

FIELD MANUAL

**LEGAL GUIDE
FOR
COMMANDERS**

HEADQUARTERS, DEPARTMENT OF THE ARMY
SEPTEMBER 1974

PREFACE

This guide of military law was prepared for use by officers and noncommissioned officers responsible for leadership and discipline at the company level. Chapter 1 discusses general concepts and principles of military justice. Subsequent chapters discuss basic skills related to the daily administration of military justice and administrative law in the unit. The detailed table of contents and index permit the reader to rapidly identify the sections in the field manual related to his particular problem. It is suggested that this field manual be filed in a loose leaf binder so that local forms and directives may be filed with it. Local directives may modify some procedures in this guide and questions about the material should always be directed to the local Staff Judge Advocate.

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U.S. ARMY CENTER FOR MILITARY JUSTICE
10103 JAN 31 1953

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CHAPTER 1

BASIC PRINCIPLES OF MILITARY JUSTICE

Section I. JUSTICE AND DISCIPLINE

1-1. Role of Military Justice. The role of military justice in maintaining military discipline in the Army was clearly stated in the *Powell Report* on the Uniform Code of Military Justice:

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

balancing discipline and justice—the two are inseparable.

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

Section II. THE COURT-MARTIAL SYSTEM

1-2. General. The goal of the court-martial system is to achieve justice. As in all American criminal courts, courts-martial are adversary proceedings. That is, lawyers representing the Government and the accused vigorously present the facts, law, and arguments most favorable to their side following the rules of procedure and evidence. Based upon these presentations, the military judge decides questions of law. The members of the court-martial, as a jury, apply that law and decide questions of fact. Only a court-martial can determine the ultimate question of innocence or guilt. Any court-martial conviction is a federal court conviction.

1-3. Summary Court-Martial (SCM). The summary court-martial is a one-man court designed to handle relatively minor crimes. It has simplified procedures; and the maximum punishment, which depends upon the rank of the accused, is limited to confinement at hard labor for one month, forfeiture of two-thirds pay for one month and reduction in grade. (See para 16, Manual for Courts-Martial.) A summary court-martial may not impose the punishment of confinement unless the accused was represented by counsel or waived his right to such representation. An accused may not be tried by summary court-martial over his objection. If he objects, the

commander may then consider trial by a higher court-martial.

1-4. Special Court-Martial (SPCM). A special court-martial consists of at least three members, a trial counsel, and a defense counsel. At the request of the accused, the defense counsel must be a qualified lawyer. A military judge may be appointed for the trial. The maximum sentence is confinement at hard labor for 6 months, forfeiture of two-thirds pay per month for 6 months, and reduction to the lowest enlisted grade. (See para 15, Manual for Courts-Martial.) In some instances the sentence may include a bad conduct discharge. The commander may wish to consider this in making his recommendation for trial because only a GCM convening authority can convene a BCD special court-martial.

1-5. General Court-Martial (GCM). The general court-martial tries the most serious offenses. It consists of at least five members, a trial counsel, a defense counsel, and a military judge. The counsel must be qualified lawyers. A formal investigation (Article 32, Uniform Code of Military Justice) must be conducted before the case may be tried by general court-martial. The general court-martial may adjudge the most severe sentences authorized by law, including dishonorable discharge. (See Table of Maximum Punish-

ments, para 127, Manual for Courts-Martial.) In both general and special courts-martial, an accused enlisted man may request that at least one-third of the total membership of the court be enlisted personnel.

1-6. Reviews and Appeals. *a. Review.* Every court-martial conviction is reviewed by the convening authority who must approve or disapprove the result of the trial. The Staff Judge Advocate will also review summary and special courts-martial, and will advise the convening authority on his review of general courts-martial. All general courts-martial are reviewed by The Judge Advocate General or the Court of Military Review.

b. Appeals. The accused may appeal his conviction by a general court-martial or a SPCM in which a BCD is adjudged to the Court of Military Review and the Court of Military Appeals. The Court of Military Appeals is a civilian three-man court in Washington, DC. Other cases may be reviewed by The Judge Advocate General under the provisions of Article 69, UCMJ.

Section III. DISPOSITION OF OFFENSES

1-8. General. The company commander is responsible for both enforcing the law and protecting the rights of the individual soldier. The discipline and morale of his men may depend on how wisely he exercises his authority. He should remember that many basic rights are guaranteed by our Constitution.

1-9. Recognizing Criminal Conduct. An act for which the law provides a penalty is a "crime." In the military, the Uniform Code of Military Justice states the types of conduct for which a soldier may be legally punished. Criminal conduct under the Uniform Code of Military Justice is defined in chapter XXVIII of the Manual for Courts-Martial. The violation of Army regulations, State and Federal laws, and the orders of superiors may constitute criminal conduct punishable under the Uniform Code of Military Justice. However, the regulation or order must be applicable to the soldier under suspicion and must clearly state what conduct is either required or prohibited. Any question as to conduct which is a crime under the Uniform Code of Military Justice should be resolved by calling the Staff Judge Advocate. In some instances, a soldier's conduct may be substandard or personally offensive without being criminal.

1-10. Individual Rights. These are several fundamental rights and safeguards which must be considered in any case involving criminal conduct.

a. Presumption of Innocence. Under our system of American law, every man is presumed

1-7. References. *a. The Uniform Code of Military Justice (1969) (UCMJ).* The Uniform Code of Military Justice is a Federal law. It is the basis of our system of justice in the military. It declares what conduct is a crime, establishes the various types of courts, and sets forth the basic procedures to be followed in administering military justice. The Uniform Code of Military Justice is located in appendix 2 of the Manual for Courts-Martial.

b. Manual for Courts-Martial, United States, 1969 (Rev. Ed.) (MCM). The Manual for Courts-Martial is an executive order of the President. It sets forth the rules which are to be followed in administering justice in more detail than the Uniform Code of Military Justice. For example, it explains what conduct is a violation of the Uniform Code of Military Justice, sets forth the rules of evidence for courts-martial, and contains a list of maximum punishments for each offense. Each company-size unit should have a copy of the Manual for Courts-Martial.

c. Army Regulation 27-10. This is the basic regulation for administration of military justice and supplements the Manual for Courts-Martial.

innocent until a court finds beyond a reasonable doubt that he is guilty. A fair and just decision can only be made after a court has heard all the evidence relating to the guilt or innocence of an accused. While charges are being processed for trial, a commander may want to confine or restrict the accused soldier. In determining whether restraint is appropriate, he should consider the fact that confinement deprives a soldier of his liberty during a period when he is presumed innocent and makes it difficult for the soldier to prepare his defense. Thus, a soldier may be confined only when he has committed a serious offense or it appears that restraint is necessary to insure his presence at a trial, or it appears that he may injure himself or others if he is not confined. (See para 20c, MCM.) Convenience to the commander is not sufficient reason to justify depriving a soldier of his freedom and pretrial confinement may not be used as punishment.

b. Search and Seizure. Our Constitution protects every citizen from unreasonable searches and seizures. However, this right to privacy is not an absolute right. Our courts have balanced the rights of the individual against the needs of society and have established rules for determining when a search is reasonable. When an unreasonable search of an individual's person or property is conducted, the evidence obtained may not be used against him in a trial. This "exclusionary rule" was developed to discourage the indiscriminate invasion of privacy by government officials. Under military law, a company commander has

the power to authorize a search. He must decide whether a search will violate the rights of a soldier, and his decision may well be reviewed by a court-martial (chap 2).

c. Article 31 and Right to Counsel. Our laws provide that no one must incriminate himself and that anyone suspected of having committed a crime has the absolute right to consult with a lawyer. At an early date, Congress realized that young soldiers do not completely understand their rights and may be intimidated merely by the presence of a superior. Thus, under military law no one may question a suspect without first determining that he understands his right to remain silent and his right to counsel. If these rights are violated, no evidence obtained as a result of the violation may be used against the individual at a court-martial. The company commander both protects the rights of his men and preserves the Government's case by insuring that his officers and noncommissioned officers understand and comply with Article 31, UCMJ, and the right to counsel requirements (chap 2).

d. Prompt Action on Offenses. A soldier accused of a crime has the right to be advised of the charges against him at the earliest possible moment so that he can prepare his defense and so that his guilt or innocence may be determined without unreasonable delay. This right to a "speedy trial," guaranteed by the sixth amendment to the Constitution, assists both the Government and the accused. Witnesses are likely to leave the area during a delay and testimony given soon after an incident is more reliable than that given after a long period of time.

e. The Adversary System. At a court-martial, it is the responsibility of the trial counsel to represent the Government and it is the responsibility of the defense counsel to represent the accused. Each counsel is duty-bound to do all that he can within the law to represent the interest of his client. At times, defense tactics may lengthen the trial and irritate individuals wishing to see the trial of cases proceed at a faster pace. However, each commander must be mindful of the fact that it is the policy of our country to insure that each man charged with a crime has an opportunity to present the best defense available to him. This "adversary system" usually results in all issues being brought before the court so that the triers of fact may make a just decision.

1-11. Factors Influencing Disposition. It is sometimes difficult for a commander to understand why a particular sentence was imposed by a court. A court may hear evidence not known to the commander or there may be information available to the commander which is not presented at trial. A court-martial is charged with the responsibility of selecting a sentence, based upon the evidence it hears, which will "best serve the

ends of good order and discipline, the needs of the accused, and the welfare of society." These same goals should guide a commander prior to the preferral of charges. Thus, after familiarizing himself with the background of the offense and the offender, the commander should consider the following factors in determining his disposition of the case:

a. Nature of the Offense. A minor offense does not merit severe punishment and may often be most expeditiously handled by the commander under the provisions of Article 15 or by administrative measures. A more serious offense may warrant a court-martial. All factors surrounding the commission of the offense must be considered.

b. Personal History of the Accused. The accused's performance in the civilian and military communities often indicates his general character and rehabilitation potential. A first time offender generally should be treated more leniently than a repeated offender. A commander who talks to the accused's supervisors and reviews his personnel records is better able to determine what action will most benefit the soldier and the Army. For example, if the commander considers the offense to be serious but does not believe the accused should be punitively discharged, he may recommend trial by a court-martial not authorized to impose a punitive discharge.

1-12. Role of the Company. *a. Administrative Support.* The military justice system cannot work efficiently without administrative support. Forwarding of charges does not end the company's involvement in the case. For example, the company may be requested to furnish witnesses, provide transportation and guards, or insure that the accused appears at trial in a clean, appropriate uniform.

b. Witnesses. A case cannot successfully be tried without witnesses. The unavailability of a witness for the Government or accused may result in needless delay or dismissal of the case. The commander should insure that essential witnesses are available for trial (para 4-3).

c. Rehabilitation. One of the goals of the military justice system is rehabilitation. Counseling, training, and command leadership are essential if the soldier is to become a useful member of the unit.

1-13. Relations with Judge Advocates. *a. The Staff Judge Advocate.* The Staff Judge Advocate is the command's lawyer. He is responsible for the administration of criminal justice within the command and advises all court-martial convening authorities. His office provides professional guidance and assistance in criminal cases at all levels.

b. The Trial Counsel. The Trial Counsel is the

prosecutor. He is a key individual in the court-martial process from the point of view of the company commander. He is responsible for witnesses, documents, and all the other arrangements related to the trial. Establishing a good relationship with the trial counsel early in a case can prevent unnecessary delay. The commander's cooperation is essential to the complete presentation of the Government's case.

c. The Defense Counsel. The Defense Counsel has the duty of defending his client to the best of his ability. His tactics may appear unwarranted and may delay a case. However, he is required by law and his code of professional responsibility to present the best defense possible.

He is the accused's representative and acts solely in his interest. A professional relationship should be maintained with the defense counsel. He may be of considerable help in providing information for rehabilitation of an offender.

1-14. References. *a.* The Constitution of the United States (app 1, Manual for Courts-Martial).

b. The Uniform Code of Military Justice (1969), (app 2, Manual for Courts-Martial).

c. The Manual for Courts-Martial, United States, 1969 (Rev. ed.).

d. Army Regulation 27-10, Military Justice.

CHAPTER 2

PRELIMINARY INVESTIGATION

Section I. REPORT OF OFFENSE

2-1. Sources of Information. A command may receive information from many sources that an offense has allegedly been committed by one of its members. For example, the unit commander himself may witness an offense, someone within the unit may report the offense, a report of an investigation may bring the offense to the command's attention, or a higher headquarters may forward a report for action. When a superior commander asks that an alleged report be investigated and the disposition reported the request must not be construed or interpreted as a directive to take disciplinary action.

2-2. Command Responsibilities. Regardless of how the commander learns of an alleged offense, he *must* insure that the matter is promptly and adequately investigated.

a. Reporting.

(1) The Provost Marshal's office is notified in all cases of criminal conduct. See paragraph 2-13 for guidance in determining what offenses to report.

(2) Any incident which may generate widespread adverse publicity or which may damage public confidence in the Army will be reported to the major commander as required by AR 190-40.

b. Investigation. The investigation should provide the company commander with sufficient information to make an intelligent and appropriate disposition of the incident report. The commander may conduct the inquiry himself or he may direct some other competent individual to do it. (See para 32, MCM.) The investigator should collect and present all information which may prove or disprove the allegation of misconduct.

The investigation should address itself to three primary questions: was an offense committed; was the suspected soldier involved in the offense; and what is the character and military record of the suspected soldier. The investigator must at all times remain impartial. A one-sided investigation may lead to injustice to the accused and embarrassment to the command. Usually the preliminary investigation is informal and consists of interviews with witnesses and review of police reports. The investigation must be thorough enough to provide a firm factual foundation for a determination of what happened and what should be done. This investigation is preliminary in nature and should not be confused with the Article 32 investigation, which requires sworn charges, nor the procedures for an administrative investigation under AR 15-6.

c. Disposition. Once the preliminary investigation is completed, the company commander must make his decision. He may—

(1) Decide to take no action. (See para 32*d*, MCM.)

(2) Decide to take nonpunitive disciplinary action (chap 8).

(3) Decide to impose nonjudicial punishment under Article 15, UCMJ (chap 3).

(4) Decide to prepare court-martial charges against the accused (chap 4).

2-3. References. *a.* Manual for Courts-Martial, United States, 1969 (Rev. ed.).

b. Army Regulation 190-40, Serious Incident Report—Reports Control Symbol PMG-114 (MIN).

c. Army Regulation 27-10, Military Justice.

d. Army Regulation 210-10, Administration.

Section II. QUESTIONING SUSPECTS AND WITNESSES

2-4. General. It is the duty of the company commander to promptly investigate the circumstances of an alleged crime and to examine the facts relevant to the guilt or innocence of the accused. He should interview all necessary witnesses as well as the suspects. Interviews should be conducted fairly and, because memories fade,

as soon as possible. The questioning of any suspect must begin with a warning of his rights under Article 31, UCMJ and his right to counsel. An investigation may be complicated or simple. A case involving larceny from the mailroom will require more time to investigate than the unauthorized absence of a soldier from a work forma-

tion. In either case, the commander will want to question both the suspect and the witnesses. Not all cases will require formal statements. In the simple case, sufficient facts may be obtained without written statements.

2-5. Article 31 Warning/Right to a Lawyer. A confession or admission by a suspect *without* warning him of his rights under Article 31, UCMJ and his right to a lawyer will result in the confession or admission not being admissible in a court-martial. It is possible that an accused may still be convicted because of other evidence of guilt which is admissible. The failure to warn does not mean automatic acquittal; it means that the confession or admission may not be presented to a court-martial. The following procedure must be carefully followed in questioning a suspect to insure that his statements are admissible in court proceedings. (See GTA 19-6-1.)

a. Inform the individual . . .

"You are suspected of committing the following offense(s): _____ which is (are) violation(s) of the Uniform Code of Military Justice. Before I ask you any questions, you must understand your rights. You have the right to remain silent. Any statement you do make may be used as evidence against you in criminal or administrative proceedings.

"You have the right to consult with a lawyer before being asked any questions and to have the lawyer present with you during questioning. You may hire a civilian lawyer at no cost to the Government or a military lawyer will be detailed for you at no cost to you. In addition, the detailed military lawyer may be a military lawyer of your own selection if he is reasonably available. Even if you decide to answer questions now without having a lawyer present, you may stop answering questions until you consult with a lawyer."

b. After this statement is made, the suspect should be asked if he understands his rights. When the commander is satisfied that the suspect understands these rights, then the following two questions should be asked . . .

(1) "Do you want a lawyer?"

(2) "Do you want to answer any questions or make a statement?"

c. The suspect may indicate that he wishes to waive his rights to remain silent and to consult with a lawyer. He must waive these rights freely, knowingly, and intelligently. He may then be questioned concerning the offense. If the suspect indicates that he wishes to consult with a lawyer, he should not be questioned until a lawyer is present. The Office of the Staff Judge Advocate will provide a military lawyer. If the accused or suspect indicates that he does not wish to answer questions, he should not be questioned. In any case, it is essential that the commander *not* use a tone of voice or manner which could lead the suspect to believe that he is being threa-

tened or which plays down the importance of the warning. If this is done, it may later be held that the suspect's agreement to answer questions was gained by coercion or improper inducement and his statement would be inadmissible in a trial by court-martial. A company commander may decide not to question a suspect if other evidence is available.

d. If the person being interviewed is not suspected of having committed an offense but is merely a witness to the offense or has knowledge of it, there is no legal requirement to warn him of his rights. During the questioning, the commander may begin to suspect that the witness was involved in the offense. This may happen when it appears that the witness was actually an accomplice or an accessory to the crime. The commander should then stop the questioning, inform the witness of the offense of which he is now suspected, and advise him of his rights as indicated above.

2-6. Written Statements. a. Procedure. The best means for making an accurate and complete record of the information obtained in the investigation is the sworn statement. A sworn statement (an affidavit) is a written statement of facts given by a witness or suspect who states under oath that the contents of his statement are true. Investigating officers are authorized by Article 136, UCMJ to administer oaths in conjunction with sworn statements taken in the course of a preliminary investigation. No special form is required to make a sworn statement. However, DA Form 3881 (Rights Warning Procedure/Waiver Certificate) provides a convenient format. It should always be completed before questioning the suspect. DA Form 2823 (Sworn Statement) may be used for the sworn statement of a witness. Since the witness is not a suspect, this latter form has no provision for a warning of his rights. The language of the witness or suspect should be used throughout the statement even though it may be vulgar. This insures that the writing is the witness' statement and not the composition of the investigating officer. The statement may be written in narrative or story form, in question and answer form, or both. An appropriate oath for completing the sworn statement may be administered as follows:

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

(2) The officer administering the oath must sign his own name.

b. Guidelines for Written Statements. Sworn statements should be requested primarily from persons who have direct, personal knowledge of the facts. If the information offered was told to

the witness by Sergeant A, the company commander should attempt to obtain a sworn statement from Sergeant A. Opinions and conclusions, without supporting facts, reduce the reliability of a sworn statement. The company commander should attempt to obtain the facts upon which the opinions are based, and encourage the witness to substitute facts for his opinions. The witness should initial the written statement at the beginning and at the end of each page, at each erasure and correction, and where otherwise indicated on DA Form 2823. The purpose of the initials is to avoid any question of tampering after the statement has been completed.

2-7. Oral Statements. When a suspect waives

Section III. SEARCH AND SEIZURE

2-9. General. There are three ways in which a company commander may lawfully seize the property of a man in his unit. An unlawful search may violate the soldier's rights and result in seized items being inadmissible.

a. Lawful searches and Seizures. A commander may authorize a search if he is reasonably certain that an offense has been committed and that items connected with the offense will be found in the location he intends to search (para 2-10). Military judges may also issue warrants to search persons and property subject to military control upon a showing of probable cause (see 2-10b(2) for discussion of probable cause).

b. Inspections. Search and seizure requirements do not limit the commander's authority to conduct legitimate inspections including unannounced shakedown inspections. The purpose of an inspection is to promote the health, welfare and safety of the personnel in the unit. For example, he may want to insure that his men have their equipment clean, maintained and properly stored and that they have no dangerous articles such as ammunition carried from the range. The inspection must apply uniformly to all soldiers in the area and may extend to an examination of all their belongings kept within their living area. Although an inspection need not be previously announced, it must have a legitimate purpose and may not be a mere subterfuge for what is really an unlawful search. The commander who decides to conduct his first "inspection" upon hearing of a barracks larceny, and then starts his inspection near the living area of his prime suspect will not convince anyone that he was "inspecting" rather than "searching." Since an inspection is not based on the commander's belief a crime has been committed, it is not a search. Evidence of criminal conduct discovered during the course of a legitimate inspection may be admitted at a trial by court-martial.

his rights under Article 31 and his right to counsel, but refuses to sign a statement, the company commander may make a summary of his remarks. This summary of the oral statement may be admissible in a trial by court-martial. The oral statement of a suspect concerning his part in an offense which is made to a person who is not investigating the case or which is blurred out to the company commander before the rights warning may also be admissible in a trial by court-martial.

2-8. References. *a.* Manual for Courts-Martial, United States, 1969 (Rev. ed.).

b. GTA 19-6-1, Procedure For Informing Accused or Suspect Person of his Rights.

c. Inventories. When a soldier is AWOL, about to be confined, or detained by civilian authorities, an inventory of the soldier's personal belongings is required (chap 10). Evidence obtained as a result of this inventory is admissible in a court-martial.

2-10. Authority To Search. A search and seizure is lawful in the following situations:

a. Apprehension. A soldier may be searched at the time and place of a lawful apprehension. The purpose of the search is to discover weapons and to prevent the destruction of evidence. The search is limited to the person of the soldier and the area within his immediate control. For example, the area within his immediate control may include a nearby open wall locker within his reach, but not the entire room.

b. Searches Authorized by the Commander.

(1) *Areas subject to search.* Paragraph 152, Manual for Courts-Martial, gives a commander authority to conduct or direct a search of any person or property located in a place under his control if there is "probable cause" to justify the search. A company commander could authorize a search in his company area, but only the post commander could authorize a search of government quarters.

(2) *Requirement of probable cause.* Before a commander may authorize a search of a person or area in a place under his control, he must have probable cause to believe that—

(a) A crime is being committed or has been committed;

(b) The person to be searched committed or is involved in the crime;

(c) The evidence of the crime is now where the commander plans to search; and

(d) The information and the source of the information are reliable.

There must be more than mere suspicion in the

mind of the commander, but absolute proof beyond a shadow of a doubt is not required. In other words, probable cause lies somewhere between suspicion and actual knowledge. The commander must personally conclude, on the basis of information presented to him, that the contraband or evidence of a crime is at that time likely to be in the possession of the individual or on the premises to be searched. The commander's determination that probable cause exists must be reasonable and must be based on facts. It may not be based only on the conclusions of others. It is of no importance that a CID agent, a first sergeant, or an informant is aware of sufficient facts to provide probable cause, unless those facts are given to the man who orders or authorizes the search—the commander. The commander must believe that the person furnishing the information is reliable and that he had a sound basis for his information. The following examples are situations where probable cause is not present:

Example 1. A CID agent calls a commander and tells him that he has apprehended one of his men at the railroad station with marijuana on his person. The agent requests authority to search the living area of the suspect. Based solely upon this information, the commander authorizes the search of the suspect's wall locker where more marijuana is found. *The search is unlawful.* There is no evidence from which the commander could reasonably conclude that the suspect had marijuana in his wall locker which was some distance away from the place of apprehension.

Example 2. A reliable person informs the commander that three weeks ago he saw the suspect with marijuana in his footlocker. Based solely on this information, the commander authorizes a search of the suspect's footlocker. *The search is unlawful.* Since the possession in question is far removed in time, there is no valid reason to believe that the suspect still has any marijuana in his possession. Similar information that the suspect was seen with marijuana in his possession that same day would constitute probable cause and be a basis for a lawful search.

Example 3. While walking through the barracks, an officer sees smoke coming from Private X's room. Based upon past experience and classes by the CID, he recognizes the odor as burning hashish. He looks through a crack in the door and sees Private X and two other men passing a pipe between them. The officer returns to the orderly room and informs the company commander that Private X and two men are smoking pot in the room. Based solely on this statement, the commander authorizes a search. *The search is unlawful.* A mere statement is not enough. The commander failed to inquire into the basis of the officer's conclusion. If the officer had told

the commander all the facts, including his knowledge of hashish, probable cause would have been present. The rule for probable cause is not what information is available, but rather what information the commander considers when he authorizes the search.

Example 4. A barracks larceny occurs, and \$500 and a sports jacket are reported missing. Three days later Private X, the roommate of the victim, purchases a stereo from the PX for \$350. The victim, suspicious of his roommate, informs the commander. Based solely upon this information, the commander authorizes a search and discovers \$200 and the jacket in Private X's wall locker. *The search is unlawful.* Suspicion alone, however strong, does not support a finding of probable cause to search. The company commander should have continued his investigation until he had uncovered additional information such as a report that another soldier had seen the victim's coat in the suspect's wall locker.

The following examples are situations where probable cause is present:

Example 5. A reliable person informs the commander that he saw the suspect last night with hashish in his possession. The commander trusts the informant because of his past association with him and he knows the information is accurate because it is based upon the informant's personal observation. The commander authorizes a search of the suspect's person. *The search is lawful.* The informant and his information were both known to the commander to be reliable.

Example 6. A person whose reliability is unknown to the commander informs him that the suspect is a drug pusher. He further informs the commander that the accused is presently in Metropolis to make a "buy," that he will return by train at 1900 hours or thereabouts, that he will be carrying a brown suitcase and that he will go to Room 213 in the barracks where he will make a sale. The commander advises the CID of these facts and they in turn place the station under surveillance. At 1930 hours the suspect steps off a train arriving from Metropolis. He is carrying a brown suitcase. He immediately takes a taxi to the barracks and goes directly to Room 213. The CID advises the commander of these facts and the commander authorizes a search which produces a large quantity of drugs. *The search is lawful.* Although the commander had no prior knowledge of the reliability of the informant, so much of the information supplied by the informant proved to be correct that the commander had good reason to believe that the remainder of the information was likewise trustworthy.

Example 7. The commander has heard several rumors that Private X is a user of marijuana. During a field training exercise he sees Private

X and two other men go to a secluded part of the company area. Following them, he sees Private X take a small packet from his pocket, take something from the packet and place it in a pipe of the type that he had learned from CID classes was typical of marijuana users. Based upon this observation he apprehends the suspects, searches them and seizes the pipe and packet. *The search is lawful.* Suspicion coupled with tangible facts may often be enough to constitute probable cause. Since the law of probable cause is often difficult to apply, it would be advisable for a company commander to consult with a judge advocate before authorizing a search. This not only avoids unlawful searches and protects the soldier's rights, but it also insures that physical evidence will be admissible in a trial by court-martial. Figure 2-1 should be used by the commander when authorizing a search.

Example 8. There was a theft of money from one of the occupants of an open bay barracks in a training company. The theft occurred early in the morning prior to the company formation. The commanding officer had not yet arrived at the company when the theft was reported to the First Sergeant. In the absence of the company commander, the First Sergeant conducted a detailed search of the entire barracks, including personal possessions of all occupants. He found and seized a vial of heroin in Private X's locker. *The search is lawful* and the vial can be admitted in evidence. The time and place of the theft and the fact that money can be quickly and easily disposed of justified the First Sergeant in conducting an immediate search of the barracks. Any items found during the search can be seized.

(3) *Delegation of authority.* A company commander may delegate his authority to search. The delegation of this authority should be limited to those persons whose experience, responsibilities, and temperament will insure a fair and impartial determination of probable cause. A suggested format for the delegation of authority to search is at figure 2-2.

c. Consent Searches. Probable cause is not required when a person with possession or control

of property freely gives his consent to the search of his property. Because consent to search is a waiver of the constitutional right to be free from unreasonable searches, the Government must be able to produce clear and convincing evidence that the consent was voluntary and not a mere submission to authority. In order to establish voluntary consent, it is recommended that the suspect be told:

(1) the specific items the search is expected to uncover;

(2) the specific area the search will cover;

(3) that he has a legal right to withhold his consent;

(4) that he cannot be forced to submit to a search unless it is properly authorized; and

(5) that any evidence found during the search can be used against him.

It is advisable for the commander to have a witness present when a soldier consents to a search. Should the consent become an issue at a trial, the witness can verify the nature of the consent. If a consent search uncovers evidence of criminal conduct, the evidence will be admissible at a trial. It does not matter that the consent was obtained without probable cause.

d. Open View. Evidence of criminal conduct which is in open view or is located in a public area, such as a dayroom, may be seized without consideration of the requirements of consent or probable cause.

e. Search Warrant. Evidence may be seized pursuant to a search warrant issued by a military judge. The person named in the warrant to conduct the search may be a criminal investigator, military policeman, commander, or officer designated by him.

2-11. References. *a.* The Constitution of the United States (app 1, Manual for Courts-Martial).

b. Manual for Courts-Martial, United States, 1969 (Rev. ed.).

c. Chapter 14, Army Regulation 27-10, Military Justice.

Section IV. COOPERATION WITH POLICE INVESTIGATORS

2-12. General. There are several important reasons for consulting with military police (MPI) and criminal (CID) investigators. The alleged offense may be a serious crime. If the offense is complicated, sophisticated investigation techniques may be necessary. These may include lineups, fingerprinting, expert interrogation and chemical evaluation. Finally, the alleged offense may be one of a series of crimes currently under investigation by the police.

2-13. Professional assistance. The assistance of

professional investigators is required in the following cases:

a. Espionage, sabotage, or subversive activities;

b. Matters of fraud against the Government involving the Army or Army personnel;

c. Major offenses, including—

(1) Crimes punishable under the UCMJ by confinement at hard labor for one year or more;

(2) Offenses involving other Government agencies, e.g., customs, postal, narcotics;

(3) Perverted sexual behavior; and

(4) Conditions or conduct affecting persons with top security clearances.

2-14. Lineups. Lineups may be used to identify persons who have been observed at the scene of a crime. The conduct of a lineup is a technical procedure and requires professional assistance. A

suspected person must be represented by a lawyer at the lineup, unless he waives his right. For this reason a company commander should never conduct a lineup.

2-15. References. Army Regulation 195-2, Criminal Investigative Activities.

b. Army Regulation 190-30, Military Police Investigations.

Section V. SAFEGUARDING EVIDENCE

2-16. General. Drugs, weapons, clothing, and other items related to an alleged offense are physical evidence of crimes. The company commander must preserve and safeguard any physical evidence in his custody. Physical evidence should be handled by as few persons as possible since anyone who touches it may be required to appear at the trial. In order to properly safeguard physical evidence, it must be carefully marked to insure later identification. A chain of custody document must be initiated. Physical evidence should be turned over to professional investigators as soon as possible.

an item from the time it was originally identified as evidence until the time of trial.

2-18. Marking. Physical evidence must be marked immediately by the first person who assumes custody to insure that he will be able to identify it at trial. This mark may be placed on the item itself and is usually the person's initials, the date, and time. The chain of custody record should briefly describe the item and the date and place of its discovery. If the evidence cannot be marked it should be placed in a sealed container and the container suitably marked.

2-17. Chain of Custody. When an item of physical evidence is introduced at trial, counsel must show that is the same item which was found at the scene of the crime or otherwise connected with the offense and that the item has not been altered. The chain of custody document is a written record listing all persons who have handled

2-19. Perishable and Unstable Items. Perishable and unstable items of evidence require special attention. They must be photographed or otherwise preserved. Professional assistance is necessary, for example, to preserve a fingerprint or a tire track in the dirt. The military police can be of assistance in this regard.

Section VI. FLAGGING ACTION

2-20. General. When it appears that action may be initiated which could result in a court-martial, disciplinary action, or elimination proceedings, the commander must initiate flagging action against the soldier pursuant to AR 600-31. This suspends all favorable personnel action. In no

case will flagging action be used as a punitive or disciplinary measure.

2-21. Reference. Army Regulation 600-31, Suspension of Favorable Personnel Actions for Military Personnel in National Security Cases and Other Investigations or Proceedings.

AUTHORIZATION FOR SEARCH

TO:

DATE:

SUBJECT: Authorization to Search

Authorization is hereby given for the search of the property of

_____, located at _____,
 (name) (on person, billets, automobile, etc.)

who is a member of _____, located at
 (unit, organization)

_____,
 (installation)

There is probable cause to justify this search for _____
 (item to be seized)

_____ based on the following information:

This information was presented to me by _____
 (name and organization)

I have determined the informant to be reliable based upon _____

 Company Commander

 Unit

NOTES:

1. Retain one copy in company files.
2. Attach copies of statements from persons giving information.

Figure 2-1.

DELEGATION OF SEARCH AUTHORITY

TO: (Executive Officer) (Training Officer) (_____)

1. You are hereby delegated authority to conduct or authorize searches of property and persons of this command. When appropriate, you may seize property discovered during these searches.
2. You are reminded that you must have probable cause to search prior to exercising this authority. In this regard, your attention is directed to paragraph 152, Manual for Courts-Martial, United States, 1969 (Rev. ed.).

Company Commander

Unit

Date

Figure 2-2.

CHAPTER 3

NONJUDICIAL PUNISHMENT

Section I. APPLICABILITY

3-1. General. A commanding officer may impose nonjudicial punishment for minor offenses upon military personnel of his command under the provisions of Article 15, Uniform Code of Military Justice (UCMJ). He should distinguish nonjudicial punishment from nonpunitive disciplinary measures which are discussed in chapter 8.

3-2. Offenses Punishable by Article 15. The individual to be punished must have committed an offense in violation of the UCMJ. That is, the offensive conduct must have in fact been a crime. The crime committed must also be of a minor nature for nonjudicial punishment to be appropriate. The term "minor" *ordinarily* does not include misconduct of a kind which could be punished by dishonorable discharge or confine-

ment at hard labor for more than one year if tried by a general court-martial. This is not a hard and fast rule. Due regard should be given to all circumstances surrounding the commission of the offense and the personal history of the offender.

3-3. Persons Who May Be Punished. A commanding officer may impose nonjudicial punishment upon commissioned officers, warrant officers, and other military personnel of his command. This generally includes attached as well as assigned personnel.

3-4. References. *a.* Uniform Code of Military Justice (1969).

b. Manual for Courts-Martial, United States, 1969 (Rev. ed.).

c. Army Regulation 27-10, Military Justice.

Section II. WHO MAY IMPOSE ARTICLE 15

3-5. General. Article 15 may be imposed by any commanding officer, including a warrant officer in command, provided that a superior commander has not restricted or withheld his authority to impose punishment on certain categories of military personnel or offenses. For example, general officers in command often reserve to themselves the authority to impose nonjudicial punishment of their officers. The company commander may not delegate his authority. In no case can an NCO impose nonjudicial punishment, even on behalf of his commander.

3-6. Company Grade. A company grade officer in command may impose nonjudicial punishment as outlined in figure 3-1. If the company grade officer does not feel his punishment authority is adequate to the offense, he may forward the case to his field grade commander and request that the field grade officer exercise his authority under

the provisions of Article 15. The company grade officer cannot recommend the punishment he believes the offender should receive. In an appropriate case, a field grade officer may return a case to a company grade officer for disposition at his level. In no case can a superior direct that a subordinate commander take action under Article 15, nor can he dictate to a subordinate the type of punishment to be administered under Article 15.

3-7. Field Grade. A field grade officer in command may impose punishment as outlined in figure 3-1.

3-8. References. *a.* Uniform Code of Military Justice (1969).

b. Manual for Courts-Martial, United States, 1969 (Rev. ed.).

c. Army Regulation 27-10, Military Justice.

Section III. PROCEDURE

3-9. General. Before taking action under Article 15, the commanding officer must satisfy himself (a) that the alleged misconduct actually took place, (b) that the misconduct was an offense under the UCMJ, (c) that the accused soldier

committed the offense, and (d) that an Article 15 is appropriate to the offense in view of the soldier's past record. These steps were considered during the preliminary investigation (chap 2). The investigation must have been conducted with all

deliberate speed. When the soldier is restricted pending disposition, promptness is critical to his right to a speedy trial should he demand trial by court-martial.

3-10. Grounds for an Offense. The commander should consult the "Proof" paragraph found under the appropriate punitive article in chapter XXVIII, Manual for Courts-Martial, to determine that a crime has been committed.

3-11. Initial Notification (Items 1 and 2, DA Form 2627). The first step in an Article 15 proceeding is the commander's initial notification to the member. The elements of this step are stated on the DA Form 2627, Record of Proceedings under Article 15, UCMJ. Appendix E to Army Regulation 27-10 sets forth a Suggested Guide for Conduct of Nonjudicial Punishment Proceedings. The initial notification contains the following elements:

a. Statement of Offense. The commander who intends to impose the punishment must inform the member of his intent. The initial notification must include a brief statement of the offense the commander believes the member has committed. In drafting Item 1 of the DA Form 2627, the commander should use the model specification forms in appendix 6c of the Manual for Courts-Martial. The commander should describe the offense to the member in simple language which a layman can understand.

b. Right To Demand Trial by Court-Martial. Unless the member is attached to or embarked in a vessel, he has a right to demand court-martial in lieu of the Article 15. If the member has this right, the commander must inform him of the right.

c. Rights Under Article 31(b), UCMJ. The commander must inform the member that under Article 31 (b), the member has a right to remain silent and that anything he says can be used against him.

d. Right To Consult Counsel. The commander must inform the member that he has the right to consult counsel concerning the proposed disciplinary action. The commander must also inform the member of the location of counsel whom he may consult.

e. Right to Informal, Public Hearing. The commander must inform the member that he has a right to fully present evidence, and be accompanied by a person to speak on the member's behalf. The commander must also inform the member that upon his request, the hearing will be open to the public unless military exigencies or security interests preclude public disclosure.

f. Consultation With Counsel or Representative. At the time of the initial notification, the com-

mander must inform the member of the period of time which the member has to consult with counsel or his representative and make the necessary decisions on such matters as the right to demand court-martial. The commander must afford the member a reasonable period of time. In determining the period of time, the commander should consider such factors as the offense's gravity and the availability of counsel. As a general rule, 72 hours would be considered a reasonably long period of time. If necessary, the commander should give the member time off from duty to meet with his counsel or representative.

3-12. Acknowledgement and Rights of the Member (Items 3-6, DA Form 2627). The member responds to the initial notification by acknowledging the notification. The member acknowledges in writing on the DA Form 2627. The subsequent course of the proceeding depends upon the decisions the member makes.

a. Demand for Trial by Court-Martial. If the member demands court-martial, the Article 15 must terminate. The commander must then decide whether to prefer court-martial charges. The commander need not prefer the charges, but he ordinarily will do so.

b. Waiver of Court-Martial and Failure To Either Submit Matters or Demand Hearing. If the member waives court-martial and neither submits matters in his own behalf nor demands a hearing, the commander may immediately proceed to impose punishment.

c. Waiver of Court-Martial and Hearing and Submission of Matters. If the member waives both court-martial and an Article 15 hearing but submits matters in defense, extenuation, or mitigation, orally or in writing, the commander must consider the matters before deciding whether to impose a nonjudicial punishment. If the matters persuade the commander that the member is innocent or that there is some other valid reason for not punishing the member, the commander simply terminates the Article 15 proceeding. If, after considering the matters, the commander is still convinced that the member is guilty and that nonjudicial punishment is appropriate, the commander proceeds to impose punishment.

d. Waiver of Court-Martial and Demand for Hearing. If the member waives court-martial but demands an Article 15 hearing, the commander must arrange for and conduct the hearing before deciding whether to impose nonjudicial punishment.

(1) The commander must personally conduct the hearing except in rare circumstances where it is not feasible for him to do so. In those circumstances, he must appoint another officer to conduct the hearing. After conducting the

hearing, the appointed officer should submit written recommendations to the commander.

(2) During the hearing, the member may be represented by a spokesman. The spokesman need not be an attorney. The spokesman's participation in the case must be completely voluntary. No travel fees or other unusual costs will be incurred at Government expense to insure the spokesman's presence at the hearing.

(3) During the hearing, neither the member nor his spokesman may examine or cross-examine witnesses unless the commander allows them to do so. The member or his spokesman may indicate to the commander what the relevant issues and areas are. The commander should explore those issues and areas in his questioning of the witnesses.

(4) The member may indicate the witnesses he desires produced at the hearing; and if the witnesses are reasonably available, the commander must arrange for their presence. No witness or transportation fees will be incurred at Government expense to insure the witnesses' presence. Reasonably available witnesses include those present for duty at the installation concerned and those whose presence can be arranged without the expenditure of Government travel funds and whose attendance at the hearing will not materially delay the proceedings.

3-13. Imposition of Punishment (Items 7 and 8, DA Form 2627). *a. Maximum Punishments.* Figure 3-1 outlines the maximum punishment authorized under the provisions of Article 15. A field grade commander may impose greater punishment than a company grade commander. However, a field grade Article 15 may not be administered for misconduct previously punished by a company grade Article 15. Similarly, an offender subject to the UCMJ who has been tried in a civil court will not be punished under Article 15 for the same act or acts over which the civil court has exercised jurisdiction. When the civil punishment seems inadequate, the commander may request by letter through channels that he be given authority to impose additional punishment. The company commander must be aware of certain limitations on punishment. Forfeiture of pay may never be combined with detention of pay. Any forfeiture imposed must be based upon the grade to which the offender is reduced and not upon his original grade, even if the reduction is suspended. Restriction and extra duties may be combined only for the maximum time allowed for extra duties alone. In no case can restriction or extra duties be combined with correctional custody (para 3-7 AR 127-10.)

b. Informing the Offender. The officer imposing the punishment will personally announce the punishment to the offender. At his time, the officer imposing punishment may explain any

factors he considered in arriving at the announced punishment and he should explain the offender's right to appeal and how to do so.

3-14. Responsibilities After Imposition. The full effectiveness of Article 15 cannot be realized unless the commander is aware of his power of clemency and of his responsibilities in the event that the soldier decides to appeal.

a. Delay of the Execution of the Punishment. If the member files a timely appeal, the execution (i.e. carrying out) of any punishment other than reduction, pay forfeiture, or pay detention will be stayed pending the appeal's completion unless the member requests otherwise.

b. Clemency. A commander imposing punishment under Article 15 has the power to suspend, remit, mitigate, or set aside that punishment if he concludes that this action is warranted by the circumstances of the case. These powers give the commander an effective means of rehabilitating the offender which are often more valuable than his mere power to punish.

(1) *Suspension.* When a punishment is suspended, the punishment is held in abeyance, or not put into effect, for a specified period of time. This results in a probationary period which permits the soldier to demonstrate his good conduct and efficiency. It provides him with an incentive to stay out of trouble. The unexecuted portion of any punishment may be suspended for a reasonable time not to exceed 6 months. In fact, Army regulations permit a reduction in grade to be suspended any time within 4 months after it has been imposed; i.e., even if the punishment has already been executed. For example, if a soldier is reduced from E-3 to E-2 in January and he performs well after his Article 15, his reduction may be suspended any time prior to May. Suspension should be considered in all cases, but it is most effective in the case of the offender who has his first brush with military justice. The commander has an opportunity to rehabilitate a man who might otherwise become a continuing disciplinary problem. The commander should bear in mind that no favorable personnel actions may be taken during the period of suspension. If during the period of probation the soldier commits further acts of misconduct the suspension may be vacated (terminated) and the original punishment put into effect (para 3-7, AR 27-10).

(2) *Mitigation.* The severity of the punishment may be reduced by mitigation. This is appropriate when the soldier has demonstrated by subsequent good conduct that he merits a decrease in his punishment. For example, 14 days of extra duty may be reduced to 7 days of extra duty, or a forfeiture of pay may be changed to a detention of pay.

(3) *Remission.* Remission is the cancellation of the unserved portion of the punishment. This action may be taken by the commander when mitigation would be appropriate.

(4) *Setting aside.* The commander may "set aside" an action taken under Article 15 when it is clear that an injustice has occurred. All rights and privileges are returned. This type of action would be necessary, for instance, in a case where new evidence or information indicates that the soldier was innocent.

c. Appeals (Part II, DA Form 2627.) Every soldier who receives an Article 15 has the right to appeal the punishment. This right does not conflict with his "consent" to the Article 15, for his consent is merely a waiver of his right to demand a trial and it is not an admission of guilt. The appeal should be handled promptly. Upon appeal by the offender from the punishment imposed under Article 15, the next superior commander can approve or reduce but *not* increase the punishment imposed by the company commander. Delays in handling appeals may deprive the soldier of his rights and undermine the military justice system.

(1) *Action by officer imposing punishment.* Appeals should be submitted within a reasonable time after the imposition of punishment. Absent unusual circumstances, 15 days is considered a reasonable time. The accused is entitled to submit oral or written statements dealing with the offense or with the appropriateness of the punishment. The commander should consider these statements and, if warranted, modify the punishment imposed. Essentially, the commander treats the appeal as a request for reconsideration. If additional action such as suspension, mitigation, or remission is taken, the commander should then ask the soldier if he wishes to voluntarily withdraw his appeal. If the soldier refuses, or if the com-

mander takes no modification action, the appeal must then be forwarded to the next higher commander. If forwarding is necessary, the commander should insure that the soldier receives whatever assistance he may need in preparing the appeal, including the preparation of any written statements the soldier wishes to be considered by the reviewing authority.

(2) *Forwarding the appeal.* The commander should complete the necessary portions of DA Form 2627 and he should make any comment he considers necessary to rebut a statement made by the soldier. The file will be forwarded to his immediate superior who is responsible for taking action on the appeal.

d. Publication of Results. In order to be effective, our system of military justice must not only function properly but it must also *appear* to function properly. The commander will announce the disposition of all cases involving nonjudicial punishment of personnel in the grade of E-4 and below, including action taken on previously imposed Article 15's (para 3-13b, AR 27-10). This may be done orally at a routine unit formation and, in any case, must also be done in writing by posting a DA Form 3743-R on the unit bulletin board or other location where routine notices are placed. This announcement must be left in place for 7 days following the imposition of punishment. In the cases of personnel in the grade of E-5 and above, any announcement of Article 15 disposition is discretionary with the officer imposing the punishment and he must consider the impact on unit morale and the impairment to job or leadership effectiveness of the individual concerned. See figure 3-2 for sample of completed form.

3-15. References *a.* Manual for Courts-Martial, United States, 1969 (Rev. ed.).

b. Army Regulation 27-10, Military Justice.

FOR NCO'S
(E5-E9)
AND
SPECIALISTS
(E5-E7)

Co Grade CO Admonition or Reprimand and	
Restriction (Note 1*) or Extra Duties	14 days
or Correctional Custody	None
and Forfeiture of Pay	7 days' pay
or Detention of Pay	14 days' pay
and Reduction in Grade	None

Field Grade CO Admonition or Reprimand and	
	60 days
or	45 days
or	None
and	1/2 of 1 month's pay for 2 months
or	1/2 of 1 month's pay for 3 months
and	One grade. If within promotion authority (Note 5*)

FOR
OTHER EM
(E1-E4)
(*See Note 4)

Co Grade CO Admonition or Reprimand and	
Restriction (Note 1*) or Extra Duties	14 days
or Correctional Custody (Notes 2 & 3*)	7 days
and Forfeiture of Pay	7 days' pay
or Detention of Pay	14 days' pay
and Reduction in Grade	One grade

Field Grade CO Admonition or Reprimand and	
	60 days
or	45 days
or	30 days
and	1/2 of 1 month's pay for 2 months
or	1/2 of 1 month's pay for 3 months
and	One or more grades

***Notes:**

1. Restriction and extra duty may be combined but in such a case the total may not exceed the maximum allowed for extra duty.
2. A company or battalion commander must have a grant of authority from the GCM authority or a general officer in command prior to exercising the power to impose correctional custody.
3. An E4 may not be placed in correctional custody, but an E4 may be reduced to E3 and placed in correctional custody as a part of the same punishment.
4. Enlisted men (E3-E1) may be confined for 8 days on bread and water when attached to or embarked in a vessel.
5. E7-E9 can only be reduced at DA level.

Figure 3-1.

SUMMARY OF NONJUDICIAL PUNISHMENTS ADMINISTERED		DATE
For use of this form, see AR 27-10; the proponent agency is Office of the Judge Advocate General.		11 Jan 74
TO MEMBERS OF (Unit) Co A, 9th Bn, 20th Inf		
NAME	GRADE	DATE PUNISHMENT IMPOSED
REMINGTON, Winchester Q.	PFC (E-3)	4 Jan 74
BRIEF SUMMARY OF OFFENSES FOR WHICH PUNISHED		
AWOL 4 days; disrespect to NCO		
BY WHOM PUNISHED	ANY PRIOR ARTICLE 15 PUNISHMENT OR TRIAL BY COURT-MARTIAL?	
CO, Co A	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
PUNISHMENT IMPOSED		
Red to E-2; forfeit \$25.00 for one month		
WAS MITIGATION, EXTENUATION, OR DEFENSE SUBMITTED?	WAS APPEAL MADE?	
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
ACTION ON APPEAL		
N/A		
NAME	GRADE	DATE PUNISHMENT IMPOSED
BRIEF SUMMARY OF OFFENSES FOR WHICH PUNISHED		
BY WHOM PUNISHED	ANY PRIOR ARTICLE 15 PUNISHMENT OR TRIAL BY COURT-MARTIAL?	
	<input type="checkbox"/> YES <input type="checkbox"/> NO	
PUNISHMENT IMPOSED		
WAS MITIGATION, EXTENUATION, OR DEFENSE SUBMITTED?	WAS APPEAL MADE?	
<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	
ACTION ON APPEAL		
NAME	GRADE	DATE PUNISHMENT IMPOSED
BRIEF SUMMARY OF OFFENSES FOR WHICH PUNISHED		
BY WHOM PUNISHED	ANY PRIOR ARTICLE 15 PUNISHMENT OR TRIAL BY COURT-MARTIAL?	
	<input type="checkbox"/> YES <input type="checkbox"/> NO	
PUNISHMENT IMPOSED		
WAS MITIGATION, EXTENUATION, OR DEFENSE SUBMITTED?	WAS APPEAL MADE?	
<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	
ACTION ON APPEAL		

DA Form 3743-R, 1 Jul 71

Figure 3-2.

CHAPTER 4

PREPARING AND FORWARDING CHARGES

Section I. PRELIMINARY CONSIDERATIONS

4-1. General. *a.* When the company commander has completed his preliminary investigation and believes that an offense has been committed (chap 2), he must *promptly* dispose of the case. He may decide to take nonpunitive action (chap 8), to impose nonjudicial punishment (chap 3), or to prefer charges and recommend trial by court-martial.

b. If, on the other hand, the commander's preliminary investigation leads him to believe that no offense has been committed, he should not initiate any charges. A superior commander may order the company commander to forward his investigation, but a superior commander may not order him to prefer charges as an accuser. If charges were preferred and the investigation does not support the charges, the company commander should take no action on the charges. He may discuss this action with his battalion commander.

c. A commander should be aware that the United States Supreme Court has held that within the United States, the armed forces do not have jurisdiction over every offense any serviceman commits. If the offense is committed within the United States, the services may court-martial the individual for the offense only if the offense has "military significance" and is "service connected." For example, if an off-duty serviceman in civilian clothes commits an offense off post and the offense

in no way affects the military, the offense is not service connected. Neither the Supreme Court nor the Court of Military Appeals has yet developed an exact definition of the phrases, "military significance" and "service connection." In any case of doubt, the commander should consult the Staff Judge Advocate's Office to determine whether the military has jurisdiction over an offense the commander is investigating.

d. In preparing charges for trial by court-martial, the company commander will use DD Form 458 (Charge Sheet). This form must be prepared in an original and four copies. While the company commander is responsible for the preparation of the Charge Sheet, there is no legal requirement that he do it personally. In some commands there will be a "Law Center" where he can send his investigation and have the Charge Sheet prepared under the supervision of a judge advocate. If there is no "Law Center," the company commander may seek advice from the battalion adjutant, the battalion legal clerk, or from the Military Justice Division of the command's Staff Judge Advocate Office. The preparation of the Charge Sheet is a critical function of the company commander. Careful preparation will aid in the prompt disposition of the case while a poor job will cause delay and an administrative overload. Consistently poor work in preparing and investigating charges will reflect adversely on the company commander.

Section II. PREPARATION OF THE CHARGE SHEET (DD FORM 458)

4-2. General. The Charge Sheet is the basic document for court-martial action. Once the charge and specification have been prepared and signed under oath, they are a public record and should not be altered except on the advice of a judge advocate. The Charge Sheet consists of four pages. The company commander is responsible for supervising the preparation of the Charge Sheet as outlined in paragraphs 4-3 through 4-6.

4-3. Administrative Data (Page 1). Page 1 of

the Charge Sheet (fig 4-1) provides information concerning the accused and administrative aspects of the investigation. The first line is completed by inserting the geographical location of the unit preparing the Charge Sheet (Fort Riley, Kansas; Fire Support Base Mary Anne, Republic of Vietnam) and the date the Charge Sheet is completed at the company.

Figure 4-1.

(Located in back of manual)

a. Personal Data. The first one-third of page 1 contains personal information concerning the accused. This information is generally found in the accused's 201 file. The company commander should have reviewed this 201 file before making his decision on disposition of the offense during his preliminary investigation. The accused's "grade or rank" is his military title (PFC) and his "pay grade" is the numerical designation (E-3). The "contribution to family or quarters allowance" refers to the Class Q allotment *only* and the amount of the soldier's contribution should be entered "Class Q—\$40." Other payments or allotments are *not* entered. The initial date of the accused's current service is the date of his *latest* enlistment. Earlier enlistments are indicated in the section on "prior service."

b. Witnesses. The name and address (unit, organization or home address) of *every* witness known to the company commander should be listed on page 1 under "Data As To Witnesses." All witnesses will be shown as witnesses for the "prosecution" unless the witness is one whom the accused has requested by name to give a sworn statement or to be available for trial. Each witness should be contacted to determine his availability during the next 90 days. If he is to be discharged or transferred, this information should be noted after his name. The company commander should request that an "administrative hold" be placed on the witness. Usually, a post or division commander must authorize this action. This is not a "flagging" action under AR 600-31 and chapter 2. Failure to take this action may result in the loss of an essential witness who will not return to testify or who will return only at great expense to the Government.

c. Documents and Objects. The company commander should list all documents, photographs, or objects which are items of evidence. A clear identification of the item should be given along with the current location of the item. Examples:

(1) Smith & Wesson pistol, Cal. 38, SN 46721-M; Property Custodian, 18th MP Co. (CID), Fort Blank, Mo.

(2) First National Bank of Smithville, Mo. check in amount of \$100.00 dtd 1 August 1971; Safe, A Co., 1/61st Inf, Fort Blank, Mo.

d. Restraints. The last item on page 1 is the "Data as to Restraint" concerning the accused (para 1-10). All types of restraint imposed must be shown, including the duration of the restraint and any changes in the restraint.

Example:

"Pretrial Confinement	Fort Blank Stockade
20-22 Sep 71	
Restriction (barracks)	Bldg 205, Fort Blank
22-25 Sep 71	
Restriction (Co. area)	1/61st Inf"
25 Sep 71-pres	

4-4. Charges and Specifications (Page 2). *a. General.* The most important part of the Charge Sheet is page 2 (fig 4-2). This page contains the charges and specifications. The "charge" merely indicates the article of the Uniform Code of Military Justice violated. The specification, under the charge, states the facts and circumstances which constitute a violation of that article of the UCMJ. There may be more than one specification under a single charge. The specification must be written so that it clearly advises the accused of the date, time, place, and circumstances of the alleged offense.

Figure 4-2.

(Located in back of manual)

b. Elements of the Offense. The punitive articles of the UCMJ are discussed in chapter XXVIII of the Manual for Courts-Martial. These punitive articles are the basis for charges and specifications. At the end of each paragraph is a statement of "Proof." This statement outlines the "elements of the offense," which are important both in recognizing criminal conduct and in drafting a clear, complete specification. When the specification is written, the company commander should be able to find each of these "elements" in the specification.

c. Sample Specifications. The company commander will use appendix 6, Manual for Courts-Martial in drafting all specifications. This appendix contains model "fill-in-the-blank" specifications which are legally correct. Additionally, the appendix outlines other information useful in drafting specifications (see app 6a, MCM).

d. Legal Advice. The company commander may not alter the words in a model specification without legal advice from the Staff Judge Advocate's Office. If he has any question in the selection or drafting of a specification, he should also obtain legal advice. The officer who should be contacted is the Chief of the Military Justice Division. He is the principal assistant of the Staff Judge Advocate in all matters pertaining to the administration of military justice.

4-5. Preferral and Transmittal of Charges (Page 3). Page 3 of the Charge Sheet outlines the processing of charges through the chain of command to trial by court-martial (fig 4-3).

Figure 4-3.

(Located in back of manual)

a. Preferral. The person who believes that the specifications are true signs at the top of page 3 as the accuser. While any person subject to the UCMJ may be an accuser, it is customary for the company commander to sign as the accuser.

A superior authority may not order anyone to act as an accuser. The signing of the Charge Sheet by the accuser *must* be done in the presence of a commissioned officer authorized to administer oaths (see Article 136, UCMJ). The accuser must take the oath described on page 3 of the Charge Sheet. This act is called the "preferal" of charges.

b. Informing the Accused. After the charges have been preferred, the company commander or his representative *must* read the charges and specifications to the accused. The company commander or his representative then completes the certificate on page 3 of the Charge Sheet. The accused must be informed of the charges by this formal act. The fact that the commander may have previously told the accused that he intended to bring charges or that he was investigating possible charges does not satisfy this requirement.

c. Receipt by Summary Court-Martial Authority. The company commander next has all copies of the Charge Sheet and allied papers hand-carried to the commander exercising summary court-martial jurisdiction. The summary court-martial authority or his representative will sign the receipt of charges on page 3.

d. Referral. The portion of page 3 designated as the "1st Indorsement" is completed by the

appropriate court-martial convening authority. This action "refers" the charges to a specific court-martial for trial.

e. Service by Trial Counsel. The last item of page 3 is the service of charges by the trial counsel. He will read the information on the Charge Sheet to the accused, leave a copy with the accused or his defense counsel, and sign the certificate.

4-6. Article 15 and Summary Court-Martial Data (Page 4). Finally, the company commander must complete the first section of page 4 (fig 4-4). He indicates in this section whether the accused was offered punishment under Article 15. The "Record of Trial by Summary Court-Martial" completes page 4 and is used when the accused is tried by summary court-martial.

Figure 4-4.

(Located in back of manual)

4-7. References. *a.* Uniform Code of Military Justice (1969).

b. Manual for Courts-Martial, United States, 1969 (Rev. ed.).

c. Army Regulation 27-10, Military Justice.

d. DA Pamphlet 27-16, Legal Clerk's Handbook.

Section III. TRANSMITTAL OF CHARGES

4-8. General. In addition to the Charge Sheet, other documents must be prepared and forwarded by the company commander. Paragraph 32f(4), Manual for Courts-Martial, lists the documents which must be attached to the Charge Sheet. Local directives may require additional documents. The forms and documents in paragraphs 4-9 and 4-10 usually accompany the Charge Sheet.

4-9. Letter of Transmittal A letter of transmittal is the form used to forward the Charge Sheet and allied papers to the court-martial convening authority. This letter is usually a local form which contains information about the accused, and the commander's specific recommendation for disposition of the charges. The commander must personally sign the letter of transmittal and attach one copy of each set of the Charge Sheet and allied papers. When the commander makes his recommendation for the disposition of the charges, he should consider the nature of the offense, the personal history of the accused, and whether or not he believes the accused should be eliminated from the service (para 1-11). After considering these matters, the com-

pany commander should relate the punishment he considers appropriate to the type of court-martial which may impose it. The commander must keep in mind that charges against an accused should be tried by the lowest court which has power to adjudge an appropriate and adequate punishment (chap 1).

4-10. Allied Papers. *a. Military Police or CID Reports of Investigation.* Reports prepared by the military police or criminal investigators, if available, should be forwarded with the charges. If these investigation reports are not completed when the company commander is ready to forward the charges, he should forward the charges, stating that he will send the reports when they become available. Initial and interim reports received by the commander may be forwarded with the Charge Sheet. Under no circumstances should a commander delay the forwarding of charges until completion of the final CID or Military Police Report.

b. Witness Statements. All available witness statements should be forwarded with the Charge Sheet. Witness statements may be sworn or un-

sworn, as well as summaries of expected testimony. While in most cases it is best to attach written statements from all available witnesses, it is not necessary to delay forwarding the charges to obtain them. Handwritten statements may be attached to the charges if typing will cause unnecessary delay.

c. Available Documentary Evidence. In order to safeguard documentary evidence, originals should not be forwarded with the Charge Sheet. It is sufficient to forward copies of the documents. For example, if the case is based on a forged check, it would be unwise to forward the original and risk its loss in transmittal (chap 2).

d. Extract of Military Records of Previous Convictions (DD Form 498). Extracts of previous convictions should be forwarded with the charges. This document is prepared by the personnel officer at the request of the company commander.

e. Personal Evaluation Sheet. This local form contains information concerning the accused's military record and the company commander's evaluation of the accused's conduct and efficiency.

4-11. Time Limits. The prompt disposition of charges is essential to our system of military justice. An unexplained delay in the processing of charges at any stage may result in the dismissal of charges (para 1-10d). When a decision concerning a delay is brought up at trial, the burden is on the Government to justify the delay and to show that it was not intentional nor due to an oppressive design or neglect on the part of the Army. The period of time for which the Government is accountable starts to run when the accused is placed in restraint or when charges have been preferred. Local directives normally outline the acceptable time limits for the processing of cases. The company commander must be familiar with these guidelines. He must be prepared to present in court a reasonable, logical explanation for each delay. When a commander simply holds the file waiting for a military police report, he will not be able to justify the delay. He should forward the Charge Sheet when completed and send the military po-

lice report when it is later received. In any serious offense which might result in trial by a general court-martial, the commander must forward the charges to the commander exercising general court-martial jurisdiction within 8 days. If this is not possible a letter explaining the delay will be forwarded to the GCM authority (para 30i, MCM). Any question on a possible delay should be discussed with the Staff Judge Advocate. The following are guidelines for avoiding unreasonable delays in the processing of court-martial charges:

(1) Hand-carry all court-martial files to higher headquarters. The message center may be too slow and often cannot be relied upon.

(2) Investigate an incident immediately after it happens. Do not wait for laboratory reports or completed CID and MP reports. A commander can always obtain preliminary statements from CID agents or MP officials and may initiate his action based upon those statements.

(3) Do not allow a case to remain in the unit because of the pressure of other duties.

(4) If the accused is being placed in pre-trial confinement, the Charge Sheet should be prepared immediately and the accused informed of the charges prior to confinement. In any event, charges must be prepared and read to the accused within 24 hours after confinement begins.

(5) The reasons for any delay should be noted for use in the event that the question is raised at trial. The law does not require the company commander to meet a timetable, but it does require a reasonable explanation for all actions taken in bringing a case to trial.

(6) At any stage of the proceedings, the company commander should call the Staff Judge Advocate for advice if he has any questions or doubts.

4-12. References a. Uniform Code of Military Justice (1969).

b. Manual for Courts-Martial, United States, 1969 (Rev. ed.).

c. Army Regulation 27-10, Military Justice.

CHAPTER 5

ACTIONS AFTER FORWARDING CHARGES

Section I. RECOMMENDATIONS FOR COURT-MARTIAL

5-1. General. Charges are forwarded by the company commander with a recommendation for trial by court-martial to the summary court-martial authority who is usually the battalion commander. The battalion commander has substantial authority in acting upon the company commander's recommendations. He may dismiss the charges. He may decide to try the accused by summary court-martial. He may decide to forward the case with a recommendation for trial by special court-martial if he does not have special court-martial authority at the battalion level. If he considers the offense serious enough for general court-martial action, he may, as a summary court-martial authority, direct an investigation under Article 32, UCMJ. Although he may not impose his will upon the company commander regarding disposition of a case, the battalion commander may accept or reject any recommendation when it reaches battalion headquarters. Finally, the battalion commander may decide not to handle the case under the court-martial system or by nonjudicial punishment. He may elect to dispose of it by administrative action as outlined in chapters 6 and 8.

5-2. Article 32 Investigation. The investigation under Article 32, UCMJ is an absolute requirement before any case is tried by general court-martial. The offenses investigated by the company commander and forwarded as charges are the basis for this investigation. The Article 32 investigating officer must inquire into the truth of the matters set forth in the charges and make a recommendation regarding disposition of the case. (See para 34, MCM, for a complete discussion.) Based upon the information developed in the investigation, the battalion commander

may decide to forward the case with a recommendation for trial by general court-martial. Alternatively, he may decide to recommend disposition by special court-martial, to try the case at battalion headquarters by summary court-martial, or to impose nonjudicial punishment. Finally, he may take administrative action or dismiss the charges and return the soldier to duty.

5-3. Separation in Lieu of Court-Martial (chap 10, AR 635-200). A soldier who has been charged with an offense which is punishable by a bad conduct discharge or dishonorable discharge may request an administrative discharge for the good of the service. The soldier's request for discharge does not preclude or suspend court-martial proceedings and any decision to delay the court-martial must be made by the general court-martial convening authority. The soldier must be given the opportunity to consult with qualified legal counsel and the soldier must certify that he understands he may receive a discharge under less than honorable conditions. The company commander will forward the soldier's request for discharge with a recommendation for disposition through channels to the commander exercising general court-martial jurisdiction. The soldier normally will receive an undesirable discharge, although he may be issued an honorable or general discharge if this is considered warranted by the general court-martial authority. (See chap 6 for further discussion.)

5-4. References. *a.* Manual for Courts-Martial, United States, 1969 (Rev. ed.).

b. Army Regulation 635-200, Personnel Separations: Enlisted Personnel.

Section II. REHABILITATION

5-5. General. After a court-martial conviction, the role of the company commander is completed when the convening authority approves a sentence in excess of 30 days or the accused is discharged. The company commander must transfer

all prisoners whose approved sentences exceed 30 days to the Correctional Holding Detachment (CHD) which is under the commander of the installation confinement facility. The responsibility of the company commander for those prisoners

not assigned to the CHD continues through the confinement period. The company commander has a role in returning the individual to his unit as a rehabilitated, responsible soldier.

5-6. Pending Release From Confinement. a. Visits. While a soldier in his unit is in a correctional facility, the company commander should visit the prisoner as often as possible. Local regulations may direct periodic visits. This insures that contact is maintained between the soldier and his unit and insures that his needs are being met. More importantly, these visits enable the commander to monitor the prisoner's progress and are a vital part of the prisoner's rehabilitation program.

b. Counseling. Army correctional facilities have Prisoner Counseling Programs which are administered by qualified confinement officers and trained counselors. In addition, company commanders remain responsible for counseling their men serving sentences to insure that they will be ready to rejoin the unit once the confinement period ends. A company commander should also be ready to receive a soldier from the CHD. It is required that all men assigned to CHD be transferred to a new unit upon release in order to obtain a fresh start (see AR 190-23). The confinement officer and counselors orient the prisoner back to the Army in general. It is the duty of the commander to reorient the prisoner to the mission of the unit and to his responsibility within the unit.

c. Clemency and Suspension. After a member of his unit has been sentenced to confinement by a court-martial, a company commander can influence the length of the confinement. He may recommend to the convening authority, through the chain of command, that the sentence be reduced or suspended. The purpose of suspending a sentence is to allow the accused a proba-

tionary period in which to demonstrate his good conduct and efficiency. If the accused remains a good soldier during the time allowed, he does not have to serve the remaining portion of his sentence. Matters pertaining to clemency are usually submitted in writing by the defense counsel at the conclusion of a trial. In addition, the company commander may recommend clemency to the commander exercising control over the installation confinement facility after a sentence to confinement has been approved and after the prisoner has been assigned to the CHD. The commander usually requests clemency when new information concerning the accused is discovered after trial which would have reduced the sentence, had it been presented at the court-martial.

5-7. After Release. a. Counseling. A company commander is responsible for counseling any soldier who returns from a confinement facility. The counseling should be oriented toward the needs of the unit and the needs of the soldier. The counseling sessions are necessary to orient the soldier to the unit's mission and to help the soldier become an effective working member of the unit.

b. Transfer. A commander should give a returned prisoner a new start in the Army whenever possible. If a soldier is returned to the unit after serving less than 30 days confinement, the company commander should consider transferring the individual to another platoon or squad within the unit.

5-8. References. a. Manual for Courts-Martial, United States, 1969 (Rev. ed.).

b. Army Regulation 190-4, Uniform Treatment of Military Prisoners.

c. Army Regulation 190-23, US Army Correctional Holding Detachment.

CHAPTER 6

DISCHARGE OF ENLISTED PERSONNEL

Section I. ELIMINATION FOR UNFITNESS

6-1. General. A soldier whose conduct shows that he is unwilling to be a satisfactory soldier, despite efforts at rehabilitation, may be discharged prior to his normal ETS. The specific reasons for elimination due to unfitness described in paragraph 13-5a, AR 635-200 are—

- a. frequent acts of misconduct (military and civilian);
- b. sexual perversion;
- c. drug abuse;
- d. repeated shirking of duty;
- e. repeated dishonorable failure to pay valid debts;
- f. repeated failure to support dependents; and
- g. in-service homosexual acts.

A soldier discharged for unfitness normally will be given an undersirable discharge certificate, but he may be given an honorable or general discharge certificate if he has been awarded a personal decoration (Congressional Medal of Honor through ARCOM) or there are particular circumstances which warrant less severe treatment. In cases involving only drug abuse, the discharge must not be less than under honorable conditions. In other cases the final discharge decision is made by the commander holding general court-martial jurisdiction (division CG, post CG).

6-2. Counseling and Rehabilitation. The unit commander should insure that before he recommends a soldier for discharge there has been an attempt at correcting the soldier's misconduct at the unit level. This is generally done by counseling and a rehabilitative transfer. In cases where corrective attempts appear useless, the commander can request a waiver of this requirement (para 13-9, AR 635-200).

a. *Counseling.* When it appears that a soldier's conduct is becoming unsatisfactory, a commander should look for the causes of the misconduct and what steps can be taken to change the soldier's attitudes or actions. The soldier should be told of the fact that continued misconduct could result

in a bad discharge and he should be urged to change his ways. His NCOIC should be advised of the problems and directed to counsel and assist the soldier as needed. Written records of all counseling sessions must be kept by the commander and the NCOIC.

b. *Rehabilitation Transfer.* When a soldier does not respond to counseling, or has shown that he cannot get along with others in his unit, he should be transferred to another unit. Often a change in supervisors, associates, or living and work areas will solve a soldier's problem. If possible, the transfer should be to another special court-martial jurisdiction. Otherwise, the transfer can be to a different company or detachment within the unit or organization. Only as a last resort will the commander recommend a PCS transfer.

c. *Waivers.* If the unit commander believes that the soldier will not be helped by counseling and rehabilitation, he may forward his discharge recommendation with a request that these measures be waived. Only the commander who has general court-martial jurisdiction can approve a waiver. In making his request for a waiver, the unit commander should give a full statement of why he feels the soldier cannot be rehabilitated.

6-3. Unit Commander's Responsibilities. The unit commander is the person who makes the discharge recommendation, based on his knowledge of the individual soldier. The soldier himself cannot apply for an unfitness discharge. A commander should not use this discharge authority instead of a court-martial *solely* to keep a soldier from receiving harsher penalties which could be given by a court-martial in cases of serious misconduct (para 13-2d, AR 635-200).

a. *Preliminary Actions.* When the unit commander has decided that a soldier is unfit for further service for one of the reasons in paragraph 6-1, he must send the soldier to the hospital for a complete physical examination. He must tell the hospital the reasons for considering discharge of the soldier and ask for a specific answer from the doctor to the question, "Is there a medical condition causing this conduct?" If

the answer is "Yes," then the soldier should be processed for a medical discharge. If the answer is "No," then the commander can continue his discharge action (para 13-10, AR 635-200). In homosexuality cases, the commander must ask for specific findings by the doctor and a psychiatrist as to whether the soldier is a homosexual or merely immature or easily misled into such acts. In addition, he will take action to "flag" the soldier's records in accordance with AR 600-31.

b. Report. Once the medical evaluation is completed, the unit commander must prepare his letter of recommendation, using the format shown in appendix C, AR 635-200, and containing the information listed in paragraph 13-15, AR 635-200. This letter is addressed through the chain of command to the commander holding general court-martial jurisdiction. Copies of court-martial orders, Article 15 punishments, CID reports (especially important in homosexual cases), letters of indebtedness, court orders of support, and any other documents which relate to the specific misconduct will be attached to the letter of recommendation. The unit commander should also attach his statement and statements of the soldier's NCOIC concerning counseling and the soldier's general conduct, as they know it.

c. JAG Counseling. After the unit commander has prepared his letter and collected all of the documents concerning the case, he will notify the soldier in writing of the basis for the proposed action and of his rights (para 13-12a, AR 635-200). He will then make an appointment with the Staff Judge Advocate office to have the soldier counseled on his rights. He will send him to the JAG Office with a copy of the entire file and 5 copies of the statement shown in figure 13-1, AR 635-200. A soldier's rights in an elimination case are discussed in paragraph 6-4.

d. Witnesses. If the soldier has requested a board of officers to hear his case, the unit commander should request The Adjutant General to place administrative holds on all potential witnesses in his unit (para 13-18c, AR 635-200).

6-4. Rights of Enlisted Personnel. Once the unit commander has made his decision to recommend a soldier for discharge, the soldier has specific rights and options he may demand.

a. Board of Officers. The soldier has the right to request personal appearance before a board of officers in order to contest the recommended elimination if not in civil confinement (para 13-13, AR 635-200). He may submit any statements he desires to have attached to the discharge recommendation, and he may be represented by counsel (*b* below). He will be given not less than

48 hours to make these decisions, and will be advised on his rights by a JAG officer (para 6-3c). He also has the right to waive all of these rights. His decision to waive these rights must be in writing, using the format shown in figure 13-1, AR 635-200, and signed by the soldier and a JAG officer (para 13-12a, AR 635-200).

b. Counsel. A soldier being recommended for a discharge for unfitness who has requested appearance before a board of officers, is entitled to be represented at the board hearing by—

(1) a civilian attorney chosen and paid by the soldier; or

(2) a judge advocate officer or other military counsel qualified under Article 27(b)(1), UCMJ; or

(3) any military officer requested by the soldier if the officer is reasonably available (para 13-19, AR 635-200).

If the soldier does not request a specific officer as his counsel, military counsel will be appointed by the commander having general court-martial jurisdiction.

c. Withdrawal of Waivers. If a soldier waives his rights to appear before a board of officers, to submit statements or to have counsel, he may withdraw that waiver and request these rights at any time before the commander having the discharge authority has approved the discharge with the waivers.

6-5. Processing for Elimination. Once the unit commander has completed his report and the soldier has been counseled by a JAG officer, the case is forwarded to higher headquarters through channels.

a. Intermediate Commanders. The unit commander will route his recommendation through the chain of command to the commander having general court-martial jurisdiction (division CG, post CG). All intermediate commanders (battalion, brigade) will review the file and may disapprove the recommendation and direct reassignment, take action to discharge the soldier for unsuitability (see next section), or may approve it and forward it to the next commander.

b. General Court-Martial Authority. The commander having general court-martial jurisdiction is the discharge authority in all unfitness cases. He may disapprove the recommendation and direct reassignment, approve a discharge for unsuitability or order discharge if a board of officers is waived or a board has recommended discharge. He is also the commander who appoints the board of officers and counsel. His decision in a case is final.

c. Board Actions. If the soldier has requested appearance before a board of officers, a board of not less than three commissioned officers will be appointed to hold a hearing and to make findings and recommendations on the discharge recommendation. It is at this hearing that the soldier is entitled to counsel and to present his side of the case. He may also question the witnesses who are called to state facts showing that the soldier should be eliminated. In many cases, the unit commander and the soldier's NCOIC will be called as witnesses. The decision of the board is not final, but the commander appointing the board cannot, upon review, take action which is more severe than that recommended by the board.

d. Status of Soldier During Processing. There are no special limitations placed on the duties

that a soldier can perform while awaiting discharge processing. Because his records will be flagged, he is in a non-promotable status. The commander should stay abreast with the status of the proceedings so that he can inform the soldier and answer questions.

6-6. References. *a.* Army Regulation 15-6, Procedures for Investigating Officers and Boards of Officers Conducting Investigations.

b. Army Regulation 600-31, Suspension of Favorable Personnel Actions for Military Personnel in National Security Cases and Other Investigations or Proceedings.

c. Army Regulation 635-200, Enlisted Personnel.

Section II. ELIMINATION FOR UNSUITABILITY

6-7. General. A soldier whose conduct shows that he is unable to be a satisfactory soldier, because of reasons other than misconduct, may be discharged prior to his normal ETS. The specific reasons for elimination due to unsuitability described in paragraph 13-5b, AR 635-200, are—

- a.* inaptitude (inability to learn);
- b.* character and behavior disorders;
- c.* apathy, defective attitudes, or inability to work constructively;
- d.* chronic alcoholism; or
- e.* homosexual tendencies and pre-service homosexual acts.

Unsuitability is not a lesser degree under unfitness, but is an entirely separate category of conduct which can be the basis for discharge. A soldier discharged for unsuitability will be given an honorable or general discharge certificate, as warranted by his military record (para 13-31b, AR 635-200). The final discharge decision is made by the commander holding special court-martial jurisdiction (battalion CO, post commander).

6-8. Counseling and Rehabilitation (para 6-2). It should be noted that with respect to waivers (para 6-2c), the commander holding special court-martial jurisdiction may grant waivers in certain specified situations (para 13-9, AR 635-200).

6-9. Unit Commander's Responsibilities. The unit commander is the person who makes the discharge recommendation, based on his knowledge of the individual soldier and his general

performance. The soldier himself cannot apply for an unsuitability discharge.

- a. Preliminary actions.* See paragraph 6-3a.
- b. Report.* See paragraph 6-3b.
- c. JAG Counseling.* See paragraph 6-3c.
- d. Witnesses.* See paragraph 6-3d.

6-10. Rights of Enlisted Personnel. See paragraph 6-4.

a. Board of Officers. See paragraph 6-4a.

b. Counsel. A soldier being recommended for a discharge for unsuitability who has requested appearance before a board of officers, is entitled to be represented at the board hearing by—

- (1) a civilian attorney chosen and paid by the soldier; or
- (2) an appointed counsel in the grade of 1LT or higher; or
- (3) any military officer requested by the soldier if the officer is reasonably available (para 13-19, AR 635-200).

There is no requirement for the counsel to be legally qualified.

c. Withdrawal of Waivers. See paragraph 6-4c.

6-11. Processing for Elimination. See paragraph 6-5, substituting "commander holding special court-martial jurisdiction" for "commander holding general court-martial jurisdiction."

6-12. References. *a.* Army Regulation 15-6, Pro-

cedures for Investigating Officers and Boards of Officers Conducting Investigations.

b. Army Regulation 600-31, Suspension of Favorable Personnel Actions for Military Person-

nel in National Security Cases and Other Investigations or Proceedings.

c. Army Regulation 635-200, Enlisted Personnel.

Section III. ELIMINATION FOR CONVICTION BY CIVILIAN COURT

6-13. **General.** A soldier who has been initially convicted by a civilian court or declared a juvenile offender by a civilian court may be discharged prior to his normal ETS if the offense meets one of three criteria. These criteria are—

a. the offense has a maximum penalty of death or confinement in excess of 1 year under the Table of Maximum Punishments, Manual for Courts-Martial, United States, 1969 (Rev. ed.); or

b. the offense involves narcotics violations or acts of sexual perversion which constitute offenses of moral turpitude (para 3g, AR 635-206); or

c. the declaration of a juvenile offender is for an offense under b above (para 33, AR 635-206).

A soldier discharged because of a conviction by a civilian court normally will be given an undesirable discharge certificate, but he may be given an honorable or general discharge certificate if he has been awarded a personal decoration (Congressional Medal of Honor through ARCOM) or there are particular circumstances which warrant less severe treatment. The final discharge decision is made by the commander holding general court-martial jurisdiction (division CG, post CG).

6-14. **Conditions Affecting Discharge.** a. *Conviction.* A conviction, for these purposes, means any action which decides the issue of guilt and carries with it the power of the State or Federal court to impose a penalty, even though it is not called a "conviction" by the court or statutes.

b. *Offenses.* The civilian offense may not be exactly like any military offense in name, but may actually be the same crime. If there is no exact relationship between the civilian offense and any military offense, get the advice of the Staff Judge Advocate. Some of the more common cases of related offenses are:

<i>Civilian offense</i>	<i>Military offense</i>
joyriding	wrongful appropriation of motor vehicle
interstate transportation of stolen vehicle	wrongful appropriation of motor vehicle
unlawful entry	housebreaking
assault with a deadly weapon	aggravated assault

It is improper to combine the punishments (un-

der the Table of Maximum Punishments), for two or more offenses in order to satisfy the "in excess of one year" rule. There must be at least one offense which qualifies by itself to warrant discharge. Exceptions may be granted by The Adjutant General (para 40, AR 635-206).

c. *Appeals.* If the soldier has appealed his conviction to a higher court, or still has time under State or Federal statutes to make an appeal to a higher court, he cannot be processed for discharge until the appeal is completed or he states in writing that he does not intend to appeal.

6-15. **Unit Commander's Responsibility.** The unit commander makes the initial discharge recommendation. The soldier has no right to request that he be discharged. The commander may decide not to eliminate the soldier if the offense is not too serious, the soldier has a good military record, and there are no restrictions placed on the soldier by civilian authorities which would interfere with his normal performance of military duties. As a general rule, however, a soldier convicted of a narcotics violation or sexual perversion will not be retained in the service (para 35, AR 635-206).

a. *Preliminary Actions.* When a unit commander has decided that a soldier is to be recommended for discharge because of a civilian conviction, and the soldier is physically under military control, i.e., not in civilian confinement, he will send the soldier to the hospital for a complete physical and psychiatric examination. Medical authorities will decide whether the soldier meets medical retention standards and is mentally able to understand the nature of discharge proceedings. If he is not mentally or physically fit, the soldier should be processed for a medical discharge. If he is fit, then the commander may proceed with the discharge action. In addition, he will take action to "flag" the soldier's records in accordance with AR 600-31.

b. *Report.* Once the medical evaluation has been completed, the unit commander must prepare his letter of recommendation, following the general format set out in paragraph 17, AR 635-206. The primary inclosure will be a certified copy of the court record of conviction. In some cases, it will also be necessary to obtain a certified copy of the arrest warrant or indictment in order to have

enough facts upon which to determine what offense under the UCMJ is most nearly identical. The Staff Judge Advocate should be contacted about these documents.

c. JAG Counseling.

(1) *Soldier under military control.* See paragraph 6-3c.

(2) *Soldier in civilian confinement.* When the soldier is confined by the civilian authorities, counseling by a JAG officer is not required. Instead, the unit commander will inform the soldier of the discharge action and of his rights (para 6-16) by registered mail with return receipt requested. The soldier will be advised that if he does not notify the unit commander of his election of rights within 30 days, he may be discharged without the opportunity to have his case considered by a board of officers.

6-16. Rights of Enlisted Personnel. Once the unit commander has made his decision to recommend the soldier for discharge, the soldier has specific rights and options he may demand.

a. Board of Officers.

(1) *Soldier under military control.* See paragraph 6-4a.

(2) *Soldier in civilian confinement.* When a soldier being considered for discharge is confined by civilian authorities, he loses his right

of personal appearance before a board of officers. However, he still has the right to have his case considered by a board of officers, to present statements, and to be represented by counsel (*b* below). He also has the right to waive, in writing, any or all of these rights.

b. Counsel. See paragraph 6-4b.

6-17. Processing for Elimination. See paragraph 6-5.

Note. In this type of discharge, intermediate commanders and the commander exercising general court-martial jurisdiction cannot recommend elimination for unsuitability instead of elimination for civilian conviction.

6-18. References. *a.* Manual for Courts-Martial, United States, 1969 (Rev. ed.).

b. Army Regulation 15-6, Procedures for Investigating Officers and Boards of Officers Conducting Investigations.

c. Army Regulation 600-31, Suspension of Favorable Personnel Actions for Military Personnel in National Security Cases and Other Investigations or Proceedings.

d. Army Regulation 635-200, Enlisted Personnel.

e. Army Regulation 635-206, Misconduct.

Section IV. DISCHARGE FOR HARDSHIP AND DEPENDENCY

6-19. General. No matter how careful the screening process, either within the Selective Service System or the Army Recruiting system, soldiers will be taken into the Army who, because of a hardship or dependency situation at home, should be discharged and returned to civilian life before their ETS. These men are not attempting to shirk their military obligations, but have a conflict of demands which is best resolved by discharge. Usually, the soldier will approach his unit commander or first sergeant with his problem, and it is the unit commander who takes the first action in processing the discharge request.

6-20. Conditions for Discharge. Any circumstance of dependency or hardship sufficient to warrant a discharge must have arisen after the soldier has entered the Army or been made more serious by his absence in the service. The situation must be permanent in nature, i.e., more than an illness or temporary job layoff.

a. Dependency. "Dependency" is a condition caused by the death or disability of a member of a soldier's family who previously had sup-

ported those persons now dependent upon the soldier. Further, the death or disability of the family member must have placed the *responsibility* of support on the soldier. For example, a soldier's parents are in an automobile accident which kills the father and leaves the mother disabled. There are two younger children at home and no relatives willing to serve as guardians for them. In this case, the soldier could reasonably claim dependency. A list of those persons whom a soldier can claim as "dependents" for dependency discharge includes parents, spouse, and children (para 6-6a, AR 635-200).

b. Hardship. "Hardship" is a condition not involving the death or disability of a family member, but which is caused by his entry into the service or which arose after his entry into the service and which his return could alleviate. A change in income or inconvenience caused by military service is not sufficient to show a hardship. For example, a soldier is the only son of a farmer in an area where farm help is not available or within the family's means. The father is elderly and cannot, by himself, work the farm sufficiently to maintain his family now that his

son is in the service. In this case, a soldier could reasonably claim a hardship caused by his entry into the service.

6-21. Unit Commander's Responsibilities. One of the primary duties of any commander is to look after the welfare of his troops. When a soldier makes known a situation at home which appears to create a conflict between the soldier's military obligation and his duty to his family, the commander should act immediately to assist the soldier before he acts foolishly or immaturity. Failure to assist the soldier may cause him to go AWOL, thus creating a greater problem for both the soldier and the Army.

a. Counseling and Assistance. The unit commander's first action should be to learn as much as possible about the situation. Then he should see what alternatives other than a discharge are available which would alleviate the hardship or dependency situation until the soldier's normal ETS. Discharge should be considered as a last resort.

(1) *Financial assistance.* In many cases, temporary financial relief will alleviate the hardship on a short-term basis, allowing the soldier to finish his term of service. There are many ways to obtain loans, such as a local bank or credit union, but often the terms of interest and repayment are prohibitive. The Army Emergency Relief Fund provides a less burdensome means of financial assistance if the soldier can qualify. Loans may be made locally up to \$250. These loans are made without interest and can be repaid in small amounts through a monthly Class E allotment. If the soldier cannot repay a loan without creating an additional hardship, the AER can authorize a grant up to \$250. In some situations, the AER will combine these two into a loan and grant package, totalling \$250 (para 2-3 and 2-4, AR 930-4). Conditions for authorizing a loan or a grant are found in paragraph 4-1, AR 930-4; conditions which do not qualify are set out in paragraph 4-2, AR 930-4.

(2) *Leave.* In other cases, the presence of the soldier at home for a short period will allow him to make arrangements to alleviate the situation until his ETS. If the soldier has sufficient accrued leave, he should be allowed to use it for this purpose. If he does not have accrued leave, the unit commander can authorize advance leave up to 45 days, depending upon the time remaining in the soldier's enlistment. Advance leave is permitted to allow a soldier to resolve personal,

emergency or morale problems (para 5-1, AR 630-5). If more time is needed than can be granted by advance leave, a commander of any unit authorized a commander in the grade of LTC or higher (battalion, brigade) may grant excess leave without pay. The maximum allowed is 30 days in any one absence, including any accrued leave and advance leave allowable (para 5-2, AR 630-5). Finally, a commander can authorize up to 30 days emergency leave upon the death or serious injury of family members (para 6-1 and 6-4, AR 630-5). Instances for using these leave provisions might be to allow a soldier to go home to help with the annual harvest in a hardship situation or to allow a soldier to settle family matters relating to his dependents, care and support.

b. Application for Discharge. If the soldier believes that the only solution to his family problem is to be released from the Army, then he must submit a written application for discharge. It may be in letter form or on DA Form 2476 (Application for Separation—Hardship or Dependency). He must attach evidence of the hardship or dependency to his application. This evidence will normally be in affidavit form and must meet the requirements of paragraph 6-8, AR 635-200. In some cases the commander may find it advisable to grant a soldier leave so that he can go home to get the necessary statements and reports to support his application. Once the soldier has completed his application, he will submit it to his unit commander. The commander should review it to see if it satisfies the requirements of the regulation (para 6-20), and then he should add his indorsement for approval or disapproval. He will also include all of the information required by paragraph 6-7b, AR 635-200. He will then forward the application to the first level of command having a general officer or to the commander of a personnel center, training center, or hospital commander, as appropriate (para 2-17a, AR 635-200). This commander is the final discharge authority in these cases.

6-22. References. *a.* Army Regulation 630-5, Leaves, Passes, Administrative Absences and Public Holidays.

b. Army Regulation 635-200, Enlisted Personnel.

c. Army Regulation 930-4, Army Emergency Relief—Authorization, Organization, Operations and Procedures.

Section V. DISCHARGE OF MINORS

6-23. General. From time to time, young men and women below the legal age for military service are either inducted or enlisted. Depending upon the situation, the particular enlistment may be either without legal effect (void) or may be made void (voidable). If the enlistment is void, the Army has no jurisdiction or right to exercise authority over the "soldier." If the enlistment is voidable, the Army may discharge the soldier. The same rules apply to void and voidable inductions.

6-24. Enlistees. The enlistment of a person into the Army is a contractual agreement which results in the person obtaining a military status and being subject to the UCMJ. The rules for making this agreement are found in Congressional statutes.

a. Void Enlistments. The United States Code states that no male under 17 years of age nor female under 18 years of age may be enlisted. Therefore, any enlistee who is below these ages is not legally enlisted and cannot be "discharged." Instead, an order will be published by the discharge authority (para 2-17 through 2-20, AR 635-200) releasing the minor from military control.

b. Voidable Enlistments.

(1) The statute requires parental consent for the enlistment of any male who is 17 years old and any female from 18 to 21 years old. If there was no parental consent the enlistment is voidable. The enlistee will be discharged if his parents demand his release within 90 days of his enlistment, or at the option of the Secretary of the Army.

(2) If an enlistee enlisted while a minor, but has since reached the age of 17 (males) or 18 (females), then the enlistment is considered as a voidable enlistment. In this situation, the unit commander may recommend the retention of the enlistee. The Secretary of the Army has the approval authority in these cases. If the commander does not recommend retention of the enlistee, then he or she will be discharged.

c. Bars to Discharge. If the enlistee covered by *b* above has committed a serious court-martial offense after reaching the age of 17 (males) or 18 (females) and before the parents make a request for discharge, the enlistee may be retained in the service in spite of a timely parental request for discharge. Additionally, once the enlistee has reached the age of 18 (males) or 21 (females), the enlistment becomes completely valid.

6-25. Inductees. The induction of a person into the Army is not a contractual agreement, but is the fulfillment of an obligation of citizenship. Requirements for induction are set out in the Selective Service Act.

a. Void Inductions.

(1) The Act states that no person may be involuntarily inducted ("drafted") before he reaches the age of 18 1/2 years. Therefore, any involuntary inductee who is below this age was illegally inducted and will be released from military control.

(2) The Act also forbids the voluntary induction of a person under the age of 17. Such an induction is illegal and the inductee will be released from military control.

b. Voidable Inductions.

(1) The Act allows the voluntary induction, with parental consent, of a person who is 17 years old. If a voluntary inductee was inducted without his parents' consent, the induction is voidable. However, the voluntary inductee will not be discharged unless a request for discharge is made by one or both parents.

(2) If an inductee was voluntarily inducted when below the minimum age for such induction and has since reached the age of 17, he will be discharged.

c. Bars to Discharge. If the inductee covered in *a*(3) or *b* above has committed a serious court-martial offense after reaching the age of 17 and before the parents make a request for discharge, the enlistee may be retained in the service in spite of a later parental request for discharge. Additionally, once the voluntary inductee reaches the age of 18 or the involuntary inductee reaches the age of 18 1/2, the induction becomes completely valid.

6-26. Unit Commander's Responsibilities. The primary duty of a unit commander who discovers that he has a minor serving on an enlistment or induction which is void or voidable is to verify the facts. Verification must be made by obtaining any of the documents listed in paragraph 7-6, AR 635-200. Once he has verified that an enlistment or induction is either void or voidable he will report the facts to the discharge authority (para 2-17 through 2-20, AR 635-200).

6-27. Reference. Army Regulation 635-200, Enlisted Personnel.

Section VI. DISCHARGE FOR CONSCIENTIOUS OBJECTION

6-28. General. Since 1864 Congress has allowed draft exemptions for persons who were conscientiously opposed to participation in war. Since 1962 the soldier (officer or enlisted) has been allowed to apply for a discharge based on his conscientious objection to war formed after his entry into the Army.

6-29. Conditions for Discharge. *a.* A soldier may apply for a discharge if he is opposed to *all* forms of war because of deeply held, sincere moral, ethical or religious beliefs. An opposition which is based solely on considerations of policy, pragmatism, or expediency is not sufficient. Also, an opposition to a single war or type of war is not sufficient.

b. A soldier may not request a discharge because of conscientious objection beliefs he held before he entered the Army but failed to make known to his draft board, nor may he request a discharge if he has been denied an exemption by Selective Service. His beliefs must have arisen while he is on active duty, though they may be based on experiences, training, and learning occurring before entry into the service.

6-30. Unit Commander's Responsibilities. The unit commander is the first person to take action on an application for discharge. When he receives the application from the soldier, he should review it to insure that it contains all of the information required by AR 600-43. If there are any omissions, he should give the soldier an opportunity to correct his application. If, however, the commander thinks that the soldier has not stated a valid case, he cannot refuse to process the request.

a. Interviews. The most important responsibility of the unit commander is to arrange for the soldier to be interviewed by a chaplain and a psychiatrist, who will make reports to be attached to the application. After these interviews have been completed, the commander will advise the soldier of his right to a hearing on his application before an officer knowledgeable in the regulations and policies concerning conscientious

objection. This officer will normally be one appointed by the local major commander (division CG, post commander) (para 6-31).

b. Processing of Application. Once the interviews and hearings are completed, the unit commander must review the file and complete the actions required by AR 600-43. He will then forward the entire file through the chain of command to the commander holding general court-martial jurisdiction. That commander will then forward the file to Department of the Army for final action.

c. Assignment Limitations. During the processing of a soldier's application for a conscientious objection discharge he will not be required to perform any duties which are contrary to his stated beliefs. He may not be ordered to perform duties involving the use of or training in weapons. He may, however, be required to undergo training which is defensive in nature, such as the gas chamber exercise (AR 600-43).

6-31. Rights of the Soldier. Once the soldier has submitted his application for discharge he has several rights which his commander must assure him.

a. Hearing. The soldier has the right to a hearing on his application before an officer in the grade of CPT (0-3) or higher who is knowledgeable in the regulations and policies. The soldier does *not* have any right to counsel at this hearing, but may have a civilian attorney chosen and paid by him if he desires.

b. Application and Duties. He also has the right to submit his application and to have it considered by Department of the Army. During this time, he has the right to be free from duties which conflict with his beliefs. If he is ordered to perform such a duty and disobeys the order, he can raise the provision in AR 600-43 as a defense against nonjudicial or judicial action.

6-32. References. Army Regulation 600-43, Conscientious Objection.

Section VII. DISCHARGE FOR THE GOOD OF THE SERVICE (CHAPTER 10, AR 635-200)

6-33. General. Whenever court-martial charges have been preferred (signed and sworn), a soldier may request a discharge "for the good of the service" if the offense charged has a maximum punishment which includes either a bad conduct discharge or a dishonorable discharge. (See Table of Maximum Punishments, Manual for Courts-

Martial, United States, 1969 (Rev. ed.)). In most cases a discharge in lieu of a court-martial is decided upon after the soldier has been assigned a counsel, and the counsel does most of the paperwork. However, the unit commander does have certain responsibilities in the processing of these discharge requests.

6-34. Unit Commander's Responsibilities. Besides cooperating with the soldier's counsel in the collection of the various documents which must be attached to the discharge request, the unit commander must insure that the soldier receives a complete physical and psychiatric examination. The results of this examination will be attached to the discharge request. Once the soldier and his counsel have completed the request, it will be submitted to the unit commander. He will then recommend approval or disapproval, based on the seriousness of the offense and the soldier's

overall *military* record, and forward the request through the chain of command to the commander holding general court-martial jurisdiction (division CG, post CG). The general court-martial authority will take final action on the request for discharge.

6-35. References. *a.* Manual for Courts-Martial, United States, 1969 (Rev. ed.).

b. Army Regulation 635-200, Enlisted Personnel.

Section VIII. OTHER DISCHARGES

6-36. General. Other situations may arise where a soldier is eligible for discharge before the completion of his normal term of service. Some of these situations are set forth in paragraphs 6-37 and 6-38.

6-37. Discharge for Convenience of the Government. This discharge is the prerogative of the Secretary of the Army, and he alone can approve and order such a discharge. The discharge given is either an honorable or general discharge, and there is no requirement for a hearing or similar procedure. A discharge for convenience may be given for any of the following reasons:

- a.* order to active duty as an officer.
- b.* erroneous induction.
- c.* aliens not lawfully admitted to CONUS.
- d.* reserves on active duty.
- e.* soldiers on unspecified enlistments.
- f.* soldiers not meeting medical fitness standards.
- g.* for immediate reenlistment.
- h.* national health, safety or interest.
- i.* lack of military jurisdiction.
- j.* early separation of inductees having prior military service.
- k.* soldiers too close to ETS to warrant productive PCS.

- l.* attendance at school as student or teacher.
- m.* to gain seasonal employment or employment with law enforcement agency.
- n.* erroneous enlistments.

Specific rules for each of these categories are found in chapter 5, AR 635-200.

6-38. Discharge for Fraudulent Entry. A soldier who has enlisted in the Army by means of a fraudulent concealment, omission, or misrepresentation of a material fact may be discharged with an undesirable discharge. The procedures are similar to those for soldiers who have been found unfit (para 6-1 through 6-6) and include the right to a board of officers and counsel. "Material facts" which have been concealed to obtain enlistment and which warrant discharge are—

- a.* prior service.
- b.* citizenship status.
- c.* conviction by civilian court.
- d.* declaration as a juvenile offender.
- e.* medical defects.
- f.* AWOL or desertion from prior service.
- g.* false identity.

The specific rules and procedures are set forth in chapter 14, AR 635-200.

6-39. Reference. Army Regulation 635-200, Enlisted Personnel.

Section IX. CHARACTERIZATION OF DISCHARGES

6-40. General. A unit commander has the responsibility of recommending the type of discharge a soldier will receive upon ETS or upon discharge before ETS. The criteria for characterizing a discharge are found in paragraph 2-11, AR 635-200. In deciding the type of discharge, the

commander can consider only a soldier's military record, and *not* his preservice activities nor activities during a prior enlistment or induction period. The three types of administrative discharges are, in order of precedence, honorable, general, and undesirable.

6-41. Honorable Discharge. Issuance of an honorable discharge is conditioned upon proper military behavior and proficient performance of duty by the soldier. Consideration must be given to his age, length of service, grade, personal decorations, and general aptitude. Isolated incidents of minor misconduct may be disregarded if the overall pattern of a soldier's service is good. There is no specific number of disciplinary actions which may disqualify a soldier from receiving an honorable discharge.

6-42. General Discharge. Recommending a general discharge certificate is appropriate when the pattern of a soldier's record shows a lack of satisfactory conduct or duty performance. Again, a specific number of disciplinary actions is not an automatic criteria for a general discharge and the commander must exercise his own discretion. A general discharge may be proper when the soldier has been convicted by a general court-martial or by more than one special court-martial. The soldier who receives a general discharge may be denied some veterans' benefits and may find it more difficult to obtain good employ-

ment in civilian life. Thus, if the commander has doubts about recommending a general discharge, he should give the soldier the benefit of the doubt and recommend an honorable discharge.

6-43. Undesirable Discharge. The undesirable discharge is the most severe of the administrative discharges and results in the loss of most veterans' benefits. Additionally, it will make it very difficult for the soldier to obtain civilian employment. Only a commander holding general court-martial jurisdiction can authorize an undesirable discharge, and then only after the soldier has had an opportunity to present his case to a board of officers. The grounds for issuance of an undesirable discharge are—

- a. unfitness.
- b. conviction by civilian court.
- c. fraudulent entry.
- d. for the good of the service.

6-44. Reference. Army Regulation 635-200, Enlisted Personnel.

DISCHARGE BENEFITS

THIS CHART shows the eligibility for benefits based on type of discharge. It does not indicate the other requirements that must be met. "A" indicates eligible only if the administering agency determines that for its purpose the discharge was not under dishonorable conditions. "E" indicates eligible and "NE" not eligible.

	DISHONORABLE	BAD CONDUCT General Court-Martial	BAD CONDUCT Special Court-Martial	UNDESIRABLE	GENERAL Under honorable conditions	HONORABLE
VA BENEFITS						
Wartime disability compensation	NE	NE	A	A	E	E
Wartime death compensation	NE	NE	A	A	E	E
Peacetime disability compensation	NE	NE	A	A	E	E
Peacetime death compensation	NE	NE	A	A	E	E
Dependency and indemnity compensation to survivors	NE	NE	A	A	E	E
Service pension: Nonservice connected disability pension	NE	NE	A	A	E	E
Educational assistance	NE	NE	A	A	E	E
Pensions to widows and children	NE	NE	A	A	E	E
Hospital and domiciliary care	NE	NE	A	A	E	E
Medical and dental care	NE	NE	A	A	E	E
Prosthetic appliances	NE	NE	A	A	E	E
Seeing-eye dogs, mechanical and electronic aids	NE	NE	A	A	E	E
Burial benefits (flag and expenses)	NE	NE	A	A	E	E
Special housing	NE	NE	A	A	E	E
Vocational rehabilitation	NE	NE	A	A	E	E
Orphans educational assistance	NE	NE	A	A	E	E
Home, farm, business loans (business loans available only to WW II and Korean veterans)	NE	NE	A	A	E	E
Autos for disabled veterans	NE	NE	A	A	E	E
MILITARY BENEFITS						
Mileage	NE	NE	NE	NE	E	E
Headstone Marker	NE	NE	NE	NE	E	E
Payment for accrued leave	NE	NE	NE	NE	E	E
Transportation for dependents and household goods	NE	NE	NE	NE	E	E
Burial in national cemetery	NE	NE	NE	NE	E	E
Retain and wear uniform home	NE	NE	NE	NE	E	E
Notice to employer of discharge	NE	NE	NE	NE	E	E
Award of medals, crosses and bars	NE	NE	NE	NE	E	E
Admission to Soldiers' & Airmen's Home	NE	NE	NE	NE	E	E
Army Board For Correction of Military Records	E	E	E	E	E	E
Death Gratuity	NE	NE	A	A	E	E
Use of wartime title and wearing of uniform	NE	NE	NE	NE	E	E
Army Discharge Review Board	NE	NE	E	E	E	E
OTHER BENEFITS						
Homestead preference	NE	NE	NE	NE	E	E
Civil Service employment preference	NE	NE	NE	NE	E	E
Credit for retirement benefits	NE	NE	NE	NE	E	E
Reemployment benefits	NE	NE	NE	NE	E	E
Naturalization benefits	NE	NE	NE	NE	E	E
Reclaimed lands preference	NE	NE	NE	NE	E	E
Employment as District Court bailiffs	NE	NE	NE	NE	E	E
DC police, fireman, and teacher retirement credit	NE	NE	NE	NE	E	E
Housing for distressed families of veterans	NE	NE	A	A	E	E
Farm housing loans	NE	NE	A	A	E	E
Unemployment benefits	NE	NE	A	A	E	E
Social Security wage credits for WW II service	NE	NE	A	A	E	E
Employment preference in Farm Credit Banks	NE	NE	NE	NE	E	E
Preference in purchasing defense housing	NE	NE	A	A	E	E

Figure 6-1.

CHAPTER 7

ADMINISTRATIVE BOARDS AND INVESTIGATIONS

Section I. INVESTIGATIVE TECHNIQUES

7-1. General. A commander is often called upon to conduct or to participate in investigations authorized by Army Regulations. He may have to determine the cause of an injury suffered by one of his men or inquire into damage to unit or individual equipment. He may have to participate in an investigation conducted by other officers concerning a matter in his command. Investigations usually conclude with findings and recommendations for administrative action which may have serious and far-reaching effects on a soldier. Therefore, it is important that the company commander understand the purpose of investigations and how properly to conduct one.

7-2. Methods of Investigation.

a. Objectives.

(1) Every investigation has the same basic objectives: the collection, assembly, and preservation of evidence; the finding of facts known to be true and those which can be assumed from all the evidence; findings and recommendations for administrative disposition. Each investigator must be aware of the importance of his task. He must remember that his report is often the sole source of information available to the appointing authority who must take final action on the case. Adverse as well as favorable evidence must be obtained and recorded. Too much emphasis cannot be placed upon promptness in making an investigation. With the passage of time, witnesses may forget, develop a partisan view of the facts, become reluctant to give statements or difficult to locate. Additionally, there may be changes in the physical appearance of the scene of the incident due to the repair of damaged property or change of the location of physical evidence.

(2) The investigation should develop definitive answers to the questions: When? Where? Who? What? and How? Generally, the time (when), place (where), the persons (who), and circumstances (what), involved in an incident may be established by a simple report; but the cause (how), and the resulting damage (what), may require extensive effort to obtain all the facts. The object is to gather, with the least possible delay, the best available evidence. In

this regard, the investigator must read and understand the applicable regulations so that he can seek out and recognize pertinent facts. If the regulation is not clear, advice should be obtained from the local staff judge advocate.

(3) The proper investigation of an incident requires patience, training, experience, and skill on the part of the investigator. Specific rules for the investigation of incidents cannot cover all situations. The investigator must use ingenuity and imagination to determine the best way to obtain the facts. The investigator is primarily a fact gatherer. He is not expected to engage in extensive legal research. He is obliged, however, to gather all pertinent facts on an impartial basis and report them accurately and concisely. Application of the appropriate legal principles to the factual situation developed by the investigation is the function of the appointing authority and his staff judge advocate. If the investigator is in doubt as to his particular responsibilities, he should consult the judge advocate. Unless complete and precise statements or other information are already available in connection with investigations made by others, the investigator will interview witnesses and parties involved and obtain statements, prepare diagrams, and obtain photographs. Damaged property should be inspected and photographed before it is repaired so that the investigator and later reviewers will be able to observe the extent of the damage. Injured persons should be visited, observed, and interviewed, if possible, in order to judge more accurately the nature and extent of their injuries. Medical examinations of injured persons should be arranged and conducted in accordance with applicable regulations. If an investigation has already been made for other purposes, the investigator should obtain a copy of that report. While such a report may not be adequate for his particular purpose, it could contain evidence and investigative leads of value to the investigator. If the report of the prior investigation contains diagrams, photographs, or witness statements, it may not be necessary for the investigator to cover the same ground. Copies of such items may be made and included in the investigation after they have been checked for accuracy. Generally, how-

ever, it may be necessary for the investigator to obtain more complete statements from witnesses. The investigator must put all his facts in the report if he wants the reviewers to see and understand the basis for his conclusions. Remember, those reviewing the investigation report see only the information in that report.

b. Collection and Preservation of Evidence. The most important part of an investigator's job is the collection and preservation of evidence. Evidence may take several forms.

(1) Real evidence is any tangible item other than a writing. A defective windshield wiper in a vehicle accident case would be a good example.

(2) Documentary evidence is quite common and may be any writing, whether an official record or not, which can be readily identifiable on its face. Examples are extracts from regulations, MP reports, extracts from Army records, letters, and many more. If the original document is contained in the original copy of the report, then the copies of the additional reports need not be certified. However, if the original document cannot be obtained, then any copy thereof must bear the notation "A TRUE COPY" followed by the officer's signature and signature block. While documentary evidence has a definite value in any investigation, it should not be relied on alone to provide the whole story. *Example:* In the investigation of a fire, the investigating officer attached the standard fire report as an exhibit and relied upon it in his findings as evidence of probable cause for the fire and amount of loss. This is a misuse of documentary evidence. First, while the officer knew that the fire chief, who was present at the fire, wrote the report, it was signed by the Post Engineer and not the fire chief. Therefore, the proper action would have been to obtain the statement of the fire chief concerning what he saw at the scene and his analysis of the event. Second, the report shows only final figures as to property loss. This too, is over-reliance on one document. Only accurate costs, including depreciation, salvage, and repair costs (or estimates) may be used when establishing the amount of damages.

(3) The most difficult form of evidence to collect and preserve is also the most important—this is testimonial evidence. Testimonial evidence is the oral statement of an individual which has been reduced to a written statement. Ideally, the person making the statement will then swear that it is true. A statement may be taken in several ways.

(a) A witness may simply be asked to write out everything he has to say. This typically results in a poor quality statement because a witness rarely tells a comprehensive story. Next,

he may be asked to tell his story to the investigator who either takes notes or records it on a tape recorder. Later, it is written up as a statement for the witness' approval and signature. Perhaps the best method is to discuss with the witness what took place, ask questions, clarify points in his remarks as he proceeds, and take notes of this discussion. As above, the notes are typed in the form of a statement for the witness' signature. The result is an orderly, comprehensive, and coherent statement.

(b) No matter how a statement is taken, several common errors usually occur. Failure to record in a witness' statement all that he says is probably the most serious error. Many investigators will take a short formal statement and then casually discuss the case with the witness, gaining new facts. If these facts are not recorded, any finding or recommendation which makes reference to them must be ignored as invalid for lack of sufficient evidence.

(c) The administration of oaths relating to sworn statements often causes difficulty. The authority of an investigating officer to administer oaths is contained in Article 136(b)(4), UCMJ. The use of DA Form 2823 for statements of witnesses solves the wording problem. This form may be used for military or civilian personnel. If these forms are not available, the form in figure 7-1 may be used as a guide.

(d) If a witness is unwilling to make a sworn statement, his statement may carry less weight as evidence but it is still considered proper evidence. This form in figure 7-1 may be used with the deletion of the words "under oath" and the preamble and "Sworn and" and "pursuant to Article 136(b)(4), UCMJ." If a witness is unwilling to sign any statement in writing, the investigator should take notes of the discussion, prepare them in statement form, and sign this statement under oath himself. AR 15-6, the procedural guide for most investigations, permits this type of *hearsay* evidence as long as it is relevant and material. However, the investigator should be cautious in accepting at full value the statement of any witness who refuses to sign it. These alternatives may seem to be time-consuming and burdensome, but they are a necessary part of preserving the evidence. Those who review the investigation will want to see the basis for the investigator's conclusions and a deficiency in evidence may well mean that the report is not legally sufficient.

(4) A picture is worth a thousand words, and never was this more true than in an investigation. Documents and statements of witness do not always provide an adequate representation of the incident. Investigators should make full use of photographs and diagrams to describe the facts underlying their investigation. The date/time and

"STATEMENT

I, HARRY A. PRIVATE, PFC, 123-45-6789, US Army, have been advised by 2LT John A. Doe that he is (an investigating) (a surveying) officer appointed by competent orders to investigate the loss of US Government property caused by a fire in building 182, Fort Blank, Kansas, on 1 June 1972; that I am requested to make a statement as a (witness) (person subject to pecuniary liability; that I do not have to make a statement); that I may consult legal counsel if I desire; and I make the following statement voluntarily and under oath:

[STATEMENT]

//////////////////////////////////End of Statement//////////////////////////////////

HARRY A. PRIVATE
PFC, 123-45-6789
US ARMY

Sworn and subscribed to before me this 10th day of June, 1972, at Fort Blank, Kansas, pursuant to Article 136 (b) (4), UCMJ.

JOHN A. DOE
2LT, INF
(Investigating) (Surveying) Officer"

Figure 7-1.

place should be indicated on all photographs and drawings. A timely picture or diagram may be an important item of evidence. Physical conditions may change with the passage of time so that photographs taken or diagrams prepared long after an incident may be valueless.

c. The Findings. After he has collected, recorded, and analyzed the evidence, the investigating officer is ready to begin the last stage of his investigation—the findings and recommendations. The findings made by the investigating officer serve an important purpose. They should not be the unsupported conclusions of the investigator. The term "findings" means, more specifically, findings of fact. The investigator must, step by step, lay out the facts established by the evidence he has gathered in a logical manner. An individual finding of fact may be based on direct evidence—SGT A stated that he saw SGT B light the fire; therefore, the fact is that SGT B lit the fire. Or, a finding of fact may be based upon circumstantial evidence—SGT A stated that he saw SGT B in the area where the fire started and that he saw no one else in the area; CID agent C said that the fire started in the area due to the lighting of several sticks with matches, therefore, the fact appears to be that SGT B lit the fire. The findings will not include the reasoning process leading up to the fact (as in the two examples above), but will state the facts in simple, concise terms so that anyone reviewing the report may get a complete picture

of what is known about the incident without having to examine each item of evidence. The investigator should not overlook the obvious in stating the findings. For example, in a fire investigation, the fact that there was a fire at a certain time and place should be stated as the first finding. The obvious and the assumed should not be overlooked. They are vital links in the chain of facts and failure to mention each one may well result in a report that is not legally sufficient.

d. The Recommendations. The recommendations of action to be taken are the personal opinion of the investigating officer based upon his findings. Under some regulations, they must meet certain standards to be legally sufficient. Be sure to read the basic regulation carefully. The recommendations must cover each of the issues raised by the appointing order or the regulation and they should deal with each issue separately unless several issues can be logically combined. The recommendations must be based solely on the findings and not upon conjecture or suspicion. Finally, they should be fair, reasonable, and appropriate to the situation and the known conditions. The simplest way to look at the final investigative report is to imagine it as a pyramid. The evidence, as contained in the report, is the base; the findings are the middle portion; and the recommendations are the peak. Each part of the report relies upon the strength and completeness of the underlying parts, just as each level of the pyramid must be built to support the next level

up. If the evidence does not support the findings, the recommendations will have no foundation, and the entire report will fail. The investigating officer must critically review his work to insure that his investigation will stand on its own.

7-3. References. *a.* Army Regulation 15-6, Procedures for Investigating Officers and Boards of Officers Conducting Investigations.

b. Army Regulation 27-20, Claims.

Section II. INVESTIGATIONS UNDER AR 15-6

7-4. General. Many Army regulations require investigations but provide no procedural guide for the investigating officer or board of officers to follow during the investigation. AR 15-6 provides this procedural guidance. For example, the board of officers appointed to consider the administrative elimination of a soldier for unfitness under AR 635-200 uses the procedure set forth in AR 15-6 and chapter 6. On the other hand, a commander desiring to inquire into a matter in his own organization may find no regulation which covers the specific situation. In such cases, he too would turn to AR 15-6 as a guide to the conduct of his entire investigation.

loss of funds, or fix responsibility for the cause of an accident. Boards of officers may be appointed to act as an advisory body to appointing authorities at higher levels of command. Boards may act as administrative tribunals to examine facts, hear evidence and to make determinations for promotion, separation and retirement. Administrative tribunals are perhaps best known as the elimination boards for enlisted personnel (chap 6). These boards are appointed pursuant to specific regulation, such as AR 635-206, and conduct hearings based upon the procedural guide in AR 15-6.

7-5. Use. Investigating officers and boards of officers are appointed by superior authority to investigate matters usually pertaining to specific regulations with AR 15-6 as the procedural guide. AR 15-6 is not to be used in the investigation of court-martial charges. If, during the conduct of an investigation under this regulation possible criminal conduct appears, this fact should be promptly brought to the attention of superior authority for consideration by an investigation under the provisions of paragraph 32, Manual for Courts-Martial.

7-6. Responsibilities. The commander must be able to recognize the need for initiating board action as described in chapter 6 and he should be able to supervise command investigations within his own unit. However, the company commander and company grade officers—and senior noncommissioned officers—have more frequent and serious responsibilities as members themselves of boards of officers and as investigating officers. The major burden of conducting investigations and boards typically falls upon this group of officers. Accordingly, they must familiarize themselves with the substantive regulation, such as AR 635-200, before participating in the proceeding and they must have a working knowledge of AR 15-6 as described below.

a. Command Boards and Investigations. The primary purpose of an investigation is to ascertain facts and to report them to the appointing authority for action as he deems appropriate. The command prerogative board of officer (which may be one officer) or investigating officers may be appointed at the discretion of the commander to investigate any activity or occurrence within his command. This particularly useful tool of command enables the military leader to inquire into any matter not specifically considered in other regulations. He may use AR 15-6 as a procedural guide to investigate widespread personnel complaints in the unit, excessive vehicle accidents in a particular platoon, or the lack of proficiency in a particular skill reflected in MOS test scores.

7-7. Procedures. The basic rules of procedure for investigating officers and boards of officers are found in AR 15-6. Unless other regulations provide specific guidance, the provisions of this regulation are controlling.

b. Boards and Investigations Required by Regulation. Boards of officers, including one-man boards, and investigating officers are typically appointed to conduct an investigation required by a specific regulation. These boards and investigating officers may determine the cause of injury or death, inquire into the loss or misappropriation of property, establish liability for the

a. Preliminary Actions. The first task of the investigator, either a board or an officer, is to carefully read the appointing order and the applicable regulations mentioned in it. Questions should be addressed to the appointing authority or the local judge advocate. Be sure you understand the language of the regulation. Many investigations and reports of boards are found to be legally insufficient because the investigator misunderstood a provision in the basic regulation.

b. Appointments. Paragraphs 3 through 5, AR 15-6, outline the appointment, swearing, and challenging of investigating officers and members of boards of officers.

c. Duties. Paragraph 6, AR 15-6, discusses in

detail the duties of the investigating officer or recorder of a board prior to, during, and after the hearing. This discussion is clear, concise, and of great importance to any proceeding. Illustratively, if the investigator fails to give timely notice of a hearing to the parties under investigation or if he fails to notify witnesses, the investigation may be needlessly delayed or it may be overturned as legally insufficient.

d. Counsel. Paragraph 8, AR 15-6, provides that an individual under investigation is entitled to have either military or civilian counsel. Any military person requested by the individual under investigation will be appointed as counsel if he is reasonably available. Fees for civilian lawyers will not be paid by the Government. "Counsel" here may be a nonlawyer. Legally qualified counsel must be provided only when the basic regulation under which the board of investigation was appointed requires such counsel.

e. Procedures for the Hearing. Paragraphs 9 through 18, AR 15-6 outline procedures for conduct of the investigation. Although these procedures pertain to what is normally called a "formal" investigation, countless investigations have been overturned because investigating officers chose to follow an "informal" format to the prejudice of the parties under investigation. That is, they simply gathered random statements and evidence while observing only some of the rules in AR 15-6. At the conclusion of the investigation it was discovered that serious questions of conduct, efficiency, character, or pecuniary liability had been raised which could not be pursued without first conducting another "formal" investigation. Thus, it is best to carefully observe the rules in these paragraphs discussing evidence, rights of witnesses, prejudicial allegations, and pecuniary responsibility. Although boards and investigations need not observe the technical rules of evidence and procedure found in courts-martial, conclusions and recommendations must be based upon substantial and credible evidence. Substantial evidence is described as evidence which a reasonable mind can accept as adequate to support a conclusion. Whenever possible, the

highest quality evidence obtainable and available will be considered. Facts may not be established by rumor. An individual whose conduct, efficiency, fitness, or pecuniary liability is under investigation must be present at all open sessions of the hearing and he must have the opportunity to cross-examine adverse witnesses. The foregoing is only a brief summary of the important provisions in these paragraphs. The investigating officer or board member must know them well and he should have a copy of AR 15-6 with him throughout the proceeding.

f. Findings and Recommendations. Paragraphs 19 through 23, AR 15-6, discuss findings and recommendations. In addition to the observations made above, findings should be in such form as to give a clear and coherent recital of the facts as established by the evidence and the conclusions of the investigator. Recommendations must be made according to the investigator's understanding of the rules and regulations for the government of the Army, Army policies and the customs of the services, guided by his concept of justice both to the government and the individual concerned.

7-8. Report of Proceedings. *a.* The report of proceedings will be prepared as prescribed in the regulation under which the board or investigation was appointed. AR 635-200, for example, requires that the findings and recommendations of the board be recorded verbatim in the report. The AG officer may be helpful in assembling the report.

b. When there is no regulation which prescribes the format for the report, DA Form 1574 (Report of Proceedings by Investigating Officer (Board of Officers)) should be used. This is an excellent guide to procedure and should be available to the investigator when he begins his investigation. Paragraphs 24 and 25, AR 15-6 outline the requirements for these reports.

7-9. Reference. Army Regulation 15-6, Procedure for Investigating Officers and Boards of Officers Conducting Investigations.

Section III. CLAIMS

7-10. General. A claim is a demand for the payment of money resulting from an accident or incident causing loss or damage to property, personal injury, or death. The Army claims system provides for the payment of these claims if they resulted from the negligent or wrongful conduct of soldiers or civilian employees. On the other hand, if military property is damaged by someone in the civilian community or if a soldier is likewise injured, the Army may pursue a claim

against the civilian for the value of the government property or the reasonable costs of medical care furnished the soldier. In any event, all these claims are based upon investigations conducted at the time and place of the accident. AR 27-20 is the basic regulation for all claims filed against the government. Every Army installation has its own claims regulation which discusses local procedures and which directs the appointment of claims investigating officers for all troop units

on post. Commanders should be familiar with this regulation.

7-11. Commander's Responsibilities. *a. Investigations.* No claim may be paid until the facts and circumstances surrounding the accident or incident have been carefully investigated by the claims investigating officer. Thus, the commander must insure that any accident or incident in his unit which may give rise to a potential claim is promptly investigated. He is usually the first to know about such accidents and it is his prompt notification of the claims investigation officer that insures the timely preservation of evidence which is so important in the review and payment of claims. The local staff judge advocate is responsible for administration of the claims system. He decides whether a claim will be paid and how much will be paid. Any question concerning claims investigations should be addressed to him.

b. Damage to Soldier's Personal Property. The claims system provides for an important benefit to soldiers who may suffer loss or damage to personal property incident to their military service. Claims may be paid for loss or damage to personal belongings shipped or stored pursuant to PCS orders, losses due to hostile fire in a combat zone and losses arising from fire, theft or similar hazard in assigned government quarters (chap 11, AR 27-20). Payment of claims under these provisions has a significant effect on the morale and welfare of the individual soldier. Commanders should understand this regulation and insure that their men make timely application for payment of their claims. Prompt filing of claims will also aid the Army in recovering from carriers, warehousemen, insurers, and other third parties for loss or damages caused by them to personal property of military personnel.

7-12. Investigating Officer's Report. *a.* Chapter 2, AR 27-20 describes in detail the procedures to

be followed in claims investigations. DA Form 1208 (Report of Claims Officer) is the basic guide for the investigation. Typically, each battalion will have a claims investigating officer on orders. When extensive maneuvers are scheduled, maneuver damage claims teams may be appointed. Serious accidents may result in claims totaling many thousands of dollars. For this reason, the investigating officer must begin his work promptly, follow the provisions in chapter 2, AR 27-20 with diligence, and feel free to direct questions concerning any phase of his investigation to the local judge advocate.

b. Often the investigating officer will find himself joined by other investigators working on the same accident but pursuant to other regulations. Bear in mind that the diagrams, police reports, statements, and other available evidence may serve more than one investigation. Illustratively, as part of the Army's accident prevention program all accidents involving injury or property damage must be investigated (AR 385-10). AR 385-40 sets forth the requirements for the investigation and the report. Although the purpose and requirements for the safety and claims investigations may differ, evidence obtained for one investigation may well be used in the other. However, each investigating officer has the independent duty to thoroughly investigate the incident. Before evidence from another report is used, it should be completely checked for accuracy, relevance and completeness.

7-13. References. *a.* Army Regulation 27-20, Claims.

b. Army Regulation 27-40, Litigation.

c. Army Regulation 385-10, Army Safety Program.

d. Army Regulation 385-40, Accident Reporting and Records.

Section IV. LINE OF DUTY

7-14. General. When a soldier is injured, disabled or unable to perform his normal duties, it is necessary for the Army to establish the cause of such condition for purpose of medical care, bad time, and similar matters. For this reason, procedures have been established to determine whether the injury or condition occurred while the soldier was in the line of duty (LOD) or not in the line of duty (NLOD), and, if not in line of duty, whether it was due to the soldier's own misconduct. Certain legal obligations arise or legal liabilities arise as a result of these determinations.

a. Loss of Pay. A soldier who is absent from

duty for more than a day because of a disease which was caused by and immediately follows his intemperate use of alcoholic liquors or habit forming drugs will not be paid his base pay, special or incentive pay during the period he is absent. However, soldiers participating under the exemption policy of the Department of the Army Alcohol and Drug Abuse Prevention and Control Program are not usually considered to be absent from duty.

b. Lost Time. A soldier who is unable to perform his duties for more than one day because of excessive drinking or a disease or injury caused by

his own misconduct may be held past his ETS to make up for such absence.

c. Disability. While an LOD determination is not final as to disability retirement or separation benefits, the evidence in the LOD investigation will be used by the physical evaluation board in its decision making.

7-15. Procedures. There are two types of procedures which can be used in making an LOD determination, depending on the circumstances of the individual case.

a. Informal Investigation. An informal investigation consists of the gathering of only enough evidence by the unit commander to show that absence without authority, deliberate injury or illness, or misconduct were not involved. An informal LOD report consists of a completed DA Form 2173, (Statement of Medical Examination and Duty Status), with a small number of attached documents, if necessary, to show that absence without authority or misconduct were not involved.

b. Formal Investigation. A formal investigation consists of the fullest and most detailed investigation possible to ascertain all the facts surrounding the death, injury, or disease of the member. A formal LOD report consists of a completed DD Form 261 (Report of Investigation in Line of Duty and Misconduct Status) and attached documents which are used to substantiate the findings reached, and will be conducted in accordance with the provisions of AR 15-6 and AR 600-33.

c. Appeals. A soldier who feels that the findings of LOD or NLOD are erroneous may appeal the decision, in writing, within 45 days after receipt of notification. Guidelines are set forth in paragraph 3-7, AR 600-33.

7-16. Rules for LOD Determination. In arriving at a determination of LOD or NLOD, the commander or investigating officer must follow certain principles as set out in Chapter 2, AR 600-33 and DA Pamphlet 27-21.

a. Findings. One of three findings may be arrived at in an LOD case. They are:

- (1) Line of duty (LOD)

- (2) Not line of duty—due to own misconduct (NLOD-DOM)

- (3) Not line of duty—not due to own misconduct (NLOD-NDOM)

b. Rules. Any injury or disease of a soldier is presumed to be LOD. This general rule may be overcome by substantial evidence (evidence on which a reasonable man would make a decision of importance) that the injury or disease was—

- (1) proximately caused by intentional misconduct or willful gross neglect; or

- (2) incurred while AWOL; or

- (3) not occurring while on active duty and made worse by military service.

The specific rules and applications are clearly set out in DA Pam 27-21 and Chapter 2, AR 600-33.

7-17. LOD Determinations in Drug Abuse Cases.

a. A service member in an in-patient status, who has been determined by a physician to be physically incapacitated because of the intemperate use of drugs or alcoholic beverages, and is unable to perform his full military duties for a period in excess of 24 hours, will be administratively determined to be "Not in Line of Duty—Due to Own Misconduct" for the period of actual incapacitation. The medical treatment facility commander is responsible for this line of duty determination. If a member is not determined to be so incapacitated, a line of duty determination is not required. It is the intent of this policy that physical incapacitation will be strictly interpreted so as not to unnecessarily penalize a serviceman merely because he is hospitalized.

b. A member who is a participant in the Department of the Army Alcohol and Drug Abuse Prevention and Control Program and is undergoing detoxification, treatment, or rehabilitation pursuant to that program is considered to be absent from his duties because of administrative policies and the line of duty provisions of AR 600-33 do not apply.

7-18. References. *a.* Army Regulation 600-33, Line of Duty Investigations.

b. DA Pamphlet 27-21, Military Administrative Law Handbook.

Section V. REPORTS OF SURVEY

7-19. General—Property Accountability. Congress appropriates funds, the Department of Defense allocates these funds, and the Army buys goods and equipment. This equipment is delivered for use to the individual soldier under a system of property accountability which places great responsibility upon a company commander, his

officers and senior noncommissioned officers. There are several methods for obtaining relief from property accountability. For example, property may be turned in as unserviceable, due to use—"fair wear and tear." The Inventory Adjustment Report (DA Form 444) allows for the reporting of losses of property maintained on unit

property books (with some exceptions). Such losses may be investigated using the report of survey standards and the general procedures for a board of officers (AR 15-6). In some cases, individuals responsible for loss or damage, up to \$250.00, may admit liability and simply reimburse the government. However, if the procedures above are not applicable or the amount in question exceeds \$250, an investigation by report of survey must be conducted to establish pecuniary liability (AR 735-1).

7-20. Principles of Liability. For the Army's property accountability system to function, some individual must be responsible at all times for the care and safekeeping of military property. However, soldiers are not absolutely liable for the loss or damage to government property in their care. In order to determine liability, several general rules apply. But, first, a word about negligence. Although the principles of liability may cause little difficulty, the degree of negligence typically creates interpretative problems. Simple negligence is an act or omission showing a lack of the exercise of due care normally expected of a reasonably prudent man under the circumstances (AR 735-11). Gross negligence is defined as an act or omission combined with a reckless, deliberate, or wanton disregard for the foreseeable results (AR 735-11).

Accordingly, the determination of negligence in a vehicle accident may raise many questions for the investigator who is guided only by the rather general definitions in the regulation. On such questions, the investigator should feel free to consult with the local judge advocate whose legal background will be useful in determining the degree of negligence established by the evidence.

a. Personal Responsibility. An individual may be charged with loss or damage caused by his simple negligence, gross negligence, or willful misconduct when he has personal responsibility for property. Personal responsibility is described as the relationship between the individual and arms and equipment which have been issued for his exclusive use or which have been converted to his personal use. Property in the personal responsibility category is rather limited. Arms means personal weapons such as a rifle or pistol, and not crew-served weapons. Equipment may include flashlights but not a set of mechanic's tools. AR 735-11 describes these categories in detail. Converted property means equipment which has been stolen or misappropriated. Illustratively, a soldier may not be charged with damage to a vehicle based upon his simple negligence because it is not within his personal responsibility. But, if he takes it for a joy ride without authority—converts it to his personal use

his simple negligence is sufficient to establish the pecuniary charge. The personal responsibility rule also pertains to the loss of public funds, e.g., loss of a Class A agent and officer.

b. Supervisory Responsibility. An individual may be charged with any loss or damage caused by his gross negligence or willful misconduct when he has supervisory responsibility for property. Supervisory responsibility is the relationship between an individual and property under his control or supervision for which he *does not* have personal responsibility. This would include crew-served weapons and vehicles which he uses or whose use he supervises. Clearly, the individual is held to a much higher standard of care for property within his personal responsibility because only simple negligence is required to hold him liable. Since the regulations specifically exclude many items of property from this "personal" category—vehicles, typewriters and tool sets—it appears that a soldier may not have personal responsibility for equipment that he personally uses. He has supervisory responsibility over larger items of equipment, although in common practice he is not supervising their use but may be using them himself. One of the most significant applications of this concept is in the use of motor vehicles. He has supervisory responsibility for his vehicle and his actions causing loss or damage must be considered gross negligence or willful misconduct before he can be held liable for damage to it. AR 735-11 contains a detailed discussion of these principles and should be read carefully by both the accountable officer and the investigating officer. The determination of liability based upon these rules, or upon the evidence in the file, may later be the basis for an appeal, request for reconsideration or remission of indebtedness.

c. Gross Negligence or Willful Misconduct. An individual may be charged for loss or damage to property not in his personal custody or under his supervisory control (personal or supervisory responsibility) when the loss was caused by his willful misconduct or gross negligence.

d. Assigned Government Quarters. An individual occupying assigned government quarters or having custody of government property issued for use in family quarters, may be charged with loss or damage to the property caused by his gross negligence or the gross negligence of a member of his household.

7-21. Investigations by the Surveying Officer. Chapter 5, AR 735-11 set forth the requirements for the investigation and the preparation of a report of survey. The surveying officer, appointed by the special court-martial authority, should carefully review the DD Form 200 (Report of Survey) and the file prepared by the accountable officer.

If this investigation parallels another on the same incident, he should examine the evidence already gathered. Frequently, a claims investigation, safety investigation, or line-of-duty investigation will all be in progress at the same time. As always, prompt investigation is essential. The Surveying Officer should carefully observe the methods of investigation discussed above. Findings and recommendations must be based upon a sound analysis of the evidence. Bear in mind that the person under investigation has the right to consult with legal counsel if advised of the surveying officer's intention to hold him liable (AR 735-11).

7-22. Processing the Report of Survey. *a. Action by the Installation Commander.* The investigating officer will return his completed file to the appointing authority who will forward it through channels to the installation commander. The installation commander, acting for the Secretary of the Army, has the authority to hold a person liable up to \$5,000 and he may relieve a person of liability up to \$5,000. All reports of survey recommending pecuniary liability must now receive a legal review prior to the installation commander's action.

b. Appeals. Military personnel are authorized to request reconsideration or to appeal from a determination holding them pecuniarily liable. Reconsideration is an informal review of the report at local installation level. Requests for reconsideration must be submitted within 60 days after an individual is notified he has been held liable. An appeal is a formal determination of the adequacy of the facts to support the recommendation of the survey officer and must be filed within 3 years. The staff judge advocate can help individuals preparing requests for reconsideration or appeals. While requests for reconsideration go only as far as the headquarters taking final action on the report of survey, final disposition of appeals is made by the Secretary of the Army. Request for remission of indebtedness may be made by an enlisted person who has been held liable by a report of survey to have the dollar amount of his liability reduced. These are submitted for action through channels to the Secretary of the Army (chap 11, AR 735-11).

7-23. References. *a.* Army Regulation 735-5, Deviations and Waivers of Military Property.

b. Army Regulation 735-11, Accounting for Lost, Damaged, and Destroyed Property.

CHAPTER 8

NONPUNITIVE DISCIPLINARY MEASURES

8-1. General. Commanders, unit leaders, and noncommissioned officers are required to deal with a broad spectrum of misconduct. At the most serious end are found crimes familiar to a civilian society and serious military offenses. Less serious civilian and military offenses are loosely described as minor offenses. Below these, however, are even less significant acts of misconduct which may not even rise to the level of an offense and which can be dealt with without the necessity of punishment. When some form of misconduct is committed by a person in the service, his or her commander addresses the problem of what to do about it. The commander has a wide variety of options available to him, and each has its particular attributes and values. The commander should consider some action for every person who misconducts himself, beginning with the least severe action believed to accomplish the necessary goals. The commander's choice of action will depend in part on the nature of the misconduct and it will also depend upon the goal sought. For example punishment is generally considered to have one or more of these goals:

- a. to protect society against a repetition of the offense;
- b. to reform the offender so he will not repeat the offense; and
- c. to deter others from considering and undertaking such an offense.

The list of available options has, at its most serious level, the general, special, and summary courts-martial. These are judicial actions. Through these courts, penalties may be inflicted on the offender in the nature of confinement, forfeitures of pay, loss of rank, and even, under certain circumstances, a punitive (dishonorable or bad conduct) discharge. Further down, we find nonjudicial action, the Article 15, UCMJ. Here the penalties are more strictly limited. The spectrum of options available to the commander includes a variety of steps that are loosely collected under the titles of administrative or administrative corrective actions. As the words reflect, judicial and nonjudicial punishment procedures deal with *punishment*, which emphasizes infliction of a penalty rather than correction. Patterns of misconduct often commence with minor infractions and, too often, commanders

accumulate several infractions and incorporate them into a single court-martial. This procedure is prohibited (para 25, MCM) and bypasses the opportunity to exercise sound leadership through the use of increasingly more severe administrative measures if further offenses occur. The discussions in paragraphs 8-2 through 8-11 are tools by which the unit commander may rehabilitate and discipline his troops without resorting to punitive procedures.

8-2. Guidelines. The various administrative corrective actions emphasize the element of correction, the idea that the misconduct is not so much the product of an intentional or deliberate or gross failure to comply with the prescribed standards of military conduct, as it is the product of simple neglect, forgetfulness, ignorance, laziness, inattention to instruction, sloppy habits, immaturity, difficulty in making the adjustment to the disciplined military life, or other similar reasons. Implicit in this action is the belief that the individual concerned can, with proper guidance, become an efficient and competent soldier. The commander has an excellent opportunity, in dealing with the less significant acts of misconduct, to salvage good military manpower, to teach a young soldier the error of his ways without at the same time inflicting upon him a penalty which he may never be able to overcome. The procedures available to the commander permit him to deal with this type of misconduct himself and without requiring a formal report. The soldier can thus be corrected and returned to duty without a serious blemish on his record, as would be the case if he were subjected to nonjudicial punishment. In dealing with the lesser range of misconduct, the commander is primarily engaged in teaching and training in discipline and the proper standards of conduct, and he should be not at all interested in *punishment*, or the infliction of a penalty. This is a fine, but crucial, line for the commander. If punishment is to be sought, then Article 15 or the punitive actions should be considered. If teaching and training are his prime considerations, then the administrative corrective actions should be considered. A wise use of the various administrative corrective actions will frequently result in an individual adjusting and improving his conduct so that he does not ultimately become a

candidate for punitive action, an Article 15 action, or administrative separation or reduction. Equally true, however, is the fact that in some instances, judicial or nonjudicial punitive measures are immediately appropriate. One of the tests of good leadership is the correctness and success of the leader's determination as to which measure or combination of measures is appropriate for a particular individual involved in particular circumstances at a particular time. The following administrative corrective actions are not noted in any order of seriousness or importance, because in corrective action, the personality of the offender and the state of his mind at the time of his misconduct are determinative of the value of each corrective device. In other words, what might work well with one person might be useless for another. Sometimes, a combination of two or more of these measures may be employed together, if the situation warrants.

8-3. Deferment of Discretionary Benefits. *a. Authority.* The unit commander has the power to withhold privileges in order to maintain good order and discipline. Where the commander authorized to confer a benefit at his discretion determines that the person demonstrated by his misconduct a lack of readiness or fitness or responsibility for the benefit, award, or promotion, he may withhold such benefits. This can be a useful corrective device for the commander to use as an incentive for improved behavior, but of course, this depends, like the other corrective devices, upon the commander's intent and determination being communicated to the soldier concerned. It also depends upon the deferment of the benefit having some reasonable comparability in importance, seriousness, and duration with the transgression that gives rise to it and the accomplishment of the desired correction. Too long a deferment or too disproportionate an action can easily discourage a soldier and actually become a barrier to the desired correction in attitude or conduct.

b. Applicability. Aside from the pass privilege (chap 10, AR 630-5), other privileges exist which lend themselves to being withheld. An individual may be barred from an area or activity; e.g., a soldier who persists in fighting in the EM club may be denied the use of that activity for a certain period. Privileges over which the commander has no direct control, e.g., driving on-post, use of the theater and PX, and living in government quarters, can be terminated upon the recommendation of the unit commander. Caution should be exercised, however, to insure that the privilege withheld has a significant relationship to the offense committed; e.g., driving privileges should not be revoked for an assault upon another individual. However, removal of PX privileges might be appropriate for the soldier guilty of disorderly conduct in the PX.

c. Procedure. When the commander has direct control over the grievance, he simply informs the offender that his privilege has been summarily revoked. When a higher authority controls the activity, the unit commander submits a Disposition Form (DA Form 2496) through channels requesting that the individual's privilege be revoked and stating the grounds for such action.

8-4. Conduct and Efficiency Ratings. *a. Authority.* The unit commander is responsible for insuring that conduct and efficiency ratings are properly recorded on the Enlisted Qualification Record (DA Form 20) of each enlisted member of his unit. By awarding less than an "excellent" rating in the appropriate instance, a commander may affect the promotions, assignments, and type of discharge of his career personnel (para 8-9 through 8-20, AR 600-200).

b. Applicability. Conduct and efficiency ratings are rendered at the following times:

- (1) Soldier reassignment from one organization to another.
- (2) Change in rating officer.
- (3) Soldier attachment to another organization when DA Form 201 (Military Personnel Records Jacket, U.S. Army) accompanies the individual (unless a rating was given within preceding 60 days).
- (4) Change in duty MOS (efficiency rating only).
- (5) Soldier separation, including discharge for immediate reenlistment.
- (6) Award of the Good Conduct Medal or clasp.
- (7) Soldier dropped from the rolls of an organization.
- (8) As of day prior to the date of AWOL.
- (9) When certificate barring enlistment or reenlistment is either approved or voided.

c. Procedure. The unit commander submits a letter, normally a locally prepared form, through channels to the individual's personnel section, at the times outlined in *b* above, indicating the individual's conduct and efficiency ratings for a specific period covered and requesting that they be entered on his Enlisted Qualification Record (DA Form 20). The commander should discuss the conduct and efficiency ratings with the individual. The commander rates the conduct of all his assigned enlisted personnel. The efficiency rating is rendered by the officer who is the soldier's immediate supervisor. Each of these ratings should be founded upon the rater's personal knowledge and observations; conduct ratings describe conduct and behavior, while efficiency con-

cerns only job performance. The ratings for any given period should not be influenced by previous reports rendered. Use of the term "Unknown" is prohibited if the individual has been assigned to the unit for 30 days or more. Additionally, any rating which might disqualify an individual from an Honorable Discharge and which is not substantiated in the individual's 201 file by information such as court-martial, AWOL, etc., must be supported with a brief, written explanation.

8-5. Admonitions and Reprimands. a. Authority. The unit commander may issue an admonition or reprimand, either oral or written, as an administrative corrective measure. In contrast to conduct and efficiency ratings, which cover specific time periods, an admonition or reprimand should be issued only for a specific act of misconduct (para 3-3 and 3-4, AR 27-10).

b. Corrective Admonishment. This can be oral or written and it can be given by any level of authority from the NCO to the commander. It is a warning that the act is considered to be misconduct, that its repetition will likely evoke a further response from the commander and possibly, even probably, some escalation in the seriousness with which the whole matter will be viewed and dealt.

c. Corrective Reprimand. Also either oral or written, and may be applied by a person at any level of responsibility, from NCO to commander. It is a reproof, a rebuke, a censure, strong criticism, a "chewing out" for failing to comply with the established standard.

d. Procedure. An oral admonition or reprimand is administered to the individual by the commander at the place and in the manner of his choice. A written admonition or reprimand is prepared in letter form and submitted through channels to the individual's personnel section along with a request that it be placed in the temporary section of the offender's field 201 file. A copy of the letter should also be given to the soldier. It remains there until the serviceman is transferred, separated from the Army or the administering commander requests its removal by the submission of a subsequent letter through channels (para 1-8, AR 640-10). Since these measures can also be imposed as nonjudicial punishment, commanders should insure that a written administrative admonition or reprimand contains a statement indicating that it has been imposed merely as an administrative measure and not as punishment under Article 15, UCMJ. See AR 600-37 for additional guidance concerning administrative reprimands. This regulation authorizes general officers to permanently file administrative reprimands in service member's files, under certain circumstances.

8-6. Counseling. Counseling consists of advising the soldier of the error of his ways, but an effort is made by the commander to learn what it was that produced this form of conduct, why the soldier had failed to maintain the desired standards, or the reasons behind a defective or unresponsive attitude. Counseling may be written, but is usually oral—it may be performed by the commander personally, his representative, a unit leader, or a noncommissioned officer. It involves the furnishing of helpful advice, an endeavor to arouse in the soldier the desire to be a better soldier, not because he is threatened with some unfavorable action if he fails to do so, but because his own self-respect demands he do a better job. Sometimes the counseling takes the form of discussion or special instruction over an extended period, and sometimes it results in a soldier being further assisted by professional counselors where his difficulties demonstrate the need for these services (like the chaplain, judge advocate, psychiatrist, debt counselor, marriage counselor, and the like). The counseling may inspire a soldier to correct his ways so that he does not let down his comrades or his family or others who have his loyalty and respect. Or it may show him the advantages of proper conduct as contrasted with the "hassling," or harassment, or difficulties derived from misconduct. Skill at counseling does not come easily or quickly. Officers and NCO's who study this subject enhance their chances of success in counseling. Obviously, increased experience of the counselor at counseling, increased knowledge by him of human motive generally and of the personality of the soldier concerned, and enhanced ability by the counselor to communicate with and understand the soldier concerned, the knowledge and adherence by the counselor himself of the proper standards all tend to increase the chances that counseling will successfully inspire improved conduct and attitude on the part of the counseled soldier.

8-7. Corrective Training. Corrective training is used when the soldier has demonstrated by his action that he needs and should benefit by some additional training. This may be applied at any level of responsibility for instruction. Care must be exercised to apply the additional training only where there is a reasonable relationship to the soldier's deficiency. Extra training and instruction, if timely and appropriate, may achieve a corrective effect and avoid more formal disciplinary measures later becoming necessary. But extra training and instruction are not to be used as punitive measures and must be distinguished from punishment or even the appearance of punishment. If the soldier reasonably believes the training or instruction are punishment, then all training and instruction are degraded and their value jeopardized. The following ex-

amples illustrate the proper use of training and instruction oriented toward improving performance in the problem area:

(1) An individual appearing in improper uniform may be required to attend special instruction in correct wearing of the uniform.

(2) An individual in poor physical shape may be required to take additional conditioning drills and participate in extra field and road march exercises.

(3) An individual who has unclean personal or work equipment may be required to devote additional time and effort to cleaning the equipment and be given special instruction in its maintenance.

(4) An individual who executes drills poorly may be given additional practice drill.

(5) An individual who fails to maintain his housing or work area in proper condition or who abuses property may be required to perform additional maintenance leading to a correction of his shortcoming.

(6) An individual who fails to perform properly his assigned duty may be given special formal instruction or additional on-the-job training in those duties or skills relating to them, to correct his performance.

(7) An individual who is deficient in responding to orders may be required to participate in additional drills and exercises to develop his responsiveness to the prompt execution of orders.

These examples are not exclusive listings of what is or is not permissible. These measures are in the nature of training and instruction, not punishment, and authority to employ them is part of the inherent power of command. Care should be exercised, at all levels of command, to insure that training and instruction are not used in an oppressive manner to evade the procedural provisions applicable to the imposition of nonjudicial punishment under Article 15, UCMJ. Deficiencies that have been satisfactorily corrected by means of training and instruction will not be noted in the records of the individuals concerned and will be considered closed incidents.

8-8. Reductions. *a. Authority.* The unit commander may administratively reduce assigned personnel in accordance with the provisions of paragraph 7-25 through 7-29, AR 600-200.

b. Applicability.

(1) *Reduction for misconduct.* An individual may be reduced (however, the recommendation of a reduction board is required when service member is in a pay grade above E-4) one or more grades for misconduct if he has been convicted by a civil court or adjudged a juvenile offender.

(2) *Reduction for inefficiency.* An individual who has served in an assigned position for 90 days or more may be reduced *one grade* for inefficiency. However, an individual in pay grade E-5 or above can only be reduced under this sanction by board action. Inefficiency is defined as demonstration by an individual of distinctive characteristics which reflect his inability to perform the duties and responsibilities of his grade MOS. The one grade reduction limitation also applies when an individual is reduced for unpaid personal indebtedness of long standing which he has not attempted to resolve. This measure should not be used to reduce an individual for an offense of which he has been acquitted by a court-martial, nor should it be used in lieu of Article 15, UCMJ, for a single act of misconduct.

c. Procedure.

(1) *Reduction for misconduct based on civil court conviction or civil adjudication as a juvenile offender.* Board actions are required only if such reduction is contemplated for service members in pay grade above E-4. When a service member, in pay grade E-4 or below, is so reduced, the unit commander should submit a letter through channels to the member's personnel section notifying it of the summary reduction for misconduct, requesting publication of reduction orders and inclosing as an attachment a copy of the civil decree upon which the reduction is founded. Boards are required to be held in the case of reductions of service members above the grade of E-4. Boards convened by commanders of organizations authorized a commander in the grade of colonel or higher and consisting of at least five members (officer and enlisted personnel) are required in all cases for reduction of members in pay grade E-7 or above. When reduction of a member in pay grade E-5 or E-6 is contemplated, it is required that boards will be convened by the commander authorized to reduce from the highest grade currently held (see para 7-26, AR 600-200) and will consist of a minimum of three members. Convening authorities may approve or disapprove any portion of the recommendation of the board so long as the action taken does not increase the severity of the board's recommendation. Board recommendation for reduction approved by the convening authority may be accomplished without regard to any action taken by the member to appeal his civil conviction. Reductions will be announced in orders which will be published in accordance with AR 310-10. Paragraph 7-28, AR 600-200 contains further guidance concerning the publication of such orders and the reduction effective date. AR 600-20 provides guidance as its date of rank computation. Commanders should inform a member of his right to appeal a reduction in writing. Paragraph 7-27, AR 600-200 con-

tains procedural guidance as to appeals from reductions for civil court convictions and inefficiency. The authority to take final action on appeals cannot be delegated.

(2) *Reduction for inefficiency.* The commander intending to exercise his authority to reduce an individual for inefficiency must notify him by letter of the proposed reduction and the reasons for it. Prudence dictates that his grounds for reduction should be founded on personal knowledge and observations over a reasonable period of time. The individual must acknowledge receipt of the notice by indorsement and may submit any pertinent matters in rebuttal. The commander then requests by letter through channels that reduction orders be published. If the individual is reduced, he must be furnished, by indorsement, a copy of the orders effecting reduction and must be informed of his right to appeal under the provisions of paragraph 7-27, AR 600-200. The individual must acknowledge receipt of the orders by indorsement and accept the reduction or state his intention to appeal. Following the reduction, if there is no appeal, all correspondence will be furnished through channels to the reduction authority next above the officer who accomplished the reduction. This officer will review the case to insure that action was in accordance with regulations and take final corrective action where indicated. The enlisted member will be notified of any final corrective action taken. Upon completion of review and final action, the file will be returned to the organization maintaining the individual's Military Personnel Record Jacket, US Army (DA Form 201), to be retained in his records for 2 years and then destroyed. A service member above pay grade E-4 will not be reduced, for inefficiency under paragraph 7-26b(2), AR 600-200, without action by a board. Boards convened by commanders of organizations authorized a commander in the grade of colonel or higher and consisting of at least five individuals (officers and enlisted personnel) are required in all cases for the reduction of personnel in the grade of E-7 and above; other boards will be convened by the commander authorized to reduce from the highest grade currently held and will consist of a minimum of three individuals. A majority of the appointed members of the board will constitute a voting quorum and must be present at all its sessions. Enlisted personnel appointed to such boards will be senior in pay grade to the personnel being considered for reduction. Board members should be knowledgeable of the individual's field of specialization. The board may recommend reduction of one grade, retention of current grade, reassignment in grade, or a combination of any of the above. The convening authority may approve or disapprove any portion of the recommendation of the

board as long as his action does not increase the severity of the board's recommendation. If he approves a recommendation of the board for reduction he may direct that the reduction be administratively accomplished.

8-9. Revocation of Security Clearance. *a. Authority.* Commanders have a grave responsibility to insure that their soldiers who possess security clearances are reliable and trustworthy. When a commander receives information indicating that a soldier should not have a security clearance, he must take immediate action to suspend the soldier's access to classified information.

b. Applicability. The type of conduct that merits revocation or suspension of a security clearance includes criminal and immoral activities, habitual use of drugs, excessive use of alcohol, excessive indebtedness, and repeated AWOL. The existence of any facts indicating that a soldier is subject to coercion or undue influence, such as a soldier who has a close relative living in a Communist country, is also grounds for the revocation of a security clearance (chap 3, AR 604-5).

c. Procedure. When a commander proposes to revoke a security clearance, he must notify the soldier concerned, explain the reasons for the contemplated action, and offer the soldier a reasonable opportunity to refute or explain the derogatory information which is the basis for the action. Notification need not be given to soldiers who have been dropped from the rolls, or who have been confined after conviction of a criminal offense by a court-martial or a civilian court. The unit commander then forwards his recommendation, through channels, to the clearance authority. The clearance authority cannot make his decision until he has considered all the materials submitted by the soldier concerned. There is no formal right of appeal provided for a soldier whose security clearance has been revoked. However, there is nothing to prevent the soldier from following informal channels, such as appealing to the next higher commander above the clearance authority, or filing an IG complaint.

8-10. Bar to Reenlistment. *a. Authority.* The unit commander may recommend the administrative bar to reenlistment of any unsuitable or untrainable soldier within his command when a discharge for unfitness or unsuitability under AR 635-200 board action is inappropriate (para 1-26, AR 601-280).

b. Applicability. A soldier may be barred from reenlistment if his character, conduct, attitude, proficiency, motivation or general desirability for retention are not consistent with the high qualities demanded by the Army. These deficiencies are often illustrated by the following:

- (1) Late to formations or duties.
- (2) One day or shorter AWOL's.

- (3) Losses of clothing and equipment.
- (4) Substandard personal appearance and hygiene.
- (5) Persistent indebtedness.
- (6) Frequent traffic violations.
- (7) Recurrent Article 15 punishments.
- (8) "Riding" sick call without medical justification.
- (9) Missing bed checks.
- (10) Cannot follow orders; recalcitrant.
- (11) Untrainability.
- (12) Unadaptability to military.
- (13) Failure to manage personal affairs.
- (14) Involvement in frequent difficulties with fellow soldiers.

c. Procedure. Normally, the commander should not initiate the bar to reenlistment against a soldier who has been assigned to the unit for less than 90 days nor during his last 14 days preceding his permanent departure from the unit. The unit commander prepares a certificate (letter form) in duplicate summarizing the grounds upon which he intends to initiate bar to reenlistment proceedings. The certificate includes all factual information supporting the commander's recommendation which is founded upon specific facts (date, place, and occurrence) and substantiated by the official remarks made at each occurrence to insure that all instances are made a matter of official record. Neither the soldier's ETS nor his reenlistment intent should be given any consideration. The commander then refers the certificate to the soldier concerned who may then submit a statement in his own behalf. The soldier must be allowed 30 days to prepare his comment and to collect documents or other materials. The soldier's statement and the certificate are then forwarded to the brigade or separate battalion commander, who in turn forwards the documents to the appropriate approval/disapproval authority.

d. Removing the Bar to Reenlistment. A recommendation to remove or void a bar to reenlistment may be submitted at any time the commander feels the individual has demonstrated his worthiness to be retained in the Army. The commander must review an approved bar to reenlistment at 6-month intervals after date of approval or 30 days prior to transfer or ETS, whichever occurs first. If he feels the bar should be removed, he may submit a recommendation to this effect through channels. The authority which originally approved the bar is the authority which ultimately voids it, or if the individual is in a new jurisdiction, that new comparable authority

may so act. In any event, the possibility of voiding a bar should not be used as an incentive to improve the conduct or performance of recalcitrant individuals.

8-11. MOS Reclassification. *a. Authority.* The unit commander must recommend the reclassification of any MOS awarded to any member of his command for certain acts of misconduct and *should* do so when inefficiency of duty performance is present (para 2-28 through 2-33, AR 600-200).

b. Applicability. A unit commander *must* recommend reclassification of any awarded MOS when the individual concerned has committed an act of misconduct which unfavorably affects the eligibility of that individual to perform duties in his present MOS; e.g., Military Policeman commits assault, Medical Corpsman becomes an alcoholic, or Finance Clerk commits larceny. The following are situations necessitating mandatory reclassification:

- (1) Disciplinary actions (except combat).
- (2) Lack of security clearance.
- (3) Appointment as an NCO or Specialist to duties normally associated with the awarded MOS.
- (4) Loss of MOS qualification.

The unit commander *may* recommend reclassification of any awarded MOS when the individual concerned demonstrates inefficient performance of duty in the technical, supervisory, or other requirements of the MOS or attains an MOS test score of less than 70.

c. Procedure. The unit commander submits a letter of local form, if appropriate, through channels, requesting reclassification of the individual's MOS and indicating grounds (*b* above) and substantiating facts therein. Ultimately, some higher authority, dependent upon the MOS involved and the rank of the individual, up to Department of Army level, will act on the recommendation.

8-12. References. *a.* Army Regulation 27-10, Military Justice.

b. Army Regulation 600-200, Enlisted Personnel Management System.

c. Army Regulation 601-280, Army Reenlistment Program.

d. Army Regulation 604-5, Clearance of Personnel for Access to Classified Defense Information and Material.

e. Army Regulation 630-5, Leave, Passes, Administrative Absence, and Public Holidays.

CHAPTER 9

RESTRICTIONS ON PRIVATE ACTIVITIES

Section I. BUSINESS AND FINANCIAL ACTIVITIES

9-1. Selling to Soldiers on Post. All solicitors who come on post to sell goods or services must have the permission of the installation commander. In granting approval the commander only determines that the salesman works for a reputable company and that he or his company has not committed any fraudulent or deceptive sales practices. The commander does not recommend the product or service; he simply allows the salesman to sell to those interested. Once a salesman is allowed on post he must follow the guidelines set forth in AR 210-7 and in local directives. These regulations provide when and where the salesman can solicit business. Basically, he cannot visit soldiers while they are in a duty status and must contact the soldier on an individual basis by appointment only. In addition there can be no solicitation of mass or captive audiences or in barracks areas used as quarters or during basic training. Special attention should be given to the control of solicitation of young, inexperienced soldiers in the low pay grades. Soldiers should be made aware of goods offered by salesmen which are also available in the Post Exchange, library, or craft shops. Since the privilege of soliciting on post can be revoked because of improper conduct or violation of the provisions of the regulations, any incidents or disreputable trade practices should be reported, through channels, to the installation commander for appropriate action.

9-2. Selling by Soldiers. Soldiers on active duty are prohibited from personal commercial solicitation and sale to other soldiers who are junior in grade or rank (para 4-2a(2), AR-600-50). This prohibition applies to activities on or off post, in or out of uniform, while on or off duty, and includes the personal solicitation and sale of life and automobile insurance, stocks, mutual funds, real estate, or any other goods or services. "Personal commercial solicitation" refers to those situations where a soldier is employed as a sales agent on commission or salary, and contacts prospective purchasers suggesting they buy something that he is offering for sale. This prohibition does not apply to the one-time sale by an individual of his own personal property or pri-

vately owned dwelling. Although a soldier is not forbidden from selling something to a subordinate on a one-time, personal basis, he should consider the wisdom of doing so. These sales can lead to hard feelings and may reflect upon the quality of leadership. These restrictions are intended to eliminate all instances where it could appear that the sale involved coercion, intimidation, or pressure which was based on rank, grade, or position.

9-3. Off-Duty Employment. Off-duty employment is permitted provided that it does not interfere with official duties, does not bring discredit upon the Army, and does not violate basic ethical considerations. An example of off-duty employment that interferes with the performance of official duties is the case of a soldier who works late in a civilian job and reports for duty so tired that he cannot perform efficiently. Where off-duty employment does affect a man's performance of his military duties, his commander can properly order him to terminate the off-duty employment. "Moonlighting" as a salesman for a disreputable business is an example of the type of off-duty job which would bring discredit upon the Army. An example of employment which violates common ethics is working for a firm which does business with the Army since such employment creates the appearance of a conflict of interest (i.e., it might appear to the public that the soldier got the job because he can help his employer get more Army business). In addition no soldier can accept off-post employment if his job would interfere with the regular employment of local civilians. Thus, a soldier would not be permitted to work off post in an area where jobs were generally scarce or where there were many people with the same skills as the soldier because his working would deprive one of the local civilians of a job.

9-4. Gifts to Superiors. A soldier may not ask for or accept any gifts or presents from persons employed by the United States, either as civilians or soldiers, whose salary is less than his (para 1-9, AR 600-50). It is also unlawful for subordinates to solicit contributions from fellow

soldiers or employees for the purpose of presenting a gift to a superior. The only exception to this rule is that contributions may be made to give superiors *nominal* gifts on special occasions such as marriage, retirement, or illness (chap 2, AR 600-50). The gift must be nominal *both* as to the amount each soldier gives and as to the total amount collected from all of the subordinates. For example, an appropriate occasion for a gift could be a wedding. If each member of the company gave 50 cents toward a wedding gift, the total collected would be \$90. However, even though each soldier only made a small contri-

bution, the total would not be a nominal gift. Unfortunately, the term "nominal" cannot be set at an exact amount. Care should be used to make certain that the proposed gift is a simple one, e.g., a plaque or trophy or other item of remembrance, and that the cost of the gift is limited to a small amount.

9-5. References. *a.* Army Regulation 210-7, Personal Commercial Affairs.

b. Army Regulation 600-50, Standards of Conduct for Department of the Army Personnel.

Section II. FREEDOM OF EXPRESSION

9-6. General. As citizens all people have the right freely and openly to express their feelings. However, a citizen's freedom of speech is not an absolute right and there are times and places where speaking out is not permitted. When an individual comes into the Army, there are several additional restrictions upon his freedom of expression. His speech or actions cannot present a clear danger to the loyalty, discipline, and morale of his fellow soldiers nor interfere with the mission of his unit.

9-7. Congressional Correspondence. A soldier may write or petition any member of Congress about any complaint (DOD Directive 1325.6). Commanders should not interfere with or attempt to dissuade a soldier from the exercise of this right. However, soldiers should be aware of their right to complain and request the correction of a grievance because of the action of their commanders as protected by Article 138, UCMJ. (Chapter 13.)

9-8. Writing for Publication. *a. Letters and Articles.* A soldier may write on subjects not involving military matters or foreign policy without submitting his writing for prior clearance and review. He also may write "letters to the Editor" and similar articles which constitute statements of personal opinion and knowledge without submitting them for review and clearance even though the subject matter may involve military matters or foreign policy (para 9, AR 360-5). However, he may not indicate his official status in the letter. Other types of writing involving military matters or foreign policy must be submitted for clearance and review by the appropriate headquarters prior to publication. Personal writing efforts may not be conducted during normal working hours or accomplished with the use of Army facilities, personnel or property.

b. Underground Newspapers. The "underground newspaper" is a form of writing the commander may often encounter. This type of publication is not illegal but it is subject to the same restric-

tions as other forms of writing. While the publication of underground newspapers by soldiers off-post, on their own time and with their own money, is not prohibited, if the newspaper contains material or words the use of which is punishable under Federal law, those involved may be disciplined (DOD Directive 1325.6).

9-9. Distribution of Publications. While only an installation commander has the authority to control the distribution of publications, the company commander may receive questions about this from his men. An installation commander is not authorized to prohibit the distribution of a specific issue of a publication distributed through official outlets such as exchanges or post libraries. In the case of distribution of publications, such as passing out underground newspapers in front of the post theater, through other than official outlets, an installation commander may require that prior approval be obtained for any distribution on post in order that he may determine whether the publication would cause a clear danger to the loyalty, discipline, or morale of the soldiers or interfere with the accomplishment of a military mission. (DOD Directive 1325.6). If the commander determines the publication to be improper he can delay distribution and forward the material to Department of the Army. Only Department of the Army may prohibit the distribution of a publication on an installation (AR 210-10). In order for a publication to be banned, a clear basis in fact for the danger must be shown and not just the dislike of the reviewer for the opinions expressed in the publication. The fact that a publication is critical of Government officials or policy is not in itself grounds for banning it.

9-10. Confiscation of Unauthorized Publications. Although the on-post distribution of a publication can be forbidden by Department of the Army, unit commanders must realize that the

mere possession of these materials by members of their units cannot be prohibited. Therefore, commanders cannot seize such materials from the members of their units. However, if the commander finds that a soldier does not merely possess these materials for his own reading but intends to distribute them among other soldiers, the commander is authorized to seize the literature. The most common example of these prohibited materials is the "underground newspaper," and commanders must always remember that their troops are entitled to possess copies of such newspapers as long as they do not attempt to distribute them to others. Although the number of copies in a soldier's possession may be evidence that he was going to distribute them to others, it may not alone be adequate evidence and the commander should look at all the circumstances involving the particular soldier.

9-11. Demonstrations. The presence of a soldier in uniform at a public demonstration can give the appearance that the demonstration is sponsored or approved by the Army. A demonstration is a mass meeting or assembly which is intended to promote a cause, political issue, or candidate. A soldier is entitled to participate in demonstrations provided he does not do so when he is required to be present for duty—in fact, if he does participate at such times, he is AWOL; does not participate while wearing his uniform; does not participate while on a military post; does not participate while in a foreign country; does not participate in such a manner as to constitute a breach of law and

order (e.g., does not block traffic or assault police); and does not participate when violence is likely to result (para 5-16, AR 600-20). Any one who does take part in a demonstration in a manner prohibited by AR 600-20 is subject to disciplinary action.

9-12. Servicemen's Union. In recent years, soldiers at several installations have organized themselves into organizations commonly referred to as soldiers' or servicemen's unions. These groups attempt to act much like a labor union. They often seek to bargain with commanders on behalf of their men with regard to such matters as duty hours, duty rosters, pass policies, and political activities. Commanders must remember that these groups have no legal status and that commanders are forbidden to recognize or deal with them (DOD Directive 1325.6). Commanders, in the exercise of good leadership, must be willing to discuss complaints and other matters with their soldiers on an individual basis, but under no circumstances can commanders recognize or lend any legitimacy to these unions.

9-13. References. a. DOD Directive 1325.6, Guidance for Handling Dissident and Protest Activities.

b. Army Regulation 210-10, Administration.

c. Army Regulation 360-5, General Policies.

d. Army Regulation 600-20, Army Command Policy and Procedures.

Section III. POLITICAL ACTIVITIES

9-14. General. There are certain rights which a soldier does not lose by being a member of the military. He retains his rights to vote and to express his opinions privately and informally on all political subjects and candidates. These rights are as broad as those of any other citizen. He may not, however, use his "official authority, position, or influence for the purpose of interfering with an election, or affecting the course or outcome thereof" (DOD Directive 1344.10). Thus, it would be improper for a commander to campaign among the members of his unit in an effort to get them to vote for a particular candidate. Also, it would be improper for a commander or NCO to solicit contributions from the men in the unit for any political party or candidate or to distribute among the unit any literature published by a political party or candidate.

9-15. Voting. All soldiers retain the right to

vote in local or national elections during their military service. When duty requires the soldier to be away from his normal place of voting, he can still cast his vote by applying for an absentee ballot. A soldier can only register to vote at his legal residence—the place he considers his permanent home. The State, city, or county in which the soldier lived before joining the Army is usually considered his legal residence. However, the soldier could change his legal residence to another area, i.e., the State in which he is stationed. By registering to vote where he is stationed the soldier might subject himself to local income and property taxes. Any soldier considering registration in the local community should visit the Legal Assistance Officer to discuss possible problems. The forms needed to obtain absentee ballots and other election materials are generally available in the Legal Assistance Office or from the unit voting officer.

9-16. Attendance at Political Meetings. A soldier may attend partisan as well as nonpartisan political meetings or rallies as a spectator when not in uniform. "Partisan" political actions are those in support of or related to candidates representing, or issues specifically identified with, national or State political parties or related groups. While the soldier may go to these rallies, he cannot speak before a partisan political gathering of any kind to promote a partisan political party or candidate. Furthermore, no soldier may attend partisan political events as a representative of the Army even though he does not actively participate (DOD Directive 1344.10). In addition the soldier can join a political club and attend its meetings when not in uniform. However, he cannot be an officer of the political club nor be listed as a sponsor.

9-17. Campaigning. As a general rule, a soldier may not participate in partisan political management, campaigns or conventions. The soldier may take no active part in any phase of the campaign. He cannot solicit contributions, canvass for votes, write political articles, or perform any duties for a partisan political committee. (DOD Directive 1344.10). While the soldier can take no part in organized political campaigns, there are some actions he may take in an individual capacity. The soldier may make a contribution to a political party or committee so long as he does not contribute to another soldier or government employee. He may sign a petition for an

issue or candidate provided that he does so in his individual capacity and not as a member of the Army. In addition, the soldier may display a political sticker, but not a large banner or sign, on his private automobile (para 5-31 and app A, AR 600-20).

9-18. Office Holding. A soldier may not campaign as a partisan candidate for nomination or as a partisan nominee for civil office. However, the Secretary of the Army may permit the soldier to file such evidence of nomination as may be required by law (DOD Directive 1344.10). The soldier may not become a nonpartisan candidate for any full-time civil office while serving an initial tour of extended active duty or other obligated tour. If a regular Army officer accepts a civil office, he loses his appointment in the regular Army. Reserve officers and enlisted personnel who are elected to a full-time civil office or as a partisan candidate to any civil office may be separated from the service unless they are serving an initial tour of extended active duty or other obligated tour. A soldier may serve in a local part-time nonpartisan civil office, e.g., Chairman of the P.T.A., provided the job does not interfere with his military duties and he receives prior approval from the Secretary of the Army or his designee.

9-19. References. a. DOD Directive 1344.10, Political Activities by Members of the Armed Forces.

b. Army Regulation 600-20, Army Command Policy and Procedure.

CHAPTER 10

DISPOSITION OF PERSONAL PROPERTY

Section I. DECEASED PERSONNEL

10-1. General. When a soldier dies, it is important that his personal effects be handled with extreme care. Every effort must be made to insure that the soldier's belongings are not stolen, damaged, or lost. Bear in mind that prompt action is essential, and failure to comply with Army regulations may result in claims against the Army. Remember that personal effects may be handled differently depending upon whether the soldier died in or outside a combat area. In any case, a summary court may be appointed to secure and dispose of the belongings (para 10-4).

10-2. Commander's Responsibility—Combat Areas. In combat areas, the unit commander is responsible for the recovery and proper evacuation of all the personal effects of his deceased men. Those personal effects which are found on the deceased soldier will be shipped along with the body. All items will be carefully inventoried on DD Form 1076 (Record of Personal Effects—Military Operations), placed in a personal effects bag and secured. Money and negotiable instruments are handled differently. Amounts of \$5 or more are withdrawn and converted into a US Treasury check and forwarded to the Theater Effects Office (para 3-11, AR 638-1). A notation will be made on DD Form 1076 as to what has been done with the funds. Property left in units, hospitals, or rear areas by a deceased soldier will be collected, inventoried (DD Form 1076), and then shipped to the theater effects depot. The unit commander is required to secure motor vehicles and/or household goods while awaiting disposition instruction from the Theater Effects Depot (para 3-13, AR 638-1). Organizational clothing and equipment are not to be considered as personal effects and must be turned in to the appropriate supply officer on DA Form 2765 (Request for Issue or Turn-In). Documents and sealed material will be reviewed to insure proper safeguarding of military information. At the time of the collection and inventory, certain items which are obnoxious in nature or which might cause embarrassment if forwarded to the person entitled to the property will be removed and destroyed. Also, blood-stained clothing will be cleaned; mutilated items will be thoroughly

cleaned and made presentable. When the items cannot be cleaned or made presentable, they will be destroyed (para 2-2, AR 638-1). The unit commander must keep in mind that information concerning the recovery, inventory, or disposition of personal effects of a deceased soldier will not be furnished to the next of kin or other person, except by the Army Effects Office. The commander will forward the request and all available information to the Army Effects Office so that it may reply directly (para 3-15, AR 638-1).

10-3. Commander's Responsibility—Outside Combat Areas. *a. Collection and Inventory.* Outside a combat area, the installation commander or his designated representative is responsible for the collection and safeguarding of the personal effects of a deceased soldier, but the initial burden of collection and security of the property will fall upon the unit commander. He will act as a liaison and coordinating officer concerning the disposition of the deceased's personal property. As in the case of combat area deaths, military documents, organizational clothing and equipment will be withdrawn. An inventory of all effects will be prepared on DA Form 54 (Record of Personal Effects—Outside Combat Areas). Items which are obnoxious, embarrassing, mutilated or blood stained will be handled in the same manner as stated in paragraph 10-2.

b. Disposition. When the surviving spouse or legal representative is present at the installation, the unit commander will usually be directed to deliver the goods to the spouse or representative. A receipt for the belongings on the original DA Form 54 will be obtained. The receipted copy will be forwarded to the Chief, US Army Memorial Affairs Agency, ATTN: MEMA-DIS, Washington, DC, 20315.

10-4. Summary Court Procedure. *a. Appointment.* If the belongings of the deceased soldier cannot be delivered to the surviving spouse or legal representative, the commanding officer of the installation where the goods are located will ap-

point a summary court whose function will be to secure and dispose of the belongings. The summary court is guided in determining who is eligible to receive the belongings by paragraph 1-5, AR 638-1, which sets out the order of precedence.

b. Report of Summary Court. An examination of the contents of the report of the summary court will quickly illustrate tasks he must perform. The report includes the name, address, and relationship (to the decedent) of the person designated to receive custody of the personal effects; the means used to determine existence of local debtors and creditors and the amount of money, if any, collected and paid out; and the total amount of cash received from the sale of effects and by whose authority they were sold. Certain other documents including copies of orders, correspondence and legal documents must be attached to the report (para 2-6b, AR 638-1). One of the documents that must be attached is a copy of the letter from the summary court to the person receiving the belongings, advising that the delivery of the personal effects does not necessarily make him the owner of the property but that ownership of the property will be decided by the law of the decedent's State. After the report has been reviewed and approved by the officer who appointed the summary court, it will be forwarded along with a copy of the DA Form 54 to the Chief, US Army Memorial Affairs Agency, ATTN: MEMA-DIS, Washington, DC. 20315.

c. Moneys. If the surviving spouse or legal representative is present, all currencies, commercial papers, stocks, bonds, and checks (with specific exceptions (para 2-7, AR 638-1)) will be delivered with the rest of the belongings. If the surviving spouse or legal representative is not present, then the summary court will take action in compliance with paragraph 2-7, AR 638-1. This procedure includes converting currency over

\$5 into a US Treasury check so that it may be sent to the next of kin.

d. Sale of Effects. There are times when it is in the best interest of all to allow the summary court to sell some of the decedent's property. When the surviving spouse or legal representative is not present, the installation commander may authorize sales if they are in the best interest of both the Government and the person designated to receive the property, and that person has furnished the summary court a power of attorney to sell the goods. Sometimes the summary court may sell property without the permission of the person designated to receive it. This would be the case when the item in question is a motor vehicle or bulky furniture and the sale is in the best interest of the Government. This also requires that the situation be an emergency in which a reasonable effort to contact the person eligible to receive the goods has been made (para 2-8, AR 638-1). Complete records of such sales (including advertising, authority for sales, and bills of sale) must be kept.

e. Lack of Survivors. When no next of kin or legal representative can be found or contacted, the summary court will wait 30 days and then sell all property, except those items whose value is chiefly as a keepsake (para 2-10, AR 638-1). The funds will then be deposited and held by the Army until a next of kin can be located. Those items valued chiefly as keepsakes will be forwarded to the Chief, US Army Memorial Affairs Agency, ATTN: MEMA-DIS, Washington, DC. 20315, for transmission to the U.S. Soldier's Home under the provisions of 10 U.S.C. § 4713.

10-5. Reference. Army Regulation 638-1, Disposition of Personal Effects of Deceased and Missing Persons.

Section II. AWOL, HOSPITALIZED, CONFINED, AND MISSING PERSONNEL

10-6. General. Whenever a soldier is absent from his unit under other than normal circumstances, the unit commander has a duty to insure that the personal property and organizational property of the soldier is protected from theft, damage, or loss. Even if the absence of the soldier is due to his own misconduct, the duty to protect his property does not change. Remember that failure to comply with Army Regulations may result in claims against the Army. This duty will require the unit commander to enter the area of the absent soldier and may require him to forcibly enter wall lockers and foot lockers so that a complete inventory can be made. Such authority only

applies to areas under the commander's control and would not apply off-post.

10-7. AWOL Personnel. Immediately upon being notified that a member of his unit is AWOL, the commander will select an officer, warrant officer, or noncommissioned officer (E-6 through E-9) to inventory all property left behind by the soldier. The items and quantities of personal military clothing will be listed on plain paper, in triplicate, by the unit supply officer and verified and initialed by the unit commander. The original list is placed in the duffel bag or other container and the remaining two copies are retained

in the unit suspense file. As soon as the inventory is completed, the clothing is placed in the unit supply room for safekeeping and retained for 120 days. If the soldier returns to military control within 120 days, the personal military clothing is returned to him. Otherwise, the clothing is turned in through supply channels for reclassification and return to stock (para 6-12, AR 700-84). Privately owned personal property of the AWOL soldier will be inventoried in the same manner, and a signed copy of the inventory will be placed in the soldier's 201 file. This property will be retained at the unit until the soldier is dropped from the rolls as a deserter. At that time a request for disposition will be made to the installation commander. Personal cash left behind by the absentee will be deposited with finance, and the cash receipt will be placed in the soldier's 201 file. Upon the soldier's return, he may file a claim for the turned in cash (AR 630-10).

10-8. Hospitalized Personnel. When a commander is notified that one of his soldiers has been hospitalized, he will take immediate steps to secure and safeguard the soldier's clothing and personal effects by placing them in the unit supply room. If the soldier does not return within 120 hours, the clothing and personal effects will be inventoried in the same manner as is done for an AWOL soldier (para 6-13, AR 700-84). When a hospitalized soldier is to be transferred off the post, the local medical facility commander will notify the unit commander so that the soldier's clothing may be transferred with him. The soldier should sign for his clothing. However, if he is in no condition to sign for the clothing, the commander of the medical facility will do so. When the soldier is transferred to a medical holding detachment, his clothing should accompany him. When an emergency makes it impossible, the unit commander will ship the clothing within 24 hours of notification (para 6-13, AR 700-84).

10-9. Confined Personnel. When a soldier is ordered into confinement, his personal military clothing will accompany him. Prior to leaving for the stockade, the unit commander is required to conduct an inspection and physical inventory of all clothing in the soldier's possession or con-

trol. Civilian clothing and other items of personal property will be separately inventoried and held for safekeeping at the unit. Soldiers may take a limited number of personal belongings to the stockade, e.g., wallet, ring, religious medal, money (para 5-1h(1)(e), AR 190-4). Those personal belongings which were secured at the unit will remain there until the prisoner is returned to the unit or reassigned. Upon reassignment to a correctional holding detachment, new unit, or disciplinary barracks, the personal belongings will be shipped to the soldier's new unit. If the prisoner has received a punitive discharge, the unit commander will turn in certain military clothing and forward a listing of civilian clothing and personal property to the prisoner for instructions in disposing of them (para 5-1h(2)(a), AR 190-4).

10-10. Missing Personnel. A missing person is a type of casualty whose whereabouts and actual fate cannot be determined, and who is not known to be AWOL. Instructions for disposing of the property of a missing soldier are contained in AR 638-1. When a soldier is officially reported as missing, the commander having control of the soldier's belongings will secure them and prepare an inventory of the belongings on DA Form 54. After 30 days, the unit commander delivers or ships the personal effects of the missing soldier to the spouse, next of kin, or legal representative. The spouse or legal representative will be notified that the delivery of the belongings does not give them ownership of the goods but that they hold them as a custodian until the appropriate State decides to whom they belong (AR 638-1).

10-11. References. *a.* Army Regulation 700-84, Issue and Sale of Personal Clothing.

b. Army Regulation 630-10, Absent Without Leave and Desertion.

c. Army Regulation 190-4, Uniform Treatment of Military Prisoners.

d. Army Regulation 600-10, The Army Casualty System.

e. Army Regulation 638-1, Disposition of Personal Effects of Deceased and Missing Persons.

CHAPTER 11

LEGAL ASSISTANCE

Section I. LEGAL ASSISTANCE PROGRAM

11-1. Legal Assistance for the Soldier and His Dependents. *a.* The Army provides free legal advice and counseling to soldiers and their dependents (AR 608-50). This program is called Legal Assistance and includes advice regarding personal legal problems, such as wills, powers of attorney, taxation, divorce, renting a house, immigration, automobiles, and many other areas. Legal Assistance does not include criminal or official military matters which are handled by other staff sections.

b. In addition to the kind of legal assistance described above, the Army is currently operating an expanded legal assistance program. This program permits legal assistance officers to deal with civil and criminal matters and to represent clients before civilian courts. To qualify for this program, the client must be unable to afford civilian counsel. Commanders should check with their legal assistance officer to see if this pilot program is available for their soldiers.

11-2. The Legal Assistance Officer—Your Lawyer. Legal assistance offices are established at most military installations. The legal assistance officer is a lawyer, and when a soldier discusses legal problems with him an attorney-client relationship is created. This means that the discussions are confidential, and will not be disclosed to anyone without the permission of the client. The legal assistance officer can provide many legal services for the soldier and his dependents, and may in proper cases refer them to civilian counsel for assistance.

11-3. Responsibility of the Commander. A soldier burdened with legal difficulties or worried about those of his family suffers from low morale; this is reflected adversely in the soldier's efficiency. A commander should learn to recognize legal problems affecting his men and encourage his soldiers to seek help from the legal assistance office. All problems, however, are not legal problems, and a commander must distinguish legal assistance difficulties from situations involving criminal, administrative, financial, or other matters. For example, pay problems are handled by

the Finance Officer, and promotion questions are answered by the Adjutant General's Office. Remember that legal aid on criminal matters, whether involving an Article 15 or court-martial, is not part of the legal assistance program, but is provided by the military justice section of the Staff Judge Advocate's Office. There are also several emergency services available to handle the crises that frequently occur in a soldier's life. The Army Emergency Relief Office can be a source of interest-free loans and, in the case of extreme hardship, free cash grants to soldiers and their dependents who are in financial distress. The Red Cross is capable of providing trained consultation on family and other personal problems; financial assistance in certain emergency situations; referrals to agencies which can give assistance in employment matters, medical or psychiatric care and children's welfare counseling; and, emergency means of communication between soldiers and their families when conventional communication facilities are inadequate. The Army Community Service Program is intended to help the soldier help himself by providing information, assistance, and guidance to a soldier and his family in meeting personal and family problems beyond the scope of their own resources and capabilities. The commander should also be aware of the availability of emergency leave and compassionate reassignments in appropriate situations. Emergency leave and in many cases space-required transportation on military aircraft may be granted in the case of a death in the immediate family or other urgent personal problems. In all cases where it appears that emergency leave might be necessary, consult chapter 6, AR 630-5. In certain limited cases, a soldier may qualify for a compassionate reassignment. To obtain a compassionate reassignment a soldier must be able to supply evidence that an unusual problem exists that can only be solved by the soldier's reassignment and not by leave or correspondence; the problem is solvable within a reasonable period of time (usually 1 year); and that the problem did not exist or was not reasonably foreseeable at the time the soldier last came on active duty. For other requirements in obtaining a compassionate reassignment, be

sure to consult paragraph 3-3, AR 614-101, paragraph 1-21, AR 614-200, and AR 614-6. In the case of both emergency leave and compassionate reassignment, the Red Cross will assist the commander in obtaining information on conditions at the soldier's home.

11-4. References. *a.* Army Regulation 600-14, Preventive Law Program.

b. Army Regulation 608-1, Army Community Service Program.

c. Army Regulation 608-50, Legal Assistance.

d. Army Regulation 930-4, Army Emergency Relief—Authorization, Organization, Operations, and Procedures.

e. Army Regulation 930-5, American National Red Cross Service Program and Army Utilization.

Section II. LEGAL ASSISTANCE SERVICES

11-5. Wills. A will is a legal document which insures that upon a man's death his property is disposed of according to his desires. A will is essential, if a man wishes to insure that his wife and children receive the maximum benefit upon his death. Commanders should inform their soldiers of the importance of a will. The legal assistance officer is authorized to review and prepare wills. When there has been a significant change in a soldier's family or financial situation, he should review his will with the legal assistance officer to see if changes are necessary. Some of the situations which may require review of a will are marriage, divorce, birth of children, death in the family, and receipt of oversea orders. At the time a will is prepared or reviewed, the legal assistance officer will discuss related problems, including insurance and survivor's benefits.

11-6. Power of Attorney. A power of attorney is a document which authorizes one person to act for another. It is a very useful instrument, but it also can be very dangerous. For example, a wife with a power of attorney may be able to sell a soldier's car without his knowledge while he is overseas, and he would not be able to get the car back. If a soldier is to be separated from his family for a long period of time, a power of attorney may be used to enable his family to take care of its financial needs by completing transactions that normally would require the soldier's presence. Commanders should advise soldiers who are thinking of signing a power of attorney to see the legal assistance officer.

11-7. A Soldier and His Debts. Soldiers are expected to pay their just debts in a manner that will avoid bringing discredit upon the Army. Soldiers with financial obligations acquired before they entered the Army may find that they cannot meet their obligations. The Soldiers' and Sailors' Civil Relief Act is designed to help the soldier in this situation. For example, a soldier may find he cannot keep up his car payments. If he signed a sales contract before he entered the Army and, due to his lower pay as a soldier, can no longer make the payments, he can get relief

under the Act by having his monthly payments reduced or suspended until he is released from active duty. Remember, this section of the Act only covers debts acquired prior to coming into the Army. Civilian creditors frequently demand that the Army do something about the failure of a soldier to pay his debts. While the commander should reply to these complaints, he has no legal authority to force a soldier to pay his debts or to withhold any part of his pay to satisfy the obligation. Nonetheless, the Army expects soldiers to handle their financial obligations in an honorable way. If a creditor has furnished the two certificates required by AR 600-15 and is unable to get the soldier to honor his debt, then the commander must counsel the soldier (AR 600-15). He should not threaten the soldier, but he should explain the seriousness of paying one's debts and inform him that a dishonorable failure to pay debts can lead to court-martial, nonpunitive disciplinary measures, or administrative discharge. The commander should review all available facts about the debt and the soldier's overall financial situation. The legal assistance officer is available to aid the commander in evaluating the case. When advising the soldier that he is expected to pay his just debts, the commander should also advise him that the legal assistance officer can advise him concerning the lawfulness of the debt and assist him in consolidating and paying off his debts. If the soldier admits the debt, the commander should reply to the creditor telling him that the soldier has been advised with respect to the debt and informing him of the soldier's intentions regarding payment. If the soldier denies or disputes his debt and the commander has some doubt as to the legality of the debt, then he should advise the creditor that it is the established policy of the Department of the Army that a disputed debt is to be resolved by the civilian courts. On the other hand, if a soldier refuses to honor his just debts after having been counseled by his commander, disciplinary action may be initiated against him. A commander may offer the soldier nonjudicial punishment under Article 15 for dishonorable failure to pay just debts in violation of Article

134, UCMJ, or, in serious cases, refer the case to higher commands for possible court-martial. He may also take administrative action to have the soldier removed from the Army (AR 635-200).

11-8. Court Actions. Soldiers can be sued in civilian courts just like any other citizens. But because soldiers are often assigned to duty stations far removed from the city or State where a lawsuit has been filed against them, they frequently incur inconvenience and financial hardship in defending lawsuits. For example, Private Jones was involved in an automobile accident in his home State of Maine before he joined the Army. He is now stationed in California and has just learned that he has been sued in Maine as a result of the accident. Even if he can get leave to return to Maine, he would still experience financial hardship, especially on a private's pay, in traveling to Maine. Congress, fortunately, has appreciated the plight of soldiers like Private Jones and has passed a law (the Soldiers' and Sailors' Civil Relief Act) which permits the suspension of lawsuits against soldiers when, because of military service, they find it difficult to appear in court to defend themselves. Commanders should tell their soldiers about this law whenever they learn that a member of their unit has been sued. In such cases, it is advisable to refer the soldier to the legal assistance officer where appropriate steps can be taken to invoke the soldier's legal rights.

11-9. Law and The Soldier's Family. a. Marriage. Legal problems may evolve from a soldier's relationship with his family. Marriage and children create problems, and the legal assistance officer can provide guidance as to the legal aspects of marriage. The Chaplain, the doctor, and the Army Community Services' representative are available to the soldier to help him solve non-legal problems related to marriage. Commanders should encourage their soldiers to seek such help in solving domestic difficulties. If a marriage cannot be saved, however, the legal assistance officer can provide advice concerning divorce. In addition, he can advise the soldier and his family regarding adoption and changing of names.

b. Paternity Claims. Commanders occasionally receive letters from unwed mothers or mothers-to-be asserting that a soldier is the father of a child and demanding that the Army "do something" about the matter. The Army's role in such matters is rather limited. The proper action for commanders who have received such letters is clearly set out in AR 608-99.

c. Nonsupport Matters.

(1) Commanders are responsible for insur-

ing that their soldiers honor their obligations toward their families. Where a soldier refuses to contribute to the support of his wife, children, or other dependents, the commander should take firm action to advise him of his duties and of the possible consequences should he continue to refuse to fulfill those responsibilities. Members who willfully neglect the support of their families may be court-martialed under Article 134, UCMJ, or administratively eliminated from the service.

(2) When doubt exists as to the nature or extent of the sponsor's liability for support, he should be referred to the legal assistance office. However, if problems of pay or allowances are involved, the soldier should first be referred to the Finance Office.

11-10. Taxation. a. Income Taxes. Just like any other citizens, soldiers are expected to pay Federal and State income taxes. However, if a soldier experiences financial hardship in paying these taxes because of a severe reduction in his income as the result of leaving a civilian job to join the Army, he can qualify for a postponement in both Federal and State income taxes. This is another provision of the Soldiers' and Sailors' Civil Relief Act which legal assistance offices can help soldiers to invoke. Another section of the Soldiers' and Sailors' Civil Relief Act provides that soldiers have to pay State income taxes only in their home States. Thus when they are stationed away from their home States, soldiers do not have to pay income taxes in their duty States. Therefore, if a soldier's home State is Maine but he is stationed in California, he would have to pay income taxes on his military pay to Maine but not to California. When a soldier is having difficulties with local tax collectors, he should consult his legal assistance officer.

b. Personal Property Taxes. The Soldiers' and Sailors' Civil Relief Act also protects a soldier's personal property from taxation in any State except his actual home State. Thus, if a soldier is stationed outside his home State, he does not have to pay personal property taxes to his duty State. This is true whether the soldier lives off or on post. However, the Act does not protect a soldier from real property taxes which he must pay to any State in which he owns real estate.

11-11. Motor Vehicles. a. Registration. The Soldiers' and Sailors' Civil Relief Act provides that if a soldier has registered or licensed his automobile in his home State, he cannot be required to register it in his duty State. However, he must register or license it in either his home State or his duty State: registration or licensing in some other State will not protect him.

b. Liability Insurance. At all times, a soldier

must comply with the automobile liability insurance laws of the State in which his car is located. Information concerning the minimum coverage required can be obtained from Provost Marshal's Office.

c. Safety Inspections. The Soldiers' and Sailors' Civil Relief Act does not protect a soldier from the safety inspection requirements of his duty station. However, most States do not require soldiers to submit to these inspections if the car is not licensed in the State. Information on local law can be obtained from the Provost Marshal or legal assistance office. Army Regulation 190-5 requires annual safety inspections of private vehicles operated on post.

11-12. Immigration and Naturalization. The immigration and naturalization laws of the United States are important to some members of the Armed Forces. Under the Naturalization Law aliens can acquire American citizenship. Army Regulation 608-3, and sections 1439 and 1440 of Title 8, United States Code, provide that an alien who has served honorably in an active duty status, during an armed conflict or in peace time, may acquire American citizenship without satisfying the residence, physical presence and waiting period requirements. Commanders at all levels of command must take action to insure that all aliens serving on active duty are aware of this law and are furnished assistance in applying for United States citizenship should they choose to become citizens. There are a host of problems arising under the immigration and naturalization laws. All of them, including alien registration, reentry permits, American passports, naturalization of surviving spouse, citizenship of children born abroad of military parents, and the provision to be made for alien fiancées should be referred to your legal assistance officer.

11-13. Insurance. As a commander you may receive frequent requests from insurance salesmen for permission to talk with your men about purchasing life insurance. Remember, unless a salesman has evidence of permission from the post commander to solicit on post, you must deny him access to your company area. While most insurance problems should be referred to the legal assistance officer, soldiers should be reminded of the availability of \$20,000 worth of Servicemen's Group Life Insurance (SGLI), at a cost of only \$3.40 a month. This insurance coverage will terminate if a soldier is absent without leave for a

continuous period of 31 days; convicted and confined by a civilian court; or confined as a result of a court-martial sentence invoking total forfeiture of pay and allowances. Restoration to active duty will automatically revive the insurance.

11-14. Rents and Leases. Many soldiers do not live on post. Instead they rent homes or apartments in the civilian community. One of the most common misconceptions about the Soldiers' and Sailors' Civil Relief Act is that it gives the soldier the right to end a lease any time he changes duty stations. This is not so. The Act only gives soldiers the right to terminate those leases which they signed before they entered upon active duty and, even then, there are specific steps which they must take in order to end the lease. Where a soldier signs a lease after he is on active duty, he can terminate the lease upon a change of station only if the lease itself gives him such right. One of the first things a commander should tell a new man assigned to his unit is that he should see the legal assistance officer before he signs a lease. The Soldiers' and Sailors' Civil Relief Act also gives soldiers certain protections when landlords try to evict them for not paying their rent. The Act does not excuse soldiers from their duty to pay their rent, but it does afford them certain relief if their military service makes it difficult for them to pay the rent. Any soldier threatened with eviction should be referred to the legal assistance office.

11-15. References. *a.* Army Regulation 608-50, Legal Assistance.

b. Army Regulation 600-15, Indebtedness of Military Personnel.

c. Army Regulation 635-100, Officer Personnel.

d. Army Regulation 635-300, Enlisted Personnel.

e. Army Regulation 608-99, Paternity Claims.

f. Army Regulation 210-8, Solicitation and Sales of Insurance on Army Installations.

g. Army Regulation 608-3, Naturalization and Citizenship of Military Personnel and Dependents.

h. Army Regulation 190-5, Motor Vehicle Traffic Supervision.

i. DA Pamphlet 27-166, Soldiers' and Sailors' Civil Relief Act.

CHAPTER 12

CIVIL RIGHTS

Section I. INTRODUCTION

12-1. Background. In recent years Congress has passed two significant laws dealing with civil rights. One law grants all persons equal access to movie theaters, restaurants, motels and hotels, and similar facilities. Under this law, soldiers cannot be discriminated against because of race when they seek to use such facilities in the civilian community. The other law prohibits discrimination against anyone in the sale or rental

of housing. Under this law, soldiers cannot be discriminated against on racial grounds when they buy or rent homes in the civilian community. Commanders should familiarize themselves and their soldiers with both Acts. The first law is discussed in Section II under the heading "Public Accommodations." The second law is discussed in Section III under the heading "Fair Housing."

Section II. PUBLIC ACCOMMODATION

12-2. General. The Civil Rights Act of 1964 outlaws discrimination in connection with "places of public accommodation." A place of public accommodation is any of the following business establishments: hotels, motels, or similar establishments; restaurants, cafeterias, lunch counters, and the like; and movie theaters, sports arenas, or other places of public entertainment. The manager or owner of one of these kinds of business cannot practice racial discrimination.

12-3. Commander's Responsibilities. It is the commander's duty to inform his soldiers of their rights under this Act. Minority group soldiers must be told that off-post businesses which fall under the category of "places of public accommodation" cannot discriminate against them. Normally, the DPCA/G1 is responsible for handling civil rights complaints. Advice and counsel for the soldier may also be obtained from the legal assistance officer. Because the name of the civil rights office may vary from post to post, commanders should consult local regulation supplements to find out the name of the appropriate office. Soldiers should be made to feel free to visit these offices at any time. If a commander fails to keep his troops informed about these offices, he may discover unnecessary tensions within his unit which can only lead to poor efficiency and low morale.

12-4. Post Civil Rights Office. The post civil rights office, whatever its name, is responsible for advising soldiers about their rights and helping them protect those rights. Besides being able

to tell a soldier of his legal rights, the local civil rights office can often provide assistance in getting businessmen in town to abide by the law. If the office cannot obtain voluntary promises from a businessman to end discrimination, it may ask the United States Attorney General to bring a lawsuit on behalf of the soldier. It can also initiate steps to declare a business off-limits for failure to comply with the Civil Rights Act.

12-5. Investigation. In addition to their command responsibility of educating troops in the area of their rights under the 1964 Act, officers in the grade of captain or higher may be appointed to investigate civil rights complaints. Although the local civil rights office is the centralized place where soldiers file a civil rights complaint, installation commanders can appoint any officer in the grade of captain or higher to investigate the facts upon which a complaint is based. The officer who is appointed investigating officer has a serious responsibility, and the manner in which he is to fulfill that responsibility is spelled out in detail in AR 600-22.

12-6. Procedures. *a. Filing of the Complaint.* The civil rights office is in charge of the administrative details of filing a complaint. Once the complaint is filed, however, the investigating officer is appointed. The first step the investigating officer should take is to visit the civil rights office to be briefed on his duties and to review the file on the complaint.

b. Preliminary Inquiry. After reviewing the file, the investigating officer is to conduct a pre-

liminary inquiry. This inquiry has two purposes: to determine if the person or business against whom the complaint is made will voluntarily stop the discriminatory practice and to informally gather evidence to prove or disprove the complaint. If the officer gets a voluntary promise that the discriminatory practice will cease, he will report that fact to the civil rights office or the installation commander (depending upon local regulation) and terminate his investigation.

c. Formal Inquiry. If the investigating officer is unable to obtain a voluntary promise to stop the discrimination, the post commander will convene a formal investigation. The object of this investigation is to determine whether the law has been broken and, if so, to prepare a file which can be forwarded to the Attorney General. In the course of this investigation, the investigating officer should refer back to the civil rights office from time to time to see if he is on the right track. The civil rights office, for example, can guide the investigating officer in making sure that the evidence he is gathering is relevant to the complaint and that an important factor is not overlooked. The investigating officer is required to obtain a sworn statement from the soldier who made the complaint. He may also ask for sworn statements relating to the complaint from other soldiers and dependents. However, he may not ask for statements from any other persons, but he may accept statements from other persons if they voluntarily come forward. In no case shall the investigating officer require a statement of any person except the soldier who filed the complaint.

Section III. FAIR HOUSING

12-8. General. The Civil Rights Act of 1968 makes it illegal to discriminate in the sale or rental of homes and apartments on the basis of race. Soldiers who live off-post are entitled to the protections of this law as much as any other citizen, and the Army has assumed the responsibility of helping soldiers exercise their rights under the law.

12-9. Commander's Responsibility. Commanders should insure that their soldiers understand that racial discrimination in the sale or rental of housing is illegal, and that the Army is available to help whenever their rights under the law are violated. The Attorney General of the United States and the Department of Housing and Urban Affairs have responsibility of assisting persons whose rights under the 1968 Act have been violated. Each installation is required to have a local office where soldiers can file complaints under the Act which the Army will then investigate for the soldier and forward to the Attorney General

d. Report of Inquiry. At the conclusion of his investigation, the investigating officer will prepare a summary of his findings. In this summary, he will indicate the sources of each item of information. Additionally, he will attach a copy of each statement he received. The investigating officer, if he so desires, may comment upon the credibility or trustworthiness of those who gave him statements. The investigating officer, however, will not draw or state any conclusions as to whether the law was actually violated as these matters will be determined by a legal officer. The investigating officer will submit his report to the civil rights office or the installation commander, as required by local regulations. The report together with a legal officer's statement and a memorandum from the installation commander will be forwarded to the Attorney General.

e. Conduct of Interviews. It is important to the investigating officer to realize that his duty is to gather facts. He is not a judge or jury. He therefore should not indicate to any of the persons he interviews whether he personally believes that the Civil Rights Act has been violated. Rather, if asked about his role, he should simply state that he is making an objective and impartial inquiry to ascertain the true circumstances of the particular case.

12-7. Reference. Army Regulation 600-22, Processing Requests of Military Personnel for Action by the Attorney General under the Civil Rights of 1964.

or the Department of Housing and Urban Development for action. The procedure for processing complaints is found in AR 600-18. Commanders should familiarize themselves with that regulation and make sure that their soldiers know that they can go to the installation civil rights office and that this office will help them receive assistance from the Attorney General or the Department of Housing and Urban Affairs. The commander who keeps himself and his soldiers informed and who displays genuine concern for his minority troops will be in the best position to prevent racial unrest in his unit and thereby assist the Army policy that soldiers be treated in a nondiscriminatory manner in the civilian community. Commanders should also be aware of the Army policy forbidding soldiers from renting quarters from landlords who practice discrimination (see AR 600-18).

12-10. Investigation. In addition to his responsibilities as a commander, an officer can be ap-

pointed to investigate a fair housing complaint that has been filed with the post civil rights office. Although complaints are filed in the centralized civil rights office, any officer in the grade of O-3 or higher can be detailed to investigate the complaint. In general, the officer so appointed will first attempt to obtain basic background information regarding the complaint and to obtain a voluntary promise from the person against whom the complaint is made that he will abide by the fair housing laws. If the investigating officer cannot obtain the voluntary promise, he then conducts

a formal investigation and prepares a report which will be forwarded through channels to the Attorney General or the Department of Housing and Urban Affairs. The procedures for the investigation are found in AR 600-18 but they are identical to those discussed in paragraph 12-5.

12-11. References. *a.* DOD Directive 1100.15, Equal Opportunity within the Defense Department.

b. Army Regulation 600-18, Equal Opportunity in Off-Post Housing.

Section IV. RACE RELATIONS

12-12. General. It is firmly established Army policy that all soldiers shall be treated equally and fairly without regard to race. Any departure from this policy can only lead to racial unrest and discontent within a unit. The basic regulation establishing this policy is AR 600-21 which places upon commanders at all levels the duty to insure equal opportunity and treatment of all soldiers.

12-13. Commander's Responsibilities. In the area of race relations, the commander's most important obligation is to make it clear to every soldier in his unit that each man will be treated fairly and equally without regard to his race. Only if the commander places emphasis on this policy can he be assured that discrimination will be minimized in the command. Soldiers of all races in the unit must realize that discrimination will not be tolerated. In addition, as stressed in the preceding paragraphs, commanders should inform their soldiers about the Army's policies to help soldiers exercise those rights guaranteed to them by the Civil Rights Act. Soldiers should be encouraged to discuss freely and openly with their commander any grievances they may feel concerning racial discrimination, and the commander should make every effort to counsel soldiers who come to him and to direct them to that office on post which can help them resolve their problems (i.e., the Inspector General or Civil Rights Office). It is impossible to list all the ways in which discrimination can take place within a unit. But, examples which sometimes occur are

discrimination against soldiers in promotions and duty rosters. Commanders must be constantly alert to learn of discrimination in any form and to take immediate action to stop it. Commanders must also realize that soldiers at all times have the right to file a complaint whenever they feel that they are the victims of racial discrimination. Commanders should make sure that every soldier knows that he has this right and that no disciplinary action can be taken against him for exercising that right. It is only when soldiers feel that they have the right to make their grievances known that racial unrest is the least likely to occur.

12-14. Civil Rights Complaints Within the Army. Any soldier who believes that he is being discriminated against because of his race can at any time make a complaint against the officer or soldier who he thinks has treated him unfairly. He can make this complaint through normal command channels or he can go directly to the Inspector General. He may also use the procedures of Article 138, UCMJ. When a complaint is received in the command, the commander must take prompt action to see that all the facts are ascertained and that corrective measures are taken immediately.

12-15. References. *a.* Army Regulation 600-21, Race Relations and Equal Opportunity.

b. Army Regulation 20-1, Inspector General Activities and Procedures.

CHAPTER 13

COMPLAINTS UNDER ARTICLE 138, UCMJ

13-1. General. Article 138, Uniform Code of Military Justice, allows a soldier who believes he has been wronged by his commanding officer to formally complain and have the complaint investigated and reviewed by the Department of the Army. Legal advice is available to the complaining soldier to assist him in determining which is the best way to obtain corrective action on his complaint.

13-2. Procedure. The soldier must present his complaint within 90 days after discovering the wrong. Before submitting the actual complaint, he must first give his unit commander a written request asking that the wrong be corrected. That is, he must give the commander an opportunity to refuse the request. The period during which the unit commander has the written request does not count as a part of the 90 days (para 5, AR 27-14). The actual complaint must be in writing and state that it is an Article 138 complaint. It must be addressed through military channels to the officer exercising general court-martial authority over the respondent (the commander against whom the complaint is made). While the making of the complaint does not give the complaining soldier a right to participate in the investigation and review, he should be questioned about the matter. It is necessary for the complaining soldier to set out all the important facts so that they will not be overlooked. Broad sweeping statements are not much help in investigating and correcting a particular wrong.

13-3. Commander's Responsibility. Department of

Army policy requires that honest complaints be handled at the lowest level of command. This means that the burden is on the unit commander to be alert for unfair, unauthorized, or discriminatory acts which will cause this type of complaint. Army Regulation 27-14 requires that the unit commander be given written notice of the complaint before it is formally submitted. This will give the commander a chance to make his own investigation and, if appropriate, take corrective action. If the unit commander determines that the complaint is not justified, he will notify the complaining soldier that he refuses to take corrective action because it is not needed, and that the soldier may submit his complaint through channels to the officer exercising general court-martial jurisdiction (para 5b, AR 27-14). Should the formal complaint be submitted, it will be forwarded as required.

13-4. Action by the General Court-Martial Authority. The general court-martial convening authority must inquire into the complaint and then take action (para 9, AR 27-14). After he has reviewed the complaint he will approve or deny the complaining soldier's request. The file, including the complaint, investigation, and action taken, will then be forwarded to The Judge Advocate General, Department of the Army. At the same time, the complaining soldier will be notified of the action taken (para 10, AR 27-14).

13-5. Reference. Army Regulation 27-14, Receipt and Processing of Complaints Under Article 138, UCMJ.

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

By Order of the Secretary of the Army:

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The Adjutant General

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ALL ADMINISTRATIVE ERRORS SHOULD BE CORRECTED AND INITIALED BY THE OFFICER SO DIRECTING

ALL BLOCKS MUST CARRY AN ENTRY

GEOGRAPHICAL LOCATION ONLY

SEE PARA 7d, AR 600-20 FOR PROPER GRADE DESIGNATIONS

THE ARMED FORCE MUST BE SHOWN HERE

DATE OF LAST ENLISTMENT OR INDUCTION

IF "NONE" SO INDICATE

IF "NONE" SO INDICATE

IF "NONE" SO INDICATE

IT IS POSSIBLE FOR THIS BLOCK TO HAVE MORE THAN ONE ENTRY. IF SO, SHOW ALL TYPES.

CHARGE SHEET			
PLACE Fort Bliss, Texas		DATE 20 December 1970	
ACCUSED (Last name, First name, Middle initial) (List aliases when material) ELKINS, George T.		SOCIAL SECURITY ACCOUNT NUMBER 263-17-9455	GRADE OR RANK AND PAY GRADE Specialist Four E-4
ORGANIZATION AND ARMED FORCE (If the accused is not a member of any armed force, state other appropriate description showing that he is subject to military law) Battery A, 1st Battalion, 27th Artillery, U.S. Army		DATE OF BIRTH 10 November 1941	PAY PER MONTH
		CONTRIBUTION TO FAMILY OR QUARTERS ALLOWANCE (MCM, 126h(2)) (If none, so state) \$40.00 Class Q	BASIC \$249.90
			SEA OR FOREIGN DUTY \$ NA
			TOTAL \$249.90
RECORD OF SERVICE			
INITIAL DATE OF CURRENT SERVICE 5 June 1969		TERM OF CURRENT SERVICE Three (3) years	
PRIOR SERVICE: <u>1</u> <u>3</u> <u>10</u> (As to each prior period of service, give inclusive dates of service and Armed Force, if available.) YEARS MONTHS DAYS 3d Service Fleet, U.S. Navy			
DATA AS TO WITNESSES (Summary Court Officer will line out and insert names as applicable (MCM, 79g) and initial changes)			
NAME OF WITNESS	ADDRESS (Include ZIP Code)	WITNESSES FOR	
		PROSECUTION	ACCUSED
ISG John L. Toss SGT Joe M. Ziles Allen E. Downs PFC Tom S. Leas	Btry A, 1st Bn, 27th Arty, Ft Bliss HQ USAG (4001), Ft Bliss 6th CID Det, Ft Bliss Btry B, 2d Bn, 27th Arty, Ft Bliss	X X X	X
DOCUMENTS AND OBJECTS LIST AND DESCRIBE (If not attached to charges, note where it may be found)			
DA Fm 188 - Extract Copy of MR, dtd 20 Dec 70 1 Sport Shirt; 1 Tweed Sweater; in custody 6th CI Det, Ft Bliss American Currency (\$62.00) in Btry Comdrs safe, Bldg 131, Ft Bliss			
DATA AS TO RESTRAINT			
NATURE OF ANY RESTRAINT OF ACCUSED Restriction	DATE 20 December 70	LOCATION Btry A, 1st Bn, 27th Arty, Ft Bliss	

DO NOT INCLUDE ANY SPECIAL PAYS SUCH AS PROFICIENCY-HAZARD-OR PERFORMANCE

DOES NOT APPLY IN CONUS

DETERMINE WHETHER PAY OF ACCUSED IS CONSISTENT WITH THAT SHOWN ON PAY TABLES IN ACCORD WITH GRADE AND LENGTH OF SERVICE. IF NOT, CORRECT IT.

ONLY THAT CONTRIBUTION REQUIRED BY LAW IS SHOWN. AN E-4 WITH OVER 4 YEARS SERVICE AND ALL HIGHER GRADES SHOULD SHOW "NONE".

NEVER ATTACH ORIGINAL OBJECT OR ORIGINAL OF DOCUMENT (e.g. CHECKS, CONFESSIONS, ETC.) WHEN FORWARDING CHARGES. ALWAYS USE DESCRIPTION AND LOCATION OF AN OBJECT AND REPRODUCED COPIES (XEROX) OR DUPLICATES OF DOCUMENTS.

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PREVIOUS EDITIONS ARE OBSOLETE.

IF TERMINATED, SHOW DATE IMPOSED AND TERMINATED.

ADDITIONAL CHARGES ARE NORMALLY PREFERRED ON SEPARATE CHARGE SHEETS AND ARE DESIGNATED "ADDITIONAL CHARGE" (IF MORE THAN ONE, USE ROMAN NUMERALS SUCH AS ADDITIONAL CHARGE I, II, ETC.). DO NOT USE THE TERM "ADDITIONAL" ON ANY OF THE SPECIFICATIONS.

IF THERE IS MORE THAN ONE SPECIFICATION UNDER A CHARGE, NUMBER THEM WITH ARABIC NUMERALS, SUCH AS 1,2,3,ETC.

Charge I : Violation of the Uniform Code of Military Justice, Article 86

Specification: In that Specialist Four (E-4) George T. Elkins, U.S. Army, Battery A, 1st Battalion, 27th Artillery, did, on or about 18 December 1970, without proper authority, absent himself from his organization, to wit: Battery A, 1st Battalion, 27th Artillery, located at Fort Bliss, Texas, and did remain so absent until on or about 19 December 1970.

~~CHARGE II: Violation of the Uniform Code of Military Justice, Article 121~~

~~Specification 1: In that Specialist Four (E-4) George T. Elkins, U.S. Army, Battery A, 1st Battalion, 27th Artillery, did, at Headquarters US Army Garrison, Ft Bliss, Texas, on or about 18 December 1970, steal one (1) sport shirt of a value of less than \$20.00, the property of SGT Joe M. Ziles.~~

~~Specification 2: In that Specialist Four (E-4) George T. Elkins, U.S. Army, Battery A, 1st Battalion, 27th Artillery, did, at Headquarters US Army Garrison, Ft Bliss, Texas, on or about 18 December 1970 steal one (1) Tweed sweater, of a value of less than \$20.00, the property of SGT Joe M. Ziles.~~

~~Specification 3: In that Specialist Four (E-4) George T. Elkins, U.S. Army, Battery A, 1st Battalion, 27th Artillery, did, at Headquarters US Army Garrison, Ft Bliss, Texas, on or about 18 December 1970, steal one (1) wallet, leather, brown, of a value of less than \$20.00, the property of SGT Joe M. Ziles.~~

~~Specification 4: In that Specialist Four (E-4) George T. Elkins, U.S. Army, Battery A, 1st Battalion, 27th Artillery, did, at Headquarters US Army Garrison, Ft Bliss, Texas, on or about 18 December 1970, steal United States Currency, of a value of more than \$50.00, the property of SGT Joe M. Ziles.~~

CHARGE II: Violation of the Uniform Code of Military Justice, Article 121

Specification: In that Specialist Four (E-4) George T. Elkins, U.S. Army, Battery A, 1st Battalion, 27th Artillery, did, at Headquarters, U.S. Army Garrison, Ft. Bliss, Texas, on or about 18 December 1970, steal one (1) sport shirt, value of about \$5.00; one (1) tweed sweater, value of about \$30.00; one (1) brown leather wallet, value of about \$5.00; and one electric alarm clock, value of about \$10.00; of a total value of about \$50.00, the property of SGT Joe M. Ziles.

If this space is insufficient for all charges and specifications, they will be set forth numerically, front to back, on separate sheets attached to this page.

2

FOR "DO AND DON'T" ON THE PREPARATION OF A CHARGE SHEET, SEE APP. 6a, MCM, 1969 (REVISED).

NEVER SHOW SERIAL NUMBER OF ACCUSED IN A SPECIFICATION.

THE EXAMPLE USED HERE IS TO SHOW WHEN TO AVOID THE SETTING FORTH OF MULTIPLICIOUS SPECIFICATIONS WHEN THE INCIDENT WAS THE THEFT OF SEVERAL ARTICLES FROM THE SAME PERSON AT THE SAME TIME AND PLACE. HOWEVER, THIS IS NOT ALWAYS THE CASE SO CONSULT YOUR SJA FIRST. (SEE NOTE BELOW)

A SPECIFICATION WHICH FAILS TO ALLEGE EVERY ESSENTIAL ELEMENT OF THE OFFENSE CHARGED IS FATALLY DEFECTIVE (U.S. v. PARRISH, 26 CMR 504). IF THERE IS NO MODEL OF A SPECIFICATION TO A PARTICULAR OFFENSE CHARGED, DO NOT ATTEMPT TO CREATE ONE: SEE YOUR SJA.

SEE APP. 6c, MCM, 1969 (REVISED), FOR MODEL TYPE SPECIFICATIONS.

ALL CHANGES, CORRECTIONS, ADDITIONS, DELETIONS, MUST BE INITIALED BY THE OFFICER WHO MAKES THEM.

NOTE: THE TEST FOR MULTIPLICITY IS THAT, IN CASES WHERE MORE THAN ONE OFFENSE ARISES OUT OF A SINGLE TRANSACTION, IF PROOF OF ONE OFFENSE RESULTS IN PROOF OF ANOTHER THEN THE OFFENSES ARE CONSIDERED MULTIPLICIOUS FOR SENTENCING PURPOSES. (U.S. v. CUNNING, 30 CMR 710).

Fill in blank numbers of pertinent charges and specifications or "all specifications and charges," as may be appropriate for use unless departmental regulations prevent such election (MCM, 32f(2)).

THE ACCUSED HAS BEEN PERMITTED AND HAS ELECTED TO REFUSE PUNISHMENT UNDER ARTICLE 15 AS TO

THE ACCUSED HAS NOT BEEN OFFERED PUNISHMENT UNDER ARTICLE 15 AS TO

NAME, GRADE, AND ORGANIZATION OF OFFICER EXERCISING ARTICLE 15 JURISDICTION	SIGNATURE
---	-----------

RECORD OF TRIAL BY SUMMARY COURT-MARTIAL	CASE NUMBER <small>(Inserted by convening authority)</small>
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WAS THE ACCUSED ADVISED IN ACCORDANCE WITH PARAGRAPH 79d, MCM, 1969 (Rev.)? YES

(To be filled in by summary court)

I <input type="checkbox"/> CONSENT <input type="checkbox"/> OBJECT TO TRIAL BY SUMMARY COURT-MARTIAL <i>(To be filled in by the accused)</i>	SIGNATURE OF ACCUSED
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TO BE FILLED IN BY SUMMARY COURT AS APPLICABLE

THE ACCUSED, HAVING REFUSED TO CONSENT IN WRITING TO TRIAL BY SUMMARY COURT-MARTIAL, THE CHARGES ARE HEREWITH RETURNED TO THE CONVENING AUTHORITY.

CHECK, IF APPLICABLE

NAME, GRADE, AND ORGANIZATION OF SUMMARY COURT OFFICER	SIGNATURE
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SPECIFICATIONS AND CHARGES	PLEAS	FINDINGS	SENTENCE OR REMARKS

NUMBER OF PREVIOUS CONVICTIONS CONSIDERED (MCM, 75b(2))

PLACE AND DATE OF TRIAL	DATE SENTENCE ADJUDGED
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NAME, GRADE, ORGANIZATION, AND ARMED FORCE OF SUMMARY COURT OFFICER <small>(MCM, 4g)</small>	SIGNATURE
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Enter after signature, "Only officer present with command", if such is the case.

TO BE FILLED IN BY CONVENING AUTHORITY (MCM, 89, and app. 14a)

ORGANIZATION	PLACE	DATE
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ACTION OF CONVENING AUTHORITY

NAME, GRADE, AND ORGANIZATION OF CONVENING AUTHORITY	SIGNATURE
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ENTERED ON APPROPRIATE PERSONNEL RECORDS IN CASE OF CONVICTION. (MCM, 91c)

A COPY OF THE RECORD OF TRIAL AND ACTION OF THE CONVENING AUTHORITY HAS BEEN FURNISHED TO THE ACCUSED.

NAME, GRADE, AND DESIGNATION OF OFFICER RESPONSIBLE FOR ACCUSED'S RECORDS	SIGNATURE
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NOTE: Summary of evidence, if required by the convening or higher authority, will be attached on separate pages.

