

**LESSONS
IN
MILITARY LAW**

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LESSONS IN MILITARY LAW

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METHODS OF INSTRUCTION

A. General

1. Text and References

The *Lesson in Military Law* series was developed for use in classes with company grade officers and noncommissioned officers. The lessons are based upon chapters in the *Legal Guide for Commanders* (DA Pam 27-19), which is the basic textbook for these classes. This book should be available to students in preparing for the classes and for their later use in carrying out their responsibilities as military leaders. The Manual for Courts-Martial, United States, 1969 (Rev. ed.) and current Army regulations cited in the book are also important references for these lessons, but their discussion in the *Legal Guide for Commanders* should provide sufficient background information for the students.

2. Case Methods

Each lesson has several cases or problems for group discussion. Free and open discussion of these cases by the students is essential to the success of this teaching system. The instructor *must not* lecture. The lessons include discussion questions and an outline of teaching points taken from the *Legal Guide for Commanders*, which the instructor should develop with his students.

B. Technique

1. Instructor Preparation

The lessons have been written for presentation by a judge advocate officer. He should prepare for each class by reading the problems, the discussion questions and the outline of teaching points. He should be familiar with the materials in the appropriate chapter of the *Legal Guide for Commanders* and all cited references to the Manual for Courts-Martial and Army regulations.

2. Teaching Materials

a. Cases/Problems

Each lesson has several original cases or problems taken from actual experience. Several ways to present these cases are discussed below.

(1) *Handouts*. The cases or problems may be reproduced and handed out to the students. If possible, they should be handed out the day before classes so that students have the opportunity to read them with their assignment in the *Legal Guide for Commanders*.

(2) *Demonstration*. The cases may be presented by a live demonstration or skit. The instructor may tailor the facts in the case to the local organization in order to make the presentation more realistic.

(3) *TV Tape*. The case may be presented by a demonstration or skit which has been taped for television. Once again the

flexibility of adapting the case to local requirements will improve student interest.

(4) *Narration by the Instructor.* When there are no facilities for reproduction or other presentation of the cases, the instructor may simply explain the case or problem to the class and then continue with his discussion outline.

b. *Other Teaching Materials*

Several lesson plans call for charge sheets or other materials to be handed out to the class. In most cases, the judge advocate instructor will have charge sheets and other forms available which he may conveniently distribute in the classroom. Ideally, each student should have a copy of the *Legal Guide for Commanders* available to him during the class.

3. Classroom Techniques

a. *Lesson Introduction*

The instructor should read to the class the brief introduction and statement of objectives in each lesson. He may mention local problems related to the particular lesson or use other techniques for gaining the students' interest and making them feel at ease in the classroom. In any event, this introduction should not exceed *10 minutes*. He should urge students in his introduction to ask questions and participate in the discussion.

b. *Presentation*

The lessons follow a logical sequence in developing various aspects of military law. For this reason, the instructor should start with Lesson Number 1. However, he is free to use any lesson in the series if he feels that his student group would be better served by discussing problems which are later in the series. The class should have the case or problem well in mind and the instructor should be prepared to make any explanation necessary if questions arise. The instructor begins the session by asking the questions in the discussion following each problem. He leads the discussion by encouraging student participation in order to develop the outlined teaching points following each question. If students fail to bring out all the teaching points, supplemental questions by the instructor may be necessary. All teaching points in the outline should be discussed before going on to the next case.

c. *Time*

Each lesson is planned for two hours of discussion. Based upon the composition of the student group (officers, noncommissioned officers, or both) the discussion may be completed in less than two hours or it may extend over a longer period of time. If an instructor is unable to complete all problems in a class period, he should endeavor to complete discussion of all teaching points in any one case or problem by the end of the session.

d. *Instructor Innovation*

The cases, questions, and discussion points in each lesson were developed to permit maximum flexibility in achieving the teaching objectives. Tailoring the cases to fit local command structure and permitting the students to relate personal experiences can be valuable to the discussion. The instructor should bear in mind that students learn more rapidly and retain information far longer when they engage in the learning process as active participants. Moreover, they are far better equipped to handle daily problems related to military law if they have had the opportunity to openly discuss the application of law to actual problems.

LESSONS IN MILITARY LAW

LESSON 1

THE MILITARY JUSTICE SYSTEM

REQUIREMENTS

1. Lesson Objective: To provide an overall view of the court-martial system, including types of courts-martial, appellate processing of convictions, and recognition of criminal conduct.
2. Time: Two Hours. (See Methods of Instruction, page iii.)
3. Training Aids: Optional. (See Methods of Instruction, page iii.)
4. Facilities: Discussion group. (See Methods of Instruction, page iii.)
5. Text References: Manual for Courts-Martial, U.S., 1969 (Rev. ed.); *Legal Guide for Commanders* (DA Pam 27-19).
6. Lesson Assignment: Read sections I, II, and III, chapter I, *Legal Guide for Commanders* (DA Pam 27-19).

I. INTRODUCTION

A. Opening Statement

Today's discussion is an introduction to the military justice system. We'll consider the three levels of courts-martial and the factors to consider in determining which court should try an offense. Next we'll take a quick look at how a conviction is appealed and then discuss how to determine if conduct is in fact, a criminal offense.

B. Lesson Objectives

At the conclusion of this period, the student should be familiar with:

1. The three types of courts-martial.
2. The factors to be considered in recommending the type of courts-martial by which the offenses should be tried.
3. Alternative or additional actions to be taken on offenses considered for trial by courts-martial.
4. General appellate action on convictions.
5. Methods of recognizing criminal conduct.

C. Methods of Instruction

The instructor should explain the method of presentation to the students as outlined in the Methods of Instruction, page iii.

II. PROBLEMS AND DISCUSSION

A. Problem 1

PFC Simmons is a 19-year-old, unmarried, company goof-off who possesses one company grade Article 15 for 3 failures to make work formation 2 months ago. He is 2 days late returning from a one-week leave. His excuse is that he stayed to visit with his brother who was leaving for Vietnam that week. He admits never checking with anyone in the company to get an extension on his leave since he figured it would be "OK to stay home for a couple extra days." He is offered a field grade Article 15 for the AWOL and refuses to accept it. His platoon leader states, "Simmons does a good enough job when he feels like it, but has to be pushed." Simmons has been in the Army 2 years and his conduct and efficiency ratings range from "Excellent" to "Good."

B. Discussion of Problem

1. What are the alternatives to a court-martial?
2. What about a summary court-martial?
 - a. Any limit on sentence:
 - (1) E-4 and below;
 - (2) E-5 and above.
 - b. One-man court;
 - c. Counsel required? (No right to counsel, but may be permitted.)
 - d. Local restrictions on use, if any (e.g., Article 15 refusal required?)
 - e. Can accused object to trial by summary court-martial:
 - (1) If objects, cannot be tried by summary court-martial;
 - (2) True even if Article 15 has been refused;
 - (3) If refuses, commander can recommend referral to special or general court-martial.
 - f. Who convenes a summary court;
 - g. Who can act as summary court officer:
 - (1) Any commissioned officer on active duty;
 - (2) Cannot be a warrant officer;
 - (3) Cannot be an enlisted man;
 - (4) Cannot be the accuser;
 - (5) Cannot be a witness;
 - (6) Age, education, training, experience, service, judicial temperament considered in selecting.
3. What should you consider in recommending summary court-martial?
 - a. Disposition under Article 15 not appropriate:
 - (1) Article 15 refused;
 - (2) Offense more serious than Article 15 offense;
 - (3) Article 15's have not worked in past.
 - b. Mentality of accused;
 - c. Offense not serious enough for special or general court-martial;
 - d. Probable effect of conviction on accused;
 - e. Conviction is permanent part of record;

- f. Summary court—prompt action, little administration.

C. Problem 2

SP4 Adcock had been drinking at the service club and created a disturbance by pouring beer on another soldier. The MP's were summoned. Adcock punched out an MP, who sustained a black eye and Adcock had to be subdued by three others. When the XO arrived at the MP station to retrieve Adcock, he was roundly cursed by Adcock, who then passed out. Adcock was returned to the barracks to sleep it off. While being carried to the jeep, a .45 caliber pistol fell out of Adcock's pocket. There has been a rash of incidents on post involving unregistered weapons. SP4 Adcock received a field grade Article 15 6 months ago for being drunk and disorderly in a civilian bar off-post. The one grade reduction was suspended for 3 months and never executed, but the \$100 forfeiture was deducted from his pay. Adcock's immediate supervisor tells you Adcock is one of the best workers, but has been coming to work with bad hangovers at least once a week for the last 2 months. Adcock is married with two children. Three letters have been received concerning debts of approximately \$500 which he owes to Household Finance.

D. Discussion of Problem 2

1. What factors are considered in determining level of court?
 - a. Nature of offenses;
 - (1) Assault on MP relatively serious;
 - (2) Concealed weapons are dangerous.
 - b. Circumstances surrounding offenses:
 - (1) Voluntary intoxication;
 - (a) Not a complete defense, but consider;
 - (b) Does it make offenses more or less serious.
 - (2) Place and time of offenses.
 - c. Background of accused:
 - (1) Good on the job performances—

does this excuse or mitigate offense;

- (2) Prior offense of approximately same type;
- (3) Reasons for offenses;
- (4) Grade of accused:
 - (a) Different rules for different ranks;
 - (b) Is NCO expected to meet higher standard of behavior.
- (5) Family status;
 - (a) Financial effect of court-martial;
 - (b) Is discipline for the man or family.

2. Should Adcock be made an example?

- a. Effect on company and firearms problem;
- b. Should results of trial be publicized, as Article 15 punishments are;
 - (1) In all cases.
 - (2) Only in selected cases.

3. What if referred to special court without BCD power?

- a. What are sentence limitations;
- b. Who is on court;
 - (1) Three members;
 - (2) Military judge, probably;
 - (3) Enlisted men if requested.
- c. Can Adcock have a lawyer to defend him:
 - (1) Civilian lawyer;
 - (2) Military lawyer.

4. What other assistance is available to Adcock?

- a. Debt counseling by JA;
- b. Social worker, Alcoholics Anonymous, or similar aid for problem drinkers.

E. Problem 3

Based on a CID report, charges have been preferred against Private Darcy for larceny of PX merchandise totaling \$500, conspiracy with two others to commit the larceny, and resisting apprehension. A year ago Darcy was convicted by a Special court-martial of assault and a 2-month AWOL and was sentenced to 3 months' confinement,

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reduction to E-1, and forfeitures. Four months ago he received a company grade Article 15 for a 4-day AWOL and forfeited \$100. Last month he received a field grade Article 15 for disrespect to a staff sergeant and larceny of \$10 for which he received a reduction, restriction, and forfeitures. He has been in your company for 2 years and prior to his first AWOL was no problem whatsoever. Since then his job performance has been marginal, his off-duty time is spent with the battalion malcontents, and his general attitude is negative. Rumor has it that Darcy is on drugs and has been involved in several incidents for which charges could never be brought due to lack of sufficient evidence.

F. Discussion of Problem 3

1. Is a punitive discharge appropriate?
 - a. Nature of offenses;
 - b. Background of accused;
 - c. Past offenses;
 - d. General attitude of accused;
 - (1) Rehabilitation potential;
 - (2) Other rumored misconduct—how considered.
2. Which courts can adjudge punitive discharges?
 - a. BCD special:
 - (1) Convened by GCM authority;
 - (2) Legally qualified defense counsel;
 - (3) Who is on the court:
 - (a) Three members;
 - (b) Military judge;
 - (c) Enlisted members if requested.
 - (4) Verbatim record required;
 - (5) Limits on sentence;
 - (6) No formal investigation under Article 32, UCMJ required;
 - (7) SJA need not prepare formal pretrial advice.
 - b. General court-martial:
 - (1) Legally qualified counsel on both sides;
 - (2) Who is on the court:
 - (a) Five members;
 - (b) Military judge;

(c) Enlisted members if accused requests.

3. Only limit on sentence is Table of Maximum Punishment, MCM;
4. Formal investigation under Article 32, UCMJ required.

G. Problem 4

Specialist 4 Jones, has just been sentenced to confinement at hard labor for 6 months and a Bad Conduct discharge. He is on the way to the stockade. He asks what will happen to his case.

H. Discussion of Problem 4

1. What actions will be taken on the case if it is a special court-martial?
 - a. Staff Judge Advocate prepares post-trial review when BCD to be approved;
 - b. Convening authority's review:
 - (1) Findings: Approve in whole or part, or set aside;
 - (2) Sentence: Approve, reduce, or suspend.
 - c. Review by Judge Advocate for legal sufficiency when BCD is not approved;
 - d. Article 69, UCMJ permits review by the Judge Advocate General;
 - e. Clemency;
 - f. If BCD approved, mandatory review by Court of Military Review.
2. What action may be taken on the case if GCM?
 - a. Staff Judge Advocate prepares post trial review;
 - b. Convening authority review:
 - (1) Findings: Approve in whole or part, or set aside;
 - (2) Sentence: Approve, reduce, or suspend.
 - c. Reviewed by Court of Military Review;
 - d. May be reviewed by Court of Military Appeals;
 - e. Clemency.

I. Problem 5

The company commander has just received a CID report stating that PFC Johnson has

been subscribing to an "underground newspaper" entitled *Revolution* which advocates forceful overthrow of the Government. Johnson has been encouraging others to subscribe to the paper. He is violently opposed to the Army. Johnson told the First Sergeant to "shove off" when directed by the First Sergeant to remove the large gold earring from his left ear.

J. *Discussion of Problem 5*

1. Has Johnson violated the UCMJ?
 - a. Subscription to an underground newspaper does not violate the UCMJ. Not all conduct that is unacceptable to military authority is criminal conduct punishable under the UCMJ.
 - b. Disrespect may be evidenced by words alone, such as "shove off" and violates the UCMJ.
 - c. The gold earring may violate uniform regulations—Article 92, UCMJ.
2. If Johnson's remark to "shove off" occurred after duty hours when both he and the First Sergeant were in civilian clothes would it be a violation of the UCMJ?
 - a. Yes, if the conversation related to an official military matter.
 - b. No, if the conversation were private in nature.

3. What should a commander do to determine whether Johnson has violated the UCMJ?
 - a. Consult MCM;
 - b. Check Army regulations;
 - c. If in doubt, consult with the Judge Advocate.

III. CONCLUSION

A. *Summary of Important Points*

1. The summary, special, and general court-martial may be used to maintain discipline in the unit. The court-martial should be tailored to the individual and the offense.
2. All court-martial cases are reviewed at some level for legal sufficiency.
3. Commanders must not assume that everything they dislike is a violation of the UCMJ.

B. *Closing Statement*

As you have observed during this lesson, each case of criminal conduct must be weighed on its own facts. This means that the nature of the offense, and the background of the accused must be considered in deciding the level of the court-martial. The system works best when all cases are disposed of at the lowest level.

LESSONS IN MILITARY LAW

LESSON 2

MILITARY JUSTICE CONCEPTS

REQUIREMENTS

1. Lesson Objective: To discuss and provide an understanding of basic individual rights of soldiers, including the concepts and reasons underlying the development and enforcement of such rights.
2. Time: Two hours. (See Methods of Instruction, page iii.)
3. Training Aids: Optional. (See Methods of Instruction, page iii.)
4. Facilities: Discussion group. (See Methods of Instruction, page iii.)
5. Text References: *Legal Guide for Commanders* (DA Pam 27-19).
6. Lesson Assignment: Read paragraph 1-3.3, *Legal Guide for Commanders* (DA Pam 27-19).

I. INTRODUCTION

A. Opening Statement

Each of us has probably heard a statement such as, "We didn't have problems 'till we had rights," or, "The only rights a soldier needs are to wear a uniform and to get in the Club." However, the Constitution didn't exclude military personnel from sharing the same basic personal rights guaranteed to civilians. These rights can sometimes result in an apparently "guilty" man going free. Today let's take a look at some of the basic principles.

B. Lesson Objectives

To acquaint the students with the basic meaning, effects, and concepts underlying the following:

1. Presumption of innocence.
2. Search and seizure.
3. Article 31.
4. Right to counsel.
5. Speedy trial.

C. Method of Instruction

The instructor should explain the method of presentation as outlined in Methods of Instruction, page iii.

II. PROBLEMS AND DISCUSSION

A. Problem 1

A soldier discovered that his radio had been stolen. He told his First Sergeant who immediately suspected PFC Johnson of the theft. Johnson lived near the last known location of the radio, was a constant disciplinary problem, and had exhibited signs of drug use. The First Sergeant cut off the lock to Johnson's locker and found the radio and three bags of marijuana inside the locker. The First Sergeant put Johnson in a detention cell pending approval of pretrial confinement.

B. Discussion of Problem 1

1. Is Johnson guilty of any offense?
 - a. A soldier is presumed innocent until a court finds beyond a reasonable doubt that he is guilty.

b. Previous unrelated misconduct does not change the presumption of innocence.

2. Should Johnson be placed in pretrial confinement?

a. Grounds for pretrial confinement:

- (1) Necessary to insure his presence at trial;
- (2) When it appears he may injure himself or others; or
- (3) When a serious offense has been committed.

b. Disadvantages of pretrial confinement:

- (1) Deprivation of a man's liberty before trial;
- (2) Hinders preparation of a defense;
- (3) May be punitive in nature; and
- (4) Facilities may be overcrowded and understaffed.

C. Problem 2

Because the First Sergeant had cut off Johnson's lock and opened his locker without requesting permission from the commanding officer to search, Johnson laughed and told the First Sergeant that he had "blown the case."

D. Discussion of Problem 2

1. Was the First Sergeant's search unlawful?

- a. The commanding officer did not authorize the First Sergeant's search.
- b. There was not sufficient grounds for the commanding officer to authorize a search (probable cause).
- c. The Constitution protects soldiers from unreasonable searches and seizures.

2. Will the evidence obtained be admissible in court?

- a. Evidence obtained by an unlawful search is not admissible in court.
- b. This "exclusionary rule" is designed to discourage unlawful invasions of privacy.

3. What will be done with the radio and marijuana?

- a. Contraband may be seized and destroyed.
- b. Stolen property may be returned to its owner.

E. *Problem 3*

The commanding officer talked to Johnson and told him it appeared that he had taken the radio. He demanded an explanation. Johnson replied, "Yes, sir, I stole it, but you have blown the case, sir!"

F. *Discussion of Problem 3*

1. Has any right of Johnson been violated?
 - a. He was not advised of his rights against self-incrimination.
 - b. He was not advised of his right to consult with a lawyer.
2. Can Johnson's confession be used against him in court?
 - a. Confessions or admissions obtained without proper warnings cannot be used against a person in court.
 - b. The exclusion of improperly obtained confessions or admissions protects against abuse by authorities of a person's constitutional rights.

G. *Problem 4*

Assume that Johnson's locker was lawfully searched and he had been properly warned before confessing. After charges were forwarded, Johnson was transferred to another unit and the paperwork lost. It was not until 15 months later that Johnson was brought to trial. The charges were dismissed by the military judge.

H. *Discussion of Problem 4*

1. Why were the charges dismissed?
 - a. His constitutional guarantee to a speedy trial was denied.
 - b. Nothing short of a dismissal of charges would protect this constitutional right.
2. Why is there a constitutional guarantee to a speedy trial?
 - a. An accused suffers solely by being under charges:
 - (1) Suspension of favorable personnel actions;
 - (2) Personal restraint;

- (3) Mental anxiety.

- b. The delay may prejudice the accused's ability to defend himself:
 - (1) Availability of witnesses;
 - (2) Investigation of fresh facts.

I. *Problem 5*

Assume that the case was not dismissed and Johnson went to trial. He was represented by a military lawyer and Perry Mason, a civilian lawyer. Both lawyers did a great job presenting Johnson's case and Johnson walked out of court a free man. Johnson's commanding officer immediately told him that he was going to be kicked out of the Army with a "212" discharge.

J. *Discussion of Problem 5*

1. What duty did the lawyers owe Johnson in representing him?
 - a. A lawyer owes his client the best defense possible.
 - b. In an adversary proceeding a defense lawyer's loyalty is only to the defendant.
 - c. The prosecutor has a similar obligation in representing the Government.
2. Can Johnson be administratively separated after his acquittal?
 - a. An administrative separation cannot be based upon the same grounds which were tried at court martial.
 - b. Unrelated matters and newly discovered grounds may be the basis for administrative elimination.

III. CONCLUSION

A. *Summary of Important Points*

1. The presumption of innocence is most important and pervades all aspects of military justice from appropriateness of pretrial confinement to the findings of the court-martial.
2. Constitutional rights to a speedy trial, against self-incrimination, and against illegal search and seizure are basic to the American system of justice.

B. *Closing Statement*

Some of the concepts discussed in this lesson

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lead to the fact that a guilty man may go free. While this is disturbing to some, it is obvious that the safeguards are necessary

and beneficial to all. When leaders administer these safeguards fairly, a respect for the judicial system is accomplished.

LESSONS IN MILITARY LAW

LESSON 3

THE PRELIMINARY INVESTIGATION

REQUIREMENTS

1. Lesson Objective: To familiarize the student with requirements of a preliminary investigation, including reporting the offense, cooperating with police, safeguarding evidence, with particular emphasis on questioning suspects and witnesses.
2. Time: Two hours. (See Methods of Instruction, page iii.)
3. Training Aids: Optional. (See Methods of Instruction, page iii.)
4. Facilities: Discussion group. (See Methods of Instruction, page iii.)
5. Text References: Manual for Courts-Martial, U.S., 1969 (Rev. ed.) *Legal Guide for Commanders* (DA Pam 27-19).
6. Lesson Assignment: Read sections I, II, IV, and V, chapter 2, *Legal Guide for Commanders* (DA Pam 27-19).

I. INTRODUCTION

A. Opening Statement

Today we are going to discuss the manner in which a preliminary investigation should be conducted. A thorough and impartial preliminary investigation is an essential step in the commander's handling of all military justice problems. Special attention will be given to the requirement to warn a suspect of his constitutional right to remain silent and to have a lawyer present during questioning.

B. Lesson Objectives

At the conclusion of this period, the student should have a better understanding of:

1. The requirements of a preliminary investigation.
2. The need to safeguard evidence.
3. When and how to properly inform a suspect of his constitutional rights.
4. The technique of questioning witnesses and taking statements.
5. When to contact police investigators.

C. Method of Instruction

The instructor should explain the method of presentation to the students as outlined in the Methods of Instruction, page iii.

II. PROBLEMS AND DISCUSSION

A. Problem 1

Captain Young, the Commanding Officer, Company A, learns privately from CPL Gilroy, of Company B, that PVT Dunn of Company A has been selling many expensive items at bargain prices. Gilroy suspects that Dunn has been taking the items from the PX. Captain Young makes a note to look into the matter when he gets a chance. Several weeks later Captain Young finds his note and directs PVT Levin to check Dunn's current rate of pay and to pull his 201 file to determine Dunn's educational level and pre-service experience. A few days later PVT Levin reports that there is nothing unusual in Dunn's records. Captain Young then dismisses Gilroy's report as gossip.

B. Discussion of Problem 1

1. Is the "investigation" adequate? If not, Why?
 - a. Not timely—should be started when information first received.
 - b. Not complete—
 - (1) No inquiry to find out what, where, when, or if items being sold.
 - (2) Gilroy, the only witness, not interviewed for more information.
2. Does Captain Young have to conduct the investigation himself?
 - a. He can direct another responsible person in unit to make the preliminary inquiry.
 - b. If serious crime—can ask CID to investigate.
3. What else can CPT Young do?
 - a. Conduct search of Dunn's property if probable cause is found as a result of investigation.
 - b. Question Dunn after properly warning him.
 - c. Call in criminal investigators (compare notes).

C. Problem 2

SFC Donlevy comes to Captain Young and reports that PVT Dunn of the 1st Platoon came into the barracks after a weekend pass and started packing his personal gear. When SFC Donlevy saw this he tried to find out what was wrong but Dunn told him to "go to hell." Dunn then tore up his ID card, stated the Army could "go pound sand," and stormed out of the barracks. SFC Donlevy reported that several soldiers of the Company had been present but he was too excited to remember who they were. Captain Young knew that PVT Dunn had a pregnant wife and that she lived in an apartment just off-post. Captain Young ordered 2LT Novak of the 1st Platoon to look into the situation and to report all the information. 2LT Novak had known PVT Dunn for the 9 months Dunn had been in the 1st Platoon and had expressed the opinion that Dunn would never make a soldier. Captain Young knows that the 1st Platoon will be

tied up for the next several weeks serving as the honor guard for the post. Captain Young tells 2LT Novak that he wants the report within the next 3 or 4 weeks. Captain Young then shelves the incident pending the report.

D. Discussion of Problem 2

1. What should Captain Young have done in order to properly investigate the incident?
 - a. Make a prompt personal investigation.
 - b. Select a responsible individual to conduct the investigation.
2. Why should CPT Young have selected an officer other than LT Novak to conduct the investigation?
 - a. LT Novak was too busy to conduct an immediate and thorough investigation.
 - b. LT Novak may be biased against PVT Dunn.
3. How would the investigation have been conducted?
 - a. It should be informal, not like an Article 32 or AR 15-6 investigation.
 - b. The investigator should interview all witnesses (Dunn's friends, members of his platoon, and his wife).
 - c. He should contact the military police and the CID.
 - d. He should check Dunn's 201 file and attempt to obtain all information relevant to Dunn and the incident.

E. Problem 3

Assume the situation presented in Problem 2. Tuesday following the Sunday night incident, PVT Dunn returns voluntarily to the post, goes directly to SFC Donlevy and apologizes for his behavior. SFC Donlevy, still upset, reports Dunn's return to Captain Young and requests that Dunn be confined in the stockade. The Captain agrees and Dunn is confined. Captain Young receives 2LT Novak's report several weeks later. The report has the names of the witnesses to the incident and their statements which substantiate SFC Donlevy's version of the facts.

In addition the statements indicate that Dunn was "very emotional" and "upset" during the incident. Dunn has been in the company for 9 months. His work has been acceptable but uninspired. He is easy going and gets along well within the Company, but seemed preoccupied and tense for the last 2 or 3 months. He has no prior disciplinary record. Novak's reports show that Dunn, 18 years old, married his present wife just before enlisting in the Army. He had completed the 9th grade and had worked in the construction field for several years prior to coming into the service. His basic test scores showed him to be of average ability. Further, 2LT Novak reported that Dunn's wife was indeed pregnant and had left Dunn's home without Dunn's knowledge or permission the day of the incident to return to her parents. Dunn reported that his wife wanted more money and they had been fighting about it. Dunn said he left the post to find his wife and maybe get a job that paid more money. Dunn had been working nights at a gas station for the last 5 months. Based on the above, 2LT Novak recommends "trial by special court-martial with discharge authorized, on charges of desertion, disrespect to a superior NCO and violation of a lawful general order by failing to have his ID card in his possession."

F. Discussion of Problem 3

What should Captain Young do?

- a. Confinement was probably not justified in this situation;
- b. Dunn should not be charged with desertion. The charge is not supported by the evidence;
- c. The charge of violating a lawful order, while technically correct, is an example of an unnecessary and unwarranted additional charge;
- d. He should carefully consider PVT Dunn's personal situation before deciding on a court-martial.

G. Problem 4

Specialist Howard is awakened by a noise near his bed in the barracks. He sees a man

going through his dresser and clothes. He yells, the man turns, faces Howard and tells him "Don't sweat it, man; I'm just looking for my hat." The man then hurries out. Howard turns on the lights and sees muddy footprints on the floor, his locker door forced open, and a large crowbar lying on the floor with what could be the letters "BT" in red on the handle. A clock radio and his wallet with a twenty dollar bill are missing. Howard rushes to the Duty Officer and tells him what happened. He shows him the crowbar and after closely examining it, they lay it on a table and forget it. Howard describes the man for the Duty Officer and while the description is not unusual it does seem to fit a corporal assigned to the company. Howard says he got a good look at the man and thinks he could recognize him if he saw him again but is not sure. The next afternoon the Duty Officer calls CPL Petroff and Specialist Howard to his office and asks Howard to identify the man. Howard says that CPL Petroff is the burglar without any doubt. During the morning Howard cleaned his cubicle.

H. Discussion of Problem 4

1. What was wrong with the handling of the situation?
Failure to use CID;
 - a. Serious offense;
 - b. Perishable evidence;
 - c. Technical assistance required—fingerprints, footprints.
2. Evidence was not cared for:
 - a. Crowbar left lying around after being handled freely;
 - b. Footprints and possible fingerprints lost.
3. Improper identification; line-ups should be run only by CID.

I. Problem 5

Mr. Whizz, a military criminal investigator, picks up Private Blue from the company orderly room and hustles him over to the CID office. Although he knows that Private Blue is suspected of assault, Whizz refuses to tell him what is going on and places him

in a small room by himself. Private Blue is ordered to stay in the room. Three hours later, Mr. Whizz returns to the room angry and upset. Private Blue asks if he can get a drink of water. Mr. Whizz says, "I'm required to read you something and when I get finished you better have some answers for me." Mr. Whizz advises Private Blue that he is suspected of assault with intent to commit robbery. He is advised that he doesn't have to say anything about the offense, but if he does, it can be used against him. He is told that he had a right to counsel and can talk to one if he wants. The counsel can be military or civilian. Private Blue states he needs to talk to somebody. Mr. Whizz replies, "Good, I'm ready to do some listening." Private Blue says he doesn't want to talk to Mr. Whizz. Mr. Whizz gets up and leaves the room, telling Private Blue to remain there. Approximately 3 hours later, Mr. Whizz returns, having gone to Private Blue's company area and conducted an unauthorized search of Blue's room. Mr. Whizz throws Private Blue's red ski jacket and hunting knife he has taken from Private Blue's room down on the table. He tells him that the items have been identified by the victim of the assault. Private Blue knows he is in trouble but still refuses to talk. Mr. Whizz suggests that they both get down on their knees and pray but again Blue refuses. Mr. Whizz stands up and says he is going to call Private Blue's parents and tell them their son committed a felony. Private Blue becomes quite upset and explains that his father is dead and his mother has a bad heart. After further discussion Private Blue decides to give Mr. Whizz a sworn statement. As soon as Private Blue begins talking, Mr. Whizz begins typing. He explains to Private Blue that he is required by regulation to take a sworn written statement. After about 30 minutes Mr. Whizz takes the DA Form 2820 out of the typewriter and shows Private Blue where to sign the form. Mr. Whizz explains that the form is complicated, but that he has prepared hundreds and can show him where to sign. Mr. Whizz explains that as

soon as they have finished signing they can get something to eat. Private Blue signs the written statement and is escorted to the military police mess hall by two guards.

J. Discussion of Problem 5

1. When should a suspect be warned?
 - a. As soon as he is taken into custody;
 - b. As soon as it is apparent that the individual is a suspect.
2. What were some of the methods used by Mr. Whizz to coerce a statement?
 - a. Refusing comforts;
 - b. Angry tone;
 - c. Isolated for long period of time;
 - d. Prayer;
 - e. Use of unlawfully seized evidence;
 - f. Call to mother;
 - g. Offering comforts (meal).
3. What was wrong with the warning given to the accused?
 - a. Warning should not be played down as unimportant;
 - b. Accused has a right to remain silent, not just the right to say nothing about the offense;
 - c. Any statement may be used against him in trial by court-martial or administrative proceedings;
 - d. Counsel means lawyer;
 - e. Right to free military lawyer; right to civilian lawyer at own expense;
 - f. Right to talk to lawyer before answering questions;
 - g. Mr. Whizz should inquire, "Do you want to make a statement?" and "Do you want a lawyer?"
 - h. Mr. Whizz must insure that Blue understands the warning;
 - i. Right to terminate the interrogation when accused desires.
4. What is wrong in the procedure for taking a sworn statement?
 - a. Immediate typing (whose statement?);
 - b. Failure to allow Blue to read statement;
 - c. Failure to have Blue swear to the statement.

K. Problem 6

Captain Mooney is conducting an investigation into a recent rash of barracks thefts in his company. He calls in Sergeant Shafer who had \$300 stolen from him the night before. Captain Mooney reads Article 31 to Sergeant Shafer, but assures him that he is not suspected of any crime. Sergeant Shafer tells Captain Mooney that he doesn't like Specialist Greer and thinks he might have done it. Sergeant Shafer further explains that he heard that Private Jewel had come into the Army to avoid going to jail for a car theft. Captain Mooney tells Sergeant Shafer to write down what he thinks on a DA Form 2823 (Witness Statement), sign it and give it to the First Sergeant. Private Beard reports to Captain Mooney that he saw Private Jewel acting suspiciously that morning and Jewel had told him that he had money to burn. Captain Mooney sends for Private Jewel. As soon as Private Jewel enters the Captain's office he blurts out, "I can't stand it! Here is the money I took!" At the same time he dumps a larger number of bills on Captain Mooney's desk. Captain Mooney calms the young soldier down and Private Jewel tells him all about the theft he has committed.

L. Discussion of Problem 6

1. How should a witness be questioned?
 - a. The facts the investigator is looking for must be obtained in specific detail;
 - b. Opinions must be based on observed facts to be of investigative value, i.e., an opinion as to intoxication may be based on observation (slurred speech and glossy eyes).
2. How would a witness execute a written statement?
 - a. DA Form 2823 (Witness Statement) should be used if available, or any other appropriate form;
 - b. A witness, unless the investigator begins to suspect him during the questioning, need not be read Article 31 prior to questioning;

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3. How should a suspect be questioned?
 - a. A suspect should be advised of his rights as soon as possible;
 - b. If a suspect blurts out a confession before a warning can be given to him, his statement may be admissible at trial;
 - (1) A memorandum of his statement should be made;
 - (2) The suspect should then be warned before taking a formal statement from him or asking questions.
 - c. A confession or admission made to a third party may be admissible at trial, i.e., a suspect tells his buddy he committed an offense.

III. CONCLUSION

A. *Summary of Important Points*

1. A preliminary investigation must attempt to discover all the relevant facts. The investigation must be conducted as quickly as possible.
 2. If the commander is to reach a just decision, the investigation must be complete, fair, and impartial.
 3. A proper warning of constitutional rights is essential not only for the protection of the suspect, but also to protect the Government's case in the event of a court-martial.
- B. *Closing Statement*

The preliminary investigation is an essential element in the administration of military justice. It is the main source of the information the commander needs in making the grave decisions that involve military justice and discipline.

LESSONS IN MILITARY LAW

LESSON 4
SEARCH AND SEIZURE

REQUIREMENTS

1. Lesson Objective: To discuss and provide a basic understanding of the distinction between searches, inspections, and inventories; the methods for conducting each; the type of evidence which may be seized; and the relationship between search and seizure and the conduct of a court-martial.
2. Time: Two hours. (See Methods of Instruction, page iii.)
3. Training Aids: Optional. (See Methods of Instruction, page iii.)
4. Facilities: Discussion group. (See Methods of Instruction, page iii.)
5. Text References: Manual for Courts-Martial, United States, 1969 (Rev. ed.); *Legal Guide for Commanders* (DA Pam 27-19).
6. Lesson Assignment: Read section III, chapter 2, *Legal Guide for Commanders* (DA Pam 27-19).

I. INTRODUCTION

A. Opening Statement

Today we are going to discuss search and seizure. As leaders, you may have to apply the rules for search and seizure which fall under some of the most stringent requirements in our American system of law. As you may well know, this job is not always an easy one. But the fact remains that if a search is illegal then the evidence produced by that search will not be considered in a court-martial, and you might very well watch a "guilty" man go free.

B. Lesson Objectives

At the conclusion of this period, the student should have a better understanding of:

1. The difference between searches, inspections, and how to lawfully conduct each;
2. The type of evidence which may be seized during searches, inspections, and inventories; and
3. The commander's role in search and seizure, including the limitations placed on his authority.

C. Method of Instruction

The instructor should explain the method of presentation to the students as outlined in the Methods of Instruction, page iii.

II. PROBLEMS AND DISCUSSION

A. Problem 1

Captain Cuning has been the Commanding Officer of Company A for the past 11 months. Private Bates reports to Captain Cuning that he has just returned from leave and some of his property has been stolen. Private Bates is missing a stereo tape deck and two expensive rings. There does not appear to be any information as to who stole the property or when it was stolen. The tape deck and rings were in Private Bates' room when he left for leave. Captain Cuning has never conducted an unannounced shakedown inspection, but he knows he has the authority to do so. He read it in a regulation. At 2330 hours that same day, Captain Cuning, his First Sergeant, and two Lieu-

tenants started conducting an unannounced inspection. He advised the men in his company that he was required by regulation to conduct a monthly health and welfare inspection and they should unlock and open all foot lockers and wall lockers. The automobiles in the company lot would be inspected last. Captain Cuning told his assistants that they should be on the lookout for Private Bates' tape deck and rings. The inspection began with the soldiers who shared Private Bates' room. While inspecting Specialist Hip's wall locker, the First Sergeant discovered a small plastic bag containing marijuana. It had been hidden in a shoe box marked "personal". He seized the marijuana along with a sweat shirt inscribed "Vietnam, Love it or Leave it". The inspection continued through four more rooms but nothing else was discovered. By then it was 0130 hours and Captain Cuning was tired and called off the search.

B. Discussion of Problem 1

1. What is an inspection?

- a. It is a periodic check, announced or unannounced, to see if the soldier's belongings are clean, properly maintained, properly stored; to insure he has no dangerous materials such as ammunition; and other considerations related to health, safety, and welfare.
- b. The inspection must be for legitimate reasons and not a disguised search.
- c. A legitimate inspection does not require probable cause.

2. How is an inspection conducted?

- a. It may be announced or unannounced.
- b. It must be uniform.
- c. It should be conducted with regularity.

3. What are the limits of an inspection?

- a. The inspection may be as complete as is necessary to accomplish the purpose of the inspection.
- b. The commander may use other personnel as required to assist in the inspection.

- c. Automobiles—search must be based upon probable cause; inspection does not apply.
- 4. What items may be seized during an inspection?
 - a. Contraband.
 - b. Evidence of a crime.
 - c. Contraband seized during an inspection which may not be admissible at trial need not be returned to the owner. Stolen property which is seized may be returned to the owner.

C. Problem 2

Private Sly has gone AWOL from Company B. Captain Goodfellow, his company commander, has directed the First Sergeant to inventory and secure all Private Sly's personal belongings. The First Sergeant, along with Supply Sergeant Oboe, goes to Private Sly's room. The door is locked. The First Sergeant uses a master key to enter the room. Private Sly shares the room with Specialist Geefee. Sergeant Oboe breaks open the padlock on Private Sly's footlocker. While the First Sergeant examines Private Sly's belongings, Sergeant Oboe makes a complete written inventory of the items. Three obscene photographs and four .30 caliber bullets are removed by the First Sergeant. While the two are conducting the inventory, Sergeant Oboe sees a .45 caliber pistol sticking out of the open end of a duffel bag at the end of Sergeant Geefee's bunk. The First Sergeant examines the pistol and determines that it is one which was stolen from the arms room one week ago. After the First Sergeant secures the inventoried items in the supply room, he sees Specialist Geefee and tells Specialist Geefee to accompany him to see Captain Goodfellow. While they are walking through the company area, Specialist Geefee takes out a full pack of cigarettes and throws them in a ditch. Lieutenant Sparks, the battalion motor officer, sees Specialist Geefee throw the cigarettes away and wonders why. He picks up the cigarette pack and determines that the cigarettes contain marijuana. The First Sergeant later learns that Private Sly has an

apartment downtown. He decides to also inventory the items there.

D. Discussion of Problem 2

1. When may an inventory of a soldier's belongings be made?
 - a. When he is AWOL.
 - b. When he is hospitalized.
 - c. When he is confined:
 - (1) Stockade.
 - (2) Detention cell.
2. How is an inventory conducted?
 - a. A written list must be prepared.
 - b. Locked areas may be opened.
 - c. Reasonable and necessary force may be used to enter locked areas.
3. What items may be seized during an inventory?

Contraband may be seized (bullets and obscene photographs).
4. What items seized would be admissible in trial?
 - a. The contraband seized may be admissible against Sly because it was seized during an inventory.
 - (1) No probable cause was necessary because it was not seized during a search.
 - (2) The inventory was for a legitimate reason (Sly was AWOL).
5. Is the pistol admissible in trial?
 - a. It was in "open view".
 - b. The entrance into the room was pursuant to a legitimate inventory.
 - c. Any item in open view in a public area which is contraband or evidence of a crime may be seized.
 - d. When the "open view" is based upon an improper invasion of an individual's privacy, an item seen and seized is not admissible in trial.
6. May abandoned property be seized?

Items thrown away may lose the incidents of ownership and may be seized without violation of any personal or property rights.
7. May Specialist Geefee be prosecuted for wrongful possession of marijuana cigarettes?

- a. The cigarettes were lawfully seized because they were abandoned property.
- b. Possession may be proved by the testimony of Lieutenant Sparks.
 - (1) He saw Specialist Geefee throw the cigarettes away.
 - (2) Lieutenant Sparks can testify that the cigarettes he picked up were the ones thrown away by Specialist Geefee.

E. Problem 3

PVT Lewis bursts into the orderly room and informs First Sergeant Steel, that he has just been beaten and robbed by Privates Thug and Meany. He says they jumped him, knocked him down, and took his wallet, containing 16 dollars, and his new transistor radio. Lewis says he saw Thug and Meany running in the direction of the Company day room. Sergeant Steel immediately starts looking for the wrongdoers. Not finding them in the dayroom, he proceeds to the barracks where he sees Thug flushing something down the toilet. Sergeant Steel places Thug under apprehension and conducts a thorough search of his person, the toilet stall where Thug was apprehended, and the foot and wall lockers belonging to both Thug and Meany. On Thug's person, the First Sergeant finds a switchblade and 26 dollars. At the base of the toilet near Thug's foot, he finds PVT Lewis's empty wallet. In Thug's wall locker, he finds PVT Lewis's radio, plus an envelope containing a small amount of marijuana. In Meany's wall locker he finds an unregistered pistol.

F. Discussion of Problem 3

- 1. What is the purpose of a search incident to apprehension?
 - a. To find weapons.
 - b. Prevent destruction of evidence.
- 2. What is the justification for apprehending an individual?
A reasonable belief that a crime has been committed and the suspect committed it.
- 3. What are the limitations on the areas that can be searched?
 - a. The person of the suspect.

- b. The area within the suspect's immediate control.
- 4. What is required for a lawful search incident to apprehension?
 - a. Lawful apprehension;
 - b. Items within immediate area of suspect's control;
 - c. Conducted within reasonable time after apprehension;
 - d. Valid purpose.
- 5. Were the items in the search lawfully seized?
 - a. The switchblade knife was taken from the person of Thug at the time of apprehension (weapon).
 - b. There may be no proof that the \$26 included the money taken from Lewis.
 - c. Lewis' empty wallet is in the area under Thug's immediate control (also open view).
 - d. The radio and marijuana were not in an area under the immediate control of Thug. A search of that area would have to be authorized by the commander based upon probable cause.
 - e. There was no authority to search Meany's wall locker where the unauthorized pistol was found.

G. Problem 4

After the switchblade, the money, and Lewis' wallet were found, Captain Jones is called to the scene. He informs PVT Thug that:

- 1. He is suspected of robbing PVT Lewis;
- 2. His permission to search Thug's wall locker for the stolen radio is requested;
- 3. Any evidence that is found can be used against him in a court-martial; and
- 4. He has the right to refuse to consent to the search.

Thug says he understands his rights and consents to the search.

The Captain searches Thug's wall locker and footlocker. In the wall locker, he finds the radio on a shelf and an envelope containing marijuana in a shirt pocket. In the footlocker, he discovers several classified documents. Thug also consents to a search of

Meany's wall locker where the Captain discovered the pistol.

H. Discussion of Problem 4

1. Why is the radio the only item that will be admissible at court-martial?
 - a. A consent search is valid only as to the specific area and items for which the consent was obtained.
 - b. No consent was obtained for the footlocker (classified documents).
 - c. Consent is limited to search for a radio.
 - (1) Search must stop when radio is found.
 - (2) It is not reasonable to look for radio in an envelope in a shirt pocket.
 - (3) Had the marijuana been in open view, it could be seized.
2. What advice must be given to Thug before he may consent?
(The recommended language is set out in the example.)
3. Why would the pistol not be admissible in a court-martial?
 - a. Thug may not consent for Meany.
 - b. Meany did not consent.
4. What happens if the suspect refuses to consent?
The Commanding Officer must authorize the search based on probable cause.

I. Problem 5

Private Greer informs the Commanding Officer, Captain Hay, that he has been beaten and robbed by Privates Skip and Flow. Greer lost his wallet with \$20, his Timex wristwatch, and a high school ring. Skip was seen letting Flow out of his car in front of the barracks and speeding away. Captain Hay tells First Sergeant Witt to go to the barracks and get Flow, and if he is not there, to break open and search Flow's and Skip's rooms for the stolen items. He is not able to find Flow, so the First Sergeant does search the rooms. He finds the class ring and some marijuana in Flow's room, and he finds a pistol in Skip's room. Meanwhile Captain Hay is searching for Private Skip.

He finds Skip's care parked in an off-post parking lot, but there is no sign of Skip. The Captain breaks the window, opens the door and conducts a search. Under the front seat of the car he finds two vials of heroin and Greer's wallet.

J. Discussion of Problem 5

1. When may Captain Hay authorize a search of barracks rooms?
 - a. He must have probable cause. He must have reason to believe:
 - (1) A crime has been committed;
 - (2) The item he is searching for will be found in the area searched; and
 - (3) The source of his information is reliable.
 - b. The informant may be reliable because:
 - (1) He is a trusted member of the unit; or
 - (2) He has previously furnished reliable information.
2. Can Captain Hay direct someone else to conduct the search?
Once he authorizes the search, any responsible person may conduct the search.
3. Which items will be admissible in trial by court-martial?
 - a. The class ring and marijuana were seized during a properly authorized search.
 - b. There is no indication that Skip has been to his room and it is not reasonable to search his area for stolen goods (pistol).
 - c. The car was outside Captain Hay's area. He could not authorize a search in the parking lot. If the car were in his company area, he could authorize a search based upon probable cause.
4. Is there a problem as to the vagueness in the instructions from Captain Hay to First Sergeant Witt? The instructions should be specific as to the area to be searched and the items to be seized.
5. During a properly authorized search, may other contraband be seized? Contraband may be seized as long as the search

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is reasonable. It is not reasonable to look for a stolen rifle inside a match box.

III. CONCLUSION

A. *Summary of Important Points*

1. Searches, inspections, and inventories are not identical activities. They are, in many ways, similar to one another in that each entails some type of interference with individual property rights and the right to privacy. However they differ in purpose and method.
2. Except for the "open view" seizure (seizure without a search) and a search incident to apprehension, all searches must be authorized by the commander based on probable cause.

3. As soon as misconduct has been reported, it is usually the better course of action to seek guidance from a judge advocate officer if you anticipate a search and seizure situation developing. A phone call does not take much time.

B. *Closing Statement*

During this period we have discussed and analyzed various situations which highlight many of the pitfalls awaiting the ill-advised or overly hasty commander in the area of search and seizure. The purpose of this presentation has been accomplished if, when you are confronted with a search and seizure situation, bells ring, flares pop off, and sirens go off, all warning you to proceed with care.

LESSONS IN MILITARY LAW

LESSON 5

NONJUDICIAL PUNISHMENT UNDER ARTICLE 15, UCMJ

REQUIREMENTS

1. Lesson Objective: To define nonjudicial punishment and provide an understanding of the circumstances under which it may be imposed, the types of punishment and required procedural steps for exercising authority under Article 15, UCMJ.
2. Time: Two hours. (See Methods of Instruction, page iii.)
3. Training Aids: Optional. (See Methods of Instruction, page iii.)
4. Facilities: Discussion group. (See Methods of Instruction, page iii.)
5. Text References: Manual for Courts-Martial, United States 1969 (Rev. ed.); *Legal Guide for Commanders* (DA Pam 27-19).
6. Lesson Assignment: Read chapter 3, *Legal Guide for Commanders* (DA Pam 27-19).

I. INTRODUCTION

A. Opening Statement

Today we are going to discuss the commander's authority to impose nonjudicial punishment under Article 15, UCMJ. Nonjudicial punishment has long been a basic tool for disciplinary action by the company commander and provides him with a simple and effective means of punishing soldiers for minor misconduct. Although a noncommissioned officer may not administer Article 15 punishment, his recommendations are of importance to the commander. To be effective, nonjudicial punishment must be administered fairly, promptly, and legally.

B. Lesson Objectives

At the conclusion of this period, the student should have a better understanding of:

1. Who may impose punishment under Article 15.
2. When Article 15's may be imposed.
3. The procedure for imposing Article 15's.
4. The lawful punishments which may be imposed.
5. Appeals and other actions following the imposition of punishment.

C. Method of Instruction

The instructor should explain the method of presentation to the students as outlined in the Methods of Instruction, page iii.

II. PROBLEMS AND DISCUSSION

A. Problem 1

PFC Jones, who has been in the company for 2 weeks, is absent from work call formation. He has been counseled by the First Sergeant on two previous occasions for being late to work call. He is an efficient soldier when motivated but resents being in the Army. His attitude has been brought to his commander's attention although he has not been talked to personally by the commander. PFC Jones has been in the Army for a year.

B. Discussion of Problem 1

1. Is this the type of offense which may be disposed of by Article 15?

- a. Must be a crime;
- b. Must be minor in nature;
- c. Define the term "minor".
2. Would a reprimand or revocation of pass privileges be more appropriate?
 - a. Consider nature of offense;
 - b. Examine history of the offender;
 - c. Review applicability of nonpunitive disciplinary measures.
3. Would this decision be different if this were the third such absence within a short period of time?

Reexamine factors listed in 2 above.
4. May the Platoon Sergeant impose Article 15? NO. In no case can an NCO impose nonjudicial punishment, even in behalf of his commander.
5. May the Platoon Leader (Officer) impose Article 15? NO. Company Grade Article 15 may only be imposed by the officer in charge of a "Company", "Battery", or "Troop", or by the acting commander in his absence.
6. May the Company Commander delegate this authority to his Executive Officer? NO. The authority to impose Article 15 is an incident of command and may not be delegated by a company or field grade officer.
7. May punishment be imposed if PFC Jones is only attached to the Company? Authority to impose punishment generally extends to attached as well as assigned personnel.

C. Problem 2

PFC Johnson returns to his unit after a 2-day AWOL. Because of previous incidents of misconduct, and because reprimands and other counseling sessions seem to have had no effect, the company commander decides to impose nonjudicial punishment for this offense. When PFC Johnson presents himself to be advised of his commander's intent to impose Article 15, his uniform is dirty and torn, and he is in need of a haircut and a shave.

D. Discussion of Problem 2

1. May these haircut and uniform violations be made the basis of separate Arti-

cle 15 proceedings? NO. All known offenses should be disposed of at one time.

2. May the Company Commander forward the necessary paperwork to his Battalion Commander for appropriate disposition? He should do so if he believes he does not have the authority to impose the appropriate punishment.
3. May he suggest the type of punishment PFC Johnson should receive? While he may recommend field grade Article 15, he may not recommend the type of punishment.
4. May the Battalion Commander return the file to the Company Commander for appropriate disposition? When the Battalion Commander believes that the Company Commander has sufficient authority to punish, he may return the file.
5. May the Battalion Commander direct that Article 15 be imposed?
 - a. He may not direct the Company Commander to impose Article 15;
 - b. He may direct the file be forwarded to him for disposition.
6. May the Battalion Commander direct the type of punishment to be administered under Article 15 by the Company Commander?
 - a. He may not, but he may take action himself;
 - b. He has Article 15 authority, too.

E. Problem 3

Captain Bradford, the Company Commander C Troop, 14th Cav., receives a police report that SP4 Brown was apprehended in an off-limits area. After conducting his own investigation, and taking into consideration SP4 Brown's character and past record, Captain Bradford decides to offer SP4 Brown an Article 15.

F. Discussion of Problem 3

1. What must Captain Bradford tell SP4 Brown?
 - a. Must inform SP4 Brown of his intent to impose Article 15;
 - b. Statement of offense.

2. Must this be done in a face to face interview or may this be communicated in writing?

Either method is acceptable.

3. What rights are available to SP4 Brown?
 - a. Right to demand trial by court-martial;
 - b. Submit statements on his behalf;
 - c. Obtain evidence from witnesses;
 - d. Right to consult with a lawyer.
4. Must he be given time off work if this is necessary to talk with a lawyer?
 - a. YES.
 - b. Neither the unit nor Brown should abuse the right.
5. Should Captain Bradford make the appointment with a judge advocate officer if SP4 Brown wants to see one?
 - a. YES. This will insure a quick disposition of the case;
 - b. He should know the phone number by heart;
 - c. Captain Bradford is entitled to legal advice, and in questionable cases, he should check with the Chief, Military Justice.
6. How much time must SP4 Brown be allowed to consult with a lawyer and make his decision to accept Article 15 or demand trial by court-martial?

48 hours when notified orally; 72 hours when notified in writing.

G. Problem 4

On his way back to his on-post quarters one evening, SSG Thompson is stopped by the MP's and cited for drunken driving. Upon learning of this offense, his Company Commander decides to offer SSG Thompson an Article 15. The circumstances were relatively serious and SSG Thompson has accumulated two on-post speeding tickets in the last 3 months.

H. Discussion of Problem 4

1. Would it be wise to check with the Battalion Commander to see if the latter has reserved to himself the authority to impose Article 15 on E-6's?

YES. This is frequently the case.

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2. What type of punishments may be given by the Company Commander?
 - a. Forfeiture or detention of pay;
 - b. Restriction;
 - c. Extra duty.
3. If extra duty is imposed are there any restrictions on the type of extra duty that may be performed by an NCO? Extra duties assigned as punishment for non-commissioned officers may not be of a kind which demeans their grade or position.
4. May 14 days extra duty be imposed to be followed by 14 days restriction?
 - a. The punishments of restriction and duties may be combined to run *concurrently*, but the combination may not exceed the maximum duration imposable for extra duties.
 - b. These punishments may not be combined to run *consecutively* in the maximum amount imposable for each.
 - c. Discuss apportionment when punishments are combined to run consecutively.
5. Are there any limitations on suspending any punishments at the time they are imposed? NO.
6. If punishment is offered and accepted, what type of announcement must be made of this action under Article 15?
 - a. In the case of personnel in the grade of E-6 and above, any announcement of Article 15 punishment is discretionary with the officer imposing the punishment and he must consider the impact on unit morale and the impairment to job or leadership effectiveness of the individual concerned.
 - b. Enlisted in the grade of E-5 and below must have their punishment under Article 15 posted on the company bulletin board for 7 days.
7. What actions may the Commander take if, after the Article 15, SSG Thompson demonstrates excellent conduct and efficiency?

- a. Suspension.
- b. Mitigation.

I. Problem 5

PFC Johnson has agreed to accept Article 15 punishment from Captain Brooks, his Company Commander. Since he has been in the Army for only 7 months and in Captain Brooks' unit for 2 weeks, PFC Johnson would like to make sure that Captain Brooks knows more about him than just what is on the Article 15 and his DA Form 20. SP4 Lewis, a cadre member in the AIT school Johnson attended, is in another Company on post. PFC Washington is his immediate job supervisor; both Lewis and Washington have offered to speak up for him. Captain Brooks considered a reduction to be appropriate but would like to give PFC Johnson a trial period to try to prove himself.

J. Discussion of Problem 5

1. How can PFC Johnson present statements in his own behalf from SP4 Lewis, PFC Washington, and himself?
 - a. Request that Captain Brooks grant an interview;
 - b. Attach written statements to the Article 15.
2. When can Captain Brooks suspend some or all of the punishment imposed?
 - a. Captain Brooks can suspend punishment at the time he imposed it, but not for a period longer than 6 months from the date of suspension.
 - b. He can suspend later, but only within a period of 4 months after the date punishment is imposed.
3. If he suspends the reduction to Private E-2, would this affect the maximum forfeiture imposable? NO. Any forfeiture imposed must be based upon the grade to which the offender is reduced, whether or not the reduction is suspended.
4. What action should Captain Brooks take if Private Johnson appeals the imposition of the Article 15?
 - a. If Brooks reduces the punishment (suspended, mitigated, or remitted),

he should ask Johnson if he wishes to withdraw his appeal. If Johnson does not wish to withdraw, then Brooks should forward the paperwork to next higher commander.

- b. In all other cases the appeal is forwarded expeditiously to the next higher commander.
- c. Execution of the punishment need not be delayed if an appeal is filed.
- d. Delays handling appeals may deprive the soldier of his rights and undermine the Military Justice System.
5. What happens if Captain Brooks later uncovers evidence indicating Private Johnson was not involved in the offense for which he was punished?
 - a. The Article 15 should be set aside;
 - b. His original rank, and date of rank, would be restored;
 - c. All money deducted from his pay would be returned.

III. CONCLUSION

A. *Summary of Important Points*

1. Nonjudicial punishment, properly employed, is one of the most effective tools a commander has in maintaining discipline in his unit.
2. Procedure for imposing Article 15 is rather simple and straightforward, but it must always be remembered that nonjudicial punishment is an instrument of military justice and it must be used justly.

B. *Closing Statement*

As you have seen during this past period, nonjudicial punishment has many factors which must be considered when you are the commander. Your ability to consider and evaluate them in a very real way will determine your effectiveness as a commander.

LESSONS IN MILITARY LAW

LESSON 6

PREPARING AND FORWARDING CHARGES

REQUIREMENTS

1. Lesson Objective: To explain and illustrate the proper preparation of Charge Sheets, drafting of specifications, preferring of charges and transmittal of charges and allied papers.
2. Time: Two hours. (See Methods of Instruction, page iii.)
3. Training Aids: Optional. (See Methods of Instruction, page iii.)
4. Facilities: Discussion Group. (See Methods of Instruction, page iii.)
5. Text References: Manual for Courts-Martial, United States, 1969 (Rev. ed.) ; *Legal Guide for Commanders* (DA Pam 27-19).
6. Lesson Assignment: Read chapter 4, *Legal Guide for Commanders* (DA Pam 27-19) and appendix 6, Manual for Courts-Martial, United States, 1969 (Rev. ed.).

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I. INTRODUCTION

A. Opening Statement

The Charge Sheet, DD Form 458, is the first step in the *formal* procedure leading to trial by court-martial. Along with other documents, known as allied papers, it is the basis from which all trial activity stems. Today we are going to see what the parts of the Charge Sheet are, and how they convey vital information about the accused and the offenses with which he is charged. We will also discuss the Company's responsibilities for preparation and transmittal of the charges and allied papers.

B. Lesson Objectives

At the conclusion of this period, the student should have a better understanding of:

1. Preparation of the Charge Sheet.
2. Drafting of specifications.
3. Allied papers.
4. Processing of Charge Sheets.
5. Transmittal of the charges and allied papers.

C. Method of Instruction

The instructor should explain the method of presentation to the students as outlined in the Methods of Instruction, page iii.

II. PROBLEMS AND DISCUSSION

A. Problem 1

Private First Class Doyle failed to make it to work on Monday morning. When he showed up on Tuesday, and after a proper warning of his rights, he explained that his car had broken down over the weekend in Center City (150 miles from post) and that it took until Monday evening to get it in working condition. Doyle's pass privilege had been suspended because of three similar occurrences in the past 2 months (one of which had resulted in an Article 15 reduction from E-4). The Company Commander restricted Doyle to the company area until he could decide what to do with this latest offense. On Thursday Doyle was gone again. One of the other men in his barracks said Doyle packed a small suitcase Wednesday

night and told his buddies to help themselves to his field gear as he wouldn't be needing it anymore. (Upon inventory all of his field gear was accounted for.) The company clerk dropped Doyle from the rolls as a deserter. It is now 2 weeks later and there has been no sign of Doyle.

B. Discussion of Problem 1

1. Assuming that a court-martial is the appropriate method of handling the situation, can or should charges now be preferred even though Doyle is still gone?
 - a. Should prefer charges now, leaving termination date blank. Can always be filled in later.
 - b. Preferring of charges tolls the statute of limitations.
2. What offense or offenses are indicated?
 - a. Short AWOL on weekend (had no pass).
 - b. Desertion. If later evidence fails to support desertion, it can be reduced to standard AWOL.
 - c. Breaking restriction not appropriate (merging of major and minor offense).
3. How should the first page of DD Form 458 be filled in?
 - a. Information for first third of page obtained from 201 file.
 - b. Who should be listed as witnesses?
 - (1) Commander who suspended pass.
 - (2) Barracks mates.
 - c. What if some witnesses are about to depart the unit?
 - (1) List ETS or PCS date by name.
 - (2) List social security number, new unit or address or attach orders.
 - d. What documents should be prepared?
 - (1) Morning report extracts (DA Form 188).
 - (2) Statements of witnesses should be attached, although they need not be listed on the form.
 - e. Is restriction considered as "restraint"?
 - (1) Yes, and dates should be from date of imposition to date he went AWOL again.

- (2) If he later is confined or restricted, that will be added.
4. Who normally prefers (swears to) the charges?
 - a. Normally the company commander, although it can be anyone subject to the UCMJ.
 - b. Must be preferred in the presence of a commissioned officer authorized to administer oaths (usually an adjutant).
 5. How is an accused informed of charges when he is AWOL?
 - a. That block on the DD Form 458 is left blank. He will be informed upon his return to military control and after the AWOL termination date has been filled in on the Charge Sheets. After the accused returns to military custody, he will be informed of the charges.
 6. What is the significance of the receipt of charges?
 - a. Puts the charges officially in the hands of the next senior commander who must take action.
 - b. This step stops the running of statute of limitations.
 7. What comes next, since there cannot yet be a trial?
 - a. The Charge Sheets and all the accompanying documents should be stapled into the 201 file of the accused before the file is retired from the installation.
 - b. When the soldier is returned to military control all the papers needed for trial are immediately available.

C. Problem 2

Specialist Four John H. Dumas went AWOL on 5 January 1971, and was apprehended by civilian police and returned to military control on 22 September 1971. The company clerk has prepared a Charge Sheet and the charge and specification reads:

CHARGE: Violation of Article 86, UCMJ
 SPECIFICATION: In that SP/4 J. H. Dumas Junior, 999-99-9999, HQ Company, 2/45th Infantry, did, on or about 5 January 71, absent himself

from his unit, to wit: HQ Company, 2/45th Infantry, located at Fort Good, Texas, and did remain so absent until apprehended by civil authorities on or about 22 Sep 71.

D. Discussion of Problem 2

Do you see any errors?

1. May not use abbreviations or initials except for "US" as in "US Army", middle initials and "Jr." at the end of a name.
2. The specification must show the jurisdiction or authority for a military court to try the accused, i.e., "US Army."
3. No need for service number in the specification.
4. Must include words of criminality, i.e., "without proper authority."
5. An AWOL specification may not state that the accused was apprehended.
6. The correct wording is as follows:

CHARGE: Violation of Article 86, UCMJ

SPECIFICATION: In that Specialist Four John H. Dumas, Jr., US Army, Headquarters Company, 2d Battalion, 45th Infantry, did, on or about 5 January 1971, without proper authority, absent himself from his unit, to wit: Headquarters Company, 2d Battalion, 45th Infantry, located at Fort Good, Texas, and did remain so absent until on or about 22 September 1971.

E. Problem 3

Corporal Kelly got himself into some trouble this morning. He was apprehended by the CID who said he was negotiating a sale to a soldier from another unit of a shoe box filled with a green vegetable substance which had a smell similar to alfalfa. Kelly told the CID that he was just showing his buddy a pile of chopped weeds that he had put in the box as a joke. The other soldier refused to make a statement. The CID said that a quick field test indicated that the substance was marijuana, but that the laboratory at Fort Gordon would make the official determination and the lab analysis might take several weeks. Until that time, the CID will not be able to give the unit a completed investigation or even an exact measurement of the amount of the substance.

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F. *Discussion of Problem 3*

1. Does the commander have enough evidence to charge Kelly with wrongful possession of marijuana?
 - a. YES. It is reasonable to assume that the substance is marijuana.
 - b. The commander doesn't have to be convinced "beyond a reasonable doubt."
2. How can the amount of marijuana be put in the specification when it is not yet known?
 - a. An estimate is sufficient.
 - b. The specification can later be amended if necessary to reflect the exact amount.
3. What is wrong with the commander waiting for a final CID report to be sure?
 - a. It could take quite a while.
 - b. The commander has an obligation to act expeditiously based on the available evidence.
 - c. If the accused is under any restraint the delay could interfere with his right to a speedy trial.
 - d. If the laboratory says the substance was just harmless weeds, the charges can be dismissed. In the meantime preparations for the trial have progressed based upon a reasonable assumption that an offense has occurred.

G. *Problem 4*

One night three soldiers SP4 Green, PFC Smith, and PVT Jones went out to celebrate Green's approaching ETS. All three got drunk. SP4 Green decided to return to the company. PVT Jones and PFC Smith remained at the EM Club.

When Green returned to his company, he was directed by SSG Nynn, the CQ, to report to the First Sergeant. Green went to his barracks instead. After SP4 Green left, PFC Smith got into a fight with another soldier. He returned to the company area in a drunken state. There he was disrespectful to Captain Jake, the Company Commander. PVT Jones shot out a street light with a weapon he had stolen from the arms room.

He later had a shoot out with the Military Police. When he was finally apprehended, Jones physically resisted apprehension and threatened to kill the MP's. The weapon was returned to Captain Jake and Jones was placed in pretrial confinement.

SP4 Green is a Vietnam returnee who has both a Bronze Star and Army Commendation with "V" device. He also has excellent conduct and efficiency ratings. He has no Article 15's and no previous convictions. He has a 20 August ETS.

PFC Smith has been in the Company since reporting from AIT. He has been an average soldier. His section chief describes him as a willing worker who avoids trouble. He received an Article 15 for missing formation shortly after joining the Company. PFC Smith is SP4 Green's best friend.

Private Jones just reported to the unit from the stockade on a rehabilitative transfer. He was recycled twice in both basic and AIT for failure to progress in training. He has two Article 15's for fighting, one summary court-martial conviction for larceny, and one special court-martial for AWOL, disrespect to an NCO, and assault. His conduct and efficiency rating have been "Poor."

Captain Jake has conducted a preliminary investigation of the incident and has prepared charges against one of the men. He takes the charges to Battalion Headquarters where he swears to them before the acting adjutant, CWO Tomkins. He leaves the charges with Mr. Tomkins and returns to his company. He feels that his role in this case is complete.

H. *Discussion of Problem 4*

1. What errors have been committed?
 - a. The Company Commander failed to swear the charges before a commissioned officer.
 - b. He did not inform the accused of the charges against him.
2. What is the legal effect of swearing the charges before a warrant officer? The charges are unsworn and an accused may not be tried on unsworn charges if he objects.

I. Problem 5

After swearing charges before Captain Borg, who has been appointed a summary court-martial, Captain Jake sees that there are certain errors in the specification on the Charge Sheet. He personally crosses out and initials the accused's social security number and directs that the company clerk type in a charge and specification which was mistakenly left off the Charge Sheet. The charges are then read to the accused.

J. Discussion of Problem 5

1. What has the Commander done wrong?
 - a. All charges must be sworn. Any major change in a specification may result in an unsworn specification even though the charges had been previously sworn.
 - b. The new charge which was not on the Charge Sheet at the time of swearing is unsworn.
2. May the commander make and initial minor change on the Charge Sheet and may he swear charges before a summary court-martial?
 - a. Minor corrections may be made in the charges.
 - b. Any changes in the Charge Sheet after the swearing of charges should be discussed with the Chief of Military Justice, SJA Office.

K. Problem 6

Captain Jake conducted a preliminary investigation and determined that the events which took place put a serious strain on the military community. He feels that under the circumstances he must take action against the three men. As SP4 Green was the senior man in the group, Jake feels that Green was responsible for the situation getting out of hand. Thus he charges Green with the following offenses:

1. Drunk and disorderly.
2. Disobedience of an order of an NCO.

Since the other two men were involved in serious incidents, the Commanding Officer recommends that Green be tried by general court-martial. Because of Green's previous

record, however, Captain Jake recommended that Green be retained in the service. He tells Green that he will be happy to testify in Green's behalf at the trial and tell the court of Green's fine record and that he would welcome Green back in his unit.

L. Discussion of Problem 6.

1. Were the Commander's action's in this case appropriate?
 - a. Recommendations inconsistent.
 - b. SP4 Green was gone when the situation got out of hand.
 - c. Did Green have a duty to make the others return to the company with him? The offenses of the others should have no bearing on Green's case unless he was legally responsible in some way. If he was legally responsible, he should have been charged with the offense.
2. What action should have been taken?
 - a. Court-martial charges.
 - b. Article 15.
 - c. Nonpunitive measures.
3. Considerations:
 - a. Dispose of case at lowest level which may properly handle it.
 - b. Nature of offenses.
 - c. Punishment which should be imposed.
 - d. Background of accused.
 - e. Maximum punishment for offense.

M. Problem 7

After a preliminary investigation, Captain Jake determines that he should bring charges against PFC Smith. He prepares a Charge Sheet which charges him with drunk and disorderly conduct, assault, and disrespect. He has prepared a letter of transmittal which indicates Smith's conduct and efficiency ratings as "Good." He recommends that Smith be retained in service and given a special court-martial.

N. Discussion of Problem 7

1. What is a letter of transmittal?
 - a. Used to send the Charge Sheet and allied papers forward.
 - b. Usually a local form.

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- c. Contains information about the accused and the commander's recommendation for disposition of the charge.
- 2. Where is it sent?
 - a. To the summary court-martial convening authority.
 - b. Usually the battalion commander.
- 3. Who must sign it? Must be signed personally by the commander.
- 4. What is the purpose of a letter of transmittal?
 - a. To forward the charges and allied papers.
 - b. To give personal data about the accused.
 - c. To give the commander's specific recommendation for disposition of the charges.
- 5. Should the Charge Sheet indicate pre-trial confinement?
 - a. Smith was not placed in restraint pending charges.
 - b. No restraint should be reflected on the Charge Sheet.

O. Problem 8

Captain Jake intends to recommend trial by court-martial for Jones. He knows he must take extra care to properly process the charges. He determines that rather than conduct a preliminary investigation, he will wait for the complete CID investigation before preferring charges. Thirty days later the reports of investigation arrive and Captain Jake prefers charges against Jones for various offenses including attempted murder and larceny of Government property.

He then notes that the statement of one of the military policemen is missing from the file. He writes the Provost Marshal requesting the missing statement. Two weeks later when the statement arrives, the company is in the field with the battalion. As competition between the companies is high, Captain Jake elects to devote his full time to the training mission and delay processing of the case until the com-

pany comes in from the field next week. When he returns to his office, the company commander has the company clerk assemble the charges, statements, CID report, and the stolen pistol. The executive officer then signs the letter of transmittal to the Staff Judge Advocate. Knowing that military justice matters should always be hand carried, the First Sergeant has Private Wilson, who is going to the JA office for counseling on his 212 elimination, take the charges with him.

The charges and the pistol never arrive. One month later the charges are found in PVT Wilson's wall locker. Wilson has been discharged.

P. Discussion of Problem 8

1. What errors appear in the processing of this case?
 - a. Duty of company commander to make preliminary inquiry.
 - b. Must not wait for CID report to forward charges.
 - c. The military policeman's statement could have been forwarded after the charges.
 - d. The company commander should have used the fastest means to secure the statement, i.e., the telephone.
 - e. Military Justice is an important function of command. Processing charges should receive high priority.
 - f. Items of real evidence should not be forwarded with the charges.
 - g. The company commander must personally sign the letter for transmittal.
 - h. An extract of previous convictions should accompany the charges.
 - i. The charges were never sworn.
 - j. The letter of transmittal must be sent to the summary court-martial convening authority.
 - k. Unreliable persons should not be allowed to handle charges.
 - l. The company commander did not maintain a record of his processing of the case.
2. Can Captain Jake explain the delay?

III. CONCLUSION

A. *Summary of Important Points*

1. The Charge Sheet is the one document from which all court-martial activity stems.
2. Proper and expeditious preparation of charges and allied papers by the company is essential to the effective functioning of the military justice system and the maintenance of discipline.
3. The company commander's recommendations on his transmittal of charges carry great weight and must be the prod-

uct of careful evaluation of the offenses and the offender.

B. *Closing Statement*

The preparation and processing of charges is not as difficult as it may have first seemed. There are guidelines available to assist you and reasons for the technical requirements which perhaps you thought of as being only a nuisance. Rather than tying a commander down, the procedures we have discussed, when properly utilized, can give the commander great flexibility.

LESSONS IN MILITARY LAW

LESSON 7

ADMINISTRATIVE ELIMINATION OF ENLISTED MEN

REQUIREMENTS

1. Lesson Objective: To discuss and gain an understanding of the grounds, policies and procedures for the major types of administrative eliminations, the interaction between the various types of elimination for misconduct and the relation of administrative discharges to courts-martial.
2. Time: Optional. (See Methods of Instruction, page iii.)
3. Training Aids: Optional. (See Methods of Instruction, page iii.)
4. Facilities: Discussion group. (See Methods of Instruction, page iii.)
5. Text References: *Legal Guide for Commanders* (DA Pam 27-19).
6. Lesson Assignment: Read sections I, II, III, V, VII, and IX, chapter 6, *Legal Guide for Commanders* (DA Pam 27-19).

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I. INTRODUCTION

A. Opening Statement

Today we are going to discuss the Commander's option to recommend the involuntary administrative separation of enlisted men from the service. Such eliminations may be due to patterns of misconduct, attitude and ability deficiencies, or conflicts with authority. The elimination of these soldiers is a serious matter because a less than honorable discharge can have serious repercussions in civilian life. However, the administrative discharge is not meant to save a soldier from the harsher penalties of a court-martial if that type of punishment is deserved.

B. Lesson Objectives

At the conclusion of this period, the student should have a better understanding of:

1. Reasons for a discharge for unfitness.
2. The relation of unfitness to unsuitability.
3. Reasons for a discharge due to a civilian court conviction.
4. Counseling and rehabilitation.
5. Administrative discharge procedures at the company level.
6. The grounds for and denial of minority discharges.
7. The role of a discharge in lieu of a court-martial.

C. Methods of Instruction

The instructor should explain the method of presentation to the students as outlined in the Methods of Instruction, page iii.

II. PROBLEMS AND DISCUSSION

A. Problem 1

Corporal Harvey Smith has just been transferred to your company. A review of his 201 file reveals that he was given an Article 15 in his last company for disrespect to an NCO and a summary court-martial for being AWOL for 7 days. The file also shows that CPL Smith was recently convicted by a municipal court in New Jersey for drunk and disorderly conduct and speeding. Each

of these are punished by a maximum of 1 year confinement under New Jersey law. An interview with CPL Smith reveals that he had trouble with his platoon Sergeant and cussed him out. After the Article 15 he took off and went home to New Jersey where he got into trouble with the police while driving home from a party. He says he hopes to do better in this Company.

B. Discussion of Problem 1

1. Does CPL Smith meet any of the requirements for elimination under AR 635-206 or AR 635-212?

a. AR 635-206—discharge for civil conviction.

- (1) Offense not one of moral turpitude as defined in regulation (sexual perversion or narcotics—para 3g, AR 635-206).

- (2) Offense must, therefore, qualify as one carrying punishment in excess of 1 year under UCMJ. New Jersey penalty statute of no importance in this matter.

(a) Drunk and disorderly, at worst, a 6-month offense under UCMJ/MCM.

(b) No UCMJ offense like speeding.

(c) Adding two and calling it drunken driving is only a 6-month offense under Article 111.

b. AR 635-212—Unfitness

- (1) Frequent incidents with authorities (para 6a(1), AR 635-212).

(a) Disrespect, AWOL, drunk and disorderly conduct, and speeding show pattern of misconduct.

(b) All are sufficient to satisfy regulation but note that they occurred at about same time and no record of previous misconduct.

(c) Whole case indicates rehabilitation possible and conduct not serious enough over long period of time.

(2) Counseling and Rehabilitation (para 7, 635-212).

- (a) Counseling in new unit may resolve all problems and prevent recurrence.
- (b) Transfer may be considered rehabilitation, transfer between company-size units. Advise CPL Smith this is his second chance.
- (c) Past conduct not so bad as to warrant recommending elimination with waiver of counseling.

C. Problem 2

CPL Smith has been in your company now for 2 months. During his fourth week he got into an argument with another soldier and when the First Sergeant tried to break it up, CPL Smith cussed him out. An Article 15 was accepted and the sentence was 7 days restriction and loss of pay. Several nights later CPL Smith got drunk at the EM Club and the MP's were called to return him to the unit. You had a long talk with him and told him that he could be "booted out with an undesirable discharge" if he didn't shape up. He said he would be "OK". Last week CPL Smith missed work because of a hang-over from the previous night's drinking spree. You talked to him again and he said he was "sorry". You checked with his section chief and his work has been good and, except for the incident with the First Sergeant, he has not been a problem with his peers or supervisors.

D. Discussion of Problem 2

1. What action should be taken against CPL Smith for missing work?
 - a. Offense too minor for court-martial, but prior Article 15's may give basis for requesting summary court-martial.
 - b. Article 15 appropriate, but past actions appear to have no effect.
 - c. Now is time to consider elimination under para 6a(1), AR 635-212. Pat-

tern has continued and rehabilitation with counseling not successful.

2. What actions must the commander take to recommend elimination?
 - a. Send EM for medical and psychiatric evaluation.
 - b. Collect copies of Article 15's, convictions, statements of supervisors, record of counseling and prepare cover letter, (appendix, AR 635-212).
 - c. Send for JAG counseling. Send complete copy of file and 5 copies of waiver form (fig. 1, AR 635-212).
 - d. Don't need to request rehabilitation waiver as you have transfer and counseling.
3. What type discharge should you recommend?
 - a. Undesirable is normally given.
 - b. Must justify, in EM's military record, a recommendation for honorable or general.
4. What if psychiatric evaluation shows CPL Smith has a character and behavior disorder?
 - a. Is grounds for unsuitability action (para 6b(2), AR 635-212).
 - b. But misconduct sufficient to warrant recommending more serious discharge action (unsuitability results in general or honorable discharge).

E. Problem 3

Several weeks ago one of the men in your company was coming back from the club when another soldier jumped him with a knife and robbed him of \$20 cash. The CID investigated the incident and last week obtained a confession from PFC Jesse James, who is also a soldier in your company. You conducted your investigation, preferred a charge of robbery against PFC James and recommended trial by special courts-martial. Yesterday you received a letter from Mrs. Frank James, Jesse's mother, stating that he was 17 when he enlisted and did not have her consent. She said he is still 17 and demands his return home. Today, PFC James handed you a written request for a discharge in lieu of court-

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martial. You have checked PFC James' record and this is his first offense except for an Article 15 for missing a formation 6 months ago. His conduct and efficiency ratings have been either good or excellent.

F. Discussion of Problem 3

1. Is PFC James eligible for minority discharge?
 - a. NO. Parent's request comes after commission of serious offense and discharge barred as enlistment only voidable.
 - b. Could go ahead and get certified birth certificate.
 - c. If PFC James now 18, parent too late with request.
 - d. If only lesser included offense is substantiated then there may be a question whether the offense is really serious. Battalion commander may decide to overlook and thus could discharge on parent's demand.
2. Is PFC James eligible for discharge in lieu of court-martial? (chap 10, AR 635-200).
 - a. Robbery has maximum punishment under UCMJ of DD and 10 years (Article 122). Offense could result in BCD or DD.
 - b. Do not have to refer to trial. Only

need charges preferred to process discharge request. But should be serious about court-martial in case discharge denied by GCM authority.

- c. Consider that past record is good (compare with CPL Smith in earlier problem).

III. CONCLUSION

A. Summary of Important Points

1. Today we have discussed five types of administrative elimination:
 - a. Unfitness.
 - b. Unsuitability.
 - c. Conviction by civilian court.
 - d. Minority.
 - e. In lieu of court-martial.
2. We have also considered the problem of characterizing discharges.

B. Closing Statement

Chapter 6 in the *Legal Guide for Commanders* discusses other types of discharge cases and you should become familiar with them. Remember that these discharges are all regulatory matters and their initiation or approval are matters of command discretion. If you have questions not clearly answered in the regulation or the text, you should call the Chief of Military Affairs in the SJA office.

LESSONS IN MILITARY LAW

LESSON 8

NONPUNITIVE DISCIPLINARY MEASURES

REQUIREMENTS

1. Lesson Objective: To discuss and provide a better understanding of the various nonpunitive measures available to a commander to dispose of cases involving repeated minor misconduct or inefficiency.
2. Time: Two hours. (See Methods of Instruction, page iii.)
3. Training Aids: Optional. (See Methods of Instruction, page iii.)
4. Facilities: Discussion group. (See Methods of Instruction, page iii.)
5. Text References: Manual for Courts-Martial, United States, 1969 (Rev. ed.); *Legal Guide for Commanders* (DA Pam 27-19).
6. Lesson Assignment: Read chapters 6 and 8, *Legal Guide for Commanders* (DA Pam 27-19).

I. INTRODUCTION

A. Opening Statement

Today we are going to discuss the commander's use of nonpunitive disciplinary measures. Many commanders completely overlook these useful tools, turning instead to the harsher provisions of the UCMJ such as Article 15 or to the court-martial provisions. In many cases these may be inappropriate and will not achieve the desired effect.

B. Lesson Objectives

At the conclusion of this period, the student should have a better understanding of administrative actions which may include:

1. Withholding of privileges.
2. Admonition, reprimand, or reduction.
3. Bar to reenlistment, revocation of security clearance, MOS reclassification, and the use of conduct and efficiency ratings.

C. Method of Instruction

The instructor should explain the method of presentation to the students as outlined in the Methods of Instruction, page iii.

II. PROBLEMS AND DISCUSSION

A. Problem 1

PVT (E-2) Smith shares an off-post apartment with three other servicemen. On three successive mornings he was 10 or 15 minutes late for his company's work call, and on each occasion was admonished by his platoon sergeant. On the fourth day, Smith overslept and reported for duty 2 hours late.

B. Discussion of Problem 1

1. What are some nonpunitive measures which can be taken against PVT Smith?
 - a. Assignment to the barracks.
 - b. Written admonition or reprimand to be inclosed in Smith's personnel file.
 - c. Conduct and efficiency report.
2. What relevance do the following facts have?
 - a. Three prior admonitions by platoon sergeant.
 - (1) Indicates course of conduct.
 - (2) Action by commander required.

- b. Fact that Smith was 2 hours late.

- (1) Longer period of absence is more serious.
 - (2) May indicate that Smith was indifferent to the earlier corrective measures.
3. Why should elimination from the service not be considered at this time?
 - a. Short period of unacceptable conduct.
 - b. Few corrective measures taken thus far.

Note. The teaching points outlined for this problem, and those which follow subsequent problems, should not necessarily limit discussion. There may be other nonpunitive disciplinary remedies discussed in chapters 6 and 8, *Legal Guide for Commanders*, which may be appropriate for any of these problems. Additionally, the instructor may want to discuss courses of action which he considers to be sound and beneficial to the soldier and the unit.

C. Problem 2

Specialist Four Greer is an intelligence analyst with a Top Secret security clearance assigned to the US Army Security Agency in Berlin, Germany. His ailing mother, a Russian immigrant living in the United States, is constantly asking him for money for medical expenses which Greer cannot afford to send. With his mother's ill health and financial problems constantly on his mind, Greer's work has deteriorated to the extent that it is no longer reliable. In addition, Greer has recently taken to drinking. He can be found nightly in the local gasthaus getting drunk, and talking loudly about his home, his family, and his job.

D. Discussion of Problem 2

1. What factors should be considered in deciding whether to reduce Greer for inefficiency?
 - a. Quality of on the job performance.
 - b. Performance standard for other men of same grade and MOS.
2. What elements of the situation make revocation of Greer's security clearance appropriate; i.e., make him a security risk?

- a. Nature of his job (intelligence analyst).
- b. Location of assignment (Berlin).
- c. Nationality of mother (Russian).
- d. Financial difficulties.
- e. "Hard" drinking.
- f. Publicly talking about home, family, and job.

3. Other than reduction for inefficiency and the revocation of Greer's security clearance, what nonpunitive measures may also be appropriate?

- a. Rehabilitative transfer which may or may not include an MOS change.
- b. Restriction of pass privileges.
- c. Bar to reenlistment if difficulties accumulate.
- d. Unsatisfactory conduct or efficiency ratings.
- e. Admonition or reprimand.

E. Problem 3

Sergeant (E-5) Jones is married and living in Government quarters. He and his wife fight continuously when they are at home together. The MP's have gone to his home on four separate occasions because neighbors have complained of excessive noise during various hours of the night. Jones appears very tired at work during the day and his work has become very sloppy. He can no longer handle the men in his section.

F. Discussion of Problem 3

What nonpunitive measures can be taken against Sergeant and Mrs. Jones?

- 1. SGT Jones may be directed to move into the barracks.
- 2. Mrs. Jones may be required to move off-post.
- 3. Oral or written admonition.
- 4. Oral or written reprimand.
- 5. Poor or unsatisfactory conduct or efficiency rating.
- 6. Reduction for inefficiency.
- 7. Transfer:
 - a. To another unit for rehabilitation.
 - b. To a nonleadership position.
 - c. This may not solve the domestic problem.

G. Problem 4

SSG (E-6) Davis is the owner of a recently demolished 1971 Pontiac GTO. He bought the car from Nu-Car Motors, Inc., financed by a dealership credit program. On the credit application, SSG Davis stated he had no debts.

Nu-Car Motors has written numerous letters to Davis' company commander, Captain Corbett, stating that SSG Davis has missed several monthly payments, ignored letters demanding payment, and that current credit information on Davis shows he lied on the application since he was deeply in debt at the time. Captain Corbett counseled Davis after receiving each of these letters, and each time Davis promised he would pay his debts. Another letter has just been received stating that SSG Davis has not been paying. A check with Davis' last CO reveals Davis has been "plagued" with payment problems in the past. During Captain Corbett's interview with Davis, Davis admits he lied.

SSG Davis is a fine leader, has had two Vietnam tours during his 10 years of service, and wants to make the Army a career.

H. Discussion of Problem 4

- 1. What nonpunitive actions can be taken against SSG Davis?
 - a. Written admonition or reprimand.
 - b. Bar to reenlistment.
 - c. Poor or unsatisfactory conduct rating.
 - d. Elimination from the service for indebtedness under AR 635-212.
- 2. What factors should be considered in determining whether to eliminate SSG Davis for unfitness (repeated failure to pay just debts under AR 635-212).
 - a. Past history of indebtedness.
 - b. Ineffectiveness of counseling.
 - c. Falsified credit application.
 - d. The number of letters of indebtedness received.
 - e. SSG Davis' good military record.
 - f. SSG Davis' desire to make the Army a career.

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I. *Problem 5*

PVT Green has received three Article 15's for short AWOL's and a special court-martial for a 2-week absence. His duty performance has generally been poor. Last week, while he was under investigation for the theft of a car tape deck from the PX, Green again went AWOL. During this absence, Green was arrested on a breaking and entering charge and given 3 months to serve in a civilian jail. After serving his sentence, Green was released to the Army and was returned to his unit. While he was gone, court-martial charges were preferred against Green for the theft of the tape deck.

J. *Discussion of Problem 5*

What nonpunitive measures can be taken against Green?

- a. Reduction for misconduct based on civilian conviction.
- b. Reduction for inefficiency for poor duty performance.
- c. Oral or written admonition or reprimand.

d. Bar to reenlistment.

e. Unsatisfactory conduct and efficiency ratings.

III. CONCLUSION

A. *Summary of Important Points*

1. There is a wide range of administrative measures which are nonpunitive in nature and are often more appropriate to particular types of misconduct than are the punitive provisions of the UCMJ.
2. These measures may be used either in conjunction with punitive disciplinary action or by themselves.
3. Whenever a commander is confronted with a disciplinary situation, he should always at least consider the appropriateness of these measures.

B. *Closing Statement*

Commanders should always consider non-punitive disciplinary measures when faced with a case of misconduct or inefficiency. Intelligent use of these measures is often effective in rehabilitating a soldier.

The proponent agency of this pamphlet is the Office of the Judge Advocate General. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications) direct to HQDA (DAJA-MJ) Washington, DC 20310.

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