

LEGAL GUIDE FOR COMMANDERS

HEADQUARTERS, DEPARTMENT OF THE ARMY

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LEGAL GUIDE FOR COMMANDERS

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Preface

This manual is a guide to military law for company commanders--officers and noncommissioned officers. It will acquaint you with military law as reflected in military justice, administrative law, and personal rights, responsibilities, and restrictions. It outlines basic responsibilities and daily procedures for administering military justice and administrative law in the unit. It will assist you in safeguarding the personal and civil rights of the soldiers under your command.

The "Powell Report" on the Uniform Code of Military Justice stresses military law's role of maintaining discipline in the Army:

Discipline— a state of mind which leads to a willingness to obey an order no matter how unpleasant the task to be performed— is not characteristic of a civilian community. Development of this state of mind among soldiers is a command responsibility and a necessity. In the development of discipline, correction of individuals is indispensable; in correction, fairness or justice is indispensable. Thus, it is a mistake to talk of balancing discipline and justice— the two are inseparable.

Once a case is before a court-martial, it should be realized by all concerned that the sole concern is to accomplish justice under the law. This does not mean justice as determined by the commander referring a case or by anyone not duly constituted to fulfill a judicial role. It is not proper to say that a military court-martial has a dual function as an instrument of discipline and as an instrument of justice. It is an instrument of justice, and in fulfilling this function it will promote discipline.

(Powell Report: Report to Honorable Wilbur M. Brucker, Secretary of the Army, 1960)

This manual is more useful in a loose-leaf binder, enabling you to file local forms and directives with it. You may find that local directives will modify some procedures in this guide. Direct questions about this material to the local staff judge advocate office.

The proponent of this publication is The Judge Advocate General's School, US Army. Send comments and recommendations on DA Form 2028 to Commandant, The Judge Advocate General' School, US Army, ATTN: JAGS-ADA, Charlottesville, VA 22903-1781.

Unless this publication states otherwise, masculine nouns and pronouns do not refer exclusively to men.

MILITARY JUSTICE

CHAPTER 1

Military Criminal Law**SOURCES OF AUTHORITY**

The military justice system derives its authority from three major sources:

- The Uniform Code of Military Justice (UCMJ).
- The Manual for Courts-Martial (MCM).
- Army Regulation (AR) 27-10.

The UCMJ is a federal law and the basis of our military justice system. It determines what conduct is criminal, establishes the various types of courts, and sets forth the procedures to be followed in the administration of military justice. You can find the UCMJ in Appendix 2 of the MCM, United States, 1984 or in 10 United States Code (USC) §§801-940.

The MCM is an executive order that details the rules for administering military justice. For example, it sets forth the rules of evidence for courts-martial and contains a list of maximum punishments for each offense. Each company-size unit should have a copy of the MCM.

AR 27-10 supplements the MCM and is the basic Army regulation for administering military justice.

ROLE OF COMMANDERS

As company commanders, you are responsible for both enforcing the law and protecting soldiers' rights. Their discipline and morale may depend on how wisely you exercise your authority.

The military justice system needs adequate administrative support to work effectively. As a company commander, when you forward charges your involvement in a case does not end. In addition, you must ensure that the accused appears at all proceedings in a clean, proper uniform. You may also be required to provide witnesses, vehicles, drivers, escorts, and bailiff's from your unit. Military witnesses are especially

important to the success of a proceeding. A court may dismiss a case when a witness is not available. **Under no circumstances will you interfere with an accused's right to present witnesses at a court-martial or with the testimony of any witness.** (See UCMJ, Article 37.)

RIGHTS OF SOLDIERS

The military justice system provides for certain fundamental rights and safeguards that must be considered in any case involving criminal conduct.

Presumption Of Innocence

Under our legal system, everyone is presumed innocent until a court finds them guilty beyond a reasonable doubt. A court may make a fair and just decision only after it has heard all the evidence relating to the guilt or innocence of an accused.

Counsel

Laws prohibit compulsory self-incrimination and provide that anyone suspected of committing a crime has the right to consult with a lawyer. Congress realized that soldiers may not understand their rights and may be intimidated by the mere presence of a superior. Therefore, under military law no one may question a suspect without first determining that the suspect understands the nature of the offense, the right to remain silent, and the right to counsel.

If interrogators violate these rights, the evidence obtained may not be used against the accused. You must protect your unit members' rights and preserve the government's case by ensuring that your subordinate commanders understand and comply with UCMJ, Article 31, and right-to-counsel requirements.

Search and Seizure

The United States Constitution protects every citizen from unreasonable searches and seizures; however, the right to privacy is not absolute. Courts have balanced individuals' rights against society's needs and have established rules for determining when a search is reasonable. The evidence obtained from unreasonable searches may not be used in a trial. This discourages indiscriminate invasion of privacy by government officials. **Under military law, you may authorize searches if you determine such searches will not violate soldiers' rights. However, a court-martial may well review your decisions.**

Prompt Action

The Sixth Amendment to the Constitution and UCMJ, Article 10, guarantee the right to a speedy trial. The accused soldier has the right to be advised of the charges against him as early as possible. Normally, the accused must come to trial within 120 days of either arrest or preferral of charges, whichever is earlier. An accused may not remain in continuous pretrial confinement more than 90 days for the same or related charges. (See MCM, Chapter VII, Rule for Courts-Martial 707, Analysis.) A speedy trial assists both the government and the accused. Testimony given soon after an incident is more reliable than that given after a long period. Also, witnesses are likely to leave the area during a delay.



The Court-Martial System

PROCEDURE

Justice is the goal of the court-martial system. As in all American criminal courts, courts-martial are adversary proceedings. That is, lawyers representing the government and the accused present the facts, legal aspects, and arguments most favorable to each side. In doing so, they follow the rules of procedure and evidence. Based upon these presentations, the judge decides questions of law. The court-martial members apply the law and decide questions of fact. Only a court-martial can determine innocence or guilt. General and special court-martial convictions are equivalent to federal court convictions.

At a court-martial, the trial counsel represents the government, and the defense counsel represents the accused. Each counsel is duty-bound to do everything possible within the law to represent the client's interests. Our country's policy is to ensure that each soldier charged with a crime has an opportunity to present the best possible defense. This system allows all issues to be brought before the court so that it may make a just decision.

Determination Of Criminal Conduct

A crime is an act for which the law provides a penalty. Violations of Army regulations, state and federal laws, and the orders of superiors may constitute criminal conduct punishable under the UCMJ. You can resolve any question of what constitutes criminal conduct under the UCMJ by calling your staff judge advocate or trial counsel. A soldier's conduct may be substandard or personally offensive without being criminal.

Relations With Staff Judge Advocates

Staff judge advocates are lawyers for their commands. Their responsibility is to administer criminal justice and advise court-martial convening authorities. Staff judge advocates provide professional guidance and assist ante in criminal cases at all levels. The two types of court-martial counsel are trial counsel and defense counsel.

TRIAL COUNSEL

The trial counsel is the prosecutor, a key individual in the court-martial process. The trial counsel is responsible for witnesses, documents, and all the other arrangements related to the trial. Your establishment of a good relationship with the trial counsel early in a case can prevent unnecessary delay. Your cooperation is essential to the complete presentation of the government's case.

DEFENSE COUNSEL

The defense counsel, generally assigned to the Trial Defense Service, is also a key individual in the court-martial process. The defense counsel is the accused's representative and acts solely on the behalf of the accused. The defense counsel is required by law and ethics to present the best defense possible. This includes determining the facts and sometimes recommending rehabilitation for a soldier,

TYPES OF COURTS-MARTIAL

The court-martial system consists of three types of courts-martial: **a summary court-martial, a special court-martial, and a general court-martial.**

Summary Court-Martial

A summary court-martial (SCM) is a court composed of one officer who may or may not be a lawyer. (See MCM, Chapter XIII, R.C.M. 1301-1306.) The SCM handles minor crimes and has simple procedures. The maximum punishment, which depends upon the rank of the accused, is limited to confinement for one month, forfeiture of two-thirds pay for one month, and reduction in grade. (See MCM, R.C.M. 1301(d) for allowable punishments.) An SCM may not try an accused against his will. If he objects, you may consider trial by a higher court-martial. The accused does not have the right to military counsel at an SCM.

Special Court-Martial

A special court-martial (SPCM) consists of a military judge, at least three court members (unless the accused chooses to be tried by a military judge alone), a trial counsel, and a defense counsel. The maximum sentence is

confinement for six months, forfeiture of two-thirds pay per month for six months, and reduction to the lowest enlisted grade. (See MCM, R.C.M. 201(f)(2)(B).)

The SPCM convening authority may authorize the SPCM to adjudge a bad-conduct discharge (BCD) as part of its maximum sentence. This proceeding is known as a BCD SPCM. It differs from an ordinary SPCM in that a verbatim court reporter is required. If a BCD is adjudged, a verbatim record of trial is required, and the accused has a right to an automatic appeal to the Army Court of Military Review.

General Court-Martial

A general court-martial (GCM) tries the most serious offenses. It consists of a military judge, at least five members (unless the accused elects to be tried by a military judge alone), a trial counsel, and a defense counsel; the counsel must be lawyers. Unless waived by the accused, a formal investigation must occur before a general court-martial may try the case. (See UCMJ, Article 32.) The GCM may adjudge the most severe sentences authorized by law, including dishonorable discharge. (See MCM, Part IV and Appendix 12.) In both GCMs and SPCMs, an enlisted accused may request that at least one-third of the court be enlisted soldiers.

DISPOSITION

You may not understand why a court imposes a particular sentence. A court may hear evidence not known to you, or information available to you may not be presented or admissible at trial. The court-martial is responsible for setting the sentence. The members determine a sentence based on evidence, and it must best serve the—

- Ends of good order and discipline in the military.
- Needs of the accused.
- Welfare of society.

With these goals in mind, become familiar with the background of the offense and the offender in determining the disposition of the case.

A minor offense does not merit severe punishment and may often be best handled by the commander under the provisions of UCMJ, Article 15, or by administrative means. A more serious offense may warrant a court-martial. You must consider all factors of the offense.

The performance of an accused in the civilian and military communities often shows his character and potential for rehabilitation. You should generally treat a first-time offender more leniently than you would a repeat offender. If you talk to his supervisors and review his personnel records, you may be better able to decide what action will most benefit him and the Army. For example, if you consider the offense to be serious but do not believe the accused should be punitively discharged, you may recommend trial by a court-martial with no authorization to impose a punitive discharge.

REVIEW AND APPEAL

The convening authority must review and approve each court-martial conviction. The convening authority may disapprove the finding of guilty or reduce the sentence. After the convening authority's action, the next step depends on the sentence. If the soldier received a punitive discharge or confinement for one year or more and has not waived appellate review, the Army Court of Military Review (ACMR) in Washington, DC, automatically reviews the case. Senior judge advocate officers sit on the ACMR. If they reject the soldier's appeal, he may further appeal the case to the United States Court of Military Appeals (CMA), also in Washington DC, which consists of five civilian judges. Finally, if CMA rules against him, the soldier may ask the United States Supreme Court to hear the case.

The Preliminary Investigation

REPORT OF OFFENSE

Anyone may report an offense by a soldier to the local civilian police, the military police, or the unit commander. If the soldier commits an offense off post, the civilian police will usually investigate. Military police normally investigate on-post offenses. If an offense is minor, such as a soldier disobeying an order or being late for unit formation, a unit NCO or officer will report it to the unit commander. As the company commander, you must conduct a preliminary investigation and make the initial decision about how the case should be handled, no matter how the command reviews the information.

You must ensure that all reported offenses are quickly and thoroughly investigated. You may conduct the preliminary inquiry yourself or direct someone else to do so. (See MCM, R.C.M. 303.) In serious or complex criminal cases, you should seek the help of law enforcement personnel. When collecting information that may prove or disprove allegations of misconduct, investigators should ask three primary questions:

- Was an offense committed?
- Was the suspect involved in the offense?
- What is the character and military record of the suspect?

Investigators must always remain impartial. A one-sided investigation may result in an injustice to the accused and an embarrassment to the command.

Preliminary investigations are usually informal, consisting of interviews with witnesses and reviews of police reports. Investigations must provide a thorough, factual foundation for determining what happened and what should be done. Preliminary investigations should not be confused with UCMJ, Article 32 investigations, which require sworn charges. Nor should they be confused with the procedures for administrative investigations addressed in AR 15-6.

Once a preliminary investigation is complete, you must do one of the following:

- Take no action.
- Take nonpunitive disciplinary action.
- Impose nonjudicial punishment under UCMJ, Article 15.
- Prefer court-martial charges against the accused and forward them up the chain of command with a recommendation for appropriate action.

STATEMENTS OF SUSPECTS AND WITNESSES

Investigations may be complicated or simple. Not all cases will require formal statements; in simple cases, you may find sufficient facts without written statements. You must investigate the circumstances of alleged crimes and examine the facts relevant to the case. You should ensure that all witnesses and suspects are interviewed. Interviews should be fair and prompt. Before questioning, you must advise suspects of their rights under UCMJ, Article 31, and of their right to counsel.

A confession or admission by a suspect without a proper rights warning will not be admissible in a court-martial. A court, however, may still convict an accused because of other evidence of guilt that is admissible. **Failure to warn does not mean automatic acquittal; it means that the admission may not be presented to a court-martial.** (See MCM, 305, Military Rule of Evidence.)

After receiving the warning, a suspect may waive the right to remain silent and the right to consult a lawyer. He must waive these rights freely, knowingly, and intelligently. If a suspect indicates that he wishes to consult a lawyer, he should not be questioned until a lawyer is made available. The installation Trial Defense Service office will provide a military lawyer. If the

suspect indicates that he does not wish to answer questions, no questions should be asked. If he waives his rights, he may then be questioned about the offense.

In any case, your manner should not lead suspects to believe they are being threatened. Neither should it play down the importance of the warning. If you do either of these, a court-martial may determine that the suspect's agreement to answer questions was in response to coercion or improper inducement. The judge would then find the statement not admissible in the trial. You may decide not to question a suspect if other adequate evidence is available.

Rights Warning Statement

You need not give a rights warning to witnesses who are not suspects. During the questioning, you may, however, begin to suspect that a witness was involved in an offense. The witness may appear to have been an accomplice or an accessory to the crime. You should then stop the questioning, inform the witness of the offense of which you now suspect him, and warn him of his rights as previously described. DA Form 3881 provides a convenient format to apprise individuals of their rights, and you should complete it before questioning a suspect.

Written Statement

A sworn statement is the best way to record accurately and completely information obtained in an investigation. UCMJ, Article 136, authorizes investigating officers to administer oaths in conjunction with sworn statements taken in the course of a preliminary investigation.

No special form is required; however, the investigating officer may use DA Form 2823 for a witness's statement. He should use the language of the witness or suspect throughout the statement, even if the language is vulgar. Doing so ensures that the statement is the witness's and not the composition of the investigating officer. The statement may be narrative, questions and answers, or both.

The following is an appropriate oath for administering and completing the sworn statement:

Do you swear that the statements you have made are the truth, the whole truth, and nothing but the truth?

The witness should sign his name, and the officer administering the oath must then sign his own name.

You should request sworn statements primarily from persons who have direct, personal knowledge of the facts. For example, if Sergeant A provided the information to the witness, you should try to get a sworn statement from Sergeant A. Opinions and conclusions without supporting facts, however, reduce the reliability of sworn statements. You should try to get the facts on which opinions are based and encourage witnesses to provide facts rather than opinions. In each case, the witness should sign the written statement and initial it at the beginning and at the end of each page, at each erasure and correction, and at the places otherwise indicated on DA Form 2823. The initials are to avoid any question of tampering.

Oral Statement

When a suspect waives his rights under Article 31 and his right to counsel but refuses to make a written statement, you should record his remarks. Oral statements may be admissible in a trial by court-martial. A suspect may make a statement about his part in an offense to a person not investigating the case, or he may blurt it out to you before he receives the rights warning. The information he provides may be admissible in a trial by court-martial as well.

LAWFUL SEARCHES AND SEIZURES

You may lawfully seize soldiers' property in their units after a legal search, inspection, or inventory. An unlawful search may violate a soldier's rights and result in seized items being inadmissible in a court-martial.

Searches

PROBABLE CAUSE TO SEARCH

You may direct a search of any person or property in a place under your control only if you have probable cause. You may authorize searches in your company areas, but only post commanders may authorize searches or apprehensions in government quarters. (See MCM, 302, Military Rule of Evidence and MCM, R.C.M. 315.) Probable cause to search requires both of the following:

- You have a reasonable belief that evidence of the crime is on the person or at the place you plan to search.
- The information and its source are reliable.

You must have more than a suspicion, but you need not have absolute proof. In other words,

The following examples are situations in which you would have probable cause to search.

Example 1

A reliable person informs you that he saw the suspect earlier that night with hashish. You trust the informant because of his past association with you. You also know the information is accurate because the informant saw the incident himself. You authorize a search of the suspect's person.

This search is lawful. You knew both the informant and his information to be reliable.

Example 2

A person whose reliability is unknown to you informs you that the suspect is a drug pusher. The informant tells you that the accused has told him that he is going to Metropolis to make a "buy," he will return by train at 1900 or thereabouts, he will be carrying a brown suitcase, and he will go to room 213 in the barracks to make his sale. You advise the CID of these facts, and they in turn place the depot under surveillance. At 1900, the suspect steps off a train arriving from Metropolis. He is carrying a brown suitcase. He immediately takes a taxi to the barracks and goes directly to room 213. The CID advises you of these facts, and you authorize a search, which produces a large quantity of drugs.

probable cause lies between suspicion and knowledge. You must conclude on the basis of information presented to you that the contraband or evidence of a crime is at that time likely to be in the possession of the suspect or on the premises to be searched. Your determination that probable cause exists must be reasonable and based on facts. It may not be based solely on others' conclusions. A CID agent's, first sergeant's, or informant's awareness of sufficient facts to provide probable cause is unimportant unless the commander who orders or authorizes the search receives those facts. That commander must believe the person furnishing the information and the information are reliable before probable cause can exist.

The search is lawful. Although you had no prior knowledge of the informant's reliability, so much of the information he supplied proved to be correct, you had good reason to believe that the rest of the information was also reliable.

Military judges and magistrates may also issue warrants to search suspects and property subject to military control, also upon a showing of probable cause. (See MCM, Mil. R. Evid. 315.) When time permits, information supporting an authorization should be provided under oath or affirmation and in writing.

Since the law concerning probable cause is often difficult to apply, you should consult a judge advocate before authorizing a search. Doing so will not only help you avoid unlawful searches and protect soldiers' rights, but will also ensure that physical evidence will be admissible in a court-martial. Appendix A shows a completed affidavit requesting authorization to search. Appendix B shows a written search authorization. The military, however, has no requirement that either the request or the authorization be in writing.

NO PROBABLE CAUSE TO SEARCH

The following paragraphs address searches that do not require probable cause to be lawful.

Searches incident to lawful apprehension.

A soldier maybe searched when and where he is legally apprehended. (See Apprehensions, page 3-14.) Such a search is to discover weapons and prevent destruction of evidence. The search is limited to the soldier's person and the area within his immediate control. For example, the area within his immediate control might include an open wall locker within reach, but it might not include the entire room. However, a complete search of the passenger compartment of an automobile is permissible, even if the apprehended soldier has been removed from the vehicle and cannot return to it.

Searches of government property. A search of government property does not require probable cause unless the person to whom the property is assigned or issued has a reasonable expectation of privacy. Generally, a person does not have a reasonable expectation of privacy in regard to government property that is not issued for personal use. (See MCM, Mil. R. Evid. 314(d).)

Searches by consent. Probable cause is not necessary when a person freely consents to the search. Because consent is a waiver of the Constitutional right of freedom from unreasonable searches, the government must be able to produce clear and convincing evidence that the consent was voluntary and not a submission to authority. You should have a witness to a soldier's consent to a search. If the consent becomes an issue at a trial, the witness can verify its nature. If the search then uncovers evidence of criminal conduct, the evidence will be admissible at a trial. (See MCM, Mil. R. Evid. 314(e).)

To establish voluntary consent, the suspect should be informed of both of the following:

- The legal right to withhold consent.
- The fact that any evidence found during the search can be used against the suspect.

The following examples are situations lacking probable cause to search.

Example 1

A CID agent calls you and states that he has apprehended one of your soldiers at the railroad station with marijuana on his person. The agent requests authority to search the suspect's living area. Based solely on this information, you authorize a search of the suspect's wall locker, where the agent finds more marijuana.

The search is unlawful. You had no evidence from which to reasonably conclude that the suspect had marijuana in his wall locker, which is located some distance from his place of apprehension. You must have more than mere suspicion.

Example 2

A reliable person informs you that three weeks ago he saw marijuana in the suspect's footlocker. Based solely on this information, you authorize a search of the suspect's footlocker.

This search is also unlawful. Since the reported possession was far removed in time, you had no valid reason to believe that the suspect still had any marijuana. Your being told that the suspect was seen with marijuana in his footlocker that same day would constitute probable cause and be a basis for a lawful search.

Example 3

A larceny occurs in the barracks, and \$500 and a dress are reported missing. Three days later, Private Smith, the victim's roommate, buys a stereo from the post exchange for \$350. The victim, suspicious of her roommate, informs you. Based solely upon this information, you authorize a search and discover \$200 and the dress in Private Smith's wall locker.

The search is unlawful. Suspicion alone does not constitute probable cause. You should have continued the investigation until more information was uncovered, such as a report that another soldier had seen the victim's dress in the suspect's wall locker.

Seizures

Evidence in open view or in a public area such as a dayroom or an open field may be lawfully seized without probable cause and without consent. (See MCM, Mil. R. Evid. 314(j).)

The Fourth Amendment prohibits unreasonable seizure of the person. An unreasonable seizure may result in the evidence being inadmissible in a court-martial.

CONTACTS AND STOPS

Every contact between an official and soldier is not a detention and therefore subject to the Fourth Amendment. Many contacts do not result from suspicion of criminal activity. Examples of lawful contacts include questioning witnesses to crimes and warning pedestrians that they are entering a dangerous neighborhood. These types of contacts are entirely reasonable, permissible, and within the normal activities of law enforcement personnel and commanders—they are not detentions in any sense.

Officers, NCOs, and MPs may initiate contact with persons in any place they are lawfully situated. It is difficult to define when a person is lawfully situated. Generally, this includes inspecting the barracks, making a walk-through of the barracks or unit area, and presence in any place for a legitimate military purpose.

An officer, NCO, or MP who reasonably suspects that a person has committed, is committing, or is about to commit a crime has the obligation to stop that person. He may stop both pedestrians and vehicle occupants. If the person stopped is a suspect to be questioned, the official should read him or her Article 31 and the counsel warnings. The stop must be based on more than a hunch. The official making the stop should be able to state specific facts to support the decision to stop an individual.

APPREHENSIONS

Any officer, warrant officer, noncommissioned officer, or military policeman may apprehend individuals with probable cause. Probable cause

to apprehend requires the following:

- A reasonable belief that a crime is being committed or has been committed.
- A reasonable belief that the person being apprehended is guilty of a crime.

An example of probable cause to apprehend is when you or another reliable person have seen someone violate UCMJ, such as using marijuana, assaulting someone, breaking another's property, or being drunk and disorderly. Probable cause requires a common sense appraisal of all available facts and circumstances.

You may apprehend a soldier anywhere and any time; the only limitation is that you must have probable cause. To do so, you should identify yourself as an officer and show your ID card if you're not in uniform. Tell the soldier you are apprehending him and explain the reason, such as disorderly conduct, assault, or possession of marijuana. You may use help. Read the soldier his Article 31 rights, preferably from a rights warning card, as soon as practicable. If the soldier resists apprehension by running away or assaulting you, enlist others to help catch him; he may be prosecuted for resisting apprehension or disobeying an order. You may detain civilians until military or civilian police arrive.

Generally, with probable cause, no arrest warrant is required in the military. There is one important exception, however: **a warrant is required for any apprehension in a private dwelling, such as on-post family quarters, the BOQ or BEQ, or off-post quarters.** The barracks and field encampments are not considered private dwellings; therefore, no special authorization is needed to apprehend someone there.

If the person to be apprehended is in a private dwelling, the apprehending officer must get authorization from a military magistrate or the commander with authority over the private dwelling (usually the installation commander). Also, to apprehend a person at off-post quarters requires coordination with civilian authorities.

INSPECTIONS

Search and seizure requirements do not limit your authority to conduct inspections. The primary purpose of inspections is to ensure the unit's security, military fitness, and order and discipline. Orders for urinalyses are a permissible part of a valid inspection. An inspection can include an examination to locate and confiscate unlawful weapons or contraband as long as the inspection is not a pretext for a search; that is, the primary purpose of an inspection cannot be to obtain evidence for use in a trial or other disciplinary proceeding.

An inspection for weapons or contraband may not be proper if any of the following occurs—

- The inspection immediately follows a report of a specific offense in the unit and was not scheduled before the report.
- Specific individuals are selected for inspection.
- Persons inspected are subjected to substantially different intrusions.

Such an inspection is proper only if the government presents clear and convincing evidence that the primary purpose was to ensure security, military fitness, or order and discipline and not to secure evidence for a trial or disciplinary proceeding. Evidence disclosed during a legitimate inspection may be seized and admitted at a court-martial. (See MCM, Mil. R. Evid. 313.)

INVENTORIES

When a soldier is absent without leave, is about to be confined, or is being detained by civilian authorities, an inventory of that soldier's personal belongings is required. As with an inspection, an inventory may not be a pretext for search. Evidence obtained as a result of a lawful inventory is admissible in a court-martial. (See MCM, Mil. R. Evid. 313.)

COOPERATION WITH POLICE INVESTIGATORS

You should coordinate with military police and CID investigators for several important reasons. The offense may be more serious than you realize. If it is complicated, sophisticated investigative techniques may be necessary.

They may include lineups, fingerprinting, expert interrogation, or laboratory analyses. Also, the offense may be one of a series of crimes currently under investigation.

ARs 190-30 and 195-2 require you to report criminal activity, known or suspected, to the military police for appropriate investigation. This requirement applies to persons subject to the UCMJ, Department of Defense civilian employees in connection with their assigned duties, government property under Army jurisdiction, or incidents occurring in areas under Army jurisdiction.

PRESERVATION OF PHYSICAL EVIDENCE

You must preserve and safeguard in your custody any physical evidence of an offense. As few people as possible should handle it; everyone who touches it may have to appear at the trial. Physical evidence must be carefully marked, to ensure later identification, and recorded on a chain-of-custody document. (See AR 195-5.) The chain-of-custody document, such as DA Form 4137, is a record of everyone who has handled an item from when it was originally identified as evidence until the trial. Physical evidence should then be turned over to professional investigators as soon as possible.

Perishable and unstable evidence requires special attention for preservation. Sometimes professional assistance is necessary, for example, to preserve a fingerprint or a tire track. The military police can usually assist.

The first person to assume custody of the physical evidence marks it immediately. This person may mark the item itself, usually with his initials, the date, and the time. If the evidence cannot be marked, he should place it in a sealed, marked container. The container must be tamper-proof or sealed to show an absence of tampering. When physical evidence is introduced at trial, counsel must show that it is the same item found at the scene of the crime or otherwise connected with the offense and is unaltered.

PRETRIAL CONFINEMENT

While charges are being processed, you may need to confine or restrict the suspect. Pretrial confinement is limited to persons reasonably suspected of a serious offense and in which it is necessary to ensure their presence at trial or to prevent them from committing other offenses. In determining whether confinement is appropriate, you should remember that it deprives the accused of liberty while he is presumed innocent and makes his defense preparations difficult. Your convenience is not enough to justify curtailing a soldier's freedom, and you may not use it as punishment. Also, an accused will receive day-for-day credit for his confinement against the adjudged sentence.

Grounds for pretrial confinement are the accused's foreseeable, serious criminal misconduct or risk of his absence before trial. Serious criminal misconduct includes-

- Intimidation of witnesses.
- Obstruction of justice.
- Serious injury to others.
- Serious threats to the safety of the community.

When a soldier is placed in pretrial confinement, he must be informed of-

- The nature of the offenses for which he is confined.
- His right to remain silent and that anything he says maybe used against him.
- His right to request counsel and to retain civilian counsel at no expense to the government.
- The procedures for review of pretrial confinement.

Developments in military decisional law and requirements for magisterial review have made pretrial confinement considerations increasingly complex. If you consider confinement necessary, consult with the staff judge advocate, the chief of military justice, or the trial counsel.(See MCM, AR 27-10, and AR 600-31.)

Types of confinement include—

- **Conditions on liberty.** Under this type of restraint, a soldier may be required to avoid certain activities, places, or people. A speedy trial is not gauged against the imposition of conditions on liberty.
- **Restriction.** Under this type of restraint, the accused is directed to remain within specified limits but ordinarily performs regular duties. Imposition of restriction starts the 120-day limit required for a speedy trial.
- **Arrest.** This type of restraint is much like restriction, but the soldier ordinarily does not perform his regular duties. Arrest starts the 90-day limit required for a speedy trial.
- **Confinement.** Confinement is a full, physical restraint in a confinement facility. It starts the 90-day limit for a speedy trial.

You must review any pretrial confinement within 72 hours and prepare a memorandum justifying it. This normally occurs prior to placing a soldier in confinement. Within 7 days, a neutral reviewing officer (usually a military judge or judge advocate) will review your confinement justification. The accused may present testimony to the reviewing officer and may also ask the military judge to review the confinement at trial. (See MCM, R.C.M. 305.)

Nonjudicial Punishment

PROVISIONS OF UCMJ, ARTICLE 15

Under the provisions of UCMJ, Article 15, commanding officers may impose nonjudicial punishment upon soldiers who commit minor offenses within their units. These soldiers include commissioned officers, warrant officers, and other soldiers whether attached or assigned. Nonjudicial punishment is not the same as nonpunitive disciplinary measures, which Chapter 2 of this manual discusses.

To be punished under an Article 15, soldiers must violate the UCMJ, that is, their conduct must be criminal. However, the crime must be minor in order for nonjudicial punishment to be appropriate. Ordinarily, if the accused is tried by general court-martial, a minor offense does not include misconduct that is punishable by dishonorable discharge or confinement for more than one year. All circumstances surrounding the offense and the personal history of the offender should be considered.

AUTHORITY TO IMPOSE AN ARTICLE 15

Any commanding officer, including a warrant officer in command, may impose an Article 15 unless a superior commander has restricted or withheld the authority to do so. For example, general officers in command often reserve to themselves the authority to impose nonjudicial punishment upon their officers. Only commanding generals and general court-martial convening authorities may delegate Article 15 authority. In no case may noncommissioned officers impose nonjudicial punishment, even on behalf of commanders.

Company grade officers in command may impose nonjudicial punishment as outlined in Table 1, shown on the next page. If a company grade officer does not feel that company grade punishment is adequate for an offense, he should forward the case to the field grade commander with a request that the field commander exercise authority under the provisions of UCMJ, Article 15. The company grade commander may not, however, recommend what punishment the offender should receive.

A field grade officer may return a case to a company grade officer for disposition. In no case may a superior direct that a subordinate commander take action under Article 15, nor may the superior dictate to a subordinate the type of punishment to be administered under Article 15. A field grade officer in command may impose punishment as outlined in Table 1.

CONDUCT OF AN ARTICLE 15

Before taking action under Article 15, you must be satisfied that the misconduct was a UCMJ offense and that an Article 15 is appropriate in view of the soldier's record. To determine if a crime has been committed, consult the subparagraphs under the appropriate punitive article in the MCM, Part IV.

Summarized Proceedings

You may use summarized proceedings when dealing with the misconduct of your enlisted soldiers. Punishment under summarized procedures will not exceed 14 days of restriction, 14 days of extra duty, an oral reprimand or admonition, or any combination of these. An imposing commander or a designated subordinate (officer or noncommissioned officer in the pay grade of E7 or above) will inform the accused—

- Of the nature of the alleged offenses and the UCMJ articles violated.
- Of the intent to use summarized proceedings under UCMJ, Article 15.
- Of the maximum punishment.
- That he has the right to remain silent.
- That he has the right to demand trial.
- Of the consequences of a demand for trial. (See MCM, Part V, paragraph 4a(5) and DA Form 2627-1, note 3.)
- That he has the right to confront witnesses, examine adverse evidence, and submit matters in defense, extenuation, and mitigation.
- That he has the right to appeal.

The accused must have reasonable time (normally 24 hours) to decide whether to demand trial or gather matters for defense, extenuation,

and mitigation. He has no right to consult with legal counsel or to have a spokesperson at the proceedings. He also may not request an open hearing.

Summarized proceedings are legibly recorded on DA Form 2627-1, which will remain in the local unit personnel files for two years or until the soldier transfers out of the unit, whichever occurs first.

Formal Proceedings

Formal proceedings for an Article 15 under UCMJ begin with the initial notification and conclude with the appeals process.

NOTIFICATION

AR 27-10, Appendix B, contains a guide for nonjudicial punishment proceedings. Your first step in conducting an Article 15 is to notify the soldier both orally and in writing. You or your designated subordinate (officer or noncommissioned officer in the grade of E7 or above) must inform the soldier of your intent to initiate the process. The initial notification must include a brief statement of the offense. Describe the offense to the soldier in simple language and then record your discussion in items 1 and 2 of DA Form 2627. Use the model specification forms in MCM, Part IV, to draft item 1 on the form. You must also tell the soldier the maximum punishment that he could receive under Article 15.

**TABLE 1. MAXIMUM NONJUDICIAL PUNISHMENTS UNDER ARTICLE 15
(Formal Proceedings)**

| Commanding Officer | Admonition or Reprimand | Restriction | Extra Duties | Correctional Custody | Forfeiture of Pay | Reduction in Rank |
|--|-------------------------|----------------------|----------------------|--|------------------------------|---|
| Company Grade: | | | | | | |
| E-5 to E-9 | Yes | 14 days ¹ | 14 days ¹ | No | 7 days | No |
| E-1 to E-4 | Yes | 14 days ¹ | 14 days ¹ | 7 days ^{2,3} (E-1 to E-3) | 7 days | To one grade lower |
| Field Grade: | | | | | | |
| E-5 to E-9 | Yes | 60 days | 45 days | No | ½ pay per month for 2 months | To one grade lower if within promotion authority ⁴ |
| E-1 to E-4 | Yes | 60 days | 45 days | 30 days | ½ pay per month for 2 months | To one or more grades lower |
| ¹ Restriction and extra duty may be combined, but in such a case, the total may not exceed the maximum allowed for extra duty. | | | | ³ Enlisted soldiers with pay grades of E-1 to E-3 may be confined for 3 days on bread and water when attached to or embarked on a vessel. | | |
| ² Enlisted soldiers with a pay grade of E-4 may not be placed in correctional custody, but if their rank is reduced to a pay grade of E-3, they may be placed in correctional custody as a part of the same punishment. | | | | ⁴ The promotion authority for pay grades E-7, E-8, and E-9 rests with Headquarters, Department of the Army; AR 600-200 (paragraph 7-36) prohibits reduction in rank for misconduct of soldiers in these pay grades. | | |

RIGHTS OF ACCUSED

You or your designated subordinate must advise the accused of his rights as follows:

- **The right to demand trial by court-martial.** Unless attached to or embarked on a vessel, soldiers have the right to demand court-martial in lieu of an Article 15. You must also inform them of the consequences of their demand for trial. (See MCM, Part V, paragraph 4a(5), and DA Form 2627, Note 3.)
- **Rights under UCMJ, Article 31(b).** You must inform soldiers of their right to remain silent and warn them that anything they say may be used against them.
- **The right to consult with counsel.** You must tell the accused where to find counsel and give him time off to consult with counsel. The accused must have reasonable time to review the evidence with counsel or a personal representative and to make the necessary decisions on such matters as the right to demand court-martial. In determining the period of time, consider such factors as the gravity of the offense and the availability of counsel. Generally, 48 hours is reasonable.
- **The right to an informal public hearing.** You must tell the accused of his right to fully present evidence and to be accompanied by a spokesperson.

ACKNOWLEDGEMENT

The accused must acknowledge notification by completing DA Form 2627, item 3. The subsequent course of the proceeding depends upon the accused's decisions regarding the following.

Demand for court-martial. If the soldier demands trial by court-martial, you must terminate the Article 15 and decide whether to prefer court-martial charges.

Waiver of court-martial and failure to submit matters or demand a hearing. If the accused chooses this option, you may determine his guilt and immediately impose punishment.

Waiver of court-martial and hearing with submission of matters. If the accused chooses

this option, you must consider the matters before deciding whether to impose punishment. If the matters persuade you that the accused is innocent or that you have a valid reason for not punishing him, simply terminate the Article 15. If, after considering the matters, you are convinced beyond a reasonable doubt that the accused is guilty and nonjudicial punishment is appropriate, you may impose it.

Waiver of court-martial and demand for hearing. In this case, you must arrange for and conduct a hearing before deciding whether to impose nonjudicial punishment.

Often, commanders conduct hearings in their offices. You must personally conduct the hearing except in rare circumstances in which doing so is not practicable. Then, you must appoint another officer to conduct the hearing. Afterwards, the appointed officer should submit a summary and written recommendations to you.

You should initiate the hearing by advising the accused of his rights under UCMJ, Article 31. During the hearing, a spokesperson may represent the accused. That person need not be an attorney, and his participation in the case must be voluntary. The government will not pay travel fees or other costs to ensure the spokesperson's presence at the hearing.

Neither the accused nor the spokesperson may examine or cross-examine witnesses without your permission; however, the accused or the spokesperson may brief you on the relevant issues and areas of suggested inquiry. You should explore those issues and areas when questioning witnesses.

The accused may indicate which witnesses he prefers at the hearing. If those witnesses are reasonably available, you must arrange for their presence. The government will not pay witness or transportation fees to ensure their presence. Reasonably available witnesses include those on duty at the installation and those whose presence can be arranged without spending government travel funds and whose attendance at the hearing will not materially delay the proceedings.

The accused may waive personal appearance at the hearing and instead submit written matters to you for consideration. You should give such matters due consideration before deciding about the case.

PUNISHMENT

Table 1 outlines the maximum nonjudicial punishments authorized under Article 15. Note that a field grade commander may impose greater punishment than a company grade commander. However, a field grade commander and a company grade commander may not both impose an Article 15 for the same act of misconduct. Nor will a commander ordinarily impose an Article 15 for the same offense over which a civil court has exercised jurisdiction or an offense the commander plans to recommend for a court-martial.

You must also be aware of certain limitations on punishment. You must base any forfeiture of pay upon the grade to which an offender is reduced and not upon his original grade, even if the reduction is suspended. You may combine restriction and extra duties, but only for the maximum time allowed for extra duties alone. In no case may you combine restriction or extra duties with correctional custody. (See AR 27-10, paragraph 3-19b(8).)

You must personally inform the offender of the punishment. At that time, you may explain any factors you considered when you decided on the punishment. You should also inform the offender of his right to appeal and explain how to do so.

According to AR27-10, paragraph 3-6, indicate on the DA Form 2627 where to file the record of nonjudicial punishment.

CLEMENCY POWER

To realize the full effectiveness of Article 15, you should be aware of your power to grant clemency and your duties and responsibilities should an offender decide to appeal. You may delay executing punishment no more than 30 days. Otherwise, unsuspended punishments are effective when you impose them. Under Article 15, you may suspend, mitigate, remit, or

set aside punishment if you conclude that the circumstances of the case warrant it. This power gives you effective means for rehabilitating offenders.

Suspension. Suspension permits offenders to demonstrate good conduct and efficiency. It provides them with an incentive to stay out of trouble. You may suspend the unexecuted portion of any punishment for a reasonable time, not to exceed six months. In fact, the MCM permits you to suspend a reduction in grade or forfeiture of pay any time within four months after you have imposed it, even if you have already executed it. For example, if you reduced a soldier from E3 to E2 in January, and he performs well later, you may suspend the reduction any time before May.

You may consider suspension in all cases, but it is most effective with offenders who have no previous disciplinary problems. You may use suspension to rehabilitate soldiers whose disciplinary problems might otherwise continue. However, no personnel actions favorable to the offender may be taken during his suspension. If during the probation period the offender commits further acts which are considered misconduct under the UCMJ, you may terminate the suspension and put the original punishment into effect. (See AR 27-10, paragraph 3-25.)

Mitigation and remission. Mitigation reduces the punishment's severity and is appropriate when offenders demonstrate subsequent good conduct that merits a decrease in punishment. Mitigation is also warranted when the punishment is disproportionate to the offense. For example, you may reduce 14 days of extra duty to 7 days of extra duty, or you may reduce a forfeiture of pay in amount or duration.

Remission is appropriate under the same circumstances as mitigation.

Set-aside. You may set aside an Article 15 when you are convinced that an injustice has occurred. When you set aside an Article 15, return all rights, privileges, and property. A set-aside would be appropriate, for instance, in a

case in which new evidence or information proves the accused is innocent.

APPEALS

All soldiers receiving an Article 15 have the right to appeal the punishment. This right does not conflict with an accused soldier's consent to the Article 15 proceeding, because his consent is merely a waiver of the right to demand a trial, not an admission of guilt. Appeals should be handled promptly. After considering an appeal, the next higher commander may approve or reduce the punishment but not increase it.

The accused should submit the appeal through the commander who imposed the punishment. An appeal not submitted within five days of imposition of punishment will be waived unless the soldier can show good cause for the delay. The accused may submit written statements regarding the offense or the appropriateness of the punishment. The commander who imposed the punishment should consider these statements and, if warranted, modify the punishment.

You should treat the appeal as a request for reconsideration. If you suspend, mitigate, or remit the punishment, determine if the accused wishes to voluntarily withdraw his appeal. If the accused refuses or you take no modification action, you must forward the appeal to the next higher commander. If forwarding is necessary,

be sure that the soldier receives any help he needs to prepare the appeal, including preparation of any written statements he wishes the reviewing authority to consider.

If you have not acted on a soldier's appeal within five days of its submission, upon request by the soldier, you will postpone any remaining punishment involving restraint or extra duty until you act on the appeal. (For summarized proceedings, the limit is three calendar days.)

You should complete the necessary portions of DA Form 2627 and make any necessary rebuttals. Then forward the file to your immediate superior, who is then responsible for acting on the appeal. Certain punishments, however, require a judge advocate's review before the superior commander's action on the appeal. (See DA Form 2627, note 9.)

You may announce the disposition of all cases involving nonjudicial punishment, including action taken on previously imposed Articles 15. You may do this orally at a routine unit formation and may also post a completed DA Form 2627 on the unit bulletin board or elsewhere routine notices are placed. Before announcing Article 15 disposition for personnel in pay grades E5 and above, you must consider the impact on unit morale and the possibility of impairment to the soldier's job or leadership effectiveness.

Case Disposition

PRELIMINARY CONSIDERATIONS

When you have completed a preliminary investigation and believe that an offense has been committed, you must dispose of the case promptly. You may decide to take nonpunitive action, to impose nonjudicial punishment, or to prefer charges and recommend trial by court-martial.

Do not initiate charges if your preliminary investigation leads you to believe that an offense was not committed. If charges have been preferred and the investigation does not support them, do not forward them. You may discuss the situation with your battalion commander. A superior commander may order you to forward the investigation, but he may not order you to make a specific recommendation for disposition.

The armed forces have jurisdiction over every offense a soldier commits. For example, if an off-duty soldier in civilian clothes commits an offense off post, the military still has jurisdiction over the offense; jurisdiction depends solely upon the accused's status as a member of the armed forces.

PREPARATION OF CHARGES

Use DD Form 458 to prepare charges for trial by court-martial. While you are responsible for preparing the charge sheets, you have no legal requirement to do so personally. If your command has a staff judge advocate office, you should have the judge advocate supervise their preparation. If you have no SJA office, you may seek advice from—

- The battalion adjutant.
- The battalion legal specialist.
- The military justice division of the major command's SJA office.

Careful preparation of the charge sheet is critical to the prompt disposition of the case; a poor job will cause delay and an administrative overload. Consistently poor work in investigating and preparing charges may reflect adversely on you.

Once the charge and specification have been prepared and signed under oath, they are public record and should not be altered except on the advice of a judge advocate. MCM, R.C.M. 307 provides additional guidance for preparing the

charge sheet, which you must prepare with an original and four copies.

Time Limits

The prompt disposition of charges is essential to military justice. An unexplained delay in the processing of charges at any stage may cause a dismissal of charges. When a question of delay is brought up at trial, the government must justify it and show that it was not intentional and was not due to an oppressive design or neglect on the part of the Army. The government is accountable for the period beginning when the accused is placed under pretrial restraint or when he receives notice that he is being charged.

Local directives usually outline the acceptable time limits for the processing of cases. The local directives on speedy disposition of cases maybe stricter than the speedy-trial requirements of MCM, RCM 707. You should discuss any question on a possible delay with the servicing trial counsel or SJA.

Delays

To avoid unreasonable delays in the processing of court-martial charges, you should—

- Hand-carry all court-martial files to higher headquarters. Using the message center may be too slow.
- Investigate an incident immediately after it happens. Do not wait for laboratory reports or completed CID and MP reports. You can always get preliminary statements from CID agents or MP officials and may initiate action based upon those statements.
- Not allow a case to remain in the unit because of the pressure of other duties. Note the reasons for any delay in case the question is raised at trial. Call the servicing trial counsel or SJA for advice if there are any questions or doubts at any stage of the proceedings.

RECOMMENDATIONS FOR COURT-MARTIAL

Forward the charge sheet and allied papers with your recommendation for disposition to the

summary court-martial convening authority. Summary court-martial convening authorities are usually battalion commanders who have authority to act upon your recommendations. They may dismiss charges or decide to try the accused by summary court-martial. If they do not have special court-martial authority at the battalion level, they may also decide to forward a case still higher with a recommendation for trial by special court-martial. If an offense is serious enough for general court-martial, a battalion commander may, as a summary court-martial authority, direct an investigation under UCMJ, Article 32.

Although battalion commanders may not impose their will upon you regarding disposition of a case, they may accept or reject any recommendation they receive.

Finally, a battalion commander may decide that neither trial by court-martial nor nonjudicial punishment is appropriate. Instead, he may elect to dispose of the matter by administrative action as outlined in Part Two, Chapters 6 and 7.

Article 32 Investigation

Any case to be tried by general court-martial requires an investigation under UCMJ, Article 32, unless the accused waives it. Any offense you investigate and forward as charges is the basis for such an investigation. The special court-martial convening authority (SPCMCA) usually appoints an Article 32 investigating officer. The investigating officer must inquire into the truth of the matters set forth in the charges and recommend a disposition for the case. (See MCM, R.C. M. 405, for a complete discussion.) Based on the information developed in the investigation, the SPCMCA may decide to—

- Forward the case with a recommendation for trial by general court-martial.
- Refer the case to a special court-martial.
- Refer the case to a summary court-martial.

- Impose nonjudicial punishment.
- Take administrative action.
- Dismiss the charges and return the soldier to duty.

Separation In Lieu Of Court-Martial

Soldiers charged with an offense punishable by a bad-conduct discharge or dishonorable discharge may request an administrative discharge for the good of the service. A soldier's request for discharge does not preclude or suspend court-martial proceedings; only the general court-martial convening authority (GCMCA) may decide to delay the court-martial. Soldiers must have the opportunity to consult with legal counsel, and they must certify their understanding that a discharge under other-than-honorable conditions is possible.

Forward a soldier's request for discharge with a recommendation for approval or disapproval through channels to the commander exercising general court-martial jurisdiction. If he recommends approval, he will further indicate the type of discharge he recommends. The soldier normally will receive a discharge under other-than-honorable conditions, although he maybe issued an honorable or general discharge if the GCMCA considers it warranted. (See Part Two, Chapter 6 and AR 635-200, Chapter 10.)

REHABILITATION

After an accused is convicted by a court-martial, your responsibility for him continues until he is no longer a member of your unit. Convicted soldiers whose sentences include unsuspended confinement will be transferred or retained in the unit as indicated below. (See AR 190-47.)

Soldiers transferred to either the United States Disciplinary Barracks (USDB), Fort Leavenworth, Kansas, or to the United States Army Correctional Activity (USACA), Fort Riley, Kansas, must be sent as soon as possible.¹ The

¹Transfer criteria for the USDB and the USCCA change frequently. Check with your trial counsel or local confinement facility to find out what they are.

GCMCA must approve any delay in transfer based on exceptional circumstances such as the following:

- Requirement of the accused as a witness in further judicial proceedings.
- A pending request for deferment of confinement.
- A pending clemency action such as suspension of confinement or punitive discharge.
- A pending additional criminal investigation or administrative elimination.

All officer prisoners who have any confinement remaining are eligible for transfer to the

USDB, whether or not they are sentenced to dismissal. Officer prisoners will not be transferred to the USACA. Enlisted prisoners whose sentences include more than two years of confinement are also transferred to the USDB without regard to whether a punitive discharge was adjudged.

Enlisted prisoners who have more than four months and less than two years of confinement will be transferred to the USACA without regard to whether a punitive discharge was adjudged. Enlisted soldiers whose sentences include four months or less of confinement, without regard to whether a punitive discharge was adjudged, will stay in local confinement facilities.

²See note 1.

ADMINISTRATIVE LAW

CHAPTER 6

Administrative Separations

REASONS FOR SEPARATIONS

Soldiers may be discharged from the Army before their normal expiration of term of service (ETS). Reasons for such discharge include—

- Misconduct.
- Conviction by a civilian court.
- Unsatisfactory performance.
- Hardship and dependency.
- Void and voidable enlistments or inductions.
- Alcohol or drug abuse.
- Conscientious objection.
- The good of the service.
- The convenience of the government.
- Fraudulent entry.
- Homosexuality.

Misconduct

Soldiers may be separated for misconduct because of—

- Conviction by a civilian court.
- Commission of a serious offense.
- A pattern of minor military disciplinary infractions.
- A pattern of misconduct involving either civil or military authorities.

(See AR 635-200, Chapter 14.)

PRELIMINARY ACTIONS

Before initiating a separation action for a pattern of minor military disciplinary infractions or for patterns of misconduct, you must counsel soldiers and take rehabilitative measures. The separation authority may waive rehabilitative measures (but not counseling) in appropriate circumstances. (See AR 635-200,

paragraph 1-18d.) These preliminary actions need not be taken when basis for separation is either conviction by a civilian court or commission of a serious offense.

Counseling. When a soldier's conduct deteriorates to a level that might warrant his separation, you should look for the causes and take steps to correct the soldier's attitudes or actions. A member of the soldier's chain of command must counsel him regarding his deficiencies, inform him that his continued misconduct could result in his separation, and advise him about the types of discharge that could result and the consequences of each. You should advise the noncommissioned officer in charge (NCOIC) of the problems and direct him to counsel and assist the soldier as needed. You and the NCOIC must keep written records of all counseling sessions, using DA Form 4856 when possible.

Rehabilitative transfer. When a soldier does not respond to counseling or has shown that he cannot get along with others in the unit, you should transfer him to another unit. Often a change of supervisors, associates, or living and working areas will solve the problem. If possible, the transfer should be between battalion-sized units with duty in both the gaining and losing units for at least two months. This does not preclude reassignment between brigade or larger units when local commanders consider it necessary. Only as a last resort will you recommend a permanent change of station.

Waivers If you believe a rehabilitative transfer will not help a soldier, you may request waiver of rehabilitation measures. The separation authority may approve a waiver any time on or before the

date the separation authority approves or disapproves the separation. In requesting a waiver, you should fully state why the soldier cannot be rehabilitated. (See AR 635-200, paragraph 1-18d.)

INITIATION OF SEPARATION PROCEEDINGS

Your recommendation for separation should be based on your knowledge of the individual. The soldier cannot apply for a misconduct discharge. You should not use separation authority instead of a court-martial solely to keep soldiers from receiving harsher penalties. Separation action must be initiated against soldiers who have the following drug problems unless other action is taken:

- Soldiers with the rank of sergeant through sergeant major/command sergeant major who have abused drugs.
- Soldiers with the rank of private through specialist/corporal who have abused illegal drugs twice.
- Any soldiers medically diagnosed as drug-dependent. (See AR 635-200, paragraph 14-12c.)

Medical examination. When you initiate separation of a soldier for misconduct, other than by conviction by a civilian court, you must schedule the soldier for both a medical examination and a mental status evaluation. (see AR 635-200, paragraph 1-34.) If the examining medical officer decides that the soldier does not meet medical retention standards, he will refer the soldier to a medical board. The GCMCA will direct that the soldier be processed through disability channels if he determines that—

- A disability is the cause or a substantial contributor to the cause of the misconduct.
- Circumstances warrant disability processing. You must flag the soldier's records according to AR 600-8-2.

Commander's Report Upon completion of the medical evaluation, you must prepare a commander's report, addressing it through the chain of command to the separation authority. (See AR 635-200, paragraphs 7-21, 13-7, 14-9b, 14-15, and 15-6b.)

Judge advocate counseling. After preparing the report and collecting all of the documents concerning the case, tell the soldier in writing of the basis for the proposed action and advise him of his rights. (See AR-635-200, paragraphs 2-2 and 2-4.) You should then make an appointment for the TDS office to counsel the soldier on his rights. Give the soldier a copy of his entire separation file to take with him to the TDS office.

Witnesses. If the soldier requests a board of officers to hear the case, the appropriate commander will ensure that military witnesses are not transferred or separated before the board hearing, except when an enlistment or period of service fixed by law expires. (See AR 635-200, paragraph 2-9.)

OPTIONS AVAILABLE TO SOLDIERS

Once recommended for separation, a soldier can exercise specific rights and options as addressed in the following paragraphs.

Separation board. Unless in civil confinement, a soldier has the right to a hearing before a separation board if the commander initiates the separation under the—

- Administrative board procedures. (See AR 635-200, paragraph 2-4.)
- Notification procedures, and the soldier has six or more years of total active and reserve military service at the time of separation. (See AR 635-200, paragraph 2-2.)

Soldiers have the right to appear before the separation board unless unable because of civil confinement or absence without authority. In such cases, soldiers may choose to be represented by counsel before the board. Soldiers may submit any statements they want to have attached to the separation recommendation. Give soldiers at least three duty days to consult with counsel; a judge advocate officer will advise soldiers concerning their rights.

Soldiers may waive all of these rights; failure to respond within seven duty days will constitute a waiver. The JAG officer will use the format

shown in AR 635-200, Figure 2-5, to record counseling and the rights selection or waiver.

Counsel. Any soldier recommended for discharge for misconduct, who has requested appearance before a board of officers, is entitled to representation by a—

- Civilian attorney at no expense to the government.
- Appointed JAG officer or other military counsel qualified under UCMJ, Article 27(b)(1).

(See AR 635-200, paragraph 2-4e.)

Withdrawal of waivers. A soldier who waives his right to appear before a board of officers, to submit statements, or to have counsel may withdraw that waiver and request these rights any time before the separation authority orders, directs, or approves his discharge.

SEPARATION PROCESS

Once you have completed a report and a JAG officer has counseled the soldier, you must forward the case through channels to higher headquarters. If the soldier refuses to consult with counsel, prepare a statement to that effect and forward the case as if the soldier had consulted with counsel.

Chain of command review. Route the recommendation through the chain of command to the separation authority. In actions involving cases of misconduct, except cases of drug abuse, all intermediate commanders (battalion, brigade) will review the file and may—

- Disapprove the action and direct reassignment.
- Recommend separation for unsatisfactory performance.
- Disapprove the misconduct action and take further action against the soldier for unsatisfactory performance. Only commanders with special court-martial jurisdiction have this option.
- Recommend approval and forward it to the next higher commander.

Separation actions that are required to be initiated due to abuse of illegal drugs must be forwarded through the chain of command to the separation authority for appropriate action.

(See AR 635-200, paragraph 14-12c(2).)

Separation authority. For misconduct cases where a discharge under other than honorable conditions is warranted, the separation authority is either the GCMCA or a general officer in command with a judge advocate or legal advisor available. A general officer cannot, however, approve a discharge based upon a foreign conviction. The commander who is an SPCMCA acts as the separation authority when a discharge under other than honorable conditions is not warranted and the notification procedure is used. An honorable discharge may be ordered only when the GCMCA has authorized the exercise of separation authority in the case.

The appropriate separation authority appoints a board of officers. When the board has recommended separation for misconduct, the separation authority may do one of the following:

- Direct retention.
- Direct separation for misconduct.
- Direct separation for unsatisfactory performance or for whatever reason the soldier received notification.
- Approve the separation, but suspend its execution for up to six months. (See AR 635-200, paragraph 1-20.)

Options available to soldiers. If a soldier who is entitled to a board requests one, the separation authority will appoint no fewer than three experienced commissioned, warrant, or noncommissioned officers (sergeant first class or higher and senior in rank to the respondent) to hold a hearing and make findings and recommendations on the separation action. Soldiers are entitled to counsel at this hearing and may call witnesses and present evidence on their behalf. They may question the witnesses who are called to testify. Often, the board will call you and members of the soldier's chain of command as witnesses. The board's decision is

not final, but the separation authority who appoints the board cannot, upon review, take action more severe than what the board recommended.

If the soldier is a female or a member of a minority group, she or he may request in writing that at least one member of the board also be a female or a minority member. The separation authority will appoint a member of the same minority group as the respondent or, if one is not available, appoint a member of another minority group. All determinations of availability should be documented in the record of proceedings. (See AR 635-200, paragraph 2-7b(3) and (5)).

Status of soldiers during processing. There are no special limitations on the duties soldiers may perform while awaiting separation processing. Because their records will be flagged, they are in a nonpromotable status. You should stay abreast of the status of proceedings to inform the soldiers and answer questions.

Conviction By A Civilian Court

The procedures and policies governing a misconduct separation, based on conviction by a civilian court, differ from those relating to other misconduct separations. Conviction, for these purposes, means any action that decides the issue of guilt and carries the power of a state or federal court to impose a penalty, even though the court or statutes do not call it a conviction.

When a soldier has been convicted by a civilian court or when court action has been taken that is tantamount to a finding of guilty (including adjudications in juvenile proceedings), the separation authority may discharge the soldier if the offense meets either of two criteria:

- A punitive discharge would be authorized for the same or a closely related offense under the MCM, or
- The sentence by civil authorities includes confinement for six months or more, without regard to suspension or probation.

The separation authority makes the final discharge decision. The separation authority

usually gives a discharge under other than honorable conditions but may give an honorable or general discharge certificate or entry level separation when the soldier's overall record merits it. (See AR 635-200, Chapter 3, Section III.)

PRELIMINARY ACTIONS

Soldiers subject to discharge under AR 635-200 will be considered and, if appropriate, processed for discharge, even if an appeal is pending or is filed later. Execution of a discharge, however, must be withheld until one of the following occurs:

- An appeal is complete.
- The soldier states in writing that he does not intend to appeal.
- The time to submit an appeal expires or the soldier's term of service expires, whichever is first.

You decide to initiate separation actions; such initiation is not mandatory. Soldiers do not have a right to request discharge. The separation authority may decide not to separate a soldier if the circumstances so warrant and if civil authorities have placed no restrictions on the soldier that would interfere with his performance of duty.

When contemplating separations, take action as specified in the administrative board procedure (AR 635-200, paragraph 2-4); the notification procedure (AR 635-200, paragraph 2-2) is authorized if characterization of service under other than honorable conditions is not warranted. AR-635-200, Chapter 2, Section IV, prescribes additional actions to take when soldiers are confined or are beyond military control due to their unauthorized absence.

Your duties are the same in the case of a conviction by civilian court as in cases of misconduct. Soldiers confined by civil authorities may consult a JAG by correspondence. You will inform the soldier of a separation action and of the soldier's rights. You will personally deliver this notice to the soldier or send it by certified mail with return receipt requested. You then advise the soldier that he must notify you of an

election of rights before a specified date (not less than 30 days from date of receipt of notice). If the soldier does not respond, process the separation action as though the soldier had waived his rights.

OPTIONS AVAILABLE TO SOLDIERS.

Once you decide to recommend discharge, soldiers may demand the specific rights and options addressed in the following paragraphs.

Separation board. When soldiers are under military control, the separation board procedures are the same as for misconduct cases. When soldiers who are entitled to an administrative board are confined by civilian authorities, they will be notified that the hearing by a board of officers will proceed in their absence; they lose their right to appear before the board.

Counsel. The right to representation before a separation board is the same as for a misconduct discharge. If soldiers are confined by civil authorities and unable to attend proceedings, they will still be represented by counsel.

Separation process. The procedures for processing a recommendation for separation are the same for civilian conviction as for misconduct. Cases will be processed through the chain of command to the separation authority.

Unsatisfactory Performance

Soldiers maybe separated under the provisions of AR 635-200, Chapter 13, when they are unqualified for further military service because of unsatisfactory performance. Soldiers separated for unsatisfactory performance will receive honorable or general discharge certificates, as warranted by their military records. The separation authority specified in AR 635-200, paragraph 1-21, decides discharges.

PRELIMINARY ACTIONS

Counseling. Before initiating separation actions for unsatisfactory performance, you must counsel soldiers and take rehabilitative measures. These procedures are the same as those for separations for a pattern of minor

military disciplinary infractions and for other acts or patterns of misconduct.

Initiation of separation proceedings. Base your separation recommendations on knowledge of individual soldiers and their performance. Soldiers cannot apply for an unsatisfactory performance separation. After you recommend soldiers for discharge for unsatisfactory performance, follow the same procedures as for separations for misconduct.

OPTIONS AVAILABLE TO SOLDIERS

Soldiers who are recommended for discharge for unsatisfactory performance and who have six or more years of active and reserve service at the time separation action is initiated are entitled, upon request, to a hearing before an administrative separation board. Their right to counsel is the same as for separations for misconduct.

SEPARATION PROCESS

The SPCMCA serves as the separation authority and will convene an administrative separation board if necessary. If a hearing is not required or if a soldier waives his right to a hearing, the separation authority can be one of the following:

- A commander in the rank of lieutenant colonel or above.
- A commander in the rank of major on an approved recommended promotion list commanding a unit authorized a lieutenant colonel or higher.

Hardship and Dependency

No matter how thorough the screening process, the Army accepts people who, because of hardship or dependency at home, should be discharged before their ETS. These soldiers are not attempting to shirk their obligations but have a conflict of demands that discharge will best resolve. They will usually approach you or their first sergeant with this problem, and you will take the first action in processing the request.

Any dependency or hardship sufficient to warrant a discharge must have arisen after the

soldier entered active duty or have been aggravated to excess since entry on active duty. The situation must be permanent, that is, more than a minor illness or temporary job layoff.

An automobile accident may have killed a soldier's father and left the mother disabled. The two younger children at home have no relatives willing to be their guardians. In this case the soldier could reasonably claim dependency. Persons whom a soldier can claim as dependents for a dependency discharge generally include parents, spouse, and younger siblings. (See AR 635-200, paragraph 6-5a.)

A change in income or inconvenience caused by military service does not necessarily show hardship. The existence of these circumstances, however, does not prevent separation because of dependency or hardship, provided the application meets the criteria discussed above. For example, a soldier may be the only child of a farmer in an area where farm help is not available or within the family's means. The farmer is permanently disabled in an accident after the soldier's enlistment and can no longer work the farm sufficiently to maintain the family without the soldier. No other family members are able to help. In this case, the soldier could reasonably claim a hardship that has occurred since he entered the service and that warrants separation.

PRELIMINARY ACTIONS

When soldiers have a home situation that creates a conflict between their military obligation and their duty to the family, they should inform you. You should act immediately to assist. Therefore, soldiers will not act foolishly or immaturely, such as go AWOL, thereby creating a greater problem for both themselves and the Army.

As the unit commander, you should first learn as much as possible about the situation. Then, you should investigate alternatives to discharge that could alleviate the hardship or dependency until the soldier's normal ETS. Discharge should be considered a last resort.

Financial assistance. In many cases, temporary financial relief will alleviate hardship for a short term, allowing the soldier to finish his term of service. Local banks or credit unions offer loans, but often the terms of interest and repayment are prohibitive. The Army Emergency Relief (AER) fund provides a less burdensome means of financial assistance to qualified soldiers. AER loans have no interest charge and can be repaid in small monthly allotments. If the soldier cannot repay a loan without creating further hardship, the AER can authorize a grant. In some situations, the AER will offer a loan-and-grant package. (See AR 930-4, paragraph 2-4.) AR 930-4, paragraph 2-10, details conditions for approval of a loan or grant; paragraph 2-11 details conditions for denial.

Leave. In other cases, a soldier's brief presence at home will allow the family to arrange to alleviate the situation until the soldier's ETS. If the soldier has enough accrued leave, he should be allowed to use it for this purpose. If he does not have enough accrued leave, you may authorize an advance of up to 45 days, depending on the time remaining in the soldier's enlistment.

Advanced leave is permitted to allow soldiers to resolve personal, emergency, or morale problems. (See AR 630-5, paragraph 5-1.) If the soldier needs more time than advancing leave will allow, a commander of any unit authorized a commander in the rank of lieutenant colonel or higher (battalion, brigade) may grant leave without pay. The maximum leave allowed is normally 60 days for one absence, including accrued and advanced leave. (See AR 630-5, paragraph 5-2.) Finally, you may authorize up to 30 days of emergency leave upon the death or serious injury of family members. (See AR 630-5, paragraphs 6-1 and 6-4.)

SEPARATION PROCESS

If a soldier believes that the only solution to a family problem is his release from the Army, he may apply in writing for discharge, attaching evidence of hardship or dependency. The evidence will usually be an affidavit and must meet

the requirements of AR 635-200, paragraph 6-7. In some cases, you may grant the soldier leave to go home to get the necessary statements and reports to support his application. Once the application is complete, the soldier must submit it to you. You review it to see if it meets regulatory requirements and then add an endorsement recommending approval or disapproval. This endorsement will also include all of the information AR 635-200, paragraph 6-6b, requires. Forward the application to the separation authority for review and final action.

Void and Voidable Enlistments or Inductions

Occasionally, the Army enlists or inducts young men and women below the legal age for military service. Depending on the situation, the enlistment may be either void or voidable at the option of the Army. If the enlistment is void, the Army has no authority over the individual. If the enlistment is voidable, the Army may discharge or retain the soldier. The same rules apply to void and voidable inductions when an induction statute is in effect.

If you discover that a minor is serving on an enlistment or induction, your primary duty is to determine the facts in the case. AR 635-200, paragraph 7-5, lists the necessary documents. After determining whether an enlistment or induction is void or voidable, report the situation to the separation authority.

ENLISTMENTS

An Army enlistment is a contractual agreement that gives a person military status and subjects him or her to the UCMJ. Federal statutes govern this agreement.

The United States Code states that no person under 17 years of age may be enlisted for military service. Therefore, any enlistment of a person under 17 years old who has not reached that age in the meantime is void, and the person will be released from the military. Since the individual was never properly a member of the Army, you cannot recommend a discharge. Instead, you order that the person be released from the Army's custody and control. (See AR 635-200, paragraph 72D9.)

Federal statute further requires parental consent for the enlistment of anyone who is 17 years old. If a person enlisted while younger than 17 but has in the meantime attained that age, or if time person enlisted when 17 years old without parental consent, the enlistment is voidable. Unless the soldier is charged with a serious offense committed after attaining the age of 17 years, the separation authority will discharge the soldier for minority upon application of parents or guardians. The parents or guardians must apply within 90 days of the enlistment, and evidence must show that the soldier is under 18 years of age and that he or she enlisted without the parents' or guardians' written consent.

INDUCTIONS

The induction of a person into the Army is not contractual agreement but is the fulfillment of an obligation of citizenship. The Selective Service Act gives the requirements for induction. No induction statute is currently in effect.

Alcohol Or Drug Abuse

You may initiate separation of an enlisted soldier if you determine that he is an alcohol-or drug-abuse rehabilitation failure. Separation is based on the soldier's illegal, wrongful, or improper use of any controlled substance, alcohol, or other drug while enrolled in ADAPCP. A soldier with less than six years of active and reserve military service is not entitled to an administrative separation board. He is entitled to the protections of the limited use policy, according to AR 600-85, Chapter 6. AR 635-200, Chapter 9, sets forth precise rules and procedures for separation of an abuser of alcohol or drugs.

Conscientious Objection

Since 1864, Congress has allowed draft exemptions for persons conscientiously opposed to participating in war. Since 1962, officers and enlisted soldiers have been allowed to apply for discharge on the basis of conscientious objection to war formed after entering the Army.

Soldiers may apply for discharge if, because of religious training or belief, they have firm, fixed, and sincere objections to participating in

war in any form or to bearing arms. An opposition based solely on policy considerations, pragmatism, or expediency is not sufficient, nor is an objection to a single war or type of war.

Soldiers may not request discharge because of conscientious objection beliefs held before entering the Army but which they did not make known before induction or enlistment. They may not request discharge if Selective Service previously denied their request for exemption. Such beliefs must have arisen while the soldiers were on active duty, though these beliefs may be based on experiences, training, and education which occurred before the entered the service.

SEPARATION PROCESS

- The separation process includes—
- Your review of the soldier's application.
- Interviews of the soldier by a chaplain and a psychiatrist.
- Review by the chain of command.

Review by unit commander. Take the first action on the application for discharge. After receiving an application from a soldier, review it to ensure that it contains all of the information required by AR 600-43. If information is missing, return the application to the soldier for correction. If you think the soldier has not stated a valid case, you may not, however, refuse to process the request.

Interviews. You must arrange for a chaplain and a psychiatrist to interview the soldier. They will attach their reports to the application. You will then forward the file to the commander exercising special court-martial convening authority. He, in turn, will appoint an officer to investigate the claim. The appointed officer will be captain or higher and know the conscientious objection policies and procedures.

Chain of Command Review. After the interviews and hearings, you must again review the file and act as required by AR 600-43, paragraph 2-6. You then forward the file through the chain of command to the commander exercising general court-martial convening authority

That commander will approve the action or forward it to the Department of the Army if he recommends disapproval.

Status of soldiers during processing. While the application is being processed, the soldier will be retained in the unit and assigned duties that conflict as little as possible with his stated beliefs

OPTIONS AVAILABLE TO SOLDIERS.

After soldiers have applied for discharge, they have several rights that the commander must protect. They have the right to a hearing before an officer with a rank of captain or higher who knows the regulations and policies. Soldiers have no right to military counsel at this hearing, but they may be represented by civilian counsel at their own expense.

Good Of The Service

Soldiers may request discharge for the good of the service if—

- Court-martial charges have been signed and sworn against them for an offense with a maximum punishment that includes either a bad conduct discharge or a dishonorable discharge under the UCMJ and the MCM, or
- Referral of court-martial charges to a court-martial authorized to adjudge a punitive discharge, where none of the charges individually includes a punitive discharge as part of the punishment, and the escalator provisions of RCM 1003(d), MCM, are used to enhance the punishment.

In most cases, soldiers decide to submit such a request after being assigned counsel; the counsel does most of the paperwork.

You also have certain responsibilities in processing the discharge requests. You should cooperate in the collection of documents that must be attached to discharge requests. The soldier and his counsel will submit to you the completed request. You will recommend approval or disapproval, based on the seriousness of the offense and the soldier's record, and forward it through the chain of command to the

commander with general court-martial authority. (AR 635-200, paragraph 10-7, provides criteria for delegating approval authority for Chapter 10 requests in certain AWOL cases). The general court-martial convening authority will take final action on the request for discharge. (See AR 635-200, Chapter 10.)

Convenience Of The Government

Only the Secretary of the Army may approve and order a separation for the convenience of the government, but often that authority is delegated to commanders. This separation is characterized as honorable or general or as an entry level separation. A soldier may receive a separation for government convenience for—

- Inability to fulfill military obligations due to parental obligations.
- Unlawful alien status.
- Concealment of an arrest record.
- Inability to meet procurement medical fitness standards.
- Personality disorder.
- Status as surviving son or daughter.
- Failure to meet Army body composition/weight control standards.
- Furtherance of education.
- Failure to qualify medically for flight training.

Fraudulent Entry

Soldiers may be separated for enlistment or reenlistment by using fraudulent concealment, omission, or misrepresentation of a material fact. That fact must have possibly resulted in the soldier's rejection had the Army known and considered it at the time of his enlistment or reenlistment. The separation authority may void the fraudulent entry and issue orders releasing the soldier from the Army; it may process the soldier under the notification procedure (AR 635-200, paragraph 2-2) and grant an honorable or general discharge; or it may process the soldier under the administrative board procedure (AR 35-200, paragraph 2-4) and direct a discharge under other than honorable conditions. If con-

cealed to enlist, material facts that may warrant discharge are—

- Prior service.
- Citizenship status.
- Conviction by a civil court.
- Juvenile record.
- Medical defects.
- Record of AWOL or desertion.
- Preservice homosexuality.
- Misrepresentation of intent with regard to legal custody of children.
- False identity.

AR 635-200, Chapter 7, Section V, discusses specific rules and procedures.

Homosexuality

Homosexuality is incompatible with military service; homosexual soldiers will be separated. Grounds include preservice, prior-service, or current-service homosexual acts, admissions of homosexuality or bisexuality, or homosexual marriages. If you have any credible evidence that a basis for separation exists, you will investigate. If you determine that probable cause for separation exists, you must initiate separation action. The soldier is entitled to the protections of the administrative board procedures in accordance with AR 635-200, paragraph 2-4. AR 635-200, Chapter 15, discusses specific rules and procedures.

TYPES OF SEPARATIONS

Soldiers' military records determine the characterization of service or description of separation they receive, to include behavior and performance during their current enlistment and any extensions prescribed by law or regulation or effected with their consent. Administrative separations may be characterized or described as—

- Honorable.
- General, under honorable conditions.
- Under other than honorable conditions.
- Entry-level separations.

AR 635-200, Chapter 3, gives criteria for characterizing or describing a separation.

Honorable Discharge

An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the soldier's service generally has met the standards of acceptable conduct and performance of duty, or is otherwise so meritorious that any other characterization will be clearly inappropriate. The separation authority must consider the soldier's age, length of service, rank, personal decorations, and general aptitude. Isolated incidents of minor misconduct may be disregarded if the overall pattern of a soldier's service is good. No specific number of disciplinary actions disqualify a soldier from receiving an honorable discharge.

General Discharge Under Honorable Conditions

A general discharge is a separation under honorable conditions. Recommending a general discharge is appropriate if a soldier's military record is satisfactory but does not merit an honorable discharge. Again, a specific number of disciplinary actions is not an automatic criterion for a general discharge; you must use discretion. A soldier who receives a general discharge might find it more difficult to obtain good civilian employment. A general discharge may be issued to a soldier only if the reason for

the soldier's separation specifically allows such a discharge.

Discharge Under Other Than Honorable Conditions

A discharge under other than honorable conditions is the least favorable of the administrative discharges. It may deprive a soldier of most veteran's benefits, and it may cause great difficulty in finding civilian employment. Only the following may authorize such a discharge:

- A commander exercising general court-martial.
- A general officer in command with a judge advocate or legal advisor available.
- In limited situations, a commander exercising special court-martial authority. (See 635-200, paragraph 1-21.)

The soldier must have an opportunity to present his case to a board of officers before the discharge can be authorized. It may be authorized without board action if the soldier requests a discharge for the good of the service or is beyond military control due to prolonged, unauthorized absence.

Entry-Level Separation

Entry-level separation is given to a soldier within the first 180 days of creditable continuous active duty if a discharge under other than honorable conditions is not warranted and the Secretary of the Army does not authorize an honorable discharge.

Nonpunitive Disciplinary Measures

GUIDELINES FOR CORRECTIVE ACTIONS

Commanders, unit leaders, and noncommissioned officers (NCOs) must deal with a broad spectrum of misconduct. The most serious cases are crimes familiar to a civilian society and serious military offenses, such as homocides, assaults, drug-related offenses, and desertion. Less serious civilian and military offenses are loosely described as minor offenses. The least serious are insignificant acts of misconduct that may not even rise to the level of an offense. These may be addressed without the necessity of punishment.

When a soldier commits an offense, you have a wide variety of options. Each has its attributes and values. Consider some action for each offender, beginning with the least severe, to meet necessary goals. Your choice will depend in part on the nature of the misconduct; it will also depend upon the goal you seek. Punishment generally has one or more of the following goals:

- To protect society against a repetition of the offense.
- To reform the offender so he will not repeat the offense.
- To deter others from considering and committing such an offense.

Minor offenses may justify nonjudicial action under UCMJ, Article 15. These penalties are strictly limited. Your options for less significant misconduct can be loosely collected under the title of adverse administrative actions.

Adverse administrative actions emphasize correction. They recognize that the misconduct does not result from intentional or gross failure to comply with standards of military conduct. Instead, misconduct results from simple neglect, forgetfulness, ignorance, laziness, inattention to instruction, sloppy habits, immaturity, and difficulty in adjusting to the disciplined military life. Implicit in adverse administrative actions is the belief that the offender can, with proper guidance, become an efficient and competent soldier.

In dealing with less significant acts of misconduct, you have an excellent opportunity to

salvage good soldiers and to teach young soldiers the errors of their ways without imposing a penalty that they may never overcome. Many of the procedures available permit you to deal with this type of misconduct without requiring a formal report. You can thus correct soldiers and allow them to return to duty, sometimes without serious blemish to their record as would happen if they were subjected to nonjudicial punishment.

In these instances, you primarily teach discipline and standards of conduct; you should be less interested in punishing. This is a fine but crucial line. If you seek to punish, you should consider an Article 15 or court-martial; if you primarily seek to teach, you should consider adverse administrative actions.

Wise use of adverse administrative actions frequently results in the soldier adjusting and improving his conduct so that he does not ultimately become a candidate for judicial action, Article 15 action, or administrative separation or reduction. In some instances, however, judicial or nonjudicial punitive measures are immediately appropriate. One of the tests of a good leader is to determine correctly which measure or combination of measures is appropriate for a particular soldier at a particular time.

TYPES OF ADVERSE ADMINISTRATIVE ACTIONS

In adverse administrative actions, the personality of an offender and his state of mind at the time of his misconduct determine the value of each action. In other words, what might work well with one soldier might be useless for another. The situation might warrant a combination of two or more of the following actions.

Withholding Privileges

You may withhold some privileges, for example, pass privileges, to maintain good order and discipline. (See AR 630-5, Chapter 10.) The privileges revoked should relate directly to the act of misconduct. For example, revoking driving privileges would not be appropriate for an assault offense, but removal of post exchange (PX) privileges might be appropriate for a soldier

guilty of disorderly conduct in the PX. You may also withhold a benefit, award, or promotion if a soldier shows a lack of readiness, fitness, or responsibility.

Withholding privileges can be an incentive for improved behavior. Like other corrective actions, the effectiveness of withholding privileges depends on your communicating your intent and determination to the soldier concerned. It also requires that the restriction relate in importance, seriousness, and duration to the transgression and to the desired correction. Too long or disproportionate an action can easily discourage soldiers and hinder correction.

If you have direct control over a privilege, simply inform an offender that you are withholding the privilege. When a higher authority controls the activity, you typically request, through channels, revocation of the privilege.

Admonitions And Reprimands

You may issue admonitions or reprimands, either oral or written, as administrative corrective measures. (See AR 600-37.)

The following individuals may orally admonish or reprimand a soldier, regardless of the soldier's rank:

- Any supervisor in the soldier's chain of supervision.
- Any commander in the soldier's chain of command.
- Any higher ranking soldier.

They may do so where and in the manner they deem most appropriate.

Written admonitions and reprimands may be filed in a soldier's military personnel records jacket (MPRJ). For enlisted soldiers, they are issued and filed by—

- Any commander in their chain of command.
- School commandants.
- Any general officer (including those frocked to the rank brigadier general).
- Officers with general court-martial authority over them.

Immediate supervisors of enlisted soldiers may also issue written reprimands or admonitions, but they may not file them in the soldier's MPRJ unless they also serve in one of the other capacities.

The following individuals may issue admonitions or reprimands to commissioned or warrant officers and file them in their MPRJs:

- Any commander in their chain of command (if the commander is senior in grade or date of rank to the recipient).
- School commandants.
- Their rater, intermediate rater, or senior rater.
- General officers (senior to the recipient).
- Officers with general court-martial convening authority over them.

Regardless of the issuing authority, an admonition or reprimand may be filed in the official military personnel file (OMPF) of an enlisted soldier or officer only upon direction of a general officer (including officers frocked to the rank of brigadier general) or an officer exercising general court-martial convening authority over them.

Since admonitions and reprimands may also be imposed by nonjudicial punishment, you should ensure that written administrative ones include a statement that it is an administrative measure and not punishment under UCMJ, Article 15.

Rehabilitation

You may elect to correct a soldier with counseling or corrective training.

COUNSELING

Sometimes counseling takes the form of discussion or special instruction over a long period. It maybe written but is usually oral. You may personally carry it out, or your representative, who may be an NCO, may do it. Sometimes it leads to professional counseling by a chaplain, judge advocate, psychiatrist, debt counselor, or

marriage counselor. A counselor must try to learn—

- What produced the undesirable conduct.
- Why a soldier failed to maintain the desired standards.
- Why a soldier has a poor or unresponsive attitude.

The counselor should provide helpful advice and motivate the soldier to do better, not because he is threatened with unfavorable action if he fails to do so, but because his self-respect demands a better job. Counseling may inspire a soldier to correct his ways so as not to let down comrades, family, or others who have the soldier's loyalty and respect. It may also show the soldier that proper conduct offers more advantages than the hassling, harassment, or difficulties resulting from misconduct or poor performance.

Skill at counseling does not come easily or quickly. Officers and NCOs who study the subject enhance their chances of success. Experience and knowledge of human motivation in general and of the individual personality in particular enhance the counselor's ability to communicate with the soldier. By knowing and using the proper standards, a counselor will more likely succeed in improving the conduct and attitude of the counseled soldier.

You must adequately counsel soldiers before initiating action to separate them for—

- Inability to fulfill military obligations due to parental objections.
- Personality disorders.
- Unsatisfactory entry level performance and conduct.
- Unsatisfactory performance.
- Minor disciplinary infractions.
- A pattern of misconduct.

You must also record the counseling in writing. (See AR 635-200, paragraph 1-18b, for guidance.)

CORRECTIVE TRAINING

Corrective training is for soldiers who have demonstrated that they need and would benefit from additional instruction or practice in a particular area. Take care to give training that has a reasonable relationship to the soldier's deficiency. Extra training and instruction, if timely and appropriate, may correct deficiencies and eliminate the need for formal disciplinary measures in the future. Do not use extra training and instruction as punitive measures. You must distinguish extra training and instruction from punishment or even the appearance of punishment. Soldiers should have extra training or instruction only as long as they need it to correct deficiencies. If they perceive the training or instruction as punishment, all training and instruction will be degraded and their value jeopardized. The following examples illustrate the proper use of training and instruction:

- A soldier appearing in improper uniform may need special instruction in how to wear the uniform properly.
- A soldier in poor physical shape may need to do additional conditioning drills and participate in extra field and road marches.
- A soldier with unclean personal or work equipment may need to devote more time and effort to cleaning the equipment. The soldier may also need special instruction in its maintenance.
- A soldier who executes drills poorly may need additional drill practice.
- A soldier who fails to maintain housing or work areas in proper condition or abuses property may need to do more maintenance to correct the shortcoming.
- A soldier who does not perform assigned duties properly maybe given special formal instruction or more on-the-job training in those duties.
- A soldier who does not respond well to orders may need to participate in additional drill and exercises to improve.

As the company commander, you have the authority to use these measures since they are for training and instruction. Commandeers at

all levels must ensure that training and instruction are not used in an oppressive manner to evade imposing nonjudicial punishment under UCMJ, Article 15. You should not ordinarily note deficiencies corrected with training and instruction in a soldier's record, and you should consider such deficiencies closed incidents.

Administrative Reductions

Enlisted soldiers may be reduced in rank by one or more pay grades for conviction by a civilian court and by one pay grade for inefficiency. Orders published according to AR 310-10 will announce reductions. AR 600-200, paragraph 6-15, contains further guidance about publishing such orders and the effective date of reduction. It also provides guidance for computing the date of rank.

You should inform soldiers of their right to appeal a reduction. AR 600-200, paragraph 6-10, provides guidance for filing appeals for reductions for inefficiency or civil court convictions. The authority to take final action on appeals cannot be delegated.

The rank of the commander who may approve the reduction depends on the rank of the soldier involved. For example, a company, troop, battery, or separate detachment commander can reduce soldiers in the grade of E-2, E-3, or E-4. Only a commander of an organization authorized a colonel or higher as its commander can reduce a sergeant first class. AR 600-200, paragraph 6-1, outlines reduction authority for each grade.

CONVICTIONS

The civilian court sentence for a convicted soldier (or one adjudged a juvenile offender) determines reduction for civilian conviction. If an enlisted soldier's sentence is death or confinement for 1 year or more and the sentence is not suspended, the soldier will be reduced to private with no right to aboard hearing. If the sentence included one of the following and the soldier is serving in the grade of E-5 or above the case must be referred to a reduction board for consideration:

- Confinement for more than 30 days but less than 1 year if the sentence was not suspended.

- Confinement of 1 year or more if the sentence was suspended.

If the soldier is serving in the grade of E-4 or below, the reduction authority must consider reduction of one or more grades.

A soldier may be considered for reduction with a conviction for less severe offenses or with less severe sentences than theme previously mentioned. Consult AR 600-200, Table 6-1, for more detailed conditions for administrative reductions due to civil conviction.

For soldiers below the rank of sergeant, initiate the reduction by—

- Submitting a memorandum through channels to the soldier's personnel section.
- Requesting publication of reduction orders.

A soldier maybe reduced in rank for civilian conviction, regardless of any appeal of his civil conviction. In accordance with AR 600-200, paragraph 6-17c, the soldier's grade will be restored upon reversal of the conviction.

INEFFICIENCY

Reduction for inefficiency is limited to one pay grade, and the soldier normally must have served in an assigned position in the same unit for at least 90 days. The one-grade limitation also applies when a soldier is reduced for long-term personal indebtedness that he has not tried to resolve. Do not use reduction for inefficiency—

- For an offense of which the soldier has been acquitted by a court-martial.
- In lieu of UCMJ, Article 15.
- For a single act of misconduct if the soldier's performance is otherwise satisfactory.

If you intend to reduce a soldier for inefficiency, you must notify him in writing of the proposed reduction and the reasons for it. You should base your grounds for reduction on personal knowledge and observation over a reasonable period. The soldier must acknowledge receipt of the notice by endorsement and may submit a rebuttal. You may then request, in writing, through channels, reduction orders or convening of a board.

PROCEDURES

Under the provisions of AR 600-200, paragraphs 6-9 and 6-10, you must furnish soldiers being reduced in rank, by endorsement, copies of the reduction orders and inform them of their right to appeal. A soldier must acknowledge receipt of the orders by endorsement and accept the reduction or state his intent to appeal.

A reduction board is required for sergeants and above except when reduction is mandatory or the board is waived. This board must convene within 30 days of when the Army receives documentation proving that the conditions for reduction exist. A soldier's decision not to appear will be in writing and will signify acceptance of the action.

When a board is required, the convening authority must ensure that it consists of at least three voting members. A majority of the appointed members is a quorum and must be present at all sessions. Enlisted soldiers appointed to such boards must be senior in grade or date of rank to the soldier being considered for reduction. For inefficiency cases only, at least one board member will be knowledgeable of the soldier's MOS.

The board may recommend the following:

- Reduction of one or more grades (except for inefficiency which is limited to one grade).
- Retention of current rank.
- Reassignment within pay grade.
- A combination of any of the above.

It may not recommend lateral appointments from specialist to corporal or vice versa. The convening authority may approve or disapprove any part of the board's recommendation as long as doing so does not increase the severity of the board's recommendation.

Revocation Of Security Clearance

You must ensure that soldiers who receive security clearances are reliable. When you receive information indicating that a soldier should not have a security clearance, you must immediately suspend the soldier's access to classified information.

Conduct that merits revocation or suspension of a security clearance includes-

- Criminal and immoral activities.
- Abuse of drugs and alcohol.
- Excessive indebtedness.
- Repeated AWOL status.

You may also revoke a clearance if you believe the soldier is subject to coercion or undue influence because he has a close relative living in a communist country. (See AR 604-5.)

When derogatory information is forwarded to you or your organization's security officer, review it to ensure that it is complete and to assess its security significance. Then, forward it to the central personnel security clearance facility (CCF), which will determine if it warrants clearance revocation. You may, in the meantime, suspend the soldier's security clearance. (See AR 604-5, Annex A, Appendix C, for procedures.) Soldiers may rebut in writing a proposed revocation; if clearance is revoked, they have a right to appeal to Headquarters, Department of the Army.

Bar To Reenlistment

You may initiate action to bar reenlistment when immediate administrative separation is not warranted but a soldier's desirability for retention is not consistent with the high qualities demanded by the Army. You should not initiate a bar to reenlistment against a soldier who has been assigned to the unit for less than 90 days or who is permanently leaving the unit in 30 days or less (ETS or PCS).

You may bar soldiers from reenlistment for deficiencies of character, conduct, attitude, proficiency, and motivation.

These deficiencies often include—

- Tardiness for formations, details, or duties.
- Being AWOL for 1 to 24 hours.
- Losses of clothing and equipment.
- Substandard personal appearance and hygiene.
- Persistent indebtedness.
- Frequent traffic violations.

- Recurrent punishments under UCMJ, Article 15.
- Use of sick call without medical justification.
- Unwillingness to follow orders.
- Untrainability.
- Inability to adapt to the military.
- Failure to manage personal affairs.
- Frequent difficulties with fellow soldiers.
- Involvement in immoral acts.
- Failure to qualify with weapons.
- Failure to pass Army physical fitness tests.
- Lack of potential for further service.

When initiating such an action, prepare DA Form 4126-R summarizing the grounds for a bar. Include all information supporting your recommendation. Base this information on facts (date, place, and occurrence) and substantiate it with official remarks to ensure that you make an official record of each occurrence. Do not consider the soldier's ETS, reenlistment intent, or any pending judicial or administrative separation action.

Upon receiving DA Form 4126-R, the soldier may submit a statement in his own behalf. You must allow the soldier 7 days to prepare comments and collect documents or other materials. Forward the file, including the soldier's rebuttal, through the chain of command to the approval authority. Anyone in the chain of command may disapprove the action and return it to you.

The approval authority for soldiers with less than 10 years of service at ETS is the first commander in the rank of lieutenant colonel or above or the special court-martial convening authority (SPCMCA), whichever is in the most direct line to the soldier. For soldiers with 10 to 18 years service or with over 20 years of service at ETS, the approval authority is the general court-martial convening authority (GCMCA) or first general officer in the chain of command. For those with 18 to 20 years of service at ETS, the approval authority is at Department of the Army level. Approval authority cannot be delegated.

You must review an approved bar to reenlistment at least every 6 months and 30 days before the soldier's PCS or ETS. After the first 6 month review, if you decide to leave the bar in place, you must inform the soldier that he or she may request voluntary separation under the provisions of paragraph 16-5, AR 635-200. You must also tell the soldier that you will initiate involuntary separation after the second 6 month review unless you should determine that it is appropriate to lift the bar. (See AR 601-280, paragraph 6-5i (6)). The bar may be removed or voided any time the soldier demonstrates his worthiness to be retained in the Army. Make such recommendations through the chain of command. The authority who approved the bar is the authority who can void it. Any commander in the chain of command, however, may disapprove the request to remove the bar to reenlistment and return it to the initiating unit. If the soldier is in a new jurisdiction, the new comparable authority acts on the recommendation.

Mos Reclassification

You must recommend reclassification of an awarded MOS when (See AR 600-200, chapter 2)—

- The award of the MOS was in error.
- Disciplinary actions under the UCMJ adversely affect the soldier's eligibility to perform in his present MOS.
- The soldier does not have the security clearance required for the MOS.
- The soldier is appointed or reduced to the rank of an NCO or specialist that is not in line with or authorized for the MOS.
- The soldier loses the qualifications that enable him to perform in the MOS satisfactorily.
- The soldier is physically unable to perform the required duties. (See AR 600-60.)

You may recommend reclassification of an awarded MOS if the soldier does not efficiently perform the technical, supervisory, or other requirements of the MOS.

FM 27-1
Nonpunitive Disciplinary Measures

Initiate the action and process it through channels. In requesting reclassification of a soldier's MOS, summarize the grounds and include substantiating facts. The soldier may appear before a reclassification board that will

make recommendations to the appointing authority. According to the soldier's rank and MOS, the appointing authority or another authority up to DA level will take final action.

CHAPTER 8

Investigations

METHODS

Often, you must conduct or participate in investigations authorized by Army regulations. You may have to determine the cause of a soldier's injury or inquire about damage to unit or individual equipment. You may also have to participate in an investigation conducted by other officers concerning a matter in your command. Investigations usually conclude with findings and recommendations for administrative action that may have serious and far-reaching effects on soldiers; therefore, you must understand their purpose and proper conduct.

Objectives

Every investigation has the same basic objectives:

- To collect, assemble, and preserve evidence.
- To find facts known to be true and those that may be presumed from all the evidence.
- To make determinations and recommendations for administrative disposition.
- To gather the best available evidence with the least possible delay.

An investigation should develop definitive answers to the questions who, what, when, where, and how. Generally, a simple report will establish the time, place, persons, and circumstances involved in an incident. Establishing the cause and the results, however, requires much effort. An investigator must read and understand the applicable regulations so that he can seek and recognize pertinent facts. If a regulation is not clear, he should get advice from the local SJA. Each investigator must be aware of the importance of his task. He must remember that his report is often the sole source of information available to the appointing authority who will take the final action.

Investigators must promptly obtain and record adverse and favorable evidence. As time passes, witnesses may forget, develop a biased view of the facts, hesitate to give statements, or become difficult to find. The scene of the incident may also change, perhaps due to repairing damaged property or moving evidence. The investigator should inspect and photograph damaged pro-

perty before it is repaired. He should visit, observe, and interview injured persons, if possible, to accurately report the type and extent of their injuries. If warranted, the investigator should arrange for medical examinations of injured persons.

Proper investigation of an incident requires patience, training, experience, and skill on the part of an investigator. Specific rules for investigating cannot cover all situations. The investigator must use ingenuity and imagination to determine the best way to get the facts. He is primarily a fact gatherer and is not expected to engage in extensive legal research. He must, however, gather all pertinent facts impartially and report them accurately and concisely. The appointing authority and SJA apply the appropriate legal principles to the situation the investigator develops. If the investigator has doubts about his responsibilities, he should consult the SJA. Unless complete and precise statements and other information are already available from previous investigations, the investigator will interview witnesses and parties involved, obtain statements and photographs, and prepare diagrams.

If an investigation has already been made for other purposes, the investigator should get a copy of that report. While such a report may not be adequate for the current investigation, it could contain evidence and valuable leads. If the prior report contains diagrams, photographs, or witness statements, the investigator may not have to cover the same ground. He may make copies of such evidence, verify it, and include it in his investigation. Generally, however, the investigator will need to get more complete statements from witnesses. He must ensure that his report includes all pertinent facts, since reviewers see only the information in his report.

Evidence

Evidence may take several forms:

- Real.
- Documentary.
- Testimonial.
- Pictorial.

REAL

Real evidence is any tangible item other than something in writing. A defective windshield wiper in an accident case is a good example.

DOCUMENTARY

Documentary evidence is any writing, whether an official record or not, that can be easily identified on sight. Examples are extracts from regulations, military police reports, and extracts from Army records and letters. If the investigator's report contains an original document, the copies of the report need not be certified. If the investigator cannot get an original document, any copy must be noted "ATRUE COPY," with the officer's signature block and signature.

While documentary evidence is valuable in any investigation, the investigator should not rely on it alone to provide the whole story. For example, suppose an officer investigating a fire attached the standard fire report as an exhibit and relied on it in his findings as evidence of probable cause for the fire and for the amount of loss. Suppose also that he knew the fire chief was present at the fire, but that the post engineer prepared the report and signed it 'For the Fire Chief.' In this case, he misused documentary evidence. First, while the officer knew that the fire chief was present at the fire, the post engineer, not the fire chief, prepared and signed the fire report. Second, the fire report showed only final figures as to property loss, putting undue reliance on one document. The proper action would have been to obtain a statement from the fire chief and others who were present, on what was witnessed and their analysis of the event. The report should be used only as secondary evidence. The investigator must use only accurate costs, including depreciation, salvage, and repair costs or estimates to establish the amount of damages.

TESTIMONIAL

The most difficult form of evidence to collect and preserve is also the most important—testimonial evidence. It is the transcript of an individual's oral statement. Ideally, the person making the statement will then swear that it is

true. A statement may be taken in several ways:

- The investigator may simply ask a witness to write out everything he has to say. This typically results in a poor statement because witnesses frequently find telling a comprehensive story difficult.
- The investigator may ask the witness to tell the story while he either takes notes or tape records it. Later, he uses his notes or recordings to write a statement for the witness to approve and sign.
- Perhaps the best method is to discuss with the witness what took place, ask questions, clarify points, and take notes of the discussion. The investigator then transcribes the testimony for the witness's signature. The result is an orderly, comprehensive, and coherent statement.

No matter how an investigator takes a witness's statement, several errors often occur. Failure to record all that the witness has said is probably the most serious error. Many investigators will take a short, formal statement and then casually discuss the case with the witness, gaining new facts. If the investigator does not record these facts, any finding or recommendation that relates to them may be invalid.

Investigators sometimes have difficulty with wording when administering oaths relating to sworn statements. UCMJ, Article 136(b)(4) gives an investigating officer the authority to administer oaths. Using DA Form 2823 for witness's statements solves the wording problem. Just restate what's set out on the form. The investigator may use it for military and civilian personnel.

If a witness is willing to make an oral statement, but refuses to swear to it or sign the written statement, his oral statement is still proper evidence. If the witness is unwilling to sign any written statement, the investigator should take notes of the discussion, prepare them in statement form, and note the refusal of the witness to sign or swear to it. AR 15-6, the guide for most investigations, permits this type of evidence as long as it is relevant and material. The investigator should be cautious in

accepting at full value the statement of any witness who refuses to sign it.

Although these alternatives are time-consuming and burdensome, they are necessary in preserving evidence. Reviewers of the investigation will want to see the basis for the conclusions; any deficiency in the evidence may invalidate the report.

PICTORIAL

Documents and statements do not always provide an adequate representation of the incident. Investigators should use photographs and diagrams to further support the facts of their investigation. They should indicate the date, time, and place on all photographs and drawings. Physical conditions may change with time, so photographs taken or diagrams prepared long after an incident may be worthless.

Findings And Recommendations

After an investigator has collected, recorded, and analyzed the evidence, he is ready to start the last stage of the investigation—the findings and recommendations. A finding is a conclusion. The investigator must present, in a logical, step-by-step manner, the facts that support his finding.

A single finding may be based on direct evidence. For example, Sergeant Doe may state that he saw Sergeant Jones light a fire; therefore, if Sergeant Doe is believed, the finding is that Sergeant Jones lit the fire. Sergeant Doe's statement would be discussed as the basis for that finding. Or, a finding may be based upon circumstantial evidence. For example, Sergeant Doe may state that he saw Sergeant Jones in the area where the fire started and that no one else was in the area. The CID agent has said that the fire started in the area due to the lighting of several sticks with matches. Therefore, the investigator may find that Sergeant Jones lit the fire. The findings must be supported by the reasoning process and facts leading up to the finding. Reviewers should get a complete picture of what is known about the incident without having to examine the supporting evidence.

The investigator should not overlook the obvious in stating the findings. For example, in a fire investigation, the fact that a fire occurred at a certain time and place should be stated as the first finding. Failure to mention each link in the chain of facts may result in a report that is not legally sufficient.

The recommendations are the personal opinion of the investigator based solely on his findings and not on conjecture or suspicion. Under some regulations, the recommendations must meet certain standards to be legal. The investigator must read the applicable basic regulation carefully. The recommendations must cover each of the issues raised by the appointing order or the regulation. They should deal with each issue separately unless several issues can be logically combined. Finally, they should be fair, reasonable, and appropriate to the situation and known conditions.

The simplest way to look at the final report is as a pyramid. The evidence forms the base, the findings are the middle, and the recommendations are the peak. Each part of the report relies on the and completeness of the underlying parts. If the evidence does not support the the recommendations will have no foundation, and the report will fail. The investigator must review his work critically to ensure that his investigation will stand on its own.

BOARDS

Many Army regulations require investigations but provide little or no guidance for an investigator or board of officers to follow. In such cases, use AR 15-6. For example, aboard appointed to consider the administrative separation of a soldier for misconduct uses the procedures set forth in AR 15-6, as modified by AR 635-200, Chapter 2, Section III. On the other hand, if you are inquiring into a matter in your command, you may find that no regulation covers the specific situation. In such cases, use AR 15-6 as a guide for the investigation.

Administrative fact-finding procedures may be designated for an investigation or a board of officers, and the proceedings may be formal or

informal. Proceedings that involve a single investigating officer using informal procedures are designated investigations. Procedures that involve more than one investigating officer using informal or formal procedures or a single investigating officer using formal procedures are designated a board of officers.

Functions

The primary function of an investigation or board of officers is to ascertain facts and report them to the appointing authority for appropriate action. A formal board may have the additional function of affording a hearing to a soldier, the result of which maybe a finding or recommendation adverse for the soldier. Thus, you may use AR 15-6 as a guide for investigating widespread personnel complaints in the unit, excessive vehicle accidents in a particular platoon, or the lack of proficiency in a particular skill as reflected in MOS test scores.

These boards and investigating officers also may-

- Determine the cause of an injury or a death.
- Inquire into the loss or misappropriation of property.
- Establish liability for the loss of funds or fix responsibility for the cause of an accident.

Boards of officers may act as advisory bodies to appointing authorities at higher levels of command. Boards may act as administrative tribunals to examine facts, hear evidence, and decide promotions, separations, and retirements.

Perhaps the best known administrative tribunals are the separation boards for enlisted personnel. (See Chapter 6.) These boards are appointed pursuant to a specific regulation, such as AR 635-200, but they conduct hearings in accordance with AR 15-6 as modified by the specific regulation.

Responsibilities

Commanders must know when to initiate board action and be able to supervise investigations within the unit. Company commanders and other company grade officers also may

serve as members of boards of officers and as investigating officers. The major burden of conducting investigations and boards typically falls at company level. Therefore, as a company commander, you must familiarize yourself with AR 635-200 before participating in proceedings. You must also have a working knowledge of AR 15-6.

Proceedings

The proceedings for an investigating officer or board of officers include the preliminary actions, hearing, findings and recommendations, and final report.

PRELIMINARY ACTIONS

The first task of an investigating board or officer is to carefully read the memorandum of appointment and the applicable regulations it references. You may address questions to the appointing authority or the local SJA. You must understand the language of the regulation-**many investigations and reports of boards are found to be legally insufficient because the investigating officer misunderstood a provision in the basic regulation.**

Appointments. AR 15-6, paragraphs 2-1,3-1, 3-2, and 5-7, outlines appointments, oaths, and challenging of investigating officers and boards.

Duties of recorders. AR 15-6, paragraph 5-3, details the duties of the recorder before, during, and after the hearing of a formal board of officers. The AR's discussion is important to any proceeding; for example, if a recorder fails to give timely notice of a hearing to the parties under investigation or fails to notify witnesses, the investigation may be needlessly delayed or may be overturned as legally insufficient.

Assistance of counsel. AR 15-6, paragraph 5-6, provides that soldiers under investigation are entitled to the assistance of counsel. This counsel may be civilian and, if so, must be employed by the soldier at no expense to the government. Soldiers not retaining civilian counsel are entitled to representation by military counsel designated by the appointing authority.

In general, counsel as used here may refer to one who is not a lawyer. Counsel must be an attorney only if AR 15-6 or the basic regulation under which a board of investigation is appointed so requires.

HEARINGS

Chapters 3, 4, and 5 of AR 15-6 outline procedures for conducting formal and informal proceedings. The rules in these chapters discuss evidence, rights of witnesses, prejudicial allegations, and pecuniary responsibility. Investigating officers and boards of officers must know the rules well and should have a copy of AR 15-6 available throughout their proceedings.

Although, as an investigating officer, you need not observe the technical rules of evidence and procedure for courts-martial, you must base your conclusions and recommendations on substantial and credible evidence. Whenever possible, consider the highest quality evidence available. Rumors do not establish facts. An individual designated a respondent in formal board proceedings must be present at all open sessions of the hearing and must have the opportunity to cross-examine adverse witnesses.

FINDINGS AND RECOMMENDATIONS

AR 15-6, Chapter 3, Section II, discusses findings and recommendations. Findings should recite clearly and coherently the facts established by the evidence and the conclusions of the investigator or board. Your recommendations must be based on your understanding of the rules and regulations governing the Army, Army policies, and military customs. Your concept of justice, both for the government and for any individual concerned, should guide your recommendations.

FINAL REPORTS

As the investigating officer, you should prepare a report of proceedings in accordance with the regulation under which the board or investigation was appointed. AR 635-200, for example, requires that the findings and recommendations of the board be recorded verbatim in the report. You may find an adjutant general corps officer helpful in assembling the report.

DA Form 1574 is an excellent guide, especially if the report has no prescribed format. The form should be available to you at the start of the investigation. AR 15-6, Chapter 3, Section III, outlines the requirements for these reports.

CLAIMS

The Army claims system provides for payment—

- Of claims resulting from the negligent or wrongful conduct of soldiers, civilian employees, or other agents of the government.
- Of claims for personal property lost or damaged incident to the service of a soldier or civilian employee.
- Directly from an offender's military pay to the victims of some crimes (pursuant to UCMJ, Article 139).
- Of affirmative claims, which are claims by the United States.

AR 27-20 covers all claims. Many installations have their own claims regulations that apply local procedures and direct appointment of claims investigating officers. You should be familiar with AR 27-20 and with your local regulations.

Avoiding incidents that could result in claims is an important function of a commander. Properly inventorying and safeguarding personal property of soldiers on emergency leave, AWOL, or in confinement as outlined in Chapter 8, can prevent claims concerning missing personal property. Attention to driver safety can prevent claims resulting from accidents. In Europe, prompt reporting of maneuver damage significantly reduces the amounts spent for such claims. As a commander, you should understand these concerns and take action to reduce needless claims generated by the activities of your units.

Types Of Claims

The four types of claims are tort; personnel; UCMJ, Article 139; and affirmative.

TORT

Federal statutes authorize payment of damages for property damage, personal injury,

or death caused by authorized Army activities or by the acts of soldiers and Army civilian employees performing government duties. The intelligent disposition and protection of the government's financial interests require prompt and thorough investigation of activities or incidents that may generate such claims.

PERSONNEL

The claims system benefits soldiers and Army civilian employees who suffer loss or damage to their personal property incident to their military service or employment. Such claims include those for the loss of or damage to belongings shipped or stored pursuant to military orders; those arising from fire, flood, hurricane, or other unusual occurrences; or those resulting from theft or vandalism at government quarters or other authorized places.

Payment of these claims significantly reduces the hardships of military life and has a significant effect on morale. Prompt filing of these claims not only benefits soldiers but also assists the Army in recovering from common earners, warehouse owners, insurers, and other third parties. As a commander, you should be familiar with the provisions of AR 27-20, Chapter II, and help your soldiers and civilian employees file their claims promptly.

UCMJ, ARTICLE 139

Unlike any other claims provision, Article 139 authorizes commanders (as opposed to claims offices) to approve or disapprove certain claims. Not only is Article 139 designed to recompense injured parties, it is also designed to assist commanders in maintaining discipline. If a soldier willfully damages or wrongfully takes someone's personal property, as the commander, you can have money withheld from that soldier's pay and paid to the victim. This action is separate from any other UCMJ action.

AFFIRMATIVE

The Federal Claims Collection Act (31 USC 951-53) directs heads of federal agencies to attempt to collect all government claims for money or property incurred during agency operations that do not exceed \$20,000. The Federal Medical

Care Recovery Act (42 USC 2651-53) enables the government to recover the reasonable value of medical care it provides a third person due to an injury or disease incurred under tort liability. Under either act, soldiers may be called upon to cooperate in the collection effort.

Investigation Of Claims

AR 27-20, Chapter 2, details the procedures for claims investigations. The local SJA is responsible for administering the claims system. He decides whether a claim will be paid and, if so, how much. Address any question about claims investigations to the SJA.

NOTIFICATION

A claim may not be paid until a claims investigating officer has thoroughly investigated the facts and circumstances surround an accident or incident. Therefore, as the commander, you must ensure that any accident or incident in the unit which may give rise to a potential claim is promptly investigated. As the commander, you will usually be the first to know about such incidents. It is your duty to notify the claims investigating officer promptly. Prompt notification ensures the timely preservation of evidence, which is very important in the review and payment of claims.

REPORT

DA Form 1208 can be used as a guide for the investigation. Typically, each battalion will have a claims investigating officer on orders. When extensive maneuvers are scheduled, you may appoint maneuver damage claims teams. Serious accidents can result in claims for many thousands of dollars. Therefore, an investigating officer must be prompt, follow diligently the provisions of AR 27-20, Chapter 2, and freely direct questions about any phase of the investigation to a local judge advocate.

Often, other investigators working on the same incident, but pursuant to other regulations, will join an investigating officer. In such cases, diagrams, police reports, statements, and other available evidence may serve for more than one investigation. For example, the Army's accident prevention program requires that all accidents

involving injury or property damage be investigated. (See AR 385-10.) AR 385-40 provides the requirements for the investigation and the report. Although the purpose and requirements of the safety and claims investigating officers may differ, investigators may use evidence obtained for one investigation in the other. However, each investigator must thoroughly investigate the incident. Before using evidence from another report, the investigating officer should check it completely for accuracy, relevance, and completeness.

LINE-OF-DUTY DETERMINATIONS

When a soldier is injured, disabled, or unable to perform normal duties, the Army must establish the cause of the condition to determine lost pay, eligibility for disability retirement, bad time, and similar matters. For this reason, the Army has established procedures to determine whether the injury or condition occurred while the soldier was in the line of duty (LD) or not in the line of duty (NLD) and, if NLD, whether it was due to the soldier's misconduct or willful negligence. Some legal obligations or legal liabilities may arise as a result of these determinations.

Soldiers absent from duty for more than a day because of disease caused by and immediately following use of alcohol or addictive drugs will not be paid base pay, special pay, or incentive pay for the period of absence. Nevertheless, soldiers participating in the ADAPCP usually are not considered absent from duty. Soldiers unable to perform assigned duties for more than one day because of excessive drinking, disease, or injury caused by their own misconduct may be held past their ETS to make up for such absence.

When a soldier is an inpatient and is so disabled by drug or alcohol abuse that he is comatose for more than 24 consecutive hours, he will be administratively determined to be not in the line of duty-due to own misconduct (NLD-DOM) for the period of actual incapacitation. The medical facility commander makes this LD

determination. If a soldier is not so incapacitated, an LD determination is not required. A soldier participating in the ADAPCP and undergoing detoxification, treatment, or rehabilitation is considered to be absent from duty because of administrative policies, and the LD provisions of AR 600-8-1 do not apply.

A soldier may question an LD determination during disability processing and submit it to the military personnel center for further consideration; however, the final LD decision is conclusive in determining entitlement to physical disability benefits under AR 635-40.

Rules

In making an LD or NLD determination, a commander or investigating officer must follow certain principles addressed in AR 600-8-1, Part 5. In making such a determination, the commander will arrive at one of three findings:

- In the line of duty (LD).
- Not in the line of duty-due to own misconduct (NLD-DOM).
- Not in the line of duty-not due to own misconduct (NLD-NDOM).

Any injury, disease, or death of a soldier is presumed to be LD, unless the investigator finds substantial evidence that the injury or disease was—

- Caused and immediately preceded by willful misconduct or neglect. Simple negligence or carelessness alone does not constitute misconduct.
- Incurred while AWOL.
- Not incurred while on active duty or aggravated by military service.

Procedures

Unless a presumptive LD determination is appropriate, two types of procedures may be used in making an LD determination: informal and formal. This determination depends on the circumstances of each case.

INFORMAL INVESTIGATIONS

In informal investigations, a unit commander gathers sufficient evidence to show that absence without authority, deliberate injury or illness, or misconduct was not involved. An informal LD report consists of a DA Form 2173, completed by a medical treatment facility and the unit commander. The form may have attached documents, if necessary, to show that absence without authority and misconduct were not involved.

FORMAL INVESTIGATIONS

In formal investigations, a unit commander must make the fullest and most detailed investigation possible to ascertain all the facts

surrounding the death, injury, or disease of a soldier. A formal LD report consists of a completed DD Form 261 with attached documents to substantiate the findings. The commander will conduct the investigation according to the provisions of AR 600-8-1.

Appeals

Soldiers who feel that a finding of NLD is erroneous may appeal the decision in writing within 30 days of receiving notice of the findings. AR600-8-1, paragraph 41-16, provides guidelines for appeal.

RESPONSIBILITIES, RIGHTS, AND RESTRICTIONS

CHAPTER 9

Commanders' Responsibilities

ADVISING SOLDIERS

You should refer most insurance problems to a legal assistance attorney. You should also, however, inform soldiers of the Servicemen's Group Life Insurance (SGLI) program. With this plan, soldiers can insure themselves for up to \$50,000 for a low monthly charge and can select a beneficiary. The insurance coverage will terminate if a soldier is AWOL for 31 days continuously, is convicted and confined by a civilian court, or is confined due to a court-martial sentence involving total forfeiture of pay and allowances. Restoration to active duty will revive the insurance.

You may receive requests from insurance agents for permission to talk with individual soldiers about life insurance. You should generally deny permission unless they can show written permission from the installation commander and evidence that the soldier has invited them to discuss insurance matters.

Civilian Creditors and Debt Collectors

Creditors and debt collectors may request that you assist them in collecting soldiers' debts. While you must reply in all cases, you will assist creditors and debt collectors only under specified circumstances. To respond appropriately, consult AR 600-15, which identifies Army policy and establishes procedural requirements. Your response may range from advising that the military cannot accommodate the request to helping the soldier develop a payment schedule.

Under federal law, debt collectors may not seek the assistance of third parties, such as employers and commanders, without first obtaining either the debtor's consent or a court order. Federal law does not prohibit creditors

from contacting third parties to seek collection assistance, but state law may forbid such contacts without consent or a court order. If such contacts are permitted, or if the requester has gotten the requisite court order or consent, you should ensure that the requestor has provided the documents required by AR600-15 and should interview the debtor-soldier before providing collection assistance. You should not release information about this interview without the soldier's consent.

Disputed debts can be resolved only by the parties to the dispute or through the judicial process. Consequently, if the soldier disputes the debt, you may not require him to pay it. You should refer soldiers who have questions regarding debts to the legal assistance office. Legal assistance attorneys can advise soldiers and their family members about the lawfulness of debts and can help them decide what to do. Army Community Services offices often provide financial and budget counseling and can help develop payment plans and budgets.

You may initiate administrative elimination or court-martial of soldiers who dishonorably fail to pay just debts. Whether a debt is just and whether a soldier's failure to pay it is dishonorable are questions that an elimination board or court-martial panel must resolve.

PATERNITY, CUSTODY, AND NONSUPPORT CLAIMS

You may occasionally receive a letter from an unwed mother or mother-to-be asserting that a soldier is the father of her child and demanding that the Army do something about the matter.

AR 608-99 addresses the proper action for you to take.

You are responsible for ensuring that soldiers honor their family support obligations. When they fail to honor court custody orders or refuse to provide adequate support for spouses, children, and other family members, you should take firm action as discussed in AR 608-99. You should advise soldiers of possible consequences, including garnishment of up to 65 percent of military pay for nonsupport, if they do not fulfill these responsibilities. Soldiers who willfully neglect to support their families may be court-martialed under UCMJ, Article 92, or they may be administratively eliminated from the service.

When the nature or extent of liability for support is in doubt, you should refer the soldier to the legal assistance office and seek legal advice yourself from an administrative law attorney (not a legal assistance attorney). If problems of pay or allowances are involved, however, you should first refer the soldier to the finance office.

Unions

Groups seeking to bargain with commanders on such matters as duty, hours, duty rosters, pass policies, or political activities have no legal status. DOD Directive 1354.1 and AR 600-50 give specific guidance. In exercising good leadership, you must be willing to discuss complaints and other matters with your soldiers individually, but under no circumstances may you recognize or lend legitimacy to unions.

RESOLVING COMPLAINTS UNDER UCMJ, ARTICLE 138

Article 138 of the UCMJ provides a complaint procedure for members of the active Army and members of the Army reserve on active duty training who think their commanders have wronged them. (A commander is an officer, in the complainant's chain of command, up to and including the first officer exercising general court-martial jurisdiction over the complainant, authorized to impose nonjudicial punishment on the complainant.)

Procedure

If one of your soldiers has a complaint, he must first ask you in writing to correct the wrong, that is make a request for redress. If you do not resolve the complaint, the soldier may make a formal written complaint, called a 138 complaint, to his immediate superior commissioned officer. The complaint must allege that you took a discretionary action that adversely affected the soldier. The action must have been arbitrary, capricious, or materially unfair, an abuse of discretion; or beyond your authority. The soldier must file the 138 complaint within 90 days of learning of the wrong. The time you take to decide the request for redress is not part of the 90 days.

The commander who receives the complaint must forward it to his GCMCA, who will investigate the complaint and take whatever action he thinks proper. After the GCMCA takes action, he must forward the file to The Judge Advocate General (TJAG) unless the soldier voluntarily withdraws it. TJAG will review the matter and will act on behalf of the Secretary of the Army.

Resolution

Department of the Army policy is to resolve all grievances at the lowest possible level of command. Since all soldiers have a statutory right to complain under Article 138, you may neither restrict submission of 138 complaints nor retaliate against soldiers who submit them. Soldiers must, however, follow the procedures outlined in AR 27-10, Chapter 20.

Unless the soldier voluntarily withdraws the 138 complaint, the GCMCA must forward the file to DA, even if the soldier gets the relief he or she requested. Therefore, although you are presumed to have acted properly, you should try to resolve any meritorious complaint at the request-for-redress stage. The servicing judge advocate is available to advise you whether a request for redress or a 138 complaint was properly submitted, how it should be processed, and what relief, if any, should be granted the soldier.

DISPOSING OF PERSONAL PROPERTY

Your command responsibilities will sometimes include the recovery, safeguard, and/or disposition of soldiers' personal property.

Deceased Soldiers

RECOVERY AND SAFEGUARD OF PERSONAL EFFECTS

When soldiers die, their personal effects should be handled with dignity and extreme care. You must make every effort to ensure that their belongings are not stolen, damaged, or lost. Prompt action is essential, and failure to comply with Army regulations may result in claims against the Army. You may handle personal effects under Army control differently, depending on whether or not a soldier died in a combat area. (See AR 600-8-1, Chapters 34 and 35). Outside a combat area, the commander of the installation where the personal effects are located may appoint a summary court to secure and dispose of them. (See AR 600-8-1, paragraph 34-6.)

Combat areas. In combat areas, commanders are responsible for recovering and properly evacuating all personal effects of deceased soldiers. As the commander, you will have personal effects found on a soldier shipped with the body. You will also have all items carefully inventoried on DD Form 1076, placed in personal effects bags, and secured.

Money and negotiable instruments are handled differently. Amounts of \$5 or more are withdrawn, converted into US Treasury checks, and forwarded to the Army Effects Office. (See AR 600-8-1, paragraph 35-11). DD Form 1076 will be used to document the disposition of the funds.

Property soldiers have left in units, hospitals, or rear areas must be collected, inventoried on DD Form 1076, and shipped to the theater effects depot. You must secure motor vehicles and household goods until disposition instructions come from the theater effects depot. (See AR 600-8-1, paragraph 35-13.) Organizational clothing and equipment are not personal effects and must be turned in to the appropriate supply officer. You will review documents and sealed material to safeguard military information.

Keep in mind that information concerning the recovery, inventory, or disposition of personal effects of deceased soldiers will not be furnished to the next of kin or other persons except by the Army Effects Office. They will forward inquiries and all available information to the Army Effects office for reply. (See AR 600-8-1, paragraph 35-15).

Noncombat areas. For soldiers who die outside a combat area, installation commanders or designated representatives are responsible for collecting and safeguarding their personal effects. Unit commanders have initial responsibility and act as both liaison and coordinating officers in disposing of a deceased soldier's property. Just as for combat area deaths, unit commanders will withdraw military documents and organizational clothing and equipment and will inventory all effects on DA Form 54. They will have all obscene, embarrassing, mutilated, or blood-stained items destroyed and all clothing designated for shipment cleaned. (See AR 600-8-1, paragraph 34-2.)

TRANSFER OF PERSONAL EFFECTS

The personal effects of a soldier who has died can be transferred either with or without summary court procedures.

Without summary court procedures. When surviving spouses or legal representatives are present at the installation, you will usually be directed to deliver the effects to them. Unit commanders will retain a receipt for the belongings on the original DA Form 54. They will forward the receipted copy to HQDA (DAPC-PEC-D), Alexandria, VA 22331-0400. They will also deliver all currencies, commercial papers, stocks, bonds, and checks with the rest of the belongings.

Exceptions are—

- Funds belonging to the government.
- Government checks payable to the deceased that are drawn on the Treasurer of the United States or on foreign depositories.
- Military payment orders payable to the deceased.

With summary court procedures. If the Army cannot deliver belongings of deceased soldiers to surviving spouses or legal representatives at the installation where the effects are, the installation commander will appoint a summary court to secure and dispose of them. The summary court determines who is eligible to receive the belongings. (See AR 600-8-1, paragraph 33-3, for the order of precedence.)

The summary court's report will include-

- The name, address, and relationship to the decedent of the person designated to receive the personal effects.
- The means used to determine local debtors and creditors.
- The amount of money, if any, collected and paid out.
- The total amount of cash received from the sale of effects and by whose authority they were sold.

The summary report must also include other documents, including copies of orders, correspondence, and legal documents (see AR 600-8-1, paragraph 34-6b) and a copy of the letter from the summary court to the person receiving the belongings. This letter advises that the delivery of the personal effects does not necessarily make the recipient the owner of the property, but that the law of the decedent's state will decide ownership of the property.

After the appointing authority has reviewed and approved the report, he will forward it with one copy of the DA Form 54 to HQDA, (DAPC-PEC-D), Alexandria, VA 22331-0400. The summary court will transfer money and negotiable instruments in accordance with AR 600-8-1, paragraph 34-2D7. This procedure includes converting currency over \$5 into a US Treasury check to be sent to the designated representative.

When the summary court can find or contact no next of kin or legal representative, it will wait 30 days and then sell all property except those items with keepsake value. (See AR 600-8-1, paragraph 34-2-10). The Army will then deposit and hold the funds. The summary court will

forward those items valued chiefly as keepsakes and commercial paper such as stocks and bonds to HQDA, (DAPC-PEC-D), Alexandria, VA 22331-0400, for transfer to the soldier's home.

SALE OF PERSONAL EFFECTS

At times the summary court will best serve the interests of all concerned by selling some of the decedent's property. When the surviving spouse or legal representative is not present, the installation commander may authorize such sales if the spouse or representative has provided a power of attorney to sell the goods. The summary court may sell a motor vehicle or other large item without the permission of the person designated to receive it if-

- The sale is in the best interest of the government.
- An emergency exists.
- The court has made a reasonable effort to determine the wishes of the designated recipient. (See AR 600-8-1, paragraph 34-8.)

The summary court's report must include complete records of such sales, including advertising, authority for sales, and bills of sale.

Absent Soldiers

When soldiers are absent from their units under unusual circumstances, you must ensure that both their personal and organizational property are protected from theft, damage, or loss. Even if soldiers are absent due to misconduct, the duty to protect their property does not change. Your failure to comply may result in claims against the Army. Your duty as a commander requires you to enter the absent soldier's area and may require you to forcibly search wall and foot lockers to make a complete inventory. Such authority applies only to areas under your control and does not apply off post.

ABSENT WITHOUT LEAVE

As soon as a soldier is listed as AWOL, you will select an officer, warrant officer, or non-commissioned officer (pay grades E5 through E9) to inventory all of the soldier's property under your control. The inventory officer will

list the items and quantities of personal military clothing on DA Form 3078. He will then have a witness and the unit commander verify and initial the form. The inventory officer will place the original form with the items in the duffel bag or other container and keep three copies of the form in the unit suspense file. As soon as he completes the inventory, the inventory officer will place the clothing in the unit supply room for safekeeping. If the soldier returns to military control before being dropped from the rolls, his personal military clothing will be returned to him. (See AR 700-84, paragraph 12-12.) If the soldier is dropped from the rolls, the clothing is turned in through supply channels. If the soldier returns to military control after his property is disposed of, military clothing will be reissued at his expense. If the soldier returns to military control at another installation before being dropped from the rolls, his clothes will be shipped to him at his expense. (See AR 700-84, paragraph 12-13.)

Personal civilian clothing and property of an AWOL soldier will be inventoried on plain bond paper as discussed above, and the inventory will be filed with DA Form 3078. The unit will retain the property until the soldier returns or drops from the rolls. Cash left behind will be deposited with the finance office, and the receipt will be placed in the soldier's DFR packet. If the soldier is dropped from the rolls, you or a summary court officer (in CONUS) or the unit commander (in OCONUS) will ship his personal civilian property. (See DA Pamphlet 600-8, paragraph 9-6.)

HOSPITALIZED

When a soldier is in the hospital, you will immediately secure and safeguard his clothing and personal effects. If the soldier does not return within 120 hours, the clothing and personal effects will be inventoried in the same manner as for an AWOL soldier. When a hospitalized soldier is transferred from the post, the local medical facility commander will notify you so that the soldier's clothing may go with him. The soldier should sign for the clothing; if he cannot, the commander of the medical facility will designate an officer to do so. When an

emergency makes that impossible, you will ship the clothing within 24 hours of notification. (See AR 700-84, paragraph 12-14.)

CONFINED

Soldiers ordered into confinement will report with personal military clothing. Before transferring a soldier, you must inspect and inventory all clothing in the soldier's possession or control. You must separately inventory and hold civilian clothing and other personal property at the unit for safekeeping. (See AR 190-47, paragraph 5-8.)

Prisoners may place in safekeeping personal property that is not authorized for personal retention. Such items may include-

- Watches.
- Rings.
- Checks.
- Wallets.
- Keys.
- Pens.
- Official papers.
- Religious emblems and medals.
- Items of sentimental value.

(See AR 190-47, paragraph 5-7).

Personal belongings secured at the unit will remain there until the prisoner returns or is reassigned. If the prisoner is reassigned to a correctional holding detachment or to disciplinary barracks, you will contact the confinement facility for disposition instructions. (See AR 190-47, paragraph 5-8.)

If the prisoner was sentenced to an unsuspended punitive discharge, you will turn in all excess personal outer military clothing retained at the unit and forward an inventory of civilian clothing and other personal property to the prisoner for further disposition instructions. (See AR 190-47, paragraph 5-8.)

Missing Soldiers

A missing soldier is one whose whereabouts and actual fate are unknown and one who is not

known to be AWOL. AR 600-8-1, paragraph 34-12 through 34-18, outlines instructions for disposing of a missing soldier's property. Effects of a soldier missing or captured in combat areas are processed as described for deceased soldiers in combat areas. Under the Missing Person's Act, when a soldier is officially reported as missing outside combat areas, the commander having control of the soldier's belongings will secure them and prepare an inventory of the belongings on DA Form 54. If the soldier is officially missing for 30 days or more, the unit commander will deliver or ship his personal effects to the spouse or legal representative. The spouse or legal representative will be notified that the delivery of the belongings does not grant ownership of the goods but that the recipient holds them as a custodian until the appropriate state decides to whom they belong. (See AR 600-8-1, paragraph 34-15).

CONTROLLING PUBLICATIONS

Only Headquarters, of the Army, may prohibit distribution of a publication on an installation. (See AR 210-10.) Installation commanders may require that soldiers get approval to distribute publications on post through other than official outlets, such as passing out underground newspapers in front of the post theater.

The installation commander determines if the publication would pose a danger to loyalty, discipline, or morale or if its distribution would interfere with a military mission. The installation commander delays distribution and forwards the material to Headquarters, Department of the Army. To ban distribution, Headquarters, Department of the Army, must find a clear danger based on fact. A publication's criticism of government officials or policy is not a basis for banning distribution of the publication, nor is a commander's disagreement with or dislike of the opinions expressed in the publication.

Although Headquarters, Department of the Army, may ban on-post distribution of publications, unit commanders may not prohibit possession of or seize them. Usually, these prohibited materials are underground newspapers. You must remember that soldiers have a right to possess such newspapers as long as they do not try to distribute them. Although the number of copies a soldier has may be evidence of intent to distribute, you should consider all the circumstances. Close coordination with the SJA is advisable on matters which involve a soldier's first amendment rights and the command's interest in promoting loyalty, discipline, and morale.

SOLDIERS' RIGHTS, RESPONSIBILITIES, AND RESTRICTIONS**RIGHTS**

Soldiers have specific rights in regard to personal expression, legal assistance, and civil rights.

Freedom Of Expression

The right of all citizens to express their feelings freely and openly has only those limitations necessary to protect the rights of society. Soldiers have the same basic rights. These rights must, however, be consistent with good order and discipline and national security.

CORRESPONDING WITH A MEMBER OF CONGRESS

Soldiers may write or petition any member of Congress about a complaint. You should not interfere with or try to dissuade a soldier from exercising this right. UCMJ, Article 138 (Chapter 13), protects a soldier's right to complain and request correction of a grievance against his commander.

WRITING FOR PUBLICATION

Generally, soldiers may not write on the following topics without submitting their writing for prior review and approval by the appropriate headquarters:

- National government operations.
- Military matters.
- Foreign policy.

They may write letters to editors and similar articles that constitute personal opinion or knowledge without having them reviewed and approved, even if the topic involves military matters or foreign policy. (See AR 360-5, Chapter 4.) Soldiers may not do personal writing during duty hours or use Army facilities, personnel, or property. (See paragraph 2-4.)

Writing for underground newspapers is not illegal, but it is subject to the same restrictions as other forms of writing. Soldiers may publish these newspapers off post, on their own time, and with their own money. However, soldiers are subject to discipline if the newspaper contains material or words for which the soldier can be prosecuted under federal law.

DEMONSTRATING

Soldiers may participate in demonstrations if they do not-

- Do so during duty hours.
- Soldiers participating during duty hours may be considered AWOL.
- Do so while in uniform.
- Soldiers in uniform can give the appearance that the Army sponsors or approves of the demonstration.
- Do so while on post.
- Do so while in a foreign country.
- Create a breach of law and order such as blocking traffic or assaulting police.
- Do so when violence is likely to result. (See AR 600-20, paragraph 5-3.)

Soldiers who demonstrate in a manner prohibited by AR 600-20 may be subject to disciplinary action.

EXPRESSING OPINIONS ON POLITICAL SUBJECTS

Soldiers do not lose the right to express opinions on all political subjects and candidates. Soldiers may not, however, use "official authority or influence for the purpose of interfering with an election or affecting the course of its outcome" (DOD Directive 1344.10). Therefore, as a commander, you may not campaign among your subordinates for any political party or candidate or distribute any literature published by one.

VOTING

Soldiers retain the right to vote in local and national elections. They may register to vote at their legal or permanent residence. (See AR 60020.)

Some soldiers change their legal residence to the state where they are stationed. (However, by registering to vote where stationed, soldiers might incur local taxes. Any soldier considering registering in the local community should visit a legal assistance officer to discuss possible problems.) When duty requires them to be away, soldiers may vote by absentee ballot. The forms needed to get absentee ballots and other election materials are

generally available in the legal assistance office or from the unit voting officer.

ATTENDING POLITICAL MEETINGS

When not in uniform, soldiers may attend both partisan and nonpartisan political meetings or rallies as spectators. While soldiers may go to these rallies, they may not speak before a partisan political gathering of any kind to promote a partisan political party or candidate. The limitations on soldiers participating in public demonstrations also apply to participating in political meetings. That is, soldiers cannot do so when on duty, while in uniform, while on post, and so forth. Furthermore, soldiers may not attend partisan political events as representatives of the Army, even though they do not actively participate. (See AR 600-20, Appendix B.)

Soldiers may also join political clubs and attend meetings when not in uniform. However, they may not serve in any official capacity (for instance, as officers) or be sponsors of a partisan political club.

Legal Assistance

Through the legal assistance program, the Army provides free legal advice to soldiers and their family members. (See AR 27-3.) In some places, the Army is also operating a court representation program. This program permits legal assistance attorneys to represent soldiers before civilian courts. To qualify for this program, a soldier must be unable to afford civilian counsel. Check with your legal assistance office to find out if this expanded program is available locally.

You should learn to recognize legal problems affecting soldiers and encourage them to seek help from the legal assistance office. All problems, however, are not legal problems, and you must distinguish legal assistance difficulties from situations involving criminal, administrative, financial, and other matters. For example, the finance office handles pay problems, and the adjutant general's office answers promotion questions. Legal aid for military criminal matters, whether involving Article 15 or court-martial, is not part of the legal assistance

program but is provided by the US Army Trial Defense Service.

EMERGENCY SERVICES

Several emergency services are available for soldiers. The Army Emergency Relief (AER) office can provide interest-free loans and, in cases of extreme hardship, free cash grants to soldiers and their family members who are in financial distress.

The Red Cross provides services such as—

- Family and personal counseling.
- Emergency financial assistance.
- Referrals to agencies for help in employment matters, medical care, and children's welfare counseling.
- Emergency communication between soldiers and their families when conventional communication facilities are inadequate.

The Army Community Service Program further helps soldiers and their families by providing information, assistance. When a soldier discusses a problem with a dance in meeting personal and family problems.

Emergency leave and compassionate reassignments are available to soldiers when appropriate. Emergency leave and, in some cases, space-required transportation on military aircraft may be granted in cases of death of an immediate family member or other urgent personal problems. (See AR 630-5, Chapter 6.)

Family emergencies also may trigger a request for a compassionate reassignment. To qualify, a soldier must be able to prove that—

- An unusual problem exists that can be solved only by reassignment and not by leave or correspondence.
- The problem is solvable within a reasonable period (usually one year).
- The problem did not exist or was not foreseeable at the time the soldier last came on active duty.

AR 614-200, Chapter 3, provides other requirements for compassionate reassignment.

In the cases of both emergency leave and compassionate reassignment, the Red Cross can assist you in getting information about conditions at the soldier's home.

LEGAL ASSISTANCE OFFICE SERVICES

Most military installations have legal assistance offices staffed by attorneys who can provide three important services for the command. First, they assist soldiers and family members with personal legal problems. This helps ensure that soldiers are ready to perform their missions without distraction. Second, they form the core of the installation's preventive law program. They help soldiers learn to avoid problems, especially those regarding taxes, personal readiness, and consumer rights. Finally, legal assistance attorneys assist in readiness exercises, helping commanders evaluate their unit's deployment preparedness and developing plans for ensuring that soldiers' legal affairs are in order.

The chain of command and the legal assistance attorney form a team to help soldiers avoid problems, solve problems they cannot avoid, and maintain a high level of morale and readiness. The legal assistance attorney is a resource you can use to help individual soldiers, to present command information classes, and to consult with regarding soldiers' needs to arrange personal affairs to achieve deployment readiness.

When a soldier discusses a problem with a legal assistance attorney, they create an attorney-client relationship. The attorney cannot disclose information from those discussions without the soldier's consent unless extraordinary circumstances exist regarding future violations of criminal law.

The most common services available to soldiers and their family members from the legal assistance office are—

- Wills.
- Powers of attorney.
- Marriage.
- Immigration and naturalization.

Wills. To be valid, a will must comply with specific legal requirements. If a soldier dies without a will, the law of the state where he was domiciled at the time of death will determine who should take his property. The state of domicile is the state in which the soldier is a legal resident and is not necessarily the state where he resided. A will may also nominate guardians of minor children. In addition, a soldier can use a will to designate who should administer the estate. Legal assistance attorneys are available to help soldiers determine if a will should be prepared and to write wills for soldiers and family members.

Powers of attorney. Powers of attorney authorize one person to act on behalf of another. For example, a soldier's spouse may use the soldier's power of attorney to—

- Clear government quarters.
- Ship the family car.
- Cash the soldier's paycheck.

Special powers of attorney are designed to confer limited authority for a short period and do not pose great risk to the person granting the power. On the other hand, general powers of attorney allow the agent to transact any business on behalf of the soldier. They can be dangerous because they confer considerable power, and they are difficult to revoke.

Marriage. Legal assistance attorneys can also help guide clients on legal aspects of family issues. For nonlegal aspects, referral to a chaplain, a counselor, or an Army community services representative may be appropriate, and you should consider recommending that soldiers seek assistance from these sources.

When a marriage cannot be saved, however, legal assistance attorneys can provide guidance on obtaining a separation or divorce. In addition, they can help in paternity matters, adoptions, family support issues, and name changes.

Immigration and naturalization. US immigration and naturalization laws have special provisions for soldiers who are aliens to acquire

American citizenship, and AR 608-3 discusses them. An alien who has served honorably in the US armed forces can acquire US citizenship without satisfying the normal residence, physical presence, and waiting period requirements.

Commanders at all levels must ensure that all aliens on active duty are aware of this law and are offered help in applying for US citizenship. Legal assistance attorneys can help with problems such as—

- Alien registration.
- Reentry permits.
- Naturalization of a surviving spouse.
- Citizenship of children born abroad.
- Provisions to be made for alien fiances.

THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

Congress passed the Soldiers' and Sailors' Civil Relief Act (SSCRA) in 1940 to protect military members fighting in World War II. It permits members who are unable to appear in court due to their military duties to postpone proceedings until they can. To grant such a delay, many courts require the member must have made a diligent effort to appear and must request a delay for the shortest reasonable amount of time in order to obtain leave and be present. Although attending court proceedings is often quite difficult in time of war, it typically is not difficult to obtain leave to attend these proceedings during peacetime. Thus, courts may be reluctant to grant long delays, and they are unlikely to grant delays at all solely for the soldier's personal convenience.

The SSCRA can also provide some protection regarding loan interest rates and repayment of debts. However, this protection applies only if the debt arose before the soldier entered active duty and if the difference between his prior civilian income and his military pay has substantially harmed his financial position.

One of the most common misconceptions about the SSCRA is that it gives a soldier the right to end a lease any time he or she changes duty

stations. The SSCRA gives soldiers the right to terminate only those leases they signed before entering active duty. Even then, soldiers must take specific steps to end leases. When a soldier signs a lease after entry onto active duty, the specific provisions of the lease, and, in some cases, state law, will control whether and how the lease can be terminated. The SSCRA does not require that termination provisions be included in a lease; instead, the soldier must ensure an appropriate termination provision is in the lease. Therefore, soldiers should have a legal assistance attorney review their leases before they sign them.

Although the SSCRA does not excuse soldiers from paying rent, it does afford some relief if military service makes payment difficult. Soldiers threatened with eviction for failure to pay rent should see a legal assistance attorney.

Civil Rights

Congress has passed civil rights laws prohibiting discrimination against soldiers. One law grants all persons equal access to theaters, restaurants, motels, hotels, and similar facilities. Under this law, businesses cannot refuse to serve soldiers because of their race, color, religion, or national origin.

Other federal laws prohibit discrimination in the sale or rental of housing. These laws cover discrimination on the basis of race, color, religion, national origin, handicap, and sex. You should familiarize yourself and your soldiers with these laws.

PUBLIC ACCOMMODATIONS

The Civil Rights Act of 1964 outlaws discrimination in places of public accommodation. As defined in this statute, places of public accommodation include—

- Hotels.
- Motels.
- Other overnight lodging facilities.
- Restaurants.
- Cafeterias.

- Lunch counters.
- Snack bars.
- Movie theaters.
- Sports arenas.
- Other places of public entertainment.

The statute prohibits managers or owners of such businesses from discriminating on racial, religious, color, or ethnic grounds (42 USC 2000a). This statute does not prohibit sex discrimination, but such discrimination violates Army policy AR 600-20.

You must advise your soldiers of their rights under this statute and AR 600-20. You should also tell minority group soldiers that off-post businesses that can be categorized as places of public accommodation cannot legally discriminate against them. The legal assistance office and the appropriate equal opportunity office can counsel soldiers in this regard.

Soldiers may file complaints of discrimination with the appropriate equal opportunity advisor. Such complaints will be fully investigated. If they seem to be justified, the equal opportunity advisor will refer them to the appropriate Armed Forces Disciplinary Control Board according to AR 190-24. This board will consider imposing an off-limits sanction against the offending business. Installation commanders will use the procedures in AR 19024 for imposing off-limits sanctions.

FAIR HOUSING

The Civil Rights Act of 1968, as amended, bans discrimination in the sale or rental of homes on the basis of race, color, religion, national origin, handicap, or sex. Since 1988, the Fair Housing Act has forbidden housing discrimination against families with children. This law applies to soldiers who live off post as much as it does to other citizens, and the Army has assumed responsibility for helping soldiers exercise these rights.

You should ensure that your soldiers understand that discrimination in the sale or rental of housing is illegal and that the Army is available to help whenever their rights are violated. The

attorney general of the United States and the Department of Housing and Urban Development have the responsibility to assist soldiers whose rights under this act have been violated. Each installation must have a local office where soldiers may file complaints of housing discrimination. The Army will investigate the complaints and forward them, if appropriate, to the attorney general or the Department of Housing and Urban Development for action.

Complaints will also be acted on within the Army in accordance with AR 210-50. When discrimination is confirmed, the installation commander must impose restrictive sanctions on the housing involved for at least 180 days.

You should become familiar with AR 210-50 and make sure your soldiers know that the installation housing referral office will help in cases of discrimination off post. If you keep yourself and your soldiers informed and display genuine concern for off-post housing problems, you will be able to prevent unrest and promote the Army policy of equal opportunity in off-post housing. You should also inform your troops of the Army policy forbidding soldiers to rent quarters that are under restrictive sanctions (AR 210-50).

EQUAL OPPORTUNITY

AR 600-20 establishes Army policy as providing equal opportunity and treatment for soldiers regardless of race, color, sex, religion, age, or national origin. Commanders at all levels must be personally, directly, and continuously involved in correcting discrimination and ensuring equal opportunity for all soldiers.

You can minimize discrimination within your command only if you emphasize this policy. Soldiers with all backgrounds must realize that you will not tolerate discrimination. In addition, you should inform your soldiers of the Army's policy to help them exercise their guaranteed rights. You should encourage them to discuss freely any grievances involving any type of discrimination. You should make every effort to counsel soldiers and direct them to a person or

office on post that can help resolve their problems, for example—

- The office of the inspector general.
- The housing referral office.
- The equal opportunity office.

As the number of women in the armed forces has increased, so has sexual harassment. Sexual harassment is a form of discrimination and is prohibited. It ranges from seemingly innocent-but unwelcome and offensive-sexual jokes to threats of adverse action by superiors unless subordinates submit to sexual advances. Soldiers and civilian employees who engage in or condone sexual harassment are subject to administrative discipline. Soldiers are also subject to punishment under the UCMJ. Sexual harassment often results in lawsuits. Victims of sexual harassment frequently sue superiors who know of a problem and fail to correct or prevent it.

You must be constantly alert for discrimination in any form and take immediate action to stop it. You must also realize that soldiers always have the right to file complaints when they feel they are victims of discrimination. You should make sure that all soldiers know of their right to complain and also know that they cannot be disciplined for exercising that right. Only when soldiers know that they have the right to make their grievances known without fear of reprisal is unit harmony possible.

You are also responsible for training your unit in the policies and activities supporting equal opportunity. You should ensure that soldiers are familiar with racial, ethnic, cultural, and gender-related differences so that they can appreciate these differences as positive aspects of American life. Although minimum equal-opportunity training in the unit is specified by major commands, active involvement of all unit members as participants in unit equal-opportunity sessions should be your goal.

Soldiers who believe that they are being discriminated against may file complaints at any time against the offices or soldiers who have

treated them unfairly. They may file complaints through normal command channels or directly to the local inspector general. They may also follow the procedures in UCMJ, Article 138, when appropriate. When you receive a complaint, you should get all the facts and take corrective measures immediately.

RESPONSIBILITIES

In addition to the rights discussed above, soldiers also have many responsibilities, including paying taxes and registering their motor vehicles.

Paying Taxes

INCOME TAXES

Soldiers, like everyone else, must file a federal income tax return every year. Those serving overseas on 15 April receive an automatic extension to 15 June. They will have to pay interest, however, on any amount not paid by April 15.

Several provisions in the tax code offer favorable treatment for soldiers. For example, most taxpayers have two years from the sale of a home to buy and occupy a new home to escape tax liability. Soldiers serving on active duty, however, are allowed up to four years after the sale of a home in which to buy and occupy a new one, and soldiers serving overseas may have up to eight years. No tax will be due on the gain from the sale of a home if a soldier meets these time limitations. Soldiers also do not have to meet the usual rules for claiming a deduction for moving expenses. Most taxpayers must meet a length-of-employment test and move a certain distance from an old job to a new job. Soldiers may, however, deduct all unreimbursed moving expenses as long as they incurred them in a permanent change of station (PCS).

Soldiers must include bonuses, base pay, and special pay on their federal income tax returns. They may exclude from their taxable income—

- Basic allowance for quarters (BAQ).
- Subsistence allowances.

- Uniform allowances.
- Several special items of compensation.

A special provision of the tax code may also preclude taxation of pay that enlisted soldiers receive while serving in a combat zone. Commissioned officers may exclude up to \$500 per month. Soldiers may receive help in preparing their federal income tax returns from unit tax assistants (UTAs).

A soldier must comply with the income tax laws of his or her home state, or state of domicile. Regardless of whether the home state taxes the soldier's income, the soldier need not pay taxes on military pay to the duty state, or state of station, if it is different from the home state. Soldiers must, however, pay taxes on nonmilitary income to both the home state and the state in which they earn the income. A soldier's nonmilitary spouse may have to pay income taxes to both the home state and the duty state.

PERSONAL PROPERTY TAXES

A soldier must pay personal property taxes on his or her solely owned property only to the home state. Property that the soldier and his or her spouse jointly own may be fully taxed by both the home state and the duty state; however, many states grant credit for personal property taxes paid to other states. A nonmilitary spouse's solely owned property can be taxed only in the state where it is located. Real property is taxed by the state in which the property is located, regardless of whether the owner is a soldier or a civilian.

Registering Motor Vehicles

Soldiers who have registered or licensed solely owned motor vehicles in their home states need not register the vehicles in their duty states. A soldier cannot avoid, however, registering in the duty state based on registration in a third state that is neither the home state nor the duty state. Soldiers may be required to comply with the safety inspection and emission control laws of the state where the car is registered, the state in which the car is located, or both.

RESTRICTIONS

In addition to rights and responsibilities, soldiers are limited by specific restrictions on their activities.

Soliciting

Soldiers must observe the following restrictions in regard to sales and other monetary solicitations.

SELLING TO SOLDIERS ON POST

All solicitors who sell goods, commodities, or services on post must have the installation commander's permission. Before granting approval, the commander determines if the solicitors work for reputable companies and if they or their companies have made any fraudulent or deceptive sales. The commander does not recommend the product or service; he simply allows solicitors to sell to those interested.

Once on post, solicitors must follow the guidelines in AR 210—7 and local directives. These regulations outline when and where they can solicit. They cannot visit soldiers in basic training or on duty; they must contact soldiers on an individual basis and by appointment only; and they may not solicit mass or captive audiences.

You should control solicitation of young, inexperienced soldiers in low pay grades and encourage soldiers to seek legal advice before making substantial loan or credit commitments. You should also ensure that soldiers know when the goods being sold are available in the PX, library, or craft shop.

Since the privilege of soliciting on post can be revoked because of improper conductor violation of Army regulations, any incidents or disreputable trade practices should be reported, through channels, to the installation commander for appropriate action.

SELLING TO OTHER SOLDIERS

Soldiers on active duty may not engage in personal commercial solicitation and sales to other soldiers who are junior in pay grade. (See AR 600-50, paragraph 2-lj.) This applies to activities on or off post, in or out of uniform, and on or off duty. Soldiers may not solicit or sell life or

automobile insurance, stocks, mutual funds, real estate, or any other goods, commodities, or services to other soldiers who are junior in pay grade or to anyone on an installation. (See AR 210-10, paragraph 5-5.)

A soldier may, however, sell personal property or a privately owned dwelling. Although a soldier may sell something to a subordinate on a onetime, personal basis, a superior should consider the wisdom of doing so. Such sales can lead to hard feelings and may diminish the quality of leadership.

SOLICITING GIFTS

Soldiers may not ask for contributions from other DOD personnel to buy a gift for a superior. Nor may they accept gifts from DOD subordinates. (See AR 600-50, paragraph 2-3.) However, a soldier may give a gift of nominal value or collect voluntary, minimal donations for such a gift for special occasions such as marriage, reassignment, retirement, or illness. (See AR 600-50, paragraph 2-3.)

Gifts of nominal value are sentimental and not to exceed \$200. Examples of such gifts include plaques, trophies, pen and pencil sets, or other items of remembrance. These gift restrictions also apply to solicitations on behalf of a superior's family members.

Working During Off-Duty Hours

Off-duty employment is allowed if it does not—

- Interfere with official duties. For example, a soldier who works late at a civilian job and reports for duty so tired that he cannot perform well has a job that interferes with official duty. In such a case, you may order the soldier to quit the off-duty job.
- Bring discredit upon the Army, for example, moonlighting for a disreputable business.
- Violate basic ethical considerations.

(See AR 600-50, paragraph 2-6a.)

Soldiers may not accept work for a civilian employer involved in a strike. However, soldiers

already on the payroll before the strike begins may generally continue if such employment otherwise conforms with the provisions of AR 600-50. During a strike, soldiers may not accept employment at the strike's location.

Soldiers must obtain your written permission to work for nonappropriated fund activities on the installation. Commissioned and warrant officers may work off-duty for nonappropriated fund activities on the installation only when such work is done on a fee basis and does not involve an employer-employee relationship. Acceptable activities include officiating at sports events and conducting educational, religious, recreational, or entertainment activities.

Political Campaigning

Soldiers may generally take no active part in partisan political management, any phase of campaigns, or conventions. Nor may they solicit contributions, canvass for votes, write political articles, or perform any duties for a partisan political committee. (See AR 600-20, Appendix B.)

While soldiers may not take part in organized political campaigns, they may contribute in other ways. They may make financial contributions to a political party or committee as long as they do not contribute to another soldier or federal employee. They may sign petitions for issues or candidates provided they do so as individuals and not as members of the Army. Soldiers may also display political stickers, but not large political banners or signs, on their private automobiles. (See AR 600-20, Appendix B.)

Holding Office

Soldiers may not campaign as partisan candidates for nomination or as partisan nominees for civil office. However, the installation commander may permit a soldier on active duty for training who is serving on active duty for less than 30 days to file for nomination or candidacy as required by law. The filing must not interfere with the soldier's official military duties. However, the soldier may not become a nonpartisan candidate for any full-time civil office while

serving an initial tour of extended active duty or other obligated tour.

A reserve officer or enlisted soldier elected to a full-time civil office or to any civil office as a partisan candidate may be separated from the service unless serving an initial tour of extended

active duty or other obligated tour. (See AR 600-20, paragraph 5-3). A soldier may serve in a local part-time nonpartisan civil office, such as chairman of a parent-teacher association, provided the job does not interfere with military duties, and he has prior approval from the installation commander.

APPENDIX A
Search Affidavit

M TAB TAB TAB TAB

AFFIDAVIT SUPPORTING REQUEST FOR AUTHORIZATION TO SEARCH AND SEIZE OR APPREHEND
For use of this form, see AR 27-10. The proponent agency is TJAG.

BEFORE COMPLETING THIS FORM, SEE INSTRUCTIONS ON PAGE 2

1. I, CW2 James E. Snow, 3d MPD (CI) Fort Gordon, Georgia
(Name) (Organization or Address)

having been duly sworn, on oath depose and state that on 6 October 1985, PFC John Doe, Headquarters and Headquarters Company, 3d Advanced Individual Training Brigade (Signal), US Army Signal Center and Fort Gordon, Fort Gordon, Georgia, reported to me that one blue and white portable "Smooth Tone" high-fidelity phonograph with gold script initials "JD" engraved on the cover, the property of Doe, was stolen from his living quarters by a person or persons unknown. The property was of a value of \$200.00.

2. The affiant further states that PFC Joseph R. Jones, Special Processing Detachment, Fort Gordon, Georgia, who lives next door to Doe, stated that at about 1700 hours on 6 October 1985 he was entering his driveway in his automobile when he noticed PFC Tom Smutt, Headquarters and Headquarters Company, 3d Advanced Individual Training Brigade (Signal), US Army Signal Center and Fort Gordon, Fort Gordon, Georgia, leaving Doe's house with a blue and white phonograph. Smutt put the phonograph in his automobile and drove away. PFC Larry Matthews, Headquarters and Headquarters Company, 3d Advanced Individual Training Brigade (Signal), Fort Gordon, Georgia, who lives directly across the hall from Smutt, stated that at about 1730 hours on 6 October 1985 he was in front of the barracks when Smutt arrived in his automobile and removed a blue and white phonograph from his car. When Matthews called to ask Smutt if he had bought a new player, Smutt replied that he had and took the phonograph into his room. Smutt lives in Room 6, Bldg. 9, Headquarters and Headquarters Company, 3d AIT Brigade (Signal), Fort Gordon, Georgia. Both Jones and Matthews related the above information to me during an official military police investigation of the matter after Doe had reported the incident. Doe, Jones, and Matthews appeared to be trustworthy and to have had no reason to tell an untruth in this case. Matthews has also provided valid information to the affiant on another matter on one previous occasion which proved to be accurate.

M _____ TAB _____ TAB _____ TAB _____ TAB _____

3 In view of the foregoing, the affiant requests that an authorization be issued for a search of the living quarters
(Room(s) (and)
known as Room 6, Bldg. 9, Headquarters and Headquarters Company, 3d AIT Brigade (Signal)
(the quarters or billets) (and)
occupied by PFC Tom Smutt
Fort Gordon, Georgia, presently/ and (seizure) apprehension of one blue and white portable
(item(s) (and) searched for)
"Smooth Tone" high-fidelity phonograph with gold script initials "JD" engraved on
the outside cover.

TYPED NAME AND ORGANIZATION OF AFFIANT
CW2 JAMES E. SNOW
3d MPD (CI), Fort Gordon, Georgia
SIGNATURE OF AFFIANT
James E. Snow

SWORN TO AND SUBSCRIBED BEFORE ME THIS 7th DAY OF October 19 85 AT Fort Gordon,
Georgia

TYPED NAME, ORGANIZATION AND OFFICIAL CAPACITY OF
AUTHORITY ADMINISTERING THE OATH
SIGNATURE OF AUTHORITY ADMINISTERING THE
OATH

**INSTRUCTIONS FOR
AFFIDAVIT SUPPORTING REQUEST FOR AUTHORIZATION TO SEARCH AND SEIZE OR APPREHEND**

1. In paragraph 1, set forth a concise, factual statement of the offense that has been committed or the probable cause to believe that it has been committed. Use additional page if necessary.
2. In paragraph 2, set forth facts establishing probable cause for believing that the person, premises, or place to be searched and the property to be seized or the person(s) to be apprehended are connected with the offense mentioned in paragraph 1, plus facts establishing probable cause to believe that the property to be seized or the person(s) to be apprehended are presently located on the person, premises, or place to be searched. Before a person may conclude that probable cause to search exists, he or she must first have a reasonable belief that the person, property or evidence sought is located in the place or on the person to be searched. The facts stated in paragraphs 1 and 2 must be based on either the personal knowledge of the person signing the affidavit or on hearsay information which he/she has plus the underlying circumstances from which he/she has concluded that the hearsay information is trustworthy. If the information is based on personal knowledge, the affidavit should so indicate. If the information is based on hearsay information, paragraph 2 must set forth some of the underlying circumstances from which the person signing the affidavit has concluded that the informant (whose identity need not be disclosed) or his/her information was trustworthy. Use additional pages if necessary.
3. In paragraph 3, the person, premises, or place to be searched and the property to be seized or the person(s) to be apprehended should be described with particularity and in detail. Authorization for a search may issue with respect to a search for fruits or products of an offense, the instrumentality or means of committing the offense, contraband or other property the possession of which is an offense, the person who committed the offense, and under certain circumstances for evidentiary matters.

APPENDIX B
Written Search Authorization

| | | | | |
|---|-----|--|-----|---------|
| IN | TAB | TAB ² | TAB | TAB |
| SEARCH AND SEIZURE AUTHORIZATION <small>For use of this form see AR 27 18, the proponent agency is TJAG</small> | | | | |
| TO: <i>(Name and Organization of the person to whom authorization is given.)</i> | | | | |
| <u>Special Agent William P. Warren, 3d MPD (CI), Fort Gordon, Georgia</u> | | | | |
| <i>(An affidavit has been made before me by having been made before me by</i> <u>CPT James E. Snow</u> <small><i>(Name of Affiant)</i></small> | | | | |
| <u>3d MPD (CI), Fort Gordon, Georgia</u> <small><i>(Organization or Address of Affiant)</i></small> | | | | |
| <i>(which affidavit is attached hereto and made a part of this authorization), and as I am satisfied that there is probable cause to believe that the matters mentioned in the affidavit are true and correct, that the offense set forth therein has been committed, and that the property to be seized is located (at the place) (at the place) to be searched, you are hereby ordered to search the (place) (place) known as</i> | | | | |
| <u>Room 6, Bldg. 9, Headquarters and Headquarters Company, 3d AIT Brigade (Signal), Fort Gordon, Georgia</u> | | | | |
| for the property described as <u>one blue and white portable "Smooth Tone" high-fidelity phonograph with gold script initials "JD" engraved on the outside cover.</u> | | | | |
| <i>bringing this order to the attention of the (person in possession, if any person be found at the place or on the premises searched). The search will be made in the (daytime) (daytime), and if the property is found there, you shall seize it, issue a receipt therefor to the person from whom the property is taken or in whose possession the property is found, deliver the property to:</i> | | | | |
| <u>the Evidence Custodian, 3d MPD (CI), Fort Gordon, Georgia</u> <small><i>(Name and Organization of Authorized Custodian)</i></small> | | | | |
| and prepare a written inventory of the property. If there is no person at the searched place to whom the receipt may be delivered, the receipt will be left in a conspicuous location at the place or on the premises where the property is found. | | | | |
| Dated this <u>7th</u> day of <u>October</u> , 19 <u>85</u> | | | | |
| _____ TYPED NAME AND GRADE OF AUTHORIZING OFFICIAL | | _____ DUTY POSITION OF AUTHORIZING OFFICIAL | | |
| _____ ORGANIZATION OF AUTHORIZING OFFICIAL | | _____ SIGNATURE OF AUTHORIZING OFFICIAL | | |
| DA FORM 3748-R, Mar 85 | | EDITION OF NOV 82 IS OBSOLETE | | 1737-85 |

DD Form 458, Charge Sheet

See AR 600-200, Table 1-1, for the proper grade designations.

More than one entry may be shown for this block; if so, show all types.

If terminated, show date imposed and terminated.

Do not include any special pay such as that for proficiency, hazard, or performance.

| CHARGE SHEET | | | |
|---|-----------------------------|----------------------------------|------------------------------------|
| I. PERSONAL DATA | | | |
| 1 NAME OF ACCUSED (Last, First, MI) James, Reuben J. | | 2 SSN 111-11-1111 | |
| 3 GRADE OR RANK PFC | | 4 PAY GRADE E-3 | |
| 5 UNIT OR ORGANIZATION Co A, 1st Inf Bde, Fort Blank, MO | | | |
| 6. CURRENT SERVICE | | | |
| a. INITIAL DATE 1 April 1983 | | b. TERM 3 years | |
| 7 PAY PER MONTH | | 3 NATURE OF RESTRAINT OF ACCUSED | |
| a. BASIC \$500 | b. SEA/FOREIGN DUTY None | c. TOTAL \$500 | 9 DATE(S) IMPOSED 1 August 1985 |
| | | | Restriction |

Does not apply in CONUS.

List every essential element of the offense charged.

| 10 CHARGE | | II. CHARGES AND SPECIFICATIONS | |
|---|-----------------------------------|--------------------------------|--|
| I | VIOLATION OF THE UCMJ, ARTICLE 86 | 86 | |
| SPECIFICATION In that Private First Class Reuben J. James, US Army, Company A, 1st Battalion, 1st Infantry Brigade, Fort Blank, Missouri, on active duty, did, on or about 15 July 1985, without authority, absent himself from his unit, to wit: Company A, 1st Battalion, 1st Infantry Brigade, located at Fort Blank, Missouri, and did remain so absent until on or about 30 July 1985. | | | |
| Charge II: Violation of the UCMJ, Article 112a | | | |
| Specification 1: In that Private First Class Reubin J. James, US Army, Company A, 1st Battalion, 1st Infantry Brigade, Fort Blank, Missouri, on active duty, did at Fort Blank, Missouri, on or about 12 July 1985, wrongfully possess 10 grams of marijuana. | | | |
| Specification 2: In that Private First Class Reuben J. James, US Army, Company A, 1st Battalion, 1st Infantry Brigade, Fort Blank, Missouri, on active duty, did at Fort Blank, Missouri, on or about 14 July 1985, wrongfully possess 8 grams of marijuana. | | | |

Do not show the social security number of the accused in the specification.

The accuser may be any person subject to the Code, but the accuser cannot refer those charges to a general or special court-martial.

To avoid charging an accused with multiple offenses for what is really a single offense, consult legal counsel before drafting charges. See RCM 307(c) (4), MCM.

| III. PREFERRAL | | |
|--|--|---|
| 11a NAME OF ACCUSER (Last, First, MI) Richards, Jonathan E. | b. GRADE Captain | c. ORGANIZATION OF ACCUSER Co A, 1st Bn, 1st Inf Bde |
| d. SIGNATURE OF ACCUSER <i>Jonathan E. Richards</i> | | e. DATE 1 Aug 85 |
| AFFIDAVIT Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this <u>1st</u> day of <u>August</u> , 19 <u>85</u> , and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief | | |
| Will M. Wilson <i>Typed Name of Officer</i> | 1st Bn, 1st Inf Bde <i>Organization of Officer</i> | |
| Captain <i>Grade</i> | Adjutant <i>Official Capacity to Administer Oath</i> <small>(See R.C.M. 307(b) - must be commissioned officer)</small> | |
| <i>Will M. Wilson</i> <i>Signature</i> | | |

Charges must be sworn in all cases. No accused may be tried on unsworn charges over his objection.

Only a commissioned officer may swear the accuser to the charges.

Refer to RCM 307, MCM, for guidance in preparing a charge sheet. All blocks must carry an entry.

DD FORM 458
31 AUG 84

EDITION OF OCT 69 IS OBSOLETE

The time entry here is extremely important; it is used as the time element in the Statute of Limitation, Article 43, UCMJ.

12. On 2 August, 19 85, 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.)

Jonathan E. Richards
Typed Name of Immediate Commander

Co A, 1st Bn, 1st Inf Bde
Organization of Immediate Commander

Captain
Grade

Jonathan E. Richards
Signature

If at all possible, the commander should make this notification personally.

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1100 hours, 2 August, 19 85 at 1st Bn, 1st Inf Bde
Designation of Command or

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

FOR THE COMMANDER

Will M. Wilson
Typed Name of Officer

Adjutant
Official Capacity of Officer Signing

Captain
Grade

Will M. Wilson
Signature

If the charges are recommended for a GCM, then do not go below this block. Notify your SJA as quickly as possible of the recommended level of disposition.

V. REFERRAL SERVICE OF CHARGES

| | | |
|--|----------------------|---------------|
| 14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY | b. PLACE | c. DATE |
| 1st Infantry Brigade | Fort Blank, Missouri | 7 August 1985 |

Referred for trial to the special court-martial convened by CMCO number 12 dated 1 August, 19 85, subject to the following instructions None

By _____ of _____
Command or Order

Carl E. Nevins
Typed Name of Officer

Commander, 1st Inf Brigade
Official Capacity of Officer Signing

Colonel
Grade

Carl E. Nevins
Signature

List the amending CMCOs in numerical sequence. All must be listed.

If the rank of the convening authority is colonel or below, use the word *order*. If the rank is BG or higher and if the convening authority does not personally sign, use the word *command*.

15. On 8 August, 19 85, I (caused to be) served a copy hereof on ~~person(s)~~ the above named accused

Hamilton Burger
Typed Name of Trial Counsel

Captain, JAGC
Grade or Rank of Trial Counsel

Hamilton Burger
Signature

The appointed trial counsel has the responsibility for serving charges. See RCM 602, MCM, for the applicable time limitations.

All changes, corrections, additions, and deletions must be initialed by the person who makes them.

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

PERSONAL DATA

The first section of the charge sheet contains personal information concerning the accused. This information is generally found in the personnel file of the accused. During the preliminary investigation, you should have reviewed the personnel file before deciding the disposition of the case. The accused's grade or rank is the military title (PFC in the sample), and the pay grade is the numeric designation (E3). The initial date of the accused's current service is the date of his latest enlistment.

WITNESSES

Each witness must be contacted to determine availability during the next 90 days. You should request that an administrative hold be placed on the witness. Failure to take this action may result in the loss of an essential witness who will not return to testify or who will return only at great expense to the government.

RESTRAINT

Block 8 should indicate the nature of restraint of the accused, listing all types of restraint imposed. Block 9 specifies the duration of and any changes in the restraint, for example—

- Restriction, 1-10 August 1989.
- Pretrial Confinement, 11 August 1989.

CHARGES AND SPECIFICATIONS

The charge merely indicates the article of the UCMJ that was violated. The specification under the charge states the facts and circumstances that constitute a violation of that article.

A single charge may include more than one specification; if it does, number them with arabic numerals. The specification must be written so that it clearly advises the accused of the date, time, place, elements, and circumstances of the alleged offense. A specification which fails to allege every essential element of the offense charged is fatally defective. If a model specification is not available for a particular offense, do not attempt to create one—see your SJA.

Elements Of The Offense

Part IV of the MCM discusses the punitive articles of the UCMJ. These punitive articles are the bases for charges and specifications. Subparagraph b of each paragraph in Part IV outlines the elements of the offense which are important both in recognizing criminal conduct and in drafting a clear, complete specification. A carefully prepared specification will include each of these elements.

Model Specifications

When drafting specifications, use the model fill-in-the-blank specifications in MCM, Part IV. These specifications are legally correct. You should address any questions regarding proper wording to the SJA office. The paragraphs in Part IV also outline other information useful in drafting specifications.

Legal Advice

Do not alter the words in a model specification without advice from the SJA office. Seek legal advice regarding any question on the selection or drafting of a specification. The designated trial counsel for the unit or the military justice division chief, who is the principal assistant of the SJA in all matters pertaining to the administration of military justice, should provide the legal advice.

PREFERRAL OF CHARGES

Usually you sign the charge sheet as the accuser; however, any person subject to the UCMJ maybe an accuser. A superior authority may not order anyone to prefer charges to which he cannot truthfully make the required oath. The signing of the charge sheet by the accuser must be done in the presence of a commissioned officer authorized to administer oaths. (See UCMJ, Article 136.) The accuser must take the oath described on the bottom of the front page of the charge sheet. This act is called the referral of charges.

NOTIFICATION TO THE ACCUSED

After the charges have been preferred, you or your representative must inform the accused of the charges and specifications and who preferred

the charges. The notification should normally occur on the same day as the preferral of charges. You then complete the certificate in block 12 of the charge sheet. The accused must be informed of the charges by this formal act. You may have previously told the accused that you intended to bring charges or that you were investigating possible charges; merely having done so does not satisfy this requirement. Later, after the charges have been referred to trial, the trial counsel will give a copy of the charge sheet to the accused and sign the certificate (block 15).

RECEIPT AND REFERRAL OF CHARGES

Upon receipt of all necessary copies of the charge sheet and allied papers, the summary court-martial convening authority or a representative will sign the receipt of charges in block 13. The appropriate court-martial convening authority will refer the charges to a specific court-martial for trial and complete Section V of the charge sheet.

TRANSMITTAL OF CHARGES

As the company commander, you prepare and forward other documents with the copies of the charge sheet. These should be hand-carried to the commander exercising summary court-martial jurisdiction. (See MCM, R.C.M. 401(c)(2).)

Letter Of Transmittal

Use a letter of transmittal to forward the charge sheet and allied papers to the court-martial convening authority. The letter is usually a local form containing information about the accused and your recommendation for disposition of the charges. You must personally sign the letter of transmittal and attach one copy to each set of the charge sheet and allied papers. When recommending disposition of the charges, consider the nature of the offense, the personal history of the accused, and whether the accused should be eliminated from the service.

Keep in mind that charges against an accused should be tried by the lowest court with power to adjudge an appropriate and adequate punishment.

Allied Papers

INVESTIGATIVE REPORTS

Forward all military police or CID reports of investigation related to the offense. If these investigative reports are not completed when you are ready to forward the charges, you should forward the charges with a statement that the reports will follow when they become available. You may forward initial and interim reports you receive with the charge sheet. Under no circumstances should you delay forwarding charges until completion of the final MP or CID reports.

WITNESS STATEMENTS

Available witness statements forwarded with the charge sheet may be sworn or unsworn. You may include summaries of expected testimony. While in most cases attaching written statements from all available witnesses is best, delaying forwarding charges to obtain them is not necessary. You may attach handwritten statements to the charges if typing causes an unnecessary delay.

DOCUMENTARY EVIDENCE

To safeguard documentary evidence, do not forward originals with the charge sheet; copies are sufficient. For example, if the case is based on a forged check, forwarding the original would risk loss in transmittal.

OTHER RECORDS

Include any records of the accused's previous convictions with the documentation, as well as personal evaluation sheets. Personal evaluations are often recorded on local forms and include information about the accused's military record and your evaluation of the accused's conduct and efficiency.

Glossary

ACMR—Army Court of Military Review

ADAPCP—Alcohol and Drug Abuse Prevention and Control Program

admonition—a warning that a specific act is inappropriate and that its repetition will likely provoke a further, more severe response.

AER—Army Emergency Relief

apprehension—a military arrest; the actual taking of someone into custody, not a temporary stop or detention(See RCM 302.)

AR—Army regulation

arrest warrant—a written authorization to apprehend

attn—attention

AWOL—absent without leave.

BCD—bad conduct discharge

BG—brigadier general.

CCF—security clearance facility

CFR—Code of Federal Regulations

CID—criminal investigation division

claim—a written demand for payment resulting from an accident or incident causing personal injury, death, or loss of or damage to property

CMA—United States Court of Military Appeals

CMCO—court-martial convening order

CONUS—continental United States

counseling—advising soldiers of their errors and how to improve

creditors—the people or organizations to whom or to which a debtor was originally obligated.

DA—Department of the Army

DC—District of Columbia

DD form—Department of Defense form

debt collectors—people and organizations in the business of collecting debts on behalf of others

demonstration—a mass meeting or assembly intended to promote a cause, political issue, or candidate

dependency—a condition caused by the death or disability of a member of a soldier's or spouse's immediate family who previously had supported those persons now dependent upon the soldier; the death or disability of the family member must have placed the responsibility of support on the soldier

DFR—dropped from rolls

DIR—directive (DOD)

DOD—Department of Defense

DOM—due to own misconduct.

ETS—expiration term of service.

FM—field manual.

GCM—general court-martial

GCMCA—general court-martial convening authority.

hardship—a condition that has been aggravated to excess since a soldier's entering the service or that arose after the soldier entered the service; does not involve the death or disability of a family member, and can only be alleviated by a return to civilian life.

HQDA—Headquarters, Department of the Army

inefficiency—The inability of soldiers to perform the duties and responsibilities expected of them according to rank or military occupational specialty

LD—line of duty

MCM—Manual for Courts-Martial

Mil. R. Evid.—military rule of evidence

MOS—military occupational specialty

MP—military police

MPI—military police investigator

MPRJ—military personnel records jacket

NCO—noncommissioned officer

NCOIC—noncommissioned officer in charge

NDOM—not due to own misconduct

NLD—not in the line of duty

OCONUS—outside continental United States

OMPF—official military personnel file

Pam—pamphlet

partisan political actions—those political actions that support or relate to candidates or issues specifically identified with national or state political parties or related groups

PCS—permanent change of station

PERSCOM—US Army Military Personnel Command

PFC—private first class

personal commercial solicitation— situations in which soldiers sell on commission or salary, conduct business, and contact prospective purchasers concerning goods or services for sale

physical evidence—drugs, weapons, clothing and other items related to an alleged offense

pretrial restraint—moral or physical restraint on a soldier's liberty which is imposed before and during disposition of offenses

PX—post exchange

R.C.M.—rules for courts-martial

remission—cancellation of the unserved portion of the punishment

reprimand—a reproof, rebuke, censure, strong criticism, or chewing out for failing to comply with the established standard

SCM—summary court-martial

SGLI—Servicemen's Group Life Insurance

SJA—staff judge advocate

SPCM—special court-martial

SPCMCA—special court-martial convening authority

SSCR—Soldiers' and Sailors' Civil Relief Act

substantial evidence—evidence upon which a reasonable person is convinced of its truth or falseness

suspension—when punishment is held in abeyance or not put into effect for a specified period of time

sworn statement—an affidavit or written statement of facts given by a witness or suspect who states under oath that the statement's contents are true

TJAG—The Judge Advocate General

UCMJ—Uniform Code of Military Justice

US—United States

USACA—United States Army Correctional Activity

USC—United States Code

USDB—United States Disciplinary Barracks

void—without legal effect

will—a legal document signed by a person over 18 years old that directs how the person's property should be distributed upon his or her death



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- AR 630-5.** *Leave and Passes.* 1 July 1984.
- AR 635-40.** *Physical Evaluation for Retention, Retirement, or Separation.* 15 February 1980.
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- AR 700-84.** *Issue and Safe of Personal Clothing.* 20 September 1989.
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- DA Pam 190-2.** *Guidance on Dissent.* 1 March 1983.
- DA Pam 600-8.** *Management and Administrative Procedures.* 25 February 1986.
- DOD Directive 1354.1.** DOD Policy on Organizations that Seek to Represent or Organize Members of the Armed Forces in Negotiation or Collective Bargaining. 25 Nov 80.
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- Selective Service Act, 50 USC 55 451 -73(1 988) Soldiers' and Sailors' Civil Relief Act, 50 USC App. 5 500-48, 560-91 (1988).
- United States Code (USC).

DOCUMENTS NEEDED

- DA Form 54.** *Record of Personal Effects—Outside Combat Areas.*
- DA Form 1208.** *Report of Claims Officer.*
- DA Form 1574.** *Report of Proceedings by Investigating Officer/Board of Officers.*
- DA Form 2028.** *Recommended Changes to Publications and Blank Forms.*
- DA Form 2173.** *Statement of Medical Examination and Duty Status.*

- DA Form 2627.** *Record of Proceedings Under Article 15, UCMJ.*
- DA Form 2627-1.** *Summarized Record of Proceedings Under Article 15, UCMJ.*
- DA Form 2823.** *Sworn Statement.*
- DA Form 3078.** *Personal Clothing Request.*
- DA Form 3744-R.** *Affidavit Supporting Request for Authorization to Search and Seize.*
- DA Form 3745-R.** *Search and Seizure Authorization.*
- DA Form 3881.** *Rights Warning Procedure/Waiver Certificate.*
- DA Form 4126-R.** *Bar to Reenlistment Certificate.*
- DA Form 4137.** *Evidence/Property Custody Document.*
- DA Form 4856-R.** *General Counseling Form.*
- DD Form 261.** *Report of Investigation—Line of Duty and Misconduct Status.*
- DD Form 458.** *Charge Sheet.*
- DD Form 1076.** *Record of Personal Effects of Deceased Personnel.*

READINGS RECOMMENDED

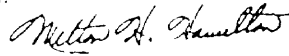
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13 JANUARY 1992

By Order of the Secretary of the Army:

GORDON R. SULLIVAN
General, United States Army
Chief of Staff

Official:



MILTON H. HAMILTON
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