**DEPARTMENT OF THE NAVY**
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IN REPLY REFER TO

JAGINST 5830.1A
Code 15

31 OCT 2005

JAG INSTRUCTION 5830.1A

From: Judge Advocate General
To: Distribution

Subj: PROCEDURES APPLICABLE TO COURTS AND BOARDS OF INQUIRY

Ref: (a) 10 U.S.C. § 935
(b) JAGINST 5800.7D (JAGMAN)
(c) Manual for Courts-Martial (MCM), United States, 2005
(d) SECNAVINST 1920.6B

Encl: (1) Rules and Procedures for Courts and Boards of Inquiry
(2) Appointing Order for Courts of Inquiry
(3) Appointing Order for Boards of Inquiry
(4) Modification to the Appointing Order
(5) Sample Oaths to be Administered
(6) Record of Proceedings of Court or Board of Inquiry
(7) Letter of Transmittal for Record of Proceedings
(8) Endorsement of the Convening Authority

1. **Purpose.** To publish the procedures for Courts and Boards of Inquiry and to detail the rights of individuals designated as parties. A Court or Board of Inquiry is guided by the references and enclosure (1). Enclosures (2) through (8) are provided as guidance in conducting Courts and Boards of Inquiry. References to various sections of reference (b) in the enclosures are prefaced with the word "JAGMAN" followed by either a section number or appendix page.

2. **Cancellation.** JAGINST 5830.1.

3. **Other Directives.** If a conflict arises between this instruction and the references, the references control, unless otherwise provided in this instruction.

4. **Background.** Courts and Boards of Inquiry use a hearing procedure and should be reserved for the investigation of major incidents (as that term is defined in JAGMAN Appendix A-2-a) or serious or significant events.

a. Court of Inquiry. A Court of Inquiry is an administrative, fact-finding body authorized by reference (a), consisting of three or more officers. It is convened by a general court-martial convening authority in accordance with references (a) and (b), or any other person so designated by the Secretary of the Navy. See reference (a).

(1) The Court of Inquiry has a long military tradition. Originally adopted from the British Army, it has remained in its present form with only slight modification since the adoption of the Articles of War of 1786. A Court of Inquiry is not a court as the term is commonly used today. Rather, it is a board of investigation charged with examining and inquiring into an

incident and, when directed by the convening authority, offering opinions and recommendations about the incident.

(2) Under circumstances detailed in Rule for Courts-Martial (R.C.M.) 405 of reference (c), a Court of Inquiry may be substituted for an Article 32, UCMJ, investigation. Substitution may only be accomplished if the subject matter of the offense was investigated and the accused was present at the investigation and afforded the opportunities for representation, cross-examination and presentation of evidence. Should a Court of Inquiry be used in place of an Article 32 investigation, a demand for further investigation by an accused entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his behalf. As a result, the convening of a separate Article 32 investigation may be the most efficient method for bringing an accused to trial.

(3) A Court of Inquiry has the authority to subpoena civilian witnesses. In such cases, DD Form 453 should be used.

(4) A Court of Inquiry may be used as a preliminary inquiry required by R.C.M. 303 of reference (c). However, if the offense is one for which the Department of Justice (DOJ) has investigative responsibilities, prior coordination with DOJ should be made in accordance with the terms of the Memorandum of Understanding (MOU) between the DOJ and the Department of Defense (DOD). See Appendix 3.1 of reference (c).

b. Board of Inquiry. A Board of Inquiry is an administrative, fact-finding body authorized by reference (b), consisting of one or more commissioned officers. It is convened by a general court-martial convening authority in accordance with reference (b). Boards of Inquiry are intended to be an intermediary step between an investigation without a hearing and a Court of Inquiry. Such investigations are used, for example, when a hearing with sworn testimony is desired or designation of parties may or may not be required, but only a single investigating officer, without the power to subpoena civilian witnesses, is necessary to conduct the inquiry. Boards of Inquiry conducted pursuant to reference (d) are excluded from this instruction.

(1) A Board of Inquiry does not have the authority to subpoena civilian witnesses unless convened under Article 135, UCMJ, but can order naval personnel to appear, testify, and produce evidence.

(2) A Board of Inquiry may be used as the preliminary inquiry required by R.C.M. 303 of reference (c). However, if the offense is one for which the DOJ has investigative responsibilities, prior coordination with DOJ should be made in accordance with the terms of the MOU between the DOJ and the DOD. See Appendix 3.1 of reference (c).

5. **Selection**. Before convening an investigation, the convening authority must consider the powers a fact-finding body will require and the desirability of designating parties. If the subject matter of the inquiry involves disputed issues of fact and a risk of substantial injustice if an individual is not afforded the rights of a party, a Court of Inquiry or Board of Inquiry authorized to designate parties should be ordered. Where benefit may be obtained from the deliberative process of several commissioned officers examining an incident, a Court of Inquiry, or a Board of Inquiry with multiple members, should be convened. If the ability to subpoena civilian witnesses is necessary, a Court of Inquiry should normally be

convened. JAGMAN 0210 details suggested procedures preliminary to the appointment of a Court or Board of Inquiry.

6. **Support Requirements**. Courts and Boards of Inquiry are only used to investigate major incidents (as that term is defined in JAGMAN Appendix A-2-a) or serious or significant events. The report of the proceedings into these serious incidents shall be transcribed verbatim, necessitating assignment of court reporters. The assignment of interpreters may also be necessary to obtain a witness statement or to transcribe documents. Further, the incidents being investigated frequently have heightened media and congressional interest, and considerable pressure is often exerted to complete the investigation in a limited period of time. Due to the nature of these investigations, convening authorities should provide the following types of support as appropriate:

a. Technical Advisor. If an understanding of the matters under inquiry involves a high degree of technical knowledge, convening authorities are encouraged to appoint an officer who possesses this technical knowledge to assist the court.

b. Court Reporter. A court reporter will normally be provided by the legal office providing court-martial support to the convening authority. When that legal office is unable to provide court reporter support, the convening authority shall request assistance from the Commander, Naval Legal Service Command, or the Commandant of the Marine Corps (JA), as appropriate. The reporter appointed to record the proceedings of a court or board may use longhand, shorthand, or a mechanical or sound recording device. A verbatim record of the proceedings shall be compiled, subject to exceptions as noted in paragraph 14b of enclosure (1). If additional expense to the Government is involved in the employing of reporters, the convening authority should follow the procedure set forth in JAGMAN 0130d(6).

c. Interpreter. An interpreter shall be appointed to all Courts or Boards of Inquiry where testimony is to be given in a language other than English. Prior to assuming duties, the interpreter shall satisfy the court or board of his qualifications. If it appears to the court or board that the interpreter is experiencing difficulty in interpreting, or if there is an objection by a party that the interpreter is not fully and correctly interpreting, the court or board shall immediately conduct an inquiry into the matter. If the court or board determines that the interpreter is not able to interpret accurately and intelligently, the court or board shall report this matter to the convening authority and request that a competent person be appointed. Until the appointment of another interpreter, no further examinations of the witnesses whose testimony is to be interpreted shall be taken. If additional expense to the Government is involved in the employment of interpreter(s), the convening authority should follow the procedures set forth in JAGMAN 0130d(6).

d. Evidence Custodian. Appointing an evidence custodian to relieve the Court or Board of Inquiry members and counsel of the responsibility of cataloging and safeguarding substantial quantities of physical and documentary evidence can greatly expedite the investigation. In appropriate cases, individuals may be assigned to assist the evidence custodian. Evidence custodians will be guided by OPNAVINST 5580.1A (Navy Law Enforcement Manual), Chapter 6.

e. Security. Where classified matters may be involved, a security officer should be assigned. In appropriate cases, the evidence custodian and security officer may be the same individual. Whenever appointed, a security officer will be guided by SECNAVINST 5510.36 (Department of the Navy Information Security Program Regulation) and should also contact National Security Litigation and Intelligence Law Division, (Code 17, OJAG), for the latest requirements for processing cases of National Security interest.

f. Messages. When the Court or Board of Inquiry has a requirement to send or receive information electronically, there may be a need to assign a temporary plain language address under the United States Navy Plain Language Address Directory. Hearing officers may desire that information sent or received electronically not be disseminated, especially where a command under investigation controls all message facilities. In such cases, methods to ensure secure transmissions must be provided.

g. Public Affairs. Representatives of the media often attempt to obtain statements from members, hearing officers, counsel, parties, and witnesses. To minimize disruption of the investigation, assignment of a public affairs officer and/or team of public affairs personnel is often advisable. At a minimum, members of a Court or Board of Inquiry, and counsel for the investigation should be advised not to discuss the investigation with anyone not officially involved with the investigation. Additionally, media requests for information should be directed to the designated public affairs office.

h. Administrative Support Personnel. Appointing administrative support personnel, such as bailiffs/orderlies, clerks, and other appropriate clerical assistance will relieve court or board members and assigned counsel of the requirement to perform basic ministerial functions and will greatly expedite the investigative process. Such personnel shall be obtained by request to the convening authority.

i. Command and Control. The investigation is the primary duty of all support personnel. Support personnel are under the temporary supervision of the president of a Court or Board of Inquiry.

j. National Transportation Safety Board (NTSB). The NTSB, an independent Government agency, promotes transportation safety by conducting independent investigations of accidents involving Government regulated transportation: air, highway, rail, pipeline, and major maritime casualties. See JAGMAN 1224(b) for further guidance on the role of NTSB and its interaction with the Navy.

7. **Responsibility for Financial Support.**

a. Travel, Per Diem, Fees, and Mileage. The cost of travel and per diem for Department of Navy (DON) civilian and military personnel, and the cost of fees and mileage for civilians other than employees of the DON, will be charged to the operating budget that supports the appropriate Navy or Marine Corps convening authority. See Navy Financial Management Policy Manual (NAVSO P-1000, 12 December 2002) Chapter 3, Part B, Section IV, paragraph 075159(3)(a)(1)-(3).

b. Services and Supplies.

(1) The following costs of services and supplies provided by an activity in support of a Court or Board of Inquiry will be charged to the operation and maintenance allotment of the appropriate convening authority:

(a) In-house costs that are direct, out-of-pocket, identifiable, and which total $100.00 or more in a calendar month; and

(b) Costs that arise under contracts entered into in support of a Court or Board of Inquiry.

(2) All other costs of services and supplies will be absorbed by the operation and maintenance allotment of the activity providing the services or supplies.

8. **Relationship With Law Enforcement Investigations.** To avoid interference with law enforcement investigations, a Court or Board of Inquiry should not normally proceed at the same time as a law enforcement investigation by the Federal Bureau of Investigation (FBI), a Military Criminal Investigative Organization (i.e., Naval Criminal Investigative Service (NCIS)), Marine Corps Criminal Investigation Division, or local civilian police department. If the convening authority determines that it is necessary to proceed with a Court or Board of Inquiry prior to completion of a criminal investigation, the convening authority shall first discuss the matter with the local NCIS Resident Agent in Charge. If the Resident Agent objects, on behalf of NCIS or another law enforcement agency, the matter will be referred to the area coordinator for the Navy, or the Marine Corps convening authority, as appropriate, for resolution. See MOU between DOJ and DOD, Appendix 3.1 of reference (c).

9. **Executive Summaries.** Given the nature of the major incidents investigated, officials of the DON, the DOD, other executive agencies, the legislative branch, and the media, often desire copies of the investigation. Where the incident results in death, the next of kin also will normally request a copy of the investigation. The report of the investigation, transcript of the proceedings, and enclosures can often be thousands of pages in length. For persons unfamiliar with military organizations, terminology, and operations, the task of deciphering an investigation can be difficult. Accordingly, convening authorities should ensure that an executive summary in plain English, which accurately reflects the findings, opinions, and recommendations of the investigation, is prepared prior to forwarding the investigation. The summary may be a part of the convening authority's endorsement or an enclosure thereto. There is nothing improper with requiring counsel to the investigation or the president of a Court or Board of Inquiry to prepare the summary. Participation by public affairs personnel in the preparation of the executive summary may also be advisable.

10. **Privacy Act Compliance.** Pursuant to SECNAVINST 5211.5D (Department of the Navy Privacy Act (PA) Program) and the Privacy Act (5 U.S.C. §552a), the following procedures apply:

a. Advice Required. When any individual is requested by a person acting on the Government's behalf to supply personal information for a record in a system of records in the course of an investigation, the person making the request shall first provide the individual, in duplicate, a Privacy Act statement containing the information prescribed in SECNAVINST 5211.5D. The original Privacy Act statement should be signed by the individual and appended to the record of the investigation with a copy retained by the individual. If the information is requested in an interview or hearing, the

Privacy Act statement should also be orally summarized and explained to ensure full understanding. The requirement for a Privacy Act statement is in addition to other applicable warnings or advice required by the JAGMAN, Article 31, UCMJ, and related court decisions.

b. "Personal Information" Defined. Personal information is information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions. It ordinarily includes, for example, information pertaining to an individual's financial, family, social, and recreational affairs; medical, education, employment, or criminal history; or information that identifies, describes, or affords a basis for inferring personal characteristics, such as finger or voice prints or photographs. It ordinarily does not include information such as the time, place, and manner of, or reasons or authority for, an individual's conduct directly related to the duties of his Federal employment or military assignment.

c. "Systems of Records" Defined. A system of records is a group of records under the control of the Department of the Navy or any element of the Navy Department, operating forces, or shore establishments, from which information is retrieved by the name of the individual or by some identifying particular assigned to the individual.

d. Social Security Numbers. No individual, even a member or employee of the naval service, should be requested to provide his social security number in connection with an investigation. This may obviate the need for giving a Privacy Act statement. Social security numbers can generally be obtained from other available records in a particular investigation.

e. Privacy Act Statement Contents. JAGMAN Appendix A-2-e includes every item of information that would be required for a Privacy Act statement for any administrative investigation. It should be used as a basis for tailoring a specific Privacy Act statement appropriate to the particular purposes and subject matter of the investigation, and the role of the particular party or witness in relation to the matter under investigation.

f. Local Forms. Locally prepared forms using the format in JAGMAN Appendix A-2-e are authorized. Copies of local forms for Privacy Act statements prepared for use in administrative investigations shall be filed on a current basis with the Administrative Law Division (Code 13) Office of the Judge Advocate General.

g. Reviewing Authorities. The officer exercising general court-martial jurisdiction has the responsibility to ensure that remedial action, as appropriate, is taken to rectify any noncompliance with the Privacy Act indicated in the investigative record. JAGMAN 0210(j) and (k).

h. Records of Disclosure. JAGMAN Appendix A-2-f is recommended for use, as required, in recording and accounting for disclosures of information about identifiable individuals from records that are collected, used, or maintained pursuant to directives under the cognizance of the Judge Advocate General. Local reproduction is authorized.

J. E. MCPHERSON

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# RULES AND PROCEDURES FOR COURTS AND BOARDS OF INQUIRY

This regulation prescribes the rules and procedures concerning Courts of Inquiry under Article 135, Uniform Code of Military Justice (UCMJ), and Boards of Inquiry conducted pursuant to JAGINST 5830.1A.

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1. **Jurisdiction**. A Court or Board of Inquiry may be convened to investigate any matter, whether or not the persons involved have requested such an inquiry. The fact that an involved person has requested a Court or Board of Inquiry does not require that one be convened. Article 135(a), UCMJ.

2. **Authority to Convene**. A Court or Board of Inquiry may be convened by any person authorized to convene a general court-martial or by any person designated by the Secretary of the Navy. Article 135(a), UCMJ.

3. **Composition.**

a. Members of the Court or Board of Inquiry. The convening authority will designate three or more commissioned officers to sit as members of the Court of Inquiry. Article 135(b), UCMJ. For a Board of Inquiry, the convening authority will appoint one or more commissioned officers. When practical, the senior member of the court or board should be at least a Navy lieutenant commander or a Marine Corps major. The senior member shall be the president. All members should be senior to any person whose conduct is subject to inquiry.

b. Advisors and non-voting members.

(1) Advisors. The convening authority may appoint to a Court or Board of Inquiry full-time Federal personnel (military or civilian) to participate in the proceeding and advise the members. Such advisors may be selected because of their subject-matter expertise or because of their background, training, or experience. Advisors may be present at all court or board sessions, are subject to challenge to the same extent as members, and may suggest a course of inquiry or recommend such other action to the court or board as they consider appropriate. Moreover, persons with technical knowledge may be appointed for either full participation or the limited purpose of utilizing their special expertise. If appointed for a limited purpose, they need not participate in any aspect of the inquiry not concerning their expertise. The investigative report must clarify any limited participation by advisors. See JAGMAN 0210d(1).

(2) Non-voting members. The convening authority may appoint to a Court or Board of Inquiry one or more non-voting members, whose level of participation in the proceedings will be determined by the convening authority or the president of the court or board when so authorized by the convening authority. An example of when it may be appropriate to appoint a non-voting member is when a court is convened to investigate an incident in which another nation has a significant interest and the convening authority determines that it will serve the interests of the United States to invite a representative (e.g., a foreign military officer) from the nation to participate in a non-voting capacity. The level of participation by the foreign representative may, however, affect the convening authority's ability to use the Court of Inquiry in lieu of an Article 32, UCMJ, pretrial investigation. See JAGMAN 0210d(2) and R.C.M. 405(b).

c. Counsel for the Court or Board of Inquiry. The convening authority will appoint a counsel certified under Article 27(b), and sworn in accordance with Article 42(a), UCMJ, for the Court or Board of Inquiry. Counsel is required to act in a fair and impartial manner and will not assume an adversarial role. Counsel duties are to assist the Court or Board of Inquiry in matters of law, presentation of evidence, and in the keeping and preparation of the record. Assistant counsel for the court or board may also

be appointed. Assistant counsel need not be certified under Article 27(b), UCMJ.

d. Parties.

(1) Courts of Inquiry. Courts of Inquiry shall designate as parties persons subject to the UCMJ whose conduct is "subject to inquiry." Courts of Inquiry shall also designate as parties persons subject to the UCMJ or employed by the DOD who have a "direct interest" in the subject under inquiry and request to be so designated. Designation as a party has significant procedural implications. See 10 U.S.C. § 935, JAGMAN 0210b(5)-(6), and JAGMAN Appendix A-2-b.

(2) Boards of Inquiry. Persons whose conduct is "subject to inquiry" or who have a "direct interest" in the subject of the inquiry may be designated a party by the convening authority in the appointing order. The convening authority may also authorize the board to designate parties during the proceedings. See JAGMAN 0210c(3) and JAGMAN Appendix A-2-b.

(3) Subject to inquiry. A person's conduct or performance of duty is subject to inquiry when the person is involved in the incident or event under investigation such that disciplinary action may follow, the person's rights or privileges may be adversely affected, or their personal reputation or professional standing may be jeopardized.

(4) Direct interest. A person has a direct interest in the subject of inquiry when the findings, opinions, or recommendations of the Court or Board of Inquiry may, in view of his relation to the incident or circumstances under investigation, reflect questionable or unsatisfactory conduct or performance of duty; or when the findings, opinions, or recommendations may relate to a matter over which the person has a duty or right to exercise official control.

(5) Reserve applicability. Any member of the Navy or Marine Corps Reserve, not subject to the UCMJ by virtue of their status, whose conduct or performance of duty is subject to inquiry may, upon request to the Court or Board of Inquiry or its convening authority, be designated a party.

(6) Other designations of parties. No other person may be designated as a party unless expressly authorized by the Secretary of the Navy.

(7) Who may designate. Parties are designated by the convening authority of the Court or Board of Inquiry, or by the president of the Court or Board of Inquiry when expressly authorized to designate parties by the convening authority, subject to the following considerations:

(a) When parties are to be designated, and it is apparent at the time of the issuance of the appointing order that a person or persons must or should be designated, the convening authority should include such designation in the appointing order. The convening authority's power to designate parties continues during the entire proceedings of a Court or Board of Inquiry.

(b) If at any time during the course of an investigation by a Court or Board of Inquiry authorized to designate parties, it appears to the court or board that any person not previously designated a party should be so

designated, that person shall be informed of that conclusion and designated a party and informed of and accorded his rights as such.

(c) If at any time during the course of an investigation by a Court or Board of Inquiry not authorized to designate parties, it appears that any person should be designated a party, the convening authority shall be so advised. The convening authority will decide if such person should be so designated.

(8) Effects of designation. Designating an individual a party before a Court or Board of Inquiry affords that party a hearing on possibly adverse information concerning his conduct or performance of duty, or a matter over which he had a duty or right to exercise official control.

(9) Change in status of a party. If it no longer appears that a person previously designated as a party is "subject to inquiry" or has a direct interest in the subject of the inquiry, his designation as a party may be withdrawn by the president of the court or board upon application of that party or upon the president's initiative. The convening authority will be promptly informed of this action. The convening authority may reverse the president's decision.

e. Counsel for Parties.

(1) Entitlement. Only a "party" is entitled to representation by counsel. The convening authority will appoint counsel for service members designated as parties in the appointing order and those service members designated as parties during the course of the proceedings. See paragraph 3e(2) for counsel for civilian parties. Appointed counsel must be a person certified by the Judge Advocate General under Article 27(b), UCMJ. Any party may be represented by civilian counsel, at no expense to the Government, or by military counsel of the party's own selection, if reasonably available. The procedures detailed in JAGMAN 0131 may be used in determining availability of requested counsel. If requested military counsel is provided, appointed military counsel will be excused from further representation. Civilian counsel representing a party must be admitted to practice before the highest court of a State or a Federal District Court. If a party desires to be represented by counsel from a foreign nation, the advice of the Judge Advocate General of the Navy will be sought as to whether such counsel is appropriately qualified.

(2) Appointed counsel for civilian parties. Appointed military counsel will only be provided for a civilian party under one of the following circumstances:

(a) The civilian party is in a status in which he might be subject to trial by court-martial and the Court or Board of Inquiry may be used as a pretrial investigation under Article 32, UCMJ. See R.C.M. 405(b), JAGMAN 0210j(3). As discussed in the basic instruction, the substitution of the Court or Board of Inquiry in place of an Article 32 investigation is normally not advisable. However, designation of a civilian as a party to the investigation, assignment of military counsel, and allowing the party and counsel to be present and to cross-examine witnesses may, in some cases, expedite a subsequent Article 32 investigation. Failure to designate a civilian as a party before a Court or Board of Inquiry does not preclude a subsequent Article 32 investigation of the individual.

(b) Doubt exists as to the mental competency of the civilian party, and the civilian party is not represented by counsel capable of adequately protecting the party's interest. See paragraph 3e(3) below.

(c) The convening authority directs such action on the ground that, under the particular circumstances of the case, the interests of the Government would be best served by making military counsel available to represent the civilian party.

(3) Incompetent party. When a medical officer finds that a person designated a party, whether military or civilian, is incompetent due to injuries or disease and will remain so for at least 30 days, and the party is not represented by counsel, the convening authority will ensure that counsel certified under Article 27(b), UCMJ, is appointed to represent the party during the proceedings of the court. Such counsel is obligated to exercise all the rights of the party as though the party were present.

4. **Appointing Order.**

a. Form. Courts and Boards of Inquiry are convened by an appointing order signed by the convening authority. The appointing order shall be in official letter form addressed to the president of the court or board. When circumstances warrant, a court or board may be convened on oral or message orders. Signed written confirmation of oral and message orders will be issued in each case. Message orders and all confirmations of orders shall be included in the record of proceedings of the court or board.

b. Contents of Appointing Order. The appointing order of a Court or Board of Inquiry shall: (1) name the president, the members, and the counsel; (2) designate known parties if a Court of Inquiry, or may designate parties if a Board of Inquiry; (3) appoint counsel for parties when required and detail support personnel to counsel for parties as appropriate; (4) specify the time and place for the initial meeting of the court or board; (5) recite the specific purposes of the inquiry and explicit instructions as to the scope of the inquiry; (6) require that the members of the court or board make findings of fact, but the convening authority should be aware that Article 135(g), UCMJ, prohibits a Court of Inquiry from expressing opinions or making recommendations unless the convening authority specifically requires that court to do so in the appointing order; (7) require that the president suspend the proceedings of the court or board and advise the convening authority when it appears that the intentional acts of a deceased service member were a contributing cause to the incident under investigation; (8) state whether or not the court or board has authority to designate parties and the scope of that authority; (9) provide for the appointment of reporters, evidence custodians, security officers, public affairs officers and interpreters as appropriate; and (10) contain directions for complying with the Privacy Act. For examples of appointing orders for a Court and Board of Inquiry, see enclosures (2) and (3).

c. Additional Matters.

(1) Junior officer membership. If exigencies of the service require that an officer junior to a party sit as a member, the reason for this will be stated in the appointing order, or will be noted in the convening authority's action on the record.

(2) Amendment of appointing order. The convening authority may amend the appointing order at any time to limit or increase the scope of the inquiry, name additional parties, or provide additional instructions. See enclosure (4) for an example. The counsel to the Court or Board of Inquiry may be changed at any time. At any time prior to receipt of evidence by the court or board, the convening authority can amend the appointing order to change the president or members. After a court or board has received evidence, changes to the president or members will only be for good cause. Good cause includes physical disability, military exigency, adherence to the seniority principle in membership, and other extraordinary circumstances that render the president or a member unable to proceed within a reasonable time. Good cause does not include temporary inconveniences incident to normal conditions of military service. The convening authority in his action on the record of proceedings shall set forth the reasons for any change in the membership of the court or board after the receipt of evidence. For procedures guiding changes in membership, see paragraphs 10d(5) and (6) below.

(3) Routing of appointing orders. On occasion, it may be advantageous to forward an advance copy of the appointing order to interested superiors, so that they may be apprised of significant occurrences and actions being taken in connection therewith.

d. Communication with the Convening Authority. If at any time during the course of the proceedings it should appear from the evidence that the convening authority might consider it advisable to enlarge or restrict the scope of the inquiry, alter the composition of the court or board (whether by augmentation or substitution), cancel or otherwise modify instructions set forth in the appointing order, or provide for additional, appropriate safeguards to ensure a fair hearing regarding a deceased service member's action, a report should be made to the convening authority by the president. Recommendations may be included in the report. The convening authority may take such action on this report as deemed appropriate. Copies of all such communications and replies should be appended to the record.

5. **Duties and Responsibilities of the President**. Performance of the duties and responsibilities of the president is the primary duty of the officer so appointed. The president shall preserve order, decide upon administrative matters relating to the routine business of the court or board and, where authorized by this enclosure, make rulings. Except as otherwise provided in the appointing order, the president may recess, grant continuances, or adjourn the court or board to meet at a time or place that will be most convenient and proper.

6. **Duties and Responsibilities of the Members**. Performance of the duties and responsibilities of the members is the primary duty of the officers so appointed. No member shall fail to attend at the designated time and place unless prevented by illness, ordered away, or excused by competent authority.

7. **Duties and Responsibilities of the Counsel for the Court or Board**

a. Duties. Counsel for the court or board is under the direct supervision of the president. Counsel shall call witnesses and conduct the direct examination of all witnesses except those requested or called by a party. At the president's discretion, however, the members may request a witness to be recalled, a new witness be summoned, or other evidence be produced. The members may also direct counsel to make inquiry along certain

lines to discover additional evidence. Counsel shall arrange a place for the court or board to meet and, if not provided by the convening authority, for the assistance of custodians, security officers, reporters, interpreters, orderlies, and clerical assistants. He shall administer the oath or affirmation to all members, reporters, interpreters, and witnesses, and when appropriate shall advise witnesses and parties under Article 31, UCMJ. He shall arrange for the attendance of all witnesses, military and civilian, and supervise the recording of the proceedings and preparation of the record. Counsel shall also ensure that the Privacy Act is fully complied with prior to requesting an individual to supply personal information. See paragraph 10 of this instruction (JAGINST 5830.1A), JAGMAN 0215 and 0219, and JAGMAN Appendices A-2-e and A-2-f.

b. Responsibility. The primary responsibility of counsel is to exploit all sources of information in order to disclose all facts in an impartial manner without regard to the favorable or unfavorable effect on persons concerned. Counsel is not to assume the role of prosecutor or advocate. The role of counsel is to assist the Court or Board of Inquiry in its assignment to determine the facts associated with the matter under examination.

8. **Duty and Responsibilities of Counsel for Party**. It is the duty of counsel to represent the party to the best of his ability, and to protect and safeguard the interests of the party by all ethical and legal means.

9. **Party to an Investigation.**

a. Rights of a Party. A person duly designated a party before a Court or Board of Inquiry shall be advised of and accorded the following rights:

(1) To be given due notice of such designation.

(2) To be present during the proceedings, except in accordance with paragraph 9b below and when the investigation is cleared for deliberations.

(3) To be represented by counsel.

(4) To be informed of the purpose of the investigation and provided with a copy of the appointing order.

(5) To examine and object to the introduction of physical evidence and written statements.

(6) To object to the testimony of witnesses and to cross-examine witnesses.

(7) To request that the Court or Board of Inquiry obtain documents and testimony of witnesses or pursue additional areas of inquiry. See paragraph 11f below.

(8) To introduce evidence.

(9) To not be called as a witness, but to testify at his request.

(10) To refuse to self-incriminate. If a party is suspected of an offense, to be informed of the nature of the accusation and advised that he does not have to make any statement regarding the offense of which he is

accused or suspected; and that any statement he makes may be used as evidence against him in a trial by court-martial. See paragraph 12d below.

(11) To make a voluntary statement, sworn or unsworn, oral or written, to be included in the record of proceedings.

(12) To make an argument at the conclusion of the presentation of evidence.

(13) To be properly advised concerning the Privacy Act.

(14) To challenge members of the Court or Board of Inquiry for cause stated to the court or board, Article 135(d), UCMJ. See paragraph 10f below.

b. Waiver of Rights of a Party. A party shall be advised of the nature of any offense of which accused or suspected, of the right to refrain from making any statement regarding such offense, and of the possible adverse use against him of any statement in a trial by court-martial. See Article 31(b), UCMJ, and paragraph 10d(3) below. Any statement regarding the origin, incurrence, or aggravation of a disease or injury is invalid unless warnings in accordance with paragraph 12e below are given. Any other right is conclusively waived by the party's failing to exercise it, unless he has made, upon the record, a request to exercise it and such request has been denied. A party to a Court or Board of Inquiry may waive his right to be present during any portion of the proceedings.

c. Person on Witness Stand when Designated Party. If a person is on the witness stand at the time he is designated a party, testimony may only continue at the consent of the party. See paragraph 12c of this enclosure. Prior to continuing his testimony, the person designated a party will be fully advised of the rights of a party and given reasonable opportunity to obtain counsel. See paragraph 9a above.

d. Failure to Accord Rights.

(1) In cases where nonjudicial punishment is contemplated on the basis of the record of a Court or Board of Inquiry before which the accused was not designated a party or accorded the rights of a party, the procedures shall be as prescribed in JAGMAN 0110d.

(2) In death, injury, or disease cases where an adverse line of duty determination is contemplated on the basis of the record of a Court or Board of Inquiry before which the service member concerned was not designated a party or accorded the rights of a party, the procedures shall be as prescribed in JAGMAN 0221-0236 and for Navy personnel NAVADMIN 065/03.

(3) In cases where a general court-martial is contemplated on the basis of the record of a Court or Board of Inquiry before which the accused was not designated a party or accorded the rights of a party, the court or board's record may not be used in lieu of a formal pretrial investigation of the offenses charged against the accused. See Article 32(c), UCMJ, and R.C.M. 405(b), MCM, 2005.

(4) In cases where charges have been referred to a court-martial, military commission, or other tribunal, which is required fully to observe the rules of evidence as prescribed in the UCMJ and in Part III of MCM, 2005, sworn testimony contained in the record of proceedings of a Court or Board of

Inquiry before which the accused was not designated a party may not be received in evidence by that court-martial, military commission, or tribunal, unless such testimony is admissible independently of the provisions of Article 50, UCMJ, and Military Rule of Evidence 804.

10. **Procedures.**

a. General. The mission of the Court or Board of Inquiry shall be given primary consideration in the determination of procedural questions not expressly addressed in this instruction. The procedural rules set out in MCM, 2005, for trials by courts-martial do not apply. However, where no procedure is established by this instruction, the MCM, 2005, may provide a valuable guide.

b. Presence of Person Designated as a Party. Any person designated as a party will be given reasonable notice as to the time and place of the meeting of the Court or Board of Inquiry and of his right to be present at the court or board. Article 135(c), UCMJ.

c. Preliminary Procedures. A Court or Board of Inquiry shall assemble at the place and, as nearly as practicable, at the time designated in the appointing order. Thereafter, the court or board may convene at any time and place convenient to the court or board. The members shall take their seats in the same order as members on courts-martial. Courts and Boards of Inquiry are usually cleared of all spectators and parties until the manner of proceeding is decided. Normally, counsel for the court or board will not withdraw when the court or board is cleared for preliminary procedures. A record of meetings to establish preliminary procedures is not required.

d. Meeting of the Court or Board.

(1) Sessions. The proceedings of a Court or Board of Inquiry will be public unless the convening authority or the president, for security reasons or other good cause stated in the record, directs that the entire proceeding or any portion thereof is closed to the public. The closure of the inquiry to the public will not exclude the parties or their counsel from the court or board. See JAGMAN 0143. If the matter to be heard requires a security clearance and a party or counsel has not been granted such clearance, the convening authority shall be advised thereof. See SECNAVINST 5510.36 (Department of the Navy Information Security Program Regulation), paragraph 12-12. If a party or counsel is not so cleared, the procedure described in JAGMAN 0144 shall be followed.

(a) Clearing the Court or Board. The Court or Board of Inquiry may be cleared at any time for deliberation or consultation, whereupon the parties and their counsel and spectators will withdraw. A record of closed sessions is not required. Counsel for the court or board will also withdraw unless requested to remain. During an open hearing when numerous spectators are present, and as a matter of convenience, the court or board may withdraw to another room for deliberation or consultation.

(b) Spectators and publicity. Neither the public nor the news media will be permitted to make an audio or video recording, broadcast or televise, or take photographs of the court or board proceedings. A party may tape record proceedings only with the prior approval of the convening authority. The president of the court or board should make clear this requirement by appropriate means. Violation of this rule constitutes grounds

for barring violators from subsequent sessions of the investigation. The president of the court or board, in coordination with the convening authority, may as a matter of discretion permit contemporaneous closed-circuit video or audio transmission to permit viewing or hearing by spectators when facilities are inadequate to accommodate a reasonable number of spectators.

(2) Recess and adjournment. A Court or Board of Inquiry may recess or adjourn for such period as may be necessary without permission of the convening authority. If, however, the adjournment is for more than three days, the president shall inform the convening authority.

(3) Presence of party and counsel. As soon as the court or board has determined the manner of proceedings and whether the court or board will be open or closed to the public, each party named in the appointing order and their counsel shall be called before the court or board. Parties may be called individually, in groups, or all at the same time. Unless waived, the appointing order shall be read to the party or parties before the court or board. The rights of a party, as set forth in paragraph 9a of this enclosure, shall be fully explained by the counsel for the court or board. The record may state simply that the appointing order was read or the reading thereof waived, but advice as to rights shall be reported verbatim. If any party is not represented by counsel and desires such representation, the court or board shall recess for a reasonable time to allow counsel to be appointed or retained. If it is essential that the court or board takes testimony, which might otherwise become unobtainable, then, in lieu of recessing, the court or board shall arrange for the appointment of counsel (qualified under Article 27(b), UCMJ) to represent the party until he can obtain the attendance of detailed counsel or counsel of choice and proceed with the taking of such testimony.

(4) Absence of counsel from the court or board. If the counsel for the court or board is absent and there is an appointed assistant counsel who is certified under Article 27(b), UCMJ, the assistant counsel may, in the discretion of the court or board, act as counsel and the proceedings may continue. Otherwise, the court or board shall adjourn, report the absence to the convening authority, and await the return of counsel or the appointment of a new counsel.

(5) Absence of the president or a member. After receiving evidence, the court or board may, in the absence of a member, proceed with the inquiry only if authorized and directed to do so by the convening authority. The convening authority should only direct the court or board to proceed when the absence will unreasonably delay the proceedings. The convening authority will state his reasons for so directing in his action on the proceedings. For Courts of Inquiry, even if the convening authority directs the proceeding to continue, no business other than an adjournment shall be transacted, unless at least three members and a majority of the total membership are present. If the absence of a member will unreasonably delay a court or board, the convening authority may appoint additional members (to ensure that at least three members will be present for Courts of Inquiry) and direct the proceedings to continue. Any such action is extreme and convening authorities are cautioned to make substantial efforts to allow the court or board to go forward with the original members prior to substituting a new member. See paragraph 4c(2) of this enclosure. The convening authority will state the reasons for appointing new members and direction for the court or board to proceed in his action on the proceedings.

(6) Substituted or additional members. Any substituted or additional member appointed after evidence has been received shall examine the record of the proceedings conducted before sitting as a member and such examination shall be noted on the record. Any new member shall be subject to challenge as provided for in paragraph 10f below. After examination, each substituted and additional member shall participate fully in the subsequent proceedings of the court or board and in its deliberations relative to findings of fact, opinions, and recommendations.

(7) Temporary absence. Temporary absences should be discouraged by the convening authority. However, if a member is absent, the record of that part of the proceedings conducted in a member's absence shall be examined by the member and such examination noted in the record. Such temporary absence does not preclude that member's full participation in the deliberations of the court or board relative to findings of fact, opinions, and recommendations.

e. Oaths.

(1) General. The members, the reporter, and the interpreter will take an oath or affirmation to faithfully perform their duties. Article 135(e), UCMJ.

(2) Witnesses. All persons who testify before a Court or Board of Inquiry will be examined under oath or affirmation. See Article 135(f), UCMJ, and JAGMAN 0210c(3).

(3) Administering oaths. The president and the counsel for the Court or Board of Inquiry have the authority to administer oaths throughout the Court or Board of Inquiry proceedings. See enclosure (5), and Article 136(b), UCMJ.

f. Challenges. A member of a Court or Board of Inquiry may be challenged by a party only for cause. See Article 135(d), UCMJ.

(1) The challenge. Any member and non-voting member of a court or board, including the president, may be challenged at any time during the proceedings for good cause stated to the court. The court or board will not receive a challenge to more than one member at a time. After disclosing the ground for challenge, the party may examine the member concerning that ground. This examination shall be under oath and recorded verbatim. Counsel for the court or board may cross-examine the challenged member. After such examination and cross-examination, the president has the discretion to permit any other evidence bearing on the basis for challenge. The president may refer to R.C.M. 912(b)-(e) for general guidance on how to conduct examination and challenges of members, and the president may perform those duties assigned by R.C.M. 912 to the military judge. Where a conflict arises between this instruction and R.C.M. 912, this instruction controls.

(2) Grounds for challenge. The president or a member shall be excused for cause whenever it appears that the individual challenged:

(a) Is not a commissioned officer;

(b) Has not been properly detailed in the appointing order;

(c) Will be a witness;

(d) Has formed a definite opinion as to cause of the incident prior to hearing evidence presented to the Court or Board of Inquiry; or

(e) Should not sit to ensure a Court or Board of Inquiry is free from substantial doubt as to fairness and impartiality.

(3) Decision on a challenge. The burden of establishing the ground for challenge is on the party who made the challenge. The challenged member shall withdraw with all other persons during the court or board's consideration of the challenge. The remaining members may discuss the challenge in closed session prior to voting. The court or board decides the challenge according to the preponderance of the evidence. JAGMAN 0214b(1) defines preponderance of evidence. A majority or tie vote disqualifies the challenged member. A sustained challenge will be immediately reported to the convening authority. If the challenge reduces the number of members below the statutory minimum of three for Courts of Inquiry, the court will adjourn until the convening authority appoints another member. If the membership is not reduced below three, the court may proceed with its inquiry unless otherwise directed by the convening authority. If a challenge to the president is sustained, the next senior officer becomes president.

g. Order of Presentation. Unless otherwise directed by the president, witnesses and evidence are usually presented in the following order: counsel for the court or board; parties; counsel for the court or board in rebuttal; and as directed by the court or board. The order of examining each witness is usually direct examination, cross-examination, redirect examination, recross-examination, and examination by the court or board. Each witness will then be permitted to make a statement relating to matters pertinent to the inquiry not previously brought out in his testimony. Thereafter, counsel for the court or board, or counsel for a party will be permitted to examine the witness further concerning these matters as well as other matters touched upon during the witness' statement before the court or board.

h. Suspension of Proceedings. If, at any time during the course of the investigation, it appears that the intentional act or acts of a deceased service member were a contributory cause of the incident, the president of the Court or Board of Inquiry will suspend any further proceedings and immediately notify the convening authority. The convening authority will, in turn, notify the Judge Advocate General of the preliminary findings regarding the deceased. The Judge Advocate General will advise the convening authority of additional measures, if any, that need to be implemented in order to ensure a fair hearing regarding the deceased's actions. The president will proceed with the investigation only when directed to do so by the convening authority.

i. Visiting the Scene of Incident. When practicable, it may be desirable to visit the scene of the incident under inquiry to acquaint the court or board with the physical characteristics of the scene. Usually, testimony is not taken at the scene. The court or board should normally be accompanied by counsel for the court or board, parties and their counsel, and the reporter, but any party may waive attendance of themselves or their counsel.

j. Examination of Previous Record by Party Designated During Proceedings. The record of proceedings to the point the investigation has progressed will

be made available for examination by a newly designated party and his counsel. Such a party may request that specified witnesses who have previously testified be recalled for cross-examination. If circumstances do not permit the recalling of a witness, evidence may be obtained from that witness by a sworn statement. In the absence of compelling justification, investigative proceedings shall not be suspended pending the obtaining of any such statement.

k. Designation of a Party Senior to a Member During Proceedings. Should an officer senior to any member be designated a party during the proceedings, the convening authority shall be notified so that the membership can be revised in accordance with the seniority principle, if legally permissible. See paragraph 4c(2) above. Whenever it is not possible to adhere to the seniority principle in membership, the convening authority shall set forth the reasons in his action on the record of proceedings. The seniority principle does not apply to counsel.

l. Previous Testimony of Witness Thereafter Designated as a Party. Any testimony given by a person as a witness prior to his designation as a party remains in the record and is considered and used thereafter without regard to his subsequent designation as a party.

m. Unsworn Statements. Regardless of whether a party has previously testified as a witness, the party may make an unsworn statement to the court or board after all the witnesses have testified, all evidence has been received and before arguments. The party may not be cross-examined upon this unsworn statement. Counsel for the court or board, or any of the other parties to the inquiry may, however, introduce evidence to rebut any statements of fact contained therein. The statement may be oral or written, and may be made by the party or his counsel. The statement should be factual, and not argumentative in nature.

n. Arguments. After the testimony and statements by the parties, if any, counsel for the court or board and counsel for the parties may present argument if they so desire. The impartial role of the counsel for the court or board shall not be abandoned. If counsel for the court or board presents argument, his remarks should be in the nature of a summation of the evidence rather than partisan advocacy. Counsel for the court or board has the right to make the opening argument and, if any argument is made on behalf of a party, the closing argument in rebuttal. If multiple parties have been designated, their counsel shall present argument in the reverse order of seniority, the most junior party presenting the first argument. The court or board may set any reasonable limitation on the length of arguments.

11. **Evidence.**

a. Rules of Evidence. Proceedings under this instruction are administrative and not judicial. Therefore, the Military Rules of Evidence (M.R.E.), other than M.R.E. 301, 302, 303, 412 and 501-507, will not be followed. See JAGMAN 0214 and paragraph 13 of this enclosure as to the standard of proof required to support findings of fact.

b. Objections to Evidence. Any member, the counsel for the court or board, a designated party, counsel for a party, or the president may object to the Court or Board of Inquiry considering any evidence. The reason for the objection will be stated on the record.

c. Rulings. A Court or Board of Inquiry is an administrative Fact-Finding Body and, as such, it is inappropriate except as detailed in this paragraph for the president to rule on objections to evidence. Rather, the objection should be noted for the record. The president may rule, subject to objection detailed in paragraph 11d below, on the following matters:

(1) Relevancy. Any information relevant to the investigation may be brought before the Court or Board of Inquiry. Relevant information means information having a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. The president may rule that evidence is not relevant and exclude its consideration by the court or board.

(2) Military Rules of Evidence. The president will make rulings on evidentiary objections to the Court or Board or Inquiry when the objection is based upon the following M.R.E.: 301, compulsory self-incrimination; 302, mental examination; 303, degrading questions; 412, relevance of victim's behavior or sexual predisposition; 501-504, dealing with privileges; 505, classified information; 506, Government information other than classified information; and 507, informants. In ruling on objections, the president will be guided by this instruction and the discussion of the above rules in MCM, 2005.

d. Objections to Rulings. Should counsel for the Court or Board of Inquiry, a party or counsel for any party, object to a ruling, the objections will be noted for the record. Should a member object to the president's ruling on any matter, a vote shall be taken in closed session and the decision of the majority shall govern. The court or board may discuss the matter in closed session prior to voting. The president and all members will vote on the issue. In the case of a tie vote, the decision of the president shall govern. The objection and the results of the vote will be noted for the record.

e. Obtaining Information. Whenever it appears desirable to members of the Court or Board of Inquiry that certain information be elicited or developed in the interest of establishing or clarifying any matter, the president will so advise counsel for the court or board and may direct such counsel to call witnesses, to pursue further lines of questioning, or to adduce other evidence. The president may permit the members of the court or board to further examine the witness upon completion of examination by counsel, or at any other time during the proceedings that the president deems appropriate.

f. Request for the Production of Evidence by a Party. Whenever a party desires the court or board to obtain documents or evidence that the party is unable to obtain or desires that information be elicited or developed in the investigation in the interest of establishing or clarifying any matter, a party or the counsel for a party may so request the president. Such requests are subject to objection, see paragraphs 11b, c and d. If such matters are found to be admissible, the president will direct counsel for the court or board to obtain the requested documents or witnesses or pursue further lines of inquiry. When appropriate, DD Form 453, Subpoena, may be issued for persons not subject to the UCMJ to compel production of evidence.

g. Depositions. The method of taking and authenticating depositions to be received in evidence before courts or boards of inquiry will be as prescribed in Article 49, UCMJ. If there is any likelihood that the

deposition might be required in a subsequent court-martial proceeding, the procedures should comply with R.C.M. 702.

h. Admissibility of Former Testimony. Former testimony admissible under M.R.E. 804(b)(1) may be received by a Court or Board of Inquiry.

12. **Witnesses.**

a. General. Witnesses may be summoned to appear and testify before a Court of Inquiry as provided for in trials by court-martial. Boards of Inquiry do not possess the power to subpoena civilian witnesses, but can order naval personnel to appear, testify, and produce evidence. R.C.M. 703(e)(2), Article 135(f), UCMJ, and JAGMAN 0210. Counsel for the court or board, any party, and counsel for any party may request any witness, at any time, regardless of whether such witness has previously testified. When appropriate, DD Form 453, Subpoena, may be issued for persons not subject to the UCMJ.

b. Refusal to Appear and Testify. Any person not subject to the UCMJ who has been duly subpoenaed to appear as a witness before any Court of Inquiry, has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the courts of the United States, and willfully neglects or refuses to appear, or refuses to qualify as witness, to testify, or to produce any evidence that person may have been legally subpoenaed to produce, is guilty of an offense against the United States and may have a warrant of attachment served upon them to compel their attendance as a witness. Article 47, UCMJ. A warrant of attachment (see R.C.M. 703) to compel the witness' attendance before the court shall, however, not be issued by a Court of Inquiry without prior approval of the Secretary of the Navy. JAGMAN 0138-0139 and 0147 apply. The Judge Advocate General will conduct all liaison with the Department of Justice or individual United States Attorney to serve any warrants of attachment.

c. Person Designated as a Party. Any person designated as a party may at his request, but not otherwise, become a witness before the Court or Board of Inquiry. A party's failure to make such a request will not create any presumption against the party. If a party elects to testify, it will be under oath or affirmation, as with any other witness.

d. Compulsory Self-Incrimination Prohibited.

(1) Compelling testimony. No witness shall be compelled to self-incriminate or to answer any question to which the answer may tend to incriminate him; nor shall he be compelled to make any statement or produce evidence if the statement or evidence is not material to any issue under investigation and may tend to degrade him. See Article 31(a)-(d), UCMJ, M.R.E. 305, and JAGMAN 0138-0139.

(2) Warning. If a person called as a witness before a Court or Board of Inquiry is suspected of or charged with an offense, the person shall be informed of the nature of the offense and the subject matter of the inquiry. Often, particularly in the early stages of an investigation, the specific nature of any suspected offenses is unclear. Care must be taken in such cases to tailor the warning to at least alert an individual in general terms of the nature of any suspected offenses. The person suspected of an offense shall be informed of his right to remain silent and to refuse to make any statement or give any testimony regarding the offense of which suspected or

accused. Additionally, the person suspected of an offense shall be informed that any such testimony or statement may be used as evidence against him in any subsequent trial. Article 31(b), UCMJ. After being so informed, the witness must assert the right to refrain from testifying regarding the offense of which suspected or charged. Despite his assertion of the right, the witness may be questioned on matters other than the offense of which suspected or charged.

e. Warnings Regarding Disease and Injury. A member of the Armed Forces may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that the member has suffered. JAGMAN 0220(c). Any such statement without warning against interests, signed by a member, is invalid. See 10 U.S.C. § 1219. Any statement relating to the origin, incurrence or aggravation of any disease or injury that the member has suffered, which is obtained voluntarily after the member has been advised of his right not to sign such a statement, is valid and may be used in connection with the subject matter of the inquiry. JAGMAN Appendix A-2-g is recommended for use, as required, in recording such warning.

f. Examination of Witnesses.

(1) Witnesses may be examined by counsel for the Court or Board of Inquiry and by its members.

(2) Any person designated as a party will have the right to cross-examine witnesses. Article 135(c), UCMJ.

(3) The Court or Board of Inquiry in its discretion may direct witnesses subject to naval authority not to discuss their testimony with other witnesses or persons without an official interest in the matter until the investigation is completed. Other witnesses may be requested, in a similar manner, not to discuss their testimony. This warning may be given to ensure that the matter before the Court or Board of Inquiry can be fairly heard and to eliminate the possibility that disclosures of the substance of the testimony may influence the testimony of witnesses still to be heard.

g. Exclusion of Witnesses. Witnesses, other than a party, ordinarily should be excluded from hearings except when they are testifying. In some cases, expert witnesses (who did not witness the actual events of an incident but are called upon to testify for their technical expertise) may not be able to testify in an informed manner unless they are fully aware of all the circumstances of the incident under inquiry. In such instances, it may be necessary to allow such experts to be present during the open sessions of the court or board in order that they may be sufficiently advised of the facts to give informed testimony as to the technical aspects of the incident. In these instances, the record must affirmatively show that the witness was present during the testimony of other witnesses.

13. **Deliberations and Voting on Findings.**

a. General. After the president announces that the court or board will adjourn to consider all the evidence and to submit to the convening authority its findings of fact, opinions, and recommendations, the members shall deliberate and vote in closed session. The president shall determine the method and procedures for voting. Only the members, including non-voting members, shall be present during deliberations. Superiority in rank shall

not be used in any manner in an attempt to control the independence of members in the exercise of their judgment.

b. Deliberations. Deliberations include full and free discussion of the evidence presented. Unless otherwise directed by the president, members may take with them in deliberations their notes, if any, and any exhibits admitted in evidence. Members may request that the investigation be reopened and that portions of the record be read to them or additional evidence introduced. The president may, in the exercise of discretion, grant such request.

14. **Written Report by the Court or Board of Inquiry.**

a. Report by the Court or Board. After all the evidence, statements, and arguments have been received, the Court or Board of Inquiry shall declare the inquiry closed. The president and members will then consider the evidence, statements, and arguments, and the instructions contained in the appointing order shall be carefully re-examined and scrupulously followed. At the request of the court or board, counsel for the court or board shall assist in the preparation of the findings of fact, opinions, and recommendations, or any part thereof. In so acting, counsel merely assists the court or board in the transcription of its report. Counsel for the court or board, and counsel for any party, are prohibited from taking part in any deliberations. The report of findings of fact, opinions, and recommendations shall become a part of the record. Dissenting views are authorized if the findings of fact, opinion, or recommendations are not unanimous. See enclosure (6).

b. Findings of Fact. The Court or Board of Inquiry, after deliberating on the evidence received during the inquiry, shall first record the facts found that constitute a detailed description of the matter under investigation. Care shall be taken to include only those findings of fact which the court or board believes are established by a preponderance of the evidence. JAGMAN 0214b(1) defines preponderance of the evidence as it is to be applied in establishing each finding of fact. If, however, it appears to the court or board that the actions of a deceased service member may have caused a loss of life, including his own, or the loss of property by intentional or criminal acts, such findings of fact must be established by clear and convincing evidence as defined in JAGMAN 0214b(2). The clear and convincing burden pertains to the establishment of those findings of fact that describe the activities or actions of the deceased member. This more demanding burden of proof is required because the deceased service member is unavailable to speak in his own behalf.

c. Opinions. If opinions are called for in the appointing order or required by regulations, the Court or Board of Inquiry shall list all of its opinions drawn from and supported by the facts. Each opinion will clearly indicate which of the findings of fact supports the opinion. Depending upon the nature of the inquiry and the provisions of the appointing order, opinions include inferences drawn from the facts, opinions as to performance of duty by individuals concerned or as to performance of functions by equipment involved, and opinions required by regulations.

d. Recommendations. When the appointing order calls for recommendations, the Court or Board of Inquiry shall make such recommendations as are specifically directed and any others that, in its view, are appropriate and advisable in view of the nature of the facts found and opinions expressed. If any member of the court or board recommends trial by court-martial, only

the general nature of the charges shall be stated. Under no circumstances will a charge sheet be signed and sworn to by the president or any member. If a punitive letter of reprimand or admonition is recommended, a draft of the recommended letter will be prepared and forwarded with the record of proceedings. If a nonpunitive letter is recommended, a draft may be prepared and separately forwarded to the appropriate commander for issuance, but such a draft will not be included as a part of the record of proceedings. See JAGMAN Appendices A-1-a and A-1-g for examples of non-punitive and punitive letters, respectively.

e. Disagreement Among Members. The report of the Court or Board of Inquiry shall be based upon the opinion of the majority of the members. If a member does not concur with the findings of fact, opinions, or recommendations of a majority of the court or board, the nonconcurring member shall append a minority report to the record and state explicitly those parts of the majority report with which he disagrees and the reasons therefor. The minority report may also include additional findings of fact, and where appropriate, opinions or recommendations. See enclosure (6).

f. Disclosure of Decision. No member, the president or counsel for the court or board, or other person officially connected with the inquiry, shall disclose or publish any findings, opinions, or recommendations of the court or board, or of the individual members without prior approval of the cognizant Echelon II Commander. See JAGMAN 0219(e). With the exception of the convening authority and subsequent reviewers in the convening authority's chain of command, no copies of the record of proceedings may be provided to any person, including parties, without the approval of the Secretary of the Navy.

15. **Record of the Court or Board of Inquiry.**

a. Authentication. Each Court or Board of Inquiry will keep a written record of its proceedings that will be authenticated by the signatures of the president and counsel for the court or board. All concurring members, if available, shall sign the record immediately under the findings of fact, opinions, and recommendations. This includes an officer who participated in only part of the proceedings (provided he participated at the time of the findings). Such limited participation shall be disclosed in the record of proceedings. In the case of a minority report, the respective report must be signed by all the members of the court or board concurring therein, if available. In case the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president, and in case the record cannot be authenticated by the counsel for the court or board, it shall be signed by at least one other member. Article 135(h), UCMJ. If members authenticate the record in lieu of the president or counsel, the reason shall be stated in an addendum to the record.

b. The Record of Proceedings of a Court or Board of Inquiry. The record of proceedings of a Court or Board of Inquiry shall include the original appointing order and any other communications from the convening authority. It shall contain the verbatim testimony of all witnesses, all exhibits reviewed in evidence by the court or board, and all proceedings of the court or board except that, in the discretion of the court or board, arguments presented on behalf of the Government and any party to the inquiry may be summarized. A copy of the findings of fact, opinions, and recommendations shall be appended to the record. See enclosure (6).

c. Forwarding. The president, using a short letter of transmittal, shall forward to the convening authority the record of proceedings, together with the number of complete copies required by the circumstances. See enclosure (7).

d. Privacy Act Compliance. The record of proceedings must reflect the Privacy Act compliance as described in paragraph 10 of the basic instruction (JAGINST 5830.1A). JAGMAN Appendix A-2-e should be utilized.

e. Reviewing Authority. See JAGMAN 0210 and 0218.

f. Sample Record. The sample record of proceedings of a Court of Inquiry in enclosure (6) may be used as a guide in the conduct of the proceedings of a Court or Board of Inquiry. Nothing in the sample record shall, however, be considered as authority to depart from the provisions of this instruction. Deviations from the sample proceedings, when not inconsistent with the provisions of this instruction, may be made when appropriate and necessary to execute the primary mission of the Court or Board of Inquiry more effectively. When procedural steps are taken that are not covered in the sample record, the provisions of Appendix 8, MCM, 2002, may be consulted for general guidance.

16. **Revision.**

a. General. If not satisfied with the investigation or report of findings, the convening authority may reassemble the Court or Board of Inquiry, and return the proceedings with direction to:

(1) Pursue the investigation further, directing that the report of the facts be made more detailed, that opinions be expressed in terms more definite and unequivocal, or that the investigation be more responsive to the original instructions, or

(2) Correct some other error or defect, or supply some omission.

b. Evidence in Revision. A Court or Board of Inquiry is an investigation and not a trial. Therefore, it may properly be required, upon revision, to reexamine witnesses, take entirely new testimony or obtain other new evidence.

c. Procedures in Revision. If directed by the convening authority, the president, members, counsel for the court or board, parties and counsel for the parties will reassemble. The president shall read the direction from the convening authority. Thereafter, adhere to the rules regarding procedures, evidence and witnesses detailed in paragraphs 10-12 of this enclosure.

d. Record in Revision. The court or board will make a written report of the proceedings in revision as detailed in paragraphs 13 and 14 of this enclosure. The record in revision will be attached to the original record. The court or board may change a finding of fact, opinion or recommendation as part of a hearing in revision. Such a change will be detailed in the report of revision, but the finding of fact, opinion or recommendation as originally determined will remain a part of the record. Dissenting opinions may be made to any change or new finding of fact, opinion or recommendation in the manner detailed in paragraph 13e of this enclosure.

Appointing Order for Court of Inquiry

(File information)
Date:

From: Commander, Fleet Forces Command
To: Rear Admiral J____ B. T____, USN, 000-00-0000/1100

Subj: COURT OF INQUIRY TO INQUIRE INTO THE CIRCUMSTANCES SURROUNDING AN EXPLOSION WHICH OCCURRED ON BOARD USS (_____), ON __ FEBRUARY 20__

Ref: (a) JAG INSTRUCTION 5830.1A

1. In accordance with reference (a), a Court of Inquiry is appointed to inquire into the circumstances surrounding an explosion, which occurred on board USS (_____), on __ February 20__. The court will convene on board USS (_____), at 1000 on __ February 20__ or as soon thereafter as practicable.

2. The court shall consist of you as president, Capt D_____ E. F_____ USN, 000-00-0000/1100, and Captain G_____ I. H_____ USNR, 000-00-0000/1100, as members. Commander J_____ K. L_____, JAGC, USN, 000-00-0000/2500, a lawyer certified in accordance with Article 27(b) of the Uniform Code of Military Justice, is designated counsel for the court.

3. The court is directed to inquire into all the facts and circumstances connected with the explosion, the damage resulting therefrom, and deaths of and/or injuries to naval personnel, and to fix individual responsibility for the incident. After deliberation, the court shall submit its findings of fact, opinions and recommendations. The court will express its opinion as to the line of duty and misconduct status of any injured personnel and will recommend administrative or disciplinary action, as appropriate.

4. The court is directed to suspend the proceedings and notify the convening authority at any time during the course of the investigation when it appears that the intentional act or acts of a deceased service member was a contributory cause of the explosion.

5. The court is directed to notify Commander M_____ N. O_____, USN, 000-00-0000/1100, of the time and place of the meeting of the court and that he is a party to the inquiry and to accord him the rights of a party pursuant to the provisions of JAGINST 5830.1A. The court is/is not authorized to designate additional parties to the inquiry during the proceedings (as may be appropriate).

6. Lieutenant Commander D_____ M. M_____, JAGC, USN, 000-00-0000/2500, a lawyer qualified in accordance with Article 27(b) Uniform Code of Military Justice has been designated counsel for Commander M_____ N. O_____ , USN.

7. The court is directed to take the testimony of witnesses under oath and to submit a verbatim record of the proceedings. Compliance with the Privacy Act of 1974 is mandatory during the proceedings.

8. By signed copy of this appointing order, Commanding Officer, USS _____ (___), is directed to furnish the necessary reporters and other

clerical assistance to the court for the purpose of recording and preparing the record of this court of inquiry.

A_____ J. L_____
Admiral, U.S. Navy

Copy to:
CO USS (_____) (___)
Members (names)
Counsel (names)
Parties (names)

APPOINTING ORDER FOR A BOARD OF INQUIRY

Date:_____

From: Commander, Amphibious Group TWO
To: Captain _____, USN, 000-00-0000/1110

Subj: INVESTIGATION OF AN EXPLOSION THAT OCCURRED ON BOARD USS _____, ON __ AUGUST ___, 20__

Ref: (a) JAGINST 5830.1A

1. Under reference (a), you are appointed to inquire, as soon as practical, into the circumstances surrounding an explosion that occurred on board USS_____ on __ August 20__.

2. You are to investigate all facts and circumstances surrounding the explosion. You must investigate the cause of the explosion, resulting injuries and damages, and any fault, neglect or responsibility therefor. You must express your opinion of the line of duty and misconduct status of any injured or deceased naval member. You should recommend appropriate administrative or disciplinary action. Report your findings of fact, opinions and recommendations by __ September 20__, unless an extension of time is granted.

3. "Commander _____ JAGC, USN, 000-00-0000/2500, a lawyer certified under Article 27(b) of the Uniform Code of Military Justice, is counsel for the investigation."

4. You are directed to suspend proceedings and notify the convening authority at any time during the course of the investigation when it appears that the intentional act or acts of a deceased servicemember were a contributory cause of the explosion.

5. (If parties are designated by a convening authority, add the following language:

"You are to notify Commander _____ , USN 000-00-0000/1110, of the time and place of the hearing and that he is a party to the inquiry, and accord him the rights of a party under JAGINST 5830.1A")

(If a convening authority authorizes designating parties during the proceedings, add the following language:

"You may designate parties to the investigation during the proceedings. If you designate parties, comply with JAGINST 5830.1A.")

6. Compliance with the Privacy Act of 1974 is mandatory during the proceedings.

(If testimony under oath and a verbatim record are required, add the following language:

"You are directed to take testimony of witnesses under oath and submit a verbatim record of proceedings.")

7. By copy of this appointing order, Commanding Officer, USS _____, is directed to furnish necessary reporters and other clerical assistance to the fact-finding body for recording the proceeding and preparing the record.

_____
Rear Admiral, U.S. Navy

Copy to:
COMUSFLTFORCOM
CO USS _____
Counsel (name)
Party (name)
Party (name)

MODIFICATION TO THE APPOINTING ORDER

COMMANDER FLEET FORCES COMMAND

(File information)
Date:

From: Commander, Fleet Forces Command
To: Rear Admiral J_____B. T_____, USN, 000-00-0000/1100

Subj: CHANGE IN MEMBERSHIP OF (COURT) (BOARD) OF INQUIRY

1. Captain S____ T. U_____, USN, 000-00-0000/1100, is appointed a member of the (Court) (Board) of Inquiry of which you are president convened by my appointing order of __ February 20__. Captain D_____ R. F_____, U.S. Navy, is hereby relieved.

_____
Admiral, U.S. Navy

SAMPLE OATHS TO BE ADMINISTERED

1. **Reporter**. Every reporter shall, before entering upon his duties, make an oath or affirmation, administered by counsel for the court or board, in the following form:

"You swear (or affirm) that you will faithfully perform the duties of reporter to this court or board. So help you, God."

2. **Court or Board Members**. Before the court or board begins the inquiry prescribed by the appointing order, counsel for the court or board shall administer to the members the following oath or affirmation:

"You, AB, CD, and EF, do swear (or affirm) that you will faithfully perform all the duties incumbent upon you as members of this (court) (board), and that you will examine and inquire, according to the evidence, into the matter now before you, without partiality. So help you, God."

3. **Counsel**. When the oath or affirmation has been administered to the members, the president of the court or board shall administer the following oath to the counsel for the court or board, and assistant counsel, if any. Counsel for the parties are not sworn:

"You swear (or affirm) that you will faithfully perform the duties of counsel (assistant counsel) for this (court) (board). So help you, God."

4. **Interpreter**. Every interpreter shall, before entering upon his duties, make oath or affirmation, administered by counsel for the court or board, in the following form:

"You swear (or affirm) that you will faithfully perform the duties of interpreter to this (court) (board), So help you, God."

5. **Challenged Member**. If challenged member is to be examined under oath as to his fitness to serve, counsel for the court or board shall administer the following oath or affirmation:

"You swear (or affirm) that you will answer truthfully to the questions regarding your competency as a member of the (court) (board), in this case. So help you, God."

6. **Witnesses**. All persons who testify before the court or board shall be examined on oath or affirmation, administered by counsel for the court or board before they first testify, in the following form:

"You swear (or affirm) that the evidence you shall give in the matter now under investigation shall be the truth, the whole truth, and nothing but the truth. So help you, God."

NOTE: In the administration of an affirmation, the word "affirm" is used in lieu of "swear." The words "So help you, God" should be omitted in administering an affirmation to one whose individual religious belief forbids use of the word "swear" and a reference to a Supreme Deity in a secular proceeding.

RECORD OF PROCEEDINGS OF COURT OF INQUIRY

RECORD OF PROCEEDING

of a

COURT OF INQUIRY

convened on board

USS _____ (___),

by order of

Commander, Fleet Forces Command

To inquire into an explosion which occurred aboard

USS _____ (___),

on __ February 20__

Investigation into_____

which occurred on board

USS _____ (___) on

__ February 20__

Ordered on __ February 20__

Note:

1/ "Ordered on" is the date of the appointing order.

2/ A copy of the findings of fact, opinions and recommendations will be prefixed to the record as the first page following the title page.

3/ The record of proceedings shall be prepared on standard-size paper.

4/ Index in lengthy cases: The index shall follow the findings of fact, opinions and recommendations. An index is required whenever a record exceeds 20 pages. The index shall list the witnesses, a descriptive title of their duties in relation to the incident (e.g., Officer of the Day, Engineer Officer, Navigator), whether called by the court or party, and the page number on which their testimony appears. Exhibits, briefly described, offered or admitted in evidence, shall be listed in chronological order showing the page at which each was admitted in evidence.

5/ Appointing Order: The original appointing order follows the cover page and is lettered "A." Amendments or modifications thereto are lettered "B," "C," etc. When an index is required, it precedes the appointing order. Written communications with the convening authority will follow the appointing order as amendments or modifications thereto.

Court meets

- FIRST DAY -

On board
USS _____ (___)
U.S. Naval Base
Norfolk, Virginia
Wednesday, __ Feb 20__

Preliminary Matters

The court met at (insert time, e.g., 0830) for preliminary matters.

Present:

Rear Admiral J _____ B. T_____, U.S. Navy;
Captain S_____ T. U_____, U.S. Navy; and
Captain G_____ H. I_____, U.S. Naval Reserve
Members.

Commander J____ K. L_____, JAGC, U.S. Navy, certified in accordance with Article 27(b) and sworn in accordance with Article 42(a) of the Uniform Code of Military Justice, Counsel for the Court.

All matters preliminary to the inquiry having been determined and the court having decided to sit with open doors, the court was opened.

Advice to Parties

Party and counsel enter

Commander M____ N. O_____, U.S. Navy, entered as a party to the inquiry, was represented by Lieutenant P____ A. R_____, JAGC, U.S. Naval Reserve, as his counsel, who is qualified in accordance with Article 27(b) of the Uniform Code of Military Justice. (If civilian counsel represents a party his qualifications should be stated.)

Note: If a party enters and waives his right to be present or to be represented by counsel, this shall be reported verbatim. If any designated party or his counsel is absent the record shall indicate the absence, the reason therefor if known, and whether or not the party had been notified that he was a party and of the time and place of the meeting of the court.

Swearing the reporter, members and counsel for the court

The appointed reporter, W_____ E. D_____, Yeoman First Class, U.S. Navy, and the members of the court, were sworn by counsel.

Note: Interpreters and assistant counsel, if any, also shall be sworn at this time.

Reading of appointing order

The counsel for the court read the appointing order, original attachment, marked "A" (and an amendment thereto, original attachment, marked "B").

Advising parties of their rights

Note: Informing the party or parties of their rights is accomplished at this time. The counsel informs the interested party or parties of their rights in accordance with paragraph 9a of enclosure (1) of this instruction and this is reported verbatim. The record will clearly show that each has been designated as a party. Several parties may be

informed of their rights at the same time. See paragraph 12e of enclosure (1) of this instruction for additional rights of a person who has been injured.

Challenges

Note: See Rules for Courts-Martial (RCM) 912(b)-(e) for authority on how to conduct examination and challenges of members. The president of the court will perform those duties assigned to the military judge in RCM 912. However, where a conflict arises between this instruction and RCM 912, this instruction controls. Accordingly, the president may permit counsel for a party to ask brief general questions of the court members to determine if there is a ground for challenge. He may also permit questioning of individual members. If requested by a party, he may require any questioning be done under oath.

Upon request of the party, the member took the stand, was duly sworn and was examined as follows:

Questions by counsel for Commander O_____ party:

Q. _____?
A. _____.

Questions by counsel for the court:

Q. _____?
A. _____.

Neither counsel for the court, the court, nor the party desired to examine the witness further. The witness resumed his seat as a member of the court (evidence may be presented regarding the possible challenge).

Ensign A_____ I. K_____, U.S. Navy, was called as a witness by counsel for the court, was duly sworn, and examined as follows:

DIRECT EXAMINATION

Questions by counsel for the court:

Q. State your name, grade, organization and present duty station.
A. _____.

Q. _____?
A. _____.

CROSS-EXAMINATION

Questions by Commander O_____, party:

Q. _____?
A. _____.

Neither counsel for the court, the court, nor the party desired to examine the witness further. The witness was duly warned and withdrew.

Right to challenge accorded

The president asks if any party has a challenge for cause against any member.

_____ objected to Captain G_____ H. I_____, U.S. Naval Reserve, as a member because Captain I_____ had formed an opinion that the party was guilty of culpable conduct with regard to the question of the responsibility for the explosion (The member, if not called by a party to testify under oath regarding the challenge, may make a brief statement regarding the challenge). The president may permit brief arguments by counsel for a party or counsel to the court on the challenge.

The challenged member replied as follows:

The court closed at (indicate time) __ February 20__. The challenged member withdrew from the courtroom along with all other persons. Only the members remained.

Challenge sustained

The court opened at ____, __February 20__.

All persons connected with the inquiry who were present when the inquiry closed were again present. The president announced that the challenge of the party was sustained and that Captain I_____ was relieved as a member and excused.

Captain I_____ withdrew from his seat as a member.

Note:

1/ If the challenge reduced the number of members to less than three, the court would proceed as follows:

The number of members being reduced to less than three, the court directed the counsel for the court to inform the convening authority of this fact.

2/ If after the challenge, the court had three or more members remaining, it could proceed. However, the convening authority should be informed of the excusing of the challenged member by the court and the court would then proceed as follows:

The number of members remaining after excusing the challenged member being not less than three, the court determined to proceed. Counsel for the court was instructed to inform the convening authority that Captain I_____, U.S. Naval Reserve was challenged by an interested party and excused by the court.

3/ All communications with the convening authority will be in writing and will be made part of the record.

Adjournment

The court adjourned at _____, __ February 20__ (to await the appointment of a new member).

-SECOND DAY-

On board
USS (_____) (___)
U. S. Naval Base
Norfolk, Virginia
Thursday, __Feb 20__

The court met at (indicate time).

All persons connected with the court who were present when the court adjourned were again present.

Counsel for the party absent

Continue the above entry by stating "except Lieutenant R_____, counsel for the party who was called as a witness in a general court-martial." Commander O_____, the party stated: "I waive my right to have counsel present during this session of the court."

Note: When the party is represented by counsel and the counsel is not present, the record shall show verbatim accused's waiver of his right to have counsel present, if such be the case.

Communication from the convening authority read

Counsel for the court read a communication from the convening authority, original prefixed, marked "C," appointing Captain V_____ W. Z_____, U.S. Navy, a member of the court. A copy of the amendatory order was given to the party.

The party stated that he did not object to the new member or to any member.

New member sworn

The new member of the court was duly sworn and was afforded an opportunity to examine the record of proceedings of the court as far as it had progressed.

Note: If deemed advisable, the court will recess or adjourn for this purpose.

Witness separated

No witness not otherwise connected with the inquiry was present.

Presentation of Evidence

Commander _____, U.S. Navy, took the stand as a witness, was duly sworn, and examined as follows:

DIRECT EXAMINATION

Questions by counsel for the court:

Q. State your name, grade, organization, and present duty station.
A. _____.

Witness introduces documentary evidence

Q. Are you the custodian of the official log of USS (_____)?
A. I am.

Q. Can you produce the log?
A. Here it is. (Any notation re: handing the log to counsel?)

Exhibits

Note: When introducing documentary evidence and other material items, the following procedure should be followed by counsel:

Counsel: Request that the reporter mark this exhibit.

Note: The reporter is responsible for keeping a list of properly marked exhibits and noting their final acceptance into evidence. The reporter will mark on the exhibit (or tag affixed thereto) the appropriate number and state:

Reporter: This will be Exhibit 1.

The log (Exhibit 1) was submitted to the party and to the court, and was offered in evidence by counsel for the court for the purpose of reading into the record such extracts therefrom as pertained to the explosion, which occurred on board USS(____) on __February 20__.

There being no objection, it was received in evidence.

Note: If there is an objection see paragraph 11b of enclosure (1) for procedures.

Q. Refer to the log and read such portions thereof as pertain to _____.

The witness read from the said log extracts, copy appended, marked "Exhibit 1."

Neither the counsel for the court, the court, nor the party desired further to examine this witness. The witness was duly warned concerning his testimony and withdrew from the courtroom.

Examination of a witness called by counsel for the court

P____ S. L_____, Fireman, U.S. Navy, was called as a witness for the court, was duly sworn, informed of the subject matter of the inquiry and examined as follows:

Note: To the extent feasible, the procedures for preparing verbatim records of courts-martial shall be followed in courts of inquiry. All questions and answers (except statements or extracts from documents subsequently admitted as exhibits) as well as all objections, arguments and discussions thereto and rulings thereon shall be recorded verbatim. In all other instances, entries may be summarized as outlined below unless verbatim proceedings are required for clarity.

Note: The examination of witnesses shall be captioned as below. Whenever possible, the side interrogating a witness shall be given the opportunity to complete such interrogation of that witness before further questions are propounded by anyone else.

DIRECT EXAMINATION

Questions by counsel for the court:

Q. State your name, rate, organization, and present duty station.
A. _____.

Q. _____?
A. _____.

CROSS-EXAMINATION

Questions by counsel for Commander _____ party:

Q. _____?
A. _____.

REDIRECT EXAMINATION

Q. _____?
A. _____.

RECROSS-EXAMINATION

Questions by counsel for Commander _____ party:

Q. _____?
A. _____.

EXAMINATION BY THE COURT

Questions by a court member (president), CAPT:

Q. _____?
A. _____.

Neither counsel for the court, the court, nor the party desired to examine this witness further.

The president of the court informed the witness that he could make any further statement covering anything related to the subject matter of the inquiry that he thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness made the following statement:

Witness: _____.

Note: If a witness brings up any new matter, each counsel and member will be afforded the opportunity of further examination before the witness is excused.

Warning the witness

Note: A witness who, by assignment or otherwise, is subject to naval authority is cautioned by the president in the following tenor: "You are instructed not to discuss your testimony in this case with anyone other than a member of the court, parties thereto, or counsel. You will not allow any witness in this case to talk to you about the testimony he has given or which he intends to give. If anyone, other than counsel or the parties thereto attempts to talk to you about your testimony in this case, you should make the circumstance known to the counsel originally calling you as a witness."

Note: A witness who is not subject to naval authority by assignment or otherwise is cautioned by the president in the following tenor: "You are requested not to discuss your testimony in this case with anyone other than a member of the court, parties thereto, or counsel. You should not allow any witness in this case to talk to you about the testimony he has given or which he intends to give. If anyone, other than counsel or the parties, attempts to talk to you about your testimony in this case, you should make the circumstances known to the counsel originally calling you as a witness. Your cooperation is requested so that the evidence to be received is not influenced by any discussion of that nature."

The witness was duly cautioned concerning his testimony and withdrew from the courtroom.

At this stage of the proceedings it appeared to the court that the conduct of Lieutenant D_____ F_____, U.S. Navy, was subject to inquiry, and that he should properly be designated a party to the inquiry. Accordingly, the president of the court instructed counsel for the court [to so advise the convening authority (and if the convening authority designated him a party) to summon Lieutenant F_____ before the court] or [to summon Lieutenant F_____ to appear (if the court has been given the authority to designate parties)].

Time of session

The court (adjourned) (recessed) at _____, __ February 20__.

The court (closed) (opened) at _____ , __February 20__.

All persons connected with the inquiry who were present when the court (adjourned) (recessed) are again present [except _____].

J_____ A. H_____, Chief Yeoman, U.S. Navy, was introduced as reporter and was duly sworn.

No witness not otherwise connected with the inquiry was present.

Designation of a Party

Lieutenant D_____ F_____, U.S. Navy, entered. The president of the court informed him of its conclusion that his conduct appeared to be subject to inquiry and the reasons therefore, and advised him that (either the convening authority or the court of inquiry, if so empowered) had designated him a party to the inquiry. (See Note First Day as to informing of rights.)

Lieutenant F_____ requested and was granted a delay in the proceedings until he could obtain counsel.

Adjournment

The court adjourned at _____, __ February 20__.

-THIRD DAY-

On board
USS (_____) (___)
U. S. Naval Base
Norfolk, Virginia
Friday, __Feb 20__

The court met at (indicate time).

All persons connected with the court who were present when the court adjourned were again present.

Lieutenant F_____ was present and represented by Captain B____ O. J_____, U.S. Marine Corps, qualified in accordance with Article 27(b) of the Uniform Code of Military Justice.

According rights to new party

Lieutenant F_____ examined the appointing order and modification(s) and stated that he did not object to any member of the court.

Note: If a new party desires, he must be allowed the opportunity to voir dire the members and afforded the opportunity to challenge for cause.

Note: An opportunity to examine the record of proceedings thus far conducted will be afforded Lieutenant F and his counsel. If deemed advisable the court will be recessed (or adjourned) for this purpose.

Lieutenant F____ stated that he did not desire to recall any of the witnesses for further examination.

Note: If further examination of any of the witnesses is requested by a newly named party, such witnesses will be recalled, if practicable.

No witnesses not otherwise connected with the inquiry were present.

View by the court

The president announced that the court would adjourn to the scene of the explosion on board USS (_____).

The court adjourned at ____, __February 20__.

The court met at ____, __ February 20__, in compartment A-106 USS _____ to inspect the damaged area. All members, counsel for the court, parties and their counsel were present.

Note: If any party or their counsel is absent, a specific verbatim waiver by the party on the record is required.

After completing inspection of the scene of the explosion, all personnel present returned to the regular place of meeting where the court was reassembled.

The court opened at ____, __ February 20__.

All the members, counsel for the court, the parties and their respective counsel and the reporter were present.

No witnesses not otherwise connected with the inquiry were present.

Person requests designation as a party

Ensign J____ D_____, U.S. Navy, entered, informed the court that he had a direct interest in the subject matter of the inquiry and requested that he be designated a party and be accorded the rights of a party.

Ensign D_____ was directed to state the nature of his interest and replied as follows (Report the reply verbatim):

Designation as party and according of rights

The court, having decided that Ensign D_____ had a direct interest in the subject of the inquiry, (the convening authority was advised of his interest) (he was designated a party). (See Note First Day as to informing party of his rights.)

Ensign D_____ stated: "I waive my right to be represented by counsel and to examine the record of proceedings thus far conducted." He read the appointing order and modification(s) and stated that he did not object to any member of the court; or

The court recessed at ____, __ February 20__, to provide Ensign D_____ with an opportunity to examine all the evidence of record.

The court opened at ____, __ February 20__.

All persons connected with the inquiry who were present when the inquiry recessed were again present.

No witnesses not otherwise connected with the inquiry were present.

Ensign D_____ stated: "I have examined all the evidence of record and do not desire to recall any of the previous witnesses for further cross-examination."

Court overrules president's ruling

A member objected to the ruling of the president.

The court closed at ____, __ February 20__.

The court opened at ____, __ February 20__.

All persons connected with the inquiry who were present when the inquiry closed were again present.

The president announced that his previous ruling was withdrawn and that the motion to strike was denied.

Counsel for the court has no further evidence to present

Counsel for the court stated that he had completed the presentation of his evidence.

Parties informed of right to call witnesses

The president of the court informed the parties that they could now call witnesses and present any evidence in their own behalf.

Examination of witness called by party

O_____ P. J_____, Machinist's Mate, Third Class, U.S. Navy, was called as a witness by Commander O_____, party, was duly sworn, informed of the subject matter of the inquiry, and examined as follows:

DIRECT EXAMINATION

Questions by counsel for the court:

Q. State your name, rate, organization and present duty station.
A. _____.

Questions by counsel for Commander O_____, party:

Q. _____?
A. _____.

Neither the counsel for the court, the court, nor the parties desired to examine this witness further.

The president of the court informed the witness that he could make any additional statement covering anything relating to the subject matter of record in connection therewith which had not been fully brought out by the previous questioning.

The witness stated that he had nothing further to say.

The witness was duly warned concerning his testimony and withdrew from the courtroom.

Party calls self as witness

Ensign D_____ a party, called himself as a witness. He was informed by the court that he was suspected of an offense, to wit: ******, was advised of his right not to testify or make any statement regarding the offense of which he was suspected, was informed that any testimony or statement made by him might be used as evidence against him in any subsequent trial, and was reminded of his rights as a party. (Advice of rights, waiver if any and testimony of a party is always recorded verbatim.)

Ensign D_____ stated that he understood his rights and that he chose to testify relative to the offense of which he was suspected.

(Ensign D_____, a party, stated that he withdrew his request to testify.)

Ensign D_____, a party, took the stand to testify in his own behalf, was duly sworn, and examined as follows:

DIRECT EXAMINATION

Questions by counsel for the court:

Q. State your name, grade, organization and present duty station.
A. _____.

Q. Are you a party to this proceeding?
A. I am.

Questions by Ensign D_____, party:

Q. _____?
A. _____.

Questions by counsel for Commander O_____, party:

Q. _____?
A. _____.

CROSS-EXAMINATION

Questions by counsel for the court:

Q. _____?
A. _____.

Neither the counsel for the court, the court nor the parties desired to examine this witness further. He resumed his seat as a party.

Parties rest

None of the parties desired to present additional evidence.

Witness for the court

The court announced that it desired further testimony and directed that R_____ O. J_____, Chief Gunner's Mate, U.S. Navy, be called as a witness for the court.

R_____ O. J_____, Chief Gunner's Mate, U.S. Navy, was called as a witness for the court, was duly sworn, informed of the subject matter of the inquiry, and was examined as follows:

EXAMINATION BY THE COURT

Questions by counsel for the court:

Q. State your name, rate, organization and present duty station.
A. _____.

Questions by the (president) (CAPT_____):

Q. _____?
A. _____.

Neither the counsel for the court, the court, nor the parties desired to examine this witness further.

The president of the court informed the witness that he could make any additional statement covering anything relating to the subject matter of the inquiry that he thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness stated that he had nothing further to say.

The witness was duly warned concerning his testimony and withdrew from the courtroom.

Statements of Parties

Commander O_____ and Ensign D_____, parties, each submitted a signed written statement, which statements were read and are appended as exhibits (numbered __ and __, respectively).

Lieutenant F_____, party, made an oral statement as follows: "_____."

Arguments

Counsel for the court presented opening argument.

Note: Counsel may waive opening argument.

Commander O_____, party, presented argument.

Lieutenant F_____, party, made the following oral argument: "_____."

Note: Argument may be made by either the party or his counsel.

Ensign D_____, party, desired to make no argument.

The counsel for the court made the following closing argument: _____.

Inquiry completed

President: Counsel for the court and the party (parties) having no further evidence or argument to present to this court of inquiry, the court is now adjourned to consider all the evidence and to submit to the convening authority its findings of fact, opinions, and recommendations. The court will be closed.

The court closed at ____, __ February 20__.

Findings of fact, opinions and recommendations

The court, after inquiring into all the facts and circumstances connected with the incident, which occasioned the inquiry, and having considered the evidence, finds as follows [and submits the following opinions and recommendation(s) (if requested by the convening authority)]. The findings

of facts, (opinions and recommendation(s)) are attached to the front of the record. See page one of this enclosure.

FINDINGS OF FACT

1. That a violent explosion occurred at 0939, __ February 20__on board USS _____ (___)

2. **********

OPINIONS

1. That the cause of the explosion was *******. (FOF X, XX, XXX).

2. That Commander O_____ was derelict in his duties in that he *******. (FOF X, XX, XXX).

3. That the injuries to ******* which were caused by the explosion occurred in the line of duty and were not the result of his misconduct. (FOF X, XX, XXX).

4. **********

RECOMMENDATIONS

1. That Commander M_____ N. O_____, U.S. Navy, be brought to trial by general court-martial on the charge of violation of Article *****, Uniform Code of Military Justice.

2. That Lieutenant D____ F_____, U.S. Navy, be addressed a letter of reprimand for his failure to **********. A draft of such letter is forwarded herewith.

3. That, in order to prevent a recurrence of this type of explosion, the following action be taken: **********.

J_____ B. T_____
Rear Admiral, U.S. Navy
President

D_____ E. F_____
Captain, U. S. Navy
Member

Note: If there is no minority report, each member signs as shown above. If there is a minority report, the member who disagrees with the majority does not sign. Instead he submits a minority report and signs as follows:

Minority report. I concur with the majority report except as follows:

I disagree with the court's Finding for the reason that _____.

I disagree with the court's Opinion for the reason that _____.

I disagree with the court's Recommendation for the reason that _____.

The following additional (findings of fact) (opinions) (and recommendations) are submitted: _____.

S_____ T_____
Captain, U.S. Navy
Member

Authentication

J_____ B. T_____
Rear Admiral, U.S. Navy
President

J_____ K. L_____
Commander, JAGC, U.S. Navy
Counsel for the court

Note: If either the president or the counsel for the court cannot authenticate the record, a member shall sign in lieu thereof. Members authenticating the record sign as follows:

_____
Captain, U.S. Navy, a member in lieu of the (president) (counsel) because of his (death) (disability) (absence)

Documents appended

Note: All exhibits received in evidence are appended in the order in which they were marked during the inquiry. A description, photograph, or copy of any exhibit may be substituted. When a letter of censure is recommended, a draft of the letter will be prepared and forwarded with the record. See enclosures 7 and 8.

LETTER OF TRANSMITTAL
FOR
RECORD OF PROCEEDINGS

From: Rear Admiral J_____ B. T_____, USN, 000-00-0000/1100
To: Commander, Fleet Forces Command

Subj: (COURT) (BOARD) OF INQUIRY INTO THE EXPLOSION WHICH OCCURRED ON BOARD USS (_____) ON __ MARCH 20__

Ref: (a) CFFC ltr 5830 Ser ___ of ___ Mar __

Encl: (1) Subject Record of Proceedings

1. As directed by reference (a), a (Court) (Board) of Inquiry was convened on March __, 20__ and was completed on April __, 20__. The original record of proceedings and __ complete copies are forwarded herewith as enclosure (1).

J____ B. T_____

ENDORSEMENT OF THE CONVENING AUTHORITY

FIRST ENDORSEMENT on RADM J_____ B. T_____'s ltr of _____

From: Commander, Fleet Forces Command
To: Judge Advocate General

Subj: (SAME)

1. Readressed and forwarded.

2. The (court) (board) failed to accord the rights of a party to _____; or

Opinion 6 of the investigative record is not substantiated by the findings of fact as _____; or

The evidence of record is clear and convincing that the (injuries) (disability) of Lieutenant _____ (were) (was) the direct result of his intemperate and excessive use of _____; or

Opinion 6 and recommendation 2 of the (court's) (board's) report are (disapproved) (disapproved in part) (approved in part); or

A letter of (reprimand) (admonition) has been issued to Lieutenant _____ as a result of this inquiry; or

Subject to the foregoing remarks, the proceedings, findings of fact, opinions and recommendations of the (Court) (Board) of Inquiry in this case are approved; or

The record is returned for further inquiry into _____; or _____.

A_____ J. L_____
Admiral, U.S. Navy