

C O N F I D E N T I A L

HEADQUARTERS 102D INFANTRY DIVISION
Office of the Division Judge Advocate

APO 102, US Army

SUBJECT: Advice in case of United States vs _____.

TO : _____, Trial Judge Advocate, General Courts-Martial.

1. Read the following in the Manual for Courts-Martial: Appendix #5 and paragraphs 41, 42 and 75b.

2. Prepare carefully for trial. Proof of the case on trial and the final written record will never be better than your preparation.

a. Make an outline of the elements of proof (MCM Chapter XXVI), and opposite each element the specific details alleged in the specification.

b. Be sure you have the evidence to prove these elements and details. Do not rely on the investigation report entirely. Check availability of witnesses and interview them yourself or through the Assitant TJA.

c. Consult with defense counsel to determine what matters will not be contested and arrange stipulations whenever possible. (MCM paragraph 41c, 45c and 126b) All stipulations will be typed and signed by the TJA, DC, and the accused, before trial. If in doubt about form, call this office.

d. Serve a copy of the charge sheet on the accused immediately, give defense counsel copies of the evidence and arrange with him date of trial and inform the president. Trial should be held not more than five days from service. Arrange shorter time when possible, but obtain consent of accused for the record.

3. In trial, you are responsible to see that the procedural rules are followed and that the record shows it. Watch these points especially:

a. The court must explain to accused the meaning of a plea of guilty. Accused must be asked whether he understands it, and make a reply. All this must appear verbatim in the record. Even after plea of guilty, the prosecution must present all of its evidence.

b. The record must show a ruling by the court for each objection, unless the question or offered evidence is withdrawn.

c. Do not ask questions which are leading, suggestive, or call for hearsay.

d. Documents and physical evidence must bear an exhibit number. If the evidence is received, be sure the record shows that the defense examined it and that the court ruled on receiving it. All exhibits not absolutely essential to the record should be withdrawn at the end of the trial and certified copies submitted for the originals. The record must show what specific exhibits were withdrawn.

e. If the possible penalty in this case is death, ask the individual members of the court if they have any religious or moral scruples against imposition of the death penalty. Do this just before the challenges. If any member has such scruples, he should be challenged for cause.

f. The rights of accused as a witness must be explained to him fully by the President or the Law Member, and the explanation must be in the record verbatim. Use specimen furnished by this office.

g. When you serve the charges on the accused, read them to him, then with a knife or razor blade cut out any geographical locations appearing anywhere on the charge sheet before leaving the charge sheet with him.

h. Similarly when serving the accused with his copy of the record of trial cut out all geographical locations appearing on all pages of the record.

C O N F I D E N T I A L

i. If, before trial or during trial, any questions arise which place you in doubt as to procedure, legal questions or administration, contact the Division Judge Advocate--don't try to "bull it through."

4. Immediately following trial:

- a. If convicted, bring accused to Staff Judge Advocate for interview.
- b. Notify the Staff Judge Advocate of the result of trial.
- c. Prepare written request to Provost Marshall, Ninth Army Stockade, to receive accused as a prisoner, and state sentence.

Lt Colonel, JAGD
Division Judge Advocate