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PART I

**RULES OF PROCEDURE
SECTION I**

COURTS, COUNSEL AND OFFICIALS

1. **CONSTRUCTION OF RULES.** These rules shall be read with and subject to the proclamations, ordinances, orders, and regulations of the occupying forces.

2. **COURTS.**

a. **AUTHORITY.** Before proceeding with the hearing of any case, a military court shall satisfy itself that it is properly constituted, having regard to whether it is a Military Commission, a Superior Provost Court or a Summary Provost Court, and that it is authorized to try the accused and the offense with which he is charged.

b. **MEMBERS.**

(1) **DISQUALIFIED MEMBER.** No officer who has a personal interest in or prejudice with regard to the case, or who is acting as a public safety officer, or who personally investigated or participated in investigating the charges, or who will be needed as a witness in the case shall sit as a member of a military court.

(2) **PRESIDING MEMBER.** When a military court consists of more than one officer, the senior in rank shall preside, except that an officer who is a qualified lawyer may be designated to preside by the Appointing Authority or by the senior in rank.

(a) **MAKING OF RECORD.** The presiding officer shall be responsible for the making of the record and may require any other member to assist him in making it. Any member of the court may sign it.

(3) **PRESENCE OF MEMBERS.** No addition to or substitution in the membership of a military court shall be made in the course of a trial. However, the failure of any member to be present throughout the trial shall not invalidate the trial, provided that the membership of the court is at no time reduced below the required minimum. No member who has been absent at any time shall take any further part in the trial.

c. **VOTING.** Every question or issue shall be determined by a majority vote of the members of a military court as then constituted, except that at least two-thirds vote shall be required for a sentence of death. The court shall be closed for voting on its findings and sentences, and for other deliberations when the court may deem it necessary.

(1) **ORDER OF VOTING.** When a military court consists of more than one officer, voting shall be in inverse order of rank.

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d. ASSESSORS. The Appointing Authority or the court may appoint an assessor to sit with the court. He has no vote, but lends assistance as may be requested, such as advising on the indigenous law or local custom. Before assuming his duties he shall be sworn as in the case of any other official of the court. He may be paid as a court official.

3. COUNSEL.

a. PROSECUTOR. The Appointing Authority or the court may designate an officer of the United States forces, or an enlisted man thereof who is a qualified lawyer, or other person to act as prosecutor.

b. COUNSEL FOR ACCUSED. Every accused may be represented by a lawyer or other person of his own selection and at his own expense. The accused shall be informed of his right to counsel as soon as practicable after arrest and not later than the time at which he is informed of the charges or receives a copy thereof.

c. ASSIGNMENT OF COUNSEL. When an accused is not represented, the Appointing Authority or the court before which the accused is to be tried may appoint an officer of the United States forces or an enlisted man thereof who is a qualified lawyer, or designate local counsel to represent the accused or assist in his defense, if the nature of the case (as for instance because of its exceptional complexity, magnitude or gravity) makes it desirable that the accused be represented. In any trial in which the accused may be sentenced to death, the accused shall be defended by local counsel or where local counsel is not obtainable or where (on security grounds or for other good reasons) that is not practicable by an officer of the United States forces or an enlisted man thereof who is a qualified lawyer.

d. PROHIBITION FROM APPEARING IN COURT. The Appointing Authority or an officer authorized by him, or any court may at any time prohibit any lawyer or other person from appearing in any court.

h. OFFICIALS. A military court may appoint interpreters, reporters and other officials, either generally or for the trial of a particular case, who need not be members of the United States forces. Any official, reporter, or interpreter shall, before assuming his duties, take an oath or affirmation in the form prescribed or in accordance with any procedure which binds him to perform his duties truthfully (R-32c (2), p. ___), for the purpose of any particular proceedings or for any term or session of the court.

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SECTION II

COMMENCEMENT OF PROCEEDINGS

5. ARREST AND SUMMONS.

a. GENERAL. All proceedings in a military court shall be commenced by the issuance of a warrant of arrest, by the issuance of summons to appear, by issuance of a charge sheet or by arrest without warrant followed, where necessary, by service of charges on a charge sheet.

b. WARRANT AND SUMMONS. Any officer or authorized enlisted man of the United States forces and any other person acting under their authority, including a member of the civil police, may issue a warrant or summons. A warrant or summons may be issued on the complaint of any person that an offense triable by a military court has been committed.

6. SEIZED PROPERTY.

a. SEIZURE. Any property seized in connection with an alleged offense (unless the property is perishable) shall be retained pending trial in accordance with instructions which may be issued from time to time or in accordance with orders of a military court. Such property shall be produced in court, if practicable.

b. SALE OF PROPERTY. Seized property which is perishable may be sold before trial under the order of a military court or an officer of the military government. The proceeds of the sale shall be held subject to the disposition of the court.

c. DISPOSITION. (R-21, p ____). At the termination of the trial the court shall order the disposition of the property or the funds resulting from the sale of the property by restoration to the owner or make such other proper order as may be required, and incorporate such order in the record of the case.

7. IMPOUNDING. A military court may also in its discretion impound, by an order directing any person other than a member of the forces of the United States or any of its Allies to be charged with the care thereof, any document or article relating to proceedings before it, whether or not it has been received in evidence.

8. CHARGES.

a. GENERAL. An offense shall be prosecuted before a military court on a written charge or charges, which shall be signed by an officer or authorized enlisted man of the United States forces or, if permitted, other person such as a member of the civil police. However, if the accused is to be tried before a Summary Provost Court, the court may merely inform the accused orally of the charge or charges unless the accused requests a written copy before trial.

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b. SERVICE. Subject to the last sentence of the preceding paragraph a, a copy of the written charges shall be served on an accused as soon as practicable after arrest, and in any event in sufficient time before the trial to enable the accused to prepare his defense. However, where proceedings are commenced by service of a summons adequately stating the charges, no separate charge sheet need be used.

c. CONTENTS. Each charge shall disclose one offense only and shall be particularized sufficiently to identify the place, the time, and the subject matter of the alleged offense, and shall specify the provision under which the offense is charged.

d. NUMBER. Any number of charges may be contained in the same charge sheet, and alternative charges may be based on the same facts. In general, multiplicity of charges based on the same set of facts shall be avoided.

e. AMENDMENT. A military court may amend or permit a charge to be amended at any time before finding, and may at the same time grant an adjournment or other appropriate relief.

9. ARRAIGNMENT AND PLEADINGS.

a. APPEARANCE OF ACCUSED. All persons arrested for an offense, with or without warrant, shall be brought as soon as practicable before a Summary Provost Court except that the chief legal officer of military government or other authorized officer may order that any particular case or class of cases be brought directly before a Superior Provost Court or a Military Commission for trial. The accused shall be present throughout the trial except when the court is closed for deliberation. There shall be no trials held in absentia in criminal cases even if the local i.e. indigenous law permits such trials to be held, provided, however, that, if after arraignment and during the trial the accused escapes, the jurisdiction of the court is not thereby terminated and under such circumstances the court may proceed with the trial, notwithstanding the accused's absence. In addition, every accused before a military court shall be entitled:

- (1) To have in advance of trial a copy of the charges upon which he is to be tried;
- (2) To give sworn evidence on his own behalf (but he may not be compelled to do so, subject to Rule 12 j, p. 12);
- (3) To consult a lawyer before trial and to be represented at the trial by a lawyer of his own selection, subject to military exigencies, and subject to the right of the court or authorized officer to deter any person from appearing before the court;
- (4) In any case in which a sentence of death may be imposed to be represented by an officer of the United States forces or an enlisted man thereof who is a qualified lawyer;
- (5) To bring with him to his trial such material witnesses in his defense as he may desire, or to have them summoned by the court at his request, if practicable;

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- (6) To apply to the court for an adjournment when necessary to enable him to prepare his defense, which application the court may grant or deny in its discretion;
- (7) To have the proceedings translated, when he is otherwise unable to understand the language in which they are conducted;
- (8) In the event of conviction, within a time fixed by the rules of military courts or by the court itself, to file a petition setting forth the grounds why the conviction should be set aside or the sentence should be modified.

b. HEARING OF CHARGE. A military court before whom an accused appears shall examine the charge sheet and either proceed to try the case immediately, defer the trial of the case or refer it for trial by a higher court.

c. DETENTION OR RELEASE PENDING TRIAL. In the event that a court, after being apprised of the charges, decides to refer the case for trial by a higher court (R-13, p. ___) or to defer it for any other reason, it shall order the accused detained in custody or released pending trial on or without bail on such terms as the court may deem advisable. Such a release may be granted only under rare and exceptional circumstances and then generally on bail which shall be substantial in amount and sufficient to ensure the attendance of the accused at his trial.

d. STATEMENT OF CHARGE. In the event of a decision to proceed, the court shall read and also explain, if necessary, the charges to the accused and shall ask the accused after the reading of each charge whether he pleads guilty or not guilty. If necessary, the court shall explain these terms to the accused. The court shall enter in the record of the case the plea made to each charge.

e. PLEAS.

(1) **PLEA OF GUILTY.** The accused may plead guilty to any or all of the charges against him. In any case where the accused pleads guilty, the court must satisfy itself that the accused appreciates the elements required to constitute the charge and admits the facts sufficient to support it.

(a) The court may accept a plea of guilty to an offense other than that charged and a plea of not guilty to the offense charged. If the court accepts a plea of guilty to an offense other than that set forth in a charge sheet, a charge sheet shall be filed forthwith setting forth the new charge.

(2) **PLEA OF NOT GUILTY.** The accused may plead not guilty to any or all of the charges against him.

(a) A plea of not guilty shall be entered by the court if the answer of the accused to any charge is such that it does not clearly amount to an answer of guilty or not guilty; or if the accused fails or refuses to answer; or if the accused does not appear to the court to understand the nature of the charge or the effect of a plea of guilty; or if the answer of the accused

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to any charge is such that it appears he may not be guilty of the offense, whether he pleads guilty or not guilty.

(b) A plea of not guilty to any offense for which a sentence of death may be imposed shall be entered by a Military Commission or by a Summary or Superior Provost Court in any case referred to a Military Commission, provided, however, that a plea of guilty may be accepted provided the court is satisfied from the nature of the case that the punishment of death would be clearly excessive and that a lesser punishment would suffice.

(3) CHANGE OF PLEA. The accused may at any stage of the trial, with the consent of the court, change a plea of not guilty to one of guilty. The court may then proceed as though the accused had originally pleaded guilty. At any stage of the trial prior to the finding, the accused, with the consent of the court, may enter a plea of not guilty in the place of a plea of guilty made by the accused.

10. PROCEDURE ON PLEA OF GUILTY IN SUMMARY PROVOST COURT.

a. PRESENTATION OF RELEVANT FACTS OF THE OFFENSE. If the accused pleads guilty to any offense charged and the court accepts the plea, no evidence is required to prove the offense. The court must, however, acquaint itself with the relevant facts in order to pass sentence, and this may be done as follows:

- (1) Where there is a prosecutor, by the prosecutor stating the facts briefly to the court, and
- (2) Where there is no prosecutor, by a perusal of the documents or by statements of witnesses. The accused must have full opportunity of knowing what facts are being placed before the court whether by the prosecutor or by documents or by the statements of witnesses.

b. EVIDENCE OF CHARACTER. Evidence of good or bad character may then be offered by the prosecution and the defense, including evidence of prior convictions. The accused or his representative on his behalf may also make any statement he wishes in mitigation of the offense. The statement by the accused need not be on oath.

c. IMPOSITION OF SENTENCE. If in the opinion of the court it has power to impose adequate punishment, it shall proceed to do so.

d. REFERENCE OF CASE TO HIGHER COURT. If in the opinion of the court a sentence should be imposed in excess of that which it has power to impose, it shall refer the case for trial by a higher court. (R-13, P. ___).

e. PERPETUATION OF TESTIMONY. Before referring a case for trial by a higher court, the court may, in its discretion, for the purpose of perpetuating testimony or for any other reason, receive evidence respecting the commission of the alleged offense, and should do so if there is any doubt of the future availability of witnesses.

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11. PROCEDURE ON PLEA OF NOT GUILTY IN SUMMARY PROVCST COURT.

a. STATEMENTS BY PROSECUTION AND DEFENSE. Upon a plea of not guilty, the court will hear, if necessary, such statements for the prosecution and the defense and such evidence as it requires to enable it to determine:

- (1) Whether the case should be referred for trial by a higher court, either because of its own lack of power to impose adequate punishment in the event of conviction, or for any other reason (R-13, p ____).
- (2) Whether there is sufficient substance to the charges to justify a trial thereon by any court.

b. DISPOSITION OF CHARGES. The court may then either:

- (1) Dismiss all the charges if there is not sufficient substance to them;
- (2) Refer the case for trial by a higher court (R-13, p ____), or
- (3) Retain the charges and proceed to the trial of the case.

c. PERPETUATION OF TESTIMONY. The court, if it decides to refer the case for trial by a higher court, may cause testimony to be perpetuated in accordance with Rule 10c, p ____.

d. JOINDER OF CHARGES FOR TRIAL. All charges to which an accused pleads not guilty shall be tried together, except that on application of the accused the court may, under exceptional circumstances only, grant leave for any of the charges to be tried separately.

e. JOINDER OF ACCUSED FOR TRIAL.

(1) Two or more persons may be tried together for the same offense where the charge or charges are alleged to have arisen out of the same set of circumstances.

(2) The court may either before or during trial direct that one or more of the accused persons or of the charges be tried separately if the court is satisfied that otherwise such accused person or persons or the prosecution would be seriously prejudiced in the trial.

f. FURTHER PROCEDURES. If the court retains jurisdiction to try the case, the trial procedure set forth in Section III ensuing shall be followed to the extent applicable.

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SECTION III

Trial Procedure

12. TRIAL PROCEDURE IN SUMMARY PROVOST COURT. A Summary Provost Court shall be guided by the following procedure, which may be modified to fit the circumstances of the particular case.

a. OPENING STATEMENT BY PROSECUTION. The court shall call upon the prosecution to make such statement, if any, as it deems necessary, outlining the facts proposed to be proved by the witnesses for the prosecution.

b. CALLING WITNESSES. Witnesses on behalf of the prosecution shall be called in such order as to permit the facts to be presented to the court in as clear and logical a sequence as possible.

c. ADMINISTERING OF OATH. An oath or affirmation shall be administered by the presiding officer of each military court to all persons who are to give testimony except that a child may testify without being sworn provided the court is satisfied such witness understands the duty of telling the truth.

(1) Any procedure which appeals to the conscience of the person to whom the oath or affirmation is administered and which binds him to speak the truth is sufficient.

(2) Persons who have peculiar forms which they recognize as obligatory and believers in other than the Christian religion may be sworn in their own manner, or according to the peculiar ceremonies of the religion which they profess and declare to be binding.

d. DIRECT EXAMINATION. Each witness called on behalf of the prosecution shall first be examined by the prosecutor. In the absence of a prosecutor, the court shall call upon the witness to state the facts as he knows them.

e. CROSS-EXAMINATION. After each witness has given his evidence, the accused or his representative may cross-examine the witness upon any matters relevant to the case and relevant to the credibility of the witness.

f. RE-DIRECT EXAMINATION. The prosecution may re-examine any of its witnesses upon any matter raised in cross-examination or, with the court's consent, upon any other matter.

g. PROSECUTION CLOSES. After all of the witnesses for the prosecution have been called, the case for the prosecution shall be deemed closed. It is the duty of the prosecution not only to call evidence to establish a prima facie case, but also to see that facts favorable to the accused, if known to the prosecution, are presented to the court.

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h. CONSIDERATION OF PROSECUTION EVIDENCE. After the close of the case for the prosecution, the court shall consider whether the evidence introduced by the prosecution is sufficient to support each charge. The accused, or his representative, may submit and present arguments that, in respect of all or any of the charges, there is not sufficient evidence to support the same and that the accused should not be required to answer them.

(1) If as a result of such submission or otherwise, the court is satisfied that there is not sufficient evidence to support any charge, the court shall acquit the accused on such charge and shall enter any such acquittal on such charge in the record of the case.

(2) The court may also direct that new or additional charge or charges be prepared against the accused, if the evidence introduced by the prosecution tends to support any new or additional charge or charges. In such case the court may grant any necessary adjournment for the purpose of permitting the accused to prepare his defense against the new or additional charge or charges.

i. OPENING STATEMENT FOR DEFENSE. After the close of the case for the prosecution, the court shall call upon the accused or his representative to present his defense in respect to those charges which the accused is required to answer.

(1) The accused or his representative may make an opening statement, and call witnesses for the defense in the manner provided by paragraphs b, c, d, e and f of this Rule, with respect to the case for the prosecution.

J. ACCUSED AS A WITNESS. If the accused chooses to give evidence in his own defense he may do so but only on oath or affirmation, and subject to all the right of cross-examination and re-direct examination as in the case of any other witness, but he shall not be required to do so.

(1) The court may draw such inference as the circumstances justify from the failure of the accused to take the stand in his own behalf, and the prosecution may consent thereon.

(2) It shall be the duty of the court carefully to explain to the accused the foregoing and his rights with respect thereto.

k. DEFENSE CLOSURE. After all of the witnesses for the defense have been called, the case for the defense shall be deemed closed.

l. REBUTTAL. With leave of the court, the prosecution may call or recall any witness for the purpose of rebutting any material statement made by a witness for the defense, or for the purpose of giving evidence on any new matter raised by the defense.

m. SUMMATION. After all of the witnesses have testified, the prosecution and the accused or his representative may make statements summing up the facts of the case and dealing with any matters of law which require argument.

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The defense shall sum up first, and the prosecution shall sum up a second. Only one statement may be made on behalf of each accused.

n. **EXAMINATION OF WITNESS BY COURT.** The court may at any stage of the trial question any witness and may call or recall any witness at any time before finding, if it considers it necessary in the interests of justice.

13. REFERENCE OF CASE TO HIGHER COURT. At any stage of the proceedings prior to finding, the court may refer the case for trial by a higher court. If the court decides to refer the case, the court will:

a. Make and enter the order of reference in the record of the case;

b. Make and enter in the record, after hearing the prosecution and the defense, an order directing that the accused be held in custody, or released pending trial, on or without bail. (See R-9c, p ____.)

c. Send the record to the legal officer of the next higher military government echelon, and

d. Comply with such other directions as to reference as may be ordered by the Military Governor.

14. JUDGMENT. The judgment shall with respect to each charge consist of a finding of guilty and sentence or a finding of not guilty and acquittal.

a. **FINDING.** The court shall announce to the accused its finding of guilty or not guilty on each charge on the charge sheet. If the accused is found not guilty on all charges, he shall be acquitted and released. If the accused is found guilty on any or all of the charges he shall be convicted and sentenced.

b. **SENTENCE.**

(1) **STATEMENTS BEARING UPON SENTENCE.** The court may, in the event of conviction, hear statements and evidence for the prosecution and the defense, including evidence of prior convictions, bearing upon the sentence to be imposed, as set forth in Rule 10b, p ____.

(2) **PASSING SENTENCE.** The court shall impose and record a separate and appropriate sentence in respect of each charge upon which the accused is found guilty. Sentences may run consecutively or concurrently or partly consecutively and partly concurrently. In the event that accused has been convicted of the violation of local law the sentence shall be imposed in accordance with local law (this may be altered by appropriate proclamation, ordinance or other order).

(3) **SUSPENSION.** A sentence of imprisonment may, at the time it is passed, be suspended in whole or in part, in exceptional circumstances. Unless the court orders otherwise, a suspended sentence shall be deemed suspended indefinitely, to be put into effect upon a subsequent conviction of the accused by

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a military court or if good behavior is not maintained or upon breach of such other conditions as the court may impose.

(4) **DATE OF COMMENCEMENT.** Every sentence of imprisonment shall state the date of commencement thereof, which, if the accused was previously in custody, may make allowance for the period of custody.

(5) **FINES.**

(a) When imposing any fine a military court shall direct the period within which the fine shall be paid and shall impose a sentence of imprisonment to be served in default of payment, to the extent such period and sentence shall not have been prescribed by the Military Governor to be effective automatically upon the imposition of a fine.

(b) Where default is made in payment of the fine within the period directed by the court, it shall not be necessary to bring the accused again before a court to have the alternative sentence confirmed, and such accused may be imprisoned as a matter of course.

(6) **OTHER PENALTIES.** In addition to or in lieu of sentence of fine, imprisonment or death a military court may:

(a) Order the accused to make restitution to the lawful owner or to forfeit or deliver in temporary custody of the United States forces or other duly authorized persons any property where the accused is found guilty of an offense of which the illegal possession, use, purchase or sale of such property is an essential element;

(b) Where the accused has been found guilty of an offense involving the improper or illegal use of any place of residence or business, order that such place be vacated or closed for a period of time to be fixed by the court.

(c) Where the accused has been found guilty of the illegal operation of a business, order the closing of any premises in which such business or a related business was carried on, the supervision of any business, or the withdrawal or suspension of any license for the operation thereof, and, in any such case, may order the forfeiture to, or temporary custody by, the United States forces or other duly authorized persons of any stock in trade to which such illegal operation relates;

(d) Order the person convicted to establish his residence within or without a designated area or not to leave or enter a designated area without permission.

e. EXECUTION OF JUDGMENT. Except as the court may otherwise direct, every sentence except a sentence of death shall be put into execution forthwith and without awaiting the action of the Reviewing Authority.

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(1) **DEATH SENTENCE.** No sentence of death shall be executed unless and until affirmed in writing by the Military Governor or by a specified officer not below the rank of Brigadier General or Commodore to whom the Military Governor shall have delegated such power in writing.

15. TRIAL PROCEDURE IN SUPERIOR PROVOST COURT AND MILITARY COMMISSION. The procedure in Superior Provost Courts and Military Commissions shall be the same, in so far as applicable, as that in Summary Provost Courts except that,

a. The record of any evidence taken in a lower military court shall be made available to a higher military court, and any witness whose evidence differs from that given by him before the lower military court may be cross-examined thereon or questioned by the higher military court.

b. If any witness is unavailable, the higher military court may, after hearing the prosecution and defense, receive in evidence the record of his testimony given in the lower military court.

16. RECORD.

a. **CONTENTS OF RECORD.** Every military court shall in every case make a record containing the date and place of its proceedings, the names of the members of the court, of the accused, of the prosecutor, and of the defense counsel, the address, age, sex and occupation of the accused, the original or copy of the charge sheet or summons, the pleas, the name and opinion of the assessor, if any, the finding, the sentence and any other order of the court. In addition, in every case in which there is a plea of not guilty, the record shall contain the name of each witness and minutes or summary of the essential evidence given by him.

b. **TRANSMITTAL OF RECORDS.** The complete record of every case before a military court at the time a petition for review has been filed or when the time therefor has expired shall be forwarded to the Reviewing Authority.

c. **REVIEW OF RECORDS.** The record of every case in which there has been a conviction shall be reviewed by the Reviewing Authority in accordance with the provisions of Section V of these rules, whether or not a petition for review has been filed.

17. EVIDENCE.

a. **GENERAL RULE.** A military court may in general admit evidence, oral, written and physical including hearsay evidence having a bearing on the issues before it, and may exclude any evidence which in its opinion is of no value as proof or which should be excluded for reasons of military security, except that

(1) Evidence of bad character of an accused shall be admissible prior to conviction only when the accused person has introduced evidence of

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his own good character or the bad character of any witness for the prosecution.

(2) Neither the accused, nor a person of unsound mind, nor the husband, wife, parent or child of the accused shall be required to testify.

(3) No witness shall be required to incriminate himself.

b. BEST EVIDENCE. The court shall in general require the production of the best evidence reasonably available and in deliberating on the judgment shall take into consideration the nature of the evidence produced and the degree of credibility which it merits. Documents which are obviously authentic need not be identified in accordance with the principles of common law rules of evidence.

c. FORMER TRIAL. The testimony of any witness in a former hearing or trial of the accused shall be admissible when the witness is unavailable, unable to attend, or prevented for any other reason from attending the trial.

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SECTION IV

GENERAL PROVISIONS

18. **ADJOURNMENT.** A military court has power at any time to adjourn the proceedings either without date or to a fixed time and place, and to grant an adjournment at the request of the prosecution or the accused, or as the justice of the case may require.

19. WITNESSES.

a. **ATTENDANCE.** A military court or a duly authorized officer or enlisted man of the United States forces or any other person acting under their authority, shall have power to summon as a witness any person except a child under 14 years of age, in which case the parent or guardian may be summoned to bring the child to attend as a witness, and except a member of the forces of the United States or any of its allies, in which case the commanding officer of such member may be requested to order his attendance.

(1) Any person who may be summoned as a witness may be ordered to bring with him any document or article in his possession or under his control which has a bearing on the case.

b. **DETENTION.** Whenever the court or, in the absence of the court, an officer of the military government has reason to believe that a witness may be intimidated or become unavailable at the trial, he may be detained as a material witness, provided no such person shall be detained for a period of more than 21 days without a further order being made.

c. **EXCLUSION.** The court in its discretion with or without the request of the prosecution or the accused or his representative may direct that any or all witnesses be excluded from the court room until they have given evidence and may direct that they shall remain in the court room or within the precincts of the court thereafter during the proceeding unless released.

20. **CONTEMPT.** In exercising its power to punish for a contempt, a military court shall make a record which shall be reviewed as in the case of any other sentence.

21. **DISPOSITION OF FINES AND FORFEITED PROPERTY.** (R-5, p ____). Receipt shall be given for all fines and property forfeited. Property forfeited to the forces of the United States or any of its Allies shall be disposed of as the court shall direct, or in accordance with such procedure as may be prescribed by applicable accounting or other instructions with respect thereto. All fines and proceeds of property forfeited to the military government shall be treated and accounted for in accordance with financial accounting instructions. A record of fines shall be kept by each court.

22. **INSANITY.** If it is ascertained by the court upon competent medical or other evidence either that the accused at the time of committing the offense with which he is charged was so insane as not to appreciate the nature and quality of his act, or that at the time of his trial is so insane as to be

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unable to understand the nature of the charges against him, the court shall record a finding of such fact and may make an order providing for temporary custody, pending direction by the Military Governor or an officer authorized by him for permanent custody or other disposition.

23. JUVENILE OFFENDERS.

a. UNDER 16 YEARS OF AGE. In cases involving offenders under the age of 16 years, military courts shall adopt a flexible procedure based on the accepted practices of local juvenile courts and those of the United States, including in so far as possible the following measures:

- (1) Report by a welfare or probation officer in advance of trial;
- (2) Detention, where necessary, in a special institution, or in any event, if possible, apart from adult offenders;
- (3) Hearing informally in closed session;
- (4) Interrogation of parents or guardians and release in their custody if appropriate.

b. OVER 16 YEARS OF AGE. An offender 16 years of age, and under 18 years of age, may be treated in all respects as an adult if in the opinion of the court his physical and mental maturity so justifies.

c. AS JOINT ACCUSED. Notwithstanding the foregoing if one or more juvenile offenders are charged together with an adult, all may, and in the event of the charge being one of conspiracy shall, be tried together in open court unless otherwise ordered.

24. PROCEDURE IN ABSENCE OF SPECIFIC RULE. Where no procedure has been directed in any matter which arises, a military court may adopt such procedure as it thinks fit, provided no injustice is thereby done to the accused.

25. FORMS. Forms used by military courts shall conform substantially to those set out in Part III, page ___ ff.

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SECTION V

REVIEW

26. **PETITION FOR REVIEW.** The only mode of appeal from a conviction or sentence of a military court whereby the errors alleged to have been committed by the court may be specifically set forth is by petition for review. Notwithstanding the fact that no petition for review has been filed, the record of every case in which there has been a conviction shall be reviewed by the Reviewing Authority.

a. **CONTENTS.** No such petition shall be submitted unless it discloses substantial grounds (whether of law or fact) on which it is suggested that the conviction should be set aside or the sentence modified.

b. **CONDITIONS.** A petition shall comply with the following conditions:

- (1) It must be in the prescribed form.
- (2) It must be presented within 15 days of sentence or other period prescribed by the court.
- (3) It must be presented to the trial court or legal officer on the staff of the commander having civil affairs responsibility for the area in which the trial was held, or other officer in accordance with instructions issued.
- (4) It must be signed or sealed either by the accused personally or by the lawyer who appeared for him at the trial, or by some other interested person.
- (5) It must state the grounds of the appeal.
- (6) It must state the full name and address of the accused or the lawyer or other person by whom it is presented.

c. **NUMBER OF PETITIONS.** Once one petition has been submitted and adjudicated no further petition shall be presented.

d. **FRIVOLOUS PETITIONS.** Any lawyer who repeatedly submits or advises his clients to submit petitions which are either frivolous or which do not disclose any substantial grounds of appeal may be forbidden by the chief legal officer of the military government or other authorized officer or by any military court to appear in any military court.

27. **TRANSMITTAL OF PETITION.** Petitions for review shall be transmitted in the same manner as records and as parts thereof.

28. **POWERS OF REVIEWING AUTHORITY AND OF AFFIRMING AUTHORITY WHETHER OR NOT A PETITION FOR REVIEW HAS BEEN FILED.**

a. **DEATH SENTENCES.** The Affirming Authority under Rule 14c (1) p ___ shall have the powers of a Reviewing Authority in any case in which a sentence of death has been imposed.

b. **GENERAL POWERS.** The Reviewing Authority may upon review:

- (1) Affirm any finding of guilty, or set aside any such finding and, if the circumstances warrant it, order a new trial;

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- (2) Substitute for the finding of guilty of any offense charged a finding of guilty of a lesser included offense if supported by the record, where it appears that the court without injustice to the accused might before finding have amended the charge to include the lesser offense;
- (3) Affirm, suspend, reduce, set aside, commute or modify any sentence or order and make appropriate order for the release of the accused or the return of fine or restitution of property, but shall not set aside a finding of not guilty or increase any sentence. To the extent necessary, it may fix the time for the payment of a fine and the term of imprisonment in lieu of payment thereof if the court has failed to do so. (R-14b (5) (a), p ____.)

c. SUSPENSION OF SENTENCE. The Reviewing Authority may at any time suspend any sentence or part thereof.

d. DISREGARD OF PETITIONS. The Reviewing Authority may disregard any petition which does not comply with provisions of paragraphs a and b of Rule 26, p ____, or where a previous petition has been submitted and adjudicated.

29. EFFECT OF IRREGULARITIES. The proceedings before a military court shall not be invalidated, nor shall any finding or sentence be disapproved for any error or omission, technical or otherwise, occurring in such proceedings, unless in the opinion of the Reviewing Authority after an examination of the entire record it shall appear that the error or omission has resulted in injustice to the accused.

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PART II

GUIDE TO PROCEDURE IN MILITARY COURTS

The procedure to be followed in military courts is set out in Part I of this manual, the Rules of Procedure. The following guide should be read in conjunction with those rules and with the "Military Courts Ordinance" or proclamation, order or regulation promulgated in any area where those rules are to operate. Part IV contains a specimen form of ordinance establishing military courts.

The following comments are not exhaustive. They are in amplification and explanation of the rules. This guide is designed primarily for officers performing duties with respect to the establishment and conduct of military courts. It is imperative that all officers presiding in military courts familiarize themselves with the Rules of Procedure.

For purposes of cross-reference, the following symbols will be used:

- R - Rules of Procedure (Part I)
- G - Guide to Procedure in Military Courts (Part II).

SECTION I COURTS

30. TYPES, POWERS OF IMPOSITION OF PUNISHMENT AND JURISDICTION. Ordinarily there will be three types of military courts established in occupied territory by the ordinance, proclamation, or order (see Part IV), but conceivably only two types may be so established. Any such document generally coupled with appropriate instructions will prescribe the types of courts, their jurisdiction as to persons and offenses, their respective powers of punishment and their composition. Therefore, in reading this guide officers, particularly with regard to Sections 30 and 31, and Part IV, should consult and rely upon the above-mentioned documents and instructions. The last mentioned sections proceed upon the basis of the establishment of three rather than two types of military courts and are to be regarded as matters of general information, only, except to the extent adopted in the particular theater of military government.

a. The three types of military courts and their respective powers to impose punishment are as follows:

- (1) Military Commissions having power to impose any lawful punishment including death;
- (2) Superior Provost Courts having power to impose any lawful punishment other than death or imprisonment for more than ten years;
- (3) Summary Provost Courts having power to impose any lawful punishment other than death or imprisonment

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for more than one year or a fine of more than the equivalent of \$500, United States currency, or both such imprisonment and fine.

Where a Superior Provost Court or a Summary Provost Court imposes a term of imprisonment in the event of a default of payment of a fine the aggregate of such term, plus term imposed under (2) or (3) above shall not exceed ten years and one year respectively.

b. The jurisdiction of military courts extends over:

(1) All persons except:

- (a) Members of the United States forces or members of Allied forces.**
- (b) Prisoners of war or persons treated as such, subject to instructions which may be issued as to persons entitled to be treated as "Prisoners of War."**

(2) All offenses:

- (a) Against the laws and usages of war, except those offenses or classes of offenses that have been designated by appropriate authority for trial by special tribunals and not military courts.**
- (b) Against any proclamation, ordinance, order or enactment of the military government.**
- (c) Against local, i. e., indigenous law (military courts shall not try any civil cases in the absence of order to that effect by the Military Governor).**

31. COMPOSITION OF COURTS.

a. A Military Commission shall consist of not less than three officers of the United States forces, at least one of whom shall be a qualified legal officer, i. e., an officer who is a qualified lawyer.

b. A Superior Provost Court shall consist of two or more officers of the United States forces, at least one of whom shall be a qualified legal officer, or one qualified legal officer if he has been specifically authorized by the chief legal officer of military government or by any other officer designated by appropriate instructions to sit alone as a Superior Provost Court.

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c. A Summary Provost Court shall consist of (1) a qualified legal officer, if available, or (2) any officer of the military government or (3) any other officer of the United States forces, if appointed in writing by the Appointing Authority.

32. ASSIGNMENT OF CASE TO PROPER COURT (R-10d, 13, PP ___).

a. In providing for the establishment of types of military courts each equally competent to try all offenses within the jurisdiction of the military courts but with varying powers of imposing punishment, it is intended that offenders will be tried in that court which may impose adequate punishment. Generally instructions will be issued in any military government that certain designated officers shall have the authority to submit directly to higher courts for trial cases involving offenses which to them seem to require heavier punishment than the lower court or courts would have jurisdiction to impose. Thus, cases of sabotage, espionage and murder should ordinarily be referred direct to the highest court without first going to a Summary Provost Court, except possibly for perpetuation of testimony. With the proper exercise of such authority it will be found in practice that few of such cases particularly after the initial stages of occupation will first come before Summary Provost Courts. However, not infrequently in the initial stages of occupation and occasionally in later stages, serious cases may come initially before Summary Provost Courts. Much reliance, therefore, must be placed upon the judgment of those officers to whose attention cases are first brought or who may be sitting as Summary Provost Courts. They should always bear in mind that effective law enforcement depends largely upon the imposition of adequate and speedy punishment.

b. In most instances violations including some of a serious nature will first be brought to the attention of civil affairs officers sitting as Summary Provost Courts. Upon the examination of the charges such officers must decide whether the violation charged is a minor violation which may be disposed of by a Summary Provost Court. Occasionally, it may not appear until after trial in a Summary Provost Court has begun that greater punishment than that which may be imposed by the Summary Provost Court is warranted and hence the case should be referred for trial by a higher military court.

c. Whether it is decided in advance, or during a trial before a Summary or Superior Provost Court, that such court lacks power to impose adequate punishment, the procedure to be followed is the same. The case should be referred in accordance with Rule 13, P ___, for trial by a higher court.

d. Where there are more than one accused, the power to refer a case for trial by a higher court may be used in respect of some of the accused, the lower court retaining and disposing of the case against the remainder. This course should be adopted only in cases in which there are a large number of accused and the gravity of the offense alleged against them varies greatly. Generally, it will be better to try them jointly in the higher court, otherwise many of the witnesses will have to be heard on two different occasions and some may become unavailable at the time of the second trial.

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33. **ROLE OF JUDGE.** In continental countries and in countries such as Japan which have followed the court procedure and codes of continental countries, it is the practice for the presiding judge to conduct the examination of witnesses and generally to take the leading part in the proceedings. Officers presiding in military courts may be obliged to do the same where the prosecutor is inexperienced or where there is no prosecutor or because the counsel for the accused may be unfamiliar with the procedure and inexperienced in the technique of cross-examination.

a. A military court should always lend such assistance to the prosecution and to the accused as circumstances may require to help ascertain the truth. It will also be impartial towards the prosecution and the defense and take every step to see not only that a fair trial is held but also that the trial appears fair.

b. A military court must always bear in mind that each accused person is presumed to be innocent until he is proved guilty, and he must be given the benefit of any reasonable doubt. Reasonable doubt, however, does not mean a mere vague or possible doubt.

34. **PUBLIC OR CLOSED HEARINGS.** Trials by military courts should be public except when otherwise directed by the court, or by authorized higher authority. The power to direct any trial or any part thereof to be closed to the public should be exercised if it is necessary to prevent any prejudice to the security of the occupying forces or for some other exceptional reason. Where any such direction is given, this should be clearly stated on the record.

35. **DIGNITY OF COURT.** The court is responsible that its proceedings are such as to enhance the prestige of the occupying forces. Officers appearing in a military court should at all times be neat in appearance and correct in deportment. No disorders should be tolerated in or near the court.

36. **GENERAL POWERS OF COURT.** Military courts are empowered to do all acts necessary for the due administration of justice. This includes the following powers:

a. To grant bail (R-9c, p ____). This power should not be exercised in serious cases especially where property or other interests of the occupying forces are involved, and generally only under the most unusual circumstances. Bail, if granted, must always be substantial in amount, and sufficient to ensure the attendance of the accused at his trial;

b. To adjourn proceedings generally or to a fixed time and place (R-18, p ____);

c. To punish for contempt (R-20, p ____);

d. To administer oaths or affirmations (R-12c, p ____);

e. To order the attendance of witnesses with or without documents (R-19, p ____);

f. To direct that any person shall be detained in custody as a material witness in accordance with Rule 19b, p ____;

g. To appoint one or more assessors (R-2d, ____).

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37. MODIFICATION OF PROCEDURES. (R-12, p ____). In simple cases, steps set forth in the rules may be omitted or greatly abbreviated, but no rights of the accused shall be disregarded. Opening statements by the prosecution and the defense in particular may frequently be omitted. The court is in complete control of the proceedings, and may cut short any person who becomes repetitious or wanders from the issue.

SECTION II

COUNSEL

38. PROSECUTION (R-3a, p ____). Whenever possible and invariably in the event of complexity or magnitude, cases should be prepared and presented by a qualified prosecutor. The prosecutor should preferably be an officer of the United States forces, but may be an enlisted man thereof who is a qualified lawyer or, if security permits, a member of the indigenous police or other indigenous authority. It is undesirable to use a civilian having otherwise no official status with the military government.

a. The duty of the prosecutor is to present to the court in as clear and concise a way as possible all material facts including those favorable to the accused.

39. ASSIGNED COUNSEL (R-3c, p ____). When an officer or enlisted man of the United States forces is assigned to defend two or more accused who are to be tried together, he should consider whether he will be prejudiced in the conduct of the defense of any one of them by reason of the fact that there is a serious conflict of interest between such accused and the other accused. If he will be so prejudiced, he should apply to the court for the appointment of a separate representative for the other accused. In a serious case where the sentence of death is likely to be imposed the officer assigned to defend the accused should be a qualified lawyer.

SECTION III

OFFICIALS

40. INTERPRETERS (R-4, p ____). Care should be taken to obtain a qualified interpreter, because language differences are a barrier to understanding, and consequently to the administration of justice. The interpreter should translate directly and in the same person everything that is said, subject to the direction of the court. The activities of the interpreter should be confined to interpreting; he should not be permitted to frame questions or merely to give the purport of any observations, questions or answers, or to enter into argument with advocates or witnesses.

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a. In military occupation efforts are frequently made to influence military government personnel through the medium of the indigenous interpreter. It is, therefore, important that a careful watch be kept on such interpreter out of court, and on no account should he be permitted to sign any official letter, form or other document.

41. ASSESSORS (R-3d, p ____). An assessor has no vote but lends assistance as may be requested, such as advising on the indigenous law or local custom. Another object for using an assessor is to check on the interpreter in a case of unusual importance. Generally, the employment of an assessor will be found necessary only in unusual cases.

SECTION IV SUMMONS

42. FAILURE TO ANSWER SUMMONS (R-5, 19, pp ____). If an accused or witness who has been summoned does not answer to the call at the appointed time, the court should order that he be arrested and brought before it, and may issue a warrant of arrest. Unexcused failure to appear is punishable as a contempt of court or as a violation of an order issued by the occupying forces or a number thereof.

SECTION V CHARGE

43. FRAMING OF CHARGES (R-8, p ____).

a. Unless an accused has been served with a summons clearly and properly stating the charges on which he is to be tried, a set of the charges on which it is proposed to proceed shall be served on the accused subject to the provisions of Rule 8c, p ____.

b. Even if the summons contains a statement of the charges, further facts may come to light during investigation and the original charges may require revision. In this case a set of amended charges shall be served.

c. The charges and particulars must be clear and specific.

d. If it is necessary to charge offenses under more than one paragraph or section of the proclamation, ordinance, order, regulation or local law or with different offenses under one paragraph or section, a separate charge should be framed for each alleged offense.

e. In framing charges, the following should be carried out:

- (1) The paragraph or section of the proclamation, ordinance, order, regulation or local law alleged to

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have been violated must be cited.

- (2) The phraseology of the paragraph or section should be followed exactly.
- (3) All relevant particulars (e.g., date and place of alleged offense, nature and quantity of property involved, etc.) must be stated.

f. Multiplicity of charges should be avoided.

g. Example: The facts on which the charge is to be based are as follows:

The accused was found at X in possession of ten blankets recently stolen from an Army store at Y. No person witnesses the theft or could identify the accused as having been at the scene of the theft.

A charge of theft should not be preferred in this case. The charge should be as follows:

1st Charge: The accused wrongfully had in his possession property of the United States forces contrary to Procl. _____, Art. _____, Sec. _____.

Particulars: Between 1 January 1944 and 15 January 1944, the accused had in his possession at X, 10 blankets, property of the United States forces.

SECTION VI
PLEADING

44. EXPLANATION OF "GUILTY" AND "NOT GUILTY". It may be frequently necessary for the court to explain the meaning and the effect of the terms "guilty" and "not guilty" to the accused.

a. The accused may be advised that if he answers not guilty to the charge, the court will then proceed with the trial of the case by hearing the witnesses and the evidence of both the prosecution and the defense and that after hearing the witnesses and the evidence for both the prosecution and the defense, the court will then decide whether the accused is guilty or not guilty.

b. The accused may be advised that if the court finds an accused not guilty, he will be acquitted of the charge. On the other hand, if the court finds an accused guilty, it will then sentence him, but he will not be penalized for having answered not guilty.

c. The court may further explain to an accused that if he answers guilty, the court may then, without hearing any testimony, sentence him, but that the court shall hear such statements and receive such evidence from the prosecution and the accused or his representative as it requires to enable it to impose a just sentence.

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45. SPECIAL PLEAS. The accused or the court itself on behalf of the accused at any time during the course of the proceedings prior to finding may enter a special plea such as former jeopardy or lack of jurisdiction of the court to try the accused on the ground that he is entitled to be treated as a prisoner of war. Before proceeding further, the court should make its determination on such plea and set forth in the record the action thereon. Any person establishing that he has the status of prisoner of war is not subject to the jurisdiction of military courts of the military government, and must be turned over to the Provost to be dealt with in accordance with the Geneva Convention of 27 July 1929. Doubtful cases should be referred to Counter Intelligence for investigation or be dealt with according to any instructions that may have been issued in this regard.

46. MIXED PLEAS. (R-9, 10, 11, pp ____.) If there are more than one accused, and one or more, but not all plead guilty, or if a single accused pleads guilty to one or more, but not all the charges, the court should defer sentence on all of the charges until the conclusion of the trial, in order to impose sentence on each accused with respect to each of the charges as to which he has pleaded or been found guilty.

47. TESTIMONY OF THE ACCUSED. (R-12j, p ____.) The court may draw such inference as the circumstances justify from the failure of the accused to take the stand in his own behalf. If the accused elects to take the stand in his own behalf, he must do so on oath or affirmation, and be subject to cross-examination and re-direct examination as in the case of any other witness. His rights to give or not give evidence in his own behalf, and the consequences thereof must be carefully explained to the accused.

SECTION VII EVIDENCE

48. IN GENERAL.

a. Rule 17, p ____, does not incorporate the rules of evidence of American or British Courts or of courts-martial. Hearsay evidence, including the statement of a witness not produced, is admissible. If, however, the matter is important and controverted, every effort should be made to obtain the presence of the witness, and an adjournment may be ordered for that purpose. It must be borne in mind that no opportunity may have been given for cross-examination as to the facts set out in a statement of a witness not produced, and that even if the statement is not inaccurate it may create a wrong impression by being incomplete.

b. Whenever witnesses give oral testimony for any purpose at any stage of the proceedings before any court they shall be sworn and shall testify in accordance with the provisions of Rule 12 c, d, e and f, pp ____.

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49. **PROOF OF EXHIBITS (R-17, p)**. A document or other article becomes evidence in the case and should be marked as an exhibit when a document or other article is identified in circumstances relevant to the charge. However, documents such as authenticated copies of military orders or authenticated copies of entries in local judicial or other official registries which are obviously genuine need not be further identified, unless they are seriously questioned and the court has reason to doubt their authenticity. No other type of formal offer is necessary.

a. Examples:

(1) In a charge of assaulting a member of the occupying forces with intent to kill, after evidence that a member of such forces had been stabbed, the witness states, "I found this dagger under a pile of rubbish at the accused's house." The dagger should be received in evidence by the court and marked as an exhibit. It remains for the court in considering its finding to decide on this and other evidence whether or not this was the dagger which was used.

(2) In a charge of wrongful possession of property of the occupying forces a policeman testifies "On 10 November 1944, the accused made a verbal statement to me at X. I wrote down the statement, read it over to him and he signed it. I produce the statement." The court should receive the statement in evidence, but the weight to be attached to it depends on the circumstances.

50. CONFESSIONS.

a. In American and British procedure no confession to the police is admissible unless made freely and voluntarily and generally only after caution. It is not possible to apply those rules strictly to all proceedings in military courts. The court is entitled to look at a purported confession and should inquire into the circumstances under which it was made. The issue for the court then is whether or not the confession is true, the onus being upon the prosecution to prove that it is.

b. There is no rule of law in military courts that a man may not be convicted on an uncorroborated confession; but if there is evidence that a confession was obtained by force, corroboration is obviously necessary.

c. Similarly, there is no rule of law that a confession by an accomplice which implicates the accused may not be accepted by the court as evidence against the accused. Every court, however, must consider the natural tendency to exculpate oneself by implicating another; and the court, therefore, must be wary of attaching great weight to such evidence.

51. PERJURY. The court must not permit a trial of an accused for a substantive offense to be converted into a trial of a witness for perjury. In a proper case, a charge of perjury may be preferred against a witness who has deliberately made a false statement on oath. This course should be adopted only in exceptional cases in which it is clear that the witness has deliberately

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given false evidence on a substantial question of fact (as opposed to opinion) to mislead the court.

52. FALSE STATEMENTS. Proclamations, ordinances or similar documents setting forth occupation crimes ordinarily provide that it is an offense to "make a false statement in connection with any official matter." This is a very useful provision in many ways, but it should not be used:

- a. as a substitute for a charge of perjury;
- b. As an easy means of procuring conviction in a case where the evidence against the suspect is flimsy, but the suspect, in the course of the investigations, has made a false statement to the investigating officer;
- c. if the accused makes the false statement in answer to questions designed to establish his guilt on some other charge.

SECTION VIII SENTENCES

53. GENERAL CONSIDERATIONS (R-14b, p ____). The paramount consideration in sentencing by a military court is the protection of the interests of the occupying forces by deterring further violations by the accused or by others. Where offenses which are of direct concern to the military are involved, such as interference with communications, sentences may properly be given which are much more severe than would otherwise be warranted. In petty cases, unreasonably heavy sentences should not ordinarily be imposed. Additional considerations are whether the act was premeditated, the prevalence of the offense in the locality, the previous record, and the occupation, age and sex of the accused. The court should give the sentence which it considers proper and not assume that the Reviewing Authority will modify it. (as to violations of local law, see R-14b (2), p ____.)

54. FINES (R-14b (5), p ____). A military court has power to impose a fine as its sentence or part of its sentence. Fines, however, except for minor violations generally do not serve as an effective deterrent and should not normally be imposed unless coupled with a sentence of imprisonment. In particular, fines alone are not appropriate in that type of case where the accused is engaged in illegal trading from which profits are great and the accused therefore does not fear a fine. While it is not proposed to fix in the Rules or the Guide any inflexible ratio between unpaid fines and days of imprisonment to be imposed on default of payment thereof, as any such ratio might in all fairness vary from area to area and from case to case, depending on the circumstances, it is suggested that a generally fair ratio would be one day of imprisonment for each \$1.00 (United States currency or equivalent) of the fine not paid. The Military Governor may prescribe the ratio to be followed, automatically.

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55. TOTAL IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE. (R-14b (5), p ___ and G-30, p ___.) Summary and Superior Provost Courts are limited in their powers to impose a sentence of imprisonment. They may also impose a fine which may or may not be in addition to a sentence of imprisonment. However, where the court does impose a fine, the period of imprisonment in default of payment shall not exceed the term of imprisonment which the court has the power to impose as an original sentence of imprisonment or if the fine is imposed in addition to a term of imprisonment the aggregate of the term to be served for nonpayment of the fine and under the straight sentence of imprisonment shall not exceed the total term of imprisonment which the court has the power to impose as an original sentence of imprisonment. Thus a Summary Provost Court would exceed its jurisdiction in imposing a sentence of six months, plus a fine in default of which the accused must serve an additional eight months.

56. SUSPENSION OF SENTENCES. (R-14b (3), p ___.) A sentence should be suspended only for a definite reason, and not as a means of cutting down a sentence considered appropriate. If it is proposed to suspend a sentence or a part of a sentence on an accused, it is important that the court's records be checked to detect prior offenses. It is a good alternative practice to file an abstract of all proceedings of military courts with the local judicial or police archives, and to have those files checked for previous records of cases in which the accused has been found guilty. The power of suspension will not be used as a regular practice, but only in exceptional cases, e.g., on account of the age or ill health of the accused, or some special extenuating circumstances.

a. In the event of an alleged breach of any such conditions as the court may impose, the accused shall be brought before the nearest available Summary Provost Court (not necessarily the court which imposed the sentence). If such breach is admitted by the accused or is proved by evidence, the court will order the accused to serve the original sentence or such part of it as was suspended.

b. A subsequent conviction by a military court for any offense shall put into effect the whole of any suspended sentence unless the court otherwise directs. The court so convicting will order the accused to serve the suspended term in addition to any other sentence it may impose.

SECTION IV
OTHER PENALTIES

57. GENERAL. (R-14b (6), p ___.) In addition to other forms of punishment, a military court is empowered by proclamation, ordinance or other similar document to order restitution, compensation, forfeiture or confiscation of property.

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a. The power to order restitution, compensation or forfeiture should be exercised where an accused is convicted of wrongful use, sale, purchase or possession of an article.

b. Normally, the power to order forfeiture should be used where the wrongful use, etc., is the substance of, and not merely incidental to, the offense.

EXAMPLES:

(1) A man is convicted of possession of firearms without permit or of wrongful possession of property of the occupying forces. The power should normally be exercised in such cases. In addition to a sentence of imprisonment which may be imposed, the court should order the forfeiture of the firearm or property wrongfully possessed.

(2) A person is convicted of being out-of-doors after curfew without a permit and was riding a bicycle at the time of arrest. The power should not be exercised. The court may impose a fine or term of imprisonment but should not order the forfeiture of the bicycle.

58. COMPULSORY RESIDENCE. (R-14b (6) (d), p ____.) Orders restricting residence should be made only in exceptional situations. They should be considered security measures rather than punishment, and should be based upon the recommendations of public safety or security officers.

SECTION X

SEIZED OR IMPOUNDED PROPERTY

59. GENERAL. (R-6, a, b and R-7, pp ____.) If property which has been seized or impounded is not produced in court, the court must scrutinize closely the reasons for its non-production. The mere seizure or impounding of an article does not give the person who seized or impounded it any claim to the article. At the termination of the case the court must make an order disposing of all property seized or impounded in connection with the case.

SECTION XI

RECORD OF PROCEEDINGS

60. MAKING THE RECORD. (R-2b (2) (a), 16, pp ____.)

a. The making of the record is the responsibility of the court. The court's notes of the evidence should be made on the appropriate form or on

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separate sheets. If no official reporter is used, the court should prepare the summary of the evidence during the course of the trial and should not leave it to be written up afterwards. Such summary must be written in legible handwriting, if not typed.

b. As every case in which there has been a conviction is subject to review whether or not a petition for review has been filed, unless there is an adequate record, the Reviewing Authority will not be able to consider the case properly. Aside from the rights of the accused to have a proper review of his case which an inadequate record reduces to an empty form, the responsible legal officers of military government through the system of review are able to ascertain how well or how poorly officers acting in a judicial capacity are performing their duties. An inadequate record may become the basis of setting aside a conviction which on an adequate record would be affirmed.

c. Records in simple cases need not be long but must include all material facts, particularly relevant quantities and amounts. Comments by the court which may help the Reviewing Authority to form a mental picture of the case or to know why a particularly severe or lenient sentence was imposed are valuable and should always be included in the space provided for the purpose.

d. If a record has become lost or has been destroyed before the conclusion of any proceeding or before action has been completed on review and if in the opinion of the Reviewing Authority no satisfactory reconstruction of the record can be made by one or more members of the trial court, the Reviewing Authority may declare such proceeding null and void and remand the case for a re-trial or issue such other order as he may deem expedient for the disposition of the case.

61. REVIEW. (R-26, p ____.)

a. Every case in which there has been a conviction is subject to review whether or not a petition for review has been filed. Who shall be the Reviewing Authority for any case or type or class of cases will be designated by appropriate instructions.

b. A petition for review is the only means whereby the accused or his representative may after judgment raise affirmatively and thus call directly to the attention of the Reviewing Authority any point of law or fact which would serve as a basis of setting aside the conviction or modifying the sentence. A petition for review may thus serve a useful purpose despite the fact that the Reviewing Authority even in the absence of such a petition should himself examine the record carefully for any such points.

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c. Forms of petition for review should be made available to the accused or his representative upon request. Any such petition which is filed should be examined and transmitted with the record. While Rule 26 sets forth specific requirements as to the form, preparation and submission of a petition, nevertheless, in the absence of specific contrary instructions from the Reviewing Authority, if a petition is filed late or otherwise does not comply with the requirements of such Rule, it is the better practice to transmit the petition with the record or if the latter has already gone forward to the Reviewing Authority to transmit the petition under identifying reference to the Reviewing Authority for such action as he may care to take.

d. The filing of a petition for review should not be deemed an act of disrespect.

e. Comments of the member or members of the court as to matters set forth in the petition for review should be noted on the petition, as they will prove helpful to the Reviewing Authority.

f. In the interest of justice reviews should be promptly made and kept current.

g. If under orders or instructions cases are to be reviewed at different echelons depending upon the size of the sentences imposed, and, if two or more accused have been tried jointly and the respective sentences imposed on them would be subject to review at different echelons, the entire case shall be reviewed by the Reviewing Authority having jurisdiction to review the heaviest of the sentences imposed.

h. If the Reviewing Authority alters in anyway the finding or the sentence, such alteration must be put into effect immediately. The means and methods by which, or the circumstances under which, it is conveyed to the convicted person or his representative should be left to the discretion of the court or officer in charge of such matters, it being borne in mind that while justice must be done the manner of carrying it out must be such that through the reversal or modification of the court's decision neither the court nor the military government will suffer loss of prestige or what the orientals call "loss of face" in the community.

i. In final analysis, the primary purpose of a review of cases being to see that justice has been done, as long as no injustice is done to the accused, convictions should not be set aside and sentences should not be modified on mere technical or legalistic grounds.

j. The action taken by the Reviewing Authority should preferably be entered in the space provided therefor on the form in which the proceedings are recorded.

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SECTION XIII

CONCLUSION

62. **FINAL CONSIDERATIONS.** Neither the Rules nor the Guide can cover or be expected to cover every situation which will arise. There can never be laid down in advance any set pattern which will give the answers to or the methods of solving all the problems which will arise, or be the sole guide to those administering justice in military courts. Whether success or failure attends the operation of military courts in any area will, aside from the consistent application of certain basic principles, depend in large measure upon the use of common sense, initiative and imagination applied with due regard to local conditions, customs and points of view obtaining in such area. A thorough knowledge and understanding of such conditions, customs and points of view are essential, if the prompt and fair decisions of military courts are to have their most desired effect.

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R E S T R I C T E D

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

Policy

AG 014.1 (18 Sep 45)MG

APO 500
18 September 1945

SUBJECT : Establishment of Military Occupation Courts

TO : Commanding General, XXIV Corps, APO 235.

1. The establishment of Military Occupation Courts as hereinafter described is authorized in the territory of Korea south of 38 degrees north latitude. They will consist of two types, namely, Military Commissions and Provost Courts.

2. a. Military Commissions will consist of not less than three officers, one of whom shall be a qualified lawyer, if available, otherwise any qualified officer, who will in general perform the duties required of the law member of a general court-martial.

b. Provost Courts will consist of one or more officers.

3. Military Commissions will be appointed by the Commanding General, XXIV Corps. Provost Courts will be appointed by the Commanding General, XXIV Corps or such subordinate commanders as he may designate.

4. a. Military Occupation Courts shall have the power to try only such cases as are properly referred to them by the appointing authority or by subordinate officers designated by the appointing authority.

b. Military Occupation Courts appointed pursuant to this directive have jurisdiction over all persons within the territory of Korea occupied by the United States Forces except:

(1) Persons subject to the military or naval laws of the Allied Powers.

(2) Persons having diplomatic immunity.

(3) Prisoners of War.

c. Military Occupation Courts will have jurisdiction over the following types of offenses committed after 1 September 1945:

(1) Offenses against the laws and usages of war.

(2) All violations of the proclamations, ordinances, regulations or orders promulgated by the Commander-in-Chief, United States Army Forces, Pacific, or his authorized subordinates.

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(3) All violations of the terms of surrender.

(4) All violations of the criminal or civil law of Korea.

5. a. Military Commissions will follow the procedure applicable in army general courts-martial insofar as practicable and Provost Courts will similarly follow the procedure prescribed for army summary courts-martial. A Military Occupation Court shall have power to and shall as the occasion demands, make such rules for the conduct of its proceedings as it shall deem necessary for a full and fair trial of matters before it, consistent with this directive, with the powers of military courts under the Articles of War and with the customs and usages of war in like cases; Provided that:

- (1) The provisions of Article of War 70 relating to investigations and preliminary hearings shall not be deemed to apply in the proceedings. Nor is it necessary to allow peremptory challenges.
- (2) Such evidence shall be admitted as would, in the opinion of the law member, or the president of the commission in his absence, or the Provost Court or the president thereof, have probative value to a reasonable man.
- (3) The concurrence of at least two-thirds of the members of the Military Occupation Court present at the time the vote is taken shall be necessary for conviction and for sentence.
- (4) No accused shall be required to testify against himself, but he may, if he so elects, give evidence in his own behalf.

b. Trials will be had and judgments entered with the utmost dispatch consistent with fair administration of justice, particularly in cases where witnesses for or against the accused are likely to disappear. Accused persons will not be tried unless they are present in person at the trial. Matters respecting counsel, witnesses, interpreters, reporters and previous convictions shall be as prescribed in paragraphs 44f, g, h, i, and j, FM 27-5, 22 December 1943, insofar as not inconsistent with other parts of this order.

c. Provost Courts may at any time prior to pronouncement of sentence suspend proceedings and recommend to the appointing authority or subordinate officers designated by him reference of the case to a Military Commission in all instances where a proper sentence is considered beyond the power of the Provost Court to impose.

6. a. Military Commissions are authorized to impose sentences which may include fines, imprisonment at hard labor and death.

b. Sentences imposed by Provost Courts will be limited to fines not exceeding five thousand dollars (\$5,000.00), or the equivalent in yen, and imprisonment at hard labor not to exceed five (5) years, or both.

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c. In addition to or in lieu of the punishments described above, Military Occupation Courts may impose the punishments described in paragraph 45d, FM 27-5, 22 December 1943, namely, expulsion, confiscation and padlocking, and make such other orders with respect to the person, property or business of the accused as are just and reasonable. Military Occupation Courts may impound money, grant bail, accept and forfeit the security therefor, order arrest, compel the attendance and detention of witnesses, punish summarily for contempt and have such other powers as may be appropriate and necessary for the proper administration of justice.

7. a. Charges will be preferred by a person subject to military or naval law of the United States and will be accomplished on a Charge Sheet. The charge sheet used by the U. S. Army (W.D. AGO Form No. 115) may be used with appropriate modifications.

b. Military Commissions will keep records of proceedings similar to those of army general courts-martial. After appropriate action by the appointing authority following review of the case by his Staff Judge Advocate, or other designated legal representative, the record will be forwarded through the Commanding General, United States Army Forces in Korea, to the Branch Office of the Judge Advocate General except in cases requiring confirmation by the Commander-in-Chief, United States Army Forces, Pacific, in which instance it shall be forwarded to this headquarters.

c. Provost Courts will keep records of proceedings similar to those made in army summary courts-martial. These records will, after appropriate action by the appointing authority, be forwarded to the Commanding General, United States Army Forces in Korea, through an officer exercising general courts-martial jurisdiction, where there is such an intermediate commander.

8. a. All records of trial by Military Occupation Courts will be examined and acted upon by the appointing authority. The appointing authority shall have the power to entertain and consider any appeal or petition by or on behalf of the accused; to stay execution of the sentence; to disapprove the findings or set aside any finding of guilty; to disapprove, suspend, mitigate or remit the sentence; or to order a new trial.

b. The Commanding General, United States Army Forces, in Korea, shall have similar powers and, in addition, shall have the power to commute death sentences.

c. No death sentence will be carried into execution until it shall have been confirmed by the Commander-in-Chief, United States Army Forces, Pacific.

BY Command of General MacARTHUR:

For Harold Fair
B. M. FITCH,
Brigadier General, U. S. Army,
Adjutant General.

OFFICIALS-MINISTRY OF JUSTICE AND LAW COURTS 1/

THE JUSTICE MINISTRY (SHIHO-SHO)

Minister	May 25, 1945 Hiromasa MATSUZAKI	Feb. 23, 1945. Same
Vice Minister	Wataru KUROKAWA	Same
Parliamentary Vice-Minister	Tetsutaro HAMANO	Kazue NAKAI
Parliamentary councilor	Baron Hitoshi KURATOMI	Count Munetaka TOKUGAWA

Directors of Bureaus:

Penal Adm Bureau (Keisei-Kyoku)	Akira (Ryo) MASAKI	None Indicated
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SUPREME COURT (Taishin-in)

President:ent	Seiichi SHIMOYAMA	Same
Procurator General	Namisuke NAKANO	Same
Public Procurator	Yutuka ATSUHIRA	Eitaro NISHIN
Procurator	Jiro KANAZAWA	Same

Judges

Noboru INOUE

Shuroku KAMIKAKI

Shinkichi KUDO

Taiji KUROKAWA

Genji OKAMURA

Tamotsu SHIMA

None indicated for Feb. 23, 1945

Tokyo Court of Appeal (Tokyo-Koso-in) 3

President:	Kota OMORI	Same
Chief Procurator:	Kaname AKIYAMA	Same

Source: Who's Who in Japan : FCC - Foreign Broadcast Intelligence Service. Officials are listed as of two reporting dates - Feb. 23, 1945 and May 25, 1945

A

Tokyo District Criminal Court
Tokyo Keiji Chiho Saiban-sho

Chief Judge: Fujisuke SATO Tamotsu SHIMA
Chief Procurator: ~~NOBORU TOSEKI~~
~~HIROSHI KURATA~~ Same

Higher Prize Court,
Koto Hokoku Shinken-jo

Assessor: Jumpei SHINOBU Same

Osaka Court of Appeal
Osaka Koso-in

President: Hyoichiro KUSANO Same
Chief Procurator: Makoto KUMAGAI Same

Kobe Court of Appeal
C Kobe Koso-in

President: None indicated None Indicated
Chief Procurator: Takeo YOSHIMURA Same

Fukuoka Court of Appeal
Fukuoka Koso-in

President: None Indicated None indicated
Chief Procurator: Yoshihiro OTAKE Same

Miyagi Court of Appeal
Miyagi Koso-in

President: None indicated None Indicated
Chief Procurator: Takeichiro MORIYAMA Same

2 / These two reports of the FCC do not indicate Court of Appeals or personnel at Nagasaki, Sapporo, Nagoya, Hiroshima or Sendai.