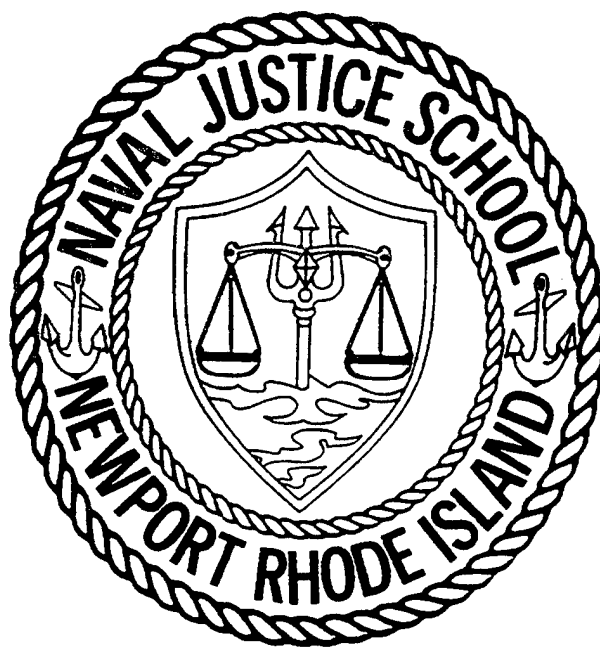


Senior Officer Course Manual



DISTRIBUTION STATEMENT A

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**Military Justice
&
Civil Law**

DTIC QUALITY INSPECTED 3

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Student Data Record -- Senior Officer Course (Fleet)

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

NAVAL JUSTICE SCHOOL

SENIOR OFFICER COURSE IN MILITARY JUSTICE AND CIVIL LAW

TIME	Monday	Tuesday	Wednesday	Thursday
0800 to 0850	CC Welcome Aboard / Opening Remarks	PR Court-Martial Procedures / Problems of the Convening Authority	CIV JAGMAN Investigations	PR Military Justice Current Issues
0900 to 0950	PR Military Justice Overview	EV Drug Abuse Detection	CIV LOD / Misconduct Determinations	CIV Current Civil Law Issues
1000 to 1050	PR Non Punitive Measures		EV Self- Incrimination	CIV Family Advocacy
1100 to 1150	PR Non Judicial Punishment			CIV Legal Assistance
1300 to 1350	PR Non Judicial Punishment	EV Search & Seizure	CIV Freedom of Expression	CIV Environmental Law
1400 to 1450	CIV Administrative Separations	CIV Standards of Conduct	CR Sexual Harrass. / Frat.	CIV / PR / EV Seminar
1500 to 1550			CC/MJ Sentencing Seminar	
1600 to 1650				

AVAILABILITY OF NAVAL JUSTICE SCHOOL PUBLICATIONS

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

Defense Technical Information Center

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

Defense Technical Information Center
Attention: Code DTIC-FDRA
8725 JOHN J. KINGMAN RD STE 0944
FT BELVOIR, VA 22060-6218

or calling commercial (703) 767-8273, DSN 427-8273 or 1-800-CAL-DTIC (225-3842) menu selection 2, option 1. The cost of all hard copy publications is \$6.00 for the first 100 pages, with an additional \$.10 per page (over 100 pages), and \$4.00 for a microfiche copy. In addition to registering with DTIC, the command normally must establish a deposit account with the National Technical Information Service (NTIS) as the means of funding purchases from DTIC. Information on such a deposit account is supplied by DTIC when a command registers as a DTIC user. When ordering from DTIC, publications should be identified by both title and AD number, if known. (A listing of publications and their AD numbers appears below).

National Technical Information Center

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

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

NJS Electronic Bulletin Board (EBB)

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

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

Obtaining the name of a file to download

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

Telling the EBB that you wish to download a file

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

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

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

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

Telling your communications program to commence the download

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

NJS publications available through DTIC

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

Commander's Handbook on Military and Civil Law (October 1994 edition). This text is intended to familiarize commanding officers, executive officers, and officers in charge with the UCMJ and civil law matters relating to command legal responsibilities and the administration of military law. The AD number is AD-A291540. Number of pages: 576.

Senior Officer Course Manual on Military and Civil Law (October 1994 edition). This text is intended to familiarize commanding officers, executive officers, and officers in charge with the UCMJ and civil law matters relating to command legal responsibilities and the administration of military law. The AD number is AD-A _____. Number of pages: 348.

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

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

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

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

Procedure Study Guide (April 1994 edition). This text is used in teaching military justice procedure to lawyers. The AD number is AD-A285815. (Note: New AD number pending.) Number of pages: 582.

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

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

Staff Judge Advocate Deskbook (December 1994 edition). This text is a survey of administrative, criminal, and labor law topics encountered by command legal advisors. It is used as the basic text in our Staff Judge Advocate Course. The AD number is AD-A _____. Number of pages: 1098.

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

Consolidated Environmental Law Deskbook (May 1994 edition). This text is used as a ready reference for the judge advocate with no environmental law background. Each chapter is designed to provide an overview of the key topics in each significant area and, at a minimum, enhance the reader's ability to spot issues. The AD number is AD-A285817. Number of pages: 462.

Legalman / Legal Clerk Study Guide (November 1994 edition). This text covers areas of instruction for legalman and legal clerk students. It is used as a basic text in all paralegal courses. The AD number is AD-A289752. (**Note:** AD number pending.) Number of pages: 390.

SENIOR OFFICER COURSE QUESTIONNAIRE

Name		Rank	Service
Location		Command	Date
Previous military experience (<i>circle as appropriate</i>)			
CO	XO	OIC	Unit Legal Officer
Attended previous SOC: ☐ Yes ☐ No			

Please evaluate the course using the responses called for below

1. Please rate the quality of instruction / material in each area:								
PROCEDURE								
a.	MILJUS Overview	(Low)	1	2	3	4	5	(High)
b.	Non Punitive Measures	(Low)	1	2	3	4	5	(High)
c.	NJP	(Low)	1	2	3	4	5	(High)
d.	Courts-Martial / CA	(Low)	1	2	3	4	5	(High)
e.	MILJUS Current Issues	(Low)	1	2	3	4	5	(High)
EVIDENCE								
a.	Search & Seizure	(Low)	1	2	3	4	5	(High)
b.	Drug Abuse Detection	(Low)	1	2	3	4	5	(High)
c.	Self-Incrimination	(Low)	1	2	3	4	5	(High)
d.	Sexual Harassment / Fraternization	(Low)	1	2	3	4	5	(High)
CIVIL LAW								
a.	Administrative Separations	(Low)	1	2	3	4	5	(High)
b.	Standards of Conduct	(Low)	1	2	3	4	5	(High)
c.	Family Advocacy	(Low)	1	2	3	4	5	(High)
d.	JAGMAN / LOD	(Low)	1	2	3	4	5	(High)
e.	Freedom of Expression	(Low)	1	2	3	4	5	(High)
f.	Current CIVLAW Issues	(Low)	1	2	3	4	5	(High)
g.	Legal Assistance	(Low)	1	2	3	4	5	(High)
e.	Environmental Law	(Low)	1	2	3	4	5	(High)

2. How would you rate your general level of knowledge in the following areas prior to the course?								
a.	Military Justice	(Low)	1	2	3	4	5	(High)
b.	Civil/Admin Law	(Low)	1	2	3	4	5	(High)
3. How would you rate your general level of knowledge in these areas after the course?								
a.	Military Justice	(Low)	1	2	3	4	5	(High)
b.	Civil/Admin Law	(Low)	1	2	3	4	5	(High)
4. How would you rate the exercises / seminars.								
a.	Military Judge's Sentencing Seminar	(Low)	1	2	3	4	5	(High)
b.	Wrap-up Seminar	(Low)	1	2	3	4	5	(High)
5. How would you rate the materials provided.								
		(Low)	1	2	3	4	5	(High)
Comment:								
6. How would you rate the adequacy of the facilities (classroom, mess spaces, heads, parking, etc...)								
		(Low)	1	2	3	4	5	(High)
Comment:								

7. How would you rate the adequacy of the Admin support?							
(Low)	1	2	3	4	5	(High)	
Comment:							
8. Please list any subjects or materials you think should be added to, or deleted from, the course.							
9. Do you have any recommendations regarding the amount of time allotted to each subject?							
10. How would you rate the overall quality / usefulness of the course?							
(Low)	1	2	3	4	5	(High)	
Comment:							
11. Do you have any other comments or recommendations concerning the manner in which the course was conducted? <i>(Note: Use back of sheet for further comments / recommendations.)</i>							

FURTHER COMMENTS / RECOMMENDATIONS

12.

PROCEDURE MATERIALS

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OVERVIEW OF THE MILITARY JUSTICE SYSTEM

I. PERCEPTIONS AND COMPARISONS

A. Perceptions

B. Comparisons

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

II. SOURCES OF LAW IN THE MILITARY

A. U.S. Constitution

B. Uniform Code of Military Justice (UCMJ)

C. *Manual for Courts-Martial, 1984* (MCM)

D. *Manual of the Judge Advocate General* (JAGMAN)

E. *Military Justice Manual* (MJM) (Coast Guard)

F. *U.S. Navy Regulations, 1990* (NAVREGS)

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

H. Command directives

I. Judicial decisions

J. International law

III. COURTS AS SOURCES OF LAW

A. U.S. Supreme Court

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

C. Courts of Military Review

1. Navy-Marine Corps Court of Criminal Appeals (N.M. Ct. Crim. App.)

2. Coast Guard Court of Criminal Appeals (C.G Ct. Crim. App.)

3. Army Court of Criminal Appeals (A. Ct. Crim. App.)

4. Air Force Court of Criminal Appeals (A.F Ct. Crim. App.)

IV. SYSTEM OVERVIEW

A. Convening authority (CA)

B. Report of offenses (complaints)

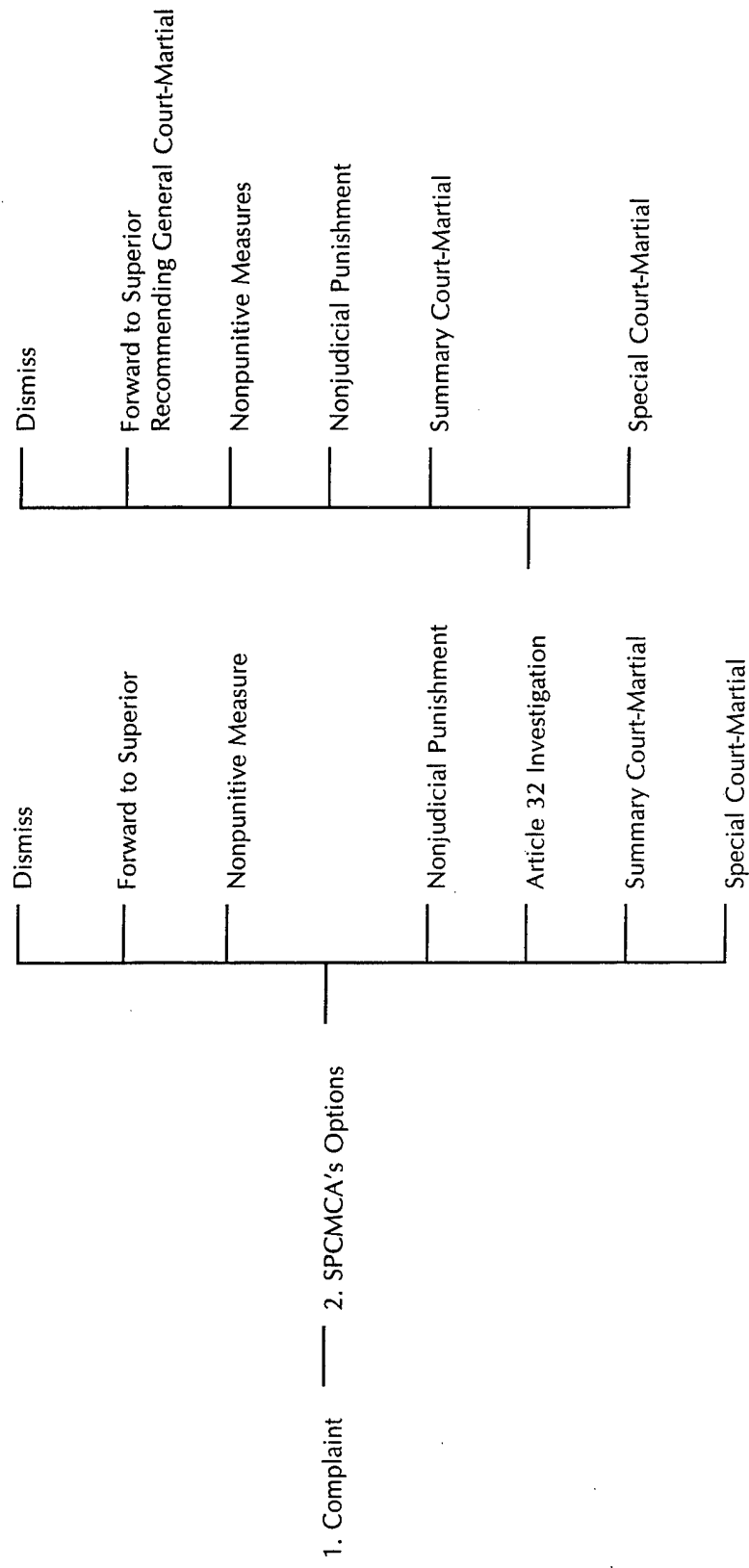
C. Preliminary inquiry

1. In-house
2. NCIS

D. Command alternatives for disposition

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

SPECIAL COURT-MARTIAL CONVENING AUTHORITY'S DISPOSITION OPTIONS



NONPUNITIVE MEASURES

I. PURPOSE AND FUNCTION

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

II. THREE TYPES OF NONPUNITIVE MEASURES

A. Censure

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

B. Extra military instruction (EMI)

– A leadership tool

- 1. Analysis
 - a. Identify the deficiency

- b. Logical relationship test
 - c. Examine the order's language
 - 2. Who may assign EMI?
 - a. During working hours: officers / CPO's / PO's / NCO's
 - b. After working hours: CO's who may delegate to senior enlisted
 - 3. Limitations on EMI (JAGMAN Section 103)
 - a. Normally not more than two hours maximum per day
 - b. Not on Sabbath
 - c. Reasonable number of days
 - d. Normal liberty upon completion
 - e. No entry in service record
- C. Administrative withholding of privileges
 - 1. Rights vs. privileges
 - a. Right – part of compensation or required for the performance of duties
 - b. Privilege – a benefit for the servicemember's enjoyment
 - 2. Examples
 - a. Rights – medical care, dental care, quarters, subsistence, pay
 - b. Privileges – special liberty, civilian clothing, exchange of duty, use of base theater, club

3. Denial of normal liberty (See OPNAVINST 3120.32C, para. 142 and JAGMAN Section 104b.)

- a. NJP
- b. Court-martial punishment
- c. Pretrial restraint
- d. Liberty risk program
 - (1) Overseas only
 - (2) Definition – deprivation of normal liberty in a foreign country when such action is deemed essential for the protection of the foreign relations of the United States
- e. EMI
- f. Extension of working hours

III. "VOLUNTARY RESTRAINT" (HACK)

- A. Not authorized
- B. Problematic – can lead to defense of "former punishment"

IV. REMEDIES FOR ILLEGAL NONPUNITIVE MEASURES

- A. Request mast
- B. Article 138 (UCMJ) complaint
- C. Article 1150 (NAVREGS) complaint
- D. Congressional inquiry / Hotline complaint

NONJUDICIAL PUNISHMENT

I. NATURE AND AUTHORITY

A. Nature

1. Disciplinary proceeding for minor offenses, **not** a "conviction"
2. Terms used by various armed forces
 - (a) Navy / Coast Guard - captain's mast
 - (b) Marine Corps - office hours
 - (c) Army / Air Force - article 15
3. XOI
 - (a) Navy only
 - (b) Not required
 - (c) XO's authority
 1. Forward to CO for mast
 2. Dismiss
 3. Dismiss and impose nonpunitive measures
 4. Can be restricted by CO

B. CO imposing NJP

1. All military members of the command
 - (a) Member of command at the time NJP is imposed, **not** at the time of the offense

(b) TAD personnel are members of both commands for purposes of NJP, either CO can impose

2. Authority to impose NJP is normally **not** delegable
3. Authority to impose NJP should not be withheld from subordinate commander (Navy / Marine Corps)

C. OIC imposing NJP

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

D. Embarked units

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

E. Other armed force personnel

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

II. OFFENSES PUNISHABLE

- A. CO / OIC has broad discretion to decide what offenses should be handled with NJP
- B. General guidance
 - 1. NJP is for "minor" offenses
 - 2. An offense is "minor" if a dishonorable discharge (DD) or over one year's confinement is **not** authorized at a GCM
- C. Former punishment
 - 1. Minor offense – punishment at NJP will bar a subsequent court-martial for the same offense
 - 2. Major offense – punishment at NJP will not bar a subsequent court-martial for the same offense, but accused will receive credit for NJP against the court-martial sentence
 - 3. Military judge (MJ) will decide if offense is major or minor
- D. Prior civilian action (JAGMAN, § 0124)
 - 1. Federal court – bars NJP or court-martial
 - 2. State / local / foreign court – does not bar NJP or court-martial, but must request permission to proceed
 - (a) For GCM / SPCM – OJAG permission required
 - (b) For NJP / SCM – GCMCA permission required
 - (c) Criteria – exceptionally light sentence, impracticable probation, court concludes without conviction or acquittal after trial on the merits, unique military interest

E. Statute of limitations

- Punishment may not be imposed for offenses committed more than two years prior to the date of imposition of punishment.

III. NOTIFICATION OF RIGHTS REGARDING NJP

A. Prior to hearing

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

B. Rights at the hearing

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

IV. ADMINISTRATIVE MATTERS

- A. Mast / office hours guide – JAGMAN, App. A-1-(e)(1)
- B. Military Rules of Evidence (Mil.R.Evid.) – do **not** apply (except privileges)
- C. Standard of proof – preponderance of the evidence
- D. Publication of NJP (JAGMAN, § 0115)
 1. Full publication allowed to military personnel
 2. IF Civilian access to publication, name should be removed

E. CO's options after review of the evidence

1. Dismissal – with or without warning
2. Dismissal and imposition of nonpunitive measures
3. NJP
4. Referral to a higher forum
5. Postponement of action

V. PUNISHMENTS

A. General categories

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

B. Maximum potential punishment based on

1. Imposing officer's grade
2. Servicemember's rank
3. Ship / shore command

4. Limitations on combinations of punishments
5. To determine use
 - a. MCM, Part V.1f(3) and JAGMAN, § 0111
 - b. See Limitation Charts on pages 18 and 19 of this Guide

VI. CLEMENCY AND CORRECTIVE ACTION

A. Authorities

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

B. Types of clemency and corrective action

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

3. Mitigation

- a. A reduction in either the quantity or quality of a punishment
- b. Time limit to mitigate – four months

4. Suspension

- a. Any type of punishment
- b. Period of suspension – no more than six months
- c. Time limit to suspend – four months
- d. Conditions of suspension
 - (1) Every suspension requires servicemember not violate the UCMJ
 - (2) Officer imposing suspension may specify additional terms of suspension in writing
 - (a) Must be lawful order capable of performance
 - (b) Examples: **not** to enter certain establishments, to submit to searches, make restitution to a victim, conduct GMT, successfully complete course of rehabilitation, etc.

5. Vacating suspensions

- a. By any authority competent to impose punishment
- b. Servicemember should be notified
- c. Hearing should be conducted if punishment is greater than what an O-3 and below CO can adjudge, unless impracticable

VII. APPEALS

A. Authority

1. Navy – area coordinator
2. USMC / USCG – chain of command

B. Grounds

1. Unjust
2. Disproportionate

C. Time

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

D. Procedure

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

E. Request for stay of restraint punishment

1. Applies only to restraint punishments: restriction, extra duties, bread and water
2. Servicemember must file appeal
3. Request for stay may be in writing or verbally
4. If appellate authority fails to act within five days after appeal submitted, restraint punishment must be stayed
5. If appeal is denied, servicemember must serve out remaining restraint punishment

F. Appellate authority's action

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

ARTICLE 15 PUNISHMENT LIMITATIONS

Navy and Marine Corps

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

(1) May be awarded only if attached to / embarked in a vessel and may not be combined with other restraint punishment or extra duties

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

(3) May not be combined with restriction

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

(5) Shall be expressed in whole dollar amounts only

(6) Navy CPOs (E-7 to E-9) may not be reduced at NJP; Marine Corps NCOs (E-6 to E-9) may not be reduced at NJP (Check directives relating to promotion)

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

(8) OICs regardless of rank have NJP authority over enlisted personnel only

(9) Restriction imposed upon commissioned and warrant officers may not exceed 15 days when imposed by a CO below the grade of MAJ or LCDR (JAGMAN 0111a)

ARTICLE 15 PUNISHMENT LIMITATIONS

Coast Guard

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

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

(2) May not be combined with restriction

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

(4) Shall be expressed in whole dollar amounts only

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

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

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

(8) Restriction imposed upon commissioned and warrant officers may not exceed 15 days when imposed by a CO below the grade of LCDR (Art. 1-E-2b Military Justice Manual) (9) OIC's regardless of rank have NJP authority over enlisted personnel only

COURTS-MARTIAL PROCEDURES

I. JURISDICTION

A. Subject matter

B. Personal

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

C. Retaining jurisdiction over EAOS / EAS

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

II. CONSTITUTION CONVENING AND REFERRAL OF COURTS-MARTIAL

A. Constitution of courts-martial

1. MJ

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

2. Trial counsel (TC)

3. Defense counsel (DC)

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

4. Members

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

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

B. Convening of courts-martial

1. Convening authority (CA)

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

2. Mechanics of convening a court-martial

- a. Court created by convening order

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

C. The referral process

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

IV. TYPES OF COURTS-MARTIAL

A. SCM

1. Jurisdiction
 - a. Enlisted personnel only
 - b. Absolute right to refuse
 - c. Limitations on punishments
2. Composition
 - a. One officer
 - b. Same armed force
 - c. O-3 and above as policy
3. Procedural rules
 - a. SCM is impartial officer acting at MJ / TC / DC
 - b. The Mil.R.Evid. apply
 - c. Burden of proof is beyond a reasonable doubt
 - d. Accused can bring motions
 - e. Accused enters plea of guilty / not guilty
 - f. SCM sentences if accused found guilty

B. SPCM

1. Federal conviction
2. Jurisdictional limits on maximum punishment

C. GCM

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

e. Post-hearing options

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

V. REVIEW OF COURTS-MARTIAL

A. Findings

1. CA **not** required to take any action
2. CA may disapprove or lessen severity of findings

B. Sentence

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

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

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

PART ONE: ACCUSER CONCEPT, UNLAWFUL COMMAND INFLUENCE

I. ACCUSER CONCEPT

- A. General policy - the CA cannot be an accuser
- B. Types of accusers
 - 1. Type I – signs / swears to charges (preferral)
 - 2. Type II – directs preferral
 - 3. Type III – personal interest in prosecution
- C. Junior accuser concept
 - 1. Any CA subordinate to accuser
 - 2. Accuser concept applied to all subordinate CA's
- D. Consequences of accuser concept
 - 1. May **not** convene court
 - 2. May **not** refer charges
 - 3. May **not** take CA's action
 - 4. May **not** conduct judge advocate's review

E. Remedy

1. Nullity-Start over
2. Waived if not raised

II. UNLAWFUL COMMAND INFLUENCE

A. Broad policy

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

C. Possibilities

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

D. Balancing test

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

E. Consequences of unlawful command influence

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

F. Remedies

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

PART TWO: PRETRIAL RESTRAINT

I. GENERALLY

A. Types: Physical/Moral

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

B. Authority to impose

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

C. Grounds for imposition

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

D. Grounds for continued pretrial confinement (PTC)

- Confinement is necessary because it is foreseeable that
 - a. Accused will not appear for trial, *or*
 - b. Accused will engage in further serious misconduct, *and*
 - c. Lesser forms of restraint are inadequate

II. ADVICE TO ACCUSED UPON IMPOSITION OF PTC

A. Article 31(b) rights

B. Right to military counsel

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

C. Right to civilian counsel

D. PTC review process

III. REVIEW OF PTC

A. 24 hours

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

B. 48 hours

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

C. 7 calendar days

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

IV. CREDIT FOR PTC

A. **Allen** credit – day-for-day

B. 305(k) credit

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

C. **Suzuki** credit

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

D. **Mason** credit

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

PART THREE: SPEEDY TRIAL

I. APPLICATION

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

II. ACCOUNTABILITY

A. Starting the speedy trial clock

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

B. Length of the clock

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

PART FOUR: PRETRIAL AGREEMENTS

I. SCOPE OF A PRETRIAL AGREEMENT (PTA)

A. An accused may agree to

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

B. A CA may agree to

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

C. Illegal Provisions

1. Waiver of
 - a. Jurisdiction
 - b. Sentencing

- c. Counsel
- d. Post-Trial/Appellate Rights
- e. Speedy Trial

II. NEGOTIATION PROCEDURES

- A. Negotiations may originate with: accused, DC, TC, SJA, CA
- B. Proposals must be forwarded to the CA
- C. Counteroffers permissible
- D. Agreement must be in writing
 - 1. Must contain all aspects of agreement
 - 2. Authority to sign may be delegated

III. WITHDRAWAL FROM THE PTA

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

EXECUTIVE OFFICER'S INQUIRY (XOI)

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

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

7. Ask the accused what happened.
 - a. If (s)he admits guilt, the accused should be allowed to articulate any E & M.
 - Ask the witnesses to testify on matters of E & M or A.

b. If (s)he denies guilt, the accused should be asked for his / her version of the facts.

- Ask the witnesses to testify about the alleged offense.
- Inform the accused of any other evidence against him / her concerning the alleged offense (i.e. written statements and / or physical and documentary evidence).
- Allow for rebuttal, as appropriate.
- Ask the witnesses to testify on matters of E, M, and A.

8. Ask the accused if (s)he would like to make a final statement.

9. If the CO has given you the power to dismiss cases and you feel dismissal is warranted, either dismiss the case outright or dismiss it with a warning. (Such action does not preclude later NJP for the same offense.) If the case is dismissed, you may impose nonpunitive measures. If you feel NJP is warranted, indicate this on the report card and return all materials to the legal officer who will take appropriate action.

SAMPLE

NAVY APPEAL PACKAGE

OF

NONJUDICIAL PUNISHMENT

5800
27 Jun 19cy

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

Subj: APPEAL FROM NONJUDICIAL PUNISHMENT

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

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

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

a. Offenses

Charge: Violation of Article 134, UCMJ

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

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

c. Grounds of Appeal

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

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

S A M P L E

5800
Ser /
29 Jun 19cy

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

From: Commanding Officer, USS BENSON (DD-895)
To: Commander, Cruiser-Destroyer Flotilla FIVE

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

Encl: (4) NAVPERS 1626/7 with attachments thereto
(5) SR Accused's Service Record (Record of Performance)

1. Forwarded for action. Enclosures (4) and (5) are attached in amplification of the appeal.
2. (Statement of facts or circumstances or other matters which are not contained in appellant's letter of appeal and which would aid the command acting on appeal in arriving at a proper determination. This should not be argumentative nor in the form of a "defense" to the matters stated in appellant's letter of appeal.)

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

See JAGMAN, § 0116c

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

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

PRELIMINARY INQUIRY REPORT					
From: Commanding Officer To: <u>ENS David S. Willis, USNR</u>				Date: <u>20 June 19CY</u>	
1. Transmitted herewith for preliminary inquiry and report by you, including, if appropriate in the interest of justice and discipline, the preferring of such charges as appear to you to be sustained by expected evidence.					
REMARKS OF DIVISION OFFICER (Performance of duty, etc.) SN Williams is a good worker who is learning his rate thru on-the-job training. He needs occasional supervision, but works willingly when assigned a job to do. I consider him petty officer material. This is the first time he's been in trouble. /s/ LT G.V. Jones					
NAME OF WITNESS	RATE/GRADE	DIV/DEPT	NAME OF WITNESS	RATE/GRADE	DIV/DEPT
Harold B. Johnson	CPO	OPS			
Robert A. Hudson	WO1	ENG			
RECOMMENDATION AS TO DISPOSITION: ☐ REFER TO COURT MARTIAL FOR TRIAL OF ATTACHED CHARGES (Complete Charge Sheet (DD Form 458) through Page 2)					
☒ DISPOSE OF CASE AT MAST ☐ NO PUNITIVE ACTION NECESSARY OR DESIRABLE ☐ OTHER					
COMMENT (Include data regarding availability of witnesses, summary of expected evidence, conflicts in evidence, if expected. Attach statements of witnesses, documentary evidence such as a service record entries is UA cases, items of real evidence, etc.) SN Williams was discovered to be carrying a switchblade with a 5" blade by QMC Johnson when he was the JOOD on 16 June. SN Williams was about to depart the ship on liberty at approx. 1630, when QMC Johnson noticed a bulge in his front pocket. The knife was discovered when Williams was ordered to empty his pockets. All witnesses are available. WO1 Hudson observed the incident. /s/ D. S. Willis, ENS, USNR (Signature of Investigation Officer)					
ACTION OF EXECUTIVE OFFICER					
☐ DISMISSED ☒ REFERRED TO CAPTAIN'S MAST			SIGNATURE OF EXECUTIVE OFFICER /s/ R. D. Line, LCDR, USN		
RIGHT TO DEMAND TRIAL BY COURT-MARTIAL (Not applicable to persons attached to or embarked in a vessel)					
I understand that nonjudicial punishment may not be imposed on me if, before the imposition of such punishment, I demand in lieu thereof trial by court-martial. I therefore (do) (do not) demand trial by court-martial.					
WITNESS NA			SIGNATURE OF ACCUSED NA		
ACTION OF COMMANDING OFFICER					
☐ DISMISSED ☐ DISMISSED WITH WARNING (Not considered NJP) ☐ ADMONITION: ORAL/IN WRITING ☐ REPRIMAND: ORAL/IN WRITING ☐ REST. TO _____ FOR _____ DAYS ☐ REST. TO _____ FOR _____ DAYS WITH SUSP. FROM DUTY ☒ FORFEITURE: TO FORFEIT \$100.00 PAY PER MO. FOR 2 MO(S) ☒ DETENTION: TO HAVE \$ _____ PAY PER M0X X R0R X XXX X Z X X XX X M0XXX X 0XXXXN0D X R0R X X X M0XXX ☐ CONF. ON _____ 1, 2, OR 3 DAYS ☐ CORRECTIONAL CUSTODY FOR _____ DAYS ☐ REDUCTION TO NEXT INFERIOR PAY GRADE ☐ REDUCTION TO PAY GRADE OF _____ ☐ EXTRA DUTIES FOR _____ DAYS ☐ PUNISHMENT SUSPENDED FOR _____ ☐ ART. 32 INVESTIGATION ☐ RECOMMENDED FOR TRIAL BY GCM ☐ AWARDED SPCM ☐ AWARDED SCM					
DATE OF MAST: 25 June 19CY		DATE ACCUSED INFORMED OF ABOVE ACTION 25 June 19CY		SIGNATURE OF COMMANDING OFFICER /s/ S. D. Dunn, CDR, USN	
It has been explained to me and I understand that if I feel this imposition of nonjudicial punishment to be unjust or disproportionate to the offenses charged against me, I have the right to immediately appeal my conviction to the next higher authority within XX X HXX. 5 days.					
SIGNATURE OF ACCUSED /s/ J. P. Williams			DATE: 25 Jun 19CY I have explained the above rights of appeal to the accused. SIGNATURE OF WITNESS /s/ H.O. Kay DATE 25 Jun 19CY		
FINAL ADMINISTRATIVE ACTION					
APPEAL SUBMITTED BY ACCUSED DATED: 27 Jun 19CY FORWARDED FOR DECISION ON 28 Jun 19CY			FINAL RESULT OF APPEAL DENIED		
APPROPRIATE ENTRIES MADE IN SERVICE RECORD AND PAY ACCOUNT ADJUSTED WHERE REQUIRED DATE: 25 Jun 19CY /s/ Leg Off (Initials)			FILED IN UNIT PUNISHMENT BOOK: DATE: 25 Jun 19CY /s/ Leg Off (Initials)		

(CAPTAIN'S MAST) (OFFICE HOURS)

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

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

NOTIFICATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A-1-b(1)

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

ELECTION OF RIGHTS

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

a. Personal appearance. (Check one)

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

 I waive a personal appearance. (Check one)

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

 Written matters are attached.

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

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

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

RMSN Quigley

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

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

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

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

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

A-1-b(2)

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

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

RIGHTS

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

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

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

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

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

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

A-1-m(1)

WAIVER OF RIGHTS

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

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

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

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

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

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

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

A-1-m(2)

18 June 19cy

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

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

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

*Harold B. Johnson
QMC, USN*

*WITNESS: David S. Willis
ENS, USNR*

[HAND-WRITTEN]

18 June 19cy

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

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

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

***Robert A. Hudson
WO1, USN***

***WITNESS: David S. Willis
ENS, USNR***

[HAND-WRITTEN]

19 June 19cy

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

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

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

John P. Williams

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

[HAND-WRITTEN]

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

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

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

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

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

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

c. The appeal must be in writing.

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

(1) The punishment was unjust, or

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

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

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

25 June 19cy

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

25 June 19cy

A-1-f

5800
Ser /
1 Jul 19cy

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

Subj: APPEAL FROM PUNISHMENT ICO RMSN JOHN P. WILLIAMS

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

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

5800
Ser /
6 Jul 19cy

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

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

Subj: APPEAL FROM PUNISHMENT ICO RMSN JOHN P. WILLIAMS

1. Returned for delivery.

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

5800
Ser /
6 Jul 19cy

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

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

Subj: APPEAL FROM NONJUDICIAL PUNISHMENT

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

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

SAMPLE

MARINE CORPS APPEAL PACKAGE

OF

NONJUDICIAL PUNISHMENT

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

5812
21 July 19cy

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

Subj: APPEAL OF NONJUDICIAL PUNISHMENT

Ref: (a) MCM, 1984

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

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

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

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

5812
23 Jul 19cy

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

From: Commanding Officer

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

Subj: APPEAL OF NONJUDICIAL PUNISHMENT

Ref: (a) JAGMAN
(b) LEGADMINMAN

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

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

a. Summary of recitation of facts

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

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

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

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

Subj: APPEAL OF NONJUDICIAL PUNISHMENT

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

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

b. Summary assertion of facts made by Private Adams:

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

c. Basic record data

(1) Summary of military offenses:

None.

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

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

/s/ **Andrew Jackson**

ANDREW JACKSON

Major USMC

Copy to:
Private Adams

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

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

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

← Staple Additional pages here.

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

18 July 19cy

PVT John Q. Adams 456-64-5080 USMC

Summary of evidence presented.

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

Extenuating or mitigating factor considered.

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

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

[HAND-WRITTEN]

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

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

NOTIFICATION

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

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

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

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

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

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

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

A-1-d(1)

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

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

A-1-d(1)

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

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

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

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

ELECTION OF RIGHTS

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

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

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

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

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

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

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

17 July 19cy
(Date)

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

I talked to _____, a lawyer, on _____

(Signature of witness)

N/A
(Signature of accused)

(Date)

A-1-d(2)

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

☐ I refuse nonjudicial punishment.

☒ I accept nonjudicial punishment.

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

c. Personal appearance. (Check one)

☒ I request a personal appearance before the commanding officer.

☐ I waive a personal appearance. (Check one)

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

☐ Written matters are attached.

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

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

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

NONE

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

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

17 July 19cy
(Name of witness)

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

(Name of accused)

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

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

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

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

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

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

c. The appeal must be in writing.

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

(1) The punishment was unjust, or

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

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

<u>/s/ JOHN Q. ADAMS</u>	<u>/s/ I. M. WITNESS</u>
(Signature of Accused and Date)	(Signature of Witness and Date)
18 Jul cy	18 Jul cy

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

5812
Ser /
23 Jul 19cy

From: Commanding Officer

To: Staff Judge Advocate, Marine Corps Base, Camp Pendleton, CA 92055

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

Ref: (a) MCM, 1984

Encl: (1) NJP Appeal Package

1. In accordance with reference (a), enclosure (1) is forwarded for review and advice by a judge advocate.

2. It is noted that the Commanding Officer, Schools Company, Schools Battalion, has the authority to promote up to and including the grade of E-3.

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

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

5812
24 Jul 19cy

MEMORANDUM ENDORSEMENT

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

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

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

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

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

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

5812
Ser /
24 Jul 19cy

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

Subj: APPEAL OF NONJUDICIAL PUNISHMENT

1. Returned.

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

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

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

5812
Ser /
25 Jul 19cy

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

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

Subj: APPEAL OF NONJUDICIAL PUNISHMENT

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

/s/ **Andrew Jackson**
ANDREW JACKSON

Copy to:
Private Adams

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

ADMINISTRATIVE REMARKS

E-32

NAVPERS 1070/613 (Rev. 1-76)
S/N 0106-LF-010-6990

See BUPERSMAN 5030420

SHIP OR STATION

PSD, NETC, NEWPORT, RI

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

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

Clyde E. FerndockCLYDE E. FERNDOCK
YN3, USNI. M. PerfectI. M. PERFECT, PNC, USN
Personnel Officer

By direction of the OIC

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

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

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

OFFENSES AND PUNISHMENTS

NO PUNISHMENT

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

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

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

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

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

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

O. North **LtCol USMC**
(Signature of Commanding Officer)

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

O. North **LtCol USMC**
(Signature of Commanding Officer)

GOOD CONDUCT MEDAL PERIOD COMMENCES:		ORGANIZED MARINE CORPS RESERVE MEDAL PERIOD COMMENCES:	
GLUTZ, BUFORD	A.	374 52 4897	
NAME (Last) (First)	(Middle)	SSN	

ALMAR 097/87

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

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

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

CAPTAIN'S MAST / OFFICE HOUR GUIDE

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

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

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

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

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

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

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

ACC: _____.

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

ACC: _____.
_____.

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

WIT: _____.

OR

A-1-e(1)

CO: [To witness(es) who has/have previously provided written statement(s) when accused and CO

both have copies of the statement(s).] Do you adopt your statement(s) as your testimony here today?

WIT: _____.

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

WIT: _____
_____.

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

ACC: _____.

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

ACC: _____.

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

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

ACC: _____.

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

ACC: _____.

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

ACC: _____.

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

ACC: _____.

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

ACC: _____.

CO: I impose the following punishment:

A-1-e(2)

_____.

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

_____.

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

ACC: _____.

CO: You are dismissed.

A-1-e(3)

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

***Nonjudicial punishment* (NJP)**

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

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

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

RECORD OF TRIAL BY SUMMARY COURT-MARTIAL

1a. NAME OF ACCUSED (Last, First, MI) SMITH, John J.	b. GRADE OR RANK SN, USN	c. UNIT / ORGANIZATION OF ACCUSED USS OLDSHIP (DD-111)	d. SSN 123-45-6789
2a. NAME OF CA (Last, First, MI) HIGH, Hang M.	b. RANK CDR, USN	c. POSITION Commanding Officer	d. ORGANIZATION OF CA USS OLDSHIP (DD-111)
3a. NAME OF SUMMARY COURT-MARTIAL (If SCM was accuser, so state.) NEW, Brand S.	b. RANK LT, USN	c. UNIT OR ORGANIZATION OF SUMMARY COURT-MARTIAL USS OLDSHIP (DD-111)	

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

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

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

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

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

☒ YES

☐ NO

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

☒ YES

☐ NO

12. AUTHENTICATION

Brand S. New

BRAND S. NEW, LT, USN

Signature of Summary Court-Martial

14 January 19CY

Date

13. ACTION BY CONVENING AUTHORITY

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

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

HANG M. HIGH

Typed Name of Convening Authority

COMMANDING OFFICER

Position of Convening Authority

CDR, USN

Rank

/s/

22 JANUARY 19CY

LETTERHEAD

15 Feb 19CY

SPECIAL COURT-MARTIAL CONVENING ORDER 1-CY

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

MEMBERS

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

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

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

5 Feb CY

GENERAL COURT-MARTIAL AMENDING ORDER 1A-CY

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

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

Note to student:

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

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

Typed Name of Immediate Commander

Organization of Immediate Commander

Grade

Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.
The sworn charges were received at _____ hours, _____ 19 ____ at _____
Designation of Command or
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE ¹ _____

Typed Name of Officer

Official Capacity of Officer Signing

Grade

Signature

V. REFERRAL : SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE

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

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

By _____ of _____
Command or Order

Typed Name of Officer

Official Capacity of Officer Signing

Grade

Signature

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

Typed Name of Trial Counsel

Grade or Rank of Trial Counsel

Signature

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

CONFINEMENT ORDER

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

NAME (Last, first, middle)	SSN	RATE/GRADE	BRANCH SER
SHIP OR ORGANIZATION		DATE	
STATUS			
DETAINED (Alleged violation of UCMJ Articles) "I have been informed that I am being confined for the above alleged offense(s)" _____ Date Signature of accused _____ Date Signature of accused	CONFINED AS RESULT OF ☐ NJP ☐ SCM ☐ VACATED SUSPENSION ☐ SPCM ☐ GCM		
	CHARGES AND SPECIFICATIONS CONVICTED OF		
	SENTENCE ADJUDGED:		DATE:
	IF SENTENCE DEFERRED, DATE DETERMENT TERMINATED:		
	SENTENCE APPROVED	APPROVED BY	DATE
		CA	
	SA		
	NCMR		
	COMA		
	OTHER		
PRE-TRIAL CONFINEMENT NECESSARY			
☐ TO ENSURE THE PRESENCE OF THE ACCUSED AT THE TRIAL ☐ BECAUSE OF THE SERIOUSNESS OF THE OFFENSE CHARGED			
CONFINEMENT DIRECTED AT		TYPED NAME / RANK / TITLE	
HOUR	DATE		
		SIGNATURE	
MEDICAL CERTIFICATE			
The above named individual was examined by me at _____ on _____ and found to be (HOUR) (DATE) ☐ fit ☐ unfit for confinement. The following irregularities were noted during the examination: (If none, to state) ☐ I certify that from an examination of _____ Name Rate SSN and of the place where he/she is to be confined. I am of the opinion that the execution of the foregoing sentence to confinement on (bread and water) (diminished rations) will/will not produce serious injury to his/her health.			
TYPED NAME / RANK / TITLE		SIGNATURE	
RECEIPT FOR PRISONER			
The above named individual was received at _____ (NAME OF BRIG / CORRECTIONAL FACILITY) at _____ on _____ (HOUR) (DATE)			
TYPED NAME / RANK / TITLE		SIGNATURE	

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

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

Notes to chart on preceding page:

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

GCM POST-TRIAL CHECKLIST
ICO _____ (JAG / COMNAVLEGSVCCOMINST 5814.1 / 20)

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

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

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

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

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

BCD SPCM POST-TRIAL CHECKLIST

ICO _____ [JAG / COMNAVLEGSVCCOMINST 5814.1 / 20]

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

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

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

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

NON-BCD SPCM POST-TRIAL CHECKLIST

ICO _____ (JAG / COMNAVLEGSVCCOMINST 5814.1 / 20)

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

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

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

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

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

SJA Recommendation ICO _____

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

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

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

CA's Action ICO _____

- ___ R.C.M. 706 hearing ordered if accused lacks mental capacity.
- ___ Action taken not earlier than 10 days after the later of service of the ROT or LO / SJA recommendation.
 - ___ Waiver of right to submit matters, in writing, by accused.
 - ___ Time period extended.
- ___ Optional: offenses, pleas, findings, and adjudged sentence properly promulgated.
- ___ Action states CA considered:
 - ___ Result of trial.
 - ___ LO / SJA recommendation.
 - ___ Court or MJ's recommendation, if any.
 - ___ Clemency matters submitted by anyone, if any.
 - ___ Legal errors raised, if any.
 - ___ Other matters raised under R.C.M. 1105 and 1106, if any. (**Note:** Indicate that no matters were received if that is the case, also indicate a failure of accused or counsel to respond to SJA / LO recommendation.)
- ___ Optional additional matters considered, if any.
 - ___ ROT.
 - ___ Personnel records of accused.
 - ___ Other matters deemed appropriate by CA.
 - ___ Notification to accused and opportunity to rebut, if matters adverse to accused from outside record, with knowledge of which the accused is not chargeable are considered.
- ___ Specific action with regard to findings, if applicable.
 - ___ Rehearing on findings ordered.
 - ___ If rehearing or new trial ordered, reasons for disapproval set forth.
 - ___ If no rehearing ordered on disapproved charges and specifications, statement of dismissal.
 - ___ If "other" trial ordered, reasons for declaring the proceedings invalid stated.
- ___ Specific action with regard to sentence adjudged.
 - ___ Sentence consistent with pretrial agreement, if any.
 - ___ CA executed portions of sentence not suspended, except for punitive discharge.
 - ___ If sentence mitigated, equivalencies under R.C.M. 1003 complied with.

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

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

Promulgating Order ICO _____

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

EVIDENCE MATERIALS

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SEARCH & SEIZURE ANALYSIS

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

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

YES - Then you must have one of the following:

1. Probable cause plus authorization from CO:

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

2. Probable cause plus exigent circumstances:

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

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

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

SEARCH AND SEIZURE

I. SEARCH AND SEIZURE

A. Introduction

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

B. Sources of the law

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

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

1. ***Quest for evidence***

- a. Types of evidence that can be searched for

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

(2) Evidence of crimes

(a) Fruits

(b) Instrumentalities

(c) Other evidence of crime

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

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

- b. U.S. and foreign law enforcement officials

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

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

(2) Acting independently

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

(b) Foreign authorities cannot subject accused to maltreatment

c. Private capacity exception

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

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

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

a. Areas where servicemembers generally have reasonable expectation of privacy

(1) Personal vehicle

(2) Government-provided married housing

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

(4) Person

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

(1) Government vehicle

(2) Government aircraft

(3) Common areas

c. What about berthing / barracks?

D. General rule: Probable cause + authorization required

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

a. Definition - reasonable belief that:

(1) Crime has been committed, **and**

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

b. Reasonable belief

(1) Factual basis (not just conclusions)

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

(2) Credibility

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

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

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

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

2. Authorization

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

b. The authorizing official occupies a judicial role

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

c. Form of the request and search authorization

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

(3) All authorizations must accurately describe with particularity:

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

(b) Evidence sought

d. Requisites of a lawful search authorization

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

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

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

-1- Authorizing official with control over the place located

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

(b) Military property of the United States

– May be searched regardless of location

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

- 1- May be searched if on military installation, encampment, vessel, aircraft, or vehicle or other location under military control of authorizing official
- 2- Includes civilians and their property
- 3- In some situations, more than one military commander may have jurisdiction to authorize a search

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

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

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

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

(3) Oath / affirmation

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

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

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

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

1. Border searches (customs or immigration)
2. Searches upon entry to, or exit from, U.S. installations, aircraft, and vessels abroad if authorized by CO for security, military fitness, or good order and discipline
 - Gate / brow "searches" in United States – See para. I, *infra* (Inspections and inventories)
3. Searches of government property in which no individual has reasonable expectation of privacy
4. Consent searches
 - a. Consent must be given voluntarily
 - b. Warnings **not** required prior to consent, but strongly recommended
 - (1) Offense(s) of which suspected
 - (2) Evidence sought
 - (3) Area to be searched
 - (4) Right to refuse to consent
 - c. Mere acquiescence in face of authority not sufficient consent

- d. Suspect has right to limit and / or withdraw consent at any time
 - e. Consent may be obtained from third party who has equal access and control over the place / property to be searched
 - Will not extend to private, exclusive areas controlled by others
 - f. Recommendation: Ask for suspect's consent even if you have search authorization
 - *JAG Manual* form: Appendix A-1-o
5. Stop and frisk
- a. Law enforcement personnel may "stop" a person temporarily to investigate if unusual conduct leads to a reasonable suspicion that criminal activity is afoot
 - b. The person may be "frisked" if reasonably believed to be armed and dangerous
 - c. If person stopped is a driver or passenger in a motor vehicle, the passenger compartment of the vehicle may be searched for weapons if a reasonable belief exists that the driver / passenger stopped is dangerous and that the driver / passenger may gain immediate control of a weapon
6. Search incident to lawful apprehension
- a. Apprehension = taking an individual into custody

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

7. Emergency searches to save life or for related purposes
 - Must be made in good faith

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

1. Under fourth amendment, probable cause must exist to lawfully seize property or evidence. Probable cause to seize exists when there is a reasonable belief that the property or evidence is an unlawful weapon, contraband, evidence of a crime, or might be used to resist apprehension or escape.
2. Who has power to seize? Mil.R.Evid. 316(e)
 - a. Commissioned officers
 - b. Warrant officers
 - c. Petty officers or NCO's
 - d. Criminal investigators, military police, or one performing guard or police duties
 - e. Agent of any of the above
3. Seizures are generally lawful under the following circumstances:
 - a. Government property in which no individual has reasonable expectation of privacy
 - b. Consent
 - c. Authorization based on probable cause
 - d. Plain view – Mil.R.Evid. 316(d)
 - e. Abandoned property

H. Sanctions for unlawful searches and seizures

1. Exclusionary rule

a. Renders evidence inadmissible at trial if:

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

b. Inevitable discovery

c. Good faith exception

2. Fruit of the poisonous tree

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

b. Such evidence is admissible if gained via independent means

3. Civil liability - not to military member

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

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

b. Contraband inspection

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

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

(3) Contraband inspection is suspect if:

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

and

Directed immediately following a report of a specific offense

(b) Specific *individuals* are selected

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

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

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

5. Inspectors at entrance and exit points (gate inspections) should not be allowed discretion with regard to selection of persons or extent of inspection

a. All-inclusive, or

b. Random selection

– Rationale: Eliminates discretionary selection by inspectors of persons or property to be inspected, and thereby minimizes possibility that inspection will be subterfuge for a search

6. Inspections and inventories must be conducted in reasonable manner in order to yield admissible evidence

a. Reasonable in purpose

– Must not be pretext for unlawful search

b. Reasonable in scope

c. The use of drug detector dogs during inspection is reasonable

RECORD OF AUTHORIZATION FOR SEARCH (see JAGMAN 0170)

RECORD OF AUTHORIZATION FOR SEARCH

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

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

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

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

(Grade) (Signature) (Title)

(Date and Time)

INSTRUCTIONS

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

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

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

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

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

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

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

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

A-1-n(2)

CONSENT TO SEARCH (see JAGMAN 0170)

CONSENT TO SEARCH

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

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

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

*1 _____ to conduct a complete search of my

[person] [residence] [automobile] [wall locker] [_____] [_____] located at

_____.

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

*2 _____.

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

Signature

WITNESSES

*

1 Positions

2 Date

A-1-o

SELF-INCRIMINATION ANALYSIS

REQUIRED WARNINGS UNDER UCMJ ARTICLE 31(b)

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

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

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

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

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

WHO MUST GIVE WARNINGS

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

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

THE LAW OF SELF-INCRIMINATION

I. SOURCES OF THE LAW

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

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

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

2. Who is a suspect?

- Objective test- Would a reasonable person have thought that the person being questioned was a suspect?

3. What is an interrogation?

Any question or statement reasonably likely to elicit an incriminating response.

B. Counsel warnings (*Miranda* / *Tempia* warnings) are required if a military **suspect** is being **interrogated** while in "**custody**" **or** as otherwise **provided** under Mil.R.Evid. 305

1. Content of the counsel rights

- a. Right to **consult** with lawyer(s) **prior** to interrogation
- b. Right to have lawyer(s) **present during** the interrogation

2. What is custody? The deprivation of the suspect's freedom in any significant way

3. When otherwise provided?

- a. After preferral of charges, or
- b. Imposition of pretrial restraint (including restriction)

4. What is a lawyer?

- a. May be civilian lawyer at suspect's expense
- b. Military lawyer appointed at no expense to suspect
- c. ***Or both*** under Mil.R.Evid. 305

III. WHO MUST WARN?

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

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

A. Types of statements

1. Verbal- Oral or Written

2. Nonverbal

a. Testimonial acts

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

(2) Avoiding problems with testimonial acts

(a) Get search authorization if probable cause exists

(b) Apprehend suspect and perform a search incident to apprehension

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

– Article 31 warnings are not required for the following

(a) Fingerprints / photos

(b) Exhibiting scars

(c) Trying on clothing or shoes

(d) Placing feet in footprints

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

V. SPECIAL PROBLEMS

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

E. Request for counsel

1. If suspect requests counsel, questioning must terminate
2. Questioning should never begin if suspect previously requested counsel (even if this interrogator unaware)
3. Exceptions – **suspect** reinitiates the questioning prior to provision of counsel or the suspect was released from custody for a lengthy period during which the suspect had an opportunity to speak with a lawyer

F. Interrupted interrogations

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

G. Article 15 hearings

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

4. Subsequent use at court-martial?

VI. USE OF STATEMENTS AT TRIAL

A. At trial, government must establish

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

B. Comprehension of rights warnings

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

C. Voluntariness (after rights are comprehended and waived)

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

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

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

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

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

D. Special problems

1. **Caution:** Promises of leniency or immunity can become binding
2. Cases involving national security / classified information
The power to grant immunity in these cases is generally restricted to three-star Admirals and Generals
 - a. See OPNAVINST 5510.1H for procedures
 - b. See JAGMAN, § 0126
3. Major Federal offenses
Coordination with the Department of Justice is required, so work through the Staff Judge Advocate's Office
 - See JAGMAN, §0125 and MCM, 1984, app. 3

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

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

RIGHTS

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

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

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

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

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

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

WAIVER OF RIGHTS

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

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

(2) I expressly desire to make a statement;

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

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

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

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

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

SIGNATURE (ACCUSED / SUSPECT)

DRUG ABUSE DETECTION

I. INTRODUCTION

II. SOURCES OF THE LAW

A. Instructions

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

B. Case law

III. LAWFULLY OBTAINED URINE SAMPLES

A. Search and seizure

1. Consent
2. Probable cause and authorization
3. Probable cause and exigency
 - Life in body

B. Command inspection (Mil.R.Evid. 313)

1. Unit sweep
2. Random sample

C. Service-directed testing

- **Example:** Rehabilitation facility staff testing

D. Valid medical purpose [Mil.R.Evid. 312(f)]

1. Tested for diagnosis and treatment
2. Distinguish from "fitness for duty" examination
3. Medical purpose vice law enforcement

E. Fitness for duty / "command directed"

1. Reasonable suspicion of drug abuse
2. Suspicion generated by
 - a. Serious accident or incident in which safety precautions were violated

- b. Motor vehicle offense involving excessive speed, loss of control, reckless driving
 - c. Fight, disorderly conduct, disrespect, UA
 - d. Bizarre, unusual, or irregular behavior
- 3. Rehabilitation program testing / surveillance
- 4. Results can be used only at an administrative discharge board and only to decide whether to retain or separate. The results may not be used for **any** disciplinary action or to characterize the nature of the discharge.

IV. URINALYSIS COLLECTION

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

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

D. Practical suggestions

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

V. PORTABLE FIELD KITS

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

VI. NAVY DRUG SCREEN LABS

- A. Locations
 1. Jacksonville, FL
 2. San Diego, CA
 3. Great Lakes, IL

B. Drug groups

1. THC
2. PCP
3. Opiates
4. Amphetamines / methamphetamines
5. Barbiturates
6. Cocaine
7. LSD
8. Steroids- Navy Drug Screening Labs do not test for steroids. The command can arrange for steroid testing by the UCLA Olympic Drug Lab, whose phone number is 310-825-2635. The command must pay for the test itself.

C. Lab procedure

1. Receipt
2. Accessioning
3. Aliquot sample
4. Screening test by radioimmunoassay (RIA)
or Enzymeimmunoassay (EIA)
5. Confirmation by gas chromatography / mass spectrometry (GC/MS)

6. Review of documentation by lab officials
7. Message to submitting command
8. Positive sample frozen and retained for 1 year

VII. QUALITY CONTROL

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

VIII. ISSUES AT NJP

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

D. Passive inhalation

E. "4.0 sailors don't do drugs."

IX. REFUSAL TO SUBMIT SAMPLE

A. Failure to obey order

B. Who gave the order?

FRATERNIZATION

I. Introduction

A. References

1. Article 1165, U.S. Navy Regulations, 1990
2. OPNAVINST 5370.2A
3. Marine Corps Manual 1100.4
4. COMDTINST M1000.6

B. Article 1165, U.S. Navy Regulations, 1990- Definition:

1. *Relationships between officers and enlisted* - personal relationships between officer and enlisted members that are unduly familiar and that do not respect differences in grade or rank are prohibited. Such relationships are prejudicial to good order and discipline and violate long-standing traditions of the naval service.
2. *Relationships between officers or enlisted personnel* - When prejudicial to good order and discipline or of a nature to bring discredit on the naval service, personal relationships between officer members or between enlisted members that are unduly familiar and that do not respect differences in grade or rank are prohibited. Prejudice to good order and discipline or discredit to the naval service may result from, but are not limited to, circumstances which -
 - a. call into question the senior's objectivity;
 - b. result in actual or apparent preferential treatment;
 - c. undermine the authority of a senior: or
 - d. compromise the chain of command.

II. Basic concepts

- A. Not all social interaction between seniors and subordinates is prohibited
 - Proper command-oriented interaction is encouraged
- B. Gender-neutral concept
- C. Prohibited conduct does not have to be sexual in nature
- D. Subsequent marriage is not a defense
- E. Senior member's responsibility for prevention
 - Accountability of each member
- F. Training requirements
- G. Violators will be disciplined (administrative or punitive action)

III. Examples of prohibited conduct

- A. Private business dealings
- B. Dating
- C. Gambling/Drinking
- D. Complete list of prohibited conduct is not possible.

IV. Handling fraternization allegations

- A. Duty to investigate
- B. Determination of whether an undue familiar relationship exists
- C. Options - administrative or disciplinary action

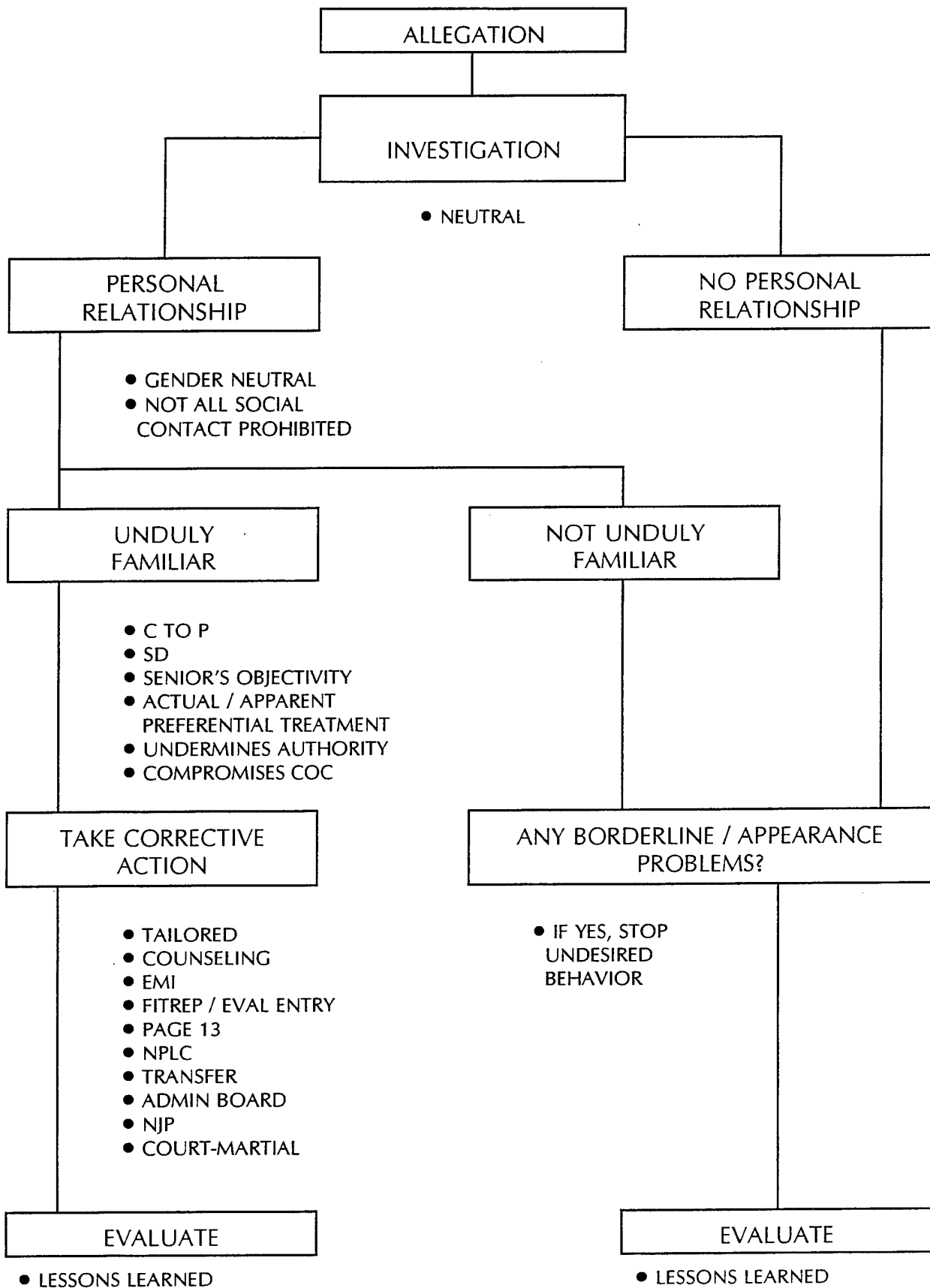
V. Charging fraternization under the UCMJ

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

VI. Summary

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

HANDLING FRATERNIZATION ALLEGATIONS



DEPARTMENT OF THE NAVY
Office of the Chief of Naval Operations
Washington DC 20350-2000

OPNAVINST 5370.2A
Pers-203C
14 March 1994

OPNAV INSTRUCTION 5370.2A

From: Chief of Naval Operations
To: All Ships and Stations
(less Marine Corps field
addressees not having Navy
personnel attached)

Subj: NAVY FRATERNIZATION POLICY

Ref: (a) U.S. Navy Regulations, 1990
(b) SECNAVINST 5300.26B

1. **Purpose.** To conform Navy policy on fraternization to reference (a). This instruction has been substantially revised and should be reviewed in its entirety.

2. **Cancellation.** OPNAV Instruction 5370.2.

3. **Policy.** Personal relationships between officer and enlisted members that are unduly familiar and that do not respect differences in rank and grade are prohibited and violate long-standing custom and tradition of the naval service. Similar relationships that are unduly familiar between officers or between enlisted members of different rank or grade may also be prejudicial to good order and discipline or of a nature to bring discredit on the naval service and are prohibited. Commands are expected to take administrative and disciplinary action as necessary to correct such inappropriate behavior. This instruction and the prohibition of fraternization found in Article 1165 of reference (a) are lawful general orders effective without further implementation. Violation of this instruction or Article 1165 subjects the involved members to disciplinary action under the Uniform Code of Military Justice (UCMJ).

4. **Background/Discussion**

a. Navy has historically relied upon custom and tradition to define the bounds of acceptable personal relationships among its members.

Proper social interaction among officer and enlisted members has always been encouraged as it enhances unit morale and esprit de corps. At the same time, unduly familiar personal relationships between officers and enlisted members have traditionally been contrary to naval custom because they undermine the respect for authority which is essential to Navy's ability to accomplish its military mission. Over 200 year of seagoing experience have demonstrated that seniors must maintain thoroughly professional relationships with juniors at all times. This custom recognizes the need to prevent use of a senior grade or position in such a way that it results in (or gives the appearance of) favoritism, preferential treatment, personal gain, or involves actions that otherwise may reasonably be expected to undermine good order, discipline, authority, or high unit morale. In like manner, custom requires that junior personnel recognize and respect the authority inherent in a senior's grade, rank, or position. This recognition of authority is evidenced by observance and enforcement of the military courtesies and customs that have traditionally defined proper senior-subordinate relationships.

b. "Fraternization" is the term traditionally used to identify personal relationships that contravene the customary bounds of acceptable senior-subordinate relationships. Although it has most commonly been applied to officer-enlisted relationships, fraternization also includes improper relationships and social interaction between officer members as well as between enlisted members.

c. Historically, and as used in this instruction, fraternization is a gender-neutral concept. Its focus is on the detriment to good order and discipline resulting from the erosion of respect for authority inherent in an unduly familiar senior-subordinate relationship, not the sex of the members involved.

In this sense, fraternization is a uniquely military concept, although abuse of a senior's position for personal gain and actual or perceived preferential treatment are leadership and management problems that also arise in civilian organizations. In the context of military life, the potential erosion of respect for the authority and leadership position of a senior in grade or rank can have an enormously negative effect on good order and discipline and seriously undermine a unit's effectiveness. The prohibition of fraternization, therefore, serves a valid, mission essential purpose.

d. This instruction discusses only fraternization. Other forms of impermissible conduct, such as sexual harassment are addressed in reference (b).

5. Prohibited Relationships

a. Personal relationships between officer and enlisted members that are unduly familiar and that do not respect differences in grade or rank are prohibited. Such relationships are prejudicial to good order and discipline and violate longstanding traditions of the naval service.

b. When prejudicial to good order and discipline or of a nature to bring discredit on the naval service, personal relationships between officer members or between enlisted members that are unduly familiar and that do not respect differences in grade or rank are prohibited. Prejudice to good order and discipline or discredit to the naval service may result from, but are not limited to, circumstances which:

(1) call into question a senior's objectivity;

(2) result in actual or apparent preferential treatment;

(3) undermine the authority of a senior; or

(4) compromise the chain of command.

6. Discussion

a. Fraternization, as defined in paragraph 5, is prohibited and punishable as an offense under the UCMJ.

b. It is impossible to set forth every act that may be prejudicial to good order and discipline or that is service discrediting because the surrounding circumstances often determine whether the conduct in question is inappropriate. Proper social interactions and appropriate personal relationships are an important part of unit morale and esprit de corps. Officer and enlisted participation on command sports teams and other command sponsored events intended to build unit morale and camaraderie are healthy and clearly appropriate. Dating, cohabitation, and intimate or sexual relations between officers and enlisted members are unduly familiar and are prohibited, as would be a private business partnership between officer and enlisted members. Likewise, such conduct between officer members and between enlisted members of different rank or grade would be unduly familiar and constitute fraternization if the conduct is prejudicial to good order and discipline or is service discrediting.

c. Prejudice to good order and discipline and discredit to the naval service may occur when the degree of familiarity between a senior and a junior in grade or rank is such that the senior's objectivity is called into question. This loss of objectivity by the senior may result in actual or apparent preferential treatment of the junior, and use of the senior's position for the private gain of either the senior or the junior member. The actual or apparent loss of objectivity by a senior may result in the perception the senior is no longer capable or willing to exercise fairness and make judgments on the basis of merit. An unduly familiar relationship that so undermines the leadership authority of a senior, or that compromises the chain of command, (i.e., where there is a direct senior-subordinate

14 March 1994

relationship) is in appropriate and is prohibited.

d. Unduly familiar relationships may exist with individuals outside one's direct chain of command. By longstanding custom and tradition, Chief Petty Officers (E-7 to E-9) are separate and distinct leaders within their assigned command. Chief Petty Officers provide leadership not just within their direct chain command but for the entire unit. Due to this unique leadership responsibility, relationships between Chief Petty Officers and junior personnel (E-1 to E-6) that are unduly familiar and that do not respect differences in grade or rank are typically prejudicial to good order and discipline when they are within the same command. Likewise, personal relationships that are unduly familiar between staff/ student personnel within Navy training commands that do not respect differences in grade, rank, or the staff/ student relationship are typically prejudicial to good order and discipline. While the existence of a direct senior-subordinate supervisory relationship is not a prerequisite for a relationship between juniors and seniors to constitute fraternization, the fact that individuals are in the same chain of command increases the likelihood that an unduly familiar relationship between senior and junior officers or between senior and junior enlisted members will result in prejudice to good order and discipline or discredit to the naval service.

e. Conduct which constitutes fraternization is not excused or mitigated by a subsequent marriage between the offending parties.

f. Service members who are married or otherwise related (father/son, ect.) to other service members must maintain the requisite respect and decorum attending the official relationship while either is on duty or in uniform in public.

g. Compatible with sea/shore rotation policy and the needs of the service, service members married to each other will not be assigned in the same chain of command.

7. Action/Responsibility

a. Seniors throughout the chain of command will:

(1) Be especially attentive to their personal associations such that their actions and the actions of their subordinates are supportive of the military chain of command and good order and discipline. Since circumstances are important in determining whether personal relationships constitute fraternization, seniors must provide guidance on appropriate relationships that build unit cohesion and morale.

(2) Ensure that all members of the command are aware of the policies set forth in this instruction.

(3) Address the offending conduct by taking appropriate action, to include counselling, issuing letters of instruction, comments on fitness reports or annual performance evaluations, reassignment, and/or, if necessary, by taking appropriate disciplinary steps.

b. The responsibility for preventing inappropriate relationships must rest primarily on the senior. While the senior party is expected to control and preclude the development of inappropriate relationships, this policy is applicable to both members and both are accountable for their own conduct.

c. The Director for Naval Training (N7) will ensure training on this subject, including examples of appropriate and prohibited personal relationships, is provided in General Military Training.

OPNAVINST 5370.2A
14 March 1994

d. Commanders will provide indoctrination and annual training to all hands on the subject of fraternization, including examples of appropriate and prohibited personal relationships.

F. B. KELSO, II

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SNDL Parts 1 and 2

Chief of Naval Operations
(Code N09B34)
Navy Department
Washington DC 20350-2000
(150 copies)

SEXUAL HARASSMENT

I. REFERENCES

- A. *U.S. Navy Regulations, 1990*, Articles 1164 (Equal Opportunity and Treatment) and 1166 (Sexual Harassment)
- B. SECNAVINST 5300.26B, Change 1 of 30 Sep 94
- C. OPNAVINST 5300.9
- D. MCO 5300.10A
- E. NAVADMIN 025/92, Zero Tolerance for Sexual Harassment

II. DEFINITION OF SEXUAL HARASSMENT/SECNAVINST 5300.26B, Change 1 of 30 Sep 94

- A. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:
 - 1. Made a term of employment;
 - 2. Used as a basis for a job decision; or
 - 3. Interferes with an individual's performance or creates a hostile or offensive environment.

III. FORBIDDEN CONDUCT

- A. Sexual harassment
- B. Reprisals against witnesses
- C. False claims of harassment
- D. Ignoring or condoning sexual harassment as supervisor or commander

IV. FORMS OF HARASSMENT

- A. Verbal
- B. Physical
- C. Nonverbal

V. RANGE OF BEHAVIORS [TRAFFIC LIGHT ANALOGY]

- A. Green Zone - always acceptable behavior
 - 1. Counseling
 - 2. Compliments
 - 3. "Elbow touch"
 - 4. Show of concern
- B. Yellow Zone - inappropriate behavior to most, but sometimes acceptable
 - 1. Foul language
 - 2. Whistling
 - 3. Suggestive comments
- C. Red Zone - always unacceptable conduct
 - 1. Sexually explicit photos
 - 2. Offensive touching
 - 3. Use status for sex
 - 4. Use threats for sex

5. Explicit sexual comments

VI. KEY POINTS

- A. Zero tolerance
- B. Psychological harm to victim is not required
- C. Victim perceives environment as hostile
- D. Reasonable person standard applies
- E. "Work place" includes on duty/off duty, 24 hours a day
- F. Victim's Responsibilities
 - 1. Confront the perpetrator when practicable
 - a. No absolute duty to complain
 - 2. Attempt to resolve issues at the lowest level
 - 3. Report to chain of command

VII. AVENUES OF REDRESS

- A. Military personnel
 - 1. Informal complaint to command
 - 2. Formal complaint to command
 - 3. Article 138/1150 Complaints

4. Notify members of Congress
5. Call DON advice line/IG hotline
6. Request mast
7. NLSO Family Service Center

B. Civilian personnel

1. Complaint through civilian personnel office
2. Hotline
3. Notify members of Congress
4. Union representative

VIII. COMMANDER'S RESPONSIBILITIES

- A. Investigate all complaints of sexual harassment
- B. Provide annual training for all personnel in the command
- C. Do not ignore or condone sexual harassment
- D. Take whatever action each individual case warrants

IX. COMPLAINT FORM

- A. Processing Complaints
1. NAVOP 028/94 (24 Jun 94)

2. NAVADMIN 244/94 (22 Dec 94)

3. MCBUL 5354.1 (5 Feb 94)

B. Part I - Complaint

1. File complaint in writing, under oath
2. Must be filed within 45 days of incident
3. CO designates individual to administer the oath and the oath giver must forward complaint within 1 day
4. Remedy should focus on actions to solve the problem

C. Part II - Support

1. CO assigns advocates [E-7 or above] for all parties involved
2. Complete form and provide a copy to the victim
3. Acts of reprisal are illegal and shall not be tolerated

D. Part III - Processing

1. CO determines appropriate level of investigation [ISIC, NCIS]
2. Investigation must start within 3 days of submission of complaint

E. Part IV - Notification

1. Notify victim on day investigation begins

2. Determine if substantiated

3. If substantiated - notify victim and accused within 14 days / If the investigation takes longer than 14 days, a message must be transmitted

F. Part V - Review

1. Victim has right to request review by higher authority (GCMCA)

2. Request must be submitted within 7 days of notification

G. Part VI - Follow-Up

1. Debrief victim 30 - 45 days after final action

2. Effective? Command climate? Reprisal? More harassment?

3. Victim may submit comments

4. CO shall summarize debrief

H. MCBUL 5354.1 (5 Feb 94)

1. Required reporting format

2. Report to CMC via DASH system

3. Resolve within 30 days of immediate commander receiving formal complaint

4. Greater than 30 days requires final report

5. Submit report to local EO

X. SUBSTANTIATED INCIDENT/CO'S OPTIONS

- A. Counseling
- B. Page 13
- C. FITREP / Eval
- D. Administrative Separation
- E. Nonjudicial punishment

XI. MANDATORY ADMINISTRATIVE PROCESSING

- A. Required when:
 - 1. Action, threat or attempt to influence job in return for sexual favors; or
 - 2. Physical conduct of a sexual nature, which if charged, could result in a punitive discharge.

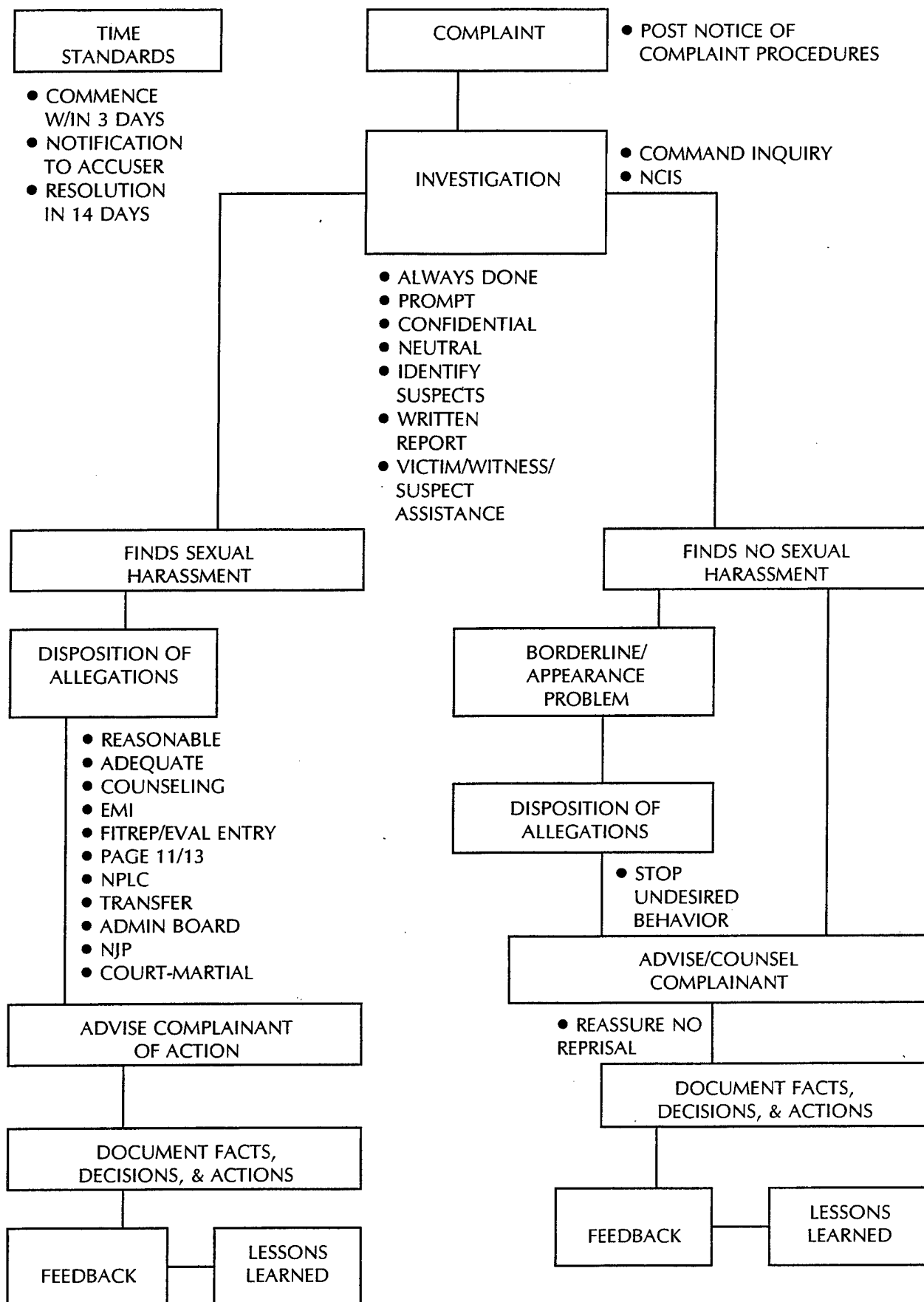
XII. OVERVIEW

- A. Be timely
- B. Take tailored action
- C. Charge as an orders violation
- D. Be aware of future changes
- E. Training responsibilities pursuant to OPNAVINST 5300.9

XIII. ADVICE AND COUNSELING HOTLINE

- A. 1-800-253-0931 / DSN 224-7350

STEPS IN HANDLING SEXUAL HARASSMENT COMPLAINTS



ASN(M & RA)
6 January 1993

SECNAV INSTRUCTION 5300.26B

From: Secretary of the Navy
To: All Ships and Stations

Subj: DEPARTMENT OF THE NAVY (DON) POLICY ON SEXUAL HARASSMENT

Ref: (a) SECDEF memo of 20 July 88 (NOTAL)
(b) DODDir 1350.2 off 23 Dec 88 (NOTAL)
(c) DODDir 1440.1 of 21 May 87 (NOTAL)
(d) 29 C.F.R. § 1604. 11 (NOTAL)
(e) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e (NOTAL)
(f) U.S. Navy - Marine Corps white Paper "...From the Sea, Preparing the Naval Service for the 21st Century" of September 1992 (NOTAL)

Encl: (1) Department of the Navy Definition of Sexual Harassment
(2) Glossary of Terms
(3) Range of Behaviors which Constitute Sexual Harassment

1. Purpose. To provide a comprehensive Department of the Navy (DON) policy for all military and civilian personnel on the identification prevention, and elimination of sexual harassment and to establish regulations to enforce that policy.

2. Cancellation. SECNAVINST 5300.26A.

3. Applicability. This instruction applies to all DON civilian personnel, including nonappropriated fund employees; active-duty military personnel, both Regular and Reserve; midshipmen of the Naval Academy and in the Reserve Officer Training Corps; and reserve personnel when performing active or inactive duty for training, or engaging in any activity directly related to the performance of a Department of Defense (DOD) duty or function.

4. Summary of Changes. This instruction is a complete revision and should be reviewed in its entirety. Major changes are:

a. Publishes the DON definition of sexual harassment, enclosure (1), in accordance with the DOD definition published in reference (a).

b. Makes clear that the prohibition against sexual harassment may be enforced through punitive, disciplinary, or administrative action (including punishment for violation of a lawful general order under Article 92, Uniform Code of Military Justice (UCMJ)) under military or civilian systems.

c. Prohibits reprisals against individuals who provide

information on incidents of sexual harassment.

d. Expands education and training requirements.

e. Mandates administrative separation processing for military personnel for certain substantiated sexual harassment offenses.

f. Adds a requirement for an effective system to resolve complaints of sexual harassment.

g. Adds a requirement for a DON information system for tracking incidents of sexual harassment.

h. Adds a glossary of terms at enclosure (2).

i. Provides at enclosure (3), a non-technical discussion of sexual harassment in "layperson" terms for the purpose of providing background information and describing behavior which may constitute sexual harassment.

5. Definition and Terms. Enclosure (1) defines sexual harassment in accordance with references (a) through (c). This is the DOD definition which expands the Equal Employment Opportunity Commission's (EEOC) definition in reference (d). Interpretation of this instruction and enclosure (1) shall be governed by the definitions in enclosure (2).

6. Background

a. The Navy-Marine Corps Team must be comprised of an optimally integrated group of men and women who must be able to work together to accomplish the mission. Each member of the team is entitled to be treated fairly, with dignity and respect, and must be allowed to work in an environment free of unlawful discrimination.

b. The economic costs of sexual harassment are significant. Even more harmful, however, are the negative effects of sexual harassment on productivity and readiness, including increased absenteeism, greater personnel turnover, lower morale, decreased effectiveness, and a loss of personal, organizational, and public trust. While not easily quantified, these costs are real and seriously affect DON's ability to accomplish its mission.

c. We must ensure that all DON military and civilian personnel are treated fairly with dignity and mutual respect, and that sexual harassment does not adversely affect the DON's ability to accomplish its mission. While the EEOC regulations reference (d), establish a standard for determining employer liability for sexual harassment under the Title VII of the Civil Rights Act, the DOD definition of sexual harassment, reference (e), establishes a standard that exceeds the EEOC definition. This more comprehensive standard expands on the definition to include identifying supervisors and those in command positions who use or condone implicit or explicit sexual behavior to affect another's career,

pay, or job as engaging in sexual harassment.

7. Policy. The DON is committed to maintaining a work environment free from unlawful discriminatory practices and inappropriate behavior. Leadership is the key to eliminating all forms of unlawful discrimination. Sound leadership must be the cornerstone of the effort to eliminate sexual harassment. In support of this commitment, it is DON policy that:

a. Sexual harassment is prohibited. All DON personnel, military and civilian, will be provided a work environment free from sexual harassment.

b. All DON personnel, military and civilian, will be educated and trained, upon accession (within 90 days to the extent possible) and annually thereafter, in the areas of identification, prevention, resolution, and elimination of sexual harassment. Training programs will use a three-tiered behavioral zone approach to explain the spectrum of sexual harassment, as outlined in enclosure (3).

c. Individuals who believe they have been sexually harassed will be afforded multiple avenues to seek resolution and redress. Commanders and those in supervisory positions will ensure that notification of sexual harassment can be made in a command climate that does not tolerate acts of reprisal, intimidation, or further acts of harassment. All personnel will be made aware of the avenues of resolution and redress that are available.

a. All reported incidents of sexual harassment will be investigated and resolved at the lowest appropriate level. The nature of the investigation will depend upon the particular facts and circumstances and may consist of an informal inquiry where that action is sufficient to resolve factual issues. All incidents will be resolved promptly and with sensitivity. Confidentiality will be maintained to the extent possible. Feedback will be provided to all affected individuals consistent with the requirements of the Privacy Act and other pertinent laws, regulations, and negotiated agreements.

e. Counseling support or referral services will be made available for all involved in incidents of sexual harassment.

8. Accountability

a. Sexual harassment is prohibited.

b. No individual in the DON shall:

(1) Commit sexual harassment, as defined in enclosure (1);

(2) Take reprisal action against a person who provides information on an incident of alleged sexual harassment;

(3) Knowingly make a false accusation of sexual

harassment; or

(4) While in a supervisory or command position, condone or ignore sexual harassment of which he or she has knowledge or has reason to have knowledge.

c. The rules in subparagraphs 8b are regulatory orders and apply to all DON personnel individually without further implementation. A violation of these provisions by military personnel is punishable in accordance with the UCMJ, and is the basis for disciplinary action with respect to civilian employees. The prohibitions in subparagraph 8b apply to all conduct which occurs in or impacts a DOD working environment as defined in enclosure (2). The reasonable person standard as defined in enclosure (2) shall be used to determine whether a violation of these provisions has occurred.

d. The appropriate action to resolve an incident of sexual harassment will depend on the circumstances surrounding that incident. Incidents of sexual harassment cover a wide range of behaviors, from verbal comments to rape. Likewise, the full range of administrative and disciplinary actions is available to address sexual harassment. In the case of military personnel, these include informal counseling, comments in fitness reports and evaluations, administrative separation, and punitive measures under the UCMJ. In the case of civilians, options include informal counseling, comments in performance evaluations, and disciplinary action including removal from the Federal Service.

e. Administrative Separation. Military personnel of the Navy and Marine Corps shall be processed for administrative separation on the first substantiated incident of sexual harassment involving any of the following circumstances (for the purposes of this subparagraph, an incident is substantiated if there has been a court-martial conviction or if the commanding officer determines that sexual harassment has occurred):

(1) Action, threats, or attempts to influence another's career or job in exchange for sexual favors; or

(2) Physical contact of a sexual nature which, if charged as a violation of the UCMJ, could result in a punitive discharge.

f. Commanders are not precluded from initiating administrative separation proceedings for reasons set forth in the appropriate service regulations for individuals whose conduct warrants separation not covered in subparagraph 8e.

9. Responsibility

a. Commanders and supervisors are responsible for leading the men and women under their control. It is not the intent of this instruction to impair their ability to take appropriate actions to

carry out leadership responsibilities. They must set the example in treating all people with mutual respect and dignity, fostering a climate free of all forms of discrimination, and eliminating sexual harassment. Such a climate is essential to maintain high morale, discipline, and readiness. Commanders and supervisors are responsible for and must be committed to preventing sexual harassment in their commands and work environments. They must not ignore or condone sexual harassment in any form, and they must take whatever action is required to ensure that a recipient of sexual harassment is not subsequently also the victim of reprisal or retaliation. These responsibilities regarding sexual harassment are part of the broader responsibility of commanders and supervisors to foster a positive climate and take appropriate corrective action when conduct is disruptive, provoking discriminatory or otherwise unprofessional.

b. Individuals who believe they have been sexually harassed are encouraged to address their concerns or objections regarding the incident directly with the person demonstrating the harassing behavior. Persons who are subjected to or observe objectionable behavior should promptly notify the chain of command if:

- (1) The objectionable behavior does not stop; or
- (2) The situation is not resolved; or
- (3) Addressing the objectionable behavior directly with the person concerned is not reasonable under the circumstances; or
- (4) The behavior is clearly criminal in nature.

If the person demonstrating the objectionable behavior is a direct superior in the chain of command or the chain of command condones the conduct or ignores a report, individuals who have been subjected to or who observe objectionable behavior are encouraged to promptly communicate the incident through other available means.

c. All personnel are responsible for treating others with mutual respect and dignity. This means fully and faithfully complying with this instruction. All DON personnel are accountable for their actions.

10. Action. The Chief of Naval Operations, the Commandant of the Marine Corps, the Chief of Naval Research, and the Administrative Assistant to the Under Secretary of the Navy shall take action to enforce the provisions of this instruction. These actions shall ensure that:

a. All DON personnel under their cognizance comply with this instruction.

b. Education and training programs are in place at all levels within the DON. These programs will cover identification, prevention, resolution and elimination of sexual harassment and

will be implemented from entry through executive levels.

c. An effective system is in place to resolve complaints of sexual harassment at the lowest possible level. The system will emphasize individual accountability of the recipient, accused, coworkers, and the chain of command; clarify the roles for coworkers and the chain of command; teach interpersonal communications skills; and, incorporate the concepts of a reprisal free environment, timely resolution, and appropriate feedback to all parties. Due to the volatile and potentially damaging nature of the allegations, confidentiality will be maintained to the extent possible without thwarting resolution.

d. Systems are in place to monitor the DON's progress in eliminating sexual harassment and to evaluate DON' education and training programs including attendance at and effectiveness of those programs. These systems will include surveys, assessments, and an integrated database, featuring standardized information to track formal complaints of sexual harassment.

e. A counseling support and referral network exists and is advertised.

f. Commanders and supervisors investigate and, to the extent that authority to do so is vested in them by law or regulation, take such action as they consider appropriate on all alleged violations of this instruction.

Sean O'Keefe

Distribution:

SNDL Parts 1 & 2

MARCORPS 71000000000 and 71000000100

SECNAV/OPNAV Directives Control Office

Washington Navy Yard, Bldg 200

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Stocked:

Naval Aviation Supply Office

Physical Distribution Division, Code 103

5801 Tabor Avenue

Philadelphia, PA 19120-5099 (500 copies)

**DEPARTMENT OF THE NAVY
DEFINITION OF SEXUAL HARASSMENT**

Sexual harassment is a form of sex discrimination that involves unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

a. Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career, or

b. Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or

c. Such conduct interferes with an individual's performance or creates an intimidating hostile, or offensive environment.

Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcomed verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment.

RANGE OF BEHAVIORS WHICH CONSTITUTE SEXUAL HARASSMENT

1. Introduction. This enclosure explains and illustrates behaviors which may constitute sexual harassment by describing in layperson's terms what sexual harassment is and how it occurs in the work environment. This enclosure is intended to be used as a guide for developing training programs and to assist military members and civilian employees in distinguishing between acceptable and unacceptable behavior in the work environment. DON policy and prohibitions governing sexual harassment are contained in the basic instruction and enclosures (1) and (2).

2. Background

a. The world has changed dramatically in recent years, and America's national security policy has also changed. Reference (f) defines a vision for the Navy and Marine Corps to support that policy into the 21st Century. The new vision represents a fundamental shift away from open-ocean warfare on the sea toward joint operations from the sea, as part of the nation's "sea-air-land" team. The need to maximize efficiency and teamwork remains firm. The Navy-Marine Corps Team must be comprised of an optimally integrated group of men and women, who must be able to work together to get the job done. Each member of the team is entitled to be treated fairly, with dignity and respect, and must be allowed to work in an environment free of discrimination.

b. Sex discrimination in the workplace is not a new problem; however, prior to 1964 there were inadequate legal protection against it. In 1964, the U.S. Congress passed Title VII of the Civil Rights Act, which prohibits various forms of discrimination in employment. In 1972, the Civil Rights Act was made applicable to federal employees (reference (e)), but it was not until the late 1970's that sexual harassment began to be recognized as a form of sex discrimination. In 1980, the EEOC, established to enforce Title VII, issued the regulations in reference (d). These regulations include a definition of sexual harassment and conditions under which an employer may be held liable for its occurrence. They have been used as a basis for legal actions brought against employers for violating the Civil Rights Act. The EEOC definition of sexual harassment has been upheld by the Supreme Court and has also been used as a basis for DOD policies on sexual harassment (see references (a) through (c)).

c. In the 1990's sexual harassment is receiving increased attention. The costs to resolve incidents of sexual harassment are significant. Even more harmful and costly, however, are the negative effects sexual harassment has on productivity and readiness. These include costs associated with increased

Enclosure (3)

absenteeism, greater personnel turnover, lower morale, decreased effectiveness, and a loss of personal, organizational, and public trust. While not easily quantified, these costs are just as real and seriously affect the DON's ability, to meet the needs of our

Nation.

3. Sexual Harassment. Basically sexual harassment means bothering someone in a sexual way. In the context of this instruction, it is behavior that is unwelcome, is sexual in nature, and is connected in some way with a person's job or work environment. A wide range of behaviors can meet these criteria, and therefore, constitute sexual harassment. Even with this rather simplistic way of explaining it, trying to determine exactly what kinds of behavior constitute sexual harassment often is not easy. The policy established by this instruction is not intended to prevent the types of behavior which are appropriate in normal work settings and which contribute to camaraderie.

4. Discussion. For a person's behavior to be considered sexual harassment, it must meet three criteria: it must be unwelcome, be sexual in nature, and occur in or impact on the work environment.

a. Unwelcome behavior is behavior that a person does not ask for and which that person considers undesirable or offensive. Not everyone has the same perception of "undesirable or offensive." What is acceptable for some people is not acceptable for others. So whose perception should be used? Since the person being subjected to the behavior--the recipient--is the one being affected, it is the recipient's perception that counts. As long as the recipient is a reasonable person and not overly sensitive, behavior which the recipient finds unwelcome should be stopped. Using this "reasonable person standard," from the perspective of the recipient, is really no more than using common sense.

b. Behavior which is sexual in nature is fairly easy to determine. Telling sexually explicit jokes, displaying sexually suggestive pictures, and talking about sex are obviously "sexual in nature." Some people would consider other behaviors, such as touching, to be sexual in some cases but not in others. Not all touching is sexual in nature, but if the touching is to certain parts of the body or is done suggestively, it definitely is. Again, using common sense will normally be enough to determine whether or not a certain behavior is sexual in nature.

c. For sexual harassment to occur, unwelcome sexual behavior must occur in or impact on the work environment:

(1) When recipients are offered or denied something that is work-connected in return for submitting to or rejecting unwelcome sexual behavior they have been subjected to a type of sexual harassment known as "quid pro quo" ("this for that"). Examples include: getting or losing a job, a promotion or demotion, a good or bad performance evaluation, etc. Basically, if any work-connected decisions are made based on the submission to or rejection of the unwelcome sexual behavior, sexual harassment has occurred. Normally, this is from a senior to a junior, because the senior person has something to offer.

(2) When the unwelcome sexual behavior of one or more persons in

a workplace interferes with another person's work performance, sexual harassment has occurred. If the behavior produces a work atmosphere which is offensive, intimidating, or abusive to another person, whether or not work performance is affected, a type of sexual harassment has occurred called "hostile environment." The following are a few examples of behavior that could create a hostile environment:

(a) Using sexually explicit or sexually offensive language.

(b) Displaying sexually-oriented posters or calendars of nude or partially-clad individuals.

(c) Touching someone in a suggestive manner (e. g., intentionally brushing against them or pinching).

(d) Giving someone unwelcome letters, cards, or gifts of a personal nature, when these items have sexual overtones.

(e) Unwanted or uninvited pressure for dates.

(3) Certain types of unwelcome sexual behavior do not have to create a "hostile environment" to be considered sexual harassment. If the behavior occurs in the work environment and is unreasonable, such as fondling or groping, it would be considered sexual harassment, even if it were displayed only once. Other less obvious behaviors can become sexual harassment if they are repeated.

5. Range of Behaviors. There is a wide range of behaviors, from leering to rape, which can be unwelcome, sexual, and work-connected and can, therefore, constitute sexual harassment. Some behavior may be unwelcome and work-connected, but not sexual (for example, performance counseling). This behavior is not sexual harassment. To make it easier to understand, it is helpful to think of the entire range of possible behavior in terms of a traffic light. The traffic light has three colors, and behavior may be divided into three zones. Green on the traffic light means "go"; behavior in the green zone means "it's acceptable." It is not sexual harassment. Red on the traffic light means "stop"; the red behavior zone means "don't do it." It is sexual harassment. The third color on the traffic light, yellow, means "use caution." The yellow behavior zone may be sexual harassment. Just as with a traffic light, if in the yellow zone long enough, the light will turn red. If yellow zone behavior is repeated enough, especially after having been told it is unwelcome, it becomes red zone behavior--sexual harassment. The following examples illustrate these three types of behavior, but they are certainly not all-inclusive:

a. Green zone. These behaviors are not sexual harassment: performance counseling, touching which could not reasonably be perceived in a sexual way (such as touching someone on the elbow), counseling on military appearance, social interaction, showing concern, encouragement, a polite compliment, or friendly conversation.

b. Yellow zone. Many people would find these behaviors unacceptable, and they could be sexual harassment: violating personal "space",

whistling, questions about personal life, lewd or sexually suggestive comments, suggestive posters or calendars, off-color jokes, leering, staring, repeated requests for dates, foul language, unwanted letters or poems, sexually suggestive touching, or sitting or gesturing sexually.

c. Red zone. These behaviors are always considered sexual harassment: sexual favors in return for employment rewards, threats if sexual favors are not provided, sexually explicit pictures (including calendars or posters) or remarks, using status to request dates, or obscene letters or comments. The most severe forms of sexual harassment constitute criminal conduct, e.g. sexual assault (ranging from forcefully grabbing to fondling, forced kissing, or rape).

Note: Keep in mind that the above examples are used as guidance only, that individuals believe they are being sexually harassed based on their perceptions, that each incident is judged on the totality of facts in that particular case, and that individuals' judgment may vary on the same facts. Therefore, caution in this area is advised. Any time sexual behavior is introduced into the work environment or among coworkers, the individuals involved are on notice that the behavior may constitute sexual harassment.

**DEPARTMENT OF THE NAVY
DEFINITION OF SEXUAL HARASSMENT**

1. Sexual harassment is a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

a. Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay or career, or

b. Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person or

c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

2. The above definition emphasizes that workplace conduct, to be actionable as "abusive work environment" harassment, need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or abusive [Note: "workplace" is an expansive term for military members and may include conduct on or off duty, 24 hours a day).

3. Any person in a supervisory or command position who uses or condones any form of sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature in the workplace is also engaging in sexual harassment.

GLOSSARY OF TERMS

1. Career or Employment Decisions. The decision must concern some aspect of the employment, career, pay, duty assignment, benefits, or privileges of another.
2. Condition. To make some aspect of another's employment, career, pay, duty assignment, benefits, or privileges contingent upon fulfillment of some requirement the maker thereof has no right to impose.
3. Discrimination. For purposes of this instruction, discrimination means the illegal treatment of a person or group based on handicap, race, color, national origin, age, religion, or sex. Sex discrimination refers to the practice of wrongfully treating men and women differently in the workplace, solely because of their sex. The Supreme Court has held that sexual harassment of both men and women is a form of sex discrimination.
4. Hostile Environment. A type of sexual harassment that occurs when the unwelcome sexual behavior of one or more persons in a workplace produces a work atmosphere which is offensive, intimidating, or abusive to another person using the reasonable person standard.
5. "Quid Pro Quo" or "This for That." A type of sexual harassment that occurs when submitting to or rejecting such behavior is used as a basis for decisions affecting any person's employment, job, pay, or career. This could be a promise of employment, a promotion, a threat of or an actual demotion, a duty assignment, or a positive or negative performance evaluation.
6. Reasonable Person Standard. An objective test used to determine if behavior constitutes sexual harassment. This standard considers what a reasonable person's reaction would have been under similar circumstances and in a similar environment. The reasonable person standard considers the recipient's perspective and not stereotyped notions of acceptable behavior. For example, a work environment in which sexual slurs, the display of sexually suggestive calendars, or other offensive sexual behavior abound can constitute sexual harassment even if other people might deem it to be harmless or insignificant.
7. Recipient. Anyone subjected to sexual harassment as defined in this instruction.
8. Reprisal. The wrongful threatening or taking of either unfavorable action against another or withholding favorable action from another solely in response to a report of sexual harassment or violations of this instruction.

Enclosure (2)

9. Severe or pervasive. These terms derive their meaning in the context of the conduct engaged in and the surrounding facts and circumstances. Obvious examples of severe conduct include indecent assaults or offensive requests for sexual favors. Pervasive conduct is that which is repeated or widespread, or evidences a pattern.

10. Sexual Favors. Sexual privileges that are granted or conceded in the work environment.

11. Sexual Nature. Conduct that a reasonable person would find sexual in nature in light of the relevant facts and circumstances. Behavior does not need to be overtly sexual if it creates an offensive work environment. Examples include but are not limited to sexist remarks or slurs, sexual advances, displays of pornographic material, touching, language, gestures, mannerisms, and similar behavior.

12. Unwelcome. Conduct that is not solicited and which is considered objectionable by the person to whom it is directed and which is found to be undesirable or offensive using a reasonable person standard.

13. Work Environment. The workplace or any other place that is work-connected, as well as the conditions or atmosphere under which people are required to work. Examples of work environment include, but are not limited to, an office, an entire office building, a DOD base or installation, DOD ships, aircraft or vehicles, anywhere when engaged in official DON business, as well as command-sponsored social, recreational and sporting events, regardless of location.

NAVY EQUAL OPPORTUNITY (EO) / SEXUAL HARASSMENT (SH) FORMAL COMPLAINT FORM

This form is for EO /SH complaints of military personnel. For EEO complaints of civilian employees, see Chapters 4 and 7, Commander's Handbook for Prevention of Sexual Harassment; OCPMINST 12713.2.)

AUTHORITY: 10 U.S.C. §5013 (G).

PRINCIPAL PURPOSE: Formal filing of allegations of reprisal, or of discrimination based on race, color, religion, gender, or national origin.

ROUTINE USES: Information provided on this form may be used, (a) as a data source for complaint information, statistics, reports, and analysis, (b) to respond to requests from appropriate outside individual or agencies (e.g. Members of Congress, the White House) regarding the status of a complaint or appeal, (c) to adjudicate the complaint or appeal, (d) any other properly established routine use.

DISCLOSURE: Disclosure is voluntary, however, failure to fully complete all portions of this form may result in rejection of the complaint on the basis of inadequate data to assess complaint.

PART I - COMPLAINT

1a. COMPLAINANT'S NAME

1b. RANK/GRADE

1c. SSN

1d. UNIT

1e. RACE/ETHNIC GROUP

1f. GENDER

1g. DATE

1h. NATURE OF COMPLAINT. (State, in as much detail as possible, the basis for your complaint; describe the complained of conduct, date (s) of occurrence, names of involved parties, witnesses, or others to whom previous reports may have been made, other evidence that might be available, and any additional information which may be helpful in resolving your complaint. Attach additional sheets, as needed)

1i. FILING DEADLINE. I UNDERSTAND THAT I HAVE 45 CALENDAR DAYS FROM THE DATE OF THE ALLEGED INCIDENT TO FILE A FORMAL EO COMPLAINT. This EO filing deadline does not affect alternative remedies which might apply. (Investigation of EO complaints received after 45 calendar days is discretionary with the cognizant commanding officer/activity head. If you are filing this complaint after 45 days, state the reasons for the delay.)

1j. REQUESTED REMEDY. (What, specifically, do you think the final outcome should be?)

1k. AFFIDAVIT. I, _____ have read the above statement which begins on this page (page 1) and continue on _____ attached page(s), and I have initialed any changes. Having been duly sworn upon my oath I swear, or affirm, that the statement is true and correct to the best of my knowledge and belief, and that it is made freely without coercion, threat, or promise.

(Signature of Complainant)

Subscribed and sworn to before me, a person authorized to administer oaths (per JAGMAN chapter IX), this

_____ day of _____, 19 ____ at _____

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

2a. ACKNOWLEDGEMENT OF RECEIPT OF COMPLAINT. I acknowledge receipt of this complaint from

_____ (name/rank) of _____ (command) on _____ (date)

I UNDERSTAND I HAVE 1 CALENDAR DAY TO REFER THE COMPLAINANT TO THE APPROPRIATE AUTHORITY AND TO INFORM THAT AUTHORITY OF ANY INTERIM ACTION THAT IS TAKEN.

2b. NAME

2c. RANK/GRADE

2d. DATE

2e. UNIT/COMMAND

2f. SIGNATURE

PART II - COMPLAINANT SUPPORT / COUNSELLING

3a. REFERRAL TO COUNSELLING AND SUPPORT SERVICES. THE COMPLAINANT SHOULD BE INFORMED OF / REFERRED TO AVAILABLE COUNSELLING AND SUPPORT SERVICES WITHIN 24 HOURS WITH FOLLOW-UP AS REQUIRED. (This part should be completed by an appropriate command representative. The complainant should be provided a copy and acknowledge receipt on the command copy.)

3b. THE FOLLOWING ARE AVAILABLE LOCALLY (complete the following as appropriate) --

(1) DON Sexual Harassment Advice Line. For confidential counseling/advice for identifying and dealing with sexual harassment and similar inappropriate behavior. (Business hours Monday - Friday EST, toll free 1-800-253-0931, DSN 224-2735, commercial 703-614-2735, call collect from overseas.)

(2) Informal Resolution System (IRS). (Ref: IRS Skills Booklet, NAVPERS 1562.) Both military and civilian personnel are encouraged to utilize the IRS as a means of direct resolution of sexual harassment complaints (not clearly criminal in nature). The IRS can be employed either before pursuing other statutory and regulatory procedures or as a supplemental dispute resolution tool during formal discrimination complaints processing. For further information on the IRS contact (name, unit, phone number): _____

(3) Authorized command forums. The following command-sponsored councils and committees, ombudsman, command master chief, etc., are available (insert name, unit, phone number for each): _____

(4) Assistance of personal advocate (at shore commands). Per OPNAVINST 5354.1C, shore commanders are responsible for assigning a personal advocate to assist members needing help in processing complaints. Personal advocate assigned (name, phone): _____

(5) Request mast with the CO/OIC. Your right to communicate with the CO in a proper manner, time, and place may not be denied. Such requests shall be acted upon promptly and forwarded without delay. Local procedures are: _____

(6) Other local resources. (Insert local name, organization, phone number): _____

Family Service Center (FSC) _____

Equal Opportunity (EO) advisor _____

Medical Treatment Facilities (MTF) _____

Chaplain _____

Legal _____

(7) Communications with Inspectors-General. As an alternative to the normal chain of command, any person who doesn't feel comfortable filing complaints locally or in person can lodge complaints (anonymously if desired) via one or more of the available hotlines:

Naval Inspector General, toll free 1-800-522-3451, DSN 288-6743, commercial (202) 433-6743
Marine Corps Inspector General, DSN 224-1349, commercial (703) 614-1349
Atlantic Fleet Inspector General, toll free 1-800-533-2397, DSN 565-5940, comm. (804) 445-6743
Pacific Fleet Inspector General, commercial (808) 471-0735
Naval Forces Europe Inspector General, DSN 235-4188
Naval Reserve Inspector General, DSN 363-1324, commercial (504) 948-1324.
(Insert local TYCOM, ISIC, local commanders' hotlines:)

(8) A servicemember may always communicate individually with members of Congress.

(9) Article 138/NAVREGS 1150 complaint. A servicemember who believes him/herself wronged by his/her DO or other superior officer may file a complaint as provided in JAGMAN chapter III. Assistance in filing such complaints may be available from the local Naval Legal Services Office.

(10) Other. (Attach additional pages as necessary): _____

3c. IF YOU SUSPECT THAT YOU (COMPLAINANT) ARE BEING SUBJECTED TO IMPROPER PERSONNEL ACTION (REPRISAL) AS A RESULT OF FILING THIS COMPLAINT, PLEASE CONTACT THE FOLLOWING IMMEDIATELY (insert name, phone): _____

3d. COMPLAINANT WAS ADVISED OF COUNSELING/SUPPORT SERVICES, REPRISAL ASSISTANCE, PROVIDED A COPY OF THIS FORM, AND OFFERED ASSISTANCE IN MAKING APPOINTMENTS.

3e. NAME OF COMMAND REPRESENTATIVE	3f. RANK/GRADE	3g. DATE
3h. UNIT/COMMAND	3i. SIGNATURE	
3j. COMPLAINANT'S ACKNOWLEDGEMENT _____ (Signature) _____ (Date)		

PART III - COMPLAINT PROCESSING

4a. ACKNOWLEDGEMENT OF RECEIPT BY COMMANDING OFFICER/ACTIVITY HEAD. I acknowledge receipt of this complaint by _____ (name/rank) of _____ (date)

I UNDERSTAND I MUST INITIATE AN APPROPRIATE INVESTIGATION (OR ENSURE THAT ONE IS BEING CONDUCTED (E.G., BY NCIS) WITHIN 3 CALENDAR DAYS.

4b. NAME OF COGNIZANT CO/ACTIVITY HEAD

4c. RANK/GRADE

4d. DATE

4e. UNIT/COMMAND

4f. SIGNATURE

5. REFERRAL TO COUNSELING AND SUPPORT SERVICES (MANDATORY). If not already done, ensure compliance with Part II of this form. (COMPLAINANT MUST BE INFORMED OF/REFERRED TO AVAILABLE COUNSELLING/SERVICES WITHIN 24 HOURS, WITH FOLLOW-UP AS REQUIRED.)

6. OBTAIN LEGAL ADVICE (HIGHLY ADVISABLE). Consult the command legal advisor at the outset and maintain close coordination through final resolution and follow-up.

7. OTHER PRELIMINARY CONSIDERATIONS (for details, see chapter 4 of the Commander's Handbook)

a. Special Incident Reporting? (e.g., OPREP-3, Navy Blue, Unit SITREP per OPNAVINST 3100.6/TYCOM)

b. Major criminal offense?

(1) Referral to NCIS is mandatory (SECNAVINST 5520.3B).

(2) In interim preserve evidence, ensure members' safety, avoid compromising later investigation.

c. Special considerations for crime victims and witnesses (SECNAVINST 5800.11, OPNAVINST 1752.1).

d. Review other options under the UCMJ: e.g., conditions on liberty? pre-trial restraint? search?

e. Recommend informal resolution (IRS)? Unless the conduct is clearly criminal in nature, it is within the CO/OIC/activity head's discretion to forego taking further formal action when a complaint has been resolved under the IRS and the complainant does not desire further action.

f. Protect privacy. Protect individual privacy (both complainant's and alleged offending person) through all stages of the process. (SECNAVINST 5211.5D)

g. Important caution: DODDIR 6490.1 (14 Sep 93), Mental Health Evaluations of Members of the Armed Forces, (SECNAVINST 6320.xx) prohibits the use of referrals by commands for mental health evaluations in reprisal, establishes rights for members referred by their commands for such evaluations, and imposes specific procedures which commands must follow in order to refer a member for a mental health evaluation.

8. INVESTIGATION OF THE COMPLAINT. MUST BE INITIATED WITHIN 3 CALENDAR DAYS- -NOTIFY COMPLAINANT OF COMMENCEMENT SAME DAY (See part iv, item 13). Unless another activity (e.g., NCIS) has cognizance, the investigation will depend upon the CO's/activity head's assessment of what more is required under the particular facts and circumstances (and chain-of-command directives) to sufficiently resolve/document factual issues. (For a command investigator's guide, see Appendix M of the Navy Commander's Handbook for Prevention of Sexual Harassment.) Completed investigation must be sufficient to permit any subsequent reviewers to clearly ascertain nature/source/analysis of evidence considered (including who was interviewed) and all pertinent facts developed. (Indicate type of investigation, investigating officer, date convened:)

9. INTERIM FEEDBACK/ASSISTANCE TO COMPLAINANT. TAKE PARTICULAR CARE TO AVOID RE-VICTIMIZING COMPLAINANTS (AND WITNESSES). Keep the complainant apprised of the status of the investigation (including any deadline extensions). Provide supplemental counselling/support assistance/referral as warranted. Ensure that all involved know that reprisal against the complainant will not be tolerated. (Recommend keeping a record of such feedback/assistance): _____

10. POSSIBLE COMMAND ACTIONS AFTER INVESTIGATION

a. If warranted, initiate a formal, more in-depth investigation or refer/re-refer the case to NCIS.

b. Forward the report to another authority for disposition.

c. Dispose of the allegations at the command. Each commander/activity head generally has the discretion to dispose of offenses by members of that command. Options for disposition span the spectrum from taking no action on groundless complaints (after appropriate investigation) through counselling, exhortation, criticism, EMI, administrative withholding of privileges, entries in FITREPS/EVALS/performance ratings, revocation of security clearance, detachment for cause, civilian termination, separation processing, NJP, or court-martial. (See chapters 7 and 8 of the Navy Commander's Handbook for Prevention of Sexual Harassment for a more detailed listing of options for correcting offenders.)

d. Consider/implement command improvements based on lessons learned.

11. RESOLUTION TIME STANDARDS/REPORTING. RESOLUTION OF CASE SHOULD BE COMPLETED NOT LATER THAN 14 DAYS (60 DAYS FOR RESERVE UNITS) FROM INVESTIGATION COMMENCEMENT. Resolution includes: completion of investigation; determination of validity of complaint; holding NJP or preferring of charges (if courts-martial contemplated); initiation of other appropriate action; notification to accused; and notification to complainant. IF TIME STANDARDS CANNOT BE MET, OPREP (SITREP PREVIOUSLY SUBMITTED) IS MANDATORY: explain reasons case is taking more time and request any assistance required (or state no assistance required). Submit follow-up SITREP's every 14 days until case resolved.

12. DOCUMENT COMMAND ACTION. Command records should permit reviewers to clearly ascertain/assess decisions reached. (Retain this form at least 3 years.) Also make appropriate entries in individual personnel records, if applicable. Finally, make any statistical reports required by the chain of command.

PART IV - NOTIFICATION, REVIEW, AND FOLLOW-UP (attach additional pages as required)

13a. NOTIFICATION OF INVESTIGATION COMMENCEMENT. (NOTIFY COMPLAINANT SAME DAY.)

13b. COMPLAINANT'S ACKNOWLEDGEMENT

(Signature)

(Date)

14a. NOTIFICATION OF ACTION TAKEN TO RESOLVE COMPLAINT. (TO OCCUR WITHIN 14 CALENDAR DAYS (60 DAYS FOR RESERVE UNITS) OF INVESTIGATION COMMENCEMENT. REPORT DELAYS VIA OPREP/SITREP.)

This complaint was investigated by _____ (name and rank)
of _____ (unit/command) and completed on _____ (date).

The complaint was found to be (mark one): ☐ Substantiated

☐ Unsubstantiated [Insufficient Corroboration];

☐ Unsubstantiated [No Corroboration]

based on the following findings:

The following action has been taken/initiated by the command (CAUTION: SECNAVINST 5211.5D generally precludes providing specific details on adverse actions against offenders. Consult servicing Judge Advocate for further guidance.):

14b. COMPLAINANT'S ACKNOWLEDGEMENT

(Signature)

(Date)

14c. ACCUSED'S ACKNOWLEDGEMENT

(Signature)

(Date)

15a. COMPLAINANT'S RIGHT TO REVIEW BY HIGHER AUTHORITY. I acknowledge notice of my right to submit a statement concerning the investigative findings and command action taken, and to request review of those findings and actions by the next higher authority who is: _____

15b. I REALIZE ANY STATEMENT AND REQUEST FOR REVIEW MUST BE SUBMITTED WITHIN 7 CALENDAR DAYS OF TODAY'S DATE.

15c. I: _____ DO NOT REQUEST REVIEW _____ REQUEST REVIEW
(Initials) (Initials)

If review requested, indicate reason:

15d. COMPLAINANT'S ACKNOWLEDGEMENT

(Signature)

(Date)

16a. ACTION TAKEN BY REVIEWING AUTHORITY. The following action has been taken:

16b. NAME OF REVIEWING AUTHORITY	16c. RANK/GRADE	16d. DATE
16e. UNIT/COMMAND	16f. SIGNATURE	
16g. COMPLAINANT'S ACKNOWLEDGEMENT		
(Signature) (Date)		

17a. COMPLAINANT'S FOLLOW-UP COMMENTS (The complainant should be debriefed 30-45 days after final action to assess complainant's views as to effectiveness of corrective action, present command climate, ensure the complainant has not suffered any reprisal, etc.) The complainant was debriefed on _____ (date) and had the following comments:

17b. COMPLAINANT'S ACKNOWLEDGEMENT

(Signature)

(Date)

18. COMMANDING OFFICER'S FOLLOW-UP NOTES. (Indicate dates/nature of any actions prompted by complainant's debrief.)

SENIOR OFFICER COURSE

CIVIL LAW MATERIALS

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ENLISTED ADMINISTRATIVE SEPARATIONS

I. OVERVIEW

A. Function

1. Military equivalent of firing someone
2. Method of early out

B. Objectives

1. Quality control - maintaining high standards
2. Encourage honorable service
3. Ensure consistent standards
4. Protect rights - due process

C. Types of Discharges: Characterizations

1. Punitive
 - a. BCD
 - b. DD
2. Administrative
 - a. Honorable
 - b. General
 - c. OTH
 - d. Uncharacterized (ELS, OOR)

II. CRITERIA FOR CHARACTERIZATIONS

A. Honorable

1. Navy
 - a. Final Trait average of 2.0 or
 - b. Extraordinary decorations (Medal of Honor, NAM, Combat Action Ribbon)
2. Marine Corps
 - a. E-4 and below:
 - (1) Overall conduct marks: 4.0
 - (2) Proficiency marks: 3.0
 - b. E-5 and above: automatic
 - c. Unless CO recommendation and approved by GCMCA

B. General Under Honorable Conditions

1. Satisfactory performance, but evaluation marks not meeting "honorable" criteria. Final Trait average of 1.99 and below.
2. Reenlistment - not normally
3. VA benefits - eligible, except for Montgomery GI Bill

C. Other Than Honorable (OTH)

1. Pattern of adverse behavior
2. One or more acts constituting a significant departure from expected standards

3. VA benefits - not likely; subject to VA independent review
4. Uniforms - member may not retain

D. Bases for OTH Discharge

1. Misconduct
2. In lieu of courts-martial
3. Fraudulent enlistment
4. Unsatisfactory participation in the Ready Reserve
5. Aggravated homosexual conduct

III. ROLE OF THE CONVENING AUTHORITY

A. Mandatory Processing

1. Drug abuse
2. Commission of a serious offense - death or serious bodily injury, sexual perversion, aggravated sexual harassment
3. Civilian conviction - death or serious bodily injury
4. Homosexual conduct
5. Deserter from another service
6. Enlistments by minors under 17 years old
7. Weight Control Failure
8. All other cases initiated at CA's discretion

B. When To Use Admin Board or Notice Procedure

1. Entitled to admin board if any one of the following applies:

- a. OTH possible (normally misconduct cases)
 - b. 6 or more years service
 - c. Homosexual conduct cases
- 2. All other cases use "simplified" notice procedure
- 3. CA's discretion to use notice procedure with certain misconduct bases:
 - a. With misconduct bases, other than mandatory processing bases, CA can elect to use simplified notice procedure when CA determines that an OTH is not warranted
 - b. Characterization of discharge is General
 - c. No right to an administrative board unless member has over 6 years service
 - d. SPCMA is separation authority
 - (1) Member can request GCMA review of case

IV. BASES FOR SEPARATION

- A. Convenience of the Government
 - 1. Hardship
 - a. Severe, non-temporary situation involving "immediate family"
 - b. Occurred or aggravated since entry
 - c. No alternative solution from other family members
 - d. Separation will alleviate problem
 - e. Written request to CO, in proper format with substantiation
 - 2. Pregnancy
 - a. Request prior to birth

- b. USN - Normally granted, unless:
 - Retention is in the best interest of member
(But see SECNAVINST 1000.10)
- c. Separation denied
 - (1) Obligated service for education
 - (2) Advance technical training
 - (3) Personnel shortage in rating
 - (4) Executed PCS orders while pregnant
- 3. Parenthood
 - a. Reasons - unable to perform duties, repeatedly absent, unavailable for world-wide assignment
 - b. USN - Dependent care certificate (OPNAV form 1740/1)
 - c. USMC - Power of attorney (MCO 1740.13)
- 4. Personality disorder
 - a. Diagnosed by psychiatrist
 - b. Documented material interference with performance
 - c. Counseling required, **unless** danger to self or others
- B. Weight Control / PRT Failure
 - 1. USN - 3 failures of semi annual test in a 4-year period
 - a. Exceed height/weight or body fat standards due to dietary indiscretion, **or**
 - b. PRT failure
 - c. Counseling required

- d. Mandatory processing
- 2. USMC - Persistent failure to meet weight standards due to dietary indiscretion - counseling required, must correct within 6 months
- C. Unsatisfactory Performance
 - 1. Not contributing to unit readiness or mission accomplishment
 - 2. USN - counseling required and at least two or more evals with marks of 1.0 in:
 - a. Professional expertise;
 - b. Military bearing character or,
 - c. Violated page 13 given for unsatisfactory performance
 - 3. USMC - counseling and below average evals and / or unsanitary habits
- D. HIV
 - 1. Enlistment policy - no accessions
 - 2. If on active duty, retain preenlistment
 - 3. May voluntarily request discharge in 90 days of notification
 - 4. Full AIDS development - medical discharge
 - 5. Assignment policy - in conus, within 300 miles of certain hospitals
- E. Homosexual Conduct
 - 1. General
 - a. **Mandatory** processing where preponderance of evidence exists
 - b. Always rates an admin board
 - c. BUPERS / CMC retain separation authority

2. Defining "homosexual conduct">
 - a. Homosexual act
 - b. Homosexual statement
 - c. Homosexual marriage or attempted marriage
3. Fact Finding Inquiries
 - a. Only CO may initiate
 - b. Only upon receipt of "credible information"
 - c. "Credible information"
 - (1) Reliable person saw homosexual act or heard the homosexual statement
 - (2) Reliable person observed "non-verbal" behavior intended to convey homosexual statement
 - d. Not "credible"
 - (1) Opinion that someone is homosexual
 - (2) Rumor
 - (3) Associated activity
 - e. Scope of Inquiry
 - (1) Should be limited to information that directly relates to the grounds for possible discharge
 - (2) Shall not ask whether member is homosexual, heterosexual or bisexual
 - (3) Can ask if member engaged in the homosexual conduct that is alleged
 - (4) Must advise member of DoD policy on homosexual conduct, and Art. 31 rights if applicable, before questioning

4. Defenses

a. Homosexual acts: retention factors

- (1) One time event;
- (2) unlikely to recur;
- (3) no force or coercion used;
- (4) retention consistent with good order and discipline; and
- (5) no intent to repeat.

b. Homosexual statements

- (1) Rebuttable presumption - member has "intent" or "propensity"
- (2) "Celibate homosexual" defense
- (3) Celibacy factors to be considered by Admin Board
 - (a) Previous acts
 - (b) Credibility
 - (c) Testimony from others
 - (d) Nature and circumstances of statement
 - (e) Any other relevant evidence

5. Characterization of discharge

a. Normally, TWSR

b. OTH authorized if:

- (1) Force, coercion, or intimidation used;
- (2) with a minor (< 16);
- (3) with a subordinate;

- (4) in public;
- (5) for compensation;
- (6) on board naval vessel or aircraft; or
- (7) another location subject to naval control that adversely impacts good order and discipline.

F. Alcohol Rehabilitation Failure

- 1. USN - May be separated if he/she lacks potential for continued future service, and:
 - a. Inability or refusal to participate / complete Level II or III; or
 - b. Alcohol incident any time in career following completion; or
 - c. Fails to follow aftercare; or
 - d. Returns to abuse following completion
- 2. USMC
 - a. If diagnosed **alcohol dependent** must be afforded treatment and rehabilitation
 - (1). Can be separated for refusal to attend or complete
 - (2). Can be separated for failure to complete aftercare or a return to uncontrolled drinking
 - b. If diagnosed an **alcohol abuser** can be separated if considered to have no potential for future military service, if potential exists will be afforded treatment

G. Misconduct

- 1. Pattern of misconduct
 - a. Typically, 2 NJPs in current enlistment; or

- b. Failure to pay just debts; or
 - c. Non-support of dependents.
 - d. Page 13 / 11 counseling violated
2. Commission of a serious offense
- a. USN
 - (1) Circumstances warrant separation, and
 - (2) BCD authorized for same or closely related UCMJ offense
 - (3) Conviction **not** required
 - (4) Mandatory processing
 - (a) Offenses involving likelihood of death / serious bodily injury
 - (b) Sexual perversion
 - (c) Aggravated sexual harassment
 - (5) CO may use notification procedure where OTH not warranted
 - b. USMC
 - (1) Circumstances warrant separation
 - (2) BCD authorized for same or closely related UCMJ offense
 - c. Aggravated sexual harassment
 - (1) Mandatory - first substantiated incidents
 - (2) Substantiated incidents involving
 - (a) Threats to influence career for sexual favors

(b) Rewards for sexual favors

(c) Physical sexual contact (BCD authorized)

3. Civilian conviction

- a. Circumstances warrant separation, and
- b. Punitive discharge authorized for same or closely related UCMJ offense; or
- c. Sentenced to six months confinement (regardless of probation)
- d. USN - mandatory processing if offense involved likelihood of death / serious bodily injury
- e. Don't wait until appeal decided
- f. CO may use notification procedure where OTH not warranted

H. Drug Abuse

1. Mandatory processing

- a. Use, sale, transfer or possession of drugs, or drug paraphernalia
- b. 1st incident

2. Characterization: normally OTH unless

- a. Urinalysis test can't be used for characterization
 - (1) Competence for duty
 - (2) Drug aftercare program
 - (3) Mishap / safety investigation

I. Guidance on Supremacist or Extremist Conduct (USN only):

- 1. Not a basis for discharge, but guidance on the handling of such cases
- 2. Mandatory Processing

- a. If CO finds by preponderance of evidence that service member engaged in misconduct involving supremacist or extremist activity.
 - b. Conduct relates to illegal discrimination on the basis of Race, religion, creed, color, or national origin or,
 - c. Conduct involves violence against any federal, state or local government agency
 - d. Conduct could involve the following: Disrespect, assaults, Riot, Provoking words, Disloyal statements, wearing unauthorized insignias, decorations, badge on uniform or civilian clothes,
3. Notice or administrative board procedure can be used depending on the circumstances.

V. Administrative Board Issues

A. Witness requests.

1. Must be made in a "timely" fashion by respondent
2. No subpoena power at an administrative board
3. CA **may** expend funds to produce witness only if senior member determines that:
 - a. The testimony is not cumulative;
 - b. Personal appearance is essential to a fair board;
 - c. Written or recorded testimony will not be adequate;
 - d. The need for live testimony is substantial, material, and necessary; and
 - e. The significance of personal appearance outweighs the difficulties (ie, cost, delay, interference with mission).

B. Challenges for cause against board members

1. Must be based upon a showing that the member can not make a fair and impartial decision
 2. USN - CA rules on challenges
 3. USMC - Non challenged board members rule on challenge
- C. Continuance requests - may be granted by CA
1. Respondent should be given reasonable amount of time from notice to prepare (minimum of 2 days) – watch for EAOS problems and delay tactics by Counsel for Respondent
 2. Hearing should not be unreasonably delayed, and can be held in absentia if respondent goes UA after notice
- D. CA Must Avoid Command Influence
- E. Endorsement On Administrative Board Package
1. Local separation if authorized (USN) or forward to Separation Authority
 2. If board recommended retention and CO disagrees, request SECNAV to separate member - often requires strong endorsement by CA
 3. CA can recommend characterization be upgraded, but not downgraded

VI ROLE OF SENIOR MEMBER

- A. Controls and Conducts Administrative Board
1. Presides at the hearing, responsible for proper conduct and decorum
 2. Rules on matters of procedure and evidence (note: formal rules of evidence do not apply at administrative boards)
 3. Advises CA on expenditure of funds to produce witnesses
 4. Authenticates the record of proceedings
- B. Findings and Recommendations of the Board

1. All members vote, majority rules
2. Three key issues:
 - a. Basis supported by a preponderance of the evidence?
 - b. If basis supported, should the respondent be retained or separated?
 - c. If the respondent should be separated, what is characterization of service?

VII MISCELLANEOUS

- A. Holding Past EAOS for ADSEP - not authorized, see MILPERSMAN 3610260.2
- B. ADSEP Leave - MILPERSMAN 3610280
- C. Conditional Waivers - USN (3610240), USMC (6304.5)
 1. Cannot be used for mandatory processing cases
 2. CO favorably endorses - to GCMCA or Pers 83 for approval
 3. CO denies - request is dead
- D. Deploying Units
 1. Notification procedure - can leave member behind if within 21 days of at sea operations — excess of 10 days
 2. Admin board waived - message BUPERS requesting transfer to SA
 3. Admin board elected - BUPERS message requesting transfer to SA

**USN AND USMC
BASES FOR ADMINISTRATIVE SEPARATIONS**

<u>BASIS</u>	<u>MILPERSMAN</u>	<u>MARCORSEPMAN</u>
Expiration of Active Service (EAS)	3620150	1005
Changes in Service Obligation	3620100	6202/6404
Convenience of the Government	3620100	6203
Voluntary		
Hardship	3620210	6407
Pregnancy	3620220	6408
Further Education	3620235	6405
Conscientious Objector	<u>3620252</u>	6409
Surviving Family Member	3620240	6410
Failed to Make SSGT		6412
Reduced from SNCO		6413
Married to Other Member		6416
Involuntary		
Parenthood	3620215	6203.1
Personality Disorder	3620225	6203.3
Physical Condition	<u>3620200</u>	6203.2
Weight Control Failure	3620260	6206.1
Physical Disability (HIV)	3620270	
Defective Enlistment		
Erroneous Enlistment	3620280	6204.2
Defective Enlistment	3620283	6402
Minority	3620285	6204.1
Fraudulent Enlistment	3630100	6204.3
Entry Level Separation	3630200	6205
Unsatisfactory Performance	3630300	6206
Homosexual Conduct	3630400	6207
Rehab Failure		
Drug	3630500	6208
Alcohol	3630550	6209
Misconduct		
Minor Disciplinary Infractions	<u>3630615</u>	6210.2
Pattern of Misconduct	<u>3630600</u>	6210.3
Commission of Serious Offense	<u>3630605</u>	6210.6
Generally	<u>3630605</u>	
Serious Harm	<u>3630605.2b(1)</u>	
Sexual Perversion	<u>3630605.2b(2)</u>	
Sexual Harassment	<u>3630605.3</u>	
Civilian Conviction	<u>3630610</u>	6210.7
Supremacist/Extremist	<u>3610255</u>	
Misconduct – Drugs	3630620	6210.5
Security	3630700	6212
Best Interest of the Service	3630900	6214
In Lieu of Court-Martial	3630650	6419

1. Determining Separation Authority. - Use the following chart to determine separation authority.

IF the member is being processed for separation by reason of . . .	THEN, subject to the rules at the end of this chart, the separation authority is the . . .
Selected Changes in Service Obligation - Inactive Reserves Selected Changes in Service Obligation - Immediate reenlistment Selected Changes in Service Obligation - Within 90 days of EAOS Expiration of Service Obligation	Commanding Officer or higher
Convenience of the Government - Other designated physical or mental conditions Convenience of the Government - Review action Convenience of the Government - Dependency or hardship Convenience of the Government - Parenthood Convenience of the Government - Pregnancy or childbirth Convenience of the Government - Personality disorder Convenience of the Government - Surviving family member Convenience of the Government - Reservist becomes a minister Weight control failure Entry level performance and conduct Unsatisfactory performance Drug abuse rehabilitation failure Alcohol abuse rehabilitation failure Defective Enlistments and Inductions - Erroneous Defective Enlistments and Inductions - Minority Defective Enlistments and Inductions - Defective enlistment agreements Defective Enlistments and Inductions - Separation from delayed entry program	Special Court-Martial Convening Authority (SPCMCA) or higher

IF the member is being processed for separation by reason of . . .	THEN, subject to the rules at the end of this chart, the separation authority is the . . .
Defective Enlistments and Inductions - Fraudulent entry into the Naval service Misconduct - A pattern of misconduct Misconduct - Commission of a serious offense Misconduct - Civilian conviction Misconduct - Drug abuse Unsatisfactory participation in the ready reserves	GCMCA or higher when the Administrative Board Procedure is used and: - Board recommended OTH - Board recommended retention - Member waived a Board; or - Member requested a conditional waiver. SPCMCA or higher when: - The Notification Procedure is used; or - The Administrative Board Procedure is used and the Board recommended separation with an Honorable, General, or Entry Level Separation.
Separation in lieu of trial by court-martial	GCMCA or higher, unless request is based only on an absence without leave for more than 30 days, then the SPCMCA is separation authority. (Except homosexual conduct cases - Pers-83 serves as Separation Authority) Note: see Article 3630650.2d.
Early release to further education Selected Changes in Service Obligation - General demobilization or reduction in authorized strength Selected Changes in Service Obligation - Acceptance of an active duty commission or appointment, or acceptance into a program leading to such a commission or appointment in any branch of the Military Services. Convenience of the Government - Conscientious objection Homosexual conduct	Chief of Naval Personnel (CHNAVPERS)
Best interest of the service (SICTS) Disability	Secretary of the Navy (SECNAV)

STANDARDS OF CONDUCT AND GOVERNMENT ETHICS

I. INTRODUCTION

II. SOURCES FOR THE STANDARDS OF CONDUCT

- A. 18 U.S.C. Sections 201, 203, 205, 208, 209
- B. 5 C.F.R 2635 - Office of Government Ethics Regulations, "Standards of Ethical Conduct for Employees of the Executive Branch"
- C. DOD Directive 5500.7 - *Joint Ethics Regulation (JER)*

III. APPLICABILITY

- A. Military Personnel - Officer, Enlisted, Regular and Reserve, Midshipmen
- B. DON Civilian Personnel
- C. To Limited Extent, Retired and Released Personnel

IV. ENFORCEMENT TOOLS

- A. Criminal Prosecution
- B. Court-Martial or Non-Judicial Punishment
- C. Administrative Actions
- D. Civil Penalties

V. GUIDING PRINCIPLES

- A. Executive Orders 12674 & 12731
 - 1. Public service is a public trust

2. Cannot use public office for private gain
 3. Conflicts of interest must be avoided
 4. Cannot misuse nonpublic information
 5. Cannot misuse government position, property and / or resources
 6. Must disclose fraud, waste and abuse
- B. Catch-All Provision - Endeavor to avoid any action creating the appearance of violating the law or ethical standards
- To be determined from the perspective of a reasonable person with knowledge of relevant facts

VI. ETHICS ADVICE

- A. Ethics Counselor
1. CO's of Naval Legal Service Offices
 2. Staff Judge Advocates to Flag Officers in command
- B. "Safe Harbor" Concept - Where full disclosure of relevant facts is made, disciplinary action for violating the Standards of Conduct will not be taken where person has, in good faith, relied upon advice of Ethics Counselor
1. No Attorney-Client Privilege for disclosures to Ethics Counselor
 2. Written documentation advisable

VII. GIFTS

- A. From Outside Sources
1. Basic rule - No solicitation / acceptance, either directly or indirectly, of gifts:
 - a. From a "prohibited source"; **or**
 - b. given because of official position

2. Imputed interests - Also prohibited are gifts given to an employee's parents, sibling, spouse, child, dependent relative or designee.
3. "Prohibited source" - Any entity or person either
 - a. Seeking official action by the agency
 - b. Doing or seeking to do business with the agency, is regulated by the agency or is substantially affected by the agency
4. "Gift" - Includes any item of monetary value
 - a. Excluded from the definition
 - (1) Greeting cards
 - (2) Modest refreshments (offered other than as part of a meal)
 - (3) Discounts available to all military personnel
 - (4) Prizes won in contests or events, including random drawings, which are open to the public
 - (5) Items you pay market value for
5. Exceptions - Considered a "gift", but keeping it is permissible. **Some** of the more common exceptions include:
 - a. Gift worth less than \$20 per occasion. Cannot receive more than \$50 worth of gifts from any one source in any calendar year
 - b. Gift given because of a personal relationship
 - c. Awards for meritorious public service. Gift must typically be non-cash and worth less than \$200; further exceptions may apply
 - d. Certain discounts and / or benefits offered to certain groups where:
 - (1) The group offered the benefit is unrelated to employee's position;
 - (2) the group offered the benefit is related, but the offer is also made broadly to the public

- e. Gifts based on outside business or employment relationships
 - Gifts arising from spouse's work
 - f. Free attendance at an event where you are assigned to speak on behalf of the agency
 - g. Free attendance at widely attended gatherings, where such attendance is deemed to be in the interest of the agency
6. Notwithstanding exceptions, no:
- a. Bribery or graft
 - b. Soliciting or coercing of a gift
 - c. Accept so frequently so as to cause an appearance of impropriety
 - d. Additional concerns / rules for procurement officials
7. Disposition of prohibited gifts. Must:
- a. Return
 - b. Pay market value for
 - c. In certain circumstances, may be able to accept on behalf of agency (See SECNAVINST 4001.2F)
 - d. No reciprocation

B. Gifts Between Employees

- 1. Basic rule - A junior shall not give a senior a gift, nor shall a senior accept the gift, unless the two have separate chains of command and there is a bona fide personal relationship
- 2. Exceptions
 - a. Occasional basis. Occasionally, including those times when gifts are traditionally given, a junior may give and a senior accept:
 - (1) an item worth less than \$10
 - (2) food and refreshments shared within the office

- (3) offers of personal hospitality at one's residence and / or hospitality gifts
- b. Special infrequent occasions. Times of personal significance, such as marriage, illness, birth of child, or a time of PCS, resignation, or retirement
 - Cannot exceed \$300 per donating unit
- c. Contributions must be:
 - (1) Voluntary
 - (2) Nominal (not more than \$10)

C. Foreign Gifts

- 1. U.S. CONSTITUTION: ARTICLE I, SECTION 9, CLAUSE 8. "No Person holding any Office [of the U.S.] . . . shall, without the Consent of Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State"
- 2. Blanket approval - Gifts of minimal value (\$225)
- 3. SECNAVINST 1650.1F - If a gift more than \$225 is offered, should advise the donor of the prohibition **but** if to do so would cause offense, may accept on behalf of the Navy (with follow-on reports of acceptance)

VIII. CONFLICTS OF INTEREST

A. 18 U.S.C. SECTION 208:

- 1. General - Executive Branch employees cannot hold either direct or indirect financial interest that conflicts with duties and responsibilities of official position
- 2. Imputed interests - Include the interests of an employee's spouse, minor child, general partner, organization in which the employee serves, or any person or entity with whom the employee is negotiating employment
- 3. Where a conflict might exist:
 - a. Employee must disqualify himself / herself (no further participation)

- b. Provide notification of potential conflict to superior, in writing
 - 3. Remedies
 - a. Waiver of disqualification, refusal, limits on duties, reassignment
 - b. Divestiture
- B. Financial Disclosure Requirements
 - 1. Public Financial Disclosure Reports (SF 278)
 - a. Filed by O-7's and above:
 - (1) When promoted, and yearly thereafter
 - (2) Reviewed by Ethic Counselors for potential conflicts of interest
 - (3) Remediation where necessary
 - b. Info is available to the public
 - 2. Confidential Financial Disclosure Reports (SF 450)
 - a. Filed by:
 - (1) CO's and XO's of Navy shore installations with greater than 500 military or civilian DOD personnel
 - (2) CO's and XO's of all Marine installations
 - (3) All others whose official responsibilities require personal and substantial participation in contracting or procurement
 - b. Filed upon assuming covered position and annually thereafter
 - c. Reviewed by Ethic Counselors for potential conflicts of interest
 - Remediation where necessary
 - d. Information kept confidential

C. Seeking Other Employment

1. Basic rule - If an employee is "seeking employment," or who has prospective employment, he / she must disqualify with respect to matters possible affecting the financial interests of the prospective employer
 - Notice must be in writing
2. "Seeking employment"
 - a. Engaged in negotiations
 - b. Made an unsolicited communication about employment (other than resume dumping)
 - c. Where received an unsolicited proposal, made a response that was something other than rejection
3. Reinstatement: No longer "seeking employment" when
 - a. Either party rejects the possibility of employment
 - b. 2 months pass after resume sent, with no response

D. Assignment of Reservists

1. CO's duty - Don't give reservists assignments where they will obtain info for their employers that result in unfair advantage over competitors
2. Reservist's duty - Disclose possible conflicts

IX. MISUSE OF POSITION

A. Use of Public Office for Private Gain is **Prohibited** Includes:

1. Use of position to coerce benefits
2. Use of position which implies agency or government sanction
3. Use of position to endorse products, services, etc.

B. Misuse of "Nonpublic Information" is ***Prohibited***

1. Definition: Information gained by reason of federal employment and that has not been made available to the general public
2. Cannot be used for the employee's private interest ***or*** the interests of anyone else

C. Misuse of Government Resources is ***Prohibited***

- Includes such things as office supplies, telephones, mails, data processing and printing resources, records, vehicles, a subordinate's time

X. **OUTSIDE ACTIVITIES**

A. Outside Employment / Activities

- Outside employment or other activities are prohibited where such would require disqualification from matters central or critical to the employee's official duties

B. Commercial Dealings Between DOD Personnel

1. Basic rule - Seniors may not solicit or sell to junior personnel or their families. Applies both on and off duty
2. Exceptions - Where there is *no coercion or intimidation*
 - a. One-time sale or lease of non-commercial personal or real property
 - b. Commercial sales made in a retail establishment during off-duty employment (does ***not*** include sale of insurance, stocks, mutual funds, real estate, cosmetics, household supplies, vitamins, and other goods and services)

C. Teaching, Speaking, Writing

1. Related to duties - ***No compensation***
 - Exception - Teaching certain courses requiring multiple presentations

2. Honoraria ban - Can you accept money for articles or speeches ***unrelated*** to official duties?

D. Fund Raising

1. Providing support in official capacity
 - a. Only where authorized - CFC, Navy Relief
 - b. SECNAVINST 5370.44A - may also support of local entities
2. Providing support in private capacity. Encouraged, so long as:
 - a. No soliciting of subordinates or prohibited sources
 - b. No use of title, position or authority as federal employee

E. Participation in Non-Federal Entities

1. Official participation
 - a. May attend meetings in official capacity if legitimate federal government purpose
 - b. May be detailed to serve as liaisons
 - c. May ***not*** endorse or show preferential treatment
 - d. May provide certain forms of support for non-federal entity events, including use of certain federal resources (the JER should be consulted in all cases)
2. Nonofficial participation
 - May participate as individuals in private capacities provided actions are done exclusively outside the scope of official position

F. Political Activities

- DOD Directive 1344.10
- Beware of partisan politics - Hatch Act, 5 U.S.C. Sec. 7321 et. seq.

XI. OFFICIAL TRAVEL

- A. Acceptance of Incidental Benefits - Joint Federal Travel Regulations, U2000
 - 1. Frequent flyer miles
 - a. FFM's accumulated on official travel are government property; cannot be used for personal purposes
 - b. **May** use for upgrade of seat (**but not** 1st Class)
 - 2. Accepting travel upgrades
 - "On the Spot" upgrades - may accept
 - 3. Over-booking
 - a. Involuntary bump: Any "gifts" belong to government, but may claim extra time on travel claim
 - b. Voluntary bump: May keep any "gifts", but may not add time to travel claim (also, don't be UA!)

XII. GAMBLING

- A. Basic Rule: Prohibited While on Duty or While on Government Property
 - 1. No games of chance, lotteries or office pools
 - 2. Exception: Navy Relief raffles
 - 3. Exception: MWR bingo
 - 4. Exceptions must be approved by SECNAV

XIII. POST-GOVERNMENT EMPLOYMENT

- A. Procurement Activity Restrictions
- B. Retired Military Officer Restrictions
- C. Civil Service Restrictions
- D. Consult Ethics Counselor in All Cases

**STANDARDS OF CONDUCT AND GOVERNMENTAL ETHICS
ISSUE IDENTIFICATION SEMINAR**

1. LCDR Bud Wiser, a contracting officer at Naval Air Systems Command, is offered two tickets to see the Super Bowl match between the New England Patriots and the Seattle Seahawks. The face value of the tickets is \$100, although scalpers are getting \$1,000 a piece for this soldout match of grid iron giants. The complimentary tickets were from Bombs-R-Us, a defense contractor that LCDR Wiser works with in developing the new nerf missile.

May LCDR Wiser accept the tickets?

2. The Commanding Officer of the USS NIMITZ has received a letter from the Bremerton Yacht Club. The letter states that in recognition of the CO's importance within the military community, the Club is extending him a membership and waiving all normal membership requirements and fees.

May the CO accept?

3. LCDR Smith, a CEC Officer, is involved in supervising the construction of a hazardous waste storage site onboard Naval Station Norfolk. An employee of the construction contractor offers to pay for LCDR Smith's lunch at the clubhouse after a round of golf. The lunch costs \$11.50.

Can LCDR Smith accept the lunch?

4. IBM has offered a substantial discount for the purchase of its new personal computer to members of the Navy Federal Credit Union. CDR Jones, the Naval Station Supply Officer and a NFCU member, has requested your advice on whether she can take advantage of this offering.

May CDR Jones use the IBM discount?

5. The Commanding Officer of USS RONALD REAGAN (CVN 76) is about to transfer to NAS Pebble Beach. The Executive Officer decides that a set of PING! golf clubs (value \$1,500) would make a nice departure gift. The word is passed to the 150 officers of the wardroom that their contribution to the CO's farewell gift will be \$10 each.

Is this permissible? May the CO accept the gift?

6. While deployed to the Arabian Gulf in support of Operation Southern Watch, COMCARGRU 25 hosts the Crown Prince of Saudi Arabia and his entourage onboard the USS REAGAN. The Crown Prince has brought a gift for the Admiral; a jewel encrusted

ceremonial sword. The Prince delivers the sword, saying that it is given in recognition of the Navy's unwavering commitment to maintaining peace in Southwest Asia.

May the sword be accepted?

7. The Navy is in the midst of creating its new homeport at Everett, Washington. CAPT Dee, the Commanding Officer of Naval Station Seattle, and CDR Cee, the Naval Station's Public Works Officer, come to you about the legality of forming a corporation for the purpose of purchasing a house in the middle of an area where a Navy site-selection committee is considering putting a \$15 million support-services complex. CDR Cee is a member of the Navy's site-selection committee and CAPT Dee will be responsible for endorsing the committee's report.

What would your advice to the CAPT and CDR be?

8. CWO3 Bonatz is the manager of the Officer's Club at NAS Pebble Beach. In connection with his duty, CWO3 Bonatz handles all the contracting for provisions and alcoholic beverages. CWO3 Bonatz has a cousin in the local area who owns a beer distribution franchise.

May CWO3 Bonatz contract with his cousin to provide beer for the Officer's Club?

9. As an audit manager in the Comptroller's Office, Mary Rose has been overseeing a pilot project to contract out to the private sector certain routine audits. While working with the private accounting firms involved in the pilot project, Ms. Rose decides it would be a good time to make a career change and leave Civil Service. After assembling her resume, Ms. Rose drops 100 copies in the mail to various accounting firms around the country - including several that are participating in the pilot project.

Should Ms. Rose have any concerns about the standards of conduct at this point?

10. At NAS Pebble Beach, Fuel Farm operations have been contracted out to a civilian corporation, "We Fuel Em, Inc." One of the Commanding Officer's Technical Representatives (COTR's), responsible for overseeing the contractor's performance, is ABF1 Gasman. It has come to your attention that Petty Officer Gasman has been moonlighting in his off-duty time; he is employed by We Fuel Em, Inc., to drive one of their tank trucks during night operations.

Is there a problem with this arrangement?

11. The Commanding Officer of MCAS Yuma has been asked to write a recommendation for Major Dad who wishes to go to law school.

May the Commanding Officer use his official government title and command letterhead for this recommendation?

12. A civilian procurement official on staff at SPAWAR uses information not available to the general public on an upcoming \$58 million Navy contract and makes \$9,000 on the Stock Market.

Problems?

13. The CO of the USS REAGAN calls you to the Bridge and says that he wants to take the gig out for some crew training. He wants to know if you're available that afternoon to go deep sea fishing with the CO and CMC.

Should you go?

14. Lieutenant General Star has been asked by Newsweek Magazine to write an article concerning his busy year as CINCCENT. Newsweek offers to pay the General \$5,000 for his story.

May the General write the article and accept the money?

Suppose that Newsweek Magazine approached the General not with respect to his CINCCENT story, but rather because of his being one of the nation's foremost authorities on the Druid religion and Newsweek wants an article for an upcoming Earth Day issue. Same offer of compensation: \$5,000.

May the General write the article and accept the money?

15. The Comptroller of your base has been approached by the local community college and asked to develop and teach a governmental accounting course for the upcoming semester. The College offers to pay the Comptroller a salary of \$2,500 for such course.

May the Comptroller teach this course and accept the money?

16. The Commanding General of MCB Swampy is excited about this year's Navy-Marine Corps Relief fundraising drive. She has called you in and says that she plans to set 100% participation goals for MCB Swampy; the General doesn't care how much is contributed by each employee, but she wants each to participate for this very worthy cause. She specifically wants supervisory personnel to be involved in this process.

Should the General proceed with this plan?

17. The Officer's Wives Club would like to hold a fundraising event at the Officer's Club. They propose to hold an auction for various items to be donated by Club members. There

will also be a raffle for assorted door prizes. The Club also wants to use the Admin Office's computer, telephone, and copier machine in order to support this function.

What support may the command legally provide?

18. You hear that a LT in the Operations Department has been selling AMWAY products to military and civil service personnel as well as actively recruiting others, including your LN2, to be distributors.

Is there a problem?

19. CAPT Brown has been a member of the USAIR Frequent Flyer Club for many years and has accumulated a lot of mileage from her various official travel trips. After an exhausting business trip, CAPT Brown would like to cash in some of those Frequent Flyer Miles and upgrade her seat to first class.

May CAPT Brown do so?

20. VADM Black is about to retire from his position as Commander, Naval Air Force, Pacific. He walks into your office and says that he has just received an offer of post-government employment from Lockheed.

May the Admiral accept this offer?

ADMINISTRATIVE INVESTIGATIONS

I. GENERAL OVERVIEW

A. Introduction

1. Recent changes
2. References
 - a. JAGMAN, chapter II
 - b. Other directives may also apply, dependent upon nature of incident

B. Primary Functions

1. Gather & preserve info
2. Improve efficiency & administration of USN
 - a. Reevaluate practices
 - b. Redesign or improve material
 - c. Modify or adopt regulations, standards operating procedures and / or instructions
 - d. Reply to inquiries
3. Disposition of claims both for and against the United States
4. Assist in making of disciplinary and / or administrative decisions concerning personnel

C. When Do You Convene?

1. Any situation the CO wants more information about
2. Mandatory when:
 - a. Certain death cases
 - b. Certain injuries or disease sustained (LOD / Misconduct)

- c. Aircraft mishaps
- d. Ship stranding, collision, or significant flooding
- e. Fires, if significant
- f. Loss of government funds / property
- g. Claims
- h. Health care incidents
- i. Firearm accidents
- j. Security violations
- k. Environmental incidents

II. TYPES OF INVESTIGATIONS

- A. **Preliminary Inquiry** - tool to help you decide if investigation is necessary (0204)
 - 1. Advised for all incidents
 - 2. 3 day inquiry - determine if further investigation is warranted
 - 3. Command options after PI completion
 - (a) No further action
 - (b) Convene an investigation
 - (c) Recommend GCMCA convene Court / Board of Inquiry
 - 4. Report decision to ISIC
 - Use of existing situational reporting systems
- B. **Court of Inquiry** (0211)
 - 1. Required for "**Major Incidents**"
 - (a) Three attributes:

- (1) Extraordinary event causing multiple deaths, substantial property loss, or substantial environmental harm
 - (2) Likelihood of national interest and potential loss of public confidence
 - (3) Significant departure for expected levels of professionalism, leadership, judgment, communication, state of material readiness
- (b) Cognizance: First Flag or General Officer in chain of command, or any superior Flag or General Officer
- (c) Preliminary Inquiry - avoid premature convening of Court of Inquiry
 - (1) One officer investigation to begin process of collecting and preserving evidence, inform Flag whether Court required
- 2. Convened by: GCMCA
- 3. Composition: 3 or more commissioned officers, and a "Legal Advisor"
- 4. Procedure: formal hearing, with testimony under oath
- 5. Can subpoena civilian witnesses
- 6. Can designate a "Party"
 - (a) Person whose conduct is "subject of inquiry" **or** has a direct interest" in the outcome of investigation
 - (b) Rights of a Party
 - (1) Counsel
 - (2) Challenge members
 - (3) Call witnesses
 - (4) Introduce evidence
 - (5) Cross-examine witnesses

(6) Testify or remain silent

(7) Present argument

C. **Board of Inquiry** (0211)

1. Utilized when a formal hearing is desired but only one officer required to conduct investigation
2. Convened by: GCMCA
3. Composition: 1 or more commissioned officers (legal counsel optional)
4. Procedure: formal hearing, with testimony under oath
5. Subpoena power: No
6. May designate a "Party"

D. **Command Investigation** (0209)

1. When utilized: Most frequent method for investigations in the USN and USMC
2. Convened by: Anyone with Article 15 power
 - (a) Normally: Commanding Officer for incidents occurring within, or involving personnel of, the command
 - (b) Distant location or deploying unit involved; may ask superiors for assistance
 - (c) More than one unit involved: only one investigation. Either reach agreement who will conduct, or refer to common superior or area coordinator
 - (d) Incidents involving Marines injured or killed during training or operations: next senior commander must decide who will do investigation
3. Composition: 1 person investigation
 - (a) Officer
 - (b) Senior enlisted

- (c) Civilian employee
- 4. Procedure: Informal evidence gathering
- 5. Subpoena power: No
- 6. Cannot designate a "Party"

D. ***Litigation-Report Investigation*** (0210)

- 1. Primary purpose: Prepare and defend the legal interests of the US and USN
 - Concern over release of work product in litigation
- 2. Basic procedures are similar to that of Command Investigation
- 3. Special rules for convening and conducting
 - (a) CA must consult with "cognizant judge advocate" (station or Staff Judge Advocate, or NLSO command services or claims attorney)
 - (b) Convening order must identify JAG who will provide direction and supervision to IO
 - (c) No opinions or recommendations requested by CO, may be requested and written by supervising JAG
- 4. Investigation with dual purposes (determine reason for accident, and document for claims defense)
 - (a) Seek counsel
 - (b) What is primary purpose?
 - (1) If claim-related: Litigation-Report
 - (2) If significant command interests are present: Command Investigation

III. THE ENDORSEMENT

A. Command investigation

1. If defective investigation, return to IO
2. If no one outside the command would be interested, file as an internal report
3. If decide to forward, CA may
 - (a) Approve, and / or
 - (b) Disapprove, and / or
 - (c) Modify, and / or
 - (d) Add any findings, opinions or recommendations
- d. Must specifically approve or disapprove any opinion regarding LOD / Misconduct
- e. Shall indicate any corrective action taken
- f. State where original evidence is preserved

B. Litigation-Reports

- a. If defective, may return to supervising JAG
- b. If OK, CA may comment on issues relevant to command administration and management
- c. CA will not normally approve or disapprove facts
4. When forwarding, special marking required
 - "For Official Use Only: Litigation / Attorney Work Product"

III. ROUTING AND REVIEW

A. Command investigations

- a. To GCMCA
- b. GCMCA only routes higher if further review deemed necessary

2. Litigation-Reports
 - a. Ultimate addressee is OJAG (Code 33)
 - Sent via GCMCA's SJA
 - b. No formal endorsement by GCMCA required
3. Advance copies
 - a. Naval Safety Center
 - b. Naval Legal Service Office

IV. RETENTION AND RELEASE

- A. Command investigations
 1. CA and last reviewer must retain for 2 years
 2. After 2 years, last reviewer stores IAW SECNAVINST 5212.5
 3. Once review is complete, investigation is "final"
 - Whoever is last reviewer becomes release authority under FOIA / Privacy Act
- B. Litigation-Reports
 1. CA retains a copy - special marking requirements
 2. OJAG is release authority under FOIA / Privacy Act

LINE OF DUTY / MISCONDUCT DETERMINATIONS

I. References

JAGMAN, Chapter II, 0221-0233

II. When Required?

- A. Disease or injury incurred and:
 - 1. Possible permanent disability; **or**
 - 2. Physical inability to perform duties in excess of 24 hours (as distinguished from evaluation or observation)

III. Why are LOD / Misconduct Determinations Required?

- A. Longevity and retirement multiplier
- B. Extension of enlistment
- C. Disability retirement and severance pay
- D. VA benefits

IV. Who Initiates?

- A. CO of servicemember when injury occurs
 - Not the Naval Hospital's job (although they provide assistance)
- B. Doubtful cases - make LOD / Misconduct determination, especially if adverse determination anticipated

V. Two Part Inquiry

- A. Was servicemember in line of duty when injury occurred?
- B. Was the injury the result of the servicemember's own misconduct?

VI. "LINE OF DUTY"

- A. Start with favorable presumption: servicemember's injury was incurred within the line of duty
- B. Not in LOD when there is clear and convincing evidence that injury occurred:
 - 1. While in a deserter status;
 - 2. While UA and that UA materially interfered with performance of duty;
 - 3. While in the Brig with a unremitted DD;
 - 4. While in a civilian jail as a result of a felony conviction;
 - 5. As a result of the servicemember's own "misconduct"
- C. UA rule
 - 1. Absence in excess of 24 hours leads to a rebuttable presumption that the UA constituted a material interference to the performance of duty
 - 2. Converse is also true
 - 3. Special Note: As to disability retirement and severance benefits, any UA period will foreclose, regardless of material interference (10 U.S.C. § 1207)

VII. "Misconduct"

- A. Term of Art: Defined as
 - 1. Injury intentional incurred; **or**
 - 2. Injury which results as the proximate result of "willful neglect"
 - Reckless disregard of foreseeable consequences
- B. Start with favorable presumption: servicemember's injury was not incurred as a result of misconduct
 - Can only be overcome with clear and convincing evidence
- C. Fact dependent

- That conduct violates law, regulation, or order, or is engaged in while intoxicated, does not, of itself, constitute "misconduct"

VIII. Relationship of LOD and Misconduct

- A. Three possible findings
 - 1. In the line of duty, not due to the member's own misconduct
 - 2. Not in the line of duty, not due to member's own misconduct
 - 3. Not in the line of duty, due to member's own misconduct

IX. Special Rules

- A. ***Intoxication:*** Must be clear and convincing evidence
 - 1. That member was sufficiently intoxicated to impair rational and full exercise of mental or physical faculties
 - (a) Rebuttable presumption: BAC > .10
 - (b) May be intoxicated even if no BAC or BAC < .10
 - 2. Impairment was proximate cause of injury
- B. ***Medical treatment***
 - 1. Unreasonable refusal to submit to medical or dental treatment, and such proximately causes disability, is deemed "misconduct"
 - Even if refusal on religious grounds
- C. ***Mental responsibility***
 - 1. Presumption: All Sailors and Marines are mentally responsible
 - 2. Most cases: need not address unless questions raised by
 - (a) Facts uncovered; or
 - (b) By act itself
 - 3. If issue is raised, must find mental responsibility exists prior to making an adverse determination
 - Clear and convincing evidence required

4. Suicide attempts: if bona fide, no mental responsibility and thus "in LOD, not due to misconduct"

X. Documenting LOD / Misconduct

- A. **Must** conduct Preliminary Inquiry
 1. Report result to GCMCA through use of Personnel Casualty Report System (MILPERSMAN 4210100)
 2. Provide copy of Casualty Report to Medical
- B. If determine that injury was incurred while "in LOD, not due to misconduct," make appropriate entries in health record
- C. Command Investigation only required where:
 1. Possible "not in LOD", "due to own Misconduct" findings; **or**
 2. Essential to ensure adequate official record

XI. CA Review of Command Investigation

- A. Must comment on LOD / misconduct opinion
- B. **Must** afford member opportunity to submit any desired information before making an adverse determination
- C. Follow-up action required to ensure any GCMCA directions entered in service / medical records

XII. Special Rules for Death Cases

- A. Investigation **not** required for:
 1. Death resulting from previously known medical condition
 2. Death resulting from enemy action
- B. When JAGMAN Investigation is Required:
 1. Civilian found dead on base and under peculiar or doubtful circumstances
 2. Adequacy of military medical care at issue

3. Probable nexus between the naval service and circumstances of the death
 4. Possible "friendly-fire" incident
- C. "Limited Investigation" - appropriate where:
1. In CONUS, at location not under military control; and
 2. Member off-duty; and
 3. Circumstances have no discernable nexus to naval service
 4. ***Simply obtain police report and file***
- D. In JAGMAN Investigations involving death of servicemember:
1. LOD / Misconduct determination ***prohibited***
 - No effect on Navy or VA administered benefits
 2. ***"Independent Reviews"*** - CA's option to have a "reviewer" outside the command look at the investigation, pre-endorsement, where propriety of deceased's conduct is being questioned
 - Critically analyze investigation from perspective of the deceased, make comments accordingly
 3. Unavailability of documents (autopsies)
 - (a) Don't delay forwarding unless absolutely necessary
 - (b) Can supplement as documents become available
 - (c) Status of Investigation Report: MILPERSMAN 4210100 (every 14 days)

FREEDOM OF EXPRESSION

I. INTRODUCTION

A. References

- (1) U.S. Const., Amend. I
- (2) DOD Directive 1325.6

B. Balancing Test: Constitutional Individual Rights vs. "Clear Danger" to Legitimate Military Interest:

1. Security—base or mission
2. Mission accomplishment
3. Morale, good order & discipline

II. FREEDOM OF SPEECH

A. General Rule: Subsequent punishment preferred over prior restraint. See *United States v. Wyson*, 9 U.S.C.M.A. 249, 26 C.M.R. 29 (1958)

B. UCMJ Contains Permissible Restraints on "Free Speech" Rights:

1. Art. 88: Contemptuous language (by comm. officer) about Pres., VP, etc.
2. Art. 89: Disrespect to a commissioned officer
3. Art. 91: Disrespect to a warrant officer, NCO or petty officer
4. Art. 104: Communicating with the enemy
5. Art. 107: False official statement
6. Art. 117: Provoking words ("fighting words") or gestures
7. Art. 134: Disloyal statements
8. Art. 134: Bomb threat or bomb hoax
9. Art. 134: Communicating a threat

C. Expressive Conduct

1. Flag burning? See *Texas v. Johnson*, 491 U.S. 397, 109 S.Ct. 2533 (1989).
2. On duty, disrespect to the flag? See *United States v. Wilson*, 33 M.J. 797 (A.C.M.R. 1991).

D. Affirmative Speech Obligations

1. Duty to report offenses: Navy Regulation 1137
2. "Safe sex" orders - duty to advise of sexually-transmitted disease *United States v. Womack*, 29 M.J. 88 (A.F.C.M.R. 1989).

III. FREEDOM OF THE PRESS

A. References

1. DOD Directive 1325.6
2. OPNAVINST 1620.1A, CH-1
3. MCO 5370.4

- B. Mere Possession of Printed Material: Private **possession** of printed material cannot be prohibited, except classified material; see ref. (a) **but** written material, the distribution of which is prohibited, m a y b e
impounded if it is determined that an attempt will be m a d e t o
distribute

C. Distribution of Printed Material

1. **Official channels:** NEX, Ship's Store, Base Library, etc.
Rule: cannot ban specific issues; can completely remove but must be able to clearly articulate
2. **Unofficial channels:** handbills, posters, notices, etc.
 - a. Prior approval from CO may be required (and should be required);

- b. distribution on base can be prohibited if "clear danger to legitimate military interest;" and
- c. articulate reasons and provide equal treatment for all seeking access

IV. PUBLISHING

- A. Government Time or Equipment for Personal Use: DON'T DO IT!!
Ref: (a) Joint Ethics Regulations, DOD 5500.7-R
- B. Military Subjects: "pertains to military matters, . . ."
Ref: (a) SECNAVINST 5720.44A, Mandatory security and policy reviews
- C. Honoria Ban? *United States v. National Treasury Employees Union, et. al.*, No. 93-1170, U.S. Supreme Court, 1995 US Lexis 1624; 63 USLW 4133 (22 Feb 95), Court held the ban not applicable to GS-15 and below.

V. FREEDOM OF ASSEMBLY

- A. References
 - 1. DOD Directive 1325.6
 - 2. OPNAVINST 1620.1A, CH-1
- B. On-Base "Gatherings" PROHIBITED IF:
 - 1. CO can prohibit if clear danger to loyalty, morale, or good order & discipline or if could result in interference w/ or prevention of mission accomplishment
 - 2. Articulate reasons and provide equal treatment for access
 - 3. Open houses vs. guest ships: check local directives
 - 4. Bar letters / orders: valid forever? Applicable to open house? See *United States vs. Albertini*, 105 S.Ct. 2897 (1985).

C. Off-Base "Gatherings" Prohibited if:

1. On duty;
2. In a foreign country;
3. Illegal march (no permit);
4. Violence likely to result; and
5. Sponsored by hate group.

D. Uniform?

1. References

- a. DOD Directive 1334.1
- b. Navy Uniform Regulations Ch.1, section 4, p. 1-8

2. Cannot wear uniform:

- a. At activities of totalitarian, fascist, communist, subversive, or group advocating force / violence to deny others their civil rights;
- b. in connection with political activities, private employment, or commercial interest, that implies official sponsorship;
- c. at public demonstrations, interviews, pickets, marches, rallies, public speeches if implies the service supports the demonstration, rally, speech, etc.;
- d. if it would "discredit the Armed Forces;" or
- e. when specifically prohibited by regulations.

E. "Off Limits:"

1. References

- a. OPNAVINST 1620.2A (AFDCB Inst.)
- b. MCO 1620.2C
- c. COMDTINST 1620.1C

2. Places can be designated "off limits" if "there is substantive information indicating an establishment or area . . . presents conditions which adversely affect health, safety, welfare, or morals" [quoted from Ref (a)], such as:
 - a. Violence, crime, or drugs common;
 - b. discriminatory practices ("race, color, sex, religion, age, or national origin");
 - c. unhealthy conditions; or
 - d. unethical business practices.
3. Who can designate?
 - a. COs may declare establishments or areas "temporarily off-limits to their respective commands in emergency situations."
 - b. Area Coordinator (Armed Forces Disciplinary Control Board)
4. Walking into "off limits" amounts to a violation of a lawful order – Art. 92., UCMJ.

VI. "BELONGING": MEMBERSHIPS IN CIVIL ORGANIZATIONS

- A. General Rule: "Passive" membership in any organization cannot be prohibited
- B. Exception: Military Labor Unions: criminally proscribed
 1. References
 - a. 10 U.S.C. section 976 (1982)
 - b. SECNAVINST 1600.1A
 2. "The processes of conventional collective bargaining and labor-management negotiations cannot, and should not, be applied to the [military]." No strikes, slowdowns, picketing.
- C. Exception: "**Active**" Participation in "Hate Groups" Prohibited
 1. Reference
 - OPNAVINST 1620.1A CH-1

2. "**Active**" is defined as "publicly demonstrating or rallying, fund raising, recruiting and training members, and organizing or leading such organizations"
3. Policy: "Military personnel must reject participation in organizations that espouse supremacist causes; attempt to create illegal discrimination . . . or advocate the use of force or violence, or otherwise engage in efforts, to deprive individuals of their civil rights. . . . Commanders have authority to employ the full range of administrative procedures, including separation or appropriate disciplinary action against military personnel who actively participate in such groups."

VII. FREEDOM TO PETITION FOR REDRESS OF GRIEVANCES

A. Appropriate Mechanisms for Complaints

1. Request Mast with CO - shall not be denied
Ref: (a) Navy Regulations, Art. 1151
2. Complaint of Wrongs against CO - must forward to GCMCA
Ref: (a) UCMJ, Art. 138
3. Complaint of wrongs against any superior other than CO
Ref: (a) Navy regulations, Art. 1150
4. May also seek relief from:
 - a. Inspector General;
 - b. Congress; See Navy Regulations, Art. 1154, 1155
 - c. Federal Courts; or
 - d. Hotline complaints.

B. No reprisals against the member for lawful communication with a member of Congress or an IG.

— References

- a. 10 U.S.C. sec. 1034
- b. DOD Directive 7050.6 Military Whistleblower Protection
- c. SECNAVINST 5370.7 Military Whistleblower Protection

- C. Group Grievances? Members "shall not join together for the common purpose of protesting or complaining against orders or details to duty, complaining of particulars of duty or procuring preferences."
Ref: (a) Navy Regulations, Art. 1153

VIII. FREEDOM OF RELIGION

A. References

1. 10 U.S.C. sec. 6031
2. 10 U.S.C. sec. 774
3. DOD Dir. 1300.17
4. SECNAVINST 1730.8

- B. Policy: DON policy is "to accommodate the doctrinal or traditional observances of the religious faith practiced by individual members when they will not have an adverse impact on military readiness, individual or unit readiness, unit cohesion, health, safety, or discipline."

- C. Factor analysis: In deciding whether to approve request for religious accommodation COs shall consider the following factors:

1. Importance of military requirements, including unit cohesion, unit readiness, health, safety, morale, and discipline;
2. Importance of the religious accommodation to the requester;
3. Cumulative impact of repeated accommodations similar nature;
4. Alternative means available; and
5. Previous treatment of the same or similar request.

- D. Per reference (d), member may request that CNO or CMC review a CO's denial of a request to wear an item of religious apparel with the uniform. Mbr may also seek redress via UCMJ, Art. 138, or Navy Reg., Art. 1150.

E. Examples of Accommodation:

1. Accommodation of various Sabbath days;
2. Permitting the wearing of religious apparel in designated living spaces;

3. Granting separate rations or permitting members to bring special rations to the field or aboard ship to adhere to religious dietary observances; and
4. Wearing a skullcap (yarmulke) with the uniform, or jewelry under the uniform.

IX. POLITICAL ACTIVITIES

A. References

1. 10 U.S.C. sec. 973
2. DOD Dir. 1344.10: Political Activities by Mbrs on Active
3. DOD Dir. 5500.7-R (JER), Ch. 6, sec. 6-300
4. MILPERSMAN, article 6210240
5. MCO 5370.7

B. Military Members (on active duty more than 30 days) May:

1. Display a bumper sticker on POV;
2. make lawful monetary contributions to a political party, committee, organization favoring a candidate(s);
3. sign a petition for specific legislative action;
4. register, vote, express a personal opinion on issues; and
5. join a political club and attend meetings not in uniform.

C. Military Members (active duty more than 30 days) Shall Not:

1. March or ride in a partisan political parade;
2. perform clerical or other duties for a partisan political committee during a campaign or on election day;
3. participate in a partisan campaign or make public speeches;
4. speak before a partisan political gathering of any kind to promote a partisan political party or candidate;

5. display a large political sign on top of a POV;
 6. sell tickets for or otherwise actively promote political dinners; and
 7. participate in any radio, TV, or other program or group discussion as an advocate of a partisan political party or candidate.
- D. Per reference (a), regular commissioned officers and reserve and retired officers on active duty (more than 180 days), except as otherwise authorized by law, may not hold elective or appointive civil office in the Federal Government or any State government (***or any political subdivision***).

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

- I. **INTRODUCTION.** It has long been recognized that a servicemember's ability to defend or prosecute a civil suit or that his / her financial obligations may be impaired because of his / her active duty service.

A. History / Background

1. Civil War "Stay" Laws - many states enacted "stay" laws which imposed an absolute moratoria on enforcement of legal rights against servicemembers
2. Soldiers' and Sailors' Civil Relief Act (SSCRA) of 1918 - provided protection in the form of "stays of proceedings" unless the servicemember's ability to conduct his or her defense was not "materially affected" by military service
3. SSCRA of 1940 - still basic law today
 - a. Cite: SSCRA of 1940, 50 U.S.C. app. 501-591 (1988) (as amended by SSCRA amendments of 1991)
 - b. Reenacted, almost verbatim, many provisions of SSCRA of 1918
 - c. Context: Situation SSCRA originally meant to address was that of the soldier or sailor being drafted and called to arms—not so much the "all volunteer armed force" of today
4. "Desert Storm" and SSCRA 1991 Amendments
 - a. Refocused attention on SSCRA

B. Who is protected? Application of SSCRA Protections

1. "Persons in the military service" means federal service on active duty (50 U.S.C. App. 511)
 - a. Active duty personnel
 - b. Activated Reservists
 - c. National Guard only covered when on active federal service
 - e. UA / deserters not covered
2. "Persons not in the military service"
 - a. Dependents - given some limited protections

- b. Persons secondarily liable - third party or derivative protection for
 - co-signers, guarantors, endorsers, sureties, co-makers etc.

C. Purpose of SSCRA

1. Purpose of the SSCRA is to "protect those who have been obliged to drop their own affairs to take up the burdens of the nation." *Boone v. Lightner*, 319 U.S. 561 (1943)
2. Section 510 states that its purpose is to provide for **temporary** suspension of enforcement of civil liabilities or legal proceedings and transactions which may prejudice the civil rights of members
 - Boost morale and improve national defense by minimizing worries on the home front

D. How SSCRA Operates - Generally

1. All Federal, State, and Territorial Courts shall grant a **temporary** delay, a "stay of proceedings," in civil actions where member's military service has "materially affected" the member's ability to appear to "defend" or "prosecute" an action (50 U.S.C. App. 520-527).
2. Provides protection to a member whose ability to pay certain "debts" has been "materially affected" by his / her military service

E. What SSCRA is **not**

1. Does not provide immunity from law suits
 - a. Not designed to give "breaks" but to counteract the adverse effects of military service
 - b. "Not a shield" - military service alone does not prevent court from proceeding even where court is in a different state
2. Does not relieve member of debts
 - No clean slates - expectation is that all military members will honorably pay their just debts
3. Does not apply in criminal cases, administrative hearings or foreign cases

II. PROTECTION IN CIVIL PROCEEDINGS

A. Stay of Proceedings (50 U.S.C. App. 521)

1. May be applied for at any stage of civil court proceedings
2. Stay of proceedings "**shall**" be granted if court finds ability of member to participate "materially affected" by military service
3. Stay - for how long?
 - a. The request for stay should be only until such time as a defendant is unhampered by his military service to defend the action
4. Proving "material effect"
 - a. "Due diligence" and "good faith" are factors affecting a court's decision whether to grant a stay and its length
 - b. If material effect shown, court **MUST STAY**
5. How to Obtain a Stay
 - a. Prepare letter to court requesting stay of proceedings
 - (1) Detail "material effect"
 - (a) no leave available
 - (b) leave denied
 - (c) military duties prevent returning
 - (d) overseas duty (expenses)
 - (2) Request **reasonable stay** - courts will tolerate a reasonable amount of delay as long as member can show good faith and due diligence
 - (3) Signed by someone in chain-of-command
 - (4) Commanding Officer: *Cromer v. Cromer*, 303 N.C. 307, 278 S.E.2d 518 (1981)

B. Protection Against Default Judgments (50 U.S.C. App. 520)

1. Protection against "default judgments" apply in "any court" - includes small claims court
2. Designed to prevent "trial by ambush." Courts must protect servicemember-defendant before entry of a default judgment
 - a. Appoints counsel for servicemember (50 U.S.C. App. 520(1))
 - b. Appointed counsel's role and limitations
 - (1) Counsel may not waive any of the member's rights or bind the member by his / her actions in case
 - (2) Counsel is, in effect, appointed to assist Court in finding and notifying servicemember of action
 - c. Violations render judgements voidable
3. Reopening Default Judgments (50 U.S.C. App. 520(4))
 - a. Timing - must move to reopen while in service or within 90 days after leaving

III. OTHER SSCRA PROTECTIONS

A. Leases

1. Right of lease termination for leases entered into **before** entry into service
2. Eviction protection (50 U.S.C. App. 530)
 - a. Purpose: Protect members who cannot pay rent while on active duty, against eviction
 - b. Protection applies to both pre-service and post-service leases
 - c. Applies only to family dwellings with less than \$1200 monthly rent
 - d. Landlord may not evict servicemember or family **without court order**
 - if member's ability to pay rent is materially affected by service, the court must grant a stay of such court order for three months

B. Mortgage Foreclosure Protection

1. Purpose: To protect members against foreclosures of mortgages, trust deeds or similar security if obligation originated **prior to** service on active duty by member **or dependent**

C. Installment Contract Protections

1. Protection from repossessing property, rescinding contract, or penalties without court authority for members who signed an installment contract for purchase of real or personal property **prior to** entry on active service

D. Maximum Rate of Interest Protection

1. No obligation or liability shall exceed 6% per annum
 - a. Debts must have been incurred **prior to** service
 - Applies to interest on mortgages and credit cards but not to GSL loans
 - b. 6% rate continues until creditor goes to court and shows that member's ability to pay higher interest is not "materially affected" by the member's military service

E. Taxation Protections

1. SSCRA protects against double taxation and reserves the right of taxing military income and personal property to the member's state of domicile
 - a. State income taxes - retain state of domicile for income tax purposes
 - b. Personal property taxes - deemed to be located in state of domicile

F. Professional Liability

1. For doctors or other professionals as designated by SECNAV, with liability insurance, ordered to active duty, who make written request to carrier to suspend coverage:
 - a. No premiums will be charged

- b. Refunds will be made for prepayments
- c. Members have 30 days after ACDU to reinstate
- d. Insurance companies **must** reinstate
- e. No premium increase can be charged
- f. Malpractice actions are stayed and period of suspended coverage is excluded from statute of limitations for malpractice actions

IV. CONCLUSION

- A. SSCRA allows protections of rights, not avoidance of liabilities
- B. Most creditors are willing to work with members
- C. Most SSCRA protections extend to dependents
- D. For those invoking SSCRA, no retaliation allowed by creditors
 - No adverse credit reports

NONSUPPORT OF DEPENDENTS

A. References

1. SECNAVINST 7200.16, Subj: Garnishment of Pay of Naval Military and Civilian Personnel for Collection of Child Support and Alimony
2. MILPERSMAN 6210120: Support of Dependents
3. USMC - LEGADMIN, CH. 8

B. Basic Expectation: Members of the naval service have natural, moral, and legal obligations to provide **adequate and continuous** support to lawful family members

C. Sanction

1. Failure to support brings discredit on USN / USMC and may lead to:
 - a. Counseling
 - b. Loss of BAQ entitlement
 - c. Garnishment / involuntary allotment
 - d. NJP / court-martial
 - e. Adsep for misconduct (MILPERSMAN 3630600.3)
2. USMC - if no satisfactory action taken in reasonable time, CO will send complaint to CMC, becomes part of official record

D. Problems With Nonsupport Issues

1. DON cannot and will not act as civil court
2. Preferred solution
 - a. Mutual agreement between parties
 - b. Court order
3. Regardless, USN / USMC will take interim measures to assist

E. Processing Formal Complaints

1. Any garnishment orders / involuntary allotment notices must be forwarded to:
 - a. USN - Cleveland
 - b. USMC - Kansas City
2. Member's rights
 - a. Notification - member will be notified within 15 days of receipt by the finance center
 - b. Member has right to consult with judge advocate about involuntary allotment
 - c. Defenses
 - (1) Garnishment - must be addressed to court (SSCRA)
 - (2) Involuntary allotment - can show (within 30 days) through different affidavits that he / she is not delinquent or support order is amended, superseded or set aside

F. "Informal" Nonsupport Complaint Letters

1. Most common form of processing procedures are:
 - a. Interview and counsel member
 - b. State DON expectations
 - c. Advise member that career may be in jeopardy
 - d. Document with a page 13 / 6105 counselling if repetitive
2. Where no court order or mutual agreement - use USN / USMC support scale (see MILPERSMAN 6210120)
3. Command can hold member accountable for failing to respond to counselling and for service-discrediting behavior

G. Exemptions from Spousal Support

1. Occasions where a member may be able to withhold support:
 - a. Court order

- b. Mutual agreement
- c. Waivers by DFAS in Cleveland
 - (1) Desertion without cause
 - (2) Infidelity
 - (3) Physical abuse (USN only)
 - (4) Waivers are unavailable where court order specifically provides for spousal support

H. Exemptions From Child Support

- 1. Spouse misconduct has no effect on member's duty to provide child support
- 2. May withhold only if:
 - a. Court order allows withholdings
 - b. CO has discretion to withhold admin/disciplinary action for alleged failure to provide child support where:
 - (1) Location and welfare of child is unknown
 - (2) Person requesting support does not have physical custody of child
 - (3) Marine has been granted, and is "ready, willing, and able" to take custody, but custody not turned over (USMC only)

PATERNITY COMPLAINTS

A. References

1. MILPERSMAN 6210125
2. USMC - LEGADMIN, CH. 8

B. General Rule:

1. Duty to support dependents applies equally to "illegitimate" children
2. DON cannot / will not make paternity determinations
 - (a) Need court order, or
 - (b) Acknowledgement (affidavit of paternity)

C. Processing Paternity Complaints

1. Summons / court orders
 - a. First question: SSCRA compliance?
 - b. If a final order: advise member to comply regardless of doubt over paternity

D. Paternity Complaint Letter

1. First step: interview and counsel member
2. Does member admit paternity?
 - a. If yes: use support scale to counsel member, advise of duty to pay for prenatal expenses, eligible for BAQ entitlement
 - b. If no: no further action

PROCESSING INDEBTEDNESS COMPLAINTS

A. References

1. DOD - 32 C.F.R. Part 43a - Indebtedness of Military Personnel
2. Navy - MILPERSMAN 6210140
3. USMC - LEGADMINMAN Ch. 7

B. Navy / Marine Corps Policy

1. Servicemembers expected to pay just financial obligations in proper and timely manner
2. Failure = irresponsibility
3. Impact to career:
 - a. Security clearance (duty assignments)
 - b. Adverse evaluations (effect advancement / reenlistment)
 - c. NJP / court-martial (aggravated noncompliance)
 - d. Adsep for "misconduct"

C. LOIs from "Non-Creditors"

1. Rubber checks to supermarket, landlords, etc.
2. Refer matter to servicemember
 - a. Counselling
 - b. Admin warning (Page 11/13)
3. Respond IAW sample letters ("your letter has been referred to servicemember, hope this resolves the issue")
4. Hold servicemember accountable (can't force payment of debt - remedy is admin / disciplinary power command holds)

D. LOIs from "Debt Collectors"

1. Fair Debt Collection Practices Act

2. Debt Collectors may not contact command unless servicemember consented (won't happen) **or** court order (unlikely)
3. Return without action

E. LOIs from "Creditors"

1. Car loans, bank loans, installment contracts
2. Before CO action, creditor must have a court judgment **or** prove both;
 - a. Compliance with Truth in Lending Act (all disclosures made at time of signing)
 - b. Compliance with DOD's "Standard of Fairness"
3. "Standards of Fairness"
 - a. Policy - won't help enforce unfair agreements
 - b. Provisions:
 - (1) No usury (state interest cap)
 - (2) No excessive attorney fees (no fees unless lawsuit filed, then only 20% of outstanding debt)
 - (3) No excessive late charges (5% or \$5, lesser of)
 - (4) No prepayment penalty
 - (5) Right to remove property from state under military orders
4. Creditor must prove:
 - Compliance by submitting the "certificate of compliance" and providing true copy of credit disclosure made to servicemember
5. If not included, return to creditor with explanation of deficiency
6. If creditor includes appropriate documents
 - a. Refer to servicemember
 - b. Counselling
 - c. Admin warning (Page 11/13)

7. Respond to creditor
8. Hold servicemember accountable

F. Judgement Creditor Involuntary Allotments

1. Public Law 103-94
 - a. DOD **shall** promulgate regulations with regard to the involuntary allotment of the pay of a member of the uniformed services for indebtedness owed to a third party as determined by the final judgment of a court."
 - b. Why? Estimated annual defaulted debt of all federal employees - \$1.3 billion
3. DOD Directive 1344.9
 - a. Signed 27 Oct 94
 - (1) USD (P&R) - detail procedure
 - (2) Commence no later than 01 Jan 95
4. NAVADMIN 249/94
 - a. Guidance pending publication of OPNAVINST / MCO
 - b. Involuntary allotment will be processed where:
 - (1) Court judgment is obtained
 - (2) Judgment still valid
 - (3) State law allows taking pay
 - (4) SSCRA compliance
 - (5) Duty did not cause absence
5. Process
 - a. Creditor completes DD Form 2653
 - (1) Copy of court order
 - (20) Sent to DFAS

- b. Package mailed to CO with DD Form 2654
- c. Command delivers to servicemember
 - Due back at DFAS in 90 days
- 6. Member's rights
 - a. 15 days to review
 - b. Consult with military LAO
 - c. Can contest allotment where:
 - (1) SSCRA noncompliance
 - (2) Exigencies of duty caused absence (SSCRA back-up)
 - (3) Information false
 - (4) Judgment satisfied, amended, set aside, or discharged
- 7. Ruling on contested issues
 - a. Military exigency
 - (1) Commanding Officer
 - (2) DFAS bound
 - b. Other grounds
 - DFAS
- 8. Maximum amount of allotment
 - a. 25% of pay **or** maximum % allowed under state law (e.g., RI - can't attach wages of a seaman; TX & SC - limits on garnishment)
 - Allowances **not** included
 - b. "Stacking"
 - (1) 1st come, 1st serve
 - Up to 25%
 - (2) Family support allotments / garnishment take precedent

MENTAL HEALTH REPRESENTATION

I. BACKGROUND

A. Military Whistleblower Protection Act (10 U.S.C. 1034)

1. Enacted in September 1988 to prohibit anyone from retaliating or taking reprisals against servicemembers who disclose information concerning government fraud, waste, and abuse.
2. Examples of reprisals against these whistleblowers were improper referrals for Mental Health Evaluations (MHEs), low evaluations and transfers.
3. Between September 1988 and 24 February 1994, 233 cases of alleged reprisals against whistleblowers were filed. DOD investigated 14 cases alleging the use MHEs as reprisals. Of the 14 cases, two were substantiated and 1 was partially substantiated. 17 other cases involving improper MHEs were pending investigation. (GAO REPORT of 3 Feb 95)

B. References

1. National Defense Authorization Act for Fiscal Year 1993, section 546, P.L. 102-484, (10 U.S.C. 1074) - enacted October 1992.
 - a. Established procedures for referring servicemembers for inpatient and outpatient MHEs
 - b. Set forth rights of service members referred by their commands for MHEs
 - c. Strengthened protection for whistleblowers by prohibiting use of MHEs as reprisals against whistleblowers for making protected disclosures
2. DODDIR 6490.1 of 14 September 1993, Subj: MENTAL HEALTH EVALUATIONS OF MEMBERS OF THE ARMED FORCES
3. SECNAVINST 6320.24 of 14 December 1994, Subj: MENTAL HEALTH EVALUATIONS OF MEMBERS OF THE ARMED FORCES

C. Purposes of SECNAVINST 6320.24

1. Prevent improper referral for MHEs
2. Set objective standards so servicemembers not arbitrarily subjected to MHEs
3. Ensure servicemembers understand their rights in connection with MHEs

D. Applicability

1. All DON civilians
2. Active duty personnel, Regular or Reserve
3. Navy and Marine Corps Reserves on ACDUTRA
4. NAFI personnel, Naval Academy midshipmen, and other personnel employed by DON performing duties in military treatment facilities

E. Two Fundamental Principles of DON Policy

1. No person shall refer a member for a mental health evaluation as a reprisal for making or preparing a lawful communication to a member of Congress, any appropriate authority in the chain of command of the member, an inspector general (IG), or a member of an audit, inspection, investigation, or law enforcement organization
2. No person shall restrict a member from lawfully communicating with an IG, attorney, member of Congress, or others about the member's referral for a MHE

F. Enforceability

1. A person subject to the UCMJ who violates either principle may be punished under Article 92, UCMJ
2. Civilian employees who violate either principle are punishable under other regulations governing civilian disciplinary or adverse actions
3. Violations of other provisions are enforced by timely administrative actions

G. Procedures for MHE Referrals

1. Specify rights of service members referred for an MHE
2. Specify the duties of the CO referring a servicemember for a MHE
3. Specify the duties of Mental Health Professionals (MHPs)
4. Designed to protect servicemembers referred by command for an improper MHE

H. Triggering Event - a "Command Referral"

1. Command referral: A referral of a member to a MHP initiated by member's commander, CO, or OIC or others authorized by CO
2. Delegation of authority to make MHE referrals to another person (MHP, SMO, or Chaplain) does not relieve CO of accountability for actions taken
3. Command control essential

I. Not Considered a Mental Health Referral

1. Patient self-referrals
2. Referrals by outside chain of command health-care providers for routine diagnostic procedures
3. Referrals to non-mental professionals for competence for duty determinations
4. Referrals related to family advocacy programs
5. Referrals related to drug and alcohol rehabilitation programs
6. Referrals to mental health professionals for routine screening evaluations as required by written instruction
7. Referrals related to responsibility and competence inquiries conducted pursuant to Rule for Courts-Martial 706.

J. CO's Responsibilities - Outpatient (Non-Emergency) Referrals

1. **Shall** consult with MHP **before** referral for MHE
 - CO may delegate authority to another but not accountability
2. **Shall** provide servicemember with **written** notice of the referral
3. Inability to consult MHP before referral or provide written notice
 - The CO **shall** prepare a written memo setting forth reasons for not complying such as a need for emergency referral or operational commitments, etc.

K. Written Referral Notice Includes

1. Date and time the MHE is scheduled
2. A brief description of behaviors causing MHE referral
3. The name of the MHP the CO consulted before making the MHE referral
4. The positions and the telephone number of JAG and IG who can assist member who wishes to question referral
5. A copy of the member's rights (a rights sheet)
6. The member's signature acknowledging receipt of written notice of rights

L. Member's Rights & Responsibilities for MHE Referrals on an Outpatient (Non-Emergency) Basis

1. Member may request a judge advocate or attorney employed by DOD to advise on methods of redress
 - Article 138 Complaints, Request Mast etc. . .
2. Member may submit an allegation of improper referral to IG
 - Member may be prosecuted under UCMJ for false allegations

3. Member shall have the right to be evaluated by MHP of own choosing if reasonably available
 - a. MHP of member's own choosing may be DOD or non-DOD employed MHP
 - b. "Reasonably available" means within next ten **business** days
 - c. Member pays for travel, per diem costs for MHE by MHP of own choosing within DOD and all costs for MHE by a non-DOD MHP
4. No person may restrict member's right to contact others about member's referral for MHE
5. In situations other than emergencies, the member shall have **2 business days** before a scheduled MHE to meet with an attorney, IG, chaplain or other appropriate party

M. Mental Health Professional Duties (Non-Emergency)

1. For outpatient MHE referrals, must have a mental health professional assessment by MHP
 - a. Duty to assess purpose of request for MHE referral
 - b. Duty to report improper MHE referrals to medical chain of command
2. Duty to advise member of the purpose, nature and likely consequences of MHE
 - Duty to make clear such MHE lacks confidentiality

N. Requirements for Involuntary Inpatient (Emergency) MHEs

1. MHP must assess whether involuntary inpatient or emergency admission is necessary and proper
 - a. MHP is guided by least restrictive alternative principle
 - b. Emergency / involuntary MHEs should only be used if MHE cannot be reasonably conducted on outpatient basis
2. Inpatient admission made only by psychiatrist, MHP, or physician with admitting privileges

O. Member's Rights if Involuntarily Admitted

1. Member must be informed, as soon as possible, by MHP of
 - a. reasons for evaluation
 - b. nature, purposes and consequences of evaluation or treatment plan
 - c. member's rights
2. Right to contact friend, attorney, IG, or relative as soon as condition permits
3. Right to submit allegation to IG that MHE made in reprisal
4. Right to be evaluated within 2 business days to determine if continued hospitalization is justified
5. Right to be notified orally and in writing the reasons for continued hospitalization
6. Right to have a review within 72 hours to determine appropriateness of continued hospitalization

P. 72 Hour Review Procedure by Independent MHP

1. Independent MHP appointed by (O-5) or higher at military treatment facility (MTF) - normally CO of MTF
 - a. Not a MHP of the multidisciplinary team assigned to member's case
 - b. No grade level restriction on independent MHP to conduct review
2. Duties of independent MHP
 - a. Must inform member of reasons for review
 - b. Must notify member of right to legal representation by JAG or DOD attorney during review or by an attorney of the member's own choosing, at his or her own expense, who is available within a "reasonable time" (3 business days).
 - c. Must determine whether
 - (1) member should be discharged

(2) MHE referral or involuntary admission was improper

d. Report to appointing authority any improper referral

Q. Navy IG - Duty to Report, Investigate and Monitor

1. The Navy IG makes reports to DOD IG of all allegations of improper MHE referrals received by an IG w/in 10 workdays of receipt of such allegations
2. Initiates investigation into allegations of improper MHE referrals
3. Monitors status of investigations and reports outcome to DOD IG

ENVIRONMENTAL LAW - OVERVIEW

I. ENVIRONMENTAL VISION

Navy Recognized as an Environmental Leader While Effectively Executing Naval Operations. Thus, an important part of the Navy's mission is to prevent pollution, protect the environment, and protect natural, historic, and cultural resources.

– Chief of Naval Operations

The Marine Corps is fully committed to strict compliance with all applicable environmental requirements. I consider attainment of our environmental goals paramount to the continued success and future survival of the Marine Corps, our families, and our nation.

– Commandant of the Marine Corps

II. BASIC PRINCIPLES

A. Environmental Law is highly statutory

B. Basic structure of Environmental Regimes

1. Congress identifies a problem and passes legislation
2. EPA establishes basic program through rulemaking
3. Administration of programs and enforcement is typically delegated to the States
 - a. States may set stricter standards
4. Civil and Criminal sanctions ensure compliance
5. For operations outside of U.S., must also consider effect of International Law

6. Service "How To" Guides
 - a. OPNAVINST 5090.1B
 - b. MCO 5090.2
 - c. COMDTPUB 5090.1
7. NAVYREGS 0832
 - a. Cooperate with regulators
 - b. Report compliance issues to chain of command

C. Waiver of Sovereign Immunity

1. States have a large role in setting standards and enforcement
2. There are no automatic National Defense exceptions in the major Environmental Statutes
3. Some statutes are aimed specifically at Federal Agencies (e.g., National Environmental Policy Act)
4. Other statutes contain specific provisions for Federal Facilities (e.g., Clean Water Act)
5. Typical Waivers
 - a. Recordkeeping and reporting requirements
 - b. Permits
 - c. Exercise of Federal, State or Local administrative authority
 - d. Process and "Sanctions"

III. MAJOR ENVIRONMENTAL LAWS:

A. Planning Statutes

1. National Environmental Policy Act (NEPA)
 - a. Designed to interject environmental considerations into government decision-making.
 - b. Requires planning, consultation, public participation.
 - c. Sometimes requires Environmental Impact Statement (EIS)
2. National Historic Preservation Act (NHPA)
 - a. Designed to interject considerations of historic resources into government decisionmaking.
 - b. Requires consultation with State Historic Preservation Officer (SHPO)
3. Coastal Zone Management Act (CZMA)
 - a. Provides for state regulation of coastal development.
 - b. Requires Coastal Consistency Determination (CCD)

B. Preservation Statutes

1. Endangered Species Act
 - a. Prohibits "Taking" of endangered species
 - "harass, harm, pursue, hunt, shoot, wound, kill, trap capture, or collect"
 - and any habitat destruction that could result in killing

2. Marine Mammal Protection Act.

a. Applies to all marine mammals worldwide

b. Prohibits "taking" of marine mammals

- "harass, hunt, capture, collect or kill"

- "harass" includes any "act of annoyance" with potential to injure or disturb

C. Pollution Control and Abatement Statutes.

1. Clean Water Act (CWA)

a. Section 301: Unless specifically permitted the discharge of any pollutant by any person is unlawful

b. Oil Spills

(1) Must have spill contingency plans.

(2) Must report spills to National Response Center (NRC)

2. Clean Air Act (CAA)

a. Control of Specific Pollutants

(1) Criteria Pollutants

-Ozone

-Sulphur Dioxide

-Nitrogen Oxides

-Carbon Monoxide

-Small Particulate Matter

-Lead

(2) Hazardous Air Pollutants

-Requirement to use compliant paints, solvents, etc.

(3) Ozone Depleting Substances

-Stringent maintenance, and training requirements.

3. Resource Conservation and Recovery Act (RCRA)

- a. "Cradle to Grave" Tracking of Hazardous Waste
- b. Requirement for proper containers, labeling, record-keeping, etc.

D. Restoration Statutes

1. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (Superfund)
2. Defense Environmental Restoration Program (DERP)
 - (1) Installation Restoration Program (IRP): Navy and Marine Corps.
 - (2) Restoration Advisory Boards (RAB's)

V. LIABILITY

A. Agency Liability

1. EPA and State Sanctions
2. Citizen Suits
3. In all cases: Contact Regional Environmental Coordinator

B. Personal Liability - Civil

1. Injunctions and money damages.
2. Statutory protection in major statutes for those acting within scope of employment

C. Personal Liability - Criminal

1. Criminal prosecution at Aberdeen Proving Ground:
new emphasis on criminal enforcement.
2. Prosecutorial discretion
 - a. Will consider voluntary disclosure, cooperation, compliance and audit programs, etc.

VI. Avoiding liability

A. Regional Environmental Coordinator (REC)

1. Coordinate environmental matters
2. Ensure consistent positions, permit conditions, etc.
3. Support staff includes Environmental Counsel

B. Good relationship with regulators (NAVREGS 0832)

C. Environmental Compliance Inspection

1. Annual Self Audit
2. ISIC Evaluation
3. INSURV or IG Inspection

D. Training of personnel

E. Document Efforts

F. Reporting Requirements

1. NAVYREGS 0832, OPNAVINST 5090.1B, MCO 5090.2
2. When in doubt - Report

G. Personal involvement throughout chain of command

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

PROBLEM I

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

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

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

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

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

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

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

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

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

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

PROBLEM II

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

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

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

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

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

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

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

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

PROBLEM III

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

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

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

Consider:

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

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

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

PROBLEM IV

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

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

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

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

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

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

SENIOR OFFICER COURSE

SENTENCING SCENARIOS

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

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

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

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

Maximum punishment:

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

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

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

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

Maximum punishment:

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

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

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

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

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

Maximum punishment:

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

SENTENCING WORKSHEET

CASE ONE (UA SPCM)

BCD _____

To be confined for _____ months

To forfeit \$ _____ per month for _____ months

To be reduced to E- _____

Other lawful punishment _____

CASE TWO (DRUG LARCENY SPCM)

BCD _____

To be confined for _____ months

To forfeit \$ _____ per month for _____ months

To be reduced to E- _____

Other lawful punishment _____

CASE THREE (MOLESTATION GCM)

DD OR BCD _____

To be confined for _____ years / months

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

To be reduced to E- _____

Other lawful punishment _____

NOTES:

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