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● **JUDGE ALONE TRIAL GUIDE**

**U.S. Department of Justice
National Institute of Justice**

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This trial guide is for use throughout the Navy-Marine Corps Trial Judiciary and in all Navy-Marine Corps judicial circuits.

It is designed to provide a basic trial guide for the usual, very basic, procedural evolutions that occur in a court-martial military judge alone trial.

The guide attempts to avoid "nice-to-say" procedural renditions. Its drafters utilized a precedence in determining whether certain language should be included, excluded, or modified. The Rules of Court-Martial (R.C.M.s) were the primary source. However, if case precedent mandated a particular additional procedural requirement, this requirement was included. Then, if a particular provision in Appendix 8 of the MCM 1984 was not contrary to an R.C.M. or case precedent, Appendix 8 language was used. For example, R.C.M. 910(c)(3) requires the military judge to advise the accused that s/he "has the right to be tried by a court-martial, and that at such trial the accused has the right to confront and cross-examine witnesses against the accused, and the right against self-incrimination". Language in Appendix 8, at A8-5, advises the accused of these rights in terms of waiver. The R.C.M. approach was used. Another example: whether United States v. Williamson, 4 MJ 708 (NCMR 1977) is still a requirement remains an issue. Consequently, its requirements are met.

An additional consideration in preparation of this guide was that it be capable of use without all parties to the trial having to read from it as the trial progresses. An example of this is on page 2, where the information as to the detailing and qualifications of counsel are elicited by questions asked by the judge rather than by statements volunteered by the counsel, as in Appendix 8 at A8-5.

This trial guide has been coordinated with the Naval Justice School. It has been reviewed by, among others : the JA Division; Headquarters, U. S. Marine Corps; the Naval Justice School; the Military Justice, Appellate Defense, and Appellate Government Divisions, JAG; and, the judicial circuits, NAVMARTRIJUDIC. Their suggestions, many of which were adopted, are gratefully acknowledged.

If any recipient detects any errors, now or in the future, in this trial guide, it would be sincerely appreciated if they would notify the Chief Judge, NAVMARTRIJUDIC as soon as possible.

TRIAL GUIDE--JUDGE ALONE

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ACQUISITIONS

1 The military judge should carefully check the trial documents for errors such as improper referral, referral before the court was convened, referral to a different court, or charges not yet served. These should be brought to the trial counsel's attention and rectified before going on the record. Only minor pen-and-ink changes may be made to the convening order, such as corrections of typographical errors or changes in grade due to promotion.

2 The preliminary information on this page as to convening order, nature and referral of charges, and presence or absence of parties is customarily announced by the trial counsel but may be announced by the military judge within the latter's discretion. The status as to oath of the court reporter, on the other hand, is to be announced by the trial counsel. See R.C.M. 901(c).

3 This inquiry is not required by the MCM, which places the responsibility for the accused's appearance in proper uniform on the defense, subject to assistance on request by the accused's commander. R.C.M. 804(c)(1).

4 The trial counsel should not read the specifications in stating the nature of the charges.

The notation as to forwarding the charges, and all material in this guide contained in square brackets, is applicable to general courts-martial only.

If there has been a prior referral of any charge, trial counsel must ensure that the record reflects the reasons and dates for the withdrawal and re-referral. See Discussion, R.C.M. 604(b).

5 If the accused has not been afforded the statutory waiting period since service of charges and does not waive that period the proceedings must be delayed until the period has passed. Neither the day of service nor the day of trial count in computing the period. See UCMJ Art. 35 and R.C.M. 602 and Appendix A of this guide.

6 If there are oral modifications to the convening order the trial counsel should be directed to ensure that a written confirmation of the oral modification is attached to the record of trial prior to authentication.

7 Most reporters in courts-martial are already sworn. The oath for swearing in a reporter is in the Discussion, R.C.M. 807(b)(2).

TRIAL GUIDE--JUDGE ALONE

MJ: THIS ARTICLE 39(A) SESSION IS CALLED TO ORDER IN THE CASE OF (RANK, NAME, UNIT) . *1*

TC: THIS COURT IS CONVENED BY BY (SPECIAL) (GENERAL) COURT-MARTIAL CONVENING ORDER (NUMBER) DATED , 19 (AS AMENDED BY), COPIES OF WHICH HAVE BEEN FURNISHED THE MILITARY JUDGE, COUNSEL, THE ACCUSED, AND THE REPORTER FOR INSERTION IN THE RECORD. *2*

MJ: ARE YOU , THE ACCUSED IN THIS CASE?

ACC:

MJ: (DEFENSE COUNSEL) IS THE ACCUSED ATTIRED IN THE APPROPRIATE UNIFORM WITH ALL INSIGNIA AND DECORATIONS TO WHICH HE/SHE IS ENTITLED? *3*

DC:

TC: THE GENERAL NATURE OF THE CHARGE(S) IN THIS CASE IS . THE CHARGE(S) WAS/WERE PREFERRED BY , SWORN TO BEFORE AN OFFICER AUTHORIZED TO ADMINISTER OATHS, [FORWARDED WITH RECOMMENDATIONS AS TO DISPOSITION BY] AND HAS/HAVE BEEN PROPERLY REFERRED TO THIS COURT-MARTIAL FOR TRIAL BY , THE CONVENING AUTHORITY. THE CHARGE(S) WAS/WERE SERVED ON THE ACCUSED ON , 19 . *4*

MJ: CHECK 3 OR 5 DAY STATUTORY WAITING PERIOD, AS APPLICABLE *5*

MJ: ARE THERE ANY (FURTHER) MODIFICATIONS OR CORRECTIONS TO THE CONVENING ORDER? *6*

TC:

TC: THE ACCUSED AND THE FOLLOWING PERSONS DETAILED TO THIS COURT-MARTIAL ARE PRESENT: NAME & RANK OF JUDGE AND DETAILED COUNSEL THE MEMBERS (AND THE FOLLOWING PERSONS DETAILED TO THIS COURT-MARTIAL) ARE ABSENT(: NOTE NAME AND RANK OF ABSENT COUNSEL, IF ANY)

TC: HAS BEEN DETAILED REPORTER FOR THIS COURT-MARTIAL AND (HAS PREVIOUSLY BEEN SWORN) (WILL NOW BE SWORN). *7*

1 Counsel should state the official position of the individual detailing them, e.g. NLSO Commanding Officer, SJA, Military Justice Officer, Senior Trial/Defense Counsel, etc.

If either trial or defense counsel have been detailed in writing the detailing document should be attached to the record.

The detailing, legal qualifications, and status as to oath of any assistant trial or defense counsel, as well as the lead counsel, should be inquired into.

2 The capacities which disqualify a counsel are set out in R.C.M. 502(d)(4).

3 If another defense counsel was previously detailed it will be necessary to determine whether that counsel was excused before or after formation of an attorney-client relationship. See R.C.M. 505(d)(2).

MJ: TRIAL COUNSEL, PLEASE STATE FOR THE RECORD BY WHOM YOU HAVE BEEN DETAILED. *1*

TC:

MJ: WHAT ARE YOUR LEGAL QUALIFICATIONS AND STATUS AS TO OATH?

TC:

MJ: HAVE YOU (OR ANY MEMBER OF THE PROSECUTION) ACTED IN ANY DISQUALIFYING CAPACITY? *2*

TC:

MJ: DEFENSE COUNSEL, PLEASE STATE FOR THE RECORD BY WHOM YOU HAVE BEEN DETAILED. *1*

DC:

MJ: WHAT ARE YOUR LEGAL QUALIFICATIONS AND STATUS AS TO OATH?

DC:

MJ: HAVE YOU (OR ANY MEMBER OF THE DEFENSE) ACTED IN ANY DISQUALIFYING CAPACITY? *2*

DC:

MJ: HAS ANY OTHER DEFENSE COUNSEL BEEN DETAILED TO THIS CASE? *3*

DC:

MJ: _____, YOU HAVE THE RIGHT TO BE REPRESENTED IN THIS COURT-MARTIAL BY _____, YOUR DETAILED DEFENSE COUNSEL, OR YOU MAY BE REPRESENTED BY MILITARY COUNSEL OF YOUR OWN SELECTION, IF THE COUNSEL YOU REQUEST IS REASONABLY AVAILABLE. MILITARY COUNSEL ARE PROVIDED TO YOU FREE OF CHARGE. IF YOU ARE REPRESENTED BY MILITARY COUNSEL OF YOUR OWN SELECTION, THEN YOU COULD REQUEST THAT _____, YOUR DETAILED COUNSEL CONTINUE TO REPRESENT YOU AND THE AUTHORITY WHO DETAILED _____ WOULD HAVE THE SOLE DISCRETION TO EITHER GRANT OR DENY THAT REQUEST. DO YOU UNDERSTAND?

1 See R.C.M. 906(b)(2) for procedure where an IMC request has been denied. The judge should put on the record the name, rank, and command of the requested counsel.

If the accused has been afforded the services of an individual military counsel the military judge should inquire if the accused desires to request retention of detailed counsel from the detailing authority.

If the accused hires civilian counsel the military counsel shall act as associate counsel unless excused at the request of the accused. The military judge should inquire whether the accused desires to excuse the military counsel.

Additional advice and inquiry is required when two or more accused in a joint or common trial are represented by the same military or civilian counsel, or by civilian counsel who are associated in the practice of law. See R.C.M. 901(d)(4)(D).

See R.C.M. 506(d) if the accused wishes to proceed pro se.

2 Civilian counsel must be, and should state that he/she is licensed to practice before the highest court of a state.

3 Oath for counsel: "Do you (swear) (affirm) that you will faithfully perform all the duties of _____ counsel in the case now in hearing(, so help you God)?" Oaths for trial participants generally are found in Discussion, R.C.M. 807(b)(2). See also JAGMAN 0126.

4 The military judge should identify the official capacity of the individual who has detailed him/her (ordinarily the circuit military judge, or another judge to whom the authority to detail judges has been delegated). If the military judge has been detailed in writing the detailing document should be attached to the record.

ACC:

MJ: IN ADDITION, YOU HAVE THE RIGHT TO BE REPRESENTED BY CIVILIAN COUNSEL, AT NO EXPENSE TO THE UNITED STATES. CIVILIAN COUNSEL MAY REPRESENT YOU ALONE OR ALONG WITH YOUR MILITARY COUNSEL. DO YOU UNDERSTAND?

ACC:

MJ: DO YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHT TO COUNSEL?

ACC:

MJ: WHOM DO YOU WANT TO REPRESENT YOU? *1*

ACC:

MJ: DETERMINE THE LEGAL QUALIFICATIONS OF ANY CIVILIAN OR INDIVIDUAL MILITARY COUNSEL AND BUSINESS ADDRESS OF CIVILIAN COUNSEL *2*

MJ: SWEAR IN ANY NON-27(B) QUALIFIED MILITARY OR CIVILIAN COUNSEL *3*

MJ: I HAVE BEEN DETAILED TO THIS COURT-MARTIAL BY _____. I AM CERTIFIED IN ACCORDANCE WITH ARTICLE 26(B) [AND (C)] AND SWORN IN ACCORDANCE WITH ARTICLE 42(A), RESPECTIVELY, OF THE UNIFORM CODE OF MILITARY JUSTICE. I WILL NOT BE A WITNESS FOR EITHER SIDE IN THIS CASE AND I AM NOT AWARE OF ANY MATTERS WHICH I BELIEVE MAY BE A GROUND FOR CHALLENGE BY EITHER SIDE AGAINST ME. DOES EITHER COUNSEL HAVE ANY VOIR DIRE OR CHALLENGE FOR CAUSE AGAINST THE MILITARY JUDGE?
4

TC:

DC:

1 The right to enlisted members only applies to an enlisted accused.

Additional advice as to the minimum number of members and the required voting fraction for conviction and sentencing may be included. See R.C.M. 501(a) (minimum number of members); 921(c)(2) (number of votes to convict); and 1006(d)(4) (number of votes for sentencing). Sample language includes:

A COURT-MARTIAL WITH MEMBERS VOTES BY SECRET WRITTEN BALLOT. TWO-THIRDS OF THE MEMBERS MUST AGREE ON ANY FINDING OF GUILTY. IF YOU ARE FOUND GUILTY OF ANY OFFENSE, THE MEMBERS AGAIN VOTE BY SECRET WRITTEN BALLOT TO DETERMINE AN APPROPRIATE SENTENCE. DO YOU UNDERSTAND?

2 R.C.M. 903(c)(2)(A) requires that the military judge ascertain whether the accused has been informed of the identity of the military judge. When the request for trial by military judge alone is submitted in writing this requirement is generally satisfied by the judge's name being written on the request before the accused signs it. When the request is made orally on the record the requirement is satisfied by the identification of the military judge on page 1 of this guide.

MJ: _____, DO YOU UNDERSTAND THAT YOU HAVE THE RIGHT TO BE TRIED BY A COURT-MARTIAL COMPOSED OF MEMBERS (INCLUDING, IF YOU REQUEST IN WRITING, AT LEAST ONE-THIRD ENLISTED PERSONS) AND THAT, IF YOU ARE FOUND GUILTY OF ANY OFFENSE, THOSE MEMBERS WOULD DETERMINE A SENTENCE? *1*

ACC:

MJ: DO YOU ALSO UNDERSTAND THAT YOU MAY REQUEST IN WRITING OR ORALLY HERE IN COURT TO BE TRIED BY ME ALONE, AND THAT IF I APPROVE SUCH A REQUEST, THERE WILL BE NO MEMBERS AND I ALONE WILL DECIDE WHETHER YOU ARE GUILTY AND, IF I FIND YOU GUILTY, I WILL DETERMINE A SENTENCE?

ACC:

MJ: HAVE YOU DISCUSSED THESE CHOICES WITH YOUR COUNSEL?

ACC:

MJ: BY WHICH TYPE OF COURT-MARTIAL DO YOU CHOOSE TO BE TRIED?

ACC:

IF MEMBERS GO TO PAGE 4 OF THE MEMBERS GUIDE
A REQUEST FOR ENLISTED MEMBERS MUST BE REDUCED TO WRITING AND ATTACHED TO THE RECORD
IF THERE IS A WRITTEN REQUEST FOR MILITARY JUDGE ALONE IT MUST BE INCLUDED IN THE RECORD
IF TRIAL BY JUDGE ALONE IS REQUESTED CONTINUE:

MJ: HAVE YOU DISCUSSED THIS REQUEST AND THE RIGHTS I JUST DESCRIBED WITH YOUR COUNSEL?

ACC:

MJ: AT THE TIME YOU MADE THIS REQUEST DID YOU KNOW THAT I WAS THE MILITARY JUDGE DETAILED TO THE CASE? *2*

ACC:

1 If a request for trial by military judge alone is disapproved the reasons should be stated on the record. R.C.M. 903(c)(2)(b). See U.S. v. Butler, 14 M.J. 72 (CMA, 1982).

Assembly of the court-martial is significant because it marks the point after which substitutions of the military judge may no longer take place without good cause and the accused may no longer, as a matter of right, withdraw a previously approved request for trial by military judge alone. See Discussion, R.C.M. 911.

2 After arraignment is completed no additional charges may be referred to the same trial without the consent of the accused. R.C.M. 601(e)(2).

If a recess or continuance is taken after arraignment the military judge may properly, but need not, advise the accused of the consequences of voluntary unauthorized absence after arraignment. See R.C.M. 804(b)(1).

If trial of any offense charged is barred by the statute of limitations the military judge must advise the accused of that fact and obtain an express waiver in order for trial to proceed on the affected offense(s). The statute is not waived by failure to assert it. R.C.M. 907(b)(2)(B).

3 See R.C.M. 801(e), 905-907 concerning motions.

4 See R.C.M. 910(a) and (b) if conditional or irregular pleas are entered.

Pleas are ordinarily entered by the defense counsel. The military judge may properly inquire of the accused: "YOU HAVE PLEADED AS FOLLOWS (REPEAT PLEAS) , IS THAT CORRECT?" Such an inquiry may be appropriate where pleas are complicated, such as when there are detailed exceptions and substitutions.

MJ: IF I APPROVE YOUR REQUEST FOR TRIAL BY ME ALONE YOU GIVE UP YOUR RIGHT TO TRIAL BY A COURT-MARTIAL COMPOSED OF MEMBERS (INCLUDING, IF YOU REQUESTED, ENLISTED MEMBERS). UNDERSTANDING THIS DO YOU WISH TO REQUEST TRIAL BEFORE ME ALONE?

ACC:

MJ: YOUR REQUEST IS APPROVED. THE COURT-MARTIAL IS ASSEMBLED. *1*

MJ: THE ACCUSED WILL NOW BE ARRAIGNED. DOES THE DEFENSE DESIRE THAT THE CHARGE(S) AND SPECIFICATION(S) BE READ?

DC:

MJ: (THE READING OF THE CHARGE(S) AND SPECIFICATION(S) WILL BE OMITTED.)
(THE CHARGE(S) AND SPECIFICATION(S) WILL NOW BE READ.)

MJ: ACCUSED AND COUNSEL PLEASE RISE.

_____, I NOW ASK YOU HOW DO YOU PLEAD, BUT BEFORE RECEIVING YOUR PLEAS I ADVISE YOU THAT ANY MOTIONS TO DISMISS ANY CHARGE OR TO GRANT ANY OTHER RELIEF SHOULD BE MADE AT THIS TIME. *2*

DC: THE DEFENSE HAS (NO) (THE FOLLOWING) MOTIONS. *3*

AFTER ANY MOTIONS HAVE BEEN DISPOSED OF:

DC: THE ACCUSED PLEADS AS FOLLOWS: *4*

MJ: VERY WELL, YOU MAY BE SEATED.

MJ: IF MIXED PLEAS ENTERED, ASCERTAIN WHETHER THE PROSECUTION WILL GO FORWARD WITH REGARD TO THE OFFENSES TO WHICH THE ACCUSED HAS PLEADED NOT GUILTY. IF ANY GUILTY PLEAS ARE ENTERED PROCEED TO THE NEXT PAGE. IF THE ACCUSED PLEADS NOT GUILTY TO ALL OFFENSES GO TO PAGE 17.

6A

1 The guilty plea inquiry is based on R.C.M. 910(c)-(e). See R.C.M. 910(c)(2) if an accused not represented by counsel enters a guilty plea.

IF ANY GUILTY PLEAS ENTERED: *1*

MJ: _____, YOUR PLEAS OF GUILTY WILL NOT BE ACCEPTED UNLESS YOU UNDERSTAND THEIR MEANING AND EFFECT. I AM GOING TO DISCUSS YOUR PLEAS OF GUILTY WITH YOU NOW. THIS MAY BE A SOMEWHAT LENGTHY PROCEEDING, SO YOU MAY REMAIN SEATED UNTIL I TELL YOU OTHERWISE. I ALSO WANT YOU TO KEEP A COPY OF THE CHARGE SHEET IN FRONT OF YOU SO THAT YOU CAN REFER TO IT READILY. IF AT ANY TIME YOU BECOME CONFUSED OR HAVE ANY QUESTIONS PLEASE INFORM ME AND IF NECESSARY INTERRUPT ME AND I WILL GIVE YOU THE OPPORTUNITY TO CONSULT WITH YOUR COUNSEL TO CLEAR UP ANY QUESTIONS YOU MAY HAVE. DO YOU HAVE ANY QUESTIONS AT THIS TIME?

ACC:

MJ: A PLEA OF GUILTY IS THE STRONGEST FORM OF PROOF KNOWN TO THE LAW AND ON YOUR PLEA OF GUILTY ALONE, WITHOUT RECEIVING ANY EVIDENCE, THIS COURT CAN FIND YOU GUILTY OF THE OFFENSE(S) TO WHICH YOU ARE PLEADING GUILTY. YOUR PLEAS WILL NOT BE ACCEPTED UNLESS YOU UNDERSTAND THAT BY PLEADING GUILTY YOU ADMIT EVERY ELEMENT OF THE OFFENSE(S) TO WHICH YOU HAVE PLEADED GUILTY AND YOU ARE PLEADING GUILTY BECAUSE YOU REALLY ARE GUILTY. IF YOU DO NOT BELIEVE THAT YOU ARE GUILTY, YOU SHOULD NOT PLEAD GUILTY FOR ANY REASON. DO YOU UNDERSTAND THAT?

ACC:

MJ: EVEN IF YOU BELIEVE YOU ARE GUILTY, YOU HAVE A LEGAL AND A MORAL RIGHT TO PLEAD NOT GUILTY AND TO REQUIRE THE GOVERNMENT TO PROVE ITS CASE AGAINST YOU, IF IT CAN, BY LEGAL AND COMPETENT EVIDENCE BEYOND A REASONABLE DOUBT. IF YOU WERE TO PLEAD NOT GUILTY, THEN YOU WOULD BE PRESUMED UNDER THE LAW TO BE NOT GUILTY, AND ONLY BY INTRODUCING EVIDENCE AND PROVING YOUR GUILT BEYOND A REASONABLE DOUBT COULD THE GOVERNMENT OVERCOME THAT PRESUMPTION. DO YOU UNDERSTAND THAT?

ACC:

MJ: IF YOU EXERCISE YOUR RIGHT TO PLEAD NOT GUILTY THERE ARE SEVERAL IMPORTANT RIGHTS WHICH YOU WOULD HAVE. THESE ARE, FIRST, THE RIGHT AGAINST SELF-INCRIMINATION, THAT IS THE RIGHT TO SAY NOTHING AT ALL ABOUT THIS/THESE OFFENSE(S). SECOND, THE RIGHT TO A TRIAL OF THE FACTS BY THE COURT-MARTIAL, THAT IS, THE RIGHT TO HAVE THIS COURT-MARTIAL DECIDE WHETHER OR NOT YOU ARE GUILTY BASED ON EVIDENCE PRESENTED BY THE PROSECUTION AND, IF YOU CHOOSE TO DO SO, BY THE DEFENSE. THIRD, THE RIGHT TO BE CONFRONTED BY THE WITNESSES AGAINST YOU, THAT IS TO SEE AND HEAR THE WITNESSES AGAINST YOU HERE IN THE COURT-MARTIAL AND TO HAVE THEM CROSS-EXAMINED, AND TO CALL WITNESSES IN YOUR BEHALF. DO YOU UNDERSTAND THESE RIGHTS?

ACC:

1 If the prosecution intends to proceed on a greater offense or excepted words the military judge should explain exactly what the accused admits by pleading guilty. For example:

MJ: YOU HAVE ENTERED A PLEA OF GUILTY TO _____. YOUR PLEA OF GUILTY WILL ADMIT EVERY ESSENTIAL ELEMENT OF THE GREATER OFFENSE OF _____ EXCEPT _____. DO YOU UNDERSTAND THAT FOR YOU TO BE FOUND GUILTY OF THE GREATER OFFENSE, THE PROSECUTION WOULD ONLY HAVE TO PROVE _____.

2 If there is a discrepancy between the allowable maximum punishment and the accused's understanding, the judge must inquire if the accused desires to persist in the pleas entered.

Multiplicity of charges and specifications may affect the maximum sentence in a general court-martial or, on rare occasions, a special court-martial. If there is an issue of multiplicity among the offenses to which the accused has pleaded guilty the military judge should solicit the views of counsel for both sides on the issue. Erroneous advice to the accused on the maximum sentence for the offenses to which guilty pleas have been entered may result in an improvident plea.

3 Prior convictions may authorize a punitive discharge even though the charges before the court do not. When the offense(s) to which the accused has entered guilty pleas do not, on their face, authorize a punitive discharge the military judge should inquire of the trial counsel: "DOES THE GOVERNMENT HAVE EVIDENCE OF PREVIOUS CONVICTIONS THAT MAY AFFECT THE MAXIMUM PUNISHMENT?" See R.C.M. 1003(d).

4 If mixed pleas were entered this advice should be of the maximum sentence for the offense(s) to which the guilty pleas were entered, rather than that for all the offenses before the court, since "a plea of guilty may be improvident because of a substantial misunderstanding on the accused's part as to the maximum punishment to which he legally was subject as a result of the plea." [emphasis added] U.S. v. Hedlund, 7 M.J. 271 (CMA, 1979).

MJ: IF YOU PLEAD GUILTY, THERE WILL NOT BE A TRIAL OF ANY KIND AS TO THE OFFENSE(S) TO WHICH YOU ARE PLEADING GUILTY, SO BY PLEADING GUILTY YOU WAIVE OR GIVE UP THE RIGHTS I HAVE JUST DESCRIBED. (YOU KEEP THESE RIGHTS WITH REGARD TO ALL OFFENSES TO WHICH YOU HAVE PLEADED NOT GUILTY.) DO YOU UNDERSTAND THAT? *1*

ACC:

MJ: DO YOU WISH TO GIVE UP THESE RIGHTS WITH REGARD TO THE OFFENSE(S) TO WHICH YOU HAVE PLEADED GUILTY?

ACC:

MJ: DEFENSE COUNSEL, WHAT ADVICE HAVE YOU GIVEN _____ AS TO THE MAXIMUM PUNISHMENT FOR THE OFFENSE(S) TO WHICH HE/SHE HAS PLEADED GUILTY? *2*

DC:

MJ: TRIAL COUNSEL, DO YOU AGREE WITH THAT? *3*

TC:

MJ: _____, THE MAXIMUM SENTENCE WHICH CAN BE ADJUDGED FOR THE OFFENSE(S) TO WHICH YOU HAVE PLEADED GUILTY IS:

MJ: STATE APPLICABLE MAXIMUM PUNISHMENT *4*
JURISDICTIONAL LIMIT OF A SPCM IS:

CONFINEMENT FOR SIX MONTHS;

FORFEITURE OF TWO-THIRDS PAY PER MONTH FOR SIX MONTHS;

REDUCTION TO PAYGRADE E-1; AND

DISCHARGE FROM THE SERVICE WITH A BAD CONDUCT DISCHARGE.

MJ: IS THAT YOUR UNDERSTANDING?

ACC:

MJ: DO YOU FEEL YOU HAVE HAD ENOUGH TIME TO DISCUSS YOUR CASE WITH YOUR COUNSEL?

8A

1 This advice is required by R.C.M. 910(c)(5).

2 The oath requirement is found in R.C.M. 910(e).

1 The description of the elements should be tailored to the allegations in each specification. Any potential defenses raised by the accused's responses should be discussed and explained. Trial counsel should request additional questions if an element is not adequately covered by the military judge.

2 If the accused was discharged and re-enlisted since commission of any offense see U.S. v Ginyard, 37 C.M.R. 132 (CMA, 1967), which was overruled by U.S. v. Clardy, 13 M.J. 308 (CMA, 1982) but not retroactively. If the accused's EAOS has passed before this session of court see R.C.M. 202(c)(1) for provisions concerning retention on active duty for purposes of trial.

3 If the accused has pleaded guilty to a lesser included offense or an offense related to one to which a not guilty plea was entered great care should be taken to prevent the inquiry from going beyond the scope of the offense(s) to which the accused has pleaded guilty.

If the STATUTE OF LIMITATIONS would normally be a bar to trial the judge should not accept a plea of guilty without an affirmative waiver. R.C.M. 907(b)(2)(B).

If the accused is not a principal, the judge must explain the concept of being an aider and abettor or accessory before the fact so that the accused understands the government's theory of his/her guilt. See DA Pam. 27-9, Military Judge's Benchbook, Para. 7-1.

If the accused is unable to recall certain events, a technique whereby the accused admits he/she has read reports, heard witnesses, etc. and is, based on these, satisfied of the facts and every element, may be used.

MJ: I AM GOING TO EXPLAIN THE ELEMENTS OF THE OFFENSE(S) TO WHICH YOU HAVE ENTERED PLEAS OF GUILTY. BY "ELEMENTS" I MEAN THE FACTS WHICH THE GOVERNMENT WOULD HAVE TO PROVE BEYOND A REASONABLE DOUBT BEFORE YOU COULD BE FOUND GUILTY IF YOU PLEADED NOT GUILTY. WHEN I STATE EACH OF THESE ELEMENTS ASK YOURSELF IF IT IS TRUE, AND WHETHER YOU WANT TO ADMIT THAT IT IS TRUE. THEN BE READY TO TALK ABOUT THESE FACTS WITH ME. PLEASE FOLLOW ALONG WITH ME ON YOUR COPY OF THE CHARGE SHEET AS I LIST THE ELEMENTS OF THE OFFENSE(S) TO WHICH YOU HAVE PLEADED GUILTY.

MJ: GIVE ELEMENTS OF EACH SPECIFICATION
TO WHICH GUILTY PLEAS WERE ENTERED *1*

MJ: DO THESE ELEMENTS CORRECTLY DESCRIBE WHAT YOU DID (ON EACH OCCASION)?

ACC:

MJ: IS YOUR NAME, RANK/RATE AND PRESENT UNIT OR ORGANIZATION CORRECTLY STATED IN EACH SPECIFICATION?

ACC:

MJ: ON (DATE OF EARLIEST OFFENSE) WERE YOU A MEMBER OF THE UNITED STATES NAVY/MARINE CORPS ON ACTIVE DUTY, AND HAVE YOU REMAINED ON ACTIVE DUTY SINCE THEN?

ACC:

MJ: HAVE YOU BEEN DISCHARGED OR RELEASED TO INACTIVE DUTY SINCE THAT DATE? *2*

ACC:

MJ: INQUIRE INTO ALL OFFENSES TO WHICH
GUILTY PLEAS HAVE BEEN ENTERED *3*

MJ: DO YOU BELIEVE AND ADMIT THAT TAKEN TOGETHER THE ELEMENTS I LISTED FOR YOU AND THE MATTERS WE HAVE DISCUSSED CORRECTLY DESCRIBE WHAT YOU DID (ON EACH OCCASION)?

ACC:

MJ: COUNSEL, IS THERE A PRETRIAL AGREEMENT IN THIS CASE?

DC:

IF YES, CONTINUE TO NEXT PAGE

IF NO, GO TO PAGE 15

1 Pretrial agreements are governed by R.C.M. 705 and the inquiry into such agreements by R.C.M. 910(f).

The memorandum of agreement and the sentence limitation provision should be marked as separate appellate exhibits and the former handed to the military judge, if not done earlier.

If any clause is stricken or any provision is materially modified in the course of the inquiry the trial counsel should be granted a recess upon request to contact the convening authority and determine whether he/she consents to be bound by the changed agreement.

If mixed pleas were entered it should be determined what disposition will be made of the offense(s) to which the accused pleaded not guilty. If the government is not going forward with them it should be determined whether that decision is a part of the agreement. If the government will attempt to prove any of them, the judge should ensure that the sentence limitations are to apply regardless of the outcome of the contested charge(s).

If the agreement provides for the accused to give up any procedural rights, check R.C.M. 705(c) which lists prohibited and permitted terms of a pretrial agreement.

The judge should ensure that provisions requiring the accused to cooperate in the prosecution of another are clear. The accused must be able to tell what acts or failures to act will lead to a breach of the agreement.

If there are good behavior provisions the accused must be adequately informed as to what degree and type of misconduct will lead to a breach of the agreement, as well as who will make the determination and what type of hearing will be held.

MJ: _____, I HAVE HERE APPELLATE EXHIBIT _____, WHICH IS PART OF A PRETRIAL AGREEMENT BETWEEN YOU AND _____, THE CONVENING AUTHORITY. IS THIS YOUR SIGNATURE WHICH APPEARS (ON THE BOTTOM OF PAGE _____) (_____), AND DID YOU READ THIS PART OF THE AGREEMENT?
1

ACC:

MJ: DID YOU ALSO READ AND SIGN APPELLATE EXHIBIT _____, WHICH IS THE SECOND PART OF THE AGREEMENT?

ACC:

MJ: DO YOU BELIEVE THAT YOU FULLY UNDERSTAND THE AGREEMENT?

ACC:

MJ: I DON'T KNOW, AND I DON'T WANT TO KNOW AT THIS TIME THE SENTENCE LIMITATION YOU HAVE AGREED TO. HOWEVER, I WANT YOU TO READ THAT PART OF THE AGREEMENT OVER TO YOURSELF ONCE AGAIN.

AFTER THE ACCUSED HAS DONE SO

MJ: WITHOUT TELLING ME WHAT IT IS, DO YOU UNDERSTAND THE MAXIMUM PUNISHMENT THE CONVENING AUTHORITY MAY APPROVE?

ACC:

MJ: IN A PRETRIAL AGREEMENT, YOU AGREE TO ENTER A PLEA OF GUILTY TO (SOME OF) THE CHARGE(S) AND SPECIFICATION(S), AND, IN RETURN, THE CONVENING AUTHORITY AGREES TO APPROVE AND ORDER EXECUTED NO GREATER SENTENCE THAN THAT LISTED IN APPELLATE EXHIBIT _____ (AND) (TO WITHDRAW A/CERTAIN CHARGE(S) AND SPECIFICATION(S)). DO YOU UNDERSTAND THAT?

ACC:

MJ: IF THE SENTENCE ADJUDGED BY THIS COURT-MARTIAL IS GREATER THAN THE ONE PROVIDED IN THE AGREEMENT, THE CONVENING AUTHORITY WOULD HAVE TO REDUCE THE SENTENCE TO ONE NO MORE SEVERE THAN THE ONE IN YOUR AGREEMENT. ON THE OTHER HAND, IF THE SENTENCE ADJUDGED BY THIS COURT-MARTIAL IS LESS THAN THE ONE IN YOUR AGREEMENT, THE CONVENING AUTHORITY CANNOT INCREASE THE SENTENCE ADJUDGED, SO YOU GET THE LESSER AMOUNT. DO YOU UNDERSTAND THAT?

ACC:

1 These three provisions are included in the pretrial agreement forms in the JAGMAN and, accordingly, are only included here for use if they have not already been covered in the discussion of the written agreement.

MJ: GO OVER EACH PROVISION WITH THE ACCUSED, PARAPHRASING THE CONTENTS AND EXPLAINING IN THE JUDGE'S OWN WORDS THE RAMIFICATIONS OF EACH.

MJ: IF NOT COVERED BY WRITTEN AGREEMENT ADD: *1*

MJ: ADMINISTRATIVE PROCESSING IS SEPARATE FROM THIS TRIAL AND YOUR PRETRIAL AGREEMENT. THEREFORE, ANY AGREEMENT YOU MAY HAVE REGARDING A PUNITIVE DISCHARGE DOES NOT PREVENT THE SERVICE FROM INITIATING ADMINISTRATIVE DISCHARGE PROCEEDINGS AGAINST YOU WHICH COULD RESULT IN AN OTHER THAN HONORABLE DISCHARGE. DO YOU UNDERSTAND THIS?

ACC:

MJ: IF ANY PLEA OF GUILTY IS CHANGED TO NOT GUILTY, EITHER BECAUSE YOU DESIRE IT OR BECAUSE I DIRECT IT, THEN THE CONVENING AUTHORITY COULD WITHDRAW FROM THE AGREEMENT. DO YOU UNDERSTAND THIS?

ACC:

MJ: DO YOU UNDERSTAND THAT YOU MAY REQUEST TO WITHDRAW (ANY OF) YOUR PLEAS OF GUILTY BEFORE SENTENCE IS ANNOUNCED AND I MAY, AT MY DISCRETION, PERMIT YOU TO DO SO?

ACC:

MJ: IN ALL PRETRIAL AGREEMENT CASES CONTINUE:

MJ: IS THIS WRITTEN AGREEMENT THE ENTIRE AGREEMENT BETWEEN YOU AND THE CONVENING AUTHORITY? IN OTHER WORDS, IS IT CORRECT THAT THERE ARE NO OTHER AGREEMENTS OR PROMISES IN THIS CASE?

ACC:

MJ: DO COUNSEL AGREE WITH THAT?

TC:

DC:

MJ: DO YOU HAVE ANY QUESTIONS ABOUT ANY OF THE PROVISIONS OF YOUR AGREEMENT?

ACC:

MJ: DO YOU FEEL THAT YOU UNDERSTAND EACH AND EVERY PROVISION?

ACC:

MJ: DO COUNSEL FOR BOTH SIDES AGREE WITH THE COURT'S INTERPRETATION OF THE PRETRIAL AGREEMENT?

TC:

DC:

MJ: DO BOTH SIDES AGREE TO THE TERMS OF THE AGREEMENT, INCLUDING THE SENTENCE LIMITATION PROVISION?

TC:

DC:

MJ: _____, DID THE OFFER TO MAKE A PRETRIAL AGREEMENT ORIGINATE WITH YOU AND YOUR COUNSEL?

ACC:

MJ: ARE YOU ENTERING INTO THIS AGREEMENT FREELY AND VOLUNTARILY?

ACC:

MJ: HAS ANYONE TRIED TO FORCE YOU TO ENTER INTO THIS AGREEMENT OR TO PLEAD GUILTY?

ACC:

14A

1 This finding by the military judge is not required by the MCM, but is based on U.S. v. Williamson, 4 M.J. 708 (NCFR, 1977).

MJ: HAVE YOU FULLY DISCUSSED THIS AGREEMENT WITH YOUR COUNSEL, AND ARE YOU SATISFIED THAT HIS/HER ADVICE IS IN YOUR BEST INTEREST?

ACC:

MJ: I FIND THE PRETRIAL AGREEMENT TO BE IN ACCORD WITH APPELLATE CASE LAW, NOT CONTRARY TO PUBLIC POLICY OR MY OWN NOTIONS OF FAIRNESS AND THE AGREEMENT IS ACCEPTED. *1*

GO TO PAGE 16

15A

1 This paragraph is based on R.C.M. 910(d).

IF DC STATES THERE IS NO PRETRIAL AGREEMENT:

MJ: TRIAL COUNSEL, DO YOU CONCUR WITH THAT?

TC:

MJ: _____, ARE YOU PLEADING GUILTY BECAUSE OF ANY DISCUSSION BETWEEN YOU OR YOUR COUNSEL AND THE CONVENING AUTHORITY, TRIAL COUNSEL, OR ANY REPRESENTATIVE OF THE CONVENING AUTHORITY; OR ANY PROMISE BY ANYONE THAT YOU WILL RECEIVE A REDUCTION IN YOUR SENTENCE OR ANY OTHER BENEFIT IF YOU PLEAD GUILTY? *1*

ACC:

MJ: ARE YOU PLEADING GUILTY VOLUNTARILY?

ACC:

MJ: _____, YOU MAY REQUEST TO WITHDRAW YOUR PLEA OF GUILTY ANY TIME BEFORE SENTENCE IS ANNOUNCED IN YOUR CASE AND IF YOU HAVE A GOOD REASON FOR YOUR REQUEST I WILL GRANT IT. DO YOU UNDERSTAND?

ACC:

1 In a partially contested case it is permissible to announce findings based on guilty pleas immediately after accepting pleas, unless a guilty plea was accepted to a lesser included offense and the prosecution intends to proceed to trial on the offense as charged. R.C.M. 910(g).

IN ALL GUILTY PLEA CASES CONTINUE:

MJ: DO YOU HAVE ANY QUESTIONS ABOUT THE MEANING AND EFFECT OF YOUR PLEAS OF GUILTY?

ACC:

MJ: _____, DO YOU STILL WISH TO PLEAD GUILTY?

ACC:

MJ: I FIND THAT THE ACCUSED HAS KNOWINGLY, INTELLIGENTLY, AND CONSCIOUSLY WAIVED HIS/HER RIGHTS AGAINST SELF-INCRIMINATION, TO A TRIAL OF THE FACTS BY A COURT-MARTIAL, AND TO BE CONFRONTED BY THE WITNESSES AGAINST HIM/HER. I FIND THAT THE ACCUSED'S PLEAS ARE MADE VOLUNTARILY AND WITH A FACTUAL BASIS AND THEY ARE ACCEPTED.

THIS ARTICLE 39(A) SESSION IS TERMINATED.

IF ANY PLEAS ARE CONTESTED GO TO NEXT PAGE

IF NO PLEAS ARE CONTESTED GO TO PAGE 18 FOR ANNOUNCEMENT OF FINDINGS *1*

CONTESTED CASE ON THE MERITS

MJ: TRIAL COUNSEL MAY MAKE AN OPENING STATEMENT.

TC OPENING STATEMENT

MJ: DEFENSE COUNSEL MAY MAKE AN OPENING STATEMENT NOW OR RESERVE UNTIL THE CLOSE OF THE PROSECUTION'S CASE.

DC OPENING STATEMENT, UNLESS RESERVED

MJ: THE PROSECUTION MAY PROCEED.

PRESENTATION OF EVIDENCE FOR THE PROSECUTIONDC OPENING STATEMENT, IF NOT MADE EARLIERPRESENTATION OF EVIDENCE FOR THE DEFENSEREBUTTAL AND SURREBUTTAL, IF ANY

MJ: THE COURT IS PREPARED TO HEAR ARGUMENT.

TC ARGUMENTDC ARGUMENTTC CLOSING ARGUMENT

MJ: THE COURT WILL BE CLOSED FOR DELIBERATIONS.

MJ: THE COURT WILL COME TO ORDER. ALL PARTIES PRESENT WHEN THE COURT CLOSED ARE AGAIN PRESENT.

18A

1 See R.C.M. 922 and Appendix 10 of MCM 1984 concerning forms of findings.

2 See R.C.M. 907(b)(3)(B) and Discussion and see, e.g. U.S. v. Zupancic, 18 M.J. 387 (CMA, 1984).

ANNOUNCEMENT OF FINDINGS

MJ: ACCUSED AND COUNSEL PLEASE RISE.

_____, IT IS MY DUTY AS MILITARY JUDGE TO INFORM YOU THAT
(IN ACCORDANCE WITH YOUR PLEAS) THIS COURT FINDS YOU:

MJ: ANNOUNCE FINDINGS *1*

MJ: YOU MAY BE SEATED.

MJ: MAKE A DETERMINATION AS TO WHETHER ANY OF THE FINDINGS
OF GUILTY ARE MULTIPPLICIOUS FOR FINDINGS. *2*

17A

1 This advice, and the inquiry whether the accused chooses to exercise the rights enumerated, is based on R.C.M. 1001(a)(3).

SENTENCING HEARING

MJ: ARE THERE ANY CORRECTIONS OR ADDITIONS TO THE PERSONAL DATA ON PAGE ONE OF THE CHARGE SHEET?

TC:

DC:

MJ: IF ANY PRETRIAL CONFINEMENT IS INDICATED, ASCERTAIN WHAT THE SPECIFIC TIME PERIODS FOR U.S. V. ALLEN CREDIT ARE.

MJ: THE COURT WILL NOTE THOSE DATA. DOES THE PROSECUTION HAVE ANY EVIDENCE TO PRESENT?

TC:

AFTER PROSECUTION CASE, IF ANY:

MJ: _____, YOU HAVE THE RIGHT TO PRESENT MATTERS IN EXTENUATION AND MITIGATION, THAT IS, MATTERS ABOUT THE OFFENSE(S) OR YOURSELF WHICH YOU WANT THE COURT-MARTIAL TO CONSIDER IN DECIDING A SENTENCE. INCLUDED IN YOUR RIGHT TO PRESENT SUCH MATTERS ARE THE RIGHTS YOU HAVE TO TESTIFY UNDER OATH, TO MAKE AN UNSWORN STATEMENT, OR TO REMAIN SILENT. IF YOU TESTIFY UNDER OATH, YOU MAY BE CROSS-EXAMINED BY THE TRIAL COUNSEL AND QUESTIONED BY ME. IF YOU DECIDE TO MAKE AN UNSWORN STATEMENT YOU MAY NOT BE CROSS-EXAMINED BY TRIAL COUNSEL OR QUESTIONED BY ME. YOU MAY MAKE AN UNSWORN STATEMENT ORALLY OR IN WRITING, PERSONALLY, OR THROUGH YOUR COUNSEL, OR YOU MAY USE A COMBINATION OF THESE WAYS. IF YOU DECIDE TO EXERCISE YOUR RIGHT TO REMAIN SILENT, THAT CANNOT BE HELD AGAINST YOU IN ANY WAY. DO YOU UNDERSTAND YOUR RIGHTS TO PRESENT MATTERS IN EXTENUATION AND MITIGATION? *1*

ACC:

MJ: DO YOU CHOOSE TO EXERCISE THESE RIGHTS?

ACC:

AFTER THE DEFENSE HAS CONCLUDED PRESENTATION OF EVIDENCE IN EXTENUATION AND MITIGATION

1 See R.C.M. 1003(c)(1)(C) and Discussion.

2 R.C.M. 1001(g) specifies certain forms of improper argument on sentencing.

3 After examining the sentence limitations of a pretrial agreement the military judge should state his/her interpretation of the maximum punishment which the convening authority can approve, and of any related provisions. The judge should ensure that the accused understands each provision. Some specific areas are:

1. Are all limitations clearly and unambiguously defined? Are there any areas not covered?

2. Are all suspension provisions clear? When does the period of suspension start and end? Are there any special vacation provisions? Does the accused understand the meaning and effect of suspension? Does it go beyond normal or expected end of enlistment? If there is a good behavior provision is the accused adequately informed as to what degree and type of misconduct will lead to a breach of the agreement? What kind of hearing, if any, is required before the convening authority may void the agreement?

3. Are any restitution provisions in lieu of or in addition to forfeitures or a fine?

4. Does the agreement provide for, or specifically prohibit, commutation of all or any part of the sentence by the convening authority?

5. Does the agreement require the convening authority to honor a deferment request? If so ensure that the accused understands the possible long term effects of deferment.

MJ: DOES THE PROSECUTION HAVE A CASE IN REBUTTAL?

TC:

AFTER REBUTTAL AND SURREBUTTAL, IF ANY:

MJ: STATE WHETHER ANY SPECIFICATIONS ARE CONSIDERED
MULTIPLICIOUS FOR SENTENCING *1*

MJ: COUNSEL MAY PRESENT ARGUMENT. *2*

TC ARGUMENT

DC ARGUMENT

REBUTTAL ARGUMENTS IN THE DISCRETION OF THE MILITARY JUDGE

MJ: THE COURT WILL BE CLOSED FOR DELIBERATIONS.

MJ: THE COURT WILL COME TO ORDER. ALL PARTIES PRESENT WHEN THE COURT
CLOSED ARE AGAIN PRESENT.

MJ: ACCUSED AND COUNSEL PLEASE RISE.

MJ: _____, IT IS MY DUTY AS MILITARY JUDGE TO INFORM YOU THAT
YOU ARE SENTENCED AS FOLLOWS:

MJ: ANNOUNCE SENTENCE

MJ: YOU MAY BE SEATED.

MJ: EXAMINE SENTENCE LIMITS OF PRETRIAL AGREEMENT, IF ANY.
VERIFY THAT ACCUSED AND BOTH COUNSEL AGREE ON HOW, IF AT ALL,
THE SENTENCE WILL BE AFFECTED BY THE PRETRIAL AGREEMENT *3*

21A

1 The inquiry on this page is based on R.C.M. 1104(b)(1)(C) and is optional.

MJ: _____, A COPY OF THE RECORD OF TRIAL IS REQUIRED TO BE GIVEN TO YOU AFTER IT IS PREPARED. YOU MAY; HOWEVER, REQUEST THAT YOUR COPY OF THE RECORD BE DELIVERED TO YOUR DEFENSE COUNSEL INSTEAD. DO YOU WISH TO DO THAT? *1*

ACC:

IF THE ACCUSED REPLIES AFFIRMATIVELY AND THERE IS MORE THAN ONE DEFENSE COUNSEL:

MJ: WHICH OF YOUR DEFENSE COUNSEL DO YOU WISH TO RECEIVE YOUR COPY OF THE RECORD?

ACC:

APPELLATE RIGHTS--NON BCD SPCM

MJ: I WILL NOW EXPLAIN TO YOU YOUR POST-TRIAL AND APPELLATE RIGHTS.

AFTER THE RECORD OF THIS TRIAL IS PREPARED IN YOUR CASE, THE CONVENING AUTHORITY WILL ACT ON YOUR CASE. THE CONVENING AUTHORITY CAN APPROVE THE SENTENCE (ADJUDGED) (PROVIDED IN YOUR PRETRIAL AGREEMENT), OR HE/SHE CAN APPROVE A LESSER SENTENCE OR DISAPPROVE THE SENTENCE ENTIRELY. THE CONVENING AUTHORITY CANNOT INCREASE THE SENTENCE. THE CONVENING AUTHORITY CAN ALSO DISAPPROVE (SOME OR ALL OF) THE FINDINGS OF GUILTY. THE CONVENING AUTHORITY IS NOT REQUIRED TO REVIEW THE CASE FOR LEGAL ERRORS, BUT MAY TAKE ACTION TO CORRECT LEGAL ERRORS.

YOU HAVE THE RIGHT TO SUBMIT MATTERS TO THE CONVENING AUTHORITY BEFORE HE/SHE TAKES ACTION ON YOUR CASE. YOU MUST DO SO WITHIN 20 DAYS OF TODAY OR WITHIN 7 DAYS AFTER YOU OR YOUR COUNSEL RECEIVE A COPY OF THE RECORD OF TRIAL, WHICHEVER IS LATER. THE CONVENING AUTHORITY MAY EXTEND THESE PERIODS FOR GOOD CAUSE. DO YOU UNDERSTAND?

ACC:

MJ: NEXT, YOUR CASE WILL BE REVIEWED BY A JUDGE ADVOCATE FOR CERTAIN LEGAL ERRORS. YOU MAY SUBMIT, IN WRITING, SUGGESTIONS OF LEGAL ERROR FOR CONSIDERATION BY THE JUDGE ADVOCATE AND HE OR SHE MUST FILE A WRITTEN RESPONSE TO EACH. DO YOU UNDERSTAND?

ACC:

MJ: AFTER SUCH REVIEW, AND COMPLETION OF ANY REQUIRED ACTION BY THE GENERAL COURT-MARTIAL CONVENING AUTHORITY, YOU MAY REQUEST THE JUDGE ADVOCATE GENERAL TO TAKE CORRECTIVE ACTION. SUCH A REQUEST MUST BE FILED WITHIN TWO YEARS OF THE CONVENING AUTHORITY'S ACTION, UNLESS THE TIME IS EXTENDED FOR GOOD CAUSE. DO YOU UNDERSTAND?

ACC:

MJ: YOU HAVE THE RIGHT TO THE ADVICE AND ASSISTANCE OF COUNSEL IN THE EXERCISE OF YOUR POST-TRIAL RIGHTS. DO YOU UNDERSTAND THIS?

ACC:

MJ: DO YOU HAVE ANY QUESTIONS?

ACC:

MJ: DOES EITHER COUNSEL HAVE ANY MATTERS TO TAKE UP PRIOR TO ADJOURNMENT?

TC/DC:

MJ: THIS COURT-MARTIAL IS ADJOURNED.

APPELLATE RIGHTS--BCD SPCM OR GCM WITH A SENTENCE TO
PUNITIVE DISCHARGE AND/OR CONFINEMENT OF 1 YEAR OR MORE

MJ: I WILL NOW EXPLAIN TO YOU YOUR POST-TRIAL AND APPELLATE RIGHTS.

AFTER THE RECORD OF THIS TRIAL IS PREPARED IN YOUR CASE, THE CONVENING AUTHORITY WILL ACT ON YOUR CASE. THE CONVENING AUTHORITY CAN APPROVE THE SENTENCE (ADJUDGED) (PROVIDED IN YOUR PRETRIAL AGREEMENT), OR HE/SHE CAN APPROVE A LESSER SENTENCE OR DISAPPROVE THE SENTENCE ENTIRELY. THE CONVENING AUTHORITY CANNOT INCREASE THE SENTENCE. THE CONVENING AUTHORITY CAN ALSO DISAPPROVE (SOME OR ALL OF) THE FINDINGS OF GUILTY. THE CONVENING AUTHORITY IS NOT REQUIRED TO REVIEW THE CASE FOR LEGAL ERRORS, BUT MAY TAKE ACTION TO CORRECT LEGAL ERRORS.

YOU HAVE THE RIGHT TO SUBMIT MATTERS TO THE CONVENING AUTHORITY BEFORE HE/SHE TAKES ACTION ON YOUR CASE. YOU MUST DO SO WITHIN 30 DAYS OF TODAY OR WITHIN SEVEN DAYS AFTER YOU OR YOUR COUNSEL RECEIVE A COPY OF THE RECORD OF TRIAL, WHICHEVER IS LATER. THE CONVENING AUTHORITY MAY EXTEND THESE PERIODS FOR GOOD CAUSE. DO YOU UNDERSTAND?

ACC:

MJ: BEFORE THE CONVENING AUTHORITY TAKES ACTION, HIS LEGAL ADVISOR WILL SUBMIT A RECOMMENDATION TO HIM, WITH A COPY TO YOUR DEFENSE COUNSEL. YOU MAY SUBMIT MATTERS IN RESPONSE TO THE RECOMMENDATION WITHIN FIVE DAYS OF RECEIVING IT. THE CONVENING AUTHORITY MAY EXTEND THIS PERIOD FOR GOOD CAUSE. DO YOU UNDERSTAND?

ACC:

MJ: IF THE CONVENING AUTHORITY APPROVES THE DISCHARGE/DISMISSAL [OR CONFINEMENT FOR ONE YEAR OR MORE] AND UNLESS YOU WAIVE APPELLATE REVIEW YOUR CASE WILL BE REVIEWED BY THE NAVY-MARINE CORPS COURT OF MILITARY REVIEW FOR LEGAL ERROR, FACTUAL SUFFICIENCY, AND APPROPRIATENESS OF SENTENCE, UNLESS YOU WAIVE THIS RIGHT. MILITARY COUNSEL WILL BE APPOINTED TO REPRESENT YOU FREE OF CHARGE AND, IF YOU CHOOSE, YOU MAY RETAIN CIVILIAN COUNSEL AT NO EXPENSE TO THE GOVERNMENT.

FOLLOWING THIS, YOUR CASE COULD BE REVIEWED BY THE COURT OF MILITARY APPEALS, ON YOUR REQUEST OR OTHERWISE, AND FINALLY, IT MIGHT BE REVIEWED BY THE U.S. SUPREME COURT. BEFORE THESE COURTS YOU WOULD CONTINUE TO HAVE THE SAME APPELLATE COUNSEL RIGHTS WHICH I JUST DESCRIBED. DO YOU UNDERSTAND?

ACC:

MJ: YOU MAY WAIVE APPELLATE REVIEW, GIVING UP THE RIGHT WHICH I JUST DESCRIBED, OR YOU MAY WITHDRAW YOUR CASE FROM APPELLATE REVIEW AT A LATER TIME. HOWEVER, ONCE YOU FILE A WAIVER OR WITHDRAWAL, YOUR DECISION IS FINAL AND APPELLATE REVIEW IS BARRED. DO YOU UNDERSTAND?

ACC:

MJ: IF YOU WAIVE OR WITHDRAW APPELLATE REVIEW, YOUR CASE WILL BE REVIEWED BY A JUDGE ADVOCATE FOR CERTAIN LEGAL ERRORS. YOU MAY SUBMIT, IN WRITING, SUGGESTIONS OF LEGAL ERROR FOR CONSIDERATION BY THE JUDGE ADVOCATE AND HE OR SHE MUST FILE A WRITTEN RESPONSE TO EACH. THE JUDGE ADVOCATE'S REVIEW WILL BE SENT TO THE GENERAL COURT-MARTIAL CONVENING AUTHORITY FOR FINAL ACTION. WITHIN TWO YEARS AFTER SUCH FINAL ACTION, YOU MAY REQUEST THE JUDGE ADVOCATE GENERAL TO TAKE CORRECTIVE ACTION IN YOUR CASE. THE TWO YEAR PERIOD MAY BE EXTENDED FOR GOOD CAUSE. DO YOU UNDERSTAND?

ACC:

MJ: YOU HAVE THE RIGHT TO THE ADVICE AND ASSISTANCE OF COUNSEL IN EXERCISING OR DECIDING TO WAIVE YOUR POST-TRIAL AND APPELLATE RIGHTS. DO YOU UNDERSTAND?

ACC:

MJ: DO YOU HAVE ANY QUESTIONS ABOUT THE POST-TRIAL OR APPELLATE PROCESSES?

ACC:

MJ: DOES EITHER COUNSEL HAVE ANY MATTERS TO TAKE UP PRIOR TO ADJOURNMENT?

TC/DC:

MJ: THIS COURT-MARTIAL IS ADJOURNED.

APPELLATE RIGHTS--GCMs WITH NEITHER A PUNITIVE
DISCHARGE NOR CONFINEMENT FOR 1 YEAR OR MORE

MJ: I WILL NOW EXPLAIN TO YOU YOUR POST-TRIAL AND APPELLATE RIGHTS.

AFTER THE RECORD OF THIS TRIAL IS PREPARED IN YOUR CASE, THE CONVENING AUTHORITY WILL ACT ON YOUR CASE. THE CONVENING AUTHORITY CAN APPROVE THE SENTENCE (ADJUDGED) (PROVIDED IN YOUR PRETRIAL AGREEMENT), OR HE/SHE CAN APPROVE A LESSER SENTENCE OR DISAPPROVE THE SENTENCE ENTIRELY. THE CONVENING AUTHORITY CANNOT INCREASE THE SENTENCE. THE CONVENING AUTHORITY CAN ALSO DISAPPROVE (SOME OR ALL OF) THE FINDINGS OF GUILTY. THE CONVENING AUTHORITY IS NOT REQUIRED TO REVIEW THE CASE FOR LEGAL ERRORS, BUT MAY TAKE ACTION TO CORRECT LEGAL ERRORS.

YOU HAVE THE RIGHT TO SUBMIT MATTERS TO THE CONVENING AUTHORITY BEFORE HE/SHE TAKES ACTION ON YOUR CASE. YOU MUST DO SO WITHIN 30 DAYS OF TODAY OR WITHIN SEVEN DAYS AFTER YOU OR YOUR COUNSEL RECEIVE A COPY OF THE RECORD OF TRIAL, WHICHEVER IS LATER. THE CONVENING AUTHORITY MAY EXTEND THESE PERIODS FOR GOOD CAUSE. DO YOU UNDERSTAND?

ACC:

MJ: BEFORE THE CONVENING AUTHORITY TAKES ACTION, HIS LEGAL ADVISOR WILL SUBMIT A RECOMMENDATION TO HIM, WITH A COPY TO YOUR DEFENSE COUNSEL. YOU MAY SUBMIT MATTERS IN RESPONSE TO THE RECOMMENDATION WITHIN FIVE DAYS OF RECEIVING IT. THE CONVENING AUTHORITY MAY EXTEND THIS PERIOD FOR GOOD CAUSE. DO YOU UNDERSTAND?

ACC:

MJ: AFTER THE CONVENING AUTHORITY TAKES ACTION, UNLESS YOU WAIVE FURTHER REVIEW, YOUR CASE WILL BE FORWARDED TO THE OFFICE OF THE JUDGE ADVOCATE GENERAL. THE RECORD MAY BE EXAMINED FOR ANY LEGAL ERRORS AND CONCERNING THE APPROPRIATENESS OF THE SENTENCE AND THE JUDGE ADVOCATE GENERAL MAY TAKE CORRECTIVE ACTION, IF APPROPRIATE. DO YOU UNDERSTAND?

ACC:

MJ: YOU MAY WAIVE APPELLATE REVIEW, GIVING UP THE RIGHT WHICH I JUST DESCRIBED, OR YOU MAY WITHDRAW YOUR CASE FROM APPELLATE REVIEW AT A LATER TIME. HOWEVER, ONCE YOU FILE A WAIVER OR WITHDRAWAL, YOUR DECISION IS FINAL AND APPELLATE REVIEW IS BARRED. DO YOU UNDERSTAND?

ACC:

MJ: IF YOU WAIVE OR WITHDRAW APPELLATE REVIEW, YOUR CASE WILL BE REVIEWED BY A JUDGE ADVOCATE FOR CERTAIN LEGAL ERRORS. YOU MAY SUBMIT, IN WRITING, SUGGESTIONS OF LEGAL ERROR FOR CONSIDERATION BY THE JUDGE ADVOCATE AND HE OR SHE MUST FILE A WRITTEN RESPONSE TO EACH. THE JUDGE ADVOCATE'S REVIEW WILL BE SENT TO THE GENERAL COURT-MARTIAL CONVENING AUTHORITY FOR FINAL ACTION. WITHIN TWO YEARS AFTER SUCH FINAL ACTION, YOU MAY REQUEST THE JUDGE ADVOCATE GENERAL TO TAKE CORRECTIVE ACTION IN YOUR CASE. THE TWO YEAR PERIOD MAY BE EXTENDED FOR GOOD CAUSE. DO YOU UNDERSTAND?

ACC:

MJ: YOU HAVE THE RIGHT TO THE ADVICE AND ASSISTANCE OF COUNSEL IN EXERCISING OR DECIDING TO WAIVE YOUR POST-TRIAL AND APPELLATE RIGHTS. DO YOU UNDERSTAND?

ACC:

MJ: DO YOU HAVE ANY QUESTIONS ABOUT THE POST-TRIAL OR APPELLATE PROCESSES?

ACC:

MJ: DOES EITHER COUNSEL HAVE ANY MATTERS TO TAKE UP PRIOR TO ADJOURNMENT?

TC/DC:

MJ: THIS COURT-MARTIAL IS ADJOURNED.

STATUTORY DELAY INQUIRY

MJ: _____, DO YOU UNDERSTAND YOU HAVE AN ABSOLUTE RIGHT TO A (3) (5) DAY DELAY BETWEEN THE SERVICE OF THE CHARGE(S) UPON YOU AND ANY SESSION OF THIS COURT?

ACC:

MJ: WHAT THIS MEANS IS THAT SINCE THE CHARGE(S) WAS/WERE SERVED UPON YOU ON (DATE), WE CANNOT PROCEED ANY FURTHER UNTIL (NEW TRIAL DATE) UNLESS YOU AGREE TO AN EARLIER DATE. DO YOU UNDERSTAND THAT?

ACC:

MJ: HAVE YOU DISCUSSED THIS RIGHT WITH YOUR COUNSEL?

ACC:

MJ: TAKE A MOMENT TO DISCUSS THIS AGAIN WITH YOUR COUNSEL AND LET ME KNOW IF YOU WANT TO GIVE UP THIS RIGHT AND PROCEED TO TRIAL TODAY OR IF YOU WANT TO WAIT.

ACC: