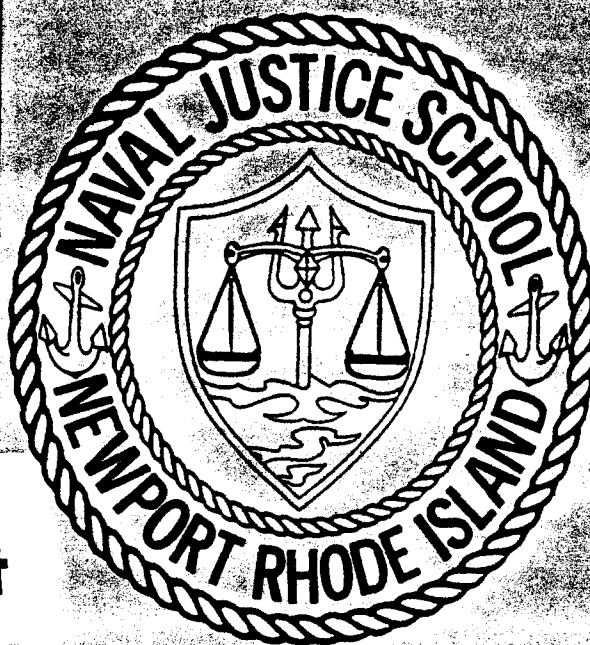


Senior Officer Course Manual



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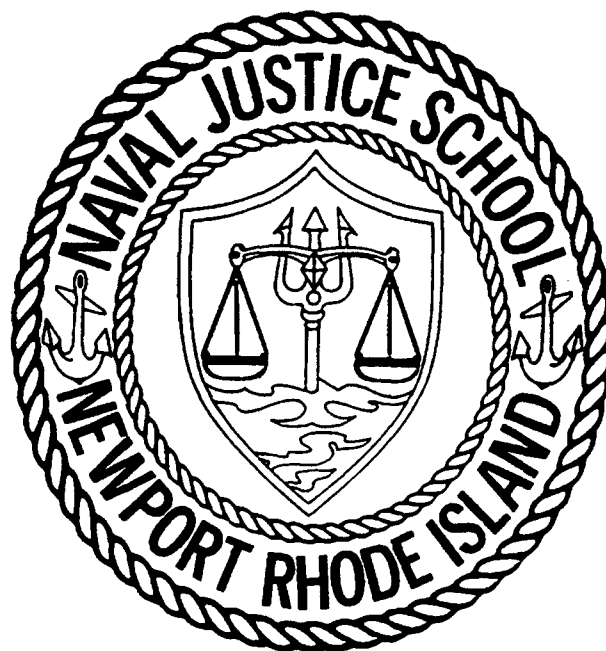


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September 1994 edition

Senior Officer Course Manual



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**Military Justice
&
Civil Law**

SENIOR OFFICER COURSE QUESTIONNAIRE

Name		Rank	Service
Location		Command	Date
Previous military experience (<i>circle as appropriate</i>)			
CO	XO	OIC	Unit Legal Officer
Legal experience: Years _____ Months _____			
Member of Admin Board: _____ Yes _____ No How many? _____			
_____ Member _____ Recorder			
Court-Martial: _____ Yes _____ No How many? _____			
Attended previous SOC: _____ Yes _____ No			

Please evaluate the course using the responses called for below

1. How would you rate your general level of knowledge in the following areas prior to the course?								
a.	Procedure	(Low)	1	2	3	4	5	(High)
b.	Evidence	(Low)	1	2	3	4	5	(High)
c.	Civil Law	(Low)	1	2	3	4	5	(High)
2. How would you rate your general level of knowledge in these areas after the course?								
a.	Procedure	(Low)	1	2	3	4	5	(High)
b.	Evidence	(Low)	1	2	3	4	5	(High)
c.	Civil Law	(Low)	1	2	3	4	5	(High)
3. Please rate the quality of instruction in each area:								
a.	Procedure	(Low)	1	2	3	4	5	(High)
b.	Evidence	(Low)	1	2	3	4	5	(High)
c.	Civil Law	(Low)	1	2	3	4	5	(High)
4. How would you rate the exercises / seminars in each area?								
a.	Procedure	(Low)	1	2	3	4	5	(High)
b.	Evidence	(Low)	1	2	3	4	5	(High)
c.	Civil Law	(Low)	1	2	3	4	5	(High)

5. How would you rate the Commander's Handbook?						
(Low)	1	2	3	4	5	(High)
Comment:						
6. How would you rate the adequacy of the classroom facilities?						
(Low)	1	2	3	4	5	(High)
Comment:						
7. How would you rate the adequacy of the Admin support?						
(Low)	1	2	3	4	5	(High)
Comment:						
8. Please list any subjects or materials you think should be added to, or deleted from, the course.						
9. Do you have any recommendations regarding the amount of time allotted to each subject?						

Telling your communications program to commence the download

At this point, you must tell your communications package to start receiving the file. In most communications packages, you merely have to hit the PgDn key, select the same protocol as you told the EBB you were using, and give the receiving file a file name on your computer (e.g., A:\FILENAME.ZIP). **Note: The EBB gives you about 20 seconds to start the download or it will assume that something is wrong and abort the process.** Repeat the second and third steps to download additional files.

NJS publications available through DTIC

Military Justice Study Guide (April 1992 edition). This publication is a basic text on military justice covering areas of procedure, evidence, and criminal law. Its use is intended for those military personnel who are not lawyers, but need a basic reference tool on military justice. It is used as a text in our legal officer, senior officer, legalman, and legal clerk courses. The AD number is AD-A252104. Number of pages: 726.

Commander's Handbook on Military and Civil Law (January 1992 edition). This text is intended to familiarize commanding officers, executive officers, and officers in charge with the UCMJ and civil law matters relating to command legal responsibilities and the administration of military law. The AD number is AD-A247409. Number of pages: 562.

Civil Law Study Guide (Lawyer) (April 1993 edition). This text is a survey of civil law in the military, covering such topics as JAG Manual investigations, administrative separations, claims, Privacy Act, etc. It is used as a text in our lawyer and staff judge advocate courses. The AD number is AD-A280527. Number of pages: 486.

Civil Law Study Guide (Legal Officer) (April 1993 edition). This text is a survey of civil law in the military, covering such topics as JAG Manual investigations, administrative separations, claims, Privacy Act, etc. It is used as a text in our legal officer, legalman, and legal clerk courses. The AD number is AD-A280526. Number of pages: 400.

Criminal Law Study Guide (January 1994 edition). This text is used in teaching lawyers substantive criminal law. It provides an excellent survey of crimes in the military. The AD number is AD-A280528. Number of pages: 598.

Evidence Study Guide (July 1992 edition). This text is used in teaching evidence to lawyers. The AD number is AD-A255264. Number of pages 710.

Procedure Study Guide (April 1994 edition). This text is used in teaching military justice procedure to lawyers. The AD number is AD-A_____. (**Note:** New AD number pending.) Number of pages: 582.

Evidentiary Foundations (January 1989 edition). A practical guide for lawyers to predicate questions used for laying the proper evidentiary foundations for the admissibility of evidence. The AD number is AD-A210405. Number of pages: 118.

Aids to Practice (January 1991 edition). A practical guide to forms used in military trial practice. The AD number is AD-A165312. Number of pages: 302.

Staff Judge Advocate Deskbook (October 1991 edition). This text is a survey of administrative, criminal, and labor law topics encountered by command legal advisors. It is used as the basic text in our Staff Judge Advocate Course. The AD number is AD-A243995. Number of pages: 958.

Coast Guard Handbook on Military and Civil Law (April 1989 edition). This text is used to instruct Coast Guard lawyer students in foundational concepts of military and civil law. The AD number is AD-A210046. Number of pages: 476.

Environmental Law Deskbook (October 1991 edition). This text is used as a ready reference for the judge advocate with no environmental law background. Each chapter is designed to provide an overview of the key topics in each significant area and, at a minimum, enhance the reader's ability to spot issues. The AD number is AD-A243974. Number of pages: 302.

Legalman / Legal Clerk Study Guide (January 1995 edition). This text covers areas of instruction for legalman and legal clerk students. It is used as a basic text in all paralegal courses. The AD number is AD-A_____. (**Note:** AD number pending.) Number of pages: 432.

AVAILABILITY OF NAVAL JUSTICE SCHOOL PUBLICATIONS

Naval Justice School (NJS) publications are readily available to commands in hard copy or on fiche from the Defense Technical Information Center (DTIC) and electronically for downloading from the School's electronic bulletin board (EBB). They are available to individuals in hard copy or on fiche from the National Technical Information Center (NTIC). *Because of funding restraints, they are not available directly from NJS.*

Defense Technical Information Center

In order for a command to purchase publications from DTIC, the command must be a registered user. Commands not already registered with DTIC may obtain registration forms and information on ordering publications by writing to:

Defense Technical Information Center
Attention: Code DTIC-FDRA
Cameron Station, Building 5
Alexandria, VA 22304-6145

or calling commercial (202) 274-7633 or DSN 284-7633. The cost of all hard copy publications is \$6.00 for the first 100 pages, with an additional \$.10 per page (over 100 pages), and \$4.00 for a microfiche copy. In addition to registering with DTIC, the command normally must establish a deposit account with the National Technical Information Service (NTIS) as the means of funding purchases from DTIC. Information on such a deposit account is supplied by DTIC when a command registers as a DTIC user. When ordering from DTIC, publications should be identified by both title and AD number. (A listing of publications and their AD numbers appears below).

National Technical Information Center

NJS publications are also available to individual purchasers through the Commerce Department's National Technical Information Service (NTIS); however, the purchase price of the publications through NTIS is substantially higher. The cost of all publications from NTIS is \$6.95 per microfiche copy, with various prices for paper copy (depending on the number of pages in the publication). Information on ordering publications from NTIS may be obtained by writing to:

U.S. Department of Commerce
National Technical Information Service
5285 Port Royal Road
Springfield, VA 22161

NJS Electronic Bulletin Board (EBB)

An alternative means of obtaining an even wider range of our publications, including Professional Development Program (PDP) modules, is by downloading them from our EBB at DSN 948-3990 or commercial (401) 841-3990, 8-N-1, 1200/2400/9600/14.4 BAUD.

In order to download a file from the NJS EBB, you must do three basic things: (1) Obtain the name of the file you wish to download; (2) tell the BBS that you wish to download the file; and (3) tell your communications program to commence the download. That's it!

Obtaining the name of a file to download

First, obtain a list of all categories (file directories) from the main conference by entering "F" (without the quotes) at the main menu. You will be presented with a list of file directories with titles like: "Evidence Study Guide," "Procedure Study Guide," etc. (There are 23 file directories -- #'s 11-21 are NJS publications.) To display the individual file titles, enter the number of the directory you want (e.g., "14" for the Evidence Study Guide). You will receive a list of file names and descriptions. Jot down the names of those you wish to download.

Telling the EBB that you wish to download a file

To tell the EBB that you wish to download a file from either the files listing or the main menu, type "D" (again, without the quotes). You will be presented with this list of download protocols:

(Z)	Zmodem Batch	(P)	Zmodem Batch (PCP)
(R)	Zmodem Resume Aborted D/L	(Y)	Ymodem Batch
(O)	Xmodem-1K (Old Ymodem)	(C)	Slow Xmodem/CRC
(F)	Qmodem-1K-G (Full flow)	(G)	Ymodem-G
(M)	MobyTurbo Zmodem		

Use the Zmodem Batch (Z) if you have it. If not, use Xmodem-1K (Old Ymodem) (O). If you get funny characters (line noise) when using this protocol, use Slow Xmodem/CRC (C) instead.

After you select the protocol, you will be asked for the file name. After you type it, the EBB software will find the file and indicate that it is ready to send it.

**SENIOR OFFICER COURSE
IN
MILITARY JUSTICE
AND
CIVIL LAW**

NOTE: All references are to chapters in the Commander's Handbook on Military Justice and Civil Law

SPONSORED BY:

**NAVAL JUSTICE SCHOOL
360 Elliot Street
Newport, RI 02841-1523**

FY 1995

TIME	Monday	Tuesday	Wednesday	Thursday	Friday
0800 to 0850	CC Welcome Aboard / Opening Remarks	PR Nonjudicial Punishment (CH-6)	EV	CIV JAGMAN Investigations (CH-30)	CIV Environmental Law
0900 to 0950	PR Military Justice Overview (CH-4)		Search and Seizure (CH-3)		CIV/PR/EV
1000 to 1050	PR Nonpunitive Measures (CH-5)	PR Court-Martial Procedures (CH-7, 8, 9, 11, 12)		CIV LOD / Misconduct Determinations (CH-31)	Seminar
1100 to 1150	PR Nonjudicial Punishment (CH-6)			CIV Mental Health Representation	
1300 to 1350	EV Self-Incrimination (CH-2)	CIV	EV Drug Abuse Detection (CH-3)	CIV Standards of Conduct (CH-34)	
1400 to 1450		Administrative Separations (CH-32, 33)			
1500 to 1550	EV Fraternalization / Sexual Harassment (CH-29)		PR Problems of the Convening Authority (CH-10)	CC/MJ Sentencing Seminar	
1600 to 1650					

Student Data Record -- Senior Officer Course (Fleet)

Please Read Privacy Act Statement Below			
Name: <i>(Last, First, MI)</i>		Grade:	Desig/MOS: SSN:
Service: ___ USN ___ USNR ___ USNR-R ___ USNR(TAR) ___ USMC ___ USMCR ___ USCG ___ OTHER (<i>Explain</i>):			
Training Site:	Dates of Training:	Travel Status: ___ TAD ___ PCS ___ ACDUTRA ___ Local (No travel)	
If TAD, Command / Location Reporting From: <i>(If Local, Command Attached To)</i>			
If PCS, Date Detached from Prior Command:			
If PCS, Command Reporting To:			
Privacy Act Statement: Authority to request this information is derived from 5 U.S.C. § 301 and OPNAVINST 3120.32B. The principal purpose for this solicitation is to provide the Naval Justice School with required personnel training data. The information will be routinely used for that purpose and will not be disclosed without your consent except as authorized by the Privacy Act. Completion of this form is voluntary; however, failure to provide the required information may result in disenrollment.			

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10. How would you rate the overall usefulness of the course?						
(Low)	1	2	3	4	5	(High)
Comment:						
11. How would you rate the overall quality of the course?						
(Low)	1	2	3	4	5	(High)
Comment:						
12. Do you have any other comments or recommendations concerning the manner in which the course was conducted?						

FURTHER COMMENTS / RECOMMENDATIONS

SENIOR OFFICER COURSE
PROCEDURE MATERIALS

Rev. 9/94

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OVERVIEW OF THE MILITARY JUSTICE SYSTEM

I. PERCEPTIONS AND COMPARISONS

A. Perceptions

B. Comparisons

1. Self-incrimination
2. Search and seizure
3. Grand jury vs. article 32 hearing
4. Right to counsel
5. Speedy trial

II. SOURCES OF LAW IN THE MILITARY

- A. U.S. Constitution
- B. Uniform Code of Military Justice (UCMJ)
- C. *Manual for Courts-Martial, 1984* (MCM)
- D. *Manual of the Judge Advocate General* (JAGMAN)
- E. *Military Justice Manual* (MJM) (Coast Guard)
- F. *U.S. Navy Regulations, 1990* (NAVREGS)

G. *U.S. Coast Guard Regulations, 1975*

H. Command directives

I. Judicial decisions

J. International law

III. COURTS AS SOURCES OF LAW

A. U.S. Supreme Court

B. U.S. Court of Military Appeals (C.M.A.)

C. Courts of Military Review

1. Navy-Marine Corps Court of Military Review (N.M.C.M.R.)

2. Coast Guard Court of Military Review (C.G.C.M.R.)

3. Army Court of Military Review (A.C.M.R.)

4. Air Force Court of Military Review (A.F.C.M.R.)

IV. SYSTEM OVERVIEW

A. Convening authority (CA)

B. Report of offenses (complaints)

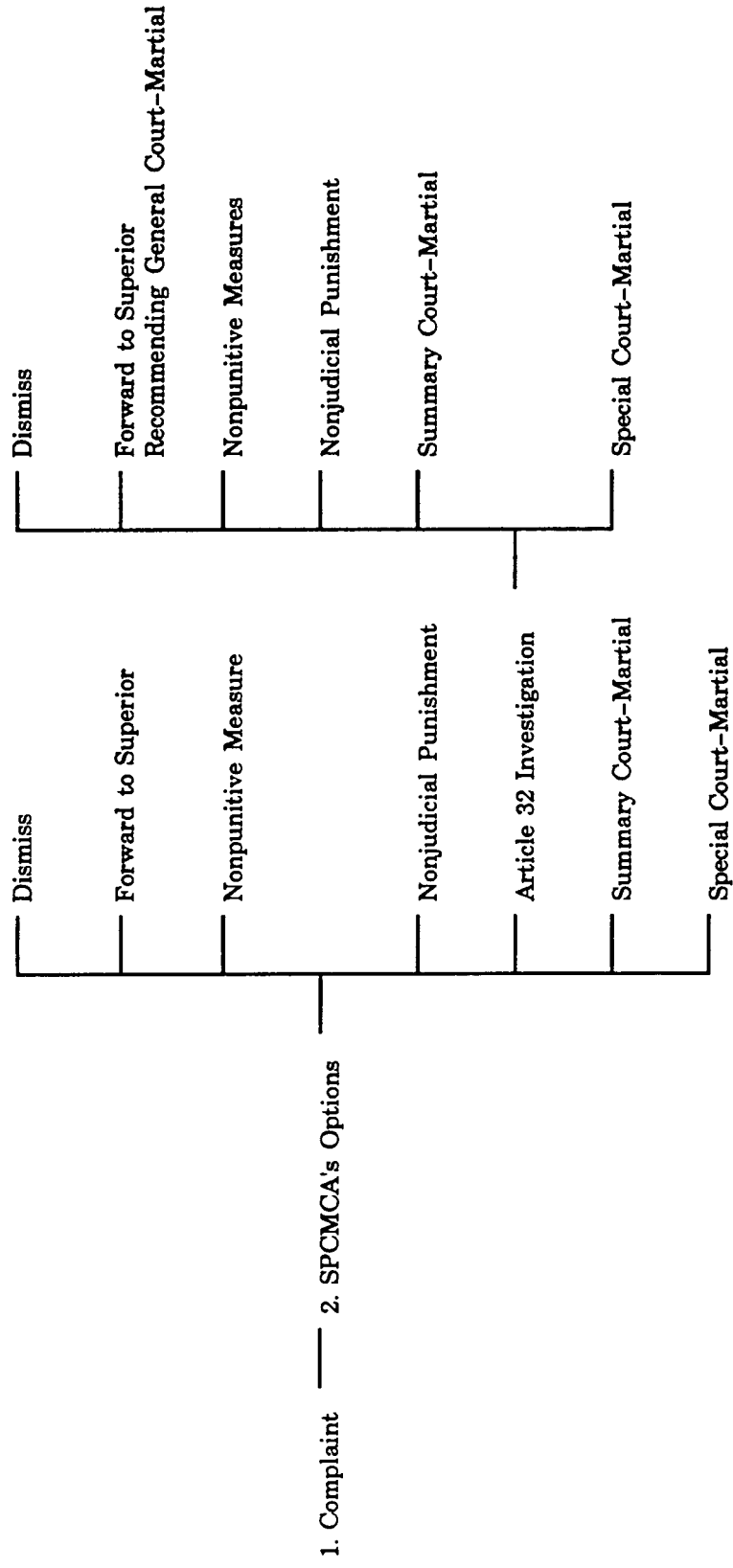
C. Preliminary inquiry

1. In-house
2. NCIS

D. Command alternatives for disposition

1. Dismissal
2. Nonpunitive measures
3. Nonjudicial punishment (NJP)
4. Summary courts-martial (SCM)
5. Special courts-martial (SPCM)
6. Article 32 investigation
7. General courts-martial (GCM)

SPECIAL COURT-MARTIAL CONVENING AUTHORITY'S DISPOSITION OPTIONS



NONPUNITIVE MEASURES

I. PURPOSE AND FUNCTION

- A. Purpose -- to correct minor infractions and deficiencies without a permanent record
- B. Function -- teaching and training device instead of punishment

II. THREE TYPES OF NONPUNITIVE MEASURES

A. Censure

- 1. Oral
- 2. Written
 - a. Titled - "Nonpunitive Letter of Caution" (NPLOC)
 - b. Limitations
 - (1) Private (one copy)
 - (2) Not an admonition or reprimand
 - (3) Not mentioned in Evals / FITREPs
(Secretarial letter of censure exception)

B. Extra military instruction (EMI)

-- A leadership tool

- 1. Analysis
 - a. Identify the deficiency

- b. Logical relationship test
- c. Examine the order's language

2. Who may assign EMI?

- a. During working hours: officers / CPO's / PO's / NCO's
- b. After working hours: CO's who may delegate to senior enlisted

3. Limitations on EMI

- a. Two hours maximum per day
- b. Not on Sabbath
- c. Reasonable number of days
- d. Normal liberty upon completion
- e. No entry in service record

C. Administrative withholding of privileges

1. Rights vs. privileges

- a. Right -- part of compensation or required for the performance of duties
- b. Privilege -- a benefit for the servicemember's enjoyment

2. Examples

- a. Rights -- medical care, dental care, quarters, subsistence, pay
- b. Privileges -- special liberty, civilian clothing, exchange of duty, use of base theater, club

3. Denial of normal liberty

a. NJP

b. Court-martial punishment

c. Pretrial restraint

d. Liberty risk program

(1) Overseas only

(2) Definition -- deprivation of normal liberty in a foreign country when such action is deemed essential for the protection of the foreign relations of the United States

e. EMI

f. Extension of working hours

III. "VOLUNTARY RESTRAINT" (HACK)

A. Not authorized

B. Problematic -- can lead to defense of "former punishment"

IV. REMEDIES FOR ILLEGAL NONPUNITIVE MEASURES

A. Request mast

B. Article 138 (UCMJ) complaint

C. Article 1150 (NAVREGS) complaint

D. Congressional inquiry / Hotline complaint

NONJUDICIAL PUNISHMENT

I. NATURE AND AUTHORITY

A. Nature

1. Disciplinary proceeding for minor offenses, **not** a "conviction"
2. Terms used by various armed forces
 - (a) Navy / Coast Guard – captain's mast
 - (b) Marine Corps – office hours
 - (c) Army / Air Force – article 15

B. CO imposing NJP

1. All military members of the command
 - (a) Member of command at the time NJP is imposed, **not** at the time of the offense
 - (b) TAD personnel are members of both commands for purposes of NJP, either CO can impose
2. Authority to impose NJP is normally **not** delegable
3. Authority to impose NJP should not be withheld from subordinate commander (Navy / Marine Corps)

C. OIC imposing NJP

1. Enlisted members of the unit only
2. Limited punishment powers
3. Authority to impose is **not** delegable

D. Embarked units

1. Unit attached to the ship -- unit commander defers to the CO of the ship for imposition of NJP
2. Unit embarked for transportation only -- unit commander retains NJP authority (generally)

E. Other armed force personnel

- A recent change to the *JAG Manual* (change 2) allows a CO of a unit to impose NJP on all members of his / her unit regardless of their service

II. OFFENSES PUNISHABLE

- A. CO / OIC has broad discretion to decide what offenses should be handled with NJP

B. General guidance

1. NJP is for "minor" offenses
2. An offense is "minor" if a dishonorable discharge (DD) or over one year's confinement is **not** authorized at a GCM

C. Former punishment

1. Minor offense -- punishment at NJP will bar a subsequent court-martial for the same offense
2. Major offense -- punishment at NJP will not bar a subsequent court-martial for the same offense, but accused will receive credit for NJP against the court-martial sentence
3. Military judge (MJ) will decide if offense is major or minor

D. Prior civilian action (JAGMAN, § 0124)

1. Federal court -- bars NJP or court-martial
2. State / local / foreign court -- does not bar NJP or court-martial, but must request permission to proceed
 - (a) For GCM / SPCM -- OJAG permission required
 - (b) For NJP / SCM -- GCMCA permission required
 - (c) Criteria -- exceptionally light sentence, impracticable probation, court concludes without conviction or acquittal after trial on the merits, unique military interest

E. Statute of limitations

- Punishment may not be imposed for offenses committed more than two years from the date of imposition

III. NOTIFICATION OF RIGHTS REGARDING NJP

A. Prior to hearing

1. To be informed of the charges
2. To be informed that the CO is contemplating NJP

3. Summary of the evidence
4. Right to refuse NJP
 - (a) If servicemember is **not** attached to or embarked on a vessel
 - A recent court case has held that a nonoperational ship in SLEP (Service Life Extension Program) is not a vessel for NJP purposes
 - (b) Right includes opportunity to consult with counsel before deciding whether or not to refuse NJP
 - (c) Right expires when punishment is imposed
 - (d) Right to refuse NJP is **not** the right to demand trial by court-martial
5. Right to waive personal appearance
 - CO may require servicemember to appear

B. Rights at the hearing

1. To be present
2. To remain silent
 - Counsel warnings?
3. To have a personal representative
4. To examine evidence
5. To present matters in defense or E & M
 - a. Includes "reasonably available" witnesses
 - b. No subpoena power over civilian witnesses
6. To a public hearing (confer privately?)

IV. ADMINISTRATIVE MATTERS

- A. Mast / office hours guide -- JAGMAN, App. A-1-(e)(1)
- B. Military Rules of Evidence (Mil.R.Evid.) -- do *not* apply (except privileges)
- C. Standard of proof -- preponderance of the evidence
- D. Publication of NJP (JAGMAN, § 0115)
 - 1. Full publication allowed to military personnel
 - 2. Civilian access to publication requires name be removed
- E. CO's options after review of the evidence
 - 1. Dismissal -- with or without warning
 - 2. Dismissal and imposition of nonpunitive measures
 - 3. NJP
 - 4. Referral to a higher forum
 - 5. Postponement of action
- F. XOI
 - 1. Navy only
 - 2. Not required
 - 3. XO's authority
 - a. Forward to CO for mast
 - b. Dismiss

- c. Dismiss and impose nonpunitive measures
- d. Can be restricted by CO

V. PUNISHMENTS

A. General categories

- 1. Admonition / reprimand
- 2. Reduction in rate
- 3. Forfeiture of pay
- 4. Restraint types
 - a. Confinement on bread and water
 - b. Restriction
 - c. Extra duties

B. Maximum potential punishment based on

- 1. Imposing officer's grade
- 2. Servicemember's rank
- 3. Ship / shore command
- 4. Limitations on combinations of punishments
- 5. To determine use
 - a. MCM, Part V.1f(3) and JAGMAN, § 0111
 - b. See Limitation Charts on pages 18 and 19 of this Guide

VI. CLEMENCY AND CORRECTIVE ACTION

A. Authorities

1. Imposing officer
2. Successor in command (temporary or permanent)
3. Subsequent CO after transfer of servicemember
4. Appellate authority

B. Types of clemency and corrective action

1. Set aside
 - a. All rights, privileges, and property restored
 - b. Used to correct an injustice
 - c. Time limit -- within reasonable time, normally four months
2. Remission
 - a. Cancel out unexecuted portions of punishment
 - b. End of current enlistment or discharge automatically remits at end of unexecuted punishment
 - c. Time limit to remit -- four months
3. Mitigation
 - a. A reduction in either the quantity or quality of a punishment
 - b. Time limit to mitigate -- four months

4. Suspension
 - a. Any type of punishment
 - b. Period of suspension -- no more than six months
 - c. Time limit to suspend -- four months
 - d. Conditions of suspension
 - (1) Every suspension requires servicemember not violate the UCMJ
 - (2) Officer imposing suspension may specify additional terms of suspension in writing
 - (a) Must be lawful order capable of performance
 - (b) Examples: **not** to enter certain establishments, to submit to searches, make restitution to a victim, conduct GMT, successfully complete course of rehabilitation, etc.
5. Vacating suspensions
 - a. By any authority competent to impose punishment
 - b. Servicemember should be notified
 - c. Hearing should be conducted if punishment is greater than what an O-3 and below CO can adjudge, unless impracticable

VII. APPEALS

- A. Authority
 1. Navy -- area coordinator
 2. USMC / USCG -- chain of command

B. Grounds

1. Unjust
2. Disproportionate

C. Time

1. Five calendar days from date of imposition of punishment
2. Extensions may be requested for good cause
3. Late appeals may be denied by the appellate authority unless good cause for lateness is shown by servicemember

D. Procedure

1. Servicemember must appeal in writing
2. Appeal is via the officer who imposed NJP
3. Imposing officer endorses appeal to appellate authority including
 - a. Statement of facts
 - b. Copies of documents / witness statements
 - c. Copy of report chit / unit punishment book (UPB)
 - d. Copy of servicemember's record of performance

E. Request for stay of restraint punishment

1. Applies only to restraint punishments: restriction, extra duties, bread and water
2. Servicemember must file appeal
3. Request for stay may be in writing or verbally

4. If appellate authority fails to act within five days after appeal submitted, restraint punishment must be stayed
5. If appeal is denied, servicemember must serve out remaining restraint punishment

F. Appellate authority's action

1. Standard of review is "abuse of discretion"
2. Referral to judge advocate / law specialist required if punishment was greater than O-3 or below CO could impose
3. Appellate authority can take corrective action or order a rehearing
4. At a rehearing, the maximum punishment is limited to the punishment imposed at the original NJP

SENIOR OFFICER COURSE

SENTENCING SCENARIOS

There are three sample problems attached to this memorandum. Each problem gives you the facts of a court-martial. You have been selected to serve as a *member* of the court in each case and it is your duty to arrive at an appropriate sentence for the accused. Each problem provides you with the maximum authorized punishment. After deciding a sentence for each case, please fill out the attached chart and turn it in to the instructor. You may also want to copy down your sentences below the problems for use during classroom discussions.

1. Accused, at Special Court-Martial (SPCM), pleads guilty to an unauthorized absence of four months, which was terminated by his voluntary surrender. He's a 20-year-old E-3 with no disciplinary record and average (3.4 - 3.6) evaluations. He's been in the Navy for 2 1/2 years.

The accused makes an unsworn statement in court in which he says that he left his ship because his girlfriend was pregnant back in Iowa and her parents kicked her out of the house. He took care of her and they now have a son. He brought the girlfriend and son back with him when he surrendered. He *really* wants to remain in the Navy and intends to marry his girlfriend and be a good sailor from now on.

The accused's LPO and LCPO provided written statements indicating they think the accused is a reliable and trustworthy man.

Maximum punishment:

Bad-Conduct Discharge, six months' confinement, forfeiture of two-thirds' pay per month for six months, and reduction to E-1.

2. Accused, at Special Court-Martial, pleads guilty to one specification use of methamphetamine and four specifications of larceny. She is a corporal (E-4) who has been in the Marine Corps for almost four years. She has excellent pro-con marks (4.6 - 4.8) and no prior disciplinary problems. In fact, she has received two Letters of Commendation for her work.

She testifies under oath that she used methamphetamine to help her stay awake and alert at work. Her work center is undermanned and has been working extremely long hours for the past two months. She testifies that she got the drugs from her husband. He was discharged honorably as a sergeant from the Marine Corps three months ago. He has been depressed about having to leave the Marines as a consequence of the "drawdown" and not being able to find a job. She has been trying to help him through his problems and not getting much sleep. The larceny charges are a result of bad checks she wrote to the Marine Corps exchange for \$150.00 each (total \$600.00). Her husband asked her to write the checks so that he could buy drugs and she did so knowing the checks would bounce. She testifies that she knows what she did was wrong and she wants to be a good Marine. She has paid the exchange back by selling her car.

Her company commander and platoon sergeant both testify as to her outstanding on-the-job performance and their surprise that she was having these problems at home.

Maximum punishment:

Bad-Conduct Discharge, six months' confinement, forfeiture of two-thirds' pay per month for six months, and reduction to E-1.

3. The accused is a chief petty officer (E-7) who has pled not guilty at a General Court-Martial (referred as noncapital) to one specification of rape and three specifications of indecent acts with a child. You and the other members find him guilty of all charges and specifications.

The victim is the 13-year-old stepdaughter of the accused. She testified (very credibly) that, on three occasions in the last year, the accused would become very intoxicated while her mother was out of the house late at night. The accused would come into her room, talk to her, and then begin to fondle her breasts. On the last occasion, the accused undressed her and started to have sex with her. When he penetrated, she yelled and he stopped and left the house. She told her mother everything that had happened that night and her mother reported the incidents to the base police. A rape exam was performed on the victim, but proved inconclusive. When interviewed by agents from the Naval Criminal Investigative Service, the victim gave them her diary which contained entries about the incidents.

On the stand, the accused denied any wrongdoing and suggested that the allegations were concocted out of spite by his wife. He alleged she had been out late because she was having an affair and had now filed for divorce. He stated the charges were an attempt to ensure she received custody of both the stepdaughter and another child.

Still apparently shocked by the findings of guilty, the accused says very little during sentencing -- other than how he loves the Navy and will do anything necessary to save his career, including a family advocacy treatment program. He has been on active duty for 19 years and has received straight 4.0 evaluations for the last five.

Maximum punishment:

Dishonorable Discharge, confinement for life, total forfeiture of all pay and allowances, reduction to E-1.

SENTENCING WORKSHEET

CASE ONE (UA SPCM)

BCD _____

To be confined for _____ months

To forfeit \$ _____ per month for _____ months

To be reduced to E- _____

Other lawful punishment _____

CASE TWO (DRUG LARCENY SPCM)

BCD _____

To be confined for _____ months

To forfeit \$ _____ per month for _____ months

To be reduced to E- _____

Other lawful punishment _____

CASE THREE (MOLESTATION GCM)

DD OR BCD _____

To be confined for _____ years / months

Total forfeitures _____ OR
to forfeit \$ _____ per month for _____ months

To be reduced to E- _____

Other lawful punishment _____

NOTES:

1. A court-martial has no authority to suspend a sentence or any part of a sentence.
2. A court-martial has no authority to adjudge an administrative discharge.
3. Other lawful punishments are specified in R.C.M. 1003.

PROBLEM II

BMC Kellerman, who is assigned to your command, has been sexually abusing his daughter but has never been caught. Finally, a neighbor learns of the abuse from her daughter, who is a friend of the victim. The neighbor reports the abuse to the chaplain who, with her permission, reports the abuse to the Family Service Center and to you.

You decide to get NCIS involved. They provide the following information:

1. ***Interview:*** The victim, 14-year-old Vanessa Kellerman, alleges that her father, BMC Kellerman, forces her to have sexual intercourse with him. According to Vanessa, the following pattern developed:
 - a. Mom would be out shopping or visiting friends.
 - b. Dad would become very "nice" and begin to compliment Vanessa on how she looked. He would begin to caress her.
 - c. Often he would produce one of his pornographic magazines or place a pornographic movie in the VCR and get Vanessa to watch it with him. Dad kept these items in his bottom left desk drawer and in a locked trunk with his initials on it.
 - d. This conduct would continue until Dad would carry her into her bedroom and proceed to commit the acts.
2. ***Search of the Kellerman home:*** Mrs. Kellerman refused to consent to a search, so agents obtained a search authorization from the base commander to search the on-base quarters. The agents found the following:
 - a. Semen stains in Vanessa's bedroom.
 - b. Pornographic tapes in the desk.

NCIS learned that BMC Kellerman has a locker at the command. They want your authorization to search that locker.

You contact BMC Kellerman's division officer and ask him to have Kellerman report to NCIS as soon as possible. When told to go to NCIS, BMC Kellerman asks, "Is this about my daughter? At least we only had sex when *she* wanted it. My OIC, LCDR Dent, never gave me a choice when she wanted to have sex with me. She just said I had to put out or else."

When he arrives at NCIS headquarters, Kellerman is read article 31 and counsel warnings. Kellerman agrees to waive his rights, but will not confess to molesting his daughter. The NCIS agent assures him that he is an excellent candidate for the Family Advocacy Program and will likely not have to face charges. BMC Kellerman then states that his daughter's allegations are true.

BMC Kellerman is referred to the Family Advocacy Program on base. He states that he would like the command to consider a treatment and rehabilitation program instead of disciplinary action. Pending further investigation, you order him to move into the barracks, to have no unsupervised contact with his wife or daughter, and to remain away from his family quarters unless escorted by an officer or CPO.

1. Is the evidence found in the search of the Kellerman home admissible at a court-martial?
2. Do you have probable cause to authorize a search of BMC Kellerman's locker at the command?
3. Is Kellerman's statement to the division officer admissible?
4. Does the comment about LCDR Dent raise any other issues? What action should you take on that?
5. Is Kellerman's confession to the NCIS agent admissible?
6. Is the order to move into the barracks and have no family contact valid? Does this action start the speedy trial clock?
7. What is this "Family Advocacy Program" Kellerman is asking about and how does it work?
8. If Kellerman is accepted into the Incest Offender Program, what effect will that have on pending disciplinary or administrative discharge action?
9. Are statements given to a Family Advocacy Counselor admissible at a later court-martial?

PROBLEM III

You are the Commanding Officer of Naval Station Brack. Commander Riggs, the XO, tells you that, while you were on leave last week, he had to act on a situation. YN2 Smith has been concerned with the "anti-gay attitude prevailing on the naval station" and wants to "help educate the public on homosexuality." YN2 Smith has mentioned to his LCPO that he intends to write articles for a newsletter published by persons who want the public to understand more about homosexuality. He intends to write these articles on the office computer during work hours, and justifies this because he feels his military peers need to understand more about homosexuality. Also, he wishes to organize a large "consciousness-raising rally" to "enlighten and educate some of the ignorant people in the community." Finally, he plans to speak to TV Channel 2 reporters (while wearing his uniform) about the gay bashing by military people since he heard that a ship tied up at the piers had allowed reporters to come aboard and interview sailors who were very negative about homosexuals.

The XO was informed of this and sent word to YN2 Smith that he may write articles for, and circulate, the newsletter on base; but instructed him not to work on the articles, or anything related, during work hours. The XO flatly refused to discuss the rally, and issued strict orders to YN2 Smith to neither stage such meetings nor make any "homosexual rights or awareness type speeches" on or off base or to talk to the press. On Friday, YN2 Smith addressed a poorly attended noontime rally outside the enlisted mess. The gathering did not disrupt normal activity at the mess nor did the contents of his remarks violate the UCMJ; however, several sailors did stop briefly to shout derisive comments—including one CWO2 Knight.

This morning, the first issue of YN2 Smith's newsletter was widely distributed on base. There is no indication that it was prepared on Navy time or with government materials. The newsletter contained an editorial written by YN2 Smith describing CWO2 Knight's actions at the rally. He refers to CWO2 Knight's conduct as being typical of his unenlightened attitude, referring to him as a "fossilized remnant of the ignorant times."

Consider:

1. Whether each of the XO's responses to YN2 Smith's requests were proper.
2. Whether he can prevent the distribution of the remaining copies of the newsletter.
3. Whether the individual copies of the newsletter, now in the hands of the members of the command, can be confiscated.

You, as the CO, decide to order YN2 Smith to make no further appearances in uniform at speeches, rallies, etc. YN2 Smith ignores your order and addresses an audience at a rally in a park outside the base gates and arranges for, and takes part in, an interview with the press. He was seen marching and carrying posters saying "stop gay bashing." You are really upset that he blatantly violated your order and you send him to court-martial for an orders violation.

4. Could you legally order YN2 Smith not to participate in the rally off base?
5. Could you legally order him not to talk to the press?
6. Assuming he is convicted at court-martial, but does not receive a Bad-Conduct Discharge, can you process him? On what basis would he be processed? Is it mandatory? What characterization of discharge is possible?
7. Would the two previous NJP's in his record—for unauthorized absence—affect your decision and options at all?

PROBLEM IV

You are on a patrol wing staff. One of the wing's P-3s crashed recently during a training mission. The pilot and navigator were injured in the crash; the copilot was killed. The wing commander directed Commander Jones to conduct an aircraft mishap investigation (AMI). The squadron commander ordered Commander Smith to conduct a JAGMAN investigation not requiring a hearing. The P-3's navigator gave Commander Jones a detailed written statement for the AMI. He said that the pilot was doing aileron rolls when he lost control of the aircraft and crashed. The pilot also admitted to Commander Jones that he may have been "a little careless," but declined to elaborate. The JAGMAN investigator was told a completely different story. The navigator informed Commander Smith that he was too busy with maps and charts to know what caused the crash. The pilot initially declined to talk to Commander Smith, but later changed his mind and blamed the crash on a complete failure of the hydraulic system.

Commander Smith happened to meet Commander Jones in the O'Club. Commander Smith complained that he had been "stonewalled" by the pilot and navigator and couldn't get to the bottom of the crash. Commander Jones told him about the navigator's statement, then offered him a "bootleg" copy of the AMIR. Commander Smith finished his report, concluded the crash resulted from "pilot error," and summarized the information obtained from the AMIR in an investigating officer's memorandum to the record as an enclosure to the JAGMAN investigation.

The wing commander had already reviewed the AMIR and had decided to convene a Field Naval Aviator Evaluation Board (FNAEB) to pull the pilot's wings. When he read the JAGMAN investigation, however, he decided to delay the FNAEB and hold NJP on the pilot for false swearing and dereliction of duty. Meanwhile, the copilot's widow has heard of the alleged hydraulic failure. She has hired a lawyer, who has made a FOIA request to you for the AMIR and the JAGMAN investigation.

1. Can the JAGMAN investigation be used as a valid evidentiary basis for imposing NJP?
2. Are there any problems with the JAGMAN investigation? If so, how can they be corrected?
3. How should the FOIA request be handled?

Just as the incident is about to "blow over," a television reporter from the local station calls the Chief of Staff to request an interview concerning the incident. The reporter states she has obtained a copy of the Navy's investigation via a FOIA request. The Chief of Staff asks you what he should do.

4. Whom would you contact before advising the Chief of Staff?
5. What advice would you give?

**MILITARY JUSTICE AND CIVIL LAW SEMINAR
FOR
SENIOR OFFICER COURSES**

PROBLEM I

Late one night, you receive a call from your Command Master Chief. He informs you that one of your sailors, SN Moore, has been arrested by civilian police for a possible hit-and-run, DUI, and possession of marijuana. When the police stopped him, they saw five (5) baggies of marijuana in the back seat of the car. They arrested Moore and read him *Miranda* warnings. He then confessed that he was using marijuana on his ship. He was not read article 31 warnings.

The police took Moore to the Naval Hospital for treatment. In response to questions from the military doctor, Moore makes the following statements:

- a. "I have had six (6) beers and smoked one (1) joint of marijuana."
- b. "I buy marijuana from my LPO, Petty Officer Crockett."

A routine blood test showed Moore's blood alcohol content was .15%. He also consented to a urinalysis test when the Navy doctor told him he could either give a sample now or the CO would order him to give a sample later. The urinalysis test was positive for THC.

While at the hospital, Moore was treated for a severe head injury apparently sustained as a result of the hit-and-run incident. He received outpatient treatment, but may have permanently blurred vision. After treatment, he was returned to the ship.

The civilian authorities later charged Moore with DUI and hit-and-run. He was convicted.

1. As the CO, you are considering your options for dealing with Moore. How do you resolve the following evidentiary issues?
 - a. Is the marijuana seized from Moore's car admissible at a court-martial?
 - b. Is the confession to the civilian police admissible?
 - c. Are the statements to the doctor admissible?
 - d. Are the results of the blood alcohol test admissible? What about the urinalysis test?

2. Considering the admissibility (or inadmissibility) of the evidence, answer the following:
 - a. As the CO, what are your options for dealing with Moore?
 - b. Does it make a difference that the offenses occurred off-base? Is there any jurisdiction problem?
 - c. Can we prosecute Moore for the same offenses for which he received the civilian conviction?
 - d. What are the "pros and cons" of the various disposition options?
3. After considering your options, you are undecided whether to take Moore to mast or a court-martial.
 - a. As the CO, can you impose pretrial restraint? Pretrial restraint?
 - b. If we place Moore under restraint, does this create any procedural problems?
 - c. If we place Moore in pretrial confinement, what actions do we need to take to do this legally?
 - d. What issues will the Initial Review Officer (IRO) consider in deciding whether or not to continue the confinement?
 - e. If the IRO releases Moore, what action can we take to reimpose confinement?
4. On the subject of the administrative implications of this incident, answer the following questions:
 - a. Do you need to order some kind of investigation of this? If so, what kind?
 - b. What is the likely LOD / Misconduct determination?
 - c. Would an administrative discharge be appropriate? If so, what kind?
 - d. If you send Moore to court and he does not receive a discharge, what options do you have?

5. As the CO, you are also concerned about dealing with Petty Officer Crockett if he is a drug dealer.
 - a. If there is a problem with the admissibility of Moore's statements against Moore, is there any problem using them against Crockett?
 - b. Do we have probable cause to search Crockett's locker?
 - c. Can we just do an inspection of all lockers?
 - d. What other alternatives are available to find out if Crockett is dealing drugs and get evidence admissible at court?
6. You decide to order an inspection of all the lockers in berthing. Your inspectors find heroin in Crockett's locker and marijuana in the lockers of Petty Officers Klinger and Burns.
 - a. Will the heroin be admissible against Crockett at court-martial? Will the marijuana be admissible against Klinger and Burns at court-martial?
 - b. Will any of the evidence be admissible against these sailors at mast?
 - c. Crockett has two years left on his enlistment. Klinger is scheduled for regular separation next week. Burns, just last week, was discharged early and immediately reenlisted for a reenlistment bonus. What action can we take against these sailors?
7. After much deliberation, you decide to take Moore to mast. Answer the following:
 - a. What are Moore's rights at mast?
 - b. He wants to talk to a lawyer. What should you do?
 - c. At mast, the only evidence you have is a copy of the police report on the civilian arrest, a copy of the lab report showing the substance in the baggies was marijuana, and the medical record entries describing the events at the Naval Hospital. Moore's personal representative (who also happens to be a lawyer) objects that this is all hearsay. He requests the arresting officer be present as a material witness. What should you do?
 - d. The personal representative states that the car Moore was driving was not his, but was borrowed, and the marijuana did not belong to Moore. How should you deal with this defense?

8. Not one to be fooled, you impose nonjudicial punishment. Moore wants to appeal.
- a. Three days after the mast, Moore informs you he intends to appeal and orally requests that all punishment be immediately stayed pending appeal. What should you do?
 - b. Ten days after the mast, Moore submits a written appeal alleging unjust and disproportionate punishment. He does not mention a stay of punishment. What should you do?
 - c. The appeal is denied. A week later you receive a letter in the mail from Petty Officer O'Mally, a recently discharged shipmate. O'Mally states that the car Moore was driving and the marijuana in the back seat belonged to him and not to Moore. He did not mention this before because he did not want to ruin his honorable discharge. What options do you have to grant clemency or take corrective action? What would you do?

ARTICLE 15 PUNISHMENT LIMITATIONS

Navy and Marine Corps

Imposed By	Imposed On	Bread & Water or DIRMATS (1)	Correctional Custody (2)	Arrest in Quarters (3)	Forfeitures (4)(5)	Reduction (4)(6)	Extra Duties (7)	Restriction (7)	Reprimand or Admonition (4)
Flag/Generals in Command	Officers	No	No	30 Days	1/2 of 1 Mo. for 2 Mos.	No	No	60 Days	Yes
	E-4 to E-9	No	No	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
	E-1 to E-3	3 Days	30 Days	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
O-6 to O-4	Officers	No	No	No	No	No	No	30 Days	Yes
	E-4 to E-9	No	No	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
	E-1 to E-3	3 Days	30 Days	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
O-3/Below and OICs (8)	Officers	No	No	No	No	No	No	15 Days (9)	Yes
	E-4 to E-9	No	No	No	7 Days	1 Grade	14 Days	14 days	Yes
	E-1 to E-3	3 days	7 Days	No	7 Days	1 Grade	14 days	14 days	Yes

- (1) May be awarded only if attached to / embarked in a vessel and may not be combined with other restraint punishment or extra duties
- (2) May not be combined with restriction or extra duties
- (3) May not be combined with restriction
- (4) May be imposed in addition to or in lieu of all other punishments
- (5) Shall be expressed in whole dollar amounts only
- (6) Navy CPOs (E-7 to E-9) may not be reduced at NJP; Marine Corps NCOs (E-6 to E-9) may not be reduced at NJP (Check directives relating to promotion)
- (7) Restriction and extra duties may be combined to run concurrently but the combination may not exceed the maximum possible for extra duties
- (8) OICs regardless of rank have NJP authority over enlisted personnel only
- (9) Restriction imposed upon commissioned and warrant officers may not exceed 15 days when imposed by a CO below the grade of MAJ or LCDR (JAGMAN 0111a)

ARTICLE 15 PUNISHMENT LIMITATIONS

Coast Guard

Imposed By	Imposed On	Bread & Water or DIMRATS	Correctional Custody (1)	Arrest in Quarters (2)	Forfeitures (3)(4)	Reduction (3)(5)	Extra Duties (6)(7)	Restriction (7)	Admonition (8)
Flag Officers in Command	Officers	No	No	30 Days	1/2 of 1 Mo. for 2 Mos.	No	No	60 Days	Yes
	E-4 to E-9	No	No	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
	E-1 to E-3	No	30 Days	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
O-4 to O-6	Officers	No	No	No	No	No	No	30 Days	Yes
	E-4 to E-9	No	No	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
	E-1 to E-3	No	30 Days	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
O-3/Below	Officers	No	No	No	No	No	No	15 Days (8)	Yes
	E-4 to E-9	No	No	No	7 Days	1 Grade	14 Days	14 Days	Yes
	E-1 to E-3	No	7 Days	No	7 Days	1 Grade	14 Days	14 Days	Yes
OJNC's (9)	Officers	No	No	No	No	No	No	No	No
	E-4 to E-9	No	No	No	3 Days	No	14 Days	14 days	No
	E-1 to E-3	No	No	No	3 Days	No	14 days	14 days	No

(1) May not be combined with restriction or extra duties

(2) May not be combined with restriction

(3) May be imposed in addition to or in lieu of all other punishments

(4) Shall be expressed in whole dollar amounts only

(5) USCG CPO's (E-7 to E-9) may not be reduced at NJP

(6) Restriction and extra duties may be combined to run concurrently but the combination may not exceed the maximum possible for extra duties

(7) May be imposed only upon personnel E-6 and below

(8) Restriction imposed upon commissioned and warrant officers may not exceed 15 days when imposed by a CO below the grade of LCDR (Art. 1-E-2b Military Justice Manual)

(9) OIC's regardless of rank have NJP authority over enlisted personnel only

COURTS-MARTIAL PROCEDURES

I. JURISDICTION

A. Subject matter

B. Personal

1. Active-duty servicemembers
2. Retirees
3. Fleet Reserve
4. Active-duty or drilling reservists
5. Civilians (limited wartime exception)

C. Retaining jurisdiction over EAOS / EAS

1. Voluntary extension
2. Involuntary extension - requires "official action"
 - a. Apprehension, notification as suspect
 - b. Pretrial restraint
 - c. Preferral of charges

II. CONSTITUTION CONVENING AND REFERRAL OF COURTS-MARTIAL

A. Constitution of courts-martial

1. MJ

- a. Qualifications
- b. Request for trial by MJ alone

2. Trial counsel (TC)

3. Defense counsel (DC)

- a. Detailed counsel
- b. Individual military counsel (IMC)
- c. Civilian counsel

4. Members

- a. Personally selected by CA
- b. Selection criteria (Art. 25(d), UCMJ)
 - (1) Best qualified by age, education, experience, training, length of service, and judicial temperament
 - (2) Senior to accused
- c. Minimum required
 - (1) GCM -- five
 - (2) SPCM -- three

- d. Request for enlisted members
 - (1) At least one third of panel
 - (2) From a unit other than accused's
 - (3) Senior to accused, if possible

B. Convening of courts-martial

1. Convening authority (CA)

- a. Nondelegable
- b. GCM
 - (1) Flag / general officers
 - (2) Certain overseas CO's
 - (3) Special designees of SECNAV
- c. SPCM
 - (1) CO's
 - (2) Special designees of SECNAV
- d. SCM
 - Any GCM or SPCMCA

2. Mechanics of convening a court-martial

- a. Court created by convening order

- b. Contents of the convening order
 - (1) Date
 - (2) Convening order number
 - (3) Authority to convene
 - (4) Type of court
 - (5) Names of members
 - (6) Personal signature of the CA

C. The referral process

- 1. The charge sheet
- 2. Contents of the charge sheet
 - a. Personal data of accused
 - b. Charges and specifications
 - c. Preferral
 - d. Notification to accused
 - e. Receipt of charges
 - f. Referral
 - g. Service on accused
- 3. The service day rule
 - a. SPCM – three days
 - b. GCM – five days

IV. TYPES OF COURTS-MARTIAL

A. SCM

1. Jurisdiction

- a. Enlisted personnel only
- b. Absolute right to refuse
- c. Limitations on punishments

2. Composition

- a. One officer
- b. Same armed force
- c. O-3 and above as policy

3. Procedural rules

- a. SCM is impartial officer acting at MJ / TC / DC
- b. The Mil.R.Evid. apply
- c. Burden of proof is beyond a reasonable doubt
- d. Accused can bring motions
- e. Accused enters plea of guilty / not guilty
- f. SCM sentences if accused found guilty

B. SPCM

- 1. Federal conviction
- 2. Jurisdictional limits on maximum punishment

C. GCM

1. Federal felony conviction
2. Maximum punishment based on offense(s)
3. Article 32 investigation
 - a. Required before referral of charges to GCM
 - b. May be waived by accused
 - c. Purposes
 - (1) To inquire into the truth of the charges
 - (2) To consider the form of the charges
 - (3) To make a disposition recommendation to the GCMCA
 - d. Players
 - (1) Investigating officer (IO)
 - (a) Commissioned officer
 - (b) O-4 or above or legal experience
 - (2) Government counsel
 - (a) Optional
 - (b) May serve as TC at GCM
 - (3) DC
 - (a) Detailed
 - (b) IMC
 - (c) Civilian

- e. Post-hearing options
 - (1) IO's report is **not** binding
 - (2) SPCMCA's options
 - (a) Dismiss
 - (b) NJP
 - (c) SCM
 - (d) SPCM
 - (e) Forward to GCMCA
 - (3) GCMCA's options
 - (a) Same as SPCMCA's options
 - (b) GCM

V. REVIEW OF COURTS-MARTIAL

A. Findings

- 1. CA **not** required to take any action
- 2. CA may disapprove findings

B. Sentence

- 1. CA must take action
- 2. Options
 - a. Approve all punishment as adjudged
 - b. Disapprove all / part of punishment

- c. Mitigate (reduce) a punishment
- d. Commute (change) a punishment
- e. Approve as adjudged, but suspend all / part of punishment

**PROBLEMS OF THE CONVENING AUTHORITY:
THE ACCUSER CONCEPT, UNLAWFUL COMMAND INFLUENCE,
PRETRIAL RESTRAINT, SPEEDY TRIAL, and PRETRIAL AGREEMENTS**

PART ONE: ACCUSER CONCEPT, UNLAWFUL COMMAND INFLUENCE

I. ACCUSER CONCEPT

A. General policy -- the CA cannot be an accuser

B. Types of accusers

1. Type I -- signs / swears to charges (preferral)
2. Type II -- directs preferral
3. Type III -- personal interest in prosecution

C. Junior accuser concept

1. Any CA subordinate to accuser
2. Accuser concept applied to all subordinate CA's

D. Consequences of accuser concept

1. May **not** convene court
2. May **not** refer charges
3. May **not** take CA's action
4. May **not** conduct judge advocate's review

II. UNLAWFUL COMMAND INFLUENCE

A. Broad policy

B. Definition -- any act tending to coerce or unlawfully influence the trial process by attempting to substitute the judgment of a superior for that of an independent decision of a court member, witness, judge, or reviewing authority

C. Possibilities

1. General informational lectures
2. Policy directives
3. Contact with members
4. Contact with witnesses

D. Balancing test

1. Who made contact
2. Who was contacted
3. When was contact made
4. Type of contact
5. Content of contact
6. Is there a reasonable likelihood of prejudice to the accused?

E. Consequences of unlawful command influence

1. Court-martial proceedings are a nullity
2. Start over with a CA senior in the chain of command

F. Remedies

- 1. Retract statement**
- 2. Correct misconception**
- 3. Appoint new members**
- 4. Change location of trial**

PART TWO: PRETRIAL RESTRAINT

I. GENERALLY

A. Types

1. Confinement
2. Arrest
3. Restriction
4. Conditions on liberty

B. Authority to impose

1. On officers
 - a. CO
 - b. Non-delegable
2. On enlisted
 - a. Any officer
 - b. CO may delegate to senior enlisted

C. Grounds for imposition

1. Reasonable belief that an offense triable by court-martial has been committed
2. Reasonable belief that the accused committed it
3. Reasonable belief that the degree of restraint imposed is necessary under the circumstances

D. Grounds for continued pretrial confinement (PTC)

-- Confinement is necessary because it is foreseeable that

- a. Accused will not appear for trial, *or*
- b. Accused will engage in further serious misconduct, *and*
- c. Lesser forms of restraint are inadequate

II. ADVICE TO ACCUSED UPON IMPOSITION OF PTC

A. Article 31(b) rights

B. Right to military counsel

- 1. Limited to the initial review officer (IRO) hearing
- 2. No right to IMC
- 3. Accused must request counsel

C. Right to civilian counsel

D. PTC review process

III. REVIEW OF PTC

A. 24 hours

- 1. Notification of accused's CO
- 2. Name, offense, and / or who ordered confinement

B. 48 hours

1. Although R.C.M. 305 authorizes 72 hours for the CO's review, recent case law now requires a review within 48 hours
2. CO reviews decision to continue confinement
3. Written memorandum documenting decision
4. Memo to IRO within 7 days (signed on the date the decision was made)

C. 7 calendar days

1. IRO - neutral and detached officer
2. Hearing to consider continued confinement
3. IRO options
 - a. Orders confinement continued
 - (1) Accused may request a second IRO review
 - (2) Accused may request review by MJ
 - b. Orders accused released
 - (1) CO may restrict accused
 - (2) CO may reconfine ~~if~~ accused commits another UCMJ offense

IV. CREDIT FOR PTC

A. *Allen* credit -- day-for-day

B. 305(k) credit

1. For violation of procedural rules
2. Additional day for every day the rules were violated

C. *Suzuki* credit

1. For punishment of the accused before trial
2. MJ may order additional days above two-for-one

D. *Mason* credit

- Day-for-day credit for pretrial restriction tantamount to confinement

PART THREE: SPEEDY TRIAL

I. APPLICATION

- A. To all types of courts-martial -- SCM, SPCM, and GCM
- B. Remedy for violation is dismissal of the charges

II. ACCOUNTABILITY

A. Starting the speedy trial clock

- 1. Preferral of charges
- 2. Imposition of pretrial restraint (restriction or confinement)

B. Length of the clock

- 1. R.C.M. 707 applies a 120-day clock for both the pretrial restrained (confinement or restriction) and unrestrained accused
- 2. *United States v. Kossman*
 - a. The C.M.A. abolished R.C.M. 707's 120-day limit only for pretrial confinees and set a new standard of "reasonable diligence" on the government to bring a confined accused to trial
 - b. "Reasonable diligence" is decided on a case-by-case basis by the MJ
 - c. R.C.M. 707's 120-day clock still applies to both unrestrained and those in pretrial restriction
 - d. Remedy = dismissal of all charges ***with*** prejudice
 - e. "Restriction tantamount to confinement" might trigger the "*Kossman*" standard vice the R.C.M. 707 120-day clock

PART FOUR: PRETRIAL AGREEMENTS

I. SCOPE OF A PRETRIAL AGREEMENT (PTA)

A. An accused may agree to

1. Plead guilty
2. Waive article 32 hearing
3. Waive members
4. Waive sentencing witnesses
5. A specific trial date
6. Stipulate to facts or testimony
7. Testify against others
8. Make restitution to a victim
9. Conform behavior to conditions of probation

B. A CA may agree to

1. A lower forum court-martial
2. Drop or not proceed with certain charges
3. Protection on sentence provisions

II. NEGOTIATION PROCEDURES

A. Negotiations may originate with: accused, DC, TC, SJA, CA

- B. Proposals must be forwarded to the CA
- C. Counteroffers permissible
- D. Agreement must be in writing
 - 1. Must contain all aspects of agreement
 - 2. Authority to sign may be delegated

III. WITHDRAWAL FROM THE PTA

- A. By the CA
 - 1. Anytime before performance by the accused begins
 - 2. If accused fails to fulfill a material condition
 - 3. If MJ finds disagreement as to a material term
 - 4. If findings are set aside on appeal
- B. By the accused -- anytime; but, after findings are announced, the accused can withdraw only with permission of the MJ

EXECUTIVE OFFICER'S INQUIRY (XOI)

1. Obtain the report chit, all written statements, and all physical and documentary evidence relating to the alleged offense from the legal officer. (You may want to consult with the legal officer prior to XOI).
2. Call in the accused and all reasonably available witnesses who can testify about either the alleged offense or extenuating (E), mitigating (M), or aggravating (A) circumstances concerning the alleged offense.
3. Inform the accused that the CO is contemplating the imposition of NJP and that this informal hearing -- the XOI -- is part of the NJP process.
4. Describe the specific offense(s) to the accused, including the article of the UCMJ that was allegedly violated.
5. If applicable, advise the accused of the right to refuse NJP. (Accused can never refuse XOI.)
6. Advise the accused (s)he does not have to make a statement regarding the offense(s) and that any statement made by him / her can be used as evidence against him / her at XOI and NJP.

(Note: If it is reasonably foreseeable that the accused's statements during the XOI may be considered for introduction in a later court-martial, an explanation of rights and a waiver—in the format of appendix A-1-m of the *JAG Manual*—will have to be obtained from the accused during the hearing, before proceeding further.

7. Ask the accused what happened.
 - a. If (s)he admits guilt, the accused should be allowed to articulate any E & M.

-- Ask the witnesses to testify on matters of E & M or A.

- b. **If (s)he denies guilt, the accused should be asked for his / her version of the facts.**
- Ask the witnesses to testify about the alleged offense.
 - Inform the accused of any other evidence against him / her concerning the alleged offense (i.e. written statements and / or physical and documentary evidence).
 - Allow for rebuttal, as appropriate.
 - Ask the witnesses to testify on matters of E, M, and A.
8. **Ask the accused if (s)he would like to make a final statement.**
9. **If the CO has given you the power to dismiss cases and you feel dismissal is warranted, either dismiss the case outright or dismiss it with a warning. (Such action does not preclude later NJP for the same offense.) If the case is dismissed, you may impose nonpunitive measures. If you feel NJP is warranted, indicate this on the report and return all materials to the legal officer who will take appropriate action.**

SAMPLE

NAVY APPEAL PACKAGE

OF

NONJUDICIAL PUNISHMENT

5800
27 Jun 19cy

From: RMSN John P. Williams, USN, 434-52-9113
To: Commander, Cruiser-Destroyer Flotilla FIVE
Via: Commanding Officer, USS BENSON (DD-895)

Subj: APPEAL FROM NONJUDICIAL PUNISHMENT

Ref: (a) Art. 15(e), UCMJ
(b) Part V, para. 7, MCM, 1984
(c) JAGMAN, § 0116

Encl: (1) (Statements of other persons of facts or matters in mitigation which
support the appeal)
(2) " " "
(3) " " "

1. As provided by references (a) through (c), appeal is herewith submitted from nonjudicial punishment imposed upon me on 25 June 19cy by CDR S. D. Dunn, Commanding Officer, USS BENSON (DD-895) as follows:

a. Offenses

Charge: Violation of Article 134, UCMJ

Specification: In that RMSN John P. Williams, USN, on active duty, did, on board USS BENSON (DD-895), on or about 16 June 19cy, unlawfully carry a concealed weapon, to wit: a switchblade knife.

b. Punishment: Forfeiture of \$100.00 pay per month for 2 months

c. Grounds of Appeal

Punishment for the Charge is unjust because I, in fact, did not know there was a knife in my pants pocket. The clothes were borrowed.

/s/ **John P. Williams**
JOHN P. WILLIAMS

S A M P L E

5800
Ser /
29 Jun 19cy

FIRST ENDORSEMENT on RMSN John P. Williams, USN, 434-52-9113 ltr 5800
of 27 Jun 19cy

From: Commanding Officer, USS BENSON (DD-895)

To: Commander, Cruiser-Destroyer Flotilla FIVE

Subj: APPEAL FROM PUNISHMENT ICO RMSN JOHN P. WILLIAMS, USN,
434-52-9113

Encl: (4) NAVPERS 1626/7 with attachments thereto

(5) SR Accused's Service Record (Record of Performance)

1. Forwarded for action. Enclosures (4) and (5) are attached in amplification of the appeal.

2. (Statement of facts or circumstances or other matters which are not contained in appellant's letter of appeal and which would aid the command acting on appeal in arriving at a proper determination. This should not be argumentative nor in the form of a "defense" to the matters stated in appellant's letter of appeal.)

/s/ **S. D. Dunn**
S. D. DUNN

See JAGMAN, § 0116c

REPORT AND DISPOSITION OF OFFENSE(S)
NAVPERS 1626/7 (REV. 8-81) S/N 0106-LF-016-2636

To: Commanding Officer, USS BENSON (DD-895) Date of Report: 16 June 19CY					
1. I hereby report the following named person for the offense(s) noted:					
NAME OF ACCUSED WILLIAMS, John P.		SERIAL NO. NA	SSN 434-52-9113	RATE/GRADE RMSN	BR. & CLASS USN
PLACE OF OFFENSE(S) Quarterdeck, USS BENSON (DD-895)		DATE OF OFFENSE(S) 16 June 19CY			
DETAILS OF OFFENSE(S) (Refer by article of UCMJ, if known. If unauthorized absence, give following info: time and date of commencement, whether over leave or liberty, time and date of apprehension or surrender and arrival on board, loss of ID card and/or liberty card, etc.): Violation of Art. 134, UCMJ. In that RMSN John P. Williams, USN, on active duty, did, on board USS BENSON (DD 895), on or about 16 June 19CY, unlawfully carry a concealed weapon, to wit: a switchblade knife.					
NAME OF WITNESS	RATE/GRADE	DIV/DEPT	NAME OF WITNESS	RATE/GRADE	DIV/DEPT
Harold B. Johnson	CPO	OPS			
Robert A. Hudson	WO1	ENG			
OMC, USN (Rate/Grade/Title of person submitting report)			/s/ Harold B. Johnson (Signature of person submitting report)		
I have been informed of the nature of the accusation(s) against me. I understand I do not have to answer any questions or make any statement regarding the offense(s) of which I am accused or suspected. However, I understand any statement made or questions answered by me may be used as evidence against me in event of trial by court-martial (Article 31, UCMJ). Witness: /s/ H. O. Kay, Legal Officer Acknowledged: /s/ John P. Williams (Signature) (Signature of Accused)					
PRE-MAST RESTRAINT	☐ PRE TRIAL CONFINEMENT				
	☐ RESTRICTED: You are restricted to the limits of _____ in lieu of arrest by order of the CO. Until your status as a restricted person is terminated by the CO, you may not leave the restricted limits except with the express permission of the CO or XO. You have been informed of the times and places which you are required to muster.				
	☒ NO RESTRICTIONS				
_____ (Signature and title of person imposing restraint)			_____ (Signature of Accused)		
INFORMATION CONCERNING ACCUSED					
CURRENT ENL. DATE 24 May 19CY	EXPIRATION CURRENT ENL. DATE 23 May 19CY+2	TOTAL ACTIVE NAVAL SERVICE 2yr 1mo	TOTAL SERVICE ON BOARD 10 mos	EDUCATION HS	GCT 57
AGE 19	MARITAL STATUS Single		NO. DEPENDENTS none		CONTRIBUTION TO FAMILY OR QTRS ALLOWANCE (Amount required by law) none
			PAY PER MONTH (Including sea or foreign duty pay, if any) \$965.40		
RECORD OF PREVIOUS OFFENSE(S) (Date, type, action taken, etc. Nonjudicial punishment incidents are to be included.)					
None					

PRELIMINARY INQUIRY REPORT					
From: Commanding Officer To: <u>ENS David S. Williams USNR</u>			Date: <u>20 June 19CY</u>		
1. Transmitted herewith for preliminary inquiry and report by you, including, if appropriate in the interest of justice and discipline, the preferring of such charges as appear to you to be sustained by expected evidence.					
REMARKS OF DIVISION OFFICER (Performance of duty, etc.) EN Williams is a good worker who is learning his rate thru on-the-job training. He needs occasional supervision, but works willingly when assigned a job to do. I consider him petty officer material. This is the first time he's been in trouble. /s/ LT G.V. Jones					
NAME OF WITNESS	RATE/GRADE	DIV/DEPT	NAME OF WITNESS	RATE/GRADE	DIV/DEPT
Harold B. Johnson	CPO	OPS			
Robert A. Hudson	WO1	ENG			
RECOMMENDATION AS TO DISPOSITION: ☐ REFER TO COURT MARTIAL FOR TRIAL OF ATTACHED CHARGES (Complete Charge Sheet (DD Form 458) through Page 2)					
☒ DISPOSE OF CASE AT MAST ☐ NO PUNITIVE ACTION NECESSARY OR DESIRABLE ☐ OTHER					
COMMENT (Include data regarding availability of witnesses, summary of expected evidence, conflicts in evidence, if expected. Attach statements of witnesses, documentary evidence such as a service record entries is UA cases, items of real evidence, etc.) EN Williams was discovered to be carrying a switchblade with a 5" blade by QMC Johnson when he was the JOOD on 16 June. EN Williams was about to depart the ship on liberty at approx. 1630, when QMC Johnson noticed a bulge in his front pocket. The knife was discovered when Williams was ordered to empty his pockets. All witnesses are available. WO1 Hudson observed the incident. /s/ D. S. White, ENS, USNR (Signature of Investigation Officer)					
ACTION OF EXECUTIVE OFFICER					
☐ DISMISSED ☒ REFERRED TO CAPTAIN'S MAST			SIGNATURE OF EXECUTIVE OFFICER /s/ R. D. Line, LCDR, USN		
RIGHT TO DEMAND TRIAL BY COURT-MARTIAL (Not applicable to persons attached to or embarked in a vessel)					
I understand that nonjudicial punishment may not be imposed on me if, before the imposition of such punishment, I demand in lieu thereof trial by court-martial. I therefore (do) (do not) demand trial by court-martial.					
WITNESS NA			SIGNATURE OF ACCUSED NA		
ACTION OF COMMANDING OFFICER					
☐ DISMISSED ☐ DISMISSED WITH WARNING (Not considered NJP) ☐ ADMONITION: ORAL/IN WRITING ☐ REPRIMAND: ORAL/IN WRITING ☐ REST. TO _____ FOR _____ DAYS ☐ REST. TO _____ FOR _____ DAYS WITH SUSP. FROM DUTY ☒ FORFEITURE: TO FORFEIT \$100.00 PAY PER MO. FOR 2 MO(S) ☒ DETENTION: TO HAVE \$ _____ PAY PER MEX X XXX X XX X X X X MEX X XXX X XXX X X MEX X ☐ CONF. ON _____ 1, 2, OR 3 DAYS ☐ CORRECTIONAL CUSTODY FOR _____ DAYS ☐ REDUCTION TO NEXT INFERIOR PAY GRADE ☐ REDUCTION TO PAY GRADE OF _____ ☐ EXTRA DUTIES FOR _____ DAYS ☐ PUNISHMENT SUSPENDED FOR _____ ☐ ART. 22 INVESTIGATION ☐ RECOMMENDED FOR TRIAL BY GCM ☐ AWARDED EPCM ☐ AWARDED SCM					
DATE OF MAST: 25 June 19CY	DATE ACCUSED INFORMED OF ABOVE ACTION 25 June 19CY	SIGNATURE OF COMMANDING OFFICER /s/ S. D. Dunn, CDR, USN			
It has been explained to me and I understand that if I feel this imposition of nonjudicial punishment to be unjust or disproportionate to the offenses charged against me, I have the right to immediately appeal my conviction to the next higher authority within XX X XXXX. 5 days.					
SIGNATURE OF ACCUSED /s/ J. P. Williams			DATE: 25 Jun 19CY	I have explained the above rights of appeal to the accused. SIGNATURE OF WITNESS /s/ H.O. Ray DATE 25 Jun 19CY	
FINAL ADMINISTRATIVE ACTION					
APPEAL SUBMITTED BY ACCUSED DATED: 27 Jun 19CY FORWARDED FOR DECISION ON 28 Jun 19CY			FINAL RESULT OF APPEAL DENIED		
APPROPRIATE ENTRIES MADE IN SERVICE RECORD AND PAY ACCOUNT ADJUSTED WHERE REQUIRED DATE: 26 Jun 19CY /s/ Log Off (Initials)			FILED IN UNIT PUNISHMENT BOOK: DATE: 26 Jun 19CY /s/ Log Off (Initials)		

(CAPTAIN'S MAST) (OFFICE HOURS)

ACCUSED'S NOTIFICATION AND ELECTION OF RIGHTS
ACCUSED ATTACHED TO OR EMBARKED IN A VESSEL
(See JAGMAN 0109)

Notification and election of rights concerning the contemplated imposition of nonjudicial punishment in the case of RMSN John P. Williams, USN, SSN 434-52-9113, assigned or attached to USS BENSON (DD 895).

NOTIFICATION

1. In accordance with the requirements of paragraph 4 of Part V, MCM, 1984, you are hereby notified that the commanding officer is considering imposing nonjudicial punishment on you because of the following alleged offenses:

Art. 134: Unlawfully carrying switchblade onboard, 16 Jun 19CY

(Note: Here describe the offenses, including the UCMJ article(s) allegedly violated.)

2. The allegations against you are based on the following information: **Statements of QMC Johnson and WO1 Hudson which say you possess the knife when departing the ship at approx. 1630 on 16 Jun 19CY.**

(Note: Here provide a brief summary of that information.)

3. You may request a personal appearance before the commanding officer or you may waive this right.

a. Personal appearance waived. If you waive your right to appear personally before the commanding officer, you will have the right to submit any written matters you desire for the commanding officer's consideration in determining whether or not you committed the offenses alleged, and, if so, in determining an appropriate punishment. You are hereby informed that you have the right to remain silent and that anything you do submit for consideration may be used against you in a trial by court-martial.

b. Personal appearance requested. If you exercise your right to appear personally before the commanding officer, you shall be entitled to the following rights at the proceeding:

(1) To be informed of your rights under Article 31(b), UCMJ;

(2) To be informed of the information against you relating to the offenses alleged;

(3) To be accompanied by a spokesperson provided or arranged for by you. A spokesperson is not entitled to travel or similar expenses, and the proceedings will not be delayed to permit the presence of a spokesperson. The spokesperson may speak on your behalf, but may not question witnesses except as the commanding officer may permit as a matter of discretion. The spokesperson need not be a lawyer;

(4) To be permitted to examine documents or physical objects against you that the commanding officer has examined in the case and on which the commanding officer intends to rely in deciding whether and how much nonjudicial punishment to impose;

(5) To present matters in defense, extenuation, and mitigation orally, in writing, or both;

(6) To have witnesses attend the proceeding, including those that may be against you, if their statements will be relevant and they are reasonably available. A witness is not reasonably available if the witness requires reimbursement by the United States for any cost incurred in appearing, cannot appear without unduly delaying the proceedings, or if a military witness, cannot be excused from other important duties; and

A-1-b(1)

(7) To have the proceedings open to the public unless the commanding officer determines that the proceedings should be closed for good cause. However, this does not require that special arrangements be made to facilitate access to the proceeding.

ELECTION OF RIGHTS

4. Knowing and understanding all of my rights as set forth in paragraphs 1 through 3 above, my desires are as follows:

a. Personal appearance. (Check one)

JPW X I request a personal appearance before the commanding officer.

 I waive a personal appearance. (Check one)

 I do not desire to submit any written matters for consideration.

 Written matters are attached.

(Note: The accused's waiver of personal appearance does not preclude the commanding officer from notifying the accused, in person, of the punishment imposed.)

b. Elections at personal appearance. (Check one or more)

JPW X I request that the following witnesses be present at my nonjudicial punishment proceeding:

RMSN Quigley

JPW X I request that my nonjudicial punishment proceeding be open to the public.

/s/ H. O. Kay
(Signature of witness)

H. O. KAY, ENS, USNR
(Name of witness)

/s/ J. P. Williams
(Signature of accused)

J. P. Williams, RMSN, USN
(Name of accused)

A-1-b(2)

SUSPECT'S RIGHTS ACKNOWLEDGEMENT / STATEMENT
(See JAGMAN 0170)

FULL NAME (ACCUSED/SUSPECT)	SSN	RATE/RANK	SERVICE (BRANCH)
John P. Williams	434-52-9113	RMSN	USN
ACTIVITY/UNIT			DATE OF BIRTH
USS BENSON (DD 895)			22 May 19xx
NAME (INTERVIEWER)	SSN	RATE/RANK	SERVICE (BRANCH)
D. S. Willis	000-00-0000	ENS	USNR
ORGANIZATION		BILLET	
USS BENSON (DD 895)		PIO	
LOCATION OF INTERVIEW		TIME	DATE
USS BENSON (DD 895)		1000	19 Jun 19cy

RIGHTS

I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, he warned me that:

(1) I am suspected of having committed the following offense(s); **Unlawfully carrying a concealed weapon, to wit: a switch blade knife** **JPW**

(2) I have the right to remain silent; **JPW**

(3) Any statement I do make may be used as evidence against me in trial by court-martial; **JPW**

(4) I have the right to consult with lawyer counsel prior to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both; and **JPW**

(5) I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview, ... **JPW**

A-1-m(1)

WAIVER OF RIGHTS

I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that, ... **JPW**

(1) I expressly desire to waive my right to remain silent; **JPW**

(2) I expressly desire to make a statement; **JPW**

(3) I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to any questioning; **JPW**

(4) I expressly do not desire to have such a lawyer present with me during this interview; and **JPW**

(5) This acknowledgement and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me. **JPW**

SIGNATURE (ACCUSED / SUSPECT)	TIME	DATE
/s/ John P. Williams	1015	19 Jun cy
SIGNATURE (INTERVIEWER)	TIME	DATE
/s/ David S. Willis	1015	19 Jun cy
SIGNATURE (WITNESS)	TIME	DATE
attached hereto and		

A-1-m(2)

The statement ~~XXXXX XXXXXXXX XX XXXX XXXX XXX XXXXXXXXXX~~
~~XXXXXXXXXX XXX XX XXXXX XXX~~ signed by me), is made freely and voluntarily by
me, and without any promises or threats having been made to me or pressure or
coercion of any kind having been used against me.

/s/ John P. Williams
SIGNATURE (ACCUSED/SUSPECT)

A-1-m(3)

18 June 19cy

I, Harold B. Johnson, QMC, USN, have been asked by ENS D. S. Willis to make the following statement:

On 16 July 19cy, I was the JOOD on board USS BENSON (DD 897). At approximately 1630, I was on the quarterdeck and RMSN John P. Williams passed me in civilian clothes. He had on a tight pair of double-knit pants and I noticed an oblong bulge in the right-hand front pocket. I suspected that he might have a knife in his pocket. I know that a number of the crew had bought knives when we were in the Med.

I told Williams to stop and asked him what he had in his pocket. He started to stutter and so I told him to empty his right-hand pocket. He did and he handed me a switch-blade knife. I asked him what he planned to do with the knife and he said he did not intend to use it but just wanted to have it with him in case of trouble. I then took the knife and Williams to the OOD, WO Hudson. He told me to put Williams on report. I turned the knife which had a 5-inch blade over to the legal officer, LTJG Kay.

*Harold B. Johnson
QMC, USN*

*WITNESS: David S. Willis
ENS, USNR*

[HAND-WRITTEN]

18 June 19cy

I, Robert A. Hudson, WO1, USN, have been asked by ENS D. S. Willis to make the following statement:

On 16 June 19cy, I was the OOD on board USS BENSON. My JOOD was Chief Harold B. Johnson. At approximately 1645, Chief Johnson brought RMSN Williams to me and showed me a switchblade knife which he said he had found on Williams. I asked Williams if he had anything to say and he said he had no intention of using the knife but was only carrying it to protect himself.

I told Chief Johnson to put Williams on report and instructed Williams to report to the legal office the next morning after quarters.

*Robert A. Hudson
WO1, USN*

*WITNESS: David S. Willis
ENS, USNR*

[HAND-WRITTEN]

19 June 19cy

I, John P. Williams, RMSN, USN, having been advised of my rights by Ensign David S. Willis, which I have acknowledged on the attached rights form, make the following statement freely and voluntarily, understanding my rights to remain silent and to consult a lawyer.

I bought the knife that Chief Johnson took from me during the ship's last Med deployment. I bought it for my own protection. I never intended to use it on anyone. I did not know that just carrying a knife around was a crime.

When Chief Johnson stopped me I had intended to mail the knife home to my father and have him keep it for me to use when we go fishing. It was a good knife and I did not want to just throw it away.

John P. Williams

WITNESS: */s/ David S. Willis*
 DAVID S. WILLIS
 ENS, USNR

[HAND-WRITTEN]

**(CAPTAIN'S MAST) (OFFICE HOURS)
ACCUSED'S ACKNOWLEDGEMENT OF APPEAL RIGHTS**

**(CAPTAIN'S MAST) (OFFICE HOURS) ACCUSED'S
ACKNOWLEDGEMENT OF APPEALS RIGHTS**

I, RMSN John P. Williams, SSN 434-52-9113,
(Name and grade of accused)

assigned or attached to USS BENSON (DD 895), have been informed of the following facts concerning my rights of appeal as a result of (captain's mast) (office hours) held on 25 June 19CY:

a. I have the right to appeal to (specify to whom the appeal should be addressed).

b. My appeal must be submitted within a reasonable time. Five days after the punishment is imposed is normally considered a reasonable time, in the absence of unusual circumstances. Any appeal submitted thereafter may be rejected as not timely. If there are unusual circumstances which I believe will make it extremely difficult or not practical to submit an appeal within the 5 day period, I should immediately advise the officer imposing punishment of such circumstances, and request an appropriate extension of time in which to file my appeal.

c. The appeal must be in writing.

d. There are only two grounds for appeal; that is:

(1) The punishment was unjust, or

(2) The punishment was disproportionate to the offense(s) for which it was imposed.

e. If the punishment imposed included reduction from the pay grade of E-4 or above, or was in excess of: arrest in quarters for 7 days, correctional custody for 7 days, forfeiture of 7 days' pay, extra duties for 14 days, restriction for 14 days, or detention of 14 days' pay, then the appeal must be referred to a military lawyer for consideration and advice before action is taken on my appeal.

/s/ John P. Williams
(Signature of Accused and Date)

25 June 19cy

/s/ I. M. Witness
(Signature of Witness and Date)

25 June 19cy

A-1-f

5800
Ser /
1 Jul 19cy

From: Commander, Cruiser-Destroyer Flotilla FIVE
To: RMSN John P. Williams, USN, 434-52-9113
Via: Commanding Officer, USS BENSON (DD-895)

Subj: APPEAL FROM PUNISHMENT ICO RMSN JOHN P. WILLIAMS

1. Returned, appeal (granted) (denied).
2. Your appeal was referred to a lawyer for consideration and advice prior to my action.
3. (Statement of reasons for action on appeal, and remarks of admonition and exhortation, if desired.)
4. You are directed to return this appeal and accompanying papers to your immediate commanding officer for file with the record of your case.

/s/ **M. J. Hughes**
M. J. HUGHES

5800
Ser /
6 Jul 19cy

FIRST ENDORSEMENT on Commander, Cruiser-Destroyer Flotilla FIVE ltr 5800
Ser / of 1 Jul 19cy

From: Commanding Officer, USS BENSON (DD-895)
To: RMSN John P. Williams, USN, 434-52-9113

Subj: APPEAL FROM PUNISHMENT ICO RMSN JOHN P. WILLIAMS

1. Returned for delivery.

/s/ **S. D. Dunn**
S. D. DUNN

5800
Ser /
6 Jul 19cy

SECOND ENDORSEMENT on Commander, Cruiser-Destroyer Flotilla FIVE ltr 5800
Ser / of 1 Jul 19cy

From: RMSN John P. Williams, USN, 434-52-9113
To: Commanding Officer, USS BENSON (DD-895)

Subj: APPEAL FROM NONJUDICIAL PUNISHMENT

1. I acknowledge receipt, and have noted the contents, of the first endorsement on my appeal from nonjudicial punishment.
2. The appeal and all attached papers are returned for file with the record of my case.

/s/ *John P. Williams*
JOHN P. WILLIAMS

SAMPLE

MARINE CORPS APPEAL PACKAGE

OF

NONJUDICIAL PUNISHMENT

UNITED STATES MARINE CORPS
Schools Company, Schools Battalion
Marine Corps Base
Camp Pendleton, California 92055

5812
21 July 19cy

From: Private John Q. Adams 456 64 5080/0311 USMC
To: Commanding Officer, Schools Battalion, Marine Corps Base, Camp Pendleton,
CA 92055
Via: Commanding Officer, Schools Company, Schools Battalion, Marine Corps
Base, Camp Pendleton, CA 92055

Subj: APPEAL OF NONJUDICIAL PUNISHMENT

Ref: (a) MCM, 1984

1. In accordance with reference (a), I am appealing the punishment awarded me at company office hours on 18 July 19cy.

2. Because this was my first offense, I feel that the punishment handed down to me at office hours was too hard and disproportionate to the offense that I committed. Additionally, I feel that my commanding officer did not consider my state of mind at the time I went UA.

/s/ *John Q. Adams*
JOHN Q. ADAMS

UNITED STATES MARINE CORPS
Schools Company, Schools Battalion
Marine Corps Base
Camp Pendleton, California 92055

5812
23 Jul 19cy

FIRST ENDORSEMENT on Private John Q. Adams 456 64 5080/0311 USMC ltr 5812
of 21 July 19cy

From: Commanding Officer
To: Commanding Officer, Schools Battalion, Marine Corps Base, Camp
Pendleton, CA 92055

Subj: APPEAL OF NONJUDICIAL PUNISHMENT

Ref: (a) JAGMAN
(b) LEGADMINMAN

Encl: (1) Unit Punishment Book
(2) Summary of Hearing
(3) Acknowledgment of Rights Forms

1. In accordance with the provisions of references (a) and (b), the following information setting forth a summary recitation of facts of the office hours' proceedings and a summary of the assertion of facts made by Private Adams are submitted:

a. Summary of recitation of facts

(1) Private Adams appeared at Company Office Hours on 18 July 19cy for the following offense:

Article 86, UA 1300, 5 July 19cy to 2344, 15 July 19cy, from Schools Company, Schools Battalion, Marine Corps Base, Camp Pendleton, California 92055.

(2) The offense was read to Private Adams and then discussed with him. He was asked at least twice if he understood the offense, and he replied that he did.

(3) Private Adams' rights were explained to him and thereafter he signed item 6 on enclosure (1).

Subj: APPEAL OF NONJUDICIAL PUNISHMENT

(4) Private Adams was asked what he pled to the offense; he pleaded guilty and was found guilty.

(5) Private Adams was awarded reduction to Private, restriction to the limits of Schools Company, Schools Battalion, for seven days, without suspension from duty, and forfeiture of \$25.00 per month for one month.

b. Summary assertion of facts made by Private Adams:

The findings of guilty are appealed because he feels the punishment is too harsh.

c. Basic record data

(1) Summary of military offenses:

None.

(2) Performance, Proficiency, and Conduct marks are 4.3 and 4.5, respectively.

2. In summary, Private Adams was found guilty of the offense against the Uniform Code of Military Justice. Subject-named Marine was aware of regulations pertaining to unauthorized absence and the steps he should have taken to obtain leave. Private Adams' age, length of service, SRB, and matters presented in extenuation and mitigation were also considered in arriving at an appropriate punishment. A brief summarization of the office hours is contained on the attached sheet of enclosure (1).

/s/ **Andrew Jackson**
ANDREW JACKSON
Major USMC

Copy to:
Private Adams

Note: When a Marine makes an appeal, the original UPB is forwarded as an enclosure with the commanding officer's endorsement. A duplicate is retained by the commanding officer pending final disposition. The duplicate copy may be used as the Marine's copy upon completion of the appeal.

UNIT PUNISHMENT BOOK (5812)
 NAVMC 10132 (Rev. 10-81) (8-75 EDITION WILL BE USED)
 SN 0000-00-002-1305 U/I: PD (100 sheets per pad)

← Staple Additional pages here.

1. See Chapter 2, Marine Corps Manual for Legal Administration, MCO P5800.8
2. Form is prepared for each accused enlisted person referred to Commanding Officer's Office Hours.
3. Reverse side may be used to summarize proceedings as required by MCO P5800.8.

1. INDIVIDUAL (Last name, first name, middle initial) ADAMS, John Q.		2. GRADE PFC, E-2	3. SSN 456 64 5080
4. UNIT ScolsCo, ScolsBn, MCB, CamPen			
5. OFFENSES (To include specific circumstances and the date and place of commission of the offense.) Art. 86. UA 1300, 5 Jul cy - 2344, 15 Jul cy, fr ScolsCo, ScolsBn, MCB, CamPen.			
6. I have been advised of and understand my rights under Article 31, UCMJ. I also have been advised of and understand my right to demand trial by court-martial in lieu of non-judicial punishment. I (do) (do not) demand trial and (will) (will not) accept non-judicial punishment subject to my right of appeal. I further certify that I (have) (have not) been given the opportunity to consult with a military lawyer, provided at no expense to me, prior to my decision to accept non-judicial punishment. (Date) <u>18 Jul cy</u> (Signature of accused) <u>/s/ John Q. Adams</u>			
7. The accused has been afforded these rights under Article 31, UCMJ, and the right to demand trial by court-martial in lieu of non-judicial punishment. (Date) <u>18 Jul cy</u> (Signature of immediate CO of accused) <u>/s/ Andrew Jackson</u>			
8. FINAL DISPOSITION TAKEN AND DATE Reduction to Pvt, restriction to the limits of ScolsCo, ScolsBn, for 7 days, without suspension from duty, and forfeiture of \$25.00 per month for 1 month. 18 Jul cy.			
9. SUSPENSION OF EXECUTION OF PUNISHMENT, IF ANY. None.			
10. FINAL DISPOSITION TAKEN BY (Name, grade, title) Andrew JACKSON, Major, USMC, Commanding Officer			
11. Upon consideration of the facts and circumstances surrounding (this offense) (these offenses) and upon further consideration of the needs of military discipline in this command, I have determined the offense(s) involved herein to be minor and properly punishable under Article 15, UCMJ, such punishment to be that indicated in 8 and 9. (Signature of CO who took disposition in 8 and 9) <u>/s/ Andrew Jackson</u>		12. DATE OF NOTICE TO ACCUSED OF FINAL DISPOSITION TAKEN. 18 Jul cy	
13. The accused has been advised of the right of appeal. <u>18 Jul cy</u> <u>/s/ Andrew Jackson</u> (Date) (Signature of CO who took final action in 11)	14. Having been advised of and understanding my right of appeal, at this time I (intend) (do not intend) to file an appeal. <u>18 Jul cy</u> <u>/s/ John Q. Adams</u> (Date) (Signature of accused)	15. DATE OF APPEAL, IF ANY. 21 Jul cy	
16. DECISION ON APPEAL (IF APPEAL IS MADE), DATE THEREOF, AND SIGNATURE OF CO WHO MADE DECISION. Appeal granted. See 2d encl on the basic ltr for decision. <u>24 Jul cy</u> <u>/s/ Martin Van Buren</u> (Date) (Signature of CO making decision on appeal)		17. DATE OF NOTICE TO ACCUSED OF DECISION ON APPEAL. 24 Jul cy	
18. REMARKS 18 Jul - Intent to appeal indicated. Permission of Rest. for 7 days stayed.		19. Final administrative action, as appropriate, has been completed. <u>TBP</u>	

18 July 19cy

PVT John Q. Adams 456-64-5080 USMC

Summary of evidence presented.

The accused admitted to the offense contained in item 5. Accordingly, the accused was found guilty of the single offense.

Extenuating or mitigating factor considered.

PVT Adams stated, relating to the JA, that he had received a phone call from his brother stating that his dog was seriously ill and not expected to live. PVT Adams stated that he knows it was wrong to leave without permission and that he was sorry for his actions.

Based on recommendation of his First Sergeant, Platoon Sergeant, and his past record, the punishment appearing in block 8 was imposed.

[HAND-WRITTEN]

(CAPTAIN'S MAST) (OFFICE HOURS)
ACCUSED'S NOTIFICATION AND ELECTION OF RIGHTS
ACCUSED NOT ATTACHED TO OR EMBARKED IN A VESSEL
RECORD MAY BE USED IN AGGRAVATION IN EVENT OF LATER
COURT-MARTIAL (See JAGMAN 0109)

Notification and election of rights concerning the contemplated imposition of nonjudicial punishment in the case of Pvt John Q. Adams, SSN 456-64-5080, assigned or attached to ScholsCo. ScholsBn. MCB. CamPen.

NOTIFICATION

1. In accordance with the requirements of paragraph 4 of Part V, MCM, 1984, you are hereby notified that the commanding officer is considering imposing nonjudicial punishment on you because of the following alleged offenses:

Art. 86 UA 1300 5 Jul 19cy - 2344 15 Jul 19cy from ScholsCo, ScolsBn, MCB, CamPen.

2. The allegations against you are based on the following information:

Statement of Pvt John Q. Adams USMC dtd 16 Jul 19cy acknowledges he was absent during period alleged and that his absence was unauthorized.

3. You have the right to refuse imposition of nonjudicial punishment. If you refuse nonjudicial punishment, charges could be referred for trial by court-martial by summary, special, or general court-martial. If charges are referred to trial by summary court-martial, you may not be tried by summary court-martial over your objection. If charges are referred to a special or general court-martial you will have the right to be represented by counsel. The maximum punishment that could be imposed if you accept nonjudicial punishment is:

4. If you decide to accept nonjudicial punishment, you may request a personal appearance before the commanding officer or you may waive this right.

a. **Personal appearance waived.** If you waive your right to appear personally before the commanding officer, you will have the right to submit any written matters you desire for the commanding officer's consideration in determining whether or not you committed the offenses alleged, and, if so, in determining an appropriate punishment. You are hereby informed that you have the right to remain silent and that anything you do submit for consideration may be used against you in a trial by court-martial.

A-1-d(1)

b. **Personal appearance requested.** If you exercise your right to appear personally before the commanding officer, you shall be entitled to the following rights at the proceeding:

- (1) To be informed of your rights under Article 31(b), UCMJ;
- (2) To be informed of the information against you relating to the offenses alleged;
- (3) To be accompanied by a spokesperson provided or arranged for by you. A spokesperson is not entitled to travel or similar expenses, and the proceedings will not be delayed to permit the presence of a spokesperson. The spokesperson may speak on your behalf, but may not question witnesses except as the commanding officer may permit as a matter of discretion. The spokesperson need not be a lawyer;
- (4) To be permitted to examine documents or physical objects against you that the commanding officer has examined in the case and on which the commanding officer intends to rely in deciding whether and how much nonjudicial punishment to impose;

A-1-d(1)

(5) To present matters in defense, extenuation, and mitigation orally, in writing, or both;

(6) To have witnesses attend the proceeding, including those that may be against you, if their statements will be relevant and they are reasonably available. A witness is not reasonably available if the witness requires reimbursement by the United States for any cost incurred in appearing, cannot appear without unduly delaying the proceedings, or if a military witness, cannot be excused from other important duties; and

(7) To have the proceedings open to the public unless the commanding officer determines that the proceedings should be closed for good cause. However, this does not require that special arrangements be made to facilitate access to the proceeding.

5. In order to help you decide whether or not to demand trial by court-martial or to exercise any of the rights explained above should you decide to accept nonjudicial punishment, you may obtain the advice of a lawyer prior to any decision. If you wish to talk to a lawyer, a military lawyer will be made available to you, either in person or by telephone, free of charge, or you may obtain advice from a civilian lawyer at your own expense.

ELECTION OF RIGHTS

6. Knowing and understanding all of my rights as set forth in paragraphs 1 through 5 above, my desires are as follows:

a. Lawyer. (Check one or more, as applicable)

☐ I wish to talk to a military lawyer before completing the remainder of this form.

☐ I wish to talk to a civilian lawyer before completing the remainder of this form.

☒ I hereby voluntarily, knowingly, and intelligently give up my right to talk to a lawyer.

/s/ L. M. Witness
(Signature of witness)

/s/ John Q. Adams
(Signature of accused)

17 July 19cy
(Date)

(Note: If the accused wishes to talk to a lawyer, the remainder of this form shall not be completed until the accused has been given a reasonable opportunity to do so.)

☐ I talked to _____, a lawyer, on _____.

(Signature of witness)

N/A
(Signature of accused)

(Date)

A-1-d(2)

b. Right to refuse nonjudicial punishment. (Check one)

☐ I refuse nonjudicial punishment.

☒ I accept nonjudicial punishment.

(Note: If the accused does not accept nonjudicial punishment, the matter should be submitted to the commanding officer for disposition.)

c. Personal appearance. (Check one)

☒ I request a personal appearance before the commanding officer.

☐ I waive a personal appearance. (Check one)

☒ I do not desire to submit any written matters for consideration.

☐ Written matters are attached.

(Note: The accused's waiver of personal appearance does not preclude the commanding officer from notifying the accused, in person, of the punishment imposed.)

d. Elections at personal appearance. (Check one or more)

☐ I request that the following witnesses be present at my nonjudicial punishment proceeding:

NONE

☒ I request that my nonjudicial punishment proceeding be open to the public.

/s/ T. M. Witness
(Signature of witness)

17 July 19cy
(Name of witness)

/s/ John Q. Adams
(Signature of accused)

(Name of accused)

A-1-d(3)

**(CAPTAIN'S MAST) (OFFICE HOURS)
ACCUSED'S ACKNOWLEDGEMENT OF APPEAL RIGHTS**

**(CAPTAIN'S MAST) (OFFICE HOURS) ACCUSED'S ACKNOWLEDGEMENT
OF APPEALS RIGHTS**

I, Pvt John Q. Adams, SSN 456 64 5080,
(Name and grade of accused)

assigned or attached to ScolsCo, ScolsBn, MCB CamPen, have been informed of the following facts concerning my rights of appeal as a result of (captain's mast) (office hours) held on 18 Jul 10cy:

a. I have the right to appeal to (specify to whom the appeal should be addressed).

b. My appeal must be submitted within a reasonable time. Five days after the punishment is imposed is normally considered a reasonable time, in the absence of unusual circumstances. Any appeal submitted thereafter may be rejected as not timely. If there are unusual circumstances which I believe will make it extremely difficult or not practical to submit an appeal within the 5 day period, I should immediately advise the officer imposing punishment of such circumstances, and request an appropriate extension of time in which to file my appeal.

c. The appeal must be in writing.

d. There are only two grounds for appeal; that is:

(1) The punishment was unjust, or

(2) The punishment was disproportionate to the offense(s) for which it was imposed.

e. If the punishment imposed included reduction from the pay grade of E-4 or above, or was in excess of: arrest in quarters for 7 days, correctional custody for 7 days, forfeiture of 7 days' pay, extra duties for 14 days, restriction for 14 days, or detention of 14 days' pay, then the appeal must be referred to a military lawyer for consideration and advice before action is taken on my appeal.

/s/ JOHN Q. ADAMS
(Signature of Accused and Date)
18 Jul cy

/s/ I. M. WITNESS
(Signature of Witness and Date)
18 Jul cy

A-1-f

UNITED STATES MARINE CORPS
Schools Battalion, Marine Corps Base
Camp Pendleton, California 92055

5812
Ser /
23 Jul 19cy

From: Commanding Officer
To: Staff Judge Advocate, Marine Corps Base, Camp Pendleton, CA 92055
Subj: REVIEW AND ADVICE OF NJP APPEAL IN THE CASE OF PRIVATE
JOHN Q. ADAMS 456 64 5080/0311 USMC
Ref: (a) MCM, 1984
Encl: (1) NJP Appeal Package

1. In accordance with reference (a), enclosure (1) is forwarded for review and advice by a judge advocate.
2. It is noted that the Commanding Officer, Schools Company, Schools Battalion, has the authority to promote up to and including the grade of E-3.

/s/ **Martin Van Buren**
MARTIN VAN BUREN

UNITED STATES MARINE CORPS
Marine Corps Base
Camp Pendleton, California 92055

5812
24 Jul 19cy

MEMORANDUM ENDORSEMENT

From: Staff Judge Advocate
To: Commanding Officer, Schools Battalion, Marine Corps Base, Camp Pendleton,
CA 92055

Subj: REVIEW AND ADVICE OF NJP APPEAL IN THE CASE OF PRIVATE
JOHN Q. ADAMS 456 64 5080/0311 USMC

1. The basic correspondence has been reviewed by a judge advocate. The proceedings are considered to be correct in law and fact, and the punishment awarded is not considered to be unjust or disproportionate to the offense committed.
2. Rejection of the appeal is recommended.

/s/ **William H. Harrison**
WILLIAM H. HARRISON

Note: Once the battalion commander has received a reply from a judge advocate, his letter requesting review and advice and the reply are *not* provided to the Marine. This correspondence is retained by the battalion.

UNITED STATES MARINE CORPS
Schools Battalion, Marine Corps Base
Camp Pendleton, California 92055

5812
Ser /
24 Jul 19cy

From: Commanding Officer
To: Private John Q. Adams, 456 64 5080/0311 USMC, Schools Company, Schools Battalion, Marine Corps Base, Camp Pendleton, CA 92055
Via: Commanding Officer, Schools Company, Schools Battalion, Marine Corps Base, Camp Pendleton, CA 92055

Subj: APPEAL OF NONJUDICIAL PUNISHMENT

1. Returned.

2. Your case has been reviewed by a judge advocate. The proceedings in this case are considered to be correct in law and fact, and the punishment is not considered to be unjust or disproportionate to the offense committed. However, as an act of clemency, only so much of the punishment as provides for reduction to private, restriction to the limits of Schools Company, Schools Battalion, for five days, without suspension from duty, and forfeiture of \$25.00 per month for one month will take effect. That portion of the punishment providing for forfeiture of \$25.00 per month for one month and restriction to the limits of Schools Company, Schools Battalion, for five days, without suspension from duty, is suspended for six months and, unless sooner vacated, will be remitted at that time.

/s/ *Martin Van Buren*
MARTIN VAN BUREN

UNITED STATES MARINE CORPS
Schools Company, Schools Battalion
Marine Corps Base
Camp Pendleton, California 92055

5812
Ser /
25 Jul 19cy

FIRST ENDORSEMENT on Commanding Officer, Schools Battalion ltr 5812 Ser / of
24 Jul 19cy

From: Commanding Officer

To: Private John Q. Adams, 456 64 5080/0311 USMC

Subj: APPEAL OF NONJUDICIAL PUNISHMENT

1. Returned.
2. Action has been taken on your appeal, and your attention is invited to the Commanding Officer, Schools Battalion ltr 5812 of 24 Jul 19cy.
3. Inasmuch as the original correspondence is to be filed in the Unit Punishment Book, you are provided with a copy of your appeal.

/s/ **Andrew Jackson**
ANDREW JACKSON

Copy to:
Private Adams

Note: Once the commanding officer has received the decision, any necessary administrative action should be taken. The Marine is provided with a **copy** of the entire appeal package, **excluding** the battalion commander's letter to the SJA and the memorandum endorsement from the SJA.

ADMINISTRATIVE REMARKS**E-32**

NAVPERS 1070/613 (Rev. 1-76)

S/N 0106-LF-010-6990

See BUPERSMAN 5030420

SHIP OR STATION

PSD, NETC, NEWPORT, RI

5 Jun CY: I, YN3 Clyde E. Ferndock, USN, signed JAG Manual Appendix A-1-d, prior to my captain's mast which was held on 4 June 19CY.

I talked to a lawyer prior to deciding whether to demand trial by court-martial in lieu of captain's mast. In completing the remainder of the form, I did not demand trial by court-martial in lieu of captain's mast.

Clyde E. Ferndock

CLYDE E. FERNDOCK

YN3, USN

I. M. Perfect

I. M. PERFECT, PNC, USN

Personnel Officer

By direction of the OIC

NOTE: This page 1070/613 entry represents documentation that the accused had talked with an attorney prior to accepting NJP.

THIS ENTRY IS TO BE USED ONLY WHEN THE ACCUSED IS NOT EMBARKED IN A VESSEL AND WHERE THE RECORD MAY BE USED IN AGGRAVATION IN THE EVENT OF A LATER COURT-MARTIAL.

NAME (Last, First, Middle FERNDOCK, CLYDE ELROD	SSN 000-00-0000	BRANCH AND CLASS USN
--	--------------------	-------------------------

OFFENSES AND PUNISHMENTS

NO PUNISHMENT

(Note: If a hearing of NJP results in no punishment imposed, the entry below will not be retained as a matter of record. If other offenses and punishments are recorded on page 12, the removal of the entry will be accomplished by drawing a thin-inked line through the entry. The lined-out entry must be initialed by the officer signing.)

CY0105 I certify that I was given the opportunity to consult with a lawyer, provided by the Government at no cost to me, in regard to the NJP held on CY0105. I understand that I have the right to refuse that NJP, but I choose not to exercise that right. I was not represented by a civilian/military lawyer. I further understand that acceptance of NJP does not preclude my command from taking other administrative action against me.

B. A. Glutz CY0105
(Signature of accused and date)

CY0110 I certify that I was given the opportunity to consult with a lawyer, provided by the Government at no cost to me, in regard to the NJP held on CY0110. I understand that I have the right to refuse that NJP, but I choose not to exercise that right. I was not represented by a civilian/military lawyer. I further understand that acceptance of NJP does not preclude my command from taking other administrative action against me.

B. A. Glutz CY0110
(Signature of accused and date)

CY0110 MarBks, NavSta, Pearl Harbor, HI, Viol Art. 89, UCMJ: Disrespect to CAPT B. H. BOKONY, USMC, on CY0101 by saying to him, "Take your own damn messages." Awd Red to E-2, forf \$30.00 pay per month for 2 months and 30 days extra duties. Eff date of Red is CY0110. Awd at COP on CY0110. Rpt on UD 016-CY dtd CY0110. Not appealed.

O. North LtCol USMC
(Signature of Commanding Officer)

CY0315 MarBks, NavSta, Pearl Harbor, HI: Suspension of NJP imposed and suspended on CY0207 for a period of 6 months is hereby vacated and the punishment is ordered executed this date. Reported on UD 035-CY dtd CY0315.

O. North LtCol USMC
(Signature of Commanding Officer)

GOOD CONDUCT MEDAL PERIOD COMMENCES:

ORGANIZED MARINE CORPS RESERVE MEDAL PERIOD
COMMENCES:

GLUTZ, BUFORD A. 374 52 4897

NAME (Last) (First) (Middle) SSN

NAVJ C 118 (12) (REV. 8-67) SN: 0000-00-000-2803 U/I: SN OFFENSES AND PUNISHMENTS (1070)
Previous editions are obsolete.

ALMAR 097/87

Because of recent litigation in Federal court involving an attack on the Navy for issuing a discharge under other than honorable conditions based, at least in part, on prior nonjudicial punishments, the Commandant of the Marine Corps has directed that the *Booker* advice and service record book entry reflecting compliance with *Booker* contain the following language:

DATE. I CERTIFY THAT I HAVE BEEN GIVEN THE OPPORTUNITY TO CONSULT WITH A LAWYER, PROVIDED BY THE GOVERNMENT AT NO COST TO ME, IN REGARD TO A PENDING (NJP/SCM) FOR VIOLATION OF ARTICLE(S) (ART. NO.(S)) OF THE UCMJ. I UNDERSTAND THAT I HAVE THE RIGHT TO REFUSE THAT (NJP/SCM): I (DO) (DO NOT) CHOOSE TO EXERCISE THAT RIGHT. I FURTHER UNDERSTAND THAT ACCEPTANCE OF (NJP/SCM) DOES NOT PRECLUDE MY COMMAND FROM TAKING OTHER ADVERSE ADMINISTRATIVE ACTION AGAINST ME. I (WILL) (WILL NOT) BE REPRESENTED BY CIVILIAN/MILITARY LAWYER.
SIGNATURE OF ACCUSED.

This change has been incorporated into the IRAM at para. 4015.2a(2).

CAPTAIN'S MAST / OFFICE HOUR GUIDE

(**Note:** The formalities prior to and at the termination of the captain's mast or office hours normally are determined by custom and tradition in the Navy and Marine Corps.)

CO: You are suspected of committing the following violation(s) of the Uniform Code of Military Justice:

You do not have to make any statement regarding the offense(s) of which you are accused or suspected and any statement made by you may be used as evidence against you.

(**Note:** If it is reasonably foreseeable that the accused's statements during the captain's mast/office hours proceedings may be considered for introduction in evidence in a later court-martial, an explanation of rights and a waiver, in the format of Appendix A-1-m of the JAG Manual, will have to be obtained from the accused, during the hearing, before proceeding further.)

CO: You are advised that a captain's mast/office hours is not a trial and that a determination of misconduct on your part is not a conviction by a court. Further, you are advised that the formal rules of evidence used in trials by court-martial do not apply at captain's mast/office hours.

CO: I have a statement signed by you acknowledging that you were fully advised of your legal rights pertaining at this hearing. (**Note:** This statement will be either JAGMAN Appendix A-1-b, A-1-c, or A-1-d.)

CO: Do you understand this statement and do you understand the rights explained therein?

ACC: _____.

CO: Do you have any questions about them or do you wish to make any requests?

ACC: _____.

_____.

CO: [To witness (if any are present)] What can you tell me about the accused's involvement in (these) (this) offense(s)?

WIT: _____.

OR

A-1-e(1)

CO: [To witness(es) who has/have previously provided written statement(s) when accused and CO both have copies of the statement(s).] Do you adopt your statement(s) as your testimony here today?

WIT: _____.

CO: Do you have anything to add to or change in your statement?

WIT: _____
_____.

CO: (To accused) Would you like me to ask any further questions of this witness?

ACC: _____.

CO: (After all witnesses are questioned) I have before me the following (documents) (statements) (other physical evidence) that will be considered by me. Have you been given the opportunity to examine them?

ACC: _____.

CO: (If the answer is "no," offer the accused the opportunity to examine the evidence.)

CO: Is there anything that you wish to offer? (If the answer is "yes," permit the accused the opportunity to call his witnesses, make a personal statement in defense, and present other evidence.)

ACC: _____.

CO: Are there any other witnesses you would like to call or any other evidence you would like to present?

ACC: _____.

CO: Is there anything that you wish to offer that would lessen the seriousness of (this) (these) offense(s) or mitigate them?

ACC: _____.

CO: (To witness) What can you tell me about (accused's name) performance of duty?

ACC: _____.

CO: (To accused) Is there anything else you would like to present?

ACC: _____.

A-1-e(2)

CO: I impose the following punishment:

_____.

My decision to impose this punishment was based on my determination that you committed the minor offenses of:

_____.

You are advised that you have the right to appeal this punishment to (identify the superior authority by name and organizational title.) Your appeal must be made within a reasonable time -- which is normally 5 days. Following this hearing, _____ will advise you more fully of this right to appeal. Do you understand?

ACC: _____.

CO: You are dismissed.

A-1-e(3)

**Requirements of *United States v. Booker*, 5 M.J. 238 (C.M.A. 1977)
5 M.J. 246 (C.M.A. 1978)**

***Nonjudicial punishment* (NJP)**

1. The *Booker* requirements do not apply to NJP received by members who are attached to or embarked in ships and who, therefore, have no right to refuse NJP.
2. Shore-based members who are facing NJP may be given the opportunity to consult with a lawyer prior to deciding whether to accept NJP. The purpose of this consultation is to assist the accused in deciding whether to accept NJP.
3. If the accused makes a knowing, intelligent, and voluntary waiver of that opportunity to consult with counsel, that waiver should be in writing. If the accused consults with counsel, that facts should be recorded in writing.
4. Waiver of the right to refuse NJP must also be in writing.
5. Failure to afford the member the opportunity to consult with independent counsel before accepting NJP renders the NJP inadmissible under R.C.M. 1011(b)(2) at a subsequent court-martial and, in USMC cases, at subsequent administrative proceedings.

***Summary court-martial* (SCM)**

1. An accused may be given the opportunity to consult with an independent counsel prior to accepting trial by SCM. The purpose of this consultation is to assist the accused in deciding whether to accept an SCM and whether to request representation by counsel at the SCM.
2. If the accused makes a knowing, intelligent, and voluntary waiver of that opportunity to consult with counsel, that waiver should be in writing. If the accused consults with counsel, that fact should be recorded in writing.
3. The accused's consent to trial by SCM must also be in writing.
4. If the accused's consults with an independent counsel prior to accepting trial by SCM or if he waives that right, the record of that SCM may then be introduced at a subsequent court-martial in accordance with R.C.M. 1001(b)(2).
5. For USMC cases, failure to comply with the above requirements will prevent the use of a record of SCM by the government at any subsequent *administrative* proceeding.

RECORD OF TRIAL BY SUMMARY COURT-MARTIAL

NAME OF ACCUSED (<i>Last, First, MI</i>) SMITH, John J.		b. GRADE OR RANK SN, USN	c. UNIT / ORGANIZATION OF ACCUSED USS OLDSHIP (DD-111)	d. SSN 123-45-6789
2a. NAME OF CA (<i>Last, First, MI</i>) HIGH, Hang M.		b. RANK CDR, USN	c. POSITION Commanding Officer	d. ORGANIZATION OF CA USS OLDSHIP (DD-111)
3a. NAME OF SUMMARY COURT-MARTIAL (<i>If SCM was accuser, so state.</i>) NEW, Brand S.		b. RANK LT, USN	c. UNIT OR ORGANIZATION OF SUMMARY COURT-MARTIAL USS OLDSHIP (DD-111)	
(Check appropriate answer)				
				YES
				NO
4.	At a preliminary proceeding held on <u>1 January 19CY</u> , the summary court-martial gave the accused a copy of the charge sheet.			X
5.	At that preliminary proceeding the summary court-martial informed the accused of the following:			
a.	The fact that the charge(s) had been referred to a summary court-martial for trial and the date of referral.			X
b.	The identity of the convening authority.			X
c.	The name(s) of the accuser(s).			X
d.	The general nature of the charge(s).			X
e.	The accused's right to object to trial by summary court-martial.			X
f.	The accused's right to inspect the allied papers and immediately available personnel records.			X
g.	The names of the witnesses who could be called to testify and any documents or physical evidence which the summary court-martial expected to introduce into evidence.			X
h.	The accused's right to cross-examine witnesses and have the summary court-martial cross-examine on behalf of the accused.			X
i.	The accused's right to call witnesses and produce evidence with the assistance of the summary court-martial if necessary.			X
j.	That during the trial the summary court-martial would not consider any matters, including statements previously made by the accused to the summary courts-martial, unless admitted in accordance with the Military Rules of Evidence.			X
k.	The accused's right to testify on the merits or to remain silent, with the assurance that no adverse inference would be drawn by the summary court-martial from such silence.			X
l.	If any findings of guilty were announced, the accused's right to remain silent, to make an unsworn statement, oral or written or both, and to testify and to introduce evidence in extenuation or mitigation.			X
m.	The maximum sentence which could be adjudged if the accused was found guilty of the offense(s) alleged.			X
n.	The accused's right to plead guilty or not guilty.			X
6.	At the trial proceeding held on <u>14 January 19CY</u> , the accused, after being given a reasonable time to decide, ☐ did ☒ did not object to trial by summary court-martial. (Note: The SCM may ask the accused to initial this entry at the time the election is made.)			JJS (Initial)
7a.	The accused ☐ was ☒ was not represented by counsel. (If the accused was represented by counsel, complete b, c, and d below.)			
b.	NAME OF COUNSEL (<i>Last, First, MI</i>) N/A			c. RANK (If any) N/A
d.	COUNSEL QUALIFICATIONS N/A			

8. The accused was arraigned on the attached charge(s) and specification(s). The accused's pleas and the findings reached are shown below:

CHARGE(S) AND SPECIFICATION(S)	PLEA(S)	FINDINGS (including any exceptions and substitutions)
Charge I: Specification 1: Specification 2:	Guilty Guilty Not Guilty	Guilty Guilty Not Guilty
Charge II: Specification 1:	Not Guilty Not Guilty	Guilty Guilty, except for the figure "\$74.00," substituting therefor the figure "\$25.00." Of the excepted figure, not guilty. Of the substituted figure, guilty.
Specification 2:	Not Guilty	Not Guilty

9. The following sentence was adjudged: To be confined for 15 days; to forfeit \$150.00 pay per month for the period of 1 month; and to be reduced to the grade of paygrade E-1.

10. The accused was advised of the right to request that confinement be deferred. (Note: When confinement is adjudged.)

☒ YES

☐ NO

11. The accused was advised of the right to submit written matters to the convening authority, including a request for clemency, and of the right to request review by the Judge Advocate General.

☒ YES

☐ NO

12. AUTHENTICATION

Brand S. New

BRAND S. NEW, LT, USN

Signature of Summary Court-Martial

14 January 19CY

Date

13. ACTION BY CONVENING AUTHORITY

Approved and ordered executed. The Navy Brig, Naval Education and Training Center, Newport, Rhode Island, is designated the place of confinement.

The record of trial is forwarded to the Staff Judge Advocate, Commander, Naval Education and Training Center, Newport, Rhode Island, for review under Article 64(a), UCMJ.

HANG M. HIGH

Typed Name of Convening Authority

COMMANDING OFFICER

Position of Convening Authority

CDR, USN

Rank

/s/

22 JANUARY 19CY

LETTERHEAD

15 Feb 19CY

SPECIAL COURT-MARTIAL CONVENING ORDER 1-CY

A special court-martial is hereby convened. It may proceed at the Naval Justice School, Newport, Rhode Island, to try such persons as may properly be brought before it. The court will be constituted as follows:

MEMBERS

Lieutenant Commander John C. Peterson, U.S. Navy
Lieutenant Edward M. Wiley, U.S. Navy
Lieutenant Junior Grade Thomas M. Johnson, U.S. Naval Reserve
Ensign Jerry F. Samuels, U.S. Naval Reserve
Ensign John B. Bryant, U.S. Navy

/s/
ROBERT A. GASTON
Captain, U.S. Navy
Commanding Officer
Naval Justice School
Newport, Rhode Island

DEPARTMENT OF THE NAVY
Naval Surface Group, Middle Pacific
Pearl Harbor, Hawaii 96860

5 Feb CY

GENERAL COURT-MARTIAL AMENDING ORDER 1A-CY

Chief Operations Specialist CWO3 Jeffrey T. Campbell, U.S. Navy, is detailed as a member of the general court-martial convened by order number 1-CY, this command, dated 29 January 19CY, vice Lieutenant Anthony R. Patrilli, U.S. Navy, relieved.

RICHARD J. ANDERSON
Rear Admiral, U.S. Navy
Commander, Naval Surface Group
Middle Pacific
Pearl Harbor, Hawaii

Note to student:

This type of amending order is used to permanently remove an officer member from a previously established General or Special Court-Martial and to replace that member with a new officer member.

CHARGE SHEET					
I. PERSONAL DATA					
1. NAME OF ACCUSED (<i>Last, First, MI</i>)			2. SSN		3. GRADE OR RANK
4. PAY GRADE			5. UNIT OR ORGANIZATION		
6. CURRENT SERVICE			7. TERM		
8. INITIAL DATE			9. DATE(S) IMPOSED		
10. PAY PER MONTH			11. NATURE OF RESTRAINT OF ACCUSED		
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL			
II. CHARGES AND SPECIFICATIONS					
12. CHARGE: VIOLATION OF THE UCMJ, ARTICLE SPECIFICATION:					
III. PREFERRAL					
13a. NAME OF ACCUSER (<i>Last, First, MI</i>)			b. GRADE		c. ORGANIZATION OF ACCUSER
d. SIGNATURE OF ACCUSER				e. DATE	
AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this ____ day of _____, 19__, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief. _____ <i>Typed Name of Officer</i> _____ <i>Grade</i> _____ <i>Signature</i> _____ <i>Organization of Officer</i> _____ <i>Official Capacity to Administer Oath</i> (See R.C.M. 307(b) - must be commissioned officer)					

12.
On _____, 19 ____, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)

Typed Name of Immediate Commander

Organization of Immediate Commander

Grade

Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.
The sworn charges were received at _____ hours, _____ 19 ____ at _____
Designation of Command or

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE ¹ _____

Typed Name of Officer

Official Capacity of Officer Signing

Grade

Signature

V. REFERRAL : SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE

Referred for trial to the _____ court-martial convened by _____

_____, _____ 19 ____, subject to the following instructions: ² _____

By _____ of _____
Command or Order

Typed Name of Officer

Official Capacity of Officer Signing

Grade

Signature

15.
On _____, 19 ____, I (caused to be) served a copy herof on (each of) the above named accused.

Typed Name of Trial Counsel

Grade or Rank of Trial Counsel

Signature

FOOTNOTES: 1 - When an appropriate commander signs personally, inapplicable words are stricken
2 - See R.C.M. 601(e) concerning instructions. If none, so state.

NAVPERs 1640/4 (Rev. 7-82) S/N 0106-LF-016-4023

II-84

COURT-MARTIAL PUNISHMENTS (R.C.M. 1003)

PUNISHMENT	FORUM		
	SCM	SPCM	GCM
DEATH (1)	No	No	Yes
SEPARATION			
Dismissal (2)(3)	No	No	Yes (Only Officers)
Dishonorable Discharge (DD) (2)(4)	No	No	Yes (All Enlisted)
Bad-Conduct Discharge (BCD) (2)	No	Yes (E-1 to E-9)	Yes (E-1 to E-9)
CONFINEMENT (2)	Yes 30 Days Maximum (E-1 to E-4)	Yes 6 Months Maximum (All Enlisted)	Yes Maximum Authorized (All Grades)
BREAD AND WATER (2)(5)(6)	Yes 3 Days Maximum (E-1 to E-4)	Probably No	Probably No
RESTRICTION (2)(7)	Yes 60 Days Maximum	Yes 60 Days Maximum	Yes 60 Days Maximum
HARD LABOR W/O CONFINEMENT (2)(7)(8)	Yes 45 Days Maximum (E-1 to E-4)	Yes 90 Days Maximum; 45 Days For Each Month Of Authorized Confinement (All Enlisted)	Yes 90 Days Maximum; 45 Days For Each Month Of Authorized Confinement (All Enlisted)
FORFEITURE (2)(9)	Yes Maximum 2/3's Pay Per Month For 1 Month (All Grades)	Yes Maximum 2/3's Pay Per Month For 6 Months (All Grades)	Yes Maximum Authorized (All Grades)
FINE (2)(10)	Yes May Not Exceed Amount Authorized For Forfeitures (All Grades)	Yes May Not Exceed Amount Authorized For Forfeitures (All Grades)	Yes No Limit (All Grades)
PUNISHMENT AFFECTING GRADE (2)			
Reduction in Rate	Yes To E-1 (E-1 to E-4) 1 Paygrade (E-5 to E-9)	Yes To E-1 (All Enlisted)	Yes To E-1 (All Enlisted)
Loss of Numbers	No	Yes (Only Officers)	Yes (Only Officers)
PUNITIVE LETTER (Reprimand) (2)	Yes (All Members)	Yes (All Members)	Yes (All Members)

Notes to chart on preceding page:

- (1) Death includes a DD or Dismissal, as appropriate. Confinement is a necessary incident of death, but not part of it.
- (2) Can be combined with any other lawful punishment.
- (3) Permissible for any offense regardless of the listed maximum authorized punishment.
- (4) For W-1s, permissible for any offense regardless of the listed maximum authorized punishment.
- (5) Accused must be attached to or embarked in a vessel.
- (6) Shall be treated as 2 days' confinement when combined with confinement, hard labor without confinement, or restriction [R.C.M. 1003b(9)].
- (7) Combined restriction and hard labor without confinement shall be executed concurrently.
- (8) When combined with confinement, the two punishments may not exceed the maximum allowable confinement at the equivalency rate of 1.5 months' hard labor w/o confinement for 1 month confinement.
- (9) State both the amount of forfeiture per month and the number of months it is to run—state amount per month in whole dollars.
- (10) At SCMs and SPCMs: when combined with forfeitures, combined amount may not exceed amount authorized for forfeitures.

GCM POST-TRIAL CHECKLIST

ICO _____ (JAG / COMNAVLEGSVCCOMINST 5814.1 / 20)

- ___ Prepare report of results of trial form, if required; attach to ROT. JAGMAN, § 0149, A-1-j.
- ___ Art. 32 appointing order inserted in ROT. R.C.M. 1103(b)(3).
 - ___ Report of investigation (DD Form 457).
 - ___ Art. 34 advice.
 - ___ Waiver of Art. 32.
- ___ Convening order inserted in ROT. R.C.M. 1103(b)(2)(D).
 - ___ Modifications inserted, if any.
- ___ Charge sheet inserted in ROT. R.C.M. 1103(b)(2)(D).
- ___ ROT examined by TC. R.C.M. 1103 (i)(1)(A).
- ___ ROT examined by DC, when unreasonable delay will not result. R.C.M. 1103(i)(1)(B).
- ___ ROT authenticated by each MJ participating in proceedings or substitute authentication. R.C.M. 1104(a)(2).
- ___ Original verbatim ROT and four copies prepared, or original summarized ROT and one copy if verbatim not required. R.C.M. 1103(b)(2), (3), (g). All exhibits included:
 - ___ Prosecution.
 - ___ Defense.
 - ___ Appellate.
 - ___ Pretrial agreement.
 - ___ Motions.
 - ___ MJ alone request, if any.
 - ___ Written continuance requests with ruling.
 - ___ Written special findings by the MJ.
 - ___ Enlisted members request.
 - ___ Members questionnaires.
 - ___ Voir dire questions submitted.
 - ___ Members' questions.
 - ___ Appellate rights statement.
 - ___ Special power of attorney.
 - ___ Waiver of appellate review.
 - ___ Other _____.
- ___ Page check: sequential; # of pages: ____.

- ___ Index sheet.
- ___ Copy of ROT served on accused; attach receipt in ROT (or explanation in lieu of). R.C.M. 1104(b).
- ___ ROT and copies delivered to the LO / JA.

(Note: Items above this point are normally completed by the NLSO)

- ___ LO / JA recommendation prepared; inserted in ROT.
R.C.M. 1103(b)(3)(G); R.C.M. 1106; JAGMAN, § 0151(c).
 - ___ SJA / LO recommendation checklist complied with.
- ___ LO / JA recommendation served on DC or accused; receipt in ROT (or explanation in lieu of). R.C.M. 1106(f). Date accused _____. Counsel _____.
- ___ Accused response to LO / JA recommendation inserted in ROT, if provided. R.C.M. 1106.
- ___ Forward all responses and recommendations (including supplementary responses and recommendations) to CA for review. R.C.M. 1107.
 - ___ Allegations of legal error raised by accused in response addressed in an addendum to the recommendation. R.C.M. 1106(d)(4). (SJA only)
 - ___ All other R.C.M. 1105, 1106, or other clemency matters addressed.
 - ___ All supplementary recommendations raising new matter served on DC or accused; receipt in ROT (or explanation in lieu of). R.C.M. 1106(f)(7).
- ___ Attach other matters submitted by accused or DC, and any action on same, to ROT. R.C.M. 1105, R.C.M. 1106(f)(4), R.C.M. 1110; JAGMAN, § 0161.
 - ___ Deferment requests.
 - ___ All clemency requests.
 - ___ Other matters.
- ___ Prepare CA's action using CA's input. R.C.M. 1107.
 - ___ CA's action checklist complied with.
- ___ Attach CA's action or statement as to why (s)he cannot take action; include letter of reprimand if any. R.C.M. 1107.
- ___ Prepare promulgating order and appropriate copies for distribution. JAGMAN, § 0153, 0155; R.C.M. 1114(c)(3).
 - ___ Promulgating order checklist complied with.
- ___ Complete time sheet and the back of the cover of the ROT.

- Forward ROT to appropriate authority. JAGMAN, §§ 0153, 0154; R.C.M. 1111, R.C.M. 1112. (*Note*: If case assigned an NMCM number, it must always be forwarded to Navy and Marine Corps Appellate Review Activity.)
 - Waiver of appellate review in writing.
 - Forward ROT to JA for review, this may be the SJA for CA. R.C.M. 1111; JAGMAN, §§ 0153, 0154. (*Note*: Appellate review with sentence to death may not be waived.)
 - JA's review inserted in original ROT and all copies. R.C.M. 1103(b)(3)(G), R.C.M. 1112.
 - Copy of review to accused.
- Forward ROT and copies to the Navy and Marine Corps Appellate Review Activity, Code 40.31.
- Forward one copy of the ROT to the President, Naval Clemency and Parole Board, if sentence includes an unsuspended punitive discharge or confinement for eight months or more.
- No waiver of appellate review.
 - Send ROT and two copies to the Navy and Marine Corps Appellate Review Activity, Code 40.31.
 - Forward one copy of the ROT to the President, Naval Clemency and Parole Board, if sentence includes an unsuspended punitive discharge or confinement for eight months or more.
- Prepare appropriate service record entries (usually pages 4, 7, 9, and 13).
- Optional: retain copy of ROT, CA's action, and promulgating order.
- Conditions on suspension, proof of service on probationer, and any records of procedures in connection with vacation of suspension. R.C.M. 1108, R.C.M. 1109.
- Confinement order and medical officer's certificate for members sentenced to confinement on bread and water and diminished rations.
- Appellate court directives (i.e., orders to conduct a rehearing, supplemental orders, etc.).
- Records of former trial of the same case if case was a rehearing or new or other trial of the same case. R.C.M. 1103(b)(3)(A).
- Compliance with requirements for national security and classified information. JAGMAN, §§ 0126, 0144, 0166; OPNAVINST 5510.1H; R.C.M. 407(b), R.C.M. 1104(b)(1)(D).
- Other _____.

BCD SPCM POST-TRIAL CHECKLIST

ICO _____ [JAG / COMNAVLEGSVCCOMINST 5814.1 / 20)

- ___ Prepare report of results of trial form, if required; attach to ROT. JAGMAN, § 0149, A-1-j.
- ___ Convening order inserted in ROT. R.C.M. 1103(b)(2)(D).
 - ___ Modifications inserted, if any.
- ___ Charge sheet inserted in ROT. R.C.M. 1103(b)(2)(D).
- ___ ROT examined by TC. R.C.M. 1103(i)(1)(A).
- ___ ROT examined by DC, when unreasonable delay will not result. R.C.M. 1103(i)(1)(B).
- ___ ROT authenticated by each MJ participating in proceedings or substitute authentication. R.C.M. 1104(a)(2).
- ___ Original verbatim ROT and four copies prepared. R.C.M. 1103(b)(2), (3), and (g). All exhibits included:
 - ___ Prosecution.
 - ___ Defense.
 - ___ Appellate.
 - ___ Pretrial agreement.
 - ___ Motions.
 - ___ MJ alone request, if any.
 - ___ Written continuance requests with ruling.
 - ___ Written special findings by MJ.
 - ___ Enlisted members request.
 - ___ Members questionnaires.
 - ___ Voir dire questions submitted.
 - ___ Members' questions.
 - ___ Appellate rights statement.
 - ___ Special power of attorney.
 - ___ Waiver of appellate review.
 - ___ Other _____.
- ___ Page check: sequential; # of pages: _____.
- ___ Index sheet.
- ___ Copy of ROT served on accused; attach receipt in ROT (or explanation in lieu of). R.C.M. 1104(b).
- ___ ROT and copies delivered to LO / JA.

(Note: Items above this point are normally completed by the NLSO)

- ___ LO / JA recommendation prepared; inserted in ROT. R.C.M. 1103(b)(3)(G), R.C.M. 1106, JAGMAN, § 0151(c).
 - ___ SJA / LO recommendation checklist complied with.
- ___ LO / JA recommendation served on DC or accused; receipt in ROT (or explanation in lieu of). R.C.M. 1106(f). Date accused _____. Counsel _____.
- ___ Accused response to LO / JA recommendation inserted in ROT, if provided. R.C.M. 1106.
- ___ Forward all responses and recommendations (including supplementary responses and recommendations) to CA for review. R.C.M. 1107.
 - ___ Allegations of legal error raised by accused in response addressed in supplementary recommendation. R.C.M. 1106(d)(4). (SJA only)
 - ___ All other R.C.M. 1105, 1106, or other clemency matters addressed.
 - ___ All supplementary recommendations raising new matter served on DC or accused; receipt in ROT (or explanation in lieu of). R.C.M. 1106(f)(7).
- ___ Attach other matters submitted by accused or DC, and any action on same, to ROT. R.C.M. 1105, R.C.M. 1106(f)(4), R.C.M. 1110; JAGMAN, § 0161.
 - ___ Deferment requests.
 - ___ Clemency requests.
 - ___ Other matters.
- ___ Prepare CA's action using CA's input. R.C.M. 1107.
 - ___ CA's order checklist complied with.
- ___ Attach CA's action or statement as to why (s)he cannot take action; include letter of reprimand if any. R.C.M. 1107.
- ___ Prepare promulgating order and appropriate copies for distribution. R.C.M. 1114(c)(3); JAGMAN, §§ 0153, 0155.
 - ___ Promulgating order checklist complied with.
- ___ Complete time sheet and the back of the cover of the ROT.
- ___ Forward ROT to appropriate authority. R.C.M. 1111, R.C.M. 1112; JAGMAN, §§ 0153, 0154. (Note: If case assigned an NMCM number, it must be forwarded to Navy and Marine Corps Appellate Review Activity.)
 - ___ Waiver of appellate review in writing.
 - ___ Forward ROT to SJA of OEGCMA for review. R.C.M. 1111; JAGMAN, §§ 0153, 0154. (Note: ROT may have to be forwarded to OEGCMA for action or the JAG for action. R.C.M. 1112, 1201.)

- ___ The JA's review inserted in original ROT and all copies. R.C.M. 1103(b)(3)(G), R.C.M. 1112.
 - ___ Copy of review to accused.
 - ___ Forward ROT to OJAG, Code 40.31.
 - ___ Forward one copy of the ROT to the President, Naval Clemency and Parole Board, if sentence includes an unsuspended punitive discharge.
 - ___ No waiver of appellate review.
 - ___ Send ROT and two copies to the Navy and Marine Corps Appellate Review Activity, Code 40.31.
 - ___ Forward one copy of the ROT to the President, Naval Clemency and Parole Board, if sentence includes an unsuspended punitive discharge.
- ___ Prepare appropriate service record entries (usually pages 4, 7, 9, and 13).
- ___ Optional: retain copy of ROT, CA's action, and promulgating order.
- ___ If initiated as Art. 32, appointing order inserted in ROT. R.C.M. 1103(b)(3).
 - ___ Report of investigation (DD Form 457).
 - ___ Art. 34 advice.
 - ___ Waiver of Art. 32.
- ___ Conditions on suspension, proof of service on probationer, and any records of procedures in connection with vacation of suspension. R.C.M. 1108, R.C.M. 1109.
- ___ Confinement order and medical officer's certificate for members sentenced to confinement on bread and water and diminished rations.
- ___ Appellate court directives (i.e., orders to conduct a rehearing, supplemental orders, etc.).
- ___ Records of former trial of the same case if case was a rehearing or new or other trial of the same case. R.C.M. 1103(b)(3)(A).
- ___ Compliance with requirements for national security and classified information. JAGMAN, §§ 0126, 0144, 0166; OPNAVINST 5510.1H; R.C.M. 407(b), R.C.M. 1104(b)(1)(D).
- ___ Other _____.

NON-BCD SPCM POST-TRIAL CHECKLIST

ICO _____ (JAG / COMNAVLEGSVCCOMINST 5814.1 / 20)

- ___ Prepare report of results of trial form, if required; attach to ROT. JAGMAN, § 0149, A-1-j.
- ___ Convening order inserted in ROT. R.C.M. 1103(b)(2)(D).
 - ___ Modifications inserted, if any.
- ___ Charge sheet inserted in ROT. R.C.M. 1103(b)(2)(D).
- ___ ROT examined by TC. R.C.M. 1103(i)(1)(A).
- ___ ROT examined by DC, when unreasonable delay will not result. R.C.M. 1103(i)(1)(B).
- ___ ROT authenticated by each MJ participating in proceedings or substitute authentication. JAGMAN, § 0150a: R.C.M. 1104(a)(2).
- ___ Original summarized ROT and one copy prepared. R.C.M. 1103(b)(2), (3), (g).
All exhibits included:
 - ___ Prosecution.
 - ___ Defense.
 - ___ Appellate.
 - ___ Pretrial agreement.
 - ___ Motions.
 - ___ MJ alone request, if any.
 - ___ Written continuance requests with ruling.
 - ___ Written special findings by MJ.
 - ___ Enlisted members request.
 - ___ Members questionnaires.
 - ___ Voir dire questions.
 - ___ Members' questions.
 - ___ Appellate rights statement.
 - ___ Other _____.
- ___ Page check: sequential; # of pages: ____.
- ___ Index sheet.
- ___ Copy of ROT served on accused; attach receipt of ROT (or explanation in lieu of). R.C.M. 1104(b).
- ___ ROT and copies delivered to LO / JA.

(Note: Items above this point are normally completed by the NLSO)

- ___ Attach accused's response to ROT, if provided. R.C.M. 1106.
- ___ Attach other matters submitted by accused or DC, and any action on same, to ROT. R.C.M. 1105, 1106.
 - ___ Deferment requests.
 - ___ Clemency requests.
 - ___ Other matters.
- ___ Comment to CA on all matters raised under R.C.M. 1105, 1106 and any other clemency matter. (Only SJA's may respond to legal error.)
- ___ Forward all responses and recommendations to CA for review. R.C.M. 1107.
- ___ Prepare CA's action using CA's input. R.C.M. 1107.
 - ___ CA's action checklist complied with.
- ___ Attach CA's action or statement as to why (s)he cannot take action; include letter of reprimand if any. R.C.M. 1107.
- ___ Prepare promulgating order and appropriate copies for distribution. R.C.M. 1114(c)(3); JAGMAN, §§ 0153, 0155.
 - ___ Promulgating order checklist complied with.
- ___ Complete time sheet and the back of the cover of the ROT.
- ___ Forward ROT to SJA of OEGCMA for review. R.C.M. 1111; JAGMAN, §§ 1053, 0154. **(Note: ROT may have to be forwarded to OEGCMA for action or the JAG for action. R.C.M. 1112, 1201.)**
- ___ The JA's review inserted in original ROT and all copies. R.C.M. 1103(b)(3)(G), R.C.M. 1112.
- ___ Copy of review to accused.
- ___ Maintain and distribute ROT in accordance with JAGMAN, § 0154(2) and (3).
 - ___ Shore activities: maintain two years after final action.
 - ___ Fleet activities: maintain three months after final action.
- ___ Prepare appropriate service record entries (usually pages 4, 7, 9, and 13).

- ___ If initiated as Art. 32, appointing order inserted in ROT. R.C.M. 1103(b)(3).
 - ___ Record of investigation (DD Form 457).
 - ___ Art. 34 advice.
 - ___ Waiver of Art. 32.
- ___ Conditions on suspension, proof of service on probationer, and any records of procedures in connection with vacation of suspension. R.C.M. 1108, R.C.M. 1109.
- ___ Confinement order and medical officer's certificate for members sentenced to confinement on bread and water and diminished rations.
- ___ Records of former trial of the same case if case was a rehearing or new or other trial of the same case. R.C.M. 1103(b)(3)(A).
- ___ Appellate court directives (i.e., orders to conduct a rehearing, supplemental orders, etc.).
- ___ Compliance with requirements for national security and classified information. JAGMAN, §§ 0126, 0144, and 0166; OPNAVINST 5510.1H; R.C.M. 407(b), R.C.M. 1104(b)(1)(D).
- ___ Other _____.

SJA / LO RECOMMENDATION CHECKLIST
R.C.M. 1106, JAGMAN, § 0151(c)

SJA Recommendation ICO _____

- ___ Offenses, pleas, findings, and adjudged sentence set out.
- ___ Court or MJ's clemency recommendation, if any.
- ___ Summary of accused's service record.
 - ___ Length of service.
 - ___ Character of service (average pros and cons, average evaluation traits).
 - ___ Decorations / awards.
 - ___ Records of prior nonjudicial punishments (NJPs).
 - ___ Previous convictions.
 - ___ Other matters of significance.
- ___ Nature and duration of pretrial restraint, if any.
 - ___ Judicially ordered credit to be applied to confinement if any.
- ___ Current confinement status.
- ___ Existence of pretrial agreement noted, if any.
 - ___ Terms and obligations CA is obligated to take or reasons why CA is not obligated to take specific action under the agreement.
- ___ All R.C.M. 1105 matters and other clemency submitted prior to recommendation with all matters submitted attached as enclosures.
- ___ All claims of legal error addressed and statement whether corrective action on the findings or sentence is appropriate when an allegation of error is raised under R.C.M. 1105 or when deemed appropriate by the SJA. (*Note: For SJAs only, LOs do not address legal error.*)
 - ___ All R.C.M. 1105 or other clemency matters noted and statement that they were taken into consideration.
- ___ Specific recommendation concerning action to be taken by CA on adjudged sentence after considering any clemency matters, any claims or legal error, and any pretrial agreement.
- ___ Optional matters, if any.
 - ___ Accused notified and given opportunity to rebut adverse matters which are not part of the record and with knowledge of which the accused is not chargeable.

- ___ Recommendation signed by SJA or commissioned officer acting as LO.
- ___ Served on accused and counsel.
 - ___ Statement stating why accused not personally served.
 - ___ Date accused: _____, counsel: _____.
- ___ If R.C.M. 1105 or 1106 matters or other matters are raised after original recommendation, addendum to recommendation noting these issues completed.
(**Note:** Only SJA may respond to legal errors.)
 - ___ If addendum raises new matter, has accused and counsel been served and given opportunity to respond prior to CA taking action?

CA'S ACTION CHECKLIST
R.C.M. 1107; JAGMAN, § 0151(a) and (b).

CA's Action ICO _____

- ☐ R.C.M. 706 hearing ordered if accused lacks mental capacity.
- ☐ Action taken not earlier than 10 days after the later of service of the ROT or LO / SJA recommendation.
 - ☐ Waiver of right to submit matters, in writing, by accused.
 - ☐ Time period extended.
- ☐ Optional: offenses, pleas, findings, and adjudged sentence properly promulgated.
- ☐ Action states CA considered:
 - ☐ Result of trial.
 - ☐ LO / SJA recommendation.
 - ☐ Court or MJ's recommendation, if any.
 - ☐ Clemency matters submitted by anyone, if any.
 - ☐ Legal errors raised, if any.
 - ☐ Other matters raised under R.C.M. 1105 and 1106, if any. (*Note:* Indicate that no matters were received if that is the case, also indicate a failure of accused or counsel to respond to SJA / LO recommendation.)
- ☐ Optional additional matters considered, if any.
 - ☐ ROT.
 - ☐ Personnel records of accused.
 - ☐ Other matters deemed appropriate by CA.
 - ☐ Notification to accused and opportunity to rebut, if matters adverse to accused from outside record, with knowledge of which the accused is not chargeable are considered.
- ☐ Specific action with regard to findings, if applicable.
 - ☐ Rehearing on findings ordered.
 - ☐ If rehearing or new trial ordered, reasons for disapproval set forth.
 - ☐ If no rehearing ordered on disapproved charges and specifications, statement of dismissal.
 - ☐ If "other" trial ordered, reasons for declaring the proceedings invalid stated.

- ___ Specific action with regard to sentence adjudged.
 - ___ Sentence consistent with pretrial agreement, if any.
 - ___ CA executed portions of sentence not suspended, except for punitive discharge.
 - ___ If sentence mitigated, equivalencies under R.C.M. 1003 complied with.
 - ___ Sentence limited if the ROT does not meet requirements of R.C.M. 1103(b)(2)(B) or (c)(1).
 - ___ Rehearing on sentence ordered.
- ___ Automatic reduction addressed (Article 58a), if accused not reduced to E-1 as part of adjudge sentence.
- ___ If portion of sentence suspended, accused has been informed of conditions in writing.
- ___ Place of confinement noted, if approved by CA.
- ___ Deferment date noted, if granted.
 - ___ Deferment rescinded.
- ___ Credit for illegal pretrial confinement directed.
- ___ Any reprimand ordered executed included in action.
- ___ Companion cases noted, if any.
- ___ Signed by CA with authority to sign stated below.
- ___ If substitute CA, action notes CA is acting pursuant to a specific request.
- ___ If action on rehearing on new trial, limitations of R.C.M. 810(d) complied with.
- ___ Served on accused or counsel.

PROMULGATING ORDER CHECKLIST
R.C.M. 1114; MCM Appendix 17; JAGMAN, § 0155

Promulgating Order ICO _____

- ___ Order bears date of initial action of CA, if any.
- ___ Type of court-martial specified.
- ___ Command which convened court-martial.
- ___ Charges and specifications, or summary thereof on which accused arraigned.
- ___ Accused's plea.
- ___ Findings or other disposition of each charge and specification.
- ___ Sentence, if any.
- ___ Action of CA, or summary thereof.
 - ___ Date of initial action.
- ___ Signed by CA, other competent authority, or person acting under direction.
- ___ Distributed in accordance with JAGMAN, § 0155.
- ___ Supplementary order, if necessary.
 - ___ Verbatim recitation of the action or order of the appropriate authority, or summary of thereof.

SENIOR OFFICER COURSE
EVIDENCE MATERIALS

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SEARCH & SEIZURE ANALYSIS

IS THERE A:

- QUEST FOR EVIDENCE;
- BY A GOVERNMENT AGENT;
- IN AN AREA WITH A REASONABLE EXPECTATION OF PRIVACY?

NO - Go ahead and look, this is not a fourth amendment problem.

YES - Then you must have one of the following:

1. Probable cause plus authorization from CO:

- Probable cause is a reasonable belief (factual basis plus reliability of information) that a crime has been committed **and** that evidence related to that crime will be located in the place to be searched at this time.
- Authorization must be from a neutral and detached person with jurisdiction (CO) making an independent decision based on facts known/presented to him / her.

2. Probable cause plus exigent circumstances:

- Same probable cause requirements as above are required; however, if delay in obtaining search authorization would result in removal, destruction, or concealment of object of search, no authorization is required.

3. Neither probable cause nor authorization is required in order to search if one of the following circumstances is present:

- a. A border search at entry point to United States.
- b. A search upon entry to, or exit from, U.S. installations, aircraft, and vessels **abroad** if authorized by CO for security, military fitness, or good order and discipline.
- c. The person being searched gives **voluntary** consent.
- d. Stop and Frisk - reasonable suspicion leads to detaining someone for investigation and it is believed they may be armed and dangerous (may pat down for weapons **only**).
- e. Search incident to lawful apprehension - if there was probable cause to apprehend, then search can be made of the person apprehended and areas within his / her immediate control.
- f. An emergency search to save life or for related purpose.

SEARCH AND SEIZURE

I. SEARCH AND SEIZURE

A. Introduction

1. Fourth amendment protects the right of people to be secure in their persons, houses, papers, and effects from *unreasonable* searches and seizures
2. Included as part of the Bill of Rights in response to abuses of the use of general warrants and writs of assistance in colonial times

B. Sources of the law

1. Fourth amendment
2. Military Rules of Evidence (Mil.R.Evid.)
-- Rules 311 - 317
3. Case law

- C. An individual is not protected under the fourth amendment from every search of his / her person, home, papers, and effects. Fourth amendment protections apply to searches when there is a:

1. ***Quest for evidence***

a. Types of evidence that can be searched for

(1) Contraband (e.g., illicit drugs, unlawful weapons)

(2) Evidence of crimes

(a) Fruits

(b) Instrumentalities

(c) Other evidence of crime

2. ***Conducted, instigated, or participated in by a government agent***

a. Military personnel and their agents bound by the Constitution, the UCMJ, and Mil.R.Evid. 312 - 317

b. U.S. and foreign law enforcement officials

(1) Acting as agents of military or in joint investigation

-- Must abide by the U.S. Constitution, Acts of Congress, and Mil.R.Evid. 312 - 317

(2) Acting independently

(a) U.S. authorities must abide by the U.S. Constitution and the rules followed in U.S. district courts

(b) Foreign authorities cannot subject accused to maltreatment

c. Private capacity exception

(1) Individual acting in private, nongovernmental capacity, not subject to law governing search and seizure

(2) Rationale: The exclusionary rule exists to deter official, not private, conduct

3. ***In an area where there is reasonable expectation of privacy***

a. Areas where servicemembers generally have reasonable expectation of privacy

(1) Personal vehicle

(2) Government-provided married housing

(3) Private property, such as: desk, toolbox, briefcase, etc., if member has exclusive control and access

(4) Person

b. Areas where servicemembers generally do not have expectation of privacy

(1) Government vehicle

(2) Government aircraft

(3) Common areas

c. What about berthing / barracks?

D. General rule: Probable cause + authorization required

1. Probable cause – Mil.R.Evid. 315(f)

a. Definition – reasonable belief that:

(1) Crime has been committed, *and*

(2) Evidence related to that crime will be located in place to be searched at this time

b. Reasonable belief

(1) Factual basis (not just conclusions)

-- Factual basis is derived from senses of the source of the information (i.e., what the source had seen, heard, smelled, etc.)

(2) Credibility

-- The believability of the information can be established in a variety of ways

- 1- The source of information was a law enforcement official
- 2- The source was an eyewitness or victim of crime
- 3- Source was co-actor and made admissions as to criminal involvement
- 4- Source personally appeared before CO
- 5- Source had past history of reliability
- 6- Source was personally known to CO
- 7- Facts source gave were corroborated
- 8- Information given under oath

c. In many cases, information will come from a source not before the authorizing official (the so-called "informant" situation)

- (1) Authorizing official must know *facts* upon which informant based conclusions, *and*
- (2) Authorizing official must know that informant is reliable or that information is reliable (*see* list of credibility factors above)
- (3) Need not know a confidential informant's identity, but recommended unless disclosure to CO will compromise informant's safety or usefulness

- d. Detector dogs may be used to establish probable cause
 - (1) May be used without search authorization in areas where there is no individual expectation of privacy
 - (2) Dog's alert, if considered reliable, may provide probable cause on which search authorization may be based. Treat the dog as if it were an informant.
 - (3) See Ch. 7 of OPNAVINST 5585.2A (*Military Working Dog Manual*) for guidance
- e. Information on which probable cause determination is based must be timely
 - Search authorization based on stale information may not be valid
- f. Generally, probable cause to believe evidence is in one place does *not* provide probable cause to believe that similar evidence is located in other places

2. Authorization

- a. Power to authorize
 - (1) Military commanders: CO's, OIC's, or persons in similar positions
 - (2) Power to authorize may not be delegated
 - Procedure when CO absent from command

b. The authorizing official occupies a judicial role

- (1) Follows the same general rules as would a Federal magistrate or judge
- (2) Must be neutral and detached
- (3) Participation by authorizing official in "evidence-gathering process" will disqualify him / her from granting further search authorization in the particular case. *United States v. Ezell*, 6 M.J. 307 (C.M.A. 1979).
- (4) Mere presence at search or, making impartial authorizations of investigatory nature, will not necessarily disqualify him - Mil.R.Evid. 315

c. Form of the request and search authorization

- (1) Determination of probable cause may be based on any of the following
 - (a) Written statements
 - (b) Oral statements
 - (c) Personal knowledge of authorizing official
- (2) No legal requirement that requests or authorizations be in writing - but strongly recommended
 - *JAG Manual* form: Appendix A-1-n(1)
Record of Authorization

(3) All authorizations must accurately describe with particularity:

(a) Persons and / or places to be searched, *and*

(b) Evidence sought

d. Requisites of a lawful search authorization

(1) A lawful search authorization must be based on probable cause *and* pertain to an area / person over which the authorizing official has jurisdiction

(2) Jurisdiction of authorizing official - Mil.R.Evid. 315(c) and (d)

(a) Persons subject to UCMJ may be searched regardless of location

-1- Authorizing official with control over the place located

-2- Authorizing official with control over the person to be searched—if not in a place under military control

(b) Military property of the United States

-- May be searched regardless of location

(c) Persons and property within military **control** of the authorizing official

-1- May be searched if on military installation, encampment, vessel, aircraft, or vehicle or other location under military control of authorizing official

-2- Includes civilians and their property

-3- In some situations, more than one military commander may have jurisdiction to authorize a search

(d) Nonmilitary property within a foreign country (located off base)

-- May be searched if owned, used, occupied, or possessed by United States or servicemember under the control of the authorizing official

(e) Nonmilitary property in United States (located off base)

-- May **not** be searched by military even if owned by person subject to UCMJ

(3) Oath / affirmation

- (a) Not required, but strongly recommended because information will be considered more believable
- (b) Authorizing official may administer oath
- (c) Oath may be given via telephone

E. Search requiring probable cause but **not** authorization -- the exigency search -- Mil.R.Evid. 315(g)

- 1. Where delay in obtaining search authorization would result in removal, destruction, or concealment of object of search, no authorization is required
- 2. Traditionally applied to search of operable vehicles
 - a. No authorization required when there exists probable cause to search the vehicle
 - b. Generally, authorities may conduct a reasonable search of the entire vehicle and containers
- 3. Has been extended to situations where there is insufficient time or inability to communicate with person empowered to authorize searches

F. Searches *not* requiring probable cause or authorization --
Mil.R.Evid. 314

1. Border searches (customs or immigration)
2. Searches upon entry to, or exit from, U.S. installations, aircraft, and vessels abroad if authorized by CO for security, military fitness, or good order and discipline

-- Gate / brow "searches" in United States -- See para. I, *infra* (Inspections and inventories)
3. Searches of government property in which no individual has reasonable expectation of privacy (by definition, these are not fourth amendment searches)
4. Consent searches
 - a. Consent must be given voluntarily
 - b. Warnings *not* required prior to consent, but strongly recommended
 - (1) Offense(s) of which suspected
 - (2) Evidence sought
 - (3) Area to be searched
 - (4) Right to refuse to consent
 - c. Mere acquiescence in face of authority not sufficient consent

- d. Suspect has right to limit and / or withdraw consent at any time
- e. Consent may be obtained from third party who has equal access and control over the place / property to be searched
 - Will not extend to private, exclusive areas controlled by others
- f. Recommendation: Ask for suspect's consent even if you have search authorization
 - *JAG Manual* form: Appendix A-1-o

5. Stop and frisk

- a. Law enforcement personnel may "stop" a person temporarily to investigate if unusual conduct leads to a reasonable suspicion that criminal activity is afoot
- b. The person may be "frisked" if reasonably believed to be armed and dangerous
- c. If person stopped is a driver or passenger in a motor vehicle, the passenger compartment of the vehicle may be searched for weapons if a reasonable belief exists that the driver / passenger stopped is dangerous and that the driver / passenger may gain immediate control of a weapon

6. Search incident to lawful apprehension

- a. Apprehension = taking an individual into custody

- b. Apprehension must be done by one empowered to do so
 - (1) Art. 7, UCMJ
 - (2) R.C.M. 302
- c. Probable cause to apprehend is required -- reasonable belief that:
 - (1) Offense committed, and
 - (2) Person to be apprehended committed it
- d. Rationale for search incident to apprehension
- e. Probable cause to apprehend must precede search
- f. Search can be made of person apprehended and area within his immediate control
 - (1) "Immediate control" -- area which the person apprehended could reach with sudden movement to obtain a weapon or destroy evidence
 - (2) Motor vehicles -- search incident to apprehension of an operable vehicle may include search of passenger compartment and all containers (open or closed) therein, regardless whether the person apprehended has been removed from the vehicle
- g. A cursory examination may be conducted to determine the presence of others who may interfere with the search

7. Emergency searches to save life or for related purposes

-- Must be made in good faith

G. Seizures under fourth amendment – Mil.R.Evid. 316

1. Under fourth amendment, probable cause must exist to lawfully seize property or evidence. Probable cause to seize exists when there is a reasonable belief that the property or evidence is an unlawful weapon, contraband, evidence of a crime, or might be used to resist apprehension or escape.

2. Who has power to seize? Mil.R.Evid. 316(e)

a. Commissioned officers

b. Warrant officers

c. Petty officers or NCO's

d. Criminal investigators, military police, or one performing guard or police duties

e. Agent of any of the above

3. Seizures are generally lawful under the following circumstances:

a. Government property in which no individual has reasonable expectation of privacy

b. Consent

c. Authorization based on probable cause

d. Plain view -- Mil.R.Evid. 316(d)

e. Abandoned property

H. Sanctions for unlawful searches and seizures

1. Exclusionary rule

a. Renders evidence inadmissible at trial if:

- (1) Evidence received through use of illegal search and/or seizure, and
- (2) Person against whom evidence is offered had reasonable expectation of privacy in place searched or legitimate interest in property seized

b. Inevitable discovery

c. Good faith exception

2. Fruit of the poisonous tree

a. Not only illegally obtained evidence is inadmissible, but also other evidence derived from the illegal search and / or seizure

b. Such evidence is admissible if gained via independent means

3. Civil liability - not to military member

I. Inspections and inventories - Mil.R.Evid. 313

1. Evidence obtained in accordance with Mil.R.Evid. 313 is admissible without search authorization or probable cause
2. Evidence discovered in course of *administrative* inventory admissible
 - Command may inventory personal effects of members who are UA, taken into custody, confinement, or hospitalized
3. Inspection: Examination of whole or part of unit, organization, installation, vessel, aircraft, or vehicle to ensure security, military fitness, or good order and discipline
4. Examination made for *primary* purpose of obtaining evidence for use in a trial by court-martial or other disciplinary proceedings is *not* an inspection or inventory under Mil.R.Evid. 313
 - a. Noncontraband inspection - Examination to determine and ensure that the following requirements are met
 - (1) Command properly equipped
 - (2) Command functioning properly
 - (3) Command maintaining proper standards of readiness, sea or air worthiness, sanitation and cleanliness
 - (4) Personnel present, fit, and ready for duty

b. Contraband inspection

(1) Examination to locate and confiscate unlawful weapons and other contraband

(2) Orders to produce body fluid, such as urine

(3) Contraband inspection is suspect if:

(a) Not previously scheduled (need not be previously announced)

and

Directed immediately following a report of a specific offense

(b) Specific *individuals* are selected

(c) Persons examined are subjected to substantially different intrusions during the same examination

(4) Burden of proof on government -- clear and convincing evidence

(5) What constitutes a "part of the unit"?

5. Inspectors at entrance and exit points (gate inspections) should not be allowed discretion with regard to selection of persons or extent of inspection
 - a. All-inclusive, or
 - b. Random selection
 - Rationale: Eliminates discretionary selection by inspectors of persons or property to be inspected, and thereby minimizes possibility that inspection will be subterfuge for a search
6. Inspections and inventories must be conducted in reasonable manner in order to yield admissible evidence
 - a. Reasonable in purpose
 - Must not be pretext for unlawful search
 - b. Reasonable in scope
 - c. The use of drug detector dogs during inspection is reasonable

RECORD OF AUTHORIZATION FOR SEARCH (see JAGMAN 0170)

RECORD OF AUTHORIZATION FOR SEARCH

1. At _____, on _____, I was approached by _____,
(Time) (Date) (Name)
in his capacity as _____, who, having been first duly sworn, advised me
(Duty)
that he suspected _____ of _____ and requested permission
(Name) (Offense)
to search his _____ for _____.
(Object or Place) (Items)

2. The reasons given to me for suspecting the above-named person were:

3. After carefully weighing the foregoing information, I was of the belief that the crime of _____ [had been] [was being] [was about to be] committed, that _____ was the likely perpetrator thereof, that a search of the object or area stated above would probably produce the items stated, and that such items were [the fruits of crime] [the instrumentalities of a crime] [contraband] [evidence].

4. I have therefore authorized _____ to search the place named for the property specified and, if the property be found there, to seize it.

(Grade) (Signature) (Title)

(Date and Time)

INSTRUCTIONS

1. Although the person bringing the information to the attention of the individual empowered to authorize the search will normally be one in the execution of investigative or police duties, such need not be the case. The information may come from one as a private individual.

2. Other than his own prior knowledge of facts relevant thereto, all information considered by the individual empowered to authorize a search on the issue of probable cause must be provided under oath or affirmation. Accordingly, prior to receiving the information

A-1-n(1)

which purports to establish the requisite probable cause, the individual empowered to authorize the search will administer an oath to the person(s) providing the information. An example of an oath is as follows: Do you solemnly swear (or affirm) that the information you are about to provide is true to the best of your knowledge and belief, so help you God? (This requirement does not apply when all information considered by the individual empowered to authorize the search, other than his prior personal knowledge, consists of affidavits or other statements previously duly sworn to before another official empowered to administer oaths.)

3. The area or place to be searched must be specific, such as wall locker, wall locker and locker box, residence, or automobile.

4. A search may be authorized only for the seizure of certain classes of items: (1) fruits of a crime (the results of a crime such as stolen objects); (2) instrumentalities of a crime (example: search of an automobile for a crowbar used to force entrance into a building which was burglarized); (3) contraband (items, the mere possession of which is against the law -- marijuana, etc.); or (4) evidence of crime (example: bloodstained clothing of an assault suspect).

5. Before authorizing a search, probable cause must exist. This means reliable information that would lead a reasonably prudent and cautious man to a natural belief that:

- a. An offense probably is about to be, or has been committed;
- b. Specific fruits or instrumentalities of the crime, contraband, or evidence of the crime exist; and
- c. Such fruits, instrumentalities, contraband, or evidence are probably in a certain place.

In arriving at the above determination, it is generally permissible to rely on hearsay information, particularly if it is reasonably corroborated or has been verified in some substantial part by other facts or circumstances. However, unreliable hearsay cannot alone constitute probable cause, such as where the hearsay is several times removed from its source or the information is received from an anonymous telephone call. Hearsay information from an informant may be considered if the information is reasonably corroborated or has been verified in some substantial part by other facts, circumstances, or events. The mere opinion of another that probable cause exists is not sufficient; however, along with the pertinent facts, it may be considered in reaching the conclusion as to whether or not probable cause exists. If the information available does not satisfy the foregoing, additional investigation to produce the necessary information may be ordered.

CONSENT TO SEARCH (see JAGMAN 0170)

CONSENT TO SEARCH

I, _____, have been advised that inquiry is being made in connection with _____.

I have been advised of my right not to consent to a search of [my person] [the premises mentioned below]. I hereby authorize _____ and

_____, who [has] [have been] identified to me as

*1 _____ to conduct a complete search of my [person] [residence] [automobile] [wall locker] [_____] [_____] located at

_____.

I authorize the above-listed personnel to take from the area searched any letters, papers, materials, or other property which they may desire. This search may be conducted on *2 _____.

This written permission is being given by me to the above named personnel voluntarily and without threats or promises of any kind.

Signature

WITNESSES

*

1 Positions

2 Date

A-1-o

SELF-INCRIMINATION ANALYSIS

REQUIRED WARNINGS UNDER UCMJ ARTICLE 31(b)

1. Nature of the offense:
 - Need not be specific as to UCMJ provision violated (used to orient the person as to the area of inquiry so an intelligent decision can be made about answering questions).
2. The right to remain silent:
 - Person being questioned has right to stop at any time and refuse to answer further questions.
3. That any statement can be used against them at trial by court-martial.
4. Rights to counsel -- if applicable (*see below*).

The above warning *must* be given when a military *suspect* is being *interrogated*.

- A person is a suspect when the interrogator believed, *or should have reasonably believed*, that the person being questioned committed an offense.
- An interrogation exists when questioning, conversation, acts or lack thereof, *is intended to, or reasonably likely to, elicit an incriminating response*.

In addition to the article 31(b) warnings stated above, *counsel warnings* are required if a military *suspect* is being *interrogated while in custody* or after *preferral of charges or imposition of any pretrial restraint*.

- Custody means a deprivation of one's freedom of action in any significant way (as a practical matter, due to rank structure in the military, *any* time there is an official interrogation, custody will be involved and counsel rights should be given).

WHO MUST GIVE WARNINGS

- Anyone acting in an "official capacity" (motivated by law enforcement vice personal objectives).
- This will normally include all officers, those performing law enforcement duties, and anyone superior in rank to the person being questioned.

Remember, statements must *always be voluntary* to be admissible at court-martial, regardless of whether they were obtained by someone acting in an official or private capacity.

THE LAW OF SELF-INCRIMINATION

I. SOURCES OF THE LAW

- A. Fifth amendment
- B. Article 31, UCMJ
- C. *Manual for Courts-Martial, 1984*
- D. Case law

II. WHAT WARNINGS ARE REQUIRED IN ORDER FOR THE STATEMENT OF A MILITARY SUSPECT TO BE ADMISSIBLE AT TRIAL BY COURT-MARTIAL?

- A. Article 31(b) warnings are required if a military *suspect* is being *interrogated*
 - 1. Contents of the warning
 - a. Nature of the accusation
 - b. Right to remain silent
 - c. Any statement usable as evidence

2. Who is a suspect?
 - Objective test
 3. What is an interrogation?
- B. Counsel warnings (*Miranda* / *Tempia* warnings) are required if a military **suspect** is being **interrogated** while in "**custody**" or as otherwise **provided** under Mil.R.Evid. 305
1. Content of the counsel rights
 - a. Right to **consult** with lawyer(s) **prior** to interrogation
 - b. Right to have lawyer(s) **present during** the interrogation
 2. What is custody?
 3. When otherwise provided?
 - a. After preferral of charges, or
 - b. Imposition of pretrial restraint (including restriction)
 4. What is a lawyer?
 - a. May be civilian lawyer at suspect's expense
 - b. Military lawyer appointed at no expense to suspect
 - c. **Or both** under Mil.R.Evid. 305

III. WHO MUST WARN?

- A. Civilian state, Federal, and foreign authorities
- B. Physicians and psychiatrists (military)
 - 1. Medical purpose exception
 - 2. R.C.M. 706 board to determine sanity; *see also* Mil.R.Evid. 302
- C. Counseling
- D. Unofficial interrogations
 - 1. Position of authority test
 - 2. *Duga* test: article 31(b) warnings required if
 - a. The questioner was acting in an official vice private capacity, *and*
 - b. The person being questioned perceived that the inquiry involved was more than casual conversation. Unless *both* prerequisites are met, article 31(b) warnings will not be required for the statements given to be admissible.
 - 3. Informants

IV. WHAT STATEMENTS OF A SUSPECT MUST BE PRECEDED BY WARNINGS IN ORDER FOR THE STATEMENTS TO BE ADMISSIBLE AT COURT-MARTIAL?

A. Types of statements

1. Verbal

2. Nonverbal

a. Testimonial acts

(1) "Hand-it-over" orders require warnings

(2) Avoiding problems with testimonial acts

(a) Get search authorization if probable cause exists

(b) Apprehend suspect and search incident there-to

b. Nontestimonial activity which does not constitute a statement under article 31

-- Article 31 warnings are not required for the following

(a) Fingerprints / photos

(b) Exhibiting scars

(c) Trying on clothing or shoes

- (d) Placing feet in footprints
- (e) Fingernail scrapings
- (f) Shavings or growing beard / mustache / hair
or samples thereof
- (g) Entering lineup
- (h) Handwriting exemplars
- (i) Voice identification / voice exemplar
- (j) Blood and urine specimens (law of search and
seizure still applicable)
- (k) ID cards and general location information
-- Where is your locker?

V. SPECIAL PROBLEMS

- A. Prior confession without proper warnings
- B. Cleansing warnings
- C. Disclosure of additional, unsuspected offenses after warnings
- D. Spontaneous confessors

E. Request for counsel

1. If suspect requests counsel, questioning must terminate
2. Questioning should never begin if suspect previously requested counsel (even if this interrogator unaware)
3. Exception -- *suspect* reinitiates the questioning prior to provision of counsel

F. Interrupted interrogations

1. Once warnings given, must they be given again if interrogation is interrupted?
2. Key: lapse of time
3. Practical suggestion: give warnings again if lapse is longer than coffee / lunch break

G. Article 15 hearings

1. "Explanation" of accused's rights under article 31 required at mast or office hours
2. Counsel warnings *not* required to make *NJP* valid
3. Accused has no *right* to counsel
-- Entitled to representative
4. Subsequent use at court-martial?

VI. USE OF STATEMENTS AT TRIAL

A. At trial, government must establish

1. Proper warnings given (or warnings unnecessary)
2. Suspect understood rights
3. Suspect waived rights and *voluntarily* gave statement
 - a. Must be an informed waiver
 - b. Need not be in writing, but strongly recommended
 - c. Rights must be affirmatively waived

B. Comprehension of rights warnings

1. Government has burden of proving accused understood warnings
2. Comprehension problems
 - a. Intoxicated
 - b. Low mental capacity
 - c. "Know-it-all"

C. Voluntariness (after rights are comprehended and waived)

1. Interrogator must not unlawfully coerce or induce a statement from a suspect
2. Rationale
3. Examples of unlawful coercion / inducement
 - a. Physical coercion
 - b. Promises of leniency
 - c. Promises or threats concerning others
 - d. Threats of more severe action
4. Lawful inducements?
5. Applies to **any** interrogator under **any** situation: no private capacity exception to voluntariness requirement

VII. WHAT HAPPENS IF THE SUSPECT'S RIGHTS ARE VIOLATED?

- A. Exclusionary rule
- B. "Fruit of the poisonous tree" doctrine
 - All evidence obtained through exploitation of unlawful statement also inadmissible at trial against person from whom unlawful statement was taken
- C. Complaints under Art. 138, UCMJ and / or *U.S. Navy Regulations (1990)*, art. 1150
- D. Exclusionary rule applies only to person whose rights were violated

VIII. GRANTS OF IMMUNITY - R.C.M. 704; JAGMAN, § 0138

- A. Rationale
- B. May be granted only by officers exercising GCM authority
 - Caution - others in authority may bind government (*see sub-paragraph D.1 infra*)
- C. Types of immunity
 - 1. Transactional - immunity from prosecution for any offense to which compelled testimony relates
 - 2. Testimonial - immunity only from the use, in future prosecution, of the compelled testimony

D. Special problems

1. **Caution:** Promises of leniency or immunity can become binding
2. Cases involving national security / classified information
 - a. See OPNAVINST 5510.1H for procedures
 - b. See JAGMAN, § 0126
3. Major Federal offenses
 - See JAGMAN, §0125 and MCM, 1984, app. 3

SUSPECT'S RIGHTS ACKNOWLEDGEMENT / STATEMENT

(see JAGMAN 0170)

FULL NAME (ACCUSED/ SUSPECT)	SSN	RATE/RANK	SERVICE (BRANCH)
ACTIVITY / UNIT			DATE OF BIRTH
NAME (INTERVIEWER)	SSN	RATE/RANK	SERVICE (BRANCH)
ORGANIZATION		BILLET	
LOCATION OF INTERVIEW		TIME	DATE

RIGHTS

I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, he warned me that:

- (1) I am suspected of having committed the following offense(s):

- (2) I have the right to remain silent;

- (3) Any statement I do make may be used as evidence against me

- (4) I have the right to consult with lawyer counsel prior to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both; and

- (5) I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview.

WAIVER OF RIGHTS

I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that, ... _____

(1) I expressly desire to waive my right to remain silent; _____

(2) I expressly desire to make a statement; _____

(3) I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to any questioning; _____

(4) I expressly do not desire to have such a lawyer present with me during this interview; and _____

(5) This acknowledgement and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me. _____

SIGNATURE (ACCUSED/SUSPECT)	TIME	DATE
SIGNATURE (INTERVIEWER)	TIME	DATE
SIGNATURE (WITNESS)	TIME	DATE

The statement which appears on this page (and the following ____ page(s), all of which are signed by me), is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

SIGNATURE (ACCUSED / SUSPECT)

DRUG ABUSE DETECTION

I. INTRODUCTION

II. SOURCES OF THE LAW

A. Instructions

1. DOD Dir. 1010.1 of 28 Dec 84
2. OPNAVINST 5350.4B
3. MCO P5300.12 of 25 Jun 1984

B. Case law

III. LAWFULLY OBTAINED URINE SAMPLES

A. Search and seizure

1. Consent
2. Probable cause and authorization
3. Probable cause and exigency

-- Life in body

- B. Command inspection (Mil.R.Evid. 313)
 - 1. Unit sweep
 - 2. Random sample
- C. Service-directed testing
 - ***Example:*** Rehabilitation facility staff testing
- D. Valid medical purpose [Mil.R.Evid. 312(f)]
 - 1. Tested for diagnosis and treatment
 - 2. Distinguish from "fitness for duty" examination
 - 3. Medical purpose vice law enforcement
- E. Fitness for duty / "command directed"
 - 1. Reasonable suspicion of drug abuse
 - 2. Suspicion generated by
 - a. Serious accident or incident in which safety precautions were violated

- b. Motor vehicle offense involving excessive speed, loss of control, reckless driving
 - c. Fight, disorderly conduct, disrespect, UA
 - d. Bizarre, unusual, or irregular behavior
- 3. Rehabilitation program testing / surveillance
- 4. Results can be used only for retention or discharge. They may not be used for **any** disciplinary action or to characterize the nature of the discharge.

IV. URINALYSIS COLLECTION

- A. Selection of key personnel
- B. Observer watches
 - 1. Urinating
 - 2. Placing lid on bottle
 - 3. Delivering to unit coordinator
- C. Unit coordinator
 - 1. Attaches labels to bottle
 - 2. Maintains urinalysis ledger

3. Ensures sample is validated by initials and sealed with tamper-resistant tape
4. Prepares custody document
5. Prepares shipping container

D. Practical suggestions

1. Member certification as to sample contents / use of prescription drugs
2. Alternatives for member's refusal to comply

V. PORTABLE FIELD KITS

- A. Results cannot be used for discipline / characterization of discharge (unless accompanied by confession)
- B. Positive for any drug, sample is forwarded to Navy Drug Screening Lab

VI. NAVY DRUG SCREEN LABS

- A. Locations
 1. Norfolk, VA (scheduled to close mid-95)
 2. Jacksonville, FL

3. Oakland, CA (closed in FY-94)
4. San Diego, CA
5. Great Lakes, IL (scheduled to close mid-95)

B. Drug groups

1. THC
2. PCP
3. Opiates
4. Amphetamines / methamphetamines
5. Barbiturates
6. Cocaine
7. LSD

C. Lab procedure

1. Receipt
2. Accessioning
3. Aliquot sample
4. Screening test by radioimmunoassay (RIA)

5. Confirmation by gas chromatography / mass spectrometry (GC/MS)
6. Review of documentation by lab officials
7. Message to submitting command
8. Positive sample frozen and retained for 1 year

VII. QUALITY CONTROL

- A. Screening / confirmation by different tests (different scientific principles)
- B. Daily machine calibration
- C. Internal testing of known samples with each batch
- D. Armed Forces Institute of Pathology (AFIP) sends samples to units for submission
 1. Maximum 5% false negative
 2. 0% false positives

VIII. ISSUES AT NJP

- A. "Not my sample"
- B. "I will take another test."

- C. Passive ingestion
- D. Passive inhalation
- E. "4.0 sailors don't do drugs."

IX. REFUSAL TO SUBMIT SAMPLE

- A. Failure to obey order
- B. Who gave the order?

FRATERNIZATION

I. What is fraternization?

A. General definition

B. Historical perspective

C. OPNAVINST 5370.2A definition

1. Relationships between officers and enlisted

2. Relationships between officers or enlisted personnel

D. *U.S. Navy Regulations, 1990*, Article 1165 (amended 25 Jan 1993)

1. Previous requirements of article 1165

2. Relationships between officers and enlisted

3. Relationships between officers or enlisted personnel

-- Generally

-- When prejudicial to good order and discipline

II. Basic concepts

A. Not all social interaction between seniors and subordinates is prohibited

-- Proper command-oriented interaction is encouraged

- B. Gender-neutral concept
- C. Prohibited conduct does not have to be sexual in nature
- D. Subsequent marriage is not a defense
- E. Senior member's responsibility for prevention
 - Accountability of each member
- F. Training requirements
- G. Violators will be disciplined (administrative or punitive action)

III. Examples of prohibited conduct

- A. Officer-enlisted relationships
- B. Officer-officer relationships
- C. Enlisted-enlisted relationships

IV. Handling fraternization allegations

- A. Duty to investigate
- B. Determination of whether an unduly familiar relationship exists
- C. Options

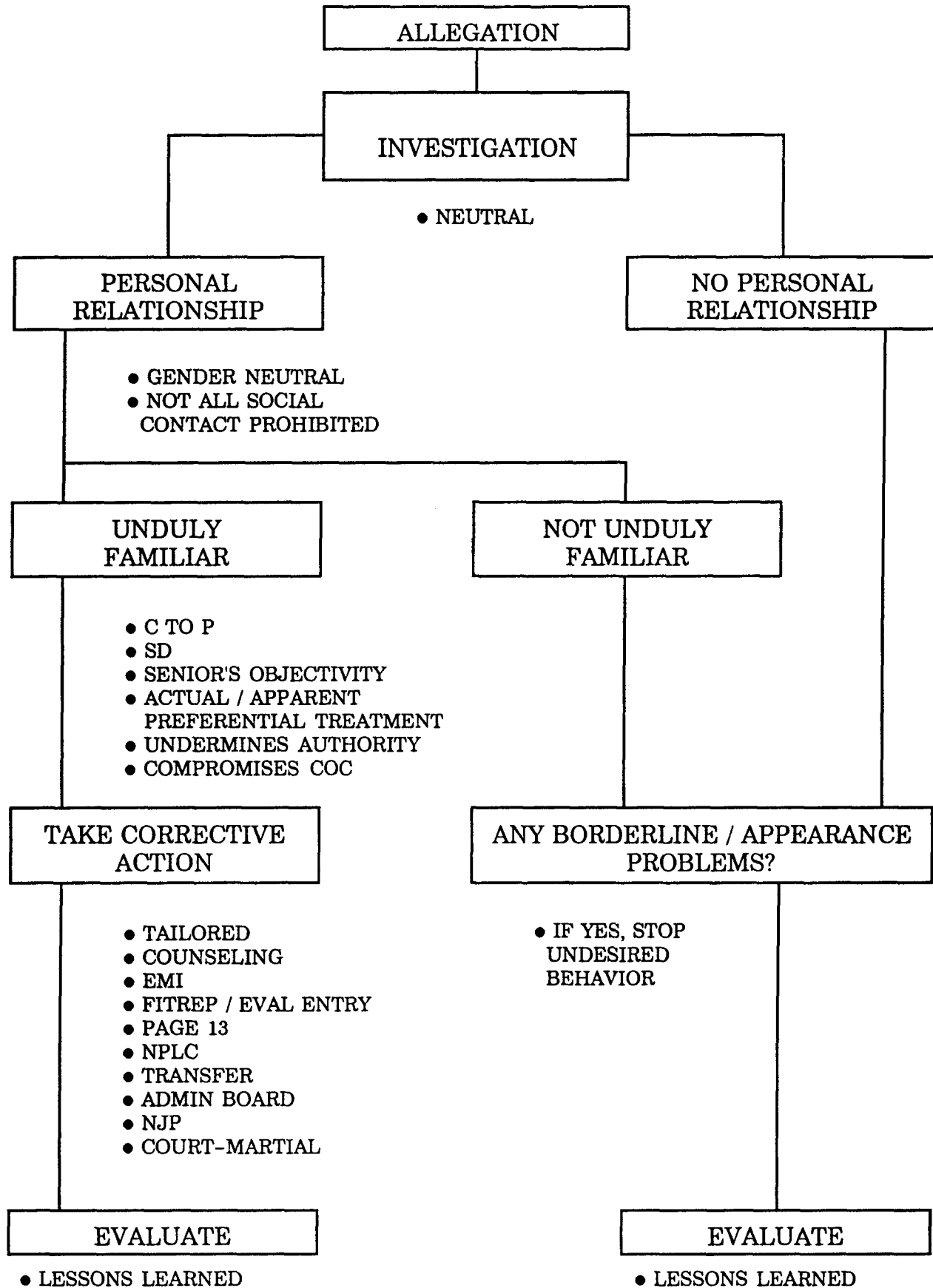
V. Charging fraternization under the UCMJ

- A. Officer-enlisted cases
- B. Officer-officer cases
- C. Enlisted-enlisted cases

VI. Summary

- A. Most effective cure -- prevention
- B. Educate and train your personnel
- C. Be alert for fraternization and take prompt corrective action
- D. Tailor corrective action to fit severity of conduct

HANDLING FRATERNIZATION ALLEGATIONS



SEXUAL HARASSMENT

I. What is sexual harassment?

- A. General definition
- B. SECNAVINST 5300.26B

II. Basic concepts

- A. Zero tolerance
- B. Forms of harassment
 - 1. Verbal harassment
 - 2. Physical harassment
- C. Intent of perpetrator is not relevant
 - Focus on effect on victim or bystander
- D. Duty to complain to perpetrator?
- E. Duty to report sexual harassment to chain of command

F. Making a complaint of harassment

1. Military personnel
2. Civilian personnel

III. Dealing with sexual harassment

A. CO's *requirement* to investigate and take corrective action

1. CNO's processing deadlines
2. Notification to complainant
3. Guard against reprisals

B. Options available

C. Report back to complainant

D. Review lessons learned

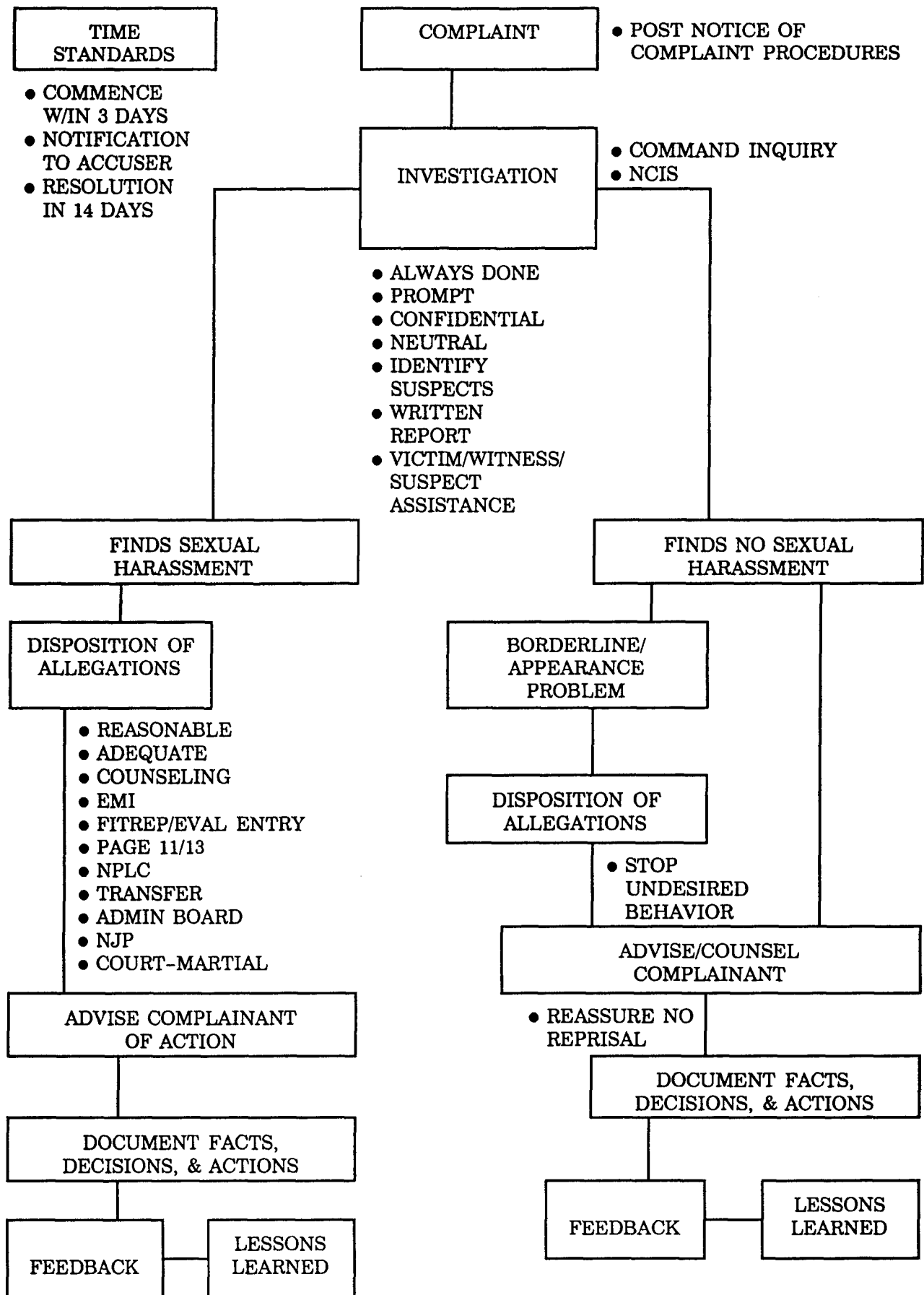
IV. Charging sexual harassment under the UCMJ

- A. Article 92, UCMJ -- Violation of SECNAVINST 5300.26B / *U.S. Navy Regulations, 1990*, Article 1166 (amended Jan 93)
- B. Article 93, UCMJ -- Maltreatment
- C. Underlying offense (i.e. Article 128 Assaults)

V. Summary

- A. Most effective cure -- prevention
- B. Training responsibilities under SECNAVINST 5300.26B
- C. Tailor corrective action to fit the severity of the conduct

STEPS IN HANDLING SEXUAL HARASSMENT COMPLAINTS



SENIOR OFFICER COURSE

Rev. 9/94

CIVIL LAW MATERIALS

Table of Contents

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CIVIL LAW NOTETAKING OUTLINE

JAGMAN INVESTIGATIONS

I. GENERAL OVERVIEW

A. Introduction

1. Primary functions

- a. Reevaluate**
- b. Redesign**
- c. Modify / adapt**
- d. Reply**
- e. Disposition**
- f. Redress**
- g. Discipline**

2. Three types of investigations

3. Major incident defined

- a. Extraordinary event
- b. Significant departure
- c. Resulting in:

4. Cognizance over major incidents

5. Preliminary investigations

B. Types of investigations

- 1. Court of inquiry
- 2. Investigation requiring a hearing
- 3. Investigation not requiring a hearing

C. Parties to investigations

1. Party defined
 - a. Subject of inquiry
 - b. Direct interest
2. Rights of a party

D. Use of the JAGMAN record of investigation

1. NJP
2. In lieu of article 32
3. In lieu of LOD / misconduct hearing

E. Mechanics of the investigation

1. Who initiates

2. Which type of investigation
3. Special rules for death cases
4. Selecting an investigating officer (IO)

II. LINE OF DUTY / MISCONDUCT DETERMINATIONS

A. Overview

1. When are LOD / misconduct determinations required?
 - a. Disease or injury resulting in
 - b.
 - c.
2. Why are LOD / misconduct determinations required?
 - a. Longevity
 - b. Extension

c. Disability

d. VA

3. Who initiates the investigation?

a. CO / OIC

b.

c. Doubtful cases

B. Presumptions

1. In the line of duty / not the result of misconduct

2. Clear and convincing evidence

3. Overcoming the presumption – "In the line of duty"

a.

b.

c.

d.

e.

4. Unauthorized absence rule

5. Overcoming the presumption – "misconduct"

a. Misconduct – term of art

b.

c.

6. Intoxication - three-part test

C. Special cases

1. Medical treatment

a.

b.

c.

2. Venereal disease

a.

b.

c.

3. Mental responsibility

a. Presumption

b. Most cases

c. Unless question raised by

d. Clear and convincing evidence

e. If question raised

f. Suicide attempts

D. Possible findings

1. In the line of duty, not due to the member's own misconduct
2. Not in the line of duty, not due to member's own misconduct
3. Not in the line of duty / due to member's own misconduct

E. Procedures

1. Death cases
 - a. LOD / misconduct determination
 - b. VA determination
 - c.
 - d.

e.

f.

2. Recording findings

a. JAGMAN investigation

b. NAVJAG 5800 / 15

c. Health record

3. Convening authority review

a.

b.

c.

4. JAGMAN, § 0225 hearing

a.

b.

c.

d.

5. Common errors

III. THE REPORT OF INVESTIGATION

A. The appointing order

1. Format

-- JAGMAN, App. A-2-c

2. Scope of inquiry

3. Warnings

a.

b.

c.

4. Available assistance

a.

b.

c.

5. Attorney work product statement

-- JAGMAN, § 0211c

6. Time limits

a. Initial report

b. Endorsement

c. Extensions

B. The investigation

1. Start immediately

2. Conducting the investigation

3. Types of evidence

4. Witnesses

C. Contents of the report

1. Definitions

- a. Fact**
- b. Opinion**
- c. Recommendation**

2. List of enclosures

- a.**
- b.**
- c.**
- d.**

3. Preliminary statement

- a.**

b.

c.

d.

e.

f.

g.

h.

4. Finding of fact

a.

b.

c.

d.

5. Opinions

a.

b.

c.

6. Recommendations

a.

b.

c.

d.

D. The endorsement

1. Actions required in the endorsement

a. Forward report with action taken

- b. Include additional information

- 2. Contents of the endorsement

- a. Specifically approve / disapprove

- b. Report action taken

- c. If defective

- E. Miscellaneous concerns

- 1. Routing and copies

- FOIA

- 2. Combinability with other reports / sources of information

- a. NCIS

- b. IG

- c. Safety

d. Polygraph

e. Medical

f. Security

LOD - MISCONDUCT				
	POSSIBLE PERMANENT INJURY?	24-HOUR DISABILITY?	LOD / MISCONDUCT PROBLEM?	INVESTIGATION REQUIRED
1	NO	NO	NO	NONE
2	NO	YES	NO	HEALTH RECORD
3	YES	NO	NO	JAG 5800 / 15
4	YES	YES	NO	JAG 5800 / 15
5	NO	NO	YES	NONE
6	NO	YES	YES	JAGMAN
7	YES	NO	YES	JAGMAN
8	YES	YES	YES	JAGMAN

ENLISTED ADMINISTRATIVE SEPARATIONS

I. OVERVIEW

A. Function

- 1. Military equivalent**
- 2. Method of requesting**

B. Objectives

- 1. Quality**
- 2. Encourage**
- 3. Ensure**
- 4. Protect**

C. Terminology

1. Basis
2. Characterization
3. Processing
4. Convening authority (CA)
5. Separation authority (SA)
6. Respondent

D. Types of discharges: characterizations

1. Punitive
2. Administrative separation

II. CRITERIA FOR CHARACTERIZATIONS

A. Honorable

1. Navy

a. Performance

b. Personal behavior

c. Extraordinary decorations

2. Marine Corps

a. E-4 and below

b. E-5 and above

B. General Under Honorable Conditions

1. Satisfactory performance

2. Reenlistment

3. VA benefits

C. Other Than Honorable (OTH)

1. Pattern

2. One or more acts

3. VA benefits

D. Bases for OTH discharge

1.

2.

3.

4.

5.

III. COUNSELING PRIOR TO DISCHARGE

A. Contents of Page 13 / 11

1. Deficiencies

2. Action

3. Consequences

4. Correct

5. USN

B. Mandatory

1. Entry level
2. Unsatisfactory
3. Misconduct
4. Involuntary convenience of the government
5. Weight control

C. Miscellaneous

1. Violated
2. Dated and signed

3. Forms

4. ADSEP package

IV. BASES FOR SEPARATION

A. Convenience of the government (voluntary and involuntary)

1. OTH not authorized

2. Separation authorized

3. TWSR

B. Convenience of the government (voluntary)

1. Hardship (MILPERSMAN, art. 3620210)

a.

b.

c.

d.

e.

2. Pregnancy (MILPERSMAN, art. 3620220)

a. Request

b. USN

c. USMC

d. Separation denied

(1)

(2)

(3)

(4)

4. Conscientious objector (MILPERSMAN, art. 1760120)

a. Belief

b. Religious convictions

c. Objection

d. Noncombatant duties

e. Process

(1)

(2)

(3)

5. Surviving family member (MILPERSMAN, art. 3620240)

a. No other siblings or parent

b. Discharged

c. Exception

6. Alien (MILPERSMAN, art. 3620250)

a. Foreign national

b. Denied if

D. Convenience of the government (involuntary)

1. Parenthood (MILPERSMAN, art. 3620215)

a. Reasons

b. USN

c. USMC

2. Personality disorder (MILPERSMAN, art. 3020225)

a. Diagnosed

b. Documented

c. Unless

3. Nondisability physical conditions (MILPERSMAN, art. 3620200.1g)

a. Interfere

b. Threat

c. Medical evaluation

d. List:

E. Weight control failure (MILPERSMAN, art. 3620260)

1. USN

a.

b.

c.

2. USMC

F. HIV (MILPERSMAN, art. 3620270)

1. Enlist
2. Reenlist
3. Full AIDS development

G. Defective enlistments (MILPERSMAN, art. 3620283)

1. Minority
 - a. Under 17
 - b. Age 17

2. Erroneous

a. Would not have occurred

b. No fraud

c. Defect remains

d. Types:

3. Defective

a. Recruiter's conduct

b. Written commitment

c. Involuntary enlistment

4. Fraudulent

- a. Knowingly false
- b. Qualifications
- c. OTH possible
- d. Processing mandatory unless
 - (1)
 - (2)
 - (3)

H. Entry level separation (ELS) (MILPERSMAN, art. 3630200)

- 1. First 180 days
- 2. Unsat performance
- 3. Counseling

I. Unsatisfactory performance (MILPERSMAN, art. 3630300)

1. Unit readiness

2. USN

3. USMC

J. Homosexual conduct (MILPERSMAN, art. 3630400)

1. Definitions

a. Conduct

b. Celibate homosexual – presumption

2. Homosexual conduct

a. Mandatory processing

b. Discharge

c. No local separations

3. Aggravating factors

a.

b.

c.

d.

e.

f.

4. Retention factors

a.

b.

c.

d.

e.

- 5. Investigation
 - When

- 6. Credible information

- a.

- b.

- c.

- 7. Not credible information

- a.

- b.

- c.

K. Misconduct (MILPERSMAN, art. 3630600)

1. Minor disciplinary infractions

a. BCD not authorized at court-martial

b. USN

c. USMC

2. Pattern of misconduct

a. USN

(1)

(2)

(3)

(4)

(5)

(6)

(7)

b. USMC

(1)

(2)

(3)

(4)

3. Commission of a serious offense

a. USN

(1)

(2)

(3) **Mandatory processing**

b. USMC

(1)

(2)

(3) Mandatory processing

c. Generally

(1) Court-martial conviction

(2) Acquittal on merits

d. Sexual harassment

(1) Mandatory

(2) Substantiated

(a)

(b)

(c)

4. Civilian conviction

a. Punitive discharge

b. Sentenced to six months

L. Drug abuse (MILPERSMAN, art. 3630620)

1. Mandatory processing

a.

b.

2. Normally OTH unless

-- Urinalysis test can't be used for characterization

(1)

(2)

(3)

(4)

M. In lieu of court-martial (MILPERSMAN, art. 3630650)

1. Punitive discharge possible
2. Procedure
 - a.
 - b.
 - c.
 - d.

N. Best interest of the service (MILPERSMAN, art. 3630900)

1. SECNAV approval
2. No other way
3. Not entitled to admin board

O. Mandatory processing

1. Drug abuse
2. Commission of a serious offense – death or serious bodily injury
3. Sexual perversion
4. Homosexual conduct
5. Aggravated sexual harassment
6. Deserter from another service

V. PROCESSING PROCEDURE

A. Notification procedure

1. No adverse separations / no OTH authorized

2. Paperwork drill / *no hearing*
3. Right to counsel for assistance when being processed
4. Non-lawyer counsel possible
5. Processing
 - a. Letter of notification procedures
 - (1)
 - (2)
 - (3)
 - (4)
 - (5)

b. Statement of awareness

(1)

(2)

(3)

B. Administrative discharge board procedure

1. Hearing procedure

2. Use when

a. OTH possible

b. Six (6) or more years

c. All homosexual conduct cases

3. Preliminary paperwork

a. Letter of notification of administrative processing

b. Statement of awareness

c. Appointing order

4. Administrative discharge board players

a. Respondent

b. Counsel for respondent

c. Recorder

d. Administrative board members

-- Composition of board

(a)

(b)

(c)

(d)

e. Convening authority (CA)

f. Reporter (optional)

g. Separation authority (SA)

5. Administrative discharge board procedures (MILPERSMAN, art. 3640350)
 - a. Rules of Evidence do not apply
 - b. Board may consider any competent, relevant, and material evidence
 - c. The respondent should complete a privacy act statement
6. Administrative discharge board witnesses
 - a. Military personnel
 - b. Civilians
 - c. Testify under oath
 - d. Unsworn statement

VI. RESULTS OF THE ADMINISTRATIVE DISCHARGE BOARD

A. Findings

1. Allegations are supported by a preponderance of the evidence
2. If the allegations are supported, should the respondent be retained or separated
3. If the respondent should be separated, what characterization of service should be received

B. Convening authority action

1. Local separation if authorized (MILPERSMAN, art. 3610220)
2. Board recommended retention
3. Higher characterization

C. Documentation of board

1. Findings
2. Recommendations
3. Characterization
4. Dissent
5. Authenticated

D. Separation authority action

1. Legal review
2. Retain
3. Separate
4. Suspend

E. Local processing

1. No local processing for
 - a. Conscientious objector / alien
 - b. Early out / EAS
 - c. Motion sickness / allergies and disability
 - d. Defective enlistments and minority
 - e. Misconduct including any possible OTH cases, sexual harassment
 - f. Homosexual conduct
 - g. Security
 - h. In lieu of court-martial
 - i. Best interest of the service
2. Member does not oppose
3. Less than 18 years
4. OTH - Chief of Naval Personnel (CHNAVPERS)
5. USMC
 - a. Generally, GCMCA is separation authority
 - b. Commandant of the Marine Corps (CMC) is separation authority for
 - (1) Homosexual conduct

- (2) Sexual harassment
- (3) Drug cases characterized better than OTH
- (4) In lieu of court-martial
- (5) Security
- (6) Erroneous enlistment

F. Message processing

- 1.
- 2.
- 3.

G. Deploying units

- 1.
- 2.
- 3.

STANDARDS OF CONDUCT AND GOVERNMENT ETHICS

I. REFERENCES

- A. DOD 5500.7-R of 30 August 1993, Joint Ethics Regulation (JER)
- B. SECNAVINST 5370.2K, Standards of Conduct
(Does not supplement DOD 5500.7-R -- delegates responsibilities, identifies ethics counselors)
- C. 5 C.F.R. 2635, Standards of Conduct for the Executive Branch
(Included in chapter 2 of JER)
- D. Reference Guide to Post-Government Activities of Department of the Navy Personnel, NAVSO P-1778 (Rev. 11-92)
- E. JAG ETHICS-GRAM, EMAIL from Code 13
- F. Ethics Support Line: Standards of Conduct and Government Ethics Branch, OJAG (Code 13). Comm: (703) 614-1781; DSN: 224-1781; FAX: 0433; EMAIL: JAG13.

II. INTRODUCTION TO THE STANDARDS OF CONDUCT

A. Philosophical underpinnings

Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws, and ethical principles above private gain.

5 C.F.R. 2635.101

B. Working with the standards of conduct

1. What do you want to happen?
2. Why do you want it?
3. Who pays?
4. Who benefits?

C. Underlying principles

1. Public service is a public trust
2. Do not use public office for private gain
3. Avoid even the *appearance* of impropriety
4. Act impartially in the performance of official duties
5. Official property is for official use only

D. Application

1. New ethics rules (5 C.F.R. Part 2635) apply only to officers
2. JER made most rules applicable to all
3. Various other statutes apply to all
4. Service regulations

E. Working with an ethics counselor

1. Safe harbor if
 - a. Full disclosure
 - b. Good-faith reliance
2. Document
3. Who is the ethics counselor?
 - a. CO of the NLSO
 - b. SJA for a Flag officer
4. Don't forum-shop!!
5. ***But remember*** -- The ethics counselor is the ***government's*** lawyer; they do not have an attorney-client relationship or privilege with you

III. SANCTIONS

- A. Federal criminal law: bribery and graft -- 18 U.S.C. §§ 201, 205
- B. UCMJ
 1. Misappropriation (Art. 121)
 2. Bribery and graft (Art. 134)

3. False pretenses (Art. 134)
4. Failure to obey (Art. 92)
5. Conduct unbecoming (Art. 133)
6. Wrongful disposition of government property (Arts. 108, 109)
7. Wrongful appropriation (Art. 121)
8. Dishonorably failing to pay debts (Art. 134)
9. Bad checks (Art. 134)
10. False pretenses (Art. 34)

C. Administrative measures

1. Fitness reports
2. Letters of caution
3. Removal from position / detachment for cause (DFC)
4. Administrative separation

IV. GIFTS FROM OUTSIDE SOURCES (5 C.F.R. 2635 Part B (200))

A. General standards

1. Cannot solicit or coerce gifts

2. Cannot accept a gift

-- From a prohibited source -- one who:

(1) Seeks action

(2) Does business

(3) Is regulated by agency

(4) Is affected by official duties

b. Given because of official position

B. Limitations on exceptions -- 5 C.F.R. 2635.202(c)

1. No gift in return for influence in official act

2. Cannot accept recurring gifts

3. Cannot accept in violation of statutes

C. "Gift" means: Anything of value—such as gratuity, meals, entertainment, hospitality, travel, favor, loan

D. Exclusions: Not a gift -- 5 C.F.R. 2635.203(b)

1. **Coffee & donut exception:** modest items of food and refreshments (soda, snacks, etc.) offered other than as part of a meal

2. ***Trinket exception:*** cards, trophies, plaques with little intrinsic value
3. ***Loans exception:*** on terms generally available to the public
4. ***Public benefits exception:*** commercial discounts available to the public or to all uniformed military personnel
5. ***Contest exception:*** awards from contests open to the public *unless* entry was part of official duty
6. ***Pension exception:*** pensions from former employer
7. ***Government purchase exception:*** paid for by the Government under Government contract
8. ***Government gift exception:*** gift accepted by the Government under statutory authority
9. ***Paid-for-it exception:*** paid *fair* market value

E. Exceptions: keep the gift -- 5 C.F.R. 2635.204

1. Gifts of \$20.00 or less
 - a. Unsolicited
 - b. \$10.00 or less for procurement officials -- 41 C.F.R. 3.104
 - c. Less than \$50.00 per calendar year
 - d. ***Not*** cash, stocks, CDs

- e. May not accept smaller portions of a gift over \$20.00
 - f. Cannot pay the excess over \$20.00
- 2. ***Personal relationship exception:*** based on personal relationship rather than position of employee
 - 3. ***Discounts and similar benefits exception:*** discounts / benefits available to a class of people (cannot discriminate on basis of rank or rate of pay)
 - 4. ***Awards exception:*** award and honorary degree if
 - a. Less than \$200.00 and a bona fide award from a donor not affected by employee's official duties
 - b. If cash or if greater than \$200.00, need ethics official determination that award is part of established program that provides regular awards according to written standards
 - 5. ***Outside business exception:*** from outside employment activities not related to official duties
 - 6. ***Overseas exception:*** may accept food / entertainment in meeting in foreign areas if
 - a. Cost is within per diem rate
 - b. Participation is by non-U.S. persons
 - c. Attendance is part of official duties
 - d. Gift is from other than a foreign government

7. ***Charity exception:*** can accept free attendance at events sponsored by local governments and tax-exempt organizations if boss agrees community relations of the Navy will be furthered
8. ***Government gift exception:*** may accept on behalf of the Navy (see SECNAVINST 4001.2F)
9. ***Speaking exception:*** if speaking, may accept meal / attendance
10. ***Widely attended gathering exception:*** if, according to the boss, it is in the agency interest
11. ***Social invitation exception:*** parties, food, and entertainment –
– provided
 - a. Not travel or lodgings
 - b. Not a prohibited source
 - c. No fee charged to persons in attendance

F. Returning gifts -- 5 C.F.R. 2635.205

1. Nonperishable gifts
 - a. Return it
 - b. Pay for it
 - c. Accept for the government

2. Perishable gifts
 - a. Give it to charity
 - b. Share it among the office
 - c. Destroy it
3. Reciprocation does not equal reimbursement!!

V. GIFTS BETWEEN EMPLOYEES -- 5 C.F.R. 2635 Part C

- A. General standards (263.301): Federal employees may not
 - a. **Coerce** gifts from subordinates
 - b. **Give** gifts to official superiors
 - c. **Solicit** for gifts to superiors
 - d. **Accept** gifts from employees receiving less pay (chain of command relationship not required)
- B. Exceptions
 1. **Personal relationships:** can accept gifts from employees receiving less pay if
 - a. No subordinate-superior relationship, and
 - b. Personal relationship exists

2. ***Occasional events*** (birthdays, Christmas, Secretary's Day): employee may give gift to official superior

- a. Maximum value: \$10.00 (no cash)
- b. Shared refreshments
- c. Personal hospitality at residence (dinner)
- d. Gift in receipt of personal hospitality (wine)
- e. Leave transfers (civilians)

3. ***Special infrequent events*** (marriage, childbirth, retirement, transfer): superior may accept and subordinate give gift if

- a. Voluntarily given
- b. Not limited to \$10.00, and
- c. Appropriate to the occasion
- d. ***and***, in the case of group gifts

- (1) Market value of \$300.00 or less per unit
- (2) Contributions were voluntary
- (3) Contributions were \$10.00 or less
- (4) ***Not including*** food / entertainment

VI. CONFLICTING FINANCIAL INTERESTS

A. Disqualifying financial matters

1. ***Cannot act*** in particular matter if financial interest
 - a. Actual or imputed
 - b. If a direct and predictable effect
2. Must provide written notice of disqualification

B. Definitions

1. Direct and predictable
 - a. Close link
 - b. Nonspeculative
2. Imputed interests
 - a. Spouse and children
 - b. General partner
 - c. Organizations
 - d. Prospective employer

C. Required divestiture -- 5 C.F.R. 2635.403

1. DOD or unit may prohibit employees, or classes or positions of employees, from holding specific financial interests where the agency determines that the holding will
 - a. Require the employee to be disqualified to such an extent that the employee cannot do the job
 - b. Where the limitation would adversely affect the agency mission

D. Impartiality in performing official duties -- 5 C.F.R. 2635.502

1. Cannot act in matters where reasonable person would question impartiality unless authorized by boss
 - a. Affecting household
 - b. Direct and predictable effect
 - c. May preclude action, even where not specifically barred above
2. Cannot act in a matter concerning an outside activity in which the employer has served as a director, trustee, general partner, etc. within the last year

E. Seeking other employment - 5 C.F.R. 2635.601

1. General rules
 - a. Cannot act regarding prospective employer

- b. Must give written notice of disqualification
- c. May accept interviews, even from prohibited source

2. Seeking employment *means*

- a. Engaged in negotiations
- b. Unsolicited communications about a job, *except* just getting an application

F. Reporting employment contacts

1. *Who* must report

- a. Any military officer O-4 or above, or GS-11 or above
- b. Who performed a procurement function with a defense contractor who did at least \$25,000.00 in DOD business
- c. Who contacts or is contacted by *that* defense contractor about future employment

2. Contents of report

- a. Names of officer and contractor
- b. Date of contact
- c. Description of contact

3. Disqualification statement: In addition, the officer must submit a written statement disqualifying the officer from any procurement function involving *that* contractor until such time as the employment negotiations have ceased without a hire.

VII. MISUSE OF POSITION -- 5 C.F.R. 2635 Part G

A. General

1. Do not use public office for private gain -- 5 C.F.R. 2635.702
 - a. Endorse products, services
 - b. Coerce benefits
 - c. Use position to help friends
 - d. Appearance of government sanction
2. Do not use non-public information -- 5 C.F.R. 2635.703
3. Do not misuse government property -- 5 C.F.R. 2635.704
4. Do not misuse official time

B. Solicited sales -- JER 2.205

1. ***Do not*** solicit or make sales to DOD personnel who are junior -- on or off duty

2. Exceptions: absent coercion or intimidation, members may
 - a. Sell or lease noncommercial personal or real property
 - b. Make sales in retail establishment during off-duty employment

VIII. OUTSIDE ACTIVITIES

A. Outside employment -- 5 C.F.R. 2635.802

1. Not allowed in violation of supplemental regulations
2. Not to interfere with official duties
3. Not to involve conflict of interest
4. Not to involve appearance of partiality, impropriety
5. Must have command approval -- JER 2-206; JER 2-303
6. Must not receive outside compensation for official duties
7. Cannot act as agent for anyone against the government -- 18 U.S.C. 205

B. Expert witnesses -- 5 C.F.R. 2635.805

1. Cannot serve as expert witness other than on behalf of the U.S. Government
2. May serve as fact witness if subpoenaed

C. Teaching, speaking, writing -- 5 C.F.R. 2635.807

1. No pay if it relates to official duties
2. Relates if
 - a. Part of duties
 - b. Invitation due to official position
 - c. Based on non-public information
 - d. "What I do in the Navy . . . "
 - e. "The way we do it in the Navy . . . "
3. Teaching exceptions: may be paid for teaching
 - a. If not related to official duties
 - b. If course is part of regular curriculum of
 - (1) Institute of higher learning
 - (2) Elementary school
 - (3) Secondary school
 - (4) Sponsored by state, local, or Federal Government

- D. Use of official title -- generally no, except
 - 1. May include in biography
 - 2. May permit in connection with professional article
- E. Fund-raising -- 5 C.F.R. 2635.808 -- OK provided you do not
 - 1. Personally solicit from
 - a. Subordinate or
 - b. Prohibited source
 - 2. Use official position (but may use rank as term of address)
 - 3. Engage in action that violates other ethics rules
 - a. Give away official property, use official property
 - b. Create appearance of impropriety or partiality
- F. Gambling - generally not allowed -- JER 2-302
 - 1. Exceptions
 - a. Undercover law enforcement duties
 - b. Activities by organization (i.e. Morale, Welfare, and Recreation (MWR))
 - (1) Made up solely of DOD employees and dependents

- (2) Approved by head of DOD component
 - (3) Transacted entirely among membership
- c. Private wagers among employees
 - (1) Based on personal relationship
 - (2) Within living quarters
 - (3) In accordance with local law
- 2. Gambling with subordinates may violate articles 133 / 134 of the UCMJ

IX. THE HONORARIA PROHIBITION -- 5 C.F.R. 2636.201

- A. General standard -- *no honoraria*
- B. Definition of honoraria -- 5 C.F.R. 2636.203(a)
 - 1. Money or anything of value
 - 2. For an appearance, speech, or article
- C. Honoraria does not include -- 5 C.F.R. 2636.203(a)
 - 1. Items that may be accepted under gift regulations
 - 2. Copies of publications, reprints, tapes of speeches
 - 3. Production costs

4. Salaries, wages for series of speeches or articles
5. Compensation for teaching a course with multiple presentations
6. Awards

D. Current status

1. Federal Circuit Court says *unconstitutional*
2. Supreme Court to hear case this year

X. Non-Federal entities

A. Official participation

1. May attend meetings, etc. if part of official duties
2. May be detailed to serve as official liaisons
3. If a significant and continuing DOD interest
4. DOD member may not serve in a management position
5. Members may not receive any pay
6. DOD employees may participate at events

- B. Nonofficial participation -- members may participate provided that
 - 1. Exclusively outside the scope of official duties
 - 2. No conflict of interest

- C. Command support -- JER 3-211 -- may support through people or equipment where
 - 1. No interference with official duties and readiness
 - 2. Not affiliated with CFC -- or no CFC objection
 - 3. Community relations are served
 - 4. Association is appropriate
 - 5. Event is of interest to local civilian or military community as a whole
 - 6. Support will be provided to similarly situated other organizations

- D. Use of federal resources -- JER 3-305a
 - 1. Telephone systems on a not-to-interfere basis
 - 2. Office equipment, libraries, etc. if
 - a. Entity is not a prohibited source

- b. A legitimate public interest is served or the use would enhance the professional development of the employee
 - c. The use is only during personal time
 - d. The use does not interfere with official duties
 - e. **However** -- may not use clerical / staff personnel to support and may not use copiers -- JER 3-305b
- E. The relationships with certain organizations are governed by specific regulations or statutes -- see JER 3-212
 - 1. USO
 - 2. Red Cross
 - 3. Spouse's clubs

XI. MISCELLANEOUS TOPICS

- A. Travel benefits
- B. Civil office -- JER 5-407
 - 1. Officers on active duty may not hold civil office unless expressly authorized by law
 - 2. Officers may serve on a nonpartisan basis on an independent school board provided the school board is located wholly on military property -- 10 U.S.C. § 973

C. Commercial dealings -- JER 5-409 -- **no** solicited sales to junior personnel, on or off duty, except

1. Noncommercial personal or real property with **no** intimidation or coercion
2. Commercial sales, retail establishment
3. Junior comes forward, **no** coercion or intimidation

D. Political activities -- DOD Directive 1344.10

1. Members on active duty (AD) **may**
 - a. Register, vote, express personal opinion as a private person
 - b. Make contributions to political organizations
 - c. Attend meetings as spectator (not in uniform)
2. Members on active duty **may not**
 - a. Be candidates for civil office, except
 - (1) Enlisted members, nonpartisan civil offices
 - (2) Reserve members
 - b. Participate in partisan political management, campaigns, or conventions
 - c. Make campaign contributions to another member of the armed forces or employees of the Federal Government
 - d. Participate in demonstrations overseas

XII. CONFIDENTIAL FINANCIAL DISCLOSURE REPORTS (SF-450)

- A. Purpose: find conflicts of interest**
- B. Who is required to file**
 - 1. COs of**
 - a. Navy shore installations with 500 or more military or civilian personnel**
 - b. All Army, Air Force, and Marine Corps installations, bases, air stations, or activities**
 - 2. Other employees (GS-15 or O-7 and below) who are substantially involved in procurement**
 - 3. Exceptions: a superior may exclude individuals or groups**
- C. When: within 30 days, and annually by November 30**
- D. Contents: generally, financial holdings over \$1000.00**
- E. Procedure -- JER 7-206**
 - 1. Supervisor reviews, may supplement, comment**
 - 2. Ethics counselor reviews for completeness and conflicts**
 - 3. If conflicts are detected: notice, response, remedy**
 - 4. To DAEO for review**

F. Storage: on file for six years

G. Reports are protected by the Privacy Act

MENTAL HEALTH REPRESENTATION

I. SOURCE OF LAW

- A. DODDIR 6490.1 of 14 September 1993, Subj: MENTAL HEALTH EVALUATION (MHE) OF MEMBERS OF THE ARMED FORCES**
- B. SECNAVINST 6320 (IN DRAFT), Subj: MENTAL HEALTH EVALUATION OF MEMBERS OF THE ARMED FORCES**

II. DODDIR 6490.1

- A. Establishes procedures for mental health evaluations**
- B. Specifies servicemember rights when referred to a mental health professional (MHP)**
- C. Specifies duties of CO**
- D. Specifies duties of MHP**

III. TRIGGERING EVENT

- A. Servicemember referred by command for MHE**
- B. For other than R.C.M. 706 purpose**
- C. Does not apply if referred by caregiver outside the command**

IV. NOT CONSIDERED A MENTAL HEALTH REFERRAL

- A. Family Advocacy Program (FAP)
- B. Command Alcohol Abuse Coordinator (CAAC)
- C. Drug / alcohol rehabilitation

V. CO's RESPONSIBILITIES - NON-EMERGENCIES

- A. Consult with MHP *prior* to referral
- B. Provide servicemember with notice
- C. If impractical to consult with MHP, CO must make memo

VI. NOTICE REQUIREMENTS - NON-EMERGENCIES

- A. Date and time of mental health evaluation
- B. State reason for mental health evaluation
- C. Names of MHPs CO consulted
- D. Attorney / IG and phone numbers
- E. Rights sheet
- F. Signed by member

VII. MEMBER'S RIGHTS - NON-EMERGENCIES

- A. Member can get his / her own MHP (i.e. a second opinion)
- B. Two (2) days to respond to notice
- C. Member can seek counsel

VIII. COUNSEL RIGHTS - NON-EMERGENCY

- A. *Booker*-type rights
- B. Presently, this is a topic of discussion

IX. EMERGENCY AND IN-PATIENT

- A. Member notified of reason ASAP
- B. Member has right to call friend, attorney, IG ASAP
- C. MHP must evaluate admittance within 72 hours

X. REVIEW RIGHTS

- A. Right to a JAGC DC or civilian attorney (at own expense)

- B. Reviewer not part of chain of command
- C. Reviewer looks at basis of admittance
- D. Reviewer must report CO if referral was inappropriate

XI. MENTAL HEALTH PROFESSIONAL DUTIES

- A. Access basis for referral
- B. Report inappropriate referral
- C. Advise member of purpose of evaluation
- D. Advise member of lack of confidentiality

XII. WHAT IS AN INAPPROPRIATE REFERRAL

- A. Reprisal for congressional inquiry, Hotline complaint, IG notification, call to law enforcement personnel
- B. ***SECNAVINST will be punitive for any reprisal action***

SAMPLE NOTIFICATION LETTER

(Date)

From: Commanding Officer
To:

Subj: NOTIFICATION OF MENTAL HEALTH EVALUATION AND PATIENT RIGHTS

Ref: (a) SECNAVINST _____

1. You are being referred for a mental health evaluation (MHE). You are ordered to report to **(POC)** located at **(location)** at **(time / date)** to undergo the MHE.

2. The following is a description of your behaviors and / or verbal expressions which I considered in determining the need for an MHE: **(description)**

3. Prior to making this referral, the following mental health professional (MHP) was consulted: **(name of MHP)**. [or, No mental health professional (MHP) was consulted prior to making this referral as **(state reason)**].

4. Per reference (a), you are entitled to the rights listed below:

a. The right upon your request to meet with a judge advocate (or attorney employed by the Department of Defense (DOD)) who is made available to advise you of the ways in which you may seek redress should you question this referral.

b. The right to submit to the IG for investigation an allegation that your MHE referral was a reprisal for making or attempting to make a lawful communication to a member of Congress, any appropriate authority in your chain of command, an IG, or a member of an audit, inspection, investigation, or law enforcement organization, or for any other violation of reference (a).

c. The right to a second MHE by an MHP of your own choosing provided such MHP is reasonably available. Reasonably available means the MHP must be available to conduct the MHE within ten (10) business days. The availability of DOD-employed MHPs is determined by the commanding officer of the MHP using the ten business day standard. Evaluations by an MHP of your own choosing shall be at your own expense. You will not be charged for a DOD MHPs professional fees; however, ancillary costs—such as travel to the site of the evaluation—will be at your own expense.

d. The right to lawfully communicate without restriction with an IG, attorney, Member of Congress, or others about your referral for an MHE.

e. The right, except in emergencies, to have two business days to meet with an attorney, IG, chaplain, or other appropriate party prior to a scheduled MHE. If your condition requires the MHE to be conducted earlier than two business days, the reason will be stated in writing as part of the request for MHE.

f. In instances where, because of your assignment to a naval vessel or in any other circumstances related to your military duties, compliance with the above procedures is impracticable, I will prepare and give you a copy of a memorandum setting forth the reasons for the inability to comply with such procedures.

5. The following authorities can assist you if you wish to question this referral:

a. Military attorney: (*location / phone number / hours*)

b. Inspector General: (*local name / address / phone number*)

Naval Inspector General
(202) 433-2000
DOD Inspector General

SAMPLE ACKNOWLEDGEMENT OF RIGHTS

(Date)

From: (*rank or rate, name, etc.*)

To: Commanding Officer, (*command*)

Subj: NOTIFICATION OF MENTAL HEALTH EVALUATION AND PATIENT RIGHTS

Ref: (a) Your ltr (*enter description*)

(b) SECNAVINST _____

1. I acknowledge by my signature that I have received the notice and rights set forth in references (a) and (b).

2. I understand that, if I choose to question the mental health evaluation (MHE) referral, I may do so without fear of reprisal for or restriction on my lawful communications. I further understand that, even if I choose to question the MHE referral, I must still report to the medical treatment facility at the time and date ordered and that failure to do so may constitute a violation of the Uniform Code of Military Justice.

3. I elect the following rights circled below:

a. To consult with a judge advocate (or attorney employed by the Department of Defense (DOD)) who is made available to advise me of the ways in which I may seek redress for the MHE referral.

b. To submit to the Inspector General (IG) for investigation an allegation that the MHE referral is in reprisal for making or attempting to make a lawful communication to a Member of Congress, any appropriate authority in my chain of command, an IG, or a member of an audit, inspection, investigation, or law enforcement organization, or for any other violation of reference (b).

c. To lawfully communicate without restriction with an IG, attorney, Member of Congress, or others about the referral for an MHE.

d. To have two business days to meet with an attorney, IG, chaplain, or other appropriate party prior to the scheduled MHE.

e. To waive all of the above.

4. (If applicable) I have consulted with _____, an attorney, on -
_____.

Witness/Attorney

Member

ENVIRONMENTAL LAW OVERVIEW

I. LESSONS OF ABERDEEN

The conviction of three Aberdeen Proving Ground civilian managers for violating federal disposal regulations illustrates the military's contempt for environmental laws. The notion persists that anything is permissible in pursuit of superior arsenals in defense of the nation.

II. BASIC PRINCIPLES

- A. No automatic national defense exemptions
- B. States have authority over federal activities
- C. At least three tiers of regulation
- D. OPNAVINST 5090.1A; MCO 5090.2

III. REGULATIONS

- A. Federal law - Clean Air Act (CAA), Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA)
- B. Federal regulations - EPA establishes through rulemaking
- C. Administration and enforcement delegated to the states
- D. Civil and criminal sanctions ensure compliance

IV. SOVEREIGN IMMUNITY

- A. Waivers in various forms in all major environmental legislation
- B. Requirements to obtain permits, provide monthly reports, keep records, and pay fines and penalties
- C. Subject federal facilities to state and local administrative authority

V. ENVIRONMENTAL COMPLIANCE

- A. Comply with federal / state / local environmental laws and regulations
- B. Cooperate with federal / state / local officials when addressing environmental problems
- C. Allow civilian authorities access to the installation in order to monitor compliance

VI. KEY BASE PERSONNEL

- A. Environmental division within public works – civilian engineers and / or CEC officers
- B. Base SJA – must be proactive
- C. PAO – actively involved in environmentally sensitive issues (hazardous waste spills)

VII. ENVIRONMENTAL ORGANIZATION

- A. CNO (N-45) (Environmental Protection & Occupational Safety and Health Division)
- B. Major claimants (CINCLANTFLT, CINCPACFLT, CNET, etc.)
- C. Engineering field divisions (EFDs)
- D. Regional environmental coordinators (RECs)
 - REC responsibilities
 - a. Provide assistance to units in dealing with regulatory agencies
 - b. Ensure consistent positions and responses to regulatory agencies
 - c. Ensure all naval activities within the region are aware of new regulatory requirements
- E. COs of shore activity
 - Responsibilities
 - a. Negotiate permit conditions
 - b. Pay fees and fines

- c. Respond to notices of violation, warning letters, and notices of noncompliance
- d. Draft compliance agreements and comply with administrative orders

F. COs of naval vessels

-- Responsibilities

- a. Ensure environmental protection systems are maintained and operated IAW federal / state / local laws
- b. Ensure personnel with environmental duties are properly trained
- c. OPNAVINST 5090.1A, section 17-6.8
- d. Report discharges to CINC

VIII. PERSONAL LIABILITY

A. Two types of personal liability for violation of environmental laws

- 1. Criminal - penalties include imprisonment and fines
- 2. Civil - penalties include injunctions and money damages

B. Attorney's fees

IX. ENFORCEMENT MECHANISMS

- A. Federal enforcement - EPA through the Department of Justice
- B. State enforcement - state / local environmental agencies through the State Attorney General
- C. Private parties - environmental groups (civil suits only)

X. FEDERAL CRIMINAL CASES

- A. Responsible corporate officer doctrine compared with COs responsibilities
- B. Federal sentencing guideline - jail time likely
- C. Defense costs - not likely
- D. *United States v. Dee*
 - 1. *Aberdeen* case - U.S. Army Chemical Research and Development Command
 - 2. Three (3) top civilian managers; illegal dumping and storing of hazardous waste (HW) from 1983-86
 - 3. Three (3) years probation and 1,000 hours community service

E. *United States v. Bond*

1. San Diego Naval Station - April 1991
2. Properly trained civilian supervisor illegally dumped radiator fluid (NEX service station) in a storm drain
3. Pled guilty to negligent discharge of pollutants - violation of CWA

F. *United States v. Curtis*

1. Adak Naval Air Station - March 1992
2. Former fuels farm officer knowingly discharged 500,000 gallons of JP-5 into U.S. waters
3. Convicted under CWA
5. Ten (10) months in prison

G. *United States v. Woodward*

1. Charleston Naval Station - 1992
2. PO3; wrongful disposition of government property - HW (silver nitrate, mercury, oil) into a dumpster

2. Sewage treatment plant foreman falsified test results to bring wastewater records within permit limits
3. Eighteen (18) months' probation and \$5,000.00 fine

D. *California v. Lam*

1. Marine Corps Logistics Base, Barstow - May 1992
2. Civilian employee; illegal transport and discharge of HW - sandblast grit containing lead, chromium, and cadmium
3. \$50,000.00 fine (\$45,000.00 suspended) - DOJ reimbursed legal expenses

XII. CIVIL CASES

A. Federal cases

1. Statutory suits
 - a. Protection from civil penalties in CAA and CWA
 - b. Federal Facilities Compliance Act (FFCA) added protection to RCRA

3. Convicted by SPCM; seventy-five (75) days' confinement -- reduced two (2) paygrades and forfeitures

H. *United States v. Ferrin*

1. San Diego Naval Station - 1992
2. Civilian supervisor; wrongful disposal of HW (methyl isocyanate) in a dumpster
3. Three (3) years' probation (3 months home detention) and \$50.00

XI. STATE CRIMINAL CASES

A. Responsible corporate officer doctrine

B. Defense costs - DOJ will represent if

1. In scope of official duties
2. In the best interest of the United States

C. *California v. Hernandez*

1. March Air Force Base - 1992

3. Convicted by SPCM; seventy-five (75) days' confinement -- reduced two (2) paygrades and forfeitures

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 - a. Protection from civil penalties in CAA and CWA
 - b. Federal Facilities Compliance Act (FFCA) added protection to RCRA

2. DOJ will provide representation if
 - a. In scope of official duties
 - b. In the best interest of the United States

XIII. ENVIRONMENTAL COMPLIANCE EVALUATIONS

- A. Self-audit -- each unit conducts self-inspection annually
- B. Audit by major claimant -- at least every three (3) years
- C. Navy IG -- when directed due to concerns with environmental compliance
- D. DOJ policy on audits
 1. Lack of audit program makes prosecution more likely
 2. Audits must be regularly scheduled
 3. Recommendations implemented without delay
 4. Reflect strong policy to comply
- E. Audit tips
 1. Do yearly audit
 2. Assign resources to do it right

- c. Unitary Executive theory
- d. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under federal, state, interstate, or local solid or hazardous waste law with respect to any act or omission within the scope of official duties

2. Tort suits

- a. Suits must be filed under the Federal Tort Claims Act (FTCA)
- b. United States substituted as defendant (under the Westfall Act) if acting in the scope of official duties
- c. Decision to substitute can be reviewed on appeal

B. State cases

- 1. Statutory protection from civil penalties in CAA, CWA, and RCRA
- 2. Immediate removal to federal court available (federal defense)
- 3. United States substituted as defendant in tort cases

C. Personal representation

- 1. Federal and state civil cases

- c. Unitary Executive theory
- d. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under federal, state, interstate, or local solid or hazardous waste law with respect to any act or omission within the scope of official duties

2. Tort suits

- a. Suits must be filed under the Federal Tort Claims Act (FTCA)
- b. United States substituted as defendant (under the Westfall Act) if acting in the scope of official duties
- c. Decision to substitute can be reviewed on appeal

B. State cases

- 1. Statutory protection from civil penalties in CAA, CWA, and RCRA
- 2. Immediate removal to federal court available (federal defense)
- 3. United States substituted as defendant in tort cases

C. Personal representation

- 1. Federal and state civil cases

2. DOJ will provide representation if
 - a. In scope of official duties
 - b. In the best interest of the United States

XIII. ENVIRONMENTAL COMPLIANCE EVALUATIONS

- A. Self-audit -- each unit conducts self-inspection annually
- B. Audit by major claimant -- at least every three (3) years
- C. Navy IG -- when directed due to concerns with environmental compliance
- D. DOJ policy on audits
 1. Lack of audit program makes prosecution more likely
 2. Audits must be regularly scheduled
 3. Recommendations implemented without delay
 4. Reflect strong policy to comply
- E. Audit tips
 1. Do yearly audit
 2. Assign resources to do it right

3. **Develop POA&M to implement recommendations**
4. **Track progress and document action taken**
5. **Assess compliance honestly**

ADMINISTRATIVE SEPARATIONS

BMSN Cheryl Davis has been attached to your command for seven (7) months. During that time, she has had a chronic problem with lateness, incomplete work, and failure to complete basic qualifications. She has stated on many occasions that she wants to get out of this "Mickey Mouse outfit" as soon as possible. She has been counseled by her division and has received a Page 13 counseling warning for UA and failure to complete required training. She has not been to NJP. Her evals average 2.4. The XO spots her arriving late again one morning and has had enough. He calls you in and asks the following questions about administrative processing.

1. Can SN Davis be processed for discharge?
2. If so, on what grounds?
3. What is the least favorable discharge she can receive?
4. Is she entitled to an admin board?

YNSN Pierce is a 23-year-old, 4.0 performer who sings in the NAS Birdland Chapel Choir. It has never been necessary to counsel SN Pierce for anything negative; in fact, he was just named Sailor of the Quarter. Unfortunately, in his youth, SN Pierce tried marijuana "a few times"; a fact which was dutifully reported to his recruiter and which appears in his service record as a drug waiver.

Last weekend, SN Pierce's girlfriend dropped him. He celebrated his new-found freedom with a two-day nonstop drinking binge, a binge which might have gone on indefinitely had he not wrapped his car around a telephone pole. Upon regaining consciousness, the first thing SN Pierce did was call his friend, BT1 Mills (a substance abuse counselor), and confess a long-standing problem with alcohol abuse. The NAS Birdland Naval Hospital's routine blood tests revealed a BAC of .15%.

Assume you are Pierce's commanding officer.

1. Is processing for discharge mandatory?
2. If the command chooses or is required to process SN Pierce, what bases for discharge apply?
3. What is the least favorable discharge SN Pierce could receive?

ADMINISTRATIVE SEPARATIONS REVIEW
QUESTIONS

- A. In a random urinalysis, LCpl Smith tests positive for marijuana.
- B. In a command-directed urinalysis, SN Smith tests positive for marijuana.
- C. SR Smith is convicted in state court of driving under the influence. He is sentenced to confinement for one (1) year, but has all but one (1) week suspended.
- D. PO3 Smith is convicted of shoplifting (a misdemeanor) and sentenced to six (6) months' confinement, no suspension.
- E. RMSA Smith is charged with indecent exposure (a misdemeanor) in state court. Because it is his first offense, his civilian counsel gets him diverted to a treatment program after a plea of no contest.
- F. Corporal Smith offers to take GS-5 Jones to New York to see "Miss Saigon" if she will spend the weekend with him. Smith makes it clear that sexual activity will be expected. There is no supervisory relationship between Smith and Jones.

In all the above scenarios, the following questions should be asked:

- 1. Can Smith be processed for discharge?
- 2. On what basis(es)?
- 3. Is it mandatory?
- 4. What is the most appropriate procedure?

Gifts from Outside Sources

1. Lieutenant Norman, the SJA for NAS Jacksonville, attends a 2:30 p.m. meeting with officials of a local environmental organization that is concerned about a proposed hazardous waste cleanup. The meeting is held at the offices of the environmental organization, and the chairman sends out for soft drinks and cookies. Lieutenant Norman—who has not had any lunch—would love to help herself to the refreshments, but wonders whether her partaking might violate the standards of conduct.

What should Lieutenant Norman do?

2. Brenda, an Assistant to the Director, used to work for Beacon Company—a company that now does business with her agency. During the first holiday season after entering government employment, she receives 75 greeting cards from employees of her former company—each costing from \$1.50 to \$2.00.

Is it permissible for Brenda to accept the cards?

3. Lieutenant Commander Smith, a CEC officer, is involved in supervising the construction of a hazardous waste disposal site. An employee of the contractor offers to pay for Lieutenant Commander Smith's lunch at the clubhouse after a round of golf. The lunch costs \$11.50.

Can Lieutenant Commander Smith accept the lunch?

4. Don is a Telecommunications Specialist with the Air Force. His cousin and close friend, Zach, works for a communications software company that does business with the Air Force. Don's 40th birthday is approaching, and Zach and his wife have invited Don and his wife out for dinner to celebrate the occasion.

May Don accept the invitation?

Gifts Between Employees

5.
 - a. For Christmas, Melda—a program officer—gives her supervisor an \$8.00 poinsettia.
 - b. Mark, an oceanographer, takes his vacation at the beach. When he returns to work, he brings his boss a box of salt water taffy purchased for \$9.50—tax included.
 - c. James, a supervisory appeals specialist, invites a member of his staff to his home for a dinner party. The staff member brings him a \$15.00 bottle of wine.

May these gifts be exchanged as described?

6. Mary works for Mike, a supervisory special agent at the State Department. Mike is in the hospital recovering from minor surgery, and Mary would like to send him a floral arrangement worth \$25.00.

Can Mary send—and Mike accept—the "get well" gift?

7. Martha is taking up a collection from everyone in her section for a new briefcase to be presented to the division chief on the occasion of his retirement. Martha tells each person their share is \$5.00.

Is this arrangement permissible?

Conflicting Financial Interest

8. Celia, an employee of Chemical Manufacturing Corporation (CMC), has applied for and received an offer of Federal employment from an agency that regulates chemical substances. In discussions about her potential position, Celia's future supervisor informs her that, prior to beginning her work for the agency, she will have to divest the stock in CMC that she has accumulated through the corporation's profit-sharing program.

Can the agency require Celia to take these actions as a condition of employment?

9. Terry, an employee of the Administration for Children and Families, serves as an uncompensated board member for a non-profit day care cooperative. The cooperative has submitted a grant application to the agency for a new developmental program. Because he is an uncompensated board member, Terry himself does not stand to be affected by the award or denial of the grant.

Can Terry participate in the review of the grant application?

Seeking Employment - Post-Employment

10. As an audit manager for the Army, Major Dansen has been overseeing a pilot project to contract out to the private sector certain routine audits. While working with the private accounting firms involved in the pilot project, Major Dansen decides it would be a good time to make a career change and move out of the Army. After assembling his resume, Major Dansen drops 100 in the mail to various accounting firms around the country—including several that are participating in the pilot project.

What should Major Dansen be concerned about regarding this mailing?

Misuse of Position

11. Juan, a regional manager for the FDIC, is asked to write a letter of recommendation for an employee who wishes to go to law school.

Can Juan use his official government title and agency letterhead for the recommendation?

12. Orvin is an Army employee who learns that his agency will award a multi-million dollar contract to Supplier Corporation. Before the contract award is publicly announced, Orvin calls his broker and purchases stock in Supplier Corporation.

Allen, an employee with the Army Corps of Engineers, is an officer of an organization that advocates protection of the environment. Allen has been working on a long-range project to build a dam that would have some impact on a local wildlife refuge. At the monthly meeting of the environmental organization, Allen announces the proposed dam project—prior to any public announcement by the agency.

Where have Orvin and Allen gone wrong?

13. Waylon, a dedicated government employee, also coaches his daughter's soccer team. On a slow day at work, he "borrows" the office computer and copy machine to type and reproduce the team's practice and game schedule for the season.

Barbara, another dedicated government employee, is hosting this month's garden club meeting. Because she is the newest member of the club, Barbara wants to make a good impression and would like to have some pens and note pads handy for the members of the club in case they want to take notes during the meeting. Remembering that the agency's supply cabinet was recently restocked, Barbara helps herself to a few office supplies. Additionally, Barbara uses the office copier to make ten (10) copies of the chocolate cake recipe she used for the meeting's refreshments to pass out to members at the meeting.

Is there anything wrong with Waylon or Barbara's activities?

14. About an hour before he is ready to call it a day, Dennis, a supervisory government employee, remembers it's his wife's birthday. Dennis has a meeting to attend in five minutes, so he asks his secretary to run down to the local department store and pick his wife up a nice blouse.

Because it's his wife's birthday, is it okay for his secretary to take time off from her work to run this errand?

Outside Activities

15. Bill is a career employee with the Department of Energy Office of the Inspector General. He works primarily on audits of the Department's Defense Programs. Bill is also a CPA and, in his spare time, he has also been asked to conduct a CPA review course for the local community college. He will be paid \$1,000.00 for the 10-week course.

Is it acceptable for Bill to receive compensation for this activity?