

# SUMMARY COURT-MARTIAL OFFICER GUIDE

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## Available in electronic form:

1. [Manual for Court-Martial \(MCM\), 2012 Edition](#)
2. [DD Form 2329 Record of Trial](#)
3. [DD Form 2704 Victim/Witness Certification and Election Concerning Inmate Status](#)

Questions should be directed to your assigned trial counsel.

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# Summary Court Martial Information Sheet

## 1. What is a Summary Court-Martial (SCM)?

It is a streamlined trial with one officer (summary court-martial officer (SCMO)) functioning as prosecutor, defense counsel, judge and panel (jury). SCMs dispose of minor offenses. A conviction at SCM is not treated as a criminal conviction by civilian jurisdictions.

Key points to remember:

- a. The accused has an absolute right to refuse a SCM.
- b. The accused may plead guilty or not guilty. He may not be represented by a military or civilian lawyer at the proceeding, but may consult with one before the proceedings.
- c. The military rules of evidence DO apply [e.g. with respect to hearsay].
- d. The SCMO should seek advice from a judge advocate on questions of law.
- e. The SCMO may not seek advice on any factual conclusions he or she draws from the evidence, or on what sentence to impose, but must reach these conclusions independently.

## 2. What are my resources as a SCMO?

- a. Manual for Courts-Martial (MCM)
  - (1) Chapter XIII of Part II
  - (2) Appendix 9 Trial Guide (attached)
  - (3) Punitive UCMJ Articles: Part IV
- b. Charge Sheet and convening order
- c. Pretrial Agreement (if one exists). Note: The Pretrial Agreement is NOT evidence.
- d. Investigative reports (if any) and accused's SRB
- e. Providence Inquiries for each punitive article on the charge sheet (available in the Benchbook from your trial counsel)

**TAB A**

f. Your jurisdictional trial counsel (RECOMMENDATION: Speak to the trial counsel before beginning the SCM. It is imperative that you speak with the Trial Counsel or the Senior Trial Counsel IN PERSON if this is your first SCM.)

### 3. What do I do prior to the trial?

a. Gather your resources.

b. Examine the charge sheet, convening order, investigative reports, correspondence relating to the case, witness statements, and the accused's SRB. The primary goal at this stage is to identify witnesses to be produced at trial, and identify any errors in the convening order or charge sheet (see R.C.M. 1304(a), Manual for Courts-Martial).

c. Hold a PRELIMINARY PROCEEDING with the accused, per R.C.M. 1304(b)(1) (this is NOT the trial).

(1) Filling out blocks 4 and 5 of DD Form 2329 (which you can obtain from the legal officer) give the accused a copy of the charge sheet and read him the rights he has at a SCM.

(2) Allow the accused to examine any evidence against him.

(3) Ask the accused how he intends to plead at trial (NOTE: If the accused has a pretrial agreement obligating him to plead guilty, you MUST stop the proceedings if he fails to plead guilty at trial. You should then contact your jurisdictional trial counsel).

(4) Ask the accused what witnesses he wants produced at trial. In addition to trial witnesses, the accused may want witnesses available to testify on his behalf during sentencing. Help him make efficient sentencing witness choices. (Tell him, for example, you would be happy to hear from someone he worked for, but testimony from his buddies probably won't help much. He can also have character statements faxed from out-of-town witnesses (or mailed if they get there on time).

c. Set a trial date and select a site (with a large table and several chairs).

d. Arrange for the presence of the witnesses at trial. Note: the accused has a right to have available witnesses present. These are usually easy to locate and produce (call their OIC). Consider having witnesses testify by telephone if not physically able to be present. If questions, contact your jurisdictional trial counsel.

e. Gather evidence to be presented at trial.

f. Read the punitive UCMJ article charged, paying attention to the elements and the list of lesser included offenses. See MCM Part IV.

g. Call the trial counsel if you have any questions.

#### **4. How do I conduct the trial itself?**

a. Follow the Trial Guide (read the fine print). If at any time you have a question or concern, immediately call a recess and contact your trial counsel. See R.C.M. 1304(b)(2).

b. The SCM is a public forum, but you may limit observers, or remove disruptive ones.

c. Seat the accused. Have him read and sign the rights forms.

d. Begin the SCM by reading directly from the trial guide, taking thorough notes as you proceed. Summarize the testimony of witnesses in your notes and include a summary of all witnesses' testimony in your report of the SCM.

e. On page 6 of the trial guide, you will receive the accused's pleas:

(1) If the accused has a pretrial agreement obligating him to plead guilty, you MUST stop the proceedings if he fails to plead guilty.

(2) Even after he enters pleas, you must also swear him and inquire into the facts surrounding the offense so that you are satisfied that all of the elements are met. You need not be hyper-technical in conducting this inquiry but you must be satisfied that he committed the offense as it is described in the MCM.

(3) If, during this questioning, the accused says something inconsistent with his guilty plea (for example, anything that may raise a defense or indicate that the accused is not admitting guilt, e.g. "I didn't know the brownies had dope in them" or "I thought my leave was approved") you MUST either clear the matter up or stop the proceedings and call the trial counsel.

(4) The only documentary evidence you must produce at a guilty plea is the accused's SRB. You must also produce any available sentencing witnesses the accused requests or you feel are relevant (for example, his SNCOIC or OIC).

(5) Make sure you explain the elements of the crimes and have him explain why he thinks he's guilty of EACH element. Question him in detail about the offenses before finding any guilt.

f. If there are any witnesses called (such as sentencing witnesses), you question the witnesses first. The accused may also question them. You should assist the accused in questioning witnesses if he needs or wants assistance.

g. The record of trial must correctly state the sentence you adjudge. Do not deviate from correct wording (e.g. do not award “time served”).

**5. What are the Maximum Punishments I may award? R.C.M. 1301(d) allows:**

a. Reduction to E-1 (E-5 and above can be reduced one pay grade only).

b. Forfeiture of 2/3 pay for one month

(1) If sentence includes reduction, the 2/3 is from the lower rank's pay

(2) State the sentence in the dollar amount (e.g. \$751.00 per month for 1 month)

c. Confinement, Hard Labor Without Confinement, or Restriction

(1) Confinement for up to 30 days (E-4 and below).

(2) Hard labor without confinement for up to 45 days (E-4 and below). HLWC somewhat like EPD, except there is none on Sunday, and it is not limited to two hours per day (as long as it's reasonable).

(3) Restriction for 60 days.

(4) IMPORTANT NOTE: If you award confinement, Hard Labor Without Confinement, and/or restriction in the same sentence, then the total days awarded may not exceed 30 days confinement. Use the following formula to make this determination.

(a) 2 days restriction = 1 day confinement;

(b) 1.5 days hard labor without confinement = 1 day confinement.

**6. What do I do after trial?**

a. Before you dismiss the accused, if you found him guilty of any offense, ensure he reads, signs, and returns to you the “Acknowledgment of R.C.M. 1105 Rights” form. **DO NOT SIGN THIS BEFORE THE SCM.**

b. Next, if you award confinement, complete DD Form 2704 (Victims and Witness Assistance Program). This is required by federal law before the Marine can be confined. You can obtain this form from the legal officer or your Trial Counsel. If there are witnesses to or victims of the crime you must ascertain if they want to be notified by the brig of changes in confinement status. Once you've completed the form, give it to the legal officer; the form is attached to the confinement order and goes to the brig with the confinee.

c. Complete the record of trial with the contents attached in this order:

(1) DD Form 2329 (fill it out completely).

(2) Written “report” summarizing the proceedings. (THIS REPORT IS REQUIRED BY THE JAG MANUAL). It should be attached to the DD Form 2329 and MUST include:

(a) A statement that the accused was informed of his rights per DD Form 2329.

(b) A statement that the accused did not object to trial by SCM.

(c) A summary of what the accused said about why he was guilty (if guilty plea). Make sure that the reader of your summary can determine the factual basis of the guilty plea.

(d) A statement of which charges you found the accused guilty.

(e) A list of all witnesses who testified and a summary of what they said.  
(Note: A sample written summary is attached to this guide)

(3) Charge Sheet and Convening Order.

(4) Exhibits you considered in the case.

(5) The trial guide you used with the accused's answers to your questions filled in. Write in the actual responses and statements made during the trial. Do not use “check” marks.

(6) Rights forms.

d. Finally, make a copy of the completed record of trial package, serve it on the accused, and give the original Record of Trial, with all the documents listed above, to your legal officer. You’re done!



ACC: \_\_\_\_\_.

Right to object to SCM      SCM: You have the absolute right to object to trial by summary court-martial. If you object the appropriate authority will decide how to dispose of the case. The charges may be referred to a special or general court-martial, or they may be dismissed, or the offenses charged may be disposed of by (nonjudicial punishment [if not previously offered and refused] or) administrative measures.[ See R.C.M. 306.] Do you understand that?

ACC: \_\_\_\_\_.

Right to inspect allied papers and personnel records.      SCM: You may inspect the allied papers and personnel records [Hand those documents which are available to the accused for examination in your presence.] (You may also inspect [*identify personnel records or other documents which are not present*] which are located at \_\_\_\_\_ . You may have time to examine these if you wish.)

Witnesses/other evidence for the government      SCM: The following witnesses will probably appear and testify against you: \_\_\_\_\_ . The following documents and physical evidence will probably be introduced: \_\_\_\_\_ .

Right to cross-examine

After these witnesses have testified in response to my questions, you may cross-examine them. If you prefer, I will do this for you after you inform me of the matters about which you want the witness to be questioned. Do you understand that?

ACC: \_\_\_\_\_.

Right to present evidence      SCM: You also have the right to call witnesses and present other evidence. This evidence may concern any or all of the charges. (I have arranged to have the following witnesses for you present at the trial.) I will arrange for the attendance of other witnesses and the production of other evidence requested by you. I will help you in any way possible. Do you understand that?

ACC: \_\_\_\_\_.

Evidence to be considered      SCM: In deciding this case, I will consider only evidence introduced during the trial. I will not consider any other information, including any statements you have made to me, which is not introduced in accordance with the Military Rules of Evidence during the court-martial. Do you understand that?

ACC: \_\_\_\_\_.

Right to remain silent      SCM: You have the absolute right during this trial to choose not to testify and to say nothing at all about the offense(s) with which you are charged. If you do not testify, I will not hold it against you in any way. I will not consider it as an admission that you are guilty. If you remain silent, I am not permitted to question you about the offense(s).

Right to testify concerning the offense(s)

However, if you choose, you may be sworn and testify as a witness concerning the offense(s) charged against you. If you do that, I will consider your testimony just like the testimony of any other witness.

[Note 2. Use the following if there is only one specification.]

If one specification

If you decide to testify concerning the offense, you can be questioned by me about the whole subject of the offense. Do you understand that?

ACC: \_\_\_\_\_.

[Note 3. Use the following if there is more than one specification.]

If more than one specification

SCM: If you decide to testify, you may limit your testimony to any particular offense charged against you and not testify concerning any other offense(s) charged against you. If you do this, I may question you about the whole subject of the offense about which you testify, but I may not question you about any offense(s) concerning which you do not testify. Do you understand that?

ACC: \_\_\_\_\_.

Right to testify, remain silent or make an unsworn statement in extenuation and mitigation

SCM: In addition, if you are found guilty of an offense, you will have the right to testify under oath concerning matters regarding an appropriate sentence. You may, however, remain silent, and I will not hold your silence against you in any way. You may, if you wish, make an unsworn statement about such matters. This statement may be oral, in writing, or both. If you testify, I may cross-examine you. If you make an unsworn statement, however, I am not permitted to question you about it, but I may receive evidence to contradict anything contained in the statement. Do you understand that?

ACC: \_\_\_\_\_.

Maximum punishment

SCM: If I find you guilty (of the offense) (of any of the offenses charged), the maximum sentence which I am authorized to impose is:

[Note 4. For an accused of a pay grade of E-4 or below, proceed as follows.]

E-4 and below

- (1) reduction to lowest enlisted pay grade; and
- (2) forfeiture of two-thirds of 1 month's pay; and
- (3) confinement for 1 month.

[Note 5. For an accused of a pay grade above E-4, proceed as follows.]

E-5 and above

- (1) reduction to the next inferior pay grade; and
- (2) forfeiture of two-thirds of 1 month's pay; and
- (3) restriction to specified limits for 2 months.

Plea options

SCM: Do you understand the maximum punishment which this court-martial is authorized to adjudge?

ACC: \_\_\_\_\_.

SCM: You may plead not guilty or guilty to each offense with which you are charged. You have an absolute right to plead not guilty and to require that your guilt be proved beyond a reasonable doubt before you can be found guilty. You have the right to plead not guilty even if you believe you are guilty. Do you understand that?

ACC: \_\_\_\_\_.

SCM: If you believe you are guilty of an offense, you may, but are not required to, plead guilty to that offense. If you plead guilty to an offense, you are admitting that you committed that offense, and this court-martial could find you guilty of that offense without hearing any evidence, and could sentence you to the maximum penalty I explained to you before. Do you understand that?

ACC: \_\_\_\_\_.

Lesser included offenses

SCM: [Examine the list of lesser included offenses under each punitive article alleged to have been violated. *See* Part IV. If a lesser included offense may be in issue, give the following advice.] You may plead not guilty to Charge \_\_\_\_\_, Specification \_\_\_\_\_, as it now reads, but plead guilty to the offense of \_\_\_\_\_, which is included in the offense charged. Of course, you are not required to do this. If you do, then I can find you guilty of this lesser offense without hearing evidence on it. Furthermore, I could still hear evidence on the greater offense for purposes of deciding whether you are guilty of it. Do you understand that?

ACC: \_\_\_\_\_.

SCM: Do you need more time to consider whether to object to trial by summary court-martial or to prepare for trial?

ACC: \_\_\_\_\_.

SCM: [If time is requested or otherwise appropriate.] We will convene the court-martial at \_\_\_\_\_. When we convene, I will ask you whether you object to trial by summary court-martial. If you do not object, I will then ask for your pleas to the charge(s) and specification(s), and for you to make any motions you may have.

**Trial Proceedings**

Convene

SCM: This summary court-martial is now in session.

Objection/consent to trial by SCM

SCM: Do you object to trial by summary court-martial?

ACC: \_\_\_\_\_.

Entries on record of trial	[Note 6. If there is an objection, adjourn the court-martial and return the file to the convening authority. If the accused does not object, proceed as follows. The accused may be asked to initial the notation on the record of trial that the accused did or did not object to trial by summary court-martial. This is not required, however.]
Readings of the charges	<p>SCM: Look at the charge sheet. Have you read the charge(s) and specification(s)?</p> <p>ACC: _____.</p> <p>SCM: Do you want me to read them to you?</p> <p>ACC: [If accused requests, read the charge(s) and specification(s).]</p>
Arraignment	<p>SCM: How do you plead? Before you answer that question, if you have any motion to dismiss (the) (any) charge or specification, or for other relief, you should make it now.</p> <p>ACC: _____.</p>
Motions	[Note 7. If the accused makes a motion to dismiss or to grant other relief, or such a motion is raised by the summary court-martial, do not proceed with the trial until the motions have been decided. <i>See</i> R.C.M. 905-907, and R.C.M. 1304(b)(2)(c). After any motions have been disposed of and if termination of the trial has not resulted, have the accused enter pleas and proceed as indicated below.]
Pleas	<p>ACC: I plead: _____.</p> <p>[Note 8. If the accused refuses to plead to any offense charged, enter pleas of not guilty. If the accused refuses to enter any plea, evidence must be presented to establish that the accused is the person named in the specification(s) and is subject to court-martial jurisdiction. <i>See</i> R.C.M. 202, 1301(c)]</p> <p>[Note 9. If the accused pleads not guilty to all offenses charged, proceed to the section entitled "Procedures-Not Guilty Pleas."]</p> <p>[Note 10. If the accused pleads guilty to one or more offenses, proceed as follows.]</p>
Procedures-guilty pleas	<p>SCM: I will now explain the meaning and effect of your pleas, and question you so that I can be sure you understand. Refer to the charge(s) and specification(s). I will not accept your pleas of guilty unless you understand their meaning and effect. You are legally and morally entitled to plead not guilty even though you believe you are guilty, and to require that your guilt be proved beyond a reasonable doubt. A plea of guilty is the strongest form of proof known to the law. On your pleas of guilty alone, without receiving any evidence, I can find you guilty of the offense(s) to which you have pleaded guilty. I will not accept your pleas unless you realize that by your pleas you admit every element of the offense(s) to which you have pleaded guilty, and that you are pleading guilty because you really are guilty. If you are not convinced that you are in fact guilty, you should not allow anything to influence you to plead guilty. Do you understand that?</p> <p>ACC: _____.</p> <p>SCM: Do you have any questions?</p> <p>ACC: _____.</p>

SCM: By your pleas of guilty you give up three very important rights. (You keep these rights with respect to any offense(s) to which you have pleaded not guilty.) The rights which you give up when you plead guilty are:

First, the right against self-incrimination. This means you give up the right to say nothing at all about (this) (these) offense(s) to which you have pleaded guilty. In a few minutes I will ask you questions about (this) (these) offense(s), and you will have to answer my questions for me to accept your pleas of guilty.

Second, the right to a trial of the facts by this court-martial. This means you give up the right to have me decide whether you are guilty based upon the evidence which would be presented.

Third, the right to be confronted by and to cross-examine any witnesses against you. This means you give up the right to have any witnesses against you appear, be sworn and testify, and to cross-examine them under oath.

Do you understand these rights?

ACC: \_\_\_\_\_.

SCM: Do you understand that by pleading guilty you give up these rights?

ACC: \_\_\_\_\_.

SCM: On your pleas of guilty alone you could be sentenced to \_\_\_\_\_.

[Note 11. Re-read the appropriate sentencing section at notes 4 or 5 above unless the summary court-martial is a rehearing or new or other trial, in which case *see* R.C.M. 810(d).]

Do you have any questions about the sentence which could be imposed as a result of your pleas of guilty?

ACC: \_\_\_\_\_.

SCM: Has anyone made any threat or tried in any other way to force you to plead guilty?

ACC: \_\_\_\_\_.

Pretrial agreement

SCM: Are you pleading guilty because of any promises or understandings between you and the convening authority or anyone else?

ACC: \_\_\_\_\_.

[Note 12. If the accused answers yes, the summary court-martial must inquire into the terms of such promises or understandings in accordance with R.C.M. 910. *See* Appendix 8, Note 35 through acceptance of plea.]

[Note 13. If the accused has pleaded guilty to a lesser included offense, also ask the following question.]

Effect of guilty pleas to lesser included offenses

SCM: Do you understand that your plea of guilty to the lesser included offense of \_\_\_\_\_ admits all the elements of the offense charged except the element(s) of \_\_\_\_\_, and that no proof is necessary to establish those elements admitted by your pleas?

ACC: \_\_\_\_\_.

SCM: The following elements state what would have to be proved beyond a reasonable doubt before the court-martial could find you guilty if you had pleaded not guilty. As I read each of these elements to you, ask yourself whether each is true and whether you want to admit that each is true, and then be prepared to discuss each of these elements with me when I have finished.

The elements of the offense(s) which your pleas of guilty admit are \_\_\_\_\_.

[Note 14. Read the elements of the offense(s) from the appropriate punitive article in Part IV. This advice should be specific as to names, dates, places, amounts, and acts.]

Do you understand each of the elements of the offense(s)?

ACC: \_\_\_\_\_.

SCM: Do you believe, and admit, that taken together these elements correctly describe what you did?

ACC: \_\_\_\_\_.

[Note 15. The summary court-martial should now question the accused about the circumstances of the offense(s) to which the accused has pleaded guilty. The accused will be placed under oath for this purpose. See oath below. The purpose of these questions is to develop the circumstances in the accused's own words, so that the summary court-martial may determine whether each element of the offense(s) is established.]

Oath to accused for guilty plea inquiry

SCM: Do you (swear) (affirm) that the statements you are about to make shall be the truth, the whole truth, and nothing but the truth (so help you God)?

ACC: \_\_\_\_\_.

SCM: Do you have any questions about the meaning and effect of your pleas of guilty?

ACC: \_\_\_\_\_.

SCM: Do you believe that you understand the meaning and effect of your pleas of guilty?

ACC: \_\_\_\_\_.

Determination of providence of pleas of guilty

[Note 16. Pleas of guilty may not be accepted unless the summary court-martial finds that they are made voluntarily and with understanding of their meaning and effect, and that the accused has knowingly, intelligently, and consciously waived the rights against self-incrimination, to a trial of the facts by a court-martial, and to be confronted by the witnesses. Pleas of guilty may be improvident when the accused makes statements at any time during the trial which indicate that there may be a defense to the offense(s), or which are otherwise inconsistent with an admission of guilt. If the accused makes such statements and persists in them after questioning, then the summary court-martial must reject the accused's guilty pleas and enter pleas of not guilty for the accused. Turn to the section entitled "Procedures-Not Guilty Pleas" and continue as indicated. If (the) (any of the) accused's pleas of guilty are found provident, the summary court-martial should announce findings as follows.]

Acceptance of guilty pleas

SCM: I find that the pleas of guilty are made voluntarily and with understanding of their meaning and effect. I further specifically find that you have knowingly, intelligently, and consciously waived your rights against self-incrimination, to a trial of the facts by a court-martial, and to be confronted by the witnesses against you. Accordingly, I find the pleas are provident, and I accept them. However, you may ask to take back your guilty pleas at any time before the sentence is announced. If you have a sound reason for your request, I will grant it. Do you understand that?

ACC: \_\_\_\_\_.

If any not guilty pleas remain

[Note 17. If no pleas of not guilty remain, go to note 26. If the accused has changed pleas of guilty to not guilty, if the summary court-martial has entered pleas of not guilty to any charge(s) and specification(s), or if the accused has pleaded not guilty to any of the offenses or pleaded guilty to a lesser included offense, proceed as follows.]

Witnesses for the accused

SCM: If there are witnesses you would like to call to testify for you, give me the name, rank, and organization or address of each, and the reason you think they should be here, and I will arrange to have them present if their testimony would be material. Do you want to call witnesses?

ACC: \_\_\_\_\_.

[Note 18. The summary court-martial should estimate the length of the case and arrange for the attendance of witnesses. The prosecution evidence should be presented before evidence for the defense.]

Calling witnesses

SCM: I call as a witness \_\_\_\_\_.

Witness oath

SCM: [To the witness, both standing] Raise your right hand.

Do you swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth (, so help you God)? [Do not use the phrase, "so help you God," if the witness prefers to affirm.]

WIT: \_\_\_\_\_.

SCM: Be seated. State your full name, rank, organization, and armed force ([or if a civilian witness] full name, address, and occupation).

WIT: \_\_\_\_\_.

[Note 19. The summary court-martial should question each witness concerning the alleged offense(s). After direct examination of each witness, the accused must be given an opportunity to cross-examine. If the accused declines to cross-examine the witness, the summary court-martial should ask any questions that it feels the accused should have asked. If cross-examination occurs, the summary court-martial may ask questions on redirect examination and the accused may ask further questions in recross-examination.]

[Note 20. After each witness has testified, instruct the witness as follows.]

SCM: Do not discuss this case with anyone except the accused, counsel, or myself until after the trial is over. Should anyone else attempt to discuss this case with you, refuse to do so and report the attempt to me immediately. Do you understand that?

	WIT: _____.
	SCM: [To the witness]You are excused.
Recalling witnesses	[Note 21. Witnesses may be recalled if necessary. A witness who is recalled is still under oath and should be so reminded.]  [Note 22. After all witnesses against the accused have been called and any other evidence has been presented, the summary court-martial will announce the following.]  SCM: That completes the evidence against you. I will now consider the evidence in your favor.
Presentation of defense case	[Note 23. Witnesses for the accused should now be called to testify and other evidence should be presented. Before the defense case is terminated the summary court-martial should ask the accused if there are other matters the accused wants presented. If the accused has not testified, the summary court-martial should remind the accused of the right to testify or to remain silent.]
Closing argument	SCM: I have now heard all of the evidence. You may make an argument on this evidence before I decide whether you are guilty or not guilty.
Deliberations on findings	[Note 24. The court-martial should normally close for deliberations. If the summary court-martial decides to close, proceed as follows.]  SCM: The court-martial is closed so that I may review the evidence. Wait outside the courtroom until I recall you.  [Note 25. The summary court-martial should review the evidence and applicable law. It must acquit the accused unless it is convinced beyond a reasonable doubt by the evidence it has received in court in the presence of the accused that each element of the alleged offense(s) has been proved beyond a reasonable doubt. See R.C.M. 918. It may not consider any facts which were not admitted into evidence, such as a confession or admission of the accused which was excluded because it was taken in violation of Mil. R. Evid. 304. The summary court-martial may find the accused guilty of only the offense(s) charged, a lesser included offense, or of an offense which does not change the identity of an offense charged or a lesser included offense thereof.]
Announcing the findings	[Note 26. The summary court-martial should recall the accused, who will stand before the court-martial when findings are announced. All findings including any findings of guilty resulting from guilty pleas, should be announced at this time. The following forms should be used in announcing findings.]
Not guilty of all offenses	SCM: I find you of (the) (all) Charge(s) and Specification(s): Not Guilty.
Guilty of all offenses	I find you of (the) (all) Charge(s) and Specification(s): Guilty.
Guilty of some but not all offenses	I find you of (the) Specification ( _____ ) of (the) Charge ( _____ ): Not Guilty; of (the) Specification ( _____ ) of (the) Charge ( _____ ): Guilty; of (the) Charge ( _____ ): Guilty.
Guilty of lesser included offense or with exceptions and substitutions	I find you of (the) Specification ( _____ ) of (the) Charge ( _____ ): Guilty, except the words _____ and _____; (substituting therefor, respectively, the words _____ and _____); of the excepted words: Not Guilty; (of the substituted words: Guilty;) of the Charge: (Guilty) (Not Guilty, but Guilty of a violation of Article _____, UCMJ, a lesser included offense).
Entry of findings	[Note 27. The summary court-martial shall note all findings on the record of trial.]

Procedure if total acquittal [Note 28. If the accused has been found not guilty of all charges and specifications, adjourn the court-martial, excuse the accused, complete the record of trial, and return the charge sheet, personnel records, allied papers, and record of trial to the convening authority.]

Procedure if any findings of guilty [Note 29. If the accused has been found guilty of any offense, proceed as follows.]

Presentence procedure  
 SCM: I will now receive information in order to decide on an appropriate sentence. Look at the information concerning you on the front page of the charge sheet. Is it correct?

[Note 30. If the accused alleges that any of the information is incorrect, the summary court-martial must determine whether it is correct and correct the charge sheet, if necessary.]

[Note 31. Evidence from the accused's personnel records, including evidence favorable to the accused, should now be received in accordance with R.C.M. 1001(b)(2). These records should be shown to the accused.]

SCM: Do you know any reason why I should not consider these?

ACC: \_\_\_\_\_.

[Note 32. The summary court-martial shall resolve objections under R.C.M. 1002(b)(2) and the Military Rules of Evidence and then proceed as follows. *See also* R.C.M. 1001(b)(3), (4), and (5) concerning other evidence which may be introduced.]

Extenuation and mitigation  
 SCM: In addition to the information already admitted which is favorable to you, and which I will consider, you may call witnesses who are reasonably available, you may present evidence, and you may make a statement. This information may be to explain the circumstances of the offense(s), including any reasons for committing the offense(s), and to lessen the punishment for the offense(s) regardless of the circumstances. You may show particular acts of good conduct or bravery, and evidence of your reputation in the service for efficiency, fidelity, obedience, temperance, courage, or any other trait desirable in a good servicemember. You may call available witnesses or you may use letters, affidavits, certificates of military and civil officers, or other similar writings. If you introduce such matters, I may receive written evidence for the purpose of contradicting the matters you presented. If you want me to get some military records that you would otherwise be unable to obtain, give me a list of these documents. If you intend to introduce letters, affidavits, or other documents, but you do not have them, tell me so that I can help you get them. Do you understand that?

ACC: \_\_\_\_\_.

Rights of accused to testify, remain silent, and make an unsworn statement  
 SCM: I informed you earlier of your right to testify under oath, to remain silent, and to make an unsworn statement about these matters.

SCM: Do you understand these rights?

ACC: \_\_\_\_\_.

SCM: Do you wish to call witnesses or introduce anything in writing?

ACC: \_\_\_\_\_.

[Note 33. If the accused wants the summary court-martial to obtain evidence, arrange to have the evidence produced as soon as practicable.]

[Note 34. The summary court-martial should now receive evidence favorable to the accused. If the accused does not produce evidence, the summary court-martial may do so if there are matters favorable to the accused which should be presented.]

SCM: Do you wish to testify or make an unsworn statement?

ACC: \_\_\_\_\_.

Questions concerning pleas of guilty

[Note 35. If as a result of matters received on sentencing, including the accused's testimony or an unsworn statement, any matter is disclosed which is inconsistent with the pleas of guilty, the summary court-martial must immediately inform the accused and resolve the matter. See Note 16.]

Argument on sentence

SCM: You may make an argument on an appropriate sentence.

ACC: \_\_\_\_\_.

Deliberations prior to announcing sentence

[Note 36. After receiving all matters relevant to sentencing, the summary court-martial should normally close for deliberations. If the summary court-martial decides to close, proceed as follows.]

Closing the court-martial

SCM: This court-martial is closed for determination of the sentence. Wait outside the courtroom until I recall you.

[Note 37. See Appendix 11 concerning proper form of sentence. Once the summary court-martial has determined the sentence, it should reconvene the court-martial and announce the sentence as follows.]

Announcement of sentence

SCM: Please rise. I sentence you to \_\_\_\_\_.

[Note 38. If the sentence includes confinement, advise the accused as follows.]

SCM: You have the right to request in writing that [name of convening authority] defer your sentence to confinement. Deferment is not a form of clemency and is not the same as suspension of a sentence. It merely postpones the running of a sentence to confinement.

[Note 39. Whether or not the sentence includes confinement, advise the accused as follows.]

SCM: You have the right to submit in writing a petition or statement to the convening authority. This statement may include any matters you feel the convening authority should consider, a request for clemency, or both. This statement must be submitted within 7 days, unless you request and convening authority approves an extension of up to 20 days. After the convening authority takes action, your case will be reviewed by a judge advocate for legal error. You may suggest, in writing, legal errors for the judge advocate to consider. If, after final action has been taken in your case, you believe that there has been a legal error, you may request review of your case by The Judge Advocate General of \_\_\_\_\_. Do you understand these rights?

ACC: \_\_\_\_\_.

Adjourning the court-martial

SCM: This court-martial is adjourned.

Entry on charge sheet

[Note 40. Record the sentence in the record of trial, inform the convening authority of the findings, recommendations for suspension, if any, and any deferment request. If the sentence includes confinement, arrange for the delivery of the accused to the accused's commander, or someone designated by the commander, for appropriate action. Ensure that the commander is informed of the sentence. Complete the record of trial and forward to the convening authority.]

**SAMPLE INQUIRY INTO THE FACTUAL BASIS OF A PLEA  
OF GUILTY TO THE OFFENSE OF  
UNAUTHORIZED ABSENCE (ARTICLE 86)**

1. **Assumption.** Assume the accused has entered pleas of guilty to the following charge and specification:

*CHARGE: VIOLATION OF THE UNIFORM CODE OF MILITARY JUSTICE, ARTICLE 86*  
Specification: In that Lance Corporal Joe A. Binatz, U.S. Marine Corps, on active duty, did, on or about 5 July --, without authority, absent himself from his unit, to wit: 3d Bn, 4th Marines, MCAGCC, 29 Palms, California, and did remain so absent until on or about 23 July --.

2. **Procedure.** The summary court-martial officer, after he has completed the inquiry indicated in the TRIAL GUIDE as to the elements of the offense, should question the accused substantially as follows:

SCM: State your full name and rank.  
ACC: Lance Corporal Joe A. Binatz  
SCM: Are you on active duty in the U.S. Marine Corps?  
ACC: Yes, sir.  
SCM: Are you the same Lance Corporal Binatz who is named in the charge sheet?  
ACC: Yes, sir.  
SCM: Were you on active duty in the Marine Corps on 5 July --?  
ACC: Yes, sir.  
SCM: What was your unit on that date?  
ACC: 3d Bn, 4th Mar.  
SCM: Is that located at MCAGCC?  
ACC: Yes, sir.  
SCM: Tell me in your own words what you did on 5 July that caused this charge to be brought against you.  
ACC: I stayed at home.  
SCM: Had you been at home on leave or liberty?  
ACC: Yes, sir.  
SCM: Which one was it?  
ACC: I had liberty on the 4th of July.  
SCM: When were you required to report back to the 3/4?  
ACC: At 0800 on the 5th of July.  
SCM: And did you fail to report on 5 July --?  
ACC: Yes, sir.  
SCM: When did you return to military control?  
ACC: On 23 July --.  
SCM: How did you return to military control on that date?  
ACC: I took a bus to the Base and turned myself in to the duty officer at 3/4.  
SCM: When you failed to report to 3/4 on 5 July, did you feel you had permission from anyone to be absent from your unit?  
ACC: No, sir.  
SCM: Where were you during this period of absence?  
ACC: I was at home, sir.  
SCM: Where is your home?  
ACC: In Yucca Valley, CA.

**TAB C**

SCM: Is that where you were for this entire period?  
ACC: Yes, sir.  
SCM: During this period, did you have any contact with military authorities? By “military authorities” I mean not only members of your unit, but anyone in the military.  
ACC: No, sir.  
SCM: During this period, did you go on board any military installations?  
ACC: No, sir.  
SCM: Were you sick or hurt or in jail, or was there anything which made it physically impossible for you to return?  
ACC: No, sir.  
SCM: Could you have reported to the 3/4 on 5 July 19 if you had wanted to?  
ACC: Yes, sir.  
SCM: During this entire period, did you believe you were an unauthorized absentee?  
ACC: Yes, sir; I knew I was UA.  
SCM: Do you know of any reason why you are not guilty of this offense?  
ACC: No, sir.

**SAMPLE INQUIRY INTO THE FACTUAL BASIS OF A PLEA  
OF GUILTY TO THE OFFENSE OF  
WRONGFUL USE OF A CONTROLLED SUBSTANCE (ARTICLE 112a)**

1. **Assumption.** Assume the accused has entered pleas of guilty to the following charge and specification:

*CHARGE: VIOLATION OF THE UNIFORM CODE OF MILITARY JUSTICE, ARTICLE 112A*  
Specification: In that Lance Corporal Joe A. Binatz, U.S. Marine Corps, on active duty, did, on or about 5 July --, at an unknown location, wrongfully use marijuana.

2. **Procedure.** The summary court-martial officer, after he has completed the inquiry indicated in the TRIAL GUIDE as to the elements of the offense, should question the accused substantially as follows:

SCM: State your full name and rank.  
ACC: Lance Corporal Joe A. Binatz  
SCM: Are you on active duty in the U.S. Marine Corps?  
ACC: Yes, sir.  
SCM: Are you the same Lance Corporal Binatz who is named in the charge sheet?  
ACC: Yes, sir.  
SCM: Were you on active duty in the Marine Corps on 5 July --?  
ACC: Yes, sir.  
SCM: What was your unit on that date?  
ACC: 3d Battalion, 4th Marines, 1st Marine Division, MCAGCC.  
SCM: Tell me in your own words what you did on 5 July that caused this charge to be brought against you.  
ACC: I used some marijuana.  
SCM: How did you use it?  
ACC: Smoked it.  
SCM: Where were you?  
ACC: At Joshua Tree National Park.  
SCM: How much did you smoke?  
ACC: I shared a joint with two other guys.  
SCM: Did you know it was marijuana when you smoked it?  
ACC: Yes, sir.  
SCM: And did you know that it was illegal to smoke marijuana when you did so?  
ACC: Yes, sir.  
SCM: How did the marijuana make you feel  
ACC: Lightheaded. Happy. Hungry. [Must establish that it was marijuana]  
SCM: Did you pop positive on a urinalysis soon after you used it?  
ACC: Yes, sir.  
SCM: Did that reinforce your belief that what you smoked was marijuana?  
ACC: Yes, sir.  
SCM: Did you think you had any authority to use the marijuana?  
ACC: No, sir.  
SCM: Did anyone force you to use marijuana?  
ACC: No, sir.  
SCM: Do you believe your use was wrongful?  
ACC: Yes, sir.

**TAB D**

**SUMMARY COURT-MARTIAL  
ACKNOWLEDGMENT OF RIGHTS AND WAIVER**

I, \_\_\_\_\_, acknowledge the following facts and rights regarding summary courts-martial:

1. I have the right to consult with a lawyer prior to deciding whether to accept or refuse trial by summary court-martial. Should I desire to consult with counsel, I understand that a military lawyer may be made available to advise me, free of charge, or, in the alternative, I may consult with a civilian lawyer at my own expense.

2. I realize that I may refuse trial by summary court-martial, in which event the commanding officer may refer the charge(s) to a special court-martial. My rights at a summary court-martial would include:

- a. The right to confront and cross-examine all witnesses against me;
- b. the right to plead not guilty and the right to remain silent, thus placing upon the government the burden of proving my guilt beyond a reasonable doubt;
- c. the right to have the summary court-martial call, or subpoena, witnesses to testify in my behalf;
- d. the right, if found guilty, to present matters which may mitigate the offense or demonstrate extenuating circumstances as to why I committed the offense; and
- e. the right to be represented at trial by a civilian lawyer provided by me at my own expense, if such appearance will not unreasonably delay the proceedings and if military exigencies do not preclude it.

3. I understand that the maximum punishment that may be imposed at a summary court-martial is:

<u>E-4 and below</u>	<u>E-5 and above</u>
Confinement for one month	60 days restriction
45 days hard labor w/out confinement	Forfeiture of 2/3 pay for one month
60 days restriction	Reduction to next inferior pay grade
Forfeiture of 2/3 pay for one month	
Reduction to the lowest pay grade	

4. Should I refuse trial by summary court-martial, the commanding officer may refer the charge(s) to trial by special court-martial. At a special court-martial, in addition to those rights set forth above with respect to a summary court-martial, I would also have the following rights:

***TAB E***

**SUMMARY COURT-MARTIAL  
ACKNOWLEDGMENT OF RIGHTS AND WAIVER (CONT.)**

a. The right to be represented at trial by a military lawyer, free of charge, including a military lawyer of my own selection if he is reasonably available. I would also have the right to be represented by a civilian lawyer at my own expense.

b. the right to be tried by a special court-martial composed of a least three officers as members or, at my request, at least one-third of the court members would be enlisted personnel. If tried by a court-martial with members, two-thirds of the members, voting by secret written ballot, would have to agree in any finding of guilty, and two-thirds of the members would also have to agree on any sentence to be imposed should I be found guilty.

c. the right to request trial by a military judge alone. If tried by a military judge alone, the military judge alone would determine my guilt or innocence and, if found guilty, he alone would determine the sentence.

5. I understand that the maximum punishment that can be imposed at a special court-martial for the offense(s) presently charged against me is:

a. discharge from the naval service with a bad-conduct discharge (delete if max punishment for alleged offense does not include BCD);

b. confinement for \_\_\_\_\_ months;

c. forfeiture of 2/3 pay per month for \_\_\_\_\_ months;

d. reduction to the lowest enlisted pay grade (E-1); and

e. under certain circumstances, a fine.

Knowing and understanding my rights as set forth above, I (do) (do not) desire to consult with counsel before deciding whether to accept trial by summary court-martial.

Knowing and understanding my rights as set forth above (and having first consulted with counsel), I hereby (consent) (object) to trial by summary court-martial.

Signature of accused and date: \_\_\_\_\_

Signature of witness and date: \_\_\_\_\_

**SUMMARY COURT-MARTIAL  
WAIVER OF RIGHT TO COUNSEL**

I was advised by the summary court-martial officer that I cannot be tried by summary court-martial without my consent. I have also been advised that if I consent to trial by summary court-martial, I may be represented by civilian counsel provided at my own expense. If I do not desire to be represented by civilian counsel provided at my own expense, at the option of the convening authority, a military lawyer may be appointed to represent me upon my request, if such appearance will not unreasonably delay the proceedings and if military exigencies do not preclude it.

It was also explained to me that if I am represented by a lawyer (whether civilian or military) at the summary court-martial, or if I reject an offer to be represented by a lawyer, the summary court-martial will be considered a criminal conviction and will be admissible as such at any subsequent court-martial. On the other hand, if I request a military lawyer to represent me and a military lawyer is not available to represent me, or is not provided, and I am not represented by a civilian lawyer, the results of the court-martial will not be admissible as a prior conviction at any subsequent court-martial.

I further understand that the maximum punishment which can be imposed in my case will be the same whether or not I am represented by a lawyer. Understanding all of this, I consent to trial by summary court-martial and I waive (give up) my right to be represented by a lawyer at the trial.

\_\_\_\_\_  
Signature of Summary Court-Martial Officer

\_\_\_\_\_  
Signature of Accused

\_\_\_\_\_  
Date

\_\_\_\_\_  
Accused Name

\_\_\_\_\_  
Accused Rank

NOTE: The accused must sign this form for the SCM to be admissible under R.C.M. 1001(b)(3) or M.R.E. 609 as a prior conviction in a subsequent courts-martial. If the accused is not represented by counsel, or does not waive the right to counsel (even though military counsel is not being made available), the record of SCM will only be admissible under R.C.M. 1001(b)(2) as character of service.

*Source: Handbook for Military Justice at 10-17 (NJS, January 1998).  
Section for "Accused SSN" has been removed.*

**TAB F**

**SUMMARY COURT-MARTIAL  
NOTICE OF ADVANCED EDUCATION ASSISTANCE  
REIMBURSEMENT REQUIREMENT**

For use when the accused has received advanced education assistance as defined in 10 U.S.C. Section 2005.

I, \_\_\_\_\_, the accused in a Summary Court-Martial, understand that, in accordance with 10 U.S. Code Section 2005, I may be required to reimburse the United States on a pro-rata basis for the value of the advanced education assistance provided to me if I, voluntarily or because of misconduct, do not complete the required period of active duty service incurred because I received advanced education assistance.

\_\_\_\_\_  
Accused Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

**ACKNOWLEDGMENT OF R.C.M. 1105 RIGHTS**

1. I understand that pursuant to R.C.M. 1105 of the Manual for Courts-Martial, I have seven days after the announcement of sentence to submit any written matters to the convening authority which may reasonably tend to affect his decision whether to disapprove any findings of guilty or to approve the sentence.
  
2. I understand that such matters are not subject to the Military Rules of Evidence and may include the following:
  - a. Allegations of errors affecting the legality of the findings or sentence;
  
  - b. Portions or summaries of the record of trial and copies of documentary evidence offered or introduced at trial;
  
  - c. Matters in mitigation which were not available for consideration at the courts-martial;  
and
  
  - e. Clemency recommendations from any person.
  
3. Further, I also understand that I may expressly waive, in writing, this right to submit matters and that once filed, such a waiver may not be revoked.
  
4. I intend to (EXERCISE) (WAIVE) my rights under R.C.M. 1105, Manual for Courts-Martial.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of the Accused)

## CHECKLIST FOR REPORT OF SUMMARY COURT-MARTIAL

Instruction: **Manual of the Judge Advocate General, JAGINST 5800.7F, requires that a report of summary court-martial be completed for all summary courts conducted and attached to the DD form 2329. Merely filling out the DD form 2329 is not enough. A complete “record of trial” includes both the DD Form 2329 and the report which must contain the following information.**

1. Location, date(s) conducted, persons present (with title and role, e.g., witness, accused, Summary Court-Martial, etc.) and findings.
2. List of documents attached to report of summary court-martial. Including:
  - a. Convening order
  - b. Charge sheet
  - c. Documents and physical evidence, where practicable
  - d. Acknowledgment of rights advisory, including waiver of right to refuse summary court.
3. Summary of evidence on the merits (required for each charge and specification of which the accused is found guilty contrary to his/her plea):
  - a. Pleas
  - b. Offense of which convicted
  - c. Evidence supporting guilt
    - (1) Witness testimony
    - (2) Documents presented (notation as to whether admitted or denied, description if not attached)
    - (3) Other physical evidence (notation as to whether admitted or denied, description if not attached)
    - (4) Stipulations
    - (5) Other
  - d. Evidence supporting defense:
    - (1) Testimony of accused
    - (2) Witness testimony
    - (3) Documents presented (notation as to whether admitted or denied, description if not attached).
    - (4) Other physical evidence (notation as to whether admitted or denied, description if not attached)
    - (5) Any other matters submitted by the defense.
4. For guilty pleas, a summary of the sworn statements of the accused which describe the facts surrounding the offense. It must be clear from this summary that there is a factual basis for the accused pleas of guilty.
5. Matters submitted in aggravation, and extenuation and mitigation:
  - a. Matters in aggravation:
    - (1) Documents presented (notation as to whether admitted or denied, description if not attached)
    - (2) Witness(es) testimony
    - (3) Any other matters

***TAB I***

- b. Matters in extenuation and mitigation:
  - (1) Statement of accused
  - (2) Documents presented (notation as to whether admitted or denied, description if not attached)
  - (3) Witness(es) testimony
  - (4) Any other matter submitted by the defense.
  
- 6. Sentence adjudged.
  
- 7. Clemency or suspension recommendation.

## **SAMPLE SUMMARY OF PROCEEDINGS**

At 0830, 29 January 2012, I met with PFC Binatz for the purpose of conducting the preliminary proceeding to his summary court-martial. I gave the accused a copy of the charge sheet and informed him that the charge against him had been referred to a summary court on 15 Jan 2012. I informed him that the LtCol Smith was the convening authority, and that Cpl Wesson was the accuser (see block 11a of the charge sheet). I explained to the accused that the general nature of the charge was wrongful use of marijuana, and I then explained to him the rights that he had at the summary court. I explained my duties as summary court-martial officer, and about the procedure and standard of proof. I explained his right to object to the summary court and that the accused had a right to inspect the allied papers and available personnel records.

Since the accused had informed me before court that he would plead guilty, I informed him that I did not expect to call any witnesses during the merits portion of the court-martial, but that I planned to call his OIC, 1stLt Steele, during sentencing. I also told him that I planned to consider his SRB in determining an appropriate sentence. I told the accused he had the right to cross-examine any witnesses and to have me cross-examine witnesses on his behalf. I also told him that he had the right to call witnesses and produce evidence with my assistance.

Prior to the preliminary proceeding, PFC Binatz told me that he wanted Cpl Dean to testify during sentencing, and I arranged for his presence. He also wanted Sgt Gruff to testify, but as Sgt Gruff was scheduled to be in the field and unavailable on the day of court-martial, I arranged for him to write a statement prior to going to the field. I told the accused I would not consider any evidence that was not admitted in accordance with the Military Rules of Evidence.

I explained the accused's right to testify on the merits or remain silent. I also explained to PFC Binatz that he could testify, make an unsworn statement, or remain silent during sentencing. I told PFC Binatz that the maximum sentence was confinement for 30 days, reduction to E-1, and forfeiture of 2/3 pay for one month. I told him that he the right to plead not guilty or guilty, but I also informed him that since his pretrial agreement required him to plead guilty, I would stop the proceedings if pled not guilty. Although Binatz told me that he had consulted a lawyer, would not object to summary court and was prepared to go, I advised him that we would reconvene at 1300 the following day as previously arranged.

When I reconvened the court PFC Binatz told me again that he wanted to accept a summary court-martial. PFC Binatz was not represented by counsel during the summary court-martial. The accused then pled guilty to the charge of wrongful use of marijuana. After I explained the meaning and effect of the accused's plea of guilty, I ensured his pleas were voluntary, and explained the elements of the offense. I asked the accused to describe under oath the factual circumstances surrounding the offense. After he was sworn, he told me that he had gone to a party in Oceanside and smoked a marijuana cigarette that was being passed around the room. He said he knew the cigarette had marijuana in it because someone told him it did and that he could smell the distinctive odor of marijuana coming from the cigarette, a smell which he became familiar with while attending rock concerts in his youth. He further stated he felt lightheaded and good after he smoked the cigarette and that later he was very hungry. He said he had been drinking beer but he knew at the time that it was wrong to smoke marijuana.

*\*\*NOTE: The following language, or similar language, should NOT be used without a summary of the accused's description of the facts of his actions/offenses: " The essential elements of the*

**TAB J**

*offense to which the accused pleaded guilty were explained, and he stated that he understood all description of his actions. The accused made no attempt to explain the circumstances of the offenses alleged.” Without an accompanying summary, the language by itself is inadequate.*

I announced that I found the accused guilty of wrongful use of marijuana. At the outset of the sentencing portion of the trial, I asked the accused if he had any reason why I should not consider anything in his SRB in determining an appropriate sentence. He said he thought I shouldn't consider his four previous NJP's because they were separate incidents and he had already been punished for them. I told PFC Binatz that his objection was overruled and that I would consider all matters on the right side of his SRB. I call 1stLt Steele as a witness. He testified that PFC Binatz was a hard worker, but that he frequently got into trouble on liberty. He stated that he had counseled the accused on numerous occasions for alcohol-related incidents. At PFC Binatz's request, I called Cpl Dean as a witness. Cpl Dean testified that he thought PFC Binatz was a great Marine. He also stated that he and PFC Binatz hung out on liberty a lot together, and that they had both been Private's together at 3/5. I also considered the written statement of Sgt Gruff, is attached as an exhibit.

After deliberating on sentence, I informed PFC Binatz that I sentenced him to reduction to E-1 and 15 days confinement. I informed him that he had the right to request that confinement be deferred and of his right to submit matters to the convening authority and to the Judge Advocate General. The proceedings ended at 1000.

I. B. FAIR  
Captain, USMC

## APPENDIX 15

### Record of Trial by Summary Court-Martial (DD Form 2329)

RECORD OF TRIAL BY SUMMARY COURT-MARTIAL			
1a. NAME OF ACCUSED <i>(Last, First, MI)</i> SHERRY, Arthur N.	b. GRADE OR RANK PFC	c. UNIT OR ORGANIZATION OF ACCUSED Co A, 1st Bn, 61st Inf Bde, Fort Bless, LA	d. SSN 111-11-1111
2a. NAME OF CONVENING AUTHORITY <i>(Last, First, MI)</i> BUSYBODY, Bay B.	b. RANK COL	c. POSITION Commander	d. ORGANIZATION OF CONVENING AUTHORITY 61st Infantry Brigade
3a. NAME OF SUMMARY COURT-MARTIAL <i>(If SCM was accuser, so state)</i> ANDREWS, Andy A.	b. RANK MAJ	c. UNIT OR ORGANIZATION OF SUMMARY COURT-MARTIAL 2d Battalion, 61st Infantry Brigade, Fort Bless, LA	
<i>(Check appropriate answer)</i>			YES NO
4. At a preliminary proceeding held on <u>20 September</u> , 2007, the summary court-martial gave the accused a copy of the charge sheet.			X
5. At that preliminary proceeding the summary court-martial informed the accused of the following:			
a. The fact that the charge(s) had been referred to a summary court-martial for trial and the date of referral.			X
b. The identity of the convening authority.			X
c. The name(s) of the accuser(s).			X
d. The general nature of the charge(s).			X
e. The accused's right to object to trial by summary court-martial.			X
f. The accused's right to inspect the allied papers and immediately available personnel records.			X
g. The names of the witnesses who could be called to testify and any documents or physical evidence which the summary court-martial expected to introduce into evidence.			X
h. The accused's right to cross-examine witnesses and have the summary court-martial cross-examine on behalf of the accused.			X
i. The accused's right to call witnesses and produce evidence with the assistance of the summary court-martial if necessary.			X
j. That during the trial the summary court-martial would not consider any matters, including statements previously made by the accused to the summary court-martial, unless admitted in accordance with the Military Rules of Evidence.			X
k. The accused's right to testify on the merits or to remain silent, with the assurance that no adverse inference would be drawn by the summary court-martial from such silence.			X
l. If any findings of guilty were announced, the accused's right to remain silent, to make an unsworn statement, oral or written or both, and to testify and to introduce evidence in extenuation or mitigation.			X
m. The maximum sentence which could be adjudged if the accused was found guilty of the offense(s) alleged.			X
n. The accused's right to plead guilty or not guilty.			X
6. At the trial proceeding held on <u>21 September</u> , 2007, the accused, after being given a reasonable time to decide, <input type="checkbox"/> did <input checked="" type="checkbox"/> did not object to trial by summary court-martial. <i>(Note: The SCM may ask the accused to initial this entry at the time the election is made.)</i>			<u>and</u> <i>(Initial)</i>
7a. The accused <input type="checkbox"/> was <input checked="" type="checkbox"/> was not represented by counsel. <i>(If the accused was represented by counsel, complete b, c, and d below.)</i>			
b. NAME OF COUNSEL <i>(Last, First, MI)</i>		c. RANK <i>(If any)</i>	
d. COUNSEL QUALIFICATIONS			

DD Form 2329, AUG 84

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