



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
200 STOVALL STREET
ALEXANDRIA, VA 22332-2400

IN REPLY REFER TO
JAGINST 5813.1A
20
17 SEP 1993

JAG INSTRUCTION 5813.1A

From: Judge Advocate General

Subj: STANDARDIZATION OF GCM AND SPCM VERBATIM RECORDS OF TRIAL

Ref: (a) U.S. Government Printing Office Style Manual, 1984
(b) Manual for Courts-Martial, United States, 1984 (MCM)
(c) DD Form 490, Oct 1984

Encl: (1) Standard Format for GCM and SPCM Verbatim Records of Trial

1. Purpose.

a. To reissue the standard format required for all GCM and SPCM verbatim records of trial. These changes will decrease post-trial processing times, as well as increase work productivity within Naval Legal Service Offices and Detachments.

b. This is a major revision and should be reviewed in its entirety.

2. Cancellation. JAG Instruction 5813.1.

3. Applicability. This instruction supplements the requirements for preparation of records of trial promulgated in references (a) and (b), and supplemented by reference (c). It applies to all personnel involved in the preparation and authentication of GCM and SPCM verbatim records of trial.

4. Procedure. The margins for the record of trial should be set in accordance with appendix 14 of reference (b). Set the right margin at 1/2 inch. Use left justification. The format and guidelines contained in enclosure (1) are advisory and should be followed as practicable. Included in enclosure (1) are various notes and explanations used to assist in the preparation of the record of trial, but they should not be transcribed as part of the record. Divide large records into volumes no more than 1 1/2 inches thick. The following computer functions are included in enclosure (1) and are recommended during transcription of records of trial:

- a. Italicize the court reporter's comments and descriptions.
- b. Indent and bold the accused's pleas.

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- c. Indent elements of the offense.
 - d. Indent and bold the court's findings and sentence.
 - e. Bold the identification of witnesses.
 - f. Check page breaks so that the answer to a question does not appear on a page separate from the question.
 - g. Avoid using all capital letters for emphasis. Use bold or italics.
5. Action. Addresses shall comply with the provisions of this instruction.



W. L. SCHACHTE, JR.
Acting

Distribution:
JAG Special List 40 (one copy each)

Original

VERBATIM ¹

RECORD OF TRIAL ²

(and accompanying papers)

of

QUIRK, Phineus R.
(Name: Last, First, Middle Initial)

000-00-0000
(Social Security Number)

Electrician's Mate
Fireman
(Rank)

Naval Justice School
(Unit/Command Name)

U.S. Navy
(Branch of Service)

Newport,
Rhode Island
(Station or Ship)

By

SPECIAL

COURT-MARTIAL

Convened by Commanding Officer
(Title of Convening Authority)

Naval Justice School
(Unit/Command of Convening Authority)

Tried at

Newport, Rhode Island on 3, 4, and 5 February 19CY
(Place or Places of Trial) (Date or Dates of Trial)

¹ Insert "verbatim" or "summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)

² See inside back cover for instructions as to preparation and arrangement

CHRONOLOGY SHEET ¹

In the case of Electrician's Mate Fireman Phineus A. Quirk
(Rank and Name of Accused)

Date of alleged commission of earliest offense tried: 30 November, 19 CY (-1)
(Enter Date)

Date record forwarded to The Judge Advocate General: ² 18 February, 19 CY
(Enter Date)

JOHN Q. ADAMS, Lieutenant Commander

(Signature and Rank of Staff Judge Advocate or Legal Officer)

	ACTION	DATE 19 <u> </u> <small>CY</small>	CUMULATIVE ELAPSED DAYS ³
<p>¹ In a case forwarded to The Judge Advocate General, the staff judge advocate or legal officer is responsible for completion of the Chronology Sheet. Trial counsel should report any authorized deductions and reasons for unusual delay in the trial of the case.</p> <p>² Or officer conducting review under Article 64(a) (MCM, 1984, RCM 1112)</p> <p>³ In computing days between two dates, disregard first day and count last day. The actual number of days in each month will be counted.</p> <p>⁴ Item 1 is not applicable when accused is not restrained, (see MCM, 1984, RCM 304) or when he/she is in confinement under a sentence or court-martial at time charges are preferred. Item 2 will be the zero date if Item 1 is not applicable.</p> <p>⁵ May not be applicable to trial by special court-martial.</p> <p>⁶ Only this item may be deducted.</p> <p>⁷ If no further action is required, items 1 to 8 will be completed and chronology signed by such convening authority or his/her representative.</p> <p>⁸ When further action is required under Article 64 or service directives.</p>	1. Accused placed under restraint by military authority ⁴	25 Dec <small>CY (-1)</small>	0
	2. Charges preferred (date of affidavit)	21 Jan	28
	3. Article 32 investigation (date of report) ⁵	_____	_____
	4. Charges received by convening authority	21 Jan	28
	5. Charges referred for trial	22 Jan	29
	6. Sentence or acquittal	5 Feb	43
	Less days:		
	Accused sick, in hospital, or AWOL	0	
	Delay at request of defense	0	
	Total authorized deduction ⁶	0	
7. Net elapsed days to sentence or acquittal		43	
8. Record received by convening authority	12 Feb	50	
Action ⁷	14 Feb	52	
9. Record received by officer conducting review under Article 64(a)	15 Feb	53	
Action ⁸	18 Feb	56	

REMARKS

RECORD OF TRIAL

of

QUIRK, Phineus R.
(Name: Last, First, Middle Initial)

000-00-0000
(Social Security Number)

Electrician's Mate
Fireman
(Rank)

Naval Justice School
(Unit/Command Name)

U.S. Navy
(Branch of Service)

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TESTIMONY

NAME OF WITNESS (Last, First, Middle Initial)	DIRECT AND REDIRECT	CROSS AND RECROSS	COURT
PROSECUTION			
BROWN, Robert C., SN	24, 25	24	25
LEWIS, Robert O., ENS	26, 50	—	—
JONES, Richard C., BM1	29, 30	29, 30	31
DEFENSE			
FRANCIS, Dale, BM1	34	—	35
ROBERTS, John C., BM2	36	36	—
QUIRK, Phineus R., BMFN	40	41	—
COURT			
FRANCIS, Dale, BM1	42, 43	42, 43	—

EXHIBITS ADMITTED IN EVIDENCE

NUMBER OR LETTER	DESCRIPTION	PAGE WHERE —	
		OFFERED	ADMITTED
1	Page 601-R reflecting commencement of UA	27	27
2	Page 601-R reflecting previous conviction	50	50
3	Page 613 reflecting final review of conviction	50	50

COPIES OF RECORD ¹

1 copy of record furnished the accused or defense counsel as per attached certificate or receipt.
2 copy (ies) of record forwarded herewith.

RECEIPT FOR COPY OF RECORD ²

I hereby acknowledge receipt of a copy of the record of trial in the case of United States v. BMFN Phineus R. Quirk
 Naval Brig

delivered to me at NETC, Newport, Rhode Island this 24th day of March, 19 CY

Phineus R. Quirk
PHINEUS R. QUIRK

(Signature of accused)

~~I hereby acknowledge receipt of a copy of the record of trial in the case of United States v. _____~~

~~delivered to me at _____ this _____ day of _____, 19 _____~~

~~(Signature of accused)~~

¹ For instructions as to preparation of copies of record, see back cover or appendices 13 and 14, MCM, 1984.

² If copy of record prepared for accused contains matters requiring security protection, see RCM 1104(b)(1)(D), MCM, 1984.

CERTIFICATE IN LIEU OF RECEIPT

_____ (Place) _____ (Date)

I certify that on this date a copy of the record of trial in the case of United States v. _____ was transmitted (delivered) to the accused. _____ (Rank and Name of accused) at _____ (Place of delivery, or address sent to) by _____ (Means of effecting delivery, i.e., mail, messenger, etc.)

and that the receipt of the accused had not been received on the date this record was forwarded to the convening authority. The receipt of the accused will be forwarded as soon as it is received.

_____ (Signature of trial counsel)

OR

_____ (Place) _____ (Date)

I certify that on this date a copy of the record of trial in the case of United States v. _____ was transmitted (delivered) to the accused's defense counsel, _____ (Rank and Name)

at _____ (Place of delivery or address sent to) by _____ (Means of effecting delivery, i.e., mail, messenger, etc.)

because (it was impracticable to serve the record of trial on the accused because he/she was transferred to _____ (Place)) (the accused requested such at trial) (the accused so

requested in writing, which is attached) (the accused is absent without leave) (_____ (Other reason)).

_____ (Signature of trial counsel)

OR

The accused was not served personally because (he/she is absent without leave) (_____ (Other reason)).

Accused has no defense counsel to receive the record because (defense counsel has been excused under RCM 505(d)(2)(B)) (_____ (Other reason)).

_____ (Date)

_____ (Signature of trial counsel)

SSK

PROCEEDINGS OF A SPECIAL COURT-MARTIAL

SSK The military judge called the Article 39(a) session to order at Naval Justice School, Newport, Rhode Island, at 0900 hours, 3 February 19CY, pursuant to the following orders:

NOTE: IF APPLICABLE TO THE CASE, ATTACH THE FOLLOWING TO THIS PAGE IN DECENDING ORDER WHEN NOT APPENDED TO THE RECORD OF TRIAL AS APPELLATE EXHIBITS:

1. Amending orders (most recent on top);
2. basic convening order;
3. written orders detailing military judge, trial counsel or defense counsel;
4. request for military judge alone;
5. request for enlisted members;
6. declaration of the nonavailability of enlisted persons; and
7. statement that a military judge could not be obtained.

SSE

PERSONS PRESENT

Lieutenant Commander Constantle E. Legal, JAGC, U.S. Navy, **MILITARY JUDGE**;
Lieutenant Peter R. Ryan, JAGC, U.S. Navy, **TRIAL COUNSEL**;
Ensign John L. Jones, JAGC, U.S. Navy, **ASSISTANT TRIAL COUNSEL**;
Lieutenant Kenneth C. Hartman, JAGC, U.S. Navy, **DEFENSE COUNSEL**; and
Ensign Robert L. Bright, JAGC, U.S. Navy, **ASSISTANT DEFENSE COUNSEL**.

SSE

PERSONS ABSENT

MEMBERS.

SSE The following named accused was present: Electrician's Mate Fireman Phineus R. Quirk, U.S. Navy.

SSE The detailed reporter, Legalman Second Class John Q. Doelittle, U.S. Navy, (was sworn) (had previously been sworn).

NOTE: The remainder of the record of trial follows the actual proceedings of the court-martial. Transcribe record verbatim.

DETAILING OF MILITARY JUDGE

MJ: I have been detailed to this court-martial by the Northeast Judicial Branch Office, Newport, Rhode Island.

LEGAL QUALIFICATIONS OF THE PROSECUTION

TC: All members of the prosecution have been detailed to this court-martial by Commanding Officer, Naval Legal Service Office, Newport, Rhode Island.

TC: All members of the prosecution are qualified and certified under Article 27(b) and sworn under Article 42(a), Uniform Code of Military Justice.

PRIOR PARTICIPATION BY TRIAL COUNSEL

TC: No member of the prosecution has acted in any manner which might tend to disqualify him in this court-martial.

INQUIRY CONCERNING COUNSEL RIGHTS

MJ: Fireman Quirk, I am sure that Lieutenant Hartman and Ensign Bright have discussed your rights to counsel with you. However, the law requires that I ensure that you understand your rights.

MJ: You have the right to be represented by Lieutenant Hartman and Ensign Bright, your detailed defense counsel. They are attorneys, and are fully qualified to serve as your defense counsel. Their services are provided free of charge.

You have the right, however, to request a different military lawyer to represent you. If the person you request is available, he or she would be appointed to represent you free of charge. Do you understand that?

ACC: Yes, Your Honor.

MJ: If your request for this other military lawyer were granted, however, you would not have the right to keep the services of Lieutenant Hartman and Ensign Bright, your detailed defense counsel. That is because you are only entitled to one military lawyer. You may ask Captain Jones, the convening authority, to let you keep your detailed counsel, but your request would not have to be granted. Do you understand that?

ACC: I understand, sir.

MJ: In addition to the right to request a military lawyer of your own choice, you have the right to be represented by a civilian lawyer. A civilian lawyer would have to be provided by you; he or she would not be at the expense of the government. Do you understand that?

ACC: Yes, sir.

MJ: Do you have any questions about your rights to counsel?

ACC: No, sir, I do not.

MJ: By whom do you wish to be represented?

ACC: Lieutenant Hartman and Ensign Bright, sir.

MJ: Very well. Defense counsel will announce by whom they were detailed and their qualifications.

LEGAL QUALIFICATIONS OF THE DEFENSE

DC: All detailed members of the defense have been detailed to this court-martial by Commanding Officer, Naval Legal Service Office, Newport, Rhode Island.

DC: All detailed members of the defense are qualified and certified under Article 27(b) and sworn under Article 42(a), Uniform Code of Military Justice.

PRIOR PARTICIPATION BY DEFENSE COUNSEL

DC: No member of the defense has acted in any manner which might tend to disqualify them in this court-martial.

VERIFICATION OF OATHS

MJ: Very well. It appears that counsel for both sides have the requisite qualifications, and all personnel of the court required to be present have been sworn.

MJ: Trial counsel may announce the general nature of the charges.

GENERAL NATURE OF CHARGES:

TC: The general nature of the charges in this case is absence without leave for a period of about 33 days, in violation of Article 86, Uniform Code of Military Justice; and theft of one Bulova wristwatch, in violation of Article 121, Uniform Code of Military Justice. The charges were preferred by Ensign Robert Q. Lewis, U.S. Navy, a person subject to the Code, as accuser; were sworn to before an officer of the armed forces authorized to administer oaths; and were referred for trial by Captain K. C. Jones, JAGC, U.S. Navy, Commanding Officer, Naval Justice School, Newport, Rhode Island, the convening authority.

CHALLENGE OF THE MILITARY JUDGE

TC: Your Honor, are you aware of any matters which may be grounds for challenge by either side against you?

MJ: I am aware of none. Does either side wish to voir dire or challenge the military judge for cause?

TC: The government has no challenge for cause against the military judge.

DC: The defense has no challenge for cause against the military judge.

EXPLANATION OF TYPES OF TRIAL

MJ: Fireman Quirk, do you understand that you have the right to be tried by a court composed of at least three members?

ACC: Yes, Your Honor.

MJ: Do you understand that if you were tried by a court composed of members, then at least two-thirds of the members, voting by secret written ballot, would have to agree on any finding of guilty before you could be convicted?

ACC: Yes, sir, I understand.

MJ: Do you also understand that if this case is heard by members and you are found guilty, then two-thirds of the members, voting by secret written ballot, would have to agree on a particular sentence before any sentence could be imposed in the case?

ACC: Yes, sir, I do.

MJ: Electrician's Mate Quirk, if this case is heard by a court with members, then you have a right to request enlisted members on the court. If you requested it, enough enlisted members would be appointed so that at the time the court met to hear the evidence and decide the case, at least one-third of its members would be enlisted people. These enlisted personnel would serve with an equal voice and vote with officer members in determining guilt or innocence, and, if guilty, the sentence. Do you understand this?

ACC: I understand perfectly, Your Honor.

MJ: Do you also understand that you may request, in writing or orally here in the court-martial, trial before me alone?

ACC: Yes, sir.

MJ: Do you understand that if I sit alone in this case, without members being present, then I will have the only vote on the question of guilt or innocence, and, if you are found guilty, then it is only my vote and opinion as to what an appropriate sentence should be?

ACC: I do, sir.

MJ: Have you discussed these choices with your defense counsel?

ACC: Yes, Your Honor, I have.

MJ: By which type of court-martial do you choose to be tried?

ACCUSED'S ELECTION ON COMPOSITION OF COURT-MARTIAL

ACC: I desire to be tried by a court-martial composed of members. I do not desire enlisted members.

OR

ELECTION TO BE TRIED BY MEMBERS INCLUDING ENLISTED PERSONS

- MJ: By which type of court-martial do you choose to be tried?
- ACC: I request to be tried by a court-martial composed of members including enlisted persons.
- TC: I have such request for enlisted membership, which has been previously marked as Appellate Exhibit I.

OR

ELECTION TO BE TRIED BY MILITARY JUDGE ALONE

- MJ: By which type of court-martial do you choose to be tried?
- ACC: I request to be tried by military judge alone.
- MJ: I have Appellate Exhibit I, a request for trial before me alone. I am Lieutenant Commander Constantle E. Legal, JAGC, U.S. Navy. Have you discussed this request and the rights I just described with your counsel?
- ACC: Yes sir, I have.
- MJ: If I approve your request for trial by me alone, you give up your right to a trial by a court-martial composed of members including, if you requested, enlisted members. Do you wish to request trial before me alone?
- ACC: Yes, sir.
- MJ: Your request is approved. The court-martial is assembled.

ARRAIGNMENT

- MJ: The accused will now be arraigned.
- TC: All parties and the military judge have been furnished with a copy of the charges and specifications. Does the accused want them read?
- DC: The accused waives reading of the charges.

MJ: The reading may be omitted. The original charge sheet will be inserted into the record at this point.

NOTE: GENERALLY, THE ACCUSED WILL WAIVE THE READING OF THE CHARGES AND SPECIFICATIONS, AS PREVIOUSLY SHOWN. YOU WILL THEN INSERT THE ORIGINAL CHARGE SHEET IN THE RECORD FOLLOWING THIS PAGE. HOWEVER, IF HE DECLINES TO WAIVE THE READING OF THE CHARGES AND SPECIFICATIONS, THEY ARE THEN READ IN OPEN COURT BY THE TRIAL COUNSEL AND YOU MUST RECORD AND TRANSCRIBE THEM VERBATIM INTO THE RECORD OF TRIAL. IF THE CHARGE SHEET IS NOT INSERTED HERE, YOU MUST TRANSCRIBE THE NAME AND DESCRIPTION OF THE ACCUSER, THE AFFIDAVIT, AND PART V, REFERRING THE CHARGES TO TRIAL, INTO THE RECORD WHERE IT OCCURS. THE ORIGINAL CHARGE SHEET IS NOT A NUMBERED PAGE OF THE RECORD.

TC: The charges are signed by Ensign Robert Q. Lewis, U.S. Navy, a person subject to the Code, as accuser; are properly sworn to before a commissioned officer of the armed forces authorized to administer oaths; and are properly referred to this court-martial for trial by Commanding Officer, Naval Justice School, Newport, Rhode Island, the convening authority.

MJ: Fireman Quirk, how do you plead? Before receiving your pleas, I advise you that any motions to dismiss any charge or to grant other relief should be made at this time.

NOTE: THIS COMPLETES THE ARRAIGNMENT PROCESS.

DC: The defense has no motions at this time.

OR

DC: The defense moves to dismiss Charge II and its Specification on the ground that the specification fails to allege an offense.

MJ: The session will recess for 10 minutes.

SSE The Article 39(a) session recessed at 1005 hours, 3 February 19CY.

SSE The Article 39(a) session was called to order at 1015 hours, 3 February 19CY.

MJ: The session will come to order.

TC: All parties who were present when the session recessed are again present.

MJ: The motion is denied.

DC: The accused has no further motions to make at this time.
The accused pleads:

PLEAS

To the Specification of Charge I:	Not Guilty.
To Charge I:	Not Guilty.
To the Specification of Charge II:	Guilty, except the word, "steal", substituting therefor the words "wrongfully appropriate". To the excepted word: Not Guilty; to the substituted words: Guilty.
To Charge II:	Guilty.

MJ: Fireman Quirk, you have pleaded guilty by exceptions and substitutions to Charge II and its Specification. Your plea will not be accepted unless you understand its meaning and effect. A plea of guilty is equivalent to a conviction and is the strongest form of proof known to the law. On the basis of your plea alone, and without receiving any evidence, this court could find you guilty of the offense to which you plead guilty. Your plea cannot be accepted unless you realize that by your plea, you admit every act, omission, and element with respect to the offense to which you are pleading guilty, and further that you are pleading guilty because you actually are, in fact, guilty. If you are not convinced in your own mind that you are in fact guilty, then you should not allow any other consideration to influence you to plead guilty. Do you understand that?

ACC: Yes, sir.

MJ: By your plea of guilty you waive, and by "waive" I mean give up certain important rights, but only with respect to the offense to which you have pleaded guilty. You keep these rights as to the offense to which you have pled not guilty. The rights you give up are:

First, the right against self-incrimination, that is the right to say nothing at all. You cannot be compelled to testify or provide evidence against yourself.

MJ: Second, the right to a trial of the facts by this court. That is, your right to have this court-martial decide whether or not you are guilty based upon evidence which the prosecution would present, and on any evidence you may introduce.

Third, the right to be confronted by the witnesses against you, that is, to see, hear, and to have cross-examined, any witnesses called to testify against you during the trial and the right to call witnesses in your own behalf. Now, do you have any questions about any of the rights that I have just mentioned to you?

ACC: I do not, Your Honor.

MJ: And do you realize that by your plea you waive each of these rights?

ACC: Yes, Your Honor, I do.

MJ: If your plea of guilty is accepted, there will not be a trial of any kind as to the offense to which you plead guilty, so by pleading guilty, you give up the rights I have just described. Do you understand this?

ACC: I understand, Your Honor.

MJ: If you persist with your plea, you will be placed under oath and I will question you to determine whether you are, in fact, guilty. If you tell me anything that is untrue, those statements may be used against you later for charges of perjury or false statement. Do you understand that?

ACC: Yes, Your Honor.

MAXIMUM PENALTY

MJ: Defense Counsel, what advice have you given Fireman Quirk as to the maximum punishment for the offense to which he has pled guilty?

DC: I have advised him that the maximum sentence is confinement for 3 months, forfeiture of two-thirds pay per month for 3 months, and reduction in rate to pay grade E-1.

MJ: Trial Counsel, do you agree with that?

TC: The government concurs, Your Honor.

MJ: Fireman Quirk, I advise you that by reason of your plea of guilty in this case, you could legally be sentenced to the maximum punishment authorized which is:

Confinement for 3 months, forfeiture of two-thirds pay per month for 3 months, and reduction to the grade of pay grade E-1.

MJ: Do you understand that?

ACC: Yes, Your Honor.

MJ: Do you feel you have had ample time and opportunity to discuss your case with your defense counsel?

ACC: Yes, sir.

MJ: Lieutenant Hartman and Ensign Bright, do you feel that you have had ample time and opportunity to discuss this case with your client?

DC: Yes, sir, we feel we have.

MJ: Fireman Quirk, are you satisfied with Lieutenant Hartman and Ensign Bright, your defense counsel, and do you believe their advice has been in your best interest?

ACC: Oh, yes, sir.

MJ: Are you pleading guilty voluntarily and of your own free will?

ACC: Yes, sir, I am.

MJ: Has anyone tried to force you to plead guilty?

ACC: No, sir.

MJ: Fireman Quirk, at this time I am required by R.C.M. 910(e) to determine the factual basis for your plea of guilty. As such, you will be placed under oath during this portion of the inquiry.

MJ: Mr. Trial Counsel, swear the accused.

SSE The accused was sworn.

MJ: I am going to explain the elements of the offense to which you have entered a plea of guilty. By "elements" I mean the facts which the government would have to prove by evidence beyond a reasonable doubt before you could be found guilty if you pled not guilty. When I state each of these elements, ask yourself if it is true, and whether you want to admit that it is true. Then be ready to talk about these facts with me.

Please look at your copy of the Charge and Specification. You have pleaded guilty to Charge II and its Specification by exception and substitution, a violation of Article 121 of the Uniform Code of Military Justice. The elements of that offense are:

First, that, at the time and place alleged, you wrongfully took from the possession of the true owner, the property described in the specification;

second, that such property belonged to a certain person named or described, as alleged;

third, that the property was of the value alleged; and

fourth, that the taking by you was with the intent temporarily to deprive the owner of the use and benefit of the property.

MJ: Do you understand those elements?

ACC: Yes, sir.

MJ: Do these elements correctly describe what you did?

ACC: Yes, sir, they do.

MJ: Fireman Quirk, did you wrongfully take the wristwatch from its true owner?

ACC: Yes, sir.

MJ: Was this watch the property of Seaman Apprentice Harry O. Time, U.S. Navy?

ACC: Yes, sir, it was.

MJ: When you took this watch, did you intend to return it to its true owner?

ACC: I just borrowed it, sir. I intended to return it the next morning.

IDENTIFICATION OF THE ACCUSED

MJ: Do you admit that you are Fireman Quirk, the accused in this case?

ACC: Yes, sir, I am.

MJ: On 1 July 19CY(-1), were you a member of the United States Navy on active duty, and have you remained on active duty since that date?

ACC: Yes, sir.

MJ: Defense Counsel, are you aware of any possible impediment to the jurisdiction of this court in this case?

DC: I am not, Your Honor.

PRETRIAL AGREEMENT

MJ: Is there a pretrial agreement in this case?

DC: There is not, Your Honor.

MJ: Fireman Quirk, are you pleading guilty because of any promise by the government that you will receive a sentence reduction or other benefit from the government if you plead guilty?

ACC: No, sir.

NOTE: IF THERE IS A PRETRIAL AGREEMENT, SEE APPENDIX 8, MCM, 1984, PAGE A8-7 through A8-9, FOR INCORPORATION INTO THE RECORD.

MJ: Fireman Quirk, although you believe you are guilty, you have a legal and a moral right to plead not guilty and to require the government to prove its case against you, if it can, by legal and competent evidence beyond a reasonable doubt. If you were to plead not guilty, then you would be presumed under the law to be not guilty, and only by introducing evidence and proving your guilt beyond a reasonable doubt can the government overcome that presumption. Do you understand?

ACC: Yes, sir.

MJ: Do you have any questions about your plea of guilty, or anything we have discussed?

ACC: No, sir.

MJ: Do you understand that even though you believe you are guilty, you still have a legal and a moral right to plead not guilty and to place upon the government the burden of proving your guilt beyond reasonable doubt?

ACC: Yes, Your Honor, I understand.

MJ: Take a moment now and consult with your counsel and then tell me if you understand everything we've spoken about and whether you still want to plead guilty.

SSE The accused did as directed.

MJ: Do you still want to plead guilty?

ACC: Yes, Your Honor, I do.

ACCEPTANCE OF GUILTY PLEA

MJ: Very well. I find that the accused has knowingly, intelligently, and consciously waived his rights against self-incrimination, to a trial of the facts by a court-martial, and to be confronted by the witnesses against him; that the accused is, in fact, guilty, and his plea of guilty is accepted.

MJ: Fireman Quirk, while accepting your plea of guilty, I advise you that you may request to withdraw your plea of guilty at any time before sentence is announced in your case, and, if you have a good reason for your request, I will grant it.

ANNOUNCEMENT OF FINDINGS BASED ON GUILTY PLEA

MJ: Fireman Quirk, in accordance with your plea of guilty, this court-martial finds you:

Of the Specification of Charge II:	Guilty, except the word "steal", substituting therefor the words "wrongfully appropriate". Of the excepted word: Not Guilty; of the substituted words: Guilty.
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Of Charge II:	Guilty.
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MJ: Do counsel for either side have any further matters to be taken up at this time?

TC: No, Your Honor.

DC: Nothing from the defense, Your Honor.

MJ: This session is adjourned.

SSE The Article 39(a) session adjourned at 1100 hours, 3 February 19CY.

SSE The court-martial met at Naval Justice School, Newport, Rhode Island, at 0900 hours, 4 February 19CY, pursuant to the orders previously inserted in the record.

SSE **PERSONS PRESENT**

Lieutenant Commander Constantle E. Legal, JAGC, U.S. Navy, MILITARY JUDGE;
Lieutenant Commander John C. Brown, U.S. Navy,
Lieutenant Richard L. O'Brien, U.S. Navy,
Lieutenant Junior Grade Daniel E. Burns, U.S. Navy,
Ensign Patton C. Earthington, U.S. Navy, and
Chief Warrant Officer (CWO-3) John P. Jones, U.S. Navy, MEMBERS;
Lieutenant Peter R. Ryan, JAGC, U.S. Navy, TRIAL COUNSEL;
Ensign John L. Jones, JAGC, U.S. Navy, ASSISTANT TRIAL COUNSEL;
Lieutenant Kenneth C. Hartman, JAGC, U.S. Navy, DEFENSE COUNSEL; and
Ensign Robert L. Bright, JAGC, U.S. Navy, ASSISTANT DEFENSE COUNSEL.

SSE **PERSONS ABSENT**

Lieutenant Calvin R. McDougal, U.S. Naval Reserve, MEMBER.

NOTE: IF NO PERSONS ARE ABSENT, INDICATE BY THE WORD "NONE." BEGINNING AT THE LEFT MARGIN. DO NOT LEAVE THIS ITEM BLANK.

TC: The prosecution is ready to proceed with the trial in the case of the United States against Electrician's Mate Fireman Phineus R. Quirk, U.S. Navy, who is present. (NOTE: TAKES PLACE OF SSE ACCOUNTING FOR ACCUSED AS SHOWN ON PAGE 2 FOR INITIAL 39(a) SESSION; VERBATIM.)

SSE The detailed reporter, Legalman Second Class John Q. Doelittle, U.S. Navy, had previously been sworn.

MJ: The members of the court-martial will now be sworn.

TC: The members will be sworn. All persons please rise.

SSE The members of the court-martial were sworn.

ASSEMBLY/PRELIMINARY INSTRUCTIONS

MJ: Be seated, please. The court-martial is assembled.

Members of the court, it is appropriate that I give you some preliminary instructions.

It is my duty to ensure this trial is conducted in a fair and orderly manner. I rule upon objections and instruct you on the law applicable to this case. You are required to

follow my instructions on the law and may not consult any other source as to the law pertaining to this case unless it is admitted into evidence. This rule applies throughout the trial including closed sessions and periods of recess or adjournment. Any questions you have should be asked of me in open court.

MJ: First, it is my duty as military judge to ensure that the accused receives a fair, orderly, and impartial trial, and that this trial is so conducted in accordance with the law. In performing my duties, it will be necessary for me to rule upon certain matters presented by counsel, and (REMAINDER OF INSTRUCTIONS INTENTIONALLY OMITTED-TYPE VERBATIM.)

NOTE: HERE THE MILITARY JUDGE MAY GIVE PRELIMINARY INSTRUCTIONS TO THE MEMBERS. RECORD AND TYPE THEM VERBATIM, PARAGRAPHING WHERE APPROPRIATE. YOU COULD HAVE SEVERAL PAGES OF INSTRUCTIONS.

MJ: Unless required to be present for other reasons, all persons expecting to be called as witnesses in the case of Electrician's Mate Fireman Phineus R. Quirk, U.S. Navy, will withdraw from the courtroom.

GENERAL NATURE OF CHARGES

TC: The general nature of the charges in this case are absence without leave for a period of about 33 days, in violation of Article 86, Uniform Code of Military Justice, and theft of one Bulova wristwatch, in violation of Article 121, Uniform Code of Military Justice. The charges were preferred by Ensign Robert Q. Lewis, U.S. Navy, a person subject to the Code, as accuser; were forwarded with recommendations as to disposition by Lieutenant Commander John R. Wayne, U.S. Navy; and referred to trial by Captain K. C. Jones, JAGC, U.S. Navy, Commanding Officer, Naval Justice School, Newport, Rhode Island, the convening authority. Neither the military judge nor any member of the court-martial will be a witness for the prosecution.

VOIR DIRE PROCEDURE

NOTE: VOIR DIRE IS THE PROCEDURE USED TO DETERMINE IF THERE ARE REASONS SELECTED PERSONNEL SHOULD NOT PARTICIPATE IN A COURT-MARTIAL AS A MEMBER. THE PHRASE "VOIR DIRE" ACTUALLY DENOTES THE PRELIMINARY EXAMINATION WHICH THE COURT MAY CONDUCT OF A WITNESS OR COURT-MARTIAL MEMBER CONCERNING COMPETENCY, INTERESTS, ETC., IN A COURT-MARTIAL.

TC: The records of this case disclose grounds for challenge of Chief Warrant Officer John P. Jones, U.S. Navy, owing to the fact that he was the duty officer at the time the accused returned to naval jurisdiction.

MJ: Mr. Jones, have you anything to say?

MBR (CWO JONES): I cannot dispute the challenge, sir.

MJ: The challenge is sustained. Chief Warrant Officer Jones, you are excused from sitting as a member of this court-martial.

SSE Chief Warrant Officer Jones, the challenged member, withdrew from the courtroom.

NOTE: WHEN A CHALLENGED MEMBER OR ANY INDIVIDUAL OR WITNESS WITHDRAWS FROM THE COURTROOM, YOU MUST ALWAYS RECORD AND TRANSCRIBE SUCH MOVEMENT. IF CHIEF WARRANT OFFICER JONES WERE NOT THE JUNIOR MEMBER OF THE COURT-MARTIAL, THE MEMBERS SHOULD RESEAT THEMSELVES ACCORDING TO RANK AND, IF THEY DO, THE FOLLOWING SSE WOULD BE ENTERED:

SSE The members reseated themselves according to rank.

NOTE: REMEMBER TO REFLECT IN YOUR RECORD ONLY THOSE THINGS THAT ACTUALLY DO OCCUR; IF THE MEMBERS FORGET TO RESEAT THEMSELVES DO NOT REFLECT THAT IT HAPPENED. LIKEWISE, IF THE MEMBERS RESEATED THEMSELVES IN THE DELIBERATION ROOM AND REENTERED THE COURTROOM IN THE REARRANGED ORDER, YOU NEED NOT REFLECT IN THE RECORD THAT THE MEMBERS RESEATED THEMSELVES SINCE IT DID NOT HAPPEN ON THE RECORD. REFLECT ONLY THOSE THINGS WHICH HAPPENED ON THE RECORD.

TC: If any member of the court-martial or the military judge is aware of any matters which he believes may be a ground for challenge by either side against him, he should now state such matters. If a statement is to be made, it should be made so as to state the general nature of the matter and not any specific facts which might tend to disqualify other members when heard by them.

TC: The prosecution has no further challenges for cause.

TC: The prosecution has no peremptory challenge.

TC: Does the accused desire to challenge any member of the court-martial or the military judge for cause?

DC: Your Honor, the defense has reason to believe that Lieutenant O'Brien may have acted as an investigating officer in this case. In light of that information, with the permission of the military judge, the accused desires to voir dire Lieutenant Richard L. O'Brien, U.S. Navy, Your Honor.

MJ: Very well. All members, with the exception of Lieutenant O'Brien, will withdraw to the deliberation room.

SSE The members of the court-martial did as directed.

MJ: We may proceed.

SSE Lieutenant Richard L. O'Brien was sworn to testify concerning his competency to act as a member of the court-martial, and testified as follows:

SSE DIRECT EXAMINATION

SSE Questions by the prosecution:

Q. State your full name, rank, armed force, and present duty station.

A. Richard Lee O'Brien, Lieutenant, U.S. Navy, attached to the Naval Justice School, Newport, Rhode Island.

Q. Are you a member of this court-martial?

A. I am.

SSE Questions by the defense:

Q. Lieutenant O'Brien, what is your primary duty at the Naval Justice School?

A. I am the school's admin officer, and as such, take care of all administrative matters for enlisted and officer students.

Q. In your capacity as admin officer here at the school, isn't it a fact, then, that you did act as the investigating officer when the report chit of Fireman Quirk came into your office?

A. No, sir. I was almost assured that the accused would go to court-martial, and I checked over his report chit to see that it was in proper order and had Ensign Lewis conduct the actual investigation.

DC: No further questions.

TC: The prosecution has no questions. Does the military judge care to examine Lieutenant O'Brien?

MJ: I've no questions of Lieutenant O'Brien.

MJ: Lieutenant O'Brien, you may return to the deliberation room.

SSE Lieutenant O'Brien, the challenged member, withdrew from the courtroom.

NOTE: AT THIS POINT THE MILITARY JUDGE IS CONDUCTING AN OUT-OF-COURT HEARING IN ORDER TO DISCUSS A CHALLENGE POSED BY THE DEFENSE AND TO ALLOW THE ACCUSED THE OPPORTUNITY TO PRESENT ONE PEREMPTORY CHALLENGE. START A NEW PAGE AT THIS POINT. REMEMBER, UNLESS THE MILITARY JUDGE RECESSES THE COURT-MARTIAL, NO SSE FOR A RECESS WILL APPEAR, SIMPLY THE SSE FOR THE COURT MEMBERS WITHDRAWING FROM THE COURTROOM. AT THIS POINT IN THE TRIAL, DO NOT TYPE AN SSE TO CALL THE ARTICLE 39(a) SESSION TO ORDER OR TO ADJOURN IT. SIMPLY START THE NEW PAGE WITH THE SPOKEN WORDS.

JUST A REMINDER! START WITH THE SPOKEN WORDS.

- DC: Your Honor, although Lieutenant O'Brien stated that he did not act as investigating officer in this case, by virtue of his position here at the school, he would be called upon to conduct some type of investigation in order to determine whether or not the accused should be here at trial today. It is the defense's contention that Lieutenant O'Brien did, indeed, at some point, become involved in the investigation of the charges alleged and therefore, should not sit as a member of this court-martial. The accused desires to challenge Lieutenant O'Brien for cause, Your Honor.
- MJ: Does the defense have any other evidence to offer in regard to this matter?
- DC: The defense does not, Your Honor.
- MJ: The challenge is denied. Does the defense desire to challenge any other member for cause?
- DC: No, Your Honor.
- MJ: Does either side desire to voir dire any other member individually?
- TC: The prosecution does not, Your Honor.
- DC: The defense does not, Your Honor.
- MJ: Does the accused desire to exercise his right to one peremptory challenge against any member?
- DC: The accused challenges Lieutenant O'Brien peremptorily.
- MJ: Very well. That challenge is sustained. Anything further by either side?
- TC: Not by the government.
- DC: Not by the defense, Your Honor.
- MJ: Call the members.

SSE The members reentered the courtroom.

MJ: Lieutenant O'Brien, you are excused from any further participation in this trial. Thank you very much for your attendance here today. You may return to your duties.

SSE Lieutenant O'Brien, the challenged member, withdrew from the courtroom.

SSE The members reseated themselves according to rank.

MEMBERS INFORMED OF ACCUSED'S PLEAS

MJ: Members of the court-martial, at a session of this trial held on 3 February 19CY, the accused entered the following pleas:

To the Specification of Charge I: Not Guilty.

To Charge I: Not Guilty.

To the Specification of Charge II: Guilty, except the word "steal", substituting therefor the words "wrongfully appropriate". To the excepted word: Not Guilty; to the substituted words: Guilty.

To Charge II: Guilty.

MJ: The trial counsel will now distribute copies of the charges to the members of the court-martial.

SSE The trial counsel did as directed.

MJ: Members, I accepted the accused's plea of guilty and entered findings of guilty as to Charge II and its Specification by exceptions and substitutions. You will not be required to reach findings regarding Charge II and its Specification. Findings will be required, however, as to Charge I and its Specification, to which the accused has pleaded not guilty. You may not consider the fact that the accused pleaded guilty to one offense in any way in deciding whether the accused is guilty of the offense to which he has pleaded not guilty.

MJ: Do you have any questions on what I have just explained to you?

MBRS: [No response.]

MJ: The prosecution may now present its case.

PROSECUTION'S CASE-IN-CHIEF:

TC: The prosecution has a brief opening statement.

NOTE: THE PROSECUTION MAY MAKE AN OPENING STATEMENT AT THIS POINT. SUBSEQUENT TO TRIAL COUNSEL'S OPENING STATEMENT, DEFENSE COUNSEL MAY, IF DESIRED, MAKE AN OPENING STATEMENT OR RESERVE THE RIGHT TO MAKE IT UPON THE BEGINNING OF HIS CASE-IN-CHIEF.

TC: Your Honor, and members of the court-martial, it is the government's contention that the accused--(REMAINDER OF OPENING STATEMENT INTENTIONALLY OMITTED; TYPE VERBATIM.)

TC: With the consent of the accused, the prosecution and the defense have entered into the following stipulation of fact:

That the accused is Electrician's Mate Fireman Phineus R. Quirk, U.S. Navy;

that Electrician's Mate Fireman Phineus R. Quirk, U.S. Navy, enlisted in the United States Navy on 10 August 19CY(-3); and

that on 1 December 19CY(-1) he was attached to the Naval Justice School, Newport, Rhode Island.

MJ: Fireman Quirk, do you join in this stipulation?

ACC: Yes, sir, I do.

MJ: The stipulation is accepted.

PROSECUTION WITNESS:

NOTE: NOTICE THAT THE SPOKEN WORDS CALLING A WITNESS ARE NOT TRANSCRIBED; INSTEAD, THEY ARE ABSORBED INTO THE FOLLOWING SSE.

SSE Seaman Robert C. Brown, U.S. Navy, was called as a witness for the prosecution, was sworn, and testified as follows:

SSE DIRECT EXAMINATION

SSE Questions by the prosecution:

- Q. State your full name, rate, armed force, and present duty station.
- A. Robert Charles Brown, Seaman, USN, and I'm attached to the Naval Justice School, Newport, Rhode Island.
- Q. Do you know the accused in this case, and if so, please point to him and call him by name.
- A. Yes, sir, I do. That's Quirk sitting over there at that table [pointing in the direction of the accused].
- Q. Brown, were you and Quirk very close friends?
- A. Yes, sir, we sure were, until the beginning of the year when Quirk went UA from the school here.
- Q. What do you know about Quirk going on unauthorized absence?
- A. Well, sir, he and I went--we--we went on liberty on 30 November 19CY(-1), and while we were on the beach he said that he wasn't going back to school and that he was going to go home for a few days. That's the last I seen him, you know, un--until the shore patrol brought him back on 2 January.
- TC: No further questions. Does the defense desire to cross-examine?
- DC: Yes, I have a couple of questions.

SSE CROSS-EXAMINATION

SSE Questions by the defense:

- Q. How do you know that the shore patrol brought Quirk back to the school?
- A. I saw them myself, and I was also in the personnel office when they turned the apprehension papers over to Ensign--Ensign Lewis.
- Q. Did Quirk give you any reason for his desire to go home?
- A. No, sir, I--he just said he wanted to go home and not back to the school.

SSE

REDIRECT EXAMINATION

SSE Questions by the prosecution:

Q. Brown, you didn't go with Quirk, did you?

A. No, sir, I returned to the school.

TC: No further questions.

MJ: I have no further questions. Does any member of the court-martial have any questions?

MBR (LTJG BURNS): Yes, sir, Your Honor [writing out question].

NOTE: QUESTIONS BY MEMBERS, LIKE THOSE OF COUNSEL, ARE SUBJECT TO OBJECTION AND ARE THEREFORE WRITTEN OUT AND REVIEWED BY COUNSEL BEFORE BEING ASKED. THE MILITARY JUDGE NORMALLY ASKS QUESTIONS POSED BY MEMBERS. THE MILITARY JUDGE WILL OFTEN ASK THE WITNESS ADDITIONAL QUESTIONS OF HIS OWN AT THE SAME TIME. RECORD THIS USING THE FOLLOWING FORMAT:

REPORTER: This will be Appellate Exhibit I.

MJ: Counsel will approach the bench.

TC: [Reviewing Appellate Exhibit I.] No objection, Your Honor.

DC: [Reviewing Appellate Exhibit I.] The defense has no objection.

SSE

EXAMINATION BY THE COURT-MARTIAL

SSE Questions by the military judge:

Q. If you knew that Quirk planned on leaving the area, why didn't you tell this to someone?

A. I did, sir.

Q. Who did you tell?

A. I reported it to the MAA at morning muster.

MJ: Any further questions by the members?

MBRS: [No response.]

MJ: No further questions by the court-martial.

MJ: The witness is excused, subject to recall.

SSE The witness was duly warned and withdrew from the courtroom.

NOTE: WHEN A WITNESS IS EXCUSED AND THEN WARNED NOT TO DISCUSS HIS TESTIMONY, THE SPOKEN WORDS OF THE MILITARY JUDGE WARNING THE WITNESS ARE ABSORBED INTO THE SSE SHOWN ABOVE. ADDITIONALLY, IF THE WARNING IS GIVEN FIRST, AND THEN THE WITNESS IS TOLD THAT HE IS EXCUSED, ALL OF THIS IS ABSORBED IN THE SSE.

SSE Ensign Robert Q. Lewis, U.S. Navy, was called as a witness for the prosecution, was sworn, and testified as follows:

SSE **DIRECT EXAMINATION**

SSE Questions by the prosecution:

- Q. State your full name, rank, armed force, and present duty station.
A. Robert Quade Lewis, Ensign, U.S. Navy, Naval Justice School, Newport, Rhode Island.
- Q. Do you know the accused, and if so, will you point to him if you see him in the courtroom and state, if you know, his name and duty station?
A. Yes, that's Phineus R. Quirk there [pointing to accused]. Quirk is attached to the Naval Justice School, Newport, Rhode Island.
- Q. What are your duties at the Naval Justice School?
A. I am the school's personnel officer.
- Q. Are you the current custodian of the accused's service record?
A. Yes, sir, I am.
- Q. Do you have it in your possession at this time?
A. Here it is [holding up service record].
- Q. Is there a page 601-6R therein containing an entry relating to a period of unauthorized absence commencing approximately 1 December 19CY(-1)?
A. There is.
- Q. May I see it?
A. Of course, here it is [handing to prosecution].

TC: Request that the reporter mark this document which I am extracting from the accused's service record for identification.

REPORTER: This will be Prosecution Exhibit 1 for identification.

NOTE: IN THE INTEREST OF SAVING THE COURT'S VALUABLE TIME, EXHIBITS INTENDED TO BE INTRODUCED AT THE TRIAL MAY BE MARKED IN PENCIL BEFORE THE PROCEEDINGS BEGIN. HOWEVER, IF YOU MARK EXHIBITS IN OPEN COURT OR AT AN ARTICLE 39(a) SESSION, THE ABOVE ENTRY IS THE CORRECT WAY TO REFLECT IT IN THE RECORD OF TRIAL.

Q. Does the entry on Prosecution Exhibit 1 for identification purport to bear a signature?

A. It does.

Q. Whose?

A. Mine. Robert Q. Lewis, Ensign, U.S. Navy, by direction of the commanding officer.

Q. Does the entry on Prosecution Exhibit 1 for identification purport to bear a date?

A. It does. It is dated 6 January 19CY as the submission date. It also has dates showing the commencement and termination of unauthorized absence.

TC: Prosecution Exhibit 1 for identification is offered in evidence as Prosecution Exhibit 1, and permission is requested to withdraw it at the conclusion of the trial and substitute a true copy therefor.

TC: I now show Prosecution Exhibit 1 for identification to the accused and his counsel for their inspection and possible objection [handing to defense].

DC: *[Examining.] No objection [returning to prosecution].*

TC: *[Handing to military judge.]*

MJ: Prosecution Exhibit 1 for identification is admitted in evidence as Prosecution Exhibit 1, and a true copy may be substituted. The reporter is directed to delete the words "for identification".

REPORTER: The words "for identification" have been deleted.

NOTE: THE MILITARY JUDGE MAY INSTRUCT YOU TO DELETE THE WORDS AT THE CONCLUSION OF THE TRIAL OR HE MAY NOT MENTION IT AT ALL. IN EITHER CASE, YOU MUST STILL LINE THROUGH THE WORDS "FOR IDENTIFICATION" ON THE EXHIBIT ITSELF BEFORE COMPLETING THE RECORD OF TRIAL. WHEN AN EXHIBIT IS ADMITTED, REMEMBER TO ANNOTATE YOUR REPORTER'S LOG FOR EASY REFERENCE.

NOTE: IF AN EXHIBIT THAT HAS BEEN ADMITTED IN EVIDENCE IS READ VERBATIM IN OPEN COURT, YOU CAN PROPERLY REFLECT THE READING AS SHOWN BELOW, OR TYPE THE READING VERBATIM. IF THE PERSON READING THE EXHIBIT DEVIATES IN ANY WAY FROM VERBATIM, THE READING MUST BE TYPED VERBATIM AS READ, INTO THE RECORD IN ITS ENTIRETY.

EXAMPLES:

Q. Please read Prosecution Exhibit 1 aloud.
A. *[Reads Prosecution Exhibit 1 verbatim to the court-martial.]*

OR

Q. Please read Prosecution Exhibit 1 aloud.
A. (TYPED VERBATIM FROM YOUR TAPE.)

OR

SSE The trial counsel read Prosecution Exhibit 1 to the court-martial.

OR

TC: (TYPED VERBATIM FROM YOUR TAPE)

TC: The prosecution has no further questions. Does the defense wish to examine this witness?

DC: The defense does not.

TC: Are there any questions by the court-martial?

MJ: Apparently not. The witness is excused subject to recall.

SSE The witness withdrew from the courtroom.

SSE Boatswain's Mate First Class Richard C. Jones, U.S. Navy, was called as a witness for the prosecution, was sworn, and testified as follows:

SSE *DIRECT EXAMINATION*

SSE Questions by the prosecution:

- Q. State your full name, rate, armed force, and duty station.
A. Richard C. Jones, Boatswain's Mate First Class, U.S. Navy. I'm stationed at the Naval Justice School.
- Q. Do you know the accused, and if you see him in the courtroom, will you point to him and state his name if you know it?
A. Yes, sir, I know the accused. His name is Phineus R. Quirk, and he is sitting right over there [pointing in the direction of the accused].
- Q. Jones, what were your duties on 30 November 19CY(-1)?
A. I was acting chief master-at-arms and mustering PO for the Justice School.
- Q. And in this capacity, did you have direct control over the accused?
A. Yes, sir, I did.
- Q. Did you give the accused any specific instructions on 30 November?
A. What do you mean, sir, by the words "specific instructions"?
- Q. Did you inform him just when liberty was to expire?
A. Yes, sir, I did. I told him that his liberty would expire on board the school at 0730, 1 December 19CY(-1).
- TC: No further questions. Does the defense desire to cross-examine?
DC: The defense does.

SSE *CROSS-EXAMINATION*

SSE Questions by the defense:

- Q. When did you last see the accused?
A. I last saw him on the evening of 30 November 19CY(-1).
- Q. What was he doing at that time?
A. Getting ready to go on liberty, I believe, sir.
- Q. Did you go on liberty with him?
A. No, sir. He went on liberty with Seaman Brown.

Q. Did you say anything to Quirk at that time?

A. No, sir.

Q. And that was the last time that you saw him?

A. Yes, sir, the last time until the shore patrol brought him back to the school.

SSE

REDIRECT EXAMINATION

SSE Questions by the prosecution:

Q. When you last saw the accused, where was he at that time?

A. The last time I saw him, he was leaving the school.

Q. Was this in the personnel office or at the MAA office?

A. Neither, sir. It was in the area between the buildings.

Q. And he was with Seaman Brown, is that right?

A. Yes, sir, he was.

SSE

RECROSS-EXAMINATION

SSE Questions by the defense:

Q. Was the accused in uniform or civilian clothes when you last saw him?

A. He was in uniform.

MBR (LCDR BROWN): I didn't hear the answer.

WIT: I said, "He was in uniform."

Q. Was he carrying anything--like a suitcase, or package of any type?

A. Not that I recall, sir.

MJ: What did you say?

WIT: I said that I didn't recall, sir.

Q. Did you personally inform the personnel officer or legal officer that Quirk was UA?

A. Yes, sir. I notified Mr. Lewis.

DC: No further questions.

SSE

EXAMINATION BY THE COURT-MARTIAL

SSE Questions by the military judge:

Q. You say you did not see the accused after he was apprehended until today?

A. I saw him, yes, sir; but never to speak to. He was always in the custody of a brig guard.

MJ: Any questions from any member?

MBRS: [No response.]

MJ: The witness is excused, subject to recall.

SSE The witness withdrew from the courtroom.

TC: The prosecution rests.

DC: The defense is ready to proceed, Your Honor. However, before going forward with its case, the defense respectfully requests an out-of-court hearing to present a motion based upon evidence which has been presented here today by the prosecution.

MJ: Very well, the court-martial will be in recess.

SSE The court-martial recessed at 1103 hours, 4 February 19CY.

NOTE: THE MILITARY JUDGE MAY OR MAY NOT RECESS THE COURT-MARTIAL IN ORDER TO HAVE AN ARTICLE 39(a) SESSION. IF HELD DURING RECESS, THEN TYPE THE SSE SHOWING THE COURT-MARTIAL RECESSING, AS SHOWN ABOVE. THIS WILL REQUIRE ANOTHER SSE CALLING THE COURT-MARTIAL TO ORDER AFTER THE ARTICLE 39(a) SESSION ADJOURNS.

HOWEVER, IF NO RECESS OCCURS BECAUSE THE MILITARY JUDGE SIMPLY EXCUSED THE MEMBERS, UTILIZE THE SSE FOR THE MEMBERS WITHDRAWING FROM THE COURTROOM, AS SHOWN BELOW. USING THIS FORMAT, THE COURT-MARTIAL WOULD NOT BE CALLED TO ORDER WITH AN SSE AFTER THE ARTICLE 39(a) SESSION ADJOURNS.

**DO NOT FORGET TO LINE OUT THE REMAINDER OF THE PAGE, IF REQUIRED, AND START THE ARTICLE 39(a) SESSION ON A NEW PAGE.
(SEE SAMPLES ON PAGE 28)**

OR

MJ: Very well, the members will withdraw from the courtroom.

SSE The members withdrew from the courtroom.

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ARTICLE 39(a) SESSION:

SSE The Article 39(a) session was called to order at 1105 hours, 4 February 19CY.

- MJ: This Article 39(a) session will come to order. Let the record show that this hearing is being held out of the presence of the members of the court-martial. It is attended by the military judge, the accused, counsel for both sides, and the reporter.
- MJ: Mr. Defense Counsel, you requested this out-of-court hearing in order to present a motion?
- DC: Yes, sir, Your Honor.
- MJ: You may proceed.
- DC: At this time, Your Honor, the defense moves for a finding of not guilty of Charge I and the Specification thereunder on the ground that the prosecution has failed to establish a prima facie case. The prosecution's evidence has merely shown (REMAINDER OF MOTION INTENTIONALLY OMITTED - TYPE VERBATIM)
- MJ: Trial Counsel, do you desire to present argument?
- TC: I do, Your Honor. Your Honor, it is the government's contention that a prima facie case has clearly been established. The evidence presented (REMAINDER OF ARGUMENT INTENTIONALLY OMITTED - TYPE VERBATIM)
- MJ: Defense?
- DC: (ARGUMENT INTENTIONALLY OMITTED - TYPE VERBATIM)
- MJ: Does either side have anything further on the motion?
- TC: No, sir, Your Honor.
- DC: No, Your Honor.
- MJ: The motion for a finding of not guilty of Charge I and the Specification thereunder is denied.
- MJ: Do you have any further motions, defense?
- DC: No, sir.
- MJ: This 39(a) session is adjourned.

SSE The Article 39(a) session adjourned at 1150 hours, 4 February 19CY.

SSE The court-martial was called to order at 1155 hours, 4 February 19CY.

MJ: The court-martial will come to order.

TC: All parties to the trial who were present when the court-martial recessed are again present.

NOTE: THE WAY YOU WOULD START THE COURT-MARTIAL AGAIN AFTER THE ARTICLE 39(a) SESSION DEPENDS ON WHETHER IT WAS HELD DURING A RECESS OF THE COURT-MARTIAL, OR IF THE MILITARY JUDGE SIMPLY EXCUSED THE MEMBERS WITHOUT TAKING A RECESS.

IF THE COURT-MARTIAL RECESSED, IT IS CALLED TO ORDER AS SHOWN ABOVE.

HOWEVER, IF THE COURT MEMBERS WERE SIMPLY EXCUSED AND WITHDREW FROM THE COURTROOM, YOU WOULD PICK UP THE PROCEEDINGS WITH THE FIRST WORDS SPOKEN AFTER THE MEMBERS REENTERED THE COURTROOM, AS SHOWN BELOW.

MJ: We may proceed.

TC: All parties to the trial are again present, to include the members.

DC: Your Honor, may I have your permission to proceed?

MJ: In view of the hour, you may begin your case after lunch.

DC: That's agreeable with the defense, Your Honor.

MJ: The court-martial will recess for 2 hours.

SSE The court-martial recessed at 1200 hours, 4 February 19CY.

SSE The court-martial was called to order at 1415 hours, 4 February 19CY.

MJ: Court will come to order.

TC: All parties to the trial who were present when the court-martial recessed are again present.

MJ: The defense may proceed. You are ready, are you not, Mr. Defense Counsel?

DC: Yes, Your Honor, I am.

MJ: Continue.

NOTE: WHEN CALLING A WITNESS, ALWAYS KEEP THE SSE CALLING THE WITNESS, THE STAGE OF EXAMINATION, THE SSE FOR "QUESTIONS BY" AND AT LEAST THE FIRST "Q." AND "A." ON THE SAME PAGE. IF ALL WILL NOT FIT ON THE SAME PAGE, BEGIN A NEW PAGE.

DEFENSE'S CASE IN REPLY:

DC: The defense has no opening statement.

SSE Boatswain's Mate First Class Dale Francis, U.S. Navy, was called as a witness for the defense, was sworn, and testified as follows:

SSE **DIRECT EXAMINATION**

SSE Questions by the prosecution:

- Q. State your full name, rate, organization, and armed force.
A. Dale Francis, Boatswain's Mate First Class, U.S. Navy, Service Craft Division, Naval Education and Training Center, Newport, Rhode Island.
- Q. Do you know the accused?
A. Yes, sir.
- Q. If you see him in the courtroom, would you please point to him and state his name?
A. Electrician's Mate Fireman Phineus R. Quirk. He's sitting right over there [pointing in the direction of the accused].

NOTE: INTRODUCTORY QUESTIONS SUCH AS THOSE SHOWN ABOVE ARE NORMALLY ASKED OF DEFENSE WITNESSES BY THE PROSECUTION TO IDENTIFY THE WITNESS TO THE COURT-MARTIAL. THE ACTUAL DIRECT EXAMINATION OF A DEFENSE WITNESS BEGINS WHEN QUESTIONS ARE ASKED BY THE DEFENSE COUNSEL. YOU DO NOT CHANGE THE STAGE OF EXAMINATION, BUT MERELY TYPE THE SSE "QUESTIONS BY THE DEFENSE:" TWO SPACES BELOW THE LAST LINE OF TYPING AS SHOWN BELOW.

SSE Questions by the defense:

- Q. You say that you know the accused. Francis, will you please tell the court-martial how you know the accused?
A. Yes, sir. He was stationed on the YTB with me, down in Service Craft.
- Q. Did he ever cause you any trouble?
A. No, sir. Quirk was one of the best men I had on the tug.

Q. Did Quirk ever show any tendency to go UA while he was stationed on the tugs with----

TC: I object. That last question calls for an opinion of the witness.

MJ: Argument?

TC: (ARGUMENT IN SUPPORT OF OBJECTION INTENTIONALLY OMITTED - TYPE VERBATIM)

DC: (ARGUMENT IN OPPOSITION TO OBJECTION INTENTIONALLY OMITTED - TYPE VERBATIM)

MJ: Reporter, please read back the last question of the defense counsel.

SSE The reporter did as directed.

NOTE: WHEN REQUIRED TO READ BACK ANYTHING FROM YOUR TAPES, DO NOT TYPE WHAT YOU ACTUALLY READ BACK; SIMPLY TYPE THE SSE AS SHOWN ABOVE.

MJ: The objection of trial counsel is overruled. Francis, you may answer the question.

A. No, sir. He was always on time and he was sure to be there early enough to get a good day's work done.

DC: The defense has no further questions.

TC: The prosecution does not desire to cross-examine this witness. Does the court-martial wish to examine this witness?

MJ: I have a question or two for the witness.

SSE EXAMINATION BY THE COURT-MARTIAL

SSE Questions by the military judge:

Q. Francis, how long have you known the accused?

A. For approximately 1 year, sir.

Q. He has always been dependable, trustworthy, and loyal?

A. Yes, sir.

MJ: I have no further questions.

TC: The prosecution has no questions. Does the defense have any further questions?

DC: No, the defense has no further questions, Your Honor.

SSE The witness was duly warned and withdrew from the courtroom.

SSE Boatswain's Mate Second Class John C. Roberts, U.S. Navy, was called as a witness for the defense, was sworn, and testified as follows:

SSE DIRECT EXAMINATION

SSE Questions by the prosecution:

Q. State your name, rate, and present duty station.

A. My name is John C. Roberts, and I'm a boatswain's mate second class. My duty station is Naval Brig, Naval Education and Training Center, Newport, Rhode Island.

Q. Do you know the accused in this case?

A. Yes, sir. That's Quirk sitting over there [pointing in the direction of the accused].

SSE Questions by the defense:

Q. When was the first time that you met the accused?

A. I would say about 18 months ago, sir, when I was stationed on the tugs.

Q. Were you very friendly with the accused at that time?

A. Yes, sir. Quirk and I made quite a few liberties together here in Newport and Boston.

Q. Do you know whether or not there was any family trouble at home?

A. You mean Quirk's family, don't you? No, sir, there was no trouble that I knew of.

DC: I have no further questions.

SSE CROSS-EXAMINATION

SSE Questions by the prosecution:

Q. Roberts, have you had a chance to speak to Quirk while he has been in the brig?

A. Yes, sir, I have.

Q. Did he say anything to you as to why he went UA?

A. No, sir, he didn't.

TC: The prosecution has no further questions. Does the defense have any further questions?

DC: No further questions.

TC: Does the court desire to examine this witness?

MJ: The court does not.

MJ: The witness is excused, subject to recall.

SSE The witness was duly warned and withdrew from the courtroom.

EXPLANATION OF ACCUSED'S RIGHTS TO TESTIFY:

DC: The accused elects to take the stand and testify as a witness in his own behalf. His testimony will be limited to Charge I and the Specification thereunder.

MJ: Before proceeding, Mr. Defense Counsel, an Article 39(a) session is required.

MJ: The court-martial is in recess.

SSE The court-martial recessed at 1628 hours, 4 February 19CY.

ARTICLE 39(a) SESSION:

SSE The Article 39(a) session was called to order at 1630 hours, 4 February 19CY.

MJ: This Article 39(a) session will come to order.

TC: All parties are present except the members.

MJ: Have you explained to the accused, and does he understand, his right to testify or to remain silent?

DC: I have, Your Honor, and the accused does understand his rights in this regard.

MJ: Fireman Quirk, you now have the right, if you wish, to present evidence in your own behalf. You are under no legal obligation to present any evidence at all. The burden is upon the government to prove your guilt beyond a reasonable doubt. If you present no evidence, this fact will not be considered against you for any purpose. However, if there is any evidence you wish to present to the court-martial to explain, mitigate, impeach, or rebut any evidence of the prosecution, or for any other legitimate purpose, now is the time to do so. If you elect to present evidence, such evidence will be considered by the court-martial for all purposes; either for you or against you, as the case may be.

MJ: As the accused, you have these rights as a witness:

First, you may be sworn and take the stand as a witness. If you do that, whatever you say will be considered and weighed as evidence by the court-martial, as is the testimony of any other witness, and you may be cross-examined on your testimony by the trial counsel and by the court. If your testimony should be restricted to less than all of the offenses charged against you, and you do not testify concerning others, then you may be questioned about the whole subject of those offenses concerning which you do testify, but you may not be questioned about any offense concerning which you do not testify.

Second, you may remain silent, that is, say nothing at all. You have a right to give no testimony, if you wish, and if you do not testify, the fact that you do not take the stand yourself will not count against you in any way with the court. It will not be considered as an admission that you are guilty, nor can it be commented on in any way by counsel in addressing the court-martial.

MJ: Do you understand your right to testify or present other evidence at this time?

ACC: Yes, sir.

MJ: This Article 39(a) session is adjourned.

SSE *The Article 39(a) session adjourned at 1635 hours, 4 February 19CY.*

SSE The court-martial was called to order at 1640 hours, 4 February 19CY.

MJ: The court-martial will come to order.

TC: All parties to the trial who were present when the court-martial recessed are again present.

DC: The defense desires to call the accused, Quirk. The accused desires to take the stand and testify under oath at this time.

MJ: Proceed, Defense Counsel.

SSE Electrician's Mate Fireman Phineus R. Quirk, U.S. Navy, was called as a witness for the defense, was sworn, and testified as follows:

SSE DIRECT EXAMINATION

SSE Questions by the prosecution:

Q. State your full name, rate, armed force, and duty station.

A. Phineus R. Quirk, Electrician's Mate Fireman, U.S. Navy, and I'm stationed at the Naval Justice School.

Q. Are you the accused in this case?

A. I am, sir.

NOTE: AT THE CONCLUSION OF A STAGE OF EXAMINATION, COUNSEL WILL SAY, "YOUR WITNESS" OR WORDS VERY SIMILAR. THESE WORDS ARE NOT TRANSCRIBED. THEY ARE ABSORBED IN THE SSE IDENTIFYING THE NEXT PERSON CONDUCTING THE EXAMINATION AS SHOWN BELOW.

SSE Questions by the defense:

Q. Quirk, did you and Seaman Brown go on liberty together on 30 November?

A. Yes, sir, we did.

MJ: You're going to have to speak up. We can't hear you.

WIT: Yes, Your Honor

Q. Did you have a few drinks while you were on liberty?

A. Yes, sir, I did. You see, I just turned 21, and I wanted to celebrate a little, so Brown and me had a few drinks.

Q. Would you be kind enough to tell the court the last thing you can remember about the evening of 30 November?

A. I don't rightly remember too much, sir. I been told what I did a few days later by Brown--Seaman Brown. He said I sort of got drunk.

TC: I move that the answer to the last question be stricken from the record on the grounds that it is hearsay.

MJ: That motion is granted. The members will disregard the answer.

DC: The defense has no further questions.

TC: I have a few that I would like to ask.

SSE

CROSS-EXAMINATION

SSE Questions by the prosecution:

Q. You say that you were drinking, is that right?
A. We were drinking? Yes, sir, we was drinking; that's what I said.

Q. And you can't remember how many drinks you had?
A. That's right, sir.

Q. So this drinking, then, is the cause of your going UA?
A. I didn't say that, sir.

TC: No further questions.

MJ: Any further questions of this witness?

MBRS: [No response.]

DC: No, sir.

MJ: You may resume your seat at the counsel table.

SSE The accused resumed his seat at the counsel table.

DC: The defense rests.

TC: The prosecution has no further evidence to offer.

MJ: Does the defense have any further evidence to offer?
DC: It does not.

WITNESS RECALLED BY THE COURT-MARTIAL

MJ: Does any member desire to have any witnesses recalled, any additional witnesses called, or any further evidence educed?
MBRS: [No response.]

MJ: I would like to recall Boatswain's Mate Dale Francis.

SSE Boatswain's Mate First Class Dale Francis, U.S. Navy, was recalled as a witness for the court-martial, reminded of his oath, and testified as follows:

SSE *DIRECT EXAMINATION*

SSE Questions by the prosecution:

Q. Are you the same Dale Francis who testified earlier in this trial?
A. Yes, sir, I am.

SSE Questions by the military judge:

Q. You stated earlier that Quirk was one of your best workers, and never caused any trouble. Is that correct?
A. Yes, sir, it is.

Q. Isn't it a fact, however, that on three separate occasions Quirk was returned to the Service Craft barracks by the shore patrol for various infractions on the beach?
A. Yes, sir, I believe so, but I can't remember the circumstances.

MJ: No further questions.

SSE *CROSS-EXAMINATION*

SSE Questions by the defense:

Q. Petty Officer Francis, do you recall just what these infractions were?
A. One of them was for being out of uniform--wearing white socks with his blues. I just can't remember the others.
Q. But he was brought back a few times by the shore patrol?
A. Yes, sir.

SSE Questions by the prosecution:

Q. Could one of the others possibly have been for a minor period of UA?
A. Not that I recall, sir.

TC: No further questions.

SSE

REDIRECT EXAMINATION

SSE *Questions by the military judge:*

Q. Do you recall if the accused ever went to CO's mast for any of these incidents?

A. He never went to mast while he was stationed in Service Craft.

MJ: No further questions. Any further questions?

DC: I have one or two.

SSE

RECROSS-EXAMINATION

SSE *Questions by the defense:*

Q. You say that Quirk was never disciplined for these alleged infractions?

A. I didn't say that, sir.

Q. What did you say?

A. I said, "He never went to mast while he was stationed in Service Craft," sir.

DC: Thank you.

SSE *Questions by the prosecution:*

Q. Was Quirk ever disciplined for these incidents?

A. He was counseled regarding his behavior on the beach on a few occasions.

Q. But he never went to captain's mast?

A. No, sir, it was taken care of at division level.

TC: Thank you. I have nothing further.

MJ: There are no further questions by the court.

MJ: The witness is excused subject to recall.

SSE *The witness was reminded of his previous warning and withdrew from the courtroom.*

MJ: In a moment, we'll recess so that counsel and I may discuss certain procedural matters. Upon reconvening the court-martial, the procedure that will be followed will be that each counsel will be given an opportunity to present argument to you. Following the presentation of counsel's argument, I will instruct you on the law and the procedures in the case.

MJ: Upon the conclusion of my instructions, the court-martial will close for deliberations. I again remind you that you should not discuss the case among yourselves or with anyone else; nor is it permissible to consult the Manual for Courts-Martial, JAGMAN or any other directives or publications. Your discussions of evidence and opinions should be reserved for the time when you are in your closed session for deliberation.

MJ: The court-martial stands in recess.

SSE The court-martial recessed at 1710 hours, 4 February 19CY.

ARTICLE 39(a) SESSION:

SSE The Article 39(a) session was called to order at 1715 hours, 4 February 19CY.

MJ: This out-of-court hearing will come to order. Let the record show that this hearing is being held out of the presence of the members of the court-martial. The military judge, the accused, counsel for both sides, and the reporter are present.

MJ: Do counsel for either side have any requested instructions on findings?

TC: The prosecution does not, Your Honor.

DC: The defense does not, Your Honor.

MJ: Gentlemen, I intend to give the following instructions on findings: (PROPOSED INSTRUCTIONS INTENTIONALLY OMITTED - TYPE VERBATIM)

MJ: Are there any objections to the proposed instructions, or requests for additional instructions?

TC: Not by the government, Your Honor.

DC: No, sir.

MJ: Very well. This out-of-court hearing is adjourned.

SSE The Article 39(a) session adjourned at 1735 hours, 4 February 19CY.

SSB The court-martial was called to order at 1740 hours, 4 February 19CY.

MJ: The court-martial will come to order.

TC: All parties to the trial who were present when the court-martial recessed are again present.

MJ: The prosecution may proceed.

ARGUMENTS:

NOTE: ARGUMENTS ON FINDINGS OR SENTENCE ARE GENERALLY QUITE LENGTHY. IF YOU CAN AVOID IT, NEVER INTERRUPT A COUNSEL WHILE ARGUMENT IS BEING RECITED. INTERRUPTIONS CAN DEVASTATE COUNSEL'S ATTEMPT TO SWAY THE MEMBERS TO HIS OR HER WAY OF THINKING. VICTORY OR DEFEAT COULD DEPEND UPON HOW WELL ARGUMENTS ARE PRESENTED BY COUNSEL. BE PREPARED. IF NECESSARY, START A NEW TAPE.

TC: The prosecution makes the following opening argument (ARGUMENT INTENTIONALLY OMITTED - TYPE VERBATIM)

DC: In reply to the prosecution's argument (ARGUMENT INTENTIONALLY OMITTED - TYPE VERBATIM)

TC: In summing up, (CLOSING ARGUMENT INTENTIONALLY OMITTED - TYPE VERBATIM)

MJ: Has the prosecution anything further to offer?

TC: It has not.

MJ: Has the defense anything further to offer?

DC: It does not.

MJ: Very well, I will now instruct the members.

NOTE: TRANSCRIBE THE INSTRUCTIONS INTO PARAGRAPHS WHEN THE MILITARY JUDGE TAKES UP A NEW SUBJECT. NOTE THE SPECIFIC PARAGRAPHING FOR LISTING ELEMENTS OF THE OFFENSE, ETC.

INSTRUCTIONS ON FINDINGS:

MJ: Gentlemen, I will now instruct you on the law and the procedures you must follow in deciding this case. When this court-martial closes to vote on its findings, each of you must resolve the ultimate issue of the guilt or innocence of the accused in accordance with the law, the evidence admitted in court, and your own conscience.

MJ: It is my duty as military judge to instruct you on the law applicable to this case. It is your duty as members of the court-martial to determine the facts of the case, apply the law to these facts, and then determine the guilt or innocence of the accused.

I will now instruct the court-martial as required by R.C.M. 920. Let the record show that each member has been provided with a copy of the charges and specifications upon which the accused was arraigned.

The court-martial is advised that, in order to find the accused guilty of the Specification of Charge I, it must be satisfied by legal and competent evidence beyond a reasonable doubt:

(1) That, at the time and place alleged, the accused absented himself from his organization, to wit: Naval Justice School, Newport, Rhode Island;

(2) that such absence was without proper authority from anyone competent to give him such leave and was of the duration alleged; and

(3) that the absence of the accused was terminated by apprehension.

You are further advised in accordance with R.C.M. 920(e)(5):

First, that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt;

second, that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt shall be resolved in favor of the accused and he shall be acquitted;

third, that if there is a reasonable doubt as to the degree of guilt, the findings must be in a lower degree as to which there is no reasonable doubt; and

fourth, that the burden of proof to establish the guilt of the accused beyond a reasonable doubt is upon the United States.

The final determination as to the weight of the evidence and the credibility of the witnesses in this case rests solely upon you members of the court-martial. (REMAINING INSTRUCTIONS INTENTIONALLY OMITTED - TYPE VERBATIM)

MJ: Does either counsel have any objections to the instructions as given, or desire any additional instructions?

TC: No, Your Honor.

DC: No, Your Honor.

MJ: Members of the court, are there any questions concerning any of the instructions that I have given you?

MBRS: *[No response.]*

MJ: The court-martial will be closed.

SSE *The court-martial closed at 1800 hours, 4 February 19CY.*

SSE *The court-martial opened at 1857 hours, 4 February 19CY.*

MJ: The court-martial will come to order.

TC: All parties to the trial who were present when the court-martial closed are again present in court, to include the members.

MJ: Mr. President, are you ready to announce your findings?

PRES: Yes, Your Honor.

MJ: Very well, proceed. Accused and counsel, please rise.

SSE *Defense counsel and the accused did as directed.*

PRES: Let the record indicate that during the closed session of this court-martial, no member of the court-martial, including the president, had access to or used the Manual for Courts-Martial, United States, 1984, the JAG Manual, or any other writing except copies of the convening orders, the charges and specifications referred to this court-martial, the instructions of the military judge of the court-martial, and exhibits received in evidence.

NOTE: IT IS CUSTOMARY FOR THE ACCUSED AND HIS COUNSEL TO STAND AND FACE THE MEMBERS DURING THE READING OF THE FINDINGS OF THE COURT-MARTIAL. HERE AT THE SCHOOL, WE WILL DISPENSE WITH THIS FORMALITY.

FINDINGS

PRES: Electrician's Mate Fireman Phineus R. Quirk, U.S. Navy, it is my duty as president of this court-martial to inform you that this court-martial finds you:

Of the Specification of Charge I: Guilty.

Of Charge I: Guilty.

MJ: Gentlemen, considering the hour, I am going to recess the court-martial until 0900 hours tomorrow morning.

MJ: The court-martial will stand in recess.

SSE *The court-martial recessed at 1910 hours, 4 February 19CY.*

SSE *The court-martial was called to order at 0905 hours, 5 February 19CY.*

MJ: The court-martial will come to order.

TC: All parties to the trial who were present when the court-martial recessed are again present.

PRESENTENCING PROCEDURE:

MJ: The court-martial will now hear the personal data concerning the accused as shown on the charge sheet, any other information from his personnel records relevant to sentencing, and will receive evidence of previous convictions, if any.

TC: The first page of the charge sheet shows the following data concerning the accused:

NAME OF ACCUSED: QUIRK, Phineus R.
SOCIAL SECURITY ACCOUNT NUMBER: 123-45-6789.
RATE: Electrician's Mate Fireman.
ORGANIZATION: Naval Justice School, Newport, Rhode Island.
INITIAL DATE OF CURRENT SERVICE: 10 August 19CY(-3).
TERM OF CURRENT SERVICE: 4 years.
PAY PER MONTH - BASIC: \$636.90.
SEA OR FOREIGN DUTY: None.
TOTAL: \$636.90.
NATURE OF RESTRAINT OF ACCUSED: Confinement.
DATE OF RESTRAINT: 2 January 19CY.

NOTE: THE CATEGORIES FOR THE DATA FROM THE CHARGE SHEET MAY VARY FROM CASE TO CASE; SIMPLY FOLLOW THE ABOVE FORMAT, TYPING VERBATIM FROM YOUR TAPE. MINOR STUTTERS, ETC., WITHIN THE CATEGORIES SHOULD BE OMITTED.

TC: Does the accused have any objection to the data as read?

DC: He does not.

TC: I have evidence of one previous conviction by summary court-martial.

SSE Ensign Robert Q. Lewis, U.S. Navy, was recalled as a witness for the prosecution, was reminded of his under oath, and testified as follows:

SSE *DIRECT EXAMINATION*

SSE Questions by the prosecution:

Q. Are you the same Ensign Robert Q. Lewis, U.S. Navy, who testified earlier at this trial?

A. I am, sir.

Q. Are you the custodian of the current service record of the accused?

A. I am, sir.

Q. Referring to the service record of the accused, would you state if there is a page 601-7R therein containing an entry relating to a previous conviction by court-martial?

A. [Looking through service record.] There is.

Q. May I see it?

A. Yes, sir. Here it is [handing to prosecution].

TC: Request the reporter mark this exhibit for identification.

REPORTER: This will be Prosecution Exhibit 2 for identification.

Q. Does the entry on Prosecution Exhibit 2 for identification purport to bear a signature?

A. It does.

Q. Whose?

A. The entry purports to bear the signature of Lieutenant Commander Johnnie B. Good, the Staff Judge Advocate of Naval Education and Training Center here in Newport, Rhode Island.

TC: Prosecution Exhibit 2 for identification is offered in evidence as Prosecution Exhibit 2, and permission is requested to withdraw it at the conclusion of the trial and substitute a true copy therefor.

TC: I now show Prosecution Exhibit 2 for identification to the defense counsel for his inspection and possible objection [offering to defense].

DC: I've already seen it, Your Honor. No objection.

TC: *[Hands document to military judge.]*

MJ: Do you have anything to show the final action on this court-martial?

TC: Yes, Your Honor. I am planning to introduce another service record page entry to establish that the court-martial has had final review.

MJ: Proceed before I make a ruling on Prosecution Exhibit 2 for identification.

Q. Mr. Lewis, do you find an entry in the service record of the accused reflecting final action of the court-martial referred to in Prosecution Exhibit 2 for identification?

A. Yes, sir. There is an entry in the service record--a NAVPERS 1070/613, dated 14 January 19CY(-3).

Q. Would you please hand it over to me?

A. Here you are *[handing to prosecution]*.

TC: Request the reporter mark this for identification.

REPORTER: This will be Prosecution Exhibit 3 for identification.

Q. Does Prosecution Exhibit 3 for identification purport to bear a signature *[handing to witness]*?

A. *[Examining.]* It does. It is signed by Lieutenant Howard H. Stine, U.S. Navy, OIC, PSD, NETC, Newport, Rhode Island *[returning to prosecution]*.

TC: Prosecution Exhibit 3 for identification is offered in evidence as Prosecution Exhibit 3, and permission is requested to withdraw it at the conclusion of the trial and substitute a true copy therefor.

TC: I now show Prosecution Exhibit 3 for identification to the defense for his inspection and possible objection *[handing to defense]*.

DC: *[Examining exhibit.]* No objection. *[Returns to prosecution.]*

TC: *[Hands exhibit to military judge.]*

MJ: Prosecution Exhibits 2 and 3 for identification are admitted in evidence as Prosecution Exhibits 2 and 3. True copies may be substituted at the end of the trial.

MJ: The reporter is directed to delete the words "for identification" from Prosecution Exhibits 2 and 3 at the conclusion of the trial.

TC: I have no further questions of the witness at this time.

MJ: Any questions by the members?

MBRS: *[No response.]*

MJ: The witness is excused.

SSE *The witness withdrew from the courtroom.*

MJ: An Article 39(a) session is required. The members are excused.

SSE *The members withdrew from the courtroom.*

SSE The Article 39(a) session was called to order at 0931 hours, 5 February 19CY.

MJ: This Article 39(a) session will come to order. Let the record show that this session is being held out of the presence of the members of the court-martial. It is attended by the military judge, the accused, counsel for both sides, and the reporter.

EXTENUATION AND MITIGATION:

MJ: Electrician's Mate Fireman Quirk, you are advised that you may now present evidence in mitigation and/or extenuation of the offenses of which you stand convicted, that is, any evidence which might tend to explain or lessen the degree of severity of the offenses of which you have been convicted. You may testify under oath as to such matters. You may remain silent, in which case, the court-martial will draw no adverse inference from your silence.

You may call witnesses or introduce documents. You may make an unsworn statement, either oral or written. This statement may be made by you personally, or through your counsel. You are advised that an unsworn statement is not evidence and you cannot be cross-examined upon it. However, the prosecution may offer evidence to rebut anything contained in a unsworn statement. You may remain silent, or you may elect to use any manner or combination of manners about which you have been advised to bring forth mitigation and extenuation. Consult with your counsel and advise me what you desire to do.

SSE The accused did as directed.

MJ: Do you understand what I have explained to you?

ACC: Yes, sir, and I am going to make an oral unsworn statement, with your permission.

MJ: Very well. Does counsel for either side have anything further to present at this time?

TC: No, sir, Your Honor.

DC: I have nothing further, Your Honor.

MJ: This session is adjourned.

SSE The Article 39(a) session adjourned at 0950 hours, 5 February 19CY.

NOTE: NOTICE BELOW, THE REGATHERING OF THE COURT-MARTIAL WITHOUT A RECESS. REMEMBER, YOU START WITH THE SPOKEN WORDS.

MJ: We may proceed.

TC: Let the record reflect that all parties to the trial are again present, to include the members.

DC: The accused desires to make an oral unsworn statement at this time.

MJ: You may proceed.

ACC: (UNSWORN STATEMENT INTENTIONALLY OMITTED - TYPE VERBATIM)

NOTE: THE ACCUSED COULD MAKE AN UNSWORN STATEMENT WITH THE ASSISTANCE OF THE DEFENSE COUNSEL. THIS PROCESS COULD INVOLVE QUESTIONS AND ANSWERS AS INDICATED BELOW. BOTH ARE PROPER. IN EITHER CASE, YOU SHOULD BE CAREFUL TO USE THE PROPER PREFIX.

DC: Quirk, would you like to explain to the court-martial why you took the watch belonging to Seaman Time?

ACC: Yes, sir. Well, I remembered what Boatswain's Mate Jones said about getting back to the school on time the following morning, and since I didn't have a watch, I temporarily borrowed Time's.

DC: You didn't have any intention of retaining it permanently, did you?

ACC: No, sir. I knew that Time didn't wear his watch much, and I was going to return it the following morning, but things didn't work out that way at all.

TC: I have no evidence in rebuttal to this unsworn statement.

MJ: Does either side have anything further?

DC: No, sir.

TC: No, sir, the prosecution does not.

TC: The prosecution makes the following argument (ARGUMENT INTENTIONALLY OMITTED - TYPE VERBATIM)

DC: The defense makes the following argument (ARGUMENT INTENTIONALLY OMITTED - TYPE VERBATIM)

TC: In closing, the government would like to remind the court that (REBUTTAL ARGUMENT INTENTIONALLY OMITTED - TYPE VERBATIM)

INSTRUCTIONS ON THE MAXIMUM PERMISSIBLE PUNISHMENT

MJ: Very well. I will now instruct the court-martial as to the maximum sentence which may be imposed in this case. The maximum punishment which may be awarded for the offenses of which this accused has been found guilty is discharge from the naval service with a bad conduct discharge, confinement for a period of 6 months, forfeiture of two-thirds pay per month for 6 months, and reduction to the grade of pay grade E-1.

The court-martial is further advised that when deliberating on an appropriate sentence, you must consider the fact that Fireman Quirk, in an unsworn statement, related that he was worried about getting to school on time; that he did not have a watch; and that he temporarily borrowed Time's watch. You must also consider his unsworn statement that Time did not wear his watch much; that he was going to return the watch; and that he testified he had no intention of keeping the watch.

MJ: Does any member have any questions concerning these instructions?

MBRS: *[No response.]*

MJ: The trial counsel will remove all trial guides, Manuals for Courts-Martial, and JAG Manuals from the courtroom.

SSE *The trial counsel did as directed.*

MJ: The court-martial will be closed.

SSE *The court-martial closed at 1025 hours, 5 February 19CY.*

SSE *The court-martial opened at 1115 hours, 5 February 19CY.*

MJ: The court-martial will come to order.

TC: All parties to the trial who were present when the court-martial closed are again present.

PRES: Let the record indicate that during the closed session of this court-martial, no member of the court-martial, including the president, had access to or used the Manual for Courts-Martial, the JAG Manual, or any other writing except copies of the charges and specifications, convening orders, and instructions of the military judge.

MJ: Mr. President, are you ready to announce sentence?

PRES: Yes, Your Honor.

MJ: Very well. Proceed, Mr. President.

PRES: Electrician's Mate Fireman Phineus R. Quirk, U.S. Navy, it is my duty as president of this court-martial to inform you that this court-martial sentences you:

SENTENCE

To be discharged from the service with a bad conduct discharge, to be confined for 3 months, to forfeit \$25.00 pay per month for 3 months, and to be reduced to the grade of pay grade E-1.

MJ: Has the prosecution any other cases to try at this time?

TC: No, Your Honor.

MJ: Since there are no other cases to be tried at this time, I want to thank the court members for their attendance during this trial. The members are excused at this time. All other parties will remain.

SSE The members withdrew from the courtroom.

NOTE: AT THIS POINT THE MILITARY JUDGE IS CONDUCTING AN OUT-OF-COURT HEARING IN ORDER TO ADVISE THE ACCUSED OF HIS POST-TRIAL AND APPELLATE RIGHTS. YOU WOULD START A NEW PAGE AT THIS POINT. REMEMBER, UNLESS THE MILITARY JUDGE RECESSES THE COURT-MARTIAL, NO SSE FOR A RECESS WILL APPEAR, SIMPLY THE SSE FOR THE COURT MEMBERS WITHDRAWING FROM THE COURTROOM. REMEMBER, DO NOT TYPE AN SSE TO CALL THE ARTICLE 39(a) SESSION TO ORDER OR TO ADJOURN IT; SINCE THE MEMBERS HAVE WITHDRAWN, THE MILITARY JUDGE WILL GIVE POST-TRIAL RIGHTS TO THE ACCUSED AND ADJOURN THE COURT-MARTIAL.

APPELLATE RIGHTS ADVISEMENT

MJ: Fireman Quirk, I will explain to you your post-trial and appellate rights.

After the record of trial is prepared in your case, the convening authority will act on your case. The convening authority may approve the sentence adjudged, may approve a lesser sentence, or may disapprove the sentence entirely. The convening authority may not increase the sentence. The convening authority may also disapprove some or all of the findings of guilty. The convening authority is not required to review the case for legal errors, but may take action to correct legal errors.

MJ: Do you understand?

ACC: Yes, sir.

MJ: You have the right to submit matters to the convening authority before he takes action on your case. These matters must be submitted to the convening authority within 10 days after you or your counsel receive a copy of the record of trial, or 10 days from date of receipt of staff judge advocate or legal officer review, whichever is later. The convening authority may extend these periods for good cause.

Before the convening authority takes action, the staff judge advocate will submit a recommendation to him. This recommendation will be sent to your defense counsel before the convening authority takes action, and you may submit matters in response to the recommendation within 10 days of receiving it. The convening authority may extend this period for good cause.

MJ: After the convening authority takes action, unless you waive appellate review, your case will be reviewed by the Navy-Marine Corps Court of Military Review. You are entitled to be represented by counsel before such court. Military counsel will be appointed to represent you at no cost to you, and if you so choose, you may be represented by civilian counsel at no expense to the United States.

The Court of Military Review will review your case for any legal errors, and for factual sufficiency. It will also consider whether the sentence is appropriate.

MJ: After the Court of Military Review completes its review, your case could be reviewed, on your request or otherwise, by the Court of Military Appeals, and, if it were reviewed by the Court of Military Appeals, by the Supreme Court. You would have the same rights to counsel before those courts as you have before the Court of Military Review.

If you waive appellate review, you give up the rights I have just described. If you do not waive appellate review, you may withdraw your case from appellate review at a later time, before such review is completed.

If you do waive, or later withdraw your case from appellate review, you cannot change your mind later. Once you file a waiver or withdrawal, your decision is final and appellate review is barred.

If you waive or withdraw appellate review, your case will be reviewed by a judge advocate for legal error. You may suggest, in writing, possible errors for the judge advocate to consider. The judge advocate's conclusions will be sent to the general court-martial convening authority for final action in your case.

After review by the judge advocate and action by the general court-martial convening authority is completed, you may request the Judge Advocate General to take corrective action in your case. Such a request must be filed within 2 years after the convening authority takes action, unless you can show good cause for filing later.

MJ: The court-martial is adjourned.

SSE The court-martial adjourned at 1130 hours, 5 February 19CY.

AUTHENTICATION OF RECORD OF TRIAL

in the case of

Electrician's Mate Fireman Phineus R. Quirk, U.S. Navy

Naval Justice School, Newport, Rhode Island 02841-1523

Constantle E. Legal

CONSTANTLE E. LEGAL
LCDR, JAGC, USN

(Military Judge)¹

10 February

19CY

I have examined the record of trial in the foregoing case.

Kenneth E. Hartman

KENNETH E. HARTMAN
LT, JAGC, USN

(Defense Counsel)

11 February

19CY

RECORD OF UNAUTHORIZED ABSENCE

A	1. DATE OF SUBMISSION CYJAN06	2. SHIP OR STATION AND LOCATION NAVAL JUSTICE SCHOOL, NEWPORT, RI	
B	UNAUTHORIZED ABSENCE FROM: 0730: 4. DATE: CY-1DEC01	<input checked="" type="checkbox"/> 5. OVER LIBERTY	LIBERTY BEGAN 6. 1200: 7. DATE: CY-1NOV30 <input type="checkbox"/> 8. OVER LEAVE <input type="checkbox"/> 9. AWOL
C	HELD AND CHARGED BY CIVIL AUTH. 10. HOUR: 11. DATE:	<input type="checkbox"/> 12. DELIVERED TO CIVIL AUTH	<input type="checkbox"/> 13. APPREHENDED BY CIVIL AUTHORITIES <input type="checkbox"/> 14. DD 616 ISSUED
D	15. AT (ORGANIZATION AND LOCATION)		
E	UNAUTHORIZED ABSENCE FOR 16 DAYS <input checked="" type="checkbox"/> 16. DD 553 ISSUED	<input checked="" type="checkbox"/> 17. PERSONAL EFFECTS COLLECTED, INVENTORIED, AND IN SAFEKEEPING	
F	18. UIC MEMBER UA FROM: 25645	19. ACTIVITY MEMBER UA FROM: NAVAL JUSTICE SCHOOL, NEWPORT, RI	
G	RETURNED TO MILITARY JURISDICTION 20. HOUR: 0100: 21. DATE: CYJAN02	<input checked="" type="checkbox"/> 22. APPREHENDED	<input type="checkbox"/> 23. SURRENDERED <input type="checkbox"/> 24. DD 616 ISSUED
H	25. RETURNED TO MILITARY JURISDICTION AT: (ACTIVITY) NAVY DESERTER INFORMATION POINT	26. UIC 41004	<input type="checkbox"/> 27. RET. ON BOARD
I	28. TRANSFERRED TO: (ACTIVITY) NAVAL JUSTICE SCHOOL, NEWPORT, RI	29. UIC 25645	30. DETERMINATION NOT UNAUTHORIZED ABSENCE
J	<input type="checkbox"/> 31. DETERMINATION NOT UNAUTHORIZED ABSENCE	32. NAVPERS 1070/606 WHICH REPORTED ABSENCE IN ERROR	
K	<input type="checkbox"/> 32. ABSENCE EXCUSED UNAVOIDABLE	33. CHARGED NO. DAYS LEAVE (DAY FOR DAY)	
L	34. FROM: SKMC	35. TO:	<input type="checkbox"/> 36. DISEASE DUE TO USE OF ALCOHOL/ DRUGS <input type="checkbox"/> 37. OTHER
M	<input checked="" type="checkbox"/> 38. ABSENCE NOT EXCUSED	39. CHARGE NO. DAYS LOST TIME (30 DAY MO) 32	40. CHARGE NO. DAYS LOST TIME (DAY FOR DAY) 33
N	<input type="checkbox"/> 41. CHANGE EAOS TO:	42. CHANGE EXPR ENL TO: CY+1 SEP11	43. ADJUST PREVIOUSLY SUBMITTED 1070/606
O	44. DATED	45. CORRECTED INFO ENTERED ABOVE	
P	46. ERRONEOUSLY REPORTED LEAVE	47. ERRONEOUSLY REPORTED LOST TIME (30 DAY MONTH)	48. ERRONEOUSLY REPORTED LOST TIME (DAY FOR DAY)
Q	<p>49. AMPLIFYING REMARKS (MAY BE CONTINUED ON REVERSE)</p> <p>CY-1DEC02: UA FM NAVAL JUSTICE SCHOOL, NEWPORT, RI AT 0730, CY-1DEC01. INTENTIONS UNKNOWN.</p> <p><i>R. Q. Lewis</i> R. Q. LEWIS, ENS, USN, BYDIROFCO</p> <p>CYJAN02: APP BY CIV AUTH 0100, CYJAN02, AT PROVIDENCE, RI, IN CONNECTION WITH DD FORM 553. RTN MIL CONTROL 0800, CYJAN02, AT NAVAL JUSTICE SCHOOL, NEWPORT, RI.</p> <p><i>R. Q. Lewis</i> R. Q. LEWIS, ENS, USN, BYDIROFCO</p> <p>A true copy. Attest:</p> <p><i>Peter R. Ryan</i> PETER R. RYAN LT, JAGC, USN Trial Counsel</p>		
R	50. (SIGNATURE) BY DIRECTION	<i>R. Q. Lewis</i> LT RANK/GRADE	
S	R. Q. LEWIS, ENS, USN, BYDIROFCO	51. UNIT I.D. CODE 25645	52. RATE EM3
T	53. NAME (LAST, FIRST, MIDDLE) QUIRK, PHINEUS RAY	54. SSN 123-45-6789	55. BRANCH/CLASS USN

COURT MEMORANDUM

1. DATE SUBMITTED CY-3JAN14		2. SHIP OR STATION NAVAL JUSTICE SCHOOL, NEWPORT, RHODE ISLAND			
3. DATE OF REFERRAL CY-3JAN05		4. TYPE OF COURT SUMMARY	5. DATE OF COURT/ CY-3JAN07	6. UCMJ ARTICLE(S) -121	
7. DATE OF ACTION CY-3JAN14		8. TYPE OF ACTION <input checked="" type="checkbox"/> REPORT OF ACTION	9. MODIFICATION OF ACTION <input type="checkbox"/>	10. CORRECTION TO PREVIOUS 1070/607 <input type="checkbox"/>	11. DATE OF ACTION ON 1070/607 MOD. OR CORRECTED
<input checked="" type="checkbox"/> 12. RATE ADJUSTMENT	13. FROM EM3	14. TO EMFN	15. TIR CY-3JAN14		
<input checked="" type="checkbox"/> 16. FORFEITURE	17. MONTHLY AMT. \$ 50.00	18. NO. MONTHS 1			
<input type="checkbox"/> 19. FINE	20. AMOUNT \$	21. CONSENT TO CHECKAGE <input type="checkbox"/>	22. DOES NOT CONSENT TO CHECKAGE <input type="checkbox"/>	23. MO. AMT. OF CHECKAGE \$	24. NO. MOS.
<input type="checkbox"/> 25. DETENTION	26. MONTHLY AMT. \$	27. NO. MONTHS	28. DETENTION RE-FUND DATE		
29. DESERTION MARK REMOVED <input type="checkbox"/>	30. ADJUDGED <input type="checkbox"/>	31. ADJUDGED AND DIS-APPROVED <input type="checkbox"/>			
32. FROM:		33. TO:	34. DAYS LOST TIME (30 DAY BASIS)	35. DAYS LOST TIME (DAY FOR DAY)	
36. FROM:		37. TO:	38. DAYS LOST TIME (30 DAY BASIS)	39. DAYS LOST TIME (DAY FOR DAY)	
40. CHANGE EAOS TO:		41. CHANGE EXP. ENL TO:			

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)

CY-3JAN14: SCM HELD CY-3JAN07

VIOLATION UCMJ, ART 121: LARCENY OF \$50.00, THE PROPERTY OF YN2 JONES, USN, ON CY-3DEC30.

PUNISHMENT AWARDED: RIR TO EMFN, FORF \$50.00 PAY PER MONTH FOR ONE MONTH, AND 10 DAYS RESTRICTION TO THE LIMITS OF NETC, NEWPORT, RI.

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15 (D) OR (E), UCMJ, (ALSO ANY APPEAL)

43. 1070/607 DTD		44. AUTHORITY TYPE CONVENING		CO, NJS, NPT, RI,	
------------------	--	---------------------------------	--	-------------------	--

45. SER: 102 OF CY(-3)JAN14. RECORD OF TRIAL FORWARDED TO COMMANDER, NETC, NPT, RI ON CY(-3)JAN14.

CA'S ACTION: THE SENTENCE IS APPROVED AND WILL BE EXECUTED. FORFEITURES SHALL APPLY TO PAY BECOMING DUE ON AND AFTER THIS ACTION. ROT FWD TO COM NETC, NPT, RI IAW ART 64(b), UCMJ.

A true copy. Attest:

Peter R. Ryan
PETER R. RYAN, LT, JAGC, USN
Trial Counsel

(MAY BE CONTINUED ON REVERSE)

<i>Howard H. Stine</i>		LT	
46. SIGNATURE		GRADE	

HOWARD H. STINE, LT, USN, OIC, PSD, NETC, NPT, RI

47. UNIT I.D. CODE 25645		48. RATE EMFN	
49. NAME (LAST, FIRST, MIDDLE) QUIRK, PHINEUS RAY		50. SSN 123-45-6789	51. BRANCH/CLASS USN

COMMANDER
NAVAL EDUCATION AND TRAINING CENTER
NEWPORT, RHODE ISLAND

14 Jan 19CY-3

UNITED STATES)	
)	STAFF JUDGE ADVOCATE'S REVIEW
)	
)	- - case - -
)	
PHINEUS R. QUIRK)	SUMMARY COURT-MARTIAL
EMFN, USN)	
123-45-6789)	

In the foregoing summary court-martial case of Electrician's Mate Fireman Phineus R. Quirk, U.S. Navy, 123-45-6789, convened by Commanding Officer, Naval Justice School, Newport, Rhode Island, and tried on 07 January 19CY-3, (1) the court had jurisdiction over the accused and the offenses to which the accused was found guilty, (2) the specification to which the accused was found guilty stated an offense under the Uniform Code of Military Justice, and (3) the sentence, as approved and ordered executed by the convening authority, is legal.

Neither the accused, nor his counsel, submitted allegations of error in accordance with R.C.M. 1105.

By copies hereof, the convening authority is requested to cause the accused to be notified of this review and have necessary service record entries made (See MILPERSMAN 5030500). If the accused has been transferred, please forward two copies of this Staff Judge Advocate's Review to the accused's present command requesting that the required notification and service record entries be effected. Commander, Naval Education and Training Center, Newport, Rhode Island, shall be provided a copy of the letter of transmittal.

This record has been reviewed in accordance with the provisions of Article 64(a), Uniform Code of Military Justice, and R.C.M. 1112, Manual for Courts-Martial, 1984.

Johnnie B. Good
JOHNNIE B. GOOD
Lieutenant Commander, JAGC
U.S. Navy
Staff Judge Advocate

Copy to:
DC
CA
Accused
Accused's CO (For Service Record)

QUESTION FORMS FOR MEMBERS

U.S. v. Quirk

DATE: 4 Feb 64

1. Did you tell anyone that Quirk was leaving?

2. _____

3. _____

4. _____

John C. Brown
JOHN C. BROWN
PRINTED NAME & SIGNATURE

APPELLATE EXHIBIT I

INSTRUCTIONS FOR PREPARING AND ARRANGING RECORD OF TRIAL

USE OF FORM - This form and MCM, 1984, Appendix 14, will be used by the trial counsel and the reporter as a guide to the preparation of the record of trial in general and special court-martial cases in which a verbatim record is prepared. Air Force uses this form and departmental instructions as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized. Army and Navy use DD Form 491 for records of trial in general and special court-martial cases in which a summarized record is authorized. Inapplicable words of the printed text will be deleted.

COPIES - See MCM, 1984, RCM 1103(g). The convening authority may direct the preparation of additional copies.

ARRANGEMENT - When forwarded to the appropriate Judge Advocate General or for judge advocate review pursuant to Article 64(a), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 6, 7, and 15e will be inserted by the convening or reviewing authority, as appropriate, and items 10 and 14 will be inserted by either trial counsel or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover (*chronology sheet*) of DD Form 490.

2. Judge advocate's review pursuant to Article 64(a), if any.

3. Request of accused for appellate defense counsel, or waiver/withdrawal of appellate rights, if applicable.

4. Briefs of counsel submitted after trial, if any (Article 38(c)).

5. DD Form 494, "Court-Martial Data Sheet."

6. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is verbatim and in 4 copies when it is summarized.

7. When required, signed recommendation of staff judge advocate or legal officer, in duplicate, together with all clemency papers, including clemency recommendations by court members

8. Matters submitted by the accused pursuant to Article 60 (MCM, 1984, RCM 1105).

9. DD Form 458, "Charge Sheet" (*unless included at the point of arraignment in the record*).

10. Congressional inquiries and replies, if any.

11. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.

12. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

13. Requests by counsel and action of the convening authority taken thereon (e.g., requests concerning delay, witnesses and depositions).

14. Records of former trials.

15. Record of trial in the following order:

a. Errata sheet, if any

b. Index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt.

c. Record of proceedings in court, including Article 39(a) sessions, if any

d. Authentication sheet, followed by certificate of correction, if any

e. Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.

f. Exhibits admitted in evidence

g. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.

h. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (*real or documentary*), and briefs of counsel submitted at trial