. To grant individuals the **right to access** to agency records maintained on themselves. If an agency maintains a “system of records” in which personal information is maintained and accessible through use of a personal identifier (e.g., name or social security number), notice of the system must be published in the Federal Register. In this notice, agencies describe the categories of individuals who may have personal information contained therein, the types of records that may be present, as well as the purpose and routine uses of system files. Notices also contain procedures on how individuals request copies of, or access to, any files about themselves. Certain exemptions may apply (e.g., law enforcement records may not be accessible). In addition to periodic publication in the Federal Register, the National Archives and Records Administration (NARA) maintains a compilation of agency PA issuance at www.nara.gov.

3. To grant individuals the **right to seek amendment** of agency records maintained on themselves. If an individual believes that information is not accurate, relevant, timely, or complete, he/she may request amendment of his/her own record. The agency must either make any requested correction or inform the individual of its refusal and procedures for appeal.

4. To **restrict disclosures of personal information to third parties**. Generally, federal agencies may not release personal information contained or originating from its records to anyone besides the individual to whom the record relates, unless that individual provides prior written consent. The PA does allow certain nonconsensual disclosures to third parties in limited circumstances, including:

- Intra-agency disclosures to employees who have a “need to know”;
- Where required by the Freedom of Information Act (and only after an appropriate balancing of the individual’s privacy interest vs. public interest);
- Disclosures made in accordance with published “routine uses” of the record;
- In response to proper law enforcement requests;
- In compelling circumstances to protect the health and safety of an individual;
- To Congress, Bureau of Census, National Archives, or GAO; and
- In response to a court order.

The PA requires agencies to maintain an accurate accounting for each of the above disclosures (except intra-agency releases), a copy of which may be requested by the individual to whom the record relates.

RELEASE OF INFORMATION

(Military Justice and Disciplinary Actions)

Congressional Inquiries. When a Member of Congress requests information related to a disciplinary case and such information may be protected by the Privacy Act (PA), the releasing authority must first determine the capacity in which the Member is requesting the information. If a Member of Congress is requesting information on behalf of either House, or a committee or subcommittee thereof, regarding a matter within its jurisdiction, then a statutory PA exception permits release of the information. DOD regulations govern the procedures for releasing information related to the official action of Congress.

If a Member of Congress requests information in a personal capacity or on behalf of a constituent, the statutory exception does not apply. The request for information must be treated in the same manner as a request from any other individual. If the information involves the privacy interest of the individual for whom the Member of Congress is making the request and such individual has provided the Member with written authorization and consent to release, then the information may be provided. However, other Freedom of Information Act (FOIA) exceptions to disclosure, such as the exception related to information collected for law enforcement purposes, may limit disclosure. If the information is requested personally by the Member of Congress or on behalf of a person other than the individual with the privacy interest (e.g. crime victim), then PA requirements must be balanced against FOIA concerns. If release of the information is not required by FOIA and such release will be an unwarranted invasion of privacy, then the information may not be released. Likewise, if a FOIA exception to disclosure applies, then disclosure will be limited. Service regulations provide procedures for responding to requests from Members of Congress that are personal or on behalf of a constituent.

Court-Martial, Nonjudicial Punishment, and Administrative Actions :

General. Release of information related to adverse personnel actions involves considerations of the relationship between the Freedom of Information Act (FOIA) and the Privacy Act (PA). Where the action is not final, the primary consideration must be the fairness of the proceedings. If the release of information may affect the impartiality of an adjudicator or reviewing authority, then such release should not occur. Where the action is final and privacy interests are involved, FOIA and PA concerns must be reconciled. If the FOIA requires disclosure of the information and such disclosure does not constitute a clearly unwarranted invasion of personal privacy, the PA does not bar disclosure. Thus, under certain circumstances, FOIA provides an exception to the general rule that an individual's consent is required to disclose PA protected information. Finally, FOIA exceptions to disclosure, such as the limitation on providing information collected

for law enforcement purposes, may apply.

ANNEX A: U.S. Coast Guard Media Relations in High-Visibility Court Martial Cases

Court-Martial. Court-martial proceedings are generally open to the public and media. Thus, information concerning action taken in open court, the results of court proceedings, and subsequent actions, such as clemency and appellate review, are not generally protected by the PA. Accordingly, such information may usually be released. Additionally, a written FOIA request is not needed prior to release of such information. However, despite the public availability of court-martial information, a privacy interest may exist with respect to material that is "practically obscure." Such an interest may exist with respect to court-martial records from proceedings that occurred in the relatively distant past. Thus, information related to recent cases may be readily releasable, while information related to older cases may require detailed review in order to determine whether it may be released.

Nonjudicial Punishment. Unlike courts-martial, the imposition of nonjudicial punishment (NJP) and the hearings thereon are not open to the public. Accordingly, release of information concerning NJP is restricted. Under NJP procedures, the alleged offender may request that his or her personal hearing before the commander be "open to the public." Generally, this means to members of the command. For good cause, commanders may also open personal hearings to members of the command. When the NJP proceedings are open to members of the command imposing NJP, the results, including personal identifying information may be released to members of the command. The justification for this is under both the "routine use" exception and the concept that no "disclosure" occurs where the information is already available to those to whom it is provided. If NJP results are to be disclosed outside of the command, then FOIA and PA concerns must be reconciled. In most cases, the privacy interest of the individual will outweigh the FOIA interest of informing the public about the functioning of its government. In such cases, NJP information should not be released. On the other hand, the circumstances of some cases may create a greater need to inform the public. Specifically, where the misconduct for which NJP was imposed involves a government official's violation of the public trust, disclosure can be justified by the need to inform the public and instill confidence in government operations and also by the benefit and deterrent effect that would result from public dissemination. The balance in favor of disclosure is even higher when the misconduct involves high-ranking government officials.

Administrative Action. Adverse administrative actions, such as administrative separation or non-punitive censure, are not matters of public record. In most cases, disclosure of the character of separation or other administrative action will be an unwarranted invasion of privacy and the balance will weigh against disclosure. On the other hand, as with NJP results, the circumstances of a given case may involve FOIA considerations that favor disclosure.

DISCHARGES, RESIGNATIONS, AND RETIREMENTS IN LIEU OF COURT-MARTIAL

General. Separation of an accused in lieu of trial by court-martial is an administrative procedure that is available to resolve disciplinary matters and may be used in appropriate cases. Whether such administrative action is appropriate in a given case is a matter within the discretion of the approval authority. DOD and service regulations detail the procedures and requirements for such action. Generally, an accused initiates the request and, if approved, the accused is separated from military service. In exchange for such voluntary separation, the charges against the accused are dismissed. No regulation specifically authorizes retirement in lieu of court-martial; however, no regulation prohibits such action. A retirement-eligible servicemember may not be administratively discharged without the member's consent. In other words, only a punitive discharge, awarded at court-martial, will divest retirement. Thus, in a given case, it may be appropriate to retire an individual instead of trying that person at court-martial. Additionally, an officer may be retired at a grade lower than the highest grade in which the officer served. While separation in lieu of court-martial is administrative in nature, the existence of such a procedure is recognized in the Military Rules of Evidence. Specifically, statements made in the course of a request for separation in lieu of court-martial, including admissions or acknowledgments of guilt, are not generally admissible in a court-martial.

Procedure and Approval Authority for Enlisted Personnel. DOD regulations provide the details regarding the procedure for the separation of enlisted personnel in lieu of court-martial. In addition, Service policies and procedures apply. There are three requirements that must be met when an accused requests discharge in lieu of court-martial. First, charges must be preferred against the accused. Second, the authorized maximum punishment for the offense, upon which separation is to be based, must include a punitive discharge. The Manual for Courts-Martial identifies those offenses that may be punished by a punitive discharge. Finally, there must be an assessment made that the accused is unqualified for future military service. This determination may be based on the seriousness of the charged offense(s) and the related circumstances, as well as other factors related to the service of the accused. A request for discharge in lieu of trial by court-martial must also meet several requirements. Specifically, the request must be in writing and signed by the accused. The accused must be afforded the opportunity to consult with legal counsel and if legal counsel is sought, counsel must sign the request. Additionally, in the request the accused must state that he or she understands the elements of the charged offense and the consequences of administrative separation. This understanding must also acknowledge the possibility of an adverse characterization of service. The discharge case file must also contain either an acknowledgement that the accused is guilty of an offense for which a punitive discharge is authorized or a summary of the evidence supporting the guilt of the accused. Statements made by the accused or defense counsel in connection with the discharge request are not admissible against the accused in a

court-martial should the discharge request be disapproved. In most cases, the approval authority for discharge in lieu of court-martial is the appropriate General Court-Martial Convening Authority. The sole exception to this is that a Special Court-Martial Convening Authority may approve separations that are based only on the offense of unauthorized absence of greater than 30 days.

Procedure and Approval Authority for Officers. Service regulations provide the details regarding the procedure for separation of officers in lieu of court-martial. Generally, the request procedures are similar to those relating to enlisted personnel. The primary difference is that the Secretary of the applicable service is the approval authority. The reason for this is that such requests are really requests by the officer to resign his or her commission. Officer commissions are held at the pleasure of the President, who has delegated resignation approval authority to Service Secretaries.

Types of Discharges. Normally, requests for administrative discharge in lieu of trial by courtmartial are characterized as discharges Under Other Than Honorable Conditions (UOTHC). There are three types of administrative discharge characterizations: Under Other Than Honorable Conditions (UOTHC), General (under Honorable Conditions), and Honorable. The serious nature of the misconduct and the circumstances warranting trial by court-martial generally support the appropriateness of a UOTHC discharge. Characterization of service as General (under honorable conditions) is authorized only where appropriate. A General discharge may be appropriate, for example, if the offense is relatively minor or if the service of the individual is otherwise particularly meritorious. An Honorable discharge is only authorized if the individual's record of service is so meritorious that any other characterization would be inappropriate.

ANNEX B

PRACTICAL POINTERS

FOR

COAST GUARD MEDIA PLANS

ANNEX B: U.S. Coast Guard Media Relations in High-visibility Court Martial Cases

ANNEX B

Practical Pointers for Coast Guard Media Plans

Be Involved With Plan Development

Remember, dealing with the media is PA's mission and hence PA is responsible for the media plan. However, just as no op plan is developed without the active input of those experts who must employ it, no PA plan should be developed without ACTIVE legal counsel involvement. As soon as a case is identified as "high-profile," a specially trained legal spokesperson will be detailed to the case from outside the Staff Judge Advocate's office by Commandant (CG-0946), Coast Guard Legal Service Command East and West, or CCGD 13(d1) to assist in responding to the media. The legal spokesperson should help develop the plan, review it, and provide the substantive legal information needed to develop the plan. The commander should approve it. The plan should generally address the following:

- **Themes and messages** that should be made by PA in its releases to the media. These themes should be clear, short and to-the point. (For example, "We are concerned with unprofessional relationships because they pose a risk to unit morale and discipline." Or, "Coast Guard justice is gender neutral.")
- **Written Q's and A's** (questions and answers) prepared for PA's use in responding to standard and expected media questions.

Establish a Media Center

Establish a media center consisting of local PAs and a legal spokesperson from Commandant (CG-0946), Coast Guard Legal Service Command East and West, with a "media center director" from PA, and with adequate phone lines and basic amenities such as coffee, water, etc., at a location convenient to the courtroom. Ensure, though, that the media center is located in an area that will not unduly interfere with trial proceedings or, more importantly, deliberations. As news reporters arrive at media center (consider having PA rep at gate to direct them to media center), provide handouts, brief them on rules, location of restrooms, etc. Provide lots of space/phones/outlets to file stories, plug in laptop computers, etc. Don't forget cameramen camped outside.

Escorting the Media

Provide the media with badges so they can be distinguished from other civilians in the area. Some will attempt to wander off and may enter off-limits areas such as the deliberation room, and may try to interview bystanders without an escort. You must **HAVE PLENTY OF ESCORTS** for the media to avoid problems. (Consider allowing media to have an area where they can wander about at will, with the understanding they will comply with your other rules on interviews, photography, etc.; otherwise, you will need a one-for-one escort, which may not be practical or feasible.)

Media in the Courtroom

Reserve a reasonable number of courtroom seats for the media and at least one PA escort. If the number of reporters wishing to cover the trial exceeds the number of seats that can reasonably be allocated, consider pool coverage. In extraordinary situations, it may also be appropriate to ask the judge pursuant to RCM 806 (C) to allow contemporaneous closed-circuit video or audio transmission to permit viewing or hearing by spectators in a separate room when courtroom facilities are inadequate to accommodate a reasonable number of spectators.

Prepare Your Spokesperson

Prepare the assigned legal spokesperson to deal with the media. While PA is responsible for organizing and assuring execution of the plan, commanders and legal officers are most likely to be called upon to be spokespersons on military procedures, justice and command issues. People who actually work with the justice system on a daily basis frequently have more inherent credibility than someone who has had a “crash course” in the basics of military justice. Judge advocates should be used as spokespersons to explain the Uniform Code of Military Justice issues surrounding the case. Unless requested, they are, ordinarily, not to be considered spokespersons on command issues more appropriately addressed by those who have responsibility of command. Media training for the spokespeople is essential.

Pre-trial Background Briefing

Prepare a pre-trial background briefing, with written handouts, for the media – preferably moderated by PA but conducted by the legal spokesperson – on military justice procedures. Such a briefing should focus on the process, and steer away from substantive issues in the case, especially evidentiary issues related to guilt or innocence. The briefing can also include the kinds of releasable information discussed

earlier in this document. It should also educate the media about how the UCMJ favorably compares to the civilian system.

Press Kits

Prepare a press information kit, and ask your legal office to review the contents to verify that release will not create legal issues. Then, distribute a kit to credentialed media covering the trial and/or attending the pre-trial background briefing. Include only those items that are of importance to the media, and have more general information available for them to pick up. Among items you may wish to include in such a kit may be:

- ❑ “Ground rules” for press members (e.g., where they are allowed to go on base, where photography is permitted or prohibited, procedures for requesting interviews, including locations of “man on the street” interviews, whether they will be allowed back into the courtroom after the day’s proceedings in order to do a “standup,” etc.). Be sure everyone understands your conditions in advance.
- ❑ Copy of the charges, sanitized as appropriate. (No social security numbers or other Privacy Act protected information.)
- ❑ Provide Fact Sheet explanation of UCMJ process from *Annex A* as appropriate.
- ❑ Extracts of the UCMJ and MCM as appropriate.
- ❑ List of names of trial participants (not including, though, witnesses, or judge or members).
- ❑ Information on how to contact PA after duty hours.

Continuous Media Oversight

Once trial begins, continued oversight by both PA and the legal spokesperson is critical. Periodic procedural updates through the use of “background” interviews can be effective in keeping the media informed about the progress of the trial. (Be aware of and follow any “gag” order issued by the judge, though. On average, “gag orders” should not be encouraged by the government.)

**COURT RULES OF PRACTICE AND PROCEDURE
BEFORE
COAST GUARD GENERAL AND SPECIAL
COURTS-MARTIAL**

LAST UPDATED: 19 NOV 2009

PREAMBLE

These rules for courts-martial have been promulgated in accordance with RCM 108 in order to provide uniformity in the practice and proceedings of courts-martial throughout the Coast Guard, and to meet the goals set forth in rule 2. Pursuant to RCM 801 and section 6.C. of this manual, the military judge has authority to modify or supplement these rules in whole or in part, but absent a specific court order by the military judge, these rules apply to all general and special courts-martial in the Coast Guard. Adherence to these rules by all parties is required and will assist in promoting the orderly disposition of courts-martial cases, and ensure that the proceedings manifest fairness, justice, and impartiality for all parties.

Rule 1. Applicability. These uniform rules of court apply to all cases tried in, and all counsel practicing before, Coast Guard general and special courts-martial. These rules also apply to an accused who chooses to proceed pro se pursuant to RCM 506(d) and in cases with a military judge from another armed force. Counsel, as officers of the court, are expected to be familiar with and follow these rules.

Rule 2. Purpose, construction, and enforcement. These rules are intended to provide for the just determination of every court-martial proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay. Although these rules are mandatory, noncompliance, in and of itself, does not give rise to any rights or remedies and the rules shall be interpreted and applied in that light. Counsel may be required to explain the failure to comply with these rules and the military judge is empowered to take appropriate action pursuant to applicable law and regulation. See Coast Guard Professional Responsibility Program (CGPRP) COMDTINST M5800.1, RCM 109, and RCM 809.

Rule 3. Trial procedure guide. The Coast Guard Trial Guide will be used.

Rule 4. Notifications to the military judge.

Rule 4.1. After referral of charges, the trial counsel shall promptly provide a copy of those charges, and the appropriate convening order, to the chief trial judge and alternate docketing judge. This should be done concurrently with submission of the military judge detailing request. A military judge will not normally be detailed to the case until after receipt of the appropriate charge sheet and convening order.

Rule 4.2. After referral, the trial counsel shall immediately notify the detailed trial judge and defense counsel when any offer to plead guilty or any request for discharge/resignation in lieu of court-martial will be presented to the convening authority for decision and whether the SJA is supporting the request.

Rule 4.3. When the convening authority accepts an accused's offer to plead guilty

pursuant to a pretrial agreement, the trial counsel shall immediately provide a signed copy of the pleas portion only (Part I) to the judge, but in no case less than three full work days prior to trial. If the pretrial agreement package presented to the convening authority included a signed stipulation of fact, it shall also be provided to the judge. Otherwise, stipulations of fact must be provided to the judge as soon as signed by all parties, but in no case less than three full work days prior to trial.

Rule 5. Retention of civilian counsel.

Rule 5.1. In each case in which a civilian attorney is retained by the accused, the detailed defense counsel shall furnish a copy of these rules to that civilian attorney, who shall be bound by them, as well as by the Coast Guard Professional Responsibility Program, COMDTINST M5800.1, and paragraph 6.C. of this manual which makes Coast Guard courts-martial also subject to the following ABA standards for the Administration of Criminal Justice: The Prosecution Function and the Defense Function; The Function of the Trial Judge; Fair Trial and Free Press.

Rule 5.2. When a trial date has been set prior to the accused's retention of civilian counsel, or individual military counsel, the detailed defense counsel shall advise the other defense counsel of the date, time, and place of trial or Article 39(a), UCMJ session, and the identities of the convening authority, the military judge, and the trial counsel.

Rule 5.3. At the earliest opportunity, civilian defense counsel shall cause to be served on the court reporter a written notice of appearance, with copies to the military judge and trial counsel. This notice shall include the name of the accused, counsel's name, office address, telephone number, email address, and jurisdiction(s) where the counsel is currently admitted to practice. The filing of any pleading relative to the case signed by the counsel, or submitted from the counsel's email account or fax number, constitutes an initial notice of appearance for such counsel.

Rule 5.4. Requests for continuance by recently added defense counsel that are premised upon schedule conflicts, i.e. prior scheduled appearance in another court, shall set forth the name and address of the court, case name and docket number, the name of the judge, if known, the date the commitment was made, and a requested date for trial.

Rule 6. Docketing and ex parte contacts with the military judge.

Rule 6.1. The trial counsel shall submit an electronic docketing request using the tool maintained by CG-0948 within one day of referral. See §3.H.1.a of this manual. Once the trial date is established, the trial judge shall post the trial date along with the charge sheet on the military judges' shared docketing calendar.

Rule 6.2. Ex parte communications between counsel for one side and the military judge concerning a case which is pending before that judge are prohibited except as otherwise provided by law. Routine administrative matters, however, such as submission of the electronic docketing request are excluded from this prohibition.

Rule 6.3. Military judges may conduct critiques or offer suggestions regarding counsel's in-court performance to improve the administration of military justice. Any such session held before adjournment must be done with all counsel present.

Rule 7. Withdrawal of counsel. See Rule 1.16 of the CGPRP, COMDTINST M5800.1.

Rule 7.1. Trial counsel. After referral, trial counsel shall not be permitted to withdraw unless substitute qualified counsel, who is available on the scheduled trial date, is detailed prior to or simultaneously with the relief of the withdrawing counsel.

Rule 7.2. Military defense counsel. After referral, military defense counsel may not withdraw from representation of the accused without the judge's approval whether or not the accused wishes to release the detailed or individual military counsel. See also §3.H.2.c of this manual.

Rule 7.3. Civilian defense counsel. Once civilian counsel enters an appearance, to include the filing of a pleading, such counsel may not withdraw from representation of the accused without the judge's approval, whether or not the accused wishes to release the counsel. Willful failure of a fee-paying client to comply with the terms of the contract for representation may provide grounds for counsel to request to withdraw. The mere failure, however, to pay the fee does not terminate the attorney's obligations as an officer of the court. Approval of the request to withdraw will be based on whether: (1) counsel has taken reasonable steps to avoid foreseeable, material prejudice to any substantial right of the accused; (2) adequate time exists to employ other military or civilian defense counsel without undue prejudice to the accused or the Government; and (3) the interests of justice and the orderly administration of justice are advanced.

Rule 8. Conferences and pretrial sessions.

Rule 8.1. Conferences. Conferences with the military judge and counsel for both sides are authorized by RCM. 802. The accused is neither required nor prohibited from attending any such conference. Conferences may be held to inform the military judge of anticipated motions, unusual problems or issues which are likely to affect the duration, progress or orderly disposition of the case, and to expeditiously resolve matters on which the parties can agree. All conferences where agreements were reached between the parties shall be summarized on the record. Others should normally be summarized.

Rule 8.2. Article 39(a) sessions. As authorized under Article 39(a), UCMJ, a session of the court without the presence of the members may be called for the purpose of holding the arraignment and receiving the pleas of the accused, and for other matters not requiring the presence of members. A pretrial Article 39(a) session, however, is normally held only if necessary to receive testimony to resolve any pretrial motions. Either party may request, or the judge may direct sua sponte, an Article 39(a) session. See also §4.C.1 of this manual. Procedures for remote Article 39(a) sessions are contained in §4.C.6 of this manual.

Rule 9. Discovery.

Rule 9.1. RCM and MRE requirements. RCM 701 and the Military Rules of Evidence (MRE) set forth requirements for disclosure and discovery by both parties. The following minimum time limits are established for some of these requirements. Counsel shall, in addition, review RCM 701 and the Discussion thereunder for a listing of other disclosure requirements that may be applicable. The military judge may establish more stringent deadlines in the case management order (usually Court Order #1). See enclosure (16b) to this manual.

Rule	Number of full working days pretrial	
	SpCM	GCM
MRE 301(c), 304(d)(1), 311(d)(1), & 321(c)(1)	5	10
MRE 412(c)(1)	14	14
MRE 413 and 414	15	15
RCM 701(a)(1), (3) and (4)	5	10
RCM 701(b)(1) and (2)	4	8
RCM 703(c)(2) (list of witnesses)	4	4

Rule 9.2. Court member questionnaire. The trial counsel shall ensure that a copy of the completed "Court Martial Member Questionnaire" for each prospective member is furnished to defense counsel and the military judge at least five full working days prior to trial. See enclosure (16g) of this manual. The military judge may establish earlier deadlines. If it appears to counsel that a challenge might be sustained, the convening authority should be advised that it would be advisable to have alternate members readily available for detailing to the court in the event that the challenge procedure reduces the court-martial below a quorum.

Rule 9.3. Other notices. Counsel shall advise opposing counsel and the military judge no later than five full working days before trial of any intent to use electronic media during the trial, such as in their opening statement or closing argument.

Rule 10. Motions. [Also discussed at §4.C.2 of this manual]

Rule 10.1. Timing. Counsel for both sides shall file any anticipated motions, including motions in limine, with the court (with a copy to opposing counsel) in writing not later than seven working days prior to trial in order to permit the judge and opposing

counsel to research the issues before travelling to the trial site. Motions and replies will follow the format of enclosures (16 c-d) of this manual. Pleadings shall be dated and show distribution. Replies to motions shall be submitted no later than two working days before the first Article 39(a) session. The military judge may establish earlier deadlines.

Rule 10.2. Filing motions. Motions are filed with the court by providing a copy, including any enclosures, to the military judge via confirmed facsimile, or via confirmed email. Motions sent by mail, courier or other carrier are not filed until physically received. Opposing counsel shall also be served with a copy of the motion, with enclosures, at the same time the motion is filed with the court. The moving party shall provide the original signed motion to the court reporter, along with any enclosures referenced in the motion, at the Article 39(a) session that will address the motion.

Rule 10.3. Content. Motions will consist of a written brief containing: (1) the specific relief sought; (2) the burden of persuasion and burden of proof; (3) the facts in issue as believed by counsel and supported by the evidence; (4) a list of evidence and witnesses to be produced; (5) argument and the legal authority upon which the argument is based and contrary legal authority of which counsel is aware; and (6) a conclusion that restates the relief sought. For any motion requiring the entry of essential findings under RCM 905(d), counsel shall include with their motion, or reply, proposed essential findings of fact. A format for motions is at enclosures (16 c-d) of this manual.

Any documents necessary to evaluate the motion shall be attached. For example, a challenge to the pretrial investigation or the pretrial advice to the convening authority should include a copy of the allegedly defective pretrial investigation or pretrial advice.

The judge may rule on the basis of the pleadings when appropriate, e.g. the motion does not involve disputed issues of fact. Motions requiring findings of fact must be supported by evidence presented by the parties or by a written stipulation of fact.

Rule 10.4. Counsel certification. Every motion, pleading or other document submitted to the court by a party shall be signed by at least one counsel of record. Electronic documents may be “signed” (among other electronic methods) by making an appropriate typed annotation on the document. Counsel’s signature constitutes a certification that he or she has read the motion, pleading or other document; that to the best of the signer’s knowledge, or upon information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or is a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause undue delay.

Rule 10.5. Speedy trial motions. In those cases where the defense moves to dismiss the charges and specifications on the grounds of denial of a speedy trial, the trial counsel will prepare a written chronology of events prior to trial. If the counsel cannot stipulate to the events and dates, areas of disagreement shall be identified and litigated when the motion is presented.

Rule 11. Continuances. Continuance requests shall be made as soon as possible after

the need for a delay becomes known to either party. If the accused is in pretrial confinement, defense motions for a continuance, and concurrence in government requests, shall indicate that the accused has been consulted and agrees to the delay.

Rule 12. Trial site. Subject to RCM 504(d)(1), the military judge shall designate the location of the trial. See §3.I.2 of this manual.

Rule 13. Courtroom security.

Rule 13.1. Responsibilities. The government, often in the form of the unit commanding officer or local SJA, is primarily responsible for ensuring that the courtroom facility is safe. Notwithstanding such responsibility, counsel shall inform the military judge of any potential risks related to the court-martial or any security concerns that they become aware of. The military judge may require additional courtroom security measures as deemed necessary. See §3.H.5.f and §3.I.2 of this manual.

Rule 13.2. Weapons and dangerous items prohibited. No arms or weapons, except when such are to be exhibits, or when otherwise authorized by the military judge, shall be allowed inside the courtroom. Security officers working in the federal, state, or local courthouse where a court-martial is being conducted may bring their standard personal protective equipment and weapons into the courtroom to the same extent as permitted by the hosting authority.

If firearms are marked as exhibits, the trial counsel shall ensure that, before they are brought into the courtroom, they are rendered inoperable in a manner that doesn't change their evidentiary value. Exhibits that could be used as a weapon, such as a knife, shall be attached to an evidence board or otherwise rendered safe.

Rule 13.3. Security guards. The military judge may permit, or require, that courtroom security guards attend portions of the trial. If so, the trial counsel is responsible for ensuring that this requirement is satisfied by properly qualified, trained, and equipped security personnel. Guards who accompany the accused, a witness, or high-value evidence, shall not normally be permitted inside the "bar" of the courtroom and will remain in the area designated for spectators. Use of courtroom security guards does not indicate that the accused presents a security or flight risk. An instruction to the members to that effect may be appropriate in the judge's discretion.

Rule 13.4. Restraint of the accused or a witness. The accused shall not be physically restrained in a manner observable by court members unless the judge approves the restraint in advance. Any defense counsel concern with the nature of such restraint shall be immediately brought to the attention of the military judge outside of the presence of the members. See also §4.C.3 of this manual.

Counsel shall advise the military judge whenever they anticipate calling an inmate as a witness and obtain advance approval of any special security measures, including restraint of the witness.

Rule 14. Uniforms. The default military uniform for all courts-martial is military service dress. This uniform is mandatory only for the military personnel required to be present at trial sessions attended by the members. See §3.I.1 of this manual. The military judge may, however, designate an alternate uniform. Trial counsel will ensure all parties receive timely notice. Civilian attorneys shall wear appropriate business attire suitable for appearance before a federal district court. The military judge shall wear the judicial robe.

A military witness who normally performs their duties in civilian clothes may testify in appropriate business attire suitable for appearance before a federal district court.

The accused and defense counsel are responsible for ensuring that the accused is properly attired. In the event of pretrial confinement, however, the government is responsible for ensuring that the accused is in the appropriate uniform. Confinement uniforms are not appropriate courtroom attire.

Rule 15. Spectators. Spectators are encouraged to attend any session of a court-martial except those at which spectators must be excluded, as determined by the military judge. Counsel shall ensure that the judge is notified if any spectator may be called as a witness, unless the spectator becomes a witness by observing trial events. A spectator may observe the providence inquiry and become a witness without prior notification. Spectators shall be dressed appropriately, befitting the seriousness of the proceedings. See §4.B.2 of this manual.

Rule 16. Punctuality. Punctuality in all matters affecting the court is required of all parties and reflects preparation and professionalism. When a party unavoidably is or will be late, the judge shall be notified as soon as possible and provided an explanation.

Rule 17. Bailiff. Unless the judge directs otherwise, the court requires a bailiff at every Article 39(a) session at which witnesses will be called and at every trial. The general duties of the bailiff are contained in enclosure (16i) of this manual. See RCM 502(e) and §3.H.5.c. of this manual. The bailiff shall neither be a witness, nor the unit escort, nor a guard for the accused. Likewise, the bailiff shall not have an interest in the case nor be a close associate of the accused or victim of an alleged offense. The trial counsel is responsible for obtaining and briefing the bailiff as to their duties.

Rule 18. Conduct of spectators and court participants.

Rule 18.1. Weapons prohibited. No firearm or other weapon may be brought into the courtroom without the permission of the military judge. Security officers are governed by rules 13.2 and 13.3.

Rule 18.2. Eating, drinking, etc. Eating, chewing gum, or using tobacco products is not permitted in the courtroom during open sessions. Spectators may not bring beverages into the courtroom or consume them in the courtroom.

Rule 18.3. Recording and broadcast devices. No video or audio recording

devices are permitted in the courtroom with the exception of the equipment required by the court reporter. The taking of photographs or other digital visual images in the courtroom during the process of judicial proceedings is not permitted. Broadcasting of judicial proceedings from the courtroom is not permitted. However, a closed circuit television system may be used under the circumstances set forth in MRE 611(d), RCM 804(c), and RCM 914A (child witness testifies from remote location or accused elects to absent himself from the courtroom during testimony of child witness), when an accused has been removed from the courtroom, or to accommodate members of the public who have been unable to obtain space in the courtroom. See also RCM 806(c).

Rule 18.4. Cell phones and similar devices. All beepers, audible pagers, cell phones, and other audio communication devices must be turned off prior to entering the courtroom. Counsel for both sides are responsible for informing their witnesses of this requirement, prior to the witness being called to testify.

Rule 18.5. Disturbances prohibited. Spectators ordinarily may enter or leave the courtroom while court is in session but shall not be permitted to disturb or interrupt court proceedings by their conduct. Spectators shall not indicate or demonstrate in any manner agreement or disagreement with testimony or procedures at a trial, nor will their appearance or attire be permitted to detract from the dignity of the proceedings or to create a distraction. Spectators shall refrain from any activities indicative of inattention to the proceedings such as loud whispering, sleeping or playing electronic or video games.

Rule 18.6. Protocol. All personnel in the courtroom, except the court reporter, shall rise upon the entry and departure of the military judge. All personnel in the courtroom, other than the military judge and court reporter, shall rise when the members enter and depart the courtroom. All personnel in the courtroom shall rise when the members of the court-martial are sworn. The defense counsel and the accused shall rise and face the court when entering pleas and when findings and sentence are announced.

Rule 18.7. Sanctions. Individuals who violate these rules may be excluded from the courtroom, held in contempt, or both.

Rule 18.8. Public notice. The trial counsel shall post a copy of rule 18 outside the courtroom where spectators and the court members enter, indicating these requirements.

Rule 19. Reserved.

Rule 20. Reserved.

Rule 21. Reserved.

Rule 22. Voir Dire.

Rule 22.1. Conduct. The judge will ordinarily initiate voir dire examination by

asking the preliminary questions contained in the Coast Guard Trial Guide. The judge may then permit such additional questions by counsel as deemed reasonable and proper by the judge. The judge will normally require counsel to submit voir dire questions to the judge and opposing counsel in advance of trial.

Rule 22.2. Surveys. The pretrial member questionnaire discussed in rule 9 shall be used to expedite voir dire. See enclosure (16g) of this manual. No other pretrial questionnaire may be used, nor the standard one supplemented, without permission of the military judge. No post-trial questionnaires or surveys shall be sent to any member, nor will any post-trial assessment be requested from any court member except upon approval of the judge. Defense requests for clemency recommendations shall be limited solely to that purpose and do not require the approval of the military judge. RCM 1105(b)(2)(D).

Rule 23. Working hours. Sessions of court shall not be held outside normal working hours except for good cause that shall be shown on the record.

Rule 24. Counsel decorum.

Rule 24.1. All counsel are officers of the court. Their courtroom decorum shall be conducive to a dignified and respectful judicial atmosphere. Counsel shall not indicate, in any manner inconsistent with the dignified nature of a court-martial, agreement or disagreement with testimony, argument by opposing counsel, a court ruling, or other procedures at trial, except by proper objection or motion. Counsel are also obligated to acquaint clients and witnesses with appropriate courtroom procedures and decorum and, insofar as possible, ensure adherence.

Rule 24.2. Counsel shall always stand when addressing the military judge or court members. Counsel shall also stand when conducting examination or cross-examination of witnesses; however, at the discretion of the military judge, counsel may remain seated during extended periods of questioning.

Rule 24.3. Counsel will not be permitted to depart the courtroom during the conduct of a trial without first obtaining leave of the court.

Rule 25. Counsel conduct.

Rule 25.1. Personal opinions. Counsel shall not, during trial, assert personal knowledge of the facts in issue, except when testifying as a witness. But see rule 29 (offers of proof). Counsel shall not assert a personal opinion in the course of arguing for any position or conclusion based on an analysis of the evidence with respect to the matter stated. Counsel shall not express a personal belief or opinion as to an appropriate sentence or portion thereof.

Rule 25.2. Undue familiarity. Counsel shall refrain from any familiarity among themselves, with the judge, with court members, or with witnesses, in the presence of the accused or other trial participants, or while court is in session. Counsel shall address their comments to the court, not to each other. Opposing counsel will not confer without

the judge's permission.

Rule 25.3. Double-teaming. Only one counsel per side may examine any one witness or address the court on any particular issue, motion, argument, or objection except with the specific permission of the military judge.

Rule 25.4. Conduct of opposing counsel. During argument or examination of a witness, opposing counsel shall remain quietly seated at counsel table, except when rising to state an objection or when whispering or passing notes to others seated at the counsel table. Opposing counsel shall not talk to others or engage in conduct that diverts attention from counsel's argument or examination.

Rule 25.5. Opening statements. Opening statements may be made by either or both counsel or waived; however, they shall be confined to what counsel expect their evidence to prove. Counsel will not use the opening statement to argue the case or to instruct as to the law. Unless granted prior permission from the judge, counsel shall not show to the members during opening statement evidence that has not been admitted.

Rule 25.6. Closing argument. Counsel in their closing statements may make reasonable comment on the evidence and may draw such inferences from the evidence and testimony as will support their theory of the case. In argument, counsel shall not assert a personal belief in the accused's guilt or innocence, or in the justness of a particular cause, or the credibility of a witness. Trial counsel may not, under any circumstances, either directly or indirectly, or by inference, argue or bring to the attention of the court any desire, belief, or opinion of the convening or other authority concerning the guilt or innocence of the accused, or an appropriate sentence if convicted. Trial counsel also may not argue that an accused is guilty, or deserves a more severe punishment, because their acts violated "core values" or other command policy that is not contained within a charged offense.

Rule 25.7. Rebuttal arguments. The trial counsel may, if the defense counsel presents argument on findings, make a rebuttal argument. RCM 919(a). Trial counsel's rebuttal argument is limited to matters raised by the defense and will not introduce new matters. Should trial counsel raise any new matters in rebuttal, the defense counsel may be given the opportunity to rebut such new matters in surrebuttal.

At sentencing, the trial counsel may, in the discretion of the military judge, be permitted to make a rebuttal argument after the defense presents a sentencing argument. RCM 1001(a)(1)(F). Any sentencing rebuttal argument by the trial counsel shall be strictly limited to responding to new matters raised by the defense argument. As a result, rebuttal sentencing arguments should be rare. The trial counsel may not waive, or limit, the government's sentencing argument in order to maximize the scope of rebuttal.

Rule 26. Witnesses.

Rule 26.1. Presence in the courtroom. Witnesses generally shall not sit in the courtroom prior to their testimony in a contested case. After a witness has been

permanently excused, they may remain as spectators. The judge will consider MRE 615 and applicable law in deciding whether alleged victims may be excluded from proceedings.

Rule 26.2. Preparation. Counsel shall ensure that their witnesses will be immediately available when called to testify and understand how to conduct themselves.

Rule 26.3. Oaths and identification. Trial counsel will swear all witnesses and identify them with a short leading question that does not include the witness's social security number or full home address. For example: Are you Mrs. Mary Bragmar of Oxford, MD?

Rule 26.4. Examination. Counsel shall conduct the questioning of witnesses and arguments to the court at a reasonable distance from the witness or the court. This reasonable distance will normally be from a fixed position that does not block the view of any other trial participant and is near one of the court reporter's microphones. Counsel shall not approach a witness without first obtaining the permission of the court. Witnesses shall be treated with consideration and respect – they will not be crowded, ridiculed, or otherwise abused. All witnesses, except children, will be referred to by their surnames and titles, as applicable.

Rule 26.5. Gestures or actions by witnesses. Examining counsel shall concisely and accurately summarize any gestures or nonverbal communication of their witnesses. This will be done as near in time as possible to the gesture or nonverbal communication.

Rule 26.6. Mid-testimony consultations. Once a witness has begun their testimony, counsel shall not, during any recess, consult with them on the subject of their ongoing testimony without advance permission of the military judge.

Rule 26.7. Unsworn statement by the accused. Unsworn statements made by an accused in mitigation and extenuation shall be given or presented from counsel table, or standing before the court. An unsworn statement may not be presented from the witness stand.

Rule 27. Objections. When an objection is entered, only the objection and a short statement of the ground(s) shall be stated. Argument upon objections will not be heard or made until permission is given or argument is requested by the military judge. Any argument will normally be conducted at an Article 39(a) session after the witness, if any, answers the question that drew the objection. This negates the need for offers of proof and provides the most accurate record.

After a matter has been argued and submitted to the military judge, and the military judge has announced his or her decision, counsel shall not make further comment or argument. A request for reconsideration of a ruling by the military judge will not be made unless counsel making such a request has new matter of substance to present on the issue; such a request shall not be made for the purpose of making further argument.

Rule 28. Stipulations. Wherever possible, counsel shall fully cooperate in reducing undisputed items to stipulations. Counsel may enter stipulations for the limited purpose of obtaining a ruling on a motion or objection. Counsel should also, wherever possible, stipulate as to the authenticity of documents known to be authentic.

Rule 28.1. Format. Stipulations will normally be written. Oral stipulations shall be read into the record and agreed to by counsel and the accused.

Rule 28.2. Marking and use. Written stipulations of fact shall be marked as a prosecution or defense exhibit, as appropriate. See rule 31. In a members trial, it may be read and published to the members and is taken into the deliberation room. Stipulations of expected testimony shall be marked as Appellate exhibits and only read to the members. They may not be taken into the deliberation room.

Rule 29. Offers of proof. Absent a stipulation, an offer of proof is not evidence upon which a judge's essential findings of fact may be based. They will only be used in those rare circumstances set forth in MRE 103(a)(2). Even then, the preferred practice is to receive the evidence in an Article 39(a) session before ruling.

Rule 30. Judicial notice. Counsel shall advise the military judge and opposing counsel as soon as possible of any intended requests for judicial notice. Counsel shall provide a copy of the applicable law, regulation, order, or other source to be used in determining whether to take judicial notice. Such documentation will be an Appellate exhibit.

Rule 31. Exhibits.

Rule 31.1. Marking. Exhibits intended to be introduced at trial shall be marked prior to the trial. If more than one page in length, the exhibit shall also be marked as follows on each page: "Page __ of __ pages." Prosecution exhibits will be numbered consecutively with Arabic numerals and marked "for identification" prior to being offered into evidence. Defense exhibits will be lettered consecutively with capital letters and marked "for identification" prior to being offered into evidence. (But see rule 28.2 regarding stipulations of expected testimony.) The first twenty Appellate exhibits will be numbered consecutively with Roman numerals and then transition to Arabic numerals. Each counsel will keep a list of all exhibits. In formulating questions to witnesses dealing with an exhibit, the designation of the exhibit will be specific so that the record will be clear. Neither a counsel nor witness may mark or in any way alter an exhibit after it has been admitted into evidence without the express permission of the military judge.

Rule 31.2. Completing the record. When paper or electronic media are used at trial but not admitted into evidence, such as a PowerPoint or flip chart in an opening statement, or an item to refresh recollection, a printed copy of the item, photograph of a large item, etc., shall be labeled as an Appellate exhibit and included in the record of trial. When an item of real evidence is published to the court by use of visual presentation equipment (e.g. ELMO), the proponent counsel shall prepare an accurate color photograph of such exhibit that duplicates, as closely as possible, the image presented to the members. It shall be included in the record as an Appellate exhibit.

Rule 31.3. Copies. Whenever possible, counsel planning to introduce documentary evidence at trial shall have sufficient copies of the document(s) at hand so that upon the offer of the document into evidence, copies can be furnished to opposing counsel, the military judge, and, if publication is desired, the members. If a copy of a document is to be substituted for the original document in the record of trial, only a permanent exact copy is permissible, such as photocopy. The copy/reproduction shall mirror the actual item as nearly as possible to include the use of color copies.

Rule 31.4. Presentation before trial. The trial counsel shall show the prosecution exhibits to the defense counsel before trial. The defense counsel shall similarly show defense exhibits to the trial counsel before trial.

Rule 31.5. Substitution. If an exhibit is not compatible for inclusion in the record of trial, counsel shall prepare an appropriate substitute and request that it be inserted into the record. Such a substitute shall include an accurate and detailed description either pictorially or written, as to the exhibit's size, weight, color, substance, and other relevant characteristics.

Rule 31.6. Exhibits during deliberations. Prior to closing the court for deliberations, the trial and defense counsel shall agree on the record which exhibits are going back with the members. See rule 28.2 regarding stipulations of fact and stipulations of expected testimony. Tape recordings, video, and similar forms of evidence shall be treated like a stipulation of expected testimony and not provided. If the members request to review such evidence during their deliberations, the judge will, if the request is deemed appropriate, assemble the members in open court and replay the audio, video, or other evidence. Remote testimony or pre-recorded deposition testimony should be treated like any in-court testimony that the members request to review. That is, only the audio portion is replayed if the judge grants the request.

Rule 32. Instructions. Trial and defense counsel shall make appropriate recommendations from the Military Judge's Benchbook, DA Pamphlet 27-9, as to specific instructions for the judge to provide to the members. Requests for special instructions or modifications to standard instructions shall be submitted in writing and in a timely manner to the military judge and opposing counsel. If counsel desire that the military judge comment specifically on testimony given or evidence introduced, such request shall be made in writing accompanied with a proposed summarization of the testimony or evidence requested to be given.

Rule 33. Record of trial.

Rule 33.1. Counsel review. Prior to the submission of the record of trial to the military judge for authentication, the trial counsel shall thoroughly review it for completeness and proper authentication of exhibits. The defense counsel shall also normally be given an opportunity to review the record of trial before it is submitted to the judge for authentication. See RCM 1103 (i)(1)(B).

Rule 33.2. Electronic review. At the direction of the military judge, authentication of all or part of the record of trial may be accomplished using electronic means. The transcript portion of the record is particularly suitable for digital review since the military judge corrects it by editing the electronic document itself. Afterward, the original and all copies of the authenticated transcript shall be produced from the judge's edited document. Several methods exist to collect the recommended transcript edits from counsel; however, submission of errata sheets is often the most expeditious technique given the limits of current technology. Caution: The transcript is not a complete record of trial and the judge is responsible for authenticating the entire record.

SPECIAL COURT-MARTIAL
UNITED STATES COAST GUARD

<p>UNITED STATES v. MK3 Ronald M. McDonald U.S. Coast Guard</p>	<p>COURT ORDER #1 (Case Management Order)</p>
---	---

Commander, Sector Los Angeles/Long Beach, CA has referred the charges and specifications against MK3 Ronald M. McDonald, U. S. Coast Guard, to trial by Special Court-Martial convened by Convening Order Number 01-09 dated 8 September 2009. I have been detailed to preside over this court-martial pursuant to Rule for Courts-Martial (RCM) 503, Manual for Courts-Martial, United States (MCM). Jurisdiction over the case is now vested in the Military Judge.

A telephonic RCM 802, MCM conference was conducted on 7 October 2009. In attendance by telephone were the Military Judge, CDR Grimace, USCG; Trial Counsel, LT McCheese, USCG; and Detailed Defense Counsel, LT Hamburglar, JAGC, USN. The expected course of the pre-trial and trial proceedings were generally discussed. The Government's docketing request proposed a trial date of 16 November. Accordingly, no time is excluded for the purpose of RCM 707(c). The Military Judge did not rule on any other matters except as described in this order.

Pursuant to RCM 701(g) and 801, MCM, and the American Bar Association Standards for the Administration of Criminal Justice relating to The Function of the Trial Judge, a Military Judge has the responsibility and duty to ensure that all trial proceedings are conducted in a fair, orderly, and efficient manner; and a responsibility and duty to prescribe and make known the ground rules relating to the conduct of all parties to the trial.

ACCORDINGLY, IT IS ORDERED THAT:

Both the Government and the Defense will endeavor to be ready for trial at **0800** hours on **9 November 2009** unless a continuance has been granted by the Military Judge upon the request of counsel for either side. The trial will be conducted at **BSC Long Beach, CA** unless an alternate location is identified by the Convening Authority and approved by the Military Judge. **The uniform is tropical blue long, or service equivalent.** A request for a continuance may be addressed and resolved by a RCM 802, MCM, conference, a written brief served by mail or electronic means, or an Article 39(a), Uniform Code of Military Justice (UCMJ) session.

RULES OF PRACTICE AND PROCEDURE

Except as otherwise provided in this order, the Court Rules of Practice and Procedure for General and Special Courts-Martial, contained in Enclosure (16a) to the Military Justice Manual, COMDTINST M5810.1E, apply in this case.

DISCOVERY

All requests for discovery shall be made on or before **7 October 2009**, if practicable. All responses to requests for discovery shall be made on or before **9 October 2009**, if practicable. All counsel are encouraged to be liberal when responding to discovery requests or disclosing items. In particular, counsel are encouraged to liberally disclose matters, or potential matters, under RCM 914 and MRE 404(b), 612, and 613(a), MCM, in advance of trial.

REQUIRED DISCLOSURES AND NOTIFICATIONS

Trial Counsel shall comply with the disclosure or notification requirements of RCM 701(a)(4), RCM 701(a)(6), MRE 201A(b), MRE 301(c)(2), MRE 304(d)(1), MRE 311(d)(1), MRE 321(c)(1), MRE 404(b), MRE 413(b), MRE 414(b), and MRE 609(b), MCM, as applicable to this case, on or before **9 October 2009**.

Defense Counsel shall comply with the disclosure or notification requirements of RCM 701(b)(2), MRE 201A(b), MRE 412(c), MRE 505(h), and MRE 609(b), MCM, as applicable to this case, on or before **26 October 2009**.

All counsel shall immediately notify opposing counsel of any additional disclosures or notifications that are required as a result of further case preparation.

WITNESS NOTIFICATIONS AND REQUESTS

Trial Counsel shall comply with the witness provisions of RCM 701(a), MCM, on or before **13 October 2009**. Defense Counsel shall comply with the witness provisions of RCM 701(b) & 703(c)(2), MCM, on or before **27 October 2009**.

Counsel shall disclose the identity of all expert witnesses who may be used at trial to present evidence under MRE 702-705 in accordance with the deadlines set forth above. Expert notification shall also include the field(s) of expertise; a complete statement of all opinions which may be expressed; and the basis and reasons for the expert's opinion.

All counsel shall immediately notify opposing counsel of any additional witnesses who are identified at a later date as a result of further case preparation. All notifications or requests must be given to opposing counsel not later than three working days before a witness testifies, unless the witness is called in rebuttal to an issue not previously raised.

MOTIONS

Notwithstanding any other rule, all other motions under R.C.M. 907, MCM, shall be filed in writing with the Military Judge and served on opposing counsel on or before **30 October 2009**. Responses to motions shall be filed in writing with the Military Judge and served on opposing counsel on or before **5 November 2009**. Any motions requiring an Article 39(a) session will be litigated on **9 November 2009** unless remote means are utilized at an earlier date in accordance with R.C.M. 804(b), or the issue is suitable for resolution at a R.C.M. 802 conference. See R.C.M. 802 Discussion.

All motions and responses filed shall contain, or have appended thereto, a short statement of the facts, the burden of proof and identity of the party who bears the burden of persuasion, the points and authorities relied upon, the relief requested, and proposed essential findings of fact. Counsel are encouraged to reach early, written stipulations of fact on any matters relating to motions that are not in dispute.

Any issues falling within this order but not raised in compliance with it will be deemed waived if the basis is known or reasonably discoverable by the date specified.

VOIR DIRE

Court-martial member questionnaires as provided in Enclosure (16g) to the Military Justice Manual, COMDTINST M5810.1D, shall be completed and copies provided to Defense Counsel and the Military Judge not later than **9 October 2009**.

Any voir dire questions proposed to be asked of court members shall be filed in writing with the Military Judge and served on opposing counsel by **27 October 2009**.

FORUM SELECTION

The Defense shall notify the Government and the Military Judge on or before **20 October 2009** of the Accused's anticipated forum selection.

INSTRUCTIONS & OTHER DOCUMENTS

Any request for nonstandard instructions not included in the Military Judges' Benchbook, DA PAM 27-9, shall be submitted in writing to the Military Judge and served on opposing counsel on or before **2 November 2009** if known before trial or in writing at trial if based upon a matter raised during trial. Any request for standard instructions contained in the Military Judges' Benchbook, DA PAM 27-49, shall also be submitted in writing on or before **2 November 2009**. For standard instructions, counsel need only cite the chapter and paragraph number of the instruction as well as any note number (s) following the instruction and/or any other requested modifications.

If applicable, Trial Counsel shall submit the following documents to the Military Judge and Defense Counsel by no later than **5 November 2009**: Member's folders (cleansed charge sheet & convening order), findings worksheet, and draft sentencing worksheet.

PRETRIAL CONFERENCE

A RCM 802, MCM, conference will be held prior to the Article 39(a) session on **9 November 2009**.

MILITARY JUDGE'S MAILING ADDRESS

All motions and responses and other documents required to be submitted to the Military Judge shall be sent to the Military Judge at his office. This may be done by mail, overnight delivery service, electronic mail, or facsimile. Email is preferred. Counsel shall ensure that all electronic mail sent to the Military Judge is sent with a copy to opposing counsel. Counsel shall bring to the first Article 39(a), U.C.M.J., session the original of any documents submitted to the Military Judge.

Mailing Address: CDR Grimace, USCG
Military Judge
4200 Wilson Blvd; Suite 750
Oak Brook, IL 23850

Telephone Number: (212) 441-3208 (cell)

E-Mail Address: Ray.K.Grimace@uscg.mil

EFFECTIVE DATE

This order was effective on 8 October 2009 and confirms the agreement reached by the Trial Counsel, Defense Counsel, and Military Judge during a RCM 802, MCM, conference, or separately between the parties.

Done at Oak Brook, IL,

//s//

Ray K. Grimace
Commander, U. S. Coast Guard
Military Judge

FORMAT FOR PRETRIAL MOTION

**(SPECIAL COURT-MARTIAL)
(GENERAL COURT-MARTIAL)
UNITED STATES COAST GUARD**

UNITED STATES)
	) (MOTION FOR APPROPRIATE
	) RELIEF)
V.	) (MOTION TO DISMISS)
	) /SUPPRESS)
NAME	) (MOTION FOR FINDINGS OF NOT
RATE/RANK	) GUILTY)
SERVICE)
	) DATE
_____)

1. (Here name the identity of the convening authority, the nature of the tribunal to which the case has been referred, and the identify of the order convening the court.)

(e.g.: "The Commanding Officer, USCGC NORTHLAND (WMEC 904), Portsmouth, Virginia has referred this case to trial by Special Court-Martial convened by his order No. _____ dated _____.")

2. (The remaining paragraphs should set forth the basis and the nature of the relief requested.)

(The motion must show service on opposing counsel in accordance with Rule 9.)

FORMAT FOR PRETRIAL MOTION (ANSWER)

**(SPECIAL COURT-MARTIAL)
(GENERAL COURT-MARTIAL)
UNITED STATES COAST GUARD**

UNITED STATES	) ANSWER TO
	) (MOTION FOR APPROPRIATE
	) RELIEF)
V.	) (MOTION TO DISMISS)
	) /SUPPRESS)
NAME	) (MOTION FOR FINDINGS OF NOT
RATE/RANK	) GUILTY)
SERVICE)
	) DATE
_____)

1. (Here identify the motion to which the answer is directed including the nature of the relief sought in the motion and the date thereof.)

(e.g., "On 3 January 2012, the trial counsel in the above referenced case was served with a motion directed to the convening authority in which the defense moved for an inquiry into the accused's sanity pursuant to RCM 706. This answer is in response to that motion.")

2. (The remaining paragraphs should set forth the basis and the position of the government in response to the motion.)

(The motion must show service on opposing counsel in accordance with Rule 9.)

FORMAT FOR PRETRIAL MOTION (RULING)

**(SPECIAL COURT-MARTIAL)
(GENERAL COURT-MARTIAL)
UNITED STATES COAST GUARD**

UNITED STATES	) RULING ON
	) (MOTION FOR APPROPRIATE
	) RELIEF)
V.	) (MOTION TO DISMISS)
	) /SUPPRESS)
NAME	) (MOTION FOR FINDINGS OF NOT
RATE/RANK	) GUILTY)
SERVICE)
_____	) DATE
)

1. (Here identify the motion to which the answer is directed including the nature of the relief sought in the motion and the date thereof. Also indicate the fact of receipt of an answer by opposing counsel and the date thereof.)

(e.g., "On 3 March 2012, the defense in the above referenced case submitted a motion to dismiss all charges and specifications on the basis that the accused had been denied the right to a speedy trial. This motion was served on trial counsel on 3 March 2012 and was answered by trial counsel on 5 March 2012.")

2. (The remaining paragraphs should set forth the ruling on the motion submitted and may also set forth reasons for the ruling.)

(GENERAL/SPECIAL) COURT-MARTIAL

UNITED STATES COAST GUARD

U N I T E D S T A T E S

v.

(NAME OF ACCUSED)

RATE/RANK USCG

1. MEMORANDUM

OF

PRETRIAL AGREEMENT

(Part I)

I, (NAME), the accused in a [general/special] court-martial, in exchange for good consideration and after thorough consultation with my defense counsel, offer to plead as follows:

The specific pleas of the accused must be listed clearly and concisely, and should reflect any modifications made to the original charge sheet, any renumbering of the original charges, and any pleas by exceptions and substitutions, and/or pleas to lesser-included offenses. An accused may plead as follows: guilty; not guilty to an offense as charged, but guilty of a named lesser included offense; guilty with exceptions, with or without substitutions; or not guilty. RCM 910(a). Refer to Appendix 10 of the MCM for examples.

PLEAS OF THE ACCUSED

CHARGE

PLEAS

Charge I: Violation of Article _____

GUILTY/NOT GUILTY

Specification____: Language of Spec.

GUILTY/NOT GUILTY

[Examples of Pleas w/exceptions and substitutions**]**

Spec __: Unauthorized absence terminated by apprehension.

Guilty, except for the words "terminated by apprehension"; of the excepted words, Not Guilty; of the Specification as excepted, Guilty.

Spec: __: Between 22 Jun and 29 Jun 03, at an unknown

Guilty, except for the words "unknown location"

location, wrongfully use cocaine.	substituting therefore the words "Norfolk, Virginia"; of the excepted words, Not Guilty; of the substituted words, Guilty; of the Specification as excepted and substituted, Guilty.
Charge __: Violation of Art 123a	Not Guilty, but guilty of a violation of Article 134.
Spec __: Uttering checks w/out sufficient funds	Not Guilty, but guilty to the LIO of dishonorable failure to maintain funds.

In making this offer, I state that:

Note: Each of the following paragraphs of the PTA should be numbered. This facilitates the military judge's inquiry by directing the accused to specific paragraphs.

¹. That I am satisfied with [NAME, Rank, Service], my defense counsel, in all respects and consider (him/her/them) qualified to represent me at this court-martial;

². That I am entering into this agreement freely and voluntarily. Nobody has made any attempt to force or coerce me into making this agreement or into pleading guilty;

³. That my counsel advised me of the meaning and effect of my guilty plea and I fully understand and comprehend its meaning and all its attendant effects, and consequences, including the possibility that I may be processed for an administrative discharge, even if all or part of the sentence, including any punitive discharge, is suspended or disapproved pursuant to this agreement or for any other reason;

⁴. That my counsel advised me that an administrative discharge may result in an other than honorable characterization of service, and that I may therefore be deprived of virtually all veterans' benefits based upon my current period of active service, and that I may therefore expect to encounter substantial prejudice in civilian life in many situations;

⁵. That my counsel advised me that while Article 58a, UCMJ authorizes administrative reductions, Paragraph 4.E.1 of the Coast Guard Military Justice Manual, COMDTINST M5810.1D states that the Coast Guard, as a matter of policy, has decided not to effect automatic administrative reductions;

⁶. That my counsel advised me that if the adjudged sentence includes either a punitive discharge and confinement, or confinement in excess of six months, whether the sentence is suspended or not, Article 58b of the UCMJ requires the automatic imposition of forfeitures of (2/3 pay per month) (all pay and allowances) due during any period of confinement, unless the convening authority takes action to limit or defer the automatic

forfeitures. Forfeitures, whether adjudged or automatic, take effect upon the convening authority's action in this case or 14 days after sentence is adjudged, whichever is earlier. I understand that I may request in writing that the convening authority defer execution of forfeitures until the convening authority takes action in this case. Additionally, I understand that if I am held in confinement beyond my end of active obligated service (EAOS) date, then I will not receive any pay or allowances by operation of law, regardless of the terms of this agreement;

⁷. That my counsel has advised me that I may be placed on appellate leave in no pay status under the provisions of Article 76a of the UCMJ, notwithstanding any provision regarding forfeitures or fines in Part II of this agreement, if the sentence, as approved, includes an unsuspended punitive discharge;

⁸. This agreement (Parts I and II) constitutes all the conditions and understandings of both the government and myself regarding the pleas in this case. There are no other agreements, written or otherwise;

⁹. I understand, and the sentence limitation portion of this agreement addresses, each of the following distinct parts of the sentence that may be adjudged in this case: (1) punitive discharge, (2) confinement and/or restraint, (3) forfeiture and/or fine, (4) reduction in pay grade, and (5) any other lawful punishment. I understand that should the court award a sentence that is less, or a part thereof that is less, than that set forth and approved in this agreement, then the convening authority, according to law, may approve not more than the lesser sentence;

¹⁰. I understand that I may withdraw any of my pleas of guilty at any time before they are actually accepted by the military judge. I also understand that I may ask to withdraw any of my pleas of guilty after they have been accepted, but before sentence is announced, and the military judge may, at his/her discretion, permit me to do so;

¹¹. I understand that this pretrial agreement will become null and void, and the convening authority can withdraw from this agreement, in the event that:

- (1) I fail to plead guilty as required by this agreement;
- (2) The court refuses to accept any of my pleas of guilty;
- (3) The court sets aside any of my pleas of guilty for whatever reason, including upon my request, before sentence is announced;
- (4) I fail to plead guilty as required by this agreement at a rehearing should one occur;

¹². I understand that if this agreement becomes null and void, then my offer to plead guilty and enter into this agreement cannot be used against me in any way in determining whether I am guilty or not guilty of the charges alleged against me at this court-martial;

13. That I fully understand that if I engage in misconduct after signing this pretrial agreement, I may forfeit the benefits of this agreement. Misconduct means any act or failure to act that violates the Uniform Code of Military Justice or any act or failure to act by which I fail to comply with this agreement. If I engage in misconduct at any time, between when I sign this pretrial agreement and the time that I complete the sentence approved by the convening authority, including any period of probation or period in which a sentence component is suspended, the convening authority will be able to act on this agreement based on that misconduct. The action the convening authority may take on this agreement depends on when the convening authority acts, if he chooses to act, not on when the misconduct occurs, so long as the misconduct occurs within the time frame governed by this provision. There are three periods of time during which the convening authority may act on this agreement based on my misconduct: (1) from the time convening authority and I sign this pretrial agreement until the time the military judge accepts my pleas; (2) from the time the military judge accepts my pleas until the convening authority takes [his/her] RCM 1107 action; and (3) from the time the convening authority takes [his/her] RCM 1107 action until I have completed serving my entire sentence (including any period of suspension or probation, if applicable) as finally approved and executed;

¹⁴. That I understand that if, based on my misconduct, the convening authority acts on this agreement after [he/she] and I sign this pretrial agreement but before the military judge accepts my pleas, the convening authority may use such misconduct as grounds to unilaterally withdraw from this pretrial agreement. Should the convening authority do so, I understand that the pretrial agreement would thereby become null and void, and both I and the convening authority would be relieved of all obligations and responsibilities that either of us would have been required to meet by the terms of this pretrial agreement;

¹⁵. That I further understand that if, based on my misconduct, the convening authority acts on this agreement after the time the military judge accepts my pleas but before the time the convening authority takes [his/her] RCM 1107 action, such misconduct may be the basis for setting aside the sentencing provisions of the pretrial agreement. Before setting aside the sentencing provisions of this agreement, however, the convening authority shall afford me a hearing, substantially similar to the hearing required by Article 72, UCMJ, and the procedures based on the level of adjudged punishment set forth in RCM 1109(d), (e), (f), or (g), to determine whether the misconduct occurred and whether I committed the misconduct; and

¹⁶. That I further understand that if based on my misconduct, the convening authority acts on this agreement after the time the convening authority takes [his/her] RCM 1107 action, but before I have completed serving the entire sentence (including any period of suspension or probation, if applicable) as finally approved and executed, the convening authority may, after compliance with the hearing procedures set forth in RCM 1109, vacate any periods of suspension agreed to in this pretrial agreement or as otherwise approved by the convening authority;

Specially Negotiated Provisions.

The following list sets forth common specially negotiated provisions. The examples set forth below have been found to be lawful terms in a pretrial agreement, except where noted. If a term other than one discussed below is inserted into an agreement, the agreement should state whether the term was proposed by the government, or the defense. Certain terms, such as an agreement to enter a rehabilitation program or waive specific pretrial motions, are more likely to be upheld if they have been proposed by the defense.

Practice Note: It is important to ensure that the convening authority has the ability to perform the promises made in the specially negotiated provisions. See e.g., Perron, 58 M.J. 78. For example, while the convening authority initially designates the place of confinement, see R.C.M. 1107(f)(4)(C), the Navy often administratively transfers prisoners after initial confinement. Therefore, a convening authority should not guarantee a specific place of confinement.

Specially Negotiated Provisions.

As consideration for this agreement, and after having fully discussed the issue with my defense counsel:

[Elect trial by Military Judge alone**]**

I agree to request trial and sentencing by military judge alone, and waive my right to a trial by members, including enlisted members.

[Article 32 Waiver as part of agreement/GCM only**]**

I agree to waive my right to an Article 32, UCMJ, Pretrial Investigation. I fully understand the nature and purpose of an Article 32, UCMJ, Pretrial Investigation, and the rights that I would have at such a hearing. I understand that upon acceptance of this agreement, the charge(s) and specification(s) may be referred to trial by general court-martial without an Article 32, UCMJ, investigation or hearing.

[Bareback Specials – an example is included in the sentence appendix, it is preferred that such provisions are not in the first part of the PTA**]**

[^{Withdraw} language to which accused pled Not Guilty**]**

I understand and agree that, in return for my plea(s) of guilty, and following the military judge's acceptance of my plea(s), the convening authority will withdraw the language and/or charges and specifications to which I have pled not guilty. Upon announcement of the findings by the military judge, the withdrawn language and/or charges and specifications will be dismissed with/without prejudice by the convening authority.

[Government going forward on not guilty pleas**]**

I understand and agree that the Government may go forward on the charges and/or language to which I have entered pleas of not guilty.

[Waive Administrative Discharge Board**]**

To the extent, if any, the Commandant of the Coast Guard has, through the Coast Guard Personnel Manual, COMDTINST M1000.6B, provided me a right to a hearing before an administrative discharge board, I agree to waive my right to a hearing before an administrative discharge board, doing so with full understanding of the consequences of waiving such a board, as explained by defense counsel. I understand that any administrative discharge will be characterized in accordance with service regulations, and may be under other than honorable conditions. I will submit a written waiver to the convening authority, upon request.

[RESTITUTION: Select from one of the following 3 paragraphs**]**

[1. Has means to make restitution prior to date of trial**]**

I agree to make restitution by [cashier's check/money order] in the amount of \$_____, made payable to the economic victim of my misconduct, (Name(s) of Victim(s)), prior to the date of trial. I expressly represent that I will have the economic means to make restitution prior to the date of trial. The [cashier's check/money order] will be delivered to the trial counsel at least one day prior to the date of trial.

[OR]

[2. Will have means to make restitution prior to a certain date**]**

I agree to make restitution by [cashier's check/money order] in the amount of \$_____, made payable to the economic victim of my misconduct, (Names(s) of Victim(s)) by DD Month YYYY. I expressly represent that I will have the economic means to make restitution by DD Month YYYY and understand that my paying restitution to the victim is a material term of this agreement. The [cashier's check/money order] will be delivered to the trial counsel or staff judge advocate on or before that date. I fully understand that failure on my part to meet this obligation may serve as the basis for the convening authority to withdraw from this agreement, rendering it null and void, or may serve as the basis for the convening authority to vacate any or all previously suspended portions of my sentence, causing me to have to serve that previously suspended sentence.

[OR]

[3. Make restitution in installments**]**

I agree to make restitution in the amount of \$_____, to the economic victim of my misconduct, (Name(s) of Victim(s)), by DD Month YYYY. I expressly represent that I will have the economic means to make full restitution by DD Month YYYY. I will provide the trial counsel or staff judge advocate with a [cashier's check/money order] made payable to (Name(s) of Victim(s)), no later than the second working day following the payday on the 1st and 15th of each month, in the amount of \$_____. These partial payments will begin on DD Month YYYY and will be completed by DD Month YYYY. I fully understand that failure on my part to meet this obligation may serve as the basis for the convening authority to withdraw from this agreement, rendering it null and void, or may serve as the basis for the convening authority to vacate any or all previously suspended portions of my sentence, causing me to have to serve that previously suspended sentence.

[Testify ^{w/Grant} of Immunity in another case**]**

If I am provided a grant of testimonial immunity, I agree to testify truthfully if called as a witness in the case of United States v. _____. I further agree to fully and truthfully cooperate in the court-martial process, to include interviews with appropriate law enforcement authorities and the trial and defense counsel involved in the case, as well as any other reasonable request made of me.

[Testify ^{w/o Grant} of Immunity in another case**]**

Even if I am not provided a grant of testimonial immunity, I agree to testify truthfully if called as a witness in the case of United States v. _____. I further agree to fully and truthfully cooperate in the court-martial process, to include interviews with appropriate law enforcement authorities and the trial and defense counsel involved in the case, as well as any other reasonable request made of me.

[Stipulation of Fact**]**

I agree to enter into a stipulation of fact, which describes the facts and circumstances surrounding the offenses to which I am pleading guilty. I understand that the failure of the parties to reach a mutually agreed upon stipulation of fact may result in either side withdrawing from this agreement. I further agree not to object to the mutually agreed upon stipulation's admission during the providence inquiry or during the pre-sentencing proceeding.

[Witness Considerations**]**

[Call certain witnesses only**]**

COMDTINST M5810.1E

I intend to request the presence of _____ [as a witness/as witnesses] at my court-martial. Provided that the convening authority agrees to produce these witnesses, I will not request any other witnesses. This provision has not interfered with my selection of witnesses or in presenting a [defense/case in extenuation and mitigation].

[Call ^{no witness} or call only local witnesses**]**

I agree not to request the presence of any witness located (out of the area)(outside a 100-mile radius of _____). This provision does not interfere with my ability to present an effective [defense/case in extenuation and mitigation]. I intend to use alternative means to present this material. (The government specifically agrees not to object to the admission into evidence of written statements in extenuation and mitigation from witnesses located (out of the area)(outside a 100-mile radius of _____).

[Stipulation of Expected Testimony**]**

I agree to stipulate to the testimony of the following witnesses:_____. I understand that the stipulation does not admit the truth of the testimony, which may be attacked, contradicted or explained in the same way as any other testimony.

[Trial Date Consideration**]**

I agree, and am fully prepared, to go to trial and offer to go to trial no later than _____. I understand that I will not be deemed to have breached this agreement if the judiciary cannot schedule my trial by this specific date.

[Agreement to Waive Certain ^{Motions}**]**

I agree not to raise a motion pursuant to R.C.M. _____ to _____. I have not been compelled to waive my right to due process, the right to challenge the jurisdiction of the court-martial, the right to a speedy trial, the right to raise the issue of unlawful command influence, or any other motion that cannot be waived.

[Agreement Not to Object to Evidence Offered **]**

I (and the Government) agree not to object to [service record documents, chain-of-custody documents, lab reports, etc...] being offered into evidence on the merits (in sentencing) on the basis of (hearsay, authenticity, etc.).

[Conditional Plea(s) -- Only for Case Dispositive Issues **]**

I agree, upon written consent of the Government and approval of the military judge, to enter a conditional plea of guilty in writing as to (list applicable Charges and Specifications), preserving the right, on further review or appeal, to review of any adverse determination on my motion (specify nature of the motion). I understand that if I prevail on further review or appeal, I will be allowed to withdraw my conditional plea(s) of guilty in accordance with Rule for Courts-Martial 910(a)(2).

[Confessional Stipulation **]**

I agree to enter into a confessional stipulation of fact in writing as to all elements of (list applicable Charge(s) and Specification(s)) to which I have entered pleas of not guilty. I understand that a confessional stipulation is tantamount to a guilty plea when it establishes directly, or by reasonable inference, every element of a charged offense and when I and my counsel do not present any evidence to contest any potential remaining issue(s) on the merits of my case. I also understand that this confessional stipulation will relieve the Government and the trial counsel of the burden of proving my guilt beyond a reasonable doubt as to this charge this Charge and Specification (these Charges and Specifications) and that I may be found guilty of this offense/these offenses based solely upon this stipulation and be subjected to the punishment(s) authorized for it/them.

By my signature below I acknowledge that I have read this agreement completely, discussed it with my counsel, understand it in all respects, and am prepared to abide by its terms.

_____ Date
(Rate/Rank, Name, Service), Accused

_____ Date
(Rank, Name, Service), Defense Counsel

The foregoing pretrial agreement is approved, including the sentence limitation portion of this agreement.

_____ Date
(Rank, Name, Service of Convening Authority)
(Title of Convening Authority)

(GENERAL/SPECIAL) COURT-MARTIAL

1.A. UNITED STATES COAST GUARD

U N I T E D S T A T E S

v.

(NAME OF ACCUSED)

RATE/RANK USCG

2. MEMORANDUM

OF

PRETRIAL AGREEMENT:

(Part II)

MAXIMUM SENTENCE APPENDIX

The Sentence ^{Limitation} Portion

PARAGRAPH 1. Punitive Discharge

1. Punitive Discharge: May be approved as adjudged. Should a punitive discharge be adjudged, I agree to submit a written request to be placed on voluntary appellate leave.

[OR – Mitigate DD to BCD – GCMs only]

1. Punitive Discharge: May be approved as adjudged. However, if a dishonorable discharge is adjudged, the convening authority agrees to mitigate the dishonorable discharge to a bad conduct discharge. Should a punitive discharge be adjudged, I agree to submit a written request to be placed on voluntary appellate leave.

[OR – Disapprove any punitive discharge]

1. Punitive Discharge: If adjudged, any punitive discharge will be disapproved.

[OR – Suspend the discharge]

1. Punitive Discharge: May be approved as adjudged. However, if a punitive discharge is adjudged, it will be suspended for a period of _____ months from the date of the convening authority's action, at which time, unless sooner vacated, the suspended punitive discharge will be remitted without further action.

[OR – Suspend the discharge until EAOS]

1. Punitive Discharge: May be approved as adjudged. However, if a punitive discharge is adjudged, it will be suspended until the accused's end of obligated service, at which time, unless sooner vacated, the suspended punitive discharge will be remitted without further action.

[OR – Suspend discharge until ADSEP completed]

1. Punitive Discharge: May be approved as adjudged. However, if the accused voluntarily waives his right to an administrative separation proceeding, the punitive discharge will be suspended until the administrative separation process is completed and the accused has received his DD 214, at which time, unless sooner vacated, the suspended punitive discharge will be remitted without further action.

[PARAGRAPH 2: Confinement]

2. Confinement: May be approved as adjudged.

[OR – Disapprove Confinement]

2. Confinement: If adjudged, any confinement will be disapproved.

[OR – Place a cap on confinement with the excess disapproved]

2. Confinement: If adjudged, any confinement in excess of ____ days/months/years will be disapproved.

[OR – Place a cap on confinement with the excess suspended (“Lamb Clause”)]

2. Confinement: May be approved as adjudged. However, the execution of all confinement in excess of ____ days/months/years will be suspended for a period of ____ days/months/years from the date of the convening authority’s action, at which time, unless sooner vacated, the suspended portion will be remitted without further action. This agreement constitutes my request for, and the convening authority's approval of, deferment of all confinement to be suspended pursuant to the terms of this agreement. The period of deferment will run from the date the confinement is adjudged until the date the convening authority acts on the sentence.

[OR – Confinement contingent on whether a punitive discharge is adjudged]

2. Confinement: If a punitive discharge is adjudged, confinement may be approved as adjudged. However, the execution of all confinement in excess of ____ days/months/years will be suspended for a period of ____ days/months/years from the date of the convening authority’s action, at which time, unless sooner vacated, the suspended portion will be remitted without further action. This Agreement constitutes my request for, and the convening authority's approval of, deferment of all confinement to be suspended pursuant to the terms of this Agreement. The period of deferment will run from the date the confinement is adjudged until the date the convening authority acts on the sentence. If a punitive discharge is not adjudged, confinement may be approved as adjudged.

[Paragraph 3. Forfeiture^s and Fines]

3. Forfeitures or Fines: May be approved as adjudged.

[Or - Disapproval all adjudged and defer/waive all automatic]

a. **Adjudged Forfeitures:** All adjudged forfeitures will be disapproved.

b. **Automatic Forfeitures:** Automatic forfeitures (in the amount of \$_____ per month) will be deferred provided that the accused establishes and maintains a dependent's allotment in the total amount of this deferral during the entire period of deferment. This agreement constitutes the accused's request for, and the convening authority's approval of, deferment of automatic forfeitures (in the amount of \$_____ per month) pursuant to Article 58b(a)(1), UCMJ. The period of deferment will run from the date automatic forfeitures would otherwise become effective under Article 58b(a)(1), UCMJ, until the date the convening authority acts on the sentence. Further, this agreement constitutes the accused's request for, and the convening authority's approval of, waiver of automatic forfeitures (in the amount of \$ ____ per month). The period of waiver will run from the date the convening authority takes action on the sentence for six months. The deferred and waived forfeitures shall be paid to _____, who is my dependent.

c. **Fines:** If adjudged, the fine will be disapproved.

[OR - Suspend adjudged and defer/waive automatic]

a. **Adjudged Forfeitures:** May be approved as adjudged, however adjudged forfeitures (in the amount of \$_____ pay per month for ____ months) will be suspended for _____ months from the date of the convening authority's action, at which time, unless sooner vacated, all suspended adjudged forfeitures will be remitted without further action. This agreement constitutes the accused's request for, and the convening authority's approval of, deferment of all adjudged forfeitures (in the amount of \$_____ pay per month for ____ months), which are to be suspended pursuant to the terms of this agreement and would otherwise become effective under Article 57(a)(1), UCMJ. The period of deferment will run from the date adjudged forfeitures would otherwise become effective until the date of the convening authority's action.

b. **Automatic Forfeitures:** Automatic forfeitures (in the amount of \$ _____ per month) will be deferred provided that the accused establishes and maintains a dependent's allotment in the total amount of this deferral during the entire period of deferment. This Agreement constitutes the accused's request for, and the convening authority's approval of, deferment of automatic forfeitures (in the amount of \$ _____ per month) pursuant to Article 58b(a)(1), UCMJ. The period of deferment will run from the date automatic forfeitures would otherwise become effective under Article 58b(a)(1), UCMJ, until the date the convening authority acts on the sentence. Further, this agreement constitutes the accused's request for, and the convening authority's approval of, waiver of automatic forfeitures (in the amount of \$ ____ per month). The period of waiver will run from the date of the convening authority's action. The deferred and waived forfeitures shall be paid to _____, who is my dependent.

c. **Fines:** May be approved as adjudged; however, the adjudged fine will be suspended for ____ months from the date of the convening authority's action, at which time, unless sooner vacated, the suspended portion of the fine will be remitted without further action.

[OR - fine will be mitigated to forfeitures]

Fines: May be approved as adjudged; however, the adjudged fine will be mitigated to forfeitures, which the accused shall pay in the amount of \$_____ pay per month **[note: cannot be more than 2/3rds pay per month if SPCM]** for ____ months (until the entire amount of the originally adjudged fine has been satisfied).

[Reduction]

4. **Reduction:** May be approved as adjudged.

[OR - Disapprove adjudged]

4. **Reduction:** May be approved as adjudged, however, any adjudged reduction (below the pay grade of E-____) will be disapproved.

[OR - Suspend adjudged]

4. **Reduction:**

a. **Adjudged Reduction:** May be approved as adjudged; however, any adjudged reduction (below pay grade ____) will be suspended for _____ months from the date of the convening authority's action, at which time, unless sooner vacated, the suspended reduction will be remitted without further action. This Agreement constitutes the accused' request for, and the convening authority's approval of, deferment of that adjudged reduction which is to be suspended pursuant to the terms of this Agreement and would otherwise become effective under Article 57(a)(1), UCMJ. The period of deferment will run from the date the adjudged reduction would otherwise become effective until the date of the convening authority's action.

[Other lawful punishments]

5. **Other lawful punishments:** May be approved as adjudged.

[OR – Disapprove other lawful punishments]

5. **Other lawful punishments:** If adjudged, any other lawful punishment will be disapproved.

[OR - Suspend other lawful punishments]

5. **Other lawful punishments:** May be approved as adjudged, however any **[fine, restriction, hard labor without confinement, etc.]** will be suspended for _____

COMDTINST M5810.1E

months from the date of the convening authority's action, at which time, unless sooner vacated, the suspended portion will be remitted without further action.

[Bareback Special Provision – Special Courts-Martial only]

The only consideration that I will receive under this agreement is the referral of the charges and specifications in my case to a special court-martial vice a general court-martial. All punishment may be approved as adjudged.

Accused: _____ Date: _____

(NAME OF ACCUSED) RATE/RANK USCG

Defense Counsel: _____ Date: _____

Name of Counsel, Rank

The foregoing pretrial agreement is approved.

_____ Date: _____

(convening authority signature)

ANNOTATION

¹. This provision is helpful because it assures the military judge that the accused is satisfied he has received competent advice in negotiating and drafting the agreement and is effective in countering an appellate claim of ineffective assistance of counsel.

². This provision expresses the voluntary nature of the agreement. Appellant's agreement to plead guilty must be both voluntary and intelligent. *E.g.*, [United States v. Burnell, 40 MJ 175 \(C.M.A. 1994\)](#). Voluntariness necessarily implies an accused must be free to accept or reject any offer made by the Government (i.e., not induced by threats, improper harassment, misrepresentation, or "promises that are by their nature improper as having no proper relationship to the prosecutor's business.") *Id.* at 176. Intelligent generally requires that an accused fully understands the impact of his plea and the rights he is waiving by entering a plea of guilty. *Id.* Language in old pretrial agreements stating that the offer to plead guilty originated with the defense is no longer required by case law or the MCM. R.C.M. 705(d) states that the accused, defense counsel, trial counsel, the SJA, or the convening authority may initiate negotiation. Nevertheless, such language may be needed where the pretrial agreement contains a novel provision that could be seen as contrary to public policy. In that case, the language should accompany that specially negotiated provision, as discussed in further detail below. Appellate courts may be more likely to uphold such a provision if it originated with the defense.

⁴. These provisions establish that the accused clearly understands the full effect of his or her guilty plea, [Burnell, 40 M.J. 175](#), and [United States v Bedania, 12 M.J. 373 , 376 \(C.M.A. 1982\)](#) (plea is not provident if the collateral consequences are major and the appellant's misunderstanding of the consequences (a) results foreseeably and almost inexorably from the language of a pretrial agreement; (b) is induced by the trial judge's comments during the providence inquiry; or (c) is made readily apparent to the judge, who nonetheless fails to correct that misunderstanding) makes it clear that a failure to understand the collateral administrative consequences of a guilty plea may render the plea improvident.

⁵. This provision explicitly states the Coast Guard's policy regarding administrative reductions. See [Coast Guard Military Justice Manual, COMDTINST M5810.1D ¶ 4.E.1](#). It is important to include this provision to avoid ambiguity and possible oversight by other service counsel and judges since administrative reductions are common in the other services.

⁶. This provision explains the operation of adjudged and automatic forfeitures. It also clarifies that the accused will not receive any pay if he is beyond his EAOS. This prevents any misunderstanding over pay issues - which can render a plea improvident. See [United States v. Perron, 58 M.J. 78 \(C.A.A.F. 2003\)](#). For a special court-martial, the applicable amount of forfeitures is 2/3 pay; for a general court-martial, total forfeitures apply. Strike out the inapplicable language.

⁷. This provision places the accused on notice that he or she could be placed in a no-pay status following trial. As with the above paragraph, this prevents any misunderstanding over pay issues.

⁸. This provision indicates that the language of the pretrial agreement constitutes the entire agreement between the parties and that there are no sub rosa agreements. This is required by R.C.M. 705(d)(2), as well as appellate case law (See, e.g., [United States v Green, 1 M.J. 453 \(C.M.A. 1976\)](#); [United States v King, 3 M.J. 458 \(C.M.A. 1977\)](#); [United States v Passini, 10 M.J. 108 \(C.M.A. 1980\)](#); [United States v Jones, 23 M.J. 305 \(C.M.A. 1987\)](#)).

⁹. This provision communicates the accused's understanding about the potential sentence components that may be limited by the agreement. Each category should be addressed.

[United States v. Edwards, 20 M.J. 439 \(C.M.A. 1985\)](#) (a fine could not be imposed where the PTA did not expressly state that a fine could be imposed.) Note that “other lawful punishment” is an optional fifth section of this provision. Although such punishments are rarely imposed and do not appear to be a fertile source of appellate litigation, this wording would be necessary when such a punishment is likely or of concern to an accused.

This language operates to impose a limit on each divisible portion of the sentence. [Cf. United States v. Neal, 12 M.J. 522 \(N.M.C.M.R. 1982\)](#). A sentence limitation in a pretrial agreement may operate in one of two ways, depending upon the intent of the parties: (1) a limit on each divisible portion of the sentence; or (2) a limit only on the overall severity of the sentence. [See United States v. Sparks, 15 M.J. 895 \(A.C.M.R. 1983\)](#). Say, for example, a convening authority agrees to disapprove any sentence in excess of a BCD and 6 months of confinement. If the accused is sentenced to 12 months of confinement but no BCD, under the first approach the convening authority could approve only 6 months of confinement. Under the second approach, he could approve 12 months of confinement because, by law, 12 months of confinement is less severe than a BCD. [See Frazier v. McGowan, 48 M.J. 828 \(C.G.Ct.Crim.App. 1998\)](#). There is nothing per se inappropriate about drafting a pretrial agreement so that it operates only as a cap on the overall sentence, so long as that intent is clearly stated. However, given the uncertain application of this concept and the potential for misunderstanding, we do not recommend it.

If the intent of the parties is that the sentence limit should be taken as a whole, the following language should be used:

I understand, and the sentence limitation portion of this agreement addresses, each of the following distinct parts of the sentence that may be adjudged in this case: (1) punitive discharge, (2) confinement and/or restraint, (3) forfeiture and/or fine, (4) reduction in pay grade, and (5) any other lawful punishment. I further understand that, for purposes of this agreement, the sentence is to be considered as a whole and that nothing in this agreement shall preclude the convening authority from exercising the independent powers to commute, mitigate, or otherwise change any or all of the sentence, so long as the severity of the whole adjudged sentence is not increased thereby and so long as the convening authority does not by the action exceed the total agreed or adjudged sentence, whichever is less.

¹⁰. This provision establishes that the accused understands that a guilty plea may be withdrawn even after it has been entered. Although this restates R.C.M. 705(d)(4), it effectively counters the possibility that an accused may argue on appeal that they had a change of mind and desired to change their plea to not guilty, but thought their guilty plea was irrevocable.

¹¹. This provision recites the obligations of the accused to perform under the agreement. The agreement will be null and void regardless of why the convening authority or the accused withdraws. Note, however, that a convening authority’s ability to withdraw is lessened if there has been detrimental reliance or

substantial performance by an accused. See [United States v. Villareal, 52 M.J. 27 \(C.A.A.F. 1999\)](#). See discussion at paragraph 15, below.

¹². This provision prevents an accused from arguing on appeal that they wanted to withdraw from the agreement but did not feel comfortable doing so because they thought the agreement would be used against them in some way. Although M.R.E. 410 prevents this (with limited exceptions), such a misunderstanding could render the plea improvident.

¹⁴. The convening authority does not have unfettered discretion to unilaterally withdraw from a PTA before trial. A convening authority will generally be bound by an agreement once an accused relied upon the agreement and performed some affirmative act or omission amounting to detrimental reliance. See generally [United States v. Villareal, 52 M.J. 27 \(C.A.A.F. 1999\)](#); [United States v. Manley, 25 M.J. 346 \(C.M.A. 1987\)](#); [United States v. Penister, 25 M.J. 148 \(C.M.A. 1987\)](#); [Shepardson v Roberts, 14 M.J. 354 \(C.M.A. 1983\)](#); [United States v. Kazena, 11 M.J. 28 \(C.M.A. 1981\)](#); see also, [Major Mary M. Foreman, Let's Make a Deal! The Development of Pretrial Agreements in Military Criminal Justice Practice, 170 Mil. L. Rev. 53, 99 – 105](#) (analyzing the leading cases providing an excellent summation of the law).

Practice Note: The precise process involved when a convening authority decides that withdrawal is appropriate is not well defined. It appears that a reasonable approach is for the convening authority to make a determination to withdraw and convey, in writing to the accused, the decision to withdraw. The burden is then on the accused to move for appropriate relief. See [Villareal, 52 M.J. at 29](#); RCM 705(b)(2)(C) discussion. If the accused can establish that there is a PTA and detrimental reliance, then the burden shifts to the Government to prove by a preponderance of the evidence that there was a material breach of the agreement. See [United States v. Bulla, 58 M.J. 715, 718 n.3 \(C.G.Ct.Crim.App. 2003\)](#).

¹⁵. These provisions addresses how misconduct by the accused that occurs after signing the pretrial agreement, or after trial but before the convening authority's action is taken, will impact the agreement. The procedural rules associated with vacating a suspended sentence (see R.C.M. 1109 and Article 72, UCMJ) appear to also apply under these circumstances (see R.C.M. 705(c)(2)(D)), in order to satisfy due process requirements. [United States v. Bulla, 58 M.J. 715, 718 n.3 \(C.G.Ct.Crim.App. 2003\)](#); Manual for Courts-Martial (2002), App. 21, at p. A21-40. The misconduct must constitute a "material breach" of the pretrial agreement, and must be established by a preponderance of the evidence. *Id.*

Practice Note: The Coast Guard Court of Criminal Appeals, in dicta, expressed concern about the use of this misconduct provision when Part II of the PTA states that the convening authority agrees to disapprove part of a sentence. When misconduct occurs before convening authority action the sentence limitations may be set aside. The result of setting aside the sentence limitations may be different from vacating a suspended sentence. The concern is that when the convening authority agrees to disapprove part of a sentence, misconduct that occurs before CA action could result in the imposition of all punishment imposed by the military judge. On the other hand, misconduct that occurs

after convening authority action can only result in the imposition of suspended punishments. See [United States v. Bulla, 58 M.J. 715, 718 n.3 \(C.G.Ct.Crim.App. 2003\)](#). It may, therefore, be more difficult to withdraw from a pretrial agreement that calls for certain punishment to be disapproved.

¹⁶. This provision requires the convening authority to comply with the procedural rules contained in Art. 72, UCMJ and R.C.M. 1109 before vacating or setting aside a suspended sentence, and places the accused on notice that the convening authority can move to vacate any suspended sentence due to post-trial misconduct. This ensures that post-trial misconduct clauses must comply with minimum due process protections.

^{Withdraw} **language to which accused pled Not Guilty.** Charges should normally be dismissed without prejudice. This preserves the government's ability to resurrect the charges in the event of a subsequent breach. Should the accused breach the agreement after charges are dismissed (e.g. the military judge reopens providency during sentencing and sets aside a guilty plea), the government would not have the option of reinstating charges that had been dismissed with prejudice.

^{Government} **going forward on not guilty pleas.** Unless the pretrial agreement specifically states the government will not go forward on certain charges, it may be presumed that the government retains the option of proving any offense to which the accused pleaded not guilty. To eliminate any potential misunderstanding, however, the above sentence should be inserted whenever the government intends to go forward on other charges.

Practice Pointer: The disposition of charges to which an accused pleads not guilty is a source of frequent error. If the government agrees to withdraw specifications, this must be done after the military judge accepts the guilty pleas, but before the entry of findings. The military judge then should not enter findings on the withdrawn specifications. If the government agrees to not "go forward," the charges and specifications remain before the military judge. Since the government will not have introduced any evidence on these specifications, the military judge must enter findings of "not guilty." Double jeopardy precludes the government from resurrecting any charges where a not guilty finding has been entered, even if the accused subsequently breaches the pretrial agreement.

^{Waive} **Administrative Discharge Board.** Practice Pointer: A waiver of an administrative discharge board cannot predate the date that the member is formally notified of the administrative separation action. Commands have the option of initiating administrative separation action and securing the waiver prior to the court-martial. Administrative separation action can be initiated even while a court-martial is pending (although the command must ensure that final action is stayed pending the outcome of the court-martial). Alternatively, the command could await the results of the court-martial and initiate administrative separation if a punitive discharge is not adjudged. Pursuant to this term of the pretrial agreement, the accused will be obligated to submit a written waiver (although if the adjudged punishment is less than the cap provided in the PTA, he will have little incentive to do so).

Testify ^{W/Grant} **of Immunity in another case.** A promise to testify as a witness in the trial of another person is permissible, so long as the clause only requires the accused to testify or testify truthfully. The clause will probably be invalid if it requires the accused to testify in conformity with his pretrial statements ([United States v. Conway, 42 CMR 291 \(C.M.A. 1963\)](#)), or his benefit is tied to the number of times he testifies ([United States v. Scoles, 33 CMR 226 \(C.M.A. 1963\)](#)).

Testify ^{W/O Grant} **of Immunity in another case.** Caution: Although this is probably a permitted term, this has not been clearly decided. See [United States v. Rivera, 46 M.J. 52 \(C.A.A.F. 1997\)](#). A provision such as this arguably compromises an accused's right against self-incrimination and should be used with caution. The government should not propose this term and, if used, the agreement should clearly state that the offer to testify without a grant of immunity originated with the defense.

Call^{no witness} or call only local witnesses. The accused must have an opportunity to present evidence on sentencing. If the PTA precludes out-of-area witnesses, alternative means of introducing evidence must be afforded. [United States v. Sunzeri, 59 M.J. 758 \(N.M.Ct.Crim.App. 2004\)](#).

Agreement to Waive Certain^{Motions} Agreements to waive pretrial motions are the most problematic area of pretrial agreements. Carefully research current case law before inserting such a provision. An accused can likely waive motions relating to search and seizure and out of court identification ([United States v Jones, 23 M.J. 305 \(C.M.A. 1987\)](#)); unlawful pretrial punishment ([United States v. McFadyen, 51 M.J. 289 \(C.A.A.F. 1999\)](#)); evidentiary objections ([United States v. Rivera, 46 M.J. 52 \(C.A.A.F. 1997\)](#)); statute of limitations ([United States v. Clemens, 4 MJ 791 \(N.M.C.M.R. 1978\)](#), *pet. denied*, 5 MJ 207 (C.M.A. 1978)); and even certain types of unlawful command influence ([United States v. Weasler, 43 M.J. 15 \(C.A.A.F. 1995\)](#)). The specific motions waived need to be specified – the language “all waivable motions” is unacceptable, as is an agreement to “waive all motions which can be waived under applicable statutes, case law, and public policy.” Agreements to waive specific motions are more likely to be upheld if proposed by an accused, vice the government.

The Sentence^{Limitation} Portion. The sentence limitation portion of the agreement must contain a provision addressing each of the possible types of sentence listed in paragraph 10. Failure to address one of the types of possible sentence or specify whether the limitation (or lack thereof) applies to both adjudged and automatic sentences may render the sentence unimposable, [United States v. Edwards, 20 M.J. 439 \(C.M.A. 1985\)](#).

PRACTICE POINTERS ON SENTENCE LIMITATIONS:

Punishments may be suspended for a stated period of time or until the occurrence of an anticipated future event, but the period of suspension may not be unreasonably long. R.C.M. 1108(d). The most common “anticipated future event” is release from confinement. Thus, it is common to suspend confinement for the entire duration of the confinement served, plus some period (typically 1 year). E.g. “confinement shall be suspended from the date of the convening authority’s action until 1 year from the date the accused is released from confinement pursuant to this agreement.”

Don’t mix units of measurement. 1 month is not necessarily the same as 30 days; nor is 12 months necessarily the same as 1 year. See [SECNAVINST 1640.9B](#), Department of the Navy Corrections Manual, Chapter 9. If the military judge announces a sentence using days, for example, but the pretrial agreement uses months, be sure everyone understands the precise impact of the agreement.

It is a good practice for both trial and defense counsel to compute the exact date the accused will be released from confinement accounting for all applicable credits and then ensure such happens. Brigs have been known to err in this calculation – both long and short. A calculation which errs on the long side most assuredly will create issues on appeal. See [United States v. Weber, 56 M.J. 736 \(C.G.Ct.Crim.App. 2002\)](#). For instructions on how to calculate the proper release date, see [SECNAVINST 1640.9B](#), Department of the Navy Corrections Manual, Chapter 9. These calculations rely on “expiration tables,” which are available through this [link](#).

Appellate^{leave} leave. Appellate leave is an excess leave status and the accused is not entitled to pay or allowances. See [PERSMAN](#) para. 7.A.21. If an accused is sentenced to a punitive discharge but the convening

authority has not yet approved the sentenced, the member must request appellate leave. If the member does not request appellate leave, he must generally be retained in a pay status until the convening authority takes action on the case (unless he is beyond his EAOS). Once the punitive discharge has been approved, the member may be required to take appellate leave until the discharge is executed. The language requiring the accused to submit a request for appellate leave should be used whenever there is a possibility an accused will be out of confinement before the convening authority's action, to preclude the possibility the government will have to return the member to duty.

^{Lamb} **Clause.** The last two sentences of this paragraph constitute the "Lamb Clause." [United States v. Lamb, 22 M.J. 518, 518-19 \(N.M.C.M.R.1986\)](#). Confinement begins to run on the date it is adjudged, whether or not an accused is actually confined, unless the confinement is suspended or deferred. The convening authority cannot suspend the sentence until he/she takes action. Thus, the Lamb clause defers that portion of the sentence which is to be suspended, until such time as the convening authority actually suspends it (i.e. at action). The Lamb clause ensures the accused will be released from confinement when called for in the pretrial agreement, even if the release date precedes the action. The Lamb clause also preserves that portion of the confinement to be suspended. Without deferral, confinement would continue to run uninterrupted even after the accused was released pursuant to the agreement. See [United States v. Riggs, 59 M.J. 614 \(C.G.Ct.Crim.App. 2003\)](#); [United States v. Anderson, 55 M.J. 588 \(C.G.Ct.Crim.App. 2001\)](#).

^{Forfeiture} **s** The interplay between adjudged and automatic forfeitures can be complicated and both trial and defense counsel must understand how these provisions work. For additional information see [AFLSA/JAJA Memorandum for All SJA dated 1 July 2002, SUBJ: Articles 57\(a\) and 58b, UCMJ](#).

MILITARY JUSTICE MANUAL, COMMANDANT INSTRUCTION M5810.1E

**ENCLOSURE (16g)
GENERAL INFORMATION FOR PROSPECTIVE COURT-MARTIAL
MEMBERS**

Having been selected as a prospective court-martial member by the convening authority, you have been called upon to perform one of the most important duties required of an active duty member of the Coast Guard, that of administering military justice. In an attempt to better prepare you as a prospective court-martial member, the following is presented for your information.

The convening order that appointed you as a prospective court-martial member may be used for one or more courts-martial and you may have to sit as a court-martial member in each of them. Therefore, it is extremely important that you refrain from any conversation regarding alleged violations of the Uniform Code of Military Justice. If anyone begins to tell you about such a violation, cut them off and advise them you cannot discuss the case as you may be a court-martial member.

Your selection as a prospective court-martial member is just that; you are still subject to questioning by the military judge and counsel for both the government and the defense before becoming a member of a particular court-martial. This questioning is known as voir dire and is specifically authorized by law. The purpose of this questioning is to determine whether or not you will sit as a trier of fact and the potential assessor of punishment. The questions that will likely be asked you at trial are not designed to embarrass you, but rather to discover such factors as whether you have any knowledge of the case, any preconceived opinions that you cannot lay aside, or if you have any experience in your personal life that might cause you to be biased in favor of either the prosecution or defense in the case.

The court-martial member questionnaire that has been enclosed with this information sheet, which provides preliminary answers for the military judge and counsel, is not intended to be all inclusive but rather addresses certain recurring issues. Being a prospective court-martial member requires no preparation at all prior to trial. In fact, it is very important that you avoid any preparation. At trial, the military judge will instruct you that he will inform you what the law is in the case and the procedures that you must follow. In this regard, the military judge is the only source of the law and you will be required to follow the law as it is given to you by him, even though you may have some different recollection of what the law is with regard to a particular issue. It is not

COMDTINST M5810.1E

permissible for you to refer to, examine, or even consult the Manual for Courts-Martial, or any other publication, directive, or writing to acquire independent knowledge of those matters to be dealt with at trial. In short you should scrupulously avoid any contact that in any way deals with issues of military justice that you may be called upon to decide.

Finally, you should be aware that courts-martial routinely extend beyond normal working hours, and may even include weekends. Personnel should make transportation and child care arrangements in advance of trial and advise the military judge of all scheduling issues on the first day of trial.

**COMMANDANT INSTRUCTION M5810.1E, MILITARY JUSTICE MANUAL
ENCLOSURE (16g) COURT-MARTIAL MEMBER QUESTIONNAIRE**

1. Full Name: _____; Rank: _____; Birth year: _____;
Gender: _____; Race/ethnicity: _____

2. Date of Rank: _____ Source of Commission: _____

3. Branch of Service: _____

4. Years of Service: _____; Active Duty: _____; Reserve: _____

5. Prior Coast Guard Enlisted Service: _____

6. How Long: _____; Highest Grade: _____

7. Have you served in another Uniformed Service: _____

A. Name of Uniformed Service: _____

B. Enlisted or Commissioned Service: _____

C. Date of Service: _____

D. Highest Rank/Grade Attained: _____

8. Present Duty Station: _____

A. Office Telephone Number: _____

B. Recall Phone Number: _____

C. Duty Assignment (Description of Job): _____

D. Present Performance Rating Chain

(1) Supervisor: _____

(2) Reporting Officer/Marking Official: _____

(3) Reviewing/Approving Official: _____

9. Provide a brief history of your military career

Dates (Rpt/Dpt)	Unit	Job Title & Description

Is your career summary continued on the reverse of this page? _____

MILITARY JUSTICE MANUAL, COMMANDANT INSTRUCTION M5810.1E

ENCLOSURE (16g)

10. Have you ever convened a court-martial? _____

11. If so, when? _____

12. Have you ever served, in any capacity, on any court-martial? _____

Date	Type	Your role	Offense(s)	Result

13. Have you ever imposed nonjudicial punishment? _____

14. Have you ever served on an administrative discharge board? _____

15. Have you, or anyone close to you, had any involvement with any judicial system that is not reflected in the above? (e.g. charged with an offense, arrested but not charged, witness who did or didn't testify, party in a civil lawsuit, deposition, civilian juror, in a jury pool but didn't serve) Please explain, including the date of the involvement. _____

—

—

—

16. Are you a high school graduate? _____

17. Have you attended college (undergraduate)? _____

A. Name(s) of college: _____

B. Location(s): _____

C. Years of attendance: _____

D. Major field(s): _____

E. Degree(s) awarded: _____

18. Have you attended postgraduate school? _____

A. Name(s) of school: _____

B. Location(s): _____

C. Years of attendance: _____

D. Major field(s): _____

E. Degree(s) awarded: _____

19. Have you attended law school or taken law courses? _____

20. Please explain (School/Course/ Date/ Topic(s) of Course(s): _____

**COMMANDANT INSTRUCTION M5810.1E, MILITARY JUSTICE MANUAL
ENCLOSURE (16g)**

21. Family Information.

A. Marital Status: _____

B. Home of Record: _____

C. Number of Dependents: _____

Gender	Age	Relationship

22. Have you, a close relative, **or a close friend**, ever been the victim of a crime? _____

23. If so, briefly describe: _____

24. Have you, a close relative, **or a close friend**, ever been involved in the following:

A. Crime Prevention (e.g., police officer, detective): _____

B. Medicine (e.g., doctor, nurse, pharmacist): _____

C. Mental Health (e.g., psychiatrist, psychologist): _____

D. Law (e.g., judge, attorney, law student): _____

COMDTINST M5810.1E

E. Forensic Sciences (e.g., chemistry, toxicology): _____

25. Is there anything in your background or experience that may affect your serving as an impartial court-martial member? _____

26. Are you able to sit for an extended period of time & concentrate on detailed matters such as witness testimony, argument from counsel, & instructions from the military judge? _____

27. Is there anything in your personal belief system (religious, moral, etc.) or personal or family history that makes it more difficult for you to sit in judgment of another person? Please _____ explain.

28. Do you have any professional qualifications not clearly reflected in the assignment history you provided? (e.g. professional engineer, private pilot, etc.) Please list.

29. I acknowledge the continuing duty to update this information if anything changes.

Date Prepared: _____ Signature _____

SAMPLE NOTICE OF PUBLIC TRIAL

Pursuant to RCM 806 of the Manual for Courts-Martial, notice is hereby given that a Special Court-Martial will be held in Room 504, Federal Building, Portsmouth, Virginia at 0900, *date*, in the case of United States v. SN Ivan M. SMITHY, USCG.

The public is invited to and permitted to attend all open sessions of said court-martial unless the military judge shall direct that for national security, or other good cause, the public shall be excluded from certain portions of the trial. The following rules of court apply to all spectators.

Rule 18. Conduct of spectators.

Rule 18.1. Weapons prohibited. No firearm or other weapon may be brought into the courtroom without the permission of the military judge.

Rule 18.2. Eating, drinking, etc. Eating, chewing gum, or using tobacco products is not permitted in the courtroom during open sessions. Spectators may not bring beverages into the courtroom or consume them in the courtroom.

Rule 18.3. Recording and broadcast devices. No video or audio recording devices are permitted in the courtroom with the exception of the equipment required by the court reporter. The taking of photographs or other digital visual images in the courtroom during the process of judicial proceedings is not permitted. Broadcasting of judicial proceedings from the courtroom is not permitted.

Rule 18.4. Cell phones and similar devices. All beepers, audible pagers, cell phones, and other audio communication devices must be turned off prior to entering the courtroom.

Rule 18.5. Disturbances prohibited. Spectators ordinarily may enter or leave the courtroom while court is in session but shall not be permitted to disturb or interrupt court proceedings by their conduct. Spectators shall not indicate or demonstrate in any manner agreement or disagreement with testimony or procedures at a trial, nor will their appearance or attire be permitted to detract from the dignity of the proceedings or to create a distraction. Spectators shall refrain from any activities indicative of inattention to the proceedings such as loud whispering, sleeping or playing electronic or video games.

Rule 18.6. Protocol. All personnel in the courtroom, except the court reporter, shall rise upon the entry and departure of the military judge. All personnel in the courtroom, other than the military judge and court reporter, shall rise when the members enter and depart the courtroom.

Rule 18.7. Sanctions. Individuals who violate these rules may be excluded from the courtroom, held in contempt, or both.

GUIDE FOR THE BAILIFF

PREAMBLE

The trial is the most visible aspect of the military justice system. It is essential that it be conducted in a dignified and orderly manner. Anything that detracts from an atmosphere of respect for the law and the authority of the court is to be avoided.

The trial of a case should not be delayed by minor administrative matters that should have been anticipated and resolved beforehand by a bailiff who has been carefully instructed in the performance of duties in order to avoid such delays.

The bailiff should seek from the trial counsel specific instruction regarding duties and for directions before and after each session of the court. While the court is in session, the bailiff is under the supervision of the military judge and should assist the military judge and counsel in the conduct of an orderly trial. The bailiff should be familiar with the location of the principal offices and facilities that may be used during the trial. Prior to the commencement of trial, the bailiff should ask the judge if there is to be any deviation from the procedure suggested in the Bailiff Guide.

DUTIES OF THE BAILIFF

Prior to Trial

1. The bailiff shall report to the trial counsel in the uniform of the day at least 30 minutes before the commencement of each day's proceedings, and to the military judge 15 minutes before the commencement of the day's proceedings.
2. The bailiff shall ensure that the courtroom, including the spectator area and the deliberation room for court members, has a neat and orderly appearance, and shall place the furniture in proper arrangement.
3. The bailiff shall ensure that the judge has the desk supplies desired and that the court members have pencils and paper. In addition, fresh water should be available for the judge, members, counsel, and accused.

Entry and Departure of Military Judge

4. When counsel for both sides, the accused, the reporter, and, when appropriate, the court members, are all present in the courtroom, the bailiff shall so notify the military judge. Immediately prior to the judge entering the courtroom, the bailiff shall state, "All persons please rise." When the military judge announces a recess or adjournment, the bailiff should again state, "All persons please rise." The military judge should advise the bailiff if there is to be any departure from this procedure.
5. Unless instructed otherwise by the military judge, the court shall be formally opened upon entry of the judge at the commencement of each day of the trial. On those occasions the bailiff shall state:

"All persons please rise. A (general)(special) court-martial convened by _____ is now in session, Military Judge _____, (Captain)(Commander), U. S. Coast Guard, presiding."

Entry of Court Members

6. When the court members stand to be sworn, the bailiff shall announce, "Everyone, please stand," in a voice that can be heard by all spectators. This will also be done each time members enter and leave the courtroom while other parties remain.

Spectators and Members of News Media

7. Military trials are normally open and spectators and members of the news media are welcome in the courtroom to hear and observe the trial proceedings. The bailiff should assist them in entering the courtroom, being seated and leaving quietly while the court is in session.

8. Picture taking or any type of broadcasts are not permitted in the courtroom. The bailiff shall not permit that type of equipment to be taken into the courtroom. Any problems concerning this matter should be brought immediately to the attention of the trial counsel.

9. Standard courtroom rules do not permit spectators to eat, sleep, smoke or engage in conversation while the court is in session. The bailiff should quietly and diplomatically inform the offenders of these rules.

10. Weapons are not permitted in a courtroom. Be particularly aware of any law enforcement officers or special agents who might be armed. If you observe any weapons, bring the matter to the immediate attention of the trial judge.

11. Anyone talking or making noise in adjoining rooms or corridors that is distracting in the courtroom shall be informed by the bailiff that the court is in session and requested to stop.

12. Rowdiness and violence are not unknown in the courtroom. The bailiff must be alert and prepared to take immediate steps to suppress unruly behavior.

13. When the court members are in closed session, only the members are permitted in the deliberation room. Therefore, the bailiff will not enter that room or permit anyone else to enter during the closed session.

14. The bailiff is the only contact between the court members and the parties to the trial during the periods the court members are deliberating. The bailiff shall be available to the court members just outside their deliberation room and immediately notify the trial counsel, defense counsel, and military judge when the court members are ready for the court to be reopened.

15. If the bailiff is requested to deliver any item or message to the court members in

closed session, he or she must first inform the judge and obtain approval.

Miscellaneous Duties During the Trial

16. The bailiff shall be prepared to furnish the following services:

- a. Summon the court members to the courtroom at the beginning of each session of court when advised by the military judge or trial counsel.
- b. Collect written questions from the court members upon the judge's request and hand them to the judge or trial counsel as instructed.
- c. Summon witnesses to the courtroom when requested by counsel.
- d. Deliver findings and sentence worksheets to the **president of the court when instructed to do so.**
- e. Deliver items of evidence to the deliberation room, if instructed to do so by the military judge, when the court members retire to the deliberation room.
- f. Perform administrative errands during the trial as requested by the military judge and counsel.
- g. Be alert to assist in the handling of evidence during the trial.

Attitudes and Relation of the Bailiff to
the Issues and Parties of the Trial

17. The bailiff should remain neutral throughout the trial of a case. That is, he or she should not assume a partisan attitude toward either side--the prosecution or the defense. The bailiff shall never participate in any discussion of the merits of the case and shall never attempt to predict the outcome of the trial. The bailiff should also avoid making any comments on the performance of counsel for either side or on the testimony of witnesses. Particular attention must be given to avoid discussing anything about the case or courtroom activities with any prospective witnesses or members. Avoid discussions with all other people during the course of the court.

GUIDANCE FOR CONTRACT COURT REPORTERS

EXHIBITS

Appellate exhibits are marked in the lower right-hand corner using "AE" and a Roman number (e.g. "AE I"). They are not marked "for identification." They are not "admitted into evidence," but simply attached to the record.

Prosecution exhibits are marked in the lower right-hand corner using "PE" and an Arabic number (e.g. "PE 1"). Prosecution exhibits are marked "for identification" until admitted into evidence (e.g. "PE 1 for ID" or "PE 1 for identification"). When admitted into evidence, the words "for identification" should be lined out.

Defense exhibits are marked in the lower right-hand corner using "DE" and a letter (e.g. "DE A"). Defense exhibits are marked "for identification" until admitted into evidence (e.g. "DE A for ID" or "DE A for identification"). When admitted into evidence, the words "for identification" should be lined out.

The numbering and lettering sequence continues into the sentencing portion of the trial (i.e. the exhibits do not begin anew with the sentencing hearing).

If an exhibit is offered but not admitted, the document retains the number or letter assigned to it (along with the words "for identification") and it is attached to the end of the record.

When assembling the record, place exhibits in the following order:

- Prosecution exhibits admitted into evidence
- Defense exhibits admitted into evidence
- Appellate exhibits
- Prosecution exhibits offered but not admitted
- Defense exhibits offered but not admitted

Two items are inserted directly into the transcript, at the point where the judge so states: the Convening Order (at the beginning of the trial) and the Charge Sheet (a little later, during arraignment). These items are not marked as exhibits.

When putting together the record, do NOT punch holes in exhibits unless you are sure the holes will fall in blank spaces or otherwise be harmless.

LABELS FOR PERSONS SPEAKING

The defendant should be referred to as "Accused" when he/she is speaking on the record (except when actually testifying as a witness, in which case the defendant is referred to the same way as any other witness). In particular, upon a guilty plea, when the judge is asking the accused questions about the offense (called the "providency inquiry"), the Accused is not considered a witness.

The judge should be captioned "Military Judge."

Counsel may be referred to as "TC" (trial counsel) (prosecutor) and "DC" (defense counsel). If there are more than two counsel, ask the trial counsel how to refer to them. The trial counsel represents the government or the prosecution (not the "plaintiff"). The defense counsel, of course, represents the accused or the defense.

"Court members" or "members" correspond to jury members in the civilian system. During "voir dire" they answer questions, but they are not considered witnesses. Because there are several of them, usually it is necessary to use their names. The most convenient source of members' names is the convening order, from which spellings can be taken.

COMMON CITATIONS

UCMJ (Uniform Code of Military Justice) is the body of statutes underlying our system. Sections of the code are referred to as Articles.

RCM (Rules for Courts-Martial) are the procedural regulations. A typical citation is "RCM 707" or "Rule 707."

MRE (Military Rules of Evidence) are the evidentiary regulations. A typical citation is "MRE 403" or "Rule 403." Similarly, sometimes we refer to FRE (Federal Rules of Evidence).

In general, a letter following an Article number or a Rule number should be in parentheses. Examples: Article 39(a), RCM 1001(b)(5), MRE 305(d)(1)(A).

(However, if the case involves UCMJ Article 112a or 123a, the "a" following Article 112 or 123 is not in parentheses.)

Some persons may refer to citations such as "Article 27 Bravo" or "Article 42 Alpha." This simply means Article 27(b) or Article 42(a). It may be rendered either way in the transcript.

MISCELLANEOUS

When breaks are taken in the trial, they are usually called recesses. However, when the court is closed for deliberations (during which the attorneys, accused and court reporter are apparently in recess), it is "closed," not "in recess."

[If you expect the court reporter to include times of recesses and other events, be sure to discuss this beforehand. Most non-military reporters are not accustomed to doing this, except for the beginning and end of the day.]

[A list of common military terms, acronyms and abbreviations likely to occur in the trial should be given to the reporter. For example, the term "OOD" may be rendered as "OD" if the reporter is not alerted to it. Likewise, the reporter will do better with enlisted ratings if given notice of them.]

**POST-TRIAL AND APPELLATE RIGHTS
SPECIAL COURT-MARTIAL
NO BCD ADJUDGED**

You have the right to submit matters to the convening authority before (s)he takes action on your case. These matters must be submitted to the convening authority within 10 days after you or your counsel receive a copy of the record of trial. The convening authority may extend this period for good cause but for not more than 20 additional days.

After the convening authority takes action, your case will be reviewed by a Judge Advocate. You may submit, in writing, suggestions of legal error for consideration by the Judge Advocate, who must file a written response to each suggestion.

After review by the law specialist and completion of any action by the General Court-Martial Convening Authority, if required, you may request the Judge Advocate General of the Coast Guard to take corrective action in your case. Such a request must be filed within two years after the convening authority takes action, unless you can show good cause for filing later.

You have the right to the advice and assistance of counsel in the exercise of your appellate rights.

App. Exh. _____(1 of 2)

CERTIFICATION OF ADVISEMENT.

I certify that I have been advised of the foregoing post-trial and appellate rights by my defense counsel, _____, in accordance with Rule for Courts-Martial 1010. I have read and fully understand these rights. My defense counsel has gone over these rights with me and has answered all of my questions satisfactorily.

Accused

I certify that I have carefully explained the foregoing rights to the accused.

Defense Counsel

App. Exh. _____ (2 of 2)

**POST-TRIAL AND APPELLATE RIGHTS
SPECIAL COURT-MARTIAL
BCD ADJUDGED,**

or

**GENERAL COURT-MARTIAL IN WHICH DEATH, PUNITIVE
DISCHARGE, OR CONFINEMENT FOR ONE YEAR OR
LONGER IS ADJUDGED**

You have the right to submit any matters that you wish to the convening authority for (her) (him) to consider before (s)he takes action on your case. These matters must be submitted to the convening authority within 10 days after you or your counsel receive a copy of the record of trial or the recommendation of the Staff Judge Advocate pursuant to RCM 1106, whichever is later. The convening authority may extend this period for good cause but for not more than 20 additional days.

After the convening authority takes action, unless you waive appellate review, your case will be reviewed by the Coast Guard Court of Criminal Appeals. You are entitled to be represented by counsel before that court. Military counsel will be appointed to represent you at no cost to you and, if you so choose, you may be represented by civilian counsel at no expense to the United States. The Court of Criminal Appeals will review your case for any legal error, for factual sufficiency, and for appropriateness of sentence.

After the Court of Criminal Appeals completes its review, your case could be reviewed, on your request or otherwise, by the Court of Appeals for the Armed Forces and, if it were reviewed by the Court of Appeals for the Armed Forces, it might be further reviewed by the Supreme Court of the United States. You would have the same rights to counsel before those courts as you have before the Court of Criminal Appeals.

If you waive appellate review, you give up the rights I have just described. Article 61, UCMJ requires that this waiver must be filed within 10 days after service of the convening authority's

action on you or your counsel. [Note: An accused may not waive or withdraw appellate review in a general court-martial in which the approved sentence includes death. See RCM 1110.]

If you do not waive appellate review, you may withdraw your case from appellate review at a later time, before that review is completed.

If you do waive or later withdraw your case from appellate review, you cannot change your mind later. Once you file a waiver or withdrawal, your decision is final and appellate review is barred.

If you waive or withdraw from appellate review, your case will be reviewed by a Judge Advocate. You may suggest, in writing, possible errors for the Judge Advocate to consider. The Judge Advocate's conclusions will be sent to the General Court-Martial Convening Authority for final action in your case.

After review by the Judge Advocate and action by the General Court-Martial Convening Authority is completed, you may request the Judge Advocate General of the Coast Guard to take corrective action in your case. This request must be filed within two years after the convening authority takes action, unless you can show good cause for filing later.

You have the right to the advice of assistance of counsel in exercising your post-trial and appellate rights and in making any decision to waive them or to withdraw your case from appellate review.

CERTIFICATION OF ADVISEMENT.

I certify that I have been advised of the foregoing post-trial and appellate rights by my defense counsel, _____, in accordance with Rule for Courts-Martial 1010. I have read and fully understand these rights. My defense counsel has gone over these rights with me and has answered all of my questions satisfactorily.

Accused

I certify that I have carefully explained the foregoing rights to the accused.

Defense Counsel

App. Exh. _____(3 of 3)

**POST-TRIAL AND APPELLATE RIGHTS
GENERAL COURT-MARTIAL WHERE NEITHER DEATH
NOR DISCHARGE IS ADJUDGED AND
CONFINEMENT IS LESS THAN ONE YEAR**

You have the right to submit any matters that you wish to the convening authority for (her) (him) to consider before (s)he takes action on your case. These matters must be submitted to the convening authority within 10 days after you or your counsel receive a copy of the record of trial or the recommendation of the Staff Judge Advocate pursuant to RCM 1106, whichever is later. The convening authority may extend this period for good cause but for not more than 20 additional days.

After the convening authority takes action, unless you waive further review, your case will be forwarded for examination to the Judge Advocate General of the Coast Guard. The record of trial will be examined in the office of the Judge Advocate General for any legal error and for appropriateness of the sentence. The Judge Advocate General may take corrective action, if appropriate, or he may order that the record of trial be sent to the Coast Guard Court of Criminal Appeals for further review.

If you waive appellate review, you give up the rights I have just described. Article 61, UCMJ requires that this waiver must be filed within 10 days after service of the convening authority's action on you or your counsel.

App. Exh. _____(1 of 3)

COMDTINST M5810.1E

If you do not waive appellate review, you may withdraw your case from appellate review at a later time, before review is completed.

If you do waive or later withdraw your case from appellate review, you cannot change your mind later. Once you file a waiver or withdrawal, your decision is final and appellate review is barred.

If you waive or withdraw appellate review, your case will be reviewed by a Judge Advocate. You may suggest, in writing, possible errors for the Judge Advocate to consider. The Judge Advocate's conclusions will be sent to the General Court-Martial Convening Authority for final action in your case.

After review by the Judge Advocate and action by the General Court-Martial Convening Authority is completed, you may request the Judge Advocate General of the Coast Guard, to take corrective action in your case. Such a request must be filed within two years after the convening authority takes action, unless you can show good cause for filing later.

You have the right to the advice and assistance of counsel in exercising your post-trial and appellate rights and in making any decision to waive them.

App. Exh. _____(2 of 3)

CERTIFICATION OF ADVISEMENT.

I certify that I have been advised of the foregoing post-trial and appellate rights by my defense counsel, _____, in accordance with Rule for Courts-Martial 1010. I have read and fully understand these rights. My defense counsel has gone over these rights with me and has answered all of my questions satisfactorily.

Accused

I certify that I have carefully explained the foregoing rights to the accused.

Defense Counsel

REPORT OF RESULTS OF TRIAL

[Command]

[Address]
Phone:
FAX:

5815
[DATE]

From: [TRIAL COUNSEL]
To: [CONVENING AUTHORITY]

Subj: REPORT OF RESULTS OF TRIAL

1. Pursuant to RCM 1101(a) [or, for summary court-martial, RCM 1304(b)(2)(F)(v)], MCM, notification is hereby given in the case of

United States v. _____.

2. Trial by _____ court-martial at _____, convened by _____.

3. Offenses, pleas, and findings:

Charges and Specifications	Pleas	Findings
----------------------------	-------	----------

4. Sentence Adjudged:

5. Date sentence adjudged:

6. Effective date of reduction in pay grade and/or forfeiture, unless deferred or waived is _____.

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

a. Pretrial Confinement: _____ days

b. Judicially ordered credits _____ days

Total credits: _____ days

8. Terms of pretrial agreement concerning sentence, if any:

TRIAL COUNSEL

Copy: CO/OIC of brig/confinement facility (if confinement adjudged)
Servicing legal office
SPO

MILITARY JUDGE RECORD AND REPORT

U. S. v. _____

CONVENING AUTHORITY:

GCM AUTH:

NAME, RATE/RANK, ORG. OF ACC:

COURT: (circle all that apply) SPCM BCD auth GCM members judge alone

LOCATION AND DATES OF TRIAL:

JUDGE-HOURS: Pre-trial: Trial: Travel:

NAME & UNIT OF MILITARY JUDGE:

NAME & UNIT OF TRIAL COUNSEL:

NAME & UNIT OF DEFENSE COUNSEL:

OFFENSES

<u>CH/SP</u>	<u>ART</u>	<u>DATE(S)</u>	<u>GENERAL</u>	<u>NATURE</u>
	<u>PLEA/FINDING</u>			

MOTIONS RAISED:

COMDTINST M5810.1E

SENTENCE:

REMARKS: (include effect of PTA on sentence, if any; recommend. for suspension if any; explanation if case did not go to trial)

Signature of Military Judge
Date:

RECORD OF TRIAL CHECKLIST
(Optional, adapt as appropriate for unit needs)

UNITED STATES V. _____

* applies if no punitive discharge and no confinement \geq 1 year only

** applies if punitive discharge or confinement \geq 1 year

Date sentence adjudged: _____ GOAL/ACTUAL	DAYS		
[CR] Type Rough ROT.	10	_____	_____
[TC] Review Rough ROT. RCM 1103(i)(1)(A).	12	_____	_____
[CR] Make 5* or 12** copies of Exhibits.	12	_____	_____
[CR] Correct Rough ROT.	13	_____	_____
[CR] Index ROT.	14	_____	_____
[CR] Arrange ROT.	14	_____	_____
[TC] Approve ROT. RCM 1103(i)(1)(A).	15	_____	_____
[CR] Make 2 copies of ROT and add exhibits.	15	_____	_____
[TC] Draft ROT transmittal ltrs w/instructions & certs. of service.	15	_____	_____
[TC] Send blank certificate of examination w/ ROT copy to DC. RCM 1103(i)(1)(B).	15	_____	_____
[TC] Send original ROT to MJ for authentication. RCM 1104(a)(2)(A).	15	_____	_____
[TC] Original authenticated ROT received from MJ. Attach DC certification	27	_____	_____
[CR] Make 2 copies of authenticated ROT.	27	_____	_____
[TC] Send copy of auth ROT (w/blank receipt) to DC/ACC per trial request RCM 1104(b)	30	_____	_____

COMDTINST M5810.1E

[TC] Get signed DC/ACC receipt & attach to orig ROT. RCM 1104(b)(1)(B)	36	_____	_____
 <u>IF GCM or BCD</u> (see RCM 1106):			
[DL] Identify SJA/Legal Off for SJA's RCM 1106 Recommendation (SJAR)	15	_____	_____
[SJA] Complete and sign SJAR. Give copy of SJAR to TC.	30	_____	_____
[TC] Send SJAR copies w/blank receipts to DC <u>and</u> ACC.	30	_____	_____
[TC] Get signed DC and ACC receipts & attach to ROT.	36	_____	_____
[SJA] Determine if CA received any RCM 1105/1106 matters.	45	_____	_____
[SJA] Determine if Addendum to SJAR required (e.g. alleged legal errors)	45	_____	_____
[SJA] Serve any SJAR Addendum on DC/ACC	45	_____	_____
[SJA] Prepare RCM 1107 Action package for CA (SJAR if any, any 1105/1106 submissions, SJAR addendum, ROT)	45	_____	_____
[SJA] Check for compliance with RCM 1107(b)(2) time periods.	45	_____	_____
[TC] Review all post-trial processing for error, recommend any corrections	45	_____	_____
[SJA] Send SJAR package to CA - CA should initial each document submitted by the accused.	45	_____	_____
[SJA] Consult CA to determine action. Get SJAR package from CA.	46	_____	_____
[TC] Draft CA's action and promulgating order. RCM 1107(f)(4)(A); 1114.	46	_____	_____
[TC] Send action/order to CA for signature.	46	_____	_____
[TC] Get signed CA's action/order RCM 1107(f).	48	_____	_____
[TC] Send copies of CA's action/order to DC/ACC/MJ/others. MJM paragraph 5.G.6.	48	_____	_____

[TC] Attach all RCM 1105-1107 materials to ROT.	48	_____	_____
<u>SPCM w/out BCD or GCM/BCD SPCM with RCM 1110 waiver of appellate review (see RCM 1112):</u>			
[DL] Appoint Judge Advocate for RCM 1112 review.	48	_____	_____
[LS] Determine if accounting for delays is required. MJM paragraph 5.F.4.	52	_____	_____
[LS] Deliver signed RCM 1112 review to SJA/OEGCMJ if applicable.	48	_____	_____
[LS] If applicable, consult OEGCMJ to determine action and draft.	52	_____	_____
[LS] Obtain signed action and give all 1112 materials to TC	54	_____	_____
[TC] Attach orig & 2 copies of RCM 1112 review to ROT. RCM 1112(d)(3).	54	_____	_____
[TC] Send copy of RCM 1112 review to CA/DC/ACC/MJ. RCM 1112(d)(3).	54	_____	_____
[CR] Make 7 copies of ROT** MJM subparagraph 5.A.2.h.	52	_____	_____
[TC] Determine if accounting for delays is required. MJM paragraph 5.F.4.	52	_____	_____
[TC] Draft transmittal ltr, copy to CA - Include accused's address.	52	_____	_____
[TC] Send orig ROT (w/blank receipt) to G-LMJ.	53	_____	_____
[TC] Send copy of chronology sheet (if app.) and forwarding letter to CA.	53	_____	_____
[CR] Attach signed G-LMJ receipt to office copy of ROT.	60	_____	_____

SAMPLE RCM 1106 RECOMMENDATION

5815
13 December 2012

STAFF JUDGE ADVOCATE RECOMMENDATION UNDER RCM 1106, MCM IN
THE SPECIAL COURT-MARTIAL CASE OF U. S. v. SMITHY

1. As required by RCM 1106 of reference (a), I completed my review of the record of trial in the above matter. The purpose of my recommendation is to assist you in your decision as to what action to take on the sentence in the exercise of your command prerogative. To that end, I provide the following information:

a. SN (E-3) Ivan M. SMITHY, [EMPLID], was charged with a violation of Article 85, UCMJ, under a single specification alleging unauthorized absence from 5 May 2012 to 8 September 2012 from his unit, USCGC NORTHLAND (WMEC 904), with the intent to remain away therefrom permanently in desertion. SN SMITHY pleaded not guilty to the Specification and Charge but guilty to a lesser included offense of unauthorized absence from 5 May 2012 to 8 September 2012. In accordance with this pleas, the military judge found SN SMITHY guilty of a violation of Article 86, UCMJ, by exception and substitutions, of being on authorized absence from his unit, USCGC NORTHLAND (WMEC 904), from 5 May 2012 to 8 September 2012. SN SMITHY was sentenced to a bad conduct discharge, restriction to the limits of Group Portsmouth for two months, extra duties for two months, and a forfeiture of \$300.00 per month for three months. [The military judge recommended that you suspend the bad conduct discharge.]

b. Personal data relative to SN SMITHY: He was born on 27 April 1990 in Decatur, Illinois. He enlisted in the Coast Guard on 5 May 2008. As an E-3, SN SMITHY's base pay is \$XXXX.XX per month. The record of trial reveals no prior NJPs or previous convictions by court-martial. He has received the following awards and decorations:

Meritorious Team Commendation (January 2011)
Sea Service Ribbon (February 2011)

c. SN SMITHY was in pretrial confinement from 8 September 2012 until the date of his trial on 15 November 2012.

d. It is my recommendation that you approve the bad conduct discharge as awarded and approve and order executed the forfeiture of \$300.00 per month for three months. Please keep in mind that this is a recommendation and you are not bound by it. As I have indicated you may approve and order executed the forfeiture portion of the sentence. Procedural rules require further review before a bad conduct discharge may be ordered executed. Further, with regard to the forfeiture, SN SMITHY may never suffer any

COMDTINST M5810.1E

pecuniary loss as he is in a leave without pay status and the bad conduct discharge may be executed without his return to a pay status.

2. As provided by RCM 1106 of reference (a), the record of trial was not examined for legal errors and no allegations of legal errors were raised and submitted by the defense counsel under RCM 1105 of reference (a).

3. As the Convening Authority you, under RCM 1107 of reference (a), shall take action on the sentence in this matter. The action to be taken is within your sole discretion. Determining what action to take on the findings and sentence of a court-martial is a matter of command prerogative. You are not required to review this case for legal errors or factual sufficiency. You should approve the sentence that is warranted by the circumstances of the offense and appropriate for SN SMITHY. Before taking your action you must consider; the results of trial, my recommendations, any matter that defense counsel submits under RCM 1105 of reference (a). You may consider; the record of trial; the personnel records of the accused; other matters you consider appropriate. If you consider matters adverse to the accused from outside the record, however, the accused must be given an opportunity to rebut.

4. You are not required to take any action on the findings of the court-martial. Such action is discretionary with you. The full spectrum of the actions you may take with regard to findings are enumerated in RCM 1107(c) of reference (a), which is incorporated by reference herein and included herewith.

5. As required by law, a copy of this recommendation will be served on Defense Counsel on 14 December 2012. Counsel has ten (10) days from date of receipt to submit comments.

6. I have attached a return sheet with the potential actions that you may take in this case. Space is provided for other actions you may desire to take. If you would indicate your action I will have the appropriate documents prepared.

//s//

X. Q. BUMBLEBEE
Commander, U. S. Coast Guard
Staff Judge Advocate

SAMPLE CONVENING AUTHORITY'S ACTION

2 January 2012

ACTION OF THE CONVENING AUTHORITY

In the case of Seaman Ivan M. SMITHY [EMPLID], U.S. Coast Guard, the sentence is approved and will be executed. The U.S. Naval Brig, Norfolk, Virginia is designated as the place of confinement.

R. D. READY
Commander, U. S. Coast Guard
Commanding Officer
USCGC NORTHLAND (WMEC 904)

SAMPLE PROMULGATING ORDER

SPECIAL COURT-MARTIAL) Commanding Officer
ORDER NO. 2-12)) USCGC NORTHLAND (WMEC 904)
) Portsmouth, VA 23703
)
) 2 January 2012
)
_____)

Before a Special Court-Martial which convened at U. S. Coast Guard Support Center Portsmouth, VA. pursuant to Special Court-Martial Convening Order of Commanding Officer, USCGC NORTHLAND (WMEC 904), Order No. 2-12, dated 18 September 2012, as amended, was arraigned and tried:

Seaman Ivan M. SMITHY [EMPLID], U. S. Coast Guard, USCGC NORTHLAND (WMEC 904)

The accused was arraigned on the following offenses and the following findings or other disposition were reached:

Charge I. Article 85 (Not Guilty) but Guilty of the lesser included offense Article 86.

Specification: Desertion from unit from 5 May 2012 to 8 September 2012 (Not Guilty) but Guilty of the lesser included offense of absence without leave from 5 May 2012 to 8 September 2012.

Charge II. Article 91 (Not Guilty).

Specification: Disrespect to superior noncommissioned officer on 30 May 2012 by saying to him "Stick it in your ear." (Not Guilty).

Charge III. Article 92 (Withdrawn by convening authority).

Specification: Failure to obey lawful order on 27 May 2012 (Withdrawn by convening authority).

The findings of guilty to the lesser included offense of Article 86, absence without leave, of Charge I and the Specification thereunder were based on the accused's pleas of guilty. The accused pleaded not guilty to the remaining charges and specifications.

SENTENCE

The members adjudged the following sentence on 10 October 2012:

Confinement for six months, reduction to the lowest enlisted pay grade and forfeiture of \$440.00 per month for six months.

ACTION

In the case of Seaman Ivan M. SMITHY [EMPLID], U.S. Coast Guard, the sentence is approved and will be executed. The U.S. Naval Brig, Norfolk, Virginia is designated as the place of confinement.

/s/

R. D. READY
Commander, U. S. Coast Guard
Commanding Officer
USCGC NORTHLAND (WMEC 904)

R. D. READY
Commander, U. S. Coast Guard
Commanding Officer
USCGC NORTHLAND (WMEC 904)

SAMPLE RCM 1112 REVIEW

5814
2 January 2012

**JUDGE ADVOCATE REVIEW UNDER R.C.M. 1112(A) IN THE SPECIAL
COURT-MARTIAL CASE OF SN IVAN M. SMITHY [EMPLID], USCG**

1. Pursuant to R.C.M. 1112(a)(2), the attached record of trial in the Special Court-Martial case of U. S. v. SMITHY has been reviewed by the undersigned Judge Advocate.
2. Based upon my review of the record, I have concluded that:
 - a. The court-martial had jurisdiction over the accused and each offense in which there is a finding of guilty and which has not been disapproved;
 - b. Each specification in which there is a finding of guilty and which has not been disapproved states an offense under the UCMJ; and
 - c. The sentence approved by the convening authority is legal.

[If the case is to be sent to the officer exercising general court-martial jurisdiction for action under R.C.M. 1112(e), a recommendation/opinion in accordance with R.C.M. 1112(d)(3) should be included.]

K. M. DOE
Lieutenant, U. S. Coast Guard
Judge Advocate

SAMPLE ACTION UNDER RCM 1112(F)

5814
5 January 2012

**ACTION OF THE OFFICER EXERCISING GENERAL COURT-MARTIAL
JURISDICTION IN ACCORDANCE WITH RCM 1112(f), MCM
IN THE SPECIAL/SUMMARY COURT-MARTIAL CASE OF
SN IVAN M. SMITHY [EMPLID], USCG**

In the foregoing case of SN Ivan M. SMITHY [EMPLID], USCG, USCGC NORTHLAND (WMEC 904), the findings of guilty of Charge I, and the two specifications alleged thereunder, are disapproved and are therefore dismissed. The findings of guilty of Charge II and the specification thereunder alleging a violation of Article 121, UCMJ are approved. The sentence approved by the Convening Authority is approved.

W. W. WATERS
Rear Admiral, U. S. Coast Guard

COAST GUARD COURT-MARTIAL PROCEDURAL RIGHTS CHECKLIST

ACCUSED’S NAME AND RANK: _____

UNIT/COMMAND NAME: _____

INSTRUCTIONS

Place an “X” in the appropriate box. If an item is not applicable to the record of trial being reviewed, write “N/A” in the box.

	TC		SJA		CG-0946	
	YES	NO	YES	NO	YES	NO
1a. If an Article 32 investigation was conducted, was the accused represented by civilian or military counsel of his/her own selection or by detailed counsel?						
1b. Does the Article 32 report reflect that defense counsel was properly qualified under Article 27(b), UCMJ?						
1c. If not, did the accused waive his/her right to such representation?						
2. Is the place, date, and hour of each Article 39(a) session, the assembly of the court, and each opening and closing thereafter recorded?						
3a. Are all convening and amending orders of courts to which charges were referred entered in the record?						
3b. Are all court members named in the convening orders?						
3c. Are all court members identified by name and rank on the record (RCM 813(a)(4))?						
3d. Are detailed military judge, counsel, and the accused always accounted for as						

COMDTINST M5810.1E

present or absent?						
3e. Were the minimum requisite number of members (five for general courts-martial, three for special courts-martial) present at all meetings requiring the presence of court members (RCM 805(b))?						
3f. Were the parties to the trial accounted for when the court reopened after each session, adjournment, recess, or closing during the trial?						
3g. Were the military judge, all members, counsel, and the accused present throughout the trial?						
3h. If not, was the absence the result of challenge, physical disability or based on good cause as shown in the record of trial (RCM 505(c)(2)(A))?						
4. Were the reporter and interpreter, if any, sworn or previously sworn?						
5a. Was the military judge properly qualified and certified (RCM 502(b) and (c))?						
5b. Was the military judge properly detailed (RCM 503(b))?						
6a. Was the accused advised of his options concerning counsel?						
6b(1). Did the accused request a specific military counsel?						
6b(2). If so, was such request complied with?						
6b(3). If not, were reasons given why requested counsel was not reasonably						

available?						
7. Was the defense counsel properly certified (RCM 502(d))?						

8a. Did the military judge determine whether there were any apparent conflicts of interest with any counsel (RCM 502(d)(4))?						
8b. If such conflicts existed, were they addressed by the military judge?						
8c. If the defense counsel had a conflict of interest, did the accused voluntarily waive such conflict?						
9a. Was the accused properly arraigned (RCM 904)?						
9b. Is the charge sheet included in the record of trial?						
9c. Were there at least five days between service of charges on the accused and the commencement of a general court-martial (three days for a special court-martial) (RCM 602)?						
9d. If not, did the accused waive any objections to proceeding with the trial?						
10a. Were all charges or specifications within the statute of limitations (RCM 907(b))?						
10b. If not, was the accused advised of his/her right to assert the statute and was his/her response recorded (RCM 907(b))?						
11. Did the court rule on motions raising defenses and objections (RCMs 905-						

COMDTINST M5810.1E

907)?						
12a. Were pleas of guilty properly entered (RCM 910(a))?						
12b. Were pleas of guilty properly explained, and did the accused's responses prove his guilt?						
13a. If the accused was an enlisted person, did he/she make a request that enlisted persons be appointed to the court?						
13b. If so, were at least one-third of the members enlisted members, or did the convening authority direct the trial without enlisted members and provide a detailed written explanation which is appended to the record (RCM 503 (a)(2))?						
13c. Did any enlisted member belong to the same unit as the accused?						
14. Was the accused informed of his/her right to request trial by military judge alone?						
15. Were the members of the court, military judge, and the personnel of the prosecution sworn or previously sworn?						
16a. Was the military judge disqualified from hearing the case (RCM 902(b))?						
16b. Was any member of the court disqualified from hearing the case (RCM 912(f))?						
17a. Was the accused given the right to challenge the military judge for cause?						

17b. Was the accused given the right to challenge any member of the court for cause?						
17c. Was the accused given the right to exercise one peremptory challenge against a member of the court?						
17d. Did the court rule on all challenges (RCM 902 and RCM 912)?						
17e. Does the record show that a member excused as a result of a challenge withdrew from the court?						
18. Were all witnesses sworn?						
19. In a trial before members, did the military judge advise the court concerning the elements of each offense, each lesser-included offense reasonably raised by the evidence, and the presumption of innocence, reasonable doubt, and burden of proof, pursuant to Article 51(c), UCMJ (RCM 920(e))?						
20. If special findings were requested, were they made a part of the record?						
21. Were the findings in proper form?						
22a. Was the information from the accused's personnel records properly admitted (RCM 1001(b)(3))?						
22b. Was the defense permitted to introduce evidence in extenuation and mitigation after the court announced findings of guilty (RCM 1001(c))?						
23a. Was the sentence in proper form?						
23b. If the sentence included forfeitures for more than one month, was it						

COMDTINST M5810.1E

announced as a value per month?						
---------------------------------	--	--	--	--	--	--

PROCEDURE AFTER TRIAL						
24. If the sentence included a punitive discharge or confinement of six months or more, was a verbatim transcript made (RCM 1103(b)(2)(B)(i))?						
25. Is the record properly authenticated (RCM 1104)? (GCMs must be authenticated by the military judge)						
26. Was the accused furnished a copy of the record of trial or substitute service made on defense counsel (RCM 1104(b))?						
27. Was the court convened by proper authority (RCM 504(b))?						
28. Did the court have jurisdiction of person and offense (RCM 202 and 203)?						
29. Does each specification state an offense under the code (RCM 907(b))?						
30a. Was the issue of whether the accused had the requisite mental capacity at the time of trial (RCM 909) raised before or during the trial?						
30b. If so, was the issue resolved?						
30c. Was the issue of whether the accused had the requisite mental responsibility at the time of the commission of each offense (RCM 916(k)) raised before or during the trial?						
30d. If so, was the issue resolved?						

31. Is the evidence sufficient to support the findings?						
32a. Is the sentence within legal limits (RCM 1112(d))?						
32b. If no confinement was adjudged and a forfeiture exceeding two-thirds pay per month was adjudged, was the forfeiture reduced to not more than two-thirds pay per month (RCM 1107(d)(2))?						
33a. Was the staff judge advocate's post-trial recommendation served on the defense counsel for comment (RCM 1106(f)(7))?						
33b. If the addendum to the recommendation contained new matters, was it served on the defense counsel for comment (RCM 1106(f)(7))?						

COMDTINST M5810.1E

33c. Did the accused submit matters for the convening authority's consideration in a timely manner (RCM 1105)?						
33d. If the accused submitted matters, does the addendum to the staff judge advocate's recommendation list the matters as attachments ?						
33e. If the accused submitted matters, does the addendum to the staff judge advocate's recommendation inform the convening authority he/she must consider the matters prior to taking action on the sentence?						
33f. If the accused submitted matters, was the convening authority's action subsequent to the submission of the matters?						
33g. If the accused did not submit matters, did he/she waive in writing the right to submit matters						
33h. If the accused waived in writing the right to submit matters, was the action taken after the written waiver?						
33i. If the accused did not submit or waive the right to submit matters, did the time periods provided in RCM 1105(c) expire before the convening authority's action?						
34a. Does the record indicate that the accused was advised of his/her appellate rights (RCM 1010)?						
34b. Do the allied papers contain a statement indicating the desires of the accused with respect to appellate representation in the event his/her case is						

referred to a court of criminal appeal?						
34c. Did the accused waive or withdraw appellate review (RCM 1110(a))?						
34d. Is the waiver or withdrawal of appellate review in proper form (RCM 1110(d))?						
34e. Is the waiver or withdrawal of appellate review attached to the record of trial (RCM 1110(e))?						
34f. Does the request for appellate representation contain a post-trial address for the accused to receive notice of appellate decisions?						
35. Is the action of the convening authority properly entered in the record and signed (RCM 1107(f))?						
36. Does the action reflect that the the place of confinement (RCM 1107(f)(4)(c))?						
37. Does the initial CMO bear the same date as the action of the convening authority who published it?						
38. Are the accused's name, rank, SSN, unit/command name, and branch of service correctly shown in the CMO?						
39. Are all charges and specifications (including amendments) upon which the accused was arraigned correctly shown in the CMO (RCM 1114)?						
40. Are the pleas, findings, and sentence correctly shown in the CMO (RCM 1114)?						
41. Does the CMO show the date the						

COMDTINST M5810.1E

sentence was adjudged?						
42. Is the action of the convening authority correctly shown in the CMO (RCM 1114)?						
43. Is the CMO properly authenticated (RCM 1114)?						

44. REMARKS:

45. TRIAL COUNSEL

a. TYPE/PRINT NAME	b. RANK	c. SIGNATURE	d. DATE

**46. STAFF JUDGE ADVOCATE OF GENERAL COURT-MARTIAL
CONVENING AUTHORITY OR REVIEWING JUDGE ADVOCATE**

a. TYPE/PRINT NAME	b. RANK	c. SIGNATURE	d. DATE

47. CG-0946

a. ACTION			
b. INDIVIDUAL COMPLETING DATA SHEET			
(1) TYPE/PRINT NAME	(2) RANK	(3) SIGNATURE	(4) DATE

**SAMPLE MOTION FOR RELIEF OF
TRIAL DEFENSE COUNSEL DUTIES**

[Suggested form for a motion to be relieved of duties as Trial Defense Counsel in accordance with United States v. Sterling, 5 M.J. 601 (NMCMR 1978).]

**IN THE UNITED STATES COAST GUARD
COURT OF CRIMINAL APPEALS**

UNITED STATES,	) 16 May 2012
Appellee,)
	) MOTION FOR RELIEF
v.	) OF TRIAL DEFENSE
	) COUNSEL DUTIES
S. A. Miam,)
Seaman Apprentice (E-2),	) CGCCA Docket No.
United States Coast Guard,)
Appellant.	) PANEL FIVE
_____)

**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES
COAST GUARD COURT OF CRIMINAL APPEALS**

1. Now comes trial defense counsel and respectfully requests relief from representational duties in the above-captioned matter.
2. _____ has been appointed appellate defense counsel, and has assumed that duty. Trial defense counsel has performed all post trial duties in appellant's case and, furthermore, has advised appellate defense counsel of the current status of appellant's case, the issues which should be raised on appeal, the post trial actions undertaken on behalf of appellant and all other matters pertinent to the effective continuing representation of the appellant.
3. Wherefore, trial defense counsel respectfully requests the relief sought be granted.

**SAMPLE CERTIFICATE OF ATTEMPTED SERVICE OF DECISION OF
COAST GUARD COURT OF MILITARY REVIEW**

[See, section 5.I.]

UNITED STATES,	) 16 May 2012
Appellee,)
	) CERTIFICATE OF
v.	) ATTEMPTED SERVICE
)
S. A. Miam,)
Seaman Apprentice (E-2),	) CGCCA Docket No.
United States Coast Guard,)
Appellant.	) PANEL FIVE
_____)

On (date) at (ship or station) I, the undersigned, attempted to deliver to (Accused), the accused in the above entitled case, a copy of the decision of the Coast Guard Court of Criminal Appeals but delivery was impossible because the accused was then absent without leave.

An authenticated copy of the entry appearing in the service record of the accused reporting absence without leave is attached hereto.

(signature)

Date Name and Rank

Encl: (1) Authenticated extract copy from service record

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.

COMDTINST M5810.1E

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 twelve 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 twelve 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.

COMDTINST M5810.1E

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 _____.

COMDTINST M5810.1E

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 FOR TWO MONTHS; AND

COMDTINST M5810.1E

(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 (I): 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 been 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

COMDTINST M5810.1E

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

COMDTINST M5810.1E

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.

COMDTINST M5810.1E

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.

COMDTINST M5810.1E

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:

EMPLID:

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)

COMDTINST M5810.1E

- () 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

COMDTINST M5810.1E

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 (Last, First, MI)	b. GRADE OR RANK	c. UNIT OR ORGANIZATION OF ACCUSED	d. SSN
2a. NAME OF CONVENING AUTHORITY (Last, First, MI)	b. RANK	c. POSITION	d. ORGANIZATION OF CONVENING AUTHORITY
3a. NAME OF SUMMARY COURT-MARTIAL (If SCM was accuser, so state.)	b. RANK	c. UNIT OR ORGANIZATION OF SUMMARY COURT-MARTIAL	
(Check appropriate answer)			
4. At a preliminary proceeding held on _____, the summary court-martial gave the accused a copy of the charge sheet.			YES NO
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>			_____ <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 (Last, First, MI)			c. RANK (if any)
d. COUNSEL QUALIFICATIONS			

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)

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

_____ Date

Signature of Summary Court-Martial

13. ACTION BY CONVENING AUTHORITY

_____ Position of Convening Authority

_____ Rank

_____ Date

Signature of Convening Authority

DD Form 2329 Page 2, 84 AUG

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

RECORD OF TRIAL BY SUMMARY COURT-MARTIAL			
1a. NAME OF ACCUSED (Last, First, MI) 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 (Last, First, MI) 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 (If SCM was accuser, so state.) Shaw, R. T.	b. RANK LT (O-3)	c. UNIT OR ORGANIZATION OF SUMMARY COURT-MARTIAL First Coast Guard District (dl)	
(Check appropriate answer)			
			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. (Note: The SCM may ask the accused to initial this entry at the time the election is made.)			ABC <small>(initial)</small>
7a. The accused <input type="checkbox"/> was <input checked="" type="checkbox"/> was not represented by counsel. (If the accused was represented by counsel, complete b, c, and d below.)			
b. NAME OF COUNSEL (Last, First, MI) N/A		c. RANK (if any) N/A	
d. COUNSEL QUALIFICATIONS N/A			

DD FORM 2329
84 AUG

<p>8. The accused was arraigned on the attached charge(s) and specification(s). The accused's pleas and the findings reached are shown below:</p>		
CHARGE(S) AND SPECIFICATIONS	PLEA(S)	FINDINGS (Including any exceptions and substitutions)
<p>Charge I: Article 92 Specification: Failure to obey a lawful order.</p>	<p>Not Guilty Not Guilty</p>	<p>Guilty Guilty</p>
<p>Charge II: Article 107 Specification 1: False official statements.</p>	<p>Not Guilty Not Guilty</p>	<p>Guilty Guilty, except for the word "mine", substituting therefore the word "yours". To the excepted word not guilty. To the substituted word, guilty.</p>
<p>Specification 2:</p>	<p>Not Guilty</p>	<p>Guilty</p>
<p>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.</p>		
<p>10. The accused was advised of the right to request that confinement be deferred. (Note: When confinement is adjudged.)</p> <p><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>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.</p> <p><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p>	
<p>12. AUTHENTICATION</p> <p>_____ LT R. T. Shaw <i>RTShaw</i> _____ 14 January 2000 <small>Signature of Summary Court-Martial</small> <small>Date</small></p>		
<p>13. ACTION BY CONVENING AUTHORITY</p> <p>In the case of SN A. B. Cee, USCG, the sentence is approved and will be executed.</p> <p>_____ I. M. ABLE, CDR, USCG _____ Group Commander, USCG Group Boston <small>Typed Name of Convening Authority</small> <small>Position of Convening Authority</small></p> <p>_____ Commander (O-5) _____ <small>Rank</small></p> <p>_____ <i>I M Able</i> _____ 21 January 2000 <small>Signature of Convening Authority</small> <small>Date</small></p>		

SAMPLE SUMMARY COURT-MARTIAL SUMMARIZATION

Commander(dl)
Fifth Coast Guard District
Portsmouth, Virginia 23705

5814
30 November 2012

From: LCDR Roger S. JONES, USCG, Summary Court
To: Commanding Officer, USCGC NORTHLAND (WMEC 904)

Subj: Summary Court-Martial case of United States v. Ivan M. SMITHY, [EMPLID],
USCG

Ref: (a) Your Convening Order 1-12 of 31 October 2012

1. Subject court-martial was held on 27 November 2012 at u. S. Coast Guard Base Support Unit, Portsmouth, Virginia.
2. The accused was present at all times during the proceedings. He was not represented by a lawyer or a non-attorney representative, but had previously been counseled concerning his rights to consult with counsel and accept or reject trial by summary court-martial. The original Acknowledgement of Rights-Acceptance of SCM form, executed by the accused, *is* enclosed. The accused's rights were explained in accordance with R.C.M. 1304, MCM 1984. His consent to trial by summary court-martial is noted on the Record of Trial form (DD-2329).
3. The accused was arraigned on the charges as set forth in the enclosed charge sheet. No motions were made prior to the entry of the pleas. Before pleas were entered, I carefully explained to him all rights concerning them. The accused pled guilty to Charge I and its specifications and not guilty to Charge II and its specifications.
4. I conducted an appropriate inquiry to determine whether the offered guilty plea would be provident. After a thorough discussion of the facts surrounding the incident, I determined that the guilty pleas to Charge I and its specifications were provident and accepted them.
5. Because the accused pled not guilty to Charge II and its specifications but was found guilty, I am required to summarize the evidence relating to that charge and specification.

a. Prosecution evidence:

- 1) Accused's enlistment contract, Page 1 of the accused's service record, was admitted.

(2) SA Ned N. GREEN, USCG, stated that while on authorized liberty at about 2200 on 25 October 1984 he was standing on the corner of Ocean Boulevard and Pine Avenue in Portsmouth, Virginia with SN Frederick F. WHITE, USCG, in uniform, when a car with two Coast Guardsmen in it pulled up alongside. One of the men in the car was the accused, whom GREEN identified in court. GREEN stated he was personally acquainted with the accused, and knew him to be on active duty in the Coast Guard. GREEN had had an argument with the accused earlier in the day. The accused got out of the car, came over to GREEN and struck GREEN in the face with his fist. GREEN stated further that he and the accused both worked in the galley on the ship as messcooks.

(3) SN Frederick F. WHITE, USCG, stated that he went on authorized liberty with SA Ned N. GREEN, USCG. At about 2130 on 25 October 2012 as he and GREEN were standing on the corner of Ocean Boulevard and Pine Avenue in Portsmouth, Virginia, an automobile with two coastguardsmen in it pulled up alongside of them. One of the men in the car was the accused. WHITE stated that the accused got out of the car, came over to GREEN, and hit GREEN in the face with his fist. WHITE stated that he, GREEN, and the accused all worked in the galley on the ship as messcooks. He recalled that the accused and GREEN had argued earlier in the day over who was responsible for washing the dishes.

b. Defense evidence:

(1) BM3 Benjamin B. CUTER, USCG, was called as a witness by the defense. He stated that he and the accused departed the ship on liberty at about 1745 in his car. While they were stopped at a red light at the corner of Ocean Boulevard and Pine Avenue in Portsmouth, Virginia they saw SA GREEN and SN WHITE standing on the corner. GREEN *yelled* something at them, and the accused got out of the car to go see what GREEN wanted. GREEN and the accused were talking and he saw GREEN draw back as if to hit the accused but the accused beat him to the punch and hit GREEN in self-defense. The accused then got back in the car and they drove away.

6. After the findings were announced, I advised the accused of his rights concerning the presentation of evidence in extenuation and mitigation. Pages 3303-1 and 3306-1 of the accused's service record were admitted into evidence. Copies of these documents are attached as enclosures (5) and (6).

7. No previous convictions were considered in awarding sentence.

8. After sentence was announced I advised the accused of his right to submit a written request for the deferment of the confinement and of his right to submit any matters to you before you acted on the record of trial.

Enclosures: (1) Convening Order
(2) Record of Trial (DD Form 2329)
(3) Acknowledgement of Rights-Acceptance of SCM
(4) Charge Sheet
(5) Page 3303-1 of the accused's service record
(6) Page 3306-1 of the accused's service record

DELIVERY AGREEMENT

In consideration of the delivery of (person delivered) , United States Coast Guard, to (person authorized to receive), at (place) , for trial upon the charge(s) of, I hereby agree pursuant to the authority vested in me as (title) that Commanding Officer, (unit) will be informed of the outcome of the trial and that (person delivered) will be returned to the Coast Guard at the aforesaid place of his delivery or to a Coast Guard command nearer the place of civil detention, as may be designated by the Coast Guard, without expense to the Coast Guard or person delivered, immediately upon final disposition of the case, which includes satisfaction of any sentence that may be imposed if convicted, unless the Coast Guard, upon notification of such final disposition shall have indicated that return is not desired.

State Official

Coast Guard Official

Date

Date

WAIVER OF EXTRADITION

I, _____, United States Coast Guard, have been advised that I may exercise my rights to formal extradition by insisting on my release to the local civil authorities. I have been advised of those rights as provided for by _____(Citation to local laws concerning extradition) by _____(Name of law specialist or civilian attorney), of _____ (address). I hereby waive such rights and agree to accompany _____, a representative of the State of _____, into the territorial limits of said State. I have been advised that the crime(s) with which I have been charged is (are) as follows:

Accused

Witness

Date

Date

DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD
APPLICATION FOR SEARCH AUTHORIZATION



In the Matter of the Search of _____)
)
(Briefly describe the property to be)
searched or identity of the person by)
name and address))
)

I, _____, request a search authorization and state under penalty of perjury that I have reason to believe that there is now concealed on the following person or property (*identify the person or describe property to be searched and give its location*):

the following property, evidence or person (*identify the person or describe the property or evidence to be seized*):

The basis for the search is (*check one or more*):

- evidence of a crime;
- contraband, fruits of crime, or other items illegally possessed;
- property designed for use, intended for use, or used in committing a crime;
- a person to be apprehended or a person who is unlawfully restrained.

The search is related to a violation of Article(s) _____, UCMJ, and the application is based on these facts¹:

Continued on attached sheet(s).

The affiant requests to execute this search authorization in the daytime between 0600 and 2200 at any time day or night. The basis for the night service request is:

¹ Include factual statement of the offense that there is probable cause to believe has been committed. Also set forth facts establishing probable cause for believing that the person, premises, or place to be searched and the property to be seized or the person(s) to be apprehended are connected with the offense mentioned above plus facts establishing probable cause to believe that the property to be seized or the person(s) to be apprehended are presently located on the person premises or place to be searched.

Continued on attached sheet(s).

Delayed notice of _____ days (or give exact ending date if more than 30 days: _____) is requested because immediate notification may endanger the life or physical safety of an individual; result in flight from prosecution; result in destruction or tampering with evidence; result in intimidation of a potential witness; otherwise seriously jeopardize on ongoing investigation or unduly delay a trial. The basis for the delayed notice request is

Continued on attached sheet(s).

The Affiant requests that a search authorization be issued for a search of (*identify the person or describe property to be searched and give its location*)

and (seizure) (apprehension) of (*identify the person or describe the property or evidence to be seized*).

There have been no previous requests for a search authorization involving the same person or property, or

A previous request for a search authorization involving the same person and property has been denied.

I hereby swear under penalty of perjury that the foregoing is true to the best of my knowledge and belief.

Sworn to me on _____ 20 ____ at _____ :

Military Judge

DEPARTMENT OF HOMELAND SECURITY
VOLUNTARY CONSENT TO SEARCH

I, _____, _____, _____
[Rate/Rank] [First, MI, Last Name] [EmpID]

Consent to the search of the following:

to be conducted by _____, of _____

I am the owner or custodian of the places and/or objects to be searched, or I am otherwise empowered to consent to the search. I have been advised that:

- _____ (1) I am not required to consent to the search, and cannot in any way be compelled
[Init] to give my consent.
- _____ (2) The results of the search may be used against me in a trial by court-martial, Federal, State,
[Init] or local court of law or any other administrative or disciplinary proceedings.
- _____ (3) If I refuse to consent to the search, no adverse conclusion may be drawn against me based
[Init] on my refusal to consent to the search.

This consent is given voluntarily without threat, promise, or offer of reward.

[Signature]

[Date/Time]

[Location]

[Witness Name/Rank]

[Witness Signature]

DEPARTMENT OF HOMELAND SECURITY
URINALYSIS CONSENT FORM

I, _____, have been requested to provide a urine sample. I have been advised that:

- (1) I am suspected of having unlawfully used drugs;
- (2) I may decline to consent to provide a sample of my urine for testing; and,
- (3) If a sample is provided, any evidence of drug use resulting from urinalysis testing may be used against me in a court-martial.

I consent to provide a sample of my urine. This consent is given freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

[Signature]

[Date]

[Witness Signature]

[Date]

SCRIPT FOR TELEPHONIC SEARCH AUTHORIZATION

MJ: "This is (RANK) (NAME), a military judge authorized to issue search authorization. With me on this conference call is (NAME), the applicant for a telephonic search authorization. This call is being recorded with the consent and knowledge of all parties." An Application for Search Authorization, (enclosure (23e) to the Military Justice Manual), (has been) (has not been) completed. [If not completed, reason should be stated].

MJ: "The applicant will state his rank or rate, name, and duty assignment."

APP: "This is (RANK/RATE) (NAME) and my present duty assignment (PLACE)."

MJ: [OATH MAY BE OMITTED IF IMPRACTICABLE]. "_____, I will now administer the oath to you prior to taking your affidavit. Do you _____ swear or affirm that the statements that you are about to give in this affidavit are the truth, the whole truth, and nothing but the truth, so help you, God?"

APP: "I do."

MJ: [I have received a fax (or e-mail) of Search Authorization Application and Search Authorization forms purportedly prepared by _____. Did you complete these forms and is the information contained in these forms true and accurate to the best of your knowledge and belief?] [Depending on the contents of the fax or e-mail, the following may be omitted].

MJ: "First, _____, what is the location and description of the premises, object, or person you wish to search?"

APP: (Describe person or property to be searched. In giving this description, the applicant should carefully detail how the person or property to be searched is within the limits of military searches set out in subparagraph 7.C.2.b., Military Justice Manual, COMDTINST M5810.1D. The applicant then should read the description of the person or premises word for word from the previously completed search authorization.)

MJ: "What property do you wish to seize from the person or property previously described?"

APP: (Describe the property. Pay careful attention to the directions given in paragraph 7.C.2., Military Justice Manual, COMDTINST M5810.1E. The applicant then should read the description of the property to be seized word for word from the previously completed search authorization.)

MJ: "_____, what facts do you have relevant to a determination that there is probable cause to believe that the property you wish to seize is located on the person, or premises to be searched?"

COMDTINST M5810.1E

APP: (Describe the basis for requesting the search authorization verbatim from paragraph 2 of the previously prepared affidavit.)

MJ: "____, have you received information regarding the above persons, objects, or premises from a confidential, reliable informant?"

APP: "Yes/No."

(IF INFORMER INVOLVED)

MJ: (If Yes) "____, is there any reason that you wish to keep the informant anonymous?"

APP: (A possible reason: informant wishes anonymity, and it is the applicant's experience that to reveal informants' identity subjects them to abuse, destroys their utility to law enforcement, and dissuades others from volunteering information.)

MJ: "What specific information has the informant given to you to indicate that the item(s) to be seized are in a particular place?"

APP: (Here fully describe all the relevant information given to you to indicate that the item(s) to be seized are in a particular place.)

MJ: "____, why do you believe that the informant is reliable?"

APP: (How long has the applicant known the informant; has the informant provided information in the past; has the informant always proved true and correct; has the informant ever given false or misleading information; has the informant identified narcotics in the presence of the applicant; what have been the results of the prior information--number of arrests for felonies, number of convictions for felonies, number of cases awaiting trial, what types of narcotics have been seized, etc. The military judge should also be provided with as much background information as possible regarding the knowledge of the circumstances held by the informer in order to justify any conclusion that probable cause exists to effect a search.)

(CONTINUE FOR ALL APPLICATIONS)

MJ: "____, what type of training or experience have you had in investigating (TYPE OF OFFENSE) and/or identification of (TYPE OF DRUG, ETC.)?"

APP: (Answer completely.)

MJ: "____, is there any other information that you believe may provide grounds for the seizure of the property described earlier?"

APP: "Yes/No."

MJ: "Has any previous request for search authorization involving the same person and property been denied?"

APP: "Yes/No."

MJ: "Is night service requested?"

APP: "Yes/No." (If yes, set out reasons - *see*, MJM subparagraph 7.C.2.c(4).)

MJ: "I find that probable cause exists for the issuance of a search authorization for the previously described property. _____, do you have a copy of the telephonic search authorization form?"

APP: "Yes."

MJ: "Have you filled in the description of the person or premises to be searched and the property to be seized exactly as set out earlier in this telephonic application procedure?"

APP: "Yes."

MJ: "Read back the search authorization to me in its entirety."

APP: (Reads search authorization.)

MJ: (Directs any necessary corrections.)

MJ: [If enclosure (23b) to the MJM has been e-mailed or faxed to the MJ do not read] "_____, at this point, I direct you to sign my name and rank in the space provided. Next sign your name and rank immediately below mine. Fill in the block for date and time of issuance. The date time group of issuance is (EXAMPLE: 081236R NOV 00)."

MJ: "The verbatim record of this application proceedings is incorporated by reference into the search authorization. This ends the recorded proceedings."

FORMAT FOR SEARCH AUTHORIZATION APPLICATION

[Command]

[Address]
Phone:
FAX:

5800
[DATE]

From: [RANK/RATE NAME DUTY ASSIGNMENT]

To: [RANK NAME MILITARY JUDGE'S TITLE]

Subj: APPLICATION FOR SEARCH AND SEIZURE AUTHORIZATION

1. I, _____, submit the following facts in support of my application for a search authorization: The location and description of the (premises, object, or person) to be search is _____.

2. I put forth the following facts as establishing probable cause to believe that the (premises, object, or person) to be searched and the property to be seized is connected with the offense of (full description of offense).

(SET OUT ALL RELEVANT INFORMATION)

3. I have (personal knowledge/hearsay information via informant) of the preceding facts. (If hearsay, state in detail the basis for believing the reliability of the informant.)

4. I have had the following training or experience in investigating (type of offense) and /or identification of (type of drug/contraband).

//s//

(Applicant)

(Note: Execution of this application under oath may be omitted if impracticable.)

USCG-DEPARTMENT OF JUSTICE MOU

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF JUSTICE AND TRANSPORTATION (COAST GUARD) RELATING TO THE INVESTIGATIONS AND PROSECUTION OF CRIMES OVER WHICH THE TWO DEPARTMENTS HAVE CONCURRENT JURISDICTION.

Whereas, certain crimes committed by Coast Guard personnel subject to the Uniform Code of Military Justice may be prosecuted by Coast Guard tribunals under the Code or by civilian authorities in the Federal Courts; and

Whereas, it is recognized that although the administration and discipline of the Coast Guard requires that certain types of crimes committed by its personnel be investigated by that service and prosecuted before Coast Guard military tribunals other types of crimes committed by such military personnel should be investigated by civil authorities and prosecuted before civil tribunals; and

Whereas, it is recognized that it is not feasible to impose inflexible rules to determine the respective responsibility of the civilian and Coast Guard military authorities as to each crime over which they may have concurrent jurisdiction and that informal arrangements and agreements may be necessary with respect to specific crimes or investigations; and

Whereas, agreement between the Department of Justice and the Department of Transportation (Coast Guard) as to the general areas in which they will investigate and prosecute crimes to which both civil and military jurisdiction attach will, nevertheless, tend to make the investigation and prosecution of crimes more expeditious and efficient and give appropriate effect to the policies of civil government and the requirements of the United States Coast Guard;

It is hereby agreed and understood between the Department of Justice and the Department of Transportation (Coast Guard) as follows:

1. Crimes committed on military installations (including aircraft and vessels). Except as hereinafter indicated, all crimes committed on a military installation by Coast Guard personnel subject to the Uniform Code of Military Justice shall be investigated and prosecuted by the Coast Guard if the Coast Guard makes a determination that there is a reasonable likelihood that only Coast Guard personnel subject to the Uniform Code of Military Justice are involved in such crimes as principals or accessories, and except in extraordinary cases, that there is no victim other than persons who are subject to the Uniform Code of Military Justice or who are bonafide dependents or members of a household of military or civilian personnel residing on the installation. Unless such a determination is made, the Coast Guard shall promptly advise the Federal Bureau of Investigation of any crime committed on a military installation if such crime is within the investigative authority of the Federal Bureau of Investigation. The Federal Bureau of Investigation shall investigate any serious crime of which it has been so advised for the purpose of prosecution in the civil courts unless the Department of Justice determines that investigation and prosecution may be conducted more efficiently and expeditiously by the Coast Guard. Even if the determination provided for in the first sentence of this paragraph is made by the Coast Guard, it shall promptly advise the Federal Bureau of Investigation of any crime committed on a military installation in which there is a victim who is not subject to the Uniform Code of Military Justice or a bona fide dependent or member of the household of military or civilian personnel residing on the installation and that the Coast Guard is investigating the crime because it has been determined to be extraordinary. The Coast Guard shall promptly advise the Federal Bureau of Investigation whenever the crime, except in minor offenses, involves fraud against the government, misappropriation, robbery, or theft of government property or funds, or is of a similar nature. All such crimes shall be investigated by the Coast Guard unless it receives prompt advise that the Department of Justice has determined that the crime should be investigated by the Federal Bureau of Investigation and that the Federal Bureau of Investigation will undertake the investigation for the purpose of prosecution in the civil courts.

2. Crimes committed outside of military installations. Except as hereinafter indicated, all crimes committed outside of military installations, which fall within the investigative jurisdiction of the Federal Bureau of Investigation and in which there is involved as a suspect an individual subject to the Uniform Code of Military Justice, shall be investigated by the Federal Bureau of Investigation for the purpose of prosecution in

civil courts, unless the Department of Justice determines that investigation and prosecution may be conducted more efficiently and expeditiously by other authorities. All such crimes which come first to the attention of Coast Guard authorities shall be referred promptly by them to the Federal Bureau of Investigation, unless relieved of this requirement by the Federal Bureau of Investigation as to particular types or classes of crime. However, whenever Coast Guard military personnel are engaged in scheduled military activities outside of military installations such as organized maneuvers or organized movement, the provisions of paragraph 1 above shall apply, unless persons not subject to the Uniform Code of Military Justice are involved as principals, accessories or victims.

If, however, there is involved as a suspect or as an accused in any crime committed outside of a military installation and falling within the investigative authority of the Federal Bureau of Investigation, an individual who is subject to the Uniform Code of Military Justice and if the Coast Guard authorities believe that the crime involves special factors relating to the administration and discipline of the Coast Guard which would justify investigation by them for the purpose of prosecution before a Coast Guard military tribunal, they shall promptly advise the Federal Bureau of Investigation of the crime and indicate their views on the matter. Investigation of such a crime may be undertaken by the Coast Guard military authorities if the Department of Justice agrees.

3. Transfer of investigative authority. An investigative body of the Coast Guard which has initiated an investigation pursuant to paragraphs 1 and 2 hereof, shall have exclusive investigative authority and may proceed therewith to prosecution. If, however, any Coast Guard investigative body comes to the view that effectuation of those paragraphs requires the transfer of investigative authority over a crime, investigation of which has already been initiated by that or by any other investigative body, it shall promptly advise the other interested investigative body of its views. By agreement between the Departments of Justice and Transportation (Coast Guard), investigative authority may then be transferred.

4. Administrative action. Exercise of exclusive investigative authority by the Federal Bureau of Investigation pursuant to this agreement shall not preclude Coast Guard military authorities from making inquiries for the purpose of administrative action related to the crime being investigated. The Federal Bureau of Investigation will make the results of its

investigations available to Coast Guard military authorities for use in connection with such action.

Whenever possible, decisions with respect to the application in particular cases of the provisions of this Memorandum of Understanding will be made at the local level, that is, between the Special Agent in Charge of the local office of the Federal Bureau of Investigation and the local Coast Guard military commander.

5. Surrender of suspects. To the extent of the legal authority conferred upon them, the Department of Justice and Coast Guard military authorities will each deliver to the other promptly suspects and accused individuals if authority to investigate the crimes in which such accused individuals and suspects are involved is lodged in the other by paragraphs 1 and 2 hereof.

Nothing in this memorandum shall prevent the Coast Guard from prompt arrest and detention of any person subject to the Uniform Code of Military Justice whenever there is knowledge or reasonable basis to believe that such a person has committed an offense in violation of such code and detaining such person until he is delivered to the Federal Bureau of Investigation if such action is required pursuant to this memorandum.

APPROVED:

/s/ Ramsey Clark
Ramsey Clark
Attorney General

/s/ Alan S. Boyd
Alan S. Boyd
Secretary of Transportation

Date: 9 October 1967

Date: 24 October 1967

USCG-U.S. NAVY MOU

U.S. Department
of Transportation

United States
Coast Guard



Commandant
U.S. Coast Guard

2100 Second Street, SW
Washington, DC 20593-0001
Staff Symbol: G-LMJ
Phone: (202) 267-0272

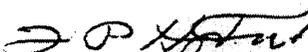
5810

MAY 23 1995

From: Commandant
To: Distribution

Subj: COAST GUARD/NAVY MEMORANDUM OF UNDERSTANDING (MOU)
REGARDING MUTUAL SUPPORT IN MILITARY JUSTICE MATTERS

1. Enclosure (1) is a copy of the subject MOU, which was negotiated in anticipation of reorganizations within each service and, specifically, the closure of the Navy Legal Services Office at Naval Station Treasure Island, CA.
2. The Navy Office of the Judge Advocate General will be promulgating policy guidance concerning the MOU to its field units. As this guidance is disseminated, local Navy legal office commanders may contact local Coast Guard commands to discuss details of the MOU.
3. Further Coast Guard policy guidance will be forthcoming as streamlining is implemented in the Coast Guard and the closure of Naval Station Treasure Island approaches.


F. P. HOPKINS
By direction

Encl: (1) CG/USN MOU regarding military justice

Dist: MLCP(1), MLCA(1), CCGD5(d1)

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
CHIEF COUNSEL, UNITED STATES COAST GUARD
AND THE
JUDGE ADVOCATE GENERAL, UNITED STATES NAVY
REGARDING MUTUAL SUPPORT IN MILITARY JUSTICE MATTERS

A. SCOPE, PURPOSE AND AUTHORITY

This Memorandum of Understanding (MOU) outlines an agreement between the Chief Counsel, United States Coast Guard, for the United States Coast Guard and The Judge Advocate General, United States Navy, for the United States Navy with regard to mutual support in military justice matters.

The purpose of this MOU is to advance professional expertise in the practice of military law incident to the prosecution and defense of courts-martial and the representation of personnel at administrative discharge boards, and to further overall military readiness by experience gained through cross training of respective service military justice and personnel procedures.

The statutory basis for mutual support between the Coast Guard and the Navy is 14 U.S.C. §§ 141 and 145.

B. POLICY

The Coast Guard will assign a minimum of four military attorneys to one or more Navy Legal Service Offices (NLSOs) or Trial Service Offices (TSOs). In exchange, the Navy will expand the NLSO mission to include the direct provision of defense counsel and counsel for respondents, along with certain incidental military justice support services, to Coast Guard courts-martial, boards of inquiry, and administrative discharge boards.

C. TERMS

1. Personnel Assignment

a. In consultation with the Navy, the Coast Guard will assign a minimum of four officers certified or qualified for immediate certification under 10 U.S.C. § 827(b) to one or more NLSOs or TSOs. Officers so assigned, whether by permanent change of station, temporary additional duty, or special detail orders, will be under the command of the receiving NLSO or TSO Commanding

Officer. The goal is to assign such officers for a period of approximately one year. Coast Guard officers normally will not be assigned to a NLSO or TSO for a period of less than six months.

b. The principal duty for Coast Guard officers assigned to a NLSO or TSO will be duty as trial or defense counsel. Collateral duty assignments will be consistent with those assigned to Navy judge advocates also serving as trial or defense counsel, and should relate directly to military justice advocacy. It is both desired and expected that Coast Guard officers assigned to either a NLSO or TSO will be detailed as either trial or defense counsel before Navy courts-martial.

c. The Navy agrees to assign Coast Guard officers in roughly equal numbers to trial and defense counsel duties to the extent possible. Specific assignments within a NLSO or TSO, however, will be the decision of the receiving NLSO or TSO Commanding Officer. Individual Coast Guard officers normally will not be detailed to both trial and defense duties during an assignment.

d. Assignments of Coast Guard officers will be to locations where a NLSO or TSO is within reasonable commuting distance of a Coast Guard legal office to which Coast Guard officers may be permanently attached. In consultation with the Navy, the Coast Guard will endeavor to assign two officers to NLSOs or TSOs located in the eastern part of the country and two officers to NLSOs or TSOs located in the western part of the country. Actual locations may vary due to anticipated reorganizations within each service or other needs of each service. Projections of specific assignment locations affected by reorganization or other needs of each service will be determined by mutual agreement.

2. Responsibility for Cases

a. Court-Martial Defense. On request, the Navy will assume responsibility for providing defense counsel at courts-martial referred by Coast Guard convening authorities located within each NLSO's geographic area of responsibility. This responsibility applies whether or not the NLSO with geographic responsibility for the case has an assigned Coast Guard officer. If there is a Coast Guard officer performing defense duties at the servicing NLSO, then that officer will be considered for detail as defense counsel to Coast Guard cases. The decision of whether or not a Coast Guard officer will be detailed as a defense counsel to a Coast Guard court-martial, however, is within the sole discretion of the NLSO Commanding Officer. Any detailing decision will be based upon such factors as constraints of case docketing, complexity of the case, and the advancement of the professional growth of assigned Coast Guard

and Navy officers. Defense counsel assigned to Coast Guard courts-martial will be detailed in accordance with applicable Coast Guard procedures and policies.

b. Court-Martial Prosecution

(1) The cognizant Coast Guard Staff Judge Advocate (SJA) will normally detail Coast Guard officers assigned to Coast Guard commands as trial counsel for Coast Guard courts-martial and recorders for Coast Guard boards of inquiry or administrative discharge boards. Nevertheless, any Coast Guard SJA may request that any Commanding Officer of a NLSO or TSO, to which a Coast Guard officer is assigned trial counsel duties pursuant to this MOU, detail a Coast Guard officer to serve as trial counsel for a Coast Guard court-martial or as recorder for a Coast Guard board of inquiry or administrative discharge board. The requesting Coast Guard SJA and the requested NLSO or TSO need not be located within the same geographic area of responsibility.

(2) The decision of whether or not a Coast Guard officer assigned to a NLSO or TSO will be detailed as trial counsel to a Coast Guard court-martial or as recorder for a Coast Guard board of inquiry or administrative discharge board is within the sole discretion of the NLSO or TSO Commanding Officer. Any detailing decision will be based upon such factors as constraints of case docketing, complexity of the case, and the advancement of the professional growth of assigned Coast Guard officers.

(3) While a Coast Guard officer assigned to either a NLSO or TSO as a trial counsel will be primarily employed as a prosecutor of courts-martial, such designation does not preclude the officer from being assigned other duties generally associated with the functions of a trial counsel. Such duties can include, but are not limited to: acting as recorder of an administrative discharge board; acting as recorder in a board of inquiry; or providing advice to a client command. Such duties will be assigned to the Coast Guard officer to the extent the NLSO or TSO Commanding Officer believes it is beneficial to the Coast Guard officer's professional growth.

Article 32 Investigations. The Navy will make defense counsel available upon request by the cognizant Coast Guard commanding authority. While the Coast Guard normally will be responsible for providing all other required personnel and facilities needed for an Article 32 Investigation, Coast Guard convening authorities may request such assistance from the Commanding Officer of the NLSO or TSO with geographic responsibility for the area where the Coast Guard convening authority is located. Requested assistance will be provided as resources permit in the discretion of the NLSO or TSO Commanding

Officer. Requests by the Coast Guard for a Coast Guard officer assigned to a NLSO or TSO to serve as government counsel will be in accordance with paragraph C.2.b above.

d. Miscellaneous Defense Functions

(1) Upon request, the Navy will provide routine defense counsel services to Coast Guard members. Such services include, but are not limited to, the providing of: "Booker" advice; advice to members charged with offenses to be disposed of by Summary Court-Martial; counsel to members held in pretrial confinement during the Initial Reviewing Officer hearing under RCM 305; advice to members on preparing Article 138, UCMJ complaints; and advice to or representation of a member concerning involuntary referral to a psychiatric evaluation, to the extent that the Coast Guard member is entitled by law or policy to such advice or representation. The NLSO Commanding Officer has the discretion to authorize the formation of an attorney/client relationship between a defense counsel and any Coast Guard member referred to the NLSO for advice.

(2) As part of normal defense counsel duties while assigned to a NLSO, a Coast Guard officer may be assigned to provide routine defense counsel services to both Navy and Coast Guard members. Such services may include, but are not limited to, the providing of: "Booker" advice; advice to members charged with offenses to be disposed of by Summary Court-Martial; counsel to members held in pretrial confinement during the Initial Reviewing Officer hearing under RCM 305; advice on preparing Article 138, UCMJ, complaints; and advice to or representation of a member concerning involuntary referral to a psychiatric evaluation, to the extent that the member is entitled by law or policy to such advice or representation. The NLSO Commanding Officer has the discretion to authorize the formation of an attorney/client relationship between the Coast Guard officer defense counsel and any member referred to the NLSO for advice.

e. Administrative Discharge Boards

(1) The Navy will provide counsel for respondents before Coast Guard administrative discharge boards, including boards of inquiry but excluding Commanding Officer/Officer-in-Charge reports for cause proceedings. If there is a Coast Guard officer performing defense duties at the servicing NLSO, that officer generally should be assigned as respondent's counsel. The NLSO will detail respondent's counsel upon request by the cognizant Coast Guard convening authority.

(2) Coast Guard officers assigned to a NLSO may be detailed as counsel for Navy respondents before administrative discharge boards, including officer boards of inquiry. Coast

Guard officers under normal circumstances will not be involved in Navy Commanding Officer/Officer-in-Charge relief for cause proceedings.

f. Continuity of Counsel

(1) If a Coast Guard accused in a criminal case disposed of prior to trial requests that the detailed court-martial defense counsel continue that representation during any subsequent administrative proceeding based upon the same or related factual events, the servicing NLSO will attempt to make such counsel available.

(2) Coast Guard officers serving as trial counsel normally will be relieved of their non-Coast Guard cases and any other NLSO or TSO duties at the time scheduled for detachment. Coast Guard officers serving as defense counsel who have been detailed to cases and have established attorney-client relationships will continue to represent those clients after detachment unless released by the accused or by the presiding military judge.

3. Implementation. The parties agree to implement expeditiously this MOU within their respective organizations. The Legal Policy and Program Development Division, Office of Chief Counsel, U.S. Coast Guard will coordinate the initial distribution and continued maintenance of the applicable Coast Guard manuals and other directives necessary for the Navy to assume these additional responsibilities. The Coast Guard agrees to take all steps necessary to assign any additional officers necessary to implement fully this agreement as soon as feasible after the agreement is signed.

4. Scope of Responsibility

a. Courts-Martial. Investigation, case evaluation, forum selection, and provision of pre-referral advice for Coast Guard courts-martial will continue to be the responsibility of the cognizant Coast Guard command.

b. Authority Over Cases/Counsel. Defense services for Coast Guard cases will be afforded the same priority in docketing and processing as other cases handled by the NLSO.

c. Individual Military Counsel. If a Coast Guard officer assigned to a NLSO or TSO is requested as individual military counsel in any case, the NLSO or TSO Commanding Officer will be considered to be the commanding officer for purposes of determining that counsel's availability. For Coast Guard convened courts-martial or Article 32 investigations, determinations of availability, and appeals therefrom, will be made in accordance with paragraph 3-C-3 of the Military Justice

Manual, COMDTINST M5810.1C. However, in a Coast Guard convened court-martial or Article 32 investigation in which a Navy judge advocate has been requested as individual military counsel, determination of counsel's availability, and appeals therefrom, will be made by the Navy in accordance with the provisions set forth in the Manual of the Judge Advocate General (JAGMAN).

d. Extraordinary Assignments. In extraordinary circumstances, the Commanding Officer of a NLSO or TSO may request that specific Coast Guard officers be made available for detail to a Navy or Marine Corps case.

5. Situs of Proceedings. A court-martial convened by a Coast Guard command generally will be tried in courtrooms provided by the Coast Guard. However, in appropriate cases the Coast Guard may request the use of a courtroom provided by a NLSO or TSO. Conversely, in appropriate cases the Navy may request the use of a Coast Guard courtroom for a Navy or Marine Corps case.

6. Rules of Court. A court-martial convened by a Coast Guard command will be tried in accordance with the Coast Guard Court Rules of Practice and Procedure for General and Special Courts-Martial, enclosure (18) to the Military Justice Manual, COMDTINST M5810.1C, even if the presiding military judge is provided by the Navy.

7. Military Judges. The Coast Guard normally will provide the military judge for all Coast Guard cases. Occasionally, however, circumstances may require the assignment of specific cases to Navy-Marine Corps Trial Judiciary judges. Detailing of Navy-Marine Corps Trial Judiciary judges to Coast Guard cases or Coast Guard Judges to Navy or Marine Corps cases will be coordinated between the Chief Judge of the Navy-Marine Corps Trial Judiciary and the Chief Trial Judge of the Coast Guard.

8. Court Members. Court-martial members for courts convened by Coast Guard convening authorities will be provided by those authorities.

9. Court Reporting. The Coast Guard will normally provide court reporting services for all Coast Guard cases. In the event of unusual court-reporting backlogs, either party, through its local POC, may request the other to provide court reporting support on a short-term basis. In addition, in order to maintain court reporting proficiency, the Coast Guard may request temporary assignment of a Coast Guard yeoman to NLSO or TSO court reporting duties.

10. Travel/Funding. The Coast Guard will be responsible for funding travel of military judges, accused, counsel, witnesses, court reporters, members, bailiffs, escorts and other necessary

court personnel incident to Coast Guard convened courts-martial, as well as respondents, counsel for the respondents, witnesses and Board members in Coast Guard administrative separation cases, including boards of inquiry.

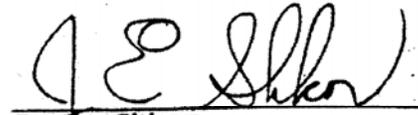
11. Training. Coast Guard officers assigned to NLSOs or TSOs will be permitted to participate in all training evolutions open to Navy officers at the NLSO or TSO, whether on or off site. To the extent providing training opportunities to assigned Coast Guard officers involves travel, per diem and/or tuition expenditures, the Coast Guard agrees to fund all such costs for these officers. Coast Guard funding must be approved in advance for any training proposed to be funded by the Coast Guard. Requests for funding shall be made to the Coast Guard Legal Office to which the officer is assigned permanently or the Chief, Legal Policy and Program Development Division, Office of Chief Counsel, USCG Headquarters. In addition, the Navy may fund such training at its option.

12. Officer Evaluation Reports. Commanding Officers of NLSOs or TSOs with assigned Coast Guard personnel will designate supervisors, who will prepare Officer Evaluation Reports for those Coast Guard officers under their supervision. The NLSO or TSO Commanding Officer shall act as the Reporting Officer. The Reviewing Officer for such reports shall be the Chief of the Coast Guard Legal Office to which the Reported On Officer is permanently assigned. Assigned Coast Guard officers will provide all necessary guidance and advice regarding the initial preparation of such reports to the cognizant command.

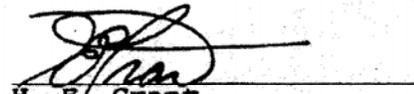
13. Local Liaison. Subject to the terms of this agreement and any implementing guidance issued by higher authority, direct liaison between the NLSOs or TSOs and Coast Guard Legal Offices is authorized and encouraged. Nothing in this agreement shall be construed to prevent the local assignment of additional Coast Guard attorneys to a nearby NLSO or TSO for shorter periods of time than six months for training and litigation experience under such terms as may be mutually agreeable between the Chief of the Coast Guard Legal Office and the Commanding Officer of the NLSO or TSO.

14. Review/Modification. This MOU will be reviewed annually to ensure it continues to meet the needs of both the Coast Guard and the Navy. Anticipated reorganizations in the near future in both the Coast Guard and the Navy may precipitate more frequent review. In the event that the number of Coast Guard court-martial cases or administrative discharge boards, including boards of inquiry, materially increases in either quantity or complexity over that generally experienced during the three years immediately preceding the effective date of this MOU, the Navy reserves the right to request additional officers qualified to serve as described herein.

15. Effective Date/Termination. This MOU is effective upon signature of both parties. The MOU will be extended automatically absent a written indication from either party of a desire to terminate. Either party may terminate this MOU at any time by written notice of termination to the other party. Such termination will be effective six months from the date of written notification. In the event of termination, all existing counsel assignments will be carried through to completion by assigned counsel.



J. E. Shkor
Rear Admiral
U. S. Coast Guard
Chief Counsel
Date: 24 APR 1995



H. E. Grant
Rear Admiral
U. S. Navy
Judge Advocate General
Date: MAY 03 1995

**DOD DIRECTIVE FOR PROVIDING
FOR ANNUAL REVIEW OF MCM**

FOLLOWS



Department of Defense

DIRECTIVE

NUMBER 5500.17

May 3, 2003

Certified Current as of October 31, 2006

GC, DoD

SUBJECT: Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice

References: (a) DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 8, 1996 (hereby canceled)
(b) Manual for Courts-Martial, United States
(c) Chapter 47 of title 10, United States Code (Uniform Code of Military Justice)
(d) Executive Order 12473, July 13, 1984
(e) through (g), see enclosure 1

1. REISSUANCE AND PURPOSE

This Directive:

- 1.1. Reissues reference (a).
- 1.2. Implements the requirement established by the President that reference (b) be reviewed annually.
- 1.3. Formalizes the Joint Service Committee (JSC) and defines the roles, responsibilities, and procedures of the JSC in reviewing and proposing changes to reference (b) and proposing legislation to amend reference (c).
- 1.4. Provides for the designation of a Secretary of a Military Department to serve as the Executive Agent for the JSC.

2. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard by agreement with the Department of Homeland Security when it is not operating as a Service of the Department of the Navy), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter collectively referred to as "the DoD Components").

3. POLICY

To assist the President in fulfilling his responsibilities under the Uniform Code of Military Justice (UCMJ) (reference (c)), and to satisfy the requirements of Executive Order 12473 (reference (d)), the Department of Defense shall review the Manual for Courts-Martial (reference (b)) annually, and, as appropriate, propose legislation amending reference (c) to ensure that references (b) and (c) fulfill their fundamental purpose as a comprehensive body of military criminal law and procedure. The role of the JSC furthers these responsibilities. Under the direction of the General Counsel of the Department of Defense, the JSC is responsible for reviewing reference (b) and proposing amendments to it and, as necessary, to reference (c).

4. RESPONSIBILITIES

4.1. The General Counsel of the Department of Defense shall:

4.1.1. Administer this Directive, to include coordination on and approval of legislative proposals to amend reference (c), approval of the annual review of reference (b), and coordination of any proposed changes to reference (b) under OMB Circular A-19 (reference (e)).

4.1.2. Designate the Secretary of a Military Department to serve as the joint Service provider for the JSC. The joint Service provider shall act on behalf of the JSC for maintaining the JSC's files and historical records, and for publication of the updated editions of reference (b) to be distributed throughout the Department of Defense, as appropriate.

4.1.3. Invite the Secretary of Homeland Security to appoint representatives to the JSC.

4.1.4. Invite the Chief Judge of the United States Court of Appeals for the Armed Forces to provide a staff member to serve as an advisor to the JSC.

4.1.5. Invite the Chairman of the Joint Chiefs of Staff to provide a staff member from the Chairmans Office of Legal Counsel to serve as an advisor to the JSC.

4.1.6. Ensure that the Associate Deputy General Counsel (Military Justice and Personnel Policy), Office of the General Counsel, Department of Defense, shall serve as the General Counsel's representative to the JSC in a non-voting capacity. In addition, the United States Court of Appeals for the Armed Forces (USCAAF) and the Legal Counsel to the Chairman of the Joint Chiefs of Staff shall be invited to provide a staff member to serve as an advisor to the JSC in a non-voting capacity.

4.2. The Secretaries of the Military Departments shall ensure that the Judge Advocates General of the Military Departments and the Staff Judge Advocate to the Commandant of the Marine Corps appoint representatives to the JSC.

4.3. The Joint Service Committee (JSC) shall further the DoD policy established in section 3. of this Directive and perform additional studies or other duties related to the administration of military justice, as the General Counsel of the Department of Defense may direct. (See reference (f).) The membership of the JSC shall consist of one representative of each of the following, who shall comprise the JSC Voting Group:

4.3.1. The Judge Advocate General of the Army.

4.3.2. The Judge Advocate General of the Navy.

4.3.3. The Judge Advocate General of the Air Force.

4.3.4. The Staff Judge Advocate to the Commandant of the Marine Corps; and

4.3.5. By agreement with the Department of Homeland Security, the Chief Counsel, United States Coast Guard.

4.4. The JSC Working Group (WG) shall assist the JSC Voting Group in fulfilling its responsibilities under this Directive. The WG consists of non-voting representatives from each of the Services and may include the representatives from the USCAAF, and the Office of the Legal Counsel to the Chairman of the Joint Chiefs of Staff.

4.5. The JSC chairmanship rotates biennially among the Services in the following order: the Army, the Air Force, the Marine Corps, the Navy, and the Coast Guard. Due to its size and manning constraints, a Coast Guard's request not to be considered for JSC chairmanship shall be honored. The Military Service of the JSC Chairman shall provide an Executive Secretary for the JSC.

5. EFFECTIVE DATE AND IMPLEMENTATION

5.1. The foregoing policies and procedures providing guidelines for implementation of this Directive, as well as those contained in the enclosures, are intended exclusively for the guidance of military personnel and civilian employees of the Department of Defense, and the United States Coast Guard by agreement of the Department of Homeland Security. These guidelines are intended to improve the internal management of the Federal Government and are not intended to create any right, privilege, or benefit, substantive or procedural, to any person or enforceable at law by any party against the United States, its agencies, its officers, or any person.

5.2. This Directive is effective immediately.



Paul Wolfowitz
Deputy Secretary of Defense

Enclosures - 2

- E1. References, continued
- E2. Guidance to the JSC

E1. ENCLOSURE 1
REFERENCES, continued

- (e) Office of Management and Budget Circular A-19, "Legislative Coordination and Clearance," September 20, 1979
- (f) DoD Directive 5105.18, "DoD Committee Management Program," February 8, 1999
- (g) DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964

E2. ENCLOSURE 2
GUIDANCE TO THE JSC

E2.1. REVIEW OF THE MANUAL FOR COURTS-MARTIAL (REFERENCE (b))

E2.1.1. The JSC shall conduct an annual review of reference (b), in light of judicial and legislative developments in military and civilian practice, to ensure:

E2.1.1.1. Reference (b) implements reference (c) and reflects current military practice and judicial precedent.

E2.1.1.2. The rules and procedures of reference (b) are uniform insofar as practicable.

E2.1.1.3. Reference (b) applies, to the extent practicable, the principles of law and the rules of evidence generally recognized in the trial of criminal cases in United States district courts, but which are not contrary to or inconsistent with the UCMJ (reference (c)).

E2.1.1.4. Reference (b) is workable throughout the worldwide jurisdiction of the UCMJ; and,

E2.1.1.5. Reference (b) is workable across the spectrum of circumstances in which courts-martial are conducted, including combat conditions.

E2.1.2. During this review, any JSC voting member may propose for the Voting Group's consideration an amendment to reference (b). Proposed amendments to reference (b) shall ordinarily be referred to the JSC Working Group (WG) for study. The WG assists the JSC in staffing various proposals, conducting studies of proposals and other military justice related topics at the JSC's direction, and making reports to the JSC. Any proposed amendment to reference (b), if approved by a majority of the JSC voting members, becomes a part of the annual review.

E2.1.3. The JSC shall prepare a draft of the annual review of reference (b) and forward it to the General Counsel of the Department of Defense, on or about December 31st. The General Counsel of the Department of Defense may submit the draft of the annual review to the Code Committee established by Article 146 of reference (c), with an invitation to submit comments.

E2.1.4. The draft of the annual review shall set forth any specific recommendations for changes to reference (b), including, if not adequately addressed in the accompanying discussion or analysis, a concise statement of the basis and purpose of any proposed change. If no changes are recommended, the draft review shall so state. If the JSC recommends changes to reference (b), the draft review shall so state. If the JSC recommends changes to reference (b), the public notice procedures of paragraph E2.4.3., below, are applicable.

E2.2. CHANGES TO REFERENCE (b)

E2.2.1. By January 1st of each year, the JSC voting members shall ensure that a solicitation for proposed changes to reference (b) is sent to appropriate agencies within their respective Services that includes, but is not limited to, the judiciary, the trial counsel and defense counsel organizations, and the judge advocate general schools.

E2.2.2. The Federal Register announcement of each year's annual review of proposed changes to reference (b) shall also invite members of the public to submit any new proposals for JSC consideration during subsequent JSC annual reviews.

E2.2.3. When the JSC receives proposed changes to reference (b) either by solicitation or Federal Register notice, the JSC shall determine whether the proposal should be considered under paragraph E2.1.2. of this enclosure by determining if one or more of the JSC voting member(s) intends to sponsor the proposed change. The JSC shall determine when such sponsored proposals should be considered under the annual review process, taking into account any other proposals under consideration and any other reviews or studies directed by the General Counsel of the Department of Defense.

E2.2.4. Changes to reference (b) shall be proposed as part of the annual review conducted under section E2.1. of this enclosure, above. When earlier implementation is required, the JSC may send proposed changes to the General Counsel of the Department of Defense, for coordination under DoD Directive 5500.1 (reference (g)).

E2.3. PROPOSALS TO AMEND THE UCMJ (REFERENCE (c))

The JSC may determine that the efficient administration of military justice within the Armed Services requires amendments to reference (c), or that a desired amendment to the Manual for Courts-Martial (reference (b)) makes necessary an amendment to reference (c). In such cases, the JSC shall forward to the General Counsel of the Department of Defense, a legislative proposal to change reference (c). The General Counsel of the Department of Defense may direct that the JSC forward any such legislative proposal to the Code Committee for its consideration under Article 146, UCMJ.

E2.4. PUBLIC NOTICE AND MEETING

E2.4.1. Proposals to amend reference (c) are not governed by the procedures set out in this section. (See reference (f). This section applies only to the JSC recommendations to amend reference (b).)

E2.4.2. It is DoD policy to encourage public participation in the JSC's review of reference (b). Notice that the Department of Defense, through the JSC, intends to propose changes to reference (b) normally shall be published in the Federal Register before submission of such changes to the President. This notice is not required when the Secretary of Defense in his sole and unreviewable discretion proposes that the President issue the change without such notice on the basis that public notice procedures, as set forth in this Directive, are unnecessary or contrary to the sound administration of military justice, or a Manual for Courts-Martial change corresponding to legislation is expeditiously required to keep reference (b) current and consistent with changes in applicable law.

E2.4.3. The Office of General Counsel of the Department of Defense shall facilitate publishing the Federal Register notice required under this section.

E2.4.4. The notice under this section shall consist of the publication of the full text of the proposed changes, including discussion and analysis, unless the General Counsel of the Department of Defense determines that such publication in full would unduly burden the Federal Register, the time and place where a copy of the proposed change may be examined, and the procedure for obtaining access to or a copy of the proposed change.

E2.4.5. A period of not fewer than 60 days after publication of notice normally shall be allowed for public comment, but a shorter period may be authorized when the General Counsel of the Department of Defense determines that a 60-day period is unnecessary or is contrary to the sound administration of military justice. The Federal Register notice shall normally indicate that public comments shall be submitted to the Executive Secretary of the JSC.

E2.4.6. The JSC shall provide notice in the Federal Register and hold a public meeting during the public comment period, where interested persons shall be given a reasonable opportunity to submit views on any of the proposed changes contained in the annual review. Public proposals and comments to the JSC should include a reference to the specific provision to be changed, a rationale for the proposed change, and specific and detailed proposed language to replace the current language. Incomplete submissions might be insufficient to receive the consideration desired. The JSC shall seek to consider all views presented at the public meeting as well as any written comments submitted during the 60-day period when determining the final form of any proposed amendments to reference (b).

E2.5. INTERNAL RULES AND RECORD-KEEPING

E2.5.1. In furthering DoD policy, studying issues, or performing other duties relating to the administration of military justice, the JSC may establish internal rules governing its operation.

E2.5.2. The JSC shall create a file system and maintain appropriate JSC records.

MILITARY JUDGE CERTIFICATION REQUEST

5810
Date

From: Grade, Name, USCG(R)
To: Chief, Office of Legal Policy and Program Development(CG-0948)
Via: (1) Commander, XXXX Coast Guard District (dcs)
(2) Chief Trial Judge (CG-094J)
Subj: APPLICATION FOR ATTENDANCE AT A MILITARY JUDGE
COURSE AND FOR CERTIFICATION AS MILITARY JUDGE
Ref: (a) Coast Guard Military Justice Manual, COMDTINST M5810.1E,
paragraph 6.D.1

1. I request assignment to attend the Military Judge Course and subsequent certification as a Military Judge. The following information is provided per reference (a)....

/s/

Encl: (1) PDR Review Authorization

PDR Review Authorization

Date

“I (name) authorize the Judge Advocate General, the Deputy Judge Advocate General, the Chief Trial Judge and the Chief, Office of Legal Policy and Program Development to review my Headquarters PDR, for the purpose of considering my application to be certified as a Military Judge.”

/s/