EXTENSION COURSE

THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY

SUBCOURSE JA 132 - MILITARY JUSTICE II

EVIDENCE

INTRODUCTION

The purpose of this subcourse is to familiarize the student with some of the rules of evidence as applied in courts-martial.

This subcourse consists of eight lessons and an examination. The subject matter is divided among the lessons as follows:

		Credit Hours
Lesson 1:	Character Evidence; Other offenses or Acts of Misconduct of the Accused; The Hearsay Rule.	2
Lesson 2:	The Law of Confessions.	3
Lesson 3:	The Warning Requirement of Article 31.	3
Lesson 4:	Procedure Concerning Privilege Against Self-Incrimination; Foundation for Admissibility of Statements.	2
Lesson 5:	Official Records; Business Entries.	2
Lesson 6:	Depositions and Former Testimony.	3
Lesson 7:	Search and Seizure.	4
Lesson 8:	Examination and Impeachment of Witnesses.	3
Examination:		3

A total of 25 credit hours is allowed for this subcourse.

BEFORE UNDERTAKING THE STUDY OF THIS COURSE READ INSTRUCTIONS AT PAGE 2.

7 Jun 61
(Rev 1 Sep 64)
(Rev 1 Jul 68)

Text and materials required: DA Pam 27-172, Military Justice, Evidence (1962); Supplement, DA Pam 27-172 (1 May 1968); MCM, U. S., 1951, with Addendum dated January 1963.

You should study the lessons of this subcourse in the order in which they appear in this booklet. All assignments to read portions of DA Pam 27-172 include the requirement of reading those portions of the 1 May 1968 Supplement to DA Pam 27-172 which updates the assigned material.

Near the beginning of each lesson are paragraphs entitled "LESSON OBJECTIVE" and "SUGGESTIONS." Reading those paragraphs should be your first step in completing each assignment.

The last portion of each lesson assignment is entitled "EXERCISES." It contains a series of questions which you must answer. Instructions for answering the questions are given in the paragraphs entitled "SUGGESTIONS" and "REQUIREMENT." Special instructions for certain questions are given just before those questions. Use the reading assignments for help in answering the questions only if you consider it necessary.

The questions contained in the exercises are all of the multiple-choice type. For these questions only one choice is correct, and you should keep this in mind in selecting the one best answer. The answers to the questions are to be marked on the answer sheets provided. If additional space is required to explain your answer or justify it, you may attach additional sheets of paper to the answer sheet.

The heading of each answer sheet should be completely filled out. One space on the answer sheet requires an entry of the number of hours you devoted to the lesson. In computing the time spent, include the time needed for assembling the lesson's materials, for reading the assignment, and for answering the questions. You are not limited as to the number of hours you may spend on the subcourse or any part of it. Information about the time spent is needed only for statistical purposes. Your response does not affect in any way the credit you will receive for the course.

Should your answer not be the same as the School's you may be given part or full credit based on the reasoning you display in the answer you attach to the answer sheet. When you are fully satisfied with your answers and the heading has been filled out completely on the answer sheet, mail the answer sheet by folding it with this School's address on the outside, stapling or taping it shut, and mailing without an envelope.

You may retain all materials sent with this subcourse except hard bound volumes, if any, which must be returned to the School.

LESSON ASSIGNMENT

SUBCOURSE JA 132.	Military Justice II (Evidence)
LESSON 1.	Character Evidence; Other Offenses or Acts of Misconduct of the Accused, the Hearsay Rule.
CREDIT HOURS.	2.
TEXT ASSIGNMENT	Chapters VI-VIII, DA Pam 27-172; MCM 1951, Para. 138f, 139, 153b(2), 138g.
MATERIALS REQUIRED.	None.
LESSON OBJECTIVE.	To familiarize the student with the assigned rules of evidence as applied in courts-martial.
SUGGESTIONS	Read and study the text assignment carefully. Complete the exercise after careful study of the assignment and then using the text, check your solutions.

EXERCISES

REQUIREMENT: The following 20 questions are of the multiple choice type. Indicate the one correct answer by placing an "X" in the appropriate space provided on the ANSWER SHEET. A statement false in part is false. Each question is worth 5 points.

1. The accused pleaded not guilty to a charge of larceny. He took the stand and on direct examination denied the commission of the offense, testified to a former honorable discharge, and indicated that he had never before been in difficulty with the law. On cross-examination, the prosecution established prior convictions for perjury and larceny and that the honorable discharge was fraudulently obtained. The accused was the only witness for the defense.

a. The accused's testimony raises his good character as an issue and even though its probative value is slight, the law officer must give a requested instruction on good character.
b. The refusal to give a requested instruction on good character would be error but it would be nonprejudicial.
c. The law officer must instruct sua sponte on good character.
d. The law officer may properly refuse to give a requested instruction on good character.

2. Which of the following statements is most correct:

a. The testimony of a minister as to the accused's good reputation in his congregation is inadmissible because it is limited to members of a single church.
b. The law officer must sua sponte instruct the court on good character if there is evidence thereof.
c. The law officer must sua sponte give limiting instructions on evidence of prior misconduct.
d. None of the above.

3. If evidence of prior acts of misconduct is erroneously received at the trial, the error can be purged. Which of the following methods will suffice to purge the error.

a. An instruction by the law officer to disregard the evidence, if it can be said that the instruction removed any possible influence on the verdict.
b. Affirmance if there is compelling evidence even though no instruction to disregard was given.
c. Assessment of the error as nonprejudicial under the specific prejudice rule.
d. All of the above.

4. The accused was charged with premeditated murder. The prosecution attempted to show that the accused had falsified certain official pay records and that the victim had discovered this and was blackmailing the accused for substantial sums of money. The defense objected.

a. The evidence is inadmissible.
b. The evidence is admissible to show motive.
c. The objection should be overruled and no limiting instruction need be given.
d. None of the above.

5. The accused was charged with wrongful possession of narcotics. The defense was mistake. The accused testified that his possession was innocent in that he did not know that the substance in his possession was a narcotic. Other defense evidence raised a serious question as to whether the substance found in the accused's possession was a narcotic. The prosecution, on rebuttal, sought to introduce three prior narcotic convictions.

a. The convictions are admissible as showing knowledge on the part of the accused that the substance was a narcotic.
b. The convictions are admissible as relevant in showing that the substance was in fact a narcotic.
c. The evidence is admissible to rebut the accused's contention of innocent mistake.
d. Both "a" and "c" above.

6. The accused was charged with murder by shooting the victim with a rifle. The prosecution's witnesses testified that the victim was some distance from the accused at the time of the shooting. The prosecution then called a local farmer to the stand who testified that the accused had once been apprehended while shooting sheep on the victim's farm at twice the distance involved in the present case. The defense objected.

a. The evidence is admissible as tending to show a plan on the part of the accused.
b. The evidence is admissible as tending to show an ability on the part of the accused to commit the offense.
c. The evidence is admissible as identifying the accused.
d. The evidence is inadmissible.

7. The accused was charged with larceny by check. The prosecution sought to introduce evidence of the accused's cashing "worthless checks" other than those involved in the offenses charged, at the same banks alleged in the specifications. The defense objected.

a. The evidence is admissible to show the intent of the accused.
b. The evidence is admissible to show a plan or design of the accused.
c. The evidence is admissible to identify the accused as the perpetrator.
d. The evidence is inadmissible.

8. The accused was charged with the robbery of a bank messenger. The prosecution evidence did not show with certainty that a completed larceny took place because there was some evidence that an unknown third party seized the briefcase of the messenger during a fight between the messenger and the accused. The prosecution then proceeded to show that some checks from the briefcase had been cashed by forged indorsements and that the accused was the person who forged and cashed them. This offense was not charged. The defense counsel objected and demanded to know the prosecution's ground for admissibility of this offense. The prosecution should argue:

a. That the showing of this offense is merely incidental to proof of the offense charged.
b. That the offense is admissible because it is relevant to show that the accused possessed the stolen property after the offense and therefore tends to identify him as the thief.
c. That the evidence rebuts the showing that someone else may have committed the offense.
d. All of the above.

9. The accused was charged with robbery. During the presentation of prosecution's case, the trial counsel offered evidence that the accused attempted to commit another robbery shortly before the robbery alleged in the specification. The defense objected.

a. The evidence is admissible to show a plan on the part of the accused.
b. The evidence is admissible to show the intent of the accused.
c. The evidence is inadmissible.
d. The evidence is admissible to show that the accused had the disposition to commit the offense of robbery.

10. The accused was charged with the attempted rape of X and adultery with Y. During the presentation of its case, the prosecution sought to introduce evidence of prior sexual misconduct on the part of the accused. First, evidence of the commission by the accused of another rape was offered. Second, acts of fornication by the accused and Z were offered.

a. Both offenses are admissible as to both charges because they tend to show a general plan of sexual misconduct on the part of the accused.
b. The rape misconduct is admissible as to the charge of attempting to rape X and the fornication misconduct is admissible as to the charge of adultery with Y.
c. The rape misconduct is admissible on both charges.
d. The rape misconduct is admissible as to the charge of attempting to rape X but the fornication is not admissible.

11. The defense counsel called Sam Green as a character witness for the accused. Green testified that he had known the accused for one year prior to the accused's entry into the service. Green's connection with the accused was strictly in an official nature. He was the plant superintendent at a large manufacturing concern where the accused worked, and did not know the accused outside of business contacts. Green then testified that the accused's reputation for honesty and as a law abiding citizen was good.

a. If the prosecution objects, the testimony should be struck because Green has not satisfactorily indicated that he is qualified as a member of the accused's "community" to give evidence of his reputation.
b. The evidence is admissible and the law officer must instruct on good character if requested to do so and if offered a satisfactory instruction by the defense counsel.
c. The evidence is admissible and the law officer must give a proper instruction on good character sua sponte.
d. The evidence is admissible and the law officer must give a proper instruction on good character if the defense counsel requests an instruction.

12. The accused was charged with rape. He took the stand and denied the commission of the offense. He also testified that he had never been in trouble with civilian or military law enforcement officials, that he was law abiding and that he would never commit an offense like that charged. Which of the following is a permissible manner of attacking the accused:

a. Cross-examination on and proof of a prior conviction of embezzlement.
b. Character witnesses who testify as to the accused's reputation as a violent person.
c. Proof that the accused was convicted of drunkenness.
d. All of the above.

13. After guilty findings had been returned in the court-martial of Private Thomas Fuller, the defense counsel produced five character witnesses who testified that in their opinion the accused possessed a good moral character. The defense counsel then asked them to give the basis for their opinions and the witnesses listed instances of exemplary conduct on the part of Fuller.

a. Upon objection, the answers should be struck because the defense counsel is attempting to show specific acts of good conduct in the guise of testing opinion testimony.
b. If the trial counsel does not object, he may show specific acts of misconduct on rebuttal under the theory of curative admissibility.
c. The evidence is admissible after findings but this does not open the door for the prosecution to admit acts of misconduct because their nature is prejudicial.
d. The specific acts are admissible over objection and the trial counsel may elicit acts of misconduct in rebuttal.

14. Sergeant Paul Giddings was charged with aggravated assault. The defense was self-defense. Sergeant Giddings testified that the victim attacked him and that he only defended himself. The defense also called several character witnesses who testified that the accused had a good character for peacefulness. In rebuttal, the trial counsel called several character witnesses who testified that the accused had a violent nature. He also sought to introduce a prior conviction of the accused of forgery.

a. The conviction should be excluded because the accused has only put a specific trait, peacefulness, in issue and the conviction exceeds this scope.
b. The conviction is inadmissible because it is not logically relevant to any issue in the case.
c. The conviction is logically relevant but too collateral and should therefore be excluded.
d. The conviction is admissible to attack the credibility of the accused.

15. The accused was charged with taking indecent liberties with a child under the age of 16 years. The defense presented two juvenile officers who had been assigned to obtain information of the alleged victim's personal history in connection with delinquency proceedings pending against her. The witnesses proposed to testify that their exhaustive research had shown that the girl's reputation for chastity was very poor.

a. The evidence should be excluded because consent is not an element of this offense, rendering the evidence irrelevant.
b. The evidence should be admitted as bearing on the credibility of the "victim," but for no other purpose.
c. The evidence should be excluded because the witnesses are not competent to present evidence of the victim's reputation.
d. The evidence should be admitted for all purposes.

16. At the trial of Captain Harry Dunn for aggravated assault, the prosecution, in rebuttal, produced a witness who testified that the accused's reputation as a law abiding citizen was very poor. The witness further stated that his opinion was the same. The general character of the accused was in issue. The defense counsel suspected that the prosecution witness was biased against the accused because of personal differences. He asked the witness to state his reason for the opinion and the witness replied that the accused had once stolen $100 from him. The defense counsel objected to the answer on the ground that it was an improper reference to a prior act of misconduct and that the act mentioned had no relevancy in a prosecution for assault.

a. The objection should be sustained for the reason stated.
b. The objection should be sustained because only convictions of offenses affecting credibility are admissible.
c. The objection should be overruled because the defense counsel assumed the risk of prior acts of misconduct when he asked the question.
d. The answer should be struck as non-responsive.

17. Chief Warrant Officer Robert Bowen was tried for rape of the wife of a civilian employee of an army post. The defense presented two witnesses who testified as to the unchaste character and lewd repute of the alleged victim. The defense also introduced an affidavit by an unavailable witness which contained similar statements as to the alleged victim's character. The affidavit was admitted over the trial counsel's objection. On rebuttal, the trial counsel sought to introduce the affidavit of still another witness to the effect that the victim's reputation for chastity was excellent and, in her opinion, that the victim's character for such was excellent. The defense objected but the law officer admitted the affidavit.

a. The trial counsel's objection to the defense affidavit should have been sustained.
b. The defense counsel's objection to the prosecution affidavit should have been sustained.
c. Both rulings were correct.
d. Both rulings were erroneous.

18. The accused, Sergeant William Ransom, was charged with perjury. The defense produced several witnesses who testified that Ransom's reputation in the community for truth and veracity was good. The trial counsel objected to this proof, citing the rule that evidence as to the good character of the accused for veracity is inadmissible unless the prosecution has first impeached the accused with contrary evidence. The accused did not testify.

a. The objection should be sustained for the reason stated.
b. The objection should be overruled because the evidence used by the defense was not used to bolster the accused's testimony, but had independent relevance to show that it was unlikely that he committed the offense.
c. The objection should be sustained because specific character traits, as opposed to general good character, are inadmissible.
d. None of the above.

19. The trial defense counsel called, as a character witness, a friend of the accused who had lived in the same community for many years. He testified, before the findings, that the accused's reputation in the community was good and that in his opinion the accused was a moral and law abiding citizen. The defense counsel asked the witness to indicate his reasons for this opinion. The witness was proceeding to list several charitable and civic contributions made by the accused when the trial counsel objected.

a. The objection should be overruled because the Manual specifically recognizes the right of the defense counsel to elicit specific acts of good conduct in this situation.
b. The objection should be overruled because it is always permissible to elicit the basis of the opinion of a character witness.
c. The objection should be overruled because the defense counsel is allowed to anticipate that the trial counsel will attack the basis of the opinion if it is known that prior acts of misconduct exist.
d. The objection should be sustained.

20. The accused was charged with murder. The prosecution established that the murder weapons which were found at the scene of the crime had been stolen by the defendant two weeks prior to the murder. After findings, the law officer instructed the court they were to consider "all the facts and circumstances of the case" in adjudging an appropriate sentence.

a. The instruction was proper.
b. The instruction was erroneous.
c. Following findings, the rules prohibiting introduction of acts of misconduct are not applicable.
d. The prosecution should not have introduced evidence of other acts of misconduct in this case.

LESSON ASSIGNMENT

SUBCOURSE JA 132 . . . . . .Military Justice II (Evidence)

LESSON 2 . . . . . .3.

TEXT ASSIGNMENT. . . . . .Chapter IX, DA Pam 27-172, and Miranda and the Military: Development of a Constitutional Right (at Chapter IX, 1 May 1968 Supplement to DA Pam 27-172).

LESSON OBJECTIVE . . . . . .To familiarize the student with the assigned rules of evidence as applied in courts-martial.

SUGGESTIONS. . . . . .Read and study the text assignment carefully. Complete the exercise after careful study of the assignment and then using the text, check your solutions.

EXERCISES

REQUIREMENT: The following 20 questions are of the multiple choice type. Indicate the one correct answer by placing an "X" in the appropriate space provided on the ANSWER SHEET. A statement false in part is false. Each question is worth 5 points.

1. The accused confessed to stealing a watch after the victim administered a physical beating to him. The accused was then taken into custody by CID agents who continued an investigation. One week later, the agents gave the accused a proper warning and asked him to repeat his confession. The accused did so.

a. The Supreme Court of the United States has held that this confession would be inadmissible without inquiry into causation between the first and second statements.
b. The Manual rule is that if intervening circumstances have removed the coercive effect of the beating, the confession is admissible.
c. The Court of Military Appeals has adopted the Supreme Court approach as set forth in "a" above.
d. None of the above.

2. The accused was suspected of having committed the offense of possession of narcotics. The evidence in possession of CID agents indicated only that the accused was a narcotics peddler. After proper warnings and waivers, the accused confessed to the offense of narcotics possession and use. At the trial the accused was charged with both possession and use of narcotics. The accused testified that he was a user of narcotics and that he confessed because he thought that he could then get out of confinement and go to the hospital to avoid approaching withdrawal sickness.

a. The confession as to possession should be excluded.
b. If it can be shown that the CID agents did not know of the accused's condition, the confession is admissible.
c. The confession is inadmissible because the accused was not suspected of narcotics use at the time it was made.
d. None of the above.

3. The government agent did not have sufficient information to secure a search warrant for a search of Private A's barracks room. The agent approached Private A at the enlisted men's club, and asked if he could search A's room. A replied: "Sure, let's go back to the room and you can search to your heart's content." No warnings were given. The stolen radio was found in the room.

a. The radio is inadmissible because no Article 31 warning was given.
b. The radio is inadmissible because no Miranda-Tempia warning was given.
c. The lack of warnings may be considered in determining whether the consent was in fact voluntarily given.
d. All of the above.

4. After a short period of investigation, the accused denied guilt in a robbery case and made an exculpatory statement to investigating officers. The officers had reason to doubt the veracity of the statement and continued the investigation. In subsequent interrogations, the officers informed the accused of the maximum sentence for perjury, encouraged him to tell the truth, and indicated that he might be charged with perjury on the basis of his first statement. The accused confessed.

a. An issue of voluntariness is raised, as to the confession.
b. There is no issue of voluntariness because the officers merely encouraged the accused to speak the truth and furnished him with information.
c. An issue of voluntariness is raised here, but if the accused had not made the first statement, the information furnished as to perjury would not have vitiated a confession.
d. Both "a" and "c" above.

5. The Miranda-Tempia warning requirements will be applied to:

a. Exculpatory statements.
b. Admissions.
c. Statements used for impeachment purposes.
d. All of the above.

6. The victim of an attempted robbery is unable to identify who committed the crime; however, he states that he hit the criminal in the forehead with a 3 iron. When the CID brought the accused in to book him for the crime, the desk sergeant noticed a gash on the suspect's forehead, and asked the suspect: "How do you feel?" The suspect responded: "How would you feel if you had just been hit in the forehead with a 3 iron?" This statement was used to tie the suspect to the robbery.

a. The statement is admissible because the suspect was not interrogated for purposes of illiciting a criminal fact.
b. The statement is inadmissible because "interrogation" means any device used to get the suspect to talk.
c. Miranda-Tempia warnings must be given only when the statement is a confession and not when admissions are used.
d. None of the above.

7. Prior to Miranda:

a. Military law held that the suspect was entitled to the presence of his individually retained counsel during the interrogation.
b. The right to appointed counsel arose only after the filing of charges.
c. Escobedo caused a significant change in military law.
d. All of the above.

8. CID agents took the accused into custody for investigation of a series of forgeries. The accused was properly warned of his rights. After two hours of questioning, the agents told the accused that the offenses could be traced to him by witnesses who cashed the forged checks and by handwriting experts. These statements were true. The accused confessed. The next day, the agents called the accused into their office, warned him, and continued the questioning. The accused made a voluntary confession. The trial counsel seeks to introduce this second statement into evidence at the accused's trial by general court-martial.

a. The second statement is inadmissible.
b. An issue of voluntariness is raised as to the second statement.
c. The statement is admissible.
d. The statement is admissible only if the first statement is also used.

9. Appointed military counsel at the interrogation state is furnished free of charge:

a. Whether indigent or not.
b. Only if the suspect is unable to hire his own counsel.
c. When the suspect requests counsel.
d. Both "a" and "c".

10. Major X was suspected of taking procurement "kickbacks." Agent Smith of the CID asked if Major X could stop for a few minutes to discuss the matter. Major X stated he was very busy; however, if Agent Smith would come up to his office, he would be glad to talk to him for a few minutes. When Agent Smith came up to the office, Major X made an admission which was later used in his trial. Only an Article 31 warning was given.

a. Major X was subject to "custodial interrogation" and since no Miranda-Tempia warning was given, the admission was inadmissible.
b. The test of custodial interrogation is the belief of the person under interrogation as to whether he is in custody or otherwise limited in his freedom of action.
c. There was no necessity to give the Article 31 warning.
d. Both "a" and "b".

11. The prosecution offered a confession without showing the Miranda-Tempia requirements were met. Defense counsel made no objection to the admission.

a. The failure to object will be deemed a waiver.
b. No waiver will be found by the failure to object.
c. The defense may not consent to the introduction of a confession without a showing that the requisite warnings were given.
d. Both "a" and "c".

12. Concerning the relationship between Article 31 and Miranda-Tempia:

a. There will always be a necessity to give an Article 31 warning if a Miranda-Tempia is required.
b. A Miranda-Tempia warning will always be necessary if an Article 31 warning is required.
c. In point of time, the necessity for an Article 31 warning may arise before the necessity for a Miranda-Tempia warning.
d. Both "a" and "b".

13. The suspect, in addition to the other requirements, was advised that "he could consult with legal counsel at any time he desired."

a. This advice sufficiently advises the suspect of his right to have counsel present during the interrogation.
b. In giving the required advice, the interrogator must follow the exact warning contained in Miranda.
c. The advice will be tested to determine whether it conveys the substance of the warning, and technical ineptness doesn't destroy its legal effect.
d. Both "a" and "c".

14. During an out-of-court hearing on the issue of the voluntariness of an accused's confession, the defense attempted to show by the accused's military record and other evidence that he was of extremely low mentality. When pressed by the prosecution to give some explanation of the relevancy of this evidence, the defense counsel asserted (1) that the extreme low mentality of the accused was such as to render any statement by him inadmissible. He admitted, however, that the accused was sane and was fully competent to testify and aid in the conduct of his defense. The defense counsel also argued (2) that his client's low mentality was relevant in weighing the effect of the evidence of coercion that he had shown.

a. The evidence is relevant for both reasons expressed.
b. The second reason is invalid because investigating officials are not required to vary their methods with each suspect and are entitled to assume that each suspect can withstand normal and reasonable investigative procedures.
c. The second reason stated is valid, but the first is not.
d. The evidence should be excluded because neither reason is valid.

15. The accused was charged with robbery. At the trial, the prosecution attempted to show that the accused had made a statement to one Private Peterson that he (the accused) was present at the time of the alleged offense. (The statement was made voluntarily and under circumstances not requiring a warning.) The defense attempted to establish on cross-examination of Peterson that the accused also told him that he had arrived after the offense was committed and that he had not seen the violator. The prosecution objected on the ground that the exculpatory statement was hearsay. Later, the defense attempted to prove that the accused had told investigating officers that the stolen goods found in his possession were sold to him by an unidentified party. The prosecution again objected on the ground of hearsay.

a. Both objections should be sustained.
b. Both objections should be overruled.
c. The first should be sustained and the second overruled.
d. The first should be overruled and the second sustained.

16. The accused was charged with several larcenies. While investigating the charges the CID placed an informer in the accused's cell. During the course of a conversation the accused made some incriminating admissions to the informer in answer to the usual question "What are you in for?" The prosecutor offered these statements into evidence at the accused's trial and the defense counsel objected.

a. These statements are inadmissible because they were obtained by trick, strategem or fraud.
b. The statements are admissible because the probable truthfulness of the statements is the only standard by which they are measured.
c. These statements were not obtained by coercion or unlawful inducement.
d. The accused's ignorance of the status of his "cell-mate" makes the statements inadmissible.

17. The accused, who was suspected of stealing $50.00 from another private in his unit, denied his guilt and voluntarily submitted to a lie detector test which indicated to the contrary. The alleged victim, after being informed of the result of the test, confronted the accused and told him that if the money was returned he would do what he could to have the matter disposed of at the unit level. The accused then admitted his guilt and repaid the money to the alleged victim.

a. The confession is inadmissible because the victim was not investigating a suspected crime.
b. The confession is inadmissible because the accused was unlawfully induced to confess.
c. The confession was inadmissible because the accused had submitted to a lie detector test and the results were released to the alleged victim without authority.
d. The confession was voluntary and therefore admissible at a court-martial because a promise of light treatment must come from someone having apparent ability to effect the promised treatment.

18. The accused was charged with murder. At the court-martial he claimed that a confession offered by the prosecution was obtained by the use of "psychological pressure" consisting of intermittent, prolonged periods of interrogation during which his victim's picture was displayed to him repeatedly. The prosecution offered evidence to the effect that the accused finally made the statement immediately after a period of three days, during which there was no interrogation, and after the accused had sent word to the investigators through the chaplain that he was ready to make a statement.

a. The confession is inadmissible because of coercion.
b. The confession is admissible, and the evidence eliminates any issue of voluntariness for determination by the court.
c. The confession is inadmissible because there was no intervening cause between the confession and the alleged "psychological pressure."
d. The confession is inadmissible because of the prolonged interrogation.

19. "Custodial interrogation" arises:

a. When the suspect is ordered by a military superior to go to the interrogation office for questioning.
b. An inference that the suspect was ordered to go to the interrogation office arises from his presence there anytime during normal working hours.
c. When the suspect is apprehended by military or civilian authorities.
d. All of the above.

20. The suspect was advised, in addition to the other required elements, he could get "legal assistance from the staff judge advocate or be represented by civilian counsel at his own expense." Following appropriate waivers, the suspect gave a confession in which he stated where the murder weapon was located.

a. The Supreme Court has held that evidence secured from an improperly warned confession is inadmissible.
b. The gun was not the "fruit of the poisoned tree" because the original confession was admissible.
c. Military law recognizes an exclusionary rule for evidence discovered as a result of an illegal confession.
d. Both "b" and "c".

LESSON ASSIGNMENT

SUBCOURSE JA 132	Military Justice II (Evidence)
LESSON 3	The Warning Requirement of Article 31.
CREDIT HOURS.	3.
TEXT ASSIGNMENT	Chapters X, XI, DA Pam 27-172.
MATERIALS REQUIRED.	None.
LESSON OBJECTIVE.	To familiarize the student with the assigned rules of evidence as applied in courts-martial.
SUGGESTIONS	Read and study the text assignment carefully. Complete the exercise after careful study of the assignment and then using the text, check your solutions.

EXERCISES

REQUIREMENT: The following 20 questions are of the multiple choice type. Indicate the one correct answer by placing an "X" in the appropriate space provided on the ANSWER SHEET. A statement false in part is false. Each question is worth 5 points.

1. Acting on a specific request by military authorities in a distant city, local civilian police apprehended the accused as a deserter. While holding him for the military authorities, the police questioned him about some "muggings" committed in their city. Only a Miranda warning was given. The accused made several incriminating statements as to the desertion charge and also admitted to having committed several robberies in the local park. The accused was tried by court-martial for the robberies and desertion.

a. All of the statements are admissible because the local police are not subject to the Uniform Code of Military Justice.
b. All of the statements are inadmissible because the police were required to warn the accused under Article 31 because they were working as the "agents" of military authorities.
c. The statements relating to the robberies are admissible because the interrogators were acting entirely in their civilian capacity as to these offenses.
d. None of the above.

2. The accused, a supply officer, was suspected of selling government property. Investigators checked his records and discovered the suspected shortage. The accused was then taken to a CID office and given a warning in the terms of Article 31 and Miranda-Tempia. The only instruction that was given as to the nature of the accusation was that a shortage existed in the supplies. No mention was made of the offense of selling the property even though the investigators had evidence of the sales. The admissibility of the accused's subsequent confession is challenged.

a. The confession is inadmissible.
b. The fact that the accused obviously knew that the investigation would extend to the disposition of the property can be considered in determining whether he was properly warned.
c. While it is not necessary to inform the accused of the exact charge, a warning such as the present one that does not mention the offense that investigators actually intend to charge is always defective.
d. None of the above.

3. Investigators apprehended the accused in connection with a forgery case. He was given an Article 31 warning in general terms and advised of the nature of the investigation. The accused apparently understood the warning. Thereafter, he was requested to furnish a handwriting exemplar. He did so but later challenged its admissibility on the theory that he had not been properly warned.

a. The exemplar is admissible because no warning was required.
b. The exemplar is not admissible because a Miranda-Tempia warnin was required.
c. Because an accused is not likely to relate a general warning to a request to perform an act, it has been held that an accused must be specifically warned that he cannot be required to perform the act.
d. Since no case has ever been reversed for failure to give a specific warning that an accused need not give a statement by performing a requested act, it can be persuasively argued that a general Article 31 warning is sufficient where an accused is requested to perform a non-testimonial act.

4. The accused, a Sergeant, was placed in pretrial confinement after a long and fruitless interrogation at which he refused to make any statement. After the accused had been confined for a period of one week, PFC Brown was admitted to the stockade as a "prisoner." Brown, who was in reality a CID agent, secured a confession from the accused by simply asking him the reason for his confinement. The accused objected to the admission of the confession.

a. The confession is admissible provided there is no proof that the failure to warn the accused was the cause of the confession.
b. The confession is admissible provided the government can prove that the accused was in fact aware of his Article 31 rights.
c. The confession probably is inadmissible because Brown, who was obviously subject to the Code, was acting in an official capacity and conducting an investigation.
d. The confession is admissible because the accused was not interrogated nor was he asked to make a statement about the offense of which he was suspected.

5. An investigator warned the accused as follows: "You don't have to make any statement that will incriminate you. In fact, you don't have to say anything at all. And remember, we can use anything you say against you." The accused apparently understood this warning. The investigation continued. A second investigator, while alone with the accused, told him, "you can tell me about it. All we want to know is whether we have the right guy. You don't have to give us a signed statement that can be shown to the court, just tell us who did it so we can all stop for now and get some rest." The accused gave an oral confession but refused to sign a written statement.

a. The confession is inadmissible because the first warning failed to notify the accused that statements could be used against him in a court-martial.
b. The confession is inadmissible because of the failure of the second investigator to warn the accused.
c. The confession is inadmissible because the advice of the second interrogator was erroneous and nullified the first warning.
d. None of the above.

6. The accused was interrogated in connection with a robbery case. The offense was committed by two men and, in a statement not preceded by a warning, the accused admitted that he took part in the crime. He also pointed out his partner. At the trial of the latter, the accused was called as a witness for the prosecution and repeated his statement. He was not given an Article 31 warning at the trial. When he was tried for the same offense, he challenged the admissibility of the statement he made at his partner's trial on the ground that he had not been warned.

a. The statement was inadmissible at the first trial and should not be received in evidence against the accused in the second trial.
b. Although admissible in the first trial, the statement cannot be used in a prosecution against the accused because he was not warned.
c. The statement is admissible because an Article 31 warning was not necessary at the time the statement was made.

d. The statement is admissible if it can be shown that the accused understood his Article 31 rights when he made the statement.

7. The accused, suspect of larceny from an Italian citizen, was apprehended by Italian police. The following day, the suspect was taken by a CID agent to the Italian police station for interrogation. No Article 31 warning was given. The CID agent was present when the suspect gave a statement to the Italian police.

a. The admissions to the Italian police are inadmissible because of a failure to give an Article 31 warning.
b. The admissions to the Italian police are inadmissible because the questioning was an American military enterprise.
c. A subsequent statement to the CID agent following proper warnings would be inadmissible only if it was the product of the earlier unwarned statement and the earlier statement was taken in the course of an American military enterprise.
d. None of the above.

8. A robbery offense was being investigated and CID agents apprehended the accused as a suspect. He was taken to an office where an interrogator gave a valid warning and began an interrogation. The accused confessed to the commission of the offense. Shortly thereafter, a second investigator informed the accused that his statement would be kept in confidence and could not be used against him in a court-martial.

a. The confession is inadmissible because the warning was invalidated.
b. The confession is admissible because Article 31 had been complied with at the time it was made.
c. A promise like that given by the investigator may raise an issue as to voluntariness, but cannot vitiate an otherwise proper warning.
d. None of the above.

9. The accused was suspected of use and possession of narcotics. He was apprehended and requested to furnish a urine specimen. No warning preceded the request. There was no compulsion exerted to acquire the specimen. (Assume for purposes of this question that Article 31a prohibits requiring a suspect to furnish urine.)

a. The specimen is inadmissible.
b. If the Minnifield case is carried to its logical extreme, the specimen would be inadmissible because an Article 31 warning was not given.
c. The Minnifield case is not completely analogous to the present situation because in that case the act requested may carry with it certain "testimonial" representations not present here.
d. None of the above.

10. The accused was apprehended and confined during the period of an investigation of a robbery offense. He was properly warned and then questioned. He refused to answer questions directly related to the offense but did answer some questions which were largely collateral but which aided the investigators in establishing identity. A period of two days elapsed and the accused was again produced for questioning. Before the session began the investigators started to warn the accused again, but he stopped them, saying, "I know I don't have to say anything that you guys can use against me." The interrogation proceeded, and at the end of the period the accused was requested to participate in a line-up, at which time he was identified by the victim.

a. The identification is inadmissible because the accused's statement indicates that he did not understand his rights under Article 31.
b. The identification is inadmissible because the accused's statement standing along was sufficient to require a new warning.
c. The identification is admissible because the line-up was merely physical examination of the accused, which need not be prefaced by an Article 31 warning.
d. The identification is admissible because one warning is sufficient for each investigation.

11. Vandals caused a great amount of damage to certain government vehicles during the period when the accused was charged with the possession of the vehicles. Certain evidence pointed to the conclusion that the accused had participated in or had acquiesced in the damage, which was obviously willful. Investigators, who were interested only in fixing pecuniary liability for the damage, then approached the accused to interrogate him. They informed the accused of their purpose and warned him that any statement that he made "could be used against him." The accused apparently understood his rights and made incriminating statements. The accused challenged the admissibility of these statements at a subsequent court-martial for his part in the willful destruction of government property.

a. If the accused thought that the statements could only be used to establish pecuniary liability, they are inadmissible in the court-martial.

b. If the investigators did or said nothing to indicate that the statements could be used only to establish pecuniary liability, the statements are admissible.
c. Even if the investigators told the accused that his statements could be used only to establish pecuniary liability, they could nevertheless be used in a court-martial, because the only necessary factor is that the accused know that they could be used against him.
d. Both "b" and "c" above are correct.

12. The accused was charged with wrongful possession of an unlawful pass. The facts showed that the accused was found to be missing from his company area and his company commander had so informed the MP's. This information, along with a description, was furnished to MP's on duty at the post gates. For this reason, when they saw the accused, they asked him to produce his pass. No warning was given. The accused complied and the unlawful pass was discovered. The MP's always checked the passes of about one half of all persons leaving the post and the accused was aware of this practice.

a. The evidence is admissible because no "statement" in the meaning of Article 31 was involved.
b. The evidence would have been admissible if the MP's had not been notified of the accused's absence and requested to watch for him.
c. The evidence is admissible because the accused was not "suspected" of this offense within the meaning of Article 31.
d. Both "a" and "c" above.

13. The accused was suspected of murder. After an Article 31 warning, he told investigators that he was present at the time of the offense but that he did not remember anything that happened after an hour before the murder took place. At the trial, the accused's defense was insanity. The prosecution attempted to introduce the accused's statements as proof that he was present at the time of the offense. The defense objected and offered to show by expert testimony that the accused was insane at the time of the investigation and could not have understood the warning.

a. Evidence of insanity goes only to the merits of the case or the ability to cooperate in his own defense and is inadmissible as here offered.
b. If the evidence is believed, the court should disregard the accused's statement because Article 31 demands that the accused understand the warning.
c. The statement is admissible unless it can be shown that the investigators should have known that there was some doubt as to the accused's sanity.
d. Both "b" and "c" above.

14. The accused's company commander was informed of wide-spread barracks thievery in his organization. The thefts had gained a great deal of notoriety within the company. The commander, along with CID agents, began calling company members for questioning. As each man was questioned, Article 31 was read and explained. However, no mention was made that the investigation dealt with the thefts. Evidence at the trial indicated that the entire company knew the purpose of the investigation and that the accused was told the purpose by a man who had just returned from being questioned. The accused confessed to the company commander.

a. The confession is inadmissible because it was taken without notifying the accused that he was a suspect.
b. While there may have been error in not informing the accused of the purpose of the investigation, it is probably nonprejudicial error if the confession is admitted over objection.
c. The confession is admissible because the investigation lacked the required "officiality."
d. Both "b" and "c" above.

15. The accused was taken into custody by military police after being found wandering on the post in a dazed condition. The police suspected a narcotics offense and called a medical officer to verify their suspicions. The MP's did not interrogate the accused. The doctor requested the accused to roll up his sleeves. The accused complied and the doctor noted needle marks in the arms of the accused. Without further comment by the doctor or the MP's, the accused asked the doctor to give him some narcotics because he was becoming ill. There was no warning given the accused at any time.

a. The doctor was an "investigator" within the meaning of Article 31.
b. No warning was required when the doctor requested the accused to roll up his sleeves.
c. Since there has been no interrogation except the request by the doctor, no warning is required and the confession is admissible.
d. All of the above.

16. A guard while walking his post at night saw the accused, his personal friend, in a closed post exchange. Shortly thereafter, while still on duty, he found the accused in a nearby boiler room at which time, without any preliminary warning, he asked the accused why he had broken into the post exchange. Later, after coming off duty, the guard awoke the accused in the barracks and asked him the same question. Each time when questioned the accused remained silent. The guard did not report either incident.

a. The guard's testimony is inadmissible as he was acting in an official capacity.

b. The court might reasonably have inferred that the accused, were he innocent, would have denied the accusation implicit in the remark of the guard, when he awoke him in the barracks.
c. The guard's testimony is admissible as he was not acting in an official capacity at the time he questioned the accused in the boiler room.
d. The accused's silence when questioned in both instances may be treated as confession.

17. The accused, a former POW in Korea, was charged with aiding the enemy. Upon his repatriation he was questioned by CIC agents. At the outset of his examination Article 31 was read and explained to him, but he was not informed of the offense of which he was suspected. He also was given a Miranda-Tempia warning. After an examination which covered a period of several weeks the accused signed and swore to a statement which was a "collection" of the oral and written information obtained from him. At his court-martial the CIC agents who interrogated the accused admitted that they did not inform him that he was suspected of the commission of an offense. The agents further testified they personally did not suspect him of an offense and were not interrogating him to obtain information with a view to criminal prosecution. The accused objected to the admission of the statement. The basis of his objection was the CIC agents in the United States suspected him of an offense, and since both CIC groups were responsible to the G-2, U. S. Army, the CIC agents who interrogated him were chargeable with knowledge that he was suspected of an offense, and should have so informed him.

a. The accused's statement to the CIC is inadmissible because the CIC agents did not inform him of the offense of which he was suspected.
b. The accused was prejudiced by the admission into evidence of this illegally obtained statement.
c. The fact that CIC agents in the U. S. had information concerning wrongful activities of the accused, which was unknown to his interrogators, does not make the accused a "suspect" and impose a duty on his interrogators to warn him.
d. Both "a" and "b" above.

18. The accused, who was custodian of a nonappropriated fund, was charged with larceny. During a routine audit of the fund the auditor, while counting the assets, discovered an apparent shortage and asked the accused where the balance was. The accused answered, "I'm short." The accused then confessed to taking the missing money after being asked what he meant by "I'm short."

a. All audits, whether routine or otherwise, must be prefaced by a warning to the custodian.

b. As soon as the accused started to explain the shortage, the auditor should have stopped him and warned him of his rights.
c. The accused's confession was admissible despite the absence of a prior warning.
d. The accused was prejudiced by the receipt of his confession in evidence.

19. The accused was charged with barracks larceny. The accused's company commander, after receiving reports of numerous losses in his company, requested that the CID investigate. During the course of the investigation the accused, at the request of the CID and without preliminary warning, opened his foot locker so that it could be searched. Certain property belonging to other members of the company was found in the accused's locker. The ownership of the locker was established by evidence other than the accused's identification of it. At the accused's trial, evidence obtained as a result of this search was admitted over his objection.

a. The evidence obtained as a result of this search was erroneously admitted in evidence because of the absence of a warning.
b. Consent to a search is by itself incriminating.
c. There is no distinction between the legality of a search and the admission of evidence that the accused identified the property searched as belonging to him.
d. None of the above.

20. Which of the following statements is correct:

a. The requirement that a suspect be advised "of the nature of the accusation" demands that the specific offense be named with technical completeness and accuracy.
b. An adequate warning under Article 31 can be nullified by subsequent misadvice.
c. A warning must be given before asking a suspect if he will consent to search.

LESSON ASSIGNMENT

SUBCOURSE JA 132	Military Justice II (Evidence)
LESSON 4	Procedure Concerning Privilege Against Self-Incrimination; Foundation for Admissibility of Statements.
CREDIT HOURS	2.
TEXT ASSIGNMENT	Chapters XII, XIII, DA Pam 27-172.
MATERIALS REQUIRED	None.
LESSON OBJECTIVE	To familiarize the student with the assigned rules of evidence as applied in courts-martial.
SUGGESTIONS	Read and study the text assignment carefully. Complete the exercise after careful study of the assignment and then using the text, check your solutions.

EXERCISES

REQUIREMENT: The following 15 questions are of the multiple choice type. Indicate the one correct answer by placing an "X" in the appropriate space provided on the ANSWER SHEET. A statement false in part is false. Questions 3, 6, 9, 12 and 15 are worth 6 points each. All other questions are worth 7 points each.

1. The accused was charged with larceny of a large number of uniforms from a supply warehouse. Throughout the investigation, the accused asserted his innocence. Investigators, after proper warning, told the accused that if he would return the goods, the convening authority would be inclined to be more lenient because there would be no loss to the government. Acting on this belief, the accused led the investigators to the uniforms. Defense counsel objects to the use of this evidence at the trial on the theory that Article 31a had been violated.

   a. Since no statement is involved the objection should be overruled.
   b. Since Article 31a requires "compulsion" and there is none evident here, the objection should be overruled.
   c. Improper inducements will not vitiate the production of evidence under Article 31a and therefore the objection should be overruled.
   d. None of the above.

2. The accused was charged with robbery. The victim was uncertain as to the identity of the accused. An easily identifiable coat was worn by the person who committed the crime. The accused was known to own such a coat and he was ordered by investigators to bring this coat to a "line-up." The accused was forced to wear the coat and the victim then identified him as the thief.

a. Testimony as to the identification is inadmissible because the wearing of certain clothes and a visual inspection of the person violates Article 31.
b. Testimony as to the identification is inadmissible because the accused was compelled to produce evidence against himself in violation of Article 31.
c. The identification is inadmissible and would have been so even though the accused was not compelled to produce the coat.
d. Both "b" and "c" above.

3. The accused was charged with larceny of an automobile. The prosecution called a used car dealer, a civilian with no connection with the government, as a witness. This witness refused to answer questions dealing with his purchase of the allegedly stolen automobile from the accused. The law officer directed the witness to answer the question. The witness answered and the accused was convicted.

a. Assuming that the circumstances indicated that the witness' answer would tend to expose him to federal prosecution for transporting a stolen automobile across state lines, the claim of privilege was improperly overruled.
b. The law officer should overrule a claim of privilege in these circumstances because there can be no prejudice to the accused.
c. The accused was prejudiced by the law officer's action, assuming it to be improper, and the conviction will be reversed.
d. Even though the circumstances clearly indicate that the witness might be subjected to the federal prosecution mentioned in "a" above, the assertion of privilege should have been overruled.

4. The accused was charged with being drunk on duty. At an out-of-court hearing, prosecution witnesses testified that the accused consented to a blood test, the results of which showed that he was intoxicated. The accused, however, testified that he was ordered to submit to the test and was not given an opportunity to refuse to take the test.

a. Under the principles stated in Minnifield, the law officer must first decide whether the evidence is protected by Article 31 and then decide whether it was voluntarily obtained, the court also making the latter decision if the law officer rules that it was voluntary.

b. If the law officer decides that the evidence is admissible because it is not protected by Article 31, the court must still pass on the issue of voluntariness.
c. If the law officer decides that the evidence is protected by Article 31 but admissible because voluntarily given the court will not pass on the question because there is no authority indicating that Article 31a violations must be passed upon by the court.
d. None of the above.

5. The accused was charged with the unlawful possession of narcotics. A prosecution witness testified on direct examination that he was with the accused at the time of the alleged offense, that the accused was carrying a small package and that he (the witness) knew that the package contained narcotics. Upon cross-examination the witness claimed his privilege against answering defense questions as to how he knew the circumstances of the possession and his general involvement in the transaction.

a. Having taken the stand and voluntarily testified as to facts surrounding the offense, the witness waived all Article 31 privileges against self-incrimination.
b. Even if the privilege is improperly sustained, the defense cannot complain in this case.
c. Since the witness has already answered questions that may be incriminating, the only question for the law officer is whether the questions asked by the defense are proper cross-examination.
d. Even though the testimony on direct examination may be incriminating, there is no waiver of the privilege if the answers to the defense questions, in the light of all the circumstances and former statements, would further incriminate the witness.

6. The prosecution came into possession of a copy of a letter written by the accused which indicated his involvement in an extortion attempt. It appeared that the original was back in the possession of the accused. When the prosecution attempted to introduce the copy, the law officer raised the "best evidence rule" and stated that a demand must be made on the defense to produce the original before the copy would be admissible. The trial counsel then made the demand in open court.

a. The accused, absent certain circumstances not apparent here, could not be compelled to produce the original.
b. The law officer committed error by requiring the demand to be made in open court.
c. Although the Manual is silent with regard to the admissibility of evidence obtained in this manner, federal cases will be followed by courts-martial to preclude admissibility.
d. All of the above.

7. The accused was apprehended under circumstances which led investigating officers to suspect him of narcotics use. During the short initial investigation, the accused was violent and uncooperative, refusing to answer any questions of enlisted investigators. An officer then took charge of the investigation and ordered the accused to furnish a urine specimen. The accused protested, but complied. There was no threat of confinement or the use of force connected with the order.

a. The order was legal and the specimen would be admissible.
b. The order was illegal and the specimen would be inadmissible.
c. The Court of Military Appeals has ruled that the order was illegal but has not determined the effect on the admissibility of the specimen.
d. Although the Court of Military Appeals has determined that the order is illegal, the specimen is admissible because there is no "testimonial utterance" involved.

8. After the prosecution had closed its case in a trial for extortion, the accused took the stand and denied that he had committed the offense. His testimony was very short and consisted primarily of "yes" and "no" answers. The alleged victim had testified that he had never seen the person who committed the offense, but could recognize his voice because of telephone conversations with him during the extortion. The trial counsel requested the accused, on cross-examination, to repeat certain phrases allegedly spoken by the perpetrator of the offense. The accused claimed his privilege against self-incrimination.

a. The claim of privilege should be overruled because an accused may always be compelled to give voice specimens.
b. The claim of privilege should be sustained because an accused does not by taking the stand waive his privilege as to the creating of evidence which he could not be compelled to produce before trial.
c. The claim of privilege should be overruled because taking the stand is an effective waiver of the privilege not to produce voice specimens.
d. None of the above.

9. The defense called as a witness a person who, under its theory of a larceny case, was the actual perpetrator of the crime. Defense counsel secured permission from the law officer to examine the witness as a hostile witness. The questioning was leading into the whereabouts of the witness at the time of the offense when the law officer interrupted to advise the witness of his privilege against self-incrimination. The witness indicated that he understood his rights and answered two introductory questions. The law officer warned him three more times and the witness thereafter refused to answer. The privilege was validly claimed in that the answers would in fact have incriminated the witness.

a. The actions of the law officer could not have prejudiced the accused in any way because there was a valid claim of privilege.
b. The law officer committed error, even though the claim of privilege was valid, if it can be said that he was so sensitive to the possible ignorance of the witness of his rights that he impliedly directed him not to answer.
c. The law officer must warn a witness of his rights and must do so on each question that appears to call for an incriminating reply because the witness has no counsel to assist him.
d. None of the above.

10. The accused was charged in a special court-martial with being drunk on duty. During the course of the trial, the prosecution sought to introduce evidence of a blood test made immediately after the accused was apprehended and while he was "passed out." The person who took the blood specimen was a civilian hospital employee trained in taking blood tests. The defense counsel, who was not a qualified attorney, did not object to the evidence. The issue of an Article 31 violation was raised for the first time on appeal. The conviction should be:

a. Affirmed because there was no error.
b. Reversed on the ground of general prejudice.
c. Affirmed on the ground of waiver.
d. May be reversed if specific prejudice is found.

11. The accused was compelled to give a voice exemplar and a handwriting specimen. Which of the following represents the current state of military law concerning the admissibility of these items of evidence:

a. Article 31 secures to persons subject to the UCMJ the same rights secured to those of the civilian community under the Fifth Amendment--no more and no less.
b. Military law follows the Supreme Court decision in Gilbert v. California holding that handwriting exemplars do not require any type of warning.
c. Military law follows the Supreme Court decision in United States v. Wade holding that voice exemplars do not require any type of warning.
d. None of the above.

12. Which of the following statements is correct:

a. The ruling of the law officer on the voluntariness of a confession or admission of the accused is final and binding on the members of a court-martial.
b. The ruling of the law officer that a statement is voluntary and therefore admissible is inconclusive in that the members of the court-martial must, despite this ruling, redetermine the issue and reject the statement if they are not in agreement with his ruling.
c. A finding by the court of voluntariness precludes consideration of the circumstances surrounding the taking of the statement for the purpose of determining its truthfulness.
d. None of the above.

13. In various situations arising under Article 31, the law officer assumes certain duties with respect to instructing the court members as to admissibility, weight and credibility. Which of the following represents a true statement of his duties:

a. The law officer must instruct sua sponte that evidence of the accused's silence where admissible, may be considered only for impeachment value and not as an admission of guilt.
b. The law officer must act sua sponte to produce in open court any evidence tending to show involuntariness of a confession that is produced before him in an out-of-court hearing.
c. The law officer must instruct sua sponte on the law of confessions or the Article 31 warning requirement if evidence is before the court which raises either of these issues.
d. All of the above.

14. The prosecution sought to introduce an incriminating reply made by the accused in answer to a question asked him by a military policeman. The answer placed the accused at the scene of the alleged crime. The testimony of the witness who had overheard the conversation between the accused and the MP did not affirmatively establish that the statement was "voluntary" or that the accused had been given an Article 31 warning. Assume that the statement constituted an admission. The accused objected to the evidence.

a. The statement is admissible unless the defense produces evidence showing an indication of involuntariness.
b. The evidence is inadmissible without a foundation because silence on the issue is an indication of involuntariness.
c. The admission is admissible because there is no indication of involuntariness.
d. None of the above.

15. Which of the following statements is correct:

a. In determining the question of voluntariness, the court may consider a statement if it finds that the prosecution has established by a preponderance of the evidence that it was voluntary.
b. The court determines the question of voluntariness of a statement by a majority vote.
c. Each member of the court must be convinced beyond a reasonable doubt that a statement is voluntary before he can consider it.
d. The concurrence of at least two-thirds of the court members present at the time the vote is taken is required before a statement can be considered as voluntary.

LESSON ASSIGNMENT

SUBCOURSE JA 132.	Military Justice II (Evidence)
LESSON 5.	Official Records; Business Entries.
CREDIT.	2.
TEXT ASSIGNMENT	Chapters XXII, XXIII, DA Pam 27-172; MCM, 1951, Para. 144.
MATERIALS REQUIRED.	None.
LESSON OBJECTIVE.	To familiarize the student with the assigned rules of evidence as applied in courts-martial.
SUGGESTIONS	Read and study the text assignment carefully. Complete the exercise after careful study of the assignment and then using the text, check your solutions.

EXERCISES

REQUIREMENT: The following 15 questions are of the multiple choice type. Indicate the one correct answer by placing an "X" in the appropriate space provided on the ANSWER SHEET. A statement false in part is false. Questions 3, 6, 9, 12, and 15 are worth 6 points each. All other questions are worth 7 points each.

1. The accused was charged with the theft of property from a unit fund of which he was custodian. The prosecution attempted to show that the accused had sold certain dayroom equipment belonging to the fund. The only manner in which trial counsel could show the exact property sold was through the use of a record of an inventory of the property which had not been prepared on the forms or in the manner required by regulations. This record had been kept informally by a member of the fund council. The regulations required the custodian to maintain an inventory record and authorized him to delegate this responsibility. The defense established that there had been no such delegation.

a. The informal record was admissible as an official record because where delegation is permissible, it will be conclusively presumed.
b. The informal record is admissible if customarily made in the operation of the fund, and the entries were made periodically and at the time of any transaction affecting the inventory.

c. The record is inadmissible as a business entry because a unit fund is not a "business" within the meaning of the rule.
d. Both "a" and "b" above.

2. In a bigamy prosecution, the accused maintained that he had never married the alleged second "wife." Marriage records in the community in question had been destroyed by fire. However, the defense produced an insurance salesman who, in the regular course of his business, periodically noted the names of all persons acquiring marriage licenses. The salesman's records did not reflect that a license had been issued to the accused during the relevant period of time.

a. If the official records were available, evidence of the absence of any entry showing a license issued to the accused would be admissible, but since only a business record is available, the absence of an entry is inadmissible.
b. Evidence of absence of the entry is made admissible by Manual provision as proof that no license was issued.
c. The Manual does not provide for admissibility of evidence of the absence of a business entry and the Court of Military Appeals has refused to allow it.
d. None of the above.

3. The accused was charged with desertion. The prosecution introduced a proper morning report showing that the accused's absence began on 6 June. Trial counsel then turned his attention to proof of intent to desert and introduced a required report showing that the absence was terminated by apprehension. The defense, however, called attention to the fact that this latter entry showed the date of the inception of the absence to be 12 June. (Assume that this latter entry was also required.) Defense counsel then moved to strike both documents from the record.

a. The motion should be granted insofar as the documents pertain to the beginning of the absence because neither document is reliable.
b. Conflicts between entries in official records are solved by holding that the entry least favorable to the accused is inadmissible.
c. Both documents are admissible and the conflict goes only to the weight to be accorded each entry.
d. None of the above.

4. The accused was charged with unauthorized absence commencing on 3 January. The prosecution introduced a corrected morning report entry made on 5 June showing that the absence began on the date alleged. The defense then produced the original morning report which indicated that the accused had been transferred to another unit as of 3 January. Assume that the regulation concerning corrected entries required that they be made "as soon as the mistake becomes known." Assume further that the defense is able to establish that the commander involved knew

of the unauthorized absence one month before he made the corrected entry.

a. The corrected entry is admissible.
b. The corrected entry is inadmissible because of the length of time between the two entries.
c. While the length of time between entries will not ordinarily defeat admissibility, this corrected entry is inadmissible because of the terms of the regulation.
d. Only the original morning report is admissible.

5. In the problem above, assume that the defense is able to show conclusively that the commander had decided not to correct the original entry. He was then approached by the trial counsel, who asked that the correction be made so that the absence could be established by "paper" rather than by witnesses. The commander complied with this request solely out of a desire to aid the prosecution.

a. This evidence furnishes an additional ground for refusing to admit the corrected entry.
b. If the corrected entry were admissible in the problem above, it would remain so despite this new evidence.
c. If the corrected entry were admissible in the problem above, it would not be so in the light of this new evidence because made "principally" with a view to prosecution.
d. Both "a" and "c" above.

6. The accused was charged with larceny of certain property allegedly belonging to a unit fund. In order to establish the exact property stolen the prosecution offered a written inventory which was required by regulations. The regulations designated the company commander as the inventory officer. The record of inventory was signed by the sergeant who was responsible for issuing and storing the property and who testified that he was ordered to inventory the property by a warrant officer connected with the unit. The warrant officer testified that he had been ordered by the company commander to conduct the inventory.

a. The record is admissible as an official record because the presumption of regularity supplies the missing link in the delegation of authority.
b. The record is inadmissible as an official record.
c. The presumption of regularity allows the record to be admitted, but only if the regulation specifies that the duty is delegable by the company commander.
d. Both "a" and "c" above.

7. In the above problem assume that the prosecution elicited from the sergeant that he had made a monthly inventory of the unit fund property for the past two years and that he had faithfully recorded the results thereof at the completion of each inventory and maintained these records in his office files.

a. Even with this further evidence, the record is inadmissible as an official record because the sergeant is a mere interloper in the transaction and the record does not meet the tests of "officiality."
b. This evidence makes the report admissible as both a business entry and an official record.
c. The report is admissible as a business entry.
d. None of the above.

8. In a desertion case, the prosecution attempted to introduce as an official record a duly authenticated extract copy of a morning report entry which showed the inception of the accused's absence. The regulation requiring the entry specified the unit commander as the proper officer to sign the entry, but allowed delegation of this function. The entry was not signed by the company commander. The signature was that of another, unidentified, officer. The defense objected to the receipt of the document.

a. The presumptions usually attached to official records no longer apply to this entry because it has been shown to be irregular on its face.
b. The record is admissible only if the prosecution can establish the delegation of authority to the officer who signed the record.
c. The admissibility of the document can be defeated only if the defense establishes that the unit commander did not properly delegate this function to the officer who signed the record.
d. None of the above.

9. The accused was charged with burglary. In establishing the identity of the accused, the prosecution offered three different newspaper articles giving similar descriptions of the perpetrator of the crime. These stories were printed on the day of the burglary and it is obvious from their content that the reporters did not see the events themselves, but relied on the descriptions given by witnesses.

a. The articles are inadmissible because they are based on hearsay.
b. The articles are admissible as business entries and the fact that they are based on hearsay goes only to their weight.
c. The articles are inadmissible because newspaper accounts are not classified as business entries.
d. Both "a" and "c" above.

10. The accused was charged with desertion and escape from confinement. The desertion had its inception in the escape. The prosecution sought to prove the escape through the use of stockade records which showed the notation that the accused had "escaped" on the date alleged. This entry was required by regulations and prepared in accordance therewith.

a. The record is inadmissible as one prepared principally with a view to prosecution.
b. The record is inadmissible as an opinion or legal conclusion.
c. The record is admissible.
d. Both "a" and "b" above.

11. Assume that the record mentioned in the problem above is inadmissible because based on an opinion and prepared primarily for prosecution.

a. The first reason stated would not prevent admission of the record as a business entry.
b. The second reason stated would not prevent admission of the record as a business entry.
c. Neither reason stated would prevent admission of the record as a business entry.
d. Both reasons stated are equally applicable to and would prevent admission of the record as a business entry.

12. The accused was charged with desertion commencing on 1 January 1958. The original morning report entry showed that he was transferred on that date. Fourteen months later, it was discovered that there had been no actual transfer. A corrected entry was made at this time to reflect AWOL status from 1 January 1958. Neither entry was signed. Regulations requiring the entry specified that it must be signed.

a. The entries are admissible as official records because the presumption of regularity allows the inference that a proper official made the entries.
b. The entries are admissible because the defects were not "material to the execution" of the morning report.
c. Even though defective the documents will be accepted as proof on appellate review if they were received without objection by the defense at the trial.
d. None of the above.

13. The accused was charged with reckless driving. The defense attempted to introduce a routine statement filed by an insurance investigator after examining the scene of the accident and talking to witnesses. This statement was required in the regular course of the insurance business. The statement concluded that the accident was unavoidable under the circumstances because of road conditions.

a. The fact that the statement contains matter based on hearsay and ends with an opinion goes only to the weight to be accorded it.
b. The statement is inadmissible because made as a report of an investigation into the misconduct and legal liability of the accused.
c. The opinion contained in the statement would ordinarily be inadmissible but is admissible here because the

investigator was required, in the regular course of his business, to express his opinion as to the cause of the accident.

d. All of the above.

14. The accused was charged with larceny of a government pistol. The prosecution sought to establish a portion of its case by use of a check-out register kept in the arms room. This record was not required by regulations, but was kept by supply personnel as a matter of custom. This register showed that the pistol was issued to the accused on 1 January and that it was to be returned within one week. The register also contained an entry dated 8 January reciting that the pistol had not been returned. No further entries appeared with regard to the pistol.

a. The entry reflecting that the pistol was not returned when due is inadmissible because it does not record a fact or event but rather the absence of such.

b. The fact that the record does not show that the pistol was ever returned is, according to the Manual, admissible to prove that fact.

c. The negative entry of 8 January is admissible as a business entry but the absence of a further entry is not admissible.

d. None of the above.

15. The accused was absent without authority on 1 January and remained so absent for 6 months. For reasons unknown, no morning report entry was ever made to reflect these facts. While preparing for trial, the trial counsel discovered this omission and, in order to procure evidence of the inception date, requested proper authorities to forward the accused's service record to The Adjutant General with an indorsement showing the inception date. Such an indorsement was required by regulations. However, the regulations were violated in that the indorsement was not signed. Choose the best answer:

a. The indorsement is inadmissible because it was made for purposes of prosecution.

b. The indorsement is inadmissible as a business entry because it is not regular on its face and not made in accordance with regulations.

c. The indorsement is inadmissible as a business record because it was made too long after the inception of the absence.

d. The indorsement is admissible.

LESSON ASSIGNMENT

SUBCOURSE JA 132	Military Justice II (Evidence
LESSON 6.	Depositions and Former Testimony.
CREDIT HOURS.	3.
TEXT ASSIGNMENT	DA Pam 27-172, Chapters XXVIII, XXIX; UCMJ Arts. 49, 50; MCM, 1951, paras. 117, 145.
MATERIALS REQUIRED.	None.
LESSON OBJECTIVE.	A study of the rules governing the admissibility of depositions and former testimony.
SUGGESTIONS	Read and study the text assignment carefully. Complete the exercise after careful study of the assignment and then using the text, check your solutions.

EXERCISES

REQUIREMENT: The following 20 questions are of the multiple choice type. Indicate the one correct answer by placing an "X" in the appropriate space provided on the ANSWER SHEET. A statement false in part is false. Each question is worth 5 points.

1. The accused was charged with taking indecent liberties with three children. Prior to trial, the parents of one of the children prepared to move to another state. For this reason, the prosecution sought to take her oral deposition. The proposed deponent was nine years old. The accused was represented by civilian counsel and appointed military counsel, whom the accused accepted. The civilian counsel received written notice of the taking of the deposition and a list of points to be covered. He forwarded this to the military counsel, who represented the accused at the deposition proceedings. At the trial, the defense objected to the introduction of the deposition on the ground that the witness was incompetent.

a. The failure to make this objection to the convening authority at the time of the taking of the deposition waived the objection to the witness' competency.
b. The failure of the civilian defense counsel to be present at the taking of the deposition is error and the deposition is inadmissible.
c. There was no waiver by failing to object prior to trial and if the law officer finds the deponent incompetent, the deposition is inadmissible.

d. The deposition is inadmissible unless the law officer can personally examine the deponent because he cannot make an effective determination of competency in any other way.

2. The prosecution offered a deposition in a disobedience case and established that the witness was outside the state. The defense objected on the ground that after the deposition was taken, the convening authority had transferred the witness because it became apparent that he was going to change his story. The government did not deny this but showed that the defense with full knowledge of the impending transfer had asserted no objection to the convening authority. The defense also objected to a portion of the deposition wherein the deponent testified as to the contents of an order posted on a company bulletin board which detailed the accused to KP duty. No copy of the order was enclosed with the deposition and defense counsel had asserted this objection at the time the deposition was taken.

a. The first objection should be overruled because the evidence does not show lack of authority to transfer or that the defense made reasonable efforts to stop the transfer.
b. The second objection should be overruled because best evidence objections to testimony in depositions cannot be sustained when the writing in question qualifies as an official record or business entry.
c. The second objection should be sustained because there is no showing that the deponent authenticated the order and no copy of the order was forwarded with the deposition.
d. Both "a" and "b" above.

3. The accused was charged with bribery. The officer allegedly bribed testified for the prosecution and, without objection by the defense, made reference to other past acts of bribery, unrelated to the one charged, committed by the accused. The case was subsequently reversed and a rehearing was held. The officer had died in the interval between trials and the prosecution offered his former testimony. The defense objected to that portion of the testimony concerning the prior acts of bribery. The trial counsel argued that any objection was waived by the failure to object when the witness gave his testimony.

a. The objection should be overruled because a waiver of this defect was established by the failure to object at the first trial.
b. The objection would be sustainable in most cases but not in this instance because the error was one which could have easily been corrected at the first trial if properly asserted.
c. The objection should be sustained.
d. None of the above.

4. The accused was charged with rape (a capital offense) and larceny. The case was tried by a general court-martial and had not been designated as non-capital. The prosecution attempted to introduce the

deposition of a pawn broker as to his purchase of the stolen goods and the value thereof. Nothing in the deposition pertained to the rape charge which was apparently committed independently of the larceny. The defense objected to the introduction of the deposition in a capital case and also objected to the refusal of the law officer to give a requested instruction limiting consideration of the deposition to the larceny charge. On appeal, the defense raised these objections and also requested a reversal on the ground that the defense had not been given adequate and timely written notice of the taking of the deposition. The record showed that the deposition had been taken only two days after the charges were referred for trial. Defense counsel and the accused were present at the taking, cross-examined the witness, and raised no objection then or at the trial as to the lack of notice.

a. If prejudice is shown, the case must be reversed because depositions are inadmissible in capital cases absent the consent of the accused.
b. If prejudice is shown, reversal must follow because of the law officer's failure to give the requested limiting instruction.
c. If prejudice is shown, reversal must follow because the record clearly shows lack of adequate written notice of the taking of the deposition and waiver will not be inferred from the mere failure to object.
d. All defense contentions are without merit.

5. The accused was charged with larceny. The prosecution offered a confession. To prove that an Article 31 warning had been given, a CID agent was allowed to testify, without objection, that a fellow agent had told him that the accused already had been warned and that he, the witness, need not repeat the warning prior to the interrogation. The accused was convicted. Upon appellate review, the trial was held to be a nullity because the purported convening authority actually lacked authority to exercise general court-martial jurisdiction. When a new court was convened to try the accused, the prosecution offered the portion of the record which included the testimony above. Unavailability of the witness was established.

a. The former testimony is admissible because the failure to object at the first trial waived the objection.
b. The former testimony is inadmissible only if a proper hearsay objection is raised when it is offered at this trial.
c. The former testimony is inadmissible because of the lack of jurisdiction at the first trial.
d. The testimony is admissible.

6. Defense counsel in a robbery case offered the deposition of a witness concerning the value of the allegedly stolen goods. The prosecution objected to the use of the deposition and offered to stipulate

to a portion of the testimony included in the deposition. The defense was not satisfied with the terms of the stipulation. Therefore, it refused the offer and again submitted the deposition. The trial counsel then objected to the use of the deposition on the ground that the defense had failed to establish the unavailability of the deponent.

a. The deposition is admissible because the prosecution, as in other matters, has the burden of proof on the issue of availability.
b. The deposition is inadmissible.
c. The deposition is admissible because there is no requirement that the defense, as opposed to the government, show unavailability.
d. The deposition should be admitted because there can be no prejudice to the accused in such a ruling.

7. The accused was charged with larceny and murder arising from an incident in which the accused, when discovered taking a radio from a car, shot the owner and fled with the radio. At the trial, the prosecution sought to introduce a properly taken deposition of a friend of the accused who had seen him an hour after the offense with blood on his clothes and the radio in his possession. The case had not been designated as non-capital.

a. The deposition is admissible if it is accompanied by an instruction limiting consideration of it to the larceny charge.
b. The deposition is admissible but its introduction automatically makes the case non-capital.
c. The deposition is inadmissible because a deposition can never be used in a trial for a capital offense even though it is relevant only to a joined non-capital charge.
d. The deposition is inadmissible even with a limiting instruction because it is relevant to both charges which were parts of the same transaction.

8. The accused was charged with wartime desertion, a capital offense. The case was tried by general court-martial and had not been designated non-capital. The defense introduced the deposition of a relative of the accused to the effect that on many occasions he had heard the accused state his intention to return to the Army. The accused testified to the same effect. The prosecution then sought to place in evidence the remainder of the deposition which included testimony that the accused had acquired civilian employment during his absence.

a. The deposition is inadmissible unless the accused or his counsel consents in open court to its use.
b. The only way for the deposition to be admitted over accused's objection is for the government to secure from the convening authority a designation of the case as non-capital.

c. Both "a" and "b" above.
d. Neither of the above.

9. The accused was convicted of premeditated murder and sentenced to death. Appellate authorities reversed the conviction because of faulty instructions given by the law officer. At the rehearing, ordered by the convening authority without any limitation on sentence, the prosecution established that a witness necessary to its case had become so ill that it was impossible for him to testify in person. The defense objected to the introduction of his former testimony, first because of a failure to establish the necessary unavailability of the witness, and second because the appointed defense counsel who acted at the first trial had been reassigned and was not present at the rehearing.

a. The objections should be overruled.
b. The first ground for the objection is valid but the second is not.
c. The second ground is valid but the first is not.
d. Both grounds for the objection are valid.

10. The accused was charged with receiving stolen goods. The prosecution offered the deposition of the accused which had been taken for use at the trial of the thief. The deposition included an admission by the accused that he had purchased the goods involved from the thief. Other prosecution evidence indicated that accused had knowledge that they were stolen. There was no showing by the prosecution that the accused intended to refuse to testify at his trial.

a. The proffered evidence is inadmissible because taken in another case instead of after reference of the charges against the accused.
b. It is inadmissible if it is shown that the accused was not represented at the taking of the deposition by counsel qualified under Article 27.
c. It is inadmissible unless the accused is first offered an opportunity to testify and refuses to do so.
d. None of the above.

11. During the accused's trial for burglary, a deposition was introduced by the prosecution on the issue of the voluntariness of the accused's confession. Appellate authorities reversed the case because of instructional error. At the rehearing, the issue of voluntariness was again raised and the prosecution sought to introduce the deposition which had been admitted at the original trial. The deponent was unavailable. The defense objected.

a. The deposition is inadmissible because there had been no opportunity at the first trial to cross-examine the witness and thus an essential requirement for admission of former testimony is absent.

b. The deposition is inadmissible because it was not taken for use at the hearing in question and the accused had not been afforded the opportunity for further cross-examination for this specific use.
c. The deposition is admissible but it would not have been if it had not actually been used at the first trial.
d. None of the above.

12. Military authorities were investigating a 60 day absence on the part of Corporal X. During the course of the investigation, and after X had returned to military control, the deposition of an aged relative of Corporal X was taken which indicated that X had intended to desert. Counsel was appointed for and accepted by X and adequately represented him at the taking. X was charged with desertion. The deponent dies and the prosecution offered the deposition at X's trial.

a. The deposition is inadmissible unless X is defended at trial by the same counsel that represented him at the taking of the deposition.
b. The deposition is inadmissible if charges had not been preferred at the time of the taking of the deposition.
c. The deposition is admissible.
d. Both "a" and "b" above.

13. Charges against the accused for narcotics violations had been preferred and referred to trial. The prosecution requested the taking of an oral deposition of a civilian witness. The trial was to be held in France and the civilian was a French national. The accused's regularly appointed counsel was absent in connection with another case and the convening authority appointed another qualified counsel to represent the accused. This counsel objected to the taking on the ground that no showing had been made that the civilian would refuse to testify if requested to do so.

a. The deposition will be inadmissible at trial unless the prosecution meets its burden of establishing the factual unavailability of the witness.
b. The deposition will be inadmissible at trial unless it affirmatively appears that the accused assented either personally or through counsel to representation by the second counsel.
c. The deposition will be inadmissible if the convening authority acted on the objection to the taking.
d. Both "a" and "b" above.

14. The government, after establishing the unavailability of a witness who had testified at an earlier trial of a forgery case, offered the official record of his former testimony. This testimony would have helped to establish the identity of the accused. Later, the prosecution wished to have a spectator at the first trial testify as to the previous testimony of another unavailable witness.

a. The best evidence rule has no application to the first situation because the record itself is introduced.
b. The best evidence rule prohibits the use of the oral testimony of the spectator because the government has demonstrated that the record of trial is available as proof.
c. The best evidence rule applies to the introduction of the record of trial but not to the oral testimony.
d. Both "a" and "b" above.

15. The accused was charged with premeditated murder. The case was not designated non-capital. The prosecution introduced the deposition of a fellow soldier to the effect that the accused had threatened the victim a month prior to the murder. The defense counsel objected to the introduction of the deposition on the ground that the prosecution had failed to show the unavailability of the deponent. The prosecution introduced further evidence on this point and the law officer overruled the objection. The deposition was then considered and the court found the accused guilty and sentenced him to life imprisonment.

a. The deposition was inadmissible but the accused, by failing to object on the proper ground, impliedly consented to the introduction of the deposition.
b. The deposition was inadmissible, the error was not waived, and the conviction of premeditated murder must be disapproved.
c. The deposition was inadmissible, the error was not waived, but the case will not be reversed unless specific prejudice is found.
d. The deposition was inadmissible, the error was not waived, but no reversal is necessary because the punishment actually imposed was less than death.

16. The accused was convicted of rape and sentenced to death. No sentence limitation was imposed for the rehearing, at which the prosecution sought to introduce the testimony of the prosecutrix as given at the original trial. The prosecution showed that she had died prior to the rehearing.

a. The former testimony is admissible but the case becomes non-capital upon the introduction of this evidence.
b. The former testimony is inadmissible in any case in which the death penalty is imposable.
c. The former testimony is admissible and the case remains capital.
d. None of the above.

17. The prosecution wished to take the deposition of a civilian in a wrongful appropriation case. The witness was crucial to the prosecution's case. However, the defense counsel had certain information which made it possible to impeach the witness to a large extent. For this

reason and others, the defense wanted the witness at the trial, and objected to the taking of the deposition. The objection was denied by the convening authority.

a. The deposition will be admissible at the trial if other requirements are met.
b. The deposition will be inadmissible at the trial because the convening authority may not defeat the defense's right to have essential witnesses present at the trial.
c. The deposition will be admissible at trial because the defense has made its objection to the improper authority.
d. Both "a" and "c" above.

18. The accused is charged with perjury. The offense was allegedly committed by the accused at the trial of another soldier at which the accused testified as a witness. The prosecution seeks to establish this testimony by the production of a duly authenticated copy of the record of the earlier trial. The defense objects to this procedure on the grounds that there is no identity of parties and issues between the two trials.

a. The objection should be sustained.
b. The objection should be overruled.
c. The objection should be overruled only if it can be established that the accused had, or could have had, effective advice of counsel at the first trial.
d. The objection should be sustained but other means of proving the testimony, such as by witnesses to the utterance, are available.

19. In a trial held in Virginia, the government offered two depositions in a reckless driving case. An issue arose as to the unavailability of each witness. The government showed that the civilian deponent lived in a city fifty miles away in Maryland. There was no showing of a request and a refusal. The military witness was stationed at a post 150 miles from the trial, but within the same state. It appeared that the military witness was on temporary duty at the place of trial at the time of the accident and the prosecution did not show that this duty had terminated.

a. Both depositions are admissible.
b. Neither deposition is admissible.
c. The civilian deponent's deposition is admissible but the military deponent's is not.
d. The military deponent's deposition is admissible but the civilian deponent's is not.

20. During the course of a general court-martial, the prosecution adequately established that a certain witness was residing at a distance of over 100 miles from the place of trial. In addition, it was shown the witness was requested to attend but he refused. This showing of unavailability would be sufficient to admit the testimony of the witness in the form of a:

a. Deposition in non-capital cases, former testimony in capital and non-capital cases, testimony at a court of inquiry.
b. Deposition or former testimony in capital and non-capital cases, testimony before a court of inquiry.
c. Deposition or former testimony in non-capital cases.
d. Deposition or former tesitmony in capital and non-capital cases.

LESSON ASSIGNMENT

SUBCOURSE JA 132	Military Justice II (Evidence)
LESSON 7.	Search and Seizure.
CREDIT HOURS.	4.
TEXT ASSIGNMENT	DA Pam 27-172, Chapter XXXII; MCM, 1951, para. 152.
MATERIALS REQUIRED.	None.
LESSON OBJECTIVE.	A study of the law of search and seizure and illegally obtained evidence.
SUGGESTIONS	Read and study the text assignment carefully. Complete the exercise after careful study of the assignment and then using the text, check your solutions.

EXERCISES

REQUIREMENT: The following 20 questions are of the multiple choice type. Indicate the one correct answer by placing an "X" in the appropriate space provided on the ANSWER SHEET. A statement false in part is false. Each question is worth 5 points.

1. The accused and certain other members of his command were suspected of wrongfully possessing marihuana because one member of the group was a known dealer in narcotics and another had borrowed some money before the group departed for town. Acting solely upon the suspicion, the company commander arranged for the apprehension and search of a group, including the accused, upon their return from leave. The search of the accused produced several cigarettes containing marihuana. Accused's counsel objected to the introduction into evidence of the fruits of the search. The objection was overruled by the law officer without allowing counsel to state the basis therefor.

a. The company commander's suspicion, based on his knowledge that one member of the group was a known narcotics dealer, was sufficient to justify the search.
b. The company commander's suspicion that members of the group were users of narcotics justified the search of all present as an incident to their apprehension.
c. The accused's company commander ordered the apprehension and search of the group without a reasonable belief that an offense had been committed and that a member of the group had committed it.

d. A search of an individual's person and clothing is always legal when conducted as an incident to apprehending him.

2. The accused, who was a life guard at the post swimming pool, was suspected of having stolen money from a locker in the bath house. The special service officer, having knowledge of the previous theft, had arranged for military payment certificates to be placed in a wallet which then was left in a locker in the bath house after the serial numbers of the certificates had been recorded. A watch was maintained on the bath house and no one other than the accused entered it. After his departure it was discovered that the certificates were gone. The accused's company commander was advised by the special service officer of these events and the accused was directed to report to his company's orderly room. At the company commander's request he submitted his wallet for inspection. The missing money was found in the wallet and he then was ordered into confinement in the post stockade.

a. The accused was legally searched even though he was searched prior to being physically taken into custody.
b. The search was illegal because it preceded the accused's being placed in confinement.
c. The search was illegal because he was not warned of his rights under Article 31 prior to the search.
d. Both "b" and "c" above.

3. PFC A, a cook on his way to his off-post home, was stopped at the gate by the military police who were conducting a routine check of all automobiles leaving the post. Sergeant B, the military policeman checking A's car noticed that the rear end of the car was sagging and told him to open the trunk. A did so and exposed a quantity of coffee, sugar, and foodstuff in cans similar to those used in the mess halls. There had been no reported thefts from either the mess hall to which the accused was assigned or any of the other post mess halls.

a. The search can be justified as lawful as it was made under circumstances demanding immediate action to prevent the removal of property believed on reasonable grounds to be criminal goods.
b. The search can be justified on the grounds that the accused consented to the search.
c. The search was legal because the goods found in the accused's car were criminal goods.
d. None of the above.

4. A member of accused's company reported the disappearance of some personal property from the barracks. A "shake-down" inspection of the company was ordered by the company commander and the missing property was found in the accused's wall locker. At the accused's trial for larceny the prosecution offered no evidence that the accused had consented to this search and the defense raised a search and seizure objection.