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FORMS OF PROCEDURE
FOR
COURTS AND BOARDS
IN THE
NAVY AND MARINE CORPS
—
1910

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FORMS OF PROCEDURE
FOR
COURTS AND BOARDS
IN THE
NAVY AND MARINE CORPS

PUBLISHED BY AUTHORITY OF THE SECRETARY OF THE NAVY



WASHINGTON
GOVERNMENT PRINTING OFFICE
1910

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DEPARTMENT OF THE NAVY,
Washington, January 7, 1910.

The following forms of procedure for courts, boards, etc., based largely upon previous publications on the same subject, are approved and published for the information and guidance of the naval service. While the phraseology used need not be absolutely adhered to, yet the procedure laid down should be strictly followed, as it has received the Department's approval and deviation therefrom may be fatally irregular and erroneous.

G. v. L. MEYER,
Secretary of the Navy.

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**NOTES CONCERNING THE MANNER OF MAKING UP
RECORDS.**

NOTES CONCERNING THE MANNER OF MAKING UP RECORDS.

Written legibly; corrections, etc.—Records of all kinds shall be written neatly and legibly, whether by hand or on typewriter, without erasures or interlineations, as far as practicable; but if corrections should be necessary they shall, when made, be initialed by the judge-advocate or recorder. An undue number of corrections or lack of neatness in making them will be sufficient cause for returning a record for rewriting. Both sides of the paper shall be used when written by hand.

Numbering and marking of pages and documents.—The pages of the record shall be numbered in the middle of the margin at the lower edge. Documents relating to the organization of the court or board shall be marked with capital letters and instruments of evidence with numbers; all such marks must be boldly and distinctly made and placed in the lower right-hand corner of the page or sheet.

Modifications of precept.—The modifications of the precept, or convening order, are those which are signed and issued by the convening authority, and they must not be confused with orders to perform the duty on the court or board which are issued separately by the Bureau of Navigation, the Commandant of the Marine Corps, or convening authority, as the case may be. These modifications of the precept must appear as a part of every record where changes have been made in the composition of the membership.

Absence of members.—In case of the absence on authorized leave or on other duty of members, a copy of the orders permitting or directing such absence must be appended.

Corrections to testimony.—When a witness makes corrections in his testimony a note in red ink shall be made opposite the place in the left-hand margin of the record. This note shall refer to the page where the corrections are shown.

Order in which documents appended.—In making up records each document or exhibit shall be prefixed or appended, as may be required, in the precise order in which it is introduced. All papers of a similar character, such as reports on fitness, communications concerning indebtedness, medical surveys, etc., shall be arranged together in chronological order with the earliest coming first.

Cover sheets.—A neat cover sheet shall be prefixed to the whole record, following the appropriate form herein prescribed. At the end of the record, following all appended documents, there shall be attached one or more blank sheets to provide for the action of higher authorities and as a protection to the record. The date on the front cover sheet shall be the date when the court or board convenes.

Manner of binding record.—The record, before being forwarded to the convening authority, must have all the pages, documents, and exhibits securely bound together by at least two through fasteners at the top margin, and care shall be exercised to see that the fasteners are through every such page, document, and exhibit. If the exhibits are objects which do not permit of being secured in the manner above indicated, they shall be otherwise attached so as to prevent the possibility of loss.

Aid in preparation of record.—The several steps in the procedure of any court or board may be assigned consecutive numbers by the judge-advocate or recorder. Such numbers may then be used to facilitate keeping the routine record of the case when there is no stenographer, but they shall not appear in the smooth record.

Notes to be followed.—The notes interspersed through the general court-martial procedure should be consulted as there is much therein that applies as well to other courts and boards.

Index for lengthy cases.—If a general court-martial case, or that of a court of inquiry, investigation, or board of investigation, exceeds twenty pages in length, it shall be preceded by an index showing upon what page each step of the trial and of the examination of the several witnesses, giving their names, may be found; also, in case a witness corrects his testimony, the pages where such correction is referred to and where made.

GENERAL COURTS-MARTIAL.

GENERAL COURTS-MARTIAL.

Incidents of a Trial by General Court-Martial.

1. Court meets.
2. Provost-marshal reports.
3. Stenographer introduced.
4. Accused introduced.
5. Accused signifies wishes as to counsel.
6. Counsel, if any, introduced.
7. Precept and other documents relating to organization read.
8. Challenge of members.
9. Judge-advocate sworn by president.
10. Members sworn by judge-advocate.
11. Stenographer sworn by judge-advocate.
12. Has accused received copy of charges and specifications? When?
13. Court cleared to examine charges and specifications.
14. Court opened and court's decision announced.
15. Accused asked if he is ready for trial (motions, etc.)
16. Letter of transmittal and charges and specifications read.
17. Arraignment (pleas).
18. Prosecution begins.
19. Prosecution ends.
20. Defense begins.
21. Defense ends.
22. Rebuttal.
23. Surrebuttal.
24. Statements or arguments.
25. Trial finished.
26. Judge-advocate informs court as to previous convictions.
27. Court cleared for deliberation on finding.
28. Judge-advocate recalled to record finding.
29. Court opened to receive evidence of previous convictions, if any.
30. Court cleared for deliberation on sentence.
31. Judge-advocate recalled to record sentence.
32. Court opened.
33. Adjournment.

CASE OF

LIEUT. X——— Y. Z———, *U. S. Navy.*

JUNE 21, 1909.



RECORD OF PROCEEDINGS

OF A

GENERAL COURT-MARTIAL

CONVENED AT

THE NAVY-YARD, PHILADELPHIA, PA.,

BY ORDER OF

THE SECRETARY OF THE NAVY.

VAR. 1. ——— convened on board the U. S. S. *Ohio* by order of the Commander in Chief, U. S. Atlantic Fleet.

VAR. 2. ——— at the naval station, Cavite, P. I., by order of the Commandant of said station.

VAR. 3. ——— on board the U. S. S. ——— by order of the Commander in Chief, Squadron for Special Service.

VAR. 4. ——— on board the U. S. S. ——— by order of the Commander of Third Division, and Commander in Chief Detached Squadron, U. S. Pacific Fleet.

Record in revision.—The proceedings in revision must form a separate and complete record, which should be *prefixed* to the record of which it is a revision.

Copy furnished.

VAR. Copy waived.

FIRST DAY.

NAVY-YARD, PHILADELPHIA, PA.,
(U. S. S. *Ohio*, off ———),
Monday, June 21, 1909.

The court met at 10 a. m.

Hours of sessions.—A naval court-martial may hold sessions at any hour of the day, as may be desirable.

Present:

Captain A——— B. C.———, U. S. Navy.
Commander D——— E. F———, U. S. Navy.
Captain G——— H. I———, U. S. Marine Corps.
Lieutenant J——— K. L———, U. S. Navy.
Lieutenant M——— N. O———, U. S. Navy.
First Lieutenant P——— Q. R———, U. S. Marine Corps, and
Lieutenant (j. g.) S——— T. U———, U. S. Navy, mem-
bers, and First Lieutenant V——— V. W———, U. S.
Marine Corps, judge-advocate.

Sittings of court.—The court is required to sit from day to day, Sundays excepted, until a sentence is given. An adjournment for a longer period than twenty-four hours taken during the trial of a case before the court must appear on the record to be by authority of the convening power. This requirement does not apply to adjournment from one case to another.

Proceedings not delayed.—When the proceedings of the court are once begun they should not be suspended or delayed on account of the absence of any of the members so long as five are present. If the court is reduced below that legal quorum, the convening authority should at once be notified by letter, a copy of which should be appended to the record.

Record of each case complete.—The record of proceedings of each case must be complete in itself, without dependence on or reference to any other.

Senior member is president.—The senior member present is always president of the court by virtue of his seniority.

Responsibility of president.—The president is responsible for the trial being conducted in the proper order and in accordance with law, Navy Regulations, and the procedure herein prescribed.

First Lieutenant C——— B. A———, U. S. Marine Corps, reported as provost-marshal.

Detail of provost-marshal, etc.—Prior to the first meeting of the court, the president should, if necessary or desirable, request the commandant or the senior officer present to appoint a provost-marshal and an orderly for the court.

F——— E. D———, clerk (stenographer, interpreter) entered.

The accused entered and stated that he wished to have Ensign I——— H. G———, U. S. Navy, act as his counsel; the request was granted and counsel entered.

Counsel for accused.—When the accused has no legal adviser, the commandant of the navy-yard or station, the commander in chief, or the senior officer present, within whose jurisdiction the court sits, shall, if the accused so requests, detail a suitable officer to act as his counsel. If there be no such officer available, the fact shall be reported to the convening authority for action.

Duties of counsel.—An officer so detailed shall perform such duties as usually devolve upon counsel for defendant before civil courts in criminal cases. As such he should guard the interests of the accused by all honorable means known to the law, so far as they are not inconsistent with military relations.

Accused advised of rights.—Enlisted men to be tried shall be particularly advised of their rights in the premises, and counsel detailed for them, if practicable, unless they explicitly state that they do not desire such assistance.

VAR. 1. ——— stated that he did not wish counsel.

VAR. 2. ——— stated that he desired counsel, and the commandant (commander in chief) (senior officer present) was requested by the court to detail an officer to act as such. (This in case a detail has not already been made.)

(Should the judge-advocate require counsel.) The judge-advocate read the appointment, copy appended, marked “——,” by the Attorney-General, of Mr. A—— A. A——, to act as counsel to assist the judge-advocate. Mr. A—— entered.

VAR. The judge-advocate read an order from the convening authority, copy (original) appended, marked “——,” directing Lieut. B—— B. B——, U. S. Navy, to act as counsel to assist the judge-advocate. Lieutenant B—— entered.

The judge-advocate read the precept (and modifications thereof), copy appended, marked “——.”

Marking documents.—For convenience, all documents relating to the organization of the court shall be marked with capital letters, as “A,” “B,” “C,” etc.; and all those which are instruments of evidence shall be marked with numerals, as “1,” “2,” “3,” etc. Care shall be taken that all such marks are distinct, and they shall be placed at the lower right-hand corner of the page or sheet. The pages of the record shall be numbered in the middle of the margin at the lower edge.

Copies.—All copies of documents or papers shall be certified by the judge-advocate.

Reading of papers, etc.—When the record states that a paper, document, or testimony was read, it is to be understood that it was read *aloud*.

Disposition of precept.—The original precept should be kept until the court is dissolved and then forwarded to the convening authority.

Changes in the court.—Changes in the composition of the court can legally be made only by the convening authority, and no officer is empowered to sit as a member or judge-advocate except in obedience to an order signed by such authority and addressed to the president of the court. All such orders must, equally with the precept, be read to the accused and duly marked copies appended to the record.

Orders to members and judge-advocate.—A member or judge-advocate becomes or is relieved as such only by order of a lawful convening authority. Two orders are issued in each instance; one, the order of appointment or relief, issued by the convening authority, is sent direct to the president of the court; the other, issued by the authority which details him to duty, is sent through official channels to the officer himself who is appointed or relieved. The order from the convening authority is a part of the court's records and a copy of it must be attached to the record of each case tried and to which it pertains; it is the only authority for a member or judge-advocate to act as such during a trial.

VAR. (In case any member or members are absent add) and the medical certificate (detachment, etc.), in the case of ——, copy appended, marked, “——,” (or, and the letter from —— explaining his absence) is appended, marked “——.”

Absence of members.—No member of a general court-martial shall, after the proceedings are begun, absent himself therefrom except in case of sickness or of an order to go on duty from a superior officer, on pain of being cashiered.

Order from superior.—In case of an order from a superior officer the provisions of the Navy Regulations (Instructions for Officers in General) shall be complied with. The report of the circumstances shall be forwarded by the member receiving such order to the convening authority through the president of the court, and a copy of such report shall be attached to the record of each case to which it applies.

Illness of member.—In case a member is sick, he shall, if able, request the attending medical officer to report the fact of his sickness to the convening authority and such request shall be complied with. The report shall be forwarded through the president of the court, and a copy thereof shall be attached to the record of each case to which it applies. When the member is able to resume his duties, the attending medical officer shall report such fact in the same manner as above prescribed.

Detachment from ship or station.—The detachment of an officer from his ship or station does not, of itself, relieve him from duty as a member or judge-advocate of a general court-martial; special orders for such relief are necessary.

Procedure in case of absence.—In a case of compulsory temporary absence, the court may excuse the member so absent from further attendance upon the case then pending, provided there still remain the legal number of members present; but should that not be deemed possible or advisable, the requirements of the forty-seventh article of the Articles for the Government of the Navy shall be strictly complied with.

Absence of judge-advocate.—The temporary absence of the judge-advocate at any time during the progress of the trial does not invalidate the proceedings, but as the court has no authority to detail any person to act as judge-advocate, it must, in case of his incapacity, adjourn from day to day, until he is able to resume his duty or a successor is appointed by the convening authority.

The accused stated that he did not object to any member present.

VAR. 1. The accused objected to Lieut. J—— K. L——, U. S. Navy, because (here state reason).

The challenged member replied —— (or, did not desire to reply).

The court was cleared, the challenged member also retiring. (It is not compulsory, but it is customary, for the challenged member to withdraw).

When opened, all parties to the trial entered, the president announced that the objection of the accused was sustained, and Lieut. J—— K. L—— was excused from serving as a member in this case (or, the president announced that the objection of the accused was overruled).

(Should the accused wish to examine the challenged member.) Upon request of the accused the challenged member was called and examined.

(Examination as hereinafter given for the defense.)

(Should the accused wish to support his challenge by the evidence of witnesses.) ——, a witness for the accused, declared as follows:

The accused did not object to any other member. (Or, —— next objected to ——.) (Same procedure as above.)

VAR. 2. The judge-advocate objected to ——.

(Same procedure as in challenge by the accused, except that declarations are taken as hereinafter given for the prosecution.)

The judge-advocate did not object to any other member. (Or, —— next objected to ——.)

Judge-advocate not challenged.—The judge-advocate may not be challenged on any grounds.

Time for challenge.—As a general rule, whatever objection either party may have to make to the personnel of the court should be made before the court is sworn; but at any

stage of the proceedings prior to the finding, any member may be challenged by either party for cause not previously known.

Court's decision final.—The court's decision as to the validity of a challenge can not be opposed by either party.

If court reduced below quorum.—If, by challenge, the court is reduced below the legal quorum, the convening authority must be notified by letter or telegram and the court adjourn in that case. A copy of the communication must be appended to the record.

The judge-advocate, each member, and the clerk (stenographer, interpreter) were duly sworn.

Acts of court before being sworn.—Until a court is duly sworn according to law, it is incompetent to perform any judicial act, except to hear and determine challenges against its own members.

How oaths administered.—The oaths shall be administered as follows: First, to the judge-advocate by the president; next, to the members by the judge-advocate; and last, to the clerk, etc., by the judge-advocate.

Oath administered to judge-advocate.—You, A—— B——, do swear (or affirm) that you will keep a true record of the evidence given to, and the proceedings of, this court; that you will not divulge or by any means disclose the sentence of the court until it shall have been approved by proper authority; and that you will not, at any time, divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law.

Oath administered to members.—You, A—— B——, do swear (or affirm) that you will well and truly try, without prejudice or partiality, the case now depending, according to the evidence which shall come before the court, the rules for the government of the navy, and your own conscience; that you will not, by any means, divulge or disclose the sentence of the court until it shall have been approved by proper authority; and that you will not, at any time, divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law.

Oath administered to stenographer (clerk, reporter).—You, A—— B——, swear (or affirm) faithfully to perform the duty of stenographer (clerk, reporter) in aiding the judge-advocate to take and record the proceedings of the court, either in shorthand or ordinary manuscript.

Oath administered to interpreter.—You, A—— B——, swear (or affirm) faithfully and truly to interpret or translate in all cases in which you shall be required so to do between the United States and the accused.

The accused stated that he had received a copy of the charges and specifications preferred against him (here state when).

Copy forwarded to accused.—The copy is sent to the accused by the convening authority through the usual official channels. Facts as to the delivery may be obtained from the commanding officer under whom the accused is serving.

Denial of accused as to receipt.—If the accused denies having received a copy, evidence to establish the fact may be introduced.

VAR. The judge-advocate read a letter from the convening authority authorizing and directing him to make a change (or changes) in the specifications, and stated that the same had been made both in the original and in the copy in the possession of the accused. (See also under defense as to entering a *nolle prosequi*.)

Copies of charges, etc., for court.—The judge-advocate shall, for the convenience of the court, place upon the table several copies of the charges and specifications on which the accused is to be tried.

Judge-advocate to inform court of errors.—In case the judge-advocate should note any technical or other errors in the specifications, he shall, before withdrawing, bring them to the attention of the court.

The court was cleared.

Court to examine charges and specifications.—At this stage the court should critically examine the charges and specifications to see that they are in due form and technically correct. When the court goes on record as having so found them it thereby asserts that

they are legally and properly drawn, that they conform to the requirements of the law and regulations, and that the specifications sustain the charges.

Alteration of errors.—After a charge and specification has been signed by the proper authority and ordered to be investigated, it is not competent for any person to make alteration therein without first having obtained the consent of such authority, except that the judge-advocate may correct manifest clerical errors.

Technical and clerical errors.—Technical errors are, in general, those which the charges and specifications disclose and which would be sufficient to sustain a demurrer or special plea; such as charge not supported by the specification, uncertainty as to time or place of offense, lack of jurisdiction of the court, etc. Clerical errors are those of spelling, punctuation, etc., correction of which does not alter the facts.

Authorized changes made by judge-advocate.—Should the convening power authorize the judge-advocate to amend legal defects in the charges and specifications before the accused is called upon to plead, it is to be understood that in doing so the judge-advocate is strictly responsible that the facts are not changed nor the legal responsibilities weakened. He shall on every occasion communicate to the accused any alteration in the charges which were delivered to him at the time of his arrest, as soon as possible after such alteration shall have been made.

When opened, all parties to the trial entered, and the president announced that the court found the charges and specifications in due form and technically correct.

VAR. ——— the president announced that the court having found the specifications (or as the case may be) not in due form, had sent a communication to the convening authority, copy appended, marked “——,” and would await a reply. The court adjourned (took a recess) until ——.

The court met pursuant to adjournment (reassembled at the expiration of the recess). Present: ——.

The charges and specifications having been returned to the court, it was cleared to examine them.

When opened, all parties to the trial entered; the judge-advocate was directed to correct the copy in the hands of the accused to correspond with the charges and specifications just received from the convening authority (with the charges and specifications corrected by direction of the convening authority); or

It was announced that the court would proceed with the trial on the charges and specifications as originally received; copy of letter from convening authority appended, marked “——.”

The accused stated that he was ready for trial.

VAR. 1. The judge-advocate requested a postponement of the trial (here state reason).

The court was cleared. When opened all parties to the trial entered.

The court adjourned to meet to-morrow at —— o'clock. (Or) —— entered, and the president announced that the court had decided to proceed with the trial.

VAR. 2. The accused requested a postponement (here state reason). The court was cleared, etc. (Continue as when postponement requested by judge-advocate.)

Application for postponement.—An application to suspend the proceedings of a court for a longer period than from day to day, Sundays excepted, must be referred to the officer convening the court, who alone has authority to grant the request.

No witnesses were present.

VAR. All witnesses were directed to withdraw.

Warning as to withdrawal.—Before the charges and specifications are read to the accused, the court should warn all witnesses to retire from the room and not to return until officially called. This warning should be repeated daily at the beginning of the session.

The judge-advocate read the letter of transmittal, and the charges and specifications, originals prefixed, marked “_____” and “_____,” and arraigned the accused as follows:

Questions and answers distinct.—The questions constituting the arraignment and the answers thereto, if any be given, must be distinctly recorded.

Q. Lieut. X——— Y. Z———, you have heard the charges and specifications of charges preferred against you; how say you to the specification of the first charge, guilty or not guilty?

A. Not guilty (guilty) (the accused stood mute).

Q. To the first charge, guilty or not guilty?

A. * * *

Q. To the first specification of the second charge, guilty or not guilty?

A. * * *

Q. To the second specification of the second charge, guilty or not guilty?

A. * * *

Q. To the second charge, guilty or not guilty?

A. * * *

Procedure on plea of guilty.—Should the accused plead either “guilty” or “guilty in a less degree than charged,” the president shall warn him that he thereby precludes himself from the benefits of a regular defense by the former plea, and as to the acts confessed by the latter. (See “Statement inconsistent with plea,” p. 144.)

Evidence in extenuation.—After the above warning, should the accused persist in a plea of guilty, the court, before proceeding to deliberate and determine upon the sentence, shall allow him to urge anything he may desire to offer in extenuation of his conduct, to call witnesses as to character, and to offer any other evidence of a strictly palliative nature; and the judge-advocate shall have the right to cross-examine such witnesses and to introduce evidence in rebuttal.

Evidence after plea of guilty.—As by the plea of guilty everything alleged is admitted, no evidence shall, when such plea is offered, be taken by the prosecution, unless in the judgment of the court such course be necessary in order to show all the circumstances of the offense either in mitigation or aggravation. (See p. 143.)

Not guilty, stands mute, etc.—If the accused stand mute, or if, after making objections to the court which it overrules, he refuse to offer evidence or to make any defense, the trial shall proceed as if he had pleaded not guilty.

Change of plea.—The accused may, at the discretion of the court, be allowed at any time before the trial is finished to substitute for a plea of guilty or guilty in a less degree than charged, a plea of not guilty, or *vice versa*.

Plea in bar of trial.—Pleas in bar of trial are sometimes submitted by the accused for the consideration of the court. These may be either to the jurisdiction of the court or special pleas which go to the merits of the case. Whatever such plea may be, it must be fully recorded in the proceedings. If a written statement of the plea be handed into court, it shall be read and appended to the record.

Procedure after plea in bar.—If the plea be admitted as valid, an extract from the proceedings of the court shall be forwarded to the convening authority for his information; but if the plea be considered as invalid, the decision of the court shall be communicated to the accused upon court being opened, it shall be duly recorded, and the trial shall proceed.

Plea of former jeopardy.—The jeopardy of the law means a real peril, originally of life or limb, and always of substantial punishment or penalty. A fundamental idea is that there must be a trial upon an indictment for an offense, or upon some equivalent charge and presentment, as by a court-martial, submitting a definite issue and involving conviction or acquittal. The person must be in danger of condemnation; a mere inquiry or other informal proceeding (informal in a judicial sense) ending in a reprimand, does not satisfy either element of the principle of second jeopardy. Of course, if there is a trial in some form, which *might* result in conviction and punishment, the jeopardy is none the less complete and valid as a bar to another trial because, in fact, it issues in a simple rebuke; for absolute acquittal, if the peril is real, is equally a bar. This plea is, therefore, a valid bar when the accused has been duly prosecuted before a court-martial to a final conviction or acquittal; he may, however, waive objection to a second trial. (25 Opins. A. G., 623.)

Plea of illegal arrest.—Failure to conform to the provisions of article 43 of the Articles for the Government of the Navy is sometimes pleaded in bar of trial on the ground that the accused was not furnished with a true copy of the charges and specifications at the time he was put under arrest. Such a plea in bar has no validity, the Supreme Court of the United States having decided that the word "arrest," as used in that article, does not relate to the preliminary arrest or detention of an accused person awaiting the action of higher authority to frame charges and specifications and order a court-martial, but to the arrest resulting from preferring the charges by the proper authority and the convening of a court-martial.

Pleading less degree.—In case the charge is "desertion" and the accused desires to admit the offense of "absence without leave" only, the proper form of pleading, if the facts set forth in the specification are true except as to intent and the accused desires to admit them without proof, is as follows: To the specification—Guilty except to the words "desert" and "in desertion," and to those words, not guilty; and for the excepted words should be substituted, respectively, the words "absent himself without leave" and "so absent" and to such words, guilty. To the charge—Guilty in a less degree than charged, guilty of absence without leave.

Rejection of plea.—If, after a plea of guilty in less degree, the court decides to proceed with the trial of the accused for the greater offense with which he is charged, such plea in less degree shall be rejected and the accused advised by the judge-advocate to substitute a plea of "not guilty." Should the accused decline to plead thus, as advised, the court shall direct the trial to proceed as if the plea of "not guilty" had been entered, and the prosecution shall then be put to the proof of every allegation contained in the specification. Save in exceptional cases, a court-martial should try the accused for the offense as charged.

VAR. 1. The accused pleaded in bar of trial saying (here give plea if oral). Or, — and submitted a written plea, which was read by him (his counsel) (the judge-advocate), appended, marked "____."

The accused stated that he had no testimony to introduce in support of his plea.

Or, a witness on behalf of the accused in support of his plea entered and was duly sworn. (The testimony is taken in the same manner as hereinafter given for the prosecution; arguments may then be made as at the end of the trial, the accused having the opening and closing.) (Continued as in Var. 2.)

VAR. 2. (When no testimony is introduced, but the accused or counsel wishes to submit a written or oral argument in support of plea.)

The accused (counsel) (judge-advocate) read an argument in support of the plea by the accused, original appended, marked "____;" (or) the judge-advocate did not desire to reply; (or) the judge-advocate requested until _____ in order to prepare his reply, whereupon the court adjourned (took a recess) until _____.

(Also, continued from Var. 1.)

The court was cleared. When opened all parties to the trial entered and the president announced that the court overruled the plea, and the judge-advocate asked the accused if he had any further plea

in bar to offer. He replied in the affirmative and (same as before), or he replied in the negative, and the judge-advocate arraigned the accused.

Q. (Same as before.) (Or)

When opened, all parties to the trial entered and the president announced that the court decided that the plea by the accused was valid.

The president thereupon addressed a communication to the convening authority, copy appended, marked "—," transmitting an extract from the proceedings of the court stating that the accused had submitted a plea in bar (state plea) which the court had decided was a valid one.

VAR. a. (If the accused pleads guilty, etc.; see notes following arraignment, *ante*.) The accused was duly warned as to the effect of his plea, and persisted therein. (This warning will, of course, not be given when, as may sometimes be the case, the prosecution intends, notwithstanding the plea of guilty, to introduce evidence to show the degree of criminality involved.)

The accused persisted in his plea.

VAR. b. The accused withdrew his plea of guilty and was rearraigned as follows: * * *

Arraignment.—The arraignment is the beginning of the trial.

In cases of desertion.—It has not infrequently happened that enlisted men charged with desertion have, in connection with a plea of guilty, made a statement disclaiming having had, in absenting themselves, any intention of abandoning the service and stating facts which, if true, constitute absence without leave only. In such a case the accused can not, in general, fairly be convicted of desertion in the absence of an investigation. (Opins. J. A. G. Army, 1992.) When such conditions arise, the president of the court should direct the judge-advocate to change the plea to not guilty.

Trials in Joinder.—When two or more persons are tried in joinder they should be separately arraigned, the questions constituting each arraignment and the answers thereto being separately recorded; and throughout the trial the accused persons should severally be given the same opportunity to answer, plead, make objections, examine, be examined, submit a written defense or statement, etc., and the fact should in every instance be entered upon the record with the same particularity, as in the ordinary case of the trial of one person only, for which provision is made in these forms of procedure.

The prosecution began.

Lists of witnesses.—The judge-advocate shall, prior to the trial if practicable, call upon the accused for a list of the witnesses he wishes summoned for his defense, and shall at the same time furnish him a list of the witnesses who are to appear against him. It is to be understood, however, that neither party is precluded from calling further witnesses whose attendance may, during the course of the trial, be found necessary to the proper administration of justice.

Member or judge-advocate as witness.—If any member of the court or the judge-advocate is required to testify for the prosecution he should be the first witness called. Should the president of the court become a witness, the oath or affirmation shall be administered to him by the member next in rank who shall preside during the progress of his examination. If the judge-advocate be a witness he shall record his own testimony unless the employment of a clerk or stenographer has been authorized. When a member or the judge-advocate has completed his testimony an entry shall be made to the effect that the witness resumed his seat as member or judge-advocate.

Exception as to competency of witness.—Should either party take exception to the competency of any witness, such exception must be stated in open court and, together with the decision of the court thereon, must be fully recorded in the proceedings.

Examination of witness to whom exception made.—If either side objects to the competency of a witness he may be examined relative thereto before he is regularly sworn as a witness, in which case the following oath should be administered:

Oath administered on *voir dire*: You swear (or affirm) that you will true answers make to questions touching your competency as a witness in this case: So help you God (or, this you do under the pains and penalties of perjury).

When exception should be made.—As a general rule the exception to the competency of a witness shall be stated before he is sworn, but at whatever stage of the trial the incompetency of the witness appears, if the court decides that the objection to his competency is valid, it may arrest the evidence and disregard his testimony.

Reading of charges to witness.—Before a witness is examined, the general charges may be read to him, if the court thinks proper; but the specifications shall not be read to him, particularly when they are so worded as to instruct him how to answer, or to make known to him the minute facts of the case.

A witness for the prosecution entered and was duly sworn.

Oath administered to witness.—You do solemnly swear (or affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the charges: So help you God (or, this you do under the pains and penalties of perjury).

Examined by the judge-advocate:

1. Q. What is your name, rank (rate), and present station?

A. * * *

2. Q. As whom do you recognize the accused?

A. * * *

Questions numbered.—The questions asked each witness shall be numbered consecutively throughout his examination. If the examination is interrupted by recess or adjournment and is resumed when the court reassembles or reconvenes, the numbering shall be continued. If, however, the first examination of the witness is completed and, later in the trial, he is recalled, the numbering of the questions asked on this later examination shall begin anew.

Answers paragraphed.—All answers of a witness shall begin a new paragraph, as herein shown.

Leading questions.—In the direct examination leading questions are not permitted except (1) questions as to identification, (2) introductory questions, (3) questions tending to aid a defective memory, and (4) questions to a witness who appears to be hostile to the party that called him. But, especially in cases where identification is an important element in the case, a witness should not be asked if he recognizes the accused as such and such a person, giving his name, unless the accused has already been sufficiently identified.

Direct examination.—All the testimony desired and obtainable from the witness should be drawn from him in the direct examination. The court may or may not permit a subsequent direct examination on matters not previously touched upon. (Winthrop Abridg., 138.)

3. Q. * * *

VAR. This question was objected to by the accused (a member) on the ground (here state reason).

The judge-advocate replied (here give reply).

The court was cleared. When opened all parties to the trial entered and the president announced that the objection by the accused (a member) was sustained.

(Or) ——— announced that the court overruled the objection.

(If objection is overruled.)

3. Q. * * *

A. * * *

Cross-examined by the accused (counsel):

4. Q. * * *

A. * * *

Cross-examination.—The object of cross-examination is to test the credibility of the witness.

Leading questions.—Leading questions and also questions that are not relevant are permitted on cross-examination, provided their purpose is to test (1) the witness' power of observation, (2) his accuracy of memory, or (3) the connection of his statements with each other or with the attendant circumstances.

Reexamined by the judge-advocate:

37. Q. * * *

A. * * *

Recross-examined by the accused (counsel):

45. Q. * * *

A. * * *

Examined by the court:

51. Q. * * *

A. * * *

VAR. 53. Q. Question by a member: * * *

This question was objected to by the accused (judge-advocate) on the ground (here state reason).

The court was cleared. When opened all parties to the trial entered and the president announced that the court sustained the objection of the accused (judge-advocate).

(Or) ——— announced that the court overruled the objection of the accused (judge-advocate). (The question then becomes a question by the court.)

53. Q. * * *

A. * * *

Questions of members.—All questions originating with members, and which have been received, are recorded as "by the court," but when made the subject of discussion and rejected they are recorded as "by a member."

Character of members' questions.—A member may put such questions as he desires; though, since members must be impartial and without prejudice, questions by them should, in general, be for the purpose of making clear the meaning of testimony already given. (Winthrop Abridg., 108.)

How questions asked.—A question by a member may be put directly to a witness without submitting it first to the court; if, however, it is objected to and ruled out it must be recorded as "by a member." It is generally preferable to submit the questions to the court before they are asked.

The witness verified his testimony, was duly warned, and withdrew.

Testimony of witness read.—The recorded testimony of a witness shall be read to or by him in order that he may verify, correct, or amend it. If this method is not convenient, the procedure shown in Var. 3, below, shall be followed.

Warning to witness.—Before a witness withdraws from the court room the president shall warn him not to converse upon matters pertaining to the trial during its continuance. This warning shall be omitted in the case of members, the judge-advocate, accused, and counsel if they are called as witnesses.

Omission of step in examination.—If any step in the examination of a witness is omitted by reason of the fact that the party whose turn it is to examine does not desire to ask any questions, the record must show by a suitable entry that an opportunity was afforded; thus, "The accused did not desire to cross-examine," etc.

VAR. 1. ——— corrected his testimony as follows: Page —, answer to question No. —, the words "——— ———" changed to "——— ———," and as thus amended was read, pronounced by him correct, and, after being duly warned, he withdrew.

VAR. 2. ——— and then resumed his seat as judge-advocate (president, member).

VAR. 3. At the request of the judge-advocate the witness was directed to report to-morrow at — o'clock —, m., to correct or verify his testimony, and, after being duly warned, he withdrew.



Direction to witness.—This direction is given in order that the witness may correct, amend, or verify his testimony on the next or some future day, when it is not convenient to have him do so immediately at the conclusion of his examination.

Manner of correcting testimony.—Upon the reappearance of the witness at the time indicated, the correction, amendment, or verification may be accomplished in either of two ways. First, the witness may be present during the reading of so much of the record as contains his testimony, and, at the conclusion of such reading, make any necessary changes or verify it; or, second, he may be furnished with so much of the record, or a copy thereof, as contains his testimony, thus enabling him to reconsider and revise the same, after which he is called before the court to correct, amend, or verify it. The latter method is recommended.

Manner of recording corrections.—In recording corrections or amendments made by a witness no erasure or obliteration of his original testimony is permitted. The correction or amendment desired, and any remarks made by the witness in connection therewith, are to be separately and distinctly entered on the record.

Corrections indicated in red ink.—When a witness amends his testimony, as above directed, a marginal note shall be made in red ink opposite the testimony which is changed. This note shall give the amendment, if brief, or shall refer to the page of the record where the correction may be found. (As, "See correction, p. —.")

Examination upon corrections.—If the correction or amendment is material, the witness may be cross-examined thereon.

The court took a recess until — p. m.

The court reassembled at the expiration of the recess. Present: All the members, the judge-advocate, the stenographer, the accused and his counsel.

Recess or adjournment.—When the business of the court is suspended from one day to the next, or for a longer period, the record should show that the court *adjourned* until the time agreed upon; but when the period of suspension of business is from one part of a day to another part of the same day, the record should show that a *recess* was taken for the time mentioned.

VAR. 1. The court adjourned to meet to-morrow, Saturday (or if Saturday, to meet Monday), at — o'clock a. m.

VAR. 2. The judge-advocate stated that ———, a material witness, had not appeared, and requested the court to adjourn until to-morrow morning. The court adjourned to meet, etc.

Duty of officer or enlisted man when summoned to appear.—An officer or enlisted man who is duly summoned must appear and testify, and any such person who refuses to give evidence, or to give it in the manner required by the Articles for the Government of the Navy, or who prevaricates or behaves with contempt to the court, may be sentenced by the court to imprisonment for any time not exceeding two months.

Witness on waiting orders or leave.—Whenever the judge-advocate of a court-martial convened within the limits of the United States has occasion to summon as witness an officer who may at the time be on waiting orders or on leave, he shall, at the same time, notify the Bureau of Navigation or the Commandant of the Marine Corps, as the case may be, of the fact that the summons has been issued; and he shall send a similar notice when such officer is discharged from further attendance on the court.

Civilian witnesses.—A naval court-martial or court of inquiry has power to issue like process to compel witnesses to appear and testify which United States courts of criminal jurisdiction within the State, Territory, or district where such naval court shall be ordered to sit may lawfully issue. (Act of Feb. 16, 1909.)

When witness guilty of misdemeanor.—Any person duly subpoenaed to appear as a witness before a general court-martial or court of inquiry of the navy who willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or produce documentary evidence which such person may have been legally subpoenaed to produce, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the United States. This does not apply to persons residing beyond the State, Territory, or district in which such naval court is held. (Act of Feb. 16, 1909.)

When witness need not answer.—No witness shall be compelled to incriminate himself or to answer any question which may tend to incriminate or degrade him. (See also notes after "Subpoena for civilian witness.")

The court adjourned to meet ———.

SECOND DAY.

NAVY-YARD, PHILADELPHIA, PA.,

Tuesday, June 22, 1909.

The court met at 10 a. m.

Present: All the members, the judge-advocate, the stenographer, the accused and his counsel.

No witnesses were present.

VAR. All witnesses were directed to withdraw.

The record of proceedings of yesterday (the first day of the trial; or Saturday) was read and approved.

Reading record.—In reading the record of the court, the salient features of the proceedings only need be read; it is not necessary to read the testimony recorded nor the various interlocutory arguments of counsel. The court's rulings, however, on questions submitted for decision should be read.

VAR. 1. Present: All the members except ————. Also present: The judge-advocate, the stenographer, the accused and his counsel.

VAR. 2. Present: All the members except ————; the medical certificate accounting for his absence was read and appended, marked "——." Also present: The judge-advocate, the stenographer, the accused and his counsel.

Procedure in absence of members.—If the absence of a member reduces the court below the legal minimum, an adjournment should be taken until the next day, or over Sunday, as the case may be, unless it appears that the absence of the member may be protracted, in which case the president should advise the convening authority of the facts.

VAR. 3. Present: All the members, the judge-advocate, the stenographer, the accused and his counsel. Lieut. J—— K. L——, U. S. Navy, who was absent yesterday when the court was organized, appeared and stated (here give statement).

The court accepted the explanation.

The accused stated that he did not object to this member. (Should he object, proceed as under challenge.)

Lieut. J—— K. L——, U. S. Navy, was duly sworn.

No witnesses were present.

The record of proceedings of yesterday was read and approved.

Each witness, who had been examined during the absence of Lieut. J—— K. L——, was called before the court, informed that his oath previously taken was still binding, heard his own evidence read, and, Lieut. L—— not desiring to question him, he pronounced his testimony correct and withdrew.

(Should Lieut. L—— wish to examine the witness, or should any of the other parties to the trial wish to question him on any correction he may have made in his testimony, proceed as if he were a new witness about to be examined.)

VAR. 4. Present: All the members except Commander D—— E. F——, U. S. Navy, whose absence is accounted for by the medical certificate previously read and appended.

The judge-advocate read an order from the convening authority relieving Commander D—— E. F——, U. S. Navy, and appointing Surg. M—— L. F——, U. S. Navy, as a member of the court.

Procedure upon seating of new member.—In the case of a member of the court appointed and taking his seat as such after the trial has begun, the procedure will be similar to that set forth in variation 3 as regards challenge, hearing reading of record of proceedings of trial to date, and also the evidence given by and the further examination of former witnesses.

VAR. 5. Present: All the members, the stenographer, the accused and his counsel. The judge-advocate being absent, the court adjourned until to-morrow, the — instant, at 10 a. m.

Judge-advocate's absence protracted.—As the court has no authority to detail a judge-advocate, it shall, if the latter's absence is likely to be protracted, notify the convening authority of such absence.

VAR. 6. (In case of promotion of member or judge-advocate since precept was issued.)

The judge-advocate read a communication, copy appended, marked “—,” from the Bureau of Navigation, Navy Department, addressed to Lieut. Commander J—— K. L——, transmitting to him his commission as a lieutenant-commander in the navy.

VAR. 7. The record of proceedings of yesterday was read and objected to by the accused (a member) (the court), inasmuch as (here state reason). The court was cleared. When opened, etc. (if objection is sustained), the record was corrected so that “——” on page — shall read “——.”

With this correction the record was approved.

VAR. 8. At the request of the judge-advocate, who stated that the record of the proceedings of yesterday, the — day of the trial, was not ready, the court took a recess until ——; or, the court decided to postpone the reading of this record until such time as it shall be reported ready, and in the meantime to proceed with the trial.

VAR. 9. During the reading of so much of the record as contained the testimony of —— ——, he was called before the court and, having been informed that the oath previously taken was still binding, stated that he desired to make the following correction in his testimony. Page —, answer to question No. —, line No. —, strike out the words “——” and insert the words “——.”

With this correction, he pronounced the testimony correct and withdrew.

VAR. 10. —— ——, who had previously testified, was called before the court, informed that the oath previously taken was still binding, and stated that he had read over (or, had had read over to him) the testimony given by him on ——, the — day of the trial, pronounced it correct, and withdrew. (Or, and stated that he desired to make the following corrections, etc.)

When variation 10 used.—Variation 10 is to be used when a witness has been given that part of the record containing his testimony and has read it over (or, has had it read over to him) outside of court.

Corrections indicated in red ink.—When a witness makes corrections in his testimony, a note in red ink shall be made opposite the place in the left-hand margin of the record. This note shall refer to the page where the corrections are shown. (As, “See correction, p. —.”)

A witness for the prosecution entered and was duly sworn.

VAR. W—— V. U——, the witness under examination when the court adjourned, appeared, and, being warned that the oath previously taken was still binding, continued his testimony.

Examined by the judge-advocate:

1. Q. * * *

A. * * *

2. Q. * * *

The witness declined to answer on the ground that it might tend to incriminate him.

The judge-advocate requested the court to direct the witness to answer.

The court sustained the witness.

VAR. The court was cleared. When opened, all parties to the trial and the witness entered, and the president announced that the witness need not (must) answer the question.

Witness may decline to answer.—A witness may properly decline to answer when it may tend to incriminate him; no inference whatever from such a declination is permissible, except in case of the accused himself.

Request that witness be required to answer.—The judge-advocate may request the court to require the witness to answer on the ground that the answer would not tend to incriminate him. If the court sustains the request, the witness must answer or be in contempt. If his answer, when made, does tend to incriminate him, it must not be considered as evidence and can not subsequently be used as the basis of any prosecution.

Privilege a personal one.—The privilege of declining to answer is a personal one and can be interposed only by the witness himself, but he may be informed of his rights in the premises.

3. Q. * * *

A. * * *

The witness declined to answer on the ground that his answer would violate a privileged communication (here state in what manner).

The court sustained the witness (or as the case may be).

Privileged communications.—On grounds of public policy a witness may properly decline to answer questions that would violate privileged communications. Such are communications between attorney and client, communications between husband and wife, state secrets, etc. The last are included in all departments of the Government, and the question of inclusion under this head is decided by the court in each case on grounds of the requirements of public policy.

Privilege a personal one.—The privilege of declining to answer is a personal one and can be interposed only by the witness himself, but he may be informed of his rights in the premises.

Examination of succeeding witnesses.—The examination of succeeding witnesses should be conducted on the lines previously indicated for the first witness.

* * * * *

Z——— B. C——— entered as a witness for the prosecution and was objected to by the accused (here give reason).

Grounds for objection to witness.—In general, a witness may be objected to on account of extreme youth, thus being unable to distinguish between truth and falsity, disease affecting the mind, or any other cause of the same nature which would prevent him from understanding and intelligently testifying. Deaf and dumb persons are not, by reason of those physical defects alone, incompetent. In the case of husband and wife, neither spouse is competent to testify for or against the other before courts-martial, excepting that in crimes involving personal injury committed by one upon the other, the injured spouse may testify against the other.

Rules governing the competency of witnesses.—The rules governing the competency of witnesses before the criminal courts of the United States and the States, where apposite, are generally, though not always necessarily, followed in the practice of courts-martial. (Dig. Opins. J. A. G. Army, 2460.)

The judge-advocate replied (here give reply).

How decided.—The objection to a witness on the ground of incompetency is tried and decided similarly to the plea in bar. It may be interposed at any time after the witness is called.

Witness examined on *voir dire*.—If the objecting party wishes to examine the witness on his *voir dire*, or to introduce testimony, the following oath should be administered by the president:

Oath on *voir dire*.—You, A—— B——, swear that you will true answers make to questions touching your competency as a witness in this case; so help you God.

If objection made while witness on stand.—If the question of the witness's competency arises while he is on the stand, his examination is arrested and the question decided. If he is declared not competent the court will disregard any testimony that he may have given; if competent, the examination is continued. The court itself decides the question of competency.

(The evidence may be continued and completed, if witness is competent, as in the case of other witnesses.)

* * * * *

3. Q. Are you the legal custodian of the current enlistment record of the accused (*or*, of the official log book of the U. S. S. ——; *or*, the medical journal of the U. S. Naval Hospital at ——, etc.)? If so, produce it.

A. I am.

Method of introducing documentary evidence.—Documentary evidence before courts-martial, consisting generally of public writings, will be introduced by the proper custodian taking the stand as witness to identify such documents, presenting them to the accused for inspection and opportunity to interpose objection to their admission, and then, if there be no reasonable objection interposed, *reading* therefrom such entries as may be pertinent to the issue, certified copies of which must be attached to the record. Upon objection being interposed by either party to the trial, the court will rule upon the objection, the decision thereon being final.

Documentary evidence in case of desertion.—That a man has been charged with desertion is no evidence that he has committed the offense. Therefore, the entry on an enlistment record, descriptive list, or other official paper, that a man deserted is not legal evidence of his desertion, but is only evidence that he has been so *charged*. Also, it has been held that an entry upon a report of prisoners that an accused deserted on a certain day and was subsequently apprehended as a deserter was not legal evidence of the fact of desertion. (Dig. Opins. J. A. G. Army, 1056.)

Official records.—Official records on file in the Navy Department, and copies of the same, duly certified, are evidence of the facts originally entered therein and not compiled from other sources, subject to rebuttal by proper evidence that they are mistaken or incorrect. (Dig. Opins. J. A. G. Army, 1293.)

General orders.—General orders may ordinarily be proved by printed official copies in the usual form. The court will, in general, properly take judicial notice of the printed order as genuine and correct. (Dig. Opins. J. A. G. Army, 1294.)

Records of courts-martial.—Copies of records of courts-martial authenticated under seal, as provided by section 882, Revised Statutes, are admissible in evidence equally with the originals. (Dig. Opins. J. A. G. Army, 1309.)

Enlistment records.—The enlistment paper, the physical examination paper, and the outline card are *original* writings made by officers in the performance of duty and competent evidence of the facts recited therein. Copies, duly authenticated under the seal of the Department, are admissible as fully as the originals. (Dig. Opins. J. A. G. Army, 1310.) When the enlistment record and finger-print card have been forwarded to the judge-advocate, he becomes their legal custodian after he receives them.

Morning report book.—This is an original writing. In order properly to admit extracts in evidence, the book should first be identified by the proper custodian, and the extracts then not merely read to the court by the witness, but copied and the copies, properly verified, attached as exhibits to the record of the court. (Dig. Opins. J. A. G. Army, 1313.)

Parties have right to inspect documents.—The party against whom documentary evidence is adduced has a right to inspect it before it is read or shown to the court.

The witness produced the current enlistment record of the accused (or other document, as the case may be), and it was submitted to the accused and the court, and by the judge-advocate offered in evidence. There being no objection, it was so received.

4. Q. The accused is charged with _____; read such portions of that record (or other document) as may refer thereto.

The witness read from the said record (or other document) an extract (or extracts), copy appended, marked "_____."

VAR. 1. 3. Q. I show you a book [witness shown log book]; can you identify it?

A. I can; it is the official log book of the U. S. S. _____.

VAR. 2. 3. Q. I show you a letter [witness shown paper]; can you identify the handwriting in which it is written?

A. I can.

4. Q. By whom was it written?

A. By _____.

When opinion as to handwriting deemed relevant.—When there is a question as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the supposed writer, that it was or was not written or signed by him, is deemed a relevant fact.

How opinion may be formed.—A person is deemed to be acquainted with (and may prove) the handwriting of another person when he has at any time seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Comparison of handwriting.—Where a paper admitted or clearly proved to be genuine is already in evidence for some other purpose in a cause, and another paper, pertinent to the issue and alleged to be in the same handwriting, is offered in evidence, the jury may compare the latter with the former. (Reynolds' Stephen on Evidence, 86-88.)

Evidence of contents of a writing.—There can be no evidence of the contents of a writing other than the writing itself, except in the following cases: (1) When the original has been lost or destroyed; (2) when the original is a record, or other document, in custody of a public officer; (3) when the original is in possession of the party against whom the evidence is offered and the latter fails to produce it after reasonable notice; and (4) when the original consists of numerous accounts or other documents which can not be examined by the court without great loss of time and the fact sought to be established from them is only the general result of the whole.

Acts set forth in a writing.—Where any official paper sets forth acts done, etc., by an officer or soldier signing the same or referred to therein, and such acts are material evidence and can be proved by himself in person as a witness, his testimony, as being the best evidence of the facts, should be resorted to instead of the writing.

Official papers prima facie evidence.—Official papers, other than judicial records, acts of state, and public books and records required by statute to be kept, furnish not conclusive but only *prima facie* evidence of the facts therein recited.

VAR. 3. The judge-advocate produced an attested copy of a document (letter, order, etc.) (or, copy under seal of the Navy Department), the original of which he informed the court could not be produced, as it was lost (part of a permanent record; on official file, etc.), and submitted it to the accused and the court, and offered it in evidence.

Sec. 882, E. S.—"Copies of any books, records, papers, or documents in any of the executive departments, authenticated under the seals of such departments, respectively, shall be admitted in evidence equally with the originals thereof." The words "documents" and "papers" can not be held to mean every document or paper on file, but only such as were made by an officer or agent of the Government in the course of his official duty. (7 C. Cls., 406.)

Documentary evidence ruled out.—When documentary evidence is ruled out, it need not be appended to the record, but its contents should be referred to, so that the reviewing authority may know what the document was.

* * * * *

The judge-advocate informed the court that D—— E. X——, an essential witness, was too ill to appear in the court room, and asked the court to adjourn to ——, where he was; the medical certificate was read and appended, marked “——.”

The court was cleared. When opened, all parties to the trial entered and the president announced that the court would adjourn to —— in compliance with the request of the judge-advocate.

The court and all parties to the trial assembled at ——, where the witness was in bed (or as the case may be). Present: etc.

D—— E. X—— was duly sworn. (Insert testimony.)

The witness verified his testimony and was duly warned.

All parties to the trial returned to the navy-yard, Philadelphia, Pa., where the court reassembled. Present: etc.

VAR. 1. The court adjourned to meet to-morrow, ——, at — o'clock — m., at the navy-yard, Philadelphia, Pa.

VAR. 2. (If examination is not completed.) The court adjourned to meet to-morrow, ——, at — o'clock — m., at this the place of adjournment.

The judge-advocate informed the court that he had summoned Lieut. F—— F. G——, U. S. Navy, a material witness, and that officer having failed (refused) to comply with the summons, submitted to the court, and by its permission appended to the record, marked “——,” duplicate of the subpcena and affidavit (certificate of service), and moved that the court issue a writ of attachment against the contumacious witness.

The motion was granted and the writ issued; copy appended, marked “——.”

(See notes following Forms of Subpcena for Civilian Witness and Warrant of Attachment, pp. 62,65.)

(In case of a *nolle prosequi*.) The judge-advocate informed the court that by direction of the convening authority he entered a *nolle prosequi* as to the —— specification of the —— charge, and as to the —— charge. A *nolle prosequi* was entered. (If accused is not present, add, and the accused informed.) The letter from the convening authority is appended, marked “——.”

The prosecution rested.

The defense began.

The accused was, *at his own request*, duly sworn as a witness in his own behalf, and testified as follows:

Accused as witness.—The law provides that the accused shall, *at his own request but not otherwise*, be a competent witness, and shall be allowed to testify in his own behalf; and his failure to make such request shall not create any presumption against him.

Must be no comment on failure of accused to testify.—Any comment at any time, especially hostile comment, on the failure of the accused to request that he be allowed to testify in his own behalf is highly improper. "The minds of the jury can only remain unaffected from this circumstance by excluding all reference to it."

Evidence for the defense.—This is taken, recorded, and verified in the same manner as for the prosecution.

Examined by the judge-advocate:

Preliminary questions to witness for defense.—The witnesses for the defense will first be questioned by the judge-advocate for the purpose only of determining the identity of such witnesses and to establish whether or not they recognize the accused.

1. Q. What is your name, rank (rate), and present station?

A. * * *

2. Q. Are you the accused in this case?

A. * * *

Examined by the accused (counsel):

3. Q. * * *

A. * * *

Cross-examined by the judge-advocate:

10. Q. * * *

A. * * *

Testimony of the accused.—When the accused testifies he occupies no exceptional status nor has he any special privileges. When he takes the stand he is subject to cross-examination like any other witness.

Rules governing testimony of accused.—The testimony of the accused is not excepted from the ordinary rules governing the admissibility of evidence, nor from the usual tests of cross-examination, rebuttal, etc. (Dig. Opins. J. A. G. Army, 1300.)

Examined by the court:

17. Q. * * *

A. * * *

The witness verified his testimony, and then resumed his seat as the accused.

A witness for the defense entered and was duly sworn.

Examined by the judge-advocate:

1. Q. What is your name, rank (rate), and present station?

A. * * *

2. Q. As whom do you recognize the accused?

A. * * *

Examined by the accused (counsel):

3. Q. * * *

The witness requested permission to refresh his memory from a memorandum.

By whom request may be made.—This request may be preferred by the examiner or by any of the parties to the trial.

Character of memorandum.—A witness may be allowed to refresh his memory from memoranda written by himself, or under his direction, at any time when the facts therein stated were fresh in his mind, provided that after his memory is thus stimulated he can testify from a present recollection either (1) that the statements made in the memoranda are true, or (2) that the memoranda when made recorded the facts and have not been subsequently altered in any material particular.

Memorandum positively testified to.—A document used to refresh memory is admissible in evidence if positively testified to, especially in case (2) above.

May be inspected by opposite party.—The party against whom documentary evidence is adduced has a right to inspect it before it is read or shown to the court. Should the opposite party in any case wish to question the witness as to the memorandum and as to the time and circumstances under which it was made, such an examination is proper, and the following form may be used:

VAR. Examined by judge-advocate:

4. Q. When was this memorandum made?

A. * * *

5. Q. Under what circumstances was it made?

A. * * *

Examined by accused (counsel):

6. Q. * * *

A. * * *

Cross-examined by judge-advocate:

9. Q. * * *

A. * * *

The witness's request was granted and, after inspecting the memorandum, he continued his testimony.

A. * * *

VAR. The witness stated that he could not remember the facts.

(In case of improper language or behavior of the witness.)

The president cautioned the witness as to his language (behavior).

Request as to caution.—The caution may be given at the request of a member, the judge-advocate, or on the president's own initiative.

The witness replied (here give reply).

Satisfactory reply.—If the reply of the witness is satisfactory the proceedings for contempt may be ended here.

The court was cleared. When opened all parties to the trial entered and the president announced that the court deemed the witness, E——— E. F———, guilty of contempt of court in that he (here insert the occurrence in full).

The court informed the witness that he was at liberty, by such proper statement as he might think necessary, to show cause why he should not be punished for contempt.

Insisting that language was proper.—A witness can not purge himself of contempt by insisting that his language or behavior was proper.

The witness stated ——.

The witness was placed in charge of the provost marshal, and the court was cleared. When opened all parties to the trial entered and the president announced that the court, having adjudged the witness guilty of contempt in its presence, sentenced him, E——— E. F———, to ——-. (Or, announced that the witness had purged himself of contempt.)

Place of confinement.—The place of confinement for a witness in the naval service who is adjudged guilty of contempt and sentenced to confinement should be left to that person's commanding officer.

The testimony of the witness was continued.

Continuation of testimony.—The testimony of a witness who has been adjudged guilty of contempt may be continued.

By the judge-advocate:

22. Q. * * *

A. * * *

* * * * *
 The witness verified his testimony, was duly warned, and was placed in charge of the provost marshal, who was directed to deliver him to his commanding officer, _____, to whom a communication, copy appended, marked "—," was addressed, announcing the offense and sentence.

Communication to commanding officer.—This communication is signed by the president. It should state the offense, the sentence, and the authority therefor which is contained in article 42 of the Articles for the Government of the Navy.

V.A.R. (In the case of a civilian witness.)

22. Q. * * *

The witness refused to answer this question (or to produce the book, paper, or document referred to, as required by the *subpena duces tecum* in his case).

The witness was duly tendered (or paid) his fee and mileage, and was cautioned by the president that his refusal, if persisted in, would make him amenable to punishment under section 12 of the act of February 16, 1909; that is, a fine of not more than \$500 or imprisonment not to exceed six months, or both. The question was again put to him.

22. Q. * * *

The witness again declined to answer the question (or to produce the desired book, paper, or document as required by the *subpena duces tecum* in his case) and gave as the reason for his refusal that (here give reason with exactness).

Questions not compelled to answer.—It should be remembered that no witness shall be compelled to incriminate himself nor to answer any question which may tend to incriminate or degrade him.

The court was cleared. When opened all parties to the trial entered and the president announced that the facts of the refusal of the witness to testify (or to produce the book, paper, or document, etc.) would be certified, by order of the court, to the district attorney for the necessary action in the premises, as required by law. (The certificate is set forth among the forms of letters, orders, etc., *post.*) A copy of said certificate is appended, marked "—."

23. Q. * * *

A. * * *

Etc., etc.

The witness verified his testimony and, after being duly warned, and further cautioned not to depart the court without leave, he was permitted to withdraw.

District attorney informed.—If possible, before the witness in contempt is permitted to withdraw, the district attorney should be communicated with in order that the witness may be apprehended expeditiously. The law does not give the court authority to restrain such person of his liberty, as in the case of naval witnesses.

Arrest of witness.—Even though the witness departs from the jurisdiction within which the court-martial sits, the district attorney may cause his arrest in another jurisdiction, the offense being one against the United States for which provision is made in section 1014 of the Revised Statutes.

A witness for the defense as to character was duly sworn and testified as follows: (Testimony recorded as previously indicated.)

Evidence of good character.—"Evidence of good general character as possessed prior to the commission of the alleged offense may be introduced by the accused as part of his defense, provided the character shown is of such a nature that it may properly weigh with the court in determining the issue involved in the case;" as a general reputation for sobriety when charged with drunkenness, or for obedience when charged with disobedience. "When offered, such evidence must be as to general character; particular acts of good conduct are not admissible."

Character evidence in military cases.—In military cases character evidence is usually intended partly, or principally, in mitigation of the punishment which may follow on conviction. "Thus offered, it is not subject to the rules which restrain the scope and quality of such testimony when defensive only. It need not be limited to general character only, but may include particular acts of good conduct, bravery, etc. It need have no reference to the nature of the charge, but may exhibit the reputation, or record, of the accused in the service for efficiency, fidelity, subordination, temperance, courage, or any of the traits that go to make a good officer or soldier. (Winthrop, 530.)

* * * * *

Z——— B———, a witness for the defense, was recalled and, having been warned that the oath previously taken by him was still binding, testified as follows: (Testimony recorded as previously indicated.)

Introduction of testimony out of regular order.—The court may, in the interest of justice, allow evidence to be introduced out of the regular order and may, for satisfactory cause, allow the prosecution or defense to introduce evidence at any time before arriving at its findings thereon, but it shall not thereafter receive any new evidence except that of previous convictions.

* * * * *

(Should the accused desire that his enlistment record be produced for the purpose of showing his previous record, good conduct, or other facts, he may call the legal custodian thereof as a witness for such purpose.)

The defense rested.

The rebuttal began.

* * * * *

Object of rebuttal.—During the rebuttal evidence may be introduced by the prosecution to explain or repel the evidence introduced by the defense. In general, anything may be given as rebutting evidence which is a direct reply to that produced by the other side. The judge-advocate may rebut any new matter by evidence in rebuttal, may impeach the testimony of witnesses for the defense, may sustain the credibility of his own witnesses, etc.

Evidence in rebuttal.—The evidence here introduced should, in general, be confined to such as relates to evidence introduced by the defense.

Impeaching a witness.—A witness may be impeached (1) by disproving the facts testified to by him; (2) by proof of contradictory statements previously made by him as to matters relevant to his testimony and to the case; and (3) by evidence as to his general bad character.

Procedure before contradictory statements can be proved.—Before contradictory statements of a witness can be proved against him, his attention must be called with as much certainty as possible to the time, place, attending circumstances, and the person to whom made. If the previous statement was in writing, it should be shown or read to him unless the absence of the writing is accounted for.

Foundation for impeachment.—To lay the foundation, the witness may be recalled at any time. It is not necessary to lay the foundation when the previous statement was made under oath and recorded before an official lawfully empowered to administer an oath.

Questions to impeaching witness.—The impeaching witness may be asked as to his knowledge of the general character of the witness whose testimony is to be impeached; as to the latter's general character, but particular transactions or opinions can not be inquired into except in seeking for the extent and foundation of the witness' knowledge; as to whether he would believe the latter under oath; and, when desired, he may be asked as to the extent and foundation of his knowledge. These questions are asked only when it is attempted to impeach by evidence of general bad character.

Former witness sustained.—A former witness may be sustained by proving general bad character of the impeaching witness. If impeached by proof of contradictory statements, he may be sustained by proof of general good character, the effect of the evidence to be determined by the court.

Relationship of witness.—The state of the feelings of the witness and his relationship to the parties may always be proved for the consideration of the court.

Exceptions as to impeachment of one's own witness.—A party may not impeach the credibility of a witness whom he calls except (1) when the witness appears to be hostile to the party that calls him; (2) when the party that called him had no option, but was compelled to do so; and (3) when the party that called him is unduly surprised at the evidence elicited.

Answers to irrelevant or collateral matters.—The answers of a witness to irrelevant or collateral matters is conclusive against the party asking the question, who will not be allowed to impeach the witness as to such answers. (Greenleaf, v. 1, 448.)

The rebuttal ended.

The surrebuttal began.

* * * * *

Object of surrebuttal.—The defense is accorded an opportunity in the surrebuttal to overcome matters brought out in the rebuttal. The evidence should, in general, be confined to matters brought out in the rebuttal, i. e., the defense here endeavors to sustain its original evidence.

The surrebuttal ended.

The court adjourned to meet ———

THIRD DAY.

NAVY-YARD, PHILADELPHIA, PA.,

Wednesday, June 23, 1909.

The court met at — a. m.

Present: All the members, the judge-advocate, the stenographer, the accused, and his counsel.

No witnesses were present.

The record of proceedings of yesterday (or Saturday) was read and approved.

The accused submitted his written defense, and the court was cleared to examine it.

VAR. 1. The accused requested a delay until ——— to prepare his written statement (argument). The request was granted, and the court adjourned to meet ——— at — o'clock a. m.

VAR. 2. The accused did not desire to make a statement, and submitted his case to the court.

VAR. 3. The accused offered in bar of judgment the following plea (same as under plea in bar of trial).

VAR. 4. The court desired further testimony and directed the recall of ——— (or, that ——— be called).

Written or oral defense.—The accused shall be at liberty to make his defense in writing, or, if an official stenographer be present, orally, either in person or by counsel. This defense, if written, he shall submit to the court for inspection before it is publicly read, and if it contains anything improper or disrespectful the court may prevent that part from being read; but the whole shall be appended to the record, or entered as a part of the proceedings, if the accused desires it, and he shall be held responsible for the same.

Statement may be withdrawn.—The court may permit a written statement, or argument, to be withdrawn in whole or in part before it is read aloud.

Omission of objectionable matter.—Unless the accused omits the words which the court decides must not be read, the statement shall not be allowed to be read, but it may, nevertheless, be appended.

Statement is personal defense.—The statement of the accused is a personal defense or declaration and can not be legally acted upon as evidence by the court, nor can it be a vehicle of evidence or properly embrace documents or other writings, or even averments of material facts which, if duly introduced, would be evidence; and if such are embraced in it they are no more evidence than any other part. (Winthrop, v. 1, 452.) It has a threefold function: First, as a modification of the plea, which must be considered by the court; second, as a summing up and closing argument for the defense, which may be considered by the court; and, third, as a plea for leniency, which may not be considered by the court except in recommending the accused to the clemency of the revising authority.

Judicial cognizance of statement.—Any averments or facts embraced in the statement may, of course, be proved by testimony, but unless so proved it is not within the province of the court to take judicial cognizance of them in determining the culpability or innocence of the accused. It is irregular and improper to have the statement sworn to.

Oral arguments.—When a stenographer is employed both the accused (counsel) and the judge-advocate may make oral arguments.

When opened, etc., the accused was informed that the court was ready to hear his written defense, which was read by him (his counsel) (judge-advocate), and appended, marked “——.”

VAR. 1. —— was ready to hear the argument on the part of the defense.

VAR. 2. When opened, all parties to the trial entered, and the president announced that omitting the words “——,” the accused might read his written defense. (Here give reason for this action.)

The accused not desiring to omit the said words, the court decided that the statement should not be read, and it was appended, marked “——.” (Or, the accused requested permission to withdraw his written defense.)

The judge-advocate submitted the case to the court without remark.

VAR. 1. The judge-advocate read his reply, appended, marked “——.” (Or, made the following argument.)

VAR. 2. The judge-advocate requested a delay until —— to prepare his reply, etc.

When arguments must be written.—Unless the clerk or reporter is a stenographer the arguments must be written before delivery.

Closing argument.—The judge-advocate is entitled to the closing argument.

Character of arguments.—A very considerable freedom is allowed in the closing arguments. The testimony and the apparent, or supposed, animus of the witness; the conduct motives, and especially any evidence of malice on the part of those responsible for the prosecution may be sharply criticised. (Winthrop, Abridg., 117.)

The trial was finished.

Evidence may be introduced before finding.—The court may, in the interest of justice, allow evidence to be introduced out of the regular order and may, for satisfactory cause, allow the prosecution or the defense to introduce evidence at any time before arriving at its findings thereon, but it shall not thereafter receive any new evidence except evidence of previous convictions.

The judge-advocate stated that he had evidence of previous convictions.

VAR. —— that he had no evidence of previous convictions.

Judge-advocate to inform court as to previous convictions.—The judge-advocate, if he has evidence of previous convictions, shall so inform the court and direct its attention to the article in the Navy Regulations relating thereto. If there be no such evidence, the judge-advocate need not request that the court be opened for the purpose of having said fact made a matter of record, as it is sufficient if the record shows that there was no evidence of that nature, in order that the convening authority may note that this part of the proceedings was not inadvertently overlooked.

The court was cleared.

Court examines evidence.—When the court has sufficiently examined the evidence, the president of the court shall put the question upon each specification of each charge, beginning with the first, whether the specification is “proved,” “not proved,” or “proved in part.”

Manner of voting.—Each member shall write “proved,” “not proved,” or “proved in part,” and if “in part,” what part, over his signature, and shall hand his vote to the president of the court, who, when he has received all the votes upon such specification, shall read them aloud, being careful not to disclose whose vote he is reading.

No minute of votes.—No written minute of the votes shall be preserved, unless so ordered by the unanimous vote of the court.

Agreement must be reached.—The court shall deliberate and consider until a majority agrees upon a finding, which shall then be recorded.

When accused pleads guilty.—When the accused has pleaded guilty, the proper finding is, for the specification, “proved by plea,” and for the charge, simply “guilty.”

Voting upon charge.—When the members have voted upon all the specifications of any charge, the question shall be put upon the charge to each member: “Is the accused guilty of this charge, guilty in a less degree than charged, or not guilty?” The members, as before, shall write “guilty,” “not guilty,” or “guilty in a less degree than charged,” and in what degree, over their signatures, and hand their votes to the president, who shall, after receiving all the votes, read them aloud, and should there be a decision by the majority, shall record the result. If otherwise, the process shall be repeated until a decision is arrived at.

All charges must be voted on.—The president in collecting the votes must bear in mind that the court is bound to exhaust the whole of the charges that come before it by expressly acquitting or convicting the accused of each allegation contained in the specification.

The judge-advocate was recalled and directed to record the following findings:

The specification of the first charge, “Proved” (“Not proved”).

And that the accused, Lieut. X—— Y. Z——, U. S. Navy, is of the first charge, “Guilty” (“Not guilty”).

The first specification of the second charge, “Proved” (“Not proved”) (“Proved in part—proved except the words ‘———,’ which words are not proved”).

The second specification of the second charge, “Proved” (“Not proved”) (“Proved in part—proved except the words, ‘———,’ which words are not proved, and for which the court substitutes the words, ‘———,’ which words are proved”).

And that the accused, Lieut. X—— Y. Z——, U. S. Navy, is of the second charge, “Guilty” (“Not guilty”) (“Guilty in a less degree than charged, guilty of ——”).

The specification of the third charge, “Not proved” (“Proved”) (“Proved in part,” etc.).

And that the accused, Lieut. X—— Y. Z——, U. S. Navy, is of the third charge, “Not guilty;” and the court does, therefore, acquit (fully acquit) (most fully acquit) (honorably acquit) (most honorably acquit) (most fully and honorably acquit) the said Lieut. X—— Y. Z——, U. S. Navy, of the third charge.

Writing the finding.—The finding must be free from interlineations or erasures, and must be entered on the record in the handwriting of the judge-advocate.

When finding is “Not guilty.”—In case the finding is “Not guilty” upon any charge, the explicit statement should immediately follow that the court acquits the accused of such charge.

Finding and sentence of persons tried in joinder.—When two or more persons are tried in joinder the finding and sentence (or acquittal) in the case of each person arraigned and tried should be separately recorded.

The court was opened and all parties to the trial entered. The president announced that the court was ready to receive evidence of previous convictions.

When no evidence of previous convictions.—When there is no evidence of previous convictions all references to the introduction of such evidence should be omitted.

To what such evidence must relate.—Evidence of previous convictions must relate to the current enlistment of the accused, and must refer to actual trials and convictions that have been approved by the authorities whose action is requisite to give full effect to the sentence, except in cases where the accused has been previously discharged from the service through sentence of a court-martial, and in cases upon which action has been withheld and the accused placed on probation.

General court-martial orders.—When properly certified to by the Judge-Advocate-General of the Navy, who is the legal custodian of the original, as a true copy, the printed general court-martial order is *prima facie* evidence of its contents.

How such evidence introduced.—Evidence of previous convictions, if objected to by the accused, should be introduced in the same manner and is subject to the same rules as other evidence; it is usually documentary, and is generally forwarded by the convening authority to the judge-advocate with the other papers in the case; if not objected to it may be introduced as follows:

There being no objection, the judge-advocate read from the (current) enlistment record of (the accused), an extract showing previous conviction, copy appended, marked “——.”

Extract to be read.—The extract should include the offense committed, the fact and nature of trial, conviction, sentence, and approval by the proper authorities.

VAR. There being no objection, the judge-advocate presented to the court general court-martial order No. — dated —, 1907, in the case of the accused.

The court was cleared.

Punishment to be adjudged.—It is made by law the duty of courts-martial, in all cases of conviction, to adjudge a punishment adequate to the nature and degree of the offense committed.

Each member to vote.—When the court has been closed, each member shall write down and subscribe the measure of punishment which he may think the accused ought to receive, and hand his vote to the president, who shall, after having received all the votes, read them aloud.

If agreement not reached.—If the requisite number shall not have agreed upon the nature and degree of the punishment to be inflicted, the president shall proceed in the following manner to obtain a decision:

Begin with mildest punishment.—He shall begin with the mildest punishment that has been proposed, and after reading it aloud shall ask the members successively, beginning with the junior in rank: “Shall this be the sentence of the court?” And every member shall vote, and the president shall note the votes.

Vote on other punishments.—Should there be no decision, the president shall, in the same manner as before, obtain a vote on the next lowest punishment, and shall so continue until some sentence, either of the first or of a subsequently proposed set, shall have been decided on.

Majority rules except in certain cases, etc.—Except in the case noted in article 50, Articles for the Government of the Navy, the opinion of the majority is the opinion of the court, and the minority is bound thereby; but as the oath taken by every member provides for the concealment of the vote or opinion of each particular member, care shall be taken that it does not appear on the record either that the votes of the members in regard to the finding or sentence were unanimous, or what number of them voted for any particular finding or sentence, with the exception already noted; and in that case the record must explicitly show the concurrence of two-thirds of the members present.

Courts-martial must not adjudge nominal punishments.—The law does not vest in courts-martial the pardoning power, nor the right to adjudge nominal punishments equivalent to a pardon; such powers are elsewhere reposed, and the exercise thereof by a court-martial is therefore illegal.

The judge-advocate was recalled and recorded the sentence of the court as follows: The court, therefore, sentences him, Lieut. X—— Y. Z——, U. S. Navy, to be dismissed from the United States naval service.

A—— B. C——,
Captain, U. S. Navy, President.
 D—— E. F——,
Commander, U. S. Navy, Member.
 G—— H. I——,
Captain, U. S. Marine Corps, Member.
 J—— K. L——,
Lieutenant, U. S. Navy, Member.
 M—— N. O——,
Lieutenant, U. S. Navy, Member.
 P—— Q. R——,
First Lieutenant, U. S. Marine Corps, Member.
 S—— T. U——,
Lieutenant (j. g.), U. S. Navy, Member.
 V—— V. W——,
First Lieutenant, U. S. Marine Corps, Judge-Advocate.

VAR. 1. —— to be shot to death by musketry (hanged by the neck until dead), two-thirds of the members concurring.

VAR. 2. —— to be dismissed from the United States naval service and to be imprisoned in such prison or penitentiary as the Secretary of the Navy may designate for a period of two (2) years.

VAR. 3. —— to be suspended from duty for a period of one (1) year on one-half of shore-duty pay, and to lose five (5) numbers in his grade.

VAR. 4. —— to be suspended from duty for eight (8) months, and to lose ten (10) numbers in his grade.

VAR. 5. —— to lose fifty (50) numbers in his grade and to be publicly reprimanded by the Secretary of the Navy.

VAR. 6. —— to be dismissed from the United States Marine Corps and from the United States naval service.

VAR. 7. —— to be confined in such place as the convening authority may designate for a period of ——; to perform hard labor during said confinement and, after his accrued pay shall have discharged his indebtedness to the United States at the date of approval of this sentence, to forfeit all pay that may become due him during said confinement except the sum of —— dollars (\$—) per month for necessary prison expenses.

VAR. 8. —— to be confined in such place as the convening authority may designate for a period of ——; then to be dishonor-

ably discharged from the United States Navy (Marine Corps); to perform hard labor during said confinement, and after his accrued pay (and allowances) shall have discharged his indebtedness to the United States at the date of approval of this sentence, to forfeit all pay (and allowances) that may become due him except the sum of _____ dollars (\$—) per month during said confinement for necessary prison expenses, and a further sum of _____ dollars (\$—) to be paid him when discharged from the service pursuant to this sentence.



Judge-advocate to be recalled to record the sentence.—When a sentence has been determined upon, the judge-advocate shall be called before the court and, under its direction, shall draw up the sentence, specifying the exact nature and degree of punishment adjudged and, after approval by the court, shall enter the same upon the record.

Manner of recording sentence.—The sentence must be recorded by the judge-advocate's own hand and must be free from erasures and interlineations. Numbers in the sentence should be expressed both by words and figures.

Authentication of sentence.—The sentence having been recorded, the proceedings in each separate case tried by the same court are required by law to be signed by all the members present when judgment is pronounced, and also by the judge-advocate.

Statutory penalty.—In all cases where a penalty has been designated by statute for a particular offense, none other than that particular penalty may be imposed, and the court must pronounce the sentence which the law requires whenever the fact is proved.

Limitations of sentences.—In considering sentences to be imposed, and especially those involving death, imprisonment for life, and others not provided for by special penalty, the requirements of the Articles for the Government of the Navy and the limitations duly prescribed for punishments in time of peace, as appended to those articles, shall be carefully scrutinized and followed. Sentences must be neither cruel nor unusual, and must be in accordance with the common law of the land and customs of war in like cases.

Sentences to suspension.—Sentences which include forfeiture of pay shall, in the case of officers, state the rate of pay and time of such forfeiture. Those including suspension must state distinctly whether from rank or from duty only.

Loss of numbers.—When an officer's position on the navy register will not permit of his being reduced in accordance with the prescribed limitations of punishments, the court shall place him at the foot of the list, with the proviso that he is to remain there until he has lost the required numbers.

Reduction in rating.—In all cases in which the sentence imposed on a petty officer involves confinement, it should include reduction to one of the ratings below petty officer in the branch to which he belongs, and in the case of a noncommissioned officer of the Marine Corps to private.

Hard labor.—Sentences of general courts-martial including confinement shall contain a provision requiring that the person sentenced, if an enlisted man, shall perform hard labor. In all cases where the confinement is to be in a prison or penitentiary, hard labor shall be included as a part of the sentence.

Forfeiture of pay due.—It is competent for a court-martial to decree forfeiture of all pay, except that on deposit, which is due or which may become due to an offender.

Desertion.—In all cases of desertion the sentence shall include dishonorable discharge and forfeiture of pay (and allowances). Regular allowances, such as marine clothing, continue unless stopped in direct terms by the sentence. Pay on deposit is, by law, forfeited by desertion.

Marines.—Marines sentenced to dishonorable discharge should also be sentenced to forfeiture of all pay and allowances that may become due during confinement with the exceptions noted in variation 8 above. Those not sentenced to dishonorable discharge should be sentenced to forfeiture of pay only during confinement.

Loss of allowances.—Loss of allowances should not be included in sentences (var. 8) adjudged in cases of enlisted men of the Navy.

Sentence distinct.—A sentence of imprisonment must express distinctly for what period the same shall continue.

Bread and water.—Whenever a general court-martial imposes a sentence of solitary confinement on bread and water, the provisions of the Navy Regulations relating thereto shall be observed.

Summary court punishments.—General courts-martial are empowered by statute to inflict any of the punishments authorized for summary courts-martial.

In consideration of (here state reason), we recommend Lieut. X——— Y. Z———, U. S. Navy, to the clemency of the revising power.

A——— B. C———,
Captain, U. S. Navy, President.
 G——— H. I———,
Captain, U. S. Marine Corps, Member.
 S——— T. U———,
Lieutenant (j. g.), U. S. Navy, Member.

Clemency.—If mitigating circumstances have appeared during the trial which could not be taken into consideration in determining the degree of guilt found by the verdict, the court may avail itself of such circumstances as adequate grounds for recommending the prisoner to clemency.

Recommendation.—This recommendation is not to be inserted in the body of the sentence, but recorded, with the reason therefor, immediately after the signatures of the court and judge-advocate to the sentence, and must be signed by the members concurring in it, but not by the judge-advocate.

Different reasons.—If the members do not agree as to the reasons, different recommendations may be entered, the members acting independently of each other.

The court was opened and proceeded with the trial of —— ———.

A——— B. C———,
Captain, U. S. Navy, President.
 V——— V. W———,
First Lieutenant, U. S. Marine Corps, Judge-Advocate.

VAR. 1. The court adjourned to meet to-morrow, —— (on Monday next) at — o'clock, a. m. (Signed as above.)

VAR. 2. The court, having no more cases before it, adjourned to await the action of the revising authority. (Signed as above.)

VAR. 3. The court adjourned to await the call of the president. (Signed as above.)

Presence of accused during subsequent reading of record.—If the court adjourns after arriving at a finding and sentence (or acquittal), but before completing the case, the record of proceedings of the succeeding day should distinctly show that the accused was present during the reading of so much thereof as referred to the proceedings in open court, that he then withdrew, and that the court was then cleared, the judge-advocate remaining, whereupon that part of the record which pertained to the proceedings in closed court was read.

Disposition of precept.—When the court is dissolved, the original precept shall be forwarded to the convening authority, and shall in all cases be filed in the Navy Department.

CASE OF

LIEUT. X——— Y. Z———, *U. S. Navy*,
JULY —, 1909.

RECORD OF PROCEEDINGS IN REVISION

OF A

GENERAL COURT-MARTIAL

CONVENED AT

THE NAVY-YARD, PHILADELPHIA, PA.,

BY ORDER OF

THE SECRETARY OF THE NAVY.

(Variations same as in original.)

Record in revision.—The proceedings in revision must form a separate and complete record, which should be *prefixed* to the record of which it is a revision.

Copy furnished.

VAR. Copy waived.

Copy for accused.—The accused is entitled to an exemplified copy of the record in revision to the same extent as he is to a copy of the original proceedings. (See notes following form of receipt or waiver, page 71.)

45

RECORD
OF
PROCEEDINGS IN REVISION OF A GENERAL COURT-MARTIAL.

**FORMS OF LETTERS RETURNING RECORD TO COURT
FOR REVISION.**

NAVY DEPARTMENT,
Washington, July 2, 1909.

SIR: The record of proceedings of the general court-martial of which you are president in the case of ———, fireman second class, U. S. Navy, is herewith returned to the court.

The Department, after careful consideration, is unable to concur in the finding of the court upon the charge and specification.

The accused, by his plea of not guilty, threw upon the prosecution the burden of proving not only his absence from his ship and the naval service, but also his intention permanently to abandon the latter. In this connection the attention of the court is called to articles — and —, Navy Regulations.

It is not clear, from such evidence as was adduced, that a reasonable inference may properly be drawn that the accused intended permanently to abandon his contract of enlistment.

The court will reconvene for the purpose of reconsidering the finding and sentence. The further proceedings of the court will be conducted in accordance with the provisions of articles — and —, Navy Regulations, and upon the conclusion of such proceedings the record will be returned to the Judge-Advocate-General of the Navy.

Very respectfully,

C—— F. I——,
Secretary of the Navy.

Capt. A—— B. C——, U. S. Navy,
*President General Court-Martial,
Navy-Yard, Mare Island, Cal.*

U. S. S. ——,
Off——, July 2, 1909.

SIR: The record of proceedings of the general court-martial of which you are president in the case of —— ——, coal passer, U. S. Navy, is herewith returned to the court.

The convening authority, after careful consideration, does not consider that the finding is in accord with the evidence which was brought before the court, in that the accused did, by his plea, admit his absence from the naval service between the dates specified, a period of one year and two months, and failed to bring any evidence to show that it was impossible to return to his duty or that he had endeavored in any way to communicate with the naval authorities.

The prosecution brought evidence to show that the accused was in civilian clothes when he surrendered on board the U. S. S. —— . The accused made no explanation whatever of his prolonged absence from his station and duty, and this fact

under section 1053, Digest of Opinions of Judge-Advocates-General, U. S. Army, (McClure), page 300, lines 6, 7, and 8, furnishes a presumption of the intent necessary to prove desertion, as does also the fact that the accused had sometime during his long absence, to which he pleaded guilty, disposed of his uniform, and was obliged to surrender himself, when he did surrender, dressed in civilian clothes.

The court will reconvene for the purpose of reconsidering the finding and sentence. The further proceedings of the court will be conducted in accordance with the provisions of articles — and —, Navy Regulations, and upon the conclusion of such proceedings the record will be returned to the convening authority.

Very respectfully,

L—— M. N——,
Rear-Admiral, U. S. Navy, Commander-in-Chief, U. S. Atlantic Fleet.

Capt. A—— B. C——, U. S. Navy,
President General Court-Martial,
U. S. S. ——.

NAVY DEPARTMENT,

Washington, July 2, 1909.

SIR: The record of proceedings of the general court-martial of which you are president in the case of ——, seaman, U. S. Navy, is herewith returned.

The Department, after careful consideration, is unable to concur in the findings of the court upon the charges and specifications.

It appears from the record that the accused pleaded guilty to the first charge and specification, that evidence was adduced substantiating the allegations of the specification, that the accused, at his own request, took the stand in his own defense and corroborated every allegation contained in the specification, and further showed that he was on duty in charge of a draft, that he turned over official papers intrusted to him to a person not authorized to receive them, that by his own act of leaving his duty and drinking with strangers he failed to proceed as ordered, that he came to his senses in twenty-six hours, that he made no effort to return to the U. S. S. ——, or to proceed as ordered until December 16, 19—. It also appears that the court, after hearing the above and more to the discredit of the accused, advised him to withdraw his plea of guilty to the first charge as inconsistent with his sworn testimony, and after mature consideration found the specification of the first charge proved and the accused of the first charge *not* guilty.

It is impossible for the Department to understand how the court could have arrived at such a conclusion as to the guilt of the accused. (See Digest Opinions Judge-Advocates-General of the Army, sec. 1353.)

The specification of the first charge being proved, and it being shown by the testimony of the accused that he made no attempt to communicate with the naval authorities, but remained absent from his station and duty until December —, 19—, it follows that he deliberately and wilfully remained absent from the U. S. S. —— until after she had sailed, and was therefore guilty of the second charge.

The court will reconvene for the purpose of reconsidering the findings and sentence. The further proceedings of the court will be conducted in accordance with the provisions of articles — and —, Navy Regulations, and upon the conclusion of such proceedings the record will be returned to the Judge-Advocate-General of the Navy.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

Capt. A—— B. C——, U. S. Navy,
President General Court-Martial,
Navy-Yard, Boston, Mass.

NAVY DEPARTMENT,
Washington, July 2, 1909.

SIR: The record of proceedings of the general court-martial of which you are president is herewith returned to the court for reconsideration of the finding and sentence in the case of ———, coal passer, U. S. Navy.

The court has found the accused guilty of desertion, and in this connection the attention of the court is called to article —, Navy Regulations, which provides as follows:

In order to establish the commission of the specific offense of desertion, both the fact of unauthorized absence and the intent permanently to abandon the service or, at least, to terminate the pending contract of enlistment, must be proved.

From an examination of the record of proceedings of the court in this case it appears that while the unauthorized absence of the accused is established, there is no evidence of his intention permanently to abandon the service, which intention must be shown in order to support the charge of desertion. (See Digest Opinions Judge-Advocate-General of the Army, secs. 1053, 1054, and 1057.)

It is presumed that the judge-advocate introduced all the evidence which was available in order to establish the intent of the accused permanently to abandon the service. The fact of his having left the ship without permission, the duration of his absence, and his reporting in civilian's clothes furnish presumptive evidence of such intent, but this presumptive evidence is negatived by the testimony of the accused in which he denies that he at any time intended to desert, by the fact that he placed himself in communication with the Bureau of Navigation, and that he voluntarily delivered himself up.

From a careful consideration of the entire evidence in the case as outlined above, the Department is of opinion that the intention of ——— permanently to abandon the service has not been shown beyond a reasonable doubt, and that, therefore, the benefit of such doubt should be given to him.

The attention of the court is also called to the fact that the offense of desertion includes the lesser offense of absence without leave; and if such absence is established to the satisfaction of the court, and it concurs in the views of the Department that there is not sufficient proof of the necessary intent, it is the duty of the court to find proved so much of the specification as supports the charge of absence without leave, and that the accused is of the charge guilty in a less degree than charged, guilty of absence without leave, and then to adjudge a sentence adequate to the offense.

The further proceedings of the court will be conducted in accordance with the provisions of articles — and —, Navy Regulations, and upon the conclusion of such proceedings the record will be returned to the Judge-Advocate-General of the Navy.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

Capt. A—— B. C——,
President General Court-Martial,
Navy-Yard, Puget Sound, Wash.

NAVY DEPARTMENT,
Washington, July 2, 1909.

SIR: The record of proceedings of the general court-martial of which you are president, in the case of Lieut. X—— Y. Z——, U. S. Navy, is returned herewith.

From an examination of the record it appears that the court has sentenced Lieutenant Z—— "to be restricted to the limits of the naval station, ———, for a period

of six (6) months, and to be publicly reprimanded by the Secretary of the Navy." While this sentence appears to be otherwise appropriate, it is deemed objectionable in that it designates the precise place to which Lieutenant Z—— is to be restricted. The court will perceive that if this sentence be approved as it now stands, and exigencies of the service should hereafter require that this officer be ordered to duty at any other station than ——, or on board any naval vessel, the sentence would interfere with the interests of the service. It is considered, therefore, that the place of restriction should be left to the discretion of the Secretary of the Navy.

The court will reconvene, etc.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

Capt. A—— B. C——, U. S. Navy,
President General Court-Martial,
Navy-Yard, Philadelphia, Pa.

NAVY-YARD, PHILADELPHIA, PA.,

Wednesday, June —, 19—.

The court reconvened at 10 a. m., pursuant to an order hereto prefixed, marked "A," which was read by the judge-advocate.

Present: (Here insert the names.)

No new testimony.—When a court is ordered to revise its proceedings new testimony shall not be brought forward in any shape.

Confined to record.—The revision shall be strictly confined to a reconsideration of the matter already recorded in the proceedings, no part of which shall be amended, altered, or annulled in any way.

Record of revision.—During the revision an entirely separate record shall be kept, to which the order for reassembling must be prefixed. A full entry shall be made of all the proceedings, verified in the ordinary manner by the signatures of all the members of the court and the judge-advocate, and transmitted, as before, to the reviewing officer for his action.

Judge-advocate excluded.—The judge-advocate shall be excluded from the court room during a revision of the finding and sentence of the court.

Presence of accused.—It is not in general necessary or desirable that the accused be present at a revision. Where, however, any possible injustice may result from his absence, he should be required or permitted to be present, and with counsel, if preferred. Thus, where the defect to be corrected consists in an omission properly to set forth a special plea made or objection taken by the accused, it may be desirable that he should be present in order that he may be heard as to the proper form of the proposed correction. Where the error is clerical merely, or, though relating to a material particular, consists in the omission of a formal statement only, the presence of the accused is not, in general, called for.

Clerical errors.—Clerical errors are not to be corrected in an informal manner by erasure or interlineation.

Absent: (Here insert the names, with reason for absence in each case.)

Quorum present.—A correction can be made only by a legal court. At least five, therefore, of the members who acted upon the trial must be present. That there are fewer members at the reassembling than at the trial is immaterial, provided there are five. The judge-advocate should be present. (Dig. Opins. J. A. G. Army, 2251.) The judge-advocate who acts during a revision need not necessarily be the same one who acted during the trial of the case.

The court was cleared.

The judge-advocate was recalled and directed to record that the court decided to revoke its former (finding) sentence in the case of

Lieut. X—— Y. Z——, U. S. Navy, and to substitute therefor the following sentence: —— ———.

(Signed by all the members and the judge-advocate.)

VAR. 1. —— and to substitute therefor the following finding: The specification proved in part, proved except, etc. The court respectfully adheres to its former sentence.

VAR. 2. —— decided respectfully to adhere to its former finding (or, finding and sentence; or, sentence).

VAR. 3. —— decided to correct the following clerical errors: On page —, by inserting between lines 10 and 11, the following: “——.”

(a) On page 9, by omitting from lines 16 and 17 the following: “——.”

(b) On page 20, by omitting the words “—— ——,” lines 5 to 9, inclusive, and substituting therefor the words “—— ——.”

The court took up the next case.

VAR. 1. —— adjourned to await the action of the revising authority.

VAR. 2. —— adjourned to meet to-morrow (on Monday next) at — o'clock a. m.

VAR. 3. —— proceeded with the trial of —— ———.

(Signed by the president and judge-advocate.)

ACTION OF CONVENING AUTHORITY ON THE RECORD.

U. S. S. ——,
OFF ——, ——,
June —, 19—.

The proceedings, finding (findings), and sentence of the general court-martial in the foregoing case of Lieut. X—— Y. Z——, U. S. Navy, are approved.

M—— L. M——,
Rear Admiral, U. S. Navy,
Commander in Chief, U. S. Pacific Fleet.

(Or) *Rear Admiral, U. S. Navy,*
Commander in Chief, Third Squadron,
U. S. Pacific Fleet.

(Or) *Rear Admiral, U. S. Navy,*
Commander of Second Division, and
Commander in Chief, Detached Squadron,
U. S. Pacific Fleet.

(Or) *Captain, U. S. Navy, Commandant,*
Commanding U. S. Naval Station,
San Juan, Porto Rico.

Execution of sentence.—No sentence of a general court-martial may be carried into execution until after the whole of the proceedings have been laid before the reviewing authority or, when the circumstances of the case require such action, have been submitted through the Secretary of the Navy to the President for his confirmation and orders.

Conflicting testimony.—In passing upon the findings and sentence of a court-martial the reviewing officer will properly attach special weight to its conclusions where the testimony has been of a conflicting character. This for the reason that having the witnesses before it in person, the court was qualified to judge, from their manner in connection with their statements, as to the proper measure of credibility to be attached to them individually.

VAR. 1. The proceedings of the general court-martial in the foregoing case of Lieut. X—— Y. Z——, U. S. Navy, are approved; the findings and sentence are disapproved for the following reasons (here state reasons); he will be released from arrest (confinement) and restored to duty.

Power of reviewing authority.—Where the law does not authorize the officer who convened a general court-martial to confirm and execute the sentence, he has still absolute power to disapprove and annul it. Should the sentence be one which he is not empowered finally to confirm and execute, and he can not remit or mitigate the same, if he thinks it ought to be confirmed he shall, in transmitting the proceedings to the authority having such power, subscribe a formal approval thereof on the record. (16 Opins. A. G., 312.)

Effect of disapproval.—While approval gives life to a sentence, disapproval, on the other hand, quite nullifies the same. A disapproval of the sentence of a court-martial by the legal reviewing authority is not a mere expression of disapprobation, but a final determinate act, putting an end to the proceedings in the particular case and rendering them entirely nugatory and inoperative; and the legal effect of a disapproval is the same whether or not the officer disapproving is authorized finally to confirm the sentence. But to be thus operative, a disapproval should be *express*. The mere absence of an approval is not a disapproval, nor can a mere reference of the proceedings to a superior without words of approval operate as a disapproval of the sentence. The effect of the disapproval, wholly, of a sentence is not merely to annul the same as such, but also to prevent the accruing of any disability, forfeiture, etc., which would have been incidental upon an approval. (Dig. Opins. J. A. G. Army, 2229.) A disapproval of a sentence by the proper reviewing authority is "tantamount to an acquittal by the court." (Ib.)

Can not disapprove and commute.—A reviewing officer can not disapprove a sentence and then proceed to mitigate or commute the punishment since, upon the disapproval, there is nothing left in the case upon which any such action can be based.

Upon revision.—While a reviewing officer can not compel the court to adopt his views in regard to a supposed defect, he may, in a proper case, express his formal disapproval of their neglect to do so. Where a court adheres to a sentence manifestly too lenient for the offense found, upon being reassembled to consider reasons presented by the reviewing authority for the infliction of a severer penalty, it is within the authority of the latter and would be no more than proper and dignified for him, in taking final action on the case, to reflect upon the refusal of the court as ill judged and as having the effect to impair the discipline and prejudice the interests of the service.

VAR. 2. The proceedings of the general court-martial in the foregoing case of Lieut. X—— Y. Z——, U. S. Navy, are approved; the findings on the first and second specifications of the first charge are disapproved; and the findings on the second and third charges and the specifications thereunder, and the sentence, are approved.

VAR. 3. The proceedings, findings, and sentence of the general court-martial in the foregoing case of —— —— are approved. The U. S. S. —— is designated as the place of confinement until an opportunity offers for sending him to the United States in a public conveyance.

VAR. 4. The proceedings, findings, and sentence of the general court-martial in the foregoing case of —— —— are approved, and the U. S. S. —— is designated as the place for the execution of so much of the sentence as relates to confinement.

VAR. 5. The proceedings, findings, and sentence of the general court-martial in the foregoing case of _____ are approved, and the naval prison at the navy-yard, _____, _____, is designated as the place for the execution of so much of the sentence as relates to confinement.

Designation of prison.—Officers authorized by law to convene general courts-martial are empowered to designate prisons for the confinement of men convicted by such courts, as follows:

(a) Those convicted by courts convened by commanders in chief of fleets or squadrons, or commandants of naval stations, in Atlantic waters—the naval prison at the navy-yard, Portsmouth, N. H., except in cases tried at Boston, Mass., or on board ships about to proceed to Boston, Mass., when the naval prison at the navy-yard, Boston, Mass., may be designated.

(b) Those convicted by courts convened by commanders in chief of fleets or squadrons on the Pacific coast, or commandants of naval stations at Hawaii and Samoa—the naval prison at the navy-yard, Mare Island, Cal., or the U. S. S. *Nipsic* at the navy-yard, Puget Sound, in the discretion of the convening authority.

(c) Those convicted by courts convened by commanders in chief of fleets or squadrons in Asiatic waters, or commandants of naval stations in the Philippine Islands and Guam—the naval prison at the naval station, Cavite, P. I.

In cases tried at Guam the commandant may, in his discretion, designate the naval prison at the navy-yard, Mare Island, Cal.

Transfer of prisoner and notification.—The convening authority, after action upon a case, will order transportation and send the prisoner under proper guard to the designated prison at the earliest practicable date, notifying the commandant of the navy-yard or station at which the designated prison is located, by letter, stating the offense, sentence, action of convening authority, and date of such action. A similar letter shall be sent to the Auditor for the Navy Department, giving the same data and, in cases of desertion and absence without leave, additional information showing the dates of the beginning and ending of the period of unauthorized absence. The enlistment records and pay accounts, or staff returns, of such prisoners should accompany them.

Notation on court-martial record.—Notation shall be made on the face of the record (cover sheet) that the above-mentioned letters have been sent, with the date, thus: Letters to Commandant, Navy-Yard, Portsmouth, N. H., and Auditor, (date). The action of the convening authority, shown on the record of the case as forwarded to the Judge-Advocate-General, will be sufficient notification to the Department as to the designated place of confinement.

VAR. 6. The proceedings, findings, and sentence of the general court-martial in the foregoing case of _____ are approved.

In view, however, of the unanimous recommendation to clemency the _____ is reduced to _____.

VAR. 7. The proceedings, findings, and acquittal of the general court-martial in the foregoing case of _____ are approved, and he will be released from confinement (arrest) and restored to duty.

VAR. 8. The proceedings, findings, and sentence of the general court-martial in the foregoing case of Lieut. X— Y. Z—, U. S. Navy, are approved and, in conformity with article 53 of the Articles for the Government of the Navy, the record is respectfully referred to the Secretary of the Navy for transmission to the President.

Article 53, A. G. N.—No sentence of a court-martial, extending to the loss of life, or to the dismissal of a commissioned or warrant officer, shall be carried into execution until confirmed by the President. All other sentences of a general court-martial may be carried into execution on confirmation of the commander of the fleet or officer ordering the court.

Final disposition of records.—The records of proceedings of all courts-martial shall be forwarded direct to the Judge-Advocate-General by the reviewing authority after acting thereon, or in the case of general courts-martial convened by the Secretary of the Navy, by the presiding officer of such courts.

Letters of transmittal not required.—Letters of transmittal are not required in forwarding to the Department records of proceedings of courts-martial, courts of inquiry, or boards, and should not be sent.

Precept for general court-martial.

NAVY DEPARTMENT,
Washington, June 11, 1909.

(Or)

U. S. S. CONNECTICUT,
OFF PROVINCETOWN, MASS.,
June 11, 1909.

(Or)

U. S. NAVAL STATION,
SAN JUAN, PORTO RICO,
June 11, 1909.

To Capt. A—— B. C——, U. S. Navy,
Commanding U. S. S. Wisconsin,
Navy-Yard, Philadelphia, Pa.,
(Naval Station, San Juan, P. R.)

A general court-martial is hereby ordered to convene at the navy-yard, Philadelphia, Pa. (on board the U. S. S. *Ohio*, off Provincetown, Mass.) (naval station, San Juan, P. R.), at 10 o'clock a. m., on Monday, June 21, 1909, or as soon thereafter as practicable, for the trial of Lieut. X—— Y. Z——, U. S. Navy, and of such other persons as may be legally brought before it.

The court is composed of the following-named members, any five of whom are empowered to act, viz:

Capt. A—— B. C——, U. S. Navy;
Commander D—— E. F——, U. S. Navy;
Capt. G—— H. I——, U. S. Marine Corps;
Lieut. J—— K. L——, U. S. Navy;
Lieut. M—— N. O——, U. S. Navy;
First Lieut. P—— Q. R——, U. S. Marine Corps;
Lieut. (j. g.) S—— T. U——, U. S. Navy; and of First Lieut. V—— V.
W——, U. S. Marine Corps, as judge-advocate. No other officers can be summoned without injury to the service.

Detachment of an officer from his ship or station does not of itself relieve him from duty as a member or judge-advocate of the court. Specific orders for such relief are necessary.

This employment on shore duty is required by the public interests. (This line should be omitted if the employment is *not* shore duty.)

C—— F. L——,
Secretary of the Navy.

(Or)

M—— L. M——,
Rear-Admiral, U. S. Navy,
Commander in Chief, U. S. Pacific Fleet.

(Or)

R—— P. G——,
Rear-Admiral, U. S. Navy,
Commander of Second Division, and Commander in Chief,
Detached Squadron, U. S. Pacific Fleet.

(Or)

J—— V. S——,
Captain, U. S. Navy, Commandant,
Commanding U. S. Naval Station, San Juan, P. R.

Name of president included.—The name of the officer to whom the precept is addressed must be included in the body thereof.

Who may order court.—General courts-martial may be convened by the President, by the Secretary of the Navy, by the commander in chief of a fleet or squadron, and by the commanding officer of any naval station beyond the continental limits of the United States.

Composition of court.—A general court-martial shall consist of not more than 13 nor less than 5 commissioned officers, and as many officers, not exceeding 13, as can be convened without injury to the service, shall be summoned on every such court. But in no case where it can be avoided without injury to the service shall more than one-half, exclusive of the president, be junior to the officer to be tried.

If less than thirteen members.—When less than 13 officers are detailed upon a general court-martial, a statement that “no other officers can be summoned without injury to the service” shall be an essential part of the precept, as showing that the requirements relating both to the number and rank of members have been complied with, as far as the interests of the service allow.

Number, rank, and corps.—The limitations as to the number, rank, or corps of the members is discretionary with the appointing power, and his decision thereon is final.

Trial of staff or marine officer.—In detailing officers for the trial of a staff or marine officer, it is proper, if the exigencies of the service permit, that at least one-third of the court be composed of officers of the same corps as the person to be tried.

Possibility of challenge.—No officer should be named as a member against whom either the judge-advocate or the accused can reasonably object when called upon to exercise the privilege of challenge.

Copy appended to record.

Letter from convening authority making change in composition of the court.

NAVY DEPARTMENT,
Washington, June 18, 1909.

SIR: Lieut. F—— S. A——, U. S. Navy, is hereby appointed a member (judge-advocate) of the general court-martial of which you are president, in place of Lieut. M—— N. O——, U. S. Navy, hereby relieved.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

Capt. A—— B. C——, U. S. Navy,
*President General Court-Martial,
Navy-Yard, Philadelphia, Pa.*

Changes in court.—Changes in the composition of the court can legally be made only by the convening authority, and no officer is empowered to sit as a member or judge advocate except in obedience to an order signed by such authority and addressed to the court.

Copies appended.—Copies of all communications making changes in the court must be appended to the record.

Letter transmitting precept.

NAVY DEPARTMENT,
Washington, June 11, 1909.

SIR: I transmit herewith a precept addressed to you as president of a general court-martial ordered to convene at the navy-yard, Philadelphia, Pa., at 10 o'clock a. m., on Monday, June 21, 1909. (The charges and specifications preferred against Lieut. X—— Y. Z——, U. S. Navy, have been forwarded to the judge-advocate of the court.)

Very respectfully,

C—— F. L——,
Secretary of the Navy.

Capt. A—— B. C——, U. S. Navy,
Navy-Yard, Philadelphia, Pa.

The last sentence in the above letter is added only when the court is convened to try a special case. It is ordinarily unnecessary when sending a new precept to a permanent court.

Not appended to record.

Letter transmitting charge and specification.

NAVY DEPARTMENT,
Washington, June 11, 1909.

SIR: C—— J. S——, seaman, U. S. Navy, will be tried before the general court-martial of which you are judge-advocate, upon charge and specification (charge and specifications) (charges and specifications) herewith transmitted.

You will notify the president of the court accordingly, inform the accused of the date set for his trial, and summon all witnesses, both for the prosecution and for the defense.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

First Lieut. V—— V. W——, U. S. Marine Corps,
Marine Barracks, Navy-Yard, Philadelphia.

Prefixed to record, preceding charges and specifications.

Letter transmitting copy of charge and specification to commanding officer under whom the accused is serving.

NAVY DEPARTMENT,
OFFICE OF THE JUDGE-ADVOCATE-GENERAL,
Washington, June 11, 1909.

SIR: C—— J. S——, seaman, U. S. Navy, will be tried by general court-martial.

I have to request that the inclosed copy of the charge and specifications be delivered to him with information that the judge-advocate of the court has been directed to notify him as to the date of his trial and to summon such witnesses as may be required for his defense.

By direction of the Secretary of the Navy:

Very respectfully,

C—— H. E——,
Judge-Advocate-General.

The COMMANDING OFFICER,
U. S. S. Kentucky,
Navy-Yard, Philadelphia, Pa.

Not appended to record.

Letter to commandant of navy-yard, inclosing charges and specifications, and placing officer under arrest.

NAVY DEPARTMENT,
Washington, June 11, 1909.

SIR: I transmit herewith charges, with specifications, preferred against Lieut. X—— Y. Z——, U. S. Navy, which you will deliver to him with the accompanying letter, place him under arrest in conformity with article 44 of the Articles for the Government of the Navy, directing that he confine himself to the limits of (the navy-yard under your command), and further direct him to report to Capt. A—— B. C——, U. S. Navy, at 10 o'clock a. m., Monday, June 21, 1909, for trial before the general court-martial of which that officer is president.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

The COMMANDANT,
Navy-Yard, Philadelphia, Pa.

Order placing officer under arrest.

U. S. NAVAL STATION, HAWAII,
Honolulu, T. H., June 11, 1909.

SIR: Inclosed you will find charges, with specifications, preferred against you. A general court-martial has been ordered to convene at this station at 10 o'clock a. m., on Monday, June 21, 1909, at which time and place you will report to Capt. A—— B. C——, U. S. Navy, the presiding officer of said court, for trial.

You are hereby placed under arrest and will confine yourself to the limits of ——.
Very respectfully,

G—— G. G——,

Rear-Admiral, U. S. Navy, Commandant, U. S. Naval Station, Hawaii.

Lieut. X—— Y. Z——, U. S. Navy,
U. S. Naval Station, Hawaii.

(Or)

U. S. S. CONNECTICUT,
OFF PROVINCETOWN, MASS.,
June 11, 1909.

SIR: Inclosed you will find charges, with specifications, preferred against you. You will be tried by the general court-martial now in session on board the U. S. S. *New Hampshire*, and will report to Capt. A—— B. C——, U. S. Navy, the presiding officer of said court, at such time as he may designate, for trial.

You are hereby placed under arrest and will confine yourself to the limits of the U. S. S. ——.

Very respectfully,

D—— D. D——,

Rear-Admiral, U. S. Navy, Commander in Chief, U. S. Atlantic Fleet.

Lieut. X—— Y. Z——, U. S. Navy,
U. S. S. Louisiana.

Letter to commandant of navy-yard (or to commanding officer of vessel) directing him to furnish clerical assistance.

NAVY DEPARTMENT,
Washington, June 11, 1909.

SIR: A general court-martial, of which Capt. A—— B. C——, U. S. Navy, is president, has been ordered to convene at the navy-yard, Philadelphia, at 10 o'clock a. m., on Monday, June 21, 1909.

You will detail, from the civil employees or enlisted force under your command, a suitable person (or persons) to assist the judge-advocate in recording the proceedings of the court.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

The COMMANDANT,
Navy- Yard, Philadelphia, Pa.

Not appended to record.

Letter to judge-advocate authorizing correction in the specifications.

NAVY DEPARTMENT,
Washington, June 15, 1909.

SIR: You are hereby authorized and directed to change the copy of charges and specifications preferred by the Department against Lieut. X—— Y. Z——, U. S. Navy, in the following particular: On page 3, line 6, the word "——" to "——."

You will cause the copy in the possession of Lieut. Z—— to be corrected accordingly.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

First Lieut. V—— V. W——, U. S. Marine Corps,
Judge-Advocate, General Court-Martial, Navy-Yard, Philadelphia, Pa.

Prefixed to record, following letter of transmittal and preceding charges and specifications.

Letter to judge-advocate authorizing a nolle prosequi.

NAVY DEPARTMENT,
Washington, June 17, 1909.

SIR: You are hereby authorized and directed to enter a *nolle prosequi* in the case of Lieut. X—— Y. Z——, U. S. Navy, on the charge and specification preferred against him by the Department, and forwarded to you on June 11, 1909, for trial.

You will return all papers in the foregoing case to the Department (office of the Judge-Advocate-General).

Very respectfully,

C—— F. L——,
Secretary of the Navy.

First Lieut. V—— V. W——, U. S. Marine Corps,
Judge-Advocate, General Court-Martial, Navy-Yard, Philadelphia, Pa.,

Appended to record.

Letter to judge-advocate authorizing the employment of a stenographer.

NAVY DEPARTMENT,
Washington, June 11, 1909.

SIR: You are hereby authorized and directed to employ, at the customary market rates, to be agreed upon in writing before any services are rendered, such stenographic assistance as may, in your judgment, be requisite and proper for the purpose of recording the proceedings to be had, and the testimony to be taken, by the general court-martial of which you are judge-advocate, ordered to convene on board the U. S. S. *Connecticut* at Hampton Roads, Va., on Tuesday, June 15, 1909.

This agreement will embrace a separate charge for the copying of such matter as may not be taken stenographically.

Should it appear at any time subsequent to the making of the original agreement that service other than that specified therein is necessary, a new agreement in writing shall at once be made concerning the additional service.

The commanding officer of the U. S. S. *Connecticut* has been directed to furnish you with the necessary clerical assistance.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

Commander K—— K. K——, U. S. Navy,
Judge-Advocate, General Court-Martial,
U. S. S. *Connecticut*, Hampton Roads, Va.

Not appended to record.

Form of agreement between judge-advocate and stenographer.

_____,
_____, 1909.

I propose to do the necessary stenographic work in the general court-martial (court of inquiry) to be convened at _____, on the _____ day of _____ (now in session at _____), for the trial of _____ (or as the case may be), and furnish _____ copies of the record for _____ cents per folio of _____ words (or, for \$_____ per diem); and to copy such matter as may not be taken stenographically for _____ cents per folio.

Should additional service, other than that herein specified, become necessary, a new agreement for such service at not more than market rates therefor will be made.

The above proposition is accepted.

V_____ V. W_____,
Judge-Advocate.

Agreement in duplicate.—This agreement should be made in duplicate, one copy to be retained by the stenographer and the other forwarded by the judge-advocate to the Judge-Advocate-General of the Navy when the services have been performed.

Request for court room and for provost-marshal, guard, and orderlies.

U. S. S. WISCONSIN,
NAVY-YARD, NEW YORK,
June 14, 1909.

SIR: Having been appointed president of a general court-martial, ordered to convene at the navy-yard under your command, at 10 o'clock a. m., on Monday, June 21, 1909, I respectfully request that a suitable place be assigned for the sessions of the court, and that a provost-marshal and the necessary guard and orderlies be detailed, as provided by the Navy Regulations.

Very respectfully,

A_____ B. C_____,
Captain, U. S. Navy, President.

The COMMANDANT,
Navy-Yard, New York.

Order to president of court when travel is involved.

NAVY DEPARTMENT,
Washington, June 12, 1909.

SIR: Having been appointed president of a general court-martial ordered to convene at the navy-yard, New York, at 10 o'clock a. m., on Monday, June 22, 1909, you will proceed to that place and report to the commandant of said yard on the date specified.

The members of the court and the judge-advocate have been directed to report to you.

Upon the completion of this duty return to Boston, Mass., and resume present duties.

Very respectfully,

C_____ F. L_____,
Secretary of the Navy.

Capt. A_____ B. C_____, U. S. Navy,
*Commanding U. S. S. Vermont,
Navy-Yard, Boston, Mass.*

If president of court is senior.—When the president of the court is senior to the commandant of the station, he is ordered to confer with, instead of reporting to, him.

If court ordered by commander in chief.—When the court is ordered by a commander in chief of a fleet or squadron, or the commandant of a naval station abroad, this order is issued from his office.

Not appended to record.

Order to president of court when no travel is involved.

NAVY DEPARTMENT,
Washington, June 12, 1909.

SIR: Having been appointed president of a general court-martial ordered to convene at the navy-yard, Washington, D. C., at 10 o'clock a. m., on Monday, June 22, 1909, you will report to the commandant of said yard on the date specified.

The members of the court and the judge-advocate have been directed to report to you.

This duty is in addition to your present duties.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

Capt. A—— B. C——, U. S. Navy,
Navy-Yard, Washington, D. C.

If court ordered by commander in chief.—When the court is ordered by a commander in chief of a fleet or squadron, or the commandant of a naval station abroad, this order is issued from his office.

Not appended to record.

Order to member or judge-advocate when travel is involved.

NAVY DEPARTMENT,
BUREAU OF NAVIGATION,
Washington, June 12, 1909.

SIR: Having been appointed a member (judge-advocate) of a general court-martial ordered to convene at the navy-yard, New York, at 10 o'clock a. m., on Monday, June 22, 1909, you will proceed to that place and report to Capt. A—— B. C——, U. S. Navy, presiding officer of the court, at the time specified.

Upon the completion of this duty return to Boston, Mass., and resume present duties.

Very respectfully,

M—— M. M——,
Chief of Bureau.

Lieut. J—— K. L——, U. S. Navy,
Navy-Yard, Boston, Mass.

If court ordered by commander in chief.—When the court is ordered by a commander in chief, etc., these orders are issued from his office.

Not appended to record.

Order to member or judge-advocate when no travel is involved.

NAVY DEPARTMENT,
BUREAU OF NAVIGATION,
June 12, 1909.

SIR: Having been appointed member (judge-advocate) of a general court-martial ordered to convene at the navy-yard, New York, at 10 o'clock a. m., on Monday, June 22, 1909, you will report to Capt. A—— B. C——, U. S. Navy, the presiding officer of the court, at the place and time specified.

Very respectfully,

M—— M. M——,
Chief of Bureau.

Lieut. M—— N. O——, U. S. Navy,
U. S. S. Birmingham,
Navy-Yard, New York.

If court ordered by commander in chief.—When the court is ordered by a commander in chief, etc., these orders are issued from his office.

Not appended to record.

Summons for naval witness.

COURT-MARTIAL ROOM,
NAVY-YARD, NEW YORK,
June 23, 1909.

To Lieut. G—— C. C——, U. S. Navy,
Navy-Yard, New York.

You are hereby summoned to appear before a general court-martial at the navy-yard, New York, at 10 o'clock a. m., June 24, 1909, as a witness for the prosecution (defense) in the case of Lieut. X—— Y. Z——, U. S. Navy.

When discharged, return to your present station and duties.

V—— V. W——,
First Lieutenant, U. S. Marine Corps,
Judge-Advocate.

Judge-advocate to summon witnesses.—The judge-advocate shall summon, through the customary channels, every person whose testimony is in any way necessary, whether to the prosecution or to the defense; but he shall not, except by order of the court, summon any witnesses at the expense of the United States, or any officer of the Navy or Marine Corps, unless satisfied that his testimony is material and necessary to the ends of justice.

Officers on leave or waiting orders.—Whenever the judge-advocate of a court-martial convened within the limits of the United States has occasion to summon as witness an officer who may at the time be waiting orders or on leave, he shall, at the same time, notify the Bureau of Navigation or the Commandant of the Marine Corps, as the case may be, of the fact that the summons has been issued; and he shall send a similar notice when such officer is discharged from further attendance on the court.

Enlisted man.—When the attendance of an enlisted man as a witness is desired, and formal notification is necessary, a summons in the form shown above will be transmitted to such witness through official channels.

Not appended to record.

Subpœna for civilian witness.

NAVAL GENERAL COURT-MARTIAL OF THE UNITED STATES,
NAVY-YARD, NEW YORK.

UNITED STATES	}	Subpœna.
v.		
Lieut. X—— Y. Z——, U. S. Navy.		

The President of the United States to J—— B. S——:

You are hereby commanded to appear as a witness for the prosecution, at 10 o'clock a. m., June 22, 1909, before a naval general court-martial of the United States, convened at the navy-yard, New York, by an order of the Secretary of the Navy, dated June 11, 1909.

And herein fail not under penalty of five hundred dollars fine or imprisonment for six months, or both.

Bring with you this precept and depart not the court without leave.

Witness: Capt. A—— B. C——, U. S. Navy, president of the said court, this 21st day of June, 1909.

V—— V. W——,
First Lieutenant, U. S. Marine Corps,
Judge-Advocate.

Power to compel attendance.—The act of Congress, approved February 16, 1909, provides that a naval court-martial or court of inquiry shall have power to issue like process to compel witnesses to appear and testify which United States courts of criminal jurisdiction within the State, Territory, or district where such naval court shall be ordered to sit may lawfully issue.

In case of neglect or refusal, etc., to appear.—The same act provides, further, that any person duly subpoenaed to appear as a witness before a general court-martial or court of inquiry of the navy, who willfully neglects or refuses to appear or refuses to qualify as a witness or to testify or to produce documentary evidence which such person may have been legally subpoenaed to produce, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the United States; and it shall be the duty of the United States district attorney on the certification of the facts to him by such naval court, to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than \$500 or imprisonment not to exceed six months, or both, at the discretion of the court: *Provided*, That this shall not apply to persons residing beyond the State, Territory, or district in which such naval court is held, and that the fees of such witness and his mileage at the rates provided for witnesses in the United States district court for said State, Territory, or district shall be duly paid or tendered said witness, such amounts to be paid by the Bureau of Supplies and Accounts out of the appropriation for compensation of witnesses: *Provided further*, That no witness shall be compelled to incriminate himself or to answer any question which may tend to incriminate or degrade him.

Subpœna duces tecum for naval witness.

COURT-MARTIAL ROOM,
NAVY-YARD, NEW YORK,

June 21, 1909.

To Lieut. H—— H. J——, U. S. Navy,

Navy-Yard, New York:

You are hereby summoned to appear before a general court-martial at the navy-yard, New York, at 10 o'clock a. m., June 24, 1909, as a witness for the prosecution (defense) in the case of Lieut. X—— Y. Z——, U. S. Navy.

You will also bring with you the following-described documents: (Here describe them.)

When discharged, return to your present station and duties.

V—— V. W——,

First Lieutenant, U. S. Marine Corps, Judge-Advocate.

Subpœna duces tecum for civilian witness.

NAVAL GENERAL COURT-MARTIAL OF THE UNITED STATES.
NAVY-YARD, NEW YORK.

UNITED STATES

v.

Lieut. X—— Y. Z——, U. S. Navy: }

Subpœna.

The President of the United States to J—— B. S——:

You are hereby commanded to appear as a witness for the prosecution (defense), at 10 o'clock a. m., June 22, 1909, before a naval general court-martial of the United States, convened at the navy-yard, New York, by an order of the Secretary of the Navy, dated June 11, 1909, and bring with you the following-described documents: (Here describe them.)

And herein fail not under penalty of five hundred dollars fine or imprisonment for six months, or both.

Bring with you this precept, and depart not the court without leave.

Witness: Capt. A—— B. C——, U. S. Navy, president of the said court, this 21st day of June, 1909.

V—— V. W——,
First Lieutenant, U. S. Marine Corps, Judge-Advocate.

Subpoena for taking deposition of a witness.

NAVAL GENERAL COURT-MARTIAL OF THE UNITED STATES.

NAVY-YARD, NEW YORK.

UNITED STATES

v.

Lieut. X—— Y. Z——, U. S. Navy. }

Subpoena.

The President of the United States to J—— B. S——:

You are hereby commanded to appear as a witness for the prosecution (defense) on June —, 1909, at — o'clock — m., before the commandant of the navy-yard, Mare Island, Cal., or such person as he may designate, detailed to take your deposition for use before a naval general court-martial of the United States, convened at the navy-yard, New York, by an order of the Secretary of the Navy, dated June 11, 1909.

And herein fail not under penalty of five hundred dollars fine or imprisonment for six months, or both.

Bring with you this precept, and depart not without leave.

Witness: Capt. A—— B. C——, U. S. Navy, president of the said court, this 21st day of June, 1909.

V—— V. W——,
First Lieutenant, U. S. Marine Corps, Judge-Advocate.

Who may administer oaths.—Judges-advocate of naval courts-martial and courts of inquiry, and all commanders in chief of naval squadrons, commandants of navy-yards and stations, officers commanding vessels of the navy, and recruiting officers of the navy, and the adjutant and inspector, assistant adjutants and inspectors, commanding officers, and recruiting officers of the Marine Corps are authorized to administer oaths for the purposes of naval justice and for other purposes of naval administration.

Oaths to be taken before an officer.—When practicable, officers and men of the Navy and Marine Corps who may be required to subscribe under oath to any papers relating to naval administration and the administration of naval justice shall do so in the presence of officers of the service authorized to administer oaths.

Depositions of witnesses may be taken.—It is provided by the act of February 16, 1909, that depositions of witnesses may be taken on reasonable notice to the opposite party, and, when duly authenticated, may be put in evidence before naval courts, except in capital cases and cases where the punishment may be imprisonment or confinement for more than one year, as follows: First, depositions of civilian witnesses residing outside the State, Territory, or district in which a naval court is ordered to sit; second, depositions of persons in the naval or military service stationed or residing outside the State, Territory, or district in which a naval court is ordered to sit, or who are under orders to go outside of such State, Territory, or district; third, where such naval court is convened on board a vessel of the United States, or at a naval station not within any State, Territory, or district of the United States, the depositions of witnesses may be taken and used as herein provided whenever such witnesses reside or are stationed at such distance from the place where said naval court is ordered to sit, or are about to go to such a distance as, in the judgment of the convening authority, would render it impracticable to secure their personal attendance.



Return of service.

(Indorsement on preceding writs.)

UNITED STATES
 v.
 Lieut. X——— Y. Z———, U. S. Navy. }

NAVY-YARD, NEW YORK,

June 22, 1909.

I certify that I made service of the within subpoena on J——— B. S———, the witness named therein, by personally delivering to him a duplicate of the same at ——, on the 21st day of June, 1909.

B——— R. G———,

*Lieutenant, U. S. Navy,**Provost-Marshal, General Court-Martial.*

(Or other person, as the case may be.)

____ } ss. (State and county, or navy yard, etc., where affidavit is taken.)

B——— R. G———, being duly sworn, on his oath states that the foregoing certificate is true.

B——— R. G———

Subscribed and sworn to this 22d day of June, 1909, before me.

V——— V. W———,

First Lieutenant, U. S. Marine Corps, Judge-Advocate.

(Or other officer, giving title, before whom affidavit is made.)

Original subpoena returned.—After service, as above indicated, the original subpoena should be at once returned to the judge-advocate of the court; if the witness can not be found, the judge-advocate shall be so informed.

Securing attendance of witnesses.—Subpoenas shall, whenever possible, be sent through official channels. In case a civilian witness, duly subpoenaed before a court-martial or court of inquiry, willfully neglects or refuses to qualify as a witness, or to testify or produce documentary evidence as required by law, he shall at once be tendered or paid by a pay officer, designated by the senior officer present, one day's fees and mileage for the journey to and from the court, and shall thereupon be again called upon to comply with the requirements of the law. The fees and mileage of civilian witnesses residing beyond the limits of the State, Territory, or district in which the court-martial is held shall not be paid in advance, as such witnesses can not be punished if they refuse to obey the summons.

Witness living near at hand.—If the desired witness is a civilian living near where the court is convened, duplicate subpoenas shall be prepared, one of which shall be served by the judge-advocate, provost-marshal, recorder, deck court officer, or by any person duly instructed to do so; if the residence of the witness is not near at hand, but still within the State, etc., the duplicate subpoenas shall be sent to the convening authority or senior officer present, requesting service of the same.

Service and proof thereof.—Service is made by a personal delivery of the duplicate subpoena to the witness, and proof of service by returning the original to the judge-advocate, recorder, or deck court officer, properly indorsed by the person who serves the subpoena. Any person, duly instructed to do so, may serve the subpoena, but the service must be personal.

Warrant of attachment.

NAVAL GENERAL COURT-MARTIAL OF THE UNITED STATES.

UNITED STATES

v.

Lieut. X—— Y. Z——, U. S. Navy. }

The President of the United States to Lieut. B—— R. G——, U. S. Navy, provost-marshal for said court:

Whereas, J—— B. S——, of ——, was on the —— day of June, 1909, at ——, duly subpoenaed to appear and attend at the navy-yard, New York, on the —— day of June, 1909, at 10 o'clock a. m., before a naval general court-martial of the United States, duly convened by an order of the Secretary of the Navy, dated June 11, 1909, to testify on the part of the prosecution (defense) in the above-entitled case:

And whereas he has willfully neglected, refused, and failed to appear and attend (*or*, and to produce documentary evidence which he was legally subpoenaed to produce) before said general court-martial as by said subpoena required:

And whereas he is a necessary and material witness on behalf of the prosecution (defense) in the above-entitled case:

Now, therefore, by virtue of the power vested in said naval court-martial, by section 11 of an act of Congress entitled "An act to promote the administration of justice in the navy," approved February 16, 1909, of which court-martial I, the undersigned, am president, you are hereby commanded and empowered to apprehend and attach the said J—— B. S——, wherever he may be found within the State (Territory or district) of New York, and forthwith bring him before the said general court-martial assembled at the navy-yard, New York, to testify as required by said subpoena.

Dated Navy-Yard, New York, June —, 1909.

A—— B. C——,

Captain, U. S. Navy, President of said General Court-Martial.

Warrant served by whom.—This warrant should be addressed to and served by the provost marshal of the court. If none has been appointed, the court should ask for such an appointment before the president issues the warrant.

Power of court to issue.—Should a civilian witness fail to appear after due and reasonable notice, after having been served with a subpoena, the court has power to issue like process to compel him to appear and testify, which United States courts of criminal jurisdiction within the State, Territory, or district where such naval court is convened may lawfully issue. This power also includes the power to execute such process through an officer, who shall be specially charged with its execution.

Limits of warrant.—A warrant, or writ, of attachment does not run beyond the State, Territory, or district in which the court-martial sits.

Method of enforcing attendance.—Whenever it becomes necessary to enforce the attendance of a civilian witness as provided above, the president of the court will issue a warrant of attachment, directing and delivering it for execution to an officer designated for that purpose, the provost marshal of the court. He will also deliver to this officer the subpoena, indorsed with affidavit of service (to be returned when the warrant is executed), and a certified copy of the order appointing the court-martial.

Use of force.—In executing such process it is lawful to use only such force as may be necessary to bring the witness before the court. Whenever force is actually required, the senior officer present, or other officer designated by the convening authority, nearest the witness's residence will furnish a detail sufficient to execute the process. The use of such force, however, should only be resorted to when the ends of justice absolutely demand it, when all other means have failed, and only with the greatest discretion.

Interrogatories and Deposition.

INTERROGATORIES.

UNITED STATES
 v.
 LIEUT. X—— Y. Z——, }
 U. S. Navy.

The following interrogatories and cross-interrogatories to be propounded under section 16 of the act of Congress, approved February 16, 1909, to ——, stationed (or residing) at ——, a witness for the prosecution (defense) in the above-entitled case now pending and to be tried before the general court-martial convened by an order of the Secretary of the Navy, dated June 11, 1909, are accepted by the court in open session, the defense (prosecution) having been given reasonable opportunity to submit cross-interrogatories (or, are agreed upon by both parties in advance of the assembling of the court and subject to exceptions when read in court) and are respectfully forwarded to —— with the request that some suitable officer may be designated to take, or cause to be taken, the deposition of the said witness thereon:

First interrogatory: Are you in the United States Navy? If yes, what is your full name, rank, and vessel or station? If no, what is your full name, occupation, and residence?

Second interrogatory: Do you know the accused? If yes, how long have you known him?

Third interrogatory: —— ———?

Etc.

First cross-interrogatory: —— ———?

Etc.

First interrogatory by the court: —— ———?

Etc.

Dated at the Navy-Yard, New York, June —, 1909.

A—— B. C——,
 Captain, U. S. Navy, President of the Court.

V—— V. W——,
 First Lieutenant, U. S. Marine Corps, Judge-Advocate.

(Or, if taken in advance of the assembling of the court, the signatures should be those of the judge-advocate and the accused, thus:)

V—— V. W——,
 First Lieutenant, U. S. Marine Corps, Judge-Advocate.

X—— Y. Z——,
 Lieutenant, U. S. Navy.

NAVY-YARD, MARE ISLAND, CAL.,

June —, 1909.

Capt. L—— L. L——, U. S. Navy, commanding U. S. S. *Independence* (or some other officer lawfully authorized to administer oaths), is hereby designated to take the deposition of the said J—— B. S——, a witness on the part of the prosecution (defense) in the case of the United States against Lieut. X—— Y. Z——, U. S. Navy, now pending before a general court-martial at the navy-yard, New York.

The deposition, when taken, shall be sent to Capt. A—— B. C——, U. S. Navy (or, to First Lieut. V—— V. W——, U. S. Marine Corps, judge-advocate), president of said court at the navy-yard, New York.

L—— G. N——,
 Rear-Admiral, U. S. Navy, Commandant.

DEPOSITION.

J—— B. S——, the witness above named, having been first duly sworn by me, Capt. L—— L. L——, U. S. Navy, commanding the U. S. S. *Independence*, doth depose and say for full answers to the foregoing interrogatories, as follows:

To the first interrogatory: _____.

Etc.

J—— B. S——.

Subscribed and sworn to before me this _____ day of June, 1909.

L—— L. L——,

Captain, U. S. Navy, Commanding U. S. S. Independence.

To obtain deposition.—The method of procedure to obtain a deposition is as follows: The party, prosecutor or defendant, desiring the deposition submits to the court a list of interrogatories to be propounded to the absent witness; the opposite party then prepares and submits a list of cross-interrogatories, a reasonable time being allowed for this purpose; redirect and recross interrogatories are added if desired; finally, the court, having assented to the interrogatories thus submitted, adds such as in its judgment may be necessary to elucidate the whole subject of the witness's testimony.

Papers sent to whom.—The interrogatories having been accepted by the court, duplicate subpoenas shall be prepared requiring the witness, if a civilian, to appear in person, at the time and place prescribed in the subpoena or to be entered by the convening authority, commandant, or other officer, naval or civil, who is to take the deposition or cause it to be taken, and the interrogatories, subpoenas, and proper account for civilian witness shall be sent to the convening authority, senior officer present, or other officer, naval or civil, or to the witness himself, if necessary, with a request that the deposition be secured, the required data supplied in the account for civilian witness, and the post-office address given, so that the account may be properly certified by the officer administering the oath before payment.

Deposition of person in the service.—If the deposition of a person in the service is required, subpoenas will not be inclosed with the interrogatories, but the officer before whom the deposition is to be taken, or the officer who causes it to be taken, shall direct the witness to appear at the proper time and place.

Account of civilian witness not in government employ.

(General Orders, Nos. 12 and 31; act of February 16, 1909, sections 11 and 12.)

_____,
 _____, 19—.
The United States, Navy Department, To _____, Dr.
Address: _____.

	Dollars.	Cents.
For allowance while in attendance before a general court-martial convened at _____, from _____, 19—, to _____, 19—, as per judge-advocate's certificate hereon, being _____ days, at \$1.50 per day.....		
For mileage from _____ to _____ and return, in accordance with subpoena attached, being _____ miles, at 5 cents per mile.....		
Total		

I solemnly swear that the above account is correct, and that I have not been furnished with government transportation for any part of the journey for which travel fare is charged, and that I have not heretofore received payment for any part of this account.

Sworn to and subscribed before me at _____, on this _____ day of _____, 19____.

_____,
_____, (U. S. —.)
(Judge-Advocate, or proper officer.)

I certify that _____, a civilian not in government employ, has been in attendance as a witness before the _____ court-martial, of which I am _____ in session at _____ from _____, 19____, to _____, 19____, inclusive, and that he was duly summoned thereto from _____, and that he was not furnished transportation by the Government for any portion of this journey.

_____,
_____, (U. S. —.)
(Judge-Advocate, or proper officer.)

To _____, Pay _____, U. S. Navy:

Under the act of February 16, 1909, you are hereby directed to pay mileage and witness fees or cost of travel and expenses for civilian witness whose account is set forth above in the sum of _____ (\$_____).

_____,
_____, U. S. Navy, Commanding.

Paid by check No. _____ on assistant treasurer at _____, dated _____, 19____, for \$_____ in favor of _____.

_____,
_____, Pay _____, U. S. N.

(Receipt to be signed only when payment is made in cash.)

Received _____, 19____, of _____, Pay _____, U. S. Navy, in cash, _____ dollars, in full of above account.

_____,
Witness.

(Certified copy of order convening the court must be attached to this voucher.)

Forms furnished.—This form and the one following may be obtained from the Bureau of Supplies and Accounts.

Voucher for reimbursement of traveling expenses, civilian witness in government employ.

(General Orders, Nos. 12 and 31; act of February 16, 1909, sections 11 and 12.)

The United States, Navy Department, To _____, Dr.

Address: _____.

	Dollars.	Cents.
For reimbursement of traveling expenses incurred in attendance as a witness before the _____ court-martial at _____, from _____, 19—, to _____, 19—, in accordance with the subpoena which is attached hereto and forms a part of this account—as per itemized statement herein set forth.....		
Amount claimed.....		

I solemnly swear that the above account and schedule annexed are just and true in all respects, as verified by a memorandum kept by me; that the distances as charged have been actually and necessarily traveled on the dates therein specified; that the amounts as charged have been actually paid by me for traveling expenses; that I have not and will not receive, directly or indirectly from any person, agency, or corporation any sums as rebate on account of any expenses of transportation included in this account; that none of such distances for which charge is made was traveled under any free pass on any conveyance; that no part of the account has been paid by the United States, but the full amount is justly due; that all expenditures included in said account other than my own personal traveling expenses were made under urgent and unforeseen public necessity, and that it was not, for the reasons stated herein, feasible to have payment made for such expenditures by a pay officer of the Navy Department. So help me God.

Sworn to and subscribed before me at _____, on this _____ day of _____, 19—.

[L. s.]

_____,
_____, (U. S. —.)
(Judge-Advocate, or proper officer.)

I certify that _____, a civilian in government employ, has been in attendance as a witness before the _____ court-martial, of which I am _____, in session at _____, from _____, 19—, to _____, 19—, inclusive, and that he was duly summoned thereto from _____, and that he was (—) furnished transportation by the Government for (—) this journey.

_____,
_____, (U. S. —.)
(Judge-Advocate, or proper officer.)

To _____,

Pay _____, U. S. Navy:

Under the act of February 16, 1909, you are hereby directed to pay the cost of travel and expenses, for civilian witness whose account is set forth above, in the sum of _____ (\$_____).

_____,
_____, U. S. Navy, Commanding.

Paid by check No. —, on Assistant Treasurer at —, dated —, 19—, for \$— in favor of —.

—, — Pay —, U. S. N.

(Receipt to be signed only when payment is made in cash.)

Received —, 19—, of —, — Pay —, U. S. N., in cash, — dollars, in full of above account.

—, — Witness.

(Certified copy of order convening the court must be attached to this voucher.)

Itemized statement of traveling expenses—and other expenses incurred under stress of urgent or unforeseen public necessity.

Table with 5 columns: Date, Character of expenditures, Sub-voucher No., Amount (Dollars, Cts.). Includes a row for '19--' with a note to fill in form and a 'Total amount claimed' row.

Memorandum of travel performed upon transportation requests.

Table with 7 columns: No. of transportation request, Date of travel, From—, To—, Via R. R., Dollars, Cts.

INSTRUCTIONS RELATIVE TO PAYMENT OF FEES AND MILEAGE TO CIVILIAN WITNESSES.

1. Payment of the fees and mileage of civilian witnesses shall be made by the pay officer of any vessel, or at a yard or station where there is no receiving ship, by the paymaster of the yard, upon receipt of an order from his commanding officer. The order from the commanding officer must be accompanied with vouchers, properly sworn to by the witness and certified by the judge-advocate or recorder of the court, or by the deck court officer, or by the officer before whom the witness gives his deposition.

2. The order must also be accompanied by a copy of the order convening the court, certified to be correct by the judge-advocate or recorder of the court, or by the deck court officer, or by the officer before whom the witness gives his deposition.

3. In case a witness duly subpoenaed before a court-martial or court of inquiry refuses to appear or qualify as a witness, or to testify or produce documentary evidence as required by law (sec. 12, act of February 16, 1909, 35 Stat., 621), he will at once be duly paid or tendered his fees and mileage at the rates provided for witnesses in the United States district court for the State, Territory, or district in which such naval court is held, and such witness shall then again be called upon to comply with the requirements of the law. The fees and mileage of civilian witnesses residing beyond the limits of the State, Territory, or district in which the court is held shall not be paid in advance, as such witnesses can not be punished if they refuse to obey the summons.

4. The fees and mileage above referred to will be duly paid or tendered by the judge-advocate, recorder, deck court officer, or the officer before whom a deposition is taken, the money for this purpose to be supplied by such pay officer as may be designated, upon the written order of the senior officer present, and the judge-advocate, recorder, deck court officer, or the officer before whom a deposition is taken, receiving the money for the purpose named, shall furnish the pay officer concerned with a proper receipt.

5. The certificate of the judge-advocate, recorder, deck court officer, or officer before whom a deposition is taken will be evidence of the fact and period of attendance and place from which summoned, and said certificate shall be made on the voucher.

6. Upon execution of the certificate the witness will be paid upon his discharge from attendance, without awaiting performance of return travel. The charges for return journeys will be made upon the basis of the actual charges allowed for travel to the court, or place designated for taking a deposition. No other items will be allowed.

7. Travel must be estimated by the shortest usually traveled route—by established lines of railroad, stage, or steamer—the time

occupied to be determined by the official schedules, reasonable allowance being made for unavoidable detention.

8. If no pay officer be present at the place where the court sits, the accounts, properly authenticated as above directed, shall be transmitted to the convening authority or to the nearest naval station to which a pay officer is attached, with the request that the amount be paid by check.

9. Accounts of civilian witnesses are not transferable.

10. Signature of witnesses when signed by mark must be witnessed.

11. The following rates for civilian witnesses are prescribed by law:

(a) A civilian not in government employ, duly summoned as a witness before a naval court-martial or court of inquiry, or at a place where his deposition is to be taken for use before such court, will receive \$1.50 a day for each day of actual attendance for such purpose, and 5 cents a mile from place of residence to place of trial or taking deposition, and return, except as follows:

(b) Porto Rico and Cuba, \$1.50 a day, 15 cents a mile for necessary travel by stage or private conveyance and 10 cents by railway or steamship line.

(c) Alaska, east of one hundred and forty-first degree west longitude, \$2 a day and 10 cents a mile; west of that degree, \$4 a day and 15 cents a mile.

(d) Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Washington, Oregon, Nevada, California, \$3 a day, 15 cents a mile for necessary travel by stage or private conveyance, 5 cents by railway or steamship line, and \$3 a day for the time necessarily occupied in such travel.

12. Civilian witnesses, not in government employ, summoned to attend courts-martial in the Philippine Islands, are entitled to the per diem and mileage allowed witnesses in attendance upon United States courts; i. e., \$1.50 per day for each day in attendance on the court, and 5 cents per mile for the distance traveled to and from the court. If furnished with transportation by the Government, 42.858 per cent of the 5 cents per mile will be deducted as cost of transportation furnished, and 57.142 per cent allowed for subsistence and other expenses of the witness.

13. An employee of the civil government of the Philippine Islands, paid from insular funds, is not in the employ of the Government for the purposes of payment as a witness.

14. Civilians in the employ of the Government, when summoned as witnesses, shall be allowed their actual expenses for travel and subsistence while going to and returning from the court, and for actual and necessary reasonable expenses for board and lodging while on attendance thereon. If the court is in session at the place where the civilian witness in the employ of the Government is stationed, he shall receive no allowance.

Certificate of court to district attorney in case of a contumacious civilian witness.

COURT-MARTIAL ROOM,
NAVY-YARD, BROOKLYN, N.Y.

June —, 19—.

The United States District Attorney for the Southern District of New York,

SIR: A naval general court-martial was convened at the navy-yard, New York, situated in Brooklyn, State of New York, by an order of the Secretary of the Navy (or as the case may be); a certified copy of said order is hereto appended, marked "—"; also certified copies of subsequent modifications thereof are hereto appended, marked "—" and "—."

In the case of the United States against ———, U. S. Navy, transmitted to the court by a letter, certified copy hereto appended, marked "—," a material witness for the prosecution (defense), L—— J. B——, residing at ——, within this State (Territory or district), was duly subpoenaed to appear as such witness before said court-martial; certified copy of subpoena (*duces tecum*) and of the return of service thereon, hereto appended, marked "—."

Upon being duly sworn as a witness in the aforesaid case, and in the course of his testimony therein, the said L—— J. B—— was asked the following question by counsel for the defense (judge-advocate): Q. * * *?

The witness declined to answer the question, and was paid (tendered) his lawful fee and mileage. He was then cautioned and informed as to the penalty for persisting in his refusal to answer the said question, which was again put to him. The witness again declined to answer, and gave the following reason for his refusal: "——." (Enter reason of witness *in extenso*, and verbatim if possible.)

The foregoing facts are certified to you as correct for your action thereon, in accordance with the provisions of section 12 of the act of February 16, 1909 (35 Stat. L., 621).

By order of the court:

A—— B. C——,
Captain, U. S. Navy, President.

Attest:

V—— V. W——,
First Lieutenant, U. S. Marine Corps, Judge-Advocate.

Object of certificate.—The certification of facts is for the information of the district attorney, and to enable him to prepare the proper information charging the witness with the offense and, except in two cases mentioned below, the accuracy and precision required in an indictment is not essential.

Precise question set out.—The first exception referred to above is where the witness refuses to answer a question. In such a case the precise question propounded to him should be set out, likewise the reason, if any, which the witness gives for not answering.

Refusal to obey subpoena duces tecum.—In case the contumacy is in the refusal of the witness to produce a book, paper, or document the second exception referred to above occurs. In such a case, the witness having been subpoenaed to produce such book, etc., the book, paper, or document should be particularly and certainly described and identified, which description should also correspond with that given in the *subpoena duces tecum*. The reason for the refusal of the witness should also be accurately set forth.

Substance of certificate.—The certificate should contain the following information: Copy of order convening court with copies of any subsequent modifications. Copy of subpoena served on the witness showing the place from which summoned and that such place was within the State, Territory, or district within which the court is held. Facts as to (1) neglect to appear, (2) refusal to appear, (3) refusal to qualify as a witness, (4) refusal to testify, or (5) refusal to produce documentary evidence, all to be definitely but succinctly stated. Also a statement that the witness was paid or tendered his lawful fee and mileage.

Further information.—With a proper observance of the particularity, accuracy, and precision in the two cases above referred to, the matter indicated in the foregoing paragraph is sufficient to meet the requirements of the law. Any further information can readily be furnished if needed by the district attorney.

Record and signature.—The record of the proceedings shall state the facts relative to any case of contumacy, and that the court has ordered the facts to be certified to the district attorney. The formal certificate of facts, stating that it is made “by order of the court,” will be sufficiently signed if done officially by the president of the court and attested by the judge-advocate.

Copy appended to record.

Receipt of accused for copy of record.

GENERAL COURT-MARTIAL ROOM,
NAVY-YARD, PHILADELPHIA, PA.,

May 1, 1909.

I hereby acknowledge the receipt of a copy of the record of the proceedings of my trial by general court-martial, held this date (or as the case may be.)

_____,
Seaman, U. S. Navy.

Appended to record.

Waiver of the accused of the right to copy of record.

GENERAL COURT-MARTIAL ROOM,
NAVY-YARD, PHILADELPHIA, PA.,

May 1, 1909.

Without any coercion whatever, I hereby waive my right to a copy of the record of the proceedings of my trial by general court-martial held this date (or as the case may be).

A—— D. B——,
Private, U. S. Marine Corps.

Accused entitled to copy of record.—Any person having an interest in the record of a naval court-martial is entitled to an exemplified copy, after the proceedings are consummated by proper authority.

Duty of judge-advocate.—The judge-advocate shall secure from the accused a waiver of his right to a copy of the proceedings, or, if the accused desires a copy, the record of proceedings shall be made in duplicate and a copy furnished him at the time of his trial.

Finding, sentence, and final action.—The finding, sentence, and action of the convening authority shall not be included in the copy furnished to the accused; he may obtain the same, however, by application to the Department.

Notation on cover page.—The fact that a copy of the record has been furnished the accused, or that he has waived his right thereto, shall be noted on the cover page of the case.

Waiver or receipt appended.—The waiver of the right to a copy of the proceedings, or, when a copy is furnished, a receipt therefor shall, in each case, be the last document appended to the record.

Letter informing convening authority that court has finished all business before it.

COURT-MARTIAL ROOM,
NAVY-YARD, NEW YORK,

June —, 1909.

SIR: I have the honor to inform you that the general court-martial of which I am president has finished all the business before it and has adjourned to await your further instructions.

Very respectfully,

A—— B. C——,
Captain, U. S. Navy, President.

The Honorable the SECRETARY OF THE NAVY,
Navy Department, Washington, D. C.

Order dissolving court.

NAVY DEPARTMENT,

Washington, July —, 1909.

SIR: The general court-martial of which you are president is hereby dissolved.
You will notify the other members of the court and the judge-advocate accordingly.
Very respectfully,

C——— L. R———,
Secretary of the Navy.

Capt. A——— B. C———, U. S. NAVY,
President General Court-Martial, Navy-Yard, New York.

Return to writ of habeas corpus by a United States court.

U. S. S. FRANKLIN,
NAVY-YARD, NORFOLK, VA.,
June 11, 1909.

In re M——— P. A———, coal passer, U. S. Navy. }
Writ of habeas corpus. Return of respondent. }

To the Honorable Court (or Judge):

The respondent, Capt. W——— X. Y———, U. S. Navy, upon whom has been served a writ of habeas corpus for the production of M——— P. A———, respectfully makes return and states that he holds the said M——— P. A——— by authority of the United States as a coal passer in the United States Navy, under the following circumstances:

That the said M——— P. A——— was duly enlisted as a coal passer in the United States Navy at Boston, Mass., on May 12, 1909, for a term of four years.

That the said M——— P. A——— deserted said United States Navy at Boston, Mass., on May 17, 1909, and remained absent in desertion until he was apprehended at Norfolk, Va., on May 20, 1909, by ——, and was thereupon committed to the custody of the respondent as commanding officer of the U. S. S. *Franklin* at the navy-yard, Norfolk, Va.

That the said M——— P. A——— has been placed in confinement (or arrest, as the case may be) charged with said offense, and formal charges against him therefor have been preferred, a copy of which is hereto annexed (or are being prepared), and that he will be brought to trial before a general court-martial, in session at this yard, as soon as possible.

In obedience, however, to the said writ of habeas corpus the respondent herewith produces before the court the body of the said M——— P. A———, respectfully refers to the decisions cited in the annexed brief, and for the reasons set forth in this return prays this honorable court to dismiss the said writ.

W——— X. Y———,
Captain, U. S. Navy,
Commanding U. S. S. Franklin.

VAR. 1. (If the offense is fraudulent enlistment, omit the *second* and *third* paragraphs above and substitute the following:)

That on the 12th day of May, 1909, at Boston, Mass., the said M——— P. A———, being then under the age of 18 years, did fraudulently enlist in the naval service of the United States for the term of four years, by falsely representing himself to be over 18 years of age, to wit, 21 years and 2 months; and has, since said enlistment, received pay and allowances thereunder.

VAR. 2. (If the offense is fraudulent enlistment of a marine, omit the *second* and *third* paragraphs above and substitute the following:)

That on the 12th day of May, 1909, at Boston, Mass., the said _____, being then a minor, did fraudulently enlist in the United States Marine Corps for the term of four years, by falsely representing himself to be over 21 years of age, to wit, 22 years and 7 months; and has, since said enlistment, received pay and allowances (or either) thereunder.

VAR. 3. (If the party is held as a general court-martial prisoner, after reciting his offense in detail appropriately in the third paragraph above, omit the *fourth* paragraph and substitute therefor the following:)

That the said _____ was duly arraigned for said offense before a general court-martial by an order of the Secretary of the Navy, dated June 4, 1909, was convicted thereof by said court, and was sentenced to be _____, which sentence was duly approved on the _____ day of June, 1909, by the Secretary of the Navy, as required by article 53, section 1624, of the Revised Statutes of the United States. A copy of the order promulgating said sentence is hereto attached.

Return to writ of habeas corpus by a State court.

In re A—— P. M——, private, U. S. Marine Corps. }
 Writ of habeas corpus. Return of respondent. }

(When the writ issues from a State court, the return is made in the same manner as to a United States court, with the exception of the concluding paragraph, which should be in the following form:)

And the said respondent further makes return that he has not produced the body of the said A—— P. M——, because he holds him by authority of the United States as above set forth, and that this court (*or, your honor, as the case may be*) is without jurisdiction in the premises, and he respectfully refers to the decisions of the Supreme Court of the United States in *Ableman v. Booth* (21 Howard, 506), and *Tarble's case* (13 Wallace, 397), as authority for his action, and prays this court (*or, your honor*) to dismiss the writ.

W—— X. Y——,
 Captain, U. S. Navy,
 Commanding U. S. S. Franklin.

Return to writ by United States court.—The return to a writ of habeas corpus issued by a United States court shall be made in accordance with the first of the forms given above, and will refer, as in last paragraph thereof, to the brief of authorities which follows these instructions, and a copy of that brief shall be annexed to the return.

If discharge ordered, appeal noted.—Should the court order the discharge of the party, the officer making the return, or counsel, should note an appeal pending instructions from the Navy Department, and he shall report to the Judge-Advocate-General of the Navy the action taken by the court and forward a copy of the opinion of the court as soon as it can be obtained.

Return to writ by State court.—The return to a writ issued by a State court shall be made in accordance with the second of the forms given above, but a copy of the brief of authorities is not intended to be attached to the return to the writ of habeas corpus issuing from a State court.

Brief to be filed with return to a writ of habeas corpus issued by a United States court in case the discharge of an enlisted man of the navy is sought under section 1419, or that of a marine under section 1117, of the Revised Statutes.

If a minor between the ages of 14 and 18 years claims to be over 18 years of age and enlists in the navy without the consent required by section 1419, Revised Statutes, as amended by the act of February 23, 1881 (21 Stats., 338), or if a minor 16 years old or over claims to be 21 years of age or over and enlists in the Marine Corps without the consent required by section 1117, Revised Statutes, the contract of such enlistment is not voidable by the minor, nor by his parents or guardian, if at the time of the filing of the petition the enlisted minor is held in pursuance of a sentence of a court-martial, or any step has been taken with a view to bringing him before such court.

1. CONTRACT NOT VOIDABLE BY MINOR.

(a) *When the party is not in confinement.*—United States *ex rel. Wagner v. Gibbon.* (24 Fed. Rep., 135.) In this case Wagner, becoming "tired of the service," sought his discharge from the army "solely on the ground of minority at the time of enlistment." This the court refused to grant, holding that section 1117, Revised Statutes, "was made for the exclusive benefit of parents and guardians," and that, quoting from the syllabus:

A minor over 16 years of age, who at the time of his enlistment makes affidavit that he is 21 years of age, will not, on his own application, be released on *habeas corpus* on the ground that he was a minor at the time of his enlistment, and that the written consent of his guardian was not obtained.

(b) *When the party is in confinement.*—*In re Morrissey* (137 U. S., 157); *In re Grimley* (137 U. S., 147); *In re Wall* (8 Fed. Rep., 85); *In re Davison* (21 Fed. Rep., 618); *In re Zimmerman* (30 Fed. Rep., 176); *In re Hearn* (32 Fed. Rep., 141); *In re Spencer* (40 Fed. Rep., 149); *In re Lawler* (40 Fed. Rep., 233); *Solomon v. Davenport* (87 Fed. Rep., 318).

In the *Morrissey* case the Supreme Court of the United States settles this beyond question. *Morrissey*, a minor of 17 years of age, enlisted without the consent of his mother, who was living. He deserted, remained in concealment until he attained his majority, and then presented himself before a recruiting officer and demanded his discharge from the army on the ground that he was a minor when enlisted. The court said that the provision of section 1117, Revised Statutes—

is for the benefit of the parent or guardian, * * * but it gives no privilege to the minor. * * * An enlistment is not a contract only, but effects a change of status. It is not, therefore, like an ordinary contract, voidable by the infant. * * * The contract of enlistment was good so far as the petitioner is concerned. He was not only *de facto*, but *de jure*, a soldier—amenable to military jurisdiction.

All the cases cited are instructive as illustrative of the different circumstances under which this principle has been declared.

In the *Lawler* case the deserter was arrested and "held as such awaiting trial, which will be as soon as a court-martial can be convened and organized for that purpose."

In the case of *Solomon v. Davenport*, the deserter was held by a sheriff under a warrant of a United States commissioner.

In the *Spencer* case the court said:

The authorities which have been read to me seem to establish very conclusively this rule—that the enlistment of a minor is voidable, not necessarily void; and that he does really become by such enlistment, although under age, engaged in the service of the United States, and subject to the power and jurisdiction of the military authorities; and, such being the case, the court-martial had jurisdiction to arrest and try him for the charge of desertion.

2. CONTRACT NOT VOIDABLE BY PARENTS OR GUARDIANS IF THE PARTY IS HELD PURSUANT TO A SENTENCE OF A COURT-MARTIAL OR IF ANY STEP HAS BEEN TAKEN WITH A VIEW TO BRINGING HIM BEFORE SUCH COURT.

In re Kaufman (41 Fed. Rep., 876); *In re Dohrendorf et al.* (40 Fed. Rep., 148); *In re Cosenow* (37 Fed. Rep., 668); *In re Dowd* (90 Fed. Rep., 718); *In re Miller* (114 Fed. Rep., 838); *U. S. v. Reaves* (126 Fed. Rep., 127); *In re Lessard* (134 Fed. Rep., 305); *Ex parte Anderson* (16 Iowa, 595); *McConologue's case* (107 Mass., 170).

In the Kaufman case, the father sought the discharge of his son, who was held by the military authorities and had been ordered before a military court for trial as a deserter. Quoting from the syllabus:

A minor who enlists in the United States Army upon his representation that he is of age and receives pay and clothing, and afterwards deserts and is arrested as a deserter, and at the time of his petition is held by the United States awaiting trial by a court-martial for the crime of desertion, will not be released under a writ of *habeas corpus* upon the ground that being a minor his enlistment was unlawful and contrary to the Revised Statutes of the United States.

In the Cosenow case the minor swore that he was 21 years and 7 months old at the time of enlistment. He deserted, and at the time of the filing of the petition was held in custody awaiting action of the reviewing authority on the proceedings of the court-martial. His father sought the discharge of his son on the ground of infancy at the time of enlistment. The court refused to discharge him, holding that "an enlistment contrary to law is not void, but voidable;" that the court-martial had jurisdiction of the offense, and the soldier "must be remanded to await the result of his trial."

The Dowd case arose on the application of the mother for the release of her son, who was held under sentence of a summary court. The court held, quoting from the syllabus:

The enlistment of a minor in the army without the consent of his parents or guardian, required by Revised Statutes, section 1117, is not void, but voidable only, and while he remains in the service under such enlistment the minor is amenable to the Articles of War, and can not be remanded to the custody of his parents by a civil court on a writ of *habeas corpus* while undergoing a sentence imposed on him by a court-martial for a violation of such articles.

In the Anderson case it appears that a minor enlisted without his father's consent, and, being held for trial before a court-martial for desertion, his father sought his discharge on *habeas corpus*. The court refused to discharge the soldier, saying "he must abide by the decision of the latter court (court-martial) before the question of the validity of his enlistment can be determined in the civil courts on *habeas corpus*."

In *McConologue's case* the court said:

The minor's contract of enlistment is indeed voidable only and not void, and if, before a writ of *habeas corpus* is sued out to avoid it, he is arrested on charges of desertion, he should not be released by the court while proceedings for his trial by the military authorities are pending.

By the act of March 3, 1893 (27 Stats., 716), "fraudulent enlistment in the navy, and the receipt of any pay or allowance thereunder, is * * * declared an offense against naval discipline and made punishable by general court-martial, under article 22 of the Articles for the Government of the Navy." A minor under the age of 18 in the Navy or of 21 in the Marine Corps who procures his enlistment by representing himself to be over those ages, respectively, and receives pay or allowance thereunder, commits this offense, and the statute authorizes his punishment therefor.

In general it may be stated that where a minor has committed a military offense the interests of the public in the administration of justice are paramount to the right of the parent and require that the enlisted person shall abide the consequences of his offense before the right to his discharge be passed upon. (Dig. Opins. J. A. G. Army, McClure, 1901, secs. 1258, 1264, and notes.)

The enlisted person should not be allowed to escape punishment for his offense, even though his parents assert their right to his services. A minor in civil life is liable to punishment for a crime or misdemeanor, even though his confinement may interfere with the rights of his parents. In the case of *In re Miller* (114 Fed. Rep., 838) it was held that a minor 16 years old or over "enlisting without the consent of his parents, on representation that he is of age, becomes a soldier amenable to military jurisdiction for military offenses, and subject to release from service only on application from his parents, who can not prevent his court-martial for past military offenses." In the opinion of the court (p. 842) it is said:

The common law, unaided by statute, fully recognized the parents' rights to the custody and services of their minor child; but it has never been held that they could, by the writ of *habeas corpus* or otherwise, obtain his custody and his immunity when he was held by an officer of a civil court of competent jurisdiction to answer a charge of crime. His enlistment having made the prisoner a soldier notwithstanding his minority he is answerable to the military law just as the citizen who is a minor is answerable to the civil law. *The parents can not prevent the law's enforcement in either case.* * * *

These views were cited with approval in *United States v. Reaves* (126 Fed. Rep., 127), where, upon full consideration of the authorities, the circuit court of appeals remanded Reaves, a minor who had deserted from the navy, to the custody of the naval authorities as represented by the chief of police who had apprehended him.

In a recent case in the United States district court for the eastern district of Pennsylvania, October session, 1908, No. 464, the father sought to obtain the minor's release on the ground that the enlistment was not only voidable, but wholly void. It was argued that the father's consent was obtained by a false representation, the recruiting officer having declared that the minor was to be enlisted as a "landsman for electrician," whereas he was actually enlisted as an "apprentice seaman;" and that the conduct of the officer nullified the father's formal consent, thus making the minor's enlistment absolutely void and giving him the right to quit the service whenever he pleased without exposing himself to punishment as a deserter. The court said:

But I do not think that this argument can be allowed to prevail in the face of several authoritative decisions of the federal courts. * * * The Government contends that as no such steps (to obtain release) were taken until January 9, 1909, when the son had passed the age of 20 years and moreover was in confinement under sentence for desertion, the present writ can not be maintained. This position, I think, is sound. The enlistment of the minor was not void, whether his father validly consented or not. So far as he himself was concerned it was legally binding. * * * It follows that the present proceeding must be dismissed.

**REGULATIONS AND INSTRUCTIONS FOR DRAWING
UP CHARGES AND SPECIFICATIONS.**

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FOR
DRAWING UP CHARGES AND SPECIFICATIONS.

Charges and specifications to be succinct.—In drawing up the charges and specifications, all extraneous matter is to be carefully avoided, and nothing shall be alleged but that which is culpable and which the prosecution is prepared to substantiate before a court-martial.

Different offenses the subject of distinct charge and specification.—Offenses of a perfectly distinct nature must not be included in one and the same charge and specification of a charge, but each offense of a different kind shall be the subject of a distinct charge and specification.

Not necessary to refer to statute or article.—It is not necessary to specify in a charge that an offense was committed in breach of any particular statute, or article of the Articles for the Government of the Navy, but whenever the allegation comes directly under any enactment it shall be set forth in the terms used therein.

Offenses not specially provided for, how charged.—When an offense is a neglect or disorder not specially provided for, it shall be charged as “scandalous conduct tending to the destruction of good morals,” or “conduct to the prejudice of good order and discipline.”

No figures or abbreviations.—No part of the charges or specifications shall be in figures; all numbers, dates, proper names, titles, and the like must be written at length and without abbreviation, except that Christian names other than the first may be indicated by initial letters.

Intent should be expressed by technical word prescribed.—In cases where the law has adopted certain expressions to show the intent with which an offense is committed the intent shall be expressed by the technical word prescribed, as “wilfully,” “knowingly,” “feloniously,” “corruptly,” “maliciously,” “intentionally,” “wrongfully,” etc. Certain of the foregoing words appear in the Articles for the Government of the Navy, and should be used to fully express the offense charged. For example, a charge made against an officer for making or for signing a false muster must be laid to have been

done "knowingly." And when an offense may be punished by imprisonment in a state prison or in a penitentiary, "feloniously" may be used correctly to describe the intent.

If higher criminality attaches to acts under particular circumstances.—In all cases in which the law attaches higher criminality to acts committed under particular circumstances the act must, to bring the person within the higher degree of punishment, be charged to have been committed under those circumstances, which must be stated with certainty and precision. For instance, by clauses 6 and 7, article 4, Articles for the Government of the Navy, the penalty of death shall, in time of war, be inflicted for desertion, betrayal of trust, or enticing others to commit these crimes; in a charge, therefore, under one of those clauses it must be laid that the offense was committed in time of war.

The specifications of each charge, one or more, must be brief, clear, and explicit.—The facts, circumstances, and intent constituting the offense must be set forth with certainty and precision, and the accused charged directly and positively with having committed it.

Certain as to the party accused.—He must be described by his title and rank, or rating, Christian name and surname written at full length, with the addition of his vessel or service at the time the offense with which he is charged took place.

Certain as to time.—The time when the alleged offenses occurred should be set forth minutely and precisely. Should any doubt exist with regard to the time, it may be set forth in the specification that the act was committed "on or about" such a time, but the limitation as to date must embrace a reasonable time only.

Certain as to place.—The place where the alleged offenses occurred should be set forth minutely and precisely. Should any doubt exist as to the place, it may be set forth in the specification that the act was committed "at or near" such a place. But when the geographical position of a ship is not material to a complete description of the offense, such as the theft of another's clothing or any other act committed wholly on board, such particular geographical position need not be specified.

Certain as to the person against whom the offense was committed.—In the case of offenses against the person or property of individuals the Christian name and surname, with the rank and station or duty of such person, if he have any, must be stated at length, if known. If not known, the party injured must be described as a "person unknown."

Certain as to facts, circumstances, and intent, if last is an essential ingredient.—It is not sufficient that the accused be charged generally with having committed an offense, as, for instance, with habitual violation of orders or neglect of duty, but the particular acts or circum-

stances constituting such offenses must be distinctly set forth in the specification.

What to be set forth in case of perjury before court-martial.—In prosecutions for perjury committed on examination before a naval general court-martial, or for the subornation thereof, it shall be sufficient to set forth the offense charged on the defendant, without setting forth the authority by which the court was held, or the particular matters brought before, or intended to be brought before, said court. (Sec. 1023, R. S.) The specification must include direct and specific allegations negating the truth of the alleged false testimony, together with affirmative averments setting up the truth by way of antithesis.

Written instruments, when set out verbatim.—Written instruments, or such portions thereof as form part of the gist of the offense charged, must be set out verbatim, with care and accuracy.

When substance of written instrument only set out.—When the substance only is intended to be set out, it should be introduced by the words “in substance as follows.” The word “tenor” implies that a correct copy is set out.

Particular words, how set out.—Where particular words form the gist of the offense they must be set forth with particularity or declared to be of like meaning and purport. Where the language is profane or obscene its nature may be indicated only in general and becoming terms.

Theft.—In drawing up a specification to support the charge of theft care should be taken to state, at least approximately, the value of the articles alleged to have been stolen.

Incompetency.—When incompetency is alleged it is essential to set forth the particular acts or neglects upon which the specification is based.

Intoxicants or drugs in possession.—When the offense is having intoxicants or drugs in possession it must be alleged that the possession was “unlawful.”

SPECIMEN CHARGES AND SPECIFICATIONS.

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CHARGE.—Absence from command without leave.

Specification.—In that Commander ———, United States Navy, having been theretofore regularly assigned to and placed in command and being then in command of the United States ship ———, in the harbor of ———, ———, did, on or about the fifteenth day of March, nineteen hundred and nine, absent himself from his said command and station without leave from proper authority, and did proceed to Washington, in the District of Columbia, at which latter place the said Commander ——— arrived on or about the second day of April, nineteen hundred and nine.

CHARGE.—Absence from station and duty after leave had expired.

Specification.—In that ———, an assistant surgeon in the United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, was, on or about the nineteenth day of June, nineteen hundred and nine, absent from his station and duty on board said ship after his leave had expired, and did remain absent therefrom, without permission from proper authority, for a period of about twenty-four hours.

Specification.—In that the said ———, a seaman in the United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, having been granted leave of absence from said ship for a period of four days from the seventeenth day of July, nineteen hundred and eight, did, without permission from proper authority, remain absent from his said station and duty for a period of about six days after his said leave had expired.

Specification.—In that ———, a chief machinist's mate in the United States Navy, attached to and serving on board the United States ship *Franklin*, at the navy-yard, Norfolk, Virginia, having, while attached to and serving on board the United States ship *Maine*, at Hampton Roads, Virginia, to which ship he had been regularly assigned, been granted leave of absence, to expire on the seventeenth day of April, nineteen hundred and nine, did fail to return to his station and duty on board said ship *Maine* upon the expiration of said leave of absence, as it was his duty to do, and has ever since remained absent without leave from said ship *Maine*; and did surrender himself on board the said ship *Franklin*, at the navy-yard aforesaid, on the fifteenth day of May, nineteen hundred and nine.

CHARGE.—Absence from station and duty without leave.

Specification.—In that ———, an ensign in the United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, did, on or about the twentieth day of April, nineteen hundred and nine, without permission from proper authority, absent himself from his station and duty on board said ship, and did remain absent therefrom, without leave, until the twenty-sixth day of April, in the year aforesaid.

Specification.—In that ———, a private in the United States Marine Corps, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, did, at about nine hours and thirty minutes antemeridian, on the thirtieth day of August, nineteen hundred and eight, absent himself from his station and duty on board said ship without leave from proper authority, and did remain so absent until about two hours and thirty minutes postmeridian on the day above mentioned.

Specification.—In that ———, an ordinary seaman in the United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, did, on or about the seventh day of September, nineteen hundred and eight, absent himself from said ship without leave from proper authority, and did remain so absent until the twenty-sixth day of the month aforesaid.

Specification.—In that ———, a fireman, second class, in the United States Navy, attached to and serving on board the United States ship *Philadelphia*, at the navy-yard, Puget Sound, Washington, did, on or about the fifteenth day of August, nineteen hundred and nine, absent himself from his station and duty on board the United States ship *Pennsylvania*, at the navy-yard aforesaid, to which ship he had been regularly assigned, without leave from proper authority, and has ever since remained so absent, and did surrender himself on board said ship *Philadelphia*, at the navy-yard aforesaid, on the twenty-first day of August, nineteen hundred and nine.

CHARGE.—Assault.

Specification.—In that ———, a carpenter in the United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, did, on or about the twenty-third day of June, nineteen hundred and nine, in the city of ———, ———, wilfully and maliciously, and without justifiable cause, assault Lieutenant ———, United States Navy.

CHARGE.—Assaulting and attempting to kill another person in the service.

Specification.—In that ———, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ———, ———, did, on the thirty-first day of August, nineteen hundred and eight, wilfully and maliciously, and without justifiable cause, assault and attempt to kill Private ———, United States Marine Corps, attached to said barracks.

CHARGE.—Assaulting and striking another person in the navy.

Specification.—In that ———, an ensign in the United States Navy, attached to and serving on board the United States ship ———, off ———, ———, did, on or about the twenty-fourth day of May, nineteen hundred and nine, wilfully and maliciously, and without justifiable cause, assault, strike, beat, and illtreat ———, a fireman, second class, in the United States Navy, who was then on duty in the fireroom on board said ship.

CHARGE.—Assaulting and striking another person in the service.

Specification.—In that ———, a private in the United States Marine Corps, undergoing confinement, in accordance with the sentence of a general court-martial, at the naval prison, navy yard, ———, ———, did, at or about five hours and thirty minutes antemeridian, on the sixteenth day of February, nineteen hundred and eight, wilfully and maliciously, and without justifiable cause, assault and strike ———, private, United States Marine Corps, who was also in confinement at said prison.

CHARGE.—Assaulting and striking his superior officer.

Specification.—In that _____, a fireman, first class, in the United States Navy, attached to and serving on board the United States ship _____, at the navy-yard, _____, _____, did, at about eight hours and forty minutes antemeridian, on the seventh day of March, nineteen hundred and nine, in the city of _____, wilfully and maliciously, and without justifiable cause, assault and strike his superior officer, Lieutenant _____, United States Navy.

Specification.—In that _____, a fireman, first class, in the United States Navy, attached to and serving on board the United States ship _____, at _____, _____, did, on the thirtieth day of June, nineteen hundred and eight, wilfully and maliciously, and without justifiable cause, assault and strike _____, coxswain, United States Navy, attached to said vessel, who was then and there in the execution of the duties of his office.

CHARGE.—Assaulting and striking his superior officer while in the execution of the duties of his office.

Specification.—In that _____, a lieutenant of the junior grade in the United States Navy, attached to and serving on board the United States ship _____, did, at or about eight hours and thirty minutes postmeridian, on the fifth day of April, nineteen hundred and nine, while said ship was lying at anchor in the harbor of _____, _____, and in the wardroom of said ship, when his superior officer, Lieutenant-Commander _____, United States Navy, the executive officer of said ship, ordered him, the said _____, to prepare a report of _____ wilfully and maliciously, and without justifiable cause, assault and strike the said Lieutenant-Commander _____, the executive officer of said ship, who was then and there in the execution of the duties of his office.

Specification.—In that _____, a coal passer in the United States Navy, attached to and serving on board the United States ship _____, at _____, _____, did, between the hours of ten and eleven postmeridian on the first day of July, nineteen hundred and nine, on board said ship, wilfully and maliciously assault _____, master at arms, first class, United States Navy, and did then and there, without justifiable cause, strike said _____, who, in the discharge of his duties, was searching the said _____ by order of Lieutenant _____, United States Navy, the executive officer of said ship.

CHARGE.—Assaulting with a deadly weapon and wounding another person in the navy.

Specification.—In that _____, a seaman in the United States Navy, attached to and serving on board the United States ship _____, at Honolulu, Territory of Hawaii, did, on the fourth day of July, nineteen hundred and nine, in the Park Saloon in said city, wilfully and maliciously, and without justifiable cause, assault and stab with a knife or other sharp instrument, _____, an ordinary seaman in the United States Navy, attached to and serving on board the United States ship _____, at Honolulu, Territory of Hawaii.

CHARGE.—Assault with intent to commit rape.

Specification.—In that _____, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, did, on or about the ninth day of March, nineteen hundred and nine, at the said navy-yard, feloniously, forcibly, and against her will, assault one _____, with intent to commit the crime of rape upon her, the said _____.

CHARGE.—Attempting to desert.

Specification.—In that _____, an ordinary seaman in the United States Navy, attached to and serving on board the United States ship _____, at _____, _____, did, on or about the eighteenth day of May, nineteen hundred and nine, endeavor to leave said ship by attempting to jump overboard therefrom, with intent to desert from said ship and from the United States Navy.

Specification.—In that _____, an ordinary seaman in the United States Navy, attached to and serving on board the United States ship _____, at _____, _____, did, on or about the fourth day of April, nineteen hundred and nine, endeavor to leave said ship by attempting to conceal himself in a coal barge alongside with intent to desert from said ship and from the United States Navy.

CHARGE.—Breaking arrest.

Specification.—In that _____, a seaman in the United States Navy, attached to and serving on board the United States ship _____, then in dry dock, Shanghai, China, having been placed in double irons, for the purpose of safe custody, by the lawful order of Commander _____, United States Navy, his commanding officer, did, at or about seven hours and fifteen minutes postmeridian, on the fifteenth day of May, nineteen hundred and nine, break his arrest and leave the said ship _____.

CHARGE.—Carnally and unlawfully knowing a female under the age of sixteen years.

Specification.—In that _____, a sergeant in the United States Marine Corps, attached to and serving at the United States Marine Barracks, navy-yard, _____, _____, did, at or about eleven hours antemeridian on the eighteenth day of February, nineteen hundred and nine, while on duty as sergeant of the guard at the main gate of said navy-yard, in the guardhouse at said gate, make an assault in and upon the body of one _____ who was, at the time and place aforesaid, a woman under the age of sixteen years, and he, the said _____, being then and there above the age of twenty-one years, did unlawfully and carnally abuse and know her, the said _____.

CHARGE.—Causing to be prepared and approving a false and fraudulent voucher in violation of article fourteen of the Articles for the Government of the Navy.

Specification.—In that _____, a naval constructor in the United States Navy, being, on or about the first day of July, nineteen hundred and nine, and continuously thereafter until the date hereof, attached to and serving at the navy-yard, _____, _____, as the head of the department of _____ at said yard, and it being part of his duty as such head of department to supervise and control all work pertaining to said department and to have general superintendence, charge, direction, and mustering of all persons employed in said department, and it being also a part of his duty to direct the preparation of and to examine, and if found correct to approve, the pay rolls of said department prior to their submission to the commandant for approval and transmission to the pay officer at said yard, did cause to be prepared a semimonthly pay roll of persons employed in said department of _____, navy-yard, _____, _____, for the period from March sixteenth to March thirty-first, inclusive, nineteen hundred and nine, and did, on or about the tenth day of April, nineteen hundred and nine, in his official capacity as head of said department, approve said pay roll, which pay roll was, subsequently, in due course, approved by the commandant and transmitted to the pay officer of the said navy-yard, and the amounts therein set forth, respectively, were paid to the persons whose names appeared thereon; whereas, as he, the said _____, well knew, the said pay roll contained the names of a number of laborers and mechanics, to wit, four hundred and forty-nine, who,

for work performed during the last six days of March, between seven o'clock antemeridian and twelve meridian and between twelve-thirty postmeridian and six-thirty postmeridian, were credited, in making up the time and amounts specified on said pay roll, with having rendered one and five-eighths days', that is to say, thirteen hours', service, when in fact they had thus rendered and were entitled to be credited with one and three-eighths days', that is to say, eleven hours', service per day only, in consequence of which false entries on said pay roll overpayments to laborers and mechanics employed in the department of ——— at said navy-yard, for the period named, were made, amounting to about one thousand four hundred twenty-nine dollars and thirty-three cents; and the said ——— did, therein and thereby, cause to be prepared and did approve a false and fraudulent voucher, in violation of article fourteen of the Articles for the Government of the Navy.

CHARGE.—Conduct to the prejudice of good order and discipline.

Specification.—In that ———, a coal passer in the United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, having, on or about the twenty-second day of November, nineteen hundred and eight, been ordered by ———, chief boatswain's mate, United States Navy, attached to said ship, to remove certain clothes belonging to him, the said ———, from a towel line on board said ship, did use obscene and threatening language toward the said ———, who was then and there in the execution of the duties of his office.

Specification.—In that ———, a private of the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ———, ———, having, at or about nine hours and thirty minutes postmeridian, on the twenty-first day of December, nineteen hundred and eight, been placed in arrest by First Lieutenant ———, United States Marine Corps, the officer of the day at said barracks, and having been placed in irons for the purpose of safe custody, did break the hand irons, and did, by throwing a cup, break a window in the cell passage at said barracks.

Specification.—In that ———, a seaman in the United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, did, at about one hour and fifteen minutes postmeridian, on the second day of February, nineteen hundred and nine, upon returning to said ship from liberty, unlawfully have in his possession a flask of intoxicating liquor.

Specification.—In that ———, a passed assistant surgeon in the United States Navy, having, on the sixteenth day of June, nineteen hundred and eight, been appointed by the Secretary of the Navy member and recorder of a board of medical examiners at the navy-yard, ———, ———, and having been duly informed of such appointment, and it being his duty as such recorder to record the proceedings of said board, did, on or about the thirteenth day of October, nineteen hundred and eight, at said navy-yard, refuse, on account of alleged informalities, to record the proceedings had in the case of Ensign ———, United States Navy, who had been examined before said board, as a preliminary to promotion, in accordance with the requirements of section fourteen hundred and ninety-three of the Revised Statutes of the United States.

Specification.—In that ———, a coal passer in the United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, while being escorted to his ship by Private ———, United States Marine Corps, patrol at said yard, at about five hours antemeridian, on the twenty-third day of June, nineteen hundred and nine, did, after having been ordered by the said patrol to stop singing and making a noise, reply that he would not stop for any " * * * marine," or words to that effect.

Specification.—In that ———, a water tender in the United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, having, on the thirtieth day of August, nineteen hundred and eight, brought to Lieutenant-Commander ———, United States Navy, the executive officer of said ship, a telegram in words as follows: "Frank, Eliza is dying. Patrick," and having asked and been refused permission to leave the ship, did reply to said Lieutenant-Commander ———, "Well, I'll go anyway," or words to that effect.

Specification.—In that ———, a water tender in the United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, having, on the thirtieth day of August, nineteen hundred and eight, requested permission of Lieutenant-Commander ———, United States Navy, the executive officer of said ship, to send a telegram to the Secretary of the Navy, in words and figures substantially as follows, to wit: * * *, and having been informed that he could do so if he forwarded it through his commanding officer, did reply, "No, I'll send it through my lawyer," and having been further informed that he must send it through his commanding officer, did further reply, "The captain be damned; I'll send it as I please," or words to that effect.

Specification.—In that ———, a sergeant in the United States Marine Corps, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, did, between the hours of twelve-thirty and one-thirty postmeridian, on the first day of October, nineteen hundred and eight, on board said vessel, unlawfully have in his possession a bottle of intoxicating liquor;

Specification.—In that ———, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ———, ———, did, on the thirtieth day of August, nineteen hundred and eight, smuggle into said navy-yard two bottles of intoxicating liquor.

Specification.—In that ———, a private in the United States Marine Corps, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, did, at or about seven hours and forty minutes postmeridian, on the nineteenth day of April, nineteen hundred and nine, while a member of the day's guard of said ship, unlawfully have intoxicating liquor in his possession.

Specification.—In that ———, a captain in the United States Navy, attached to and being in command of the United States ship ———, did, between the hours of twelve meridian and one postmeridian, on or about the twenty-first day of November, eighteen hundred and ninety-nine, the said ship then lying in the harbor of Cebu, Philippine Islands, without justifiable cause, and without the exercise of proper discretion, make careless use of firearms by discharging, with his own hand, in the direction of a native shore boat, which had approached within hailing distance of said vessel, a shot from a revolver, thereby wounding and causing the death of a Filipino, one of the occupants of the said native shore boat.

Specification.—In that ———, a captain in the United States Navy, attached to and being in command of the United States ship ———, at ———, ———, having, on the twenty-second day of March, nineteen hundred and nine, had referred to him by the Bureau of Navigation, Navy Department, a copy of a letter which had been received by said bureau from Captain ———, United States Navy, commandant of the naval station, ———, ———, in the words and figures following, to wit: * * *, and having been called upon by said bureau for an explanation of the facts mentioned in the letter above set forth, did, on the twenty-sixth day of March, nineteen hundred and nine, address a communication

to the commandant of the navy-yard and station, New York, in the words and figures following, to wit: * * * , which said letter contained in the third paragraph thereof, statements which are wholly irregular, unofficerlike, and prejudicial to good order and discipline.

CHARGE.—Conduct unbecoming an officer and a gentleman.

Specification.—In that _____, a lieutenant in the United States Navy, attached to and serving on board the United States ship _____, having become justly indebted to _____, of Brooklyn, New York, in the sum of one hundred and twenty-four dollars and twenty-five cents, or thereabouts, for goods purchased and money borrowed from said _____, at various times between the fourteenth day of April, nineteen hundred and five, and the sixth day of March, nineteen hundred and nine, has, with the exception of fifteen dollars (\$15), paid on account July fifteenth, nineteen hundred and six, up to the present time, notwithstanding repeated promises to pay said debt and the frequent demands for payment made on him by said _____, neglected and failed to pay the said _____ the amount due him, thereby exhibiting a dishonorable indifference to his just indebtedness and a disregard of his obligations as an officer and a gentleman.

Specification.—In that _____, a second lieutenant in the United States Marine Corps, having, while attached to and serving on board the United States ship _____, become justly indebted to _____, a first lieutenant in the United States Marine Corps on board said ship, in the sum of thirty dollars, or thereabouts, for money borrowed from said _____, at various times between the fifth day of June, nineteen hundred and seven, and the eighth day of August, nineteen hundred and eight, and having, in the month of March, nineteen hundred and nine, when detached from said ship, at San Francisco, California, promised said _____ to pay said debt upon his arrival in New York, New York, has, notwithstanding said promise, neglected and failed to pay the amount of said indebtedness, or any portion thereof.

Specification.—In that _____, an ensign in the United States Navy, attached to and serving on board the United States ship _____, having, on or about the fifteenth day of May, nineteen hundred and nine, the said ship being then at _____, _____, been relieved from duty as officer of the deck on said ship for being under the influence of intoxicating liquor, and having voluntarily pledged himself to his commanding officer, Captain _____, United States Navy, to abstain from the use of intoxicating drinks while attached to the said ship _____, did, on or about the seventh day of July, nineteen hundred and nine, while attached to and on board the said ship, notwithstanding his said pledge so given, and in violation thereof, take intoxicating drinks, and was then and there drunk and unfit for the proper performance of his duty.

Specification.—In that _____, a passed assistant paymaster in the United States Navy, then attached to and serving on board the United States ship _____, at _____, _____, having received from the Navy Department a letter, in words and figures substantially as follows, to wit, * * * , did, on or about the twenty-eighth day of December, nineteen hundred and eight, address a communication to the Secretary of the Navy, in words and figures substantially as follows, to wit, * * * , the said _____ well knowing that the statement in his said letter, to the effect that he had repaid to Mr. _____ the sum of four hundred and eighty-four dollars and fifty-four cents, for which he held his receipt, was calculated to deceive the Department by inducing the inference that such sum was in part payment of his indebtedness to Mrs. _____.

CHARGE.—Culpable inefficiency in the performance of duty.

Specification.—In that _____, a lieutenant in the United States Navy, attached to and serving as navigator on board the United States ship _____, making passage from _____ to _____, on the second day of February, nineteen hundred and nine, well knowing that at about sunset of said day the said ship had nearly run her estimated distance from the four o'clock postmeridian position, obtained and plotted by him, to the position of _____, and well knowing the difficulty of sighting _____ from a safe distance after darkness fell, under the conditions of the weather then existing, did fail to advise his commanding officer, as it was clearly his duty to do, to lay a safe course for said ship to the northward before continuing on a westerly course; and the said Lieutenant _____ was therein and thereby culpably inefficient in the performance of his duty as navigator, in consequence of which the said ship was, at about six hours and fifty minutes postmeridian on the day above mentioned, run upon _____ Bank, in the _____ Sea, in about latitude thirteen degrees thirty-four minutes north, and longitude eighty-five degrees five minutes west, and was stranded.

Specification.—In that _____, a lieutenant of the junior grade in the United States Navy, being attached to and serving as officer of the deck on board the United States ship _____, making passage from _____ to _____, on the thirteenth day of March, nineteen hundred and eight, and the said _____ well knowing that the said ship, being a steam vessel, was required by law, when approaching another vessel under such circumstances as to involve risk of collision, to slacken her speed or, if necessary, to stop and reverse her engines, and that it was furthermore her duty, if such other vessel was a sail vessel, to keep out of the way of such sail vessel, and the said _____, well knowing, also, that it was his duty, as officer of the deck, to issue such orders as might be necessary, in accordance with said requirements, to enable the _____ to avoid a collision with an approaching vessel, and to see that such orders were carried into effect, and having been informed, between the hours of eight and nine postmeridian on the date aforesaid, and while he was acting as such officer of the deck, that the said ship _____ was approaching a sail vessel, both vessels being then near Cape Maisi, Cuba, did neglect and fail to issue, as he should have done, such orders as were necessary to cause the said ship _____ to comply with the said requirement of law by keeping out of the way of such sail vessel, or did neglect and fail to see that such orders were duly carried into effect, and being informed that the said vessels were approaching each other under circumstances which involved the risk of collision, did neglect and fail to issue, as he should have done, timely orders to cause the said ship _____ to slacken her speed, or to stop entirely, or to reverse the action of her engines so as to prevent a collision, and was therein and thereby culpably inefficient in the performance of his duty as officer of the deck, by reason of which neglect, failure, and inefficiency on the part of the said _____, the said United States ship _____ collided, at the time and place aforesaid, with the said sail vessel, being the schooner _____, of San Juan, Porto Rico, which collision resulted in the sinking of the said schooner and her cargo, and endangered the lives of her officers and crew.

Specification.—In that _____, a commander in the United States Navy, being in command of the United States ship _____, on the eleventh day of August, nineteen hundred and eight, then cruising on special service in the South Pacific Ocean, among the _____ Islands, notwithstanding the fact that at midnight of the tenth day of August, in the year aforesaid, the southeast point of _____ Island bore abeam and was about seven miles distant, the said ship being then under way and making a speed of about eleven knots an hour, and well knowing the position of the said ship at the time stated and that the charts of that locality were unreliable and the currents thereabouts uncertain, and it having been reported to him at about three hours and thirty minutes antemeridian, on the date first above

mentioned, that land was in sight on the port bow of said ship, and that it was necessary, the ship having been set to the northward, promptly to change the course to the southward, did neglect and fail to go on deck and to superintend personally the management of said ship, as it was his duty to do, in consequence of which the course of the vessel was not promptly changed, the engines were stopped, and the vessel was set upon a rock, as set forth in the specification of the first of these charges, and the said Commander ——— was therein and thereby culpably inefficient in the performance of his duty as commanding officer of the said United States ship ———.

Specification.—In that ———, a passed assistant paymaster in the United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, having, on the fifth day of November, nineteen hundred and eight, issued a check, number fifty-two, drawn on the ——— National Bank of ———, ———, payable to the order of ———, for the sum of seventy-seven dollars and fifty cents, marked "exchange for cash," and indorsed to the order of ———, U. S. N., and having, on the fifth day of November, nineteen hundred and eight, issued checks numbered four hundred eighteen thousand one hundred and sixty-one for eight hundred dollars, and ———, drawn on the assistant treasurer of the United States at New York, payable to the order of ———, which checks were marked "exchange for cash," and were indorsed to the order of ———, U. S. N., did fail to enter the above-mentioned checks in the account, as required by the system of accountability for disbursing officers of the United States Navy, and he, the said Passed Assistant Paymaster ———, United States Navy, was therein culpably inefficient in the performance of duty.

Specification.—In that ———, a passed assistant paymaster in the United States Navy, attached to and serving on board the United States ship ——— at the navy-yard, ———, ———, did, on or about the fifteenth day of October, nineteen hundred and eight, fail to provide in a regular manner, funds to his credit as a disbursing officer of the United States Navy, in the ——— National Bank of ———, ———, a United States depository, which it was his duty to do, and did, on the fifteenth day of October, nineteen hundred and eight, issue a check, number seventy-five, drawn on said ——— National Bank, for eighty-five dollars, payable to the order of ———, seaman, United States Navy, on account of pay, and a check number seventy-six, drawn on the said ——— National Bank for twenty dollars, payable to the order of ———, marked "exchange for cash," well knowing that he had not sufficient funds in said bank to pay both of said checks, and he, the said Passed Assistant Paymaster ———, United States Navy, was therein culpably inefficient in the performance of duty.

Specification.—In that ———, a passed assistant paymaster in the United States Navy, attached to and serving on board the United States ship ———, having, as pay officer of said ship, between the first of June, nineteen hundred and eight, and the thirty-first of March, nineteen hundred and nine, both days inclusive, issued to the officers' and other messes of said ship certain provisions belonging to the Government, did wholly neglect and fail to keep or cause to be kept a proper account of the issue of said stores.

CHARGE.—Culpable negligence and inefficiency in the performance of duty.

Specification.—In that ———, a lieutenant in the United States Navy, attached to and serving on board the United States ship ———, as navigating officer, on the fifth day of April, nineteen hundred and nine, while the said ship was returning to Hampton Roads, Virginia, from a trial trip at sea, and the commanding

officer of the said ship, Commander _____, United States Navy, having been called from the bridge of the said ship in the performance of official duty and having instructed the said Lieutenant _____ to pilot said ship into Hampton Roads, and the said Lieutenant _____, well knowing that it was his duty as navigating officer under such instructions to continue at his proper post of duty and carefully to watch the course of the said ship, and to change the same from time to time as might be necessary in order properly to pilot said ship safely into Hampton Roads, did, nevertheless, improperly absent himself from his said post of duty, and did neglect and fail safely to pilot said ship into Hampton Roads, as it was his duty to do, by reason of which culpable negligence and inefficiency on the part of the said Lieutenant _____, the said ship _____ was, on the day aforesaid, between the hours of three and four postmeridian, run aground near Cape Henry, Virginia, the said ship being thereby unnecessarily subjected to the risk of great danger and possible loss.

CHARGE.—Desertion.

Specification.—In that _____, a yeoman third class in the United States Navy, undergoing confinement, in accordance with the sentence of a general court-martial, at the naval prison, navy-yard, _____, _____, did, on the twenty-sixth day of May, nineteen hundred and nine, while a prisoner on board the United States ship _____, at the navy-yard, _____, _____, awaiting transfer to the prison at the navy-yard, _____, _____, desert from said ship and from the United States Navy, and did continue in desertion until he was delivered on board the United States ship _____, at the navy-yard, _____, _____, by the civil authorities of said city, on the third day of July, in the year aforesaid.

Specification.—In that _____, ordinary seaman, *alias* _____, coal passer, United States Navy, now attached to and serving on board the United States ship _____, at the navy-yard, _____, _____, did, on or about the sixth day of July, nineteen hundred and six, desert from the United States ship _____, at _____, _____, and from the United States Navy, while serving under the name and rate of _____, ordinary seaman, and did continue in desertion until he was identified on the fourteenth day of April, nineteen hundred and eight, on board said ship _____ where serving under the name and rate of _____, coal passer, United States Navy.

Specification.—In that _____, *alias* _____, an ordinary seaman in the United States Navy, attached to and serving on board the United States ship _____, at the navy-yard, _____, _____, did, on the fifteenth day of October, nineteen hundred and eight, desert from said ship and from the United States Navy, and did continue in desertion until he was delivered on board said ship by civil authorities, on the eighteenth day of the month and year aforesaid.

Specification.—In that _____, a seaman in the United States Navy, attached to and serving on board the United States ship _____, at _____, _____, did, on or about the eighth day of August, nineteen hundred and eight, desert from the said ship and from the United States Navy, and did continue in desertion until he was delivered on board the United States ship _____, at the navy-yard, _____, _____, on the thirtieth day of August, in the year aforesaid.

Specification.—In that _____, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, did, on the twentieth day of March, nineteen hundred and eight, desert from said barracks and from the United States Marine Corps, and did continue in desertion until he surrendered himself at the marine barracks, _____, _____, on the twentieth day of August, nineteen hundred and nine.

Specification.—In that ———, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ———, ———, did, on the second day of October, nineteen hundred and eight, while a coal passer in the United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, desert from said ship and from the naval service, and did continue in desertion until he enlisted in the United States Marine Corps, as a private, at ———, ———, on the second day of February, nineteen hundred and nine.

Specification.—In that ———, a mess attendant third class in the United States Navy, attached to and serving on board the United States ship ———, at ———, ———, did, on the twenty-seventh day of June, nineteen hundred and eight, desert from said ship and from the United States Navy, and did continue in desertion until he was delivered on board the United States ship ———, at the navy-yard, ———, ———, on the eleventh day of May, nineteen hundred and nine.

CHARGE.—Disobedience of a lawful order of the Secretary of the Navy.

Specification.—In that ———, a carpenter in the United States Navy, then attached to and serving on board the United States ship ———, having, on or about the first day of August, nineteen hundred and eight, had addressed to him by the Secretary of the Navy, a letter in words and figures substantially as follows: * * * , he, the said ———, did, notwithstanding the direction of the Secretary of the Navy immediately to acknowledge the receipt of said letter, neglect and fail, and has ever since neglected and failed, to make such acknowledgment; and the said ——— did therein and thereby disobey a lawful order of the Secretary of the Navy.

CHARGE.—Disobeying the lawful order of his superior officer.

Specification.—In that ———, an ensign in the United States Navy, attached to and serving on board the United States ship ———, at anchor off ———, ———, having, on or about the nineteenth day of May, nineteen hundred and nine, on board said ship, been ordered by Lieutenant ———, United States Navy, the executive officer of said ship, to superintend the work of breaking out the fore hold, did then and there refuse to obey and did disobey said lawful order.

Specification.—In that ———, a paymaster in the United States Navy, attached to and serving on board the United States ship ———, then at sea making passage from ——— to ———, having, on or about the fifth day of December, nineteen hundred and eight, received from his superior and commanding officer, Commander ———, United States Navy, a specific, lawful order requiring him to go with a board appointed in accordance with article ———, United States Navy Regulations of nineteen hundred and nine, and to see that certain papers were placed in the safe, and that the safe was sealed, did, nevertheless, deliberately refuse to obey said order.

Specification.—In that ———, an ensign in the United States Navy, attached to and serving as such on board the United States ship ———, then lying in the harbor of ———, ———, having received permission from proper authority to visit the shore, did leave the said ship ——— on the fifth day of January, nineteen hundred and nine, and did fail to return at or before sunset of the same day, and did remain absent from the said ship ——— until at or about five o'clock ante-meridian of the sixth day of January, in the year aforesaid, this in disobedience of a lawful order of Rear-Admiral ———, United States Navy, commander in chief of the ——— fleet, of the following tenor, to wit, "Officers' leave shall expire at sunset," which order was given because of the sanitary condition of the city of ———, ———, to protect the officers and crews of the said fleet from danger of infection by yellow fever.

Specification.—In that _____, a seaman in the United States Navy, attached to and serving on board the United States ship _____, at anchor off Thomas Point Light, Chesapeake Bay, having, on the sixteenth day of June, nineteen hundred and nine, been ordered by _____, chief master at arms, United States Navy, attached to said ship, to go to the berth deck of said ship and perform extra duty in accordance with the sentence of a summary court-martial, did refuse to obey, and did wilfully disobey, the said lawful order of the said Chief Master at Arms _____, who was then and there in the execution of the duties of his office.

Specification.—In that _____, a seaman in the United States Navy, attached to and serving on board the United States ship _____, at _____, _____, having, on the sixth day of June, nineteen hundred and nine, while on shore at said place as a member of a landing party for the protection of the United States consulate, been ordered by Lieutenant _____, United States Navy, attached to said ship, to cease being noisy and disorderly, did refuse to obey, and did wilfully disobey, the said lawful order of the said Lieutenant _____, who was then and there in the execution of the duties of his office.

Specification.—In that _____, a coal passer in the United States Navy, attached to and serving on board the United States ship _____, at the navy-yard, _____, _____, having, on the sixth day of May, nineteen hundred and nine, received through _____, fireman second class, United States Navy, an order from Midshipman _____, United States Navy, attached to said ship, to assist in cleaning the passages on the berth deck of said ship, did refuse to obey, and did wilfully disobey, the said lawful order of the said Midshipman _____, who was then and there in the execution of the duties of his office.

Specification.—In that _____, a seaman in the United States Navy, attached to and serving on board the United States ship _____, at _____, _____, having, on the seventeenth day of May, while a general court-martial prisoner under sentry's charge, been ordered by Lieutenant-Commander _____, United States Navy, the executive officer of said ship, to hold communication with no one, did wilfully disobey the said lawful order of his superior officer, the said Lieutenant-Commander _____, who was then and there in the execution of the duties of his office.

CHARGE.—Disrespect to the Secretary of the Navy.

Specification.—In that _____, an assistant civil engineer in the United States Navy, having disobeyed an order dated November seventeenth, nineteen hundred and eight, from the Secretary of the Navy, directing him, the said _____, to proceed to the navy-yard, _____, _____, and report to the commandant of that station for duty thereat, and having in violation of said order and of the instructions contained in a letter from the Acting Secretary of the Navy, dated the fifteenth day of December, in said year, refusing to grant him, the said _____, authority to return East for medical treatment, proceeded to _____, _____, and reported at the naval hospital at said place for medical treatment; and having been subsequently reported by the medical officer in command of said hospital as fit for duty, and having thereupon been ordered by the Secretary of the Navy to proceed at once to the navy-yard aforesaid and report to the commandant of said station for duty thereat; and having, without permission from proper authority proceeded to _____, _____, as set forth in the second specification of the first of these charges, he, the said _____, did, from the place last named, on or about the twenty-ninth day of December, in the year aforesaid, write and address to the Secretary of the Navy a letter, in the words and figures following, to wit: * * *, containing contemptuous and disrespectful words of and against the Secretary of the Navy, thereby violating the respect due from every officer in the navy to the head of the Navy Department.

CHARGE.—Disrespectful in language and deportment to his superior officer while in the execution of his office.

Specification.—In that _____, a machinist in the United States Navy, attached to and serving on board the United States ship _____, at the navy-yard, _____, _____, having, on or about the fourth day of October, nineteen hundred and eight, been ordered by the senior engineer officer of said ship, Lieutenant _____, United States Navy, to inspect the clothing of his section of the engineer division, did say to said Lieutenant _____, in a disrespectful manner, "I haven't got time to do that now," or words to that effect, and therein and thereby the said Machinist _____ was disrespectful in language and deportment to his superior officer, the said Lieutenant _____, who was then and there in the execution of his office.

Specification.—In that _____, an assistant surgeon in the United States Navy, attached to and serving on board the United States ship _____, at _____, _____, having, at or about nine hours and thirty minutes postmeridian on the sixteenth day of November, nineteen hundred and eight, been informed by his superior officer, Surgeon _____, United States Navy, the senior medical officer of said vessel, that he had reported the said _____'s failure properly to carry out the instructions given him concerning the removal of such of the sick men belonging to said vessel as were able to travel from the naval hospital on shore to the said ship _____, did then and there assume a disrespectful and defiant manner toward his said superior officer, and did reply: "Reported me! Go ahead and report; you have put your foot in it, I give you that for a tip," or words to that effect, and did then go below to his room; and the said _____ was therein and thereby disrespectful in language and deportment to his superior officer, the said Surgeon _____, who was then and there in the execution of his office.

Specification.—In that _____, a lieutenant of the junior grade in the United States Navy, attached to and serving on board the United States ship _____, then lying at anchor in the harbor of _____, _____, did, on board said ship, between the hours of eight and nine postmeridian of the sixth day of April, nineteen hundred and nine, when ordered by his superior officer, Lieutenant-Commander _____, United States Navy, the executive officer of the said ship, to remain in his room, say to said Lieutenant-Commander _____: "* * *," or words of similar meaning and purport as the aforesaid; and the said _____ was therein and thereby disrespectful in language and deportment to his superior officer, the said _____, while in the execution of his office.

Specification.—In that _____, a seaman in the United States Navy, attached to and serving on board the United States ship _____, at _____, _____, did, on the sixth day of June, nineteen hundred and nine, while on shore at said place as a member of a landing party for the protection of the United States consulate, when ordered on sentry duty by Lieutenant _____, United States Navy, commanding the said landing party, say in a defiant manner to said Lieutenant _____, "It's not my turn; you can't make me do it," or words to that effect, and was therein and thereby disrespectful in language and deportment to his superior officer, Lieutenant _____, who was then and there in the execution of his office.

Specification.—In that _____, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, did, on the fifteenth day of August, nineteen hundred, while confined in the guard room at said barracks, in reply to a question addressed to him by Second Lieutenant _____, United States Marine Corps, the officer of the day at said place and time, reply in a surly and contemptuous manner, "Oh, get out of here; don't talk to me," or words to that effect, and was therein and thereby disrespectful in language and deportment to his superior officer, Second Lieutenant _____, who was then and there in the execution of his office.

Specification.—In that _____, a corporal in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, did, on or about the twenty-fifth day of December, nineteen hundred and eight, while being placed in confinement in the prison at said barracks, say to Captain _____, United States Marine Corps, the commanding officer of said barracks, in an insolent and menacing manner, "I'll get even with you for this," or words to that effect, and was therein and thereby disrespectful in language and deportment to his superior officer, Captain _____, who was then and there in the execution of his office.

CHARGE.—Drunkenness.

Specification.—In that _____, a lieutenant in the United States Navy, attached to and serving on board the United States ship _____, at _____, _____, was, on the sixth day of March, nineteen hundred and nine, on board said ship under the influence of intoxicating liquor and thereby incapacitated for the proper performance of duty.

Specification.—In that _____, a commander in the United States Navy, serving as captain of the yard, navy-yard, _____, _____, was, on or about the twenty-fifth day of May, nineteen hundred and nine, at the _____ Hotel in the city of _____, _____, under the influence of intoxicating liquor.

Specification.—In that _____, a private in the United States Marine Corps, attached to and serving on board the United States ship _____, at the navy-yard, _____, _____, was, at said navy-yard, on the thirteenth day of August, nineteen hundred and eight, under the influence of intoxicating liquor and thereby unfit for duty.

Specification.—In that _____, an ordinary seaman in the United States Navy, a patient at the naval hospital, _____, _____, was, at or about five hours post-meridian, on the eighth day of May, nineteen hundred and nine, drunk at said hospital.

Specification.—In that _____, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, was, on the fifteenth day of April, nineteen hundred and nine, upon his return to said barracks from liberty, drunk and unfit for duty.

CHARGE.—Drunkenness on duty.

Specification.—In that _____, a commander in the United States Navy, serving as commandant of the navy-yard, _____, _____, was, on or about the tenth day of November, nineteen hundred and eight, at his quarters in said yard, being then and there on duty, under the influence of intoxicating liquor.

Specification.—In that _____, a lieutenant in the United States Navy, attached to and serving on board the United States ship _____, at the navy-yard, _____, _____, was, at or about nine hours postmeridian on the twenty-fourth day of May, nineteen hundred and nine, while on duty as officer of the deck of said ship, under the influence of intoxicating liquor, and thereby incapacitated for the proper performance of duty.

Specification.—In that _____, a lieutenant in the United States Navy, attached to and serving on board the United States ship _____, was, while on duty as acting executive officer on board said ship, at _____, _____, on or about the twenty-third day of August, nineteen hundred and eight, so much under the influence of intoxicating liquor as to be unable properly to perform his duty.

Specification.—In that _____, a lieutenant in the United States Navy, attached to and serving on board the United States ship _____, was, at _____, _____, at

quarters on or about the thirteenth day of September, nineteen hundred and eight, so much under the influence of intoxicating liquor as to be unable properly to perform his duty.

Specification.—In that _____, a seaman in the United States Navy, attached to and serving on board the United States ship _____, at _____, _____, was, on the sixth day of June, nineteen hundred and nine, while on shore at said place, as a member of a landing party for the protection of the United States consulate, under the influence of intoxicating liquor, and thereby unfit for the proper performance of duty.

CHARGE.—Drunkenness on guard.

Specification.—In that _____, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, was, on the morning of the twenty-second day of November, nineteen hundred and eight, while acting as corporal of the guard at said yard, drunk on guard.

Specification.—In that _____, a private in the United States Marine Corps, attached to and serving on board the United States ship _____, at the navy-yard, _____, _____, was, at or about seven hours and fifty minutes postmeridian on the nineteenth day of April, nineteen hundred and nine, while a member of the day's guard of the said ship, drunk on guard.

CHARGE.—Drunkenness on post.

Specification.—In that _____, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, having, on the eighteenth day of July, nineteen hundred and eight, been regularly posted as a sentinel at the lyceum at said navy-yard, was drunk while on said post.

CHARGE.—Embezzlement.

Specification.—In that _____, ordinary seaman, United States Navy, *alias* _____, formerly private, United States Marine Corps, now attached to and serving on board the United States ship *Hancock*, at the navy-yard, New York, having, on or about the first day of September, nineteen hundred and eight, on board the United States ship *Vermont*, then at Guantanamo Bay, Cuba, and while acting as mail orderly of said ship, been intrusted as such mail orderly with the sum of twelve dollars by and belonging to _____, ordinary seaman, United States Navy; the sum of fifty dollars by and belonging to _____, master at arms, third class, United States Navy; and the sum of seventy-three dollars by and belonging to _____, private, United States Marine Corps, all of the aforesaid men being at the time above mentioned attached to and serving on board the said ship *Vermont*, did fraudulently misappropriate and convert to his own use and did embezzle the several sums as herein set forth, amounting in all to about one hundred and thirty-five dollars, lawful money of the United States.

CHARGE.—Embezzlement, in violation of article fourteen of the Articles for the Government of the Navy.

Specification.—In that _____, a paymaster in the United States Navy, attached to and serving on board the United States ship _____, having, between the first day of January and the twenty-fifth day of February, nineteen hundred and eight, both days inclusive, issued various articles of provisions to the officers' and other messes of said ship _____, and having received the value of said stores in lawful money of the United States, in the amount of one thousand five hundred and twenty dollars and sixty-two cents, or thereabouts, did unlawfully and wholly fail to account to the United States for said sum or any part thereof, but did con-

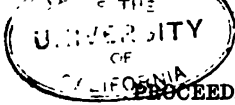
vert to his own use the said sum of one thousand five hundred and twenty dollars and sixty-two cents, or thereabouts, lawful money of the United States, the total amount received from said issues.

Specification.—In that _____, a colonel in the United States Marine Corps, being in command of the marine barracks, navy-yard, _____, _____, and in such capacity having in his possession certain public stores of the United States, including coal, furnished and intended for the use of troops, hospital, guard room, and offices at said barracks, and duly entrusted to his charge for issue for said purposes, did, between the first day of October, nineteen hundred and eight, and the sixth day of March, nineteen hundred and nine, both days inclusive, in violation of said trust, embezzle, and knowingly and wilfully apply to his own use and benefit, forty-eight tons, more or less, of anthracite coal, a portion of the aforesaid public stores, by using the same for the purpose of heating his, the said _____'s private quarters at said barracks, the said coal aggregating in value two hundred and two dollars and eight cents, or thereabouts, lawful money of the United States.

Specification.—In that _____, a paymaster in the United States Navy, attached to and serving on board the United States ship _____, having, on or about the twenty-fifth day of February, nineteen hundred and nine, received a lawful order from the Secretary of the Navy, dated February fifth, nineteen hundred and nine, directing him to transfer to Paymaster _____, United States Navy, the public funds in his possession, and the said _____, having as pay officer of the said ship _____, between the first day of January and the twenty-fifth day of February, nineteen hundred and eight, both days inclusive, received the sum of one thousand and twenty-five dollars, or thereabouts, lawful money of the United States, for provisions sold to officers' and other messes of said ship _____, which sum should have been transferred to his relief, Paymaster _____, United States Navy, in obedience to the aforesaid order, did, on or about said twenty-fifth day of February, nineteen hundred and nine, on board said ship _____, fail to transfer to his relief, the said Paymaster _____, the said sum of one thousand and twenty-five dollars; and the said _____ did thereby embezzle the said sum from moneys of the United States in his custody, the amount received for provisions, as aforesaid.

Specification.—In that _____, a paymaster in the United States Navy, attached to and serving on board the United States ship _____, was, on the thirty-first day of July, nineteen hundred and eight, as pay officer of said ship, justly indebted to the United States in the sum of thirty-nine thousand five hundred and seventy-three dollars and five cents, moneys of the United States, under "General account of advances," for the safe-keeping and disbursement of which sum, in accordance with law, he, the said _____, was responsible; whereas he, the said _____, did have on hand in cash, on board said ship, on the said date, the sum of thirteen thousand nine hundred and seventy dollars and five cents, and subject to his check in the subtreasuries at New York and San Francisco the total sum of nineteen thousand three hundred and twenty-three dollars and ninety-nine cents, making an aggregate sum of only thirty-three thousand two hundred dollars and ninety-six cents accounted for; and the said _____ did, in and by rendering a false and fraudulent return of balances to his credit, in words and figures as follows: * * * convert to his own use the sum of six thousand two hundred and seventy-nine dollars and nine cents, or thereabouts, from moneys of the United States in his custody, said sum being the difference between the amount for which he was accountable to the United States and the amount accounted for as aforesaid.

Specification.—In that _____, a paymaster's clerk in the United States Navy, attached to and serving on board the United States ship _____, at the navy-yard, _____, _____, having, on various dates between July fifteenth and October



tenth, nineteen hundred and eight, been entrusted by Paymaster _____, United States Navy, the pay officer of said ship, with sums of money belonging to the United States, in various amounts, furnished and intended for the naval, service thereof, for disbursement for the purposes of said service during the temporary absence of said Paymaster _____ from said ship, and having, on the first day of October, nineteen hundred and eight, receipted to the said Paymaster _____ for moneys so entrusted to his care as aforesaid in the sum of one thousand seven hundred and one dollars and forty-four cents, did, between the said fifteenth day of July and tenth day of October, nineteen hundred and eight, knowingly and wilfully misappropriate and apply to his own use and benefit, from the money so entrusted to him at various times as aforesaid, the sum of nine hundred and seventy-one dollars and eleven cents, or thereabouts, lawful money of the United States.

Specification.—In that _____, a paymaster in the United States Navy, attached to and serving at the naval station, _____, _____, did on or about the first day of February, nineteen hundred and eight, embezzle and wilfully misappropriate and apply to his own use and benefit public money of the United States, to wit, ten thousand dollars, or thereabouts, lawful money of the United States, with which money he was officially entrusted for disbursement in the discharge of the duties to which he was assigned at the said naval station.

Specification.—In that _____, a paymaster in the United States Navy, attached to and serving at the naval station, _____, _____, having as such, between the twenty-sixth day of November, nineteen hundred and eight, and the first day of March, nineteen hundred and nine, had placed to his official credit in the United States subtreasury, _____, _____, an authorized place of deposit for public funds, the sum of one hundred and fifty thousand two hundred and forty-five dollars and eighty-seven cents, or thereabouts, lawful money of the United States, for disbursement at the naval station to which he was attached, and, being authorized to draw from the same only as might be required for payments to be made by him in pursuance of law, did, on or about the first day of March, nineteen hundred and nine, for a purpose not prescribed by law, withdraw from the moneys with which he was so entrusted, and did convert to his own use, the sum of five thousand dollars, by drawing a check, numbered thirty-eight thousand eight hundred and seventy-seven, in favor of himself for the last-mentioned amount, and receiving the money for the same from the First National Bank of _____, _____, thereby effecting an embezzlement of five thousand dollars, lawful money of the United States, so withdrawn and converted.

CHARGE.—Falsehood.

Specification.—In that _____, a passed assistant surgeon in the United States Navy, member and recorder of a board of medical examiners in session at the naval hospital, navy-yard, _____, _____, having, on or about the thirteenth day of October, nineteen hundred and eight, refused, on account of alleged informalities, to record the proceedings had by said board in the case of Ensign _____, United States Navy, did, on said date, state to Medical Inspector _____, United States Navy, president of said board, that he, _____, had referred the matter of his action in refusing to record the proceedings of the board as aforesaid to the Secretary of the Navy, who had sustained his action in so refusing, which said statement was wholly false and intended to deceive, as he, the said _____, well knew.

Specification.—In that _____, a colonel in the United States Marine Corps, being in command of the marine barracks, navy-yard, _____, _____, well knowing that the northwest chimney of the building at said barracks occupied as

officers' quarters was in a dangerous condition, such fact having been officially reported to him by First Lieutenant ———, United States Marine Corps, on the second day of April, nineteen hundred and nine, and having, on or about the tenth day of April, nineteen hundred and nine, received from the Commandant of the United States Marine Corps a telegram of that date substantially as follows: * * *, did, on the same day, send to said commandant a telegram in reply substantially as follows: * * *, the said ———, well knowing that the first order given by him to discontinue the use of said defective chimney was not issued until the tenth day of April in the year aforesaid, and that so much of his aforesaid telegram as stated that he had ordered discontinuance of the use of the said chimney as soon as the defect was discovered therein was wholly false and intended to deceive.

Specification.—In that ———, a gunner in the United States Navy, attached to and serving at the navy-yard, ———, ———, did, on or about the fourteenth day of April, nineteen hundred and nine, in the pay office at said navy-yard, state to ———, paymaster's clerk, United States Navy, that a claim of the First National Bank of Key West, Florida, in the amount of ——— dollars against him, the said ———, had been satisfied, he, the said ———, well knowing that such statement made by him, as aforesaid, was false and intended to deceive.

Specification.—In that ———, a passed assistant paymaster in the United States Navy, then attached to and serving on board the United States ship ———, at Shanghai, China, having received a letter from the Navy Department in words and figures substantially as follows, to wit: * * *, did, on or about the twenty-eighth day of December, nineteen hundred and eight, address to the Secretary of the Navy a letter, in words and figures substantially as follows, to wit: * * *, the said ——— well knowing that the statements contained in his said letter of December twenty-eight, nineteen hundred and eight, to the effect that he received the sum of two thousand five hundred dollars from his former clerk, ———, as loan and not in any sense as a bond, was wholly false and intended to deceive.

Specification.—In that ———, a captain in the United States Marine Corps, in command of the marine barracks, navy-yard, ———, ———, acting as post treasurer at said barracks, and being in such capacity charged with the expenditure of the company fund thereof and the purchase of supplies for the use of the said barracks, did, on the fourth day of August, nineteen hundred and eight, upon turning over the command of said barracks, preliminary to his detachment therefrom on said day, to his relief, Captain ———, United States Marine Corps, state to the said ———, in substance, that all financial claims against the barracks aforesaid had been settled, and that there were then no debts outstanding chargeable to the said company fund; whereas he, the said ———, well knew that said barracks was, on the day above mentioned, indebted to one ———, of the said city of ———, ———, in the sum of four hundred and eighty-three dollars and sixty-five cents or thereabouts, and to one ———, of ———, ———, in the sum of twenty-three dollars and thirty cents, for supplies furnished by them to said barracks during the fiscal year ending June thirtieth, nineteen hundred and eight, which supplies had been purchased from them on credit by the said ——— for the use of the barracks aforesaid, and were a proper charge upon said company fund, said statement, in substance above set forth, being false, and as such made by the said ———, to the said ——— knowingly and wilfully, and with intent to deceive.

CHARGE.—Forgery.

Specification.—In that _____, a passed assistant paymaster in the United States Navy, while attached to and serving on board the United States ship _____, having, on or about the fifteenth day of January, nineteen hundred and nine, received through the commanding officer of said ship a certificate for the sum of sixty dollars or thereabouts, in United States money, in payment of an indemnity for loss of clothing, issued by the Auditor for the Navy Department in favor of _____, seaman, attached to said ship, and he, the said _____, well knowing that the said _____ was, at the time of the receipt by him, the said _____, of said certificate, a deserter from the United States naval service, did, nevertheless, for the purpose of obtaining allowance in his accounts, of the said claim of sixty dollars or thereabouts, by the accounting officers of the Treasury, present, among his official vouchers, the aforesaid certificate, bearing thereon what purported to be the signature of the said _____, he, the said _____, well knowing that the said signature was a forgery; this in violation of the fifth clause of the fourteenth article of the Articles for the Government of the Navy.

CHARGE.—Fraud, in violation of article fourteen of the Articles for the Government of the Navy.

Specification.—In that _____, a paymaster in the United States Navy, attached to and serving on board the United States ship _____, did, between the first day of July and the thirtieth day of September, nineteen hundred and eight, both days inclusive, issue various articles of clothing to the following-named men belonging to the crew of the said ship, to wit: _____, seaman; _____, fireman second class; _____, ordinary seaman; and _____, private; and did neglect and fail to charge for the same as such in the _____ roll of the said ship for the then current quarter, to wit, the first quarter of the fiscal year of nineteen hundred and nine, but in lieu thereof did knowingly and fraudulently charge the price of the said clothing as money received by the aforesaid men.

Specification.—In that _____, a paymaster in the United States Navy, attached to and serving on board the United States ship _____, did, on or about the third day of July, nineteen hundred and eight, the said ship being then at anchor off Shanghai, China, purchase for the following-named men belonging to the crew of the said ship, drafts for the respective amounts hereinafter specified, and did pay therefor in Mexican money as hereinafter stated, to wit: _____, fireman second class, ten pounds sterling, paid fifty-five dollars and sixty-five cents in Mexican money; _____, seaman, twelve pounds sterling, paid sixty-six dollars and seventy-eight cents in Mexican money; * * * _____, ordinary seaman, twenty-five dollars in United States money, paid twenty-nine dollars and twenty-five cents in Mexican money; and did knowingly and fraudulently charge in United States money to the accounts of the aforesaid men, for the first quarter of the fiscal year of nineteen hundred and nine, the number of dollars paid in Mexican money for said drafts, thereby making fraudulent overcharges against the said men, amounting in the aggregate to one hundred and sixty-five dollars and seventy-six cents in United States money, or thereabouts.

CHARGE.—Fraudulent enlistment.

Specification.—In that _____, *alias* _____, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, did, on the eighth day of December, nineteen hundred and eight, at said barracks, procure himself to be accepted and did fraudulently

enlist as a private in the United States Marine Corps, by falsely representing that he had never been discharged from the United States service by sentence of a military court, and by deliberately and wilfully concealing from the recruiting officer the fact that he had on the nineteenth day of November, nineteen hundred and eight, been dishonorably discharged from the United States Army, under the name of _____, pursuant to the sentence of a general court-martial; and, furthermore, that he, the said _____, *alias* _____, has, at the marine barracks aforesaid, since said enlistment, received pay and allowances thereunder.

Specification.—In that _____, an apprentice seaman, *alias* _____, formerly apprentice seaman, United States Navy, now attached to and serving on board the United States ship _____ at the navy-yard, _____, did, on the thirtieth day of September, nineteen hundred and eight, at Atlanta, Georgia, procure himself to be accepted and did fraudulently enlist as an apprentice seaman in the United States Navy, under the name of _____, by falsely representing that he had had no previous service in the United States Navy, and that he had never been discharged from the United States service through sentence of a military court and by deliberately and wilfully concealing from the recruiting officer the fact that he had, on the twenty-third day of April, nineteen hundred and seven, while serving under the name and rate of _____, apprentice seaman, been dishonorably discharged from the United States Navy pursuant to a sentence of a general court-martial; and, furthermore, he, the said _____, has since said enlistment received pay and allowances thereunder.

Specification.—In that _____, ordinary seaman, *alias* _____, coal passer, United States Navy, now attached to and serving on board the United States ship _____, at the navy-yard, _____, did, on the twenty-first day of February, nineteen hundred and eight, at the Navy Recruiting Station, Chicago, Illinois, procure himself to be accepted and did fraudulently enlist as a coal passer in the United States Navy under the name of _____ by falsely stating that he had had no previous naval service and that he had never deserted from the United States Navy, and by deliberately and wilfully concealing from the recruiting officer the fact that he had, on or about the sixth day of July, nineteen hundred and six, deserted from the United States Navy while serving under the name and rate of _____, ordinary seaman, and was a deserter at large; and furthermore that he, the said _____, *alias* _____, has since said enlistment received pay and allowances thereunder.

Specification.—In that _____, an apprentice seaman in the United States Navy, now attached to and serving on board the United States ship _____, at the navy-yard, _____, did, on the twenty-eighth day of August, nineteen hundred and eight, at Kansas City, Missouri, procure himself to be accepted and did fraudulently enlist as an apprentice seaman in the United States Navy by falsely representing that he had had no previous service in the United States Navy, and that he had never been discharged from the United States service except for reasons given the recruiting officer prior to enlistment, and by deliberately and wilfully concealing from the recruiting officer the fact that he had, on the eleventh day of January, nineteen hundred and eight, been discharged from the United States Navy for physical disability, pursuant to a recommendation of a medical board of survey; and furthermore that he, the said _____, has since said enlistment received pay and allowances thereunder.

Specification.—In that _____, an apprentice seaman in the United States Navy, attached to and serving on board the United States ship _____, at the navy-yard, _____, did, on the twenty-fourth day of June, nineteen hundred and

eight, on board the United States ship ———, at ———, ———, procure himself to be accepted and did fraudulently enlist as an apprentice seaman in the United States Navy, by falsely representing that he had had no previous naval service, and by deliberately and wilfully concealing from the recruiting officer the fact that he had, on the seventeenth day of November, nineteen hundred and seven, deserted from the United States ship ———, at the navy-yard, ———, ———, under the name of ——— ———; and furthermore, that he, the said ——— has, on board said ships ——— and ———, since said enlistment, received pay and allowances thereunder.

Specification.—In that ——— ———, *alias* ——— ———, an ordinary seaman in the United States Navy, attached to and serving on board the United States ship ———, at the naval station, ———, ———, did, on the fifteenth day of July, nineteen hundred and eight, on board the United States ship ———, at the navy-yard, ———, ———, procure himself to be accepted and did fraudulently enlist as an apprentice seaman in the United States Navy, by falsely representing that he had had no previous naval service, and by deliberately and wilfully concealing from the recruiting officer the fact that he had, on the twenty-sixth day of May, nineteen hundred and seven, been discharged from the United States ship ———, at the naval station, ———, ———, for inaptitude, under the name of ——— ———; and furthermore that he, the said ———, *alias* ———, has, on board said ships ——— and ———, since said enlistment, received pay and allowances thereunder.

Specification.—In that ——— ———, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ———, ———, did, on the first day of December, nineteen hundred and eight, at said barracks, procure himself to be accepted and did fraudulently enlist as a private in the United States Marine Corps, by falsely representing that he had had no previous naval service, and by deliberately and wilfully concealing from the recruiting officer the fact that he had, on the sixth day of July, nineteen hundred and eight, been discharged from the United States Navy, as an apprentice seaman, pursuant to the sentence of a summary court-martial, with bad conduct discharge; and furthermore that he, the said ———, has, at the marine barracks, navy-yard, ———, ———, since said enlistment, received pay and allowances thereunder.

CHARGE.—Improperly hazarding the vessel under his command, in consequence of which she was run upon a rock and lost.

Specification.—In that Commander ——— ———, United States Navy, then in command of the United States ship ———, while said ship was at sea making a passage from ——— to ———, on the seventeenth day of November, nineteen hundred and eight, about nine hours postmeridian, the weather at the time being thick and foggy, the night dark, and the currents uncertain, did issue written night orders in substance as follows: That during the night the ——— was to proceed under slow speed, was to steer a course of southwest one-half south, per standard compass, until she had made thirty miles on that course, when the course was to be changed to west-southwest one-quarter west, per standard compass; the said Commander ——— knowing at the time he issued the aforesaid orders, from reports which had been made to him by Lieutenant ——— ———, United States Navy, the navigator of said ship at the time, and from calculations which he and the said Lieutenant ——— had made together, that the said ship ——— would be, at the time the course was to be changed to west-southwest one-quarter west, per standard compass, in obedience to the aforesaid night orders, about thirty miles from the ——— Islands, and that the said course of west-southwest one-quarter west, per standard compass, would head the said ship ——— almost directly for the said ——— Islands, which islands it was dangerous to approach on a dark and foggy

night, and in issuing the aforesaid night orders he, the said Commander ———, did improperly hazard the ship under his command, which ship, while being run in obedience to the aforesaid night orders, ran upon a rock at about four hours and five minutes antemeridian of the eighteenth day of November, nineteen hundred and eight, which rock was close to the southeast end of the East ——— Island, or thereabouts, and in consequence of which striking upon the aforesaid rock the said ship ——— was lost.

CHARGE.—Leaving post before being regularly relieved.

Specification.—In that ——— ———, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ———, ———, having, at or about eleven o'clock postmeridian on the fourth day of June, nineteen hundred and nine, been regularly posted as a sentinel on post number four at said navy-yard, did, at or about one o'clock antemeridian on the fifth day of said month, leave said post before being regularly relieved.

Specification.—In that ——— ———, a private in the United States Marine Corps, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, having, on the eleventh day of September, nineteen hundred and eight, been regularly posted as a sentinel over prisoners on board said ship, did, between the hours of six and eight postmeridian on said day, leave said post before being regularly relieved.

CHARGE.—Leaving station before being regularly relieved.

Specification.—In that ——— ———, a lieutenant in the United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, having, at or about eight o'clock on the evening of the twenty-fourth day of May, nineteen hundred and nine, regularly relieved the officer of the deck of the said ship, did, at or about nine o'clock on the evening of the said day, while officer of the deck of the said ship, leave his station before being regularly relieved; this in violation of the ninth clause of the fourth article of the Articles for the Government of the Navy.

Specification.—In that Captain ——— ———, United States Navy, being in command of the navy-yard, ———, ———, did, without authority, place a subordinate officer in command of said navy-yard and leave his station before being regularly relieved: This, on or about the first day of September, nineteen hundred and eight, when yellow fever was prevailing in the city of ———, ———, and when the officers and others residing at and in the immediate vicinity of said navy-yard were apprehensive of the approach of said disease.

Specification.—In that ——— ———, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ———, ———, did, on the morning of the twenty-second day of October, nineteen hundred and eight, while acting as corporal of the guard at the main gate at said yard, absent himself from his station before being regularly relieved, and did remain so absent for a period of about one hour.

CHARGE.—Making a false and fraudulent official report, in violation of article fourteen of the Articles for the Government of the Navy.

Specification.—In that ——— ———, a paymaster in the United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, did, on the thirteenth day of May, nineteen hundred and nine, when his accounts as pay officer of said ship were being inspected, and the cash on hand in his possession as such pay officer was being verified by Pay Inspector ——— ———, United States Navy, in obedience to a telegraphic order from the Secretary of the Navy to the said ———, dated May twelfth, nineteen hundred

and nine, acknowledge to the said ——— that he, the said ———, was indebted to the United States in the sum of nine thousand eight hundred and ninety-six dollars and eighty-seven cents on account of money had and received under "General account of advances;" and, whereas, the said ——— did have on hand, in cash, on board the said ship ———, on the said thirteenth day of May, the total amount of one thousand seven hundred and forty-three dollars and eighty-five cents, and on deposit to his official credit in the subtreasury at New York, the sum of fifty-four dollars and six cents, and in the subtreasury at San Francisco the sum of six hundred and thirty-two dollars and sixty-three cents, making a total amount of six hundred and eighty-six dollars and sixty-nine cents, subject to his check in the aforesaid subtreasuries, and an aggregate of only two thousand four hundred and thirty dollars and fifty-four cents accounted for, he, the said ———, did then and there officially report to the said ——— that on the said thirteenth day of May, nineteen hundred and nine, there was on deposit to his credit as pay officer of the said ship ———, in the subtreasury at New York, the sum of seven thousand six hundred and three dollars, the said ——— well knowing that said report was false and fraudulent.

CHARGE.—Making false and fraudulent official reports, in violation of article fourteen of the Articles for the Government of the Navy.

Specification.—In that ———, a naval constructor in the United States Navy, being, on or about the first day of July, nineteen hundred and eight, and continuously thereafter until the date hereof, attached to and serving at the navy-yard ———, ———, as the head of the ——— department at said yard, and it being a part of his duty as such head of department to supervise and control all work pertaining to said department and to have the general superintendence, charge, direction, and mustering of all persons employed in said department, and it being also a part of his duty, when doing work for another department, to send every morning through the commandant to the head of such department a report of the number and class of men employed, with their rates of pay, did, from time to time, between the twenty-eighth day of March and the thirtieth day of June, nineteen hundred and nine, cause to be prepared and transmitted over his official signature, as the head of the department of ———, to the heads of other departments at said yard, to wit, to the heads of the departments of ———, ———, and ———, statements of labor performed for such other departments, respectively, which statements contained the names of laborers and mechanics who were credited with having rendered, respectively, one and five-eighths (1½) days' service on certain days therein specified; whereas, in fact, as he, the said ———, well knew, such laborers and mechanics had rendered and were entitled to be credited with one and three-eighths (1¾) days' service only on such days; and the said ——— did, therein and thereby, make false and fraudulent official reports of labor performed by employees of the department under his charge.

CHARGE.—Making and using false papers, in violation of article fourteen of the Articles for the Government of the Navy.

Specification.—In that ———, a colonel in the United States Marine Corps, being in command of the marine barracks, navy-yard, ———, ———, having, on the third day of October, nineteen hundred and eight, made a requisition on Colonel ———, quartermaster, United States Marine Corps, in words and figures substantially as follows: * * * and the said quartermaster of the Marine Corps, on the fifth day of the same month, the public exigency requiring the immediate delivery of the articles enumerated in said requisition, ordered that they be procured by open purchase, and the said ——— having purchased from ———, Fulton street, Brooklyn, New York, ———, did, on or about the twenty-fourth day of October, nineteen hundred and eight, in order to obtain the

approval, and payment to said firm for such articles, of its claim against the United States, prepare and forward to the said quartermaster, United States Marine Corps, an open purchase voucher, in words and figures substantially as follows: * * * the said ———, well knowing that of the articles enumerated in said voucher, ——— were not purchased, inspected, and received by him at the navy-yard, ———, ———, and, therefore, that the certificates on said voucher made and signed by him that the said articles were so purchased, inspected, and received were false.

CHARGE.—Maltreating a person subject to his orders.

Specification.—In that ———, a commander in the United States Navy, being in command of the United States ship ———, did, on or about the fifth day of March, nineteen hundred and nine, while the said ship was at ———, ———, maltreat ———, then a fireman second class in the United States Navy, and attached to and serving on board said ship, by causing him, the said ———, to be confined, in a strait-jacket on board said ship, and to be kept so confined during a period of about seven days.

Specification.—In that ———, a lieutenant in the United States Navy, attached to and serving on board the United States ship ———, at New London, Connecticut, did, between the hours of seven and eight postmeridian on the sixth day of April, nineteen hundred and nine, wilfully and without justifiable cause assault and kick ———, mess attendant third class, United States Navy, attached to and serving on board the said ship.

CHARGE.—Mayhem.

Specification.—In that ———, a boilermaker in the United States Navy, attached to and serving on board the United States ship ———, off ———, ———, did, on or about the twenty-eighth day of May, nineteen hundred and nine, on board said ship, assault ———, a coal passer, United States Navy, attached to said ship, and did then and there unlawfully and maliciously bite off the left forefinger of the said ———, thereby maiming and wounding the said ———.

CHARGE.—Neglect of duty.

Specification.—In that, on the second day of February, nineteen hundred and nine, ———, a lieutenant in the United States Navy, attached to and serving as navigator on board the United States ship ———, making passage from ——— to ———, did, although the weather permitted, neglect and fail to obtain the local deviation of the compass of said ship; and the said Lieutenant ——— did thereby neglect his duty as navigator of said ship.

Specification.—In that ———, a chief boatswain in the United States Navy, commanding United States coal barge number two, laden with coal, at sea, in tow of the United States ship ———, from ——— to ———, did, between ten hours postmeridian of the nineteenth day of December and six hours antemeridian of the twentieth day of December, nineteen hundred and eight, neglect and fail to keep himself informed at proper intervals of the depth of water in said barge number two, and did therein and thereby neglect his duty as commanding officer of said barge.

Specification.—In that ———, a chief boatswain in the United States Navy, commanding United States coal barge number two, laden with coal, at sea, in tow of the United States ship ———, from ——— to ———, having, between ten hours postmeridian of the nineteenth day of December and six hours antemeridian of the twentieth day of December, nineteen hundred and eight, neglect and fail to cause to be kept a steam pressure in the boiler of said barge sufficient to work the pump, and did therein and thereby neglect his duty as commanding officer of said barge.

Specification.—In that _____, a chief boatswain in the United States Navy, commanding United States coal barge number two, laden with coal, at sea, in tow of the United States ship _____, from _____ to _____, having, between ten hours postmeridian of the nineteenth day of December and six hours antemeridian of the twentieth day of December, nineteen hundred and eight, negligently allowed water to enter said barge to a hazardous depth, did, at or about seven hours antemeridian of the twentieth day of December in the year aforesaid, abandon said barge without making any effort to free her from such water or to save any part of her outfit, and the said _____ did therein and thereby neglect his duty as commanding officer of said barge.

Specification.—In that _____, a lieutenant, junior grade, in the United States Navy, commanding the United States ship _____ engaged in towing coal barge number two, laden with coal, from _____ to _____, which barge was, at or about seven hours antemeridian on the twentieth day of December, nineteen hundred and eight, in latitude twenty-six degrees and one minute north, and longitude seventy-nine degrees and forty-seven minutes west, or thereabouts, abandoned by her commanding officer, Chief Boatswain _____, United States Navy, and crew, and he, the said _____, having been informed that water had entered said barge to a hazardous depth, did fail to send a relief crew on board said barge, and did therein and thereby neglect his duty.

Specification.—In that _____, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, having, at or about five hours antemeridian on the seventeenth day of January, nineteen hundred and nine, been regularly posted as a sentinel over prisoners confined in the cell passage at said barracks, the three doors leading to said passage being locked and the keys thereof in the possession of the corporal of the guard, did nevertheless, at about five hours and forty-five minutes antemeridian on the day aforesaid, suffer a prisoner confined in said passage, _____, private, United States Marine Corps, to escape by way of the door leading from said passage to the arcade of the said barracks; and the said _____ did thereby neglect his duty as sentinel on said post.

Specification.—In that _____, a corporal in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, being, on the twenty-ninth day of January, nineteen hundred and nine, on duty as corporal of the prison guard at said barracks, and having, at or about seven hours postmeridian on the said day, taken the prisoners under his charge, eleven in number, more or less, from the cells on board the United States ship _____, where they were confined, to the sinks on the dock for the purpose of policing said prisoners, did, after said prisoners had entered the sinks aforesaid, leave them under a guard consisting of two sentinels, and did go aboard said ship _____, moored to the dock abreast of said sinks, where he remained for the space of about ten minutes, and upon his return from said vessel did neglect and fail to verify the number of said prisoners before taking them again on board said ship aforesaid; and the said _____ did therein and thereby neglect his duty as corporal of the prison guard, in consequence of which neglect one of the prisoners hereinbefore mentioned, Private _____, United States Marine Corps, who was under sentence of a general court-martial, and awaiting transfer to the naval prison, Boston, did, between the hours of seven and seven-thirty postmeridian, on the day aforesaid, escape from the custody of the guard and from the limits of the said navy-yard.

Specification.—In that _____, a lieutenant in the United States Navy, attached to the naval torpedo station at Newport, Rhode Island, as a member of the class

of officers under instruction at said station, having, on or about the thirtieth day of July, nineteen hundred and eight, been assigned to the duty of performing certain practical exercises before a board of officers appointed by the Secretary of the Navy to witness the examination of said class, did, then and there, wilfully neglect to perform said duty.

CHARGE.—Negligence in obeying orders.

Specification.—In that _____, a first lieutenant in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, having, on the ninth day of December, nineteen hundred and eight, been duly discharged from attendance as a witness before a court of inquiry in session at the navy-yard, _____, _____, with orders to proceed to his station, did neglect and fail to report in obedience thereto until about four hours and thirty minutes post-meridian on the fifteenth day of said month; and the said _____ was thereby negligent in obeying orders.

CHARGE.—Negligent and careless in obeying orders, and culpably inefficient in the performance of duty.

Specification.—In that _____, a commander in the United States Navy, being in command of the United States ship _____, having, on or about the fourth day of December, nineteen hundred and eight, said vessel being then in the port of Yokohama, Japan, received from the Bureau of Navigation, Navy Department, a copy of Navy Department General Order number eighteen, dated October fifteenth, nineteen hundred and eight, which directs that the captain of every cruising ship shall require the navigator to furnish as full and complete information as possible concerning the proper navigation of ports visited and the approaches to said ports, and that such information be forwarded to the Hydrographic Office, Bureau of Equipment, did, notwithstanding the fact that the said ship _____ remained at anchor in the said port of Yokohama, Japan, from the fourth day of December, nineteen hundred and eight, until the twenty-sixth day of February, nineteen hundred and nine, and that important changes were then being made in said port, neglect and fail, during the entire time embraced between said dates, to take any steps to carry out the provisions of the order aforesaid, and the said Commander _____ was thereby negligent and careless in obeying orders, and culpably inefficient in the performance of his duty as commanding officer of the said ship _____.

CHARGE.—Perjury.

Specification.—In that _____, a coal passer in the United States Navy, a prisoner in the United States naval prison, at the navy-yard, _____, _____, having, on the twenty-fourth day of February, nineteen hundred and nine, been duly sworn as a witness before a general court-martial, by the president thereof, said court-martial being then convened on board the United States ship _____ at Panama, Republic of Panama, did, wilfully and contrary to said oath, testify as follows (here quote *verbatim* the testimony containing false statements), which testimony that (here quote *verbatim* the false statement) was false; whereas, in truth and in fact (here allege affirmatively what was the truth); and the said false testimony was known by the said _____ to be false, was material to the issue then and there being tried, and was given with intent to deceive the said general court-martial.

CHARGE.—Persistent delinquency in the rendition of accounts, in violation of section twelve of an act of Congress entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes."

Specification.—In that _____, a passed assistant paymaster in the United States Navy, attached to and serving as such on board the United States ship _____, did fail to mail or otherwise send to the proper officer at Washington, within twenty days after the period to which they related, his quarterly accounts for the second quarter of the fiscal year, nineteen hundred and eight, being the quarter ending on the thirty-first day of December, nineteen hundred and seven; and further, did fail to mail or otherwise send to the proper officer at Washington, within twenty days after the period to which they related, his quarterly accounts for the third quarter of the fiscal year nineteen hundred and eight, being the quarter ending on the thirty-first day of March, nineteen hundred and eight; and further, did fail to mail or otherwise send to the proper officer at Washington, within twenty days after the period to which they related, his quarterly accounts for the fourth quarter of the fiscal year nineteen hundred and eight, being the quarter ending on the thirtieth day of June, nineteen hundred and eight; and further, did fail to mail or otherwise send to the proper officer at Washington, within twenty days after the period to which they related, his quarterly accounts for the first quarter of the fiscal year nineteen hundred and nine, being the quarter ending on the thirtieth day of September, nineteen hundred and eight.

CHARGE.—Refusing to obey the lawful order of his superior officer.

Specification.—In that _____, a private in the United States Marine Corps, attached to and serving on board the United States ship _____, at the navy-yard, _____, _____, having, on the twelfth day of February, nineteen hundred and eight, been ordered by Lieutenant-Commander _____, United States Navy, the executive officer of said ship, to clean bright work, did refuse to obey, and did wilfully disobey, the said lawful order of his superior officer, the said Lieutenant-Commander _____, who was then and there in the execution of his office.

Specification.—In that _____, an ordinary seaman in the United States Navy, attached to and serving on board the United States ship _____, at anchor off Tompkinsville, Staten Island, New York, having on the sixteenth day of June, nineteen hundred and nine, been ordered by _____, chief master at arms, United States Navy, attached to said ship, to go on the berth deck of said ship and perform extra duty in accordance with the sentence of a summary court-martial, did refuse to obey and did wilfully disobey the said lawful order of his superior officer, the said Chief Master at Arms _____, who was then and there in the execution of his office.

Specification.—In that _____, a seaman in the United States Navy, attached to and serving on board the United States ship _____, at _____, _____, having on the sixth day of June, nineteen hundred and eight, while on shore at said place as a member of a landing party for the protection of the United States consulate, been ordered by Midshipman _____, United States Navy, attached to said ship, to cease being noisy and disorderly, did refuse to obey, and did wilfully disobey, the said lawful order of his superior officer, the said Midshipman _____, who was then and there in the execution of his office.

CHARGE.—Rendering false and fraudulent returns of balances to his credit, in violation of article fourteen of the Articles for the Government of the Navy.

Specification.—In that ———, a paymaster in the United States Navy, while attached to and serving as such on board the United States ship ———, did render to the Bureau of Supplies and Accounts, Navy Department, a monthly summary statement for the month ending August thirty-first, nineteen hundred and eight, in which he reported that, of the balance due to the United States by him as pay officer of the said ship ———, there was on deposit in the subtreasury under “General account of advances,” on the thirty-first day of August, nineteen hundred and eight, the sum of twenty-four thousand two hundred and six dollars; whereas, on the said date there was on deposit to his credit, in the subtreasury at New York, the sum of seven thousand seven hundred and three dollars and thirty-three cents, with outstanding checks against said credit amounting to six hundred and twenty-five dollars, and in the subtreasury at San Francisco the sum of thirteen thousand five hundred and eighty-seven dollars and fifty-eight cents, with outstanding checks against said credit amounting to one thousand seven hundred and sixty-nine dollars and ninety cents; and, whereas, there remained subject to check by the said ——— in the subtreasury at New York the sum of seven thousand and seventy-eight dollars and thirty-three cents, and in the subtreasury at San Francisco the sum of eleven thousand eight hundred and seventeen dollars and sixty-eight cents, making a total amount of only eighteen thousand eight hundred and ninety-six dollars and one cent subject to his check in the aforesaid subtreasuries, the said ——— did, in and by said summary statement, knowingly and wilfully render a false and fraudulent return of balances to his credit in the subtreasuries at New York and San Francisco, as aforesaid.

CHARGE.—Resisting arrest.

Specification.—In that ———, a seaman in the United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, ———, did, at about four hours and thirty minutes postmeridian on the twenty-fourth day of August, nineteen hundred and eight, while being placed in confinement by ———, master at arms, first class, United States Navy, forcibly resist arrest.

Specification.—In that ———, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ———, did, on or about the twenty-fifth day of September, nineteen hundred and eight, at said navy-yard, while being placed under arrest by Corporal ———, United States Marine Corps, on duty as corporal of the guard at said barracks, forcibly resist arrest.

CHARGE.—Robbery.

Specification.—In that ———, a trumpeter in the United States Marine Corps, attached to and serving at the marine barracks, Marine Officers' School, Port Royal, South Carolina, did, on or about the third day of April, nineteen hundred and nine, in Carteret Creek, near said school, with force and arms, feloniously make an assault upon ———, a constable of Beaufort County, in said State, then and there in the execution of his office, and did feloniously rob, steal, take, and carry away from him, the said Constable ———, two barrels of beer, value unknown, lawfully seized and held by him, the said Constable ———, under the laws of the State and county aforesaid.

CHARGE.—Brobbery, in violation of clause sixteen of article eight of Articles for the Government of the Navy.

Specification.—In that _____, a seaman in the United States Navy, now attached to and serving on board the United States ship _____, at the navy-yard, _____, did, on or about the twenty-second day of February, nineteen hundred and eight, while on liberty from the United States ship _____, at San Francisco, California, by violence, feloniously take, steal, and carry away from the person of _____, blacksmith, United States Navy, attached to said ship _____, the sum of fifteen dollars, lawful money of the United States.

CHARGE.—Scandalous conduct tending to the destruction of good morals.

Specification.—In that _____, a lieutenant in the United States Navy, while attached to and serving on board the United States ship _____, at Havre, France, did, on or about the thirteenth day of September, nineteen hundred and eight, by reason of the excessive use of intoxicants, become incapacitated for the proper performance of duty.

Specification.—In that _____, a gunner in the United States Navy, attached to and serving at the navy-yard, _____, _____, did, on or about the third day of January, nineteen hundred and nine, procure as a loan from _____, then an employee of the ordnance department of said navy-yard, and a subordinate of the said _____, a sum of money, to wit, one hundred dollars.

Specification.—In that _____, a boatswain's mate, second class, and _____, an ordinary seaman, in the United States Navy, attached to and serving on board the United States ship _____, in the harbor of _____, _____, were, on or about the thirteenth day of May, nineteen hundred and nine, in the construction storeroom of said ship, found lying together, each with his person indecently exposed and in contact with that of the other.

Specification.—In that _____, a gunner in the United States Navy, attached to and serving at the navy-yard, _____, _____, having, between the twenty-sixth day of March and the third day of April, nineteen hundred and nine, become indebted to _____, confectioner, of Berkley, Virginia, in the sum of five dollars and sixty-three cents, for goods furnished, under promise that he would in a few days make payment therefor, did neglect and fail, and has ever since neglected and failed, to pay to said _____, the sum of five dollars and sixty-three cents, or any portion thereof.

Specification.—In that _____, a gunner in the United States Navy, attached to and serving at the navy-yard, _____, _____, did, on or about the first day of March, nineteen hundred and nine, induce _____, of Norfolk, Virginia, to cash a check drawn by him, the said _____, upon the Bank of Berkley, in the sum of ten dollars; and he, the said _____, well knowing that he did not have at the time of drawing said check sufficient funds in said bank to provide for its payment, did thereafter wholly neglect and fail to provide therefor, and did allow said check, upon presentation at said bank, to be dishonored because of the fact that he, the said _____, had at that time no funds on deposit.

Specification.—In that _____, a yeoman, second class, in the United States Navy, attached to and serving on board the United States ship _____, at the navy-yard, _____, _____, having, on or about the eighteenth day of May, nineteen hundred and nine, procured from _____, a fireman, first class, in the United States Navy, attached to said vessel, the sum of one hundred dollars, as set forth in the first specification of this charge, and having, on or about the twenty-ninth day of said month, been reproached by the said _____ for not procuring his transfer to the United States ship _____, did refund the sum

of ten dollars only, and did then and there withhold, and has ever since withheld from said _____, the remainder of said money, to wit, the sum of ninety dollars or thereabouts.

Specification.—In that _____, a gunner in the United States Navy, attached to and serving at the navy-yard, _____, _____, having, on or about the tenth day of March, nineteen hundred and nine, become justly indebted to _____, of the city of Philadelphia, Pennsylvania, in the sum of two hundred dollars, and having paid to the said _____, on or about the fourth day of May, nineteen hundred and nine, the sum of twenty-five dollars, and being thereafter, to wit, since about the eleventh day of July, nineteen hundred and nine, justly indebted to the said _____ in the sum of one hundred and fifty dollars, did, notwithstanding repeated attempts on the part of the said _____ to collect such indebtedness, neglect and fail, and has ever since neglected and failed, to pay to the said _____ the said sum of one hundred and fifty dollars, or any part thereof.

Specification.—In that _____, a gunner in the United States Navy, attached to and serving at the navy-yard, _____, _____, having between the third day of December, nineteen hundred and eight, and the first day of March, nineteen hundred and nine, become indebted to _____, of Norfolk, Virginia, in the sum of twenty-seven dollars and twenty-five cents, and having paid to said company on the twenty-fifth day of January, nineteen hundred and nine, the sum of five dollars, and on the twenty-seventh of said month the sum of four dollars, and being thereafter, to wit, since about the twenty-seventh day of January, nineteen hundred and nine, indebted to _____ in the sum of eighteen dollars and twenty-five cents, did, although often requested so to do, neglect and fail, and has ever since neglected and failed, to pay to said company the said sum of eighteen dollars and twenty-five cents, or any portion thereof.

Specification.—In that _____, a gunner in the United States Navy, attached to and serving at the navy-yard, _____, _____, being, on or about the fifth day of February, nineteen hundred and nine, indebted to the First National Bank, of Key West, Florida, for or on account of cash theretofore advanced and loaned to him by said bank, did, on or about said day, for the ostensible purpose of satisfying such indebtedness, transmit to the said bank pay receipts, dated April fifth, nineteen hundred and nine, and duly signed by him, the said _____, acknowledging the receipt from Pay Director _____, United States Navy, of the sum of one hundred dollars; and the said _____ did, nevertheless, draw from Pay Director _____, before the presentation of said pay receipts, all pay due him up to the date of said receipts, he, the said _____, well knowing that by thus drawing his pay he prevented the First National Bank of Key West from receiving the sum of one hundred dollars for which such receipts were given as aforesaid.

Specification.—In that _____, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, did, on or about the thirteenth day of January, nineteen hundred and nine, at the subtreasury of the United States, New York, with intent then and there to defraud the United States, present for payment and cause to be paid him the amount of a check drawn upon the Assistant Treasurer of the United States, at Philadelphia, Pennsylvania, by Paymaster _____, United States Navy, attached to and serving on board the United States ship _____, at the navy-yard aforesaid, payable to the order of _____, said check being in tenor as follows: * * *; which said check was falsely indorsed as follows: * * *; the said _____ well knowing that the said indorsements of _____ and _____ upon said check were forged thereon.

Specification.—In that _____, a lieutenant in the United States Navy, attached to and serving on board the United States ship _____, having, on or about the twenty-fourth day of August, nineteen hundred and eight, in the cabin of said ship, promised Commander _____, United States Navy, the commanding officer of said ship, that he, the said _____, would in future abstain from the use of any intoxicants, either on shore or on board ship, while attached to the _____, or while that ship was under the command of _____, did, nevertheless, on or about the thirteenth day of September, nineteen hundred and eight, on board the _____, and the said _____ being still attached to and serving on board said ship, become intoxicated, in violation of his promise as hereinbefore set forth.

Specification.—In that _____, a chaplain in the United States Navy, did, on or about the eighth day of August, eighteen hundred and ninety-eight, in the course of a lecture delivered by him in Trinity Methodist Episcopal Church, _____, _____, before an audience of about four hundred persons, refer to the naval battle of July third, eighteen hundred and ninety-eight, near Santiago, Cuba, between certain vessels of the United States naval force, under the command of his superior officer, Rear-Admiral _____, and a Spanish fleet commanded by Rear-Admiral _____, in language substantially as follows: * * *, or language of like import.

Specification.—In that _____, a first lieutenant in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, a married man, did, on or about the sixteenth day of January, nineteen hundred and eight, write and cause to be delivered to _____, a young girl residing in the city of _____, and a student in the high school of that city, a letter in the words and figures following, to wit: * * *, which said letter was written and sent as aforesaid, for the purpose of enticing the said _____ to elope with him, the said _____.

Specification.—In that _____, a yeoman second class in the United States Navy, attached to and serving on board the United States ship _____, at the navy-yard, _____, _____, did, on or about the eighteenth day of April, nineteen hundred and nine, represent to _____, a fireman first class in the United States Navy, attached to said ship, that the sum of one hundred dollars was necessary to be paid to him, the said _____, for the purpose of influencing certain parties to procure said _____'s transfer to the United States ship _____, under the provisions of article —, United States Navy Regulations of nineteen hundred and nine, and did, by said representation, procure from said _____ the said sum of one hundred dollars for said purpose.

Specification.—In that _____, a gunner in the United States Navy, attached to and serving at the navy-yard, _____, _____, having, on or about the third day of January, nineteen hundred and nine, procured as a loan from _____ the sum of one hundred dollars under promise that he would repay said sum in two equal installments of fifty dollars, fifteen and thirty days, respectively, after date on which the loan was made, and having at various times between said third day of January and the first day of March, nineteen hundred and nine, paid to the said _____ sums of money aggregating seventy-five dollars, and being thereafter, to wit, since said first day of March, nineteen hundred and nine, indebted to the said _____ in the sum of twenty-five dollars, did, in violation of the agreement and promise upon which said loan was obtained, neglect and fail, and has ever since neglected and failed, to pay to the said _____ the said sum of twenty-five dollars, or any portion thereof.

Specification.—In that _____, a carpenter in the United States Navy, now attached to and serving at the naval station, _____, _____, having, during the month of May, nineteen hundred and nine, or thereabouts, induced _____,

of the city of Portsmouth, Virginia, to convey a house and lot owned by the said ——— in said city of Portsmouth, by deed of trust to the Twin City Building Association, of Norfolk, Virginia, to secure a loan made by said association to him, the said ———, under promise that he, the said ———, would return such loan in monthly installments and that the property of the said ——— would not be jeopardized, and the said ——— having, up to the month of August, nineteen hundred and nine, made payments to said building association on account of the return of said loan, has, since said month of August, nineteen hundred and nine, wholly neglected and failed to make such payments, in consequence of which neglect and failure on the part of the said ——— the house and lot of the said ——— have become subject to seizure by said building association for satisfaction of its claim.

Specification.—In that ———, a paymaster in the United States Navy, having, on or about the eighth day of March, nineteen hundred and nine, in the city of San Francisco, California, received from Rear-Admiral ———, United States Navy, then commandant of the navy-yard, Mare Island, California, an order directing him to report in person to the said Rear-Admiral ———, was, on or about the ninth day of March, in the year aforesaid, upon his arrival at said navy-yard, so much under the influence of intoxicating liquor as to be unfit to report his arrival to the said commandant.

Specification.—In that ———, a passed assistant paymaster in the United States Navy, then attached to and serving on board the United States ship ———, at the navy-yard, ———, having, on or about the ninth day of November, nineteen hundred and eight, received from Mrs. ———, of Vallejo, California, the mother of ———, then a paymaster's clerk in the United States Navy, attached to and serving on board the said ship ———, the sum of two thousand five hundred dollars, lawful money of the United States, as a deposit in guaranty of the faithful performance of duty by the said ———, such sum to be returned upon the termination of the services of the said ———, and the said ——— having, on or about the thirty-first day of July, nineteen hundred and nine, resigned his appointment as such paymaster's clerk, and having thus severed his connection with the naval service, the said ——— did then fail, and has ever since wholly failed, to return to the said ———, or to her estate, the said sum of two thousand five hundred dollars, or any part thereof.

Specification.—In that ———, a passed assistant surgeon in the United States Navy, member and recorder of a board of medical examiners, in session at the naval hospital, ———, having, on or about the thirteenth day of October, nineteen hundred and eight, refused, on account of alleged informalities, to record the proceedings had by said board in the cases of Ensigns ——— and ———, United States Navy, did, on said date, state to Captain ———, United States Navy, the commandant of the navy-yard, ———, that he, ———, had referred the matter of his action in refusing to record the proceedings of the board as aforesaid to the Secretary of the Navy, who had sustained his action in so refusing, which said statement was wholly false, as he, the said ———, well knew, and did then and there exhibit to the said commandant a telegram which he, the said ———, falsely alleged to be a reply from the said Secretary of the Navy to his inquiry in reference to his action in refusing to record the proceedings of the board as aforesaid, the said ——— intending thereby to deceive the said commandant.

Specification.—In that ———, a first lieutenant in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ———, did, at about four o'clock on the morning of the twentieth day of January, nineteen hundred and nine, engage in a brawl in a saloon on ——— street in the said

city of _____, and was thereupon publicly arrested by _____ and _____, police officers of said city, and confined in the police station.

Specification.—In that _____, an ordinary seaman in the United States Navy, attached to and serving on board the United States ship _____, and being, on or about the eighteenth day of January, nineteen hundred and nine, temporarily one of the crew of a boat belonging to that vessel, in charge of Boatswain _____, which boat was engaged in picking up the dead bodies of persons who lost their lives by the wreck of the steamer *City of Columbus*, near Gay Head, Massachusetts, and while the crew of said boat was occupied in picking up three of the dead bodies aforesaid which were found floating in the waters of Vineyard Sound, or while said bodies remained in said boat and prior to their delivery on shore, did feloniously abstract and take from one of said bodies a watch and chain, and did also feloniously abstract and take from the same or another of the said bodies certain bank bills or notes, being lawful currency of the United States and representing a certain money value according to the denominations thereof, and did, with felonious intent, secrete such watch, chain, and bank bills or notes upon or about his person, and did thereafter wrongfully and knowingly appropriate the same to his own use and benefit.

Specification.—In that _____, an ensign in the United States Navy, now attached to and serving on board the United States ship _____, at the naval station _____, _____, having become justly indebted to _____, proprietor of the Sturtevant House, New York City, in the amount of ninety dollars, did, while attached to the United States Fish Commission steamer _____, on or about the first day of November, nineteen hundred and eight, in consideration of such indebtedness, make and cause to be delivered to the said _____ a promissory note, in the words and figures following, to wit: * * *, and the said promissory note having, on the fourteenth day of December, nineteen hundred and eight, the date of its maturity, been duly presented for payment at the banking house of _____ and Company, Washington, District of Columbia, by _____, and payment thereon demanded, was protested by said _____, a notary public for the District of Columbia, on the ground that the said _____ had no account with the said _____ banking house; and the said _____, well knowing that he did not have at the time of making said note, or intend to have, an account at the said _____ banking house to meet said note at maturity, did, knowingly and willfully, by false and fraudulent pretense, cause the said worthless promissory note to be accepted by the said _____ in settlement of the indebtedness hereinbefore mentioned.

Specification.—In that _____, an ensign in the United States Navy, now attached to and serving on board the United States ship _____, at the naval station _____, _____, having become justly indebted to _____, proprietor of the Sturtevant House, New York City, in the amount of ninety dollars, did, while attached to the United States Fish Commission steamer _____, on or about the first day of November, nineteen hundred and eight, in consideration of such indebtedness, make and cause to be delivered to the said _____, a promissory note, in the words and figures following, to wit: * * *, and well knowing that it was his duty to have protected said promissory note by the deposit of a sufficient sum of money or otherwise at the banking house of _____ and Company, Washington, District of Columbia, at maturity thereof, did fail so to do, and the said promissory note having, on the fourteenth day of December, nineteen hundred and eight, the date of its maturity, been duly presented for payment at the said banking house by _____, and payment thereon demanded, was protested by the said _____, a notary public for the District of Columbia, on the ground that the said _____ had no account with the said banking house.

Specification.—In that ———, an ensign in the United States Navy, now attached to and serving on board the United States ship ———, at the naval station, ———, ———, having, on or about the thirtieth day of June, nineteen hundred and eight, while attached to the United States Fish Commission steamer ———, been detailed under the direction of the Commissioner of Fish and Fisheries to conduct a survey of the St. Croix River, in the vicinity of Calais, Maine, and having received from ———, disbursing agent of the United States Commission of Fish and Fisheries, for the purpose of defraying the actual expenses of conducting such survey, sums of money as follows, viz, on or about the thirtieth day of June, nineteen hundred and eight, the sum of one hundred dollars; on the twenty-third day of July, two hundred and fifty dollars; and on the tenth day of August, two hundred and fifty dollars; and having submitted to said disbursing agent vouchers covering expenditures as follows, to wit: On or about the twentieth day of July, nineteen hundred and eight, vouchers in the amount of one hundred and seventy-six dollars and sixty-nine cents, and on or about the tenth day of August, vouchers in the amount of two hundred and three dollars and eighteen cents; and having, on or about the fourteenth day of August in said year, completed the special duty to which he had been assigned as aforesaid, and well knowing that it was his duty to submit without unnecessary delay to said disbursing agent a settlement of his accounts, did fail so to do; and ———, Acting Commissioner of Fish and Fisheries, having, on the tenth day of September, nineteen hundred and eight, addressed to Lieutenant ———, United States Navy, the commanding officer of the ———, a telegram in the words and figures following, to wit, * * *, he, the said ensign ———, did, in reply thereto, on the eleventh day of September, nineteen hundred and eight, address to ———, the disbursing agent of the United States Commission of Fish and Fisheries, a communication in words and figures as follows, to wit, * * *, and notwithstanding the statement contained in said letter that he forwarded under separate cover money orders for the balance in his hands due the said commission, he, the said ———, did fail to forward such money orders and, furthermore, did fail to procure any such money orders for the purpose represented until October first, nineteen hundred and eight, and did therein and thereby make a false and fraudulent official statement to the said ———, disbursing agent of the United States Commission of Fish and Fisheries.

Specification.—In that ———, a first lieutenant in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ———, ———, having been duly designated to perform the duties of the treasurer of the company fund, so-called, and, as such, being the custodian of certain moneys belonging to the enlisted men at said barracks, and charged with the duty of disbursing such moneys for their benefit, from time to time, as occasion might require, and it being, as he well knew, a part of his duty as treasurer of the company fund aforesaid, to report to his commanding officer from time to time the condition of said fund, and, in making such report, to state, correctly and truly, the total amounts of all disbursements from and out of said fund by him as custodian thereof during the period which had elapsed since the date of his last preceding report, did, under date of February eighteenth, nineteen hundred and nine, make and submit to Major ———, United States Marine Corps, his commanding officer, a report of the condition of the said company fund at the date of such report, in which he, the said Lieutenant ———, stated the total disbursements out of said fund from October fifteenth to December thirty-first, nineteen hundred and eight, and from January twenty-fifth to February fifteenth, nineteen hundred and nine, as amounting to the sum of one hundred and thirty-seven dollars and eighteen cents, and did, in and by such report, pretend and claim,

in effect, that he was, on the eighteenth day of February, nineteen hundred and nine, entitled to a credit, as treasurer of said fund, for disbursements to the amount of one hundred and thirty-seven dollars and eighteen cents, and that the balance of cash in his hands, as such treasurer, was eighty-three dollars and twenty-three cents, and did, in and by such report, further pretend and claim, in effect, that he had, on the sixteenth day of November, nineteen hundred and eight, paid to ———, of the city of Philadelphia, in the State of Pennsylvania, from and out of said company fund, the sum of seven dollars and fifty cents for an implement known as a "feed cutter," purchased for the use of the enlisted men at said barracks, whereas, in fact, he, the said Lieutenant ———, had not, on the said sixteenth day of November, nineteen hundred and eight, or at any time prior to February eighteenth, nineteen hundred and nine, the date of said report, paid to the said ———, from and out of said company fund and for or on account of the purchase of a "feed cutter," the aforesaid sum of seven dollars and fifty cents, or any part thereof, and was not, in fact, entitled to a credit of more than one hundred and twenty-nine dollars and sixty-eight cents for disbursements made by him as treasurer of said fund prior to the date of said report, and was, in fact, properly chargeable with a balance of cash in his hands, as such treasurer, amounting to ninety dollars and seventy-three cents, instead of eighty-three dollars and twenty-three cents, the amount which, in and by said report, he reported as remaining in his hands on the said eighteenth day of February, nineteen hundred and nine.

CHARGE.—Selling property of the United States intended for the naval service thereof.

Specification.—In that ———, a landsman in the United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, ———, did, on or about the twenty-fourth day of August, nineteen hundred and eight, while serving in the rate of yeoman third class on board said ship, unlawfully sell about fifteen yards of cap cloth, of the value of about thirty dollars, and about one hundred neckerchiefs, of the value of about one hundred dollars, property of the United States, intended for the naval service thereof.

CHARGE.—Sleeping on post.

Specification.—In that ———, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ———, ———, having, on the seventh day of August, nineteen hundred and eight, been regularly posted as a sentinel on post number five at said navy-yard, did sleep while on said post.

CHARGE.—Sleeping on watch.

Specification.—In that ———, an ensign in the United States Navy, attached to and serving on board the United States ship ———, then at anchor off Shanghai, China, did, while he was officer of the deck of the said ship, from midnight of June the eleventh to four o'clock on the morning of June the twelfth, nineteen hundred and nine, sleep on duty during a part of said watch.

CHARGE.—Sodomy.

Specification.—In that ———, a boatswain's mate second class, and ———, an ordinary seaman, in the United States Navy, attached to and serving on board the United States ship ———, at the naval station, ———, ———, did, on or about the thirteenth day of November, nineteen hundred and eight, in the fore hold of said ship, together and with each other, commit sodomy.

CHARGE.—Stealing and opening a valuable letter, in violation of section five thousand four hundred and sixty-nine of the Revised Statutes of the United States.

Specification.—In that _____, a landsman in the United States Navy, attached to and serving on board the United States ship _____, at the navy-yard, _____, did, on or about the twentieth day of August, nineteen hundred and eight, feloniously take, steal, and carry away from the authorized receptacle for the mail to be posted, in the office of the paymaster of the said ship _____, at the navy-yard aforesaid, and with felonious intent did open and take from a letter addressed to the commanding officer of the United States ship _____, New Haven, Connecticut, checks drawn upon the assistant treasurer of the United States at New York, by Pay Inspector _____, United States Navy, said checks being pecuniary obligations of the United States Government for pay due the persons named therein, as follows: Check number three hundred and ninety thousand one hundred and fifty-nine, in favor of _____, United States Navy, for twelve dollars (here follows several other checks similarly described); all of said checks dated the twentieth day of August, nineteen hundred and eight.

CHARGE.—Striking another person in the navy.

Specification.—In that _____, a commander in the United States Navy, on or about the tenth day of July, nineteen hundred and nine, being then in command of the United States ship _____, in the harbor of _____, _____, did, with a sword, unlawfully and wilfully, strike and cut _____, then a fireman second class in the United States Navy, and attached to and serving on board said ship, thereby inflicting on said _____'s head a wound of about one inch and a half in length; said _____ being, at the time he was struck, cut, and wounded, as aforesaid, by said _____, in a kneeling position on the deck of said ship, and in double irons, with his hands ironed behind his back.

CHARGE.—Theft.

Specification.—In that _____, a ship's cook first class in the United States Navy, attached to and serving on board the United States ship _____, at the navy-yard, _____, _____, did, on or about the twenty-first day of May, nineteen hundred and nine, feloniously take, steal, and carry away from a drawer in the galley of said ship, a gold watch of about sixty dollars in value, the property of _____, ship's cook fourth class, United States Navy, attached to said ship, and did then and there appropriate the same to his own use.

Specification.—In that _____, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, did, on the fifteenth day of August, nineteen hundred and eight, feloniously take, steal, and carry away from the locker of _____, private, United States Marine Corps, money to the amount of one dollar and eighty-nine cents, the property of the said _____, attached to said barracks, and did then and there appropriate the same to his own use.

Specification.—In that _____ and _____, privates in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, did, each and together, at or about ten hours postmeridian on the twenty-sixth day of January, nineteen hundred and nine, feloniously take, steal, and carry away from the copper pile in the vicinity of the foundry at said navy-yard, a pig of lead weighing one hundred and ninety-three pounds, more or less, of the value of about nine dollars and sixteen cents, the property of the United States, and did then and there appropriate the same to their own use.

Specification.—In that _____, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, did, between the hours of five postmeridian on the twenty-fourth day of October,

nineteen hundred and eight, and seven antemeridian on the twenty-fifth day of the month and year aforesaid, feloniously take, steal, and carry away from the pay office at the said navy-yard, a revolver of about four dollars and fifty cents in value, the property of ———, paymaster's clerk, United States Navy, attached to said yard, and a pair of shears of about seventy-five cents in value, the property of the United States, and did then and there appropriate said revolver and said shears to his own use.

Specification.—In that ———, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ———, did, on or about the eleventh day of September, nineteen hundred and eight, in the city of ———, feloniously take, steal, and carry away a check for the amount of two hundred and thirty-eight dollars, drawn upon the assistant treasurer of the United States, at Philadelphia, Pennsylvania, by Paymaster ———, United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, ———, payable to the order of ———, the said check being the property of the said ———, and at the time aforesaid in the possession of a mail orderly of the said ship ———, one ———; and the said ——— did then and there appropriate the said check to his own use.

CHARGE.—Through inattention and negligence suffering a vessel of the Navy to be hazarded.

Specification.—In that ———, a commander in the United States Navy, being in command of the United States ship ———, the said ship being, on the twenty-sixth day of February, nineteen hundred and nine, underway in the inner harbor of Yokohama, Japan, standing out toward the breakwater in course of construction at the entrance of said inner harbor, was inattentive and negligent in the performance of his duty as commanding officer of said ship, in that he did then and there fail personally to superintend the conning of said vessel, and did delegate the performance of said duty to Lieutenant ———, United States Navy, the navigating officer of said ship, by reason of which aforesaid inattention and negligence on the part of the said Commander ———, the said ship ——— was stranded on the outer edge of the eastern breakwater, near the entrance of said inner harbor, and was thereby hazarded.

CHARGE.—Through negligence, suffering a vessel of the Navy to be run upon a rock and hazarded.

Specification.—In that ———, a commander in the United States Navy, being in command of the United States ship ———, cruising on special service in the ——— Ocean, off the coast of ———, on the fifth day of June, nineteen hundred and nine, notwithstanding the fact that at about midnight of the fourth day of June, nineteen hundred and nine, the northeast point of ——— Island bore abeam, and was about six miles distant, the said ship being then under way, and making a speed of about ten knots per hour, and well knowing the position of the said ship at the time stated, and that the charts of that locality were unreliable and the currents thereabouts uncertain, did, nevertheless, neglect and fail to exercise proper care and attention in navigating said ship while approaching ——— Island, in that he neglected and failed to lay a course that would carry said ship clear of the last aforesaid island, or to change the course in due time to avoid disaster, in consequence of which neglect and failure on the part of the said Commander ———, the said ship ——— was run upon a rock of the southwest coast of ——— Island, at about four hours and forty-five minutes antemeridian on the day first above mentioned, and was hazarded.

CHARGE.—Through negligence, suffering a vessel of the Navy to be run upon a reef and stranded.

Specification.—In that _____, a commander in the United States Navy, being in command of the United States ship _____, making passage from _____ to _____, on the second day of February, nineteen hundred and nine, did, when about fifty-five miles to the northward and eastward of _____ Bank, in the _____ Sea, shape, and did subsequently maintain, a course of west-southwest three-quarters west, which said course lay close to a dangerous reef and cay, surrounded by strong currents well known to exist, and did neglect and fail to exercise proper care and attention in navigating said ship while approaching said reef and cay, in that he neglected and failed to lay a course which would surely carry a vessel clear of said reef and cay, or to change course in due season to avert disaster, in consequence of which neglect and failure on the part of the said Commander _____, the said ship _____ was, at about six hours and fifty minutes postmeridian, on the day aforesaid, run upon the north end of _____ Bank, in the _____ Sea, in about latitude thirteen degrees thirty-four minutes north and longitude eighty degrees five minutes west, and was stranded.

CHARGE.—Through negligence, suffering a vessel of the Navy to be stranded.

Specification.—In that _____, a lieutenant in the United States Navy, attached to and serving as executive officer of the United States ship _____, and being, on the second day of August, nineteen hundred and eight, temporarily in command of said ship, making passage from _____ to _____, the weather being foggy and the currents thereabouts uncertain, did, nevertheless, neglect and fail to exercise proper care and attention in navigating said vessel while approaching _____ Island, in that he neglected and failed to make allowance for current setting in the direction of the ship's course toward said island, the said _____ well knowing that the tide during the latter part of the passage was running flood, and that said flood tide in that vicinity set to the north with a velocity at times approaching two knots per hour, in consequence of which neglect and failure on the part of the said Lieutenant _____, the said ship _____ was, at about five hours and twenty-five minutes postmeridian on the day aforesaid, stranded in _____ Bay, _____ Island.

Specification.—In that _____, a commander in the United States Navy, being in command of the United States ship _____, on the eighteenth day of June, nineteen hundred and nine, said ship being then under way in Chesapeake Bay, near Cape Henry, Virginia, and notwithstanding the fact that said ship was, at or about two hours postmeridian, on the day aforesaid, passing near and in sight of a buoy in said bay, known as _____ Buoy, that the weather was then thick and foggy, that the said ship was making a speed of at least seven knots per hour, and well knowing that, on the course the ship was then being steered, Cape Henry, which was then hidden by the fog, was right ahead and but about three and one-half nautical miles distant, the said Commander _____ did, nevertheless, neglect and fail to reduce the speed of the vessel, to establish a proper lookout, to keep himself duly informed of the soundings, or to change the course of the vessel in due time, in consequence of which negligence on the part of the said Commander _____, as her commanding officer, said vessel was stranded on said cape, at about two hours and thirty minutes postmeridian, on the day aforesaid.

CHARGE.—Treating his superior officer with contempt.

Specification.—In that _____, an ensign in the United States Navy, attached to and serving on board the United States ship _____, then lying in the harbor of _____, _____, did, on or about the night of the seventeenth day of July,

nineteen hundred and eight, assume control of the dinghy of the said ship ———, notwithstanding the remonstrance of Lieutenant ——— ———, United States Navy, his superior officer serving on board said ship, each of the officers above named being a passenger in said boat.

CHARGE.—Treating his superior officer with contempt while in the execution of his office.

Specification.—In that ——— ———, a passed assistant paymaster in the United States Navy, attached to and serving on board the United States ship ———, having, on the fourth day of June, nineteen hundred and nine, been addressed by the Acting Secretary of the Navy, in an official letter which contained, among other things, a statement of the following tenor: * * * and having, on the eighth day of July, nineteen hundred and nine, acknowledged the receipt of the said letter, the said ——— did treat with contempt the injunctions contained in the said official letter of his superior officer, the Acting Secretary of the Navy, and did persist in the delinquencies regarding which he had been admonished, by failing to render, within the period prescribed by law, his accounts for the fourth quarter of the fiscal year nineteen hundred and nine, and for the first and second quarters of the fiscal year nineteen hundred and ten.

CHARGE.—Treating with contempt his superior officer and being disrespectful to him in language and deportment while in the execution of his office.

Specification.—In that ——— ———, an ensign in the United States Navy, attached to and serving on board the United States ship ———, at anchor in the harbor of ———, ———, did, between the hours of eight and nine postmeridian of the first day of April, nineteen hundred and nine, in the wardroom of said ship, when ordered to go to his room by his superior officer, Lieutenant ——— ———, United States Navy, the executive officer of said ship, say to the said Lieutenant ———, "I want to stand my watch; I am all right; you are not treating me fairly; if you report me I'll be G—d d—d if I don't fix you, and you had better be careful as to what you report me for," or words of similar purport and meaning as the aforesaid.

Specification.—In that ——— ———, a seaman in the United States Navy, attached to and serving on board the United States ship ———, at Fortress Monroe, Virginia, did, on or about the fifth day of April, nineteen hundred and nine, when brought to the mast by order of the officer of the deck, Lieutenant ——— ———, United States Navy, to explain his absence from anchor watch, say to him, the said Lieutenant ———, "You can take my excuses or not, just as you please; I will get even with you. You can court-martial me if you want to, and I'll fix you," or words to that effect.

Specification.—In that ——— ———, an ordinary seaman in the United States Navy, attached to and serving on board the United States ship ———, then in dry dock at Shanghai, China, did, on or about October eighteenth, nineteen hundred and eight, use abusive language toward ——— ———, master-at-arms first class, United States Navy, attached to said ship, who was then and there in the execution of his office.

CHARGE.—Threatening to assault his superior officer while in the execution of the duties of his office.

Specification.—In that ——— ———, a seaman in the United States Navy, attached to and serving on board the United States ship ———, at Fortress Monroe, Virginia, did, on or about the fifth day of April, nineteen hundred and nine, when brought to the mast by order of the officer of the deck, Lieutenant ——— ———, United States Navy, to explain his absence from anchor watch, say to him, the

said Lieutenant ———, "I will get even with you; you can court-martial me if you want to, and I'll fix you," or words to that effect. And further did, at the same time and place, take off his coat, turn up his sleeves, and assume a threatening attitude toward his superior officer, the said Lieutenant ———, who was then and there in the execution of the duties of his office.

CHARGE—Using abusive, obscene, and profane language toward another person in the service.

Specification.—In that ——— ———, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ——— ———, did, on the twenty-seventh day of September, nineteen hundred and eight, while confined in the guardroom at said barracks, use abusive, obscene, and profane language toward Corporal ——— ———, United States Marine Corps, attached to said barracks.

CHARGE—Using abusive, obscene, and threatening language toward his superior officer.

Specification.—In that ——— ———, a private in the United States Marine Corps, a patient in the naval hospital, ———, ———, did, at or about five hours post-meridian on the eighth day of May, nineteen hundred and nine, while being removed, by order of Passed Assistant Surgeon ——— ———, United States Navy, from one of the wards to another room in said hospital, use abusive, obscene, and threatening language toward his superior officer, the said Passed Assistant Surgeon ———.

CHARGE—Using abusive and profane language toward his superior officer while in the execution of his office.

Specification.—In that ——— ———, a seaman in the United States Navy, attached to and serving on board the United States ship ———, in the harbor of ———, ———, while under sentry's charge on board said ship, during the afternoon of the nineteenth day of December, in the year nineteen hundred and eight, upon hearing Lieutenant ——— ———, United States Navy, ask the sentry over prisoners who had broken the light on the brig, did say that he, ———, had broken it, and that he would like to break his, ———'s, G—d d—d head, or words to that effect; said Lieutenant ——— being his superior officer and at said time in the execution of his office.

CHARGE—Using abusive, profane, and threatening language toward his superior officer.

Specification.—In that ——— ———, a fireman second class in the United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, did, on the twenty-fifth day of February, nineteen hundred and nine, while receiving treatment in the sick bay of said vessel, use abusive, profane, and threatening language toward Assistant Surgeon ——— ———, United States Navy, his superior officer.

CHARGE—Using abusive and threatening language toward another person in the service.

Specification.—In that ——— ———, a lieutenant in the United States Navy, attached to and serving on board the United States ship ———, at New London, Connecticut, did, between the hours of seven and eight postmeridian, on the sixth day of April, nineteen hundred and nine, use abusive and threatening language toward ——— ———, mess attendant third class, United States Navy, serving on board said ship.

CHARGE.—Using abusive and threatening language toward his superior officer.

Specification.—In that ———, a seaman in the United States Navy, did, at about five hours and forty-five minutes postmeridian on the sixteenth day of February, nineteen hundred and nine, while a boatswain's mate in the United States Navy and a patient in the United States naval hospital at ———, ———, use abusive and threatening language toward Assistant Surgeon ———, United States Navy, his superior officer.

CHARGE.—Using obscene and threatening language toward another person in the service.

Specification.—In that ———, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ———, ———, did, at about nine hours and thirty minutes postmeridian on the twenty-first day of December, nineteen hundred and nine, use obscene and threatening language toward Sergeant ———, United States Marine Corps, the sergeant of the guard at said barracks.

CHARGE.—Using threatening language toward another person in the navy.

Specification.—In that ———, a seaman in the United States Navy, attached to and serving on board the United States ship ———, at Port Angeles, Washington, did, on the seventeenth day of September, nineteen hundred and eight, while a general court-martial prisoner under sentry's charge on board said ship, use threatening language in speaking to and about Chief Boatswain's Mate ———, United States Navy, also attached to and serving on board the said ship, saying, "I can lick you now; if you report me I'll lick you sooner or later," and "If he reports me I'll get square with him; I'll kill him," or words to that effect.

CHARGE.—Violation of a lawful general order issued by the Secretary of the Navy.

Specification.—In that ———, a commander in the United States Navy, being in command of the United States ship ———, at the navy-yard, ———, ———, having received a lawful general order, issued on the tenth day of February, nineteen hundred and nine, by the Secretary of the Navy, announcing to the navy and the country the death, at Washington, District of Columbia, on the morning of that day, of ———, and having caused said order to be publicly read to the officers and crew of said ship on the fourteenth day of the month aforesaid, the said Commander ———, well knowing that said order required all officers of the navy and Marine Corps to wear the badge of mourning for a period of thirty days from and after the date of its receipt, did wilfully, and in violation of said general order, neglect and fail to wear the badge of mourning during a period of thirty days immediately following the date of the publication by him of said order as aforesaid.

CHARGE.—Violation of a lawful regulation issued by the Secretary of the Navy.

Specification.—In that ———, a captain in the United States Navy, being in command of the United States ship ———, at ———, having, on the twenty-second day of April, nineteen hundred and eight, had referred to him by the Bureau of Navigation, Navy Department, a copy of a letter which had been received by said bureau from Captain ———, United States Navy, commandant of the naval station, ———, ———, as follows: * * * ; and having been called upon by said bureau for an explanation of the facts mentioned in the said letter of the commandant of the naval station aforesaid, did, on the twenty-seventh day of April, nineteen hundred and eight, address a communication to the commandant of the navy-yard and station, New York, in the words and figures following: * * * ; in which said letter he, the said Captain ———, did ex-

press an opinion upon and impugn the motives of the said Captain ———; this in violation of a lawful regulation issued by the Secretary of the Navy, to wit, article — of the Regulations for the Government of the Navy of the United States, nineteen hundred and five.

Specification.—In that ———, a commander in the United States Navy, being in command of the United States ship ———, in the harbor of ———, did on or about the twentieth day of October, nineteen hundred and eight, write a certain letter with a view to its publication, of and concerning public work theretofore performed at the navy-yard, ———, ———, and of and concerning officers of the line, medical, and pay corps of the navy, and did procure and cause the said letter to be published on the twentieth day of December, nineteen hundred and eight, in the ———, a public newspaper published at ———, ———, in the words and figures as set forth in the specification of the first of these charges, and the said ———, well knowing that said letter had in view the censure of officers on duty in said bureau and navy-yard, and of officers of the line, medical, and pay corps of the navy, did write and cause the same to be published, as aforesaid, in violation of a lawful regulation issued by the Secretary of the Navy, to wit, article — of the Regulations for the Government of the Navy of the United States, nineteen hundred and five.

Specification.—In that ———, a coxswain in the United States Navy, attached to and serving on board the United States ship ———, at the Navy Yard ———, ———, having, while attached to and serving on board the United States ship ———, at ———, to which ship he had been regularly assigned, been granted leave of absence, to expire on the nineteenth day of March, nineteen hundred and nine, did fail to return to his station and duties on board said ship ——— upon the expiration of said leave of absence, as it was his duty to do; and he, the said coxswain ———, did therein and thereby fail to show in himself as a petty officer a good example of subordination, zeal, and attention to duty, as required by article ———, United States Navy Regulations, lawfully issued by the Secretary of the Navy.

Specification.—In that ———, a passed assistant paymaster in the United States Navy, attached to and serving on board the United States ship ———, did, during the period of his service on board the said ship, between the sixteenth day of April, nineteen hundred and seven, and the twenty-eighth day of January, nineteen hundred and nine, fail to enter in proper books copies of all official letters sent by him; this in violation of a lawful regulation issued by the Secretary of the Navy, to wit, article — of the Regulations for the Government of the Navy of the United States, nineteen hundred and five.

Specification.—In that ———, a passed assistant paymaster in the United States Navy, while attached to and serving on board the United States ship ———, did permit the entries of money, clothing, and small stores for the first quarter of the fiscal year ending June thirtieth, nineteen hundred and eight, to be made in lead pencil in the respective columns of the rough pay, receipt, and muster roll for said quarter; this in violation of article — of the Regulations for the Government of the Navy of the United States, nineteen hundred and five.

Specification.—In that ———, a passed assistant surgeon in the United States Navy, attached to and serving on board the United States ship ——— as senior medical officer of said ship, did, from the eighteenth day of January to the twenty-first day of March, nineteen hundred and nine, fail to keep or cause to be kept by the junior medical officer of the said ship, the medical journal of the said ship; this in violation of a lawful regulation issued by the Secretary of the Navy, to wit, article — of the Regulations for the Government of the Navy of the United States, nineteen hundred and nine.

CHARGE.—Wilful destruction of public property.

Specification.—In that ————, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ————, ————, having, on or about the twenty-fifth day of September, nineteen hundred and eight, been placed in confinement in the prison at said barracks, did wilfully break the glass in the window of the cell in which he was confined.

Specification.—In that ————, a seaman in the United States Navy, attached to and serving on board the United States ship ————, in the harbor of ————, ————, while under sentry's charge on board said ship, about noon on the nineteenth day of December, nineteen hundred and eight, did wilfully tear down the wire guard or shield around the electric light on the brig of said ship.

Specification.—In that ————, a seaman in the United States Navy, attached to and serving on board the United States ship ————, while under sentry's charge on board said ship, about noon on the nineteenth day of December, nineteen hundred and eight, did take off his shoes and wilfully throw one of them at the electric light on the brig of said ship, thereby breaking said light.

NOTES ON EVIDENCE.

NOTES ON EVIDENCE.

Duty of members of courts-martial as to evidence.—Members of courts-martial, in their capacity as judges, must pass upon the admissibility of evidence, and, as jurors, weigh it. As it is not to be expected that officers will be able to familiarize themselves with the numerous and voluminous works on evidence, it is deemed appropriate, in connection with the forms of procedure, to present a brief outline of the general principles governing the subject of evidence, particularly such as will be of service in determining questions likely to arise during the progress of a trial.

Reasonable and just evidence usually admissible.—The rules of evidence have as their foundation justice and common sense. Accordingly, when the exact rule governing a point in controversy is not known, it is proper to inquire whether it is *reasonable* and *just* that a given question be asked, if, for example, that is the point at issue; and if the answer be in the affirmative, the question may be admitted with assurance that the chances of error are reduced to a minimum.

Courts should be bound by ordinary rules.—Courts-martial are, however, in general bound to observe the fundamental rules of law and principles of justice governing the civil judicature, and should, of course, wherever practicable and so far as apposite to military cases, be guided by the rules of evidence established in the practice of the civil courts, and especially in the courts of the United States in criminal cases.

Courts-martial not bound by statute.—They are not bound, however, by any statute in this particular, and it is thus open to them in the interest of justice to apply the rules of evidence with more indulgence than the civil courts; to allow, for example, more latitude in the introduction of testimony and in the examination and cross-examination of witnesses than is commonly permitted by the latter tribunals. In such particulars, as persons on trial by court-martial are ordinarily not versed in legal science or practice, and are as a rule not represented by counsel trained in the law, a liberal course should, in general, be pursued and overtechnicality avoided.

Definition of evidence.—The term "evidence" includes all that may be submitted to the court, whether it be the statements of witnesses, the contents of papers, documents, or records, or whatever the court may be permitted to examine and consider during the trial. (Bouvier.)

Production and interrogation of witnesses.—Witnesses are produced in court by summonses or subpoenas, and after being sworn are interrogated respecting such facts bearing upon the case as are within their own knowledge.

Object of rules of evidence.—The rules of evidence are directed to the determination of two things: First, the competency of evidence—that is, the question whether certain witnesses shall or shall not testify, or whether certain documentary or other evidence shall or shall not be introduced; and, second, the credibility or probative force of such evidence when introduced, i. e., the weight to be attached thereto.

Credibility distinguished from competency.—Competency should not be confounded with credibility, which latter, in the case of a witness, means his worthiness of belief,

the value of his testimony; and this is determined by many things, such as his character, his opportunities and powers of observation, the accuracy and retentiveness of his memory, his ability to give lucid expression to facts within his own knowledge, and his attitude or relation to the matter with respect to which his testimony is given.

Presumption of competency.—A presumption always exists in favor of the competency of a witness whose testimony is offered, and the burden of proving the contrary rests on the party objecting. In deciding upon the competency of a witness the court acts in the capacity of a judge, while in determining questions of credibility it acts in the capacity of a jury.

Grounds of incompetency.—The question of competency was formerly much more important than it is now, the grounds of incompetency having by statute been reduced from time to time so that at present there are few persons, except idiots, the insane, intoxicated persons, very young children, and the wives of accused persons, that by law are not competent to testify.

Witnesses before naval courts generally competent.—Matters that were once regarded as affecting the competency of witnesses are now treated as bearing only upon their credibility. In other words, it may be stated as a general rule, the exceptions to which are unlikely to arise in naval practice, that all witnesses capable of so doing are entitled to testify, and that it rests with the court in its capacity as jury to decide how much weight is to be given to their testimony.

Competency decided before witness testifies.—The question of the competency of a witness should be raised and decided before he is allowed to testify; but it may be raised at any time during the trial, if the grounds of incompetency were not previously known.

Manner of adducing and form of evidence.—The issues to be proved having been laid before the court in the form of charges and specifications, each side in turn submits evidence in proof or disproof of the facts at issue. The testimony submitted is, as to its form, either oral, written, or in the nature of exhibits.

Written evidence.—This consists of documents, either under seal or otherwise.

Oral testimony.—This is "direct or original" when a witness testifies to facts observed by him through the medium of his senses, and "indirect or hearsay" when he derives his knowledge from the observation of others and testifies to their declarations or statements.

Real evidence.—This consists of any objects or articles in open court, in order that they may be examined by the court, and by witnesses who may identify them or illustrate their application.

Circumstantial evidence.—The term "circumstantial evidence" is applied to that form of evidence in which the existence of a fact is inferred by a process of reasoning from the existence, or nonexistence, of other facts established in evidence by the testimony of witnesses or by the production of documents or exhibits.

Subject of evidence, how divided.—The subject of evidence may be divided into four heads: I. Proof in general; II. Admissibility of evidence; III. Oral testimony; and IV. Written evidence.

Proof in general.—Under the head of "Proof in general" it is necessary to consider, (1) what is to be proved; (2) how it must be proved; (3) what is to be presumed; (4) what is to be taken notice of judicially.

(1) **What is to be proved.**—As to the first point, in a military as in a civil court, the burden is on the prosecution to establish the guilt of the accused, and not upon the accused to establish his innocence. It must be shown by the prosecution that the act charged was committed, that the accused committed it, and that he did so with criminal intent.

(2) **Proof beyond a reasonable doubt.**—In a civil suit the plaintiff need make out a *prima facie* case only; that is, he need only adduce evidence materially preponderating over that of the defendant in order to give him a verdict; but the burden of proof

resting on the prosecution in a criminal case—and all court-martial procedure is of such character—is much greater by reason of the presumption of innocence that always exists in favor of the accused. To this presumption is due the rule of criminal evidence that the guilt of the accused must be established beyond a reasonable doubt.

Definition of reasonable doubt.—As this question of reasonable doubt is one that arises in every case of military law in the course of which evidence is adduced, the following definition thereof is given: By reasonable doubt is intended not fanciful or ingenious doubt or conjecture, but substantial, honest, conscientious doubt, not removed by material evidence in the case.

Rule as to reasonable doubt.—In the case of the United States *v.* Newton (52 Fed. Rep., 390), the court held that “it is an honest, substantial misgiving, generated by insufficiency of proof. It is not a captious doubt, not a doubt suggested by the ingenuity of counsel or jury and unwarranted by the testimony; nor is it doubt born of a merciful inclination to permit the defendant to escape conviction, nor prompted by sympathy for him or those connected with him.”

Meaning of rule.—From these citations it will be seen that the meaning of the rule is that the proof must be such as to exclude, not the possibility of innocence, but every fair and natural hypothesis except that of guilt. As stated in Greenleaf on Evidence, “What is required is not absolute or mathematical but a ‘moral certainty;’” and as laid down in Winthrop, “A court-martial which acquits because, upon the evidence, the accused may *possibly* be innocent falls as far short of appreciating the proper *quantum* of proof required in a criminal trial as does a court which convicts because the accused is *probably* guilty.”

(3) **Presumptions of law and of fact.**—Under the head of “What is to be presumed,” we find two classes of presumptions—those of law and those of fact. By presumptions of law are meant the general propositions established by the law, which are accepted without evidence by the courts as being *prima facie* true. These are of two kinds, those which are conclusive and those which are disputable. By presumptions of fact are meant those inferences as to the existence of a fact derived from some other facts; in other words, inferences deduced by the human reason.

(4) **What is taken notice of judicially.**—As to the matters of which the courts take judicial notice, we find that there are many facts of a conspicuous general or public character which so authenticate themselves in law that the courts take judicial notice of their existence as matters of course, and which are not required either to be charged or proved; thus a court-martial takes judicial notice of the Constitution, public statutes, proclamations, the power of the President and executive departments, matters of public history, the Navy Regulations, general and special orders and circulars of the Department.

Rules as to admissibility of evidence.—The three principal rules, as laid down by the authorities, bearing on the admissibility of evidence are: (1) The evidence must be relevant; (2) the burden of proof is on the Government, (3) the best evidence must be produced of which the nature of the case is susceptible.

Evidence must be relevant.—In order that evidence may be admitted by a court it must be relevant, i. e., it must bear directly upon the issue. The reason of this rule is too apparent to require further comment; the only question is, when is a fact relevant to the issue? The answer is, “A fact is relevant when it is the cause or effect of another fact or is the effect of the same cause, or is the cause of the same effect.” “Particular testimony tends to prove a fact when, taken in connection with other and similar testimony, it is calculated to establish such fact in evidence; each fact so testified to forming a link of the chain of either party.”

Collateral facts generally inadmissible.—Facts which are collateral to the issue are inadmissible, unless the burden rests upon a party of proving interest or the existence of particular knowledge or intent on the part of a person; as, for instance, in a case of desertion, testimony that the accused purchased a ticket for a distant point, attempted

to dispose of his outfit, or endeavored to exchange it for civilian's dress, though collateral, is admissible to show the intent of not returning, which is the essence of the offense.

Burden of proof on the Government.—Nothing need be said on the point that the burden of proof is on the Government, as this rule is based upon one of the fundamental axioms of the law.

Meaning of best evidence.—By the best evidence is meant not necessarily the greatest quantity of evidence, but the most authoritative and legally satisfactory evidence of which the case is capable. Whenever it appears that there is a higher and better grade of evidence than that which is introduced, the latter is not admissible.

Example of what is not best evidence; exception.—A familiar example is the attempt to introduce oral, or parol, evidence to show the contents of a written instrument. There are, of course, exceptions to this rule. One exception of frequent occurrence is the introduction of parol evidence to prove the contents of a document which is lost or destroyed or in the possession of the other side and not produced when called for.

Hearsay evidence.—In connection with the requirement that the best evidence of which the nature of the case is susceptible, must be produced, the subject of hearsay evidence is pertinent. Greenleaf states that hearsay evidence is "That form of evidence which does not derive its value solely from the consideration to be given to the witness himself, but rests in part on the veracity and competency of some other person."

Why hearsay evidence is objectionable.—Hearsay evidence is objectionable, first, because it is secondary evidence and the law requires primary evidence; second, the real witness is not testifying in court under the sanction of an oath; and, third, the opposite party, and especially the defendant in a criminal case, has no opportunity to be confronted with the witness against him, or to exercise his right of cross-examination. There are, of course, exceptions to this rule of exclusion; and again there are some exceptions which, upon examination, will be found to relate to relevant facts and to be, as such, not liable to objection as hearsay. Thus, where the question at issue is whether certain words were actually spoken by a person other than the witness, a recital of the words by the witness is original testimony and admissible.

Exceptions to rule excluding hearsay evidence.—The principal exceptions to the inadmissibility of hearsay evidence are:

1. Confessions or admissions against interest.
2. Dying declarations.
3. *Res gestae*.

Confessions or admissions against interest.—These are admissible, but in the case of confessions it must be clearly shown that the confession was voluntary, and anything which will tend to show that a confession was extorted by threats or promises, or by use of force, especially by one in authority, will destroy its value as evidence. The court is allowed to take testimony to ascertain the absolute conditions under which a confession was made in order to decide whether it was a voluntary act of the accused. Again, before a confession be admitted in evidence the *corpus delicti* must be proved.

Dying declarations.—These must pertain to the facts relating to the injury from which the party is suffering. It must be shown that the declaration was made in view of impending death and when no hope of recovery was cherished by the declarant. In such a case the sense of impending death replaces the sanctity of an oath. A declaration made under these circumstances is admissible in evidence even though the declarant subsequently recovers.

***Res gestae*.**—Another form of declaration of a third person which is admissible is that which forms a part of what is legally known as the "*res gestae*." By the term

“*res gestae*” is meant “the circumstances and occurrences attending and contemporaneous with the principal fact at issue, or so nearly contemporaneous with it as to constitute a part of the same general transaction, which explain and elucidate such fact by indicating its nature, motive, etc.” No rule can be laid down which will be a guide as to what is and what is not a part of the *res gestae*. It is a matter which must be left to the wise discretion of the court. A declaration made even a few seconds after the occurrence of a fact has been held not to be a part of the *res gestae*, while under other circumstances a declaration made a week or months after the fact has been held as part of the *res gestae*. Each and every case must stand on its own merits, and, as before stated, must be left to the sound discretion of the court, which of course is guided by the circumstances attending the case.

Accused as witness in his own behalf.—Formerly, in criminal prosecutions, the accused could not testify, but by the act approved March 16, 1873, it was provided that the “accused shall at his own request, but not otherwise, be a competent witness, and his failure to make such request shall not create a presumption against him.” Care must be taken by the court that the accused is not placed on the stand unless he, himself, requests to be permitted to testify, otherwise a fatal error is committed. The record must affirmatively show that the statutory request was, in fact, made.

No comment to be made if the accused does not take the stand.—With reference to the fact that no presumption lies against the accused on account of his failure to testify, the Supreme Court held that it was not allowable to make “comment, especially hostile comment, upon such failure.” “The minds of the jurors,” it was further held, “can only remain unaffected from this circumstance by excluding all reference to it.” (*Wilson v. United States*, 149 U. S., 60.) It is accordingly highly improper for the judge-advocate, in summing up the case for the prosecution, to comment on the failure of the accused to take the stand in his own behalf.

Depositions before naval courts.—Depositions may, by the act of February 16, 1909, be taken on reasonable notice to the opposite party, and when duly authenticated, may be put in evidence before naval courts, except in capital cases and cases where the punishment may be imprisonment or confinement for more than one year, as follows: First, depositions of civilian witnesses residing outside the State, Territory, or district in which a naval court is ordered to sit; second, depositions of persons in the naval or military service stationed or residing outside the State, Territory, or district in which a naval court is ordered to sit, or who are under orders to go outside of such State, Territory, or district; third, where such naval court is convened on board a vessel of the United States, or at a naval station not within any State, Territory, or district of the United States, the depositions of witnesses may be taken and used wherever such witnesses reside or are stationed at such a distance from the place where said naval court is ordered to sit, or are about to go to such a distance as, in the judgment of the convening authority, would render it impracticable to secure their personal attendance.

How witness may refresh his memory.—A witness may be allowed to refresh his memory by reference to a memorandum, provided it was made by him at the time the fact or transaction to which it refers occurred, or as soon thereafter as to afford the presumption that the memory of the witness was fresh at the time of making it. If the paper is not one made by the witness, it must appear that after inspecting it, he can speak from his own recollection; otherwise he can not use it. The privilege of using a memorandum does not authorize the witness to read his evidence from notes previously made.

Witnesses must state facts, not opinions; exceptions.—Witnesses must confine themselves to statements of fact. Opinions are not admissible, except in two cases, as follows:

Opinions drawn from numerous facts of daily observation and experience.—“In the first place, any intelligent witness may testify as to opinions which are themselves

conclusions drawn from numerous facts within the daily observation and experience of intelligent persons. Such relate to the demeanor or appearance of a person; his sanity, sobriety, or identity, or his resemblance to another; his physical condition, whether sick or well; his condition as regards emotion or passion, as to anger, hope or fear, joy or sorrow, excitement or coolness, and the like. These are matters of every-day occurrence with respect to which all thoughtful persons form conclusions of fact, to which they are competent to testify in a proper case."

Opinions of experts.—"Second, the opinions of experts in an art, trade, or profession, in which they have attained especial proficiency, may, at the discretion of the court and under its direction, be given in evidence. This is permitted for the reason that the opinions in question are technical or scientific in character and are based upon experience that is beyond the knowledge and experience of the average member of a court. Under this head fall opinions as to the effects of particular poisons; that is, certain symptoms having been observed, expert opinions may be received as to the poisons that would produce such effects. In general, certain facts or effects having been established in evidence, the testimony of experts may be admitted as to the causes which would have produced such effects; or as to the laws of nature applicable to certain causes to produce particular effects."

Experts must be shown to be such.—"The party who introduces expert witnesses must show that they are experts in fact; that is, that they actually possess the technical or scientific knowledge which will assist the court to a correct understanding of the fact in the case. Having established their competency and the necessity for their appearance, they may give opinions as to certain facts, or may testify in answer to a hypothetical question, agreed upon by the parties and approved by the court, the answer to which is calculated to afford the court the assistance of which they stand in need."

Credibility of one's own witness not to be impeached.—A rule of evidence which frequently arises is that a party is not permitted to impeach the credibility of his own witness; but this must not be construed to mean that he can not introduce other testimony as to a particular fact which is directly contradictory to the testimony of such witness.

Weight to be given evidence of accused.—In weighing the evidence of the accused the Supreme Court has held that "the testimony of the defendant in a criminal case is to be considered and weighed by the jury, taking all the evidence into consideration, and giving such weight to the testimony as in their judgment it ought to have."

Credibility of testimony determined by court.—The question of the credibility of the testimony given by a witness is a most important one, for upon it rests the decision of the court as to the proof of the various allegations. When the character for veracity of a witness has been shown to be bad—and whether this has been done or not is a matter within the sound judgment and discretion of the court—his testimony is not necessarily to be wholly disregarded, but is to be considered in connection with the rest of the testimony and such credit given to it as it appears to be entitled to receive. Also when a witness has been shown to have testified falsely to a certain particular, the maxim "falsus in uno, falsus in omnibus," need not always be applied, nor all his testimony disregarded, but it should be weighed in connection with the other testimony, especially when corroborated. The general manner and bearing of a witness is an important consideration in weighing his testimony.

Weight of evidence as affected by number of witnesses.—The relative number of witnesses for the prosecution and defense is by no means decisive in general, as the relative weight of the evidence depends much less upon the number of the witnesses than upon their character, their relation to the case, and the circumstances under which their testimony is given.

Conflicting testimony.—When the testimony is conflicting, the task of weighing it is frequently attended with difficulty and is sometimes so difficult that disagreement

results. As a general rule, however, it may be stated that "the testimony of a single competent and credible witness is sufficient to establish a fact in evidence unless the Constitution, a statutory provision, or a rule of the common law requires otherwise." The Constitution of the United States provides that in a case of treason two witnesses to the same overt act, unless confession is made in open court, are necessary to secure conviction.

Corroboration of confession.—In any criminal case where a confession is made out of court, two witnesses are necessary to convict, for otherwise, should the accused deny said confession in court, we would have the oath of one man balanced against the oath of another; but in some jurisdictions this rule has been relaxed so that the testimony of a single credible witness, supported by criminating circumstances, is held to be sufficient to establish guilt beyond a reasonable doubt.

Cumulative evidence unnecessary.—When a fact has been conclusively established, it is unnecessary to consume the time of the court by introduction of additional evidence which is merely cumulative.

Facts asserted established by admission.—Facts asserted by one of the parties may be established by admission on the part of the other, i. e. by admission of the accused or the judge-advocate, formally made in open court. In such case no testimony in proof or disproof of facts so admitted will be received. (But see "Rejection of plea," p. 23, and "Plea of guilty," etc., p. 143.)

Public and private writings.—The question of public and private writings in evidence is a very extended one. A public document is "any written instrument originating in or pertaining to any office or department of the Government," and under this head are included statutes, resolutions, and other acts of the legislature; the treaties, proclamations, orders, regulations, reports, and other utterances of the Executive, and the records, judgments, orders, and decrees of courts of justice. Every public document pertains to, or is said to be of record in, some public office, the chief of which is its general custodian.

Secondary evidence as to public documents.—When it becomes necessary to produce public documents before a court, as inconvenience might and probably would result from the taking of the originals from their customary place of file, secondary evidence as to their contents, in the form of copies duly authenticated under the seal of a department, are admitted in evidence in the same manner as the originals, and, according to the statutes, full credence is to be given to them. (Sec. 882, R. S.)

Public statutes, orders, regulations, etc., noticed judicially.—Courts-martial take judicial notice of the laws of the land, and in this way the public statutes of the United States, when produced from the authorized editions of books, are judicially taken notice of, together with the regulations, orders, and circulars issued by the Navy Department.

Private documents, how identity established, etc.—Private documents differ from public chiefly in the character and amount of testimony necessary to establish their identity, and the burden of such proof rests with the party in whose interest the paper is produced. As a general rule the best evidence of the contents of a paper is the production of the paper itself, and before parol evidence thereof can be admitted it must be satisfactorily shown that the original can not be produced, having, for example, been lost or destroyed, or being in adverse custody. While as a general rule the document speaks for itself, it does not follow that parol evidence may not be introduced in relation thereto, for while it is a well-known rule of evidence that parol evidence may not be used "to add to, subtract from, contradict, or vary the contents of a written document," yet at all times a latent ambiguity in a document may be explained by throwing on it the light of the surrounding circumstances. For this purpose parol evidence is always admissible.

When document is not in hands of party desiring to introduce it.—If the paper to be introduced is in the hands of the opposite party, formal notice to produce must be served on him; if in the possession of a person not a party to the trial, it is produced

by a subpoena *duces tecum*. If the party called on fails to produce the paper then parol evidence as to its contents may be introduced.

Manner of taking oath.—Witnesses called before a court-martial to testify are sworn by the presiding officer. The oath or affirmation laid down in the statutes must ordinarily be administered before a witness may testify, although this rule as to the prescribed oath is not invariably followed. The Attorney-General rendered an opinion in the case of Paymaster Watkins to the effect that a Chinaman produced as a witness might take the oath common among the Chinese, i. e., the breaking of a dish in the court room, and that his testimony would be binding, as the object of an oath is to impress upon the witness the fact that some future punishment will be meted out in case of failure to tell the truth, the whole truth, and nothing but the truth.

Manner of examining witnesses; leading questions, etc.—Witnesses are first examined by the party calling them, then cross-examined by the opposite party. So long as the questions are relevant to the issue considerable latitude is allowed in the direct examination of witnesses, but care must be taken not to ask leading questions, i. e., those which suggest their answers, for they are excluded if objected to by the opposite party. Questions of identification of persons or things which have already been described, introductory questions, questions tending to aid a defective memory, and those asked a witness who appears hostile to the party calling him, are exceptions to this rule.

Cross-examination; latitude allowed.—The cross-examination of a witness is less restricted than the direct, but must in general be confined to the matter brought out in the direct examination and must not be extended to collateral matter, with a view to contradicting the witness by other evidence and thus discrediting him. This rule is, however, subject to the qualifications that, the object of cross-examination being to test the credibility of the witness, great latitude is allowed; leading questions are permitted, as well as those which are not relevant to the subject where the purpose is to test the witness's powers of observation, the accuracy of his memory, and the connection of his statement.

Testimony of the accused; not excepted from ordinary rules.—The testimony of an accused party is competent only when presented as authorized by the act of March 16, 1878, viz, when the party himself requests to be permitted to testify. Such testimony is not excepted from the ordinary rules governing the admissibility of evidence, nor from the application of the usual tests of cross-examination, rebuttal, etc., except that an accused so testifying can not be compelled on direct examination against his objection to criminate himself.

Opinion of Supreme Court.—Where the accused party waives his constitutional privilege of silence, takes the stand in his own behalf and makes his own statement, it is clear that the prosecution has a right to cross-examine him upon such statement with the same latitude as would be exercised in the case of an ordinary witness, as to the circumstances connecting him with the alleged crime. While no inference of guilt can be drawn from his refusal to avail himself of the privilege of testifying, he has no right to set forth to the jury all the facts which tend in his favor without laying himself open to a cross-examination upon those facts. The witness having sworn to an alibi, it was perfectly competent for the Government to cross-examine him as to every fact which had a bearing upon his whereabouts upon the night of the murder, and as to what he did and as to the persons with whom he associated that night. Indeed we know of no reason why an accused person, who takes the stand as a witness, should not be subject to cross-examination as other witnesses are.

* * * While the court would probably have no power of compelling an answer to any question, a refusal to answer a proper question put upon cross-examination has been held to be a proper subject of comment to the jury (*State v. Ober*, 52 N. H., 459; and it is also held in a large number of cases that when an accused person takes

the stand in his own behalf, he is subject to impeachment like other witnesses. If the prosecution should go farther and compel the defendant, on cross-examination, to write his own name or that of another person, when he had not testified in reference thereto in his direct examination, the case of *State v. Lurch*, 12 Oregon, 99, is authority for saying that this would be error. It would be a clear case of the defendant being compelled to furnish original evidence against himself. *State v. Saunders*, 14 Oregon, 300, is also authority for the proposition that he can not be compelled to answer as to any facts not relevant to his direct examination. (*Fitzpatrick v. United States*, 178 U. S., 304.)

Questions witness may decline to answer.—A witness may rightfully decline to answer certain questions, and in such cases should be sustained by the court. These questions are known as "privileged," and are made so as a matter of public policy, with a view to preventing inquisitorial trials, or to forbidding the disclosure of facts, the discovery of which would seriously affect the public business or trespass unduly upon certain private relations, the continued existence of which it is the policy of the law to secure.

The principal cases of privilege are: 1. **State secrets.**—This class covers all the departments of the Government, and its immunity rests upon the belief that the public interests would suffer by a disclosure of state affairs. The scope of this class is very extended, and the question of the inclusion of a given matter therein is decided by a consideration of the requirements of public policy with reference to such matter.

2. **Attorney and client.**—This class includes all confidential communications between a client and his attorney, made during the existence of the relationship and having reference thereto, but does not include matters coming to the knowledge of the attorney independently of his employment. The privilege extends to the clerks, stenographers, interpreters, and other employees whose services are necessary to the counsel in the transaction of his business.

3. **Husband and wife.**—This case covers all communications of a confidential nature made during the continuance of marriage. In personal assaults, however, of the one against the other, the testimony of either as against the defendant is admissible.

4. **Criminating questions.**—All questions whose answers would expose the witness to a criminal prosecution or penal action come under the head of privileged questions. This is a principle of the common law which has been affirmed by the Constitution. The witness may, of course, waive this exemption. By the act of February 16, 1909, it is expressly provided that no witness shall be compelled to incriminate himself or to answer any question which may tend to incriminate or degrade him.

Impeachment of credibility of witness.—The credibility of a witness may be attacked in his cross-examination, or his testimony may be rebutted by other witnesses. In addition to this his reputation for truth and veracity may be impeached. By this is meant the general reputation of the party in the community in which he lives and as understood by those by whom he is best known. When the impeachment is to be made by the testimony of other witnesses care must be taken to lay the groundwork for such impeachment while the witness is on the stand, otherwise it is not admissible.

Statements of witness outside of court.—A witness may also be shown to have made statements outside of court inconsistent with those made under oath, but the statements in question must have been relevant to the issue, and it is proper, where such contradiction is intended, to direct the attention of the witness himself particularly to the matter while on the stand.

Plea of guilty does not exclude evidence for prosecution.—A plea of guilty does not necessarily exclude evidence for the prosecution. Where the court has discretionary power as to the punishment to be awarded it is proper that it should have full knowledge of all the circumstances attending the offense. The reviewing authority is

also entitled to this knowledge, and to this end it is proper for the court to take evidence after a plea of guilty, unless the facts are so fully set forth in the specification as to show all circumstances of mitigation or aggravation.

Accused may cross-examine.—When evidence of this character is introduced after a plea of guilty, the accused has the same right to cross-examine the witnesses and to offer evidence in rebuttal as though he had pleaded not guilty.

Statement inconsistent with plea.—It frequently occurs that an accused, not being familiar with the effect of his plea, will plead "guilty," and, no evidence being introduced, will submit to the court a statement inconsistent with his plea. It is the duty of the court in such cases to consider the statement and plea together, and if guilt is not conclusively admitted, it will direct the judge-advocate to enter a plea of "not guilty" and proceed to trial. (See note, "In cases of desertion," p. 24.)

Examples of statement inconsistent with plea.—One of the familiar instances of a statement inconsistent with a plea is presented where the accused, charged with desertion, pleads "guilty," and then submits a statement in which he denies that at any time he had any intention permanently to abandon the service.

Statutes of limitation.—The statutes of limitation, as contained in articles 61 and 62 of the Articles for the Government of the Navy, relate to a matter of defense which may be either specially pleaded by the accused or may be taken advantage of under the general issue, if the evidence shows that the statute applies. A conviction by a court-martial, duly approved by the convening authority, conclusively establishes as a fact that the prosecution was not barred by the limitation, and the question will not, thereafter, be considered by a civil court in *habeas corpus* proceedings.

Witnesses may be recalled and evidence introduced out of usual order.—While the proper and orderly sequence of the examination of witnesses is that set forth in the "Procedure of General Courts-Martial" (*ante*), the court may, in the interest of truth and justice, call or recall witnesses, or permit their recall at any stage of the proceedings. Evidence may also be admitted entirely out of its usual and proper place, and in fact the court may, even after a case is closed by either party, permit it to be reopened for the introduction of material evidence. This should be done in the presence of both parties, and the opposite party has the usual right to cross-examine and to offer evidence in rebuttal.

To what facts evidence may be given:

1. To the precise fact in dispute.
2. To the act, declaration, or omission of a party as evidence against such party.
3. An act or declaration of another, which act or declaration would naturally accompany the situation, considering the relative conduct of the parties.
4. After proof of a conspiracy, the act or declaration of a conspirator relating to the conspiracy.
5. The act, declaration, or omission forming part of a transaction.
6. The testimony of the witness deceased, or out of the jurisdiction of the court, or who is unable to testify, which was given in a former action between the same parties relating to the same matter.
7. The opinion of a witness respecting the identity, or the handwriting, of a person when he has knowledge of the person or of the handwriting.
8. The opinion of a witness on a question of science, art, or trade when the witness is skilled therein.
9. The opinion of a subscribing witness to a writing respecting the mental sanity of the signer, his sanity being in dispute.
10. The opinion of an intimate acquaintance respecting the sanity of a person, the reason for the opinion being given.
11. Common reputation existing previous to the controversy respecting facts of a public or general interest more than thirty years old.

12. Facts which serve to show the credibility of a witness; such as his general reputation for veracity, his motives, or contradictory statements made by him relative to the facts in issue.

13. Any other facts from which the points in issue may be logically inferred.

14. The state of a witness's feelings to the parties and his relationship may always be proved for the consideration of the court.

Preponderance of evidence.—In determining where the preponderance, or superior weight, of the evidence lies the court may consider:

1. The witness's manner of testifying.
2. His intelligence.
3. His means and opportunities of knowing the facts to which he testifies.
4. The nature of the facts to which he testifies.
5. The probability or improbability of his testimony.
6. His interest or want of interest.
7. His personal credibility, so far as it legitimately appears upon the trial.
8. The number of witnesses; though the preponderance is not necessarily with the greatest number.
9. All the facts and circumstances of the case.

Original entries.—When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are equally regarded as original.

Alterations in a writing.—The party producing a writing as genuine which has been altered in a part material to the question in dispute, and which appears to have been altered after its execution, must account for the appearance of the alteration before the writing will be received in evidence. He may show that the alteration—

1. Was made by another without his concurrence.
2. Was made with the consent of the parties affected by it, or otherwise properly or innocently made.
3. Did not change the meaning or the language.

Entries and writing of a deceased person.—Entries and writings of a deceased person who was in a position to know the facts therein stated and who made the entries at or near the time when the facts occurred may be read as *prima facie* evidence of such facts—

1. When the entry is against the interest of the deceased person who made it.
2. When it was made in a professional capacity in the ordinary course of professional conduct.
3. When it was made in the performance of a duty enjoined by law, or in the course of the person's ordinary and regular duties.

Disputable presumptions.—It is presumed to be true until disproved by evidence that—

1. A person is innocent of crime or wrong.
2. An unlawful act was done with unlawful intent.
3. A person takes ordinary care of his own concerns.
4. Money paid by one to another belongs to the latter.
5. A thing delivered by one person to another belongs to the latter.
6. A person owns the property which is in his possession.
7. A person acting in a public office was regularly appointed or elected to it.
8. Official duty has been regularly performed.
9. Private transactions have been fair and regular.
10. A writing is correctly dated.
11. A letter duly directed and mailed was received in the regular course of the mail.
12. There is identity of person from identity of name, depending upon circumstances.

13. A person not heard from in seven years is dead.
14. Acquiescence resulted from a belief that the thing acquiesced in was conformable to the law or to the fact.
15. Things have happened according to the ordinary course of nature and the ordinary course of life.
16. A man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage.
17. A child born in lawful wedlock, there being no divorce, is legitimate.
18. A thing once proved to exist continues as long as is usual with things of that nature.
19. The law has been obeyed.
20. A printed or published book purporting to contain reports of cases adjudged in tribunals of the State or country where the book is published contains correct reports of such cases.
21. A book purporting to be printed or published by public authority was so printed or published.
22. There was a good and sufficient consideration for a written contract.

Are rules of evidence binding on courts-martial?—A military court should, in general, as the wisest, safest, and fairest proceeding, observe the well-established rules of evidence. (Winthrop, vol. 1, p. 567.)

Courts-martial are bound, in general, to observe the fundamental rules of law and principles of justice observed and expounded by the civil judicature; and are also, in general, to be governed upon trials by the rules of evidence of the common law as recognized and followed by the criminal courts of the country. * * * Inasmuch as the rules of evidence are in the main the result of the best wisdom and experience of the past, approved and ratified by modern intelligence, it is clear that military tribunals can not, in general, safely assume to reject or ignore them. * * * If the effect of a technical rule is found to exclude material facts, or otherwise to obstruct a full investigation the rule may and should be departed from. Proper occasions, however, for such departure will be exceptional and infrequent. (Winthrop, p. 472.)

Courts-martial having cognizance only of criminal offenses are bound, in general, by the rules of evidence administered in criminal cases in courts of common law; the only exceptions being those which are of necessity created by the nature of the service, by the constitution of the court, and by its course of proceedings. (Greenleaf, vol. 3, pars. 469, 476.)

As no rules of evidence are specially prescribed by Congress for the observance of courts-martial, it must be deemed that such courts are contemplated to be governed, in general, by the same rules of evidence which govern the ordinary courts of criminal jurisdiction. These rules are prescribed by the common law, excepting, of course, where otherwise provided by statute, in which case the latter prevail. (Opin. Atty. Gen. Brewster in Whittaker's case, March 17, 1882.)

The rules of evidence, established by a long line of decisions, are the only safe guides for the ascertainment of truth, and can not safely be purposely disregarded by military courts. (G. C. M. Order 6, Div. Army Atlantic, 1891.)

The rules of evidence are substantially the same in criminal as in civil procedure. (Greenleaf, vol. 1, par. 65.)

Facts are best established before a tribunal by the steady operation of fixed rules; and these must be of such a general character that they may be applied to the establishment of all matters of fact whatever their nature.

Such are the existing rules of evidence; they are the collected wisdom of past experience. Their application insures justice and impartiality in the greatest number of cases; best secures a man from being divested of his rights at the pleasure of a tribunal;

and shortens a trial by excluding irrelevant evidence and by bringing to an issue the points in dispute.

It is not always possible for a tribunal to arrive at a perfect knowledge of the truth in each particular case, and yet necessities require that a judgment be rendered.

Directory regulations.—Executive regulations are not, in general, imperative to the extent of rendering actually invalid acts provided for by the regulations but not done in compliance with their requirements. Such regulations are, in general, directory only.

Depending upon the quality of not being of the essence or substance of the thing required, compliance being rather a matter of convenience, and the direction being given with a view simply to proper, orderly, and prompt conduct of business, they seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. (Endlich on Interpretation of Statutes, par. 436; Dig. Opins. J. A. G. Army, p. 754.)

Many statutory requisitions, intended for the guidance of officers in the conduct of business, do not limit their power or render its exercise in disregard of the requirements ineffectual. Such are regulations designed to secure order, system, and dispatch in proceedings. Provisions of this character are not mandatory unless accompanied by negative words importing that the acts shall not be done in any other manner or time than designated. (Anderson's Law Dictionary, Dig. Opins. J. A. G. Army, p. 755.)

The above rules have been applied to the construction of Army Regulations. (Dig. Opins. J. A. G. Army, p. 755.)

In the administration of military affairs, as in other branches of government, precedents are of great value; and an authoritative construction once given to a regulation should thereafter be given great weight. (Dig. Opins. J. A. G. Army, p. 758.)

Affidavits.—1. Affidavits, or statements of persons not subjected to cross-examination, are entirely incompetent as evidence before courts-martial.

2. A letter from a post adjutant introduced in evidence was held improperly admitted, being, though official, a mere *ex parte* statement.

3. Certain *ex parte* statements contained in a record of a board of survey were held improperly admitted in evidence upon a trial by court-martial.

4. Affidavits, however, have sometimes been admitted by courts-martial in the absence of objection by a party. But notwithstanding the consent of parties, a court-martial could rarely, if ever, with safety receive evidence of this character, which must, in general, be too incomplete to serve as a reliable basis either for its own judgment or the action of the reviewing authority. (Winthrop, p. 536.)

SUMMARY COURTS-MARTIAL.

SUMMARY COURTS-MARTIAL.

Incidents of a trial by summary court-martial.

1. Court meets.
2. Accused introduced.
3. Does accused desire counsel, and if so, counsel introduced.
4. Has accused received a copy of the specification; if so, when?
5. Is accused ready for trial?
6. Convening order read aloud.
7. Does accused object to any member mentioned in order?
8. Members sworn.
9. Recorder sworn.
10. All witnesses directed to withdraw.
11. Specification read aloud by recorder.
12. Prosecution begins.
13. Prosecution rests.
14. Defense begins.
15. Defense rests.
16. Rebuttal.
17. Surrebuttal.
18. Trial finished.
19. Court closed for deliberation.
20. Recorder recalled to record finding.
21. Court opened to receive evidence of previous convictions.
22. Court cleared.
23. Recorder recalled to record sentence.
24. Record signed.
25. Court opened.
26. Adjournment.

RECORD OF PROCEEDINGS

OF A

SUMMARY COURT-MARTIAL

IN THE CASE OF

J——— Z. S———, SEAMAN, U. S. NAVY.

U. S. S. *Hancock*,
Navy-Yard, New York,
January —, 19—.

Record in revision.—The proceedings in revision must form a separate and complete record which should be *prefixed* to the record of which it is a revision.

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Order convening a summary court-martial.

U. S. S. HANCOCK,
NAVY-YARD, NEW YORK,

January —, 19—.

SIR: A summary court-martial is hereby ordered to convene on board this vessel on Friday, January —, 19—, or as soon thereafter as practicable, for the trial of such persons as may be legally brought before it.

The court will be constituted as follows:

Lieut. A—— R. K——, U. S. Navy;
Lieut. J—— M. D——, U. S. Navy; and
First Lieut. G—— B. W——, U. S. Marine Corps, members, and
Ensign J—— H. R——, U. S. Navy, recorder.

Captain, U. S. Navy, Commanding.

Lieut. A—— R. K——, U. S. Navy,
U. S. S. Hancock,
Navy-Yard, New York.

Detail of recorder.—A petty officer or a noncommissioned officer of marines can not lawfully be detailed as recorder of a summary court-martial.

Commissioned warrant officers as members.—Commissioned warrant officers may be detailed as members of a summary court-martial.

Detail for trial of marine.—When an enlisted man of the Marine Corps is to be tried one or more marine officers shall be detailed as members, if practicable.

Selection of members.—Care shall be exercised in selecting the personnel of the court so that no reasonable objection against a member may be made by either the accused or by the recorder when called upon to exercise the right of challenge.

Original prefixed to record of first case.

Form of specification.

SPECIFICATION OF AN OFFENSE (OR OFFENSES) PREFERRED AGAINST J—— Z.
S——, SEAMAN, U. S. NAVY.

Specification.—In that J—— Z. S——, a seaman in the United States Navy, attached to and serving on board the U. S. S. *Hancock*, navy-yard, New York, did, on or about the tenth day of January, nineteen hundred and nine, absent himself from his station and duty without leave from proper authority, and did remain so absent until the twenty-fourth day of the month and year aforesaid.

Approved January —, 19—.

To be tried before the summary court-martial of which Lieut. A—— R. K——, U. S. Navy, is senior member.

Captain, U. S. Navy,
Commanding U. S. S. Hancock.

Original prefixed to record.

Forms of specifications.—The specimen forms of specifications, pp. 89 and 167, should be followed in preparing specifications for summary courts-martial as far as practicable.

Specification alleging incompetency.—When the specification alleges incompetency it is essential to set forth the particular acts, or neglect, upon which the specification is based.

Intoxicants in possession.—When the allegation involves having intoxicants in possession, it is essential to specify that the possession was "unlawful."

Absence over or without leave.—The period of absence over or without leave, in the case of an enlisted man reporting at a station or on board a ship other than his own, should be considered as the time elapsing from the date of commencement of the unauthorized absence to date of his return to his proper station or ship.

Care to be exercised by convening authority.—Convening authorities preparing specifications for courts-martial should in all cases before delivering the same take the precaution to read them carefully with the end in view of determining whether or not the statement of facts of the alleged offense, as set forth therein, actually constitutes a military or legal offense. Frequently an offense is implied and not set forth clearly and explicitly, and thus does not show that an unlawful act has been committed.

FIRST DAY.

U. S. S. ———,
NAVY-YARD, NEW YORK,
January —, 19—.

The court met at 10 a. m.

Present:

Lieut. A——— R. K———, U. S. Navy;
Lieut. J——— M. D———, U. S. Navy; and
First Lieut. G——— B. W———, U. S. Marine Corps, mem-
bers, and
Ensign J——— H. R———, U. S. Navy, recorder.

See also notes under general court-martial procedure.

Record of each case complete.—The record of every case must be complete in itself, and therefore the place, date, names and rank of members and recorder must be fully set out at the beginning of each case.

VAR. 1. Lieut. J——— M. D———, U. S. Navy, a member, was absent on account of illness (or other cause), and the court being reduced below the number authorized by law, adjourned until 10 a. m., to-morrow, the — instant.

VAR. 2. The court, being reduced below the number authorized by law, informed the convening authority to that effect and then took a recess until 11.30 a. m., the same date, when it reconvened. Present: The members last above mentioned, the recorder, and Ensign T——— S———, U. S. Navy, appointed a member by the convening authority, *vice* Lieut. J——— M. D———, U. S. Navy, relieved.

The accused entered and stated that he did not desire counsel; that he had received a copy of the specification against him at — a. m., January —, 19—, and that he was ready for trial.

VAR. 1. ——— that he desired Captain, L——— A———, U. S. Marine Corps, as his counsel, and that officer reported as such; that he had received ———.

VAR. 2. ——— that he desired postponement until ——— for the reason that ———.

The recorder read the precept, original hereto prefixed, marked "A".

VAR. 1. ——— original prefixed to the record in the case of M—— R. S——, private, U. S. Marine Corps.

VAR. 2. ——— and an order relating thereto, prefixed hereto, marked "——."

Reading of papers, etc.—When the record states that a paper or document is read, it is to be understood that it is read *aloud*.

Composition of court changed.—In case the composition of the court is changed a new precept should be issued.

The accused stated that he did not object to any member.

VAR. 1. The accused objected to being tried by First Lieut. G—— B. W——, U. S. Marine Corps, for the following reasons:
——.

First Lieutenant W—— replied to the objection as follows: ——.

The court was cleared for the consideration of the challenge, the challenged member (if he so desired) also withdrawing.

After due deliberation the court was opened, and all parties to the trial entered. The senior member announced that the objection of the accused was not sustained.

The accused had no further objections to offer.

VAR. 2. The senior member announced that the objection of the accused was sustained and the record would be forwarded to the convening authority, pending a reply from whom, the court adjourned until 10 a. m., to-morrow, the — instant.

VAR. 3. When the court convened (if on a subsequent day). Present: ——, etc. The recorder read an order appended, marked "——," from the convening authority returning the record and directing the court to proceed as originally constituted.

The accused had no further objections to offer.

VAR. 4. The recorder read aloud an order from the convening authority appointing Lieut. O—— S——, U. S. Navy, *vice* First Lieut. G—— B. W——, U. S. Marine Corps, relieved, which order is hereto appended, marked "——."

The accused had no further objections to offer.

Each member and the recorder were duly sworn.

How oaths administered.—The oaths shall be administered, first, to the members by the recorder, and then to the recorder by the senior member.

Oaths administered to members.—You, A—— R. K——, J—— M. D——, and G—— B. W——, do swear (or affirm) that you will well and truly try without prejudice or partiality the case now depending, according to the evidence which shall be adduced, the Laws for the Government of the Navy, and your own conscience.

Oath administered to recorder.—You, J—— H. R——, do swear (or affirm) that you will keep a true record of the evidence which shall be given before this court and of the proceedings thereof.

No witnesses were present.

VAR. All witnesses were directed to withdraw.

The recorder read the specification, original prefixed, marked "——," and arraigned the accused as follows:

Q. J—— Z. S——, seaman, U. S. Navy, you have heard the specification preferred against you; how say you to the specification, guilty or not guilty?

A. Not guilty (*or*, guilty; *or*, guilty except as to the words “* * *,” to which words, not guilty; *or*, the accused stood mute.)

(In case the accused pleads guilty.) The accused was duly warned as to the effect of his plea, and persisted therein.

Warning upon plea of guilty.—In case the accused pleads guilty, he shall be warned by the senior member that by so doing he deprives himself of the benefits of a regular defense and can only introduce evidence in extenuation or as to character. See notes following the arraignment, general court-martial.

When warning not given.—This warning will, of course, not be given when, as is sometimes the case, the prosecution intends, notwithstanding the plea of guilty, to introduce evidence to show the degree of criminality involved.

The prosecution began.

Accused pleads guilty.—If the accused pleads guilty the foregoing sentence shall be omitted unless the prosecution offers evidence as to the degree of criminality.

Member or recorder as witness.—If a member or the recorder is called as a witness, the record must show that upon the conclusion of his testimony he resumed his status as member or recorder.

Testimony of member or recorder taken first.—The testimony of a member or the recorder should be taken before any other evidence is received.

Senior member as witness.—If the senior member becomes a witness, the member next in rank shall administer the oath and preside until the witness resumes his status as senior member.

Recorder as witness.—If the recorder is a witness, he shall record his own testimony.

Each case to show members and recorder sworn.—When more than one case is tried by the court the record in each case must show that the members and recorder were duly sworn.

A witness for the prosecution was duly sworn and testified as follows:

VAR. The senior member was called as a witness for the prosecution and, having been duly sworn by the member next in rank, testified as follows:

Examined by the recorder:

1. Q. what is your name and rate (rank)?
- A. R—— E. W——, boatswain's mate, second class, U. S. Navy.
2. Q. As whom do you recognize the accused?
- A. I recognize him as J—— Z. S——, seaman, U. S. Navy, serving on board the U. S. S. *Hancock*, at the navy-yard, New York.
3. Q. * * *
- A. * * *

Cross-examined by the accused (counsel):

7. Q. * * *
- A. * * * (See steps in examination of witness, pp. 25, 26, and notes.)

The court did not desire to question this witness.

The witness verified his testimony, was duly warned, and withdrew.

VAR. —— testimony and then resumed his status as member (or, senior member, or, recorder).

Testimony of witness read.—The recorded testimony of a witness shall be read to or by him in order that he may verify, correct, or amend it; in so doing the procedure under general court-martial shall be followed.

Warning to witness.—Before a witness withdraws from the court room the senior member shall warn him not to converse upon matters pertaining to the trial during its continuance. This warning shall not be given to a member, to the recorder, to the accused or to his counsel, if any.

A witness for the prosecution entered and was duly sworn.

Examined by the recorder:

1. Q. What is your name and rank (rate)?
A. J—— A. R——, lieutenant, U. S. Navy.
2. Q. As whom do you recognize the accused?
A. As J—— Z. S——, seaman, U. S. Navy.
3. Q. * * *
A. * * *

Neither the accused nor court desired to question this witness. The witness verified his testimony, was duly warned, and withdrew. The prosecution rested.

If prosecution introduces no evidence.—In case no evidence for prosecution is offered, foregoing sentence shall be omitted.

The defense began.

VAR. The accused did not desire to offer any evidence in his defense or to make a statement.

A witness for the defense entered and was duly sworn.

Preliminary questions.—The witnesses for the defense will first be questioned by the recorder for the purpose only of determining the identity of such witnesses and to establish whether or not they recognize the accused.

Examined by the recorder:

1. Q. What is your name and rank?
A. M—— G. R——, lieutenant, U. S. Navy.
2. Q. As whom do you recognize the accused?
A. As J—— Z. S——, seaman, U. S. Navy.

Examined by the accused (counsel):

3. Q. * * *
A. * * * (See order of examining witness for defense, p. 34.)

Neither the recorder nor the court desired to question this witness. The witness verified his testimony, was duly warned, and withdrew. The accused, *at his own request*, was duly sworn and testified as follows:

Accused as witness.—The law provides that the accused shall, *at his own request, but not otherwise*, be a competent witness, and shall be allowed to testify in his own behalf; and his failure to make such request shall not create any presumption against him.

Examined by the recorder:

1. Q. What is your name and rate?
A. J—— Z. S——, seaman, U. S. Navy, stationed on the U. S. S. *Hancock*.

Examined by the accused (counsel):

2. Q. State the facts concerning the offense with which you are charged.

A. * * *

3. Q. * * *

A. * * *

Status of accused when a witness.—The accused as a witness occupies no exceptional status; he is subject to cross-examination, and his testimony is subject to the same rules of evidence that apply to other testimony. (See Notes on Evidence, *ante*.)

Neither the recorder nor the court desired to question this witness. The witness verified his testimony, and resumed his status as accused.

The defense rested.

No defense.—In case no defense is offered, the foregoing sentence shall be omitted.

No rebuttal or surrebuttal.—The following references to rebuttal and surrebuttal shall be omitted if there is no evidence thereunder.

The rebuttal began.

A witness for the prosecution in rebuttal was duly sworn and testified as follows:

Examined by the recorder:

1. Q. What is your name and rate?

A. J—— R. G——, ordinary seaman, U. S. Navy.

2. Q. As whom do you recognize the accused?

A. * * *

Order of examination.—The examination follows the same order as in the case of other witnesses for the prosecution.

The rebuttal ended.

The surrebuttal began.

A witness for the defense in surrebuttal, duly cautioned as to his previous oath, testified as follows:

Witness recalled warned as to previous oath.—A witness who has been before the court in the case under consideration and duly sworn, and who is subsequently recalled to testify, need not be resworn. He should be warned by the senior member that the oath previously administered is still binding, and a note thereof made in the record.

Examined by the accused (counsel):

1. Q. What is your name and rank?

A. M—— G. R——, lieutenant, U. S. Navy.

2. Q. * * *

A. * * *

The surrebuttal ended.

The accused did not desire to make a statement.

VAR. —— made an oral statement in substance as follows (here insert statement).

Substance of oral statement entered.—Neither written defense nor argument, nor any protracted oral defense, should be admitted, but the substance of any oral statement may be entered on the record.

The defense rested.

The trial was finished.

The recorder stated that he had no evidence of previous convictions, and that the pay of the accused is \$—— a month, and that on January —, 19—, there was due him \$—— (or, he was in debt to the United States \$——).

VAR. —— that he had evidence of previous convictions, ——.

The court was cleared.

The recorder was recalled and directed to record the following finding: "The specification proved."

VAR. 1. —— proved by plea.

VAR. 2. —— not proved, and the court acquits him, the said J—— Z. S——, seaman, United States Navy, of the offense (offenses) specified.

VAR. 3. —— proved in part; proved except the words "——," which words are not proved, and for the excepted words the court substitutes the words "——," which words are proved.

Finding and sentence written by recorder.—The finding and sentence must be entered on the record in the handwriting of the recorder and must be without erasure or interlineation.

Care in drawing up finding.—In drawing up the finding under variation 3, care should be taken to state exactly what words are not proved and what words are substituted.

The court was opened and all parties to the trial entered.

There being no objection, the recorder read from the current enlistment record of the accused an extract showing previous conviction, copy appended, marked "—." (See pp. 31 and 41.)

Approval of convictions.—The approval of the Department is unnecessary on summary court cases tried subsequent to February 16, 1909.

Certified copy appended.—Extracts from the enlistment record shall not be written into the body of the proceedings, but an appended certified copy shall be used. (See p. 41.)

Conduct record read.—By direction of the senior member, the conduct record of the accused may be read by the recorder and certified copy appended.

The court was cleared.

The recorder was recalled and directed to record the following sentence in the case of J—— Z. S——, seaman, United States Navy:

Solitary confinement on bread and water for eight (8) days, with full ration every third (3d) day, and to lose pay amounting to thirty (30) dollars.

A—— R. K——,
Lieutenant, U. S. Navy, Senior Member.

J—— M. D——,
Lieutenant, U. S. Navy, Member.

G—— B. W——,
First Lieutenant, U. S. Marine Corps, Member.

J—— H. R——,
Ensign, U. S. Navy, Recorder.

Authorized punishments.—Article 30 of the Articles for the Government of the Navy, as amended by the acts of May 13, 1906, and February 16, 1909, prescribes the punishments that a summary court-martial may inflict, and is as follows:

“Summary courts-martial may sentence petty officers and persons of inferior ratings to any one of the following punishments, namely:

“(1) Discharge from the service with bad conduct discharge; but the sentence shall not be carried into effect in a foreign country.

“(2) Solitary confinement, not exceeding thirty days, on bread and water or on diminished rations.

“(3) Solitary confinement not exceeding thirty days.

“(4) Confinement not exceeding two months.

“(5) Reduction to the next inferior rating.

“(6) Deprivation of liberty on shore on foreign station.

“(7) Extra police duties and loss of pay, not to exceed three months, may be added to any one of the above-mentioned punishments.”

Article 30 construed.—The act of February 16, 1909, provides “that the courts authorized to impose the punishments prescribed by article thirty of the Articles for the Government of the Navy may adjudge either a part or the whole, as may be appropriate, or any one of the punishments therein enumerated: *Provided*, That the use of irons, single or double, is hereby abolished, except for the purpose of safe custody or when part of a sentence imposed by a general court-martial.” The effect of the foregoing is construed to permit the imposition under the amended second clause, above, of a sentence of confinement, not exceeding thirty days, on bread and water; and also to permit sentences involving extra police duties alone, or loss of pay alone.

Bread and water.—Summary courts shall exercise care and discretion in resorting to the punishment of confinement on bread and water, and shall not adjudge it in any case for a longer period, consecutively, than five days. As a shorter interval is less likely to work injury to health, the maximum interval allowed should be adjudged only in cases of maximum offenses.

Disrating.—In disrating the court should be careful to observe that the next inferior rating is that set forth in the table entitled “Classification for disrating” as found in the Navy Regulations, unless the man’s current enlistment record shows that he was promoted to his present rate from some inferior rating other than the one indicated by the table, in which case his reduction shall be to the inferior rating from which he was last advanced, and it shall be so stated in the record.

Incompetency.—In the case of a person found guilty of incompetency, the sentence of disrating is mandatory and the only authorized punishment therefor.

Deprivation of liberty.—A sentence of “deprivation of liberty” is illegal unless the words “on shore on foreign station” are added, and the court in adjudging such sentence shall not exceed the limit of three months.

Loss of pay.—As stated above, loss of pay alone may be adjudged as a sentence; and in all cases where loss of pay is involved the amount of money and not the length of time shall be stated, having due regard to the fact that not more than three months’ loss of pay may be imposed.

Extra police duties.—Except where the offender is serving on a receiving ship or at a shore station, sentences involving extra police duties are undesirable.

Phraseology employed.—Where the legal term of confinement is limited to “thirty days,” the exact phraseology should be employed in adjudging a sentence involving confinement for such maximum period. A sentence of “solitary confinement not exceeding one month,” for example, would be irregular and improper, as the article above quoted prescribes thirty days as the maximum, while one month might be in excess of the limit so fixed.

In consideration of his previous good record we recommend the accused in this case to the clemency of the revising authority.

VAR. 1. — his youth and inexperience —.

VAR. 2. — the attending circumstances of provocation (or, as the case may be) —.

J — M. D —,
Lieutenant, U. S. Navy, Member.

G — B. W —,
First Lieutenant, U. S. Marine Corps, Member.

The court then adjourned to await orders from the convening authority.

VAR. 1. ——— took up the next case.

VAR. 2. ——— adjourned to meet ———.

A——— R. K———,
Lieutenant, U. S. Navy, Senior Member.
 J——— H. R———,
Ensign, U. S. Navy, Recorder.

U. S. S. HANCOCK,
 NAVY-YARD, NEW YORK,
January —, 19—.

From an examination of J——— Z. S———, seaman, U. S. Navy, and of the place where he is to be confined, I am of opinion that the execution of the above sentence would (not) produce serious injury to his health.

B——— N. J———,
Surgeon, U. S. Navy,
Senior Medical Officer on Board.

Certificate of medical officer.—Whenever any person is sentenced for a period exceeding ten days to confinement on diminished rations, or on bread and water, there must appear on the record of the proceedings the certificate of the senior medical officer under the immediate jurisdiction of the convening authority, to the effect that such sentence will not be seriously injurious to the health of the prisoner.

Duty of convening authority.—It is the duty of the convening authority either to remit any part or the whole of any sentence, the execution of which would, in the opinion of the surgeon or senior medical officer on board, given in writing, produce serious injury to the health of the person sentenced; or to submit the case again, without delay, to the same or to another summary court-martial, which shall have the power, upon the testimony already taken, to remit the former punishment and to assign some other of the authorized punishments in the place thereof.

U. S. S. HANCOCK,
 NAVY-YARD, NEW YORK,
January —, 19—.

The proceedings and sentence in the foregoing case of J——— Z. S———, seaman, U. S. Navy, are approved.

D——— B. W———,
Captain, U. S. Navy,
Commanding U. S. S. Hancock.

Power of revising authority.—The convening or other revising authority has full power to remit or mitigate, but not to commute, any sentence or part thereof.

Sentences involving bad conduct discharge and loss of pay.—Such sentences should be so mitigated if necessary, as to leave the man sufficient money for his immediate needs after his separation from the service.

VAR. 1. The proceedings and sentence in the foregoing case of J——— Z. S———, seaman, U. S. Navy, are approved, but the period of confinement is reduced to ——— days.

(a) ——— but in view of the recommendation to clemency the loss of pay is reduced to ——— dollars.

(b) ——— but in view of the opinion of the medical officer, above recorded, the confinement is remitted and the accused will be released from confinement and restored to duty.

(c) ——— but the loss of pay is remitted.

VAR. 2. The proceedings in the foregoing case of J—— Z. S——, seaman, U. S. Navy, are approved. The sentence is disapproved because ———. The accused will be released from confinement and restored to duty.

VAR. 3. The proceedings in the foregoing case of J—— Z. S——, seaman, U. S. Navy, are disapproved because ———. The sentence is disapproved. The accused will be released from confinement and restored to duty.

VAR. 4. The proceedings and acquittal in the foregoing case of J—— Z. S——, seaman, U. S. Navy, are approved. He will be released from confinement and restored to duty.

VAR. 5. The proceedings in the foregoing case of J—— Z. S——, seaman, U. S. Navy, are approved. The acquittal is disapproved. He will be released from confinement and restored to duty.

VAR. 6. The court will reconvene, as soon as practicable, in the case of J—— Z. S——, seaman, U. S. Navy, for the purpose of revising its sentence which is not, in my opinion, adequate to the offense found proved. (See notes under "Order for Revision," *post*.)

(a) ——— as the sentence adjudged is not one which the court is authorized to impose.

(b) ——— as the sentence will, in the opinion of the senior medical officer on board, be seriously injurious to the health of the accused.

(c) ——— for the purpose of revising its finding, which is not in accord with the evidence adduced.

(d) ——— for amendment in the following particulars ———.

(e) ——— as there is no evidence to support the finding that the absence of the accused was "without leave."

(f) ——— as there is no evidence to support the finding that the possession by the accused of intoxicating liquor on board ship was "unlawful."

Synopsis of conduct spread upon record. In every case where a sentence involving bad conduct discharge has been imposed it shall be the duty of the officer ordering the court, before acting upon the proceedings, to spread upon the record a brief synopsis of the service of the person tried and of the offenses committed by him during his current enlistment.

U. S. S. HANCOCK,
NAVY-YARD, NEW YORK,
January --, 19--.

The enlistment record of J—— Z. S——, seaman, U. S. Navy, shows that he has served in the navy — years and --- months. During his current enlistment, beginning March 15, 1908, he has committed the following offenses: March 31, 1908, forty-eight hours over liberty; June 7, 1908, clothes in lucky bag; June 18, 1908, absent from quarters; July 10, 1908, shirking; * * * January 20, 1909, absent without leave eight days.

VAR. ——— he has committed no offense prior to the one for which he has been tried in this case (or, as may be).

The proceedings and, in view of the above, the sentence in the foregoing case are approved.

VAR. 1. The proceedings are approved but, in view of the above, the sentence in the foregoing case is disapproved. The accused will be released from confinement and restored to duty.

VAR. 2. The proceedings and sentence in the foregoing case are approved but, in view of ———, so much of the sentence as involves bad conduct discharge is remitted.

- (a) ——— as involves bad conduct discharge is disapproved.
- (b) ——— as involves loss of pay is remitted.

D——— B. W———,
Captain, U. S. Navy,
Commanding U. S. S. Hancock.

Sentences executed on approval of senior officer present.—The act of February 16, 1909, provides that all sentences of summary courts-martial may be carried into effect upon the approval of the senior officer present. This provision includes loss of pay.

Execution of sentence involving bad conduct discharge.—Upon approval of the senior officer present, sentences of bad conduct discharge in the cases of enlisted men of the navy serving in their first enlistment may be carried into effect, but only within the continental limits of the United States. Men in the insular force, so sentenced, may be discharged in the Philippine Islands, Samoa, or Guam, depending upon the place of enlistment, after similar approval.

Restriction as to discharge.—Enlisted men of the navy serving in a second or succeeding enlistment, and enlisted men of the Marine Corps, shall not be discharged pursuant to a sentence of bad conduct discharge until an order therefor is received from the Bureau of Navigation or the Commandant of the Marine Corps, respectively.

Action of the revising authority.

NAVY-YARD, NEW YORK,
January —, 19—.

The proceedings and sentence in the foregoing case of J——— Z. S———, seaman, U. S. Navy, are approved.

Power of mitigation vested in whom.—All powers of mitigation vested in the convening authority may be exercised by the commander in chief or, in his absence, by the senior officer present.

Commandant as senior officer present.—The commandant acts as senior officer present upon summary courts convened by himself, and upon those convened by officers directly under his command, including those convened by the commanding officers of vessels permanently attached to the yard and of vessels there stationed in the second reserve.

Senior officer present of vessels at navy-yard.—When the convening authority is the commanding officer of a cruising vessel in commission temporarily at a navy-yard, the commander in chief or, in his absence, the senior officer of the cruising vessels there present, and not the commandant of the yard, is the authority whose approval of the proceedings and sentence is necessary before the latter may be carried into execution.

Action in case of acquittal.—In cases where the accused has been acquitted by the court, or where the sentence has been disapproved by the convening authority, the record of proceedings shall be submitted to the senior officer present in the same manner as though a sentence requiring action still remained.

VAR. 1. The proceedings, and sentence as mitigated, in the foregoing case of ———, are approved.

VAR. 2. The proceedings in the foregoing case of ——— are approved. The sentence is disapproved (for the reason that ———).

- (a) The sentence is approved, but the loss of pay is remitted.

(b) The sentence is approved, but the period of confinement is reduced to — days.

(For other variations, see action of convening authority.)

(Or) G—— F. C——,
Rear-Admiral, U. S. Navy, Commandant.

(Or) E—— X. T——,
*Rear-Admiral, U. S. Navy,
Commander in Chief, U. S. Atlantic Fleet.*

(Or) L—— P. M——,
*Rear-Admiral, U. S. Navy,
Commander Third Squadron, U. S. Atlantic Fleet,
Senior Officer Present.*

(Or) P—— S. R——,
*Captain, U. S. Navy,
Commanding U. S. S. Maryland,
Senior Officer Present.*

(Or, for captain of yard in absence of commandant.)
D—— M. C——,
*Captain, U. S. Navy, Commanding,
Senior Officer Present.*

Published.

D—— C. B——,
*Lieutenant, U. S. Navy,
Executive Officer.*

Loss of pay, \$9. 40, checked.

N—— W. D——,
Paymaster, U. S. Navy.

Order to the pay officer.—Records of summary courts-martial and deck courts shall show, over the signature of the pay officer having the pay accounts of the accused, that the loss of pay, if there be any adjudged and approved, has been checked. In order to enable the pay officer to make the necessary certificate, the commanding officer shall forward with the record the requisite order for the checkage; such order shall be in duplicate, one copy of which shall be sent immediately to the Auditor for the Navy Department. The order shall contain the following information: Name, rate, date of trial, offense (condensed as much as possible), and sentence as finally approved. If the offense is absence over leave or absence without leave, the dates of the beginning and ending of the unauthorized absence shall be stated.

Specimen specifications for summary courts-martial.

1. ABSENCE WITHOUT LEAVE.

Specification.—In that ———, a seaman in the United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, did, on or about the twentieth day of April, nineteen hundred and nine, without proper authority, absent himself from his station and duty on board said ship, and did remain so absent until the twenty-sixth day of April, in the year aforesaid.

No charge to be used.—The headings preceding these specifications are intended only as a guide and are in no case to precede an actual specification.

2. ABSENCE WITHOUT LEAVE; ATTEMPTED.

Specification.—In that _____, an ordinary seaman in the United States Navy, attached to and serving on board the United States ship _____, at _____, _____, did, at or about eleven hours postmeridian on the eighteenth day of May, nineteen hundred and nine, endeavor to leave said ship without authority by attempting to jump overboard therefrom.

3. ABSENCE WITHOUT LEAVE; TO AVOID GUARD OR DRAFT.

Specification.—In that _____, an ordinary seaman in the United States Navy, attached to and serving on board the United States ship _____, at the navy-yard, _____, _____, did, on or about the second day of July, nineteen hundred and nine, leave his station and duty without proper authority and with the intention of avoiding transfer to the United States ship _____, to which vessel he had been detailed for service, and did remain so absent until the seventh day of the month and year aforesaid, when he returned on board the said ship _____.

4. ABSENCE WITHOUT LEAVE; MISSING SHIP.

Specification.—In that _____, a seaman in the United States Navy, attached to and serving on board the United States ship _____, in Cape Cod Bay, Massachusetts, having been granted leave of absence from the said ship which expired at seven hours antemeridian on the sixth day of July, nineteen hundred and nine, the said ship then being at Boston, Massachusetts, did fail to return to the said ship at the expiration of the said leave of absence; and furthermore, that he, the said _____, seaman, United States Navy, did miss his ship at the said port and did remain absent from his ship, station, and duty without permission from proper authority until at or about seven hours postmeridian, on the tenth day of the month and year aforesaid, when he was returned on board the said ship, then at Provincetown, Massachusetts, from the United States ship _____.

5. ABSENCE WITHOUT LEAVE; OVER TWENTY-FOUR HOURS.

Specification.—In that _____, a quartermaster, second class, in the United States Navy, attached to and serving on board the United States ship _____, at the navy-yard, _____, _____, was, on or about the nineteenth day of June, nineteen hundred and nine, absent from his station and duty on board said ship after his leave had expired, and did remain absent therefrom, without permission from proper authority, for a period of about twenty-four hours.

6. ABSENCE WITHOUT LEAVE; RETURNING IN CIVILIAN CLOTHES.

Specification.—In that _____, an apprentice seaman in the United States Navy, attached to the United States ship _____, and serving at the naval training station, _____, _____, did, at about one hour postmeridian on the seventh day of August, nineteen hundred and nine, absent himself from his station and duty, having left said station without proper authority, and did remain so absent until about eleven hours antemeridian, on the eleventh day of the month and year aforesaid, when he reported on board in civilian clothing.

7. ABSENCE WITHOUT LEAVE; SURRENDERING AT ANOTHER STATION.

Specification.—In that _____, a coal passer in the United States Navy, attached to and serving on board the United States ship _____, at the navy-yard, _____, _____, having been granted liberty by proper authority, while attached to and serving on board the United States ship _____, at Callao, Peru, until the third day of January, nineteen hundred and nine, did fail to return on the said date

and did remain absent from his station and duty without proper authority until the third day of June, of the year aforesaid, when he surrendered in civilian clothing on board the United States ship —— at Corinto, Nicaragua.

8. ABSENCE WITHOUT LEAVE; USING WRONG NAME RETURNING.

Specification.—In that ——, an ordinary seaman in the United States Navy, attached to and serving on board the United States ship ——, at the navy-yard, ——, ——, did, on or about the seventeenth day of June, nineteen hundred and nine, absent himself from his station and duty without proper authority, and did remain so absent until at or about one hour and twenty minutes antemeridian, on the eighteenth day of the month and year aforesaid, when he returned on board and attempted to check in from liberty under the name of ——, ordinary seaman, United States Navy, also attached to the aforesaid vessel.

9. ABSENCE WITHOUT LEAVE; USING WRONG NAME GOING.

Specification.—In that ——, a fireman second class, United States Navy, attached to and serving on board the United States ship ——, did, at or about five hours postmeridian on or about the twenty-sixth day of May, nineteen hundred and nine, at the navy-yard, ——, ——, absent himself from said ship without proper authority by giving the name of one ——, and did remain so absent from his station and duty until some time before nine hours antemeridian on the twenty-sixth day of the month aforesaid.

10. DISOBEDIENCE, DELIBERATE.

Specification.—In that ——, an ordinary seaman in the United States Navy, attached to and serving on board the United States ship ——, at anchor off Tompkinsville, Staten Island, New York, having on the sixteenth day of June, nineteen hundred and nine, been ordered by ——, chief master at arms, United States Navy, attached to said ship, to go on the berth deck of said ship and perform extra duty in accordance with the sentence of a summary court-martial, did refuse to obey and did wilfully disobey the said lawful order of said Chief Master at Arms ——, who was then and there in the execution of his office.

11. DISORDERLY CONDUCT.

Specification.—In that ——, a private in the United States Marine Corps, attached to and serving at the United States Marine Barracks, Naval Academy, Annapolis, Md., was, on the fourth day of June, nineteen hundred and nine, drunk and disorderly in the town of Annapolis, Md., and did use abusive and obscene language toward ——, at the aforesaid time and place.

12. DISRESPECT TO PETTY OFFICER.

Specification.—In that ——, an ordinary seaman in the United States Navy, attached to and serving on board the United States ship ——, then in dry dock at Shanghai, China, did, on or about October eighteenth, nineteen hundred and eight, use abusive language toward ——, master at arms first class, United States Navy, attached to said ship, who was then and there in the execution of his office.

13. DRUGS IN POSSESSION.

Specification.—In that ——, an ordinary seaman in the United States Navy, attached to and serving on board the United States ship —— at the naval training station, San Francisco, California, was, at or about two hours and thirty

minutes postmeridian on the seventh day of July, nineteen hundred and nine, under the influence of cocaine, and, furthermore, that he ———, ordinary seaman, United States Navy, did, at or about the aforesaid time, unlawfully have cocaine in his possession.

14. DRUNK, FROM LIBERTY.

Specification.—In that ———, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ———, ———, was, on the fifteenth day of April, nineteen hundred and nine, on his return to said barracks from liberty, drunk and unfit for duty.

15. DRUNK, OFF DUTY.

Specification.—In that ———, a private in the United States Marine Corps, attached and serving on board the United States ship ———, at the navy-yard, ———, ———, was, at said navy-yard, on the thirteenth day of August, nineteen hundred and eight, under the influence of intoxicating liquor, and thereby unfit for duty.

16. DRUNK, ON GUARD.

Specification.—In that ———, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ———, ———, was, on the morning of the twenty-second day of November, nineteen hundred and eight, while acting as corporal of the guard at said yard, drunk on guard.

17. DRUNK, ON POST.

Specification.—In that ———, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ———, ———, having, on the eighteenth day of July, nineteen hundred and eight, been regularly posted as a sentinel at the lyceum at said navy-yard, was drunk while on said post.

18. FAILURE TO OBEY.

Specification.—In that ———, a water tender in the United States Navy, attached to and serving on board the United States ship ———, then lying at anchor in Magdalena Bay, Mexico, having received an order from Machinist ———, United States Navy, at or about five hours postmeridian on the nineteenth day of March, nineteen hundred and nine, to have certain bunkers of said ship swept out during the watches of that night, did fail to obey said order which had not been executed at five hours and forty-five minutes antemeridian on the twentieth day of March in the year aforesaid.

19. FALSEHOOD.

Specification.—In that ———, a master at arms, third class, in the United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, Boston, Massachusetts, did, at or about two hours and twenty minutes antemeridian on the first day of June, nineteen hundred and nine, enter the warrant officer's pantry of the said ship without proper authority; and, furthermore, that he, the said ———, master at arms, third class, United States Navy, did, after having been questioned by the executive officer of said ship, Lieutenant-Commander ———, United States Navy, as to who had accompanied him on the occasion specified, state that he was not accompanied by any person, which statement was knowingly false and intended to deceive.

20. INCOMPETENCY.

Specification.—In that ———, a coxswain in the United States Navy, attached to and serving on board the United States ship ——— at Callao, Peru, and detailed in charge of the steam launch of said ship, did, at or about nine hours antemeridian of the fifth day of April, nineteen hundred and nine, while endeavoring to bring said launch alongside the starboard gangway of said ship, fail to handle said launch in a competent manner, and did thereby ram said gangway and destroy the lower grating thereof:

And furthermore, that the said ——— did, at or about two hours postmeridian of the seventh day of April in said year and at the said place, while endeavoring to take said launch to the starboard quarter-boom of said ship, fail to handle said launch in a competent manner, and did thereby injure said boom and the canopy of said launch: (Other specific acts of incompetency may be further alleged.)

And the said ——— was, as above specified, incompetent in the performance of the duties of his rating.

21. LEAVING POST BEFORE REGULARLY RELIEVED.

Specification.—In that ———, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ———, ———, having at or about eleven o'clock postmeridian on the fourth day of June, nineteen hundred and nine, been regularly posted as a sentinel on post number four at said navy-yard, did, at or about one o'clock antemeridian on the fifth day of said month, leave said post before being regularly relieved.

22. LIQUOR IN POSSESSION.

Specification.—In that ———, a seaman in the United States Navy, attached to and serving on board the United States ship ———, at the navy-yard, ———, ———, did, at about one hour and fifteen minutes postmeridian, on the second day of February, nineteen hundred and nine upon returning to said ship from liberty, unlawfully have in his possession a flask of intoxicating liquor.

23. LIQUOR, SMUGGLING.

Specification.—In that ———, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ———, ———, did, on the thirtieth day of August, nineteen hundred and eight, smuggle into said navy-yard two bottles of intoxicating liquor.

24. NEGLECT OF DUTY.

Specification.—In that ———, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, ———, ———, having at or about five hours antemeridian on the seventeenth day of January, nineteen hundred and nine, been regularly posted as a sentinel over prisoners confined in the cell passage at said barracks, the three doors leading to the passage being locked and the keys thereof in the possession of the corporal of the guard, did nevertheless, at about five hours and forty-five minutes antemeridian on the day aforesaid, suffer a prisoner confined in said passage, ———, private, United States Marine Corps, to escape by way of the door leading from said passage to the arcade of the said barracks; and the said ——— did thereby neglect his duty as sentinel on said post.

25. RESISTING ARREST.

Specification.—In that _____, an ordinary seaman in the United States Navy, attached and serving on board the United States ship _____, at the navy-yard, _____, _____, did, at about four hours and thirty minutes postmeridian on the twenty-fourth day of August, nineteen hundred and eight, while being placed in confinement by _____, master at arms, first class, United States Navy, forcibly resist arrest.

26. SITTING DOWN ON POST.

Specification.—In that _____, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, having been regularly posted as a sentinel on post fourteen at said yard, did, at or about seven hours antemeridian of the eleventh day of June, nineteen hundred and nine, sit down while on said post.

27. SLEEPING ON POST.

Specification.—In that _____, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, having, on the seventh day of August, nineteen hundred and eight, been regularly posted as a sentinel on post number five at said yard, did sleep while on said post.

28. SLEEPING ON WATCH.

Specification.—In that _____, a quartermaster, first class, United States Navy, attached to and serving on board the United States ship _____, then at anchor off Shanghai, China, did, while on watch on board said ship, from midnight of June eleventh, to four hours antemeridian of June twelfth, nineteen hundred and nine, sleep while on said watch.

29. THEFT.

Specification.—In that _____, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, did, on the fifteenth day of August, nineteen hundred and eight, feloniously take, steal, and carry away from the locker of _____, private, United States Marine Corps, money to the amount of one dollar and eighty-nine cents, the property of the said _____, attached to said barracks, and did then and there appropriate the same to his own use.

30. UNLAWFULLY HAVING IN POSSESSION PROPERTY OF ANOTHER.

Specification.—In that _____, an ordinary seaman in the United States Navy, attached and serving on board the United States ship _____, at Boston, Massachusetts, did, on the sixth day of May, nineteen hundred and nine, unlawfully have in his possession, one overshirt of about two dollars and sixty cents in value, the property of _____, ordinary seaman, United States Navy, and one pair of white trousers of about one dollar and fifteen cents in value, the property of _____, ordinary seaman, United States Navy.

31. USING OBSCENE AND THREATENING LANGUAGE TO ANOTHER PERSON.

Specification.—In that _____, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, did, at about nine hours and thirty minutes postmeridian on the twenty-first day of December, nineteen hundred and nine, use obscene and threatening language toward Sergeant _____, United States Marine Corps, the sergeant of the guard at said barracks.

32. USING THREATENING, ABUSIVE, AND OBSCENE LANGUAGE.

Specification.—In that _____, a coal passer in the United States Navy, attached to and serving on board the United States ship _____, at the navy-yard, _____, _____, having on or about the twenty-second day of November, nineteen hundred and eight, been ordered by _____, chief boatswain's mate, United States Navy, attached to said ship, to remove certain clothes belonging to him, the said _____, from a towel line on board said ship, did use obscene and threatening language toward the said _____, who was then and there in the execution of his office.

33. WILFUL DESTRUCTION OF PUBLIC PROPERTY.

Specification.—In that _____, a private in the United States Marine Corps, attached to and serving at the marine barracks, navy-yard, _____, _____, having on or about the twenty-fifth day of September, nineteen hundred and eight, been placed in confinement in the prison at said barracks, did wilfully break the glass in the window of the cell in which he was confined.

RECORD OF PROCEEDINGS IN REVISION

OF A

SUMMARY COURT-MARTIAL

IN THE CASE OF

J—— Z. S——, seaman, U. S. Navy.

U. S. S. *Hancock*,
Navy-Yard, New York,
February —, 19—.

Record in revision.—The proceedings in revision must form a separate and complete record which should be *prefixed* to the record of which it is a revision.

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Order for revision.

U. S. S. HANCOCK,
NAVY-YARD, NEW YORK,

February —, 19—.

SIR: The summary court-martial before which J—— Z. S——, seaman, U. S. Navy, was tried will reconvene as soon as practicable and will reconsider its sentence in his case as it is not, in my opinion, adequate to the offense found proved.

VAR. 1. ——— as it is not one which the court is authorized to adjudge.

VAR. 2. ——— as its execution will, in the opinion of the medical officer, produce serious injury to his health.

VAR. 3. ——— reconsider its finding and sentence, as the finding is not in accord with the evidence adduced.

VAR. 4. ——— reconsider its record in the following particulars:

VAR. 5. ——— reconsider its record in his case and make such corrections as are warranted by the facts in the following particulars: On page 14, it does not appear that the witness, ———, was duly sworn; on page 20, it does not appear that the accused entered when the court was opened.

(See further variations under action of convening authority.)

D—— B. W——,

Captain, U. S. Navy, Commanding U. S. S. Hancock.

Lieut. A—— R. K——, U. S. Navy,

Senior Member.

Revising authority to scrutinize record.—Upon receipt of the record of a court-martial the reviewing officer shall proceed at once to scrutinize the same, in order to return it for revision, if such course be necessary, before the dissolution of the court.

No new testimony admitted.—When a court is ordered to revise its proceedings no new testimony shall be brought forward in any shape.

Revision confined to matters of record.—The revision shall be strictly confined to a reconsideration of the matter already recorded in the proceedings, no part of which is to be amended, altered, or annulled in any way.

Separate record.—During the revision an entirely separate record shall be kept, to which the order for reassembling must be prefixed.

How record returned.—The record may be returned for revision by means of indorsement. (See action of the convening authority.)

Record of revision.—A full entry shall be made of all the proceedings, verified by the signatures of the members and the recorder, and upon completion the entire record be transmitted to the reviewing officer.

U. S. S. HANCOCK,
NAVY-YARD, NEW YORK,

February —, 19—.

The court met at 10 a. m., pursuant to an order hereto prefixed, marked "A," which was read by the recorder.

VAR. ——— pursuant to an order contained in the indorsement of the convening (reviewing) authority on the case, dated February —, 19—, which was read by the recorder.

Present: All the members and the recorder.

The recorder withdrew.

Recorder excluded.—The recorder shall be excluded from the court room during a revision of the finding and sentence of the court.

What record must show.—If the court be reconvened to amend or otherwise remedy a defect or omission in the record, which may be done if the facts warrant, the record must show that all members of the court, the recorder, and the accused (with counsel, if any) were present, and that the amendment was then made to conform to and express the truth in the case.

Presence of accused.—If the court be reconvened to correct clerical errors the accused need not be present, nor shall he be present during the revision of any matters that occurred in closed court.

Correction of clerical errors.—Clerical errors are not to be corrected in an informal manner by erasure or interlineation. The legal procedure is for the court to continue the record by a report of the proceedings in revision when the amendment is made.

Revision by a different court.—The only case in which a revision may be had by a summary court-martial other than the one which sat originally is where the medical officer certifies that the execution of the original sentence would be seriously injurious to the health of the accused. In such a case the new court is restricted in its action to the review of the record of the former trial and a redetermination of the sentence. No further testimony may be admitted.

(See also Revision, general court-martial.)

The recorder was recalled and directed to record that the court decided to revoke its former sentence in the case of J—— Z. S——, seaman, U. S. Navy, and to substitute therefor the following sentence: _____.

VAR. 1. _____ revoke its former finding in the case of J—— Z. S——, seaman, U. S. Navy, and to substitute therefor the following finding: The specification proved in part, proved except, etc. The court respectfully adheres to its former sentence.

VAR. 2. _____ decided respectfully to adhere to its former finding (or, finding and sentence; or sentence).

VAR. 3. _____ decided to correct the following clerical errors: On page 7, by inserting between lines 10 and 11 the following: "_____."

(a) On page 9, by omitting from lines 16 and 17 the following: "_____,"

(b) On page 20, by striking out the words "_____," lines 5 to 9, inclusive, and substituting therefor the words "_____."

A—— R. K——,
Lieutenant, U. S. Navy, Senior Member.

J—— M. D——,
Lieutenant, U. S. Navy, Member.

G—— B. W——,
First Lieutenant, U. S. Marine Corps, Member.

J—— H. R——,
Ensign, U. S. Navy, Recorder.

The court took up the next case.

VAR. 1. _____ adjourned to meet _____.

VAR. 2. _____ adjourned to await orders from the convening authority.

VAR. 3. _____ proceeded with the trial of _____.

A—— R. K——,
Lieutenant, U. S. Navy, Senior Member.

J—— H. R——,
Ensign, U. S. Navy, Recorder.

(Here follow the indorsements of the convening and reviewing authorities, as previously indicated.)

DECK COURTS.

8483—10—12

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DECK COURT.

U. S. S. SALEM,
NAVY-YARD, NEW YORK,
August 2, 1909.

Lieut. A—— B. C——, U. S. Navy, is hereby ordered as deck court to try J—— K. B——, coal passer, U. S. Navy, for the following offense:

By whom ordered.—Deck courts for the trial of enlisted men in the Navy and Marine Corps for minor offenses may be ordered by the commanding officer of a naval vessel, by the commandant of a navy-yard or station, by a commanding officer of marines, or by higher naval authority. After consideration of reports against enlisted men for offenses not warranting punishment more severe than such court is authorized to adjudge, the officers herein mentioned shall, in their discretion, cause the offenders to be brought before a deck court.

Composition and authority.—A deck court shall consist of one commissioned officer only, who, while serving in such capacity, shall have power to administer oaths, to hear and determine cases, and to impose, in whole or in part, the punishment prescribed by article 30 of the Articles for the Government of the Navy, but in no case shall a deck court adjudge discharge from the service, nor shall it adjudge confinement or forfeiture of pay for a longer period than twenty days. The order constituting the court shall be in writing.

Who shall not be ordered as deck court.—Officers shall not be ordered as deck court who are below the rank of lieutenant in the navy, or captain in the Marine Corps, except in cases where there is no officer of such rank attached to the command.

When approval not necessary.—An officer empowered to order these courts shall not designate himself for this duty unless he is the only commissioned officer attached to the vessel, navy-yard, or station, or command, or when the subordinate officers are below the specified rank, in which cases he shall constitute the deck court and finally determine the cases tried by him, and no order appointing the court need be issued, but the officer in question shall enter on the record that he is "the only officer (of the specified rank) attached to the vessel," "navy-yard," or "present with the command," as the case may be. In these cases no approval of the sentence is required, but he should sign as above and date his signature. In all other cases the sentences must, before they can be executed, be approved by the officer ordering the court or his successor in office.

Specification: In that J—— K. B——, coal passer, U. S. Navy, having been granted liberty on June 25, 1909, until 12 m., June 27, 1909, did, upon the expiration of said liberty fail to return to his ship and did remain absent from his station and duty without leave until 10 a. m., June 28, 1909.

R—— A. V——, yeoman second class, U. S. Navy, will act as recorder.

Recorder.—Any person in the navy under the command of the officer by whose order a deck court is convened may be detailed to act as recorder thereof.

J—— J. K——,
Commander U. S. Navy, Commanding.

I consent to trial by deck court as above.

Consent of accused.—When an enlisted man is brought before the deck court for trial, he shall signify his willingness to be so tried by affixing his signature to a statement to that effect in the record. If he does so object he shall be tried for the offense by a summary court-martial.

J—— K. B——,
Coal Passer, U. S. Navy.

Date of present enlistment: November 17, 1907.

Rate of pay per month: \$24.20.

Previous convictions during present enlistment:

March 16, 1909, absent overleave, February 24-30, 1909. S. c. m., sentence: S. c., b. w., 5 d.; l. p. \$18.60. App'd. by C.-in-C., March 18, 1909.

April 9, 1909, forty and one-half hours overleave. Deck court sentence: L. p. \$13.70. Approved April 13, 1909.

Previous convictions.—Cases submitted for trial by deck court shall be accompanied by evidence of previous convictions, or by a statement to the effect that none such exists. When previous convictions are considered in determining the sentence, a note to that effect shall be entered upon the record.

U. S. S. SALEM,
NAVY-YARD, NEW YORK,
August 2, 1909.

The accused was arraigned and pleaded as follows:

Not guilty. (Guilty.)

Procedure.—The procedure as to counsel for the accused, swearing of the recorder, arraignment, pleading, swearing of the witnesses, prosecution and defense, direct and cross examination, certificate of medical officer, etc., for the deck court shall be the same as is provided for summary courts-martial.

Witness's testimony.—If the accused, having offered no objection to trial by deck court, does not plead guilty, the officer sitting as such court shall summon the witnesses and administer to them the oath prescribed by article 41 of the Articles for the Government of the Navy. The accused may, at his own request, but not otherwise, be permitted to testify in his own behalf; he may also make a statement, if he so desires. The facts established by the testimony shall be submitted on a separate sheet to the convening authority. In cases of contempt the deck-court officer shall report the facts to the convening authority for such disciplinary action as may be appropriate.

Witnesses for prosecution: Midshipman C——— M. Y———, U. S. Navy.

Witnesses for defense: ——— ———, fireman, first class, U. S. Navy.

Civilian witnesses.—Deck courts are empowered to compel the attendance of civilian witnesses and to make use of depositions in the same manner as general courts-martial.

Finding: Guilty. (Not guilty.)

Sentence: To lose pay amounting to \$16.13.

VAR. The court acquits the said ——— of the offense specified.

A——— B. C———,
Lieutenant, U. S. Navy, Deck Court.

Convening authority to decide on trial.—The officer ordering the court shall determine when and what cases shall be brought before it; but, whenever practicable, the trial shall take place within forty-eight hours after the offense is committed. Delay in the trial of the accused may be considered in adjudging sentence.

Completion and submission of record.—The deck court, as soon as a trial is completed, shall record its finding and sentence in the record and submit the same to the officer convening the court, or to his successor in office, upon whose approval the sentence may be carried into effect.

(If sentence involves more than ten days' confinement on diminished rations, or on bread and water, the following certificate is required:)

Having examined accused and place of his confinement, I am of opinion that execution of this sentence would (not) produce serious injury to his health.

A——— A. B———,
Surgeon, U. S. Navy,
Senior Medical Officer on Board.

The sentence is —— approved and the accused informed this day,
 June 29, 1909.

J——— J. K———,
Commander, U. S. Navy, Commanding.

Reviewing authority.—The officer within whose command a deck court sits shall have full power as reviewing authority to remit or mitigate, but not to commute, any sentence imposed by such court; but no sentence of a deck court shall be carried into effect until it shall have been so approved or mitigated, and such officer shall have power to remit any punishment such court may adjudge.

Action of convening authority.—The convening authority or his successor in office, shall, after careful scrutiny of the record and of the testimony, if any be given, note his action thereon, with date and signature, due attention being paid to the foregoing paragraph. Should the only officer present with the command sit as deck court the finding and sentence shall be recorded in like manner. No other record of the proceedings need be kept, and the result of such trials shall be published to the accused only.

Transcript.—Brief transcripts, as in summary courts-martial cases, shall be furnished to the officer of the deck for entry in the ship's log, and to the executive officer for entry on the enlistment record of the accused.

Disposition of record.—The record of a deck court shall, when completed, be at once forwarded by the convening authority to the Judge-Advocate-General. Should the accused desire to make an appeal to the reviewing authority, i. e., the Secretary of the Navy, within the prescribed period of thirty days, such statement as he may wish to make shall be submitted in writing and appended to the record of testimony, separately therefrom, and shall be forwarded therewith to the Navy Department (office of the Judge-Advocate-General). As the Secretary of the Navy is the reviewing authority, no action by any intermediate authority is required.

Accounts checked, \$16.13.

J——— F. K———,
P. A. Paymaster, U. S. Navy.

Pay accounts.—Records of deck courts shall show, over the signature of the pay officer having the pay accounts of the accused, that the loss of pay, if there be any adjudged and approved, has been checked. In order to enable the pay officer to make the necessary certificate, the commanding officer shall forward with the record the requisite order for the checkage; such order shall be in duplicate, one copy of which shall be sent immediately to the Auditor for the Navy Department. The order shall contain the following information: Name, rate, date of trial, offense (condensed as much as possible), and sentence as finally approved. If the offense is absence over leave, the dates of the beginning and ending of the unauthorized absence shall be stated.

(Briefing for record of deck court.)

U. S. _____,
 (ship or station)
 BOSTON, MASS., _____.

Record of Deck Court No.—. Held September 19,
 19—.

Respectfully forwarded to the office of the Judge-Advocate-General.

J——— J. K———,
Lieutenant, U. S. Navy, Commanding.

Form for record of proceedings of deck court when there is only one officer, or only one of the required rank, attached to the vessel, navy-yard, station, or command.

DECK COURT.

U. S. S. SEVERN,
NAVAL ACADEMY, ANNAPOLIS, MD.,

July 12, 1909.

Trial of _____, coal passer, U. S. Navy, for the following offense:

(See notes and variations under preceding case.)

Specification: In that _____, coal passer, U. S. Navy, having been granted liberty to expire at 7 a. m. on July 12, 1909, did, upon the expiration of said liberty, fail to return to his ship and did remain absent from his station and duty without leave until 10 a. m., July 13, 1909.

J_____ A. H_____, chief yeoman, U. S. Navy, will act as recorder.

I consent to trial by deck court as above.

_____,
Coal Passer, U. S. Navy.

Date of present enlistment: October 15, 1908.

Rate of pay per month: \$24.20.

Previous convictions during current enlistment: None.

U. S. S. SEVERN,
NAVAL ACADEMY, ANNAPOLIS, MD.,

July 12, 1909.

The accused was arraigned and pleaded as follows: Guilty.

Witnesses for prosecution: None.

Witnesses for defense: None.

Finding: Guilty.

Sentence: To lose pay amounting to \$7.25.

(If sentence involves more than ten days' confinement on diminished rations, or on bread and water, the following certificate is required:)

Having examined accused and place of his confinement, I am of opinion that execution of this sentence would (not) produce serious injury to his health.

A_____ A. B_____,
Surgeon, U. S. Navy,
Senior Medical Officer on Board.

The accused informed this day, July 12, 1909.

R_____ M. J_____,
Lieutenant, U. S. Navy, Commanding.

The only officer attached to the vessel (navy-yard, etc.).

VAR. The only officer of the required rank attached to the vessel (navy-yard, etc.).

Accounts checked, \$—.

J_____ F. K_____,
P. A. Paymaster, U. S. Navy.

**SUMMARY AND DECK COURTS.—SCHEDULE OF
PUNISHMENTS.**

SUMMARY AND DECK COURTS.

Schedule of punishments.

Offense.	Number days' loss of pay for act and for each day's absence.
Absence over leave exceeding 24 hours	5, act; 4, each day absent.
Absence without leave	15, act; 4, each day absent.
Absence without leave, attempted	15.
Absence without leave, to avoid guard or draft	15, additional.
Absence without leave, using another's name	30.
Asleep on post or watch	Max.
Delivered after absence without or over leave	5, increased to 10 or 15 days for long absence.
Disobedience, deliberate	Max.
Disorderly conduct	15.
Disrespect to commissioned or warrant officer	Max.
Disrespect to petty officer	60.
Drunk, not having been on liberty	30.
Drunk on duty, post, or guard	Max.
Failure to obey	Max.
Falsehood	Max.
Gambling	30.
Leaving post or watch	Max.
Liquor unlawfully in possession	15.
Missing ship after absence without or over leave	30.
Neglect of duty	Max.
Resisting arrest	30.
Returning from liberty unfit for proper performance of duty	3.
Returning in civilian clothes	10.
Sitting down on post or watch	15.
Smuggling or attempting to smuggle liquor	15.
Surrendering at another station	30.
Threatening, abusive, or obscene language	Max.
Previous conviction during current enlistment	In case of a second conviction for an offense of a similar nature, the punishment should be doubled; and for a third or subsequent conviction, either the maximum or a bad conduct discharge should be adjudged. If the offense is of a different character, increased by 15 days' loss of pay.

The act of a man in absenting himself without leave calls for 15 days' loss of pay; and each day's absence calls for an additional loss of pay as specified above, using the multiplier 4, in connection with the exact number of days absent. For example, a man who absents himself without leave and remains away 7 days should be awarded $15 + (4 \times 7) = 43$ days' loss of pay.

Absence over leave is a distinct offense. The number of days over leave is to be used in connection with the multiplier. Thus, a man who remains over leave 7 days is adjudged $5 + (4 \times 7) = 33$ days' loss of pay.

A member of a boat's crew leaving the boat without permission may be considered as *leaving post*, *A deck court can not adjudge loss of pay for a longer period than twenty (20) days.*

Nothing in the foregoing schedule is intended to limit the power of summary courts-martial under article 30 of the Articles for the Government of the Navy, or of deck courts under the act of February 16, 1909, but it is considered that a better disciplinary effect is obtained if a loss of pay is not reduced by the Department, and it is, therefore, suggested that the schedule be generally followed, not only for the reason given above, but also to secure uniformity of punishment throughout the service.

COURTS OF INQUIRY.

RECORD OF PROCEEDINGS

OF A

COURT OF INQUIRY

CONVENED AT

THE NAVY YARD, NEW YORK,

BY ORDER OF

THE SECRETARY OF THE NAVY

(*or*, the Commander in Chief, U. S. Atlantic Fleet)

(*or*, the Commander, Third Squadron, U. S. Pacific Fleet)

TO INQUIRE INTO

June —, 19—.

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FIRST DAY.

NAVY-YARD, NEW YORK,
Friday, ———, 19—.

The court met at 10 a. m.

Notes and variations.—See notes and variations under general court-martial procedure.

Present:

Capt. A——— B. C———, U. S. Navy, president;
Commander D——— E. F———, U. S. Navy, and
Commander G——— H. K———, U. S. Navy, members; and
Lieut. L——— M. N———, U. S. Navy, judge-advocate.

VAR. Absent: Commander G——— H. K———, U. S. Navy, member, owing to (*or*, for reasons unknown, due inquiry having been made by the judge-advocate).

The judge-advocate read a certificate accounting for the absence of Commander G——— H. K———, U. S. Navy, which is appended, marked "——."

The court then took a recess until —— (*or*, addressed a letter to the convening authority, a copy of which is appended, marked "——") (*or*, adjourned until —— to await the arrival of the absent member).

The court was cleared and the precept, together with the accompanying instructions, were read. All other matters preliminary to the inquiry were determined, and, after deciding to sit with open doors, the court was opened.

VAR. All other matters preliminary to the inquiry were determined, and the court announced that in obedience to orders it would sit with closed doors (*or*, decided to sit with closed doors).

Withdrawal of judge-advocate.—The judge-advocate of a court of inquiry does not withdraw when the court is cleared.

The judge-advocate, having received permission, introduced as reporter (clerk or stenographer) Chief Yeoman A——— B———, U. S. Navy.

VAR. The judge-advocate having asked and received permission to employ a stenographer (clerk or interpreter), his request, copy of which is appended, marked "——," was referred to the convening authority.

VAR. 2. F——— E. D———, clerk (stenographer, interpreter), entered by authority contained in letter, copy (*or*, original) appended, marked "——."

The defendant, Commander O——— P. Q———, U. S. Navy, commanding the U. S. S. ——, appeared and, having received

permission, introduced Lieut. R—— S. T——, U. S. Navy, as his counsel.

Defendant's right to be present.—The convening authority should notify the defendant of his right to be present during the investigation.

When there is no defendant.—When the court is convened to inquire into certain facts, and no person is placed in the position of defendant, the record will necessarily omit all that relates to such defendant and proceed with the administration of the oaths.

When proceedings indicate a defendant.—If it should appear at any stage of the proceedings that any other person or persons than those named by the convening authority are implicated, they should be called before the court, informed of all the evidence which tends to implicate them, and instructed as to their right to cross-examine witnesses and offer evidence in defense.

VAR. 1. The court received from —— —— a communication, which was read and appended, marked “——,” stating that the defendant (in case of more than one defendant, give names) was unable to appear, owing to —— . (Here give reason; if illness, a medical certificate must be presented, read, and appended. This communication may be made personally by any competent person.)

The court then, at ——, adjourned until —— . (See adjournment.)

VAR. 2. The defendant, etc., appeared and stated that he did not desire counsel.

VAR. 3. The defendant appeared and asked permission to introduce Lieut. U—— V. W——, U. S. Navy, as counsel; at the request of (a member) (the judge-advocate) the court was cleared. When opened the defendant appeared and was informed that, while he was at liberty to designate some other person, his request was denied.

VAR. 4. The complainant, Capt. X—— Y. Z——, U. S. Navy, appeared, and, having received permission, introduced Major B—— C. D——, U. S. Marine Corps, as his counsel. (If counsel is rejected, procedure same as in preceding variation.)

Complaint communicated to parties.—The court having decided on its mode of procedure, the defendant, and the complainant, if there be one, should be called in and the complaint or subject to be investigated communicated to them.

The judge-advocate read the precept, and accompanying papers, the original of the former and certified copies of the latter are appended, marked “——,” “——,” etc.

VAR. The original precept and the accompanying papers are appended, marked “——,” “——,” etc.

The defendant stated that he did not object to any member present.

VAR. The defendant, and the complainant were asked if they objected to any member present, to which each replied in the negative.

Challenge.—In the case of challenge proceed as laid down for general courts-martial.

The members, judge-advocate, and clerk (stenographer, interpreter) were duly sworn.

Oath administered to members.—You, —— ——, do swear (or affirm) well and truly to examine and inquire, according to the evidence, into the matter now before you, without partiality.

Oath administered to judge-advocate.—You, —— ——, do swear (or affirm) truly to record the proceedings of this court and the evidence to be given in the case in hearing.

Oath administered to the clerk (stenographer).—You, ———, swear (or affirm) faithfully to perform the duty of clerk or reporter in aiding the judge-advocate to take and record the proceedings of the court, either in shorthand or ordinary manuscript.

Oath administered to interpreter.—You, ———, swear (or affirm) faithfully and truly to interpret or translate in all cases in which you shall be required so to do between the United States and the defendant.

VAR. (Postponement of inquiry.) The defendant (complainant or judge-advocate) applied for a postponement of the inquiry on the ground (here give reasons). The court was cleared and, after due deliberation, was opened and its decision announced, that the inquiry should be postponed until ——— (or) the inquiry should proceed, (or) it would await the action of the convening authority, who was informed that the defendant (complainant) desired a postponement of the inquiry until ——— for the reason (here give reasons offered for the postponement).

Need not meet daily.—Courts of inquiry, unlike general courts-martial, need not meet from day to day, but have the power to adjourn for such period as they may see fit without the permission of the convening authority.

All witnesses were directed to withdraw, and the inquiry proceeded as follows:

A witness called by the judge-advocate was duly sworn.

Oath administered to witness.—You, ———, do solemnly swear (or affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the matter under inquiry: So help you God (or, This you do under the pains and penalties of perjury).

Examined by the judge-advocate:

- 1. Q. * * *
- A. * * *

Examined by the complainant (if there be one):

- 20. Q. * * *
- A. * * *

Cross-examined by the defendant:

- 25. Q. * * *
- A. * * *

Reexamined by the judge-advocate:

- 40. Q. * * *
- A. * * *

Examined by the court:

- 52. Q. * * *
- A. * * *

The witness verified his testimony, was duly warned and withdrew.

Correction of testimony.—See variations under general courts-martial for method of having witness pronounce testimony correct.

Parties may introduce evidence.—When the judge-advocate has introduced all the evidence on the part of the Government, the defendant (the complainant, if there be one) may introduce evidence in the same manner as the accused in a court-martial.

The court then, at — o'clock —. m., adjourned until — o'clock —. m. the next day (Saturday), ———, 19—.



SECOND DAY.

NAVY-YARD, NEW YORK,
Saturday, ———, 19—.

The court met at — a. m., pursuant to adjournment of yesterday.
 Present: All the members, judge-advocate, and the parties to the inquiry.

The record of proceedings of yesterday (or, the previous day) was read and approved.

A witness called by the judge-advocate was duly sworn.

Examined by the judge-advocate:

1. Q. * * *

A. * * *

There being no further questions to ask, etc.

The judge-advocate had no more witnesses to call.

A witness called by the defendant was duly sworn.

Examined by the defendant:

1. Q. * * *

A. * * *

Cross-examined by the judge-advocate:

8. Q. * * *

A. * * *

Reexamined by the defendant:

15. Q. * * *

A. * * *

Examined by the court:

30. Q. * * *

A. * * *

The witness verified his testimony, etc.

The defendant had no further witnesses to call.

The court had no witnesses to call.

Arguments.—At this point the arguments are made, or statements submitted, by the complainant, defendant, and judge-advocate. See procedure under general courts-martial.

At — o'clock the inquiry was finished and the parties thereto withdrew.

The court having thoroughly inquired into all the facts and circumstances connected with the allegations contained in the papers attached to the precept, and having considered, with closed doors, the evidence adduced, submits a statement of the facts which it deems to be established.

FINDING.

The allegations and complaints made by Commander O—— P. Q——, U. S. Navy, were to the following effect: (Here state them concisely.)

Of these allegations, the court finds that the following are not sustained by the evidence adduced, namely: (Here insert them in full.)

The complaints and allegations made by Lieut. R—— M. P——, U. S. Navy, against Commander O—— P. Q——, U. S. Navy, are as follows: (Here state them concisely.)

Of these several allegations and complaints, the court finds that the one which accuses Commander O—— P. Q——, U. S. Navy, of —— is not sustained by the evidence adduced.

As to the remaining allegations, the court finds the following established by the evidence, namely: (Here insert those found established.)

OPINION.

In the opinion of the court no further proceedings should be had against Lieut. R—— M. P——, U. S. Navy, for the reason that of the allegations against him which have been sustained, but one, that of ——, is of sufficient weight to justify such further action, and (here state reason why further action is unnecessary or not desirable, if such be the case).

And in the opinion of the court further proceedings should be had against Commander O—— P. Q——, U. S. Navy, and that officer should be tried by general court-martial for the following specific acts, namely:

For restoring Lieutenant —— to duty when he (——) had been suspended by Lieut. R—— M. P——, U. S. Navy, in the clear exercise of his (Lieutenant P——'s) prerogative as commanding officer, thereby tending to injure the discipline of the ship.

For publicly reprimanding Lieutenant P—— in the presence of Surg. —— and Lieut. ——, U. S. Navy, and thereby subverting the discipline of the ship.

The record of proceedings of this second day of the inquiry was read and approved, the court being closed during the reading of so much thereof as pertains to the proceedings in closed court.

Captain, U. S. Navy, President.

Lieutenant, U. S. Navy, Judge-Advocate.

Revision.—The proceedings of a court of inquiry may be revised as often as the convening authority may deem necessary, and new evidence may be received and recorded on every such revision. Any of the witnesses may be recalled and reexamined with a view to eliciting further information.

NAVY DEPARTMENT,
Washington, October 18, 19—.

The finding, opinion, and recommendation of the court of inquiry in the foregoing case are approved (disapproved).

_____,
Acting Secretary of the Navy.

VAR. The findings and recommendation of the court of inquiry in the foregoing case are approved. The department does not, however, deem it advisable to bring _____ to trial by general court-martial, as recommended by the court, but will address a letter to him admonishing (cautioning) him as to his conduct in the matter.

_____, *Secretary of the Navy.*

VAR. The recommendation of the Judge-Advocate-General in the foregoing matter is approved.

_____, *Secretary of the Navy.*

Action of commander in chief.—If the court of inquiry is convened by a commander of a fleet or squadron, his action on the record is similar to the above.

RECORD OF PROCEEDINGS

OF A

COURT OF INQUIRY

CONVENED AT

THE NAVY-YARD, NEW YORK,

BY ORDER OF

THE SECRETARY OF THE NAVY

TO INQUIRE INTO

the loss (or grounding) of the late U. S. S. ——— (or, the U. S. S.
—————).

November —, 19—.

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FIRST DAY.

NAVY-YARD, NEW YORK,
Friday, November —, 19—.

The court met at 10 o'clock a. m., with closed doors.

(See notes and variations under general court-martial.)

Present:

Capt. A—— B. C——, U. S. Navy, president;
Commander D—— E. F——, U. S. Navy, and
Commander G—— H. K——, U. S. Navy, members; and
Lieut. T—— T. W——, U. S. Navy, judge-advocate.

Variations.—The variations which are recorded under the proceedings of an ordinary court of inquiry are also applicable to this form.

The judge-advocate read the precept and other papers, and, the court having decided to sit with open doors, the doors were opened.

Commander L—— M——, U. S. Navy; Lieut. N—— O——, U. S. Navy; and Ensign P—— Q——, U. S. Navy, appeared before the court.

The precept and accompanying papers hereto appended, marked “——,” “——,” and “——,” were read by the judge-advocate, and each of the above-named officers stated that he did not object to any member.

Challenge.—In case of challenge proceed as laid down in the form for general courts-martial.

The members and judge-advocate were duly sworn.

Oaths.—The forms of oaths are the same as those under ordinary courts of inquiry.

The court then took a recess until 2 o'clock p. m., when it reconvened on board the U. S. S. —— . Present: All the members and the judge-advocate.

All the (surviving) officers and men of the U. S. S. —— having been mustered on the quarter-deck of that vessel, the president explained the purpose of the court and the rights of all persons concerned and duly administered to them the oath of witnesses.

VAR. —— and duly administered to them the oath of witnesses, except to —— and ——, who were absent from the vessel (here give reason).

The official report of Commander L—— M——, U. S. Navy, containing the narrative of the grounding of the U. S. S. ——, on August —, 19—, was then read by the judge-advocate; original hereto appended, marked “——.”

The following questions were then put to the commanding officer by the court:

Q. Is the narrative just read to the court a true statement of the grounding (loss) of the ———, on August —, 19—?

A. * * *

Q. Have you any complaint to make against any of the officers or men of said vessel on said occasion?

A. * * *

The following questions then put by the court to the (surviving) officers and crew of the said vessel, and they were instructed by the president that if they had anything to say in answer to the questions propounded they should step to the front.

Q. Have you any objection to make to the narrative just read, or anything to lay to the charge of any officer or man concerning the grounding (loss) of the ———, on August —, 19—?

A. The officers and men answered "No" and nobody stepped to the front (or as the case may be).

All the officers and such of the crew as filled positions of special responsibility on the occasion referred to were informed by the president that they have the right to be present during the sessions of the court to offer evidence and cross-examine witnesses if they so desire.

The court then, at 3.40 p. m., took a recess to meet at 4 p. m., at which time it reconvened at the navy-yard, New York (or, as the case may be).

Present: All the members, the judge-advocate, Commander L——— M———, Lieut. N——— O———, and Ensign P——— Q———, U. S. Navy.

The court then, at 4.05 p. m., adjourned until 10 a. m. to-morrow, the — instant.

SECOND DAY.

NAVY-YARD, NEW YORK,
Saturday, November —, 19—.

The court met at 10 a. m.

Present: All the members, the judge-advocate, Commander L——— M———, Lieut. N——— O———, and Ensign P——— Q———, U. S. Navy.

The record of proceedings of yesterday was read and approved. The (surviving) officers and men of the U. S. S. ———, who were absent yesterday, were called before the court and duly sworn; the above questions were propounded and the same instructions given, and no one had anything to urge (or as the case may be.)

The officers and men then before the court were informed of their right to be present during the sessions of the court, to offer evidence, and to cross-examine witnesses if they so desired.

Commander L—— M——, U. S. Navy, was called as a witness, and, after being duly sworn, testified as follows:

Examined by the judge-advocate:

* * * * *

Examined by Lieut. N—— O——, U. S. Navy:

* * * * *

Examined by Ensign P—— Q——, U. S. Navy:

* * * * *

Examined by the court:

* * * * *

The witness verified his testimony, and then resumed his seat as an interested party.

Verification of testimony.—The procedure under general courts-martial, so far as it relates to the various methods of entering on the record the fact that the witness has pronounced the testimony as recorded correct, is applicable to courts of inquiry.

At this point it appeared to the court that Lieut. R—— S——, U. S. Navy, was an interested party. He was accordingly called before the court, so advised, and, after stating that he did not object to any member, was informed of his right to be present, to offer evidence, and to cross-examine witnesses if he so desired.

The court then, at — p. m., adjourned until 10 a. m. Monday, the — instant.

THIRD DAY.

NAVY-YARD, NEW YORK,
Monday, November —, 19—.

The court met at 10 a. m.

Present: All the members, the judge-advocate, and the parties to the inquiry. The record of proceedings of Saturday was read and approved.

Lieut. C—— S——, U. S. Navy, was called as a witness by Ensign P—— Q——, U. S. Navy, and, being duly sworn, testified as follows:

Examined by Ensign P—— Q——:

* * * * *

Examined by the judge-advocate:

* * * * *

Examined by Commander L—— M——:

* * * * *

The court and Lieut. N—— O—— had no questions to ask this witness.

The witness verified his testimony, etc.

There were no more witnesses to call.

Commander L—— M—— and Lieut. R—— S——, U. S. Navy, each submitted a written statement, which statements were read and hereto appended, marked "——" and "——."

The judge-advocate then read his reply, hereto appended, marked "——."

Oral statements.—If a stenographer is employed these statements may be made orally.

All the evidence being before the court, and there being nothing further to offer, the court was cleared and, after maturely deliberating on the evidence adduced, finds as follows: (Here insert the findings of the court.)

Findings.—When a court is required to report facts, it is not to be understood that the bare record of the testimony is meant but also the result and conclusion of the court from hearing the evidence.

Opinion.—The court shall, if so directed, give an opinion on the merits of the case, and the propriety or expediency, or otherwise, of further action.

The court is of the opinion (here insert opinion).

The court is also of opinion that further proceedings should be had in the case of Commander L—— M——, U. S. Navy, as follows: (Here insert definitely the grounds upon which further proceedings should be had, and also what proceedings are recommended, whether general court-martial, letter of reprimand, etc.)

Minority report.—Here insert minority report if there be one.

The court then, at 3 p. m., adjourned until 10 a. m. to-morrow, the — instant.

FOURTH DAY.

NAVY-YARD, NEW YORK,
Tuesday, November —, 19—.

The court met at 10 a. m.

Present: All the members and the judge-advocate.

The record of proceedings of Monday was read and approved, the court being closed during the reading of so much thereof as pertains to the proceedings in closed court.

A—— B. C——,
Captain, U. S. Navy, President.

T—— T. W——,
Lieutenant, U. S. Navy, Judge-Advocate.

The court having finished the inquiry, then at — p. m. adjourned to await the action of the convening authority.

A—— B. C——,
Captain, U. S. Navy, President.

T—— T. W——,
Lieutenant, U. S. Navy, Judge-Advocate.

Precept for court of inquiry.

To Capt. A—— B——, U. S. Navy,
Navy Yard, ——, ——

A court of inquiry, consisting of yourself as president, of Commander C—— D—— and Paymaster E—— F——, U. S. Navy, as additional members, and of First Lieut. G—— H——, U. S. Marine Corps, as judge-advocate, is hereby ordered to convene at the navy-yard, Norfolk, Va., at 10 o'clock a. m., on Tuesday, the —— day of October, 19—, or as soon thereafter as practicable, for the purpose of inquiring into —— (here insert object of inquiry).

Upon the conclusion of the investigation the court will report its proceedings and the testimony taken, with a full statement of all the facts which it may deem to be established by the evidence adduced, together with its opinion as to what further proceedings, if any, should be had in the matter.

If the court shall be of the opinion that further proceedings should be had in the matter, it will include in its report a succinct statement as to the person or persons against whom, and the specific matter upon which, such proceedings should be had.

This employment on shore duty is required by the public interests.

W—— M. W——,
Secretary of the Navy.

Precept for court of inquiry to inquire into the grounding of a vessel.

To Capt. A—— B. C——, U. S. Navy,
Commanding U. S. S. Colorado, Navy-Yard, Mare Island, Cal.:

A court of inquiry, consisting of yourself as president, and of Commander D—— E. F—— and G—— H. K——, U. S. Navy, as additional members, and of Lieut. T—— T. W——, U. S. Navy, as judge-advocate, is hereby ordered to convene at the navy-yard, Mare Island, Cal., at 10 o'clock a. m., on Friday, the 1st day of November, 19—, or as soon thereafter as practicable, for the purpose of inquiring into the circumstances connected with the grounding of the U. S. S. ——, near St. Paul Island, Pribilof Group, Bering Sea, Alaska, on the afternoon of the 5th day of August, 19—.

The attention of the court is invited to the instructions concerning the particulars to be investigated in the case of the loss or grounding of a ship of the navy, contained in the United States Navy Regulations.

The following-described papers relating to the grounding of the U. S. S. —— on the occasion referred to are attached to and made a part of this precept:

Letter dated August —, 19—, from Commander C—— E. C——, U. S. Navy, reporting ——.

Letter dated August —, 19—, from Commander L—— M——, U. S. Navy, reporting ——.

Coast Survey Chart No. —, being the same as that used in navigating the ship on August —, 19—.

Extract from the ship's log for the period beginning —— and ending ——.

The court will diligently and thoroughly inquire into all the circumstances attending the grounding of the said vessel on the date named, and upon the conclusion of the investigation will report to the Department its proceedings, all the testimony taken, and the facts which it may deem to be established by the evidence adduced, together with its opinion as to what further proceedings, if any, should be had in the matter.

The court will also report whether or not the grounding of said vessel was, on the occasion named, in any respect due to fault or negligence on the part of any of the

officers or members of the crew of said vessel, and if so, the names of such officers or members of the crew and in what respect and to what extent any or either of them were so at fault or negligent.

If the court shall be of opinion that further proceedings should be had in the matter, it will include in its report a succinct statement as to the person or persons against whom, and the specific matter upon which, such proceedings should be had.

This employment on shore duty is required by the public interests.

W—— M. W——,
Secretary of the Navy.

Letter to the president of the court.

NAVY DEPARTMENT,
Washington, September —, 19—.

SIR: Referring to the Department's precept of this date, ordering a court of inquiry, of which you are president, to convene at the navy-yard, Mare Island, Cal., on Friday, the — instant, for the purpose of inquiring into the circumstances connected with the grounding of the U. S. S. —, near St. Paul Island, Pribilof Group, Bering Sea, Alaska, I have to advise you that Commander A—— R. X——, U. S. Navy, commanding the ——, and Lieut. S—— P. O——, U. S. Navy, the executive officer, and Lieut. C—— R. Y——, U. S. Navy, the navigator of that vessel, have been informed of their right to be present during the investigation, to cross-examine witnesses, and offer such evidence as they may desire.

If, during the progress of the investigation, it shall appear that others than those mentioned are entitled to appear as defendants, they will be called before the court and informed of their right to be present and cross-examine witnesses, and offer evidence before the court should they desire to do so.

As the court has been directed to report whether or not the grounding of the U. S. S. —— was in any respect due to the fault or negligence on the part of any of the officers or crew of said vessel, etc., you will inform the officers, and such of the crew as may have filled positions of special responsibility upon the occasion referred to, that they have the same right to be present during the sessions of the court, to offer evidence, and cross-examine witnesses, if they so desire.

W—— M. W——,
Secretary of the Navy.

Capt. A—— B. C——, U. S. Navy,
Commanding U. S. S. Colorado, Navy-Yard, Mare Island, Cal.

Letter to party to inquiry.

NAVY DEPARTMENT,
Washington, September —, 19—.

SIR: A court of inquiry, of which Capt. A—— B. C——, U. S. Navy, is president, has been ordered to convene at the navy-yard, Mare Island, Cal., at 10 o'clock a. m., on Friday, the — day of November, 19—, for the purpose of inquiring into the circumstances connected with the grounding of the U. S. S. ——, near St. Paul Island, Pribilof Group, Bering Sea, Alaska, on the afternoon of the — day of August, 19—.

You have the right to be present during the investigation, to cross-examine witnesses, and offer evidence before the court, should you desire to do so.

W—— M. W——,
Secretary of the Navy.

Commander A—— R. X——, U. S. Navy,
U. S. S. ——, *Navy-Yard, Mare Island, Cal.*

Letter to commandant of navy-yard informing him of ordering of court.

NAVY DEPARTMENT,
Washington, September —, 19—.

SIR: A court of inquiry, of which Capt. A—— B. C——, U. S. Navy, is president, has been ordered to convene at the navy-yard under your command, at 10 o'clock a. m., on Friday, the — day of November, 19—, for the purpose of inquiring into the circumstances connected with the grounding of the U. S. S. ——, near St. Paul Island, Pribilof Group, Bering Sea, Alaska, August —, 19—.

You will detail, from among the civil employees or enlisted men under your command, such clerical assistance as may be required by the judge-advocate in recording the proceedings of the court.

W—— M. W——,
Secretary of the Navy.

The COMMANDANT,
Navy-Yard, Mare Island, Cal.

INVESTIGATIONS.

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RECORD OF PROCEEDINGS
OF AN
INVESTIGATION
CONDUCTED AT
THE NAVY-YARD, NEW YORK,
BY ORDER OF
THE SECRETARY OF THE NAVY
TO INQUIRE INTO

May 3, 19—.

8483—10—14

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FIRST DAY.

NAVY-YARD, NEW YORK,

10 a. m., Monday, May 3, 19—.

The investigating officer, Mr. A—— B——, administered the oath prescribed by U. S. Navy Regulations, to Mr. C—— D——, the stenographer, who then took his seat as such.

Section 133, R. S., as amended.—"Any officer or clerk of any of the departments lawfully detailed to investigate frauds on, or attempts to defraud, the Government, or any irregularity or misconduct of any officer or agent of the United States, and any officer of the army detailed to conduct an investigation, and the recorder, and, if there be none, the presiding officer of any military board appointed for such purpose, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation."

Naval officer not authorized.—The foregoing section does not authorize an officer of the navy to conduct an investigation of this character.

The investigating officer called before him Civil Engineer ——, U. S. Navy, and Quarterman —— —— and announced that the investigation would be conducted with open doors.

The investigating officer then read the order directing him to make the investigation, and the other papers transmitted to him by the Department, which are hereto appended, marked "—" and "—."

Civil Engineer —— —— and Quarterman —— —— were then asked if they desired to be present during the investigation and be represented by counsel.

They both replied in the negative.

VAR. Quarterman —— —— desired to be represented by counsel, and his request being granted Mr. O—— R—— entered and took his seat as such.

W—— B. C—— was called as a witness and, after being duly sworn by the investigating officer, testified as follows: (Examination conducted in the same manner as in court of inquiry.)

Oath administered to witness.—You, A—— B——, do solemnly swear (or affirm) that the testimony you shall give in the matter of —— now in hearing, shall be the truth, the whole truth, and nothing but the truth, so help you God (or, this you do under the pains and penalties of perjury).

Right of parties.—The parties to the investigation have the same right to introduce evidence and cross-examine witnesses as the accused in a court-martial or the defendant in a court of inquiry, and the procedure is as outlined under those heads.

The investigating officer and the parties to the investigation had no further witnesses to call and nothing further to offer. The investigating officer announced that the investigation was closed.

After full and mature deliberation, the investigating officer finds as follows: (Here insert finding at length.)

A—— B——,
Investigating Officer,
 —— ———, *Navy Department.*

Letter to investigating officer.

NAVY DEPARTMENT,
Washington, May ——, 19—.

SIR: Under the authority of section 183 of the Revised Statutes, as amended by the act of March 2, 1901, you are hereby detailed to investigate certain charges preferred against A—— W. L——, quarterman in charge of mechanics, department of construction and repair, navy-yard, New York, which charges are contained in a letter dated May ——, 19—, from W—— M——, foreman of construction and repair, and in the papers inclosed in said letter, herewith transmitted.

In accordance with the provisions of the statute above mentioned, you are given authority to administer an oath to any witness attending to testify or depose during the course of the investigation, and you are also authorized to employ a stenographer to assist you in the work, at the usual rate of compensation for such services, to be agreed upon in writing before any services are rendered. This agreement will contain a separate clause embracing the copying of such matter as may not be taken stenographically. Should it appear at any time subsequent to the making of the original agreement that service other than that specified therein is necessary, a new agreement in writing shall at once be made concerning the additional service.

You will notify Quarterman L—— of the nature of the charges against him, notify him that he may be present during the examination of witnesses, and give him an opportunity to introduce such witnesses and to make such statement as he may desire.

Civil Engineer R—— X. Y——, U. S. Navy, who is on duty at the navy-yard, New York, has been advised of these instructions and informed that if he wishes to be present during the examination, or to suggest the calling of witnesses, you will afford him the opportunity to do so.

You will make a careful and thorough examination into all the matters set forth in the papers above mentioned, and upon the completion of the investigation you will report to the Department the testimony taken and the facts established thereby, together with your conclusion concerning such facts.

The commandant of the navy-yard, New York, has been instructed to afford you such facilities as may be necessary to the proper conduct of the investigation.

Very respectfully,

W—— M. W——,
Secretary of the Navy.

Mr. A—— B——,
 —— ———, *Navy Department, Washington, D. C.*

BOARD OF INVESTIGATION.

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RECORD OF PROCEEDINGS
OF A
BOARD OF INVESTIGATION

CONVENED AT
THE NAVY YARD, NEW YORK,

BY ORDER OF
THE COMMANDANT, NAVY-YARD AND STATION, NEW YORK,
(*or*, the Commander in Chief, U. S. Atlantic Fleet)
(*or*, the Commanding Officer, U. S. S. ———, senior officer present)

TO INQUIRE INTO

May —, 19—.

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FIRST DAY.

NAVY-YARD, NEW YORK,
Monday, May —, 19—.

The board met at 10 a. m.

Present:

Commander G—— H——, U. S. Navy, senior member;
Lieut. I—— K——, U. S. Navy, member; and
Ensign L—— M——, U. S. Navy, member and recorder.

The convening order, hereto prefixed marked, “——,” was read and the board decided upon its procedure.

Quarterman A—— B—— was called and the senior member informed him of the instructions to the board, and further informed him that in view of the fact that certain reports against him are to be investigated, that he has the right to be present to cross-examine witnesses and present such evidence as he may desire.

Foreman N—— O—— was called and similarly instructed.

Mr. X—— Y—— was called as a witness and was examined as follows: (Order of examination same as in court of inquiry.)

Oaths.—Boards of this character have no authority to administer oaths, and they can therefore only record the declarations of witnesses.

The procedure of courts of inquiry will be followed.

There were no further declarations to be introduced by the board, by the complainant, or by the defendant, and the two latter were then excused from further attendance.

The board, after maturely deliberating upon the declarations above recorded, finds the following facts to be established: (Here state them as fully, clearly, and concisely as possible.)

G—— H——,
Commander, U. S. Navy, Senior Member.
I—— K——,
Lieutenant, U. S. Navy, Member.
L—— M——,
Ensign, U. S. Navy, Member and Recorder.

Opinion of board.—When required by the order, the board will give its opinion on the merits of the case. The opinion should be recorded immediately after the facts which have been established.

ACTION OF CONVENING AUTHORITY.

NAVY-YARD, NEW YORK,

May —, 19—.

The proceedings and findings (and opinion, if any) of the board in the foregoing case are approved and respectfully referred to the Secretary of the Navy.

_____,
Rear-Admiral, U. S. Navy,
Commandant, Navy-Yard and Station.

VAR. The proceedings and findings (and opinion, if any) of the board in the foregoing case are disapproved for the following reason (give fully), and the papers in the case are respectfully referred to the Secretary of the Navy.

Form of order for board of investigation.

NAVY-YARD, NEW YORK,

April —, 19—.

SIR: A board consisting of yourself as senior member, and of Lieut. I—— X—— and Ensign L—— M——, U. S. Navy, as additional members, and of Ensign N—— O——, U. S. Navy, as recorder, will convene at the navy-yard, New York, at 10 o'clock a. m., on Monday, May —, 19—, for the purpose of inquiring into and reporting upon the allegations contained in a report made against A—— B——, quarterman attached to this yard, by N—— O——, foreman of construction and repair, and in the papers inclosed in said report herewith transmitted.

You will make a careful and thorough examination into all the matters set forth in the papers above referred to, and upon the conclusion of the investigation will report the testimony taken and all the facts established thereby (together with your conclusions covering such facts).

C—— D——,
Rear-Admiral, U. S. Navy,
Commandant, Navy-Yard and Station.

Commander G—— H——, U. S. Navy,
Navy-Yard, New York.

BOARD OF INQUEST.

RECORD OF PROCEEDINGS
OF A
BOARD OF INQUEST
CONVENED
ON BOARD THE U. S. S. NEW YORK,
BY ORDER OF
CAPT. T—— R. S——, U. S. NAVY,
Senior Officer Present,
IN THE CASE OF
A—— B——, seaman, U. S. Navy.
May —, 19—.

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U. S. S. NEW YORK, AT SEA,
LAT. _____, LONG. _____,

May _____, 19—.

SIR: A board, consisting of yourself as president, and of Surg. G—— H—— and Lieut. I—— K——, U. S. Navy, as additional members, and Ensign L—— M——, U. S. Navy, as recorder, will immediately assemble for the purpose of investigating and reporting upon the circumstances attending the death of A—— B——, seaman, U. S. Navy, attached to this vessel.

The proceedings of the board will be conducted in accordance with the provisions of the United States Navy Regulations.

C—— D——,
Captain, U. S. Navy, Commanding U. S. S. New York,
Senior Officer Present.

Lieut. Commander, E—— F——, U. S. Navy, *U. S. S. New York.*

U. S. S. NEW YORK, AT SEA,
LAT. _____, LONG. _____,

May _____, 19—.

At a board of inquest assembled by the order hereto prefixed, marked "—," on the body of A—— B——, seaman, U. S. Navy, found dead.

Present:

Lieut. Commander E—— F——, U. S. Navy, president.
Surg. G—— H——, U. S. Navy, member.
Lieut. I—— K——, U. S. Navy, member.
Ensign L—— M——, U. S. Navy, recorder.

The order convening the board was read by the recorder and the board, having viewed the body, then took the following evidence:

— was called before the board.

1. Q. State all you know about the death of A—— B——, seaman, U. S. Navy.

A. * * *

2. Q. * * *

A. * * *

The witness withdrew.

Witnesses summoned. Every witness who may be able to throw any additional light on the manner or cause of death should be called before the board to testify.

Surg. G——— H———, U. S. Navy, stated that, in his opinion, the deceased met his death (here give cause).

The proceedings closed here.

The board from a view of the body and from the evidence before it is of the opinion that A——— B———, seaman, U. S. Navy, died a natural death (*or*, was killed by ——; *or*, was drowned; *or*, was murdered by ——, *or* by some person or persons unknown; *or*, committed suicide by ——; *or* otherwise, as the case may be), and that his death was (not) occasioned by an act of duty in which he was engaged when it occurred.

E——— F———,
Lieutenant-Commander, U. S. Navy, president.

G——— H———,
Surgeon, U. S. Navy, member.

I——— K———,
Lieutenant, U. S. Navy, member.

L——— M———,
Ensign, U. S. Navy, recorder.

Form of approval.—The form of approval, or other action of the convening authority, will be such as is appropriate to the case.

Revision.—The record may be returned to the board for such revision as is thought necessary.

Record forwarded.—The record shall be forwarded to the Secretary of the Navy, through the Bureau of Navigation or the Commandant of the Marine Corps, as the case may require.

NAVAL EXAMINING BOARD.

8483—10—15

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RECORD OF PROCEEDINGS
OF A
NAVAL EXAMINING BOARD
CONVENED AT
(or, on board)
THE NAVY-YARD, MARE ISLAND, CAL.,
(or, the U. S. S. *Minnesota*)
IN THE CASE OF
Lieut. H——— C. E———, U. S. Navy,
April 25, 19—.

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NAVAL EXAMINING BOARD,
NAVY-YARD, MARE ISLAND, CAL.,

May 1, 19—.

The board met at 10 a. m., April 25, 19—, pursuant to an order, copy prefixed marked "A."

VAR. ——— pursuant to orders, copies prefixed marked "A1" to "A3." (This variation is used when original members are detached, when the date or place of meeting is changed, etc.)

Date of the proceedings.—It must be carefully noted that the date of this record is that of the day when the board reaches its finding and makes its recommendation. The date of meeting and subsequent intermediate dates are appropriately referred to in the proceedings.

Present:

Rear-Admiral A—— B. C——;

Capt. D—— E. F——, and

Capt. G—— H. K——, U. S. Navy, members; and

Lieut. L—— M. N——, U. S. Navy, recorder.

Lieut. X—— Y. Z——, U. S. Navy, reported for examination in obedience to an order, copy prefixed marked "B."

Copies of orders, etc., certified.—A copy of the precept and of every order or notice or the originals thereof, addressed by the Department or countersigning officer to the board or to the candidate, certified by the recorder, must be attached to the record of proceedings in the case, and each exhibit, of whatever nature, must be separately designated by letter or number.

Physical examination of candidate for appointment.—The physical examination of a candidate for appointment shall precede the mental and professional, and if he be physically unfit he shall not be examined otherwise. See also note preceding variation 6, page 234.

VAR. Mr. L—— E. H—— appeared for examination under authority contained in a letter, copy prefixed marked "B."

The precept (and orders altering the same were) was read by the recorder, and there was no objection to any member.

VAR. 1. The candidate objected to Capt. D—— E. F——, U. S. Navy, as a member on account of (here state reason).

Captain F—— replied that he believed that (here give reply).

An extract from the record containing the candidate's objection to Captain F—— and the latter's reply thereto was referred to the Secretary of the Navy (countersigning officer).

The board took a recess (or adjournment). The Secretary of the Navy (countersigning officer) decided that the candidate's objection

was valid and relieved Capt. D—— E. F——, U. S. Navy, who withdrew. Capt. O—— P. Q——, U. S. Navy, was detailed as a member and took his seat as such.

The letter of the Secretary (countersigning officer) is appended, marked "——."

The candidate did not object to Captain Q—— nor to any other member.

VAR. 2. —— The Secretary of the Navy (countersigning officer) decided that the candidate's objection was not valid and declined to relieve Captain F——. The letter of the Secretary (countersigning officer) is appended, marked "——."

There was no objection to any other member.

The recorder and the board were duly sworn.

Oath administered by president to recorder.—You do solemnly swear (or affirm) that you will keep a true record of the proceedings of this board in the case of ——, now before the board and about to be examined.

Oath administered by recorder to members.—You and each of you solemnly swear (or affirm) that you will honestly and impartially examine and report upon the case of ——, now before the board and about to be examined.

Organized and sworn.—The board shall be duly organized and sworn in each case in the manner provided for naval courts-martial. (See procedure general courts-martial.)

The candidate stated that he was ready for examination.

VAR. —— that he was not ready for examination, and the facts of the case were reported to the Bureau of Navigation, copy of letter appended, marked "——."

The board then conducted the written examination of the candidate as follows:

April 25: Subject, seamanship; began 10.30 a. m.; ended 4.30 p. m.

April 26: Subject, navigation; began 9.10 a. m.; ended 4.25 p. m.

April 27: Subject, ordnance and gunnery; began 9.05 a. m.; ended 12.35 p. m.

At 1.15 p. m., April 27, the candidate was directed to report to the medical board for physical examination.

April 27: Subject, military law; began 2.15 p. m.; ended 4.30 p. m.

* * * * *

The written examination is appended, pages — to —.

Incidents out of ordinary routine.—Any incidents out of the ordinary routine which occur on a date included above shall be appropriately entered, as shown, under the proper date, and the tabulation shall then continue.

A communication, appended marked "C," was received from the Navy Department, transmitting the papers named therein, which were duly considered by the board and which, with the exception of those intended for the medical board, are appended marked "——" to "——."

Powers of board.—The board shall have the power to take testimony and to examine all matter on the files and records of the Navy Department relating to any officer whose case may be under consideration.

Marking of documents attached to record.—Each document attached to the record shall be plainly marked in the lower right hand corner of its first page for identification. Documents pertaining to the organization of the board shall be marked by capital letters, instruments of evidence by numbers.

Arrangement of matter attached to record.—Reports of fitness, answers to interrogatories, commendatory letters, letters relating to indebtedness, etc., shall be appended to the record, all papers of each class together and arranged in chronological order in each class.

Right of candidate to be present.—Any officer whose case is to be acted upon by such examining board shall have the right to be present if he so desires and to submit a statement of his case on oath.

Entry in the record of statement of candidate and testimony of witnesses.—The statement of such officer, if any be made, all questions propounded to him, and his answers thereto, with the testimony of all witnesses, shall be entered in the record of proceedings.

The candidate did not desire to call any witnesses in his behalf nor to make any statement.

VAR. The candidate made a sworn statement, as follows (here insert statement, or append it).

The examination of the candidate having been concluded he was discharged from further attendance.

VAR. (If the candidate has not previously appeared before the medical board.) ——— was discharged from further attendance and directed to report to the president of the board of medical examiners.

Candidate not to be discharged before completion of case.—Care shall be taken not to discharge a candidate until his case is fully completed. This applies particularly to cases where there are unfavorable reports, or other evidence. See variation 4, below.

The board having deliberated on the evidence before it, decided that the mental, moral, and professional fitness of the candidate to perform all his duties at sea has been established to its satisfaction.

Evidence to be considered.—The evidence above referred to is that which appears in and is attached to the record.

We hereby certify that Lieut. X——— Y. Z———, U. S. Navy, has the mental, moral, and professional qualifications to perform efficiently all the duties, both at sea and on shore, of the grade to which he is to be promoted, and recommend him for promotion.

A——— B. C———,
Rear-Admiral, U. S. Navy, President.

D——— E. F———,
Captain, U. S. Navy, Member.

G——— H. K———,
Captain, U. S. Navy, Member.

L——— M. N———,
Lieutenant, U. S. Navy, Recorder.

Signing of record by all members.—Each record must be signed by every member and by the recorder, and must show who of the members concurred in and who, if any, dissented from the opinion of the board.

Record must show consideration of unfavorable evidence.—When there is evidence of an unfavorable nature, the record must show affirmatively that the board fully considered this unfavorable evidence, and give the reasons for its recommendation.

VAR. 1. ——— has been established to its satisfaction. In arriving at its conclusion as to the moral fitness of the candidate, the board fully considered the general court-martial in his case, dated January —, 19—. In view, however, of the subsequent good record

of the candidate (*or*, state other reasons) the board came to a favorable conclusion as to his moral (professional) fitness notwithstanding such evidence.

We hereby certify, etc.

VAR. 2. The board, having deliberated on the evidence before it, decided that the mental and the moral fitness of the candidate to perform all his duties at sea has been established to its satisfaction; but that owing to deficiency in the subject of (*or*, as the case may be), as shown by his written examination papers hereto appended, his professional fitness has not been so established.

We hereby certify that Lieut. X—— Y. Z——, U. S. Navy, has the mental and the moral, but not the professional qualifications to perform efficiently all the duties, both at sea and on shore, of the grade to which he is to be promoted and do not recommend him for promotion.

VAR. 3. (Majority and minority opinion.) We hereby certify that Lieut. X—— Y. Z——, U. S. Navy, has the mental, moral, and the professional qualifications to perform efficiently all the duties, both at sea and on shore, of the grade to which he is to be promoted, and recommend him for promotion.

A—— B. C——,
Rear-Admiral, U. S. Navy, President.
G—— H. K——,
Captain, U. S. Navy, Member.

From an inspection of the written examination of the candidate, and from the answers to interrogatories sent to officers under whom the candidate has served, I am constrained to differ with the majority of the board as to the professional fitness of the candidate to perform all his duties at sea.

I hereby certify that Lieut. X—— Y. Z——, U. S. Navy, has the mental and moral, but not the professional qualifications to perform efficiently all the duties, both at sea and on shore, of the grade to which he is to be promoted, and do not recommend him for promotion.

D—— E. F——,
Captain, U. S. Navy, Member.

L—— M. N——,
Lieutenant, U. S. Navy, Recorder.

Witnesses to be examined upon written interrogatories.—Such witnesses as the candidate may reasonably request to have examined upon written interrogatories regarding any particular matter or incident touching his fitness for promotion may be addressed by the Bureau of Navigation to any officer having knowledge of the facts. Whenever such request is by the board deemed unreasonable, it shall be at once referred to the Secretary of the Navy for decision.

Calling of officers before the board to give evidence.—Any officer may be called before the board to give evidence if deemed necessary.

Officers junior in rank to candidate shall not be questioned as to matter of opinion.—No inquiry as to matter of opinion shall be put to any officer who is junior in rank to the candidate for promotion.

Oath of witnesses.—Witnesses before testifying shall be sworn by the president of the board, as follows: You do solemnly swear (or affirm) that you will make true answer to such questions as may be put to you in the case of ——, now under examination by the board.

Consideration of facts which occurred prior to last examination.—Hereafter, in the examination of officers of the navy for promotion, no fact which occurred prior to the last examination of the candidate whereby he was promoted, which has been inquired into, but such previous examination, if approved, shall be conclusive, unless such fact

continuing shows the unfitness of the officer to perform all his duties at sea. (Act of June 20, 1878.)

Discharge by reason of drunkenness or misconduct.—Whenever on an inquiry had pursuant to law concerning the fitness of an officer of the navy for promotion, it shall appear that such officer is unfit to perform at sea the duties of the place to which it is proposed to promote him, by reason of drunkenness, or from any cause arising from his own misconduct, and having been informed of and heard upon the charges against him, he shall not be placed on the retired list of the navy, and if the findings of the board be approved by the President, he shall be discharged with not more than one year's pay. (Act of August 5, 1882.)

Entries in medical history to be investigated.—In case of entries in the medical history of the candidate or other accompanying papers indicating moral or other unfitness, the matter shall be investigated by the naval examining board, as indicated in the following variation.

VAR. 4. The board, having deliberated on the evidence before it, and having determined that from such evidence it appears *prima facie* that Lieut. X—— Y. Z——, U. S. Navy, is not morally qualified for promotion by reason of his own misconduct (or, drunkenness; or, over indulgence in intoxicants; or, as the case may be), he was called before the board and given an opportunity to be heard upon the charges against him, as follows:

On October —, 19—, he was under the influence of liquor on board of the U. S. S. ——, while executive officer of that vessel.

That in the report of fitness from July 1, 19—, to December 31, 19—, his commanding officer reported that he would object to having him under his immediate command unless given satisfactory assurance that intoxicating liquor would be left absolutely alone.

The claim of —— & Co., New York, N. Y., dated September —, 19—.

The claim of H—— & B——, Brooklyn, N. Y., dated November —, 19—.

An extract from the medical record of the candidate, and particularly the report of Surg. J—— B. S——, U. S. Navy, in a hospital ticket, dated July —, 19—.

Lieutenant Z—— asked permission to introduce A—— R—— as a witness, which request was granted. The witness entered and was duly sworn.

(Testimony recorded as for defense in general court-martial.)

Lieutenant Z—— had nothing further to offer but made a sworn statement, as follows: (Here insert statement or append it.)

After the consideration of his case, during which the board was cleared, the board was opened and the candidate was discharged from further attendance.

The board was then cleared for deliberation and decided that the mental and professional fitness of the candidate to perform all his duties at sea has been established to its satisfaction; but that, by reason of drunkenness (or, by reason of ——), which is the result of his own misconduct, his moral fitness has not been so established.

We hereby certify that Lieut. X—— Y. Z——, U. S. Navy, has the mental and professional, but not the moral qualifications to perform efficiently all the duties, both at sea and on shore, of the grade to which he is to be promoted, and do not recommend him for promotion.

Record to state cause of candidate's failure.—Whenever the board fails to recommend a candidate for admission, the record must similarly state whether such failure is owing to his mental, moral, or professional fitness (or, in the case of candidates for the pay corps, his mental, moral, or physical fitness).

VAR. 5. (In case of a candidate for admission to any staff corps of the navy, except the pay corps.)

The board having deliberated on the evidence before it, found that the candidate has obtained a general average of — per cent, and decided that his mental, moral, and professional qualifications have been established to its satisfaction.

We hereby certify that ——— is mentally, morally, and professionally qualified for admission to the United States Navy as an assistant civil engineer (assistant surgeon, *or*, as the case may be), and recommend him for appointment.

Physical examination of a candidate for the pay corps.—The physical examination of a candidate for assistant paymaster shall be conducted by a board of medical examiners, who shall report the result thereof to the examining board of pay officers, certifying as to the physical qualifications of the candidate, and such report shall form part of the record of the latter board.

VAR. 6. (In case of a candidate for admission to the pay corps.)

The board, having deliberated on the evidence before it, found that the candidate had obtained a general average of — per cent, and decided that his physical, mental, and moral qualifications have been established to its satisfaction.

We hereby certify that ——— is physically, mentally, and morally qualified for admission to the U. S. Navy as an assistant paymaster, and recommend him for appointment.

In case the officer to be examined is not ordered to appear before the board.

NAVAL EXAMINING BOARD,
MILLS BUILDING,
Washington, May 1, 19—.

The board met at 10 a. m., April 30 19— (*or*, this date), pursuant to an order, copy prefixed marked "A."

Present:

Rear-Admiral A—— B. C——,
Rear-Admiral D—— E. F——, and
Rear-Admiral G—— H. K——, U. S. Navy, members, and
Lieut. L—— M. N——, U. S. Navy, recorder.

The board convened for consideration of the case of Capt. O—— P. Q——, U. S. Navy, preliminary to his promotion.

The precept was read by the recorder. The recorder and the board were duly sworn.

A letter from the Navy Department, directing the examination of Captain Q—— on his record only, is appended, marked "B."

A communication, appended, marked "C," was received from the Navy Department, transmitting the papers named therein which are appended, marked "——" to "——."

Candidate to appear personally if necessary.—If the board deems it necessary, in order to establish the fitness of the candidate, that he appear personally before it, the Department shall be so informed with the reasons therefor.

The board having deliberated on the evidence before it, and having taken into consideration their association with the candidate in the navy and his reputation as an officer, decided that his mental, moral, and professional fitness to perform all his duties at sea has been established to its satisfaction.

We hereby certify that Capt. O—— P. Q——, U. S. Navy, has the mental, moral, and professional qualifications to perform efficiently all the duties, both at sea and on shore, of the grade to which he is to be promoted, and recommend him for promotion.

A—— B. C——,
Rear-Admiral, U. S. Navy, President.

D—— E. F——,
Rear-Admiral, U. S. Navy, Member.

G—— H. K——,
Rear-Admiral, U. S. Navy, Member.

L—— M. N——,
Lieutenant, U. S. Navy, Recorder.

Precept.

NAVY DEPARTMENT,
Washington, April 21, 19—.

STR: A naval examining board, for the examination of such candidates for promotion as may be directed to appear before it, is hereby ordered to convene at the Mills Building, Navy Department, Washington, D. C. (*or, the navy-yard, —— ——*), on Monday, the 1st day of May, 19—, at 10 o'clock a. m., or as soon thereafter as may be practicable.

The board will consist of yourself as president, and of Capt. D—— E. F——, U. S. Navy, and Capt. G—— H. K——, U. S. Navy, as members. Lieut. L—— M. N——, U. S. Navy, will act as recorder.

The proceedings of the board shall be conducted in accordance with the provisions of the Navy Regulations and the Forms of Procedure issued by the Navy Department. This employment on shore duty is required by the public interests.

(If the precept is prepared in blank, see note below, the previous paragraph will be omitted and the following paragraph substituted: This order will take effect when countersigned by the commander in chief, U. S. Pacific Fleet, *or as the case may be.*)

Very respectfully,

C—— F. L——,
Secretary of the Navy.

Rear-Admiral A—— B. C——, U. S. Navy,
Commandant Navy-Yard and Station, Washington, D. C.

Precept for examination abroad.—In a precept for an examination to be held on a foreign station, at a naval station abroad, or elsewhere, as may be desirable, the form above shown will be used, leaving blank the date and the place of meeting, and the names of the president, members, and recorder. This will be sent to the commander in chief, commander of squadron, or other proper officer, with the following letter:

NAVY DEPARTMENT,
Washington, April 21, 19—.

SIR: There is transmitted herewith a precept in blank convening a naval examining board for the examination of Commander B—— E. F——, U. S. Navy, preliminary to promotion in conformity with the provisions of section 1496 of the Revised Statutes.

You will insert therein the date and place of meeting of the board, the names of such officers as you deem proper to designate as members and recorder, and, after countersigning, forward the same to the officer by you named as president.

The board must consist of at least three members senior in rank to Commander F——.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

The COMMANDER OF THE THIRD SQUADRON,
U. S. Pacific Fleet.

Composition of board.—Boards for the professional examination of officers of the navy for promotion shall consist of not less than three officers senior in rank to the officers to be examined, and they shall, when practicable, be selected from the same corps to which the candidate belongs.

Precept for examination of candidates for admission.

NAVY DEPARTMENT,
Washington, April 25, 19—.

SIR: A naval examining board, for the examination of such candidates for admission to the navy as assistant paymasters as may be authorized to appear before it, is hereby ordered to convene at the Navy Department, Washington, D. C. (or, the navy-yard, ——), on Monday, the 1st day of May, 19—, at 10 o'clock a. m., or as soon thereafter as may be practicable.

The board will consist of yourself as president, and of Paymaster R—— S. T——, U. S. Navy, and Paymaster U—— V. W——, U. S. Navy, as members. Asst. Paymaster X—— Y. Z——, U. S. Navy, will act as recorder.

The proceedings of the board shall be conducted in accordance with the provisions of the Navy Regulations and the forms of procedure issued by the Navy Department. This employment on shore duty is required by the public interests.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

Pay Inspector C—— B. A——, U. S. Navy,
Navy-Yard, New York, N. Y.

Letter to candidate for promotion.

NAVY DEPARTMENT,
Washington, April 25, 19—.

SIR: Proceed to Washington, D. C., and report to the president of the naval examining board, Mills Building, Navy Department, at 10 o'clock a. m., on Monday, May 1, 19—, for the examination preliminary to promotion required by section 1496 of the Revised Statutes.

Upon the completion of this examination, or when otherwise directed by proper authority, report to the president of the naval medical examining board for the examination required by section 1493 of the Revised Statutes.

When discharged by both boards, you will return to Portsmouth, N. H., or to such port as the U. S. S. *Chester* may be, and resume your duties on board that vessel.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

Lieut. S—— P. L——, U. S. Navy,
U. S. S. *Chester*,
Navy-Yard, Portsmouth, N. H.

Letter transmitting matter on files and records of department.

NAVY DEPARTMENT, BUREAU OF NAVIGATION,
Washington, April 20, 19—.

SIR: Lieut. S—— P. L——, U. S. Navy, having been ordered to report to you on April 21, 19—, for examination preliminary to promotion, the bureau, in accordance with the requirements of article 1635, paragraph 2, Navy Regulations, 1909, transmits herewith all matter on the files and records of the Navy Department which relates in any way to his fitness for promotion, viz:

One record of service.

Twenty-two reports on fitness of officers.

Copy of charges and finding of general court-martial on board the U. S. S. *Colorado*, dated San Diego, Cal., October 14, 19—, whereby he was sentenced to be publicly reprimanded by the Secretary of the Navy.

Letter from Mr. ——, dated January 5, 19—, relative to ——; the Department's answer thereto; and the Department's letter to Lieutenant L—— regarding the charges contained in first mentioned letter.

Letter from Lieutenant L—— in reply to the foregoing.

One record of service and one medical record to be transmitted to the medical examining board.

Very respectfully,

D—— V. S——, *Chief of Bureau.*

PRESIDENT NAVAL EXAMINING BOARD,
Mills Building, Navy Department,
Washington, D. C.

Record of the service of Lieut. S—— P. L——, U. S. Navy, since last examination.

1902, May 14. To examination for promotion, Washington, D. C., June 1.

1902, June 10. Commissioned from May 7, 19—.

1903, February 17. Detached February 25 and to the *Mayflower*. Detached 25 and reported 27 February.

* * * * *

(Interrogatories, reports on fitness, and other papers appended, following the written examination.)

BOARD OF MEDICAL EXAMINERS.

239

RECORD OF PROCEEDINGS
OF A
BOARD OF MEDICAL EXAMINERS
CONVENED AT
(or, on board) .
THE NAVY YARD, MARE ISLAND, CAL.,
(or, the U. S. S. *Minnesota*)
IN THE CASE OF
Lieut. H—— C. E——, U. S. Navy.
April 30, 19—.

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BOARD OF MEDICAL EXAMINERS,
NAVY-YARD, MARE ISLAND, CAL.,

May 1, 19—.

The board met at 10 a. m., April 30, 19— (or, this day), pursuant to an order; copy prefixed, marked "A."

(See variations and notes under Naval Examining Board.)

Present:

Medical Inspector C—— B. A——;

Surg. F——, E. D——; and

Passed Asst. Surg. K—— H. G——, U. S. Navy, members; and

Asst. Surg. N—— M. L——, U. S. Navy, recorder.

Lieut. X—— Y. Z——, U. S. Navy, reported for examination in obedience to an order; copy prefixed, marked "B."

The precept was read by the recorder and there was no objection to any member.

The recorder and the board were duly sworn. (See procedure and oaths under naval examining board.)

The candidate's statement as to his physical qualifications is appended, marked "C."

Oath as to statement of physical condition.—The foregoing statement shall be sworn to by a candidate for admission but not by a candidate for promotion.

The medical history of the candidate is appended, marked "D."

What medical history considered.—The medical history of the candidate since the date of his last examination for promotion shall be considered in connection with his physical examination, which shall relate only to his qualifications to perform the duties of the grade to which he seeks admission or promotion, and not those of any other grade.

What record must show.—Each record must state fully what physical examination of the candidate was made, and by whom, and whether the board recommends the candidate for admission or promotion, as the case may be.

Each member of the board then made a careful physical examination of the candidate and found no trace of any ailment or disability now existing.

VAR. 1. ——— examination of the candidate, giving special attention to the following entries contained in his medical history; viz, *febris continua simplex, vulnus punctum, etc.*, and found no trace of any ailment or disability now existing.

VAR. 2. ——— and found that he is suffering from ———.

VAR. 3. Each member of the board then made a careful physical examination of the candidate and found that he has recovered from the ailment noted in his medical record for the period since January 3, 19—; that he has lost his left leg at the knee; that such disability was occasioned by a wound received in the line of his duty; and that it does not incapacitate him for other than sea duties in the grade

to which he shall be promoted; that there is no other disability now existing; and therefore,

We hereby certify that —— is physically qualified to perform all his duties except those at sea, and recommend him for promotion in accordance with the provisions of section 1494 of the Revised Statutes.

VAR. 4. The board finds that ——'s wounds were received in the line of duty and do not at present incapacitate him for other than his duty as a watch officer at sea. The board, therefore, in consideration of the provisions of section 1494 of the Revised Statutes, recommend him for promotion.

We hereby certify that Lieut. X—— Y. Z——, U. S. Navy, is physically qualified to perform all his duties at sea, and recommend him for promotion.

VAR. 1. We hereby certify that Lieut. X—— Y. Z——, U. S. Navy, is not physically qualified to perform all his duties at sea, and do not recommend him for promotion.

VAR. 2. We hereby certify that Lieut. X—— Y. Z——, U. S. Navy, is not physically qualified to perform all his duties at sea, owing to ——, and we recommend that he be further examined physically in —— months in order to ascertain the extent of his incapacity (*or*, —— recommend that he be ordered before a retiring board).

Physical examination before promotion.—No officer shall be promoted to a higher grade on the active list of the navy, except in the case provided in the next section, until he has been examined by a board of naval surgeons and pronounced physically qualified to perform all his duties at sea. (Sec. 1493, R. S.)

Physical disability due to wounds.—The provisions of the preceding section shall not exclude from the promotion to which he would otherwise be regularly entitled any officer in whose case such medical board may report that his physical disqualification was occasioned by wounds received in the line of his duty, and that such wounds do not incapacitate him for other duties in the grade to which he shall be promoted. (Sec. 1494, R. S.)

Physical examination of candidates for appointment.—The following variation applies to the physical examination of candidates for admission to all staff corps, which examination shall precede the mental and professional, and if the candidate be physically unfit he shall not be examined otherwise.

Candidates for pay corps.—In the case of candidates for the pay corps, the board of medical officers shall prepare its report in each case in accordance with the form here given and shall transmit the same to the examining board of pay officers.

VAR. 3. We hereby certify that Mr. —— —— is (not) physically qualified for admission to the United States Navy as an assistant paymaster (*or*, assistant surgeon; *or*, as the case may be) and (do not) recommend him for appointment.

C—— B. A——,
Medical Inspector, U. S. Navy, President.

F—— E. D——,
Surgeon, U. S. Navy, Member.

K—— H. G——,
Passed Assistant Surgeon, U. S. Navy, Member.

N—— M. L——,
Assistant Surgeon, U. S. Navy, Recorder.

Precept for board of medical examiners.

NAVY DEPARTMENT,
Washington, April 20, 19—.

SIR: A board of medical examiners, to examine and report upon the physical qualifications of such candidates for (admission or) promotion as may be directed to appear before it, is hereby ordered to convene at the navy-yard, New York, N. Y., on Thursday, April 30, 19—, at 10 o'clock a. m., or as soon thereafter as practicable.

The board will be composed of yourself as president, and of Surg. F—— E. D—— and Passed Asst. Surg. K—— H. G——, U. S. Navy, as members. Asst. Surg. N—— M. L——, U. S. Navy, will act as recorder.

The proceedings of the board will be conducted in accordance with the provisions of the Navy Regulations and the Forms of Procedure issued by the Navy Department.

This employment on shore duty is required by the public interests.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

Medical Inspector C—— B. A——, U. S. Navy,
Navy-Yard, New York, N. Y.

Precept in blank, etc.—For precept in blank for examination on foreign station, etc., letter transmitting same, letter to candidate, etc., see Naval Examining Board.

Board of one officer.—In cases of urgent necessity the board may be composed of a single medical officer, in which case the oath should be administered by an officer or other person lawfully authorized to perform that act.

Certificate of candidate.

BOARD OF MEDICAL EXAMINERS,
 NAVY-YARD, NEW YORK, N. Y.,
April 30, 19—.

I hereby certify that I am, to the best of my knowledge and belief, physically qualified to perform all the duties at sea in the grade for which I am a candidate for promotion (or appointment), and that I am at present free from all bodily ailments.

(In the case of a candidate for admission, add the following:)

I was born at ——, —— County, in the State of ——, on the —— day of ——, in the year ——, and am at this time a legal resident of the State of ——.

My home address is 352 State Street, Columbus, Ohio.

My local address is 1422 Washington Avenue, Washington, D. C.

WILLIAM ROBERT ANDERSON, M. D.

Subscribed and sworn to before me this —— day of ——, A. D. 19—.

C—— B. A——,

Medical Inspector, U. S. Navy, President Board of Medical Examiners.

Meaning of certificate.—The above certificate is not a mere matter of form, and, regardless of whether an officer has been doing duty or not, it is intended to be the candidate's statement that he has no physical ailment whatever of any kind.

Medical history of candidate.

NAVY DEPARTMENT,
BUREAU OF MEDICINE AND SURGERY,

Washington, April 15, 19—.

Medical record of Lieut. X—— Y. Z——, U. S. Navy, since September 8, 19—.

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T—— L. R——,
Surgeon-General U. S. Navy.

NAVAL RETIRING BOARD.

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RECORD OF PROCEEDINGS

OF A

NAVAL RETIRING BOARD

CONVENED AT

THE MILLS BUILDING, NAVY DEPARTMENT,
WASHINGTON, D. C.,

IN THE CASE OF

Capt. Q——— R. S———, U. S. Navy.

March 9, 19—.

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NAVAL RETIRING BOARD,
MILLS BUILDING, NAVY DEPARTMENT,
Washington, March 10, 19—.

The board met at 10 a. m., March 9, 19— (*or*, this day), pursuant to an order; copy prefixed, marked "A."

VAR. ——— pursuant to orders, copies prefixed marked "A1" to "A3." (This variation is used when original members are detached, when the date or place of meeting is changed, etc.)

Present:

Rear-Admiral A—— B. B——;
Capt. D—— E. F——;
Medical Director R—— S. T——;
Capt. G—— H. K——, and
Surg. U—— V. W——, U. S. Navy; members, and
Lieut. L—— M. N——, U. S. Navy, recorder.

Capt. Q—— R. S ——, U. S. Navy, reported in obedience to an order; copy prefixed, marked "B."

The precept was read by the recorder and there was no objection to any member.

(See variations, notes, and oaths under "Naval examining boards.")

The recorder and the board were duly sworn.

A communication, appended, marked "C," was received from the Navy Department transmitting the papers named therein which are appended, marked "——" to "——;" those marked "——" to "——," inclusive, were read aloud.

Papers to be read.—All papers having any bearing on the physical or mental condition of the officer under examination shall be read as above indicated.

Authority of retiring board.—Said retiring board shall be authorized to inquire into and determine the facts touching the nature and occasion of the disability of any such officer, and shall have such powers of a court-martial and of a court of inquiry as may be necessary. (Sec. 1449, R. S.)

The medical members were directed to examine into the past and present physical and mental condition of Captain S——; letter of instructions, appended, marked "——."

Pending the physical examination the board took a recess (*or*, adjourned) in this case until 2 o'clock p. m., March 9, 19— (*or*, until 9.30 o'clock a. m., this day), when it reconvened; present, the entire board and the officer under examination.

The medical members submitted a report which was sworn to, read, and appended, marked "——."

Captain S—— stated that he did not desire to question the medical members, to rebut their evidence, nor to make a statement. He was then discharged from further attendance.

VAR. —— stated that he desired to question the medical members (*or*, to rebut the evidence of the medical members) and requested the board to subpoena as witnesses in rebuttal the following-named persons (here insert names) (*or*, and requested permission to make a sworn statement).

The request of Captain S—— was granted and the necessary subpoenas issued (*or*, and the said sworn statement is appended, marked “——.” Pending the arrival of the witnesses the board adjourned until ——.

The board met March —, 19—, pursuant to adjournment of the — instant.

Present: All the members, the recorder, and the officer under examination.

Medical Director C—— R——, U. S. Navy, a witness on the part of Captain S—— was duly sworn and testified as follows:——

The record of testimony of this witness was read aloud, pronounced by him correct, and he withdrew.

(The same procedure is followed with regard to all witnesses.)

Captain S—— then submitted in evidence certain papers, appended marked “——” to “——.”

Captain S—— had no further evidence to introduce and was discharged from further attendance.

Right of officer to be heard.—No officer of the navy shall be retired from active service or wholly retired from the service, without a full and fair hearing before such navy retiring board, if he shall demand it, etc. (Sec. 1455, R. S.)

Completion of case before discharge.—Care shall be taken not to discharge an officer under examination until his case is fully completed.

Cause of incapacity must be reported.—When such retiring board finds an officer incapacitated for active service, it shall also find and report the cause which, in its judgment, produced his incapacity, and whether such cause is an incident of the service. (Sec. 1451, R. S.)

The board, having deliberated on the evidence before it, decided that Capt. Q—— R. S——, U. S. Navy, is incapacitated for active service by reason of apoplexy and that his incapacity is the result of an incident of the service.

A—— B. C——,
Rear-Admiral, U. S. Navy, President.
 D—— E. F——,
Captain, U. S. Navy, Member.
 R—— S. T——,
Medical Director, U. S. Navy, Member.
 G—— H. K——,
Captain, U. S. Navy, Member.
 U—— V. W——,
Surgeon, U. S. Navy, Member.
 L—— M. N——,
Lieutenant, U. S. Navy, Recorder.

VAR. 1. The board having deliberated on the evidence before it, decided that Capt. Q—— R. S——, U. S. Navy, is temporarily incapacitated for active service by reason of malarial poisoning, and recommends that he be granted sick leave for three months.

VAR. 2. The board, having deliberated on the evidence before it, decided that Capt. Q—— R. S——, U. S. Navy, is incapacitated for active service by reason of ——, and that his incapacity is not the result of an incident of the service.

VAR. 3. The board, having deliberated on the evidence before it and having thereupon decided that *prima facie* it appears that the incapacity of Capt. Q—— R. S——, U. S. Navy, is the result of his own misconduct, he was called before the board and given an opportunity to be heard upon the charges against him, as follows (insert charges).

Captain S—— had nothing to offer in relation to the charges (or, made a sworn statement, appended marked “——”). Or Captain S—— asked permission to introduce Mr. —— R——, as his counsel, which request was granted and Mr. R—— took his seat accordingly.

Or Captain S—— requested the board to summon the following persons as witnesses, which request was granted (insert names).

The board decided to call the following persons as witnesses (insert names).

(Testimony of witnesses recorded as in general courts-martial.)

Captain S—— had no further witnesses to call and had nothing further to offer.

The board was then cleared and, having deliberated on the evidence before it, decided that Capt. Q—— R. S——, U. S. Navy, is incapacitated for active service by reason of ——, and that his incapacity is not the result of an incident of the service but is the result of his own misconduct.

Minority report.—If a member dissents from the finding and opinion of the board, he is authorized to submit a minority report of his finding and opinion.

Record laid before President.—A record of the proceedings and decision of the board in each case shall be transmitted to the Secretary of the Navy, and shall be laid by him before the President for his approval or disapproval, or orders in the case. (Sec. 1452, R. S.)

Precept.

NAVY DEPARTMENT,

Washington, March 1, 19—.

SIR: A retiring board, consisting of yourself as president and of Capt. D—— E. F——, U. S. Navy; Medical Director R—— S. T——, U. S. Navy; Capt. G—— H. K——, U. S. Navy, and Surg. U—— V. W——, U. S. Navy, as members, is hereby ordered to convene at the Mills Building, Navy Department (or, the navy-yard, ——, ——), at 10 o'clock a. m., March 9, 19—, or as soon thereafter as practicable.

Lieut. L—— M. N——, U. S. Navy, will act as recorder of the board.

The board will examine and report upon such officers as may, by the Secretary of the Navy, be ordered to appear before it, in conformity with the provisions of Title XV, chapter 3, of the Revised Statutes.

This employment on shore duty is required by the public interests.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

Rear-Admiral A—— B. C——, U. S. Navy,
*Commandant, Navy-Yard and Station,
Philadelphia, Pa.*

Composition of board, etc.—Whenever any officer on being ordered to perform the duties appropriate to his commission reports himself unable to comply with such order, or whenever, in the judgment of the President, an officer is incapacitated to perform the duties of his office, the President, at his discretion, may direct the Secretary of the Navy to refer the case of such officer to a board of not more than nine nor less than five commissioned officers, two-fifths of whom shall be members of the Medical Corps of the navy. Said board, except the officers taken from the Medical Corps, shall be composed, as far as may be, of seniors in rank to the officer whose disability is inquired of. (Sec. 1448, R. S.)

Letter to officer.

NAVY DEPARTMENT,
Washington, March 1, 19—.

SIR: Proceed to Washington, D. C., and report to the president of the Naval Retiring Board, Mills Building, Navy Department Annex, at 10 a. m., Monday, March 9, 19—, for examination in conformity with Title XV, chapter 3, of the Revised Statutes.

Upon the completion of this examination, return to your home and await orders.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

Capt. Q—— R. S——, U. S. Navy,
Philadelphia, Pa.

Record of the service of Capt. Q—— R. S——, U. S. Navy, since last examination.

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D—— V. S——, *Chief of Bureau.*

Medical record of Capt. Q—— R. S——, U. S. Navy, July 20, 1900.

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T—— S. R——,
Surgeon-General, U. S. Navy.

(Here follow other documents, reports of medical surveys, hospital tickets, case papers, etc.)

Letter to medical members of board directing physical examination.

NAVAL RETIRING BOARD,
NAVY DEPARTMENT,

March 9, 19—.

GENTLEMEN: You will be pleased to make a careful examination into the past and present physical and mental condition of Capt. Q—— R. S——, U. S. Navy, whose case has been referred to this board for examination and report as to his capacity to perform the duties appropriate to his commission, in conformity with Title XV, chapter 3, of the Revised Statutes of the United States.

Besides a personal examination, you will examine closely all matter transmitted to the board in this case by the Bureau of Navigation from the files and records of the Navy Department, and you will also endeavor to obtain from any other authentic source within your reach such information as will aid the board in the performance of its duties, and will report the result in writing.

In case you find the officer under examination incapacitated for active service, you will state whether, in your opinion, his disability is the result of an incident of the service.

Very respectfully,

A—— B, C——.

Rear-Admiral, U. S. Navy, President.

Medical Director R—— S. T——, U. S. Navy.

Surgeon U—— V. W——, U. S. Navy.

Letter from medical members to president of board.

NAVAL RETIRING BOARD,
NAVY DEPARTMENT,

Washington, March 9, 19—.

SIR: We have carefully and separately examined Capt. —— Q—— R. S——, U. S. Navy, as to his past and present mental and physical condition, together with the records pertaining to his case, and report as follows:

Captain S—— is — years old and has been — years in the naval service.

He has suffered from some of the common ailments, including ——, which are shown to have originated in the line of duty, and with —— which are shown not to have so originated. The foregoing ailments, however, have no bearing (or, have the following bearing) on his present condition,

On July 27, 19—, he was transferred from the U. S. S. California to the United States Naval Hospital, Norfolk, Va., with heart disease, which originated in the line of duty. (The medical history should here be set forth *in extenso*.)

We believe him to be suffering with a chronic inflammation of the heart.

We consider this condition to be permanent, by reason of which he is incapacitated for active service in the navy, and that his incapacity is (not) the result of an incident of the service.

R—— S. T——,

Medical Director, U. S. Navy.

U—— V. W——,

Surgeon, U. S. Navy.

Rear-Admiral A—— B. C——, U. S. Navy,
President of Board.

Sworn to and subscribed before me, March 9, 19—.

A—— B. C——,

Rear-Admiral, U. S. Navy, President.

VAR. 1. We find that —— is suffering from neurasthenia, which, by the records, is shown to have originated in the line of duty.

We consider this condition to be temporary and, therefore, he is not permanently incapacitated for active service in the navy. We find that he is at present unfit for duty and recommend that he be ordered to a naval hospital for treatment and further observation.

VAR. 2. —— We find that he is at present unfit for duty and recommend that he be granted sick leave for three months.

VAR. 3. —— We therefore find that —— is not incapacitated for active service.

BOARD OF SELECTION FOR RETIREMENT.

8483—10—17

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RECORD OF PROCEEDINGS
OF A
BOARD OF SELECTION FOR RETIREMENT
CONVENED AT
THE NAVY DEPARTMENT, WASHINGTON, D. C.,
June 1, 19—.

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NAVY DEPARTMENT,

Washington, July 1, 19—.

The board met at 10 a. m., June 1, 19—, pursuant to an order appended, marked "A."

Present:

Rear-Admiral A—— B——,
Rear-Admiral C—— D——,
Rear-Admiral E—— F——,
Rear-Admiral G—— H——, and
Rear-Admiral I—— J——, U. S. Navy; members, and
Lieut. Commander K—— L——, U. S. Navy, recorder.

The recorder read the precept.

The members of the board were severally duly sworn by Mr. M—— N——, a notary public.

Oath administered to members.—You, and each of you, solemnly swear (or affirm) that you will without prejudice or partiality, and having in view solely the special fitness of officers and the efficiency of the naval service, perform the duties imposed upon you by your appointment as a member of this board.

The recorder read a letter from the Bureau of Navigation relative to the condition of the navy list on June 1, 19—; appended, marked "B."

The board then examined the records of captains, commanders, lieutenant commanders, and lieutenants on file in the Navy Department, all of which were placed at the disposal of the board, continuing the examination from day to day (or as the case may be) until June 18, 19—, when it adjourned to await further information from the Navy Department as to the number of compulsory retirements that would be required under the provisions of section 9 of the navy personnel act, approved March 3, 1899.

The board reassembled at 10 a. m., this day. Present: All the members and the recorder.

The recorder read a letter from the Secretary of the Navy, appended, marked "C," stating that the board would be required to select twelve officers for compulsory retirement.

VAR. —— stating that it will not be necessary for the board to make any selections for compulsory retirement.

The board then further examined the records of certain officers, keeping in mind the instructions contained in the precept, and, after due deliberation, reports that it has selected the following-named officers for compulsory retirement:

- Capt. Z——— Y———, U. S. Navy.
 Capt. X——— W———, U. S. Navy.
 * * * * *
 Lieut. N——— M———, U. S. Navy.

If no officers selected.—In case no officers are to be selected, the foregoing paragraph and list of names will be omitted.

The board then adjourned to await the action of the Navy Department.

- A——— B———,
Rear-Admiral, U. S. Navy, President.
 C——— D———,
Rear-Admiral, U. S. Navy, Member.
 E——— F———,
Rear-Admiral, U. S. Navy, Member.
 G——— H———,
Rear-Admiral, U. S. Navy, Member.
 I——— J———,
Rear-Admiral, U. S. Navy, Member.
 K——— L———,
Lieutenant-Commander, U. S. Navy, Recorder.

Precept for board of selection for retirement.

NAVY DEPARTMENT,
 Washington, May 20, 19—.

SIR: In pursuance of the provisions of section 9 of the act of Congress entitled "An act to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps of the United States," approved March 3, 1899, a board of selection for retirement is hereby ordered to convene in the reception room (No. 275), Secretary's office, Navy Department, Washington, on Saturday, the first proximo, at 10 o'clock a. m., for the purpose of selecting the officers whose retirement may be rendered necessary under the provisions of section 9 of the act above mentioned.

The board will obtain from the Bureau of Navigation such information respecting the present and prospective condition of the navy list as may facilitate the performance of its duties.

It shall be the duty of the board, without prejudice or partiality, and having in view solely the special fitness of officers and the efficiency of the naval service, to examine, as far as the proper performance of its duties requires, the service and medical records on file in the Navy Department of all officers in the grades of captain, commander, lieutenant-commander, and lieutenant, which records, or such of them as may be necessary, are at the disposal of the board.

As soon as practicable after the 1st of July next, the board will report its selections for retirement to the Department.

The board will consist of yourself as president, and of Rear-Admiral C—— D——, Rear-Admiral E—— F——, Rear-Admiral G—— H——, and Rear-Admiral I—— J——, U. S. Navy, as members.

Lieut. Commander K—— L——, U. S. Navy, will act as recorder.

The proceedings of the board will be conducted in accordance with the provisions of the Navy Regulations and the Forms of Procedure issued by the Navy Department. The oath taken by the members will be that prescribed in said regulations, and will be administered by a notary public provided by the Department, when requested.

This employment on shore duty is required by the public interests.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

Rear-Admiral A—— B——, U. S. Navy,
Commandant, Navy-Yard, New York, N. Y.

Letter from Bureau of Navigation relative to navy list.

NAVY DEPARTMENT,
BUREAU OF NAVIGATION,
Washington, June 1, 19—.

SIR: As the navy list now stands it will be necessary to make fifteen (15) vacancies above the grade of lieutenant (junior grade) on June 30, 19—, in order to bring the yearly average number of vacancies above that grade up to forty (40), the number required by section 8 of the navy personnel act.

Up to the present time two (2) applications for voluntary retirement have been received, leaving thirteen (13) vacancies to be made. If more applications for voluntary retirement are received the bureau will advise the board.

Very respectfully,

T—— U. V——,
Chief of Bureau.

The PRESIDENT OF THE BOARD ON SELECTION FOR RETIREMENT.

Letter informing board as to number of officers to be selected for retirement.

NAVY DEPARTMENT,
Washington, July 1, 19—.

SIR: You are informed that it will be necessary for the board of which you are president to select twelve officers for compulsory retirement under the provisions of section 9 of the navy personnel act, approved March 3, 1899, in order to bring the yearly average number of vacancies above the grade of lieutenant (junior grade) as near to forty as possible in accordance with the provisions of section 8 of the act referred to.

The following is a list of the officers who have requested voluntary retirement on June 30, 19—, and whose names will be submitted to the President for retirement from that date:

(Here follow names.)

The Bureau of Navigation will furnish the board with a correct list of the officers of the line of the navy as it stands to-day.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

The PRESIDENT OF THE BOARD ON SELECTION FOR RETIREMENT.

(Or)

NAVY DEPARTMENT,
Washington, July 1, 19—.

SIR: The number of applications for voluntary retirement on June 30, 19—, has been sufficient to cause the average yearly number of vacancies above the different grades of the line of the navy as required by section 8 of the navy personnel act, approved March 3, 1899. It will not, therefore, be necessary for the board of which you are president to make any selections for retirement under the provisions of section 9 of the said act.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

The PRESIDENT OF THE BOARD ON SELECTION FOR RETIREMENT.

MARINE EXAMINING BOARD.

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RECORD OF PROCEEDINGS
OF A
MARINE EXAMINING BOARD

CONVENED AT

THE MARINE BARRACKS, NAVY-YARD, MARE ISLAND, CAL.,

IN THE CASE OF

First Lieut. X——— Y. Z———, U. S. Marine Corps.

June 2, 19—.

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EXAMINING BOARD ROOM, MARINE BARRACKS,
NAVY-YARD, MARE ISLAND, CAL.,

June 10, 19—.

The board met at 10 a. m., June 2, 19—, pursuant to an order; copy prefixed, marked "A."

VAR. ——— pursuant to orders, copies prefixed marked "A1" to "A3." (This variation is used when original members are detached, when the date or place of meeting is changed, etc.)

Promotion of commissioned officers in Marine Corps.—" * * * hereafter promotions to every grade of commissioned officers in the Marine Corps below the grade of commandant shall be made in the same manner and under the same conditions as are now or may hereafter be prescribed in pursuance of law for commissioned officers of the army." (From act approved July 28, 1892.)

Promotions in the army.—" SEC. 3. That the President be, and he is hereby, authorized to prescribe a system of examination of all officers of the army below the rank of major to determine their fitness for promotion, such an examination to be conducted at such times anterior to the accruing of the right to promotion as may be best for the interests of the service: * * * *Provided*, That if any officer fails to pass a satisfactory examination and is reported unfit for promotion, the officer next below him in rank having passed said examination shall receive the promotion: *And provided*, That should the officer fall in his physical examination and be found incapacitated for service by reason of physical disability contracted in line of duty, he shall be retired with the rank to which his seniority entitled him to be promoted; but if he should fail for any other reason he shall be suspended from promotion for one year, when he shall be reexamined, and in case of failure on such reexamination he shall be honorably discharged with one year's pay from the army: * * * " (From act approved October 1, 1890.)

Present:

Maj. A——— B. C———, U. S. Marine Corps;
Maj. D——— E. F———, U. S. Marine Corps;
Surg. G——— H. K———, U. S. Navy;
Surg. L——— M. N———, U. S. Navy, and
Capt. O——— P. Q———, U. S. Marine Corps; members, and
First Lieut. R——— S. T———, U. S. Marine Corps, recorder.

VAR. 1. Maj. D——— E. F———, U. S. Marine Corps, a member, was absent on account of illness (or other cause) which being only temporary, the board adjourned to meet the following day.

The board met at 10 a. m., June 2, 19—. Present: All the members and the recorder.

VAR. 2. Maj. D——— E. F———, U. S. Marine Corps, a member, was absent on account of illness (or other cause) which would prevent his attendance for an indefinite time. The president, therefore, addressed a letter to the convening authority in the matter,

and the board then adjourned to await further action in the premises, copy of letter appended, marked "—."

Procedure in case of absence.—In case of absence of a member or of the recorder the record shall show the reason therefor, and, if the absence is to be more than temporary, the board shall adjourn and the president shall inform the convening authority of the facts.

Members to familiarize themselves with regulations.—Before entering on the discharge of their duties members of examining boards shall acquaint themselves with the provisions of the chapter on "Boards," Navy Regulations.

Duties of medical members.—The medical officers shall take part only in the physical examination of the candidate for promotion.

Duties of recorder.—The recorder shall take no part in examining the candidate, but, under the direction of the board, shall record its proceedings and prepare the record.

Presence of candidate.—All proceedings of the board, except its findings, recommendations, deliberations thereon, and its deliberations on interlocutory questions shall be in the presence of the candidate for promotion and his counsel, if he has counsel present.

First Lieut. X——— Y. Z———, U. S. Marine Corps, reported for examination in obedience to his orders, copy prefixed, marked "B."

Candidate to present his orders.—The candidate shall present his orders as his authority for appearing; these orders shall be read by the recorder, and a copy thereof, certified by the recorder, shall be prefixed to the record.

The precept (and orders altering the same were) was read by the recorder, and there was no objection to any member.

Procedure in case of challenge.—The candidate may challenge members, only one at a time, for causes stated, the validity of the challenges to be determined by the full board, according to the Regulations and the procedure of general courts-martial. The record must show that the candidate afforded opportunity to challenge. If a challenge is sustained, the president shall report the facts to the convening authority and the board shall adjourn. (See variations under procedure of general court-martial.)

The recorder and the board were duly sworn.

How oaths administered.—The recorder shall first swear the several members, including the medical officers, and the president shall then swear the recorder.

Form of oaths.—For form of oaths, see chapter on "Boards," Navy Regulations, or procedure of a naval examining board.

The recorder read the medical record of the candidate; appended, marked "C."

Medical record, etc., to be read aloud.—The medical record of the candidate since his last examination, as furnished by the Navy Department, and other documents pertaining to his physical fitness, including any pertinent extracts from the military history, reports on fitness, interrogatories, etc., shall be read aloud and appended to the record.

The candidate submitted a certificate, appended, marked "D," as to his physical qualifications, and he was then directed to report to the medical officers for physical examination, during which the board took a recess, the medical members and the candidate withdrawing.

Candidate's certificate signed by himself.—The candidate's certificate as to his physical qualifications shall be signed by himself as of the date of examination.

Medical members shall personally examine candidate.—Each of the medical members shall thoroughly examine the candidate as to his physical qualifications for promotion.

Defects of vision.—Defects of vision that may be entirely corrected by glasses do not disqualify unless they are due to, or are accompanied by, organic disease.

The board reassembled. Present: All the members, the recorder, and the candidate.

The report of the medical officers, that the candidate is physically qualified for promotion, was read by the recorder, adopted by the board, and appended, marked "E."

Question of physical fitness.—All questions relating to the physical fitness of an officer for promotion shall be determined by the full board.

The medical officers were excused from further attendance.

VAR. The report of the medical officers, that the candidate is not physically qualified for promotion, was read by the recorder, concurred in by the full board, and appended, marked "—." The board then resolved itself into a retiring board.

A communication, marked "C," was received from the Commandant of the Marine Corps, etc. (Continue as in marine retiring board.)

Procedure on physical disqualification.—When the board decides that the candidate is physically disqualified for promotion the examinations as to his other qualifications shall not be held, but the board shall examine and report in full, according to the procedure of a marine retiring board, upon the cause which in its judgment produced the disability, and whether or not such disability was contracted in line of duty.

Finding signed by all concurring members.—In such case the finding shall be signed by all the members, including the medical officers, who concur therein, and the votes of a majority shall decide; any member who dissents shall state his reasons for so doing, which reasons shall be entered in the record and signed by the dissenting member.

Procedure on reexamination.—The procedure prescribed herein shall be followed in the reexamination of officers suspended from promotion under the last proviso in section 3 of the act of October 1, 1890, quoted above.

A communication, appended, marked "—," was received from the Commandant of the Marine Corps, transmitting the papers named therein; which were duly considered by the board, and which are appended, marked "—" to "—."

Marking of documents.—Each document attached to the record shall be plainly marked in the lower right hand corner of its first page for identification. Documents pertaining to the organization of the board shall be marked by capital letters; instruments of evidence, by numbers.

Arrangement of documents.—Reports of fitness, answers to interrogatories, commendatory letters, letters relating to indebtedness, etc., shall be appended to the record, all papers of each class together and arranged in chronological order in each class.

Fitness as regards general efficiency.—The use an officer has made of his opportunities in the past, his ability to apply practically his professional knowledge, and his general trustworthiness and ability in the performance of his official duties will be taken under consideration. To this end, whenever an officer is ordered to examination for promotion, the Commandant of the Marine Corps shall forward to the president of the board all papers on file in his headquarters and in the Navy Department pertaining to or affecting the efficiency of the candidate; the commanding officer under whom he is serving, and the commanding officer of his regiment (if serving in a regiment), without further instructions, shall prepare and forward without delay a report on fitness, in accordance with the Navy Regulations, up to the latest practicable date prior to the candidate's examination.

General efficiency assumed.—In the absence of evidence to the contrary from authoritative sources, an officer's fitness as to general efficiency will be assumed.

Procedure in case general efficiency is not assumed.—If the general efficiency of the candidate is not assumed, the candidate shall be furnished full information as to any allegations concerning his lack of such efficiency, names of accusers, and witnesses, and documentary evidence against him; he shall be allowed to examine such witnesses and evidence, and to testify and introduce evidence in his own behalf.

Unfavorable entries investigated.—In case of entries in the medical history of the candidate or other accompanying papers indicating unfitness, the matter shall be investigated by the board.

Scope of interrogatories.—The board shall decide concerning the officers or other persons to whom interrogatories shall be sent and shall decide upon the scope and character of such interrogatories; but no inquiry as to matters of opinion shall be put to any officer who is junior in rank to the candidate.

Examination of witnesses.—If the candidate requests that witnesses be examined in his behalf, the board shall, so far as the request appears to be reasonable, examine the witnesses in his presence or by taking their depositions.

What facts not inquired into.—The board shall not inquire into nor consider any fact which occurred prior to the last examination of the candidate whereby he was promoted and which has been inquired into and decided upon, unless such fact continuing shows his present unfitness for promotion.

Mark in general efficiency.—The mark in general efficiency shall be based upon reports of fitness; answers to interrogatories; documentary evidence submitted to the board by the Navy Department, the Commandant of the Marine Corps, or the candidate; and such other relevant evidence as may be submitted by the candidate or obtained by the board on its own initiative. All the foregoing shall be embodied in full in the record, or properly appended thereto, each class of evidence by itself.

VAR. The board was cleared. (All persons shall withdraw except the board.)

The board was opened, the candidate appeared and was informed that his general efficiency could not be assumed owing to the following adverse evidence of record, which was read by the recorder:

Copy of general court-martial order, dated October 27, 19—; marked "—."

Copy of letter of reprimand from the Secretary of the Navy, dated June 12, 19—; marked "—."

Report by Colonel ———, U. S. Marine Corps, Commanding First Brigade of Marines, Philippine Islands, dated May 18, 19—; marked "—."

* * * * *

The candidate was informed that he would be heard upon the foregoing matters, and he asked permission to introduce P—— Q—— as a witness, which request was granted. The witness entered and was duly sworn.

(Testimony recorded as for defense in a general court-martial.)

First Lieutenant Z—— had nothing further to offer and did not desire to make a statement. (Or, —— but made a sworn statement, appended, marked "—.") (The candidate shall always be given an opportunity to make a statement with reference to his general efficiency, when such efficiency is not assumed.)

Presence of members during examination.—During the oral and practical examinations all the members, except the medical members, shall be present. Written examinations, when necessary, may be conducted in the presence of one member of the board, for which purpose the board may be divided into committees before whom the examinations will be continued from day to day until completed, after which the board shall reassemble to determine its findings.

Professional examination of field officers.—A field officer is not required to be examined professionally.

The board then conducted the professional examination of the candidate, as follows:

VAR. The candidate presented a graduating certificate of the School of Application, U. S. Marine Corps, dated ——, copy appended, marked "—," which was accepted by the board as sufficient evidence of proficiency in the subjects of ——, enumerated therein.

Graduating certificate.—Graduating certificates of the School of Application, dated not more than three years anterior to the accruing of the vacancy to which the candidate is entitled, shall be accepted as sufficient evidence of proficiency in the subjects enumerated therein, except in professional efficiency.

June 2. Subject, Administration; began, 11.15 a. m.; ended, 12.30 p. m.

Character of professional examination.—The examination shall be such as will fully test an officer's knowledge of the general principles of all the duties pertaining to the particular branch of the corps that devolve upon him by reason of his promotion to the next higher grade. In all examinations the board shall form their opinion of an officer's professional qualifications by comparison of his knowledge with his age, service, and opportunities for acquiring such knowledge. The examination shall be in no sense scholastic, and the practical exercises and problems shall not be so framed as to require a knowledge that extends beyond the functions of the next higher grade.

Examinations, oral and practical.—Examinations in all professional subjects shall be oral and practical, with the exceptions mentioned in the notes following this form of procedure.

June 2. Subject, Drill regulations and signaling; began, 1.30 p. m.; ended, 2.25 p. m.

Failure on practical examination.—In case of failure on practical examination in any subject, the board shall conduct a second practical test of sufficient scope to determine beyond doubt the officer's actual degree of efficiency in the subject.

June 2. Subject, Firing regulations; began, 2.30 p. m.; ended, 4 p. m.

The candidate (if a second lieutenant) was then directed to proceed at daylight (or as may be) the following morning to make a road (or position) sketch (locality assigned) and to bring the same before the board at 9 a. m. the next morning, which direction was complied with.

June 3. Subject, Completing road sketch; began, 9 a. m.; ended, 11 a. m.

June 3. Subject, Fire discipline; began, 11.05 a. m.; ended, 12.15 p. m.

VAR. The oral examination of the candidate in fire discipline being unsatisfactory, the board proceeded with a written examination on that subject; appended, marked "——." (The questions asked and the candidate's answers shall be appended as written.)

June 7. Subject, Minor tactics; began, 1.30 p. m.; ended, 2.30 p. m.

* * * * *

June 9. Subject, Naval ordnance and gunnery; began, 11.20 a. m.; ended, 12.10 p. m.

Entry of incidents out of the ordinary.—Any incidents out of the ordinary routine of the examination which occurs on a date included in the above table of examinations shall be entered, under the proper date, and the tabulation shall then continue.

The candidate (if a captain) was then assigned a problem and the board adjourned until the following day, when the solution was submitted by the candidate; appended, marked "——."

The exercises in practical drill were next proceeded with.

Problems for first and second lieutenants.—In connection with the practical drill, a problem shall be given to a first or second lieutenant, as follows: For a first lieutenant—a practical problem to solve in the field, on varied ground, adjacent to the post, when

in command of a company; for a second lieutenant—a practical problem in reconnoissance, sufficient men being used to simulate the enemy, to be worked out in varied country adjacent to the post.

Practical exercises never omitted.—Practical exercises may be postponed from day to day, in case of unpropitious weather, but shall never be omitted or curtailed, except as set forth in the third class of written examinations; see note, *post*.

A copy of all questions asked in the several subjects, a description of sketches and problems assigned, and a list of the practical maneuvers explained and performed, are appended, marked “——.”

Copies of questions, answers, marks, etc., appended.—There shall be appended to the record in each case a copy of all questions asked and a description of all practical exercises, which will show in the case of oral and practical examinations the marks assigned by the individual members of the board and the marks assigned by the board as a whole to each. In the case of a written examination each question shall be attached to the record together with the answers thereto written by the candidate, the marks assigned to each answer by the individual members of the board, and the marks assigned by the board as a whole to each.

Candidate's certificate.—At the conclusion of his examination the candidate shall be called upon to sign and submit a certificate to the effect that he has not received assistance from any unauthorized source.

The candidate submitted a certificate, appended, marked “——,” that he had received no unauthorized assistance.

Finding in case of field officer.—In the case of a field officer, the finding and recommendation shall only refer to the general efficiency and the physical fitness of the candidate.

Finding and recommendation confidential.—The finding and recommendation of the board shall be regarded by the members and recorder as confidential.

Record to show that unfavorable matter considered.—In case any of the papers submitted to the board are unfavorable to the candidate and the board finds him qualified notwithstanding such evidence, the record must show affirmatively that these unfavorable matters were duly considered and state the board's conclusions in regard thereto. (See variation after certificate of naval examining board.)

The board assigned the several marks, as shown in the following table:

Marks and percentages reported.—When both oral (or written) and practical examinations are required, the board shall report the marks attained in each examination, in each subject, whether oral, written, or practical, appropriately inserting the several marks in the different subjects, exercises, and problems as subheads in the following tabulation.

Marks required for promotion.—No officer shall be recommended for promotion who fails to attain in each examination a mark of 3.0 (75 per cent) in each oral or written, and in each practical, examination in every subject, nor if his mark in general efficiency is less than 3.0.

Subject.	Mark.	Weight.	Multiple.
Administration.....	3.00	3	9.00
Drill regulations.....	4.00	4	16.00
Firing regulations.....	3.00	2	6.00
Fire discipline.....	3.00	2	6.00
Military field engineering.....	3.70	1	3.70
Naval and military law.....	3.15	2	6.30
Minor tactics.....	3.00	2	6.00
Naval ordnance and gunnery.....	3.05	2	6.10
General efficiency.....	3.30	7	25.10
		25	84.20
Average.....			3.37

What final opinion must show.—The record of the final opinion of the board as to the fitness or unfitness of an officer for promotion shall show under which heads the officer's qualifications are considered satisfactory, and under which, if any, they are unsatisfactory.

The board is of the opinion that First Lieut. X—— Y. Z——, U. S. Marine Corps, has the general efficiency, and the physical and professional qualifications to perform the duties of the next grade to which he will be eligible, and does, therefore, recommend his promotion thereto.

VAR. 1. —— has the general efficiency and the physical qualifications, but has not the professional qualifications to perform the duties of the next grade to which he will be eligible, and does not, therefore, recommend his promotion thereto (or, as the case may be).

VAR. 2. (In case of field officer.) —— has the general efficiency and physical qualifications to perform the duties of the next grade to which he will be eligible, and does, therefore, recommend his promotion thereto.

A—— B. C——,
Major, U. S. Marine Corps, President.
 D—— E. F——,
Major, U. S. Marine Corps, Member.
 O—— P. Q——,
Captain, U. S. Marine Corps, Member.
 R—— S. T——,
First Lieut., U. S. Marine Corps, Recorder.

Notes relating to examination of Marine Officers.

Board to prepare questions.—Before beginning the examination in a subject the board shall prepare and prescribe, in writing, such number of questions on each subject as it may deem necessary to test thoroughly the theoretical knowledge of the officer being examined; it shall also require such practical exercises, including problems, appropriate to the subjects of the examination as it may deem necessary to demonstrate his capacity to perform properly the duties of the office for which he is examined. The board shall assign a weight (which shall be entered on the margin of the paper) to each question, exercise, and problem which shall be used only in calculating the average in the subject.

Uniformity in questions.—In the interest of uniformity and for the assistance of boards, the latter will be furnished by the Commandant of the Marine Corps with lists of questions on the subjects of examination, with weights attached. Boards will not be expected, however, to use or to confine themselves *exclusively* to the questions contained in these lists, but are authorized to frame and ask any questions, with suitable weights attached, selected from the publications recommended for study, or to use blackboards or illustrations which will facilitate its work and which it may deem necessary during the progress of the oral, written, or practical examinations. The use of diagrams and sketches is authorized.

Manner of assigning questions.—The officer being examined shall be furnished with only such number of questions or be required to conduct such practical exercises as he may be able to answer or complete before a recess or adjournment is taken.

Board to note value of answer.—As each question is answered or each exercise is completed, each member of the board shall note his estimate of the value of the answer given or the exercise conducted. These estimates shall be made on a scale of 4 to 0, a 4 representing perfect, and the use of tenths in marking is authorized.

Calculation of average.—The average which the candidate obtains in a subject shall be calculated as follows: Each member shall multiply the estimate (on the scale of 4 to 0) given by him to an answer or exercise by the weight previously assigned thereto; the sum of the products divided by the sum of the weights will be each member's average. The mean of these averages shall be the average which the candidate obtains in that subject.

Final average.—The final average of the candidate shall be calculated as follows: Multiply the average in a subject by the weight assigned that subject; the sum of the products is the final multiple, and the final multiple divided by the sum of the weights is the final average.

Examination to include all subjects.—The examination of the candidate shall include all the subjects required, whether he is found satisfactory or deficient in any of them.

Continuance of examination.—Examinations shall continue from day to day, Sundays and holidays excepted, until completed.

Troops and material furnished.—Commanding officers of posts at or in the vicinity of which boards may be appointed to meet shall furnish, upon request, such available troops and material as may be required by examining boards in carrying out the prescribed examination.

Written examinations.—Written examinations, which shall be sufficiently comprehensive to test properly the officer's knowledge of the whole subject, shall be held under the following circumstances:

First. In any subject or subjects prescribed for the promotion examination which the record of the officer shows that he has pursued at the School of Application and in which he has been pronounced deficient.

Second. In any subject in which the oral examination of the candidate is unsatisfactory—i. e., below the mark of 3.0. In such case the written examination shall be proceeded with at once. The questions shall be prepared and weights assigned, as in oral examinations, and shall be written (or typewritten) immediately preceding each answer thereto, respectively. The written examination being completed, the members of the board shall estimate the value of the answers given and determine the mark in the same manner as required in oral examinations.

Third. Whenever, owing to the exigencies of the service, it is impracticable for an officer to appear before an examining board. In such case his professional examination shall be conducted entirely in writing, in the presence of an officer, either selected by his commanding officer, or designated by the convening authority. The proper examining board shall prepare questions and problems, and forward them to the commanding officer of the officer to be examined, or to the designated officer, with instructions to have the questions answered in writing. The solution of problems shall be submitted in writing. The medical officers will be specially designated by the convening authority to conduct the physical examination; they shall be subject to challenge in the usual manner, and the relevancy and validity of the challenge shall be determined by the officer detailed to conduct the examination and the two medical officers. In case the challenge is sustained, that fact shall be reported to the convening authority.

The officer detailed to conduct the examination shall swear the two medical officers in the usual manner. Should the medical officers find the candidate incapacitated for service, further examination shall be suspended and the facts reported to the president of the board, who shall communicate them to the convening authority.

Upon completion of the examination, all the papers shall be forwarded to the president of the board.

Responsibility of recorder.—While the recorder is specially charged with keeping the record, he does so under the directions of the board, and the board as a whole is responsible for its correctness.

Transmission of record upon completion.—When the record is complete it shall be transmitted to the Judge-Advocate-General of the Navy.

General subjects and weights.—The subjects and the weights assigned each in calculating the final average shall be as follows:

For promotion from second to first lieutenant:

Subject.	Weight.	Maxima.
Administration	3	12
Drill regulations and signaling.....	4	16
Firing regulations.....	2	8
Fire discipline.....	2	8
Military field engineering.....	1	4
Naval and military law	2	8
Minor tactics.....	2	8
Naval ordnance and gunnery.....	2	8
Military topography.....	1	4
General efficiency.....	6	24
	25	100

For promotion from first lieutenant to captain:

Subject.	Weight.	Maxima.
Administration	3	12
Drill regulations.....	4	16
Firing regulations.....	2	8
Fire discipline.....	2	8
Military field engineering.....	1	4
Naval and military law	2	8
Minor tactics.....	2	8
Naval ordnance and gunnery.....	2	8
General efficiency.....	7	28
	25	100

For promotion from captain to major:

Subject.	Weight.	Maxima.
Drill regulations.....	5	20
Naval and military law	3	12
Minor tactics.....	5	20
General efficiency.....	12	48
	25	100

Precept.

NAVY DEPARTMENT,
Washington, May 20, 19—.

SIR: A marine examining board, for the examination of such candidates for promotion as may be directed to appear before it, is hereby ordered to convene at the marine barracks, navy-yard, Mare Island, Cal., on Monday, the 1st day of June, 19—, at 10 o'clock a. m., or as soon thereafter as practicable.

The board will consist of yourself as president; and of Col. D—— E. F——, U. S. Marine Corps, Medical Director G—— H. K——, U. S. Navy, Col. L—— M. N——, U. S. Marine Corps, and Surg. O—— P. Q——, U. S. Navy, members; and of First Lieut. R—— S. T——, U. S. Marine Corps, as recorder.

The proceedings of the board will be conducted in accordance with the provisions of the Navy Regulations and the Forms of Procedure issued by the Navy Department.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

Col. A—— B. C——, U. S. Marine Corps,
*Commanding Marine Barracks,
Navy-Yard, Mare Island, Cal.*

Form of precept.—The above form of precept will be used whatever be the rank of the officers to be examined.

Composition of examining board.—Examining boards shall in all cases consist of not less than five officers, three of whom shall, if practicable, be officers of the Marine Corps, senior to the officer to be examined, and two of whom shall be medical officers of the navy. When not practicable to detail officers of the Marine Corps as members of such examining boards, officers of the line of the navy shall be so detailed. (From act approved July 28, 1892.)

Professional examination.—When the candidate holds the rank of captain or below, the board shall examine and report upon (1) his general efficiency, (2) his physical, and (3) his professional fitness for promotion; when he holds the rank of major, lieutenant-colonel, or colonel no professional examination is required.

Letter to candidate.

HEADQUARTERS U. S. MARINE CORPS,
Washington, May 28, 19—.

SIR: Proceed to Washington, D. C., and report to the president of the marine examining board, marine barracks, at 10 o'clock a. m., on Monday, the 1st proximo, for the examination preliminary to promotion to the next higher grade.

When discharged by the board, return to your present station and resume your duties.

Very respectfully,

C—— B. A——,
Major-General, Commandant.

First Lieut. X—— Y. Z——, U. S. Marine Corps,
Marine Barracks, Navy-Yard, New York.

Letter from the Secretary of the Navy to board concerning challenge of member.

NAVY DEPARTMENT,
Washington, June 2, 19—.

SIR: Referring to your letter of the 1st instant, inclosing extracts from the record of proceedings of the marine examining board of which you are president, in the case of First Lieut. X—— Y. Z——, U. S. Marine Corps, relative to challenging of Capt. O—— P. Q——, U. S. Marine Corps, as a member of said board, you are informed that the Department considers the reasons urged by Lieutenant Z—— to be valid and Capt. U—— V. W——, U. S. Marine Corps, is hereby appointed a member of the board in place of Capt. O—— P. Q——, relieved.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

Maj. A—— B. C——, U. S. Marine Corps,
*President Marine Examining Board,
Marine Barracks, Washington, D. C.*

(Or, in case challenge is not regarded as valid:)

NAVY DEPARTMENT,

Washington, June 2, 19—.

SIR: Referring to your letter of the 1st instant, inclosing extracts from the record of proceedings of the marine examining board of which you are president, in the case of First Lieut. X—— Y. Z——, U. S. Marine Corps, relative to the challenging of Capt. O—— P. Q——, U. S. Marine Corps, as a member of said board, you are informed that the Department does not consider the reasons urged by Lieutenant Z—— to be valid, and declines to relieve Captain Q—— as a member of the board.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

Maj. A—— B. C——, U. S. Marine Corps,
*President Marine Examining Board,
Marine Barracks, Washington, D. C.*

Medical record of First Lieut. X—— Y. Z——, U. S. Marine Corps, since last promotion.

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V—— I. D——,
Surgeon-General, U. S. Navy.

Medical certificate of candidate.

MARINE EXAMINING BOARD,
MARINE BARRACKS, WASHINGTON, D. C.,

June 1, 19—.

I hereby certify that I am, to the best of my knowledge and belief, physically qualified to perform all the duties pertaining to the grade to which I am a candidate for promotion, and that I am free from all bodily ailments.

X—— Y. Z——,
First Lieutenant, U. S. Marine Corps.

Meaning of certificate.—The above certificate is not a mere matter of form, and, regardless of whether an officer has been doing duty or not, it is intended to be the candidate's statement of his belief that he has no physical ailment whatever of any kind.
Statement not sworn to.—The candidate is not required to make the statement under oath, and should not therefore be sworn.

Certificate of candidate at conclusion of examination.

MARINE EXAMINING BOARD,
MARINE BARRACKS, WASHINGTON, D. C.,

June 10, 19—.

I hereby certify that during my examination just concluded I have received no assistance from any unauthorized source.

X—— Y. Z——,
First Lieutenant, U. S. Marine Corps.

Report of medical members to the board.

(See form of report under marine retiring board, which shall also be used by examining boards.)

Military history of First Lieut. X—— Y. Z——, U. S. Marine Corps, since last promotion.

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S—— S. R——,
Colonel, Adjutant and Inspector.

Letter from president to medical members when board resolves itself into a retiring board.

MARINE RETIRING BOARD, MARINE BARRACKS,
Washington, June 1, 19—.

GENTLEMEN: You will be pleased to make a careful examination into the past and present physical condition of First Lieut. X—— Y. Z——, U. S. Marine Corps, whose case has been referred to this board for examination, and report as to his capacity to perform the duties appropriate to his commission, in conformity with Title XIV, chapter 2, of the Revised Statutes of the United States.

Besides a personal examination, you will examine closely all matter transmitted to the board in this case by the Commandant of the Marine Corps from the files and records of his headquarters and from those of the Navy Department, and you will also endeavor to obtain from any other authentic source within your reach such information as will aid the board in the performance of its duties, and will report the result in writing.

In case you find the officer under examination incapacitated for active service, you will state whether, in your opinion, his disability is the result of an incident of the service.

Very respectfully,

A—— B. C——,
Major, U. S. Marine Corps, President.

Surgeon G—— H. K——, U. S. Navy.

Surgeon L—— M. N——, U. S. Navy.

Report of medical members to board which resolves itself into retiring board.

(See form of report under marine retiring board, which shall also be used by examining boards.)

Interrogatories and reports on fitness in the case of First Lieut. X—— Y. Z——, U. S. Marine Corps.

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MARINE RETIRING BOARD.

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RECORD OF PROCEEDINGS

OF A

MARINE RETIRING BOARD

CONVENED AT

THE MARINE BARRACKS, WASHINGTON, D. C.,

IN THE CASE OF

First Lieut. X——— Y. Z———, U. S. Marine Corps,

June 1, 19—.

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**MARINE RETIRING BOARD,
MARINE BARRACKS,
Washington, June 2, 19—.**

The board met at 10 a. m., June 1, 19— (*or*, this day), pursuant to an order; copy prefixed, marked "A."

Present:

Col. C—— B. A——, U. S. Marine Corps;
Medical Inspector F—— E. D——, U. S. Navy;
Maj. K—— H. G——, U. S. Marine Corps;
Maj. N—— M. L——, U. S. Marine Corps, and
Surg. Q—— P. O——, U. S. Navy, members, and
First Lieut. T—— S. R——, U. S. Marine Corps, recorder.

First Lieut. X—— Y. Z——, U. S. Marine Corps, reported in obedience to an order; copy prefixed, marked "B."

The precept was read by the recorder and there was no objection to any member.

Challenge.—See procedure marine examining board in case of challenge of member.

The board and the recorder were duly sworn.

How oaths administered.—The oaths shall be administered in the order prescribed by the procedure for marine examining boards.

Form of oaths.—For form of oaths, see naval examining board procedure.

A communication appended, marked "C," was received from the Commandant of the Marine Corps, transmitting the papers named therein which are appended, marked "——" to "——;" those marked "——" to "——," inclusive, were read.

Papers bearing on physical condition read.—All papers having any bearing on the physical condition of the officer under examination shall be read as above indicated.

Facts to be inquired into, and powers of board.—A retiring board may inquire into and determine the facts touching the nature and occasion of the disability of any officer who appears to be incapable of performing the duties of his office, and shall have such powers of a court-martial and of a court of inquiry as may be necessary for that purpose. (Sec. 1248, R. S.)

The medical officers were directed to examine into the past and present physical condition of First Lieutenant Z——; letter of instructions appended, marked "——."

Pending the physical examination the board took a recess (*or*, adjourned) in this case until 2 o'clock p. m., June 1, 19— (*or*, until 9.30 o'clock a. m., this day), when it reconvened; present, the entire board and the officer under examination.

Officer desires retirement.—If the officer desires retirement, the record shall be continued as next shown; he shall be examined first, after which the medical officers shall be examined.

Officer does not desire retirement.—If the officer does not desire to be retired, his examination, and that of any witnesses he may wish to call, shall be postponed until after the medical officers have been examined.

First Lieut. X——— Y. Z———, U. S. Marine Corps, was asked whether he wished to be retired, and replied in the affirmative. He was then duly sworn as a witness, and testified as follows:

Examined by the recorder (*or* by the board):

1. Q. State the nature of your disability, its cause, and how long you have suffered from it.

A. (The officer may here make an oral statement or submit a written one. If the latter, the record shall state): The witness submitted a written statement, which was read and appended, marked “—.”

2. Q. Is the statement submitted by you correct?

A. Yes.

(The board may then ask further questions.)

5. Q. Do you desire to make any further statement?

A * * *

Medical Inspector F——— E. D———, U. S. Navy, a member of the board, was duly sworn, and testified as follows:

Examined by the recorder (*or* by the board):

1. Q. Please submit to the board the result of your examination of First Lieutenant Z———.

The witness submitted a written report, signed by himself and Surg. Q——— P. O———, U. S. Navy, also a member of the board, which was read and appended, marked “—.”

2. Q. From what cause does First Lieutenant Z———’s disability proceed?

A. * * *

3. Q. Is the disability permanent?

A. * * *

4. Q. Is First Lieutenant Z———’s disability such as to incapacitate him for active service?

A. * * *

Examination of senior medical officer.—The examination of the witness should be conducted so as to bring out all material facts on the lines indicated.

First Lieutenant Z——— stated that he had no question to ask (*or* asked the following questions):

* * * * *

Other medical member examined.—The other medical member of the board shall then be similarly interrogated.

If officer does not desire retirement.—The officer under examination for retirement, in case he does not wish to be retired, shall next be permitted to call witnesses to rebut the evidence of the medical officers, or to make a statement, as shown below.

First Lieutenant Z—— stated that he did not desire to rebut the evidence of the medical officers, nor to make a statement. He was then discharged from further attendance.

VAR. —— asked and received permission to subpoena Dr. A—— B——.

Dr. A—— B—— appeared, was duly sworn, and testified as follows: (Examined as for defense in general court-martial.)

First Lieutenant Z—— had no other witnesses to call; he made a sworn statement appended, marked “——.”

He was then discharged from further attendance.

(See variations under naval examining board.)

Findings of board.—When the board finds an officer incapacitated for active service, it shall also find and report the cause which, in its judgment, has produced his incapacity, and whether such cause is an incident of the service.

The board, having deliberated on the evidence before it, decided that First Lieut. X—— Y. Z——, U. S. Marine Corps, is incapacitated for active service by reason of (here state reason), and that his incapacity is the result of an incident of the service.

The board then adjourned.

C—— B. A——,
Colonel, U. S. Marine Corps, President.

F—— E. D——,
Medical Inspector, U. S. Navy, Member.

K—— H. G——,
Major, U. S. Marine Corps, Member.

N—— M. L——,
Major, U. S. Marine Corps, Member.

Q—— P. O——,
Surgeon, U. S. Navy, Member.

T—— S. R——,
First Lieutenant, U. S. Marine Corps, Recorder.

VAR. 1. —— decided that First Lieutenant ——, U. S. Marine Corps, is not incapacitated for active service.

VAR. 2. —— decided that —— is temporarily incapacitated for active service by reason of malarial poisoning, and recommends that he be granted sick leave for —— months.

VAR. 3. —— decided that —— is incapacitated for active service by reason of ——, and that his incapacity is not the result of an incident of the service.

(See also variations under naval retiring board.)

Precept.

NAVY DEPARTMENT,
Washington, May 20, 19—.

SIR: A retiring board, consisting of yourself as president and of Medical Inspector F—— E. D——, U. S. Navy, Maj. K—— H. G——, U. S. Marine Corps, Maj. N—— M. L——, U. S. Marine Corps, and Surg. Q—— P. O——, U. S. Navy, members, is hereby ordered to convene at the marine barracks, Washington, D. C., at 10 o'clock a. m., on Monday, June 1, 19—, or as soon thereafter as practicable.

First Lieut. T—— S. R——, U. S. Marine Corps, will act as recorder.

The board will examine and report upon such officers as may, by the Secretary of the Navy, be ordered to appear before it, in conformity with sections 1622 and 1623, and Title XIV, chapter 2, of the Revised Statutes of the United States.

This employment on shore duty is required by the public interests.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

Col. C—— B. A——, U. S. Marine Corps,
*Commanding Marine Barracks,
Navy-Yard, Philadelphia, Pa.*

Manner of retirement.—The commissioned officers of the Marine Corps shall be retired in like cases, in the same manner, and with the same relative conditions, in all respects, as are provided for officers of the army, except as is provided in the next section. (Sec. 1622, R. S.)

Composition of board.—In the case of an officer of the Marine Corps, the retiring board shall be selected by the Secretary of the Navy, under the direction of the President. Two-fifths of the board shall be selected from the Medical Corps of the Navy, and the remainder shall be selected from officers of Marine Corps, senior in rank, so far as may be, to the officer whose disability is to be inquired of. (Sec. 1623, R. S.)

Number on board.—A retiring board shall consist "of not more than nine nor less than five officers, two-fifths of whom shall be selected from the Medical Corps." (Sec. 1246, R. S.)

Letter to officer.

NAVY DEPARTMENT,
May 28, 19—.

SIR: Proceed to Washington, D. C., and report to Col. C—— V. A——, U. S. Marine Corps, president of a marine retiring board, at the marine barracks, at 10 o'clock a. m., on Monday, June 1, 19—, for examination in conformity with sections 1622 and 1623, and Title XIV, chapter 2, of the Revised Statutes of the United States.

When discharged from further attendance before the board, return to your present station and resume your duties.

Very respectfully,

C—— F. L——,
Secretary of the Navy.

First Lieut. X—— Y. Z——, U. S. Marine Corps,
Marine Barracks, Navy-Yard, Pensacola, Fla.

Record of the service of First Lieut. X—— Y. Z——, U. S. Marine Corps.

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Medical Record of First Lieut. X—— Y. Z——, U. S. Marine Corps.

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Letter to medical members of board.

MARINE RETIRING BOARD, MARINE BARRACKS,
Washington, June 1, 19—.

GENTLEMEN: You will be pleased to make a careful examination into the past and present physical condition of First Lieut. X—— Y. Z——, U. S. Marine Corps, whose case has been referred to this board for examination, and report as to his capacity to perform the duties appropriate to his commission, in conformity with Title XIV, chapter 2, of the Revised Statutes of the United States.

Besides a personal examination, you will examine closely all matter transmitted to the board in this case by the Commandant of the Marine Corps from the files and records of his headquarters and from those of the Navy Department, and you will also endeavor to obtain from any other authentic source within your reach such information as will aid the board in the performance of its duties, and will report the result in writing.

In case you find the officer under examination incapacitated for active service, you will state whether, in your opinion, his disability is the result of an incident of the service.

Very respectfully,

C—— B. A——,
Colonel, U. S. Marine Corps, President.

Medical Inspector F—— E. D——, U. S. Navy.

Surg. Q—— P. O——, U. S. Navy.

Report of the medical members to the board.

MARINE BARRACKS, Washington, June 2, 19—.

(Surname.) (Christian name.)

(Rank.)

Age, } in 19..
Years of service, }

(NOTE.—This form is intended as a general guide only, and should in no way restrict the scope of the inquiry, which should be as thorough as possible.)

History of the case (obtained from the officer before the board)

PRESENT CONDITION.

Vision: Right eye
 Left eye
 Right eye corrected to by
 Left eye corrected to by
 Hearing: Right ear
 Left ear
 Pulse: Rate
 Quality
 Condition of arteries
 Figure and general appearance
 Weight pounds; height inches.
 Chest measurement: At expiration inches.
 At inspiration inches.
 Mobility
 Bones and joints
 Skin
 Nervous system
 Respiratory system
 Veins
 Varicocele
 Varicose veins
 Digestive system
 Hernia
 Genito-urinary system
 Is he incapacitated for active service?
 Nature and degree of disability
 How does it incapacitate?
 Is it permanent?
 Is the incapacity the result of an incident of service?

_____,
 _____, *U. S. Navy.*
 _____,
 _____, *U. S. Navy.*

ARTICLES FOR THE GOVERNMENT OF THE NAVY.

ARTICLES
FOR THE
GOVERNMENT OF THE UNITED STATES NAVY.

The Navy of the United States shall be governed by the following articles:

Article 1.

The commanders of all fleets, squadrons, naval stations, and vessels belonging to the navy are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the navy, all persons who are guilty of them; and any such commander who offends against this article shall be punished as a court-martial may direct.

Article 2.

The commanders of vessels and naval stations to which chaplains are attached shall cause divine service to be performed on Sunday, whenever the weather and other circumstances allow it to be done; and it is earnestly recommended to all officers, seamen, and others in the naval service diligently to attend at every performance of the worship of Almighty God.

Article 3.

Any irreverent or unbecoming behavior during divine service shall be punished as a general or summary court-martial may direct.

Article 4.

The punishment of death, or such other punishment as a court-martial may adjudge, may be inflicted on any person in the naval service—

1. Who makes, or attempts to make, or unites with any mutiny or mutinous assembly, or, being witness to or present at any mutiny,

does not do his utmost to suppress it; or, knowing of any mutinous assembly or of any intended mutiny, does not immediately communicate his knowledge to his superior or commanding officer; •

2. Or disobeys the lawful orders of his superior officer;

3. Or strikes or assaults, or attempts or threatens to strike or assault, his superior officer while in the execution of the duties of his office;

4. Or gives any intelligence to, or holds or entertains any intercourse with, an enemy or rebel, without leave from the President, the Secretary of the Navy, the commander in chief of the fleet, the commander of the squadron, or, in case of a vessel acting singly, from his commanding officer;

5. Or receives any message or letter from an enemy or rebel, or, being aware of the unlawful reception of such message or letter, fails to take the earliest opportunity to inform his superior or commanding officer thereof;

6. Or, in time of war, deserts or entices others to desert;

7. Or, in time of war, deserts or betrays his trust, or entices or aids others to desert or betray their trust;

8. Or sleeps upon his watch;

9. Or leaves his station before being regularly relieved;

10. Or intentionally or willfully suffers any vessel of the navy to be stranded, or run upon rocks or shoals, or improperly hazarded; or maliciously or willfully injures any vessel of the navy, or any part of her tackle, armament, or equipment, whereby the safety of the vessel is hazarded or the lives of the crew exposed to danger;

11. Or unlawfully sets on fire, or otherwise unlawfully destroys, any public property not at the time in possession of an enemy, pirate, or rebel;

12. Or strikes or attempts to strike the flag to an enemy or rebel, without proper authority, or, when engaged in battle, treacherously yields or pusillanimously cries for quarter;

13. Or, in time of battle, displays cowardice, negligence, or disaffection, or withdraws from or keeps out of danger to which he should expose himself;

14. Or, in time of battle, deserts his duty or station, or entices others to do so;

15. Or does not properly observe the orders of his commanding officer, and use his utmost exertions to carry them into execution, when ordered to prepare for or join in, or when actually engaged in, battle, or while in sight of an enemy;

16. Or, being in command of a fleet, squadron, or vessel acting singly, neglects, when an engagement is probable, or when an armed vessel of an enemy or rebel is in sight, to prepare and clear his ship or ships for action;

17. Or does not, upon signal for battle, use his utmost exertions to join in battle;

18. Or fails to encourage, in his own person, his inferior officers and men to fight courageously;

19. Or does not do his utmost to overtake and capture or destroy any vessel which it is his duty to encounter;

20. Or does not afford all practicable relief and assistance to vessels belonging to the United States or their allies when engaged in battle.

Article 5.

All persons who, in time of war, or of rebellion against the supreme authority of the United States, come or are found in the capacity of spies, or who bring or deliver any seducing letter or message from an enemy or rebel, or endeavor to corrupt any person in the navy to betray his trust, shall suffer death, or such other punishment as a court-martial may adjudge.

Article 6.

If any person belonging to any public vessel of the United States commits the crime of murder without the territorial jurisdiction thereof, he may be tried by court-martial and punished with death.

Article 7.

A naval court-martial may adjudge the punishment of imprisonment for life, or for a stated term, at hard labor, in any case where it is authorized to adjudge the punishment of death; and such sentences of imprisonment and hard labor may be carried into execution in any prison or penitentiary under the control of the United States, or which the United States may be allowed, by the legislature of any State to use; and persons so imprisoned in the prison or penitentiary of any State or Territory shall be subject, in all respects, to the same discipline and treatment as convicts sentenced by the courts of the State or Territory in which the same may be situated.

Article 8.

Such punishment as a court-martial may adjudge may be inflicted on any person in the navy—

1. Who is guilty of profane swearing, falsehood, drunkenness, gambling, fraud, theft, or any other scandalous conduct tending to the destruction of good morals;

2. Or is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders;

3. Or quarrels with, strikes, or assaults, or uses provoking or reproachful words, gestures, or menaces toward, any person in the navy;

4. Or endeavors to foment quarrels between other persons in the navy;
5. Or sends or accepts a challenge to fight a duel or acts as a second in a duel;
6. Or treats his superior officer with contempt, or is disrespectful to him in language or deportment, while in the execution of his office;
7. Or joins in or abets any combination to weaken the lawful authority of, or lessen the respect due to, his commanding officer;
8. Or utters any seditious or mutinous words;
9. Or is negligent or careless in obeying orders, or culpably inefficient in the performance of duty;
10. Or does not use his best exertions to prevent the unlawful destruction of public property by others;
11. Or, through inattention or negligence, suffers any vessel of the navy to be stranded, or run upon a rock or shoal, or hazarded;
12. Or, when attached to any vessel appointed as convoy to any merchant or other vessels, fails diligently to perform his duty, or demands or exacts any compensation for his services, or maltreats the officers or crews of such merchant or other vessels;
13. Or takes, receives, or permits to be received, on board the vessel to which he is attached, any goods or merchandise for freight, sale, or traffic, except gold, silver, or jewels, for freight or safe keeping; or demands or receives any compensation for the receipt or transportation of any other article than gold, silver, or jewels, without authority from the President or Secretary of the Navy;
14. Or knowingly makes or signs, or aids, abets, directs, or procures the making or signing of, any false muster;
15. Or wastes any ammunition, provisions, or other public property, or, having power to prevent it, knowingly permits such waste;
16. Or, when on shore, plunders, abuses, or maltreats any inhabitant, or injures his property in any way;
17. Or refuses, or fails to use, his utmost exertions to detect, apprehend, and bring to punishment all offenders, or to aid all persons appointed for that purpose;
18. Or, when rated or acting as master-at-arms, refuses to receive such prisoners as may be committed to his charge, or, having received them, suffers them to escape, or dismisses them without orders from the proper authority;
19. Or is absent from his station or duty without leave, or after his leave has expired;
20. Or violates or refuses obedience to any lawful general order or regulation issued by the Secretary of the Navy;
21. Or, in time of peace, deserts or attempts to desert, or aids and entices others to desert;

22. Or receives or entertains any deserter from any other vessel of the navy, knowing him to be such, and does not, with all convenient speed, give notice of such deserter to the commander of the vessel to which he belongs, or to the commander in chief, or to the commander of the squadron.

Article 9.

Any officer who absents himself from his command without leave, may, by the sentence of a court-martial, be reduced to the rating of an ordinary seaman.

Article 10.

Any commissioned officer of the Navy or Marine Corps who, having tendered his resignation, quits his post or proper duties without leave, and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of such resignation, shall be deemed and punished as a deserter.

Article 11.

No person in the naval service shall procure stores or other articles or supplies for, and dispose thereof to, the officers or enlisted men on vessels of the navy, or at navy-yards or naval stations, for his own account or benefit.

Article 12.

No person connected with the navy shall, under any pretense, import in a public vessel any article which is liable to the payment of duty.

Article 13.

Distilled spirits shall be admitted on board of vessels of war only upon the order and under the control of the medical officers of such vessels, and to be used only for medical purposes.

Article 14.

Fine and imprisonment, or such other punishment as a court-martial may adjudge, shall be inflicted upon any person in the naval service of the United States—

1. Who presents or causes to be presented to any person in the civil, military, or naval service thereof, for approval or payment, any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

2. Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

3. Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the

United States or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing, or other paper, knowing the same to contain any false or fraudulent statement; or

4. Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes, or procures, or advises the making of, any oath to any fact or to any writing or other paper, knowing such oath to be false; or

5. Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures or advises the forging or counterfeiting of, any signature upon any writing or other paper, or uses, or procures or advises the use of, any such signature, knowing the same to be forged or counterfeited; or

6. Who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the naval service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

7. Who, being authorized to make or deliver any paper certifying the receipt of any money or other property of the United States, furnished or intended for the naval service thereof, makes, or delivers to any person, such writing, without having full knowledge of the truth of the statements therein contained, and with intent to defraud the United States; or

8. Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully and knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money, or other property of the United States, furnished or intended for the military or naval service thereof; or

9. Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any other person who is a part of or employed in said service, any ordnance, arms, equipments, ammunition, clothing, subsistence stores, or other property of the United States, such other person not having lawful right to sell or pledge the same; or

10. Who executes, attempts, or countenances any other fraud against the United States.

And if any person, being guilty of any of the offenses described in this article while in the naval service, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial, in the same manner and to the same extent as if he had not received such discharge nor been dismissed.

Article 15.

(Repealed by section 13 of the act of March 3, 1899.)

Article 16.

No person in the navy shall take out of a prize, or vessel seized as a prize, any money, plate, goods, or any part of her equipment, unless it be for the better preservation thereof, or unless such articles are absolutely needed for the use of any of the vessels or armed forces of the United States, before the same are adjudged lawful prize by a competent court; but the whole, without fraud, concealment, or embezzlement, shall be brought in, in order that judgment may be passed thereon; and every person who offends against this article shall be punished as a court-martial may direct.

Article 17.

If any person in the navy strips off the clothes of, or pillages, or in any manner maltreats, any person taken on board a prize, he shall suffer such punishment as a court-martial may adjudge.

Article 18.

If any officer or person in the naval service employs any of the forces under his command for the purpose of returning any fugitive from service or labor, he shall be dismissed from the service.

Article 19.

Any officer who knowingly enlists into the naval service any deserter from the naval or military service of the United States, or any insane or intoxicated person, or any minor between the ages of sixteen and eighteen years, without the consent of his parents or guardian, or any minor under the age of sixteen years, shall be dishonorably dismissed from the service of the United States.

Article 20.

Every commanding officer of a vessel in the navy shall obey the following rules:

1. Whenever a man enters on board, the commanding officer shall cause an accurate entry to be made in the ship's books, showing his name, the date, place, and term of his enlistment, the place or vessel from which he was received on board, his rating, his descriptive list, his age, place of birth, and citizenship, with such remarks as may be necessary.

2. He shall, before sailing, transmit to the Secretary of the Navy a complete list of the rated men under his command, showing the particulars set forth in rule one, and a list of officers and passengers,

showing the date of their entering. And he shall cause similar lists to be made out on the first day of every third month and transmitted to the Secretary of the Navy as opportunities occur, accounting therein for any casualty which may have happened since the last list.

3. He shall cause to be accurately minuted on the ship's books the names of any persons dying or deserting, and the times at which such death or desertion occurs.

4. In case of the death of any officer, man, or passenger on said vessel, he shall take care that the paymaster secures all the property of the deceased, for the benefit of his legal representatives.

5. He shall not receive on board any man transferred from any other vessel or station to him, unless such man is furnished with an account, signed by the captain and paymaster of the vessel or station from which he came, specifying the date of his entry on said vessel or at said station, the period and term of his service, the sums paid him, the balance due him, the quality in which he was rated, and his descriptive list.

6. He shall, whenever officers or men are sent from his ship, for whatever cause, take care that each man is furnished with a complete statement of his account, specifying the date of his enlistment, the period and term of his service, and his descriptive list. Said account shall be signed by the commanding officer and paymaster.

7. He shall cause frequent inspections to be made into the condition of the provisions on his ship, and use every precaution for their preservation.

8. He shall frequently consult with the surgeon in regard to the sanitary condition of his crew, and shall use all proper means to preserve their health. And he shall cause a convenient place to be set apart for sick or disabled men, to which he shall have them removed, with their hammocks and bedding, when the surgeon so advises, and shall direct that some of the crew attend them and keep the place clean.

9. He shall attend in person, or appoint a proper officer to attend, when his crew is finally paid off, to see that justice is done to the men and to the United States in the settlement of the accounts.

10. He shall cause the Articles for the Government of the Navy to be hung up in some public part of the ship and read once a month to his ship's company.

Every commanding officer who offends against the provisions of this article shall be punished as a court-martial may direct.

Article 21.

When the crew of any vessel of the United States are separated from their vessel by means of her wreck, loss, or destruction, all the command and authority given to the officers of such vessel shall

remain in full force until such ship's company shall be regularly discharged from or ordered again into service, or until a court-martial or court of inquiry shall be able to inquire into the loss of said vessel. And if any officer or man, after such wreck, loss, or destruction, acts contrary to the discipline of the navy, he shall be punished as a court-martial may direct.

Article 22.

All offenses committed by persons belonging to the navy which are not specified in the foregoing articles shall be punished as a court-martial may direct.

(Fraudulent enlistment and the receipt of pay and allowances thereunder are, by the act of March 2, 1893, made punishable under this article.)

Article 23.

All offenses committed by persons belonging to the navy while on shore shall be punished in the same manner as if they had been committed at sea.

Article 24.

No commander of a vessel shall inflict upon a commissioned or warrant officer any other punishment than private reprimand, suspension from duty, arrest, or confinement, and such suspension, arrest, or confinement shall not continue longer than ten days, unless a further period is necessary to bring the offender to trial by a court-martial; nor shall he inflict, or cause to be inflicted, upon any petty officer, or person of inferior rating, or marine, for a single offense, or at any one time, any other than one of the following punishments, namely:

1. Reduction of any rating established by himself.
2. Confinement, with or without irons, single or double, not exceeding ten days, unless further confinement be necessary in the case of a prisoner to be tried by court-martial.
3. Solitary confinement, on bread and water, not exceeding five days.
4. Solitary confinement not exceeding seven days.
5. Deprivation of liberty on shore.
6. Extra duties.

No other punishment shall be permitted on board of vessels belonging to the navy, except by sentence of a general or summary court-martial. All punishments inflicted by the commander, or by his order, except reprimands, shall be fully entered upon the ship's log.

(See remarks at Article 30, as to use of irons.)

Article 25.

No officer who may command by accident, or in the absence of the commanding officer, except when such commanding officer is absent for a time by leave, shall inflict any other punishment than confinement.

Article 26.

Summary courts-martial may be ordered upon petty officers and persons of inferior ratings, by the commander of any vessel, or by the commandant of any navy-yard, naval station, or marine barracks to which they belong, for the trial of offenses which such officer may deem deserving of greater punishment than such commander or commandant is authorized to inflict, but not sufficient to require trial by a general court-martial.

Article 27.

A summary court-martial shall consist of three officers not below the rank of ensign, as members, and of a recorder. The commander of a ship may order any officer under his command to act as such recorder.

Article 28.

Before proceeding to trial the members of a summary court-martial shall take the following oath or affirmation, which shall be administered by the recorder: "I, A B, do swear (or affirm) that I will well and truly try, without prejudice or partiality, the case now depending, according to the evidence which shall be adduced, the laws for the government of the navy, and my own conscience." After which the recorder of the court shall take the following oath or affirmation, which shall be administered by the senior member of the court: "I, A B, do swear (or affirm) that I will keep a true record of the evidence which shall be given before this court and of the proceedings thereof."

Article 29.

All testimony before a summary court-martial shall be given orally, upon oath or affirmation, administered by the senior member of the court.

Article 30.

Summary courts-martial may sentence petty officers and persons of inferior ratings to any one of the following punishments, namely:

1. Discharge from the service with bad-conduct discharge; but the sentence shall not be carried into effect in a foreign country.
2. Solitary confinement, not exceeding thirty days, in irons, single or double, on bread and water or on diminished rations.

3. Solitary confinement in irons, single or double, not exceeding thirty days.
4. Solitary confinement not exceeding thirty days.
5. Confinement not exceeding two months.
6. Reduction to next inferior rating.
7. Deprivation of liberty on shore on foreign station.
8. Extra police duties, and loss of pay, not to exceed three months, may be added to any of the above-mentioned punishments.

(This article is modified by section 8 of the act of February 16, 1909, which provides "That the courts authorized to impose the punishments prescribed by article thirty of the 'Articles for the Government of the Navy' may adjudge either a part or the whole, as may be appropriate, of any one of the punishments therein enumerated: *Provided*, That the use of irons, single or double, is hereby abolished except for the purpose of safe custody or when part of a sentence imposed by a general court-martial.")

Article 31.

A summary court-martial may disrate any rated person for incompetency.

Article 32.

No sentence of a summary court-martial shall be carried into execution until the proceedings and sentence have been approved by the officer ordering the court and by the commander in chief, or, in his absence, by the senior officer present. And no sentence of such court which involves loss of pay shall be carried into execution until the proceedings and sentence have been approved by the Secretary of the Navy.

(This article is modified by section 17 of the act of February 16, 1909, which provides "That all sentences of summary courts-martial may be carried into effect upon the approval of the senior officer present, and all sentences of deck courts may be carried into effect upon approval of the convening authority or his successor in office.")

Article 33.

The officer ordering a summary court-martial shall have power to remit, in part or altogether, but not to commute, the sentence of the court. And it shall be his duty either to remit any part or the whole of any sentence, the execution of which would, in the opinion of the surgeon or senior medical officer on board, given in writing, produce serious injury to the health of the person sentenced; or to submit the case again, without delay, to the same or to another summary court-martial, which shall have power, upon the testimony already taken, to remit the former punishment and to assign some other of the authorized punishments in the place thereof.

(This article is modified by section 9 of the act of February 16, 1909, which provides "That the Secretary of the Navy may set aside the proceedings or remit or mitigate, in whole or in part, the sentence imposed by any naval court-martial convened by his order or by that of any officer of the Navy or Marine Corps.")

Article 34.

The proceedings of summary courts shall be conducted with as much conciseness and precision as may be consistent with the ends of justice and under such forms and rules as may be prescribed by the Secretary of the Navy, with the approval of the President, and all such proceedings shall be transmitted in the usual mode to the Navy Department, where they shall be kept on file for a period of two years from date of trial, after which time they may be destroyed, in the discretion of the Secretary of the Navy.

(This article was specifically amended as above given by the act of February 16, 1909.)

Article 35.

Any punishment which a summary court-martial is authorized to inflict may be inflicted by a general court-martial.

Article 36.

No officer shall be dismissed from the naval service except by the order of the President or by sentence of a general court-martial; and in time of peace no officer shall be dismissed except in pursuance of the sentence of a general court-martial or in mitigation thereof.

Article 37.

When any officer, dismissed by order of the President since 3d of March, 1865, makes, in writing, an application for trial, setting forth, under oath, that he has been wrongfully dismissed, the President shall, as soon as the necessities of the service may permit, convene a court-martial to try such officer on the charges on which he shall have been dismissed. And if such court-martial shall not be convened within six months from the presentation of such application for trial, or if such court, being convened, shall not award dismissal or death as the punishment of such officer, the order of dismissal by the President shall be void.

Article 38.

General courts-martial may be convened by the President, the Secretary of the Navy, or the commander in chief of a fleet or squadron; but no commander of a fleet or squadron in the waters of the United States shall convene such court without express authority from the President.

(This article is modified by section 10 of the act of February 16, 1909, which provides "That general courts-martial may be convened by the President, by the Secretary of the Navy, by the commander in chief of a fleet or squadron, and by the commanding officer of any naval station beyond the continental limits of the United States.")

**Article 39.**

A general court-martial shall consist of not more than thirteen nor less than five commissioned officers as members; and as many officers, not exceeding thirteen, as can be convened without injury to the service, shall be summoned on every such court. But in no case, where it can be avoided without injury to the service, shall more than one-half, exclusive of the president, be junior to the officer to be tried. The senior officer shall always preside and the others shall take place according to their rank.

Article 40.

The president of the general court-martial shall administer the following oath or affirmation to the judge-advocate or person officiating as such:

“I, A B, do swear (*or affirm*) that I will keep a true record of the evidence given to and the proceedings of this court; that I will not divulge or by any means disclose the sentence of the court until it shall have been approved by the proper authority; and that I will not at any time divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law.”

This oath or affirmation being duly administered, each member of the court, before proceeding to trial, shall take the following oath or affirmation, which shall be administered by the judge-advocate or person officiating as such:

“I, A B, do swear (*or affirm*) that I will truly try, without prejudice or partiality, the case now depending, according to the evidence which shall come before the court, the rules for the government of the navy, and my own conscience; that I will not by any means divulge or disclose the sentence of the court until it shall have been approved by the proper authority; and that I will not at any time divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law.”

Article 41.

An oath or affirmation in the following form shall be administered to all witnesses, before any court-martial, by the president thereof:

“You do solemnly swear (*or affirm*) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the charges. So help you God; (*or, ‘this you do under the pains and penalties of perjury’.*)”

Article 42.

Whenever any person refuses to give his evidence or to give it in the manner provided by these articles, or prevaricates, or behaves with contempt to the court, it shall be lawful for the court to imprison him for any time not exceeding two months.

(Sections 11 and 12 of the act of February 16, 1909, also provide "That a naval court-martial or court of inquiry shall have power to issue like process to compel witnesses to appear and testify which United States courts of criminal jurisdiction within the State, Territory, or District where such naval court shall be ordered to sit may lawfully issue.

"That any person duly subpoenaed to appear as a witness before a general court-martial or court of inquiry of the navy, who willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or produce documentary evidence which such person may have been legally subpoenaed to produce, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the United States; and it shall be the duty of the United States district attorney, on the certification of the facts to him by such naval court, to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than five hundred dollars or imprisonment not to exceed six months, or both, at the discretion of the court: *Provided*, That this shall not apply to persons residing beyond the State, Territory, or District in which such naval court is held, and that the fees of such witness and his mileage at the rates provided for witnesses in the United States district court for the State, Territory, or District shall be duly paid or tendered said witness, such amounts to be paid by the Bureau of Supplies and Accounts out of the appropriation for compensation of witnesses: *Provided further*, That no witness shall be compelled to incriminate himself or to answer any question which may tend to incriminate or degrade him.")

Article 43.

The person accused shall be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest; and no other charges than those so furnished shall be urged against him at the trial, unless it shall appear to the court that intelligence of such other charge had not reached the officer ordering the court when the accused was put under arrest, or that some witness material to the support of such charge was at that time absent and can be produced at the trial; in which case reasonable time shall be given to the accused to make his defense against such new charge.

Article 44.

Every officer who is arrested for trial shall deliver up his sword to his commanding officer and confine himself to the limits assigned him, on pain of dismissal from the service.

Article 45.

When the proceedings of any general court-martial have commenced they shall not be suspended or delayed on account of the absence of any of the members, provided five or more are assembled; but the court is enjoined to sit from day to day, Sundays excepted, until sentence is given, unless temporarily adjourned by the authority which convened it.

Article 46.

No member of a general court-martial shall, after the proceedings are begun, absent himself therefrom, except in case of sickness, or of an order to go on duty from a superior officer, on pain of being cashiered.

Article 47.

Whenever any member of a court-martial, from any legal cause, is absent from the court after the commencement of a case, all the witnesses who have been examined during his absence must, when he is ready to resume his seat, be recalled by the court, and the recorded testimony of each witness so examined must be read over to him, and such witness must acknowledge the same to be correct and be subject to such further examination as the said member may require. Without a compliance with this rule, and an entry thereof upon the record, a member who shall have been absent during the examination of a witness shall not be allowed to sit again in that particular case.

Article 48.

Whenever a court-martial sentences an officer to be suspended, it may suspend his pay and emoluments for the whole or any part of the time of his suspension.

Article 49.

In no case shall punishment by flogging, or by branding, marking, or tattooing on the body be adjudged by any court-martial or be inflicted upon any person in the navy.

Article 50.

No person shall be sentenced by a court-martial to suffer death, except by the concurrence of two-thirds of the members present, and in the cases where such punishment is expressly provided in these articles. All other sentences may be determined by a majority of votes.

Article 51.

It shall be the duty of a court-martial, in all cases of conviction, to adjudge a punishment adequate to the nature of the offense; but the members thereof may recommend the person convicted as deserving of clemency, and state, on the record, their reasons for so doing.

Article 52.

The judgment of every court-martial shall be authenticated by the signature of the president and of every member who may be present when said judgment is pronounced, and also of the judge-advocate.

Article 53.

No sentence of a court-martial, extending to the loss of life, or to the dismissal of a commissioned or warrant officer, shall be carried into execution until confirmed by the President. All other sentences of a general court-martial may be carried into execution on confirmation of the commander of the fleet or officer ordering the court.

Article 54.

Every officer who is authorized to convene a general court-martial shall have power, on revision of its proceedings, to remit or mitigate, but not to commute, the sentence of any such court which he is authorized to approve and confirm.

(This article is affected by section 9 of the act of February 16, 1909; see amendment at article 33, A. G. N.)

Article 55.

Courts of inquiry may be ordered by the President, the Secretary of the Navy, or the commander of a fleet or squadron.

Article 56.

A court of inquiry shall consist of not more than three commissioned officers as members, and of a judge-advocate, or person officiating as such.

Article 57.

Courts of inquiry shall have power to summon witnesses, administer oaths, and punish contempts in the same manner as courts-martial; but they shall only state facts, and shall not give their opinion unless expressly required so to do in the order for convening.

(This article is affected by sections 11 and 12 of the act of February 16, 1909; see amendment at article 42, A. G. N.)

Article 58.

The judge-advocate, or person officiating as such, shall administer to the members the following oath or affirmation: "You do swear (or affirm) well and truly to examine and inquire, according to the

evidence, into the matter now before you without partiality." After which the president shall administer to the judge-advocate, or person officiating as such, the following oath or affirmation: "You do swear (or affirm) truly to record the proceedings of this court and the evidence to be given in the case in hearing."

Article 59.

The party whose conduct shall be the subject of inquiry, or his attorney, shall have the right to cross-examine all the witnesses.

Article 60.

The proceedings of courts of inquiry shall be authenticated by the signature of the president of the court and of the judge-advocate, and shall, in all cases not capital, nor extending to the dismissal of a commissioned or warrant officer, be evidence before a court-martial, provided oral testimony can not be obtained.

Article 61.

No person shall be tried by court-martial or otherwise punished for any offense, except as provided in the following article, which appears to have been committed more than two years before the issuing of the order for such trial or punishment, unless by reason of having absented himself, or for some other manifest impediment, he shall not have been amenable to justice within that period.

Article 62.

No person shall be tried by court-martial or otherwise punished for desertion in time of peace committed more than two years before the issuing of the order for such trial or punishment, unless he shall meanwhile have absented himself from the United States, or by reason of some other manifest impediment shall not have been amenable to justice within that period, in which case the time of his absence shall be excluded in computing the period of the limitation: *Provided*, That said limitation shall not begin until the end of the term for which said person was enlisted in the service.

Article 63.

Whenever, by any of the articles for the government of the navy of the United States, the punishment on conviction of an offense is left to the discretion of the court-martial, the punishment therefor shall not, in time of peace, be in excess of a limit which the President may prescribe.

**LIMITATIONS TO PUNISHMENTS IN TIME
OF PEACE.**

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LIMITATIONS TO PUNISHMENTS.

The following limitations to the punishment of officers and enlisted men, in time of peace, by naval general courts-martial, have been prescribed by the President, and shall not be exceeded:

Offenses.	Limit of punishment.
UNDER ARTICLE 3.	
Irreverent or unbecoming behavior during divine service.	Officer: To lose three numbers. Enlisted man: Confinement for three months.
UNDER ARTICLE 4.	
Making or attempting to make, or uniting with, any mutiny or mutinous assembly.	Officer: Dismissal and imprisonment at hard labor for ten years. Enlisted man: Imprisonment at hard labor for ten years and dishonorable discharge.
Being witness to or present at any mutiny, does not do his utmost to suppress it.	Officer: Dismissal and imprisonment at hard labor for ten years. Enlisted man: Imprisonment at hard labor for ten years and dishonorable discharge.
Knowing of any mutinous assembly or of any intended mutiny, does not immediately communicate his knowledge to his superior or commanding officer.	Officer: Dismissal and imprisonment at hard labor for ten years. Enlisted man: Imprisonment at hard labor for ten years and dishonorable discharge.
Disobeying lawful order of superior officer.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.
Striking, assaulting, or attempting or threatening to strike or assault his superior officer while in the execution of duties of office.	Officer: Dismissal and imprisonment at hard labor for five years. Enlisted man: Imprisonment at hard labor for five years and dishonorable discharge.
Sleeping on watch or post: <ol style="list-style-type: none"> 1. Officer of the watch. 2. Sentinel. 3. Lookout. 4. Petty or noncommissioned officer on watch or guard. 	<ol style="list-style-type: none"> 1. Dismissal. 2. Confinement for one year and dishonorable discharge. 3. Confinement for one year and dishonorable discharge. 4. Confinement for one year and dishonorable discharge.
Leaving station or post before being regularly relieved: <ol style="list-style-type: none"> 1. Officer. 2. Petty or noncommissioned officer. 3. Sentinel. 4. Lookout. 	<ol style="list-style-type: none"> 1. Dismissal. 2. Confinement for one year and dishonorable discharge. 3. Confinement for one year and dishonorable discharge. 4. Confinement for one year and dishonorable discharge.
Intentionally or willfully suffering a vessel of the Navy to be run upon a rock or shoal, or to be improperly hazarded.	Officer: Dismissal and imprisonment at hard labor for twenty years. Enlisted man: Imprisonment at hard labor for twenty years and dishonorable discharge.
Unlawfully setting on fire or destroying public property not in possession of pirate, enemy, or rebel.	Officer: Dismissal and imprisonment at hard labor for twenty years. Enlisted man: Imprisonment for twenty years at hard labor and dishonorable discharge.

Offenses.	Limit of punishment.
Refusing to obey the lawful order of superior officer.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.
Maliciously or willfully injuring any vessel of the Navy or any part of her tackle, armament, or equipment, whereby the safety of the vessel is hazarded, or lives of crew exposed to danger.	Officer: Dismissal and imprisonment at hard labor for fifteen years. Enlisted man: Imprisonment for fifteen years at hard labor and dishonorable discharge.
UNDER ARTICLE 6.	
Murder.	Officer: Death. Enlisted man: Death.
UNDER ARTICLE 8.	
Profane swearing.	Officer: Public reprimand. Enlisted man: Solitary confinement for thirty days.
Falsehood.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Drunkenness on duty.	Officer: Dismissal and imprisonment for one year. Enlisted man: Confinement for one year and dishonorable discharge.
Drunkenness.	Officer: To lose ten numbers. Enlisted man: Confinement for six months.
Gambling.	Officer: Dismissal. Enlisted man: Confinement for six months.
Fraud.	Officer: Dismissal. Enlisted man: Confinement for six months and dishonorable discharge.
Theft: 1. Above one hundred dollars. 2. Between fifty and one hundred dollars. 3. Under fifty dollars.	1. Officer: Dismissal and imprisonment for four years. Enlisted man: Confinement for four years and dishonorable discharge. 2. Officer: Dismissal and imprisonment for three years. Enlisted man: Confinement for three years and dishonorable discharge. 3. Officer: Dismissal and imprisonment for two years. Enlisted man: Confinement for two years and dishonorable discharge.
Scandalous conduct tending to the destruction of good morals.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.
Cruelty toward, or oppression or maltreatment of, any person subject to his orders.	Officer: Dismissal. Enlisted man: Confinement for six months and dishonorable discharge.
Quarrelling with, striking or assaulting, or using provoking or reproachful words, gestures, or menaces toward any person in the navy.	Officer: To lose five numbers. Enlisted man: Confinement for three months.
Endeavoring to foment quarrels between other persons in the navy.	Officer: To lose five numbers. Enlisted man: Confinement for three months.
Sending or accepting a challenge to fight a duel, or acting as second in a duel.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Treating his superior officer with contempt, or being disrespectful to him in language or deportment while in the execution of his office.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
To join in or abet any combination to weaken lawful authority of, or lessen the respect due to, his commanding officer.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.
Uttering seditious or mutinous words.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.
Negligent or careless in obeying orders.	Officer: To lose ten numbers. Enlisted man: Confinement for six months.

Offenses.	Limit of punishment.
Culpably inefficient in the performance of duty.	Officer: Dismissal. Enlisted man: Confinement for six months and dishonorable discharge.
Not using his best exertions to prevent the unlawful destruction of public property by others.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.
Through inattention or negligence suffering a vessel of the navy to be stranded, or run upon a rock or shoal, or hazarded.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.
When attached to any vessel appointed as convoy to any merchant or other vessel, fails diligently to perform his duty, or demands or exacts any compensation for his services, or maltreats the officers or crew of such merchant or other vessel.	Officer: Dismissal.
Taking, receiving, or permitting to be received on board the vessel to which he is attached any goods, merchandise, for freight, sale, or traffic, except gold, silver, or jewels for freight or safekeeping, or demanding or receiving any compensation for the receipt or transportation of any other article than gold, silver, or jewels without authority from the President or the Secretary of the Navy.	Officer: Dismissal.
Knowingly making, signing, or aiding, abetting, directing, or procuring the making or signing of any false muster.	Officer: Dismissal and imprisonment for five years Enlisted man: Confinement for five years and dishonorable discharge.
Wasting any ammunition, provisions, or other public property, or, having power to prevent it, knowingly permits such waste.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.
When on shore, plundering, abusing, or maltreating any inhabitant or injuring his property by means of—	<ol style="list-style-type: none"> 1. Officer: Dismissal and imprisonment at hard labor for ten years. Enlisted man: Imprisonment at hard labor for ten years and dishonorable discharge. 2. Officer: Dismissal and imprisonment at hard labor for five years. Enlisted man: Imprisonment at hard labor for five years and dishonorable discharge. 3. Officer: Dismissal. Enlisted man: Confinement for six months and dishonorable discharge. 4. Officer: Dismissal and imprisonment at hard labor for twenty years. Enlisted man: Imprisonment for twenty years at hard labor and dishonorable discharge. 5. Officer: Dismissal and imprisonment at hard labor for seven years. Enlisted man: Imprisonment at hard labor for seven years and dishonorable discharge. 6. Officer: Dismissal and imprisonment at hard labor for seven years. Enlisted man: Imprisonment at hard labor for seven years and dishonorable discharge. 7. Officer: Dismissal and imprisonment at hard labor for ten years. Enlisted man: Imprisonment at hard labor for ten years and dishonorable discharge. 8. Officer: Public reprimand. Enlisted man: Confinement for three months. 9. Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge. 10. (a) Officer: Dismissal and imprisonment for four years. Enlisted man: Confinement for four years and dishonorable discharge. (b) Officer: Dismissal and imprisonment for three years. Enlisted man: Confinement for three years and dishonorable discharge. (c) Officer: Dismissal and imprisonment for two years. Enlisted man: Confinement for two years and dishonorable discharge.
1. Manslaughter.	
2. Assault with intent to kill.	
3. Assault and battery.	
4. Rape.	
5. Burglary	
6. Robbery.	
7. Arson.	
8. Obscene and abusive language.	
9. Willful destruction of property.	
10. Larceny:	
(a) Above one hundred dollars.	
(b) Between fifty and one hundred dollars.	
(c) Under fifty dollars.	

Offenses.	Limit of punishment.
<p>Refusing or failing to use his utmost exertions to detect, apprehend, and bring to punishment all offenders, or to aid all persons appointed for that purpose.</p> <p>When rated or acting as master-at-arms refuses to receive such prisoners as may be committed to his charge, or having received them, suffers them to escape or dismisses them without orders from the proper authority.</p>	<p>Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.</p> <p>Enlisted man: Confinement at hard labor for five years and dishonorable discharge.</p>
<p>Absent from station and duty without leave, or after his leave has expired.</p>	<p>Officer: Dismissal. Enlisted man: Confinement for six months and dishonorable discharge.</p>
<p>Violating or refusing obedience to any lawful general order or regulation issued by the Secretary of the Navy.</p>	<p>Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.</p>
<p>Desertion (In case of surrender): After thirty days.</p>	<p>Officer: Dismissal. Enlisted man: Confinement for eighteen months and dishonorable discharge.</p>
<p>Desertion (In case of apprehension).</p> <ol style="list-style-type: none"> 1. If less than six months in the service. 2. If more than six months in the service. 	<p>Officer: Dismissal and imprisonment for four years. Enlisted man: 1. Confinement for eighteen months and dishonorable discharge. 2. Confinement for two and one-half years and dishonorable discharge.</p>
<p>Desertion: From a ship about to sail on an extended cruise.</p> <p>When joined in by two or more men in the execution of a conspiracy, or for desertion in the presence of any unlawful assemblage which the naval forces may be opposing.</p>	<p>Officer: Dismissal and imprisonment for three years. Enlisted man: Confinement for three years and dishonorable discharge. Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.</p>
<p>Aiding or enticing others to desert.</p>	<p>Officer: Dismissal and imprisonment for four years. Enlisted man: Confinement for one year and dishonorable discharge.</p>
<p>Receiving or entertaining any deserter from any other vessel of the Navy, knowing him to be such, and not with all convenient speed giving notice of such deserter to the commander of the vessel to which he belongs or to the commander-in-chief or to the commander of the squadron.</p>	<p>Officer: Dismissal.</p>
<p>UNDER ARTICLE 9.</p>	
<p>Absent from command without leave.</p>	<p>Officer: Dismissal. Enlisted man: Confinement for six months and dishonorable discharge.</p>
<p>UNDER ARTICLE 11.</p>	
<p>Procuring stores or other articles or supplies for and disposing thereof to officers and enlisted men on vessels of the Navy, or at any yard or naval station, for his own account or benefit.</p>	<p>Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.</p>
<p>UNDER ARTICLE 14.</p>	
<p>Presenting or causing to be presented to any person in the civil, military, or naval service for approval or payment any claim against the United States, or any officer thereof, knowing said claim to be false or fraudulent.</p>	<p>Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.</p>
<p>Entering into any agreement or conspiracy to defraud the United States by obtaining or aiding others to obtain the allowance of any false or fraudulent claim.</p>	<p>Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.</p>
<p>Making or using, or procuring or advising the making or using, of any writing or other paper, knowing the same to contain any false or fraudulent statement, for the purpose of obtaining or aiding others to obtain the approval, allowance, or payment of any claim against the United States or against any officer thereof.</p>	<p>Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.</p>
<p>Making or procuring or advising the making of any oath to any fact or to any writing or other paper, knowing such oath to be false, for the purpose of obtaining or aiding others to obtain the approval, allowance, or payment of any claim against the United States or any officer thereof.</p>	<p>Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.</p>

Offenses.	Limit of punishment.
Forging or counterfeiting, or procuring or advising the forging or counterfeiting, of any signature upon any writing or other paper, or using or procuring, or advising the using of any such signature, knowing it to be forged or counterfeited, for the purpose of obtaining or aiding others to obtain the approval, allowance, or payment of any claim against the United States or any officer thereof.	Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.
Knowingly delivering or causing to be delivered to any person having authority to receive the same any amount of money or other public property of the United States furnished or intended for the naval service less than that for which he receives a certificate or receipt.	Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.
Knowingly making or delivering to any person a paper certifying the receipt of any money or other property of the United States furnished or intended for the naval service thereof without having full knowledge of the truth of the statement therein contained and with intent to defraud the United States.	Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.
Stealing, embezzling, knowingly and wilfully misappropriating and applying to his own use and benefit, or unlawfully selling or disposing of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money, or other property of the United States, furnished or intended for the military or naval service thereof.	Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.
Knowingly purchasing or receiving in pledge, for any obligation or indebtedness from any other person who is a part of or employed in the naval service, any ordnance, arms, equipment, ammunition, clothing, subsistence stores, or other property of the United States, such other person not having lawful right to sell or pledge the same.	Officer: Dismissal and imprisonment for two years. Enlisted man: Confinement for two years and dishonorable discharge.
Executing, attempting, or countenancing any fraud against the United States.	Officer: Dismissal and imprisonment for two years. Enlisted man: Confinement for two years and dishonorable discharge.
UNDER ARTICLE 19.	
Knowingly enlisting into the naval service any deserter from the naval or military service of the United States, or any insane or intoxicated person, or minor without consent of parent or guardian.	Officer: Dismissal.
UNDER ARTICLE 22.	
Manslaughter.	Officer: Dismissal and imprisonment at hard labor for ten years. Enlisted man: Imprisonment at hard labor for ten years and dishonorable discharge.
Assault with deadly weapon and wounding.	Officer: Dismissal and imprisonment for five years. Enlisted man: Imprisonment at hard labor for five years and dishonorable discharge.
Rape.	Officer: Dismissal and imprisonment at hard labor for twenty years. Enlisted man: Imprisonment at hard labor for twenty years and dishonorable discharge.
Robbery.	Officer: Dismissal and imprisonment at hard labor for seven years. Enlisted man: Imprisonment at hard labor for seven years and dishonorable discharge.
Sodomy.	Officer: Dismissal and imprisonment at hard labor for fifteen years. Enlisted man: Imprisonment at hard labor for ten years and dishonorable discharge.
Lewd or indecent behavior.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.

Offenses.	Limit of punishment.
Smuggling liquor (aggravated case).	Officer: Loss of three numbers and public reprimand. Enlisted man: Confinement for six months and dishonorable discharge.
Selling arms.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.
Selling equipments.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.
Selling clothes.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Attempting to suborn testimony to be given before court-martial.	Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for three years and dishonorable discharge.
Neglecting to discharge pecuniary obligations (aggravated case).	Officer: Dismissal. Enlisted man: Confinement for six months.
False swearing or perjury.	Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.
Disorderly conduct (aggravated case): 1. Assaulting and striking another person in the Navy. 2. Attempting to strike and assault another person in the Navy. 3. Disrespect or affront to sentinel. 4. Interfering with or resisting sentinel in lawful execution of his duty.	1. Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge. 2. Officer: Dismissal. Enlisted man: Confinement for six months and dishonorable discharge. 3. Officer: To lose five numbers. Enlisted man: Confinement for three months. 4. Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Striking or assaulting a sentinel.	Officer: Dismissal and imprisonment for two years. Enlisted man: Confinement for two years and dishonorable discharge.
Refusing obedience to lawful orders of sentinel.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Neglect of duty.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Resisting arrest.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Enticing a prisoner to escape.	Officer: Dismissal and imprisonment for one year. Enlisted man: Confinement for two years and dishonorable discharge.
Malingering.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Refusing to give testimony before a court-martial.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Behaving contumaciously before a board or court.	Officer: Loss of ten numbers. Enlisted man: Confinement for six months.
Using profane, abusive, and threatening language toward his superior officer.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.
Mayhem.	Officer: Dismissal and imprisonment for three years. Enlisted man: Imprisonment for three years at hard labor and dishonorable discharge.
Malicious or wilful destruction of public property.	Officer: Dismissal and imprisonment for two years. Enlisted man: Imprisonment for two years at hard labor and dishonorable discharge.
Attempting to desert.	Enlisted man: Confinement for six months.

Offenses.	Limit of punishment.
Answering for another at muster.	Enlisted man: Confinement for six months.
Conduct unbecoming an officer and a gentleman.	Officer: Dismissal.
Conduct to the prejudice of good order and discipline.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.
Disrespectful in language or deportment toward petty or noncommissioned officer.	Enlisted man: Confinement for six months.
Fraudulent enlistment.	Enlisted man: Confinement for one year and dishonorable discharge.
Creating a disturbance after being placed in arrest.	Enlisted man: Confinement for six months.
Liquor unlawfully in possession upon returning to ship or garrison (aggravated case).	Officer: Loss of three numbers and public reprimand. Enlisted man: Confinement for six months and dishonorable discharge.
Using profane, obscene, and abusive language toward another person in the service.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Refusing to obey, or wilfully disobeying, lawful order of petty or noncommissioned officer.	Enlisted man: Confinement for one year and dishonorable discharge.
Refusing to halt when challenged by noncommissioned officer of guard or sentinel.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Smuggling liquor into vessel or navy yard.	Enlisted man: Confinement for six months.

The following instructions have been prescribed by the President in connection with the limitations to the punishment of officers and enlisted men:

"The foregoing prescribes the maximum limit of punishment for the offenses named, and that limit is intended for those cases in which the severest punishment should be awarded.

"Offenses not herein provided for remain punishable as authorized by the Articles for the Government of the Navy and the custom of the service.

"Summary courts-martial are subject to the restrictions named in article 30 of the Articles for the Government of the Navy."

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