UNITED STATES MARINE CORPS
THE BASIC SCHOOL
MARINE CORPS TRAINING COMMAND
CAMP BARRETT, VIRGINIA 22134-5019

MILITARY LAW
B3O4818
STUDENT HANDOUT

Military Law

Introduction

The Supreme Court has characterized the armed forces as a "*society apart*;" a society within a society, with special societal needs, norms, and mores. That society also needs, and has, its own distinct legal system established by Congress to satisfy the needs of a society whose principal purpose is "to win wars." The courts have consistently recognized that some restraints on liberty and some legal procedures that would not be acceptable in American society generally, (e.g., inspection procedures), are permissible in the military community.

Military law consists of the following:

- Statutes governing the military establishment and regulations issued there under.
- Constitutional powers of the President and regulations issued there under.
- Inherent authority of military commanders.

Importance

The purpose of military law is to:

- Promote justice.
- Assist in maintaining good order and discipline in the armed forces.
- Promote efficiency and effectiveness in the military establishment, and thereby strengthen the national security of the United States (US).

In This Lesson

This lesson covers the following topics:

Learning Objectives

Terminal Learning Objectives

1 . Given a scenario without the aid of references, describe how to conduct a lawful inspection without omission in accordance with the Uniformed Code of Military Justice. (TBS-UCMJ-2206)

2 . Given a scenario without the aid of references, describe how to conduct a lawful search and seizure without omission in accordance with the Uniformed Code of Military Justice. (TBS-UCMJ-2205)

3 . Given a scenario without the aid of references, describe how to apprehend a suspect without omission in accordance with the Uniformed Code of Military Justice. (TBS-UCMJ-2204)

4 . Without the aid of references, describe the forms of punishment for violations of the UCMJ without omitting key components. (TBS-UCMJ-1007)

5 . Without the aid of references, identify punitive articles of the UCMJ without omitting key components. (TBS-UCMJ-1006)

6 . Without the aid of reference, describe the characterizations of separations without omitting key components. (TBS-UCMJ-1005)

7 . Without the aid of references, describe types of courts-martial without omitting key components. (TBS-UCMJ-1008)

8 . Without the aid of reference, describe the Military Justice System without omitting key components. (TBS-UCMJ-1004)

Military Law (Continued)

Learning Objectives (Continued)

Enabling Learning Objectives

1. Without the aid of references, define the term punitive article without error. (TBS-UCMJ-1006a)

2 . Without the aid of references, describe offenses without omission. (TBS-UCMJ-1006b)

3 . Without the aid of references, identify elements for an offense without omission. (TBS-UCMJ-1006c)

4 . Without the aid of references, describe courts-martial convening authorities without omission. (TBS-UCMJ-1008a)

5 . Without the aid of references, define the term probable cause without error. (TBS-UCMJ-2205a)

6 . Without the aid of references, define the term search without error. (TBS-UCMJ-2205b)

7 . Without the aid of references, define the term seizure without error. (TBS-UCMJ-2205c)

8 . Without the aid of references, describe the purpose of inspecting with notice without error. (TBS-UCMJ-2206a)

9 . Without the aid of references, describe the purpose of inspecting without notice without error.

Creation of Uniform Code of Military Justice (UCMJ)

Prior to 1950, each service had its own punitive regulations. In 1950, Congress drafted and enacted a Uniform Code of Military Justice (UCMJ), which constitutes the military law of the US. The UCMJ, found in Title 10, US Code:

- Was passed by Congress and signed into federal law by the President.
- Has 146 subsections, referred to as "*Articles*." These 146 articles are further divided into two groups
    - Articles 1 through 76 and 135 through 146 are *procedural in nature.*
    - Articles 77 through 134 are the *punitive* articles that detail the criminal law applicable to the armed forces.

Manual for Courts-Martial (MCM, 2012 Ed.) ***"The Manual"***

The Manual for Courts-Martial is the document that *implements* the UCMJ.

Issued by executive order signed by the President in his capacity as commander-in-chief, subsections of the MCM, 2012 (Ed.) are referred to as either:

- "Rules for Courts-Martial" (RCM)
- "Military Rules of Evidence" (MRE)
- "Punitive Articles"

Jurisdiction

Jurisdiction is the power to execute the laws and administer justice. The UCMJ applies to all active duty service members, anytime, anywhere. The Marine Corps has jurisdiction over all service members on active duty. Jurisdiction commences with a valid enlistment or and ends with delivery of valid discharge papers. The UCMJ also applies to:

- Reservists on active duty, including drill weekends.
- Military retirees.

Regulations

Congress authorizes service secretaries to issue regulations governing the conduct of their respective services. The Secretary of the Navy (SecNav) has promulgated US Navy Regulations (Navy Regs) as the controlling authority for Department of Navy regulations. Navy Regs cover numerous subjects including:

- The role of the Chief of Naval Operations and the Commandant of the Marine Corps (CMC).
- Ceremonial details and protocol.
- Various prohibitions on relationships between members of the Department of the Navy (e.g., Navy Regs define and prohibit fraternization and sexual harassment).

- **Other Regulations**
    - JAGINST 5800.7E. Manual of the Judge Advocate General (JAGMAN). While the JAGMAN covers numerous matters concerning legal administration, chapter II is the primary reference for administrative (vice criminal) investigations.
    - Marine Corps Manual. Senior Marine Corps Regulation.
    - MCO P5800.16A. Marine Corps Manual for Legal Administration (LEGADMINMAN). Covers the administration of many legal situations including:
        - Nonjudicial punishment.
        - Officer misconduct.
        - Unauthorized absences.
        - Details of Marine Corps policy on topics such as:
            - Paternity.
            - Dependant support.
            - Indebtedness.

Manual for Courts-Martial

Punitive Articles (77-134). Set out in Part IV of the Manual, each punitive article is in the same format; including the fifty-two separate offenses listed under *Article 134* (see Appendix A for samples of some common offenses). Each punitive article consists of:

- Text of the article.
- Elements of the offense. Facts the government must prove beyond a reasonable doubt to convict a service member at court-martial.
- Explanation. A narrative discussion of the offense with definitions of key terms.
- Lesser included offenses.
- Maximum punishment.

  Note: Offenses addressed at nonjudicial punishment, summary court-martial, and special courts-martial have jurisdictional limits that may affect the maximum punishment possible.
- Sample specification(s).

Finding the Proper Charge and Specification.

Step	Action
1	Get all of the facts. Review them and make sure you understand them.
2	Identify the potential charge(s) by reviewing the contents of Part IV, Manual for Courts-Martial, 2012 Ed. to determine the applicable article(s). (See MCM, 2012 Ed., Table of Contents, Page xxiv.)
3	Examine the elements and all explanation paragraphs in Part IV, MCM, 2012 (Ed.), for each article you think may be applicable.
4	Match the facts as you know them with the elements and explanation paragraphs. There must be evidence, direct or circumstantial, establishing each element.
5	Draft the specification(s) using the sample specifications contained in Part IV, MCM, 2012 Ed. Use the exact wording that is contained in the sample specification.
6	Do not hesitate to call the trial counsel (prosecutor) who supports your unit.

Manual for Courts-Martial (Continued)

Initiating and Preferring Charges.

- Initiate. To bring or report an allegation concerning an offense to the attention of military authorities. Charges may be initiated by any:
  - Person, civilian or military.
  - Means: letter, hotline complaint, telephone call, log book entry, etc.
- Prefer. To formally accuse a military member, under oath, of an offense under the UCMJ. When the accuser swears to charges, he or she is said to have "preferred" charges. The accuser:
  - Swears that there is sufficient information available to believe there is a factual basis for the charges.
  - Must be a person subject to the UCMJ.
  - Signs the charges and specifications under oath before a commissioned officer of the armed forces authorized to administer oaths.

Charges and Specifications.

- Charge. What article of the UCMJ (by number) has allegedly been violated?
- Specifications. A statement of how the accused is supposed to have violated the article.

Example:
Charge: Violation of the Uniform Code of Military Justice, Article 121.
Specification: In that Private John D. Dillinger, US Marine Corps, Marine Fighter Attack Squadron 314, Marine Aircraft Group 11, Third Marine Aircraft Wing, Fleet Marine Force, Pacific, did, at Marine Corps Air Station, El Toro, California, on or about 2 January 2006, steal a wrist watch, of a value of about $75.00, the property of Sergeant J. E. Hoover, US Marine Corps.

Lesser Included Offenses (LIO). An offense other than the one charged, which contains some, but not all, of the elements of the offense charged, and no elements different from the offense charged. An attempt to commit the charged offense is always an LIO of the charged offense (for example, attempted larceny). An attempt to commit an LIO of the charged offense is a lesser included offense of the charged offense. Because an LIO is a necessarily included offense within the original charge, there is no requirement to list it as a separate charge and specification.

Examples of LIOs:

- Unauthorized absence (UA) is an LIO of desertion.
- Wrongful appropriation is an LIO of larceny.

Manual for Courts-Martial (Continued)

Intent. Intent is that state of mind required to commit an offense. To be criminally liable, an accused must:

- Have committed an act.
- Also have had a "guilty mind" while doing the act. It is presumed that one intends for the logical consequences of his actions to occur.

A *general intent* offense exists when the article does not indicate that a specific state of mind or element of knowledge is part of the offense. (In other words, if the article does not mention “intent” in the elements, it is normally a general intent offense.) Since it is presumed the accused intended the act, the government has no obligation to prove general intent. Examples of general intent offenses include:

- UA.
- Simple assault.

A *specific intent* offense exists when the article requires a specific state of mind or element of knowledge to exist in order for an offense to be committed. (In other words, the government must affirmatively prove state of mind.) To determine if a specific state of mind or knowledge is required to commit an offense, examine the text of the article and the elements of the offense appearing in Part IV, MCM, 2012 (Ed.). Examples of specific intent offenses include:

- Desertion.
- Larceny.
- Assault *with intent* to inflict grievous bodily harm.

Defenses. There are various types of defenses to charged misconduct. Defenses involve special rules and do not apply to all situations. Examples of some defenses are

- Lack of requisite criminal intent.
- Alibi.
- Impossibility.
- Ignorance or mistake of fact.
- Self-defense.
- Coercion or duress.
- Accident.

Refer questions about possible defenses to a charge to your staff judge advocate.

Levels of the Military Justice System

A commander has two avenues by which to decide how to appropriately resolve an issue before him/her:

- Nonpunitive measures
- Punitive measures

Nonpunitive Measures. Nonpunitive measures are corrective measures/leadership tools that are designed to overcome noted deficiencies in a unit or an individual and are not imposed as a punishment. Nonpunitive measures include:

- Informal and formal counseling.
- Extra military instruction.
- Nonpunitive Letter of Caution

  Administrative withholding of privileges.

Extra Military Instruction (EMI). EMI is not meant to be punishment. EMI measures *must:*

- Logically relate to the deficiency.
- Serve a valid training purpose.

EMI *may* be performed after normal working hours, but only:

- After approval of the commanding officer.
- Under supervision.

EMI is *never* to be performed:

- For more than two hours a day.
- On a Marine's Sabbath – this will vary by individual.

Chapter I of the JAGMAN details the specific requirements for EMI. For example:

- Extra drill for drill failures is permissible.
- Cleaning the head is not allowed for drill failure; this constitutes unlawful punishment.

Levels of the Military Justice System (Continued)

Nonpunitive Letter of Caution (NPLOC). A NPLOC is a written censure that is considered a personal matter between the individual receiving it and the superior issuing it. Censure is criticism of one's conduct or performance of duty. Once issued, a NPLOC ceases to exist from an official standpoint. Although the underlying facts giving rise to the NPLOC may be mentioned on a fitness report, the letter itself cannot.

Administrative Withholding of Privileges. A privilege is a benefit, advantage or favor provided for the convenience or enjoyment of an individual. A commander, (including a platoon commander), may withhold *privileges*, so long as an individual is not deprived of normal liberty. The following are examples of privileges: special liberty, enlisted/officer clubs, commissary, PX, bowling alley, on-base driving. For example, if a Marine becomes drunk and causes a disturbance at the base theater, the commander may put the base theater off-limits to the Marine for a *limited* period of time.

Because the measures described above are nonpunitive, any small unit leader (down to fire team leader) may use them. Platoon commanders must closely monitor the use of such measures by enlisted subordinates to ensure that illegal punishment is not inadvertently imposed.

Punitive Measures. Punitive measures are designed to punish wrongdoing. Punitive measures include: NJP, summary courts-martial, special courts-martial and general courts-martial.

Nonjudicial Punishment (NJP). The lowest level of punitive measure, NJP is imposed by commanding officers and officers-in-charge on members of their commands for minor offenses. The purpose of NJP is to quickly correct minor offenses without resort to trial by court-martial. Nonjudicial punishment is known by several titles:

- NJP.
- Office hours (Marine Corps).
- Captain's mast (Navy/Coast Guard).
- Article 15 punishment (Army/Air Force).

Levels of the Military Justice System (Continued)

Authority to Impose NJP

Who may impose NJP? The power to impose punishment is an aspect of command; rank alone does not confer NJP authority.

Company commanders and higher may impose punishment on commissioned and warrant officers and enlisted members of their commands. (By custom, officer NJP is typically reserved to general officers in command, although commanders down to battalion/squadron level sometimes exercise it.)

Officers-in-charge who are specifically detailed as such by Table of Organization (T/O), commanding general's orders, or other such authority, may impose punishment on enlisted members of their units only.

Delegation of Authority

Only a flag or general officer-in-command may delegate the power to impose NJP.

If the second-in-command assumes command, he/she also assumes NJP authority. This is succession to command, not a delegation of authority.

Punishable Offenses

Minor offenses under the UCMJ are properly punishable at NJP. What constitutes a "*minor offense*" depends on the facts and circumstances surrounding its commission; commanding officers have wide discretion in determining which offenses are "minor."

Rights of the Accused at NJP

Prior to the imposition of NJP, a preliminary inquiry must be conducted. The accused has the right to know:

- The nature of the offense(s) of which suspected.
- That the Commanding Officer is contemplating office hours.

The accused has an absolute right to refuse NJP:

- Unless attached to or embarked on a vessel.
- During the NJP proceeding, up until the moment punishment is imposed. The punishment is considered imposed when it is announced by the commanding officer.

If an accused refuses NJP, the commanding officer has several options:

- Refer the case to trial by court-martial (or, if he/she is not a court-martial convening authority, forward the case to a senior commanding officer recommending such referral).
- Take no further action.
- Use administrative/nonpunitive measures to resolve the case.

Right to Confer with Counsel

An accused has no right to detailed defense counsel at NJP. Before deciding whether or not to accept NJP, an accused has the right to confer with an independent lawyer to help make that decision.

Note: Counsel merely assists the accused in deciding whether or not to accept NJP; counsel does not normally represent the accused at NJP. As a practical matter, *always* provide a Marine the opportunity to speak with counsel prior to imposing NJP. An accused may also waive the right to talk to counsel.

Hearing Rights

The accused has an absolute right to remain silent and to make no statement at all. The accused has the right to ask questions of any witness who makes a statement at the hearing and to present evidence in his or her behalf (including a statement of his or her own). The accused has the right to end the hearing and refuse NJP at any time before punishment is actually announced.

Procedures at NJP

Step	Action
1	The individual who conducted the preliminary inquiry submits a report (oral or written) to the commanding officer, who decides whether or not to hold NJP. The report may be based on a Criminal Investigation Division (CID) or Naval Criminal Investigative Service (NCIS) report.
2	If NJP is to be held, the: • Unit punishment book (UPB) is prepared. • Accused is informed of: o The charges. o His or her Article 31(b), UCMJ rights. o His/ her right to refuse NJP. If the accused so desires, he/she
3	If the accused elects to accept NJP, the unit will: • Schedule the office hours. • Arrange for the presence of observers and witnesses.
4	Immediately before the office hours, the accused is again informed of all of his or her rights under Articles 15 and 31(b), UCMJ.
5	At: • Company-level office hours, the company commander and first sergeant are usually present, as are the platoon commander and platoon sergeant in all but the most extraordinary circumstances. • Battalion-level office hours, the battalion commander, sergeant major, company commander, and first sergeant would normally expect to be present.
6	During the NJP hearing, the commanding officer again reminds the accused of his or her rights under Articles 15 and 31(b), UCMJ.
7	Options available to the commanding officer: • Dismiss the charge(s). • Impose nonpunitive corrective measures. • Impose NJP. • Refer the case to trial by court-martial, or if not empowered to do so, refer the case to higher authority with a recommendation for trial by

Levels of the Military Justice System (Continued)

NJP (Continued)

UPB

The UPB is the document the unit uses to record the imposition of NJP on enlisted personnel.

When officers receive NJP, the imposition of punishment is reported by naval correspondence to the Commandant of the Marine Corps (CMC). A UPB page is not prepared for officers.

Even if the accused signs the UPB indicating that he/she will accept office hours, NJP may still be refused at any time before punishment is announced.

Authorized Punishments

Authorized punishment at NJP depends on the rank of the:

- Commander who imposes NJP.
- Marine who receives NJP.

Authorized punishments are described in the chart in Appendix B (page 74).

Suspension

Part or all of the punishment imposed at NJP may be suspended for up to six months. Suspension occurs at the commanding officer's discretion.

- Stays out of trouble during the period of suspension, the suspended punishment is remitted (goes away).
- Is involved in further misconduct during the period of suspension, then the suspension can be vacated, and the suspended punishment takes effect.

An officer-in-charge (OIC), no matter what his rank, may *never* award:

- Punishment to an officer.
- More than that punishment imposable by a company-grade company commander.

In addition to the punishments described in Appendix B commanders and OICs may always award punitive letters of admonishment or reprimand. (Punitive letters always become part of the recipient's official record.)

Special Consideration Reduction	In the naval service, reduction authority is limited to one grade. Only commanders who have authority to promote to the grade from which the accused is being reduced may award reduction. Only battalion/squadron commanders or higher may reduce sergeants and below. Staff noncommissioned officers may not be reduced at NJP. Only the Commandant of the Marine Corps has that authority.
Appeal of NJP	If punishment is awarded, the accused may appeal to the next senior commander in his or her chain of command. • Nonpunitive corrective measures cannot be appealed. • Referral to trial cannot be appealed.
Grounds for Appeal	There are only two grounds for appeal; the punishment was: • Unjust (i.e., the accused does not believe that there was enough evidence to be found guilty, or. • Disproportionate to the offense (i.e., the punishment imposed was too harsh when compared to the offense).
Appeal Procedures	The appeal must be made in writing. • A standard naval letter is sent from the accused to the appeal authority via the officer who actually imposed the punishment. • The platoon commander or first sergeant should assist the Marine in writing his or her appeal (i.e., format, grammar, etc.). The appeal must be “timely.” An appeal must be submitted within *five* days (calendar days, not working days) of the imposition of punishment. In the absence of good cause shown, a late appeal can be denied solely on the basis that it was not submitted within the five day "window." However, a late appeal must be forwarded because it is the appeal authority's decision to consider it or not. A service member who has filed a timely appeal must still undergo the punishment imposed while awaiting action on the appeal, subject to one exception. If action is not taken on an appeal within five days of its submission and the service member so requests, any un-served punishment involving restraint or extra duties will be stayed until the appeal is acted upon.

Appeal Authority

The next commander in the chain of command senior to the officer who imposed NJP is the appeal authority and the options available to the appeal authority are to

- Approve the punishment in whole.
- Set aside the punishment (remit).
- Suspend all or any part of the punishment, for a period not to exceed six months.
- Change to a lesser form of punishment (mitigate).

The appeal authority *cannot* increase the punishment.

Corrective Action after NJP

If NJP was executed, action may be taken within a reasonable time (usually four months) to set aside the NJP. Such action may be taken by:

- Officer (billet) who initially imposed the NJP.
- Successor in command.
- Commanding officer or OIC of a command to which accused is properly transferred *after* the imposition of NJP.

Courts-Martial Definitions. The table below defines terms pertinent to courts-martial.

Term	Definition
Convene	To create, appoint, and bring into existence
Convening authority (CA)	• The commander who creates, appoints, and brings into existence a court-martial. • In the Marine Corps, the lowest level commander authorized to convene a court-martial (summary or special court-martial) is a battalion or squadron commander. In the air wings, however, it is common practice for aircraft group commanders to withdraw court-martial convening authority from squadron commanders, thereby making themselves the sole convening authority within their respective groups.
Refer	To send a specific case to a specific, previously convened court-martial for trial

Summary Court-Martial

Generally:

- Summary Court-Martial (SCM) is the lowest, least severe form of court-martial under the UCMJ. Although called a court-martial, like NJP this is not a *judicial* proceeding. It is not a "*criminal prosecution*" like a SPCM or GCM.
- Only *enlisted* personnel can be tried by SCM.

Composition of the SCM

SCM is composed of one commissioned officer:

- Usually in the grade of captain (O-3) or above (this is not an absolute requirement).
- Who acts as prosecutor, defense counsel, and judge.

The convening authority may restrict the power of the court to award a particular punishment.

Rights of the Accused at SCM

The accused has no right to a detailed military defense counsel, but may retain civilian counsel at his own expense. The accused does have to right to:

- Refuse SCM, even if embarked upon or attached to a vessel.
- Be present and to hear all the evidence against him or her.
- Cross-examine all witnesses who testify against him or her, and to examine all documentary and real evidence introduced at trial.

Duties of the SCM

Obtain **all** of the:

- Witnesses.
- Evidence.

Conduct a pretrial conference with the accused to go over:

- Rights.
- Administrative details pertaining to the court-martial.

Trial Procedure

Unlike the informal NJP hearing, the SCM is a formal proceeding.

All witnesses testify under oath:

- The only exception — the accused may make an *unsworn* statement during the *sentencing* phase of the trial.
- If the accused testifies on the *merits* (guilt or innocence), he or she must be placed under oath just like any other witness.
- The SCM officer summarizes all testimony; the summary is attached to the record of trial.

The military rules of evidence apply. Evidence is marked as exhibits and attached to the record of trial.

- **Order of Proceedings**
  - Rights advisement of the accused
  - Entry of pleas by the accused
  - Evidence presented on the merits (if there is any plea of "*not guilty*")
  - Findings ("*guilty*" or "*not guilty*" of each offense before the court)
  - Evidence presented that is relevant to sentencing (aggravation, extenuation and mitigation) if there is a finding of "*guilty*"
  - Sentencing (if "*guilty*")

The SCM prepares a record of trial, which must be promptly provided to the accused for use in preparation of any clemency submission he or she desires to make. The record includes:

- A summary of the hearing, to include a fairly detailed summary of all testimony pertaining to charges for which there was a plea of "*not guilty*" but a finding of "*guilty*".
- The original charge sheet.
- All exhibits the SCM considered.

Authorized Punishments. The table below lists authorized punishments for an SCM. The SCM officer may recommend suspension of all or part of the sentence, but only the convening authority has the power to suspend SCM punishment.

Maximum Punishment	• Confinement for one month • Forfeiture of two-thirds (2/3) of one month's pay for a period of one month (based on pay of rank to which reduced, if applicable) • Reduction to the lowest enlisted pay grade (E-1)
Other Authorized Punishments **(Imposed Instead of Confinement)**	• Hard labor without confinement for 45 days • Restriction for 60 days
If the accused is a sergeant (E-5) or above, he or she may not be…	• Reduced more than one pay grade • Confined • Awarded hard labor without confinement

Special (SPCM) and General (GCM) Courts-Martial

SPCMs and GCMs are formal, adversarial trial proceedings. They consist of:

- A military judge.
- Trial counsel (prosecutor).
- Defense counsel.
- The accused.

There may or may not be a panel of members (jury). The accused has a choice of composition:

- Military judge alone.
- Panel of officers.
- Court with enlisted membership.

An *enlisted* accused may request that at least one-third (1/3) of the composition of the court include *enlisted members*. Enlisted members:

- Must be senior to the accused, either by rank or date of rank.
- May not be from the same unit as the accused.

Special Court-Martial (SPCM). Battalion or squadron commanders or higher convene SPCMs. An SPCM requires a minimum of three members (if not military judge alone). Maximum sentence at an SPCM includes:

- Confinement for 12 months.
- Forfeiture of two-thirds (2/3) base pay per month for 12 months.
- Reduction to the lowest enlisted grade (E-1).
- Bad conduct discharge (BCD).

Note: If the maximum possible punishment in the Article for that offense is less than the above listed punishments, then the limits in the Article apply. For example, punishment for a simple assault (Article 128) may not include a BCD, or confinement for more than 3 months, or forfeiture for more than three months.

Officers can be tried by SPCM, but in practice rarely are because an SPCM may not award the following punishments to an officer:

- Dismissal.
- Confinement.
- Hard labor without confinement.

A finding of guilty at a SPCM constitutes a federal misdemeanor conviction.

General Court-Martial (GCM). A commanding general, after formal pretrial investigation under Article 32, UCMJ, convenes a GCM. Before charges may be referred to a GCM, a pretrial investigation is required. It is a thorough, impartial investigation to inquire into the truth of the matters set forth in the charges, the form of the charges and to recommend an appropriate disposition. The pretrial investigation serves a function similar to the grand jury in civilian proceedings.

The accused:

- Is entitled to detailed counsel.
- May waive the Article 32 investigation.

The investigating officer (IO), usually an O-4 or above or a judge advocate, prepares a report to the officer who directed the investigation, who must be an SPCM or GCM convening authority. The IO's recommendations are not binding on the convening authority.

A GCM requires a minimum of five members (if not military judge alone).

At a GCM, the maximum sentence is whatever is specified under Part IV, Manual for Courts-Martial, for the offenses of which a Marine is found guilty. Possible punishments include:

- Death.
- Punitive discharge:
    - Bad Conduct Discharge (BCD) (for enlisted persons only).
    - Dishonorable discharge (DD) (for enlisted persons only).

The Special (SPCM) and General (GCM) Courts-Martial (Continued)

- Dismissal (this is the commissioned officer equivalent of a DD).
- Confinement (for both officers and enlisted persons).
- Reduction in rank (for enlisted persons only.
- Total forfeiture of all pay and allowances.

A finding of guilty at a GCM generally constitutes a federal felony conviction.

Evidentiary Seizures

Article 31(b), UCMJ Warnings -- Apprehension -- Search & Seizure.

Introduction. Courts-martial are federal criminal proceedings. As in all criminal proceedings, significant constitutional, legal, and regulatory substantive and procedural protections exist which regulate the conduct of those proceedings and the use of evidence at those proceedings.

The military rules of evidence (MREs) (Part III, Manual for Courts-Martial) are patterned after the federal rules of evidence that are applicable in federal district courts. The MREs have been, in some cases, modified to accommodate the military's special operational circumstances and needs of good order and discipline.

Company grade officers commonly experience the following situations on a regular basis; these situations are by no means exhaustive. Understanding your authority and the limits thereof and the proper procedures for dealing with these situations directly impacts the court-martial process.

Article 31(b), UCMJ Warning – Interrogation. An Article 31(b), UCMJ Warning is a rights advisement required before questioning a military suspect/accused regarding the commission of an offense under the UCMJ. Article 31(b), UCMJ warning requirements began with the adoption of the UCMJ in 1950. Article 31(b), UCMJ:

- Prohibits compulsory self-incrimination or questioning of a suspect or an accused without first providing specific warnings.
- Appears in Appendix 2 of the Manual for Courts-Martial, 2012 (MCM, 2012).
  - Military Rule of Evidence 305, found in Part III of the MCM, 2012, discusses warnings about rights.
- Current warnings provide greater protection to a suspect or accused than required under the 5th Amendment to the US Constitution. Specific warnings currently required are:
  - You are suspected of the offense(s) of …
  - You have the right to remain silent …

- Any statement you make may be used against you in a trial by court-martial …
- You have the right to consult with a lawyer before any questioning. This lawyer may be a civilian lawyer retained by you at your own expense, a military lawyer appointed to act as your lawyer without cost to you, or both …
- You have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview …
- If you decide to answer questions now without a lawyer present, you will have the right to stop this interview at any time. You also have the right to stop answering questions at any time in order to obtain a lawyer.

Why must the warning be given?

- To protect a Marine's right against compulsory self-incrimination
- To preserve evidence for trial

For an incriminating statement by the accused to be admitted in a court-martial as evidence against him or her, a proper Article 31(b), UCMJ rights advisement is required. Incriminating statements include:

- Confession. Oral or written statement by the accused, which admits complete guilt of a crime.
- Admission. Oral or written statement by the accused, which implicates the accused in regard to an offense, but is not a complete admission of guilt.

When must the warning be given?

- Before any interrogation or questioning of a suspect or an accused about an offense.
- Article 31(b) does not apply to spontaneous remarks (i.e., statements made before questioning is initiated); however, follow-up questioning without warnings is not permissible.

Who must give the warning?

Anyone subject to the UCMJ must give Article 31(b), UCMJ warnings if:

- An offense has been committed, and
- That person intends to ask the suspect questions about the offense.

Evidentiary Seizures (Continued)

Article 31(b), UCMJ Warnings (Continued)

To whom must the warning be given?

Persons subject to the UCMJ who are either suspected or accused of having committed an offense and are going to be questioned about that offense.

- Suspect - a person you have reason to believe has committed an offense.
- Accused - a person who has been informed of sworn charges against him or her or who is facing disciplinary proceedings.
- All persons on active duty in the armed forces are subject to the UCMJ regardless of their geographic location.

By definition, Article 31(b), UCMJ warnings are not given to civilian.

Article 31(b) Warnings How to Give the Warning

Read the complete text of the Article 31 warning to the suspect or accused, using Appendix C (page 75).

You may explain or add to the warning, but do not:

- Leave anything out.
- Attempt to paraphrase.
- Question an individual who is represented by a lawyer unless the lawyer agrees to the interrogation.

Waiver of Rights

The suspect or accused must freely, voluntarily, knowingly and intelligently waive his or her rights before any statement that he or she makes in response to questioning will be admissible at a court-martial.

The suspect or accused may understand his or her rights but not waive them; therefore it is not sufficient to simply ask, "Do you understand your rights?" You must ask three questions of the individual to be interrogated for a valid waiver:

1. Do you want a lawyer?
2. Do you understand that if you should decide to answer questions, you may stop answering questions at any time?
3. Do you want to answer questions and make a statement?

Get verbal responses to the three questions identified above. Do not be satisfied with nodding of the head, grunts, or similar nonverbal responses.

Do not attempt to interrogate a person who is

- Drunk.
- Under the influence of drugs.

Use a format that permits the suspect or accused to acknowledge receipt of the warning and an understanding of his or her rights in writing whenever possible.

Evidentiary Seizures (Continued)

Article 31 Warnings (Continued)

Waiver of Rights (Continued)

- A Suspect's Rights Acknowledgment/Statement is available in Appendix A-1-m (1) of the JAGMAN, and a copy is attached as Appendix C (page 75) to this handout.
- A Military Suspect's Acknowledgment and Waiver of Rights is another commonly used form for obtaining a waiver of rights, and a copy is attached as Appendix D (page 76).

Coercing a suspect or accused into giving a waiver of rights or making unlawful promises in exchange for such a waiver is prohibited.

Exercise of Rights

Questioning must cease immediately upon the exercise of the:

- Privilege against self-incrimination. The suspect or accused refuses to talk or states that he or she does not desire to talk or make a statement.
- Right to seek counsel. The suspect or accused indicates he or she desires to talk with a lawyer.

Cleansing Warning

If a suspect or accused is willing to make a statement, you should first ask whether he or she has made a statement about the suspected offense to anyone prior to the present interview.

If a prior statement has been made, you should determine whether a proper warning was given to the suspect or accused prior to that statement.

If a suspect or accused has been questioned without a proper Article 31 rights advisement, special precautions are required:

- You must first advise the suspect or accused as follows:
  - The statement you gave to _____ before is not admissible at a court-martial and cannot be used against you.
  - Regardless of the fact that you have talked about the offense before, you still have the right to remain silent now.
- Then proceed with the standard rights advisement; that is, warn them again.

Apprehension

Definition

- Taking an individual into custody.
- The military equivalent of civilian "arrest".

Authority to apprehend

Authority may be exercised on- or off-base by:

- Commissioned, warrant, and noncommissioned officers.
- Military personnel or civilians performing law enforcement, guard, police, or investigative duties.
- Military police or CID agents regardless of rank.
- Civilian law enforcement personnel such as NCIS agents or contract security guards.
- Sentries on post, when authorized to apprehend by their special orders.

Grounds for Apprehension

A person subject to the UCMJ may be apprehended for an offense under the UCMJ based on probable cause. Probable cause to apprehend exists when there are reasonable grounds to believe both that:

- An offense has been or is being committed.
- The person to be apprehended committed it.

A person may also be apprehended in order to quell:

- Quarrels.
- Disorders.

Civilians are not apprehended. They are "detained" until turned over to civilian law enforcement authorities. Military dependents are civilians and are to be treated as such.

Apprehension (Continued)

How to Apprehend

Identify yourself to the person being apprehended. If in civilian attire, the best method is to display your armed forces identification card.

Clearly notify the person who is being apprehended that he or she is in custody. Even though the fact of apprehension may be implied from the circumstances, do not rely on implication to affect an apprehension — tell the person why he or she is being apprehended.
Reasonable force may be used to affect an apprehension. If possible under the circumstances, an individual equal or senior in rank to the individual to be apprehended should execute the apprehension.

Always search the individual apprehended immediately after taking him or her into custody.

Search and Seizure

Introduction. The Fourth Amendment to the Constitution protects the right of people to be secure in their persons, houses, papers and effects, against *unreasonable* searches and seizures. The Fourth Amendment requires that no search "warrants" be issued except on the basis of probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Although the military has its own justice system, protections guaranteed under the Constitution apply to the military just as they do in civilian society. The military law regarding search and seizure, therefore, has generally been drawn from decisions of the Supreme Court and other judicial interpretations of the Fourth Amendment.

Exclusionary Rule

Generally, illegally obtained evidence may not be admissible at a court-martial. In addition to evidence that is itself obtained illegally, evidence that is derived from illegal government activities may be subject to the exclusion sanction.

Definitions

- **Search**. Looking for evidence by an agent of the government (see Appendix E (page 78), Record or Authorization for Search)
- **Seizure**. Taking physical control of evidence.

Types of Evidence

- Real. Physical, tangible item:
  - Pistol.
  - Knife.
  - Drugs.
- Documentary. Written statement, logbook, ledger, or other written record.
- Testimonial. The testimony of a witness in open court.

Search and Seizure (Continued)

Requirements for Admissibility

Each of the three types of evidence must also be:

- Relevant. Related to the issues being tried.
- Competent. Conform to the rules of evidence.
- Authentic. Shown to be what the party offering the evidence claims it to be.

For example, drugs admitted at trial to prove the offense of possession must be demonstrated to be the same drugs actually seized from the accused.

To prove authenticity requires:

- Identification by a unique characteristic.
- Chain of custody.

Identification

- Used when there is an easily recognizable piece of evidence:
  - Serialized weapons.
  - Items indelibly marked by the person seizing the evidence.
  - Items with peculiar individual characteristics.
- Does not require a chain of custody, although a chain of custody will always be of assistance.

Chain of Custody

The party offering the evidence must account for every person having custody of the evidence between the time it was seized and the time it is admitted into evidence at trial. (Appendix F [page 79] is a sample chain of custody document.)

The party offering the evidence must demonstrate that the evidence was safeguarded and properly handled.

Any break in the chain of custody may render the evidence inadmissible.

A chain of custody can be as short as one link (i.e., a single custodian).

Search and Seizure (Continued)

Duties of an Officer with Regard to Safeguarding Evidence

The best policy is to establish a chain of custody in every case. Document each person who comes into possession of the evidence after seizure. After you obtain the evidence, you should:

- As soon as possible, note the time, date, place, from whom or where the evidence was seized, and describe the evidence.
- Safeguard the evidence in your possession until you can turn it over to proper authorities.
  - You must be able to testify that the evidence was not tampered with.
  - Keep the evidence on your person if possible.
  - You may lock it up in an area in which only you have access.
  - Under no circumstances leave the evidence unattended in an unsecured area.
  - Promptly deliver the evidence to law enforcement personnel.

Items that may be Seized

- Instrumentalities of a crime (e.g., burglary tools).
- Fruits of a crime (e.g., stolen money, stereo).
- Weapons that could be used to attempt escape.
- Contraband (any property the possession of which is illegal).

Two Types of Searches

- Those requiring probable cause.
- Those not requiring probable cause.

Probable cause is a reasonable belief that the person, property, or evidence sought, is located in the place or on the person to be searched.

Searches Requiring Probable Cause

Essentially, to search an area where an individual has a reasonable expectation of privacy, you need to have probable cause and proper authorization or permission. If there is any question whether authorization is required to search a particular place, the best policy is to get authorization first if the circumstances permit (example: unlocked personal gear locker in a government office).

Search and Seizure (Continued)

Who may authorize searches?	The convening authority or OIC who has control over the place where the property or person to be searched is situated or found; if that place is not under military control, the Commanding Officer or OIC having control over the person of anyone subject to military law or the law of war. Power to authorize searches may *not* be delegated. Power to authorize searches is an inherent, non-delegable attribute of command.
Basis for Search Authorizations (Probable cause determination)	Probable cause to search exists when there is a reasonable belief that the person, property, or evidence sought is located on the person or in the place to be searched.

Reasonable Person Test

Based on what you know, would a reasonable person believe what you are looking for is located where you are looking for it?

Before a person may conclude that probable cause to search exists, he or she must first have a reasonable belief that the information giving rise to the intent to search is reliable and has a factual basis. Is the source of the information worthy of belief?

The commanding officer must be informed of the source of the information presented so that he or she may independently determine the reliability of the informant or information. Indications of reliability are:

- Prior reliability of source
- Detail of information provided
- Amount of time that has passed since information came into hands of informant

A determination of probable cause may be based on any or all of the following:

- Written sworn statements communicated to the commanding officer
- Sworn oral statements communicated to the commanding officer
  - In person
  - Via telephone
  - By other appropriate means of communication
- Such information that the commanding officer may already know.

Search and Seizure (Continued)

Reasonable Person Test (Continued)

An authorization to search may be based upon hearsay evidence, in whole or part.

Any information provided to the commanding officer should be given under oath.

The commanding officer must independently evaluate the evidence presented to determine if probable cause exists. The determination that probable cause exists also must be from a "neutral and detached" official.

- If the commanding officer is personally involved in the prosecution or investigation of a case or has some other personal bias or involvement, then a superior authority should make the probable cause determination.
- Be sure to give all the information you have to the authorizing officer. Do *not* assume that the officer already knows any of the information. If the determination of probable cause becomes an issue at a subsequent trial, the court will only consider that information that was actually presented to or known by the authorizing officer.

Best Policy: Obtain the authorization in writing.

Once the search is authorized, the person granting the authorization should *not* go to the search area.

The search order must:

- Describe with some degree of particularity the evidence being sought.
- Clearly define the person and/or place to be searched.

The search authorization's direction concerning the area to be searched must not be exceeded. Example: "1992 blue Mazda pickup truck. Virginia license plate IOU-20K, located in parking lot 14 at Camp Barrett, TBS, MCCDC, Quantico, Virginia for cocaine."

If you are not sure you have probable cause to search, do not rush into it. Isolate the area and request assistance (e.g., judge advocate, PMO).

Search and Seizure (Continued)

Scope of the Authorization

(What can be searched?)

- The person of anyone subject to military law or the law of war wherever found.
- Military property of the US or of non-appropriated fund activities of armed forces of the US wherever found.
- Persons and property within military control wherever located, including:
  - Military installations
  - Military encampments
  - Military vessels, aircraft, and vehicles
  - Any other location under military control
- Does not include a military member's off-base quarters.

Who may conduct a search or seize evidence found

(after an authorization has been granted)?

- Commissioned officers
- Warrant officers
- Noncommissioned officers
- When in the execution of guard or police duties,
  - NCIS agents.
  - CID agents.
  - Military Police (MPs).
  - Other persons properly designated to perform guard or police duties.

Execution of the Search Authorization

If the person whose property is to be searched is present during a search conducted pursuant to a search authorization, the person conducting the search should, when possible, notify him or her of the act of authorization and its general substance before or contemporaneously with the search.

Test

Before performing any search, ask yourself two questions:

- Can I perform this search without further authorization?
- If not, what must I do to obtain authorization?

Search and Seizure (Continued)

Exigent Search

Although this search must be based on probable cause, a search authorization is not required when there is insufficient time. That is, a reasonable belief exists that the delay necessary to obtain a search authorization would result in the removal, destruction, or concealment of the property or evidence sought.

Example: The Officer of the Day smells burning marijuana emanating from a room in the barracks.

If it is possible to isolate the area or person without affecting the property or evidence sought, then exigent circumstances probably do not exist. You should wait until authorization is obtained from the commanding officer.

Searches Not Requiring Probable Cause

The most common searches that don't require probable cause are:

- Searches of government property.
- Consent searches.
- Searches incident to lawful apprehension.
- Emergency searches.
- Searches of open fields or woodlands.

Searches of Government Property

No consent or probable cause is required unless the person to whom the property is issued or assigned has a reasonable expectation of privacy therein at the time of the search. One does not usually have an expectation of privacy in that which is not issued for personal use.

***Example*:** Wall lockers or footlockers in living quarters that are issued for the purpose of storing personal possessions normally are issued for personal use. In that case, there is an expectation of privacy.

Example: Office desks or government brief cases are issued for official business purposes; therefore, no recognized expectation of privacy exists. However, if there is any question about expectation of privacy, the safest course of action is to obtain authorization.

Search and Seizure (Continued)

Consent Searches

A search of any person or property may be conducted with lawful consent.

Who may consent? Any person may consent to a search of his or her own body and any property over which he or she exercises control (ownership is not necessary).

Scope: The person granting the consent may limit the consent in any way and may withdraw consent at any time. The search must not exceed the limitations placed upon the search by the individual giving consent (for example: "You may search my house, except for the hall closet").

To be valid, the consent must be voluntary. No coercion or promises can be made to induce an individual to consent to a search. Consent to search, given after the statement that a warrant can/will be obtained, is usually not voluntary.

There is no requirement to tell an individual that he or she can refuse to give consent, unless asked.

Searches Incident to a Lawful Apprehension

- A full search of the individual being apprehended. (Always conduct this search.) Usually need more than just apprehension to obtain bodily fluids.
- The area within the immediate control of the person being apprehended, for weapons and destructible evidence.
    - "Immediate control" is that area the person being apprehended could reach by lunging.
    - If an individual is apprehended while driving a vehicle, the entire passenger compartment, glove compartment (locked or not), and any containers therein.
- When an apprehension occurs at a location in which other persons might reasonably be present who could interfere with the apprehension or endanger those effecting the apprehension, a reasonable examination (a "sweep," or walk-through, but nothing more) may be made of the general area in which such other persons might be located.

Search and Seizure (Continued)

Searches Incident to a Lawful Apprehension (Continued)

A search incident to a lawful apprehension is conducted to discover weapons and destructible evidence, with a view toward:

- Protecting the person making the apprehension.
- Discovering instrumentalities that might assist in an escape attempt.
- Preventing the destruction of evidence.

Even if you find some evidence that you did not suspect the accused had during a search incident to a lawful apprehension, it is admissible in judicial proceedings.

Emergency Searches

This type of search may be conducted of persons or property in a *good faith effort* to:

- Render immediate medical aid.
- Obtain information that will assist in the rendering of such aid.
- Prevent immediate or ongoing personal injury.

Searches of Open Fields or Woodlands

- Outside the immediate vicinity of a home, mere ownership of property does not give rise to an expectation of privacy.
- May be conducted by anyone, at any time, for any reason

Apprehension is the taking of a person into custody. It is the military equivalent of the civilian term "arrest." What can be searched incident to an apprehension?

Inspections

Definition. The examination of the whole or part of a:

- Unit.
- Organization.
- Installation.
- Vessel.
- Aircraft.
- Vehicle.

including an examination made at entrance and exit points, conducted as an incident of command, the primary purpose of which is to determine and ensure the:

- Security.
- Military fitness.
- Good order and discipline.

of the unit, organization, installation, vessel, aircraft, or vehicle.

Scope. An inspection may include, but is not limited to, an examination to determine and to ensure that any or all of the following requirements are met:

- That the command is properly equipped, functioning properly, maintaining proper standards of readiness, sea or airworthiness, sanitation, and cleanliness.
- That personnel are present, fit, and ready for duty.
    - Urinalysis testing - Primary purpose is to ferret out illegal drugs as a means of protecting the health of the unit and assuring its fitness to accomplish its mission.
    - An inspection also includes an examination to locate and confiscate unlawful weapons and other contraband when such property would adversely affect the security, military fitness, or good order and discipline of the command and when the facts and circumstances of the inspection establish that the inspection was not ordered to gather evidence concerning a specific crime or a specific individual. The legality of such a "contraband search" would be closely examined at a trial.

The best policy is to schedule the inspection of the command. This does not mean that the date of the examination must be published to the command as a whole.

An inspection made for the primary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings is not an inspection, it is a search (this is called a subterfuge). Evidence discovered during a subterfuge search is not admissible at trial.

Conducting the Inspection	• Must be conducted in a reasonable fashion. • May use any reasonable natural or technological aid, such as drug detection dogs.

Inspections (Continued)

Results

Any unlawful weapons, contraband, or other evidence of crime located during a lawful inspection may be seized and may be admissible at trial.

Authority

Any unit leader, including a platoon commander, squad leader, or fire team leader may order an inspection for the security, military fitness, or good order and discipline of his or her unit. Such "health and welfare" inspections are generally designed to:

- Ascertain the health, welfare, morale, state of readiness and living conditions of unit members.
- Check the state of physical repair or disrepair of buildings and equipment of the unit.

Article 31 warnings are not required in order to inspect because you are not asking a suspect or an accused to make a statement.

Plain View Doctrine

While in the course of a lawful activity, if a person who has the authority to seize reasonably observes evidence that is subject to seizure, he or she may seize the evidence. In other words, if the government official was legitimately situated when he or she saw an item and if the government official reasonably believed that the item seen was connected with criminal activity, then the item can be seized.

Example: A company commander (a person with the authority to seize), during a routine personnel inspection (lawful activity), notices a switchblade knife protruding from the pocket of a PFC. (Reasonable observation of an item subject to seizure.)

Inventories

Items connected with criminal activity that are discovered during the course of a bona fide inventory, may be seized under the plain view doctrine.

For impounded vehicles, inventories are permissible because they protect:

- The owner from loss.
- The government against claims.
- Protect police from possible dangerous contents.

Types of Discharges

Introduction. The majority of Marines, officer and enlisted, separate or leave our Corps at the end of an enlistment or contract; regular officers submit a resignation. There are other circumstances, both voluntary and involuntary, under which Marines may leave active duty, prior to the completion of their obligated service. Regardless of the circumstances under which a Marine leaves the service, he or she will be issued a DD Form 214 that will reflect the basis (reason) for discharge and a characterization of their service.

Your role is primarily to counsel and educate. You will make the initial recommendation for characterization of discharge. You are the starting point for the Marine's "paper" or admin record. You may also sit as a member of an administrative separation board.

When a Marine separates from the service he or she is entitled to certain federal benefits. However, should that Marine receive anything but an honorable discharge, his or her benefits may be affected. As part of your counseling program you should advise your Marines of these facts.

Note: A Marine must get an honorable discharge to be eligible for the G.I. Bill.

Basis for Separation.

- **Voluntary**. A Marine may shorten or revoke his/her enlistment. The CMC will normally approve the request if criteria are met. Possible basis for voluntary separation are:
  - If a Marine determines that his or her enlistment contract is defective because:
    - Of a material misrepresentation.
    - The enlistment was not voluntary.
    - There is a change in service obligation for reservists on inactive duty.
  - For a change in service obligation of an active duty Marine, such as to receive a commission or appointment.
  - If elected to a statewide or national public office.
  - To further his or her education (request must fall within 90 days of the Marine's remaining service).
  - For dependency or hardship that:
    - Cannot be a temporary condition.
    - Must have come about since the Marine entered active duty.
  - If the Marine is pregnant (*not* normally approved unless extenuating circumstances).
  - For a conscientious objection to further service (see MCO 1306.16).
  - When a Marine is the surviving family member of his or her generation (see DOD Directive 1315.15).

Types of Discharges (Continued)

Basis for Separation, Voluntary (Continued).

- When there is an intra- or inter-service marriage.
- Officer candidates may disenroll at any time.
- Sergeants who twice fail selection and reduced SNCOs may separate.
- Marines may transfer to the Navy to serve as corpsmen or religious program specialists.
- Reservists may separate to become ministers.
- Marines may separate in lieu of trial by court martial (normally this will warrant an “other than honorable” discharge).

- **Involuntary**. The Marine Corps takes action to end a Marine's service. Possible basis for involuntary separation are:
  - If a change in a Marine's service obligation is directed by the CMC as part of a demobilization or reduction in force.
  - At the convenience of the government, for reasons such as:
    - Parenthood.
    - Physical conditions not a disability.
    - Personality disorder.
  - When a defective enlistment or induction is determined to have occurred, such as underage or fraud.
  - For poor entry level performance or conduct.
  - For unsatisfactory performance (including weight control failure (generally due to lack of effort), unsanitary habits, or poor performance of assigned duties or tasks).
  - For drug or alcohol rehabilitation failure: level II, III, or aftercare.
  - For misconduct:
    - Minor disciplinary infractions. Has a documented series of at least three minor disciplinary infractions during current enlistment of a nature that could have been or would have been appropriately disciplined at NJP.
    - Pattern of misconduct. Where a pattern of two or more instances of conduct prejudicial to good order and discipline occur within one enlistment.
    - Drug abuse.
    - Commission of serious offense.
    - Civilian conviction.
  - When a Marine is determined to be a security risk.
  - For unsatisfactory participation in the Ready Reserve.
  - When company grade officers twice fail selection.
  - When enlisted Marines reach high tenure marks for their MOS.
  - For weight control failure, exceeding the height and weight standards or body fat content, only for otherwise solid performers.
  - New entrant drug and alcohol testing (voids the entrance contract; normally an uncharacterized discharge).
  - Catchall - Best interests of the service (SECNAV Plenary Authority).

Types of Discharges (Continued)

Characterizations of Discharges. The standards for performance and conduct in the Marine Corps are established by the:

- UCMJ.
- MCM.
- Marine Corps Separation and Retirement Manual (MARCORSEPMAN), MCO P1900.16.
- Performance Evaluation System (PES), MCO P1610.7.
- Individual Records Administration Manual (IRAM), MCO P1070.12.
- Time-honored customs and traditions of the Marine Corps and the naval service.

How discharges are characterized depends upon the:

- Type of discharge.
- Basis for discharge.
- Quality of the Marine's service.

Punitive Discharge. Issued as *punishment* for misconduct. The table below describes the three types of punitive discharge.

Discharge	Description
Bad conduct discharge (BCD)	• Characterizes a Marine's service as other than honorable • Can only be imposed on enlisted personnel as punishment by a special or general court-martial
Dishonorable discharge (DD)	• Applies only to enlisted personnel. • Characterizes a Marine's service as dishonorable • Can only be awarded as punishment by a general court-martial
Dismissal	• Applies only to officers • Is the equivalent of a dishonorable discharge • Can only be awarded as punishment by a general court-martial

Types of Discharges (Continued)

Administrative Discharge. The table below describes administrative discharge.

Discharge	Description
Honorable	Earned by a Marine who meets or exceeds the high standards of the Corps.
General (under honorable conditions)	• Issued to a Marine if that Marine's service is determined to have significant negative aspects. • Though characterized as "under honorable conditions," may impact a Marine's future because a future employer will know that the Marine's service did not meet the high standards of the Corps. • Associated with a Marine who has earned conduct and proficiency marks less than 4.0/3.0.

Other than Honorable (OTH)	• Issued to a Marine when that Marine's service can be characterized as a significant departure from accepted standards or practices.
	• Associated with a Marine who:
	  ○ Commits misconduct.
	  ○ Requests and receives a separation in lieu of trial by court-martial.

Involuntary Discharge Procedures for Enlisted Personnel

Notification

Marine

- Notified in writing
- Has opportunity to respond

Board

Special court-martial authorities convene involuntary discharge boards to review and recommend the disposition of certain cases:

- Involving involuntary separation
- Where Marines have been recommended for discharges which are less than honorable

The board:

- Is typically composed of two officers and a staff NCO. The senior member is typically an O-4.
- Will recommend both the:
  - Category of separation
  - Characterization of the discharge

The separation authority makes the final decision.

Not every Marine is entitled to an administrative discharge board.

Summary

In the near future you will be in a leadership position from which you will influence the lives of Marines. You must be prepared to counsel them about the benefits and consequences of the various discharges they can receive. You may have to recommend them for administrative separation. You could be called upon to sit on an administrative discharge board. While you may not make the final decisions, your actions will have a significant effect upon the outcome.

References

Reference Number or Author	Reference Title
UCMJ	Uniform Code of Military Justice
MCM	Manual for Courts-Martial
JAGMAN	Manual of the Judge Advocate General

Glossary of Terms and Acronyms

Term or Acronym	Definition or Identification
BCD	Bad conduct discharge
CA	Convening authority
CID	Criminal Investigation Command
CMC	Commandant of the Marine Corps
DD	Dishonorable discharge
EMI	Extra military instruction
GCM	General Courts Martial
IO	Investigating officer
JAGMAN	Manual of the Judge Advocate General
LEGADMINMAN	Marine Corps Manual for Legal Administration
LIO	Lesser included offenses

Glossary of Terms and Acronyms (Continued)

Term or Acronym	Definition or Identification
MCM	Manual for Courts-Martial (or "The Manual")
MP	Military Police
MRE	Military Rules of Evidence
Navy Regs	Navy Regulations
NCIS	Naval Criminal Investigative Service
NJP	Nonjudicial punishment
NPLOC	Nonpunitive Letter of Caution
OIC	Officer-in-charge
OTH	Other than Honorable
RCM	Rules for Courts-Martial
SecNav	Secretary of the Navy
SCM	Summary court-martial
SPCM	Special Courts Martial
T/O	Table of Organization
UA	Unauthorized Absence
UCMJ	Uniform Code of Military Justice
UPB	Unit punishment book
US	United States

Notes

Appendix A, UCMJ Punitive Articles

The following excerpts taken from Manual For Courts-Martial United States (2000 Edition).

9. Article 85—Desertion

a. *Text.*

"(a) Any member of the armed forces who—

(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away there from permanently;

(2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States

[Note: This provision has been held not to state a separate offense by the United States Court of Military Appeals in *United States v. Huff*, 7 U.S.C.M.A. 247, 22 C.M.R. 37 (1956)];

is guilty of desertion.

(b) Any commissioned officer of the armed forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away there from permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment, other than death, as a court-martial may direct."

b. *Elements.*

(1) *Desertion with intent to remain away permanently.*

(a) That the accused absented himself or herself from his or her unit, organization, or place of duty;

(b) That such absence was without authority;

(c) That the accused, at the time the absence began or at some time during the absence, intended to remain away from his or her unit, organization, or place of duty permanently; and

(d) That the accused remained absent until the date alleged.

[Note: If the absence was terminated by apprehension, add the following element]

(e) That the accused's absence was terminated by apprehension.

(2) *Desertion with intent to avoid hazardous duty or to shirk important service.*

(a) That the accused quit his or her unit, organization, or other place of duty;

(b) That the accused did so with the intent to avoid a certain duty or shirk a certain service;

(c) That the duty to be performed was hazardous or the service important;

(d) That the accused knew that he or she would be required for such duty or service; and

(e) That the accused remained absent until the date alleged.

(3) *Desertion before notice of acceptance of resignation.*

(a) That the accused was a commissioned officer of an armed force of the United States, and had tendered his or her resignation;

(b) That before he or she received notice of the acceptance of the

resignation, the accused quit his or her post or proper duties;

(c) That the accused did so with the intent to remain away permanently from his or her post or proper duties; and

(d) That the accused remained absent until the date alleged.

[Note: If the absence was terminated by apprehension, add the following element]

(e) That the accused's absence was terminated by apprehension.

(4) *Attempted desertion.*

(a) That the accused did a certain overt act;

(b) That the act was done with the specific intent to desert;

(c) That the act amounted to more than mere preparation; and

(d) That the act apparently tended to effect the commission of the offense of desertion.

c. *Explanation.*

(1) *Desertion with intent to remain away permanently.*

(a) *In general.* Desertion with intent to remain away permanently is complete when the person absents himself or herself without authority from his or her unit, organization, or place of duty, with the intent to remain away there from permanently. A prompt repentance and return, while material in extenuation, is no defense. It is not necessary that the person be absent entirely from military jurisdiction and control.

(b) *Absence without authority* — inception, duration, termination. *See* paragraph 10c.

(c) *Intent to remain away permanently.*

(i) The intent to remain away permanently from the unit, organization, or place of duty may be formed any time during the unauthorized absence. The intent need not exist throughout the absence, or for any particular period of time, as long as it exists at some time during the absence.

(ii) The accused must have intended to remain away permanently from the unit, organization, or place of duty. When the accused had such an intent, it is no defense that the accused also intended to report for duty elsewhere, or to enlist or accept an appointment in the same or a different armed force.

(iii) The intent to remain away permanently may be established by circumstantial evidence. Among the circumstances from which an inference may be drawn that an accused intended to remain absent permanently or; that the period of absence was lengthy; that the accused attempted to, or did, dispose of uniforms or other military property; that the accused purchased a ticket for a distant point or was arrested, apprehended, or surrendered a considerable distance from the accused's station; that the accused could have conveniently surrendered to military control but did not; that the accused was dissatisfied with the accused's unit, ship, or with military service; that the accused made remarks indicating an intention to desert; that the accused was under charges or had escaped from confinement at the time of the absence; that the accused made preparations indicative of an intent not to return (for example, financial arrangements); or that the accused enlisted or accepted an appointment in the same or another armed force without disclosing the fact that the accused had not been regularly separated, or entered any foreign armed service without being authorized by the United States. On the other hand, the following are included in the circumstances which may tend to negate an inference that the accused intended to remain away permanently: previous long and excellent service; that

the accused left valuable personal property in the unit or on the ship; or that the accused was under the influence of alcohol or drugs during the absence. These lists are illustrative only.

(iv) Entries on documents, such as personnel accountability records, which administratively refer to an accused as a "deserter" are not evidence of intent to desert.

(v) Proof of, or a plea of guilty to, an unauthorized absence, even of extended duration, does not, without more, prove guilt of desertion.

(d) *Effect of enlistment or appointment in the same or a different armed force.* Article 85a(3) does not state a separate offense. Rather, it is a rule of evidence by which the prosecution may prove intent to remain away permanently. Proof of an enlistment or acceptance of an appointment in a service without disclosing a preexisting duty status in the same or a different service provides the basis from which an inference of intent to permanently remain away from the earlier unit, organization, or place of duty may be drawn. Furthermore, if a person, without being regularly separated from one of the armed forces, enlists or accepts an appointment in the same or another armed force, the person's presence in the military service under such an enlistment or appointment is not a return to military control and does not terminate any desertion or absence without authority from the earlier unit or organization, unless the facts of the earlier period of service are known to military authorities. If a person, while in desertion, enlists or accepts an appointment in the same or another armed force, and deserts while serving the enlistment or appointment, the person may be tried and convicted for each desertion.

(2) *Quitting unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service.*

(a) *Hazardous duty or important service.* "Hazardous duty" or "important service" may include service such as duty in a combat or other dangerous area; embarkation for certain foreign or sea duty; movement to a port of embarkation for that purpose; entrainment for duty on the border or coast in time of war or threatened invasion or other disturbances; strike or riot duty; or employment in aid of the civil power in, for example, protecting property, or quelling or preventing disorder in times of great public disaster. Such services as drill, target practice, maneuvers, and practice marches are not ordinarily "hazardous duty or important service." Whether a duty is hazardous or a service is important depends upon the circumstances of the particular case, and is a question of fact for the court-martial to decide.

(b) *Quits.* "Quits" in Article 85 means "goes absent without authority."

(c) *Actual knowledge.* Article 85 a(2) requires proof that the accused actually knew of the hazardous duty or important service. Actual knowledge may be proved by circumstantial evidence.

(3) *Attempting to desert.* Once the attempt is made, the fact that the person desists, voluntarily or otherwise, does not cancel the offense. The offense is complete, for example, if the person, intending to desert, hides in an empty freight car on a military reservation, intending to escape by being taken away in the car. Entering the car with the intent to desert is the overt act. For a more detailed discussion of attempts, *see* paragraph 4. For an explanation concerning intent to remain away permanently, *see* subparagraph 9c(1)(c).

(4) *Prisoner with executed punitive discharge.* A prisoner whose dismissal

or dishonorable or bad-conduct discharge has been executed is not a "member of the armed forces" within the meaning of Articles 85 or 86, although the prisoner may still be subject to military law under Article 2(a)(7). If the facts warrant, such a prisoner could be charged with escape from confinement under Article 95 or an offense under Article 134.

d. *Lesser included offense.* Article 86—absence without leave

e. *Maximum punishment.*

(1) *Completed or attempted desertion with intent to avoid hazardous duty or to shirk important service.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(2) *Other cases of completed or attempted desertion.*

(a) *Terminated by apprehension.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(b) *Terminated otherwise.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(3) *In time of war.* Death or such other punishment as a court-martial may direct.

f. *Sample specifications.*

(1) *Desertion with intent to remain away permanently.*

In that _____(personal jurisdiction data), did, on or about _____20_____, (a time of war) without authority and with intent to remain away there from permanently, absent himself/herself from his/her (unit) (organization) (place of duty), to wit: _____, located at (_____), and did remain so absent in desertion until (he/she was apprehended) on or about _____ 20_____.

(2) *Desertion with intent to avoid hazardous duty or shirk important service.*

In that _____(personal jurisdiction data), did, on or about _____ 20_____, (a time of war) with intent to (avoid hazardous duty) (shirk important service), namely: _____, quit his/her (unit) (organization) (place of duty), to wit: _____, located at (_____), and did remain so absent in desertion until on or about _____ 20_____.

(3) *Desertion prior to acceptance of resignation.*

In that _____(personal jurisdiction data) having tendered his/her resignation and prior to due notice of the acceptance of the same, did, on or about _____ 20_____, (a time of war) without leave and with intent to remain away there from permanently, quit his/her (post) (proper duties), to wit: _____, and did remain so absent in desertion until (he/she was apprehended) on or about _____ 20 _____.

(4) *Attempted desertion.*

In that _____(personal jurisdiction data), did (at/onboard-location), on or about _____ 20_____, (a time of war) attempt to (absent himself/herself from his/her (unit) (organization) (place of duty) to wit: _____, without authority and with intent to remain away there from permanently) (quit his/her (unit) (organization) (place of duty), to wit: _____, located at _____, with intent to (avoid hazardous duty) (shirk important service) namely _____) (_____).

10. Article 86—Absence without leave

a. *Text*.

"Any member of the armed forces who, without authority—

(1) fails to go to his appointed place of duty at the time prescribed;

(2) goes from that place; or

(3) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed; shall be punished as a court-martial may direct."

b. *Elements*.

(1) *Failure to go to appointed place of duty*.

(a) That a certain authority appointed a certain time and place of duty for the accused;

(b) That the accused knew of that time and place; and

(c) That the accused, without authority, failed to go to the appointed place of duty at the time prescribed.

(2) *Going from appointed place of duty*.

(a) That a certain authority appointed a certain time and place of duty for the accused;

(b) That the accused knew of that time and place; and

(c) That the accused, without authority, went from the appointed place of duty after having reported at such place.

(3) *Absence from unit, organization, or place of duty*.

(a) That the accused absented himself or herself from his or her unit, organization, or place of duty at which he or she was required to be;

(b) That the absence was without authority from anyone competent to give him or her leave; and

(c) That the absence was for a certain period of time.

[Note: if the absence was terminated by apprehension, add the following element]

(d) That the absence was terminated by apprehension.

(4) *Abandoning watch or guard*.

(a) That the accused was a member of a guard, watch, or duty;

(b) That the accused absented himself or herself from this or her guard, watch, or duty section;

(c) That absence of the accused was without authority; and

[Note: if the absence was terminated by apprehension, add the following element]

(d) That the accused intended to abandon his or her guard, watch, or duty section.

(5) *Absence from unit, organization, or place of duty with intent to avoid maneuvers or field exercises*.

(a) That the accused absented himself or herself from his or her unit, organization, or place of duty at which he or she was required to be;

(b) That the absence of the accused was without authority;

(c) That the absence was for a certain period of time;

(d) That the accused knew that the absence would occur during a part of a period of maneuvers or field exercises; and

(e) That the accused intended to avoid all or part of a period of maneuvers or field exercises.

c. *Explanation*.

(1) *In general*. This article is designed to cover every case not elsewhere provided for in which any member of the armed forces is through the member's own fault not at the place where the member is required to be at a prescribed time. It is not necessary that the person be absent entirely from military jurisdiction and control. The first part of the article—relating to the appointed place of duty—applies whether the place is appointed as a rendezvous for several or for one only.

(2) *Actual knowledge*. The offenses of failure to go to and going from

appointed place of duty require proof that the accused actually knew of the appointed time and place of duty. The offense of absence from unit, organization, or place of duty with intent to avoid maneuvers or field exercises requires proof that the accused actually knew that the absence would occur during a part of a period of maneuvers or field exercises. Actual knowledge may be proved by circumstantial evidence.

(3) *Intent*. Specific intent is not an element of unauthorized absence. Specific intent is an element for certain aggravated unauthorized absences.

(4) *Aggravated forms of unauthorized absence*. There are variations of unauthorized absence under Article 86(3) which are more serious because of aggravating circumstances such as duration of the absence, a special type of duty from which the accused absents himself or herself, and a particular intent which accompanies the absence. These circumstances are not essential elements of a violation of Article 86. They simply constitute special matters in aggravation. The following are aggravated unauthorized absences:

(a) Unauthorized absence for more than 3 days (duration).

(b) Unauthorized absence for more than 30 days (duration).

(c) Unauthorized absence from a guard, watch, or duty (special type of duty).

(d) Unauthorized absence from guard, watch, or duty section with the intent to abandon it (special type of duty and specific intent).

(e) Unauthorized absence with the intent to avoid maneuvers or field exercises (special type of duty and specific intent).

(5) *Control by civilian authorities*. A member of the armed forces turned over to the civilian authorities upon request under Article 14 (see R.C.M. 106) is not absent without leave while held by them under that delivery. When a member of the armed forces, being absent with leave, or absent without leave, is held, tried, and acquitted by civilian authorities, the member's status as absent with leave, or absent without leave is not thereby changed, regardless how long held. The fact that a member of the armed forces is convicted by the civilian authorities, or adjudicated to be a juvenile offender, or the case is "diverted" out of the regular criminal process for a probationary period does not excuse any unauthorized absence, because the member's inability to return was the result of willful misconduct. If a member is released by the civilian authorities without trial, and was on authorized leave at the time of arrest or detention, the member may be found guilty of unauthorized absence only if it is proved that the member actually committed the offense for which detained, thus establishing that the absence was the result of the member's own misconduct.

(6) *Inability to return*. The status of absence without leave is not changed by an inability to return through sickness, lack of transportation facilities, or other disabilities. But the fact that all or part of a period of unauthorized absence was in a sense enforced or involuntary is a factor in extenuation and should be given due weight when considering the initial disposition of the offense. When, however, a person on authorized leave, without fault, is unable to return at the expiration thereof, that person has not committed the offense of absence without leave.

(7) *Determining the unit or organization of an accused*. A person undergoing transfer between activities is ordinarily considered to be attached to the activity to which ordered to report. A person on temporary additional duty

continues as a member of the regularly assigned unit and if the person is absent from the temporary duty assignment, the person becomes absent with out leave from both units, and may be charged with being absent without leave from either unit.

(8) *Duration*. Unauthorized absence under Article 86(3) is an instantaneous offense. It is complete at the instant an accused absents himself or herself without authority. Duration of the absence is a matter in aggravation for the purpose of increasing the maximum punishment authorized for the offense. Even if the duration of the absence is not over 3 days, it is ordinarily alleged in an Article 86(3) specification. If the duration is not alleged or if alleged but not proved, an accused can be convicted of and punished for only 1 day of unauthorized absence.

(9) *Computation of duration*. In computing the duration of an unauthorized absence, any one continuous period of absence found that total not more than 24 hours is counted as 1 day; any such period that totals more than 24 hours and not more than 48 hours is counted as 2 days, and so on. The hours of departure and return on different dates are assumed to be the same if not alleged and proved. For example, if an accused is found guilty of unauthorized absence from 0600 hours, 4 April, to 1000 hours, 7 April of the same year (76 hours), the maximum punishment would be based on an absence of 4 days. However, if the accused is found guilty simply of unauthorized absence from 4 April to 7 April, the maximum punishment would be based on an absence of 3 days.

(10) *Termination*—methods of return to military control.

(a) *Surrender to military authority*. A surrender occurs when a person presents himself or herself to any military authority, whether or not a member of the same armed force, notifies that authority of his or her unauthorized absence status, and submits or demonstrates a willingness to submit to military control. Such a surrender terminates the unauthorized absence.

(b) *Apprehension by military authority*. Apprehension by military authority of a known absentee terminates an unauthorized absence.

(c) *Delivery to military authority*. Delivery of a known absentee by anyone to military authority terminates the unauthorized absence.

(d) *Apprehension by civilian authorities at the request of the military*. When an absentee is taken into custody by civilian authorities at the request of military authorities, the absence is terminated.

(e) *Apprehension by civilian authorities without prior military request*. When an absentee is in the hands of civilian authorities for other reasons and these authorities make the absentee available for return to military control, the absence is terminated when the military authorities are informed of the absentee's availability.

(11) *Findings of more than one absence under one specification*. An accused may properly be found guilty of two or more separate unauthorized absences under on specification, provided that each absence is included within the period alleged in the specification and provided that the accused was not misled. If an accused is found guilty of two or more unauthorized absences under a single specification, the maximum authorized punishment shall not exceed that authorized if the accused had been found guilty as charged in the specification.

d. *Lesser included offense*. Article 80--attempts

e. *Maximum punishment*.

(1) *Failing to go to, or going from, the appointed place of duty*. Confinement for 1 month and forfeiture of two-thirds pay per month for 1 month.

(2) *Absence from unit, organization, or other place of duty*.

(a) For not more than 3 days. Confinement for 1 month and forfeiture of two-thirds pay per month for 1 month.

(b) For more than 3 days but not more than 30 days. Confinement for 6 months and forfeiture of two-thirds pay per month for 6 months.

(c) For more than 30 days. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(d) For more than 30 days and terminated by apprehension. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 18 months.

(3) *From guard or watch*. Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

(4) *From guard or watch with intent to abandon*. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(5) *With intent to avoid maneuvers or field exercises*. Bad conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

f. *Sample specifications*.

(1) *Failing to go or leaving place of duty*.

In that _____(personal jurisdiction data), did (at/on board—location), on or about _____20_____, without authority, (fail to go at the time prescribed to) (go from) his/her appointed place of duty, to with: (here set for the appointed place of duty).

(2) *Absence from unit, organization, or place of duty*.

In that _____(personal jurisdiction data), did, on or about _____20_____, without authority, absent himself/herself from his/her (unit) (organization) (place of duty at which he/she was required to be), to wit: _____, located a _____, and did remain so absent until (he/she was apprehended) on or about _____20_____.

(3) *Absence from unit, organization, or place of duty with intent to avoid maneuvers or field exercises*.

In that _____(personal jurisdiction data), did, on or about _____20_____, without authority and with intent to avoid (maneuvers) (field exercises), absent himself/herself from his/her (unit) (organization) (place of duty at which he/she was required to be), to wit: _____located at (_____), and did remain so absent until on or about _____20_____.

(4) *Abandoning watch or guard*.

In that _____(personal jurisdiction data), being a member of the _____ (guard) (watch) (duty section), did, (at/on board—location), on or about _____20_____ without authority, go from his/her (guard) (watch) (duty section) (with intent to abandon same).

28. Article 104—Aiding the enemy

a. *Text.*

"Any person who—

(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly; shall suffer death or such other punishment as a court-

martial or military commission may direct."

b. *Elements.*

(1) *Aiding the enemy.*

(a) That the accused aided the enemy; and

(b) That the accused did so with certain arms, ammunition, supplies, money, or other things.

(2) *Attempting to aid the enemy.*

(a) That the accused did a certain overt act;

(b) That the act was done with the intent to aid the enemy with certain arms, ammunition, supplies, money, or other things;

(c) That the act amounted to more than mere preparation; and

(d) That the act apparently tended to bring about the offense of aiding the enemy with certain arms, ammunition, supplies, money, or other things.

(3) *Harboring or protecting the enemy.*

(a) That the accused, without proper authority, harbored or protected a person;

(b) That the person so harbored or protected was the enemy; and

(c) That the accused knew that the person so harbored or protected was an enemy.

(4) *Giving intelligence to the enemy.*

(a) That the accused, without proper authority, knowingly gave intelligence information to the enemy; and

(b) That the intelligence information was true, or implied the truth, at least in part.

(5) *Communicating with the enemy.*

(a) That the accused, without proper authority, communicated, corresponded, or held intercourse with the enemy, and;

(b) That the accused knew that the accused was communicating, corresponding, or holding intercourse with the enemy.

c. *Explanation.*

(1) *Scope of Article 104.* This article denounces offenses by all persons whether or not otherwise subject to military law. Offenders may be tried by court-martial or by military commission.

(2) *Enemy.* For a discussion of "enemy," *see* paragraph 23c(1)(b).

(3) *Aiding or attempting to aid the enemy.* It is not a violation of this article to furnish prisoners of war subsistence, quarters, and other comforts or aid to which they are lawfully entitled.

(4) *Harboring or protecting the enemy.*

(a) *Nature of offense.* An enemy is harbored or protected when, without proper authority, that enemy is shielded, either physically or by use of any artifice, aid, or representation from any injury or misfortune which in the chance of war may occur.

(b) *Knowledge.* Actual knowledge is required, but may be proved by circumstantial evidence.

(5) *Giving intelligence to the enemy.*

(a) *Nature of offense.* Giving intelligence to the enemy is a particular case of corresponding with the enemy made more serious by the fact that the communication contains intelligence that may be useful to the enemy for any of the many reasons that make information valuable to belligerents. This intelligence may be conveyed by direct or indirect means.

(b) *Intelligence.* "Intelligence" imports that the information conveyed is true or implies the truth, at least in part.

(c) *Knowledge.* Actual knowledge is required but may be proved by circumstantial evidence.

(6) *Communicating with the enemy.*

(a) *Nature of the offense.* No unauthorized communication, correspondence, or intercourse with the enemy is permissible. The intent, content, and method of the communication, correspondence, or intercourse are immaterial. No response or receipt by the enemy is required. The offense is complete the moment the communication, correspondence, or intercourse issues from the accused. The communication, correspondence, or intercourse may be conveyed directly or indirectly. A prisoner of war may violate this Article by engaging in unauthorized communications with the enemy. *See also* paragraph 29c(3).

(b) *Knowledge.* Actual knowledge is required but may be proved by circumstantial evidence.

(c) *Citizens of neutral powers.* Citizens of neutral powers resident in or visiting invaded or occupied territory can claim no immunity from the customary laws of war relating to communication with the enemy. d. *Lesser included offense.* For harboring or protecting the enemy, giving intelligence to the enemy, or communicating with the enemy. Article 80—attempts

e. *Maximum punishment.* Death or such other punishment as a court-martial or military commission may direct.

f. *Sample specifications.*

(1) *Aiding or attempting to aid the enemy.*

In that _____(personal jurisdiction data), did, (at/onboard—location), on or about _____20_____, (attempt to) aid the enemy with (arms) (ammunition) (supplies) (money) (_____), by (furnishing and delivering to _____, members of the enemy's armed forces_____) (_____).

(2) *Harboring or protecting the enemy.*

In that _____(personal jurisdiction data), did, (at/on board—location), on or about _____20_____, without proper authority, knowingly (harbor) (protect)_____, an enemy, by (concealing the said _____in his/her house) (_____).

(3) *Giving intelligence to the enemy.*

In that _____(personal jurisdiction data), did, (at/on board—location), on or about _____20_____, without proper authority, knowingly give intelligence to the enemy, by (informing a patrol of the enemy's forces of the whereabouts of a military patrol of the United States forces) (_____).

(4) *Communicating with the enemy.*

In that _____(personal jurisdiction data), did, (at/on board—location), on or about _____20_____, without proper authority, knowingly (communicate with) (correspond with) (hold intercourse with) the enemy (by writing and transmitting secretly through the lines to one _____, whom he/she, the said _____, knew to be (an officer of the enemy's armed forces) (_____) a communication in words and figures substantially as follows, to wit: _____)) ((indirectly by publishing in _____, a newspaper published at _____, a communication in words and figures as follows, to wit: _____, which communication was intended to reach the enemy)) ((_____)).

31. Article 107—False official statements

a. *Text.*

"Any person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct."

b. *Elements.*

(1) That the accused signed a certain official document or made a certain official statement;

(2) That the document or statement was false in certain particulars;

(3) That the accused knew it to be false at the time of signing it or making it; and

(4) That the false document or statement was made with the intent to deceive.

c. *Explanation.*

(1) *Official documents and statements.* Official documents and official statements include all documents and statements made in the line of duty.

(2) *Status of victim of the deception.* The rank of any person intended to be deceived is immaterial if that person was authorized in the execution of a particular duty to require or receive the statement or document from the accused. The government may be the victim of this offense.

(3) *Intent to deceive.* The false representation must be made with the intent to deceive. It is not necessary that the false statement be material to the issue inquiry. If, however, the falsity is in respect to a material matter, it may be considered as some evidence of the intent to deceive, while immateriality may tend to show an absence of this intent.

(4) *Material gain.* The expectation of material gain is not an element of this offense. Such expectation or lack of it, however, is circumstantial evidence bearing on the element of intent to deceive.

(5) *Knowledge that the document or statement was false.* The false representation must be one which the accused actually knew was false. Actual knowledge may be proved by circumstantial evidence. An honest, although erroneous, belief that a statement made is true, is a defense.

(6) *Statements made during an interrogation.*

(a) *Person without an independent duty or obligation to speak.* A statement made by an accused or suspect during an interrogation is not an official statement within the meaning of the article if that person did not have an independent duty or obligation to speak. *But see* paragraph 79 (false swearing).

(b) *Person with an independent duty or obligation to speak.* If a suspect or accused does have an independent duty or obligation to speak, as in the case of a custodian who is required to account for property, a statement made by that person during an interrogation into the matter is official. While the person could remain silent (Article 31(b)), if the person chooses to speak, the person must do so truthfully.

d. *Lesser included offense.*

Article 80—attempts

e. *Maximum punishment.*

Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

In that _____(personal jurisdiction data), did, (at/on board—location), (subject-matter jurisdiction data, if required), on or about _____20_____, with intent to deceive, (sign an official (record) (return) (_____), to wit: _____) (make to _____, an official statement, to wit: _____), which (record) (return) (statement)

(_____) was (totally false) (false in that _____), and was then known by the said _____to be so false.

32. Article 108—Military property of the United States—sale, loss, damage, destruction, or wrongful disposition

a. *Text.*

"Any person subject to this chapter who, without proper authority—

(1) sells or otherwise disposes of;

(2) willfully or through neglect damages, destroys, or loses; or

(3) willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of, any military property of the United States, shall be punished as a court-martial may direct."

b. *Elements.*

(1) *Selling or otherwise disposing of military property.*

(a) That the accused sold or otherwise disposed of certain property (which was a firearm or explosive);

(b) That the sale or disposition was without proper authority;

(c) That the property was military property of the United States; and

(d) That the property was of a certain value.

(2) *Damaging, destroying, or losing military property.*

(a) That the accused, without proper authority, damaged or destroyed certain property in a certain way, or lost certain property;

(b) That the property was military property of the United States;

(c) That the damage, destruction, or loss was willfully caused by the accused or was the result of neglect by the accused; and

(d) That the property was of a certain value or the damage was of a certain amount.

(3) *Suffering military property to be lost, damaged, destroyed, sold, or wrongfully disposed of.*

(a) That certain property (which was a firearm or explosive) was lost, damaged, destroyed, sold, or wrongfully disposed of;

(b) That the property was military property of the United States;

(c) That the loss, damage, destruction, sale, or wrongful disposition was suffered by the accused, without proper authority, through a certain omission of duty by the accused;

(d) That the omission was willful or negligent; and

(e) That the property was of a certain value or the damage was of a certain amount.

c. *Explanation.*

(1) *Military property.* Military property is all property, real or personal, owned, held, or used by one of the armed forces of the United States. If is immaterial whether the property sold, disposed, destroyed, lost, or damaged had been issued to the accused, to someone else, or even issued at all. If it is proved by either direct or circumstantial evidence that items of individual issue were issued to the accused, it may be inferred, depending on all the evidence, that the damage, destruction, or loss proved was due to the neglect of the accused. Retail merchandise of service exchange stores is not military property under this article.

(2) *Suffering military property to be lost, damaged, destroyed, sold, or wrongfully disposed of.* "To suffer" means to allow or permit. The willful or negligent sufferance specified by this article includes: deliberate violation or intentional disregard of some specific law, regulation, or order; reckless or unwarranted personal use of the property; causing or allowing it to remain exposed to the weather, insecurely housed, or not guarded; permitting it to be consumed, wasted, or injured by other persons; or loaning it to a person, known to be irresponsible, by whom it is damaged.

(3) *Value and damage.* In the case of loss, destruction, sale, or wrongful disposition, the value of the property controls the maximum punishment which may be adjudged. In the case of damage, the amount of damage controls. As a general rule, the amount of damage is the estimated or actual cost of repair by the government agency normally employed in such work, or the cost of replacement, as shown by government price lists or otherwise, whichever is less.

d. *Lesser included offenses.*

(1) *Sale or disposition of military property.*
- (a) Article 80—attempts
- (b) Article 134—sale or disposition of non-military government property

(2) *Willfully damaging military property.*
- (a) Article 108—damaging military property through neglect
- (b) Article 109—willfully damaging non-military property
- (c) Article 80—attempts

(3) *Willfully suffering military property to be damaged.*
- (a) Article 108—through neglect suffering military property to be damaged
- (b) Article 80—attempts

(4) *Willfully destroying military property.*
- (a) Article 108—through neglect destroying military property
- (b) Article 109—willfully destroying non-military property
- (c) Article 108—willfully damaging military property
- (d) Article 109—willfully damaging non-military property
- (e) Article 108—through neglect damaging military property
- (f) Article 80—attempts

(5) *Willfully suffering military property to be destroyed.*
- (a) Article 108—through neglect suffering military property to be destroyed
- (b) Article 108—willfully suffering military property to be damaged
- (c) Article 108—through neglect suffering military property to be damaged
- (d) Article 80—attempts

(6) *Willfully losing military property.*
- (a) Article 108—through neglect, losing military property
- (b) Article 80—attempts

(7) *Willfully suffering military property to be lost.*
- (a) Article 108—through neglect, suffering military property to be lost
- (b) Article 80—attempts

(8) *Willfully suffering military property to be sold.*
- (a) Article 108—through neglect, suffering military property to be sold
- (b) Article 80—attempts

(9) *Willfully suffering military property to be wrongfully disposed of.*
- (a) Article 108—through neglect, suffering military property to be wrongfully disposed of in the manner alleged
- (b) Article 80—attempts

e. *Maximum punishment.*

(1) *Selling or otherwise disposing of military property.*

(a) *Of a value of $100.00 or less.* Bad-conduct discharge, forfeiture of all pay and allowance, and confinement for 1 year.

(b) *Of a value of more than $100.00 or any firearm or explosive.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(2) *Through neglect damaging, destroying, or losing, or through neglect suffering to be lost, damaged, destroyed, sold, or wrongfully disposed of, military property.*

(a) *Of a value or damage of $100.00 or less.* Confinement for 6 months, and forfeiture of two-thirds pay per month for 6 months.

(b) *Of a value or damage of more than $100.00.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(3) *Willfully damaging, destroying, or losing, or willfully suffering to be lost, damaged, destroyed, sold, or wrongfully disposed of, military property.*

(a) *Of a value or damage of $100.00 or less.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(b) *Of a value or damage of more than $100.00, or of any firearm or explosive.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

f. *Sample specifications.*

(1) *Selling or disposing of military property.*

In that _____(personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, without proper authority, (sell to _____) (dispose of by _____)_____, ((a firearm) (an explosive)) of a value of (about) $ _____, military property of the United States.

(2) *Damaging, destroying, or losing military property.*

In that _____(personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____20 _____, without proper authority, ((willfully) (through neglect)) ((damage by _____) (destroy by _____)) (lose)) _____(of a value of (about) $ _____,) military property of the United States (the amount of said damage being in the sum of (about) $ _____).

(3) *Suffering military property to be lost, damaged, destroyed, sold, or wrongfully disposed of.*

In that _____(personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____20 _____, without proper authority, (willfully) (through neglect) suffer, ((a firearm) (an explosive)) (of a value of (about) $ _____) military proper t y of the United States, to be (lost) (damaged by _____) (destroyed by _____) (sold to _____) (wrongfully disposed of by _____) (the amount of said damage being in the sum of (about $ _____).

46. Article 121—Larceny and wrongful appropriation

a. *Text.*

"(a) Any person subject to this chapter who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind—"

(1) with intent permanently to deprive or de-fraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(2) with intent temporarily to deprive or de-fraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

b. *Elements.*

(1) *Larceny.*

(a) That the accused wrongfully took, obtained, or withheld certain property from the possession of the owner or of any other person;

(b) That the property belonged to a certain person;

(c) That the property was of a certain value, or of some value; and

(d) That the taking, obtaining, or withholding by the accused was with the intent permanently to deprive or defraud another person of the use and benefit of the property or permanently to appropriate the property for the use of the accused or for any person other than the owner.

[Note: If the property is alleged to be military property, as defined in paragraph 32c(1), add the following element]

(e) That the property was military property.

(2) *Wrongful appropriation.*

(a) That the accused wrongfully took, obtained, or withheld certain property from the possession of the owner or of any other person;

(b) That the property belonged to a certain person;

(c) That the property was of a certain value, or of some value; and

(d) That the taking, obtaining, or withholding by the accused was with the intent temporarily to deprive or defraud another person of the use and benefit of the property or temporarily to appropriate the property for the use of the accused or for any person other than the owner.

c. *Explanation.*

(1) *Larceny.*

(a) *In general.* A wrongful taking with intent permanently to deprive includes the common law offense of larceny; a wrongful obtaining with intent permanently to defraud includes the offense formerly known as obtaining by false pretense; and a wrongful withholding with intent permanently to appropriate includes the offense formerly known as embezzlement. Any of the various types of larceny under Article 121 may be charged and proved under a specification alleging that the accused “did steal” the property in question.

(b) *Taking, obtaining, or withholding.* There must be a taking, obtaining, or withholding of the property by the thief. For instance, there is no taking if the property is connected to a building by a chain and the property has not been disconnected from the building; property is not “obtained” by merely acquiring title thereto without exercising some possessory control over it. As a general rule, however, any movement of the property or any exercise of dominion over it is sufficient if accompanied by the requisite intent. Thus, if an accused enticed another’s horse into the accused’s stable without touching the animal, or procured a railroad company to deliver another’s trunk by changing the check on it, or obtained the delivery of another’s goods to a person or place designated by the accused, or had the funds of another transferred to the

accused's bank account, the accused is guilty of larceny if the other elements of the offense have been proved. A person may "obtain" the property of another by acquiring possession without title, and one who already has possession of the property of another may "obtain" it by later acquiring title to it. A "withholding" may arise as a result of a failure to return, account for, or deliver property to its owner when a return, accounting, or delivery is due, even if the owner has made no demand for the property, or it may arise as a result of devoting property to a use not authorized by its owner. Generally, this is so whether the person withholding the property acquired it lawfully or unlawfully. *See* subparagraph c(1)(f) below. However, acts which constitute the offense of unlawfully receiving, buying, or concealing stolen property or of being an accessory after the fact are not included within the meaning of "withholds." Therefore, neither a receiver of stolen property nor an accessory after the fact can be convicted of larceny on that basis alone. The taking, obtaining, or withholding must be of specific property. A debtor does not withhold specific property from the possession of a creditor by failing or refusing to pay a debt, for the relationship of debtor and creditor does not give the creditor a possessory right in any specific money or other property of the debtor.

(c) *Ownership of the property.*

(i) *In general.* Article 121 requires that the taking, obtaining, or withholding be from the possession of the owner or of any other person. Care, custody, management, and control are among the definitions of possession.

(ii) *Owner.* "Owner" refers to the person who, at the time of the taking, obtaining, or with-holding, had the superior right to possession of the property in the light of all conflicting interests therein which may be involved in the particular case. For instance, an organization is the true owner of its funds as against the custodian of the funds charged with the larceny thereof.

(iii) *Any other person.* "Any other person" means any person—even a person who has stolen the property—who has possession or a greater right to possession than the accused. In pleading a violation of this article, the ownership of the property may be alleged to have been in any person, other than the accused, who at the time of the theft was a general owner or a special owner thereof. A general owner of property is a person who has title to it, whether or not that person has possession of it; a special owner, such as a borrower or hirer, is one who does not have title but who does have possession, or the right of possession, of the property.

(iv) *Person.* "Person," as used in referring to one from whose possession property has been taken, obtained, or withheld, and to any owner of property, includes (in addition to a natural person) a government, a corporation, an association, an organization, and an estate. Such a person need not be a legal entity.

(d) *Wrongfulness of the taking, obtaining, or withholding.* The taking, obtaining, or withholding of the property must be wrongful. As a general rule, a taking or withholding of property from the possession of another is wrongful if done without the consent of the other, and an obtaining of property from the possession of another is wrongful if the obtaining is by false pretense. However, such an act is not wrongful if it is authorized by law or apparently lawful superior orders, or, generally, if done by a person who has a right to the possession of the property either equal to or greater than the right of one from whose possession the property is taken, obtained, or withheld. An owner of property who takes or withholds it from the possession of another, without the consent of the other, or who obtains it there from by false pretense, does so wrongfully if the other has a superior right—such as a lien—to possession of the property. A person who takes, obtains, or withholds property as the agent of another has the same rights and

liabilities as does the principal, but may not be charged with a guilty knowledge or intent of the principal which that person does not share.

(e) *False pretense.* With respect to obtaining property by false pretense, the false pretense may be made by means of any act, word, symbol, or token. The pretense must be in fact false when made and when the property is obtained, and it must be knowingly false in the sense that it is made without a belief in its truth. A false pretense is a false representation of past or existing fact. In addition to other kinds of facts, the fact falsely represented by a person may be that person's or another's power, authority, or intention. Thus, a false representation by a person that person presently intends to perform a certain act in the future is a false representation of an existing fact—the intention—and thus a false pre-tense. Although the pretense need not be the sole cause inducing the owner to part with the property, it must be an effective and intentional cause of the obtaining. A false representation made after the property was obtained will not result in a violation of Article 121. A larceny is committed when a person obtains the property of another by false pretense and with intent to steal, even though the owner neither intended nor was requested to part with title to the property. Thus, a person who gets another's watch by pretending that it will be borrowed briefly and then returned, but who really intends to sell it, is guilty of larceny.

(f) *Intent.*

(i) *In general.* The offense of larceny requires that the taking, obtaining, or withholding by the thief be accompanied by an intent permanently to deprive or defraud another of the use and benefit of property or permanently to appropriate the property to the thief's own use or the use of any person other than the owner. These intents are collectively called an intent to steal. Although a person gets property by a taking or obtaining which was not wrongful or which was without a concurrent intent to steal, a larceny is nevertheless committed if an intent to steal is formed after the taking or obtaining and the property is wrongfully withheld with that intent. For example, if a person rents another's vehicle, later decides to keep it permanently, and then either fails to return it at the appointed time or uses it for a purpose not authorized by the terms of the rental, larceny has been committed, even though at the time the vehicle was rented, the person intended to return it after using it according to the agreement.

(ii) *Inference of intent.* An intent to steal may be proved by circumstantial evidence. Thus, if a person secretly takes property, hides it, and denies knowing anything about it, an intent to steal may be inferred; if the property was taken openly and returned, this would tend to negate such an intent. Proof of sale of the property may show an intent to steal, and therefore, evidence of such a sale may be introduced to support a charge of larceny. An intent to steal may be inferred from a wrongful and intentional dealing with the property of another in a manner likely to cause that person to suffer a permanent loss thereof.

(iii) *Special situations.*

(A) *Motive does not negate intent.* The accused's purpose in taking an item ordinarily is irrelevant to the accused's guilt as long as the accused had the intent required under subparagraph c(1)(f)(i) above. For example, if the accused wrongfully took property as a "joke" or "to teach the owner a lesson" this would not be a defense, although if the accused intended to return the property, the accused would be guilty of wrongful appropriation, not larceny. When a person takes property intending only to return it to its lawful owner, as when stolen property is taken from a thief in order to return it to its owner, larceny or wrongful appropriation is not committed.

(B) *Intent to pay for or replace property not a defense.* An intent to pay for or replace the stolen property is not a defense, even if that intent existed at the time of the theft. If, however, the accused takes money or a negotiable instrument having no special value above its face value, with the intent to return an equivalent amount of money, the offense of larceny is not committed although wrongful appropriation may be.

(C) *Return of property not a defense.* Once a larceny is committed, a return of the property or payment for it is no defense. *See* subparagraph c(2) below when the taking, obtaining, or withholding is with the intent to return.

(g) *Value.*

(i) *In general.* Value is a question of fact to be determined on the basis of all of the evidence admitted.

(ii) *Government property.* When the stolen property is an item issued or procured from Government sources, the price listed in an official publication for that property at the time of the theft is admissible as evidence of its value. *See* Mil. R. Evid. 803(17). However, the stolen item must be shown to have been, at the time of the theft, in the condition upon which the value indicated in the official price list is based. The price listed in the official publication is not conclusive as to the value of the item, and other evidence may be admitted on the question of its condition and value.

(iii) *Other property.* As a general rule, the value of other stolen property is its legitimate market value at the time and place of the theft. If this property, because of its character or the place where it was stolen, had no legitimate market value at the time and place of the theft or if that value cannot readily be ascertained, its value may be determined by its legitimate market value in the United States at the time of the theft, or by its replacement cost at that time, whichever is less. Market value may be established by proof of the recent purchase price paid for the article in the legitimate market involved or by testimony or other admissible evidence from any person who is familiar through training or experience with the market value in question. The owner of the property may testify as to its market value if familiar with its quality and condition. The fact that the owner is not an expert of the market value of the property goes only to the weight to be given that testimony, and not to its admissibility. *See* Mil. R. Evid. 701. When the character of the property clearly appears in evidence—for instance, when it is exhibited to the court-martial—the court-martial, from its own experience, may infer that it has some value. If as a matter of common knowledge the property is obviously of a value substantially in excess of $100.00, the court-martial may find a value of more than $100.00. Writings representing value may be considered to have the value—even though contingent—which they represented at the time of the theft.

(iv) *Limited interest in property.* If an owner of property or someone acting in the owner's behalf steals it from a person who has a superior, but limited, interest in the property, such as a lien, the value for punishment purposes shall be that of the limited interest.

(h) *Miscellaneous considerations.*

(i) *Lost property.* A taking or withholding of lost property by the finder is larceny if accompanied by an intent to steal and if a clue to the identity of the general or special owner, or through which such identity may be traced, is furnished by the character, location, or marketing of the property, or by other circumstances.

(ii) *Multiple article larceny.* When a larceny of several articles is committed at substantially the same time and place, it is a single larceny even though the articles belong to different persons. Thus, if a thief steals a suitcase containing the property of

several persons or goes into a room and takes property belonging to various persons, there is but one larceny, which should be alleged in but one specification.

(iii) *Special kinds of property which may also be the subject of larceny.* Included in property which may be the subject of larceny is property which is taken, obtained, or withheld by severing it from real estate and writings which represent value such as commercial paper.

(iv) *Services.* Theft of services may not be charged under this paragraph, but *see* paragraph 78.

(v) *Mail.* As to larceny of mail, *see also* paragraph 93.

(2) Wrongful appropriation.

(a) In general. Wrongful appropriation requires an intent to temporarily—as opposed to permanently—deprive the owner of the use and benefit of, or appropriate to the use of another, the property wrongfully taken, withheld, or obtained. In all other respects wrongful appropriation and larceny are identical.

(b) Examples. Wrongful appropriation includes: taking another's automobile without permission or lawful authority with intent to drive it a short distance and then return it or cause it to be returned to the owner; obtaining a service weapon by falsely pretending to be about to go on guard duty with intent to use it on a hunting trip and later return it; and while driving a government vehicle on a mission to deliver supplies, withholding the vehicle from government service by deviating from the assigned route without authority, to visit a friend in a nearby town and later restore the vehicle to its lawful use. An inadvertent exercise of control over the property of another will not result in wrongful appropriation. For example, a person who fails to return a borrowed boat at the time agreed upon because the boat inadvertently went aground is not guilty of this offense.

d. Lesser included offenses.

(1) Larceny.

(a) Article 121—wrongful appropriation

(b) Article 80—attempts

(2) Larceny of military property.

(a) Article 121—wrongful appropriation

(b) Article 121—larceny of property other than military property

(c) Article 80—attempts

(3) Wrongful appropriation. Article 80—attempts

e. Maximum punishment.

(1) Larceny.

(a) Military property of a value of $100 or less. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(b) Property other than military property of a value of $100 or less. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(c) Military property of a value of more than $100 or of any military motor vehicle, aircraft, vessel, firearm, or explosive. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(d) Property other than military property of a value of more than $100 or any motor vehicle, air-craft, vessel, firearm, or explosive not included in subparagraph e(1)(c). Dishonorable discharge, forfeiture of all pay and allowances, and confinement for five years.

(2) Wrongful appropriation.

(a) Of a value of $100.00 or less. Confinement for 3 months, and forfeiture of two-thirds pay per month for 3 months.

(b) Of a value of more than $100.00. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(c) Of any motor vehicle, aircraft, vessel, firearm, or explosive. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

f. Sample specifications.

(1) Larceny.

In that _____(personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____20_____, steal _____, (military property), of a value of (about) $ _____, the property of _____.

(2) Wrongful appropriation.

In that _____(personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about _____20_____, wrongfully appropriate _____, of a value of (about) $ _____, the property of _____.

78. Article 134—(False pretenses, obtaining services under)

a. *Text. See* paragraph 60.

b. *Elements.*

(1) That the accused wrongfully obtained certain services;

(2) That the obtaining was done by using false pretenses;

(3) That the accused then knew of the falsity of the pretenses;

(4) That the obtaining was with intent to defraud;

(5) That the services were of a certain value; and

(6) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* This offense is similar to the offenses of larceny and wrongful appropriation by false pretenses, except that the object of the obtaining is services (for example, telephone service) rather than money, personal property, or articles of value of any kind as under Article 121. *See* paragraph 46c. *See* paragraph 49c(14) for a definition of “intent to defraud.”

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Obtaining services under false pretenses.

(1) *Of a value of $100.00 or less.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(2) *Of a value of more than $100.00.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

In that _____(personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____20_____, with intent to defraud, falsely pretend to _____ that _____, then knowing that the pretenses were false, and by means thereof did wrongfully obtain from _____services, of a value of (about) $ _____, to wit: _____.

79. Article 134—(False swearing)

a. *Text. See* paragraph 60.

b. *Elements.*

(1) That the accused took an oath or equivalent;

(2) That the oath or equivalent was administered to the accused in a matter in which such oath or equivalent was required or authorized by law;

(3) That the oath or equivalent was administered by a person having authority to do so;

(4) That upon this oath or equivalent the accused made or subscribed a certain statement;

(5) That the statement was false;

(6) That the accused did not then believe the statement to be true; and

(7) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *Nature of offense.* False swearing is the making under a lawful oath or equivalent of any false statement, oral or written, not believing the statement to be true. It does not include such statements made in a judicial proceeding or course of justice, as these are under Article 131, perjury *(see* paragraph 57). Unlike a false official statement under Article 107 *(see* paragraph 31) there is no requirement that the statement be made with an intent to deceive or that the statement be official. *See* paragraphs 57c(1), c(2)(c) and c(2)(e) concerning "judicial proceeding or course of justice," proof of the falsity, and the belief of the accused, respectively.

(2) *Oath. See* Article 136 and R.C.M. 807 as to the authority to administer oaths, and *see* Section IX of Part III (Military Rules of Evidence) concerning proof of the signatures of persons authorized to administer oaths. An oath includes an affirmation when authorized in lieu of an oath.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

f. *Sample specification.*

In that _____(personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____20_____, (in an affidavit) (in _____), wrongfully and unlawfully (make) (subscribe) under lawful (oath) (affirmation) a false statement in substance as follows: _____, which statement he/she did not then believe to be true.

80. Article 134—(Firearm, discharging—through negligence)

a. *Text. See* paragraph 60.

b. *Elements.*

(1) That the accused discharged a firearm;

(2) That such discharge was caused by the negligence of the accused; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* For a discussion of negligence, *see* paragraph 85c(2).

d. *Lesser included offenses.* None

e. *Maximum punishment.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

f. *Sample specification.*

In that _____(personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____20_____, through negligence, discharge a (service rifle) (_____) in the (squadron) (tent) (barracks) (_____) of _____.

81. Article 134—(Firearm, discharging—willfully, under such circumstances as to endanger human life)

a. *Text. See* paragraph 60.

b. *Elements.*

(1) That the accused discharged a firearm;

(2) That the discharge was willful and wrongful;

(3) That the discharge was under circumstances such as to endanger human life; and

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* "Under circumstances such as to endanger human life" refers to a reasonable potentiality for harm to human beings in general. The test is not whether the life was in fact endangered but whether, considering the circumstances surrounding the wrongful discharge of the weapon, the act was unsafe to human life in general.

d. *Lesser included offenses.*

(1) Article 134—firearm, discharging—through negligence

(2) Article 80—attempts

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

f. *Sample specification.*

In that_____(personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____20_____, wrongfully and willfully discharge a firearm, to wit: _____, (in the mess hall of _____) (_____), under circumstances such as to endanger human life.

82. Article 134—(Fleeing scene of accident)

a. *Text. See* paragraph 60.

b. *Elements.*

(1) *Driver.*

(a) That the accused was the driver o f a vehicle;

(b) That while the accused was driving the vehicle was involved in an accident;

(c) That the accused knew that the vehicle had been in an accident;

(d) That the accused left the scene of the accident without (providing assistance to the victim who had been struck (and injured) by the said vehicle) or (providing identification);

(e) That such leaving was wrongful; and

(f) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) *Senior passenger.*

(a) That the accused was a passenger in a vehicle which was involved in an accident;

(b) That the accused knew that said vehicle had been in an accident;

(c) That the accused was the superior commissioned or noncommissioned officer of the driver, or commander of the vehicle, and wrongfully and unlawfully ordered, caused, or permitted the driver to leave the scene of the accident without (providing assistance to the victim who had been struck (and injured) by the said vehicle) (or) (providing identification); and

(d) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *Nature of offense.* This offense covers “hit and run” situations where there is damage to property other than the driver’s vehicle or injury to someone other than the driver or a passenger in the driver’s vehicle. It also covers accidents caused by the accused, even if the accused’s vehicle does not contact other people, vehicles, or property.

(2) *Knowledge.* Actual knowledge that an accident has occurred is an essential element of this offense. Actual knowledge may be proved by circumstantial evidence.

(3) *Passenger.* A passenger other than a senior passenger may also be liable under this paragraph. *See* paragraph 1 of this Part.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

f. *Sample specification.*

In that _____(personal jurisdiction data), (the driver of) (a passenger in*) (the senior officer/noncommissioned officer in) (_____in) a vehicle at the time of an accident in which said vehicle was involved, and having knowledge of said accident, did, at-_____(subject-matter jurisdiction data, if required), on or about _____20_____(wrongfully leave) (by _, assist the driver of the said vehicle in wrongfully leaving*) (wrongfully order, cause, or permit the driver to leave) the scene of the accident without (providing assistance to _____, who had been struck (and injured) by the said vehicle) (making his/her (the driver’s) identity known).

[Note: This language should be used when the accused was a passenger and is charged as a principal. *See* paragraph 1 of this part.]

83. Article 134—(Fraternization)

a. *Text. See* paragraph 60.

b. *Elements.*

(1) That the accused was a commissioned or warrant officer;

(2) That the accused fraternized on terms of military equality with one or more certain enlisted member(s) in a certain manner;

(3) That the accused then knew the person(s) to be (an) enlisted member(s);

(4) That such fraternization violated the custom of the accused's service that officers shall not fraternize with enlisted members on terms of military equality; and

(5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *In general.* The gist of this offense is a violation of the custom of the armed forces against fraternization. Not all contact or association between officers and enlisted persons is an offense. Whether the contact or association in question is an offense depends on the surrounding circumstances. Factors to be considered include whether the conduct has compromised the chain of command, resulted in the appearance of partiality, or otherwise undermined good order, discipline, authority, or morale. The acts and circumstances must be such as to lead a reasonable person experienced in the problems of military leadership to conclude that the good order and discipline of the armed forces has been prejudiced by their tendency to compromise the respect of enlisted persons for the professionalism, integrity, and obligations of an officer.

(2) *Regulations.* Regulations, directives, and orders may also govern conduct between officer and enlisted personnel on both a service-wide and a local basis. Relationships between enlisted persons of different ranks, or between officers of different ranks may be similarly covered. Violations of such regulations, directives, or orders may be punishable under Article 92. *See* paragraph 16.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Dismissal, forfeiture of all pay and allowances, and confinement for 2 years.

f. *Sample specification.*

In that _____(personal jurisdiction data), did, (at/on board—location), on or about _____, 20 _____, knowingly fraternize with _____, an enlisted person, on terms of military equality, to wit: _____, in violation of the custom of (the Naval Service of the United States) (the United States Army) (the United States Air Force) (the United States Coast Guard) that officers shall not fraternize with enlisted persons on terms of military equality.

84. Article 134—(Gambling with subordinate)

a. *Text. See* paragraph 60.

b. *Elements.*

(1) That the accused gambled with a certain service member;

(2) That the accused was then a noncommissioned or petty officer;

(3) That the service member was not then a non-commissioned or petty officer and was subordinate to the accused;

(4) That the accused knew that the service member was not then a noncommissioned or petty officer and was subordinate to the accused; and

(5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* This offense can only be committed by a noncommissioned or petty officer gambling with an enlisted person of less than noncommissioned or petty officer rank. Gambling by an officer with an enlisted person may be a violation of Article 133. *See also* paragraph 83.
d. *Lesser included offense.* Article 80—attempts
e. *Maximum punishment.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.
f. *Sample specification.*

In that _____(personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____20_____, gamble with _____, then knowing that the said _____was not a noncommissioned or petty officer and was subordinate to the said _____.

Appendix B, Maximum Nonjudicial Punishments

IMPOSED BY	IMPOSED ON	Conf on B&W/ DimRats (2)(3)	Correctional Custody (3)	Arrest in Quarters (3)	Forfeitures (4)	Reduction (5) (6)	Extra Duties	Restriction to Limits (3) (7)	Admonition /Reprimand (6) (8)
General Officers in Command	Officer	No	No	30 days	1/2 mo x 2	No	No	60 days	Yes
	E-4 to E-9	No	No	No	1/2 mo x 2	1 Grade	45 days	60 days	Yes
	E-1 to E-3	3 days	30 days	No	1/2 mo x 2	1 Grade	45 days	60 days	Yes
Field Grade Officers	Officer	No	No	No	No	No	No	30 days	Yes
	E-4 to E-9	No	No	No	1/2 mo x 2	1 Grade	45 days	60 days	Yes
	E-1 to E-3	3 days	30 days	No	1/2 mo x 2	1 Grade	45 days	60 days	Yes
Company Grade and OICs (1)	Officer	No	No	No	No	No	No	15 days	Yes
	E-4 to E-9	No	No	No	7 days	1 Grade	14 days	14 days	Yes
	E-1 to E-3	3 days	7 days	No	7 days	1 Grade	14 days	14 days	Yes

Notes:

(1) Officers-in-charge, regardless of rank, have company grade NJP authority over only enlisted members

(2) May be imposed only if member is embarked on or attached to a vessel

(3) May not be imposed in combination with other forms of deprivation of liberty (4)

Amount of forfeiture calculated from the pay grade to which reduced, if any

Reduction authority limited to commanding officers with the authority to promote to grade from which reduced. *See handout*

Reduction limited to one pay grade by JAGMAN

(6) May be imposed in combination with, or in lieu of, any other permissible punishment

(7) Extra duties and restrictions may be imposed concurrently, but only to maximum imposed for extra duties

(8) When imposed on officers, must be in writing

Appendix C, Suspect's Rights Acknowledgements/Statement

DEPARTMENT OF THE NAVY

MILITARY SUSPECT'S ACKNOWLEDGEMENT AND WAIVER OF RIGHTS

Place:----------

!, _____

have been advised by _____

that I am suspected of ----------

r have also been advised that:

(1} I have the right to remain silent and make no statement at all,

{2) Any statement I do make can be used against me in a trial by court-martial or other judicial or administrative proceeding;

{3) I have the right to consult with a lawyer prior to any questioning. This lawyer may be a civilian lawyer retained by me at no cost to the United States, a military lawyer appointed to act as my counsel at no cost to me, or both;

(4) I have the right to have my retained civilian lawyer and/or appointed military lawyer present during this interview; and

(5} I may terminate this interview at any time, for any reason.

I understand my rights as related to me and as set forth above. With that understanding, I have decided that I do not desire to remain silent, consult with a retained or appointed lawyer, or have a lawyer present at this time. I make this decision freely and voluntarily. No threats or promises have been made to me

Signature:----------
Date & Time. ----------

Witnessed: _____

_____

Date & Time: ----------

At this time, I, - - ------ ''''-,__---c--c------,---c-,--c--- -c- desire to make the following voluntary statement. This statement is made with an understanding of my rights as set forth above. It is made with no threats or promises having been extended to me.

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Appendix D, Military Suspect's Acknowledgement and Waiver of Rights

Suspect's Rights and Acknowledgement/Statement (See JAGMAN 0170)

Full Name (Accused/Suspect)	SSN	Rate/Rank	Service (Branch)
Activity/Unit			Date of Birth
Name (Interviewer)	SSN	Rate/Rank	Service (Branch)
Organization		Billet	
Location of Interview		Time	Date

Rights

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

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

(2) I have the right to remain silent: _____

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

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

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

Appendix D, Military Suspect's Acknowledgement and Waiver of Rights (Continued)

Waiver of Rights

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

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

(2) I expressly desire to make a statement. _____

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

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

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

Signature (Accused/Suspect)	Time	Date
Signature (Interviewer)	Time	Date
Signature (Witness)	Time	Date

The statement, which appears on the following _____ pages, all of which are signed by me, is made freely and voluntarily without any promises or tretas having been made or pressure or coercion of any of any kind having been used against me.

_____
Signature (Accused/Suspect)