NAVY

1953 No. 594

The Naval Courts-Martial (Procedure) Order, 1953

Made - - - -	1*st April*, 1953
Laid before Parliament	2*nd April*, 1953
Coming into Operation	3*rd April*, 1953

At the Court at Windsor Castle, the 1st day of April, 1953

Present,

The Queen's Most Excellent Majesty in Council

Whereas there was this day read at the Board a Report of the Judicial Committee of the Privy Council, dated the 13th day of March, 1953, in the words following :—

" Whereas by Order in Council of the 25th day of November, 1952, there was referred unto this Committee a Memorial of the Lords Commissioners of the Admiralty dated the 17th day of November, 1952, praying that the General Orders for regulating the Procedure and Practice of Naval Courts-Martial sanctioned by an Order in Council dated the 11th day of October, 1923, as amended by Orders in Council dated the 25th day of June, 1925, and the 21st day of February, 1935, may be amended. And there was likewise referred unto this Committee Revised General Orders contained in the Schedule to the said Memorial to consider the same and report their opinion to Your Majesty in Council :

" The Lords of the Committee, in obedience to the said Order of Reference have taken the said Memorial and the said Revised General Orders into consideration and Their Lordships do this day agree humbly to report to Your Majesty in Council as their opinion that the General Orders regulating the Procedure and Practice of Naval Courts-Martial as amended and set out in the Schedule annexed to this Report ought to be approved ".

Now, therefore, Her Majesty, having taken the said Report into consideration, and in exercise of the powers conferred upon Her by section sixty-five of the Naval Discipline Act(a), and of all other powers Her enabling, is pleased, by and with the advice of Her Privy Council, to order and it is hereby ordered as follows :—

1. The General Orders aforesaid as set out in the Schedule to this Order are hereby approved and shall come into force on the 1st day of July, 1954, or such earlier date or dates, not being earlier than the day following the day on which this Order is laid before both Houses of Parliament, as may be notified by the Admiralty in the London Gazette.

2. This Order shall come into operation on the 3rd day of April, 1953, and may be cited as the Naval Courts-Martial (Procedure) Order, 1953.

And the Right Honourable the Lords Commissioners of the Admiralty are to give the necessary directions herein accordingly.

W. G. Agnew.

(a) 29 & 30 Vict. c. 109.

SCHEDULE

REVISED GENERAL ORDERS REGULATING THE PROCEDURE AND PRACTICE OF NAVAL COURTS-MARTIAL

These General Orders supersede the General Orders regulating the procedure and practice of naval courts-martial(a) as amended(b).

In these General Orders, unless the context requires otherwise, the words "the Act" mean "the Naval Discipline Act", and the words "convening authority" mean an officer having power to order courts-martial, or, when a court-martial has been ordered, the officer who ordered that particular court-martial or his successor in command.

PROCEDURE PREPARATORY TO TRIAL

2105. *Application for Trial.*—An application for the trial by court-martial of any person on any charge shall be made as follows. There shall be forwarded to the convening authority through the usual channels a letter, hereinafter called the circumstantial letter, reporting the circumstances on which the charge or charges are founded in the order of their occurrence, and in sufficient detail to show the real nature and extent of the offence; when words constitute the substance of the offence, they are to be fully and exactly set out. The letter is not to refer in any way to the previous character, conduct or convictions of the accused, or to contain any reference to facts prejudicial to him other than such as bear directly on the charges.

(2) Statements made by the accused in the course of enquiries or during an investigation or after he has been charged are not to be included in the circumstantial letter (unless they constitute an essential part of the alleged offence, such as in a charge of perjury). They should be forwarded as an annex to the circumstantial letter in a separate document and reference should be made in the circumstantial letter itself to the fact that such statements were made and to their inclusion in the annex.

2107. *Documents to accompany Circumstantial Letter.*—There shall also be forwarded at the same time as the circumstantial letter a further letter enclosing—

(*a*) The charge or charges drawn in accordance with the prescribed forms in the very words in which the offence is described in the section of the Naval Discipline Act or other Act under which it falls, and signed by the officer who signed the circumstantial letter. Such charges may be in addition to or substitution for charges which were put to the accused during the course of any investigation.

(*b*) A list of witnesses for the prosecution.

(*c*) A summary of evidence in support of the charges.

And when the offender is below the rank of officer:—

(*d*) A certified extract of all entries of offences and punishments in the Record of Offences Sheet prior to the date of the offence charged but subsequent to his joining his present ship, with his character assessed from the previous 31st December to the date of the offence with which he may be charged but excluding all consideration of that offence.

(*e*) A certified copy of the accused's certificate of service.

2110. *Opportunity to Prepare Defence.*—An accused person, for whose trial by court-martial an application has been made, shall be afforded as full an opportunity as is possible consistent with the exigencies of the Service of preparing his defence and of free communication with his witnesses or with any adviser whom he may wish to consult.

(a) S.R. & O. 1923/1291; Rev. XVI p. 735; 1923, p. 659.
(b) S.R. & O. 1925/605, 1935/138; Rev. XVI pp. 752, 754; 1925 p. 1212, 1935 p. 1258.

2111. *Friend of the Accused.*—Unless the person charged desires to conduct his own case, he may have a person or persons to assist him during the trial, whether an officer, legal adviser, or any other person. He may request and is to be afforded at the earliest possible moment the assistance of any officer or other person in his ship whose assistance is reasonably available. Should no such request be made or should an accused person be unable to obtain assistance, it shall be the duty, if he is an officer, of such officer as the convening authority may direct to assist him, or if he is below the rank of officer, of the Divisional Officer, the Royal Marine Officer or such other officer as the Captain may detail.

(2) Where the accused person is not otherwise legally represented and the trial is expected to give rise to complexities, the convening authority shall consider whether it is desirable to appoint as the accused's friend, subject to his consent, an officer who has undergone legal training.

Duties of the Convening Authority

2115. *Sufficiency of Charges and Evidence.*—When it is proposed to try a person on any charge, the convening authority shall not order a court-martial to assemble until he has satisfied himself that the charges are correct and sufficient, and that they are properly framed and carefully drawn up, and until he has also satisfied himself that the evidence, if uncontradicted or unexplained, will probably suffice to ensure a conviction. He shall then countersign the charge sheet to indicate his approval of the form in which the charges are to be brought and shall transmit it to the officer who is to prosecute.

2118. *Documents to President.*—The convening authority shall issue to the officer appointed by him to preside at the court-martial a warrant under his hand in the prescribed form, directing him to assemble a court-martial.

(2) He shall transmit to the president a copy of the charge sheet but shall not send him a copy of the circumstantial letter except when, for trials under Sections 9 or 29 of the Act, the letter contains detailed navigational data. In such cases he may send to the president a copy of the portion of the circumstantial letter containing such information. (See also 2155 (4).)

2119. *Appointment of Judge Advocate and Clerk of the Court.*—In the absence of the Chief Naval Judge Advocate and in default of any appointment by the Admiralty, the convening authority may, by warrant under his hand in the prescribed form, appoint a person to officiate as judge advocate at the trial, and shall send him a copy of the charge(s) and of the circumstantial letter, and any statement(s) annexed thereto, and shall forward to him (or to the president for him) in all cases a list of the officers from whom the court may be formed, the documents mentioned in Article 2107 (*b*) and (*c*), the list of persons who have been tried by court-martial or disciplinary court, or a certified extract therefrom, and in the case of the trial of a person below the rank of officer, the documents mentioned in Article 2107 (*d*) and (*e*).

(2) The convening authority may, in default of any appointment by the Admiralty, by warrant under his hand in the prescribed form, appoint a person to officiate as clerk of the court at the trial and shall forward to him (or to the president for him) a list of the officers from whom the court may be formed, a copy of the charge(s) and circumstantial letter and of the documents mentioned in Article 2107 (*b*) and (*c*).

(3) *Appointment of Provost Marshal.*—The convening authority, or, in his absence, the senior naval officer present, shall, by warrant under his hand in the prescribed form, appoint a provost marshal to take the accused into his custody and safely keep him until he shall have been delivered in due course of law.

(4) *When to Appoint a Prosecutor.*—It is the duty of the Captain of the ship to which the accused belongs in ordinary cases to act as prosecutor, but if for any reason it is undesirable or impossible for the Captain or Executive Officer of that ship to conduct the prosecution, the convening authority shall appoint a competent person to undertake the duty.

Duties of the President

2123. *Appointment of Judge Advocate and Clerk of the Court* (*N.D.A. s.* 61).—If the judge advocate or the clerk of the court are appointed by the Admiralty or by the president, the president shall forward to them, with his warrant if necessary, the documents furnished by the convening authority.

(2) *Responsibility in Regard to Accused.*—In every case in which any person is about to be tried on any charge the president shall satisfy himself that the accused has been furnished, at the earliest possible moment, with a copy of the charge sheet and of the circumstantial letter, a list of officers from whom the court may be formed and of witnesses for the prosecution, the summary of evidence in support of the charge(s), and a copy of Form S.268 on the rights of persons on trial by naval court-martial.

(3) *When Less Than* 24 *Hours' Notice.*—If, in pressing circumstances, where delay would be very inconvenient to the public service, the above-mentioned documents shall not have been furnished to the accused 24 hours before trial, this fact shall be set out in the record of the proceedings, together with a statement of the pressing circumstances which prevented their being so furnished. Any representations made by or on behalf of the accused should be considered at or before the trial.

(4) *In case of Mutiny.*—Notwithstanding anything contained in these regulations, in the case of mutiny the trial may take place immediately after the commission of the offence.

(5) *Appointment of Officer of the Court.*—The president shall appoint an officer to be officer of the court, and shall give him such orders as may be necessary for the due transaction of the business of the court.

(6) *Responsibility as to Trial.*—The president shall be responsible for the trial being held and conducted in accordance with the provisions of the Naval Discipline Act, with the general orders framed thereunder and with any supplementary orders given by the Admiralty.

(7) Where the court does not accept the advice of the judge advocate on a point of law (see 2125 (8)) the president shall cause the fact to be set out in the record of proceedings together with the court's reasons for rejecting the advice.

Duties of the Clerk of the Court

2124. *Duty to Accused and to Prosecutor.*—The clerk of the court shall give the accused notice in writing of the time and date of the trial and a copy of Form S.268 (Rights of Accused Persons). He shall also cause the accused to be furnished with a copy of the charge(s), circumstantial letter, the list of officers from whom the court may be formed and of witnesses for the prosecution, and the summary of the evidence in support of the prosecution, and, if the prosecutor should at a later stage desire to call any further witnesses, the clerk of the court shall give the accused immediate notice of his intention to do so, together with the summary of the evidence to be given by such witnesses. He shall also inform the accused that any witnesses whom he may desire to call and whose attendance can reasonably be procured shall be summoned on his behalf, and shall inform the president that he has performed these duties. The clerk of the court shall inform the prosecutor of the date and time of the court-martial and request him to forward to the judge advocate certified copies (in the case of an officer) of any of the documents mentioned in Article 2190, 1 (*a*) (ii), and (in the case of a person below the rank of officer) the documents mentioned in Article 2190, 1 (*b*) (ii) and (iii).

(2) *Notice to Produce Documents.*—At the request of the prosecutor, or of the accused or his friend, the clerk of the court shall serve on the accused or on the prosecutor (as the case may require) notice to produce at the trial any specified documents which are in their possession and which may be material evidence in the case.

(3) *Attendance of Witnesses* (*N.D.A. s.*66).—The clerk of the court shall prepare for the signature of the judge advocate a summons addressed to each witness whom the prosecutor or the accused may desire to call, and whose attendance can reasonably be procured, and shall arrange for service thereof after signature by the judge advocate. Should it appear that any witness has been summoned without due cause, the person requiring the attendance of such witness may, at the discretion of the Admiralty at home, or Commander-in-Chief abroad, be required to refund the cost of such attendance.

(4) The clerk of the court shall repay to witnesses and others their reasonable expenses in accordance with the regulations on expenses and allowances of civilian witnesses.

(5) When the duties of the judge advocate at the trial have been performed by a civilian lawyer, or where the exigencies of the Service would cause undue delay if the judge advocate were to prepare and transmit the proceedings, the clerk of the court is responsible for the preparation and transmission of the record of proceedings.

Duties of the Judge Advocate

2125. *Duties before the Trial.*—The only duties of the judge advocate before the commencement of the trial shall be to summon witnesses on the forms prepared for his signature by the clerk of the court. (See 2124 (3).)

(2) *Administration of Oaths.*—The judge advocate, in addition to administering to members of the court the oath prescribed by Section 63 of the Act, shall administer to every witness or other person appearing at the trial the oath or affirmation prescribed by Article 2160 (1).

(3) *Advice to Court.*—The judge advocate shall, whether his opinion is asked or not, advise the court to the utmost of his knowledge and ability, not only on questions relating to naval law and to the procedure of courts-martial, as they arise, but also on every question of doubt or difficulty with reference to common and statute law, to the law and rules of evidence, and to the rules and regulations of the Service generally.

(4) *To be Impartial and Protect Accused.*—The judge advocate shall maintain an entirely impartial position. He shall take care that the accused does not suffer any disadvantage in consequence of his position or of his ignorance, or of his incapacity to examine or cross-examine witnesses, or of any other cause. He may, with the permission of the president, put such questions to any witness as may appear necessary to elicit the truth, and may, with the permission of the court and consent of the accused, call witnesses.

(5) Before the closing of the court for consideration of the finding the judge advocate shall advise the court on all legal issues arising out of the trial and shall deal in particular with the burden of proof, the ingredients of the offence(s) with which the accused is charged and, where necessary, on the question of corroboration; he shall, where appropriate, advise the court (*a*) of and concerning any legal issue(s) raised by the evidence which will require to be determined to enable the court to reach a proper decision, (*b*) whether there is in his view no evidence which could, in law, support the charge(s) or any of them, (*c*) whether there is any, and if so what, evidence which could, in law, amount to corroboration; and he shall also advise the court on the powers to bring in alternative findings conferred on it by Sections 47 and 48 of the Act.

(6) Any information, advice or opinion given by the judge advocate in open court shall be entered in the record of proceedings.

(7) The judge advocate shall retire when the court is closed for consideration of the finding, and should the court require his further advice, the court shall be re-opened and the advice shall be requested and given in open court. He may remain with the court when the court is closed for consideration of the sentence.

(8) The court shall be guided by the advice of the judge advocate on all points of law. Where however the court does not accept his advice on a point of law, it shall be the duty of the president to cause the fact to be set out in the record of proceedings, together with the court's reasons for rejecting the advice.

(9) When any question of the admissibility of evidence is raised or when in a joint trial of more than one person application is made for a separate trial, or where application is made that one or more charge(s) out of multiple charges should be tried separately, the judge advocate may request, and if he does the president shall grant, permission to hear the arguments, in the court room or such other convenient place as may be decided by the president, in the absence of the court. The hearing by the judge advocate of the arguments shall form part of the proceedings of the court and take place and be recorded in the normal manner except for the absence of the court. After hearing such arguments and evidence on the admissibility of the evidence in question, the judge advocate shall inform the court of his ruling as to the admissibility of the evidence or as to the desirability of a separate trial, or as the case may be, and such ruling shall be followed by the court. (See 2143 (8), 2151 (1) and 2152 (1).)

(10) *Record of Proceedings.*—The judge advocate shall be responsible for the due recording of the proceedings in the prescribed form. He shall be responsible for the taking down and consecutive numbering, so far as is reasonably practicable, of the questions put to, and the answers given by each witness. He shall, when required to do so, read the same or cause the same to be read in the hearing of the witness, in order that any mistakes may be corrected. All words spoken in open court, whether by way of argument, objection, submission, decision, or in any other way, are to be recorded, so far as may be reasonably practicable, so that the record shall contain a full account of all that is said and done in open court. No erasures are to be made in the record and all corrections or interlineations are to be verified by the initials of the judge advocate or the clerk of the court.

2126. *Advice to Prosecution and Defence.*—If any officer with legal experience other than the judge advocate and clerk of the court is available to give advice to the prosecution or defence on questions of law before the trial, such officer may be consulted by the prosecution or the defence or by both, and if such officer be available neither the judge advocate nor the clerk of the court may be consulted.

Constitution, Summoning and Sitting of the Court

2131. *Constitution and Notice to be Given.*—Whenever a court-martial is ordered, such timely notice as may be practicable, which as a general rule should be not less than 24 hours, shall be given in general orders or by signals to the ships present, so that the proper officers may be prepared to attend at the place and hour appointed. The names of the president and of the officers whose presence it is anticipated will be required are at the same time to be made known and after such notice no officer junior to the president of a rank eligible to sit as a member is to proceed on leave of absence without the express authority of the officer ordering the court-martial, or of the senior officer present.

(2) On the morning of the day appointed for the court-martial to be held the Commander-in-Chief or senior officer present shall send to the president a list of the officers who are eligible and may be required to sit as members specifying any whose attendance is not attainable by reason of the exigencies of the public service. This list is also to give the names of any officers absent on leave.

(3) *Summoning Members.*—The Commander-in-Chief or senior officer present shall, by signal, order the president to make a signal not less than one hour before the time appointed for the court-martial to assemble, summoning the officers junior to himself present at the place where the court-martial shall be held, to sit thereon, and this latter signal shall be deemed to be a compliance with Section 58 (16) of the Naval Discipline Act.

2132. *Officers to Sit in Confirmed Rank.*—Officers whose duty it may be to attend as members of a court-martial shall only sit in the confirmed rank they hold in the Service, notwithstanding they may be borne on the books of the ships to which they may respectively belong in a superior rank, but Commodores shall sit as Commodores and rank above all Captains, and Commodores First Class

shall sit as such and rank above all Commodores Second Class, and Commodores within each of these two categories shall sit according to their seniority as Captains.

(2) Any officer who, on promotion, may not be re-appointed in the higher rank by the Admiralty, but who may temporarily retain his appointment in the lower rank, shall sit at courts-martial in the rank from which he was promoted, but senior of that rank; if, however, two or more officers promoted to the same rank and similarly circumstanced be present, they shall sit in the order in which they stood on the official list in their lower rank.

(3) Officers on the retired or emergency lists of the Royal Navy, if on full pay, shall sit at courts-martial in the order in which they take rank and command; but if holding acting rank they shall sit in the order in which they would have taken rank and command if they had not been granted acting rank.

2134. *Absence of Member of Court.*—A member of a court who may have been absent during any part of the trial of an accused person can take no further part in the trial, but the court will not be affected except as provided by Section 60 of the Act.

Procedure at the Trial

2138. *Admission to Trial.*—Except as provided in clause (2) of this Article, courts-martial shall be public.

(2) *Trial in Camera.*—If the court is satisfied that it is necessary, in the interests of public safety or the defence of the realm, or that it is necessary for the attainment of justice, that all or any portion of the public should be excluded during the whole or any part of the trial, the court may so exclude the public or any portion thereof. If any such order is made the sentence, if any, and the findings or such parts of the findings as will not adversely affect the purpose of making the order shall always be read in public. The record of proceedings must include any order so made, together with any submission made in connection therewith and the grounds on which the court made the order; they must also indicate during what part or parts of the trial the public or any portion thereof was excluded.

2139. *Opening Court.*—As soon as the court has been assembled the accused shall be brought in and the prosecutor and audience admitted. The judge advocate or clerk of the court shall read the warrant for assembling the court and shall produce to the prosecutor and the accused for their inspection should they so desire the list of officers mentioned in Article 2131 (2).

2140. *Recording of Proceedings.*—In so far as is reasonably practicable, a verbatim record shall be made of all that is said in open court during the trial, whether in evidence, by question or answer, or by way of interjection, argument, objection, submission, ruling or advice to the court.

2141. *Shorthand Writer.*—At all trials an impartial person or persons shall be employed to record the proceedings, whether by shorthand or by mechanical or other means, and such person, and any typist who will be employed to transcribe the mechanical recording, shall be duly sworn, but no trial shall be invalidated by reason of the absence of a shorthand writer or of mechanical means of recording.

(2) *Reading over Notes.*—The evidence given by a witness shall, if the court so decides, be read over to him before he leaves the court by the shorthand writer or other person who has recorded the evidence in the absence of a shorthand writer.

2142. *Interpreter.*—At any time during the trial, should the court think it necessary, or should either the prosecutor or the accused request it on any reasonable ground, an impartial person shall be employed to act as interpreter and sworn in due course.

2143. *Objections to Members and Constitution of Court.*—(1) *Objections by Prosecutor.*—The judge advocate or clerk of the court shall read the names of the officers available to form the court, and shall ask the prosecutor whether he objects to any of them.

(2) *Objections by Accused (N.D.A. s. 62).*—If the prosecutor shall have made no objection, or after any objection made by the prosecutor has been disposed of, the judge advocate or clerk of the court shall ask the accused if he objects to any member of the court.

Procedure on Objection being made.—The following provisions shall apply to objections by either the prosecutor or the accused.

(3) *No Objections to Judge Advocate or Clerk of the Court.*—Neither the prosecutor nor the accused can object to the judge advocate or clerk of the court.

(4) *Objections to Members.*—Any member may be objected to on any ground which affects his competency to act as an impartial judge or which makes it appear that he may not be able so to act.

(5) Objections to members shall be decided separately, that to the officer lowest in rank being taken first. All the other members, whether objected to or not, shall vote as to the disposal of the objection.

(6) On an objection being allowed, the member is at once to retire, and his place is to be filled up before an objection against another officer is considered.

(7) *Objection to President.*—Should the president be objected to, and the objection be allowed, the court shall not be formed until a new president has been appointed by the convening authority.

(8) *Member Summoned as a Witness.*—Should a member be objected to on the ground of being summoned as a witness, and should it be found that the objection has been made in good faith, the objection shall be allowed. Should, however, it be found that the officer was summoned to give evidence without a sufficient cause, and merely to disqualify him from sitting, the court is to exercise its discretion in regard to allowing the objection. Unless the court is satisfied that the question of sufficient cause can, without injustice, be decided by the court, the procedure in Article 2125 (9) shall be followed.

(9) *Objection to Constitution.*—The judge advocate or clerk of the court shall then ask the prosecutor and accused whether they have any further objection to make respecting the constitution of the court. Should they raise any objection it shall then be decided by the court.

2144. *Objections to Interpreter or to Person recording or transcribing the Proceedings.*—Before a person appointed to act as interpreter or to record or transcribe the proceedings is sworn for that purpose, the accused shall be informed of the person whom it is proposed to employ, and may object to such person as not being impartial; and the court, should it think such objection reasonable, shall not swear that person.

2145. *Members and Officers of Court Sworn.*—If the prosecutor and the accused should have no further objection to make to the constitution of the court, the members, judge advocate, clerk of the court and shorthand writer (or other person(s) employed to record or transcribe the proceedings) and any officers in attendance for instruction in the duties of judge advocate or clerk of the court shall then take the oaths in the manner prescribed by the Act or these regulations. (See N.D.A. ss. 63 and 64 and Article 2160 (1).)

2147. *Production of Charts in Certain Cases.*—At any court-martial ordered to try a charge arising from the loss, stranding or hazarding of one of Her Majesty's ships or, where it may seem desirable, a charge arising from the loss of any aircraft of Her Majesty, the Captain shall, before the commencement of the trial, make available the chart or charts by which the ship was navigated, or a copy or tracing of the chart if the original is not available. (See 2155 (4) and 2252 (1).)

2148. *Friend of the Accused.*—A person assisting an accused person may advise him on all points, examine him if he desires to give evidence, cross-examine the witnesses for the prosecution and examine those for the defence. He may make any submissions that the accused might make and address the court on his behalf in accordance with Article 2176 (1). In every case in which the accused conducts his own defence, the person assisting the accused may advise him on all points, suggest to him questions to be put to witnesses, and may read the accused's statement of defence and/or statement in mitigation of punishment.

2150. *Commencement of Trial—Proof of Jurisdiction.*—The trial shall commence by the judge advocate or clerk of the court reading the heading of the charge sheet and asking the accused whether he is the person named therein and whether his description, including the statement that he is subject to the Naval Discipline Act, is correct. Admission by the accused of these matters shall be evidence that the accused is under the jurisdiction of the court.

(2) *Charge Sheet.*—The judge advocate shall then read the charge sheet.

2151. *Application for Separate Trials.*—When more than one person is charged jointly and any of the accused submit that the fair trial of one or more of the accused may be prejudiced if the accused are tried together, the judge advocate shall hear the arguments in the absence of the court as laid down in Article 2125 (9). The court shall, in accordance with the ruling of the judge advocate, decide:—

(*a*) To continue with the joint trial; or

(*b*) to try the accused, or some of them, separately; or

(*c*) to try the accused, or some of them, and leave the other, or others, of the accused to be tried by a new court; or

(*d*) to exercise the powers given under Article 2152 and try the accused, or some of them, on some charges, severing the other charges.

If any of the accused or any of the charges are left to be tried by another court, the president shall report that fact to the convening authority immediately after the trial.

2152. *Application to Sever Charges.*—When the accused is charged with more than one offence and the defence submits that the fair trial of the accused may be prejudiced if the charges are not severed, the judge advocate shall hear the arguments in the absence of the court as laid down in Article 2125 (9). The court shall, in accordance with the ruling of the judge advocate, decide:—

(*a*) to try all the charges together, or

(*b*) to try a charge or charges separately from another or others, and/or

(*c*) to leave a charge or charges to be tried by a new court.

If any of the accused or any of the charges are left to be tried by another court, the president shall report that fact to the convening authority immediately after the trial.

(2) The convening authority shall be competent to decide whether to convene a separate court-martial for the trial of the accused on any charges left untried under this Article.

(3) Should the accused have been convicted, any decision not to try him on the remaining charges shall be deferred until either

(*a*) the time limit for making an application for leave to appeal has expired, or

(*b*) the accused's appeal has been finally determined.

If on expiry of the period at (*a*) the accused has made no appeal and the convening authority decides not to order him to be tried on the remaining charges, the convening authority shall inform the accused that the untried charges are withdrawn. If however the accused has appealed the decision whether to withdraw the remaining charges and the notification of the accused shall rest with the Admiralty.

2153. *Unfitness to Plead or to Stand Trial.*—If when the accused is about to be called upon to plead to the charges it is brought to the notice of the court that, by reason of insanity, he may be unfit to take his trial, in that he may be unable to understand the charges, to comprehend the course of the proceedings so as to make a proper defence, to understand the details of the evidence or adequately to instruct his friend, it shall proceed to try that issue before the accused is actually called upon to plead.

(2) Medical evidence and any other relevant evidence should be called by the prosecutor or the defence (as may be appropriate) or by the court. If, after hearing the evidence, the court considers that the accused is unfit to take his trial as set out above, the court shall find specially to that effect and order him to be kept in custody until effect is given to the directions of the Admiralty in his case. If, after hearing the evidence, the court considers that he is fit to plead, it shall proceed with the trial.

2154. *Pleading.*—The accused shall be required to plead guilty or not guilty. If he refuses to plead the trial shall proceed as if he had pleaded not guilty.

(2) Before a plea of guilty is recorded the judge advocate shall ensure that the accused understands each charge to which he has pleaded guilty and the difference of procedure which will result from the plea of guilty. The court shall, if requested by the judge advocate, adjourn to enable him to satisfy himself on this point. If from the summary of evidence, or from anything that the accused informs the judge advocate that he proposes to advance to the court in mitigation of punishment, or from any other circumstance, it appears that the accused should not plead guilty, the judge advocate shall advise him to withdraw the plea, and if the accused does not do so, the judge advocate shall advise the court to proceed as if he had pleaded not guilty.

(3) Where the accused has pleaded guilty to one or more of the charges, the prosecutor should consider whether justice will be done without his proceeding on one or more of the other charge(s) to which the accused has pleaded not guilty, as, for example, where there is a group of alternative charges to one of which the accused has pleaded guilty. In such cases it might be proper for the prosecutor to propose to the court that he should accept such plea and not proceed further on the charge(s) to which the accused has pleaded not guilty. Such a course would not prevent the prosecutor proceeding on charge(s) of a different nature to which the accused has also pleaded not guilty. Where the prosecutor considers that any such questions may arise he should if possible consult the convening authority on the matter before the trial.

2155. *Reading of Circumstantial Letter.*—If the accused has pleaded guilty to all charges, or if no evidence is to be offered on any other charges to which he has not pleaded guilty, the judge advocate shall read the circumstantial letter, but before doing so he is to warn the court of the ex parte nature of this document. The judge advocate shall ask the accused's friend if he disputes the admissibility of the statement(s) in any annexe to the circumstantial letter (see 2105 (2)); if he does, the statement(s) shall not be read unless the prosecutor asks that the court should decide the question of the admissibility of the statement(s) on the ground that the court cannot properly do justice in the case without hearing the statement(s); such request may be made either before or after the statement in mitigation of punishment.

(2) Unless the accused has pleaded guilty to all charges and if evidence is to be offered on any charges to which he has pleaded not guilty, the judge advocate shall ask him whether he disputes the admissibility of the statement(s) in any annexe to the circumstantial letter (see 2105 (2)). The judge advocate shall then read the circumstantial letter, but before doing so he is to warn the court of the ex parte nature of this document and no such statement the admissibility of which is disputed shall be read at this stage.

(3) Copies of the circumstantial letter are not to be made available to members of the court except as provided in the following clause.

(4) *Navigational Trials.*—In trials under Sections 9 or 29 of the Act, if the circumstantial letter contains detailed navigational data, a copy of the part of the circumstantial letter containing such information may be given to each

member after the reading of the charge(s) and immediately before the circumstantial letter is read. Copies of the chart or charts mentioned in Article 2147 may also be given to the court at the same time.

2156. *Disposal of Pleas.*—If the accused has pleaded guilty to all charges, or if the court has agreed that the prosecutor should not proceed on the remainder of the charges to which the accused has pleaded not guilty, and the plea(s) of guilty has been recorded (see 2154 (2)) the following procedure should be followed:

(*a*) The court shall, unless it is of opinion that the circumstances of the case are such that a proper sentence cannot be awarded unless the facts are investigated (but see clause 3 below) call upon the accused for his statement in mitigation of punishment.

(*b*) If after the statement in mitigation of punishment the court considers that the accused has failed to understand the charge or the effect of his plea of guilty, or that the accused has put forward anything which is capable in law of amounting to a defence to a charge to which he has pleaded guilty, or (either before or after the statement in mitigation) that an investigation of the facts is necessary (see paragraph (*a*) above) the court shall order that plea(s) of not guilty shall be recorded in lieu of the plea(s) of guilty and proceed with the trial accordingly, withdrawing any permission that may have been given to the prosecutor not to proceed on any charge(s).

(*c*) If the court, after hearing the statement in mitigation of punishment, decides that it would be proper to accept the plea(s) of guilty the court shall proceed to convict the accused on the charge(s) to which he has pleaded guilty, and either to order that no further action should be taken on any other charge(s) to which he has pleaded not guilty without the order of the Admiralty or to acquit on such other charges. If a further trial on the other charge(s) is ordered to be held, they may be tried either before the same court or a new court convened for the purpose.

(2) If there are charges to which the accused has pleaded not guilty, and evidence is to be offered on such other charges, the court shall proceed to try such other charges before deciding whether to convict the accused on the charge(s) to which he has pleaded guilty, and before the accused is called upon for his statement in mitigation.

(3) If the accused in his statement in mitigation disputes any of the allegations in the circumstantial letter or raises any fresh matter and the court considers that the disputed points or fresh matter may influence the sentence to be awarded the court may direct that (unless the prosecution is prepared to accept the accused's version) evidence shall be called in the normal manner on the point(s) in dispute.

2159. *Calling of Witnesses.*—If the accused does not plead guilty, or if his plea of guilty is not accepted, the trial shall proceed, and the witnesses for the prosecution shall be called. Without prejudice to the right of the prosecution to call evidence in rebuttal and the right of the court to permit the calling of further witnesses under Article 2162 (5), no witness whose name was not included in the original list of witnesses shall be called by the prosecutor, unless the clerk of the court has given notice to the accused that it is intended to call such witness, and has supplied him with a summary of the evidence of such witness not less than 24 hours before the opening of the trial (unless the court should decide that the accused has not been prejudiced by a shorter period).

2160. *Oath or Affirmation* (*N.D.A. s.* 61).—Except as provided in clause (2) of this article and except where the provisions of the Children's and Young Persons Act, 1933, are applicable, no witness shall be examined until he has been duly sworn. The oath shall be administered in the following manner:—

The person to be sworn shall hold the New Testament, or if a Jew the Old Testament, in his uplifted right hand and shall say or repeat after the judge advocate the following:—

If a witness:

I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth.

If a shorthand writer (or other person employed to record or transcribe the proceedings):

I swear by Almighty God that I will truly record and transcribe [transcribe] to the best of my power, the evidence to be given before this court-martial, and such other matters as I may be required, [and will deliver to the court a true transcript of the same when required].

If an interpreter:

I swear by Almighty God that I will, to the best of my ability, truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

(2) *Affirmation.*—Any person upon objecting to be sworn on the grounds that he has no religious belief, or that the taking of an oath is contrary to his religious belief, may make his solemn affirmation as follows, slowly and distinctly repeating the words after the judge advocate:—

"I, A.B., do solemnly, sincerely, and truly declare and affirm that . . ." proceeding with the words of the oath prescribed, omitting the words "I swear by Almighty God".

(3) *Other Forms of Oath.*—In all cases where the above forms of oath are not binding on the conscience of the person to be sworn, such person shall be sworn in such form as he may declare to be binding on his conscience.

2161. *Witnesses—Attendance in Court.*—Witnesses must not be present in court during any part of the proceedings, unless by permission of the court, except when under examination, and except when the court re-opens for reading the finding and the sentence. Expert witnesses whose evidence, or part of whose evidence may be dependent on the evidence given by other witnesses or on the demeanour of the accused should usually be allowed to be present during the whole or part of the proceedings.

(2) *Prosecutor or Members of Court as Witnesses.*—The prosecutor is a competent witness. A member of the court, other than the president, whether previously objected to or not by either side, is not necessarily disqualified from being examined as a witness should it be found in the course of the proceedings that he can give material evidence, but thereafter he is disqualified from acting as a member of the court, unless his evidence has been given after conviction, and has been directed to the good character of the accused. If a member becomes disqualified by this means from acting as a member of the court, the trial shall proceed before the remaining members, provided that should the members be thus reduced below four, the trial shall be adjourned until another member(s) is appointed and the proceedings must then be restarted.

2162. *Examination of Witnesses.*—Unless otherwise expressly provided the examination of all witnesses shall be oral, and except in the cases mentioned in Articles 2125(9) and 2163, shall be taken in the presence of the court. Unless a strong reason to the contrary exists, the evidence of witnesses shall be taken at one examination in regard to all the charges then being tried before the court.

(2) *Order of Examination, etc.*:—

(*a*) The examination of all witnesses shall be conducted as follows:—

First, they shall be examined by the persons calling them; after which, they may be cross-examined by the opposite party should he desire to do so; then re-examined by the person calling them but only on matter arising out of the cross-examination; and, finally, the court and judge advocate may, if necessary, ask questions of them.

(*b*) If the court is satisfied that a person calling or cross-examining a witness has bona fide forgotten to ask a question or questions that he should have asked, he should be allowed to remedy such omission, subject to the right of the other party to cross-examine and/or to re-examination arising as a result thereof. A similar course should be followed if questions by the court or judge advocate have raised fresh matter.

(3) *Postponement of Cross-Examination.*—On the application of the accused, the court may allow his cross-examination of a witness to be postponed, if it is satisfied that there is a good reason for such a request.

(4) *Questions by Court and Judge Advocate.*—In addition to exercising the right of examination above conferred, the court and the judge advocate may put questions to any witness at any period of his examination for the purpose of elucidating any answers previously given by him.

(5) *Recall of Witness and Calling of Additional Witnesses.*—The court

(*a*) may at any time during the trial grant to the judge advocate, the prosecutor or the accused permission to recall a witness, or to call a fresh witness whose evidence is necessary to prove or put in evidence a formal document, or whose evidence might prove or disprove some issue raised by the defence which could not reasonably have been foreseen and where such witness is available and has not been called by either the prosecution or the defence, or

(*b*) before the accused gives evidence or is called on for his defence may call and examine any other person whose evidence they may deem necessary for the furtherance of the ends of justice, or

(*c*) after the close of the case for the defence, may permit the calling and examining of any person whose evidence the accused may show to the court might be material in his behalf.

(6) *When Prosecutor must call Witnesses.*—The prosecutor is not bound to call all the witnesses whose names are on the list given to the accused, but he shall call such of them as the accused may desire to be called, in order that the accused may cross-examine them, if he wishes to do so. Such witness or witnesses shall be called before the prosecution is finally closed.

2163. *Witness Unable to Appear.*—If any material witness should be in hospital, or otherwise unable from sickness to appear before the court, the court shall adjourn, and his evidence shall be taken on oath before a magistrate or consul, in the presence of the accused, the accused's friend or, if he is not available, other adviser, the prosecutor, the judge advocate and the clerk of the court; and full opportunity shall be afforded of cross-examining the witness. The evidence shall be taken down by a shorthand writer, if one be reasonably available, or by some other person appointed for the purpose (and any such shorthand writer or other person shall be duly sworn if he has not already been sworn in the trial) or by the judge advocate or clerk of the court or by mechanical or other means. On return to the court the notes of the evidence shall be read to the court by the person making them or, if the presence of such person cannot reasonably be obtained, by the judge advocate, and such notes (or the transcript of the notes if they were made in shorthand), duly signed and certified, shall be attached to the minutes.

2164. *Objection to Question.*—Subject to the provisions of Article 2125(9), should objection be raised to a question proposed, the opinion of the court shall be taken, and the question shall be admitted or rejected as the majority may decide. The fact of the objection being made, the ground thereof, and the decision of the court shall be set out in the record.

2165. *Contempt by Witness.*—If at any time it appears to the court that any witness is behaving with contempt, the president shall warn the witness of the powers of the court under Section 66 of the Act. The fact that this warning has been given shall be set out in the record of proceedings.

2167. *Procedure on Misconduct by Witnesses or Others.*—Any witness or other person present in court who in the opinion of the court is behaving with contempt is to be warned in accordance with Article 2165.

(2) If any witness subject to the Act persists after such a warning in contempt for which he may be punished forthwith, the court may, after announcement

of its finding(s), recall the witness, state the grounds of complaint against him and, should he offer no satisfactory explanation, sentence him to imprisonment or (except in the case of an officer) detention for a term not exceeding the terms prescribed in Section 66 of the Act. Any such sentence shall be read in open court, in the presence of the offending witness, at the same time as the sentence, if any, awarded to the accused or at the time of his acquittal, as the case may be, and shall be recorded as part of the proceedings.

(3) If the court should desire to draw attention to the conduct or manner of giving evidence of any witness, an entry to that effect should be made in the record of proceedings.

(4) If any person subject to the Act other than a witness behaves with contempt to the court, he may be removed from the court, either with or without a previous warning, and may be tried by a separate court-martial or summarily on a charge of an act or disorder to the prejudice of good order and naval discipline or a specific charge under another section of the Act as appropriate.

(5) If any witness not subject to the Act behaves with contempt to the court, he may be removed from the court, if the court decides that that is a proper course to take, but he may not be held in custody. Whether he is removed from the court or not, he should be told that he will be given an opportunity at the first convenient moment to explain his conduct before that conduct is certified to a civil court. Should he offer no satisfactory explanation when informed of the grounds of the complaint against him, his conduct should, if the court thinks fit, be certified to a civil court. What occurs in court in pursuance of this clause shall be recorded as part of the proceedings of the court-martial.

2169. *Defence—Time for Preparation.*—The prosecution being closed, and the witnesses, if any, called by the court having been examined, the accused shall be called on for his defence, and shall, on his application, be granted a reasonable time for its preparation. The court shall adjourn during that time and may adjourn again from time to time on the application of the accused if he satisfies the court that the time granted him has not been sufficient for the due preparation of his defence.

2171. *Criminal Evidence Act,* 1898, *Applied.*—The Criminal Evidence Act, 1898, is hereby, pursuant to Section 6 (2) (*a*) of the said Act, applied to naval courts-martial.

2172. *Defence—Witnesses for.*—The witnesses for the defence shall be examined, cross-examined and re-examined as mentioned in Article 2162 (2).

2173. *Unsworn Statement by Accused.*—If the accused does not desire to give evidence on oath he may, whether assisted by a friend or not, make a statement as to the facts from his place. The statement may be either oral or in writing; if in writing it shall be signed by the accused and attached to the record of proceedings. If he desires to make such a statement and is not calling witnesses (other than witnesses only as to character) he shall make his statement before the prosecutor sums up. He may not be cross-examined, either by the court or prosecutor, but the prosecutor may, if the court thinks fit, be permitted to call witnesses to rebut the accused's account. Permission should only be given if the statement raises important new matter not previously dealt with in evidence which could not reasonably have been foreseen or met by the prosecutor, and the evidence in rebuttal must be limited to the matter so raised.

2176. *Summing Up.*

For the Defence.—The accused or his friend on his behalf may, if the accused so desires, sum up the case for the defence in a written or oral statement which shall be included in the record. On the time of such summing up see Clause 2.

(2) *For the Prosecution.*—The prosecutor shall, unless with the concurrence of the court he considers this unnecessary, sum up orally or in writing the case for the prosecution—

(*a*) If the accused calls no witnesses, immediately after the closing of the case for the prosecution and before any summing up for the defence.

(*b*) If the accused alone gives evidence for the defence or makes a statement not on oath or calls witnesses only as to character, immediately after such evidence and/or statement and before any summing up for the defence.

(*c*) If any witness is called for the defence other than the accused or witnesses as to character, immediately after the summing up for the defence (if any) or in the absence of such summing up after the conclusion of the evidence for the defence.

2177. *Amendment of Charge.*—If at any time after the court has been sworn, but before the finding, the court is satisfied:—

(*a*) that the charge or any one of several charges is defective or that there is a variance in some matter not going to the real substance of the alleged offence between the charge or any of several charges and the evidence adduced in support thereof; or

(*b*) that a charge drawn under Section 28 of the Naval Discipline Act would in the circumstances disclosed by the evidence have been more appropriately drawn under Section 43 of that Act, which latter section empowers the court to pass a less sentence than that prescribed by the former section;

the court may direct the judge advocate to amend the charge or charges accordingly, provided always:—

(*c*) that the accused cannot be substantially prejudiced by the making of such an amendment in the conduct of his defence; and

(*d*) that the court shall, if so requested by the accused, adjourn for such time as is reasonably necessary to enable him to meet the charge or charges as so amended.

All such amendments shall be noted in the record at the point at which such amendments shall be made and shall be verified on the original documents by the signature of the president.

Ascertaining Opinion of the Court

2181. *Voting.*—In taking the opinion of the court upon all questions, the junior member shall vote first, and then the other members, in order of seniority to the president, all voting orally, and the votes of the majority except for judgment of death (for which special provision is made by Section 53 (2) of the Act) shall decide the question. Where the only punishment that can lawfully be inflicted after conviction is death (e.g. in cases of murder), the provisions of Section 53 (2) of the Act apply to the finding as well as to the sentence. Should the members disagree upon any question, and on a division the votes be equal, the view most favourable to the accused shall prevail. (See 2201.)

The Finding

2184. *Finding of Court.*—When the evidence has been closed and the prosecutor and the accused or his friend have, if they so desire, addressed the court and the judge advocate has advised the court, the accused shall be removed and the court cleared, so that the president and members of the court remain alone. The court shall then consider its decision(s) and shall record its decision with regard to each charge in the charge sheet. On the court being re-opened, the judge advocate, clerk of the court, accused, prosecutor, shorthand-writer, witnesses and audience having been re-admitted the record of the decision(s) shall be scrutinised by the judge advocate and then unless the judge advocate advises the court as in Clause 3 of this Article, signed by each member of the court by way of attestation (notwithstanding any difference of opinion there may have been among them) counter-signed by the judge advocate and read aloud by him, whereupon they shall become the findings of the court.

(2) *Findings on Alternative Charges.*—Where an accused is charged with more than one offence in the alternative, the court shall consider the offence of greater

gravity before it decides to convict of an offence of lesser gravity. Where the court decides to convict the accused of offences of greater gravity than, and inconsistent with, any other charges (whether the accused has pleaded guilty to such other charges or not) the court should not proceed to a vote on such other charges and the findings shall contain a statement in the form "having found him guilty on Charge . . ., the court did not proceed further with Charge . . ." (i.e. the lesser and inconsistent charge).

(3) *Advice on Finding.*—If, in the opinion of the judge advocate, any decision of guilty or special finding in respect of any charge is contrary to the law relating to the case, the judge advocate before signature of the decision(s) shall, once more, but not more than once more, advise the court in open court what finding(s) are in his opinion open to it on such charge(s), and the court will then reconsider its decision(s) in respect of such charge(s) after the court has again been cleared.

2188. *Findings under N.D.A. s.* 29.—In all findings of guilty of charges brought under Section 29 the court is to set out shortly the facts that it finds to have been proved and which lead to its decision.

2189. *Honourable Acquittal.*—It is competent for a court, whether the accused be an officer or man, to record a verdict of honourable acquittal, but only in exceptional cases where the professional conduct or personal honour of the accused is in issue.

2190. *Finding of Guilty—Evidence of Previous Character.*—If the accused is found guilty, the court, before proceeding to deliberate on the sentence, shall take into consideration the documents set out at (*a*) or (*b*) below, which shall be read in open court, and any oral or other evidence of character or qualifications that may be adduced by the accused or the prosecution; it may also call evidence as to the previous character and qualifications of the accused.

(*a*) For an officer—

(i) Any entries against him in the list of officers who have been tried by court-martial or disciplinary court, except such as are mentioned in clause 2 of this Article.

(ii) Any previous entries against him in the log of the ship to which he belonged at the time of the offence for which he is under trial. In addition any other documents containing a warning or censure by a superior authority on the accused's conduct sent to or to be conveyed to the accused and relating to a definite offence; the original of such a document or a copy sent to an officer for conveyance to the accused shall be admissible in evidence without further proof and shall be prima facie evidence that the warning or censure was conveyed to the accused.

(iii) Any certificates or other documentary evidence of character which the accused may produce.

(*b*) For a rating, non-commissioned officer or other rank—

(i) Any entries against him in the list of those who have been tried by court-martial, except such as are mentioned in clause 2 of this Article.

(ii) The entries against him in the Record of Offences Sheet before the date of the offence charged, but after his joining the ship to which he belonged when the offence or offences for which he is being tried were committed, with character assessed from the previous 31st December to the date of the offence for which he is under trial, but excluding all consideration of that offence.

(iii) His certificate of service.

(2) The words "any entries against him" at (*a*) (i) and (*b*) (i) of clause 1 of this Article are to be construed to exclude acquittals, convictions where the sentence has been annulled, and charges on which the accused was found not guilty. Where an entry records that the accused was convicted on some charge

and acquitted on another, only so much of the entry shall be read as relates to the charge on which he was convicted. So also, where the Admiralty or the Courts-Martial Appeal Court have annulled a conviction on any charge, so much of the entry as relates to that charge shall be omitted when the entry is read; and where the Courts-Martial Appeal Court have substituted another finding for the original finding of the court-martial or disciplinary court, the finding substituted by the Courts-Martial Appeal Court alone shall be read.

(3) Evidence of character as set out in the preceding clauses of this Article, given after the finding, need not be strictly proved unless disputed by the prosecutor or the accused.

(4) If the accused is found guilty he may, before the court proceeds to deliberate on the sentence, make a statement in mitigation of punishment. If in this statement he disputes any of the allegations in the circumstantial letter action may be taken as in Article 2156 (3). If as a result of this statement any of the considerations set out in Article 2156 (1) (*b*) arise with regard to any charge(s) to which the accused has pleaded guilty, the court shall proceed in accordance with that Article; in such circumstances any evidence already given in the trial shall be evidence on such further hearing without fresh proof.

2191. *Finding of Guilty—Calling Medical Witness.*—If the accused has been found guilty, the court, before proceeding to deliberate on the sentence, may also call any medical officer whose opinion as to the state of health of the accused might aid the court to arrive at a just conclusion as to the measure of his culpability.

The Sentence

2201. *Voting on Sentence.*—The court shall then be cleared, and, in the presence of the judge advocate, the members shall consider and determine on the punishment proper to be inflicted in conformity with the finding. All the members of the court, whether they have voted for an acquittal or not, shall vote on the question of what punishment is proper to be awarded for the offence of which the accused has been found guilty. In the event of the votes varying so considerably as not to give an actual majority in favour of the award of any given punishment, the president shall call on the members to revise their votes.

2213. *Drawing up, Signature and Pronouncement of Sentence.*—The judge advocate shall draw up the sentence in the prescribed form; it shall be signed by every member of the court by way of attestation, notwithstanding any difference of opinion there may have been among the members, and shall be countersigned by the judge advocate. The court shall be re-opened, and the accused brought in, and the judge advocate shall, by direction of the court, pronounce the sentence. Either before or after the reading of the sentence the president may, if he sees fit in exceptional cases, address the accused in explanation of the sentence. The accused shall then be removed and the court dissolved.

Representations and Reports by the Court

2218. *Representations by the Court.*—Except for representations made under Article 2167 (3), all representations which the court may desire to make with reference to matters arising out of the court-martial, are to be made the subject of a separate letter signed by the president before the court has been dissolved, and are not to form part of the recorded proceedings of the court.

2219. *Report to Commander-in-Chief.*—As soon as the court has been dissolved, unless the president receives directions to the contrary he is to wait upon the Commander-in-Chief or senior officer present with a letter reporting the finding and the sentence of the court-martial.

Execution of the Sentence

2222. *Legality of Sentence.*—The Commander-in-Chief or senior officer present, before he takes any step to give effect to the sentence, either by warrant for imprisonment or detention, or otherwise, or before he orders the suspension of

the sentence under Section 74A of the Act, shall satisfy himself, by a careful examination of the record of proceedings, that no error has been committed in the conduct of the court-martial, calculated, in his opinion, to invalidate the finding of the court-martial. If he doubts the correctness of the finding, in fact or in law, or the legality of the sentence, he shall avoid either putting the sentence into execution or formally suspending it pending reference to the Admiralty.

Record of the Proceedings

2230. *Transcript.*—The shorthand writer's notes, if any, shall be transcribed by the shorthand writer and signed by him; if there is no shorthand writer the notes of evidence shall be signed by the person who recorded them, or by the person who transcribed them from any mechanical record. Such transcript or notes shall be certified by the judge advocate (or clerk of the court where the judge advocate is not reasonably available) who may mark on them such corrections, additions and notes clearly distinguished from the original as he may deem necessary before certifying. Such certified transcript or notes shall constitute the record of proceedings of the court.

Special Directions as to Evidence

2240. *Documents Admissible in Evidence.*—The Queen's Regulations and Admiralty Instructions, Admiralty Fleet Orders, signal books, books of reference, manuals, sailing directions and other publications and documents which are issued officially for the information of the Naval and Royal Marine service are admissible in evidence without formal proof in all trials under the Act.

(2) The official returns of officers and ratings tried by court-martial and by disciplinary court, an accused officer's certificates (Form S.450) and the accused's Certificate of Service (Form S.1243) and Record of Offences Sheet (Form S.239a), if otherwise admissible, may be received in evidence without formal proof in all trials under the Act.

(3) Any documents which would have been admissible in any proceedings under the Army Act by virtue of Section 163 of that Act or under the Air Force Act by virtue of Section 163 of that Act shall in like manner and for the same purpose be admissible in evidence under the Naval Discipline Act.

(4) *Copies of Other Official Documents.*—A copy of the contents, or of part of the contents, or any voucher, receipt, account, muster, ship's book, or other document made or kept in pursuance of any Act of Parliament, the Queen's Regulations and Admiralty Instructions, Admiralty Fleet Orders, or of the custom of the Service, purporting to be signed and certified as a correct copy by the officer for the time being commanding the ship in which the same was made or kept, by the Secretary of the Admiralty or by a person authorised so to certify by the Secretary of the Admiralty, may be received without formal proof in all trials under the Act as prima facie evidence of such document and of matters, transactions and accounts therein recorded.

2241. *Statutory Declarations and Affidavits.*—Subject to the following clauses, evidence of formal matters and of facts unlikely to be disputed may be given by the prosecution or the defence by statutory declaration or affidavit.

(2) Either party proposing to use a statutory declaration or affidavit shall serve a copy thereof on the other party not less than seven days before the day on which the stautory declaration or affidavit is to be given in evidence. Notwithstanding this provision, a statutory declaration or affidavit of which a copy has been served on either party less than seven days before the day on which the statutory declaration or affidavit is to be given in evidence shall be admissible in evidence if the party on whom the copy is served consents.

(3) Except as provided in Article 2253 no stautory declaration or affidavit shall be admissible if, within four days of being served with a copy thereof, the

party on whom it is served gives notice in writing to the party who served it that he objects to its admission.

(4) If the court considers that it is desirable in the interests of justice that any evidence which has been, or is to be, tendered by statutory declaration or affidavit should be given orally before it and if the deponent to such statutory declaration or a witness or witnesses who can give the like evidence are reasonably available, the court may refuse to accept such evidence by statutory declaration or affidavit provided that a reasonable opportunity is given for the attendance of such witness or witnesses as may be requisite to give such evidence.

2248. *Scene of Alleged Offence.*—The court may decide that it should view a scene described in the evidence in order that it may understand the evidence more clearly. If the court decides to view the scene it should do so in the presence of the judge advocate and, wherever possible, the prosecutor, the accused, and the accused's friend. If necessary the court may ask a witness or prospective witness to identify any place or object or point out the course taken by a person or thing, but that may only be done in the presence of the prosecutor, accused, and accused's friend, who should also be given the opportunity to ask similar questions, or to point out places or objects as to which they will be asking or have asked questions. It should be borne in mind that the witness should not give evidence except on oath in court and such questions should be kept to the minimum and used solely for such purposes as indicated. If the witness has already been sworn he should be reminded, before he answers questions at the scene, that he is on oath; otherwise he should be asked, after he has been sworn, to confirm on oath what he said at the scene. The judge advocate should note the questions asked and should, on return to court, ask the witness to confirm that the notes accurately record a description of what took place.

If it is likely that the court may wish to view the scene of any incident, the prosecution (or defence if the court is to be requested by the defence to view the scene) should be prepared to prove a plan or sketch plan of the scene. If the necessity for such a view arises unexpectedly the court should call a witness to prove such a plan or sketch plan and give the prosecutor and the accused or his friend an opportunity to question him. If it is not possible to prepare and prove such a plan or sketch plan without undue delay or for any other reason, the judge advocate shall attach a plan or sketch plan to the minutes.

Evidence on Navigational Matters

2252. *Documents to be made available in Navigational Cases.*—At all trials at which evidence is to be given on the navigation of one of Her Majesty's ships the Captain is to make available—

(*a*) the ship's log book;

(*b*) the rough and fair engine room registers;

(*c*) the chart or charts (see 2147) and sailing directions by which the ship was navigated;

(*d*) the last table of compass deviations;

(*e*) the navigational data book and the gyro compass log;

(*f*) the Captain's night order book; and

(*g*) the Navigating Officer's note book and work book.

(2) *Evidence by Navigation Experts.*—At all trials on charges under Section 29 of the Act arising out of the loss, stranding or hazarding of a ship, the president shall, and at other trials at which evidence by navigation experts is required he may, before the trial commences, direct one or more Navigation Direction or other competent officers to work up the ship's reckoning from the log and the Navigating Officer's note book and work book, and the rough and fair engine room registers, from the time when her position was last accurately

ascertained (or from such a time and, with such details, as the court may require) to the time of her taking, or being in danger of taking, the ground; the result, together with such other details as may be required, is to be delivered to the court in the prescribed form completed in all relevant respects and attested by the signature of the officer or officers so directed, and he or they are to be sworn and to be subject to cross-examination by both prosecution and defence as to its accuracy. The president is to endorse such report as approved if the court concurs, and if not, an expression of its dissent is to be added, signed by the president, showing in what respects and for what reasons it dissents. With the said report such officer or officers shall also deliver to the court a copy or tracing of the chart by which the ship was navigated on which the positions of the ship so determined have been laid off, and also the determined position when ashore or in danger, as noted in the log book. The rate and direction of the current and of the tidal stream and the state of the tide should also, if possible, be ascertained, stated, and verified on oath.

(3) These documents, viz., the report in the prescribed form and the prepared chart, as well as an attested copy of the ship's log book and the engine room register, commencing from at least 48 hours before the ship took the ground or was endangered, if so long from a known anchorage, are to accompany the minutes.

(4) *Navigation of Aircraft.*—The court may, where appropriate, follow the procedure prescribed in this article at trials at which evidence may be required on the navigation of an aircraft.

2253. *Affidavits by Local Navigation Experts.*—At trials at which evidence may be required on the navigation of a ship, affidavits or statutory declarations made by officers or others having special local knowledge of navigation may be put in evidence by the person or persons on trial, but not by the prosecutor. The provisions of Article 2241 shall not apply to such affidavits or statutory declarations, but due allowance may be made for the fact that such statements have not been tested by cross-examination.

2254. *Navigation Direction Officers—Examination and Cross-Examination.*—The examination and cross-examination of the officer or officers who have been directed to perform the duty mentioned in Article 2252 (2) is to be limited to ascertaining the accuracy or inaccuracy of the document thus laid before the court. Nevertheless, if no other navigational experts are available and it is desired to have further evidence from such experts, the court may recall these officers and permit them to be questioned on other navigational matters by both the prosecution and the defence.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order approves General Orders of the Admiralty superseding the General Orders for regulating the procedure and practice of naval courts-martial, and re-enacting their provisions with certain amendments. The numbers of the Articles, which are not consecutive, are those which will be allocated to them in the new edition, now under preparation, of the Queen's Regulations and Admiralty Instructions. The more important amendments are as follows:—

(1) Copies of the circumstantial letter are no longer to be sent to the president beforehand, or made available to members of the court

at the trial, except where the charges are under s. 9 or s. 29 of the Naval Discipline Act and then only to the extent of any navigational data which the letter contains (Arts. 2118, 2155).

(2) The officer hitherto known as the Deputy to the Judge Advocate of the Fleet is to be known as the Chief Naval Judge Advocate. A clerk of the court is to be appointed, who will relieve the judge advocate of pre-trial duties (apart from those imposed on him by s. 66 of the Act) (Arts. 2119, 2124).

(3) The judge advocate is to give his advice to the court before it is closed for consideration of the finding, and is to retire when it is closed. He may hear argument, and if necessary evidence, in the absence of the court, if questions arise on which it would be undesirable for the court to hear the argument or the evidence (Art. 2125).

(4) In certain circumstances, the whole or part of a trial may be heard in camera (Art. 2138).

(5) If a question arises whether there was sufficient cause for a member of the court to be summoned as a witness, and the court cannot decide the question itself without injustice, the judge advocate is to decide it by hearing argument and if necessary evidence in the absence of the court (Art. 2143).

(6) If the accused gives evidence, the president's permission is no longer required for the friend of the accused to examine him (Art. 2148).

(7) The accused, if charged jointly with one or more others, may apply for separate trial; if charged with more than one offence, he may apply for severance of charges. The judge advocate is to rule upon the application (after hearing argument and if necessary evidence in the absence of the court), and the subsequent procedure is laid down (Arts. 2151, 2152).

(8) A plea of guilty is no longer to be deemed to involve admission of all material statements in the circumstantial letter (Art. 2156).

Where the accused has pleaded guilty to one or more, but not to all charges, any statement by the accused in mitigation of punishment is to be made on all charges after the findings (Arts. 2154, 2156, 2190).

(9) The procedure in case of misconduct by witnesses or other persons is clarified (Art. 2167).

(10) The judge advocate being no longer present in closed court, the court is to record its own findings provisionally. These are to be scrutinized by the judge advocate when the court is re-opened, and he may give further advice in open court as to what findings were open. The findings become the formal findings of the court when they are read out by the judge advocate in open court. The procedure for dealing with alternative charges is clarified (Art. 2184).

(11) Subject to certain conditions, formal matters and facts unlikely to be disputed may be proved by statutory declaration or affidavit (Art. 2241).

The new General Orders will operate from 1st July, 1954, or such earlier date or dates as may be notified in the London Gazette.