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COURTS MARTIAL
DEC. 1943 - DEC. 1944

UFFICIO TRASPO. 1 DI ROMA

Ufficio Legale

Prot. n. 10518 RM/ez

To Major M. HARRIS
Motor Transportation Division
R O M E

to the attention of:

ALLIED CONTROL TRANSPORTATION
BRANCH
Via Veneto
R O M E

1157

Subject: Demarcation line - Erroneous application of rules
by the Court Martial of Fabriano.

The Società Trasporti Automobilistici Libia has protested and requested this Office to pay damages in connection to a trip ticket issued in their name by us for Fabriano on the 21st of November. The drivers of the above mentioned Society on arriving at Fabriano were imprisoned and successively sentenced by the Court Martial of Fabriano for having entered inside a prohibited area.

The decision of the Court Martial of Fabriano seems completely erroneous, for, according to the Bans of the Allied Headquarters, has been ^{fixed} that the localities situated on the demarcation line are meant to be under the demarcation line and as such are therefore lawfully accessible.

In consideration of this it has been regularly appealed against the decision of the Court Martial of Fabriano and the judgement is actually pending before the Roman Court.

We beg you to give the necessary instructions in order to avoid the consequences of the erroneous sentence of the Court Martial of Fabriano - and corresponding instructions to the Commands situated on the demarcation line in order to avoid further similar cases as that complained by the Impresa Trasporti Automobilistici Libia.

We await your kind assurance at your early convenience.

THE DIRECTOR
(Dr. L. Tanfani)

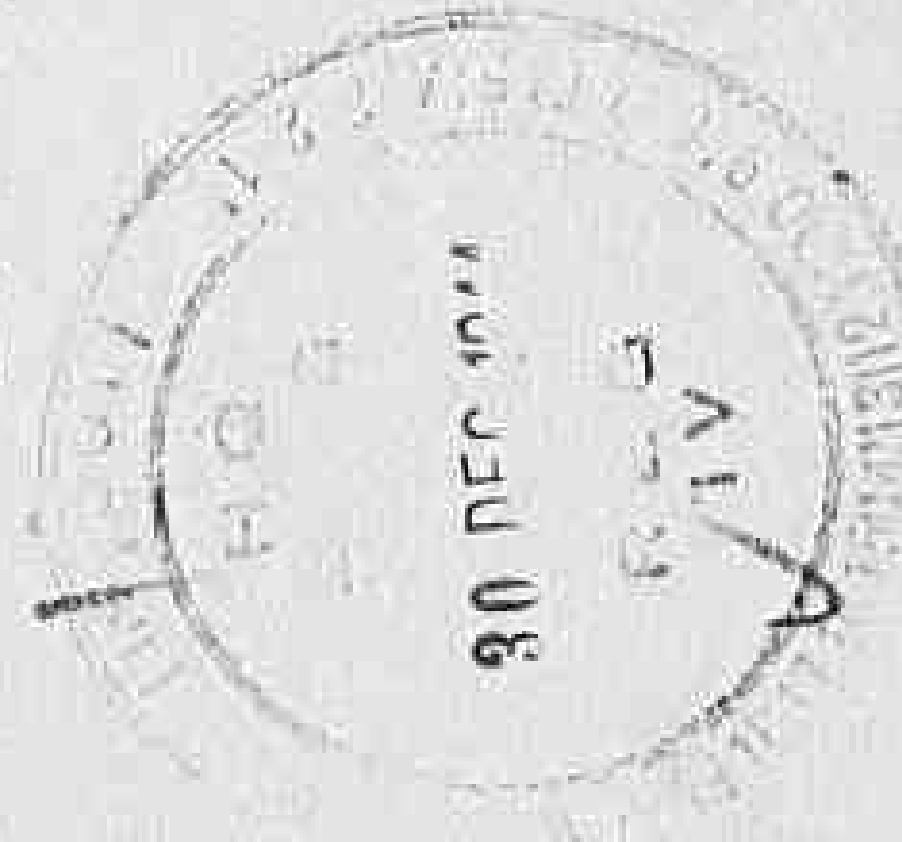
WV/ac

Long

ROMA, December 20th 1944

PIAZZA SALLUSTIA 16 - TELEF. 484.544

Ust. Fabriano
M. Harris
(Muller)



ALLIED CONTROL TRANSPORTATION

BRANCH

Via Veneto

R O M E

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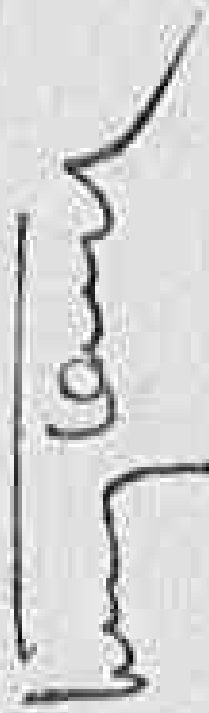
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We await your kind assurance at your early convenience.

WV/ac

THE DIRECTOR
(Dr. L. Tanfani)



Spoke Major Barnes this morning 3/1/45 reference this matter, and he requested the correspondence be filed until he called Sp. at. Date 3/1/45

UFFICIO TRASPORTI DI ROMA

UFFICIO LEGALE
Prot. n. 1058 RM/az

OGGETTO: LINEA DI DEMARCAZIONE -
ERRATA APPLICAZIONE DI NORTE DA PARTE
DELLA CORTE MARZIALE DI FABRIANO -

MAGGIORE HARRIS
Motor Transportetion Division
Via Locullo, n. 5 -

R O M A

e p.c.

ALLIED CONTROL TRASPORTETION
BRANCH -
Via Veneto -

RRO M A

1156

La Società Trasporti Automobilistici Libia ha sollevato proteste e richiesta di danni nei confronti dell'Ufficio scrivente in quanto - rilasciatisi da questo ufficio alla predetta Società in data 21/11/ u.s., un foglio di via per Fabriano - gli autisti di detta Società al loro giungere in Fabriano vennero imprigionati e successivamente condannati dalla Corte Marziale di Fabriano per avere fatto accesso in zona proibita.

Tal decisione della Corte Marziale di Fabriano risulterebbe del tutto inesatto in quanto, - con pubblici bandi di coteo Comando, - è stato fissato il principio che le località poste sulla linea di demarcazione debbono intendersi poste sotto la linea di demarcazione e come

ROMA 20/ dicembre 1944 -

PIAZZA SALLUSTIO 16 - TELEF. 484.444

MAGGIORE HARRIS
Motor Transportation Division
Via Locullo, n. 5 -

R O M A

e p.c.

ALLIED CONTROL TRASPORTATION

BRANCH -

Via Veneto -

RRO M A

1156

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Tal decisione della Corte Marziale di Fabriano risulterebbe del tutto inesatto in quanto, - con pubblici bandi di coteo Comando, - è stato fissato il principio che le località poste sulla linea di demarcazione debbono intendersi poste sotto la linea di demarcazione e come tali sono quindi legittimamente accessibili.-

Per queste ragioni la decisione di condanna della Corte Marziale di Fabriano è stata dagli autisti
./...

regolarmente impugnata d'appello ed il relativo giudizio
pende davanti la Corte Romana.

Si prega quindi a voler dare le opportune istruzioni
e l'adeguato interessamento all'effetto di derimere le con-
seguenze della inesatta decisione di condanna della Corte
Marziale di Fabriano.

Si prega altresì voler dare opportune disposizioni
ai Comandi posti sulla linea di demarcazione all'effetto di
evitare l'ulteriore verificarsi dei fatti lamentati dalla
Impresa Trasporti Automobilistici Libia.

Si resta in attesa di cortese cenno di essecuzione.

IL DIRETTORE

(L. Tanfani)



HEADQUARTERS
ALLIED CONTROL COMMISSION
ESTABLISHMENTS BRANCH
APO 394

AMCSC/jav

29 July 1944

Subject: United States vs Amil O. Nudi, 13060403, T/5, Company B, 2675th Regt., ACC, APO 394.

To : Appointing Authority, Commanding Officer, 2675th Regt., ACC, APO 394. (Through the President of the Special Courts Martial, Lt. Col. James J. Carnes).

1. The undersigned considers it an honor and a privilege to serve for the United States Army in any capacity. He is especially pleased to serve in Court Martials proceedings.

2. The undersigned respectfully submits to the Appointing Authority the following information. This information is submitted only to ensure the administration of justice. Paragraph 1, Special Order No. 98, dated 19 July 44, Headquarters 2675th Regt., ACC, (Overhead), APO 394, appointed the undersigned as Defense Counsel on a matter to come before a Special Courts Martial.

3. On the afternoon of 28 July 1944, the undersigned was served with papers designating him as the Trial Judge Advocate before a Special Courts Martial under para. 3, S.O. 106, dated 27 July 44, Headquarters 2675th Regt., ACC (Overhead), APO 394, composed of the same officers with the exception of

- a. Capt. R. B. Derby
- b. Capt. L. R. Garcia

The undersigned in reading the file and charge sheet found that the same matter he had been appointed Defense Counsel for per Par. 1, S.O. No. 98 he was now appointed Trial Judge Advocate by Par. 3, S.O. No. 106.

Because of Special Order No. 98 the undersigned had been working on certain theories of defense for accused, Nudi. The undersigned had developed certain definite ideas of defense procedure. The undersigned had talked to certain people concerning the defense angles of the case. Among some of the people I had talked to was 2nd Lt. G. W. Cashman who by Special Order No. 98 was my assistant Defense Counsel and who by Special Order No. 106 was appointed Assistant Defense Counsel thereby being my opponent in the same matter that he was my assistant previously. The undersigned had gone through a certain period of mental adjustment for the defense of the accused, Nudi. The undersigned found himself on the opposite side of the fence when Special Order

No. 106 was issued. This necessitated a complete change over

This change over has and is considerably disturbing to the Trial Judge Advocate for fear that unintentionally and unconsciously to himself he might unwittingly do something to prejudice the U. S. Government or the accused - or in some way obstruct justice.

The undersigned is honored to be appointed Trial Judge Advocate to represent the United States Government.

He would be very pleased to continue as Trial Judge Advocate as appointed, if the appointing authority after being fully appraised of all the facts determines that it is proper, and that justice will prevail.

The undersigned herewith submits the above information for the consideration of the appointing authority.

4. The undersigned invites the attention of the Appointing Authority to "A Manual For Courts-Martial, U. S. Army 1928, chapter IX, Sec. 41, Page 30.

Alan McO Goodlon
 ALAN McO GOODLON,
 Capt., G.H.P.

COURTS MARTIAL PROCEDURE

The following is offered for use in the procedure of trying a case before a Special Courts Martial. Although the expressions used are not in all cases, the exact wording used in the MCM 1928, they fulfill the requirements, as far as is known. After the Court has been properly seated, the President in the center, and the other members seated to the right and left of the Pres. according to rank, the Trial Judge Advocate (TJA) ascertains that the prisoner or accused is present with his counsel (and assistant D.C. and individual counsel if one has been requested) and that the Court is ready to proceed. When this has been done, the following procedure is suggested:

PRES.

The Court will please come to order.

TJA.

The prosecution is ready to proceed with the trial of the United States against _____ (Name the accused).

The accused and all members of the prosecution and defense now rise and remain standing until the choice of counsel has been announced.

TJA.

The accused is present, together with his regularly appointed defense counsel and assistant defense counsel. I now ask the accused - Do you wish to introduce individual counsel to serve with or in place of the regularly appointed counsel?

D.C.

He does not, and wishes to be represented by the regular counsel
(or) He wishes to introduce _____ to serve with (or in place of) the regularly appointed defense counsel.

TJA.

This court is appointed by par. _____ Special Orders # _____, Headquarters, _____ (Division), dated _____ (and is amended by par. _____ etc) - With the permission of the Court and if there is no objection on the part of the accused, I shall omit the reading of the order. (ORDER IS USUALLY READ AT FIRST MEETING OF THE COURT AND WAIVED AT SUBSEQUENT MEETINGS.)

TJA.

The following members of the court are present:

(Read full names and other data on the order appointing.)

TJA.

The following members of the Court are absent:

(Read full names etc - and then state the reason for each absence)

TJA.

The records disclose ground for challenge of: (Here state grounds for challenge of any member of the Court - such as - investigating officer, accuser, witness or other pertinent reasons. IF THERE ARE NO REASONS FOR CHALLENGE, THE TJA SHOULD FINISH THE SENTENCE WITH THE EXPRESSION - "No member of the Court.")

TJA.

If any member is aware of any facts which he believes to be the ground for challenge by either side against any member, it is requested that he state such facts at this time.

(Here the President should check to see if any member indicates that he believes himself to be prejudiced, and if so should take the proper steps to determine whether an opinion has been formed by _____ in the case.)

TJA.

The prosecution is ready to proceed with the trial of the United States against _____ (Name the accused).

TJA.

The accused and all members of the prosecution and defense now rise and remain standing until the choice of counsel has been announced.

D.C.

The accused is present, together with his regularly appointed defense counsel and assistant defense counsel. I now ask the accused - Do you wish to introduce individual counsel to serve with or in place of the regularly appointed counsel?

TJA.

He does not, and wishes to be represented by the regular counsel (or) He wishes to introduce _____ to serve with (or in place of) the regularly appointed defense counsel.

TJA.

This court is appointed by par. _____ Special Orders # _____, Headquarters, _____ (Division), dated _____ (and is amended by Par _____ etc) - With the permission of the Court and if there is no objection on the part of the accused, I shall omit the reading of the order. (ORDER IS USUALLY READ AT FIRST MEETING OF THE COURT AND WAIVED AT SUBSEQUENT MEETINGS.)

TJA.

The following members of the court are present: (Read full names and other data on the order appointing.)

TJA.

The following members of the Court are absent: (Read full names etc - and then state the reason for each absence)

TJA.

The records disclose ground for challenge of: (Here state grounds for challenge of any member of the Court - such as - investigating officer, accuser, witness or other pertinent reasons. IF THERE ARE NO REASONS FOR CHALLENGE, THE TJA SHOULD FINISH THE SENTENCE WITH THE EXPRESSION - "No member of the Court.")

PRES.

If any member is aware of any facts which he believes to be the ground for challenge by either side against any member, it is requested that he state such facts at this time.

TJA.

(Here the President should check to see if any member indicates that he believes himself to be prejudiced, and if so should take the proper steps to determine whether an opinion has been formed by such member such as would make him ineligible to sit on the case.

Apparently there are none.

The prosecution (has no) challenges. Ordinarily it is suggested that the prosecution challenge only for cause. When challenged for cause, the reason must be stated. If it appears from such statement that the reason is clearly sufficient the President should summarily excuse the member. If the reason is not deemed sufficient, the Court should follow the procedure in par. 58 of the HCM and determine by vote whether the challenge.

should be sustained (See page 47, MCM.)

I now ask the accused, whether he objects and wishes to challenge any member of the court for cause and any member other than the law member, peremptorily?

The defense (has no) challenges.
Here follow the same procedure as in the case of challenges by the prosecution.

I now ask the accused whether he objects to trial by any member of the Court now remaining?

He does (not). (If any further objection - must be made in form of a challenge and same procedure to be followed as previously)

The Court will please be sworn.
All present in the Courtroom now stand and remain standing until the Trial Judge Advocate has finished swearing in the court and has himself been sworn in.

You, Colonel _____ (and follow with the name and rank of each member of the court in order of rank - each member raising his hand as his name is called)

do swear that you will well and truly try and determine, according to the evidence, the matter now before you, between the United States and the person to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the armies of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear that you will not divulge the findings or sentence of the Court until they shall be published by the proper authority or duly announced by the Court, except to the trial judge advocate and assistant trial judge advocate; neither will you disclose or discover the vote or opinion of any particular member of the court martial upon a challenge or upon the findings or sentence, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God.

Each member of the Court - I do.

PRES. You, Captain (Trial Judge Advocate) (and Ass't T. J. A.) do swear that you will faithfully and impartially perform the duties of a trial judge advocate (and assistant trial judge advocate) and will not divulge the findings or sentence of the Court to any but the proper authority until they shall be duly disclosed. So help you God.

TJA and (Ass't TJA) I do.

All now resume their seats with the exception of the accused, his

D.C.

He does (not). (If any further objections are made, the form of a challenge and same procedure to be followed as previously)

TJA.

The Court will please be sworn.
All present in the Courtroom now stand and remain standing until the Trial Judge Advocate has finished swearing in the court and has himself been sworn in.

TJA.

You, Colonel _____ (and follow with the name and rank of each member of the court in order of rank - each member raising his hand as his name is called)

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Each member of the Court -

I do.

PRES.

You, Captain (Trial Judge Advocate) (and Ass't T. J. A.) do swear that you will faithfully and impartially perform the duties of a trial judge advocate (and assistant trial judge advocate) and will not divulge the findings or sentence of the Court to any but the proper authority until they shall be duly disclosed. So help you God.

TJA and (Ass't TJA)

I do.

All now resume their seats with the exception of the accused, his counsel and the personnel of the prosecution.

TJA.

The accused will now be arraigned. The accused is charged with violation of the _____ Article of War. (With the consent of the accused and by permission of the Court I will omit the reading of the charges and specifications.) Par 62, MCM.

D.C.

The accused consents and waives the reading of the charges.

PRES.

The reading of the charges may be omitted.

TJA.

The charges are laid under the _____ Article(s) of War, are signed by _____, a person subject to military law, as accuser, are properly sworn to before an officer authorized to administer oaths, and are referred by 1st Ind. to me as trial judge advocate of this court, for trial.

The charges in this case were served by _____ on the accused on the _____ day of _____ 194____. (If less than five days have passed since the service of the charges the TJA should here request that the accused waive the five day period and consent to immediate trial. If this is agreeable, the D.C. should announce:

D.C. The accused waives the five day period and consents to immediate trial.

TJA. Before receiving any pleas to the general issue, I advise the accused that if there are any special pleas or motions to be made that they should be made at this time.

(The insertion of request for any special pleas at this point is solely for pleas to the jurisdiction of the court.)

D.C. There are (no) special pleas or motions to be made at this time.

TJA. I now ask the accused, you now having been arraigned on the charges here referred for trial, how do you plead to the (specification of charge #1 _____ to the charge?)

D.C. The accused pleads (Plead to each specification and each charge)

If the accused wishes to plead guilty to a lesser charge - this should now be done - as for example - if he wishes to plead guilty to the violation of the 61st AW in place of the 58th AW

To the specification: "Guilty, except the words 'Desert' and 'in desertion', substituting therefor, respectively, the words 'absent himself without leave from' and 'without leave', of the excepted words not guilty, of the substituted words, guilty.

To the charge: Not guilty, but guilty of the violation of the 61st A.W..

TJA. The prosecution has no readings from legal authorities to present to the Court at this time. (Or) The prosecution wishes to read the following extracts from the MCM - in absence of any objection on the part of the Court, the TJA reads any portion which is pertinent.

TJA. Does the defense or the Court wish any portion of the Manual read?

D.C. The defense does (not).

PRES. The court does (not).

TJA. The prosecution has (no) opening statement to make.

If there are any stipulations, they should be offered at this time.

TJA then calls the first witness and swears him in: (See footnote at end of form) The usual first questions asked are

D.C. There are (no) special pleas or motions to be made at this time.

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D.C. The defense does (not).

PRES. The court does (not).

TJA. The prosecution has (no) opening statement to make.

If there are any stipulations, they should be offered at this time.

TJA then calls the first witness and swears him in: (See footnote at end of form) The usual first questions asked are

State your name, rank, organization and station.
Do you know the accused? (What is his name)
Is he in the military service?

The prosecution now presents its case and when done states:

TJA. The prosecution rests.

The defense now opens its case and introduces its witnesses. As the witness is called, the TJA swears the witness in, asks the introductory question and then turns the witness over to the defense counsel.

When the defense has concluded the presentation of its witnesses, other than the accused, the DC then states:

The rights of the accused have been explained to him and he elects to - take the stand; or, remain silent; or, make an unsworn statement.

TJA.

I now ask that the Court explain the rights of the accused to him.

The accused now stands and remains standing, with his counsel, until the President has finished his explanation and the accused has made his election of what he wishes to do.

PRES.

Private at this time you have several choices which you may make. There are three things which you may do. You may take the stand and testify on such specifications as you choose and if you do you will be subject to cross-examination by the TJA and the Court on any of the matters material to the specification on which you have testified (in the case of the TJA your cross-examination will be limited to the matters touched on the direct examination). OR, you may make an unsworn statement, orally or in writing, personally or through your counsel. You may not be cross-examined on such unsworn statement. OR, you may elect to remain silent and in this case the Court may draw no inference of your guilt or innocence from your failure to testify.

Now take a few moments to consult with your counsel and then inform the Court what you have decided to do.

D.C.

The accused has decided to (State what he has elected to do.) If he elects to take the stand, he is sworn by the TJA and asked:

TJA.

(Introductory question of identification and - "You are the accused". After the accused has testified or elected to remain silent, the DC states, "The defense rests.")

TJA.

The prosecution has nothing further to offer. Does the Court wish to have any witnesses called or recalled?

PRES.

It does (not).

TJA.

The prosecution (makes or waives) opening argument.

D.C.

The defense submits the following closing argument - or submits the case without comment.

TJA.

The prosecution makes the following closing argument.

PRES.

Has the prosecution anything further to offer?

TJA.

It has (not).

PRES.

Has the defense anything further to offer?

D.C.

It has (not).

PRES.

The Court will be cleared and closed.

All now leave the courtroom except the members of the Court.

When the finding has been reached the Court is cleared.

your cross-examination. OR, you may make an unsworn statement on the direct examination). OR, you may make an unsworn statement, orally or in writing, personally or through your counsel. OR, You may not be cross-examined on such unsworn statement. OR, you may elect to remain silent and in this case the Court may draw no inference of your guilt or innocence from your failure to testify.

Now take a few moments to consult with your counsel and then inform the Court what you have decided to do.

The accused has decided to (State what he has elected to do.) If he elects to take the stand, he is sworn by the TJA and asked:

(Introductory question of identification and - "You are the accused". After the accused has testified or elected to remain silent, the DC states, "The defense rests."

The prosecution has nothing further to offer. Does the Court wish to have any witnesses called or recalled?

It does (not).

The prosecution (makes or waives) opening argument.

The defense submits the following closing argument - or submits the case without comment.

The prosecution makes the following closing argument.

Has the prosecution anything further to offer?

It has (not).

Has the defense anything further to offer?

It has (not).

The Court will be cleared and closed.

All now leave the courtroom except the members of the Court.

When the finding has been reached the Court is opened. When all have resumed their places, the president announces, either:

Private, it is my duty as president of this court to inform you that the court, in closed session, and upon secret written ballot, has found you not guilty of all the specifications and charges, and therefore acquits you.

OR

The court is open to receive evidence of previous convictions, if any, and to hear the personal data concerning the accused as shown on the charge sheet.

I have evidence of (no) previous convictions to submit.

(4)

Any correction should be made at this time and the accused should state whether the record of previous conviction is correct.

TJA. Private, listen to the reading of this data from the charge sheet, and when I am through reading, state whether it is correct. Data on the face of the charge sheet is now read to the prisoner.

TJA. (To the accused - "Is that data correct?"

Accused It is (not) (Offer any corrections)

PRES. The court will be cleared and closed.

When the Court is ready to announce its findings and sentence, the Court is opened and the President then announces the findings and sentence to the prisoner who stands before the President as the findings and sentence are announced. All members of the prosecution and defense are also standing.

PRES. Private, it is my duty as president of this Court to inform you that the Court, in closed session, and upon secret written ballot, (Required fraction of members - 2/3 etc.,) of the members concurring in each finding of guilty, finds you guilty of the (Specification and charge) or (Of the specification of Charge) or - (of the substituted words etc)

And the court, again in secret session, and upon secret written ballot, (fraction) of the members present the time the vote was taken concurring, sentences you - (See Appendix 9, MCM, for forms of sentence) (See also AR 35-2460 November 28, 1940)

PRES. The court will now proceed to such other business as may be brought before it.

TJA. There are (no) other cases to be brought before the Court at this time.

Sample Stipulation

TJA. The prosecution and the defense have agreed to stipulate as true certain facts, relating to the charges, all of which are consistent with the accused's plea(s) of not guilty. I now offer, subject to confirmation by the accused and counsel, a written statement of stipulations as to facts, for acceptance by the Court under the provisions of par. 126, MCM.

D.C. It is so stipulated,

PRES. Subject to objection by any member, I rule that the stipulation will (not) be accepted.

OR

TJA. It is stipulated between the prosecution, the defense and the

Court is opened and the President then announces the findings and sentence to the prisoner who stands before the President as the findings and sentence are announced. All members of the prosecution and defense are also standing.

PRES.

Private _____, it is my duty as president of this Court to inform you that the Court, in closed session, and upon secret written ballot, (Required fraction of members - 2/3 etc.,) of the members concurring in each finding of guilty, finds you guilty of the (Specification and charge) or (Of the specification of Charge) or - (of the substituted words etc)

And the court, again in secret session, and upon secret written ballot, (fraction) of the members present the time the vote was taken concurring, sentences you - (See Appendix 9, MCM, for forms of sentence) (See also AR 35-2460 November 28, 1940)

PRES.

The court will now proceed to such other business as may be brought before it.

TJA.

There are (no) other cases to be brought before the Court at this time.

Sample Stipulation

TJA.

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D.G.

It is so stipulated.

PRES.

Subject to objection by any member, I rule that the stipulation will (not) be accepted.

OR

TJA.

It is stipulated between the prosecution, the defense and the accused that if _____ were present in court he would testify as follows: (OR) as appears in a prepared statement which I now offer as his stipulated testimony, subject to confirmation and acceptance by the court and confirmation by the accused and his counsel.

PRES.

I rule _____.

The statement is now marked as an exhibit and offered in evidence by the TJA and then read to the court, if accepted.

OATH TO BE ADMINISTERED TO EACH WITNESS:

TJA.

You swear that the evidence ~~which~~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.

*(Inserted for grammatical reasons only).

After each witness has completed his testimony - the TJA should inquire if the witness may be excused and the President should so state.

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