

Outline of Procedure
for Trial of Certain War Criminals
by General and Intermediate
Military Government Courts

This is Merely a Guide and is not
to be Regarded as Directive in Nature

EVIDENCE p4

OUTLINE OF PROCEDURE
FOR
TRIAL OF CERTAIN WAR CRIMINALS
BY
GENERAL AND INTERMEDIATE
MILITARY GOVERNMENT COURTS

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Prepared in the Office of the Theater Judge Advocate
as an aid to Court Officials.

PART I.

INTRODUCTION

1. GENERAL

Reference is made to: (a) Handbook, "Military Government Germany, Technical Manual for Legal and Prison Officers, Second Edition"; and particularly to Ordinance No. 2, Military Government Courts; Rules of Procedure in Military Government Courts; Forms Military Government Courts; and Guide to Procedure in Military Government Courts. (b) Letter, Headquarters USFET, 16 July 1945, Subject: "Trial of War Crimes and Related Cases".

The abbreviations for the foregoing references as hereinafter used are as follows:

- O - Ordinance No. 2, Military Government Courts; (pp 28-30).
- R - Rules of Procedure in Military Government Courts; (pp 33-41).
- F - Forms Military Government Courts (pp 49-75).
- G - Guide to Procedure in Military Government Courts; (pp 42-46).
- L - Letter, Headquarters USFET, 16 July 1945, Subject: "Trial of War Crimes and Related Cases."

The page references above are to Military Government Germany Technical Manual for Legal and Prison Officers, Second Edition, supra. The references in parenthesis in the body of this outline which are in Roman numerals refer to the articles of Ordinance No. 2, Military Government Courts. The references in Arabic numerals refer to the numbered paragraphs of the citation.

2. PERSONNEL OF THE COURT

General Military Government Courts and Intermediate Military Government Courts shall consist respectively of not less than five (5) members and not less than three (3) members, and, in addition, personnel of the prosecution and defense (L. 3). The Senior member of the court present at each trial will be the President and Presiding Officer of the Court (L. 3, R. 2(3)). The members of the Court are seated alternately to the right and left of the President in order of seniority.

No addition to or substitution in the membership of the Court shall be made in the course of the trial. The failure of any member to be present throughout any trial shall not invalidate the trial provided the court is at no time reduced below the above legal minimum. No member who has been absent at any time shall take ^{IN} any further part of the trial (R. 2(4)). Whenever deemed necessary, the court may on its own motion or the request of the accused, appoint an impartial advisor to assist the court in a particular case in checking the interpreter, giving expert opinion on German law, customs, and technical matters (G. 6, O. IV 6, R.4). The advisor may sit with the court, but will not participate in the decisions (G. 6, O. IV 6).

3. DUTIES OF PRESIDENT AS PRESIDING OFFICER

The senior member of the court present at the trial will be the president and presiding officer of the court (L. 3). He maintains order and gives directions for the regular and proper conduct of the proceedings and takes steps to prevent unnecessary delay in the trial. (All those present in the court-room stand until the court is seated. The accused and personnel of the prosecution and defense rise and remain standing until the choice of counsel has been announced.) He examines the accused after the accused has pleaded to the charge, and directs and controls the examination of the accused in the event the accused makes a voluntary statement in his own behalf; and must in any event see that the interests of the accused are protected, and that the facts are fully brought out (R. 7(4), R. 10(5), G. 12, G. 2). The President or any member of the court may sign the record (R. 2(3)). The President also administers all oaths to interpreters, reporters, witnesses, and all others who are required to be sworn in the course of the proceedings, and prescribes the uniform to be worn by members of the court (R. 4, O. III 3a).

4. DUTIES OF THE PROSECUTOR

The prosecutor should (a) familiarize himself with the orders and directives providing for the trial of War Criminals and should especially be familiar with the references cited under the first section of the Introduction; (b) see that a copy of the charge sheet is served upon the accused (R. 6, O. VS a), make the proper notation thereof and advise Defense Counsel of such action; (c) arrange with the accused and his defense counsel for the stipulation of pertinent matters which the accused does not wish to

-2-

contest; (d) arrange with the presiding officer of the court for the date of trial, arrange the court-room, provide the necessary stationery, arrange for the reporter and necessary interpreters to be present, and notify all members, other personnel of the court and witnesses concerning the date of trial; (e) see that the court receives a dossier of the case against the accused, such dossier to ^{OR} contain a copy of summary of all documentary and written evidence and a summary of the testimony to be given by the witnesses for the prosecution (G. 12); (f) place before each member of the court, for his use during the trial, a copy of the charges and particulars outlining the offenses for which the accused is being tried; (g) be responsible for the record of trial (L. 5b); (h) arrange for the transporting of the accused with necessary guard and the witnesses for the trial; (i) arrange sufficient military police or other guards to keep order; (j) arrange that the requisite mess and billeting facilities are available; (k) see that Defense Counsel has been furnished with the proper form for petition of review (F. 10); (l) ascertain the location, and advise the court, of the proper prison for the place of confinement of the accused in the event of conviction, and should draft the necessary commitment.

The above duties of the Prosecutor are not exclusive, but they are meant only as a reminder.

5. POWERS OF THE COURT

A general Military Court may impose any lawful sentence including death (O. III 3a). An Intermediate Military Court may impose any lawful sentence except death, or imprisonment in excess of ten years, or fine in excess of (2,500 pounds - - 10,000 dollars) (O. III 3b).

Within the limits of the powers given to the Court, both a term of imprisonment and a fine may be imposed for the same offense, and a further term of imprisonment within the powers of the Court may be imposed in default of payment of the fine (O. III 3c, R. 14(3) & 21).

In addition to or in lieu of sentence of fine, imprisonment or death (within its powers), a Military Government Court may make such orders with respect to the person of the accused and the property, premises, or business involved in the offense as are appropriate and authorized by the Rules of Military Government Courts; and shall have power to impound money or other objects, to grant bail and accept and forfeit security therefor, to order arrest to compel the attendance (A. 16 (1) 2) and order the detention of witnesses (R. 16 (3)), to administer oaths, to punish for contempt (R. 18), and such other powers as may be necessary and appropriate for the due administration of justice (O. III 3a).

If the members of the court agree, all interlocutory questions arising during the trial may be decided by the President subject to objection by any member of the court. Unless the court has agreed that all interlocutory questions arising during the trial may be decided by the President subject to the objection by any member of the Court, the findings of the Court on all interlocutory questions and on all other questions arising during the trial requiring the decision of the court will be determined by a majority vote of all the members present at the time the vote is taken. When the vote is evenly divided the President casts a second vote. Voting is in the inverse order of rank, the President voting last (R. 2(5)). If, in computing the number of votes required, a fraction results such fraction will be counted as one. A two-thirds vote of the members present is required to convict, and to assess a punishment on the accused.

RULES OF EVIDENCE

a. A Military Government Court shall in general admit oral, written and physical evidence having a bearing on the issues before it, and which in the opinion of the court is of probative value, and may exclude any evidence which in its opinion is of no value as proof (R. 12(1)).

b. The court shall in general require the introduction of the best evidence available. Hearsay evidence, including the statement -- sworn or unsworn -- of a witness not produced, is admissible; but if the matter is important and controverted, every effort should be made to obtain the presence of the witness, and an adjournment may be ordered for that purpose. The guiding principle is to admit only evidence that will aid in determining the truth (R. 12(2), G. 9).

c. Evidence of bad character of an accused shall be admissible before finding only when the accused person has introduced evidence as to his own good character or as to the bad character of any witness for the prosecution (R. 12(3)).

d. The court may at any stage of the examination question any witness and may call or recall any witness at any time before finding, if it considers it necessary in the interest of justice (R. 10 (3)).

e. To admit in evidence a confession of the accused, it

- 4 -

need not be shown such confession was voluntarily made and the Court may exclude it as worthless or admit it and give it such weight as in its opinion it may deserve after considering the facts and circumstances of its execution (R. 12(1)(2), G. 9).

f. **COMPELLIBILITY OF WITNESSES.** Any person other than the ACCUSED may be required to testify before a Military Government Court except a person of unsound mind, provided that no witness shall be required to incriminate himself and provided also that a Court shall not compel:

(1) A husband or wife, or a parent or child, to give evidence against the other;

(2) A legal adviser to disclose any communication between himself and a client made in the course of a professional relationship except when the communication was part of or connected with an unlawful act or omission;

(3) A priest to disclose any communication made in the course of a confession (R. 17).

These privileges are personal to the witness and except when claimed by the witness are not allowed.

In connection with self incrimination if the witness asserts that the answer to a question might incriminate him, the court, and not the witness, will decide whether answer to the question could have that effect and may require the witness to answer.

P A R T I I.

OUTLINE OF A TRIAL BEFORE A GENERAL OR INTERMEDIATE MILITARY GOVERNMENT COURT.

PRES: THE COURT WILL COME TO ORDER.

PROS: THE PROSECUTION IS READY TO PROCEED WITH THE CASE OF . . . ; THE ACCUSED (A MALE) (A FEMALE), IS PRESENT, TOGETHER WITH THE REGULARLY APPOINTED DEFENSE COUNSEL.

As to appropriate action in the event the accused does not appear before the court, see page 19.

If practicable, the members of the Court shall be furnished with a dossier of the case prior to trial (G. 12). The members of the Court should have before them during the trial copies of the charge and particulars.

PRES: THE COURT HAS APPOINTED . . . AS INTERPRETER. HE WILL BE SWORN. The interpreter rises and faces the President who asks: DO YOU SWEAR BY ALMIGHTY GOD (SOLENNLY AFFIRM) THAT YOU WILL, TO THE BEST OF YOUR ABILITY, TRULY TRANSLATE THE PROCEEDINGS OF THIS COURT AS THE COURT MAY REQUIRE? (R. 4, F. 14, O. IV 7).

INTERPRETER: I DO.

The prosecutor, defense counsel, and members of the court, in conducting their interrogations, should propound their questions by addressing the witness directly, and the interpreter should translate directly and verbatim, and in the same person, everything that is said subject to direction of the court. He should not be permitted to engage in colloquy on his own (G. 8). The accused is entitled to have the proceedings translated when he is otherwise unable to understand the language in which they are conducted (O. VB(3)).

Note that the President, and not the prosecutor, administers all oaths.

PRES: THE COURT HAS APPOINTED . . . AS REPORTER. HE WILL BE SWORN. The reporter rises and faces the President who asks: DO YOU SWEAR BY ALMIGHTY GOD (SOLENNLY AFFIRM) THAT YOU WILL, TO THE BEST OF YOUR ABILITY, TRULY RECORD AND TRANSCRIBE THE PROCEEDINGS OF THIS COURT? (R. 4, F. 14).

REPORTER: I DO.

PRES: (If an Adviser has been appointed). THE COURT HAS APPOINTED . . . AS ADVISER TO THE COURT. HE WILL BE SWORN. The Adviser rises and faces the President who asks: DO YOU SWEAR BY THE ALMIGHTY GOD (SOLENNLY AFFIRM) THAT YOU WILL, TO THE BEST OF YOUR ABILITY, ACT IMPARTIALLY AS ADVISER TO THE COURT?

ADVISER: I DO.

PRES: WHOM DOES THE ACCUSED DESIRE TO INTRODUCE AS COUNSEL?

ACC: THE DEFENSE COUNSEL. (R. 3(2)).

In the event of special counsel, such counsel is introduced as follows:

DC : THE ACCUSED DESIRES TO INTRODUCE AS COUNSEL _____ (Name) _____, WHO IS DULY QUALIFIED TO (Nationality) (Profession) PRACTICE BEFORE THIS COURT. (R. 3(2)).

In the event of civilian counsel, the court must satisfy itself and the record must show affirmatively that such counsel has permission of, and is authorized by, the Military Government to practice law. A statement of the court in the record to that effect will suffice. (R. 3(2)).

PROS: THE FOLLOWING MEMBERS OF THE COURT ARE PRESENT:

No member of the court or of the prosecution is sworn.

PROS: _____ IS ABSENT, HAVING BEEN DULY EXCUSED BY THE (Rank) (Name) APPOINTING AUTHORITY OR HIS DELEGATE.

PROS: THE GENERAL NATURE OF THE CHARGE AND PARTICULARS IS . . .

PROS: THE PROSECUTION WILL (NOT) CALL ANY MEMBER OF THE COURT AS A WITNESS. WILL THE ACCUSED CALL ANY MEMBER OF THE COURT AS A WITNESS? (R. 2).

DC : NO (YES)

PROS: HAS ANY MEMBER OF THE COURT A PERSONAL INTEREST IN THE CASE? (R. 2(1)).

The court should excuse any member of the court who will be called as a witness in the case or has a personal interest in it. (R. 2(1)).

✓
PRES: (after interrogating other members of the Court): NO.

PROS: _____ A MEMBER OF THE COURT, IS AN OFFICER
(Rank) (Name)
WITH LEGAL TRAINING. (L. 3).

PRES: THE COURT HAS SATISFIED ITSELF THAT IT IS PROPERLY CON-
STITUTED UNDER THE LAWS AND RULES GOVERNING MILITARY
GOVERNMENT COURTS AND HAS JURISDICTION OVER THE PERSON (S)
AND OFFENSE (S) OF THE ACCUSED. (R. 2(1)). IF EITHER
THE PROSECUTION OR DEFENSE HAS ANY GROUND FOR CHALLENGE
OF ANY MEMBER, IT IS REQUESTED THAT IT BE DISCLOSED NOW.
(If none disclosed, add) THERE BEING NO GROUND FOR
CHALLENGE, THE COURT IS DECLARED TO BE PROPERLY CON-
STITUTED. (R. 2).

Only challenges for cause may be exercised as neither the
prosecution nor the defense is entitled to peremptory challenges.
Challenges will be decided by a majority vote of the Court unless
the basis for challenge is such that obviously the challenged
member should be excused and it is unnecessary to go through the
formality of voting.

PRES: THE TRIAL WILL BE CONDUCTED IN OPEN COURT (IN CAMERA).

The court by majority vote is empowered to order trial in
camera if it is necessary for security, protection of witnesses,
or other good reason. Any order for trial in camera will be not-
ed on the record and a report attached stating the reasons there-
for (R. 10 (6), G. 24).

PRES: THE ACCUSED WILL NOW BE INTERROGATED AS TO HIS NAME, AGE,
RESIDENCE, NATIONALITY, AND STATUS.

The accused will always stand when addressed (G. II 42b).

PRES: _____

ACC : _____

(If the accused is under 18 years of age the procedure set
forth on page 18 will control.)

PRES TO ACC: YOU ARE ADVISED THAT UNDER THE LAW OF MILITARY
GOVERNMENT YOU ARE ENTITLED IN THIS COURT TO THE
FOLLOWING: (O. V8).

1. TO HAVE, IN ADVANCE OF TRIAL, A COPY OF THE
CHARGES UPON WHICH YOU WILL BE TRIED.

- 8 -

While no time in advance of trial is prescribed, the pur-
pose of this provision is to enable the accused to receive a copy
of such charges sufficiently in advance of trial as will assure
him a fair trial and afford him an opportunity to prepare a
defense.

2. TO BE PRESENT AT YOUR TRIAL, TO GIVE EVIDENCE, AND TO
EXAMINE OR CROSS EXAMINE ANY WITNESS.

The Court may proceed in the absence of the accused if
he applied for and is granted permission to be absent, or if he
is believed to be a fugitive from justice. (O. V. 8b).

3. TO CONSULT A LAWYER BEFORE TRIAL AND TO CONDUCT YOUR
OWN DEFENSE OR TO BE REPRESENTED AT THE TRIAL BY A
LAWYER OF YOUR OWN CHOICE, SUBJECT TO THE RIGHT OF THIS
COURT TO DEBAR ANY PERSON FROM APPEARING BEFORE IT.
4. IN ANY CASE IN WHICH A SENTENCE OF DEATH MAY BE IMPOSED
TO BE REPRESENTED BY AN OFFICER OF THE UNITED STATES
FORCES.

(Defense Counsel will be appointed in all cases (L. 3).

5. TO BRING WITH YOU TO THIS TRIAL SUCH MATERIAL WITNESSES
IN YOUR OWN DEFENSE AS YOU MAY WISH, OR TO HAVE THEM
SUMMONED BY THE COURT AT YOUR REQUEST, IF PRACTICABLE.
6. TO APPLY TO THE COURT FOR AN ADJOURNMENT WHERE
NECESSARY TO ENABLE YOU TO PREPARE YOUR DEFENSE.
7. TO HAVE THE PROCEEDINGS TRANSLATED WHEN YOU ARE OTHER-
WISE UNABLE TO UNDERSTAND THE LANGUAGE IN WHICH THEY
ARE CONDUCTED.
8. IN THE EVENT OF CONVICTION TO FILE A PETITION SETTING
FORTH GROUNDS WHY THE FINDINGS AND SENTENCE SHOULD BE
SET ASIDE OR MODIFIED.

Such petition shall be filed on Legal Form No. 10 within
ten (10) days after the announcement of the Court's decision
unless before the expiration of such ten (10) days the Court
extends such period for good cause shown. (MG Dir. 7 July 45, Sec V,
Part (II) 9e).

2
PRES TO ACC: DO YOU UNDERSTAND?

ACC : YES, SIR.

PRES TO ACC: ARE YOU NOW READY FOR TRIAL IN THIS CASE?

ACC : YES, SIR.

PRES TO ACC: HAS A COPY OF THE CHARGE SHEET BEEN SERVED UPON YOU PRIOR TO TRIAL? (R. 6(1)).

ACC : YES, SIR.

PRES TO ACC: I WILL NOW READ TO YOU THE CHARGE (S) AND PARTICULARS.

The President reads to the accused the Charge (s) and Particulars as set forth in the Charge Sheet. After the reading of EACH Particular and EACH Charge the Court will ask the accused in the language next below set out, if he understands the same and whether he pleads guilty or not guilty to it (R. 7(3), G. 2). The Court may accept a plea of guilty to an offense other than that charged (R. 7(5)).

PRES TO ACC: DO YOU UNDERSTAND THE CHARGE (PARTICULARS)?

ACC : YES, I DO.

If the issue of insanity is raised, it should be done here. The court will then proceed as set forth on page 19 of this Outline.

PRES TO ACC: HOW DO YOU PLEAD?

ACC , : (GUILTY) (NOT GUILTY)

If the plea is guilty:

PRES TO ACC: DO YOU UNDERSTAND THAT BY A PLEA OF GUILTY YOU ADMIT AS TRUE ALL PARTICULARS AND THE CHARGE AS SET FORTH IN THE CHARGE SHEET AND THAT WITHOUT FURTHER PROOF THE COURT CAN IMPOSE ANY LAWFUL SENTENCE, INCLUDING DEATH (IF A GENERAL MILITARY GOVERNMENT COURT) (UP TO TEN (10) YEARS IMPRISONMENT AND RM 100,000 IF AN INTERMEDIATE COURT)? (R. 7(3), O.III 3a,b).

ACC : YES, SIR.

PRES TO ACC: DO YOU DESIRE TO CHANGE YOUR PLEA TO ONE OF NOT GUILTY?

ACC : NO, SIR.

While the court may sentence on plea of guilty without further proof, it must receive evidence to determine that plea was not improvident or unqualified. After hearing such evidence the court will be closed and will determine by majority vote whether such plea of guilty should be entered for the accused.

- 10 -

If it determines that the plea of guilty will be entered, a finding of guilty by not less than two-thirds vote should be made by the court and announced in open court (G. 12, R. 7(6)). The court will then receive evidence to (a) ascertain extenuating circumstances, if any, and (b) to enable it to determine the sentence to be imposed (R. 8(1)). This may properly include evidence of character of the accused and prior convictions, if any. The court will then be closed, decide upon the sentence to be imposed upon the accused by not less than two-thirds vote, reopen and announce the sentence in open court.

If the plea of guilty is not received and it is determined that a plea of not guilty should be entered for the accused (G. 12, R. 7 (6)), the court will open and announce:

PRES TO ACC: A PLEA OF NOT GUILTY WILL BE ENTERED AND THE CASE WILL BE TRIED AS IF SUCH A PLEA HAD BEEN MADE BY THE ACCUSED.

The court may not receive a plea of guilty and must enter a plea of not guilty to any offense involving the death penalty provided, however, that a plea of guilty to an offense punishable by death may be accepted if the court is satisfied from the nature of the case that the punishment of death would be clearly excessive and that a lesser punishment which is within its power to impose would suffice (R. 11 (3)).

The Court may, on its own motion, or at the request of the accused, at any time before the sentence, alter a plea of guilty to one of not guilty (R. 13 (3)).

If there is more than one defendant, and one or more, but not all, plead guilty, or if a single defendant pleads guilty to one or more, but not all of the charges, the court shall defer sentence on any of the charges until the trial of all is completed, in order to impose one sentence on each defendant with respect to all the charges of which he has pleaded or been found guilty (G. 13).

PRES TO ACC: THE COURT NOW DESIRES TO INTERROGATE YOU. AT A LATER STAGE OF THIS TRIAL YOU MAY MAKE AN UNSWORN STATEMENT, ON WHICH YOU MAY BE CROSS-EXAMINED. YOU ARE ADVISED THAT ANY STATEMENTS YOU MAKE NOW OR LATER IN YOUR TRIAL WILL BE EVIDENCE IN THIS CASE. YOU ARE ALSO ADVISED THAT THE COURT MAY DRAW SUCH INFERENCES AS THE CIRCUMSTANCES JUSTIFY FROM YOUR REFUSAL TO ANSWER OR FROM YOUR FAILURE

- 11 -

7
(
TO TAKE THE STAND IN YOUR OWN DEFENSE. HOWEVER, YOU MAY NOT BE SENTENCED FOR CONTEMPT FOR REFUSING TO ANSWER. ARE YOU WILLING AT THIS TIME TO SUBMIT TO INTERROGATION BY THE COURT? (R. 7(4), R. 10(5), G(12)).

Where the accused is a British or American subject he should not be interrogated under rule 10 (5) but the trial should be conducted in accordance with Anglo-American legal procedure, the accused being sworn if he elects to testify (G. 12).

ACC : YES, SIR

The President and then any member of the Court interrogates the accused on facts pertinent to the Particulars and the Charge. The dossier furnished the Court by the prosecution at the inception of the trial should be used as a basis for an examination of the accused, but should not be regarded as proof of the statements it contains, which will have to be established in evidence in the usual way (G. 12).

The Court may interrogate the accused at the time of pleading or at the trial, but shall not apply any compulsion to require him to answer. Any statements then made may be received as evidence. If the accused elects to testify at a later stage of the trial, he may do so, but he may not be required to do so and shall not be sworn. The accused's replies will form a part of the record and before concluding the interrogation the Court should bear in mind that the accused may choose not to give evidence at a later stage and there may be no further opportunity to examine him (R. 7(4), R. 10 (5), G. 12).

PRES: DOES THE PROSECUTOR DESIRE TO MAKE AN OPENING STATEMENT? (R. 10 (1), G. 4).

PROS: YES, SIR. (NO, SIR).

The prosecutor makes his opening statement, if any.

✓ PROS: THE PROSECUTION CALLS AS ITS FIRST WITNESS _____.

PRES TO WITNESS: DO YOU SWEAR BY GOD, THE ALMIGHTY AND OMNISCIENT (SOLEMNLY AFFIRM) THAT YOU WILL SPEAK THE PURE TRUTH, AND WILL WITHHOLD AND ADD NOTHING?

WITNESS : I DO.

- 12 -

The foregoing oath is administered by the President to all witnesses, but NOT to the accused (R. 10(4), R. 10(5), G.12, F.14). A form of affirmation, in the event the witness wishes to make an affirmation, instead of taking an oath, is the same as the oath except the words "solemnly affirm" are substituted for the words "swear by God, the Almighty and Omniscient" (R. 10(4), F. 14-4). Witnesses and the accused stand while giving testimony unless the court gives special permission for them to be seated. Counsel interrogating them may stand or sit.

Witnesses should be permitted in the court-room only during the course of their interrogation.

✓ PROS: STATE YOUR FULL NAME, ADDRESS, OCCUPATION, AGE, AND RESIDENCE.

WITNESS: _____.

✓ PROS: DO YOU KNOW THE ACCUSED? IF SO, STATE HIS NAME.

WITNESS: _____.

✓ PROS: IS HE PRESENT IN COURT? IF SO, INDICATE TO THE COURT WHICH PERSON HE IS.

WITNESS: (Indicates the accused).

Reference is made to the procedural suggestions relating to stipulations (with forms), judicial notice, expert witness, documentary evidence, and real evidence which are incorporated in this outline on pages _____ to _____ hereof inclusive for the benefit of counsel and the court.

PROS: NO FURTHER QUESTIONS. DOES THE DEFENSE DESIRE TO CROSS-EXAMINE?

DC: THE DEFENSE DOES (NOT).

✓ PROS: ANY QUESTIONS BY THE COURT?

PRES: YES (NO).

PRES: THE WITNESS IS EXCUSED.

PROS: THE PROSECUTION RESTS.

If any motion for a finding of not guilty is to be made, it is made at this time as follows: (R. 10(2)).

DC : THE DEFENSE MOVES AT THIS TIME FOR A FINDING OF NOT GUILTY

- 13 -

AS TO (ALL PARTICULARS 1, 2, ETC FIRST CHARGE, ETC.)
ON THE GROUND THAT THERE IS NOT SUFFICIENT EVIDENCE TO
SUPPORT A FINDING OF GUILTY AS TO THIS (THESE) PARTICU-
LAR (S) AND THIS (THESE) CHARGE (S).

If any such motion is made, the Court will determine the
issue as in the case of any other interlocutory question and will
announce its decision.

After the close of the case for the prosecution, the court
may on its own motion acquit the accused on any charge if it de-
cides there is not sufficient evidence to support the charge and
that the accused should not be required to answer it, and any such
acquittal shall be entered in the record of the case (R. 10(2)).

The court, on application of the prosecution, may direct
that any further charge or charges be preferred against the accused
and may grant any necessary adjournment for that purpose (R. 10(2)).
If no adjournment is deemed necessary, the court may proceed to
make its findings and assess the punishment on such further charge
without the re-introduction of the evidence already heard.

A Military Government Court may amend a charge at any time
before finding, provided that an adjournment is granted
if necessary, and that no injustice is thereby done the accused
(R. 13 (1)).

Here is made the opening statement, if any, of the defense.

DC : THE DEFENSE DOES (NOT) DESIRE TO MAKE AN OPENING STATEMENT.

DC : THE DEFENSE CALLS AS ITS FIRST WITNESS _____.

The President administers to the defense witnesses the same
oath administered to witnesses for the prosecution.

✓ PRES TO ACC: DOES THE ACCUSED DESIRE TO TESTIFY?

DC : THE ACCUSED DOES (NOT).

If the accused elects to take the stand in his own behalf,
he is not permitted to take the oath and must not be sworn (R. 10
(5), G. 12).

DC : THE DEFENSE RESTS.

PROS: THE PROSECUTION HAS NOTHING FURTHER. DOES THE COURT DESIRE
ANY WITNESSES CALLED OR RECALLED? (R. 10(3)).

PRES: THE COURT DOES (NOT).

PROS: (Argument).

DC : (Argument).

It will be noted that the defense has the right to close
(R. 10(1)f, R. 11).

PRES: HAS THE PROSECUTION ANYTHING FURTHER?

PROS: IT HAS (NOT).

PRES: HAS THE DEFENSE ANYTHING FURTHER?

DC : IT HAS (NOT).

PRES: THE COURT WILL BE CLOSED.

The findings of the Court as to the guilt or innocence of
the accused and, if guilty, as to the sentence to be imposed, must
be by the concurrence of at least two-thirds of all the members
present at the time the vote is taken (L. 4).

The court will be opened in the presence of the accused.
(For action if accused is absent see instructions under
Part III p. 19, "Action when accused does not appear for
trial"), his counsel, the interpreter, the reporter, and the per-
sonnel of the prosecution, all of whom remain standing (except the
reporter) at which time the President announces:

PRES: THE COURT, IN CLOSED SESSION, AT LEAST TWO-THIRDS OF THE
MEMBERS PRESENT AT THE TIME THE VOTE WAS TAKEN CONCURRING
IN EACH FINDING OF GUILTY FINDS YOU:

OF ALL PARTICULARS AND THE CHARGE: GUILTY

OR

OF PARTICULARS 1, FIRST CHARGE : GUILTY

OF PARTICULARS 2, FIRST CHARGE : NOT GUILTY

OF FIRST CHARGE : GUILTY

PRES: THE COURT ACQUITS YOU OF ALL PARTICULARS AND THE CHARGE(S).

Irrespective of the result of trial, the accused will be
returned to custody pending final disposition (L. 5a).

A Military Government Court shall announce its findings
on each particulars and charge before it, and shall pronounce

one sentence in respect of all the charges upon which the accused is found guilty (R. 14(1)).

The findings, as well as the sentence, must be announced in open court (R. 10(1)g,j).

PRES: THE COURT WILL HEAR EVIDENCE OF PREVIOUS CONVICTIONS AND OF ANY EXTENUATING CIRCUMSTANCES.

Evidence of any previous convictions of the accused in any court may be received (R. 10(1)i).

PROS: THE PROSECUTION HAS (NO) EVIDENCE OF PREVIOUS CONVICTIONS.

PREL TO ACC: DOES THE ACCUSED DESIRE TO INTRODUCE EVIDENCE OF EXTENUATING CIRCUMSTANCES OR TO MAKE ANY FURTHER STATEMENT TO THE COURT? (R. 10(1)i).

DC : THE ACCUSED DOES (NOT).

PRES: THE COURT WILL BE CLOSED.

The procedure for voting on the sentence is the same as for voting on findings (L. 4).

The court will be opened in the presence of the accused. (For action if accused is absent see instructions under

Part III p. 19, "Action when accused does not appear for trial"), his counsel, the interpreter, the reporter, and the personnel of the prosecution, all of whom remain standing (except the reporter) at which time the President announces:

PRES: THE COURT IN CLOSED SESSION, AT LEAST TWO-THIRDS OF THE MEMBERS PRESENT AT THE TIME THE VOTE WAS TAKEN CONCURRING; SENTENCES YOU:

1. TO PAY A FINE OF RM _____ ON OR BEFORE 194 AND, IN DEFAULT OF PAYMENT TO SERVE A (FURTHER) TERM OF IMPRISONMENT OF ONE DAY FOR EACH RM 10 OF THE TOTAL FINE AT OR SUCH OTHER PLACE AS MAY BE DESIGNATED BY COMPETENT MILITARY AUTHORITY (R. 14 (3)).
2. TO BE IMPRISONED FOR A TERM OF _____ COMMENCING 194 AT _____ OR SUCH OTHER PLACE AS MAY BE DESIGNATED BY COMPETENT MILITARY AUTHORITY.

- 16 -

3. TO LIFE IMPRISONMENT COMMENCING WITHIN AT _____ OR SUCH OTHER PLACE AS MAY BE DESIGNATED BY COMPETENT MILITARY AUTHORITY.
4. TO DEATH BY DECAPITATION AT SUCH TIME AND PLACE AS HIGHER AUTHORITY MAY DIRECT.

Death sentences imposed on other than Nationals of the United Nations will be executed by decapitation; those imposed on Nationals of the United Nations will be by shooting. (Part I, Sec. 2 pars. 216, 217, Technical Manual for Prison and Legal Officers, Military Government, Germany, Second Edition; L. 6).

(As to sentence powers of the Court, see page 3.)

PRES: IS THERE ANYTHING FURTHER TO BE PRESENTED TO THE COURT?

PROS: YES (NO)

PRES: THE COURT ADJOURNS, SUBJECT TO CALL BY THE PRESIDENT.

P A R T I I I.

SPECIAL CASES

1. TRIAL OF JUVENILES

If the accused is under 18 years, but over 16 years of age, the procedure will be as follows: (R. 22(2)).

PRES: THE ACCUSED WILL BE INTERROGATED AS TO HIS PHYSICAL AND MENTAL CONDITION.

After interrogation, the Court is closed and determines by majority vote whether accused will be tried as an adult. If such is the decision, the President announces:

PRES: IT IS THE DECISION OF THE COURT THAT THE PHYSICAL AND MENTAL MATURITY OF THE ACCUSED IS SUCH THAT HE (SHE) WILL BE TRIED IN ALL RESPECTS AS AN ADULT PERSON.

If it is the decision of the Court that the physical and mental immaturity of the accused required that he be treated as juvenile or if the accused is under the age of 16 years, the court will adopt a flexible procedure based on the accepted practices of local Juvenile Courts, including, so far as practicable, the following measures: (R. 22(1)).

a. Report by Welfare Officer in advance of trial. If necessary the court will be adjourned pending receipt of such report.

The report of a welfare officer is to be considered by the Court to assist it in determining the nature and extent of the punishment to be given to the juvenile accused. Due regard must be had for the protection of the Allied Forces, prevention of further offenses, and lastly and as a secondary consideration the rehabilitation of the juvenile involved. The last includes the making of a good citizen of the offender.

The report should include all matters regarding the home conditions, station in life, educational opportunities and advantages, previous record, membership in every organization, mental abilities, social background, etc., that would assist the Court in arriving at a just finding and sentence.

b. Detention, where necessary, in a special institution or in any event apart from adult offenders.

- 18 -

c. Hearing informally in closed sessions.

d. Interrogation of parents.

2. ACTION WHEN ACCUSED DOES NOT APPEAR FOR TRIAL.

a. If it is proved that the accused was duly served with a summons to appear, or with a copy of the Charge Sheet, the Court may proceed with the trial in his absence and may, if it considers the case against him proved, record a conviction and sentence.

b. If it is not proven that the accused was duly served as above provided, but the Court is satisfied that after reasonable steps have been taken to find and summon the accused, he cannot be found, the Court may proceed in his absence up to but not beyond the recording of evidence and the making of any order permitted under paragraph 3 below of this Rule. In the event of the accused being subsequently brought before the court, such recorded evidence shall be admissible as evidence in the case, provided that the accused shall be entitled to cross-examine any of the original witnesses for the prosecution whose attendance can be procured (in which case the prosecution shall be entitled to re-examine) and both the prosecution and the accused shall be entitled to call additional evidence. (If the Court in which the original proceedings were held is no longer in existence at the time of the apprehension of the accused, the matter will be referred to the Appointing Authority for appropriate action).

c. In proceedings under paragraph 2 above, the Court may, whenever it appears to be just and appropriate, make an interim order for the custody or impounding of any property which the accused owns or in which he has an interest, pending the conclusion of the trial (R. 10 (7)).

3. ACTION IN CASE OF INSANITY OF ACCUSED.

a. Whenever the Court is satisfied that a substantial issue has been raised on the question whether the accused, either at the time of the commission of the offense was insane or at the time of trial is insane, the Court should suspend further proceedings in the case and certify the matter to the appointing authority for appropriate action.

- 19 -

PART IV.

PROCEDURAL SUGGESTIONS

1. STIPULATIONS

A stipulation is an agreement between the prosecution, accused, and the defense counsel, either as to facts (that certain facts are true), or as to testimony (that if a certain witness was present in court he would give the following testimony) - - (here set out the expected testimony). In a stipulation as to testimony to be given by a witness, if present, there is no agreement as to the (verity) of such testimony, but it is on the same plane as the testimony of those witnesses who appear in person and testify.

TRUTH

Stipulations are entered into with a view of saving time, labor and expense. Stipulations should be drawn to cover as many AS POSSIBLE of the unimportant and uncontested matters which necessarily must be established by either side. Stipulations may be agreed to by all parties prior to the trial, but in all cases of the use of stipulations in the trial the record must show that they are agreed upon by the prosecutor, the accused, and the defense counsel in open court. The record must also show that such stipulations were received by the Court. They need not be accepted by the Court when any doubt exists as to the accused's understanding of what is involved. Stipulations should not be made as to vital matters amounting to a complete defense or substantially admitting the accused's guilt. Stipulations should be closely scrutinized by the Court before acceptance.

The Court is not bound by a stipulation, even if received. For instance, the Court's own inquiry may convince it that the stipulated fact is not true. The Court may permit a stipulation to be withdrawn, and if so withdrawn, it is not effective for any purpose.

Stipulations as to facts may be written or oral. Such a stipulation may be in the form:

"It is stipulated between the accused, his counsel, and the prosecution that (Here set out the facts stipulated)."

If the stipulation is in written form the side offering it may show it to the other side and offer it in evidence. If oral, it is stated in court. The accused and his counsel should announce in open court that they join in the stipulation. The Court may assure itself by questioning, if necessary, that the accused fully understands the contents of the stipulation and that it is otherwise proper.

- 20 -

The Court will then announce whether the stipulation is received by the court.

Stipulations as to testimony:

(PROS) (DC) : It is stipulated between the accused, his counsel, and the prosecution, that, if _____ were in court, he would testify as follows: (or would testify as shown on the statement, Exhibit _____, which I now offer.)

COURT: (The court should announce its decision as to receiving the stipulation as above).

THE FOLLOWING FORMS MAY BE USED FOR STIPULATIONS ENTERED INTO PRIOR TO TRIAL:

STIPULATIONS AS TO FACTS

Bad Nauburg, Germany,
15 July 1945.

STIPULATION

It is hereby stipulated and agreed by and between the prosecution, defense, and the accused, as follows:

That 1st Lt. Jos. R. Cannon, A C, U. S. Army, O-1679543, was shot down near Bremen, Germany, on 10th day of January 1945, and that he was confined in POW camp Stalag Luft 3 from the 11th day of January 1945, until 20th day of April 1945, when he was liberated by the troops of the U. S. Army.

/s/ Thomas D. MacFadden
/t/ THOMAS D. MACFADDEN,
Capt., 180th Inf.,
Prosecutor.

/s/ Cecil T. People
/t/ CECIL T. PEOPLE,
Capt., 179th Inf.,
Defense Counsel.

/s/ Hans Schmidt
/t/ HANS SCHMIDT,
Accused.

- 21 -

2.

JUDICIAL NOTICE

Certain kinds of facts need not be proved because the court is authorized to recognize their existence without proof. Such recognition is termed "Judicial Notice".

Among matters of which a Military Government Court may take judicial notice are the following:

The Constitution, treaties, and other general laws of the United States; the law of nations; rules of war as interpreted and construed by the United States of America.

The great seal of the United States and those of its possessions and of the several States and Territories; the seals of all courts of record of the United States and its Territories and possessions and of the several States; the seal of a notary public; the seal of the Adjutant General's Office.

The ordinary divisions of time, as to years, months, weeks, etc.; general facts and laws of nature, including their ordinary operations and effects; and general facts of history; current condition of war and peace.

The organization of the Army, including the regulations relating thereto, the Army Regulations, the Official Army Register, the Army List and Directory, the provisions of official Army manuals, the existence and location of military departments, corps areas (service commands), reservations, posts, and stations of troops, as published to the Army; the fact that an officer belongs to a certain organization, branch, etc.; the organization and component parts of the German Army.

General orders, bulletins, and circulars of the War Department; War Department orders regarding General Courts-Martial, Military Commissions, Military Tribunals, and Military Government Courts. General orders, circulars, bulletins, orders regarding General Courts-Martial, Military Commissions and Tribunals, and Military Government Courts of the appointing authority, and of all higher authority; and all manuals, directives, rules, orders, and publications of Military Government, Military Government Courts and Commissions in occupied Germany.

All proclamations, ordinances, laws, notices, and other regulations for the people of the occupied territory of Germany, or any sub-divisions thereof; German Laws in force in the territory wherein the Court is sitting; and all matters of common knowledge in such territory.

The seal of an Adjutant General's Office on a certificate is prima facie evidence that the signature thereon is that of an Adjutant General or one of his assistants.

The principle of judicial notice does not prohibit the court from receiving evidence of a fact of which it is authorized to take judicial notice, and, if not satisfied of the fact of which it is asked to take judicial notice, it may resort to any authentic source of information. For example, where the terms of a general order of the War Department are material, the court may send for a copy of the order.

It is customary for the side desiring the court to take judicial notice of a given fact to ask the court to do so, at the same time presenting any available authentic source of information on the subject.

3. EXPERT WITNESS, HOW QUALIFIED

If the witness is to be used as an expert, in addition to developing the name, age, residence and nationality of the witness, facts should be adduced showing the education generally; the specialized education, if any, along the lines for which the witness is offered as an expert; the number of years the witness has been engaged in such line of work and the place of such work; the opportunities his work has afforded for him to learn about his specialty; the text books, magazine articles, etc., he has written on his specialty; honors conferred upon him by Governments, institutions, foundations, or recognized organizations devoted to his specialty; and any other facts that would be of value to the ordinary man in determining if the witness is so well qualified in his specialty as to merit the name of expert.

4. REAL EVIDENCE, HOW INTRODUCED.

Material things, such as watches, coats, pistols, etc., when relevant, may be offered as exhibits in the same manner as documentary evidence. Although the court has the right to consider such evidence as in its opinion has value as proof, and while not REQUIRED, it is suggested--in order that the court may be fully acquainted with the facts bearing on the identification and custody of the article and so that the record will indicate to the reviewing and confirming authorities the exact nature thereof--that each article be identified by appropriate evidence and that proof be made of the custody of such articles in an unbroken chain from the time they originally came into possession of the offering side until the very instant of offering in evidence. If a witness is available who can identify the object as the one in question, and that such object is in substantially the same condition as it was

- 24 -

when first coming into the possession of the offering side, there is no necessity for a strict accounting of its possession in the interim. If due to the nature of real evidence, it is impracticable to attach it to the record, the party offering it should request authority to withdraw it at the end of the trial. In such case the party offering it should develop by testimony a description of the article sufficient to enable the reviewing authority to visualize it.

These articles should be handed to the court reporter to be marked as exhibits "for identification" prior to the questioning of the witnesses who are to furnish the proof whereby the articles are properly identified for admission in evidence. They should then be offered in evidence by some such statement as:

"I now offer in evidence Prosecution's (or Defense's) Exhibit No. ___" (Identification No.)".

IN ALL CASES OF EXHIBITS BE SURE TO INTRODUCE THE EVIDENCE AFTER IT HAS BEEN PROPERLY IDENTIFIED, AND HAVE THE RECORD SO SHOW.

Tags, stickers, or adhesive tape may be used by the court reporter to affix properly his mark of identification to articles, such as pistols, knives, guns, etc., on which written marks would not show or would wear off easily.

5. DOCUMENTARY EVIDENCE, HOW INTRODUCED

a. All documents and other written instruments which in the opinion of the Court have a bearing on the issues before it and have probative value are admissible in evidence, including:

Proceedings of Boards and Courts of Inquiry; investigations by Inspectors General or other investigating officers and reports of War Crimes Investigation Teams, either in whole or in part; affidavits and depositions of witnesses (including affidavits which have been translated into a language different from that used by the witness in making the affidavit).

b. While not REQUIRED, it is suggested--in order that the Court may be fully acquainted with their nature and source and so that the record will indicate to the reviewing and confirming authority the exact nature thereof--the proof of authenticity of all documents and written instruments received in evidence be established in the normal way.

A desirable predicate for the introduction of evidence of this character would include, but not necessarily be limited to, the following steps, assuming the document to be an affidavit or written statement:

- (1). Identification of the written statement by the witness (who has been placed on the stand, sworn, and identified).
- (2). The introduction of evidence of the execution of the document in the presence of the witness or otherwise by the person whose signature appears thereon.
- (3). The identification of the signature of the person executing it.

c. After the court has "admitted" any document or instrument, it must be introduced in evidence as an exhibit and given an exhibit number so that it will become a part of the record.

d. All documents should be handed to the court reporter to be marked as exhibits "for identification" prior to the questioning of the witnesses who are to furnish the proof whereby the articles are properly identified for admission in evidence. After the proper predicate has been laid for the admission of the article it should then be offered in evidence by some such statement as:

"I now offer in evidence Prosecution's (or Defense's) Exhibit No. __ (Identification No.)".

- 26 -

P A R T V

CASE RECORD

The Case Record will consist of Legal Form No. 8, the front and reverse sides of which should be filled out completely, in which should be inserted the following:

1. Order of Review (Legal Form No. 13 (CA/G1/18)).
2. Review by Staff Judge Advocate (in triplicate).
3. Petition for Review (Legal Form No. 10 (CA/G1/15)).
4. Special Orders appointing Court (including amending orders).
5. Letter or Order referring Case to the Court.
6. Charge Sheet (Legal Form No. 3 (CA/G1/8)).
7. Record of Testimony (including exhibits) in duplicate.
8. Commitment (Legal Form No. 5 (CA/G1/10)).
9. Miscellaneous Papers.

A general outline of Record of Testimony is attached hereto.

- 27 -

RECORD OF TESTIMONY

in trial of

by

GENERAL MILITARY GOVERNMENT COURT

Tried at

19

Index	Page(s)
Arraignment	
Pleas	
Interrogation of Accused on Charges and Particulars	
Statement by Accused	
Findings	
Testimony as to Previous Convictions and Exonerating Circumstances	

TESTIMONY

Name of Witness	Direct Page	Gross Page	Redirect Page	Recross Page	Court Recall Page	edPage

EXHIBITS, ETC., APPENDED

Description	Number	Page where introduced

A General Military Court appointed by _____ (describe special orders) met at _____ on the _____ day of _____ 194____, (place) _____ (Month) _____ hours, as directed by the President thereof. (Time)

The Court proceeded in open Court to the trial of _____, accused, who was present. (If the accused was not present the record should show the pertinent facts required by Rule 10 (7); see Part III, Outline for Trials, p. 19.)

_____, a member of the Court, is an officer with _____ (Rank) (Name) _____, legal training.

The Court appointed _____ as interpreter for the case, and he was duly sworn. _____ (Grade) (Name) (ASN) (Organization)

(If an interpreter is appointed to assist the accused and his counsel, the record should so indicate).

The Court has appointed _____ as reporter for the case, and he was duly sworn. _____ (Grade) (Name) (ASN) (Organization)

(If the Court appoints an Adviser, the record should so indicate and he should be sworn.)

(If it was agreed by the Court that the President would rule on all interlocutory questions, subject to the objection of any member of the Court, the record should so indicate.)

PRES: Whom does the accused desire to introduce as counsel?

DC : The Defense Counsel.

(DC : The accused desires to introduce as counsel _____ (Name) _____, who is duly qualified to _____ (Nationality) (Profession) _____ practice before this court. (If such special counsel is a lawyer, the record will contain a statement that he is not debarred by Military Government from appearing before the Court.)

All members of the Court and the personnel of the prosecution and defense appointed by the foregoing Special Orders were present (except _____, excused by appointing authority).

The Prosecutor stated the general nature of the Charges and Particulars.

PROS: The prosecution will not call any member of the Court as a witness. Will the accused call any member as a witness?

DC : No, sir.

PROS: Has any member of the Court a personal interest in this Case?

TRES: (After interrogating the members of the Court) No.

PRES: The Court has satisfied itself that it is properly constituted under the laws and rules governing Military Government Courts and has jurisdiction over the person(s) and offense(s) of the accused. If either the prosecution or the defense has any ground for challenge of any member, it is requested that it be disclosed now. (If none disclosed, add:) There being no grounds for challenge, the court is declared to be properly constituted.

TRES: The Trial will be conducted in open Court (in camera).
(If in camera, state reasons).

The court interrogated the accused as to his name, age, residence, nationality, and status (civilian or military) as follows:

PRES: _____.

ACC : _____.

TRES: _____.

ACC : _____.

(If it appears that the defendant is under 18 years, but over 16 years, the Court proceeds as follows:)

The Court interrogated the accused with respect to his physical and mental condition as follows:

TRES: _____.

ACC : _____.

TRES: _____.

ACC : _____.

- 30 -

After consideration by the Court in closed session, the President announced that it was the decision of the Court that the physical and mental maturity of the accused was such that he (she) would be tried in all respects as an adult person. (If the finding of the Court is contrary to the foregoing, accused shall be treated as a juvenile offender and the trial suspended pending compliance with Rule 22 (See "Juvenile" in part III, page 18), whereupon the trial will proceed and the record will be completed in the normal way.)

President advised the accused of his (her) rights as set forth in Article V, Ordinance No. 2, Military Government Courts. Upon interrogation the accused stated that he (she) understood such rights.

TRES TO ACC: Are you now ready for trial in this case?

ACC : Yes, sir.

TRES TO ACC: Has a copy of the Charge Sheet been served upon you prior to trial?

ACC : Yes, sir.

ARRAIGNMENT

TRES: I will now read to you the Charge and Particulars.

The Court then read to the accused the Charge and Particulars as set forth in the Charge Sheet.

TRES TO ACC: Do you understand the Charge and Particulars?

ACC : I do.

PLEAS

TRES TO ACC: How do you plead?

(If there is more than one Charge, the above procedure is followed as to each Charge, the accused pleading to each Charge and Particulars separately.)

ACC: To the Charge and Particulars, (Not Guilty) (Guilty).

(If the plea is "Guilty", the following should appear:)

The accused was asked whether he understood that, by a plea of guilty, he admitted as true all Particulars and the Charge as set forth in the Charge Sheet, and that, without further proof, the court could impose any lawful sentence,

- 31 -

including death (if a General Military Government Court) (up to 10 years and RM 100,000, if an Intermediate Court) to which he replied that he did (not) understand. Accused was then asked whether he desired to change his plea to one of "Not Guilty".

ACC: Yes, sir.

Whereupon the plea was changed to Not Guilty.

(If the plea of guilty was not changed the Court should proceed as indicated in the Outline for Trial.)

INTERROGATION OF ACCUSED ON CHARGES AND PARTICULARS

TRES: The Court now desires to interrogate you. At a later stage of this trial you may make an unsworn statement, on which you may be cross-examined. You are advised that any statements you may make now, or later in your trial, will be evidence in this case. You are also advised that the Court may draw such inferences as the circumstances justify from your refusal to answer or from your failure to take the stand in your own behalf. However, you may not be sentenced for contempt for refusing to answer. Are you willing at this time to submit to interrogation by the court.

ACC : Yes, sir.

(If the accused is willing to submit to questioning):

Q : _____?

A : _____.

Q : _____?

A : _____.

The Prosecutor then made an opening statement to the court.

TESTIMONY OF WITNESSES

TESTIMONY FOR THE PROSECUTION:

_____, a witness for the prosecution, was sworn and testified (through an interpreter) as follows:

DIRECT EXAMINATION

CROSS EXAMINATION

REDIRECT EXAMINATION

RECROSS EXAMINATION

EXAMINATION BY THE COURT

(After prosecution has offered all its evidence):

TROS: The prosecution rests.

(If the defense makes a motion for any finding of not guilty):

DC : The defense moves at this time, etc.

(If any such motion is made, the Court will determine the issue as in the case of any other interlocutory question and will announce its decision.)

The defense counsel then made (or waived) his opening statement to the court.

TESTIMONY FOR THE DEFENSE:

_____, a witness for the defense, was sworn and testified (through an interpreter) as follows:

DIRECT EXAMINATION

CROSS EXAMINATION

REDIRECT EXAMINATION

RECROSS EXAMINATION

EXAMINATION BY THE COURT

STATEMENT OF ACCUSED

(If the accused elects to make a statement): The accused, at his own request, made the following unsworn statement:

DIRECT EXAMINATION

CROSS EXAMINATION

REDIRECT EXAMINATION

RE-CROSS EXAMINATION

EXAMINATION BY THE COURT

(After the defense has offered all its evidence:)

DO : The defense rests.

(If the prosecution has rebuttal testimony, use the sub-head REBUTTAL and record the testimony thereunder.)

The prosecution announced that it had no further testimony to offer.

The defense announced that it had no further testimony to offer.

The President stated that the Court did not desire to call or recall any witness.

Oral arguments were made by the Prosecutor and Defense Counsel.

- 3 -

The Court was closed to consider its findings after which it was opened.

FINDINGS

(If there is a finding of Guilty):

PRES: The Court, in closed session at least two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds you:

Of all Particulars and the Charge: Guilty.

OR

Of Particulars 1, First Charge: Guilty.
Of Particulars 2, First Charge: Not Guilty.
Of the First Charge : Guilty.

(If there is a finding of Not Guilty):

PRES: The Court acquits you of all Particulars and the Charge.

TESTIMONY AS TO PREVIOUS CONVICTIONS AND MITIGATING CIRCUMSTANCES:

(If there is any finding of guilty).

PRES: The court will hear evidence of previous convictions and of any extenuating circumstances.

(Here set forth the testimony and any statements of Prosecutor, Defense Counsel, and accused).

The Court was closed to consider the sentence, after which it was opened.

PRES: The Court, in closed session, at least two-thirds of the members present at the time the vote was taken concurring, sentences you:

The court then at _____ o'clock P.M., on 194____, proceeded to other business OR adjourned to meet at the call of the President.

(President) (Member) of the Court.

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 QUERY: /
 RESPONSE: 200 OK
 STATUS: 200 OK
 REASON: OK
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