

GCM  
PROCEDURE FOR GCM RECORDS

Cover

Appointed by Cndg <sup>General</sup> ~~Officer~~

Read - insert pleas in car

Sentences - underline acquittal  
Testimony Prosecution:  
Defense:

(list witnesses alphabetically)

References: GCM, 1928; GCM Form for R/T.

I. Index sheet of record.

A. Problem: Differences of opinion as to proper designation of place where trial is had.

1. If trial is had in Maastricht, Holland, should place designated be:

- ✓ a. Maastricht, Holland, or
- b. Headquarters Ninth U. S. Army, APO 339.

note (Station at head of cover is APO - , US Army)  
"Trial at" Maastricht, Holland?

2. If trial is had at some location other than in Maastricht, what should the place designation be?

- ✓ a. Name of town, province and country, or
- b. Name of unit with their APO number and U. S. Army.

same as above.

B. Problem: If there are more witnesses than the index sheet will accommodate, what is the proper way to list the remaining witnesses?

1. The proper procedure is to use an additional index sheet designated "Index Continued", leaving the upper part of the cover blank, or

- ✓ 2. add additional witnesses in blank space on reverse side of cover.

II. Page 1 of record.

A. Problem: Differences of opinion as to proper designation of place where court convened.

- ✓ Note: Place where court convened will be same as place designated where trial is had (see IA1 and IA2 above). Maastricht, Holland

attach amending orders.

III. Page 2 of record.

A. Problem: Differences of opinion as to proper designation of "place".

Note: "Place" will be same as shown in IA1 and IA2.

Maastricht, Holland.  
"Present" (copy of order)  
"Absent" - do - + excuse for each.

IV. Page 3 of Record.

A. Problem: Is it necessary to interline the words "through his counsel" in setting out the accused's answer "The accused stated he desired to be defended by:"?

1. Since it is merely introductory procedure preceding actual testimony, it is presumed that the accused's counsel will speak for him, having first been advised by the accused of what he desires.

no

- 2. "defended by" :- regularly apptd DC - (or name of)
- "accused" : yes, six



*Handwritten notes at top of page*

**B. Problem:** Is it necessary to interline the words "through his counsel" in setting out the accused's answer to the question by the J/S, "Do you want a copy of the record of trial?"

1. See answer to IVA above.

*Handwritten note:* Note: A solution is to cross out the word "accused" substituting "X" therefor.

**C. Problem:** Is it necessary to interline the words "through his counsel" in setting out the accused's answer whether he objects to any other member present?

1. See answer to IVA and IVB above.

**V. Page 4 of record.**

**A. Problem:**

**VI. Page 5 of record.**

**A. Problem:** The affidavit of the charge sheet, page 1, sets forth the signature of the officer authorized to administer oaths in two lines. The printed form of the record specifies four lines. Is it proper to reproduce the signature on the charge sheet, dividing the two-line signature into four separate lines to conform with the record?

1. Yes, or  
2. No.

**VII. Page 6 of record.**

**A. Problem:** Is it necessary to set out the matters read to the court?

*Handwritten note:* Note: The manual (page 263) specifies that "any extracts from the manual or elsewhere that are read will be identified by paragraph, page, etc., but need not be copied in the record".

1. Yes, or  
2. No.

**B. Problem:** Is it sufficient to state that the trial judge advocate then made an opening statement, or should the opening statement be included in the record?

*Handwritten note:* Note: The manual (page 264) states, "The trial judge advocate may make an opening statement. This statement need not be recorded except to the extent required or permitted by the court, and



## Suggested forms -

The challenged member was sworn as to his competency to act as a member of the court, and testified as follows:

The challenged member withdrew, the court was closed and voted upon the challenge by secret written ballot, and, upon being opened, the president announced that the challenge was (sustained, and the challenged member thereupon withdrew) (or not sustained and the challenged member thereupon resumed his seat).

Nolle Prosequi - TJA: By direction of \_\_\_\_\_, the prosecution withdraws the following charges and specifications and will not pursue the same further at the present trial.

Sergeant James V. Greer, Company B, 1<sup>st</sup> Regiment, a witness for the prosecution, was sworn and testified as follows:

Questions by prosecution:

Q. do you - -

A. Yes, sir.

Note incident discussions, formalities, motions, rulings etc also recess, adjournment, witness excused, etc.

The court then took a recess until \_\_\_\_\_ hours, at which time all the members of the court, the personnel of the prosecution and defense, the accused reporter (and interpreter) who were present at the close of the previous session, resumed their seats:

After adj. - The court then, at \_\_\_\_\_ hours, on \_\_\_\_\_, adjourns to meet at \_\_\_\_\_ hours, on \_\_\_\_\_.

The witness was excused and withdrew from the courtroom.



except to the extent necessary for a proper understanding of any objection made or question raised with respect to such statement. The proceedings and action on any such objection or question will be recorded. (Underlining supplied).

C. Problem: The printed form of the record does not indicate that the organization of the witness should be set out, however, the manual (page 264) so indicates. Should the organization be set out? e. g., SERGEANT JOHN Q. JONES, Company A, 1710th Signal Service Battalion, a witness for the prosecution, was sworn and testified as follows:

- ✓ 1. Yes, or
- 2. No.

D. Problem: In the first stock question, "State your full name, grade, organization and station", should an enlisted man be asked his "grade", and an officer his "rank"?

Note: The two words are synonymous, however, an enlisted man is said to be a Technician 3d, 4th, or 5th grade; while an officer is said to "rank" a subordinate officer. In the old days, a line of officers and a line of privates were termed "rank and file". (Webster's Dictionary, 5th Ed). Rank also denotes "social position" with which enlisted men are not associated, at least by act of Congress (joke).

- ✓ 1. Yes, or *Use "grade" for both*
- 2. No.

E. Problem: The TJA in asking the above question sometimes finds it necessary to prompt the witness who answers only a portion of the original question, e. g.:

- Q. State your full name, grade, organization and station.
- A. John Q. Jones, Sergeant.
- Q. Organization?
- A. Company A, 1710th Signal Service Battalion.
- Q. Station?
- A. Berlin, Germany.

Is it necessary to show the questions and answers in three separate groups, or may they be combined into one question and one answer?

- ✓ 1. Yes, or
- 2. No.

F. Problem: Is it correct procedure for the TJA in asking the question, "Sergeant Smith, will you look at the accused, sitting to your right and behind you, and state whether you know him?" Is it correct to ask the same question in the following manner: "Do you know the accused, Private Jones?"

*Correct* Note: It is my belief from observation that the identification of the



*Suggested forms.*

The witness was excused and withdrew from the courtroom

Sergeant John R. Brown, Company B, 170th Infantry Regiment, was recalled as a witness for the prosecution (Defense), reminded that he was still under oath, and further testified as follows:

Q. ...  
A. ...  
Q. ...  
A. ...  
Q. ...  
A. ...  
Q. ...  
A. ...

That was "sharp" ...

Q. ...  
A. ...  
Q. ...  
A. ...  
Q. ...  
A. ...

Q. ...  
A. ...  
Q. ...  
A. ...

Q. ...  
A. ...  
Q. ...  
A. ...

Q. ...  
A. ...  
Q. ...  
A. ...



accused by a witness should be made entirely upon the witness' ability to find the accused in the courtroom and identify him if he can. This is accomplished by use of the following sequence of questions:

Q. Do you know the accused? If so, state his name.

A. I do, his name is Private John Q. Jones.

Q. Do you see the accused in the courtroom? If so, will you point to him?

A. (Witness indicated).

TJA: Request that the record show that the witness properly identified the accused. Will the defense counsel object to that *the witness pointed to the accused?*

DC: No objection.

LM: Granted.

By the above means, the witness is not aided in the identification of the accused by the TJA and the result of the witness' actions makes the identification either a more positive one or a complete failure, e. g., in the case of Davis-Fotts, four additional colored soldiers were brought into the courtroom and intermingled with the accused for the purpose of making the identification more difficult for the witnesses. When the witnesses could identify the two accused, the identification evidenced a more positive ability on the part of the witness to identify the accused by selecting them from a group.

- ✓ 1. Yes, or  
2. No.

*But not necessary to aid the witness*

VIII. Page 7 of record.

- A. Problem: Is it sufficient to say in the TJA's statement, "that he had (some or no) evidence of previous convictions", or should the exact number of previous convictions be set out?

Note: Neither the manual (page 267) nor the printed form of the record indicates any enumeration.

- ✓ 1. Yes, or  
2. No.

*State the exact number*

IX. Page 8 of record.

- A. Problem: Is it desirable in setting out the sentence to cross out the word "to" on the printed form and make the word "To" the first word in the sentence?



Note: The answer may depend on whether the sentence is continued in the same style as the first two lines of the printed form, e. g.,  
"The court was closed, and upon secret written ballot \_\_\_\_\_ of the members present at the time the vote was taken concurring, sentences the accused to be dishonorably discharged the service, etc."  
or, if the sentence is set apart: ". . .at the time the vote was taken concurring, sentences the accused:

To be dishonorably discharged the service, etc."

- ✓ 1. Yes, or  
2. No.

B. Problem: If the court recessed before it proceeded to other business, should it be indicated in the record? (see page 268 of Manual under par. "Adjournment").

- ✓ 1. Yes, or  
2. No. (*form*)

Problem: If so, how?

Answer: *The court convened*

Other questions as to the record, pages 1 to 8:



X. Pages 260 to 270 of Manual.

A. Record of arguments.

Problem: When is it necessary to record arguments? (Note: see page 260).

*Only when requested*

B. Use of form.

Problem: When is it necessary to depart from the use of the form? (Note: see page 260).

C. Introduction of counsel.

1. Problem: When the accused wishes to introduce individual counsel, is the name of that counsel shown as being a member of the court present?

a. Yes, or

b. No.

2. Problem: If the accused desires individual counsel, does the regularly appointed counsel withdraw from the courtroom, and if so, is he shown as being absent or is it sufficient to indicate that he withdrew from the courtroom.

Answer: *Excused by Pres.*

*(Also if absent give reason)*

D. Interpreter sworn.

Problem: Can the interpreter be sworn at the same time as the reporter?

Note: The manual (page 261) states, "The interpreter may be sworn just before he functions as such" (underscoring supplied).

a. Yes, or

b. No. *either time*

E. Signature, affidavit, indorsement (page 263).

Problem: Following the request of the prosecution (page 3 of record) that the court state any facts which it believes to be a ground for challenge, is it desirable to include in the record the paragraph, "The accuser in this case, \_\_\_\_\_, is not a member of this court. The investigating officer, \_\_\_\_\_, is not a member of this court. No officer who forwarded the charges is a member of this court, and no member of the court will be called as a witness for the prosecution"?

a. Yes, or

b. No.



F. Indorsement. (page 263).

Problem: Following the reproduction of the first indorsement on page 5 of the record, is it desirable to include in the record the paragraph, "The charges are properly sworn to before an officer authorized to administer oaths, and are referred by 1st indorsement to me as Trial Judge Advocate of this court for trial. The charges were served upon the accused by me on \_\_\_\_\_?"

- a. Yes, or  
b. No.

G. Arraignment.

Problem: Is it desirable before receiving pleas to the general issues to include in the record the following paragraph, "Private \_\_\_\_\_, you are arraigned upon the charges here referred for trial, which I have read, and I now ask you how you plead to each charge and specification. Before receiving pleas to the general issue, however, I advise the accused that special pleas or motions, if any, should be made at this time?"

- a. Yes, or  
b. No.

H. Pleas.

Problem: Is it desirable that the TJA in asking how the accused wishes to plead ask for each plea separately, e. g.: How do you plead to the specification of Charge I? Not Guilty. Q. How do you plead to Charge I? A. Not Guilty. Q. How do you plead to Specification 1 of Charge II? A. Not Guilty. Q. To Specification 2 of Charge II? A. Not Guilty. Q. And to Charge II: A. Not Guilty.

Note: In writing the GCMO the pleas and findings must be taken as they are shown in the record. Therefore, when the accused pleads, "To all Specifications and Charges" and the findings are listed separately as to each specification and charge, the pleas must be changed in the record. The pleas and findings should conform with one another regardless of how they were stated.

1. Yes, or *Break down, regardless of how stated.*  
2. No.

I. Cross-examination (page 264).

Problem: Is it desirable to include in the record that the defense had no questions to ask of a witness even if he didn't make such a statement?

Note: "If the defense declines to cross-examine witness, the record should state: The defense declined to cross-examine the witness." (Manual, page 264).

1. Yes, or *Verdict*  
2. No.



J. Ruling (page 265).

Problem: Page 40 of the manual sets forth the rulings by the law number and the form of rulings. When is it necessary to close the court to vote on a ruling and what rulings are subject to objection by any member of the court? In other words, when is that statement made by the law number?

Note: It is noted that the President will announce the ruling when the court has been closed to vote on a ruling of the President which has been objected to.

Answer: *LM - questions on admissibility of evidence  
CT - interlocutory questions*

K. Statement by defense.

When is it necessary to include in the record an opening statement made by the defense?

Note: See VIII (statement by prosecution), and page 267 of manual.

*Same*

L. When should closing arguments be recorded?

Note: See page 267 of manual.

M. When TJA or DC completes his examination and it is followed by only one question by the court, is it necessary to set off that single question by centering the words "Examination by the Court"? The same question with reference to a single question by either the TJA or DC.

Answer: *Stray questions labeled DC, TJA, or MEMBER  
When time for regular exam - center*

N. Clemency.

What is the procedure for clemency matters?

Note: The manual indicates that matters as to clemency may be submitted immediately following the announcement of the sentence and before the court proceeds to other business or adjourns.

Answer:



**6. Amended Specification.**

**Problem** When either before or after the arraignment a specification is changed by deletion, substitution, etc., which form of the specification should be typed in page 4 of the record? Same questions as to stipulations, exhibits, etc.

**Answer:**

*Put in as read*

**Other questions with reference to procedure:**



SUGGESTED FORMS  
Procedural

MEMBER CT CHALLENGED: The challenged member was sworn as to his competency to act as a member of the court, and testified as follows: (record proceedings).

MEMBER CT EXCUSED: Captain \_\_\_\_\_, Fourth Infantry, announced that he signed the charges in the case. He was excused and withdrew.

CHALLENGED MEMBER CT VOTED ON: The challenged member withdrew, the court was closed and voted upon the challenge by secret written ballot, and, upon being opened, the president announced that the challenge was (sustained, and the challenged member thereupon withdrew) (or not sustained, and the challenged member thereupon resumed his seat).

ROLLE PROSEQUI: TJA: By direction of \_\_\_\_\_, the prosecution withdraws the following charges and specifications and will not pursue the same further at the present trial: \_\_\_\_\_.

WITNESS SWORN: SERGEANT JOHN G. JONES, Company A, 1710th Signal Service Battalion, a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by prosecution:

Q. Do you know the accused? If so, state his name.

A. I do, his name is . . .

PRES: (Indent discussions, formalities, etc.)  
TJA: (Indent motions, evidence, Let the record show, etc)  
DC: ( " " )  
LM: (Indent rulings, discussions, etc.)

(Indent recess, witness excused, etc)

CT OPENED AFTER RECESS: The court then took a recess until \_\_\_\_\_ hours, at which time all the members of the court, the personnel of the prosecution and defense, the accused (the two, four or six accused), the reporter (and the interpreter) who were present at the close of the previous session, resumed their seats.

AFTER ADJOURNMENT: The court then, at \_\_\_\_\_ hours, on \_\_\_\_\_ 19\_\_\_\_, adjourned to meet at \_\_\_\_\_ hours, on \_\_\_\_\_ 19\_\_\_\_.

/s/ TJA  
Crgn, date and place.

EXCUSING WITNESS: ~~The witness~~ <sup>was</sup> excused ~~and~~ <sup>and</sup> ~~the witness~~ withdrew from the courtroom.

RECALL: SERGEANT JOHN G. JONES, Company A, 1710th Signal Service Battalion, was recalled as a witness for the prosecution (defense), reminded that he was still under oath, and further testified as follows:



REBUTTAL  
WITNESS:

The defense having rested, the prosecution recalled SERGEANT JOHN Q. JONES, Company A, 1710th Signal Service Battalion, who after being reminded that he was still under oath, testified as follows:

FINDINGS

FORM WHEN  
ACCUSED IS  
ACQUITTED:

Neither the prosecution nor the defense having anything further to offer, the court was closed (or, the court then withdrew from the courtroom), and voted in the manner prescribed in Article of War 31. Upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring in each finding, the court finds the accused:

Of the specification of the Charge: Not Guilty.  
Of the Charge : Not Guilty.

ANNOUNCE-  
MENT OF  
ACQUITTAL:

The court was opened and the president announced that the accused was acquitted of the specification and the charge.

SENTENCE

SENTENCE:

The court was closed, and upon secret written ballot two-thirds (or three-fourths, or all) of the members present at the time the vote was taken concurring, sentences the accused:

PUNCTUATION  
OF SENTENCE:

To be dishonorably discharged the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor at such place as the reviewing authority may direct, for \_\_\_\_\_ ( ) years. \*(No (or number of) previous convictions considered).

ACQUITTAL  
SHOWN ON  
GCMO:

The court thereupon announced the acquittal of the accused on (date).

*Announcement of Spec.*

\*GCMO only