

HEADQUARTERS XVI CORPS  
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NUMBER.. 3)

GENERAL NOTES  
ON  
THE ADMINISTRATION OF MILITARY JUSTICE

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SECTION I  
GENERAL

1. Memorandum Number 1, this headquarters, 24 January 1944 is rescinded.
2. The following are to be observed by units and organizations over which this headquarters exercises general court-martial jurisdiction and do not apply to attached divisions or commands over which divisions exercise court-martial jurisdiction.
3. This is not to be considered in any manner as superseding or modifying the rules prescribed by the Manual for Courts-Martial, Army Regulations, or War Department and ETOUSA directives, but merely as an adjunct thereto. Frequent references must be made to such sources for detailed instructions and matters not covered herein.
4. As used in this memorandum the term "unit" refers to groups, regiments and separate battalions or other headquarters having special court-martial jurisdiction. The term "organization" refers to companies, batteries and troops and like detachments.
5. It is desired that commanders, personnel of the courts, adjutants, personnel adjutants and others concerned with the processes of military justice seek advice and assistance upon matters pertaining to the administration of military justice from the Corps Judge Advocate. Informal communication direct with the Corps Judge Advocate in such matters is authorized and encouraged.
6. All officers must be thoroughly familiar with both theory and practice of the administration of military justice. It is desired that instruction be given on this subject. The Corps Judge Advocate is available as an instructor at suitable times and upon arrangements with this headquarters.
7. Each authority exercising special court-martial jurisdiction is authorized to detail to his headquarters a qualified non-commissioned officer as unit court-clerk, to be responsible for the clerical aspects of the administration of military justice and to attend special court-martial trials for the purpose of compiling the record of trial under the supervision of the trial judge advocate. (Par 6f, SOP No. 35, ETOUSA)

SECTION II  
POLICIES

8. Offenses against military discipline must be punished, but an intelligent approach to disciplinary problems will reduce the number of offenses. Excessive use of courts-martial is a sure index to a weakness in the command.
9. Personal supervision and proper leadership by commanders will result in a definite increase in the efficiency of the command through the reduction of the number of men brought to trial. The application of automatic, routine and invariable court-martial punishment for every offense committed results in an impersonal attitude which cannot produce the vitally essential confidence in commanders that a more personal touch will attain. Confidence of enlisted men in the interest, impartiality, and judgment of their military superiors is essential to good order and esprit de corps.



10. Courts-martial should be resorted to only in cases of serious derelictions, and in cases where lesser disciplinary measures have failed to bring the soldier to a realization of his responsibility.

11. a. A large percentage of cases of disrespect and disobedience in violation of A. W. 63 and 64 will be avoided by an intelligent handling of personnel involved. Often a soldier is provoked into commission of these serious offenses by improper handling of a minor infraction.

b. Charges for disrespect and disobedience by soldiers while intoxicated are usually justified but should be avoided whenever possible. A soldier who is drunk cannot be expected to attain the high standards of discipline required by A. W. 63, 64 and 65 and, if, while drunk, he commits an offense in violation of these articles it is frequently the result of poor judgment or improper handling of the situation by the officer or non-commissioned officer concerned. The basic cause for the offense is generally the intoxication and consideration should be given to treating the ensuing disorder as such. Every effort should be made to avoid giving a drunken soldier a direct order, particularly by a commissioned officer.

c. Many cases in violation of A. W. 64 result from the initial refusal to obey the same order when given by a non-commissioned officer. A better course in such a situation is to not repeat the order but, if the offender persists, charge him with violation of A. W. 65 for disobedience of a non-commissioned officer and prevent the needless aggravation of the offense. However, there will be cases in which the additional direct order of the officer is essential. If so, it should be given.

12. In view of the fact that the personnel of this command are under the exclusive jurisdiction of the United States through its system of courts-martial, although on foreign soil, it is especially important that court-martial proceedings be characterized by a high degree of efficiency. Cases will be disposed of promptly. Unnecessary delay in investigating or carrying any case to final conclusion will not be tolerated (AW 70). Exceptional delays will be explained when records of trial or charges recommending trial by general court-martial are forwarded to this headquarters.

### SECTION III PREPARATION OF CHARGES

13. The age of the accused as shown on the charge sheet will be his age at the date of commission of the alleged offense.

14. Pay of the accused will be base pay plus longevity and the 20% increase for foreign service.

15. The "Data as to service" will show the inclusive dates of enlistment and discharge and reason for discharge, i.e., Conv. Gov't., E.T.S., etc., or "no prior service", and date of current enlistment. Only federal service will be shown.

16. If allotments or Class "F" deductions have been made the data must show the class, particularly if it is a Class "F" deduction. Only Class "F" deductions affect the amount of forfeiture which may be imposed. If there is no allotment or deduction insert the word "none".

17. Data as to restraint will GIVE DATES of restriction, confinement or arrest and any CHANGE OF STATUS or place of confinement.

18. The designation of the accused as stated in the specification should include his Christian name, middle initial, if any, and his



organization. His serial number SHOULD NOT be alleged in the specification. (Par a, Appx 4, M.C.M.).

19. Wherever practicable, the models of specifications found in Appendix 4, M. C. M., with necessary modifications to conform to the facts of the case, will be followed in the preparation of charges. In the wording of the specification, ABBREVIATIONS WILL NOT BE USED, except as to the middle initial of names of persons and in the quoting of documents set out in the specifications.

20. Charges and specifications will be numbered as required by paragraph b, Appendix 4, M. C. M.

21. Care will be exercised that the "Affidavit" on the charge sheet shows the date of its execution and name, rank, branch of service, and capacity (i.e. Adjutant, Summary Court, etc.) of the officer administering the oath. (See A. W. 114.) Inapplicable words should be carefully deleted and the charges and specifications referred to as they appear on the charge sheet.

22. Where the charge sheet includes both the geographical location of the station and the organization of the accused as it ordinarily does, it will be classified and safeguarded as CONFIDENTIAL and likewise as to court-martial orders and the record of trial when, at any stage in the proceedings, station and organization are shown or other disclosures are made which require such classification. Similarly, SECRET classification will be applied if the circumstances warrant. (Par 6g(2), SOP #35, ETOUSA)

23. In the preparation of joint charges, only one set of charges, including an additional copy for each additional accused, will be prepared. The charges and specifications will be prepared jointly in conformity with sub-paragraph f, Appendix 4, M. C. M., 1928. On the front of the charge sheet the name, serial number, rank, organization, pay, age, allotment, deductions and data as to service of each accused will be entered in the same sequence as shown in the joint-specification and will be shown separately as to each accused. Attaching an additional part to the charge sheet form for each additional accused, pasted or attached at the top, is recommended.

24. Charges forwarded to unit commander will be accompanied by evidence of previous convictions, statement of expected testimony and Letter of Transmittal as required by Par. 32, M. C. M. All papers will be in triplicate except where this would necessitate recopying of documents or statements.

25. Charges which will probably be tried by general court-martial will have attached a statement by the immediate commanding officer of the accused giving all available information about the soldier's background and record both in the military and civilian life and including such officer's personal estimate of the accused.

26. Certificates of previous convictions submitted with charges will be on ETOUSA CI Form 2, certified by the personnel adjutant or other person who is the LEGAL CUSTODIAN of the service record, and will refer only to convictions which fall within the time limits specified in Par. 79c, M. C. M. They will omit all reference to punishments under the 104th Article of War. Evidence of punishment under A. W. 104 is admissible only if introduced by the defense.

27. In specifications charging larceny, embezzlement and other offenses where the value is material, value should be alleged in dollars and not in terms of foreign currency. Foreign currency should be described specifically, and the value alleged, as for example, "1000 francs French currency, of the value of \$20.00".



SECTION IV  
INVESTIGATION OF CHARGES

28. Prompt action by investigating officers will have the effect of expediting trials, but thoroughness and completeness of investigation should never be sacrificed, as incomplete investigations often result in orders for re-investigations, thereby causing undue delays. Before attempting to investigate a case the investigating officer should consult the Manual for Courts-Martial for the elements of the offense, and make an outline of the evidence required to prove each offense. He should be sure the evidence procured is admissible before the court. Investigating officers must familiarize themselves with the rules of evidence (Ch. XXV, M. C. M.) and avoid including in the statements of witnesses and summaries of evidence, statements which are based on hearsay or are otherwise inadmissible.

29. Time can be saved by taking advantage of the fact that it is not mandatory that charges which are to be referred to a special or summary court be formally investigated. However, formal investigation will in some cases result in the withdrawal of charges and will in all cases give the commanding officer more complete information in determining whether the charges should be referred to a general, special, or summary court-martial.

30. In referring charges to an officer for investigation in conformity with paragraph 34, third subparagraph, M. C. M., 1928, a letter or indorsement detailing him to conduct the investigation of the charges in accordance with the provisions of paragraph 35a, M. C. M., 1928, will be prepared and must accompany the report of investigation.

31. Tangible evidence connected with any alleged offense will be handled by as few persons as possible. While this applies throughout the case, it is particularly important between the time of discovery and the time when such evidence may be subjected to scientific analysis. The first holder of tangible evidence will mark it for identification purposes. Such mark will be observed, but will not be changed, by later holders. Receipt for such evidence will be taken each time possession passes from one person to another. In the case of alleged offenses by members of the U. S. Forces against persons who are not members of the U. S. Forces, tangible evidence in the custody of civil authorities will remain in their custody for such scientific analysis as may be desired by them, and will be claimed from them only by the trial judge advocate to whom court-martial charges against the accused have been referred for trial; the foregoing is subject to reasonable right of viewing such evidence by persons who are legitimately interested. In the case of alleged criminal offenses by persons who are not members of this command, in the event any tangible evidence is in the possession of personnel of this command, it will be delivered by the holder at the earliest practicable moment to the local civil police authorities or appropriate officer in charge of Civil Affairs. (Par 6b(2), SOP #35, STOUSA)

SECTION V  
RESPONSIBILITY OF UNIT COMMANDERS

a. General



32. The authority given to unit commanders to appoint special and summary courts-martial is an important one and carries a great responsibility. The duties of the unit commander as reviewing authority are to be performed by him personally and personal supervision of the activities of courts appointed by him is imperative.

33. Cases will be referred to the lowest court which can administer adequate punishment keeping in mind that trial by courts-martial is the last resort.

34. Except where necessary in the interest of discipline, confinement for purely military offenses, not capital in character, should be kept to the minimum. A soldier in confinement in this theater is in the same category, insofar as loss of effectiveness is concerned, as a soldier wounded by enemy action. Confinement is a contribution to the enemy cause, since it not only immobilizes the confined soldier as an effective, but also immobilizes other soldiers to guard and feed him. (Par 8b, SOP No. 35, ETOUSA). Unless the ends of discipline necessitate otherwise, when sentences include confinement, the reviewing authority should consider eliminating the confinement by remission, suspension or substitution of hard labor without confinement or restriction for such confinement. The sentence of a first offender to confinement of one month or less should normally be suspended. Consideration will also be given to the suspending of other sentences to confinement when not injurious to the discipline of the command and no other reason exists to doubt the wisdom of so doing. Such suspensions will be vacated if the offender's future conduct demonstrates need therefor (Par 9a, SOP #35, ETOUSA).

#### b. Forwarding Charges

35. No charges alleging any capital offense (violations of A.W. 58, 59, 64, 66, 67, 75, 76, 77, 81, 82, 86, or 92) will be referred to a special or summary court-martial for trial without having first obtained authorization therefor from the Commander having general court-martial jurisdiction. Failure to do this will result in lack of jurisdiction of the court and a void sentence. (See A. W. 12 and 13.)

36. Before forwarding charges recommending trial by general court-martial to this headquarters, if practicable, the commander having special court-martial jurisdiction should personally interview and form an opinion of the accused. His indorsement transmitting the charges to this headquarters will state whether this has been done and if not the reasons for not doing so. (See also Par. 24).

37. In forwarding charges and allied papers, recommending trial by court-martial, the indorsement must be signed by the commanding officer, and not by the executive officer or adjutant, "For the Commanding Officer". The action by the commanding officer recommending trial in lieu of punishment under Article of War 104 is a judicial act and may not be delegated to a subordinate. (A.W. 70, 3rd subparagraph).

38. Before forwarding charges recommending trial by general court-martial give consideration to the advisability of trial by special court-martial. In the forwarding of charges involving larceny and similar offenses involving moral turpitude, it is desired that all facts be fully developed to determine the gravity of the offense. In petty cases, evidence of drunkenness, possible error in wrongfully taking articles without ascertaining their ownership, unauthorized but temporary borrowing of clothing and equipment and the like should be taken into



consideration in the recommendations of unit commanders as to the disposition of the cases. This is essential in order that the Corps Commander may determine whether general court-martial may be avoided without detriment to good order and discipline.

## SECTION VI

### SPECIAL COURTS-MARTIAL

#### 39. The Court: (See Also Pars. 42 and 43).

a. It is the responsibility of the president of the court as well as the trial judge advocate to assure that all cases referred to the court are promptly tried. The president of the court must be thoroughly familiar with the rules of procedure and evidence (Ch. XXV, M.C.M.) and insure that no illegal evidence is received or improper procedure occurs to prejudice the rights of the accused. It is his duty as well as that of the defense counsel to insure that the accused is legally tried.

b. The court must keep in mind that clemency is the prerogative of the appointing authority. Adequate, but not excessive, sentence should be imposed for the offense committed and any recommendation for clemency should be made as provided in Par. 81, M. C. M.

#### 40. Trial Judge Advocates:

a. Trial judge advocates must be familiar with the rules of evidence (Ch. XXV, M. C. M.), particularly paragraphs 113, 114, 116, and 117, M. C. M. He must not promiscuously offer improper documents, such as Military Police Reports and reports of apprehension, in evidence.

b. Under a plea of guilty, evidence need not be offered by the prosecution unless such evidence will assist the court in arriving at the nature and seriousness of the offense or in rebuttal of evidence offered by the accused in mitigation. Time will be saved by observing such practice.

41. Defense Counsel: The defense counsel should regard himself as the representative of the officer appointing the court to investigate, ascertain, and prove all facts tending to exculpate the accused or to mitigate his offense. His defense should not be perfunctory, but as vigorous as the case allows. He should interview the accused at once, preferably within twenty-four hours after the receipt of charges. If the accused informs him of exculpating or mitigating circumstances, he should not be content with putting the accused on the stand to tell his own story, but should endeavor to confirm the accused's statements by testimony or depositions of others.

#### 42. Pleas and Findings:

a. The pleas and findings of courts-martial should conform to the models laid down in the Manual for Courts-Martial. The failure in this respect has been the source of a number of serious errors.

b. The forms for the pleas, by exceptions and substitutions, are essentially the same as that of the findings, which are fully shown on pages 64, 65, and 267, M. C. M., 1928. The most common of this type plea is that of absence without leave in violation of the 61st Article of War, the form for which is fully shown therein.

c. The form for the findings is set out in Appendix 6, page 267, and Par. 78, M. C. M. In larceny cases, for instance, when the value of an article is alleged as being a certain amount and the evidence shows



a value as being less, substitutions in proper form should be made by the court. In making exceptions and substitutions, however, the substitution or substitutions must always be lesser and included within the offense alleged.

d. In the event there are a number of specifications and charges, and all pleas and findings are the same, group pleas and findings, such as "...all specifications and charges...", as shown on pages 264 and 267, M. C. M., 1928, should be used. In some cases a whole page has been consumed to record such matters, whereas one line would have been sufficient.

#### 43. Sentences:

a. Sentences of forfeiture, fine or detention will be expressed in dollars and cents per month (Par. 1, A. R. 35-2460).

b. Having due consideration for disciplinary necessity, courts-martial should not adjudge sentences including confinement if an adequate punishment can be imposed by imposing other forms of punishment. (See table of substituted punishments, page 96, M. C. M.).

c. Confinement without forfeiture should not be imposed. Sentences to confinement should ordinarily be accompanied by a suitable sentence of forfeiture; eg, a forfeiture of two-thirds of the difference between soldier's pay and his Class F deduction, if any, expressed in dollars and cents, per month (par 1, AR 35-2460, 21 May 1942), for the same number of months as the soldier is sentenced to confinement. (Par 8c(2), SOP #35, ETOUSA)

d. Sentences should be worded in conformity with the models set out in Appendix 9, M. C. M. In numerous instances, sentences have been worded from memory or by guess, resulting in inconsistencies and improper or unintended sentences. For instance, a sentence to confinement at hard labor for six months and to forfeit \$14.00 for a like period will result in a forfeiture of only \$14.00. It should read "\$14.00 per month for a like period".

e. The maximum forfeiture which may lawfully be imposed upon a soldier in a sentence not involving dishonorable discharge, is two-thirds of his monthly pay, plus longevity and foreign service pay, except that where a Class "F" deduction has been made, then the forfeiture cannot exceed two-thirds of the balance after deducting the amount of such deduction. Only Class "F" deduction affects the amount of forfeiture.

f. Failure to observe the limitation as to forfeitures at the top of page 96, M. C. M. where the dishonorable discharge is not imposed, frequently results in an accused not receiving the punishment intended by the court.

g. It will avoid confusion if any sentence to hard labor of a private first class or non-commissioned officer includes reduction to the grade of private. It should be noted that under Par. 103d, M. C. M., as modified by Par. 15, W. D. Cir. 105-1943 a sentence which, as ordered executed or suspended, includes hard labor with or without confinement, automatically reduces a private first class or non-commissioned officer to the grade of private. This must be considered in fixing the forfeiture.

44. Special court-martial records will be prepared on legal cap size (8 by 13 inches) paper. Both sides of the paper will be used. A carbon copy of the record is unnecessary unless special reason exists (See note, top of page 271, M. C. M., 1928). The record will be prepared in accordance with the forms prescribed in Appendix 7, M. C. M.,



1928. The form for record of trial provided by ETOUSA should be used. These forms may be procured from the Corps Judge Advocate.

45. The original only special court-martial record and the original accompanying papers, with one copy of the special court-martial order, will be forwarded to the Commanding General without letter of transmittal. The record will be arranged in the following order:

- a. One copy of the special court-martial order.
- b. Record of Trial.
- c. Action of reviewing authority.
- d. Exhibits in the following order:
  - (1) Order appointing court.
  - (2) Charge Sheet.
  - (3) Other exhibits, if any.
- e. Original report of investigation, if any, including statements of witnesses and documents not filed in evidence.
- f. Authorization for trial by inferior court, if any.
- g. All other letters and indorsements.

46. Court-martial orders: Those copies of special court-martial orders which are to be bound with the record, and those which are to remain in the official files of the issuing headquarters, will be complete and will be classified as may be necessary in each case. All other copies (See par 87d, MCM, 1928, and pars 3 and 19, AR 310-50, 8 Aug 1942, as changed) will be published with sufficient classified material omitted (and indicated by blanks) to permit their classification, if classified at all, as RESTRICTED. Ordinarily this will be done by the omission of place names. (Par 6g(4), SOP No. 35, ETOUSA). Special court-martial orders will follow form on page 278, H. C. M. and the following complied with:

- a. Dated the date the reviewing authority took final action.
- b. Show the number of previous convictions considered. If none, this also must be shown.
- c. Show correctly the date the sentence was adjudged.
- d. Copy exactly the charges, specifications, pleas, findings, sentence, and the pertinent parts of the action by the reviewing authority as the same appear in the record of trial.
- e. Be properly authenticated.

## SECTION VII

### SUMMARY COURTS-MARTIAL

47. Any officer appointed Summary Court Officer will inform accused of his rights under Paragraph 82, H. C. M., 1928, and will note on the summary court record, "Paragraph 82, H. C. M., complied with".

48. The summary court will note on the face of the record whether any previous convictions were considered. If there were no previous convictions, this will be noted.

49. The copy of record of trial by summary court-martial which is to be forwarded to The Adjutant General, Washington, D. C. (See par 21b, AR 345-125, 1 Feb 1932, as changed) will have sufficient classified material deleted (and indicated by blanks) to permit its classification, if classified at all, as RESTRICTED. Ordinarily this will be done by the omission of place names. (Par 6g(5), SOP #35, ETOUSA)



50. After summary courts-martial records have been acted upon by the reviewing authority in accordance with Appendix 10, page 276, M. C. H., 1928, Paragraph 21 b, A. R. 345-125, will be complied with, and the copies forwarded certified as true copies.

SECTION VIII  
MISCELLANEOUS

51. Trials for wartime desertion will be by general court-martial (Par 7a, SOP #35, ETOUSA).

52. Culpable negligence in the use of firearms or their use in the settlement of private disputes or in the commission of crimes will be severely punished (Par 7b, SOP #35, ETOUSA).

53. Offenses against civilians tend to destroy public confidence in the United States and its forces, thereby accomplishing the work of the enemy's propaganda machine. Such offenses should be punished with appropriate severity. (Par 7c, SOP #35, ETOUSA).

54. Under existing conditions, absence without leave is of such consequence as to justify severe punishment (Par 7d, SOP #35, ETOUSA).

55. Misbehavior of sentinels in a theater of operations is a very serious offense which in the absence of extenuating or mitigating circumstances of a very exceptional nature requires trial by general court-martial (Par 7e, SOP #35, ETOUSA).

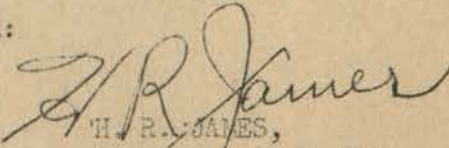
56. Articles or supplies purchased at Army Exchanges and US Army Sales Stores are sold with the understanding that they are for the purchaser's own use or for the use of dependent members of his family (Pars 2 and 9, AR 30-2290, 10 Aug 1938, as changed) and are not to be resold, bartered or exchanged. Violations of these standing instructions constitute offenses under AW 96. They may also constitute offenses against the local law, and subject the seller to trial under AW 96 as conduct of a nature to bring discredit upon the military service (Par 7f, SOP #35, ETOUSA).

57. Under the provisions of paragraph 7, War Department Circular 256, 1943, as amended by Section I, War Department Circular 439, 1944, it is recommended that Group Commanders assume special court-martial jurisdiction for all units and organizations assigned or attached to the Group. However, where this is not done it is desired that records of trial and charges recommending trial by general court-martial be forwarded direct to this headquarters by the officer exercising special court-martial jurisdiction and not through the Group Commander. In such case the Group Commander will be advised by this headquarters of any irregularities in the administration of military justice indicating the necessity for corrective action by the Group Commander.

58. The Corps Judge Advocate is available to all personnel of this command for legal advice and assistance on personal matters.

59. Court-Martial forms, both official and unofficial, published by Headquarters ETOUSA may be procured from the Office of the Corps Judge Advocate.

By command of the CORPS COMMANDER:

  
H. R. JAMES,  
Lt. Col., A. G. D.,  
Asst. Adjutant General.