

**NEEDS ASSESSMENT FOR
SECURITY POLICE
INTERVIEW AND INTERROGATION TRAINING
AT
SHAW AIR FORCE BASE, SOUTH CAROLINA**

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Needs Assessment

Air Force security police men and women conduct countless interviews and interrogations every day. The fruits of these interviews are often used as evidence in non-judicial punishment proceedings and court-martials. Commanders often rely upon statements from these interviews to determine appropriate punishments for offenders. Unfortunately, unless a commander has seen statements and reports generated from the efforts of a truly skilled interviewer and interrogator he cannot know what he's missing. A commander may become accustomed to the quality of work he sees daily and doesn't necessarily demand better, because he hasn't seen interviewing and interrogation quality as a possible dependent variable, with training as the independent variable.

Current Air Force Training

All security police men and women begin their training in the Security Police Academy at Lackland Air Force Base, Texas. Entry-level courses include the basic law enforcement specialist course, basic security specialist course, and basic officer course. Other courses include the noncommissioned officer's course and military working dog handler course. Through telephone interviews with the curriculum staff at the Security Police Academy, this author learned that interview and interrogation skills are not taught at the academy, other than instruction necessary to properly complete a statement form. Security police educational subject block indexes (ESBI's) are career field lesson plans which are taught or read at the local level. The ESBI (G-2) titled "Interviewing" provides only the most basic information and is covered in about five pages.

Personal Experience

This author graduated from the Security Police Officers Basic Course in 1988 and has served as a security police officer at six bases in six different countries. He has served as a flight (watch) commander, operations officer (deputy chief of police), and commander (chief of police). He completed the Reid Technique of Interview and Interrogation Course

in Houston, Texas and the Army Institute for Professional Development's Military Police Interrogations Course by correspondence.

At this author's first assignment he noticed that often, when reviewing written statements and reports, he had to return them to patrolmen because not enough necessary information was included. Too often, investigation revealed that the patrolmen simply handed the statement form to the witness or suspect, after rights advisement if required, and asked them to write down whatever they knew about the incident under investigation. In addition, very basic mistakes were made. For example, in one case three suspects each elected not to make a statement and each did not want to speak to a lawyer. This was a combination of options rarely seen. When this author asked the patrolman how the rights advisement was given he replied that all three were advised together in the same room; little surprise then that they each invoked their rights in the same manner. In many other cases, this author reviewed statements that were only one sentence long, addressed few, if any, of the elements of the offense alleged, and added little overall, if anything, to the investigation. Too often reports had to be sent back to flights to be reaccomplished. More often, if the case was of any consequence, the unit's investigators were forced to complete cases that could have been done at the flight (on-duty shift) level. At small security police units, this problem has been acute. Security police are divided into law enforcement and security career fields and, as expected, those in law enforcement generally have more experience conducting interviews and interrogations. However, at small units, such as the one at Shaw Air Force Base (AFB) the troops from both career fields are joined on each shift and thus security troops with little interview experience conduct more interviews and interrogations than they normally would.

Shaw AFB Interviews

Experience has indicated that security police units would benefit from improved interview and interrogation skills, however, it remained to be seen whether key personnel

at Shaw AFB had similar thoughts. The first needs assessment interview took place between the author and the security police commander and his operations officer (deputy). They had already recognized the value of giving each shift the tools necessary to complete more of their own investigations as opposed to having them refer cases to the unit's investigations section. They initiated an element investigator program, whereby each shift would send a patrolman to work temporarily, for 30 days, with the investigations section in order to have their skills honed and aid their element (shift) in conducting its own investigations. The security police unit at Shaw AFB, however, operates now at a high operations tempo. Many troops are deployed at any given time making it extremely difficult for shifts to send troops to the investigations section, even for a short period of time. Both the commander and operations officer were enthusiastic about the project this author proposed, especially the lesson plans aimed at roll call training for each shift.

The second needs assessment interview was conducted via telephone with a lawyer from Shaw AFB's staff judge advocates office. He related that overall he was pleased with the quality of reports received from security police. He did however have several suggestions for inclusion in the portfolio project. He recommended reminding patrolmen to keep in mind the element of the offense they are investigating and address them, to ask questions about other possible witnesses and suspects and name others who might be involved in order to develop leads, and to ask questions where answers might help to establish intent on the part of a suspect. He also recommended this author include information about the military rules of evidence in the patrolman's handbook. Finally, he suggested that interview techniques taught concentrate on learning the truth and not eliciting specific answers and that would avoid putting words into people's mouths. He also suggested teaching some psychological techniques for eliciting the truth.

Final needs assessment interviews were conducted with a security police training section noncommissioned officer (NCO) and the noncommissioned officer-in-charge

(NCOIC) of the security police investigations section. The training NCO confirmed that the Air Force ESBI on interviews provided little depth and that the unit conducted no other training in conducting interviews and interrogations. The NCOIC of investigations mirrored his commander's enthusiasm for the shift investigator program and was disappointed that manning levels couldn't support it. He thought this portfolio project would help and in particular was supportive of the idea of a patrolman's handbook which would take pertinent parts of the Manual for Courts-Martial and Uniform Code of Military Justice and condense them into a form useable to the patrolmen.

This needs assessment demonstrated a legitimate need for education which leads to enhanced interview and interrogation skills. The portfolio project will address filling those needs. Just as importantly, the security police squadron at Shaw AFB is a willing and enthusiastic client for the portfolio project.

SECURITY POLICE
GUIDE TO CONDUCTING
INTERROGATIONS

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INTRODUCTION

Evidence is the meat and potatoes of police investigations. It is what we use to determine the facts of each case. This paper is concerned with one type of evidence; testimonial evidence. Testimonial evidence is the fruit borne of successful interviews and interrogations. The purpose of this guide is to increase the amount and quality of this testimonial evidence gathered by security police personnel particularly at the element, or street level.

Security police men and women at the element level conduct untold numbers of interviews and interrogations every day. These conversations, aimed at gathering information, range from asking witnesses to describe what happened at a traffic accident to questioning suspects at a brawl about how knife wounds were received. Those being interviewed or interrogated can just as easily be small children as repeat offenders. Security police personnel responsible for gathering this vital information from others range from the freshest security airman, with but a few months of service under his belt, to the seasoned law enforcement element leader, with over 20 years of experience in the school of hard knocks. How these troops conduct their interviews and interrogations is usually a result of experience and gut instinct. With the exception of those few selected to attend the US Army's Military Police Investigations School, they will have little else to go on as they gather vital information.

This guide is aimed at senior security police squadron personnel and trainers. The reader is justified in asking, before spending valuable time reading this guide, "what will this guide do for me?" First, this guide will not instantly transform the reader into a skilled interrogator. What the researcher, instead, aims for is to allow the readers to learn more about the art of gathering information through conversation, as it relates to law enforcement. When the reader has finished this guide he should have a firm grasp of the legal and ethical principles involved in conducting interviews and interrogations, an

understanding of how people tend to act in an interrogational setting and why they act that way, and of some of the recommended techniques that can increase the accuracy and amount of information gathered during interviews and interrogations. Security police unit leaders can then formulate policies that may encourage the use of proper techniques and guidelines that will ensure ethical treatment of suspects, victims, and witnesses. Trainers can carefully formulate additional lesson plans, based upon information in this guide, that train element personnel on those aspects of interviewing and interrogating deemed applicable, thorough coordination with senior staff, for their particular unit.

DEFINITIONS

Certain terms are defined must be defined so as to guarantee that the reader is thinking about the same concept that the researcher is discussing. For the purpose of this guide, the terms listed will be defined as follows:

Admission: "A self-incriminating statement falling short of an acknowledgment of guilt, even if it was intended to be exculpatory" (MCM, III-5).

Confession: "An acknowledgment of guilt" (MCM, III-4).

Interrogation: "...includes any formal or informal questioning in which an incriminating response is either sought or is a reasonable consequence of such questioning" (MCM, III-6).

Interview: A nonaccusatory conversation between an interviewer and a suspect, witness, victim, or complainant.

Involuntary: "A statement is involuntary if it is obtained in violation of the self-incrimination privilege or due process clause of the Fifth Amendment...Article 31, or through use of coercion, unlawful influence, or unlawful inducement" (MCM, III-5).

Officer: The person conducting the interview or the interrogation.

Subject: The person being interviewed or interrogated.

ETHICAL CONSIDERATIONS

What is the purpose of an interview or interrogation? How best should the effectiveness of an interviewer or interrogator be measured? How these two questions are answered will determine, in large part, what the results of our interviews and interrogations will be and whether or not key ethical considerations are observed.

Purpose of the Interview/Interrogation

Some will argue that the purpose of the interview, and more particularly the interrogation, is to gather evidence, hopefully in the form of a confession, that will lead to the conviction of our suspect. Baldwin (1993) would call this looking for *proof* instead of *truth*. The purpose of the interview and interrogation should be to gather information that leads to the truth of the matter under investigation. Whether the truth implicates or exculpates the suspect, if there is one, is immaterial to this purpose. The truth, not a conviction, should be the goal. In order to get at the truth, the interviewer/interrogator must not let his assumptions, or personal prejudices, about a particular case cloud his thinking. Baldwin points out that if an interrogator's assumption that a suspect is guilty is incorrect, then there is a great possibility that the interrogator may unintentionally generate a false confession.

Measuring Interrogator Effectiveness

The effectiveness of an interrogator must not be measured by the number of confessions obtained, but rather it should be measured by the completeness of the interviews and interrogations and how well they get at the truth and address all of the necessary elements of the case. If the interrogator's effectiveness is measured based upon confessions then his goal may quite naturally become establishing proof of a suspect's guilt and not determining the truth. This can lead to the interrogator becoming emotionally involved in the interrogation and losing his objectivity (Zulawski & Wicklander, 1991).

Interrogators must not be encouraged, in this way, to bend the rules. The security policeman must see his purpose as gathering information which leads to the truth.

It is unfortunate that many police officers see the Constitution, or more accurately the courts' interpretations of it, with particular regard to the Miranda case, as thwarting law enforcement efforts and protecting the guilty (Royal & Schutt, 1976). That landmark decision was to many a mere affirmation of all of our constitutional rights. Security police personnel, more so perhaps than civilian law enforcement, have an obligation to work within the constitutional safeguards. Our oaths of enlistment and commissioning make clear our duty to defend and protect the Constitution of the United States.

LEGAL FRAMEWORK

Before getting into the mechanics of conducting an interview or interrogation it is necessary to provide the reader with the legal framework within which he must ensure that he operates. It is also important that security policemen at all levels have a thorough understanding of the legal principles and rules that govern the conduct of the interviewer and interrogator. Unit policies can provide specific guidance for troops, but without some understanding of the legal framework it may be difficult for them to adapt to new situations not specifically covered by a unit's policies. It goes without saying that this guide is simply a learning tool and is not intended, nor does it even begin, to replace advice from the local staff judge advocate's office.

The two sources of our legal framework for interviews and interrogations are the Bill of Rights in the US Constitution and the Manual for Courts Martial (MCM). Specifically, the Fifth Amendment and Sixth Amendment to the Constitution, Rule 305 of the Military Rules of Evidence, and Section 831, Article 31 of the Uniform Code of Military Justice (UCMJ). This section of the guide will examine each of these sources of guidance in turn and discuss their impact on the interview and interrogation process. It

will also briefly discuss what the consequences of failing to operate within the legal framework can be.

Fifth and Sixth Amendments

5th Amendment:

"No person shall be held to answer for a capital, or otherwise infamous, crime, unless on a presentment or indictment of a Grand jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service, in time of War, or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; **nor shall be compelled in any criminal case to be a witness against himself** nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

6th Amendment:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and **to have the Assistance of Counsel for his defense.**"

The portion of the Fifth Amendment we are concerned with is the protection against being compelled to be a witness against oneself. The Sixth Amendment provision for the assistance of counsel also factors heavily into the realm of interviews and interrogations.

Miranda Rights Advisement

The protections given in the Fifth and Sixth Amendments were most famously recognized by the courts in the case of Miranda v. Arizona (1966). In this landmark case, Miranda, who was poor and uneducated, was interrogated by police in connection with a

rape and kidnapping. Miranda claimed that he did not know he had a choice relating to his rights and that the police made promises to drop one charge if he confessed to the other (Baker, 1983). In overturning Miranda's conviction the Court held that in our adversarial criminal justice system, the government, in this case the police, should produce evidence on its own "rather than by the cruel, simple expedient of compelling it from his [the suspect's] own mouth" (Marks & Reilly, 1979, p. 41).

Miranda v. Arizona was unusual in that the US Supreme Court actually prescribed procedures for police to use when questioning a suspect in a custodial setting. The Court expressed the opinion that, without certain safeguards, a custodial interrogation could compel a person to "speak where he would not otherwise do so freely" (Del Carmen & Walker, 1991, p. 140). The Court further held that in order to counter the compelling nature of the custodial interrogation that police were now required to inform the suspect of his appropriate constitutional rights prior to questioning. Specifically the suspect must be advised of the following rights:

- the right to remain silent;
- the knowledge that statements made could be used against him in court proceedings;
- the right to a court-appointed attorney during questioning;
- the right to appointed counsel if unable to afford private counsel (Del Carmen & Walker, 1991).

It's important to note that the Miranda ruling does not require that every time police question a suspect that they advise him of these rights. Because the Miranda rights advisement is based upon the Fifth Amendment prohibition against compelled self-incrimination, it only applies in a situation which would tend to compel the suspect to witness against himself. The Court described that compelling environment as a custodial interrogation. Chief Justice Warren, writing the majority opinion, defined custodial

interrogation as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way" (Marks & Reilly, 1979, p. 50).

If the suspect requests legal counsel then the questioning must not start, or be allowed to continue, until legal counsel has been made available. In Edwards v. Arizona (1981), Edwards expressed his wish to invoke his right to legal counsel before answering further questions by police. Questioning was stopped, but the next morning police officers again advised Edwards of his rights in accordance with the Miranda decision. Edwards eventually waived his rights and made statements which incriminated him. The Supreme Court held that the suspect's waiver of his rights was not valid, because police continued questioning after the suspect had invoked his rights and as such his statements were inadmissible. If however, the suspect initiates further communication the questioning may proceed after the suspect has again been advised of his rights (Del Carmen & Walker, 1991). This prohibition against questioning after a suspect requests counsel remains in effect even if the suspect is to be questioned about a different crime on another day. In Arizona v. Roberson (1980), the suspect was arrested for a burglary, advised of his rights, and requested a lawyer. Several days later a different police officer again advised Roberson of his rights and questioned him about another robbery. The court held that once a suspect had invoked his right to legal counsel, the police could not attempt to question the suspect, even for a different crime than the suspect originally invoked his right to counsel in relation to questioning (Del Carmen & Walker, 1991).

In New York v. Quarles (1984), the so-called "public safety" exception to the mandated Miranda rights advisement prior to a custodial interrogation was established. In this case, a woman approached police officers and described a man she claimed had just raped her at gun-point. She told police that the man had entered a particular nearby supermarket. An officer spotted, chased, and apprehended Quarles, the suspect, finding

that Quarles was wearing an empty shoulder holster. The officer, prior to advising Quarles of his rights, asked Quarles where the gun was. Quarles told the officer where the gun was. After the gun was retrieved, Quarles was advised of his rights and after waiving them, he told the police officer he [Quarles] owned the gun (Del Carmen & Walker, 1991). The court held that "no matter what the officer's actual intent in asking the question might be, if the question could reasonably be prompted by a concern for his own or the public's safety the response would be deemed admissible..." (Zulawski & Wicklander, 1991, p. 39).

Article 31 of the UCMJ

"Compulsory self-incrimination prohibited.

(a) No person subject to this chapter may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this chapter may interrogate, or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial."

It's important to notice that unlike the Miranda rights advisement which is only required in custodial interrogations, Article 31 of the UCMJ requires a rights advisement any time a military member interrogates a suspect, regardless of custodial status.

Article 31 of the UCMJ is a product of the blending of military law and civilian law. The Fifth Amendment of the US Constitution already prohibits compelled self-incriminating testimony. Congress, when writing Article 31, recognized that in the military there were pressures that could conceivably cause a military member to be compelled to provide testimony against himself. In the 1951 MCM, 15 years before Miranda v. Arizona Congress created Article 31(b) as an answer to the compelling nature of questioning in a military environment (Caddell, 1993). Specifically, as cited in United States v. Loukas (1990), Congress acknowledged that in some cases, with certain players, questions might be seen as commands to be obeyed with an instant answer. In a subcommittee hearing of the Committee on Armed Services in 1949 it was noted that, "Conditioned to obey, a serviceperson asked for a statement about an offense may feel himself to be under a special obligation to make such a statement. Moreover, he may be especially amenable to saying what he thinks his superior wants him to say - whether it is true or not. Thus the serviceperson needs the reminder required under Article 31 to the effect that he need not be a witness against himself" (H.R. 2498, pp. 984-985).

Because Article 31(b) requires a rights advisement prior to questioning "...a person *suspected* of an offense..." it is important for security police personnel to understand what is required for that *suspicion* to be present. The US Court of Military Appeals clarified this issue in United States v. Good (1991), where it found that "The test for making this determination is objective in nature; that is whether the interrogating official... *believed or reasonably should have believed* [the suspect] committed an offense" (p. 2). This determination of whether someone is a suspect must be made by the interrogator in full consideration of "...all facts and circumstances at the time of the interview..." (United States v. Morris, 1982, p. 2).

The Article 31 rights advisement applies even if the suspect does not know that the questioner is a military member and acting in order to gain investigatory information

(United States v. Souder, 1959; as cited in United States v. Duga, 1981). Article 31(b) also requires that supervisors and commanders who question a suspect in conjunction with a disciplinary action, such as the application of non-judicial punishment under Article 15, must advise the suspect of his rights (United States v. Loukas, 1990).

The Chief Judge of the US Court of Military Appeals in United States v. Jones (1988) addressed the "public safety" exception to Miranda rights advisement as he saw its application in the military setting. He referenced New York v. Quarles, as discussed earlier in this chapter, and opined that the US Court of Military Appeals should accept the "public safety" exception with regard to constitutionally required rights advisement. He found it unlikely that Congress would have intended to prohibit military police questioning in emergencies which would justify invocation of the "public safety" exception. Interrogators, however, should take note of his warning that this exception should be interpreted narrowly and thus only exercised in life-threatening situations and "not in the usual criminal investigation" (p. 5). As a point of law, the reader should note that the "public safety" exception was not invoked by the government in United States v. Jones, and as such, the military court has not yet established any precedent for use of the "public safety" exception in a military environment.

What happens if an interrogation is conducted contrary to Article 31 requirements? Bluntly put, the case can be lost. If a rights advisement was not given, and was required, or if after some or all of these rights were invoked by the suspect, and they were not observed by questioners, then subsequent statements by the suspect will be termed involuntary and, as such, inadmissible. Furthermore, under the "fruit of the poison tree" doctrine, any subsequent evidence obtained as a result of these involuntary statements will also be suppressed unless the prosecution can prove to the satisfaction of the court that the evidence would have been procured without use of the involuntary statements (Wollin, 1992).

PREPARATION

"Two minutes of preparation can save hours of interrogation" (Zulawski & Wicklander, 1991, p. 13).

MSgt Berry (personal communication, 3 April, 1996), the NCOIC of security police investigations at Shaw Air Force Base, referred to proper preparation as being the most important single step in the interview process. This section will deal with the myriad of small details that the interviewer or interrogator must tend to prior to the interview or interrogation. For the purpose of this guide, the author has loosely grouped the major concerns as location for the interview or interrogation, timing of the interview or interrogation, and case preparation prior to the interview or interrogation.

Location of the Interview/Interrogation

The proper location for questioning will depend upon the situation at hand. According to Gallimore (personal communication, May 3, 1996), the head of Sumter County's serious crimes unit and an interrogator with 24 years experience, there is no hard and fast rule for determining where the interview or interrogation should be conducted. He did, however, relate that it was important to have a certain level of privacy. He also preferred to conduct interrogations in his interview room where he would feel the most comfortable and in control, and where the suspect would not be as comfortable. The overriding concern when deciding upon the location for an interview or interrogation is to select a location as free of distractions as possible (Fisher & Geiselman, 1992; Zulawski & Wicklander, 1991). There are several reasons for selecting a relatively private setting, free of distractions. By reducing distractions the subject will be encouraged to listen more carefully to the interviewer, thus keeping his attention where it should be. A distraction-free environment will make it easier for the officer to determine the reason for certain subtle actions on the part of the subject. For example, if the subject momentarily averts his eyes from the officer in a certain manner may indicate the subject is being deceptive or,

in a public setting, perhaps the subject was merely distracted by a car driving by. Privacy also affords the subject a certain shield against public embarrassment. According to Zulawski and Wicklander, the guilty suspect is much more likely to confess to the interrogator in an environment which affords privacy, thus reducing the level of anxiety over the embarrassment a confession to a misdeed in front of others might cause.

Although most interviews and interrogations should be conducted in a security police interview room, there are times when this may not be possible or practical and the interview or interrogation must be conducted on-scene. This is not necessarily bad, as there are advantages to conducting an interview at the crime scene. The sooner the interview is conducted the less likely it is that certain details are to have begun fading from the witness' mind (Fisher & Geiselman, 1992). "In addition, the context of the interview site typically is very similar to the context of the crime itself, a factor that often promotes good memory" (p. 54). Unfortunately, the witness or complainant is likely to feel very anxious and excited at the scene and at the scene it is generally more difficult to reduce distractions. Conducting the interview on-scene may also have the additional disadvantage of giving the officer little time to prepare for the questioning. If, for whatever reason, the interview is conducted on-scene, the officer should attempt to establish a small zone of privacy separate from others at the scene. If this can be accomplished, and the subject is calm and coherent, Fisher and Geiselman propose that the on-scene interview is acceptable. They also point out that an officer should gather the names, addresses, and phone numbers of all others at the scene in order to conduct later interviews.

If the interview or interrogation is to be conducted in a security police interview room then the layout and furnishing of the room become important. The major advantage to conducting the questioning at the police station, other than security concerns, is that the officer can best limit potential distractions in that environment. The interview room

should be furnished in a manner that minimizes possible distractions so that the subjects attention will be focused on the officer and what he is saying. Examples of items which may tend to distract the subject and should therefore not be present include clocks, telephones, overheard conversations from hallways or adjacent rooms, and windows which are not covered. Even such things as pencils and paper clips should not be placed where a subject can access them during the interview or interrogation. A sign should also be placed on the outside of the interview room door, just before the interview or interrogation begins, which instructs others not to enter and to be quiet (Fisher & Geiselman, 1992). Just as with the on-scene interview, only the officer and subject should be present during questioning whenever possible (Royal & Schutt, 1976), but if the subject refuses to be interviewed alone then a third party may be present, but out of the subject's sight (Fisher & Geiselman, 1992). Some (Zulawski & Wicklander, 1991), when referring to the interview room, also suggest that the environment should be a non-threatening one. This will reduce the chance of a strong defensive reaction on the part of the subject which could lead to strong denials , which are often difficult to overcome. This environment might in some cases even be the subject's office at his place of work, due to its comfortable, non threatening setting. Others (Royal & Schutt, 1976) advocate moving the subject from an office or home environment to the interview room at the police station in order to remove them from surroundings that are familiar to them. They claim, and this author would agree, that subjects feel a certain pressure to "maintain personal integrity before family, friends, and neighbors" (p. 56). This phenomenon makes it less likely that a subject will admit to being involved in potentially embarrassing acts while being questioned at his place of employment or home, where co-workers or family might be present. If the subject is interviewed at a location, such as the police interview room, free of these pressures to deny criminal acts then the subject can be more easily encouraged to be truthful and cooperative.

Timing of the Interrogation

In general it is best to conduct the interview or interrogation as soon as possible after the incident under investigation. There is less chance that witnesses and others will begin to suffer the unavoidable affects of memory loss that occur over time. On the other hand, witnesses and others are occasionally quite upset, even hysterical, for some time after a crime or other traumatic incident. It can be frustrating for the officer to attempt to gather information during this time-frame. Often, because of this, it is advisable to postpone the interview until the subject has calmed down sufficiently enough to provide coherent information (Fisher & Geiselman, 1992).

The officer should also consider the order in which interviews and interrogations are conducted. That is, who will be interviewed or interrogated first, second, third, et cetera (Zulawski & Wicklander, 1991). Witnesses considered friendly and cooperative should be the first ones interviewed, especially those most likely to give an officer the most complete version of the incident in question. This will allow the officer to more properly frame questions with later subjects. Unless a suspect appears particularly disturbed about a crime, it will usually be most productive to hold off his interrogation until background information can be gathered on him and the details of the crime under investigation (Royal & Schutt, 1976). Both MSgt Berry (personal communication, April 3, 1996) and Gallimore (personal communication, May 3, 1996) agreed that under most circumstances it was best to save questioning of the suspect for last. Berry suggested trying to conduct interviews with victims and witnesses, as well as gathering information on the subject, before the suspect was even aware that he was a suspect. Gallimore agreed that the questioning of the suspect should be conducted last so that the interrogator would have an idea what the answer to each question asked of the suspect should be. In fact, Gallimore characterized an effective interrogation as one in which the interrogator knew the truthful answer to each question asked. Furthermore, Gallimore

was not concerned about whether or not the suspect knew that an investigation was being conducted which focused on him. He said, however, that having the suspect know he's a suspect, but interviewing him last could work to the interrogator's best interest. The suspect wouldn't know what witnesses and victims were saying about him and would be kept anxious and off-guard, which could aid the interrogator.

Case Preparation

No officer should attempt an interview or interrogation without first becoming acquainted with the facts of the case up to that point (ESBI G-2). This will make it possible for the officer to ask the right questions and, in many cases, anticipate what the correct answer might be. There are usually several sources of information available that should be examined (Royal & Schutt, 1976). All previous reports involving the subject should be read and any statements already taken should also be reviewed. The officer should try to visit the crime scene if possible. Available circumstantial and physical evidence should be examined. In addition, the officer should find out all he can about the subject before speaking with him (ESBI, G-2). A background check aimed at determining the habits and character of the subject may allow the officer to ferret out any possible hidden agendas of the subject (Royal & Schutt, 1976; Zulawski & Wicklander, 1991). With the above information in mind, the officer must determine whether or not he is the best interviewer or interrogator for this subject. Is there a possibility of a good rapport or will the personalities of the officer and subject lead to a conflict which may end in a strong denial by the subject? If so, then a different interrogator might be better suited for that particular suspect (Zulawski & Wicklander, 1991). The comparative ranks of the officer and subject might play a role in selecting the best officer. Gallimore (personal communication, May 3, 1996) pointed out that in the military there was considerable risk in matching a very junior patrolman, as interrogator, with an experienced NCO as the subject. The NCO might tend to dominate the junior airman. In addition, Gallimore said

that when searching for a potential interviewer or interrogator one should be sure to choose a security policeman who is not only thorough and dedicated, but one who enjoys talking to people. It might be difficult, however, to establish a trusting rapport between a subject and officer who are widely separated by rank. In addition, an officer who has previously been involved in an investigation which led to a subject's punishment might not be the best choice to interrogate that same subject again.

Possibly the most important question for an officer to ask himself before beginning an interview or interrogation is why he's interviewing or interrogating this particular subject and what information he hopes to obtain. What can this person tell him that he needs to know (Royal & Schutt, 1976)? This means that the officer should begin with a list of questions that he intends to have answered through the interview or interrogation. The officer should locate all possible suspects and witnesses (Royal & Schutt, 1976) and determine, as much as is practicable where each fits into the picture, and what questions each will be able to answer for the officer.

When the officer determines which questions he is seeking answers to, he should keep foremost in his mind the elements of the offense which are necessary to assess guilt (Royal & Schutt, 1976). Each of the punitive articles of the UCMJ has certain *elements* which must be present, and proven, in order for the offense to have been committed. John Baldwin (1993), a judicial administration professor in England referred to a Home Office circular which summed up this concept:

"In all cases, it is essential that before starting an interview interviewing officers remind themselves of the main elements of the offences they believe have been committed. This will enable officers to be clear, when framing questions and directing the course of the interview, which points it is necessary to be able to prove, by evidence, if a prosecution is to be sustained. All officers should have access to a brief reminder of the main elements of the

most common elements of the most common offences for this purpose" (p. 327).

Finally, the interrogating officer should ensure he has all the necessary case notes, and forms in the interview room before starting. The case file should be present and visible to the subject but never left alone in the room with the subject (Zulawski & Wicklander, 1991).

INDICATIONS OF TRUTHFULNESS AND DECEPTION

"All behavior is meaningful: it is only the true meaning that may not be evident to the observer" (Zulawski & Wicklander, 1991, p. 51).

This chapter was very nearly not included in this guide. There is a saying that "A little knowledge is a dangerous thing;" and nowhere is this more true than in learning to recognize truthful and deceptive behavior in subjects. If the inexperienced officer attempts to apply the knowledge gained from this chapter he may very well rely too heavily upon some indicators, misread others, and focus an investigation in the wrong direction by giving too little or too much credence to a given subject's actions during an interview or interrogation. Security police personnel must realize that no one indicator can be proof alone of deception or truthfulness. Indicators should be evaluated in concert with other indicators, and even then viewed with a critical eye and an open mind.

Because the goal of an interview or interrogation is to gather information then we should attempt to take in all available data the subject provides. Unfortunately, officers typically digest only what a subject relates to them verbally, or only what the subject writes down on a statement form. Studies have indicated that under 10% of communication is based upon the actual text spoken, 30% to 40% of communication is in the tone of voice used, and a full 55% to 65% of communication is nonverbal. The good news for the skilled and experienced interviewer or interrogator is that, if properly evaluated, nonverbal behavior is extremely difficult to fake whereas verbal behavior (words) is often easy to use in masking the truth (Zulawski & Wicklander, 1991). Verbal

deceptive behavior can be difficult to detect because a careful suspect can choose his words, but nonverbal behavior is more difficult to mask since many subjects are not even aware they emit strong nonverbal signals.

There are always reasons for nonverbal behavior, especially in deceptive subjects. The overwhelming majority of suspects have some level of fear of being caught and their untruths detected. The more fear an individual subject has, the more likely it is that he will betray himself somehow to the officer. The body's natural reactions to distress and fear cause physiological reactions which are an open book to the observant officer.

Scaling

Before detailing some of the indicators of truthfulness and deception it's necessary that there be some scale to compare a subject's observed behavior with. There are two major methods of scaling the subject's behavior: comparing the subject's behavior to himself, and comparing the subject's behavior to that of others.

The first method involves discovering how the subject behaves when he is truthful. When asking the subject questions to establish or verify routine background information, the officer pays careful attention to the subjects mannerisms, mentally cataloging them for later reference. This data is later used as a baseline for observing differences in the subject's later behavior (Zulawski & Wicklander, 1991).

The second method compares the subject's behavior to that of other, previously interviewed, subjects whose truthfulness or deception is known. Whenever possible the subject's behavior should be compared with similar subjects. For example, it may be inappropriate to compare the behavior of a juvenile to that of an adult. These two methods together help the officer develop, in his mind, a baseline of behavior to compare with the subject's behavior during questioning (Zulawski & Wicklander, 1991). Obviously, both methods can be used together to provide the most reliable baseline behavior reference.

Truthful Subjects

Truthful subjects often exhibit certain verbal, or speech, characteristics that may help the interview to recognize them as truthful. In general, the truthful subject will answer questions directly and quickly (J. K. Gallimore, personal communication, May 3, 1996). Zulawski and Wicklander (1991) pointed out that this was because the truthful subject did not need to measure the impact of their speech and how it fit into their lies or false stories. Gallimore said the mostly innocent subject, if asked how the crime in question should be punished would be far more likely to condemn the guilty and not offer excuses for the guilty party's behavior. Harsh punishment might even be advocated by the subject. The innocent subject is also more likely to use what Zulawski and Wicklander called realistic terms to describe the criminal activity; rape, murder, steal, beat, to name a few terms.

Verbal behavior can of course be more easily controlled by the subject than can nonverbal behavior. Generally, the truthful subject will look the officer in the eye when speaking to him (M. S. Berry, personal communication, April 3, 1996). This eye contact will account for 40% to 60% of the time during the interview of a truthful subject (Zulawaski & Wicklander, 1991). For the most part truthful subjects are likely to be calm, cooperative and more relaxed than will be deceptive subjects. This makes them much easier to work with. Truthful subjects, however, can be uncooperative if they distrust police or have had bad experiences with them before.

Truthful subjects will often assume certain body positions that allow the interviewer to recognize that they are likely to be truthful. Truthful subjects usually face the interviewer squarely while exhibiting good posture. Their arms often hang loosely and are not as likely as the deceptive subject to cross their arms or otherwise shield their abdomen. In some cases their feet will be planted on the floor, especially when they are

willing to "tell it all" or confess. Their motions will likely appear natural and relaxed, because they are (Zulawski & Wicklander 1991).

Deceptive Subjects

Just as the truthful subject gives certain clues that allow the questioner to gauge his truthfulness, the deceptive subject also acts in ways that allow the observant officer to recognize his deception. The deceptive subject often evades answering questions directly and is slow to use words that would condemn the crime alleged, or tries to rationalize the action and minimize its severity (J. K. Gallimore, personal communication, May 3, 1996). According to Gallimore, if the guilty subject is asked what should happen to someone who committed the crime in question, he will likely not suggest stiff punishment and may offer possible excuses for such conduct even as he denies involvement. They are also likely to use delaying tactics to put off answering questions until an answer can be carefully crafted which fits their story. These tactics can include long pauses, elaborate disjointed answers, repeating the interrogator's question, or responding to the questions with questions. Deceptive subjects tend to give vague answers to questions, with phrases like "At this point in time...;" "To the best of my knowledge...," and so on. Answers may be evasive or even unrelated to the question. One can observe many of these deceptive practices while watching politicians answer tough questions. The subject may try to assert innocence by referring to sources which cannot be verified. The guilty suspect often feels the need to do this, because unlike the innocent subject, he naturally feels that he is a suspect. Insistence of truthfulness, such as swearing to God are often hallmarks of the deceptive. The truthful simply tells the truth without the need to swear to it. The deceptive subject occasionally acts excessively polite and overly helpful. Early complaints about the temperature of the interview room, inconvenience, or rights violations are typical of the guilty subject as well (Zulawski and Wicklander, 1991). Finally a deceptive subject may come back to talk to the interrogator some time after being interrogated on the guise of

correcting some minor mistake, such as an incorrect date of employment. In reality, he will be trying to gauge how well his deceptive story was received (Zulawski and Wicklander, 1991).

Nonverbal behavior, especially when dealing with a deceptive subject, is far more reliable than verbal behavior which can be more easily manipulated. The criminal who has been through the system knows how to fabricate a story and carefully watch what he says. He may also try to mask his nonverbal signals, but this is more difficult for the subject to do as he is often unaware of them.

According to MSgt Berry (personal communication, April 3, 1996), the deceptive subject will often fail to make eye contact with the interrogator. Zulawski and Wicklander (1991) found the same thing, especially when the subject was in the process of answering a question to which he would lie. They also described the eyes of deceptive subjects as frequently being cold and hostile, or exhibiting rapid eye movements.

Deceptive subjects sometimes appear impatient, looking at their watches, for instance. They may attempt to act unconcerned by being unnaturally cooperative, outgoing, and polite. If they think they've been had they may appear defeated and act submissive. Others will try to intimidate the interrogator by going on the offensive and laughing off questions by the interrogator as if they were stupid, hoping that the interrogator, feeling foolish, will relent (Zulawski and Wicklander, 1991).

Deceptive subjects often take measures to figuratively protect their vulnerable abdomen from attack (Zulawski and Wicklander, 1991). MSgt Berry (personal communication, April 3, 1996) gave as one example, the deceptive subject's habit of crossing his arms over his chest, demonstrating his unreceptiveness. Subjects may also cross their legs, with a knee raised to cover the abdomen (Zulawski and Wicklander, 1991). They also say that the deceptive subject will take measures to try to increase the distance between himself and the interrogator. Examples might include attempts to move his chair

away from the interrogator, or turn the chair, or subject's body, so that he no longer faces the interrogator. He might also extend his legs toward the interrogator to subconsciously increase the distance between the interrogator and the deceptive subject. Under the stress of trying to be careful about what they say, because they are lying, subject may exhibit gross, jerky body shifts that can appear unnatural. Finally, they may unconsciously try to cover their mouth or eyes with their hands in order to mask the truth.

Though it was mentioned earlier it is worthy of repeating that the officer, especially the inexperienced one, should not rely too much on the verbal and nonverbal indicators discussed above. Few, if any, of the indicators listed should be attributed only to the truthful subject, or only to the deceptive subject as truthful subjects may display some characteristics of deceptive subjects and vice versa.

WHY DO SUSPECTS CONFESS?

This section will deal with some of the reasons that suspects confess, as well as the equally important reasons why they do not confess. The successful interrogator must know how to reduce the perceived impact of the reasons why the suspect would not confess. These reasons for and against a confession are based upon the suspect's perceptions. The successful interrogator must be familiar with techniques that can legally and ethically enhance the reasons that a suspect would confess. They can be thought of as weights on opposite sides of a scale, with the interrogator's role as one of trying to change the suspect's perceptions in such a way that the suspect eventually perceives that confessing to the crime is his best option and carries more weight. Throughout the interrogation, the suspect is continually being pulled by these opposing motivations, and the successful interrogator helps him choose confession.

Plainly put, a suspect will confess when he believes, at the time, that doing so is in his best interests. According to Royal and Schutt (1976) the interrogator's role will then be to overcome inhibitions to confession. They said that the suspect must be encouraged to

believe that cooperation with the interrogator and police will benefit the suspect. One way to do this is to lay out several options for the suspect in such a way that confession or admission appears, to the suspect, to be his best course of action. Suspects can be convinced that by confessing, they are likely to receive a lighter punishment, or that people will think better of them for honestly admitting to their indiscretion and acting responsibly.

On the other side of the coin, there are many reasons why a suspect may be led to believe that confession or admission is not in his best interest. The most obvious reason why a suspect might not feel that confession is in his best interest would be fear of punishment in the form of legal sanctions (Royal and Schutt, 1976; Gudjonsson, 1992). They may also fear losing their job (Gudjonsson, 1992), and thus facing financial ruin. This is especially true in the military, where the common perception is that we work in a "one mistake Air Force," where even a minor brush with the law will end a career. In addition, the military justice system provides commanders the option of assessing fines or reducing an offender's pay grade. These can provide powerful incentives to remain silent or not admit to any criminal involvement. The suspect might also be inhibited by fear of damage to his reputation (Royal and Schutt, 1976; Gudjonsson, 1992). This, along with fear of embarrassment, are likely to be a dominating influence particularly in cases of child molestation and crimes like sexual misconduct. Occasionally, the suspect might also fear for others and not want to confess for fear of hurting them (Gudjonsson, 1992). When trying to overcome or minimize suspect's fears, it's important to treat each suspect as an individual. Each individual has different fears dependent upon their personality, marital status, duty position, rank, culture, life experiences, and other characteristics. For example, studies have shown that older suspects and suspects with a criminal record are far less likely to confess than are juvenile suspects and those with clean records (Moston, Stephenson, and Williamson, 1992). Thus the suspect's age and experience with the criminal justice system will play a role in how the interrogator deals with the suspect. It is

the interrogator's responsibility to figure out what fears are playing upon the suspect's conscience and minimizing them.

CONDUCTING THE INTERROGATION

This portion of the guide will deal with the actual mechanics involved in conducting the interrogation. It will address general philosophy, rights advisement, methods of gaining an admission or confession, and use of the Air Force Form 1168 (Statement of Witness, Suspect, or Complainant).

General Philosophy

Contrary to the popular image portrayed on television and in the movies, effective interrogations are typically not the threatening, loud, and intimidating charades we've come to expect. As Wilkes (personal communication, May 20, 1996) pointed out, loud voices are seldom heard these days in the interview room. There are far more effective, not to mention ethical, means of obtaining information without resorting to what Wilkes referred to as "getting in their ass." This does not mean, however, that every interview will be a friendly affair or that the same methods will work with each subject. All interrogators interviewed agreed that the tactics must be adapted to meet each particular subject and the surrounding circumstances. Wilkes identified a basic philosophy that he attributed to W.H. Hearst; "Comfort the afflicted...afflict the comforted." Wilkes explained that the subject afflicted by guilt or some fear was to be "comforted" in such a way that the guilt or fear was relieved so that he could confess. The subject comforted by his arrogance and confidence in beating the system, on the other hand, need to be "afflicted" by introducing and playing to the fear that they will be caught and suffer more in some way if they do not confess.

Introductions and Establishing Rapport

The interview or interrogation begins with the officer introducing himself to the subject in a friendly, business-like manner. Realizing that a subject is far more likely to

confess to someone he likes, makes this introduction and attempt at establishing a rapport valuable. Prior to discussing the crime under investigation, the officer should try to establish a favorable rapport with the subject. This process will be aided greatly if, in preparing for the interrogation, the officer has some idea what type of subject he will be dealing with. An example of how the officer could put this information into practice was given by Wilkes (personal communication, May 20, 1996). If he knew the subject was a blue collar worker, he might loosen his tie and unbutton his collar button to symbolically demonstrate that he was not a starched shirt kind of guy and might have something in common with the subject. If, on the other hand, the subject was known to be a professional, such as a banker, he would keep his tie fastened and sit upright in a professional manner. Manley (personal communication, May 30, 1996) also suggested knowing something about the subject's lifestyle and using that as a tool to break the ice. If the subject was interested in horses, for instance, that might be an area which could allow the interrogator to establish a rapport. He also cited the importance of talking to the subject at the subject's level, using similar colloquialisms and manners of speech, but not talking down to the subject.

While establishing a rapport with the subject the officer should also observe the subject's behavior (T. M. James, personal communication, May 30, 1996). As discussed earlier when examining indications of truthful and deceptive behavior, it is necessary to establish a baseline behavior pattern for the subject which shows how he acts when not being deceitful as he may be later in the interrogation. This introduction period, while establishing a rapport, provides the officer with the opportunity to establish that baseline behavior.

Rights Advisement

Mistakes made by the officer during the rights advisement can have serious consequences, including immediate termination of the interrogation by a subject. The

rights advisement is required prior to each interrogation in the military. It is the officer's responsibility to ensure that the subject has been advised of his rights and that he understands them. The rights advisement must take place prior to questioning of the suspect. This does not, however, mean that the rights advisement must take place immediately upon first contact with the subject. According to Manley (personal communication, May 30, 1996), street officers should not advise the suspect of his rights unless they must question him. Instead they should transport him to the interrogator and listen to what the subject says, noting anything he says, but without questioning him. The street officer should share any information given by the subject with the interrogator.

Being advised of one's rights can be an intimidating experience, and one that puts the subject on guard. This can make it more likely that the subject will request an attorney or simply refuse to talk with the officer. There are, however, methods of reducing the subject's perceived seriousness of the offense under investigation and to minimize the intimidating influence of the rights advisement.

The rights advisement should not be carried out in the typical melodramatic manner (M. S. Berry, personal communication, April 3, 1996) depicted on television. Royal and Schutt (1976) opined that if the rights advisement was conducted in what they termed a friendly and consoling manner that it would help to convince the subject of the investigator's integrity and help to develop in the subject in a cooperative mindset. Wilkes (personal communication, May 20, 1996) suggested giving the rights advisement in an almost apologetic manner, telling the subject that "...the chief says I have to ..." advise him of his rights before you he could talk to him. Another technique of advising the suspect of his rights involves an appeal to the subject's desire to have the officer believe the subject's version of events. In this rights advisement, recommended by Manley (personal communication, May 30, 1996) and used by this author, might sound something like this; "I know you want to tell me your side of the story, and I want to hear it, but first I've got

to read you your rights." All investigators interviewed agreed that once the subject has acknowledged understanding of his rights and waived them, the officer should remove rights advisement form from the subject's sight. Leaving it on the table would only serve as a reminder to the subject of the seriousness of the situation, and the possible consequences.

Methodology

Listening. All interrogators interviewed agreed that the successful interrogator must be a good listener. The subject should be the one who tells the story, not the officer. By the same token, the officer should allow the subject to fill in silent voids in the conversation. Though the officer may feel uncomfortable when the conversation creases, the subject will likely feel even more uncomfortable and begin talking. They also agreed that even if the subject was not telling the truth the officer should not interrupt the subject. According to Manley (personal communication, May 30, 1996), allowing the suspect to lie can lead to him becoming entangled in his lies. This allows the interrogator to help offer him a way out through rationalization later.

Minimization. One common technique used to convince the subject to provide an admission or confession is minimization. Royal and Schutt (1976) suggest a four step method of minimization during the interrogation. First, the subject must be convinced that he is "confronted with a personal emergency" (p. 119). Second, the suspect will be convinced that he will not get off scot-free, and must therefore find some way out of the most serious consequences. Third, the suspect must realize that though he will choose from among several options, none of them will be pleasant. Finally, the interrogator can then present the subject with an option that the subject believes will saddle him with the least "unpleasantness." The trick, according to Wilkes (personal communication, May 20, 1996) is to listen to the subject in order to determine what fears are keeping the person from admitting involvement, and then to minimize those fears in the subject's mind.

Gallimore (personal communication, May 3, 1996) used the analogy of offering the subject several doors through which to pass, each of which end up in a confession, but only one of which sounds to the subject like it will be the least offensive and therefore acceptable. The other doors, or choices, will appear to be very bad to the subject. For example, a subject involved in a fight might be asked by the interrogator if he intended to hospitalize the victim or simply responded to an insult from the victim. The subject, given these two "doors" is likely to admit to hitting the victim in response to the insult. Now that the subject has admitted fighting, the interrogator can use that admission to gain others.

Another method of minimizing the seriousness of a suspect's conduct is to compare his crime to more serious ones. By implying that the subject's acts are relatively minor, and could have been much worse, the subject may be willing to admit to the lesser crime. The officer says that the subject could have done far more serious things or committed his crime in a more grievous manner, thereby implying that the crime actually committed was no big deal. For example, the officer might say, "You only took a few dollars out of the wallet, most guys would have taken the credit cards. You must have known how tough it would have been for the guy if you'd taken his credit cards." With this approach, the subject may be more willing to admit to what the officer has implied is a far less serious crime that could have been committed (Zulawski & Wicklander, 1991).

Rationalization. The key to remember in using rationalization as an interrogation technique is to remember that the officer is not asking the suspect "Did you do it?", but rather "Why did you do it?" The subject must first believe that the officer already knows that he did it, and is now concerned with why it was done. In order for this technique to work, the officer must have a nonadversarial relationship with the subject, allowing the subject to feel that offered rationalization proposals are sincere. Rationalization give the offender the opportunity, in his mind, to avoid full responsibility for his crime

(Gudjonsson, 1992), with the unspoken assumption or hope that the penalty will therefore be correspondingly less severe. This author has found rationalization to be an extremely effective technique. Criminals are often quick to place the blame for their troubles, legal and otherwise, on other people and circumstances beyond their control (Samenow, 1984). Like most others, criminals want to save face and are more likely to confess, if a more acceptable motive for the crime can be presented (D. R. Manley, personal communication, May 30, 1996). Manley gave as an example suggesting that a suspect might have written a bad check only to feed his children. Along with the rationalization proposed, the officer can suggest that the subject is also sorry for his actions (M. S. Berry, personal communication, April 3, 1996), with the implication that others might look favorably upon his remorse.

Zulawski and Wicklander (1991) listed several specific rationalizations that might be used by an officer during interrogations. They suggested proposing that the crime committed might have simply been the result of an accident on the part of the subject. The problem, they identified however, with suggesting the crime might have been an accident is that it might make it difficult to later prove intent, if intent was necessary as an element of the offense and could not be otherwise proven or inferred from other evidence. A second method would involve proposing that the subject acted on an impulse, not intending or planning to cause that actual harm or degree of harm caused. The implication would be that the impulsive crime would be considered less severe than the premeditated offense. Another commonly used tactic, especially in sexual assault cases, is to allow the suspect to transfer blame to the victim. The victim can be alleged to have precipitated the crime by seducing or unduly tempting the subject to commit the act. Though to most it seems preposterous to suggest that a child seduced the abuser, or that a wealthy man caused his robbery, to the offender acceptance of these ideas may allow him to save face and lead to his confession. In theft cases, especially involving lower-ranking married

members, it can be fruitful to allow the suspect to place some of the blame on low pay combined with the military's insistence on providing for one's dependent family members. The officer could ask the subject if he stole the money just to spend on himself, or instead, to buy his kids clothes. In theft cases another rationalization which place some of the responsibility on the victim who failed to safeguard the property can be used. The offender can be asked whether he intended to steal the property or was only tempted because the property was left unattended by someone who obviously didn't care for it. Another rationalization technique especially effective with juveniles is to place blame upon peers. The officer may propose that the subject was merely along for the ride, only participating because everyone else was doing it, and not actively involved in the planning or leadership. The offender could be asked if he solicited others to commit the crime or was he pressured by them to join in. A final rationalization proposal, effective in cases of theft, especially between barracks roommates, is the suggestion that the offender did not intend to keep the stolen property, especially money, but before he could return it the police were called in. As in previous rationalizations, this technique may not be appropriate unless intent can be inferred from other evidence, such as the property being taken for a long period of time.

Although these rationalizations can be used alone, they are often more effective when combined together. The effect, when properly applied, is that the subject feels that a great deal of responsibility for the crime has been deflected to others. This can lead to a face-saving confession.

WRAPPING IT UP

Overcoming Subject Stalling

Occasionally, even after a patient and thorough interrogation, the offender may still try to delay his admission or confession, preferring to wait for a "better offer" or simply

unwilling to take that last step and admit involvement. The officer must convince the subject that it is in his best interest to cooperate with the officer now and not later.

A polygraph examiner (E. D. Wilkes, personal communication, May 20, 1996) recommended suggesting to the offender that his crime is relatively minor, when compared to others that the officer is working, and that the officer has little time to spend on the more minor cases. The officer would of course imply that he already knew the subject was guilty and that he simply wanted the subject's side of the story. A second method of convincing the subject to open up is to bring the subject to a "fork in the road" where he must make a decision about his future (E. D. Wilkes, personal communication, May 20, 1996 & D. R. Manley, personal communication, 30 May, 1996). In this method, the officer offers to become an advocate of sorts for the offender. The subject could be asked who he thought was more likely to be looked upon favorably by the disciplining commander (judge for civilians); someone who was willing to cooperate with police and admit to his mistakes, or someone who refused to accept responsibility for his action and refused to cooperate with police. The officer would then tell the offender that the officer will have to report something to the offender's commander and asks the offender "what will I tell your commander you demonstrated, cooperation or lack of responsibility?"

Reviewing the Statement

Once the suspect has completed his statement, after a thorough interrogation, the officer should leave the room with the statement, or notes if the subject refused to complete a written statement, and conduct a review. The officer should ensure that all elements of the offenses under investigation have been addressed as appropriate. He must also determine that the five W's have been answered; who, what, why, where, and when. The statement should also be compared to other witness, complainant, or suspect statements to ferret out inconsistencies. Manley (personal communication, May 30, 1996) saw the Q & A method as a legitimate tool to use at this point to clear up inconsistencies

and fill in any information voids. The officer writes down questions on the statement form, as well as the subject's answers, and has the subject initial each question and answer.

Releasing the Subject

Once the interrogation is complete and the subject has made an admission or confession, the officer's job is not yet complete. What the officer does now can influence whether or not the offender will cooperate with police the next time he is apprehended. The subject may also talk to his friends about the officer and affect the officer's reputation in the criminal world. If the officer lets the offender know that he's "been had" and gloats over the confession it is unlikely that offender, or his associates, will be as cooperative the next time. The goal of the officer should be to leave the subject on an upbeat note (S. Conley, personal communication, May 17, 1996). Lt. Conley stressed that the officer must take pains to ensure that he keeps any promises made to the offender. If the officer said he'd tell the judge that the suspect cooperated, then he must do so and make sure the offender knows it. The end result of a successfully terminated interrogation is that the offender be inclined to cooperate with police again if brought into the interrogation process (D. R. Manley, personal communication, May 30, 1996).

CONCLUSION

As discussed earlier in the introduction, this guide is not intended to turn the novice interrogator into an expert. The guide, aimed at senior unit personnel and trainers, has provided a summary of the legal and ethical considerations involved in interrogations, as well as some of the techniques used to make interrogations more productive. Combined with the Patrolman's UCMJ Handbook and lesson plans, this guide allows unit leaders to upgrade and improve upon existing skills of element-level troops.

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PORTFOLIO PROJECT
ABSTRACT

The purpose of this portfolio project, selected to meet program requirements in lieu of a thesis, was to develop a comprehensive plan to improve security police patrolman interviewing and interrogation skills. Research techniques consisted of literature research combined with interviews with experts in the field at the city, county, and state level.

A Needs Assessment was conducted to determine a legitimate need for the project in concert with the 20th Security Police Squadron at Shaw AFB. Interviews with Security Police Academy personnel at Lackland AFB, Texas and the 20th SPS commander, operations officer, training NCO, and NCOIC of investigations verified a need for training. The most comprehensive product was the Security Guide to Conducting Interrogations. Geared toward senior security police personnel and trainers, the Guide included ethical considerations, a legal framework, proper preparation, indications of truthfulness and deception, reasons why suspects confess, and methods for conducting an effective interrogation. Lesson Plans were written to be taught at guardmount, or roll call. Each lesson was designed to be taught in about 5 to 10 minutes so as not to interfere with security police break-time or other training. Topics included rights advisement, interrogation preparation, indications of truthfulness and deception, and interrogation techniques. A Patrolman's Guide to the UCMJ was developed with the providing the troop with all the necessary information from the UCMJ needed to do the job day-to-day, without the superfluous information only needed in the legal community. The final product was a one page, laminated, Interrogation Worksheet on which the interrogator could write needed information before an interrogation and refer to it during the interrogation. This would allow even relatively inexperienced patrolman to conduct a rudimentary interrogation.

Used together these products should improve interrogations at the 20th SPS.

PORTFOLIO PROJECT
ABSTRACT

The purpose of this portfolio project, selected to meet program requirements in lieu of a thesis, was to develop a comprehensive plan to improve security police patrolman interviewing and interrogation skills. Research techniques consisted of literature research combined with interviews with experts in the field at the city, county, and state level.

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**LESSON PLANS
FOR
GUARDMOUNT BRIEFINGS
ON
INTERROGATION**

**Capt Robert M. Eatman
University of South Carolina
1996**

LESSON PLAN

LESSON TITLE: Rights Advisement

INSTRUCTOR:

TEACHING METHOD: Guardmount Briefing

OBJECTIVE: The individual will be able to understand and articulate the reasons why Article 31(b) of the UCMJ is more restrictive than civilian rights advisement requirements; know and discuss how and when to advise a suspect of his rights; and be aware of the exclusionary rule as it applies to statements.

REFERENCES:

1. Manual for Courts-Martial, United States, 1995 Edition.
2. Interview with MSgt Berry, 20 SPS/SPOI.
3. Article 31(b) Warnings Revisited: The COMA does a Double Take, by Maj Caddell.
4. Policing the Police: Should Miranda Violations Bear Fruit?, by David A. Wollin, 53 Ohio State L.J. 805, *865.
5. Interview with Timothy James, Cayce Department of Public Safety.
6. United States v. Jones, 26 M.J. 353.
7. United States v. Loukas, 29 M.J. 385.
8. United States v. Duga, 10 M.J. 206, *209.
9. United States v. Morris, 13 M.J. 297.

RIGHTS ADVISEMENT

INTRODUCTION: Security Police are charged to uphold the Constitution and enforce military laws. Article 31 of the UCMJ is a part of that military law and must be obeyed.

1. Article 31(b) of the UCMJ.

"No person subject to this chapter may interrogate, or request any statement from an accused or a person suspected of an offense without first informing him that he does not have to make any statement regarding the offense of which he is suspected and that any statement made by him may be used as evidence against him in a trial by court-martial."

2. Reason why Article 31(b) is more restrictive than Miranda rights advisement.

- a.** Miranda advisement is only required in custodial interrogations, where the subject's freedom is restricted.
- b.** Article 31(b) advisement required any time the interrogator (questioner) believes or reasonably should believe that the subject has committed an offense, prior to questioning.
- c.** Why?
 - (1) Article 31(b) written 15 years before Miranda v. Arizona.
 - (2) Recognition that questioning in a military environment can be inherently compelling.
 - (3) Servicepersons are trained to obey and please superiors. This may inhibit them from invoking constitutional rights and they therefore need the extra protection of Article 31(b).

3. When and how to conduct rights advisement.

- a.** When? Prior to questioning of a suspect.
 - (1) Don't conduct rights advisement until just prior to questioning.

(2) Don't stop a suspect's spontaneous exclamations to conduct a rights advisement, but don't question him prior to rights advisement.

(3) Tell subject that you must read him his rights to protect him prior to getting his side of the story.

5. Exclusionary rule.

a. If proper warnings (rights advisement) are not given, then suspect's statement may be deemed involuntary.

b. If statement is deemed involuntary it will be suppressed and any derivative evidence may be disallowed.

CONCLUSION: Statements can be a key piece of evidence in any case, but suspects have certain rights under the Constitution and UCMJ which must be upheld. If rights are violated then the guilty may go free and the SP may face disciplinary action.

LESSON PLAN

LESSON TITLE: Interrogation Preparation

INSTRUCTOR:

TEACHING METHOD: Guardmount Briefing

OBJECTIVE: Troops will be able to articulate the necessary measures to properly prepare to conduct an effective interrogation.

REFERENCES:

1. Practical Aspects of Interview and Interrogation, by David E. Zulawski and Douglas E. Wicklander.
2. Educational Subject Block Index, G-2 (Interviewing).
3. Interview with Lt Conley, Columbia Police Department.
4. Interview with Joseph Gallimore, Sumter County Sheriff's department.
5. Interview with MSgt Berry, 20 SPS/SPOI.
6. Interview with Timothy James, Cayce Department of Public Safety.

INTERROGATION PREPARATION

INTRODUCTION: "Two minutes of preparation can save hours of interrogation."

Proper preparation can make or break an interrogation. A few simple preparations can help the troop become a more effective interrogator.

1. Selecting the interrogation location.

a. Depends upon the individual situation.

- (1) Area selected should be free of distractions.
- (2) Private setting where interrogator is in control is preferred. Interview room is generally the best location.
- (3) If conducted on-scene, move away from others to conduct interrogation.

2. Gathering suspect information.

- a.** Not always possible, prior to interrogation. SP must weigh advantage of getting background information against the advantages of a prompt interrogation.
- b.** Consult SPA records for information about suspect involvement in previous incidents.

- (1) Read incident reports involving suspect.
- (2) Read base Alpha Roster to determine basic suspect information; unit, rank, clearance, PRP, residence, etc...

3. Gathering case information.

a. Determine elements of offenses under investigation.

- (1) Use Patrolman's Guide or UCMJ.
- (2) Write down elements, if necessary, as a memory aid.

b. Review case data.

- (1) Visit crime scene, if possible.
- (2) Talk to witnesses, victims, and/or review statements by same.
- (3) Examine available physical evidence.

c. Know what information you seek before entering the interview room.

4. Physical preparation.

a. Limit potential distractions in the interview room.

- (1) Remind personnel in building to keep noise level down.
- (2) Remove unnecessary items from the interview room.
- (3) Place "Do Not Disturb" sign on the door.

b. Fill out titling information on AF Fm 1168 using suspects DD Fm 2AF prior to entering interview room.

CONCLUSION: Proper preparation for even the most routine interrogation can mean the difference between success and failure. Knowing the elements of the offense under investigation is the key to a fruitful interrogation. How can you know what questions to ask, if you don't know what it takes for the suspect's conduct to be a crime?

LESSON PLAN

LESSON TITLE: Indications of Truthfulness and Deception

INSTRUCTOR:

TEACHING METHOD: Guardmount Briefing

OBJECTIVE: Troops will be able to recognize several characteristics generally associated with truthful subjects and several characteristics generally associated with deceptive subjects, during interviews and interrogations. They will know that these indicators should not be evaluated out of context, or relied upon exclusively.

REFERENCES:

1. Practical Aspects of Interview and Interrogation, by David E. Zulawski and Douglas E. Wicklander.
2. Interview with MSgt Berry, 20 SPS/SPOI.
3. Interview with Joseph Gallimore, Sumter County Sheriff's Department.
4. Interview with "Buddy" Wilkes, South Carolina Law Enforcement Division.

INDICATIONS OF TRUTHFULNESS AND DECEPTION

INTRODUCTION: In addition to what subjects tell security police, they give off non-verbal clues which can help an interrogator gauge the subject's truthfulness. Interrogators can then change tactics as necessary and give more or less credence to subjects' statements as appropriate

1. Cautions.

- a.** Indicators can be misread, relied upon too heavily, and can focus an interrogator in the wrong direction.
- b.** Indicators must be evaluated together and troops must be careful not to focus on just one.
- c.** Nonverbal indicators tend to be more reliable than verbal ones.
 - (1) Nonverbal behavior is more difficult to mask.
 - (2) Nonverbal behavior makes up a majority of communication.
- d.** Deceptive subjects are not necessarily guilty subjects.

2. Scaling to Establish Baseline Behavior.

- a.** Must have something to compare subject behavior with (Two Methods)
 - (1) Observe subject behavior when known to be truthful (e.g. while gathering basic information), with later behavior.
 - (2) Rely upon experience; compare subject behavior with previous truthful and deceptive subjects.

3. Truthful Behavior.

- a.** Verbal Indicators.
 - (1) Questions are answered directly with little or no hesitation.
 - (2) Advocates harsh punishment for the crime in question.

(3) Describes crime in realistic terms (rape, murder, steal, beat, etc...)

b. Nonverbal Indicators.

- (1) Eye contact maintained 40-60% of the time.
- (2) Calm, cooperative, more and more relaxed as the questioning progresses.
- (3) Subject faces interrogator squarely with good posture.
- (4) Open posture, not shielding abdomen with arms or legs.
- (5) Motions appear natural and relaxed; they are.

4. Deceptive Behavior.

a. Verbal Indicators.

- (1) Avoids answering questions directly. Delays answers in order to think about a proper answer.
- (2) Slow to condemn the crime. Makes excuses for the criminal.
- (3) Answers are vague and noncommittal. Responses may not even answer the question asked of the subject.
- (4) Subject refers to alibis which are unavailable for verification.
- (5) Uses euphemisms for the crime (e.g. "borrowing" as opposed to "stealing")

b. Nonverbal Indicators.

- (1) Failure to maintain eye contact, especially at the moment a lie is told.
- (2) Impatience (e.g. looking at their watch often).
- (3) Unnaturally cooperative, outgoing, and polite.
- (4) Shielding of the abdomen with crossed legs with the legs raised or with crossed arms.
- (5) Jerky, unnatural-looking body movements.
- (6) Unconsciously covering their eyes or mouth with their hands.

CONCLUSION: Knowing some of the indicators shown by deceptive and truthful subjects can be helpful in directing the course of questioning. Troops must, however, be cautious not to rely so heavily on them that they neglect other evidence. Some subjects are more skillful than others at hiding their deception and other may be nervous and appear deceptive even when truthful.

LESSON PLAN

LESSON TITLE: Interrogation Techniques; Minimization and Rationalization

INSTRUCTOR:

TEACHING METHOD: Classroom Instruction or Two Guardmount Sessions

OBJECTIVE: Troops will be able to recognize factors which inhibit subjects from admitting involvement in crimes. Additionally, with supervision and guidance from experienced interrogators, they will be able to develop minimization and rationalization proposals which may overcome the subject's reluctance to confess.

REFERENCES:

1. Practical Aspects of Interview and Interrogation, by David E. Zulawski and Douglas E. Wicklander.
2. Interview with Timothy James, Cayce Department of Public Safety.
3. Interview with Joseph Gallimore, Sumter County Sheriff's Department.
4. Interview with "Buddy" Wilkes, South Carolina Law Enforcement Division.

INTERROGATION TECHNIQUES; MINIMIZATION AND RATIONALIZATION

INTRODUCTION: Many suspects do not readily confess to their involvement in a crime simply because a security policeman asks him to tell him about it. For these suspects the interrogator must put in a measure of extra effort in order to get at the truth. Security police personnel who know how to use minimization and rationalization techniques in the interrogation are better equipped to gain that information from reluctant suspects.

1. Suspect motives.

a. Reasons suspects confess.

- (1) Based upon suspect's perception of reality. "Will what I'm about to do be in my best interests?"
- (2) Suspect believes admission or confession will help him.

b. Reasons suspects don't confess.

- (1) Fear of punishment via legal sanctions (LOR, UIF, Article 15, etc...)
- (2) Loss of employment.
- (3) Personal embarrassment and damaged reputation.
- (4) Emotional damage to friends or relatives.

2. Overcoming subject inhibitions.

a. Minimization.

(1) Four step method:

- A.** Subject believes he is "confronted with a personal emergency."
- B.** Subject believes that he will not escape the consequences.
- C.** Subject believes he will choose from among several unpleasant options.

D. Interrogator presents suspect with several options, one of which offers the least "unpleasantness."

(2) Interrogator must determine what is preventing a confession and minimize that fear in the suspect's mind.

A. Imply that the suspect's crime is less serious than other crimes.

B. Imply that the suspect's actions could have been far worse.

C. Imply that the suspect's actions were restrained.

b. Rationalization.

(1) Interrogator asks "Why did you do it?" not "Did you do it?"

Interrogator is just getting the suspect's side of the story.

(2) Suspect must be convinced that the interrogator knows he committed the crime and can prove it.

(3) Suspect must believe that offered rationalizations are sincere. Suspect must trust the interrogator.

(4) Rationalization allows suspect to feel he is avoiding full responsibility for his actions; saving face.

A. Examples:

- Suspect stole money to feed his children.
- Suspect was seduced by 12 year-old girl.
- Suspect intended to return stolen property.
- Victim shouldn't have left her purse in an unlocked car.

CONCLUSION: Interrogators who can recognize deceptive and truthful subjects have an obvious advantage of those who cannot. Care must be taken, however, not to rely too heavily upon indicators given by subjects, especially until more experience has been gained.

**SECURITY POLICE
PATROLMAN'S GUIDE
TO THE
MANUAL FOR COURTS-MARTIAL**

**Capt Robert M. Eatman
University of South Carolina
1996**

"The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States" (MCM, 1995, p. I-1).

The purpose of this handbook is to give the security police patrolman instant access to those portions of the Manual for Courts-Martial (MCM) that apply daily on-the-job. The information contained in this handbook is, almost exclusively, drawn straight from the military Rules of Evidence (M.R.E.), Uniform code of Military Justice (UCMJ), or Rules for Courts-Martial (R.C.M.). This handbook is not a substitute for legal advice from the staff judge advocate, but is intended to supplement the security police person's knowledge of the MCM so that he or she can conduct his or her law enforcement duties more effectively, and within the appropriate guidelines.

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RULES FOR COURTS-MARTIAL

Apprehension (R.C.M. 302; M.R.E. 314)

Definition: Apprehension is the taking of a person into custody.

Arrest is the equivalent civilian term for apprehension.

- An apprehension must be based upon probable cause.

Who may apprehend: Military law enforcement officials including security police when the official making the apprehension is in the execution of law enforcement duties. Whenever enlisted persons apprehend an officer or warrant officer, the supervisor of that officer or warrant officer should be notified immediately. All officers, warrant, petty and noncommissioned officers may apprehend, however, no noncommissioned or petty officers not otherwise performing law enforcement duties should apprehend an officer unless directed to do so by another officer or in order to prevent disgrace to the service or to prevent the escape of an officer who has committed a serious offense.

Grounds for apprehension: Probable cause to apprehend exists when there are reasonable grounds to believe that an offense has been or is being committed and the person to be apprehended committed or is committing it. Reasonable grounds means that there must be the kind of reliable information that a reasonable, prudent person would rely on which makes it more likely than not that something is true. A mere suspicion is not enough but proof which would support a conviction is not necessary. A person who determines probable cause may rely on the reports of others.

How an apprehension may be made: An apprehension is made by clearly notifying the person to be apprehended that person is in custody. This notice should be given orally or in writing, but it may be implied by the circumstances.

Use of force: Any person authorized under these rules to make an apprehension may use such force and means as is reasonably necessary under the circumstances to effect the apprehension.

Where an apprehension may be made: An apprehension may be made at any place, except as described below under private dwellings.

Private dwellings: These include dwelling, on and off base, such as military family housing and Temporary Living Facilities. They do not include living areas in military barracks, tents, field encampments, and similar places. No person may enter a private dwelling to apprehend unless:

- Consent: The person who exercises control of the property gives consent.

The scope of the search may be limited by that person as to time, place, or property. The consent must be voluntary to be valid. [Note: Mere submission to the color of authority of personnel performing law enforcement duties or acquiescence in an announced or indicated purpose to search is not a voluntary consent.]

Searches incident to a lawful apprehension: In general, a person who has been apprehended may be searched for weapons and destructible evidence, in the area of immediate control of that person. This area is the area in which a security policeman could reasonably expect that person to reach in a sudden movement.

MILITARY RULES OF EVIDENCE

Confessions and admissions (M.R.E. 304, 5th Amendment, Article 31)

In general an involuntary statement or any derivative evidence therefrom may not be received in evidence against an accused who made the statement. A statement is considered involuntary if it is obtained in violation of the self-incrimination privilege or due process clause of the Fifth Amendment to the US Constitution, Article 31, or through the use of coercion, unlawful influence, or unlawful inducement.

Warning about rights (M.R.E. 305, Article 31)

[Note: An interrogation is any formal or informal questioning in which an incriminating response is either sought or is a reasonable consequence of such questioning.]

Rights advisement: Personnel subject to the UCMJ are required to give warnings under

Article 31 and may not interrogate or request any statement from an accused or person suspected of an offense without first:

- (1) informing the accused or suspect of the nature of the accusation;
- (2) advising the accused or suspect that the accused or suspect has the right to remain silent;
- (3) advising the accused or suspect that any statement made may be used as evidence against the accused or suspect in a trial or court-martial.

In addition, if a subject is interrogated in a custodial interrogation [a custodial interrogation involves the accused or suspect being deprived of his freedom of action in any significant way, or reasonably believing himself to be in custody] then the accused or suspect must be advised of his right to have legal counsel present, prior to starting the interrogation.

Presence of counsel: If the subject requests counsel, counsel must be present before any further questioning, unless the subject initiates a waiver of counsel rights [the

subject, not police, must initiate the waiver if the subject has previously requested counsel].

Exercise of rights: If the subject exercises his right to remain silent, all questioning must cease. The subject may request counsel at any time during the questioning, and questioning must cease immediately.

Waiver of rights: The subject may waive his rights, but must do so freely, knowingly, and intelligently. The subject must acknowledge affirmatively that he or she understands the rights involved, affirmatively decline the right to counsel and affirmatively consent to making a statement.

Evidence obtained from unlawful searches and seizures (M.R.E. 311)

In general, evidence obtained as a result of an unlawful search or seizure made by a person acting in a governmental capacity is in admissible.

Body views and intrusions (M.R.E. 312)

Extraction of body fluids: Nonconsensual extraction of body fluids, including blood and urine, may be made from the body of an individual pursuant to a search warrant or a search authorization. Involuntary extraction of body fluids under this rule must be done in a reasonable fashion by a person with appropriate medical qualifications.

Searches not requiring probable cause (M.R.E. 314)

Searches of government property: Government property may be searched under this rule unless the person to whom the property is issued or assigned has a reasonable expectation of privacy therein at the time of the search. Under normal circumstances, a person does not have a reasonable expectation of privacy in government property that is not issued for personal use.

Consent searches: In general, searches may be conducted of any person or property with lawful consent.

Who may consent: A person may give consent to a search of his or her property, or both, unless control of such property has been given to another. A person may grant consent to search property when the person exercises control over that property.

Scope of consent: Consent may be limited in any way by the person granting consent, including limitations in terms of time, place, or property and may be withdrawn at any time.

Voluntariness: To be valid, consent must be given voluntarily. Voluntariness is a question to be determined from all the circumstances. Mere submission to the color of authority of personnel performing law enforcement duties or acquiescence in an announced or indicated purpose to search is not voluntary consent.

Searches incident to a lawful stop:

Stops: A person authorized to apprehend may stop another person temporarily when the person making the stop has information or observes unusual conduct that leads him or her to reasonably conclude in light of his or her experience that criminal activity may be afoot. The purpose of this stop must be investigatory in nature.

Frisks: When a lawful stop is performed, the person stopped may be frisked for weapons when that person is reasonably believed to be armed and presently dangerous. Contraband or evidence seized in the process of a lawful frisk may be seized.

Motor vehicles: When a person lawfully stopped is the driver or a passenger in a motor vehicle, the passenger compartment of the vehicle may be searched for weapons if the official who made the stop has a reasonable belief that the person stopped is dangerous and that the person stopped may gain immediate control of a weapon.

Searches incident to a lawful apprehension: In general, a person who has been lawfully apprehended may be searched.

Search for weapons and destructible evidence: A search may be conducted for weapons or destructible evidence, in the area within the immediate control of a person who has been apprehended. The area within the person's "immediate control" is the area which the individual searching could reasonably believe that the person apprehended could reach with a sudden movement to obtain such property (lunge area); provided that the passenger compartment of an automobile, and containers within the passenger compartment may be searched as a contemporaneous incident of the apprehension of an occupant of the automobile, regardless of whether the person apprehended has been removed from the vehicle.

Examination for other persons:

Protective sweep: When an apprehension takes place at a location in which other persons might be present who might endanger those conducting the apprehension, a reasonable examination may be made of the general area in which such other persons might be located. A reasonable examination under this rule is permitted if the apprehending officials have a reasonable suspicion based on specific and articulable facts that the area to be examined harbors an individual posing a danger to those in the area of the apprehension.

Search of attack area: Apprehending officials may, incident to apprehension, as a precautionary matter and without probable cause or reasonable suspicion, look into closets and other spaces immediately adjoining the place of apprehension from which an attack could be immediately launched.

Searches within jails, confinement facilities, or similar facilities: Searches within jails, confinement facilities, or similar facilities may be authorized by persons with authority over the institution.

Emergency searches to save life or for related purposes: In emergency circumstances to save life or for a related purpose, a search may be conducted of persons or property in a good faith effort to render immediate medical aid, to obtain information that will assist in the rendering of such aid, or to prevent immediate or ongoing personal injury.

Probable cause searches (M.R.E. 315)

Authorization to search: An "authorization to search" is an express permission, written or oral issued by competent military authority to search a person or an area for specified property or evidence or for a specific person and to seize such property, evidence, or person.

Power to authorize a search: Authorization to search may be granted by an impartial individual as identified below.

Commander: A commander who has control over the property or person to be searched is situated or found.

Military judge or magistrate: As described by military regulations.

Basis for search authorizations: A search authorization issued under this rule must be based upon probable cause.

Probable cause determination: Probable cause to search exists when there is a reasonable belief that the person, property, or evidence sought is located in the place or on the person to be searched. A search authorization may be based upon hearsay evidence in whole or in part. A determination of probable cause under this rule shall be based upon any or all of the following:

- (a) Written statements communicated to the authorizing officer; or
- (b) Oral statements communicated to the authorizing officer.

Exceptions to the requirement for search authorization: A search authorization is not required for a search based upon probable cause when:

Insufficient time: There is a reasonable belief that the delay necessary to obtain a search authorization would result in the removal, destruction, or concealment of the property or evidence sought;

Lack of communications: There is a reasonable military operational necessity that is reasonably believed to prohibit or prevent communication with a person empowered to grant a search authorization and that there is a reasonable belief that the delay necessary to obtain a search authorization would result in the removal, destruction, or concealment of the property or evidence sought;

Execution of a search authorization:

Notice: If the person whose property is to be searched is present during a search conducted pursuant to a search authorization, the person conducting the search should when possible notify him or her of the act of authorization and the general substance of the authorization.

Inventory: An inventory of the property seized shall be made at the time of a seizure or as soon as practicable thereafter. At an appropriate time, a copy of the inventory shall be given to a person from whose possession or premises the property was taken.

Seizures (M.R.E. 316)

Seizure of property or evidence:

Abandoned property: Abandoned property may be seized without probable cause and without search authorization.

Consent: Property or evidence may be seized with consent consistent with the requirements applicable to consensual searches in M.R.E 314.

Exceptional circumstances: See M.R.E 315 under *insufficient time* and *lack of communications*.

Plain view: Property or evidence may be seized if the person while in the course of otherwise lawful activity observes in a reasonable fashion property or evidence that the person has probable cause to seize.

UNIFORM CODE OF MILITARY JUSTICE

Persons subject to the UCMJ (Article 2)

- (a) Members of a regular component of the armed services, including those awaiting discharge after the expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces.
- (b) Cadets, aviation cadets, and midshipmen.
- (c) Members of a reserve component while on inactive-duty training, but in the case of members of the Army National Guard or Air National Guard only when in Federal service.
- (d) Retired members of a regular component of the armed forces who are entitled to pay.
- (e) Persons in custody of the armed forces serving a sentence imposed by court-martial.

Territorial applicability of this chapter (Article 5)

This chapter applies in all places.

Apprehension (Article 7)

- (a) Apprehension is the taking of a person into custody.
- (b) Any person authorized to apprehend persons subject to this chapter may do so upon reasonable belief that an offense has been committed and that the person apprehended commit it.
- (c) Commissioned officers, warrant officers, petty officers, and noncommissioned officers have authority to quell quarrels, frays and disorders among persons subject to this chapter who take part therein.

Imposition of restraint (Article 9)

- (a) Arrest is the restraint of a person by an order, not imposed as punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.
- (b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this chapter. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.
- (c) A commissioned officer, a warrant officer, or a civilian subject to this chapter or to trial thereunder may be ordered into arrest or confinement only by a commanding officer to whose he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement may not be delegated.
- (d) No person may be ordered into arrest or confinement except for probable cause.
- (e) Nothing in this article limits the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

Compulsory self-incrimination prohibited (Article 31)

- (a) No person subject to this chapter may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.
- (b) No person subject to this chapter may interrogate, or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

PUNITIVE ARTICLES

When personnel from the staff judge advocates (SJA) office put together cases for criminal prosecution, they as the prosecutors have the burden of proving that the suspect actually committed the act he is to be tried for. Specifically, they must prove that the accused did certain things or met certain criteria; these are termed *elements* of the offense. You as a security police person, while investigating an alleged crime (violation of the UCMJ), should keep in the front of your mind the elements of each offense you are investigating. Your questions to witnesses, complainants, and suspects should try to address each element. It can be very difficult for the SJA to go back days, or weeks, after an offense and try to find evidence that each necessary element was present. In particular, the SJA finds it somewhat difficult to establish the intent of the suspect. Therefore, during questioning pay particular attention to this element when it is required. Find out from the suspect and witnesses, what the suspect intended.

Article 77 - Principals

Any person subject to the UCMJ who -

1. Commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or
2. causes an act to be done which if directly performed by him would be punishable by this chapter; is a principal.

Explanation: Article 77 doesn't define an offense. Instead it provides that one doesn't have to personally perform the acts necessary to constitute an offense to be guilty of it. The person who causes or contributes to the act being done is a principal.

Article 78 - Accessory after the fact

Elements:

1. That an offense punishable by the code was committed by a certain person;
2. That the accused knew that this person had committed such an offense;
3. That thereafter the accused received, comforted, or assisted the offender; and
4. that the accused did so for the purpose of hindering or preventing the apprehension, trial or punishment of the offender.

Explanation: Mere failure to report a violation will not make one an accessory after the fact. Actual knowledge on the part of the accused is required.

Article 79 - Conviction of lesser offenses

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense included therein.

Article 80 - Attempts

Elements:

1. That the accused did a certain overt act;
2. That the act was done with the specific intent to commit a certain offense under the code;
3. That the act amounted to more than mere preparation; and
4. That the act apparently tended to effect the commission of the intended offense.

Article 81 - Conspiracy

Elements:

1. That the accused entered into an agreement with one or more persons to commit an offense under the code: and

2. That, while the agreement continued to exist, and while the accused remained a party to the agreement, the accused or at least one of the co-conspirators performed an overt act for the purpose of bringing about the object of the conspiracy.

Article 82 - Conspiracy

Elements:

1. That the accused solicited or advised a certain person or persons to commit one of the following: to desert, to mutiny, to commit an act of misbehavior before the enemy, or to commit an act of sedition.

2. That the accused did so with the intent that the offense actually be committed.

[If the offense solicited or advised was attempted or committed, add the following element]

3. That the offense solicited or advised was (committed) (attempted) as the proximate result of the solicitation.

Article 83 - Fraudulent enlistment, appointment, or separation

Elements:

1. Fraudulent enlistment or appointment.

(a) That the accused was enlisted or appointed an armed force;

(b) That the accused knowingly misrepresented or deliberately concealed a certain material fact or facts regarding qualifications of the accused for enlistment or appointment;

(c) That the accused's enlistment or appointment was obtained or procured by that knowingly false representation or deliberate concealment; and

(d) That under this enlistment or appointment that accused received pay or allowances or both.

2. Fraudulent separation.

(a) That the accused was separated from an armed force;

- (b) That the accused knowingly misrepresented or deliberately concealed a certain material fact or facts about the accused's eligibility for separation; and
- (c) That the accused's separation was obtained or procured by that knowingly false representation or deliberate concealment.

Article 84 - Effecting unlawful enlistment, appointment, or separation

Elements:

1. That the accused effected the enlistment, appointment, or separation of the person named;
2. That this person was ineligible for this enlistment, appointment, or separation because it was prohibited by law, regulation, or order; and
3. That the accused knew of the ineligibility at the time of the enlistment, appointment, or separation.

Article 85 - Desertion

Elements:

1. Desertion with intent to remain away permanently.
 - (a) That the accused absented himself or herself from his or her unit, organization, or place of duty;
 - (b) That such absence was without authority;
 - (c) That the accused, at the time the absence began or at some time during the absence, intended to remain away from his or her unit, organization, or place of duty permanently; and
 - (d) That the accused remained absent until the date alleged.

[If the absence was terminated by apprehension, add the following element]

 - (e) That the accused absence was terminated by apprehension.
2. Desertion with intent to avoid hazardous duty or to shirk important service.
 - (a) That the accused quit his or her unit, organization, or other place of duty;

- (b) That the accused did so with the intent to avoid a certain duty or shirk a certain service;
- (c) That the duty to be performed was hazardous or the service important;
- (d) That the accused knew that he or she would be required for such duty or service; and
- (e) That the accused remained absent until the date alleged.

3. Desertion before notice of acceptance of resignation.

- (a) That the accused was a commissioned officer of an armed force of the United States, and had tendered his or her resignation;
- (b) That before he or she received notice of acceptance of resignation, the accused quit his or her post or proper duties;
- (c) That the accused did so with the intent to remain away permanently from his or her post or proper duties; and
- (d) That the accused remained absent until the date alleged.

[If the absence was terminated by apprehension, add the following element]

- (e) That the accused's absence was terminated by apprehension.

4. Attempted desertion.

- (a) That the accused did a certain overt act;
- (b) That the act was done with the specific intent to desert;
- (c) That the act amounted to more than mere preparation; and
- (d) That the act apparently tended to effect the commission of the offense of desertion.

Article 86 - Absent without leave

Elements:

1. Failure to go to appointed place of duty.

- (a) That a certain authority appointed a certain time and place of duty for the accused.
- (b) That the accused knew of that time and place; and
- (c) That the accused, without authority, failed to go to the appointed place of duty at the time prescribed.

2. Going from an appointed place of duty.

- (a) That a certain authority appointed a certain time and place of duty for the accused;
- (b) That the accused knew of that time and place; and
- (c) That the accused, without authority, went from the appointed place of duty after having reported at such place.

3. Absence from unit, organization, or place of duty.

- (a) That the accused absented himself or herself from his or her unit, organization, or place of duty at which he or she was required to be;
- (b) That the absence was without authority from anyone competent to give him or her leave; and
- (c) That the absence was for a certain period of time.

[If the absence was terminated by apprehension, add the following element]

- (d) That the absence was terminated by apprehension.

4. Abandoning watch or guard.

- (a) That the accused was a member of a guard, watch, or duty;
- (b) That the accused absented himself or herself from his or her guard, watch, or duty section;
- (c) That the absence of the accused was without authority; and

[If the absence was with intent to abandon the accused's guard, watch, or duty section, add the following element]

(d) That the accused intended to abandon his or her guard, watch, or duty section.

5. Absence from unit, organization, or place of duty with intent to avoid maneuvers or field exercises.

- (a) That the accused absented himself or herself from his or her unit, organization, or place of duty at which he or she was required to be;
- (b) That the absence of the accused was without authority;
- (c) That the absence was for a certain period of time;
- (d) That the accused knew that the absence would occur during a part of a period of maneuvers or field exercises; and
- (e) That the accused intended to avoid all or part of a period of maneuvers or field exercises.

Article 87 - Missing movement

Elements:

- 1. That the accused was required in the course of duty to move with a ship, aircraft or unit;
- 2. That the accused knew of the prospective movement of the ship, aircraft or unit;
- 3. That the accused missed the movement of the ship, aircraft or unit; and
- 4. That the accused missed the movement through design or neglect.

Article 88 - Contempt toward officials

Text: "Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Transportation, or the Governor or legislature of any State, Territory, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct."

Elements:

- 1. That the accused was a commissioned officer of the United States armed forces;

2. That the accused used certain words against an official or legislature named in the article;
3. That by an act of the accused these words came to the knowledge of a person other than the accused; and
4. That the words used were contemptuous, either in themselves or by virtue of the circumstances under which they were used.

[Note: If the words were against a Governor or legislature, add the following element]

5. That the accused was then present in the State, Territory, Commonwealth, or possession of the Governor or legislature concerned.

Explanation:

Neither "Congress" nor "legislature" includes its members individually... If not personally contemptuous, adverse criticism of one of the officials or legislatures named in the article in the course of a political discussion, even though emphatically expressed, may not be charged as a violation of the article. Similarly, expressions of opinion made in a purely private conversation should not ordinarily be charged... The truth or falsity of the statements is immaterial.

Article 89 - Disrespect toward a superior commissioned officer

Elements:

1. That the accused did or omitted certain acts or used certain language to or concerning a certain commissioned officer;
2. That such behavior or language was directed toward that officer;
3. That the officer toward whom the acts, omissions, or words were directed was the superior commissioned officer of the accused;
4. That the accused then knew that the commissioned officer toward whom the acts, omissions, or words were directed was the accused's superior commissioned officer; and

5. That, under the circumstances, the behavior or language was disrespectful to that commissioned officer.

Explanation: Disrespectful behavior is that which detracts from the respect due the authority and person of a superior commissioned officer. It may consist of acts or language, however expressed, and it is immaterial whether they refer to the superior as an officer or as a private individual. Disrespect by words may be conveyed by abusive epithets or other contemptuous or denunciatory language. Truth is no defense. Disrespect by acts includes neglecting the customary salute, or showing a marked disdain, indifference, insolence, impertinence, undue familiarity, or other rudeness in the presence of the superior officer.

Article 90 - Assaulting or willfully disobeying superior commissioned officer

Elements:

1. Striking or assaulting superior commissioned officer.

- (a) That the accused struck, drew, or lifted up a weapon against, or offered violence against, a certain commissioned officer;
- (b) That the officer was the superior commissioned officer of the accused;
- (c) That the accused then knew that the officer was the accused's superior commissioned officer;
- (d) That the superior commissioned officer was then in the execution of office.

2. Disobeying superior commissioned officer.

- (a) That the accused received a lawful command from a certain commissioned officer;
- (b) That this officer was the superior commissioned officer of the accused;
- (c) That the accused then knew that this officer was the accused's superior commissioned officer of the accused;

(d) That the accused willfully disobeyed the lawful command.

Article 91 - Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer

Elements:

1. Striking or assaulting warrant, noncommissioned, or petty officer.

(a) That the accused was a warrant officer or enlisted member;

(b) That the accused struck or assaulted a certain warrant, noncommissioned, or petty officer;

(c) That the striking or assault was committed while the victim was in the execution of office; and

(d) That the accused then knew that the person struck or assaulted was a warrant, noncommissioned, or petty officer.

[Note: If the victim was the superior noncommissioned or petty officer of the accused, add the following elements]

(e) That the victim was the superior noncommissioned, or petty officer of the accused; and

(f) That the accused then knew that the person struck or assaulted was the accused's superior noncommissioned, or petty officer.

2. Disobeying a warrant, noncommissioned, or petty officer.

(a) That the accused was a warrant officer or enlisted member;

(b) That the accused received a certain lawful order from a certain warrant, noncommissioned, or petty officer;

(c) That the accused then knew that the person giving the order was a warrant, noncommissioned, or petty officer;

(d) That the accused had a duty to obey the order; and

(e) That the accused willfully disobeyed the order.

3. Treating with contempt or being disrespectful in language or deportment toward a warrant, noncommissioned, or petty officer.

- (a) That the accused was a warrant officer or enlisted member;
- (b) That the accused did or omitted certain acts, or used certain language;
- (c) That such behavior or language was used toward and within sight or hearing of a certain warrant, noncommissioned, or petty officer;
- (d) That the accused then knew that the person toward whom the behavior or language was directed was a warrant, noncommissioned, or petty officer;
- (e) That the victim was then in the execution of office; and
- (f) That under the circumstances the accused, by such behavior or language, treated with contempt or was disrespectful to said warrant, noncommissioned, or petty officer.

[Note: If the victim was the superior noncommissioned, or petty officer of the accused, add the following elements]

- (g) That the victim was the superior noncommissioned, or petty officer of the accused; and
- (h) That the accused then knew that the person toward whom the behavior or language was directed was the accused's superior noncommissioned, or petty officer.

Article 92 - Failure to obey order or regulation

Elements:

1. Violation of or failure to obey a lawful general order or regulation.

- (a) That there was in effect a certain lawful general order or regulation;
- (b) That the accused had a duty to obey it; and
- (c) That the accused violated or failed to obey the order or regulation.

2. Failure to obey other lawful order.

- (a) That a member of the armed forces issued a certain lawful order;

- (b) That the accused had knowledge of the order;
- (c) That the accused had a duty to obey the order; and
- (d) That the accused failed to obey the order.

3. Dereliction in the performance of duties.

- (a) That the accused had certain duties;
- (b) That the accused knew or reasonably should have known of the duties; and
- (c) That the accused was (willfully) (through neglect or culpable inefficiency) derelict in the performance of those duties.

Article 93 - Cruelty and maltreatment

Elements:

- 1. That a certain person was subject to the orders of the accused; and
- 2. That the accused was cruel toward, or oppressed, or maltreated that person.

Article 94 - Mutiny and sedition

Elements:

- 1. Mutiny by creating violence or disturbances.
 - (a) That the accused created violence or a disturbance; and
 - (b) That the accused created this violence or disturbance with intent to usurp or override lawful military authority.
- 2. Mutiny by refusing to obey orders or perform duty.
 - (a) That the accused refused to obey orders or otherwise do the accused's duty;
 - (b) That the accused in refusing to obey orders or perform duty acted in concert with another person or persons; and
 - (c) That the accused did so with intent to usurp or override lawful military authority.

3. Sedition.

- (a) That the accused created revolt, violence, or disturbance against lawful civil authority;
- (b) That the accused acted in concert with another person or persons; and
- (c) That the accused did so with the intent to cause the overthrow or destruction of that authority.

4. Failure to prevent and suppress a mutiny or sedition.

- (a) That an offense of mutiny or sedition was committed in the presence of the accused; and
- (b) That the accused failed to do the accused's utmost to prevent and suppress the mutiny or sedition.

5. Failure to report a mutiny or sedition.

- (a) That an offense of mutiny or sedition occurred;
- (b) That the accused knew or had reason to believe that the offense was taking place; and
- (c) That the accused failed to take all reasonable means to inform the accused's superior commissioned officer or commander of the offense.

6. Attempted mutiny.

- (a) That the accused committed a certain overt act;
- (b) That the act was done with specific intent to commit the offense of mutiny;
- (c) That the act amounted to more than mere preparation; and
- (d) That the act apparently tended to effect the commission of the offense of mutiny.

Article 95 - Resistance, breach of arrest, and escape

Elements:

1. Resisting apprehension.

- (a) That a certain person attempted to apprehend the accused;
- (b) That said person was authorized to apprehend the accused; and
- (c) That the accused actively resisted the apprehension.

2. Breaking arrest.

- (a) That a certain person ordered the accused into arrest;
- (b) That said person was authorized to order the accused into arrest; and
- (c) That the accused went beyond the limits of arrest before being released from that arrest by proper authority.

3. Escape from custody.

- (a) That a certain person apprehended the accused;
- (b) That said person was authorized to apprehend the accused; and
- (c) That the accused freed himself or herself from custody before being released by proper authority.

4. Escape from confinement.

- (a) That a certain person ordered the accused into confinement;
- (b) That said person was authorized to order the accused into confinement; and
- (c) That the accused freed himself or herself from confinement before being released by proper authority.

[Note: If the escape was post-trial confinement, add the following element]

- (d) That the confinement was the result of a court-martial conviction.

Article 96 - Releasing prisoner without proper authority

Elements:

1. Releasing a prisoner without proper authority.

(a) That a certain prisoner was committed to the charge of the accused; and

(b) That the accused released the prisoner without proper authority.

2. Suffering a prisoner to escape through neglect.

(a) That a certain prisoner was committed to the charge of the accused;

(b) That the prisoner escaped;

(c) That the accused did not take such care to prevent the escape as a reasonably careful person, acting in the capacity in which the accused was acting, would have taken in the same or similar circumstances; and

(d) That the escape was the proximate result of the neglect.

3. Suffering a prisoner to escape through design.

(a) That a certain prisoner was committed to the charge of the accused;

(b) That the design of the accused was to suffer the escape of that prisoner; and

(c) That the prisoner escaped as a result of the carrying out of the design of the accused.

Article 97 - Unlawful detention

Elements:

1. That the accused apprehended, arrested, or confined a certain person; and

2. That the accused unlawfully exercised the accused's authority to do so.

Article 98 - Noncompliance with procedural rules

Elements:

1. Unnecessary delay in disposing of case.

(a) That the accused was charged with a certain duty in connection with the disposition of a case of a person accused of an offense under the code;

(b) That the accused knew that the accused was charged with this duty;

(c) That delay occurred in the disposition of the case;

(d) That the accused was responsible for the delay; and

- (e) That, under the circumstances, the delay was unnecessary.
2. Knowingly and intentionally failing to enforce or comply with provisions of the code.
- (a) That the accused failed to enforce or comply with a certain provision of the code regulating a proceeding before, during, or after a trial;
- (b) That the accused had the duty of enforcing or complying with that provision of the code;
- (c) That the accused knew that the accused was charged with this duty; and
- (d) That the accused's failure to enforce or comply with that provision was intentional.

Article 99 - Misbehavior before the enemy

Elements: See the UCMJ for details.

Article 100 - Subordinate compelling surrender

Elements: See the UCMJ for details.

Article 101 - Improper use of countersign

Elements: See the UCMJ for details.

Article 102 - Forcing a safeguard

Elements: See the UCMJ for details.

Article 103 - Captured or abandoned property

Elements: See the UCMJ for details.

Article 104 - Aiding the enemy

Elements: See the UCMJ for details.

Article 105 - Misconduct as a prisoner

Elements: See the UCMJ for details.

Article 106 - Spies

Elements: See the UCMJ for details.

Article 106a - Espionage

Elements: See the UCMJ for details.

Article 107 - False official statements

Elements:

1. That the accused signed a certain official document or made a certain official statement;
2. That the document or statement was false in certain particulars;
3. That the accused knew it to be false at the time of signing it or making it; and
4. That the false document or statement was made with the intent to deceive.

**Article 108 - Military property of the United States - sale, loss, damage, destruction,
or wrongful disposition**

Elements:

1. Selling or otherwise disposing of military property.
 - (a) That the accused sold or otherwise disposed of certain property (which was a firearm or explosive);
 - (b) That the sale or disposition was without proper authority;
 - (c) That the property was military property of the United States; and
 - (d) That the property was of a certain value.
2. Damaging, destroying, or losing military property.
 - (a) That the accused, without proper authority, damaged or destroyed certain property in a certain way, or lost certain property;
 - (b) That the property was military property of the United States;
 - (c) That the damage, destruction, or loss was willfully caused by the accused or was the result of neglect by the accused; and
 - (d) That the property was of a certain value or the damage was of a certain amount.

3. Suffering military property to be lost, damaged, destroyed, sold, or wrongfully disposed of.

- (a) That certain property (which was a firearm or explosive) was lost, damaged, destroyed, sold, or wrongfully disposed of;
- (b) That the property was military property of the United States;
- (c) That the loss, damage, destruction, sale, or wrongful disposition was suffered by the accused, without proper authority, through a certain omission of duty by the accused;
- (d) That the omission was willful or negligent; and
- (e) That the property was of a certain value or the damage was of a certain amount.

Article 109 - Property other than military property of the United States - waste, spoilage, or destruction

Elements:

1. Wasting or spoiling of non-military property.

- (a) That the accused willfully or recklessly wasted or spoiled certain real property in a certain manner;
- (b) That the property was that of another person; and
- (c) That the property was of a certain value.

2. Destroying or damaging non-military property.

- (a) That the accused willfully and wrongfully destroyed or damaged certain personal property in a certain manner;
- (b) That the property was that of another person; and
- (c) That the property was of a certain value or the damage was of a certain amount.

Article 110 - Improper hazarding of a vessel

Elements: See the UCMJ for details.

Article 111 - Drunken or reckless operation of a vehicle, aircraft, or vessel

Elements:

1. That the accused was operating or in physical control of a vehicle, aircraft, or vessel;
and
2. That while operating or in physical control of a vehicle, aircraft, or vessel, the accused:
 - (a) did so in a wanton or reckless manner, or
 - (b) was drunk or impaired, or
 - (c) the alcohol concentration in the accused's blood or breath was 0.10 grams of alcohol per 100 milliliters of blood or 0.10 grams of alcohol per 210 liters of breath, or greater, as shown by chemical analysis.

[Note: If injury resulted add the following element]

3. That the accused thereby caused the vehicle, aircraft, or vessel to injure a person.

Explanation:

"Drunk" and "impaired" mean any intoxication which is sufficient to impair the rational and full exercise of the mental or physical faculties.

Article 112 - Drunk on duty

Elements:

1. That the accused was on a certain duty; and
2. That the accused was found drunk while on this duty.

Article 112a - Wrongful use, possession, etc., of controlled substances

Elements:

1. Wrongful possession of controlled substance.
 - (a) That the accused possessed a certain amount of a controlled substance; and
 - (b) That the possession by the accused was wrongful.

2. Wrongful use of controlled substance.

- (a) That the accused used a controlled substance; and
- (b) That the use by the accused was wrongful.

3. Wrongful distribution of controlled substance.

- (a) That the accused distributed a certain amount of a controlled substance; and
- (b) That the use distribution by the accused was wrongful.

4. Wrongful introduction of a controlled substance.

- (a) That the accused introduced onto a vessel, aircraft, vehicle, or installation used by the armed forces or under the control of the armed forces a certain amount of a controlled substance; and
- (b) That the introduction was wrongful.

5. Wrongful manufacture of a controlled substance.

- (a) that the accused manufactured a certain amount of a controlled substance; and
- (b) That the manufacture was wrongful.

6. Wrongful possession, manufacture, or introduction of a controlled substance with intent to distribute.

- (a) That the accused (possessed) (manufactured) (introduced) a certain amount of a controlled substance;
- (b) That the (possession) (manufacture) (introduction) was wrongful; and
- (c) That the (possession) (manufacture) (introduction) was with the intent to distribute.

7. Wrongful importation or exportation of a controlled substance.

- (a) That the accused (imported into the customs territory of) (exported from) the United States a certain amount of a controlled substance; and
- (b) That the (importation) (exportation) was wrongful.

Article 113 - Misbehavior of sentinel or lookout

Elements:

1. That the accused was posted or on post as a sentinel or lookout;
2. That the accused was found drunk while on post, was found sleeping while on post, or left post before being regularly relieved.

[Note: If the offense was committed in time of war or while the accused was receiving special pay under 37 U.S.C. section 310, add the following element]

3. That the offense was committed (in time of war) (while the accused was receiving special pay under 37 U.S.C. section 310).

Article 114 - Dueling

Elements: See UCMJ for details.

Article 115 - Malingering

Elements:

1. That the accused was assigned to, or was aware of prospective assignment to, or availability for, the performance of work, duty, or service;
2. That the accused feigned illness, physical disablement, mental lapse or derangement, or intentionally inflicted injury upon himself or herself; and
3. That the accused's purpose or intent in doing so was to avoid the work, duty, or service.

[Note: If the offense was committed in time of war or in a hostile fire pay zone, add the following element]

4. That the offense was committed (in time of war) (in a hostile fire pay zone).

Article 116 - Riot or breach of peace

Elements:

1. Riot.
 - (a) That the accused was a member of an assembly of three or more persons;

- (b) That the accused and at least two other members of this group mutually intended to assist one another against anyone who might oppose them in doing an act for some private purpose;
- (c) That the group or some of its members, in furtherance of such purpose, unlawfully committed a tumultuous disturbance of the peace in a violent or turbulent manner; and
- (d) That these acts terrorized the public in general in that they caused or were intended to cause public alarm or terror.

2. Breach of the peace.

- (a) That the accused caused or participated in a certain act of a violent or turbulent nature; and
- (b) That the peace was thereby unlawfully disturbed.

Article 117 - Provoking speeches or gestures

Elements:

- 1. That the accused wrongfully used words or gestures toward a certain person;
- 2. That the words or gestures used were provoking or reproachful; and
- 3. That the person toward whom the words or gestures were used was a person subject to the code.

Article 118 - Murder

Elements: See the UCMJ for details.

Article 119 - Manslaughter

Elements: See the UCMJ for details.

Article 120 - Rape and carnal knowledge

Elements:

1. Rape.

- (a) That the accused committed an act of sexual intercourse; and

(b) That the act of sexual intercourse was done by force and without consent.

2. Carnal knowledge.

(a) That the accused committed an act of sexual intercourse with a certain female;

(b) That the female was not the accused's wife; and

(c) That at the time of the sexual intercourse the female was under 16 years of age.

Article 121 - Larceny and wrongful appropriation

Elements:

1. Larceny.

(a) That the accused wrongfully took, obtained, or withheld certain property from the possession of the owner or of any other person;

(b) That the property belonged to a certain person;

(c) That the property was of a certain value, or of some value; and

(d) That the taking, obtaining, or withholding by the accused was with the intent permanently to deprive or defraud another person of the use and benefit of the property or permanently to appropriate the property for the use of the accused or for any person other than the owner.

[Note: If the property is alleged to be military property, as defined in paragraph 32c (1) , add the following element]

(e) That the property was military property.

2. Wrongful appropriation.

(a) That the accused wrongfully took, obtained, or withheld certain property from the possession of the owner or of any other person;

(b) That the property belonged to a certain person;

(c) That the property was of a certain value, or of some value; and

(d) That the taking, obtaining, or withholding by the accused was with the intent temporarily to deprive or defraud another person of the use and benefit of the

property or temporarily to appropriate the property for the use of the accused or for any person other than the owner.

Article 122 - Robbery

Elements:

1. That the accused wrongfully took certain property from the person or from the possession and in the presence of a person named or described;
2. That the taking was against the will of that person;
3. That the taking was by means of force, violence, or force and violence, or putting the person in fear of immediate or future injury to that person, a relative, a member of the person's family, anyone accompanying the person at the time of the robbery, the person's property, or the property of a relative, family member, or anyone accompanying the person at the time of the robbery;
4. That the property belonged to a person named or described;
5. That the property was of a certain or of some value; and
6. That the taking of the property by the accused was with the intent permanently to deprive the person robbed of the use and benefit of the property.

[Note: If the robbery was committed with a firearm, add the following element]

7. That the means of force or violence or of putting the person in fear was a firearm.

Article 123 - Forgery

Elements:

1. Forgery- making or altering.
 - (a) That the accused falsely made or altered a certain signature or writing;
 - (b) That the signature or writing was of a nature which would, if genuine, apparently impose a legal liability on another or change another's legal rights or liabilities to that person's prejudice; and
 - (c) That the false making or altering was with the intent to defraud.

2. Forgery- uttering.

- (a) That a certain signature or writing was falsely made or altered;
- (b) That the signature or writing was of a nature which would, if genuine, apparently impose a legal liability on another or change another's legal rights or liabilities to that person's prejudice;
- (c) That the accused uttered, offered, issued, or transferred the signature of writing;
- (d) That at such time the accused knew that the signature or writing had been falsely made or altered; and
- (e) That the uttering, offering, issuing, or transferring was with the intent to defraud.

Article 123a - Making, drawing, or uttering check, draft, or order without sufficient funds

Elements:

1. For the procurement of any article or thing of value, with intent to defraud.

- (a) That the accused made, drew, uttered, or delivered a check, draft, or order for the payment of money payable to a named person or organization;
- (b) That the accused did so for the purpose of procuring an article or thing of value;
- (c) That the act was committed with intent to defraud; and
- (d) That at the time of making, drawing, uttering, or delivery of the instrument the accused knew that the accused or the maker or drawer had not or would not have sufficient funds in, or credit with, the bank or other depository for the payment thereof upon presentment.

2. For the payment of any past due obligation, or for any other purpose, with intent to deceive.

- (a) That the accused made, drew, uttered, or delivered a check, draft, or order for the payment of money payable to a named person or organization;
- (b) That the accused did so for the purpose of procuring an article or thing of value;
- (c) That the act was committed with intent to deceive; and
- (d) That at the time of making, drawing, uttering, or delivering of the instrument, the accused knew that the accused or the maker or drawer had not or would not have sufficient funds in, or credit with, the bank or other depository for the payment thereof upon presentment.

Article 124 - Maiming

Elements:

1. That the accused inflicted a certain injury upon a certain person;
2. That this injury seriously disfigured the person's body, destroyed or disabled an organ or member, or seriously diminished the person's physical vigor by the injury to an organ or member; and
3. That the accused inflicted this injury with an intent to cause some injury to a person.

Article 125 - Sodomy

Elements:

1. That the accused engaged in unnatural carnal copulation with a certain other person or with an animal.

(Note: Add either or both of the following elements, if applicable)

2. That the act was done with a child under the age of 16.
3. That the act was done by force and without the consent of the other person.

Explanation:

It is unnatural carnal copulation for a person to take into that person's mouth or anus the sexual organ of another person or of an animal; or to place that person's sexual organ in

the mouth or anus of another person or of an animal; or to have carnal copulation in any opening of the body, except the sexual parts, with another person; or to have carnal copulation with an animal.

Article 126 - Arson

Elements:

1. Aggravated arson.

(a) Inhabited dwelling

- (i) that the accused burned or set on fire an inhabited dwelling;
- (ii) That this dwelling belonged to a certain person and was of a certain value; and
- (iii) That the act was willful and malicious.

(b) Structure.

- (i) That the accused burned or set on fire a certain structure;
- (ii) That the act was willful and malicious;
- (iii) That there was a human being in the structure at the time;
- (iv) That the accused knew that there was a human being in the structure at the time; and
- (v) That this structure belonged to a certain person and was of a certain value.

2. Simple arson.

- (a) That the accused burned or set fire to certain property of another;
- (b) That the property was of a certain value; and
- (c) That the act was willful and malicious.

Article 127 - Extortion

Elements:

1. That the accused communicated a certain threat to another; and

2. That the accused intended to unlawfully obtain something of value, or any acquaintance, advantage, or immunity.

Article 128 - Assault

Elements:

1. Simple assault.

- (a) That the accused attempted or offered to do bodily harm to a certain person;
and
- (b) That the attempt or offer was done with unlawful force or violence.

2. Assault consummated by a battery.

- (a) That the accused did bodily harm to a certain person; and
- (b) That the bodily harm was done with unlawful force or violence.

3. Assaults permitting increased punishment based on status of victim.

(a) Assault upon a commissioned, warrant, noncommissioned; or petty officer.

- (i) That the accused attempted to do, offered to do, or did bodily harm to a certain person;
- (ii) That the attempt, offer, or bodily harm was done with unlawful force or violence;
- (iii) That the person was a commissioned, warrant, noncommissioned, or petty officer; and
- (iv) That the accused then knew that the person was a commissioned, warrant, noncommissioned, or petty officer.

(b) Assault upon a sentinel or lookout in the execution of duty, or upon a person in the execution of law enforcement duties.

- (i) That the accused attempted to do, offered to do, or did bodily harm to a certain person;

(ii) That the attempt, offer, or bodily harm was done with unlawful force or violence;

(iii) That the person was a sentinel or lookout in the execution of duty or was a person who then had and was in the execution of security police, military police, shore patrol, master at arms, or other military or civilian law enforcement duties; and

(iv) That the accused then knew that the person was a sentinel or lookout in the execution of duty or was a person who then had and was in the execution of security police, military police, shore patrol, master at arms, or other military or civilian law enforcement duties.

(c) Assault consummated by a battery upon a child under 16 years.

(i) That the accused did bodily harm to a certain person;

(ii) That the bodily harm was done with unlawful force or violence; and

(iii) That the person was then a child under the age of 16 years.

4. Aggravated assault.

(a) Assault with a dangerous weapon or other means of force likely to produce death or grievous bodily harm.

(i) That the accused attempted to do, offered to do, or did bodily harm to a certain person;

(ii) That the accused did so with a certain weapon, means, or force;

(iii) That the attempt, offer, or bodily harm was done with unlawful force or violence; and

(iv) That the weapon, means, or force was used in a manner likely to produce death or grievous bodily harm.

(Note: When a loaded firearm was used, add the following element)

(v) That the weapon was a loaded firearm.

(b) Assault in which grievous bodily harm is intentionally inflicted.

(i) That the accused assaulted a certain person;

(ii) That grievous bodily harm was thereby inflicted upon such person;

(iii) That the grievous bodily harm was done with unlawful force or violence; and

(iv) That the accused, at the time, had the specific intent to inflict grievous bodily harm.

(Note: When a loaded firearm was used, add the following element)

(v) That the injury was inflicted with a loaded firearm.

Article 129 - Burglary

Elements:

1. That the accused unlawfully broke and entered the dwelling house of another;
2. That both the breaking and entering were done in the nighttime; and
3. That the breaking and entering were done with the intent to commit an offense punishable under Article 118 through 128, except Article 123a.

Article 130 - Housebreaking

Elements:

1. That the accused unlawfully entered a certain building or structure of a certain other person; and
2. That the unlawful entry was made with the intent to commit a criminal offense therein.

Article 131 - Perjury

Elements:

1. Giving false testimony.
 - (a) That the accused took an oath or affirmation in a certain judicial proceeding or course of justice;

- (b) That the oath or affirmation was administered to the accused in a matter in which an oath or affirmation was required or authorized by law;
- (c) That the oath or affirmation was administered by a person having authority to do so;
- (d) That upon the oath or affirmation that accused willfully gave certain testimony;
- (e) That the testimony was material;
- (f) That the testimony was false; and
- (g) That the accused did not then believe the testimony to be true.

2. Subscribing false statement.

- (a) That the accused subscribed a certain statement in a judicial proceeding or course of justice;
- (b) That in the declaration, certification, verification, or statement under penalty of perjury, the accused declared, certified, verified, or stated the truth of that certain statement;
- (c) That the accused willfully subscribed the statement;
- (d) That the statement was material;
- (e) That the statement was false; and
- (f) That the accused did not then believe the statement to be true.

Article 132 - Frauds against the United States

Elements:

1. Making a false or fraudulent claim.

- (a) That the accused made a certain claim against the United States or an officer thereof;
- (b) That the claim was false or fraudulent in certain particulars; and
- (c) That the accused then knew that the claim was false or fraudulent in these particulars.

Article 133 - Conduct unbecoming an officer and gentleman

Elements:

1. That the accused did or omitted to do certain acts; and
2. That, under the circumstances, these acts or omissions constituted conduct unbecoming an officer and gentleman.

Explanation:

Examples of offenses. Instances of violations of this article include... using insulting or defamatory language to another officer in that officer's presence or about that officer to other military persons; being drunk and disorderly in a public place...

Article 134 - General article

Elements:

1. That the accused did or failed to do certain acts; and
2. That, under the circumstances, the accused's conduct was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Abusing public animal)

Elements:

1. That the accused wrongfully abused a certain public animal; and
2. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Adultery)

Elements:

1. That the accused wrongfully had sexual intercourse with a certain person;
2. That, at the time, the accused or the other person was married to someone else; and

3. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Assault - indecent)

Elements:

1. That the accused assaulted a certain person not the spouse of the accused in a certain manner;
2. That the acts were done with the intent to gratify the lust or sexual desires of the accused; and
3. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Assault - with intent to commit murder, voluntary manslaughter, rape, robbery, sodomy, arson, burglary, or housebreaking)

Elements:

1. That the accused assaulted a certain person;
2. That, at the time of the assault, the accused intended to kill (as required for murder or voluntary manslaughter) or intended to commit rape, robbery, sodomy, arson, burglary, or housebreaking; and
3. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Bigamy)

Elements:

1. That the accused had a living lawful spouse;

2. That while having such spouse the accused wrongfully married another person; and
3. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Bribery and graft)

Elements:

1. Asking, accepting, or receiving.

- (a) That the accused wrongfully asked, accepted, or received a thing of value from a certain person or organization;
- (b) That the accused then occupied a certain official position or had certain official duties;
- (c) That the accused asked, accepted, or received this thing of value (with the intent to have the accused's decision or action influenced with respect to a certain matter)* (as compensation for or in recognition of services rendered, to be rendered, or both, by the accused in relation to a certain matter) ;
- (d) That this certain matter was an official matter in which the United States was and is interested; and
- (e) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

2. Promising, offering, or giving.

- (a) That the accused wrongfully promised, offered, or gave a thing of value to a certain person;
- (b) That this person then occupied a certain official position or had certain official duties;

(c) That this thing of value was promised, offered, or given (with the intent to influence the decision or action of this person)* (as compensation for or in recognition of services rendered, to be rendered, or both, by this person in relation to a certain matter) ;

(d) That this matter was an official matter in which the United States was and is interested; and

(e) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Burning with intent to defraud)

Elements:

1. That the accused willfully and maliciously burned or set fire to certain property owned by an certain person or organization;
2. that such burning or setting of fire was with the intent to defraud a certain person or organization; and
3. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Check, worthless, making and uttering, by dishonorably failing to maintain funds)

Elements:

1. That the accused made and uttered a certain check;
2. That the check was made and uttered for the purchase of a certain thing, in payment of a debt, or for a certain purpose;
3. That the accused subsequently failed to place or maintain sufficient funds in or credit with the drawee bank for payment of the check in full upon its presentment for payment;

4. That this failure was dishonorable; and
5. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Cohabitation, wrongful)

Elements:

1. That, during a certain period of time, the accused and another person openly and publicly lived together as husband and wife, holding themselves out as such;
2. That the other person was not the spouse of the accused;
3. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Correctional custody - offenses against)

Elements:

1. Escape from correctional custody.
 - (a) That the accused was placed in correctional custody by a person authorized to do so;
 - (b) That, while in such correctional custody, the accused was under physical restraint;
 - (c) That the accused freed himself or herself from the physical restraint of this correctional custody before being released therefrom by proper authority; and
 - (d) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces

Article 134 - Debt, dishonorably failing to pay)

Elements:

1. That the accused was indebted to a certain person or entity in a certain sum;
2. That this debt became due and payable on or about a certain date;
3. That while the debt was still due and payable the accused dishonorably failed to pay this debt; and
4. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Disloyal statements)

Elements:

1. That the accused made a certain statement;
2. That the statement was communicated to another person;
3. That the statement was disloyal to the United States;
4. That the statement was made with the intent to promote disloyalty or disaffection toward the United States by any member of the armed forces or to interfere with or impair the loyalty to the United States or good order and discipline of any member of the armed forces; and
5. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Disorderly conduct, drunkenness)

Elements:

1. That the accused was drunk, disorderly, or drunk and disorderly on board ship or in some other place; and

2. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Drinking liquor with prisoner)

Elements: See the UCMJ for details.

Article 134 - (Drunk prisoner)

Elements: See the UCMJ for details.

Article 134 - (Drunkenness - incapacitation for performance of duties through prior wrongful indulgence in intoxicating liquor or any drug)

Elements:

1. That the accused had certain duties to perform;
2. That the accused was incapacitated for the proper performance of such duties;
3. That such incapacitation was the result of previous wrongful indulgence in intoxicating liquor or any drug; and
4. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (False or unauthorized pass offenses)

Elements: See the UCMJ for details.

Article 134 - (False pretenses, obtaining services under)

Elements:

1. That the accused wrongfully obtained certain services;
2. That the obtaining was done by using false pretenses;
3. That the accused then knew of the falsity of the pretenses;
4. That the obtaining was with intent to defraud;
5. That the services were of a certain value, and

6. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (False swearing)

Elements:

1. That the accused took an oath or equivalent;
2. That the oath or equivalent was administered to the accused in a matter in which such oath or equivalent was required or authorized by law;
3. That the oath or equivalent was administered by a person having authority to do so;
4. That upon this oath or equivalent the accused made or subscribed a certain statement;
5. That the statement was false;
6. That the accused did not then believe the statement to be true; and
7. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Firearm, discharging - through negligence)

Elements:

1. That the accused discharged a firearm;
2. That such discharge was caused by the negligence of the accused; and
3. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Firearm, discharging - willfully, under such circumstances as to endanger human life)

Elements:

1. That the accused discharged a firearm;

2. That the discharge was willful and wrongful;
3. That the discharge was under circumstances such as to endanger human life; and
4. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Fleeing scene of accident)

Elements:

1. Driver.

- (a) That the accused was the driver of a vehicle;
- (b) That while the accused was driving the vehicle was involved in an accident;
- (c) That the accused knew that the vehicle had been in an accident;
- (d) That the accused left the scene of the accident without (providing assistance to the victim who had been struck (and injured) by the said vehicle) or (providing identification);
- (e) That such leaving was wrongful; and
- (f) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

2. Senior passenger.

- (a) That the accused was a passenger in a vehicle which was involved in an accident;
- (b) That the accused knew that said vehicle had been in an accident;
- (c) That the accused was the superior commissioned or noncommissioned officer of the driver, or commander of the vehicle, and wrongfully and unlawfully ordered, caused, or permitted the driver to leave the scene of the accident without

(providing assistance to the victim who had been struck (and injured) by the said vehicle) (or) (providing identification); and

(d) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Fraternization)

Elements:

1. That the accused was a commissioned or warrant officer;
2. That the accused fraternized on terms of military equality with one or more certain enlisted member(s) in a certain manner;
3. That the accused then knew the person(s) to be (an) enlisted member(s);
4. That such fraternization violated the custom of the accused's service that officers shall not fraternize with enlisted members on terms of military equality; and
5. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Explanation:

Not all contact or association between officers and enlisted persons is an offense. Whether the contact or association in question is an offense depends on the surrounding circumstances. Factors to be considered include whether the conduct has compromised the chain of command, resulted in the appearance of partiality, or otherwise undermined good order, discipline, authority, or morale.

Article 134 - (Gambling with subordinate)

Elements:

1. That the accused gambled with a certain servicemember;
2. That the accused was then a noncommissioned or petty officer;

3. That the servicemember was not then a noncommissioned or petty officer and was subordinate to the accused;
4. That the accused knew that the servicemember was not then a noncommissioned or petty officer and was subordinate to the accused; and
5. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Homicide, negligent)

Elements: See the UCMJ for details.

Article 134 - (Impersonating a commissioned, warrant, noncommissioned, or petty officer, or an agent or official)

Elements:

1. That the accused impersonated a commissioned, warrant, noncommissioned, or petty officer, or an agent of superior authority of one of the armed forces of the United States, or an official of a certain government, in a certain manner;
2. That the impersonation was wrongful and willful; and
3. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

[Note 1: If intent to defraud is in issue, add the following additional element after (2), above: That the accused did so with the intent to defraud a certain person or organization in a certain manner;].

[Note 2: If the accused is charged with impersonating an official of a certain government without an intent to defraud, use the following additional element after (2) above: That the accused committed one or more acts which exercised or asserted the authority of the office the accused claimed to have;].

Article 134 - (Indecent acts or liberties with a child)

Elements:

1. Physical contact.

- (a) That the accused committed a certain act upon or with the body of a certain person;
- (b) That the person was under 16 years of age and not the spouse of the accused;
- (c) That the act of the accused was indecent;
- (d) That the accused committed the act with intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of the accused, the victim, or both; and
- (e) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

2. No physical contact.

- (a) That the accused committed a certain act;
- (b) That the act amounted to the taking of indecent liberties with a certain person;
- (c) That the accused committed the act in the presence of this person;
- (d) That this person was under 16 years of age and not the spouse of the accused;
- (e) That the accused committed the act with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of the accused, the victim, or both; and
- (f) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Indecent exposure)

Elements:

- 1. That the accused exposed a certain part of the accused's body to public view in an indecent manner;

2. That the exposure was willful and wrongful; and
- 3 That, under the circumstances, the accused's conduct was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Indecent language)

Elements:

1. That the accused orally or in writing communicated to another person certain language;
2. That such language was indecent; and
3. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

[Note: In appropriate cases add the following element after element (1): That the person to whom the language was communicated was a child under the age of 16;].]

Article 134 - (Indecent acts with another)

Elements:

1. That the accused committed a certain wrongful act with a certain person;
2. That the act was indecent; and
3. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Jumping from vessel into the water)

Elements: See the UCMJ for details.

Article 134 - (Kidnapping)

Elements:

1. That the accused seized, confined, inveigled, decoyed, or carried away a certain person;
2. That the accused then held such person against that person's will;

3. That the accused did so willfully and wrongfully; and
4. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Mail: taking, opening, secreting, destroying, or stealing)

Elements: See the UCMJ for details.

Article 134 - (Mails: depositing or causing to be deposited obscene matters in)

Elements: See the UCMJ for details.

Article 134 - (Misprision of serious offense)

Elements:

1. That a certain serious offense was committed by a certain person;
2. That the accused knew that the said person had committed the serious offense;
3. That, thereafter, the accused concealed the serious offense and failed to make it known to civilian or military authorities as soon as possible;
4. That the concealing was wrongful; and
5. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Obstructing justice)

Elements:

1. That the accused wrongfully did a certain act;
2. That the accused did so in the case of a certain person against whom the accused had reason to believe there were or would be criminal proceedings pending;
3. That the act was done with the intent to influence, impede, or otherwise obstruct the due administration of justice; and

4. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Wrongful interference with an adverse administrative proceeding)

Elements:

1. That the accused wrongfully did a certain act;
2. That the accused did so in the case of a certain person against whom the accused had reason to believe there was or would be an adverse administrative proceeding pending;
3. That the act was done with the intent to influence, impede, or obstruct the conduct of such administrative proceeding, or otherwise obstruct the due administration of justice;
4. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Pandering and prostitution)

Elements: See the UCMJ for details.

Article 134 - (Perjury ; subornation of)

Elements: See the UCMJ for details.

Article 134 - (Public record: altering, concealing, removing, mutilating, obliterating, or destroying)

Elements:

1. That the accused altered, concealed, removed, mutilated, obliterated, destroyed, or took with the intent to alter, conceal, remove, mutilate, obliterate, or destroy, certain public record;
2. That the act of the accused was willful and unlawful; and

3. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring the discredit upon the armed forces.

Article 134 - (Quarantine: medical breaking)

Elements: See the UCMJ for details.

Article 134 - (Restriction, breaking)

Elements:

1. That a certain person ordered the accused to be restricted to certain limits;
2. That said person was authorized to order said restriction;
3. That the accused knew of the restriction and the limits thereof;
4. That the accused went beyond the limits of the restriction before being released therefrom by proper authority; and
5. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Seizure: destruction, removal, or disposal of property to prevent)

Elements:

1. That one or more persons authorized to make searches and seizures were seizing, about to seize, or endeavoring to seize certain property;
2. That the accused destroyed, removed, or otherwise disposed of that property with intent to prevent the seizure thereof;
3. That the accused then knew that person(s) authorized to make searches were seizing, about to seize, or endeavoring to seize the property; and
4. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Self-injury without intent to avoid service)

Elements: See the UCMJ for details.

Article 134 - (Sentinel or lookout: offenses against or by)

Elements:

1. Disrespect to a sentinel or lookout.

- (a) That a certain person was a sentinel or lookout;
- (b) That the accused knew that said person was a sentinel or lookout;
- (c) That the accused used certain disrespectful language or behaved in a certain disrespectful manner;
- (d) That such language or behavior was wrongful;
- (e) That such language or behavior was directed toward and within the sight or hearing of the sentinel or lookout;
- (f) That said person was at the time in the execution of duties as a sentinel or lookout; and
- (g) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

2. Loitering or wrongfully sitting on post by a sentinel or lookout.

- (a) That the accused was posted as a sentinel or lookout;
- (b) That while so posted, the accused loitered or wrongfully sat down on post; and
- (c) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

[Note: If the offense was committed in time of war or while the accused was receiving special pay under 37 U.S.C. section 310, add the following element after element

(a): That the accused was so posted (in time of war) (while receiving special pay under 37 U.S.C. section 310).]

Article 134 - (Soliciting another to commit an offense)

Elements:

1. That the accused solicited or advised a certain person or persons to commit a certain offense under the code other than one of the four offenses named in Article 82;
2. That the accused did so with the intent that the offense actually be committed; and
3. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was a nature to bring discredit upon the armed forces.

Article 134 - (Stolen property: knowingly receiving, buying, concealing)

Elements:

1. That the accused wrongfully received, bought, or concealed certain property of some value;
2. That the property belonged to another person;
3. That the property had been stolen;
4. That the accused then knew that the property had been stolen; and
5. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Straggling)

Elements:

1. That the accused, while accompanying the accused's organization on a march, maneuvers, or similar exercise, straggled;
2. That the straggling was wrongful; and

3. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Testify ; wrongful refusal)

Elements:

1. That the accused was in the presence of a court-martial, board of officer(s), military commission, court of inquiry, an officer conducting an investigation under Article 32, or an officer taking a deposition, of or for the United States, at which a certain person was presiding;
2. That the said person presiding directed the accused to qualify as a witness or having so qualified, to answer certain question;
3. That the accused refused to qualify as a witness or answer said question;
4. That the refusal was wrongful; and
5. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Threat or hoax: bomb)

Elements: See the UCMJ for details.

Article 134 - (Threat, communicating)

Elements:

1. That the accused communicated certain language expressing a present determination or intent to wrongfully injure the person, property, or reputation of another person, presently or in the future;
2. That the communication was made known to that person or to a third person;
3. That the communication was wrongful; and

4. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Unlawful entry)

Elements:

1. That the accused entered the real property of another or certain personal property of another which amounts to a structure usually used for habitation or storage;
2. That such entry was unlawful; and
3. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Weapon: concealed, carrying)

Elements:

1. That the accused carried a certain weapon concealed on or about the accused's person;
2. That the carrying was unlawful;
3. That the weapon was a dangerous weapon; and
4. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Article 134 - (Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button)

Elements:

1. That the accused wore a certain insignia, decoration, badge, ribbon, device, or lapel button upon the accused's uniform or civilian clothing;
2. That the accused was not authorized to wear the item;
3. That the wearing was wrongful; and

4. That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

INTERVIEW / INTERROGATION WORKSHEET

(Memory Aid)

OFFENSES UNDER INVESTIGATION

1. Offense: _____

Elements: _____

2. Offense: _____

Elements: _____

3. Offense: _____

Elements: _____

4. Offense: _____

Elements: _____

SUSPECTS

WITNESSES

STRATEGY (Possible Minimization or Rationalization Techniques)