



THE POST-TRIAL HANDBOOK

A Guide for Military Justice Practitioners

OFFICE OF THE CLERK OF COURT



FORT BELVOIR, VIRGINIA
2012 EDITION



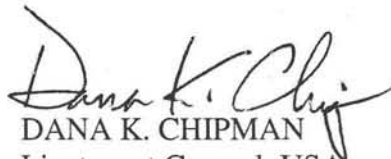
THE 2012 POST-TRIAL HANDBOOK

FOREWORD

Repeated rulings from the Service Courts and CAAF highlight the importance of timely post-trial processing. Modern technology and automation certainly helps, but technology alone will not ensure timeliness nor accuracy. Understanding the process and familiarity with the applicable resources will. Written to decode the “mystery” of the post-trial process, this most recent edition of The Post-Trial Handbook is thus vital to a successful military justice operation.

Incorporating three years of experience and lessons learned since publication of the 2009 edition, the 2012 Post-Trial Handbook is designed for use at every level, by every member of the Corps - from a brand new 27D right out of AIT to an experienced Chief of Military Justice or seasoned Staff Judge Advocate. This guide should be read by every military justice professional in the Army. It provides practitioners with a “cradle-to-grave,” detailed explanation of the post-trial process. When used in conjunction with Military Justice Online, it will guarantee timely, error-free post-trial processing.

Challenge yourself and your entire military justice shop to know the post-trial process. And as always, let us know how we can make this resource better. Tell us what works for your shop and how we can implement it Army-wide. We are ONE TEAM!


DANA K. CHIPMAN
Lieutenant General, USA
The Judge Advocate General

JAN 03 2012

DEDICATION

Dedicated in honor of Colonel [Retired] William S. Fulton, Jr., who, during a 31 year career with the U.S. Army Judge Advocate General's Corps made it his life's work to refine the art and science associated with the practice of military law. When he retired from active duty in 1983, Bill Fulton became Clerk of Court for the Army Court of Military Review, later renamed the U.S. Army Court of Criminal Appeals during Bill's tenure. One of Judge Fulton's many accomplishments was the creation of a post-trial handbook to assist practitioners. This Post-Trial Handbook is the culmination of valuable work Colonel Fulton began over two decades ago.



2012

Post-Trial

Handbook

**Prepared by the Office of the Clerk of Court for the
United States Army Court of Criminal Appeals**

THE 2012 POST-TRIAL HANDBOOK

INTRODUCTION

The Office of the Clerk of Court prepared this handbook to assist members of staff judge advocate offices in the post-trial administrative processing of court-martial cases.

Legal authorities are abundantly cited because lawyers and paralegals must get to know them. Authorities cited include the Uniform Code of Military Justice (UCMJ); the Rules for Courts-Martial (RCM) and other parts of the Manual for Courts-Martial (MCM), including portions that are only advisory and not part of the President's Executive Order (such as Discussions accompanying the RCM and appendices containing sample forms); Army Regulations (AR), and judicial decisions. This handbook does not repeat the content of the legal authorities cited. Instead, the user is expected to consult the cited authority. Please provide **suggestions for changes and additions to the Clerk of Court, U.S. Army Court of Criminal Appeals, 9275 Gunston Road, Fort Belvoir, Virginia 22060-5546 or via e-mail to Jeffrey.Todd@us.army.mil.** Many of the sample court-martial orders and other examples shown were derived from existing documents. If you can improve on these, or add other useful examples, please send a copy for use in the next revision.



MALCOLM H. SQUIRES, JR.

Clerk of Court

U.S. Army Judiciary

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CHAPTER 1

THE TERMINATION OF TRIAL

Chapter 1 outlines the immediate post-trial documentary concerns of the trial counsel and Chief of Military Justice once the trial has finished or has been interrupted or terminated before findings due to a mistrial or appeal.

1-1. Report of result of trial, DA Form 4430.

a. Notification. In accordance with MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 1101(a) (2008) [hereinafter R.C.M.] and R.C.M. 1304(b)(2)(F)(v), the trial counsel or Summary Court-Martial Officer shall promptly notify the accused's immediate commander, the convening authority or convening authority's designee, and if appropriate, the officer in charge of the confinement facility of the findings and sentence in a court-martial case. Also see U.S. DEP'T OF ARMY, AR 27-10, Military Justice, paragraph 5-30a (3 October 2011)[hereinafter AR 27-10].

b. DA Form 4430. A report of the result of trial will be prepared using U.S. DEP'T OF ARMY, DA Form 4430, Report of Result of Trial (May 2010) [hereinafter DA Form 4430]. See Figure 1-1 of this volume. The completed DA Form 4430 will be typewritten, if practicable, or legibly handwritten. A copy of this form will be included in the allied papers accompanying the record of trial.

c. Confinement Facility Notification. Post-trial prisoners who are transferred to the U.S. Disciplinary Barracks or other military corrections system facilities must carry a copy of the DA Form 4430. See Figure 1-1 at the end of this chapter. Instructions for its completion and use are in AR 27-10, para 5-30. If the accused was not in pretrial confinement, but has been sentenced to confinement, a Confinement Order will be required as well. U.S. DEP'T OF DEF., DD Form 2707, Confinement Order (September 2005) [hereinafter DD Form 2707]. See Figure 1-2 herein for a copy of DD Form 2707.

d. Finance and Accounting Office. The trial counsel is responsible for ensuring that a copy of the DA Form 4430 is expeditiously provided to the Finance and Accounting Office (FAO) in any case involving a reduction in rank or a forfeiture of pay or a fine. In Block 5 the trial counsel should indicate the effective date of any forfeiture or reduction in grade. See Uniform Code of Military Justice (UCMJ) Articles 57-58(b) (2008), R.C.M. 1101, and AR 27-10, para 5-30.

1-2. Confinement Credit.

a. In general. The DA Form 4430 will include the total number of days credited against confinement adjudged whether automatic credit for pretrial confinement under U.S. v. Allen, 17 M.J. 126 (Court of Military Appeals (C.M.A.) 1984), or judge-ordered additional administrative credit under R.C.M. 304, U.S. v. Suzuki, 14 M.J. 491 (C.M.A. 1983), or for any other reason specified by the judge, in accordance with the lines 7-9 on DA Form 4430, Report of Result of Trial. AR 27-10, para 5-32a.

b. Materials regarding pretrial confinement in record of trial. A copy of the DA Form 4430 and all other documents regarding pretrial confinement must be included in the Record of Trial. This includes, but is not limited to, a copy of the commander's checklist for pretrial confinement. U.S. DEP'T OF ARMY, DA Form 5112, Checklist for Pretrial Confinement, (September 2002) [hereinafter DA Form 5112], and a copy of the magistrate's memorandum to approve or disapprove pretrial confinement. AR 27-10, para 5-30.

1-3. DNA Testing. If required under the provisions of 10 U.S.C. §1565, the DA Form 4430 will identify the need for processing of a DNA sample. If a preferred offense for which a sentence to confinement for more than one year may be imposed or any other offense under the UCMJ that is comparable to a qualifying Federal offense (as determine under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d)). See Chapter 6, Figure 6-1 of this volume. If DNA testing is required, the initial promulgating order will also be annotated to reflect that a DNA sample is required. AR 27-10, para 5-30. See the DoD Policy on Collecting DNA Samples from Military Prisoners and a list of Qualifying Military Offenses under 10 U.S.C. § 1565 at AR 27-10, Appendix F, and Chapter 6, Figure 6-6 of this volume.

1-4. Sex Offender Registration.

a. DA Form 4430. The DA Form 4430 will indicate whether the conviction requires sex offender registration. Counsel should indicate on the DA Form 4430 that registration is required if the soldier is convicted of any qualified offense, not simply those offenses referenced on the DA Form 4430. Counsel must stay current regarding sex offender registration requirements since laws change quicker than DA Forms. Currently, Sex Offender registration is governed by 42 USC § 16901, 42 USC § 14071, DODI 1325.7, and AR 27-10. Questions regarding whether or not a particular offense requires registration should be directed to the Criminal Law Division, Office of the Judge Advocate General. See, Sexual Offense Reporting Requirements Memorandum; Figure 1-3.

b. Registration notification. For cases in which the sentence of a special or general court-martial involves a finding of guilty of an offense that requires the Soldier to register as a sexual offender without adjudged confinement, the trial counsel will immediately, and in the presence of the defense counsel, provide notice that the military sexual offender is subject to a registration requirement as a sex offender. Counsel will do so by requiring the military sexual offender to complete the acknowledgement, U.S. DEP'T OF ARMY, DA Form 7439, Acknowledgement of Sex Offender Registration Requirements (September 2002) [hereinafter DA Form 7439]. See Figure 1-3 for a copy of DA Form 7439.

c. File acknowledgement. The trial counsel will see that a copy of the acknowledgement is filed with the United States Army Crime Record Center along with any report of investigation related to the military sexual offender. AR 27-10, para 5-30, and AR 27-10, Chapter 24, "Registration of Sexual Military Offenders Who are Not Confined" for further information concerning additional requirements involving military sex offenders.

1-5. Co-Accused. The Report of result of trial must include the names and social security numbers of any co-accused. AR 27-10, para 5-30a.

1-6. Notification requirements for capital cases.

a. Notify OTJAG when capital case referred. The OTJAG, Criminal Law Division (CLD), must be notified when a capital case is referred. Moreover, it is best practice to notify CLD of the result in any capital case, whether or not a death sentence is adjudged. AR 27-10, para 5-19 (this information is exempt from U.S. DEP'T OF ARMY, AR 335-15, Management Information Control System (28 October 1986) [hereinafter AR 335-15]). In addition, the SJA will want to notify TJAG of the result of trial and of the convening authority's Action, when taken in any case that has received significant public attention, since the Secretary of the Army or the Chief of Staff of the Army may be looking to TJAG for information as to the latest developments.

b. Notify OTJAG when sentence to death adjudged. When a sentence to death is adjudged the SJA must notify the OTJAG Criminal Law Division of the following: 1. Name, grade, SSN, and unit of the accused, 2. Date sentence was adjudged, and 3. Offenses(s) for which the sentence was adjudged. AR 27-10, para 5-30c.

1-7. Assignment of convicted Soldiers in confinement or on excess leave.

a. Transfer and Excess Leave Orders and Request and Authority for Leave. The General Court-Martial Convening Authority (GCMCA) will ensure that the Clerk of Court, ATTN: JALS-CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060 is expeditiously furnished copies of all transfer orders and excess leave orders or a copy of DA Form 31, Request and Authority for Leave, when an accused has been transferred from his or her jurisdiction or placed on excess leave. AR 27-10, paras 5-30, 5-31, 5-33.

b. Personnel Accountability. Personnel accountability for post-trial Soldiers in confinement will be administratively transferred immediately after trial from their unit to the appropriate Personnel Control Facility (PCF) of the designated Regional Confinement Facility (RCF), except Soldiers who receive a sentence of 120 days (4 months) or less of confinement, without a discharge, who will remain assigned to their parent unit. AR 27-10, para 5-31.

c. Administrative Transfer. Personnel accountability for post-trial Soldiers on excess leave will be administratively transferred immediately after trial from their unit to the PCF of the nearest confinement facility, or elsewhere based on direction from Commander, Human Resources Command, or his delegee. See U.S. DEP'T OF ARMY, AR 190-47, The Army Corrections System (15 June 2006) [hereinafter AR 190-47] and U.S. DEP'T OF ARMY, AR 600-62, United States Army Personnel Control Facilities and Procedures for Administering Assigned and Attached Personnel (17 November 2004) [hereinafter AR 600-62]. Such administrative transfer of personnel accountability will not affect the authority of the convening authority that referred the case to trial to take Action on the findings and sentence. All documents reflecting a change in the Soldier's duty status or unit assignment, including voluntary/involuntary excess leave documents, will be included with the allied papers in the record of trial. AR 27-10, para 5-31.

d. Appellate Review. If the record of trial has been previously forwarded for appellate review, any new documents reflecting a change in duty status or unit assignment, including voluntary or involuntary excess leave documents, will be mailed promptly to Clerk of Court, ATTN: JALS-CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060. AR 27-10, para 5-31.

1-8. Leave or transfer pending appellate review.

a. No confinement. An accused who is under sentence of dismissal or punitive discharge, approved by the convening authority and unsuspended, and who is not serving a sentence to confinement, may voluntarily or involuntarily take leave if authorized by the officer exercising GCM jurisdiction, including excess leave, until there is a final judgment in the case. See U.S. DEP'T OF ARMY, AR 600-8-10, Leaves and Passes (15 February 2006) [hereinafter AR 600-8-10]. The accused on excess leave should be administratively transferred to the nearest PCF immediately after Action is taken by the convening authority.

b. Administrative reassignment. Once excess leave has been approved by the GCM Convening Authority, the accused must be administratively reassigned to the appropriate PCF. The accused will outprocess from his or her unit, and all records turned in to the appropriate transfer office. The accused then will depart his or her unit and proceed to his or her selected home address.

c. Forward records. The personnel transfer office will forward the accused's records, regular and/or excess leave documents, etc., to the PCF to which the accused is now assigned. Upon completion of the appellate process, the PCF prepares all documentation required to discharge the accused from the U.S. Army, including providing the accused a copy of his or her DD Form 214 and retire appropriate military records to the Army Records retirement office located in Saint Louis, Missouri. All accused personnel must be contacted while on excess leave to complete various legal and financial documents and to confer with their appellate defense counsels. The accused's address and phone number are essential to enabling various offices to contact the accused.

d. Notify Clerk of Court. The GCM authority will ensure that the Clerk of Court, ATTN: JALS-CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060 is expeditiously furnished copies of all transfer orders and excess leave orders, or a copy of U.S. DEP'T OF ARMY, DA Form 31, Request and Authority For Leave (September 1993) [hereinafter DA Form 31], when an accused has been transferred from his or her jurisdiction or is placed on excess leave. AR 27-10, para 13-11(b).

e. Advising accused of responsibility. The accused must give notice of any change in the leave address shown on the DA Form 31. Otherwise, the address on the form will be the "address provided by the accused," to which a copy of the ACCA decision and advice as to any further appellate rights will be sent in compliance with R.C.M. 1203(d) and AR 27-10, para 13-9. One way to convey this message is to supplement the accused's copy of DA Form 31. If the GCM trial jurisdiction or any other staff judge advocate office receives an accused's change of address, this must be passed to the Clerk of Court.

f. Administration of excess leave. For further information about matters pertaining to excess leave, consult AR 600-8-10, paragraphs 5-15 to 5-22, and Joint Federal Travel Regulations, volume 1, paragraph U7506.

1-9. Court-martial cases interrupted or terminated before findings.

a. Enlisted. Discharge “in lieu of trial by court-martial.” U.S. DEP’T ARMY, AR 635-200, Active Duty Enlisted Administrative Separations, Chapter 10 (27 April 2010) [hereinafter AR 635-200]. When the GCM convening authority/approval authority receives the accused’s request for an administrative discharge “in lieu of trial by court-martial”, under provision AR 635-200, Chapter 10, while a trial is pending or ongoing, the convening authority must decide whether or not to abate the proceedings. AR 635-200, para 10-1(b). In other words, a Chapter 10 discharge is not always “in lieu of trial” as its name would suggest. An enlisted Soldier (but not officer) may receive approved findings and sentence by a court-martial, or a discharge under the provisions of AR 635-200, Chapter 10, or a combination of both.

b. Officer. Resignation for the Good of the Service in Lieu of General Court-Martial (RFGOS).

1. Unlike the procedure for Enlisted personnel, the proceedings are not suspended when an officer submits his or her Resignation for the Good of the Service. Furthermore, a convening authority shall not take Action on the finding and sentence in such cases until the Secretary of the Army or designee has acted on the RFGOS.

2. If the court-martial is completed before the Action on the RFGOS, the SJA will immediately notify the Commander, US Army Human Resources Command, of the court-martial findings and sentence. If the RFGOS is approved, the officer will be immediately released from confinement, whether pretrial or post-trial.

3. If the RFGOS is approved and the approving authority makes clear his/her specific intent to vacate the entire court-martial proceedings, the convening authority will then disapprove the sentence and dismiss all charges and specifications. See Figure 1-7 for the normal Action/promulgating order in a case where a resignation is approved; AR 27-10, para 5-18.

c. Documents. Documents to be included in the record when a request for an administrative discharge or RFGOS is submitted. Records of trial must include a copy of the accused’s application for discharge or resignation along with any enclosures to the request, recommendations by the accused’s chain of command, if any, and the decision of the individual authorized to either approve or disapprove the request.

d. Trial halted. Normally, if the decision is to stop the proceedings, the convening authority will withdraw and dismiss the charges and specifications. A summarized record of trial will be prepared, and if the proceedings were before a GCM, the original record of trial will be forwarded to the Clerk of Court. The promulgating order must state the date on which the proceedings were terminated (date of last session of trial) and should direct that all rights, privileges, and property of

which the accused may have been deprived by virtue of the proceedings be restored. See Figure 1-7 for a Sample Action/Promulgating for a court-martial terminated prior to findings due to approval of a Chapter 10 discharge.

e. Trial to continue. If the trial is permitted to proceed to sentencing or the application for discharge is not approved until after a sentence has been adjudged, the convening authority must take Action as to the findings and sentence as in any other case.

1. If the trial is permitted to proceed to sentencing or the application for discharge is not approved until after a sentence has been adjudged, the convening authority may disapprove the findings and sentence and approve the application for discharge. If the decision is to disapprove the findings and sentence, the charges and specifications will be dismissed. AR 635-200, para 10-1. A record of trial will be prepared and the request for discharge in lieu of court-martial, attached documents and convening authority's decision on the request will be included in the record. If the trial was by a GCM, the original record of trial will be sent to the Clerk of Court. See Figure 1-7 at the end of this chapter.

2. If the trial is permitted to proceed to sentencing or the application for discharge is not approved until after a sentence has been adjudged, the convening authority may approve the findings and sentence. However, the convening authority cannot approve a punitive discharge, nor may he or she approve any confinement after the date the Action on the request for approval of administrative discharge is taken. AR 635-200, Chapter 10. See Figure 1-8 herein. A record of trial will be prepared and the request for discharge in lieu of court-martial, attached documents and convening authority's decision on the request will be included in the record. If the trial was by a GCM, the original record will be sent to the Clerk of Court.

f. Proceedings interrupted by mistrial. A military judge may declare a mistrial as to some or all specifications, or as to the entire proceedings or only as to the sentencing portion of the trial. R.C.M. 915(a).

1. Impact. Declaring a mistrial as to some or all specifications or the entire proceedings has the effect of withdrawing the affected charges from the court-martial and returning them to the convening authority for disposition. R.C.M. 915(c).

2. Further proceedings. Whether further proceedings can be had on the affected charges often presents counsel and the judge with a difficult legal question. See R.C.M. 915(c)(2). What is to be done with the record of trial depends upon whether the withdrawn charges will be referred anew to another court-martial or whether the instant trial will proceed on any unaffected charges.

(i) If there are to be no further proceedings of any kind, prepare the record of trial in the same way as for a case in which all charges were withdrawn before findings or in which an acquittal of all charges resulted and forward the GCM record to the Clerk of Court. See para 1-9d, of this volume, above.

(ii) If the trial is to proceed on charges unaffected by the mistrial and there will be no further proceedings as to the affected charges, continue to administratively process the case in

the same way as any other case in which some charges are withdrawn or dismissed during the trial.

(iii) If the trial is to proceed on the unaffected charges, but the charges as to which a mistrial was declared are to be referred anew for trial, continue normal processing as in (ii), above. However, make a record as in (i), above, for attachment to the new proceedings as a record of prior proceedings on the same charges (R.C.M. 1103(b)(3)(A)(iii)), and send a copy of that record to the Clerk of Court.

g. Proceedings interrupted by government appeal. The trial counsel of a GCM or BCDSPCM may appeal certain orders or rulings of the military judge under the conditions specified in R.C.M. 908(a), Appeal by the United States. Prior to filing a petition for extraordinary relief with the USACCA or the USCAAF on behalf of the United States, coordination must be made with the Chief, Government Appellate Division (GAD).

1. Notice of appeal. The trial counsel's written Notice of Appeal, R.C.M. 908(b)(3), is an important document. See Figure 1-9 for a sample of a trial counsel's written Notice of Appeal. A Certificate of Service must be prepared to show the date the judge's order or ruling was received and the date on which the Notice of Appeal was served on the military judge. See Figure 1-10. Thereafter, time is of the essence, for there are strict time limits within which an appeal can be filed with the Court of Criminal Appeals. Joint CCA Rule 21(d), reprinted in 44 MJ or found online at <http://www.armfor.uscourts.gov/newcaaf/rules.htm>.

2. Preparing the record and notifying the Government Appellate Division. A verbatim record and three copies of the proceedings to the point at which the government appeal interrupted the proceedings, "complete to the extent necessary to resolve the issues appealed," must be prepared and authenticated. R.C.M. 908(b)(5); AR 27-10, para 13-3c. A total record of trial with accompanying papers is not necessarily required, but is recommended. The original and two copies of the relevant proceedings are then sent, together with copies of the Notice of Appeal and Certificate of Service, to the Chief, Government Appellate Division, within 20 days from the date written notice of appeal is filed with the trial court. Figure 1-9; AR 27-10, para 12-3c.

3. Appeal record retained by Clerk of Court. When compiling the record for appeal bear in mind that if the appeal is filed with the U. S. Army Court of Criminal Appeals (ACCA), the original copy of the proceedings will not be returned to the jurisdiction. Instead, it is retained as part of the permanent record of the appeal and for use in the U.S. Court of Appeals for the Armed Forces (CAAF) if the accused files a petition for grant of review or if The Judge Advocate General files a Certificate for Review.

4. Notifying the accused; certificate required. When the ACCA has decided the appeal, the trial counsel must promptly notify the accused of the decision. R.C.M. 908(c)(3). If the decision is adverse to the accused, trial counsel must also notify accused the right to petition the CAAF. R.C.M. 908(c)(3). The trial counsel must then immediately certify that this notice was given. AR 27-10, para 12-3d. See Figure 1-11 at the end of this chapter for an example of the certification. The trial counsel's certificate must be sent to the Clerk of Court by fax or scanned

document that bears the trial counsel's signature.

1-10. Avoiding delay in preparing a Record of Trial in cases interrupted or terminated before findings. Some GCM jurisdictions have exhibited a tendency to defer preparing the record of trial, Action, and promulgating order in these cases as well as in cases involving acquittals. Even though there will be no appellate review, delay should be avoided. Too often, memories dim and documents are lost, making the task more difficult later. If you are uncertain how to prepare the record, it is better to ask for advice than to delay the inevitable.

DEPARTMENT OF THE ARMY REPORT OF RESULT OF TRIAL

For use of this form, see AR 27-10; the proponent agency is OTJAG.

TO: _____

1. Notification under R.C.M. 1101 and AR 27-10, paragraph 5-30 is hereby given in the case of the United States v _____

2. Trial by _____ court-martial on _____, _____ at _____

convened by: CMCO Number _____ HQ, _____

3. Summary of offenses, pleas, and findings:

CH	ART UCMJ	SPEC	BRIEF DESCRIPTION OF OFFENSE(S)	PLEA	FINDING
----	----------	------	---------------------------------	------	---------

4. SENTENCE:

5. Date sentence adjudged and effective date of any forfeiture or reduction in grade (YYYYMMDD): _____
(See UCMJ Articles 57-58b and R.C.M. 1101.)

6. Contents of pretrial agreement concerning sentence, if any:

7. Number of days of presentence confinement, if any:

8. Number of days of judge-ordered administrative credit for presentence confinement or restriction found tantamount to confinement, if any:

9. Total presentence confinement credit toward post-trial confinement:

10. Name(s) and SSN(s) of companion accused or co-accused, if any:

11. DNA processing is is not required.

12. Conviction(s) does does not require sex offender registration.

CF:

TYPED NAME	SIGNATURE
RANK	BRANCH OF SERVICE

Figure 1-1 DA Form 4430 Result of Trial

CONFINEMENT ORDER				
1. PERSON TO BE CONFINED			2. DATE (YYYYMMDD)	
a. NAME (Last, First, Middle)		b. SSN		
c. BRANCH OF SERVICE	d. GRADE	e. MILITARY ORGANIZATION (From):		
TYPE OF CONFINEMENT				
3.a. PRE-TRIAL <input type="checkbox"/> NO <input type="checkbox"/> YES		b. RESULT OF NJP <input type="checkbox"/> NO <input type="checkbox"/> YES		
c. RESULT OF COURT MARTIAL: <input type="checkbox"/> NO <input type="checkbox"/> YES				
TYPE: <input type="checkbox"/> SCM <input type="checkbox"/> SPCM <input type="checkbox"/> GCM <input type="checkbox"/> VACATED SUSPENSION				
d. DNA PROCESSING <input type="checkbox"/> IS <input type="checkbox"/> IS NOT REQUIRED UNDER 10 U.S.C. 1565.				
4. OFFENSES/CHARGES OF UCMJ ARTICLES VIOLATED:				
5. SENTENCE ADJUDGED:			b. ADJUDGED DATE (YYYYMMDD):	
6. IF THE SENTENCE IS DEFERRED, THE DATE DEFERMENT IS TERMINATED:				
7. PERSON DIRECTING CONFINEMENT				
a. TYPED NAME, GRADE AND TITLE:		b. SIGNATURE		c. DATE (YYYYMMDD)
d. TIME				
8.a. NAME, GRADE, TITLE OF LEGAL REVIEW AND APPROVAL			b. SIGNATURE:	
			c. DATE (YYYYMMDD)	
MEDICAL CERTIFICATE				
9a. The above named inmate was examined by me at _____ on _____ and found to be <input type="checkbox"/> Fit <input type="checkbox"/> Unfit <small>(Time) (YYYYMMDD)</small> for confinement. I certify that from this examination the execution of the foregoing sentence to confinement <input type="checkbox"/> will <input type="checkbox"/> will not produce serious injury to the inmate's health.				
b. The following irregularities were noted during the examination (If none, so state):				
c. HIV Test administered on (YYYYMMDD): _____				
d. Pregnancy test administered on (YYYYMMDD): _____ <input type="checkbox"/> N/A				
10. EXAMINER				
a. TYPED NAME, GRADE AND TITLE:		b. SIGNATURE		c. DATE (YYYYMMDD)
				d. TIME
RECEIPT FOR INMATE				
11.a. THE INMATE NAMED ABOVE HAS BEEN RECEIVED FOR CONFINEMENT AT: _____ <small>(Facility Name and Location)</small> ON _____ AND TIME: _____ <small>(YYYYMMDD) (Time)</small>				
b. PERSON RECEIPTING FOR INMATE TYPED NAME, GRADE AND TITLE:		c. SIGNATURE:		d. DATE (YYYYMMDD)
				e. TIME

DD FORM 2707, SEP 2005

PREVIOUS EDITION IS OBSOLETE.

Reset

Adobe Professional 7.0

Figure 1-2 Confinement Order

ACKNOWLEDGMENT OF SEX OFFENDER REGISTRATION REQUIREMENTS

For use of this form, see AR 27-10; the proponent agency is OTJAG.

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: Public Law 105-119, section 115(a)(8); 10 U.S.C. Section 951 (note); Department of Defense Instruction 1325.7; Army Regulation 27-10, Chapter 24.

PRINCIPAL PURPOSE: To notify a military sexual offender of the requirement to register with state and military authorities as a sex offender and to record the military sexual offender's acknowledgment of receiving notice of and information pertaining to the requirement. To obtain a military sexual offender's current and future expected place of residence.

ROUTINE USES: To the chain of command, Office of the Provost Marshal, Office of the Staff Judge Advocate, Office of the Judge Advocate General, United States Army Crime Records Center, Performance Fiche of the Official Military Personnel File, unit file, allied papers of the record of trial, state and local law enforcement authorities and upon request to foreign officials for purposes of notification that a sex offender will be residing in a local or military community and to military, State and local officials for purposes of registering the individual as a sex offender. Other military actions based upon the underlying conviction such as being barred from the installation, barred from living in military housing, or other restrictions where warranted may be taken.

DISCLOSURE: Failure to register and keep such registration current shall be subject to criminal penalties in any state in which the person has so failed to register. Failure to register with the Provost Marshal 5 days before reporting to a new duty assignment or upon change of address is subject to punishment for violation of Uniform Code of Military Justice Article 92, and to other administrative penalties.

I, _____, U.S. Army, _____ was
(Full Name-Last, First, Middle) (Social Security Number)

convicted and sentenced for the commission of a sexual offense sexual offenses an offense involving a minor.

I certify that I will reside at the following address: *(Include Street, Apartment Number, City, State, and ZIP Code)*

I hereby acknowledge that while on active duty I am required by a punitive regulation (*AR 27-10, Chapter 24*) and Uniform Code of Military Justice (*UCMJ*) Article 92 to register as described with the Provost Marshal, state, and local officials. I was informed that I am subject to registration requirements as a sex offender in any state or U.S. territory in which I will reside, be employed, carry on a vocation, or be a student and with the Provost Marshal wherever I am assigned and if I live or work on an Army installation. The Provost marshal and chief local law enforcement officer of the jurisdiction in which I will reside is being provided written notice of the date of my arrival in the jurisdiction, the offenses of which I was convicted, and that I am subject to a registration requirement as a sex offender. A similar notice will also be submitted to state law enforcement and sex offender officials, and to foreign officials upon request. I understand that I must contact the Provost Marshal and state office that follows to ensure that state offender registration requirements are met: *(Provost Marshal will provide the specific address of the state offender registration official.)* I acknowledge that I was informed that every change in my address must be reported in the manner provided by State Law and to the Provost Marshal at least 5 calendar days before reporting to a new duty assignment and after I am discharged from the service. I also acknowledge being informed that if I move to another state or Army installation that I must report the change in address to the responsible agency in the state I am leaving and comply with registration requirements in the new state of residence and inform the appropriate Provost Marshal of my status. I understand that failure to register or change or update such registration as required under a state sex offender registration program, and as indicated on this acknowledgment, may subject me to criminal prosecution under state law and under UCMJ Article 92 for failure to obey a lawful punitive regulation which requires me to register with the Provost Marshal 5 calendar days before reporting to my next assignment. If I remain on active duty after my conviction, I understand I must register with the Provost Marshal at my assigned military installation or any installation to which I am assigned by permanent change of station orders after signing in. I understand that failure to register with the Provost Marshal may subject me to criminal prosecution under UCMJ Article 92 for failure to obey a lawful punitive regulation, which requires me to register within 5 calendar days after signing in at my next installation.

Signed on this _____ day of _____, _____
(Day) (Month) (Year)

Witness: _____ Accused: _____
(Signed Name) (Signed Name)

(Printed Name and Rank) (Printed Name and Rank)

Figure 1-3 DA Form 7439, Acknowledgement of Sex Offender Registration Requirements

DEPARTMENT OF THE ARMY
Headquarters, III Corps and Fort Hood
Fort Hood, Texas 76544-5056

GENERAL COURT-MARTIAL ORDER
NUMBER 19

12 October 2010

Second Lieutenant Tammy B. Adams, 000-00-0000, U.S. Army, 401st Military Police Company, 720th Military Police Battalion, III Corps and Fort Hood, Fort Hood, Texas 76544, was arraigned at Fort Hood, Texas, on the following offenses at a general Court-martial convened by the Commander, III Corps and Fort Hood.

Charge I: Article 81. Plea: Not Guilty. Findings: Not Guilty.

Specification: On or about 6 July 2009, did, conspire with 1LT David D. Horel, SSG Greg L. Woods and SGT Charlie Adams, to obstruct justice by soliciting a Harker Heights Police Officer, Officer Tom Jones to provide a false statement. Plea: Not Guilty. Finding: Not Guilty.

Charge II: Article 134. Plea: Not Guilty. Findings: Guilty.

Specification 1: On or about 12 July 2009, did, wrongfully endeavor to impede an investigation into the unlawful apprehension and detention of SPC Fred O'Neil, by soliciting a false statement concerning her whereabouts on or about 5 July 2008. Plea: Not Guilty. Finding: Guilty.

Specification 2: On or about 22 July 2009, did, wrongfully subscribe a false statement in substance as follows: that she was not present at Wild Country on 5 July 2008 and that she was not sure why SPC Fred O'Neil was brought to the military police station on 6 July 2008, which statement she did not then believe to be true. Plea: Not Guilty. Finding: Guilty.

Specification 3: On or about 22 July 2009, did, wrongfully endeavor to impede an investigation into the apprehension and detention of SPC Fred O'Neil, by testifying falsely to CPT Russell Connor, an 15-6 Investigating Officer, concerning a phone call from a friend in reference to a harassment that occurred at Wild Country on 5 July 2008, and her absence of knowledge of why SPC Fred O'Neil was brought to the military police station on 6 July 2008. Plea: Not Guilty. Finding: Not Guilty.

Figure 1-5 Sample Initial GCM Promulgating Order when an Officer is found guilty, sentence is adjudged and then a request for resignation approved.

Charge III: Article 107. Plea: Not Guilty. Findings: Not Guilty.

Specification: On or about 6 July 2009, did, while serving as the military police duty officer, with intent to deceive make to CPT Paul Reining, official statements, to wit: that she had not been at the Wild Country parking lot in 5 July 2008 and had been on duty; and that she had no contact with SPC Fred O'Neil what so ever, which statements were totally false, and then known by 2LT Tammy B. Adams to be so false. Plea: Not Guilty. Finding: Not Guilty.

SENTENCE

Sentence adjudged on 12 March 2010: To be reprimanded, to forfeit \$500.00 pay per month for six months, and to be confined for three months.

ACTION

The findings of guilty and the sentence are disapproved. The charges and Specifications are dismissed. The accused's voluntary request for resignation from the Army for the Good of the Service under the provisions of Army Regulation 600-8-24, chapter 3, paragraph 3-13, was approved on 22 September 2010, by the Deputy Assistant Secretary of the Army (Army Review Boards) for the issuance of a discharge under other than honorable conditions. All rights, privileges, and property of which the accused has been deprived by virtue of the proceedings are ordered restored.

BY COMMAND OF LIEUTENANT GENERAL SMITH:

THOMAS B. FIX
MAJ, JA
Chief, Military Justice

DISTRIBUTION:
[See AR 27-10, para 11-7]

Figure 1-5, cont'd - Sample Initial GCM Promulgating Order when an Officer is found guilty, sentence is adjudged and then a request for resignation approved.

DEPARTMENT OF THE ARMY
Headquarters, 20th Infantry Division
Fort Blank, Missouri 63889

GENERAL COURT-MARTIAL ORDER
NUMBER [No.]

[Date]

[Grade, Name, SSN], US Army, 20th Aviation Company, Fort Blank, Missouri, was arraigned at Fort Blank, Missouri, on the following offenses at a general Court-martial convened by Commander, 20th Infantry Division.

Charge. Article 134. Plea: [Not Guilty] or [None Entered]. Finding: [Dismissed] or [None Required].

Specification: On 19 November 2008, committed an indecent act upon the body of J.L.R., a female under 16 years of age. Plea: [Not Guilty] or [None Entered]. Finding: Dismissed.

ACTION

The accused having been arraigned, the proceedings were terminated on 26 January 2011. The accused's request for discharge pursuant to the provisions of Chapter 10, Army Regulation 635-200, was approved on 15 February 2011, for issuance of a discharge under other than honorable conditions. The Charge and Specification are dismissed. All rights, privileges, and property of which the accused has been deprived by virtue of these proceedings will be restored.

BY COMMAND OF [GRADE AND SURNAME]:

DISTRIBUTION
[See AR 27-10, para 11-7]

[SIGNATURE BLOCK]

Figure 1-6 Sample Promulgating Order – Administrative Discharge prior to findings being announced.

DEPARTMENT OF THE ARMY
Headquarters, 20th Infantry Division
Fort Blank, Missouri 63889

GENERAL COURT-MARTIAL ORDER
NUMBER [No.]

[Date]

[Grade, Name, SSN], US Army, 20th Aviation Company, Fort Blank, Missouri, was arraigned at Fort Blank, Missouri, on the following offenses at a General Court-Martial convened by Commander, 20th Infantry Division.

Charge I. Article 86. Plea: Not Guilty. Finding: Guilty.

Specification: On or about 9 July 2010, without authority, absent himself from his unit and did remain so absent until on or about 15 August 2008. Plea: Not Guilty. Finding: Guilty.

Charge II. Article 91. Plea: Guilty. Finding: Guilty.

Specification: On or about 6 July 2010 willfully disobey a noncommissioned officer by failing to report to the motor pool. Plea: Not guilty. Finding: Guilty.

SENTENCE

Sentence adjudged on 5 October 2010: To be reduced to the grade of Private E1, to be confined for six months, to forfeit all pay and allowances for six months, and to be discharged from the service with a bad-conduct discharge.

ACTION

The findings of guilty and the sentence are disapproved. The accused's request for discharge pursuant to the provisions of Chapter 10, Army Regulation 635-200, were approved on 20 October 2010, for the issuance of a discharge under other than honorable conditions. The charges and specifications are dismissed. All rights, privileges, and property of which the accused has been deprived by virtue of these proceedings are hereby ordered restored.

BY COMMAND OF [GRADE AND SURNAME]:

DISTRIBUTION:
[See AR 27-10, para 11-7]

[SIGNATURE BLOCK]

Figure 1-7 Sample Initial GCM Promulgating Order when both the Findings of Guilty and Sentence are disapproved and an Administrative Discharge is approved.

DEPARTMENT OF THE ARMY
Headquarters, 20th Infantry Division
Fort Blank, Missouri 63889

GENERAL COURT-MARTIAL ORDER
NUMBER [No.]

[Date]

[Grade, Name, SSN], US Army, 20th Aviation Company, Fort Blank, Missouri, was arraigned at Fort Blank, Missouri, on the following offense at a General Court-Martial convened by Commander, 20th Infantry Division.

Charge. Article 134. Plea: Not Guilty. Finding: Guilty.

Specification: On 19 July 2010, committed an indecent act upon the body of J.L.R., a female under 16 years of age. Plea: Not Guilty. Finding: Guilty.

SENTENCE

Sentence adjudged on 19 October 2010: To be reduced to the grade of Private E-1, to be confined for six months, to forfeit all pay and allowances for six months, and to be discharged from the service with a bad-conduct discharge.

ACTION

The findings of guilty are approved. Only so much of the sentence as provides for reduction to the grade of Private E1, confinement for eighty-two days, and forfeiture of all pay and allowances for eighty-two days is approved and ordered executed. The accused's request for discharge pursuant to the provisions of Chapter 10, Army Regulation 635-200, was approved on this date for the issuance of a discharge under other than honorable conditions. The record of trial is forwarded pursuant to Article 69(a), UCMJ.

BY COMMAND OF [GRADE AND SURNAME]:

DISTRIBUTION:
[See AR 27-10, para 11-7]

[SIGNATURE BLOCK]

Figure 1-8 Sample Initial GCM Promulgating Order when both Findings of Guilty and a portion of the adjudged sentence and Administrative Discharge are approved.

UNITED STATES)
)
 v.)
)
 PFC ROBERT W. ROE, 000-00-000)
 United States Army)
)

FORT BLANK, MISSOURI

NOTICE OF
GOVERNMENT APPEAL
R.C.M. 908(b)(3)

23 November 2010

1. In accordance with R.C.M. 908, the prosecution hereby notifies the military judge that the Government intends to appeal the court's ruling made at 1145 hours, 22 November 2010, suppressing the statement made by the accused on 19 August 2010.

2. The evidence excluded is a confession by the accused that he fondled the victim by force and without the consent of the victim. The evidence suppressed affects Specification 2 of Charge I. I certify this evidence is substantial proof of a material fact in the proceedings; specifically, it is material to whether the victim consented to the charged assault and to whether the accused's statements concerning the event are false.

3. I further certify that this appeal is not taken for the purpose of delay.

[TRIAL COUNSEL'S
SIGNATURE BLOCK]

CF:
Defense Counsel
Staff Judge Advocate

Figure 1-9 Sample Notice of Government Appeal.

UNITED STATES

v.

PFC ROBERT W. ROE, 000-00-000
United States Army

)
)
)
)
)
)

CERTIFICATE OF SERVICE
R.C.M. 908 (b) (3)

I certify that a copy of the Notice of Government Appeal or the ruling made at 1145 hours, 22 November 2010, in the above-named case was delivered to [Grade and Name], Military Judge at 1500 hours, on 23 November 2010.

[TRIAL COUNSEL'S
SIGNATURE BLOCK]

Figure 1-10 Sample Certificate of Service of Notice of Government Appeal.

UNITED STATES)
)
 v.)
)
 PFC ROBERT W. ROE, 000-00-000)
 United States Army)

CERTIFICATE OF SERVICE
OF USACCA DECISION
IAW R.C.M. 908 (b) (3)

I certify that on the 6th day of January 2010, I served a copy of the decision of the United States Army Court of Criminal Appeals on the accused in the case of United States v. PFC Robert W. Roe, ARMY MISC 20080795. At the time of service, the accused was advised of his right to petition the U.S. Court of Appeals for the Armed Forces within sixty days from that date. PFC Roe was provided five copies of the form for Petition for Grant of Review by the U.S. Court of Appeals for the Armed Forces, 450 E Street, NW, Washington, DC 20442-0001.

[SIGNATURE BLOCK]

CF:
Defense Counsel
Military Judge

Figure 1-11 Sample Certificate of Serving Adverse USACCA Decision on the Accused in the Government Appeal Case.

CHAPTER 2

RECORD OF TRIAL DOCUMENTS REQUIRED BY R.C.M. 1103 and AR 27-10

Chapter 2 outlines the documents that form the Record of Trial (ROT).

2-1. Requirement for Record of Trial. Each general, special, and summary court-martial shall keep a separate copy of the record of the proceedings in each case brought before it. R.C.M. 1103(a). A record of trial will be prepared whenever an accused has been arraigned on court-martial charges. See Figure 2-1 at the end of this chapter.

2-2. The “original” record of trial defined. The original copy of the record is, by definition, the copy examined and authenticated by the military judge(s) and containing the originally-signed authentication(s) by the military judge(s) or, when permitted by reason of emergency, authentication signed by the trial counsel, a member of the court, or the court reporter.

2-3. Original Documents Required. The Record of Trial requires a number of original documents. See R.C.M. 1103(b)(2)(D), R.C.M. 1103(b)(3), MCM App. 14, and AR 27-10, para 5-41, and Figure 2-1 herein.

1. a record of advice provided to an accused by his or her trial defense counsel which explains to the accused his/her rights to appellate review that apply to the case. The Appellate Rights Statement provided by defense counsel and submitted to the court will meet this requirement. Note that this is document is also required for AR 27-10, para 5-41. See paragraph 2-6.

2. the original signed Article 32 Investigating Officer’s Report, U.S. DEP’T OF DEF., DD Form 457, (August 1984) [hereinafter DD Form 457] and MCM, App. 5, if any;

3. the SJA’s original signed pretrial advice, if any, to the convening authority;

4. the original Charge Sheet(s). See DEP’T OF DEF., DD Form 458, Charge Sheet (May 2000) [hereinafter DD Form 458 or Charge Sheet] and AR 27-10, para 5-37f(4). Note that the original charge sheet or a duplicate must be in the authenticated portion of the record. R.C.M. 1103(b)(2)(D). This means either at the place reflecting arraignment (preferably) or as an appellate exhibit. If, upon appellate review, the charges and specifications, affidavit, and referral are not found in the authenticated portion of the record, a Certificate of Correction separately authenticating the charge sheet will be required. United States v. Newell, 22 MJ 90 (C.M.A. 1986) (order).

5. the original authentication page signed by the military judge(s);

6. the SJA’s original signed post-trial recommendation (also called “SJAR”) to the convening authority with any enclosures and addenda or supplements, with all matters submitted to the convening authority and proof of service to defense counsel in accordance with R.C.M. 1106(f)(1); See paragraphs 2-19, 2-20, and 2-21 of this volume.

7. all original matters submitted by the accused and his counsel to the convening authority under the provisions of R.C.M. 1105. Documents submitted by the accused and his counsel that are not original documents also must be included in the record of trial;

8. the original signed Action by the convening authority. Be sure to include any previous Action that was corrected or withdrawn and any action that was made on a deferment request, if applicable; See Chapter 5, The Convening Authority's Initial Action, herein.

9. the request, if any, for trial by military judge alone, or that the membership of the court-martial include enlisted persons, and when applicable, any statement by the convening authority required under R.C.M. 201(f)(2)(B)(ii) or 503(a)(2) (rules referencing qualifications and detailing of military judge, counsel, and members);

10. exhibits, or, with the permission of the military judge, copies, photographs, or descriptions of any exhibits which were received in evidence and any appellate exhibits.

2-4. Additional documents required. A record that is required to be complete must also include the other matters prescribed by R.C.M. 1103(b)(2)(C),(D), R.C.M. 1103(b)(3), and AR 27-10, para 5-41 of which the original copies, when available, should be placed in the original record. See Paragraph 2-6, below and Figure 2-1. The following is a list of documents required to be attached to the record of trial as matters when they are not used as an exhibit. R.C.M. 1103(b)(D)(3):

1. the charge sheet or duplicate;
2. a copy of the convening order and any amending order(s);
3. the forum request (military judge (MJ) or panel);
4. the original dated, signed action by the convening authority;
5. exhibits or copies (MJ permitting) of any exhibits received in evidence and any appellate exhibit;
6. the report of investigation under Article 32, if any;
7. the staff judge advocate's pretrial advice under Article 34, if any;
8. if the trial was a rehearing or new or other trial of the case, the record of the former hearings(s);
9. written special findings, if any, by the military judge;
10. exhibits or, with the permission of the military judge, copies, photographs, or descriptions of any exhibits which were marked for and referred to on the record but not received in evidence;

11. any matter filed by the accused under R.C.M. 1105, or any written waiver of the right to submit such matter;
12. any deferment request and the action on it;
13. any explanation for any substitute authentication under R.C.M. 1104(a)(2)(B);
14. explanation for any failure to serve the record of trial on the accused under R.C.M. 1104(b) and AR 27-10, para 5-45.
15. the post-trial recommendation of the staff judge advocate or legal officer and proof of service on defense counsel in accordance with R.C.M. 1106(f)(1);
16. any response by defense counsel to the post-trial review;
17. recommendations and other papers relative to clemency;
18. any statement why it is impracticable for the convening authority to act;
19. conditions of suspension, if any, and proof of service on probationer under R.C.M. 1108;
20. any waiver or withdrawal of appellate review under R.C.M. 1110; and
21. records of any proceedings in connection with vacation of suspension under R.C.M. 1109.

2-5. When original document is missing. If the original copy of any of the above documents is missing, its absence must be explained in the accompanying papers and a certified true copy or a signed duplicate original provided. See Figure 2-1 herein.

2-6. Contents required by AR 27-10, para 5-41. Additional documents may be required if applicable to the case. AR 27-10, para 5-41 requires:

a. Front Cover of Record of Trial. The front cover of a record of trial must identify the type of court-martial and whether the record is verbatim or summarized. The cover must identify the accused and the convening authority who convened the trial and clearly state which copy it is, e.g., Original, Copy One, Copy Two, SJA's Copy, or Clemency Copy (a clemency copy is sent to the Army Clemency and Parole Board in all cases which the convening authority approves confinement for 12 months or more.) See AR 27-10, para 5-46 for clemency copy distribution requirements.

b. More than one volume. If the record of trial consists of more than one volume, the volume number and the total volumes which make up the record of trial must also be typed on the front cover, e.g., Volume 1 of 3 Volumes. If there are companion cases to the court-martial, the front cover must include the rank, name and SSN of each accused in each companion case. In addition, the trial counsel will identify any prosecution witness or victim known to have been tried for any

offense by court-martial subject to review pursuant to Article 66 on the cover of each original record of trial forwarded for review under Article 66 so that potential conflicts of interest to assignment of appellate defense counsel can be avoided. AR 27-10, paras 5-41 and 12-6. See Figures 2-2 and 2-3 herein for samples.

c. Chronology Sheet. A chronology sheet must be prepared for every record of trial regardless of the outcome of the trial in accordance with AR 27-10, para 5-41. See Figure 2-4 herein. The chronology sheet on U.S. DEP'T OF DEF., DD Form 490, Record of Trial (May 2000) [hereinafter DD Form 490] and U.S. DEP'T OF DEF., DD Form 491, Summarized Record of Trial (May 2000) [hereinafter DD Form 491] must contain:

1. A computation of the elapsed days of the court-martial beginning with the date the accused was placed under restraint by military authority or the date charges were preferred, whichever is earlier. The computation of elapsed days on the chronology sheet must be calculated in a uniform manner. AR 27-10, para 5-41. For items 2-5 on the DD 490, disregard additional charges and use the dates applicable to the earliest charges brought to trial.

2. The number of days from the initiation of the investigation of the most serious arraigned offense to the date of arraignment must be placed in the remarks section of the either the DD Form 490 or 491. No delays may be deducted, but an explanation for significant delays, such as additional offenses, sanity board, and so forth may be discussed in the remarks section. AR 27-10, para 5-41b(1).

3. Specific explanations for all delays listed in block Number 6 noted in the Remarks section. Those delays entitled, "delay at request of defense," should be interpreted to mean only those delays that would be defense delays on speedy trial motions or those approved by the convening authority, military judge, or the staff judge advocate in writing or on the record. AR 27-10, para 5-41b(2). Additionally, note on item 6: Pretrial defense delays should be documented in the record. As for the location, see item 13, DD Form 490, Inside of Back Cover.

4. Item 8: Must reflect the date on which an authenticated record became available to the office of the staff judge advocate, who is the convening authority's agent for taking the steps leading ultimately to the convening authority's Action. This usually is only a few days after authentication, and is not the date the SJA may have later carried the record to the convening authority in person to discuss the proposed Action.

5. A statement showing the confinement facility, PCF, or other command to which the accused has been transferred or whether the accused remains assigned to the unit indicated in the initial promulgating order shall be recorded in the Remarks section. AR 27-10, para 5-41c.

d. Transfer Orders, DA 31 (Request for Leave) and supporting documents. Any orders transferring the accused to a confinement facility or paperwork pertaining to excess/appellate leave and the approval thereof must be contained in the record of trial. AR 27-10, para 12-11a.

e. DA Form 4430 and all documents pertaining to confinement credit. This includes, but is not limited to a copy of the commander's checklist for pretrial confinement, DA Form 5112 (Checklist for Pretrial Confinement), and a copy of the magistrate's memorandum to approve or

disapprove pretrial confinement. AR 27-10, para 5-30.

f. Do not include DD Form 2704. Do NOT include the U.S. DEP'T OF DEF., DD Form 2704, Victim/Witness Certification and Election Concerning Inmate Status (March 1999) [hereinafter DD Form 2704] in ANY copy of the record of trial of which the offender has access. See AR 27-10, para 17-14b(3).

2-7. A memorandum explaining abnormalities, errors or delays. A memorandum signed by the Staff Judge Advocate explaining abnormalities/errors in the case, the record of trial or paperwork should be included in the record of trial. These abnormalities could be unsigned or undated documents, failure to follow normal processing procedures, or unusual delays in the case. This memorandum will help to expedite the review of the record in that the reviewing officer or court will not have to go back to the convening SJA with questions concerning abnormalities about the case.

2-8. Transcript requirements for court-martial proceedings.

a. Verbatim transcript required. A verbatim transcript is required if any part of the sentence adjudged exceeds six months confinement, forfeiture of pay greater than two-thirds pay per month, any forfeiture of pay for more than six months, or other punishments that exceed those that may be adjudged by a special court-martial (such as forfeiture of all pay and allowances), including a bad-conduct discharge (BCD), dishonorable discharge (DD) or dismissal from the service. R.C.M. 1103(b)(2)(B). However, this requirement does not extend to sessions closed for deliberations and voting and R.C.M. 802 conferences. Matters agreed upon at R.C.M. 802 conferences shall be included in the record orally or in writing. R.C.M. 802(b).

b. Verbatim transcript directed. An appropriate authority, such as a convening authority, may direct a verbatim written transcript of a record of trial be prepared.

c. Summarized transcript authorized. If a verbatim transcript is not required under R.C.M. 1103 (b)(2)(B), then a summarized report of proceedings may be prepared. R.C.M. 1103(b)(2)(C), AR 27-10, para 5-41(d) (referencing DD Form 491 and MCM, App. 13).

d. General Courts-Martial (GCM).

1. If the sentence adjudged by a GCM includes a DD, dismissal, BCD, or if any of the sentence adjudged exceeds six months confinement, forfeiture of pay greater than two-thirds pay per month, or any forfeiture of pay for more than six months or other punishment in excess of what an Special Courts-Martial may impose (for example, a forfeiture of all pay and allowances), the record of trial must include a verbatim transcript of the proceedings. R.C.M. 1103(b)(2)(B).

2. If the GCM proceedings did not result in a conviction (for example, if all findings were not guilty or not guilty by reason of lack of mental responsibility, or if the proceedings were terminated by withdrawal, mistrial, or dismissal before findings), R.C.M. 1103(e) provides that the record may consist of the original charge sheet, the convening order with any amendments, and sufficient information to establish jurisdiction over the accused and the offenses. In addition, additional items such as the Commander's checklist for pretrial

confinement and the magistrate's memorandum to approve or disapprove pretrial confinement are also required to be contained in each record of trial. See AR 27-10, para 5-41 for other requirements when preparing either a verbatim or summarized record of trial. The convening authority or higher authority may prescribe additional requirements.

e. Special court-martial empowered to impose a bad-conduct discharge (BCDSPCM). A special court-martial record of trial requires a verbatim transcript when the adjudged sentence includes a bad-conduct discharge (BCD), or any part of the adjudged sentence includes confinement in excess of six months, or a forfeiture of pay for more than six months. R.C.M. 1103(c).

1. Sentence may dictate only distribution of a promulgating order. In a BCDSPCM case, the Clerk of Court requires only a copy of the promulgating order where the sentence, as approved, does not extend to a BCD, or confinement for one year, suspended or unsuspended. AR 27-10, para 11-7b(11). This permits the Army Court-Martial Information System (ACMIS) database to be updated with the convening authority's Action in the case. SPCMs that do not involve an approved BCD, or confinement in excess of 180 days will be filed under U.S. DEP'T OF ARMY, AR 25-400-2 (file number 27-10c), The Army Records Information Management System (ARIMS), (2 October 2007) [hereinafter AR 25-400-2] and in accordance with AR 27-10, para 5-47.

2. When sentence dictates record of trial sent to Clerk of Court. In the event the sentence, as approved, extends to a bad-conduct discharge, or confinement for one year, suspended or unsuspended, the BCDSPCM record of trial is sent to the Clerk of Court, U.S. Army Judiciary, for appellate review. SPCMs bearing a U.S. Army Judiciary docket number will be sent to the Office of the Clerk of Court (JALS-CC), U.S. Army Legal Services Agency, 9275 Gunston Road, Fort Belvoir, VA 22060. AR 27-10, para 5-46.

2-9. Appellate Rights Statement and the accused's election to appellate counsel or any waiver thereof.

a. In general. This document is a record of advice provided to an accused by his or her trial defense counsel which explains to the accused his or her rights to appellate review that apply to the case. R.C.M. 1103 also requires that the accused be notified and acknowledge his/her understanding of applicable appellate rights. Also see, R.C.M. 1010 (Military judge must ensure notice concerning post-trial and appellate rights).

b. Purpose. The Appellate Rights Statement serves separate purposes as indicated below:

1. Matters submitted to the convening authority. The accused's right to submit matters to the convening authority for consideration prior to the convening authority taking Action in the case.

2. Appellate Review. The right to appellate review, as applicable, and the effect of waiver or withdrawal of such right.

3. Election as to appellate counsel. The accused must notify the court and appellate authority stating whether he or she wants to be represented before the ACCA by appointed military

counsel, by civilian counsel to be obtained by the accused, by both the military and civilian counsel, or whether the accused waives representation by counsel altogether. AR 27-10, para 12-4; Joint CCA Rule 10d, reprinted in 44 MJ or <http://www.armfor.uscourts.gov/newcaaf/rules.htm>. Note that any waiver of appellate counsel is of doubtful legal effect if signed before the accused has received notice of the convening authority's Action. See United States v. Smith, 34 M.J. 247 (C.M.A. 1992).

4. Identifying civilian counsel. The name and address of any civilian counsel to be retained for the appeal should be included. Joint CCA Rule 10(b), reprinted in 44 MJ or online, <http://www.armfor.uscourts.gov/newcaaf/rules.htm>. This is required so the Clerk of Court can comply with the duty to notify civilian counsel that the record has been received and the inform counsel date by which an appellate brief must be filed. Joint CCA Rule 19(a)(1)(B), reprinted in 44 MJ or <http://www.armfor.uscourts.gov/newcaaf/rules.htm>.

5. Responsibility. Although the trial defense counsel is initially responsible for furnishing the accused's election as to counsel, it ultimately is the trial counsel's responsibility to assure the record is complete or explain why it is not complete.

c. Placement in record of trial. The appellate rights statement and the accused's election as to appellate counsel or any waiver thereof should be placed in the first volume of the record immediately below any transfer orders and/or excess leave documents. See Chapter 3 of the Post-Trial Handbook.

d. Forwarding. A record of trial forwarded to the Clerk of Court for appellate review by the ACCA or for review by the OTJAG Criminal Law Division must include a statement concerning the accused's right of appeal and his or her counsel election. This usually is noted by the military judge at the conclusion of the trial and the written advice to the accused is signed by both the accused and the defense counsel.

2-10. Materials regarding pretrial confinement. All materials regarding pretrial confinement will be included in the record of trial. This includes, but is not limited to, a copy of the DA Form 4430, a copy of the commander's checklist for pretrial confinement, U.S. DEP'T OF ARMY, DA Form 5112 Checklist for Pretrial Confinement (September 2002), and a copy of the magistrate's memorandum to approve or disapprove pretrial confinement. Documents concerning any type of confinement or confinement credit will be included in the record of trial. AR 27-10, paras 5-30 and 5-41.

2-11. Documenting deferment of confinement. R.C.M. 1103(b)(3)(D) requires that any request for deferment and the Action taken on it be provided to the accused and included in the record. The Discussion section of R.C.M. 1101(c) indicates the denial of a request for deferment of service of confinement should be included in the record of trial. See paragraph 2-4(12), above. The convening authority must specify why confinement is not deferred, however this wording is not included in the Action. R.C.M. 1101(c)(3) and R.C.M. 1107(f)(4)(E), and Chapter 5, para 5-12 of this volume.

2-12. Authentication of record of trial.

a. In general. “A record is authenticated by the signature of a person specified in this rule who thereby declares that the record accurately reports the proceedings. An electronic record of trial may be authenticated with the electronic signature of the military judge or other authorized person. Service of an authenticated electronic copy of the record of trial with a means to review the record of trial satisfies the requirement of service under R.C.M. 1105(c) and 1305(d). No person may be required to authenticate a record of trial if that person is not satisfied that it accurately reports the proceedings.” See R.C.M. 1104(a)(1) as amended by Executive Order 13468.

b. Pre-authentication responsibilities. The trial counsel is responsible for producing an accurate, complete record. R.C.M. 1103(i)(1)(A). Unless unreasonable delay would result, the defense counsel must be permitted to examine the record before it is authenticated. R.C.M. 1103(i)(1)(B). The defense counsel may propose, and the trial counsel may make, changes in the record. However, any changes made by interlineations, as distinguished from retyping, must be initialed by the military judge. Trial Judiciary SOP, ch. 18, para 3b(1) (1996). As for changes required by the military judge before authentication, the judge will determine whether to make them by interlineations or by retyping. Trial Judiciary SOP, ch. 19, para 3c (1996).

c. Judicial authentication. Each military judge who presided over the court-martial proceedings must authenticate the record of trial. If more than one military judge presided, each authenticates only that portion over which he or she presided. R.C.M. 1104(a)(2)(A). In that event, the authentications should state the inclusive pages being authenticated by each judge. See Figure 2-5 herein. In the absence of information to the contrary, each authentication is assumed to include those exhibits admitted and appellate exhibits received during the proceedings reflected on those pages.

d. Substitute authentication. Authentication by other than the military judge is permitted under the conditions set forth in R.C.M. 1104(a)(2)(B). The person who authenticates the record instead of the military judge must attach a complete explanation, including the reason for and duration of any absences requiring substitute authentication. R.C.M. 1104(a)(2) Discussion; R.C.M. 1103(b)(3)(E). Be sure to include this explanation when the record is forwarded. See Figure 2-6 herein for a sample of a substitute authentication.

e. Errata sheet. Any errata sheet indicating changes required by the military judge to correct errors or omissions in the record of trial must be included in the original and all copies of record of trial. The errata sheet should show whether the changes have been made. It should be inserted in the record immediately before the index page.

f. Retaining court reporter’s notes. “For cases in which a verbatim transcript is required, the verbatim notes or recordings of the original proceedings will be retained until completion of final Action or appellate review whichever is later.” AR 27-10, para 5-43. Contract court reporters and reporters borrowed from other service, in particular, must be made aware of this requirement. Any items of evidence for which a description or photograph was permitted to be substituted in the record likewise must be retained, and accounted for with a chain of custody. For cases in which a summarized record of trial is authorized, the notes or recordings of the

original proceedings will be retained until the record is authenticated.

2-13 Errors in the authenticated record of trial.

a. Purpose. Errors found in the authenticated portion of records of trial range from omission of a few lines of dialog to entire missing pages, or missing exhibits such as photographs allowed by the military judge to be substituted for an item of real evidence.

b. Certificate of Correction. A record found to be incomplete or defective after authentication can be corrected by a Certificate of Correction. R.C.M. 1104(d)(1). Paragraph (c), below, details the process followed when the error or omission is discovered during appellate review; however, the process is the same when the error is first discovered in the trial jurisdiction.

c. Procedure.

1. Record not always returned. R.C.M. 1104(d)(2) envisions that the record will be returned to the military judge for preparation of the Certificate of Correction. However, the Clerk of Court usually does not need to actually return the record. Instead, although informing the military judge of the requirement for a Certificate of Correction, the Clerk of Court directs the trial jurisdiction (which has a copy of the record) to prepare the certificate for the military judge.

2. The accused's rights. The Certificate of Correction process parallels the original authentication process: The trial defense counsel must be given an opportunity to review the proposed correction, and a copy of the Certificate of Correction, after it has been signed, must be furnished to the accused in the same manner as a record of trial and a receipt obtained. Sending the original Certificate (and two copies) to the Clerk of Court should not await return of the accused's receipt. When the accused's receipt is received, it must then be forwarded for inclusion in the original and all copies of the record. See R.C.M. 1104(d)(3).

3. A form of Certificate of Correction is shown in the MCM, App.14(f). Just as with the record of trial itself, it is essential to the process that the parties be given a chance to be heard and that the accused be furnished a copy. If this has not been done, the Certificate of Correction may be ineffective.

d. A possible alternative. Should unusual circumstances make preparation of a Certificate of Correction clearly impracticable without undue delay, it is possible that the appellate court will accept a stipulation entered into by counsel for both sides who participated in the trial as curative of the error or omission. See, for example, United States v. Newell, 22 MJ 90 (CMA 1986) (order).

2-14. Classified information.

a. Classified documents at trial. All classified documents entered and/or offered into evidence or contained in the record of trial will accompany the record of trial if forwarded to the Office of the Clerk of Court, whether it is being reviewed by ACCA or the Criminal Law Division OTJAG or forwarded just for filing in accordance with AR 27-10, para 5-46. The SJA will cause any classified information to be deleted or withdrawn from an accused's copy of the record of trial

prior to its being served. See R.C.M. 1104(D) for further guidance concerning classified information. See R.C.M. 1104(b)(1)(D), AR 380-5, The Department of the Army Information Security Program (29 September 2000) [hereinafter AR 380-5], and R.C.M. 1103(h).

b. Marking volumes classified. If an otherwise unclassified volume of the record of trial contains classified documents, the volume is to bear the proper classification, but must be marked “regraded unclassified when separated from classified material.”

c. Classified pages. If a volume of the record of trial contains a small number of classified pages, they may be removed from the volume of the record of trial and properly sealed in accordance with AR 350-5 and R.C.M. 1103A. Insert a page into the record which identifies those pages that were removed and why and where they may be located. The classified pages should then be properly wrapped in accordance with AR 380-5 and, if required, forwarded to the Office of the Clerk of Court with the record. SJA offices should also include information concerning the classification or declassification authority for the documents contained in a record of trial.

2-15. Documenting changes of command. If the commander exercising GCM jurisdiction has changed, permanently or temporarily, after referral of the original charges, and a subsequent commander or acting commander takes some type of Action on the case, such as the referral of additional charges, a change in the membership of the court-martial, or initial Action on the sentence, the changes of command or transfer of the case must be documented in the papers accompanying the record of trial. Army Command Policy, AR 600-20, paras 2-5d and 2-5d(4).

2-16. Copies of the initial promulgating order. The original record of trial must contain eight copies of the initial promulgating order if the record is verbatim. AR 27-10, para 11-7d(1). All other copies of the record of trial must include at least one copy of the initial promulgating order. If the order is a “CORRECTED COPY,” be sure to include in all copies of the record at least one copy of the order that was corrected. Original promulgating orders are to be maintained by the Staff Judge Advocate Office which publishes them.

2-17. The index. A most important aid to preparing the initial promulgating order as well as assisting appellate review is the “Index” to the Record of Trial (DD Form 490, page 1). The format is not well-designed for today’s trials. For example, there is no index entry pertaining to amendment or consolidation of specifications and no clear indication that Appellate Exhibits should be listed. But amendments to the charges or specifications are of extreme importance when drafting the promulgating order. To overcome the deficiency at least in part, court reporters should use the index entries “Motions” and “Pleas” liberally to encompass any changes in pleas occurring after their initial entry and any changes in charges or specifications made by the military judge on his own motion as well as on motion of a party. Appellate Exhibits should be listed in continuation of the evidentiary exhibits.

2-18. Post-trial sessions of court-martial.

a. Two types. Two types of post-trial sessions are (1) Article 39(a) sessions, and (2) Proceedings in Revision. The purpose and procedures of both are explained in R.C.M. 1102, Post trial sessions. Briefly, sometimes an Article 39(a) session is held to determine whether

Proceedings in Revision are required. A Proceeding in Revision is “to correct an apparent error, omission, or improper or inconsistent action by the court-martial which can be rectified by reopening the proceeding without material prejudice to the accused.” R.C.M. 1102(b)(1). The military judge may order an Article 39a session or a Proceeding in Revision before authenticating the record. Similarly, a convening authority may order either session before taking Action on the record.

b. Post-trial proceedings become part of the record of trial. The post-trial proceedings become part of the record of trial and must be prepared, authenticated, and served in accordance with R.C.M. 1103 and 1104. Page numbers of the transcript should continue in sequence from the transcript of original proceedings (including an additional authentication page if the prior proceedings already have been authenticated). For example, if the last page of the original trial ended at page 50, the post-trial proceeding will begin on page 51. Similarly, any evidentiary exhibits or appellate exhibits should be numbered or lettered in sequence with those already received.

2-19. Staff Judge Advocate’s Post-Trial Recommendation (SJAR).

a. Writing recommendation required. Before the convening authority may take Action on a GCM with any findings of guilty or a SPCM with an adjudged BCD or confinement for a year, the SJA must provide the convening authority with a written recommendation. R.C.M. 1106(a) and (d)(2).

b. Rule. “The staff judge advocate or legal advisor shall provide the convening authority with a copy of the report of results of trial, setting forth the findings, sentence, and confinement credit to be applied, a copy or summary of the pretrial agreement, if any; any recommendation for clemency by the sentencing authority, made in conjunction with the announced sentence; and the staff judge advocate’s concise recommendation.” R.C.M. 1106(d)(3) and Executive Order 13468, July 2008.

c. Purpose. The SJAR is used to assist the convening authority to decide what action to take on the sentence in the exercise of command prerogative. R.C.M. 1106(d)(2) and Executive Order 13468, July 2008.

d. Contents. When preparing the SJAR, the SJA must provide the convening authority a recommendation commenting on (unless there are no findings, findings of not guilty only by reason of lack of mental responsibility): 1. the findings and sentence (including reassessment of the sentence and standard to be applied, if necessary), 2. clemency recommended by the military judge or panel (if applicable), 3. nature and duration of any pretrial restraint, 4. the convening authority’s obligation under a pretrial agreement . See R.C.M. 1106(d)(3) and (e) and Executive Order 13468, July 2008.

e. Optional matters. The SJA may consider “additional matters deemed appropriate by the staff judge advocate or legal officer. Such matter may include matters outside the record.” R.C.M. 1106(d)(5) and Executive Order 13468, July 2008.

f. Who may not write the recommendation. Those who have participated in the case may not write the recommendation, e.g. accuser, investigating officer, court members, MJ, or anyone who “has otherwise acted on behalf of the prosecution or defense.” Article 46, UCMJ.

g. No examination for legal errors required. The SJA or legal officer is not required to examine the trial for legal errors, however, the SJAR shall state whether it is the opinion of the SJA corrective actions on the findings or sentence should be taken when an allegation of legal error is raised in matter submitted under R.C.M. 1105 or when otherwise deemed appropriate by the SJA. R.C.M. 1106(d)(4) and Executive Order 13468, July 2008.

h. Accused service record. The SJA need not comment on the summary of accused service record. R.C.M. 1106(d)(1) and Executive Order 13468, July 2008.

i. Service. The SJAR must be served on the defense counsel and a separate copy served on the accused. R.C.M. 1106(f)(1). It is excellent practice to obtain certified mail or signed certification of receipt when the SJAR, or any document is served on the defense counsel and the accused and any document received from defense counsel and the accused. Also see Chapter 4 of the Post-Trial Handbook for matters related to service.

2-20. Matters submitted by the defense.

a. Authority. Although matters submitted by the defense are generally provided in one memorandum with attachments, the authority for defense to address concerns of legal error or requests for clemency stem from two separate Rules for Courts-Martial, namely R.C.M. 1105 and R.C.M. 1106.

b. R.C.M. 1105. After sentence is adjudged in any court-martial, the accused has the opportunity to submit documents to the convening authority.

c. Not subject to Military Rules of Evidence. R.C.M. 1105 submissions are not subject to the Military Rules of Evidence and may include allegations of errors affecting the legality of the findings or sentence; portions or summaries of the record and copies of documentary evidence offered or introduced at trial; and matters in mitigation which were not available for consideration at the court-martial; and clemency recommendations by any member, the military judge, or any other person. R.C.M. 1105(b)(1), (2).

d. Time periods for R.C.M. 1105 matters.

1. GCM and SPCM. Accused may submit matters within the later of 10 days after a copy of the authenticated record of trial or, if applicable, the recommendation of the staff judge advocate or legal officer, or an addendum to the recommendation containing new matter is served on the accused. R.C.M. 1106(c)(1).

2. Summary courts-martial. The accused may submit matters within 7 days after the sentence is announced. R.C.M. 1106(c)(2).

3. Extensions may be granted for good cause. R.C.M. 1106(c)(4).

e. R.C.M. 1106 – Defense response to the SJAR.

1. Counsel for accused may submit, in writing, corrections or rebuttal to any matter in the recommendation believed to be erroneous, inadequate, or misleading, and may comment on any other matter. R.C.M. 1106(f)(4).

2. R.C.M. 1106 counsel for the accused shall be given 10 days from service of the record of trial under R.C.M. 1104(b) or receipt of the recommendation, whichever is later, in which to submit comments on the recommendation. R.C.M. 1106(f)(5).

2-21. Staff Judge Advocate’s Post-Trial Recommendation Addendum.

a. Purpose. After the SJA reviews the defense submissions to be considered in clemency, the SJA will revisit the original recommendation (SJAR) and may supplement the recommendation based on the defense submissions by providing an Addendum. R.C.M. 1106(f)(7).

b. Contents. The SJAR Addendum must address defense allegations of legal error and state whether corrective action is needed. R.C.M. 1106(d)(4). The Addendum should acknowledge and instruct the convening authority to review all defense submissions (if any). Your office may opt to list the material submitted in accordance with R.C.M. 1105 on the SJAR Addendum. If you choose to list the documents, be sure every document submitted is listed, otherwise you invite error. R.C.M. 1106(d)(3)(F).

c. New Matter. If the Addendum contains a “new matter” the Addendum must be served on the defense. See R.C.M. 1106(f)(7).

2-22 Common Errors.

a. Inaccurately reflect charges and specifications (especially dismissals, consolidations.)

b. Inaccurately reflect the maximum punishment.

c. Omit or misapply pretrial confinement (*Allen*, R.C.M. 305(k) credit).

d. Omit or misapply Article 15 (*Pierce*) credit.

e. Recommend approval of greater than 2/3 forfeitures for periods of no confinement.

f. Recommend approval (in special-courts martial) forfeitures and fines (cumulatively) in excess of the court-martial’s jurisdictional limit.

g. Add extraneous (and often erroneous) information.

Rule 1103. Preparation of record of trial

(a) *In general.* Each general, special, and summary

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R.C.M. 1103(a)

court-martial shall keep a separate record of the proceedings in each case brought before it.

(b) *General courts-martial.*

(1) *Responsibility for preparation.* The trial counsel shall:

(A) Under the direction of the military judge, cause the record of trial to be prepared; and

(B) Under regulations prescribed by the Secretary concerned, cause to be retained stenographic or other notes or mechanical or electronic recordings from which the record of trial was prepared.

(2) *Contents.*

(A) *In general.* The record of trial in each general court-martial shall be separate, complete, and independent of any other document.

(B) *Verbatim transcript required.* Except as otherwise provided in subsection (j) of this rule, the record of trial shall include a verbatim written transcript of all sessions except sessions closed for deliberations and voting when:

(i) Any part of the sentence adjudged exceeds six months confinement, forfeiture of pay greater than two-thirds pay per month, or any forfeiture of pay for more than six months or other punishments that may be adjudged by a special court-martial; or

(ii) A bad-conduct discharge has been adjudged.

Discussion

A verbatim transcript includes: all proceedings including sidebar conferences, arguments of counsel, and rulings and instructions by the military judge, matter which the military judge orders stricken from the record or disregarded; and when a record is amended in revision proceedings (see R.C.M. 1102), the part of the original record changed and the changes made, without physical alteration of the original record. Conferences under R.C.M. 802 need not be recorded, but matters agreed upon at such conferences must be included in the record. If testimony is given through an interpreter, a verbatim transcript must so reflect.

(C) *Verbatim transcript not required.* If a verbatim transcript is not required under subsection (b)(2)(B) of this rule, a summarized report of the proceedings may be prepared instead of a verbatim transcript.

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Discussion

See also R.C.M. 910(i) concerning guilty plea inquiries.

(D) *Other matters.* In addition to the matter required under subsection (b)(2)(B) or (b)(2)(C) of this rule, a complete record shall include:

(i) The original charge sheet or a duplicate;

(ii) A copy of the convening order and any amending order(s);

(iii) The request, if any, for trial by military judge alone, or that the membership of the court-martial include enlisted persons, and, when applicable, any statement by the convening authority required under R.C.M. 201(f)(2)(B)(ii) or 503(a)(2);

(iv) The original dated, signed action by the convening authority; and

(v) Exhibits, or, with the permission of the military judge, copies, photographs, or descriptions of any exhibits which were received in evidence and any appellate exhibits.

(3) *Matters attached to the record.* The following matters shall be attached to the record:

(A) If not used as exhibits—

(i) The report of investigation under Article 32, if any;

(ii) The staff judge advocate's pretrial advice under Article 34, if any;

(iii) If the trial was a rehearing or new or other trial of the case, the record of the former hearing(s); and

(iv) Written special findings, if any, by the military judge.

(B) Exhibits or, with the permission of the military judge, copies, photographs, or descriptions of any exhibits which were marked for and referred to on the record but not received in evidence;

(C) Any matter filed by the accused under R.C.M. 1105, or any written waiver of the right to submit such matter;

(D) Any deferment request and the action on it;

(E) Explanation for any substitute authentication under R.C.M. 1104(a)(2)(B);

(F) Explanation for any failure to serve the record of trial on the accused under R.C.M. 1104(b);

(G) The post-trial recommendation of the staff judge advocate or legal officer and proof of service

Figure 2-1 R.C.M. 1103 – Preparation of Record of Trial.

on defense counsel in accordance with R.C.M. 1106(f)(1);

(H) Any response by defense counsel to the post-trial review;

(I) Recommendations and other papers relative to clemency;

(J) Any statement why it is impracticable for the convening authority to act;

(K) Conditions of suspension, if any, and proof of service on probationer under R.C.M. 1108;

(L) Any waiver or withdrawal of appellate review under R.C.M. 1110; and

(M) Records of any proceedings in connection with vacation of suspension under R.C.M. 1109.

(c) *Special courts-martial.*

(1) *Involving a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months.* The requirements of subsections (b)(1), (b)(2)(A), (b)(2)(B), (b)(2)(D), and (b)(3) of this rule shall apply in a special court-martial in which a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, has been adjudged.

(2) *All other special courts-martial.* If the special court-martial resulted in findings of guilty but a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, was not adjudged, the requirements of subsections (b)(1), (b)(2)(D), and (b)(3)(A)-(F) and (I)-(M) of this rule shall apply.

(d) *Summary courts-martial.* The summary court-martial record of trial shall be prepared as prescribed in R.C.M. 1305.

(e) *Acquittal; courts-martial resulting in findings of not guilty only by reason of lack of mental responsibility; termination prior to findings.* Notwithstanding subsections (b), (c), and (d) of this rule, if proceedings resulted in an acquittal of all charges and specifications or in a finding of not guilty only by reason of lack of mental responsibility of all charges and specifications, or if the proceedings were terminated by withdrawal, mistrial, or dismissal before findings, the record may consist of the original charge sheet, a copy of the convening order and amending orders (if any), and sufficient information to establish jurisdiction over the accused and the offenses (if not shown on the charge sheet). The convening authority or

higher authority may prescribe additional requirements.

Discussion

The notes or recordings of court-martial proceedings described in this subsection should be retained if reinstatement and re-referral of the affected charges is likely or when they may be necessary for the trial of another accused in a related case. See R.C.M. 905(g) and 914.

(f) *Loss of notes or recordings of the proceedings.* If, because of loss of recordings or notes, or other reasons, a verbatim transcript cannot be prepared when required by subsection (b)(2)(B) or (c)(1) of this rule, a record which meets the requirements of subsection (b)(2)(C) of this rule shall be prepared, and the convening authority may:

(1) Approve only so much of the sentence that could be adjudged by a special court-martial, except that a bad-conduct discharge, confinement for more than six months, or forfeiture of two-thirds pay per month for more than six months, may not be approved; or

(2) Direct a rehearing as to any offense of which the accused was found guilty if the finding is supported by the summary of the evidence contained in the record, provided that the convening authority may not approve any sentence imposed at such a rehearing more severe than or in excess of that adjudged by the earlier court-martial.

(g) *Copies of the record of trial.*

(1) *General and special courts-martial.*

(A) *In general.* In general and special courts-martial which require a verbatim transcript under subsections (b) or (c) of this rule and are subject to a review by a Court of Criminal Appeals under Article 66, the trial counsel shall cause to be prepared an original and four copies of the record of trial. In all other general and special courts-martial the trial counsel shall cause to be prepared an original and one copy of the record of trial.

Discussion

In a joint or common trial an additional copy of the record must be prepared for each accused. See R.C.M. 1104(b).

(B) *Additional copies.* The convening or higher authority may direct that additional copies of the

record of trial of any general or special court-martial be prepared.

(2) *Summary courts-martial.* Copies of the summary court-martial record of trial shall be prepared as prescribed in R.C.M. 1305(b).

(h) *Security classification.* If the record of trial contains matter which must be classified under applicable security regulations, the trial counsel shall cause a proper security classification to be assigned to the record of trial and on each page thereof on which classified material appears.

Discussion

See R.C.M. 1104(b)(1)(D) concerning the disposition of records of trial requiring security protection.

(i) *Examination and correction before authentication.*

(1) *General and special courts-martial.*

(A) *Examination and correction by trial counsel.* In general and special courts-martial, the trial counsel shall examine the record of trial before authentication and cause those changes to be made which are necessary to report the proceedings accurately. The trial counsel shall not change the record after authentication.

Discussion

The trial counsel may personally correct and initial the necessary changes or, if major changes are necessary, direct the reporter to rewrite the entire record or the portion of the record which is defective.

The trial counsel must ensure that the reporter makes a true, complete, and accurate record of the proceedings such that the record will meet the applicable requirements of this rule.

(B) *Examination by defense counsel.* Except when unreasonable delay will result, the trial counsel shall permit the defense counsel to examine the record before authentication.

Discussion

If the defense counsel discovers errors or omissions in the record, the defense counsel may suggest to the trial counsel appropriate changes to make the record accurate, forward for attachment to the record under Article 38(c) any objections to the record, or bring any suggestions for correction of the record to the attention of the person who authenticates the record.

The defense counsel should be granted reasonable access to

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the reporter's notes and tapes to facilitate the examination of the record.

A suitable notation that the defense counsel has examined the record should be made on the authentication page. See Appendix 13 or 14 for sample forms.

(2) *Summary courts-martial.* The summary court-martial shall examine and correct the summary court-martial record of trial as prescribed in R.C.M. 1305(a).

(j) *Videotape and similar records.*

(1) *Recording proceedings.* If authorized by regulations of the Secretary concerned, general and special courts-martial may be recorded by videotape, audiotape, or similar material from which sound and visual images may be reproduced to accurately depict the entire court-martial. Such means of recording may be used in lieu of recording by a qualified court reporter, when one is required, subject to this rule.

(2) *Preparation of written record.* When the court-martial, or any part of it, is recorded by videotape, audiotape, or similar material under subsection (j)(1) of this rule, a written transcript or summary as required in subsection (b)(2)(A), (b)(2)(B), (b)(2)(C), or (c) of this rule, as appropriate, shall be prepared in accordance with this rule and R.C.M. 1104 before the record is forwarded under R.C.M. 1104(e), unless military exigencies prevent transcription.

(3) *Military exigency.* If military exigency prevents preparation of a written transcript or summary, as required, and when the court-martial has been recorded by videotape, audiotape, or similar material under subsection (j)(1) of this rule, the videotape, audiotape, or similar material, together with the matters in subsections (b)(2)(D) and (b)(3) of this rule shall be authenticated and forwarded in accordance with R.C.M. 1104, provided that in such case the convening authority shall cause to be attached to the record a statement of the reasons why a written record could not be prepared, and provided further that in such case the defense counsel shall be given reasonable opportunity to listen to or to view and listen to the recording whenever defense counsel is otherwise entitled to examine the record under these rules. Subsection (g) of this rule shall not apply in case of military exigency under this subsection.

(4) *Further review.*

(A) *Cases reviewed by the Court of Criminal*

Appeals. Before review, if any, by a Court of Criminal Appeals of a case in which the record includes an authenticated recording prepared under subsection (j)(3) of this rule, a complete written transcript shall be prepared and certified as accurate in accordance with regulations of the Secretary concerned. The authenticated recording shall be retained for examination by appellate authorities.

(B) *Cases not reviewed by the Court of Criminal Appeals.* In cases in which the record includes an authenticated recording prepared under subsection (j)(3) of this rule, a written record shall be prepared under such circumstances as the Secretary concerned may prescribe.

(5) *Accused's copy.* When a record includes an authenticated recording under subsection (j)(3) of this rule, the Government shall, in order to comply with R.C.M. 1104(b):

(A) Provide the accused with a duplicate copy of the videotape, audiotape, or similar matter and copies of any written contents of and attachments to the record, and give the accused reasonable opportunity to use such viewing equipment as is necessary to listen to or view and listen to the recording; or

(B) With the written consent of the accused, defer service of the record until a written record is prepared under subsection (4) of this rule.

VERBATIM ¹**RECORD OF TRIAL** ²

(and accompanying papers)

of

SMITH, JOHN T. III*(Name: Last, First, Middle Initial)*111-11-1111*(Social Security Number)*Private E2*(Rank)*503d Maint Co, 264th Corps Sup Bn*(Unit/Command Name)*United States Army*(Branch of Service)*Fort Bragg, North Carolina*(Station or Ship)*

By

GENERAL**COURT-MARTIAL**

Convened by

Commander*(Title of Convening Authority)*XVIII Airborne Corps and Fort Bragg*(Unit/Command of Convening Authority)*

Tried at

Fort Bragg, North Carolina*(Place or Places of Trial)*

on

15 and 16 July 2004*(Date or Dates of Trial)*

Companion Cases:

PFC Larry E. Barbie 222-22-2222

SPC Charlie M. Adams 333-22-3333

¹ Insert "verbatim" or "summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)² See inside back cover for instructions as to preparation and arrangement.

Figure 2-3 DD Form 490 Cover Page with Companion Cases.

CHRONOLOGY SHEET ¹

In the case of _____ Private E2 Samantha T. Smith
(Rank and Name of Accused)

Date of alleged commission of earliest offense tried: _____ 1 January _____, _____ 2004
(Enter Date)

Date record forwarded to The Judge Advocate General: ² _____ 17 September _____, _____ 2004
(Enter Date)

(Signature and Rank of Staff Judge Advocate or Legal Officer)

	ACTION	DATE 2004	CUMULATIVE ELAPSED DAYS ³
<p>¹ In a case forwarded to The Judge Advocate General, the staff judge advocate or legal officer is responsible for completion of the Chronology Sheet. Trial counsel should report any authorized deductions and reasons for unusual delay in the trial of the case.</p> <p>² Or officer conducting review under Article 64(a) (MCM, 1984, RCM 1112).</p> <p>³ In computing days between two dates, disregard first day and count last day. The actual number of days in each month will be counted.</p> <p>⁴ Item 1 is not applicable when accused is not restrained, (see MCM, 1984, RCM 304) or when he/she is in confinement under a sentence or court-martial at time charges are preferred. Item 2 will be the zero date if Item 1 is not applicable.</p> <p>⁵ May not be applicable to trial by special court-martial.</p> <p>⁶ Only this item may be deducted.</p> <p>⁷ If no further action is required, items 1 to 8 will be completed and chronology signed by such convening authority or his/her representative.</p> <p>⁸ When further action is required under Article 64 or service directives.</p>	1. Accused placed under restraint by military authority ⁴	4 Jan	
	2. Charges preferred <i>(date of affidavit)</i>	15 Mar	70
	3. Article 32 investigation <i>(date of report)</i> ⁵	4 Apr	90
	4. Charges received by convening authority	14 Apr	100
	5. Charges referred for trial	5 May	120
	6. Sentence or acquittal	15 Jul	191
	Less days:		
	Accused sick, in hospital, or AWOL	NA	
	Delay at request of defense	32	
	Total authorized deduction ⁶	32	
7. Net elapsed days to sentence or acquittal			159
8. Record received by convening authority	30 Aug		205
Action ⁷	15 Sep		221
9. Record received by officer conducting review under Article 64(a)	N/A		N/A
Action ⁸	N/A		N/A

REMARKS

Number of days from initial investigation of most serious arraigned offense to the date of arraignment: 62 days. (AR 27-10, Para 5-40 b.(1))

Accused was confined at the Miramar Naval Confinement Facility, (assigned to Ft. Sill, OK) (AR 27-10, Para 5-40 c.)

Defense Delay: 32 days. (Defense request to delay trial was approved. Documentation included in allied papers.) AR 27-10, Para 5-40 b. (2)

Figure 2-4 DD Form 490 Chronology Page.

AUTHENTICATION OF RECORD OF TRIAL

in the case of

Private First Class Thomas M. Smith, U.S. Army, 111-11-1111

Special Troops Battalion, 13th Corps Support Command, Ft. Hood, Texas 76544

I have authenticated pages 1 thru 18 of this Record of Trial.

//s// Signature

HAROLD V. GIBBS, COL, JA, Military Judge

(Military Judge) 1

20 December , 2005

I have examined the record of trial in the foregoing case.

//s// Signature

MARCIA C. HAN, CPT, JA, Defense Counsel

(Defense Counsel)

20 December , 2005

¹ Delete and insert "President" for special court-martial without a military judge.

Figure 2-5 DD Form 490 Authentication of Record of Trial when more than one Military Judge presided over the court-martial.

AUTHENTICATION OF RECORD OF TRIAL

in the case of

Private First Class Thomas M. Smith, U.S. Army, 111-11-1111

Special Troops Battalion, 13th Corps Support Command, Ft. Hood, Texas 76544

I have authenticated this record because COL Harold V. Gibbs
the Military Judge in this case, _____ //s// Signature
has retired. I was the Trial Counsel in this Case.

WAYNE B. CONNOR, CPT, JA, Trial Counsel
(Military Judge) ¹

20 December , 2005

I have examined the record of trial in the foregoing case.

//s// Signature

MARCIA C. HAN, CPT, JA, Defense Counsel
(Defense Counsel)

20 December , 2005

Figure 1-13

¹ Delete and insert "President" for special court-martial without a military judge.

DD FORM 490, MAY 2000, Page 7

Figure 2-6 DD Form 490, Page 7 – Sample substitute authentication.

CHAPTER 3

ASSEMBLING THE RECORD OF TRIAL

Chapter 3 outlines how to assemble and mail a complete Record of Trial.

3-1. Assembling the record of trial.

a. Arrangement. The contents of the record shall be arranged as set forth on DD Form 490, with heavy stock dividers used to separate major components of the record as follows, beginning with post-trial documents and followed by the court-martial proceedings. Instructions for preparing and arranging a record of trial are found in the MCM, App. 14. See Figure 3-1, herein. Arranging the record of trial is summarized below:

b. Order of contents:

1. DD FORM 490, Front Cover.
2. any orders transferring the accused to a confinement facility or paperwork pertaining to excess/appellate leave;
3. appellate rights statement and the accused's election as to appellate counsel or any waiver thereof;
4. any briefs of counsel submitted after trial;
5. court-martial orders promulgating the result of trial;
6. proof service on the defense counsel of the Staff Judge Advocate's recommendation and any response to the recommendation (if the defense response to the recommendation is combined into one document with the matters submitted by the accused pursuant to R.C.M. 1105, then the document should be placed in the record of trial as if it were solely matters submitted by the accused pursuant to R.C.M. 1105;
7. either proof of service on the accused of the Staff Judge Advocate's recommendation or a statement explaining why the accused was not served personally;
8. signed review of the Staff Judge Advocate including any addenda and attached clemency matters;
9. matters submitted by the accused pursuant to R.C.M. 1105;
10. any request for deferment of post-trial confinement and action thereon;
11. any request for deferment/waiver of automatic forfeitures and any action thereon;
12. any request for deferment of reduction in grade and action thereon.

Followed by court-martial documents:

13. DD Form 457
14. Pretrial Allied Papers
15. Record of Proceedings of Court-martial
16. Post-trial sessions
17. Prosecution Exhibits admitted into evidence
18. Defense Exhibits admitted into evidence
19. Prosecution Exhibits marked but not offered and/or admitted into evidence
20. Defense Exhibits marked but not offered and/or admitted into evidence
21. Appellate Exhibits
22. Any records of proceedings in connection with vacation of suspension

3-2. Readability and assembly of the trial transcript. Transcripts must appear double-spaced on one side of 8 ½-by 11-inch letter-size white paper of sufficient weight (for example 20-lb) that the print on each succeeding page does not show through the page above. Use 10-pitch (pica) on typewriters and 12 point type on computers. Only Courier, Times-Roman or Times-New Roman fonts may be used. Anyone reading the record must be able to clearly distinguish each character from all others, such as the letter “l” from the numeral “1”. See MCM, App. 14 for additional guidance and AR 27-10, para 5-42.

3-3. Size of volumes.

a. Volume size. Records that are over 1 1/2 inches thick will be divided into volumes. The first volume of a multi-volume record will be no more than one (1) inch thick. The subsequent volumes are to be no more than 1 1/2 inches thick and held together by one two-and-one-quarter-inch prong fastener. (Remember that many pages can be added during the appellate process.) Do not interlace or “piggy-back” prong fasteners to create an oversized volume; they are unlikely to stay together in shipment and the contents will be spilled. See MCM, App. 14 and Figure 3-1 for additional guidance.

b. Exception. You may make an exception for a record of prior proceedings in the same case (such as proceedings ended as a mistrial), which, if bulky, is better placed in one or more separate volumes marked “Prior Proceedings.” A page stating that the record of former proceedings is included as a separate volume or volumes should then be inserted above the errata sheet where the prior proceedings would otherwise have been bound.

3-4. Copies of the record of trial required in addition to the original and distribution. The number of copies of a record of trial to be sent to the Clerk of Court depends on whether the case is to be reviewed and by whom. Of utmost importance is the requirement that all required copies be identical to the original and identically arranged. See the Distribution of Records of Trial chart at the end of this chapter, Figure 3-2.

a. Review by the Army Court of Criminal Appeals (ACCA).

1. Original and two exact copies (identical in contents and arrangement) are always required. If the approved sentence includes death, a dismissal, a DD or BCD, or confinement for one year or more, whether or not suspended, the case will be reviewed by the ACCA pursuant to Article 66 of the UCMJ. In that event, in addition to the original record, you must send two identical copies to the Clerk of Court. The Clerk of Court issues Copy 1 to the Chief, Defense Appellate Division, and Copy 2 to the Chief, Government Appellate Division.

2. Additional copies required for multiple accused. If the trial involved more than one accused (a joint or common trial), an additional copy for each additional accused must be sent to the Clerk of Court so that the Defense Appellate Division will have a copy of a record of trial for each individual for each counsel. In order to avoid a conflict of interest, each accused must have separate appellate counsel unless each accused waives that right.

b. Clemency copy. In all cases in which the convening authority approves confinement for 12 months or more, whether or not all or part of the confinement is suspended, an additional copy of the record of trial will be prepared for the Army Clemency and Parole Board (ACPB) for

clemency review purposes and distributed under AR 27-10, para 5-46. The cover of this additional copy will be marked prominently with the phrase "Clemency Copy." See AR 27-10, para 5-41, concerning the requirement to prepare a clemency copy of a record of trial. The clemency copy is sent as follows:

1. If the accused is confined at the U.S. Disciplinary Barracks, to the Commandant, United States Disciplinary Barracks, ATTN: ATZL-DB-CL, Fort Leavenworth, KS 66027;

2. If the accused is confined at a U.S. Army Regional Correctional Facility, to the commander of that RCF; (stateside RCFs are located at Fort Sill, OK and Fort Knox, KY, and Joint Base Lewis-McChord);

3. Do not mail the clemency copy directly to the ACPB unless the accused is confined at another place (such as a confinement facility operated by another service) or not at all. Only then shall the clemency copy of the record of trial be mailed directly to the Army Clemency and Parole Board, at 1901 South Bell Street, Arlington, VA 22202-4508. Misrouting the clemency copy impedes the work of the ACPB.

c. Article 69a, UCMJ, review. For review by the Criminal Law Division (CLD), Office of the Judge Advocate General (OTJAG). Pursuant to Article 69a, UCMJ, the CLD division reviews General Court-Martial cases in which the approved sentence does not include a punitive discharge and in which any approved confinement is for a period of less than one year. In these cases, only the original record is needed unless there was more than one accused. The record is not sent directly to the CLD, but rather to the Office of the Clerk of Court (JALS-CC), U.S. Army Legal Services Agency, 9275 Gunston Road, Fort Belvoir, VA 22060.

d. Acquittal or terminated before findings. GCM cases resulting in acquittal or terminated before findings. See paragraph 1-9 of this volume, above. The Clerk of Court is responsible for conducting an administrative review of these records and only the original is required. The Clerk of Court then refers these records to the Chief, Criminal Law Division (DAJA-CL), Office of The Judge Advocate General.

e. Appellate review waived. When the accused has waived appellate review.

1. Cases not involving dismissal. Only the original GCM or BCDSPCM record is sent to the Clerk of Court. However, the record must first undergo the local review required by UCMJ, Article 64(a) and R.C.M. 1112(a)-(d), and receive any additional Action required by Article 64(b) and R.C.M. 1112(e)-(f), such as an order to execute a DD or BCD. See AR 27-10, para 5-46b. In addition to GCM or BCDSPCM cases in which review by the ACCA has been waived (DD Form 2330, found in MCM, App. 19), this also includes GCM cases in which review by the Criminal Law Division OTJAG has been waived (DD Form 2331, found in MCM, App. 20).

2. Cases involving dismissal of officer or cadet. Waiver cases involving a dismissal are processed in the same manner as in para 3-4e(1), above, except that the convening authority cannot order a dismissal executed. R.C.M. 1112(g)(2) prescribes that the record, after review is accomplished, be forwarded to the Secretary concerned. The record is to be mailed to the Clerk of Court for this purpose: Office of the Clerk of Court (JALS-CC), U.S. Army Legal Services Agency, 9275 Gunston Road, Fort Belvoir, VA 22060. AR 27-10, para 5-45b.

f. Cases forwarded. Only the original record of trial is required in cases forwarded pursuant to UCMJ, Article 64(c)(3), UCMJ, (judge advocate review) and R.C.M. 1112(g)(1) (records forwarded to The Judge Advocate General) because of disagreement between the reviewing judge advocate and the convening authority.

3-5. Marking records.

a. Companion and related cases. AR 27-10, para 12-6, requires that the cover of each original record be marked to identify by grade, name, and SSN any companion cases or, if none, marked “No companion cases.” “Companion cases” include those pending trial as well as any already tried. They should be listed both in the original record and in Copy 1 which is issued to the Defense Appellate Division. See Figures 2-2 and 2-3 in Chapter 2, herein.

b. Cover. The cover should include the name, grade, and SSN of any victim or prosecution witness known to have been tried by GCM or BCDSPCM subject to review by ACCA. This is to prevent conflict of interest in the assignment of appellate defense counsel. AR 27-10, para 12-6b.

c. Clemency copy. When a clemency copy of a record of trial is required in accordance with AR 27-10, para 5-41 a, one copy of the record of trial is to be marked “CLEMENCY COPY” and sent separately to the USDB, and JRCF, Fort Leavenworth or JRCF, Joint-Base Lewis-McChord, or to the Army Clemency and Parole Board (ACPB), as applicable.

d. Marking the volumes. Each volume of each copy to be sent to the Clerk of Court should be clearly marked (e.g., Orig Vol I of VI Vols; 1st Copy Vol I of VI Vols, Volume One of Five Volumes, etc). See Figures 2-2 and 2-3 in Chapter 2, herein.

e. Marking other materials. The authenticity of items such as audio tapes, video tapes, compact discs, and other items of unusual size or shape is easily subject to challenge, especially when received loose. These must be clearly and permanently marked to identify them as exhibits e.g., “Prosecution Exhibit 9, Two Videotapes of CID Interview,” by their separate parts (P.E. 9, Tape 1 of 2), and, if more than one copy, by copy number (Original; Copy 1; Copy 2). When an audio/video tape/compact disc is in a container, the audio/video tape/compact disc and its container must be marked exactly the same; it is not sufficient to mark only the container or envelope. See para 3-2, of this volume, above.

3-6. Packing.

a. Fasteners. Use two-and-one-quarter-inch prong fasteners.

b. Boxes. Whenever possible, try to place all volumes and all copies of a single record in the same box. When they are split, mark the boxes as, for example, “Box 1 of 3 Boxes.” Boxes should be packed firmly; when record volumes can shift within a box, they tend to come apart. Even the strongest boxes should be bound with strong, wide wrapping tape around both the narrow and wide circumferences. Do not enclose loose official papers in a box with a record; they can be accidentally discarded as packing material. Instead, put the papers in a flat envelope clearly marked “OFFICIAL PAPERS.”

3-7. Sending record of trial.

a. Basic requirement. The record of trial will be forwarded to the Clerk of Court, ATTN: JALS-CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060. AR 27-10, para. 5-46a.

b. Method. Certified first class mail, return receipt requested, restricted delivery, or delivery by commercial means, with return receipt requested and restricted delivery, should [i.e., shall] be used to transmit records of trial for any official purpose.” AR 27-10, para. 5-48.

c. Clerk of Court. Although AR 27-10 does not so indicate, the record of trial in any GCM case or any SPCM in which a BCD has been approved but in which the accused waived appellate review, also should be sent to the Clerk of Court when the review and any Action required by R.C.M. 1112 has been completed.

d. Shipper: Point of contact. A point of contact and a phone number for this office should also be provided to any commercial carrier used to transport documents to the Office of the Clerk of Court.

e. Clerk of Court: Point of contact. The primary POC for documents and/or records of trial being sent to this office is Mr. Jeffrey Todd who may be reached at commercial phone number is: 703-693-1331. The alternate POC is Mrs. Linda Erickson, who may be reached at 703-693-1313.

f. Classified records. For instructions regarding transfer of records containing classified information, see AR 380-5, Department of the Army Information Security Program, (2000). (Documents Classified “SECRET” or above normally require shipment via Registered mail or by other methods stated in Chapter 8 of AR 380-5.)

g. When to ship the record. Send the record as soon as practicable after the convening authority has acted. Delay at this stage is as undesirable as any other delay in concluding a case.

3-8. Common errors and irregularities found in Records of Trial. The following errors or irregularities occur far too frequently in records of trial received by the Clerk of Court:

a. Volumes too large (must be taken apart and reassembled). See para 3-3, above.

b. Documents in original record incorrectly arranged (must be disassembled and rearranged). See para 3-1, above.

c. Copies 1 and 2 not the same as original and must be disassembled and rearranged. See para 3-4, above.

d. Original signed documents not in original copy of record (must search other volumes; possibly send for true copies). See para 3-4, above.

e. Exhibits not legible. Exhibits photocopied from other documents, such as personnel records, Article 15s, and photographs not legible (appellate court order and certificate of correction may be required).

- f. Documents undated. Convening Authority Action and papers filed by counsel, such as pretrial agreements, trial briefs, post-trial submissions, not dated and not date stamped at time of receipt by SJA or TC (appellate court may require affidavits);
- g. Assumption of command not documented, i.e. Assumption of Command Memorandum. See Chapter 2, para 2-15, herein.
- h. Failure to include Appellate Rights Statement or form that does not list 1) a valid address for the accused or, 2) indicating accused's choice as to appellate counsel and/or name of civilian counsel (requires correspondence to obtain);
- i. Electronic media exhibits not properly identified. Electronic media exhibits, such as audio or video tapes, not completely identified as to volume number (if more than one) and copy number (if more than one), or identification found only on container not on media itself (reauthentication by the military judge likely required). Mark each audio or video tape with the name of the accused and exhibit number, not just the box it is contained in.
- j. Exhibits too large for record retirement boxes, such as easel displays or x-rays, not sought to be replaced by photographs (certified photographs may be required);
- k. Exhibits permitted to be replaced by photographs, but photographs not included or not included in all copies (certificate of correction required);
- l. Court presided over by more than one judge. When more than one judge presided, entire record erroneously authenticated by only one judge (record must be returned for authentication of portion by the other judge); See Figure 2-4, above.
- m. Index to Record of Trial fails to include appellate exhibits.
- n. Records of Trial are incorrectly disposed of/filed upon completion of all appellate Action. See Figure 3-2 at the end of this chapter for disposition of records of trial upon completion of all appellate Action.
- o. Returning records to the trial jurisdiction for correction is expensive and causes delay in the appellate process; correcting them in the Clerk's Office, when that can be done, overtaxes a small staff already reduced through the repeated downsizing of Army Staff Field Operating Agencies. Furthermore, if carelessness characterizes our highly important GCM and BCDSPCM records, what of the Army's other special court-martial and summary court-martial records, which remain unseen by the Clerk of Court's office? They, too, must provide accurate evidence of a criminal conviction or an acquittal.

APPENDIX 14

GUIDE FOR PREPARATION OF RECORD OF TRIAL BY GENERAL COURT-MARTIAL AND BY SPECIAL COURT-MARTIAL WHEN A VERBATIM RECORD IS REQUIRED

a. *Record of trial.* The following guidelines apply to the preparation of all records of trial by general and special courts-martial when a verbatim record of trial is required by Rule for Courts-Martial 1103(b)(2)(B) and (c)(1).

1. *Paper.* All transcription will be completed only on one side of 8 1/2 x 11 inch paper. Use 15-pound or other high quality paper. Red-lined margins and other legal formats, such as numbered lines, are acceptable so long as they otherwise comport with the guidelines set forth herein.

2. *Margins.* A margin of 1 1/2 inches, or more as necessary, will be left at the top to permit binding. A one inch margin will be left on the bottom of the page and on the left side of each page. The left margin will be increased as necessary in the event that left hand binding is used rather than top binding. If left-hand binding is used, the top margin should be decreased to 1 inch.

3. *Font.* Use 10-pitch (pica) on typewriters and 12 point type on computers. Only Courier, Times-Roman, or Times-New Roman fonts may be used. Do not use cursive, script, or italic fonts, except when appropriate in specific situations (e.g., citation). Use bold print for initial identification of the members, military judge, court reporter, and the parties to the trial. Certain standard stock entries (SSEs) will be in bold print within verbatim records of trial, as reflected in this appendix's Guide for Preparation of Trial (i.e., calling a witness, stage of examination, and questions by counsel, members or the military judge).

4. *Line Spacing.* Double-space text, returning to the left margin on second and subsequent lines, with the exception of pleas, findings, and sentence, which should be single spaced, indented, and in bold print. Indent the elements of separate offenses in guilty plea cases.

5. *Justification.* Use left justification only with the exception of pleas, findings, and sentence, which may be justified both left and right.

6. *Page Numbering.* All pages in the transcribed record of trial shall be numbered consecutively, beginning with "1". The page number shall be centered on the page 1/2 inch from the bottom.

7. *Additional/Inserted Pages.* Use preceding page number plus either an alphanumeric letter after the corresponding whole numbered page (e.g. "19a") or a decimal and an Arabic number after the corresponding whole numbered page (e.g. "19.1"). Annotate the bottom of the preceding page to reflect the following inserted page (e.g. "next page 19a" or "next page 19.1"). Be consistent throughout the record of trial using either the alphanumeric or decimal system. Annotate the return to consecutive numbering at the bottom of the last inserted page (e.g. "next page 20").

8. *Omitted Page Numbers.* If a page number is omitted, but no page is actually missing from the transcript, note the missing page at the bottom of the page preceding the missing page number (e.g. "there is no page 22; next page 23").

9. *Printing.* All records of trial forwarded for review under UCMJ Articles 66 and 69(a) shall be printed in such a manner as to produce a letter quality manuscript—a clear, solid, black imprint. All pen and ink changes to the transcribed record of trial shall be initialed.

10. *Organization of Contents of Record of Trial.* The contents of a record of trial, including allied papers accompanying the record, are set forth in R.C.M. 1103(b)(2)(B), (2)(D), and (3). To the extent applicable, the original record of trial shall contain signed originals of pertinent documents. Absence of an original document will be explained, and a certified true copy or signed duplicate original copy inserted in the record of trial. Arrangement of the contents of the record shall be as set forth on DD Form 490, with heavy stock dividers used to separate major components of the record as follows:

DD Form 490, Front Cover. The front cover will be followed by: (1) any orders transferring the accused to a confinement facility or paperwork pertaining to excess/appellate leave; (2) appellate rights statement and the accused's election as to appellate counsel or any waiver thereof; (3) DD Form 494, "Court-Martial Data Sheet", if any; (4) any briefs of counsel submitted after trial; (5) court-martial orders promulgating the result of

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Figure 3-1 MCM, Appendix 14, Preparation of Record of Trial.

trial: (6) proof of service on the defense counsel of the Staff Judge Advocate's recommendation and any response to the recommendation (if the defense response to the recommendation is combined into one document with the matters submitted by the accused pursuant to R.C.M. 1105, then the document should be placed in the record of trial as if it were solely matters submitted by the accused pursuant to R.C.M. 1105); (7) either proof of service on the accused of the Staff Judge Advocate's recommendation or a statement explaining why the accused was not served personally; (8) signed review of the Staff Judge Advocate including any addenda and attached clemency matters; (9) matters submitted by the accused pursuant to R.C.M. 1105; (10) any request for deferment of post-trial confinement and action thereon; (11) any request for deferment/waiver of automatic forfeitures and any action thereon; (12) any request for deferment of reduction in grade and any action thereon.

DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if any, and all related exhibits and attachments. The original, signed investigation will be placed in the original copy of the record of trial.

Pretrial Allied Papers. These papers should include: (1) advice of the Staff Judge Advocate or legal officer; (2) requests by counsel and action of the convening authority taken thereon; (3) any other papers, endorsements, investigations which accompanied the charges when referred for trial; (4) record of any former trial.

Record of Proceedings of Court-Martial , in the following order: (1) errata sheet; (2) index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt;

Note. The preprinted index may be inadequate to properly reflect the proceedings, witnesses, and exhibits. Court reporters should liberally expand the index and use additional sheets as necessary. Special attention should be paid to noting the pages at which exhibits are offered and accepted/rejected, to include annotating those page numbers on the bottom of an exhibit, as appropriate.

(3) convening and all amending orders; (4) any written orders detailing the military judge or counsel; (5) request for trial by military judge alone if

not marked as an appellate exhibit; (6) any written request for enlisted members if not marked as an appellate exhibit; (7) verbatim transcript of the proceedings of the court, including all Article 39(a) sessions and original DD Form 458, "Charge Sheet"; (8) authentication sheet followed by Certificate of Correction, if any; (9) action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.

Note. Any necessary assumption of command orders should be included in the record of trial.

Post-trial sessions. Post-trial sessions will be authenticated and served in accordance with R.C.M. 1103, and are part of the record of trial. Page numbering should continue in sequence from the end of the transcript of the original proceedings, and will be separately authenticated if the initial proceedings have been previously authenticated. Additional exhibits should be lettered or numbered in sequence, following those already marked/admitted.

Prosecution Exhibits admitted into evidence. [The page(s) at which an exhibit is offered and admitted should be noted at the bottom of the exhibit, as appropriate, as well as noting those pages on the DD Form 490.]

Defense Exhibits admitted into evidence. [The page(s) at which an exhibit is offered and admitted should be noted at the bottom of the exhibit, as appropriate, as well as noting those pages on the DD Form 490.]

Prosecution Exhibits marked but not offered and/or admitted into evidence. [The page(s) at which an exhibit is offered and rejected should be noted at the bottom of the exhibit, as appropriate, as well as noting those pages on the DD Form 490.]

Defense Exhibits marked but not offered and/or admitted into evidence. [The page(s) at which an exhibit is offered and rejected should be noted at the bottom of the exhibit, as appropriate, as well as noting those pages on the DD Form 490.]

Appellate Exhibits. [The page(s) at which an exhibit is marked should be noted at the bottom

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Figure 3-1, cont'd. MCM, Appendix 14, Preparation of Record of Trial.

of the exhibit, as appropriate, as well as noting those pages on the DD Form 490.]

Any records of proceedings in connection with vacation of suspension.

11. *Stock Dividers.* The foregoing bullets will be separated by the use of heavy stock dividers, colored, and labeled with gummed labels.

12. *Binding.* Volumes of the record will be bound at the top with metal or plastic fasteners. Top or left-side binding is acceptable with sufficient adjustment to the top or left margin. Volumes shall be bound to withstand repeated handling, utilizing DD Form 490. **Do not sew or stack fasteners together in gangs to bind thick volumes.**

13. *Dividing Records into Volumes.* Divide ROTs that are over 11/2 inches thick into separate volumes. Make the first volume of a multi-volume record an inch thick or smaller. This will allow for inclusion of the SJA recommendation, clemency

matters, and other post-trial documents. Limit subsequent volumes to 11/2 inches thick, unless dividing them requires assembling an additional volume smaller than 1/2 inch thick. If the transcript is split into two or more volumes, indicate on the front cover which pages of the transcript are in which volume. (*e.g.* Volume 1 of 4, Transcript, pages 1-300). Number each volume of the ROT as follows: "Volume 1 of ____." In the upper right-hand corner of the DD Form 490, label the ROT to reflect which copy it is, *i.e.*, "ORIGINAL," "ACCUSED," et cetera.

Words on the margins of this appendix are not part of the form of record.

As a general rule, all proceedings in the case should be recorded verbatim. *See* R.C.M. 1103.

Following this appendix does not necessarily produce a complete record of trial. It is to be used by the reporter and trial counsel as a guide in the preparation of the completed record of trial in all general and special court-martial cases in which a verbatim record is required.

DISTRIBUTION OF RECORDS OF TRIAL

TYPE OF COURTS-MARTIAL	RESULT OF COURTS-MARTIAL	DISTRIBUTION OF RECORD OF TRIAL
GENERAL	Chapter 10 Discharge Approved (Regardless of when Chapter 10 was approved.)	Original – Clerk of Court Copy – Served on Accused Copy – Retained by SJA Office of Convening Authority
GENERAL	Acquittal, Dismissal or Withdrawal of all Charges and Specifications	Original – Clerk of Court Copy – Served on Accused Copy – Retained by SJA Office of Convening Authority
GENERAL	Sentence includes either an approved Punitive Discharge or Dismissal, or approved confinement equal to or in excess of year* (12 months) (365 days) (regardless of whether or not any of these are suspended) and the accused has not waived appellate review under R.C.M. 1110.	Original, Copy 1 and Copy 2 – Clerk of Court Copy – Served on Accused Copy – Retained by SJA Office of Convening Authority And: If the approved sentence includes confinement equal to or in excess of 1 year a Clemency Copy of the ROT is required. Clemency Copy – Forwarded to USDB/appropriate Army RCF or Clemency and Parole Board as appropriate. DO NOT FORWARD CLEMENCY COPIES OF RECORDS OF TRIAL TO THE OFFICE OF THE CLERK OF COURT.
GENERAL	Sentence DOES NOT include an approved punitive discharge or dismissal, or approved confinement equal to or in excess of 1 year (12 months) (365 days).	Original – Clerk of Court Copy – Served on Accused Copy – Retained by SJA Office of Convening Authority
GENERAL	Soldier Waives Appellate Review (Except when approved sentence includes death.)	Original – Clerk of Court Copy 1 – Served on Accused Copy 2 – Retained by SJA Office of Convening Authority SJA Office must review court-martial under the provisions of R.C.M. 1112 prior to forwarding record to the Clerk of Court. And: If the approved sentence includes confinement equal to or in excess of 1 year a Clemency Copy of the ROT is required. Clemency Copy – Forwarded to USDB/appropriate Army RCF or Clemency and Parole Board as appropriate. DO NOT FORWARD CLEMENCY COPIES OF RECORDS OF TRIAL TO THE OFFICE OF THE CLERK OF COURT

Figure 3-2, Distribution of Records of Trial.

TYPE OF COURTS-MARTIAL	RESULT OF COURTS-MARTIAL	DISTRIBUTION OF RECORD OF TRIAL
SPECIAL	Chapter 10 Discharge Approved (Regardless of when Chapter 10 was approved.)	Original – Retained by SJA Office of Convening Authority Copy – Served on Accused Copy of Promulgating Order – Clerk of Court
SPECIAL	Acquittal, Dismissal or Withdrawal of all Charges and Specifications	Original – Retained by SJA Office of Convening Authority Copy – Served on Accused Copy of Promulgating Order – Clerk of Court
SPECIAL	Sentence INCLUDES either an approved punitive Discharge or approved confinement for 1 year (12 months) (365 days) or more (regardless of whether or not the discharge or confinement is suspended) and the accused has not waived appellate review under R.C.M. 1110.	Original, Copy 1 and Copy 2 – Clerk of Court Copy – Served on Accused Copy – Retained by SJA Office of Convening Authority And: Clemency Copy: If sentence includes an approved confinement for 1 year (12 months) (365 days) a Clemency Copy of the ROT must also be made. Disposition for clemency copy is: – Forwarded to USDB/appropriate Army RCF or Clemency and Parole Board as appropriate. DO NOT FORWARD CLEMENCY COPIES OF RECORDS OF TRIAL TO THE OFFICE OF THE CLERK OF COURT.
SPECIAL	Sentence INCLUDES approved forfeitures for a period of six months or more, but does not include an approved punitive Discharge or approved confinement for 1 year (12 months) (365 days). Regardless of whether or not the forfeitures are suspended and the accused has not waived appellate review under R.C.M. 1110.	Original – Retained by SJA Office of Convening Authority Copy – Served on Accused Copy of Promulgating Order – Clerk of Court (SJA Office must review court-martial under the provisions of R.C.M. 1112.)
SPECIAL	Sentence INCLUDES approved forfeitures for a period less than six months, but does not include an approved punitive Discharge or approved confinement for 1 year (12 months) (365 days). Regardless of whether or not the forfeitures are suspended.	Original – Retained by SJA Office of Convening Authority. Copy – Served on Accused. Copy of Promulgating Order – Clerk of Court (SJA Office must review court-martial under the provisions of R.C.M. 1112.)
SPECIAL	Sentence INCLUDES approved confinement equal to or less than 364 days, but does not include an approved punitive discharge or approved forfeitures for a period of six months or more. Regardless of whether or not a confinement is suspended and the accused has not waived appellate review under R.C.M. 1110.	Original – Retained by SJA Office of Convening Authority. Copy – Served on Accused. Copy of Promulgating Order – Clerk of Court (SJA Office must review court-martial under the provisions of R.C.M. 1112.)

Figure 3-2, cont'd. Distribution of Records of Trial.

TYPE OF COURTS-MARTIAL	RESULT OF COURTS-MARTIAL	DISTRIBUTION OF RECORD OF TRIAL
SPECIAL	<p>Soldier Waives Appellate Review</p> <p>(Case includes an approved punitive discharge or approved confinement of one year.)</p>	<p>Original – Clerk of Court Copy – Served on Accused Copy – Retained by SJA Office of Convening Authority</p> <p>(SJA Office must review court-martial under the provisions of R.C.M. 1112 prior to forwarding record to the Clerk of Court.)</p>
SUMMARY	<p>Regardless of Trial Outcome, i.e. Acquittal or Findings of Guilty and Sentence adjudged.</p>	<p>Original – Retained by GCM SJA Office of Convening Authority. Copy – Served on Accused.</p> <p>(SJA Office must review court-martial under the provisions of R.C.M. 1112.)</p>

Figure 3-2, cont'd. Distribution of Records of Trial.

CHAPTER 4

SERVICE OF THE RECORD OF TRIAL AND SJAR

Chapter 4 details serving the Record of Trial and Staff Judge Advocate's post-trial recommendation (SJAR) to the defense counsel and the accused.

4-1. Serving the accused's copy of the record.

a. Entitlement. The UCMJ requires that the trial counsel ensure that the accused receive a copy of the record of trial as soon as it is authenticated. The accused is entitled to a copy of the record of trial regardless of the outcome of the trial. Art. 54(d), UCMJ; R.C.M. 1104(b)(1)(A). If the accused's copy contains classified information, see R.C.M. 1104(b)(1)(D). The accused's receipt for the record, or the trial counsel's certificate that the record was sent to the accused at a correct address on a specific date, must be in the original record of trial. R.C.M. 1104(b)(1)(B) and AR 27-10, para 5-45.

1. Requested delivery to defense counsel. An accused may request that her copy of the record be delivered to the trial defense counsel. This permits counsel to use the record when preparing a post-trial submission to the convening authority. The request must be made on the record or in a separate written request, which then must be placed in the record. R.C.M. 1104(b)(1)(C). Whenever the accused's copy is delivered to counsel, especially civilian counsel, you should obtain a receipt. When the post-trial proceedings have ended or the attorney-client relationship is terminated, counsel is both legally and ethically required to surrender the record to the accused. See AR 27-26 and Model Rules of Professional Conduct 1.15(d), 1.16(d) (2011). To permit compliance with R.C.M. 1104(b)(1)(C) ("The accused shall be provided with a copy of the record as soon as practicable."), the defense counsel must be required to return the record to the SJA office for delivery to the accused.

2. Delivery to accused impracticable. Even if the accused does not request it, the accused's copy of the record may be delivered to the defense counsel if it is impracticable to serve the accused because he or she has been transferred "to a distant place," or is AWOL, or if required by military exigencies. In this event, the trial counsel must include with the record an explanation why the accused was not personally served. R.C.M. 1104(b)(1)(C). The defense counsel on whom the accused's copy is served has the same legal and ethical obligation to return the record as stated in (1), above, and R.C.M. 1104(b)(1)(C) applies: "The accused shall be provided with a copy of the record as soon as practicable."

b. Proof of service. Proving that service of the accused's copy of the record has been made is easy: Use preprinted page 2 or 3 of DD Form 490 or page 1 or 2 of DD Form 491 to show when the record was handed to the accused or when and to what address it was mailed by certified mail with return receipt requested (AR 27-10, para 5-44). See Figures 4-1, 4-2, 4-3 at the end of this chapter. These forms will be placed in the record of trial as either page 2 or 3 of the record of trial depending upon the circumstances surrounding the service of the record.

1. Proving service on counsel. When service is on counsel, don't forget the record must show that it was sent or delivered to counsel (and not to the accused) and indicate the reason why.

R.C.M. 1104(b)(1)(C). See Figure 4-3 herein.

2. Accused's receipt. When service is by mailing, include a blank return receipt (page 2 of DD Form 490 or page 1 of DD Form 491) with the accused's copy of the record. Figure 4-2. You should have the accused return the signed receipt to your office, but you must then forward it to the Clerk of Court to be filed with the original record. This is important because if the accused claims he did not receive his copy of the record, your office will be required to make another copy and mail it to him.

4-2. Serving copies of the SJA's post-trial recommendation (SJAR).

a. Introduction. In any court-martial, R.C.M. 1105 allows an accused, within specified time limits after receiving a copy of the record of trial or a copy of any post-trial recommendation by the staff judge advocate, whichever is later, to submit matters for consideration by the convening authority. R.C.M. 1106 requires that, in any GCM and any BCDSPCM in which a BCD is adjudged, the convening authority must receive the SJA's recommendation before taking Action on the record of trial. (If the SJA is disqualified from making the recommendation, provision must be made for the substitution of another SJA or transfer of the case to another jurisdiction. If that occurs, an explanation must be inserted in the record.) See Chapter 2, paras 2-19 through 2-21 of this volume.

b. Entitlement. The accused and the defense counsel are each entitled to a copy of the SJA's post-trial recommendation to the convening authority concerning the findings and sentence. R.C.M. 1106(f). In addition, counsel is entitled to review a copy of the record, if requested. R.C.M. 1106(f)(3). Any information indicating that the accused is dissatisfied with the performance of defense counsel must be reported to the chief of military justice, for it may require that a new defense counsel be detailed for post-trial actions.

c. Delivering accused's copy to counsel. As in the case of the authenticated record of trial, the accused's copy of the SJA's post-trial recommendation may be delivered to defense counsel if the accused requests so on the record, or, if service to accused is deemed impracticable. Such reasons include but are not limited to: the transfer of the accused to a distant place, the unauthorized absence of the accused, or military exigency, or if the accused so requests on the record at the court-martial. R.C.M. 1106(f)(1).

1. More than one defense counsel. If there was more than one defense counsel the accused is entitled to specify which counsel will be responsible for the post-trial actions. R.C.M. 1106(f)(2). The trial judge is supposed to ask about this at the conclusion of the trial. Therefore, look near the end of the transcript to find the accused's choice. The trial counsel is responsible for assuring that service of the post-trial recommendation is made on the proper defense counsel; service on the wrong counsel may require the entire process to be done over.

2. No counsel designated. If the accused does not designate the counsel to receive the post-trial recommendation, service is to be made on the civilian counsel (if any), individual military counsel (if any), or a detailed defense counsel, in that order. R.C.M. 1106(f)(2).

d. Proof of service. Your office should use certified mail receipts when sending the ROT to counsel and accused. Additionally, use date-time stamps when receiving notice of receipt. It is also good practice maintain a log of correspondence or write a memorandum for record to keep an accurate record for all events in post-trial processing. By documenting these actions properly, you can save the time and expense of having to repeat them. Unfortunately, documentation of service of the post-trial recommendation on counsel is not uniform. The formats being used by various Army jurisdictions are quite similar, but some of them are deficient because they fail to show exactly when counsel received the post-trial recommendation or exactly when counsel's response, waiver of response, or request for extension of time was received at the SJA office. R.C.M. 1106(f)(5) makes these dates critical: "Counsel for accused is given 10 days from service of the ROT under R.C.M. 1104(b) or receipt of the recommendation, whichever is later."

4-3. Additional defense comment under R.C.M. 1106. The service and receipt process described above will be repeated if the SJA's response to a submission by the defense raises new matter such that the defense must be given a further opportunity to comment on the new matter. R.C.M. 1106(f)(7). The requirements for documenting the transmittal, receipt, and return of defense rebuttal are the same as described above.

TESTIMONY			
NAME OF WITNESS <i>(Last, First, Middle Initial)</i>	DIRECT AND INDIRECT	CROSS AND RECROSS	COURT
PROSECUTION			
DEFENSE			
COURT			

EXHIBITS ADMITTED IN EVIDENCE			
NUMBER OR LETTER	DESCRIPTION	PAGE WHERE -	
		OFFERED	ADMITTED

COPIES OF RECORD ¹

_____ 1 _____ copy of record furnished the accused or defense counsel as per attached certificate or receipt
 _____ copy(ies) of record forwarded herewith.

RECEIPT FOR COPY OF RECORD ²

I hereby acknowledge receipt of a copy of the record of trial in the case of United States v. PFC Howard J. Richter,
 delivered to me at Ft. Lewis, WA Regional Confinement Facility this 15th day of June, 2004

(Signature of accused)

I hereby acknowledge receipt of a copy of the record of trial in the case of United States v. _____,
 delivered to me at _____ this _____ of _____, _____

(Signature of accused)

¹ For instructions as to preparation of copies of record, see back cover or appendices 13 and 14, MCM, 1984.
² If copy of record prepared for accused contains matters requiring security protection, see RCM 1104(b)(1)(D), MCM, 1984.

DD FORM 490, MAY 2000, Page 2

Figure 4-1 DD Form 490 Receipt for Copy of Record signed by Accused.

CERTIFICATE IN LIEU OF RECEIPT

Fort Bragg, North Carolina 28310
(Place)

24 February 2005
(Date)

I certify that on this date a copy of the record of trial in the case of United States v. Baines
was transmitted (XXXXXX) to the accused, PFC William E. Baines
(Rank and Name of accused)
at PO Box 456, Inverness, Montana 59530, by certified mail number 70993400000175837
(Place of delivery, or address sent to) *(Means of effecting delivery, i.e., mail, messenger, etc.)*
and that the receipt of the accused had not been received on the date this record was forwarded to the convening authority. The receipt of the accused will be forwarded as soon as it is received.

(Signature of trial counsel)

OR

(Place)

(Date)

I certify that on this date a copy of the record of trial in the case of United States v. _____
was transmitted (delivered) to the accused's defense counsel, _____
(Rank and Name)
at _____, by _____
(Place of delivery, or address sent to) *(Means of effecting delivery, i.e., mail, messenger, etc.)*
because (it was impracticable to serve the record of trial on the accused because he/she was transferred to _____) (the accused requested such at trial) (the accused so requested in writing, which is attached) (the accused is absent without leave) (_____).
(Place) *(Other reason)*

(Signature of trial counsel)

OR

The accused was not served personally because (he/she is absent without leave) (_____).
(Other reason)
Accused has no defense counsel to receive the record because (defense counsel has been excused under RCM 505(d)(2)(B)) (_____).
(Other reason)

(Date) _____
(Signature of trial counsel)

Figure 4-2 Page 3 of DD Form 490—Certificate in Lieu of Receipt of Service of Record of Trial upon Accused via Certified Mail.

CERTIFICATE IN LIEU OF RECEIPT

(Place) (Date)

I certify that on this date a copy of the record of trial in the case of United States v. _____
was transmitted (delivered) to the accused, _____,
(Rank and Name of accused)
at _____, by _____,
(Place of delivery, or address sent to) (Means of effecting delivery, i.e., mail, messenger, etc.)
and that the receipt of the accused had not been received on the date this record was forwarded to the convening
authority. The receipt of the accused will be forwarded as soon as it is received.

(Signature of trial counsel)

OR

Fort Bragg, North Carolina 28310 24 February 2005

(Place) (Date)

I certify that on this date a copy of the record of trial in the case of United States v. _____ Baines
was transmitted (delivered) to the accused's defense counsel, _____ CPT Elmer J. Moore
(Rank and Name)
at _____ Bldg 2891, Ft. Bragg, NC 28310, by _____ personal delivery by NCOIC, Criminal Law
(Place of delivery, or address sent to) (Means of effecting delivery, i.e., mail, messenger, etc.)

because

_____ (Place) ~~(the accused requested such a trial)~~ and (the accused so
requested in writing, which is attached)

(Other reason)

(Signature of trial counsel)

OR

The accused was not served personally because (he/she is absent without leave) (_____
(Other reason)).

Accused has no defense counsel to receive the record because (defense counsel has been excused under
RCM 505(d)(2)(B)) (_____).
(Other reason)

(Date)

(Signature of trial counsel)

Figure 4-3 Page 3 of DD Form 490 – Certificate in Lieu of Receipt of Record of Trial Upon Accused’s Defense Counsel.

CHAPTER 5

THE CONVENING AUTHORITY'S INITIAL ACTION

After the record of trial has been properly assembled, reviewed, and served, the SJA must forward the record of trial to the convening authority for Action. Chapter 5 outlines the process and contents necessary for the convening authority's initial Action.

5-1. Action.

a. Purpose. The Action on the court-martial is taken at the sole discretion of the convening authority, in the interests of justice, discipline, mission requirements, clemency, and other appropriate reasons. R.C.M. 1107(b)(1).

b. Mandatory contents. The convening authority shall state in writing and insert in the record of trial the decision as to the sentence, whether any findings of guilty are disapproved, and orders as to further disposition. R.C.M. 1107(f)(1). Forms for Action are found in the MCM, App. 16.

1. The Action will show all credits against a sentence to confinement, regardless of the source of the credit. The source of the credit will not be placed in the Action, however, the reasons for the post-trial credit, along with the dates thereof, will be placed in the SJAR to the convening authority. AR 27-10, para 5-32a.

2. The initial Action will also show if either adjudged or automatic forfeitures in accordance with Art 58b, UCMJ, were deferred or waived or both. AR 27-10, para 5-32a.

3. If a reduction to E-1 is required in accordance with Art 58a, UCMJ, and AR 27-10, para 5-32a, based on the approved sentence, such reduction will be noted in the convening authority's Action and is effective on the date of the Action. If waivers of forfeitures are approved and included in the Action; the waiver sentence must state the person to whom the forfeitures are to be awarded.

4. An approved reprimand must be included in the convening authority's initial Action. AR 27-10, para 5-32a.

c. Findings. The convening authority must always take Action when there has been a finding of guilty and/or a sentence of a court-martial. However, the convening authority need not necessarily act on the findings because approval of any part of a sentence constitutes approval of the findings, unless otherwise indicated. R.C.M. 1107(a), 1107(c), Article 60(c)(3). The convening authority may not delegate the function of taking action on the findings. R.C.M. 1107(a) Discussion.

d. Sentence.

1. The convening authority may, for any or no reason, disapprove a legal sentence in whole or in part, mitigate the sentence, and change a punishment to one of a different nature as long as the severity of the punishment is not increased. The convening or higher authority may not increase the punishment imposed by a court-martial and the

approval or disapproval shall be explicitly stated. R.C.M. 1107(d)(1).

2. The function of taking action on the sentence may not be delegated. R.C.M. 1107(a) Discussion.

3. Except for a death sentence, a punitive discharge (DD or BCD), or a dismissal, the convening authority's initial Action must order the execution (with or without suspension) of any part of the sentence that is approved. R.C.M. 1107(f)(4)(B).

e. Changed jurisdiction. Action may be taken even though the accused is no longer assigned to the jurisdiction. See R.C.M. 1107(a) Discussion. For other instances of Action being taken when the accused is no longer assigned to the command, see R.C.M. 1112(e) and R.C.M. 1107(g).

f. Time period. The convening authority may act on the court-martial after R.C.M. 1105(c) time periods have expired or submissions by the Accused have been waived. Article 60, UCMJ.

g. Signature. The convening authority must personally sign the original copy of the Action, which must then be placed in the original record. R.C.M. 1107 (f)(1); R.C.M. 1103(b)(2)(D)(iv) and R.C.M. 1103(c).

h. Dated. The signed Action must be dated. R.C.M. 1107(f)(1). Remember, the date of the Action will become the date of the initial promulgating order no matter when the order is published. See Chapter 4, herein.

i. Confinement Facility. Within 24-hours of convening authority Action, in cases in which the accused is in confinement or the convening authority approves confinement, the SJA will notify the confinement facility in which the accused is or will be confined and the finance and accounting office providing finance service to that confinement facility, of the Action taken. The notification will include: 1. the name, rank, social security number, and unit of the accused, 2. the date sentence was adjudged, 3. the exact sentence adjudged by the court, and 4. the convening authority's action, to include the heading date, and name of the officer taking action. AR 27-10, para 5-32b.

5-2. Procedure. Most cases will follow MCM Forms 1-14 in Appendix 16, but heed the advice found on page A16-2 immediately following form 10. Specifically, when the adjudged sentence includes death, dismissal, or a dishonorable or bad-conduct discharge, Forms 1-10 are generally appropriate, but several will require modification depending on the action to be taken. This is because death, dismissal, or a dishonorable or bad-conduct discharge may not be ordered executed in the initial action. Also be wary of the language in Form 11—there is a typographical error. Be sure to include the words, "except for the part of the sentence extending to" when approving sentences that include a punitive discharge or death.

5-3. When Action is not taken.

a. No action will be taken on:

1. Not guilty findings;

2. Approving a sentence of an accused that has been found not guilty only by reason of lack of mental responsibility. R.C.M. 1107(b)(4); and

3. Cases when accused lacks mental capacity. R.C.M. 1107(b)(5).

b. Promulgating order. Even if no action is taken, the result of each GCM or SPCM trial must be announced in a promulgating order including the date the proceedings were terminated. AR 27-10, para 11-3a and R.C.M. 1114(c)(3). This includes cases terminated without findings, as previously discussed in Chapter 1, paragraph 1-9 of herein. An order promulgating a self-executing dishonorable or bad-conduct discharge need not be issued. AR 27-10, para 11-3d. For sample forms, see the MCM, App. 16 and see the examples provided at the end of this chapter.

5-4. Materials that the Convening Authority must consider under R.C.M. 1107(b)(3)(A)(i)-(iii).

- a. Result of trial.
- b. SJAR.
- c. Defense matters submitted under R.C.M. 1105 and R.C.M. 1106.

5-5. Materials that the Convening Authority may consider prior to taking Action. R.C.M. 1107(b)(3)(B)(i)-(iii).

- a. Record of trial.
- b. Personnel records of accused.
- c. Such other matters as the convening authority deems appropriate. However, if the convening authority considers matters adverse to the accused from outside the record, with knowledge of which the accused is not chargeable, the accused shall be notified and given an opportunity to rebut.

5-6. Contents the convening authority's initial Action shall not contain.

a. The convening authority will not designate the place of confinement. The place of confinement will be determined under AR 190-47 and AR 27-10, para 5-32a. However, it must be reflected in the remarks section of the Chronology Sheet (DD Form 490 or 491) accompanying the record of trial. AR 27-10, para 5-41c. A sample can be found in Chapter 2, Figure 2-4 of this volume.

b. Do not include reasons for approval or disapproval. Although whether the request is approved or disapproved must be included in the Action, the Action itself shall not include the reasons for approving or disapproving any part of the adjudged sentence, the findings, or a waiver, deferral, or confinement credit.

5-7. Modification of initial action.

a. Before publication or notification to the accused. The Action may be modified by the convening authority before it has been published or before the accused has been officially notified. R.C.M. 1107(f)(2).

b. After publication or notification to the accused. The Action may also be recalled after the action has been published or the accused has been officially notified for modification but only before the record has been forwarded for review, as long as the modification does not result in action less favorable to the accused. R.C.M. 1107(f)(2).

c. Change in punishment. If a punishment is to be changed to another type, use MCM, App.16, Form 13.

d. Disapproval of findings. The initial Action may be modified when the convening authority disapproves of some or all findings of guilty and the ordering of a rehearing is shown in MCM, App.16, Forms 15-20;

e. Procedure. If the Action needs to be modified or corrected the previous Action should be expressly withdrawn and replaced with a subsequent Action. See Forms 24 and 24a of the MCM, App.16 and Figure 5-12 of this volume. If the previous Action was published in a promulgating order, the new promulgating order should rescind that order and must receive at least the same distribution. Chapter 6, Figure 6-14 herein.

f. Notify confinement facility. If the Action is modified, notify the confinement facility within 24 hours. AR 27-10, para 5-32b. Also see para 5-1(i) of this volume, above.

5-8. Action on Sentence.

a. Be specific. The convening authority's initial Action must explicitly state whether the sentence is approved or disapproved and order the execution (with or without suspension) of any part of the sentence that is approved, except for a death sentence, a punitive discharge (DD or BCD), or a dismissal. R.C.M. 1107(f)(4)(B) and MCM, App. 16, Form 11. Form 11 contains a typographical error that omits the words "part of the sentence extending to" by an erroneous placement of a parenthesis. Bottom line: be sure to include the words, "except for the part of the sentence extending to" in the Action for cases in which the sentence includes a punitive discharge or death sentence. Note that a death sentence cannot be suspended.

In short, the sentence must be approved before it is executed. R.C.M. 1113(b). However, the convening authority may not order the execution of the part of the sentence pertaining to confinement, forfeitures, and reduction in the initial action. R.C.M. 1113(c).

b. Changing punishment. The convening authority may change the punishment to one of a different nature if less severe. R.C.M. 1107(d)(1).

c. No increase in punishment at Action. The convening authority may not increase the sentence imposed by a court-martial. R.C.M. 1107(d)(1).

d. Disapprove. The convening authority may disapprove all or any part of a sentence for any or no reason. R.C.M. 1107(d)(1).

e. Mandatory sentence. If a court-martial sentences the accused to a mandatory sentence, the convening authority may reduce the sentence as adjudged. R.C.M. 1107(d)(1).

f. Suspended or reassessed. The sentence may also be suspended or reassessed by the convening authority. R.C.M. 1107(d)(1). See para 5-9 of this chapter, below.

g. Sentence to discharge or dismissal only. A punitive discharge or dismissal cannot be executed until appellate review has been completed; further, a dismissal cannot be executed until approved by the Secretary of the Army or his designee. UCMJ art. 71(b), (c). Therefore, if approving a sentence to discharge or dismissal only, the convening authority's Action need say only "The sentence is approved, but the sentence will not be executed pending completion of appellate review." It is not necessary to add "the record of trial will be forwarded to The Judge Advocate General" or, in the case of a dismissal, "to the Secretary of the Army." All GCM records are sent to TJAG (that is, to the Clerk of Court). When appellate review has been completed, the Clerk of Court sends dismissal cases to OTJAG, Criminal Law Division, for recommendation to the Assistant Secretary of the Army (Manpower and Reserve Affairs), who acts for the Secretary of the Army in such cases.

5-9. Suspending the sentence.

a. Authority. Authority to suspend the execution of a sentence is set forth in R.C.M. 1108(b).

b. Reasonable time. No sentence may be suspended beyond a reasonable period. R.C.M. 1108(d). However, these limits do not include any time in which a suspension period is legitimately interrupted under R.C.M. 1109(b)(4).

c. Wording a suspension. In MCM, App.16, Forms 5, 6, and 14 show how a suspension is worded. Notice that a part of the sentence that can be ordered executed, such as confinement, is first ordered executed, and then the execution of the punishment is suspended. See Figure 5-8 and 5-9 at the end of this chapter.

(i) The suspension clause must always include the duration of the suspension and a provision for automatic remission when the period of suspension expires. R.C.M. 1108(d).

(ii) Unless otherwise stated, the suspension takes effect on the date of the convening authority's Action. See AR 27-10, para 5-35.

(iii) Attempting to fix the effective date of a suspension as other than the date of the Action, determining additional conditions of suspension besides the condition shown in the last sentence of R.C.M. 1108(c), and attempting to reflect the conditions of suspension in the Action each present legal questions beyond the scope of this handbook and usually require research of recent legal decisions and current regulations.

d. Attaching the conditions of suspension/vacation of suspension to the record of trial. The conditions of suspension must be attached to the record of trial. If a suspension is vacated, the

original and two copies of the vacation proceedings must be forwarded to the Clerk of Court for attachment to the original and copies of the record previously forwarded. R.C.M. 1103(b)(3)(M); AR 27-10, para 5-36a(1).

e. Vacating the suspension of a sentence. In GCM and BCDSPC cases other than cases involving a suspended dismissal. The procedures set forth in R.C.M. 1109 must be carefully followed. DD Form 455, found in MCM, App. 18, is used as a guide. For orders, see AR 27-10, Figures 11-5, 11-6. If the suspension is vacated, the original and two copies of the vacation proceedings must be sent to the Clerk of Court. AR 27-10, para 5-32a(1).

f. Vacating suspension of a dismissal. Only the Secretary of the Army or his designee may vacate the suspension of the dismissal of an officer or cadet and order the dismissal executed. R.C.M. 1206(a); R.C.M. 1113(c)(2). Therefore, following the vacation proceedings, if it is recommended that the suspension of a dismissal be vacated, the proceedings, recommendation, and a proposed secretarial Action are sent to the Clerk of Court, who forwards them to The Judge Advocate General. AR 27-10, para 5-36a(2). For the wording of the proposed Action, consult the Chief, Criminal Law Division, Office of The Judge Advocate General.

5-10. Confinement credits reflected in the Action. The convening authority's initial Action will show all credits against a sentence to confinement, regardless of the source of the credit. AR 27-10, para 5-32a. The reason(s) for granting the credit will not be placed in the convening authority's Action; however, the Staff Judge Advocate shall state the reasons and standard to be applied explaining to the convening authority why post trial confinement credit should be granted, along with the dates thereof, in the SJAR. AR 27-10, para 5-32a.

5- 11. Approving and administering a reprimand. R.C.M. 1107(f)(4)(G).

a. Approval. If a reprimand is approved, the convening authority determines the wording and issues it in writing to the accused. R.C.M. 1003(b)(1).

b. Actual reprimand language in Action. The reprimand is to be specifically approved by the convening authority and set forth verbatim in the Action itself. R.C.M. 1107(f)(4)(G). Some GCM jurisdictions have included only a copy of a reprimand in the record of trial without setting it forth in the convening authority's Action. As a practical matter, this results in a windfall for the accused by failing to make the punishment public. A reprimand in a promulgating order should be verbatim but shall not include a victim's full name, but use the victim's initials, instead.

5-12. Deferment of confinement.

a. Authority. Confinement can be deferred (e.g., postponed or interrupted) by the convening authority on application of the accused pursuant to Article 57a(a), UCMJ, and R.C.M. 1101(c)(2). The accused's application for deferment and the Action of the convening authority on the request must be in writing. R.C.M. 1101(c)(2).

b. Included in record of trial. All applications for deferment and the Action thereon must be included in the record of trial.

c. Included in Action. When deferment is granted before or concurrently with the initial Action

on the sentence, the deferment must be included in the Action. R.C.M. 1101(c)(4); R.C.M. 1107(f)(4)(E); MCM, App. 16, Form 7. See Figure 5-10 at the end of this chapter.

d. Expiration. If the deferment expired by its terms or was rescinded before the date of Action on the sentence, both the date of deferment and date of its termination must be shown in the Action. R.C.M. 1101(c)(7)(D); MCM, App. 16, Form 9.

e. Rescinded. If a deferment is rescinded concurrently with the taking of the Action, the dates of deferment and rescission are both shown, but if, instead, the deferment expires automatically on the date of the Action by operation of R.C.M. 1101(c)(6)(A), only the date of deferment need be shown. MCM, App. 16, Form 8. Otherwise, see AR 27-10, Figure 11-7; Also see Figure 5-10 at the end of this chapter.

f. Copy provided to the accused. A copy of the Action on the request must be given to the accused and all applications for deferment and the Action thereon must be included in the record of trial. AR 27-10, para 5-41 and Chapter 2, para 2-4 of this volume.

g. Supplementary court-martial order. When an application for deferment is granted after initial Action has been taken, a supplementary court-martial order (CMO) is issued. R.C.M. 1101(c)(4); R.C.M. 1114(b)(2). Supplementary CMOs are distributed as required by AR 27-10, para 11-7f(1).

h. Deferment of confinement during a period of civilian confinement. If an accused is in the custody of a state or foreign government and is returned only temporarily to the Army for the purpose of trial by court-martial and then is returned to the state or foreign government by virtue of an agreement or treaty, the convening authority approving a sentence to confinement may defer service of the confinement, without the accused's consent, until the accused is permanently returned to Army custody. The deferment must be reflected in the convening authority's Action on the sentence. See R.C.M. 1107 (d)(3)(C) Discussion, also see Executive Order 13468, July 2008.

5-13 . Deferment of forfeitures, reduction in grade, or both.

a. Convening Authority. The convening authority may grant the deferment of forfeitures or reduction in grade upon application of the accused. R.C.M. 1101(c)(3) and R.C.M. 1107(f)(4), Article 57(a)(2).

b. Article 57, UCMJ. Pursuant to Article 57, UCMJ, sentences to forfeitures and sentences to a specific reduction in grade take effect 14 days after the sentence is adjudged or sooner if the convening authority takes Action approving that part of the sentence before the 14-day period has ended. However, on application of the accused, the convening authority may defer the application of forfeitures or defer the specific reduction, or both, until the Action is taken and must be reflected in the Action. Article 57, UCMJ.

c. Automatic termination. The deferment of forfeitures or specific reduction terminates automatically when the convening authority takes Action on the sentence and must be reflected in the Action. Article 57, UCMJ.

d. Examples:

1. After stating the Action taken on the adjudged sentence, the Action should state:
“The (automatic forfeiture of all pay and allowances) (adjudged forfeiture of \$ ____ pay per month for ____ months) (and) (reduction to the grade of _____) was deferred effective (date) and is terminated this date.”
2. If total forfeitures are deferred only in part, the Action should state:
“So much of the adjudged forfeiture of all pay and allowances as amounts to \$ ____ pay per month and allowances was deferred effective (date). The deferment is terminated effective this date.”

5-14. Waiver of automatic forfeiture of pay and required by Article 58b, UCMJ, during confinement.

- a. Automatic.** A sentence to confinement for more than six months, or to six months or less with a dismissal or punitive discharge, or to death, causes an administrative forfeiture of pay and allowances up to the jurisdictional limit of the court-martial. Article 58b, UCMJ.
- b. Dependents.** If an accused has one or more dependents, the convening authority may waive collection of all or any part of the automatic forfeitures for a period of up to six months, but not to exceed the period of confinement adjudged. R.C.M. 1101(d). This may be done at the request of the accused or on the convening authority’s own motion. The convening authority must direct that the pay and allowances for which the collection is waived be paid to the accused’s dependent(s) by allotment.
- c. Documented in record.** Any request for waiver of forfeitures, and any Action taken with respect to a waiver, must be documented in the record. What should appear in the convening authority’s Action concerning a waiver of collection of the automatic forfeitures depends upon whether the collection is taken before the specified period of waiver ends or after it has ended. However, reasons for the approval or disapproval of waiver are not included in the Action.

d. Examples.

1. If the Action is taken before the period of waiver has ended, the following should be included in the Action: “The forfeiture of (all pay and allowances)(\$ ____ pay and allowances per month)(\$ ____ pay per month) required by Article 58b, UCMJ, has been waived effective (date) until (date).”
2. When Action is not taken until after the specified period of waiver has ended, the Action should include the following: “The forfeiture of (all pay and allowances)(\$ ____ pay and allowances)(\$ ____ pay per month), as required by Article 58b, UCMJ, was waived effective (date) (until)(and was rescinded on) (date).”

5-15. Partial forfeiture of pay.

- a. Be exact.** The sentence adjudged by a court-martial must state partial forfeitures in an exact amount of whole dollars to be forfeited each month and the number of months the forfeiture is to

last. R.C.M. 1003(b)(2). This rule does not seem to preclude expressing the duration of forfeitures in a number of days' pay for a period of less than a month. Similarly, it seems possible to approve forfeitures for, say, "one month and 15 days" but not "45 days," however.

b. Forfeiture stated improperly by the court. If, as occasionally happens without correction by the military judge, the forfeitures were not properly stated, e.g., "to forfeit two-thirds pay per month for one year," and the convening authority intends to approve the sentence, his Action should correct the error by stating, for example, "only so much of that part of the sentence extending to forfeiture of pay is approved as extends to forfeiture of \$xxx.xx pay per month for 12 months." R.C.M. 1003(b)(2).

c. Convening authority reducing total forfeitures. The convening authority must state the reduction of forfeitures with an amount in whole dollars and the duration of the reduction of forfeitures in months. R.C.M. 1003(b)(2).

d. "Per month." If forfeiture is for more than one month the Action must expressly state the duration of forfeiture and amount "per month." However, if the sentencing authority (panel/MJ) omitted the words "per month" from a partial forfeiture, e.g., "to forfeit \$300.00 pay for 6 months," the convening authority cannot supply the missing words; the accused receives an apparent windfall because the aggregate forfeiture adjudged in such a case can be only \$300.00.

e. Forfeiture of allowances; limitation when not confined. Allowances are forfeited only when the adjudged and approved forfeiture is total, for instance, "all pay and allowances," and a total forfeiture cannot be imposed while an accused is not in confinement. R.C.M. 1003(b)(2); R.C.M. 1107(d)(2) Discussion.

5-16. Errors in the Action After Publication or Notification to Accused.

a. Direction from higher authority to withdraw Action. Rule for Court-Martial 1107(g) provides that, "When the Action of the convening authority . . . is incomplete, ambiguous, or contains clerical error, the [convening] authority . . . may be instructed by an authority acting under Article 64, 66, 67, or 69 to withdraw the original Action and substitute a corrected Action."

Somewhat similarly, Rule for Court-Martial 1107(f)(2) provides in part "When so directed by . . . the Judge Advocate General, the convening authority shall modify any incomplete, ambiguous, void, or inaccurate Action noted in review of the record of trial under Article 64, 66, or 67, or examination of the record under Article 69."

b. Error discovered by the convening authority after forwarding. In some cases, when the convening authority has discovered an error after the record was forwarded (such as failure to carry out the intent to retain the accused in a grade above E1), the convening authority has communicated this to the Clerk of Court, who then informs the appellate counsel. Counsel can then seek to obtain an order from the Court remanding the case for a new Action by the convening authority.

5-17. Record returned by the appellate authority for a new Action by the convening authority.

a. Procedure. A new Action generally requires full compliance with R.C.M. 1105 and R.C.M. 1106. In most cases involving a new Action, the entire process required by Article 60, UCMJ, (R.C.M. 1105, 1106, and 1107) must be done anew. *See United States v. Mendoza*, 67 M.J. 53 (C.A.A.F. 2008), R.C.M. 1105 and 1106:

1. The preparation of a new Staff Judge Advocate Recommendation (SJAR) and new Action for the convening authority;
2. Service of a copy of the SJAR on the accused and for the opportunity to resubmit matters in accordance with R.C.M. 1105 and 1106;
3. Service of a copy of the SJAR on defense counsel and for the opportunity to resubmit matters UP R.C.M. 1106;
4. The preparation, if applicable, of a new SJAR addendum.

b. Form of withdrawal. When the convening authority withdraws an Action pursuant to instructions from higher authority, use MCM, App. 16, Form 24a at page A16-4 modified to include the date of the Action being withdrawn as follows: "In the case of (accused), in accordance with instructions from (The Judge Advocate General)(the U.S. Army Court of Criminal Appeals) pursuant to Rule for Court-martial (1107(f)(2))(1107(g)), the Action taken by (me)(my predecessor in command) on (date) is withdrawn. The following is substituted therefor: (text of new Action)." See Figure 5-12 at the end of this chapter.

c. New promulgating order. A complete new promulgating order, including a "Revocation" paragraph, with full distribution, is required. If the accused has been transferred from the command to a confinement facility or elsewhere, distribution must include copies to the gaining command for its personnel and finance officers. See Chapter 6, Figure 6-14 herein.

d. Defense Counsel. If the original defense counsel is unavailable for this procedure (or is disqualified, such as by reason of alleged inadequate representation during the original proceedings, or, if a civilian, is no longer retained by the accused), a new trial defense counsel must be designated and must enter into an attorney-client relationship with the accused. When the new Action is taken, a copy of it or a copy of the new promulgating order (c, below) must be delivered to the accused. R.C.M. 1107(h).

e. Promulgating the new Action. The original Action, having been set aside by the appellate court, is not "withdrawn." Rather, the new Action will recite that the previous Action in the case, which was promulgated in (cite the initial promulgating order), was set aside by the (name of the appellate court) on a specified date, and a new Action was ordered in accordance with Article 60, UCMJ. Then follows the new Action of the convening authority. The original promulgating order is neither revoked nor amended. Instead, a complete new promulgating order is issued. It is best not to attempt to summarize the new Action, but to report it verbatim. Be sure to include the original trial jurisdiction (SJA) in the distribution of the promulgating order. See Chapter 7, Proceedings During Appellate Review, Figure 7-6, herein.

5-18. Action after waiver of appellate review.

a. After Action. After the convening authority's Action has been taken, an accused may file a waiver of appellate review. Unless an extension of time is granted, the waiver must be filed within 10 days after the Action is taken. If the waiver is timely, the case must then be assigned to a nondisqualified judge advocate to conduct the review required by R.C.M. 1112. The same process applies to cases withdrawn from appellate review in ACCA. See Chapter 7, paragraph 7-7, herein.

b. Form of waiver. R.C.M. 1110(d) sets forth requirements as to the form and content of a waiver of appellate review. AR 27-10, para 12-5a, prescribes that DD Forms 2330 (waiver of ACCA review) and 2331 (waiver of Criminal Law Division review) be used. Examples of completed forms are shown in MCM appendixes 19 and 20, respectively. Nevertheless, R.C.M. 1110(g) permits recognizing any waiver that substantially complies with the rule. The elements set forth in R.C.M. 1110(d) are critical.

c. Time of waiver. R.C.M. 1110(f)(1) permits an accused to sign a waiver of appellate review at any time after the sentence is announced, but the waiver cannot be submitted to the convening authority until after the convening authority's Action has been taken. United States v. Hernandez, 33 M.J. 145, 148-49 (C.M.A. 1991). Unless a written request for extension has been granted, the waiver must be filed within 10 days following the convening authority's Action. R.C.M. 1110(f)(1).

d. What to do with an effective timely waiver.

1. Review by a non-disqualified judge advocate. If the waiver is both timely and in substantial compliance with R.C.M. 1110 (a legal determination, not an administrative one), the waiver is then placed in the record of trial, which is then referred to a disinterested judge advocate (i.e., one who has neither acted on behalf of nor advised the prosecution or defense) for review. R.C.M. 1112(a)(1)-(2). The judge advocate assigned to review the case must not be disqualified for any of the reasons stated in R.C.M. 1112(c).

2. Form and content of the review. The review must comply with all of the provisions of R.C.M. 1112(d) as to form and content, including a response to each written allegation of error, made by or on behalf of the accused, whether in a post-trial submission pursuant to R.C.M. 1105 or otherwise.

3. Referral to the GCM convening authority. If there is a DD, BCD, or dismissal involved, or confinement for more than six months, or if the reviewing officer recommends corrective Action, the record and review are to be referred to the GCM convening authority. First, however, if the reviewer recommends that a DD or BCD be executed, check R.C.M. 1113(c)(1) to determine whether the SJA must advise the convening authority as required by that rule.

4. Action by the GCM convening authority. An Action by the GCM convening authority is required. The convening authority's permissible Actions are set forth in R.C.M. 1112(f). Sample forms of Action are shown in MCM App. 16, especially Forms 28-34. A supplemental promulgating order may be required. R.C.M. 1114(a), (b)(2); see AR 27-10, Figure 11-2.

5. Sending the record to the Clerk of Court. When the R.C.M. 1112 review has been completed, and any required Action by the GCM convening authority promulgated, the original record of trial (only) is sent to the Clerk of Court for the applicable reason below:

(i) R.C.M. 1112(g)(1) and AR 27-10, para 5-45b, require that the record be forwarded if the reviewing judge advocate advises that corrective Action is required as a matter of law and the convening authority does not take Action at least as favorable as that recommended by the reviewing judge advocate. These cases are reviewed in the OTJAG Criminal Law Division.

(ii) As indicated in para 5-3b, above, dismissals can be executed only by approval of the Secretary of the Army or his designee. R.C.M. 1112(g)(2) provides for forwarding the record to "the Secretary concerned." However, the record is to be mailed to the Clerk of Court as in the case of all other Court-martial records to be acted upon by the Secretary. AR 27-10, para 5-45b.

(iii) AR 27-10, para 5-45a requires that the original of all other GCMs and all SPCMs with an approved BCD be sent to the Clerk of Court.

5-19. Common errors.

a. Drafting of an Action that approves an adjudged dishonorable discharge, and then recites that, "except for the part of the sentence extending to bad-conduct discharge, the sentence will be executed." Be exact—a dishonorable discharge and a bad-conduct discharge are two different punishments.

b. Remember, the sentence needs to be approved before it can be executed. R.C.M. 1113(b).

The 2008 version of the MCM has a typographical error which erroneously omits the words, "the part of the sentence extending to" for inclusion in all cases, not just those with an adjudged sentence of death. The correct language should read: "In the case of _____, the sentence is approved and, except for the part of the sentence extending to (death) (dismissal) (dishonorable discharge) (bad-conduct discharge), will be executed."

c. The most frequent legal error is approving forfeitures in excess of two-thirds pay (e.g., total forfeitures) for a period in which the accused is not to be confined or in which service of confinement is suspended. R.C.M. 1107(d)(2) and Article 58b.

d. Failing to account for: a reprimand, pretrial confinement credit, waivers or deferrals of automatic or adjudged forfeitures. R.C.M. 1107(f)(4)(A).

e. Failure to state partial forfeitures of pay in terms of whole dollars, or number of months for which forfeitures are to be imposed when the approved term is for more than one month. R.C.M. 1003(b)(2).

f. Omitting the wording of a reprimand when one has been approved. R.C.M. 1107(f)(4)(G).

g. Failure to reflect consideration, approval or disapproval of a request for a waiver and/or a deferral in an endorsement that goes through the chain of command to the convening authority. The basis of denial of requests for deferments must also be included in an endorsement. Only

approved waivers and/or deferrals are placed in the convening authority's Action. R.C.M. 1101(c)(3).

h. Do not place wording concerning the consideration or basis for denying a waiver or deferral in the convening authority's Action. R.C.M. 1107(f)(4)(B) and (E).

ACTION

DEPARTMENT OF THE ARMY
Headquarters, 20th Infantry Division
Fort Blank, Missouri 63889

18 September 2010

In the case of Sergeant Thomas D. Adams Jr., 111-11-1111, U.S. Army, Company B, 1st Battalion, 11th Infantry Brigade, 22d Infantry Division, the sentence is approved and will be executed. The accused will be credited with 4 days of confinement against the sentence to confinement.

HAROLD B. SMITH
Brigadier General, USA
Commanding

Figure 5-1 Convening Authority's Action when no punitive discharge is adjudged.

Note: Ensure that all data in the Action are correct, including but not limited to the accused's name, to include II, Jr. etc., and his SSN. Always include the accused's branch of service, "U.S. Army", in the initial Action signed by the convening authority.

ACTION

DEPARTMENT OF THE ARMY
Headquarters, 20th Infantry Division
Fort Blank, Missouri 63889

18 September 2010

In the case of Sergeant Thomas D. Adams Jr., 111-11-1111, U.S. Army, Company B, 1st Battalion, 11th Infantry Brigade, 22d Infantry Division, only so much of the sentence extending to reduction to Private E1, forfeiture of \$500.00 pay per month for eight months, confinement for eight months and a bad-conduct discharge is approved and except for that portion of the sentence pertaining to a bad-conduct discharge will be executed.

HAROLD B. SMITH
Brigadier General, USA
Commanding

Figure 5-2 Sample format for a Convening Authority's initial Action when only a portion of the adjudged sentence, including a punitive discharge, is approved.

Corrected Action

DEPARTMENT OF THE ARMY
Headquarters, 20th Infantry Division
Fort Blank, Missouri 63889

18 September 2010

In the case of Sergeant Thomas D. Adams Jr., 222-22-2222, U.S. Army, Company B, 1st Battalion, 11th Infantry Brigade, 22d Infantry Division, only so much of the sentence extending to reduction to Private E1, forfeiture of \$500.00 pay per month for eight months, confinement for eight months and a Bad-Conduct Discharge is approved and except for that portion of the sentence pertaining to a Bad-Conduct Discharge will be executed. The accused will be credited with 26 days of confinement against the sentence to confinement.

HAROLD B. SMITH
Brigadier General, USA
Commanding

Figure 5-3 Sample format for a corrected Convening Authority's initial Action when a punitive discharge is adjudged.

Note: A corrected Action is used to clarify any ambiguous language published in the initial Action. The date of the corrected Action will be the same as the initial Action which it is correcting. The corrected Action is not used to change any portion of the adjudged sentence. The original copies of both the initial Action and the corrected Action will be placed in the original Record of Trial directly behind the Military Judge's authentication page. Copies of each will also be placed in each copy of the record directly behind the Military Judge's authentication.

ACTION

DEPARTMENT OF THE ARMY
Headquarters, 22d Infantry Division
Fort Blank, Missouri 63889

27 September 2010

In the case of Sergeant Thomas D. Adams Jr., 222-22-2222, U.S. Army, Company B, 1st Battalion, 11th Infantry Brigade, 22d Infantry Division, the Action taken by (me) (my predecessor) on 18 September 2008, is withdrawn and the following substituted therefor:

Only so much of the sentence as provides for reduction to the grade of Private E1, forfeiture of \$500.00 pay per month for six months, confinement for six months and a Bad-Conduct Discharge is approved and, except for that portion of the sentence pertaining to a Bad-Conduct Discharge will be executed. The accused will be credited with 26 days of confinement against the sentence to confinement.

HAROLD B. SMITH
Major General, USA
Commanding

Figure 5-4 Format for revoking a previous Action and replacing it with another.

Note: Taking this type of Action usually involves modifying the approved sentence in some form. Remember that the approved sentence may not be increased from that taken in the initial Action. R.C.M. 1107(d)(1).

The date of the corrected Action will be the date it is signed. The new promulgating order will also be the date the revocation Action is signed. Copies of both promulgating orders are to be placed in the record of trial and maintained by the office which published them. The original copies of both the new Action (the action revoking the previous action) and the original initial Action will be placed in the original Record of Trial directly behind the Military Judge's authentication page. Copies of each will also be placed in each copy of the record in the same location.

ACTION

DEPARTMENT OF THE ARMY
Headquarters, 20th Infantry Division
Fort Blank, Missouri 63889

18 September 2010

In the case of [Rank, Full Name, SSN, U.S. Army, unit of assignment] the sentence is approved and will be executed.

HAROLD B. SMITH
Brigadier General, USA
Commanding

Figure 5-5 Initial Action which approves the sentence as adjudged with no changes when no punitive discharge has been adjudged.

ACTION

DEPARTMENT OF THE ARMY
Headquarters, 20th Infantry Division
Fort Blank, Missouri 63889

18 September 2010

In the case of [Rank, Full Name, SSN, U.S. Army, unit of assignment] the sentence is approved and except for that part of the sentence extending to a [type of discharge (Bad-Conduct Discharge)(Dishonorable Discharge)(dismissal from the service)], will be executed.

HAROLD B. SMITH
Brigadier General, USA
Commanding

Figure 5-6 Initial Action which approves the sentence as adjudged with no changes when there is a punitive discharge as part of the adjudged sentence.

ACTION

DEPARTMENT OF THE ARMY
Headquarters, 20th Infantry Division
Fort Blank, Missouri 63889

18 September 2010

In the case of [Rank, Full Name, SSN, U.S. Army, unit of assignment] only so much of the sentence as provides for reduction to Private E1, forfeiture of \$600.00 pay per month for 5 months, confinement for five months and a [type of discharge (Bad-Conduct Discharge)(Dishonorable Discharge)(dismissal from the service)] is approved and except for that part of the sentence extending to [type of discharge (Bad-Conduct Discharge)(Dishonorable Discharge)(dismissal from the service)], will be executed.

HAROLD B. SMITH
Brigadier General, USA
Commanding

Figure 5-7 Initial Action when only part of the adjudged sentence, including a punitive discharge, is approved. Any punishment not mentioned in this Action is automatically disapproved and is no longer available for approval or execution. Therefore it is extremely important that the Action be correct and lists all punishment which is to be approved.

ACTION

DEPARTMENT OF THE ARMY
Headquarters, 20th Infantry Division
Fort Blank, Missouri 63889

18 September 2010

In the case of [Rank, Full Name, SSN, U.S. Army, unit of assignment] the sentence is approved and except for that part of the sentence extending to a [type of discharge (Bad-Conduct Discharge)(Dishonorable Discharge)(dismissal from the service)] will be executed, but the execution of that part of the sentence extending to confinement in excess of 3 months is suspended for 3 months, at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further Action.

HAROLD B. SMITH
Brigadier General, USA
Commanding

Figure 5-8 Initial Action when all punishment, including a punitive discharge, is approved as adjudged and a portion of the sentence to confinement is suspended.

ACTION

DEPARTMENT OF THE ARMY
Headquarters, 20th Infantry Division
Fort Blank, Missouri 63889

18 September 2010

In the case of [Rank, Full Name, SSN, U.S. Army, unit of assignment] only so much of the sentence as provides for reduction to Private E1, forfeiture of \$600.00 pay per month for 5 months, confinement for five months and a [type of discharge (Bad-Conduct Discharge)(Dishonorable Discharge)(dismissal from the service)] is approved and except for that part of the sentence extending to [type of discharge (Bad-Conduct Discharge)(Dishonorable Discharge)(dismissal from the service)], will be executed but the execution of that part of the sentence extending to confinement in excess of 7 months is suspended for 7 months, at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further Action. The accused will be credited with six days of confinement against the sentence to confinement.

HAROLD B. SMITH
Brigadier General, USA
Commanding

Figure 5-9 Initial Action when only part of the adjudged sentence, including a punitive discharge, is approved, a portion of the sentence to confinement is suspended and the accused is credited with confinement credit.

ACTION

DEPARTMENT OF THE ARMY
Headquarters, 20th Infantry Division
Fort Blank, Missouri 63889

18 September 2010

In the case of [Rank, Full Name, SSN, U.S. Army, unit of assignment] only so much of the sentence as provides for reduction to Private E1, forfeiture of \$700.00 pay per month for 4 months, confinement for 15 months and a [type of discharge (Bad-Conduct Discharge)(Dishonorable Discharge) (dismissal from the service)] is approved and except for that part of the sentence extending to [type of discharge (Bad-Conduct Discharge) (Dishonorable Discharge)(dismissal from the service)], will be executed but the execution of that part of the sentence extending to confinement in excess of 7 months is suspended for 8 months, at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further Action. The automatic and adjudged forfeiture of all pay and allowances were deferred effective 16 March 2010 and the deferments are terminated on this date. The automatic forfeiture of all pay and allowances required by Article 58b, UCMJ is waived effective this date for a period of six months with direction that these funds be paid to the wife of the accused Mrs. [Full Name]. The accused will be credited with six days of confinement against the sentence to confinement.

HAROLD B. SMITH
Brigadier General, USA
Commanding

Figure 5-10 Initial Action when only part (not the entire sentence adjudged by the court) is approved, the automatic and adjudged forfeitures are deferred, and when taking Action the convening authority waived the automatic forfeitures. The accused is also credited with confinement credit.

ACTION

DEPARTMENT OF THE ARMY
Headquarters, 20th Infantry Division
Fort Blank, Missouri 63889

18 September 2010

In the case of [Rank, Full Name, SSN, U.S. Army, Unit of assignment] the sentence is approved and except for that part of the sentence extending to the Bad-Conduct Discharge, will be executed. You are hereby reprimanded for your wrongful use and abuse of crack cocaine and for cashing over \$1,000.00 of worthless checks over a four month period. Your Actions seriously tarnished the reputation of soldiers serving in the United States Army and have degraded morale and discipline within your unit. You also did not set the type of example a soldier with your years of service displays for other soldiers. Your behavior has brought disgrace to yourself and to the Armed Forces of the United States.

HAROLD B. SMITH
Brigadier General, USA
Commanding

Figure 5-11 Initial Action when a reprimand is a part of the adjudged and approved sentence. General Court-Martial Order Number 30 was the last in the series for 2010.

DEPARTMENT OF THE ARMY
HEADQUARTERS
U.S. ARMY COMBINED ARMS CENTER AND FORT LEAVENWORTH
FORT LEAVENWORTH, KANSAS 66027-2300

GENERAL COURT-MARTIAL ORDER
NUMBER 1

15 January 2011

Specialist Charlie D. Adams, Jr. 111-11-1111, U.S. Army, Headquarters and Headquarters Company, 555th Engineer Group, Fort Blank, Missouri, 62893, currently assigned to the Correctional Holding Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas 66027, was arraigned at Fort Blank, Missouri, on the following offenses at a General Court-Martial convened by Commander, 20th Infantry Division

Charge I. Article 80. Plea: Not Guilty. Finding: Not Guilty.

Specification: Attempting to sell military property of a value in excess of \$100.00, the property of the U.S. Air Force, on or about 27 February 2009. Plea: Not Guilty. Finding: Not Guilty.

Charge II. Article 121. Plea: Not Guilty. Finding: Guilty.

Specification: Larceny of military property of a value in excess of \$100.00, the property of the U.S. Air Force, on or about 19 February 2009. Plea: Not Guilty. Finding: Guilty.

Additional Charge. Article 92. Plea: Not Guilty. Finding: Guilty.

Specification: Willful dereliction in performance of duties as an interior guard, on or about 19 February 2009. Plea: Not Guilty. Finding: Guilty.

SENTENCE

Sentence adjudged on 24 August 2009: To be confined for three years and to be discharged from the service with a Dishonorable Discharge.

Figure 5-12 New Action When Initial Action Set Aside on Appeal and New Action Ordered.

ACTION

In the General Court-Martial case of Specialist Charlie D. Adams, Jr. 111-11-1111, U.S. Army, Headquarters and Headquarters Company, 555th Engineer Group, Fort Blank, Missouri, 62893, currently assigned to the Correctional Holding Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas 66027, the Action taken by the Commander, 20th Infantry Division, Fort Blank, Missouri, set forth in General Court-Martial Order Number 3, dated 29 January 2010, was set aside on 9 October 2010 by the U.S. Army Court of Criminal Appeals, pursuant to Article 66, Uniform Code of Military Justice. A new review and Action were ordered. A recommendation having been received pursuant to R.C.M. 1106, the following is my Action on the record of trial: The sentence is approved and, except for the part of the sentence extending to a Dishonorable Discharge, will be executed. The accused will be credited with confinement served from (initial date to date released) [or] (the sentence to confinement has been served).

BY COMMAND OF [GRADE AND SURNAME]:

[SIGNATURE BLOCK]

DISTRIBUTION:
[See AR 27-10, para 11-7]
(ARMY 20041192)

Figure 5-12, cont'd. New Action When Initial Action Set Aside on Appeal and New Action Ordered.

CHAPTER 6

THE PROMULGATING ORDER

The promulgating order is the official court-martial order that publishes the results of trial.

6-1. Initial promulgating orders.

a. Purpose. “The convening authority will issue an order promulgating the results of trial for all GCMs and SPCMs.” AR 27-10, para 11-3a. The order must be issued regardless of the result of trial and whether or not the convening authority was required to take Action in the case. R.C.M. 1114 (c)(3).

b. The order must be accurate. Orders publishing the proceedings of court-martial and all Action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States, subject only to Action upon a petition for a new trial as provided in Article 73 (Petition for New Trial), UCMJ, Action by the Secretary concerned as provided in Article 74, UCMJ, and the authority of the President under Article 76, UCMJ.

c. Distribution to the Clerk of Court. At least one copy of all GCM and SPCM promulgating orders (initial and supplementary), regardless of the outcome of a court-martial, must be sent to the Clerk of Court. AR 27-10, paras 11-7b(12), c(1), d(1), f(1). This is necessary to ensure that the Army Court-Martial Information Management System (ACMIS) can be updated for all cases, including those SPCM cases in which a record of trial will not be received by the Clerk of Court.

6-2 . Contents. In brief. R.C.M. 1114 (c)(1) establishes the following content for initial promulgating orders:

1. The type of court-martial;
2. The command by which the court-martial was convened (which may differ from the command issuing the order);
3. The charges and specifications on which the accused was arraigned or a summary thereof;
4. The accused’s pleas;
5. The findings or other disposition of each charge and specification;
6. The sentence, if any, and date on which it was adjudged (or date proceedings were terminated without a sentence); and
7. The Action of the convening authority, or a summary thereof.

6-3. Contents of the promulgating order.

a. Order number. Each type of Court Martial Order (convening and promulgating) for each type of court (GCM and SPCM) is numbered consecutively throughout the calendar year, with order No. 1 for each category stating across the top the last number used in that category in the preceding year. AR 27-10, para 11-5a(2).

b. Name of jurisdiction. The letterhead used must be that of the command issuing the order and must coincide with the name of the organization as it appears in the HQDA General Order (DAGO), if any, conferring the court-martial jurisdiction. See AR 27-10, para 5-2a(1) and US. DEP'T OF ARMY, REG. 220-5, Designation, Classification, Change in Status of Units (15 April 2003) [hereinafter AR 220-5].

c. Redesignations. In a time of deployments and redesignations, care must be exercised in both the letterhead and numbering of orders. The now separate jurisdictions will each begin a new series of CMOs with Order No. 1; neither will continue the previous numbering from the formerly combined division/post jurisdiction. Remember that this situation requires a transfer of pending cases and the selection of court members and issuance of convening orders by the gaining commander.

d. Date. An initial promulgating order must bear the date of the convening authority's Action on the sentence. R.C.M. 1114(c)(2), AR 27-10, para 11-5a(1)(b).

1. Should it become necessary to publish another promulgating order after the original promulgating order, with a date that falls between two orders already issued in the series, such as "GCMO 20" and "GCMO 21", this order should be given a decimal number such as "GCMO 20.1."

2. When there is no formal Action on a sentence, as when the court-martial was terminated before findings, resulted in acquittal, or resulted in findings of not guilty only by reason of lack of mental responsibility, the promulgating order bears the date of its publication, but must also state the date on which the proceedings were terminated. R.C.M. 1114(c)(2).

e. Authority line.

1. In court-martial orders when the officer taking Action or otherwise promulgating the result of trial is a general officer, the authority line reads "BY COMMAND OF [GRADE AND SURNAME]."

2. When the officer taking Action or otherwise promulgating the result of trial is not a general officer, the authority line reads "BY ORDER OF [GRADE AND SURNAME]." AR 27-10, para 11-5c, AR 600-8-15, para 2-18.

f. Action. When the order promulgates an Action, be sure the grade, name on the order, and date are the same as found on the original signed Action, especially if there has been a permanent or temporary change of command since the Action was signed. See Chapter 2, para 2-15, herein, documenting change of command required to be in the record of trial.

g. Classified information. See R.C.M. 1114(d) and AR 380-5 (2000).

h. Signature.

1. Commanders/Convening Authorities usually delegate use of an authority line to individuals authorized to sign documents to show that the document(s) expresses the will of the convening authority. AR 25-50, para 6-2.

2. The delegation of authority to use an authority line to sign CMOs should be in written form consistent with AR 27-10, par 11-5c(1): “By command of (grade and last name)” when the commander is a general officer and (2) “By the order of (grade and last name)” when the commander is below the grade of brigadier general. Only the individual whose signature block appears on the promulgating order may sign the promulgating order. No individual may “Sign For” the individual whose signature block appears on a CMO.

i. No personal information of victims and witnesses in order. When copying the specification in the promulgating order, be sure to only use the initials of victims and witnesses in the promulgating order, not the full name of the victim or witness. Also, do not include any personal information of a victim or witness in the promulgating order, including, but not limited, to a home address or bank account number. See AR 27-10, para 11-3e.

j. Summarizing charges. Although acceptable, summarizing the charges and specifications often lead to confusing or inaccurate promulgating orders. Take care to ensure the summary is correct. See para 6-6 below and Figure 6-1 at the end of this chapter for assistance.

6-4. Subsequent promulgating orders. See Chapter 8, The Post Trial Handbook.

a. In general. A supplementary promulgating order is used to promulgate any subsequent action taken by the convening or higher authority on findings or sentence of a GCM, SPCM, or SCM. See R.C.M.1114, AR 27-10, para 11-1b.

b. Self-executing final orders. An order promulgating a self-executing dishonorable or bad conduct discharge need not be issued. AR 27-10, para 11-3(c) and Executive Order 13468, July 2008, modifying R.C.M. 113 and R.C.M. 1114a to include self-executing final orders: “An order promulgating a self-executing dishonorable or bad conduct discharge need not be issued. The original action by a convening authority approving a discharge and certification by the appropriate official that the case is final may be forwarded to the accused’s personnel office for preparation of a discharge order and certificate.”

6-5. Summarizing specifications.

a. Use caution. Summarizing a specification can be labor-saving, especially in bad-check cases, which otherwise require setting forth each check verbatim. However, summarization has its own disadvantages. In summarizing a convening authority’s Action other than by merely omitting the accused’s name and social security number (SSN) one incurs the risk of omitting a critical sentencing phrase, or worse, by inadvertently inserting a customary critical word or phrase that is in fact missing from the original Action.

b. Lesser included offenses. The person drafting the summary must know and include those elements that distinguish one offense from a different or lesser included offense and must know and include elements that affect the maximum punishment. Furthermore, the appellate courts and other reviewing agencies sometimes have found fault with a summary that did not sufficiently disclose the true nature of the offense, as in the case of disobedience of an order (the nature of the order), dereliction of duty (the type of duty), disrespect towards a superior (the words or act that constituted disrespect), and offenses involving property (the aggregate dollar value of property taken or damaged).

c. Grammatical errors. Merely removing the verb “did” from the typical form specification usually produces a grammatical error; namely, a sentence with no verb. This degrades the JAG Corps image in the Army and the Army image held by civilians, who frequently use our promulgating orders in subsequent legal proceedings.

6-6. Summarized specification checklist. See Figure 6-1 at the end of this chapter, entitled “Checklist for Summarized Initial Promulgating Orders,” in hopes of avoiding as many errors as possible.

6-7. The “ACTION” paragraph. In cases terminated without findings of guilty and without imposition of a sentence, the “ACTION” announced in the promulgating order states how, for what reason, and on what date the court-martial proceedings were terminated. See R.C.M. 1114(c)(2) and (3); see also Chapter 1, Figure 1-4.

6-8. Format.

a. Legibility. Court-martial orders must meet the same general standards of legibility as established for trial transcripts. See Chapter 3, paragraph 3-2 of this volume.

b. Proportional spacing will not be used. Because copies will be fastened into records of trial bound at the top, orders consisting of more than one page must be printed head-to-foot in sufficient quantity for insertion into the record; distribution copies may be printed head-to-head. At least some of the text must appear on the page containing the authentication.

c. Examples. MCM, App.17a, illustrates a format for initial promulgating orders. Another sample is found in AR 27-10, Figure 11-1.

1. Note that in AR 27-10, Figure 11-1, when reflecting the plea or findings, the words “Guilty” and “Not Guilty” (G and NG in MCM App. 17a) are not abbreviated in Army orders.

2. Also, if the trial was begun, but terminated before the accused was arraigned, the recital that the accused was “arraigned at [location] on the following offenses” is changed to “appeared at [location] charged with the following offenses.” (Emphasis added.)

6-9. Corrections to promulgating orders. Corrections to promulgating orders are made in accordance with guidance of AR 27-10, para 11-5e and AR 600-8-105, para 2-22.

a. Underscore. Changed material will be underscored. AR 27-10, para 11-5e(1).

b. Numbering corrected copies. Further corrections will be made by additional corrected copies, as necessary, with the figure “2d”, “3d”, and so forth, inserted before the words “CORRECTED COPY.” AR 27-10, para 11-5e(2). See Figure 6-3 at the end of this chapter.

c. Command line. When correcting a promulgating order the command line on the corrected order will remain the same as the command line on the original order.

d. Error in the order, but not in the Action. When the error to be corrected involves the convening authority’s Action, a distinction must be made: If the signed Action is correct, but was transcribed incorrectly in the promulgating order, then a CORRECTED COPY (all caps at the top of the order) of the promulgating order is required. See Figure 6-3 at the end of this chapter.

e. Error in the Action. If the error is in the original signed Action, the ability to correct it depends on whether it has been published or the accused officially notified. See Figure 6-13.

1. If the Action has not been published and the accused has not been officially notified, a CORRECTED COPY of the Action may be signed. R.C.M. 1107(f)(2).
2. If the order has been published or the accused was officially notified, but the record has not yet been forwarded for appellate review, and it appears the revised, the Action must not be less favorable to the accused than the initial Action.
3. In all other cases, even a clerical error in the Action can be corrected only on instructions from higher authority. R.C.M. 1107(f)(2), (g). Forms for withdrawal of Actions are shown in MCM, App.16, Forms 24 and 24a.

f. The ACCA and the CAAF notice of court-martial order correction.

1. In the course of appellate review if the ACCA determines that the initial promulgating order is incomplete or erroneous, the Court usually will make the necessary correction by issuing a special form of order entitled “Notice of Court-Martial Order Correction.” A copy of the notice is stapled to all copies of the promulgating order including the copy that the Clerk of Court returns to the trial jurisdiction. Aside from avoiding the same error in the future, no further Action is necessary. It is not necessary to issue a corrected copy of the promulgating order; the Court’s order is self-executing.

2. In cases involving the most pervasive errors, the Court will order your office to issue a “CORRECTED COPY” instead of issuing its own NOTICE OF COURT MARTIAL ORDER CORRECTION because the corrected order will receive a complete initial distribution.

3. When errors are discovered by the CAAF, that Court requires a “CORRECTED COPY” in all cases. The trial jurisdiction must then transmit to the Clerk of Court, U.S. Army Judiciary, a copy to be furnished the CAAF.

6-10. Distribution of the initial promulgating order.

a. Recipients. The required distribution of initial promulgating orders is set forth in AR 27-10, paras 11-7b, c, and d. See Figure 6-15 at the end of this chapter for a copy of AR 27-10, para 11-7.

b. Number of copies required. The original record of trial must contain eight copies of the initial promulgating order if the record is verbatim. All other copies of the record of trial must include at least one copy of the initial promulgating order. If the order is a "CORRECTED COPY," be sure to include in all copies of the record at least one copy of the order that was corrected. Original promulgating orders are to be maintained by the Staff Judge Advocate Office which publishes them. See Chapter 2, para 2-15 of this volume.

c. Correction Facility. When listing the distributees on the order, do not fail to name the corrections facility, if any, to which the copy required by AR 27-10, para 11-7a(5), will be sent.

CHECKLIST FOR PREPARING
SUMMARIZED INITIAL COURT-MARTIAL PROMULGATING ORDERS

1. The Order Heading.

a. Is the order the first court-martial order of its type (GCMO, SPCMO, or Convening Order) in the series for that calendar year?

If so, the first order in each series (General Court-Martial Order, Special Court Martial Order, or Court Martial Convening Order) must have the annotation above the heading of the first page showing the number of the last order issued for that series during the preceding year, for example, "Court-Martial Convening Order Number 18 was the last of the series for 2003." AR 27-10, para 11-5a(2).

b. Is this a Corrected Order?

If this is a corrected order the annotation "CORRECTED COPY" must be placed above the heading of the first page of the court-martial order.

Further corrected copies, as necessary, with the figure "2d," "3d," and so forth may be inserted before the words "CORRECTED COPY" as needed. AR 27-10, para 11-5e and AR 600-8-150, para 2-22. See Figure 6-3 in this Appendix.

There are two errors which may not be corrected on any type of court-martial order. The first error is failing to identify the type of court-martial order being published, e.g., "Special Court-Martial Order", "General Court-Martial Order" or "Court-Martial Order." The second error is the actual court-martial order number. If either of these errors have been made and you are unsure of what Action to take, contact the Records Branch of the Office of the Clerk of Court for assistance.

c. Does the initial court-martial promulgating order (general or special court-martial order) contain findings of guilt as to any qualifying military offense for the purposes of 10 USC section 1565 (DNA processing)?

If so, the Staff Judge Advocate shall ensure that the top of the first page of the order is annotated in **bold** with "**DNA processing required. 10 USC 1565**". AR 27-10, para 11-5a(4). See Figure 6-4 at the end of this chapter. "A 'qualifying military offense' is a felony or sexual offense determined by the Secretary of Defense to be a qualifying military offense for the purposes of 10 USC Section 1565. See Figure 6-6 at the end of this chapter for additional guidance on use of the DNA annotation and a list of qualifying military offenses. Subsequent changes to 10 USC 1565, as well as all sources listed in this handout, should be monitored carefully.

Figure 6-1 Checklist for summarized initial court-martial promulgating orders.

d. Is this order the 1) first court-martial order in the series for the calendar year, 2) a corrected copy, or 3) an order which is required to contain the DNA annotation, or 4) possibly contain all three of these annotations? For correct order of these three annotations see Figure 6-5 at the end of this chapter.

e. Is the type of court-martial (GCM or SPCM) in the heading the same as in the referral endorsement and convening order?

f. Is the order correctly numbered sequentially by date in its series (GCMO or SPCMO)?

Remember--never skip numbers in a series and do not reuse the same number except in a "CORRECTED COPY."

Note: If the order is Number 1 in its series for the calendar year, type a line such as the following above the letterhead: "General Court-Martial Order Number 94 was the last of this series for 2008."

g. Is the order dated the same as the convening authority's Action? (Initial promulgating orders only.)

2. Arraignment Paragraph.

a. Does the type of court-martial before which the accused was arraigned (GCM, SPCM) agree with the order heading (1a, above.)?

b. Is the present trial a rehearing? If so, this paragraph must cite the order promulgating the prior proceedings.

c. Do the accused's grade, name, and service number (SSN) agree with what is shown in the record of trial?

Tip: Most errors occur because the Charge Sheet is wrong. Check the name, grade, and SSN in the accused's personnel records and in any personally signed papers, such as a plea agreement or stipulation. Also consult the transcript at the beginning of the sentencing proceedings, where personal information about the accused usually is read into the record of trial and any inconsistencies may have been noted.

Note: For reasons unrelated to the trial, an accused's military grade may change before or after the trial. The arraignment paragraph and specifications use the accused's grade at the time of arraignment; however, if the grade at the time of an offense was different and is pertinent to the offense, the accused is identified in that specification by the present grade followed by the grade at the time of the offense. R.C.M. 307(c)(3) Discussion (c)(ii). Similarly, if the grade on the date of Action differs from that at the time of trial the former grade is shown parenthetically in the Action.

Figure 6-1, cont'd. Checklist for summarized initial court-martial promulgating orders.

d. Are the accused's armed force (normally "U.S. Army") and unit of assignment at the time of arraignment correctly shown?

An accused who is not a member of the armed forces should be described as "a person subject to military jurisdiction pursuant to the UCMJ, Article 2(a) [(3)-(12), as appropriate]." Caveat: For the wording of specifications, see R.C.M. 307(c)(3) Discussion (C)(iv)(b).

3. The Charges (Including Findings or Other Disposition).

a. Is each charge designated and numbered as shown on the Charge Sheet at the time of arraignment and does the Charge Sheet reflect any changes made during the trial?

Tip: Changes made before arraignment should have been initialed and dated on the Charge Sheet by the trial counsel, but later changes can be found only by searching the transcript. If necessary, ask the trial counsel if there were any amendments, consolidations, or other changes.

Note 1: If a charge was incorrectly designated on the Charge Sheet or the wrong article of the UCMJ was cited, insert the correct information in brackets, such as: "[Additional] Charge I" or "Article 112 [112a]."

Note 2: If any charge was redesignated during the trial (frequently necessary when a preceding charge and its specifications are withdrawn), show both the original and new designation in the following manner: "Charge I (Redesignated the Charge)," "Charge IV (Redesignated Charge III)."

b. As to each charge, the order must show the article of the UCMJ alleged to have been violated and the plea and finding as to that charge, such as: "Charge III. Article 112a. Plea: Not Guilty. Finding: Guilty," or "Charge IV. Article 123a. Plea: Not Guilty. Finding: Not guilty, but Guilty of a violation of Article 134".

Tip: A plea to the charge normally will be "Guilty" if there is an accepted plea of guilty to any specification alleging violations of that article of the Code, but if the accused pleads guilty only to lesser included offenses in violation of a different article, the plea to the charge is shown in the following manner: "Not Guilty, but Guilty of a violation of Article 134."

4. Summarized Specifications (Including Findings or Other Disposition).

a. Is each specification designated and numbered as shown on the Charge Sheet at the time of arraignment and does it reflect any changes made during the trial?

The trial counsel should have entered on the Charge Sheet, initialed, and dated any amendments made before arraignment. However, changes often occur after arraignment and can be found only by examining the transcript (see the Note following 4. d., below).

Figure 6-1, cont'd. Checklist for summarized initial court-martial promulgating orders.

Tip: If any specification was redesignated after arraignment, show the redesignation in the following manner: “Specification 3 (Redesignated Specification 2).”

b. Does each summarized specification correctly describe the offense alleged and reflect any pertinent amendments made during the trial?

Note: See, for example, the specifications summarized in Appendix 17a of the Manual for Courts-Martial and the note there following Specification 1 of Charge I. Also see Figure 11-1 following AR 27-10, Chapter 11.

c. A properly summarized specification will accurately name the offense charged. Include all essential dates alleged, all elements affecting the maximum punishment (such as the total value of property stolen, quantity of a drug possessed, or the fact that a victim was less than 12 or less than 16 years of age as the case may be), and describe the offense with sufficient particularity to indicate the nature and gravity of the misconduct and protect the government from a claim of double jeopardy.

For example, so far as consistent with the verbatim specification, the summarized specification will include the language or other behavior alleged to have been disrespectful, the type of duty in which the accused allegedly was derelict, the terms of an order that was disobeyed, and so forth.

Also, when included in the specification being summarized, monetary values, such as the amount of cash or value of property stolen or aggregate value of bad checks uttered, should be reflected in the summarization (the greater the value, the more important its inclusion). In no case may two or more summarized specifications be completely identical. To distinguish similar offenses, the specification summaries must include one or more differentiating elements, such as the date and time, location, value, description of property, or the victim.

Note 1: Articles 90, 91, and 92 (willful disobedience, failure to obey, dereliction of duty), Article 118 (murder), and Article 132 (frauds against the U.S.) present special problems of naming or describing offenses. When those offenses are involved, see Figure 6-7 at the end of this chapter for suggested names.

Note 2: Maximum sentence factors are shown in Appendix 12, Maximum Punishment Chart, of the Manual for Courts-Martial as well as throughout Part IV of the Manual, where each offense is described and the maximum punishment listed. For your convenience, these sentence factors are listed in Figure 6-8 at the end of this chapter. You should review them to be certain that all circumstances affecting the maximum punishment, as well as the date of the offense, are shown in the specification summary.

Note 3: Do not include the names of victims or witnesses. Instead, use the person’s initials. If the alleged victim was a soldier, the military grade may be used as well. AR 25-50, para 11-3e.

Figure 6-1, cont’d. Checklist for summarized initial court-martial promulgating orders.

Tip: Summarizing specifications is optional, not required. Summarization can save time in cases involving many bad checks or long lists of items stolen. For less complex offenses, however, it is equally or more efficient to summarize merely by omitting the identification of the accused, omitting the verb “did,” and changing the tense of the operative verb to the past tense or present participle (“Absenting himself without authority . . .,” or “Wrongfully possessing . . .,” or “Indecently assaulting M.W., a child under 16 . . .”).

d. If a specification was amended after arraignment, does the summary reflect the specification as amended?

Note: Amendments may occur incident to the inquiry into a plea of guilty or as a result of consolidating multiplicitous specifications. When checking the transcript for amendments, look for motions pertaining to the specifications and pay particular attention to the pleas entered, the acceptance of guilty pleas, and the announcement of findings. Ideally, the office SOP should require the court reporter and/or the trial counsel to pinpoint in-trial amendments for the person who composes the promulgating order.

e. Are pleas and findings shown following each specification?

In many instances, the pleas and findings will merely be “Guilty” or “Not Guilty,” but in other cases, the plea may be guilty with exceptions, with or without substitutions, not guilty of the exceptions, but guilty of the substitutions, if any. R.C.M. 910(a)(1).

Rule for Court-Martial 1114(c)(1) does not provide for summarizing the accused’s plea or the findings, but R.C.M. 910(a)(1) permits an accused to plead guilty to a “named lesser included offense.” Therefore, that offense will itself be named in the statement of the plea and, if found, in the finding.

For example, when Murder (Article 118) With the intent to kill or inflict great bodily harm, was charged, a plea to a lesser included offense might read “Not Guilty, but Guilty of voluntary manslaughter in violation of Article 119.” Or, when larceny was charged, the plea (and finding) might read “Not Guilty, but Guilty of wrongful appropriation.” If no plea was entered to a particular specification, the appropriate remark is “None entered.”

f. Is the disposition of any specification other than by findings correctly shown?

Examples include “None entered” (if no plea had been entered), “Withdrawn by convening authority,” “Dismissed on motion for finding of not guilty,” “Dismissed for failure to state offense,” “Dismissed as multiplicitous,” “Dismissed by the military judge after findings,” and “Consolidated with Specification 2 of Charge I.”

Figure 6-1, cont’d. Checklist for summarized initial court-martial promulgating orders.

5. Sentence.

- a. Does the order correctly state the date the sentence was adjudged?
- b. Does the statement accurately reflect each element of the sentence as announced?
The sentence adjudged is set forth verbatim, not summarized.

Such things as monetary amounts of forfeitures and periods of confinement should be stated exactly as announced even if recognized to be inartful or incomplete. If a sentence uses “days” to describe the period of confinement, use days in all further documentation, i.e., post-trial recommendation and promulgating order. Put another way, do not change a sentence of 3 months confinement to 90 days confinement or vice versa. If the sentence was adjudged in “months”, use months to denote the time period the accused is to be confined in all further documentation unless the time period to confinement is reduced in which case you may use months and days. If a sentence is adjudged in “years”, “years” should be used in all further correspondence, unless the sentence is reduced in which case you may use years, months and days.

6. Action.

- a. The date the convening authority’s Action was taken, which will become the date of the promulgating order, should be shown on the original, signed Action.
- b. Does the Action shown in the order correctly summarize the signed, original copy in the record of trial?

Tip: The safest way to “summarize” is to omit only the identification of the accused (“In the case of . . .”) and set forth the remainder verbatim.

Note: An Action that is merely incorrectly copied or summarized can be corrected by issuing a “CORRECTED COPY” of the promulgating order or, if the error is found on appeal, by an ACCA order correcting the CMO. However, if the original Action is itself incorrect or incomplete, that can only be corrected by withdrawing it and issuing a new Action (when permitted by law), or by an appellate court decision modifying the Action taken.

7. Authentication.

- a. Does the authority line correctly reflect the grade and name of the officer who signed the Action?

Tip: Errors most often occur when the officer who signed the Action was an acting commander or was a commander who has since left the command.

Figure 6-1, cont’d. Checklist for summarized initial court-martial promulgating orders.

b. Is the order authenticated by someone to whom signature authority has been delegated in writing?

8. Acquittal or Termination without Findings or by a Finding of Not Guilty by Reason of Lack of Mental Responsibility as to All Charges.

This checklist can also be used as a guide for cases that result in an acquittal or termination without findings or by a finding of not guilty by reason of lack of mental responsibility as to all charges. The following differences should be observed, however: Remember, even in these cases, if the court was a GCM, a summarized record of trial must be sent to the Clerk of Court, U.S. Army Judiciary.

a. There being no “Action” on findings or sentence, the order bears the date of its publication (R.C.M. 1114(c)(2));

b. The order must reflect the date the proceedings were terminated by stating “The (findings were announced on)(charges were withdrawn on)(charges were dismissed on) (date),” or “A mistrial was declared on (date)” (R.C.M. 1114(c)(2));

c. If the proceedings were terminated before arraignment, the arraignment paragraph (1, above) should state that the accused “appeared before” the court-martial and was “charged” with the listed offenses, rather than having been “arraigned.” All charges and specifications should be shown, but the disposition can be indicated by a single sentence as in b, above.

d. The order should direct that “All rights, privileges, and property of which the accused has been deprived by virtue of these proceedings will be restored.”

Figure 6-1, cont’d. Checklist for summarized initial court-martial promulgating orders.

General Court-Martial Order Number 24 was the last of the series for 2009.

DEPARTMENT OF THE ARMY
Headquarters, Joint Readiness Training Center and Fort Polk
Fort Polk, Louisiana 71459

General Court-Martial Order
Number 1

9 January 2010

Figure 6-2 Example of the first General Court-Martial Order for the year with the annotation indicating the last numbered order in the series for the previous calendar year.

CORRECTED COPY

DEPARTMENT OF THE ARMY
Headquarters, Joint Readiness Training Center and Fort Polk
Fort Polk, Louisiana 71459

General Court-Martial Order
Number 15

9 January 2011

Figure 6-3 Example of a corrected Court-Martial Order with the annotation “CORRECTED COPY” above the heading.

DNA processing required. 10 USC 1565.

DEPARTMENT OF THE ARMY
Headquarters, Joint Readiness Training Center and Fort Polk
Fort Polk, Louisiana 71459

General Court-Martial Order
Number 19

15 July 2011

Figure 6-4 Example of the annotation indicating that DNA processing is required.

CORRECTED COPY

DNA processing required. 10 USC 1565.

General Court-Martial Order Number 24 was the last of the series for 2010.

DEPARTMENT OF THE ARMY
Headquarters, 82d Airborne Division
Fort Bragg, North Carolina 28307-5100

GENERAL COURT-MARTIAL ORDER
NUMBER 1

14 January 2011

Specialist Bernell B. Anderson Jr., 111-11-1111, U.S. Army, Headquarters and Headquarters Battery, 3d Battalion, 4th Air Defense Artillery Regiment (Airborne), 82d Airborne Division, Fort Bragg, North Carolina 28307, was arraigned at Fort Bragg, North Carolina, on the following offense at a General Court-Martial convened by Commander, 82d Airborne Division.

Charge: Article 109. Plea: Not Guilty. Finding: Not Guilty.

Specification: On or about 11 August 2010, willfully and wrongfully damage by scratching with a sharp object, a car, the amount of said damage being more than \$100.00, the property of 1SG J.K.L.. Plea: Not Guilty. Finding: Not Guilty.

The findings were announced on 12 December 2010. All rights, privileges and property of which the accused may have been deprived of by virtue of these proceedings will be restored.

BY COMMAND OF MAJOR GENERAL VINES:

TOM B. JONES
MAJ, JA
Chief, Military Justice

DISTRIBUTION:
[See AR 27-10, para 11-7]

Figure 6-5 Example of the first Court-Martial Order for the year which also required both the "CORRECTED COPY" and DNA processing annotations. Annotations will be placed in the order shown with a blank line between each. The text corrected is underlined.

Department of Defense Policy
on Collecting DNA Samples from Military Prisoners

The Department of Defense (DoD) requires that DNA samples be collected from each Soldier convicted of a qualifying military offense (QMO). The requirement to collect DNA samples does not apply to the findings of a summary court-martial or a proceeding under Article 15, UCMJ. The top of the first page of all initial promulgating orders annotated in accordance with the DoD DNA Analysis Policy must immediately be distributed to the following address: U.S. Army Criminal Investigation Laboratory, CODIS Lab, 4930 N 31st Street, Forest Park, Georgia 30297-5205. Regular distribution of these initial promulgating orders will also be made in accordance with guidance published in Army Regulation 27-10, para 11-7.

The confinement order, DD Form 2707, (if one is required) will also be annotated at the top with **“DNA processing required. 10 U.S.C 1565”**. As with all promulgating orders a copy will be filed in the existing Promulgating Orders file of the SJA office which published the order. No separate file is to be made for initial promulgating orders which are annotated in accordance with the DoD DNA Policy. Initial promulgating orders published/distributed which require the DNA Processing annotation will be distributed in accordance with both the new DoD Policy and existing guidance of AR 27-10.

The DoD Policy Memorandum on Collecting DNA Samples from Military Prisoners along with its attachment appears on the next four pages. The DoD Policy Memorandum is dated 18 April 2008 and supersedes the 16 May 2001 memorandum, subject: “Policy for Implementing the DNA Analysis Backlog Elimination Act of 2000.”

Figure 6-6 DoD Policy on Collecting DNA Samples from Military Prisoners.



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000



APR 18 2005

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY FOR
MANPOWER AND RESERVE AFFAIRS
ASSISTANT SECRETARY OF THE NAVY FOR
MANPOWER AND RESERVE AFFAIRS
ASSISTANT SECRETARY OF THE AIR FORCE FOR
MANPOWER AND RESERVE AFFAIRS
ASSISTANT COMMANDANT FOR HUMAN RESOURCES,
U.S. COAST GUARD

SUBJECT: DoD Policy on Collecting DNA Samples from Military Prisoners

This directive-type memorandum implements 10 U.S.C. § 1565 as amended by section 203(c) of the Justice for All Act of 2004. This policy will be published in a future revision of DoDI 1325.7, "Administration of Military Correctional Facilities and Clemency and Parole Authority." This policy supersedes the May 16, 2001 memorandum, subject: "Policy for Implementing the DNA Analysis Backlog Elimination Act of 2000."

DoD (and the Department of Homeland Security, when the Coast Guard is not operating as part of the Navy) shall collect DNA samples from each person subject to the Uniform Code of Military Justice (UCMJ) who is or has been convicted of a "qualifying military offense" (QMO). A QMO is any offense under the UCMJ punishable by a sentence of confinement for more than one year (regardless of the sentence imposed), or any other UCMJ offense on the enclosed list. Although this memorandum authorizes the Services to collect DNA samples at any time after a general or special court-martial sentence is adjudged for one or more QMOs, it is the Court-Martial Convening Authority's action under Article 60, UCMJ that determines whether the result of trial concludes with a QMO conviction. The requirement to collect DNA samples does not apply to the findings of a summary court-martial or a proceeding under Article 15, UCMJ.

The U.S. Army Criminal Investigation Laboratory (USACIL) shall analyze all DoD DNA samples collected under authority of 10 U.S.C. § 1565. USACIL shall submit the results to the Federal Bureau of Investigation for inclusion in FBI's Combined DNA Index System (CODIS).

Figure 6-6, cont'd. DoD Policy on Collecting DNA Samples from Military Prisoners.

Beginning not later than June 1, 2005, the cognizant commander, Staff Judge Advocate (SJA), or Legal Officer (LO) shall annotate the top of all post-trial Confinement Orders, DD Form 2707, or Service equivalent, and the top of the first page of all initial promulgating orders, in bold with **"DNA processing required. 10 U.S.C. § 1565."** SJAs and LOs shall ensure that a copy of each annotated promulgating order is provided to USACIL and, as applicable, to the correctional facility or unit to which the convicted member is assigned. Periodically, USACIL shall reconcile promulgating orders received with DNA samples received. Service Secretaries shall designate a point of contact for USACIL to contact concerning any discrepancies not explained by normal processing time.

Correctional facility or command representatives are authorized to collect DNA samples at any time after a QMO sentence is adjudged when based on a court-martial's finding of guilt of one or more QMOs, even if the convening authority has not taken action on the sentence. Each DoD correctional facility shall identify and collect DNA samples from all of its prisoners who have a QMO conviction, regardless of Service affiliation. Service Secretaries shall identify and collect DNA samples from those members under their jurisdiction who have a QMO conviction but are not confined. Samples normally will be collected as part of confinement facility inprocessing or, in the case of Service members with QMOs but no sentence to confinement, as soon as possible after trial, but not later than the member's separation physical exam. Commanders may authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual who refuses to cooperate in the collection of a sample. Services will cooperate in the collection of DNA samples from members on appellate excess leave, regardless of the member's particular Service.

USACIL shall develop and provide a DNA collection kit to locations the Services designate. Correctional facility or command representatives shall ensure that qualified medical personnel use the kits and procedures prescribed by USACIL to collect all DNA samples. Correctional facility representatives shall ensure that the member's confinement file reflects that a DNA sample has been collected.

Once the sample is packaged in the kit, the kit shall be mailed to the USACIL promptly, and the sender shall notify the USACIL by electronic mail that the sample has been mailed. The notification shall include only the name of the individual from whom the sample was taken, the kit number, and the location from which the sample is being mailed. USACIL shall confirm receipt of the sample electronically and notify the sender if problems are encountered that require the DNA sample to be redrawn.

The Army shall designate a point of contact to answer all questions from Federal Bureau of Prison facilities pertaining to whether prisoners have a QMO. Service

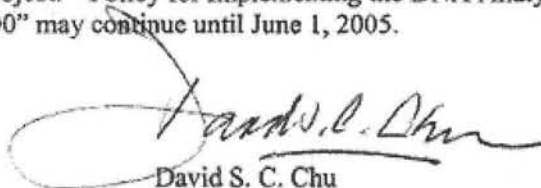
Secretaries shall designate points of contact to answer questions from Federal probation offices pertaining to whether former prisoners still under supervision have a QMO.

The correctional facility or command representative responsible for ensuring that a DNA sample is collected from a member shall give the member a card informing him or her that if conviction for all QMOs is disapproved under Article 60 or reversed during appellate review, the member may request that his or her DNA sample be expunged from CODIS. Such requests will be directed to the member's Service-designated point of contact. USACIL shall provide preprinted cards as part of the collection kit.

In cases where each QMO conviction has been disapproved under Article 60, UCMJ, or reversed in the appellate process, the Service Secretaries shall establish procedures to initiate expungement by USACIL independently of a request from the member or former member concerned.

Upon receipt of an expungement request, Service-designated points of contact shall provide to USACIL a certified copy of a final order establishing that conviction of all QMO offenses were disapproved or overturned. USACIL shall then determine whether the requester has a conviction for a qualifying Federal offense (42 U.S.C. § 14135a) or qualifying District of Columbia offense (42 U.S.C. § 14135b) before taking action to expunge the record based on a QMO. Only in those cases where USACIL has verified that the requester has no other qualifying military, Federal, or District of Columbia conviction will USACIL expunge the DNA analysis from CODIS. When USACIL expunges a DNA analysis, USACIL shall destroy the DNA sample and report back to the Service-designated point of contact. The Service-designated point of contact shall notify the requester of the result of each expungement request.

Collection of DNA samples in accordance with this memorandum shall begin not later than June 1, 2005. Collection of DNA samples in accordance with the May 16, 2001 memorandum, subject: "Policy for Implementing the DNA Analysis Backlog Elimination Act of 2000" may continue until June 1, 2005.



David S. C. Chu

Attachment
As stated

QUALIFYING MILITARY OFFENSES UNDER 10 U.S.C. § 1565

The findings of guilty by a general court-martial (10 U.S.C. § 818) or special court-martial (10 U.S.C. § 819) after the court-martial convening authority has taken action under 10 U.S.C. § 860, for any offense under the Uniform Code of Military Justice punishable by a sentence of confinement for more than one year (regardless of the sentence imposed), and any other UCMJ offense listed below:

Offense	UCMJ Article	Title 10 Section	NIBRS Code	DIBRS Code
Prostitution Involving a Minor	134	934	40A	134-B6
Arson	126	926	200	126A-B2
Solicitation of Another To Commit a Qualifying Offense	134	934	90Z	134-U7*

* For this offense, the offense code will be the code of the offense solicited and "S=Solicit" will be reflected in Data Element 18 of the offense information field.

The following offenses do not have a related DIBRS code:

Attempt to Commit a Qualifying Offense – Article 80, UCMJ (10 U.S.C. § 880)

Conspiracy to Commit a Qualifying Offense – Article 81, UCMJ (10 U.S.C. § 881)

Conviction for any conduct which involves any form of sexual abuse, and any conduct of a sexual nature that involves a minor, when charged as an assimilative offense under Article 134, UCMJ.

Conviction for any conduct which involves any form of sexual abuse, and any conduct of a sexual nature that involves a minor, when charged as conduct unbecoming an officer and a gentleman in violation of Article 133, UCMJ, or conduct that is prejudicial to good order and discipline or is service discrediting, under Article 134, UCMJ.

Conviction for conduct described in 18 United States Code §§ 2421, 2422, 2423, or 2425 when charged as Article 133 or 134, UCMJ, offenses.

Conviction for conduct described in 18 United States Code §§ 2251, 2251A, or 2252 when charged as Article 133 or 134, UCMJ, offenses.

Peonage or Slavery: Conviction for conduct described in 18 United States Code chapter 77 when charged as Article 133 or 134, UCMJ, offenses.

Figure 6-6, cont'd. DoD Policy on Collecting DNA Samples from Military Prisoners.



Department of Defense INSTRUCTION

NUMBER 5505.14

May 27, 2010

IG DoD

SUBJECT: Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations

References: See Enclosure 1

1. PURPOSE. This Instruction:

a. Establishes policy, assigns responsibilities, and provides instructions for DNA collection requirements for criminal investigations in accordance with the authority in DoD Directive (DoDD) 5106.01 (Reference (a)) and the guidance in section 1565 of title 10, United States Code (U.S.C.); section 28.12(b) of title 28, Code of Federal Regulations; and sections 14132, 14135, and 14135a of title 42, U.S.C. (References (b), (c), and (d)).

b. Recognizes the Department of Defense and the Coast Guard as "agencies of the United States" for the collection of DNA samples pursuant to References (c) and (d).

c. Does not eliminate other legal or policy requirements to provide DNA, fingerprints, or criminal history data, including submissions to the Defense Incident-Based Reporting System pursuant to DoDD 7730.47 (Reference (e)).

d. Does not regulate DNA or other biometric data collected from non-U.S. persons who are detained or held by the Department of Defense or the Coast Guard during combat or operational activities.

e. Does not regulate DNA or other biometrical data collected pursuant to DoDD 8521.01E and Public Law 108-458 (References (f) and (g)).

f. Does not regulate DNA samples maintained for identification of human remains, referred to in section 1565a of Reference (b).

2. APPLICABILITY. This Instruction applies to OSD, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and

Figure 6-6, cont'd. DoD Policy on collecting DNA samples from Military Prisoners.

the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

3. POLICY. It is DoD policy that:

a. Appropriate approving authorities of the following organizations shall take DNA samples, or direct they be taken, from Service members who are suspects of criminal investigations under the conditions in section 3 of Enclosure 3.

(1) The Defense Criminal Investigative Service, U.S. Army Criminal Investigation Command, Naval Criminal Investigative Service, and Air Force Office of Special Investigations (hereafter referred to collectively as the "Defense Criminal Investigative Organizations (DCIOs)").

(2) The Pentagon Force Protection Agency, U.S. Army Military Police, U.S. Navy Masters at Arms, U.S. Air Force Security Forces, and U.S. Marine Corps Criminal Investigation Division (hereafter referred to collectively as "other DoD law enforcement organizations").

(3) The Coast Guard Investigative Service (CGIS).

b. DCIOs, other DoD law enforcement organizations, and CGIS shall take DNA samples from civilians under the conditions in section 6 of Enclosure 3.

c. DNA samples taken by DCIOs and other DoD law enforcement organizations shall be expeditiously forwarded to the United States Army Criminal Investigation Laboratory (USACIL).

d. Service members from whom samples are taken and forwarded to USACIL, but who are not convicted of any offense by general or special courts-martial, may request in writing that their DNA records be expunged.

e. Civilians whose samples were taken and forwarded to USACIL, but who are not convicted of any offense, may request in writing that their DNA records be expunged.

f. DCIOs, other DoD law enforcement organizations, and CGIS shall provide instructions concerning expungement rights and procedures to all persons from whom they collect DNA samples in accordance with this Instruction. Such instructions shall be included in the USACIL DNA collection kits.

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3.

6. INFORMATION REQUIREMENTS. DoD internal reporting of the DNA sample kit is exempt from licensing in accordance with paragraphs C4.4.2. and C4.4.7. of DoD 8910.1-M (Reference (h)).

7. RELEASABILITY. UNLIMITED. This Instruction is approved for public release and is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

8. EFFECTIVE DATE. This Instruction is effective immediately.


Gordon S. Heddell
Inspector General

Enclosures

1. References
2. Responsibilities
3. Procedures

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5106.01, "Inspector General of the Department of Defense," April 13, 2006
- (b) Sections 912a, 1565, and 1565a of title 10, United States Code
- (c) Section 28.12(b) of title 28, Code of Federal Regulations
- (d) Sections 14132, 14135, and 14135a of title 42, United States Code
- (e) DoD Directive 7730.47, "Defense Incident-Based Reporting System (DIBRS)," October 15, 1996
- (f) DoD Directive 8521.01E, "Department of Defense Biometrics," February 21, 2008
- (g) Public Law 108-458, "Intelligence Reform and Terrorism Prevention Act of 2004," December 17, 2004
- (h) DoD 8910.1-M, "Department of Defense Procedures for Management of Information Requirements," June 30, 1998
- (i) DoD Directive 5400.11, "DoD Privacy Program," May 8, 2007
- (j) DoD 5400.11-R, "Department of Defense Privacy Program," May 14, 2007
- (k) DoD Instruction 5505.11, "Fingerprint Card and Final Disposition Report Submission Requirements," June 20, 2006
- (l) Manual for Courts-Martial, United States, 2008
- (m) Commandant Instruction M5527.1 (series), "Coast Guard Investigations Manual," July 2, 2001¹

¹ This is a restricted USCG document. A list of offenses that are investigated (see paragraph 3.a. of Enclosure 3) may be obtained by contacting the US Coast Guard Freedom of Information Act Office, from the Internet at <http://www.uscg.mil/foia/>

ENCLOSURE 2
RESPONSIBILITIES

1. IG DoD. The IG DoD shall monitor and evaluate compliance with this Instruction.

2. HEADS OF THE DoD COMPONENTS AND COMMANDANT OF THE COAST GUARD. The Heads of the DoD Components and Commandant of the Coast Guard, with respect to the criminal investigative and law enforcement organizations under their control, shall:
 - a. Issue guidance to implement and comply with this Instruction.

 - b. Require that:
 - (1) Commanders coordinate closely with the appropriate DCIO, other DoD law enforcement organization, or CGIS to ensure DNA samples are taken and processed as required by section 3 of Enclosure 3.

 - (2) Commanders and Directors of the DCIOs, other DoD law enforcement organizations, and CGIS provide appropriate Privacy Act statements to persons from whom DNA samples are taken as required by DoDD 5400.11 and DoD 5400.11-R (References (i) and (j)).

 - (3) The final disposition of each criminal offense giving rise to the collection of DNA under this Instruction be reported on Federal Bureau of Investigation (FBI)/Department of Justice Form R-84, "Final Disposition Report," or its electronic equivalent, in accordance with DoD Instruction 5505.11 (Reference (k)). (Information on where to obtain this form is available on the Internet at <http://www.fbi.gov/hq/cjisd/arrestdispositions.htm>.)

3. SECRETARY OF THE ARMY. The Secretary of the Army, in addition to the responsibilities in section 2 of this enclosure and through USACIL, shall:
 - a. Ensure a DNA collection kit is developed and provided to locations designated by the DoD Components with law enforcement organizations. The collection kit shall include a notice of general expungement rights.

 - b. Analyze all DNA samples submitted in accordance with this Instruction and forward the results to the FBI for inclusion in the Combined DNA Index System (CODIS).

 - c. Expunge profiles and destroy samples as required by this Instruction.

ENCLOSURE 3

PROCEDURES

1. The purposes for DNA collection are similar to those for taking fingerprints. They include making positive identification and providing or generating evidence to solve crimes through database searches of potentially matching samples.

2. DNA samples required by this Instruction shall be collected with the USACIL DNA collection kit. Kits may be requested from USACIL through its CODIS Branch at DSN 797-7258, (404) 469-7258, or codislab@conus.army.mil. The kit shall include the Privacy Act statement in the Appendix to this enclosure as well as instructions for collecting DNA samples and for requesting expungement. The Privacy Act statement and notice of the general rights for requesting expungement shall be provided when the sample is collected.

3. The DCIOs, other DoD law enforcement organizations, DoD corrections authorities, and CGIS shall take DNA samples from Service members and forward them to USACIL in accordance with Reference (d) and the Manual for Courts-Martial (Reference (l)) when:

a. Fingerprints are taken in connection with an investigation, for offenses identified in Reference (k) and Commandant Instruction M5527.1 (Reference (m)), conducted by a DCIO, other DoD law enforcement organization, or CGIS and in which the investigator concludes there is probable cause to believe that the subject has committed the offense under investigation. The investigator must consult with a judge advocate prior to making a probable-cause determination. Samples may be collected, but not forwarded, prior to consultation. For the purposes of this Instruction and pursuant to section 912a of Reference (b) (commonly known as "Article 112a of the Uniform Code of Military Justice"), DNA shall not be taken for the wrongful use of a controlled substance, nor shall it be taken for the wrongful possession of a controlled substance, when the controlled substance possessed:

(1) Is not intended for distribution.

(2) Is not possessed in connection with wrongful importation or exportation.

b. Court-martial charges are preferred in accordance with Rule for Courts-Martial (RCM) 307 of Reference (l) if a DNA sample has not already been submitted.

c. A member is ordered into pre-trial confinement by a competent military authority after the completion of the commander's 72-hour memorandum required by RCM 305(h)(2)(C) of Reference (l) if a DNA sample has not already been submitted.

d. A member is confined to a military correctional facility or temporarily housed in civilian facilities as a result of any general or special court-martial conviction if a DNA sample has not already been submitted.

4. Current Service members from whom samples are taken but who are not convicted of any offense by general or special courts-martial (including action generally inconsistent with such a conviction, such as administration of non-judicial punishment, administrative separation, or referral to a summary court) may request in writing that their DNA records be expunged in accordance with the procedures in this section.

a. Requests for expungement shall be forwarded through the first commanding officer in the grade of major or lieutenant commander, or higher, in the member's chain of command. Such requests shall include adequate proof that the charges have been dismissed, withdrawn, disposed of in a manner not resulting in prefferal of charges pursuant to RCM 307 of Reference (I), or otherwise have not or will not result in a conviction of any offense (including proof of any action by a general or special court-martial convening authority that has the effect of a full acquittal).

b. The first commanding officer in the grade of major or lieutenant commander, or higher, will review and confirm the information and then submit the request through the DCIOs, other DoD law enforcement organizations, or CGIS, which will then validate that the member has no convictions that would prohibit expungement and forward the request to USACIL.

c. The DCIOs, other DoD law enforcement organizations, and CGIS will send appropriate requests for expungement to USACIL. Requests will be on letterhead and bear the title, signature, and telephone number of the special agent or law enforcement officer forwarding the request. Requests will clearly state that the member concerned is entitled to expungement and list the member's full name, Social Security number (SSN), and mailing address. Requests will include all documents submitted by the member along with any additional relevant documents in the possession of the commander or official receiving the request. The DCIOs, other DoD law enforcement organizations, and CGIS should maintain a copy of all requests in the case file, including those requests not forwarded to USACIL because expungement was not appropriate.

d. USACIL shall review all requests for expungement to ensure they contain all of the required information. Incomplete requests will be returned to the submitter. USACIL will notify the member of its actions and maintain documentation of that notice.

e. If the commanding officer, after consulting with a legal advisor, determines that expungement is not authorized, the commander should notify the requestor in writing with a copy furnished to the servicing DCIO, other appropriate DoD law enforcement organization, or CGIS.

5. Former Service members from whom samples were taken but who were not convicted of any offense by a general or special court-martial may request in writing that their DNA records be expunged in accordance with the procedures in this section.

a. Requests for expungement shall be submitted to the Military Department Clerk of Court (or similar appropriate official) and include all reasonably available proof showing that none of the offenses giving rise to the collection of DNA resulted in a conviction at a general or special court-martial (including a final court order establishing that such a conviction was overturned, or establishing action by the convening authority that has the effect of a full acquittal). A court

order is not final if time remains for an appeal or application for discretionary review with respect to the order. Such former members must include their name, SSN, current contact information, date of offense, and contact information of the unit that the former member belonged to when the sample was taken. Requests that do not provide adequate information to identify the offense or to confirm the offense did not result in a conviction will be returned by "return receipt requested" with an explanation of the deficiency.

b. The Military Department Clerks of Court (or similar appropriate officials) shall search their records for any conviction pertaining to the former member and determine whether the former member is entitled to expungement. The Military Department Clerks of Court (or similar appropriate officials) will send appropriate requests for expungement by former Service members to USACIL. Requests will be on letterhead and bear the title, signature, and telephone number of the Military Department Clerk of Court (or similar appropriate official) forwarding the request. Requests will clearly state that the member concerned is entitled to expungement and list the member's full name, SSN, and mailing address. Requests will include all documents submitted by the member along with any additional relevant documents in the possession of the official receiving the request.

c. USACIL will review all requests for expungement that it receives to ensure they contain all the required information. Incomplete requests will be returned to the submitter. For complete requests, USACIL will coordinate with the FBI to expunge the DNA profile from the CODIS database.

6. DCIOs and other DoD law enforcement organizations will take DNA samples from civilians whom they detain or hold and who remain within their control at the point it is determined there is probable cause to believe the civilian has violated any provision of Federal law that requires an in-court appearance. DNA samples may also be taken by civilian law enforcement organizations; however, an individual DNA sample does not need to be taken more than once.

a. DNA samples taken by the DCIOs and other DoD law enforcement organizations shall be forwarded to USACIL. The DCIOs or other DoD law enforcement organizations shall document in the appropriate case file when civilian law enforcement organizations handle any aspect of the DNA processing and whether the civilian law enforcement agency forwarded the DNA sample to the FBI Laboratory. This Instruction does not require DCIOs or other DoD law enforcement organizations to take samples from a civilian not in their control at the point when a probable-cause determination is made.

b. Civilians whose samples are taken and forwarded pursuant to paragraph 3.b of this Instruction but who are not convicted of any offense, may request in writing that their DNA sample be expunged.

(1) To request expungement of DNA records for civilians pursuant to Reference (d), the requestor or legal representative must submit a written request to:

FBI
Laboratory Division
2501 Investigation Parkway
Quantico, VA 22135

Attention: Federal Convicted Offender Program Manager.

(2) If the request is for expungement of DNA records resulting from an arrest pursuant to the authority of the United States, the requester must include, for each charge for which the DNA record was or could have been included in the national DNA index, a certified copy of a final court order establishing that such charge has been dismissed, has resulted in an acquittal, or that no charge was filed within the applicable time period.

(3) The copy of the court order must contain a certification that it is a true and accurate copy of the original court order and be signed and dated by an appropriate court official, such as a court clerk. The copy of the court order itself must be signed by a judge, be dated, and include sufficient identifying information (at a minimum the person's full name, SSN, and/or date of birth) to determine the identity of the person and that the conviction offense was overturned, the charge was dismissed, the charge resulted in an acquittal, or no charges were filed within the applicable time period.

7. Expungement is not authorized under any of the conditions in section 6 of this enclosure if the individual seeking expungement has a Federal conviction for a separate offense that should have but did not result in the collection and forwarding of DNA to USACIL in accordance with this Instruction.

Appendix
Privacy Act Statement for DNA Sampling

APPENDIX TO ENCLOSURE 3

PRIVACY ACT STATEMENT FOR DNA SAMPLING

Figure. Privacy Act Statement

PRIVACY ACT STATEMENT

This statement is provided in compliance with the provisions of the Privacy Act of 1974, 5 U.S.C. § 552a, which requires that Federal agencies inform individuals who are requested to furnish personal information about themselves as to certain facts regarding the information requested.

The collection of a sample of an individual's deoxyribonucleic acid (DNA) by the U.S. Department of Defense is authorized by and conducted pursuant to 10 U.S.C. § 1565; 42 U.S.C. § 14135a et seq.; and 28 C.F.R. § 28.12. Collection is authorized for all offenses investigated pursuant to 42 U.S.C. § 14135a(a)(1)(A) and for all qualifying military offenses, as defined in 10 U.S.C. § 1565(d), including offenses which constitute a felony under the United States Code and offenses for which a sentence of confinement for more than 1 year may be imposed under the Uniform Code of Military Justice.

The purpose of the Department of Defense's collection of a sample of an individual's DNA is to allow for positive identification and to provide or generate evidence to solve crimes through database searches of potentially matching samples.

It is mandatory that United States persons who are arrested, facing charges, or convicted and non-United States persons who are detained by the Department of Defense or Coast Guard in non-combat or operational activities, cooperate in the collection of a sample of his or her DNA. Failure to do so may result in samples taken by the minimum force necessary and/or in disciplinary action for a violation of Article 92, Uniform Code of Military Justice, or a determination that the individual is guilty of a class A misdemeanor and punishment in accordance with title 18 (Crimes and Criminal Procedure), United States Code.

Analysis conducted on DNA samples collected by the Department of Defense will be forwarded by the U.S. Army Criminal Investigation Laboratory (USACIL) to the Federal Bureau of Investigation for entry into the Combined DNA Index System (CODIS).

Pursuant to 42 U.S.C. § 14132(d) and 10 U.S.C. § 1565(e), an individual whose DNA is collected and analyzed in the above manner may request that his or her DNA analysis be expunged from USACIL records and CODIS if the individual is (i) not convicted of an offense in a federal court, or in the case of a current or former Service member, not convicted of an offense by general or special courts-martial (including action generally inconsistent with such a conviction, such as administration of non-judicial punishment, administrative separation, or referral to a summary court), and (ii) meets certain conditions set forth in DoD Instruction 5505.14, "Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations."

THIS MESSAGE HAS BEEN SENT BY THE PENTAGON TELECOMMUNICATIONS CENTER ON BEHALF OF DA WASHINGTON DC//DAPM//

THIS ALARACT MESSAGE IS RELEASED ON BEHALF OF THE OFFICE OF THE PROVOST MARSHAL GENERAL.

SUBJECT: GUIDANCE FOR DNA COLLECTION REQUIREMENTS FOR ARMY CRIMINAL INVESTIGATIONS

1. THIS MESSAGE PROVIDES GUIDANCE FROM DODI 5505.14, REFERENCE A. IT REQUIRES ARMY LAW ENFORCEMENT (LE) OFFICIALS TO COLLECT DNA FROM INDIVIDUALS SUSPECTED OF CERTAIN OFFENSES. THE OFFICE OF THE PROVOST MARSHAL GENERAL (OPMG) WILL RELEASE FORMAL ARMY IMPLEMENTING GUIDANCE FOR DODI 5505.14 IN THE NEXT REVISION OF AR 190-45.
2. THIS ALARACT IS EFFECTIVE IMMEDIATELY.
3. UNDER THE CONDITIONS IN THIS ALARACT, ARMY LE PERSONNEL WILL TAKE DNA SAMPLES FROM SOLDIERS IAW PARAGRAPH 7 OF THIS ALARACT, AND CIVILIANS IAW PARAGRAPH 8 OF THIS ALARACT, WHO ARE SUSPECTS OF CRIMINAL INVESTIGATIONS. PER THIS ALARACT, A SAMPLE OF AN INDIVIDUAL'S DNA IS TO ALLOW FOR POSITIVE IDENTIFICATION AND TO PROVIDE OR GENERATE EVIDENCE TO SOLVE CRIMES THROUGH DATABASE SEARCHES OF POTENTIALLY MATCHING SAMPLES.
4. ARMY INVESTIGATORS WILL CONSULT THEIR SERVICING JUDGE ADVOCATE TO DETERMINE WHETHER THEY ARE WITHIN THE GEOGRAPHIC JURISDICTION OF A FEDERAL DISTRICT COURT THAT HAS HELD THE STATUTE (42 USC 14135A(A)(1)(A)) TO BE UNCONSTITUTIONAL.
5. PROVOST MARSHALS/DIRECTORS OF EMERGENCY SERVICES (PM/DES) WILL COORDINATE WITH THEIR LOCAL CRIMINAL INVESTIGATION DIVISION (CID) OFFICE TO OBTAIN THE DNA DATABASE COLLECTION KITS UNTIL THEY ARE ABLE TO ORDER KITS FOR THEMSELVES IN COORDINATION WITH U.S. ARMY CRIMINAL INVESTIGATION LABORATORY (USACIL).
6. ONCE DNA SAMPLES ARE TAKEN, INSTALLATION PM/DES WILL ENSURE DNA SAMPLES ARE EXPEDITIOUSLY FORWARDED TO USACIL.
7. INSTRUCTIONS FOR ARMY LE PERSONNEL COLLECTING DNA SAMPLES FROM SOLDIERS. IN ACCORDANCE WITH THE MANUAL FOR COURTS-MARTIAL (REFERENCE C), DODI 5505.14 REQUIRES ARMY LE ORGANIZATIONS (PROVOST MARSHAL OFFICES, DIRECTORATE OF EMERGENCY SERVICES, OR CID OFFICES) TO FORWARD DNA SAMPLES TAKEN FROM SOLDIERS TO USACIL IF ONE OF THE FOLLOWING CIRCUMSTANCES EXISTS:
 - 7.A. WHEN IN CONSULTATION WITH A JUDGE ADVOCATE AN ARMY LE INVESTIGATOR (MILITARY POLICE, CID AGENTS, MILITARY POLICE INVESTIGATORS, DEPARTMENT OF THE ARMY CIVILIAN POLICE DETECTIVES) CONCLUDES THERE IS PROBABLE CAUSE THAT A SUBJECT BEING FINGERPRINTED COMMITTED AN OFFENSE IDENTIFIED IN DODI 5505.11, REFERENCE B.

Figure 6-6, cont'd. **DoD Policy on Collecting DNA Samples from Military Prisoners.**

7.A.1. THE INVESTIGATOR MAY COLLECT DNA SAMPLES PRIOR TO CONSULTING A JUDGE ADVOCATE BUT WILL NOT FORWARD THE SAMPLES TO USACIL UNTIL PROBABLE CAUSE IS DETERMINED BASED ON JUDGE ADVOCATE CONSULTATION.

7.A.2. FOR THE PURPOSE OF THIS ALARACT AND PURSUANT TO ARTICLE 112A OF THE UNIFORM CODE OF MILITARY JUSTICE, ARMY LE PERSONNEL WILL NOT OBTAIN DNA SAMPLES FROM INDIVIDUALS SUSPECTED OF WRONGFUL USE OR POSSESSION OF A CONTROLLED SUBSTANCE UNLESS IT IS BELIEVED THE SUBSTANCE WAS INTENDED FOR DISTRIBUTION OR IS POSSESSED IN CONNECTION WITH WRONGFUL IMPORTATION OR EXPORTATION.

7.B. WHEN COURT-MARTIAL CHARGES ARE PREFERRED, IAW RULE FOR COURTS-MARTIAL (RCM) 307 OF REFERENCE C, AND IF ANY LE PERSONNEL HAVE NOT PREVIOUSLY OBTAINED AND SUBMITTED A DNA SAMPLE.

7.C. WHEN A SOLDIER IS ORDERED INTO PRE-TRIAL CONFINEMENT BY A COMPETENT MILITARY AUTHORITY AFTER A COMMANDER COMPLETES THE 72-HOUR MEMORANDUM REQUIRED BY RCM 305(H)(2)(C) OF REFERENCE C, AND IF LE HAS NOT PREVIOUSLY OBTAINED AND SUBMITTED A DNA SAMPLE.

7.D. WHEN A SOLDIER IS CONFINED TO A MILITARY CORRECTIONAL FACILITY OR TEMPORARILY HOUSED IN CIVILIAN FACILITIES, AS A RESULT OF A GENERAL OR SPECIAL COURT-MARTIAL CONVICTION, AND IF LE HAVE NOT PREVIOUSLY OBTAINED AND SUBMITTED A DNA SAMPLE.

8. INSTRUCTIONS FOR ARMY LE PERSONNEL COLLECTING DNA SAMPLES FROM CIVILIANS:

8.A. ARMY LE PERSONNEL WILL OBTAIN A DNA SAMPLE FROM A CIVILIAN IN THEIR CONTROL AT THE POINT IT IS DETERMINED THERE IS PROBABLE CAUSE TO BELIEVE THE DETAINED PERSON VIOLATED ANY PROVISION OF FEDERAL LAW THAT REQUIRES AN IN COURT APPEARANCE.

8.A.1. ARMY LE PERSONNEL ARE NOT REQUIRED TO TAKE DNA SAMPLES FROM A CIVILIAN NOT IN THEIR CONTROL AT THE POINT WHEN THE ARMY LE PERSONNEL MAKES A PROBABLE CAUSE DETERMINATION. LIKewise, ARMY LE PERSONNEL ARE NOT REQUIRED TO OBTAIN DNA SAMPLES WHEN ANOTHER LE AGENCY HAS OR WILL OBTAIN THE DNA.

8.A.2. ARMY LE PERSONNEL WILL FORWARD CIVILIAN DNA SAMPLES TO USACIL. ARMY LE PERSONNEL WILL DOCUMENT, IN THE APPROPRIATE CASE FILE, WHEN CIVILIAN LE AGENCIES HANDLE THE DNA PROCESSING AND WHETHER THE CIVILIAN LE AGENCY FORWARDED THE DNA SAMPLE TO THE FBI LABORATORY.

9. ARMY LE WILL ENSURE COMMANDING OFFICERS OF THE SUBJECTS UNDER INVESTIGATION RECEIVE THE DA FORM 4833, COMMANDER'S REPORT OF DISCIPLINARY OR ADMINISTRATIVE ACTIONS.

Figure 6-6, cont'd. **DoD Policy on Collecting DNA Samples from Military Prisoners.**

10. ARMY LE PERSONNEL WILL USE THE USACIL DNA DATABASE COLLECTION KIT TO COLLECT DNA SAMPLES IAW THIS ALARACT. THE KITS WILL BE OBTAINED FROM THE LOCAL CID OFFICE.

10.A. ARMY LE PERSONNEL WILL COMPLETE THE DNA DATABASE COLLECTION KIT TRAINING PROGRAM PRIOR TO USING THE KIT. THE TRAINING PRESENTATION CD IS INCLUDED IN THE KIT. IT IS ALSO AVAILABLE ON THE USACIL PORTAL
[HTTPS://USACIL.FORSCOM.ARMY.MIL/CODIS/DEFAULT.ASPX](https://usacil.forscom.army.mil/codis/default.aspx).

10.B. ARMY LE PERSONNEL WILL ENSURE THE PRIVACY ACT STATEMENT AND NOTICE OF THE GENERAL RIGHTS FOR REQUESTING EXPUNGEMENT (BOTH ARE INCLUDED IN THE USACIL KIT) ARE PROVIDED TO SUBJECTS WHEN DNA SAMPLES ARE COLLECTED.

10.C. THE KIT INCLUDES A PINK DNA SAMPLE CARD AND DATA CARD. IT IS CRITICAL FOR ARMY LE PERSONNEL TO WRITE THE SSN OF THE INDIVIDUAL WHOSE DNA IS BEING TAKEN ON BOTH THE BACK OF THE DNA SAMPLE CARD AND DATA CARD, USACIL WILL REJECT THE SAMPLE IF NOT DONE.

11. EXPUNGEMENT PROCEDURES:

11.A. SOLDIERS MAY REQUEST, IN WRITING, THAT THEIR DNA RECORDS BE EXPUNGED IF THEIR DNA SAMPLE WAS TAKEN BUT THEY ARE NOT CONVICTED OF ANY OFFENSE BY GENERAL OR SPECIAL COURTS-MARTIAL (INCLUDING ACTION GENERALLY INCONSISTENT WITH SUCH CONVICTION, SUCH AS ADMINISTRATION OF NONJUDICIAL PUNISHMENT, ADMINISTRATIVE SEPARATION, OR REFERRAL TO A SUMMARY COURT.)

11.A.1. SOLDIERS WILL FORWARD REQUESTS FOR EXPUNGEMENT THROUGH THE FIRST COMMANDING OFFICER IN THE GRADE OF MAJOR, OR HIGHER, IN THE SOLDIER'S CHAIN OF COMMAND. REQUESTS WILL INCLUDE PROOF THAT CHARGES WERE DISMISSED, WITHDRAWN, DISPOSED OF IN A MANNER NOT RESULTING IN PREFERRAL OF CHARGES PURSUANT TO RCM 307 OF REFERENCE C, OR OTHERWISE DID NOT OR WILL NOT RESULT IN A CONVICTION OF ANY OFFENSE (INCLUDING PROOF OF ACTION BY A GENERAL OR SPECIAL COURTMARTIAL CONVENING AUTHORITY RESULTING IN FULL ACQUITTAL).

11.A.2. THE FIRST COMMANDING OFFICER IN THE GRADE OF MAJOR OR HIGHER, WILL REVIEW AND CONFIRM THE INFORMATION AND SUBMIT REQUEST THROUGH THE INSTALLATION PM/DES.

11.A.3. INSTALLATION PM/DES WILL RECEIVE THE EXPUNGEMENT REQUESTS AND ENSURE SOLDIERS HAVE NO CONVICTIONS PROHIBITING THE EXPUNGEMENT. INSTALLATION PM/DES WILL PROVIDE A MEMORANDUM TO USACIL STATING THAT THE INDIVIDUAL IS ENTITLED TO EXPUNGEMENT. REQUESTS WILL BE ON LETTERHEAD AND BEAR THE TITLE, SIGNATURE, AND TELEPHONE NUMBER OF THE ARMY LE PERSONNEL SUBMITTING THE REQUEST AS WELL AS THE SOLDIER'S FULL NAME, SSN AND MAILING ADDRESS. REQUESTS WILL INCLUDE ALL DOCUMENTS SUBMITTED BY THE MEMBER ALONG WITH ADDITIONAL RELEVANT DOCUMENTS IN THE POSSESSION OF THE COMMANDER OR OFFICIAL RECEIVING THE REQUEST. INSTALLATION PM/DES WILL

Figure 6-6, cont'd. **DoD Policy on Collecting DNA Samples from Military Prisoners.**

FORWARD THE MEMORANDUM TO THE ATTENTION OF THE COMBINED DNA INDEX SYSTEM (CODIS) BRANCH CHIEF AT USACIL FOR ACTION. THE ARMY LE ORGANIZATION WILL MAINTAIN A COPY OF REQUESTS FOR EXPUNGEMENT IN THE CASE FILE, THIS INCLUDES THOSE REQUESTS NOT FORWARDED TO USACIL BECAUSE EXPUNGEMENT WAS NOT APPROPRIATE.

11.A.4. INSTALLATION PM/DES WILL FORWARD TO UNITED STATES ARMY CRIMINAL RECORDS CENTER THE EXPUNGEMENT REQUEST MEMORANDA AND ASSOCIATED DOCUMENTATION TO BE INCLUDED IN THE CASE FILE.

11.A.5. IF THE COMMANDING OFFICER, AFTER CONSULTING WITH A JUDGE ADVOCATE, DETERMINES THAT EXPUNGEMENT IS NOT AUTHORIZED, THE COMMANDER WILL NOTIFY THE REQUESTER IN WRITING WITH A COPY FURNISHED TO THE ARMY LE ORGANIZATION.

11.B. DODI 5505.14 DETAILS THE PROCEDURES FORMER SOLDIERS AND CIVILIANS MUST FOLLOW TO REQUEST EXPUNGEMENT OF THEIR DNA RECORDS. FORMER SOLDIERS AND CIVILIANS FROM WHOM DNA SAMPLES HAVE BEEN TAKEN, BUT WERE NOT CONVICTED, DO NOT SUBMIT REQUESTS TO HAVE THEIR DNA RECORD EXPUNGED THROUGH PMO/DES CHANNELS.

12. THIS ALARACT DOES NOT ELIMINATE OTHER LEGAL OR POLICY REQUIREMENTS TO PROVIDE DNA, FINGERPRINTS, OR CRIMINAL HISTORY DATA, INCLUDING SUBMISSIONS TO THE DEFENSE INCIDENT-BASED REPORTING SYSTEM.

12.A. THIS ALARACT DOES NOT AFFECT OPMG POLICIES AND PROCEDURES FOR THE IDENTIFICATION, COLLECTION, AND RETENTION OF BIOLOGICAL AND OTHER PHYSICAL EVIDENCE DURING THE COURSE OF AN INVESTIGATION.

13. THE POINT OF CONTACT IS LTC MASAYO MESLER, 703-697-7388 OR EMAIL MASAYO.MESLER@CONUS.ARMY.MIL

Figure 6-6, cont'd. **DoD Policy on Collecting DNA Samples from Military Prisoners.**

AID TO SUMMARIZING OFFENSES

Articles 90 and 91, Willful Disobedience

Include substance of the order alleged to have been violated.

Article 92, Failure to Obey or Dereliction of Duty

Include substance of the order or regulation violated.

Include description of the alleged dereliction.

Names of Article 118 Offenses

premeditated murder

unpremeditated murder

murder caused by an inherently dangerous act

murder while engaged in [or attempting to engage in]

[burglary], [sodomy], [rape], [robbery], [aggravated arson]

Names of Article 123a Offenses

making [or drawing, or uttering] a check [or draft] without sufficient funds with intent to defraud

making [or drawing, or uttering] a check [or draft] without sufficient funds with intent to deceive

Names of Article 132 Offenses

making a false claim

presenting a false claim

making or using a false writing

making a false oath

forging or counterfeiting a signature

using a forged signature

paying an amount less than called for by a receipt

making or delivering a receipt without having full knowledge of its truth

Name of Article 134 Worthless Check Offense

making [or drawing, or uttering] a check [or draft] and thereafter dishonorably failing to maintain sufficient funds

Figure 6-7 Aid to Summarizing Offenses

SOME CIRCUMSTANCES AFFECTING MAXIMUM PUNISHMENTS

Always include in summary when present in verbatim specification:

with intent to . . .
until . . . apprehended
through design
through neglect
in time of war
superior commissioned officer
in the execution of . . . office
superior noncommissioned officer
warrant officer
noncommissioned officer
willfully
negligently
by culpable inefficiency
without proper authority
of a value of
military property of the United States
a firearm
an explosive
the amount of said damage being in the sum of
willfully and wrongfully
thereby cause [causing] said vehicle to injure
a Schedule [I, II, or III] controlled substance
grams of [marijuana]
while receiving special pay under 37 U.S.C. sec. 310
in a hostile fire pay zone
with a firearm
with a loaded firearm
a child under the age of 12 years
a child under the age of 16 years by force and without consent

Reference: Manual for Court-martial,
Appendix 12 (indented matter under names of offenses).

Figure 6-8 Some Circumstances Affecting Maximum Punishments

SAMPLES OF SUMMARIZED SPECIFICATIONS

Article 80: On or about 15 June 2008, at Fort Leavenworth, Kansas, attempt to unlawfully enter barracks room 115, Building Number 2839, the property of the U.S. Army, with intent to commit a criminal offense, to wit: larceny therein.

Article 81: On or about 25 June 2008, conspire with others to commit an offense under the Uniform Code of Military Justice, to wit: larceny of a stereo system, of a value of about \$289.00, and in order to effect the object of the conspiracy broke into the supply room of the Company A, 1st Battalion, 11th Infantry.

Article 85: On or about 25 July 2008, without authority and with intent to remain away therefrom permanently, absent himself from his unit and did remain so absent in desertion until he was apprehended on or about 22 September 2008.

Article 86: On or about 15 June 2008, without authority fail to go at the time prescribed to his appointed place of duty.

Article 86: On or about 20 July 2008, without authority absent himself from his unit and remained so absent until on or about 5 August 2008.

Article 87: On or about 25 August 2008, through design miss the movement of Co A, 1st Bn, 29th Inf, with which he was required in the course of his duty to move.

Article 89: On or about 4 August 2008, behave with disrespect toward CPT B.D.S., his superior commissioned officer, by saying to him “stick your face in the mud”, or words to that effect.

Article 90: On or about 1 September 2008, strike 1LT T.J.B., his superior commissioned officer, on the back of his head with his open hand.

Article 90: Having received a lawful command from MAJ J.D.H., his superior commissioned officer, to fold up the tents and put them in the supply room, or words to that effect, did, on or about 1 December 2008, willfully disobey the same.

Article 91: On or about 4 September 2008, strike, SFC C.D.A., a noncommissioned officer on the side of his head with his fist.

Article 91: Having received a lawful order from CW2 G.E.W., a warrant officer, to clean tent poles, did, on or about 18 July 2008, willfully disobey the same.

Figure 6-9 Samples of Summarized Specifications

Article 92: At Fort Sam Houston, Texas, on or about 2 July 2008, violate a lawful general regulation, to wit: paragraph 2-8, Ft. Sam Houston Regulation 190-32, by wrongfully lighting fireworks in an unauthorized area.

Article 92: On or about 8 June 2008, was derelict in the performance of her duties in that she negligently failed to check the oil in the sedan, as it was her duty to do.

Article 95: On or about 15 June 2008, flee apprehension by SPC J.D.H, an armed force policeman, a person authorized to apprehend the accused.

Article 107: On or about 8 August 2008, with intent to deceive sign a false official statement, to wit a DA Form 2823, which statement was totally false and was then known by the accused to be so false.

Article 107: On or about 8 August 2008, with intent to deceive make to his Unit First Sergeant, a false official statement.

Article 108: On or about 8 August 2008, without proper authority, willfully destroy military property, of a value of about \$2383.00, military property of the United States.

Article 108: On or about 8 August 2008, without proper authority, through neglect, damage military property by driving a jeep into a wall, military property of the United States, the amount of said damage being in the sum of about \$1183.00.

Article 109: On or about 8 August 2008, willfully and wrongfully destroy windows by throwing rocks through them, of a value of about \$289.00, the property of the Myer Ford Dealer.

Article 111: On or about 15 August 2008, physically control a passenger car while drunk.

Article 112a: On or about 8 August 2008, wrongfully possess marijuana.

Article 112a: On or about 8 August 2008, wrongfully distribute marijuana.

Article 118: On or about 8 August 2008, with premeditation, murder Mr. A.D.M., by means of shooting him with a pistol.

Article 118: On or about 8 August 2008, while perpetrating an armed robbery, murder Mr. A.D.M., by stabbing him with a knife.

Article 118: On or about 8 August 2008, murder Mr. A.D.M., by means of hitting him in the head with a baseball bat.

Figure 6-9, cont'd. Samples of Summarized Specifications

**Samples of Pleas and Findings to Charges and Specifications
as entered on a Promulgating Order**

1. A Plea and Finding of Guilty.

Charge I: Article 86. Plea: Guilty. Finding: Guilty.

Specification: Without authority, absent himself from his unit, from on or about 13 December 1999, until on or about 28 March 2000. Plea: Guilty. Finding: Guilty.

2. Plea of Not Guilty is entered, but the charge and specification are later dismissed on motion of Trial Counsel.

Charge II: Article 109. Plea: Not Guilty. Finding: Dismissed on motion of Trial Counsel.

Specification 1: Wrongfully caused over \$100.00 damage to various vehicles on or between 6 September 2010 and 30 November 2010. Plea: Not Guilty. Finding: Dismissed on motion of Trial Counsel.

3. Plea of Not Guilty to the Charge and Not Guilty to the Specification by exceptions and substitutions. (In this sample two sets of words/figures were excepted and substituted.)

Additional Charge I: Article 134. Plea: Not Guilty. Finding: Guilty.

Specification: Wrongfully obtained long distance phone services under false pretenses of a value of about \$118.00 between on or about 25 January 2010 and 2 March 2010. Plea: Not Guilty. Finding: Guilty, except the words and figures, “between on or about 25 January 2000 and on or about 2 March 2000”, and “of a value of about \$118.00”, substituting therefor, the words and figures, “in early 2000” and “of some value” respectively. Of the excepted words and figures: Not Guilty; of the substituted words and figures: Guilty.

4. Sample of a Plea of Not Guilty to certain figures, substituting other figures and the findings being the same.

Specification 2: Between on or about 15 November 2010 and on or about 18 December 2010, steal a 2008 Honda Accord, of a value of about \$9,000.00, the property of Sergeant First Class C.A.B.. Plea: Guilty, except the figures, “\$9,000.00”, substituting therefor the figures, “\$3,000.00”. Of the excepted figures: Not Guilty; of the substituted figures: Guilty. Finding: Guilty, except the figures, “\$9,000.00”, substituting therefor the figures, “\$3,000.00”. Of the excepted figures: Not Guilty; of the substituted figures: Guilty.

Figure 6-10 Samples of Pleas and Findings

5. Sample of a specification which was dismissed on motion of Defense Counsel.

Specification 2: Wrongfully caused over \$100.00 damage to a Coca-Cola Machine, on or between 6 September 2010 and 30 November 2010. Plea: Not Guilty. Finding: Dismissed on motion of Defense Counsel after arraignment but before findings.

6. Sample of a specification being merged with another and subsequently being dismissed. (Specification 3 in this sample is simply there to separate the other two and show how two specifications may be combined.)

Specification 2: (Specification 4 of this Charge was merged with this specification.) On divers occasions between on or about 1 July 2010 and about 10 September 2010, at or near Dexheim, Germany and at or near Amsterdam, The Netherlands, wrongfully use and distribute marijuana. Plea: Guilty. Finding: Guilty.

Specification 3: Wrongfully distributed some amount of psilocybin mushrooms, a Schedule I controlled substance, at or near Dexheim, Germany, between on or about 22 July 2010 and about 31 July 2010. Plea: Guilty. Findings: Guilty

Specification 4: Wrongfully distributed marijuana at unknown locations between at or near Dexheim, Germany and at or near Amsterdam, Kingdom of the Netherlands, on divers occasions between on or about 1 July 2010 and about 10 September 2010. Plea: Guilty. Findings: This specification was merged with Specification 2 of this charge and this specification was subsequently dismissed.

Figure 6-10, cont'd. Samples of Pleas and Findings.

DEPARTMENT OF THE ARMY
Headquarters, 1st Infantry Division
APO Army Europe 09036

GENERAL COURT-MARTIAL ORDER
NUMBER 12

18 July 2011

General Court-Martial Order Number 4, this headquarters, dated 21 June 2010, pertaining to Sergeant First Class Arnelle B. Adams, 111-11-1111, U.S. Army, Delta Troop, 2/6 Cavalry, APO Army Europe 09140, is hereby rescinded. The case of Sergeant First Class Adams was a Special Court-Martial which has been promulgated by Special Court-Martial Order Number 15, this headquarters, dated 18 July 2010.

BY COMMAND OF MAJOR GENERAL CRADDOCK:

TOM B. JONES
SFC, USA
NCOIC, Military Justice

DISTRIBUTION:
[See AR 27-10, para 11-7]

Figure 6-11 Sample Promulgating Order used to revoke an incorrect promulgating order when the wrong series of promulgating order has been published and distributed.

DEPARTMENT OF THE ARMY
Headquarters, 82d Airborne Division
Fort Bragg, North Carolina 28307-5100

SPECIAL COURT-MARTIAL ORDER
NUMBER 4

14 January 2011

Specialist Bernell B. Anderson Jr., 111-11-1111, U.S. Army, Headquarters and Headquarters Battery, 3d Battalion, 4th Air Defense Artillery Regiment (Airborne), 82d Airborne Division, Fort Bragg, North Carolina 28307, was arraigned at Fort Bragg, North Carolina, on the following offense at a Special Court-Martial convened by Commander, 82d Airborne Division.

Charge: Article 109. Plea: Not Guilty. Finding: Not Guilty.

Specification: On or about 11 August 2010, willfully and wrongfully damage by scratching with a sharp object, a car, the amount of said damage being more than \$100.00, the property of 1SG J.K.L.. Plea: Not Guilty. Finding: Not Guilty.

The findings were announced on 12 December 2010. All rights, privileges and property of which the accused may have been deprived of by virtue of these proceedings will be restored.

BY COMMAND OF MAJOR GENERAL VINES:

TOM B. JONES
MAJ, JA
Chief, Military Justice

DISTRIBUTION:
[See AR 27-10, para 11-7]

Figure 6-12 Sample Promulgating Order when a court-martial ends with the accused being acquitted of all charges and specifications.

DEPARTMENT OF THE ARMY
Headquarters, 82d Airborne Division
Fort Bragg, North Carolina 28307-5100

SPECIAL COURT-MARTIAL ORDER
NUMBER 11

14 August 2011

Private E1 Tommy G. Adams, 111-11-1111, U.S. Army, Headquarters and Headquarters Battery, 3d Battalion, 4th Air Defense Artillery Regiment (Airborne), 82d Airborne Division, Fort Bragg, North Carolina 28307, was arraigned at Fort Bragg, North Carolina, on the following offenses at a Special Court-Martial convened by Commander, 82d Airborne Division.

Charge: Article 109. Plea: Not Guilty. Finding: None Entered.

Specification: On or about 11 August 2010, willfully and wrongfully damage by scratching with a sharp object, a car, the amount of said damage being more than \$100.00, the property of 1SG J.K.L.. Plea: Not Guilty. Finding: None Entered.

The proceedings were terminated on 23 July 2011. The [charge and specification] [charges and specifications] were withdrawn by the convening authority. All rights, privileges and property of which the accused may have been deprived of by virtue of these proceedings will be restored.

BY COMMAND OF MAJOR GENERAL VINES:

TOM B. JONES
MAJ, JA
Chief, Military Justice

DISTRIBUTION:
[See AR 27-10, para 11-7]

Figure 6-13 Sample Promulgating Order when a court-martial ends as a result of the Convening Authority withdrawing all charges and specifications.

DEPARTMENT OF THE ARMY
Headquarters, 1st Cavalry Division
Fort Hood, Texas 76544-5034

GENERAL COURT-MARTIAL ORDER
NUMBER 28

16 November 2010

Specialist Christopher B. Baumann, 111-11-1111, U.S. Army, Service Battery, 3d Battalion, 82d Field Artillery, Division Artillery, 1st Cavalry Division, Fort Hood, Texas 76544, was arraigned at Fort Hood, Texas, on the following offenses at a General Court-Martial convened by Commander, 1st Cavalry Division.

Charge I: Article 120. Plea: Guilty. Finding: Guilty.

Specification: On or about and between 1 August 2010 and 31 May 2011 rape a child under 16. Plea: Guilty. Finding: Guilty.

Charge II: Article 125. Plea: Guilty. Finding: Guilty.

Specification: On or about and between 1 August 2010 and 31 May 2011 commit sodomy with a child under 16. Plea: Guilty. Finding: Guilty.

SENTENCE

Sentence was adjudged on 20 March 2011: To be reduced to the grade of Private E-1; to be confined for 31 years; and to be discharged with a Dishonorable Discharge from the service.

Figure 6-14 Sample Promulgating Order which shows correct method of showing when a previous Action has been withdrawn and a new Action taken upon a case.

ACTION

The Action previously taken by me in this case on 30 August 2010, is withdrawn and the following substituted therefor: Only so much of the sentence as provides for confinement for 22 years, reduction to the grade of Private E1, and a Dishonorable Discharge is approved and, except for the part of the sentence extending to a Dishonorable Discharge, will be executed. The automatic forfeiture of pay and allowances required by Article 58(b), UCMJ, is hereby ordered waived effective today until 1 March 2011, with the direction that those forfeitures be paid to the natural daughter of the accused, the child of T.A.S., a victim of the accused's offenses. The accused will be credited with 80 days confinement against his approved sentence of confinement.

REVOCATION

General Court-Martial Order Number 20, this headquarters, dated 30 August 2010, pertaining to Specialist Christopher B. Bauman is hereby revoked.

BY COMMAND OF MAJOR GENERAL O'NEIL:

STEVEN C. FREEMAN
MAJ, JA
Chief, Military Justice

DISTRIBUTION:
[See AR 27-10, para 11-7]

Figure 6-14, cont'd. Sample Promulgating Order which shows correct method of showing when a previous Action has been withdrawn and a new Action taken upon a case.

AR 27-10

11-7. Distribution of court-martial orders

Official copies of CMOs and amending orders, if any, issued from the various headquarters will be thus dispersed—

a. Convening orders. Convening orders will be distributed as follows:

- (1) One copy to each individual named in the order.
- (2) One copy to the officer exercising GCM jurisdiction (inferior courts only).
- (3) One copy each for original and copies of the record of trial.

b. Initial court-martial promulgating orders. Regardless of the sentence approved, the initial court-martial promulgating order will be distributed as follows:

- (1) One copy to each individual tried (included in the record of trial provided to the accused).
- (2) One copy each to the military judge, trial counsel, and defense counsel of the court-martial at which the case was tried.
- (3) One copy each to the immediate and next higher commander of the individual tried.
- (4) Two copies for each individual tried to the GCM authority (the SJA).
- (5) One copy each to the commanding officer of the installation and the commander of the corrections facility where the individual tried is confined.
- (6) One copy to the MPD or PSC maintaining the personnel records of the individual tried, addressed to the Records Section, in compliance with AR 600-8-104. The MPD or PSC will ensure the order is transmitted to the Finance and Accounting Office maintaining the pay account of the individual tried for filing and for use as a substantiating document, according to AR 37-104-4.
- (7) One copy for each officer tried, to the Commander, HRC, 1600 Spearhead Division Ave., Fort Knox, KY 40122. For active guard reserve (AGR) officers, send to the U.S. Army Human Resources Command, AHRC-CIS-P, 1 Reserve Way, St. Louis, MO 63132-5200.
- (8) Two copies in GCM cases of officers only to the Professor of Law, United States Military Academy, West Point, NY 10996.
- (9) One copy for each enlisted Soldier tried, to the Commander, U.S. Army Enlisted Records and Evaluation Center, PCRE-FS, Fort Benjamin Harrison, IN 46249.
- (10) One copy for each member of the Army Reserve tried to the U.S. Army Human Resources Command, AHRC-CIS-P, 1 Reserve Way, St. Louis, MO 63132-5200.
- (11) In all SPCM cases, one copy forwarded to the Clerk of Court, JALS-CCZ, U.S. Army Legal Services Agency, HQDA, 901 North Stuart Street, Arlington, VA 22203-2194.
- (12) One copy to the local investigating office of the USACIDC or the Provost Marshal's Office, as applicable.
- (13) One copy to the HQ, USACIDC, CIOP-ZC, 6010 6th Street, Fort Belvoir, VA 22060-5506.
- (14) One copy to the Army Corrections Command, 150 Army Pentagon, Washington, DC 20310-0150.
- (15) One copy, for each member of the Army Reserve tried, to Commander, USARC, Office of the Staff Judge Advocate, Chief Military Law Division, 1401 Deshler Street SW, Fort McPherson, GA 30330.
- (16) One copy to the U.S. Army Criminal Investigation Laboratory, 4930 North 31st Street, Forest Park, GA 30297-5205.

c. Initial general court-martial and special court-martial orders promulgating acquittals, terminations, or approved sentences not involving death, dismissal, punitive discharge, or confinement for 1 year or more. In addition to the distribution shown in subparagraphs *b*(1) through (17), above, initial GCM and SPCM CMOs promulgating acquittals, terminations, or approved sentences not involving death, dismissal, punitive discharge, or confinement for 1 year or more, will be distributed as follows:

- (1) In GCM cases, 10 copies for each accused to the Clerk of Court, JALS-CCZ, U.S. Army Legal Services Agency, HQDA, 901 North Stuart Street, Arlington, VA 22203-1837.
- (2) Two copies to the records of each accused tried for delivery (normally, by the guard), at the same time the accused is delivered, to the Commandant of the USDB, corrections facility, or the Federal Bureau of Prisons institution in which the accused is to be confined under sentence.

Figure 6-15 Distribution of court-martial promulgating orders.

d. Initial court-martial promulgating orders with an approved sentence that involves death, dismissal, punitive discharge, or confinement for 1 year or more, whether or not suspended. In addition to the distribution shown in subparagraphs *b*(1) through (12), above, initial court-martial promulgating orders with an approved sentence that involves death, dismissal, punitive discharge, or confinement for 1 year or more, whether or not suspended, will be distributed as follows:

- (1) Ten copies for each person accused to the Clerk of Court, JALS-CCZ, U.S. Army Legal Services Agency, HQDA, 901 North Stuart Street, Arlington, VA 22203-1837. (Place eight copies in the original record of trial and one in each of the two remaining copies of the record of trial that are forwarded.)
- (2) Two copies of GCM and SPCM promulgating orders to the Department of Veterans Affairs, Regional Office and Insurance Center, 5000 Wissahickon Ave., Philadelphia, PA 19101, announcing approved findings of, guilty of—
 - (a) Mutiny.
 - (b) Treasonable acts in violation of UCMJ, Arts. 99, 104, or 134.
 - (c) Spying or espionage.
 - (d) Desertion.
 - (e) Refusal to perform service in the Army of the United States or refusal to wear the uniform of the Army of the United States.
- (3) Twelve copies provided to the records of each accused for delivery (normally, by the guard) to the Commandant of the USDB, corrections facility, or the Federal Bureau of Prisons institution in which the accused is to be confined under sentence.

e. Summary court-martial record of trial.

- (1) On completion of the convening authority's action, the SCM record of trial (DD Form 2329) will be distributed as follows:
 - (a) One copy to the accused.
 - (b) One copy will be retained by the SCM authority.
 - (c) If the accused is confined, one copy to the commander of the confinement facility in which the accused is or will be confined.
 - (d) Additional copies will be distributed as provided in subparagraphs *b*(3), (4), (6), (7), (10), (13), (14), and (15), above.
- (2) On completion of review under RCM 1112 or RCM 1201(b)(2), the original and copies of the SCM record of trial reflecting the completed review (see para 5-32*d*, above) will be distributed as follows:
 - (a) One copy to the accused.
 - (b) One copy will be retained by the SCM authority.
 - (c) Additional copies will be distributed as provided in *b*(3), (4), (6), (7), and (10), above.
 - (d) The original will be retained by the commander exercising GCM authority over the SCM convening authority, to the attention of the SJA.

f. Supplementary court-martial orders.

- (1) A supplementary order promulgating a self-executing dishonorable or bad conduct discharge need not be issued.
- (2) General court-martial and special court-martial supplementary orders will be distributed in the same manner as provided for initial CMOs shown in *b*, *c*, and *d*, above, except that copies are not required to be forwarded to the military judge and trial or defense counsel of the court-martial at which the case was tried.
- (3) Summary court-martial supplementary orders will be distributed as follows:
 - (a) One copy will be provided to each accused.
 - (b) One copy forwarded to the commander exercising GCM authority, to the attention of the SJA, over the SCM authority (for attachment to the original record of trial).
 - (c) One copy to the MPD or PSC maintaining the personnel records of the accused, to the Records Section, in compliance with AR 600-8-104. The MPD will ensure the order is transmitted to the Finance and Accounting Office maintaining the accused's pay account for filing and for use as a substantiating document, according to AR 37-104-4.
 - (d) One copy to the Commander, U.S. Army Enlisted Records and Evaluation Center, PCRE-FS, Fort Benjamin Harrison, IN 46249. For AGR enlisted Soldiers, send to the Commander, U.S. Army Reserve Personnel Center, DARP-ARE, 9700 Page Boulevard, St. Louis, MO 63132-5200.

Figure 6-15, cont'd. Distribution of court-martial promulgating orders.

- (e) One copy to the commanding officer of the confinement facility of the installation at which the accused is confined, if appropriate.
- (4) If the authority issuing the supplementary order is other than the authority initially acting on the case, the latter will be forwarded two copies of the supplementary order. These copies will be made available for information and annotation of military police and criminal investigation reports.
- (5) A copy of all supplementary orders will also be provided to the Director, U.S. Army Crime Records Center, Building 1465, 6010 6th Street, Fort Belvoir, VA 22060-5585.

Figure 6-15, cont'd. Distribution of court-martial promulgating orders.

CHAPTER 7

PROCEEDINGS DURING APPELLATE REVIEW

This chapter outlines procedures for remand of cases from either of the military appellate courts (ACCA or CAAF) to a convening authority for further proceedings or for other remedial Action and highlights the importance of keeping track of the accused during appellate review.

7-1. Remand from appellate authority.

a. In general. Formally, the appellate court returns the record of trial to TJAG, who then remands the record to a convening authority for the purpose stated. TJAG's letter of remand is prepared in the Office of the Clerk of Court based on the court's instructions. Whether or not the original copy of the record will in fact be physically returned to the convening authority depends upon what is required. What must be done when the required Actions are completed depends upon the nature of the Action that was required and the terms of the appellate court's order (also referred to as its "mandate").

b. Cases returned to original convening authority. Cases in which the convening authority is required to have the record corrected, or completed with a Certificate of Correction, or to withdraw a defective Action and substitute a correct one, are returned to the initial convening authority. In those cases, the original record is not likely to be returned because the trial jurisdiction presumably can refer to its retained copy of the record.

c. Cases returned to current convening authority. Some cases are sent to the officer currently exercising GCM jurisdiction over the accused. The required Actions range from taking a new Action because the original Action was defective and has been set aside, to conducting a sanity board or a hearing to obtain further evidence (known as a limited evidentiary hearing and often called a "DuBay" hearing), to retrying some or all of the charges (a rehearing) or at least re-sentencing the accused (referred to as a "rehearing on sentence only" or "sentence rehearing"). Less frequently, a "new trial" or "other trial" may be involved. Because the term "new trial" has a technical meaning by virtue of Article 73, the term "other trial" is the UCMJ name for retrial of a case in which the previous trial was void because jurisdiction was lacking or a charge failed to state an offense. R.C.M. 810(e).

d. Procedure. In general, any of the above-named procedures that must be done over should follow the same steps as are required for the original proceedings. There are, however, prohibitions against increasing the punishment to be imposed on an accused. See, e.g., R.C.M. 810(d).

1. Because it is usually the GCM authority currently exercising jurisdiction over the accused who inherits the task of these further proceedings, the burden falls most heavily on SJA offices in jurisdictions responsible for a correctional facility and/or a PCF. This should be taken into account in the overall staffing level and the internal organization of the SJA office.

2. As to certain of these tasks--a rehearing, for example--the selected convening authority is empowered to determine that it is impracticable to hold the further proceedings. Arts. 66(e) and

67(d), UCMJ. What to do then will depend upon the terms of the court's mandate and other applicable legal authorities.

3. In each instance, the court's order or opinion, with the record of trial when required, is transmitted with a remand letter, also called letter of instructions (LOI), from TJAG, prepared in the Office of the Clerk of Court. To obtain a correct understanding of what is to be done, one must study both the letter and the court's decision, plus any references cited. In case of doubt, call the Clerk of Court.

e. Speedy trial rules. Some of the further proceedings required may be expressly subject to speedy trial rules. In any event, all are subject to the underlying concept that justice delayed can be justice denied and that the need for an expeditious resolution of criminal justice matters is even greater in a military society than in the civilian society because of the potential impact on discipline and morale of a combat-ready force. Rather than having a lower priority, perhaps because they were not originally tried in the current GCM jurisdiction, remands should have a higher priority because they necessarily are older cases.

f. Maintain integrity of record of trial original. A final point to remember, one of utmost importance, is that all copies of the record of trial returned to a convening authority must be maintained intact. Items removed for copying, such as the original embossed copy of the appellate decision or order, must be preserved and returned. For any item necessarily removed for incorporation into the record of further proceedings, an explanation identifying its new location must be inserted in the original record. AR 27-10, para 12-10b(1). The record of any further trial proceedings is bound separately and in accordance with the instructions for initial trial records. See Chapter 3 of this volume.

7-2. Record returned for conduct of a sanity board.

a. Purpose. In this situation, no formal Action by the convening authority or promulgating order will be required. Rather, the court only requires the appointment of a medical board to provide medical opinion as to the accused's mental responsibility at the time of the offenses, mental capacity at the time of the trial proceedings, mental capacity at the current time, or, more likely, all three, as will be specified in the court's order.

b. SJA responsibility. The following steps are the responsibility of the SJA:

1. Arrange for the appointment of a medical board at an Army medical facility having the necessary capabilities, including the capacity to house prisoners if the accused is confined;

2. Convey to the medical board the court's order (and, if necessary, secure understanding that the order is binding), lend the complete record of trial to the board while maintaining accountability for it and instruct the board that nothing is to be removed from the record other than for necessary copying;

3. Arrange with the accused's command for the presence of the accused;

4. Obtain the medical board report within the time specified or obtain an extension of

time through the Clerk of Court, and return the record of trial to the Clerk of Court with the original and two copies of the board's report, together with three copies of the appointing order and any instructions given to the board. Problems that arise during this process should be brought to the attention of the Clerk of Court and, if appropriate, the SJA of the U.S. Army Medical Command.

7-3. Record of trial returned for a limited evidentiary hearing, aka "DuBay hearing."

a. History and purpose. For a succinct discussion of the need for evidentiary hearings and the types of cases in which the hearing has been used, *see United States v. Parker*, 36 M.J. 269, 271-72 (CAAF 2008); *see also United States v. Thomas*, 22 M.J. 388, 392 (CMA 1986).

b. Procedure. When a limited evidentiary hearing is required, the record of trial is remanded to a convening authority, who then, upon written advice of the SJA, may refer the case to a court-martial of the same type as the original trial court. The referral is "flapped" on the charge sheet. R.C.M. 601(e)(1) Discussion (second paragraph). Typical instructions might read "To conduct a limited evidentiary hearing IAW the (order)(decision) of the (name of court) dated (date)." A court-martial is convened and the military judge presides over the proceedings without court members. Unless the accused waives his presence upon consultation with counsel, the accused will be present with counsel. As in a trial on the merits, the parties may bring forth witnesses who are examined and cross-examined. In some cases, the military judge is required to enter findings of fact on matters specified by the appellate court; in other cases, not.

c. Action by the convening authority.

1. No Action or promulgating order required. In most cases, the convening authority is not required to take any Action except to return a record of the proceedings (original and two copies together with the original record(s) received) to the appellate court as soon as the record is transcribed and authenticated. *See, e.g., United States v. Parker, supra; United States v. Ray*, 43 CMR 171 (CMA 1971). In that event, no promulgating order is required; only an official letter of transmittal.

2. Some Action required to be promulgated. In other cases, however, depending upon the nature of the judge's findings, personal Action by the convening authority may be required, such as setting aside the findings of guilty and the sentence and ordering a rehearing, or setting aside the sentence and ordering a rehearing on sentence only. This was the situation in *United States v. DuBay*, 37 CMR 411 (CMA 1967), from which the procedure takes its informal name. If the convening authority is to take an Action affecting findings of guilty or sentence, the SJA's advice to the convening authority should be treated as if it were a post-trial recommendation, with the defense counsel afforded an opportunity to submit comments. Compare *United States v. Perez*, 5 MJ 913 (ACMR 1978) (counsel required for convening authority's reassessment of sentence), *aff'd on other grounds*, 10 MJ 114 (CMA 1980). In these cases, the convening authority's Action may take the form of a supplementary promulgating order as to which see Chapter 8, paragraph 8-4, herein.

d. Limited hearing impracticable. There are cases in which a *DuBay* hearing may be impracticable, as when an essential witness cannot be found or is deceased. Usually, the appellate

court's order will specify what is to be done if the hearing is impracticable. Unless the appellate court's order authorizes it, the convening authority who finds the hearing impracticable should not take any Action affecting the findings of guilty or the sentence. If the matter is unclear, the circumstances should be reported to the Clerk of Court who will ascertain the courses of Action open to the convening authority and/or the parties. See also paragraph 7-11, below.

e. Preservation of the record. See paragraph 7-1(f), above, for instructions regarding the records of trial provided for the DuBay hearing. Besides the original authenticated copy of the additional proceedings, two copies are required for the parties.

7-4. Rehearings in general,

a. The full rehearing. A full rehearing is (like a new trial or other trial) a proceeding involving only previously tried charges referred to a new court-martial for the purpose of findings and possible sentence. R.C.M. 810 does not preclude joining the charges being reheard with additional charges arising from misconduct discovered subsequent to the first trial. If that is done, the sentence limitation is that stated in R.C.M. 810(d).

b. The rehearing on sentence only. A rehearing on sentence only is just that: a new sentencing proceeding based on the affirmed findings of guilty.

c. The combined rehearing. A "combined rehearing" is a sentence rehearing as to some charges combined with a full rehearing as to others. Typically, this occurs when the appellate court affirms some findings of guilty, but sets aside other findings of guilty and the sentence, and orders a rehearing on the specifications as to which the findings of guilty were set aside. The sentencing will encompass both the already affirmed findings of guilty as well as those being reheard. This also occurs when a new charge not previously tried is joined with charges on which a rehearing as to only the sentence was ordered. The distinction between a combined rehearing and others is not of administrative significance, but affects the trial procedures and may affect the maximum punishment. R.C.M. 810(d).

7-5. Petitions for New Trial. Petitions for new trial pursuant to Article 73, UCMJ, and R.C.M. 1210 on the grounds of newly discovered evidence or a fraud on the court are to be filed with the office indicated in AR 27-10, para 5-40. Should such a petition be filed in error with a GCM convening authority, note on the petition the date it was received and forward it to the Clerk of Court for proper filing. However, if the case is still pending before the convening authority, the accused may in fact be seeking what is more correctly termed a "rehearing." Whether a rehearing should be ordered is a matter for the convening authority to determine with the advice of his or her staff judge advocate; in any event, the "petition for new trial" must be included in the record when forwarded.

7-6. Administration of rehearings, new trials, and "other trials."

a. In general. In full rehearings, new trials, and other trials, the administrative steps are the same as those already covered in previous chapters of this handbook. Charges previously investigated pursuant to UCMJ Article 32 need not be reinvestigated.

b. Pretrial advice. Article 34, UCMJ. There will be a pretrial advice in which the SJA advises the convening authority of the history of the case, any instructions received in the LOI or appellate decision, and the convening authority's options, and makes a re-commendation as to further proceedings, including their practicality.

c. Referral. Unless the convening authority decides the further proceedings are impracticable or not required in the interests of justice, he may issue an order directing a rehearing, new trial, or other trial, as required. A court-martial is convened and the charges referred to the court-martial. (In the case of a rehearing on sentence only, the court-martial must be of the same type that imposed the original sentence.) Referral is accomplished by overlaying ("flapping") the original referral. If any new charges are preferred, UCMJ article 32 applies if those charges are being referred to a GCM. The referral instructions (R.C.M. 601(e)(1)) might include "For full rehearing," "For a rehearing on sentence only," "For a combined rehearing," "For a combined rehearing with the charges preferred on [date]," and, when appropriate, "Referred noncapital."

d. Post-trial process. Required post-trial proceedings likewise are the same as for an original trial. However, in taking Action on a sentence, the convening authority is subject to certain limitations set forth in R.C.M. 1107(f)(5).

e. Determinations of impracticability. Reference was made above to the SJA's advice regarding practicality of the further proceedings. A convening authority may find that further proceedings are impracticable for one or more reasons. What is to be done in that event depends upon the appellate court's instructions. If nothing to the contrary is expressed or implied, the following guidelines apply:

1. Rehearing on the merits impracticable. "If the convening authority finds a rehearing as to any offenses impracticable, the convening authority may dismiss those specifications and, when appropriate, charges." R.C.M. 1107(e)(1)(B)(iii). Figure 7-2. The Discussion accompanying the rule indicates that in the case of a combined rehearing, the convening authority may, upon finding rehearing of the involved charges and specifications impracticable and dismissing them, reassess the sentence based on the remaining charges and specifications affirmed by the appellate court, unless precluded from doing so by the court's instructions. R.C.M. 1107(e)(1)(B)(iii) Discussion. In this connection, the SJA's advice to the convening authority on reassessment should be treated as if it were a post-trial recommendation. See United States v. Perez, 5 MJ 913 (ACMR 1978), affirmed on other grounds, 10 MJ 114 (CMA 1980).

2. Sentence rehearing impracticable. "[W]hen he has been directed to hold a rehearing on sentence but determines that this is impracticable . . . the convening authority may simply approve a sentence of 'no punishment.'" United States v. Montesinos, 28 MJ 38, 43 (CMA 1989); see also United States v. Sala, 30 MJ 813 (ACMR 1990) (involving approval of Chapter 10 discharge (see Chapter 1, subparagraph 1-3a(2), supra)). This advice now appears in R.C.M. 1107(e)(1)(C)(iii); however, in the light of the Discussion accompanying R.C.M. 1107(e)(1)(B)(iii), it would seem logical that, unless precluded by the appellate court from doing so, the convening authority may instead reassess the sentence on the basis of the affirmed charges.

3. If the accused is absent without leave. Unauthorized absence of the accused invokes the procedure set forth in AR 27-10, paragraph 5-28. When the determination as to practicability is deferred, the Clerk of Court checks with the Armed Forces Deserter Information Point (AFDIP) at three-month intervals. At six-month intervals, the Clerk of Court consults the GCM jurisdiction as to continuation of the deferral. Similar procedures might be used when an accused on excess leave cannot be located, except that, because AFDIP will have no information, the GCM jurisdiction should seek support through the local element of the U.S. Army Criminal Investigation Command (CID) in locating the accused.

f. Promulgating Action by the convening authority. Rehearings, new trials, and other trials, besides requiring a pretrial advice (after compliance with Article 32, UCMJ, if necessary), always require a post-trial recommendation, Action by the convening authority, and publication of a promulgating order. The convening authority's Action must provide for crediting the accused with any part of the previous sentence served from the date the first sentence was adjudged to the date it was set aside by the appellate court. Figure 7-3 at the end of this chapter. (As to the effective dates of ACCA and CAAF decisions, see para 7-10b, below.)

7-7. Cases withdrawn from appellate review.

a. Withdrawn during appellate review. Just as an accused may waive appellate review before it begins, so may an accused withdraw his case once appellate review has begun. R.C.M. 1110. The procedure is the same. See Chapter 5, paragraph 5-18 of this volume. In fact, the same forms are used, but with different words lined through. MCM, Apps. 19, 20. So long as the appellate review has not been completed, there is no time limit. R.C.M. 1110(f)(2). Most withdrawals are submitted directly to the ACCA with a motion filed by the appellate defense counsel. If, instead, a withdrawal is mistakenly filed with a convening authority, it should be forwarded immediately to the Clerk of Court. R.C.M. 1110(e)(2).

1. If the court grants the motion to withdraw, the record of trial is then returned to the original convening authority. R.C.M. 1110 (g)(3); AR 27-10, para 12-5. The review required by R.C.M. 1112 must be conducted by a judge advocate who is not disqualified by virtue of any of the provisions of R.C.M. 1112(c).

2. Thereafter, the convening authority may have to take a supplemental Action and a supplemental court-martial order is published, unless it is a self-executing punishment in which a supplemental court-martial order is not published. See AR 27-10, para s11-6b and 11-6d(3).

3. The original record of trial (only) is then returned to the Clerk of Court. AR 27-10, paras 5-35b, 5-36b. Note that DD Form 2330 is not used to withdraw cases from CAAF; instead, the accused's counsel must file a motion to withdraw the petition for grant of review.

7-8. Extraordinary writs.

a. Jurisdiction. Besides their jurisdiction under the UCMJ, the ACCA and CAAF have jurisdiction under a law popularly known as the "All Writs Act," 28 USC sec. 1651(a), which enables courts established by Congress to issue "writs necessary or appropriate in aid of their respective jurisdictions." This subject is not covered in the MCM or AR 27-10, but rather is

almost entirely the subject of case law.

b. Some types of writs. The writs most commonly involved have their origin in the English common law of centuries ago. They include the Writ of Prohibition (prohibiting an official from taking some Action), Writ of Mandamus (requiring an official to take a particular Action), and the familiar Writ of Habeas Corpus (compelling the release of a prisoner).

c. Action required. At any time before, during, or after a trial by court-martial either the accused or the government may seek an appropriate writ from the ACCA. Often, this is accompanied by a motion for stay of proceedings, which, if granted, may halt the trial or other process until the appellate court can decide the issue raised. A Petition for Extraordinary Relief does not involve the remand of a record of trial to the convening authority, but nevertheless may produce an order with which the convening authority is legally obligated to comply.

7-9. Obtaining clarification or modification of an appellate court's mandate. Sometimes, a case may be remanded with instructions that seem unclear, do not appear to permit some Action the convening authority believes should be taken, or which dictate an Action the convening authority deems inappropriate. If it is not clear what the court's instructions require or permit, it is best to consult first the Clerk of Court, U.S. Army Judiciary (even if the case was remanded by the CAAF). Should it prove necessary to seek an amendment to the court's instructions, the trial counsel (on behalf of the convening authority) and/or the defense counsel (on behalf of the accused) should consult their respective appellate counterparts to determine whether the appellate counsel will file a Motion to Amend the Mandate. Only a party to the appeal may file the necessary motion and the opposing party must be given an opportunity to respond.

7-10. Note on use of the term "mandate."

a. Used in nontechnical sense. The term "mandate" is used in the preceding paragraph in its nontechnical sense meaning the command issued by the court to TJAG or to a convening authority. The format in which the command appears may be an order issued by the court or it may be a full opinion. In the latter case, the command most often will be found at or near the close of the opinion in one or more short paragraphs often called "decretal" paragraphs (from the word "decree"). This is the "mandate" in the dictionary sense.

b. Technical meaning: Effective date of decisions. As for the CAAF, the term "mandate" currently has a more technical meaning. It is the name of an order issued ten days after an opinion has been published placing the decision in effect. In other words, a decision of the CAAF, even though dated, is not effective until its Mandate (or, in some cases, a similar order announcing finality) is issued. The purpose in delaying the effect of the decision for ten days is to allow the parties the ten days provided by the rules for seeking reconsideration. The ACCA does not issue a separate mandate. Its decisions become effective upon promulgation by TJAG to a GCM authority exercising jurisdiction over the accused or responsible for some further Action in the case. That is the date of the letter from the Clerk of Court to the convening authority, often requiring only service of a decision copy on the accused (Chapter 7, paragraph 7-11d, below), but sometimes authorizing further proceedings, such as a rehearing.

7-11. Keeping track of the accused during appellate review.

a. Background. When an accused's case must undergo review by the U.S. Army Court of Criminal Appeals (ACCA), his conviction will not become final, nor can any punitive discharge be issued, until appellate review is completed.

b. Notification. The accused must first be notified of the ACCA decision and, if the decision is unfavorable to the accused, be given the opportunity to petition the U.S. Court of Appeals for the Armed Forces (CAAF) for review. If the CAAF reviews the case, there may even be a further appeal to the Supreme Court of the U.S. by way of "petition for writ of certiorari."

c. Confinement. Personal, face-to-face, service of the Court of Criminal Appeals' decision remains the required method when the accused is in a duty or confinement status.

d. When an accused is no longer in a duty status. The following steps must be taken to notify the accused of the appellate decision when an accused is no longer in a duty status.

1. The Clerk of Court must serve a copy of the decision on appellate counsel. Article 67(b)(2), UCMJ.

2. A copy of the decision must then be deposited in the United States mail for delivery by first class certified mail to the accused—(1) At an address provided by the accused, or (2) If no address has been provided by the accused, at the latest address listed for the accused in his official service record. Usually this is the accused's excess leave address. AR 27-10, para 12-9h.

3. If those steps are correctly carried out, the 60-day period within which the accused may petition for review by the Court of Appeals for the Armed Forces begins to run when the decision is deposited in the U.S. mail, rather than when (or whether) the accused actually receives the decision.

4. The accused's excess leave address changes must be updated with the Clerk of Court.

7-12. Discharge or other separation of accused while appellate review is pending.

a. Proper discharge. The proper administrative separation of an accused not sentenced to a punitive discharge should be reported to the Clerk of Court so that the accused can be located during appellate review and, if necessary, a final supplementary CMO issued by HQDA. Whenever possible, a copy of the DD Form 214 should be obtained and sent to the Clerk of Court.

b. Erroneous discharge or retirement. Another reason for following an accused after the trial and while appellate review is pending is to prevent the erroneous administrative discharge of an accused whose approved court-martial sentence includes a punitive discharge or a dismissal. Army Regulation 635-200, para 1-24b, forbids the administrative discharge of an enlisted accused under these circumstances unless approval is first obtained from HQDA. It is the position of TJAG that a discharge issued in violation of this restriction is void. Opinion DAJA-CL 11 June 1986, digested in *The Army Lawyer*, February 1987, at p. 55. Any such occurrence

should be reported immediately to the Clerk of Court. Similarly, the discharge or retirement of an officer under sentence to a dismissal should be reported.

7-13. Informing the Clerk of Court where the accused may be contacted.

a. Address changes. The Clerk of Court must be informed of any assignments or attachments pertaining to the accused after the trial and any changes of excess leave address received from the accused. This is important because the commander exercising GCM jurisdiction over the accused at the time the decision is rendered is responsible for serving the ACCA decision in compliance with Article 67(b)(2), UCMJ.

b. Assignment changes. The SJA of the trial jurisdiction must indicate in the remarks section of DD Form 490 or 491 (Chronology Sheet) any confinement facility, Personnel Control Facility (PCF), or other command to which the accused may have been transferred prior to dispatch of the record of trial for appellate review, or must affirmatively state the accused remains assigned at the time of forwarding the record. AR 27-10, para 5-41c.

c. Time period. The Clerk of Court must be “expeditiously furnished” copies of all transfer orders and excess leave documentation pertaining to an accused whose case is undergoing appellate review. AR 27-10, para 12-11b.

7-14. Excess leave. See Chapter 1, para 1-8, Post-Trial Handbook. The GCM authority will ensure that the Clerk of Court, ATTN: JALS-CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060 is expeditiously furnished copies of all transfer orders and excess leave orders, or a copy of DA Form 31, Request and Authority For Leave, when an accused has been transferred from his or her jurisdiction or is placed on excess leave. AR 27-10, para 12-11b.

7-15. Post-trial confinement. Orders permanently assigning or temporarily attaching an accused to another command for purposes of confinement are among the orders that must be furnished to the Clerk of Court in compliance with AR 27-10, para 12-11b.

7-16. Death of an accused. When an accused dies while pending trial or following conviction, the GCM jurisdiction to which the accused was assigned takes the following Actions:

a. First verify and document the fact of death. If death occurred while under military control, obtain a copy of the documentation required by Army medical regulations. If death occurred within a civilian jurisdiction, obtain a copy of the best available documentation, preferably a certified death certificate (this may require an expenditure of imprest funds).

b. If death occurred before referral. Return the Charge Sheet to the accused's unit for disposition with other records pertaining to the accused.

c. If death occurred after referral and before findings. If death occurred before arraignment, issue a GCMO or SPCMO stating "In the (General)(Special) Court-Martial case of (accused), the accused having died on (date), prior to arraignment, the proceedings are abated and the charges are dismissed. All rights, privileges, and property of which the accused has been deprived by

virtue of these proceedings will be restored."

d. If death occurred after arraignment. Issue an initial promulgating order. If pleas were entered, they should be shown as usual, otherwise as "None entered." Unless they were entered, the findings and sentence will be shown as "None entered." The Action section will state "The accused having died on (date), prior to (entry of pleas)(entry of findings), the proceedings are abated and the charges are dismissed. All rights, privileges, and property of which the accused has been deprived by virtue of these proceedings will be restored."

e. If death occurred after the trial, but before Action on the record. Issue an initial promulgating order with an Action as follows: "In the foregoing case of (accused's name, etc.), the accused having died on (date), prior to Action of the convening authority, the proceedings are abated. The findings and sentence are disapproved and the charges are dismissed. All rights, privileges, and property of which the accused has been deprived by virtue of the findings of guilty and the sentence will be restored."

f. If death occurred after Action was taken, but before the record was forwarded to the Clerk of Court. If the Action taken has not been published, the convening authority may, in his discretion, issue an initial promulgating order with an Action withdrawing the first Action and substituting an Action as described in d, above (except for the words "prior to Action of the convening authority"). If the initial Action has been promulgated, the convening authority may, in his discretion, issue a supplementary promulgating order abating the proceedings, setting aside the findings of guilty and the sentence, and ordering restoration as in d, above.

g. If the record of trial has been forwarded to the Clerk of Court. The GCM jurisdiction receiving notice of the accused's death should use the most expeditious means to notify the Clerk of Court, then send the original copies of the available evidence of death (a, above) to the Clerk of Court. Normally, the accused's appellate defense counsel will then move the appropriate appellate court to abate the proceedings ab initio and will be required to furnish adequate proof of the fact and date of death.

h. If an appellate court abates the proceedings. The GCM jurisdiction to which the accused was assigned at the time of death will be advised to issue the final order in the following terms: "In the (General)(Special) Court-Martial case of (accused), the proceedings of which were promulgated in (cite Court-Martial Order), the accused died on (date), prior to the conviction becoming final within the meaning of Article 76, Uniform Code of Military Justice. By order of (appellate court), dated (date), the proceedings are abated ab initio, the findings and sentence are set aside and the charges are dismissed. All rights, privileges, and property of which the accused has been deprived by virtue of the findings of guilty and the sentence will be restored."

7-17. Petitions for grant of review by the U.S. Court of Appeals for the Armed Forces. If a staff judge advocate office receives an accused's DA Form 4918-R or any other form or document requesting review by the U.S. Court of Appeals for the Armed Forces, immediately record on the document the date it was received by your office and send it to the Clerk of that court at 450 E Street, NW, Washington, DC 20442-0001. AR 27-10, para 13-9i.

7-18. Freedom of Information Act requests.

a. Responsibility. Before a GCM or BCDSPCM record of trial has been forwarded for appellate review, requests for release of the record of trial or information therefrom are forwarded to the SJA of the GCM trial jurisdiction. AR 25-55, para 3-200 (Exemption) Number 6(f), and App. B, para 2b(5)(a) (1990). TJAG is the initial denial authority (IDA). AR 25-55, para 5-200d(13) (1997); however, the Clerk of Court has been delegated the IDA authority for court-martial records. JAGR 25-55, para 5b (1995).

b. Considerations. Informal coordination with the Clerk of Court is encouraged and is mandatory if the request is to be denied. While there can be little doubt as to the releasability of an unclassified record of a case in which the trial has ended, some related matters need to be considered. For example, does the testimony, or do the allied papers, identify a confidential informant? Is there information, perhaps as to a victim or other witness, the release of which would constitute an unwarranted invasion of personal privacy? (For example, the Privacy Act requires that all social security numbers and home addresses be expunged from the record.) Is the prospect of a claim or litigation against the Army such that the Chief of the Claims Service or Litigation Division, or both, should be informed? Is the requestor willing to pay the prescribed fees for copying the record? Do not promise or imply to a family member of the accused or a victim or a victim's family member that the fee for copying a record of trial will be waived.

General Court-Martial Order Number 30 was the last in the series for 2007.

DEPARTMENT OF THE ARMY
HEADQUARTERS
U.S. ARMY COMBINED ARMS CENTER AND FORT LEAVENWORTH
FORT LEAVENWORTH, KANSAS 66027-2300

GENERAL COURT-MARTIAL ORDER
NUMBER 1

15 January 2008

Specialist Charlie D. Adams, Jr. 111-11-1111, U.S. Army, Headquarters and Headquarters Company, 555th Engineer Group, Fort Blank, Missouri, 62893, currently assigned to the Correctional Holding Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas 66027, was arraigned at Fort Blank, Missouri, on the following offenses at a General Court-Martial convened by Commander, 20th Infantry Division

Charge I. Article 80. Plea: Not Guilty. Finding: Not Guilty.

Specification: Attempting to sell military property of a value in excess of \$100.00, the property of the U.S. Air Force, on or about 27 February 2004. Plea: Not Guilty. Finding: Not Guilty.

Charge II. Article 121. Plea: Not Guilty. Finding: Guilty.

Specification: Larceny of military property of a value in excess of \$100.00, the property of the U.S. Air Force, on or about 19 February 2004. Plea: Not Guilty. Finding: Guilty.

Additional Charge. Article 92. Plea: Not Guilty. Finding: Guilty.

Specification: Willful dereliction in performance of duties as an interior guard, on or about 19 February 2004. Plea: Not Guilty. Finding: Guilty.

Figure 7-1 New Action When Initial Action Set Aside on Appeal and New Action Ordered.

SENTENCE

Sentence adjudged on 24 August 2007: To be confined for three years and to be discharged from the service with a Dishonorable Discharge.

ACTION

In the General Court-Martial case of Specialist Charlie D. Adams, Jr. 111-11-1111, U.S. Army, Headquarters and Headquarters Company, 555th Engineer Group, Fort Blank, Missouri, 62893, currently assigned to the Correctional Holding Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas 66027, the Action taken by the Commander, 20th Infantry Division, Fort Blank, Missouri, set forth in General Court-martial Order Number 3, dated 29 January 2004, was set aside on 9 October 2004 by the U.S. Army Court of Criminal Appeals, pursuant to Article 66, Uniform Code of Military Justice. A new review and Action were ordered. A recommendation having been received pursuant to R.C.M. 1106, the following is my Action on the record of trial: The sentence is approved and, except for the part of the sentence extending to a Dishonorable Discharge, will be executed. The accused will be credited with confinement served from [initial date to date released] [or] [the sentence to confinement has been served).

BY COMMAND OF [GRADE AND SURNAME]:

[SIGNATURE BLOCK]

DISTRIBUTION:

[See AR 27-10, para 11-7]
(ARMY 20071192)

Figure 7-1, cont'd New Action When Initial Action Set Aside on Appeal and New Action Ordered.

DEPARTMENT OF THE ARMY
HEADQUARTERS
U.S. ARMY COMBINED ARMS CENTER AND FORT LEAVENWORTH
FORT LEAVENWORTH, KANSAS 66027-2300

GENERAL COURT-MARTIAL ORDER
NUMBER 45

14 July 2008

In the General Court-Martial case of Private First Class David M. O'Neil, 111-11-1111, U.S. Army, Headquarters and Headquarters Company, 20th Infantry Division, Fort Blank, Missouri, 62893, (currently assigned to the Correctional Holding Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas 66027), pursuant to Article 67, Uniform Code of Military Justice, the findings and sentence as promulgated in General Court-Martial Order Number 23, Headquarters, 20th Infantry Division, Fort Blank, dated 16 April 2004, were set aside on 7 September 2007, by the U.S. Court of Appeals for the Armed Forces. A rehearing was authorized. A rehearing is not practicable. The charges and specifications are dismissed. All rights, privileges, and property of which the accused has been deprived by virtue of the findings of guilty and the sentence set aside will be restored.

BY COMMAND OF [GRADE AND SURNAME]:

[SIGNATURE BLOCK]

DISTRIBUTION:
[See AR 27-10, para 11-7]
(ARMY 20031192)

Figure 7-2. Final Supplementary Promulgating Order when Ordered Rehearing is Impracticable.

DEPARTMENT OF THE ARMY
HEADQUARTERS
U.S. ARMY COMBINED ARMS CENTER AND FORT LEAVENWORTH
FORT LEAVENWORTH, KANSAS 66027-2300

GENERAL COURT-MARTIAL ORDER
NUMBER 15

12 June 2008

In the General Court-Martial case of Sergeant Charlie D. Parks, III, 111-11-1111, U.S. Army, Headquarters and Headquarters Company, 20th Infantry Division, Fort Blank, Missouri, 62893, (currently assigned to the Correctional Holding Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas 66027), on 22 December 2007, pursuant to Article 67, Uniform Code of Military Justice, the U.S. Court of Appeals for the Armed Forces set aside the findings as to Specification 4 of Charge II and Specification 2 of Charge V and those specifications were dismissed. The remaining findings of guilty were affirmed. The court also set aside the sentence as promulgated in General Court-Martial Order Number 98, Headquarters, 20th Infantry Division, Fort Blank, Missouri, dated 18 May 2001. Pursuant to Article 66, Uniform Code of Military Justice, the U.S. Army Court of Criminal Appeals authorized a rehearing on sentence only. Pursuant to Court-Martial Convening Order Number 9, this headquarters, dated 10 June 2007, a rehearing on sentence only was ordered. The rehearing on sentence was held before a General Court-Martial which convened at Fort Leavenworth, Kansas.

SENTENCE

Sentence adjudged on 22 August 2007: Reduction to the grade of Private E1, forfeiture of all pay and allowances and confinement for five months.

ACTION

In the General Court-Martial case of Specialist Charlie D. Parks, III, 111-11-1111, U.S. Army, Headquarters and Headquarters Company, 20th Infantry Division, Fort Blank, Missouri, 62893, (currently assigned to the Correctional Holding Detachment, U.S. Disciplinary Barracks, Fort Leavenworth), Kansas the sentence is approved and will be executed. The accused will be credited with any portion of the punishment from 1 July 2007 to 25 May 2008 under the sentence adjudged at the former trial of this case.

BY COMMAND OF [GRADE AND SURNAME]:

[SIGNATURE BLOCK]

DISTRIBUTION:
[See AR 27-10, para 11-7]
(ARMY 20081201)

Figure 7-3 Order Promulgating Action upon Sentencing Rehearing

DEPARTMENT OF THE ARMY
Headquarters, 7th Infantry Division (Light) and Fort Ord
Fort Ord, California 93941-5888

KFBB-JA

4 June 2010

MEMORANDUM FOR Commander, Headquarters, 7th Infantry Division (Light) and Fort Ord,
Fort Ord, California 93941-5888

SUBJECT: Staff Judge Advocate Post-Trial Recommendation (SJAR) in the Special Court-
martial Case of Private E2 Thomas J. Simpson

1. This is my recommendation pursuant to Rule for Court-Martial 1106 in the Special Court-Martial case of Private E2 Thomas J. Simpson, 111-11-1111, US Army, Company E, 187th Infantry Regiment (Provisional), Headquarters, 7th Infantry Division (Light) and Fort Ord, Fort Ord, California 93941-5888, (currently assigned to the Special Processing Company, U.S. Army Personnel Control Facility, Fort Knox, Kentucky 40121-5238).

2. Decision of the U.S. Army Court of Criminal Appeals:

a. On 6 April 2010, the United States Army Court of Criminal Appeals (ACCA) set aside the Action in the case of U.S. v. Simpson which was taken by [you] [your predecessor] [Commander, Headquarters, Fort Atterbury, Indiana] on 30 October 2009. The U.S. Army Court of Criminal Appeals directed that a new staff judge advocate post trial recommendation (SJAR) and Action be taken and returned the record of trial to the Judge Advocate General. You have been designated by the Judge Advocate General to take a new Action in this case.

b. The reason that ACCA directed that a new SJAR and Action be taken in the case of U.S. v. Simpson was because of a confusing SJAR, addendum to the SJAR and an incorrect sentence being approved by the convening authority. In an undated SJAR, the Headquarters, Fort Ord Staff Judge Advocate advised the convening authority that the appellant's adjudged sentence included "to be confined for 75 days," and that "the Convening Authority [agreed] to disapprove any confinement adjudged in excess of 40 days." However, the SJA recommended that the convening authority approve the adjudged sentence. On 22 October 2009, appellant's clemency matters stated that "PVT Simpson was sentenced to a bad conduct discharge, reduction to E-1, forfeiture, and was released from confinement with time served at the conclusion of the court-martial proceedings." On 30 October 2009, in his addendum to the SJAR, the SJA

Figure 7-4 Staff Judge Advocate Recommendation when record of trial remanded for new review and Action.

SUBJECT: Staff Judge Advocate Post-Trial Recommendation (SJAR) in the Special Court-Martial Case of Private E2 Thomas J. Simpson

recommended that the convening authority approve the sentence. The convening authority, after stating that he had considered the record of trial, SJAR, the addendum to the SJAR, and appellant's submission, concurred with the SJA's recommendation and signed an Action approving the adjudged sentence. This resulted in approving an incorrect sentence. The sentence included 75 days of confinement despite the fact the convening authority had agreed not to approve any confinement in excess of 40 days. The Military Judge also stated that the convening authority must disapprove all confinement adjudged in excess of 40 days and directed the convening authority give the accused 35 days confinement credit against the 40 days that appears in the pretrial agreement. (In the Brief on Behalf of Appellant the appellate defense counsel stated that he "confirmed that [appellant] did receive the benefit of his [pre-trial agreement] and confinement credit.")

3. The Charge: Article 86. Plea: Guilty. Finding: Guilty.

Specification 1: Did, on or about 1 May 2009, without authority, absent himself from his unit, to wit: Company E, 187th Infantry Regiment (Provisional), Headquarters, 7th Infantry Division (Light) and Fort Ord, located at Fort Ord, California, and did remain so absent until on or about 1 June 2003.

Specification 2: Did, on or about 15 June 2009, without authority, absent himself from his unit, to wit: Company E, 187th Infantry Regiment (Provisional), Headquarters, 7th Infantry Division (Light) and Fort Ord, located at Fort Ord, California, and did remain so absent until on or about 15 July 2009.

4. Sentence Adjudged: On 10 September 2009, the Military Judge sentenced the accused: to be reduced to the grade of Private (E-1), to forfeit \$767.00 pay per month for three months, to be confined for 75 days, and to be discharged from the service with a bad-conduct discharge.

5. Special Recommendations Made by the Sentencing Authority: None.

6. Pretrial Confinement: 13 August 2009 until 10 September 2009. The Military Judge stated that the accused will be credited with 28 days toward the sentence to confinement. (ROT pgs. 62 and 65)

7. Pretrial Restraint: None.

8. Additional Confinement Credit: Six days of administrative credit, one day of additional credit for unduly harsh conditions, for a total of seven additional days confinement credit.

Figure 7-4, cont'd Staff Judge Advocate Recommendation when Record of Trial remanded for New Review and Action.

KFBB-JA

SUBJECT: Staff Judge Advocate Post-Trial Recommendation (SJAR) in the Special Court-Martial Case of Private E2 Thomas J. Simpson

9. Pretrial Agreement: The Convening Authority agreed to disapprove any confinement adjudged in excess of 40 days. Any other lawfully adjudged punishment may be approved. The Convening Authority will apply any pretrial punishment or restraint credit given by the Military Judge to the approved sentence.

10. Deferment/Waiver of forfeitures: None

11. Recommendation of the Staff Judge Advocate: I recommend that you comply with ACCA's decision and take a new Action in the case of U.S. v. Simpson. I recommend that you approve only so much of the adjudged sentence as provides for reduction to Private E1, forfeiture of \$767.00 pay per month for three months, 40 days confinement and a bad-conduct discharge. I also recommend that you order all portions of the sentence be executed except for the bad-conduct discharge. The execution of the adjudged bad-conduct discharge will be complete upon the termination of the appellate review process. You must also credit PV2 Simpson with 35 days of confinement against his approved sentence to confinement.

12. A copy of this recommendation has been served on both the defense counsel and PV2 Simpson. If any matters are submitted by them in accordance with Rule for Court-Martial 1105, they will be attached and provided to you for your consideration.

THOMAS B. SMITH
COL, JA
Staff Judge Advocate

3 Encls

1. Record of Trial
2. Result of Trial
3. Pretrial Agreement

Figure 7-4, cont'd. Staff Judge Advocate Recommendation when Record of Trial remanded for New Review and Action.

ACTION

DEPARTMENT OF THE ARMY
Headquarters, 7th Infantry Division (Light) and Fort Ord
Fort Ord, California 93941-5888

28 June 2010

In the Special Court-Martial case of Private (E-2) Thomas J. Simpson, 111-11-1111, US Army, Company E, 187th Infantry Regiment (Provisional), Headquarters, 7th Infantry Division (Light) and Fort Ord, Fort Ord, California 93941-5888 (currently assigned to the Special Processing Company, U.S. Army Personnel Control Facility, Fort Knox, Kentucky 40121-5238), the Action taken by [me] [my predecessor] [Commander, Headquarters, Fort Atterbury, Indiana] in Special Court-martial Order Number 18, [this headquarters,] [Headquarters, Fort Atterbury, Indiana, 32923,] dated 30 October 2009, was set aside on 6 April 2010 by the United States Army Court of Criminal Appeals, pursuant to Article 66, Uniform Code of Military Justice. A new review and Action were ordered. Having been designated as the convening authority to take Action in this case and having received a recommendation pursuant to R.C.M. 1106, the following is my Action on the record of trial: Only so much of the sentence as provides for reduction to Private E1, forfeiture of \$767.00 pay per month for three months, 40 days confinement and a bad-conduct discharge is approved and except for that portion of the sentence pertaining to the bad-conduct discharge will be executed. The accused will be credited with 35 days of confinement against the sentence to confinement. [The sentence to confinement has been served.] [The accused will be credited with all confinement served from the date of his initial sentence to confinement, 10 September 2009.]

CHARLES B. KINGSLEY
Major General, USA
Commanding

Figure 7-5 Action on a case remanded for a New Review and Action.

DEPARTMENT OF THE ARMY
Headquarters, 7th Infantry Division (Light) and Fort Ord
Fort Ord, California 93941-5888

SPECIAL COURT-MARTIAL ORDER
NUMBER 24

28 September 2010

Private E2 Thomas J. Simpson, 111-11-1111, US Army, Company E, 187th Infantry Regiment (Provisional), Headquarters, 7th Infantry Division (Light) and Fort Ord, Fort Ord, California 93941-5888, (currently assigned to the Special Processing Company, U.S. Army Personnel Control Facility, Fort Knox, Kentucky 40121-5238), was arraigned at Fort Ord, California, on the following offenses at a Special Court-Martial convened by Commander, Headquarters, 7th Infantry Division (Light) and Fort Ord.

The Charge: Article 86. Plea: Guilty. Finding: Guilty.

Specification 1: On or about 18 February 2010, without authority, absented himself from his unit and did remain so absent until on or about 3 March 2010. Plea: Guilty. Finding: Guilty.

Specification 2: On or about 14 May 2010, without authority, absented himself from his unit and did remain so absent until apprehended on or about 13 August 2010. Plea: Guilty. Finding: Guilty.

SENTENCE

Sentence was adjudged on 10 September 2010: To be reduced to the Grade of Private (E1), to forfeit \$767.00 pay per month for three months, to be confined for 75 days, and to be discharged from the service with a Bad-Conduct Discharge.

Figure 7-6 Promulgating Order Action on a case remanded for a New Review and Action.

ACTION

In the Special Court-Martial case of Private (E-2) Thomas J. Simpson, 111-11-1111, US Army, Special Processing Company, U.S. Army Personnel Control Facility, Fort Knox, Kentucky 40121-5238 (formerly assigned to Company E, 187th Infantry Regiment (Provisional), Headquarters, 7th Infantry Division (Light) and Fort Ord, Fort Ord, California 93941-5888), the Action taken by [me] [my predecessor] [Commander, Headquarters, Fort Atterbury, Indiana] in Special Court-Martial Order Number 18, [this headquarters,] [Headquarters, Fort Atterbury, Indiana, 32923,] set forth in Special Court-Martial Order Number 18, this headquarters, dated 30 October 2009, was set aside on 6 April 2010 by the United States Army Court of Criminal Appeals, pursuant to Article 66, Uniform Code of Military Justice. A new review and Action were ordered. Having been designated as the convening authority to take Action in this case and having received a recommendation pursuant to R.C.M. 1106, the following is my Action on the record of trial: Only so much of the sentence as provides for reduction to Private E1, forfeiture of \$767.00 pay per month for three months, 40 days confinement and a Bad-Conduct Discharge is approved and, except for that portion of the sentence pertaining to the Bad-Conduct Discharge, will be executed. The accused will be credited with 35 days of confinement against the sentence to confinement. The sentence to confinement has been served.

BY COMMAND OF MAJOR GENERAL KINGSLEY:

CHARLES D. ADAMS
LTC, JA
Chief, Military Justice

DISTRIBUTION:
[See AR 27-10, para 11-7]

Figure 7-6 cont'd. Promulgating Order Action on a case remanded for a New Review and Action.

CHAPTER 8

AFTER APPELLATE REVIEW: APPELLATE DECISIONS, FINAL ACTION, SUPPLEMENTARY PROMULGATING ORDERS

8-1. Serving the ACCA decision on the accused.

a. Background. The MCM requires that an accused (1) be notified of the decision of the ACCA in his case and that, if entitled to petition the CAAF for review, (2) be provided a copy of the ACCA decision, (3) be notified of his right to appeal, and (4) be informed that he must appeal within 60 days of being notified in person or within 60 days after a mailed copy of the decision was postmarked. R.C.M. 1203(d)(2); see Article 67(b), UCMJ. The method by which the Army carries out these responsibilities is prescribed in AR 27-10, para 12-9.

b. Actions accomplished by the Clerk of Court. When a decision is issued by the ACCA, the Clerk of Court serves a copy on the accused's detailed appellate counsel and mails a copy to civilian appellate counsel, if any. Within the next 30 days, either party may request that the ACCA reconsider its decision in the case or TJAG may, at the behest of either party, send the case to the CAAF, requesting that court to consider one or more specific legal issues. Concurrently, the Clerk of Court determines the accused's location from information required to be furnished by the GCM trial jurisdiction as indicated in Chapter 1, paragraph 1-8d, herein, and sends two copies of the decision with a letter instructing the SJA of the commander currently exercising GCM jurisdiction over the accused to serve a copy of the decision on the accused, advising him or her of the right to petition the CAAF to review an adverse decision.

c. Responsibility of the accused's current command. Immediately upon receiving the decision to be served, the responsible person in the OSJA sends one copy of the decision (order or opinion) to be filed in the accused's personnel record, initiates DA Form 4916, Certificate of Service/Attempted Service (hereinafter the Certificate of Service), which is a locally-reproduced form appearing in AR 27-10, and, unless they are not required, completes or prepares the forms described in d(1)-(3), below. Particularly in those offices serving an RCF, where some prisoners may be serving relatively short terms, expeditious action is required because an accused who is present in the command must be served in person, and personal service (e(1), below) is easier and more certain than service by mail (e(5), below).

d. Forms to be completed in most cases. Unless the ACCA has set aside all findings of guilty and the sentence and dismissed all charges, there must be prepared in addition to the Certificate of Service the following:

1. DA Form 4917, entitled "Advice as to Appellate Rights" (hereinafter the Advice). When completing this form, notice that the ACCA docket number will contain both letters and numbers, such as ARMY 9400305 or ARMY MISC 9400306. The TDS office to be listed is the office serving the accused's GCM jurisdiction. However, if the accused is on excess leave, the office nearest his leave address may be listed as well.

2. Five copies of DA Form 4918 "Petition for Grant of Review" (hereinafter the Petition). Enter the accused's grade and name and SSN on the caption lines provided. Enter all letters and numbers of the ACCA docket number.

3. A letter-size (no. 10) envelope preaddressed to the Clerk of Court, U.S. Court of Appeals for the Armed Forces, 450 E Street, NW, Washington, DC 20442-0001, and to which first class postage has been affixed.

e. Completing the Certificate of Service.

1. If the accused has been transferred to another GCM jurisdiction. See AR 27-10, para 12-9c.

2. When the accused is present. If the accused is present in the command, the accused must be served face-to-face with a copy of the advice, the decision, the petition copies, and the envelope. Section A of the Certificate of Service is completed by the person who actually served the decision, the form is then dated at the top, and the original and two copies of the Certificate of Service are returned to the Clerk of Court. AR 27-10, para 12-9e. You must then establish a 75 day suspense date for issuing the final supplementary CMO, which you will issue automatically unless notice to withhold it (because the accused has petitioned the CAAF) is received from the Clerk of Court. However, take note if the punishment is a "self-executing" punishment which does not require a supplementary CMO. See R.C.M. 1114(a)(4) as modified by EO 13468, July 2008. Also see paragraph 8-4(b) of this chapter.

3. If the accused appears incapable of understanding. If the accused is present, but appears unable to understand the consequences and options available (for example, if the accused is hospitalized for psychiatric treatment or is terminally ill) telephone the Clerk of Court for advice. In addition, the senior local U.S. Army Trial Defense Service (TDS) counsel should be advised, as he or she will want to discuss the situation with the accused's appellate defense counsel.

4. If the accused is AWOL. If the accused is absent from the command without authority, by escape or otherwise, Section B of the Certificate of Service is used to record the fact. The original and two copies of the Certificate of Service and two copies of the documentary evidence of unauthorized absence are returned to the Clerk of Court. However, it is wise also to attempt service by mail to the accused's home address in accordance with Section C of the certificate. AR 27-10, para 12-9f.

5. If the accused is on excess leave. When the accused is absent on excess leave or other authorized absence, Section C of the Certificate of Service is used. Here, the instructions must be followed carefully so that constructive service will be effective because, even if the accused through no fault on the part of the Army does not in fact receive the packet, the 60 day period for petitioning the CAAF will begin the day after the packet was mailed. The following are the steps to be taken:

(i) With the ACCA decision, assemble and prepare, unless they are not required, the advice, petition forms, and envelope;

(ii) Complete paragraph 1 of Section C on the date of mailing and sign the Certificate of Service at the bottom (do not date the Certificate at this time);

(iii) Retain the undated Certificate of Service and mail the accused's packet by registered mail at a U.S. Postal Service facility, return receipt requested;

(iv) Be sure you are mailing it to the latest address given by the accused for this purpose. If the accused supplied no address, be sure the mailing address is the last home address shown in his military records;

(v) Establish a 65-day suspense date for completing paragraph 2c if necessary and a 75 day suspense date for issuing the final supplementary CMO unless notice to withhold the order is received from the Clerk of Court. AR 27-10, para 12-9h, i.

(vi) As soon as one of the listed events in paragraph 2a, 2b, or 2c of Section C occurs, complete that portion of the form, sign the form at the bottom and date it at the top. If the person who initially signed the Certificate of Service at the bottom when the packet was mailed is no longer available, the person who is now responsible for completing 2a, 2b, or 2c, and has personal knowledge of the facts, should sign in the blank space following the statement (2a, 2b, or 2c) that applies. (It should be borne in mind that, in the event of a dispute as to the facts, the person(s) responsible for this process might be re-quired to testify as to the procedure followed.)

(vii) Make at least two copies of the completed Certificate of Service (these will be for government and defense appellate counsel for use in the event of dispute as to the timeliness of a subsequent petition for grant of review); and

(viii) Immediately mail the original and two copies of the completed Certificate of Service and all material returned by the U.S. Postal Service (including any packet, unopened).

(ix) If an accused's change of address comes to your attention during or after the above process, you must so advise the Clerk of Court.

8-2. Request for final Action (DA Form 4919-R).

a. DA Form 4919. An accused who asks for it may be furnished a Request for Final Action (DA Form 4919), but an accused completing the form must receive advice from counsel in the matter. An officer or USMA cadet with an affirmed sentence to dismissal may use this form, but should be told that Secretary of the Army Action still is required before a dismissal can be executed. In dismissal cases, the final order is prepared by the Clerk of Court and issued as a Headquarters, Department of the Army, General Court-Martial Order (HQDA GCMO).

b. Requests for Final Action are not sent to the CAAF. To avoid review by that court (except in death sentence cases where CAAF review is mandatory), an accused simply does not file a petition for review or, if the petition has been filed, moves through appellate defense counsel to withdraw the petition. When that motion is granted, the convening authority may then carry out the Request for Final Action, provided it is not a self-executing punishment.

8-3. Supplementary court-martial promulgating orders in general.

a. References. Study the following important references:

R.C.M. 1114(b)(2), 1114(c)-(f) and Executive Order 13468, July 2008.
MCM appendix 17b.
AR 27-10, paras 11-3, 11-5b(4), 11-6b-c, 11-7f.
AR 27-10, figures 11-2 to 11-7.

b. By whom issued. When the President or the Secretary of the Army has taken a final Action, the supplementary CMO is prepared by the Clerk of Court and published as a HQDA CMO. This includes all cases in which a commissioned officer, warrant officer, or cadet is to be dismissed. In all other cases, supplementary orders are issued by a convening authority, usually the GCM convening authority currently exercising jurisdiction, who must personally sign the Action. See AR 27-10, para 11-3b.

c. Occasions for issue. A supplementary CMO is required whenever a convening authority takes an Action affecting the findings or sentence of a court-martial following the initial Action. This includes vacating the suspension of all or part of a sentence (AR 27-10, Figures 11-5, 11-6); reducing total forfeitures to a partial forfeiture of pay when an accused serving a sentence to total forfeitures is released from confinement; deferring the service of a sentence to confinement (Chapter 2, para 2-11, herein); clemency granted by a GCM convening authority as authorized by AR 190-47, para 6-19f(3); or promulgating the Action when a new Action pursuant to Article 60, UCMJ, has been required by an appellate court. See Figure 8-3. In each case, the convening authority must personally sign the Action. Supplementary orders are also issued to reflect clemency granted pursuant to Article 74, UCMJ, by either the Secretary of the Army or TJAG or by the Army Clemency and Parole Board. Figure 8-2.

d. Verbatim or summarized? Supplemental orders may summarize the Action taken or the order issued, or recite it verbatim. In any event, the Action must be personally signed by the convening authority and, unless it is desired to summarize the Action in a separate order, the order and Action are a single document signed by the convening authority. R.C.M. 1114(b)(2), (c)(1).

e. Date of order. A supplementary order bears the date of its publication. R.C.M. 1114(c)(2). If the effective date of the Action being recorded is different, the order must reflect the two separate dates. For example, see AR 27-10, Figure 11-2.

f. Distribution. Distribution of supplemental court-martial orders is governed by AR 27-10, para 11-7f. Note the requirement for providing copies to the initial trial jurisdiction (AR 27-10, para 11-7b(4)), the authority taking initial Action on a case (AR 27-10, para 11-7b(3)), and the U.S. Army Crime Records Center (for address see AR 27-10, para 11-7f(4)). One copy must always be sent to the Clerk of Court.

8-4. Issuing the final supplementary court-martial order.

a. Who issues the final order? In cases involving a death sentence or the dismissal of an officer or cadet, the final order is issued by HQDA. In cases returned to the trial GCM authority

for final review and Action pursuant to R.C.M. 1112, the final order is issued by that convening authority. All others are issued by the accused's current GCM convening authority.

b. In what circumstances is a final order required? Orders modifying the findings or all or any part of the sentence of a GCM, SPCM, or SCM issued subsequent to the order promulgating the result of trial are published in appropriate supplementary CMOs. AR 27-10, para 11-6a.

1. Not required in self-executing punishments. Executive Order 13468, July 2008, modifying R.C.M. 113 and R.C.M. 1114(a) to include self-executing final orders: "An order promulgating a self-executing dishonorable or bad conduct discharge need not be issued. The original action by a convening authority approving a discharge and certification by the appropriate official that the case is final may be forwarded to the accused's personnel office for preparation of a discharge order and certificate." AR 27-10, para 11-6b.

NOTE: R.C.M. 1113, Executive Order 13468 states: "A dishonorable or bad conduct discharge that has been approved by an appropriate convening authority may be self-executing after final judgment at such time as: 1. The accused has received a sentence of no confinement or has completed all confinement; 2. The accused has been placed on excess or appellate leave; and 3. The appropriate official has certified that the accused's case is final. Upon completion of the certification, the official shall forward the certification to the accused's personnel office for preparation of a final discharge order and certificate."

c. Executing a punitive discharge when additional proceedings are pending against the accused. It may happen that an accused has an approved sentence to a BCD stemming from one trial and an approved sentence to a DD stemming from another trial. If proceedings involving the BCD reach finality first, with the sentence affirmed, what are the convening authority's options?

1. One option is to order the BCD executed. Assuming the proceedings involving the DD later become final with the DD affirmed, the final order in those proceedings will reflect that "The accused was separated from the service with a Bad-Conduct Discharge on (date)."

2. A second option is to withhold execution of the BCD pending the final outcome of the other (DD) proceedings. The final order for the BCD proceedings will state "Execution of the bad-conduct discharge is deferred pending finalization of the proceedings promulgated in (cite the initial promulgating order for proceedings resulting in sentence to DD)." When the proceedings resulting in a DD become final, the convening authority may then determine which discharge to execute.

d. When is the final order issued? The GCM convening authority issues the final order automatically on whichever of the following occurrences applies:

1. In a case in which appellate review was waived or the case withdrawn from appellate review, when the review pursuant to R.C.M. 1112 has been completed and the convening authority has personally signed the requisite final Action;

2. In a case reviewed by the ACCA, 75 days after the accused was served with a copy of the ACCA decision and advice as to appellate rights (in person or by mailing), unless notified by

the Clerk of Court that the accused has petitioned the CAAF for a grant of review. AR 27-10, para 11-6b(2)(c);

3. In a case in which the accused's petition for grant of review was denied by CAAF, immediately upon notification from the Clerk of Court that review was denied;

4. In a case in which the CAAF has granted review, not until notified by the Clerk of Court that the order must be issued. When all Action, including any further proceedings or further review required by the CAAF has been completed, the Clerk of Court will continue to withhold notification for 90 days, which is the period within which either party may petition the Supreme Court of the United States for a writ of certiorari. (If such a petition is filed, the Clerk of Court continues to withhold notice until the petition for certiorari is acted upon.)

5. In a case in which the Supreme Court has denied the petition for certiorari, immediately upon notification of the denial from the Clerk of Court; and

6. In a case in which a writ of certiorari has been granted, not until further word from the Clerk of Court.

NOTE: Review by the CAAF currently is sought as to only about one-half of ACCA decisions. This means that about 50 percent of the required final orders can be issued 75 days after the ACCA decision is served in person or constructively by mail. Further experience indicates that review is granted by the CAAF only in about 15 percent of the cases petitioned. This means that altogether some 90 percent of the cases in which a punitive discharge was affirmed by the ACCA can be finalized by virtue of the ACCA decision. Only about 10 percent of the cases will fall within the groups designated (4)-(6), above.

e. Self-executing final orders. An order promulgating a self-executing dishonorable or bad conduct discharge need not be issued. The original action by a convening authority approving a discharge and certification by the appropriate official that the case is final may be forwarded to the accused's personnel office for preparation of a discharge order and certificate. R.C.M. 1114(a) as modified in Executive Order 13468, July 2008.

NOTE: "Self-executing punishments" are explained in R.C.M. 1113, EO 13468 and paragraph 8-4(b), above.

f. Sample final orders. A typical final order is illustrated in AR 27-10, figure 11-4. For additional examples, see MCM, appendix 17b, and the examples following this chapter (Figures 8-1 to 8-12).

g. Checking the draft final order. See the Checklist for Final Court-Martial Orders following this chapter.

h. Distributing the final order. See AR 27-10, para 12-6e. Do not overlook the requirement to send two copies to the GCM trial jurisdiction (ATTN: SJA (or assigned office symbol)). If the trial jurisdiction has been inactivated and the successor jurisdiction is unknown, consult the Clerk of Court.

8-5. Closing the file retained by the GCM authority exercising jurisdiction at the time of trial (or successor). When notified that the appellate review has been completed in accordance with AR 27-10, paras 11-7f(1) and (3), the GCM authority exercising jurisdiction at the time of trial:

1. May destroy the retained copy of the record of GCM or BCDSPCM trial.
2. May dispose of the verbatim notes or recordings of the trial proceedings. AR 27-10, para 5-42.
3. Must notify the evidence custodian so that property being held as evidence may be disposed of properly. AR 27-10, para 5-42. Also see, AR 27-10, para 11-7f(3), AR 190-22, para 3-4b; and AR 195-5, para 2-8.

8-6. Serving a U.S. Court of Appeals for the Armed Forces decision on an accused; Supreme Court review.

a. CAAF Decisions. Unlike decisions of the Court of Criminal Appeals, there is no legal requirement that a copy of a CAAF decision be transmitted to the accused. Keeping the client informed about the status of the case and the advisability of petitioning the Supreme Court for a writ of certiorari is the appellate attorney's ethical responsibility. AR 27-26 Rule 1.4.

b. Transfer of CAAF decisions to accused's personnel records. It is the policy of the U.S. Army Judiciary to see that a copy of any CAAF decision on the merits (as distinguished from mere denial of review) is sent to the accused and a copy given to the servicing personnel office for placement in the accused's personnel records. The accused's current GCM jurisdiction is given that task and will receive a letter of instruction from the Clerk of Court.

c. The Supreme Court. The Clerk of Court does not receive direct communication from the Supreme Court about Army cases. Instead, the Supreme Court's filing notice goes to the court to which the Writ of Certiorari (a writ calling for delivery of the record to the higher court) would be directed if the writ were issued, namely, the CAAF. In turn, the Clerk is notified by the CAAF Clerk. When issuance of a final order must be delayed, the appropriate GCM jurisdiction is then notified. No attempt is made by the Clerk of Court to deliver a copy of a Supreme Court decision to the accused, that being left entirely to counsel or to the Supreme Court if there is no counsel

CHECKLIST FOR THE FINAL ORDER

1. Background. The accuracy of your court-martial order is critical because Article 76 of the Uniform Code of Military Justice provides, in part, as follows: “[T]he proceedings, findings, and sentences of court-martial as approved, reviewed, or affirmed . . . are final and conclusive. Orders publishing the proceedings of court-martial and all Action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States”

Copies of your initial and supplementary promulgating orders, certified by the Secretary of the Army and bound with a blue ribbon and gold seal, are admitted into evidence in courts everywhere as proof of conviction (or acquittal) and are binding upon government agencies for a variety of other purposes. However, if the order is shown to be incorrect, its credibility is destroyed just the same as if the testimony of a witness is found to be inaccurate.

Thereafter, only by resorting to the original record of trial can repair the damage. That is why every order you compose must be accurate and complete. This appendix pinpoints common errors in final supplementary court-martial orders, usually called simply "final orders."

2. Quality check of court-martial orders. The following are the minimum checks you should make, or questions you must answer, before submitting the order for signature:

a. Numbering of court-martial orders. Always check your office log of court-martial orders to be sure you are using the next number in sequence and are neither duplicating a number previously used nor leaving a gap in the numbering. Of course, you must first be sure whether the case at hand is a General Court-Martial or a Special Court-Martial since the two series are numbered separately.

b. Form the habit of copying the accused's grade, name, and SSN from the Army Court of Criminal Appeals decision. The errors that too commonly occur in charge sheets and promulgating orders are usually corrected there. Don't overlook middle initials and be alert for suffixes, such as "Jr."

c. Check Action paragraph. When the Army Court of Criminal Appeals affirms the findings of guilty and sentence without modification (about 85 percent of the cases), do not mistakenly copy the sentence from the Sentence paragraph of the promulgating order. Instead, check the Action paragraph to see exactly what the convening authority approved.

1. State the date the sentence was adjudged, not the date the convening authority acted upon it. (Although not shown in MCM Appendix 17b, the adjudged date is required by AR 27-10, figure 11-4.)

2. Get the type of discharge right. Don't call it a Bad-Conduct Discharge if it is a Dishonorable Discharge, or vice versa.

Figure 8-1 Checklist for the final order.

d. Cite the initial promulgating order correctly. Remember, the "Corrected Copy General Court-Martial Order No. 3" is not the same order as "General Court-Martial Order No. 3." Sometimes there's more than one corrected copy; cite the latest one.

e. Notice of court-martial order correction. Along with the Army Court of Criminal Appeals decision, look for an order of the Court entitled "Notice of Court-Martial Order Correction." Such an order (unfortunately necessary in one of every ten to fifteen cases) corrects errors in the initial promulgating order. A Notice of Correction is a change to the promulgating order, so you must always cite it even if the error it corrects pertains to something (such as the accused's plea) that is not reflected in the final order.

f. Modifications by appellate court. If the final decision (whether from the Army Court of Criminal Appeals, the U.S. Court of Appeals for the Armed Forces, or the Supreme Court of the United States) did not affirm the findings of guilty and sentence exactly as approved by the convening authority (para c, above), but instead made modifications, your order must clearly and carefully reflect the changes. If you have difficulty determining the outcome of the appeal, consult your chief of military justice. If uncertainty remains, call us at DSN 423-1331 or commercial 703-693-1331). We'd rather help you compose a proper order than require you to correct a bad one.

If you follow these steps carefully, you will avoid 90 percent of the errors found in final orders.

Figure 8-1, cont'd. Checklist for the final order.

DEPARTMENT OF THE ARMY
HEADQUARTERS, 7TH INFANTRY DIVISION AND FORT CARSON
FORT CARSON, COLORADO 80913-5000

GENERAL COURT-MARTIAL ORDER
NUMBER 53

28 November 2008

In the General Court-Martial case of Staff Sergeant James B. Smith, 111-11-1111, U.S. Army, Company B, 1st Battalion, 389th Area Support Group, 10th Regional Readiness Command, (currently assigned to Company D, Regional Corrections Facility, Fort Carson, Colorado 80913), the Dishonorable Discharge adjudged on 3 March 1995, as promulgated in General Court-Martial Order Number 10, Headquarters, V Corps, APO AE 09014, dated 31 May 2004, has been upgraded to a Bad-Conduct Discharge, in accordance with the Action of the Army Clemency and Parole Board, dated 6 September 2008, effective 29 August 2008. Appellate review pending.

BY COMMAND OF [GRADE AND SURNAME]:

[SIGNATURE BLOCK]

DISTRIBUTION:
[See AR 27-10, para 11-7]

(ARMY 9500429)

Figure 8-2 Order Announcing Action of Army Clemency and Parole Board Upgrading Punitive Discharge.

DEPARTMENT OF THE ARMY
HEADQUARTERS
U.S. ARMY COMBINED ARMS CENTER AND FORT LEAVENWORTH
FORT LEAVENWORTH, KANSAS 66027-2300

GENERAL COURT-MARTIAL ORDER
NUMBER 16

2 February 2008

In the General Court-Martial case of Sergeant First Class Joe E. Hall, 111-11-1111, U.S. Army, 565th Supply Company, 553d Supply and Service Battalion, 13th Corps Support Command, Fort Hood, Texas 59540 (currently assigned to Correctional Holding Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas 66027), pursuant to Article 66, UCMJ, the finding of guilty as to Specification 2 of Additional Charge I was set aside and that Specification was dismissed. Specifications 1 through 7 of Charge II were consolidated into Specification 1 of Charge I. The remaining findings of guilty as to Specification 1 of Charge I (as consolidated), and the sentence to dishonorable discharge, forfeiture of all pay and allowances, confinement for five years, and reduction to Private E1, adjudged on 6 June 2007, as promulgated in General Court-Martial Order Number 44, Headquarters Fort Hood, Fort Hood, Texas 76544-5056, dated 16 July 2007, have been finally affirmed. All rights, privileges, and property of which the accused has been deprived by virtue of the finding of guilty set aside will be restored. Article 71(c) having been complied with, the Dishonorable Discharge will be executed.

BY ORDER OF COLONEL [SURNAME]:

[SIGNATURE BLOCK]

DISTRIBUTION:
[See AR 27-10, para 11-7]

(ACCA 9001591)

Figure 8-3 Final Supplementary CMO. Some findings set aside, some specifications consolidated, and the sentence affirmed as adjudged.

DEPARTMENT OF THE ARMY
HEADQUARTERS, US ARMY ARMOR CENTER AND FORT KNOX
FORT KNOX, KENTUCKY 40121-5000

SPECIAL COURT-MARTIAL ORDER
NUMBER 20

27 March 2008

In the Special Court-Martial case of Sergeant Mark E. Evans, 111-11-1111, U.S. Army, Company B, 3d Battalion, 327th Infantry Regiment, 101st Airborne Division (Air Assault), Fort Campbell, Kentucky 42223-5000, (currently assigned to Special Processing Company, U.S. Army Personnel Control Facility, Fort Knox, Kentucky 40121), pursuant to Article 66, UCMJ, only so much of the sentence promulgated in Special Court-Martial Order Number 42, Headquarters, 101st Airborne Division (Air Assault), Fort Campbell, Kentucky 42223-5000, dated 2 October 2002, as provides for a Bad-Conduct Discharge, confinement for 3 months, forfeiture of \$523.00 pay per month for 6 months, and reduction to the grade of Private E1, adjudged on 17 August 2007, has been finally affirmed. All rights, privileges, and property of which the accused has been deprived by virtue of that portion of the sentence set aside will be restored. Article 71(c) having been complied with, the Bad-Conduct Discharge will be executed. That portion of the sentence pertaining to confinement has been served.

BY COMMAND OF [GRADE AND SURNAME]:

[SIGNATURE BLOCK]

DISTRIBUTION:

[See AR 27-10, para 11-7]

(ARMY 20020834)

Figure 8-4 Final Supplementary CMO (Sentence Modified on Appeal).

DEPARTMENT OF THE ARMY
UNITED STATES DISCIPLINARY BARRACKS
U.S. ARMY COMBINED ARMS CENTER AND FORT LEAVENWORTH
FORT LEAVENWORTH, KANSAS 66027-7100

GENERAL COURT-MARTIAL ORDER
NUMBER 12

2 February 2008

In the General Court-Martial case of Private E1 Charles W. Fraser, 111-11-1111, U.S. Army, 1st Adjutant General Replacement Company, 8th Personnel Command, APO AP 96205-0113, (currently assigned to the Correctional Holding Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas 66027), the sentence to Dishonorable Discharge, forfeiture of all pay and allowances (forfeitures in excess of \$445.00 suspended for 24 months with provisions for automatic remission, provided the accused initiate and maintain an allotment in the amount of \$445.00 per month for the support of his children during the entire period of suspension), effective 3 August 2007, confinement for five years, and reduction to grade E1, adjudged 13 May 2007, as promulgated in General Court-Martial Order Number 5, Headquarters, Eighth U.S. Army, APO AP 96205-0009, dated 3 August 2007, has been finally affirmed. Article 71(c) having been complied with, the Dishonorable Discharge will be executed.

BY ORDER OF COLONEL [SURNAME]:

[SIGNATURE BLOCK]

DISTRIBUTION:
[See AR 27-10, para 11-7]
(ARMY 20030421)

Figure 8-5 Final Supplementary CMO where original Convening Authority suspended part of the sentence.

General Court-Martial Order Number 321 was the last order issued in the series for 2007.

DEPARTMENT OF THE ARMY
UNITED STATES DISCIPLINARY BARRACKS
U.S. ARMY COMBINED ARMS CENTER AND FORT LEAVENWORTH
FORT LEAVENWORTH, KANSAS 66027-7100

GENERAL COURT-MARTIAL ORDER
NUMBER 1

1 February 2010

In the General Court-Martial case of Specialist Tom E. Grey, U.S. Army, Company A, 3rd Battalion, U.S. Army Training Center, and the 56th Air Defense Artillery Brigade, Fort Bliss, Texas 79916, (currently assigned to Correctional Holding Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas 66027), the finding of guilty as promulgated in General Court-Martial Order Number 16, Headquarters, U.S. Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, Texas 79916, dated 14 November 2008, and the sentence to a Bad-Conduct Discharge, confinement for 3 years, and reduction to the grade of Private E1, as promulgated in General Court-Martial Order Number 6, Headquarters, U.S. Army Combined Arms Center and Fort Leavenworth, Fort Leavenworth, Kansas, dated 14 February 2009, adjudged 20 December 2008 on rehearing on sentence only, has been finally affirmed. The accused will be credited with any portion of the punishment to confinement served from 21 August 2008 to 13 October 2008 under the sentence adjudged at the former trial of this case. Article 71(c) having been complied with, the Bad-Conduct Discharge will be executed.

BY ORDER OF COLONEL [SURNAME]:

[SIGNATURE BLOCK]

DISTRIBUTION:

[See AR 27-10, para 11-7]

(ACMR 20031023)

Figure 8-6 Final Supplementary CMO. Sentence Adjudged on Rehearing. Accused Credited with Confinement Previously Served.

DEPARTMENT OF THE ARMY
UNITED STATES DISCIPLINARY BARRACKS
U.S. ARMY COMBINED ARMS CENTER AND FORT LEAVENWORTH
FORT LEAVENWORTH, KANSAS 66027

GENERAL COURT-MARTIAL ORDER
NUMBER 14

2 February 2011

In the general Court-martial case of Private First Class Philip E. McGregor, U.S. Army, Headquarters and Headquarters Company, Special Troops Battalion, 18th Corps Support Command, Fort Hood, Texas 54203, (currently assigned to Correctional Holding Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas 66027), the sentence to Bad-Conduct Discharge, forfeiture of \$482.00 pay per month for six months, confinement for 2 months, and reduction to Private E1, adjudged on 7 January 2009, as promulgated in Corrected General Court-Martial Order Number 153, Headquarters, U.S. Army Armor Center and Fort Knox, Fort Knox, Kentucky 40121-5000, dated 7 September 2009, has been finally affirmed. Article 71(c) has been complied with. However, the Bad-Conduct Discharge will not be issued as the Dishonorable Discharge promulgated in Corrected General Court-Martial Order Number 38, Headquarters, U.S. Army Armor Center and Fort Knox, dated 29 March 2010, has been executed pursuant to General Court-Martial Order Number 217, U.S. Disciplinary Barracks, U.S. Army Combined Arms Command and Fort Leavenworth, Fort Leavenworth, Kansas 66027, dated 25 March 2011.

BY ORDER OF COLONEL [SURNAME]:

[SIGNATURE BLOCK]

DISTRIBUTION:
[See AR 27-10, para 11-7]

(ACMR 20010418)

Figure 8-7 Example of a Supplementary CMO which shows how to prepare a final order on a soldier who was court-martialed twice. (One case ended in a BCD discharge being adjudged, while the other ended in a DD. Command executed the DD.)

DEPARTMENT OF THE ARMY
United States Disciplinary Barracks
U.S. Army Combined Arms Center and Fort Leavenworth
Fort Leavenworth, Kansas 66027-1363

GENERAL COURT-MARTIAL ORDER
NUMBER 47

20 July 2008

In the General Court-Martial case of Private E-1 Thomas S. Smith, 111-11-1111, U.S. Army, C Troop, 1st Squadron, 4th Cavalry, APO AE (currently assigned to Correctional Holding Detachment, United States Disciplinary Barracks, Fort Leavenworth, Kansas 66027), the sentence of confinement for 6 years, and a Bad-Conduct Discharge, adjudged on 2 April 2007, as promulgated in General Court-Martial Order Number 27, Department of the Army, Headquarters, 1st Infantry Division, APO AE 09036, dated 15 June 2007, has been finally affirmed. Article 71(c) having been complied with, the Bad-Conduct Discharge will be executed.

BY ORDER OF COLONEL DAVIS:

TOM B. JONES
SFC, USA
NCOIC, Criminal Law Division

DISTRIBUTION:
[See AR 27-10, para 11-7]
(ARMY # 20030633)

Figure 8-8 Sample of a supplementary CMO.

DEPARTMENT OF THE ARMY
United States Disciplinary Barracks
U.S. Army Combined Arms Center and Fort Leavenworth
Fort Leavenworth, Kansas 66027-1363

GENERAL COURT-MARTIAL ORDER
NUMBER 112

28 November 2008

In the General Court-Martial case of Sergeant Thomas S. Smith, 111-11-1111, U.S. Army, Correctional Holding Detachment, United States Disciplinary Barracks, Fort Leavenworth, Kansas 66027, (formerly assigned to Charlie Troop, 1st Squadron, 4th Cavalry, APO Army Europe 09226), the sentence of reduction to the grade of Private E-1, forfeiture of all pay and allowances, confinement for 20 years, and a Dishonorable Discharge, adjudged on 28 January 2007, as promulgated in General Court-Martial Order Number 16, Department of the Army, Headquarters, 1st Infantry Division, APO Army Europe 09036, dated 30 March 2007, has been finally affirmed. The accused was credited with 135 days of confinement against the sentence to confinement. Article 71(c) having been complied with, the Dishonorable Discharge will be executed.

BY ORDER OF COLONEL McGUIRE:

TOM B. JONES
SFC, USA
NCOIC, Command Judge Advocate

DISTRIBUTION:
[See AR 27-10, para 11-7]
(ARMY #20030211)

Figure 8-9 Sample of a supplementary CMO with confinement credit included.

DEPARTMENT OF THE ARMY
Headquarters, U.S. Army Aberdeen Proving Ground
Aberdeen Proving Ground, Maryland 21005

GENERAL COURT-MARTIAL ORDER
NUMBER 28

15 December 2008

In the General Court-Martial case of Specialist Mark A. Smith, 222-22-2222, U.S. Army, Headquarters and Headquarters Company, 16th Ordnance Battalion, 61st Ordnance Brigade, U.S. Army Ordnance Center and School, Aberdeen Proving Ground, Maryland, pursuant to Article 66, UCMJ, only so much of the sentence as provides for a Bad-Conduct Discharge, forfeiture of \$583.00 pay per month until the discharge is executed, and reduction to Private E1, adjudged on 21 June 2007, as promulgated in General Court-Martial Order Number 3, this headquarters, dated 10 September 2007, has been finally affirmed. Executed forfeitures in excess of two-thirds pay per month will be restored to the appellant. Pursuant to Article 67, UCMJ, the execution of the forfeitures and reduction prior to the date of the convening authority's Action is declared to be without legal effect. Any forfeitures collected prior to 10 September 2007, and any pay and allowances withheld because of the premature reduction in grade are ordered restored. Article 71(c) having been complied with, the Bad-Conduct Discharge will be executed.

BY COMMAND OF MAJOR GENERAL ADAMS:

THOMAS E. JONES
SFC, USA
NCOIC, Criminal Law Division

DISTRIBUTION:
[See AR 27-10, para 11-7]

Figure 8-10 Part of approved sentence affirmed by U.S. Army Court of Criminal Appeals and some executed portions of the sentence ordered restored.

DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY ARMOR CENTER AND FORT KNOX
Fort Knox, Kentucky 40121-5000

GENERAL COURT-MARTIAL ORDER
NUMBER 58

7 June 2008

In the General Court-Martial case of Private E-1 Samuel B. Adams II, 444-44-4444, US Army, Special Processing Company, US Army Personnel Control Facility, Fort Knox, Kentucky 40121-5238 (formerly assigned to Headquarters and Headquarters Company, 3d Battalion, 327th Infantry Regiment, 101st Airborne Division (Air Assault) and Fort Campbell, Fort Campbell, Kentucky, 42223), the sentence to a Bad-Conduct Discharge, confinement for four months, forfeiture of all pay and allowances, and a reprimand, adjudged on 2 December 2007, as promulgated in Corrected General Court-Martial Order Number 15, Headquarters, 101st Airborne Division (Air Assault) and Fort Campbell, Fort Campbell, Kentucky 42223, dated 11 February 2007, has been finally affirmed. Pursuant to Article 66, UCMJ, Charge I was changed to reflect a violation of Article 128, UCMJ and the U.S. Army Court of Criminal Appeals affirmed only so much of the findings of the Specification of Charge I as follows:

In that Private Samuel B. Adams II, U.S. Army, Headquarters and Headquarters Company, 3d Battalion, 327th Infantry Regiment, 101st Airborne Division (Air Assault), Fort Campbell, Kentucky, on active duty, did, at or near Fort Campbell, Kentucky, on or about 7 April 2006, attempt to inflict grievous bodily harm upon Investigator Corey Coker by offering the said Private First Class Billy M. Jones, Jr., \$500.00 to assist him in "Beating him up really bad, to the point of him being unconscious" or words to that effect, and by attempting to obtain a firearm at an off post location, and by having Private First Class Jones drive him to Walmart on Route 41A in Clarksville, Tennessee where the said Private Adams believed Investigator Jimmy Jones to be present.

The remaining findings of guilty were affirmed. That portion of the sentence pertaining to confinement has been served. Article 71(c) having been complied with, the Bad-Conduct Discharge will be executed.

8-11 Pursuant to Article 66, UCMJ, the findings were modified. Also a previous order was rescinded.

REVOCATION

General Court-Martial Order Number 78, this headquarters, dated 19 April 2007, pertaining to Private E-1 Samuel B. Adams II, 444-44-4444, US Army, Special Processing Company, US Army Personnel Control Facility, Fort Knox, Kentucky 40121-5238 (formerly assigned to Headquarters and Headquarters Company, 3d Battalion, 327th Infantry Regiment, 101st Airborne Division (Air Assault) and Fort Campbell, Fort Campbell, Kentucky, 42223), is hereby rescinded.

BY COMMAND OF MAJOR GENERAL JOHNSON:

TED E. SMITH
SFC, USA
Chief Legal NCO

DISTRIBUTION:
[See AR 27-10, para 11-7]
(ARMY 19992211)

8-11, cont'd. Pursuant to Article 66, UCMJ, the findings were modified. Also a previous order was rescinded.

DEPARTMENT OF THE ARMY
Headquarters, V Corps
APO AE 09014

GENERAL COURT-MARTIAL ORDER
NUMBER 23

6 June 2009

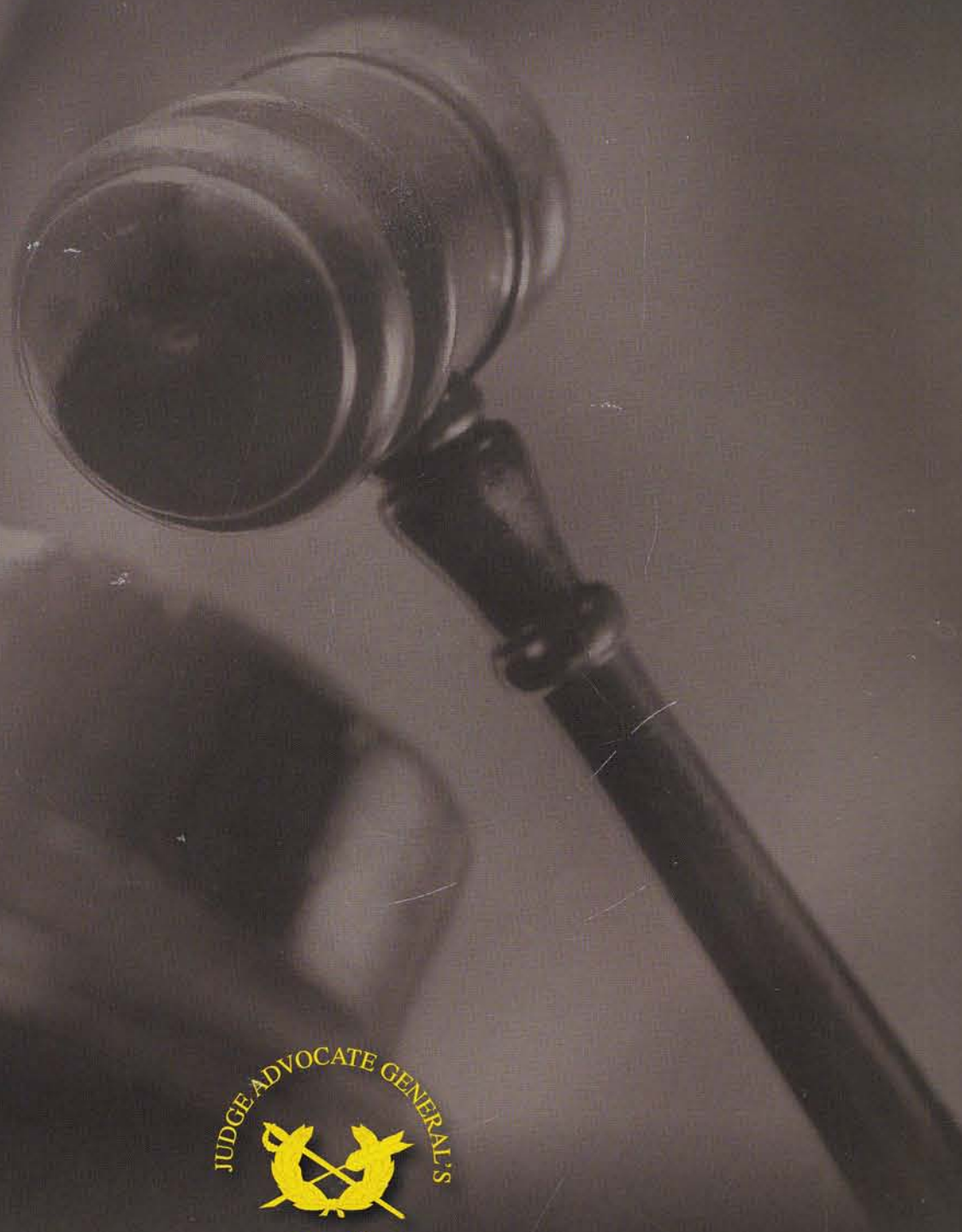
In the General Court-Martial case of Private E1 Jason C. Henning, 555-55-5555, U.S. Army, Headquarters and Headquarters Battery, 5th Battalion, 7th Air Defense Artillery, APO AE 09165, pursuant to Article 67, UCMJ, only so much of the sentence as provides for forfeiture of all pay and allowances, confinement for 9 months, and a Bad-Conduct Discharge, adjudged on 18 October 2007, as promulgated in Corrected General Court-Martial Order 13, this headquarters, dated 19 February 2008, has been finally affirmed. The accused will be credited with 7 days towards his sentence to confinement. That portion of the sentence extending to confinement has been served. Article 71(c) having been complied with, the Bad-Conduct Discharge will be executed.

BY COMMAND OF LIEUTENANT GENERAL ROBERTS:

[SIGNATURE BLOCK]

DISTRIBUTION:
[See AR 27-10, para 11-7]
(ACCA 20070952)

Figure 8-12 Example Final Supplementary CMO (Initial promulgating order was a corrected order in this case.)



OFFICE OF THE CLERK OF COURT

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Fort Belvoir, Virginia 22060
www.jagcnet.army.mil/acca