COAST GUARD COURTS AND BOARDS

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The following forms of procedure for courts and boards, based upon law and regulations, are approved and published for the information and guidance of the Coast Guard. This publication supersedes "Forms of Procedure for Courts and Boards in the United States Coast Guard, 1916," and the regulations applying exclusively to Coast Guard courts and boards in the present Coast Guard Regulations.

It is hereby required and directed that all officers and other persons belonging to the Coast Guard, so far as the duties of each are concerned, make themselves acquainted with, observe, and comply with the provisions contained herein.

A. W. MELLON,
Secretary of the Treasury.

INTRODUCTION.

This book is a revision of "Forms of Procedure for Courts and Boards in the United States Coast Guard, 1916," to which has been added the regulations governing courts and boards, with the exception of those relating to boards of a routine nature. A different arrangement has been adopted to the end that the matter needed by a court or board in the conduct of its proceedings may, so far as practicable, be found in one part of the book. The endeavor has been to place in the chapters on procedure all points ordinarily needed by the court or board in the conduct of the trial or investigation, with references to other places in the book where more detailed instructions may be found.

Chapter VII gives the general instructions for all Coast Guard courts, while instructions which relate only to one particular court are given in the footnotes in the chapter showing the procedure for that particular court. Similarly, Chapters XII and XIII, respectively, contain the general instructions for boards of inquiry and boards of investigation, while instructions applying to one particular board are given in the notes under the procedure of that board.

The chapters on procedure have been written to represent a completed record of the court or board in an imaginary case as it should be submitted. It is, of course, not obligatory that the phraseology used in these chapters be strictly followed, but the procedure should be followed, as deviation therefrom may prove a fatal error.

The word "Same" is used in an article heading to show that the article continues the subject dealt with in the preceding article.

In the preparation of this book "Naval Courts and Boards" has been freely used.

W. E. Reynolds,
Commandant.

TABLE OF CONTENTS.

CHAPTER I.

COAST GUARD COURTS.

PART I. COURTS IN GENERAL.

PART II. CONDITIONAL REMISSION OF FORFEITURE OF PAY.

PART III. IMPRISONMENT.

PART IV. GENERAL COURT.

PART V. MINOR COURT.

PART VI. DECK COURTS.

PART I. COURTS IN GENERAL.

1. Kinds.—Coast Guard courts shall be of three kinds—general courts, minor courts, and deck courts.

2. Dissolving authority.—The convening authority is the only person authorized to dissolve a court.

3. Jurisdiction.—The jurisdiction conferred by law on Coast Guard courts for the punishment of offenses against the discipline of the service shall not be regarded as exclusive, but offenders may, in the discretion of the Secretary of the Treasury, be turned over to the civil authorities for trial by any court having jurisdiction of the offense.

4. Delivery to civil courts.—In case of offenses against the laws of the United States other than those referred to in article 613, the commanding officer, or the officer in charge, will request authority of Headquarters to deliver the offenders to the civil authorities for trial.

5. Oaths administered by.—The presidents and recorders of Coast Guard courts are authorized by law to administer such oaths as may be necessary.

6. Material facts.—The court shall satisfy itself that all material facts, both for and against the accused, in relation to the matters alleged in the charges and specifications, are examined into, so that correct conclusions may be drawn.

7. Criminality by others.—Should it become apparent from the evidence elicited during the trial of any person that another person connected with the service has been guilty of grave misconduct discreditable to himself or to the service, it shall be the duty of the court to make inquiry into the matter and lay the facts, together with its conclusions, before the reviewing authority.

8. Statement of pay account.—The officer in command, or in charge, of the unit to which the accused is attached, shall transmit a statement of the pay account of the accused to the president of the general court or of the minor court or to the deck court officer, as the case may be, which statement of pay account shall be transmitted to Headquarters with the record of proceedings.

9. Publication of sentence.—The findings, whether of conviction or acquittal, and the sentence of every Coast Guard court, with the action of the reviewing authority thereon, shall be communicated by Headquarters to the officer in responsible charge of the unit to which the accused is attached. The finding and sentence in the case of an enlisted person shall, unless otherwise directed, be read aloud at a general muster on board the cutter, or at the depot, station, or other unit, to which the accused is attached, as soon as practicable after notice of the action of the final reviewing authority has been received. (See art. 585.)

10. Final action.—When the copy of the action of the department on the proceedings, finding, and sentence of a court is received from Headquarters by a commanding officer or a district superintendent, a transcript therefrom shall in every case be entered on the enlistment contract and record of the person concerned on file at the unit where he is serving. This transcript shall be signed by the officer in charge of such unit, and shall be in accordance with the following form:

Tried by a general (or minor) (or deck) court for———; acquittal approval by Department letter of———, or (sentenced to ———, as approved by Department letter of———), or (sentenced to———; sentence disapproved by Department letter of ———), or (sentenced to———; action deferred, placed on probation, by Department letter of———).

In case of suspension of the sentence, the final action taken by the Department at the expiration of the probationary period shall also be noted.

11. Suspended sentence.—(1) The order of the reviewing authority deferring action on the sentence and placing a convicted person on probation shall be promulgated at a general muster at the unit to which he is attached, when he shall be publicly warned that action on the sentence in his case has merely been postponed, and that he has been placed on probation with the view of remitting his sentence in whole or in part should his conduct warrant. (See art. 9.)

(2) On the first day of each month a brief report of his conduct during the preceding month, stating whether it has been "excellent," "very good," "good," "passing," "fair," "indifferent," or "bad," shall be submitted to Headquarters. Should he commit any serious offense or infraction of discipline while on probation, the commanding officer or officer in charge shall submit a special report and recommend whether or not clemency in the case should cease. The report shall be accompanied by such statement as the probationer may desire to make in reference to his misconduct.

(3) If final action on the sentence has not previously been taken, the commanding officer or officer in charge shall, at least 10 days before the expiration of the person's term of enlistment, submit to Headquarters a special report as to his conduct, with suitable recommendation, in order that the department may take such final action.

(4) No convicted person on probation shall be discharged from the Coast Guard until final action on his suspended sentence has been taken by the department. (See art. 642.)

PART II. CONDITIONAL REMISSION OF FORFEITURE OF PAY.

12. Remission of forfeiture of pay.—(1) Forfeiture of pay by sentence of a general court, a minor court, or a deck court in the case of an enlisted person, may be remitted subject to the conditions specified in this article, depending upon the person's conduct and the nature of his discharge.

(2) The amount of forfeiture of pay adjudged by sentence of a general court, a minor court, or a deck court shall be deducted from the pay of the person, and when he is about to be discharged from the service the total amount of pay deducted during his enlistment, subject to the provisions specified in this article, shall be credited to his account.

(3) If the person receive an honorable discharge he shall be entitled to a refund of all amounts deducted during his enlistment, pursuant to sentences of general courts, minor courts, or deck courts, which have been conditionally remitted in accordance with this article.

(4) If the person receive an ordinary discharge at the expiration of his enlistment, he shall be entitled to a refund of one-half of the total amount of pay deducted during his enlistment pursuant to sentences of general courts, minor courts, or deck courts, which have been conditionally remitted in accordance with this article.

(5) If the person receive a dishonorable discharge, or a bad conduct discharge, or if he be discharged with an ordinary discharge for undesirability or inaptitude, or for physical disability due to his own misconduct, or discharged with an ordinary discharge before the expiration of his enlistment, for causes other than those above enumerated, with a mark below "good" in either proficiency in rating, in sobriety, or in obedience, he shall be checked the total amount of pay deducted during his enlistment, pursuant to sentences of general courts, minor courts, or deck courts, which have been conditionally remitted in accordance with this article.

(6) *a.* In case the enlistment of the person be extended, or in case of his death or retirement prior to the expiration of his enlistment, the amount deducted from his pay in accordance with this article during his current enlistment, if it be the total amount involved, shall, on the date that his enlistment would have expired if not so extended, or on the date of his death or retirement, be treated as though he had been discharged on that date and in accordance with the character of discharge he would then have received.

b. In a case in which the full amount of forfeiture was not deducted upon expiration of enlistment, deductions in accordance with this article will be continued for such period as may be necessary under the extended enlistment, and will be settled upon the termination of such extension of enlistment.

(7) *a.* Forfeiture of pay involved in the sentence of a general Coast Guard court may be remitted, subject to the provisions of this article, only by the Secretary of the Treasury, or by his direction, as the final reviewing authority.

b. Forfeiture of pay involved in the sentence of a minor court may be remitted only by the Secretary of the Treasury, or by his direction, as the final reviewing authority. The convening authority, however, in his action on the proceedings, findings, and sentence, is authorized, in his discretion, to recommend remission of the forfeiture, subject to the conditions specified in this article.

c. Forfeiture of pay involved in a sentence by a deck court may be remitted, subject to the conditions specified in this article, by the officer ordering the deck court, or by the Commandant, U. S. Coast Guard, acting, by direction of the Secretary of the Treasury, as the final reviewing authority.

(8) The officer who prepares the pay rolls of the unit where the accounts of a person sentenced to forfeiture of pay are carried shall, in cases tried by a deck court, certify on the record of the court that the amount of such forfeiture of pay will be deducted. When the forfeiture of pay has been remitted, subject to the provisions of this article, the pay officer shall so certify.

(9) When forfeiture of pay involved in a sentence has been remitted by either the convening or the reviewing authority, in accordance with the conditions specified in this article, the officer in command or in charge of the unit to which the person is attached shall inform the person whose sentence has been so remitted that the amount of such forfeiture of pay will be withheld temporarily and eventually be paid to him in full or in part, or forfeited entirely, depending upon his conduct during the remainder of his enlistment and the nature of his discharge.

(10) When the convening or the reviewing authority remits, subject to the conditions set forth in this article, the forfeiture of pay adjudged, he shall at the time state that fact specifically in his action on the proceedings, findings, and sentence.

(11) Nothing in this article shall be construed to prevent the convening or the reviewing authority from approving the sentence without conditional remission of forfeiture under this article, or from disapproving, unconditionally remitting, or mitigating any sentence, or any part of any sentence authorized by law in a case where such action may be warranted. (See art. 638.)

PART III. IMPRISONMENT.

13. Imprisonment: Instructions to warden upon delivery to prison.—When a sentence of imprisonment imposed by a Coast Guard court has been approved by the department, the commanding officer of the cutter on which the person has been confined during trial and pending action in his case shall, upon being directed by Headquarters, deliver the prisoner to the warden of the prison or penitentiary designated for his imprisonment, and shall also deliver to the warden a copy of the order convening the court and of the finding and sentence as approved by the department, and shall inform Headquarters of the date upon which the prisoner was delivered into custody.

14. Same: Clothing worn by prisoners.—The commanding officer shall inform the warden of a civil prison that the prisoner shall wear only civilian clothing during the term of his imprisonment; that all articles of distinctive uniform clothing shall be withheld from him, and that such clothing as may be absolutely necessary for the health and well-being of the prisoner will be furnished upon written notification from the warden that it is needed. He shall inform the warden of the medical treatment to which the prisoner is entitled, and also that all bills for his subsistence while in prison should be forwarded to Headquarters.

15. Same: Allowances upon release from naval prison.—A person confined in a naval prison, in pursuance of the sentence of a general Coast Guard court, shall be furnished upon release with suitable civilian clothing and paid a sum not exceeding $25, to be fixed by and in the discretion of the Secretary of the Treasury, and only in a case in which the prisoner so released would otherwise be unprovided with suitable clothing or be without funds to meet his immediate needs. The person upon release from imprisonment also shall be furnished with transportation and subsistence either to his home or to the place of his enlistment, as the Secretary of the Treasury may designate. The cost of the transportation and subsistence furnished upon release and the sum paid at that time will be deducted from any pay

due him at the expiration of his enlistment, or on the date of his discharge. If he do not have sufficient pay due him, payments will be made from the appropriation for the maintenance of the Coast Guard.

16. Same: Allowances upon release from civil prison.—A person confined in a civil prison, in pursuance of the sentence of a general Coast Guard court, shall, upon entering the prison, be furnished with suitable civilian clothing, and, upon release from imprisonment, paid a sum not to exceed $25, said sum to be fixed by and in the discretion of the Secretary of the Treasury, but the clothing and money will be provided only in case the person released from imprisonment otherwise would not have sufficient clothing and would be without funds to meet his immediate needs. The person upon release from imprisonment also shall be furnished with transportation, either to his home or to the place of his enlistment, as the Secretary of the Treasury may designate. The cost of the transportation and subsistence furnished upon release, and the sum paid him at that time, will be deducted from any pay due him at the expiration of his enlistment or on the date of his discharge. If he do not have sufficient pay due him, payments will be made from the appropriation for the maintenance of the Coast Guard.

17. Prisoners: Clothing, how supplied.—The commanding officer shall, when the warden notifies him that clothing is needed for a prisoner, cause to be issued to him from the ship's stores such articles of clothing, not distinctively uniform, as may be absolutely necessary. Such outer garments as may be necessary for the prisoner shall be purchased by the clothing officer, under the direction of the commanding officer, and at the lowest cost obtainable. When the location of the place of imprisonment is such as to make it impracticable for the clothing officer himself to purchase the necessary garments, the commanding officer shall authorize the prison authorities to purchase them at the lowest cost obtainable.

18. Same: Clothing account.—Clothing issued to the prisoner from the ship's stores shall be entered on the "Inventory of Clothing" with suitable remarks. When clothing is purchased in accordance with the foregoing article, the commanding officer shall submit to Headquarters vouchers covering the expense, together with a letter showing the necessity therefor.

19. Same: Medical treatment.—The prisoner is entitled to be furnished, while in prison, with the same medical treatment accorded other Federal prisoners. Should there be no medical officer attached to the prison, the prison authorities are authorized to procure the necessary medical treatment and submit a voucher therefor to the commanding officer, who shall forward it to Headquarters for payment.

PART IV. THE GENERAL COURT.

21. Convening of general court.—A general court may be convened for the trial of any person for any offense coming within the lawful jurisdiction of Coast Guard courts.

22. Composition of—Convened by.—A general court shall be composed wholly of commissioned officers, and of not less than three members, and shall be convened only as follows:

(*a*) By the Secretary of the Treasury.

(*b*) By the Assistant Secretary of the Treasury.

(*c*) By a commissioned officer when specifically directed by the Secretary of the Treasury. When a commissioned officer has been directed to convene a general court, the Secretary of the Treasury shall be considered the convening authority.

23. Time limitation for trial or punishment.—No person shall be tried by a Coast Guard court or otherwise punished for any offense, except as provided in the following article, which appears to have been committed more than two years before the issuing of the order for such trial or punishment, unless by reason of having absented himself, or of some other manifest impediment, he shall not have been amenable to justice within that period.

24. Trial for desertion.—No person shall be tried by a Coast Guard court or otherwise punished for desertion committed more than two years before the issuing of the order for such trial or punishment unless he shall meanwhile have absented himself from the United States, or by reason of some other manifest impediment shall not have been amenable to justice within that period, in which case the time of his absence shall be excluded in computing the period of limitation. The limitation shall not begin until the end of the term for which said person was enlisted in the service.

25. Original order.—The original order convening a court shall be returned to the convening authority when the court is dissolved.

PART V. MINOR COURT.

27. Convening of.—A minor court may be convened only for the trial of an enlisted person for an offense, other than that of desertion, coming within the jurisdiction of Coast Guard courts.

28. Punishments minor court may award.—A minor court may award any punishment which the law authorizes Coast Guard courts to impose upon enlisted persons, except that it shall not impose a sentence involving imprisonment on land or forfeiture of more than one month's pay; therefore such a court should not be convened when the attendant circumstances may reasonably be expected to involve either of these punishments in case of conviction.

29. Convened by.—A minor court may be convened by the commandant, a division commander, or a commanding officer.

30. When convened.—A minor court shall, when practicable, be convened by a commanding officer to try enlisted persons under his command for offenses which may be deemed to merit greater punishment than such commander, or a deck court, is authorized to inflict, but not sufficiently grave to require trial by a general court.

31. Not to incur expense.—Unless authorized by Headquarters a court convened by a commanding officer shall not involve the Government in any expense in the matter of convening or during its deliberations.

32. Composition of.—A minor court shall be composed of three commissioned officers, and, when convened by a commanding officer, of officers under his command.

33. Order for convening.—The court shall be convened by a brief written order, addressed by the convening authority to the officer who will be its president. (See art. 826.) A copy of the convening order shall be furnished each member.

34. Examination of witnesses.—There shall be no official prosecutor. The examination of witnesses on behalf of the Government shall be conducted by the recorder of the court, and after this examination is completed any other member who so desires may question a witness.

35. Officers as counsel.—A commissioned officer, cadet, or cadet engineer, warrant officer, or petty officer may be permitted to appear as counsel for the accused at the request of the latter. (See arts. 485, 486, and 487.)

36. Procedure of.—The proceedings shall be conducted with as much conciseness and precision as may be consistent with the ends of justice and substantially in accordance with the practice of general courts, and the procedure and rules of evidence provided for such courts shall be observed by minor courts, except as otherwise stated herein.

PART VI. DECK COURTS.

41. Convened by.—Any of the following-named commissioned officers may order a deck court for the trial of an enlisted person under his command:

(*a*) The commandant, United States Coast Guard.

(*b*) The commanding officer of a vessel or other unit.

(*c*) The superintendent, Coast Guard Academy; the commandant, Coast Guard depot.

(*d*) A division commander.

(*e*) A district superintendent.

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42. When convened.—After consideration of reports against an enlisted person for offenses not warranting punishment more severe than such a court is authorized to adjudge, the officer above mentioned, shall, in his discretion, cause the offender to be brought to trial before a deck court.

43. Convened by district superintendent.—When a district superintendent receives from the officer in charge of a Coast Guard station a report of an offense committed by an enlisted person, for which adequate punishment may be imposed by a deck court, he shall try the case on his next regular visit to the station unless earlier action be deemed necessary. In the latter event the district superintendent shall transmit to Headquarters a full report of the nature of the offense, with the time when and the place where the offense was committed, in order that a trial may be ordered by the commandant.

44. Composition of—Punishments authorized.—A deck court shall consist of one commissioned officer only, who, while serving in such capacity, shall have power to administer oaths, to hear and determine cases, and to impose, in whole or in part, the following punishments:

(*a*) Forfeiture of not to exceed 20 days' pay.

(*b*) Extra police duties.

(*c*) Confinement not to exceed 20 days.

(*d*) Solitary confinement on bread and water, or on diminished ration, not to exceed 20 days, but in all cases a full ration shall be given at least every third day.

(*e*) Reduction to next inferior rating.

(*f*) Deprivation of liberty on shore on foreign station for a period not to exceed 20 days.

Forfeiture of pay, or extra police duties, or both, as set forth in paragraphs *a* and *b* above, may be imposed by sentence of a deck court, to which may be added if the offense justify, not more than one of the punishments set forth in paragraphs *c* to *f*, inclusive. One of the latter punishments may also be imposed by sentence of a deck court, without forfeiture of pay or extra police duties.

45. Offenses tried by.—The jurisdiction of deck courts shall be limited to the offenses enumerated in article 613. In no case shall a person be brought to trial before a deck court for desertion, and in no case shall a deck court adjudge discharge from the service, nor shall it adjudge confinement or forfeiture of pay for a period longer than 20 days.

46. Officers authorized to serve as.—An officer shall not be ordered as deck-court officer who is below the rank of lieutenant in the Coast Guard unless there be no officer of, or above, that rank on the vessel, or at the unit, under the command of the officer who convenes the deck court, in which event the officer who convenes the deck court

may designate as deck-court officer the senior commissioned officer of a lower available rank. Any person in the Coast Guard under command of the officer by whose order a deck court is convened may be detailed to act as recorder thereof.

47. When only one qualified officer is attached.—An officer empowered to convene deck courts shall not designate himself for this duty unless he be the only commissioned officer attached to the command, in which case he shall constitute the deck court and finally determine the case tried by him. No order appointing such deck court need be issued, but the officer shall enter on the record that he is "the only officer attached to the command authorized to act as deck-court officer." In such cases it is not necessary that he approve the sentence, but he shall sign the record and date his signature in the manner shown by the authorized forms of procedure. When a deck-court officer is also the convening authority he shall record the findings and sentence in his own handwriting, and the sentence will take effect from the date of his signature to the record.

48. Specification of offense.—The offense shall be alleged under a specification and not under a charge. In every case the convening authority shall be careful to see that the statement of facts of the alleged offense, as set forth in the specification, actually constitutes a legal offense within the jurisdiction of a Coast Guard court, and that the matters constituting the offense are set forth clearly and explicitly. The specification shall set forth briefly and plainly:

(*a*) The name and rating of the accused.

(*b*) The name of the vessel, station, or other unit to which the accused is attached.

(*c*) The offense and the date of commission thereof.

(*d*) The material facts connected with the offense.

(*e*) In cases of absence after leave has expired, or absence without leave, the date and approximate hour of the beginning and the ending of the unauthorized absence shall be stated.

49. Records of.—Records of deck courts shall be submitted on Form 9588, except in cases in which the convening authority is himself the deck-court officer, when Form 9588–A shall be used.

CHAPTER II.

BOARDS.

51. Convening order in writing.—An order convening a board, except the hull board and the permanent board of survey, shall be in writing.

52. Convened by Secretary or Assistant Secretary.—The Secretary or Assistant Secretary of the Treasury shall convene the boards to consider the retirement of officers and enlisted persons for physical or mental disability.

53. Same: Commandant.—The Commandant may convene boards for all other purposes, including boards to inquire into the competency, desirability, or aptitude of a warrant officer with a permanent appointment, unless otherwise provided.

54. Same: Division commander.—A division commander, or the senior officer of cutters acting conjointly, may convene such boards of inquiry as may be necessary. (See art. 62.) A division commander shall convene boards of the various kinds enumerated in article 55 for the inshore patrol cutters, harbor cutters, and harbor launches under his command.

55. Same: Commanding officer of cutter.—The commanding officer of a cutter (other than an officer in charge of an inshore patrol cutter, a harbor cutter, or a harbor launch forming part of a division) shall convene boards as follows:

(*a*) Survey—special.

1. When clothing has become damaged or unserviceable, or when the quantity or articles received do not agree with the invoice.

2. When provisions have become unfit for use.

3. When the contents of packages containing rations or other stores received on board do not agree with the invoice or are of inferior quality and the contractor fails promptly to make good the defects or deficiencies.

4. At the end of the first quarter of each fiscal year, or whenever necessary, for the survey of all tools, accessories, broken or damaged or missing parts of guns installed on cutters, or naval ordnance, which have been loaned to the Coast Guard by the Navy Department. When ordnance material is surveyed as broken, worthless, unserviceable, or unfit for further use, the recommendation in regard to its disposition shall be as follows. "To be turned in to the Navy Yard, New York, for further transfer to the Naval Gun Factory."

5. Whenever, for other purposes, he may deem it expedient.

(*b*) Investigation.

1. In case of the loss of or serious damage to a vessel or her machinery from any cause. (See arts. 902 and 906.)

2. In case of collision, grounding, fire, or other accident to the vessel or her machinery. (See art. 906.)

3. In case of robbery or the loss of money or other property.

4. To inquire into the competency, desirability, or aptitude of a petty officer with a permanent appointment, or of any other enlisted person.

5. In case of the death of an officer or enlisted person resulting from an accident or attended with unnatural or suspicious circumstances.

6. Concerning the efficiency of the personnel or matériél of his command or other matters of importance of which Headquarters should be advised.

56. How constituted.—Boards shall be constituted as follows:

(*a*) Retiring board or board for revision of the regulations—not less than five commissioned officers.

(*b*) Boards of inquiry—not less than three commissioned officers.

(*c*) Hull boards:

1. On cruising cutters—the executive officer, the line officer next in rank, and the engineer officer. (See arts. 974 and 981.)

2. On inshore patrol cutters, harbor cutters, and harbor launches—the commissioned and warrant officers attached, in the order of their rank, and not exceeding three members.

(*d*) Permanent board of survey:

1. On cruising cutters and at the academy and the depot—the executive officer, the line officer next in rank, and the engineer officer. (See arts. 974 and 981.)

2. On inshore patrol cutters, harbor cutters, and harbor launches—the commissioned and warrant officers attached, in the order of their rank, and not exceeding three members.

3. At stations—the district superintendent and the officer in charge.

(*e*) All other boards, unless otherwise provided, one or more officers, as the convening authority may deem expedient, except that boards convened by a division commander or a commanding officer shall, if possible, consist of three members.

57. Expense not to be incurred.—The Government shall be put to no expense by division commanders, senior officers of cutters acting conjointly, or commanding officers in the matter of convening boards or during their deliberations.

58. Order for survey of provisions and clothing.—The order convening a special board of survey for the examination of damaged provisions and ship's clothing shall name the officer who is responsible for such articles.

59. Surgeon on board to survey provisions.—Should there be a medical officer attached, he shall be a member of a board convened for the survey of provisions or infected clothing or of a board of inquest.

60. Purpose.—The purpose of a board of inquiry or investigation is to fix the responsibility, if possible, and to place sufficient facts before the convening authority to enable it to decide whether further proceedings are necessary; and if so, against whom.

61. When warrant officers may serve on boards.—Warrant officers may serve on boards of investigation convened by a commanding officer, hull boards, and boards of survey when there is not a sufficient number of commissioned officers available, but a warrant officer shall not serve on a board to consider matters involving commissioned officers.

62. Boards convened by division commander, etc.—Boards convened by a division commander, or the senior officer of cutters acting conjointly, or by a commanding officer shall be composed of officers under his command, except when, as on an inshore patrol cutter or on a harbor vessel not attached to a division, there is not a sufficient number of officers available. In such case the commanding officer may request other officers of the service on active duty at the same place or port to become members of a board, provided their attendance as members of such board shall not involve expense to the Government.

63. Record.—Each board shall keep a record in writing of its proceedings, which shall be authenticated by the signatures of the president and the recorder, or of the investigating officer, and shall be submitted to the convening authority when the business before the

board is completed. The record shall be kept in like manner and, so far as practicable, with the same degree of completeness as is specified for general courts. (See art. 658 et seq.)

64. Recommendation.—The report of the board shall contain a recommendation only when so ordered, unless otherwise provided in this book. (See arts. 958, note 63; 1041, note 51; 1062, note 17; 1112, note 29; 1149, note 20; art. 1197, note 42.)

65. Forwarding of record.—If the board be convened by a division commander, the senior officer of cutters operating conjointly, or a commanding officer, such officer shall forward the report and record of proceedings with proper indorsement or recommendation through official channels to Headquarters.

66. Facts to be reported.—If the order convening the board does not call for a recommendation but directs that the facts in the case be ascertained and reported, it shall not be understood that the bare record of the testimony is meant, but also the finding and opinion of the board based upon the evidence.

67. Deliberations not to be interfered with.—Division commanders, senior officers of cutters operating conjointly, or commanding officers shall not interfere with the deliberations of boards convened by order of Headquarters, nor, except in cases where it may be necessary to prevent damage to or loss of property, with those of their own ordering, and they are admonished to exercise great care in giving their approval to the proceedings and findings of boards.

68. Convening authority to act upon.—The proceedings, finding, opinion, or decision and recommendation of a board shall be approved or disapproved by the authority that convened it.

69. Opinion of board not to be disclosed.—As an expression of opinion by a member of a board of inquiry or investigation might prejudice any person appearing in the position of defendant in the matter under investigation in case of trial by a court, it is held to be highly irregular and a breach of discipline on the part of any member to disclose or publish the opinion, either of the board or of the individual members thereof, without the sanction of the officer to whom the proceedings have been submitted. (See art. 958, note 63, and art. 1041, note 51.)

70. Adjournment.—When a board has submitted its report it shall adjourn to await the action of the convening authority.

71. Dissolution.—A board is dissolved by the authority that convened it.

72. When higher authority is deemed the convening authority.—When a board is convened by direction of the Secretary or Assistant Secretary of the Treasury or the Commandant, those officers, respectively, shall be deemed the convening authority.

CHAPTER III.

DELIVERY OF PERSONS TO CIVIL AUTHORITIES.

77. Action where persons are convicted by civil authorities.—Whenever persons delivered to the civil authorities for trial are convicted, the commanding officer or officer in charge shall make full report of the offense and sentence to Headquarters, with recommendation as to whether the person should be discharged as undesirable.

78. Persons released by civil authorities on bail.—When a person in the Coast Guard is arrested by the Federal or State authorities for trial and returns to the unit to which he is attached on bail, the commanding officer or officer in charge may grant him leave of absence to appear for trial on the date set upon an official statement by the judge, prosecuting attorney, or clerk of the court, reciting the facts, giving the date on which the appearance of the person is required, and the approximate length of time that should be covered by such leave of absence.

79. (1) Service of subpœna or other process on a person in the Coast Guard.—Commanding officers and officers in charge are authorized to permit the service of subpœna or other process upon the person named therein, but such service will not be allowed without permission of the commanding officer or the officer in charge first being obtained. In cases in which service by mail is legally sufficient, the papers may be addressed to the commanding officer or officer in charge with request that they be delivered to the person named therein.

(2) Leave of absence may be granted persons subpœnaed or served. In such cases the commanding officer or officer in charge is authorized to grant leave of absence to the person subpœnaed or upon whom the process is served, in order to permit him to obey the same, unless

the public interests will be seriously prejudiced by his absence, in which case full report of the matter should be made to Headquarters.

80. Official records not to be produced in a State court.—Officers of the Coast Guard are prohibited from producing official records or copies thereof in a State court in answer to subpœnas duces tecum, or otherwise, without first obtaining authority therefor from Headquarters. In all cases where copies of records are desired by or on behalf of the parties to a suit, whether in a Federal or State court, such parties will be informed that it has been the invariable practice of the Treasury Department to decline in a case of legal controversy, at the request of the parties litigant, copies of papers or other information to be used in the course of the proceedings, but that the department will promptly furnish copies of papers or records in such cases upon call of the court before which the litigation is pending.

81. Habeas corpus proceedings: Federal courts.—(1) Section 756 of the Revised Statutes of the United States prescribes the time allowed for making returns of writs of habeas corpus issued by the Federal courts, as follows: "Any person to whom such writ is directed shall make the return thereof within three days thereafter, unless the party be detained beyond a distance of twenty miles; and if beyond that distance and not beyond a distance of a hundred miles, within ten days; and if beyond a distance of a hundred miles, within twenty days."

(2) **Time allowed to obey.**—The person upon whom a Federal writ of habeas corpus is served can not be required to obey the same in any shorter period after the service of the writ than that specified in the above section of the Revised Statues, even though the writ should in terms require that the person named therein be produced "forthwith," or "immediately," or at a specified time.

CHAPTER IV.

OFFENSES.

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83. Offenses not allowed to accumulate.—Offenses shall not be allowed to accumulate, in order that sufficient matter may thus be collectively obtained for trial, without giving due notice to the offender.

84. Criticism forbidden.—Detrimental criticism of commanding and other officers by subordinates or of subordinates by officers in authority is forbidden.

85. Discussions and criticisms.—Discussion or criticism of officers by their brother officers, whether superiors or inferiors, in the presence of mess attendants, other members of the crew, or strangers, is forbidden.

86. Language tending to lessen confidence and respect.—No person shall use any language which may render, or tend to render, officers or crews dissatisfied with the service or with their duties, or which may diminish their confidence in or respect for their superiors; and it shall be the duty of every officer who hears any such language to use his best endeavors to suppress it and to report it immediately to his commanding officer, or if the offense be committed by a commanding officer, to Headquarters.

87. Mutinous or treasonable practices.—No person shall make, or attempt to make, or unite with another or others in making any mutinous assembly, or shall utter any seditious, treasonable, or mutinous words, or shall conceal or connive at any mutinous, treasonable, or seditious practices, or shall treat with contempt his superior, being in the execution of his office; and every person being witness to or knowing of any mutiny, sedition, or treason, shall do his utmost to suppress it and shall immediately make it known to his commanding or superior officer.

88. Combinations.—Combinations against superior authority or for the purpose of remonstrating against orders, or of complaining of details of duty or service, are forbidden.

89. Talebearing to be suppressed.—Commanding and other officers shall discourage and suppress talebearing. Talebearing by subordinates to commanding and other officers in authority, whether verbal or written, is forbidden.

90. Frivolous complaints.—Frivolous complaints and faultfinding shall be discountenanced. Malicious, vexatious, or frivolous charges against anyone will subject the accuser to all the pains and penalties of such conduct.

91. Criticism in private letters forbidden.—An officer is forbidden to criticize or impugn the character, competency, or motives of another officer in any private letter or communication to an officer or other person connected with the administration of the Government.

92. Nagging forbidden.—The nagging of juniors by seniors, while in the performance of duty or at any other time, by petty annoyances and faultfinding, or the employment of improper language in giving and enforcing commands, is forbidden.

93. Drunkenness.—Drunkenness or the excessive use of intoxicating liquors on duty or off duty is prohibited.

94. Scandalous conduct—Conduct unbecoming an officer and a gentleman.—No person shall be guilty of scandalous conduct tending to the destruction of good morals, or of conduct unbecoming an officer and a gentleman.

95. Misappropriation of mess funds—Theft.—No person shall be guilty of misappropriation of mess funds, or of theft.

96. Contumacious conduct before court.—No person shall refuse to give testimony before a service court or board, or behave contumaciously before such court or board.

97. Willful false swearing.—No person shall willfully give false testimony, or corruptly suborn a witness to give false testimony, before a service court or board upon a matter material to the issue before such court or board.

98. Disobeying lawful order—Striking or assaulting superior officer.—No person shall disobey or refuse to obey a lawful order of his superior officer, nor shall he strike or assault, or attempt or threaten to strike or assault, a superior officer while in the execution of the duties of his office.

99. Disorderly conduct—Gambling, swearing, etc.—Grumbling, etc.—No person in the Coast Guard shall strike or assault, or attempt or threaten to strike or assault, another person therein, or be guilty of any form of disorderly conduct.

Gambling, obscene or abusive language, and profane swearing are strictly prohibited on board cutters, at stations, and in all other places under the control of the service.

Grumbling, faultfinding, and surly conduct shall not be tolerated.

100. Murder or other crime.—If murder, felony, or other crime or offense against the laws of the United States, not punishable by Coast Guard courts, be committed on board of or at any Coast Guard unit within the jurisdiction of the United States, the commanding officer, or the officer in charge, as the case may be, shall invoke the aid of and deliver the offender to the civil authorities, to whom he shall afford all the facilities in his power. If such crime be committed at sea or without the limits of the United States, he shall confine and safely guard the offender until he can deliver him to the proper civil authorities of the United States.

101. Ardent spirits.—Ardent spirits, and narcotic or other habit-forming drugs, shall not be admitted on board of any cutter, or within the limits of any other unit, except for medicinal purposes, and then only upon the order or by the authority of the commanding officer or of the officer in charge, and they shall be in the keeping of the medical officer. If there be no medical officer attached, the ardent spirits, and narcotic or other habit-forming drugs, admitted on board a cutter or within the limits of any other unit, except a station, shall be placed in charge of an officer to be selected by the commanding officer, and the officer selected shall be responsible for their use and safe-keeping. Ardent spirits, and narcotic or other habit-forming drugs, admitted within the limits of a station for medicinal purposes shall be in the custody of the officer in charge thereof.

102. Arrest not to be resisted.—No person shall resist arrest which is ordered by proper authority.

103. Conduct prejudicial to good order and discipline.—No person shall be guilty of conduct to the prejudice of good order and discipline.

104. Negligence forbidden.—No person shall be negligent or careless in obeying orders or culpably inefficient in the performance of duty.

105. No person to sleep on watch.—No officer or enlisted person shall sleep on watch, or at his post, or leave his station or post before being regularly relieved.

106. False entry or return forbidden.—No person shall knowingly or willfully make or sign, or aid, abet, cause, direct, or procure the making or signing of any false entry or statement in any log or in any other official record, report, communication, or paper.

107. No fraudulent claim to be made.—No officer or enlisted person shall present or cause to be presented to any person in the Government service, for approval or payment, any claim against the United States, or any official thereof, knowing said claim to be false or

fraudulent, or shall execute, attempt, or countenance any fraud against the United States.

108. Prohibition as to having interest in purchases or contracts.—No person shall receive, directly or indirectly, any pay, emolument, or gratuity of any kind whatsoever from any contractor or other person furnishing labor or supplies to the Coast Guard, or act as agent or attorney for any such person.

109. Gratuity for aid rendered.—No person shall, without permission of Headquarters, accept or receive any pay or gratuity whatever for any aid or service rendered any person or vessel by the Coast Guard.

110. Not to engage in trade.—No person shall, without proper authority, either for himself or as an agent, engage in trade or introduce any article for purposes of trade on board any cutter or at any depot, station, or other unit.

111. Not to act as agent or attorney.—No person shall act as agent or attorney to prosecute a claim against the United States. Any person who so acts is liable to fine or imprisonment, or both.

112. Compensation as informer forbidden.—No person shall receive, either directly or indirectly, any compensation as an informer arising under any of the laws of the United States.

113. Salvage not to be claimed.—No person shall make any claim for salvage while acting within the scope of his official duties for any services he has performed in connection therewith.

114. Not to sell wrecked property.—No person shall sell any wrecked property for the owner, agent, underwriter, or any other person interested therein.

115. Removing property from prize.—No person shall take out of any prize, or vessel seized as a prize, any money, plate, goods, or any part of her equipment, unless it be for the better preservation thereof, or unless such articles are absolutely needed for the use of any of the vessels or armed forces of the United States, before the same are adjudged lawful prize by a competent court; but the whole, without fraud, concealment, or embezzlement, shall be brought in, in order that judgment may be passed thereon.

116. Lists in triplicate.—Should it be necessary to remove any goods, articles, or outfits from a vessel, under the provisions of the preceding article, accurate lists in triplicate shall be prepared, stating the estimated value of the property removed. One list shall be forwarded to Headquarters, with a full report of the matter, one shall be filed on board the vessel or at the unit making the seizure, and the third shall be given to the master or delivered into the custody of the authority to whom the seized vessel is delivered. For any articles returned to the master duplicate receipts shall be taken.

117. No article or any part of outfit to be taken from wrecked or seized vessel.—No person shall take out of any wrecked vessel, or vessel seized for violation of law, any money, plate, goods, or any part of her cargo or the personal effects of her passengers or crew, nor take or remove any part of her rigging, stores, or outfit, unless it be for the protection or preservation of the same, and everything so taken, without fraud, concealment, or embezzlement, shall be delivered and accounted for to the proper authorities, and entered in the log of the unit.

118. Shall not use position for political purposes.—No person shall use his position to advance, in any way, party or political interests, or to secure the enlistment, discharge, transfer, advancement, or reduction of any person in the Coast Guard for political, family, or other considerations than those looking to its best interests.

119. Shall not have interest in wrecking company—Shall not act as agent of any marine company.—No person shall be permitted to indorse or give verbal or written recommendations concerning any life-saving device, or to hold any shares, directly or indirectly, in any wrecking gear or company, or to have any interest in wrecking operations beyond such as pertain to his duties; nor shall he in any manner, by the giving out of information or otherwise, favor one wrecking concern or party over another; nor shall he, without authority from Headquarters, act as representative, agent, or otherwise, for any marine company or corporation, or for the press, with the view of furnishing any such company, corporation, or the press, or any employe of the same, news of disasters to shipping to the exclusion or disadvantage of other persons, nor shall he receive any compensation for such services from any company, corporation, or person.

120. Publication of articles.—No person shall publish, or cause or permit to be published, except as required by his official duties, any information concerning the acts or measures of any officer or department of the Government, or any comments or criticisms thereon. He shall not act as correspondent of a newspaper without the express authority of Headquarters, and shall not publish, or cause or procure to be published, any matter of a scandalous nature that reflects discredit on the service or its officers.

121. Not to give copies of official records.—No person in the Coast Guard shall give to any other person copies of records or other official papers without authority therefor first being obtained from Headquarters, to which all applications for such copies shall be referred.

122. Testimonials and presents forbidden.—

(1) No officer, clerk, or employee in the United States Government employ shall at any time solicit contributions from other officers, clerks, or employees in the Government service for a gift or present to those in a superior official position; nor shall any such officials or clerical superiors receive any gift or present offered or presented to them as a contribution from persons in Government employ receiving a less salary than themselves; nor shall any officer or clerk make any donation as a gift or present to any official superior. Every person who violates this article shall be summarily discharged from the Government employ. (See sec. 1784, R. S.)

(2) No officer or enlisted person shall solicit subscriptions for the purpose of making a gift to a member of the immediate family of an officer of the Coast Guard.

123. Votes, etc.—All votes, resolutions, testimonials, or publications in praise or censure of any person in the Coast Guard are forbidden.

124. Pecuniary obligations to be discharged.—No person shall neglect to discharge his pecuniary obligations. No officer shall incur debts without a reasonable expectation of discharging them, or shall leave a station on which he has been serving without paying or providing for the payment of every debt he may have incurred on such station. When violations of this article are brought to the attention of a commanding officer or a district superintendent, he shall report the facts to Headquarters without delay.

125. Officers not to borrow money from enlisted persons—Receiving money for safe-keeping.—Officers shall not borrow money or accept deposits from enlisted persons, except that an executive officer of a cutter may, at the request of an enlisted person who has had no opportunity to deposit in a bank or otherwise dispose of his money, take the money for safe-keeping until such time as the person has an opportunity to go ashore at the cutter's headquarters. The officer receiving such deposit shall give the person a receipt for the money and shall take every precaution for its safe-keeping. No withdrawals shall be made from this deposit, except as between the person who made the deposit and the officer who received it. When a withdrawal in part is made, the amount withdrawn shall be noted on the receipt.

126. Lending money.—No person in the Coast Guard shall, for profit or benefit of any kind, loan money to any other person therein; nor shall any such person take or receive for such loan, directly or indirectly, a greater sum of money or any other thing or service of greater value than the equivalent of the sum of money loaned.

127. Sale of public property.—No person shall sell or be concerned n the selling of property belonging to the United States until authority therefor has been obtained from Headquarters.

128. Waste of supplies prohibited.—No person shall waste or misuse any provisions, supplies, or other public property, or, having power to prevent it, knowingly permit such waste or misuse.

129. Sheath knives.—No enlisted person on board a cutter or at any other unit shall carry a sheath knife.

130. Malt and other liquors.—No enlisted person shall take, smuggle, or keep any malt or other alcoholic liquors or intoxicants, nor any intoxicating or narcotic substances, on board cutters, or within the limits of any depot or station or other places within the jurisdiction of the Coast Guard.

131. Cutter not to be used for private purposes.—No person shall use any vessel of the Coast Guard for private purposes in violation of law.

132. Expenditure of public property in cases of distress.—No article of public property shall be appropriated to the private use of any person not in distress. On every occasion on which public property is expended in cases of distress for private use the fact shall be reported to Headquarters with all the attendant circumstances.

133. Articles not to be disposed of without authority.—No article of furniture, fixture, or supply belonging to the United States furnished to a unit of the Coast Guard shall be disposed of in any manner without the authority of Headquarters, except as provided in the regulations, U. S. Coast Guard.

134. Prevent destruction of public property.—No person shall willfully or maliciously destroy any public property or permit the destruction by others of property of the Government within the limits of his command or control or coming under his observation.

135. Officers not to give certificates.—No officer shall give certificates of commendation to dealers in supplies nor to enlisted men or other persons with whom he has had official dealings.

136. Buildings shall not be erected without authority.—No person shall, without authority therefor from Headquarters, erect any building upon the premises of any depot, station, or other unit.

137. Collusion or fraud.—No person shall be guilty of collusion or fraud against the Government.

138. Persons not to be concerned in furnishing supplies, etc.—No Member of Congress, Delegate to Congress, collector of customs, officer of the Coast Guard, nor any other person who is employed by, or who is in the service of, the United States, is allowed to be concerned, directly or indirectly, in any contract for furnishing provisions, supplies, or outfits, or for supplying or furnishing any article for use on

board cutters, or at stations or other units of the Coast Guard, or for repairing such cutters, stations, or other units.

139. Stranding.—No person shall through inattention or negligence suffer any vessel of the Coast Guard to be stranded, or run upon a rock or shoal, or hazarded.

140. Desertion—Absence without leave.—No person in the service shall desert, or aid or entice others to desert therefrom, nor shall any such person absent himself from duty without leave or after leave has expired.

141. Harboring deserters.—No person in the service shall receive, harbor, or entertain any deserter from any unit, knowing him to be such, or shall fail, with all convenient speed, to give notice of such deserter to the commanding officer of the unit to which he belongs, to a division commander, to a district superintendent, or to the officer in charge of a station or other unit.

142. Persons in hospital to comply with lawful regulations thereof.—No person undergoing treatment in a hospital or at a relief station of the Public Health Service shall violate or refuse to comply with a lawful regulation governing patients in such hospitals.

143. Votes of members of courts or boards not to be divulged.—No person connected with a Coast Guard court or board shall at any time disclose or divulge the vote or opinion of any particular member of the court or board unless required to do so before a court of justice in due course of law.

144. Proceedings, findings, etc., of courts and boards not to be divulged.—No person connected with a Coast Guard court or a board of inquiry, investigation, examination, or retirement shall make known to any person, except to the accused in the case of a finding of "not guilty," any part of the proceedings, opinion, finding, and sentence, or recommendation of such court or board until final action thereon has been taken by the reviewing authority.

145. Violating or refusing obedience to lawful order.—No person shall violate or refuse obedience to any lawful order or regulation issued by the Secretary of the Treasury or the President.

146. Listening in on telephone lines forbidden.—No person at a station shall take the telephone receiver from the fork and listen to communications not intended for him or for his station, nor shall any person use the telephone for the purpose of transmitting personal messages without first obtaining the permission of the officer in charge.

147. Concealed weapon.—No member of the Coast Guard shall have concealed about his person any deadly or dangerous weapon or explosive substance, or have any such weapon or explosive in his possession or custody within the limits of any place under juris-

diction of the Coast Guard, except as may be necessary to the proper performance of his duty or as may be authorized by proper authority. The foregoing shall not be construed so as to prevent any person authorized to have such weapon in his possession from carrying concealed any such weapon from place of purchase to his quarters or from his quarters to a repair shop, to have the same repaired, and back again.

148. Apprehending offenders, reproachful words, refusing to submit to medical treatment, etc.—No person in the Coast Guard shall be guilty of any offense in violation of any regulation or law, nor of any of the following:

(*a*) Refusing or failing to use his utmost exertions to detect, apprehend, and bring to punishment all offenders or to aid all persons appointed for that purpose.

(*b*) Quarreling with, or using provoking or reproachful words, gestures, or menaces toward any person in the Coast Guard.

(*c*) Endeavoring to foment quarrels between other persons in the Coast Guard.

(*d*) Refusing to submit to necessary and proper medical treatment to render him fit for duty, or refusing to submit to a necessary and proper operation not endangering life.

(*e*) Engaging in any affray, disorder, riot, rout, or unlawful assembly.

(*f*) Concealing a venereal disease.

149. Fraudulent enlistment.—Fraudulent enlistment and receipt of any pay or allowance thereunder is hereby declared to be "conduct to the prejudice of good order and discipline" and is punishable by a Coast Guard court. When a person who is not entitled to enlist or reenlist under the regulations procures his enlistment or reenlistment by concealing or misstating the facts, such enlistment is fraudulent.

CHAPTER V.

CHARGES AND SPECIFICATIONS.

PART I. PREFERRING OF CHARGES AND SPECIFICATIONS.

PART II. RULES TO BE OBSERVED IN DRAWING UP CHARGES AND SPECIFICATIONS.

PART III. CHARGES—ELEMENTS OF THE PARTICULAR OFFENSES—LESSER INCLUDED OFFENSES—SAMPLE SPECIFICATIONS.

PART I. PREFERRING OF CHARGES AND SPECIFICATIONS.

151. Definitions.—A charge, in naval law, designates an offense in general terms. A specification sets forth the facts constituting the charge. It is requisite that a charge name an offense provided for by, or within the purview of, the list of offenses in the Coast Guard specified by Congress; and that a specification set forth, in simple and concise language, facts sufficient to constitute the particular offense charged and in such manner as to enable a person of common understanding to know what is intended.

152. What part to be tried.—It is entirely within the discretion of the officer empowered to convene a court to direct what portions of the complaint against an accused shall be charged against him. Such officer may return the charges and specifications to the officer preferring them for correction, or may cause them to be redrawn or corrected. If the charges and specifications, as submitted, are materially altered or amended by the convening authority, they shall not, when submitted to the court, bear the signature of the officer who originally preferred them. When the competent officer has decided to have a person tried by general court, he shall cause charges and specifications against the offender to be prepared, and transmit a true copy of them, with an order for the arrest or confinement of the accused, to the proper officer, who shall deliver such order to the accused, together with the copy of the charges and specifications, at the same time formally notifying him that he is put under arrest.

153. Alterations in charges and specifications.—After a charge and specification has been signed by the proper authority and ordered to be investigated, it is not competent for any person to make alterations therein without first having obtained the consent of such authority, except that the prosecutor or recorder may, with the approval of the court, correct manifest clerical errors. If the court considers other alterations necessary in a charge or specification laid before it, the same must be submitted to the convening authority for his approval.

154. Errors in charges and specifications.—Errors in charges and specifications are of three classes: (1) clerical errors; (2) technical errors other than clerical; (3) errors in substance.

(1) Clerical errors are those of spelling, punctuation, etc., correction of which does not alter facts. Such errors may, with the approval of the court, be corrected by the prosecutor (or recorder or deck court officer). Under such circumstances the correction shall be neatly made in red ink and initialed, where made, by the recorder.

(2) Technical errors are those which the charges and specifications disclose, and which would be sufficient to sustain an objection by the accused, such as uncertainty as to the time or place of the occurrence of the alleged offense, name of the accused misspelled, etc. It is not within the discretion of the prosecutor, the court, or any other party, to correct technical errors in the charges and specifications without the consent of the convening authority. If the court is in doubt as to whether an error in the charges and specifications is clerical or technical, it should treat it as a technical error, and thus avoid any possibility of having the case disapproved on a technicality of this nature. If the court decides that a charge or specification contains a technical error, it shall communicate immediately with the convening authority. Technical errors are also known as errors in form.

(3) Errors in substance are those of such a nature as to vitiate the entire proceedings and render them liable to review by civil tribunals; such, for example, as failure to show jurisdiction on the part of the court. It is not within the discretion of the prosecutor, the court, or any other party to correct errors in substance occurring in the charges and specifications without the consent of the convening authority. If the court decides that a charge and specification contains an error in substance, it shall communicate immediately with the convening authority.

155. Amendment of defects in charges and specifications.—Should the convening authority authorize the prosecutor, recorder, or deck court officer to amend legal defects in the charges and specifications before the accused is called on to plead, it is to be understood that in so doing the prosecutor, recorder, or deck court officer is responsible that the amendments are made strictly in accordance with the instuctions of the convening authority. He shall at once see that the accused's copy is corrected accordingly.

156. Trial in joinder.—Accused persons will not be joined in the same charge and specification unless for concert of action in an offense. When the convening authority does not join the accused in the charges and specifications, but indicates that he desires them tried separately by preferring separate charges and specifications, courts shall not try them in joinder. If the convening authority desires to try persons in joinder, he should prefer but one set of charges and specifications and write but one letter of transmittal.

157. Court not authorized to direct a nolle prosequi.—A *nolle prosequi* (or withdrawal or discontinuance) is " an entry made on the record

by which the prosecutor or plaintiff declares that he will proceed no further." After charges have been formally referred by competent authority to a court for trial, the court is not authorized, at its discretion and upon its own motion, to strike out a charge or specification, or to direct or permit the prosecutor to drop or withdraw such charge or specification, or to enter a *nolle prosequi* as to the same. For such action the authority of the convening officer is necessary. The withdrawal of a charge or specification in such manner is not equivalent to an acquittal or to a grant of pardon and can not be so pleaded.

158. Duplication of charges.—The law permits as many charges to be preferred as may be necessary to provide for every possible contingency in the evidence. Where the offense falls apparently equally within the scope of two or more of the provisions of law governing offenses in the Coast Guard, or where the legal character of the offense can not be precisely known or defined until developed by the proof, it is quite proper, in important cases, to specify the offense under two or more charges; but there is, of course, no reason for doing this if one charge is lesser than and included in the other. In such case the specification should be laid under the more serious charge. For example, it would be improper to charge a person both with desertion and absence without leave for the same act, but, on the other hand, it is not only proper, but necessary, to charge a person both with absence without leave and conduct to the prejudice of good order and discipline where the person absented himself to avoid a particular duty, as coaling ship, landing force, etc., for in this latter case the offenses are not the same and the one does not include the other.

There is no rule of law that prohibits the formulation of the same charge under more than one article. However, as a matter of policy, the use of two or more charges is not approved where the identical facts are made the basis of both and where there are no aggravating circumstances set forth under one charge which distinguish it from the other. When the same act or omission in different aspects is charged as constituting two or more offenses the court, even though it arrives at a finding of guilty of the two or more charges, should impose punishment only with reference to the more serious one.

159. Consolidation of charges.—While all the charges against the accused should be consolidated into one set of charges and one trial had upon the consolidated set, instead of having two or more trials, offenses that are ordinarily tried by a minor court or a deck court shall not be included in charges and specifications of a general court unless they serve to explain the circumstances surrounding the serious charges. However, where there have been a number of offenses of a character usually tried by a minor court or a deck court

which in the aggregate, in the opinion of the convening authority, should be more severely punished than can be done by a minor court, it is proper to order the offender tried on them by a general court.

It is improper for the convening authority of a minor court or a deck court to order separate trials of the same accused on separate offenses committed by him when the convening authority has knowledge of the several offenses at the time of ordering the first trial. In case trial has been ordered but not commenced when knowledge of another offense is received, this letter should be sent the court as an additional specification. Otherwise the convening authority, by ordering separate trials, multiplies the limit of punishment a minor court or a deck court is authorized to impose.

PART II. RULES TO BE OBSERVED IN DRAWING UP CHARGES AND SPECIFICATIONS.

163. Charges to conform to law.—As Coast Guard courts have limited jurisdiction, their power to punish being confined to a number of offenses specifically defined by statute, charges shall be drawn in conformity with the provisions of law, and shall specify offenses of which the court may legally take cognizance.

164. Charges and specifications to be succinct.—In drawing charges and specifications all extraneous matter is to be carefully avoided, and nothing shall be alleged but that which is culpable and which the prosecution is prepared to substantiate before a court.

165. How signed.—The charges and specifications shall be signed by a duly authorized officer of the Coast Guard.

166. Different offenses the subject of distinct charges and specifications.—Offenses of a perfectly distinct nature must not be included in one and the same charge and specification of a charge, but each offense of a different kind shall be made the subject of a distinct charge and specification. Different offenses of the same kind, however, should be alleged in separate specifications under one charge. For example, it is improper to set forth in one specification the stealing of different articles on various occasions; in other words, to allege many thefts in one specification. There should be a separate specification under the one charge, "Theft," for each separate offense. On the other hand, if several articles, although the property of different persons, are stolen at one time, it is but one theft and should be alleged in one specification.

167. Numbering charges and specifications.—Charges should, so far as practicable, be placed in chronological order, and should be numbered consecutively. Specifications should be placed under their proper charges in chronological order and should be numbered consecutively under each charge, the first specification under a charge

being always numbered "1." Where there is but one charge and one specification, neither the charge nor the specification should be numbered.

168. Certain abbreviations authorized.—Dates and times may be expressed in figures. The following abbreviations are authorized: "U. S. Coast Guard"; "U. S. Navy"; "U. S. Marine Corps"; "U. S. Army," etc.; "a.m." and "p.m." for "antemeridian" and "postmeridian," respectively; Christian names other than the first may be indicated by initial letters.

12:30 a.m. and 12:30 p.m. shall be used to indicate 30 minutes after midnight and 30 minutes after meridian, respectively. The expression "30 minutes a.m." is ambiguous, and shall not be used.

Sums of money mentioned in specifications should be set out in both words and figures. Except as indicated in this article, the use of figures or abbreviations in charges and specifications is prohibited.

169. Statement of charge.—It is not essential to specify in a charge that an offense was committed in breach of any particular statute, or general regulation, but whenever the allegation comes directly under any enactment or regulation, it shall be set forth in the terms used therein.

When an offense is a neglect or disorder not specially provided for by statute, the limitations of punishment prescribed, or in this book, it shall be preferred under one of the general charges, to wit, "Scandalous conduct tending to the destruction of good morals," or "Violating lawful regulation issued by the Secretary of the Treasury" ("Conduct to the prejudice of good order and discipline"), or (in the case of an officer) "Conduct unbecoming an officer and a gentleman." But when the offense is one specifically provided for it is properly preferred under the specific charge, and not under a general charge.

The pleader should, bearing clearly in mind the facts of the offense he wishes to charge, first scan the specific charges provided for in this book, to see if a proper one can be found. If not in the list of offenses, he should then look at the limitations of punishment, to see if the specific charge is named therein. If not in the limitations of punishment, he should then carefully scan the list of offenses. If a proper specific charge can not be found in any of the places indicated, then, and then only, may it properly be charged under one of the general charges, except that in certain cases it may be proper to charge the offense specifically and also under one of the general charges, when the character of the acts committed fulfills the requirements of one of these latter.

170. Statement of specifications.—An offense is set out in a specification by the statement of the material facts which constitute it. In general, a bald statement of the facts in simple and concise but accurate language, in such manner as to enable a person of common understanding to know what is intended and for exactly what offense it is contemplated the accused be tried, is sufficient; but this does not dispense with the requirement that every element of the offense must be set forth. The statement of a mere conclusion of law instead of facts will not make a good specification. Thus it would not be a good specification which merely stated that theft was committed by a certain man at a certain time and place, or that a man unlawfully had in his possession certain property without alleging facts showing wherein the possession was unlawful.

To constitute a crime both criminal intent and a prohibited act must concur. Where the offense specified is one which requires a specific intent and the act, both must be set out. For example, a specification alleging that the accused "did * * * feloniously have in his possession with the intention of removing same from said ship * * *" certain Government property, fails to state an offense. The criminal intent is properly alleged, but the word "feloniously" is a mere conclusion of law, and the only facts alleged are that the accused had Government property in his possession and had the intention of removing it from the ship. The mere possession of Government property is not in itself a violation of any law, regulation, or custom of the service, nor is it illegal in itself to take Government property from a ship.

So, also, a specification merely alleging that the accused officer danced with a woman of doubtful character in a resort of bad reputation is faulty. The scienter—that is, the knowledge on the part of the accused of the character of the woman and of the resort—must be alleged in such a case in order to state an offense.

On the other hand, such a word as "unlawfully" may properly be used to negative justification or excuse in order to avoid undue prolixity. Thus an allegation that the accused unlawfully cut another man would negative the justification that the accused was a surgeon performing an operation.

171. Intent should be expressed by technical word prescribed.—In cases where the law has adopted certain expressions to show the intent with which an offense is committed, the intent shall be expressed by the technical word prescribed, as "willfully," "knowingly," "corruptly," "maliciously," "intentionally," "wrongfully." The foregoing words shall be used to express fully the offense charged. For

example, a charge made against an officer for making or for signing a false muster roll must be said to have been done "knowingly."

172. The facts must state an offense.—A specification must on its face allege facts which constitute a violation of some law, regulation, or custom of the service, in order to charge an offense of which judicial notice can be taken. For example, it has been held that a specification which merely alleged that an accused enlisted person made a statement in inelegant language expressing what would be his opinion of another enlisted person under certain conditions was defective in that it charged no offense of which a court could take cognizance. In order that cognizance may be taken of an offense not in violation of a law, general regulation, or well-known custom of the service, such offense must be alleged with particularity. Thus if it is desired to charge a violation of a special order local to some particular ship or station, the specification should set out the pertinent part of the local order verbatim and show that the facts constitute a violation of such special order.

Each specification must be complete and in itself state an offense and support the charge. It is not sufficient that several specifications taken together may do so. Any specification which, standing alone, does not fulfill these requirements is fatally defective.

173. The facts must be stated with certainty.—It is not sufficient that the accused be charged generally with having committed an offense, as, for instance, habitual violation of orders or neglect of duty, or attempt to commit an immoral act in and upon the body of one named, or act in a disorderly manner, thereby reflecting discredit upon the uniform of the Coast Guard, but the particular acts or circumstances attending a specific offense must be distinctly set forth in the specification. Where intent is an ingredient of the offense it must be set forth. All facts, circumstances, and intent must be set forth with certainty and precision and the accused charged directly and positively with having committed the offense.

174. Alternative allegations.—A specification must not allege two or more offenses in the alternative or disjunctive. Thus a specification alleging that the accused made or attempted to make a mutiny would be bad. It does not inform the accused with certainty of the particular offense against him. If two specifications were drawn, one alleging the making, the other the attempt, each would be good, as it would be certain, and a separate finding would be necessary on each. A specification alleging that the accused ran the vessel under his command on "a shoal or other submerged object" is bad for uncertainty. In general, it may be said that the word "or" appearing in the part of the specification which states the offense is bad except where it is used in the sense of "to wit." Where a

statute is in the disjunctive, as, for instance, in specifying an offense under any of its paragraphs, the word "or" should be changed to "and" in its specification, and it would then read, for example, "presented and caused to be presented." An allegation in the disjunctive that is surplusage may be rejected and leave a good specification.

175. Evidence not to be stated.—In alleging an offense it is not technically good pleading to state the circumstances or evidence proving or tending to disprove it, such as the acts, occurrences, and matters of description, which properly form part of the testimony of witnesses; but there is no objection to stating very briefly in the specification the immediate result or effect of the act charged as a circumstance or description illustrating the character and extent of the offense committed. For instance, in charging an assault and battery it is advisable, in a case where the battery was severe, to add in the specification the aggravated result of the blows or other injury inflicted. Unnecessarily "pleading the evidence" does not render the specification fatally defective. But the circumstances thus alleged in detail, even though unnecessarily, must be proved as alleged, or exceptions must be made in the finding. There is also danger of variance as to the details between the specification and the proof. Unnecessary allegations in a specification increase the burden placed on the prosecution and increase the chance of error in the trial.

176. Where higher criminality attaches to acts under particular circumstances.—Whenever the law attaches higher criminality to an act committed under particular circumstances, the act must, to bring the person within the higher degree of punishment, be alleged with certainty and precision to have been committed under those circumstances. For instance, in a conviction for desertion the limitations of punishment permit of a higher degree of punishment "in case of apprehension or delivery to Coast Guard authorities" than "in case of surrender to Coast Guard authorities." If, therefore, it is desired to bring an offender within the higher degree, the apprehension or delivery to Coast Guard authorities must be alleged.

177. Certainty as to the party accused.—The accused must be described by his title and rank, or rating, Christian name and surname, written at full length, with the addition of his vessel or service at the time the offense with which he is charged took place. His name should be stated as appearing in his service record or in the Coast Guard register. But Christian names other than the first may be indicated by initial letters. If the accused is known by two names, as frequently happens in cases of fraudulent enlistment, the specification will describe him under his true name, which, if not admitted, will be as-

sumed to be the name first used, and also under his assumed name as an alias. An error in the name of the accused, if unobjected to, and *idem sonans* with his true name, is not fatal. As the rate or rank is merely descriptive, an error therein, if not objected to, is not material.

178. Certainty as to the person against whom the offense was committed.—In the case of offenses against the person or property of individuals, the Christian name and surname, with the rank and station or duty of such person, if he have any, must be stated at length, if known. If not known, the party injured must be described as a person "by name to the relator unknown."

179. Allegations as to time and place.—The time and place of the commission of the offense charged must be averred in the specifications. They must be stated with sufficient precision clearly to identify the offense and enable the accused to understand what particular act or omission he is called upon to defend. For this purpose, save in cases where time or place is of the essence, a reasonably exact allegation of the time and place is sufficient, the degree of exactness required being that necessary to insure the identification of a particular offense. It is, therefore, proper pleading to allege in a specification that a certain offense occurred "on or about" a certain day "at or near" a certain place, or, if necessary to be more explicit as to the time, "at or about" a certain hour. Where the act or acts specified extend over a considerable period of time, it may be necessary and it is proper to allege them as having occurred, for example, "during the period from November 25, 1922, to April 5, 1923." So, also, it is proper to allege that an offense was committed while "en route" between certain points. There is no definite construction which can be placed upon the phrases "on or about," etc., as used in the allegations as to time and place in a specification, but these specifications must be construed reasonably by a court in the light of the circumstances of each particular case. This latitude, however, is not allowed in cases where time or place are of essence. If, for example, it is alleged that a person absented himself without authority from his ship on a day on which the "all hands" evolution of coaling ship was performed in support of a charge of conduct to the prejudice of good order and discipline, then time is of the essence of the offense charged and a variation between the date on which the unauthorized absence is alleged and the date on which the "all hands" evolution was performed would make the specification defective.

When the geographical location of a ship is not material to a complete description of an offense, such as theft of another's clothing or any other act committed wholly on board, such geographical location need not be alleged in the specification.

180. Written instruments and oral statements.—Written instruments, or such portions thereof as form part of the gist of the offense charged, must be set out verbatim with care and accuracy. When the written instrument is not a part of the gist of the offense it may be set out in substance, and it may also be set out in substance if it has been lost or destroyed without fault on the part of the prosecution. When a written instrument is set out verbatim it should be introduced by the words "in tenor as follows;" when set out in substance, by the words "in substance as follows."

Oral statements forming the gist of the offense must be set out in as nearly the exact words as possible, but should also be qualified by the words "or words to that effect," since proof will generally vary as to a word or words, particularly if some time has elapsed since the incident.

181. What is surplusage.—In drawing up specifications all extraneous matter is to be carefully avoided, and nothing shall be alleged except that which is culpable and which the prosecution is prepared to substantiate before a court. However, care must be taken to allege all the material elements of the offense. Failure to allege enough may be a fatal defect, whereas immaterial allegations, although not made by a careful pleader, may be rejected as surplusage or be excepted in the findings.

Unnecessary averments in a specification may ordinarily be rejected as surplusage, or treated as struck out, if without them the pleading remains adequate. If the allegation is wholly foreign to the charge, or, although not foreign, can be stricken out entirely without destroying the accusation, it may generally be rejected as surplusage. It may not be rejected as surplusage, however, when it tends to scandalize or prejudice the defendant.

182. Illustrations of surplusage.—Under the charge of "drunkenness" the specification alleged that the accused was "* * * under the influence of intoxicating liquor or some stupefying drug." It was held that the words "or some stupefying drug" were surplusage, as these words do not support the charge and were wholly foreign to it. These words, being thus rejected, the specification was not bad as in the disjunctive. An indictment for robbery is not bad because it charges that it was committed "in or near a highway," for the exact place of its commission is immaterial.

A specification alleged that the accused did "by standing * * * near the corner * * * aid and abet one A———, * * * while he, the said A———, entered the said house and threatened the occupants thereof." The accused did not object to this specification. The testimony was to the effect that the accused did actually aid and abet although not as charged. The department held

that although the specification was vague and indefinite, the allegation that the accused aided and abetted *by standing near the corner* might be regarded as surplusage, and the defect in the specification might be regarded as cured by the failure of the accused to object.

In a case where a specification alleged that the accused did "fail to establish the correct position of said ship * * * in consequence of which the said ship was * * * stranded," the department held that the clause "in consequence of which the said ship was * * * stranded" was surplusage.

In general, any meaningless words, or any averment in the nature of a conclusion of law, such as a statement as to the name or nature of an offense, or in the nature of an inference or deduction from facts, may be rejected as surplusage if sufficient remains to state an offense.

183. Aider of defective specification.—If a specification, while defective because of failure to allege some particular fact or element essential to the offense, nevertheless contain sufficient information fairly to apprise the accused of the offense intended to be charged, then, if the accused make no objection to the specification on the ground of such omission, and if the evidence adduced supply the omission, a finding by the court will cure such defect in the specification, unless it appear from the record that the accused was in fact misled by such failure, or that his substantial rights were in fact prejudiced thereby, or unless the existence of such omitted fact or element is negatived by the language of the defective specification.

The objects of a specification are: first, to furnish the accused with such description of the charge against him as will enable him to make a proper defense and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and, second, to inform the court and the reviewing authorities of the facts alleged, so that they may decide whether they are sufficient in law to support a conviction, if one should be had. A crime is made up of acts and intent, and these must be set forth with reasonable particularity of time, place, and circumstance. If the essential requirements and particulars of the offense are wanting, as such particulars are matters of substance and not of form, their omission is not aided or cured by the verdict. Sec. 1025 of the Revised Statutes reads: "No indictment found and presented by a grand jury in any district or circuit or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant."

184. Principals and accessories.—Section 332 of the Penal Code reads: "Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission is a principal." It follows from this that no distinction is to be made in charging accessories and principals.

185. How to charge attempts.—Where an offense is provided for by the laws relating to the Coast Guard, or in any general statute of the United States, but the attempted or uncompleted offense is not provided for, the attempt must be charged as scandalous conduct tending to the destruction of good morals, or violating lawful regulation issued by the Secretary of the Treasury (Conduct to the prejudice of good order and discipline), as the case may be. For example, an attempted theft should be charged as scandalous conduct tending to the destruction of good morals. It follows that one or the other of the general charges is a lesser included offense in nearly all of the specified offenses. On the other hand, a specific offense is not a lesser included offense in either of the general charges.

186. What constitutes an attempt.—An attempt to commit a crime consists of three elements, (1) the intent to commit the crime, (2) performance of some act toward the commission of the crime, and (3) the failure to consummate it, the third element being just as essential as the other two. It follows that one proved actually to have deserted can not be found guilty of an attempt to desert and that a specification alleging desertion does not support a charge of "attempting to desert."

In case of doubt whether the offense has been consummated it should be charged as though it had been, and the attempts may then be found proved as a lesser included offense, proper substitutions being made in the specification.

PART III. CHARGES—ELEMENTS OF THE PARTICULAR OFFENSES—LESSER INCLUDED OFFENSES—SAMPLE SPECIFICATIONS.

189. Introductory.—In the following articles the offenses considered most likely to arise in the service are dealt with, but the list is not exhaustive. If a specific charge is named in the statutes but does not appear in this list it may be properly charged as given in the statutes. If there is no specific charge covering a certain offense the offense should be charged in accordance with article 169.

Effort has been made to set forth, in so far as practicable in one place, the elements of each of the offenses—the things that must be proved in order to sustain a conviction—the lesser included offenses, if any, and a sample specification which satisfactorily sets out the offense. A court should carefully examine the appropriate section

both in passing upon the sufficiency of a specification and in making its finding thereon.

These specifications are believed to be free from superfluous words. To convict of the offense every averment must be proved. In addition, in a few specifications, such as under the charge "theft," certain words, such as "steal," must be proved by proof of all the elements set forth in these articles.

Wherever more than one charge, or more than one specification under a charge, occurs in these articles they are numbered for ease of reference. However, the charges or specifications so numbered do not relate to the same accused.

For an example of a specification for trial in joinder, see articles 193 and 199; for a specification where the rating or status of the accused has changed since the commission of the offense, see article 207, specifications 9 and 16; for a specification where the accused has aliases, see articles 202, specification 3, and 207, specification 28.

190. Additional clause to be added in time of war.—In time of war there is to be added to the end of each specification the averment " the United States then being in a state of war."

191. Disobedience of orders.—

Charge.—Disobeying the lawful order of a superior officer. (" Superior officer," as here used, includes petty and noncommissioned officers.) (See art. 614.)

Elements.—No specific intent is necessary to make this offense, but the order must be understood, and the disobedience must be willful.

Where the order is operative in futuro, a mere neglect to comply with it " through heedlessness, remissness, or forgetfulness is an offense chargeable not in general under this article, but under the general article," and the same is true of a mere refusal to obey such an order before the time set for its execution.

The order must relate to military duty and be one which the superior officer is authorized under the circumstances to give the accused. Disobedience of an order which has for its sole object the attainment of some private end, or which is given for the sole purpose of increasing the penalty for an offense which it is expected the accused may commit, is not punishable under this charge.

An accused can not be convicted of a violation of this charge if the order was in fact unlawful; but, unless the order is plainly illegal, the disobedience of it is punishable under the charge violating lawful regulation issued by the Secretary of the Treasury (Conduct to the prejudice of good order and discipline).

To justify from a military point of view a military inferior in disobeying the order of a superior, the order must be one requiring

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something to be done which is palpably a breach of law and a crime or an injury to a third person, or is of a serious character (not involving unimportant consequences only) and if done would not be susceptible of being righted. An order requiring the performance of a military duty or act can not be disobeyed with impunity unless it has one of these characteristics.

That obedience to an order involves a violation of the accused's religious scruples is not a defense.

Failure to comply with the Coast Guard Regulations is not an offense under this charge, but under the specific paragraph of the statutes, or under the general charge. Such a nonperformance by a subordinate of any mere routine duty is properly charged as neglect of duty.

The form of the order is immaterial so long as it is definite and positive, as is the method by which it is transmitted to the accused; but the communication must amount to an order and the accused must know that it is from his superior officer; that is, an officer who is authorized to give the order whether he is superior in rank to the accused or not.

Lesser included offense: Violating lawful regulation issued by the Secretary of the Treasury. (Conduct to the prejudice of good order and discipline.)

SAMPLE SPECIFICATIONS.

Charge.—Disobeying the lawful order of a superior officer.

SPECIFICATION 1.

In that A——— B. C———, now an ensign, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, having, on or about May 19, 1922, on board said ship, been lawfully ordered by one X——— Y. Z———, then a lieutenant, U. S. Coast Guard, the executive officer of said ship, to superintend the work of breaking out the fore hold, did then and there refuse to obey and did willfully disobey said lawful order.

SPECIFICATION 2.

In that D——— E. F———, now a coxswain, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, having, on or about March 10, 1923, on board said ship, been lawfully ordered by one U——— V. W———, then a lieutenant commander, U. S. Coast Guard, the commanding officer of said ship, to submit to the administration of typhoid prophylaxis, did then and there refuse to obey and did willfully disobey said lawful order.

SPECIFICATION 3.

* * * having, on or about May 3, 1923, while on shore at ———, ———, as a member of a landing party for the protection of the United States consulate, been lawfully ordered by one W——— X. Y———, then a lieutenant, U. S. Coast Guard, to cease being noisy and disorderly, did then and there refuse to obey and did willfully disobey said lawful order.

SPECIFICATION 4.

* * * having, on or about June 16, 1923, been lawfully ordered by one V——— W. X———, then a chief boatswain's mate, U. S. Coast Guard, to go to the berth deck of said ship and perform extra duty in accordance with the sentence of a minor court, did then and there refuse to obey and did willfully disobey said lawful order.

SPECIFICATION 5.

* * * having, on or about May 17, 1923, while a member of the crew of the steam launch of said ship, been lawfully ordered by one U——— V. W———, then a lieutenant, U. S. Coast Guard, the officer of the deck of said ship, not to leave said steam launch before the hour of 4.00 p. m., on the day aforesaid, did thereafter, at about 3.30 p. m., on said day, willfully, wrongfully, and without proper authority, leave said steam launch and go to the canteen of said ship, and did thereby willfully disobey said lawful order.

SPECIFICATION 6.

* * * while so serving at the office of the commander of the ——— Division, U. S. Coast Guard, at ———, ———, having, on or about January 2, 1923, in a public street car in said city, been lawfully ordered by one T——— U. V———, then a lieutenant commander, U. S. Coast Guard, to cease annoying and bumping into a certain woman, by name to the relator unknown, did, then and there, refuse to obey said order of said V———, and did knowingly and willfully annoy and bump into said woman.

192. Striking and assaulting his superior officer. (See definition of "superior officer," art. 614.)

Charges—

1. {Striking / Assaulting} his superior officer while in the execution of the duties of his office.

2. {Attempting / Threatening} to {strike / assault} his superior officer while in the execution of the duties of his office.

Elements.—The word "strike" means an intentional blow with anything by which a blow can be given.

An assault is an unlawful offer or attempt with force or violence to do a corporal hurt to another. It is the apprehension of hurt, not the real design of the offender, that constitutes the offense. Rushing, aiming a blow, or pointing a weapon at another is an assault. If there be to the superior officer an apparent present intent to injure, coupled with an apparent present ability to do so, it is sufficient. Thus it is immaterial that the offender was not in fact near enough to reach the superior officer, or that a weapon pointed is not loaded, provided that the superior officer believes there is a present ability to injure him.

An attempt to strike is an act proximately tending to but falling short of its consummation, which is at the same time not an assault because the superior officer had no apprehension of hurt.

Where the circumstances known to the superior officer clearly negative the present intent to strike there is no assault. Thus where a man placed his hand upon his sword and remarked "If the judges were not in town I would not take that from you," there was no assault. This is, however, a threat to assault, and when directed against a superior officer while in the execution of his office is an offense within this article. So, also, a threat to assault may be made to a third person. Cases of threatening to assault will be rare, as usually the offense will be assault.

An officer may be in the "execution of the duties of his office" without being on duty in the strictly military sense. This phrase may properly be defined: In the performance of an act or duty either pertaining or incident to his office, or legal and appropriate for an officer of his rank and office to perform. An officer is deemed to be in the execution of his office when engaged in any act or service required or authorized to be done by him by statute, regulation, the order of a superior, or usage of the service.

Lesser included offenses: Violating lawful regulation issued by the Secretary of the Treasury. (Conduct to the prejudice of good order and discipline.)

SAMPLE SPECIFICATIONS.

Charge I.—Striking his superior officer while in the execution of the duties of his office.

SPECIFICATION 1.

In that A——— B. C———, now a lieutenant (junior grade), U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, did, on or about April 5, 1923, in the wardroom of said ship, when ordered by one X——— Y. Z———, then a lieutenant commander, U. S. Coast Guard, the executive officer of said ship,

to get into proper uniform, willfully, maliciously, and without justifiable cause, strike the said Z———, who was then and there in the execution of the duties of his office.

SPECIFICATION 2.

In that D——— E. F———, now an apprentice seaman, U. S. Coast Guard, while so serving as a prisoner in the brig on board the U. S. Coast Guard cutter ———, did, on or about June 3, 1923, at said brig, willfully, maliciously, and without justifiable cause, strike one W——— X. Y———, then a quartermaster, first class, U. S. Coast Guard, who, in the execution of his duties as guard of said D——— E. F———, was then and there inspecting the said brig.

SPECIFICATION 3.

* * * did, on or about June 10, 1923, near the brig of said ship, willfully, maliciously, and without justifiable cause, strike one Y——— W. X———, then a chief boatswain's mate, U. S. Coast Guard, who, in the execution of his duties as police petty officer of said ship, was then and there placing said ——— in confinement.

Charge II.—Assaulting his superior officer while in the execution of the duties of his office.

SPECIFICATION.

* * * did, on or about May 3, 1923, on the berth-deck of said ship, willfully, maliciously, and without justifiable cause, assault one U——— V. W———, then a chief boatswain's mate, U. S. Coast Guard, who was then and there in the execution of his duties as police petty officer of said ship.

Charge III.—Threatening to assault his superior officer while in the execution of the duties of his office.

SPECIFICATION.

* * * did, on or about April 5, 1923, when brought to the mast by order of the officer of the deck, one T——— U. V———, then a lieutenant, U. S. Coast Guard, to explain his, the said C———'s, absence from anchor watch, say to him, the said V———, "Report me to the captain and he can court-martial me if he wants to, but I'll catch you and throw a scare into you you will not forget," or words to that effect.

193. Destruction of public property.—

Charge.—Malicious destruction of / Willful destruction of } public property.

Elements.—The intent to destroy must be proved. The word "unlawfully" is necessary in the specification to negative justification; for example, that the public property was coal intended to be set on fire in the manner done.

Lesser included offenses: Violating lawful regulation issued by the Secretary of the Treasury. (Conduct to the prejudice of good order and discipline.)

SAMPLE SPECIFICATIONS.

Charge.—Wilfull destruction of public property.

SPECIFICATION 1.

In that A——— B. C——— and D——— E. F———, now seamen, first class, U. S. Coast Guard, while so serving as members of a landing force at ———, ———, did, on or about March 2)3, 1923, willfully and unlawfully destroy public property of the United States, the same being about 50 pounds of canned corned beef.

SPECIFICATION 2.

In that D——— E. F———, now a coxswain, U. S. Coast Guard, while so serving on board the U. S. Coast Guard Cutter ———, having, on or about April 25, 1923, been placed in confinement in the brig of said ship, did, on said day in said brig willfully and unlawfully break the glass in the port of the cell in which he was confined.

194. Drunkenness.—

Charge.—Drunkenness.

Elements: Any intoxication which is sufficient sensibly to impair the rational and full exercise of the mental and physical faculties is drunkenness. If the accused was incapacitated for the proper performance of any duty for the performance of which a person of the rank or rating of the accused could properly be called, conviction is proper.

If the drunkenness occur on duty this must be alleged as an aggravation, as a greater limit of punishment is provided for such a case.

Lesser included offense: Violating lawful regulation issued by the Secretary of the Treasury. (Conduct to the prejudice of good order and discipline.)

SAMPLE SPECIFICATIONS.

Charge.—Drunkenness.

SPECIFICATION 1.

In that A——— B. C———, now a lieutenant, U. S. Coast Guard, while so serving on board the U. S. Coast Guard Cutter ———, was, on or about March 6, 1922, on board said ship, under the influence of intoxicating liquor, and thereby incapacitated for the proper performance of duty.

SPECIFICATION 2.

* * * was, on or about March 13, 1921, on a public street car in the city of ———, ———, under the influence of intoxicating liquor, and thereby incapacitated for the proper performance of duty.

SPECIFICATION 3.

* * * was, on or about October 6, 1921, upon his return to said cutter from liberty, drunk and unfit for duty.

Charge.—Drunkenness on duty.

SPECIFICATION 1.

In that A——— B. C———, now a lieutenant in the U. S. Coast Guard, while serving as officer of the deck on board the U. S. Coast Guard cutter———, was, on or about October 6, 1921, under the influence of intoxicating liquor, and thereby incapacitated for the proper performance of duty.

SPECIFICATION 2.

In that X——— Y. Z———, now a seaman, first class, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter———, was, on or about January 5, 1922, while on duty as a member of a boat's crew of said cutter, under the influence of intoxicating liquor, and thereby incapacitated for the proper performance of duty.

195. Gambling.—

Charge.—Gambling.

Elements.—Gambling is not a common law offense. It is not defined in any statute of the United States. Congress must have used the word in its commonly accepted meaning, which, according to Webster, is, properly, the act of playing or gambling for stakes. "In the strict sense of the term gambling implies a playing or gaming, as at checkers, dice, cards, horse racing, cock fighting, or some other sport or contest, as well as a staking or risking of money to be lost or won on the issue. In this sense it does not include cases

of mere wager or betting on the issue of an uncertain event, not involving any game or contest conducted in order that its event may determine the result of the wager, as lotteries, bids upon elections, and other forms of wagering contracts, etc."

Lesser included offense: Violating lawful regulation issued by the Secretary of the Treasury. (Conduct to the prejudice of good order and discipline.)

SAMPLE SPECIFICATION.

Charge.—Gambling.

SPECIFICATION.

In that A—— B. C——, now a seaman, first class, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ——, did, on or about October 10, 1921, in the fireroom of said vessel, gamble for money with cards.

196. Cruelty.—

Charges: Cruelty toward / Oppression of / Maltreatment of } a subordinate person in the Coast Guard.

Elements.—The distinction between the words used in the statute, as given above, is not clear. The charge generally used is the last, as maltreatment includes both of the other two. Maltreatment means to treat ill, to abuse, to treat roughly.

Lesser included offense: Violating lawful regulation issued by the Secretary of the Treasury. (Conduct to the prejudice of good order and discipline.)

SAMPLE SPECIFICATION.

Charge.—Maltreatment of a subordinate person in the Coast Guard.

SPECIFICATION.

In that A—— B. C——, now a coxswain, U. S. Coast Guard, while so serving on the U. S. Coast Guard cutter ——, did, on or about December 19, 1921, on board said vessel, while on duty as a guard of the brig of said vessel, willfully and without justifiable cause maltreat one D—— E. F——, then a mess attendant, second class, in the U. S. Coast Guard, a prisoner in said brig, subject to the orders of the said C——, by assaulting and striking the said F——.

197. Neglect of duty.—

Charge.—Neglect of duty.

Elements.—This offense is distinguished from the offense of culpable inefficiency in the performance of duty, in that it is a failure

to do, whereas the other is not a failure to do at all, but doing in such a manner as to be blameworthy. A person may neglect his duty by never entering upon it, in whole or in part. It is an omission rather than an act. The facts constituting neglect must be set forth with precision and certainty.

Lesser included offense: Violating lawful regulation issued by the Secretary of the Treasury. (Conduct to the prejudice of good order and discipline.)

SAMPLE SPECIFICATIONS.

Charge.—Neglect of duty.

SPECIFICATION 1.

In that A——— B. C———, now a lieutenant, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter——— as navigator of said vessel, making passage from——— to———, did, on May 4, 1922, although the weather permitted, neglect and fail to obtain the local deviation of the standard compass of said ship, as it was his duty to do.

SPECIFICATION 2.

In that W——— X. Y———, now an engineman, first class, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, secured at ——— dock, navy yard, ———, ———, being regularly detailed and serving on watch on board said ship on October 22, 1921, and it being his duty to see that the engine and firerooms on board said ship were secure and to keep a steam pressure in the boiler of said ship sufficient to work the pumps of said ship at all times, did, then and there, neglect and fail to see that the said engine and firerooms were secure and to keep a steam pressure in the said boiler sufficient to work said pumps, as it was his duty to do, as a result of which neglect and failure said ship did then and there fill with water and sink.

SPECIFICATION 3.

In that G——— H. I———, now an ensign, U. S. Coast Guard, while serving as commissary officer on board the U. S. Coast Guard cutter ———, in charge of the money and stores of the general mess of said vessel, did, on or about February 1, 1923, when detached from said vessel, neglect and fail to submit to Commander K——— L. M———, U. S. Coast Guard, commanding said vessel, on the prescribed form, a statement of the cash transactions of the general mess for the month of January, 1923, as it was the duty of the said I——— to do.

SPECIFICATION 4.

In that B——— C. D———, now an ensign, U. S. Coast Guard, while serving as the commissary officer on board the U. S. Coast Guard cutter ———, in charge of the money and stores of the general mess of said vessel, did, on or about March 3, 1922, when detached from said vessel, neglect and fail to turn over by invoice duly certified by him, to D——— E. F———, now an ensign, U. S. Coast Guard, his successor in charge of the general mess of said vessel, all money and provisions on hand belonging to said mess, taking said officer's receipt therefor on the prescribed form and delivering to the commanding officer of said vessel a copy of said receipt, as it was the duty of the said D——— to do.

SPECIFICATION 5.

In that A——— B. C———, now a pay clerk, U. S. Coast Guard, while serving as commissary officer on board the U. S. Coast Guard cutter ———, in charge of the money and stores of the general mess of said vessel, being, on December 9, 1922, indebted to ——— ———, a merchant of ———, ———, in the sum of twenty-three dollars ($23.00) for supplies furnished the general mess of said vessel, did neglect and fail to discharge said indebtedness, as it was the duty of the said C——— to do, until after the matter was referred to the said officer by Headquarters on April 10, 1923, upon complaint of the said merchant.

SPECIFICATION 6.

In that B——— C. D———, now a lieutenant, U. S. Coast Guard, while so serving as the executive officer on the U. S. Coast Guard cutter ———, and being, on May 1, 1922, temporarily in command of said ship, making passage from ——— to ———, the weather being foggy, did, nevertheless, neglect and fail to exercise proper care and attention in navigating said vessel while approaching ——— Island, in that he neglected and failed to make allowance for current setting in the direction of the ship's course toward said island, the said D——— well knowing that the tide during the latter part of the passage was running flood, and that said flood tide in that vicinity set to the north with a velocity approaching two knots per hour, and he, the said D———, through said negligence, did suffer the said U. S. Coast Guard cutter ———, at about 5.25 p. m., on the day aforesaid, to be stranded in ——— Bay, ——— Island.

SPECIFICATION 7.

In that E——— F. G———, now a lieutenant commander, U. S. Coast Guard while so serving in command of the U. S. Coast

Guard cutter ———, the said ship being, on February 26, 1922, underway in the inner harbor of ———, ———, standing out toward the breakwater at the entrance of said inner harbor, was then and there inattentive in the performance of his duty as commanding officer of said ship, in that he did then and there fail personally to superintend the conning of said vessel; and he, the said G———, through said inattention, did suffer the said ship to be stranded on the outer end of the eastern breakwater near the entrance of said inner harbor at about 6.00 p. m., on the day aforesaid.

SPECIFICATION 8.

In that G ——— H. I ———, now a lieutenant commander, U. S. Coast Guard, while so serving, in command of the U. S. Coast Guard cutter ———, making passage from ——— to ———, did, on or about June 10, 1922, while approaching the harbor of ———, cause to be steered a course that lay over ——— reef, near said harbor, and where there was at the same time available a wide, clear, and deep channel to the eastward of said reef, and this he did in the absence of any necessity for taking a course over said reef rather than away therefrom, and he, the said I ———, did then and there, in the manner aforesaid, suffer the said U. S. Coast Guard cutter ——— to be run upon a rock, without justifiable cause, in consequence of which the said U. S. Coast Guard cutter ——— was seriously injured.

SPECIFICATION 9.

In that K ——— L. M ———, now a lieutenant, U. S. Coast Guard, while so serving as navigator of the U. S. Coast Guard cutter ———, cruising in Bering Sea, off the coast of ———, on June 5, 1922, notwithstanding the fact that about midnight June 4–5, 1922, the northeast point of ——— Island bore abeam and was about six miles distant, the said ship being then underway and making a speed of about 10 knots, and well knowing the position of the said ship at the time stated, and that the charts of the locality were unreliable and the currents thereabouts uncertain, did, then and there, neglect and fail to exercise proper care and attention in navigating said ship while approaching ——— Island, in that he neglected and failed to lay a course that would carry said ship clear of the last aforesaid island, and to change the course in due time to avoid disaster; and he, the said M ———, through said negligence, did suffer the said ship to be run upon a rock off the southwest coast of ——— Island, at about 4.45 a. m., June 5, 1922, in consequence of which the said U. S. Coast Guard cutter ——— was lost.

SPECIFICATION 10.

In that J——— K. L———, now a radioman, second class, U. S. Coast Guard, while so serving on the U. S. Coast Guard cutter ———, having, at about 4.00 a. m. on June 11, 1921, relieved the radioman on watch and taken over the radio watch on board said ship, did, between the hours of 5.00 a. m. and 6.00 a. m. on said date, sleep while on watch as the radioman on duty on said vessel.

SPECIFICATION 11.

In that A——— B. C———, now a surfman, U. S. Coast Guard, while so serving at ——— Coast Guard Station, having been regularly assigned to watch duty in the lookout at said station, did, between 9.30 p. m., and 11.30 p. m., inclusive, July 19, 1923, neglect and fail to mark the dial of the lookout time detector at half-hourly periods, as it was his duty to do.

198. Misappropriation of mess funds.—

Charge.—Misappropriation of mess funds.

Elements.—Misappropriating is assuming to one's self or assigning to another the ownership of the property, where the same is not intrusted to the party in a fiduciary capacity, and the act is therefore not an embezzlement. Applying to his own use is distinguishable in that it is an appropriation not of the ownership of the property, but of its use; and, to constitute the offense, this misappropriation must be for the personal use or benefit of the offender.

Lesser included offense: Scandalous conduct tending to the destruction of good morals.

SAMPLE SPECIFICATION.

Charge.—Misappropriation of mess funds.

SPECIFICATION.

In that A——— B. C———, now an ensign in the U. S. Coast Guard, while so serving on the U. S. Coast Guard cutter———, having, while in charge of the money and stores of the general mess of said vessel, received from Ensign X——— Y. Z———, U. S. Coast Guard, the treasurer of the wardroom mess, all amounts due from him to the general mess of said vessel, and from other sources money due the said general mess, all of which moneys received by the said Ensign A——— B. C——— should have been applied to the prompt payment of indebtedness incurred by him on account of the said mess, did, on November 1, 1922, misappropriate the mess funds of said general mess, in the sum of sixty dollars ($60.00), or thereabouts, by taking said funds away from the said vessel without payment of the indebtedness contracted by him on account of the

said general mess, or without rendering a true and proper statement of his account with the said mess.

199. Misuse of Government property.—

Charge.—Misuse of Government property.

SAMPLE SPECIFICATIONS.

Charge.—Misuse of Government property.

SPECIFICATION 1.

In that A——— B. C———, and D——— E. F———, now seamen, second class, U. S. Coast Guard, while so serving at the U. S. Coast Guard Depot, South Baltimore, Maryland, did, on or about September 5, 1921, willfully, knowingly, and without proper authority apply to their own use a whaleboat, the property of the United States intended for the Coast Guard Service thereof, by taking said whaleboat from the dock at the said depot and using the same for the purpose of carrying themselves from the said dock at the said depot to the city of Baltimore, Maryland.

SPECIFICATION 2.

* * * did, on or about May 19, 1922, knowingly, willfully, and without proper authority apply to his own use a Ford automobile, numbered five hundred ninety-eight, the property of the United States intended for the Coast Guard Service thereof, by driving said automobile from said depot, and did damage said automobile to the extent of about one hundred and eleven dollars ($111.00).

SPECIFICATION 3.

In that B——— C. D———, now a radioman, first class, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, did, on November 22, 1922, willfully, knowingly, and without proper authority place in pawn at ———'s loan office at ———, ———, under the name of ——— ———, a pair of binoculars, the property of the United States intended for the Coast Guard Service thereof, receiving from the said loan office the sum of four dollars ($4.00) for the binoculars thus pledged.

200. Misuse of Government supplies.—

Charge.—Misuse of Government supplies.

SAMPLE SPECIFICATION.

Charge.—Misuse of Government supplies.

SPECIFICATION.

In that D——— E. F———, now a seaman, first class, in the U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, did, on or about January 6, 1923, willfully, knowingly, and without proper authority remove from said vessel one hundred pounds of white lead and five gallons of boiled linseed oil, the property of the United States intended for the Coast Guard Service thereof, and did use the same in painting a boat, the private property of the said F———.

201. Theft.—

Charge.—Theft in an amount under $100.00.

Elements.—Section 287 of the Federal Penal Code of 1910 reads: "Whoever shall take and carry away, with intent to steal or purloin, any personal property of another, shall be punished as follows: If the property taken is of a value exceeding fifty dollars, or is taken from the person of another, by a fine of not more than ten thousand dollars, or imprisonment for not more than ten years, or both; in all other cases, by a fine of not more than one thousand dollars or by imprisonment not more than one year, or both. If the property stolen consists of any evidence of debt, or other written instrument, the amount of money due thereon, or secured to be paid thereby and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, shall be deemed to be the value of the property stolen."

In larceny there must be a taking and carrying away. When actual physical possession is obtained and the property moved the least distance, the taking and carrying away is complete. Such possession must, however, be complete; thus, enticing a domestic animal a short distance, or seizing property secured by a chain, or causing another to drop property by knocking his hand is not a taking of such property. The taking need not be by the hands of the thief. Thus, where one, having the required intent to steal, entices a horse into his own stable without touching him, or procures an insane person to take the goods, or procures a railroad company to deliver another's trunk by changing the check on it, he is guilty of larceny.

The taking must be from the actual or constructive possession of the owner without his consent. Ownership may be in any person who is in peaceable possession of the property. The actual condition of the legal title is immaterial. Even a thief in possession is the owner as to a second thief who steals the goods from him.

Acceptance of possession, with the required intent, knowing that a mistake is being made, is larceny, as, for example, when a person

is paid by mistake more money than he knows himself entitled to. But if the taker accept in ignorance of the mistake and in good faith as intended for him, subsequent appropriation to his own use is not larceny.

The possession of goods may be in one person, although the goods themselves be in the actual manual control of another, who is said to have the custody of them. Thus, when the owner of a coin gives it to a friend to examine on the spot, he retains possession, and if the recipient goes away with the coin intending to steal it he is guilty of larceny. So also of a guest in a hotel going off with things supplied for his use while in the hotel, and similarly of a person who walks off with goods given him to examine with a view to a sale.

This distinction between custody and possession is of the utmost importance, for it is often very difficult to determine whether the crime is larceny or embezzlement, each particular case depending upon the peculiar circumstances. To illustrate the doctrine: Where a third person hands a clerk money to pay a bill which he owes the clerk's employer, and the clerk, instead of putting the money into his employer's safe or other proper place, puts it into his own pocket and appropriates it, or hides it on the premises and afterwards carries it off, he does not commit larceny, for, as the money has not reached its destination, but is merely in transit, the master has not obtained possession, either actual or constructive. If, however, the clerk puts the money in the safe, it is in his employer's constructive possession; and if he takes it out again and converts it, he is guilty of larceny. If it is not the duty of the clerk to put the money in the safe, but he is required to keep it on his person for his master, then, as soon as he receives the money, it has reached its ultimate destination, and he will be guilty if he appropriates it, instead of holding it for his master. If a master gives his servant a check to take to the bank and get cashed he has mere custody of the check itself, and commits larceny if he appropriates it; but if he cashes the check and appropriates the money he commits embezzlement only, as the money has never been in the master's possession.

An intention by the owner to pass the property prevents the taking from amounting to larceny, even though such consent was obtained by means of a false pretense or fraudulent representation. Such an offense is either "Fraud" or "Scandalous conduct tending to the destruction of good morals." But where the taking overlaps the consent given, and where the other elements of larceny are present, he who does the taking is guilty of the offense. Thus, where one gets candy from a slot machine by using a counterfeit coin, or where a customer after buying a cigar takes the whole box of matches provided by the owner of the store for the use of his customers, the act in

each case is trespass, and the offenders are guilty of larceny if the other elements of that offense are present.

One retains the constructive possession of property, although it is actually out of his control until some one else takes possession, except in the case of abandoned property. So where a desk was sold and coins afterwards found by the purchaser in a secret drawer and taken by him, he took from the possession of the owner. Where a person finds property he has a right to take it and examine it. If the circumstances give him no clue to the ownership he can rightfully appropriate it, and this act or a subsequent refusal to give it up to the owner will not be a larceny, as there was no trespass in the taking. If the circumstances do give him such a clue he can rightfully assume possession for the owner, and a subsequent change of intent and an appropriation of the property would not be a larceny, but where he intends to appropriate it at the time he assumes possession he is guilty of larceny, and none the less so if he intends to return it in the event that a reward is given.

Where the original taking was wrongful, a subsequent felonious intent makes the offense larceny in all cases in which there is concurrently with such intent, although subsequent to the taking, a fraudulent conversion or transmutation of the goods. Thus, it has been held that where a man driving away a flock of lambs negligently took a lamb belonging to a third party, and then, upon subsequently finding out the fact of the true ownership, fraudulently converted the lamb to his own use, taking it from the rest of the flock, that this was larceny.

The felonious intent in larceny is that entertained by a thief; i. e., a fraudulent intent to deprive the owner permanently of his property in the goods or of their value or a part of their value. Unless such a purpose exist with the taking and carrying away by trespass there is no larceny.

Larceny is not committed where the taking was without any intent, as in the case of property taken by mistake or accidentally or where the intent was to take one's own property, as under a bona fide claim of right, however unfounded; or where the intent was to take another's property temporarily from his possession, as where an automobile is taken merely for a joy ride, or a boat merely to enable the taker to desert.

Whether the required intent exists where property is taken to pawn or hold for a reward depends upon the circumstances. Some cases of taking property to pledge would come within the above rule as to temporary use, as where the intent is in good faith to redeem and return it; but in the absence of such intent the taking is larceny.

Where the taking is with the design of returning it to the owner, but in the hope of obtaining a reward, it is not larceny; but if the purpose is to keep the property until a reward is offered it is.

Once the goods are taken and removed with the felonious intent above described the offense is complete and is none the less a larceny because the thief may have had in mind a disposition of the property without benefit or advantage to himself. Thus, an intent to give it to another or to destroy it out of revenge, or to prevent its use as evidence or otherwise against himself or another, does not prevent the felonious taking of another's property from being larceny. It was held that a servant who clandestinely took his master's beans for the purpose of feeding them to his master's horse was guilty of larceny.

When a larceny has been committed a prompt repentance by the thief, followed by a return of the property or payment for it, is no defense.

As the degree of punishment permitted by the prescribed limitations varies in accordance with the value of the articles stolen, care must be taken to state the value in the specification, at least approximately.

Trials by Coast Guard courts for theft are limited by statute to an amount under $100. In case of theft in an amount exceeding $100, the offender should be turned over to the civil courts for trial.

Lesser included offense: Scandalous conduct tending to the destruction of good morals.

SAMPLE SPECIFICATIONS.

Charge.—Theft in an amount under one hundred dollars ($100).

SPECIFICATION 1.

In that A——— B. C———, now a coxswain, U. S. Coast Guard, while so serving at the Coast Guard Depot, South Baltimore, Maryland, did, on or about September 11, 1921, in the city of Baltimore, Maryland, feloniously take, steal, and carry away a check for the amount and value of forty-two dollars ($42.00), numbered two hundred and eight, and drawn upon the assistant treasurer of the United States, at Philadelphia, Pennsylvania, by X——— Y. Z———, then a pay clerk, U. S. Coast Guard, payable to the order of D——— E. F———, then a seaman, first class, U. S. Coast Guard, serving on board the U. S. Coast Guard cutter ———, the said check being the property of the said F———, and at the time aforesaid in the possession of a mail orderly of the said ship ———, one G——— H.

I———, then a seaman, second class, U. S. Coast Guard; and the said C——— did then and there appropriate the said check to his own use.

SPECIFICATION 2.

In that J——— K. L———, now a mess attendant, second class, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, did, on or about April 4, 1922, on board said ship, feloniously take, steal, and carry away from the possession of one M——— N. O———, then a machinist, U. S. Coast Guard, one tin box of the value of about two dollars ($2.00), about one pint of cleaning fluid of the value of about one dollar ($1.00), and a sum of about thirty dollars ($30.00) in lawful money of the United States, said box, cleaning fluid, and money, of the amounts, quantities, and values aforesaid, being the property of the said O———, and did then and there appropriate the same to his own use.

202. Scandalous conduct.—

Charge.—Scandalous conduct tending to the destruction of good morals.

Elements.—Most of the offenses specified in the statutes relative to trial by Coast Guard courts are of a military character or are against the United States. Such as are not so specified and are of a scandalous nature must be laid under this charge. As a number of attempted or uncompleted offenses are not specified, most such, involving scandalous acts, must be laid under this charge, and it follows that this charge is a lesser included charge in the specific charges of a scandalous nature.

The offenses that may have to be laid under this charge are so diverse that it is impracticable to set forth the elements of each. Where the offense is similar to that under a specific charge appearing elsewhere in this book, the elements set forth thereunder should be examined. For convenience, the nature of the offense alleged in the following sample specifications is indicated in parentheses, but this does not form part of the charge and should not be copied.

In determining whether an act should be specified under this charge, the following general rule should be observed: Acts are of a scandalous nature, and consequently are properly specified under the charge of scandalous conduct tending to the destruction of good morals, which are violations of the law of the place where committed; that is to say, which would be criminal if committed by a civilian at the same time and place. (Of course, if the acts constitute one of the specific offenses they should be laid under it.) Where, however, such an act has been punished by the civil authorities, the accused may still be tried for the offense against discipline

arising from the same act, and in such case it should be charged as violating a lawful regulation issued by the Secretary of the Treasury.

Lesser included offenses: None.

SAMPLE SPECIFICATIONS.

Charge.—Scandalous conduct tending to the destruction of good morals.

SPECIFICATION 1.

(Aid in defrauding.)

In that A——— B. C———, now a seaman, first class, U. S. Coast Guard, while so serving at the office of the commander of the ——— Division, U. S. Coast Guard, ———, ———, did, on or about May 24, 1922, in said city, at the request of one D——— E. F———, then a seaman, first class, in the U. S. Coast Guard, write and make out a check numbered six hundred sixty-one thousand one hundred thirty-six, dated May 24, 1922, drawn upon the First National Bank of Memphis, Tennessee, payable to the order of "D——— E. F———," the same being the said F———, for the sum of fifteen dollars ($15.00), and bearing the name "A——— B. C———," the same being the name of the said C———, as maker of said check, he, the said C———, well knowing that the said F——— then and there intended to use the said check for a fraudulent purpose.

SPECIFICATION 2.

(Same.)

In that J——— K. L———, now a yeoman, first class, U. S. Coast Guard, while so serving at the office of the superintendent of the ——— Coast Guard District at ———, ———, being, on or about January 1, 1922, in the city of ———, ———, present and well knowing that one M——— N. O———, a civilian, was making an attempt feloniously to utter and dispose of as true, with intent to defraud, a check numbered six thousand one hundred seventy-five, dated December 30, 1921, drawn upon the Treasurer of the United States by one "G——— H. I———," the same being G——— H. I———, then a pay clerk, U. S. Coast Guard, payable to the order of "P——— Q. R. ———, U. S. C. G.," the same being P——— Q. R———, then a lieutenant, U. S. Coast Guard, for the sum of fifty dollars ($50.00), bearing an indorsement "P——— Q. R———, U. S. C. G.," which said indorsement was false, forged, and counterfeit, as both he, the said L———, and he, the said O———, well knew, and he, the said L———, well knowing the said O——— was not the said R———, and was not entitled and authorized to receive payment of the said check, did, then and there, knowingly and willfully, identify the said O——— as the said R———.

SPECIFICATION 3.

(Attempt to defraud.)

In that T——— U. V———, now a chief commissary steward, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, stationed at ———, ———, did, on or about June 1, 1922, in said city, willfully, falsely, and with intent thereby to deceive for the purpose of thereby fraudulently obtaining from the State of Massachusetts a sum of about one hundred dollars ($100), state in substance to one W——— X. Y———, then employed in the naval bureau, adjutant general's office, of said State, in charge of paying and causing to be paid the citizens of said State who served in the naval service of the United States during the World War the one hundred dollar gratuity provided by the laws of said State to be paid to each of the citizens of said State who served in the military or naval service of the United States during the World War, that he, the said V———, had made proper application for said gratuity and had never received said gratuity or any part thereof, whereas, in truth and in fact, he, the said V———, well knew that he had received said gratuity of one hundred dollars, and the said V——— did, therein and thereby, then and there attempt to defraud the State of Massachusetts of a sum of about one hundred dollars ($100) in lawful money of the United States.

SPECIFICATION 4.

(Attempt burglary.)

In that A——— B. C———, now a mess attendant, second class, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, did, on or about December 13, 1921, on board said vessel, attempt to enter the clothing storeroom of said vessel by willfully breaking the lock on the door thereof, for the purpose and with the intention of then and there committing a theft of property of the United States.

SPECIFICATION 5.

(Attempt to destroy Government property.)

* * * did, on or about June 14, 1921, willfully, wrongfully, and without proper authority, attempt by hammering with a metal bar to destroy property of the United States, to wit, a lock on the door of the canteen of said ship.

SPECIFICATION 6.

(Acts in the nature of false pretenses.)

In that M——— N. O———, now a seaman, first class, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, stationed at ———, ———, did, on or about October 17, 1921, at the post office in the said city knowingly, willfully, and fraudulently attempt to obtain and receive into his possession from the said post office a registered letter addressed as follows, to wit, "P——— Q. R———, U. S. C. G. C. ———, ———, ———," and forwarded to said vessel, by falsely and fraudulently representing that he, the said O———, was the said R——— to whom said registered letter was addressed.

SPECIFICATION 7.

(Falsify his accounts.)

In that D——— E. F———, now a lieutenant, U. S. Coast Guard, while serving as commissary officer in charge of the general mess on board the U. S. Coast Guard cutter ———, did, on or about May 1, 1922, knowingly present and cause to be presented to the commanding officer of said vessel a commissary report, covering the period from April 1, 1922, to April 30, 1922, and certified as true by the said F———, to the effect that on that date, to wit, May 1, 1922, there was on deposit in the ——— Bank of ———, ———, to the credit of said general mess a sum of about two thousand five hundred dollars and ten cents ($2,500.10); whereas, in truth and in fact, there was at that time on deposit in said bank to the credit of said general mess a sum of about two thousand one hundred dollars and sixty-five cents ($2,100.65), as he, the said F———, then and there well knew; which said certified commissary report was false, and, as such, made and presented by the said F——— to the said commanding officer of the said vessel knowingly and willfully and with intent to deceive.

SPECIFICATION. 8.

(False swearing.)

In that F——— G. H———, now a chief commissary steward, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, at ———, ———, having, on or about November 13, 1912, been duly sworn by Commander X——— Y. Z———, U. S. Coast Guard, then commanding officer of said ship, did, at the time and place aforesaid, subscribe and swear to as true a statement in words and figures as follows, to wit:

"(Here quote verbatim the statement submitted.)"

and he, the said H———, having, on or about December 1, 1912, on board the said vessel, been duly sworn as a witness before a board of inquiry by the president of said board, convened by lawful order of the Commandant of the U. S. Coast Guard at the time and place last aforesaid, to inquire into alleged frauds practiced by certain contractors furnishing supplies to the United States, did, at the time and place last aforesaid, testify as follows:

"(Here quote verbatim the testimony containing false statements.)"

and he, the said H———, did, at the times and places aforesaid, by subscribing and swearing to said statement before said Commander Z———, and by testifying as aforesaid, willfully, falsely, and corruptly make statements under oath inconsistent the one with the other, one of which was, at the time of making the same, known to him, the said H———, to be false and misleading, and was made by him, the said H———, with the intent and purpose of defeating the ends of justice.

SPECIFICATION 9.

(Permit lewd pictures to be taken.)

In that K——— L. M———, now a chief yeoman, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, stationed at ———, ———, while indulging in illicit sexual intercourse with a certain woman, not his wife, by name N——— O. P———, did, on or about January 10, 1922, in a room in the ——— Hotel in said city, knowingly, willfully, indecently, and lewdly, permit and induce one R——— S. T———, then a chief electrician, U. S. Coast Guard, to take photographic pictures of him, the said M———, and her, the said P———, while indulging as aforesaid, she, the said P———, being then and there entirely nude.

SPECIFICATION 10.

(Propose fornication.)

In that A——— B. C———, * * * did, on or about November 7, 1921, near the main gate of said depot, make indecent and improper proposals to one D——— E. F———, a negro woman, to the effect that she, the said F———, engage in illicit sexual intercourse with him, the said C———.

SPECIFICATION 11.

(Act short of sodomy.)

In that G——— H. I———, now a boatswain's mate, second class, and J——— K. L———, now a seaman, second class, U. S. Coast

Guard, while so serving on board the U. S. Coast Guard cutter ———, did, on May 13, 1922, in the ordnance storeroom of said ship, willfully and knowingly lie together with indecent, lewd, and lascivious intent, each with his person indecently exposed and in contact with that of the other.

SPECIFICATION 12.

(Same.)

* * * did, on or about February 5, 1922, on a bunk in the crew's quarters on board said ship, willfully and knowingly, with indecent, lewd, and lascivious intent, lie with his privates indecently exposed and in contact with the indecently exposed body of one X——— Y. Z———, then a seaman, second class, U. S. Coast Guard.

SPECIFICATION 13.

(Same.)

In that X——— Y. Z———, * * * did, on or about February 5, 1922, on a bunk in the crew's quarters on board said ship, willfully and knowingly, indecently and lewdly, permit one R——— S. T———, then a boatswain's mate, first class, U. S. Coast Guard, to lie with indecent, lewd, and lascivious intent, with his, the said T———'s privates indecently exposed and in contact with the indecently exposed body of him, the said Z———.

SPECIFICATION 14.

(Same.)

In that R——— S. T———, * * * did, on or about February 5, 1922, on a bunk in the crew's quarters on board said ship, endeavor to take down the trousers of one X——— Y. Z———, then a seaman, second class, U. S. Coast Guard, for the purpose and with the intent of enabling him, the said T———, to commit sodomy in and upon the body of the said Z———.

SPECIFICATION 15.

(Propose sodomy.)

In that R——— S. T———, * * * did, on or about February 5, 1922, on board said ship, in an indecent, lewd, and lascivious manner, and with the intention thereby to convey to one U——— V. W———, then a seaman, second class, U. S. Coast Guard, an indecent, lewd, and lascivious proposal, ask and attempt to persuade the said W———, to commit with him, the said T———, an act of sodomy.

SPECIFICATION 16.

(Oral coition.)

In that A——— B. C———, now a seaman, second class, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, did, on or about June 9, 1922, in a head on board said vessel, willfully and knowingly, in an indecent, lewd, and lascivious manner, take the penis of one D——— E. F———, then a seaman, second class, U. S. Coast Guard, in his, the said C———'s mouth.

SPECIFICATION 17.

(Same.)

In that D——— E. F———, * * * did, on or about June 9, 1922, in a head on board said vessel, willfully and knowingly, indecently and lewdly, permit one A——— B. C———, then a seaman, second class, U. S. Coast Guard, to take, in an indecent, lewd, and lascivious manner, the penis of him, the said F———, in his, the said C———'s mouth.

SPECIFICATION 18.

(Propose oral coition.)

In that G——— H. I———, * * * did, on or about March 30, 1922, on board said vessel, indecently, lewdly, and lasciviously, and with the intention thereby to convey to one J——— K. L———, then a seaman, second class, U. S. Coast Guard, an indecent, lewd, and lascivious proposal, make and cause to be delivered to the said L———, a certain indecent, lewd, and lascivious note in writing in tenor as follows: "* * *," and he, the said I———, did therein and thereby, then and there, intend to convey to the said L———, that he, the said I———, desired the said L———, to permit him, the said I———, to take the penis of him, the said L———, in his, the said I———'s mouth.

SPECIFICATION 19.

(Force another to commit oral coition.)

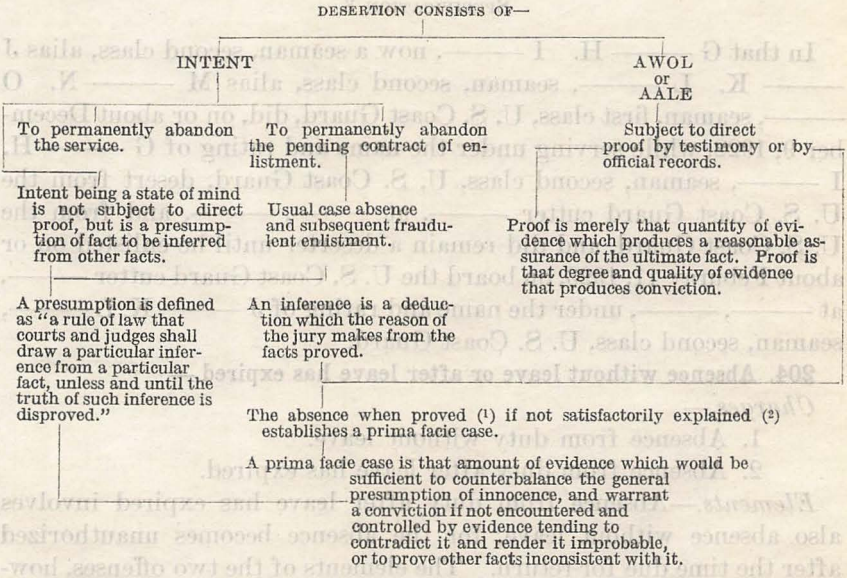
In that M——— N. O———, now a seaman, second class, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, did, on or about March 30, 1922, in a head on board said vessel, in an indecent, lewd, and lascivious manner, and with the intention thereby to influence one J——— K. L———, then an apprentice seaman, U. S. Coast Guard, to commit an indecent, lewd, and lascivious act, tell the said L———, that if he, the said L———,

did not take the penis of one G——— H. I———, then a seaman, second class, U. S. Coast Guard, in his, the said L———'s, mouth, that he, the said O———, would make him, the said L———, do so; as a result of which the said L——— did, then and there, take the penis of the said I———, in his, the said L———'s mouth.

203. Desertion.—

Charge.—Desertion.

Elements.—



(1) The duration of the absence must be proved for the court to infer from it the intent of the accused permanently to abandon the service.
(2) A statement of the accused is not evidence. (Art. 564.)

The desertion must be alleged to be from the Coast Guard and not merely to be from a certain ship or station.

One involuntarily driven by fear to leave his station is not guilty.

Lesser including offenses: Absence without leave or after leave has expired. Violating lawful regulation issued by the Secretary of the Treasury. (Conduct to the prejudice of good order and discipline.)

SAMPLE SPECIFICATIONS.

Charge.—Desertion.

SPECIFICATION 1.

In that A ——— B. C ———, now a seaman, first class, U. S. Coast Guard, did, on or about October 15, 1922, while so serving on board the U. S. Coast Guard cutter ———, desert from said ship and from the U. S. Coast Guard, and did remain a deserter until he was delivered on board said ship, on or about October 18, 1922.

SPECIFICATION 2.

In that D ——— E. F ———, now a surfman, U. S. Coast Guard, did, on or about March 20, 1922, while so serving at ——— Coast Guard Station, ———, ———, desert from said station and from the U. S. Coast Guard, and did remain a deserter until he surrendered himself at the office of the superintendent of the ——— Coast Guard District, ———, ———, on or about August 20, 1922.

SPECIFICATION 3.

In that G ——— H. I ———, now a seaman, second class, alias J ——— K. L ———, seaman, second class, alias M ——— N. O ———, seaman, first class, U. S. Coast Guard, did, on or about December 9, 1922, while serving under the name and rating of G ——— H. I ———, seaman, second class, U. S. Coast Guard, desert from the U. S. Coast Guard cutter ———, at ———, ———, and from the U. S. Coast Guard, and did remain a deserter until he enlisted on or about Feburay 11, 1923, on board the U. S. Coast Guard cutter ———, at ———, ———, under the name and rating of J ——— K. L ———, seaman, second class, U. S. Coast Guard.

204. Absence without leave or after leave has expired.—

Charges.—

1. Absence from duty without leave.
2. Absence from duty after leave has expired.

Elements.—Absence from duty after leave has expired involves also absence without leave, for the absence becomes unauthorized after the time due for return. The elements of the two offenses, however, are distinct, and one is not included as a lesser offense in the other. Consequently if an accused is charged with absence without leave and the proof is that he actually had leave but did not return when due back, the charge should be found proved, proper substitutions being made in the specification to cover the actual unauthorized absence.

No specific intent need be proved, the act supplying the intent. Where, however, a man on authorized leave is unable to get back through no fault of his own he has not committed the offense. Thus, if he is held by the civil authorities and subsequently released without trial, or because tried and acquitted, he has not committed this offense. If, however, he was without leave when held, a subsequent release or acquittal is immaterial and the accused is absent without leave for the entire period. This same rule applies to illness of the accused preventing his return.

The period of absence is the period from the unauthorized departure, or from the expiration of leave, as the case may be, until return to Coast Guard authority.

Lesser included offense: For the attempt, "Violating lawful regulation issued by the Secretary of the Treasury."

There is no lesser included offense in either of the offenses when consummated.

SAMPLE SPECIFICATIONS.

Charge I.—Absence from duty without leave.

SPECIFICATION.

In that A——— B. C———, now a yeoman, first class, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, did on or about May 11, 1922, without leave from proper authority absent himself from his station and duty on board said ship, to which he had been regularly assigned, and did remain so absent from the U. S. Coast Guard for a period of about 70 days, at the expiration of which he was delivered on board said ship.

Charge II.—Absence from duty after leave has expired.

SPECIFICATION 1.

In that D——— E. F———, now a storekeeper, first class, U. S. Coast Guard, having, while so serving on board the U. S. Coast Guard cutter ———, been granted leave of absence from his station and duty on board said ship to which he had been regularly assigned, said leave to expire on or about November 22, 1922, did fail to return to his station and duty as aforesaid upon the expiration of said leave, and did remain absent from the U. S. Coast Guard, without leave from proper authority, for a period of about two days, at the expiration of which he was delivered to U. S. Coast Guard authority at ———, ———.

SPECIFICATION 2.

In that G——— H. I———, now an ensign, U. S. Coast Guard, having, while so serving on board the U. S. Coast Guard cutter ———, been granted leave of absence from his station and duty on board said ship to which he had been regularly assigned, said leave to expire on or about March 15, 1922, did fail to return to his station and duty as aforesaid upon the expiration of said leave, and did remain absent from the U. S. Coast Guard, without leave from proper authority, for a period of about 24 hours, at the expiration of which he surrendered himself on board the aforesaid ship.

205. Conduct unbecoming an officer and a gentleman.—

Charge.—Conduct unbecoming an officer and a gentleman.

Elements.—The conduct contemplated is action or behavior in an official capacity which, in dishonoring or disgracing the individual

as an officer, seriously compromises his character and standing as a gentleman; or action or behavior in an unofficial or private capacity which, in dishonoring or disgracing the individual personally as a gentleman, seriously compromises his position as an officer and exhibits him as morally unworthy to remain a member of the honorable profession of arms.

There are certain moral attributes common to the ideal officer and the perfect gentleman, a lack of which is indicated by acts of dishonesty or unfair dealing; of indecency or indecorum; of lawlessness, injustice, or cruelty.

Not everyone is able or can be expected to meet ideal standards or to possess the attributes in the exact degree demanded by the standards of his own time; but there is a limit of tolerance below which the individual standards of an officer in these respects can not fall without his being morally unfit to be an officer or to be considered a gentleman.

This charge contemplates conduct by an officer which, taking all the circumstances into consideration, satisfactorily shows such moral unfitness and includes acts made punishable by statutes applying to the Coast Guard, provided such acts amount to conduct unbecoming an officer and a gentleman; thus, an officer who is guilty of scandalous conduct tending to the destruction of good morals violates both that charge and the charge of conduct unbecoming an officer and a gentleman.

Instances of violation of this charge are: Knowingly making a false official statement; dishonorable neglect to pay debts; opening and reading another's letters; giving a check on a bank where there were no funds to meet it, and without intending that there should be; using insulting or defamatory language to another officer in his presence, or about him to other military persons; being grossly drunk and conspicuously disorderly in a public place; public association with notorious prostitutes; failing without a good cause to support his family.

In general where an act by an enlisted person would be laid under the charge "Violating lawful regulation issued by the Secretary of the Treasury," such an act by an officer would be laid under this charge. But acts by an officer may be in violation of a lawful regulation issued by the Secretary of the Treasury (conduct prejudicial to good order and discipline) without being of such grave character as to dishonor, disgrace, or seriously compromise his standing as an officer and a gentleman.

Lesser included offense: Violating lawful regulation issued by the Secretary of the Treasury.

SAMPLE SPECIFICATIONS.

Charge.—Conduct unbecoming an officer and a gentleman.

SPECIFICATION 1.

In that A——— B. C———, now a commander, U. S. Coast Guard, having, on or about March 5, 1922, while so serving on board the U. S. Coast Guard cutter ———, been reported to the Secretary of the Treasury by D——— E. F———, of Washington, District of Columbia, for the nonpayment of a just indebtedness of five hundred fifty-three dollars and forty-five cents ($553.45), the balance of an account due and owing the said F———, for goods purchased by the said C——— at various times between January 26, 1921, and April 19, 1921, and said indebtedness being thereafter due and owing, and an itemized account of said indebtedness having been referred to him, the said C———, by indorsement, in tenor as follows:

"TREASURY DEPARTMENT,
"UNITED STATES COAST GUARD,
"*Washington, D. C., March 6, 1922.*

"HEADQUARTERS.
"From: Commandant.
"To: Commander A——— B. C———, U. S. C. G.
"Subject: Alleged indebtedness to D——— E. F———.

"1. Referred for such statement as you may desire to make relative to this alleged indebtedness.

"2. You will inform Headquarters immediately—

"First. Is this a just debt and owed by you?

"Second. If this be a just debt, have you taken any steps to make payment? If so, when?

"Third. When do you propose to pay it in full?

"3. If it is a just debt, an official report will be made to Headquarters when it has been paid.

"4. Return all papers.

"G——— H. I———."

he, the said C———, did return said indorsement to the commandant of the U. S. Coast Guard aforesaid, with a written statement, in tenor as follows:

"U. S. COAST GUARD CUTTER ———.

"TREASURY DEPARTMENT,
"UNITED STATES COAST GUARD,
New York, N. Y., May 14, 1922.

"From: Commander A——— B. C———, U. S. C. G.
"To: Commandant.
"Subject: Alleged indebtedness to D——— E. F———.

"Reference: Headquarters' indorsement of March 6, 1922.

"1. In compliance with the foregoing reference I have to state that the bill of F——— is a just debt.

"2. My reason for failing to pay said debt is that unforeseen necessities have made immediate demands upon my money. I am making arrangements at present for the payment of this debt and will make payment on or about July 1, 1922.

"A——— B. C———."

and he, the said C———, did neglect and fail to pay to the said F——— the amount of said debt, or any part thereof, as he stated he would do in his written statement as above set forth, and has ever since continued in such neglect and failure, and he, the said C———, has therein and thereby exhibited a dishonorable indifference to his written word and just indebtedness and a disregard of his obligations as an officer and a gentleman.

SPECIFICATION 2.

In that J——— K. L———, * * * having between January 3, 1922, and July 1, 1922, become justly indebted to M——— N. O———, of Washington, District of Columbia, in the sum of five hundred sixty-eight dollars and forty-five cents ($568.45), and said debt being thereafter due and owing the said O———, and the said L——— having paid, in part payment of said debt, to said O——— on July 30, 1922, the sum of fifty dollars ($50.00), and on August 30, 1922, the sum of fifty dollars ($50.00), and being on or about August 30, 1922, still justly indebted to the aforesaid O——— in the sum of four hundred sixty-eight dollars and forty-five cents ($468.45), the balance due on his said debt after the aforesaid payments, did, although often requested by said O——— to pay said balance of said debt, neglect and fail to pay to the said O——— the amount of the aforesaid balance of said debt, or any part thereof, and has ever since continued in such neglect and failure, and he, the said L——— has therein and thereby exhibited a dishonorable indifference to his just indebtedness and a disregard of his obligations as an officer and a gentleman.

SPECIFICATION 3.

In that B——— C. D———, now an ensign, U. S. Coast Guard, having, on or about April 16, 1922, while so serving on board the U. S. Coast Guard cutter———, voluntarily signed a paper pledging himself to abstain from all use of intoxicating liquors except when prescribed as medicine for a period of five years, which paper was formally witnessed by one E——— F. G———, then a commander, U. S. Coast Guard, the commanding officer of said ship, did, on or

about March 3, 1923, in the city of ———, ———, notwithstanding his pledge so given and in violation thereof, drink intoxicating liquor not prescribed as medicine, and he, the said D———, did thereby exhibit a disregard of his obligations as an officer and a gentleman.

206. Smuggling liquor.—

Charge.—Smuggling liquor on board a vessel of the Coast Guard.

Lesser included offense: Violating lawful regulation issued by the Secretary of the Treasury. (Conduct to the prejudice of good order and discipline.)

SAMPLE SPECIFICATION.

Charge.—Smuggling liquor on board a vessel of the Coast Guard.

SPECIFICATION.

In that L——— M. N———, now a fireman, first class, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, did, on or about August 7, 1921, smuggle on board said vessel intoxicating liquor.

207. Using Obscene or abusive language.—

Charges.—

1. Using abusive language.
2. Using obscene language.

Lesser included offense: Violating lawful regulation issued by the Secretary of the Treasury. (Conduct to the prejudice of good order and discipline.)

SAMPLE SPECIFICATIONS.

Charge I.—Using abusive language.

SPECIFICATION 1.

In that J——— K. L———, now a gunner, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, did, on May 5, 1922, use abusive language toward M——— N. O———, then a coxswain, U. S. Coast Guard, and serving on board said vessel.

SPECIFICATION 2.

In that P——— Q. R———, now a surfman, U. S. Coast Guard, while so serving at ——— Coast Guard Station, ———, ———, did, on June 2, 1921, use abusive language toward his superior officer, S——— T. U———, then a boatswain, U. S. Coast Guard, in charge of said station, who was then and there in the execution of the duties of his office.

Charge II.—Using obscene language.

SPECIFICATION 1.

In that A——— B. C———, now a surfman, U. S. Coast Guard, while so serving at ——— Coast Guard Station, ———, ———, did, on May 18, 1922, use obscene language toward his superior officer, D——— E. F———, then a boatswain, U. S. Coast Guard, in charge of said station, who was then and there in the execution of the duties of his office.

SPECIFICATION 2.

* * * did, on June 7, 1922, use obscene language toward F——— G. H———, then a seaman, first class, U. S. Coast Guard, attached to and serving on board said vessel.

SPECIFICATION 3.

* * * did, on July 8, 1921, willfully use obscene language.

208. Violating orders or regulations.—

Charge.—Violating / Refusing obedience to } lawful { order / regulation } issued by the Secretary of the Treasury (or the President).

Elements.—As a practical matter "violation of" includes "refusing obedience to," and the former should be used in the charge. A regulation or order issued by the Secretary of the Treasury is lawful which does not contravene the Constitution or the provisions of an act of Congress. The Secretary of the Treasury may establish general regulations for the government of the Coast Guard in execution of, or supplementary to, but not in conflict with, the statutes.

No specific intent need be shown.

Lesser included offense: None.

SAMPLE SPECIFICATIONS.

Charge I.—Violating lawful order issued by the Secretary of the Treasury.

SPECIFICATION.

In that A——— B. C———, now a commander, U. S. Coast Guard, while so serving in command of the U. S. Coast Guard cutter ———, having received a lawful order, issued on February 10, 1915, by the Secretary of the Treasury announcing to the Coast Guard the death in Washington, District of Columbia, on the morning of that day, of ——— ———, and having caused said order to be publicly read to the officers and crew of said ship on February 14, 1915, the said C———, well knowing that said order required all officers of the Coast Guard to wear the badge of mourning for a period of thirty days from and after the date of its receipt, did willfully neglect and

fail to wear the badge of mourning during a period of thirty days immediately following the date of the publication by him of said order as aforesaid.

Charge II.—Violating lawful regulation issued by the Secretary of the Treasury.

SPECIFICATION 1.

In that D——— E. F———, now a commander, U. S. Coast Guard, while so serving in command of the U. S. Coast Guard cutter———, having, on April 22, 1922, had referred to him by the commandant of the Coast Guard a copy of a letter which had been received by said commandant from Commander G——— H. I———, U. S. Coast Guard, commandant of the Coast Guard Depot, South Baltimore, Maryland, in substance as follows: * * *, and having been called upon by said commandant of the Coast Guard for an explanation of the facts mentioned in the said letter of the commandant of the said depot, did, on or about April 27, 1922, address a communication to the commandant of the said depot in tenor as follows: "* * *"; in which said letter he, the said F———, did express an opinion upon and impugn the motives of the said I———.

SPECIFICATION 2.

In that J——— K. L———, now a coxswain, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, did, on or about October 16, 1921, in the city of ———, ———, knowingly and unlawfully, and without competent authority therefor, pledge to one M——— N. O———, a merchant at number ——— ——— Street, of said city, the following articles of clothing lawfully furnished by the United States to the said L——— as a part of his, the said L———'s, prescribed uniforms and outfit, for the amounts in United States money hereinafter stated, to wit: One overcoat for two dollars ($2.00), one flannel shirt for one dollar ($1.00), and one pair of black shoes for one dollar and seventy-five cents ($1.75), which said amounts as above set forth he, the said L———, did receive into his possession and appropriate to his own use.

SPECIFICATION 3.

In that P——— Q. R———, now a pay clerk, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, as supply officer of said vessel, having, on or about April 5, 1921, discovered the fact that there was a deficiency of a sum of money of the amount of about four hundred dollars ($400.00) in the cash on hand, said money being property of the United States, intended for the Coast Guard Service thereof, which the said R——— had, be-

tween December 1, 1920, and the date first aforesaid, received into his possession, custody, and control, as pay clerk, as aforesaid, for lawful disbursement, and for which said sum of money the said R——— was responsible, did, on or about April 5, 1921, on board said ship, neglect and fail to report to proper authority the aforesaid deficiency.

SPECIFICATION 4.

In that B——— C. D———, now a chief boatswain's mate, U. S. Coast Guard, while so serving at the recruiting office of the U. S. Coast Guard at ———, ———, having charge of a detachment of applicants for enlistment in the U. S. Coast Guard, en route from ———, ———, to said recruiting office, and having in his possession a suit case containing about four quarts of alcoholic liquor, as he, the said D———, well knew, did, on or about December 20, 1921, on a train at ———, ———, wrongfully and unlawfully direct one E——— F. G———, then an applicant for enlistment in the U. S. Coast Guard and a member of the detachment aforesaid, to take charge of said suit case, which said suit case contained said alcoholic liquor, until said detachment arrived in the recruiting office aforesaid, and he, the said G———, did, pursuant to and in accordance with said directions, take charge of and take said suit case, containing alcoholic liquor as aforesaid, into said recruiting office, and he, the said D———, did, by means of said wrongful and unlawful direction, therein and thereby knowingly, willfully, and without proper authority cause alcoholic liquor to be taken within the limits of said recruiting office.

SPECIFICATION 5.

* * * did, on or about October 21, 1921, knowingly, willfully, and without proper authority, keep in his possession on board said ship a narcotic substance, to wit, cocaine.

SPECIFICATION 6.

* * * did, on or about May 17, 1922, knowingly, willfully, and without proper authority, use alcoholic liquor for drinking purposes on board said ship.

SPECIFICATION 7.

In that H——— I. J———, now a pharmacist's mate, first class, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, did, on or about September 10, 1921, on board the said vessel, willfully, knowingly, without proper authority, and not for medical purposes, give to one K——— L. M———, then a coxswain, U. S. Coast Guard, a narcotic substance, namely, heroin.

SPECIFICATION 8.

In that N——— O. P———, now a yeoman, first class, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, did, on or about December 1, 1922, on board said ship, address and cause to be delivered to the Secretary of the Treasury and to the Commandant of the Coast Guard, an application for redress of wrong bearing thereon a number of signatures of enlisted men of the U. S. Coast Guard, and being in tenor as follows: "We, the men whose names are on this paper, are dissatisfied with the conditions on the U. S. Coast Guard cutter ———. If conditions can not be remedied, we request to be TRANSFERRED," he, the said P———, having failed to make said application in writing through his immediate commanding officer.

SPECIFICATION 9.

In that R——— S. T———, now a lieutenant, U. S. Coast Guard, while serving as a lieutenant (junior grade), U. S. Coast Guard, on board the U. S. Coast Guard cutter ———, did, on or about March 5, 1921, on board said vessel, willfully, knowingly, and without proper authority, have pecuniary dealings with an enlisted man, in that he, the said T———, did borrow and receive from one X——— Y. Z———, then a coxswain, now a seaman, first class, U. S. Coast Guard, serving on board said vessel, money of the amount of eighty dollars ($80.00).

SPECIFICATION 10.

In that T——— U. V———, now a quartermaster, first class, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, having, on or about April 20, 1922, on board said vessel, made an agreement with one W——— X. Y———, then a seaman, second class, U. S. Coast Guard, whereby it was agreed that he, the said V———, would loan the said Y——— a sum of about two dollars ($2.00), and he, the said Y———, would pay the said V——— a sum of about four dollars ($4.00), for and in consideration of said loan, did, at the time and place aforesaid, without permission from his commanding officer, pursuant to and with the intention of thereby obtaining profit in accordance with said agreement, loan the said Y——— the sum of about two dollars ($2.00).

SPECIFICATION 11.

In that C——— D. E———, now a fireman, first class, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, did, on or about February 28, 1922, on board said

ship, it not being necessary to the proper performance of his duty, willfully, knowingly, and without proper authority, have concealed about his person a deadly and dangerous weapon, namely, a sandbag.

SPECIFICATION 12.

In that F——— H. G———, now a lieutenant, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, did, on or about June 7, 1921, in the city of ———, ———, while talking with one I——— J. K———, then an ensign, U. S. Coast Guard, serving on board the U. S. Coast Guard cutter ———, concerning one L——— M. N———, then a commander, U. S. Coast Guard, commanding the said U. S. Coast Guard cutter ———, state to the said K———, "Captain N——— is a * * *," or words to that effect, meaning and intending thereby the said Commander N———, well knowing and intending the said language to be such as would tend to diminish the confidence in and respect due to the said Commander N———, the superior in command of the said Ensign K———.

SPECIFICATION 13.

In that A——— B. C———, now a lieutenant, U. S. Coast Guard, having, while so serving in the U. S. Coast Guard, in a letter dated December 17, 1915, from the Commandant of the Coast Guard, been directed to explain his failure to proceed to ———, ———, in accordance with an order of the Commandant of the Coast Guard, dated November 15, 1915, did, on or about December 29, 1915, at ———, ———, write, send, and publish and cause to be sent and published to the Commandant of the Coast Guard a letter, in tenor as follows: "* * *" which said letter contains contemptuous and disrespectful words of and against the Commandant of the Coast Guard, namely, the words "* * *," and violates the respect due from him, the said C———, to the Commandant of the Coast Guard.

SPECIFICATION 14.

In that D——— E. F———, now a lieutenant, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, was, on or about September 1, 1915, on board said ship, from previous indulgence in intoxicating liquors, incapacitated for a proper performance of his duties to such an extent as to necessitate his being placed on the sick list.

SPECIFICATION 15.

In that G——— H. I———, a lieutenant, U. S. Coast Guard, while so serving at the office of the commander of the ——— Division, U. S. Coast Guard, at ———, ———, did, on or about May 12,

1921, in said city, call up the U. S. Public Health Service office over the telephone, and did falsely represent and state to the person answering said telephone at said U. S. Public Health Service office, in effect that there was an emergency stretcher case at the ——— Hotel, in said city, and that he, the said I ———, wanted the ambulance at said hotel right away, whereas in truth and in fact as he, the said I ———, well knew, there was not an emergency stretcher case at said hotel, and he, the said I ———, then and there willfully and falsely misrepresented as aforesaid, in order to obtain said ambulance for his own personal use.

SPECIFICATION 16.

In that J ——— K. L ———, now a seaman, first class, U. S. Coast Guard, while a coxswain in the U. S. Coast Guard, serving on board the U. S. Coast Guard cutter ———, well knowing that said ship was due to sail on or about August 20, 1921, did, on said date, without authority, deliberately and willfully, in order to avoid duty thereon, miss said ship when she sailed as aforesaid.

SPECIFICATION 17.

In that M ——— N. O———, now a coxswain, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter A———, well knowing that he, the said O———, was a member of a draft of men due to be transferred from said ship to the U. S. Coast Guard cutter B———, did, on or about September 4, 1922, willfully and deliberately, and without permission from proper authority, absent himself from his station and duty on board the said ship, in order to avoid said transfer to the said U. S. Coast Guard cutter B———.

SPECIFICATION 18.

In that P——— Q. R———, now a surfman, U. S. Coast Guard, while so serving at ——— Coast Guard Station, ———, ———, having on or about August 23, 1921, become justly indebted to one S——— T. U———, in the sum of seventy-five dollars ($75.00), and said debt being thereafter due and owing said U——— (and he, the said R———, having paid in part payment of said debt, to said U———, on or about December 30, 1921, the sum of five dollars ($5.00), and being on or about December 30, 1921, still justly indebted to the aforesaid U——— in the sum of seventy dollars ($70.00), the balance due on his said debt after the aforesaid payment) did, although often requested by said U——— to pay (said balance of) said debt, neglect and fail to pay to said U——— the amount of the aforesaid (balance of said) debt, or any part thereof, and has ever since continued in such neglect and failure.

SPECIFICATION 19.

In that B——— C. D———, now a chief yeoman, U. S. Coast Guard, while so serving at the office of the commander of the ——— Division, U. S. Coast Guard, ———, ———, did, on or about March 1, 1922, in the city of ———, ———, induce one E——— F. G———, of Norfolk, Virginia, to cash a check drawn by him, the said D———, upon the Bank of Berkley, in the sum of ten dollars ($10.00); and he, the said D———, well knowing that he did not have at the time of drawing said check sufficient funds on deposit in said bank to provide for its payment, did thereafter wholly neglect and fail to provide therefor, and did allow said check, upon presentation at said bank, to be dishonored because of the fact that he, the said D———, had at that time insufficient funds on deposit in said bank to provide for its payment.

SPECIFICATION 20.

In that H——— I. J———, now a lieutenant commander, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, having become justly indebted to the United States in the sum of twenty dollars ($20.00), did, on or about July 13, 1921, on board said vessel, induce the pay clerk on board said vessel to accept as payment of said indebtedness a check, numbered one hundred and twenty-seven, dated 13 July, 1921, drawn by him, the said J———, upon the National Bank of ———, ———, payable to the order of ———, in the sum of twenty dollars ($20.00); and he, the said J———, well knowing that he did not have at the time of drawing said check sufficient funds in said bank to provide for its payment, did thereafter wholly neglect and fail to provide therefor, and did allow said check, upon presentation at said bank, to be dishonored because of the fact that he, the said J———, did not have at that time sufficient funds on deposit in said bank to provide for its payment.

SPECIFICATION 21.

In that K——— L. M———, now a chief boatswain's mate, U. S. Coast Guard, while so serving on board the U. S. Coast Guard cutter ———, having become justly indebted to one N——— O. P———, then proprietor of the ——— Hotel, ———, ———, in the sum of ninety dollars ($90.00), did, on or about November 1, 1921, in said city, induce the said P———, to accept as payment of said indebtedness a promissory note, in tenor as follows: "* * *," made and delivered by the said M——— to the said P———, and he, the said M———, well knowing that he did not have at the time of making said note sufficient funds on deposit in said bank to provide for its

payment, did thereafter wholly neglect and fail to provide therefor, and did allow said note, upon presentation for payment at said bank by the said P——— on December 14, 1921, the date of its maturity, to be dishonored and protested because of the fact that he, the said M———, had at that time no funds on deposit and to his credit in said bank to provide for its payment.

SPECIFICATION 22.

In that C——— D. E———, * * *, did, on or about February 19, 1922, on board said ship, referring to one F——— G. H———, then a chief boatswain's mate, U. S. Coast Guard, attached to said ship, say, in the presence of one or more other enlisted men of the Coast Guard, "We'll get H——— yet and make him pay for what he has done," or words to that effect, meaning thereby that he would compromise or otherwise injure the said H——— in retaliation for an act or acts performed by the said H——— in the execution of the duties of his office.

SPECIFICATION 23.

In that I——— J. K———, * * *, did, on or about August 30, 1921, with intent wrongfully to take on board said ship two bottles containing intoxicating liquor, conceal said bottles containing intoxicating liquor as aforesaid upon his person and did then at the city of ———, ———, board a shore boat with the intention of thereby and therefrom boarding said ship, and he, the said K———, not having proper authority to take said intoxicating liquor on board said ship for medicinal purposes, did therein and thereby, then and there, wrongfully attempt to take on board said ship intoxicating liquor.

SPECIFICATION 24.

In that L——— M. N———, * * *, having, on September 4, 1921, been regularly detailed as quartermaster of the watch on board said vessel, on the 8 p. m. to midnight watch on said date, did, on said date, on board said vessel, willfully, knowingly, and without proper authority, exchange the said 8 p. m. to midnight watch for the midnight to 4 a. m. watch on September 5, 1921, with one O——— P. Q———, a quartermaster, first class, in the U. S. Coast Guard.

SPECIFICATION 25.

In that V——— W. X———, * * *, did, on or about May 19, 1922, at said station, wrongfully and knowingly attempt to dispose of three suits of underwear, of the total value of about twelve dollars ($12.00), property of the United States intended for the Coast Guard

Service thereof, which said underwear had been furnished him, the said X———, for use in said service, by offering to give said underwear to one X——— Z. A———, a civilian.

SPECIFICATION 26.

In that B——— C. D———, now a mess attendant, second class, U. S. Coast Guard, while so serving as a prisoner in the brig on board the U. S. Coast Guard cutter ———, having, on or about December 8, 1921, been lawfully ordered by one E——— F. G———, then a chief boatswain's mate, U. S. Coast Guard, who was then and there, in the execution of his duties, acting as guard of the said brig, as he, the said D———, well knew, to take off his, the said D———'s, clothes for a strip search, did, then and there, refuse to obey, and did willfully disobey the said lawful order of the said G———.

SPECIFICATION 27.

In that K——— L. M———, * * *, having on or about August 21, 1921, received a letter addressed to him by the Commandant of the Coast Guard in tenor as follows: " * * *," did, notwithstanding the lawful order of the Commandant of the Coast Guard contained therein, immediately to acknowledge the receipt of said letter, willfully, wrongfully, and without proper authority neglect and fail, and has ever since neglected and failed, to make such acknowledgement, and did therein and thereby willfully disobey the said lawful order of the Commandant of the Coast Guard.

SPECIFICATION 28.

In that D——— E. F———, now a surfman, U. S. Coast Guard, while so serving at the ——— Coast Guard Station, did, while on watch duty in the lookout of said station, from 7.30 p. m. to 10 p. m., July 22, 1923, sleep on watch.

SPECIFICATION 29.

In that A——— B. C———, alias D——— E. F———, now a seaman, first class, U. S. Coast Guard, did, on or about October 21, 1922, on board the U. S. Coast Guard cutter ———, at ———, ———, procure himself to be accepted and did fraudulently enlist as a seaman, first class, in the U. S. Coast Guard, under the name of D——— E. F———, by falsely representing that he had had no previous service in, and had never deserted from, the U. S. Navy, and by deliberately and willfully concealing from the enlisting officer the fact that he had, on or about February 7, 1920, under the name and rating of A——— B. C———, apprentice seaman, deserted and was a deserter at large when, except for such misrepresentations and

concealment, he would not have been enlisted; and furthermore, that he, the said C———, alias F———, has since said enlistment received pay and allowances thereunder.

209. Fraudulently signing voucher.—

Charge.—Fraudulently signing voucher.

Elements.—This article does not relate to personal claims against an officer of the United States, but to claims against the United States made to such officer or otherwise. It is not necessary that the claim be allowed or paid nor that it be made by the person to be benefited by the allowance or payment. The claim must be presented or caused to be presented with knowledge of its fictitious or dishonest character. This does not include claims, however groundless they may be, that are honestly believed to be valid, nor claims that are merely presented negligently or without ordinary prudence, but it does include claims presented by a person who has the belief of the false character of the claim that the ordinarily prudent man would have entertained under the circumstances.

The claim must be presented to some person having authority to approve or pay it. False and fraudulent claims include not only those containing some material false statement, but also claims that the person presenting knows to have been paid, or for some other reason knows he is not authorized to present or receive money on.

Where an officer knows that a certain duly assigned pay account of his is outstanding and that the assignee can collect on it if he chooses to do so, it is no defense to a charge against such officer of presenting for payment a second account covering the same period as the assigned account that the second account was presented relying on the assignee's statement that he would not present the first. But where the accused has good grounds to believe and actually does believe when he presents the second account that the assigned account had been canceled or surrendered by the assignee, his presentation of the second claim does not constitute this offense. A cancellation or surrender of the first account after the presentation of the second account is, of course, no defense to the charge.

Signing and presenting to a disbursing officer or disbursing agent a false voucher, knowing it to be false, is an example of an offense under this paragraph.

The signing of any voucher and presenting it to any authorized officer of the Government for payment, knowing such voucher to be false in any particular, is another example of an offense under this paragraph.

Lesser included offenses: Violating lawful regulation issued by the Secretary of the Treasury; Scandalous conduct tending to the destruction of good morals.

SAMPLE SPECIFICATION.

Charge.—Fraudulently signing voucher.

SPECIFICATION.

In that A——— B. C———, now a lieutenant (junior grade), U. S. Coast Guard, while so serving on board the U. S. Coast Guard Cutter ———, having signed a voucher for subsistence allowance and rental allowance for dependents, made out to "A——— B. C———, lieutenant (junior grade), U. S. Coast Guard," for the period from May 1 to 31, 1923, for the amount of one hundred fifty-six dollars and forty-seven cents ($156.47), bearing thereon a false representation in tenor as follows: "That the charges for dependents are claimed because of my wife, M——— O. C———," and he, the said A——— B. C———, not being married, and well knowing that the said M——— O. C——— was not his wife, did, on or about June 3, 1923, on board said cutter, willfully, falsely, and with intent thereby to deceive, present said voucher, bearing thereon the said false representation, to the commanding officer of said cutter for certification, and did, by means of said voucher and said false representation thereon, deceive, and fraudulently obtain from the disbursing officer on board said cutter, during said period, the total sum of one hundred fifty-six dollars and forty-seven cents ($156.47), in lawful money of the United States, the property of the United States, intended for the Coast Guard Service, and did, during said period, on board said cutter, appropriate the same to his own use.

CHAPTER VI.

RULES OF EVIDENCE.

PART I. NATURE OF EVIDENCE.

PART II. PROOF IN GENERAL.

1. What is to be proved.

2. Burden of proof.

3. Degree of proof required.

PART III. RELEVANCE OF EVIDENCE.

PART IV. COMPETENCE OF EVIDENCE: HEARSAY.

1. Confessions.

2. Admissions.

3. Pedigree.

4. Dying declarations.

5. Res gestae.

6. Statements of conditions or intention.

7. Other exceptions.

PART V. COMPETENCE OF EVIDENCE: WRITINGS.

1. General rules applicable to documents.

2. Depositions, oaths, and affidavits.

3. Former testimony.

PART VI. COMPETENCE OF EVIDENCE: OTHER RULES.

1. Opinion evidence.

2. Real evidence.

3. Whether the evidence is incompetent on account of character or circumstances of parties.

PART VII. ATTENDANCE AND EXAMINATION OF WITNESSES.

1. Attendance of witnesses.

2. Privilege.

3. General course of presenting evidence.

4. Direct examination.

5. Cross-examination.

6. Redirect and recross-examination and examination by the court.

7. Rules peculiar to Coast Guard courts and boards.

8. Credibility and impeachment of a witness.

PART VIII. WEIGHING EVIDENCE—JUDICIAL NOTICE—PRESUMPTIONS—EVIDENCE IN AGGRAVATION OR EXTENUATION.

1. Weighing evidence.

2. Judicial notice.

3. Presumptions.

4. Evidence in aggravation or extenuation.

PART I. NATURE OF EVIDENCE.

221. Evidence defined.—Evidence is that which tends to prove or disprove any matter in question, or to influence the belief respecting it. It includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. That which is legally submitted to a jury, to enable them to decide upon the questions in dispute, or the issue, as pointed out by the pleadings, and distinguished from all comment and argument. Evidence as defined by Blackstone signifies that which demonstrates, makes clear, or ascertains the truth of the very point in issue, either on the one side or on the other. It is any matter of fact, the effect, or tendency, or design of which is to produce in the mind a persuasion, affirmative or disaffirmative, of the existence of some of the matter of fact.

222. Direct and circumstantial evidence.—Direct evidence tends directly to establish a fact in issue; circumstantial evidence tends to establish a fact from which the fact in issue can be inferred.

223. Weakness of circumstantial evidence.—Circumstantial evidence is not an inferior or secondary kind of evidence. It is frequently better than direct evidence. Its weakness lies in the fact that circumstances may be very strong against an innocent man. In a case depending on circumstantial evidence the court, in order to convict, must find the circumstances to be satisfactorily proved as facts, and must also find that these facts clearly and unequivocally imply the guilt of the accused and can not reasonably be reconciled with any hypotheses of his innocence.

224. Strength of circumstantial evidence.—Circumstantial evidence is less subject to bias than direct evidence. In most Coast Guard trials

the witnesses will ordinarily be closely associated with the accused—for example, as his shipmates—and their minds are generally bound to be biased in one way or the other.

225. Illustrations of good and bad circumstantial evidence.—The accused is charged with stealing clothes from the locker of another man. The following circumstances are not admissible as circumstantial evidence:

(*a*) The accused is very much disliked by his shipmates.

(*b*) A number of thefts have taken place on board the ship, and the general belief in the ship is that he was connected with them.

(*c*) He was tried once before for larceny of clothes and was convicted.

(*d*) He is suspected of being a deserter from a foreign navy.

(*e*) He belongs to a race or enlisted in a locality that does not entertain very strict notions of right and wrong as to the manner of acquiring possession of property.

But the following series of circumstances should be admitted in evidence:

(*f*) The clothes were taken while the owner was at drill, and there was no one known to have been around the locker.

(*g*) The accused was not at drill, but was detailed as mess cook.

(*h*) He was absent from his duty as mess cook a short while during the time when the clothes disappeared.

(*i*) One of the articles stolen was found in the locker of the accused.

(*j*) The accused was known to be without money the day before the larceny, and that evening left the ship with a bundle under his arm and was seen to enter a certain house and the same night had money in his possession.

(*k*) Upon the house being searched the next day most of the missing clothes were found there.

(*l*) The person found in the house identified the accused as the one from whom he had purchased the missing clothes.

226. Rules of evidence governing Coast Guard courts and boards, how determined.—Evidence consists of matters of fact bearing on the issues of the case. But not all matters of fact may be received and considered. From centuries of experience the courts have determined that certain kinds of evidence are too untrustworthy even to be considered and are harmful as tending to prejudice. Rules of evidence have therefore been developed excluding such kinds of evidence. No statute, other than section 3 of the act of May 26, 1906, lays down rules to govern Coast Guard courts and boards. The rules governing such are made by the Secretary of the Treasury and are published herein and in amendments hereto. These

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rules, in so far as the Coast Guard is concerned, are binding upon Coast Guard courts and boards.

When a board of investigation is not required by its precept to take testimony under oath, the record of such board can not be introduced as evidence in a subsequent proceeding. Therefore a wider latitude is permissible and the rules of evidence need not be strictly observed; the function of such a board being solely to obtain information for the convening and higher authority. The same rule applies to an investigation not under oath made by an investigating officer or clerk.

If a question of evidence which can not be determined by a reference to the above rules confronts a court, it should then look to the rules of evidence applied by the Federal courts and follow the same if applicable. The court, in the absence of an authoritative rule on any specific point, should apply, as far as possible, the fundamental principles of evidence and the dictates of reason and justice in determining the particular point at issue, and may thus arrive at its conclusion with the assurance that the chance of error is reduced to a minimum.

227. Members must determine according to the evidence.—The oath taken by members of general and minor courts requires them to try and determine " according to the evidence " the matter before them; that taken by the members of a board of inquiry requires them to examine and inquire " according to the evidence " the matter before them. A deck court, although the officer does not take such an oath, will also determine the matter before it solely on the evidence in the case, and no evidence should be admitted before a deck court that is not also admissible before a general or a minor court. Every item of the evidence must be introduced in open court, and it would be seriously irregular and improper for any member of the court to convey to other members, or himself to consider, any personal information that he possessed as to the merits of the case or the character of the accused.

PART II. PROOF IN GENERAL.

1. What is to be proved.

229. The issues.—A Coast Guard court is a criminal court. In every criminal case the burden is on the prosecution to prove, by relevant evidence, (*a*) that the act charged was really committed, (*b*) that the accused committed it, and (*c*) that the accused had the requisite criminal intent at the time. These three facts broadly constitute the issues in the case. Incidental issues will be formed by the necessity for proof of the essentials of an offense. Not only the

allegations set out in the charges and specifications, but the component parts of such allegations as well, raise the issues to be decided. For instance, in a case of theft, where it is charged that the accused "did feloniously take, steal, and carry away" certain articles of value, the component parts of the allegation not specifically set out are that such articles were taken (*a*) fraudulently and (*b*) with felonious intent of permanently depriving the owner of them.

230. Proof that the act was really committed.—The *corpus delicti*, so called, or the fact that the alleged criminal act was committed by some one, is a separate fact to be proved. It may be proved by proper circumstantial evidence. The rule with regard to proof of the *corpus delicti* proceeds from the reason that the general fact without which there could be no guilt, either in the accused or in anyone else, must be established before anyone can be convicted of the perpetration of the alleged criminal act which caused it; as, in cases of homicide the death must be shown, in theft it must be proved that the goods were lost by the owner, and in arson that the house had been burned; for otherwise the accused might be convicted of murder when the person alleged to be murdered was alive, or of theft when the owner had not lost the goods, or of arson when the house was not burned. But where the general fact is proved the foundation is laid and it is competent to show by any legal and sufficient evidence how and by whom the act was committed, and that it was done criminally.

The doctrine of *corpus delicti* applies particularly to such offenses as homicide, and the strictness of the rule is relaxed in minor offenses.

In many Coast Guard court cases an omission, not an act of commission, constitutes the offense charged. To such cases the doctrine of *corpus delicti* has no application. (See art. 260.)

231. Proof that the accused committed the act.—There must first be proof that the person in court as the accused is the person named in the charges and specifications. This may be established from his descriptive list or by testimony of those who know the accused by name. It must then be shown that the person in court as the accused was the person who did the act specified and to which the testimony of the witness will refer. It is patent that identity must be very clearly proved, for no injustice is worse than that of convicting an innocent person by reason of mistaken identity.

232. Proof that the accused had the requisite criminal intent at the time.—In respect to the element of intent, crimes are distinguished as follows: Those in which a distinct and specific intent, independent of the mere act, is essential to constitute the offense, as theft, desertion, and mutiny, etc.; and those in which the act is the principal feature, the existence of the wrongful intent being simply inferable

therefrom, as sleeping on post, drunkenness, neglect of duty, etc. In cases of the former class the characteristic intent must be established affirmatively as a separate fact; in the latter class of cases it is only necessary to prove the unlawful act, for every man is presumed in law to have intended to do what he actually does, and the burden of proof is upon him to show the contrary. (See art. 239.)

233. Same: Drunkenness as showing absence of intent.—It is a general rule of law that voluntary drunkenness is not an *excuse* for crime committed in that condition. But the question whether or not the accused was drunk at the time of the commission of the criminal act may be material as going to indicate what species or kind of offense was actually committed. Thus, there are crimes which can be consummated only where a peculiar and distinctive intent or a conscious deliberation or premeditation has concurred with the act which could not well be possessed or entertained by an intoxicated person. In such cases evidence of the drunken condition of the party at the time of the commission of the alleged crime is held admissible, *not to excuse or extenuate the act as such*, but to aid in determining whether, in view of the state of his mind, such act amounted to the specific crime charged or which of two or more crimes similar but distinguished in degree it really was in law. Thus, in cases of such offenses as larceny, robbery, burglary, and passing counterfeit money, which require for their commission a certain specific intent, evidence of drunkenness is admissible as indicating whether the offender was capable of entertaining this intent or whether his act was anything more than a mere battery, trespass, or mistake. So, upon an indictment for murder, testimony as to the drunkenness of the accused at the time of the killing may ordinarily be admitted as indicating a mental excitement, confusion, or unconsciousness incompatible under the circumstances of the case with premeditation or a deliberate intent to take life and as reducing the crime to the grade of manslaughter. On the other hand, where, to constitute the legal crime, there is required no peculiar intent—no wrongful intent other than that inferable from the act itself—as in cases of assault and battery, rape or arson, evidence that the offender was intoxicated would, strictly, not be admissible in defense. The fact of the drunkenness of the accused, as indicating his state of mind at the time of the alleged offense, whether it may be considered as properly affecting the issue to be tried, or only the measure of punishment to be adjudged in the event of conviction, is in practice always admitted in evidence.

234. Same: Negligence supplying intent.—The degree of care and caution to avoid mischief required to save from criminal responsibility one who accidentally kills another is that which a man of ordi-

nary prudence would have exercised under like circumstances; mere slight negligence, with no intent to do harm, under such circumstances that it could not reasonably be supposed that injury would result, does not furnish a foundation for criminal responsibility for a resulting death. The degree of negligence necessary to support criminal liability must be gross and culpable.

2. Burden of proof.

236. Burden of proof.—The law presumes every man innocent of crime. The prosecution has in each case the burden of overcoming this presumption. The accused's guilt must be established by substantive proof. By the plea of not guilty every element of the crime specified is debated, and the prosecution must affirmatively prove it, even though it be a matter of negative averment in the specification, proof of which is peculiarly within the knowledge of the accused. The burden of proof *never shifts to the accused.* It is immaterial that the accused sets up a defense by way of justification or excuse, as insanity, or an alibi.

237. Same: In collateral issues.—In collateral issues arising in the course of the trial as to the competency of witnesses, the admissibility of testimony, and the like, the burden of proof rests upon the party who alleges incompetency or objects to the admission of particular testimony.

238. Prima facie case.—Prima facie and sufficient evidence are synonymous. A prima facie case is one which is established by sufficient evidence and can be overthrown only by rebutting evidence adduced on the other side; that amount of evidence which would be sufficient to counterbalance the general presumption of innocence, and warrant a conviction, if not encountered and controlled by evidence tending to contradict it, and render it improbable, or to prove facts inconsistent with it.

239. Burden of proceeding.—A prima facie case has no effect on the burden of proof. It shifts the burden of going forward or of proceeding, because if the accused does nothing he will be convicted. This burden of proceeding is sometimes loosely called the burden of proof but is really something very different. The question for the court at the end of the trial remains "Has the guilt of the accused been proved beyond a reasonable doubt?" and not "Has the accused proved his defense?"

3. Degree of proof required.

241. Proof beyond a reasonable doubt.—If there is a reasonable doubt as to the guilt of the accused he must be acquitted. If there is a reasonable doubt as to the degree of guilt, the finding must be in a

lower degree on which there is no doubt. If any member entertains a reasonable doubt as to the guilt of the accused, it is his duty not to consent or be influenced for the mere sake of unanimity. In making its finding the court must strictly observe the rule that it must reach its conclusion solely from the evidence adduced. "It is not necessary that each particular fact advanced by the prosecution should be proved beyond a reasonable doubt; it is sufficient to warrant conviction if, on the whole evidence, the jury are satisfied beyond such doubt that the accused is guilty."

242. Reasonable doubt defined.—By reasonable doubt is meant "an honest, substantial misgiving generated by insufficiency of proof. It is not a captious doubt, not a doubt suggested by the ingenuity of counsel or jury and unwarranted by the testimony, nor is it a doubt born of a merciful inclination to permit the defendant to escape conviction nor promoted by sympathy for him or those connected with him." "Proof beyond a reasonable doubt is not proof to a mathematical demonstration. It is not proof beyond the possibility of a mistake." "A reasonable doubt is a doubt based on reason, and which is reasonable in view of all the evidence. And if, after an impartial comparison and consideration of all the evidence, you can candidly say that you are not satisfied of the defendant's guilt, you have a reasonable doubt; but if, after such impartial comparison and consideration of all the evidence, you can truthfully say that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, you have no reasonable doubt." A "moral certainty" of guilt persuaded by the proof calls for conviction. When such has been established, a court can no more properly acquit than could it convict when there has been an insufficiency of proof.

PART III. RELEVANCE OF EVIDENCE.

244. Distinction between relevance and competence.—Evidence to be admissible must be regarded from two standpoints: First, the standpoint of subject matter, and, second, that of form. Relevant evidence is evidence the subject matter of which relates to the issues. (See art. 229.) But in a legal sense, to be relevant, evidence must relate sufficiently to warrant the court taking time to hear it. Competent evidence is evidence complying with the rules of law as to form irrespective of subject matter; it is evidence offered in a form which the courts will admit.

245. Degree of relevance required.—This depends largely on each particular case. Roughly the principle may be stated: Those matters are admissible which are not trivial and which are more likely

to help toward the correct decision of issues of fact than to mislead. Matters which have only a slight or conjectural bearing on the issues are inadmissible, especially if they be such as may create prejudice. A close relation between the evidence and the issues should be at all times enforced.

246. Same: Illustration.—An accused was charged with "Scandalous conduct tending to the destruction of good morals." The official prosecutor sought to introduce into evidence everything of a scandalous nature concerning the accused whether alleged in the specification or not. It was held that the drawing of the specification under the charge of "Scandalous conduct tending to the destruction of good morals" in the case in question can in no wise sanction the introduction of any evidence other than that necessary to establish the allegations set forth in the specifications. It is an elementary principle of law that only the evidence which tends to prove the allegations made is relevant to the issue, and the statement of the official prosecutor in the case in question that "everything that happened to the accused, though not pertaining to this specification, is a matter that should come before the court" is clearly in contravention of the established law.

EVIDENCE—WITNESSES.

247. Evidence of similar facts.—When the analogy is so close that differences are practically eliminated, evidence of similar facts may be allowed. If A were arrested for breaking the speed limit, evidence that he had on that same day broken the speed limit at a point a mile away would be inadmissible. But evidence that he was going 50 miles an hour at another point close to the one in question a moment before would be admissible if there were no crossing or obstruction between the two points. There is a reasonable probability that the speed was maintained. Thus, also, in a case involving drunkenness it can not be shown that the accused was often drunk at prior times (except in rebuttal of the accused's evidence to the contrary), but it may be shown that he had been drinking a short time before that specified. In one case A was charged with offering a bribe to a councilman. Evidence was admitted that a year before A had bribed a clerk in the legislature. On appeal the conviction was set aside, the upper court holding the inference that because a man once commited the same crime he would be likely to do it again as too inconclusive to be allowed.

248. Evidence of similar acts to show intent or motive.—In cases requiring a specific intent evidence of similar acts previously done by the accused may be admissible to show the intent or motive with which the other act was done. In an English case a man was tried

for pawning an imitation diamond as genuine. Evidence that he had shortly before tried to pawn other false articles was admitted.

249. Evidence of character.—The conduct record of the accused, introduced after the finding, is not evidence, as it does not aid in determining matter of fact, and nothing in this section applies to it. (See art. 250.) The prosecution may not evidence the doing of the act by invoking the accused's bad moral character. This forbids any resort to his bad character in any form, either by general repute or by personal opinions of witnesses. The accused himself may, however, introduce evidence of his own good character and this is admissible. If the case is very close the previous good character of the accused may be sufficient to raise a reasonable doubt that he committed the offense charged in this instance. But it is his good *reputation* and not necessarily his good *character* of which *he* may introduce evidence. Such evidence must be as to general reputation; particular acts of merit are not admissible. The reputation offered must relate to the kind of offense for which the accused is being tried. Thus if the charge is falsehood it would be immaterial that the accused's reputation as a peaceful man was good. The accused having offered evidence of his good reputation, the prosecution may offer evidence in rebuttal as freely as to any other kind of evidence of the defense, and it is the official prosecutor's duty to do this whenever he has knowledge of any such evidence.

250. Character evidence in mitigation.—The so-called character evidence offered in mitigation is properly not evidence if it does not directly bear on the issues. Thus offered, it is given a wide latitude; it need not be limited to general good character, but may include particular acts of good conduct, bravery, etc.; it need have no reference to the nature of the charge, but may exhibit the reputation or record of the accused in the service for efficiency, fidelity, subordination, temperance, courage, or any of the traits that go to make a good officer or enlisted person. Such evidence is, of course, clearly irrelevant, but is admitted out of extreme fairness to the accused.

PART IV. COMPETENCE OF EVIDENCE: HEARSAY.

252. Hearsay in general inadmissible.—Hearsay evidence is *second-hand* evidence. It is evidence not of what a witness knows himself but which rests, in part at least, upon the credibility of others. The term may be used with reference to that which is written as well as that which is spoken. The general rule is that hearsay evidence is not admissible.

253. Why hearsay evidence is objectionable.—Hearsay evidence is objectionable, first, because it is not original evidence; second, the real witness is not testifying in court under the sanction of an oath;

and, third, the accused has no opportunity to be confronted with the witness against him or to exercise his right of cross-examination.

254. Hearsay evidence not to be confused with literal acceptation of word "hearsay."—It does not necessarily follow that all evidence in respect to what a witness has "heard" is hearsay. Such evidence may constitute original facts, directly bearing on the issue, and as such be original. For example, when an accused is charged with having spoken certain words, the testimony of a witness to the effect that he had heard the accused speak the words in question is original and not hearsay evidence. So also a writing may be "hearsay" if offered to prove the fact stated therein, and yet be admissible if offered for another purpose. (See art. 291.) The distinction must be clearly kept in mind.

255. Illustrations of hearsay.—(1) A man is being tried for desertion. A is able to testify that B told A that the accused told B that he (the accused) intended to desert at the first opportunity. Such testimony from A would be hearsay and would be inadmissible.

(2) A man is being tried for larceny of clothes from a locker. A is able to testify that B told A that he (B) about the time the clothes were stolen saw the accused leave the quarters with a bundle resembling clothes. Such testimony from A would be hearsay and would be inadmissible.

(3) A man is being tried for selling clothing. Policeman A is able to testify that, while on duty as policeman, he saw the accused with a bundle under his arm go into a shop; that he (the policeman) entered the shop and the accused ran away and the policeman was unable to catch him. The policeman the next day asked the proprietor of the shop what the accused was doing there, and the proprietor replied that the accused sold him some clothes issued by the Government and that he paid the accused $2.50 for them. The testimony of the policeman as to the reply of the proprietor would be hearsay and would be inadmissible. The fact that the policeman was acting in the line of his duty at the time the proprietor made the statement would not render the evidence admissible.

In the foregoing instances the fact that the accused said he intended to desert, that the accused left the quarters with a bundle, and that the accused sold the proprietor the clothes, constitute most important evidence and can be proved in the first two instances by B, and in the third instance by the proprietor, but they can not be proved by hearsay evidence.

In a recent case objection was interposed by counsel for the accused to the answer to a certain question on the ground that this testimony was hearsay. The objection was overruled by the court on the ground that the testimony in question had a direct bearing

on the issue. It was held that this ruling was erroneous since there is no principle of law that testimony should be admitted simply because it has a direct bearing on the issue. A considerable part of the testimony in question was hearsay, and should have been directed stricken from the record.

256. Hearsay is not admissible merely because made officially.—If evidence is hearsay the fact that it was made to an officer in the course of an official investigation does not make it admissible. For instance, in illustration (1) of the preceding article, if B had made his statement to Captain C in the course of an official investigation by Captain C, the statement would still be hearsay and inadmissible.

Official statement and opinion as to either guilt or innocence expressed by an officer, as, for instance, a commanding officer, in an indorsement, is not admissible in evidence by reason of its official character or the rank or position of the officer making it, as it would be hearsay. Nor is such a statement or opinion evidence because it is among papers referred to the official prosecutor with the charges. It would be irregular to permit such statements or opinions to come to the attention of the court. If they do become known to the court they should, of course, not be considered in arriving at a finding or sentence.

In a recent case the prosecution introduced into evidence over the objection of the accused's counsel a written statement made by one A describing the alleged assault for which the accused was on trial. The official prosecutor stated that A was then absent after leave had expired and every effort had been made to locate him. He further stated that A's statement was official. The department held that the court made a fatal error in receiving this statement into evidence. The statement was not made under oath, was not an official routine report required in the regular course of duty, and the accused was deprived of his right of cross-examining the witness against him. The statement was of such a character that it could not have failed to prejudice the rights of the accused.

In another case a letter from the Chief of the Division of Loans and Currency, Treasury Department, to the Chief Post-Office Inspector, was introduced into evidence before a court, over the objection of counsel for the accused, to prove that another letter had not been received by the addressee, who had made a statement to that effect to the Treasury Department. The official prosecutor contended that the letter was admissible as documentary evidence from the files at Washington. The department held that if by this contention the official prosecutor meant that the letter was admissible under the "public documents" exception to the hearsay rule, he was mistaken and the court erred in sustaining his contention. The letter in ques-

tion was a mere repetition of a statement made by the third party, which statement itself would be inadmissible in evidence as being ex parte, not under oath, nor falling within any exception to the hearsay rule.

257. Exceptions to the hearsay rule.—Hearsay is admissible in certain cases either because there are circumstances tending to insure the truth of the evidence, or because, in the nature of the case, it is the best evidence obtainable; for example, because the declarant is deceased or for some other reason can not be secured as a witness. The principal exceptions likely to be met in the administration of Coast Guard law are the following:

1. Confessions.

258. Confessions must be voluntary.—A confession (see art. 266), strictly speaking, is hearsay. It may be repeated in evidence by a person hearing it if it was given voluntarily.

It must be affirmatively shown that the confession was entirely voluntary on the part of the accused. A confession is, in a legal sense, "voluntary" when it is not induced or materially influenced by hope of release or other benefit or fear of punishment or injury inspired by one in authority, or, more specifically, where it is not induced or influenced by words or acts, such as promises, assurances, threats, harsh treatment, or the like, on the part of an official or other person competent to effectuate what is promised, threatened, etc., or at least believed to be thus competent by the party confessing. And the reason of the rule is that where the confession is not thus voluntary there is always ground to believe that it may not be true. Statements, by way of confession, made by an inferior under charges to a commanding officer, official prosecutor, or other superior whom the accused could reasonably believe capable of making good his words upon even a slight assurance of relief or benefit by such superior should not in general be admitted. Thus in a case where a confession was made to his captain by a soldier upon being told by the former that "matters would be easier for him," or "as easy as possible," if he confessed, such confession was held not to have been voluntary and therefore improperly admitted. And it has been similarly ruled in cases of confessions made by soldiers upon assurances being held out or intimidation resorted to by noncommissioned officers. Confessions made by enlisted persons to officers or petty officers, though not shown to have been made under the influence of promises or threats, etc., should, yet, in view of the military relations of the parties, be received with caution. Of course, the above principles apply to a written confession as well as to a verbal one. In some cases before Coast Guard courts it appears that the accused has

signed a paper confessing his guilt, stating in the paper that he confesses freely without hope of reward or fear of punishment, etc. Such statements are not conclusive that the confession was voluntary. Evidence may be introduced. If the evidence shows the statement was not in fact voluntary, the latter should not be considered by the court.

259. A confession must be offered in its entirety.—A confession must be offered in its entirety, so that the accused receives the benefit of having all of his statements construed together to reach their full and actual meaning. A confession can not be used as evidence by taking only one or more parts specially unfavorable to the accused. But this rule only applies to all the statements made at a single interview or in a single document; statements made by the accused at a separate time or in another document need not be used.

260. The corpus delicti must be shown in certain cases.—There has been much conflict in the decisions of the courts as to the corroboration of a confession that is requisite. It has been said that there is much doubt as to any substantial necessity in justice for the rule that the *corpus delicti* must be shown before a confession can be heard. The rule in naval cases should be limited to offenses which are common law felony, embezzlement, and the graver naval offenses. While some sort of corroboration of a confession in such cases is necessary to a conviction, the corroborating circumstances need not be sufficient in themselves to establish the *corpus delicti* of the complete offense, either beyond a reasonable doubt or by preponderance of proof. For example, where desertion is charged, a showing of absence without leave would be sufficient proof of the *corpus delicti* to admit a confession. (See art. 230.)

Usually the *corpus delicti* is evidenced before any other main fact. But for the convenience of the court or witnesses a confession may be received, subject to being stricken out upon failure to prove the *corpus delicti*, and if the *corpus delicti* is afterwards proved, the rights of the accused will not be prejudiced.

The confession itself can not be used to establish the *corpus delicti*. The corroboration must be outside of the confession.

261. Court decides admissibility.—Evidence may be introduced to establish the conditions under which a confession was made, and where facts shown by preliminary examination are conflicting the question of whether the confession was voluntary is for the court to decide. The burden is upon the side wishing to introduce a confession to show that it was voluntarily made.

262. Examples of voluntary and involuntary confessions.—A confession is voluntary and admissible though elicited by questions put to

a prisoner by a constable, magistrate, or other person, even though the question assumes the prisoner's guilt.

The commandant of a naval district obtained a confession from an accused person by promising that, if the accused would confess his guilt, he would urge the Navy Department to mitigate such sentence as might be adjudged by the general court-martial which was to be convened in the accused's case. It was held that this confession was not voluntary in the legal sense of the word because obtained by a person in a position of authority over the accused, as a result of a promise that, if the accused would confess, efforts would be made to mitigate his punishment.

263. Any information obtained through a confession is admissible.—Although the confession may not be admissible, if any information given in it leads to the discovery of facts which can be proved by other evidence, these facts may be shown. Thus in a prosecution for murder evidence of the discovery in a certain place of the remains, money, or clothing of the deceased, or of the weapon by which he was killed, with so much of an involuntary confession as relates directly to such facts, is admissible.

264. Confessions obtained through artifice are admissible.—The employment of any artifice or fraud not calculated to produce an untrue statement in obtaining a confession does not render it inadmissible.

265. Warning or caution not essential.—The fact that a voluntary confession was made without the accused having been warned or cautioned that it might be used against him does not affect its admissibility. The better course, however, where the confession is made to a superior officer, is to require proof that the accused was warned or else very clear and convincing proof that he understood the confession was entirely voluntary and was not influenced by promises or threats.

2. Admissions.

266. Admissions.—A confession is an acknowledgment of guilt. If admissible, corroborated, and believed, nothing further is necessary for a finding of guilt. An admission may be a statement of only one or two facts against the interest of the speaker, falling short of completeness. Thus if A, charged with the murder of B, says, "I killed him because he insulted me yesterday," he has made a confession. But if he merely said, "I saw him die," he has made an admission. The distinction is important as there is no requirement that before an admission can be received in evidence it must be shown that it was voluntary. The rule is that such admissions if against the speaker's own interest, and known to be so when made, may be admitted in evidence. For instance, in a case

of homicide in a dance hall, if the accused when arrested made the statement that he was in the hall when the homicide took place, such a statement is admissible as against his interest. On a trial for desertion, a statement of the accused to the sheriff that he was "tired of working for the Government," and that he did not want to work for it any longer, is an admission and not a confession.

Admissions against penal interests of parties other than the accused or those connected with him in the commission of the crime charged are not admissible as evidence. Such persons ought to be summoned as witnesses and examined as to such supposed admissions or confessions. Admissions in favor of the accused, unless part of the *res gestae*, are not admissible, as they are mere self-serving statements.

267. Same: In open court.—An admission in open court, when such admission is voluntarily made by the accused or by his counsel in his presence and with his express or implied authority, is a judicial confession of the matter admitted and dispenses with the necessity of evidence to establish same.

No such admission shall be accepted by the court unless the accused himself either speaks the words constituting the admission, or by word or sign indicates his assent to an admission made for him by his counsel in his presence.

If the prosecution relies upon the admission or judicial confession alone, the entire admission must be considered by the court. If the accused pleads not guilty and then makes an admission containing exculpatory statements, and the prosecution offers no evidence, the exculpatory part can not be disbelieved by the court.

268. Same: By conduct.—Admissions may consist of conduct, such as flight, concealment, destruction or fabrication of evidence, bribery, or even of silence.

269. Same: By silence.—The silence of a party when he would naturally be expected to speak may be evidence against him. It must be shown that the accused heard or was in a position to have heard the statements against him, and the circumstances must have been such as naturally and reasonably to have called for a reply from him.

270. Admissions of joint conspirators.—Admissions of an accused are available against others engaged with him in a joint criminal undertaking. Thus two prize fighters were held joint conspirators in that both were planning a fight against the laws of the State, and a letter of one of the fighters written while in training, telling about the coming fight, was held admissible against his opponent as well as against himself.

Only where the statements of such conspirator fall within the rule laid down for admission of evidence as a part of the *res gestae* could such statements be admissible for the defense. The acts and statements of a conspirator, however, made after the common design is accomplished or abandoned, are not admissible against the others, except acts and statements in furtherance of an escape. It is immaterial whether such acts or statements were made in the presence or hearing of the other parties. They are binding upon all parties if they are in furtherance of the common design. Foundation must first be laid by either direct or circumstantial evidence sufficient to establish prima facie the fact of conspiracy between the parties, unless the official prosecutor states that the conspiracy will later appear from evidence to be adduced. While in Federal courts and Coast Guard courts corroboration of the testimony of a coconspirator, or accomplice, need not be required, yet from the character of the associations formed the uncorroborated testimony of a coconspirator, or accomplice, should be received with great caution.

3. Pedigree.

271. Statements about family history.—A man may testify to his own age although his testimony must be clearly hearsay. Likewise any fact of family history such as birth, parentage, relationship, marriage, age, etc., or the date or place thereof, is admissible, as a matter of general family repute. Such a fact may also be admissible as a statement by a member of the family if shown to be deceased.

4. Dying declarations.

272. Dying declarations.—Under indictments for murder and manslaughter, the law recognizes an exception to the rule rejecting hearsay, by allowing the dying declarations of the victim of the crime, in regard to the circumstances which have induced his present condition, and especially as to the person by whom the violence was committed, to be detailed in evidence by one who has heard them. It is necessary, however, to the competency of testimony of this character—and it must be proved as preliminary to the proof of declaration—that the person whose words are repeated by the witness should have been under a sense of impending death; though it is not necessary that he should himself state that he speaks under this impression, provided the fact is otherwise shown. It is no objection to testimony of this character that such declarations were brought out in answer to leading questions, or upon urgent solicitations addressed to him by any person or persons; and if, instead of speaking, he answered the questions by intelligible signs, these signs may equally be testified to. Dying declarations are admissible as

well in favor of the accused as against him. It is to be remarked that evidence of dying declarations, made, as such usually are, under circumstances of mental and physical depreciation, and without being subjected to the ordinary legal tests, is generally to be received with great caution.

5. Res Gestae.

273. Res gestae.—*Res gestae* consists of involuntary exclamations made contemporaneously with the main occurrence, and inspired by sudden excitement or fright. It has been defined to be " declarations of the individual made at the moment of a particular occurrence, when the circumstances are such that we may assume that his mind is controlled by the event, and may be received in evidence, because they are supposed to be expressions involuntarily forced out of him by the particular event and thus have an element of truthfulness which they might otherwise not have. To make declarations on this ground admissible, they must have been not mere narratives of past occurrences, but must have been made at the time the act was done which they are supposed to characterize and have been well calculated to unfold the nature and quality of the acts they were intended to explain; and to so harmonize with them as to constitute a single transaction." Examples of it are threats or declarations of the accused in connection with his commission of the crime that indicate his intent or knowledge; declarations or exclamations of a party injured that go to indicate the nature of the violence and the parties responsible; language of accomplices; cries of bystanders; facts, circumstances, and declarations showing premeditation and preparation for the crime. All such may be established by the testimony of persons who heard the utterances, etc. All such declarations and statements must made so near in time to the principal transaction as to preclude the idea of deliberate design or afterthought in making them, but it is not essential that they should have been made in the presence or hearing of the accused. Nor does it matter that the party making them would be incompetent to testify in the case. For instance, the statements of a wife under such circumstances would be admissible against her husband. Where the crime committed is the culmination of a series of acts, such as in riots, etc., the *res gestae* rule applies to all acts and declarations of the rioters and of bystanders that would tend to indicate purpose, motive, etc.

The *res gestae* is considered as an act connected with or an incident of a main transaction, and not as testimony, and as soon as it assumes the character of a narration, rather than a spontaneous exclamation, that there is probable ground for belief it was inspired by a desire to influence the case, it is inadmissible as falling under the hearsay rule.

The application of the rule of *res gestae* is not limited strictly to circumstances and occurrences contemporaneous with the principal facts at issue nor with the transactions leading up to the principal facts, but would extend to a case of identification, as when, for instance, a party who has seen the commission of a crime and afterwards sees the accused and spontaneously identifies him by some such exclamation as " There's the man that did the killing," although such statement as to identification may have been made days after the principal act was committed.

274. Same: Illustrations.—The following examples illustrate what constitute the *res gestae:*

Where the accused is charged with sleeping on post, and it appears that the officer of the day or corporal of the guard, in searching for the accused, found him sitting down with his rifle across his knees and his chin on his chest, what they did and said to each other and to the accused, and the accused to them, in what led up to and immediately followed their efforts to ascertain whether or not he was asleep, all constitute parts of the *res gestae.*

Where a man is charged with murder, manslaughter, or assault, and the party against whom the violence is offered is another man, and the wife of the former, while walking with the latter, exclaims, " Run; here comes my jealous husband, and he will kill you! " her exclamations would be admitted as part of the *res gestae.* If the man had then fled to his house pursued by her husband, and she had followed to deter him from injuring the other party and later had run from the house shouting, " My husband is killing Jones! " or " has just killed Jones! " her exclamations would be admissible as constituting part of the *res gestae.* If a party in the next room had heard a shot and then a voice that he recognized as Jones's say, " You shot me for revenge and nothing else," the declaration would be considered as a part of the *res gestae.*

6. Statements of conditions or intention.

275. Statements of condition or intention of person injured.—The person injured by the crime, whether dead or alive, is in no sense a party to the prosecution, and his statements are not evidence either for or against the accused, unless admissible under one of the exceptions already given, or unless they are made to a physician or other person, where relevant, for the sole purpose of showing physical condition at the time. This rule does not justify admission of a narrative statement as to the cause of the injury or illness. Declarations of such person tending to exculpate the accused, as that the act was an accident, or that the accused was not at fault, or of for-

67189—24——8

giveness, etc., are not admissible where they are not part of the *res gestae*, nor dying declarations.

Statements of intention are considered as verbal acts from which the state of mind or intention may be inferred in the same manner as from behavior, appearance, or actions generally.

7. Other exceptions.

276. Other exceptions to the hearsay rule.—Entries in the regular course of business and public documents are an exception to the hearsay rule. They are considered under "Writings" in articles 288 to 293. There are also a few other recognized exceptions, but their occurrence in a Coast Guard court case will be extremely rare.

PART V. COMPETENCE OF EVIDENCE: WRITINGS.

1. General rules applicable to documents.

279. Definition of documentary evidence.—Legal evidence is not confined to the human voice or oral testimony, but includes every tangible object capable of making a truthful statement, such latter class of evidence being roughly classified as "documentary evidence." In oral evidence the witness is the man who speaks; in documentary evidence the witness is the thing that speaks. In either case the witness must be competent—that is, must be deemed competent to make a truthful statement—and in either case the competency of the witness must be proved before the evidence is admitted, the difference being that in oral evidence the competency is proved by a legal presumption, and in documentary evidence the competency must be proved by actual testimony; and the further difference that in oral evidence the credit of the witness is tested by his own cross-examination, while in documentary evidence the credit of the witness is tested by the cross-examination of those who must be called to prove its competency.

280. General rules applicable to documents.—In the use of documents, written or printed, in evidence, there are certain fundamental rules to be satisfied, each of them resting on experience demonstrating them to be necessary or useful, where any real dispute exists. These rules are given in the following articles:

281. Rule 1: "Best evidence" rule.—This rule, briefly, forbids secondary evidence of the contents of a writing so long as the original is unaccounted for. Exception is made, however, where it is satisfactorily shown that the original has been lost or destroyed without fault of the party offering the evidence. When the door is thus opened to secondary evidence it may be of any kind available. A copy of the original would be the best, but verbal testimony

as to the contents would be admitted from a person who had knowledge of the document. Where the original is in the possession of the party against whom the evidence is offered and the latter fails to produce it after reasonable notice, either a duly authenticated copy, or parol evidence by some one knowing the contents of the original, may be received.

282. Same: Exception to rule in the case of voluminous documents.—Where the original consists of numerous accounts or other documents which can not be examined by the court without great loss of time, and the fact sought to be established from them is only the general result of the whole, parol evidence may be received to establish the general result without reading the records; as, for example, where an officer's official record, embracing numerous individual reports, letters, etc., is introduced to prove that he has never been reported for certain misconduct. In such a case a witness who has carefully examined the reports may be permitted to testify as to the general result—that is, that the official record contains no remarks to the effect that the accused was intemperate, etc. Likewise, where it is desired to prove from a document, as a service record, that an enlisted person has received an average mark of 4 in sobriety, it is unnecessary to read all his marks under this heading, but the general result may be stated by the witness who has examined the record.

In such cases it must be shown that:

(*a*) The writings are so numerous or bulky that they can not conveniently be examined by the court.

(*b*) The fact to be proved is the general result of the whole collection.

(*c*) The result is capable of being ascertained by calculation or examination.

(*d*) The witness is a person skilled in such matters, and capable of making the calculation or examination.

(*e*) He has examined the whole collection and has made such a calculation or examination.

(*f*) The opposite party has had access to the books and papers from which the calculation or examination is made.

(*g*) Opportunity is afforded the opposite party to cross-examine the witness upon the books and papers in question, and to have them, or such of them as the cross-examiner may desire (or properly authenticated or proved copies), produced in court for the purposes of the cross-examination.

283. Same: Exception to rule in case of official records and certificates.—"Copies of any books, records, papers, or documents in any of the executive departments, authenticated under the seals of such depart-

ments, respectively, shall be admitted in evidence equally with the originals thereof." (In such a case, of course, the original itself must be properly admissible if offered. It must be borne in mind that the mere fact that the document is an official report does not of itself make it admissible in evidence.) Copies of any records or papers in Coast Guard Headquarters, or in the official files of a division commander or district superintendent, or in the official files of a commanding officer of a ship, or the officer in charge of a station or of a small floating unit, or of the depot or academy, if authenticated by the signature of the commandant, division commander, district superintendent, commanding officer, or officer in charge, as the case may be, and the impressed stamp of the bureau, office, ship, etc., having custody of the originals, may be admitted into evidence equally with the originals thereof before any Coast Guard court or board, or in any administrative matter under the Coast Guard, provided the originals would be admissible under the rules of evidence.

284. Rule 2: "Parol evidence" rule.—This rule is that the contents of a written instrument can not be altered by oral declarations, and that evidence tending to show such alterations will not be received or heard. This rule, however, does not exclude testimony for the purpose of explaining any ambiguity in a document or of throwing light on the circumstances attending its making. Such testimony does not controvert the writing. But it can not be used to add terms to the writing.

The "parol evidence" rule applies, of course, only to the party offering the documents.

In general, a document is prima facie only and is not conclusive evidence of the facts stated therein. The opposite party may introduce evidence to rebut it or show that the contrary is the truth.

285. Rule 3: The document must be properly introduced into evidence.—When documentary evidence is offered before Coast Guard courts, it must be in public session of the court, and the proper procedure is as follows. The proper custodian (the official prosecutor or other person properly having the document in his possession) takes the stand as a witness to identify such document; the party offering the document presents it to the opposite party and to the court for inspection and opportunity to interpose objection to its admission; and then, if there be no reasonable objection interposed, the witness reads therefrom such entries as may be pertinent to the issue. Should objection be interposed by either party to the trial, the court will rule upon the objection, and the decision of the court thereon will be final, subject to consideration by the reviewing authorities. (See art. 300.)

286. Rule 4: Authentication.—Every document must be authenticated; that is to say, its genuineness must be shown. This may be proved like any other fact—by calling a witness who saw it executed, or to testify as to handwriting. It may also be done under the exception to the hearsay rule for official documents (see art. 290), as where a notary's certificate of an absent party's acknowledgment is used, or where an official copy by the custodian is used. In all such cases of the use of official documents proof of genuineness is facilitated by the presumption of genuineness which attaches to an official seal or signature, with recital of the official title of the person signing. No further evidence of genuineness is needed, where this presumption applies, unless the other side rebuts it. This does not apply, however, where the document appears on its face as of doubtful veracity, as where the roll of a militia company, *with arbitrary pencil marks*, was held inadmissible to prove the absence of a member of the organization. In other cases it is proper to call witnesses to show that the document is not competent in that it can not be relied upon owing to the way the same had been prepared, as in a case published in Navy C. M. O. 28, 1909, 3, where it was stated: "It also appeared from the testimony of a chief yeoman of the receiving ship on which [the accused] was delivered, who was finally called as a witness, that the manner in which reports are made of deserters received on board that vessel is not such as to warrant their being received in evidence, even as to the return of a man to the service." So, too, it may be shown that entries in a document have been made by unauthorized persons, or that the document is a forgery. The party producing as genuine a document which has been altered in a part material to the question in dispute, and which appears to have been altered after its execution, must satisfactorily account for the appearance of the alteration before the document will be received in evidence.

287. Rule 5: The document must be offered in full in evidence.—Although only a part of a document may have been read to the court, or only a general result deduced therefrom may have been testified to, the document in full must have been offered and received in evidence before such testimony can be received. The opposite party is thus afforded an opportunity to call upon the witness to read such additional entries as may be pertinent to the issue and for which the party introducing the document failed to call. Thus, if the question at the time before the court is the character of an accused, and the defense has introduced in evidence his service record from which it has been shown that the accused has an average of 4 in markings in sobriety, the official prosecutor, by cross-examination, can require the witness to read the marks of the accused in obedience, in order to

show that the accused has a number of low marks therein, or that his average therein is low. In other words, the rule provides an opportunity for the court to have before it all the information contained in the document, and the party introducing it in evidence can not pick and choose therefrom the points he desires to set forth and suppress the remainder. A document as a witness does not differ in status from a man as a witness; the opposite party and the court can demand from either all admissible evidence in possession of the witness, and is not confined to a consideration of only such evidence as the party putting the witness on the stand may desire adduced from that witness. But in this connection it is to be noted that the documentary evidence offered to a court need not necessarily be a record complete in itself. For example, when (see art. 751, note 17) the record of the testimony of a witness, from whom oral testimony can not be obtained, given before a board of inquiry, is offered in evidence before a general court, the full document admissible in evidence is the record of the entire testimony of such witness before such board of inquiry and not the whole record of proceedings of such board. Similarly, the fact that entry relative to desertion may be made in a man's enlistment record does not make all the record evidence, and it would be very prejudicial for the court to examine the man's previous record merely because the entry or entries as to desertion, received into evidence, were made in this record. If the enlistment record were a person testifying as to the desertion, such person could not go ahead and testify as to the accused's character. As to evidence of character see art. 249. Courts must scrupulously observe this rule.

288. Rule 6: Hearsay rule.—Where the author of a document does not appear as a witness, it remains only a hearsay statement and can be received only under some exception to the hearsay rule. Thus, in general, ex parte affidavits, letters from members of the family of an accused, certificates from a physician that an accused has been under medical treatment, etc., the admission of which would, in effect, permit the author to testify without submitting him to cross-examination, are mere hearsay statements and are inadmissible in evidence. Entries in books of account of a deceased person and official records and certificates are the most common examples of statements admissible as an exception to the hearsay rule.

289. Same: Exception in the case of books of account.—Entries in books of account, where such books are proven to have been kept in the regular course of business and the entrant is dead, insane, out of the jurisdiction of the court, or otherwise unavailable to testify, are admissible as evidence. Also the lack of an entry in a series of writ-

ten entries is admissible as an implied statement that no events occurred of the kind that would have been recorded.

Where the entrant is available to testify in court, books of account will be used, just as memoranda are used for the purpose of refreshing the recollection of the witness, and may be introduced in evidence in connection with his testimony.

Where the entrant only records an oral report or written memorandum made in the regular course of business by another person or persons, such other person or persons, if available, must be called to testify.

The original document of entry must be produced or accounted for. Where a composite entry is used, the extent to which intermediate memoranda must be produced depends on the circumstances in each case. As between ledger and daybook or other kinds, the book required is that which contains the first regular and collected record of the transactions.

To render book entries competent against the accused, it generally is necessary and sufficient to show that they are in his handwriting, or, if in the handwriting of others, that they were made under his direction or with his knowledge; but this rule does not apply where the accused is charged with making certain representations, the truth or falsity of which can be determined only from certain books or records.

290. Same: Exception in the case of certain official writings.—Where an official duty or authority exists to record or report certain facts and events, the writing containing the evidence is competent (i. e., prima facie) evidence of the facts and events recorded in it without calling to the stand the officer who made it. For instance, the ship's log, the original of the enlistment contract and record, report of transfer, etc., and such other entries as are original entries; that is to say, are not merely entries copied from some other papers. (For documentary evidence in connection with proof of desertion see art. 292; fraudulent enlistment, see art. 293.)

291. Same: The rule does not apply when document is not offered testimonially as to its contents.—The distinction must be recognized between cases in which a document is offered as evidence of the truth of the facts stated therein and those in which it is not so offered. As, for example, in a case where the specifications alleged that certain conduct brought scandal and disgrace upon the Coast Guard service, it was held that a newspaper was properly admissible in evidence, not as evidence of the facts stated therein in regard to the conduct of the accused which must be otherwise established, but as evidence of the publicity which was given the alleged misconduct, for which purpose it was not hearsay but was the best evidence.

292. Documentary evidence in connection with proof of desertion.—The most frequent use of documentary evidence before Coast Guard courts arises in cases of trial for desertion, and there has been some confusion in applying the rules of evidence in this regard. The following rules apply to the use of enlistment records and reports of deserters received on board as evidence before Coast Guard courts:

The question of *animus non revertendi* must, of necessity, always be a conclusion from certain facts, and is for the court to determine from all the evidence in the case.

The foregoing (introduction of enlistment record and entries in log books) "present applications in various instances of the well-established rule that official reports and certificates made contemporaneously with the facts stated, and in the regular course of official duty, by an officer having personal knowledge of them, are admissible for the purpose of proving such facts." They are not conclusive evidence of the facts stated therein, and rebutting testimony may be offered; but they may well establish the case for the prosecution, if an accused fail to produce sufficient evidence in rebuttal thereof to overcome the prima facie case so made out against him.

"Manifestly the design and meaning of the rule is not to convert incompetent and irrelevant evidence into competent and relevant evidence simply because it is contained in an official communication." Should the person who made the entries testify that an accused had deserted, such testimony should be excluded as inadmissible; he could only be heard to state facts within his knowledge, such as the fact that the accused had been absent without leave, had disposed of his clothing before so absenting himself, etc., from which the court would conclude whether such facts would warrant a finding of guilty on a charge of desertion. The witness's assertion that an accused had deserted would itself imply the existence of primary and more original and explicit sources of information.

The facts necessary to make out a case of desertion may be proved not only by the records, but also by parol evidence. Where records, as the above, are introduced as evidence, it is not necessary or required that the officer who made the entries be shown to be unavailable by reason of death, absence, or other circumstances of such a nature.

293. Documentary evidence in case of fraudulent enlistment.—In cases of fraudulent enlistment the original enlistment contract and record, in the absence of testimony from the officer who enlisted the accused, will be necessary, as the contract contains the oath and declaration. Finger-print records of the accussed are also admissible in this connection.

294. Private documents.—It is a general rule that private documents of an exparte nature, such as affidavits (see art. 310), are not admissible, if objected to, as evidence of the subject matter therein contained. They are mere self-serving statements. However, an affidavit is admissible as to collateral or ancillary matters, as, for instance, to establish the loss or destruction of a document in order to prepare the way for secondary evidence, and to impeach a witness. But the original authenticated entries and writings of a person who was in a position to know the facts therein stated, made at about the time such facts occurred, are admissible as evidence of such facts under the following circumstances, provided the entrant is unavailable as a witness, as in case of subsequent death or insanity: (1) When the entry or writing is against the interest of the maker; and (2) when it was made in due course of business, in a professional capacity, or in the course of the person's ordinary and regular duties. (As to the admissibility of a memorandum, the authenticity of which is vouched for by a witness on the stand, see art. 388.)

295. Same: Letters and telegrams.—If competent and relevant a letter or telegram is admissible. Before a letter can be received against the accused it must be shown that he wrote, dictated, or signed it. A letter written by other persons is not admissible either for or against the accused until its authenticity is established, and if written to the accused it must appear that he replied thereto or acted on its contents. These same remarks apply to a telegram. When its genuineness is shown a telegram may be received in evidence although unsigned or not in the accused's handwriting. In Coast Guard court cases the original telegram, and consequently the one that must be produced to satisfy the "best evidence" rule, is the one deposited at the sending office. The received copy can only be given in evidence on a showing that the original is lost, etc., as stated in art. 281. As to genuineness of handwriting see art. 325.

296. Registers, records, photographs, etc.—Attendance records at any place, when the manner and correctness of their keeping is testified to by a witness familiar therewith, are competent evidence that the accused did or did not answer the roll call on a particular day. A hotel register, records of a railroad company, and of an express office are competent if there is proof of their correctness. A stub may be admitted if identified by the person who made it out and testified to have been correctly made and to have corresponded with the check or other writing which has been lost. A newspaper record of a ball game or other occurrence is not competent evidence. A photograph proved to be a true representation of the thing it represents is competent. The essential foundation for a photograph of a

person, for instance, may be laid by testimony that it looks like that person. An X-ray photograph verified by proof that it is a true representation is admissible. An official chart is admissible as an official document. An unofficial chart or sketch, diagram, plan, or drawing, representing things which can not be as conveniently and as clearly described by witnesses, when proved to be correct or when offered in connection with the testimony of a witness, is admissible as a legitimate aid to the court; a showing of approximate correctness is sufficient.

297. Memoranda in evidence.—A memorandum properly proved correct when made may be introduced into evidence. (See art. 388.)

The mere entry of desertion in an enlistment record, with entries of attendant circumstances, is not sufficient to prove the gravamen of the offense. While admissible, if properly authenticated by the signature of the commanding officer of the accused, it is only prima facie evidence, open to explanation and to rebutting testimony, and while it would, in the absence of rebutting testimony, show that the accused was attached to and serving on board the vessel, or stationed at the depot, academy, or other unit indicated, that he was found to be absent at a certain time, that his absence continued for 5 days or more, and that it was not satisfactorily explained, it would not be of sufficient weight to establish the fact that he had intended permanently to abandon the service, that he was possessed of the *animus non revertendi* (the intention of not returning) when the officer made the entry. Yet the entries mentioned are admissible evidence of the stated facts that were within the knowledge of the officers who made the entries and are by no means without probative force in determining whether the offense of desertion has been committed.

The entries in a log book of a deserter received on board are entitled to consideration when such report has been properly received in evidence, to prove the date and place of return from unauthorized absence of the party mentioned therein, together with his condition at the time, the state of his wearing apparel, etc.

298. Comparison of handwriting.—Opinion evidence as to handwriting is allowed by statute. (See art. 325.)

299. When a document is not in the hands of the party desiring to introduce it.—If the document or paper to be introduced is not in the hands of the party desiring to introduce it, it may be produced in court by serving upon the holder a written request to produce it.

300. In connection with making up the record.—In general either the document itself or a certified copy thereof, or a certified copy of such extracts therefrom as were read to the court by either party, must be appended to the record or set out in full in the recorded testimony of the witness who reads from the document. As, however, an of-

ficer's record is a part of the official files of Headquarters, it is not required that the original or a certified copy of the same be attached to the record of proceedings where the court is one convened by the Secretary of the Treasury. Also, when a document is an exhibit attached to the record of a board of inquiry, or to another Coast Guard court record, and is such that a copy could not well be made, as a chart, design, etc., or where documentary evidence is ruled out, neither the original nor a certified copy thereof need be appended to the record; but its contents should be referred to in the body of the record, at the appropriate place, so that the reviewing authority may know what the document was and where it may be found.

2. Depositions, oaths, and affidavits.

303. Deposition: Definition of.—A deposition is the testimony of a witness, put or taken down in writing, under oath or affirmation, before an officer empowered to administer oaths, in answer to interrogatories and cross-interrogatories submitted by the party desiring the deposition and the opposite party. (See art. 309.)

304. Same: When taken.—The act of February 16, 1909, section 16 (35 Stat. 622), provides "That the depositions of witnesses may be taken on reasonable notice to the opposite party and, when duly authenticated, may be put in evidence before naval courts, except in capital cases and cases where the punishment may be imprisonment or confinement for more than one year, as follows: First, depositions of civilian witnesses residing outside the State, Territory, or District in which a naval court is ordered to sit; second, depositions of persons in the naval or military service stationed or residing outside the State, Territory, or District in which a naval court is ordered to sit, or who are under orders to go outside of such State, Territory, or District; third, where such naval court is convened on board a vessel of the United States, or at a naval station not within any State, Territory, or District of the United States, the depositions of witnesses may be taken and used as herein provided whenever such witnesses reside or are stationed at such a distance from the place where said naval court is ordered to sit, or are about to go to such a distance as, in the judgment of the convening authority, would render it impracticable to secure their personal attendance."

Depositions of witnesses may be taken in Coast Guard cases in accordance with the preceding.

305. Same: How taken.—The method of procedure in order to obtain a deposition is as follows:

The party—prosecutor or defendant—desiring the deposition submits to the court a list of interrogatories to be propounded to the absent witness; then the opposite party, after he has been allowed

a reasonable time for this purpose, prepares and submits a list of cross-interrogatories. After the court has assented to the interrogatories and cross-interrogatories thus submitted, it adds such as, in its judgment, may be necessary to elucidate the whole subject of the testimony to be given by the witness. Depositions may also be taken before the assembling of the court by mutual agreement between the official prosecutor and the accused (counsel), subject to objections when read in court.

If the witness whose deposition it is desired to take be a civilian, the official prosecutor should prepare, in duplicate, a written request to the witness to appear before the officer designated at the time and place designated for the purpose of giving his deposition. The officer who is to take the deposition will be designated, or caused to be designated, by the convening authority. It may be left to the designated officer to name the time and place of taking the deposition. The request (in duplicate), together with the interrogatories, should be forwarded to the officer who is to take the deposition. This officer will cause the duplicate request to be served personally upon the witness and return the original, with indorsement that the duplicate has been delivered, to the official prosecutor.

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

306. Same: After execution.—When the deposition has been executed, it shall be forwarded sealed to the official prosecutor, who then becomes the legal custodian thereof. As soon as practicable after its receipt, the official prosecutor shall open it in the presence of the accused (counsel) and submit it to the latter, so that he may be prepared at the proper time in the course of the trial to make any objection he may see fit. The official prosecutor, as the legal custodian of the deposition, is responsible that no alteration whatever is made therein.

307. Same: Introduction of.—To introduce the deposition, the official prosecutor takes the stand as a witness to identify the document. The party offering the deposition presents it to the opposite party and to the court for inspection and opportunity to interpose objection to its admission; and then, if there be no valid objection interposed, the official prosecutor shall read the interrogatories and answers. Should objection be interposed by either party to the trial, the court will rule upon the objection.

If it should prove that the testimony contained in a deposition is against the interests of the party causing it to be taken, he can not be

compelled to introduce it in evidence against his wishes. Nor can the opposite party, against objection, make use of the deposition, but, where applicable, the following procedure shall be followed:

In cases where the party (either the prosecution or the defense) requesting the taking of a deposition has been taken by surprise, or if for any other reason the answers of the deponent are of such nature that the deposition is withdrawn, the court should allow the opposite side, should it so desire, time to procure another deposition from deponent and allow the deposition to be introduced into evidence out of the regular order if necessary.

In addition to objection to the admission of the deposition as a whole, as set forth above, it is, even after admission, subject to objection, in part, in the same manner as objection might be made to the testimony of a witness actually on the stand.

If, for example, an interrogatory in the deposition reads:

"Q. Were you, on March 3, 1922, at 11 p. m., at the southeast corner of Broadway and Forty-second Street, New York?"

When this interrogatory has been read, an objection to the question as a leading one would be in order. If made, the court should sustain the objection and direct that the answer be stricken out, in which case the answer would not be read, but the official prosecutor would proceed to read the next question.

308. Same: Appended to record.—Whether objections have or have not been sustained, the entire deposition will be properly marked, appended to the record, and referred to in the proceedings.

309. Officers who are authorized to administer oaths.—The act of April 16, 1908 (35 Stats. 63), section 12, provides as follows:

"That the presidents and recorders of Revenue-Cutter Service [Coast Guard] courts and commanding officers of vessels of the Revenue-Cutter Service [Coast Guard] be, and are hereby, authorized to administer oaths of allegiance and such other oaths as may be necessary for the proper conduct of said service; and that commanding officers of vessels of the Revenue-Cutter Service [Coast Guard] be, and are hereby, authorized to administer oaths generally in Alaska."

The act of June 28, 1915 (38 Stats. 800), extends the laws relating to the Revenue-Cutter Service to the Coast Guard.

The act of June 5, 1920 (41 Stats. 880), provides as follows:

"Such commissioned and warrant officers of the Coast Guard as may be designated by the commandant of the Coast Guard are hereby authorized to administer such oaths as may be necessary in connection with recruiting and for the proper conduct of said service."

When practicable, officers and men of the Coast Guard who may be required to subscribe under oath to any papers relating to Coast

Guard administration and the administration of Coast Guard justice shall do so in the presence of officers of the service authorized to administer oaths.

310. Affidavits.—An affidavit differs from a deposition in that it is taken *ex parte* and offers the opposite party no opportunity to cross-examine the maker thereof. An affidavit, therefore, is not admissible in evidence for the purpose of proving the subject matter with which the affidavit deals. A rule to the contrary would, in effect, permit a person to testify without subjecting him to cross-examination by the party against whom his testimony is given.

3. Former Testimony.

313. Former testimony: Before a civil court or a Coast Guard court.—There is conflict in the civil courts as to the conditions under which testimony taken at a former trial may be admitted in evidence. The following rules will govern Coast Guard courts: Testimony given in a former trial either by a Coast Guard court or in a civil court of the same accused on substantially the same issues may be admitted into evidence on showing that the record thereof is complete, that the witness was duly sworn and testified, that accused was present and had full opportunity for cross-examination, that the witness has since died, or has become insane, or is permanently ill or disabled so as to be unable to attend, or has left the State permanently or for an indefinite time and is beyond the reach of the process of the court, or that he is kept out of the way by the adverse party. The former testimony of the accused may be received in evidence where it contains an admission or a confession and where it was voluntarily given. Where it is self-serving in character it is not admissible on behalf of the accused. If no objection is made to the admission of any former testimony the foregoing conditions need not be observed.

314. Same: Before a board of inquiry.—If the proceedings of a board of inquiry satisfy the conditions of the preceding article testimony given before it may be introduced into evidence. In order to satisfy these conditions it is essential that the testimony desired to be introduced was given at a time when the accused was present as a defendant, that the acts involved in the charges and specifications on which he is being tried by the Coast Guard court were the subject being inquired into by the board of inquiry, and that the witness be dead, insane, etc. If these requirements be satisfied any authorized sentence may legally be adjudged.

Instances in which the proceedings of boards of inquiry may thus be used as evidence are as follows:

(*a*) Where it is expressly agreed by the accused that the proceedings of the board of inquiry may be admitted as evidence on his trial, each party to have the privilege of introducing other evidence.

(*b*) Where the proceedings of the board of inquiry are offered in evidence by the accused in his own behalf and received by the court—for the right of the accused to be confronted with the witnesses against him at his trial is one which he may waive.

(*c*) Where the accused has previously testified voluntarily before a board of inquiry, such testimony is admissible when offered by the prosecution at his trial, and it is not essential to the admissibility of his testimony that he should have been warned by the board of inquiry that what he said might be used against him. If it appear that the accused while a witness before a board of inquiry was required to give evidence tending to criminate himself, after properly claiming his privilege against self-crimination, the testimony thus adduced can not be given in evidence against him at his trial. The witness is thus protected from the consequences which might otherwise follow from the action of a board of inquiry in requiring him to answer incriminating questions—a right which the board of inquiry possesses to the same extent as Coast Guard courts. (See art. 365.) But if the accused testified voluntarily before the board of inquiry, answers given by him within the scope of legitimate cross-examination, although under compulsion, are admissible in evidence against him at his trial. If the accused were improperly required to testify as a witness before a board of inquiry, the testimony so given can not be used against him at his trial. (See art. 333.)

(*d*) Where a witness before the court has made prior inconsistent statements before a board of inquiry, the proceedings of the board of inquiry may be introduced in evidence for the purpose of impeaching the testimony of such witness, subject to the general rules of evidence requiring that a proper foundation be laid before evidence may be introduced to impeach the testimony of a witness by showing prior inconsistent statements.

(*e*) Where the accused is charged with perjury or false swearing and it is necessary, in order to sustain such charge, to prove what was said by the accused as a witness before a previous board of inquiry, the proceedings of such board may be introduced in evidence against him for this purpose.

(*f*) The proceedings of the board of inquiry may be used for the purpose of refreshing the memory of a witness before a Coast Guard court in accordance with general rules of evidence. Any witness testifying before a Coast Guard court may, in the discretion of the court, be permitted to refresh his memory from the record of the testimony given by him before a board of inquiry. If the

witness, after examining the record, testifies from his own independent recollection of the facts, the record itself can not be introduced in evidence or read to the court, but if the witness has no independent recollection, but testifies merely from his knowledge or belief in the accuracy of the record, it becomes a part of his testimony, just as if without it the witness had orally repeated the words from memory, and may therefore be read aloud by him and shown to the court, or otherwise put in evidence. (See arts. 387 and 388.)

315. Same: Before a board of inquiry.—If the requirements of the preceding article be not fulfilled, testimony given before a board of inquiry may still be received by a Coast Guard court if it satisfies the following conditions:

(*a*) That such proceedings must be "duly authenticated by the signature of the president of the board and of the recorder."

(*b*) That the case in which the proceedings are received in evidence must be one not "extending to the dismissal of a commissioned or warrant officer."

(*c*) That "oral testimony can not be obtained."

The second condition above stated has been construed to mean that the proceedings of boards of inquiry shall not be admissible in evidence before a Coast Guard court where the sentence of dismissal is by law made *mandatory* upon conviction of the offense charged. The sentence of dismissal is not mandatory upon conviction in any case triable by a Coast Guard court.

Where a Coast Guard court is authorized but not required to adjudge the punishment of dismissal upon the conviction of an offense, the proceedings of a board of inquiry may be introduced in evidence against the accused, but in any case in which the proceedings of a board of inquiry are so used in evidence, the court must be careful not to adjudge a sentence extending to dismissal. In time of peace the punishment which may be imposed upon conviction in such cases in which the proceedings of a board of inquiry are used in evidence against an officer on trial by a Coast Guard court is limited to loss of twenty numbers in rank.

The third condition above stated is that "oral testimony can not be obtained." Oral testimony may be regarded as unobtainable under the following circumstances:

(*a*) In the cases of civilian witnesses who are beyond the reach of the process which the president of the court is authorized to issue. In such cases it should appear that requests intended to secure the voluntary attendance of such witnesses have been forwarded to the Secretary of the Treasury (see art. 348), and that such action has for any reason failed to produce their appearance at the trial.

(*b*) In the cases of persons in the naval or military service whom the president is not authorized to summon. In such cases it should appear that requests for such witnesses have been forwarded to the Secretary of the Treasury or other convening authority, and that such action has for any reason failed to produce their appearance at the trial. (See art. 346.)

(*c*) In the case where a witness has died, has become insane, or by the opposite party is kept out of the way, or is too ill or infirm to come to the court.

(*d*) In the case where the witness before the board of inquiry is the accused before the court.

When a fact has been sufficiently established, it is unnecessary to consume the time of the court by introduction of additional evidence which is merely cumulative. (See art. 428.) The court is the judge of how much evidence shall be received with reference to any particular fact, and where in any case it considers that sufficient evidence has already been introduced, it will properly hold that the case is not one in which "oral testimony can not be obtained" as to that fact, and will accordingly refuse to admit the proceedings of a board of inquiry with reference thereto, notwithstanding that such proceedings may contain the testimony of a witness as to such fact whose personal attendance before the court can not be obtained.

316. Same: Before a board when given under oath.—Testimony of witnesses before boards may be used in evidence only where permitted by the general rules of evidence as given in articles 313 and 314.

317. Same: Before a board when not given under oath.—If the testimony before a board was not given under oath, such testimony may be received in evidence only when no objection is made to it by the opposing party, or as a memorandum, or for purposes of impeachment.

318. Same: Introduction of.—It must be borne in mind that each separate witness's testimony is an entirely separate and distinct document, and although physically bound in with other separate documents, each such document must be separately introduced. It would be improper for a court before which such a document is introduced to examine any other parts of the proceedings of the court, board of inquiry, or board, as the case may be, except only in so far as may be necessary to make certain that the record is genuine, has been properly authenticated, etc.

Where it is decided by the court to receive the proceedings of a board of inquiry in evidence against the accused the procedure to be followed should be substantially the same as that outlined in article 307 with reference to depositions. That is to say, a proper foundation having been laid for the introduction of the proceedings, by

establishing to the satisfaction of the court that conditions exist which make such proceedings admissible, the official prosecutor should take the stand as a witness, identifying the record and stating that he desires to read therefrom so much of the proceedings as embodies the testimony of a particular witness with reference to a particular point in issue; he should then present the record to the opposite party and to the court for inspection and opportunity to interpose objection to its admission; if there be no valid objection offered, the official prosecutor should proceed to read the questions and answers from the record of the witness's testimony before the board of inquiry, subject to objection in the same manner as objection might be made to a witness actually on the stand. (See art. 751.)

Inasmuch as the scope of an investigation by a board of inquiry is commonly very broad, involving the conduct of various persons as well as condition of matériel, etc., it will frequently happen that the examination of a witness before a board of inquiry will include many matters that would not be relevant upon the trial of a particular accused before a Coast Guard court, and the procedure above outlined for introducing the proceedings of a board of inquiry will serve to eliminate irrelevant evidence at the trial.

The testimony as read by the official prosecutor should be recorded in the body of the court record, together with objections and rulings of the court thereupon, in the same manner as though such testimony were given before the court in person by the witness who appeared before the board of inquiry.

The accused should be allowed on cross-examination of the official prosecutor to require that he read any other testimony given by the same witness before the board of inquiry which might serve to explain or to affect the weight of his testimony as read on direct examination, and to proceed further in the case in the direction of contradicting the witness, impeaching his reputation for truth and veracity, etc., in the same manner as though the witness had given his testimony in person at the trial.

In the event that the proceedings of a board of inquiry are offered in evidence by the accused, the procedure should be the same as indicated above except that the official prosecutor, as custodian of the record, would be called as a witness for the defense for the purpose of getting such proceedings before the court.

The fact that the testimony of a witness before a board of inquiry may be legally admissible in evidence before a court does not render any other parts of the record of the board of inquiry admissible, and no part thereof other than that testimony and exhibits used in connection therewith will ever be admitted into evidence except when

agreed to by both parties. *This applies with special force to the findings, opinion, and recommendation which would be the worst kind of incompetent and prejudicial evidence.*

PART VI. COMPETENCE OF EVIDENCE: OTHER RULES.

1. Opinion evidence.

321. Opinion evidence.—It is a general rule of law that inferences are for the jury or the court and that witnesses must confine themselves to facts and to matters within their own knowledge.

322. Distinction between fact and opinion.—The general distinction between fact and opinion is that a fact is something cognizable by the senses, whereas opinion involves a mental operation. What a witness thinks in respect to matters in issue is matter of opinion and he can not state it.

323. Exceptions to the rule that witnesses can not state opinions.—There are three principal exceptions to the general rule excluding opinion evidence, as given in the following three articles:

324. Opinions arising from facts of daily observation and experience forming the basis of conclusions of fact.—Opinions which are practically instantaneously conclusions drawn from numerous facts within the daily observation and experience of a witness are admissible. In this class are opinions, based upon the demeanor or appearance of a person, as to his sanity, sobriety, identity, or resemblance to another; his physical condition; or his temperamental condition, whether cool or excited, and the like. Any intelligent witness may testify as to his opinions of this character, which are merely conclusions of fact drawn from matters of everyday occurrence.

325. Opinions as to handwriting.—When there is a question as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the supposed writer, to the effect that it was or was not written or signed by him, is admissible in evidence. A person is deemed to be acquainted with the handwriting of another person when he has, at any time, seen that person write, or when he has received documents purporting to have been written by that person in answer to documents written by himself, or under his authority and addressed to that person, or when in the ordinary course of business documents purporting to have been written by such person have been actually submitted to him.

In any proceeding before a court or judicial officer of the United States where the genuineness of the handwriting of any person may be involved, any admitted or proved handwriting of such person shall be competent evidence as a basis for comparison by witnesses,

or by the jury, court, board, or officer conducting such proceeding, to prove or disprove such genuineness.

326. Opinions of experts.—In cases involving questions requiring for their solution a knowledge of some specialty, the opinions of qualified experts in such specialty may be given in evidence. Such opinions are admissible for the reason that they are based upon experience and knowledge which is beyond that of the average member of a court. But the rule permitting the admission of "expert" testimony is subject to certain limitations. Before a witness can testify as an expert he must qualify as such. The burden of so qualifying a witness rests upon the party introducing him as an expert. But the mere fact that a person who witnessed a certain act which is a violation of the law happens to be a professional man does not constitute him an expert when he testifies as to his observation of that act. In addition to qualifying as an expert, the necessity for his appearance must be established before his opinion should be received. A court may not permit an expert witness to be present during the trial and ascertain the facts directly from the evidence.

327. Same: Hypothetical questions.—The opinion of an expert witness may be obtained by means of a hypothetical question, and in putting such a question, facts may be assumed which there is evience on either side tending to establish, but the facts must be stated without comment. While a hypothetical question must not assume facts outside of the evidence, it need not necessarily take into account all the testimony. Each party usually considers only his own evidence in framing his hypothetical question, and this is entirely proper. The other party may, on cross-examination, put a hypothetical question to the same witness based on the evidence of his witnesses contradicting the other. While an expert witness may be allowed to *assume* facts, as above, to be true in order to base an opinion thereon, it remains for the court, in the last analysis, to determine whether such facts are true. The law, therefore, allows an expert to state an opinion upon an assumed state of facts, but does not permit him to express an opinion upon the specific question whether or not, upon the evidence, the accused is guilty, for this is the very question which the court is sworn to determine upon its *own* opinion.

2. Real Evidence.

329. Real evidence: Defined.—Real evidence is a term applied loosely to indicate objects of all sorts material to the issue, or almost any kind of evidence, except the testimony of witnesses or writings. Common instances are the weapons with which crimes are committed,

articles stolen, and, in general, all objects which are relevant to the case. When objects, such as buildings, can not themselves be exhibited, photographs are admissible, as stated in art. 296. If necessary or advisable, in order better to understand testimony given, the court may adjourn to the scene of the crime. In such a case the accused and his counsel must be present, and the court should take no testimony on the scene, and should allow no statements in the nature of testimony to be made further than is necessary to point out places already referred to in testimony given.

330. Same: Requisites of.—In general, the same rules apply to real evidence as to verbal testimony. Primarily it must be relevant. It must throw some light on the issues. Thus it is proper in a case of assault and wounding to allow the witness to show the wound or scar resulting.

3. Whether the evidence is incompetent on account of character or circumstances of parties.

332. Evidence incompetent on account of character or circumstances of parties.—Evidence which might be admissible under any of the foregoing rules may still be excluded on account of the character or circumstances of the party offering to give it. This is considered in the following articles:

333. Accused as a witness.—Under the common law a person was not allowed to testify in his own interest. This was on the theory that such testimony would be so biased that it could not be believed. Such matters are now considered in weighing the testimony. The law now provides that the accused shall, at his own request, but not otherwise, be a competent witness, and shall be allowed to testify in his own behalf, and his failure to make such request shall not create a presumption against him. Care must be taken by the court that the accused is not placed on the stand unless he himself requests that he be permitted to testify, otherwise a fatal error is committed. The record must affirmatively show that the statutory request was in fact made. Any comment at any time, especially hostile comment, on the failure of the accused to request that he be allowed to testify in his own behalf is improper. (See arts. 364, 394, and 565.)

334. Compelling accused to criminate himself.—The fifth amendment to the Constitution provides that no person shall be compelled to give any evidence against himself. "The prohibition of the fifth amendment against compelling a man to give evidence against himself is a prohibition of the use of physical or moral compulsion to extort communications from him and not an exclusion of his body as evidence when it is material."

The following are illustrations of what might be required without violating the principle embodied in the fifth amendment:

The admission of testimony as to marks and scars found upon the person of a defendant, in a criminal prosecution, during a forcible examination of him with a view to ascertaining his identity for the purpose of arresting him, is not prohibited.

Upon a trial a question was raised as to the identity of the defendant. One witness testified that he knew the defendant, and knew that he had tatoo marks (a female head and bust) on his right forearm. The court thereupon compelled the defendant, against his objection, to exhibit his arm, in such a manner as to show the marks to the jury.

It follows that it would be appropriate for the court to order the accused to remove his clothing for the purpose of examination by the court or by a surgeon who would later testify as to the results of his examination; and upon refusal to obey the order, the accused might have his clothing removed by force. The accused might likewise be compelled to try on clothing or shoes or place his bare foot in tracks, etc. But, where force would be necessary to compel compliance, it would comport more with the dignity of the court to have a surgeon make the examination out of the presence of the court and testify as to the result of the examination, or to advise the accused as to the purpose of the examination and to warn him that his refusal to obey would be considered as an admission on his part of what was sought to be ascertained by the examination. This conclusion would be quite within legal bounds as to presumption of facts.

But neither the accused nor any other witness can be compelled to manufacture evidence himself, as by writing the name in an alleged forged instrument. Such evidence, obtained under compulsion, is incompetent and should not be received though no objection is made.

335. Testimony of an accomplice.—An accused who is one of two or more persons concerned in an offense is always competent to testify, whether he be charged jointly or separately, and whether he be called for the prosecution or for the defense. He is privileged not to incriminate himself and unless he waives the privilege can not be called. The privilege ceases, however, when his own trial is completed. The convening authority may promise not to prefer charges against one man on consideration of his testifying, but this should only be done when absolutely necessary to prevent the defeat of justice and when the accomplice is a participant in the crime to a minor degree.

The weight to be given testimony of accomplices is for the court to determine. "There is no absolute rule of law preventing conviction on the testimony of accomplices if juries believe them." Such uncorroborated testimony should, however, be viewed with suspicion and examined critically.

336. Member or official prosecutor or recorder as a witness.—A member or official prosecutor or recorder of the court is a competent witness. If required to testify such witness should be the first called, except in the case of the official prosecutor or recorder called as the official custodian of a document. (See art. 285.) Should the president of the court become a witness, the oath or affirmation shall be administered to him by the member next in rank, who shall preside during the progress of his examination. If the recorder become a witness, he shall record his own testimony, unless the employment of a reporter has been authorized. When a member, the recorder, official prosecutor, the accused, or his counsel has completed his testimony, an entry shall be made to the effect that the witness resumed his seat as member, recorder, official prosecutor, accused, or counsel. Should the court be composed of but three members, one of whom is called as a witness, this will not affect the validity of the proceedings, since, in so testifying, the witness does not cease to be a member.

When a member has so testified as a witness he shall not be considered as challenged.

337. Testimony of husband and wife.—At common law neither husband nor wife is competent as a witness against the other, except in a case of bodily injury inflicted by one of them upon the other. The law regards it as essential that marriage should be marked by implicit trust, and that both husband and wife should be free to discuss the most vital matters without fear of injury. The common-law rule has been modified by statute, it being provided that, "In any proceeding * * * in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, the lawful husband or wife of the person accused shall be a competent witness, and may be called, but shall not be compelled to testify in such proceeding * * * without the consent of the husband or wife, as the case may be; and such witness shall not be permitted to testify as to any statement or communication made by either husband or wife to each other, during the existence of the marriage relation, deemed confidential at common law." The rule for Coast Guard courts is summarized:

(*a*) Wife or husband of an accused may testify *on behalf of* the accused without restriction, but when so testifying shall be subject to

cross-examination in the same manner as a defendant testifying at his own request.

(*b*) Wife or husband of an accused may *not* be called to testify *against* the accused without the consent of both accused and witness, unless on a charge of an offense committed by the accused against the witness.

(*c*) Wife or husband of any person may not testify to *confidential communications* of the other, unless the other give consent.

(The last two rules are rules of privilege, and are more fully considered in arts. 363 to 368.)

338. Testimony of counsel.—Testimony of counsel as to matters communicated to him by the accused will not be heard. It does not matter that the counsel does not act as such at the trial; it is enough that he has been consulted as a tentative counsel. If the accused personally agree that such testimony be competent it becomes so. If, however, such communications clearly contemplate the commission of a future crime, as, for example, perjury or subornation of perjury, the testimony will be competent.

339. Testimony of medical officers.—There is no protection by common law to communications between a patient and a physician. It is the duty of medical officers to attend officers and men when sick, to make physical examination of officers, and examine applicants for enlistment, and they may be specially directed to observe an officer or man or specially to examine or attend them; such observations, examination, or attendance would be official and the information acquired would be official. While the ethics of the medical profession forbid them to divulge to unauthorized persons the information thus obtained and the statements thus made to them, such information and statements do not possess the character of privileged communications. If the medical officer, when called as a witness before a court, refuses to testify to such matters, the president of the court should report the facts to the convening authority and recommend that disciplinary measures be taken.

340. Testimony of children.—The admissibility of testimony of children is not regulated by their age, but by their apparent sense and understanding. The court may, in its discretion, receive the testimony of any child, regardless of age, and give it such weight as it may appear to deserve; provided, only that in the opinion of the court the child understands the moral importance of telling the truth, for which purpose the court may examine the child.

341. Testimony of witnesses mentally deficient.—Mental incapacity is a disqualification, but only to a limited extent, as follows: Insanity or intoxication may disqualify, but only to the extent to which they affect the subject of the testimony. For example, a

religious hallucination as to angels saving a man from bullets does not disqualify the person from testifying as to the time of lighting a fire or the persons on duty at a certain post. Intoxication would disqualify only if it were so complete as to render the person senseless at the time of the event to be testified to.

The sanity of a witness having been questioned, the court must judicially determine this fact before permitting the witness to testify. When a witness is objected to on the ground of insanity, there are two usual methods of proving whether or not he is competent to testify, the first being from the testimony of medical authorities who have made a special study of mental diseases, and the second being from the opinions of persons of ordinary intelligence who have been acquainted with and who have had opportunity of observing the party under examination.

342. Witnesses before Coast Guard courts generally competent.—Matters that were once regarded as affecting the competency of witnesses are now treated as bearing only upon their credibility. As a general rule, the exceptions to which appear in the preceding articles, all witnesses capable of so doing are entitled to testify, and it rests with the court in its capacity as jury to decide how much weight is to be given to their testimony.

A presumption always exists in favor of the competency of a witness whose testimony is offered, and the burden of proving the contrary rests on the party objecting. In deciding upon the competency of a witness the court acts in the capacity of a judge, while in determining questions of credibility it acts in the capacity of a jury.

PART VII. ATTENDANCE AND EXAMINATION OF WITNESSES.

1. Attendance of witnesses.

344. Persons amenable to service as witnesses.—All persons in the Coast Guard are amenable to the service of process to appear as witnesses. One who has disobeyed a summons can show as a defense why he should not be tried for contempt that it was impossible for him to appear, or that by reason of illness or otherwise his life would have been endangered; but no duty, except of the most imperative kind, nor any business engagement, is a valid excuse for failure to attend.

345. Summoning witnesses.—The president shall issue requests for the attendance as witnesses of all persons whose testimony is necessary to a trial, whether for the prosecution or the defense; but he shall not summon any witnesses at the expense of the United States.

The written instrument that serves to summon a witness who is in the Coast Guard is termed a *summons;* a witness who is not in the service, a *request.*

346. Same: Witness who is in naval or military service.—When it is desired to summon a witness who is in the naval or military service, the summons shall, whenever possible, be forwarded through official channels. When such a witness is present at the place where the court convenes he is simply notified, verbally or otherwise, through the regular channels, of the time and place he is to appear.

When such a witness is not present where the court is convened and his attendance would involve travel at Government expense, the president shall forward the summons seasonably to the convening authority, stating:

(*a*) The necessity for the testimony of the person to be summoned; that is, a synopsis of the testimony which it is expected the witness will give.

(*b*) Whether the testimony it is expected the witness will give is, in the opinion of the official prosecutor, material and necessary to the ends of justice.

(*c*) Whether the witness is summoned for the prosecution or for the defense.

The above statement should be accompanied by a request that the summons be transmitted to the person named therein for compliance.

In urgent cases, but in none other, a request for the attendance of such witness may be made by telegraph.

A naval or military witness, summoned as above, shall report to the president of the court upon his arrival in obedience to the summons, and it shall be the duty of the president to arrange for Government quarters and subsistence, if available, for such witness, if an enlisted person, during his attendance at the trial.

347. Same: Witnesses as to character or as experts not to be summoned at Government expense.—The general rule is that witnesses will not be summoned at Government expense when it does not appear that any such witness has personal knowledge of the facts at issue before the court, but merely that his testimony is desired either as to character or as an expert.

The best evidence as to the character of an accused is his official record, which is forwarded to the official prosecutor for use in connection with the case.

Under no circumstances will the department approve the summoning from other stations, at Government expense, of officers to give expert testimony, either for the prosecution or the defense, when there are other officers on duty at the place of the trial whose service should render them fully competent to give such testimony.

348. Same: Witnesses for defense.—The accused is, in general, entitled to have all the material witnesses for his defense summoned, except when their testimony would be merely cumulative and evi-

dently add nothing to the strength of his case. As far as possible he should be allowed a full and free defense, as the least denial to him of any proper facility, opportunity, or latitude for it may serve to defeat the ends of justice.

349. List of witnesses.—The official prosecutor shall, prior to the trial, if practicable, call upon the accused for a list of the witnesses he wishes summoned for the defense, and shall at the time furnish him with a list of the witnesses who are to appear against him. It is to be understood, however, that neither party is precluded thereby from calling further witnesses whose attendance may, during the course of the trial, be found necessary to the proper adminintration of justice.

350. The court may direct the summoning of witnesses.—While the court can not legally originate evidence—that is, take the initiative in providing any part of the proofs—yet where, with a view to a more through investigation of the case, it desires to hear certain evidence not introduced by either party, the president may properly summons or request the attendance of witnesses, adjourning for a reasonable period to allow time for the purpose. New testimony thus elicited must, of course, be received subject to cross-examination and rebuttal by the party to whom it is adverse.

2. *Privilege.*

363. Privilege of witness in not answering particular questions.—A witness may be privileged with respect to certain testimony, or there may be certain matters concerning which he may claim the privilege of not testifying. The privilege is personal and may be claimed only by the witness. No one else, not even counsel, can claim it. This privilege should be distinguished from the incompetency attaching to certain testimony as of husband or wife, and of an attorney as set forth in articles 337 and 338. The principal cases of privilege are:

(*a*) *State secrets.*—This class of privilege covers all the departments of the Government, and its immunity rests upon the belief that the public interests would suffer by a disclosure of State affairs. The scope of this class is very extended, and the question of the inclusion of a given matter therein is decided by a consideration of the requirements of public policy with reference to such matter.

(*b*) *Criminating questions.*—All questions whose answers would expose the witness to a criminal prosecution or penal action come under the head of criminating questions. A witness may properly decline to answer a criminating question. If the declination be sustained by the court no inference therefrom or comment thereon is permissible.

(c) *Degrading questions.*—A witness may also properly decline to answer where the inquiry is as to collateral, irrelevant, or immaterial matters on the ground that his answer will have the direct effect of degrading or disgracing him, as, for example, in a case where his answer could have no effect upon the case except to impair his credibility. He may, however, be compelled to answer as to a matter which is material to the issue or trial, notwithstanding the fact that his answer may tend to disgrace him or bring him into disrepute, unless his answer would also tend to incriminate him in addition to degrading him.

364. Same: The accused.—The accused not only has an absolute privilege not to testify, but it must explicitly appear that he waives this privilege before he can be allowed to testify. Having elected to take the stand in his own behalf the accused occupies the same status as any other witness. (See art. 333 as to the competency of the accused as a witness; art. 394 for cross-examination of the accused. The accused is not disqualified because of his presence in court during the examination of all other witnesses, although this may have great influence on the weight to be given his testimony.)

365. Request that witness be required to answer.—The party examining the witness may request the court to require the witness to answer on the ground that the answer would not tend to incriminate him, or would not tend to degrade him, or, admitting that the answer would degrade him, that the matter under inquiry is material to the issue on trial and must be answered, notwithstanding the element of degradation of the witness. If the court sustain the request of the party examining the witness, the witness must answer or be in contempt. If the privilege claimed be on the ground of self-incrimination, and the answer, when made under compulsion, does tend to incriminate the witness the accused can not object or require the court to exclude the evidence on that ground; but such answer can not subsequently be put in evidence in a criminal proceeding against the witness. If the privilege be claimed on the ground of self-degradation, and the answer, when made under compulsion, does tend to degrade the witness the only result is that it may affect the credibility of the witness.

366. Privilege is personal.—The privilege of declining to answer on ground of incrimination or self-degredation is a purely personal one and can be claimed only by the witness himself, and not by the accused, his counsel, or any other person. In proper cases, however, the court may, in its discretion, inform the witness of his rights. The accused can not object to such testimony, and the witness may waive his privilege and testify in spite of any objection coming from the accused, his counsel, or any other person. If the wit-

ness claim this privilege, but is nevertheless required to testify, it is a matter exclusively between the court and the witness. Under such circumstances the accused is in no worse a predicament than if the witness had come forward voluntarily to testify or had failed to avail himself of his privilege.

367. How privilege is claimed.—When a witness wishes to be excused from answering a question he should state in specific terms on what ground privilege is claimed. It is for the court to decide whether or not the privilege should be allowed. The witness should not be required to detail wherein his answer would incriminate or disgrace, but should make clear upon what ground he is basing a refusal to answer. Both the question and the ground of refusal should appear in the record.

368. Rule for deciding whether witness should answer the question when privilege on the ground of self-incrimination is claimed.—To entitle a witness to the privilege of silence, the court must see from the circumstances of the case and the nature of the evidence which the witness is called to give that there is reasonable ground to apprehend danger to the witness from his being compelled to answer. The danger to be apprehended must be real and appreciable, with reference to the ordinary operation of the law in the ordinary course of things. If the witness has been previously tried in connection with the matter on which he claims the privilege, his claim is not valid, the danger having ceased. The danger must not be of an imaginary and unsubstantial character having reference to some barely possible contingency so improbable that no reasonable man would suffer it to influence his conduct. When reasonable apprehension of danger appears, however, then, inasmuch as the witness alone knows the nature of the answer he would give, he alone must decide whether it would criminate him, and after it has been made to appear to the court that a reasonable apprehension of danger really exists, it should not require evidence of the nature of the witness's answer further than his own statement that his answer might tend to criminate him. (See art. 334 for compelling the accused or a witness to criminate himself.)

3. General course of presenting evidence.

371. Order for introduction of evidence.—The proper and usual order and sequence for the introduction of evidence is as follows: First, by the prosecution; second, by the defense; third, rebuttal by the prosecution; fourth, surrebuttal by the defense. The beginning and end of each of these steps shall be noted in the record. The court may, in the interests of justice, allow evidence to be introduced out of the above order and may, for satisfactory cause, allow the prose-

cution or the defense to introduce evidence at any time before arriving at its findings thereon, but it shall not thereafter receive any new evidence. The court may also permit a case once closed by either or both sides to be reopened for the introduction of evidence previously omitted, if the court has not yet arrived at its findings and if convinced that such evidence is so material that its omission would leave the investigation incomplete. In all such cases both parties must be present, and any evidence thus received would be subject to cross-examination and rebuttal by the party to whom it may be adverse. All evidence, whatever its nature, shall be recorded in the proceedings in the order in which it is received by the court.

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

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

373. Surrebuttal.—The defense is accorded an opportunity in the surrebutal to overcome matters brought out in the rebuttal; that is, the defense may here attempt to sustain its original evidence. The evidence here introduced should, in general, be confined to that brought out in the rebuttal.

374. Witnesses examined apart from each other.—Witnesses are examined apart from each other; no witness is allowed to be present during the examination of another. Before the charges and specifications are read to the accused, the president of the court directs all witnesses to withdraw and not to return until they are officially called. At the outset of each day's proceedings the direction to withdraw shall be repeated to all who are cited as witnesses and may chance to be present. Obviously, these instructions do not operate in any case to exclude members, the official prosecutor, recorder, the accused, or his counsel when it is necessary for them to be called as witnesses. When the court has finished with a witness, he shall be directed to withdraw, and a minute shall be entered on the record to the effect that the witness withdraws in order to show that two witnesses are not in court at the same time.

Should a witness inadvertently be present during the examination of another witness, or should he be present even in violation of the court's order, he is not thereby disqualified from testifying, but such fact should be brought out in cross-examination as affecting the credibility of the witness.

375. Objections to witnesses.—Any objection to a witness's competency should be made before he is sworn. Should his incompetency later appear, however, a valid objection should be sustained, or the court, of its own motion, should refuse to hear him further, and order that any testimony he may have already given be expunged from the record. A witness challenged as to competency may be examined relative thereto on oath administered *voir dire* before he is regularly sworn as a witness. (For form of oath see art. 718.)

376. Objections to questions or testimony.—Should objection be made to any propounded question or to the reception of any testimony, the court shall proceed at once to determine the same; and the question or matter objected to, with the decision of the court thereon, shall be recorded in full in the minutes of proceedings.

377. Order for examination of witnesses.—The proper order for the examination of a witness is as follows: First, direct examination by the party who calls him; second, cross-examination by the opposite party; third, redirect examination; fourth, recross-examination. The court may, in the interest of justice, allow further examination by the parties. Any member of the court may put questions to the witness; such questions are subject to objection in the same manner as are questions by parties to the trial. Upon new matter elicited by the examination of the court, the official prosecutor and the accused may further examine the witness.

4. Direct examination.

380. Direct examination or examination in chief.—Testimony is ordinarily given orally in court in the form of answers to questions put to the witnesses by both sides. A witness is first questioned or examined, as it is called, by the side which calls him; such examination being termed his direct examination or examination in chief. This direct examination forms the basis for further examination. But such further examination can not properly be used to extend the scope of the witness's testimony. All facts desired from a witness must be brought out in the direct examination. If additional facts be attempted to be brought out in any subsequent examination of the witness they may be objected to. A witness must always first identify himself, and then he must identify the accused. These preliminary questions are asked by the official prosecutor. The examination is then continued by the side calling the witness. All questions and answers are recorded in full and, as far as possible, in the exact language of the witness. If an objection is made to a question, the reason for the objection will be stated.

381. Identification of accused.—The identity of the accused should be carefully proved, both for the establishment of the court's juris-

diction over him, and also for proof of his actual complicity in the offense where any doubt is raised on this point.

This identification of the accused involves two distinct elements, viz, first, that the person now in court as accused is the same person described in the charges by name, rating, and station; secondly, that the person now in court as accused (irrespective of his name, etc.) is the very person who did the act charged and to which act the witnesses' testimony will refer. The first of these elements is usually proved by witnesses who know the accused and the facts as to his rank and organization, and when necessary by official records or duly authenticated copies. The second element involves the question whether the person now in court (his name, etc., being assumed to be otherwise duly evidenced) was the actual person who took part in the affray or the rape, or made the false pretenses, or did whatever is the offense charged. Whenever this fact is disputed, care must be taken to offer all available evidence that may serve to remove doubt as to identity; for no injustice is more pronounced than that of convicting an innocent person by reason of mistaken identity.

382. Leading questions.—On the examination in chief leading questions are generally improper. A leading question means what its name indicates—one which leads the witness up to the desired answer, i. e., one which is put in such a way as to suggest to the witness the answer which is expected or wanted. There is no particular form which will make a question leading, or will save it from being such. The fact that the question is put so as to require a categorical answer does not necessarily make it leading, though it may do so; nor does the fact that the question is prefaced by "whether or not," so as to avoid a categorical answer, save it from being leading. (A question is not necessarily leading because it may be answered "yes" or "no.")

383. Same: Illustrations.—The question, "State whether or not you, in substance or effect, addressed the defendant as one of those concerned in the transaction," is clearly leading and is also a double question. It was then changed to, "How did you address the defendant in respect to his being one of the persons concerned?" and still held to be leading. The question, "Did you hear the accused say he did not intend to come back?" is leading. The proper form would be, "Did the accused say anything?" If the answer is in the affirmative, add "State what he said." On a knife being introduced into evidence a witness should not be asked on direct examination "Is this the knife you saw the accused stab deceased with?" He should first be asked whether he recognizes the knife, and if he answers that he does, then he may be asked where he saw it before and what was done with it.

384. Same: When allowed.—Leading questions are allowed:

(*a*) To abridge the proceedings the witness may be led at once to points on which he is to testify. The rule as to leading questions is not applicable to that part of the examination of the witness which is purely introductory. For example, in a desertion case where the accused admits that on a certain day at a certain place he was apprehended as a deserter by a policeman, the latter when on the stand may have his attention directed at once to the occasion by such a question as whether at a certain time and place he arrested the accused as a deserter. The witness having answered the question in the affirmative, in the next question he might properly be asked to state the details connected with the arrest. So in a case of disobedience of orders where there is no dispute that the alleged disobedience took place at a certain time and place, and that it involved certain persons, the witness might properly be asked whether he was present at the place where and time when the accused was placed in arrest by a certain officer for not carrying out a certain order. The witness having answered in the affirmative, he may be asked to state all the circumstances.

(*b*) When the witness appears to be hostile to the party calling him or is manifestly unwilling to give evidence.

(*c*) When there is an erroneous statement in the testimony of the witness, evidently caused by want of recollection, which a suggestion may assist, as, for instance, where he misstates a date or an hour.

(*d*) Where, from the nature of the case, the mind of the witness can not be directed to the subject of the inquiry without a particular specification of it, as where he is called to contradict another witness who has testified that the accused made a certain statement on a certain occasion in the hearing of a number of enlisted persons, each of them may be asked whether he heard the accused make the statement.

(*e*) The court may properly permit the asking of leading questions in a criminal case, in the interest of expedition in carrying on the trial, where it is without prejudice to the rights of the defendant.

385. Double questions.—Double questions are questions embodying two or more separate elements or questions. Double questions must not be asked either on direct or cross-examination, since they are always confusing to a witness, frequently leading to misunderstanding and unintentional misstatements by the witness, and since, furthermore—particularly if asked on cross-examination in the form of a leading question to which a direct answer "yes" or "no" may be demanded—a double question may constitute a trap for the witness. Such a question may, in fact, not be susceptible of a categorical answer either "yes" or "no." It will, therefore, never be permitted to be asked. For example, the question "Did you see the accused

leave his quarters with a bundle under his arm?" is, besides being leading, a double question and may not be susceptible of a categorical answer "yes" or "no." It consists really of three questions, viz: (1) Did you see the accused? (2) If so, was he leaving his quarters when you saw him? and (3) If so, did he have a bundle under his arm? Manifestly the witness may have seen the accused at the particular time in question and yet not have seen him leave his quarters and not have seen him with a bundle under his arm; or he may have seen him leave his quarters but without a bundle under his arm, or he may have seen him with a bundle under his arm but not leaving his quarters; or, again, he may have seen him (either leaving his quarters or otherwise) with a bundle, but not under his arm. Each of these various circumstances may very possibly have a material bearing on the case. The injustice of such a question both to the witness and to the accused, and its misleading effect, is apparent from a consideration of the fact that if the witness be required to answer "yes" or "no" to such a question he may, for instance, answer "no," meaning simply that the accused, when he saw him, did not have a bundle under his arm, or perhaps meaning that although he saw the accused with a bundle under his arm, he was not then in the act of leaving his quarters. But the negative answer may be construed as a complete denial of having seen the accused at all. On the other hand, if he should answer "yes" to the question, he might mean simply that he saw the accused at the time in question, or saw him leaving his quarters, whereas his answer would be quite properly construed as meaning that he not only saw him at the time in question, but also in the act of leaving his quarters, and with a bundle, and also that the bundle was under his arm. Such a question must never be permitted to be asked of a witness at any time or under any circumstances.

386. Questions calling for opinion or conclusion of witness should not be allowed.—A witness must state facts and not his opinion as to facts, or, as it is technically termed, he must not testify to conclusions. (For opinion evidence see arts. 321 to 326.) It follows as a general rule that a question calling for the witness's opinion is objectionable.

387. Refreshing recollection.—A witness whose memory fails him on a particular point may be allowed, ordinarily, to refresh his recollection, if able to, by means of memoranda which he may have. If, after consulting the memoranda, he is able to recall a fact and can then testify positively as to such fact from his present recollection—that is to say, if the memoranda stimulate his memory so that he is then able to picture the original fact in his mind and can testify positively as to such fact—he may do so, and it is not necessary that the memoranda should have been made by the witness. In such case

the memoranda are not evidence. It is only the witness's testimony that is evidence, and he testifies independently from his present recollection, although such recollection is *aroused* by the memoranda. For example, a witness may not be able to recall a certain conversation with the accused and others, but, upon being shown a letter written by one of the others concerning the conversation, he may be able to recall the entire transaction and testify about it fully. Of course, his testimony being entirely independent of the letter may be directly contradictory to it.

388. Supplementing recollection.—Memoranda are used in another way—the distinction between the two ways is important—to supplement recollection. In many cases a witness is unable to testify as to a certain fact from his present recollection, but can testify only that he made a memorandum of such fact and that the statement which he made in the memorandum is true, or that he personally knows that a memorandum made by another was truly made. The memorandum must have been made when the matter was fresh in recollection, but the time depends on the circumstances of each case. The memorandum must be identified and is then admissible in evidence. In the majority of cases it is probable that the inspection of a memorandum by a witness does not in fact refresh his recollection so that he can then testify independently of the memorandum. The witness should then merely testify that the memorandum was correct when made. The court should see to it that no attempt is made to use such a paper to impose a false memory on the court under guise of refreshing it.

In any case it is error for a witness to testify from memoranda.

5. Cross-examination.

391. Cross-examination.—"The power of cross-examination is the most efficacious test which the law has devised for the discovery of truth." Greenleaf says, "It is not easy for a witness, who is subjected to this test, to impose on a court or jury; for, however artful the fabrication or falsehood may be, it can not embrace all the circumstances to which a cross-examination may be extended." In general the cross-examination will be limited to matters brought out by the direct examination of the witness, but in the discretion of the court minor exceptions may be made to this rule.

As it is the purpose of the cross-examination to test the credibility of the witness, it is permissible to investigate the situation of the witness with respect to the parties and to the subject of the litigation, his interest, his motives, inclinations, and prejudices, his means of obtaining a correct and certain knowledge of the facts to

which he bears testimony, the manner in which he has used those means, his powers of discernment, memory, and description. Leading questions may be freely used on cross-examination.

While a wide latitude should be allowed in cross-examination, courts should distinguish between the legitimate ends of cross-examination and the mere pointless harassing of a witness and should not permit the former bounds to be passed.

392. Limitations on cross-examination.—The court should not unduly restrict the method of the official prosecutor or counsel in cross-examination but should always preserve its own dignity and decorum by keeping cross-examination within proper bounds. The court should not permit any intimidation, harassment, or browbeating of witnesses.

393. When answer is conclusive.—The answers of a witness to questions which tend to discredit him are conclusive if such questions relate to collateral matters. The inquiry can not be further extended by producing testimony of a contradictory nature. If, however, the false answer is given with reference to a matter relevant to the issue, the cross-examination is by no means concluded.

394. Cross-examination of accused.—An accused person may at his option take the stand as a witness (the authority for this is shown in art. 333), and in so doing he occupies no exceptional status and becomes subject to cross-examination like any other witness. The same rules as to the admissibility of evidence, privilege of the witness, impeaching of his credibility, etc., will apply to him as to any other witness, and the only noticeable difference between his examination and that of other witnesses will be that he will, in general, naturally and properly be exposed to a more searching cross-examination. So far as the latitude of the cross-examination is discretionary with the court, a greater latitude may properly be allowed in his cross-examination than in that of other witnesses; but, like them, he may not be cross-examined beyond the charges on which he was examined in his direct examination, except to test his credibility as a witness. (If an accused takes the stand in his own behalf and is interrogated by his counsel on one charge only, where there are several against him, he can not be legally questioned on cross-examination on the other charges.) The accused having once taken the stand may be recalled, despite his objection, at any time during the proceedings, at the discretion of the court, for the purpose of examination or further cross-examination, to explain matter brought out in his original testimony.

Where the accused testifies in denial or explanation of any specification, the scope of his direct examination is considered to be the whole subject of his guilt or innocence of *that* offense. Any fact

relevant to the issue of his guilt or relevant to his credit as a witness is properly the subject of cross-examination. If the accused fail to take the stand at all, this failure must not be commented on, for such comment would violate his privilege to remain silent. But if he testify and if he fail in such testimony to deny or explain specific facts of an incriminating nature that the evidence of the prosecution tends to establish against him in relation to the charge or charges on which *he has testified*, such failure may not only be commented upon by counsel but may be considered by the court, with all the other circumstances, in reaching their conclusion as to his guilt or innocence. (See art. 333 for the competency of accused as a witness; art. 364 for his privilege.) Where, however, an accused is on trial for a number of offenses and, taking the stand in his own defense, testifies to one or more of them only, he can not be cross-examined as to the others, and no comment can be made or inference drawn from his failure to testify as to the others. If the defense has put the accused's character in evidence (see art. 249) before the accused testifies, the accused may be cross-examined as to his general character.

395. Contradictory statements.—The foundation for impeaching a witness by proof of contradictory statements must be laid on cross-examination. The proper method of proceeding in this is set out in article 416.

6. Redirect and recross-examination and examination by the court.

398. Redirect and recross-examination.—Ordinarily the redirect examination will be confined to matters brought out on the cross-examination, and the recross-examination will be confined to matters brought out on the redirect examination. But in these matters the court, in the interest of truth and justice, should be liberal in relaxing the rule. Whenever a redirect examination is allowed a recross-examination must also be allowed.

399. Examination by the court.—A member may put questions, but since members must be impartial and without prejudice their questions should, in general, be for the purpose of making clear the meaning of testimony already given. The court should not originate evidence. To do so lays it open to animadversion, and should be scrupulously avoided. The court has the right to put questions to a witness at any time, but ought to make no interrogation until the examination by the parties has been completed. It generally happens that any doubt in the minds of the court arising during the examination of a witness is cleared up before the parties finish with him.

A question by a member may be put directly to a witness without submitting it first to the court; if, however, it is objected to and ruled out, it must be recorded as "by a member." If received, it is recorded as "by the court."

400. Further examination of witness to be allowed after examination by the court.—If a witness is examined by the court, an opportunity should be afforded the official prosecutor and the accused, respectively, to reexamine and recross-examine the witness upon new matter brought out by the court's examination; when the witness is excused the record will be made to state affirmatively that neither the court, the official prosecutor, nor the accused (counsel) had any further questions to ask the witness. If any step in the examination of a witness is omitted by reason of the fact that the party whose turn it is to examine does not desire to ask any questions, the record must, by a suitable entry, show that such opportunity was afforded; thus, "The accused did not desire to cross-examine," etc.

7. Rules peculiar to Coast Guard courts and boards.

403. Questions to witness to be in writing.—Questions to be propounded to a witness shall be reduced to writing, except in cases where the court has a competent stenographer as reporter.

404. Parties and witnesses before board of inquiry.—Inasmuch as the testimony given by witnesses before boards of inquiry may, under certain conditions (see arts. 314 and 315), be used against such witnesses or by or against others in subsequent trials by courts, it is important that boards of inquiry should fully understand the statutory powers, restrictions, and safeguards which surround the production of evidence in cases which they are called upon to investigate.

While a board of inquiry has the same powers as a general court with reference to the attendance of witnesses, contempts, taking testimony under oath, etc., at the same time defendants and witnesses before boards of inquiry have all the rights accorded by law to parties and witnesses before general courts, principal among these being the right of a defendant to be represented by counsel, to cross-examine witnesses, to introduce evidence, and to be privileged from testifying except at his own request, and of witnesses to decline answering any question which may tend to incriminate or degrade them.

While it is not legally necessary that defendants before a board of inquiry should be warned that what they say may be used against them (see art. 314), it is desirable that in practice this be done and that they be further informed of their rights, particularly when they are without counsel.

405. Authority of Coast Guard courts to punish contempts.—Coast Guard courts have no authority to punish contempts. In such cases the president of the court shall prefer charges against the person in contempt.

406. The president may caution a witness.—This caution may be given at the request of a member, the official prosecutor, any party to the trial, or on the president's own initiative.

407. Procedure when witness is charged with contempt.—When a witness is charged with contempt, the regular business of the court should be suspended, and he should be given opportunity to reply. If the reply is satisfactory, the proceedings for contempt may be ended. A witness can not, however, purge himself of contempt by insisting that his language or behavior was proper. The testimony of a witness who has been adjudged guilty of contempt may be continued.

408. Verification of testimony.—The recorded testimony of a witness shall be read to or by him, in order that he may verify, correct, or amend it, only upon direction of the president of the court, when such a request is made by the official prosecutor, recorder, any member of the court, accused, or counsel. If it has been directed by the president of the court that the testimony of a witness be read to or by him, in order that he may verify, correct, or amend it, and it is desirable, the official prosecutor or recorder may request the court to permit the witness to report at a subsequent date in order to correct or verify his testimony. If the correction or amendment is material, the witness may be further examined on the subject matter affected by the correction.

409. Manner of correcting testimony.—When a witness has been directed to verify his testimony in accordance with the preceding article this may be accomplished in either of two ways: First, the witness may be present during the reading of so much of the record as contains his testimony and, at the conclusion of such reading, make necessary changes or verify it; or, second, he may be furnished with so much of the record or a copy thereof as contains his testimony, to be read over by him out of court, after which he is called before the court to correct, amend, or verify it. The recorder may correct obvious clerical errors out of court before the witness is called upon to verify his testimony. (See art. 673.)

410. Witness shall be warned not to converse upon matters pertaining to the trial.—The object of the examination of witnesses, and the object of all the various rules of evidence covering such examination, is to present to the court testimony, given under oath, covering all pertinent facts relating to the case which are within the personal knowledge of each witness. When the court has all of the testimony

of the various witnesses concerning matters in their own personal knowledge before it, it can then, taking all the evidence into consideration, arrive at its finding.

The reason that no witness is permitted in court during the examination of another witness is in order to prevent either the deliberate or unconscious coloring of the testimony of any witness, inasmuch as it is considered essential to the ends of justice that each witness testify truthfully and in accordance with his own recollection of events. For exactly these same reasons it is highly undesirable and improper for witnesses to an occurrence which may probably be the subject of judicial investigation to converse with each other concerning the testimony which they would give should they be called as witnesses, or, having testified, to disclose to persons not present the testimony which they gave, or to converse with anybody, including those present in the court room, concerning the details of the testimony given by them. This prohibition, of course, is not intended to prevent legitimate conversations between any persons officially interested in the case and bona fide witnesses, but it is intended to prevent any conversations with any persons whatever which will influence any testimony, directly or indirectly, which is to be given before the court.

The following rules are therefore laid down in regard to warning witnesses to refrain from discussing matters pertaining to the trial:

(*a*) It is competent for the official prosecutor or the counsel for the accused to warn prospective witnesses against conversations as to the details of the case with any person other than a party to the trial.

(*b*) The court should especially direct any witness who has testified in a case to refrain from disclosing, either directly or indirectly, any part of the testimony he has given, and from conversing with any person whatsoever concerning the details of his testimony. This warning, however, will not preclude the official prosecutor or counsel for the accused from legitimate conversation with the witness, neither shall it be given to a member of the court, the official prosecutor, the accused, nor the counsel, should they become witnesses.

(*c*) The court may also call all the witnesses in the case and instruct them not to converse with any person, other than the parties to the trial, concerning any feature of the case whatsoever, and not to allow any witness who has testified to communicate in any manner anything to them concerning testimony given on the stand.

(*d*) In exceptional cases the court may take the necessary steps to segregate the witnesses, either before or during the trial, in order to prevent intercommunication, and it may require that all communication between a witness who has testified, or a prospective witness,

and counsel, official prosecutor, or any other party, be in the presence of a provost marshal.

In brief, while in many cases of a routine nature it is not considered necessary to take special steps to safeguard the testimony, the court has full authority at any time to take such steps as may be necessary to insure the inviolability and the uncolored veracity of the testimony which is to be given.

Instruction concerning the inviolability of testimony and the impropriety of conversing on such matters should be given to every person in the service, and it should be impressed upon him that, whether he receives special warning or not, it is at all times improper to converse outside of court upon the details of the testimony he has given, or about any part of the testimony he will give if called upon the stand, unless directed so to do by parties to the trial, or other proper authority.

8. Credibility and impeachment of a witness.

415. Impeachment of a witness.—The testimony of a witness may be impeached: (1) By disproving the facts testified to by him; (2) by proof of contradictory statements previously made by him as to matters relevant to his testimony and to the case; and (3) by attacking the witness's general credibility.

416. Impeachment by proof of contradictory statements.—Evidence looking toward the impeachment of a witness by proof of contradictory statements previously made by him is competent only in respect to matters that are relevant and material to the charge. Before contradictory statements of a witness can be proved against him his attention must be called with as much certainty as possible to the time, place, attending circumstances, and persons to whom the statements have been made. If such statements were made in writing, the same should be shown the witness for identification. It is not sufficient to ask a witness in general whether he did not at some time make a different statement; but, in order to prepare the way for impeaching evidence, it is necessary first to ask the witness upon cross-examination whether he did not, on a specified occasion, make a diverse statement (specifying it) to a person named. When the impeachment is to be made by the testimony of other witnesses, care must be taken to lay the groundwork, as indicated above, for subsequent impeachment while the witness to be impeached is on the stand. Otherwise it would be necessary to recall such witness for this purpose before impeaching testimony could be admitted.

417. What credibility consists in.—The credibility of a witness is his worthiness of belief, and is determined by his character, by the

acuteness of his powers of observation, the accuracy and retentiveness of his memory, by his general manner in giving evidence, his relation to the matter in issue, his appearance and deportment, prejudices, by his general reputation for truth and veracity in the community where he lives, by comparison of his testimony with other statements made by him out of court, by comparison of his testimony with that of others, etc.

418. Attacking general credibility of a witness.—The general credibility of a witness may be attacked in cross-examination, or by evidence tending to show his general bad reputation as to veracity. The fact that a witness has been convicted of a crime involving moral turpitude, particularly if involving his veracity, as falsehood or fraudulent enlistment, may also be brought out as bearing on his credibility. There must have been a conviction by a court. Evidence of mere accusation or indictment is inadmissible. The state of the feelings of the witness and his relationship to the parties may always be proved for the consideration of the court. In all cases it is for the court to determine the weight to be given a particular witness.

419. Proof of character by general reputation.—Where impeachment of a witness for bad character is undertaken, it must be limited to proof of his general *reputation* for truth and veracity in the community in which he lives or pursues his ordinary vocation. For a military man this would mean the reputation that he bore among his shipmates, at his station, or, if stationed at or near a town, among the residents of the town. Personal opinion as to his *character* is not admissible, except that a witness may, after testifying that he knows the *reputation* of the person in question as to truth and veracity in the community in which he resides or pursues his ordinary vocation, and that such reputation is bad, be further asked whether or not from his knowledge of such *reputation* he would believe the person in question on oath.

420. A party may not impeach his own witness—Exceptions.—The general rule is that a party is not permitted to impeach the credibility of his own witness, but this does not mean that he can not introduce other testimony as to a particular fact which is directly contradictory to the testimony of such witness. Exceptions to the general rule are: (1) When the witness appears to be hostile to the party that calls him; (2) when a party is under the necessity of calling a particular person as a witness; (3) when the party that calls a witness is unduly surprised at the evidence elicited.

PART VIII. WEIGHING EVIDENCE — JUDICIAL NOTICE — PRESUMPTIONS — EVIDENCE IN AGGRAVATION OR EXTENUATION.

1. Weighing evidence.

423. What evidence may be considered.—The oath taken by members of general and minor courts requires them to try and determine "according to the evidence" the case depending; that taken by the members of a board of inquiry, to examine and inquire "according to the evidence" the matter before them. A deck court and boards not required to take such an oath will also determine the matter before them solely on the evidence in the case. The evidence thus referred to, according to which the court must decide the case, means all the matters of fact which the court permits to be introduced, or of which it takes judicial notice, with a view to prove or disprove the charges. Every item of this evidence must be introduced in open court, and it would be seriously irregular and improper for any member of the court to convey to other members, or to consider himself, any personal information that he possessed as to the merits of the case or the character of the accused without stating it in open court. But while their knowledge of the facts must come to them from the evidence, the members are expected to utilize their common sense, their knowledge of human nature, and the ways of the world in weighing the evidence and arriving at a finding. In the light of all the circumstances of the case they should consider the inherent probability or improbability of the evidence given by the several witnesses, and with this in mind the court may properly believe one witness and disbelieve several whose testimony is in conflict with that of the one.

Members of courts and boards, in their capacity as judges, must pass upon the admissibility of evidence; and, as jurors, weigh it.

424. Weighing evidence.—In weighing evidence the court may consider: (1) The witness's manner of testifying; (2) his intelligence; (3) his means and opportunities of knowing the facts to which he testifies; (4) the nature of the facts to which he testifies; (5) the probability or improbability of his testimony; (6) his interest or want of interest; (7) his personal credibility, so far as it legitimately appears upon the trial; (8) the number of witnesses, subject to the remarks in the following article; (9) all the facts and circumstances of the case. "Too close agreement between the testimony of witnesses as to a rather involved and complicated occurrence is to be regarded with suspicion. It appears suspicious that the testimony should agree so closely on what at the time would appear to have been a rather unimportant part of an operation, and should differ so widely on points which would appear to have been of more importance."

425. Weight of evidence as affected by the number of witnesses.—The relative number of witnesses for the prosecution and the defense is by no means decisive in general, as the relative weight of the evidence depends much less upon the number of witnesses than upon their character, their relation to the case, and the circumstances under which their testimony is given. The "weight of evidence" is not a question of mathematics, but depends on its effect in inducing belief. It often happens that one witness, standing uncorroborated, may tell a story so natural and reasonable in its character and in a manner so sincere and honest as to command belief, although several witnesses of apparently equal respectability may contradict him. The question for the court is not on which side are the witnesses the more numerous, but what evidence does it believe.

426. Weight to be given testimony of the accused.—The fact that a witness is the accused does not condemn him as unworthy of belief, but does create in him an interest greater than that in any other witness, and to that extent affects the question of credibility. It is a general rule that the relations of a witness to the matter to be decided are legitimate subjects of consideration in respect to the weight to be given to his testimony. In every case the testimony of an accused should be considered in connection with all the evidence adduced and given such weight as the court may believe it merits.

427. Weight of board of inquiry proceedings as evidence.—The weight to be attached by the court to proceedings of a board of inquiry which have been received in evidence is a matter for determination by the court, the same as in the case of any other evidence. In this connection, however, the following is quoted from the case of Mullan *v.* United States:

"The evidence adduced before a court [board] of inquiry is surrounded by all the solemnities of evidence taken in a court of record or before a court-martial. The accused is personally present and represented by counsel. The right of cross-examination prevails and every legal inhibition as to its competency or relevancy can be raised at the hearing. While it is a court of inferior jurisdiction and its findings usually advisory, its proceedings are not in anywise summary. The evidence adduced and preserved before courts [boards] of inquiry is superior in every respect to depositions. An accused thus arraigned can not plead ignorance of the testimony against him or hope by subsequent examination of the same witnesses, in the same cause, between the same parties, to materially change their testimony."

428. Cumulative evidence unnecessary.—When a fact has been sufficiently established, it is unnecessary to consume the time of the

court by the introduction of additional evidence which is merely cumulative, as such carries no additional weight.

2. Judicial notice.

430. Judicial notice.—The evidence introduced in the trial is supplemented by facts of which the court takes judicial notice; that is, by facts which the court knows to be true without any evidence to prove them. Courts should take judicial notice of: (*a*) Facts forming part of the common knowledge of every person of ordinary understanding and intelligence, such as qualities and properties of matter; well-known scientific, historical, physiological, and geographical facts; time, days, and dates; the composition and uses of articles in common use; the character of a weapon as deadly or not; nature of familiar games and terminology thereof; existence, appearance, and value of money; well-known facts as to the characteristics of animals in general but not of a particular animal; language, words and phrases, well-known slang expressions, and abbreviations. (*b*) Matters which are so easily ascertainable in authentic form that the court may readily inform itself by reference to some authentic, accessible source of information, such as the name of the present United States ambassador to England; the time of sunrise on a given day from the Nautical Almanac, etc. (*c*) Matters which the court is bound to know as a part of its own special duty and function, such as the United States Constitution, treaties, and statutes; Coast Guard regulations and general orders; the organization of the Coast Guard, Coast Guard divisions and districts, and the names of officers connected therewith in the higher positions; prices of articles furnished by the Government when published in general orders; official drill books, etc.

Matters of which courts may take judicial notice need neither be charged nor proved. Where the court entertains any doubt as to the propriety of taking judicial notice of a fact, it should require it to be proved like any other fact.

A court may not take judicial notice of a foreign law, the existence of such law being a question of fact which must be proved by competent evidence the same as any other fact—i. e., the purport or the actual wording of the law must be introduced into the evidence—and it must be further shown that the law or regulation was in force at the time when the alleged act in violation thereof took place.

The proper way to have the court take judicial notice of a fact not carried in mind by all intelligent men is for the party desiring it to request that the court take judicial notice, for example, of section

87 of the Federal Penal Code, and to furnish the court at the time with an official or otherwise trustworthy copy thereof.

3. Presumptions.

432. Presumptions.—The evidence introduced in a case is also sometimes supplemented by presumptions. A presumption is a rule of law annexing to certain evidential facts a legal significance. Such presumptions are of two kinds, according to the legal significance attached, namely, (*a*) *rebuttable* presumptions and (*b*) *conclusive* presumptions.

433. Same: Rebuttable.—A rebuttable presumption is an assumption made by law that an inference of fact is prima facie correct. This presumption places the burden of rebuttal upon the party against whom it operates. In the absence of evidence to the contrary the law presumes that:

(*a*) A person owns the property which is in his possession.

(*b*) A person between the ages of 7 and 14 is incapable of entertaining criminal intent and, therefore, incapable of committing crime.

(*c*) A person is sane.

(*d*) A promissory note has been issued on valuable consideration.

(*e*) There is identity of person from identity of name (depending upon the circumstances).

(*f*) When an instrument is more than 30 years old the party whose signature appears thereon duly signed it.

(*g*) A person who has not been heard from in seven years is dead.

(*h*) A letter duly directed and mailed was received in the regular course of the mail.

(*i*) Official duty has been regularly performed.

(*j*) When a man and woman have lived together as husband and wife and have been commonly reputed as such they have been properly married.

(*k*) A child born of a married woman during wedlock is legitimate.

(*l*) An unlawful act was done with unlawful intent.

(*m*) A publication purporting to have been printed or published by public authority was so printed or published.

(*n*) A publication purporting to contain reports of cases adjudged in judicial tribunals of the place where published contains correct reports of such cases.

434. Same: Conclusive.—A conclusive presumption is an assumption made by law that an inference of fact is conclusively correct. It forbids of any evidence being introduced to the contrary. The law, for example, conclusively presumes that a child under 7 years of

age is incompetent to commit crime. Strictly speaking, presumptions of this class are not presumptions at all but matters of substantive law. As such they do not belong to the subject of evidence.

4. Evidence in aggravation or extenuation.

436. Plea of guilty does not exclude evidence for the prosecution.—A plea of guilty does not necessarily exclude evidence for the prosecution. The court has discretionary power as to the punishment to be awarded. It is proper that it should have full knowledge of all the circumstances attending the offense. The reviewing authority is also entitled to this knowledge, and to this end it is proper for the court to take evidence after a plea of guilty, unless the facts are so fully set forth in the specification as to show all the circumstances of mitigation or aggravation. Where the official prosecutor has knowledge that the offense as actually committed was of a more grave nature than appears merely on the face of the specification it is his duty to offer such evidence.

437. Accused may cross-examine.—When evidence of this character is introduced after a plea of guilty, the accused has the same right to cross-examine the witnesses and to offer evidence in rebuttal as though he had plead not guilty.

438. Plea of guilty does not exclude evidence for the defense.—The accused may offer evidence in extenuation of an offense to which he has plead guilty. Such evidence, however, must not go to controvert any element of the offense specified, as it would then be inconsistent with the plea, and the latter should be changed. The motive actuating the commission of an offense may properly be shown in extenuation. (See art. 250 as to character evidence in mitigation.)

439. Official prosecutor may cross-examine.—The official prosecutor has the same right to cross-examine witnesses in extenuation as the accused has to cross-examine those in aggravation.

CHAPTER VII.

INSTRUCTIONS FOR COURTS.

PART I. JURISDICTION.

PART II. PRELIMINARY INVESTIGATION, ARREST AND SUSPENSION, AND CONFINEMENT BEFORE TRIAL.

PART III. PROCEDURE PRIOR TO TRIAL.

PART IV. ORGANIZATION.

PART V. PROCEDURE DURING TRIAL.

PART VI. FINDINGS—RECORD OF PREVIOUS CONVICTIONS—SENTENCE—RECOMMENDATION TO CLEMENCY.

PART VII. LIMITATIONS OF PUNISHMENT.

PART VIII. PROCEDURE ON REVISION.

PART IX. ACTION BY REVIEWING AUTHORITY.

PART X. RECORD OF PROCEEDINGS.

PART I. JURISDICTION.

451. Jurisdiction of a court.—The jurisdiction of a particular court is the legal power, right, or authority of such court to hear and determine cases legally referred to it and to adjudge sentences within prescribed limitations.

452. Jurisdiction of Coast Guard courts.—As Coast Guard courts are courts of limited jurisdiction, their records must show affirmatively that they have authority to hear and determine cases coming before them for trial. A particular court has authority to try men specifically ordered tried by it, and has no authority to try a man ordered tried before another court. The jurisdiction of such courts is statu-

tory and is limited to offenses which are provided for by or are within the purview of enactments of Congress. (Act May 26, 1906; 34 Stats. 200.) The jurisdiction thus conferred is exclusively criminal in character and gives no authority for adjudging damages for personal injuries or private wrongs. It is solely for the purpose of the maintenance of Coast Guard discipline. In order that a Coast Guard court may conduct a legal trial and adjudge a valid sentence, it is necessary that the jurisdiction of such court be established.

453. Conditions necessary to show jurisdiction.—The following are necessary conditions to the jurisdiction of every Coast Guard court:

(*a*) It must be convened by an officer duly empowered to do so.

(*b*) It must be legally constituted; that is, it must be composed of members authorized by statute to sit upon such court.

(*c*) There must be jurisdiction as regards (1) place, (2) time, (3) person, (4) offense.

454. Same: Convened by an officer empowered to do so.—The officers who are empowered to convene a general court are named in article 22. Where an officer who is not authorized by law, but specially authorized by the Secretary of the Treasury to convene a court, does so, the precept must cite the authorization in order to show affirmatively the jurisdiction of the court. No other than the Secretary of the Treasury can give such authority.

In the case of a minor court, the court must be convened as laid down in article 29. The precept and the charge and specification must both be signed by the commanding officer of the unit to which the accused is attached at the time of trial or by the commandant. This holds true although the accused be but temporarily attached to the unit.

455. Same: Legally constituted.—The officers who may be members of a court are named in article 32. There is no requirement of law that the official prosecutor or recorder be an officer or even a person in the Coast Guard. A retired officer may be ordered as a member of a court and it need not appear specifically on the record that he had been ordered to active duty.

456. Same: Jurisdiction as to place.—The jurisdiction of a Coast Guard court extends not only to every part of the United States but also covers all offenses of which it is authorized to take cognizance committed by persons in the Coast Guard, whether within or beyond such territorial limits.

But when the place is necessary to make an offense, as for instance, having a narcotic aboard ship in violation of article 1759, Coast Guard Regulations, 1923, the place must be alleged in order to give jurisdiction to the court.

457. Same: Jurisdiction as to time.—As courts do not depend upon a state of war for their jurisdiction, the jurisdiction of Coast Guard courts is restricted in point of time only by the operation of the statutes of limitation.

458. Same: Jurisdiction as to persons.—All commissioned officers, cadets, warrant officers, and enlisted persons in the Coast Guard are subject to the jurisdiction of Coast Guard courts.

A de facto enlisted person is subject to the jurisdiction of a Coast Guard court. A fraudulent enlistment is still an enlistment, and a person so enlisting may be tried by a court. But where the person at the time of his enlistment was under an absolute disability to enlist, that is to say, was under the age of 14 years, or was insane or intoxicated, it appears by a recent decision that he can not be tried for desertion, nor can he be tried for fraudulent enlistment if he received no pay or allowances.

459. Same: When jurisdiction over persons terminates.—The jurisdiction of a Coast Guard court over officers, cadets, and enlisted persons ordinarily ends when they become regularly separated from the service by acceptance of resignation or discharge. Discharge obtained by fraud does not oust the jurisdiction of a court. The mere expiration of the period of enlistment of an enlisted person, without the concurrence of any other circumstances whatsoever, does not operate to dissolve his status and does not of itself relieve him of liability to military law for offenses committed during the period of enlistment. Discharge by expiration of enlistment does not take effect, notwithstanding delivery of the discharge certificate, until midnight of the last day of service. Discharge at any other time or for any other cause takes effect on delivery of the certificate. An officer dropped from the rolls by order of the President for absence without leave or for other cause, can not thereafter be tried by Coast Guard court, he having by this act become fully separated from the service and become a civilian.

The general rule is subject to the following exception:

If any person, being guilty of any of the offenses of fraud, embezzlement, etc., against the United States, while in the Coast Guard of the United States, receives his discharge or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a Coast Guard court in the same manner and to the same extent as if he had not received such discharge nor been dismissed.

460. Same: Jurisdiction as to offenses.—As Coast Guard courts are courts of statutory jurisdiction, statutory authority must be found for offenses chargeable before such courts. Such authority is contained in the act of May 26, 1906; 34 Stats. 200.

461. Concurrent jurisdiction: Same act may be an offense both against Coast Guard law and State or Foreign law.—Coast Guard courts have exclusive jurisdiction to try offenders for acts constituting offenses against Coast Guard law only; they also have authority to try offenders for certain acts which, besides constituting offenses against Coast Guard law, are also civil crimes of which civil courts may take cognizance. In such cases the same act may be an offense both against Coast Guard law and against a State or foreign law if committed within the jurisdiction of a State or foreign Government. Therefore, when such offender has been brought to trial in a State or foreign court, he may, nevertheless, thereafter be brought to trial by Coast Guard court notwithstanding his conviction and punishment or his acquittal by such civil court, and vice versa.

462. Same: Same act not an offense both against Coast Guard law and Federal civil law.—When an act, prohibited both by Coast Guard law and the civil law of the Federal Government, is committed within Federal jurisdiction, and the offender is tried either by a Coast Guard court or a Federal civil court, both of which derive their jurisdiction from the same source—the Federal Government—then the same act constitutes but one offense, namely, an offense against the United States, and trial by either is a bar to trial by the other on the ground of former jeopardy.

463. Appellate jurisdiction.—When a Coast Guard court is lawfully constituted, has jurisdiction of the person and of the offense of an accused, and the sentence imposed is a legal one, civil courts are without power to review its proceedings. When the proceedings, findings, and sentence in such case have been approved by the Secretary of the Treasury, such approval is final and there is no other tribunal to which an appeal can be taken. But when a Coast Guard court is not legally constituted, is without jurisdiction, or adjudges an illegal sentence, its proceedings may be attacked in the proper Federal civil court either by means of a writ of habeas corpus where there is unlawful restraint, or, in the case of illegal dismissal, by bringing suit for pay thereby withheld.

464. Jurisdiction can not be divested by act of accused.—A Coast Guard court having once duly assumed jurisdiction of a case can not, by any wrongful act of the accused, be ousted of its authority or discharged from its duty to proceed fully to try and determine according to law and its oath. Thus the fact that, after arraignment and during the trial, the accused has escaped from military custody furnishes no ground for not proceeding to a finding, and, in the event of conviction to a sentence, in the case; and the court may and should find and sentence as in any other case. During such

absence it is proper for his counsel to continue to represent him in all respects as though present.

PART II. PRELIMINARY INVESTIGATION, ARREST AND SUSPENSION, AND CONFINEMENT BEFORE TRIAL.

470. Preliminary investigation, arrest and suspension, and confinement before trial.—This is dealt with in Chapter XIII, Coast Guard Regulations, 1923 (arts. 1701 to 1733).

471. Same: Note to articles 1722 and 1723, Coast Guard Regulations.—Articles 1722 and 1723 of the regulations reguire the commanding officer of the accused to call upon the latter for such counter statement or explanation as he may wish to make, and for a list of his witnesses, and provides that if the accused does not desire to submit a statement he shall set forth that fact in writing. It is to be noted in connection with the above that a commanding officer can not legally compel any subordinate under his command to make a statement relative to accusations against such subordinate. Thus, the right of silence or refusal to criminate one's self is accorded to the person whose conduct is the subject of preliminary investigation as well as to the witness or accused at a trial.

The accused should always be warned before making a statement that anything he says therein may be used against him.

472. Same: Two arrests provided for.—Article 1725 of the regulations states that in general the accused shall not be placed under arrest until just prior to trial, except when it may be advisable as a precaution against his escape or to enable him to prepare his defense or when necessary in the interests of good order and discipline. The first of these is arrest for trial; the second merely preliminary. Article 1730 of the regulations provides that when trial has been decided upon the accused shall, as soon as practicable, be furnished with a copy of the charges and specifications, and at the same time be placed formally under arrest for trial. This final placing under arrest for trial is necessary although the accused be already under preliminary arrest.

473. Same: Provisions not to apply to persons under arrest for trial.—Persons under arrest for trial are presumed to be innocent. Each individual case must be judged on its merits, and the confinement should be no more rigorous then the circumstances require. A member of the Coast Guard personnel held awaiting trial is to be given every opportunity consistent with his safe detention to communicate with his counsel and to prepare his defense.

474. Report to be made by commanding officer of person recommended tried by general court.—When, after the careful inquiry required of the commanding officer by article 1722 of the regulations, the

commanding officer decides that the circumstances require trial by general court, he shall submit to the Secretary of the Treasury, or such superior officer as may be authorized to convene the general court, the statements, etc., called for by articles 1722 and 1723 of the regulations, together with specimen charges and specifications covering the offenses for which he recommends trial, and in the case of an enlisted person a certified transcript of his service record, including therein date of birth and of enlistment, a statement of accounts, and a statement of the medical officer as to whether or not confinement would be injurious to his health.

PART III. PROCEDURE PRIOR TO TRIAL.

477. The precept.—The precept is the order convening the court. It is signed by the convening authority and addressed to the president of the court. It specifies the time and place of meeting and recites the composition of the court. Supplementary to the precept, individual orders are issued to the officers named therein directing them to perform the duties set forth in the precept.

It is incumbent upon an officer having official knowledge of his having been named in a precept convening a court to report to the president or senior member of said court for that duty even though he may not have received specific orders so directing. The latter, in the case of a general court, are usually made out by the Commandant of the Coast Guard, and not by the convening authority. Such are not orders authorizing an officer to sit upon the court, but for him to report to the president thereof for that purpose; the precept or its modifications signed by the proper authority convening the court is the document authorizing an officer to take part in the proceedings thereof. If the convening authority desires to authorize the court to adjourn over holidays, the precept should specifically state that such authority has been granted.

It is obvious that the precept must have been drawn before the order for trial and the reference of the charges and specifications to the court, as otherwise the latter is issued to an officer nonexistent. Care should consequently be taken that the precept is not dated later than the order and reference. (See art. 452.)

478. Personnel of court.—No officer should be named as a member against whom either the official prosecutor or the accused can reasonably object when called upon to exercise the privilege of challenge.

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

the court. It is undesirable to change the membership of a court during the progress of a trial.

480. Same: May be made by signal.—Changes in the composition of, or instructions to, Coast Guard courts may be made by dispatch, but the dispatch shall be followed by a written confirmation signed by the convening authority. When so made, if touching on the court's jurisdiction, the dispatch shall be signed with the name of the convening authority and his proper title.

481. Appointment of official prosecutor.—When it is decided to assemble a general court, the convening authority will, if practicable, select a competent commissioned officer, who shall, if possible, not be liable to summons as a material witness in the case, to perform the duties of official prosecutor, and shall name him as such in the order convening the court. Similarly in the case of the minor court, a commissioned or warrant officer (a warrant officer can not serve as a member, however) shall be named as recorder; and in the case of a deck court a competent enlisted person. The official prosecutor or recorder is in his military character responsible for the proper discharge of his duty to the convening authority.

482. Duties of official prosecutor or recorder before trial.—When the official prosecutor, recorder, or deck court officer is notified that a case is to be tried before the court of which he is such, he should be furnished with such papers and instructions as are considered necessary for his guidance. The record of proceedings of a board of inquiry in the case, if any has been held, must be transmitted to him, and he shall examine it, to the end that he may, if practicable, have the president summons all the necessary witnesses. He should question such persons as the papers in his possession indicate have any knowledge of the facts with a view to obtaining all necessary evidence to sustain the charges and specifications.

It is the duty of the official prosecutor or recorder to ascertain that the accused has received a true copy of the charges and specifications preferred against him and when the same was received. He shall critically examine the charges and specifications in order that, prior to arraignment, he may advise the convening authority of any technical inaccuracies that he may discover.

Before the court assembles the official prosecutor or recorder should also see that a suitable place is provided for the sessions of the court, and that it is supplied with writing materials for the use of the members. He should request the president to summons the necessary witnesses for the prosecution and obtain from the accused a list of his necessary witnesses and request that they be summoned. He should make a preliminary examination of the witnesses for the prosecution, and, as far as possible, systematize his plans for conduct-

ing the case. Prior to the trial he shall, for the convenience of the court, place upon the table several copies of the charges and specifications on which the accused is to be tried. The official prosecutor or recorder should confer with the accused as soon as practicable after the latter has received a copy of the charges and specifications. He should scrupulously avoid even the slightest suggestion to the accused that he plead guilty to anything charged against him. If he become apprised of facts constituting a defense he must advise the accused to plead not guilty. He should inform the accused that he is entitled to counsel; that he may have a reasonable time in which to prepare his defense; and of his rights in regard to having witnesses summoned for the defense. The official prosecutor or recorder should inform the accused as to the probable witnesses to be called for the prosecution, although it is unnecessary to inform him as to the testimony expected from them. In a large majority of cases the accused will not know whether he wants or needs counsel. In that event the official prosecutor or recorder must explain to him the general duties of counsel for the defense. If in discussing the case with the accused it develops that he might have any good defense whatever, discussion of the merits of the case should be terminated at once and the accused advised to secure counsel. Whenever an accused has secured counsel all negotiations by the official prosecutor or recorder must be conducted through counsel. (See art. 489.)

483. Same: He shall not try case out of court.—The official prosecutor or recorder shall not usurp the functions of the court by weighing evidence outside of court and advising the court to accept a plea of guilty in a less degree than charged; or by weighing the evidence in the case as shown by the original papers and withholding evidence which should be submitted to the court for its consideration. So far as applicable a deck court officer shall also be guided by the foregoing provisions, and should carefully safeguard the right of the accused to be confronted by and to cross-examine the witnesess against him.

484. Same: To report delays in trials.—The official prosecutor or recorder shall report to the convening authority all cases, with the reasons for the delay, in which the accused is not brought to trial within five days after the charges and specifications have been received by the official prosecutor or recorder. This shall never be construed, however, as authority unnecessarily to delay commencing the trial.

485. Accused entitled to counsel.—The accused is entitled to counsel as a right, and the court can not properly deny him the assistance of a professional or other adviser. Enlisted persons to be tried shall be particularly advised of their rights in the premises, and

should be represented by counsel, if practicable, *unless they explicitly state in open court that they do not desire such assistance.* Should the accused state that he does not desire counsel he shall be informed by the court that counsel will be assigned him should he so desire, and he shall be advised to consult counsel before deciding to proceed with the case without counsel. A statement that this section has been complied with shall be entered upon the record of proceedings. It should be borne in mind, however, that the convening authority has no power to force counsel upon an accused unless the accused is mentally incompetent and thereby unable to look after his own interests. In a Navy case the accused stated that he desired counsel. The record then recited "the matter was referred to the convening authority by telephone, who denied the request of the accused for counsel on the ground that they have no officer available for the purpose." The Navy Department held that it is the constitutional right of an accused being tried before a criminal court to have the assistance of counsel, and Coast Guard courts, though not bound by the letter, are within the spirit of this provision. Only in extreme cases may this right be denied an accused without committing a fatal error. If the right is denied it certainly devolves more than ever upon the president to protect the interests of the accused. In the case in question a fatal error was held to have been committed by denying counsel requested.

486. Same: Officer detailed as counsel.—When the accused before a general court has no legal adviser, the convening authority shall, if the accused so requests, detail a suitable commissioned officer to act as his counsel. Similarly in the case of a minor court or deck court the commanding officer of an accused shall detail counsel, of as much experience as practicable. If there be no such officer available in the case of a general court, the fact shall be reported to the convening authority for action. An officer so detailed shall perform such duties as usually devolve upon the counsel for the defense before civil courts in criminal cases. As such counsel he shall use all legal means to protect the interests of the accused and to present to the court such defense as the accused may have, and to offer such evidence in extenuation, mitigation, etc., as he may be able to obtain. Ordinarily, when so requested by the accused, counsel should be detailed a sufficient time in advance of trial to enable him properly to prepare the accused's case. He should, so far as practicable, be relieved of all other duties which interfere with this. If accused does not request counsel until he enters court, the court is powerless to appoint one, but should adjourn until the appointment is made by one of the officers named above. It is never proper in such a case to detail the official prosecutor or recorder as counsel.

487. In case request of accused for certain person to act as counsel is refused.—Sometimes the request of the accused to have a certain person act as counsel is refused for cause and some one else is appointed. Under such circumstances the record should always show the grounds for refusing the original request of the accused. Whenever practicable the accused should be allowed such person as he requests for counsel.

488. Accused to be informed of his rights.—The counsel for the accused or, in case there is no counsel, the official prosecutor, recorder, or deck court officer should before trial carefully explain to the accused that he may, besides introducing witnesses in his behalf, either (1) take the stand and testify under oath, or (2) make a statement not under oath; that should he take the stand he may be subjected to a rigorous cross-examination as set forth in article 394; and that should he not under oath make a statement which contains averments of material facts, such averments can not be considered as evidence or accorded evidentiary weight by the court. (Art. 564.) In advising the accused as to his right to take the stand, the official prosecutor should carefully refrain from influencing the accused in this respect except as required by article 540.

Where the accused has made a statement to the court not under oath, the official prosecutor or recorder (if there be no counsel) will, upon the completion of such statement, inform the court that the provisions of this section have been complied with.

489. Legal ethics.—The following excerpts from the "Canon of Ethics" of the American Bar Association, adopted in 1908, are set forth herein for the information and guidance of official prosecutors, recorders, and counsels:

3. Attempts to exert personal influence on the court.—A lawyer should not communicate or argue privately with the judge as to the merits of a pending cause.

5. The defense or prosecution of those accused of crime.—It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims of suspicious circumstances, might be denied proper defense. Having undertaken such defense the lawyer is bound by all fair and honorable means to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty but by due process of law.

The primary duty of a lawyer engaged in public prosecution is not to convict but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible.

6. Adverse influences and conflicting interests.—It is the duty of a lawyer at the time of retainer to disclose to the client * * * any interest in or connection with the controversy which might influence the client in the selection of counsel.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids * * * subsequent * * * employment from others in matters adversely affecting * * * the client.

8. Advising upon the merits of a client's cause.—A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon. * * * The miscarriages to which justice is subject, by reason of surprises and disappointments in evidence and witnesses, * * * admonishes lawyers to beware of bold and confident assurances to clients * * *.

9. Negotiations with opposite party.—A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel * * * but should deal only with his counsel.

15. How far a lawyer may go in supporting a client's cause.—It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause.

The lawyer owes * * * the client warm zeal in the maintenance and defense of his rights, and the exertion of his utmost learning and ability. * * * No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But * * * the office of attorney does not permit * * * violation of law or any manner of fraud or chicane.

16. Restraining clients from improprieties.—A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct toward courts, judicial officers, witnesses, and suitors.

17. Ill feeling and personalities between advocates.—Clients, not lawyers, are the litigants. * * * All personalities between counsel should be scrupulously avoided. * * * It is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel, which cause delay and promote unseemly wrangling, should also be carefully avoided.

18. Treatment of witnesses and litigants.—A lawyer should always treat adverse witnesses and suitors with fairness and due consideration.

22. Candor and fairness.—It is not candid or fair for the lawyer knowingly to misquote the contents of a paper, the testimony of a witness, the language or argument of opposing counsel, or the language of a decision or a textbook; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed; or in argument to assert as a fact that which has not been proved; or, in those jurisdictions where a side has the opening and closing arguments, to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely. * * *

A lawyer should not offer evidence which he knows the court should reject. * * * Neither should he introduce into an argument, addressed to the court, remarks or statements intended to influence the jury or bystanders.

490. Clerical assistance and interpreter.—In all trials by Coast Guard courts, where practicable and necessary, the convening authority shall provide for the furnishing of clerical assistance. In cases where there is no competent stenographer assigned to the court, it may require that all communications, motions, and questions be reduced to writing and read to the court.

Whenever practicable the convening authority, if not present at the place where the court is to meet, shall direct some officer present there to detail clerical assistance from either the enlisted or civilian personnel under his jurisdiction.

When necessary Headquarters may authorize the president of a general court or board of inquiry to employ clerical assistance, at market rates or less, for stenographic reporting. In such cases an agreement is drawn up in duplicate between the president and the stenographer. One copy of this agreement is retained by the stenographer and the other is forwarded by the president, together with the bills of the stenographer, in duplicate, certified correct, and a certified copy of the letter of the convening authority and the necessary vouchers, to Headquarters.

The services of an interpreter, where necessary, are secured in the same manner as is clerical assistance.

491. Same: Expense to the Government must be authorized.—No expense to the Government by the employment of a reporter, interpreter, or other person to assist in a trial by Coast Guard court should be allowed by the court except when authorized by Headquarters.

492. Provost marshal, guard, and orderly.—An officer of the Coast Guard not above the grade of lieutenant shall, upon proper application by the president of a general court, be detailed by the senior officer present to serve as provost marshal of the court. In case of the trial of a petty officer or a person of inferior rating, the provost marshal may be a petty officer of the Coast Guard. (See art. 516.)

At the request of the president, the necessary guard and orderlies are detailed by the commanding officer of the unit at which the court is ordered to convene.

493. Copy of charges and specifications forwarded to the accused.—The copy is sent to the accused by the convening authority through the usual official channels. In the case of a general court facts as to the delivery may be obtained from the commanding officer under whom the accused is serving. In the case of a minor court the copy of the charge and specification should ordinarily be sent to the recorder for delivery to the accused. In the case of a deck court a copy of the specifications is not required for the accused, his signature on the deck court card, consenting to trial by deck court, affirmatively showing that he has seen the specification.

494. Original charges and specifications prefixed to record.—The original charges and specifications shall be prefixed to the record in each case.

PART IV. ORGANIZATION.

500. Place of meeting of court.—Courts are assembled and held in a convenient part of a ship or other place as may be ordered. But no Coast Guard court or assembly of a judicial character shall be ordered or permitted to assemble or conduct any part of its proceedings in any place subject to foreign jurisdiction, except by consent of the foreign country.

A court assembles at its first session in accordance with its precept; thereafter, according to adjournment or recess.

It is discretionary with the court whether it will view the place where the alleged crime was committed or where some fact or transaction material thereto occurred. If it does so the court must be attended by the accused and his counsel. An alteration in the condition of the premises should be good reason for the court declining to take a view. The object of a view is to enable the court to understand the evidence better. No evidence should be taken while taking a view, and the court should hold no communication with others while so doing, except as necessary to have witnesses point out objects about which they have testified or to have the official prosecutor or recorder or counsel point out objects about which they will produce testimony.

501. Hours of sessions.—A Coast Guard court may hold sessions at any hour of the day, but courts are not to meet at unusual hours, nor should the duration of the sittings be unusually protracted, unless the court is informed by the convening authority that the case is one of extraordinary urgency and that such a measure is therefore warranted.

502. Sessions to be public.—The sessions of courts shall be public, and in general all persons, except such as may be required to give evidence, shall be admitted. The accused himself may expressly waive his right to a public trial. In cases where it may seem desirable that certain classes of spectators, such as women, children, and others, should be excluded during the trial, the court, when convened by the Secretary of the Treasury, or the convening authority in other cases, should communicate with Coast Guard Headquarters requesting permission therefor and giving a full statement of the reasons. It is proper at any time for the court to advise spectators of such classes as the above to withdraw on account of the nature of the testimony anticipated.

503. Members take seat in order of rank.—The members are named in the precept in order of their rank and take seat accordingly, the president at the head of the table and the other members at his right and left, alternately.

If the names should inadvertently not appear in the precept in order of rank, the members shall nevertheless take seats, vote, and sign in the order of their actual rank.

504. General duties of members.—In general, the members of the court as a body finally decide upon all questions as to the admissibility of evidence and pass upon all questions presented to the court during the course of the proceedings. Also, the members of a court, as well as the recorder, are responsible for the correctness of its record of proceedings.

505. Same: Voting.—The vote of each member upon a question arising during the progress of a trial—as, for instance, the competency of members or witnesses—has equal weight, and, in taking the opinion of the court, the junior member shall vote first, *viva voce*, and then the others in inverse order of their seniority. In the event of a tie vote upon a motion or objection, the same is not sustained. Where evidence is taken upon such questions the issue is determined by a preponderance of the evidence—that is, by the evidence which best accords with reason and probability—and the party having the affirmative need not prove beyond a reasonable doubt. Where there is a majority the view of the majority becomes the decision of the court. (See arts. 577 and 593.)

506. Duty to decide according to the law, even if at variance with their individual beliefs.—Coast Guard courts can not with propriety attempt to rise above the law of which they are the creatures, and disregard the provisions of law. They can not announce by their findings that offenses with which Congress has seen fit to deal as crimes of a very grave nature are, in their opinion, too trivial and insignificant to be seriously regarded. If the members of the court believe that because of good motive on the part of the accused when he committed the offense, or because of unusual circumstances, the accused should not be severely punished, it is none the less their duty to find according to the law and the evidence and to adjudge a sentence commensurate with the offense proved. In such a case ample provision for the protection of the accused is provided in the recommendation to clemency which it becomes the duty of the court to make, and the court should not presume upon the prerogative of the reviewing authority in exercising clemency. Such action would be, in effect, a reflection upon the judgment of the reviewing authority. The foregoing provisions of this article are of the utmost importance.

507. Deliberations to be in closed court.—Deliberations upon any question arising between the parties to the trial, and upon challenges, the sufficiency of the charges and specifications, the findings, etc., shall be conducted in closed court, except that it is not necessary for the court to go into closed session where it is manifest that the action of the court will be unanimous, as upon a challenge where the challenged member admits that he can not be impartial, or for findings upon a plea of guilty; and in any other cases where in the discretion of the president or senior member closing the court would be merely perfunctory. Care will be taken in such cases that no votes are taken in open session. If any member believes that the matter should be passed upon in closed session, it is proper for him to move that the court be closed, whereupon the president or senior member will clear the court. When the doors are opened the accused will be informed of the action the court has taken upon any challenge, question of evidence, etc., and upon the findings in accordance with the provisions of article 585.

Whenever the court is closed, the official prosecutor and recorder, if not a member, shall withdraw and the expression "the court was cleared" shall be understood as including such withdrawal.

In important cases where delay would ensue due to the number of spectators present the court itself may withdraw to another room prepared for the purpose for deliberating in closed session.

508. Liability of members.—A court has no power to punish its members but a member is liable for improper conduct as for any other offense against Coast Guard discipline.

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The members of a duly constituted and organized court can not be interfered with in their proceedings by Coast Guard authority, yet they are responsible in civil courts for any abuse of power or illegal proceedings.

509. Absence of members.—A member of a general court, after the proceedings are begun, shall not absent himself therefrom, except in case of sickness or order from a superior. A member of a minor court absenting himself, except under similar circumstances, commits a grave military offense. Except in case of sickness, absence from duty by a member of a court is not warranted unless with the knowledge and approval of the convening authority. A mere approved request for leave is not sufficient; nor is the fact that such member be the commanding officer of a vessel about to sail.

Unauthorized absence of a member of a general court will prevent the court proceeding with the trial.

In any case where a member is absent the reason therefor, if known, shall be set forth in the record.

510. Same: By reason of illness.—In case a member is ill, he shall, if able, request the attending medical officer to report the fact of his sickness to the convening authority, and such request will be complied with. The report shall be forwarded through the president of the court, and a copy thereof will be attached to the record of each case to which it applies.

511. Same: Procedure in case of.—In case of the compulsory temporary absence of a member of a general court, the court may excuse the member so absent from further attendance upon the case then pending, provided there remain the legal number of members present; but should that not be deemed possible or advisable, and should such member resume his seat, the record of proceedings during his absence shall be read to him and all the witnesses who have been examined during his absence must, when he is ready to resume his seat, be recalled by the court, and the recorded testimony of each witness so examined must be read over to him, and such witness must acknowledge the same to be correct and be subject to such further examination as the said member may require. Without a compliance with this rule and an entry thereof upon the record, a member who shall have been absent during the examination of a witness shall not be allowed to sit again in that particular case. If the absence of a member reduces the court below the legal minimum, an adjournment should be taken until the next day or over Sunday, as the case may be, unless it appear that the absence of the member may be protracted, in which case the president should inform the convening authority of the facts.

512. Procedure in case of absence of official prosecutor or recorder.—The temporary absence of the official prosecutor, or recorder if not a

member, at any time during the progress of the trial does not invalidate the proceedings; but, as the court has no authority to detail any person to act as official prosecutor or recorder, it must, in case of his incapacity, adjourn from day to day until he is able to resume his duty or a successor is appointed by the convening authority.

513. Procedure on seating of new member.—In the case of a new member of the court being appointed after the trial has begun, he shall take his seat as such, subject to challenge in the same manner as other members, the reading of the record of proceedings of the trial to date, and the requirements of article 511. The record shall affirmatively show the presence of such new member.

514. General duties of president or senior member.—The senior officer in rank of a Coast Guard court becomes president thereof by virtue of his rank. Besides his duties and privileges as a member, the president is the organ of the court. He is responsible for the dignified and orderly conduct of the proceedings of the court and is empowered to keep order. He shall recognize the equality of members in deciding questions presented to the court in the course of its proceedings, and in all cases where such questions arise he shall order the court cleared for the purpose of reaching a decision thereon, except where in his opinion this would be merely perfunctory. (See art. 507.) The president speaks and acts for the court. He is also responsible that all persons called before the court are treated in a becoming manner, and in all cases of impropriety, whether in language or behavior, shall, if necessary, report the offender to the convening authority.

The president of a minor court reports the fact and time when the court meets and when it adjourns through routine channels to the convening authority, and transmits the finished record to him.

The deck court officer is responsible for the transmission of the finished record of the deck court to the convening authority.

515. Same: Administer oaths.—The president or deck court officer administers the oath to the recorder.

516. Provost marshal, guard, and orderly report with accused.—As soon as the members are seated the provost marshal, guard, or orderly reports to the president with the accused in accordance with instructions previously given by the recorder. When an accused in close confinement or arrest is to be brought before the court, request for his presence is made by the recorder to the accused's immediate commanding officer, through the provost marshal, guard, or orderly, who is responsible for such person in transit to and from the place of confinement and for his safe return to the proper custody when his presence is not required by the court. The accused should not be brought before the court in irons, unless there is good reason to be-

lieve that he will attempt to escape or to conduct himself in a violent manner; but the fact that an accused has been tried in irons can not, in any case, affect the validity of the proceedings.

Besides the above duties, the provost marshal, guard, or orderly serves notices and is in attendance generally as police officer of the court.

The accused should be present during all the proceedings of a court held in open court, except when he is absent through his own act. (See art. 464.) If for any reason it is desired to call the recorder before the court while it is closed for deliberation, to advise it, the accused should also be present and the court should be opened. But the presence of the recorder, if not a member, during closed court, while a grave irregularity, is not a fatal error.

517. Reporter and interpreter.—A court may avail itself of the services of a reporter and of an interpreter, but such person or persons shall in all cases be sworn. Where expense to the Government is entailed the sanction of Coast Guard Headquarters must be had. (See art. 490.)

The reporter may set down the testimony taken before the court in the first instance in shorthand.

The reporter, and interpreter if needed, should be present when the court is open, but should not be allowed to be present in closed court.

518. Counsel for accused.—Immediately after the accused is brought before the court he should be asked if he desires counsel, and if he does, counsel should take seat as such. If the counsel for the accused is absent at any stage of the proceedings, the record should show affirmatively that the accused waived the privilege of having counsel present at that time. Otherwise, the court should adjourn for a reasonable time if it appear that the counsel will then be present or until the convening authority appoint another counsel.

Permission to address the court should be granted by the court to counsel for the accused, and the latter should be allowed to use all legal means to protect the interests of the accused, but shall not be permitted to interfere in any manner with the court's proceedings.

Counsel for the accused shall, when he so requests, be allowed to examine the record of proceedings, exclusive of the findings and sentence, as it is prepared.

519. Precept read.—The precept, together with any orders from the convening authority directing a change in the composition of the court set forth therein, is then read by the recorder in court in the presence of the accused, the recorder and the accused standing during the reading.

A copy of the precept of a general court, together with copies of any orders from the convening authority directing changes in the composition of the court set forth therein, shall be prefixed to the record of proceedings in each and every case. In the case of a minor court the original precept, together with changes therein, shall be prefixed to the record of the first trial by the court or the first trial following receipt of such change, and in the following cases reference shall be made thereto, and copies shall be prefixed.

The original precept of a general court, together with any orders directing changes in the composition of the court set forth therein, shall be kept until the court is dissolved or, in the case of a permanent court, until a new precept is issued, and then returned to the convening authority.

520. Challenge: Right of.—The accused and the official prosecutor or recorder have equal rights of challenge. A member has no such right, but it is his duty to lay any facts of which he may have knowledge, tending to show that another member is disqualified, before the court for its action. It is the duty of the official prosecutor or recorder to challenge in turn any members to whom the prosecution objects, and after these challenges are determined to ask the accused if he objects to any member of the court appointed to try him, and a minute of this inquiry and the answer thereto is invariably to be entered on the record. As a general rule, whatever objection either party may make to any member shall be decided upon before the court is sworn, but at any stage of the proceedings prior to the findings challenges may be made, either by the official prosecutor or recorder, if not a member, or by the accused, for cause not previously known.

No right of challenge exists against anyone other than a member of the court, and no challenge will be heard against an official prosecutor or recorder, counsel, or any other. The recorder has not the right of challenge when there is an official prosecutor.

521. Same: What constitutes valid.—A positive declaration by a challenged member that he is not prejudiced against the accused nor interested in the case is ordinarily satisfactory to the accused, and, in the absence of material evidence in support of the objection, will justify the court in overruling it. However, a challenge upon any one of the following grounds, if admitted by the challenged member or proved as provided for in article 522, must be sustained despite any declaration the challenged member may make:

(*a*) That he sat as a member of a board of inquiry or other board which investigated the charges.

(*b*) That he has personally investigated the charges and expressed an opinion thereon, or that he has formed a positive and definite opinion as to the guilt or innocence of the accused.

(*c*) That he is the accuser. (This does not include an officer, unless he has formed a definite opinion, merely formally referring for trial charges preferred by another.)

(*d*) That he sat as a member of a court or board which tried or investigated another person upon charges indicating concerted action in the identical incident concerning which the accused is on trial. (The facts must be such that the accused could properly have been tried in joinder with such other person in accordance with art. 156.)

(*e*) That he is related by blood or marriage to the accused.

(*f*) That he has declared enmity against the accused.

522. Same: Court decides on.—A challenge on any of the grounds set forth in the preceding article, if properly supported by the facts, must be sustained by the court. Where, however, the challenge is based on prejudice, hostility, bias, intimate personal friendship, or some other ground, it is for the court, after hearing the grounds for challenge stated, and the reply, if any, as well as any other evidence presented, to determine whether the grounds stated and proved or admitted are sufficient in fact to disqualify a challenged member. Challenges are determined by preponderance of the evidence. (See art. 505.) Courts should be liberal in passing upon challenges, but they will not entertain an objection that is not specific or upon the mere assertion of the accused, or official prosecutor, or recorder, if it is not admitted by the challenged member or proved.

In the case of challenge, the decision of the court is final, and the party who challenges can not insist upon his challenge in opposition to the decision of the court. Members of courts are liable to challenge at the beginning of each distinct trial.

523. Same: Procedure upon.—In case the challenged member makes no response or makes a response unsatisfactory to the challenger, the latter may offer testimony in support of his challenge or may subject the challenged member to an examination under oath as to his competency as a member. An examination on a challenge may be under oath on *voir dire* administered by the president or senior member. Witnesses may be introduced in rebuttal and arguments may be made. It is customary for a member objected to to withdraw when the court is cleared to deliberate on the challenge, and he should always do so. Although this may leave but two members in the court, it still leaves a legal quorum, as the member who has withdrawn has not yet ceased to be a member. The court, after being cleared, proceeds to deliberate and decide upon the validity of the objection. When clearing the court would be merely perfunctory it may be dispensed with as set forth in art. 507. A majority vote of the members voting determines. In case of a tie the challenge is not

sustained. The court is then opened and the decision announced. The objection, the cause assigned, the statement, if any, of the challenged member, the testimony of witnesses examined on *voir dire*, and the decision of the court shall be regularly and specifically entered on the record. When a challenge is sustained the challenged member ceases, from the announcement of the result in open court, to be a member for that trial.

In case more than one member is to be challenged the junior one shall be challenged first.

524. When a member not challenged considers himself disqualified.—The court of itself can not excuse a member in the absence of a challenge. An unchallenged member who thinks himself disqualified can be relieved only by application to the convening authority. He should announce in open court that he thinks himself disqualified so as to afford the proper party opportunity to challenge.

525. When court is reduced by challenge below legal quorum.—If, by challenges sustained, a court is reduced below the legal quorum the convening authority should be notified as soon as practicable and the court adjourned awaiting the appointment of new members by the convening authority. A copy of the communication notifying that authority of the adjournment and the reasons therefor must be prefixed to the record.

526. Before court is sworn it can do nothing other than determine challenges.—Until a court is duly sworn (organized) according to law it is incompetent to perform any judicial act except to hear and determine challenges against its members.

527. Oaths.—After the right of challenge has been accorded and questions arising thereon have been decided the oaths or affirmations shall be administered in the presence of the accused. Failure to show positively in the record that this was done constitutes a fatal error. If, in fact, the oaths were duly taken, but the entry to that effect was omitted from the record, this is a mere clerical error and may be corrected by the court if it has not been dissolved. The usual manner of giving an oath is to require the party taking it to keep one hand upon a Bible while doing so. The oaths or affirmations prescribed will always be administered. But it is not to be forgotten that the purpose of administering an oath is to impress the party being sworn with the solemnity of the ceremony, and therefore such additional ceremony may be undergone in giving the oath to a person as may be recognized by the religious sect to which he belongs.

When more than one case is tried by the same court the oath must be administered anew in each case. While the members and recorder are being sworn, all persons present will stand. While any

others are being sworn the person taking and the officer administering the oath will stand.

In a general court the recorder is sworn first and then the members. In a minor court the members are sworn first and then the recorder.

528. **When organization is accomplished.**—The court having met, the accused and his counsel, if any, having been introduced, the precept read, the right of challenge accorded, and the court and recorder sworn, the organization of the court is complete for the trial of the case.

PART V. PROCEDURE DURING TRIAL.

535. **Accused must admit receipt of copy of charges and specifications.**—Immediately after the court is sworn the accused shall be asked whether he has received a copy of the charges and specifications preferred against him, and on what date.

If the accused denies having received a copy of the charges and specifications, the fact that he has received them, or that he refused to take them when duly offered to him, must be established by evidence in an interlocutory proceeding before proceeding with the trial proper.

536. **Nolle prosequi.**—The official prosecutor or recorder should announce any *nolle prosequi* received by him prior to trial before the accused is asked whether he objects to the charges and specifications. (See art. 157.)

537. **Charges and specifications: Must be pronounced in due form and technically correct.**—After the court has been organized, and the fact that the accused has received a copy of the charges and specifications has been admitted or shown, the accused is asked if he has any objection to make to them. This procedure corresponds roughly to a motion to quash, a demurrer, or a plea in abatement in civil actions, and is made because the accused does not think the specification states an offense, because it is not definite enough, or because there is some error such as misnomer. If the accused make objection, he must state on what grounds. If the accused do not object to any feature of the charges and specifications, and the official prosecutor or recorder report no defect in them, and if the members of the court, after carefully scrutinizing them, find no defect in them, the court pronounces the charges and specifications in due form and technically correct. (See art. 727.) An entry to this effect must be made upon the record. After this stage of the proceedings the accused is estopped from objecting to any feature of the charges and specifications except an error in substance. (See arts. 181 to 183.) Since an error in substance is

one of such a nature as to vitiate the entire proceedings, it may be noted at any stage of the trial that it manifests itself.

538. **Postponement.**—Either the official prosecutor or the recorder or the accused may request a postponement of the trial by stating his reasons for the request. But an application to suspend the proceedings of a court for a longer period than from day to day, Sundays excepted, must be referred to the officer convening the court, who alone has authority to grant such request. The court is enjoined to sit from day to day, Sundays excepted, until sentence is given, unless temporarily adjourned by the authority which convened it.

The court should be liberal in granting a postponement requested by the accused.

A court having granted a postponement in one case is not precluded from taking up another case during such postponement.

539. **Duties of official prosecutor or recorder during trial.**—During the trial the official prosecutor of a general court or recorder of a court where there is no official prosecutor conducts the case for the Government. The recorder executes all orders of the court; reads the convening order; administers the oath to the members, reporter and interpreter; arraigns the accused; supervises and is responsible for the keeping of a complete and accurate record of the proceeedings. The official prosecutor, or recorder where there is none, examines the witnesses.

While the court is in open session it is the duty of the official prosecutor or recorder where there is no official prosecutor to advise the court in all matters of form and of law. On every occasion when the court demands his opinion he is bound to give it freely and fully; and, even when it is not requested, to caution the court against any deviation from essential form in its proceedings, or against any act or ruling in violation of law or material justice.

He shall at all times exercise great care in regard to the authenticity of any statements he may make to the court.

The accused and his counsel have a right to the opinion of the official prosecutor or recorder, in or out of court, upon any question of law arising out of the proceedings. The official prosecutor or recorder shall acquaint himself with the rules of evidence, and apply them in determining the admissibility of evidence. He shall offer only such evidence as is properly admissible. When in doubt, he shall offer the evidence. The official prosecutor or recorder is particularly to object to the admission of improper evidence, and he shall point out to the court the irrelevancy of any evidence that may be adduced which does not bear upon the matter under investigation. Should the advice of the official prosecutor or recorder be disregarded by the court, he shall be allowed to enter his opinion upon the record.

Under such circumstances it is also proper for the court to record the reasons for its decision. The minutes of opinion and decision are made for the information of the reviewing authority who should have the error, on whichever side it may be found, brought fairly under his consideration; but neither the official prosecutor or recorder, the accused, nor any member of the court has any right to enter an exception or protest on the record.

540. Same: To protect interests of accused who does not have counsel.—In the event that the accused has no counsel the official prosecutor or recorder shall protect his interests, having in mind, however, at all times his duty as prosecutor. Under such circumstances he shall not fail to advise the accused against advancing anything which may tend either to criminate him or prejudice his cause; he shall see that no illegal evidence is brought against the accused, and shall assist him in presenting to the court in proper form the facts upon which his defense is based, including such evidence as there may be in extenuation or in mitigation as well as evidence of previous good conduct and character.

If, during the progress of the trial of an accused without counsel, evidence is adduced which develops that he might have a good defense which could be better presented by counsel, the official prosecutor of a general court or the recorder of a court where there is no official prosecutor should strongly advise the accused to get counsel, and the court should do the same. The official prosecutor of a general court or the recorder of a court where there is no official prosecutor should scrupulously avoid questioning an accused in an improper manner in court as by asking him if he will admit he is the accused, as this savors of making him give evidence against himself.

541. Same: Not to be present during closed court.—The court may go into closed session for the consideration of any matter coming before it, and always does so during the consideration of the finding and sentence. This is not necessary in the findings on a plea of guilty. (See arts. 507 and 577.) When the court is to be cleared the president so announces, and all persons, including the accused, his counsel, the official prosecutor, and the recorder if not a member, withdraw. (See art. 516.) But the recorder is called before the closed court to record the findings and again to record the sentence. (See art. 666.)

542. Arraignment.—After the court has been organized and both parties are ready to proceed, the recorder will read the charges and specifications separately and in sequence to the accused and ask him how he pleads to each, " guilty " or " not guilty." The order pursued in case of several charges or specifications will be to arraign on the first, second, etc., specifications of the first charge, then on the first charge, and so on with the rest.

Both the recorder and the accused stand during the reading of the charges and specifications and the arraignment.

Error in the name under which the accused is arraigned, if *idem sonans* with his true name, or in his rank, or rating, or branch of the service, is not fatal. Failure to arraign at all, so long as the record shows that the accused was furnished with a copy of the charges and specifications against him, and in the absence of objection by the accused, is not fatal.

543. Same: On trials in joinder.—When two or more persons are tried in joinder, they shall be separately arraigned; the questions constituting each arraignment and the answers thereto shall be separately recorded; and throughout the trial the accused persons shall severally be given the same opportunity to answer, plead, make objections, examine, be examined, submit a written defense or statement, etc., and the fact shall in every instance be entered upon the record with the same particularity as in the ordinary case of the trial of one person only.

544. Pleas, kinds of.—The pleas recognized by Coast Guard courts in the order in which they should be made are: (*a*) Pleas to the jurisdiction; (*b*) pleas in bar of trial; and (*c*) pleas to the general issue. No other pleas than the foregoing will be heard by a court, and if offered the party offering will be advised that he must make them as an objection to the charges and specifications as stated in article 537, and opportunity will be afforded him to do so.

545. Plea to the jurisdiction.—This plea should regularly be made prior to pleading the general issue, but as lack of jurisdiction is a fatal defect, the plea may be made at any time. (See art. 508.) An objection on the ground of lack of jurisdiction involves a question as to the legal authority of the court, such as:

(*a*) That it was convened by an officer having no legal authority to convene it.

(*b*) That it is not legally constituted.

(*c*) That the accused is not subject to the court's jurisdiction.

(*d*) That the offense is not one cognizable by a Coast Guard court. (See art. 460.)

Even though the accused fail to make objection to the jurisdiction of a court, if the court did for any reason lack jurisdiction, the defect is fatal and the findings and sentence of the court must be set aside. Waiver of objection will never avail to confer jurisdiction upon a court not legally possessing it.

546. Pleas in bar of trial.—A plea in bar of trial, if sustained, is a substantial and conclusive answer to the charge or specification to

which it is addressed. Such a plea may be made on the grounds set forth in the three following articles:

547. Same: The statute of limitations.—The limitation for proceedings in the cases of general offenses, excepts from its terms an offender who has not been amenable to justice during the statutory period "by reason of having absented himself, or for some other manifest impediment." (See arts. 23 and 24.) The limitation for desertion in time of peace excepts an offender who "shall meanwhile have absented himself from the United States, or by reason of some other manifest impediment" shall not have been so amenable.

The above articles do not operate to extinguish the offenses in cases where they apply, but merely give the accused in such cases a defense against trial therefor. It consequently follows that the burden falls upon the accused in every case in which he desires to avail himself of these articles, in addition to establishing that he comes within the provisions of same, affirmatively to establish that he is not within the above exceptions. Inasmuch as these statutes of limitations are matters of defense only, they may be waived by the accused.

A plea of guilty operates as such a waiver. But it is not imperative that the accused, in order to avail himself of this defense, do so by means of a special plea; the limitation may equally be taken advantage of under a plea of not guilty by establishing this defense by evidence during the trial.

The fact that an accused offers as a defense the statute of limitations in no way challenges the jurisdiction of a court to hear and determine the matter, but goes to the merits of the case and is a matter to be determined by the court in the exercise of its jurisdiction. The court has final determination of the question, and its decision thereon is not reviewable in habeas corpus proceedings in the civil courts.

The point at and from which the period of limitation is to begin to run is the date of the commission of the offense, except that for desertion in time of peace it is the end of the term for which enlisted. The point at which the period of limitation is to terminate, and from which said period is to be reckoned back, is the date of the issuing of the order for trial; that is to say, in our present procedure, the date of the charges and specifications.

548. Same: Former jeopardy.—The fifth amendment to the Constitution of the United States provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." This provision is the authority for the principle that no person shall be tried a second time for the same offense. In order, however, that a person on trial before a Coast Guard court may be given the benefit of this principle, it is necessary that he should have been

actually *acquitted or convicted on a former trial.* That is, the former trial on which an accused claims to have been placed in jeopardy, must have proceeded to a final acquittal or conviction in order to constitute former jeopardy. But, after the proceedings in a former trial have been carried to an acquittal or conviction, the jeopardy is complete and it matters not whether any action, or, if any, what action has been taken upon the proceedings by the reviewing authority.

Proceedings upon a "fatally defective" specification, if objected to by the accused at the trial, do not constitute former jeopardy.

Likewise, to constitute former jeopardy the court before which the former proceedings have been conducted must have been a duly constituted and legally competent court. A commanding officer is not a court, and punishment inflicted by a commanding officer is not a bar to trial.

Also, the term "same offense" does not mean the same act. The same act may be an offense against more than one Government, as, for example, when one enlisted man assaults another within the territory of one of the States, it is an offense both against that State and against the United States. Moreover, the same act may be an offense against civil law and at the same time a separate and distinct offense against naval law. (See arts. 461 and 462.)

When a person has been once acquitted or convicted by a court of a certain offense, he is not subject to trial subsequently for a minor offense included therein. Likewise, when once tried for a minor offense an accused can not later be tried for a major offense of which it is a part, because to do so would be to place him twice in jeopardy for the minor offense. Thus, desertion includes absence without leave, and one having been acquitted or convicted of the former is not subject to later trial for the latter for the same act, and vice versa.

In order that an accused may avail himself of the defense of former jeopardy, he must take advantage of it and plead it in bar of trial at the proper time. If he waives it, as by pleading to the general issue, the court will proceed with the case. When he wishes to avail himself of it, the production of the record of the former trial is the proper way to sustain such objection.

549. Same: Pardon.—A pardon is an act of the President which exempts the individual on which it is bestowed from the punishment the law inflicts for a crime he has committed, and may be offered in evidence to sustain a plea in bar of trial.

Promotion of an officer is not a constructive pardon, and if pleaded in bar of trial should be overruled.

550. Action upon special pleas.—A plea to the jurisdiction or in bar of trial, the grounds thereof, and evidence introduced both in support and against the motion should be fully entered in the record. The burden of supporting a special plea rests on the accused. The evidence necessary to establish such a plea need not prove it beyond a reasonable doubt, but only by a preponderance of the evidence. (See art. 505.) If the motion be sustained an extract of the proceedings of the court shall be forwarded to the convening authority and the court will meet from day to day awaiting further instructions from the convening authority, who may either accept the court's ruling and direct that the prosecution on the matter involved be discontinued or may return the record to the court for a reconsideration in the premises with a statement of reasons therefor.

551. Pleas to the general issue.—After special pleas, if any, have been disposed of, and if the trial is to proceed, the accused next pleads to the issue. Ordinarily the accused should enter a plea of "guilty" or "not guilty" to the specifications under each charge and then to the charge itself. This is known as a plea to the general issue. By a plea of "guilty" the accused admits, without proof, the averments of the charges and specifications. A plea of "not guilty," on the other hand, calls upon the prosecution to prove the averments of the charges and specifications. It does not, however, commit the accused to a denial of the facts alleged therein. An accused may well know that all the material averments against him are true, and yet may properly and without color of deception enter a plea of "not guilty."

552. Same: "Guilty in a less degree than charged."—This plea is not looked upon with favor. Save in exceptional cases, a court should try the accused for the offense as charged, and the official prosecutor or recorder where there is none should produce all the available evidence. Such a plea must be wholly accepted or rejected, and if accepted the findings should be in accordance therewith. It is improper to accept such a plea and then allow the prosecution to introduce evidence to prove the accused guilty as charged. A finding of partially proved by plea and the balance by evidence is illegal. The acceptance of this plea by the court upon the advice of the official prosecutor or recorder ordinarily indicates that the case has been tried out of court by the official prosecutor or recorder, who has thereby been allowed to usurp the court's functions.

553. Same: Nolo contendere.—In proceedings before a Coast Guard court there is no difference in legal effect between a plea of *nolo contendere* and a plea of "guilty." The distinction lies in that such a plea can not be used against the accused as an admission of guilt in

a civil suit for the same act. The necessity for the use of this plea before a Coast Guard court should be rare.

554. Same: "Guilty but without criminality."—A plea to this effect is contradictory on its face, as guilt can not be disassociated from criminality, and is therefore irregular and should not be accepted. If the accused persist in such a plea the court should instruct the recorder to enter a plea of not guilty.

555. Same: Standing mute.—If the accused for any reason stands mute the court shall direct the trial to proceed as if he had pleaded "not guilty." This same procedure shall be followed if the accused answers foreign to the purpose.

556. Procedure on plea of guilty.—Should the accused plead either "Guilty" or "Guilty in a less degree than charged," and should such plea be accepted, the president shall warn him that he thereby precludes himself from the benefits of a regular defense as to the matter thus admitted and ask if he persists in such plea.

557. Evidence in extenuation.—After the warning referred to above, should the accused persist in the plea of guilty, the court, before proceeding to deliberate and determine upon the sentence, shall allow him to urge anything he may desire to offer in extenuation of his conduct, to call witnesses as to character, or to offer any other evidence of a strictly mitigating nature; and the official prosecutor or recorder, where there is none, shall have the right to cross-examine such witnesses and should introduce such evidence as he may have in rebuttal thereto. (See art. 438.)

558. Evidence after plea of guilty.—As by the plea of guilty everything alleged is admitted, no evidence need be given by the prosecution where the specification sets forth the facts so fully as to show all the circumstances of aggravation. (See art. 436.)

559. Plea of insanity.—Insanity at the time of the commission of the acts charged is a defense which should properly be made under a plea of not guilty. Insanity at the time of arraignment or at a later stage of the trial is a proper ground for the arrest of further proceedings. In case such a plea is made, or in case the court entertains any doubt as to the mental capacity of the accused at any stage of the trial, it should properly communicate with the convening authority, requesting a postponement of the trial and that accused be placed under observation of medical officers.

560. Change of plea.—The accused may at the discretion of the court be allowed at any time before the trial is finished to substitute for a plea of guilty, or guilty in a less degree than charged, a plea of not guilty, or vice versa. When it appears to the court at any time that the accused entered a plea of guilty improvidently or through lack of understanding of its meaning and effect, the court should

direct that the plea be changed to not guilty and that the trial proceed on that basis. The court should always grant a request of the accused to change a plea of guilty to one of not guilty. If the accused request permission to change a plea of not guilty to one of guilty, it must appear affirmatively on the record that he made the request personally or affirmatively assented to such request by his counsel. After such change the record must show that the accused was warned as to the effect of such substituted plea.

A change of plea is, in effect, a recommencement of the trial on the specifications to which it relates, as a new plea has been put in issue. At whatever stage in the trial such change of plea is made, it vitiates all prior proceedings on the specifications to which it relates, and the trial as to them must commence *de novo*. It is improper for the court, under such circumstances, to direct that the trial continue from the point where the plea was made.

561. Rejection of plea.—If after a plea of guilty in less degree the court decides to proceed with the trial of the accused for the greater offense with which he is charged, such plea in less degree will be rejected and the accused advised by the official prosecutor or recorder to substitute a plea of not guilty. Should the accused decline to plead thus, as advised, the court will direct the official prosecutor or recorder to enter a plea of not guilty, and the prosecution shall be put to the proof of every allegation contained in the specification. The same procedure shall be followed if, after a plea of guilty, the accused either by his own testimony or that of witnesses in his behalf or in his statement sets up matter inconsistent with such plea. (See art. 567.) But should the accused desire to admit in open court any of the facts alleged in the specifications against him he may do so after having made a general plea of not guilty, and it will not be necessary for the prosecution to prove the admitted facts. (See art. 267.)

A plea of guilty to a specification and not guilty to the charge under which it is laid is equivalent to notice that in the opinion of the accused the specification does not support the charge. If the court is convinced that the specification does support the charge the plea of guilty to the specification should be rejected. (See art. 579.) A plea of not guilty to a specification and guilty to the charge under which laid is incongruous and should be rejected. If there is some mistake in the specification, such as misnomer, the accused should object to the specification. A plea of guilty to but one of several specifications under a charge necessitates a plea of guilty to the charge, if the one specification supports the charge. In case of a plea of guilty to one specification and not guilty to the charge, the plea to the specification should be rejected.

562. Oral arguments upon the admissibility of evidence and upon interlocutory proceedings.—Oral arguments upon the admissibility of evidence and upon interlocutory proceedings shall be allowed, but shall not be recorded; briefs of such arguments may be prepared at the expense of the party who made them, and subsequently submitted to the court and shall then be appended to the record.

563. Attendance and examination of witnesses.—This is dealt with in Chapter VI, articles 344 to 420.

564. Statement of accused.—An accused may, in any case where he so desires, make a statement not under oath. Such statement of the accused is a personal defense or declaration and can not legally be acted upon as evidence by the court, nor can it be a vehicle of evidence, nor properly embrace documents or other writings or even averments of material facts, which, if duly introduced, would be evidence; and if through inadvertence or other cause such things be improperly embraced in a statement, they are entitled to evidential weight.

A statement may operate in three ways: (1) To modify the plea of the accused when inconsistent therewith; (2) as a summary and argument for the defense, which may be considered by the court; and (3) as a plea for leniency, which may not be considered by the court except in recommending the accused to the clemency of the reviewing authority.

It is irregular and improper to have a statement sworn to. In order to bring out facts or averments as sworn testimony in defense, it is necessary that the accused himself, or a witness in his behalf, regularly take the stand and subject himself to cross-examination.

If the accused does not desire to make a statement, the record should affirmatively so state. (See art. 488.) It is not the province of counsel to make a statement. If the statement is written the counsel for the accused may prepare and read it for him, but other than that he has no part connected therewith. The contents of the statement must be restricted to that authorized in the foregoing provisions of this article, and no attempt must be made to make it into an argument of counsel.

565. Same: When inconsistent with plea.—It sometimes happens that an accused, unfamiliar with the effect of his plea, and improperly advised by the official prosecutor or recorder in accordance with article 488, or not made to comprehend the advice, will plead guilty and then give testimony or submit a statement inconsistent with his plea; as, for example, when an accused charged with desertion pleads guilty and then submits a statement that he intended to return. In any such case the procedure of the following article must be observed. (See arts. 560 and 561.)

566. Same: Procedure when statement is more than a mere request for clemency.—In any case where an accused after a plea of guilty makes a statement which is anything more than a mere request for clemency, *the plea shall be rejected* and the trial begun anew. A statement which is a mere request for clemency is one relating only to the age, inexperience, family connections, previous good record, etc., of the accused. A statement which touches upon the issues of the trial, following a plea of guilty, necessitates rejection of such plea, whether or not the court thinks the statement consistent.

The official prosecutor or recorder will take pains before trial to ascertain, if possible, what statement, if any, the accused contemplates. In case the accused indicates that he thinks he has a defense on the merits the official prosecutor or recorder must advise him to plead not guilty, as in such a case, despite the fact that the official prosecutor or recorder may be convinced that the defense is of not the least merit, the accused in all probability will make a statement touching on the issues, and thus result in delaying the trial. (See arts. 482 to 484.)

567. Arguments of official prosecutor or recorder and of counsel.—In every case both the accused (counsel) and the official prosecutor shall be afforded an opportunity to present an argument before submitting their respective cases to the court. The official prosecutor has the right to make the opening and the closing argument. Both prosecution and defense should be accorded equal and adequate opportunity fairly to present their respective cases by argument, yet the court may, in the employment of a sound discretion, so limit the time allowed for argument by each side as to avoid prolixity.

In general, the scope and extent of the arguments are subject to the control of the court in the exercise of a sound discretion, which, particularly in cases involving the rights or liberty of an accused, must be carefully and cautiously exercised.

The prosecution in its closing argument is limited to the discussion of propositions or matters argued by the defense. Should the prosecution waive its opening argument, the defense thereupon may or may not make an argument, as it may desire. Should the defense make no argument, the prosecution loses its right to make a closing argument. Neither the prosecution nor the defense is required to make an argument; the proper presentation of the case, as well for the benefit of the court as of the reviewing authority, would suggest that both prosecution and defense should avail themselves of their respective rights to make argument. (See art. 539.)

568. Same: Character of.—A reasonable latitude should be allowed the official prosecutor or recorder and accused (counsel) in their

closing arguments. The testimony and any animus on the part of witnesses, the conduct, motives, and evidence of malice on the part of those upon whose complaint the accused is being prosecuted may, in so far as disclosed by the proceedings, be commented upon. But the court should not permit such argument to be made the vehicle of abuse not bearing upon the merits of the case and not supported by matters contained in the record.

It is improper to state in an argument any matter of fact as to which there has been no evidence. A party may, however, argue as though the testimony of his own witnesses conclusively established facts related by them. It is highly improper for the official prosecutor or recorder to comment on a failure of the accused to testify in his own behalf, but he may properly comment upon the failure of an accused, who has appeared as a witness, to deny or explain specific facts of an incriminating nature that the evidence of the prosecution's witnesses tends to establish against him. (See art 394.) It is improper to misstate any matter of law in an argument, but on matters about which the authorities differ a party may properly state only the views favorable to his side. It is improper to state in argument that a much greater number of witnesses might have been called, or that witnesses unavailable would have testified thus and so. In short, an argument can not be made a vehicle of getting evidence before the court. It is not evidence.

Argument should not be interrupted by the other side unless it becomes improper, in which case request should be made to the court to order that the argument be confined to proper matters, and that any improper part already made be disregarded.

569. When statement and arguments may be oral.—When the court has the service of a competent stenographer the statement and arguments may be oral. When so made they are entered in the record as a part of the proceedings.

570. When statement and arguments must be written.—Unless the reporter be a competent stenographer, the statement and arguments must be written before delivery, except that in a minor court trial the accused may, if he be willing to have only the substance of his statement reported, make it orally. The written statement or argument so made shall be appended to the record and should be signed by the party making it. In a minor court case when only the substance of the statement is recorded, it shall be appended and certified by the recorder.

PART VI. FINDINGS—RECORD OF PREVIOUS CONVICTIONS—SENTENCE—RECOMMENDATION TO CLEMENCY.

(The provisions of this part apply to a general or to a minor court. The matters of procedure obviously do not apply to a deck court, but the general principles do apply.)

577. Method of arriving at findings.—The court is closed to deliberate upon its findings, except where the accused has pleaded guilty to all specifications and charges, and it is patent that the findings will be simply "proved by plea" and "guilty." In arriving at the findings, the plea of the accused, the evidence adduced, and the arguments made are to be carefully considered. After the court has sufficiently deliberated, the president of the court shall, upon each specification of each charge, beginning with the first, put the question whether the specification is "proved," "not proved," or "proved in part." Each member shall write "proved," "not proved," or "proved in part"—and if so, what part—over his signature and shall hand his vote to the president of the court. The latter, after he has received all the votes upon each specification, shall read them aloud without disclosing how each member voted. Likewise, in the case of a general or a minor court, after the members have voted upon all the specifications of any charge, they shall in the same manner vote as to whether the accused is of such charge "guilty," "not guilty," or "guilty in a less degree than charged"—and if so, in what degree. No written minutes of the votes shall be preserved, unless so ordered by the unanimous vote of the court. The decision of a majority becomes the finding of the court. When there is a tie vote upon any of the findings, the accused is given the benefit thereof and the result is recorded in that way which is the more favorable to the accused.

578. Reasonable doubt.—The accused shall not be found guilty of any charge or specification or of any offense included in it unless a majority of the court are convinced of his guilt beyond a reasonable doubt. (See art. 242.)

579. General principles controlling findings.—The finding on the charge should be supported by the finding on the specification (or specifications), and the two findings should be consistent with each other. A finding of guilty on the charge would be quite inconsistent with a finding of not guilty on the specification. So a finding of guilty on a well pleaded specification apposite to the charge, followed by a finding of not guilty on the charge would be an incongruous verdict. If the court pronounce the charges and specifications in due form and technically correct, a finding of guilty of the specification and not guilty of the charge is improper and a reflec-

tion on the court itself. No matter how many specifications there may be, it requires a finding of guilty on but one specification (apposite to the charge) to support a similar finding upon the charge. Evidence can not be taken after a finding has been reached. (See art. 561.) The court should be careful when finding a specification proved in part that it does not except the words forming the gist of the offense.

580. When accused pleads guilty.—When the accused pleads guilty, the proper finding is, for the specification, "proved by plea," and for the charge, simply "guilty."

581. When specification is found proved in part.—It is a peculiarity of the finding at military law that a court, where of opinion that any portion of the allegations in a specification is not proved, is authorized to find the accused guilty of a part of the specification only, excepting the remainder: or, in finding him guilty of the whole (or any part), to substitute correct words or allegations in the place of such as are shown by the evidence to be incorrect. Provided the exceptions or substitutions leave the specification still supporting the charge, the court may then find the accused guilty. Familiar instances of the exercise of this authority occur when there is a mistake in name and rank or rating, or an erroneous averment of time or place, or an incorrect statement as to amount or value. But the authority to find guilty of a lesser included offense or to make exceptions and substitutions in the findings does not justify the conviction of the accused of an offense entirely separate and distinct in its nature from that charged or specified. Care must be taken in all such findings not to except the words which express the gravamen of the offense in law. Examples: Under a charge of "theft" the court found the words "the property of ———" not proved and made no substitution. Held fatal error. The court should have substituted the words "the property of a person unknown." Under a charge of "conduct unbecoming an officer and a gentleman," the specification alleging that the accused did "roughly seize and tear the garments of a Miss ———" the court found the words "roughly" and "tear" not proved and made no substitution. Held fatal error. By its finding the court eliminated the words which but poorly expressed the gravamen of the offense charged. In making exceptions and substitutions the court must see that the specification as found proved is grammatically complete.

582. "Guilty in a less degree than charged."—If the evidence prove the commission of an offense less in degree than that specified, yet included in it, the court may except words of the specification, substitute others instead, pronouncing what words are not proved and what words are proved, and then find the accused guilty in a less

degree than charged, guilty of the lesser included offense. Of this form of finding the most familiar example is the finding of guilty of "absence from duty without leave (or after his leave has expired)" upon a charge of "desertion." In such case, in its finding of "proved in part" upon the specification, the court should expressly except the words "desert" and "a deserter," and substitute therefor, respectively, the words "absent himself without leave" and "so absent," if such be the lesser included offense found proved. In such event the finding upon the charge should be "guilty in a less degree than charged, guilty of absence from duty without leave."

In this case, also, care must be taken that the words forming the gist of the lesser included offense are found proved. Example: Under the charge of "desertion" the accused was found guilty of "absence from duty without leave," and in amending the specification the court failed to include therein that the absence was without leave from proper authority. Held fatal error. The specification as found proved failed to support the lesser charge found proved.

Where the statutes relating to the Coast Guard do not include "attempt" in its express terms, if the specification is found proved so as to show an attempt to commit the offense charged, and not the completed offense, the accused should be found guilty of the charge in a less degree than charged, guilty of "scandalous conduct tending to the destruction of good morals" or of "Violation of a lawful regulation issued by the Secretary of the Treasury" (Conduct to the prejudice of good order and discipline), as the case may be.

In a general court case where there are two or more specifications under a charge and some specifications are found proved, and others proved in part, and as thus proved these latter support a charge of a lesser included offense, the findings on the charge should be recorded, for example: "* * * of the first charge guilty by the findings on the first and third specifications, and of the first charge guilty in a less degree than charged, guilty of * * *, by the findings on the second and fourth specifications."

583. Findings on joint charges or specifications.—When two or more persons are tried in joinder, the findings and sentence (or acquittal) in the case of each person arraigned and tried shall be separately recorded.

If one (or more) of the accused persons is acquitted, and one (or more) is convicted, the findings in the case of conviction must by proper exceptions eliminate the words showing that the acquitted person was a joint participant in the offense.

584. When finding is "not guilty."—In a general or a minor court in case the finding is "not guilty" upon any charge, the explicit statement should immediately follow that the court acquits the

accused of such charge. A finding of "guilty without criminality" is not consistent and should not be made. (See art. 554.) If the accused is found to have committed the act and done the things alleged in the specification, but without the guilty intent or knowledge essential to constitute the offense, the finding on the specification should be "not proved" and on the charge "not guilty."

585. Same: Acquittal to be announced in open court.—Should the accused be acquitted of all the charges or specifications upon which he has been tried the recorder shall forthwith draw up the findings in duplicate; the original shall constitute a part of the record of the trial; the duplicate shall be duly signed by all the members and the recorder. The court shall then be reopened and the recorder shall in the presence of the accused read aloud the findings of the court.

The duplicate of the findings, signed by all members of the court and the recorder together with the substance of the charges and (or) specifications against the accused, shall be transmitted to the commanding officer of the accused, who shall thereupon immediately release the accused from arrest and restore him to duty.

Should the court find one or more specifications proved and others not proved, the accused shall be called before the court and informed of the specifications found not proved.

586. Forms of acquittal.—The following forms of acquittal, and no others, are permitted:

"*The court does therefore acquit.*"—This form, known as a *simple acquittal*, should be used in all cases except in the few special cases to be hereinafter mentioned under other forms of acquittal. The use of this form sufficiently records the fact that the court has not sustained the charge and has the same legal effect as an acquittal expressed with some embellishment.

"*The court does therefore fully acquit.*"—The use of this form of acquittal indicates that a court not only fails to find a charge proved beyond a reasonable doubt but that it finds no facts whatever, as brought out by the evidence introduced in the case, which reflect adversely on the conduct of the accused in connection with matters pertaining to the charge and specification. In other words, a court should not "fully acquit" in cases where the record shows any uncontroverted facts whatever reflecting upon the accused.

"*The court does therefore honorably acquit.*"—This form is to be employed only in cases where the offense charged is, besides being an offense against military authority, of such a character that a conviction thereof would tend to dishonor the accused, such as, for example, a charge of "conduct unbecoming an officer and a gentleman." This acquittal, as in the case of a full acquittal, should never be used if the record shows any adverse reflection whatever upon the accused.

"*The court does therefore most fully and honorably acquit.*"—This form should be used only in extreme cases in which not only have the requirements of a "full" and "honorable" acquittal been fulfilled, but in which the court wishes to place the highest stamp of approval upon the actions of the accused in connection with matters covered by the specifications. The use of this form of acquittal might, for example, be justified in the case of an officer charged with unbecoming conduct in battle if the court wished to make it a matter of record that, far from considering the conduct of such officer censurable, it both approved and commended his conduct.

It will be noted that there is no legal distinction between a simple acquittal and one to which one of the additional expressions above quoted has been added, and it is to be emphasized that only in exceptional cases is the use of any form of acquittal, other than the simple "acquit," justified. Unless this rule be strictly adhered to and other forms of acquittal reserved for special cases, the distinction drawn above will soon be lost, and not only would a simple acquittal be robbed of its full absolving significance, but also the proper purposes for which the other forms of acquittal are reserved would be defeated.

587. Findings to be recorded in handwriting of recorder.—After the court has arrived at its findings the recorder, if not a member, is recalled and directed to record the same. They must be entered on the record in the handwriting of the recorder and must be free from interlineations and erasures. This direction applies to the entire findings. This includes everything which properly forms a part of the findings, commencing with the words "the (first) specification of the (first) charge." No abbreviations should be used in the findings other than the ones authorized to be used in a specification. (See art. 168.)

588. Previous convictions: Introduced.—The recorder shall, immediately after recording the findings, except where such findings have resulted in an acquittal, state whether or not he has any record of previous convictions by Coast Guard courts. If not, an entry to this effect shall be made in the record, but the court need not be reopened. If there be such record the court shall be opened and the record shall be submitted to the accused for opportunity to object to its admission. If there be no valid objection, it shall be read by the official prosecutor in the presence of all parties to the trial.

589. Same: Must have been approved by proper authority.—The record of a previous conviction, to be admissible, must show that such conviction was approved by the authorities whose action was requisite to give effect to the sentence. If the conviction was approved by such authority, and was not subsequently disapproved by the Secretary of the Treasury, it is admissible even though the

sentence of the court may have been remitted either in whole or in part.

590. Same: Must relate to current enlistment—exceptions.—The general rule is that the record of previous convictions, in order to be admissible, must relate to the current enlistment of the accused, if an enlisted person. But, in the case of persons serving under extended enlistments, convictions occurring prior to the current extension of such enlistment shall not be considered as having occurred during their current enlistment. On the other hand, when the last enlistment was terminated by sentence of a Coast Guard court or by discharge as undesirable by order of Headquarters, or where the accused deserted and subsequently fraudulently enlisted, all convictions occurring in the prior enlistment are admissible.

591. Same: What record must show.—The extract from the current enlistment contract and record of the accused showing record of previous convictions should, in the absence of objection, or where objection is overruled by the court, be read by the official prosecutor or recorder, and it should include the offense committed, the fact and nature of the trial, findings, sentence, and approval by the proper authorities, together with the dates of the offense, trial, and approval.

An official Coast Guard court order is prima facie evidence of its contents, and may, where it names the accused, be introduced as record of previous convictions.

A copy of the record of previous convictions read to the court shall be appended to the record.

592. Same: How record of is introduced when objected to.—Record of previous convictions, if objected to by the accused, should be introduced in the same manner as evidence and is subject to the rules of evidence; it is generally documentary in form, and, as a rule, is forwarded by the convening authority to the official prosecutor or recorder, together with the other papers in the case. The court will rule whether or not the record shall be admitted.

593. Method of arriving at sentence.—When the court has been closed for the purpose of determining the sentence, each member shall write down and subscribe the measure of punishment which he may think the accused ought to receive, and hand his vote to the president, who shall, after receiving all the votes, read them aloud. All sentences may be determined by a majority of votes. If the requisite number do not agree upon the nature and degree of the punishment to be inflicted, the president proceeds in the following manner to obtain a decision: He shall begin with the mildest punishment that has been proposed, and after reading it aloud shall ask the members successively, beginning with the junior in rank, "Shall this be the

sentence of the court?" And every member shall vote vive voce, and the president shall note the votes. Should there be no decision, the president shall, in the same manner as before, obtain a vote on the next mildest punishment, and shall so continue until a sentence is decided upon. A tie vote on any sentence should be reconsidered, with a view to obtaining a majority either for or against, before passing on to the next sentence.

594. Punishment to be adjudged.—It is the duty of Coast Guard courts, in all cases of conviction, to adjudge a punishment adequate to the nature and degree of the offense committed. In so doing due regard must be had to the requirements of the statutes and the limitations prescribed by the Secretary of the Treasury for punishments. Sentences must be in strict accordance with the provisions of the act of May 26, 1906 (34 Stat. 200). (See arts. 595 and 613.)

The statutes applicable to the Coast Guard do not make any sentence mandatory.

Care shall be taken that the sentence be one which the court is legally authorized to impose.

In arriving at its decision as to the nature and degree of punishment to be awarded, the court shall take into consideration its findings, all previous convictions of the accused, and his official record. If the accused be an enlisted person, all matters affecting his record must relate to his current enlistment.

595. Authorized punishments.—A Coast Guard court shall have power to impose upon a commissioned officer none other than the following punishments, namely: Summary dismissal from the service; suspension from duty for a period of two years or any part thereof upon reduced pay, which shall in no case be less than one-half nor more than three-fourths of the duty pay of such officer; reduction of rank in his own grade; retention of his present number on the official register for a specified time; imprisonment for a period not to exceed two years; official reprimand.

The only punishments that may be imposed by Coast Guard courts upon any person other than a commissioned officer shall be the following, namely: Dishonorable discharge; forfeiture of not to exceed two months' pay; imprisonment on land for a period not to exceed one year; confinement aboard ship not to exceed one month; confinement in single irons, on bread and water or on diminished rations, not exceeding 30 days, but a full ration shall in all cases be given at least every third day; confinement in single irons; reduction to next inferior rating; deprivation of liberty for a period not to exceed three months; extra duties and the imposing of these punishments will be regulated in accordance with rules prescribed by the Secretary of the Treasury. A minor court may impose any

of the above punishments except imprisonment on land and forfeiture of more than one month's pay. A deck court may impose the punishments specified in article 44.

596. Sentences involving imprisonment.—In all cases in which a warrant officer shall be sentenced to imprisonment the sentence should include dishonorable discharge and forfeiture of two months' pay, or so much thereof as may be due him at the time of discharge.

In all cases in which an enlisted person shall be sentenced to imprisonment the sentence should include reduction to the next inferior rating, dishonorable discharge, and forfeiture of two months' pay, or so much thereof as may be due him at the expiration of his enlistment or at the date of his discharge.

The sentence of an enlisted person which includes imprisonment should be expressed in the following form: The court, therefore, sentences him, ——— ———, ———, U. S. Coast Guard, to be reduced to the next inferior rating, that of ———, to be imprisoned on land in such place as the Secretary of the Treasury may designate for a period of ——— months, to be dishonorably discharged from the United States Coast Guard on the date to be designated by the Secretary of the Treasury, and to suffer all the other accessories of said sentence as prescribed by article 597, Coast Guard Courts and Boards.

The sentence of a warrant officer should be expressed according to the above form, with the exception of that part relating to reduction in rating.

597. Meaning of other accessories of said sentence.—The words "other accessories of said sentence," when used in the sentence of a general Coast Guard court, shall include the following: After the discharge of all indebtedness to the United States, including that for clothing drawn, and, in case of desertion, the expense of the apprehension and cost of transportation, and all other legal deductions, he shall forfeit from the amount of pay due him at the expiration of the term for which he enlisted, or on the date of discharge, two months' pay, or so much thereof as may be due him. He shall be allowed a reasonable sum, not to exceed $3 per month, for necessary prison expenses, said amount to be charged against any pay due him at the expiration of the term of his enlistment, or on the date of his discharge, after all deductions have been made. If he do not have sufficient pay due him, payments will be made from the appropriation for the maintenance of the Coast Guard.

598. Loss of pay.—Sentences not involving discharge which include forfeiture of pay shall state the rate and total amount of pay to be lost and the time of such forfeiture. Where such a sentence also involves reduction in rating the loss of pay adjudged, must be

figured on the rate of pay for the reduced rating. Except in unusual cases the loss of pay per month shall not exceed half of the actual pay, not including extras for gun pointer, etc., received by the accused. Loss of pay shall be stated in dollars, and not in day's pay. Loss of pay may be approved by the convening authority or may be mitigated. It is improper for the court in its sentence to attempt such mitigation, but it may properly so recommend to the convening authority for reasons stated.

599. Confinement on bread and water.—Courts shall exercise care and discretion in resorting to the punishment of confinement on bread and water, and shall not adjudge it in any case for a longer period than 30 days and shall provide for a full ration at least every third day. As a shorter interval on bread and water is less liable to work injury to health, the maximum interval allowed should be adjudged only in extreme cases. A medical certificate must be appended to the record when the confinement exceeds 10 days. (See art. 671.)

A sentence on bread and water or on diminished rations is not, in the usual case, looked on with favor. Where sentence on diminished rations is adjudged the convening authority should set out in his action the exact amount of rations to be allowed.

600. Recordation and authentication of sentence.—When a sentence has been determined upon the recorder shall be called before the court, and, under its direction, shall draw up the sentence, specifying the exact nature and degree of the punishment adjudged, and, after approval by the court, shall enter the same on the record. But it must not appear on the record what number of members voted for the sentence.

The sentence must be recorded in the recorder's own handwriting and must be free from erasures and interlineations. Numbers in the sentence shall be expressed both by words and by figures.

After the sentence has been recorded the proceedings in each separate case tried by the same court shall be signed by all the members and also by the recorder. The recorder when a member shall sign in his dual capacity as "member and recorder." These signatures are for authentication and do not necessarily impart unanimous concurrence in rulings, findings, decisions, and other action taken. In case a member dies before signing, the signatures of the remaining members will be sufficient.

601. Vote or opinion of individual members not to be disclosed.—In the matter of secrecy members of minor courts are governed by the same principle which applies to members of general courts. The latter are sworn not to "divulge or by any means disclose the sentence of the court until it shall have been approved by the proper authority," and not at any time to "divulge or disclose the vote or

opinion of any particular member of the court, unless required so to do before a court of justice in due course of law." The same oath shall be administered to members of a minor court.

602. Recommendation to clemency.—The power to pardon, remit, or mitigate is expressly vested in the Secretary of the Treasury. But if mitigating circumstances have appeared during a trial which could not be taken into consideration in determining the degree of guilt found the members of the court, individually and not as a body, may avail themselves of such circumstances as grounds for recommending the accused to clemency. In so doing the members signing the recommendation should set forth succinctly their reasons for making such recommendation. This recommendation is recorded immediately after the signatures of the members of the court and the recorder to the sentence and is signed by the members concurring in it.

It is improper for the recorder, unless a member, to sign this recommendation. Such recommendation should never be based on a doubt as to the guilt of the accused. If there be doubt as to the guilt of the accused he should be acquitted. If a minority of the court had such doubt and voted for acquittal, and then made a recommendation to clemency based on this doubt they, in effect, violated their oath not to divulge the vote or opinion of any particular member.

PART VII. LIMITATIONS OF PUNISHMENT.

608. Limitations of punishment prescribed by the Secretary of the Treasury.—The following limitations to the punishment of officers and enlisted persons of the Coast Guard in time of peace, by Coast Guard courts, for each separate offense, have been prescribed by the Secretary of the Treasury, and shall not be exceeded. They give the maximum limit of punishment for the offenses named, and that limit is intended for those cases in which the most severe punishment should be adjudged. Members of courts should bear in mind the fact that these limitations are for *each separate offense*, not for each separate charge. For several separate and distinct offenses, even though they be under the same charge, the court may, at its discretion, where the circumstances warrant such severity, adjudge in its sentence the limit of punishment for each separate and distinct offense. For example, the limitation of punishment for drunkenness (not on duty) in the case of an enlisted person is confinement for 30 days, no more than 15 of which shall be on bread and water, with or without single irons, and reduction to next inferior rating. If there happen to be two distinct offenses under the charge of drunkenness, and the court find both specifications proved, the court may, at its discretion, impose a sentence of confinement for 60 days and reduction to next inferior rating.

But where all the charges and specifications thereunder allege one and the same transaction, the court should impose punishment only with reference to the act or omission in its most important aspect.

609. Offenses not provided for.—Offenses not provided for herein remain punishable as authorized by the statutes relative to the Coast Guard and the custom of the service.

610. Loss of pay and reduction in rating.—In the case of an enlisted person, loss of pay and allowances *that may become due* during the current enlistment of the convicted person, and reduction to inferior rating or rank, may be added to the limitations of punishment.

611. Limitation when a deposition is used.—In any case where a deposition is used by the prosecution the maximum imprisonment which may be adjudged is 6 months.

612. Limitation when the record of a board of inquiry is used.—If, in the case of a commissioned or warrant officer, the maximum sentence under the following limitations of punishment extends to dismissal, and if, upon the trial, oral testimony can not be obtained, by reason of which fact the record of proceedings of the board of inquiry, upon whose findings such trial is wholly or partially based, is used in evidence by the prosecution, the maximum punishment which may be imposed shall not extend to dismissal, but shall, instead, be limited so as not to exceed the loss of 20 numbers in rank.

613. Limitations to punishment.—The following limitations to the punishment of officers and enlisted persons by Coast Guard courts are prescribed, and shall not be exceeded:

Offenses specified by law.	Limit of punishment.
Refusing to obey lawful order of superior officer.	Commissioned officer: Imprisonment and dismissal. Warrant officer: Imprisonment and dishonorable discharge. Enlisted person: Imprisonment and dishonorable discharge.
Disobeying lawful order of superior officer.	Commissioned officer: Dismissal. Warrant officer: Imprisonment and dishonorable discharge. Enlisted person: Imprisonment and dishonorable discharge.
Striking, Assaulting a superior officer while in the execution of the duties of his office.	Commissioned officer: Imprisonment and dismissal. Warrant officer: Imprisonment and dishonorable discharge. Enlisted person: Imprisonment and dishonorable discharge.
Attempting to strike, Attempting to assault, Threatening to strike, Threatening to assault a superior officer while in the execution of the duties of his office.	Commissioned officer: Imprisonment and dismissal. Warrant officer: Imprisonment and dishonorable discharge. Enlisted person: Imprisonment and dishonorable discharge.
Drunkenness on duty	Commissioned officer: Imprisonment and dismissal. Warrant officer: Imprisonment and dishonorable discharge. Enlisted person: Imprisonment and dishonorable discharge.
Drunkenness	Commissioned officer: Dismissal. Warrant officer: Dishonorable discharge. Enlisted person: Confinement for 30 days, no more than 15 of which shall be on bread and water, with or without single irons, and reduction to next inferior rating.
Gambling	Commissioned officer: Reduction of rank in his own grade, or retention of present number for a specified time, or suspension from duty on reduced pay. Warrant officer: Forfeiture of pay. Enlisted person: Confinement for 30 days, no more than 15 of which shall be on bread and water, with or without single irons, and reduction to next inferior rating.

Offenses specified by law.	Limit of Punishment.
Misappropriation of mess funds	Commissioned officer: Imprisonment and dismissal. Warrant officer: Imprisonment and dishonorable discharge. Enlisted person: Imprisonment and dishonorable discharge.
Misuse of—Government property	Commissioned officer: Imprisonment and dismissal. Warrant officer: Imprisonment and dishonorable discharge. Enlisted person: Imprisonment and dishonorable discharge.
Misuse of—Government supplies	Commissioned officer: Imprisonment and dismissal. Warrant officer: Imprisonment and dishonorable discharge. Enlisted person: Imprisonment and dishonorable discharge.
Fraudulently signing vouchers	Commissioned officer: Imprisonment and dismissal. Warrant officer: Imprisonment and dishonorable discharge. Enlisted person: Imprisonment and dishonorable discharge.
Theft in an amount under $100	Commissioned officer: Imprisonment and dismissal. Warrant officer: Imprisonment and dishonorable discharge. Enlisted person: Imprisonment and dishonorable discharge.
Scandalous conduct tending to the destruction of good morals.	Commissioned officer: Imprisonment and dismissal. Warrant officer: Imprisonment and dishonorable discharge. Enlisted person: Imprisonment and dishonorable discharge.
Desertion (in case of apprehension)	Commissioned officer: Imprisonment and dismissal. Warrant officer: Imprisonment for 1 year and dishonorable discharge. Enlisted person: Imprisonment for 1 year and dishonorable discharge.
Desertion (in case of surrender)	Commissioned officer: Dismissal. Warrant officer: Imprisonment for 9 months and dishonorable discharge. Enlisted person: Imprisonment for 6 months and dishonorable discharge.
Absence from duty—without leave	Commissioned officer: Dismissal. Warrant officer: Forfeiture of pay and dishonorable discharge. Enlisted person: Confinement for 30 days, no more than 15 of which shall be on bread and water, forfeiture of pay, and dishonorable discharge.
Absence from duty—after leave has expired	Commissioned officer: Dismissal. Warrant officer: Forfeiture of pay and dishonorable discharge. Enlisted person: Confinement for 30 days, no more than 15 of which shall be on bread and water, forfeiture of pay, and dishonorable discharge.
Neglect of duty	Commissioned officer: Imprisonment and dismissal. Warrant officer: Imprisonment and dishonorable discharge. Enlisted person: Imprisonment and dishonorable discharge.
Conduct unbecoming an officer and a gentleman.	Commissioned officer: Dismissal. Warrant officer: Dishonorable discharge.
Malicious—destruction of public property	Commissioned officer: Imprisonment and dismissal. Warrant officer: Imprisonment and dishonorable discharge. Enlisted person: Imprisonment and dishonorable discharge.
Willful—destruction of public property	Commissioned officer: Imprisonment and dismissal. Warrant officer: Imprisonment and dishonorable discharge. Enlisted person: Imprisonment and dishonorable discharge.
Aiding others to desert	Commissioned officer: Imprisonment and dismissal. Warrant officer: Imprisonment and dishonorable discharge. Enlisted person: Imprisonment and dishonorable discharge.
Enticing others to desert	Commissioned officer: Imprisonment and dismissal. Warrant officer: Imprisonment and dishonorable discharge. Enlisted person: Imprisonment and dishonorable discharge.
Smuggling liquor on board a vessel or within the limits of any depot or station of the Coast Guard.	Commissioned officer: Imprisonment and dismissal. Warrant officer: Imprisonment and dishonorable discharge. Enlisted person: Confinement for 30 days, no more than 15 of which shall be on bread and water, with or without single irons, forfeiture of pay, and dishonorable discharge.
Cruelty toward any subordinate person in the Coast Guard.	Commissioned officer: Dismissal. Warrant officer: Dishonorable discharge. Enlisted person: Confinement for 30 days, no more than 15 of which shall be on bread and water, with or without single irons, and dishonorable discharge.
Oppression of any subordinate person in the Coast Guard.	Commissioned officer: Dismissal. Warrant officer: Dishonorable discharge. Enlisted person: Confinement for 30 days, no more than 15 of which shall be on bread and water, with or without single irons, and dishonorable discharge.
Maltreatment of any subordinate person in the Coast Guard.	Commissioned officer: Dismissal. Warrant officer: Dishonorable discharge. Enlisted person: Confinement for 30 days, no more than 15 of which shall be on bread and water, with or without single irons, and dishonorable discharge.
Using obscene language	Commissioned officer: Reduction of rank in his own grade, or retention of present number for a specified time, and public reprimand. Warrant officer: Deprivation of liberty and dishonorable discharge. Enlisted person: Confinement for 30 days, no more than 15 of which shall be on bread and water, with or without single irons, forfeiture of pay, and dishonorable discharge.
Using abusive language	Commissioned officer: Reduction of rank in his own grade, or retention of present number for a specified time, and public reprimand. Warrant officer: Deprivation of liberty and dishonorable discharge. Enlisted person: Confinement for 30 days, no more than 15 of which shall be on bread and water, with or without single irons, forfeiture of pay, and dishonorable discharge.
Violating lawful order issued by the Secretary of the Treasury (or the President).	A punishment adequate to the offense and in conformity with law.
Violating lawful regulation issued by the Secretary of the Treasury (or the President).	A punishment adequate to the offense and in conformity with law.
Refusing obedience to lawful order issued by the Secretary of the Treasury (or the President).	A punishment adequate to the offense and in conformity with law.
Refusing obedience to lawful regulation issued by the Secretary of the Treasury (or the President).	A punishment adequate to the offense and in conformity with law.

614. Definition of "superior officer."—The term "superior officer," appearing in the list of offenses in the preceding article and elsewhere in this book, shall be held to mean a commissioned officer, a cadet of the line, a cadet engineer, a warrant officer, a chief petty officer, or a petty officer, senior in rank or rating to any other person concerned.

615. Punishments to be graded.—The table in article 613 prescribes the maximum limit of punishment for the offenses named, and that limit is intended for those cases in which the severest punishment should be awarded. In other cases the punishment should be graded according to the seriousness of the offense. The final reviewing authority of a minor court case shall remit any part or the whole of any sentence, the execution of which would, in the opinion of the surgeon or senior medical officer on board, given in writing, or of a medical officer of the Public Health Service who is requested to give such opinion, in writing, produce serious injury to the health of the person sentenced, or to submit the case again, without delay, to the same or another minor court, which shall have power, upon the testimony already taken, to remit the form of punishment and to assign some other of the authorized punishments in the place thereof.

616. Combined punishment.—A court may impose a punishment composed of one or more of those specified in article 595, provided that the combined punishments awarded do not exceed the limit of punishment prescribed for the offense by article 613 and are in conformity with law.

617. Next inferior rating.—A sentence involving disrating shall be to the "next inferior rating" (which rating shall be specifically designated by the court). (See art. 852.)

618. Disrating under special circumstances.—When a person's current enlistment contract and record shows that he was promoted to his present rating from some inferior rating other than the next lower one in his own branch, the "next inferior rating" shall be the rating from which he was last advanced, and it shall be so stated in the record of the court.

619. Place of imprisonment.—The department may designate as the place of execution of the sentence of a court involving imprisonment any prison or penitentiary that receives Federal prisoners.

PART VIII. PROCEDURE ON REVISION.

625. Revision must be before same court.—Upon the receipt of the record of a Coast Guard court the reviewing authority shall proceed at once to examine it in order that it may be returned for revision, if such course be necessary, before the dissolution of the court. If the reviewing authority return the record for revision the letter returning it must be signed by him, and must be bound in with the record. Jurisdiction in revision must be affirmatively shown the same as jurisdiction originally. (See art. 452.) When a court has been dissolved it ceases to exist and can not be resurrected. Consequently a record can not be returned for revision after the court has

been dissolved, although the same members constitute the new court as constituted the old. (See art. 651.)

626. Same: Except in the case of a minor court where the original sentence would injure the health of the accused.—The only case in which a revision may be had by a court other than the one which sat originally is where the medical officer certifies that the execution of the original sentence of a minor court would be seriously injurious to the health of the accused. In such a case the new court is restricted in its action to review of the record of the former trial and a redetermination of the sentence. No further testimony shall be admitted.

627. Legal quorum required for revision.—Should the reviewing authority decide to reconvene the court in order to amend or otherwise remedy a defect or omission in the record, or for a reconsideration of its findings or sentence, which may be done when the facts warrant (see art. 644), the record shall show that at least three members of a general court which originally sat upon the trial and a recorder are present. A correction can not be made unless there is a legal quorum present. So long as this essential be fulfilled it is not necessary to the legality of the proceedings that all the members present at the original trial be present at the reassembling of the court. In the case of a minor court all of the original members must, of course, be present except as noted in the preceding article.

628. Recorder on revision.—It is not necessary that the same recorder, unless he be a member, officiate on the revision of a case as took part in the original proceedings. If a new recorder be detailed, however, the orders of the convening authority, modifying the precept in that respect, shall be read and a copy prefixed to the record in revision. Also, the order convening the court in revision shall not be read until after the new recorder has been sworn.

629. No new evidence admissible.—When a court is ordered to revise its proceedings, new evidence shall not be admitted.

630. Record in revision.—During a revision an entirely separate record shall be kept, to which the order for reassembling must be prefixed, and which shall itself be prefixed to the record of which it is a revision. A full entry shall be made of all the proceedings, verified in the ordinary manner by the signatures of all the members of the court present and the recorder, and transmitted, as before, to the reviewing officer for his approval. In the case of a deck court the record in revision shall be typewritten on thin bond paper uniform in size with the deck court form and pasted to same at the top.

631. Clerical errors or omissions, how corrected.—Clerical errors or omissions in the original record may be amended by the court in revision without the presence of the accused, but they are not to be corrected in an informal manner by erasure or interlineation. The

legal procedure is for the proper officer to reconvene the court, calling its attention in the order for reassembling to the error requiring correction, and for the court, on reassembling, to decide as to the correction to be made, and to incorporate it as a part of the record of proceedings in revision.

632. Presence of accused.—It is not in general necessary or desirable that the accused be present at revision. When, however, any possible injustice may result from his absence, he should be required or permitted to be present with counsel, if desired. Thus, where the defect to be corrected consists in an omission properly to set forth a motion made or an objection taken by the accused, it may be desirable that he should be present in order that he may be heard as to the proper form of the proposed correction. But where the error consists in the omission of a formal statement only, or a reconsideration of the findings or sentence on the record as it stands is what is required, the presence of the accused is not in general called for.

633. Findings and sentence revised in closed court.—The court will be closed during a revision of the findings and sentence.

634. Revision affecting findings and sentence—Court's action to be in handwriting of recorder.—The findings or sentence in revision must be in the handwriting of the recorder. In a revision of a case the statement, "The court does respectfully adhere to its former findings (sentence)" is equivalent to a rewriting of findings (sentence), and shall be in the handwriting of the recorder.

The court is forbidden to revise its finding of not guilty of any specification or its sentence with a view to increasing its severity. (See art. 644.)

635. Where revision of findings results in acquittal.—If the trial originally resulted in conviction, but on revision in acquittal, the acquittal will be announced in open court in accordance with the procedure given in article 585.

PART IX. ACTION BY REVIEWING AUTHORITY.

638. Sentence not effective until approved.—No sentence of a Coast Guard court, except that of a deck court, may be carried into execution until the proceedings, findings, and sentence have been reviewed and approved by the Secretary of the Treasury as the final reviewing authority, or by his direction, and no sentence extending to the dismissal of a commissioned officer shall be carried into effect until approved by the President. (Section 3, act of May 26, 1906, 34 Stats. 200.) The Secretary of the Treasury, as the final reviewing authority, has power to remit or mitigate, but not to commute, a sentence of a Coast Guard court.

The records of Coast Guard courts shall be filed at Headquarters.

An officer who convenes a deck court, or his successor in office, shall after careful scrutiny of the record, and of the testimony, if there be any, note his action on the record, with date and signature. He shall have power as reviewing authority to remit or mitigate, but not to commute, any sentence imposed by such court. Such officer shall have power to remit any punishment such court may adjudge, and shall have also authority to remit forfeiture of pay under the conditions specified in article 12. If he do not conditionally remit the sentence under said article, he shall draw a line through the statement on the form relating thereto and initial the same. No sentence of a deck court shall be carried into effect until it shall have been so approved or mitigated. (See art. 882.)

When the confirmation of a sentence requiring the approval of higher authority is necessary the record shall be forwarded to the next higher reviewing authority by the convening authority with his approval indorsed thereon.

When the sentence includes confinement on board ship or deprivation of liberty, the date of commencement, unless another date is specifically stated, is the date of promulgation. If the convicted person has been in confinement, or deprived of liberty, for safe-keeping, pending trial and sentence, for a considerable length of time, the reviewing authority may take this into consideration when acting upon the sentence. The date upon which a sentence becomes effective is that of the action of the reviewing authority, unless another date is specified. Its enforcement commences upon the date of promulgation, unless another date is specified.

639. Execution of dishonorable and bad-conduct discharges.—In view of the fact that the distinctive insignia of the uniform are badges of honor, it is directed that in all cases of bad-conduct and dishonorable discharges the badges of uniform be removed prior to discharge, This includes cap ribbons, metal devices, rating badges, specialty badges, tape and watch marks, chevrons, and service stripes. Men discharged, except those who have served a term of imprisonment in a prison on shore, will not be regarded as "discharged Coast Guard prisoners" within the meaning of the regulations, providing for allowances to prisoners on discharge.

In sentences involving a dishonorable or a bad-conduct discharge, together with loss of pay, the latter should, whenever necessary, be remitted to such an extent as to leave the discharged man sufficient money for his immediate needs after his separation from the service.

640. "Reviewing authority" defined.—The Secretary of the Treasury, or the Assistant Secretary of the Treasury or the Commandant of the Coast Guard acting under his direction, and the officer con-

vening a deck court, shall be the reviewing authority. The record of a court shall be subject to review by every officer authorized to convene a court. When, as is the case in minor and deck courts, such officer is the convening authority, this latter term should, in order to avoid confusion, be used in referring to him, even while exercising the functions of a reviewing authority.

641. Power of reviewing authority.—Every officer authorized to convene a deck court is given the power to remit or mitigate, but not to commute, its sentence. Every superior reviewing authority has the same power, and the Secretary of the Treasury has this power in all deck, minor, and general court cases. When, however, the convening authority desires neither to approve the record of a court nor to exercise his power to remit or mitigate, his power is limited to returning the record to the court for revision and reconsideration in any features which he may deem to merit it, and, in the event of the court's adherence to its former conclusions, to a disapproval of the same. It is not in the power of the convening authority to compel a court to reverse its decision upon a motion or plea, or to change its findings or sentence, when, upon being reconvened by him, it has declined to modify them, nor either directly or indirectly to enlarge the measure of punishment imposed by sentence of a court. When the proceedings, findings, or sentence of a court are illegal the convening authority should set them aside.

In cases where the proceedings must be approved both by the convening authority and higher reviewing authority before the sentence becomes effective, and where the convening authority has mitigated the sentence imposed by the court, the action of the higher authority is limited to the sentence as mitigated. Such higher authority can not disapprove the mitigation of the convening authority and thus restore the original sentence.

The convening authority in his remarks returning a record for revision should not, in effect, threaten disciplinary action against the members of the court. It is not within the province of the convening authority to coerce the court to adopt his view.

Reviewing authorities in mitigating or remitting sentences should not thereby keep an accused guilty of an offense involving moral turpitude in the service.

A higher reviewing authority, believing that a specification is fatally defective, should not merely point out the defect in his action, but should explicitly disapprove the proceedings and findings thereon.

642. Same: Conditionally to remit dishonorable discharges.—*Dishonorable discharges*, adjudged for first offenses, may at the discretion of the Secretary of the Treasury be deferred instead of being summarily executed. It is considered highly desirable, unless in the opinion

of the reviewing authority such action is not warranted in a particular case, to defer action on discharges adjudged for first offenses not of a serious nature. The period during which a discharge is held in abeyance is a probationary period. Such probationary period can not extend beyond the current enlistment of the probationer. (See art. 11.)

643. Same: Conditionally to remit other sentences.—Sentences involving punishments such as confinement on bread and water, extra police duties, etc., either solely or in connection with loss of pay, may be conditionally remitted as provided in the preceding section by the reviewing authority in the same manner as where discharges are imposed. If the conduct of the man during the probationary period is satisfactory, the remission will become unconditional at the expiration of such period; otherwise, the commanding officer may carry the sentence into execution at any time during the probationary period.

644. Same: When he is not to return record.—No authority will return a record of trial to any military tribunal for reconsideration of (*a*) an acquittal; (*b*) a finding of not guilty of any specification; or (*c*) the sentence originally imposed, with a view to increasing its severity. No military tribunal in any proceedings on revision shall reconsider its finding or sentence in any particular in which a return of the record of trial for such reconsideration is herein prohibited. (See President's order to the Army of July 14, 1919.) In rare cases where reviewing authorities consider that strict adherence to the provisions of this article would result in a miscarriage of justice they may withhold action and report the circumstances to the department for action.

645. Effect of disapproval.—The disapproval of the findings or sentence of a court by the legal reviewing authority is not a mere expression of disapprobation, but has the legal effect of entirely nullifying the same. In case of disapproval the accused must be immediately released from arrest. A reviewing authority can not disapprove a sentence and then proceed to mitigate it, or place the accused on probation, or carry it into effect in any way, for, after disapproval, there is nothing left to mitigate or carry into effect.

646. Reviewing power vests in office of authority so acting.—The reviewing power, as well as the convening power, of a court vests in the office, not in the person, of the authority so acting. Thus, when the reviewing power is vested in the convening authority and the officer who has ordered the court has been relieved or is absent, it is competent for his successor in office, whether temporary or permanent, to act as reviewing authority.

647. Same: May not be delegated to inferior.—The reviewing authority can not delegate to an inferior or other officer his function as reviewing authority, nor can he authorize another officer to subscribe for him his decision and orders on the proceedings. He will sign in his own hand the action taken by him on the proceedings. His rank and official position should appear after his signature.

648. Reviewing authority should not disapprove on account of error not prejudicial to rights of accused.—The reviewing authority should properly remark upon the improper admission or rejection of evidence or errors in pleading or procedure, but unless such erroneous action by the court appears to him to have operated to the substantial injury of the accused he should not disapprove the proceedings. The effect of the erroneous action of the court should be weighed by him in the light of all the facts as shown by the record, and, if it appear to him that the court was materially influenced in its findings or sentence by its erroneous action, he should disapprove the findings and sentence, in whole or in part, as circumstances may require. The reviewing authority should not attempt to weigh the evidence, remembering that this depends largely on manner of testifying and that the court is better able to decide on this than he is. If, however, the recorded evidence is insufficient to establish a prima facie case, the reviewing authority may properly disapprove a conviction on this ground.

649. Mitigation of sentences.—The power to commute sentences—that is, to change the nature of the punishment—is vested in the President alone. Thus a reviewing authority can not reduce the period of confinement adjudged and direct that the accused "suffer all other accessories of said sentence," when the accused was not sentenced by the court to suffer all the other accessories of said sentence, the nature of the punishment being thereby changed.

But, as a sentence of dismissal includes a loss of all numbers it may be mitigated to suspension or loss of certain numbers; and as a sentence of dismissal or discharge includes loss of all pay it may be mitigated to loss of certain pay, and a more derogatory discharge may be mitigated to one less so; for example, a dishonorable discharge may properly be mitigated to a bad conduct discharge.

650. Sentences in excess of limitation of punishment.—Where a sentence in excess of the limitations of punishment prescribed by the Secretary of the Treasury in time of peace (see art. 608 et seq.) is adjudged, and the same is divisible, such part as is legal may be approved and executed. Where a sentence of a minor court or a deck court is illegal as involving parts of two or more of the punishments they are authorized to impose, or as being in excess of the limit fixed by law, the reviewing authority may approve a part of

the sentence adjudged, set aside the rest, and execute the legal sentence remaining.

651. Superior authority may return record for revision, provided court has not been dissolved.—The court can not, after it has once duly completed and forwarded the record, recall it for modification, nor can the convening authority, after he has acted upon the record and forwarded it. But a superior authority, required by law to review the proceedings, may return the record to the convening authority, requesting that the court be reconvened, provided it has not been dissolved, to reconsider the record in some particular. This may not be done, however, in contravention of the President's order set forth in article 644.

652. Suspension of sentence.—A reviewing authority may, if the sentence do not involve dismissal, suspend the execution of the sentence, in whole or in part, and may restore the person under sentence to duty during such suspension. A sentence, or any part thereof, which has been so suspended may be remitted, in whole or in part, conditionally. Such remission should empower the commanding officer of the person sentenced, in his discretion, for cause, to vacate the order of suspension at any time and order the execution of the sentence or the suspended part thereof. In any case where the commanding officer of a person sentenced is given power to vacate a suspension of such sentence he should be directed, in case he does so vacate it, to make full report to Coast Guard Headquarters of the reason therefor.

653. Dissolution of court.—A court is dissolved by the order of the authority who convened it. Such order may be oral. When so dissolved the court can not legally be reconvened. (See arts. 625 and 651.)

PART X. RECORD OF PROCEEDINGS.

(Many of the provisions of Part X do not apply to a deck court. The record of a deck court shall in all cases be made on the form furnished by Headquarters.)

658. Records of proceedings.—Every court will keep an accurate record of its proceedings. (See art. 539.) The record of proceedings in each case tried shall set forth the names of the members of the court who were present during the trial; that the accused was furnished a copy of the charges and specifications against him; that the precept was read aloud in the presence of the accused; that he was afforded an opportunity to challenge members; and that the members, recorder, reporter, interpreter, and witnesses were duly sworn. It shall further show the arraignment, preliminary motions, pleas, objections, and grounds therefor, all testimony and docu-

mentary evidence received, decisions and orders of the court, adjournments, statement and closing arguments, findings, and sentence or acquittal; in short, the entire proceedings of the court which are necessary to a complete understanding by the reviewing authority of the whole case and every incident material thereto. Oral arguments upon the admissibility of evidence and upon interlocutory proceedings shall not be recorded. (See art. 562.)

Each case is thus made complete in itself and the record continuous. When all the cases laid before the court have been finished and severally authenticated and forwarded, the president shall, unless otherwise directed by the convening authority, inform the said authority that all business before the court has been completed, and the court shall adjourn to await the action of the convening authority.

659. Same: To be typewritten.—Except under extraordinary and unusual conditions of service, records of all courts and boards shall be typewritten.

660. Same: How made up and bound.—The record shall be typewritten on paper 8 by 10½ inches in size. But one side of the paper shall be used, leaving a margin of 1 inch on the left, one-half inch on the right and 2½ inches at the top of each leaf. Each page shall be numbered in the middle of the margin at the lower edge. In making up the record it sometimes happens that the pages are not numbered consecutively, as, for example, where a page is inserted and numbered 73–a, 360½, etc. Where this occurs a notation shall be placed at the bottom of the preceding page calling attention to this fact, as, for example, "next page numbered 73–a," or "next page numbered 360½," etc. When the conditions mentioned in the preceding paragraph render it necessary that the record be written in longhand, the same size paper (8 by 10½ inches) shall be used and, as in the case of the typewritten record, but one side of the paper shall be used; the penmanship must be clear and legible and the record free from erasure or interlineation, except as authorized in the following articles. Before the record is forwarded to the convening authority all pages, documents, and exhibits must be securely bound together by through fasteners at the top margin, and care shall be taken to see that the fasteners are through each page, document, and exhibit. Where the record is long it should be bound in volumes, each having a proper cover sheet, and marked near the lower margin "Vol. I," etc. Should the exhibits be objects that do not permit of being secured in the manner indicated, they shall be otherwise attached to the record so as to prevent the possibility of loss, or, if necessary, forwarded under separate cover.

661. Cover sheets.—A neat cover sheet shall be prefixed to the whole record, following the standard forms given under the procedure of the various courts and boards. At the end of the record, following all appended documents, there shall be attached a heavy blank sheet to act as a protection to the record. The date on the front cover sheet shall be the date when the court or board first convenes for the case in question.

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

663. Questions and answers paragraphed.—Each question and answer of a witness shall begin a new paragraph.

664. Recess or adjournment.—When the business of the court is suspended from one day to the next, or for a longer period, the record shall show that the court *adjourned* until the time agreed upon; but when the period of suspension of business is from one part of a day to another part of the same day, the record shall show that a *recess* was taken for the time mentioned. A general court shall sit from day to day, Sundays excepted, unless temporarily adjourned by the authority which convened it. A minor court shall also observe these provisions.

665. Reading of record.—In reading the record of the previous day upon the opening of the court on each successive day the salient features of the proceedings only need be read; it is not necessary at this time to read the testimony recorded. The ruling of the court on questions submitted for decision should be read. Before the trial is finished the record up to that point must have been approved.

666. Presence of accused during subsequent reading of record.—If the court adjourn after arriving at a finding and sentence (or acquittal) to meet the next day for the purpose of verifying the record, the record of proceedings of the succeeding day should distinctly show that the accused was present during the reading of so much thereof as referred to the proceedings in open court, that he then withdrew, and that the court was cleared, the recorder remaining, whereupon that part of the record which pertained to the proceedings in closed court was read.

667. Order in which documents are prefixed or appended.—In making up records documents modifying or relating to the precept and to the charges and specifications are prefixed immediately following the precept or the charges and specifications as the case may be. Docu-

ments relating to occurrences during the procedure are appended immediately following the record of the trial in the order in which they occur. Exhibits are appended after these latter documents in the order in which they were introduced into evidence.

668. Numbering and marking of pages and documents.—All documents other than instruments of evidence shall be marked with capital letters, as "A," "B," "C"; instruments of evidence shall be marked "Exhibit 1," "Exhibit 2," etc. When a single document or instrument of evidence is more than one page in length, each page thereof must be marked, for example "A (1)," "A (2)," etc., "Exhibit 1 (1)," "Exhibit 1 (2)," etc. (An instrument of evidence is something tending to prove or disprove the issues; that is to say, the guilt of the accused. See art. 221.) All such marks must be boldly and distinctly made and placed in the lower right-hand corner of the page or sheet. All copies of documents which may be appended to the record shall be certified "A true copy" by the recorder.

When an officer certifies over his signature that a document is a true copy of some other writing, it should be an exact copy of said other writing, and not a summary of the substance thereof.

669. Modifications of precept.—The modifications of the precept, or convening order, are those which are signed and issued by the convening authority, and they must not be confused with the personal individual orders to officers to perform duty on the court or board, which are issued separately by the Commandant of the Coast Guard, or convening authority, as the case may be. These modifications of the precept must appear immediately after it as a part of every record where changes have been made in the composition of the membership. These, of course, are not instruments of evidence and are marked "B," "C," etc.

670. In case of absence of members.—In the case of absence of a member on leave or duty authorized by proper authority, with the knowledge and approval of the convening authority, a copy of the order permitting or directing the absence must be made a part of the record following immediately after the precept and its modifications. Similarly in case of unauthorized absence, the statement of the absent member with regard to his absence must appear in the same place.

671. Medical certificate required.—Whenever any person is sentenced for a period exceeding 10 days to confinement on diminished rations or on bread and water, there must appear on the record of proceedings the certificate of the senior medical officer under the immediate jurisdiction of the convening authority, or of a medical officer of the Public Health Service, to the effect that such sentence will not be seriously injurious to the health of the prisoner. (See art. 626.)

672. Manner in which corrections are made.—If corrections should be necessary they shall, where made, be initialed by the recorder. An undue number of corrections, or a lack of neatness in making them, will be sufficient cause for returning a record for rewriting.

673. When a witness corrects his testimony. (See art. 409).—The following instructions will be observed whenever a witness corrects or amends his testimony:

(*a*) In every case the original testimony must remain in the record as originally given.

(*b*) Inclose in parentheses, in red ink, that portion of the original testimony that has been corrected or amended by the witness.

(*c*) In the left-hand margin of the record, opposite the original testimony—inclosed in parentheses, as directed in *b*—enter, in red ink, a note referring to the page of the record where the corrections to testimony is to be found. For example, "See correction, Page —." *Or*,

(*d*) Where corrections are short, inclose the original testimony in parentheses—as directed in *b*—and enter the correction, in red ink, close to the original testimony which it corrects.

(*e*) Typographical corrections in testimony will be made in red ink and initialed by the recorder.

674. Index for lengthy cases.—If a court record or that of a board of inquiry or board exceeds 20 pages in length, it shall be preceded by an index showing upon what page each step of the trial (investigation) and of the examination of the several witnesses, designating them by name, may be found; also, in case a witness corrects his testimony the index shall show the pages where such correction may be found. There shall also be an index of exhibits offered and recieved in evidence, giving a brief description of the document, etc., and at what page of the record it was admitted in evidence. (See art. 702.)

675. Readings of papers.—Where the record states that a paper, document, or testimony was read, it is to be understood that it was read aloud.

676. Completion of record.—After the proceedings and sentence, with the recommendation to clemency, if any, have been signed, the action of the court, whether an adjournment or the taking up of a new case, shall be recorded; after this entry has been authenticated by the signatures of the president and the recorder, the record is completed.

677. Final disposition of records.—The records of proceedings of all courts shall be forwarded direct to the Commandant, U. S. Coast Guard, by the reviewing authority, after acting thereon, or, in the

case of general courts convened by the Secretary of the Treasury, by the presiding officer of such courts.

678. Letters of transmittal not required.—Letters of transmittal are not required in forwarding to Headquarters records of proceedings of courts and boards.

679. Action to be taken in case of loss of record.—When, prior to action by the reviewing authority, a record of trial by a Coast Guard court is lost or destroyed, a new record of trial in the case will, if practicable, be prepared and will become the record of trial in the case. Such new record will, however, only be prepared when the extant original notes or other sources are such as to enable the preparation of a complete and accurate record of the case. In any case of the loss of a record of trial by a Coast Guard court the convening authority will be fully informed as to the facts and as to the action, if any, taken.

In case the stenographic notes or other report of the trial be lost before the record has been written up, the record shall be prepared so as to show that the interests of all parties to the trial have been safeguarded, who were witnesses for and against the accused and a summary of their testimony, the substance of all evidence admitted over the objections of the accused or his counsel, that the accused was given an opportunity for cross-examination, and any other steps required by law to be shown. The record thus prepared will be drawn up in all respects as nearly as may be like the record required by the foregoing articles of Part X of this chapter and will be submitted in due course to the convening authority in the regular manner together with a letter attached thereto stating the reason for such procedure.

CHAPTER VIII.(1)

GENERAL COURT PROCEDURE.

PART I. THE TRIAL.

(1) This chapter shows how a record of trial by general court is made up. The object is to show each paper and entry in the order in which it should appear in the completed record, except that in this chapter the record in revision appears after the record of the original proceedings, whereas in the completed record it should be prefixed. Each separate step in the trial is given an article number in this chapter to indicate clearly that it is a separate step, and for ease of reference. The article numbers and headings given in this book are not to be repeated in the record of the court. Each of the separate steps so indicated, obviously, may not occur in any one trial.

For the general provisions governing making up records see arts. 658 to 679.

PART II. REVISION.

PART III. ACTION OF THE CONVENING AUTHORITY.

PART I. THE TRIAL.

701. Cover page.—

Case of
A———B. C———,
Seaman second class,
U. S. Coast Guard,
June 26, 1923. (2)

RECORD OF PROCEEDINGS
of a
GENERAL COURT
convened on board the (3)
U. S. C. G. C. WINONA
by order of the
SECRETARY OF THE TREASURY.

702. Index for lengthy case (5).—

A——— B. C———,

Seaman second class, United States Coast Guard,

Trial by general court on board the U. S. C. G. C. *Winona*, June 26, 1923.

INDEX.

(2) This is the date of first convening for this trial.

(3) Variation: ——— convened at the U. S. Coast Guard Depot, Arundel Cove, Md., by order of the Secretary of the Treasury.

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

(5) An index is required whenever a record exceeds 20 pages in length. (Art. 674.)

TESTIMONY.

Name of witness.	Direct and redirect.	Cross and recross.	Court.	Correct-ed.
Prosecution.				
A——— T. D———, lt. com., U. S. C. G.	9, 10	9	.....	.....
R——— Q———, cox., U. S. C. G.	10, 13	12, 13	14	.....
O——— P———, civilian	17	19	.....	.....
C——— B. A———, prosecutor	21	23	.....	.....
R——— Q———, cox., U. S. C. G.	38, 40	39, 41	39	.....
Defense.				
C——— B. A———, prosecutor	23	.....	.....	.....
M——— M———, ens., U. S. C. G.	26	28	.....	.....
K——— L———, s2c, U. S. C. G.	28	30	30	.....
X——— Y. Z———, accused	30, 31	31	32	.....
Court.				
I——— K———, bm2c, U. S. C. G.	.....	41	40	.....

EXHIBITS.

Ex-hibit.	Character of—	Admitted in evi-dence.
		Page.
1	Testimony of Lt. Com. ——— ——— before board of inquiry	22
2	Testimony of ——— ———, bm1c, before board of inquiry	22
3	Extracts from current enlistment record of accused	23
4	Testimony of Lt. Com. ——— ——— before board of inquiry	23
5	Extracts from current enlistment record of accused	24
6	Deposition for the defense	24
7	Knife	30

703. Precept.—(6).

TREASURY DEPARTMENT,
Washington, June 20, 1923.

Lieutenant Commander D——— E. F———,
U. S. Coast Guard, U. S. C. G. C. Miami.

Subject: Precept for a general court.

Sir: A general Coast Guard court is hereby ordered to convene on board the U. S. C. G. C. *Winona*, at Mobile, Alabama, at 10 o'clock a. m. on Monday, June 25, 1923, or as soon thereafter as practicable, for the trial of such persons as may be legally brought before it.

(6) See arts. 477 and 452 to 464.

The court is composed of the following members, viz:
Lieutenant Commander D——— E. F———, U. S. Coast Guard,
Lieutenant, Engineering, G——— H. I———, U. S. Coast Guard,
Lieutenant J——— K. L———, U. S. Coast Guard.
Lieutenant M——— N. O———, U. S. Coast Guard, is designated as official prosecutor and Lieutenant P——— Q. R———, U. S. Coast Guard, as recorder.

By direction of the Secretary.

Respectfully,

S——— T———,
Assistant Secretary.

A true copy. Attest:
P——— Q. R———,
Lieutenant, U. S. Coast Guard, Recorder. A.

(The original precept is never prefixed in a general court record.) (Art. 25.)

704. Promotion or other change of status of a member, recorder, or official prosecutor.—

HEADQUARTERS. TREASURY DEPARTMENT,
UNITED STATES COAST GUARD,
Washington, June 21, 1923.

From: Commandant.
To: Lieutenant Comander R——— L. J———, U. S. Coast Guard, via Commanding Officer, U. S. C. G. C. *Winona* (7).
Subject: Commission.
Inclosures: 1. Commission.
2. Form of acknowledgment.

1. Having been appointed a lieutenant commander in the U. S. Coast Guard from June 3, 1923, there is transmitted herewith your commission as such.

2. Execute an acceptance and oath under this appointment and return to Headquarters.

, (Signed) ——— ———.

A true copy. Attest:
P——— Q. R———, ,
Lieutenant, U. S. Coast Guard Recorder. B.

705. Appointment of a new member by a dispatch.—

U. S. C. G. C. *Winona*, Mobile, Alabama, for President General Court Lieutenant M——— N———, appointed member general court

(7) The member whose status is changed will show the original of this letter to the recorder that a copy may be made for the record.

67189—24——15

you president, during trial of A———B stop C———, seaman second class S———T———Assistant Secretary.

A true copy. Attest.

P——— Q. R———

Lieutenant, U. S. Coast Guard, Recorder. C.

706. Change in composition of court.—

TREASURY DEPARTMENT,
Washington, June 26, 1923.

Lieutenant Commander D——— E. F———,
U. S. Coast Guard, President, General Court, U. S. C. G. C. Winona.

Subject: Change composition of court.

Sir: Lieutenant M——— N———, U. S. Coast Guard, is hereby appointed a member of the general court of which you are president, in place of Lieutenant J——— K. L———, U. S. Coast Guard, hereby relieved.

By direction of the Secretary.

Respectfully,

S——— T———,
Assistant Secretary.

A true copy. Attest:

P——— Q. R———,
Lieutenant, U. S. Coast Guard, Recorder. D.

707. Letter from attending medical officer reporting sickness of a member.—

U. S. C. G. C. WINONA,
Mobile, Alabama, June 29, 1923.

From: Surgeon C——— F. I———, U. S. Public Health Service.

To: Commandant, U. S. Coast Guard (via Lieutenant Commander. D———E. F———, U. S. Coast Guard, president general court, U. S. C. G. C. *Winona*).

Subject: Sickness of member of general court.

Reference: Coast Guard Courts and Boards, 1923, article 510.

1. In accordance with reference, I have to report that I have this day found Lieutenant ——— ———, U. S. Coast Guard, sick and unfit for duty (8).

(Signed) C——— F. I———.

A true copy. Attest:

P——— Q. R———,
Lieutenant, U. S. Coast Guard, Recorder. E.

(8) If sickness is protracted, a similar report should be made for each day the member is absent from a session of the court.

708. Letter transmitting charges and specifications.—

TREASURY DEPARTMENT.
Washington, June 20, 1923.

Lieutenant Commander D——— E. F———,
U. S. Coast Guard, President, General Court,
U. S. C. G. C. Miami.

Subject: Charges and specifications in the case of A——— B. C———, seaman, second class, U. S. Coast Guard.

Sir: 1. There are transmitted herewith charges and specifications, approved by the department, against A——— B. C———, seaman, second class, U. S. Coast Guard, who will be brought to trial before the general court of which you are president.

2. A copy of the charges and specifications has been mailed to seaman, second class, A——— B. C———, U. S. Coast Guard, and he has been ordered to report to you for trial at the time and place designated in the order. His official record has this day been mailed to you in a sealed envelope, to be opened and examined after the findings have been recorded, but before the sentence has been decided upon.

3. A copy of the charges and specifications has also been transmitted to the official prosecutor.

4. When the trial of this case is completed by the court the record of proceedings will be transmitted without delay to Headquarters, and you will await further instructions.

Respectfully,

S——— T———,
Assistant Secretary.

F.

709. Charges and specifications.—

[Original.]

Copy delivered accused (here state when). G. (1)

P——— Q. R———,
Lieutenant, U. S. Coast Guard, Recorder.

710. Additional charge and specification.—

TREASURY DEPARTMENT,
Washington, June 22, 1923.

Lieutenant Commander D——— E. F.———,
U. S. Coast Guard, President, General Court,
U. S. C. G. C. Winona.

Subject: Charges and specifications in the case of A—— B. C———, seaman, second class, U. S. Coast Guard.

Sir: The above-named person will be tried before the general court of which you are president upon the additional charge and specification transmitted herewith, intelligence of which did not reach me until the 21st instant. You will inform the accused of the date set for his trial and summon all witnesses, both for the prosecution and the defense.

A copy of the additional charge and specification has this date been mailed to the official prosecutor, and a copy has also been sent to the accused.

By direction of the Secretary.

Respectfully,

S——— T———,
Assistant Secretary.

H.

711. Letter correcting charges and specifications (9).—

TREASURY DEPARTMENT,
Washington, June 24, 1923.

Lieutenant Commander D——— E. F———,
U. S. Coast Guard,
President, General Court, U. S. C. G. C. Winona.

Subject: Authorizing correction in specifications.

SIR: You are hereby authorized and directed to change the charges and specifications preferred by me against A——— B. C———, seaman, second class, U. S. Coast Guard, in the following particulars: In the third line of the first specification of Charge I, change the words "* * *" to "* * *"; in the third line of the specification of the additional charge make the same correction.

You will cause the copy in the possession of the accused to be corrected accordingly.

By direction of the Secretary.

Respectfully,

S——— T———,
Assistant Secretary.

I.

(9) Except to correct manifest clerical errors, only the convening authority can alter the charges and specifications.

712. Letter authorizing nolle prosequi.—

TREASURY DEPARTMENT,
Washington, June 22, 1923.

Lieutenant M——— N. O———,
U. S. Coast Guard,
Official Prosecutor, General Court, U. S. C. G. C. Winona.

Subject: Authorizing entry of *nolle prosequi* in case of A——— B. C———, seaman, second class, U. S. Coast Guard.

SIR: You are hereby authorized and directed to enter a *nolle prosequi* in the case of the above-named man to specifications one and two of Charge II of the charges and specifications preferred against him June 20, 1923.

By direction of the Secretary.

Respectfully,

S——— T———, (10)
Assistant Secretary.

J.

713. Dispatch from court reporting errors in charges and specifications.—

COAST GUARD, *Washington.*

Court in case of A——— B stop Coomb comma seaman second class comma has found charges and specifications not in due form in that the name is spelled Coombe throughout stop Request authority to change stop

D——— E. F———.

A true copy. Attest:

P——— Q. R———,
Lieutenant, U. S. Coast Guard, Recorder.

K.

714. Dispatch from convening authority correcting charges and specifications.—

Coast Guard cutter *Miami*, Mobile, Alabama, for president general court Correct charges and specifications preferred against A——— B stop Coomb comma seaman second class comma United States Coast Guard comma and copy in hands of accused comma by changing the name Coombe to Coomb wherever it occurs stop

S——— T———,
Assistant Secretary.

L.

(10) Only the convening authority can direct a *nolle prosequi.*

715. Court meets.—

FIRST DAY (11).

U. S. C. G. C. WINONA, (12)
Mobile, Alabama, Monday, June 25, 1923.

The court met at 10 a. m.

Present:

Lieutenant Commander D——— E. F———, U. S. Coast Guard, Lieutenant, Engineering, G——— H. I———, U. S. Coast Guard, Lieutenant J——— K. L———, U. S. Coast Guard, members, and Lieutenant P——— Q. R.———, U. S. Coast Guard, recorder. (13)

The official prosecutor, Lieutenant M——— N. O———, U. S. Coast Guard, and the accused, seaman second class A——— B. C———, U. S. Coast Guard, were called before the court.

The recorder introduced F——— E. D———, yeoman, first class, U. S. Coast Guard, as reporter. (14)

716. Accused's counsel.—

The accused requested that Mr. G. D. S——— act as his counsel. Mr. S——— took seat as counsel for the accused (15).

717. Precept read.—

The recorder read the precept and modification thereof, copies prefixed marked "A," "B," and "C." (16)

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(11) Where the trial occupies but one day, this entry is omitted.

(12) For place of meeting see art. 500. Hours of sessions, art. 501.

(13) For seating of members see art. 503.

(14) For appointment of reporter see art. 490. Reporting may be in shorthand. (Art. 517.)

(15) **Variation 1.**—"The accused stated that he did not wish counsel.

"The accused was notified of his right to have counsel."

Variation 2.—"The accused requested that Lieutenant L——— N———, U. S. Coast Guard, act as his counsel. The accused was informed that his request to have Lieutenant N——— act as his counsel was not approved as Lieutenant N——— had been ordered to duty at Washington, D. C., and was on the point of leaving in accordance with his orders. The accused then requested that Lieutenant C———D. H———, U. S. Coast Guard, act as his counsel; the approval of Headquarters having been obtained, the request was granted and counsel entered."

Variation 3.—"The accused requested that counsel be detailed for him. The commanding officer of the *Winona* was requested by the court to detail an officer to act as such. The court then, at 10.15 a. m., took a recess until 10.45 a. m., when it reconvened.

"Present: All the members, the recorder, the official prosecutor, the reporter, and the accused.

"Lieutenant U——— V. W———, U. S. Coast Guard, took seat as counsel for the accused."

The court can not refuse the accused the right to have counsel.

For detailing counsel see art. 486.

In case request for a certain person to act as counsel is refused, the reason for refusal must be set out. (See art. 487.)

For the rights and privileges of counsel for the accused, see art. 518.

(16) See arts. 703 to 706.

718. Challenge by official prosecutor (17).—

The official prosecutor objected to Lieutenant J——— K. L———, U. S. Coast Guard, because he has personally investigated the charges and expressed a positive opinion that the accused is innocent (18).

The challenged member replied as follows:

I do not believe that the opinion I have formed is positive so as to prevent my determining in this case according to the evidence.

Upon the request of the official prosecutor the challenged member took the stand and was examined on his *voir dire* (19) as follows (20):

* * * * * * *

G——— K. S———, a witness for the official prosecutor, was called, duly sworn, and examined as follows:

* * * * * * * (21)

The court was cleared. The challenged member withdrew. (22)

The court was opened. All parties to the trial entered; the court announced that the objection of the official prosecutor was not sustained (23).

The official prosecutor did not object to any other member.

719. Challenge by accused (24).—

The accused (25) objected to Lieutenant, engineering, G——— H. I———, U. S. Coast Guard, because he had sat as a member of a general court which tried R——— A. W———, lieutenant, U. S. Coast Guard, on charges growing out of the identical incident on which the charges in this case are based, and for which accused could properly have been tried in joinder with W———.

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(17) If the official prosecutor make no challenge, no entry need be made. For challenges in general, see arts. 520 to 526.

(18) For valid grounds of challenge, see arts. 521 and 522.

(19) Oath on *voir dire*.—"You J———K. L———, swear (or affirm) that you will true answers make to questions touching your competency as a member of the court (witness) in this case."

(20) This examination is conducted the same as that of a witness for the prosecution. (See arts. 380 to 386 and 747.)

(21) Witnesses may be called by both sides. For the procedure see art. 523.

(22) The court decides on challenges with liberality according to the preponderance of the evidence. (See arts. 522 and 505.)

(23) *Variation.*—"* * * that the objection of the official prosecutor was sustained."

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

Each new member is subject to challenge and his orders to serve on the court must be properly marked and prefixed to the record, and the record must show that both the official prosecutor and the accused challenged such new member or did not object to him.

(24) If the accused does not challenge, the entry must appear: "The accused stated that he did not object to any member."

(25) Except in pleas to the issue (arts. 551 to 561), admissions (art. 267), and the statement of the accused (art. 564), the counsel for the accused may speak for the accused. The entry shall be made as though the accused himself were speaking.

The challenged member replied as follows:

"The statement of the accused is substantially correct."

The court announced that the challenge of the accused was sustained and that Lieutenant, engineering, G——— H. I——— was excused from sitting as a member in this case (26). Lieutenant, engineering I——— withdrew from his seat as a member (27).

The court notified the convening authority by telegram (28) that lieutenant, engineering, G——— H. I——— had ceased to be a member of the court by reason of challenge.

720. Adjournment.—

The court then adjourned until 10 a. m., to-morrow, June 26, 1923.

721. Second day.—

SECOND DAY.

U. S. C. G. C. WINONA,
Mobile, Ala., Tuesday, June 26, 1923.

The court met at 10 a. m.

Present:

Lieutenant Commander D——— E. F———, U. S. Coast Guard,
Lieutenant J——— K. L———, U. S. Coast Guard, members, and
Lieutenant P——— Q. R———, U. S. Coast Guard, recorder.

Lieutenant M——— N. O———, U. S. Coast Guard, official prosecutor.

F——— E. D———, yeoman, first class, U. S. Coast Guard, reporter.

The accused.

The accused stated that he waived his right to have counsel present during this session of the court (29).

722. New member seated (before evidence has been received) (30).—

The recorder read a dispatch from the convening authority, copy prefixed marked "C" (31), appointing Lieutenant M——— N.———, U. S. Coast Guard, as a member of the court.

The official prosecutor did not object to this member.

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(26) For when clearing the court may be dispensed with, see art. 507.
The official prosecutor can not be challenged on any grounds.

(27) As a general rule, whatever objection either party may have to make to the personnel of the court, should be made before the court is sworn; but at any stage of the proceedings prior to the finding any member may be challenged by either party for cause not previously known.
The court's decision as to the validity of a challenge can not be opposed by either party.

(28) If by challenge the court is reduced below three the convening authority must be notified by letter or telegram and the court adjourned. A copy of the communication must be appended to the record.

(29) When counsel for the accused is absent the record shall show affirmatively that accused waived his right to have counsel present.

(30) When a new member is seated after evidence has been received, see art. 747.

(31) See art. 705.

The accused stated that he did not object to this member or any other member of the court (32).

723. Recorder, members, and reporter sworn.—(33).

The recorder, each member, and the reporter were duly sworn (34).

The record of proceedings of the first day of the trial was read and approved (35).

724. Accused acknowledges receipt of a copy of the charges and specifications.—

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(32) Should either the official prosecutor or the accused object, proceed as under "challenge," arts. 718 and 719.

(33) Until a court is duly sworn according to law, it is incompetent to perform any judicial act, except to hear and determine challenges against its own members.

(34) The recorder is sworn by the president, and each member of the court and the reporter (clerk, interpreter) by the recorder.

Oaths.—For manner of giving oaths see art. 527.

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

Oath for recorder when a member.—"You, A——— B———, do swear (*or*, affirm) that you will duly try, without prejudice or partiality, the case now depending, according to the evidence which shall come before the court, the regulations for the government of the Coast Guard, and your own conscience; that you will not by any means divulge or disclose the sentence of the court until it shall have been approved by the proper authority; that you will not at any time divulge or disclose the vote or opinion of any particular member of the court unless required so to do before a court of justice in due course of law, and that you will keep a true record of the evidence given to, and the proceedings of, this court."

Oath for members.—"You, A——— B. C———, D——— E. F———, and U——— V. W———, do each and separately swear (*or*, affirm) that you will duly try, without prejudice or partiality, the case now depending, according to the evidence which shall come before the court, the regulations for the government of the Coast Guard, and your own conscience; that you will not by any means divulge or disclose the sentence of the court until it shall have been approved by the proper authority; that you will not at any time divulge or disclose the vote or opinion of any particular member of the court unless required so to do before a court of justice in due course of law."

The foregoing oaths must be given in each trial.

The reporter is then sworn by the recorder.

Oath for reporter.—"You, F——— E. D———, swear (*or*, affirm) faithfully to perform the duty of reporter in aiding the recorder to take and record the proceedings of the court, either in shorthand or ordinary manuscript."

In case the services of an interpreter are needed, he is sworn by the recorder when he first assumes duty as such.

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

(35) For reading of record see art. 665.

If objected to see art. 765.

Variation.—"The recorder stated that the record of proceedings of the first day of the trial was not ready. At the request of the recorder, the court then, at ——— a. m., took a recess until ——— p. m., at which time it reconvened." (*Or*, "The court decided to postpone the reading of this record until such time as it shall be reported ready, and in the meantime to proceed with the trial.")

The accused stated that he had, on June 21, 1923, received a copy of the charges and specifications preferred against him (36).

725. Changes in charges and specifications announced.—The recorder read a letter from the convening authority, prefixed marked "I" (37), authorizing and directing a change in the specifications, and stated that the same had been made both in the original and in the copy in the possession of the accused.

726. Nolle prosequi announced.—

The official prosecutor read a letter from the convening authority, prefixed marked "J" (38), directing him to enter a *nolle prosequi* as to specifications one and two of Charge II of charges and specifications preferred against the accused on June 20, 1923. A *nolle prosequi* was so entered (39).

727. Charges and specifications examined (40).—

The recorder asked the accused if he had any objection to make to the charges and specifications. The accused replied in the affirmative, stating that in the specifications he is charged by the name of A——— B. Coombe, whereas he is now and from earliest childhood has been known by the name of A——— B. Coomb, and this he is ready to verify (41).

The recorder called attention to the fact that the word "———" in the fifth line of specification 1 of charge I and the word "———" in the third line of the specification of the additional charge were misspelled.

The court was cleared (42).

The court was opened and all parties to the trial entered.

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(36) For the manner in which the copy is sent to the accused see art. 493.

If accused denies having received a copy of the charges and specifications, the fact that he did receive them, or refused them when offered, must be proved. (See art. 535.)

In such case the official prosecutor will call witnesses that shall prove the receipt or offer by a preponderance of the evidence. The accused may call witnesses to disprove this. Upon the conclusion of the evidence the court shall be cleared, and upon reopening the finding shall be announced and recorded: "The court finds as a fact that the accused received a copy of the charges and specifications on June 21, 1923" (or "* * * that the accused was duly offered and refused a copy of the charges and specifications on June 21, 1923.") If the finding be to the contrary, the court must see that the accused is furnished a copy and must adjourn from day to day (or by permission of the convening authority for a longer period) until the accused has had ample time to prepare his defense.

(37) See art. 711.

(38) See art. 712.

(39) For definition of "nolle pros" see art. 536. The court can not direct a nolle pros.

(40) See art. 537 for discussion of this duty.

(41) Variation: "The accused replied in the negative."

(42) When there have been no objections this may be dispensed with under the provisions of art. 507.

The recorder, when not also a member, is not to be present in closed court. (See art. 541.)

The court directed the recorder to correct the manifest clerical errors in spelling pointed out by him both in the original charges and specifications and in the copy in the hands of the accused (43).

The court announced that it, having found the charges and specifications otherwise not in due form and technically correct, had sent a communication to the convening authority, copy prefixed marked "K" (44), and would await a reply.

728. Adjournment.—

The court then adjourned until 10 a. m. to-morrow, June 27, 1923 (45).

729. Third day.—

THIRD DAY.

U. S. C. G. C. WINONA,
Mobile, Ala., Wednesday, June 27, 1923.

The court met at 10 a. m.

Present:

Lieutenant Commander D——— E. F———, U. S. Coast Guard,
Lieutenant J——— K. L———, U. S. Coast Guard,
Lieutenant M——— N———, U. S. Coast Guard, members, and
Lieutenant P——— Q. R———, U. S. Coast Guard, recorder.
Lieutenant M——— N. O———, U. S. Coast Guard, official prosecutor.
F——— E. D———, yeoman, first class, U. S. Coast Guard, reporter.

Accused and his counsel.

The record of proceedings of the second day of the trial was read and approved (46).

No answer from the convening authority having been received to the communication, copy prefixed marked "K," the court then took a recess until 1 p. m.

At 1 p. m. the court reconvened, all the parties to the trial being present.

730. Charges and specifications corrected.—

The recorder read a dispatch from the convening authority, prefixed marked "L" (47), directing changes in the charges and speci-

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(43) This is set forth in art. 713.

(44) For errors in charges and specifications see art. 154.

Variation: "The court was opened and all parties to the trial entered. The court announced that the objection of the accused was overruled, and that the court found the charges and specifications in due form and technically correct."

(45) **Variation:** "The court then took a recess until 2 p. m., the same date, when it reconvened. Present: The members and all parties to the trial."

When the suspension of business is from one day to the next, or for a longer period, it should be recorded as an adjournment; when from one part of a day to another part of the same day, as a recess. (See art. 664.)

(46) If objected to, see art. 765.

(47) See art. 714.

fications. The recorder was directed by the court to correct the original charges and specifications and the copy in the hands of the accused in accordance with the directions of the convening authority (48).

731. Corrected charges and specifications examined.—

The recorder asked the accused if he had any objection to make to the charges and specifications as corrected.

The accused replied in the negative (49).

The court was cleared.

The court was opened. All parties to the trial entered and the court announced that it found the charges and specifications in due form and technically correct (50).

732. Accused asked if he is ready for trial (51).—

The accused stated that he was ready for trial.

733. Witnesses separated.—

No witnesses not otherwise connected with the trial were present (52).

734. Charges and specifications read and accused arraigned.—

The recorder read the charges and specifications (53), original prefixed marked "G(1)," "G(2)," "G(3)," "G(4)," and "L" (54), and arraigned the accused as follows (55):

Q. A——— B. C———, seaman, second class, U. S. Coast Guard, you have heard the charges and specifications preferred against you;

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(48) In case the convening authority declines to direct a change in the charges and specifications:

Variation.—"The recorder read a letter from the convening authority, prefixed marked '———,' stating that in his opinion the charges and specifications were correct as drawn, and directing the court to reconsider its finding thereon." (The letter should state fully the reasons for believing the charges and specifications in due form.)

(49) In case of further objection proceed as under art. 727.

(50) See art. 537 for discussion of this duty.

(51) Variation.—"The official prosecutor (accused) requested a postponement of the trial. (State reason.)

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

"The court then, at ——— a. m., adjourned until ——— a. m., to-morrow, Thursday." (*Or*, "The court was opened. All parties to the trial entered, and the president announced that the court had decided to proceed with the trial.")

(For postponement, see art. 538.)

(52) Witnesses shall be examined apart from each other. It is improper for witnesses, unless they are otherwise connected with the trial, to hear the charges and specifications read. (Art. 374.) For procedure in case it is desired to exclude certain classes from the court, see art. 502.

Variation 1.—"In accordance with the direction of the court, all witnesses not otherwise connected with the trial withdrew."

Variation 2.—"The court summoned all the witnesses in the case and instructed them not to converse with any person, other than parties to the trial, concerning any feature of the case whatsoever, and not to allow any witness who has testified to communicate in any manner anything to them concerning testimony given on the stand."

(For warning to witnesses see art. 410.)

(53) For the manner of arraigning, see art. 542. For arraignment in trials in joinder, see art. 543.

(54) See arts. 709 and 714.

(55) Variation.—"The recorder read the charge and specifications, originally prefixed marked 'G' and arraigned the accused as follows: * * *."

how say you to the first specification of the first charge, guilty or not guilty?

735. Plea in bar of trial made.—

Before pleading to the issue the accused made a plea in bar of trial to the first specification of the first charge on the ground that he had been previously tried and acquitted of this same offense by a civil court **(56)**.

In support of his plea the accused desired to call a witness **(57)**.

A witness in behalf of the accused entered and was duly sworn **(58)**.

(Testimony is taken in the manner given in art. 754. The official prosecutor may call witnesses to disprove the accused's contention **(59)**.

The counsel for the accused made an argument in support of his plea, a brief of which is appended, marked "M" **(60)**.

The official prosecutor replied **(61)**.

The court was cleared.

The court was opened, and all parties to the trial entered. The court announced that the plea of the accused was overruled **(62)**.

The recorder asked the accused if he had any further plea to offer **(63)**.

The accused replied in the negative and the recorder rearraigned the accused as follows:

Q. A——— B. C———, seaman, second class, U. S. Coast Guard, you have heard the charges and specifications preferred against you; how say you to the first specification of the first charge, guilty or not guilty?

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(56) For special pleas, see arts. 545 to 551.

(57) **Variation.**—"The accused stated that he had no evidence to introduce in support of his plea."

(58) The oath is the same as for a witness on the general issues. (Art. 741.)

(59) The evidence shall be fully recorded. (Art. 550.)

(60) Oral arguments upon interlocutory proceedings are not recorded. The brief must be prepared by the counsel. (Art. 562.)

The precept and the charges and specifications and all papers relating to them are prefixed; other papers are appended.

(61) **Variation 1.**—"The official prosecutor did not desire to reply.

Variation 2.—"The official prosecutor requested until ——— p. m., in order to prepare his reply.

"The court then took a recess until ——— p. m., at which time it reconvened.

(*Or*, "The court denied the request of the official prosecutor and directed him to reply at this time. The official prosecutor replied.")

"Present: The members and all parties to the trial.

"The official prosecutor read an argument in reply to the plea of the accused, copy appended, marked '———.'"

(62) **Variation.**—"The court announced that the plea of the accused was sustained. The president sent a communication to the convening authority, copy appended marked '———,' transmitting a summary of the proceedings of the court relative to the plea.

"Pending a reply from the convening authority, the court then, at ——— p. m., adjourned until 10 a. m. to-morrow."

(63) If further plea is offered proceed the same as before.

736. Pleas to the issues (64).—

A. Not guilty.

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

A. Guilty.

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

A. Guilty.

Q. To the third (65) specification of the second charge, guilty or not guilty?

A. Not guilty.

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

A. Not guilty.

* * * * * * *

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

A. Guilty, except as to the words "* * *"; to which words not guilty.

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

A. Guilty.

737. Warning on pleas.—

The accused was duly warned as to the effect of his pleas (66).

The accused persisted in his pleas (67).

738. Action on pleas (68).—

The court was cleared.

The court was opened, and all parties to the trial entered. The court announced that the pleas of the accused to the specification of the additional charge and to the additional charge were rejected,

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(64) For detailed explanation of these pleas, see arts. 551 to 561.

For procedure in case of change of plea, see arts. 737 and 753.

(65) Specifications 1 and 2 of this charge having been *nolle prosequied.* (Arts. 712 and 726.)

(66) For procedure on plea of guilty, see art. 556.

The warning must be given whenever the accused has plead guilty to any specification or part of a specification.

Example of proper warning by the president (in case of an enlisted person):

"R———, it is my duty as president of this court to warn you that by your plea of guilty to the second specification of Charge I and to Charge I and of guilty except as to the words '* * *' to the specification of the additional charge, and of guilty to the additional charge, you deprive yourself of the benefits of a regular defense as to these specifications, parts of specifications, and charges thus admitted. That is to say, you can not after such a plea of guilty go ahead and prove that you are not guilty on these specifications and charges. You may, however, introduce evidence of mitigating circumstances, in extenuation, or of previous good character. (This is set forth in arts. 557 and 558.) Do you understand what I have just explained? (In case of a negative answer the explanation must be amplified.) Understanding this, do you persist in your plea?"

(67) **Variation.**—"The accused withdrew his plea to the specification of the additional charge and to the additional charge and substituted a plea of not guilty. He persisted in his other pleas."

(68) Action on pleas need only to be taken when in the discretion of the court it is advisable.

and that the trial would proceed as if pleas of not guilty had been entered thereto (69).

739. Admission in open court.—

The counsel for the accused stated that the accused admitted that he was A——— B. C———, seaman, second class, U. S. Coast Guard, and that he was on the —d, —th, and —th of May, 1923, attached to and serving on board the U. S. C. G. C. *Winona.*

The accused stated that this admission was made by his authority (70).

740. Prosecution begins.—

The prosecution began (71).

741. Member called as a witness.—

A member was called as a witness for the prosecution and was duly sworn (72).

Examined by the official prosecutor (73).

1. Q. State your name, rank, and present station (74).

A. A——— T. D———, lieutenant commander, U. S. Coast Guard, U. S. C. G. C. *Winona.*

2. Q. If you recognize the accused, state as whom.

A. * * *.

* * * * * * * (75).

(Upon completion of examination (76).)

Lieutenant Commander ——— verified his testimony and resumed his seat as a member.

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(69) For rejection of plea, see art. 561.

(74) For admission in open court, see art. 267.

When the admission is made by counsel it must appear affirmatively on the record that the accused acquiesced in the admission.

(71) **Variation.**—" The prosecution offered no evidence."

The prosecution properly offers no evidence only where the accused has plead guilty throughout, and the specifications set forth the facts so fully as to show all the circumstances of aggravation. (Art. 558.)

For the duty of the official prosectuor to offer evidence after a plea of guilty, see art. 436.

For the order of introduction of evidence, see art. 371.

(72) Witnesses are sworn by the president.

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

The foregoing oath must be given in each case. Any additional ceremony may be undergone that will bind the honor and conscience of the witness. (Art. 527.)

For a member or official prosecutor as a witness, see art. 336.

(73) For the order of examining witnesses, see art. 377. For direct examination, see arts. 380 to 386.

(74) In case of a civilian witness:

Variation.—" State your name, residence, and occupation."

(75) The examination is the same as for any other witness for the prosecution. (See arts. 742, 744, and 748.)

(76) In case verification of testimony is asked for or directed, the first entry following the completion of the examination is " The witness verified his testimony." For verification of testimony, see arts. 408 and 766.

742. Examination of witness for prosecution.—

A witness for the prosecution entered and was duly sworn.

Examined by the official prosecutor.

1. Q. State your name, rating, and present station (77).

A. A——— G. L———, coxwain, U. S. C. G. C. *Winona.*

2. Q. If you recognize the accused, state as whom.

A. * * *.

* * * * * * *

14. Q. * * *.

This question was objected to by the accused on the ground that it was leading (78).

The official prosecutor replied (79).

The court was cleared. The court was opened. All parties to the trial entered, and the court announced that the objection was sustained (80).

15. Q. * * *.

A. * * *.

* * * * * * *

23. Q. * * *.

This question was objected to by the court on the ground that it was irrelevant (81).

The official prosecutor replied.

The court announced that the objection was sustained (82).

24. Q. * * *.

A. * * *.

The accused moved to strike out this answer on the ground that it was hearsay (83).

The official prosecutor replied.

The president directed that the answer be stricken out. A member moved that the court be cleared. The court was cleared. The court was opened. All parties to the trial entered, and the court announced that the president's ruling was revoked, and that the court did not sustain the motion to strike out the answer (84).

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(77) Questions are to be numbered consecutively. If, however, the first examination of a witness is completed and later he is recalled, the questions begin anew. (Art. 662.) Questions and answers are paragraphed. (Art. 663.)

(78) For objetcions to questions on testimony, see art. 376. For leading questions, see art. 382.

(79) Oral arguments upon admissibility of evidence are not to be recorded. (Art. 562.)

(80) For closing the court, see art. 507.

(81) For relevance of evidence, see arts. 244 to 250.

(82) Art. 507.

(83) For hearsay, see arts. 252 et seq. and 288 et seq.

(84) When the president speaks for the court the ruling is recorded as by the court. When it develops that he did not speak for the court the ruling is recorded as by the president. (See art. 507.)

25. Q. * * *.

This question was objected to by a member on the ground that it was double (85).

The official prosecutor made no reply.

The court was cleared. The court was opened. All parties to the trial entered, and the court announced that the objection was not sustained.

The question was repeated.

A. * * *.

26. Q. * * *.

A. * * *.

* * * * * * *

Cross-examined by the accused (86):

35. Q. * * *.

A. * * *.

* * * * * *

40. Q. * * *.

This question was objected to by the official prosecutor on the ground that it was beyond the scope of the direct examination (87).

The accused replied.

The court was cleared. The court was opened. All parties to the trial entered, and the court announced that the objection was sustained.

41. Q. * * *.

A. * * *.

42. Q. * * *.

This question was objected to by the official prosecutor on the ground that it called for the opinion of the witness (88).

The accused withdrew the question.

43. Q. * * *.

A. * * *.

* * * * * * *

The witness was duly warned (89).

743. Recess.—

The court then, at 11.45 a. m., took a recess until 1 p. m., at which time it reconvened (90).

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(85) For double questions see art. 385.

When it develops that a member's objection is not that of the court, the objection is recorded as by a member.

(86) For cross-examination, see arts. 391 to 395.

(87) Art. 391.

(88 For opinion evidence, see arts. 321 to 324.

(89) This is given in view of the recess (next article) decided upon by the court. For warning to witnesses, see art. 410.

(90) When the suspension of business is from one part of a day to another part of the same day it should be recorded as a recess; when from one day to another, as an adjournment. (Art. 664.)

Present: All the members, the recorder, the official prosecutor, the reporter, the accused and his counsel.

No witnesses not otherwise connected with the trial were present.

744. Examination of witness for prosecution continued.—

A——— G. L———, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

55. Q. * * *.

A. * * *.

* * * * * * *

Reexamined by the official prosecutor (**91**):

71. Q. * * *.

A. * * *.

* * * * * * *

Recross-examined by the accused:

71. Q. * * *.

A. * * *.

* * * * * * *

Examined by the court (**92**):

81. Q. * * *.

A. * * *.

By a member:

82. Q. * * *.

This question was objected to by the official prosecutor on the ground that it went beyond the scope of the direct examination and that if answered the court would be originating evidence (**93**).

The member withdrew the question (**94**).

83. Q. * * *.

A. * * *.

The accused moved to strike the words "* * *" out of the answer on the ground that they were the mere opinion of the witness.

The court directed that the words be stricken out.

84. Q. * * *.

A. * * *.

* * * * * * *

Neither the official prosecutor, the accused, nor the court desired further to examine this witness (**95**).

(**91**) For redirect and recross-examination, see art. 398.

(**92**) For examination by the court, see art. 399.

(**93**) Art. 399.

(**94**) See notes 84 and 85 *supra*.

(**95**) After examination by the court opportunity is to be accorded the parties further to examine the witness. (Art. 400.)

The witness was duly warned and withdrew (96).

745. View by the court.—

The court asked the parties if either objected to the court taking a view of the main hold of the U. S. C. G. C. *Winona*.

Neither the official prosecutor nor the accused objected to the court taking this view (97).

The court, accompanied by the official prosecutor, the accused, and counsel, proceeded to the main hold of the U. S. C. G. C. *Winona* (98).

Upon completion of the view the court returned to its regular place of meeting.

The official prosecutor stated that M——— O———, a material witness, had not appeared and requested the court to adjourn till to-morrow (99).

The court then, at 3:15 p. m., adjourned until 10 a. m., to-morrow, Thursday, June 28, 1923 (1).

746. Fourth day.—

FOURTH DAY.

U. S. C. G. C. WINONA,
Mobile, Ala., Thursday, June 28, 1923.

The court met at 10 a. m.

Present:

Lieutenant Commander D——— E. F———, U. S. Coast Guard,
Lieutenant J——— K. L———, U. S. Coast Guard,
Lieutenant M——— N———, U. S. Coast Guard, members, and
Lieutenant P——— Q. R———, U. S. Coast Guard, recorder,
Lieutenant M——— N. O———, U. S. Coast Guard, official prosecutor.

F——— E. D———, yeoman, first class, U. S. Coast Guard, reporter.

Accused and his counsel.

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(96) For warning to witnesses, see art. 410.

Variations.—"The accused (official prosecutor) (a member) requested that the witness verify his testimony.

"The witness verified his testimony, was duly warned, and withdrew." (*or*) "The witness corrected his testimony as follows: Page ———, answer to question No. ———, the words '* * *' changed to '* * *.' The testimony, thus amended, was read. The witness pronounced it correct, was duly warned, and withdrew." (*or*) "At the request of the official prosecutor the witness was directed to report to-morrow at — o'clock — m. (later in the trial when recalled), to correct or verify his testimony, was duly warned, and withdrew.

For verification of testimony, see art. 408.

For manner of correcting testimony, see art. 409.

(97) If objection is made, the court may, upon evidence introduced in a collateral proceeding, proving that the scene is in the same condition as when the alleged offense was committed, overrule the objetcion. For taking a view and the object thereof, see art. 500.

(98) No evidence is to be taken while taking a view. (Art. 500.)

(99) For postponement, see art. 538.

(1) For recess or adjournment, see arts. 728 and 743.

747. New member seated (after evidence has been received) (2).—

The recorder read an order from the convening authority, copy prefixed marked "D" (3) relieving Lieutenant J——— K. L———, U. S. Coast Guard, and appointing Lieutenant R——— K. L———, U. S. Coast Guard, as a member of the court.

The official prosecutor and the accused stated that they did not object to this member (4).

Lieutenant R——— K. L———, U. S. Coast Guard, was duly sworn (5).

The record of proceedings of the third day of the trial was read and approved (6).

No witnesses not otherwise connected with the trial were present.

Each witness who had been examined during the absence of Lieutenant L——— was separately called before the court, informed that his oath previously taken was still binding, heard his own testimony read, and Lieutenant L——— not desiring to question him, he pronounced his testimony correct and withdrew (7).

748. Examination of witness for prosecution continued.—

A witness for the prosecution entered and was duly sworn.

Examined by the official prosecutor:

1. Q. State your name, residence, and occupation (8).

A. B——— M———, * * *

2. Q. If you recognize the accused, state as whom.

A. * * *.

* * * * * * *

749. Civilian witness in contempt.—

5. Q. * * *.

The witness declined to answer on the ground that it might tend to degrade him (9).

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(2) For seating a new member before evidence has been received, see art. 722.

(3) See art. 706.

(4) Should either the official prosecutor or the accused object, proceed as under "challenge," arts. 718 and 719.

Should the court still have a legal quorum without the newly appointed member or without any member who has been absent from any legal cause after testimony has been taken, the procedure may be as follows:

Variation.—"The court excused Lieutenant L——— from further attendance in the case now pending."

(5) For oath, see art. 723.

(6) If objected to, see art. 765.

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

For verifying testimony, see art. 766.

For numbering of questions, see art. 662.

For procedure on seating new member, see art. 513.

(8) This witness being a civilian.

(9) For degrading and criminating questions, see art. 363.

For privilege and claiming of privilege, see arts. 366 and 367.

The official prosecutor requested the court to direct the witness to answer (10).

The court was cleared. The court was opened and all parties to the trial entered. The court announced that the witness must (11) answer the question.

The witness persisted in his refusal to answer the question.

The question was again put to the witness.

5. Q. * * *

The witness again declined to answer the question, and gave as the reason for his refusal that * * * (12).

6. Q. * * *.

A. * * *.

* * * * * * *

(Witness examined as in arts. 742 and 744.)

Neither the official prosecutor, the accused, nor the court desired further to examine this witness.

The witness was directed to return the next day to verify his testimony, was duly warned, and was permitted to withdraw.

750. Witness for prosecution called and objected to.—

A witness for the prosecution entered and was objected to by the accused on the ground * * * (13).

The witness was examined on this *voir dire* as follows (14):

Examined by the accused:

1. Q. * * *.

A. * * *.

* * * * * * *

(Witness examined as in art. 754.)

The court sustained the objection and the witness was excused (15).

751. Witness introduces documentary evidence.—

The official prosecutor was called as a witness for the prosecution and was duly sworn (16).

Examined by the official prosecutor:

1. Q. State your name, rank, and present station.

A. M——— N. O———, lieutenant, U. S. Coast Guard, official prosecutor of this court.

2. Q. If you recognize the accused, state as whom.

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(10) For request that witness be required to answer, see art. 365.

(11) *Or* "need not."

(12) **Variation.**—"* * * giving no reason.

When a reason is given it shall be set out in the record with precision.

(13) For evidence incompetent on account of character or circumstances of the parties, see arts. 332 to 342.

For objections to witness, see art. 375.

(14) For oath on *voir dire*, see art. 718.

(15) **Variation.**—"The court was cleared, etc., * * *. "The court announced that the objection was overruled." "The witness was duly sworn."

(16) For a member or official prosecutor as a witness, see art. 336.

A. * * *.

3. Q. Are you the legal custodian of the proceedings of the board of inquiry convened by the commandant, U. S. Coast Guard, on board the U. S. C. G. C. *Winona* at Pensacola, Fla., to inquire into the * * *? If so, produce it.

A. I am; here it is.

4. Q. Are the proceedings duly authenticated by the signature of the president of the court and of the recorder?

A. They are.

5. Q. What parts of these proceedings do you desire to introduce into evidence?

A. So much thereof as contains the testimony of ——— ———, lieutenant, U. S. Coast Guard, and of ——— ———, boatswain's mate, first class, U. S. Coast Guard.

6. Q. Can not testimony of these witnesses be obtained?

A. It can not. I have sent summons for these witnesses to the convening authority, and his reply, which I have here, states that they can not appear before this court.

The reply of the convening authority is appended, marked "N."

The proceedings of the board of inquiry were submitted to the accused and to the court, and by the official prosecutor so much thereof as contains the testimony of the before-named witnesses was offered in evidence (17).

There being no objection, it was so received (18).

7. Q. Refer to those documents (19) and read such portions thereof as relate to the offense for which the accused is now on trial.

The witness read from the testimony of Lieutenant ——— ——— an extract copy appended, marked "Exhibit 1"; from the testimony of ——— ———, boatswain's mate, first class, extracts, copies appended marked "Exhibit 2(1), 2(2)."

8. Q. If you are the legal custodian of the current enlistment contract and record of the accused, produce it (20).

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(17) For the introduction of former testimony, see art. 318.

(18) Should there be objection, argument is allowed as on any other objection to evidence. (See art. 742.)

(19) Each witness's testimony, each exhibit, etc., in the proceedings of a board of inquiry is a separate document.

(20) In case the witness is not the legal custodian:

Variation 1.—"Q. I show you a book; can you identify it?

"A. I can; it is the official log book of the U. S. C. G. C. ———." Etc.

Variation 2.—"Q. I show you a letter; can you identify it?

"A. I can.

"Q. In whose handwriting is it?

"A. In that of ———." Etc.

In case of an official copy under seal (art. 283):

Variation 3.—"The official prosecutor produced a copy of a document (letter) (order) under seal of the Coast Guard, the original of which, he informed the court, could not be produced, as it was lost (part of a permanent record) (on official file, etc.), and submitted it to the accused and the court, and offered it in evidence." Etc.

The witness produced the current enlistment contract and record of the accused, and it was submitted to the accused and to the court, and by the official prosecutor offered in evidence for the purpose only of reading into the record such extracts therefrom as may pertain to the offense for which the accused is now on trial.

There being no objection, it was so received.

9. Q. Refer to that record and read such portions thereof as relate to the offense for which the accused is now on trial.

The witness read from the said record an extract, copy appended, marked "Exhibit 3" (21).

Cross-examined by the accused:

10. Q. Read from the testimony of Lieutenant ——— ——— before the board of inquiry, questions and answers numbered 43 to 99, inclusive.

The witness read from the testimony of Lieutenant ——— ——— an extract, copy appended, marked "Exhibit 4."

The accused asked if, in order to avoid having to recall this witness as a witness for the defense, he might at this time examine him as to other portions of the current enlistment contract and record of the accused, and might have him introduce a deposition for the defense (22).

There being no objection, the request of the accused was granted.

Examined by the accused:

11. Q. Refer to the current enlistment contract and record of the accused and read therefrom his marks in sobriety and obedience.

The witness read from the current enlistment record of the accused an extract, copy appended, marked "Exhibit 5."

12. Q. If you are the legal custodian of deposition of one ——— ———, a witness for the defense, produce it (23).

The witness produced the deposition of ——— ———, and it was submitted to the official prosecutor and to the court and by the accused offered in evidence. There being no objection, it was so received, and is appended marked "Exhibit 6." The official prosecutor read the deposition (24).

Neither the official prosecutor, the accused, nor the court desired further to examine this witness; the witness resumed his seat as official prosecutor (25).

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(21) For official documents as evidence, see arts. 290 to 293.

(22) The court may, in its discretion, allow the introduction of evidence out of regular order. (Art. 371.)

(23) For depositions, see arts. 303 to 308.

(24) For the introduction of a deposition into evidence, see art. 307.

(25) The official prosecutor, a member, or the accused is not warned after testifying. (Art. 410.)

752. Prosecution rests.—

The prosecution rested **(26)**.

753. Defense begins.—

The defense began **(27)**.

754. Examination of witness for defense.—

A witness for the defense entered and was duly sworn.

Examined by the official prosecutor **(28)**:

1. Q. State your name, rank, and present station.

A. O——— P———, ensign, U. S. Coast Guard, U. S. C. G. C. *Winona*.

2. Q. If you recognize the accused, state as whom.

A. * * * .

Examined by the accused **(29)**:

3. Q. * * * .

A. * * * .

* * * * * * *

755. Use of memoranda.—

15. Q. * * *.

The witness requested permission to refresh his memory from a memorandum made at the time **(30)**.

---

(26) This entry is omitted when the prosecution has offered no evidence.

(27) Variation.—"The defense offered no evidence."

Change of plea.—When a change of plea is made as allowed by art. 561 the following is the procedure:

"The accused informed the court that he desired to change his plea of not guilty to the ——— specification of the ——— charge to guilty.

"The accused was duly warned as to the effect of such plea and persisted in his request.

"The official prosecutor stated that he had no objection to the request of the accused being granted (or, the official prosecutor objected to granting the request of the accused on the ground that * * *).

"The court was cleared. The court was opened and all parties to the trial entered. The court announced that the request of the accused was (or, was not) granted.

"The recorder reread the ——— specification of the ——— charge and rearraigned the accused as follows:

"Q. A——— B. C———, seaman (second class), U. S. Coast Guard, you have heard the ——— specification of the ——— charge preferred against you; how say you to this specification, guilty or not guilty?

"A. Guilty."

(28) The official prosecutor asks the introductory questions of all witnesses. (Art. 380.)

(29) For the order for examining witnesses, see art. 377.

(30) Variation.—The witness stated that he could not remember the facts, but that he had made a memorandum at the time of the occurrence which correctly set forth the facts. The accused requested that the memorandum be received in evidence, and submitted same to the official prosecutor and the court.

"Cross-examined by the official prosecutor:

"Q. Under what circumstances was this memorandum made?

"A. * * *.

"Q. Can you testify that it was correct when made?

"A. * * *.

"There being no objection, the memorandum was received in evidence, copy appended marked 'Exhibit ———,' and the witness read same."

For memoranda in evidence, see art. 297.

For supplementing recollection, see art. 388.

The official prosecutor requested permission to cross-examine the witness as to the memorandum. The permission was granted.

Cross-examined by the official prosecutor.

16. Q. Under what circumstances was this memorandum made?

A. * * *.

17. Q. * * *.

A. * * *.

The official prosecutor stated that he had no objection to the witness inspecting the memorandum.

The request of the witness was granted. Having inspected the memorandum the witness was asked if he could now testify as to his own knowledge.

The witness replied in the affirmative (31).

18. Q. (15. Q. repeated.)

A. * * *.

* * * * * * *

Cross-examined by the official prosecutor.

26. Q. * * *.

A. * * *.

* * * * * * *

The accused did not desire to reexamine this witness (32).

The court did not desire to examine this witness.

The witness was duly warned and withdrew.

756. Coast Guard witness in contempt.—

A witness for the defense entered and was duly sworn.

Examined by the official prosecutor:

1. Q. State your name, rating, and present station.

A. Y——— Z———, seaman, second class, U. S. Coast Guard, U. S. C. G. C. *Winona*.

2. Q. If you recognize the accused, state as whom.

A. * * *.

* * * * * * *

5. Q. * * *.

A. * * *.

The court cautioned the witness as to his language (33).

The witness, having persisted in the use of improper language (34), was charged with contempt, and, upon being given opportunity to reply, replied "* * *" (35).

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(31) For refreshing recollection, see art. 387.

(32) The fact that the party whose turn it is to examine does not desire to ask any questions shall be recorded. (Art. 400.)

(33) This caution is given in the case of improper language or behavior. For cautioning a witness see art. 406.

(34) Or as the case may be.

(35) Give reply in full. For procedure when witness is charged with contempt, see art. 407.

The court was cleared. The court was opened, and all parties to the trial and the witness in contempt entered. The court announced that it deemed the witness Y——— Z———, seaman, second class, U. S. Coast Guard, guilty of contempt of court in that he * * * **(36)**.

The court informed the witness that he was at liberty, by such proper statement as he might desire to make, to show cause why charges for contempt should not be preferred against him.

The witness stated * * *.

The witness was placed in the custody of the provost marshal **(37)** and the court was cleared. The court was opened. All parties to the trial and the witness in contempt entered. The court announced that it had adjudged the witness guilty of contempt in its presence, and that it would prefer charges against him, Y——— Z———, seaman, second class, U. S. Coast Guard, for violation of a lawful regulation issued by the Secretary of the Treasury **(38)**.

The witness continued his testimony.

6. Q. * * *.

A. * * *.

* * * * * * *

The witness was duly warned and was placed in the custody of the provost marshal, who was directed to deliver him to his commanding officer—the commanding officer of the U. S. C. G. C. *Winona*—to whom a communication, copy appended marked "O," was addressed, announcing the offense.

757. Witness as to character.—

A witness for the defense as to character entered and was duly sworn **(39)**.

(Examined and testimony recorded as previously indicated.)

* * * * * * *

A member was called as a witness for the defense as to character and was duly sworn.

(Examined and testimony recorded as previously indicated.)

* * * * * * *

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(36) Insert an account of the occurrence in full.

(37) Or guard or orderly.

(38) When a service witness is judged in contempt the president of the court shall prefer charges against him for violation of a lawful regulation issued by the Secretary of the Treasury (conduct to the prejudice of good order and discipline) and forward the same to Headquarters.

Variation.—"The court announced that the witness had purged himself of contempt."

(39) Witnesses as to character or as experts are not to be summoned at Government expense. (Art. 347.)

For evidence of character, see art. 249.

For evidence in mitigation or extenuation, see art. 438.

758. Accused as a witness.—

The accused was, at his own request, duly sworn as a witness in his own behalf (40).

Examined by the official prosecutor:

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

A. I am.

Examined by the accused:

2. Q. * * *.

A. * * *.

* * * * * * *

759. Real evidence introduced.—

5. Q. I show you a knife. Do you recognize it?

A. I do.

6. Q. Where and under what circumstances have you seen it before?

A. * * *.

The knife was submitted to the official prosecutor and to the court and by the accused offered in evidence. There being no objection, it was so received and marked "Exhibit 7."

NOTE.—The knife was returned to the owner upon completion of the trial. A description of the knife is appended marked "Exhibit 7" (41).

7. Q. * * *.

A. * * *.

* * * * * * *

760. Accused as a witness continued.—

Cross-examined by the official prosecutor (42):

12. Q. * * *.

A. * * *.

* * * * * * *

Reexamined by the accused:

* * * * * * *

Recross-examined by the official prosecutor:

* * * * * * *

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(40) Where the accused is without counsel, the following additional entry must here appear:

"The official prosecutor stated to the court that the substance of article 488, Coast Guard Courts and Boards, had been carefully explained to the accused.

For the accused as a witness, see art. 333.

For the privilege of accused to testify, see art. 364.

(41) Except where an instrument of real evidence is of such a character that a true description thereof can not readily be made, or except where in the discretion of the court the instrument should be forwarded to the reviewing authority, the procedure given here may be followed.

For securing exhibits to the record or forwarding separately, see art. 660.

(42) For cross-examination of the accused, see art. 394.

Examined by the court:

* * * * * * *

Neither the accused, the official prosecutor, nor the court desired further to examine this witness.

The witness resumed his status as accused (43).

761. Defense rests.—

The defense rested (44).

The court then, at 4 p. m., adjourned until 10 a. m., to-morrow, Friday, June 29, 1923 (45).

762. Fifth day.—

FIFTH DAY.

U. S. C. G. C. WINONA,
Mobile, Alabama, Friday, June 29, 1923.

The court met at 10 a. m.

Present:

Lieutenant Commander D——— E. F———, U. S. Coast Guard,
Lieutenant M——— N———, U. S. Coast Guard, members, and
Lieutenant P——— Q. R———, U. S. Coast Guard, recorder.
Lieutenant M——— N. O———, U. S. Coast Guard, official prosecutor.
F——— E. D———, yeoman, first class, U. S. Coast Guard, reporter.

The accused and his counsel.

A legal quorum not being present, the court then, at 10.05 a. m., took a recess until 10.15 a. m., at which time it reconvened (46).

Present: The same members as before, the recorder, the official prosecutor, the reporter, the accused and his counsel.

B——— N———, a witness for the prosecution, reported to verify his testimony in accordance with the court's orders, and was directed to return the next day for this purpose.

The court then, at 10.15 a. m., adjourned until 10. a. m., to-morrow, Saturady, June 30, 1923.

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(43) The accused is not warned. (Art. 410.)
For verification of testimony, see art. 408.
(44) This entry is omitted when the defense has offered no evidence.
(45) For adjournment or recess, see arts. 728 and 743.
(46) Three members form a quorum.
For procedure in case of the absence of a member, see art. 511; of the official prosecutor, art. 512.

763. Sixth day.—

SIXTH DAY.

U. S. C. G. C. WINONA,
Mobile, Alabama, Saturday, June 30, 1923.

The court met at 10 a. m.

Present:

Lieutenant Commander D——— E. F———, U. S. Coast Guard,
Lieutenant R——— K. L———, U. S. Coast Guard,
Lieutenant M——— N———, U. S. Coast Guard, members, and
Lieutenant P——— Q. R———, U. S. Coast Guard, recorder.
Lieutenant M——— N. O———, U. S. Coast Guard, official prosecutor.

The accused and his counsel.

H——— J———, chief yeoman, U. S. Coast Guard, reported as reporter and was duly sworn (47).

764. Absence of members.—

Lieutenant R——— K. L———, U. S. Coast Guard, handed the president of the court a medical certificate for the convening authority explaining his absence from the court yesterday; copy prefixed marked "E" (48).

765. Record corrected.—

The record of proceedings of the fourth and fifth days of the trial was read (49) and objected to by the accused (50) inasmuch as the record on page———now reads "* * *," whereas it should read "* * *."

The court was cleared. The court was opened, and all parties to the trial entered. The court announced that the objection was sustained (51).

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(47) For oath for reporter, see art. 723.

(48) See art. 707.

For absence by reason of illness, see art. 510.

Status of members in respect to other duties.—An officer detailed for duty on a general court is, while so serving, exempt from other duty, except in cases of emergency to be judged by his immediate commanding or next superior officer, who shall, in case he require such officer to perform other duty, at once communicate with the convening authority, via the president of the court, assigning the reasons for his action.

When a general court adjourns without day, or for a period of more than two days, the president of the court shall report the fact to the senior officer present, and the members of the court shall then be available for other duty.

Detachment from ship or station.—The detachment of an officer from his ship or station does not of itself relieve him from duty as a member, recorder, or official prosecutor of a general court; specific orders for such relief are necessary.

(49) The testimony need not be read. (Art. 665.)

(50) The official prosecutor or the court (or a member, if the objection is not sustained—similar to questions by a member, art. 399) may also make this objection.

(51) If the objection is not sustained the two entries following this are omitted from the record.

The recorder was directed to correct the record so that "* * *" on page——shall read "* * *."

With this correction the record was read and approved.

766. Testimony verified.—

B—— N——, who had previously testified, was called before the court, informed that his oath previously taken was still binding, and, upon having his testimony read to him, pronounced it correct, was duly warned, and withdrew (**52**).

767. Rebuttal.—

The rebuttal began (**53**).

768. Witness recalled.—

A—— G. L——, coxwain, U. S. Coast Guard, a witness for the prosecution, was recalled and warned that the oath previously taken by him was still binding.

Examined by the official prosecutor:

1. Q. * * * (**54**).

A. * * *.

* * * * * * *

(Examined and testimony recorded as previously indicated.)

Neither the official prosecutor, the accused, nor the court desired further to examine this witness.

The witness was duly warned and withdrew.

The rebuttal ended.

769. Surrebuttal.—

The accused did not desire to offer any evidence in surrebutal (**55**).

770. Witness for the court.—

The court was cleared. The court was opened and all parties to the trial entered. The court announced that it desired further testimony, and directed that I—— K——, boatswain's mate, first class, U. S. Coast Guard, be called as a witness for the court (**56**).

(**52**) **Variation.**—"* * * and stated that he had read over (or, had had read over to him) the testimony given by him on fourth day of the trial, pronounced it correct, was duly warned, and withdrew." (Or, "and stated that he desired to make the following correction in his testimony: Page ——, answer to question No. ——, line No. —, strike out the words '* * *' and insert the words '* * *.' With this correction, he pronounced the testimony correct, was duly warned, and withdrew.")

For verification of testimony, see art. 408.

For manner of correcting testimony, see art. 409.

(**53**) This entry is omitted if there be no rebuttal.

In general, evidence in rebuttal must be limited to that replying to the evidence produced by the defense. (Art. 372.) But see art. 371, providing that the court may, prior to arrival at its findings, permit a case to be reopened. In such case the proper entry is "The prosecution reopened."

(**54**) Begin numbering questions anew. (Art. 662.) The introductory questions need not be repeated.

(**55**) **Variation.**—"The surrebuttal began.

* * * * * * *

"The surrebuttal ended."

(**56**) **Variation.**—"* * * and directed that O—— P——, ensign, U. S. Coast Guard, be recalled as a witness for the court.

A witness for the court entered and was duly sworn.

Examined by the official prosecutor:

1. G. State your name, rating, and present station.

A. I——— K——— boatswain's mate, first class, U. S. C. G. C. *Winona.*

2. Q. If you recognize the accused, state as whom.

A. * * *.

Examined by the court:

3. Q. * * *.

A. * * *.

* * * * * * *

Neither the official prosecutor nor the accused desired to examine this witness (**57**).

The witness was duly warned and withdrew.

771. Statement of accused.—

The accused read a written statement in his defense, appended marked "P" (**58**).

772. Arguments.—

The official prosecutor read his written opening argument, appended marked "Q" (**59**).

The accused read a written argument, appended marked "R" (**60**).

(**57**) For cross-examination and rebuttal of such witness, see art. 350.

(**58**) When the accused makes a written statement the original thereof should be appended to the record and it should be signed by the accused.

For statement of accused, see art. 564.

If accused be without counsel, immediately following this entry must appear:

"The official prosecutor informed the court that the substance of art. 488, Coast Guard courts and boards, had been carefully explained to the accused."

Variation 1.—"The accused made an oral statement as follows: * * *."

(See art. 569 as to when statement may be oral.)

Variation 2.—"The accused requested a delay until ——— to prepare his written statement. The request was granted, and the court then, at ——— p. m., adjourned to meet to-morrow, ———, at —— a. m."

Variation 3.—"The accused did not desire to make a statement, and submitted his case to the court.

In case the statement is more than a mere request for clemency, see art. 566. In such a case the procedure is as follows:

"The court was cleared. The court was opened and all parties to the trial entered. The court announced that it considered the statement to be more than a mere request for clemency, and directed the official prosecutor to proceed as though pleas of not guilty had been entered."

(**59**) For arguments, see arts. 567 to 570.

Variation 1.—"The official prosecutor made the following opening argument: * * *."

Variation 2.—"The official prosecutor desired to make no opening argument."

(**60**) The argument, of course, may be made by counsel, but is recorded as above. See in this connection note 25 to art. 719.

Variation 1.—"The accused requested a delay until ——— to prepare his written argument. The request was granted and the court then at ——— a. m., took a recess until ——— p. m., at which time it reconvened.

"Present: * * *."

* * * * * * *

Variation 2.—"The accused made the following argument: * * *."

Variation 3.—"The accused desired to make no argument, and submitted his case to the court."

The court then, at 11.30 a. m., took a recess until 1 p. m., at which time it reconvened.

Present: All the members, the recorder, the official prosecutor, the reporter, the accused, and his counsel.

No witnesses not otherwise connected with the trial were present.

The official prosecutor read his written closing argument, appended marked "S" (61).

773. Trial finished.—

The trial was finished.

774. Further evidence allowed.—

The accused requested the court to allow the defense to introduce further evidence, as he had just been informed that Y——— Z———, seaman, second class, had made a confession that * * *.

The court announced that the defense would be allowed to introduce further evidence (62).

The defense reopened.

Y——— Z———, a witness for the defense, was recalled and warned that the oath previously taken by him was still binding.

Examined by the accused:

1. Q. * * * (63).

A. * * *

* * * * * * *

(Examined and testimony recorded as previously indicated.)

The defense had no further evidence to offer.

The trial was finished.

The court was cleared.

The court was opened. All parties to the trial entered and the court then, at 4 p. m., adjourned until 10 a. m., to-morrow, Monday, July 2, 1923 (64).

775. Seventh day.—

SEVENTH DAY.

U. S. C. G. C. WINONA,
Mobile, Alabama, Monday, July 2, 1923.

The court met at 10 a. m.

Present:

Lieutenant Commander D——— E. F———, U. S. Coast Guard,
Lieutenant R——— K. L———, U. S. Coast Guard,

(61) Variations similar to those in the preceding note.
The prosecution in its closing argument is limited to discussion of the argument of the accused. If the accused waives his argument, the prosecution loses the right to make a closing argument. (Art. 567.)

(62) For introduction of evidence, see art. 371. The prosecution has equal rights in this regard.

(63) Begin numbering questions anew. (Art. 662.)

(64) For adjournment or recess, see arts. 728 and 743.

Lieutenant M——— N———, U. S. Coast Guard, members, and Lieutenant P——— Q. R———, U. S. Coast Guard, recorder.

Lieutenant M——— N. O———, U. S. Coast Guard, official prosecutor.

H——— J———, chief yeoman, U. S. Coast Guard, reporter.

The accused and his counsel.

The record of proceedings of the sixth day of the trial was read and approved (65).

776. Findings (66).—

The court was cleared (67).

The recorder was recalled and directed to record the following findings (68):

The first specification of the first charge not proved.

The second specification of the first charge proved by plea.

And that the accused, A——— B. C———, seaman, second class, U. S. Coast Guard, is of the first charge guilty.

The third (69) specification of the second charge proved in part, proved except the words "* * *," which words are not proved, and for which the court substitutes the words "* * *," which words are proved (70).

And that the accused, A——— B. C———, seaman, second class, U. S. Coast Guard, is of the second charge, guilty in a less degree than charged, guilty of * * * (71).

The specification of the additional charge, not proved.

And that the accused, A——— B. C———, seaman, second class, U. S. Coast Guard, is of the additional charge, not guilty; and the court does therefore acquit (72) the said A——— B. C———, seaman, second class, U. S. Coast Guard, of the additional charge (73).

The court was opened and all parties to the trial entered. The court informed the accused that it had found the first specification of the first charge and the specification of the additional charge not proved (74).

---

(65) If objected to, see art. 765.

(66) For "Findings," see arts. 577 to 587.

(67) When the accused has plead guilty throughout, clearing the court to deliberate on the findings may be dispensed with in accordance with the provisions of art. 507.

(68) Findings are to be recorded in the handwriting of the recorder. (Art. 587.)

(69) The first and second specifications of this charge having been *nolle prosequied.* (Arts. 712 and 726.)

(70) For when specification is found "proved in part," see art. 587.

(71) Variation.—"* * * is of the second charge guilty."

For finding "guilty in a less degree than charged," see art. 582.

(72) Or, "fully acquit," "honorably acquit," "most fully and honorably acquit." (See art. 586.)

(73) Should the accused be acquitted of all charges the findings are read in open court and the procedure of art. 585 followed. The entry in the record is "The court was opened and all parties to the trial entered. The recorder read the findings of the court."

(74) Art. 585.

67189—24——17

777. Record of previous convictions (75).—

The official prosecutor stated that he had record of previous conviction(s) (76), that the rate of pay of the accused is $48 a month, and that he enlisted on March 4, 1923, to serve for one year, and gave as his date of birth January 21, 1897 (77).

The court announced that it was ready to receive the record of previous conviction.

There being no objection, the official prosecutor read from the current (78) enlistment contract and record of the accused (79) an extract showing previous conviction(s), copy appended, marked "T" (80).

778. Sentence (81).—

The court was cleared.

The court then, at 11.45 a. m., took a recess until 1 p. m., at which time it reconvened (82).

Present: All the members.

The recorder was recalled, and directed to record the sentence of the court as follows (83):

The court, therefore, sentences him, A——— B. C———, seaman, second class, U. S. Coast Guard, to be reduced to the next inferior rating, that of ——— (84), to be imprisoned on land, in such place as the Secretary of the Treasury may designate, for a period of ——— months, to be dishonorably discharged (85) from the U. S.

---

(75) For "previous convictions," see arts. 588 to 592.

(76) In case the accused be an officer, the entry following this point is omitted.

Variation.—"The official prosecutor stated that he had no record of previous conviction."

(77) In the case of fraudulent enlistment the data required in this entry will be taken from the first, or nonfraudulent, enlistment.

(78) For exceptions to the general rule that the previous convictions must relate to the current enlistment, see art. 590.

(79) In the case of conviction during fraudulent enlistment:

Variation.—" * * * (and) of the accused while serving under the name of ——— ———, ———, U. S. Coast Guard * * *."

(80) Variation 1.—"The accused (or the official prosecutor or the court) objected to the introduction of the record of his (the) trial by a minor court, approved May 10, 1923, on the ground that the record had not been approved by the convening authority.

"The court was cleared. The court was opened and all parties to the trial entered. The court announced that the objection was sustained."

In case the accused is an officer:

Variation 2.—"There being no objection, the official prosecutor read to the court Special Order No. — of January 2, 1922, in the case of the accused.

(81) For general provisions relating to the sentence, see arts. 593 to 602. See also limitations of punishments, art. 608 et seq.

(82) When the court while in closed session takes a recess, the court need not be reopened for formally announcing that fact, but the parties in attendance should be informed as the court leaves of the hour at which it will reconvene.

(83) For recordation and authentication of sentence, see art. 600.

(84) In all cases involving confinement for more than three months the accused is to be reduced to the next lower rating (if there be one) of that branch of the service to which he belongs.

For classification for disrating, see art. 852.

(85) The sentence of a warrant officer should be expressed according to the above form, with the exception of that part relating to reduction in rating.

Coast Guard on the date to be designated by the Secretary of the Treasury, and to suffer all the other accessories of said sentence as prescribed by article 597, Coast Guard Courts and Boards (86).

D——— E. F———,
Lieutenant Commander, U. S. Coast Guard, President.
R——— K. L———,
Lieutenant, U. S. Coast Guard, Member.
M——— N———,
Lieutenant, U. S. Coast Guard, Member.
P——— Q. R———,
Lieutenant, U. S. Coast Guard, Recorder (87).

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(86) **Meaning of "other accessories of said sentence."**—The words "other accessories of said sentence," when used in the sentence of a general court, shall include the following: After the discharge of all indebtedness to the United States, including that for clothing drawn, and, in case of desertion, the expense for the apprehension and cost of transportation, and all other legal deductions, he shall forfeit from the amount of pay due him at the expiration of the term for which he enlisted, or on the date of discharge, two months' pay, or so much thereof as may be due him.

He shall be allowed a reasonable sum, not to exceed $3 per month, for necessary prison expenses, said amount to be charged against any pay due him at the expiration of the term of his enlistment, or on the date of his discharge, after the deductions set forth above have been made. If he do not have sufficient pay due him, payments will be made from the appropriation for the maintenance of the Coast Guard. (See art. 597.)

Discharge alone may be adjudged.—A general court may sentence an enlisted person to a dishonorable discharge alone, without adjudging a period of confinement and "other accessories." But this sentence is not ordinarily deemed advisable.

Dismissal.—A sentence of dismissal may be adjudged in the case of an officer, but such sentence may be adjudged only in such cases as the limitations of punishment prescribed by the Secretary of the Treasury permit. A sentence of dismissal of a commissioned officer can be carried into execution only upon the confirmation of the President.

Dismissal to precede imprisonment of an officer.—In all cases where an officer is sentenced to imprisonment the sentence shall provide for his dismissal prior thereto.

Imprisonment.—In all cases in which a warrant officer shall be sentenced to imprisonment the sentence should include dishonorable discharge and forfeiture of two months' pay, or so much thereof as may be due him at the time of discharge.

In all cases in which an enlisted person shall be sentenced to imprisonment the sentence should include reduction to the next inferior rating, dishonorable discharge, and forfeiture of two months' pay, or so much thereof as may be due him at the expiration of his enlistment or date of his discharge.

Loss of numbers.—A commissioned officer may be sentenced to a loss of numbers. When a commissioned officer's position on the Official Register will not permit of his losing the adjudged numbers in his grade, the court shall place him at the foot of the list, with the proviso that he is to remain in that position until he has lost the required numbers.

Variation.—"To lose five (5) numbers in his grade (to be placed at the foot of the ———'s list of present date and to there remain until he shall have lost five (5) numbers in his grade)."

Loss of pay.—See art. 598.

In case of reduction in rating coupled with loss of pay, care shall be observed that the loss is based on the reduced rate.

Variation.—"The court, therefore, sentences him ——— ———, coxswain, U. S. Coast Guard, to lose twenty-five dollars ($25) per month of his pay for a period of four (4) months, total loss of pay amounting to one hundred dollars ($100)."

Variation.—"The court, therefore, sentences him ——— ———, seaman, first class, U. S. Coast Guard, to lose pay amounting to one hundred dollars ($100), and to be dishonorably discharged from the United States Coast Guard."

Official reprimand—not favored.—The sentence of official reprimand, while legal, is not regarded with favor by the Department.

Sentence of suspension—not favored.—A sentence of suspension, with full or with reduced pay, is objectionable because it is detrimental to the interests of both the officer

779. Recommendation to clemency.—

In consideration of the mitigating circumstances shown by the evidence to have existed in connection with the offense set out in the second specification of Charge I, and of the absence of evil motive (88) believed by the court to have existed in connection with the offense set out in the third specification of Charge II, we strongly recommend A——— B. C———, seaman, second class, U. S. Coast Guard, to the clemency of the reviewing authority (89).

D——— E. F———,
Lieutenant Commander, U. S. Coast Guard, President.
R——— K. L———,
Lieutenant, U. S. Coast Guard, Member.
M——— N———,
Lieutenant, U. S. Coast Guard, Member (90).

780. Final entry.—

The court then, at 3 p. m., adjourned to meet on Tuesday next at 10 a. m. (91).

D——— E. F———,
Lieutenant Commander, U. S. Coast Guard, President.
P——— Q. R———,
Lieutenant, U. S. Coast Guard, Recorder (92).

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and the Government. This form of punishment may, however, legally be imposed for an offense committed by a commissioned officer and the term of suspension may be for a period of two years or any part thereof. Also, the President may mitigate a sentence of dismissal to suspension for a limited time. A suspension from duty deprives an officer of authority to give orders to or exact obedience from his inferiors.

Deprivation of liberty.—A court may sentence an enlisted person to deprivation of liberty for a specified period not to exceed three months. This form of sentence is usually accompanied by a forfeiture of pay.

Variation.—" * * * to be deprived of liberty for a period of three (3) months, and to lose twenty dollars ($20) per month of his pay for a period of four (4) months, total loss of pay amounting to eighty dollars ($80)."

(87) The sentence having been recorded, the proceedings, findings, and sentence in each separate case tried by the same court shall be signed by all the members of the court, and by the recorder when not a member. The recorder when a member shall sign in his dual capacity as " member and recorder."

(88) Intent is an essential element of any offense; motive is immaterial, but may properly be ground for recommending clemency.

(89) For recommendation to clemency, see arts. 602 and 598. A vague and indefinite recommendation is of no practical use. The facts on which it is based should be succinctly stated.

(90) The recorder never signs a recommendation to clemency, unless he also be a member. (Art. 602.)

(91) Variation 1.—" The court was opened and proceeded with the trial of ——— ———, ———, U. S. Coast Guard."

Variation 2.—" The court, having no more cases before it, adjourned to await the action of the convening authority."

Variation 3.—" The court adjourned to await the call of the president."

(92) The final entry is authenticated by the signature of the president and of the recorder. (Art. 676.)

781. Documents appended: Brief of counsel (93).—

(Brief of argument of the counsel for the accused in support of the plea in bar of trial entered in art. 735.)

M

782. Same: Letter from convening authority that witnesses can not appear.—

TREASURY DEPARTMENT,
Washington, June 21, 1923.

Lieutenant Commander D——— E. F———,
U. S. Coast Guard, President, General Court,
U. S. C. G. C. Winona.

Subject: Summons for witnesses (94).

SIR: The summonses drawn by you to Lieutenant ——— ——— and ——— ———, boatswain's mate, first class, U. S. Coast Guard, to appear as witnesses before the general court on the U. S. C. G. C. *Winona*, of which you are president, are herewith returned.

It is impracticable to transmit these summonses to the persons named as both are on board the U. S. C. G. C. *Modoc* now en route to the Grand Banks of Newfoundland.

By direction of the Secretary.

Respectfully,

S——— T———,
Assistant Secretary.

N

783. Same: Communication to Commandant of Coast Guard when Coast Guard witnesses are in contempt.—

U. S. C. G. C. WINONA,
Mobile Ala., June 28, 1923.

From: Lieutenant Commander D——— E. F———, U. S. Coast Guard, President, General Court, U. S. C. G. C. *Winona*.

To: Commandant.

Subject: Y——— Z———, seaman, second class, U. S. Coast Guard, U. S. C. G. C. *Winona*, adjudged guilty of contempt of court.

1. I have to inform you that the above-named man this day appeared as a witness before this court and was adjudged in contempt of court in that he * * * (95). The court thereupon directed that charges and specifications be preferred against him for "Violation of lawful order issued by the Secretary of the Treasury" (conduct to the prejudice of good order and discipline.)

---

(93) Documents having to do with the precept or with the charges and specifications are prefixed; all others are appended.

(94) For summoning witnesses, see arts. 345 and 346.

(95) This is as set out in art. 756.

2. Charges and specifications against the above-named man are transmitted herewith and it is recommended that they be approved and that he be brought to trial before a general Coast Guard court.

D——— E. F———.

A true copy. Attest:

P——— Q. R———,

Lieutenant, U. S. Coast Guard, Recorder.

O

784. Same: Written statement of accused.—

(Here is appended the written statement of the accused submitted in art. 771.) **(96).**

P

785. Same: Official prosecutor's written opening argument.—

(Here is appended the written argument read by the official prosecutor in art. 772.) **(97).**

Q (1), Q (2), etc.

786. Same: Written argument of the accused.—

(Here is appended the written argument read by the accused (or his counsel) in art. 772.)

R (1), R (2), etc.

787. Same: Official prosecutor's written closing argument.—

(Here is appended the written closing argument read by the official prosecutor in art. 772.)

S (1), S (2), etc.

788. Same: Record of previous conviction (1).—

Extract of previous conviction from the current enlistment contract and record of A——— B. C———, seaman, second class, U. S. Coast Guard.

U. S. C. G. C. WINONA,
Mobile, Alabama.

April 6, 1923, awol to April 8, 36 hrs. MC confinement bread and water 10 days, full ration every third day, lose pay $10. Approved April 20, 1923, by C. O., June 25 by reviewing authority.

(Signed) ——— ———.

A true copy. Attest:

P——— Q. R———,

Lieutenant, U. S. Coast Guard, Recorder.

T

789. Exhibits.—

(Following the appended documents, the exhibits are appended in the order in which they were received in evidence. When the

(96) The statement is appended only when it is written. (See arts. 569 and 570.)
(97) Arguments are appended only when written. (See arts. 569 and 570.)
(1) This was introduced in art. 777.

exhibit is an instrument of real evidence the procedure set forth in art. 759 should be followed.) (2)

Exhibit 1 to Exhibit 7.

PART II. REVISION (3).

805. Cover page.—

Case of
A——— B. C———,
Seaman, second class,
U. S. Coast Guard.
July 9, 1923.

RECORD OF PROCEEDINGS IN REVISION
of a
GENERAL COURT
convened on board the (4)
U. S. C. G. C. WINONA
by order of
THE SECRETARY OF THE TREASURY.

806. Letter returning record for revision.—

TREASURY DEPARTMENT,
Washington, July 7, 1923.

Lieutenant Commander D——— E. F———,
U. S. Coast Guard, President, General Court, U. S. C. G. C. Winona.

Subject: Trial of A——— B. C———, seaman, second class, U. S. Coast Guard.

SIR: The record of proceedings of the general court of which you are president, in the case of the above-named man, is herewith returned to the court.

The convening authority notes that the court found certain words of the third specification of the second charge not proved and substituted for these words certain other words which it found proved. The specification as thus amended is not grammatically correct. Furthermore, it is vague and indefinite in that the time and place of the commission of the offense are not specified in the specification as amended.

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(2) For securing exhibits to the record or forwarding separately, see art. 660.

(3) For revision in general, see arts. 625 to 635.

A separate record is kept on revision and is to be prefixed to the record of which it is a revision. (Art. 630.)

(4) Variations as in art. 701.

The court will reconvene for the purpose of reconsidering the findings and sentence. At the conclusion of the proceedings in revision the record will be returned to the convening authority.

By direction of the Secretary.

Respectfully,

S——— T——— (5),
Assistant Secretary.

A

807. Court meets.—

U. S. C. G. C. WINONA,
Mobile, Ala., Monday, July 9, 1923.

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

Present:

Lieutenant Commander D——— E. F———, U. S. Coast Guard,
Lieutenant R——— K. L———, U. S. Coast Guard,
Lieutenant M——— N———, U. S. Coast Guard, members (6), and
Lieutenant P——— Q. R———, U. S. Coast Guard, recorder (7).
H——— J———, chief yeoman, U. S. Coast Guard, reporter (8).

808. Findings and sentence revised.—

The court was cleared (9).

The recorder was recalled and directed to record that the court decided to revoke its former finding on the third specification of the second charge in the case of A——— B. C———, seaman, second class, U. S. Coast Guard, and to substitute therefor the following finding (10).

The third specification of the second charge proved in part, proved except the words "* * *," which words are not proved, and for which the court substitutes the words "* * *," which words are proved.

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(5) Revision must be before the same court. (Art. 625.)
For power of the reviewing authority, see art. 641.
The reviewing authority is not to return the record with a view to having the court increase the sentence. (Art. 644.)

(6) There must be a legal quorum present for revision. (Art. 627.)

(7) The same recorder, when not a member, need not officiate in revision. But in case a new one is appointed to act the procedure of art. 628 must be observed.

(8) When applicable, the following entry next appears on the record:
"The court having decided that the presence of the accused was necessary to the ends of justice, the accused (with counsel) was called before the court and the convening order was reread."
For the presence of the accused in revision, see art. 632.

(9) The court will be closed to revise the findings and sentence. (Art. 633.)

(10) Variation 1.—"* * * decided to correct the following clerical errors:
"(*a*) On page ———, by inserting between lines 10 and 11 the following: '* * *.'
"(*b*) On page 9, by omitting from lines 16 and 17 the following: '* * *.'
"(*c*) On page 20, by omitting the words '* * *,' lines 5 to 9, inclusive, and substituting therefor the words '* * *.'"

The court decided respectfully to adhere to the remainder of its former findings and to its former sentence (11).

D——— E. F———,
Lieutenant Commander, U. S. Coast Guard, President.
R——— K. L———,
Lieutenant, U. S. Coast Guard, Member.
M——— N———,
Lieutenant, U. S. Coast Guard, Member.
P——— Q. R———,
Lieutenant, U. S. Coast Guard, Recorder.

809. Final entry.—

The court then, at 10.30 a. m., adjourned to meet to-morrow at 10 a. m. (12).

D——— E. F———,
Lieutenant Commander, U. S. Coast Guard, President.
P——— Q. R———,
Lieutenant, U. S. Coast Guard, Recorder.

PART III. ACTION OF THE CONVENING AUTHORITY.

815. Action of the convening authority on the record (13).—

TREASURY DEPARTMENT,
Washington, July 23, 1923.

The proceedings, findings, and sentence of the general court in the foregoing case of A——— B. C———, seaman, second class, U. S. Coast Guard, are approved.

In view, however, of the recommendation to clemency made by all the members of the court, the period of confinement is reduced to ——— months.

The naval prison at the navy yard, New Orleans, Louisiana (14), is designated as the place for the execution of so much of the sentence as relates to confinement.

By direction of the Secretary.

S——— T———,
Assistant Secretary.

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(11) The revised findings and sentence and statement that the court respectfully adheres to its former ones must be in the handwriting of the recorder. (Art. 634.)

(12) Variations as under art. 780.

(13) For action by reviewing and convening authorities in general, see arts. 638 to 653.

(14) **Designation of prison.**—Prisons will be designated in accordance with instructions issued by the Secretary of the Treasury and instructions relative thereto will be transmitted by Coast Guard Headquarters.

816. Form of agreement between the president and stenographer (15).—

———— ————,
————— —, 192—.

I propose to do the necessary stenographic work in the general Coast Guard court (board of inquiry, etc.) to be convened at ———, on the ——— day of (now in session at ———), for the trial of ——— (or as the case may be), for ——— cents per folio of ——— words (or, for $——— per diem), and to copy such matter as may not be taken stenographically for ——— cents per folio.

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

———— ————,
Stenographer.

The above proposal is accepted.

———— ————,
(Rank) *President.*

817. Summons for Coast Guard witness (16).—

GENERAL COURT ROOM, U. S. C. G. C. ———,
New York, N. Y., June 25, 1923.

Lieutenant G——— C. G———,
U. S. Coast Guard,
Commanding U. S. C. G. C. Deering, Baltimore, Md.
Via Commandant, U. S. Coast Guard.

You are hereby summoned to appear before a general Coast Guard court on the U. S. C. G. C.———, Tompkinsville, N. Y., at 10 o'clock a. m., June 28, 1923, as a witness for the prosecution (defense) in the case of A——— B. C———, seaman, second class, U. S. Coast Guard.

When discharged, return to your present station and duties.

Respectfully,

D——— E. F———,
Lieutenant Commander, U. S. Coast Guard, President.

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(15) **Agreement in duplicate.**—This agreement must be made in duplicate, one copy to be retained by the stenographer and the other attached to the voucher for services when such services have been performed.

(16) **Travel expense involved.**—Should travel expense be involved and the presence of the person be necessary, the president shall notify Headquarters of the facts.

NOTE.—**Civilian witnesses.**—There is no authority of law to compel persons unconnected with the public service to appear before a court as witnesses. The president of a court may request in writing such persons to appear and testify, but their attendance would be voluntary.

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

GENERAL COURT ROOM, U. S. C. G. C. ———,
New York, N. Y., June 30, 1923.

COMMANDANT, U. S. COAST GUARD,
Washington, D. C.

Subject: Adjournment of general court.

SIR: I have the honor to inform you that the general Coast Guard court of which I am president has finished all the business before it and has adjourned to await the action of the convening authority.

Respectfully,

D——— E. F———,
Lieutenant Commander, U. S. Coast Guard, President.

CHAPTER IX. (1)

MINOR COURT PROCEDURE.

PART I. THE TRIAL.

825. Cover page (2).—

Case of
J——— J———,
Seaman, second class,
U. S. Coast Guard.
July 16, 1923.

(1) This chapter shows how a record of trial by a minor court is made up. The object is to show each paper and entry in the order in which it should appear in the completed record. Each separate step in the trial is given an article number to indicate clearly that it is a separate step and for ease of reference. The article numbers and headings given in this book are not to be repeated in the record of the court. Each of the separate steps so indicated obviously may not occur in any one trial.

For the general provisions governing making up records, see arts. 658 to 679.

(2) The cover page should be protected by a sheet of extra heavy paper.

RECORD OF PROCEEDINGS
of a
MINOR COURT
convened on board the
U. S. C. G. C. MOHAWK,
Boston, Mass.,
by order of the
COMMANDING OFFICER.
(Commandant, Division Commander.)

826. Precept (3).—

U. S. C. G. C. MOHAWK,
Boston, Mass, July 12, 1923.

From: Commanding Officer.
To: Lieutenant A——— R. K———, U. S. Coast Guard.
Subject: Convening minor court.

1. A minor court is hereby ordered to convene on board this vessel on Monday, July 16, 1923, or as soon thereafter as practicable, for the trial of such persons as may be legally brought before it.

2. The court will be constituted as follows (4):

Lieutenant A——— R. K———, U. S. Coast Guard; Lieutenant J———M. D———, U. S. Coast Guard; and Ensign K——— R. A. ———, U. S. Coast Guard, members (5).

H——— A. N———, (6),
Commander, U. S. Coast Guard,
Commanding U. S. C. G. C. Mohawk.

A true copy (7). Attest:
K——— R. A———,
Ensign, U. S. Coast Guard, Recorder. A (8)

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(3) In case the record exceeds 20 pages in length an index similar to that in art. 702 is to follow the cover page.

For explanation of what the precept is, see art. 477. A minor court can not try cases referred to it by other than its own convening authority.

The convening authority shall deliver the precept to the president, and, orally or in writing, notify the other members of their appointment.

(4) None but commissioned officers shall serve on a minor court. The senior member is the president, and the junior member the recorder.

Deficiency of members—How supplied.—When a trial by minor court is decided upon, and a sufficient number of officers of the proper rank to compose the court are not under the command of the convening authority, the latter shall request the senior officer present to detail the additional officers necessary. The senior officer present shall, if practicable, comply with such request, in which case he shall, orally or in writing, notify the officers detailed.

Changes in court.—The provisions of art. 479 apply to a minor court, but ordinarily, where changes are necessitated in the composition of a minor court, a new precept should be issued.

(5) **Recorder.**—For the general duties of the recorder before trial, see arts. 482 to 484; during trial, arts. 539 to 542.

Summoning witnesses.—The president shall summon all witnesses both for the prosecution and the defense. The provisions applicable to summoning witnesses before a general court apply to the witnesses before a minor court.

(6) **Division commander or senior officer present.**—The commander of a division, or the senior officer present, can not, as such, order a minor court. The precept must show

827. Charge and specification.—

Charge and specification (9) preferred against J——— J———, seaman, second class, U. S. Coast Guard.

Charge.—Absence from duty without leave.

Specification (10).—In that J——— J———, now a seaman, second class, U. S. Coast Guard, while so serving on board the U. S. C. G. C. *Mohawk*, * * * (11).

Approved: July 14, 1923 (12).

To be tried before the minor court of which Lieutenant A——— R. K———, U. S. Coast Guard, is president.

H——— A. N——— (13),
Commander, U. S. Coast Guard,
Commanding U. S. C. G. C. Mohawk.

B.

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the jurisdiction of the convening authority; it must show that the convening authority is the immediate commanding officer of the accused, or the commandant. An accused on detached duty may be tried by a minor court convened by the commanding officer of the command to which he is attached temporarily.

(7) The original precept shall be affixed to the record of the first case tried thereunder, and, if more than one case be tried thereunder, shall be referred to in the record of each case subsequent to the first, and a copy prefixed.

(8) For marking of documents, see art. 668.

For order in which documents are prefixed or appended, see art. 667.

(9) The charge shall be drawn in accordance with sample charges in Chapter V.

(10) If there be more than one specification, they are numbered 1, 2, etc.

(11) Specifications should follow the sample specifications in Chapter V. A separate charge and specification shall be used for each distinct offense. If the punishment which a minor court may adjudge be deemed inadequate, the charge and specification should be withdrawn from the minor court and recommendation made for trial by general court.

Offenses triable by minor court.—Enlisted persons are tried by a minor court for offenses which an officer empowered to order a minor court may deem deserving of greater punishment than those to be tried by a deck court, but not sufficient to require trial by general court. When the nature of an offense charged is of such character that the punishment which a minor court is authorized to inflict is not adequate, the offender should be brought to trial before a general court unless it is impracticable to do so. A minor court can not try the offense of desertion or an offense where the proper punishment would be imprisonment on land.

(12) This date should not be anterior to that of the precept. (Art. 477.)

(13) The original charge(s) and specification(s) is (are) always prefixed to the record in each case. (Art. 494.)

Additional offense.—" Charge and specification of an additional offense preferred against J——— J———, seaman, second class, U. S. Coast Guard, intelligence of which did not reach the convening authority until this day (*or*, the ——— instant).

" **Charge.**—* * * *."

" **Specification.**—* * * *."

" To be tried before the minor court of which Lieutenant A——— R. K———, U. S. Coast Guard, is president, at the same time the accused is tried on the charge and specification approved July 14, 1923.

" H——— A. N———,
" Commander, U. S. Coast Guard, Commanding U. S. C. G. C. Mohawk."

C.

828. Court meets.—

(14)

U. S. C. G. C. MOHAWK,
Boston, Mass, Monday, July 16, 1923.

The court met at 10 a. m. (15).

Present:

Lieutenant A——— R. K———, U. S. Coast Guard,
Lieutenant J——— M. D———, U. S. Coast Guard,
Ensign, K——— R. A———, U. S. Coast Guard, members (16).

N——— O. P.———, seaman, second class, U. S. Coast Guard, entered with the accused and reported as orderly (17).

829. Accused's counsel.—

The accused stated that he did not wish counsel.

The requirements of article 485, Coast Guard Courts and Boards, were complied with (18).

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(14) If the case occupies more than one day the entry "First day" is here made. Entries for succeeding days are as under a general court.

(15) For place of meeting and sessions, see arts. 500 to 502. Hours for holding sessions of a minor court, however, shall be selected with a view to as little interference with the performance of routine duties as the administration of justice and the interests of the accused and the service permit.

The president reports when the court meets and when it adjourns, through routine channels to the convening authority. (Art. 514.)

(16) For the seating of the members, their duties, etc., see arts. 503 to 515. Members of a minor court are not excused from other duties.

Variation 1.—"Lieutenant J——— M. D———, U. S. Coast Guard, a member, was absent on account of illness (or other cause), and as the court was reduced below the authorized number, it adjourned until 10 a. m., to-morrow, Tuesday."

Variation 2. —"The court, being reduced below the number authorized, informed the convening authority to that effect, and then took a recess until 11.30 a. m., the same date, when it reconvened. Present: Lieutenant A——— R. K———, U. S. Coast Guard; Ensign K——— R. A———, U. S. Coast Guard; and Ensign T——— S——, U. S. Coast Guard, appointed a member by the convening authority, vice Lieutenant J——— M. D———, U. S. Coast Guard, relieved."

(Generally, in this latter case, it will be more simple to draw a new precept, adding thereto: "This court is hereby authorized and directed to take up such cases, if any, as may be pending before the minor court convened by my precept of ——— ———, 1923, of which you are (*or* of which ——— ——— ———, U. S. Coast Guard, is) president, except such cases the trial of which may have been commenced.")

(17) For the duty of a guard or orderly see art. 516; for appointment, art. 492. For the presence of the accused, see art. 516.

In case a reporter be authorized the following entry next appears: "The recorder introduced ——— ———, ———, U. S. Coast Guard, as reporter."

For reporter and interpreter, see art. 490. The reporter and (or) interpreter must be sworn. (Art. 517.) For oaths, see art. 832.

(18) The accused is entitled to counsel. (Art. 485.) For detailing an officer as counsel and his duties as such, see at. 486. For duties and prerogatives of a counsel in general, see art. 518.

Variation 1.—"The accused requested that Ensign L——— N———, U. S. Coast Guard, act as his counsel. Ensign N——— took seat as such."

Variation 2.—"The accused was informed that his request to have Ensign L——— N——— act as his counsel was not approved for the reason that (give reason); he then requested that Lieutenant O——— P———, U. S. Coast Guard, act as his counsel. Lieutenant P——— took seat as such. (Or, He thereupon requested that counsel be detailed for him, and the court so notified the convening authority and took a recess until 1 p. m., the same date, when it reconvened. Present: All the members and the accused. Ensign ———, having been detailed as counsel for accused, reported as such.)"

In case the request of the accused for certain counsel is refused, the reason for refusal must be set out. (Art. 487.)

830. Precept read.—

The recorder read a copy of the precept hereto prefixed marked "A," original prefixed to the record in the case of ——— ———, ———, U. S. Coast Guard (19).

831. Accused makes no objection to members.—

The accused stated that he did not object to any member (20).

832. Members sworn.—

Each member was duly sworn (21).

833. Accused acknowledges receipt of a copy of the charge and specification.—

The accused stated that he had received a copy of the charge and specification preferred against him on July 14, 1923 (22).

834. Accused makes no objection to the charge and specification.—

The recorder asked the accused if he had any objection to make to the charge and specification.

The accused replied in the negative (23).

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(19) The precept, and orders altering the same, if any, must be read aloud by the recorder in court in the presence of the accused. Both the recorder and the accused should stand during the reading. (Arts. 519 and 717.)

The precept may be modified as in the case of a general court. (Arts. 704 to 706.)

Variation.—"The recorder read the precept, original hereto prefixed, marked 'A'."

(20) In case of objection proceed as under a general court (arts. 718 and 719).

For challenge in general, see arts. 520 to 526.

(21) **Variation.**—"Each member and the reporter were duly sworn."

For the time and manner of giving oaths, see art. 527. All persons present should stand while the court is being sworn.

The recorder first swears the members:

Oath for members.—The oath administered to the members shall be that prescribed for members of a general court. (Art. 723.)

The president then swears the recorder:

Oath for recorder.—The oath administered to the recorder shall be that prescribed for the recorder of a general court. (Art. 723.)

The recorder shall then administer the oath to the reporter, if there be one:

Oath for reporter.—The oath administered to the reporter shall be that prescribed for the reporter of a general court. (Art. 723.)

In case the services of an interpreter are needed he is sworn by the recorder when he first assumes duty as such.

Oath for interpreter.—The oath administered to the interpreter shall be that prescribed for the interpreter of a general court. (Art. 723.)

For oath on *voir dire*, see art. 718.

(22) For the manner in which the copy is sent the accused, see art. 493.

In case the accused does not make this acknowledgment proceed as under art. 724.

Accused to be furnished copy of charge(s) and specification(s) before trial.—As soon as practicable after it has been decided to bring him to trial, the accused shall be furnished with a copy of the charge(s) and specification(s) preferred against him. After he has received this copy he shall, before he is brought to trial, be allowed a reasonable time to prepare his defense, but he may be tried at any time after he announces in open court that he is ready for trial. The record must show by admission of the accused or by other proof that at a stated time prior to the trial he received a copy of the charge(s) and specification(s) preferred against him.

(23) If objection is made, proceed as under art. 727.

835. Charge and specification examined (24).—

The court was cleared (25). The court was opened. The court announced that it found the charge and specification in due form and technically correct (26).

836. Accused states he is ready for trial.—

The accused stated that he was ready for trial (27).

837. Witnesses separated.—

No witnesses not otherwise connected with the trial were present (28).

838. Charge and specification read and accused arraigned.—

The recorder read the charge and specification, original prefixed marked "B," and arraigned the accused as follows (29):

1. Q. ——— ———, seaman, second class, U. S. Coast Guard, you have heard the charge and specification preferred against you; how say you to the specification, guilty or not guilty (30)?

A. Not guilty (31).

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

A. Not guilty.

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(24) See art. 537 for discussion of this duty.

(25) For when clearing the court may be dispensed with, see art. 507.

(26) In case of the contrary finding, proceed as under art. 727.

(27) For postponement, see art. 538; proceed as under the variations of art. 732.

(28) Witnesses are to be examined apart from each other, and are not to be present during the reading of the charge(s) and specification(s). (Art. 374.) For variations, see under art. 733.

(29) For arraignment, see art. 542.

(30) **Variation 1.**—"* * * you have heard the specifications preferred against you; how say you to the first specification, guilty or not guilty?

"A. * * *.

"Q. To the second specification, guilty or not guilty?

"A. * * *."

Variation 2.—(In case of trial in joinder, see arts. 543 and 156.) "The recorder read the charge and specification original prefixed marked 'B,' and arraigned each of the accused as follows:

"Q. ——— ———, seaman, second class, U. S. Coast Guard, you have heard the charge and specification preferred against you; how say you to the specification, guilty or not guilty?

"A. * * *.

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

"A. * * *.

"Q. ——— ———, fireman, second class, U. S. Coast Guard, you have heard the charge and specification preferred against you; how say you to the specification, guilty or not guilty?

"A. * * *.

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

"A. * * *."

(31) **Variation 1.**—"Guilty."

Variation 2.—"Guilty except as to the words '* * *,' to which words not guilty."

For procedure on plea of guilty, see art. 556.

Variation 3.—"The accused stood mute."

For pleas to the general issue, see arts. 551 to 555.

For special pleas, see arts. 545 to 551. For the procedure, see art. 735.

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839. Warning on plea (32).—

The accused was duly warned as to the effect of his plea and persisted therein (33).

840. Prosecution begins.—

The prosecution began (34).

841. Examination of witness for prosecution.—

A witness for the prosecution entered and was duly sworn (35).

Examined by the recorder:

1. Q. State your name, rating, and present station (36).

A. Jacob Jones, boatswain's mate, second class, U. S. C. G. C. *Mohawk.*

2. Q. If you recognize the accused, state as whom.

A. As ——— ———, seaman, second class.

* * * * * * * (37).

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(32) In this supposititious trial this entry should not properly be made. This entry is omitted when the accused has plead not guilty throughout.

(33) Variation.—" * * * and withdrew his plea of guilty and substituted therefor a plea of not guilty."

For change of plea, see art. 560; for rejection, see art. 561.

When the court takes action on the plea the procedure of art. 738 shall be followed.

Example of proper warning: " Smith, it is my duty as president of this court to warn you that by your plea of guilty (or, of guilty to the second specification, or, of guilty except as to the words * * *) you deprive yourself of the benefits of a regular defense (as to this specification (or, as to the parts of the specification) thus admitted). That is to say, you can not after such a plea of guilty go ahead and prove that you are not guilty (on this specification, or, on parts of this specification). You may, however, introduce evidence of mitigating circumstances, in extenuation, or of previous good character. (See arts. 557 and 558.) Do you understand what I have just explained? (In case of a negative answer the explanation must be amplified.) Understanding this, do you persist in your plea?"

(34) Variation.—" The prosecution offered no evidence."

The prosecution properly offers no evidence only where the accused has plead guilty throughout, and the specifications set forth the facts so fully as to show all the circumstances of aggravation. (Art. 558.)

For the duty of the recorder to offer evidence after a plea of guilty, see art. 436.

In case the accused desires to make an admission in open court, proceed as in art. 739.

For a member or the recorder as a witness, see art. 336.

The oath of the recorder or a member as a witness is the same as for any other witness. See under art. 841.

For the order of examining witnesses, see art. 347; for the procedure, see art. 742.

For direct examination, see arts. 380 to 386.

Questions are to be numbered consecutively. If, however, the first examination of the witness is completed and later he is recalled, the questions begin anew. (Art. 662.) Questions and answers are paragraphed. (Art. 663.)

(35) Each witness before a minor court, prior to giving his testimony, shall be sworn, or affirmed, by the president, as follows:

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

The foregoing oath must be given in each case. Any additional ceremony may be undergone that will bind the honor and conscience of the witness. (Art. 527.)

(36) In case of a civilian witness:

Variation.—" State your name, residence, and occupation."

(37) The examination is conducted the same as for the preceding witness.

The witness was duly warned and withdrew (38).

842. Prosecution rests.—

The prosecution rested (39).

843. Recess.—

The court then, at 11.30 a. m., took a recess until 1 p. m., at which time it reconvened (40).

Present: All the members (41), the accused, and his counsel.

No witnesses not otherwise connected with the trial were present.

844. Defense begins.—

The defense began (42).

845. Examination of witness for defense.—

A witness for the defense entered and was duly sworn (43).

Examined by the recorder (44):

1. Q. State your name, rating, and present station.

A. ——— ———, quartermaster, second class, U. S. C. G. C. *Mohawk*.

2. Q. If you recognize the accused, state as whom.

A. As ——— ———.

* * * * * * *

Examined by the accused (45):

3. Q. * * *.

A. * * *.

* * * * * * *

Cross-examined by the recorder:

7. Q. * * *.

A. * * *.

* * * * * * *

---

(38) For warning to witnesses, see art. 410.

Variations.—"The accused (recorder) (a member) requested that the witness verify his testimony.

"The witness verified his testimony, was duly warned, and withdrew." (Or, "The witness corrected his testimony as follows: Page ———, answer to question No. ———, the words '* * *' changed to '* * *.' The testimony, thus amended, was read. The witness pronounced it correct, was duly warned, and withdrew." (Or) "At the request of the recorder the witness was directed to report to-morrow at ——— o'clock —. m. (later in the trial when recalled), to correct or verify his testimony, was duly warned and withdrew."

For verification of testimony, see art. 408.

For manner of correcting testimony, see art. 409.

(39) This entry is omitted when the prosecution has offered no evidence.

(40) When a suspension of business is from part of a day to another part of the same day it should be recorded as a recess; when from one day to another, as an adjournment. (Art. 664.)

In case of an adjournment the entries are as in arts. 720 and 728, so far as applicable.

(41) If there be a reporter his presence is also to be noted. (Art. 743.)

(42) **Variation.**—"The defense offered no evidence."

For change of plea, see under art. 753.

(43) For the oath, see under art. 481.

(44) The recorder asks the introductory questions of all witnesses. (Art. 380.)

(45) For the order of examining witnesses, see art. 377; for the procedure, see art. 742.

For direct examination, see arts 380 to 386.

Reexamined by the accused:

11. Q. * * *.

A. * * *.

* * * * * * *

The recorder did not desire to recross-examine this witness.

Examined by the court:

15. Q. * * *.

A. * * *.

* * * * * * *

The accused did not desire to recross-examine this witness.

Recross-examined by the recorder:

18. Q. * * *.

A. * * *.

* * * * * * *

Neither the accused, the recorder, nor the court desired further to examine this witness.

The witness was duly warned and withdrew (46).

846. Accused as a witness.—

The accused was, at his own request, duly sworn as a witness in his own behalf (47).

Examined by the recorder:

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

A. I am.

Examined by the accused:

2. Q. State the facts concerning the offense with which you are charged.

A. * * *.

* * * * * * *

Cross-examined by the recorder (48):

10. Q. * * *.

A. * * *.

* * * * * * *

The witness resumed his status as accused (49).

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(46) For variations, see note 38 *supra*.

Contempt before a minor court.—A minor court can not punish for contempt. In case of contempt, the court shall report the facts to the convening authority for such further action as the latter may deem appropriate. For such contempt the convening authority may, if he deem it proper, order or recommend trial by a service court where the offender is a person in the service.

(47) When the accused is without counsel the following additional entry must here appear:

"The recorder stated to the court that the substance of article 488, Coast Guard Courts and Boards, had been carefully explained to the accused."

For the accused as a witness, see art. 333.

For the privilege of the accused to testify, see art. 364.

(48) For cross-examination of accused, see art. 394.

(49) The accused is not warned. (Art. 410.)

847. Defense rests (50).—

The defense rested (51).

848. Statement of accused.—

The accused made an oral statement, the substance of which is appended, marked "C" (52).

849. Trial finished.—

The trial was finished (53).

850. Finding (54).—

The court was cleared (55).

The recorder was directed to record the following finding (56):

The specification of the charge proved (57), and the accused, ———— ————, seaman, second class, U. S. Coast Guard, is of the charge guilty.

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(50) If the defense introduces witnesses as to character proceed as under art. 757.

In case of rebuttal and surrebuttal proceed as under arts. 767 and 769. In such case the next entry in the record following this is: "The rebuttal began."

(51) This entry is omitted when the defense has offered no evidence.

(52) If the accused be without counsel, immediately following this entry must appear: "The recorder informed the court that the substance of article 488, Coast Guard Courts and Boards, had been carefully explained to the accused."

See art. 570 for when statement and argument must be written, and exception in the case of a minor court. See art. 569 for when they may be oral. When the accused makes a written statement the original thereof must be appended to the record and it should be signed by the accused.

For statement of accused, see art. 564.

In case the statement is more than a mere request for clemency, see art. 566, and the procedure under art. 771.

Variation.—"The accused did not desire to make a statement and submitted his case to the court."

For other variations, see under art. 771.

In case arguments are made proceed as in art. 772.

(53) In case the court decides to allow further evidence proceed as in art. 774.

(54) For "Findings" in general, see arts. 577 to 587.

(55) When the accused has plead guilty throughout, clearing the court to deliberate on the findings may be dispensed with in accordance with the provisions of art. 507.

(56) Or, "findings."

Findings are to be recorded in the handwriting of the recorder. (Art. 587.)

(57) **Variation 1.**—"The specification of the charge proved by plea and the accused ————."

Variation 2.—"The specification of the charge not proved, and the accused is of the charge not guilty, and the court acquits (fully acquits) (honorably acquits) (most fully and honorably acquits) the said ———— ————, seaman, second class, U. S. Coast Guard, of the offense specified."

"The court was opened and all parties to the trial entered. The recorder read the finding(s) of the court."

(Should the accused be acquitted of all specifications and charges the findings are read in open court, and the procedure of art. 585 is followed.)

(For forms of acquittal, see art. 586.)

Variation 3.—"The specification of the first charge proved and the accused, ———— ————, seaman, second class, U. S. Coast Guard, is of the first charge guilty.

"The first specification of the second charge, proved. The second specification of the second charge, not proved. And the accused, ———— ————, seaman, second class, U. S. Coast Guard, is of the second charge, guilty."

(If a charge is not proved the following entry must appear: "The court was opened and all parties to the trial entered. The court informed the accused that it had found him not guilty of the second charge.")

(This is in accordance with the provisions of art. 585.)

Variation 4.—"The specification of the charge proved in part; proved except the words '* * *,' which words are not proved (and for the excepted words the court substitutes

851. Record of previous convictions (58).—

The recorder stated that he had no record of previous convictions; that the rate of pay of the accused in his present rating is $48 a month and in his next inferior rating $33 a month, and that he enlisted on March 4, 1923, to serve for one year, and gave as his date of birth April 1, 1902 (59).

852. Sentence (60).—

The court was cleared.

The recorder was directed to record the sentence of the court as follows (61):

The court therefore sentences him, ——— ———, seaman, second class, U. S. Coast Guard, to be dishonorably discharged from the United States Coast Guard (62).

A——— R. K———,
Lieutenant, U. S. Coast Guard, President.
J——— M. D———,
Lieutenant, U. S. Coast Guard, Member.
K——— R. A———,
Ensign, U. S. Coast Guard, Member and Recorder.

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the words '* * *,' which words are proved). And the accused, ——— ———, seaman, second class, U. S. Coast Guard, is of the charge guilty in a less degree than charged, guilty of ———."

For finding "guilty in a less degree than charged," see art. 582.

For other variations, see art. 776.

(58) For previous convictions, see arts. 588 to 591.

(59) Variation.—"The recorder stated that he had record of previous conviction(s), * * *.

"The court was opened, and all parties to the trial entered. The court announced that it was ready to receive the record of previous conviction (s).

"Such record having been submitted to the accused and to the court and there being no objection, the recorder read from the current enlistment contract and record of the accused an extract showing previous conviction(s), copy appended marked 'D.'"

In case of objection proceed as under art. 777.

(60) For general provisions relating to the sentence, see arts. 595 to 602.

Authorized punishments.—A minor court may award any punishment which the law authorizes Coast Guard courts to impose upon enlisted persons, except that it shall not impose a sentence involving imprisonment on land or forfeiture of more than one month's pay.

Phraseology to be employed in sentences.—The exact phraseology of art. 595 is to be followed in the sentence.

(61) For recordation and authentication of sentences, see art. 600. The sentence must be in the recorder's handwriting.

(62) For loss of pay, see art. 598.

Variation 1.—"To be dishonorably discharged from the United States Coast Guard, and to forfeit all pay now due and that may become due him to date of discharge (excepting the sum of six (6) dollars, the amount of his indebtedness for clothing drawn (or other reason)."

Variation 2.—"To be confined on board ship for one month."

Variation 3.—"To forfeit the sum of ten (10) dollars from his pay."

Variation 4.—"To be reduced to the next inferior rating, that of ——— ———, and to forfeit the sum of ten (10) dollars from his pay."

Variation 5.—"To forfeit one (1) month's pay, amounting to thirty-three dollars ($33)."

Variation 6.—"To be deprived of liberty on shore for two (2) months, and to forfeit (15) days' pay, amounting to twenty-four dollars ($24)."

Classification for disrating.—In order to secure uniformity in the reduction in rating of enlisted persons by sentence of minor courts, the following classification of petty offi-

cers and other enlisted persons in the Coast Guard, arranged in each case to show their "next inferior rating," shall be followed. In case a person has been transferred from one branch to another or from one subdivision of a branch to another subdivision of the same branch, a subsequent reduction will be made in the subdivision of the branch to which he was transferred.

Revocation of the permanent appointment of a chief petty officer is not a reduction to the next inferior rating. It is a change in status, not in rating, and is therefore not a legal form for a minor court sentence.

TABLE I.—*Seaman branch.*

Class.	Subdivisions and ratings.		
	Boatswain's mates.	Gunner's mates.	Quartermasters.
Chief petty officers	Chief boatswain's mate	Chief gunner's mate	Chief quartermaster.
Petty officers 1c	Boatswain's mate 1c	Gunner's mate 1c	Quartermaster 1c.
Petty officers 2c	Boatswain's mate 2c	Gunner's mate 2c	Quartermaster 2c.
Petty officers 3c	Coxswain	Gunner's mate 3c	Quartermaster 3c.
(Below P. O.) 1c	Seaman 1c	Seaman 1c	Seaman 1c.
(Below P. O.) 2c	Seaman 2c	Seaman 2c	Seaman 2c.
(Below P. O.) 3c	Apprentice seaman	Apprentice seaman	Apprentice seaman.

TABLE II.—*Artificer branch.*

Class.	Subdivisions and ratings.		
	Machinist's mates.	Motor machinist's mates.	Engineman.
Chief petty officers	Chief machinist's mate	Chief motor machinist's mate.	
Petty officers 1c	Machinist's mate 1c	Motor machinist's mate 1c	Engineman 1c.
Petty officers 2c	Machinist's mate 2c	Motor machinist's mate 2c.	Engineman 2c.
Petty officers 3c			
(Below P. O.) 1c	Fireman 1c	Fireman 1c	Fireman 1c.
(Below P. O.) 2c	Fireman 2c	Fireman 2c	Fireman 2c.
(Below P. O.) 3c	Fireman 3c	Fireman 3c	Fireman 3c.

Class.	Subdivisions and ratings.		
	Water tenders.	Ship fitters.	Blacksmiths.
Chief petty officers		Chief ship fitter	
Petty officers 1c	Water tender 1c	Ship fitter 1c	Blacksmith 1c.
Petty officers 2c	Water tender 2c	Ship fitter 2c	Blacksmith 2c.
Petty officers 3c		Ship fitter 3c	
(Below P. O.) 1c	Fireman 1c	Seaman 1c	Fireman 1c.
(Below P. O.) 2c	Fireman 2c	Seaman 2c	Fireman 2c.
(Below P. O.) 3c	Fireman 3c	Apprentice seaman	Fireman 3c.

Class.	Subdivisions and ratings.		
	Electricians.		Carpenter's mates.
Chief petty officers	Chief electrician's mate	Chief radioman	Chief carpenter's mate.
Petty officers 1c	Electrician's mate 1c	Radioman 1c	Carpenter's mate 1c.
Petty officers 2c	Electrician's mate 2c	Radioman 2c	Carpenter's mate 2c.
Petty officers 3c	Electrician's mate 3c	Radioman 3c	Carpenter's mate 3c.
(Below P. O.) 1c	Seaman 1c	Seaman 1c	Seaman 1c.
(Below P. O.) 2c	Seaman 2c	Seaman 2c	Seaman 2c.
(Below P. O.) 3c	Apprentice seaman	Apprentice seaman	Apprentice seaman.

TABLE II.—*Artificer branch*—Continued.

Class.	Subdivisions and ratings.	
	Painters.	Sailmaker's mates.
Petty officers 1c	Painter 1c	Sailmaker's mate 1c.
Petty officers 2c	Painter 2c	Sailmaker's mate 2c.
Petty officers 3c	Painter 3c	Sailmaker's mate 3c.
(Below P. O.) 1c	Seaman 1c	Seaman 1c.
(Below P. O.) 2c	Seaman 2c	Seaman 2c.
(Below P. O.) 3c	Apprentice seaman	Apprentice seaman.

TABLE III.—*Special branches.*

Class.	Subdivisions and ratings.		
	Yeomen.	Storekeepers.	Commissary.
Chief petty officers	Chief yeoman	Chief storekeeper	Chief commissary steward.
Petty officers 1c	Yeoman 1c	Storekeeper 1c	Commissary steward; ship's cook 1c.
Petty officers 2c	Yeoman 2c	Storekeeper 2c	Ship's cook 2c.
Petty officers 3c	Yeoman 3c	Storekeeper 3c	Ship's cook 3c.
(Below P. O.) 1c	Seaman 1c	Seaman 1c	Mess attendant 1c.
(Below P. O.) 2c	Seaman 2c	Seaman 2c	Mess attendant 2c.
(Below P. O.) 3c	Apprentice seaman	Apprentice seaman	Mess attendant 3c.

Class.	Subdivisions and ratings.	
	Pharmacist's mates.	Buglers.
Petty officers 1c	Pharmacist's mate 1c	
Petty officers 2c	Pharmacist's mate 2c	
Petty officers 3c	Pharmacist's mate 3c	
(Below P. O.) 1c	Seaman 1c	Bugler 1c.
(Below P. O.) 2c	Seaman 2c	Bugler 2c.
(Below P. O.) 3c	Apprentice seaman	

TABLE IV.—*Messmen branch.*

Class.	Stewards.
Nonrated men	Officers' steward 1c. Officers' steward 2c. Officers' steward 3c. Mess attendant 1c. Mess attendant 2c. Mess attendant 3c.

853. Recommendation to clemency.—

In consideration of his previous good record, his youth, and short time in the service we recommend ——— ———, seaman, second

class, U. S. Coast Guard, to the clemency of the convening authority (63).

A——— R. K———,
Lieutenant, U. S. Coast Guard, President.
J——— M. D———,
Lieutenant, U. S. Coast Guard, Member.

854. Final entry.—

The court then, at ———, adjourned to await orders from the convening authority (64).

A——— R. K———,
Lieutenant, U. S. Coast Guard, President.
K——— R. A———,
Ensign, U. S. Coast Guard, Recorder. (65)

855. Action by convening authority (66).—

The proceedings, findings, and sentence in the foregoing case of ——— ———, seaman, second class, U. S. Coast Guard, are approved and respectfully referred to the Secretary of the Treasury.

H——— A. N———,
Commander, U. S. Coast Guard,
Commanding U. S. C. G. C. Mohawk.

856. Documents appended: Statement of accused (67).—

I respectfully call the attention of the court to my youth, short service, and previous good record. I send half of my pay each

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(63) For recommendation to clemency, see arts. 598 and 602. A vague and indefinite recommendation is of no practical use. The facts on which it is based should be succinctly stated.

(64) **Variation 1.**—"The court was opened and proceeded with the trial of ——— ———, U. S. Coast Guard."

Variation 2.—"The court then adjourned to meet to-morrow at 10 a. m. (or as the case may be)."

(65) The final entry is authenticated by the signatures of the president and of the recorder. (Art. 676.)

The president transmits the finished record to the convening authority, and reports through routine channels to the convening authority the times of meeting and of adjourning. (Art. 514.)

For dissolution of the court, see art. 653.

(66) **Variation.**—"——— are disapproved for the following reasons, ——— ———, and respectfully referred ———."

Review of record.—The commanding officer of the vessel, being the immediate convening authority, shall review the proceedings, findings, and sentence, and approve or disapprove the same. If he disapproves, he shall state his reasons for so doing, but shall make no recommendations.

If a minor court has been convened by the Commandant, the court will transmit the record directly to Headquarters.

(67) This is the statement made in art. 848. This procedure is in accordance with the provisions of art. 570.

For the procedure when a statement after a plea of guilty is more than a mere request for clemency, see art. 566.

Documents having to do with the precept or with the specifications are prefixed immediately following the precept or the specifications, as the case may be. All other documents, not instruments of evidence, such as those set out in arts. 781 to 788, are appended immediately following the final entry of the record.

Immediately following these come the exhibits.

For marking of documents, see art. 668.

For the order in which documents are prefixed or appended, see art. 667.

month home to my mother, who needs it badly. I request the court and the convening authority to be lenient with me.

Certified the true substance of the statement made by the accused.

Attest:

K——— R. A———,
Ensign, U. S. Coast Guard, Recorder.

857. Exhibits (68).—

(An abstract from the ship's log concerning the entry of the offense or offenses for which the accused was tried, attested by the recorder, shall be appended to the record.)

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(68) The exhibits are appended in the order in which they were received in evidence. When the exhibit is an instrument of real evidence the procedure set forth in art. 759 shall be followed.

For securing exhibits to the record or forwarding separately, see art. 759.

When medical certificate is required.—When the accused is sentenced to confinement exceeding ten days on bread and water or on diminished rations, the following certificate of the medical officer attached, or, where there be none, of the nearest Public Health Service surgeon, shall be appended after the exhibits:

"U. S. C. G. C. MOHAWK,
"Boston, Mass., July 16, 1923.

"From an examination of ——— ———, seaman, second class, U. S. Coast Guard, and of the place where he is to be confined, I am of the opinion that the execution of the sentence would (not) produce serious injury to his health.

"B——— N. J———,
"Surgeon, U. S. Public Health Service."

(See in this connection art. 671.)

Revision of the record.—If a revision be ordered, proceed similarly to a general court (arts. 805 to 809). A new court may sit in revision under the provisions of art. 626. A record is not to be returned with a view to increasing the sentence. (Art. 644.)

Synopsis of conduct spread upon record when dishonorable discharge is adjudged.—In every case where a dishonorable discharge has been imposed, it shall be the duty of the officer ordering the court before acting upon the proceedings to spread upon the record a brief synopsis of the service of the person tried and the offenses committed by him during his current enlistment. And though not required this may properly be done in other cases.

Variation.—"* * * shows that he has served in the Coast Guard ——— years and ——— months, and is now in his third enlistment. During his current enlistment, beginning ——— ———, 19—, he has committed the following offenses: March ———, 1923, absent forty-eight hours after liberty had expired; May ———, 1923, clothes in lucky bag; June 15, 1923, absent from quarters."

Letter of transmittal.—A letter is not required and should not be used in forwarding records of proceedings of minor courts to an immediate superior in command. Any information which might be placed in a letter of transmittal should be included in the action of the convening authority.

Transcript from record.—Before a minor court record is transmitted to Headquarters a brief transcript shall be taken therefrom (except in case of acquittal) and furnished to the officer of the deck and the executive officer for entry, respectively, in the ship's log and upon the enlistment contract and record of the person concerned. This transcript shall comprise—

(*a*) The date of the offense.
(*b*) The nature of the offense.
(*c*) Punishment adjudged as approved by the convening authority.
(*d*) Date of such approval.

If the said punishment be disapproved or mitigated subsequently by the Department, an entry to that effect shall be made as soon as notice thereof is received. The transcript and entry shall be authenticated by the signature of the commanding officer.

CHAPTER X.

DECK COURT PROCEDURE.

This chapter shows a miniature of a deck court form and a record of trial by deck court as it should be made up on this form, with explanatory notes.

For the regulations governing a deck court, see arts. 41 to 49.

The provisions of Chapter VII apply in general to a deck court.

871. (1) Form No. 9588—

(Front of form.)

Headquarters Case No. ———.

Record of Deck Court No. ——— U. S. Coast Guard Cutter ———, 192—.

———, ———, U. S. C. G.

(Full name of accused, surname first.) (Rating.)

———, ———, U. S. Coast Guard, is hereby ordered as deck court to try the above-named man for the following offense:

Specification: In that ———, ———, U. S. Coast Guard,

——— U. S. Coast Guard, will act as recorder.

———, *U. S. Coast Guard, Commanding.*

I consent to trial by deck court as above.

U. S. Coast Guard.

Date of present enlistment ———, 192—. Pay $———. Pay in next inferior rating $———.

Record of previous convictions:

Witnesses for the prosecution:

(Back of form.)

U. S. Coast Guard Cutter ———————————————, 192—.

The accused was arraigned and pleaded as follows:

The following witnesses appeared for the prosecution:

The following witnesses appeared for the defense:

Finding:

Sentence:

State "Previous convictions considered," if any have been considered in adjudging sentence.

———————————————, *U. S. C. G., Deck Court.*

Having examined accused and place of his confinement, I am of opinion that execution of sentence would ——— produce serious injury to his health.

———————————————, *Surgeon, U. S. P. H. S.*

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1. The sentence is approved and the accused informed this day. 2. That portion of the sentence involving forfeiture of pay is remitted, subject to the conditions specified in article 12, Coast Guard Courts and Boards.

———————————————, *U. S. Coast Guard, Commanding.*

Forfeiture of pay, $———, will be checked in accordance with article 12, Coast Guard Courts and Boards.

———————————————, *U. S. C. G.*

COAST GUARD HEADQUARTERS.

———————————————, 192—.

By direction of the Secretary of the Treasury, the proceedings, findings, and sentence in the foregoing case are approved.

———————————————, *Commandant.*

(2) Form No. 9588–A.—

(Front of form.)

Headquarters Case No. ———.

Record of Deck Court No. ———, U. S. Coast Guard Station Cutter ————, 192—.

———————————————, ———————————————, U. S. C. G.

(Full name of accused, surname first.) (Rating.)

The above-named man is hereby brought to trial for the following offense:

Specification: In that ———————————————, U. S. Coast Guard,

———————————————, U. S. Coast Guard, will act as recorder.

———————————————, U. S. Coast Guard, Commanding.

The only officer present with the command.

I consent to trial by deck court as above.

———————————————, *U. S. Coast Guard.*

Date of present enlistment, ————, 192—. Pay, $———. Pay in next inferior rating, $———.

Record of previous convictions:

Witnesses for the prosecution:

(Back of form.)

U. S. Coast Guard Station / Cutter ————, 192—.

The accused was arraigned and pleaded as follows:

The following witnesses appeared for the prosecution:

The following witnesses appeared for the defense:

Finding:

Sentence:

State "Previous convictions considered," if any have been considered in adjudging sentence.

Having examined accused and place of his confinement, I am of opinion that execution of sentence would ——— produce serious injury to his health.

————————————, *Surgeon, U. S. P. H. S.*

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1. The accused informed this day. 2. That portion of the sentence involving forfeiture of pay is remitted, subject to the conditions specified in article 12, Coast Guard Courts and Boards.

————————————, *U. S. Coast Guard, Commanding.*

Forfeiture of pay, $———, will be checked in accordance with article 12, Coast Guard Courts and Boards.

————————————, *U. S. C. G.*

COAST GUARD HEADQUARTERS.

————————————, 192—.

By direction of the Secretary of the Treasury, the proceedings, findings, and sentence in the foregoing case are approved.

————————————, *Commandant.*

872. Constitution (1).—

RECORD OF DECK COURT No. 51.

Doe, Richard, Seaman, second class, U. S. C. G.

Lt. D——— E. F———, U. S. C. G., is hereby ordered as Deck Court to try the above-named man for the following offense (2):

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(1) For the constitution and powers of a deck court, see arts. 41 to 49.
For who may act as deck court officer, see arts. 46 and 47.

(2) **Variation 1.**—"Trial of the above-named man for the following offense:"
(This variation is to be used where the commanding officer is the deck court officer.)

Variation 2.—"Lieutenant D——— E. F———, U. S. Coast Guard, is hereby ordered as deck court to try the above-named man for the following additional offense, intelligence of which did not reach the convening authority until the ——— instant, at the same time the accused is tried on the specification preferred * * *. Specification: In that * * *.

Approved ——— ———, 192—.

J——— J. K———,
Commander, U. S. Coast Guard, Commanding."

(The above is to be on paper the same size as the deck court form and is to be pasted thereto below the original specification or specifications. See art. 827, under minor court *re* additional specifications and multiplicity of trials, which also applies to a deck court.)

873. Specification (3).—

Specification.—In that Richard Doe, seaman, second class, U. S. Coast Guard, having been granted liberty on June 25, 1923, until 10 a. m., June 26, 1923, did, upon the expiration of said liberty, fail to return to his ship, and did remain absent from his ship and duty without leave until 10 p. m., June 26, 1923.

874. Recorder (4).—

R——— A. V———, yeoman, second class, U. S. Coast Guard, will act as recorder.

875. Convening authority (5).—

Approved June 27, 1923,

J——— J. K———,
Commander, U. S. C. G., Commanding.

876. Consent to trial (6).—

I consent to trial by Deck Court as above.

RICHARD DOE, *Seaman, second class, U. S. C. G.*

877. Notation of previous convictions (7).—

Date of present enlistment, April 18, 1922. Pay, $48. Pay in next inferior rating, $33.

Record of previous convictions: 5–16–23, aol 6 hrs. DC, sent lp $9.60. Appvd. by c. a. 5–18–23.

878. The trial (8).—

Additional information necessary to the completeness of this record, and which has to be forwarded to Headquarters, should be type-

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(3) What specification must state.—The specification for a deck court should be brief, but in each specification it is necessary to set forth: (*a*) The name and rating of the accused; (*b*) the offense and date of commission thereof; (*c*) all material facts connected with the offense. While the specification for a deck court may be less formal than that for a minor or a general court, yet the general principles set forth in Chapter V, except such as refer to the charge, apply. In every case the convening authority should take care to see that the statement of facts of the alleged offense, as set forth therein, actually constitutes a legal offense, and that the offense is set forth clearly and explicitly, and is not left to be implied. (See art. 48.)

Offenses triable by deck court.—The jurisdiction of a deck court is expressly limited to "minor offenses." (Art. 45.)

(4) The recorder may be any person under the command of the convening authority. (Art. 46.)

(5) For officers authorized to convene a deck court, see arts. 41 and 42.

(6) Consent of the accused necessary.—When an enlisted person is brought before the deck court for trial he shall signify his willingness to be so tried by affixing his signature to a statement to that effect in the record. If he objects to being so tried, trial shall be ordered by a minor or general court as may be appropriate. But refusal of trial by deck court shall not be mentioned in the record of such latter court.

For the right of appeal of the accused, see note 18 *infra*.

(7) Cases submitted for trial by a deck court shall be accompanied by record of previous convictions, or by a statement to the effect that none such exist.

(8) The officer ordering the court shall determine when cases will be brought to trial; but, whenever practicable, the trial shall take place within 48 hours after the offense is committed.

Not sworn.—The officer constituting a deck court is not sworn as he performs his duty under the sanction of his oath of office.

Duties.—The deck court officer conducts the trial. He summons witnesses, if any. (Art. 826.) He administers the oath to the recorder and witnesses and conducts the examination of the latter. (Arts. 371 to 410.) He records the finding and sentence and

written on thin bond paper, uniform in size with this sheet and attached by pasting on this area. This does not apply to testimony, etc., which is usually retained at the unit.

U. S. C. G. C. TAHOMA,
June 28, 1923.

The accused was arraigned and pleaded as follows: Not guilty.

The following witnesses appeared for the prosecution: John Doe, seaman, second class, U. S. C. G.

The following witnesses appeared for the defense: Richard Roe, seaman, first class, U. S. C. G. The accused.

879. Finding (9).—

The specification proved (10).

880. Sentence (11).—

Sentence: To lose $16.00 per month of his pay for a period of two (2) months. Previous convictions considered.

(State "Previous convictions considered," if any have been considered in adjudging sentence (12).)

D——— E. F———,
Lt., U. S. C. G., Deck Court.

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signs the record. The deck court officer shall not be a witness either for the prosecution or for the defense.

The recorder shall be sworn to keep a true record of the proceedings of a deck court. He is not empowered to conduct any examination of witnesses. The deck court officer shall administer to the recorder the same oath as prescribed for the recorder of a minor court:

Oath for recorder.—"You, A. B., do swear (or affirm) that you will keep a true record of the evidence which shall be given before this court and of the proceedings thereof."

Each witness before a deck court must, prior to giving his testimony be sworn by the deck court officer as follows:

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

Procedure.—The general provisions laid down in Chapter VII and the procedure as to the arraignment, pleading, and conduct of a trial by minor court set out in Chapter IX, shall, in general, and where not inconsistent with the present chapter, apply to deck courts. In taking down testimony adduced before a deck court, however, the facts established by the testimony only need be recorded, and the same shall be submitted to the convening authority on a separate sheet.

(9) To be in handwriting of deck court officer.—The finding should never be typewritten, but shall be in the handwriting of the deck court officer. See article 850 under minor courts, which applies to deck courts.

(10) Variation 1.—"The specification proved by plea."

Variation 2.—"The specification not proved and the court acquits the said Richard Doe, seaman, second class, U. S. Coast Guard, of the offense specified."

(In case of acquittal the deck court officer will inform the accused of the fact.)

(11) Punishments which may be imposed are laid down in art. 44.

The provisions of art. 852, where consistent with the restrictions stated in art. 44, apply to deck courts. Delay in trial of an accused should be considered by a deck court officer in adjudging sentence.

For the general provisions relating to sentences, see arts. 595 to 602.

The sentence to be in the handwriting of the deck court officer.—The sentence shall never be typewritten, but shall be in the handwriting of the deck court officer.

(12) For previous convictions, see arts. 588 to 592. In case of objection to the record of previous convictions proceed as under art. 777. When previous convictions are considered in determining the sentence, a note to that effect shall be entered upon the record.

881. Certificate of medical officer (13).—

Having examined the accused and place of his confinement, I am of opinion that execution of sentence would ——— produce serious injury to his health.

———— ————,
Surgeon, U. S. P. H. S.

882. Action of convening authority (14).—

U. S. C. G. C. TAHOMA,
June 30, 1923.

The sentence is approved and the accused informed this day. That portion of the sentence involving forfeiture of pay is remitted, subject to the conditions specified in article 12, Coast Guard Courts and Boards (15).

J——— J. K———,
Commander, U. S. C. G., Commanding.

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(13) This must be filled out whenever confinement exceeding ten days on diminished rations or on bread and water is adjudged. See art. 671.

(14) The convening authority, or his successor in office, shall, after careful scrutiny of the record and of the testimony, if any be given, note his approval (or other action) with date and signature. After publication the sentence may be carried into effect. (See art. 638.)

When, in accordance with the provisions of note 1 *supra* the officer empowered to order deck courts himself acts as deck court, the signature of such officer upon the record is sufficient without special notation of approval. In such case no order appointing the court need be issued, but the officer in question shall enter on the record that he is "the only officer (of the required rank) attached to the vessel (depot) (academy)," or other unit, as the case may be. When the commanding officer is not of or above the rank of lieutenant, and when there are other officers attached to the command who are not of or above the rank of lieutenant, the proper entry for the commanding officer who acts as deck court officer to enter on the record is the following: "The only officer attached to the vessel (or unit) authorized to act as deck court officer."

Power of reviewing authority.—For the power of the reviewing authority in general, see arts. 641 to 651.

Publication.—Result of trial by deck court need be published to the accused only, but when publication can not be made to the accused by reason of his absence, as by desertion, publication to the command is necessary in order to complete the record.

In case of revision a separate record is to be kept in accordance with the provisions of arts. 625 to 635, so far as applicable. The record in revision shall be made on thin bond paper of the same size as the deck court form, and shall be pasted to it. (See art. 871.) Corrections in the record are not to be made in an informal manner.

Variation.—

"U. S. C. G. C. ———, ———, *192*—.

"The sentence is approved and the accused informed this day.

"L——— L. M———,
"*Lt., U. S. C. G., Comdg.*

"The only officer of the required rank attached to the vessel."

(15) The officer within whose command a deck court is sitting shall have full power as reviewing authority to remit or mitigate, but not to commute, any sentence imposed by such court; but no sentence of a deck court shall be carried into effect until it shall have been so approved or mitigated and such officer shall have power to remit any punishment such court may adjudge, and shall have also authority to remit any forfeiture of pay under the conditions specified in art. 12. If he do not conditionally remit the sentence under said article, he shall draw a line through the statement on the form relating thereto and initial the same.

883. Certificate of pay officer (16).—

Forfeiture of pay, $32.00, will be checked in accordance with article 12, Coast Guard Courts and Boards (17).

S—— C——,
Pay Clerk, U. S. C. G.

884. Disposition of record (18).—

Forward to the Commandant, U. S. Coast Guard.

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(16) The commanding officer shall notify the pay officer of the amount of loss of pay to be checked.

(17) If the forfeiture of pay has been remitted, subject to the condition specified in art. 12, the certificate of the pay officer shall so state. If the forfeiture of pay has not been remitted, subject to the conditions specified in art. 12, the pay officer shall draw a line through the words relating thereto in his certificate and initial the same.

(18) **Disposition of record.**—The record of a deck court shall be made in duplicate and one copy shall, when completed, be at once forwarded by the convening authority to Headquarters for final review and action by the Commandant, who is authorized, by direction of the Secretary of the Treasury, to approve or to remit or mitigate, in whole or in part, the sentence imposed by a deck court. The other copy shall be retained for the files of the unit concerned. Should the accused desire to make an appeal to the Secretary of the Treasury within a period of 30 days, such statement as he may wish to make shall be submitted in writing and appended to the record of testimony, separately therefrom, and shall be forwarded therewith to the Commandant, U. S. Coast Guard.

When testimony is to be forwarded.—Except in cases of appeal, or when the court is ordered by the Commandant, or when the accused pleads not guilty, separate sheets containing the testimony of witnesses called in a deck court should not be forwarded to Headquarters as a part of such records, as the testimony thus recorded is intended only for the guidance of the convening authority in his approval or disapproval of the finding and sentence. When not sent to Headquarters as above provided, the testimony shall be preserved at the unit where the trial was held for at least 30 days.

For the manner of recording testimony see note 8 *supra*.

Transcript for log and record.—A transcript of a trial by deck court shall be made and furnished for the log and record of the person tried as in the case of a trial by minor court. (Art. 857.)

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CHAPTER XI.

BOARD OF INQUIRY: INSTRUCTIONS AND PROCEDURE.

PART I. INSTRUCTIONS.

1. General instructions.

2. Instructions for an inquiry into the loss or grounding of a ship of the Coast Guard.

PART II. PROCEDURE.

PART I. INSTRUCTIONS.

1. General instructions.

901. Introductory.—The primary function of a board of inquiry is to sift facts for information of the convening authority and Headquarters. The distinction between a board of inquiry and a Coast Guard court should be clearly borne in mind by convening authorities, who should remember that any action taken in a matter subsequent to its investigation by a board of inquiry is taken upon the initiative of the convening authority in his administrative capacity. The function of the board of inquiry is merely to aid such officer in the performance of his administrative duties and is not to relieve him of responsibility for his administrative acts.

The great rule to be observed by a board of inquiry is that the rights of a defendant are accorded (1). A defendant before a board of inquiry has the rights of an accused before a Coast Guard court; that is, the right to be present, to have counsel, to challenge members, to cross-examine witnesses, to call witnesses, to testify in his own behalf at his own request, and to make a statement and argument. He has the right of any witness to refuse to answer incriminating or degrading questions (2).

If the foregoing rights be not accorded, the board of inquiry, so far as concerns the person denied his rights, will be held of no evidential effect. If a person who did not appear before the board be recommended for disciplinary action other than trial by Coast Guard court, a record of the board, or the pertinent extracts therefrom, should be referred to such person for a statement before such disciplinary action is finally effected.

If it should appear at any stage of the proceedings of a board of inquiry that any person not named as a defendant from the outset

(1) For definition of "defendant," see art. 910.
(2) For the privileges of a witness, see arts. 363 to 368. See also arts. 404 and 915 in this connection.

is implicated in the matter under investigation in such a way as to make him a defendant thereto, he shall be called before the board, informed of all the evidence that tends to implicate him, and instructed as to his rights (3).

902. Purpose.—In important cases, where the facts are various and complicated, where there appears to be ground for suspecting criminality, or where crime has been committed or serious blame incurred without any certainty on whom it ought chiefly to fall, a board of inquiry affords the best means of collecting, sifting, and methodizing information for the purpose of enabling the convening authority to decide upon the necessity and expediency of further judicial proceedings. But the proceedings of a board of inquiry are in no sense a trial of an issue or of an accused person. The board performs no real judicial functions; it is convened only for the purpose of informing the convening authority in a preliminary way as to the facts involved in the inquiry.

903. Rules to be followed.—So far as applicable the rules and instructions prescribed for general courts shall be followed by boards of inquiry and shall be referred to in all cases for information regarding the examination of witnesses, the keeping of the record, the entry of the finding and opinion on the record, and for other particulars.

904. When to be convened.—Officers so empowered are expected, on the occurrence of any matter serious enough in their judgment to require thorough investigation, to order a board of inquiry as soon as practicable. Among such occurrences are included the following:

905. Accident involving loss of life.—Whenever an accident involving loss of life occurs and the circumstances are as set forth in art. 902, a board of inquiry should be ordered to investigate fully and report upon it and give an opinion and make such recommendation as may be deemed appropriate. This board of inquiry should be in addition to the board of inquest prescribed in Chapter XVIII. The board of inquiry shall in every such case be directed to give its opinion as to whether the loss of life was due in any manner to the fault, negligence, or inefficiency of any person or persons in the Coast Guard or connected therewith; and if so, the name or names of such person or persons, and to what extent the fault, negligence, or inefficiency thereof contributed to the accident, and may be ordered specifically to recommend what further proceedings should be had. In every case where the deceased was in the Coast Guard or connected therewith, the board shall carefully investigate and state in the record whether, in its opinion, his death was due to disease con-

(3) See also arts. 910 to 915 for the rights of the parties to the inquiry.

tracted or casualties or injuries received while in the line of his duty and not the result of his own misconduct; and the board shall set forth fully the reasons for its conclusion. The division commander or the senior officer present shall at once order a board of inquest when such an accident occurs, and, if authorized to do so, the board of inquiry prescribed by this article. If he be not empowered to order a board of inquiry, he shall immediately forward the report of the board of inquest to the next superior in command who is so empowered, who will convene the requisite board of inquiry as soon thereafter as practicable.

906. Cases involving serious damage.—Officers so empowered shall cause an investigation to be made by a board of inquiry of all serious cases of collision, grounding, fire, accidents to hull, spars, machinery, and boilers, or other important casualties which they deem necessary to be investigated (4). They shall also cause investigation to be made by a board of inquiry of any marked deficiency affecting the efficiency of a vessel under their command or its readiness for service. When, under the circumstances set forth herein, a board of inquiry can not be convened, a board of investigation must be ordered (5).

907. Duties of president.—It is the duty of the president of a board of inquiry to administer the oath to the recorder and to the witnesses, to preserve order, to decide upon matters relating to the routine of business, and to adjourn the board as, in his judgment, will be most convenient and proper for the transaction of the business before it; but should objection be made by any member of the board to an adjournment announced by the president, the question shall be submitted to and decided by the board.

908. Duties of recorder.—It is the duty of the recorder of a board of inquiry—

(*a*) To summon all the witnesses required for the investigation and to lay before the board a list of them (6).

(*b*) To administer the oath or affirmation to the members of the board.

(*c*) To record the proceedings of the board under its direction and control, and to make up the record.

(*d*) To conduct the examination of witnesses (7).

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(4) The report of the board shall include a full statement of injuries received by personnel and damages to matériel.

See arts. 921 to 929 for a case involving the loss or grounding of a ship.

(5) For board of investigation see Chapter XIV.

(6) For attendance of witnesses, see arts. 344 to 350.

(7) For examination of witnesses, see arts. 371 to 410, particularly art. 404.

(*e*) To assist the board in systematizing the information it may receive, to enter in the proceedings the opinion and recommendation of the board, if called for, and to render to the board such assistance as will enable it to lay all the circumstances of the case before the convening authority in a clear and explicit manner.

(*f*) In conjunction with the president of the board, to authenticate the proceedings by his signature.

(*g*) In general he is the prosecutor of the case and is responsible for bringing out all the facts.

909. Parties to the inquiry: Complainant.—When a board of inquiry is ordered to inquire into facts in connection with an accusation or complaint made by any person to the convening authority, such person is known as the complainant and may be allowed to be present in the board room during the inquiry and make suggestions to the recorder.

910. Same: Defendant.—A person whose conduct is the subject of investigation before a board of inquiry is a defendant to the proceedings of such board. Should it at any time during the course of the inquiry appear that any person not named as a defendant in the precept becomes involved in such a way that an accusation against him may be implied it is the duty of the board to inform such person that he is a defendant. It is the right of a defendant to be present at the inquiry (8).

911. Same: Right to counsel.—The complainant and all defendants before a board of inquiry shall be advised by the board that they have the right to be represented by counsel. Should a defendant waive his right to be represented by counsel the president shall warn him that the sworn testimony given before boards of inquiry is admissible as evidence before Coast Guard courts as provided in the general rules of evidence (9), and again advise him to provide himself with counsel, informing him that counsel will be assigned him should he so desire. A statement that this article has been complied with shall be entered upon the record of proceedings in any case where an enlisted person so involved waives this right.

912. Same: May properly be excused from duty.—An officer or enlisted person who is complainant or defendant may at his own request be excused by his superior or commanding officer from other duty during the progress of the inquiry.

913. Same: Duty of convening authority to.—The convening authority should cause to be notified the complainant, if any, and any

(8) See art. 901 in this connection.

(9) The proceedings of boards of inquiry shall, in all cases not extending to the dismissal of a commissioned or warrant officer, be evidence before a Coast Guard court, provided oral testimony can not be obtained.

persons who appear from the outset to be defendants, of their right to be present during the investigation.

914. Same: May introduce evidence.—When the recorder has introduced all the evidence on the part of the Government, the complainant and then the defendants, if any, may introduce evidence in the same manner as the accused in a Coast Guard court.

915. Defendant as a witness.—A defendant shall, at his own request, but not otherwise, be a competent witness (10). It is also the right of a defendant, if he so desires, to make a statement to the board in regard to his connection with the subject matter of the inquiry (11).

916. Clerical assistance.—Art. 490 governs a board of inquiry.

917. Orderly.—At the request of the recorder of the board, the commanding officer of the immediate command within which the board is to sit shall direct an orderly to attend upon its meetings and execute its orders.

2. Instructions for an inquiry into the loss or grounding of a ship of the Coast Guard.

921. Documentary evidence to be required.—The ship's log book, commanding officer's night order book, and the chart by which the ship was navigated, or one of the same, must, if practicable, be produced to the board.

922. Latest determination of ship's position.—The board shall investigate whether a proper chart was used; whether the position of the ship at the last favorable opportunity was accurately determined by observation or otherwise; and, if not, when it was last accurately ascertained.

923. Examination of ship's position.—Some competent officer not attached to the ship, the loss or grounding of which may be the subject of inquiry, shall be directed to work up the reckoning of that ship from the data obtained from her navigating officer to enable the board to fix the true position of the ship at the time of her taking the ground. The officer appointed to perform this duty shall submit to the board in writing, attested by his signature, the result of his work, to the accuracy of which he shall be sworn. The position of the ship so determined shall be laid off on the chart by which she was navigated, as also her position when ashore, as determined by cross bearings taken from the ship's log. The rate and direction of the tidal stream and the time of tide shall be stated, if possible.

924. Ship's log book to be examined.—The board shall also determine whether the courses steered and the distances run on the day before

(10) Art. 333. See also art. 901 in this connection.

(11) See art. 404 as to the advisability of warning a witness or party that what he says may be used against him.

the ship grounded were correctly inserted in the ship's log book; also when the error for local deviation was last obtained.

925. When land was made.—If land was made, and its distance estimated before the ship struck, it is to be ascertained what steps were taken during the time it was in sight to correct the ship's run.

926. Whether instructions have been obeyed.—The board shall rigidly investigate the manner in which the instructions contained in the regulations to officers commanding ships on approaching land were observed.

927. Documents to accompany the record.—Any of the documents referred to in the preceding articles which were used in the inquiry, with an attested extract from the ship's log commencing at least 48 hours before the ship touched the ground, if pertinent, are to accompany the record of the board.

928. Official report of the commanding officer to be required.—Whenever inquiry is to be made into the loss of a ship, the board shall call for the official report of the commanding officer of such ship containing the narrative of the disaster, and this report shall be read to the board in the presence of the commanding officer and of such of the surviving officers and crew as can be assembled, and shall be appended to the record.

929. Questions to be asked by the board.—After the survivors have been sworn as witnesses the following questions shall be put to them by the board:

(1) (To the commanding officer) "Is the narrative just read to the board a true statement of the loss of the United States Coast Guard cutter ———?"

(2) (To the commanding officer) "Have you any complaint to make against any of the surviving officers and crew of the said cutter on that occasion?"

(3) (To the surviving officers and crew) "Have you any objections to make in regard to the narrative just read to the board, or anything to lay to the charge of any officer or man with regard to the loss of the United States Coast Guard cutter ———?"

PART II. PROCEDURE (12).

930. Indorsement of the convening authority (13).—

OFFICE OF COMMANDER, BERING SEA PATROL FORCE,
Unalaska, Alaska, March 4, 1921.

The proceedings, findings, opinion, and recommendations of the board of inquiry in the foregoing case are approved (14).

M——— N. O———,
Commander, U. S. Coast Guard,
Commanding Bering Sea Patrol Force.

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(12) Part II shows how the record of proceedings of a board of inquiry is made up. The object is to show each paper and entry in the order in which it should appear in the completed record. Each separate step in the proceedings is given an article number to indicate clearly that it is a separate step, and for ease of reference. The article numbers and headings given in this book are not to be repeated in the record of the board. Each of the separate steps so indicated, obviously, may not occur in any one inquiry.

The general provisions of arts. 658 to 679, governing making up records, shall be observed by a board of inquiry, except where manifestly impracticable and as noted herein.

In case of revision the record of proceedings in revision should be prefixed to the original proceedings. The record in revision shall be made up in the same manner as the original record.

Parties to the inquiry not entitled to copies of the proceedings.—No party to the inquiry can demand a copy of the proceedings. The evidence, findings, opinion, and recommendation, of whatever nature, are intended only for the officer ordering the board and higher authority. (But in case of collision with a merchant vessel copies are furnished in accordance with art. 1019, note 13.)

Reviewing authority.—Board of inquiry records are reviewed by the convening authority and by those officers, if any, through whom the record is forwarded (the record is forwarded through regular channels), who shall take such further action upon the matters disclosed by the inquiry as they may deem appropriate, or shall submit the proceedings to the Commandant of the Coast Guard in order that the latter may take such action thereon as may be advisable.

The reviewing authority may record his disapproval of the proceedings in whole or in part, or may return the record to the convening authority with recommendation to the latter to change his action or to have the board revise the record. Such recommendation, however, is purely advisory. The general principles of art. 641 apply to a board of inquiry.

(13) Disposition of record.—After action upon the original record by the convening authority it shall be forwarded through regular channels to the Commandant.

When the Commandant of the Coast Guard is the convening authority the original record shall be forwarded by the board direct to him.

(14) In case of failure to accord the rights of a defendant to a person who should properly have been made such, the convening authority should return the record to the board for revision, and direct that in such revision these rights be accorded.

New evidence admissible in revision.—The proceedings of a board of inquiry may be revised as often as the convening authority may deem necessary. New evidence may be received and recorded on every such revision, and any of the previous witnesses may be recalled and reexamined with a view to eliciting further information, provided that all parties to the inquiry are present, if they so desire.

931. Cover page.—

RECORD OF PROCEEDINGS
of a
BOARD OF INQUIRY
convened on board the (15)
U. S. C. G. C. "TAHOMA"
by order of
The Commander, Bering Sea Patrol Force,
To inquire into alleged misconduct
on the part of Lieutenant X——— Y. Z———, U. S. Coast Guard.
February 25, 1921 (16).

932. Index for lengthy case (17).—

(This is similar to the index for a general court shown in art. 702.)

933. Precept (18).—

BERING SEA PATROL FORCE,
Unalaska, Alaska, February 21, 1921.

From: Commander, Bering Sea Patrol Force.
To: Lieutenant Commander A——— B. C———, U. S. Coast Guard, U. S. C. G. C. *Tahoma*, via commanding officer U. S. C. G. C. *Tahoma*.
Subject: Board of inquiry to inquire into alleged misconduct of Lieutenant X——— Y. Z———, U. S. Coast Guard.

1. A board of inquiry consisting of yourself as president and of Lieutenant Commander D——— E. F———, U. S. Coast Guard, and Lieutenant G——— H. I———, U. S. Coast Guard, as additional members, and of Lieutenant J——— K. L———, U. S.

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(15) Variation.—

"Convened at
THE COAST GUARD ACADEMY, NEW LONDON, CONNECTICUT,
by order of
The Commandant, U. S. Coast Guard."

(16) This is the date of first convening for the inquiry.

(17) An index is required whenever a record exceeds 20 pages in length. (Art. 674.)

(18) The precept of a board of inquiry shall, in addition to naming the membership of the board and setting the time and place of meeting, state clearly and concisely the matter that is to be inquired into and shall contain explicit instructions as to what the report of the board shall include and as to any other matters relative to the procedure of the board regarding which instructions are deemed necessary. Neither the record of a board previously held in reference to the same subject matter, nor papers of any kind shall be attached to or made a part of the precept of a board of inquiry. Such records or papers may, however, as a separate matter, be sent to the recorder for the purpose of assisting him to bring out all the facts in regard to the matter under inquiry. The precept of such board shall also specifically name as defendants all persons who appear to be such from the outset.

Coast Guard, as recorder (19), is hereby ordered to convene on board the U. S. C. G. C. *Tahoma* at 10 o'clock a. m. on Wednesday, February 23, 1921, or as soon thereafter as practicable, for the purpose of inquiring into certain complaints made by Commander R——— S———, U. S. Coast Guard, alleging misconduct on the part of Lieutenant X——— Y. Z———, U. S. Coast Guard, in the following particulars: (Here are stated clearly and concisely the allegations to be inquired into.)

2. It is directed that the board notify Commander R——— S——— of the time and place of meeting of the board and that he will be a party to the inquiry in the status of complainant and will be accorded the rights of such party in accordance with the provisions of Coast Guard Courts and Boards.

3. It is directed that the board notify Lieutenant X——— Y. Z——— of the time and place of meeting of the board and that he will be a party to the inquiry in the status of defendant and will be accorded the rights of such party in accordance with the provisions of Coast Guard Courts and Boards.

4. The attention of the board is particularly invited to article 901, Coast Guard Courts and Boards.

5. The board will thoroughly inquire into the matter hereby submitted to it and will include in its findings a full statement of the facts it may deem to be established. The board will further give its opinion as to whether any offenses have been committed or serious blame incurred, and in case its opinion be that offenses have been committed or serious blame incurred, will specifically recommend what further proceedings should be had.

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(19) A board of inquiry shall consist of not more than three officers as members and of a recorder.

Less than three members may legally constitute a board of inquiry.—The provision of art. 56 that boards of inquiry shall be composed of not less than three commissioned officers is not construed as requiring three members to constitute such board. Boards of inquiry consisting of but one member have been held to be legally constituted. But should the number of members named in the order convening the board be reduced, the board can not proceed without authority from the officer who convened it. The recorder is not a member unless specifically designated as such in the convening order. When no recorder is assigned the junior member of the board shall be the recorder.

Rank and corps of members.—The composition of the board, both in regard to rank of its members and the corps to which they belong, shall be regulated by the circumstances to be inquired into. When engineering material is involved in the matter to be inquired into, an engineer officer shall, whenever practicable, be appointed a member of the board. In case the conduct or character of an officer may be implicated in the investigation, no member of the board shall, if practicable, be his junior in rank. And should such officer not be of the line, it is proper, if the exigencies of the service permit, that one or more officers of the corps to which he belongs be detailed for duty on the board.

If it can possibly be avoided no officer shall be named as a member who has personal knowledge of the subject of the inquiry.

If there are any defendants, or a likelihood of their being any, the provisions of art. 478 shall be observed.

Coast Guard, as recorder (19), is hereby ordered to convene on board the U. S. C. G. C. *Tahoma* at 10 o'clock a. m. on Wednesday, February 23, 1921, or as soon thereafter as practicable, for the purpose of inquiring into certain complaints made by Commander R——— S———, U. S. Coast Guard, alleging misconduct on the part of Lieutenant X——— Y. Z———, U. S. Coast Guard, in the following particulars: (Here are stated clearly and concisely the allegations to be inquired into.)

2. It is directed that the board notify Commander R——— S——— of the time and place of meeting of the board and that he will be a party to the inquiry in the status of complainant and will be accorded the rights of such party in accordance with the provisions of Coast Guard Courts and Boards.

3. It is directed that the board notify Lieutenant X——— Y. Z——— of the time and place of meeting of the board and that he will be a party to the inquiry in the status of defendant and will be accorded the rights of such party in accordance with the provisions of Coast Guard Courts and Boards.

4. The attention of the board is particularly invited to article 901, Coast Guard Courts and Boards.

5. The board will thoroughly inquire into the matter hereby submitted to it and will include in its findings a full statement of the facts it may deem to be established. The board will further give its opinion as to whether any offenses have been committed or serious blame incurred, and in case its opinion be that offenses have been committed or serious blame incurred, will specifically recommend what further proceedings should be had.

---

(19) A board of inquiry shall consist of not more than three officers as members and of a recorder.

Less than three members may legally constitute a board of inquiry.—The provision of art. 56 that boards of inquiry shall be composed of not less than three commissioned officers is not construed as requiring three members to constitute such board. Boards of inquiry consisting of but one member have been held to be legally constituted. But should the number of members named in the order convening the board be reduced, the board can not proceed without authority from the officer who convened it. The recorder is not a member unless specifically designated as such in the convening order. When no recorder is assigned the junior member of the board shall be the recorder.

Rank and corps of members.—The composition of the board, both in regard to rank of its members and the corps to which they belong, shall be regulated by the circumstances to be inquired into. When engineering material is involved in the matter to be inquired into, an engineer officer shall, whenever practicable, be appointed a member of the board. In case the conduct or character of an officer may be implicated in the investigation, no member of the board shall, if practicable, be his junior in rank. And should such officer not be of the line, it is proper, if the exigencies of the service permit, that one or more officers of the corps to which he belongs be detailed for duty on the board.

If it can possibly be avoided no officer shall be named as a member who has personal knowledge of the subject of the inquiry.

If there are any defendants, or a likelihood of their being any, the provisions of art. 478 shall be observed.

6. The commanding officer of the U. S. C. G. C. *Tahoma* is hereby directed to furnish the necessary clerical assistance for the purpose of assisting the recorder in recording the proceedings of this board of inquiry (20).

M——— N. O———,
Commander, U. S. Coast Guard,
Commanding Bering Sea Patrol Force (21).
A (22).

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(20) **Variation 1.**—(To inquire into the circumstances attending a death.)

"TREASURY DEPARTMENT, UNITED STATES COAST GUARD,
"Washington, February 4, 1922.

"From: Commandant.
"To: Lieutenant Commander A——— B. C———, U. S. Coast Guard,
Coast Guard Academy, New London, Conn.
"Subject: Board of inquiry to inquire into the circumstances attending the death of X——— Y. Z———, late fireman, first class, U. S. Coast Guard.

"1. A board of inquiry, consisting of yourself as president, and of Lieutenant Commander D——— E. F———, U. S. Coast Guard, and Lieutenant G——— H. I———, U. S. Coast Guard, as additional members, and of Lieutenant J——— K. L———, U. S. Coast Guard, as recorder, is hereby ordered to convene at the Coast Guard Academy, New London, Connecticut, at 10 o'clock a. m. on Monday, February 6, 1922, or as soon thereafter as practicable, for the purpose of inquiring into the circumstances attending the death of X——— Y. Z———, late fireman, first class, U. S. Coast Guard, attached to the U. S. C. G. C. ———.

"2. The board will thoroughly inquire into the matter hereby submitted to it and will include in its findings a full statement of the facts it may deem to be established, and will give its opinion and recommend further proceedings as provided in art. 905, Coast Guard Courts and Boards.

"3. The attention of the board is particularly invited to art. 901, Coast Guard Courts and Boards.

"4. The superintendent of the Coast Guard Academy, New London, Connecticut, is hereby directed to furnish the necessary clerical assistance for the purpose of assisting the recorder in recording the proceedings of this board of inquiry.

"———— ————,
"Commandant, U. S. Coast Guard."

Variation 2.—(To inquire into the condition of a vessel.)

"* * * for the purpose of inquiring into unsatisfactory conditions reported to exist on board the U. S. C. G. C. ——— in the following respects: (here state clearly and concisely the respects in which conditions are alleged to be unsatisfactory and are to be investigated.)

"2. It is directed that the board notify Commander ———, U. S. Coast Guard, and Lieutenant ———, U. S. Coast Guard, of the time and place of meeting of the board and that they will be parties to the inquiry in the status of defendants, and will be accorded the rights of such parties in accordance with the provisions of Coast Guard Courts and Boards.

"3. The attention of the board is particularly invited to art. 901, Coast Guard Courts and Boards.

"4. The board will thoroughly inquire into the matter hereby submitted to it and will include in its findings a full statement of the facts it may deem to be established.

"5. The commander of the Eastern Division, Boston, Mass., is hereby directed to furnish the necessary clerical assistance for the purpose of assisting the recorder in recording the proceedings of this board of inquiry.

"———— ————,
"Commandant, U. S. Coast Guard."

Variation 3.—(To inquire into the grounding (loss) of a vessel.)

"* * * for the purpose of inquiring into all the circumstances connected with the grounding (loss) of the U. S. C. G. C. ——— near ——— on October ———, 19—.

934. Board meets.—

FIRST DAY (23).

U. S. C. G. C. TAHOMA (24),
Unalaska, Alaska, Friday, February 25, 1921.

The board met at 10 a. m.

Present:

Lieutenant Commander A——— B. C———, U. S. Coast Guard,
Lieutenant Commander D——— E. F———, U. S. Coast Guard, and
Lieutenant G——— H. I———, U. S. Coast Guard, members; and
Lieutenant J——— K. L———, U. S. Coast Guard, recorder (25).

The recorder introduced F——— E. D———, yeoman, first class, U. S. Coast Guard, as reporter (26).

"2. The board will make a thorough investigation into all the circumstances connected with the aforesaid grounding (loss), the causes thereof, damages to property resulting therefrom, injuries to personnel incident thereto, and the responsibility therefor. In connection with this inquiry the attention of the board is invited to articles 921 to 929, Coast Guard Courts and Boards.

"3. It is directed that the board notify Commander ———, U. S. Coast Guard, and Lieutenant ———, U. S. Coast Guard, of the time and place of meeting of the board and that they will be parties to the inquiry in the status of defendants, and will be accorded the rights of such parties in accordance with the provisions of Coast Guard Courts and Boards.

"4. The attention of the board is particularly invited to art. 901, Coast Guard courts and boards.

"5. The board will include in its findings a full statement of the facts it may deem to be established. The board will further give its opinion as to whether any offenses have been committed or serious blame incurred, and, in case its opinion be that offenses have been committed or serious blame incurred, will specifically recommend what further proceedings should be had.

"6. The commanding officer, U. S. C. G. C. ———, is hereby directed to furnish the necessary clerical assistance to aid the recorder in recording the proceedings of this board of inquiry.

"———— ————,
"*Captain, U. S. Coast Guard,*
"*Commanding Eastern Division.*"

(21) For the officers who may convene a board of inquiry, see arts. 53 and 54.

(22) The original precept is to be prefixed to the record.

For marking of documents, see art. 668.

For order in which documents are prefixed or appended, see art. 667.

(23) Where the inquiry occupies but one day this entry is omitted.

(24) **Rule of assembling.**—Boards of inquiry shall assemble at the place and, as nearly as practicable, at the time named in the order convening them, but may adjourn, when desirable, to such place as may be convenient to the inquiry.

(25) **Variation.**—"Absent: Lieutenant Commander A——— B. C———, U. S. Coast Guard, member. The recorder read a medical certificate prefixed marked 'B,' accounting for the absence of Lieutenant Commander C——— (was unable to account for his absence) (or, as the case may be).

"The board addressed a letter to the convening authority, copy prefixed marked 'C,' and then, at —— a. m., took a recess until —— p. m. (or, the board then, at —— a. m., adjourned until —— a. m., to-morrow, Saturday, to await the arrival of the absent member.)"

(26) For appointment of reporter, see art. 490, which also governs a board of inquiry. Reporting may be in shorthand. (Art. 517.)

The board was cleared and the recorder read the precept, original prefixed marked "A" (27).

All matters preliminary to the inquiry having been determined, and the board having decided to sit with open doors, the board was opened (28).

935. Defendant and counsel enter (29).—

Lieutenant X——— Y. Z———, U. S. Coast Guard, entered as defendant, and with the permission of the board introduced Lieutenant U——— V. W———, U. S. Coast Guard, as his counsel (30).

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(27) **Board cleared for consideration of preliminary matters.**—The board on first assembling is usually cleared until the order constituting it, and the instructions contained therein, are read and the mode of procedure has been decided upon.

Recorder does not withdraw when board is cleared.—The recorder of a board of inquiry does not withdraw when the board is cleared.

Variation.—"The board was cleared and the recorder read the precept and modification thereof, originals prefixed marked 'A' and 'B.'"

(28) **Open or closed board.**—Whether the inquiry shall be held in open board or closed board must depend upon the nature of the matter to be investigated, and, if not specified by the convening authority, shall be decided by the board.

The fact that the board is closed can not work to exclude parties to the inquiry and their counsel. The board may be cleared at any time for deliberation, whereupon the parties and their counsel will withdraw.

The board should, in the absence of any good reason to the contrary, permit persons not named as defendants, who have an interest in the subject matter of the inquiry, to be present during the course of the inquiry and examine witnesses and introduce new matter pertinent to the inquiry in the same manner as complainants and defendants are privileged to do, provided request for such privilege is duly made.

Variation 1.—"All matters preliminary to the inquiry having been determined, the board decided to sit with closed doors."

Variation 2.—"* * * the board announced that in accordance with orders of the convening authority it would sit with closed doors."

(29) For definition of "defendant," see art. 910. For his rights, see arts. 910 to 915.

Parties introduced.—After the mode of procedure has been decided upon by the board, the complainant and defendants, if any, must be called before the board and the precept read to them by the recorder.

When there is no complainant or defendant.—When the board is convened to inquire into certain facts, and no person is placed in the position of complainant or defendant, all that relates to such parties in the procedure will necessarily be omitted.

(30) **Variation 1.**—"Commander L——— M———, U. S. Coast Guard, Lieutenant N——— O———, U. S. Coast Guard, and Ensign P——— Q———, U. S. Coast Guard, entered as defendants."

Variation 2.—"The board received from ——— ———, defendant, a communication, which was read and appended marked ' ,' stating that he was unable to be present, owing to * * *. (Give reason; if illness, a medical certificate must be presented, read, and appended. This communication may be made personally by any competent person.)

"The board then, at ——— p. m., adjourned until ——— a. m. to-morrow, Saturday."

Variation 3.—"——— ———, a defendant, entered and asked permission to introduce Lieutenant U——— V. W———, U. S. Coast Guard, as counsel. At the request of a member (the recorder), the board was cleared. The board was opened. ——— ——— entered and was informed that, while he was at liberty to designate some other person, his request to have Lieutenant U——— V. W———, U. S. Coast Guard, act as his counsel was not approved for the reason that (give reason)."

Variation 4.—"——— ———, a defendant, entered and stated that he did not wish counsel (that he waived his right to be present at the inquiry, and thereupon withdrew)."

For rights of parties to counsel, warning to be given in case this right is waived, and entry on the record in case of an enlisted person who is a defendant waiving this right, see art. 911.

936. Complainant and counsel enter (31).—

The complainant, Commander R——— S———, U. S. Coast Guard, entered. With the permission of the board, the complainant introduced Lieutenant B——— C. D———, U. S. Coast Guard, as his counsel (32).

937. Precept read.—

The recorder read the precept (33).

938. Right to challenge accorded.

The defendant and the complainant stated that they did not object to any member (34).

939. Members, recorder, and reporter sworn.—

Each member, the recorder, and the reporter were duly sworn (35).

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(31) For definition of "complainant," see art. 909. For his rights, see arts. 909 to 914.

(32) Variations as in note 30 *supra*.

If a complainant do not avail himself of his right to be present no entry need be made.

(33) See note 29 *supra*.

(34) A member of a board of inquiry may be challenged for cause by any party to the inquiry.

In case of challenge proceed as in art. 719.

Where there is more than one defendant the entry should be "X——— Y. Z———, a defendant, objected to * * *."

(35) For manner of giving oaths, see art. 527.

The members are first sworn by the recorder:

Oath for members.—"You, A——— B. C———, D——— E. F———, and G——— H. I———, do swear (or affirm) well and truly to examine and inquire, according to the evidence, into the matter now before you, without partiality."

The recorder is then sworn by the president:

Oath for recorder when not a member.—"You, J——— K. L———, do swear (or affirm) truly to record the proceedings of this board and the evidence to be given in the case in hearing."

Oath for recorder who is also member.—"You, J——— K. L———, do swear (or affirm) well and truly to examine and inquire, according to the evidence, into the matter now before you, without partiality, and to truly record the proceedings of this board and the evidence to be given in the case in hearing."

The foregoing oaths must be given in each case (art. 527).

The reporter is then sworn by the recorder:

Oath for reporter.—"You, F——— E. D———, do swear (or affirm) faithfully to perform the duty of reporter in aiding the recorder to take and record the proceedings of the board, either in shorthand or in ordinary manuscript."

In case the services of an interpreter are needed he is sworn by the recorder when he first assumes duty as such.

Oath for interpreter.—"You, A——— B———, do swear (or affirm) faithfully and truly to interpret or translate in all cases in which you shall be required so to do between the United States and the party whose conduct is the subject of this inquiry (or, in the matter under inquiry)."

If postponement be requested.—"The defendant (complainant) (recorder) applied for a postponement of the inquiry on the ground (give reasons). The board was cleared. The board was opened, and the president announced that the inquiry would be postponed until ——— (that the inquiry would proceed) (* * * that it would await the action of the convening authority, who was informed that the defendant (or as the case may be) desired a postponement of the inquiry until ——— for the reason (give reason)." (See note 51 *infra*.)

940. Witnesses separated.—

No witnesses not otherwise connected with the trial were present (36).

941. Recorder called as a witness.—

The recorder was called as a witness by the recorder, and was duly sworn (37).

Examined by the recorder (38):

1. Q. State your name, rank, and present station.

A. J——— K. L———, Lieutenant, U. S. Coast Guard, recorder of this board.

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(36) Witnesses shall be examined apart from each other. It is improper for witnesses, unless they are otherwise connected with the inquiry, to hear the testimony of other witnesses. (Art. 374.)

Variation 1.—"In accordance with the direction of the board, all witnesses not otherwise connected with the inquiry withdrew."

Variation 2.—(In case of inquiry into the loss or grounding of a ship. Arts. 921 to 929.) "The board then, at ——— a. m., took a recess until ——— p. m., when it reconvened on board the U. S. C. G. C. ———. Present: All the members and the parties to the inquiry.

"All the (surviving) officers and men of the U. S. C. G. C. ——— were mustered on the quarterdeck of the U. S. C. G. C. ———. The president explained the purpose of the board and the rights of all persons concerned, and duly administered to them the oath of witnesses (except to ——— and ———, who were absent from the vessel.) (Give reason.)

"The official report of Commander L——— M———, U. S. Coast Guard, containing the narrative of the loss of the U. S. C. G. C. ———, on August —, 19—, was then read by the recorder, original hereto appended marked ' .'

"The following questions were then put to the commanding officer by the board:

"Q. Is the narrative just read to the board a true statement of the loss of the U. S. C. G. C. ———, on August ———, 19—?

"A. * * *.

Q. Have you any complaint to make against any of the officers or men of that vessel on that occasion?

"A. * * *.

"The following questions were then put by the board to the (surviving) officers and crew of the U. S. C. G. C. ———, and they were instructed by the president that if they had anything to say in answer to the questions propounded, they should step to the front.

"Q. Have you any objection to make to the narrative just read, or anything to lay to the charge of any officer or man concerning the loss of the U. S. C. G. C. ———, on August ———, 19—?

"A. The officers and men answered 'No,' and no one stepped to the front (or, as the case may be).

"All the officers and such of the crew as filled positions of special responsibility on the occasion referred to were informed by the president of their right to be present during the sessions of the board, to offer evidence, and to cross-examine witnesses should they so desire.

"The board then, at ——— a. m., took a recess until ——— p. m., at which time it reconvened at ——— ———, ———, ———.

"Present: All the members and the parties to the inquiry."

(37) When the board is ready to proceed with the inquiry the witnesses shall be called before it separately, and the president of the board shall administer to each the following oath (or affirmation):

Oath for witnesses.—"You do solemnly swear (or affirm) that the evidence you shall give in the case now before this board shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the matter under inquiry, so help you God (or, this you do under the pains and penalties of perjury)."

(38) A witness before a board of inquiry is examined in the same manner as a witness before a general court. See arts. 741 to 760.

942. Witness introduces documentary evidence.—

2. Q. Are you the legal custodian of the official ship's log of the U. S. C. G. C. *Tahoma?* If so produce it.

A. I am; here it is.

The ship's log was submitted to the defendant and to the board, and by the recorder offered in evidence for the purpose only of reading into the record such extracts therefrom as show the location and movements of the U. S. C. G. C. *Tahoma* from January 27, 1921, to February 17, 1921, and the officers serving upon her during that period.

There being no objection, it was so received.

3. Q. Refer to that log and read such portions thereof as pertain to the facts for which it has been offered into evidence.

The witness read from the said log extracts, copy appended marked "Exhibit 1" **(39)**.

* * * * * * *

Examined by the complainant:

20. Q. * * *.

A. * * *.

* * * * * * *

Cross-examined by the defendant:

25. Q. * * *.

A. * * *.

* * * * * * *

Reexamined by the recorder:

42. Q. * * *.

A. * * *.

* * * * * * *

Examined by the board:

52. Q. * * *.

A. * * *.

* * * * * * *

None of the parties to the inquiry desired further to examine this witness; the witness resumed his seat as recorder **(40)**.

943. Recess.—

The board then, at 11.45 a. m., took a recess until 1 p. m., at which time it reconvened **(41)**.

Present: All the members, the recorder, the parties to the inquiry and their counsel.

No witnesses not otherwise connected with the trial were present.

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(39) For variations, see art. 751.

(40) The recorder, a member, or a party to the inquiry is not warned after testifying. (Art. 410.)

For verification of testimony, see art. 408.

(41) When the suspension of business is from one part of a day to another part of the same day it should be recorded as a recess; when from one day to another, as an adjournment.

944. Examination of a witness called by the recorder.—

A witness called by the recorder entered, was duly sworn, and was informed of the subject matter of the inquiry (42).

Examined by the recorder:

1. Q. State your name, occupation, and residence.

A. * * *.

* * * * * * *

(Witness examined as in art. 941.)

None of the parties to the inquiry desired further to examine this witness.

The board informed the witness that he was privileged to make any further statement covering anything relating to the subject matter of the inquiry which he thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness made the following statement (43): "* * *."

The defendant requested that the witness verify his testimony.

The witness verified his testimony, was duly warned, and withdrew (44).

945. Defendant designated.—

At this stage of the proceedings it appeared to the board that Lieutenant Z——— Y. X———, U. S. Coast Guard, was a defendant. He was accordingly called before the board and advised to that effect and of the testimony that seemed to implicate him. He examined the precept, stated that he did not object to any member of the board, and was informed of his rights (45).

946. Person not named as a defendant requests privileges.—

Lieutenant (junior grade) M——— N. O———, U. S. Coast Guard, informed the board that he had an interest in the subject matter of the inquiry in that he * * *. He requested that he be allowed to be present during the course of the inquiry, examine

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(42) For oath, see note 37 *supra*.

The board shall inform each witness, other than a member of the board, the recorder, or a party to the inquiry, immediately after the witness has been sworn, of the subject matter of the inquiry.

(43) Variation.—"The witness stated that he had nothing further to say."

(44) For verification of testimony, see art. 408.

For variations, see arts. 749 and 766.

For warning to a witness, see art. 410.

(45) Art. 910. Great care will be taken by the board that this procedure is observed when appropriate. (Art. 901.)

Should the defendant desire counsel, the entry continues: "Lieutenant X———, with permission of the board, introduced Lieutenant C——— D. E———, U. S. Coast Guard, as his counsel. (Or, requested that Lieutenant U——— V. W——— act as his counsel.)"

Conversely, should it become apparent at any time that a person who has been designated a defendant is involved in an insignificant degree, the board should inform him that it appeared he was no longer a defendant.

Variation.—"* * * a defendant, was no longer such, and he was accordingly informed of his change in status, and withdrew."

witnesses, and introduce new matter pertinent to the inquiry in the same manner as a defendent.

The request of Lieutenant (junior grade) O——— was granted (46).

947. View by the board.—

The board was cleared. The board was opened (47). All parties to the inquiry entered, and the board announced that it would adjourn to the chart house and bridge of the U. S. C. G. C. *Tahoma* (48).

All the members, the recorder, the parties to the inquiry and their counsel assembled on the bridge of the U. S. C. G. C. *Tahoma* and made an inspection of the bridge and chart house.

A witness called by the recorder entered, was duly sworn, and was informed of the subject matter of the inquiry.

Examined by the recorder:

* * * * * * *

All the members, the recorder, the parties to the inquiry and their counsel returned to the regular place of meeting, where the board was reassembled (49).

948. Recorder rests his case.—

The recorder stated that he had no more witnesses (50).

949. Adjournment.—

The board then, at 4 p. m., adjourned until 10 a. m., to-morrow (51).

950. Second day.—

SECOND DAY.

U. S. C. G. C. TAHOMA,

Unalaska, Alaska, Saturday, February 26, 1921.

The board met at 10 a. m.

Present:

Lieutenant Commander A——— B. C———, U. S. Coast Guard,

Lieutenant Commander D——— E. F———, U. S. Coast Guard, and

Lieutenant G——— H. I———, U. S. Coast Guard, members; and

Lieutenant J——— K. L———, U. S. Coast Guard, recorder.

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(46) See in this connection note 28 *supra.*

(47) Clearing the board may be dispensed with under general principles of art. 507.

(48) Variation.—"* * * to the scene of the accident (explosion) (fire) (to inspect the boiler) (or, as the case may be)."

(49) See note 24 *supra.*

(50) When the recorder rests his case the complainant, if he desire, may introduce evidence. (Art. 914.)

(51) For distinction between adjournment and recess, see note 41 *supra.*

Variation.—"* * * until 10 a. m., March 1, 1921."

Need not meet daily.—Boards of inquiry, unlike general courts, need not meet from day to day, but have power to adjourn for such period as may be necessary without requesting permission of the convening authority.

F——— E. D———, yeoman, first class, U. S. Coast Guard, reporter.

Lieutenant X——— Y. Z———, U. S. Coast Guard, defendant, and his counsel.

Lieutenant Z——— Y. X———, U. S. Coast Guard, defendant, and

Lieutenant (junior grade) M——— N. O———, U. S. Coast Guard.

The record of proceedings of the first day of the inquiry was read and approved (52).

951. Examination of a witness called by a defendant.—

A witness called by Lieutenant X——— Y. Z———, a defendant, entered, was duly sworn, and was informed of the subject matter of the inquiry.

Examined by the recorder:

1. Q. State your name, rank, and present station.

A. * * *.

Examined by Lieutenant Z———, defendant:

2. Q. * * *.

A. * * *.

* * * * * * *

Examined by Lieutenant X———, defendant:

11. Q. * * *.

A. * * *.

* * * * * * *

Examined by Lieutenant (junior grade) O———:

14. Q. * * *.

A. * * *.

* * * * * * *

Cross-examined by the recorder:

16. Q. * * *.

A. * * *.

* * * * * * *

Cross-examined by the complainant:

20. Q. * * *.

A. * * * *.

* * * * * * *

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(52) Art. 665, *re* reading of record, applies to a board of inquiry.

If the record is objected to, proceed as in art. 765.

Variation.—"The recorder stated that the record of proceedings of the first (second) day of the inquiry was not ready. At the request of the recorder the board then, at ——— a. m., took a recess until ——— p. m., at which time it reconvened. (Or, The board decided to postpone the reading of this record until such time as it shall be reported ready, and in the meantime to proceed with the inquiry.)"

See also art. 963.

Reexamined by Lieutenant X———, defendant:

25. Q. * * *.

A. * * *.

* * * * * * *

Examined by the board:

29. Q. * * *.

A. * * *.

None of the parties to the inquiry desired further to examine this witness.

The board informed the witness that he was privileged to make any further statement covering anything relating to the subject matter of the inquiry which he thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness stated that he had nothing further to say **(53)**.

The witness was duly warned and withdrew.

952. Defendant as a witness.—

Lieutenant X———, a defendant, requested that he be sworn as a witness. His request was granted and he was duly sworn, having been informed by the board that his examination would be governed by the same rules as govern the examination of an accused who takes the stand at his own request in a trial by a Coast Guard court **(54)**.

Examined by Lieutenant X———, defendant:

* * * * * * *

Examined by Lieutenant Z———, defendant:

* * * * * * *

Examined by Lieutenant (junior grade) O———:

* * * * * * *

Cross-examined by the recorder **(55)**:

* * * * * * *

Cross-examined by the complainant:

* * * * * * *

None of the parties to the inquiry desired further to examine this witness. He resumed his seat as defendant.

953. Defendants rest their cases.—

Neither of the defendants desired any more witnesses **(56)**.

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(53) For variations, see art. 943.

(54) For an accused as a witness, see art. 333.

For the privilege of an accused to testify, see art. 364. See also arts. 901 and 915 for the rights of parties to a board of inquiry.

(55) For cross-examination of an accused, see art. 394.

(56) After the defendants rest their cases, any persons who have been granted the privileges of defendants (note 28 *supra*) may call witnesses.

Variation 1.—"None of the defendants desired any more witnesses."

Variation 2.—(In case no more witnesses are desired by anyone.) "Neither the board, the recorder, nor any party to the inquiry desired any more witnesses."

954. Witness for the board.—

The board was cleared. The board was opened and all parties to the inquiry entered. The board announced that it desired further testimony, and directed that B——— B———, quartermaster, second class, U. S. Coast Guard, be called as a witness for the board.

A witness called by the board entered, was duly sworn, and was informed of the subject matter of the inquiry.

Examined by the recorder:

1. Q. State your name, rating, and present station.

A. * * *.

* * * * * * *

955. No more witnesses desired.—

Neither the board, the recorder, nor any party to the inquiry desired any more witnesses.

956. Statements.—

Lieutenant Z——— and Lieutenant X———, U. S. Coast Guard, defendants, each submitted a written statement, which statements were read and are appended marked "B" and "C" (57).

957. Arguments (58).—

The recorder read his written opening argument, appended marked "D" (59).

Commander S———, complainant, read a written argument, appended, marked "E" (60).

Lieutenant Z———, defendant, read a written argument, appended, marked "F" (61).

Lieutenant X———, defendant, desired to make no argument.

The recorder read his written closing argument, appended, marked "G" (62).

958. Inquiry finished.—

The inquiry was finished, all parties thereto withdrawing (63).

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(57) Art. 915.

Variation.—"Lieutenant Z———, defendant, made an oral statement as follows: * * *."

For other variations, see under art. 771.

(58) For argument, see arts. 567 to 570.

(59) Variation 1.—"The recorder made the following opening argument: * * *."

Variation 2.—"The recorder desired to make no opening argument."

(60) Variations same as under note 59 *supra*.

(61) Variations as above, and as in art. 772, note 59.

(62) Variations as above. See also art. 772, note 60.

(63) Proceedings and instructions to be examined.—After all the evidence is in and statements and arguments, if any, have been received, the board should be cleared, the proceedings read over, and the instructions contained in the order by which the board is constituted should be carefully examined and scrupulously followed.

Findings, and opinion and recommendation if required.—After mature deliberation on the testimony recorded during the inquiry, the board shall proceed to report the facts, and, if so directed, an opinion or conclusion drawn from the facts and a recommendation as to what further action, if any, should be had.

If the board recommend that further proceedings be had in the matter it should state in its recommendation the name of the person or persons against whom, and the specific

959. Finding of facts.—

The board having thoroughly inquired into all the facts and circumstances connected with the allegations contained in the precept (64), and having considered the evidence adduced, finds as follows:

Finding of facts (65).

1. That X——— Y. Z———, lieutenant, U. S. Coast Guard, did on or about January 31, 1921, on board the U. S. C. G. C. *Tahoma*, * * *.

2. * * *.

* * * * * * *

960. Opinion.—

Opinion.

1. That Lieutenant X——— Y. Z———, U. S. Coast Guard, on or about January 31, 1921, on board the U. S. C. G. C. *Tahoma*, knowingly and willfully violated a lawful regulation of the Secretary of the Treasury in that he * * * (66).

2. * * *.

* * * * * * *

961. Recommendation.—

Recommendations.

1. That Lieutenant X——— Y. Z———, U. S. Coast Guard, be brought to trial by general court on the charges: I. Knowingly

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matter upon which, the proceedings should be, together with the nature of the proceedings.

Findings, opinion, and recommendation not to be disclosed.—It is held to be a breach of discipline on the part of any member of a board of inquiry to disclose or publish the opinion, findings, or recommendation of the board or of the individual members thereof, without the sanction of the officer to whom the proceedings have been submitted.

(64) Variations.—" * * * the loss (or, grounding) of the U. S. C. G. C. ———, (or) * * * the death of ——— ———, late ———, U. S. Coast Guard, (or) * * * the collision between the U. S. C. G. C. ——— and the ship ———, (or) * * * the fire (accident) (explosion) on board the U. S. C. G. C. ———, (or) * * * * the condition of the engineering department of the U. S. C. G. C. ———, (or, as the case may be)."

(65) Finding, opinion, and recommendation should be typewritten.—The finding, opinion, and recommendation of a board of inquiry need not be in the handwriting of the recorder, but should be typewritten.

Facts defined.—A fact is an action; a thing done; a circumstance. Unless its opinion is called for the board shall be careful to state only facts. The board must weigh the evidence and include in its finding of facts those things which it believes the evidence establishes to have been done, and nothing further.

(66) Variation 1.—" That the evidence does not establish any misconduct on the part of Lieutenant X——— Y. Z———, U. S. Coast Guard."

Variation 2.—" 1. That the tube blew out due to a defect in manufacture.

" 2. That the defect was of such a nature that it would have escaped the notice of an expert engineer.

" 3. That the accident was not due to the fault, negligence, or inefficiency of any person in the Coast Guard or connected therewith.

" 4. That the death of ——— ———, late fireman, second class, U. S. Coast Guard, was due to an injury received in the line of duty and was not the result of his own misconduct."

and willfully violating a lawful regulation of the Secretary of the Treasury; and II. * * *. That specifications of the first charge should cover the offenses set forth in paragraphs 1 and 2 of the board's "Opinion." That specifications of the second charge should * * *.

2. That Lieutenant Z——— Y. X———, U. S. Coast Guard, be brought to trial by general court on the charges * * * (67).

A——— B. C———,
Lieutenant Commander, U. S. Coast Guard.
G——— H. I———,
Lieutenant, U. S. Coast Guard.

* * * * * * *

962. Minority report (68).—

I disagree with paragraph 3 of the board's findings for the reason that * * *.

I disagree with paragraph 2 of the board's opinion for the reason that * * *.

I disagree with paragraph 4 of the board's recommendations for the reason that * * *.

D——— E. F———,
Lieutenant Commander, U. S. Coast Guard.

963. Final entry.—

The record of the proceedings of the second day of the inquiry was read and approved, the board being cleared during the reading of so much thereof as pertains to the proceedings in cleared board, and the board having finished the inquiry, then at ———, adjourned to await the action of the convening authority.

A——— B. C———,
Lieutenant Commander, U. S. Coast Guard, President.
J——— K. L———,
Lieutenant, U. S. Coast Guard, Recorder (69).

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(67) **Variation.**—"The board recommends that no further proceedings be had in the matter."

(68) If a member does not concur with the findings, opinion, or recommendations of the board, he shall append his reasons for dissent and subscribe his name thereto. The report of the board shall be based upon the opinion of the majority.

(69) **Authentication of proceedings.**—The proceedings of a board of inquiry must be authenticated by the signatures of the president and the recorder of the board; they are then to be submitted to the convening authority for his consideration, after which the board may adjourn temporarily to await his further instructions.

Dissolution.—The board is dissolved by order of the convening authority.

964. Documents appended (70).—

(Here is appended the written statement submitted by Lieutenant Z———, defendant, in art. 956.)

B (71).

(Here is appended the written statement submitted by Lieutenant X———, defendant, in art. 956.)

C

(Here is appended the recorder's written opening argument, read in art. 957.)

D

(Here is appended the complainant's written argument, read in art. 957.)

E

(Here is appended the written argument read by Lieutenant Z———, defendant, in art. 957.)

F

(Here is appended the recorder's written closing argument, read in art. 957.)

G

965. Exhibits (72).—

(Here is appended the exhibit received in evidence in art. 942.)

EXHIBIT 1.

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(70) Documents having to do with the precept are prefixed immediately following it; all others are appended.

(71) For marking of documents, see art. 668.

For order in which documents are prefixed or appended, see art. 667.

(72) Following the appended documents, the exhibits are appended in the order in which they were received in evidence. When the exhibit is an instrument of real evidence the procedure set forth in art. 759 should be observed.

For securing exhibits to the record or forwarding separately, see art. 660.

CHAPTER XII. (1)

INSTRUCTIONS FOR BOARD OF INVESTIGATION, ETC.

971. Introductory.—The primary function of an investigation or board of investigation is to sift facts for the information of the convening authority and Headquarters. The distinction between a board and a Coast Guard court should be clearly borne in mind by convening authorities, who should remember that any action taken in a matter subsequent to its investigation by a board is taken upon the initiative of the convening authority in his administrative capacity. The function of the board or investigation is merely to aid such officer in the performance of his administrative duties, and not to relieve him of responsibility for his administrative acts.

The function of examining and retiring boards and of a board of inquest is given in the notes of the chapters dealing with such boards.

The great rule to be observed by any board is that the rights of a defendant or of a person in a status similar to that of a defendant are accorded (2). A defendant or person in similar status before

(1) The instructions contained in this chapter govern the procedure of all boards and investigations in the Coast Guard, except those that are administrative rather than judicial in character, such as boards of survey, boards of medical survey, and certain boards organized for the purpose of inquiry and report in regard to administrative features. Types of special boards last alluded to are those boards convened at times at Headquarters to consider matters connected with the administrative features of the service; the procedure of such boards will be governed largely by the character of the matter to be inquired into and such special instructions as they may receive in each case.

(2) A defendant before a board is the same as such a party before a board of inquiry. For definition of "defendant," see art. 910.

a board has, in general, the rights of an accused before a general court; that is, the right to be present, to have counsel, to cross-examine witnesses, to call witnesses, to testify in his own behalf on his request, and to make a statement and argument. He has the right of any witness to refuse to answer incriminating or degrading questions (3). Members of boards of investigation are not subject to challenge.

If the foregoing rights be not accorded, the board, so far as concerns the person denied his rights, will be held of no evidential effect. If a person who did not appear before an investigation or board of investigation be recommended for disciplinary action other than a Coast Guard court, the record of the investigation or board, or the pertinent extracts therefrom, should be referred to such person for statement before such disciplinary action is finally effected.

If it should appear at any stage of the proceedings of a board that any person not named as defendant from the outset is implicated in the matter under investigation in such a way as to make him a defendant thereto, he shall be called before the board, informed of all the evidence that tends to implicate him, and instructed as to his rights (4).

972. Convened by the commandant—Purposes.—Boards of investigation shall be convened by the commandant to inquire into:

(*a*) Loss of life within the scope of operations of Coast Guard stations.

(*b*) The conduct of a commissioned or of a warrant officer.

(*c*) The competency, aptitude, desirability, or fitness of a surfman.

(*d*) Matters affecting the discipline or efficiency of the service, and for other purposes.

Boards convened for the above-named purposes shall be composed of one commissioned officer. All other boards shall, when possible, be composed of three commissioned officers.

973. Precedence of members.—Officers on a board shall take their seats in the same order of rank or seniority as on general courts; that is, the senior member at the head of the table and the other members in order of rank at his right and left alternately (5).

974. Duties of senior member.—The senior member or president of a board shall preserve order, decide upon matters relating to the routine of business, such as recess, and may adjourn the board from day to day, at and to such hours as in his judgment will be most convenient and proper for the transaction of the business before it; but should an objection be made by any other member of the

(3) For the privilege of a witness, see arts. 363 to 368. See also arts. 404 and 915.
(4) Arts. 909 to 915 apply, in general, to a board.
(5) Art. 503.

board to a recess or adjournment announced by the senior member, a vote shall be taken with regard to it, and the decision of the majority shall govern.

975. Quorum necessary.—No board shall transact any business other than an adjournment unless a majority of the members be present, except when the officer ordering the board so authorizes.

976. Unauthorized absence forbidden.—No member of a board shall fail in his attendance at the appointed time, unless prevented by illness or some insuperable difficulty, ordered away by competent authority, or excused by the officer ordering the board, except that a short temporary absence may be allowed by the senior member of the board; nor shall a member leave the vicinity of the place at which a board is assembled, unless authorized to do so by the officer who convened it, or by his superior.

977. Absence reported.—In case of absence of a member the senior officer of the board present shall inform the officer ordering the board of the fact, and also of the reasons for the absence, if known to him, in order that the vacancy may be filled, if deemed necessary.

978. Members voting after absence.—A member absent during the investigation of any matter or case shall not vote upon a decision with regard to it, unless, if necessary to arrive at a conclusion, a re-investigation take place in the presence of that member and of the interested parties.

979. Clerical assistance.—Art. 490 governs a board.

980. Recorder—Report of board.—In any case where there is a likelihood that there will be anyone involved in the status of a defendant, a recorder should be appointed. His duties will be, in general, those of a recorder of a board of inquiry as enumerated in art. 908. In all other cases a competent person may be appointed by the officer who orders the board to record its transactions and under its directions to draw up the report of the board, which shall be based upon the opinion of the majority. This report shall be signed by all the members who concur.

981. Junior member to act as recorder when none is appointed.—In case a recorder has not been designated in the convening order, the junior member shall act as recorder; but, in that event, the report based upon the opinion of the majority shall be drawn up by the senior member and shall be signed as provided for above. In such a case the recorder will not act in any sense as prosecutor, but the board will act in an unbiased manner to obtain all pertinent information available.

982. Nonconcurring members.—Those members who do not concur with the report of the board shall append their reasons for dissent and subscribe their names thereto.

983. Incidents out of the ordinary routine.—Any incidents out of the ordinary routine shall be appropriately and in proper chronological order entered in the record.

984. Findings and opinion: Not to be disclosed.—Neither the findings nor opinion of a board or investigation shall be disclosed without proper authority.

985. Same: May be typewritten.—The findings and opinion of a board or investigation may be typewritten.

CHAPTER XIII. (1)

INVESTIGATION PROCEDURE.

991. Indorsement of the reviewing authority.—(See art. 930 and notes thereto, which apply also to an investigation.)

992. Indorsement of the convening authority (2).—

COMMANDER NORFOLK DIVISION,
Norfolk, Va., April 23, 1921.

The proceedings, findings, and opinion of the investigation in the foregoing case are approved.

It is recommended that the owners of the tug ———, the ——— Company of ———, ———, be allowed the sum of one hundred dollars ($100.00).

X——— Y. Z———, chief boatswain's mate, U. S. Coast Guard, will be tried by a minor court for culpable inefficiency in the performance of duty.

P——— Q. R———,
Captain, U. S. Coast Guard, Commander Norfolk Division.

(1) See note 12 to Part II of Chapter XI (immediately preceding art. 930), which applies also to an investigation, except that in the case of an investigation conducted by an officer or by a civilian official or clerk in regard to a subject not pertaining to the Coast Guard, the report shall be forwarded direct to the Commandant, U. S. Coast Guard.

(2) See art. 930 and notes thereto, which apply also to an investigation.

993. Cover page.—

RECORD OF PROCEEDINGS
of an
INVESTIGATION
conducted at
THE U. S. CUSTOM HOUSE (3),
Norfolk, Virginia,
by order of
THE COMMANDER OF THE NORFOLK DIVISION.
To inquire into alleged damages done to the tug ———, owned by the ——— Company of ———, ———.
April 11, 1921 (4).

994. Index for lengthy case (5).—(This is similar to the index for a general court shown in art. 702.)

995. Precept (6).—

COMMANDER NORFOLK DIVISION,
Norfolk, Va., March 23, 1923.

From: Commander Norfolk Division.
To: Lieutenant A——— B. C———, U. S. Coast Guard.
Subject: Investigation into damages alleged to have been done to tug———, owned by the ——— Company of ———, ———, by U. S. Coast Guard harbor cutter ———, on or about March 2, 1921.
Reference: (*a*) Letter from the ———Company of———, ———, dated March 4, 1921.
Inclosure: 1. Reference (*a*).

1. Under authority of section 183 of the Revised Statutes, as amended by the act of February 13, 1911, (7), you are hereby de-

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(3) Variation.—

"Conducted at
"THE COAST GUARD DEPOT, SOUTH BALTIMORE, MARYLAND.
"by order of
"THE COMMANDANT OF THE COAST GUARD."

(4) This is the date of the first meeting of the investigation.

(5) An index is required whenever a record exceeds 20 pages in length. (Art. 674.)

(6) The precept, or letter to the investigating officer, shall refer to the statutory authority hereinafter given (note 7 *infra*) and shall supply such officer with the instructions and information necessary to the conduct of the investigation, for which latter purpose reference may be made to attached papers. It shall also name the parties to the investigation.

By whom an investigation may be ordered and how constituted.—The senior officer present, who is not empowered to order boards of inquiry, or one who is so empowered and considers that the interests of the service will be better served by an investigation as set forth herein, may order one officer to conduct an investigation for the purpose of inquiring into any matter in regard to which Headquarters or the senior officer present should be informed.

(7) Sec. 183, Revised Statutes, as amended by the act of February 13, 1911 (36 Stat. 898), reads as follows:

"Any officer or clerk of any of the departments lawfully detailed to investigate frauds on, or attempts to defraud, the Government, or any irregularity or misconduct of any officer or agent of the United States, and any officer of the Army, Navy, Marine Corps or Revenue-Cutter Service (now Coast Guard, 38 Stat. 801), detailed to conduct an investigation, and the recorder, and if there be none, the presiding officer of any military, naval, or Revenue-Cutter Service (Coast Guard) board appointed for such purpose, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigations."

tailed to investigate the circumstances connected with the damage alleged to have been done to the tug ——— by the U. S. Coast Guard harbor cutter——— while towing a barge, on or about March 2, 1921.

2. In accordance with the provisions of the statute above mentioned you are given authority to administer an oath to any witness attending to testify or depose during the course of the investigation (8).

3. You will notify X——— Y. Z———, chief boatswain's mate, U. S. Coast Guard, who was officer in charge of the U. S. Coast Guard harbor cutter——— on March 2, 1921, of the time and place of meeting, and that he will be a party to the investigation in the status of defendant and will be accorded the rights of such party in accordance with the provisions of Coast Guard Courts and Boards.

4. You will also notify Mr. S——— W. G———, of———,———, who was in charge of the tug——— on March 2, 1921, of the time and place of meeting of the investigation, and that he may be present in the status of complainant and will be accorded the rights of such party in accordance with the provisions of Coast Guard Courts and Boards (9).

5. You will make a thorough investigation into all the circumstances connected with the above occurrence, and upon completion of the investigation you will make a complete report to the commander of the Norfolk Division of the facts which you deem to be established, together with an opinion as to the repairs necessary, if any, the cost of making same, and the time that will be required (10).

6. Your attention is particularly invited to art. 971, Coast Guard Courts and Boards.

7. Clerical assistance will be furnished you upon application to this office (11). In addition to the record of proceedings required by Coast Guard Courts and Boards you are directed to make three copies for the convening authority (12).

P——— Q. R———,
Captain, U. S. Coast Guard,
Commander, Norfolk Division.

A (13)

(The inclosure of the precept is prefixed immediately following the precept.) B

(8) Omit this paragraph if not deemed necessary to give this power. Unless the power is expressly given by the convening authority the investigating officer should administer no oaths.

(9) Omit paragraphs 3 and 4 if there be no such parties.

(10) An opinion on the merits of the case should not ordinarily be called for. See note 28 *infra.*

(11) For clerical assistance, see art. 490, which applies to an investigation.

(12) Variation 1.—

"TREASURY DEPARTMENT,
"UNITED STATES COAST GUARD,
"Washington, September 15, 1923.

"HEADQUARTERS.
"From: Commandant.
"To: Mr. A——— B. C———, Coast Guard Headquarters.
"Subject: Investigation of complaints against J——— K. L———, Field Assistant at Atlantic City, New Jersey.
"Reference: (a) Letter from D——— E. F———, civil engineer, Coast Guard Headquarters, July 27, 1923.
"Inclosure: 1. Reference (*a*).

"1. Under the authority of Section 183 of the Revised Statutes, as amended by the act of February 13, 1911, you are hereby detailed to investigate certain complaints made against J——— K. L———, field assistant, U. S. Coast Guard, at Atlantic City, New Jersey, which complaints are contained in reference (*a*), and inclosures.

"2. In accordance with the provisions of the statute above mentioned you are given authority to administer an oath to any witness attending to testify or depose during the course of the investigation.

"3. You will notify J——— K. L——— of the nature of the complaints against him, that he may be present in the status of defendant and will be accorded the rights of such party in accordance with the provisions of Coast Guard Courts and Boards.

"4. You will also notify D——— E. F——— of these instructions and inform him that he may be present in the status of complainant and will be accorded the right of such party in accordance with the provisions of Coast Guard Courts and Boards.

"5. You will make a careful and thorough examination into all the matters set forth in the papers above mentioned, and upon completion of the investigation you will report to the Department the testimony taken and the facts established thereby.

"6. Your attention is particularly invited to article 971, Coast Guard Courts and Boards.

"———— ————,
"Commandant, U. S. Coast Guard."

Variation 2.—" * * *.
"To: Lieutenant Commander G——— B. W———, U. S. Coast Guard, Coast Guard Depot, South Baltimore, Md., via Commandant, Depot.
"Subject: Investigation of alleged misconduct of Lieutenant X——— Y. Z———, U. S. Coast Guard.
"Inclosures: 2.

"1. Under the authority of section 183 of the Revised Statutes, as amended by the act of February 13, 1911, you are hereby detailed to investigate the alleged misconduct of Lieutenant X——— Y. Z———, U. S. Coast Guard, as set forth in the papers inclosed.

"2. In accordance with the provisions of the statute above mentioned you are given authority to administer an oath to any witness attending to testify or depose during the course of the investigation.

"3. You will notify Lieutenant Z——— of the nature of the charges against him and of his right to be present during the investigation in the status of defendant and that he will be accorded the rights of such party in accordance with the provisions of Coast Guard Courts and Boards.

"4. You will make a thorough investigation of the matters set forth in the papers above mentioned, and upon the completion of the investigation you will make a complete report to the department of the facts which you deem to be established, together with specific data as to the times and places of the misconduct, if any.

"5. Your attention is particularly invited to article 971, Coast Guard Courts and Boards.

"6. The commandant of the depot, South Baltimore, is hereby directed to afford you such facilities as may be necessary to the proper conduct of the investigation and to furnish the necessary clerical assistance.

"———— ————."

(13) The original precept is to be prefixed to the record. For marking of documents, see art. 668. For order in which documents are prefixed or appended, see art. 667.

67189—24——21

996. Investigation meets.—

FIRST DAY (14).

CUSTOM HOUSE,

Norfolk, Va., Monday, April 11, 1921.

The investigating officer, Lieutenant A——— B. C———, U. S. Coast Guard (15), administered the prescribed oath to C——— E. M———, yeoman, second class, U. S. Coast Guard, the reporter, who took seat as such (16).

997. Defendant enters (17).—

X——— Y. Z———, chief boastwain's mate, U. S. Coast Guard, entered as defendant and stated that he did not desire counsel (18).

The investigating officer warned Z——— that the evidence before the investigation might be used against him, advised him of his right to counsel, and informed him that counsel will be designated should he so desire.

Z——— persisted in his refusal of counsel (19).

998. Complainant and counsel enter (20).—

The complainant, Mr. S——— W. G———, entered. With the permission of the investigating officer, the complainant introduced Mr. Q——— G. S——— as his counsel (21).

999. Precept read (22).—

The investigating officer read the order directing him to make the investigation, and the letter of the——— Company of———, ———, accompanying it, which are hereto prefixed marked "A" and "B" (23).

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(14) Where the investigation occupies but one day this entry is omitted.

(15) Variation.—"* * * Mr. A——— B———, * * *."

(16) For appointment of reporter, see art. 490, which also applies to an investigation. Reporting may be in shorthand. (Art. 517.)

Oath for reporter.—"You, C——— E. M———, swear (or affirm) faithfully to perform the duty of reporter in taking and recording the proceedings of the investigation, either in shorthand or in ordinary manuscript."

For manner of giving oaths, see art. 527.

Variation.—(When the investigating officer has not been authorized by the convening authority to administer oaths.) "* * * directed C——— E. M———, yeoman, second class, U. S. Coast Guard, the reporter, to take seat as such."

(17) If there be no defendant, the entries of this article are omitted.

For definition of "defendant," see art. 910. For his rights, see art. 971.

(18) Variation.—"* * * and with the permission of the investigating officer introduced Mr. U——— V. W——— as his counsel."

For other variations, see under art. 935.

(19) This entry is omitted where the accused has counsel. In this connection, see art. 911.

(20) If there be no complainant, or if he do not avail himself of his right to be present, the entries of this article are omitted.

(21) Variations as under art. 936.

(22) Should there be no parties to the investigation (or none present), this may be omitted.

(23) Variation.—"The investigating officer read the order directing him to make the investigation, which is hereto prefixed, marked 'A.'"

1000. Parties informed of their rights.—

The complainant and the defendant were informed of their rights (24).

1001. Open or closed doors.—

The investigating officer announced that the investigation would be conducted with open doors (25).

1002. Witnesses separated.—

No witnesses not otherwise connected with the investigation were present (26).

1003. Witness called (27).—

(An investigation is conducted in the same manner as a board of inquiry (arts. 941 to 957) where the investigating officer has been authorized to administer oaths; if he has not been so authorized, it is conducted in the same manner as a board of investigation (arts. 1025 to 1040).)

1004. Investigation finished.—

The investigation was finished, all parties thereto withdrawing.

1005. Finding of facts.—

After full and mature deliberation, the investigating officer finds as follows:

Findings of Facts (28).

1. That U. S. Coast Guard barge No. 11, while being towed by the U. S. Coast Guard harbor cutter ———, collided with the barge ———, owned by the ——— Company of ———, ———, then

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(24) As set forth in art. 971.

If there are no parties to the investigation this entry is omitted. In such case the next entry after that of art. 996 is that of art. 1001.

Parties to an investigation have not the right to challenge the investigating officer.

(25) Whether the investigation shall be conducted with closed or open doors must depend on the nature of the matter to be examined, and, if not specified by the officer ordering the investigation, shall be decided by the investigating officer. See note 28 to art. 934 which applies also to an investigation.

(26) The provisions of art. 374, so far as applicable, shall be observed by an investigating officer.

(27) **Summoning witnesses.**—The attendance of a civilian witness before an investigation is not compellable. For general instructions governing the attendance of witnesses, see arts. 344 to 350.

Oath to witnesses.—When the investigating officer has been empowered to administer oaths the following oath shall be administered by him to witnesses:

"You, A——— B———, do solemnly swear (or affirm) that the testimony you shall give in the matter of * * * now in hearing shall be the truth, the whole truth, and nothing but the truth, so help you God (or, this you do under the pains and penalties of perjury)."

(28) After mature deliberation on the evidence introduced during the investigation, the investigating officer shall report the facts found to be established. He shall not, unless so directed by the officer who ordered the investigation, give an opinion on the merits of the case. Ordinarily such opinion should not be requested in view of the fact that but one officer constitutes such investigation.

The finding and opinion may be typewritten. (Art. 985.)

For definition of "facts," see art. 958, note 65.

moored to the ——— dock, ———, ———, at about 8 p. m., March 2, 1921.

2. That the barge ——— at the time of the collision had no bow or stern lights showing and that no lights at all were showing except one in the cabin and one at a hatch.

3. That X——— Y. Z———, chief boatswain's mate, U. S. Coast Guard, was in charge of the harbor cutter ——— at the time of the collision.

4. That barge No. 11 hit the barge ——— on the stem post slightly damaging the latter as follows: Top section of stem split at scarf for about 2 feet, and iron banding over same bent in about 3 or 4 inches for a length of about 2 feet.

5. That the harbor cutter ——— and barge No. 11 sustained no damage as the result of the collision.

6. That the barge ——— was built in 1901, and is not self-propelled.

1006. Opinion.—

Opinion.

That to repair the damage done to the barge ——— will necessitate the following: Removal and renewal of upper stem piece (12 feet by 6 inches by 10 inches); removal of banding for straightening and replacement; calking in vicinity of new stem piece; and painting new work. The estimated time to make repairs is three days (29).

1007. Final entry.—

A——— B. C———,

Lieutenant, U. S. Coast Guard, Investigating Officer (30).

1008. Documents appended and exhibits.—

(See arts. 964 and 965 and the notes thereto, which apply to an investigation.)

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(29) The findings and opinions are not to be disclosed. (Art. 984.) They may be typewritten. (Art. 985.)

(30) **Variation.—**

"A——— B———,

"Investigating Officer, U. S. Coast Guard."

CHAPTER XIV. (1)

BOARD OF INVESTIGATION PROCEDURE.

1015. Indorsement of the reviewing authority (2).—

COMMANDER NORFOLK DIVISION,
Norfolk, Va., September 17, 1921.

Forwarded. The findings and opinion of the board of investigation in the foregoing case, and the action of the convening authority thereon, are approved.

P——— R. Q———,
Captain, U. S. Coast Guard, Commander Norfolk Division.

(1) See note 12 to Part II of Chapter XI (immediately preceding art. 930), which applies also to a board of investigation.
(2) See art. 930 and the notes thereto, which apply also to a board of investigation.

1016. Indorsement of the convening authority (3).—

U. S. C. G. C. ONONDAGA,
Norfolk, Va., September 14, 1921.

The proceedings, findings, and opinion of the board of investigation in the foregoing case are approved.

The convening authority invites attention to the testimony of Lieutenant (engineering) ———, U. S. Coast Guard, in charge of the fireroom station on the *Onondaga* since October, 1920. The testimony of this officer indicates a general lack of efficiency in the operation and upkeep of the engineering plant of the *Onondaga* previous to the time that Lieutenant Commander (engineering) X——— Y. Z——— took charge.

The convening authority is well satisfied with the present operation of the engineering plant of the *Onondaga*, and feels that every effort is being made to bring the ship to its former efficiency. He is of the opinion that the unsatisfactory conditions noted by the board are to be attributed to inefficient operation and upkeep by former personnel.

In view of the numerous changes in personnel and the time that has elasped since the unsatisfactory conditions arose, it is recommended that no further action be taken.

M——— N. O———,
Commander, U. S. Coast Guard, Commanding.

1017. Cover page.—

RECORD OF PROCEEDINGS
of a
BOARD OF INVESTIGATION
convened on board the (4)
U. S. C. G. C. ONONDAGA
by order of
THE COMMANDING OFFICER,
To inquire into the conditions existing in the engineer department of the U. S. C. G. C. Onondaga.
September 7, 1921 (5).

1018. Index for lengthy case (6).—(This is similar to the index for a general court shown in art. 702.)

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(3) See art. 930 and notes thereto, which apply also to a board of investigation.

(4) Variation.—

"Convened at the
"COAST GUARD DEPOT, SOUTH BALTIMORE, MARYLAND,
"by order of the
"COMMANDANT, U. S. COAST GUARD."

(5) This is the date of first convening for the investigation.

(6) An index is required whenever a record exceeds 20 pages in length. (See art. 674.)

1019. Precept (7).—

U. S. C. G. C. ONONDAGA,
Norfolk, Va., August 24, 1921.

From: Commanding Officer.
To: Lieutenant Commander A——— B. C———, U. S. Coast Guard, U. S. C. G. C. *Onondaga.*
Subject: Board of investigation to inquire into and report upon the conditions existing in the engineer department of the U. S. C. G. C. *Onondaga.*

1. A board of investigation, consisting of yourself as senior member and of Lieutenants D——— E. F——— and G——— H. I———, U. S. Coast Guard, as additional members (8), and of Lieutenant J——— K. L———, U. S. Coast Guard, as recorder (9), will convene on board the U. S. C. G. C. *Onondaga* at the earliest opportunity (10) for the purpose of inquiring into and reporting upon the conditions existing in the engineer department of the U. S. C. G. C. *Onondaga*, and the method of operating same (11).

2. It is directed that the board notify Lieutenant Commander (engineering) X——— Y. Z———, U. S. Coast Guard, engineer officer of the U. S. C. G. C. *Onondaga*, of the time and place of meeting and that he will be a party to the investigation in the status of defendant and will be accorded the rights of such party in accordance with the provisions of Coast Guard Courts and Boards.

3. The board will make a thorough investigation into the matter hereby submitted to it, and upon the conclusion of its investigation will report the facts established thereby. If the facts establish ex-

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(7) The precept or convening order, in addition to naming the membership of the board and setting the time and place of meeting, shall state clearly and concisely the matter that is to be investigated and what the report of the board thereon shall include. See note 18 to art. 933, which, in general, applies to the precept for a board of investigation.

(8) Constitution.—A board of investigation, convened by any one other than the commandant (see art. 56–c), shall, when possible, consist of three officers as members. When engineering material is involved in the matter to be investigated an engineer officer shall, whenever practicable, be appointed a member of the board. Warrant officers may serve on boards of investigation convened by a commanding officer when there is not a sufficient number of commissioned officers available, but a warrant officer shall not serve on a board to consider matters involving a commissioned officer. Note 18 to art. 933, so far as applicable, governs a board of investigation.

(9) Recorder.—A separate recorder need not be named if there is no likelihood of there being any defendants. (Art. 980.) In such case the junior member acts as recorder. (Art. 981.)

(10) Variation.—" * * * at 10 o'clock a. m., Thursday, August 25, 1921, or as soon thereafter as practicable * * *.

(11) Testimony under oath.—If the convening authority desires to empower the board to take testimony under oath, add as next paragraph:

" 2. In accordance with the provisions of section 183 of the Revised Statutes, as amended by the act of February 13, 1911, the board is given authority to administer an oath to any witness attending to testify or depose during the course of the investigation." (See art. 995, note 7, for the statute referred to.)

isting defects of a serious nature, the board will also give its opinion as to the responsibility therefor, and the repairs necessary to remedy same; and, in this latter contingency, will forward, in addition to the original record of proceedings, a partial copy covering material in accordance with the provisions of Coast Guard Courts and Boards.

4. The attention of the board is particularly invited to article 971, Coast Guard Courts and Boards.

5. The executive officer of the U. S. C. G. C. *Onondaga* is hereby directed to furnish the necessary clerical assistance (12).

M——— N. O———,
Commander, U. S. Coast Guard, Commanding (13).
A (14).

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(12) **Variation.**—

"U. S. C. G. C. MIAMI,
"*Key West, Florida, August 16, 1921.*

"From: Commanding Officer.
"To: Lieutenant G——— H———, U. S. Coast Guard, U. S. C. G. C. *Miami.*
"Subject: Board of investigation in the case of the grounding of the U. S. C. G. C. ———, at ———, ———, August 12, 1921.

"1. A board of investigation, consisting of yourself as senior member and of Lieutenants I——— K. L——— and L——— M. W———, U. S. Coast Guard, as additional members, will convene on board the *Miami* at 10 o'clock a. m., Thursday, August 18, 1921, for the purpose of inquiring into and reporting upon the grounding of the *Miami* on the afternoon of August 12, 1921, at ——— (here state where).

"2. The board will make a thorough investigation of all the circumstances attendant to the above-mentioned grounding and upon the conclusion of its investigation will report the facts established thereby, the amount of damage to the *Miami*, and the board's opinion as to the responsibility for the grounding.

"3. The attention of the board is particularly invited to article 971, Coast Guard Courts and Boards.

"———, ———."

(13) **By whom ordered.**—The commandant or a senior officer present, who is not empowered to order boards of inquiry, may order boards of investigation. Also an officer who is empowered to order a board of inquiry may, under the circumstances hereinafter mentioned, order a board of investigation.

When ordered.—A board of investigation should be ordered to investigate any casualty, occurrence, or transaction in regard to which Headquarters should be thoroughly informed and under the circumstances set forth in art. 905, when the senior officer present is not empowered to order boards of inquiry, or when the senior officer present, if so empowered, deems it advisable to order such board in lieu of a board of inquiry.

In case of collision with merchant vessels.—In the event of a collision between a ship of the Coast Guard and a merchant vessel so serious or under such circumstances as not to admit of immediate repair with the resources at hand, and therefore likely to involve damages, a board of investigation or board of inquiry shall be ordered by the senior officer present to ascertain all the attendant circumstances, injuries received by the merchant vessel, probable amount of damages, and which of the ships is responsible for the accident; and the master of the merchant vessel concerned shall be notified of the time and place of meeting of the board and informed that the officers and men of his vessel will be given a hearing by the board, if such hearing is desired. (When repairs have been effected on the spot, a certificate of the fact shall be taken from the master and forwarded, through official channels, to the Commandant of the Coast Guard.)

The report of the board should be prepared in quadruplicate; the original forwarded through the regular channels to Headquarters; one copy to be retained by the senior officer present; one furnished to the commanding officer of the Coast Guard vessel concerned; and the remaining copy (less the findings, opinion, and recommendation) given to the master of the merchant vessel, provided that the officers and crew thereof who were witnesses to the collision shall have testified before the board. There shall also be a partial copy covering material, as required by note 1 *supra*, where the Coast Guard vessel has been materially injured.

1020. Board meets.—

FIRST DAY (15).

U. S. C. G. C. ONONDAGA (16),

Norfolk, Virginia, Wednesday, September 7, 1921.

The board met at 10 a. m.

Present:

Lieutenant Commander A——— B. C———, U. S. Coast Guard, member;

Lieutenant D——— E. F———, U. S. Coast Guard, member;

Lieutenant G——— H. I———, U. S. Coast Guard, member; and

Lieutenant J——— K. L———, U. S. Coast Guard, recorder (17).

The recorder introduced F——— E. D———, yeoman, first class, U. S. Coast Guard, as reporter (18).

If the collision occurs in the waters of the United States and results in loss of life or damage to person or property, the commanding officer of the ship concerned shall inform the collector of the district in which it occurs, through the senior officer present, in accordance with the act of June 20, 1874 (18 Stat., 128), as follows: "* * * within five days after the happening of such accident or damage, or as soon thereafter as possible * * * stating the name and official number (if any) of the vessel * * * the place where she was, the nature and probable occasion of the casualty, the number and names of those lost, and the estimated amount of loss or damage to the vessel or cargo; and shall furnish, upon the request of * * * collectors * * * such other information concerning the vessel, her cargo, and the casualty as may be called for * * *."

If the collision occurs in a foreign port, such measures shall be taken as may be required by the port regulations, and the captain of the port shall be informed should it be necessary.

The foregoing provisions shall apply, as far as practicable, in all cases of collision by a ship of the Coast Guard with a wharf, float, or other object.

Whenever in consequence of injuries sustained in the waters of a foreign port, or adjacent thereto, by a Coast Guard vessel as a result of a collision between it and a foreign merchant vessel, clearly the fault of the latter, it may become necessary or desirable on the part of the commanding officer of the former to libel the latter vessel, such libel proceedings shall be instituted in the name of the United States, and not in the name of such commanding officer. In all such cases it shall be the duty of the commanding officer concerned immediately to inform Headquarters of his action.

(14) The original precept is to be prefixed to the record.

For marking of documents, see art. 668.

For order in which documents are prefixed or appended, see art. 667.

(15) Where the investigation occupies but one day this entry is omitted.

(16) **Rule of assembling.**—Boards of investigation shall assemble at the place, and as nearly as practicable at the time named in the order convening them, but may adjourn, when desirable, to such place as may be convenient to the investigation.

(17) **Variation.—**

"* * *

"Lieutenant D——— E. F———, U. S. Coast Guard, member; and

"Lieutenant G——— H. I———, U. S. Coast Guard, member and recorder."

For variation in case of absence of a member or the recorder, see art. 934, note 25.

(18) For appointment of reporter, see art. 490, which also governs a board of investigation. Reporting may be in shorthand. (Art. 517.)

Should the board be empowered by the convening authority to administer oaths, the reporter is sworn by the recorder on first entering.

Oath for reporter.—"You, F——— E. D———, swear (or affirm) faithfully to perform the duty of reporter in taking and recording the proceedings of this investigation, either in shorthand or in ordinary manuscript."

For manner of giving oaths, see art. 527.

The convening order, hereto prefixed marked "A," was read, and the board determined upon its procedure and decided to sit with open doors (19).

1021. Defendant enters (20).—

Lieutenant Commander (engineering) X——— Y. Z———, U. S. Coast Guard, engineer officer of the U. S. C. G. C. *Onondaga*, entered as defendant, and stated that he did not desire counsel (21).

1022. Precept read.—

The recorder read the convening order (22).

1023. Defendant informed of his rights.—

The defendant was informed of his rights (23).

1024. Witnesses separated.—

No witnesses not otherwise connected with the investigation were present (24).

1025. Examination of a witness called by the recorder (25).—

A witness called by the recorder entered, was informed of the subject matter of the investigation, and declared as follows (26):

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(19) Whether the investigation shall be conducted with closed or open doors must depend on the nature of the matter to be examined, and, if not specified by the officer ordering the investigation, shall be decided by the board. The board on first convening is usually closed until this has been decided.

The recorder does not withdraw when the board is cleared.

See note 28 to art. 934 as to whether the investigation shall be conducted with open or closed doors, that the parties can not be excluded, and that persons not named as defendants may be allowed to be present, which applies also to a board of investigation.

(20) If there be no defendant the entries of this article are omitted.

For definition of "defendant," see art. 910. For his rights, see art. 971.

(21) Variations as under art. 934, note 30.

In the case of an enlisted man waiving his right to counsel, see art. 911 and the procedure of art. 997.

(22) Should there be no parties to the investigation (or none present), this may be omitted.

(23) As set forth in art. 971.

If there are no parties to the investigation this entry is omitted. In such case the next entry after that of art. 1020 is that of art. 1024.

The members and recorder of a board of investigation are not subject to challenge.

(24) The provisions of art. 374, so far as applicable, shall be observed by a board of investigation.

(25) Summoning witnesses.—For general instructions governing the attendance of witnesses, see arts. 344 to 350.

A board of investigation can not compel the attendance of civilian witnesses. See art. 1003, note 27, which applies also to a board of investigation.

(26) The board shall inform each witness, other than a member of the board, the recorder, or a party to the investigation, immediately after the witness enters or is sworn, of the subject-matter of the investigation.

Powers of a board of investigation.—Boards of investigation, although they shall collect material information from apparent, or known facts, or from written evidence which they may possess, and shall record the declarations of persons examined before them, will not take testimony under oath except in important cases in which the order convening the board expressly states that such board is authorized to administer oaths to witnesses in accordance with sec. 183 of the Revised Statutes, as amended by the act of February 13, 1911 (36 Stat. 898), quoted in art. 995, note 7.

Variation.—(Where the board has been authorized to administer oaths.)

"A witness called by the recorder entered, was informed of the subject matter of the investigation, and was duly sworn."

Oath to witness.—"You, A——— B———, do solemnly swear (or affirm) that the testimony you shall give in the matter of * * * now in hearing shall be the truth, the whole truth, and nothing but the truth, so help you God (or, this you do under the pains and penalties of perjury)."

Examined by the recorder (27):

1. Q. State your name, rank, and present station.

A. * * *

* * * * * * *

Cross-examined by the defendant (28):

13 Q. * * *

A. * * *.

* * * * * * *

Re-examined by the recorder:

17. Q. * * *.

A. * * *.

* * * * * * *

Examined by the board:

21. Q. * * *.

A. * * *.

* * * * * * *

None of the parties to the investigation desired further to examine this witness.

The board informed the witness that he was privileged to make any further statement covering anything relating to the subject matter of the investigation which he thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness stated that he had nothing further to say (29).

The witness was duly warned and withdrew (30).

1026. Defendant designated.—

At this stage of the proceedings it appeared to the board that Lieutenant (engineering) Z——— Y. X———, U. S. Coast Guard, was a defendant. He was accordingly called before the board and advised to that effect, and of the declarations that seemed to implicate him. He examined the precept, and was informed of his rights (31).

1027. Person not named as a defendant requests privileges.—

Machinist C——— C. C———, U. S. Coast Guard, informed the board that he had an interest in the subject matter of the investiga-

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(27) A witness before a board of investigation having a separate recorder is examined in the same manner as a witness before a general court. (See arts. 741 to 760.) Where there is no separate recorder, the board conducts the examination.

(28) Where there is more than one defendant the entry should be:

Variation.—"Cross-examined by M——— M———, defendant."

(29) Variation.—"The witness made the following statement: * * *."

(30) For warning to a witness, see art. 410.

Variation.—"The witness verified his declaration (testimony—in case the witness was sworn), was duly warned, and withdrew."

For verification of testimony, see art. 408.

(31) Great care will be taken by the board that this procedure is observed whenever appropriate. (Art. 971.)

Should the defendant desire counsel the entry continues: "Lieutenant (engineering) X———, with the permission of the board, introduced Lieutenant C——— D. E———, U. S. Coast Guard, as his counsel."

Should it appear that a defendant is involved in an insignificant degree proceed as under art. 945, note 45.

tion in that he * * *. He requested that he be allowed to be present during the course of the investigation, examine witnesses, and introduce new matter pertinent to the investigation in the same manner as a defendant.

The request of Machinist C——— was granted (32).

1028. View by the board.—

The board announced that it would adjourn to the engine department of the U. S. C. G. C. *Onondaga* (33).

All the members, the recorder, and the parties to the investigation (34) assembled in the upper engine room of the U. S. C. G. C. *Onondaga*, and proceeded to make an inspection of the engine department (35).

1029. Recess.—

The board then, at 11.30 a. m., took a recess until 1 p. m., at which time it reconvened in the fireroom of the U. S. C. G. C. *Onondaga* (36).

Present: All the members, the recorder, and the parties to the investigation.

The board continued its inspection of the engine department.

1030. Adjournment.—

The board then, at 4.30 p. m., adjourned until 10 a. m., to-morrow (37).

1031. Second day.—

SECOND DAY.

U. S. C. G. C. ONONDAGA,
Norfolk, Va., Thursday, September 8, 1921.

The board met at 10 a. m.

Present:

Lieutenant Commander A——— B. C———, U. S. Coast Guard, member;

Lieutenant D——— E. F———, U. S. Coast Guard, member;

Lieutenant G——— H. I———, U. S. Coast Guard, member; and

Lieutenant J——— K. L———, U. S. Coast Guard, recorder.

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(32) See in this connection note 19 *supra*.

(33) A board of investigation may adjourn, when desirable, to such place as may be convenient to the investigation. (Note 16 *supra*.)

(34) And their counsel, if there be such.

(35) Witnesses may be examined in the regular manner during this inspection. (Art. 947.) The board may in its discretion allow the introduction of evidence out of its regular order. (Art. 371.)

(36) When the suspension of business is from one part of a day to another part of the same day it should be recorded as a recess; when from one day to another, as an adjournment.

(37) Variation.—"* * * until 10 a. m., September 10, 1921."

Need not meet daily.—A board of investigation need not meet from day to day, but has power to adjourn for such period as may be necessary without requesting permission of the convening authority.

F——— E. D———, yeoman, first class, U. S. Coast Guard, reporter.

Lieutenant Commander (engineering) X——— Y. Z——— and Lieutenant (engineering) Z——— Y. X———, U. S. Coast Guard, defendants (38).

Machinist C——— C. C———, U. S. Coast Guard.

The record of proceedings of the first day of the investigation was read and approved (39).

1032. View by the board (completed).—

The board then adjourned to the engine department of the U. S. C. G. C. *Onondaga* and continued its inspection.

On the completion of its inspection all the members, the recorder, and the parties to the investigation returned to the regular place of meeting, where the board was reassembled.

1033. Recorder rests his case.—

The recorder stated that he had no more witnesses (40).

1034. Examination of a witness called by a defendant.—

A witness called by Lieutenant Commander (engineering) X——— Y. Z———, a defendant, entered, was informed of the subject matter of the investigation, and declared as follows:

Examined by the recorder:

1. Q. State your name, rating, and present station.

A. * * *.

* * * * * * *

Examined by Lieutenant Commander (engineering) Z———, defendant:

2. Q. * * *.

A. * * *.

* * * * * * *

Examined by Lieutenant (engineering) X———, defendant (41):

17. Q. * * *.

A. * * *.

* * * * * * *

Examined by Machinist C———

22. Q. * * *.

A. * * *.

* * * * * * *

(38) And their counsel, if there be such.

(39) Art. 665, *re* reading of record, applies to a board of investigation. If the record is objected to, proceed as in art. 765. For variations, see art. 950, note 52, and art. 963.

(40) After the recorder rests his case, the complainant, if there be one, may introduce evidence. (Art. 914.)

(41) Each defendant may examine a witness called by another.

Cross-examined by the recorder:

25. Q. * * *.

A. * * * (42).

* * * * * * *

Reexamined by Lieutenant (engineering) X———, defendant:

28. Q. * * *.

A. * * *.

* * * * * * *

The board did not desire to examine this witness.

None of the parties to the investigation desired further to examine this witness.

The board informed the witness that he was privileged to make any further statement covering anything relating to the subject matter of the investigation which he thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness made the following statement: * * * (43).

1035. Defendant as a witness in his own behalf.—

Lieutenant Commander (engineering) X——— Y. Z———, defendant, called himself as a witness in his own behalf and declared as follows:

Examined by Lieutenant Commander (engineering) Z———, defendant:

1. Q. * * *.

A. * * *.

* * * * * * *

Examined by Lieutenant (engineering) X———, defendant:

11. Q. * * *.

A. * * *.

(Examination continued as for preceding witness.)

None of the parties to the investigation desired further to examine this witness; he resumed his seat as defendant (44).

1036. Defendants rest their cases.—

Neither of the defendants desired to call any more witnesses (45).

1037. Witness for the board.—

The board was cleared. The board was opened and all parties to the investigation entered. The board announced that it desired further declarations, and directed that Machinist's Mate, First Class,

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(42) If there be a complainant he may also cross-examine.

(43) For variation, see art. 1025.

(44) The recorder, a member, or a party to the investigation is not warned after declaring or testifying.

(45) After the defendants rest their cases, any persons who have been granted the privileges of defendants (note 19 *supra*) may call witnesses.

Variation.—(In case no more witnesses are desired by any one.) "Neither the board, the recorder, nor any party to the investigation desired to call any more witnesses."

D——— D———, U. S. Coast Guard, be called as a witness for the board.

A witness called by the board entered, was informed of the subject matter of the investigation, and declared as follows:

Examined by the recorder:

1. Q. State your name, rating, and present station.

A. * * *.

Examined by the board:

2. Q. * * *.

A. * * *.

* * * * * * *

1038. No more witnesses desired.—

Neither the board, the recorder, nor any party to the investigation desired to call any more witnesses.

1039. Statements.—

Lieutenant Commander (engineering) Z——— and Lieutenant (engineering) X———, defendants, each submitted a written statement, which statements were read, and are appended, marked "B" and "C" (46).

1040. Arguments (47).—

The recorder read his written opening argument, appended, marked "D" (48).

Lieutenant Commander (engineering) Z———, defendant, read a written argument, appended, marked "E" (49).

Lieutenant (engineering) X———, defendant, desired to make no argument.

The recorder read his written closing argument, appended, marked "F" (50).

1041. Investigation finished.—

The investigation was finished, all parties thereto withdrawing (51).

---

(46) Art. 915.

Variation.—"Lieutenant Commander (engineering) Z———, a defendant, made an oral statement as follows * * *."

For other variations, see under art. 771.

(47) For arguments, see arts. 567 to 570.

(48) Variation 1.—"The recorder made the following opening argument * * *."

Variation 2.—"The recorder desired to make no opening argument."

(49) Variations similar to the above, and as in art. 772, note 60.

(50) Variations as above. See also art. 772, note 61.

(51) Note 63 to article 958 applies also to a board of investigation.

1042. Finding of facts (52).—

After full and mature deliberation the board finds as follows:

Finding of facts **(53).**

1. *Main engines.*—The main turbines are in good and normal condition, no defects being apparent or known.

2. *Boilers.*—Several 2-inch tubes in boiler No. 2 were found slightly pitted. Quite a number of lower 4-inch tubes in all boilers were found pitted, but not seriously. A majority of the nipples from front headers to cross boxes are pitted, but not seriously. Side casings of nearly all boilers are leaky. Several side boxes are bulged. The water side of boiler No. 2 was greasy and dirty. Others inspected were in good condition. Handhole plates are in good condition. On the whole the boilers are in good shape, and are now being thoroughly cleaned and overhauled.

3. *Main air pumps.*—These are of the Worthington type with dry and wet ends. In the dry end of the starboard pump the bronze packing ring was frozen in its groove and fused to the plunger. This was repaired. The location of the wet ends of the pumps makes it impracticable to overhaul same during operative period. An examination of the log discloses poor vacuum when ship is underway.

4. *Other auxiliaries.*—So far as the board was able to observe, these are in good condition.

5. *Method of operation.*—At the present time this appears to be in accordance with Coast Guard regulations and practice. So far as can be ascertained from recent data the fuel consumption, both at sea and in port, has been steadily reduced and is approaching former standards.

1043. Opinion.—

Opinion.

1. That the only existing defects of a serious nature are in the main air pumps.

2. That no responsibility exists therefor, the defects being due to long use of the pumps and the fact that they are so located that it is impracticable for the ship's force to overhaul them while the ship is operating.

---

(52) Finding, opinion, and recommendation may be typewritten.—The finding, opinion, and recommendation of a board of investigation need not be in the handwriting of the recorder, but may be typewritten.

(53) For definition of "facts," see art. 959, note 65.

3. That the main air pumps should be thoroughly overhauled at the first opportunity, and that augmenters should be installed to increase the vacuum obtainable (54).

A——— B. C———,
Lieutenant Commander, U. S. Coast Guard.
D——— E. F———,
Lieutenant, U. S. Coast Guard.
G——— H. I———,
Lieutenant, U. S. Coast Guard (55).

1044. Final entry.—

The record of proceedings of the second day of the investigation was read and approved, the board being cleared during the reading of so much thereof as pertained to the proceedings in cleared board, and the board having finished the investigation, then, at———, adjourned to await the action of the convening authority.

A——— B. C———,
Lieutenant Commander, U. S. Coast Guard,
Senior Member.
J——— K. L———,
Lieutenant, U. S. Coast Guard, Recorder (56).

1045. Documents appended and exhibits (57).—

(Here is appended the written statement submitted by Lieutenant Commander (engineering) Z———, defendant, in art. 1039.) B (58).

(Here is appended the written statement submitted by Lieutenant (engineering) X———, defendant, in art. 1039.) C

(Here is appended the recorder's written opening argument, read in art. 1040.) D

(Here is appended the written argument read by Lieutenant Commander (engineering) Z———, defendant, in art. 1040.) E

(Here is appended the recorder's written closing argument, read in art. 1040.) F

(Following the documents appended, exhibits are appended in the order in which they were received in evidence.) (Exhibit 1.) (59).

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(54) For variations, see arts. 960 and 1006.

(55) Minority report.—If there be a minority report, the nonconcurring member does not sign here, but makes his report immediately following the report of the board and subscribes his name thereto. (Art. 982.) The form of such report is as shown in art. 962.

(56) Dissolution.—The board is dissolved by order of the convening authority.

(57) Documents having to do with the precept are prefixed immediately following it; all others are appended.

(58) For marking of documents, see art. 668. For order in which documents are prefixed or appended, see art. 667.

(59) When the exhibit is an instrument of real evidence the procedure set forth in art. 759 should be observed. For securing exhibits to the record or forwarding separately, see art. 660.

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CHAPTER XV.

INVESTIGATION TO INQUIRE INTO THE DESIRABILITY OF RETAINING AN ENLISTED PERSON IN THE COAST GUARD PROCEDURE.

1051. Cover page.—

RECORD OF PROCEEDINGS

of an

INVESTIGATION

convened on board the

U. S. C. G. C. MIAMI (1)

at Key West, Florida,
by order of

THE COMMANDING OFFICER U. S. C. G. C. MIAMI,

To inquire into the desirability of retaining Seaman, Second Class, J——— A. B——— in the Coast Guard.

June 11, 1923 (2).

1052. Index for lengthy case (3).—

(This is similar to the index for a general court shown in art. 702.)

(1) Variation.—

"Conducted at
"THE COAST GUARD ACADEMY,
"New London, Connecticut,
"by order of
"THE SUPERINTENDENT OF THE ACADEMY."

(2) This is the date of first meeting of the investigation.

(3) An index is required whenever a record exceeds 20 pages in length. (Art. 674.)

1053. Precept (4).—

U. S. C. G. C. MIAMI,
Key West, Florida, June 8, 1923.

From: Commanding Officer.
To: Lieutenant A——— B. C———, U. S. Coast Guard.
Subject: Board of investigation, seaman, second class, J——— A. B———.

1. Under authority of section 183 of the Revised Statutes, as amended by the act of February 13, 1911 (5), you are hereby detailed to investigate the desirability of retaining in the Coast Guard seaman, second class, J——— A. B———, U. S. Coast Guard, against whom allegations of undesirability (inaptitude) have been made.

2. You will notify seaman, second class, J——— A. B——— of the time and place of meeting and that he will be a party to the investigation in the status of defendant, and that he will be accorded the rights of such party in accordance with the provisions of Coast Guard Courts and Boards.

3. You will make a thorough investigation into all the circumstances connected with this man's fitness for the service and upon completion of the investigation you will make a complete report to the commanding officer, U. S. C. G. C. *Miami*, of the facts which you deem to be established, together with the testimony taken and your recommendations in the case (6).

4. Your attention is particularly invited to article 971, Coast Guard Courts and Boards.

5. Clerical assistance will be furnished you upon application to the executive officer of the *Miami* (7).

———— ————,
Commanding. A (8).

1054. Investigation meets.—

FIRST DAY (9).

U. S. C. G. C. MIAMI,
Key West, Florida, June 11, 1923.

The investigating officer, Lieutenant A——— B. C———, introduced yeoman, second class, C——— E. M———, U. S. Coast Guard, the reporter, who took seat as such (10).

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(4) See art. 995, note 6.
(5) See art. 995, note 7.
(6) Unless the power is expressly given by the convening authority the investigating officer should administer no oaths. See art. 995, note 8.
(7) For clerical assistance, see art. 490, which applies to an investigation.
(8) The original precept is to be prefixed to the record.
For marking of documents, see art. 668.
For order in which documents are prefixed or appended, see art. 667.
(9) Where the investigation occupies but one day this entry is omitted.
(10) For appointment of reporter, see art. 490, which also applies to an investigation. Reporting may be in shorthand. (Art. 517.)
For oath for reporter, see art. 996, note 16.

1055. Defendant enters.—

J——— A. B———, seaman, second class, U. S. Coast Guard, entered as defendant and stated that he did not desire counsel (11).

The investigating officer warned B——— that the evidence before the investigation might be used against him, advised him of his right to counsel, and informed him that counsel would be designated should he so desire.

B——— persisted in his refusal of counsel (12).

The investigating officer found this man to be serving his ——— enlistment.

1056. Precept read.—

The investigating officer read the order directing him to make the investigation, original prefixed marked "A."

1057. Party informed of his rights.—

The defendant was informed of his rights (13).

1058. Open or closed doors.—

The investigating officer announced that the investigation would be conducted with open doors (14).

1059. Witnesses separated.—

No witnesses not otherwise connected with the investigation were present (15).

1060. Witness called (16).—

(An investigation is conducted in the same manner as a board of inquiry (arts. 941 to 957) where the investigating officer has been authorized to administer oaths; if he has not been so authorized, it is conducted in the same manner as a board of investigation (arts. 1025 to 1040).)

1061. Investigation finished.—

The investigation was finished, all parties thereto withdrawing.

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(11) Variation.—" * * * and with the permission of the investigating officer introduced Lieutenant U——— V. W———, U. S. Coast Guard, as his counsel."

For other variations, see under art. 935.

(12) This entry is omitted where the accused has counsel. See in this connection art. 911.

(13) As set forth in art. 971.

Parties to an investigation have not the right to challenge the investigating officer.

(14) Whether the investigation shall be conducted with closed or open doors must depend on the nature of the matter to be examined, and, if not specified by the officer ordering the investigation, shall be decided by the investigating officer. See note 28 to art. 934, which applies also to an investigation.

(15) The provisions of art. 374, so far as applicable, shall be observed by an investigating officer.

(16) An investigating officer has not the power to compel the attendance of civilian witnesses.

Oath to witnesses.—When the investigating officer has been empowered to administer oaths the following oath shall be administered by him to witnesses:

"You, A——— B———, do solemnly swear (or affirm) that the testimony you shall give in the matter of * * * now in hearing shall be the truth, the whole truth, and nothing but the truth, so help you God (or, this you do under the pains and penalties of perjury)."

1062. Finding of facts.—

After full and mature deliberation, the investigating officer finds as follows:

Finding of facts (17).

That the said seaman, second class, J——— A. B.———, U. S Coast Guard, is undesirable by reason of ———.

1063. Recommendation.—

Recommendation.

The investigating officer recommends that seaman, second class, J——— A. B——— be discharged from the U. S. Coast Guard (18).

1064. Final entry.—

A——— B. C———,

Lieutenant, U. S. Coast Guard, Investigating Officer.

1065. Action by convening authority.—

Case of first year of first enlistment:

The proceedings, findings, and recommendation of an investigation in the case of seaman, second class, J——— A. B———, U. S. Coast Guard (19), are approved and he has this day been given an ordinary discharge for ———.

The record in the case has been submitted to the Commandant, U. S. Coast Guard.

———— ————,

Commanding.

1066. Case of other than first year of first enlistment.—

The proceedings, findings, and recommendation of an investigation in the case of seaman, second class, J——— A. B———, U. S. Coast Guard (20), are approved and referred to the Commandant, U. S. Coast Guard.

———— ————,

Commanding.

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(17) After mature deliberation on the evidence introduced during the investigation, the investigating officer shall report the facts found to be established. He shall make a recommendation as required by the precept.

The finding and recommendation may be typewritten. (Art. 985.)

For definition of "facts," see art. 958, note 65.

(18) The findings and recommendation are not to be disclosed. (Art. 984.) They may be typewritten. (Art. 985.)

(19) Variation.—"——— are disapproved, it appearing from the testimony in the case that his undesirability was caused by violations (infractions) of discipline. (The reason for disapproval shall be fully stated.)"

(20) Variation.—"——— are disapproved, it appearing that (here state in full reason for disapproval), and are referred to the Commandant, U. S. Coast Guard."

CHAPTER XVI.

INVESTIGATION OF LOSS OF LIFE PROCEDURE.

1071. Cover page.—

RECORD OF PROCEEDINGS
of an
INVESTIGATION
convened at
AVALON COAST GUARD STATION
Avalon, New Jersey
by order of
THE COMMANDANT, U. S. COAST GUARD (1)
To inquire into the loss of life near Avalon Station, June 18, 1923 (2).

1072. Index for lengthy case (3).—

(This is similar to the index for a general court shown in art. 702.)

1073. Precept (4).—

HEADQUARTERS.

TREASURY DEPARTMENT,
UNITED STATES COAST GUARD,
Washington, June 14, 1923.

From: Commandant.

To: Lieutenant A——— B. C———, U. S. Coast Guard, Assistant Inspector, New York, N. Y.

(1) Boards to investigate loss of life within the scope of operations of Coast Guard stations are convened by the Commandant, U. S. Coast Guard.

(2) This is the date of first meeting of the investigation.

(3) An index is required whenever a record exceeds 20 pages in length. (See art. 674.)

(4) The precept, or letter to the investigating officer, shall refer to the statutory authority hereinafter given (note 5 *infra*) and shall supply such officer with the instructions and information necessary to the conduct of the investigation, for which latter purpose reference may be made to attached papers. It shall also name the parties to the investigation.

By whom an investigation may be ordered and how constituted.—The Commandant, U. S. Coast Guard, is empowered to order one officer to conduct an investigation of loss of life within the scope of operations of a Coast Guard station.

Subject: Investigation of loss of life near Avalon Coast Guard Station, fifth district, June 9, 1923.

1. Under authority of section 9 of the act of June 18, 1878 (5), you are hereby detailed to investigate, as soon as practicable, the circumstances connected with the wreck of the steamer———, near Avalon Coast Guard Station, on June 9, 1923, resulting in the loss of several lives, with the view of ascertaining the cause of the disaster, and whether the officer in charge or the crew of said station have been guilty of any neglect or misconduct in the premises.

2. In accordance with the provisions of the above-mentioned act you are authorized to administer an oath to any witness attending to testify or depose during the course of the investigation (6).

3. You will notify L——— M. N———, boatswain (L), U. S. Coast Guard, who was officer in charge of the Avalon Coast Guard Station on June 9, 1923, of the time and place of meeting, and that he will be a party to the investigation in the status of defendant and will be accorded the rights of such party in accordance with the provisions of Coast Guard Courts and Boards.

4. You will make a careful and thorough examination into all the matters connected with the above occurrence, including the assistance rendered by the officer in charge and crew of said station, and upon the completion of the investigation you will transmit to Headquarters a complete report, including the testimony taken, the facts which you deem to be established, your opinion as to whether or not the accident occurred within the scope of the operations of Coast Guard stations, and your recommendation as to whether or not further action is deemed necessary; and, if so, what action and against whom.

5. Your attention is particularly invited to article 971, Coast Guard Courts and Boards.

———, ———,

Rear Admiral, U. S. Coast Guard, Commandant. A (7).

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(5) Sec. 9 of the act of June 18, 1878 (20 Stat., 163) reads as follows:

"That upon the occurrence of any shipwreck within the scope of operations of the Life-Saving Service (now Coast Guard, 38 Stat. 801), attended with loss of life, the general superintendent (commandant) shall cause an investigation of all the circumstances connected with the said disaster and loss of life to be made, with a view of ascertaining the cause of the disaster, and whether any of the officers or employees of the service have been guilty of neglect or misconduct in the premises; and any officer or clerk in the employment of the Treasury Department who may be detailed to conduct such investigation, or to examine into any alleged incompetency or misconduct of any of the officers or employees of the Life-Saving Service (now Coast Guard), shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation."

(6) All testimony given in an investigation of loss of life occurring within the scope of operations of Coast Guard stations should be under oath.

(7) The original precept is to be prefixed to the record.

For marking of documents, see art. 668.

For order in which documents are prefixed or appended, see art. 667.

1074. Investigation meets.—

FIRST DAY (8).

AVALON COAST GUARD STATION,
Avalon, New Jersey, Monday, June 18, 1923.

The investigating officer, Lieutenant A——— B. C———, U. S. Coast Guard (9), administered the prescribed oath to Mr. A——— B———, the reporter, who took seat as such (10).

1075. Defendant enters (11).—

L——— M. N———, boatswain (L), U. S. Coast Guard, entered as defendant and stated that he did not desire counsel (12).

The investigating officer warned Boatswain (L) N——— that the evidence before the investigation might be used against him, advised him of his right to counsel, and informed him that counsel will be designated should he so desire.

Boatswain (L) N——— persisted in his refusal of counsel (13).

1076. Complainant and counsel enter (14).—

The complainant, Mr. I——— R. K———, entered. With the permission of the investigating officer, the complainant introduced Mr. Q——— R. P——— as his counsel (15).

1077. Precept read.—

The investigating officer read the order directing him to make the investigation, and the letter of Mr. I——— R. K———, accompanying it, which are hereto prefixed marked "A" and "B" (16).

1078. Parties informed of their rights.—

The complainant and the defendant were informed of their rights (17).

---

(8) Where the investigation occupies but one day this entry is omitted.

(9) In case the investigation is likely to be prolonged, Headquarters may authorize the employment of a stenographer upon application being made therefor by the investigating officer.

Variation.—"The investigating officer, Lieutenant A——— B. C———, U. S. Coast Guard, began the investigation at 10 a. m."

(10) Reporting may be in shorthand. (Art. 517.)

Oath for reporter.—"You, A——— B———, swear (or affirm) to faithfully perform the duty of reporter in taking and recording the proceedings of the investigation, either in shorthand or in ordinary manuscript."

For manner of giving oaths, see art. 527.

(11) For definition of "defendant," see art. 910.

For his rights, see art. 915.

(12) Variation.—"* * * and with the permission of the investigating officer introduced Mr. J——— K. L——— as his counsel."

For other variations, see under art. 935.

(13) This entry is omitted where the defendant has counsel. See in this connection art. 911.

(14) If there be no complainant, or if he do not avail himself of his right to be present, the entries of this article are omitted.

(15) Variations as under art. 936.

(16) Variation.—"The investigating officer read the order directing him to make the investigation, which is hereto prefixed marked 'A'."

(17) As set forth in art. 971.

Parties to an investigation have not the right to challenge an investigating officer.

1079. Open doors.—

The investigating officer announced that the investigation would be conducted with open doors (18).

1080. Witnesses separated.—

No witnesses not otherwise connected with the investigation were present (19).

1081. Witness called (20).—

A witness called by the investigating officer entered, was informed of the subject-matter of the investigation, was duly sworn (21), and testified as follows (22):

Examined by the investigating officer:

1. Q. State your name, residence, and occupation (23).

A. * * *.

* * * * * * *

Cross-examined by the defendant (24):

13. Q. * * *.

A. * * *.

* * * * * * *

Reexamined by the investigating officer:

(An investigation of loss of life occurring within the scope of operations of Coast Guard stations, is conducted in the same manner as a board of inquiry (arts. 931 to 965).)

---

(18) Whenever loss of life within the scope of operations of a Coast Guard station is the subject of investigation the proceedings shall be open to the public and the greatest latitude shall be afforded for the presentation of any complaints of station crew or crews on the occasion of the disaster under investigation.

(19) The provisions of art. 374, so far as applicable, shall be observed by an investigating officer.

(20) Civilian witnesses can not be compelled to appear before an investigating officer.

(21) Witnesses, so far as practicable, shall be examined in the following order: (*a*) survivors of the crew of the wrecked vessel, if any; (*b*) passengers; (*c*) other eyewitnesses whose testimony may be deemed of sufficient importance; (*d*) officers in charge and crews of stations concerned.

Members of station crew as witnesses.—Each member of the station crew who has knowledge of the facts should be sworn as a witness, and after examination by the investigating officer, the interested parties should be given opportunity to examine him. Should the testimony show that any member of the crew is an interested party, he shall be notified of his right to be present, to be represented by counsel, to cross-examine witnesses, offer evidence in his own behalf, and make a statement, and the record shall so show.

Oath to witness.—The following oath shall be administered to each witness:

"You, A——— B———, do solemnly swear (or affirm) that the testimony you shall give in the matter of the loss of life * * * now in hearing shall be the truth, the whole truth, and nothing but the truth, so help you God (or, this you do under the pains and penalties of perjury)."

(22) The investigating officer shall inform each witness, other than a party to the investigation, immediately after the witness enters or is sworn, of the subject-matter of the investigation.

(23) If there be no civilian witnesses this question will be: "State your name, rank (rating), and present station."

(24) A witness before an officer investigating loss of life within the scope of operations of Coast Guard stations is examined in the same manner as a witness before a general court. (See arts. 742 to 760.)

1082. Investigation finished.—

The investigation was finished, all parties thereto withdrawing.

1083. Finding of facts.—

After full and mature deliberation, the investigating officer finds as follows:

Finding of Facts **(25).**

(The finding shall show the facts established relative to the casualty and whether or not blame attaches to any member of the crew of the station.)

1084. Opinion.—

Opinion.

(The opinion shall state whether or not the accident occurred within the scope of operations of Coast Guard stations.)

1085. Recommendation.—

Recommendation.

(The recommendation shall state specifically whether or not further action is deemed necessary, and, if so, what action and against whom.) **(26.)**

1086. Final entry.—

A—— B. C——,

Lieutenant, U. S. Coast Guard, Investigating officer.

1087. Documents appended and exhibits.—

(See arts. 964 and 965 and the notes thereto, which apply to an investigation.)

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(25) After mature deliberation on the evidence introduced during the investigation, the investigating officer shall report the facts found to be established.

The finding and opinion may be typewritten. (Art. 985.)

For definition of "facts," see art. 958, note 65.

(26) The findings, opinions, and recommendations are not to be disclosed. (Art. 984.) They may be typewritten. (Art. 985.)

CHAPTER XVII.

INVESTIGATION FOR REMOVAL OF DISABILITY OF DESERTION PROCEDURE.

1095. Cover page.—

RECORD OF PROCEEDINGS

of a

BOARD

convened on

U. S. C. G. C. MIAMI

at

BOSTON, MASS.

by order of

THE COMMANDANT, U. S. COAST GUARD,

For consideration of the removal of the disability of desertion in case of Fireman, First Class, R——— S. T———, U. S. Coast Guard.

June 25, 1923.(1)

1096. Index for lengthy case (2).—

(This is similar to the index for a general court shown in art. 702.)

(1) This is the date of first meeting of the board.
(2) An index is required whenever a record exceeds 20 pages in length. (Art. 674.)

1097. Precept (3).—

HEADQUARTERS.

TREASURY DEPARTMENT,
UNITED STATES COAST GUARD,

From: Commandant.

Washington, June 21, 1923.

To: Lieutenant (engineering) A——— B. C———, U. S. Coast Guard, Coast Guard Cutter *Miami*, Boston, Mass., via Commander, Eastern Division, and Commanding Officer, *Miami*.

Subject: Board, removal disability desertion, fireman, first class, R——— S. T———.

Inclosure: 1.

1. Under authority of section 5 of the act approved May 26, 1906 (34 Stat., 200) (4), a board consisting of yourself as president and of Lieutenants D——— E. F——— and G——— H. I———, U. S. Coast Guard, as additional members (5), will convene on board the *Miami*, as soon as practicable, for consideration of the inclosed application of fireman, first class, R——— S. T———, U. S. Coast Guard, for the removal of the disability of desertion, he having been found guilty by a general court of desertion from the U. S. C. G. C. *Miami* on February 21, 1923, and sentenced to imprisonment for six months, dishonorable discharge, and forfeiture of pay. Action on the sentence was deferred by department order of March 6, 1923, which placed him on probation (6).

2. It is directed that the board notify fireman, first class, R——— S. T———, U. S. Coast Guard, of the time and place of meeting and that he will be a party to the investigation in the status of defendant and will be accorded the rights of such party in accordance with the provisions of Coast Guard Courts and Boards.

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(3) The precept or convening order, in addition to naming the membership of the board and setting the time and place of meeting, shall state clearly and concisely the matter that is to be investigated and what the report of the board thereon shall include. See note 18 to art. 933, which, in general, applies to the precept for a board for the removal of the disability of desertion.

(4) Sec. 5 of the act approved May 26, 1906 (34 Stat., 200), provides: "* * * That no person who has deserted from the Revenue-Cutter Service (Coast Guard) shall afterwards be employed in said service, or enlisted in any other military or naval service under the United States, unless he shall have delivered himself aboard the vessel from which he deserted, or been apprehended, and the disability shall have been removed by a board of commissioned officers of the said service convened for a consideration of the case, and the action of the said board shall have been approved by the Secretary of the Treasury."

(5) Constitution.—A board for the removal of the disability of desertion shall consist of three officers as members. When engineering personnel is involved an engineer officer shall, whenever practicable, be appointed a member of the board.

(6) If the convening authority desires to empower the board to take testimony under oath, add as next paragraph:

"2. In accordance with the provisions of section 183 of the Revised Statutes, as amended by the act of February 13, 1911, the board is given authority to administer an oath to any witness attending to testify or depose during the course of the investigation." (See art. 995, note 7, for the statute referred to.)

3. The board will make a thorough investigation into the matter hereby submitted to it, and upon the conclusion of its investigation will report the testimony taken, the facts established thereby, and its recommendation.

4. The attention of the board is particularly invited to art. 971, Coast Guard Courts and Boards.

5. The commanding officer of the U. S. C. G. C. *Miami* is hereby directed to furnish the necessary clerical assistance (7).

———— ————,
Rear Admiral, U. S. Coast Guard, Commandant (8). A (9)

1098. Board meets.—

FIRST DAY (10).

U. S. C. G. C. MIAMI,
Boston, Mass., Monday, June 25, 1923.

The board met at 10 a. m.

Present:

Lieutenant (engineering) A———— B. C————, U. S. Coast Guard, member;

Lieutenant D———— E. F————, U. S. Coast Guard, member;

Lieutenant G———— H. I————, U. S. Coast Guard, member and recorder.

The recorder introduced F———— E. D————, yeoman, first class, U. S. Coast Guard, as reporter (11).

The convening order, hereto prefixed marked "A," was read and the board determined upon its procedure and decided to sit with open doors (12).

1099. Defendant enters (13).—

Fireman, First Class, R———— S. T————, U. S. Coast Guard, entered as defendant, and stated that he did not desire counsel (14).

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(7) This paragraph is omitted if clerical assistance is not needed or impracticable to obtain.

(8) **By whom ordered.**—The Commandant, U. S. Coast Guard, is empowered to order boards for the removal of the disability of desertion.

(9) The original precept is to be prefixed to the record.

For marking of documents, see art. 668.

For order in which documents are prefixed or appended, see art. 667.

(10) Where the investigation occupies but one day this entry is omitted.

(11) For the appointment of reporter, see art. 490, which also applies to an investigation. Reporting may be in shorthand. (Art. 517.)

(12) Whether the board shall sit with closed or open doors must depend on the nature of the matter to be examined, and, if not specified by the officer ordering the board, shall be decided by the board. See note 28 to art. 934, which applies also to an investigation.

(13) For definition of "defendant," see art. 910.

For his rights, see art. 915.

(14) **Variation.**—"* * * and with the permission of the board introduced ———— ———— as his counsel."

For other variations, see under art. 935.

1100. Precept read.—

The recorder read the convening order.

1101. Defendant informed of his rights.—

The defendant was informed of his rights (15).

1102. Witnesses separated.—

No witnesses not otherwise connected with the investigation were present (16).

1103. Examination of a witness called by the recorder (17).—

A witness called by the recorder entered, was informed of the subject matter of the investigation, and declared as follows (18):

Examined by the board (19):

1. Q. State your name, rank, and present station.

A. * * *.

* * * * * * *

Cross-examined by the defendant:

13. Q. * * *.

A. * * *.

* * * * * * *

Reexamined by the board.

17. Q. * * *.

A. * * *.

* * * * * * *

None of the parties to the investigation desired further to examine this witness.

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(15) As set forth in art. 971, except that members of the board are not subject to challenge.

(16) The provisions of art. 374, so far as applicable, shall be observed by a board of this character.

(17) For general instructions governing the attendance of witnesses, see arts. 344 to 350.

The board can not compel the attendance of civilian witnesses. See art. 1025, note 25, which applies also to a board of this character.

(18) The board shall inform each witness, other than a member, or a party to the investigation, immediately after the witness enters or is sworn, of the subject matter of the investigation. The examination of a witness is conducted the same as of a witness before a board of inquiry or a board of investigation according to whether the board is authorized to administer oaths or not.

Powers of the board.—The board, although it shall collect material information from apparent or known facts, or from written evidence which it may possess, and shall record the declarations of persons examined before it, shall not take testimony under oath except in important cases in which the order convening the board expressly states that such board is authorized to administer oaths to witnesses in accordance with section 183 of the Revised Statutes, as amended by the act of February 13, 1911 (36 Stat., 898), quoted in art. 995, note 7.

Variation.—(Where the board has been authorized to administer oaths.) "A witness called by the recorder entered, was informed of the subject matter of the investigation, and was duly sworn."

Oath to witnesses.—"You, A——— B———, do solemnly swear (or affirm) that the testimony you shall give in the matter of * * * now in hearing shall be the truth, the whole truth, and nothing but the truth, so help you God (or, this you do under the pains and penalties of perjury)."

(19) Where there is no separate recorder, the board conducts the examination.

The board informed the witness that he was privileged to make any further statement covering anything relating to the subject matter of the investigation which he thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness stated that he had nothing further to say (20).

The witness was duly warned and withdrew (21).

1104. Recorder rests his case.—

The recorder stated that he had no more witnesses.

1105. Examination of a witness called by the defendant.—

A witness called by fireman, first class, R——— S. T———, the defendant, entered, was informed of the subject matter of the investigation, and declared as follows:

Examined by the board:

1. Q. State your name, rating, and present station.

A. * * *.

Examined by fireman, first class, T———, defendant:

2. Q. * * *.

A. * * *.

* * * * * * *

Examined by the board:

17. Q. * * *.

A. * * *.

* * * * * * *

Re-examined by fireman, first class, T———, defendant:

22. Q. * * *.

A. * * *.

* * * * * * *

None of the parties to the investigation desired further to examine this witness.

The board informed the witness that he was privileged to make any further statement covering anything relating to the subject matter of the investigation which he thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness made the following statement: * * * (22).

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(20) Variation.—" The witness made the following statement: * * *."

(21) For warning to a witness, see art. 410.

Variation.—" The witness verified his declaration (testimony—in case the witness was sworn), was duly warned, and withdrew."

For verification of testimony, see art. 408.

(22) For variations, see arts. 1025 and 1034.

1106. Defendant as a witness in his own behalf.—

Fireman, first class, R——— S. T———, defendant, called himself as a witness in his own behalf and declared as follows:

Examined by fireman, first class, T———, defendant:

1. Q. * * *.

A. * * *.

* * * * * * *

Examined by the board:

11. Q. * * *.

A. * * *.

(Examination continued as for preceding witness.)

None of the parties to the investigation desired further to examine this witness; he resumed his seat as defendant (23).

1107. Defendant rests his case.—

The defendant did not desire to call any more witnesses (24).

1108. Witness for the board.—

The board was cleared. The board was opened and all parties to the investigation entered. The board announced that it desired further declarations, and directed that Machinist R——— L———, U. S. Coast Guard, be called as a witness for the board.

A witness called by the board entered, was informed of the subject matter of the investigation, and declared as follows:

Examined by the board:

1. Q. State your name, rank, and present station.

A. * * *.

2. Q. * * *.

A. * * *.

* * * * * * *

Neither the board nor the party to the investigation desired to call any more witnesses.

1109. Statements.—

Fireman, first class, T———, defendant, submitted a written statement, which was read and is appended marked "B" (25).

1110. Investigation finished.—

The investigation was finished, all parties thereto withdrawing (26).

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(23) A member or a party to the investigation is not warned after declaring or testifying.

(24) Variation.—(In case no more witnesses are desired by anyone.) "Neither the board nor the party to the investigation desired to call any more witnesses."

(25) See art. 915.

Variation.—Fireman, first class, T———, the defendant, made an oral statement as follows: * * *."

For other variations, see under art. 771.

(26) Note 63, art. 958, applies also to a board of this character.

1111. Finding of facts (27).—

After full and mature deliberation the board finds as follows:

Finding of facts **(28).**

(Here record findings with reasons therefor at length.)

1112. Recommendation (29).—

Recommendation.

The board recommends: (Here record recommendation in full.)

A——— B. C———,
Lieutenant (engineering), U. S. Coast Guard, President.
D——— E. F———,
Lieutenant, U. S. Coast Guard, Member.
G——— H. I———,
Lieutenant, U. S. Coast Guard, Member and Recorder (30).

1113. Final entry.—

The record of proceedings of the investigation was read and approved, the board being cleared during the reading of so much thereof as pertains to proceedings in cleared board, and the board having finished the investigation, then, at ———, adjourned to await the action of the convening authority.

A——— B. C———,
Lieutenant (engineering), U. S. Coast Guard, President.
G——— H. I———,
Lieutenant, U. S. Coast Guard, Member and Recorder (31).

1114. Documents appended and exhibits (32).—

(Here is appended the written statement submitted by Fireman, first class, T———, the defendant, in art. 1109.) B (33).

(Following the documents appended, exhibits are appended in the order in which they were received in evidence.) (Exhibit 1.) (34).

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(27) **Finding and recommendation may be typewritten.**—The finding and recommendation of the board need not be in the handwriting of the recorder, but may be typewritten.

(28) For definition of "facts," see art. 959, note 65.

(29) The recommendation is signed by the members who concur. A minority recommendation, if there be one, is signed by the member not concurring in the recommendation.

(30) If there be a minority report, the nonconcurring member does not sign here, but makes his report immediately following the report of the board and subscribes his name thereto. (Art. 982.) The form of such report is as shown in art. 962.

(31) **Dissolution.**—The board is dissolved by order of the convening authority.

(32) Documents having to do with the precept are prefixed immediately following it; all others are appended.

(33) For marking of documents, see art. 668.
For order in which documents are prefixed or appended, see art. 667.

(34) For securing exhibits to the record, see art. 660.

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CHAPTER XVIII. (1)

BOARD OF INQUEST PROCEDURE.

1121. Indorsement of reviewing authority.—

OFFICE OF COMMANDER EASTERN DIVISION,
Boston, Mass., September 30, 1921.

The proceedings and opinion of the board of inquest in the foregoing case are approved.

L—— M. N——,
Captain, U. S. Coast Guard,
Commander, Eastern Division.

1122. Indorsement of convening authority (2).—

U. S. C. G. C. WINONA,
Boston, Mass., September 27, 1921.

The proceedings and opinion of the board of inquest in the foregoing case are approved.

P—— Q. R——,
Commander, U. S. Coast Guard, Commanding.

(1) See note 12 to Part II of Chapter XI (immediately preceding art. 930), which applies also to a board of inquest.

(2) See art. 930 and notes thereto, which apply also to a board of inquest except that the convening authority, under the circumstances set forth in art. 904, shall order a board of inquiry; or, if not so empowered, shall immediately forward the record to his next superior in command who is so empowered. When a board of inquiry is ordered the record of the board of inquest may be transmitted to the recorder in order to assist him in conducting the inquiry. (See art. 933, note 18.) When transmitted to the recorder it shall be duly forwarded by the latter together with the record of the board of inquiry.

1123. Cover page.—

RECORD OF PROCEEDINGS
of a
BOARD OF INQUEST
convened on board the (3)
U. S. C. G. C. WINONA
by order of
THE COMMANDING OFFICER
in the case of
S——— T———, late seaman, second class, U. S. Coast Guard.
September 24, 1921 (4).

1124. Index for lengthy case (5).—

(This is similar to the index for a general court shown in art. 702.)

1125. Precept (6).—

U. S. C. G. C. WINONA,
Boston, Mass., September 24, 1921.

From: Commanding Officer.
To: Lieutenant E——— F———, U. S. Coast Guard.
Subject: Convening board of inquest.

1. A board, consisting of yourself as president, and of Lieutenant G——— H——— and Lieutenant (junior grade) I——— K———, U. S. Coast Guard, as additional members (7), will immediately assemble for the purpose of investigating and reporting upon the circumstances attending the death of S——— T———, late seaman, second class, U. S. Coast Guard, attached to this vessel, that occurred on or about 9.40 a. m., this date, at the ——— Hospital, Boston, Mass.

2. The proceedings of the board will be conducted in accordance with the provisions of Coast Guard Courts and Boards, Chapter XVIII.

3. The executive officer of the *Winona* is hereby directed to furnish the necessary clerical assistance.

P——— R. Q———,
Commander, U. S. Coast Guard, Commanding (8). A

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(3) Variation.—

"Convened at
"THE COAST GUARD DEPOT, SOUTH BALTIMORE, MD.,
"by order of
"THE COMMANDANT, U. S. COAST GUARD."

(4) This is the date of first convening for the inquest.

(5) An index is required whenever a record exceeds 20 pages in length. (Art. 674.)

(6) The precept or convening order names the membership of the board and states the matter to be investigated. The original is prefixed to the record.

(7) Constitution.—Boards of inquest shall be composed of three commissioned officers, unless there be not a sufficient number available for that duty, when a warrant officer may serve as a member of a board to consider the death of an enlisted person.

Recorder.—The junior member of the board acts as recorder. (Art. 981.)

(8) By whom and when ordered.—In all cases of death occurring within the jurisdiction of the Coast Guard as the result of an accident, or attended with unnatural or suspicious circumstances, where the body of the deceased has been recovered, the commanding officer of the deceased shall order a board of inquest to assemble and investigate the matter. (See art. 904.) If such a death occur in the complement of a Coast Guard station, the officer in charge of the station, or in case of his death the ranking enlisted man of the station, shall ascertain all the particulars required to be obtained by a board of inquest and forward his report to Headquarters.

1126. Board meets.—

U. S. C. G. C. WINONA,
Boston, Mass., September 24, 1921.

The board of inquest assembled by the order hereto prefixed marked "A," on the body of S——— T———, late seaman, second class, U. S. Coast Guard, found dead, met at 10 a. m.

Present:

Lieutenant E——— F———, U. S. Coast Guard, president;

Lieutenant G——— H———, U. S. Coast Guard, member;

Lieutenant (Junior Grade) I——— K———, U. S. Coast Guard, member and recorder.

The recorder read the order convening the board (9).

1127. Board inspects body (10).—

The board proceeded to the ——— Hospital, Boston, Mass., for the purpose of viewing the body (11).

1128. Witness called (12).—

A witness was called and declared as follows (13):

Examined by the board:

1. Q. State your name, residence, and occupation.

A. S——— B———, ——— Hospital, Boston, Mass., physician.

2. Q. State all you know about the death of S——— T———, seaman, second class, U. S. Coast Guard.

A. * * *.

3. Q. * * *.

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(9) **Oaths not authorized.**—Neither the members of the board nor any person that may be examined shall be sworn.

(10) **First duty of board.**—The board shall, after convening, first proceed to the spot where the body has been found, or where it may be, identify it, examine into its condition, and note its surroundings for the purpose of discovering, if possible, some evidence that may tend to throw light on the matter. If the body of the deceased shows wounds or bruises such as to indicate or create suspicion that he came to his death by violent means, it shall be the duty of the board to ascertain, with as much exactness as possible, the precise nature of the wounds or blows and of the instrument by which they were inflicted.

(11) **Variation.**—"The board proceeded to the place where the body was found * * *."

(12) **Board to receive evidence.**—The board shall receive and record all the material evidence procurable relative to the manner in which the deceased came to his death. If there be reason to suspect a homicide, the board shall endeavor to ascertain the person or persons responsible, if there were any aiders or abetters, and such other particulars as may justify the delivery of the person or persons accused of the homicide to the civil authorities for trial.

Summoning witnesses.—Art. 1003, note 27, applies to a board of inquest. Every witness who may be able to throw any additional light on the manner or cause of death should be called before the board.

(13) **Declarations of witnesses.**—Boards of inquest not being empowered to administer oaths can not take sworn testimony. The statements of witnesses before such boards are known as declarations.

1143. Modification to precept.—

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, August 5, 1923.

Commander D——— E. F———, U. S. Coast Guard,
Coast Guard Examining Board, *Washington, D. C.*

Subject: Change in membership of board.

SIR: Commander M——— N. O———, U. S. Coast Guard, is hereby appointed a member of the Coast Guard examining board of which you will become president by virtue of your seniority, convened at Coast Guard Headquarters, Washington D. C., by precept of August 1, 1923, vice Captain A——— B. C———, U. S. Coast Guard, hereby relieved.

By direction of the President.

Respectfully,

——— ———,
Secretary of the Treasury.

A true copy. Attest:
G——— H. I———,
Commander, U. S. Coast Guard, Recorder.

FIRST DAY.

1144. Board meets.—

COAST GUARD EXAMINING BOARD,
COAST GUARD HEADQUARTERS,
Washington, D. C., August 8, 1923 (10).

The board met at 10.30 a. m., this day, pursuant to orders, copies prefixed marked "A" and "B" (11).

Present:

Commander D——— E. F———, U. S. Coast Guard, president;
Commander M——— N. O———, U. S. Coast Guard, member;
Commander G——— H. I———, U. S. Coast Guard, member and recorder (12).

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(10) This is the date of meeting. Subsequent dates are appropriately referred to in the proceedings.

(11) **Variation.**—" * * * pursuant to an order, copy prefixed marked "A."

(12) **Variation 1.**—" Commander M——— N. O———, U. S. Coast Guard, a member, was absent on account of illness (or other cause). In view of the fact that this was only temporary in its nature, the board adjourned to meet the following day.

" The board met at 10 a. m., August 9, 1923."

Variation 2.—" Commander D——— E. F———, U. S. Coast Guard, a member, was absent on account of illness (or other cause), which would prevent his attendance for an indefinite time. The president therefore addressed a letter to the convening authority in the matter, and the board then adjourned to await his further action in the premises. Copy of letter appended marked '—'."

1145. Precept read (13).—

The precept and modification thereof were read by the recorder (14).

1146. Board and recorder sworn.—

The board and the recorder were duly sworn (15).

1147. Receipt of examination papers.—

One set of examination papers of Lieutenant A——— Z. B———, U. S. Coast Guard, for promotion to the rank of lieutenant commander, U. S. Coast Guard, was received (16).

1148. Examination of papers.—

The board began the marking of the professional papers.

At 4.30 p. m. the board adjourned until 9.30 a. m. to-morrow, the 9th instant.

SECOND DAY.

COAST GUARD EXAMINING BOARD,
COAST GUARD HEADQUARTERS,
Washington, D. C., August 9, 1923 (17).

The board met at 9.30 a. m., all the members present.

The board resumed the marking of the professional papers.

At 4.30 p. m. the board adjourned until 9.30 a. m. to-morrow, the 10th instant.

THIRD DAY.

COAST GUARD EXAMINING BOARD,
COAST GUARD HEADQUARTERS,
Washington, D. C., August 10, 1923.

The board met at 9.30 a. m., all the members present.

The board continued the marking of the professional papers.

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(13) **Procedure.**—The board of examiners shall be duly organized and sworn in each case, in the same manner as provided for general courts. It shall have power to take testimony and to examine all matters in the files and records of Coast Guard Headquarters in relation to any officer whose case is to be considered by it. (See note 18 *infra*.)

(14) **Variation.**—"The precept was read by the recorder."

(15) **The recorder is first sworn by the president.—**

Oath for recorder.—"You, G——— H. I———, do solemnly swear (or affirm) that you will honestly and impartially examine and report upon the case of B——— A. R——— now before this board and about to be examined and that you will keep a true record of the proceedings in the case."

The members are then sworn by the recorder.

Oath for members.—"You, D——— E. F——— and M——— N. O———, and each of you, do solemnly swear (or affirm) that you will honestly and impartially examine and report upon the case of B——— A. R——— now before this board and about to be examined."

When there are several candidates before the board one oath to each member and one to the recorder will be sufficient; but in such cases the name of each candidate shall be mentioned in each oath.

(16) **More than one officer examined.**—If more than one officer is to be examined the record shall show that the examination papers of each was received, mentioning each by name and rank, and the rank for which he was examined.

(17) There is no requirement that an examining board meet daily.

1149. Examination of papers completed.—

The board completed the marking of all professional papers and the examination and marking of all records (18) of Lieutenant A——— Z. B———, and at 4.25 p. m. adjourned until 9.30 a. m. to-morrow, the 11th instant.

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(18) **Consideration of matter relative to candidate.**—There shall be submitted to the board for its consideration all matters in the files and records at Coast Guard Headquarters which relate in any way to the mental, moral, or professional fitness of the officer (or officers) whose case(s) is (are) being inquired into, with the exception that no fact which occurred prior to the last examination of the candidate whereby he was promoted, which has been inquired into and decided upon, shall be again inquired into, but such previous examination, if approved, shall be conclusive unless such fact continuing shows the unfitness of the officer to perform all his duties at sea.

All matters to be investigated.—Entries in the medical history of the candidate or other accompanying papers, not within the prohibition stated above, indicating moral or other unfitness, shall be investigated by a Coast Guard examining board. The candidate shall be fully and frankly informed by the board of any doubt it may entertain at any time as to his fitness for promotion, in order that he may have the opportunity to call any witnesses he may desire or to make a statement. In case witnesses are called they are examined in the same general manner as witnesses before a general court. (Arts. 371 to 400.) The statement, if any, is recorded as in a general court. (Art. 564.)

Examination to be thorough.—No officer shall be rejected until after a thorough public examination of himself and of the records of Headquarters in his case, unless he shall fail to appear before the board after having been duly ordered.

Candidate to appear personally if necessary.—If the board deems it necessary, in order to establish the fitness of the candidate, that he appear personally before it, Headquarters shall be so informed with the reasons therefor.

Summoning witnesses.—All witnesses before a Coast Guard examining board shall be summoned by the Commandant, but, as a general rule, it may be assumed that, had the candidate's professional examination and record been satisfactory to the board, it would have been unnecessary for him to summon witnesses in his behalf. Therefore, except under unusual circumstances, Headquarters can do no more than grant permission to an officer, who is summoned as a witness, to be absent from his station and duty; and all the expenses of the aforesaid witness must be borne by the officer who desires to have him summoned.

Witness before the board.—Any officer may be called before the board to give evidence if deemed necessary. Witnesses, before testifying, shall be sworn.

Oath administered by president to witnesses.—"You, A——— B———, do solemnly swear (or affirm) that you will make true answer to such questions as may be put to you in the case of ——— ———, now under examination by this board."

In case the witness is to be examined upon written interrogatories.—Such questions as the candidate may reasonably request to have asked by means of written interrogatories regarding any particular matter or incident touching his fitness for promotion may be addressed by Headquarters to any officer having knowledge of the facts. Whenever such a request is deemed unreasonable by the board, it should be at once referred to Headquarters for decision.

Officers junior in rank to the candidate shall not be questioned as to matters of opinion.—No inquiry as to matter of opinion shall be put to any officer who is junior in rank to the candidate for promotion.

Candidate as a witness.—The candidate is authorized, if he so desires, to submit a statement to the board. Inasmuch, however, as mere *ex parte* statements of a person not subjected to cross-examination are of little weight as evidence, the proper procedure is to permit the candidate, if he so desires, to take the stand as a witness. Under such circumstances he is, of course, subject to cross-examination. Likewise, the board may call the candidate as a witness.

FOURTH DAY.

COAST GUARD EXAMINING BOARD,
COAST GUARD HEADQUARTERS,
Washington, August 11, 1923.

The board met at 9.30 a. m., all the members present.

1150. Examination concluded.—

The examination of the candidate having been concluded, he was discharged from further attendance (**19**).

1151. Finding and recommendation (20).—

The board having deliberated on the evidence before it, decided that the mental, moral, and professional fitness of the candidate (candidates—name each with his rank, if more than one) to perform all the duties of the grade for which he (each) was examined has been established to its satisfaction (**21**).

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(19) This entry is not made where the candidate does not appear before the board.

Candidate not to be discharged before completion of case.—Care should be taken not to discharge a candidate who appears before the board until his case is fully completed. This applies particularly to cases where there are unfavorable reports or other evidence.

(20) Responsibility of the officer under examination.—The onus of establishing professional fitness shall be held to rest entirely upon the officer under examination. The mental and moral fitness of the candidate shall be assumed unless a doubt shall be raised on either head, in the mind of any member of the board, from the answers contained in any of the interrogatories or reports on fitness, from the general reputation of the candidate, or from other evidence of record.

Rules governing board's recommendation.—It shall be held obligatory upon any member of the board to decline to recommend the promotion of any officer until he is satisfied of the officer's entire mental, moral, and professional fitness for promotion. The board, while careful not to do injustice to any officer regarding whom there is any doubt, shall take equal care to safeguard the honor and dignity of the service, and shall recommend no officer for promotion as to whose fitness a doubt exists. In case of dissent the majority report becomes the report of the board.

(21) Board must state the cause of the candidate's failure.—Whenever the board fails to recommend a candidate for admission or promotion, it must state on the record whether such failure is owing to his mental, moral, or professional unfitness. When the unfitness of a candidate for promotion is "by reason of drunkenness, or from other cause arising from his own misconduct," the record must so state and must also show that the candidate was "informed of and heard upon the charges against him," and it must further state whether or not the moral disqualification of the candidate is the result of his own misconduct. (*See* note 24 *infra.*)

Record must show specifically that unfavorable evidence was considered.—When there is evidence of an unfavorable nature, the record must show affirmatively that the board fully considered this unfavorable evidence. It is not sufficient to set forth in general terms that unfavorable matter was considered, but the specific unfavorable report or other matter must be set forth in full, together with the reasons that guided the board in its recommendation.

Variation 1.—"* * * has been established to its satisfaction. In arriving at its conclusion as to the professional (moral) fitness of the candidate, the board fully considered the record of proceedings of the general court before which the candidate was

We hereby certify that, in our judgment, Lieutenant A——— Z. B———, U. S. Coast Guard, has the mental, moral, and professional qualifications to perform efficiently all the duties of the grade for which he was examined, and we recommend him for promotion (22).

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tried October 19, 19— (the unfavorable reports on fitness from October 1, 19—, to March 31, 19—, and from April 1, 19—, to September 30, 19—, as follows:) (the letter of reprimand addressed to the candidate by the department under date of March 4, 19—, as follows:), but in view of the candidate's otherwise excellent record as indicated by his reports on fitness (or state other reasons), the board came to a favorable conclusion as to his professional (moral) fitness notwithstanding such evidence."

Variation 2.—"The board, having deliberated on the evidence before it, decided that the mental and the moral fitness of the candidate to perform all his duties at sea has been established to its satisfaction; but that owing to deficiency in the subject of ———, as shown by his written examination papers hereto appended (or as the case may be), his professional fitness has not been so established."

Variation 3.—"The board having deliberated on the evidence before it, and having determined that from such evidence it appears prima facie that Lieutenant A——— Z. B———, U. S. Coast Guard, is not morally qualified for promotion by reason of his own misconduct (drunkenness) (overindulgence in intoxicants) (or, as the case may be), he was called before the board and informed of and given an opportunity to be heard upon the charges against him, as follows:

"On October 19, 19—, he was under the influence of intoxicating liquor on board of the U. S. C. G. C. ——— while executive officer of that vessel.

"That in the report of fitness from April —, 19—, to September —, 19—, his commanding officer reported that he would object to having him under his immediate command unless he received satisfactory assurance that this officer would entirely abstain from the use of intoxicating liquor.

"The claim of ——— & Co., New York, dated September —, 19—, as follows: * * *

"The claim of H——— & B———, Brooklyn, N. Y., dated November —, 19—, as follows: * * *

"An extract from the medical record of the candidate, dated July —, 19—, and reading as follows: * * *

"Lieutenant B——— asked permission to introduce A——— R——— as a witness. The request was granted and the witness entered and was duly sworn.

(Testimony recorded as for defense in general court.)

"Lieutenant B———, the candidate, was, at his own request, called as a witness and duly sworn, etc.

"After the consideration of his case, during which the board was cleared, the board was opened, and the candidate was discharged from further attendance.

"The board was then cleared for deliberation and decided that the mental and professional fitness of the candidate to perform all his duties at sea has been established to its satisfaction; but that, by reason of drunkenness (or, by reason of ———) which is the result of his own misconduct, his moral fitness has not been so established.

Variation 4.—(In case of a candidate for appointment.) "The board, having deliberated on the evidence before it, found that the candidate has obtained a general average of ——— per cent and decided that his mental, moral, and professional qualifications have been established to its satisfaction."

(22) Variation.—(In case of rejection.) "We hereby certify that Lieutenant A——— Z. B———, U. S. Coast Guard, has the mental and the moral, but not the professional (or as the case may be) qualifications to perform efficiently all the duties of the grade for which he was examined, to wit, lieutenant commander, and do not recommend him for promotion."

1152. Authentication of record (23).—

D——— E. F———,
Commander, U. S. Coast Guard, President.
M——— N. O———,
Commander, U. S. Coast Guard, Member.
G——— H. I———,
Commander, U. S. Coast Guard, Member and Recorder.

1153. Documents appended.—

(Here are appended the written examination papers submitted to the board.) 1 (to) 35.

(Here is appended a copy of the questions, together with tabulated form of the marks attained, etc.)

1154. Same: Letter transmitting matter in files.—

TREASURY DEPARTMENT,
UNITED STATES COAST GUARD,
Washington, August 6, 1923.

From: Commandant.

To: D——— E. F———, Commander, U. S. Coast Guard, President, Coast Guard Examining Board, Coast Guard Headquarters, Washington, D. C.

Subject: Transmitting papers for consideration in connection with examination for promotion.

Inclosure: ———

1. Lieutenant A——— Z. B———, U. S. Coast Guard, having been examined for promotion to the grade of lieutenant commander, there is transmitted herewith all matter on the files and records of

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(23) **Authentication and transmission of the record.**—The record of the proceedings shall be signed by all the members and shall be transmitted, together with all reports of qualifications and other documentary evidence which has been before the board, to Headquarters. In case of dissent the record must show those of the members who concurred in, and those who dissented from, the opinion of the board, with the reasons for dissent.

Variation.—(Majority and minority opinion.) "We hereby certify that Lieutenant A——— Z. B———, U. S. Coast Guard, has the mental, moral, and professional qualifications to perform efficiently all the duties of the grade for which he was examined, to wit, lieutenant commander, and recommend him for promotion.

"D——— E. F———,
"Commander, U. S. Coast Guard, President.
"G——— H. I———,
"Commander, U. S. Coast Guard, Member and Recorder.

"From the inspection of the written examination of the candidate, and the answers to interrogatories sent to officers under whom the candidate has served, I am constrained to differ with the majority of the board as to the professional fitness of the candidate to perform all the duties of the grade for which he was examined.

"I hereby certify that Lieutenant A——— Z. B———, U. S. Coast Guard, has the mental and moral but not the professional qualifications to perform efficiently all the duties of the grade for which he was examined, to wit, lieutenant commander, and do not recommend him for promotion.

"M——— N. O———,
"Commander, U. S. Coast Guard, Member."

the Coast Guard which relates in any way to his fitness for promotion: 12 reports on the fitness of officers * * *

———— ————.

By direction. D.

(Here are appended the papers transmitted with the foregoing communication. The record of service is of service since the last examination of the candidate.) 36 (to) 49 **(24)**.

1155. Adjournment.—

At ——— —m., the board adjourned to await the action of the convening authority.

D——— E. F———,
Commander, U. S. Coast Guard, President.
G——— H. I———,
Commander, U. S. Coast Guard, Member and Recorder.

Tabulated form of the averages attained by Lieutenant A——— Z. B———, U. S. Coast Guard, in his examination for promotion.

Subjects.	Total value.	Value as marked.	Weight.	Product of weight and marked value.
Seamanship and navigation	1,000		15	
Naval construction and care of vessels	1,000		15	
Ordnance and gunnery	1,000		15	
Navigation and customs laws	1,000		15	
Coast Guard regulations and general orders etc	1,000		10	
International law	1,000		10	
Steam engineering	1,000		10	
Signaling	1,000		10	
Total average				
Average percentage				
Fitness of officers				

D——— E. F———,
Commander, U. S. Coast Guard, President.
M——— N. O———,
Commander, U. S. Coast Guard, Member.
G——— H. I———,
Commander, U. S. Coast Guard, Member and Recorder.

(24) If there are any other documents they are appended in the order in which they occur in the proceedings. Reports of fitness, answers to interrogatories, commendatory letters, letters relating to indebtedness, etc., shall be arranged with all papers of each class together and in chronological order. If there are any exhibits introduced they are appended following the documents and are marked "Exhibit 1," etc. Matters of separate file, such as records of board of inquiry, etc., are not to be actually appended to the record but are forwarded with it.

Procedure of board of examination for promotion extended to examination for appointments.—The procedure governing a board of examination for the promotion of an officer shall be followed in examinations for appointment of constructors, district superintendents, and warrant officers.

PART II. EXAMINATION BEFORE A SUBBOARD (25).

1161. Cover page.—

RECORD OF PROCEEDINGS
of a
COAST GUARD SUBBOARD OF EXAMINATION
Convened at New York, N. Y., in the case of
ENSIGN A——— B. C———, U. S. COAST GUARD (26),
August 21, 1923 (27).

1162. Precept (28).—

TREASURY DEPARTMENT,
UNITED STATES COAST GUARD,
Washington, August 10, 1923.

From: Commandant.
To: Captain R——— L. B———, U. S. Coast Guard.
Subject: Precept for subboard of examination.
Inclosure: 1. Copy of rules governing examination.

1. You are constituted a subboard to conduct the professional examination for promotion of Ensign A——— B. C———, U. S. Coast Guard.

2. The Surgeon General, U. S. Public Health Service, has convened a board of medical officers, of which Surgeon J——— E. Y——— is chairman, to meet at the U. S. Public Health Service Hospital, ———, ———, New York City, at 10 a. m., August 20, 1923, for the physical examination of the above-named officer, who will be directed to report to the chairman of the medical board.

3. The mental examination will commence at 9 a. m., August 21, 1923, unless the officer to be examined fails in his physical examination, in which case you will notify Headquarters and await instructions (29).

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(25) **When ordered.**—In certain cases, where deemed desirable, a subboard may be appointed to supervise the written professional examination, preliminary to promotion, of such officers as may be ordered to report for such examination.

(26) **Variation.**—"* * * in the cases of Lieutenant E——— F. G———, Lieutenant H——— I. K———, and Ensign M——— N. O———, U. S. Coast Guard."

(27) This is the date of first convening for the examination.

Index.—In case the proceedings of the board (exclusive of documents and exhibits appended) exceeds 20 pages in length, an index similar to that for a general court, shown in art. 702, shall follow immediately after the cover page.

(28) The precept shall set the time and place of meeting and name the membership of the subboard. The necessary instructions relative to the conduct of the examination need not be contained in the precept, but may accompany the same or be otherwise issued.

(29) **Physical examination precedes professional.**—The physical examination of a candidate for appointment or promotion shall precede the mental and professional, and if he be found physically unfit he shall not be examined otherwise; and before proceeding with the examination the subboard shall ascertain that the candidate has been found qualified by a board of medical examiners. When the contrary is found to be the case Headquarters shall be notified and its instructions awaited.

Section 3 of the act approved January 12, 1923, provides: "That hereafter no commissioned officer of the Coast Guard shall be promoted to a higher grade or rank on the active list, * * *, and until he has been examined by a board of medical officers and pronounced physically qualified to perform all the duties of such higher grade of rank.

4. Examination questions will be sent you by registered mail, the receipt of which you will acknowledge. You will have custody of the examination papers, and will allow no person other than the candidate to see them, except as provided herein, nor permit copies of the papers to be made. You will caution the officer being examined not to divulge to anyone the nature of the questions. As soon as the examination is completed you will forward the examination papers, together with the questions, to Headquarters. The examination will continue from day to day, Sundays excepted, until finished. Navigation problems will be under date of 1923. In case you have to leave the examination room, as in an emergency, you may assign temporarily your duties to a subordinate commissioned officer during your absence.

5. The chairman of the medical board will furnish you with the completed medical certificate in the case of the officer examined, which certificate you will forward to Headquarters.

6. A copy of the rules for the government of the examination is inclosed.

B——— L. R———.

A true copy (30). Attest:

R——— L. B———, A (31)

Captain, U. S. Coast Guard.

1163. Letter to candidate for examination before a subboard.— HEADQUARTERS.

TREASURY DEPARTMENT,
UNITED STATES COAST GUARD,
Washington, August 10, 1923.

From: Commandant.

To: Ensign A——— B. C———, U. S. Coast Guard, U. S. C. G. C. ———, via Commander, New York Division.

Subject: Examination for promotion.

1. You will report to the chairman of a board of medical examiners at the U. S. Public Health Service Hospital, ——— ———, New York City, at 10 a. m., Monday, August 20, 1923, for medical examination preliminary to examination for promotion to the grade of lieutenant (junior grade).

2. Upon the completion of this examination, you will report to the commander of the New York Division, who will conduct your professional examination.

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(30) The original precept may be prefixed where the convening authority has ordered a subboard to examine but one candidate. With this exception, the provisions of the last paragraph of art. 519 apply to a subboard of examination.

A copy of every order or notice addressed to the subboard or to the candidate, certified by the member of the subboard, must be prefixed to the record of proceedings in the case, and documents shall be appended as stated in art. 1153.

(31) For marking of documents, see art. 668.

3. Upon the completion of the professional examination you will resume your regular duties.

4. This is in addition to your present duties.

———— ————.

(Copy of indorsements, if any.)

A true copy. Attest:

R——— L. B———,

Captain, U. S. Coast Guard.

B.

1164. Procedure of subboard (32).—

SUBBOARD OF EXAMINATION,

Custom House, New York, N. Y., August 21, 1923.

The subboard met at 9 a. m., August 21, 1923, pursuant to orders, original prefixed marked "A" (33).

Present: Captain R——— L. B———, U. S. Coast Guard, sole member.

Ensign A——— B. C———, U. S. Court Guard, reported in obedience to an order from Headquarters, copy appended, marked "B."

The candidate was notified of the order of sequence of the subjects of the examination, and the examination was begun and was continued from day to day until its completion.

The examination was completed August 24, 1923.

The examination questions and the candidate's answers are appended hereto (34).

R——— L. B———,

Captain, U. S. Coast Guard, Subboard.

1165. Documents appended.—

(All documents having to do with the procedure before the subboard are then appended in the same manner as in art. 1153.)

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(32) **Procedure.**—A subboard need not keep a record of its daily proceedings; but such proceedings shall be conducted in accordance with the procedure laid down for Coast Guard examining boards in so far as applicable.

(33) Papers are prefixed or appended in the order shown in this book, but are not marked by the subboard.

(34) **More than one candidate examined.**—If more than one candidate is to be examined, the record shall show that each of them reported, and that all the papers in each case were transmitted to Headquarters.

CHAPTER XX. (1)

COAST GUARD RETIRING BOARD PROCEDURE.

(1) This chapter shows how the record of a Coast Guard retiring board is made up. The object is to show each paper and entry in the order in which it should appear in the completed record. Each separate step in the examination is given an article number in this chapter to indicate clearly that it is a separate step and for ease of reference. The article numbers and headings given in this book are not to be repeated in the record of the board.

For the general provisions governing making up records, see arts. 658 to 679.

Revision.—In any case in which the convening authority may deem it necessary he may return the record to the board for a correction of its proceedings, or for a further inquiry or hearing and reconsideration of its conclusions, as in the case of a general court. As the proceedings of a retiring board are not a trial, the board upon revision may receive new evidence.

1171. Cover page.—

RECORD OF PROCEEDINGS
of a
COAST GUARD RETIRING BOARD
convened at
COAST GUARD HEADQUARTERS
Washington, D. C.
Lieutenant Q——— R. S———, U. S. Coast Guard,
in the case of
March 26, 1923 (2).

1172. Precept.—

TREASURY DEPARTMENT,
Washington, March 10, 1923.

Captain H——— J. A———, U. S. Coast Guard,
Coast Guard Headquarters, Washington, D. C.

Subject: Precept for Coast Guard retiring board.

Sir: A Coast Guard retiring board, consisting of yourself as president, and of Captain C——— O. R——— and Lieutenant Commander (E) D——— A. M———, U. S. Coast Guard; Surgeon C——— L. G——— and Passed Assistant Surgeon W——— C. R———, U. S. Public Health Service, as members, is hereby ordered to convene at Coast Guard Headquarters, Washington, D. C., as soon as may be practicable (3).

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(2) This is the date of first convening for the examination.

Index.—In case the proceedings of the board (exclusive of documents and exhibits appended) exceeds 20 pages in length, an index similar to that for a general court, shown in art. 702, shall follow immediately after the cover page.

(3) **When to be convened and how constituted.**—Section 5 of the act approved April 12, 1902 (32 Stats. 100), provides: "That the Secretary of the Treasury, under the direction of the President, shall from time to time assemble a Revenue Cutter Service [now Coast Guard] retiring board, composed of officers of the Revenue Cutter Service [Coast Guard] and medical officers of the Marine Hospital Service [Public Health Service], consisting of not less than five commissioned officers, two-fifths of whom shall be selected from medical officers of the Marine Hospital Service [Public Health Service], for the purpose of examining and reporting on such officers of the Revenue Cutter Service [Coast Guard] as may be ordered by the Secretary of the Treasury to appear before it; and the members of said board shall be sworn, in every case, to discharge their duties honestly and impartially, the oath to be administered to the members by the president of the board, and to him by the junior member or recorder; and such boards shall inquire into and determine the facts touching the nature and occasion of the disability of any officer who appears to be incapable of performing the duties of his office, and shall have such powers as may be necessary for that purpose; and when the board finds an officer incapacitated for active service it shall also find and report the cause which in its judgment has produced his incapacity, whether such cause is an incident of service, whether due to his own vicious habits, or the infirmities of age, or physical or mental disability. The proceedings and decisions of the board shall be transmitted to the Secretary of the Treasury, and shall by him be laid before the President for his approval or disapproval and his orders in the case." Section 3 of the act approved January 28, 1915 (38 Stats. 800), provides: "* * *

"The provisions of sections 3, 4, 5, 6, 7, 8, and 9 of the act of April 12, 1902, in so far as they provide for the retirement of officers of the Revenue Cutter Service are hereby extended to include commissioned officers, warrant officers, and enlisted men of the Coast Guard. * * *."

Powers of board.—In the execution of the duties imposed by law the board is required to ascertain the nature and occasion of the disability and its character and effect, as temporary or permanent. The investigation of a retiring board is not restricted by any statute of limitation. It may inquire into the matter of a disability, however long since it may have originated.

Lieutenant Commander (E) D——— A. M———, U. S. Coast Guard, will act as recorder (4).

The board will examine and report upon such persons as may be ordered by the Secretary of the Treasury to appear before it, in conformity with the provisions of section 5 of the act approved April 12, 1902 (32 Stats. 100), and section 3 of the act approved January 28, 1915 (38 Stats. 800).

The board will not examine officers who are senior to any nonmedical member of the board without specific instructions from the Secretary of the Treasury in each case.

The proceedings of the board will be conducted and the record forwarded in accordance with the provisions of Coast Guard Courts and Boards. The record of proceedings in each case will be forwarded to the Commandant, U. S. Coast Guard (5).

By direction of the President.

Respectfully,

———,
Assistant Secretary.

A true copy (6). Attest:
D——— A. M———,
Lieutenant Commander (E), U. S. Coast Guard,
Recorder. A (7)

1173. Letter to person to be examined.—

HEADQUARTERS.

TREASURY DEPARTMENT,
UNITED STATES COAST GUARD,
Washington, March 10, 1923.

From: Commandant.

To: Lieutenant Q——— R. S———, U. S. Coast Guard, U. S. C. G. C. ———, via Commander, Norfolk Division.

Subject: Examination for retirement.

1. Proceed to Washington, D. C., and report to the president of the Coast Guard Retiring Board at Coast Guard Headquarters at 9 a. m., Monday, March 26, 1923, for examination for retirement in conformity with sections 5, 6, and 7 of the act approved April 12, 1902 (32 Stats. 100).

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(4) See arts. 980 and 981 for general provisions relating to the recorder of a board.

(5) See note 40 *infra.*

(6) The original precept may be prefixed where the convening authority has ordered the board to examine but one person. With this exception, the provisions of the last paragraph of art. 519 apply to a retiring board.

(7) For marking of documents, see art. 668.

2. This is in addition to your present duties, and upon completion of the examination you will return to the U. S. C. G. C. ———.

By direction of the Secretary of the Treasury.

——— ———.

A true copy. Attest:

D——— A. M———,

Lieutenant Commander (E), U. S. Coast Guard,
Recorder. B (8)

1174. Letter transmitting medical record.—

HEADQUARTERS.

TREASURY DEPARTMENT,
UNITED STATES COAST GUARD,
Washington, March 10, 1923.

From: Commandment.
To: Captain H——— A. J———, U. S. Coast Guard, President, Retiring Board, Headquarters.
Subject: Lieutenant Q——— R. S———, medical record of.
Reference: (a) Precept convening board, March 10, 1923.
Inclosures: Medical record of Lieutenant Q——— R. S———.

1. There is inclosed herewith the medical record of the above-named officer, who has been directed to proceed to Washington, D. C., and present himself before the retiring board of which you are president, at 9 o'clock a. m., on Monday, March 26, 1923.

2. The medical record is to be returned to the division of personnel, with the report of the board in the case.

——— ———.

C

1175. Board meets.—

COAST GUARD RETIRING BOARD,
COAST GUARD HEADQUARTERS,
Washington, D. C., March 30, 1923 (9).

The board met at 10 a. m., March 26, 1923 (10), pursuant to an order, copy prefixed, marked "A."

Present:

Captain H——— J. A———, U. S. Coast Guard, President;
Captain C——— O. R———, U. S. Coast Guard, Member;
Lieutenant Commander (E) D——— A. M———, U. S. Coast Guard, Member and Recorder;
Surgeon C——— L. G———, U. S. Public Health Service, Member;

(8) Copy of order to person to be examined.—A copy of the order to an officer or other person to report to a retiring board shall be prefixed to the record of the case.

(9) This date is that of the day when the board reaches its finding. The date of meeting and subsequent intermediate dates are appropriately referred to in the proceedings.

(10) This date is that of first meeting for this examination.

Passed Assistant Surgeon W——— C. R———, U. S. Public Health Service, Member.

1176. Person to be examined reports (11).—

Lieutenant Q——— R. S———, U. S. Coast Guard, reported in obedience to an order, copy prefixed marked "B." **(12)**

1177. Authorization for the employment of a reporter (stenographer).—

The recorder read the authorization for the employment of a reporter (stenographer), hereto appended, marked "———," and Mr. C——— F——— was introduced to serve in that capacity **(13)**.

1178. Precept read and right of challenge accorded (14).—

The precept was read by the recorder, and there was no objection to any member **(15)**.

1179. Board and reporter sworn (16).—

The board and the reporter were duly sworn **(17)**.

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(11) Right to a hearing before being retired.—No person of the Coast Guard shall be retired from active service, except on account of age or length of service, or wholly retired from the service without a full and fair hearing before a Coast Guard retiring board.

Interpretation of the above footnote.—This entitles an officer or other person subject to retirement, and not within the exceptions stated, to appear before the board, with counsel, if desired, to introduce testimony in his own behalf, to cross-examine the witnesses examined by the board, including the medical members of the board who may have taken part in the medical examination and have testified or reported to the board the result of the same. He may also submit a statement to the board if he so desires, or take the stand as a witness, or such person may be called as a witness by the board. If such person fail to appear before the board when ordered, he waives the right to a hearing, and can not properly take exception to a conclusion arrived at in his absence. He may at his own request be excused from attending any particular session, and, if excused, the fact shall be recorded in the proceedings. Care shall be taken not to discharge him from attendance before the board until all the evidence in his case is completed.

(12) Variation.—" * * * and asked permission to introduce Mr. K——— L——— as his counsel. The request was granted and Mr. L——— entered.

(13) Variation.—" Chief Yeoman J——— B———, U. S. Coast Guard, was detailed to act as reporter (stenographer) and was introduced."

(14) Challenge.—The statutory right to a "fair hearing" includes the right to a hearing by an impartial board, and therefore the right to challenge for cause.

(15) Variation.—" The precept was read by the recorder.

" Lieutenant S——— objected to Surgeon C——— L. G———, U. S. Public Health Service, as a member on account of * * * (state reasons in full).'

The procedure in case of challenge is the same as for a general court. (See arts. 718 and 719.)

(16) It is provided by statute that members of a Coast Guard retiring board "shall be sworn, in every case, to discharge their duties honestly and impartially." (Section 5, act approved April 12, 1902 (32 Stats., 100).)

(17) The members of the board, except the recorder, are first sworn by the president:

Oath for members.—" You, A——— B. C———, D——— E. F———, and R——— S. T———, and each of you do solemnly swear (or affirm) that you will honestly and impartially examine and report upon the case of Q——— R. S———, now before the board and about to be examined."

The president then swears the recorder:

Oath for recorder when not a member.—" You, G——— H. K———, do solemnly swear (or affirm) that you will keep a true record of the proceedings of this board in the case of Q——— R. S———, now before the board and about to be examined."

Oath for recorder when member.—" You, G——— H. K———, do solemnly swear (or affirm) that you will honestly and impartially examine and report upon the case of

1180. Papers read (18).—

A communication appended, marked "C," was received from Headquarters, transmitting the papers named therein, which are appended, marked "1" to "15." Those marked "1" to "7," inclusive, were read by the recorder.

1181. Medical members' examination.—

The medical members were directed to examine into the past and present physical and mental condition of Lieutenant S———; letter of instructions appended, marked "16" (19).

1182. Adjournment pending physical examination.—

Pending the physical examination, the board adjourned in this case until 10.30 a. m., March 28, 1923, when it reconvened; present, the entire board and the person under examination (20).

1183. President asks person under examination his wishes relative to retirement.—

Lieutenant Q——— R. S———, U. S. Coast Guard, was asked by the president whether he wished to be retired, and replied in the affirmative (21).

1184. Person under examination sworn as a witness.—

He was then duly sworn (22) as a witness, and testified as follows (23):

Examined by the president:

1. Q. State the nature of your disability, its cause, and how long you have suffered from it.

Q——— R. S———, now before the board and about to be examined, and that you will keep a true record of the proceedings of this board in his case."

The recorder then swears the president by the same oath as is administered to the other members.

The recorder then swears the reporter (stenographer):

Oath for reporter (stenographer).—"You, C——— F———, do swear (or affirm) faithfully to perform the duty of reporter (stenographer) in aiding the recorder to take and record the proceedings of this board either in shorthand or ordinary manuscript."

(18) After the board, the recorder (if not a member), and the reporter have been sworn, all papers having any bearing on the physical or mental condition of the person under examination are read.

(19) **Authority of retiring board.**—A retiring board shall inquire into and determine the facts touching the nature and occasion of the disability of any person ordered before it who appears to be incapable of performing the duties of his office, and shall have such powers as may be necessary for that purpose. The board has power to summon witnesses as specified for general court procedure.

(20) **Variation.**—"Pending the physical examination, the board took a recess until 2 p. m., this day, when it reconvened * * *."

(21) **Person does not wish to be retired.**—If the person does not wish to be retired, he shall not be sworn as a witness until after the medical members and following witnesses have been examined.

(22) The following oath shall be administered to witnesses by the recorder of the board (see note 26 *infra*):

Oath for witness.—"You, A——— B———, do solemnly swear (or affirm) that you will make true answers to such questions as may be put to you in the case of Q——— R. S———, now under examination by this board."

(23) The person under examination may be called as a witness by the board. (See note 11 *supra*.)

A. * * *.

2. Q. * * *.

A. * * *.

3. Q. * * *.

A. * * *.

Examined by the board (24):

11. Q. * * *.

A. * * *.

* * * * * * *

Examined by the president (25):

19. Q. Do you desire to say anything further concerning your case?

A. * * *.

The board did not desire further to examine this witness.

The witness verified his testimony and then resumed his seat as the interested party.

1185. Examination of medical members.—

Surgeon C——— L. G———, U. S. Public Health Service, the senior medical member of the board, testified as follows (26):

Examined by the president:

1. Q. From what cause does Lieutenant S———'s disability proceed?

A. * * *.

2. Q. Is the disability permanent?

A. * * *.

3. Q. Is Lieutenant S———'s disability such as to incapacitate him for active service?

A. * * *.

4. Q. Have all reasonable measures for the amelioration of the disabling condition (s) been tried?

A. * * *.

5. Q. Is his disability the result of an incident of service?

A. * * *.

6. Q. Was there any information before the medical members of the board which would lead you to believe that his condition might be due to vicious practices of his own?

A. * * *.

* * * * * * * (27).

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(24) **Examination by the board.**—After the completion of the examination by the president, any member of the board may question the witness. Such questions, if unobjected to, shall be recorded as by the board. If objected to and the objection is sustained, they shall be recorded as "by a member."

(25) Witnesses are examined as before a Coast Guard court. (Arts. 741 to 760.)

(26) A member need not be sworn when he is examined as a witness, his oath as a member being sufficient.

(27) **Examination of senior medical member.**—The examination of the witness should be conducted so as to bring out all material facts on the lines indicated.

Examined by the board:

10. Q. * * *.

A. * * *.

* * * * * * *

Examined by the person under examination (28):

15. Q. * * *.

A. * * *.

* * * * * * *

Neither Lieutenant S——— nor the board desired further to examine this witness (29).

The witness verified his testimony, and then resumed his seat as a member.

1186. Examination of witness called by person under examination.—

A witness in behalf of Lieutenant S——— entered and was duly sworn (30).

Examined by the recorder:

1. Q. State your name, residence, and occupation.

A. ——— ———; Norfolk, Va.; physician.

2. Q. If you recognize the person under examination, state as whom.

A. * * *.

Examined by Lieutenant S———:

3. Q. * * *.

A. * * *.

* * * * * * *

Neither Lieutenant S——— nor the board desired further to examine this witness.

The witness was duly warned and withdrew (31).

1187. Examination of witness called by the board.—

A witness called by the board entered and was duly sworn.

Examined by the recorder:

1. Q. State your name, rank, and present station.

A. * * *.

2. Q. If you recognize the person under examination, state as whom.

A. * * *.

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(28) **Variation.**—"Lieutenant S——— stated that he had no question to ask."

(29) **Other medical member examined.**—The other medical member of the board shall then be similarly interrogated.

Other witnesses.—Such other witnesses as may be necessary or desirable shall then be introduced.

Person does not desire retirement.—If the person under examination does not desire retirement, he shall be the last witness examined.

(30) For form of oath, see note 21 *supra*.

(31) For variations, see art. 744, note 96.

Examined by the president:

3. Q. * * *.

A. * * *.

* * * * * * *

1188. Statement of person under examination.—

Lieutenant S——— then requested a postponement to enable him to prepare a brief of his case, which request was granted.

The board then adjourned.

The board met at 10 a. m., March 30, 1923, pursuant to adjournment of the 28th instant.

Present: The entire board and the person under examination.

Lieutenant S——— submitted three affidavits, which were read and are appended marked "17," "18," and "19" (32).

Lieutenant S——— submitted a statement and a brief, which were read and are appended marked "20" and "21" (33).

1189. Examination concluded.—

Lieutenant S——— had no further evidence to introduce. He withdrew, after having been informed that he would receive due notification when he might regard himself as discharged from further attendance before the board (34).

1190. Medical members' report (35).—

The medical members submitted a report, which was sworn to, read, and appended marked "22."

1191. Finding (36).—

The board, having deliberated on the evidence before it, decided that Lieutenant Q——— R. S———, U. S. Coast Guard, is incapacitated for active service by reason of * * * (* * *) of

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(32) The proceedings of a retiring board being in no sense a trial, the board may properly consider documents and testimony which would not be proper evidence before a Coast Guard court.

(33) See note 11 *supra* for the rights of the person under examination.

(34) After the person before the board has submitted his evidence, or declared that he has nothing to offer, he shall be discharged from further attendance before the board. But care shall be taken not to discharge a person under examination until his case is fully completed.

(35) After the person under examination is discharged the medical members shall submit a written report to the board, under oath, certifying as to the past and present physical and mental condition of the person, stating the reasons that led them to their conclusion.

(36) "When the board finds an officer (person) incapacitated for active service it shall also find and report the cause which in its judgment has produced his incapacity, whether such cause is an incident of service, whether due to his own vicious habits, or the infirmities of age, or physical or mental disability." (Sec. 5, act approved April 12, 1902 (32 Stats., 100).)

Retirement of officer failing physically for promotion.—Section 3 of the act approved January 12, 1923, provides as follows: "If any commissioned officer shall fail in his physical examination for promotion and be found incapacitated for service by reason of physical disability contracted in the line of duty, he shall be retired with the rank to which his seniority entitled him to be promoted." Accordingly, when an officer has been found by a board of medical examiners to be not physically qualified for promotion, *by reason of physical disability contracted in the line of duty*, and such finding has been approved, and the said officer is then ordered before a retiring board, the latter board,

the right eye; that his incapacity is permanent and is the result of an incident of service (37).

H——— J. A———,
Captain, U. S. Coast Guard, President.
C——— O. R———,
Captain, U. S. Coast Guard, Member.
D——— A. M———,
Lieutenant Commander (E), U. S. Coast Guard, Member and Recorder. (38.)

1192. Minority report (39).—

Notwithstanding the fact that Lieutenant S———'s medical history states that his ailment ——— ———, right eye, was an inci-

in its finding, shall specifically state whether or not the physical disability was contracted in the line of duty; and the words *line of duty,* in all such cases, must be set forth in the finding in order that the officer may fall under the provisions of the above-quoted act.

When an officer who has failed to pass his physical examination for promotion comes before a Coast Guard retiring board and the retiring board finds such officer fit for duty, the medical members of said retiring board shall immediately constitute themselves a board of medical examiners and shall make a separate and independent report as to whether or not said officer is physically qualified to perform all of his duties.

"Incident of service"—How determined.—Courts of law are guided by the axiom that an accused is innocent until he is proved guilty. It does not, however, follow that, in the case of a retiring board, a physical defect is assumed to be incident to service until the Government has proved the contrary. By statute, the retiring board is sworn to discharge its duties honestly and impartially, and it is authorized to inquire into and determine facts touching the nature and occasion of the disability. When it finds a person incapacitated for active service it shall also find and report the degree of such incapacity, whether or not such incapacity is likely to be permanent, and the cause which, in its judgment, has produced it; and it shall further find and report whether the physical or mental disability is due to an incident of service, or whether due to the infirmities of age, or whether due to his own vicious habits. A finding that the physical or mental disability is due to the infirmities of age must include the statement, "and not due to vicious habits."

When a retiring board finds a person incapacitated for service, from a disability not an incident of service, it must specifically state in the record as to whether or not such disability is the result of his own misconduct.

Incapacity warranting retirement.—The physical disability must be a permanent, incurable disease, or injury of such a character as absolutely to disqualify for duty on the active list. Deafness, defective vision, and incurable organic diseases are examples of such a disability. If, however, the disease be curable or of such a character as to yield to treatment, then, even though a cure may require considerable time, the disability is not permanent. The test is, Is the disease or injury curable or incurable? If it be curable within a reasonable time, the officer should not be retired. (Holland's Digest of the Opinions of the Judge Advocate General of the Army, p. 986.)

(37) Variation 1.—"The board, having deliberated on the evidence before it, decided that Lieutenant Q——— R. S———, U. S. Coast Guard, is temporarily incapacitated for active service by reason of malarial poisoning, and recommends that he be granted sick leave for three months."

Variation 2.—(If the officer is being examined because of failure to qualify for promotion) "* * * and that his incapacity was contracted in the line of duty."

Variation 3.—"The board, having deliberated on the evidence before it, finds that Lieutenant Q——— R. S———, U. S. Coast Guard, is not suffering from any disease or physical disability at the present time and is fit for duty." (See art. 1191, note 36.)

(38) The finding and decision of the majority shall be the finding and decision of the board, and shall be signed by all the members who concur. The finding and decision need not be in the handwriting of the recorder.

(39) Art. 982.

If a member dissents from the finding and decision of the board, he is authorized to submit a minority report of his finding and decision, which shall be recorded immediately after the finding and decision of the majority.

dent of service, we do not believe that any acts of duty performed by him were capable of causing ——— ———.

We believe the condition of Lieutenant S———'s right eye to be due to * * * and we are constrained to differ from the finding of the board as to the origin of the disability.

We believe that Lieutenant Q——— R. S———, U. S. Coast Guard, is incapacitated for active service by reason of ——— ——— of the right eye; that his incapacity is permanent and is not the result of an incident of service and is not the result of his own misconduct.

C——— L. G———,
Surgeon, U. S. Public Health Service, Member.
W——— C. R———,
Passed Assistant Surgeon, U. S. Public Health Service, Member.

1193. Adjournment (40).—
The board then adjourned.

H——— J. A———,
Captain, U. S. Coast Guard, President.
D——— A. M———,
Lieutenant Commander (E), U. S. Coast Guard, Recorder.

1194. Documents appended.—
(Here are appended the papers transmitted with reference C, referred to in art. 1174. The medical record is of service since original entry into the Coast Guard.) 1 to 15.

1195. Same: Letter to medical members of board directing physical examination.—

COAST GUARD RETIRING BOARD,
COAST GUARD HEADQUARTERS,
Washington, D. C., March 26, 1923.

From: President, Coast Guard Retiring Board.
To: Surgeon C——— L. G——— and Passed Assistant Surgeon W——— C. R———, U. S. Public Health Service.
Subject: Examination of Lieutenant Q——— R. S———, U. S. Coast Guard.

1. You will make a careful examination into the past and present physical and mental condition of Lieutenant Q——— R. S———, U. S. Coast Guard, whose case has been referred to this board for examination, and report as to his capacity to perform the duties appropriate to his commission, in conformity with section 5 of the act approved April 12, 1902 (32 Stats. 100).

(40) The proceedings, finding and decision of the board, together with all the documents that have been before the board, shall be transmitted to Headquarters.

2. Besides a personal examination, you will examine closely all matter transmitted to the board in this case from the files and records of Coast Guard Headquarters, and you will also endeavor to obtain from any other authentic source within your reach such information as will aid the board in the performance of its duties, and will report the result in writing, which shall be in the form of a sworn statement.

3. In case you find the officer under examination incapacitated for active service, you will ascertain and report upon the cause of his disability, the medical treatment he has received for it and by whom administered, and the degree of his incapacity for active service anywhere in the Coast Guard.

4. If you find this officer incapacitated for active service anywhere in the Coast Guard you will state whether in your opinion the incapacity would yield to proper treatment within a reasonable time or is likely to be permanent, and whether the physical or mental disability is due to an incident of service, or whether due to the infirmities of age, or whether due to his own vicious habits.

H——— J. A——— 16.

1196. Same: Papers submitted by officer under examination (41).—

(Here are appended the affidavits, statement, and brief submitted by the person under examination in art. 1188.) 17 to 21.

1197. Same: Letter from medical members to president of board.—

COAST GUARD RETIRING BOARD,
COAST GUARD HEADQUARTERS,
Washington, D. C. March 28, 1923.

From: Surgeon C——— L. G——— and Passed Assistant Surgeon W——— C. R———, U. S. Public Health Service.

To: President, Coast Guard Retiring Board.

Subject: Examination of Lieutenant Q——— R. S———, U. S. Coast Guard.

1. We have carefully and separately examined Lieutenant Q——— R. S———, U. S. Coast Guard, as to his past and present physical and mental condition, together with the records pertaining to his case, and report as follows:

Lieutenant S——— is ——— years old and has been ——— years in the Coast Guard. (This will include total service in the Revenue-Cutter Service, Life-Saving Service, Coast Guard, Army, Navy, and Marine Corps.)

(41) If there are any other documents they are appended in the order in which they occur in the proceedings. Reports of fitness, etc., if any, shall be arranged with all papers of each class together and in chronological order. If there are any exhibits introduced they are appended following the documents and are marked "Exhibit 1," etc.

He has suffered from some of the common ailments, including ———, which are shown to have originated in the line of duty, and with ——— ———, which are shown not to have so originated. The foregoing ailments, however, have no bearing (or, have the following bearing) on his present condition:

On ——, 19—, he was transferred from ——— to the United States Marine Hospital at ———, ———, with ——— ———, which originated in the line of duty. (The medical history should here be set forth *in extenso*.)

We believe Lieutenant S——— to be suffering from ——— ———.

We consider this condition to be permanent, by reason of which he is incapacitated for active service in the Coast Guard, and that his incapacity is not the result of an incident of service, and is not the result of his own misconduct (42).

C——— L. G———.
W——— C. R———.

Sworn to and subscribed before me, this 28th day of March, 1923.

D——— A. M———,
Lieutenant Commander (E), U. S. Coast Guard, Recorder.

22 (43)

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(42) **Variation 1.—**
"We believe Lieutenant S——— to be suffering from neurasthenia, which, by the records, is shown to be incident to service,
"We consider this condition to be temporary and, therefore, he is not permanently incapacitated for active service in the Coast Guard. We find that he is at present unfit for duty, and recommend that he be ordered to a Public Health Service Hospital for treatment and further observation."

Variation 2.—(If the officer is being examined because of failure to qualify physically for promotion.) "We consider this condition to be permanent, by reason of which he is incapacitated for service in the Coast Guard, and that his incapacity is (not) incident to service."

Variation 3.—"We find that he is not incapacitated for active service."

Variation 4.—"We find that he is at present unfit for duty and recommend that he be granted sick leave for ——— months."

(43) **Final, action.**—The record of the proceedings and decision of the board in each case shall be transmitted to the Commandant of the Coast Guard, and he shall lay it before the Secretary of the Treasury for transmittal to the President for his approval or disapproval, or orders in the case.

INDEX.

(References are to articles, except that "ch." indicates chapter. The letter "n" indicates a note.)

Varley, Thomas, and others—CHLORIDE VOLATILIZATION

THOMAS VARLEY, E. P. BARRETT, C. C. STEVENSON,
AND ROBERT H. BRADFORD

With an Introductory Chapter by

STUART CROASDALE

WASHINGTON
GOVERNMENT PRINTING OFFICE
[illegible]

AMENDMENT TO COURTS AND BOARDS

Coast Guard Headquarters

Amendment No. 1 ✓

TREASURY DEPARTMENT,
Washington, May 17, 1927.

1. The Coast Guard Courts and Boards are amended as follows, effective July 1, 1927:

Change the words "minor court" to read "summary court" wherever they appear.

L. C. ANDREWS,
Assistant Secretary.

48327—27

U. S. GOVERNMENT PRINTING OFFICE: 1927

AMENDMENT TO COURTS AND BOARDS

Coast Guard Headquarters

Amendment No. 2

TREASURY DEPARTMENT,
Washington, October 25, 1927.

1. The Coast Guard Courts and Boards are amended as follows:

ART. 15, ninth line. Strike out the words "and subsistence."

Eleventh line. Strike out the words "and subsistence."

ART. 16, twelfth line. Strike out the words "and subsistence."

ART. 972, tenth line. Strike out the word "shall" and substitute the word "may."

SEYMOUR LOWMAN,
Assistant Secretary.

71102—27

U.S. GOVERNMENT PRINTING OFFICE: 1927

AMENDMENT TO COURTS AND BOARDS

Coast Guard Headquarters

Amendment No. 3

TREASURY DEPARTMENT,
Washington, March 12, 1928.

1. The Coast Guard Courts and Boards are amended as follows:

ART. 12 (4) and (5). Strike out and substitute the following:

"(4) If the person receive an ordinary discharge at the expiration of his enlistment, an ordinary discharge before the expiration of his enlistment for physical or mental disability not the result of his own misconduct, or an ordinary discharge before the expiration of his enlistment for the convenience of the Government, with character of service 'good,' he shall be entitled to a refund of one-half of the total amount of pay deducted during his enlistment pursuant to sentences of general courts, summary courts, or deck courts which have been conditionally remitted in accordance with this article.

"(5) If the person receive a dishonorable discharge, or a bad-conduct discharge, or an ordinary discharge for physical or mental disability the result of his own misconduct, or a special-order discharge, or under-age discharge, or inaptitude discharge, or an undesirable discharge, he shall be checked the total amount of pay deducted during his enlistment pursuant to sentences of general courts, summary courts, or deck courts which have been conditionally remitted in accordance with this article."

SEYMOUR LOWMAN,
Assistant Secretary.

94088°—28

U.S. GOVERNMENT PRINTING OFFICE: 1928

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Coast Guard Headquarters

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SEYMOUR LOWMAN,
Assistant Secretary.

94088°—28

U.S. GOVERNMENT PRINTING OFFICE: 1928

AMENDMENTS TO COURTS AND BOARDS

Coast Guard Headquarters

Amendment No. 4

TREASURY DEPARTMENT,
Washington, November 1, 1928.

1. The Coast Guard courts and boards are amended as follows:

ART. 12 (7) *b*, first line. After the word "summary" insert the words "or deck."

ART. 12 (7) *c*. Strike out.

ART. 12 (8). Strike out the last sentence.

ART. 12 (9), second line. Strike out the words "either the convening or."

ART. 12 (10), first line. Strike out the words "convening or the."

ART. 12 (11), first and second lines. Strike out the words "convening or the."

SEYMOUR LOWMAN,
Assistant Secretary.

21191—28

U.S. GOVERNMENT PRINTING OFFICE: 1928

AMENDMENT TO COURTS AND BOARDS

Coast Guard Headquarters

Amendment No. 5

TREASURY DEPARTMENT,
Washington, March 29, 1929.

1. The Coast Guard courts and boards are amended as follows:

Art. 608, page 197, eighth line. Strike out all of article after the sentence ending with the word "adjudged."

SEYMOUR LOWMAN,
Assistant Secretary.

45706—29

U.S. GOVERNMENT PRINTING OFFICE: 1929

AMENDMENTS TO COAST GUARD COURTS AND BOARDS

Coast Guard Headquarters

Amendment No. 6

TREASURY DEPARTMENT,
Washington, July 7, 1930.

1. The Coast Guard courts and boards are amended as follows:

ART. 203. Under subheading Sample Specifications, insert the following:

"In all cases of sample specifications under this article the following will be included: (1) The date of desertion; (2) the location of the unit from which the man deserted; (3) the location of the unit to which he surrendered or was delivered; and (4) the date of such surrender or delivery."

Strike out Specification I and substitute therefor:

"SPECIFICATION 1

"In that A——— B. C———, now a seaman, first class, U. S. Coast Guard, did, on or about October 15, 1922, while so serving on board the U. S. Coast Guard Cutter ———, at ———, ———, desert from said ship and from the U. S. Coast Guard, and did remain a deserter until he was delivered (or surrendered) on board said ship (or other unit), at ———, ———, on or about October 31, 1922."

ART. 204. Under the subheading Sample Specifications, insert the following:

"In all cases of sample specifications under this article the following will be included; (1) The hour and date of unauthorized absence; (2) the location of the unit from which the man absented himself; (3) the location of the unit to which he surrendered himself or was delivered; and (4) the hour and date of such surrender or delivery."

Strike out specification under Charge I and substitute therefor:

"SPECIFICATION

"In that A——— B. C———, now a yeoman, first class, U. S. Coast Guard, while so serving on board the U. S. Coast Guard Cutter ———, at ———, ———, did, at or about 11 a. m., May 11, 1922, without leave from proper authority, absent himself from his station and duty on board said ship to which he had been regularly

assigned, and did remain so absent from the U. S. Coast Guard until he surrendered himself (or was delivered) on board said ship (or other unit) at ———, ———, at or about 10 p. m., May 20, 1922."

Strike out specifications 1 and 2 under Charge II and substitute therefor:

"SPECIFICATION 1

"In that D——— E. F———, now a storekeeper, first class, U. S. Coast Guard, having, while so serving on board the U. S. Coast Guard Cutter ———, at ———, ———, been granted leave of absence from his station and duty on board said ship to which he had been regularly assigned, said leave to expire at or about 8 a. m. November 22, 1922, did fail to return to his station and duty as aforesaid upon the expiration of said leave, and did remain absent from the U. S. Coast Guard, without leave from proper authority, until he surrendered himself (or was delivered) on board said ship, at ———, ———, at or about 2 p. m., November 27, 1922.

"SPECIFICATION 2

"In that G——— H. I———, now an ensign, U. S. Coast Guard, having, while so serving on board the U. S. Coast Guard Cutter ———, at ———, ———, been granted leave of absence from his station and duty on board said ship to which he had been regularly assigned, said leave to expire at or about 8 a. m., March 15, 1922, did fail to return to his station and duty as aforesaid upon the expiration of said leave, and did remain absent from the U. S. Coast Guard, without leave from proper authority, until he surrendered himself (or was delivered) on board said ship, at ———, ———, at or about 10 p. m., March 16, 1922.

ART. 208. Add the following to each specification under this article:

"This in violation of a lawful regulation (or order) issued by the Secretary of the Treasury, to wit, Article ——, of the Regulations, U. S. Coast Guard, 1923 (or Coast Guard, courts and boards, or pay and supply instructions, etc.)."

Make the following footnote, bottom of page 72, referring to article 208.

"Where the offense is considered to be conduct to the prejudice of good order and discipline, the following will be added: 'This to the prejudice of good order and discipline and in violation of a lawful regulation, to wit, article 103, U. S. Coast Guard Courts and Boards, 1923.'"

ART. 564. In the eighth line, after the word "to" and before the word "evidential," insert the word "no."

ART. 582. Strike out first paragraph and substitute therefor:

"If the evidence prove the commission of an offense less in degree than that specified, yet included in it, the court may except words of the specification, substitute others instead, pronouncing what words are not proved and what words are proved, and then find the accused guilty in a less degree than charged, guilty of the lesser included offense. Of this form of finding the most familiar example is the finding of guilty of 'absence from duty without leave (or after leave has expired)' upon a charge of 'desertion.'"

"(*a*) In such case, if the court finds the man guilty of absence from duty without leave the finding shall be recorded as follows: 'The specification of the charge proved in part, proved except the words "desert from said ship (or station) and from the U. S. Coast Guard, and did remain a deserter," which words are not proved, and for which the court substitutes the words "without leave from proper authority absent himself from his station and duty on board said ship (or station) to which he had been regularly assigned, and did remain so absent from the U. S. Coast Guard," which words are proved, and that the accused A——— B. C———, seaman, first class, U. S. Coast Guard, is of the charge guilty in less degree than charged, guilty of absence from duty without leave.'

"(*b*) If the court finds the man guilty of absence from duty after leave has expired the finding shall be recorded as follows: 'The specification of the charge proved in part, proved except the words "did, on or about October 15, 1922, desert from said ship (or station), and from the U. S. Coast Guard, and did remain a deserter," which words are not proved, and for which the court substitutes the words, "having been granted leave of absence from his station and duty on board said ship (or station) to which he had been regularly assigned, said leave to expire at or about 8 a. m. October 15, 1922, did fail to return to his station and duty as aforesaid upon the expiration of said leave, and did remain absent from the U. S. Coast Guard, without leave from proper authority," which words are proved, and that the accused, A——— B. C———, seaman, first class, U. S. Coast Guard, is of the charge guilty in less degree than charged, guilty of absence from duty after leave has expired.'"

ART. 597. Strike out and substitute therefor:

"The words 'other accessories of said sentence,' when used in the sentence of a general Coast Guard court, shall include the following: 'After the discharge of all indebtedness to the United States, including that for clothing drawn, and in cases of desertion, absence over

leave or without leave, or on account of any other unauthorized act, all expenditures incident and necessary for the return and delivery to duty, and all other legal deductions, he shall forfeit from the amount of pay due him at the expiration of the term for which he enlisted, or on the date of discharge, two months' pay or so much thereof as may be due him. He shall be allowed a reasonable sum, not to exceed $3 per month, for necessary prison expenses, said amount to be charged against any pay due him at the expiration of the term of his enlistment, or on the date of discharge after all deductions have been made. If he do not have sufficient pay due him, payments will be made from the appropriation for the maintenance of the Coast Guard.'"

ART. 614. Strike out and substitute therefor:

"The term 'superior officer,' appearing in the list of offenses in the preceding article and elsewhere in this book, shall be held to mean a commissioned officer, a commissioned warrant officer, a cadet, a warrant officer, a chief petty officer, or a petty officer senior in rank or rating to any other person concerned."

S. LOWMAN,
Assistant Secretary.

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AMENDMENT TO COURTS AND BOARDS

Amendment No. 7.

February 17, 1931.

1. The Coast Guard Courts and Boards, 1923, is amended as follows:

ART. 490. Strike out the third paragraph and substitute therefor the following:

"When the president of a general court or of a board finds that he is unable to secure the requisite stenographic or clerical services within his own unit, or from contiguous Coast Guard units, he shall secure through headquarters the authority of the department to employ such services. Upon receipt of such authority he shall communicate with the district secretary of the Civil Service Commission in the vicinity and request that officer to either supply temporary Civil Service stenographic or clerical services; or, if he is unable to do that, to approve the employment of outside stenographic or clerical services. In such cases an agreement, in conformity with article 816, shall be drawn up in duplicate between the president of the court or board and the stenographer. One copy of this agreement shall be retained by the stenographer and the other copy, together with certified bill, copy of the letter of authority, and approved voucher, shall be forwarded to headquarters when the services are completed."

SEYMOUR LOWMAN,
Assistant Secretary.

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U. S. GOVERNMENT PRINTING OFFICE: 1931