

**Staff Judge Advocate Handbook. Revision.**

**NAVAL JUSTICE SCHOOL NEWPORT RI**

**APR 1990**

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# STAFF JUDGE ADVOCATE HANDBOOK

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## APPENDIX

List of Appendices

Accession For	
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Justification	
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Distribution /	
Availability Codes	
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<i>A-1</i>	



## SJA RELIEVING CHECKLIST

A. GENERALLY. One of the best sources for a checklist covering your particular office is the administrative inspection checklist. Your GCM SJA should have a copy. It will be the checklist that he uses when inspecting your office during a regularly scheduled admin inspection. It can be quite helpful in determining how "healthy" the office is.

The following checklist is designed to be used in conjunction with your admin inspection checklist and not as a substitute.

- \_\_\_ 1. Who is in the command's administrative chain of command? Is the operational chain of command the same? Who is the general court-martial convening authority (GCMCA) for the command?
- \_\_\_ 2. Is there a force legal affairs manual?
- \_\_\_ 3. Are there local supplements to the MCM, JAG Manual, or Navy Regs?
- \_\_\_ 4. Where does the SJA/legal officer fit into the staff organizational chart? Through whom do you report to the XO and CO on military justice matters? Have you reviewed chapter 3 of the SORM (OPNAVINST 3120.32A)?
- \_\_\_ 5. What are the position descriptions (PD's) for the civilian employees?
- \_\_\_ 6. What is the military manpower authorization for the office?
- \_\_\_ 7. When is the next set of civilian personnel evaluations done?
- \_\_\_ 8. When are military personnel evaluations done?
- \_\_\_ 9. Is there a written SOP for the legal office? When was the last revision?
- \_\_\_ 10. Does the SJA/legal officer have "by direction" signature authority and to what kind of correspondence is that authority limited?
- \_\_\_ 11. Who is responsible for the legal office library? Do you have all of the current and updated materials (e.g., Manual for Courts-Martial, Manual of the Judge Advocate General, MILPERSMAN, PAYPERSMAN, and all other relevant command directives, instructions, general orders, etc.)?
- \_\_\_ 12. Is there a "tickler" system for recurring reports (e.g., FOIA, Privacy Act, court-martial reports, financial disclosure DD-1555, local and type commander reports, etc.)?
- \_\_\_ 13. Does your office provide powers of attorney and notary services?
- \_\_\_ 14. What Reserve units train at your command?
- \_\_\_ 15. Who is assigned responsibility for claims processed through your office?



- \_\_\_ 16. Who maintains the UPB? How is the UPB maintained?
- \_\_\_ 17. When was the last training conducted for summary court-martial officers? Is there an SCM trial guide? Standards of Conduct?
- \_\_\_ 18. Are CNO court-martial processing goals being met?
- \_\_\_ 19. Are enlisted administrative separations being processed within COMNAV-MILPERSCOM time limits?
- \_\_\_ 20. What is the procedure for delivery of personnel to civilian authorities and service of process on the command?
- \_\_\_ 21. What procedures exist for processing indebtedness, nonsupport, paternity complaints?
- \_\_\_ 22. What procedures exist to ensure that incidents involving potential claims, LOD/Misconduct determinations or otherwise requiring JAGMAN investigations are brought to your attention?
- \_\_\_ 23. How are NJP and JAGMAN investigating officers and admin board and court-martial members selected? Are there handbooks/guides for each?
- \_\_\_ 24. What procedures exist to ensure that IO's complete JAGMAN investigations in a timely manner? How are errors in the reports corrected?
- \_\_\_ 25. Who maintains service records for the command? Who prepares service record entries (UA, post-NJP, post-trial, post-confinement, civilian conviction, time lost due to injury not in the line of duty, etc.)?
- \_\_\_ 26. Who is responsible for preparing declarations of desertion and related paperwork (10-day letters, inventorying personal effects, etc.)?
- \_\_\_ 27. What procedures exist for obtaining medical services (psychiatric evals, discharge physicals, drug and alcohol evals, etc.)?
- \_\_\_ 28. Are required/useful forms available and current (NJP rights, Privacy Act statements, delivery agreements, restriction/extra-duty orders, confinement orders, injury report forms, etc.)?
- \_\_\_ 29. Are command instructions in the legal area current and accurate?
- \_\_\_ 30. Has authority to award EMI been delegated by the commanding officer?
- \_\_\_ 31. What procedures exist to track pending NJP, JAGMAN investigations, courts-martial, admin discharges, NIS investigations?
- \_\_\_ 32. How often is NJP conducted? Who notifies the accused and witnesses? Is formal XOI conducted?
- \_\_\_ 33. What procedures exist to ensure that command visits are made to personnel in confinement or correctional custody?

- \_\_\_ 34. What local requirements/procedures exist for confinement at the brig? Confinement of females?
- \_\_\_ 35. What procedures are in effect at the local NLSO for screening courts-martial? For obtaining other legal services -- for the command or individuals?
- \_\_\_ 36. Who administers the command urinalysis program? Are random sample urinalyses conducted, and how are the participants chosen?
- \_\_\_ 37. Has information on Standards of Conduct and Navy hotline been disseminated?
- \_\_\_ 38. Who is the command Freedom of Information Act/Privacy Act coordinator? Have personnel who may handle FOIA requests received training?
- \_\_\_ 39. What types of jurisdiction apply on the base? Are there jurisdictional maps? Are the security personnel, local police, NIS, and the U.S. Attorney in agreement on the boundaries of the different types of jurisdiction?
- \_\_\_ 40. Is there a memorandum of agreement with the local police department and/or state police regarding arrest authority, hot pursuit, and searches?
- \_\_\_ 41. When was the last training done for the security department on search and seizure and self-incrimination?
- \_\_\_ 42. What is the SJA office budget for the current fiscal year? How much is for travel?
- \_\_\_ 43. Who is responsible for the legal office library? Do you have all of the current and updated editions provided by JAG?
- \_\_\_ 44. Does your office do legal assistance? Do you restrict the clientele in any way? Do you restrict the scope of assistance in any way? Is there an SOP for rendering legal assistance?

B. LEGAL ADMINISTRATION. Incorporate those matters noted in the Legal Administration Outline (which follows) into the relieving process. In this way, you will better familiarize yourself with the actual operation of the legal office.

## LEGAL ADMINISTRATION OUTLINE

### I. General management

- A. It is essential to maintain cooperative relationships with CO/XO, division officers, personnel office, disbursing office, and MAA's. This is not so much camaraderie as a working cooperation for keeping each other informed and ensuring service record entries are made, pay stops and starts as appropriate, division officers have input to the discipline process, witnesses are available as necessary, performance evaluations are prepared on time, an accused has necessary uniforms, and evidence is handled properly.
- B. Must keep well organized, pay attention to details, maintain good files, and stay current
- C. Need good subordinates (may seek assistance from NLSO/Law Center for training subordinates)
- D. Military justice should be firm but fair
- E. Communicate with NLSO/LSSS
  - 1. Find out time and documentation preferred for Booker and ADSEP advice
  - 2. Consult frequently with TC
  - 3. Maintain contacts with legal assistance office
- F. Library must be current
  - 1. Manual for Courts-Martial, 1984, JAG Manual, PAYPERSMAN, MILPERSMAN, applicable instructions, notices, messages
  - 2. Applicable force regulations/instructions (e.g., Sixth Fleet Legal Manual - get it before you deploy to Mediterranean)
  - 3. Applicable local instructions (e.g., evidence handling, search authorization, urinalysis, desertion)
  - 4. Make sure admin office has you on routing for all charges and updates
- G. Keep adequate supply of blank forms (e.g., charge sheets, confinement orders, report chits, page 6's, page 7's, consent forms, rights warnings, claims forms) - especially before deployment
- H. CCU/brig list must be current at all times
  - 1. This can also be used as your reminder for letters to IRO and requests to retain prisoners in PTC for more than thirty days
  - 2. Send a weekly list to department heads for CCU/brig visits

- I. Status lists (pending courts-martial, discharges, JAG Manual investigations, and claims)
  - J. Tickler system for periodic reports (e.g., monthly post-trial review status, annual Privacy Act report, triennial FOIA report, disciplinary statistics report)
  - K. Admiralty matters (JAG Manual, chap. XII). Shipboard (non-Government employee) civilian injuries must be investigated and reported to OJAG.
  - L. Overseas
    - 1. Foreign criminal jurisdiction
    - 2. Foreign claims (JAG Manual, chap. XXII)
    - 3. Liberty ports
    - 4. Liberty risk program
    - 5. Custom declarations
  - M. Indebtedness complaints - MILPERSMAN 6210140, Ch. 7 of LEGADMINMAN
  - N. Nonsupport complaints - MILPERSMAN 6210120, Ch. 8 of LEGADMINMAN
- II. Desertion (example of shipboard procedure)
- A. 24 hours
    - 1. Obtain service record
    - 2. Start page 6
  - B. Ten days
    - 1. Memo reminding division to inventory personal effects and send you copy of inventory receipted by supply department or memo from division officer specifically stating that the deserter left no personal effects aboard
    - 2. Letter to next-of-kin
  - C. Thirty days
    - 1. Deserter message
    - 2. Mail DD Form 553

3. Obtain health, dental, and pay records
  4. Collect evidence (e.g., witness statements, pending ICR's and other documentation of pending disciplinary matters, restriction order, relevant message traffic)
  5. Prepare charge sheet. Charge absence as a violation of Art. 85, UCMJ. Prefer and receive charges.
  6. Copy anything important (e.g., charge sheet (certify true), right side of service record, page 6, performance evaluations, last LES, restriction order (certify true), relevant messages)
- D. 180 days
1. Service, health, dental, and pay records to NMPC
  2. Original page 6 OCR, original charge sheet, original restriction order are sent with service record
  3. Retain deserter file onboard
- E. Return of deserter
1. Returner deserter message. Include Finance Center as addressee, with specific request for outstanding pay and leave balances.
  2. Keep personnel office, disbursing office, and department head informed
  3. Convert deserter file to court-martial case file
- F. Cross-reference outstanding deserter list and alpha roster with EDVR

### III. Mast/office hours

- A. Maintain log book tracking each report chit (i.e., report initiated, sent to division (for investigation and completion of rights form, have someone in division initial receipt in log book), return to legal (dismissed, EMI, or XO screening), sent to XO (dismissed, XO1, to CO), return to legal (Booker if shore command), mast/office hours (dismissed, NJP))
- B. Coordinate with division and with MAA's to ensure witnesses and division representative will be present
- C. Have CO record NJP and sign

D. Post mast/office hours

1. Post-mast yeoman standing by with appellate rights form
2. Know in advance who may need page 13 warning/counseling
3. Service record entries should be made without delay
4. Be prepared for confinement at CCU

E. Maintain UPB

1. Original report chit with NJP signed by CO
2. Record of mast/office hours proceeding
3. All documents considered by CO
4. Original, signed and dated, rights warning statements
5. Copies of service record entries
6. Copies of appeals, endorsements, and responses (originals in NJP appeal correspondence file)

IV. Courts-martial

A. Convening orders, drafting charges, service record review

B. Status list

C. Case file

1. Copy right side of service record and performance evaluations
2. ICR's, NIS reports, miscellaneous writings (such as letter from Mom or from accused while UA), relevant messages, memo to division officer, etc.
3. Chronology recording when events occurred, such as delivery to NLSO, DC called about sanity issue, you called finance center, NMPC, or civilian police (with whom you spoke and what was said)

D. Work closely with TC

1. Serve accused when he is aboard
2. Supply sufficient copies of charge sheet, etc.
3. Ensure that service record entries are accurate
4. Make DC work through TC

E. Accused works for command, not for DC

1. Use check-in/check-out chits for visits to DC, and retain them in case file
2. Conversely, work with division officer and disbursing office to ensure that command fulfills its responsibilities (e.g., accused is paid if so entitled, personal effects returned, brig visits, accused's family has POC)

F. Work with division officer

1. Advise that accused is in brig, or may be going to brig, or may be transferred after trial; that will need to get sea bag in order (onboard, not off-base); that will need transfer performance evaluation reflecting SPCM conviction (to be completed after trial, of course)
2. Keep division informed of changes in trial date and results of trial
3. Keep witnesses informed of when needed (work with TC)

G. If accused still attached to command when CA action taken, ensure service record entries are made (including page 13 warning/counseling, if appropriate). If not, ensure promulgating order forwarded to accused's new command.

II. Trial team at sea

1. Message NLSO to get trial teams. Follow format in applicable legal manual, especially noting companion cases and prior attorney-client relationships.
2. Make special efforts to accommodate attorneys
  - a. For each case, prepare case file folders marked TC, DC, or MJ, which include the charge sheet and convening order. For counsel, include lists of witnesses, LPO, LCPO, division officer, and their phone numbers. TC's folder should include all applicable reports with copies he may provide to DC.
  - b. Provide temporary work space, a private space (stateroom) where DC may interview clients, and a space for courts-martial (wardroom)
3. Coordinate trial team visit with battle group JA, if possible
4. Ask NLSO/LSSS to provide legal assistance, ADSEP advice, Booker advice for SCM's

I. Notes on SCM's

1. Use good officers and prepare SCM package yourself, so that busy officers will be more cooperative
2. Provide a copy of the trial guide with plastic covers and a grease pen
3. Maintain separate case files as with other courts-martial
4. Ensure that service record entries are made, including page 13 Booker waivers and page 13 counseling/warnings, if appropriate
5. Inform division officer of trial results

V. Service record accountability

- A. There should be a single service record monitor in your office who should be kept informed of all service records entering or leaving the office. He can prepare an update list daily and should inventory the service records in the office regularly.
- B. No service record should leave your office without a record transmittal sheet dated and receipted by the transmittee (disbursing, admin, personnel, division, NLSO, registered mail clerk, etc.) and retained by your service record monitor



## REPORT CHIT/NJP PROCESSING

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## USN CHECKLIST FOR REPORT CHIT/NJP PROCESSING

The following process assumes that the command has a local report chit or system for reporting offenses and conducting the preliminary inquiry prior to the preparation of a NAVPERS 1626/7 for use at XO1 or CO's mast.

### A. BEFORE CO's MAST

1. Log local report into the logbook. (A log should be used for tracking the report through your command.)
2. Send local report and request for preliminary inquiry and recommendation as to disposition to SNM's department head.
3. If returned recommending XO1 or mast, check service record out from personnel or PSD.
4. Review service record to ensure all pages are there and to determine if SNM is on any suspended sentence, is in a frocked paygrade, or has been given an administrative separation warning.
5. Prepare NAVPERS 1626/7 and appropriate acknowledgement of rights forms from JAG Manual. If a UA case, be sure to have a page 601-6R or page 13.
6. Attach preliminary inquiry report, including statements and other evidence, to report chit.
7. Contact and inform the accused of all rights and let him/her inspect the evidence. (If shore based, set up appointment with defense counsel if accused wants to consult with counsel.)
8. Inform accused, his supervisors, and witnesses of time and place of XO1/CO's mast.

### B. AFTER CO's MAST

1. Ensure CO has completed section of NAVPERS 1626/7 entitled "Action of the Commanding Officer."
2. Inform accused of right to appeal NJP. Be sure accused signs the appropriate forms (see JAGMAN, app. A-1-v). Ensure NAVPERS 1626/7 is modified to reflect the 5-day time limit vice 15 days which is preprinted on NAVPERS 1626/7.

3. Prepare necessary service record entries.

a. Service record entries required when the commanding officer EXCUSES or DISMISSES the offense(s):

- (1) When the service record contains an entry concerning UA, an entry must be made to show what action was taken. If the UA is less than 24 hours, a page 13 entry is required.
- (2) If UA more than 24 hours, completion of a page P601-6R is required.
- (3) For all other offenses EXCUSED or DISMISSED, no service record entry is required. If UA offense excused or dismissed, page 13 required to reflect disposition.

b. When mast results in a decision to refer charges to trial by summary or special court-martial, prepare a charge sheet (DD-458). No service record entry is required.

c. When mast results in a decision to refer charges to a pretrial investigation under article 32, no service record is required.

d. Required service record entries if punishment imposed:

(1) Punishments NOT including reduction or forfeiture of pay:

- (a) NAVPERS 1070/613 (Page 13)
- (b) NAVPERS 1070/609 (Page 9)
- (c) NAVPERS 1070/606 (Page 6) - Must be completed in UA cases in excess of 24 hours. Since UA of 24 hours or more is lost time, completion of the page 6 (blocks 1 and 2, 38 through 42, and block 50) must be timely and accurate. Strict adherence to the PAYPERSMAN, § 90435 is mandatory.

(2) Punishments including reduction or forfeiture of pay:

- (a) NAVPERS 1070/607 (Page 7)
- (b) NAVPERS 1070/609 (Page 9)
- (c) NAVPERS 1070/604 (Page 4) if reduction is awarded.
- (d) NAVPERS 1070/606 (Page 6) to be completed in UA cases in excess of 24 hours as outlined above.
- (e) If reduction and forfeitures, ensure forfeitures are based on reduced paygrade (even if reduction suspended).

Note: Manual of Advancement states that all lost time as a result of UA, sick, misconduct, confinement, etc., is not creditable as time in rate (TIR) for advancement and, accordingly, the TIR shall be adjusted (Page 4), ONLY if there has been NO REDUCTION IN RATE!

(3) Punishments involving reduction, or forfeiture of pay which are suspended:

- (a) NAVPERS 1070/613 (Page 13) if punishment awarded pertains to RIR or FF and was suspended.
- (b) NAVPERS 1070/607 (Page 7) if one or more types of punishment awarded is suspended, but still includes at least one punishment not suspended that pertains to pay.
- (c) NAVPERS 1070/609 (Page 9) if reduction is awarded.
- (d) NAVPERS 1070/604 (Page 4) if reduction is awarded.

(4) Punishments involving restraint:

- (a) Correctional custody. If CC is awarded at mast, prepare the confinement order (NAVPERS 1640/4). You will need an original and two copies.

Note: The accused will be escorted to the local medical facility for a preconfinement physical. This is a function of your master-at-arms. They are trained to do this... DO NOT ASSIGN THE JOB TO ONE OF YOUR YN'S.

- (b) Restriction to limits. If restriction is imposed, restriction papers need to be typed. Usually this is on a local preprinted form, necessitating only the completion of the accused's name, rate, and social security number. It will show the boundaries of restriction, times, dates and places for muster, and is signed by someone authorized to do so.
- (c) Extra duty. If extra duty is imposed, virtually the same procedures as in b. above will be used. Again, notification is by preprinted locally prepared form which defines the extra duty, the time it will be accomplished, to whom the accused reports, and any extra instructions necessary.

(d) Confinement on bread and water. Prepare confinement orders for bread and water. The SNM must be given a confinement physical and found to be fit for confinement on bread and water. See section on preparation of confinement order.

(e) File documents in UPB and, after all action (including any appeal), ensure it is complete.

[A "Unit Punishment Book" is nothing more than a binder containing completed NAVPERS 1626/7's of ALL cases appearing before the CO at MAST, whether dismissed or excused. The unit punishment book is required as a permanent command record of all cases involving ENLISTED persons handled at mast and will be maintained on board for 2 years (MILPERSMAN 5030500 and JAGMAN, § 0112 refers).]

(5) Remission, mitigation, or setting aside of NJP

(a) The PAYPERSMAN (Part 9, section 90436) contains block-by-block instructions for preparation of NAVPERS 1070/607 for these actions.

(b) Refer to table 9-4-39h for instructions to mitigate, reinstate, or set aside the punishment for members who have previously been reduced in rate.

#### C. MISCELLANEOUS MATTERS

1. If the CO's NJP results in a restraint-type punishment, the details must be furnished to the OOD for inclusion in the deck log.
2. Prepare notice for POD. If it is the policy of commands to publish the results of CO's NJP in the command POD, strict compliance with JAGMAN, § 0107 is mandatory. (It is suggested that names of the offenders be omitted if the information may be disseminated to civilians.) In no instance will the social security number of an individual be used in the publication of NJP results. (See SECNAV-INST 5211.5 series.)
3. If appropriate, prepare page 13 -- warning member of consequences of future misconduct.
4. If a basis for administrative discharge applies, determine if command wants to process member for discharge.

D. NJP APPEALS

1. After receipt of accused's appeal, prepare written endorsement for the CO's signature. Include a copy of NAVPERS 1626/7, copies of all statements or evidence used at mast, and copy of page 9 from accused's service record (with all endorsements). See JAGMAN, § 0108 for requirements.
2. Indicate appeal on NAVPERS 1626/7.
3. If no response to appeal is received from appeal authority within 5 days of accused's appeal, then restraint punishments must be stayed if accused's has requested this.

E. OFFICER'S NJP

1. Before taking an officer to NJP, check with regulations promulgated by the type commander regarding any additional requirements or procedures required by them. (Many want notification prior to the NJP hearing. CINCPACFLT commands must have a prompt verbal report of all incidents of officer misconduct to CINCPACFLT)
2. If an officer is awarded NJP, then a disciplinary report must be sent to NMPC-8. (MILPERSMAN 3410100.2b contains the applicable provisions.)
3. If the officer is also being detached for cause, consult paragraph 5 of MILPERSMAN 3410100 for the provisions for this procedure.

BUPERS USE ONLY

P601-7R

BUPERS USE ONLY

## COURT MEMORANDUM

1. DATE SUBMITTED CYJUN25		2. SHIP OR STATION PERSUPPDET, NETC, NEWPORT, RI			
3. DATE OF REFERRAL		4. TYPE OF COURT NJP		5. DATE OF COURT/ MASTCYJUN25	
7. DATE OF ACTION CYJUN25		8. TYPE OF ACTION <input checked="" type="checkbox"/> REPORT OF ACTION		9. MODIFI- CATION OF ACTION	
<input checked="" type="checkbox"/> 12. RATE ADJUSTMENT		13. FROM YN3		14. TO YNSN	
<input checked="" type="checkbox"/> 16. FORFEITURE		17. MONTHLY AMT. \$100.00		18. NO. MONTHS 2	
<input type="checkbox"/> 19. FINE		20. AMOUNT \$		21. CONSENT TO CHECKAGE	
<input type="checkbox"/> 25. DETENTION		26. MONTHLY AMT. \$		27. NO. MONTHS	
<input type="checkbox"/> 29. DESERTION MARK REMOVED		<input type="checkbox"/> 30. ADJUDGED		<input type="checkbox"/> 31. ADJUDGED AND DIS- APPROVED	
32. FROM:		33. TO:		34. DAYS LOST TIME (30 DAY BASIS)	
36. FROM:		37. TO:		35. DAYS LOST TIME (DAY FOR DAY)	
40. CHANGE EAOS TO:		41. CHANGE EXP. ENL. TO:		38. DAYS LOST TIME (30 DAY BASIS)	
				39. DAYS LOST TIME (DAY FOR DAY)	
42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)					

CYJUN25: CO'S NJP HELD THIS DATE  
 VIOLATION UCMJ ART 121 LARCENY OF \$50.00, THE PROPERTY OF YN2  
 JONES, USN ON CYMAY25  
 PUNISHMENT AWARDED: RIR TO YNSN, FORF \$100.00 PPM X 2, AND 10 DAYS  
 RESTRICTION TO LIMITS OF NETC, NEWPORT RI.

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER  
 ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15 (D) OR (E), UCMJ, (ALSO ANY APPEAL)

43. 1070/607 DTD		44. AUTHORITY TYPE	

45.

NOTE: THIS REFLECTS NJP THAT AFFECTS PAY.

(MAY BE CONTINUED ON REVERSE)

46. SIGNATURE <i>I. M. Perfect</i>		GRADE PNC	
I.M. PERFECT, PNC, USN, BY DIRECTION OF THE OFFICER IN CHARGE			
47. UNIT I.D. CODE 12345		48. RATE YNSN	
49. NAME (LAST, FIRST, MIDDLE) FERNDOK, CLYDE ELROD		50. SSN 000-00-0000	
		51. BRANCH/CLASS USN	

COURT MEMORANDUM NAVPERS 1070-607 (REV 10-71)

SJA-15

OCR COPY-FORWARD TO BUPERS

# ENLISTED PERFORMANCE RECORD

1 PERIOD OF REPORT	2 REASON	3 RATE	4 TRAITS						5 SHIP OR STATION	6 INITIALS
			Rate Knowledge	Reliability	Military Bearing	Personal Behavior	Directing	Overall Evaluation		
CY-2DEC75	M	SR	Date of Enlistment						NAVCUITDIST SAN DIEGO CA	WWW WWW
CY-1FEB76	AR	SA	Accelerated Advancement to SA						RTC, NTC SAN DIEGO CA	WWW WWW
CY-1MAR81	T	SA	3.8	3.8	4.0	4.0	4.0	4.0	NAS JACKSONVILLE FL	ABC ABC
CY-1AUG84	AR	SN	Advanced to SN						NAS JACKSONVILLE FL	DEF DEF
CYMAR91	T	SN	4.0	3.8	4.0	4.0	4.0	4.0	NAS JACKSONVILLE FL	DEF DEF
CY MAY16	AR	YN3	Advanced to YN3						NETC NEWPORT RI	IMP IMP
CYJUN25	NJP/ RR	YNSN	(NAVPERS 1070/607)						NETC NEWPORT RI	IMP IMP
	NOTE TO STUDENT:		USE "RR" ONLY IN MAST ENTRIES IN WHICH THE ACCUSED WAS REDUCED IN RATE.							
			IF NO REDUCTION WAS AWARDED AT MAST, COLUMN 2 WOULD READ "NJP" ONLY.							
NAME (Last)			(First)		(Middle)		SSN		BRANCH/CLASS	
FERNDOK,			Clyde		Elrod		000-00-0000		USN	



6. ADVANCEMENT, PROMOTION, OR RETIREMENT			7. PERFORMANCE TESTS			8. ADVANCEMENT, REDUCTION OR CHANGE IN RATING				
DESCRIPTION	DATE COMPLETED	*OFF INIT	DESCRIPTION	DATE COMPLETED	*OFF INIT	RATE ADVANCED, REDUCED OR CHANGED	EFFECTIVE	TIME IN RATE COMPUTED FROM	*OFF INIT	
						SR	SA	10FEBCY-1	10FEBCY-1	WW
						SA	SN	16AUGCY-1	16AUGCY-1	DEF
						SN	YN3	16MAYCY	16MAYCY	IMP
						YN3	YNSN	25JUNCY	25JUNCY	IMP

9. RECORD OF OFF DUTY EDUCATION AND VOC/TECH TRAINING									
DATE COMPLETED	NUMBER AND TITLE OF COURSE OR TEST	SCHOOL	GRADE	*OFF INIT	DATE COMPLETED	NUMBER AND TITLE OF COURSE OR TEST	SCHOOL	GRADE	*OFF INIT

10. GOOD CONDUCT AWARDS			11. DECORATIONS, UNIT, AND MARKSMANSHIP AWARDS			
AWARD NUMBER	DATE EARNED	*OFF INIT	AWARD	ACTIVITY	DATE OF AWARD	*OFF INIT

12. CAMPAIGN/SERVICE AND OTHER AWARDS					
AWARD	ENGAGEMENT(S)	*OFF INIT	AWARD	ENGAGEMENT(S)	*OFF INIT

13. OTHER TRAINING COURSES/INSTRUCTIONS COMPLETED				
DATE COMPLETED	TYPE OF COURSE AND/OR INSTRUCTION	DURATION	LOCATION	*OFF INIT

NAVPERS USE ONLY

PL01-7R

NAVPERS USE ONLY

## COURT MEMORANDUM

1. DATE SUBMITTED CYJUN30		2. SHIP OR STATION USS GLORY (CVA-03)			
3. DATE OF REFERRAL		4. TYPE OF COURT NJP	5. DATE OF COURT/ CYJUN04	6. UCMJ ARTICLE(S) 86	
7. DATE OF ACTION CYJUN30		8. TYPE OF ACTION <input checked="" type="checkbox"/> REPORT OF ACTION	9. MODIFICATION OF ACTION <input type="checkbox"/>	10. CORRECTION TO PREVIOUS 1070/607 <input type="checkbox"/>	11. DATE OF ACTION ON 1070/607 MOD. OR CORRECTED
<input checked="" type="checkbox"/> 12. RATE ADJUSTMENT	13. FROM AK2	14. TO AK3	15. TIR CYJUN30		
<input type="checkbox"/> 16. FORFEITURE	17. MONTHLY AMT. \$	18. NO. MONTHS			
<input type="checkbox"/> 19. FINE	20. AMOUNT \$	<input type="checkbox"/> 21. CONSENT TO CHECKAGE	<input type="checkbox"/> 22. DOES NOT CONSENT TO CHECKAGE	23. MO. AMT. OF CHECKAGE \$	24. NO. MOS.
<input type="checkbox"/> 25. DETENTION	26. MONTHLY AMT. \$	27. NO. MONTHS	28. DETENTION RE- FUND DATE		
29. DESERTION MARK REMOVED <input type="checkbox"/>	<input type="checkbox"/> 30. ADJUDGED	<input type="checkbox"/> 31. ADJUDGED AND DIS- APPROVED			
PRE TRIAL CONFINEMENT 32. FROM:		33. TO:	34. DAYS LOST TIME (30 DAY BASIS)	35. DAYS LOST TIME (DAY FOR DAY)	
CONFINEMENT ORDERED AND COMPLETED 36. FROM:		37. TO:	38. DAYS LOST TIME (30 DAY BASIS)	39. DAYS LOST TIME (DAY FOR DAY)	
40. CHANGE EAOS TO:		41. CHANGE EXP. ENL. TO:			

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)

CYJUN30: PUNISHMENT OF RIR TO AK3 SUSPENDED AT CO'S NJP OF CYJUN04 VACATED THIS DATE DUE TO CONTINUED MISCONDUCT.

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15 (D) OR (E), UCMJ, (ALSO ANY APPEAL)

43. 1070/607 DTD	44. AUTHORITY TYPE
------------------	--------------------

45.

NOTE TO STUDENT: THIS IS THE PROCEDURE TO REPORT A SUSPENDED SENTENCE WHICH IS LATER VACATED. IF ADDITIONAL PUNISHMENT IS AWARDED AT NJP FOR AN OFFENSE WHICH CAUSED THE VACATION, A SEPARATE NAVPERS 1070/607 OR NAVPERS 1070/613 MUST BE PREPARED AS APPROPRIATE.

(MAY BE CONTINUED ON REVERSE)

46. SIGNATURE <i>A. B. Brown</i>		GRADE LTJG	
A. B. BROWN, LTJG, USNR, BY DIRECTION OF THE CO			
47. UNIT I.D. CODE 03318		48. RATE AK3	
49. NAME (LAST, FIRST, MIDDLE) SAILOR, ANY OLD		50. SSN 987-65-4321	51. BRANCH/CLASS USN

COURT MEMORANDUM NAVPERS 1070/607 (REV 10-71)

FORWARD TO LOCAL DISBURSING OFFICER

**ADMINISTRATIVE REMARKS**

NAVPERS 1070/613 (Rev. 1-76)

S/N 0106-LF-010-8890

E-32

SEE BUPERSMAN 5030420

SHIP OR STATION

PERSUPDET, NETC, NEWPORT, RI

25 Jun CY: YNSN Clyde E. Ferndock, USN, signed JAG Manual Appendix A-1-t, prior to his captain's mast which was held on 25 June 19CY.

The accused talked to a lawyer prior to deciding whether to demand trial by court-martial in lieu of captain's mast. In completing the remainder of the form, the accused did not demand trial by court-martial in lieu of captain's mast.

*J. M. Perfect*

J. M. PERFECT, PNC, USN

By direction of the Officer in Charge

NOTE TO STUDENT: This page 1070/613 (page 13) entry represents documentation that the accused talked with an attorney prior to accepting NJP.

THIS ENTRY IS TO BE USED ONLY WHEN THE ACCUSED IS NOT EMBARKED IN A VESSEL AND WHERE THE RECORD MAY BE USED IN AGGRAVATION IN THE EVENT OF A LATER COURT-MARTIAL.

Reference for sample format: JAGMAN, 0104a(3)

NAME (Last, First, Middle)

FERNDOCK, Clyde Elrod

SSN

000-00-0000

BRANCH AND CLASS

USN

ADMINISTRATIVE REMARKS  
NAVPERS 1070/613 (Rev. 1-76)  
S/N 0106-LF-010-0000

E-32

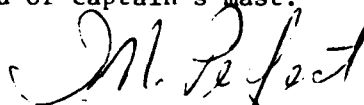
SEE BUPERSMAN 5030420

SHIP OR STATION

PERSUPDET, NETC, NEWPORT, RI

25 Jun CY: YNSN Clyde E. Ferndock, USN, signed JAG Manual Appendix A-1-t, prior to his captain's mast which was held on 25 June 19CY.

The accused gave up his right to talk to a lawyer prior to deciding whether to demand trial by court-martial in lieu of captain's mast. In completing the remainder of the form, the accused did not demand trial by court-martial in lieu of captain's mast.



I. M. PERFECT, PNC, USN

By direction of the Officer in Charge

NOTE TO STUDENT: This page 1070/613 (page 13) entry represents documentation that the accused had given up his right to talk to a lawyer prior to deciding whether to demand trial by court-martial in lieu of NJP.

THIS ENTRY IS TO BE USED ONLY WHEN THE ACCUSED IS NOT EMBARKED IN A VESSEL AND WHERE THE RECORD MAY BE USED IN AGGRAVATION IN THE EVENT OF A LATER COURT-MARTIAL.

Reference for sample format: JAGMAN, 0104a(3)

NAME (Last, First, Middle)

FERNDOCK, Clyde Elrod

SSN

000-00-0000

BRANCH AND CLASS

USN

ALMAR 097/87

Because of recent litigation in Federal court involving an attack on the Navy for issuing a discharge under other than honorable conditions based, at least in part, on prior nonjudicial punishments, the Commandant of the Marine Corps has directed that the Booker advice and service record book entry reflecting compliance with Booker contain the following language:

DATE. I CERTIFY THAT I HAVE BEEN GIVEN THE OPPORTUNITY TO CONSULT WITH A LAWYER, PROVIDED BY THE GOVERNMENT AT NO COST TO ME, IN REGARD TO A PENDING (NJP/SCM) FOR VIOLATION OF ARTICLE(S) (ART. NO.(S)) OF THE UCMJ. I UNDERSTAND THAT I HAVE THE RIGHT TO REFUSE THAT (NJP/SCM): I (DO) (DO NOT) CHOOSE TO EXERCISE THAT RIGHT. I FURTHER UNDERSTAND THAT ACCEPTANCE OF (NJP/SCM) DOES NOT PRECLUDE MY COMMAND FROM TAKING OTHER ADVERSE ADMINISTRATIVE ACTION AGAINST ME. I (WILL) (WILL NOT) BE REPRESENTED BY CIVILIAN/MILITARY LAWYER. SIGNATURE OF ACCUSED.

This change has been incorporated into the IRAM at para. 4015.2a(2).

LETTERHEAD

(Date)

From: Commanding Officer, Naval Air Station, Wonderful, Florida  
To: (Rate, name, armed force, social security number)

Subj: RESTRICTION ORDERS

1. Assigned restriction:

a. You are hereby placed on \_\_\_\_ days restriction as awarded you at a \_\_\_\_ court-martial. The sentence was adjudged on \_\_\_\_, 19\_\_.

b. You are hereby placed on \_\_\_\_ days restriction as awarded you at commanding officer's nonjudicial punishment, held on \_\_\_\_, 19\_\_.

2. You are hereby notified that the restriction limits and additional requirements are as follows:

a. You are required to remain within the perimeter and gates of the Naval Air Station, Wonderful, Florida.

b. You are not permitted in BEQ 999, 998, 997, or 996; Consolidated Package Store, Mini-Mart; bowling alley, Enlisted Mens' Club Complex, or Navy Exchange Cafeteria, or anywhere else on base that sells alcoholic beverages.

c. While you are on restriction, you may not operate a privately owned vehicle. If you have an automobile and desire to leave your automobile parked in the designated parking area, you must turn all of your ignition keys in to the chief master-at-arms who will provide you with a receipt. The chief master-at-arms will take custody of your keys, but not your automobile. You may arrange to have your automobile stored off the Naval Air Station at your own expense.

d. You are to be inside the Discipline Barracks between the hours of 1900 and 0600 daily.

e. You are hereby ordered to muster at the Discipline Barracks at the following times:

Workdays (including Saturday): 0615, 0745, 1130, 1245, 1600, 1800, 2000, 2145.

Non-workdays (Sundays and holidays): 0715, 1000, 1130, 1400, 1600, 1800, 2000, 2145.

NOTE: You are also required to come to any additional musters that may be prescribed by the duty desk chief. You will also be present for all bunk checks from taps to reveille.

Subj: RESTRICTION ORDERS

f. You will surrender the following items to the master-at arms:

(1) Identification card (a Restriction ID card will be issued); and

(2) all civilian clothes (an inventory will be made and you will be given a receipt for all clothing turned in).

g. You are required to be in the complete uniform of the day at all times between reveille and taps. You are not permitted to be in civilian clothes AT ANY TIME.

h. You are ordered to keep your face clean-shaven for the duration of your restriction.

i. You are required to march in formation to meals, if you desire to eat. The formation will depart for the meal from the muster area immediately preceding the meal. There is no requirement to march back from the meal.

j. You are to ensure that you are berthed in the proper bunk. Failure to do so will result in your being considered an unauthorized absentee.

k. If it is necessary for you to go to the Naval Hospital, Naval Air Station, Wonderful, Florida, you will be transported to and from the hospital by the master-at-arms force. You are forbidden to go or return on your own.

l. You are not to consume, or have in your possession, alcoholic beverages of any kind at any time.

3. You are hereby notified that all the above constitute lawful orders and that failure to comply is a violation of the Uniform Code of Military Justice and will subject you to disciplinary action.

(Authorized signature)  
By direction of the  
Commanding Officer

I acknowledge this restriction order. I have read and understand its content.

(Signature of restricted person)

WITNESS: \_\_\_\_\_  
TIME: \_\_\_\_\_ DATE: \_\_\_\_\_

# RESTRICTION MUSTER

W- WORK DAY  
NW- NON WORK DAY

[illegible]



TABLE ONE

## LIMITS OF PUNISHMENTS UNDER UCMJ, ART. 15

Imposed by	Imposed on	Confinement on BSW or Dim Rats (2)	Correctional Custody (3)	Arrest in Quarters (1)	Forfeiture (6) (5)	Reduction (6) (8)	Restrictions		
							Extra Duties (4)	to limits (4)	Admonition (6)
General Officers in Command	Officers	No	No	30 days	1/2 one mo. for 2 mos.	No	No	60 days	Yes
	E-4 to E-9	No	No	No	1/2 one mo. for 2 mos.	1 grade	45 days	60 days	Yes
	E-1 to E-3	3 days	30 days	No	1/2 one mo. for 2 mos.	1 grade	45 days	60 days	Yes
O-4 to O-6	Officers	No	No	No	No	No	No	30 days	Yes
	E-4 to E-9	No	No	No	1/2 one mo. for 2 mos.	1 grade	45 days	60 days	Yes
	E-1 to E-3	3 days	30 days	No	1/2 one mo. for 2 mos.	1 grade	45 days	60 days	Yes
O-3 below and OinC's (7)	Officers	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

(1) May not be combined with restriction

(2) May be awarded only if attached to/embarked in a vessel and may not be combined with any other restraint punishment or extra duties

(3) May not be combined with restriction or extra duties

(4) Restriction and extra duties may be combined to run concurrently but the combination may not exceed the maximum impossible for extra duties

(5) Shall be expressed in whole dollar amounts only

(6) May be imposed in addition to or in lieu of all other punishments

(7) OIC's have NJP authority over enlisted personnel only

(8) Chief petty officers, paygrades E-7 thru E-9, may not be reduced at NJP in the Navy; while Marine Corps NCO's, paygrades E-6 thru E-9, may not be reduced at NJP (check current directives relating to promotions)



DEPARTMENT OF THE NAVY  
NAVAL JUSTICE SCHOOL  
NEWPORT, RHODE ISLAND 02841-5030

NAVJUSTSCOLINST 5811.1C  
22:RLR:cas  
15 November 1988

NAVJUSTSCOL INSTRUCTION 5811.1C

Subj: DUTIES OF PRELIMINARY INQUIRY OFFICERS

Ref: (a) Rule for Courts-Martial 303, Manual for Courts-Martial, 1984  
(b) Uniform Code of Military Justice  
(c) SECNAVINST 5520.3 (Series)

Encl: (1) Instructions for preliminary inquiry officers  
(2) Investigator's report, NJS Form 5811/1  
(3) Witness' statement, NJS Form 5811/2  
(4) Suspect's statement, NJS Form 5811/3

1. Purpose. To promulgate instructions pertaining to the duties of preliminary inquiry officers.
2. Cancellation. NAVJUSTSCOL Instruction 5811.1B is hereby canceled.
3. Information

a. Reference (a) requires the commanding officer, upon receipt of charges or information indicating that a member of the command has committed an offense punishable under reference (b), to cause to be made a preliminary inquiry into the case sufficient to permit an intelligent disposition of the matter. This may consist only of an examination of the charges and a summary of the expected evidence which accompanies them, while in other cases it may involve a more extensive investigation.

b. An informative preliminary inquiry report is of utmost importance to the proper administration of military justice. The report is utilized initially by the commanding officer in determining the proper disposition of the case. Options include dismissal of the charge(s), imposition of nonpunitive measures, nonjudicial punishment, referral to trial by court-martial, and referral to a formal pretrial investigation. If the commanding officer determines nonjudicial punishment to be appropriate, the preliminary inquiry report will be of assistance in determining the accused's guilt or innocence and the amount of punishment to be imposed. In the event of an appeal from nonjudicial punishment, the report will assist the appellate authority in deciding whether relief is warranted. If the case is referred to trial by court-martial or to a formal pretrial investigation, the report will assist the summary court-martial officer, counsel for both sides, or a pretrial investigating officer in preparing to discharge their duties.

c. This instruction uses a check-off sheet to assist preliminary inquiry officers in performing all required procedures and collecting all necessary evidence.

NAVJUSTSCOLINST 5811.1C  
15 November 1988

4. Action

a. The executive officer, upon receipt of information indicating an offense has been committed by a member of this command, shall determine who should investigate the case. The executive officer shall be guided by reference (c) in making this determination. If an investigation by one of the command's personnel is considered appropriate, the executive officer will assign a preliminary inquiry officer from the Naval Justice School staff. It may be expedient for more than one case to be assigned to the same person for concurrent investigation where the cases are closely related.

b. Preliminary inquiry officers will proceed in accordance with enclosure (1).

c. In each case the executive officer will review the report of the preliminary inquiry officer and may remand the report for further investigation where appropriate.

T. C. WATSON, JR.

Distribution:  
NAVJUSTSCOLINST 5216.3 (Series)  
List 2

INSTRUCTIONS FOR  
PRELIMINARY INQUIRY OFFICERS

1. The preliminary inquiry officer (PIO) will conduct an investigation by executing the following steps substantially in the order presented below. The report of investigation will consist of the following:

- a. NAVPERS 1626/7, Report and Disposition of Offense(s);
- b. an NJS Form 5811/1 (Investigator's Report) (See enclosure (2). This form provides a chronological checklist for conduct of the preliminary inquiry.);
- c. statements or summaries of interviews with all witnesses (sworn statements will be obtained if practicable);
- d. statements of the accused's supervisor(s), sworn if practicable;
- e. originals or copies of documentary evidence;
- f. if the accused waives all rights, a signed sworn statement by the accused; or a summary of interrogation of the accused, signed and sworn to by the accused; or both; and
- g. any additional comments by the investigator as desired.

2. Objectives

a. The primary objective of the PIO is to collect all available evidence pertaining to the alleged offense(s). As a first step, the PIO should be familiar with those paragraphs of the Manual for Courts-Martial, 1984, describing the offense(s). Each of the common offenses is described in Part IV, MCM, 1984. Within each paragraph is a section entitled "elements," which lists the elements of proof for that offense. The PIO must be careful to focus on the correct variation. The elements of proof should be copied down to guide the PIO in searching for the relevant evidence. The PIO is to consider everything which tends to prove or disprove an element of proof.

b. The secondary objective of the PIO is to collect information about the accused which will aid the commanding officer in making a proper disposition of the case and, in the event nonjudicial punishment is to be imposed, what the appropriate punishment, if any, should be. Items of interest to the commanding officer include: the accused's currently assigned duties; evaluation of performance; attitudes and ability to get along with others; and particular personal difficulties or hardships which the accused is willing to discuss. Information of this sort is best reflected in the statements of the accused's supervisors, peers, and the accused himself.

Enclosure (1)

3. Interrogate the witnesses first (not the accused)

a. In most cases, a significant amount of the information must be obtained from witnesses. The person initiating the report and the persons listed as witnesses are starting points. Other persons having relevant information may be discovered during the course of the investigation.

b. The PIO should not begin by interrogating the accused. The accused is the person with the greatest motive for lying or otherwise distorting the truth, if in fact he/she is guilty. Before encountering such a person, the interrogator should be thoroughly prepared. Therefore, meeting with the accused should be left until last. Even when the accused confesses guilt, the PIO should, nevertheless, collect independent evidence corroborating the confession.

c. Witnesses who have relevant information to offer should be requested to make a sworn statement. Where a witness is interviewed by telephone and is unavailable to execute a sworn statement, the PIO must summarize the interview and certify it to be true.

d. In interviewing a witness, the PIO should seek to elicit all relevant information. One method is to start with a general survey question, asking for an account of everything known about the subject of inquiry, and then following up with specific questions. After conversing with the witness, the PIO should assist in writing out a statement that is thorough, relevant, orderly, and clear. The substance must always be the actual thoughts, knowledge, or beliefs of the witness; the assistance of the PIO must be limited to helping the witness express himself accurately and effectively in a written form. The witness may write the statement on a copy of enclosure (3).

4. Collect the documentary evidence. Documentary evidence such as Shore Patrol reports, log entries, watchbills, service record entries, local instructions, or organization manuals should be obtained. The original or a certified copy of relevant documents should be attached to the report. As an appointed investigator, the PIO has the authority to certify copies to be true by subscribing the words "CERTIFIED TO BE A TRUE COPY" with his/her signature.

5. Collect the real evidence. Real evidence is a physical object, such as the knife in an assault case or the stolen camera in a theft case, etc. Before the PIO seeks out the real evidence, if any, he/she must be completely familiar with the Military Rules of Evidence concerning searches and seizures. If the item is too big to bring to a nonjudicial punishment hearing or into a courtroom (for instance, the wrecked government bus in a "damaging government property" case), a photograph of it should be taken. If real evidence is already in the custody of a law enforcement agency, it should be left there unless otherwise directed. The PIO should inspect it personally.

6. Advise the accused of his/her rights during interrogation

a. Before questioning the accused, the PIO should also have the accused sign the acknowledgement line on the front of the Report and Disposition of Offense (NAVPERS 1626/7) and initial any additional pages of charges that may be attached. The PIO should sign the witness line on the front of NAVPERS 1626/7, next to the accused's acknowledging signature.

b. NJS Form 5811/3 (enclosure 4) has been provided to assure that the PIO correctly advises the accused of his/her rights before asking any questions. Filling in that page must be the first order of business when meeting with the accused. Only one witness is necessary, and that witness may be the PIO.

7. Interrogate the accused

a. The accused may be questioned only if he/she has knowingly and intelligently waived all constitutional and statutory rights. Such waiver, if made, should be recorded on NJS Form 5811/3 (Suspect's Statement), appended to this instruction as enclosure (4). If the accused asks questions regarding the waiver of these rights, the PIO must decline to answer or give any advice on that question. The decision must be left to the accused. Other than advising the accused of the rights as stated in paragraph 6b above, the PIO should never give any other form of legal advice to the accused. If the accused desires a lawyer, the Naval Legal Service Office judge advocates are available to give legal advice.

b. If the accused has waived all rights, the PIO may commence questioning. The PIO should begin in a low-key manner so as not to disquiet the accused. Once he/she have spoken their piece, the PIO may probe with pointed questions and confront the accused with inconsistencies in the story or contradictions with other evidence. The PIO should, with respect to his own conduct, keep in mind that if a confession is not "voluntary," it cannot be used as evidence. To be admissible, a confession or admission which was obtained through the use of coercion, unlawful influence, or unlawful inducement is not voluntary. The presence of an impartial witness during the interrogation of the accused is recommended.

Some instances of coercion, unlawful influence, and an unlawful inducement in obtaining a confession or admission are: infliction of bodily harm (including questioning accompanied by deprivation of the necessities of life, such as food, sleep, or adequate clothing); threats of bodily harm; imposition or threats of confinement, or deprivation of privileges or necessities; promises of immunity or clemency as to any offense allegedly committed by the accused; and promises of reward or benefit, or threats of disadvantage, likely to induce the accused to make the confession or admission.

c. If the accused is willing to make a written statement, ensure the accused has acknowledged and waived all rights. While the PIO may help the accused draft the statement, he/she must be meticulous in refraining from putting words in the accused's mouth or from tricking the accused into saying something unintended. If the draft is typed, the accused should read it over carefully and be permitted to make any desired changes. All changes should be initialed by the accused and witnessed by the PIO.

d. Oral statements, even though not reduced to writing, are admissible into evidence against a suspect. If the accused does not wish to reduce his/her statement to writing, the PIO must attach a certified summary of the interrogation to the report. Where the accused has reduced less than all of the statement to writing, but has made a written statement, the PIO must add a certified summary of matters omitted from the accused's written statement.

e. If the accused initially waives all rights, but during the interview indicates a desire to consult with counsel or to stop the interview, the PIO will scrupulously adhere to such request and terminate the interview. The interview may not resume unless the accused approaches the PIO and indicates a desire to once again waive all rights and submit to questioning.

INVESTIGATOR'S REPORT IN THE CASE OF \_\_\_\_\_

1. Read paragraphs in MCM concerning offenses/charges Yes: ☐
2. Witnesses interviewed (not the accused).

	(NAME)	(PHONE)	signed statement attached	summary of interview attached
a.	_____	_____	<input type="checkbox"/> or <input type="checkbox"/>	
b.	_____	_____	<input type="checkbox"/> or <input type="checkbox"/>	
c.	_____	_____	<input type="checkbox"/> or <input type="checkbox"/>	
d.	_____	_____	<input type="checkbox"/> or <input type="checkbox"/>	
e.	_____	_____	<input type="checkbox"/> or <input type="checkbox"/>	
f.	_____	_____	<input type="checkbox"/> or <input type="checkbox"/>	

3. Accused's supervisor(s) interviewed: ☐ or ☐

a.	_____	_____	<input type="checkbox"/> or <input type="checkbox"/>
b.	_____	_____	<input type="checkbox"/> or <input type="checkbox"/>

4. Documentary evidence:

	(ORIG.)	(COPY)/(ATTACHED)	(LOCATION)
a.	_____ <input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	or _____
b.	_____ <input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	or _____
c.	_____ <input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	or _____
d.	_____ <input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	or _____

5. Real evidence:

(DESCRIPTION)	(NAME OF CUSTODIAN)	(CUSTODIAN'S PHONE)
---------------	---------------------	---------------------

a.	_____	_____
b.	_____	_____

6. Permit the accused to inspect Report Chit. Yes \_\_\_\_\_ No \_\_\_\_\_
7. Accused initialed second page of charges (if any). N/A Yes \_\_\_\_\_ No \_\_\_\_\_
8. Accused signed Acknowledgement line on NAVPERS 1626/7. Yes \_\_\_\_\_ No \_\_\_\_\_
9. Investigator signed witness line on NAVPERS 1626/7. Yes \_\_\_\_\_ No \_\_\_\_\_
10. Accused waived rights. Yes \_\_\_\_\_ No \_\_\_\_\_
11. Accused made statement (only when #10 is Yes), and

- a. ☐ Accused's signed statement attached.
- b. ☐ Summary of interrogation attached.

Enclosure (2)



WITNESS' STATEMENT  
NJS Form 5811/2

Name	Grade/Rate	Social Security No.
Command		Division
TAD from/to _____ until _____		
Whereabouts for next 30 days		Phone

I, \_\_\_\_\_, hereby make the following statement to  
\_\_\_\_\_, who has identified himself/herself as a  
preliminary inquiry officer for the Naval Justice School, Newport, Rhode Island.

(use additional pages if necessary)

I swear (or affirm) that the information in the statement above (and on the \_\_\_\_\_  
attached page(s), all of which are signed by me) is true to my knowledge or belief.

_____ (Witness' Signature)	_____ (Date)	19_____ (Time)
-------------------------------	-----------------	-------------------

Sworn to before me this date.

_____ (Investigator's Signature)	_____ (Date)	19_____ (Time)
-------------------------------------	-----------------	-------------------

Enclosure (3)

NAVJUSTSCOLINST 5811.1C  
15 November 1988

SUSPECT'S RIGHTS ACKNOWLEDGMENT/STATEMENT  
NJS Form 5811/3

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Full Name (Accused/suspect)      Social Security No.      Grade/Rate

\_\_\_\_\_  
Interviewer      Social Security No.      Grade/Rate

RIGHTS

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) I have the right to remain silent;----- Initial \_\_\_\_

(3) Any statement I do make may be used as evidence against me in trial by court martial;----- Initial \_\_\_\_

(4) I have the right to consult with a lawyer prior to any questioning. This lawyer may be a civilian lawyer retained by me at my own expense, or, if I wish, Navy or Marine Corps authority will appoint a judge advocate to act as my counsel without cost to me; or both----- Initial \_\_\_\_

(5) I have the right to have such retained civilian lawyer and/or appointed judge advocate present during this interview----- Initial \_\_\_\_

WAIVER OF RIGHTS

I further certify and acknowledge that I have read the above statement of my rights and fully understand them,----- Initial \_\_\_\_  
and that,

(1) I expressly desire to waive my right to remain silent-- Initial \_\_\_\_

(2) I expressly desire to make a statement----- Initial \_\_\_\_

(3) I expressly do not desire to consult with either a civilian lawyer retained by me or a judge advocate appointed as my counsel without cost to me prior to any questioning----- Initial \_\_\_\_

(4) I expressly do not desire to have such a lawyer present with me during this interview----- Initial \_\_\_\_

Enclosure (4)

(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 or pressure or coercion of any kind having been used against me.----- Initial \_\_\_\_

(6) I further understand that, even though I initially waive my rights to counsel and to remain silent, I may, during the interview, assert my right to counsel or to remain silent.----- Initial \_\_\_\_

\_\_\_\_\_  
Signature (Accused/suspect)

Time

Date

\_\_\_\_\_  
Signature (Interviewer)

Time

Date

\_\_\_\_\_  
Signature (Witness)

Time

Date

\_\_\_\_\_  
The statement which appears on this page (and the following \_\_\_\_ page(s), all of which are signed by me), is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

\_\_\_\_\_  
Signature (Accused/suspect)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**REPORT AND DISPOSITION OF OFFENSE(S)**  
NAVPERS 1626/7 (REV. 8-81) S/N 0106-LF-616-2636

To: Commanding Officer, Naval Justice School Date of Report: 1 June 19CY

Newport, Rhode Island

1. I hereby report the following named person for the offense(s) noted:

NAME OF ACCUSED	SERIAL NO	SOCIAL SECURITY NO	RATE GRADE	RA & CLASS	DIV/DEPT
FERNDOCK, Clyde E.		000-00-0000	YN3	USN	ADMIN
PLACE OF OFFENSE(S)			DATE OF OFFENSE(S)		
Naval Education and Training Center Newport, Rhode Island			25 May 19CY		

DETAILS OF OFFENSE(S) (Refer by article of UCMJ, if known. If unauthorized absence, give following info: time and date of commencement, whether over leave or liberty, time and date of apprehension or surrender and arrival on board, loss of ID card and/or liberty card, etc.):

Viol. UCMJ, Art. 121: Larceny of \$50.00, the property of YN2 Alvin P. Jones, USN, on 25 May 19CY.

NAME OF WITNESS	RATE/GRADE	DIV/DEPT	NAME OF WITNESS	RATE/GRADE	DIV/DEPT
Hugh C. Caughtem	MACM	MAA			
Michael L. Orlando	MS2	Billeting			
Alvin P. Jones	YN2	Paralegal			

MACM/CMAA for NETC Newport

(Rate/Grade/Title of person submitting report)

HUGH C. CAUGHTEM

(Signature of person submitting report)

I have been informed of the nature of the accusation(s) against me. I understand I do not have to answer any questions or make any statement regarding the offense(s) of which I am accused or suspected. However, I understand any statement made or questions answered by me may be used as evidence against me in event of trial by court-martial (Article 31, UCMJ).

Witness: ANDREW S. LOOKIN, LT, USN

(Signature)

Acknowledged: CLYDE E. FERNDOCK, YN3, USN

(Signature of Accused)

PRE-TRIAL  
RESTRAINT

☐ PRE TRIAL  
CONFINEMENT

☐ RESTRICTED: You are restricted to the limits of \_\_\_\_\_

☒ NO RESTRICTIONS

in lieu of arrest by order of the CO. Until your status as a restricted person is terminated by the CO, you may not leave the restricted limits except with the express permission of the CO or XO. You have been informed of the times and places which you are required to muster.

Signature and title of person imposing restriction:

Signature of Accused:

**INFORMATION CONCERNING ACCUSED**

CURRENT ENL. DATE	EXPIRATION CURRENT ENL. DATE	TOTAL ACTIVE NAVAL SERVICE	TOTAL SERVICE ON BOARD	EDUCATION	GCT	AGE
6 Jun CY(-2)	5 Jun CY(+2)	2 yrs	10 mos	12	50	22
MARITAL STATUS	NO. DEPENDENTS	CONTRIBUTION TO FAMILY OR QTRS ALLOWANCE (Amount required by law)		PAY PER MONTH (Including sea or foreign duty pay, if any)		
Single	None	Not Applicable		\$779.10		

RECORD OF PREVIOUS OFFENSE(S) (Date, type, action taken, etc. Nonjudicial punishment incidents are to be included.)

CY(-1)JUN04: CO'S NJP: Viol. UCMJ, Art. 86, UA (0800-2100. CY(-1)MAY28). Awarded: 10 days Rest.; and FF \$100.00 x 2 mos.

CY(-1)JUN23: CO'S NJP: Viol. UCMJ, Art. 121, Larceny (\$100 on CY(-1)JUN17). Awarded: 10 days Correctional Custody.

CY(-1)JUL15: CO'S NJP: Viol. UCMJ, Art. 91, Disrespect (to a PO on CY(-1)JUL03). Awarded: Reduction: Rate to E-3; suspended x 6 months.

\*\*(Or: If no record of previous offense(s) -- "No prior NJP's or previous Courts-Martial.")

SJA-37

## UNAUTHORIZED ABSENCES/DESERTERS

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## UNAUTHORIZED ABSENCES/DESERTIONS CHECKLIST

### I. NAVY

#### A. POLICY

The policies and procedures regarding unauthorized absences and desertion of enlisted members are found in MILPERSMAN 3020220, 3430100, 3430150, 3430200, 3430250, 3430300, 3430350, 3640450. Consult these sections for further amplification of the checklist given below.

#### B. PROCEDURES

The procedures for completing the service record entries can be found in MILPERSMAN sections above and PAYPERSMAN 10381, 90419, 90435.

#### C. CHECKLIST

1. When a member is reported UA, immediately prepare a page 13 to document inception of UA.
2. When a member has been UA over 24 hours, ensure that the NAVPERS 601-6R is prepared. This will stop the servicemember's pay.
3. If member is absent less than 24 hours, prepare a page 13 to document the termination of absence.
4. If the member is gone 10 days, prepare a letter to the next of kin notifying them of the member's absence; his personal effects should be collected, inventoried, and placed in safekeeping; prepare NAVCOMPT 3060.
5. Upon return of a member gone less than 30 days, complete the NAVPERS 601-6R and decide what type, if any, disciplinary action will be taken.
6. If the member is gone 30 days, he/she is declared a deserter. This may be done earlier if there is an indication the member has no intention to return. The following documents should be prepared and actions taken:
  - a. Deserter message
  - b. DD Form 553 (Absentee Wanted by the Armed Forces)
  - c. Charge sheet DD Form 458 - charge violation of Article 85, UCMJ. Prefer and receive charges only. Do not refer.

- d. Any evidence of desertion should be gathered, such as: witness statements, pending incident complaint reports, restriction orders, any relevant message traffic, and any documentation of other pending disciplinary action
  - e. Obtain health, dental and pay records
- 7. If member is gone 180 days, send the following to NMPC:
  - a. Service record (including the page 601-6R, original charge sheet, and restriction orders)
  - b. Health record
  - c. Dental record
  - d. Pay record
- 8. After 180 days, send the personal effects to Naval Supply Center, Oakland, CA, or Supply Annex, Williamsburg, VA.
- 9. A deserter file should be retained by command. It should include the following:
  - a. Certified copy of the charge sheet
  - b. Certified copy of the restriction order
  - c. Right side of the service record
  - d. Copy of Page 601-6R
  - e. Performance evaluations
  - f. Last LES
  - g. Copy of DD 553
  - h. Copy of deserter message
  - i. Any other relevant messages
- 10. Upon return of a member from UA, prepare page 13 documenting return.
- 11. Upon return of a member from UA over 24 hours, but less than 10 days, complete page 601-6R -- sending fourth copy to disbursing. This starts member's pay.
- 12. Upon return of a member from UA over 10 days, but less than 30 days, complete page 601-6R; prepare letter to the next of kin, notifying them of member's return.



13. Upon return of a member from UA over 30 days, complete page 601-6R; prepare letter to the next of kin, notifying them of member's return; and prepare return deserter message, if not done by an intermediate command.

## II. MARINE CORPS

### A. REFERENCES

- (a) MCO P5800.8B, Marine Corps Manual for Legal Administration (LEGADMINMAN), Chapter 5
- (b) MCO P1080.35F (PRIM)
- (c) MCO P4050.38A, Marine Corps Personal Effects and Baggage Manual
- (d) MCO P1070.12E, Marine Corps Individual Records and Administration Manual (IRAM)
- (e) MCO P5512.11A, Uniformed Service Identification and Privilege Card, DD Form 1173
- (f) MCO P11000.17, Real Property Facilities Manual, Vol. X

### B. CHECKLIST

1. \_\_\_\_\_ UA entry (in excess of 24 hours) run on unit diary (b).
2. \_\_\_\_\_ Page 12 SRB "to UA" entry made (4015 of (d)).
3. \_\_\_\_\_ Inventory within 24 hours government and personal property of absentee accomplished (c).
4. \_\_\_\_\_ After 48th hour of absence, CO telephoned NOK (if not in CONUS, only if dependents reside locally (a)).
5. \_\_\_\_\_ Prior to 10th day of UA, letter mailed to NOK and copy filed on document side of SRB (fig. 5-1, ref(a)).
6. \_\_\_\_\_ Prepare charge sheet through block IV prior to 31st day of absence for violation of article 85 and all other known charges.
  - a. \_\_\_\_\_ Charges sworn to, block III.
  - b. \_\_\_\_\_ Receipted for in block IV.
  - c. \_\_\_\_\_ Original placed on document side of SRB.
7. \_\_\_\_\_ Unit diary entry run declaring a deserter and dropping from roles to desertion on 31st day (b).

8. \_\_\_\_\_ SRB pages 3, 12, and 23 - completed IAW ref (d).
- a. \_\_\_\_\_ Chronological record (page 3).
  - b. \_\_\_\_\_ Offenses and punishments (page 12) administratively declaring a deserter and dropping from roles.
  - c. \_\_\_\_\_ Markings page (page 23).
9. \_\_\_\_\_ DD 553 prepared and distributed IAW para. 5002 of ref (a).
- a. \_\_\_\_\_ Date published matches that of page 12 entry date (normally 31st day of UA).
  - b. \_\_\_\_\_ If insufficient information, priority message sent MMRB-10.
  - c. \_\_\_\_\_ If incomplete information, permission requested MHL-30.
  - d. \_\_\_\_\_ Original sent to CMC (MHL-30) (Report Symbol MC-5800-01) within seven days of administrative declaration of desertion on page 12.
10. \_\_\_\_\_ DD 553 distributed properly (para. 5002.2e(4) of ref (a)).
- a. \_\_\_\_\_ Copy on document side of SRB.
  - b. \_\_\_\_\_ Copy to NOK.
  - c. \_\_\_\_\_ Copy to all known associates.
  - d. \_\_\_\_\_ Copy to each chief of police and county sheriff in area of civilian addressees of DD 553.
  - e. \_\_\_\_\_ Copy to units assigned admin responsibility and appropriate area police (see MCO 5800.10).
11. \_\_\_\_\_ If deserter has dependents, see para. 5004 of ref (a).
- a. \_\_\_\_\_ Retrieved dependent ID cards.
  - b. \_\_\_\_\_ If not surrendered, notify local medical facilities and military activities.
  - c. \_\_\_\_\_ A terminate DD 1172 submitted to DEERS (see ref (e)).
  - d. \_\_\_\_\_ Dependents directed to vacate quarters (see ref (f)).

12. \_\_\_\_\_ Return of deserter within 91 days.
- a. \_\_\_\_\_ "From UA" entry made in diary.
  - b. \_\_\_\_\_ Page 12 entry recording date, hour, and circumstances of return to military control (see 4015 of ref (d)).
  - c. \_\_\_\_\_ Page 12 SRB entry made removing mark of desertion (not removed if apprehended and/or convicted by civil authorities except as provided in ref (a)).
  - d. \_\_\_\_\_ If mark of desertion removed, notify disbursing office in writing of removal IAW ref (a).
13. \_\_\_\_\_ If no return by 91st day of absence (see ref (a), Chapter 5).
- a. \_\_\_\_\_ Audit of SRB, pages 3, 12, and 23 completed and entries correct.
  - b. \_\_\_\_\_ Charge sheet on document side correctly receipts for charge prior to page 12 date accused dropped from rolls (if no - redo).

PL01-6R

# RECORD OF UNAUTHORIZED ABSENCE

A	1. DATE OF SUBMISSION		2. SHIP OR STATION AND LOCATION	
B	UNAUTHORIZED ABSENCE FROM 1. HOUR 0800 4. DATE CYJUN25 16. HOUR 11. DATE		LIBERTY BEGAN 5. OVER LIBERTY [X] 6. HOUR 1600 7. DATE CYJUN24 8. OVER LEAVE	
C	12. DELIVERED TO CIVIL AUTH		13. APPREHENDED BY CIVIL AUTHORITIES	
D	14. AT ORGANIZATION AND LOCATION)		15. DD 553 ISSUED	
E	16. DD 553 ISSUED		17. PERSONAL EFFECTS COLLECTED, INVENTORIED AND IN SAFEKEEPING	
F	18. UIC MEMBER UA FROM 23456 RETURNED TO MILITARY JURISDICTION 20. HOUR 21. DATE		19. ACTIVITY MEMBER UA FROM USS NEVERSAIL (AS 00) 22. APPREHENDED 23. SURRENDERED	
G	24. RETURNED TO MILITARY JURISDICTION AT (ACTIVITY)		25. UIC	
H	26. TRANSFERRED TO (ACTIVITY)		27. UIC	
I	30. DETERMINATION NOT UNAUTHORIZED ABSENCE		31. NAVPERS 1070-606 WHICH REPORTED ABSENCE IN ERROR	
J	32. ABSENCE EXCUSED UNAVOIDABLE		33. CHARGED NO DAYS LEAVE (DAY FOR DAY)	
K	34. FROM: SKMC 35. TO		36. DISEASE DUE TO USE OF ALCOHOL DRUGS	
L	37. ABSENCE NOT EXCUSED		38. CHARGE NO DAYS (LOST TIME (10 DAY MO)	
M	39. CHARGE NO DAYS (LOST TIME (DAY FOR DAY)		40. CHARGE NO DAYS (LOST TIME (DAY FOR DAY)	
N	41. CHANGE LEADS TO		42. CHANGE EXPENSE TO	
O	43. ADJUST PREVIOUSLY SUBMITTED 1070, 606		44. DATED	
P	45. CORRECTED INFO ENTERED ABOVE		46. ERRONEOUSLY REPORTED LEAVE	
Q	47. ERRONEOUSLY REPORTED (LOST TIME (30 DAY MONTH)		48. ERRONEOUSLY REPORTED (LOST TIME (DAY FOR DAY)	
R	49. AMPLIFYING REMARKS (MAY BE CONTINUED ON REVERSE) CYJUN26: UA FM USS NEVERSAIL AT NEWPORT, RI, AS OF 0800, CYJUN25. <i>R. T. Little</i> [ORIGINAL SIGNATURE] R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00)			
S	[ORIGINAL OCR - TYPED AFTER 24 HOURS UA]			
T	50. (SIGNATURE) BY DIRECTOR			
U	51. UNIT I.D. CODE			
V	52. RATE YN3			
W	53. NAME (LAST, FIRST, MIDDLE) JONES, FRED PAUL			
X	54. SSN 222-22-2222			
Y	55. BRANCH, CLASS USN			

RECORD OF UNAUTHORIZED ABSENCE NAVPERS 1070-606 (REV. 1-77) S/N 010611 010 6956

U.S. GOVERNMENT PRINTING OFFICE: 1964 421 729 Z 2049

SJA-43

ORIGINAL OCR  
AFTER 24 HOURS

## RECORD OF UNAUTHORIZED ABSENCE

A	1. DATE OF SUBMISSION CYJUN26		2. SHIP OR STATION AND LOCATION USS NEVERSAIL (AS 00)	
	3. HOUR 0800		4. DATE CYJUN25	
B	5. OVER LIBERTY <input checked="" type="checkbox"/>		6. HOUR 1600	
	7. DATE CYJUN24		8. OVER LEAVE <input type="checkbox"/>	
C	9. FIELD AND CHARGED BY CIVIL AUTH. 10. HOUR: 11. DATE:		12. DELIVERED TO CIVIL AUTH. <input type="checkbox"/>	
	13. APPREHENDED BY CIVIL AUTHORITIES <input type="checkbox"/>		14. DD 616 ISSUED <input type="checkbox"/>	
D	15. AT (ORGANIZATION AND LOCATION)		16. DD 553 ISSUED <input type="checkbox"/>	
	17. PERSONAL EFFECTS COLLECTED, INVENTORIED, AND IN SAFKEEPING <input type="checkbox"/>		18. UIC MEMBER UA FROM: 23456	
E	19. ACTIVITY MEMBER UA FROM: USS NEVERSAIL (AS 00)		20. HOURS 21. DATE:	
	22. APPREHENDED <input type="checkbox"/>		23. SURRENDERED <input type="checkbox"/>	
F	24. DD 616 ISSUED <input type="checkbox"/>		25. RETURNED TO MILITARY JURISDICTION AT (ACTIVITY)	
	26. UIC		27. RETURNED TO MILITARY JURISDICTION AT (ACTIVITY)	
G	28. TRANSFERRED TO (ACTIVITY)		29. UIC	
	30. DETERMINATION NOT UNAUTHORIZED ABSENCE <input type="checkbox"/>		31. NAVPERS 1070/606 WHICH REPORTED ABSENCE IN ERROR	
H	32. ABSENCE EXCUSED UNAVOIDABLE <input type="checkbox"/>		33. CHARGED NO. DAYS LEAVE (DAY FOR DAY)	
	34. FROM: 35. TO:		36. DISEASE DUE TO USE OF ALCOHOL/DRUGS <input type="checkbox"/>	
I	37. OTHER <input type="checkbox"/>		38. ABSENCE NOT EXCUSED <input type="checkbox"/>	
	39. CHARGE NO DAYS LOST TIME (30 DAY MO)		40. CHARGE NO DAYS LOST TIME (DAY FOR DAY)	
J	41. CHANGE EAOS TO		42. CHANGE EXP ENI TO	
	43. ADJUST PREVIOUSLY SUBMITTED 1070/606 <input type="checkbox"/>		44. DATED	
K	45. CORRECTED INFO ENTERED ABOVE <input type="checkbox"/>		46. ERRONEOUSLY REPORTED LEAVE	
	47. ERRONEOUSLY REPORTED LOST TIME (30 DAY MONTH)		48. ERRONEOUSLY REPORTED LOST TIME (DAY FOR DAY)	
L	49. AMPLIFYING REMARKS (MAY BE CONTINUED ON REVERSE) CYJUN26: UA FM USS NEVERSAIL AT NEWPORT, RI, AS OF 0800, CYJUN25. [CARBON SIGNATURE] R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00)			
	[THIRD COPY - COMPLETE BLOCKS 1, 2, 50, 51]			
M	50. (SIGNATURE) BY DIRECTION R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00)		51. UNIT I.D. CODE 23456	
	52. RATE YN3		53. NAME (LAST, FIRST, MIDDLE) JONES, FRED PAUL	
N	54. SSN 222-22-2222		55. BRANCH CLASS USN	
	56. UNIT I.D. CODE 23456		57. RATE YN3	

RECORD OF UNAUTHORIZED ABSENCE NAVPERS 1070/606 (REV. 1-77) S/M 0106-1F 010-6956

U.S. GOVERNMENT PRINTING OFFICE: 1984 421 129-2 2049

SJA-44

THIRD COPY  
AFTER 24 HOURS  
STOPS PAY

RECORD OF UNAUTHORIZED ABSENCE

A	1. DATE OF SUBMISSION		2. SHIP OR STATION AND LOCATION	
B	UNAUTHORIZED ABSENCE FROM 1. HOUR: 0800 4. DATE: CYJUN25		LIBERTY BECAME 7. HOUR: 1600 8. DATE: CYJUN24	
C	HELD AND CHARGED BY CIVIL AUTH. 10. HOUR: 11. DATE:		12. DELIVERED TO CIVIL AUTH. 13. APPREHENDED BY CIVIL AUTHORITIES	
D	15. AT ORGANIZATION AND LOCATION:		16. DD 553 ISSUED 17. PERSONAL EFFECTS COLLECTED, INVENTORIED, AND IN SAFEKEEPING	
E	18. UIC MEMBER UA FROM 23456		19. ACTIVITY MEMBER UA FROM USS NEVERSAIL (AS 00)	
F	RETURNED TO MILITARY JURISDICTION 20. HOUR: 21. DATE:		22. APPREHENDED 23. SURRENDERED	
G	25. RETURNED TO MILITARY JURISDICTION AT (ACTIVITY)		26. UIC	
H	28. TRANSFERRED TO (ACTIVITY)		29. UIC	
I	30. DETERMINATION NOT UNAUTHORIZED ABSENCE		31. NAVPERS 1070, 606 WHICH REPORTED ABSENCE IN ERROR	
J	32. ABSENCE EXCUSED UNAVOIDABLE		33. CHARGED NO. DAYS LEAVE (DAY FOR DAY)	
K	34. FROM: 35. TO:		36. DISEASE DUE TO USE OF ALCOHOL DRUGS 37. OTHER	
L	38. ABSENCE NOT EXCUSED 39. CHARGE NO. DAYS LOST TIME (DAY FOR DAY)		40. CHARGE NO. DAYS LOST TIME (DAY FOR DAY) 41. CHANGE EAOS TO 42. CHANGE EXPR TIME TO	
M	43. ADJUST PREVIOUSLY SUBMITTED 1070, 606		44. DATED 45. CORRECTED INFO ENTERED ABOVE	
N	46. ERRONEOUSLY REPORTED LEAVE		47. ERRONEOUSLY REPORTED LOST TIME (30 DAY MONTH) 48. ERRONEOUSLY REPORTED LOST TIME (DAY FOR DAY)	
O	49. AMPLIFYING REMARKS (MAY BE CONTINUED ON REVERSE) CYJUN26: UA FM USS NEVERSAIL AT NEWPORT, RI, AS OF 0800, CYJUN25. <i>R. T. Little</i> [ORIGINAL SIGNATURE] R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00) CYJUN26: MISSED SAILING OF THIS VESSEL FM NEWPORT, RI, CYJUN25. <i>R. T. Little</i> [ORIGINAL SIGNATURE] R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00)  [ORIGINAL OCR - MISSED SAILING ENTRY]			
P	50. (SIGNATURE) BY DIRECTION PANK GRAD			
Q	51. UNIT I.D. CODE		52. RATE YN3	
R	53. NAME (LAST FIRST MIDDLE) JONES, FRED PAUL		54. SSN 222-22-2222	
S	55. BRANCH CLASS USN			

RECORD OF UNAUTHORIZED ABSENCE NAVPERS 1070/606 (REV 1-77) S/N 010617 010 6956

U.S. GOVERNMENT PRINTING OFFICE: 1984 421 729 2 2049

ORIGINAL OCR  
AFTER 24 HOURS  
MISSED SAILING

RECORD OF UNAUTHORIZED ABSENCE

A	1. DATE OF SUBMISSION		2. SHIP OR STATION AND LOCATION	
B	3. UNAUTHORIZED ABSENCE FROM 1. HOUR: 0800 4. DATE: CYJUN25		LIBERTY BEGIN 6. HOUR: 1600 7. DATE: CYJUN24	
C	8. OVER LEAVE <input type="checkbox"/> 9. AWOL <input type="checkbox"/>		5. OVER LIBERTY <input checked="" type="checkbox"/>	
C	10. HELD AND CHARGED BY CIVIL AUTH. 10. HOUR: 11. DATE:		12. DELIVERED TO CIVIL AUTH <input type="checkbox"/> 13. APPREHENDED BY CIVIL AUTHORITIES <input type="checkbox"/> 14. DD 616 ISSUED <input type="checkbox"/>	
D	15. AT (ORGANIZATION AND LOCATION)			
D	16. DD 553 ISSUED <input type="checkbox"/>		17. PERSONAL EFFECTS COLLECTED, INVENTORIED, AND IN SAFEKEEPING <input checked="" type="checkbox"/>	
E	18. UIC MEMBER UA FROM: 23456		19. ACTIVITY MEMBER UA FROM: USS NEVERSAIL (AS 00)	
F	20. RETURNED TO MILITARY JURISDICTION 20. HOUR: 21. DATE:		22. APPREHENDED <input type="checkbox"/> 23. SURRENDERED <input type="checkbox"/> 24. DD 616 ISSUED <input type="checkbox"/>	
F	25. RETURNED TO MILITARY JURISDICTION AT (ACTIVITY)		26. UIC <input type="checkbox"/> 27. REF ON BOARD <input type="checkbox"/>	
F	28. TRANSFERRED TO (ACTIVITY)		29. UIC <input type="checkbox"/>	
G	30. DETERMINATION NOT UNAUTHORIZED ABSENCE <input type="checkbox"/>		31. NAVPERS 1070/606 WHICH REPORTED ABSENCE IN ERROR	
G	32. ABSENCE EXCUSED UNAVOIDABLE <input type="checkbox"/>		33. CHARGED NO. DAYS LEAVE (DAY FOR DAY)	
G	34. SKMC FROM:		35. TO: <input type="checkbox"/> 36. DISTASTE DUE TO USE OF ALCOHOL/DRUGS <input type="checkbox"/> 37. OTHER <input type="checkbox"/>	
H	38. ABSENCE NOT EXCUSED <input type="checkbox"/>		39. CHARGE NO. DAYS LOST TIME (30 DAY MO) <input type="checkbox"/> 40. CHARGE NO. DAYS LOST TIME (DAY FOR DAY) <input type="checkbox"/>	
H	41. ADJUST PREVIOUSLY SUBMITTED 1070/606 <input type="checkbox"/>		42. CHANGE EAOS TO: <input type="checkbox"/> 43. CHANGE EXPR ENL TO: <input type="checkbox"/>	
H	44. DATED		45. CORRECTED INFO ENTERED ABOVE <input type="checkbox"/>	
H	46. ERRONEOUSLY REPORTED LEAVE		47. ERRONEOUSLY REPORTED LOST TIME (30 DAY MONTH) <input type="checkbox"/>	
H	48. ERRONEOUSLY REPORTED LOST TIME (DAY FOR DAY)			
I	<p>49. AMPLIFYING REMARKS (MAY BE CONTINUED ON REVERSE)</p> <p>CYJUN26: UA FM USS NEVERSAIL AT NEWPORT, RI, AS OF 0800, CYJUN25. <i>R. T. Little</i> [ORIGINAL SIGNATURE]</p> <p>R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00)</p> <p>CYJUN26: MISSED SAILING OF THIS VESSEL FM NEWPORT, RI, CYJUN25. <i>R. T. Little</i> [ORIGINAL SIGNATURE]</p> <p>R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00)</p> <p>[ORIGINAL OCR - BLOCK 17 ENTRY]</p>			
J	50. (SIGNATURE) BY DIRECTION		RANK/GRADE	
J	51. UNIT I.D. CODE		52. RATE YN3	
J	53. NAME (LAST, FIRST, MIDDLE) JONES, FRED PAUL		54. SSN 222-22-2222 55. BRANCH, CLASS USN	

# MILITARY PAY ORDER (SINGLE)

1 UNIT CODE 23456		2 DATE (YRMONDA) CYJUL04		IT IS HEREBY AUTHORIZED THAT THE PAY ACCOUNTS OF THE INDIVIDUALS LISTED BELOW BE ADJUSTED AS INDICATED HEREIN:			
3 ORGANIZATION AND STATION USS NEVERSAIL (AS 00) PPO NEW YORK 09501							
4 NAME (LAST, FIRST, MIDDLE INITIAL) JONES, FRED P		5 FROM HR	6 DATE (YRMONDA) CYJUN25	7 TO HOUR	8 DATE (YRMONDA)	1	
9 USN 222-22-2222	10 AMOUNT \$	11 REASON FOR CHANGE UNAUTHABSNC					
12 REMARKS							
13 NAME (LAST, FIRST, MIDDLE INITIAL)		14 FROM HR	15 DATE (YRMONDA)	16 TO HOUR	17 DATE (YRMONDA)	2	
18 USN	19 AMOUNT \$	20 REASON FOR CHANGE					
21 REMARKS							
22 NAME (LAST, FIRST, MIDDLE INITIAL)		23 FROM HR	24 DATE (YRMONDA)	25 TO HOUR	26 DATE (YRMONDA)	3	
27 USN	28 AMOUNT \$	29 REASON FOR CHANGE					
30 REMARKS							
31 NAME (LAST, FIRST, MIDDLE INITIAL)		32 FROM HR	33 DATE (YRMONDA)	34 TO HOUR	35 DATE (YRMONDA)	4	
36 USN	37 AMOUNT \$	38 REASON FOR CHANGE					
39 REMARKS							
40 NAME (LAST, FIRST, MIDDLE INITIAL)		41 FROM HR	42 DATE (YRMONDA)	43 TO HOUR	44 DATE (YRMONDA)	5	
45 USN	46 AMOUNT \$	47 REASON FOR CHANGE					
48 REMARKS							
49 NAME (LAST, FIRST, MIDDLE INITIAL)		50 FROM HR	51 DATE (YRMONDA)	52 TO HOUR	53 DATE (YRMONDA)	6	
54 USN	55 AMOUNT \$	56 REASON FOR CHANGE					
57 REMARKS							
58 NAME (LAST, FIRST, MIDDLE INITIAL)		59 FROM HR	60 DATE (YRMONDA)	61 TO HOUR	62 DATE (YRMONDA)	7	
63 USN	64 AMOUNT \$	65 REASON FOR CHANGE					
66 REMARKS							
67 TOTAL NUMBER OF PAGES IN THIS PAGE 1				68 SIGNATURE OF CERTIFYING OFFICER <i>R T Little</i>			
69 NAME AND GRADE OF CERTIFYING OFFICER R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00)							



DEPARTMENT OF THE NAVY  
USS NEVERSAIL (AS 00)  
FPO New York 03501

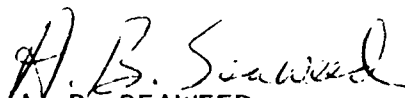
1610  
00  
July 4, 19CY

Mr. & Mrs. Ronald Jones  
235 Long Street  
Los Angeles, CA 14790-9999

Dear Mr. and Mrs. Jones:

I regret the necessity of informing you that your son, Yeoman Third Class Fred Paul Jones, who enlisted in the Navy on June 24, 19CY(-2), and was attached to USS NEVERSAIL (AS 00), has been on unauthorized absence since June 25, 19CY. Should you know of his whereabouts, please urge him to surrender to the nearest naval or other military activity immediately, since the gravity of the offense increases with each day of absence. At this time, all pay and allowances, including allotments, have been suspended pending return to Navy jurisdiction. Should he remain absent for 30 days, we will declare him a deserter and a federal warrant will be issued. Information will be provided to the National Crime Information Center wanted person's file, which is available to all federal, state, and local law enforcement agencies.

Sincerely,

  
A. B. SEAWEED  
Captain, U.S. Navy  
Commanding Officer

Copy to:

(Apply name and address of Reserve chaplain nearest the absentee's home of record, according to NAVMILPERSCOMNOTE 1600.)

Example:

Bee U. Humble  
LCDR, CHC, USNR  
1 Way Street  
Upview, CA 12345-6789

[ON THE 10TH DAY OF ABSENCE, PREPARE A LETTER OF NOTIFICATION TO NOK - SEE MILPERSMAN 3430150.1.e]

10 DAY LTR  
NOTIF NOK UA

SEE MILPERSMAN 3430250

DESERTER/ABSENTEE WANTED BY THE ARMED FORCES						1. DATE FORM PREPARED 25 Jul CY	
2. TO (I.e., State or Federal law enforcement authority as indicated by Military Deserter Information Point) <b>Commander, Naval Military Personnel Command, Washington, D.C. 20370 (NMPC-843)</b>				3. FROM: (Organization or activity and place from which absent. If unauthorized absence occurs in transit, list old and new unit in Item 3d - Remarks) <b>USS NEVERSAIL (AS 00) FPO New York 09501 Located at Newport, RI</b>		4. DISTRIBUTION (Attach photograph if available)	
5. NAME OF ABSENTEE (Last, First, MI) <b>JONES, Fred P.</b>		6. GRADE OR RATE <b>YN3</b>		7. SEX <b>M</b>	8. RACE <b>CAUC</b>		
9. PLACE OF BIRTH <b>Los Angeles, CA</b>	10. DATE OF BIRTH <b>2 Feb CY (-22)</b>	11. HEIGHT <b>72</b>	12. WEIGHT <b>170</b>	13. EYES <b>BLUE</b>	14. HAIR <b>BLOND</b>		
15. DIP CONTROL NUMBER		16. SERVICE <b>USN</b>		17. SOCIAL SECURITY NO. <b>222-22-2222</b>		18. CITIZENSHIP <b>U.S.</b>	
19. MILITARY OCCUPATION <b>Yeoman</b>		20. CIVILIAN OCCUPATION <b>Administrative Clerk</b>					
21. PERMANENT RESIDENCE ADDRESS OF ABSENTEE (Include ZIP Code) <b>235 Long Street, Los Angeles, California 14790-9999</b>							
22. DATE AND PLACE OF CURRENT ENLISTMENT <b>24 Jun CY (-2), Los Angeles, CA</b>		23. DATE AND PLACE OF ENTRY INTO CURRENT PERIOD OF SERVICE <b>24 Jun CY (-2), Los Angeles, CA</b>					
24. DATE/HOUR OF ABSENCE <b>0800, 25 Jun CY</b>		25. ADMINISTRATIVE DATE OF DESERTION <b>24 Jul CY</b>					
26. ESCAPED OR SENTENCED PRISONER <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Convicted for:		27. DISCHARGE STATUS a. DISCHARGED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO b. SUSPENDED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
OPERATOR'S LICENSE INFORMATION				LICENSE PLATE INFORMATION			
28a. LICENSE NUMBER <b>1234567</b>		b. STATE <b>RI</b>	c. EXPR DATE <b>19CY (+3)</b>	28a. PLATE NO. <b>I QUIT</b>	b. STATE <b>RI</b>	c. EXPR DATE <b>19CY (+3)</b>	
VEHICLE IDENTIFICATION INFORMATION							
30a. VEHICLE IDENTIFICATION NUMBER <b>678910X</b>		b. YEAR <b>19CY</b>	c. MAKE <b>FORD</b>	d. MODEL <b>MUSTANG</b>	e. STYLE <b>SEDAN</b>	f. COLOR <b>RED</b>	
31. NAME AND ADDRESS OF RELATIVES AND/OR PERSONS KNOWN BY ABSENTEE (Include ZIP Code) (If more space is needed, continue on reverse or on a separate sheet of paper, making reference to this item number.)							
a. NAME			b. ADDRESS (Include ZIP Code)				
(1) <b>Mr. &amp; Mrs. Ronald Jones</b>			<b>235 Long Street, Los Angeles, CA 14790-9999</b>				
(2)							
32. (See Footnotes on reverse.) The undersigned states: That (he) <u>self</u> is a commissioned officer of the United States <u>Navy</u> (Military Department) presently assigned as the Commanding Officer, <u>USS NEVERSAIL (AS 00)</u> . (Unit from which the Alleged Deserter Absented Himself or Herself), and in the performance of official duties imposed by Department of Defense Directive 1325.2 and <u>SECNAVINST 1620.7</u> (Regulations of the Service concerned which implement DOD Directive 1325.2, e.g., Army Regulations 190-9 and 630-10), (he) <u>self</u> has conducted an investigation into the absentee status of <u>YN3 Fred P. Jones, USN</u> (Name and Rank of Alleged Deserter), a member of the United States Armed Forces serving on active duty with <u>USS NEVERSAIL, USN</u> (Unit and Service from which the Alleged Deserter Absented Himself or Herself), by questioning (his) <u>self</u> unit cohorts, by examining (and verifying) the field service records of said service member which reflect (his) <u>self</u> duty status, by requesting the member's next of kin to urge (his) <u>self</u> voluntary return to military control if they are aware of (his) <u>self</u> whereabouts, by inquiring to the fullest extent possible into the feasibility of other explanations for the member's absence to include sickness, injury, hospitalization, and confinement by civil law enforcement officials, and officially barred removed from (this) <u>self</u> unit of assignment by verifying the member's status (unit and en route temporary duty unit), the appropriate command management directed, (the servicing replacement organization) (and the servicing Military Personnel and Transportation Branches) <u>self</u> .							
That based on the aforesaid investigation, the undersigned has personal knowledge that, on or about <u>25 Jun CY</u> (Date), <u>YN3 Fred P. Jones, USN</u> (Name and Rank of Alleged Deserter), did, without authority and with intent to remain away therefrom permanently, absent (himself) <u>self</u> from (his) <u>self</u> (unit) <u>(hospitalized since 21 July)</u> to wit: (See Item 3 Above) located at (See Item 3 Above) in violation of Section 885, Title 10, United States Code and (he) <u>self</u> has remained continuously so absent until <u>25 Jul CY</u> (Date this Statement is Executed). I state under penalty of perjury (under the laws of the United States of America) that the foregoing is true and correct. Executed on <u>25 Jul CY</u> (Date).							
33. ORGANIZATION AND INSTALLATION <b>USS NEVERSAIL (AS 00) FPO New York 09501</b>			34. TYPED NAME, GRADE AND TITLE <b>A. B. SEAWOOD, CAPT, USN Commanding Officer</b>		35. SIGNATURE (All Copies) <b>A.B. Seawood</b>		

**38 REMARKS** (List peculiar habits and traits of character; unusual mannerisms and speech; peculiarities in appearance; clothing worn; shoes (name); marks and scars, tattoos; facial characteristics; complexion; posture; build; other SSNs used by individual; or other data that may assist in identification. List known facts, e.g., armed and dangerous, drug user, suicidal tendencies, guards are needed, etc.)

## INFORMATION

### 1. Authority to Apprehend.

a. Any civil officer having authority to apprehend offenders under the laws of the United States, or of a State, territory, commonwealth, possession, or the District of Columbia may summarily apprehend deserters from the Armed Forces of the United States and deliver them into custody of military officials. Receipt of this form and a corresponding entry in the FBI's NCIC Wanted Person File, or oral notification from military officials or Federal law enforcement officials that the person has been declared a deserter and that his/her return to military control is desired, is authority for apprehension.

b. Civil authorities may apprehend absentees (AWOL's) when requested to do so by military authorities.

### 2. Payment of Reward or Reimbursement for Expenses.

a. **Rewards.** Receipt of this form, or oral or written notification from military authorities or Federal law enforcement officials, prior to apprehension of the individual, that the person is an absentee and that his/her return to military control is desired will be considered as an offer of reward. Persons or agency representatives (except salaried officers or employees of the Federal Government or servicemembers) apprehending or delivering absentees to military control are authorized:

(1) Payment for apprehension and detention of absentees until military authorities assume custody, or,

(2) Payment for apprehension and delivery of absentees to a military installation.

b. **Reimbursement for Expenses.** Reimbursement may be made for actual expenses incurred when conditions for payment of a reward cannot be met. If two or more persons perform these services, payment will be made jointly or severally, but total payment to all may not exceed prescribed limitations.

c. **Payment.** Payment will be made to the person or agency representative actually making arrest and detention or delivery by the disbursing officer servicing the military facility to which the absentee is delivered and will be in full satisfaction of all expenses of apprehending, keeping and delivering the absentee. Payment may be made whether the absentee surrenders or is apprehended. Payment will not be made for information leading to apprehension, nor for apprehension not followed by return to military control. Both reward and reimbursement may not be paid for the same apprehension and detention or delivery.

3. **Individual Claims He/She Is Not Absent Without Authority.** When a detained individual claims that he/she is not absent without leave and does not have the papers to prove his/her claim, the apprehending person or agency representative should communicate directly by the most rapid means available, with the nearest military installation manned by active duty personnel. When necessary, communicate directly (telephone or telegraph) with the Deserter Information Point of the military service concerned.

a. **US Army.** United States Army Deserter Information Point (USADIP), Fort Benjamin Harrison, IN 46249, telephone collect: Area Code (317) 542-3355.

b. **US Navy.** Commander, Naval Military Personnel Command (NMPC-843), Washington, D.C. 20370, telephone: Area Code (800) 336-4974. (In Va., Call (800) 572-0266).

c. **US Marine Corps.** Commandant, US Marine Corps, Code MPH-57, Washington, D.C. 20380, telephone collect: Area Code (202) 694-2180/8526.

d. **US Air Force.** USAF Manpower Personnel Center, Randolph AF Base, Texas 78148, telephone collect: Area Code (512) 652-5118/2148.

### FOOTNOTES:

<sup>1</sup> For use only when a servicemember fails to report to a gaining unit of assignment during a permanent change of station.

<sup>2</sup> For use only when statement is executed outside the United States, its territories, possessions and commonwealths.

MILPERSMAN 3430250

ADMINISTRATIVE REMARKS (See MPM 3430160 for inactive reserve enlisted absentees)

E-32

NAVPERS 1070/613 (Rev. 1-76)

S/N 0106-LF-010-0000

SEE RUPERSMAN 5030420

SHIP OR STATION

USS NEVERSAIL (AS 00)

FM: USS NEVERSAIL

TO: COMNAVMILPERSCOM WASHINGTON DC

INFO: NAVFINCEN CLEVELAND OH

EPMAC NEW ORLEANS LA

(OTHER APPROPRIATE INFO ADDEES INCLUDING DISBURSING ACTIVITY  
HOLDING DESERTER'S PAY RECORD)

UNCLAS //N01626//

SUBJ: REPORT OF DECLARATION OF DESERTION (NMPC 1600-3) NMPC-843

1. YN3 FRED PAUL JONES, USN, 222-22-2222.
2. DECL DESERTER 24 JUL CY HAVING BEEN AN UNAUTHORIZED ABSENTEE SINCE 0800, 25 JUN CY FROM USS NEVERSAIL (AS 00) UIC: 23456.
3. MEMBER IS CURRENTLY CARRIED IN ACCOUNTING CATEGORY 100 ON COMMAND'S EDVR.
4. IDENTIFYING INFORMATION:
  - A. 72.
  - B. 170.
  - C. BLOND/BLUE.
  - D. NO VISIBLE SCARS, MARKS, OR TATOOS.
  - E. NO ALIASES.
  - F. 2 FEB CY(-22), LOS ANGELES, CALIFORNIA.
  - G. LOS ANGELES, CALIFORNIA.
  - H. 1234567, RI, 19CY(+3).
  - I. 23 JUN CY(+2).
5. YES, DD 553 PREPARED AND MAILED 25 JUL CY.
6. NOK AND RESERVE CHAPLAIN HAVE BEEN NOTIFIED OF MEMBER'S ABSENCE/DESER.
7. I QUIT, RI, 678910X, 19CY, FORD, MUSTANG, SEDAN, RED.
8. REMARKS: NOT APPLICABLE.
9. NOT APPLICABLE.

The facts set forth above are verified.

[VERIFICATION AND SIGNATURE REQUIRED-SEE MILPERSMAN 5030420 EXHIBIT 7,8,9]

*R. T. Little*  
R. T. LITTLE, PNC, USN

By direction of the Commanding Officer

NAME (Last, First, Middle)

JONES, Fred Paul

SEN

222-22-2222

BRANCH AND CLASS

USN

RECORD OF UNAUTHORIZED ABSENCE

A	1. DATE OF SUBMISSION		2. SHIP OR STATION AND LOCATION	
B	UNAUTHORIZED ABSENCE FROM: 3. HOUR: 0800 4. DATE: CYJUN25		LIBERTY BEGAN 5. OVER LIBERTY: <input checked="" type="checkbox"/> 6. HOUR: 1600 7. DATE: CYJUN24 8. OVER LEAVE: <input type="checkbox"/> 9. AWOL: <input type="checkbox"/>	
C	HELD AND CHARGED BY CIVIL AUTH. 10. HOUR: 11. DATE:		12. DELIVERED TO CIVIL AUTH: <input type="checkbox"/> 13. APPREHENDED BY CIVIL AUTHORITIES: <input type="checkbox"/> 14. DD 616 ISSUED: <input type="checkbox"/>	
D	15. AT (ORGANIZATION AND LOCATION)		16. DD 553 ISSUED: <input checked="" type="checkbox"/> 17. PERSONAL EFFECTS COLLECTED, INVENTORIED, AND IN SAFEGUARDING: <input checked="" type="checkbox"/>	
E	18. UIC MEMBER UA FROM: 23456		19. ACTIVITY MEMBER UA FROM: USS NEVERSAIL (AS 00)	
F	RETURNED TO MILITARY JURISDICTION 20. HOUR: 21. DATE:		22. APPREHENDED: <input type="checkbox"/> 23. SURRENDERED: <input type="checkbox"/> 24. DD 616 ISSUED: <input type="checkbox"/>	
G	25. RETURNED TO MILITARY JURISDICTION AT: (ACTIVITY)		26. UIC: <input type="checkbox"/> 27. RET ON BOARD: <input type="checkbox"/>	
H	28. TRANSFERRED TO: (ACTIVITY)		29. UIC: <input type="checkbox"/>	
I	30. DETERMINATION NOT UNAUTHORIZED ABSENCE: <input type="checkbox"/> 31. NAVPERS 1070/606 WHICH REPORTED ABSENCE IN ERROR		32. ABSENCE EXCUSED UNAVOIDABLE: <input type="checkbox"/> 33. CHARGED NO. DAYS LEAVE (DAY FOR DAY)	
J	34. FROM: SKMC 35. TO:		36. DISEASE DUE TO USE OF ALCOHOL/DRUGS: <input type="checkbox"/> 37. OTHER: <input type="checkbox"/>	
K	38. ABSENCE NOT EXCUSED: <input type="checkbox"/> 39. CHARGE NO. DAYS LOST TIME (30 DAY MO)		40. CHARGE NO. DAYS LOST TIME (DAY FOR DAY)	
L	41. CHANGE EAOS TO:		42. CHANGE EXPR ENL TO:	
M	43. ADJUST PREVIOUSLY SUBMITTED 1070/606: <input type="checkbox"/> 44. DATED		45. CORRECTED INFO ENTERED ABOVE: <input type="checkbox"/>	
N	46. ERRONEOUSLY REPORTED LEAVE		47. ERRONEOUSLY REPORTED LOST TIME (30 DAY MONTH)	
O	48. ERRONEOUSLY REPORTED LOST TIME (DAY FOR DAY)			
P	49. AMPLIFYING REMARKS (MAY BE CONTINUED ON REVERSE) CYJUN26: UA FM USS NEVERSAIL AT NEWPORT, RI, AS OF 0800, CYJUN25. <i>R. T. Little</i> [ORIGINAL SIGNATURE] R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00) CYJUN26: MISSED SAILING OF THIS VESSEL FM NEWPORT, RI, CYJUN25. <i>R. T. Little</i> [ORIGINAL SIGNATURE] R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00)  [ORIGINAL OCR - BLOCK 16 ENTRY]			
Q	50. (SIGNATURE) BY DIRECTION		RATK GRAIN	
R	51. UNIT I.D. CODE		52. RATE YN3	
S	53. NAME (LAST, FIRST, MIDDLE) JONES, FRED PAUL		54. SSN 222-22-2222 55. BRANCH CLASS USN	

RECORD OF UNAUTHORIZED ABSENCE

A	1. DATE OF SUBMISSION		2. SHIP OR STATION AND LOCATION	
B	UNAUTHORIZED ABSENCE FROM 3. HOUR (0800) 4. DATE CYJUN25 11. DELIVERED TO CIVIL AUTH 12. DATE		LIBERTY BY CAT 5. OVER LIBERTY 6. HOUR 1600 7. DATE CYJUN24 8. REASON FOR LEAVE 9. APPROVED BY 10. DATE	
C	15. AT (ORGANIZATION AND LOCATION)			
D	UNAUTHORIZED ABSENCE FOR 10 DAYS <input checked="" type="checkbox"/> 16. DD 553 ISSUED		<input checked="" type="checkbox"/> 17. PERSONAL EFFECTS COLLECTED, INVENTORIED, AND IN SAFEKEEPING	
E	18. UIC MEMBER UA FROM: 23456		19. ACTIVITY MEMBER UA FROM USS NEVERSAIL (AS 00)	
F	RETURNED TO MILITARY JURISDICTION 20. HOUR 21. DATE 25. RETURNED TO MILITARY JURISDICTION AT (ACTIVITY) 26. UIC 27. TRANSFERRED TO (ACTIVITY) 28. UIC		<input type="checkbox"/> 22. APPREHENDED <input type="checkbox"/> 23. SURRENDERED 24. DD 614 ISSUED 25. UIC 26. UIC	
G	<input type="checkbox"/> 30. DETERMINATION NOT UNAUTHORIZED ABSENCE <input type="checkbox"/> 32. ABSENCE EXCUSED UNAVOIDABLE		31. NAVPERS 1070, 606 WHICH REPORTED ABSENCE IN ERROR 33. CHARGED NO. DAYS LEAVE (DAY FOR DAY)	
H	<input type="checkbox"/> 38. ABSENCE NOT EXCUSED 39. CHARGE NO. DAYS LOST TIME (30 DAY MO) 40. CHARGE NO. DAYS LOST TIME (DAY FOR DAY)		41. CHANGE LEAVES TO 42. CHANGE LEAVES FROM	
I	<input type="checkbox"/> 43. ADJUST PREVIOUSLY SUBMITTED 1070, 606 44. DATED 45. CORRECTED INFO ENTERED ABOVE		46. ERRONEOUSLY REPORTED LEAVE 47. ERRONEOUSLY REPORTED LOST TIME (30 DAY MONTH) 48. ERRONEOUSLY REPORTED LOST TIME (DAY FOR DAY)	
J	49. AMPLIFYING REMARKS (MAY BE CONTINUED ON REVERSE) CYJUN26: UA FM USS NEVERSAIL AT NEWPORT, RI, AS OF 0800, CYJUN25. <i>R. T. Little</i> [ORIGINAL SIGNATURE] R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00) CYJUN26: MISSED SAILING OF THIS VESSEL FM NEWPORT, RI, CYJUN25. <i>R. T. Little</i> [ORIGINAL SIGNATURE] R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00) CYDEC22: RECORDS AND PERSONAL EFFECTS TRANSFERRED THIS DATE. <i>R. T. Little</i> [ORIGINAL SIGNATURE] R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00)  [ORIGINAL OCR - BLOCK 49 ENTRY; RECORDS AND PERSONAL EFFECTS FORWARDED]			
	50. (SIGNATURE) BY DIRECTION		RANK GRADE	
	51. UNIT I.D. CODE		52. RATE YN3	
	53. NAME (LAST, FIRST, MIDDLE) JONES, FRED PAUL		54. SSN 222-22-2222 55. BRANCH CLASS USN	

RECORD OF UNAUTHORIZED ABSENCE NAVPERS 1070/606 (REV. 1-77) 5/N 0106-1F 010 6956

U.S. GOVERNMENT PRINTING OFFICE: 1984-421-329-2 2049

ORIGINAL OCR  
AFTER 181 DAYS  
EFFECTS TRANSFERRED

## RECORD OF UNAUTHORIZED ABSENCE

A	1. DATE OF SUBMISSION CYDEC22		2. SHIP OR STATION AND LOCATION USS NEVERSAIL (AS 00)	
B	3. AUTHORIZED ABSENCE FROM 0800		4. DATE CYJUN25	
	5. OVER LIBERTY <input checked="" type="checkbox"/>		6. HOUR 1600	
	7. DATE CYJUN24		8. OVER LEAVE <input type="checkbox"/>	
C	9. HELD AND CHARGED BY CIVIL AUTH. 10. HOUR:		11. DATE:	
	12. DELIVERED TO CIVIL AUTH. <input type="checkbox"/>		13. APPREHENDED BY CIVIL AUTHORITIES <input type="checkbox"/>	
	14. DD 616 ISSUED <input type="checkbox"/>		15. AT (ORGANIZATION AND LOCATION)	
D	16. DD 553 ISSUED <input checked="" type="checkbox"/>		17. PERSONAL EFFECTS COLLECTED, INVENTORIED, AND IN SAFEKEEPING <input checked="" type="checkbox"/>	
E	18. UIC MEMBER UA FROM: 23456		19. ACTIVITY MEMBER UA FROM: USS NEVERSAIL (AS 00)	
	20. HOUR:		21. DATE:	
	22. APPREHENDED <input type="checkbox"/>		23. SURRENDERED <input type="checkbox"/>	
F	24. DD 616 ISSUED <input type="checkbox"/>		25. RETURNED TO MILITARY JURISDICTION AT: (ACTIVITY)	
	26. UIC		27. RET ON BOARD <input type="checkbox"/>	
	28. TRANSFERRED TO: (ACTIVITY)		29. UIC	
G	30. DETERMINATION NOT UNAUTHORIZED ABSENCE <input type="checkbox"/>		31. NAVPERS 1070/606 WHICH REPORTED ABSENCE IN ERROR	
	32. ABSENCE EXCUSED UNAVOIDABLE <input type="checkbox"/>		33. CHARGED NO. DAYS LEAVE (DAY FOR DAY)	
	34. FROM:		35. TO:	
	36. DISEASE DUE TO USE OF ALCOHOL, DRUGS <input type="checkbox"/>		37. OTHER <input type="checkbox"/>	
	38. ABSENCE NOT EXCUSED <input type="checkbox"/>		39. CHARGE NO. DAYS LOST TIME (30 DAY MO)	
	40. CHARGE NO. DAYS LOST TIME (DAY FOR DAY)		41. CHANGE EAOS TO:	
	42. CHANGE EXPR ENL TO:		43. ADJUST PREVIOUSLY SUBMITTED 1070/606 <input type="checkbox"/>	
H	44. DATED		45. CORRECTED INFO ENTERED ABOVE <input type="checkbox"/>	
	46. ERRONEOUSLY REPORTED LEAVE		47. ERRONEOUSLY REPORTED LOST TIME (30 DAY MONTH)	
	48. ERRONEOUSLY REPORTED LOST TIME (DAY FOR DAY)		49. AMPLIFYING REMARKS (MAY BE CONTINUED ON REVERSE)	
I	CYJUN26: UA FM USS NEVERSAIL AT NEWPORT, RI, AS OF 0800, CYJUN25. [CARBON SIGNATURE] R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00) CYJUN26: MISSED SAILING OF THIS VESSEL FM NEWPORT, RI, CYJUN25. [CARBON SIGNATURE] R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00) CYDEC22: RECORDS AND PERSONAL EFFECTS TRANSFERRED THIS DATE. [CARBON SIGNATURE] R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00)  [FOURTH COPY - COMPLETE BLOCKS 1, 2, 50, 51]			
J	50. (SIGNATURE) BY DIRECTION R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00)		51. UNIT I.D. CODE 23456	
	52. NAME (LAST, FIRST, MIDDLE) JONES, FRED PAUL		53. SSN 222-22-2222	
	54. SSN 222-22-2222		55. BRANCH CLASS USN	

RECORD OF UNAUTHORIZED ABSENCE NAVPERS 1070/606 (REV. 1-77) S/N 0106-LF-010-6956

U.S. GOVERNMENT PRINTING OFFICE 1984-421 329-2 2049

SJA-54

FOURTH COPY  
AFTER 181 DAYS  
RECEIPT FOR RECORD  
EFFECTS TRANSFERRED

MILPERSMAN 3430300

FM USS NEVERSAIL

TO COMNAVMILPERSCOM WASHINGTON DC  
(DESERTER'S PARENT COMMAND SHOULD BE INCLUDED IF DESERTER  
RETURNS TO A COMMAND OTHER THAN PARENT COMMAND)

INFO EPMAC NEW ORLEANS LA  
(NSC OAKLAND CA OR SUPANX WILLIAMSBURG VA AS APPROPRIATE)  
NAVFINCEN CLEVELAND OH  
(OTHER INFO ADDEES AS APPROPRIATE)

UNCLAS //N01626//

SUBJ: REPORT OF RETURN OF DESERTER (NMPC 1600-2) NMPC-843

1. YN3 FRED PAUL JONES, USN, 222-22-2222.
2. UA FM USS NEVERSAIL (AS 00) SINCE 0800, 25 JUN CY.
3. APPREHENDED BY CIVIL AUTH AT 0500, 24 DEC CY, AT PROVIDENCE,  
RI, IN CONNECTION WITH DD 553.
4. RETURNED TO MIL CONTROL 0800, 24 DEC CY, USS NEVERSAIL (AS 00)  
AT NEWPORT, RI.
5. RETAINED ONBOARD FOR DISCIPLINARY ACTION DISPOSITION.
6. YES; NOK AND RESERVE CHAPLAIN HAVE BEEN NOTIFIED OF MEMBER'S  
RETURN TO MILITARY CONTROL.
7. CONTACT POINT: PNC R. T. LITTLE, USN, AV: 948-3456,  
COMM - (401)841-3456.
8. REMARKS: REQUEST FORWARD RECORDS TO USS NEVERSAIL (AS 00).

---

THE ACTIVITY TO WHICH A DESERTER IS FIRST RETURNED TO MILITARY CONTROL IS RESPONSIBLE FOR ENSURING THAT THIS MESSAGE REPORTING RETURN OF DESERTER IS PREPARED AND TRANSMITTED IMMEDIATELY TO COMNAVMILPERSCOM. ALL ITEMS OF INFORMATION ARE NECESSARY AND MUST BE USED. THE INFORMATION CONTAINED IN THIS MESSAGE DOES NOT GET TRANSPOSED ONTO A PAGE 13 AS WAS DONE FOR THE DECLARATION OF DESERTION MESSAGE.

THIS MESSAGE WILL REMOVE THE MEMBER FROM THE DESERTER FILES AT COMNAVMILPERSCOM AND FROM THE NATIONAL CRIME INFORMATION CENTER WANTED PERSONS FILE. THERE IS NO REQUIREMENT IN THE MILPERSMAN FOR SUBMISSION OF THE DD 616 (REPORT OF RETURN OF ABSENTEE FORM) WHICH WAS PREVIOUSLY A REQUIREMENT FOR REMOVAL FROM THE FILES.

UPON RETURN OF  
DESERTER MSG



\_\_\_\_\_

1. UNIT ID CODE 23456		2. DATE (YRMONDA) CYDEC27		IT IS HEREBY AUTHORIZED THAT THE PAY ACCOUNTS OF THE INDIVIDUALS LISTED BELOW BE ADJUSTED AS INDICATED HEREIN:	
3. ORGANIZATION AND STATION USS NEVERSAIL (AS 00) FPO NEW YORK 09501					
4. NAME (LAST, FIRST, MIDDLE INITIAL) JONES, FRED P		5. FROM: HR	6. DATE (YRMONDA) CYJUN25	7. TO: HOUR	8. DATE (YRMONDA) CYDEC24
9. SSN 222-22-2222		10. AMOUNT \$	11. REASON FOR CHANGE RETABSTEE		
12. REMARKS:					
13. NAME (LAST, FIRST, MIDDLE INITIAL)		14. FROM: HR	15. DATE (YRMONDA)	16. TO: HOUR	17. DATE (YRMONDA)
18. SSN		19. AMOUNT \$	20. REASON FOR CHANGE		
21. REMARKS:					
22. NAME (LAST, FIRST, MIDDLE INITIAL)		23. FROM: HR	24. DATE (YRMONDA)	25. TO: HOUR	26. DATE (YRMONDA)
27. SSN		28. AMOUNT \$	29. REASON FOR CHANGE		
30. REMARKS:					
31. NAME (LAST, FIRST, MIDDLE INITIAL)		32. FROM: HR	33. DATE (YRMONDA)	34. TO: HOUR	35. DATE (YRMONDA)
36. SSN		37. AMOUNT \$	38. REASON FOR CHANGE		
39. REMARKS:					
40. NAME (LAST, FIRST, MIDDLE INITIAL)		41. FROM: HR	42. DATE (YRMONDA)	43. TO: HOUR	44. DATE (YRMONDA)
45. SSN		46. AMOUNT \$	47. REASON FOR CHANGE		
48. REMARKS:					
49. NAME (LAST, FIRST, MIDDLE INITIAL)		50. FROM: HR	51. DATE (YRMONDA)	52. TO: HOUR	53. DATE (YRMONDA)
54. SSN		55. AMOUNT \$	56. REASON FOR CHANGE		
57. REMARKS:					
58. NAME (LAST, FIRST, MIDDLE INITIAL)		59. FROM: HR	60. DATE (YRMONDA)	61. TO: HOUR	62. DATE (YRMONDA)
63. SSN		64. AMOUNT \$	65. REASON FOR CHANGE		
66. REMARKS:					
67. TOTAL MEMBERS LISTED ON THIS PAGE 1		68. SIGNATURE OF CERTIFYING OFFICER R. T. Little			
69. TYPED NAME AND GRADE OF CERTIFYING OFFICER R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00)					

DEPARTMENT OF THE NAVY  
USS NEVERSAIL (AS 00)  
FPO New York 09501

1610  
00  
December 24, 19CY

Mr. & Mrs. Ronald Jones  
235 Long Street  
Los Angeles, CA 14790-9999

Dear Mr. and Mrs. Jones:

Please be advised that your son, Yeoman Third Class Fred Paul Jones, was returned to USS NEVERSAIL (AS 00), on December 24, 19CY. You may write to your son at the above address.

Sincerely,

A. B. SEAWEEED  
Captain, U.S. Navy  
Commanding Officer

Copy to:

(Include name and address of Reserve chaplain who was originally notified in the Letter of Notification, sent out on 10th day.)

Example:

Bee U. Humble  
LCDR, CHC, USN  
1 Way Street  
Upview, CA 12345-6789

[UPON RETURN OF ABSENTEE TO PARENT COMMAND, PREPARE A LETTER NOTIFYING NOK OF MEMBER'S RETURN - NO SPECIFIC LANGUAGE IS DICTATED BY MILPERSMAN. LANGUAGE OF LETTER IS LEFT TO DISCRETION OF PARENT COMMAND. WE RECOMMEND THAT THIS LETTER NOT BE SENT UNTIL THE ABSENTEE IS PHYSICALLY BACK ON BOARD THE COMMAND. SEE MILPERSMAN 3430200.1.c]

UPON RTN ABSENTEE  
LTR TO NOK

|| PHIL BR ||

|| 11 ||

# RECORD OF UNAUTHORIZED ABSENCE

A	1. DATE OF SUBMISSION CYDEC27		2. SHIP OR STATION AND LOCATION USS NEVERSAIL (AS 00)	
	3. UNAUTHORIZED ABSENCE FROM 1. HOUR 0800 4. DATE CYJUN25		5. OVER LIBERTY <input checked="" type="checkbox"/> 6. HOUR 1600 7. DATE CYJUN24	
B	8. OVER LEAVE <input type="checkbox"/> 9. AWOL <input type="checkbox"/>			
C	10. HELD AND CHARGED BY CIVIL AUTH. 10. HOUR 11. DATE		12. DELIVERED TO CIVIL AUTH <input type="checkbox"/> 13. APPREHENDED BY CIVIL AUTHORITIES <input type="checkbox"/> 14. DD 616 ISSUED <input type="checkbox"/>	
	15. AT (ORGANIZATION AND LOCATION)			
D	UNAUTHORIZED ABSENCE FOR 10 DAYS <input checked="" type="checkbox"/> 16. DD 553 ISSUED		17. PERSONAL EFFECTS COLLECTED, INVENTORIED, AND IN SAFEKEEPING <input checked="" type="checkbox"/>	
E	18. UIC MEMBER UA FROM 23456		19. ACTIVITY MEMBER UA FROM USS NEVERSAIL (AS 00)	
F	20. RETURNED TO MILITARY JURISDICTION 20. HOUR 0800 21. DATE CYDEC24		22. APPREHENDED <input checked="" type="checkbox"/> 23. SURRENDERED <input type="checkbox"/> 24. DD 616 ISSUED <input type="checkbox"/>	
	25. RETURNED TO MILITARY JURISDICTION AT (ACTIVITY) USS NEVERSAIL (AS 00)		26. UIC 23456 27. MIL CHARGE CARD <input checked="" type="checkbox"/>	
G	28. TRANSFERRED TO (ACTIVITY)		29. UIC	
	30. DETERMINATION NOT UNAUTHORIZED ABSENCE <input type="checkbox"/> 31. NAVPERS 1070-606 WHICH REPORTED ABSENCE IN ERROR		32. ABSENCE EXCUSED UNAVOIDABLE <input type="checkbox"/> 33. CHARGED NO. DAYS LEAVE (DAY FOR DAY)	
H	34. FROM SKMC 35. TO:		36. DISEASE DUE TO USE OF ALCOHOL DRUGS <input type="checkbox"/> 37. OTHER <input type="checkbox"/>	
	38. ABSENCE NOT EXCUSED <input type="checkbox"/> 39. CHARGE NO. DAYS LOST TIME (30 DAY MONTH)		40. CHARGE NO. DAYS LOST TIME (DAY FOR DAY) 41. CHANGE FAOS TO 42. CHANGE EXPR FTH TO	
I	43. ADJUST PREVIOUSLY SUBMITTED 1070-606 <input type="checkbox"/> 44. DATED		45. CORRECTED INFO ENTERED ABOVE <input type="checkbox"/>	
	46. ERRONEOUSLY REPORTED LEAVE <input type="checkbox"/> 47. ERRONEOUSLY REPORTED LOST TIME (30 DAY MONTH)		48. ERRONEOUSLY REPORTED LOST TIME (DAY FOR DAY)	
<p>49. AMPLIFYING REMARKS (MAY BE CONTINUED ON REVERSE)</p> <p>CYJUN26: UA FM USS NEVERSAIL AT NEWPORT, RI, AS OF 0800, CYJUN25.</p> <p>[CARBON SIGNATURE]</p> <p>R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00)</p> <p>CYJUN26: MISSED SAILING OF THIS VESSEL FM NEWPORT, RI, CYJUN25.</p> <p>[CARBON SIGNATURE]</p> <p>R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00)</p> <p>CYDEC22: RECORDS AND PERSONAL EFFECTS TRANSFERRED THIS DATE.</p> <p>[CARBON SIGNATURE]</p> <p>R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00)</p> <p>CYDEC27: APP BY CIV AUTH 0500, CYDEC24, AT PROVIDENCE, RI, IN CONNECTION WITH DD 553. RTN MIL CONTROL, 0800, CYDEC24, USS NEVERSAIL (AS 00) LOCATED AT NEWPORT, RI.</p> <p>[CARBON SIGNATURE]</p> <p>R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00)</p> <p>[FIFTH COPY - COMPLETE BLOCKS 1, 2, 50, 51]</p>				
50. (SIGNATURE) BY DIRECTION		51. UNIT ID CODE		
52. RATE		53. BRANCH CLASS		
54. SSN		55. BRANCH CLASS		

RECORD OF UNAUTHORIZED ABSENCE NAVPERS 1070-606 (REV 1-77) S.N. 0106 1F 010 6956

U.S. GOVERNMENT PRINTING OFFICE: 1974-421 129 7 1047

FIFTH COPY

RECORD RETURNED  
MEMBER RETURNED  
RESTART PAY

SJA-58

RECORD OF UNAUTHORIZED ABSENCE

A	1. DATE OF SUBMISSION		2. SHIP OR STATION AND LOCATION	
B	UNAUTHORIZED ABSENCE FROM 3. HOUR: 0800 4. DATE: CYJUN25 NEED AND CHARGED BY CIVIL AUTH 10. HOUR: 1600 11. DATE: CYJUN24		LIBERTY RECALL 5. OVER LIBERTY: [X] 6. HOUR: 1600 7. DATE: CYJUN24 8. OVER LEAVE: [ ] 9. HOUR: [ ]	
C	12. DELIVERED TO CIVIL AUTH: [ ] 13. APPREHENDED BY CIVIL AUTHORITIES: [ ] 14. DD 616 ISSUED: [ ]		15. AT ORGANIZATION AND LOCATION:	
D	UNAUTHORIZED ABSENCE FOR 10 DAYS [X] 16. DD 553 ISSUED		17. PERSONAL EFFECTS COLLECTED, INVENTORIED, AND IN SAFEKEEPING: [X]	
E	18. UIC MEMBER UA FROM: 23456		19. ACTIVITY MEMBER UA FROM: USS NEVERSAIL (AS 00)	
F	RETURNED TO MILITARY JURISDICTION 20. HOUR: 0800 21. DATE: CYDEC24		22. APPREHENDED: [X] 23. SURRENDERED: [ ] 24. DD 616 ISSUED: [ ]	
G	25. RETURNED TO MILITARY JURISDICTION AT (ACTIVITY): USS NEVERSAIL (AS 00) 26. UIC: 23456 27. RET OFF BOARD: [X]		28. TRANSFERRED TO (ACTIVITY): [ ] 29. UIC: [ ]	
	30. DETERMINATION NOT UNAUTHORIZED ABSENCE: [ ]		31. NAVPERS 1070.606 WHICH REPORTED ABSENCE IN ERROR: [ ]	
	32. ABSENCE EXCUSED UNAVOIDABLE: [ ]		33. CHARGED NO. DAYS LEAVE (DAY FOR DAY): [ ]	
	34. FROM: [ ] 35. TO: [ ]		36. DISEASE DUE TO USE OF ALCOHOL DRUGS: [ ] 37. OTHER: [ ]	
	38. ABSENCE NOT EXCUSED: [ ] 39. CHARGE NO. DAYS LOST TIME (10 DAY MONTH): [ ]		40. CHARGE NO. DAYS LOST TIME (DAY FOR DAY): [ ] 41. CHANGE FAOS TO: [ ] 42. CHANGE EXP. ENL TO: [ ]	
H	43. ADJUST PREVIOUSLY SUBMITTED 1070.606: [ ]		44. DATED: [ ] 45. CORRECTED INFO ENTERED ABOVE: [ ]	
	46. ERRONEOUSLY REPORTED LEAVE: [ ]		47. ERRONEOUSLY REPORTED LOST TIME (30 DAY MONTH): [ ] 48. ERRONEOUSLY REPORTED LOST TIME (DAY FOR DAY): [ ]	
I	49. AMPLIFYING REMARKS (MAY BE CONTINUED ON REVERSE) CYJUN26: UA FM USS NEVERSAIL AT NEWPORT, RI, AS OF 0800, CYJUN25. <i>R. T. Little</i> [ORIGINAL SIGNATURE] CYJUN26: MISSED SAILING OF THIS VESSEL FM NEWPORT, RI, CYJUN25. <i>R. T. Little</i> [ORIGINAL SIGNATURE] CYDEC22: RECORDS AND PERSONAL EFFECTS TRANSFERRED THIS DATE. <i>R. T. Little</i> [ORIGINAL SIGNATURE] CYDEC27: APP BY CIV AUTH 0500, CYDEC24, AT PROVIDENCE, RI, IN CONNECTION WITH DD 553. RTN MIL CONTROL, 0800, CYDEC24, USS NEVERSAIL (AS 00) LOCATED AT NEWPORT, RI. <i>R. T. Little</i> [ORIGINAL SIGNATURE] R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00) [ORIGINAL OCR - SECTION F; AFTER RECEIPT OF RECORD FM NMPC]			
J	50. (SIGNATURE) BY DIRECTION: [ ]		RANK, GRADE: [ ]	
	51. NAME (LAST, FIRST, MIDDLE): JONES, FRED PAUL		52. RATE: YN3 53. SSN: 222-22-2222 54. BRANCH CLASS: USN	

PBUL-LR

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## RECORD OF UNAUTHORIZED ABSENCE

A	1. DATE OF SUBMISSION CYDEC27		2. SHIP OR STATION AND LOCATION USS NEVERSAIL (AS 00)	
B	3. HOUR 0800		4. DATE CYJUN25	
	5. OVER LIBERTY <input checked="" type="checkbox"/>		6. HOUR 1600	
	7. DATE CYJUN24		8. OVER LEAVE <input type="checkbox"/>	
C	9. HELD AND CHARGED BY CIVIL AUTH. 10. HOUR		11. DATE	
	12. DELIVERED TO CIVIL AUTH		13. APPREHENDED BY CIVIL AUTHORITIES	
	14. DD 616 ISSUED		15. AT (ORGANIZATION AND LOCATION)	
D	UNAUTHORIZED ABSENCE FOR 10 DAYS <input checked="" type="checkbox"/> 16. DD 553 ISSUED		17. PERSONAL EFFECTS COLLECTED, INVENTORIED, AND IN SAFEKEEPING <input checked="" type="checkbox"/>	
E	18. UIC MEMBER UA FROM: 23456		19. ACTIVITY MEMBER UA FROM: USS NEVERSAIL (AS 00)	
F	20. RETURNED TO MILITARY JURISDICTION 21. HOUR 0800		22. DATE CYDEC24	
	23. APPREHENDED <input checked="" type="checkbox"/>		24. SURRENDERED <input type="checkbox"/>	
	25. DD 616 ISSUED		26. UIC 23456	
	27. REL. ON BOARD <input checked="" type="checkbox"/>		28. UIC	
G	29. DETERMINATION NOT UNAUTHORIZED ABSENCE <input type="checkbox"/>		30. NAVPERS 1070: 606 WHICH REPORTED ABSENCE IN ERROR	
	31. ABSENCE EXCUSED UNAVOIDABLE <input type="checkbox"/>		32. CHANGED NO. DAYS LEAVE (DAY FOR DAY)	
	33. SKMC 34. FROM:		35. TO:	
	36. DISEASE DUE TO USE OF ALCOHOL DRUGS <input type="checkbox"/>		37. OTHER <input type="checkbox"/>	
	38. ABSENCE NOT EXCUSED <input checked="" type="checkbox"/>		39. CHARGE NO. DAYS LOST TIME (30 DAY MO) 179	
	40. CHARGE NO. DAYS LOST TIME (DAY FOR DAY) 182		41. CHANGE EAOS TO: CY(+2)DEC22	
	42. CHANGE EXPR ENL TO		43. ADJUST PREVIOUSLY SUBMITTED 1070: 606 <input type="checkbox"/>	
H	44. DATED		45. CORRECTED INFO ENTERED ABOVE <input type="checkbox"/>	
	46. ERRONEOUSLY REPORTED LEAVE		47. ERRONEOUSLY REPORTED LOST TIME (30 DAY MONTH)	
	48. ERRONEOUSLY REPORTED LOST TIME (DAY FOR DAY)		49. AMPLIFYING REMARKS (MAY BE CONTINUED ON REVERSE)	
I	CYJUN26: UA FM USS NEVERSAIL AT NEWPORT, RI, AS OF 0800, CYJUN25. <i>R.T. Little</i> [ORIGINAL SIGNATURE] R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00) CYJUN26: MISSED SAILING OF THIS VESSEL FM NEWPORT, RI, CYJUN25. <i>R.T. Little</i> [ORIGINAL SIGNATURE] R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00) CYDEC22: RECORDS AND PERSONAL EFFECTS TRANSFERRED THIS DATE. <i>R.T. Little</i> [ORIGINAL SIGNATURE] R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00) CYDEC27: APP BY CIV AUTH 0500, CYDEC24, AT PROVIDENCE, RI, IN CONNECTION WITH DD 553. RTN MIL CONTROL, 0800, CYDEC24, USS NEVERSAIL (AS 00) LOCATED AT NEWPORT, RI. <i>R.T. Little</i> [ORIGINAL SIGNATURE] R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00) [ORIGINAL OCR - CLOSED OUT; SECTION G]			
J	50. (SIGNATURE) BY DIRECTION R. T. LITTLE, PNC, USN, BY DIR CO USS NEVERSAIL (AS 00)		51. UNITED CODE 23456	
	52. NAME (LAST, FIRST, MIDDLE) JONES, FRED PAUL		53. RATE YN3	
	54. SSN 222-22-2222		55. BRANCH CLASS USN	

RECORD OF UNAUTHORIZED ABSENCE NAVPERS 1070: 606 REV 1 7715-N 0100-11 010 6756

10. EXPIRATION DATE: 12/31/2004 421 329.2 2047

ORIGINAL OCR  
CLOSE OUT  
SECTION G

SJA-60

## SUMMARY COURT-MARTIAL

	<u>PAGE</u>
Summary court-martial checklist	61
SCM convening order	63
SCM acknowledgement of rights and waiver	64
Completed record of trial by SCM	66
Handling confessions at SCM	68
Handling UA guilty plea at SCM	74

## SUMMARY COURT-MARTIAL CHECKLIST

### A. PRETRIAL PROCEDURES

1. Check the service record out from personnel or PSD.
2. Prepare the DD Form 458 and the convening order for the CO's signature.
3. You will need 3 copies of the charge sheet and 4 copies of the convening order. Distribute as follows: one of each for the defendant, one of each for the SCM officer, one of each for command files. The fourth convening order should be certified as a true copy and attached to the original charge sheet. Note the original convening order is retained in the command files for use in future courts-martial.
4. Inform the defendant of his rights at the SCM, his right to refuse SCM, and his right to consult with counsel.
5. If defendant consults with an attorney, be sure he/she has made an election to accept a SCM. If defendant has elected a SCM and desires to waive counsel at the court, have defendant sign a Waiver of Rights to Counsel form. This allows the results to be admissible as a conviction at a later court-martial for purposes of the escalator clause.
6. Obtain a list of witnesses desired by defendant and arrange for their attendance at the trial.
7. Inform the member's division officer that the defendant could receive confinement and that a full sea bag is required. This will save time after trial if he does in fact go to the brig.
8. Contact SCM officer and inform him generally of duties.

### B. POST-TRIAL PROCEDURES

1. If confinement has been awarded, prepare the confinement orders and alert personnel that TEMADD orders will be needed.
2. If member is to be confined, copy pages 2, 4, 5, 9, 10, and any pages 6, 7, and 13 relating to prior NJP's. Also copy any evaluations or commendations. This information may be needed to prepare the convening authority's action and the service record is sent to the brig with the prisoner.
3. Ensure that the SCM officer had completed blocks 1-11 of the Record of Trial by Summary Court-Martial (DD Form 2329) and signed block 12.

4. Notify the defendant that he/she has seven days to submit matters to the convening authority for his/her consideration in taking the action on the record. The defendant may waive his right to submit matters to the convening authority. If this is done, the waiver must be in writing and should be attached to the record of trial.
5. After the seven days have elapsed, consult with your commanding officer to determine what action is to be taken on the record of trial; then prepare the CA's action accordingly. This is done by completing block 13 of the Record of Trial by Summary Court-Martial. If the accused has waived the right to submit matters, the convening authority need not wait seven days prior to taking the action on the record. Although not statutorily required, it is recommended that this waiver be noted in the convening authority's action.
6. Assemble the record of trial. It should include a certified copy of the convening order, the original charge sheet, copies of any documentary evidence used, any summarizations of witness testimony (if any -- this is no longer required by the MCM, 1984, but may be desired or required by the SCM procedures established by the OEGCMJ in your chain of command), and the Record of Trial by Summary Court-Martial (DD Form 2329). (Check also chain of command directives for local requirements for content of the record of trial.)
7. Complete the processing times report and attach it to the record of trial. [See OPNAVINST 5810.4 and JAGINST 5810.1, encl (6).]
8. Make three copies of this package and distribute as follows: one to the accused; one to the accused's service record; and one for the command's files.
9. Forward the original to the appropriate judge advocate for review (this is probably either your area coordinator or the GCM authority).
10. Ensure that appropriate service record page entries are prepared to record the CA's action. This should include a page 7 (if there is confinement, a reduction, or a forfeiture) and other entries on page 4 and 9 as needed.
11. Upon completion of any adjudged confinement, ensure that a page 7 is prepared to indicate the release and appropriate lost time.



DEPARTMENT OF THE NAVY  
USS OLDSHIP (DD 111)  
FPO New York 09501-5555

27 Oct CY

SUMMARY COURT-MARTIAL CONVENING ORDER 9-CY

Pursuant to authority contained in paragraph 0115a(3), Judge Advocate General of the Navy Instruction 5800.7B, of 7 July 1978, Lieutenant Brand S. New, U.S. Navy, is detailed a summary court-martial.

*Harry M. High*  
HARRY M. HIGH  
Commander, U.S. Navy  
Commanding Officer  
USS OLDSHIP (DD 111)

SUMMARY COURT-MARTIAL  
ACKNOWLEDGEMENT OF RIGHTS AND WAIVER

I, \_\_\_\_\_ (Rate, Name, Branch of Service)  
assigned to \_\_\_\_\_ (Accused's command or unit)  
acknowledge the following facts and rights regarding summary courts-martial:

1. I have the right to consult with a lawyer prior to deciding whether to accept or refuse trial by summary court-martial. Should I desire to consult with counsel, I understand that a military lawyer may be made available to advise me, free of charge, or, in the alternative, I may consult with a civilian lawyer at my own expense.

2. I realize that I may refuse trial by summary court-martial, in which event the commanding officer may refer the charge(s) to a special court-martial. My rights at a summary court-martial would include:

a. The right to confront and cross-examine all witnesses against me.

b. The right to plead not guilty and the right to remain silent, thus placing upon the government the burden of proving my guilt beyond a reasonable doubt.

c. The right to have the summary court-martial call, or subpoena, witnesses to testify in my behalf.

d. The right, if found guilty, to present matters which may mitigate the offense or demonstrate extenuating circumstances as to why I committed the offense.

e. The right to be represented at trial by a civilian lawyer provided by me at my own expense, if such appearance will not unreasonably delay the proceedings and if military exigencies do not preclude it.

3. I understand that the maximum punishment which may be imposed upon me at a summary court-martial is:

On E-4 and below

Confinement for one month; or

Hard labor without confinement  
for 45 days; or

60 days restriction; and

Forfeiture of 2/3 pay for one month; and

Reduction to the lowest  
enlisted paygrade (E-1).

On E-5 and above

60 days restriction; and

Forfeiture of 2/3 pay for  
one month; and

Reduction to the next  
inferior paygrade.

4. Should I refuse trial by summary court-martial, the commanding officer may refer the charge(s) to trial by special court-martial. At a special court-martial, in addition to those rights set forth above with respect to a summary court-martial, I would also have the following rights:

a. The right to be represented at trial by a military lawyer, free of charge, including a military lawyer of my own selection if he is reasonably available. I would also have the right to be represented by a civilian lawyer at my own expense.

b. The right to be tried by a special court-martial composed of at least three officers as members or, at my request, at least one-third of the court members would be enlisted personnel. If tried by a court-martial with members, two-thirds of the members, voting by secret written ballot, would have to agree in any finding of guilty, and two-thirds of the members would also have to agree on any sentence to be imposed should I be found guilty.

c. The right to request trial by a military judge alone. If tried by a military judge alone, the military judge alone would determine my guilt or innocence and, if found guilty, he alone would determine an appropriate sentence in my case.

5. I understand that the maximum punishment which can be imposed at a special court-martial for the offense(s) presently charged against me is:

Discharge from the naval service with a bad-conduct discharge  
(delete if inappropriate); Confinement for \_\_\_\_\_ months;  
Forfeiture of 2/3 pay per month for \_\_\_\_\_ months; and  
Reduction to the lowest enlisted paygrade (E-1).

Knowing and understanding my rights as set forth above, I (do) (do not) desire to consult with counsel before deciding whether to accept trial by summary court-martial.

Knowing and understanding my rights as set forth above (and having first consulted with counsel), I hereby (consent) (object) to trial by summary court-martial.

\_\_\_\_\_  
Signature of accused and date

\_\_\_\_\_  
Signature of witness and date

-----  
DOCUMENTING COMPLIANCE WITH "BOOKER" AT SCM (SRB Page 13/12)

[Date of SCM]: SNM CONSULTED WITH INDEPENDENT MILITARY COUNSEL  
PRIOR TO DECIDING WHETHER TO ACCEPT OR REFUSE THE  
SUMMARY COURT-MARTIAL HELD ON THIS DATE. SNM  
ACCEPTED TRIAL BY SUMMARY COURT-MARTIAL

NAME  
RANK, SERVICE  
POSITION  
BY DIRECTION

# RECORD OF TRIAL BY SUMMARY COURT-MARTIAL

1a. NAME OF ACCUSED (Last, First, MI)	b. GRADE OR RANK	c. UNIT OR ORGANIZATION OF ACCUSED	d. SSN
SMITH, John J.	SN, USN	USS OLDSHIP (DD 111)	123-45-6789
2a. NAME OF CONVENING AUTHORITY (Last, First, MI)	b. RANK	c. POSITION	d. ORGANIZATION OF CONVENING AUTHORITY
HIGH, Hang M.	CDR, USN	Commanding Officer	USS OLDSHIP (DD 111)
3a. NAME OF SUMMARY COURT MARTIAL (If SCM was accuser, so state.)	b. RANK	c. UNIT OR ORGANIZATION OF SUMMARY COURT-MARTIAL	
NEW, Brand S.	LT, USN	USS OLDSHIP (DD 111)	

(Check appropriate answer)			YES	NO
4	At a preliminary proceeding held on <u>1 January</u> 19 <u>CY</u> , the summary court-martial gave the accused a copy of the charge sheet.		X	
5	At that preliminary proceeding the summary court-martial informed the accused of the following:			
a	The fact that the charge(s) had been referred to a summary court-martial for trial and the date of referral.		X	
b	The identity of the convening authority.		X	
c	The name(s) of the accuser(s).		X	
d	The general nature of the charge(s).		X	
e	The accused's right to object to trial by summary court-martial.		X	
f	The accused's right to inspect the allied papers and immediately available personnel records.		X	
g	The names of the witnesses who could be called to testify and any documents or physical evidence which the summary court martial expected to introduce into evidence.		X	
h	The accused's right to cross-examine witnesses and have the summary court-martial cross-examine on behalf of the accused.		X	
i	The accused's right to call witnesses and produce evidence with the assistance of the summary court-martial if necessary.		X	
j	That during the trial the summary court-martial would not consider any matters, including statements previously made by the accused to the summary court-martial, unless admitted in accordance with the Military Rules of Evidence.		X	
k	The accused's right to testify on the merits or to remain silent, with the assurance that no adverse inference would be drawn by the summary court-martial from such silence.		X	
l	If any findings of guilty were announced, the accused's right to remain silent, to make an unsworn statement, oral or written or both, and to testify and to introduce evidence in extenuation or mitigation.		X	
m	The maximum sentence which could be adjudged if the accused was found guilty of the offense(s) alleged.		X	
n	The accused's right to plead guilty or not guilty.		X	

6

At the trial proceeding held on 14 January 19 CY, the accused, after being given a reasonable time to decide, ☒ did ☐ did not object to trial by summary court-martial.

(Note: The SCM may ask the accused to initial this entry at the time the election is made.)

JJS  
(Initial)

7a

The accused ☐ was ☒ was not represented by counsel (If the accused was represented by counsel, complete b, c and d below.)

b. NAME OF COUNSEL (Last, First, MI)	c. RANK (If any)
N/A	N/A
d. COUNSEL QUALIFICATIONS	
N/A	

8 The accused was arraigned on the attached charge(s) and specification(s). The accused's pleas and the findings reached are shown below:

CHARGE(S) AND SPECIFICATION(S)	PLEA(S)	FINDINGS (Including any exceptions and substitutions)
Charge I: Specification 1: Specification 2:	Guilty Guilty Not Guilty	Guilty Guilty Not Guilty
Charge II: Specification 1:	Not Guilty Not Guilty	Guilty Guilty, except for the figure "\$74.00", substituting therefor the figure "\$25.00". Of the excepted figure, not guilty. Of the substituted figure, guilty.
Specification 2:	Not Guilty	Not Guilty

9. The following sentence was adjudged: To be confined for 15 days; to forfeit \$150.00 pay per month for the period of 1 month; and to be reduced to the grade of paygrade E-1.

10. The accused was advised of the right to request that confinement be deferred. (Note: When confinement is adjudged.)

☒ YES

☐ NO

11. The accused was advised of the right to submit written matters to the convening authority, including a request for clemency, and of the right to request review by the Judge Advocate General.

☒ YES

☐ NO

12. IDENTIFICATION

Brand S. New  
BRAND S. NEW, LT, USN

Signature of Summary Court-Martial

14 January 19CY

Date

13. ACTION BY CONVENING AUTHORITY

Approved and ordered executed. The Navy Brig, Naval Education and Training Center, Newport, Rhode Island, is designated the place of confinement.

The record of trial is forwarded to the Staff Judge Advocate, Commander, Naval Education and Training Center, Newport, Rhode Island, for review under Article 64(a), UCMJ.

HANG M. HIGH

COMMANDING OFFICER

Typed Name of Convening Authority

Position of Convening Authority

CDR, USN

Rank

/s/

Signature of Convening Authority

22 JANUARY 19CY

Date

ADDENDA TO SUMMARY COURT-MARTIAL TRIAL GUIDE  
(MCM, 1984, App. 9)

HANDLING CONFESSIONS AT SUMMARY COURT-MARTIAL

NOTE: Before you consider an out-of-court statement of the accused as evidence against him, you must be convinced by a preponderance of the evidence that the statement was made voluntarily and that, if required, the accused was properly advised of his rights. Mil.R.Evid. 304, 305.

A confession or admission is not voluntary if it was obtained through the use of coercion, unlawful influence, or unlawful inducement, including obtaining the statement by questioning an accused without complying with the warning requirements of Article 31(b), UCMJ, and without first advising the accused of his rights to counsel during a custodial interrogation. You must also keep in mind that an accused cannot be convicted on the basis of his out-of-court self-incriminating statement alone, even if it was voluntary, for such a statement must be corroborated if it is to be used as a basis for conviction. Mil.R.Evid. 304(g).

If a statement was obtained from the accused during a custodial interrogation, it must appear affirmatively on the record that the accused was warned of the nature of the offense of which he was accused or suspected, that he had the right to remain silent, that any statement he made could be used against him, that he had the right to consult lawyer counsel and have lawyer counsel with him during the interrogation, and that lawyer counsel could be civilian counsel provided by him at his own expense or free military counsel appointed for him.

After the above explanation, the accused or suspect should have been asked if he desired counsel. If he answered affirmatively, the record must show that the interrogation ceased until counsel was obtained. If he answered negatively, he should have been asked if he desired to make a statement. If he answered negatively, the record must show that the interrogation ceased. If he affirmatively indicated that he desired to make a statement, the statement is admissible against him. The record must show, however, that the accused did not invoke any of these rights at any stage of the interrogation. In all cases in which you are considering the reception in evidence of a self-incriminating statement of the accused, you should call the person who obtained the statement to testify as a witness and question him substantially as follows:

SCM: (After the routine introductory questions) Did you have occasion to speak to the accused on \_\_\_\_\_?

WIT: (Yes) (No) \_\_\_\_\_.

SCM: Where did this conversation take place and at what time did it begin?

WIT: \_\_\_\_\_.

SCM: Who else, if anyone, was present?

WIT: \_\_\_\_\_.

SCM: What time did the conversation end?

WIT: \_\_\_\_\_.

SCM: Was the accused permitted to smoke as he desired during the period of time involved in the conversation?

WIT: \_\_\_\_\_.

SCM: Was the accused permitted to drink water as he desired during the conversation?

WIT: \_\_\_\_\_.

SCM: Was the accused permitted to eat meals at the normal meal times as he desired during the conversation?

WIT: \_\_\_\_\_.

SCM: Prior to the accused making a statement what, if anything, did you advise him concerning the offense of which he was suspected?

WIT: (I advised him that I suspected him of the theft of Seaman Jones' Bulova wristwatch from Jones' locker in Building 15 on 21 January 1984.)

SCM: What, if anything, did you advise the accused concerning his right to remain silent?

WIT: (I informed the accused that he need not make any statement and that he had the right to remain silent.)

SCM: What, if anything, did you advise the accused of the use that could be made of a statement if he made one?

WIT: (I advised the accused that, if he elected to make a statement, it could be used as evidence against him at a court-martial or other proceeding.)

SCM: Did you ask the accused if he desired to consult with a lawyer or to have a lawyer present?

WIT: (Yes.) (No.)

SCM: (If answer to previous question was affirmative) What was his reply?

WIT: (He stated he did (not) wish to consult with a lawyer (or to have a lawyer present).)

NOTE: If the interrogator was aware that the accused had retained or appointed counsel in connection with the charge(s), then such counsel was required to be given notice of the time and place of the interrogation.

SCM: To your knowledge, did the accused have counsel in connection with the charge(s)?

WIT: (Yes.) (No.)

SCM: (If answer to previous question was affirmative) Did you notify the accused's counsel of the time and place of your interview with the accused?

WIT: (Yes.) (No.)

SCM: What, if anything, did you advise the accused of his rights concerning counsel?

WIT: (I advised the accused that he had the right to consult with a lawyer counsel and have that lawyer present at the interrogation. I also informed him that he could retain a civilian lawyer at his own expense and additionally a military lawyer would be provided for him. I further advised him that any detailed military lawyer, if the accused desired such counsel, would be provided at no expense to him.)

SCM: Did you provide all of this advice prior to the accused making any statement to you?

WIT: (Yes.)

SCM: What, if anything, did the accused say or do to indicate that he understood your advice?

WIT: (After advising him of each of his rights, I asked him if he understood what I had told him and he said he did. (Also, I had him read a printed form containing a statement of these rights and sign the statement acknowledging his understanding of these rights.))

SCM: (If accused has signed a statement of his rights) I show you Prosecution Exhibit #2 for identification, which purports to be a form containing advice of a suspect's rights and ask if you can identify it?

WIT: (Yes. This is the form executed by the accused on \_\_\_\_\_ 19\_\_\_\_. I recognize it because my signature appears on the bottom as a witness, and I recognize the accused's signature, which was placed on the document in my presence.)



SCM: Did the accused subsequently make a statement?

WIT: (Yes.)

SCM: Was the statement reduced to writing?

WIT: (Yes.) (No.)

SCM: Prior to the accused's making the statement, did you, or anyone else to your knowledge, threaten the accused in any way?

WIT: (Yes.) (No.)

SCM: Prior to the accused's making the statement, did you, or anyone else to your knowledge, make any promises of reward, favor, or advantage to the accused in return for his statement?

WIT: (Yes.) (No.)

SCM: Prior to the accused's making the statement, did you, or anyone else to your knowledge, strike or otherwise offer violence to the accused should he not make a statement?

WIT: (Yes.) (No.)

SCM: (If the accused's statement was reduced to writing) Describe in detail the procedure used to reduce the statement in writing.

WIT: \_\_\_\_\_.

SCM: Did the accused at any time during the interrogation request to exercise any of his rights?

WIT: (Yes.) (No.)

NOTE: If the witness indicates that the accused did invoke any of his rights at any stage of the interrogation, it must be shown that the interrogation ceased at that time and was not continued until such time as there had been compliance with the request of the accused concerning the rights invoked. If the witness testifies that he obtained a written statement from the accused, he should be asked if and how he can identify it as a written statement of the accused. When a number of persons have participated in obtaining a statement, you may find it necessary to call several or all of them as witnesses in order to inquire adequately into the circumstances under which the statement was taken.

SCM: ! now show you Prosecution Exhibit 3 for identification, which purports to be a statement of the accused, and ask if you can identify it?

WIT: (Yes. I recognize my signature and handwriting on the witness blank at the bottom of the page. I also recognize the accused's signature on the page.)

SCM: (To accused, after permitting him to examine the statement when it is in writing) The Uniform Code of Military Justice provides that no person subject to the Code may compel you to incriminate yourself or answer any question which may tend to incriminate you. In this regard, no person subject to the Code may interrogate or request any statement from you if you are accused or suspected of an offense without first informing you of the nature of the offense of which you are suspected and advising you that you need not make any statement regarding the offense of which you are accused or suspected; that any statement you do make may be used as evidence against you in a trial by court-martial; that you have the right to consult with lawyer counsel and have lawyer counsel with you during the interrogation; and that lawyer counsel can be civilian counsel provided by you or military counsel appointed for you at no expense to you. Finally, any statement obtained from you through the use of coercion, unlawful influence, or unlawful inducement, may not be used in evidence against you in a trial by court-martial. In addition, any statement made by you that was actually the result of any promise of reward or advantage, or that was made by you after you had invoked any of your rights at any time during the interrogation, and your request to exercise those rights was denied, is inadmissible and cannot be used against you. Before I consider receiving this statement in evidence, you have the right at this time to introduce any evidence you desire concerning the circumstances under which the statement was obtained or concerning whether the statement was in fact made by you. You also have the right to take the stand at this time as a witness for the limited purpose of testifying as to these matters. If you do that, whatever you say will be considered and weighed as evidence by me just as is the testimony of other witnesses on this subject. I will have the right to question you upon your testimony, but if you limit your testimony to the circumstances surrounding the taking of the statement or as to whether the statement was in fact made by you, I may not question you on the subject of your guilt or innocence, nor may I ask you whether the statement is true or false. In other words, you can only be questioned upon the issues concerning which you testify and upon your worthiness of belief, but not upon anything else. On the other hand, you need not take the witness stand at all. You have a perfect right to remain silent, and the fact that you do not take the stand yourself will not be considered as an admission by you that the statement was made by you under circumstances which would make it admissible or that it was in fact made by you. You also have the right to cross-examine this witness concerning his testimony, just as you have that right with other witnesses, or, if you prefer, I will cross-examine him for you along any line of inquiry you indicate. Do you understand your rights?

ACC: \_\_\_\_\_.

SCM: Do you wish to cross-examine this witness?

ACC: \_\_\_\_\_.

SCM: Do you wish to introduce any evidence concerning the taking of the statement or concerning whether you in fact made the statement?

ACC: \_\_\_\_\_.

SCM: Do you wish to testify yourself concerning these matters?

ACC: \_\_\_\_\_.

SCM: Do you have any objection to my receiving Prosecution Exhibits 2 and 3 for identification into evidence?

ACC: (Yes, sir (stating reasons).) (No, sir.)

SCM: (Your objection is sustained.)

--  
(Your objection is overruled. These documents are admitted into evidence as Prosecution Exhibits 2 and 3.)

--  
(There being no objection, these documents are admitted into evidence as Prosecution Exhibits 2 and 3.)

NOTE: If the accused's statement was given orally, rather than in writing, anyone who heard the statement may testify as to its content, if all requirements for admissibility have been met.

## HANDLING UA GUILTY PLEA AT SCM

### SUMMARY COURT-MARTIAL OFFICER INQUIRY INTO THE FACTUAL BASIS OF A PLEA OF GUILTY TO THE OFFENSE OF UNAUTHORIZED ABSENCE

1. Assumption. Assume the accused has entered pleas of guilty to the following charge and specification:

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

Specification: In that Seaman Virgil A. Tweedy, U.S. Navy, on active duty, Naval Justice School, Newport, Rhode Island, did, on or about 5 July 19CY, without authority, absent himself from his unit, to wit: Naval Justice School, Newport, Rhode Island, and did remain so absent until on or about 23 July 19CY.

2. Procedure. The summary court-martial officer, after he has completed the inquiry indicated in the TRIAL GUIDE as to the elements of the offense, should question the accused substantially as follows:

SCM: State your full name and rank.

ACC: Virgil Armond Tweedy, Seaman.

SCM: Are you on active duty in the U.S. Navy?

ACC: Yes, sir.

SCM: Are you the same Seaman Virgil A. Tweedy who is named in the charge sheet?

ACC: Yes, sir.

SCM: Were you on active duty in the U.S. Navy on 5 July 19CY?

ACC: Yes, sir.

SCM: What was your unit on that date?

ACC: The Naval Justice School.

SCM: Is that located in Newport, Rhode Island?

ACC: Yes, sir.

SCM: Tell me in your own words what you did on 5 July that caused this charge to be brought against you.

ACC: I stayed at home.

SCM: Had you been at home on leave or liberty?

ACC: Yes, sir.

SCM: Which one was it?

ACC: I had liberty on the 4th of July.

SCM: When were you required to report back to the Naval Justice School?

ACC: At 0800 on the 5th of July.

SCM: And, did you fail to report on 5 July 19CY?

ACC: Yes, sir.

SCM: When did you return to military control?

ACC: On 23 July 19CY.

SCM: How did you return to military control on that date?

ACC: I took a bus to Newport and turned myself in to the duty officer at the Naval Justice School.

SCM: When you failed to report to the Naval Justice School on 5 July, did you feel you had permission from anyone to be absent from your unit?

ACC: No, sir.

SCM: Where were you during this period of absence?

ACC: I was at home, sir.

SCM: Where is your home?

ACC: In Blue Ridge, West Virginia.

SCM: Is that where you were for this entire period?

ACC: Yes, sir.

SCM: During this period, did you have any contact with military authorities? By "military authorities" I mean not only members of your unit, but anyone in the military.

ACC: No, sir.

SCM: During this period, did you go on board any military installations?

ACC: No, sir.

SCM: Were you sick or hurt or in jail, or was there anything which made it physically impossible for you to return?

ACC: No, sir.

SCM: Could you have reported to the Naval Justice School on 5 July 19CY if you had wanted to?

ACC: Yes, sir.

SCM: During this entire period, did you believe you were an unauthorized absentee from the Naval Justice School?

ACC: Yes, sir; I knew I was UA.

SCM: Do you know of any reason why you are not guilty of this offense?

ACC: No, sir.

## CONFINEMENT PROCEDURES

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#### Initial review officer pretrial confinement report

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## PREPARATION OF CONFINEMENT ORDERS

Most brig have their own instructions regarding any local requirements such as minimum sea bag needs, visiting hours, and release times. Obtain a copy of the local instruction for further guidance. See also the Navy Corrections Manual, SECNAVINST 1640.9 (series) and OPNAVINST 1640.6 (series) for all brig procedures.

### A. PRETRIAL CONFINES

1. Prepare a confinement order, NAVPERS 1640/4. You will normally need an original and three copies.
2. Check local requirements to determine whether to send dental, medical, and pay records to brig.
3. Have the accused's division officer assist the accused in obtaining the sea bag requirements for the brig.
4. Check local requirements to determine whether brig requires TEMADD orders. Do not use TEMDU orders for pretrial confines.
5. Have member escorted to the medical department/emergency room for the confinement physical. Note: The doctor must sign the confinement order.
6. Upon confinement, the accused must be informed of the nature of the offenses for which he/she is being held. This should be acknowledged by the accused on the confinement order. The accused must also be informed of: (1) The right to remain silent; (2) any statement made may be used against him/her; (3) the right to retain civilian counsel at no expense to the United States and the right to request assignment of military counsel; and (4) the procedures by which pretrial confinement will be reviewed. This may be done by brig personnel or the person escorting the member to the brig. Check with the brig to see which method is preferred.
7. After the member is confined, the CO must, within 72 hours, determine that contained confinement of the accused is warranted. He must also forward a pretrial confinement memo to the initial review officer (IRO) by the seventh day of confinement, but should do so as soon as possible. (See R.C.M. 305.)
8. The command should be prepared to send a knowledgeable representative to the hearing held by the IRO. This representative should be cognizant of: (1) The circumstances regarding the charges; (2) the accused's past history for reliability; and (3) unauthorized absences.
9. After the hearing by the IRO, the command will receive a memo either allowing the confinement to continue or ordering the accused's release. If the member is ordered released, the command must comply. A lesser form of restraint may be imposed, but reconfinement may not occur without further misconduct or new evidence which would impact on the accused's reliability. (See R.C.M. 305.)
10. If pretrial confinement is to exceed 30 days, permission for continued confinement must be obtained from the cognizant GCM authority. Ensure that permission is received prior to the expiration of the 30th day, and request must be reviewed every 30 days.



## B. POST-TRIAL CONFINEEES

1. A confinement order (with three copies) should be completed prior to trial. The charges of which convicted and the sentence adjudged should be left for the trial counsel to complete. The order should be presigned at the command, or permission should be given to the trial counsel to sign "by direction." (Note: Some NLSO's do not want a trial counsel to sign the orders on their own authority as commissioned officers and, therefore, prefer the "by direction" authority be granted.)
2. The medical, dental, pay, and service records must be sent to the brig. The NLSO will have the service record, but the command should collect the others and hold them until the end of the trial. If confinement is less than 30 days, the pay record will not be needed; but you should obtain it just in case more lengthy confinement is adjudged.
3. Prepare 30-day TEMADD orders for the accused. Give these to the bailiff also. If the accused will be confined for greater than 30 days after trial, or a BCD/DD and any confinement is adjudged, TEMDU orders will be needed. To save time after trial, however, the TEMADD orders will suffice initially and they can be canceled by the TEMDU orders the next day after trial.
4. A NAVPERS 3067 will be needed to obtain the member's pay record. If confinement is less than 30 days, the pay record may not be needed.
5. Comply with BUPERS Instruction 1640.17C concerning designation/redesignation of places of confinement.
6. Note: If your command is a deploying unit and the member will be confined for more than 30 days, you may not have to take the member back after confinement. Check with your personnel/administrative officer. See MILPERSMAN 1850300.

## C. CONFINEMENT ON BREAD AND WATER/DIMINISHED RATIONS

1. Prepare an original and three copies of the confinement order.
2. The service record, medical, and dental records should accompany the accused (check local requirements).
3. Have division officer assist member in obtaining sea bag requirements.
4. Have MAA's take confinement orders, records, sea bag, and member to medical facility for confinement physical.
5. The doctor must find the accused fit for confinement on bread and water, not just confinement. OPNAVINST 1640.6A requires the following language to be used on the medical certificate: "I certify that from an examination of \_\_\_\_\_, and the place where he/she is to be confined, I am of the opinion that the execution of the foregoing sentence to confinement on (bread and water) (diminished rations) will (not) produce serious injury to his/her health."

## NOTIFICATION OF PRETRIAL CONFINEMENT AND ITS REVIEW PROCESS

Date: 2 Jan CY

1. You have been placed in pretrial confinement pending trial by court-martial. As required by Rule 305(e) of the Manual for Courts-Martial, the following information is provided concerning this confinement and the procedures by which it will be reviewed.

a. The nature of the offense(s) for which you are being confined are:

Violation of UCMJ, Article 86: Unauthorized absence from USS PUGET SOUND (AD 38), from 23 October 19CY(-1) until apprehended on 2 January 19CY.

b. You have the right to:

(1) Remain silent, and any statement made by you may be used against you at a court-martial or other disciplinary or administrative proceeding.

(2) Retain a civilian lawyer, at no expense to the government.

(3) Request assignment of a military lawyer, at no cost to you, for the limited purpose of representing you only during the pretrial confinement proceedings before charges are referred.

c. Within 72 hours of your initial confinement, if ordered by your command, or 72 hours after your command is notified of your confinement (if a command other than your command confined you), your command must review your case to decide if pretrial confinement will continue.

d. If your command releases you from pretrial confinement, no further action on your pretrial confinement will be taken.

e. If your command concludes that continued pretrial confinement is necessary, your command must prepare a written memorandum stating the reasons for the following conclusions:

(1) That an offense triable by court-martial was committed;

(2) that you committed it;

(3) that confinement is necessary because it is foreseeable that you:

(a) Will not appear at trial, pretrial hearing, or investigation; or

(b) will engage in serious criminal misconduct; and

(4) that less severe forms of restraint are inadequate.

f. The memorandum prepared by your command will be forwarded to a reviewing officer, who must review your case within 7 days of imposition of confinement. After this review, the reviewing officer will decide if your pretrial confinement will, or will not, continue.

g. You and your lawyer, military and/or civilian (if you have either or both), shall be allowed to appear before the reviewing officer, if practicable, and make a statement and submit any matters you wish to be considered by the reviewing officer.

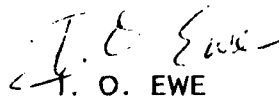
h. The requirements for confinement as set forth in subparagraph 1.e., above, must be proved by a preponderance of the evidence.

i. The reviewing officer may, for good cause, extend the time limit for completion of the initial review to 10 days after the imposition of pretrial confinement.

j. Upon completion of review, the reviewing officer shall approve continued confinement or order immediate release.

2. After completion of this review, the reviewing officer's conclusions, including the factual findings on which they are based, shall be set forth in a written memorandum. A copy of the memorandum and all other documents considered by the reviewing officer shall be maintained in your case until completion of appellate review, and provided to you or the government on request.

3. The reviewing officer shall, after notice to the parties, reconsider the decision to confine you, if you so request such reconsideration. This reconsideration shall be based upon any significant information not previously considered. In addition, once the charges for which you have been confined are referred to trial, the military judge shall review the propriety of pretrial confinement upon motion for appropriate relief.



J. O. EWE  
Lieutenant, U.S. Navy  
Legal Officer

### ACKNOWLEDGEMENT

Knowing and understanding the pretrial confinement review process and my rights as set forth above, I, David L. Typist, hereby:

1. Lawyer Assignment: (Initial one)

☒ Request assignment of a military lawyer for the limited purpose of representing me during the pretrial confinement proceeding only.

☐ Do not request assignment of a military lawyer for the limited purpose of representing me during the pretrial confinement proceeding only.

2. Personal Appearance: (Initial one)

☒ Request to personally appear before the reviewing officer who will review my pretrial confinement.

☐ Do not request to personally appear before the reviewing officer who will review my pretrial confinement.

David L. Typist 1-2-07  
(Confinee's signature) (Date)

Witnessed by:

I. O. EWE 1-2-07  
(Witness' signature) (Date)

I. O. EWE, LT, USN  
Legal Officer, USS PUGET SOUND (AD 38)

DEPARTMENT OF THE NAVY  
USS PUGET SOUND (AD 38)  
FPO New York 09501

1640  
Ser OO/  
3 Jan CY

From: Commanding Officer, USS PUGET SOUND (AD 38)  
To: Initial Review Officer, Naval Station, Rota, Spain

Subj: PRETRIAL CONFINEMENT ICO YN3 DAVID L. TYPIST, USN, 222-22-2222

Ref: (a) R.C.M. 305, MCM, 1984  
(b) SECNAVINST 1640.10

1. In accordance with references (a) and (b), the following information is provided for the purpose of conducting a hearing into the pretrial confinement of YN3 David L. Typist, USN, 222-22-2222.

a. Hour, date, and place of pretrial confinement:

1400, 2 January 19CY, Navy Brig, Naval Station, Rota

b. Offenses charged:

Violation of UCMJ, Article 86 -- Unauthorized absence from USS PUGET SOUND (AD 38) from 23 October 19CY(-1) until apprehended on 2 January 19CY.

c. General circumstances:

(1) Petty Officer Typist's absence commenced over liberty which expired on board at 0700, 23 October 19CY(-1). The circumstances, as related by Petty Officer Typist to his division officer, are that YN3 Typist was dissatisfied working in the admin office, did not like his immediate supervisor, and felt "picked on." He also relates that, at the time of his absence, he was working "undercover" with the Naval Investigative Service and the ship's master-at-arms force in identifying drug abusers on board the Naval Station. He states that a fellow petty officer (whom he identified as a drug user) found out that YN3 Typist was the one responsible for a "bust" in which this petty officer was involved. This unidentified petty officer had threatened YN3 Typist with bodily harm. Apparently becoming scared, Petty Officer Typist fled the area.

(2) These facts are unfounded. I have learned, through conversations with the Naval Investigative Service and my chief master-at-arms, that they have never used Petty Officer Typist in their programs, nor have they ever heard of YN3 Typist.

(3) Petty Officer Typist was apprehended by Shore Patrol at 1300, 2 January 19CY, at a local bar in Palma de Mallorca, Spain. I found it appropriate to place YN3 Typist in confinement due to the duration of the absence (approximately 72 days), and considering the absence was terminated by apprehension.

Subj: PRETRIAL CONFINEMENT ICO YN3 DAVID L. TYPIST, USN, 222-22-2222

2. Previous disciplinary action:

a. CO's NJP, USS PUGET SOUND (AD 38) on 3 April 19CY(-1). Violation of UCMJ, Article 86 -- Unauthorized absence from appointed place of duty. Awarded: 10 days extra duties.

b. CO's NJP, USS PUGET SOUND (AD 38) on 10 June 19CY(-1). Violation of UCMJ, Article 86 -- Unauthorized absence from unit (approximately 3 days). Awarded: Forfeiture of \$100.00 pay per month for one month and 30 days restriction.

c. CO's NJP, USS PUGET SOUND (AD 38) on 12 July 19CY(-1). Violation of UCMJ, Article 86 (6 specifications) -- Failure to go to appointed place of duty, to wit: Restricted men's muster. Awarded: 30 days extra duties and forfeiture of \$100.00 pay per month for two months.

3. Extenuating or Mitigating circumstances: None.

4. Due to the aforementioned information, continued pretrial confinement is deemed appropriate in this case. Petty Officer Typist has a history of unauthorized absences, which indicates to me the solution to any of his problems is to absent himself without authority. YN3 Typist has shown that a lesser form of restraint would be inadequate as evidenced by paragraph 2.c., above (failure to go to restricted men's musters). Charges have been preferred to trial by special court-martial, and no unusual delays are expected in this case. Given the nature of the offense charged and the sentence which could be imposed by court-martial for this offense, it is felt YN3 Typist would again flee to avoid prosecution.

*Robert R. Roberts*  
ROBERT R. ROBERTS

4 Jan CY

From: Initial Review Officer, Naval Station, Rota, Spain  
To: Commanding Officer, USS PUGET SOUND (AD 38)

Subj: PRETRIAL CONFINEMENT ICO YN3 DAVID L. TYPIST, USN, 222-22-2222

Ref: (a) R.C.M. 305, MCM, 1984  
(b) SECNAVINST 1640.10  
(c) CO, USS PUGET SOUND (AD 38) ltr dtd 3 Jan CY

1. In accordance with the provisions of references (a) and (b), a hearing concerning the pretrial confinement of YN3 Typist was conducted on 4 January 19CY. All information available at the time of the hearing, in addition to the comments and recommendations set forth in reference (c), have been reviewed.

2. At the hearing, YN3 Typist was afforded all rights set forth in reference (a). Petty Officer Typist was represented by Lieutenant P. T. Pertee, JAGC, USNR, Naval Legal Service Office Detachment, Rota Spain, who was detailed pursuant to the confinee's request for military counsel. Lieutenant I. O. Ewe, USN, legal officer, USS PUGET SOUND (AD 38) was present, acting in the capacity of command representative.

3. Having waived his right to remain silent, YN3 Typist was willing to discuss his absence with me. His reasons for going UA, as stated in reference (c), remain basically the same. Petty Officer Typist stands firm on his story concerning his involvement with the Naval Investigative Service. However, upon advisement of his counsel, YN3 Typist terminated the questioning. Lieutenant Ewe, command representative, had nothing further to offer except to reconfirm the command's position that continued confinement is warranted.

4. I find there is probable cause to believe the confinee committed the offense, and that court-martial jurisdiction does exist over the confinee and the offense charged. I find no cause to extend the time limit for completion of this review.

5. Subject to the foregoing, I find continued pretrial confinement appropriate in this case. The confinee should be brought to trial as soon hereafter as practicable, barring any unforeseen delays.

6. Pursuant to paragraphs (i)(7) and (j) of reference (a), reconsideration of this decision may be appropriate at a later date.



I. C. LIGHT  
Commander, U.S. Navy

## SPECIAL COURT-MARTIAL

### PAGE

#### Special court-martial checklist

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## SPECIAL COURT-MARTIAL CHECKLIST

### I. NAVY

#### A. PRETRIAL PROCEDURES

1. Check the service record out from personnel or PSD.
2. Copy the enlistment contract; pages 1, 2, 4, 5, 7, 9; all page 13's relating to NJP or disciplinary matters; and enlisted evaluations. These will be needed for preparation of CA's action if accused is convicted.
3. Establish liaison with the local NLSO regarding the pending charges. Follow their desired procedure regarding the forwarding of the charge sheet to their office.
4. Prepare the charge sheet, DD Form 458.
5. Prepare list of possible members from which commanding officer may choose the panel. If possible, avoid using members you know should be disqualified, such as accused's division officer or others from his same department. Have the commanding officer select the panel and prepare the convening order.
6. After the charges have been preferred by the legal clerk, have the commanding officer sign both the charge sheet and convening order.
7. Make sufficient copies of the charges and convening order. Check with the NLSO, but you will normally need the original and five copies of the charge sheet and six copies of the convening order. They will be distributed as follows: original charge sheet plus one copy to the trial counsel; one to defense counsel; one to military judge; one to the command files; and one to be served on the accused. Note, the original convening order remains in the command files, therefore the copy for the record of trial should be a certified copy.
8. Serve the accused with the charges and note the service on the original charge sheet prior to forwarding the others to the NLSO.
9. Forward appropriate copies of the charge sheet and convening order to the NLSO. Include the service record and copies of the investigation.
10. Make all arrangements necessary for the accused to see his lawyer and for the witnesses to be interviewed by counsel.
11. After being notified of the time and date of the trial, inform all witnesses and members, if necessary.

12. Arrange for a bailiff to escort the accused to the trial and to take custody after trial. Bailiff should be indoctrinated by NLSO staff for courtroom duties and by brig staff for any confinement, etc.
13. If confinement is expected, ensure the accused has a full sea bag by the date of the trial. His division officer should do this.
14. If confinement is expected, prepare a confinement order and assemble the pay record, health record, and dental record. Have TEMADD orders prepared prior to trial. If the accused receives more than 30 days effective confinement, or a BCD and any confinement, these must be changed to TEMDU orders later.

#### B. POST-TRIAL MATTERS

1. If accused will be confined for more than 30 days after trial, or a BCD and any confinement is adjudged, prepare TEMDU orders and deliver to the brig. These will cancel the previously issued TEMADD. See MILPERSMAN 1850300 and BUPERS Instruction 1640.17C.
2. After receipt of a copy of the record of trial, ensure that one copy is served on the accused. Note: This may be done by the NLSO, so check their normal procedure.
3. Prepare the legal officer's recommendation in accordance with R.C.M. 1106.
4. Serve a copy of the recommendation on the defense counsel.
5. Prior to preparing the convening authority's action, ensure that the time limits for the accused's response [R.C.M. 1105(c)] and the defense counsel's response have elapsed [R.C.M. 1106(f)(5)].
6. After receiving all responses in accordance with R.C.M. 1105 and 1106, forward the record of trial, your recommendation, and the responses to the commanding office for review.
7. Ascertain what action the commanding officer wants to take on the record of trial and prepare the convening authority's action accordingly.
8. After the action is signed by the commanding officer, attach it along with all deferment requests, requests for clemency, or other matters submitted by the accused or counsel to the record of trial. (See JAGMAN, § 0146.)
9. Prepare the promulgating order and make appropriate copies for distribution, including copies for the record. (See JAGMAN, § 0147 regarding distribution of the promulgating order.) Advocate NOTE: In some chains of command, a staff judge advocate may be available to perform steps 5-9 in whole or in part.

10. Prepare the court-martial data report form (JAGMAN, § 0160b) and attach to the original record of trial. Complete the necessary times sheet from OPNAVINST 5510.4 and the back of the cover of the original record of trial. Forward the record per JAGMAN, § 0146.
11. If the service record is held by the command, prepare the appropriate service record entries. These will normally be pages 4, 7, 9, and 13.
12. Ensure that the command has retained a complete copy of the record of trial, convening authority's action, and the promulgating order.
13. Upon completion of any adjudged confinement, prepare a page 7 to indicate lost time.
14. In non-BCD cases, upon receipt of the judge advocate review, make an appropriate page 13 entry.

## II. MARINE CORPS

### A. PRETRIAL PROCEDURES

1. Assemble service record book, preliminary inquiry (or NIS investigation).
2. Audit service record book to assure it is up-to-date and contains no errors.
3. Complete request for legal services. Be sure to list witnesses and any who are pending transfer, discharge, or who will be unavailable within the near future. Also list five (5) approved court-martial officer members by full name, rank, unit, and phone number. Also request telephone notification to the LO when a specific trial counsel is assigned.
4. Make copies of request for legal services and allied papers and forward to Law Center/LSSC. (Be certain to have legal clerk who receives it sign your log as receiving the service record book.)
5. Upon receipt of the convening order and charge sheet upon which charges have been preferred, check to see that first page is completed and signed.
6. Have adjutant/personnel officer receipt for sworn charges and cause unit commander or his designee to personally notify the accused of charges and complete the notification block.
7. Have convening authority sign convening order first, then complete referral block.

8. Return charge sheet and convening order to Law Center/LSSS for service by trial counsel.
9. After reasonable period of time, call trial counsel for a trial date and notify prospective members that, if utilized, they will be needed during a specified time frame.
10. Assign a bailiff (senior to accused) and have them read the bailiff's handbook (JAGMAN, app. A-1-q) to learn his/her duties. Advise trial counsel who has been selected.
11. Prepare applicable parts of page 13, SRB.
12. If confinement is expected, prepare confinement orders, assemble health and dental records, and secure physical immediately before trial (or notify medical people of need).

B. POST-TRIAL MATTERS

1. Assure confinement order is completed, any deferral request is acted on, accused has proper uniforms, and escort to brig.
2. Upon receipt of copy of record of trial, assure accused is served a copy.
3. Assure convening authority does not act on the record until all responses under R.C.M. 1105 and 1106 are received for the CA's action.
4. After the convening authority has acted, attach action to the record of trial and return to Law Center/LSSS for review. Assure command has a complete copy.
5. Complete appropriate section of page 13, SRB and appropriate SRB pages.
6. Upon receipt of promulgating order, insert in the record of trial.
7. Upon completion of confinement, enter time lost on page 5, SRB.

S A M P L E


DEPARTMENT OF THE NAVY  
Naval Air Station, Oceana  
Virginia Beach, Virginia 23460

16 Jan CY

SPECIAL COURT-MARTIAL CONVENING ORDER 2-CY

Pursuant to authority contained in paragraph 0115a(2)(c), Judge Advocate General of the Navy Instruction 5800.7B, of 1 July 1978, a special court-martial is convened with the following members:

Lieutenant Commander Steven A. Miller, Jr., U.S. Navy;  
Lieutenant Matthew J. Ferguson, SC, U.S. Naval Reserve;  
Lieutenant Carol L. Parmley, U.S. Navy;  
Lieutenant Junior Grade Peter C. Gaines, U.S. Navy; and  
Ensign Roberto I. Jiminez, U.S. Naval Reserve.

  
JAMES D. WATKINS III  
Captain, U.S. Navy  
Commanding Officer  
Naval Air Station, Oceana  
Virginia Beach, Virginia

S A M P L E

**DEPARTMENT OF THE NAVY**  
Naval Surface Group, Middle Pacific  
Pearl Harbor, Hawaii 96860

5 Feb CY

GENERAL COURT-MARTIAL AMENDING ORDER 1A-CY

Chief Operations Specialist CWO3 Jeffrey T. Campbell, U.S. Navy, is detailed as a member of this general court-martial convened by order number 1-CY, this command, dated 29 January 19CY, vice Lieutenant Anthony R. Patrilli, U.S. Navy, relieved.



RICHARD J. ANDERSON  
Rear Admiral, U.S. Navy  
Commander, Naval Surface Group,  
Middle Pacific  
Pearl Harbor, Hawaii

**ADMINISTRATIVE REMARKS**

NAVPERS 1070/613 (Rev. 1-76)

S/N 0106-LF-010-0000

E-32

SEE SUPERSMAN 5030420

SHIP OR STATION

USS IOWA (BB 61)

3 Feb CY: SPECIAL COURT-MARTIALDATE OF OFFENSE:

23 September 19CY-1

NATURE OF OFFENSE:

Violation of UCMJ, Article 86 - unauthorized absence from 23 September 19CY-1 to 7 January 19CY.

DATE OF TRIAL:

10 January 19CY

FINDINGS:

Of the Charge and the Specification thereunder: Guilty.

SENTENCE ADJUDGED:

To be restricted to the limits of USS IOWA (BB 61) for a period of 45 days.

CA's ACTION ON SENTENCE:

Approved and ordered executed. The record of trial is forwarded to Commander, Naval Surface Force, U.S. Atlantic Fleet, Norfolk, Virginia, for review in accordance with Article 64(b), UCMJ.



J. L. MASTERSON, PNCS, USN

By direction of the Commanding Officer

NOTE TO STUDENT: THIS IS A SAMPLE PAGE 13 ENTRY WHICH WOULD BE USED WHEN THE SENTENCE, AS APPROVED AND ORDERED EXECUTED BY THE CONVENING AUTHORITY, DOES NOT INCLUDE CONFINEMENT AND/OR ANY TYPE OF PUNISHMENT WHICH AFFECTS THE ACCUSED'S PAY.

NAME (Last, First, Middle)

BYERS, Thomas Glenn

SSN

987-65-4321

BRANCH AND CLASS

USN

## PAGE 7 ENTRIES

Page 7 entries are required in all cases where the sentence, as approved and ordered executed by the convening authority, includes confinement, reduction in rate, forfeiture of pay, or fine. (In addition, in the case of reduction, a Page 4 entry is required.)

If all of the above types of punishments have been suspended by the convening authority, then a Page 7 entry will not be prepared. Instead, a Page 13 entry will be required. If any one of the above-mentioned types of punishments has been approved and not suspended, however, then a Page 7 entry must be prepared to reflect the results of the court-martial.

In addition, in the event that a sentence which normally would have been documented on a Page 7 entry was suspended (so a Page 13 entry was initially completed) and the convening authority later vacates that suspended sentence, then preparation of a Page 7 entry will be required at the time the suspended sentence is vacated. This entry will reflect which portion of the suspended sentence has been vacated and thus "ordered executed."



COURT MEMORANDUM

1. DATE SUBMITTED CYMAR22		2. SHIP OR STATION USS IOWA (BB 61)			
3. DATE OF REFERRAL CYFEB16		4. TYPE OF COURT SPECIAL		5. DATE OF COURT/ CYFEB28	
6. UCMJ ARTICLE(S) 128, 134		7. DATE OF ACTION CYMAR20		8. TYPE OF ACTION <input checked="" type="checkbox"/> TYPE OF ACTION	
9. MODIFICATION OF ACTION <input type="checkbox"/>		10. CORRECTION TO PREVIOUS 1070/607 <input type="checkbox"/>		11. DATE OF ACTION ON 1070/607 NOV. OR CORRECTED	
12. RATE ADJUSTMENT <input checked="" type="checkbox"/>		13. FROM BT3		14. TO BTFN	
15. PER CYMAR20		16. MONTHLY AMT. \$		17. NO. MONTHS	
18. FORFEITURE <input type="checkbox"/>		19. FINE \$		20. AMOUNT \$	
21. CONSENT TO CHECKAGE <input type="checkbox"/>		22. DOES NOT CONSENT TO CHECKAGE <input type="checkbox"/>		23. NO. AMT. OF CHECKAGE \$	
24. DETENTION <input type="checkbox"/>		25. MONTHLY AMT. \$		26. NO. MONTHS	
27. DETENTION RE- FUND DATE		28. ADJUDGED <input type="checkbox"/>		29. ADJUDGED AND DIS- APPROVED <input type="checkbox"/>	
30. PRE-TRIAL CONFINEMENT 32. FROM:		31. TO:		32. DAYS LOST TIME (30 DAY BASIS)	
33. CONFINEMENT ORDERED AND COMPLETED 34. FROM:		35. TO:		36. DAYS LOST TIME (30 DAY BASIS)	
37. CYFEB28		38. TO:		39. DAYS LOST TIME (DAY FOR DAY)	
40. CHANGE EADS TO:		41. CHANGE EXP. ENL. TO:		42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)	

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)

CYMAR22: SPECIAL COURT-MARTIAL

DATE OF TRIAL: CYFEB28

VIOL UCMJ, ART. 128 - ASSAULT ON A PETTY OFFICER BY STRIKING HIM IN THE FACE WITH HIS FIST ON CYFEB10; VIOL UCMJ, ART. 134 - DRUNK AND DISORDERLY CONDUCT ON STATION ON CYFEB10.

SENTENCE ADJUDGED: CONF FOR 2 MONTHS AND REDUCTION IN GRADE TO PAYGRADE E-3

DATE SENTENCE ADJUDGED: CYFEB28

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15 (D) OR (E), UCMJ, (ALSO ANY APPEAL)

43. 1070/607 DTD CYMAR20	44. AUTHORITY TYPE CONVENING	CO USS IOWA (BB 61)
-----------------------------	---------------------------------	---------------------

45. LTR SER 325 DTD CYMAR20 FWD ROT TO COMNAVSURFLANT, NORFOLK, VA

CA'S ACTION: APPROVED AND ORDERED EXECUTED. THE NAVAL BRIG, NAVSTA, NORFOLK, VA, IS DESIGNATED THE PLACE OF CONF. ROT FWD TO COMNAVSURFLANT, NORFOLK, VA FOR REVIEW IAW ART. 64(Q), UCMJ.

(MAY BE CONTINUED ON REVERSE)

46. SIGNATURE <i>J. L. Masterson</i>		GRADE	
J. L. MASTERSON, PNCS, USN, BY DIR CO USS IOWA (BB 61)			
47. UNIT I.D. CODE 12345		48. RATE BTFN	
49. NAME BYERS, THOMAS G		51. BRANCH CLASS 987-65-4321 USN	

SUPERVISOR USE ONLY

PL01-7R

SUPERVISOR USE ONLY

## COURT MEMORANDUM

1. DATE SUBMITTED CYAPR20		2. SHIP OR STATION USS IOWA (BB 61)	
3. DATE OF REFERRAL CYFEB16		4. TYPE OF COURT SUMMARY	
5. DATE OF COURT/MEETING CYFEB28		6. UCMJ ARTICLE(S) 128, 134	
7. DATE OF ACTION CYAPR19		8. TYPE OF ACTION <input checked="" type="checkbox"/> REPORT OF ACTION	
9. MODIFICATION OF ACTION <input type="checkbox"/>		10. CORRECTION TO PREVIOUS 1070/607 <input type="checkbox"/>	
11. DATE OF ACTION ON 1070/607 MOD. OR CORRECTED		12. RATE ADJUSTMENT <input type="checkbox"/>	
13. FROM		14. TO	
15. THE		16. FORFEITURE <input type="checkbox"/>	
17. MONTHLY AMT. \$		18. NO. MONTHS	
19. FINE <input type="checkbox"/>		20. AMOUNT \$	
21. CONSENT TO CHECKAGE <input type="checkbox"/>		22. DOES NOT CONSENT TO CHECKAGE <input type="checkbox"/>	
23. NO. AMT. OF CHECKAGE \$		24. NO. MOS.	
25. DETENTION <input type="checkbox"/>		26. MONTHLY AMT. \$	
27. NO. MONTHS		28. DETENTION RE-FUND DATE	
29. DESERTION MARK REMOVED <input type="checkbox"/>		30. ADJUDGED <input type="checkbox"/>	
31. ADJUDGED AND DIS-APPROVED <input type="checkbox"/>		32. PRE TRIAL COMMITMENT FROM:	
33. TO:		34. DAYS LOST TIME (30 DAY BASIS)	
35. DAYS LOST TIME (DAY FOR DAY)		36. DAYS LOST TIME (30 DAY BASIS)	
37. TO:		38. DAYS LOST TIME (DAY FOR DAY)	
39. FROM:		40. CHANGE EACS TO:	
41. CHANGE EXP. ENL. TO:		42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)	
43. CY+1SEP25		44. CY+1SEP25	

RELEASED FROM CONF. HAVING SERVED 50 DAYS OF SENTENCE ADJUDGED ON CYFEB28. GIVEN 10 DAYS CREDIT FOR GOOD BEHAVIOR.

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15 (D) OR (E), UCMJ, (ALSO ANY APPEAL)

43. 1070/607 DTD	44. AUTHORITY TYPE ADMINISTRATIVE
------------------	--------------------------------------

45.

(MAY BE CONTINUED ON REVERSE)

46. SIGNATURE <i>J. L. Masterson</i>		47. UNIT I.D. CODE 12345		48. RATE BTEN	
49. NAME (LAST, FIRST, MIDDLE) J. L. MASTERSON, PNCS, USN, BY DIR CO USS IOWA (BB 61)		50. SSN 187 05-4321		51. BRANCH CLASS USN	

COURT MEMORANDUM NAVJAG USE ONLY (REV. 2-78)

SJA-94

# PUNISHMENT CHART

PUNISHMENT	SCM			SPCM			GCM		
	E-4 & below	E-5 & above	EM's	O's & WO's	EM's	WO's	O's		
1. Death	NO	NO	NO	NO	YES (*1)	YES(*1)	YES (*1)		
2. Dismissal	NO	NO	NO	NO	NO	NO	YES		
3. Dishonorable Discharge	NO	NO	NO	NO	YES	YES	NO		
4. Bad-Conduct Discharge	NO	NO	YES	NO	YES	NO	NO		
5. Confinement	30 days	NO	6 mos.	NO	YES (*5)	YES (*5)	YES (*5)		
6. Solitary Confinement	NO	NO	NO	NO	NO	NO	NO		
7. Confinement on Bread and Water or Diminished Rations	3 days(*2)	NO	3 days(*2)	NO	3 days(*2)	NO	NO		
8. Restriction	2 mos.	2 mos.	2 mos.	2 mos.	2 mos.	2 mos.	2 mos.		
9. Hard Labor w/o confinement	45 days	NO	3 mos.	NO	3 mos.	NO	NO		
10. Forfeiture all pay and allowances	NO	NO	NO	NO	YES	YES	YES		
11. Forfeiture 2/3 pay per mo.	1 mo. (*3)	1 mo. (*3)	6 mos.	6 mos.	YES (*5)	YES	YES		
12. Fine	YES(*4)	YES(*4)	YES(*4)	YES(*4)	YES	YES	YES		
13. Reduction to next inferior rate	YES	YES	YES	NO	YES	NO	NO		
14. Reduction to lowest pay grade	YES	NO	YES	NO	YES	NO	NO		
15. Loss of numbers	NO	NO	NO	YES	NO	YES	YES		
16. Reprimand	YES	YES	YES	YES	YES	YES	YES		

(\*1) Where authorized or mandatory

(\*2) If attached to or embarked in a naval vessel and in paygrade E-3 or below at time of sentence.

(\*3) May extend payment up to 3 months (JAGMAN, § 0019b)

(\*4) If given, a fine or a fine and forfeiture combination may not exceed the maximum amount of forfeitures which may be adjudged in a case

(\*5) Maximum punishment listed for each offense in Part IV, MCM

## COMMON SENTENCING PROVISIONS FOR PRETRIAL AGREEMENTS

The following list of provisions is to assist you in drafting the sentencing limitations of pretrial agreements. It is not an all-inclusive list; you may be inventive and draft any others which are allowed by the provisions of the Manual for Courts-Martial and current case law. Plain language is preferred and the terminology should be similar to that used by the CA in his CA's action. (See App. 16, MCM.)

### 1. Punitive discharge

a. If awarded, a bad-conduct discharge (dishonorable discharge) (dismissal) will be disapproved.

b. If awarded, a bad-conduct discharge (dishonorable discharge) (dismissal) may be approved; however, it will be suspended for a period of \_\_\_\_ months from the date the sentence is adjudged, at which time, unless sooner vacated, it will be remitted without further action.

c. If awarded, a dishonorable discharge will be changed to a bad-conduct discharge. The sentence as changed may be approved.

### 2. Confinement or restraint

a. If awarded, confinement may be approved; however, all confinement in excess of \_\_\_\_ months (years) will be suspended for a period of \_\_\_\_ months from the date the sentence is adjudged, at which time, unless sooner vacated, the suspended portion will be remitted without further action. In this regard, this pretrial agreement constitutes a request by the accused for and approval by the convening authority of deferment of the portion of any confinement to be suspended pursuant to the terms of the agreement. The period of deferment will run from the date the accused is released from confinement pursuant to this agreement until the date the convening authority acts on the sentence.

b. If awarded, confinement for   1   months (years) may be approved; however, all confinement in excess of   2   months (years) shall be suspended for a period of \_\_\_\_ months from the date the sentence is adjudged, at which time, unless sooner vacated, the suspended portion will be remitted without further action.

NOTE: The number of months in this space (#1) must be greater than those in space #2; otherwise, there will be nothing to suspend. Space #1 limits the amount to be approved.

### c. Conditional language

(1) If a bad-conduct discharge (dishonorable discharge) (dismissal) is awarded, confinement, if also awarded, may be approved; however, all confinement in excess of \_\_\_\_ months (years) shall be suspended for a period of \_\_\_\_ months from the date sentence is announced, at which time, unless sooner vacated, the suspended portion will be remitted without further action.

(2) If no bad-conduct discharge (dishonorable discharge) (dismissal) is awarded, confinement, if awarded, may be approved as adjudged.

NOTE: Both of these provisions would be present in the agreement. Also, the military judge, when examining the agreement, will seek assurances that such conditional terms originated with the defense offer to enter into the agreement.

d. If awarded, all confinement may be approved as adjudged.

e. Other forms of restraint

-- All other forms of restraint punishment may be approved as adjudged.

NOTE: This ensures that all parties agree that restriction or hard labor without confinement may be ordered executed in their entirety, notwithstanding limits on confinement approvable.

### 3. Forfeitures and fines

a. If awarded, forfeitures may be approved; however, any forfeitures in excess of \$\_\_\_\_\_ pay per month for \_\_\_\_\_ months will be suspended for a period of \_\_\_\_\_ months from the date the sentence is adjudged, at which time, unless sooner vacated, the suspended portion will be remitted without further action.

b. If awarded, fines will be changed to forfeitures and subject to the limitations of paragraph 3.a, above.

c. If awarded, forfeitures and fines may be approved as adjudged.

### 4. Reduction (rate or grade)

a. If awarded, a reduction to paygrade E-\* may be approved; however, any reduction below paygrade E-\*\* will be suspended for a period of \_\_\_\_\_ months from the date the sentence is adjudged, at which time, unless sooner vacated, the portion of the reduction suspended will be remitted without further action. Any reduction effected under Article 58a, UCMJ, and JAGMAN, § 0145, below paygrade E-\*\* will also be suspended for a period of \_\_\_\_\_ months from the date the sentence is adjudged, at which time, unless sooner vacated, the portion of the reduction suspended will be remitted without further action.

\* This is the lowest reduction you have agreed upon which may be approved - usually it is E-1.

\*\* This is the paygrade you wish your client to keep with the remaining being suspended.

b. If awarded, any reduction, whether judicially or administratively awarded, may be approved.

5. Other lawful punishments

-- All other lawful punishments not specifically mentioned in this agreement may be approved.

NOTE: This category should be added. It could include such punishments as loss of numbers, lineal position, seniority, reprimand, or other punishments listed in R.C.M. 1103(b). If any are anticipated, you may make specific mention of them or you can use the general provision above.

## ARTICLE 32 INVESTIGATIONS AND ARTICLE 34 ADVICE

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#### Article 32/34 checklist

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## ARTICLE 32/34 CHECKLIST

### A. ARTICLE 32 INVESTIGATION. (See R.C.M. 405 & 406; JAGMAN, § 0908; and UCMJ, Arts. 32-34.)

1. Obtain service record from personnel or PSD.
2. Establish liaison with local NLSO regarding pending charges and obtain name of article 32 investigating officer.
3. Draft charges on DD Form 458. Complete charge sheet through block IV only, do not refer charges.
4. Prepare the appointing order for the article 32 investigating officer.
5. Make sufficient copies of charge sheet and appointing order for distribution to all necessary parties and one copy for the command files. The original appointing order will be attached to the investigation, it is not kept in the command files.
6. Forward the charge sheet, appointing order (and the copies of each), plus the service record and any investigative reports, to the NLSO.
7. After receipt of the completed article 32 investigation and the investigating officer's report, forward to your commanding officer for a determination as to disposition.
8. If a general court-martial is desired, forward service record, the investigation, and investigating officer's report to the GCM authority requesting the appropriate action.
9. If a lesser forum is desired, handle according to procedures set out elsewhere in this handbook.

### B. ARTICLE 34 ADVICE/REFERRAL OF CHARGES

1. Upon receipt of a request for a general court-martial by a summary or special court-martial convening authority, review the service record and investigation.
2. Prepare the advice and recommendation concerning the charges for the flag officer. This is to be prepared in accordance with Article 34, UCMJ and R.C.M. 406, MCM, 1984.
3. If the flag officer agrees to refer the charge(s) to a general court-martial, then prepare block V of the charge sheet (DD Form 458).
4. Prepare a list of possible members, so the convening authority may pick the panel, and prepare the convening order for signature.
5. Serve the accused with a copy of the charges and note this on the charge sheet.



6. Prepare sufficient copies of the charge sheet and convening order for distribution to all parties. Retain the original convening order and send a certified copy with the original charge sheet for inclusion in the record of trial.
7. Copy the enlistment contract and pages 1, 2, 4, 5, 7, 9 (and any page 13's relating to NJP's or disciplinary matters) and enlisted evaluations. These may be needed for preparation of the CA's action if the accused is convicted.
8. Forward the service record, charge sheet, article 34 advice, investigating officer's report with the investigation, and any other investigative reports to the NLSO for action.
9. Liaison with accused's command for the use of a bailiff for trial and other requirements for the accused in case he is confined (sea bag, pay record, health record, etc.).
10. Prepare a confinement order and TEMADD orders in case the accused is confined.
11. After trial - see post-trial checklist under "Special Courts-Martial."

DEPARTMENT OF THE NAVY  
Naval Justice School  
Newport, Rhode Island 02841-5030

22 Aug 19CY

In accordance with R.C.M. 405, MCM, 1984, Lieutenant Commander Pretrial I. Officer, JAGC, U.S. Navy, is hereby appointed to investigate the attached charges preferred against Seaman Watt A. Accused, U.S. Navy. The charge sheet and allied papers are appended hereto. The investigating officer will be guided by the provisions of R.C.M. 405, MCM, 1984, and current case law relating to the conduct of pretrial investigations. In addition to the investigating officer hereby appointed, the following personnel are detailed to the investigation for the purposes indicated:

COUNSEL FOR THE GOVERNMENT

Lieutenant I. Will Convictim, JAGC, U.S. Navy, certified in accordance with Article 27(b), Uniform Code of Military Justice;

DEFENSE COUNSEL

Lieutenant I. Gettum Off, JAGC, U.S. Naval Reserve, certified in accordance with Article 27(b), Uniform Code of Military Justice.

*Convening T. Authority*

CONVENING T. AUTHORITY  
Captain, JAGC, U.S. Navy  
Commanding Officer  
Naval Justice School  
Newport, Rhode Island

SAMPLE APPOINTING ORDER FOR  
(ART. 32) PRETRIAL INVESTIGATION

DEPARTMENT OF THE NAVY  
Naval Justice School  
Newport, Rhode Island 02841-5030

2 Sep 19CY

FIRST ENDORSEMENT on LCDR Pretrial I. Officer, JAGC, USN,  
Investigating Officer's Report of 30 Aug CY

From: Commanding Officer, Naval Justice School  
To: Commander, Naval Education and Training Center, Newport

Subj: ARTICLE 32 INVESTIGATION ICO SEAMAN WATT A. ACCUSED, U.S. NAVY,  
123-45-6789

1. Forwarded.
2. Recommend trial by general court-martial.

*Convening T. Authority*  
CONVENING T. AUTHORITY

4 Sep 19CY

**MEMORANDUM**

From: Staff Judge Advocate  
To: Commander, Naval Education and Training Center, Newport  
Subj: ADVICE AND RECOMMENDATIONS CONCERNING THE CHARGES AGAINST  
SEAMAN WATT A. ACCUSED, U.S. NAVY, 123-45-6789  
Ref: (a) Article 32, UCMJ  
(b) R.C.M. 406, MCM, 1984  
Encl: (1) Charge sheet  
(2) Article 32 investigation w/fwd ltr CO, NAVJUSTSCOL, Newport

1. In accordance with reference (a), an investigation has been conducted into the following charge and specification against Seaman Watt A. Accused, U.S. Navy, 123-45-6789.

Charge and Specification: See enclosure (1).

2. The charge and specification have been forwarded with a recommendation for trial by general court-martial by Commanding Officer, Naval Justice School, Newport, Rhode Island. The investigating officer, Lieutenant Commander Pretrial I. Officer, JAGC, U.S. Navy, recommended trial by general court-martial of the charge and specification. The investigation was conducted on 30 August 19CY. The pretrial investigation report and forwarding letter, dated 2 September 19CY, are attached [enclosure (2)].

3. In accordance with reference (b), the following advice concerning the charge and specification is furnished:

a. The investigation was conducted in substantial compliance with reference (a). The evidence consisted of one government exhibit received into evidence.

b. The specification alleges an offense under the UCMJ.

c. The allegations in the specification are warranted by the evidence adduced at the investigation.

d. Court-martial jurisdiction has been established over the accused and the offense.

4. Discussion of the charge and specification:

a. Elements:

(1) That the accused, on or about 1 June 19CY, absented himself from his organization, that is, Naval Justice School, Newport, Rhode Island;

(2) that he remained so absent until 18 August 19CY;

Subj: ADVICE AND RECOMMENDATIONS CONCERNING THE CHARGES AGAINST  
SEAMAN WATT A. ACCUSED, U.S. NAVY, 123-45-6789

(3) that the absence was without authority from anyone competent to give him leave;

(4) that the accused intended at the time of absenting himself, or at some time during his absence, to remain away permanently from his organization; and

(5) that the accused's absence was terminated by apprehension.

b. Discussion of proof:

(1) IO Exhibit (2), a true copy of a NAVPERS 1070/606 (Record of Unauthorized Absence) from the service record of the accused, provides evidence which establishes probable cause to believe that, on or about 1 June 19CY, the accused absented himself from his organization, to wit: Naval Justice School, Newport, Rhode Island; that he remained so absent until 18 August 19CY; that the absence was without authority from anyone competent to give him leave; and that the absence was terminated by apprehension. The intent of the accused to remain away permanently can be inferred from the length of the absence (78 days), and the accused's apprehension in Tucson, Arizona, some distance from Newport, Rhode Island.

(2) If the intent of the accused to remain away permanently is not proved beyond a reasonable doubt, the accused may be found guilty of a lesser included offense of unauthorized absence in violation of Article 86, UCMJ.

(3) The statute of limitations, for both article 85 and article 86, is five years. The receipt of the preferred charges by Commanding Officer, Naval Justice School, Newport, Rhode Island, on 20 August 19CY, has tolled the running of the statute of limitations and this issue is moot.

5. Maximum authorized punishment:

a. Dishonorable Discharge, confinement for 3 years, forfeiture of all pay and allowances, and reduction to E-1, in the event the accused is convicted of a violation of Article 85, UCMJ.

b. Dishonorable Discharge, confinement for 1 year 6 months, forfeiture of all pay and allowances, and reduction to E-1, in the event the accused is convicted of a violation of Article 86, UCMJ.

6. Additional information relative to case:

a. A review of the accused's service record reflects the following misconduct resulting in disciplinary action:

CO's NJP - 14 Jan CY -Violation of Article 86, UCMJ, UA from 15 Oct CY(-1) to 23 Dec CY(-1).

AWARDED: 15 days restriction, 15 days extra duty, and forfeiture of \$50.00 pay per month for one month.

Subj: ADVICE AND RECOMMENDATIONS CONCERNING THE CHARGES AGAINST  
SEAMAN WALTER A. ACCUSED, U.S. NAVY, 123 45 6789

b. The accused is 24 years of age, single, and enlisted in the U.S. Navy on 1 January 19CY(-1), for a period of 4 years. His GCT is 45, his ARI is 53, and he completed the 12th grade of school. His average performance marks are 3.4. He is entitled to no awards, medals, or decorations.

7. In summarization, my advice is that there has been substantial compliance with reference (a), the specification alleges an offense under the Code and the allegations in the offense are warranted by the evidence contained in the investigation. My recommendation is that the charge and specification be referred to trial by general court-martial.

8. You may indicate your agreement or disagreement with the foregoing in the place provided below. If you agree with the advice and recommendation herein, you should sign the referral to trial on page two of the Charge Sheet (DD Form 458) [enclosure (1)].

*R. U. Guilty*  
R. U. GUILTY

APPROVED/DISAPPROVED

ABLE B. SEAWEEP  
Captain, U.S. Navy  
Commander, Naval Education and Training Center  
Newport, Rhode Island

## STAFF JUDGE ADVOCATE RECOMMENDATION

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STAFF JUDGE ADVOCATE RECOMMENDATION

7 Jul 19CY

From: Staff Judge Advocate, Naval Surface Group FOUR  
To: Commander, Naval Surface Group FOUR

Subj: RECOMMENDATION IN THE SPCM CASE OF YEOMAN SEAMAN JOHN Q. PUBLIC, USN, 111-22-3333

Ref: (a) R.C.M. 1106, MCM, 1984  
(b) JAGMAN, § 0145c

Encl: (1) Record of trial ICO YNSN John Q. Public, USN

1. Pursuant to references (a) and (b), the following information is provided:

a. Offenses, pleas, and findings:

Charges and specifications	Pleas	Findings
Charge I: Violation of Article 86, UCMJ.	Guilty	Guilty
Specification: Unauthorized absence from his unit, USS EDSON, from 13 July 19CY(-1) to his surrender on 5 March 19CY.	Guilty	Guilty
Charge II: Violation of Article 121, UCMJ.	Guilty	Guilty
Specification: Larceny of a radio of a value of about \$125.00, the property of Fireman Stoke T. Coals, U.S. Navy.	Guilty	Guilty

b. Sentence adjudged: On 15 June 19CY, the accused was sentenced to reduction to the grade of E-2, confinement for a period of 120 days, forfeiture of \$200.00 pay per month for 4 months, and to be discharged from the naval service with a bad conduct discharge.

c. Clemency recommendation by court or military judge: None.

d. Summary of accused's service record:

(1) Length of service: 3 years 2 months.

(2) Character of service: 3.4 average of evaluation traits.

(3) Awards and decorations: The accused is not entitled to any awards, medals or commendations, except the Sea Service Deployment Ribbon.

(4) Records of prior nonjudicial punishment: CO's NJP on 1 September 19CY(-2) for a violation of Article 86, UCMJ, for missing morning muster on 28 August 19CY(-2). Awarded 15 days restriction to the limits.



Subj: RECOMMENDATION IN THE SPCM CASE OF YEOMAN SEAMAN JOHN Q. PUBLIC, USN, 111-22-3333

(5) Previous convictions: Conviction by summary court-martial at which he was represented by lawyer counsel on 8 October 19CY(-2) for a violation of Article 121, UCMJ, wrongful appropriation of government property, for which a sentence of 1 month confinement and reduction to the grade of paygrade E-1 was finally approved. Conviction by special court-martial on 17 February 19CY(-1), for a violation of Article 86, UCMJ, unauthorized absence for a period of 27 days, for which a sentence of confinement for 1 month and forfeiture of \$50.00 pay per month for 2 months was finally approved.

(6) Other matters of significance: None.

e. Nature and duration of pretrial restraint: The accused was in pretrial confinement from 29 May to 4 June 19CY, a period of 7 days. In accordance with the decision rendered in United States v. Allen, 17 M.J. 126, the accused will be credited with 7 days of confinement against the sentence to confinement adjudged.

f. Judicially ordered credit to be applied to confinement, if any: None.

g. Terms and conditions of pretrial agreement, if any, which the convening authority is obligated to honor or reasons why the convening authority is not obligated to take specific action under the agreement: A pretrial agreement was submitted in this case and approved on 12 June 19CY. In return for the accused's provident guilty plea to all charges and specifications, the terms of this agreement called for a limitation on the punishment as follows:

Confinement: If adjudged, confinement in excess of 4 months will be disapproved.

Restriction: As adjudged.

Forfeitures: If adjudged, forfeitures in excess of \$150.00 pay per month for a period of 4 months will be disapproved.

Fine: As adjudged.

Reduction: As adjudged.

Punitive discharge: As adjudged.

Your obligations concerning the terms of the pretrial agreement in this case are as follows: Since the confinement and forfeitures awarded are less than that provided for in the agreement, you are not obligated to suspend or disapprove any portion. The confinement, forfeitures, and bad-conduct discharge may be approved as adjudged.

h. The record of trial was served on the accused on 5 July 19CY. On behalf of the accused, the detailed defense counsel, LCDR I. Freeum, JAGC, USNR, has submitted a request for clemency in the form of reduction in confinement to be approved.

Subj: RECOMMENDATION IN THE SPCM CASE OF YEOMAN SEAMAN JOHN Q. PUBLIC, USN, 111-22-3333

2. In my opinion, the court was properly constituted and had jurisdiction over the accused and the offense. The accused was found guilty in accordance with his pleas. The proceedings were conducted in substantial compliance with current regulation and policy. The offenses of which the accused was found guilty are described as offenses under the UCMJ. There is no error noted nor any issues of error raised by the accused or his counsel. The sentence as adjudged is legal and appropriate.

3. I recommend that the sentence as adjudged be approved in accordance with the terms of the pretrial agreement. I further recommend that YNSN Public be reduced to the grade of E-1 as authorized by Article 58a(a) of the Uniform Code of Military Justice.

R. U. GUILTY

MEMORANDUM FORWARDING STAFF JUDGE ADVOCATE RECOMMENDATION  
TO DETAILED DEFENSE COUNSEL

9 Jul 19CY

From: Staff Judge Advocate, Commander Naval Surface Group FOUR  
To: LCDR I. Freeum, JAGC, USNR, Naval Legal Service Office, Newport  
Subj: SPCM CASE OF YEOMAN SEAMAN JOHN Q. PUBLIC, USN, 111-22-3333  
Ref: (a) Article 64, UCMJ  
(b) R.C.M. 1106(f)(1)  
Encl: (1) Copy of SJA's post-trial review ICO YNSN John Q. Public, USN

1. Pursuant to reference (a), a review of the court-martial of YNSN Public has been conducted. Enclosure (1) is a copy of this review.
2. Pursuant to rules established by reference (b), you are hereby served with a copy of this review in order to afford you an opportunity to correct or challenge any matter therein which you may deem erroneous, inadequate or misleading, or upon which you may otherwise wish to comment. Proof of service of this review upon you, together with any such correction, challenge or comment you may make, shall be made a part of the record of proceedings.
3. You are advised that your failure to take advantage of the aforementioned opportunity within 10 calendar days from date of this service will normally be deemed a waiver of any error in the review.
4. You are requested to acknowledge receipt of this letter, with attached copy of review, by immediately completing the first endorsement.

*R.U. Guilty*  
R. U. GUILTY

DEFENSE COUNSEL'S ACKNOWLEDGEMENT OF  
RECEIPT OF STAFF JUDGE ADVOCATE RECOMMENDATION

11 Jul 19CY

FIRST ENDORSEMENT on SJA, NAVSURFGRU FOUR ltr of 9 Jul 88

From: LCDR I. Freeum, JAGC, USNR, Naval Legal Service Office

To: Staff Judge Advocate, Naval Surface Group FOUR

1. I, the undersigned, counsel for the accused in the above-captioned proceedings, hereby acknowledge receipt of the aforementioned staff judge advocate's review required by Article 64, UCMJ, for the subject case on this 11th day of July 19CY.

  
I. FREEUM

DEPARTMENT OF THE NAVY  
Naval Legal Service Office  
Newport, Rhode Island 02841-5032

13 Jul 19CY

From: LCDR I. Freeum, JAGC, USNR, Naval Legal Service Office  
To: Staff Judge Advocate, Naval Surface Group FOUR

Subj: RECOMMENDATION IN THE SPCM CASE OF YEOMAN SEAMAN JOHN Q.  
PUBLIC, USN, 111-22-3333

Ref: (a) SJA review ICO YNSN John Q. Public, USN  
(b) R.C.M. 1106(f)(4)

1. Reference (a) was received by me on 11 July 19CY and has been reviewed pursuant to reference (b).
2. I do not desire to submit a correction, challenge, or comment to the attached review.
3. I have attached letters from the accused's parents and his wife, Mrs. Public, for the convening authority's consideration.

  
I. FREEUM

Detailed defense counsel's response to SJA recommendation

SJA-111

## CONVENING AUTHORITY'S ACTION

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DEPARTMENT OF THE NAVY  
Naval Justice School  
Newport, Rhode Island 02841-5030

1 Feb 19CY

In the case of Boatswain's Mate Seaman Mickey E. Mouse, 123-45-5789, U.S. Navy, tried by special court-martial on 18 January 19CY, the court had jurisdiction over the accused and the offense(s) for which he was tried and the court was properly convened and constituted.

*H. S. Law*

H. S. LAW  
Captain, JAGC, U.S. Navy  
Commanding Officer  
Naval Justice School  
Newport, Rhode Island

Convening authority's action - acquittal record of trial

DEPARTMENT OF THE NAVY  
Naval Justice School  
Newport, Rhode Island 02841-5030

1 Feb 19CY

In the case of Personnelman Third Class Mickey E. Mantel, 444-44-9944, the sentence is approved and will be executed. The Navy Brig, Naval Education and Training Center, Newport, Rhode Island, is designated as the place of confinement.

In accordance with Article 58(a), UCMJ, and JAGMAN, § 0145a(7), automatic reduction in rate to paygrade E-1 is effected.

The record of trial is forwarded to the Staff Judge Advocate, Commander, Naval Education and Training Center, Newport, Rhode Island, for review under Article 64(a), UCMJ.

*H. S. Law*

H. S. LAW  
Captain, JAGC, U.S. Navy  
Commanding Officer  
Naval Justice School  
Newport, Rhode Island

Convening authority's action  
(Sentence awarded at trial approved and ordered executed)

Note: In this sample, the sentence does not include a punitive discharge, death or dismissal, and the paragraph pertaining to automatic reduction should be included only if the sentence awarded and approved contains confinement in excess of 90 days/3 months.



## SENTENCE MODIFICATION AND PARTIAL EXECUTION

The following action shows the approval of part of the sentence and partial order of execution of the sentence awarded at trial. The convening authority only approved part of the sentence adjudged by the court. The court sentenced the accused to reduction to the grade of E-2, confinement for 120 days, forfeiture of \$200.00 pay per month for 4 months, and a bad conduct discharge. The convening authority approved the reduction to E-2 and the bad conduct discharge, but approved only 90 days of confinement and forfeitures of only \$150.00 pay per month for 3 months.

The provisions of Article 58a(a), automatic reduction, are included in this case only because the reduction awarded by the court was from E-3 to E-2. Had the court reduced the accused to E-1, and that portion of the sentence been approved and ordered executed, Article 58a(a) would no longer have been applicable.

**DEPARTMENT OF THE NAVY**  
**Naval Surface Group FOUR**  
**Newport, Rhode Island 02841-5030**

**26 July 19CY**

In the case of Yeoman Seaman John Q. Public, 111-22-3333, U.S. Navy, only so much of the sentence as provides for reduction to the grade of E-2, confinement for 90 days, forfeiture of \$150.00 pay per month for 3 months, and a bad-conduct discharge is approved and, except for the part of the sentence extending to bad-conduct discharge, will be executed. The Navy Brig, Naval Education and Training Center, Newport, Rhode Island, is designated as the place of confinement.

In accordance with Article 58a(a), UCMJ and JAGMAN, § 0145a(7), automatic reduction in rate to paygrade E-1 is effected as of the date of this action.

Synopsis of the accused's prior conduct as required by JAGMAN, § 0145a(5):

Conviction by summary court-martial at which he was represented by lawyer counsel on 8 October 19CY(-2) for a violation of Article 121, UCMJ, wrongful appropriation of government property, for which a sentence of 1 month confinement and reduction to the grade of E-1 was finally approved. Conviction by special court-martial on 17 February 19CY(-1), for a violation of Article 86, UCMJ, unauthorized absence for a period of 27 days, for which a sentence of confinement for 1 month and forfeiture of \$50.00 pay per month for 2 months was finally approved.

In addition to the two previous convictions considered by the court in this case, the accused was awarded 15 days restriction as a result of commanding officer's nonjudicial punishment on 1 September 19CY(-2), for missing morning muster, in violation of Article 86, UCMJ.

The accused is not entitled to any awards, medals, or commendations, except the Sea Service Deployment Ribbon.

The record of trial is forwarded to the Navy-Marine Corps Appellate Review Activity (Code 40.2), Office of the Judge Advocate General, Washington Navy Yard, Washington, D.C. 20374-2002 for review under Article 66, UCMJ.

**D. D. DUCK**  
Captain, U.S. Navy  
Commander, Naval Surface Group FOUR  
Newport, Rhode Island

**DEPARTMENT OF THE NAVY**  
Naval Surface Group FOUR  
Newport, Rhode Island 02841-5030

26 Jul 19CY

In the case of Yeoman Seaman John Q. Public, 111-22-3333, U.S. Navy, the sentence is approved and, except for the part of the sentence extending to bad-conduct discharge, will be executed. The Navy Brig, Naval Station, Philadelphia, Pennsylvania, is designated as the place of confinement.

In accordance with Article 58a(a), UCMJ and JAGMAN, § 0145a(7), automatic reduction in rate to paygrade E-1 is effected as of the date of this action.

Synopsis of the accused's prior conduct as required by JAGMAN, § 0145a(5):

Conviction by special court-martial on 17 February 19CY(-1), for a violation of Article 85, UCMJ, desertion for a period of 10 days, for which a sentence of confinement for 2 months and forfeiture of \$200.00 pay per month for 2 months was finally approved.

In addition to the previous conviction considered by the court in this case, the accused was awarded 15 days restriction as a result of commanding officer's nonjudicial punishment on 5 August 19CY(-2), for missing morning muster, in violation of Article 86, UCMJ.

The accused is not entitled to any awards, medals, or commendations, except the Sea Service Deployment Ribbon.

The record of trial is forwarded to the Navy-Marine Corps Appellate Review Activity (Code 40.2), Office of the Judge Advocate General, Washington Navy Yard, Washington, D.C. 20374-2002 for review under Article 66, UCMJ.

D. D. DUCK  
Captain, U.S. Navy  
Commander, Naval Surface Group FOUR  
Newport, Rhode Island

CA's Action - Sentence adjudged by the court approved by the convening authority and all but the bad-conduct discharge ordered executed.

The following are completed samples of forms contained in Appendix 16, Manual for Courts-Martial:

The court adjudged a sentence of confinement for 6 months, forfeiture of \$200.00 pay per month for 6 months, and reduction to the grade of paygrade E-1.

Form 1. Adjudged sentence approved and ordered into execution without modifications.

In the case of Yeoman Seaman John Q. Public, U.S. Navy, the sentence is approved and will be executed. The Navy Brig, Naval Education and Training Center, Newport, Rhode Island, is designated as the place of confinement.

Form 2. Adjudged sentence approved in part (modified) and ordered executed.

In the case of Yeoman Seaman John Q. Public, U.S. Navy, only so much of the sentence as provides for confinement for 3 months and reduction to the grade of E-1 is approved and will be executed. The Navy Brig, Naval Education and Training Center, Newport, Rhode Island, is designated as the place of confinement.

NOTE: Since there is no mention of the forfeiture, it was not approved and SN Public will not forfeit his money. Also, the period of confinement was reduced from 6 months to 3 months.

Form 5 Adjudged sentence approved and entire sentence suspended.

In the case of Yeoman Seaman John Q. Public, U.S. Navy, the sentence is approved. Execution of the sentence is suspended for 6 months, at which time, unless the suspension is sooner vacated, the sentence will be remitted without further action.

Form 6. Adjudged sentence approved with part of the sentence suspended.

In the case of Yeoman Seaman John Q. Public, 111-22-3333, U.S. Navy, the sentence is approved and will be executed, however, the execution of that part of sentence extending to confinement is suspended for six months, at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action.

## PROMULGATING ORDERS

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### PROMULGATING ORDERS GENERALLY

This section contains sample promulgating orders for special courts-martial. A promulgating order publishes the results of a court-martial. The action taken by the convening authority in regards to a court-martial is published only when included as part of the promulgating order. The action of the convening authority on page 115 of your SJA Handbook has been entered verbatim in the promulgating order shown on page 119 of the Handbook.

The action of the convening authority is always prepared first and then entered verbatim in the promulgating order.

**DEPARTMENT OF THE NAVY**  
Naval Surface Group FOUR  
Newport, Rhode Island 02841-5061

26 Jul 19CY

**SPECIAL COURT-MARTIAL ORDER NO. 2-CY**

Yeoman Seaman John Q. Public, 111-22-3333, U.S. Navy, Naval Surface Group FOUR, Newport, Rhode Island, was arraigned at Naval Legal Service Office, Newport, Rhode Island, on the following offenses at a court-martial convened by this command.

**CHARGE I: ARTICLE 86. Plea: G. Finding: G.**

Specification: Unauthorized absence from his unit, USS Edson, from 4 April 19CY to his apprehension on 1 June 19CY. Plea: G. Finding: G.

**CHARGE II: ARTICLE 121. Plea: G. Finding: G.**

Specification: Larceny of a radio of a value of about \$125.00, the property of Fireman Stoke T. Coals, U.S. Navy. Plea: G. Finding: G.

**SENTENCE**

Sentence adjudged on 15 June 19CY: To be reduced to the grade of E-2, to be confined for 120 days, to forfeit \$200.00 pay per month for 4 months, and to be discharged from the naval service with a bad-conduct discharge.

**ACTION**

**DEPARTMENT OF THE NAVY**  
Naval Surface Group FOUR  
Newport, Rhode Island 02841-5061

26 Jul 19CY

In the case of Yeoman Seaman John Q. Public, 111-22-3333, U.S. Navy, only so much of the sentence as provides for reduction to the grade of E-2, confinement for 90 days, forfeiture of \$150.00 pay per month for 3 months, and a bad-conduct discharge is approved and, except for the part of the sentence extending to bad-conduct discharge, will be executed. The Navy Brig, Naval Education and Training Center, Newport, Rhode Island, is designated as the place of confinement.

In accordance with Article 58a(a), UCMJ and JAGMAN, § 0145a(7), automatic reduction in rate to paygrade E-1 is effected as of the date of this action.

Synopsis of the accused's prior conduct as required by JAGMAN, § 0145a(5):

Conviction by summary court-martial at which he was represented by lawyer counsel on 8 October 19CY(-2) for a violation of Article 121, UCMJ, wrongful appropriation of government property, for which a sentence of 1 month confinement and reduction to the grade of E-1 was finally approved. Conviction by special court-martial on 17 February 19CY(-1), for a violation of Article 86, UCMJ, unauthorized absence for a period of 27 days, for which a sentence of confinement for 1 month and forfeiture of \$50.00 pay per month for 2 months was finally approved.

In addition to the two previous convictions considered by the court in this case, the accused was awarded 15 days restriction as a result of commanding officer's nonjudicial punishment on 1 September 19CY(-2), for missing morning muster, in violation of Article 86, UCMJ.

The accused is not entitled to any awards, medals, or commendations, except the Sea Service Deployment Ribbon.

The record of trial is forwarded to the Navy-Marine Corps Appellate Review Activity (Code 40.2), Office of the Judge Advocate General, Washington Navy Yard, Washington, D.C. 20374-2002 for review under Article 66, UCMJ.

/s/ D. D. Duck  
D. D. DUCK  
Captain, U.S. Navy  
Commander, Naval Surface Group FOUR  
Newport, Rhode Island

R. U. GUILTY  
Lieutenant Commander, JAGC, U.S. Navy  
Staff Judge Advocate  
Naval Surface Group FOUR  
Newport, Rhode Island  
By direction of D. D. Duck  
Captain, U.S. Navy  
Commander, Naval Surface Group FOUR  
Newport, Rhode Island

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DEPARTMENT OF THE NAVY  
Naval Surface Group FOUR  
Newport, Rhode Island 02841-5061

26 Jul 19CY

SUPPLEMENTAL COURT-MARTIAL ORDER NO. 2A-CY

In the special court-martial case of Yeoman Seaman John Q. Public, 111-22-3333, U.S. Navy, the sentence to bad-conduct discharge, as promulgated in Special Court-Martial Order No. 2-CY, Commander, Naval Surface Group FOUR, Newport, Rhode Island, dated 26 Jul 19CY, has been affirmed by the Navy-Marine Corps Court of Military Review, NMCM CY 5464, dated 23 April 19CY(+1). Article 71(c) having been complied with, the bad-conduct discharge will be executed.

*T. H. Judge*

T. H. JUDGE

Lieutenant Commander, JAGC, U.S. Navy  
Naval Surface Group FOUR  
Newport, Rhode Island  
By direction of D. D. Duck  
Captain, U.S. Navy  
Commander, Naval Surface Group FOUR  
Newport, Rhode Island

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1 to USS SIMPSON (FFG 56)

## VACATION PROCEDURES

### PAGE

Chart -- Procedures for vacation of suspended sentences	123
Sample DD Form 455 -- Report of vacation proceedings (BCD GCM)	124

## PROCEDURES FOR VACATION OF SUSPENDED SENTENCES

### References:

Art. 72, UCMJ  
R.C.M. 1109

COURT-MARTIAL SENTENCE:	ANY GCM, BCD SPCM	NON-BCD SPCM, SCM
HEARING REQUIRED	Similar to Art. 32, UCMJ investigation	Similar to Art. 32, UCMJ investigation
RIGHT TO COUNSEL	Same as at GCM  No right to IMC	Same as at type of C-M which adjudged the sentence  No right to IMC
WHO MAY VACATE	OEGCMJ	OESPCMJ, OESCMJ
REQUIRED RECORD	Written statement of evidence and reasons for vacating	Written statement of evidence and reasons for vacating

The accused may be confined pending the decision to vacate the suspended sentence. Unless the proceedings are completed within 7 days, a preliminary hearing must be held by an independent officer to determine whether there is probable cause to believe that the accused has violated the conditions of the suspension.

The commencement of the proceedings to vacate the suspension interrupts the running of the period of suspension.

The hearing must be conducted personally by the officer exercising special/ summary court-martial jurisdiction over the probationer.

**REPORT OF PROCEEDINGS TO VACATE SUSPENSION OF A GENERAL COURT-MARTIAL SENTENCE  
OR OF A SPECIAL COURT-MARTIAL SENTENCE INCLUDING A BAD- CONDUCT DISCHARGE  
UNDER ARTICLE 72, UCMJ, and R.C.M. 1109**

<b>1a. TO: (Name of Officer exercising general court martial jurisdiction - Last, First, MI)</b>  LAWSON, James T.		<b>2a. FROM: (Name of Officer exercising special court martial jurisdiction - Last, First, MI)</b>  HARPER, James F.	
<b>b. TITLE</b> Commander		<b>b. TITLE</b> Commanding Officer	
<b>c. ORGANIZATION</b>  U.S. Sixth Fleet		<b>c. ORGANIZATION</b>  USS NEVERSAIL (AS 00)	
<b>3a. NAME OF PROBATIONER (Last, First, MI)</b>  LITTLE, Timothy L.	<b>b. RANK</b>  SHSR/USNR	<b>c. SSN</b>  123-45-6789	<b>d. ORGANIZATION</b>  USS NEVERSAIL (AS 00)
<b>4. DATA AS TO TRIAL BY COURT MARTIAL. ATTACH A COPY OF THE COURT MARTIAL ORDER AND ANY SUPPLEMENTARY ORDERS OR, IF NO COURT MARTIAL ORDER HAS BEEN PROMULGATED OR IS AVAILABLE, ATTACH A SUMMARY OF THE CHARGES AND SPECIFICATIONS, FINDINGS, SENTENCE, INITIAL ACTION, AND ANY SUPPLEMENTARY ACTIONS. ATTACH A COPY OF THE WRITTEN NOTICE OF SUSPENSION (see R.C.M. 1108(c)).</b>  Copy of Court-Martial Order and Copy of Written Notice of Suspension attached.			
<b>5. ALLEGED VIOLATION(S) OF THE CONDITIONS OF SUSPENSION. (BRIEF STATEMENT AND DATE. See R.C.M. 1108(c) AND 1109(a) CONCERNING THE CONDITIONS OF SUSPENSION.)</b>  Unauthorized absence from USS NEVERSAIL (AS 00) from on or about 30 June 19CY to on or about 1 August 19CY, in violation of Article 86, UCMJ.			
(Check appropriate answer)			YES NO
<b>6. PURSUANT TO THE PROVISIONS OF ARTICLE 72, UCMJ, AND R.C.M. 1109, A HEARING WAS HELD ON THE ALLEGED VIOLATION(S) OF THE CONDITIONS OF SUSPENSION.</b>			X
<b>7. BEFORE THE HEARING THE AUTHORITY CONDUCTING THE HEARING CAUSED THE PROBATIONER TO BE NOTIFIED OF (see R.C.M. 1109(d)(1)(B)).</b>			X
<b>a. THE TIME, PLACE, AND PURPOSE OF THE HEARING.</b>			X
<b>b. THE RIGHT TO BE PRESENT AT THE HEARING.</b>			X
<b>c. THE ALLEGED VIOLATION(S) OF THE CONDITIONS OF SUSPENSION AND THE EVIDENCE EXPECTED TO BE RELIED ON.</b>			X
<b>d. THE RIGHT TO BE REPRESENTED AT THE HEARING BY CIVILIAN COUNSEL PROVIDED BY THE PROBATIONER OR, UPON REQUEST, BY MILITARY COUNSEL DETAILED FOR THIS PURPOSE.</b>			X
<b>e. THE OPPORTUNITY TO BE HEARD, TO PRESENT WITNESSES AND OTHER EVIDENCE, AND THE RIGHT TO CONFRONT AND CROSS EXAMINE ADVERSE WITNESSES UNLESS THE HEARING OFFICER DETERMINES THAT THERE IS GOOD CAUSE FOR NOT ALLOWING CONFRONTATION AND CROSS-EXAMINATION.</b>			X
<b>8a. THE PROBATIONER REQUESTED DETAILED MILITARY COUNSEL.</b>			X
<b>b. NAME OF DETAILED COUNSEL (Last, First, MI)</b>  CRANE, Ika B.	<b>c. RANK</b> LT/JAGC USN	<b>d. ORGANIZATION</b> Naval Legal Service Office Naples, Italy	
<b>e. DETAILED COUNSEL WAS QUALIFIED WITHIN THE MEANING OF ARTICLE 27(b), UCMJ, and R.C.M. 502(d).</b>			X
<p><small>NOTE: If this form is used and additional space is required for any item, enter the additional material in Block 18 or on a separate sheet. Identify such material with the proper heading. Example: "Jd)". Securely attach any additional sheet(s) and add a note in the appropriate item. "See Block 18" or "See additional sheet." This form may be used to vacate a suspended special court-martial sentence not including a bad-conduct discharge or a suspended summary court martial sentence under R.C.M. 1109(e) by lining through or altering the form, as appropriate.</small></p>			

(Check appropriate answer)		YES	N
9. THE PROBATIONER INDICATED THAT HE SHE WOULD BE REPRESENTED BY CIVILIAN COUNSEL PROVIDED BY HIM/HER			X
b. NAME OF CIVILIAN COUNSEL (Last, First, MI)	c. ADDRESS OF CIVILIAN COUNSEL		
d. ENTRY OF APPEARANCE BY PROBATIONER'S CIVILIAN COUNSEL I HEREBY ENTER MY APPEARANCE FOR THE ABOVE NAMED PROBATIONER AND REPRESENT THAT I AM A MEMBER IN GOOD STANDING OF THE FOLLOWING BAR(S) (LIST) OR LICENSED OR OTHERWISE AUTHORIZED TO PRACTICE LAW (EXPLAIN) (see R.C.M. 502(d)(3) CONCERNING QUALIFICATIONS)			
e. SIGNATURE OF COUNSEL	f. DATE		
10a. DETAILED COUNSEL OR CIVILIAN COUNSEL WAS PRESENT THROUGHOUT THE PROCEEDINGS. (If probationer waives the right to have counsel present throughout part or all of the proceedings after requesting detailed counsel or employing civilian counsel, complete b below.)		X	
b. STATE CIRCUMSTANCES AND SPECIFIC PROCEEDINGS CONDUCTED IN ABSENCE OF COUNSEL			
11. (To be signed by probationer if answer to items 8 or 9 was "No." If probationer fails to sign, the hearing officer shall explain in item 18.) I have been informed and understand my right under R.C.M. 1109(d) to representation at this hearing by civilian counsel provided by me or, upon request, by detailed military counsel. I hereby knowingly waive my right to such: a. <input type="checkbox"/> Detailed Counsel      b. <input checked="" type="checkbox"/> Civilian Counsel			
c. SIGNATURE OF PROBATIONER <i>Timothy L. Little</i>	d. DATE 4 August 19CY		
12a. THE PROBATIONER WAS AFFORDED THE RIGHT TO OBTAIN WITNESSES AND PRODUCE EVIDENCE (see R.C.M. 405(g)).		X	
b. IN THE PRESENCE OF PROBATIONER I QUESTIONED UNDER OATH ALL AVAILABLE WITNESSES AND EXAMINED DOCUMENTARY AND REAL EVIDENCE FOR BOTH SIDES. ANY DOCUMENTS AND REAL EVIDENCE WERE SHOWN TO THE PROBATIONER.		X	
c. THE PROBATIONER WAS AFFORDED THE RIGHT TO CROSS-EXAMINE ALL AVAILABLE WITNESSES.		X	
d. I HAVE SUMMARIZED THE EVIDENCE CONSIDERED IN EXHIBIT <u>1</u>		X	
e. THE FOLLOWING WITNESSES REQUESTED BY THE ACCUSED WERE NOT AVAILABLE UNDER R.C.M. 405(g) FOR THE REASONS INDICATED. (Explain why requested witnesses were unavailable and any alternatives to testimony under R.C.M. 405(g)(4) used.)			
NAME (Last, First, MI)	REASON UNAVAILABLE	ALTERNATIVES	
13. AFTER HAVING BEEN INFORMED OF THE RIGHT TO REMAIN SILENT OR MAKE A STATEMENT, THE PROBATIONER			
a. INDICATED THAT HE <del>WAS</del> DID NOT WISH TO MAKE A STATEMENT.		X	
b. MADE A STATEMENT SUMMARIZED IN EXHIBIT _____			

(Which appropriate answer)		YES	NO
14a. THERE ARE REASONABLE GROUNDS TO BELIEVE THAT THE PROBATIONER NOW OR AT THE TIME OF THE ALLEGED VIOLATION WAS NOT MENTALLY RESPONSIBLE (see R.C.M. 916(k)) OR IS NOW INCOMPETENT TO PARTICIPATE IN THE VACATION PROCEEDING (see R.C.M. 909).			X
b. INDICATE THE GROUNDS FOR SUCH BELIEF AND THE ACTION TAKEN.			
c. A REPORT OF MEDICAL OFFICERS UNDER R.C.M. 706 IS ATTACHED IN EXHIBIT _____.			X
15. IF PROBATIONER WAS CONFINED PENDING VACATION PROCEEDINGS UNDER R.C.M. 1109(c)			
a. I FIND THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PROBATIONER VIOLATED THE CONDITIONS OF SUSPENSION.		X	
b. I DO NOT FIND THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PROBATIONER VIOLATED THE CONDITIONS OF SUSPENSION AND ORDER HIS/HER RELEASE UNDER R.C.M. 1109(d)(1)(E).			
16. RECOMMENDATION OF THE OFFICER EXERCISING SPECIAL COURT-MARTIAL JURISDICTION OVER THE PROBATIONER.			
a. I RECOMMEND THAT THE SUSPENSION OF THE SENTENCE BE VACATED. (Indicate type and amount of punishment, if any, to be vacated.) Bad conduct discharge and confinement for 11 months.		X	
b. I RECOMMEND THAT THE PROCEEDINGS TO VACATE SUSPENSION BE DROPPED.			X
c. I RECOMMEND (state other recommendation):			
17a. NAME OF OFFICER EXERCISING SPECIAL COURT-MARTIAL JURISDICTION OVER PROBATIONER	b. RANK	c. ORGANIZATION	
James F. Harper	CAPT/USN	USS NEVERSAIL (AS 00)	
3. SIGNATURE		6. DATE	
<i>James F. Harper</i>		6 August 19CY	
18. REMARKS			
<p>The testimony of LT R. B. Snodgrass, SC, USN, Supply Officer, USS NEVERSAIL (AS-00) establishes that the probationer was an unauthorized absentee during the time alleged; (Exhibit 1). Given the fact that this occurred during the period of suspension in this case, and therefore is a violation of the conditions of suspension. I recommend that the suspension of the bad conduct discharge and confinement for 11 months in this case be vacated and that the punishment be executed.</p>			

REMARKS (CONTINUED)

(Check appropriate answer)

15. DECISION OF THE OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION OVER PROBATIONER.

YES

NO

a. VACATE SUSPENSION OF THE SENTENCE TO (specify type/amount of punishment to be vacated):

Bad conduct discharge and confinement for 11 months.

X

b. NOT TO VACATE

c. OTHER (specify)

d. IF DECISION IS TO VACATE, INDICATE EVIDENCE RELIED ON:

The undisputed testimony of LT R. B. Snodgrass, SC, USN, clearly establishes the fact that SHSR Little was, in fact, an unauthorized absentee during the period alleged. The probationer has not presented any evidence which would tend to disprove the alleged violation nor any matters in extenuation or mitigation.

e. IF DECISION IS TO VACATE, INDICATE REASONS FOR VACATING

The conduct of the probationer, particularly in light of the opportunity given him to redeem himself by suspending the punishment awarded at court-martial, is of such a serious nature as to warrant vacation of the suspended bad conduct discharge and confinement.

20a. NAME OF OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION OVER PROBATIONER

James T. Lawson

b. RANK

VADM/USN

c. ORGANIZATION

U.S. Sixth Fleet

d. SIGNATURE

James T. Lawson

e. DATE

8 August 19CY



## SEARCH AND SEIZURE/DRUG ABUSE DETECTION

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### PROBABLE CAUSE CHECKLIST

When faced with a request by an investigator to authorize a search, what should you know before you make the authorization? The following considerations are provided to aid you.

1. Find out the name and duty station of the applicant requesting the search authorization.
2. Administer an oath to the person requesting authorization. A recommended format for the oath is set forth below:

"Do you solemnly swear (or affirm) that the information you are about to provide is true to the best of your knowledge and belief, so help you God?"

3. What is the location and description of the premises, object, or person to be searched? Ask yourself:
  - a. Is the person or area one over which I have jurisdiction?
  - b. Is the person or place described with particularity?
4. What facts do you have to indicate that the place to be searched and property to be seized is actually located on the person or in the place your information indicates it is?
5. Who is the source of this information?
  - a. If the source is a person other than the applicant who is before you (that is, an informant), see the attached addendum on this subject.
  - b. If the source is the person you are questioning, proceed to question 6 immediately. If the source is an informant, proceed to question 6 after completing the procedure on the addendum.
6. What training have you had in investigating offenses of this type or in identifying this type of contraband?
7. Is there any further information you believe will provide grounds for the search for, and seizure of, this property?
8. Are you withholding any information you possess on this case which may affect my decision on this request to authorize the search?

If you are satisfied as to the reliability of the information and that of the person from whom you receive it, and you then entertain a reasonable belief that the items are where they are said to be, then you may authorize the search and seizure. It should be done along these lines:

"(Applicant's name), I find that probable cause exists for the issuance of an authorization to search (location or person)\* for the following items: (Description of items sought)"\*

- \* SEE page 130 describing the area/person to be searched and items to be seized.

### SEARCHES: INFORMANT CHECKLIST

1. First inquiry. What forms the basis of his or her knowledge? You must find what facts (not conclusions) were given by the informant to indicate that the items sought will be in the place described.
2. Then you must find that either the informant is reliable or his information is reliable.
  - a. Questions to determine the informant's reliability:
    - (1) How long has the applicant known the informant?
    - (2) Has this informant provided information in the past?
    - (3) Has the provided information always proven correct in the past?  
Almost always? Never?
    - (4) Has the informant ever provided any false or misleading information?
    - (5) (If drug case) Has the informant ever identified drugs in the presence of the applicant?
    - (6) Has any prior information resulted in conviction? Acquittal? Are there any cases still awaiting trial?
    - (7) What other situational background information was provided by the informant that substantiates believability (e.g., accurate description of interior of locker room, etc.)?
  - b. Questions to determine that the information provided is reliable:
    - (1) Does the applicant possess other information from known reliable sources, which indicates what the informant says is true?
    - (2) Do you possess information (e.g., personal knowledge) which indicates what the informant says is true?

## SPECIFICITY CHECKLIST

Requirement of specificity: No valid search authorization will exist unless the place to be searched and the items sought are particularly described.

1. Description of the place or the person to be searched.

- a. Persons. Always include all known facts about the individual, such as name, rank, SSN, and unit. If the suspect's name is unknown, include a personal description, places frequented, known associates, make of auto driven, usual attire, etc.
- b. Places. Be as specific as possible, with great effort to prevent the area which you are authorizing to be searched from being broadened, giving rise to a possible claim of the search being a "fishing expedition."

2. What can be seized. Types of property and sample descriptions. The basic rule: Go from the general to the specific description.

- a. Contraband: Something which is illegal to possess.

Example: "Narcotics, including, but not limited to, heroin, paraphernalia for the use, packaging, and sale of said contraband, including, but not limited to, syringes, needles, lactose, and rubber tubing."

- b. Unlawful weapons: Weapons made illegal by some law or regulation.

Example: Firearms and explosives including, but not limited to, one M-60 machine gun, M-16 rifles, and fragmentation grenades.

- c. Evidence of crimes

(1) Fruits of a crime

Example: "Household property, including, but not limited to, one G.E. clock, light-blue in color, and one Sony fifteen-inch, portable, color TV, tan in color with black knobs."

(2) Tools or instrumentalities of crime. Property used to commit crimes.

Example: "Items used in measuring and packaging of marijuana for distribution, including, but not limited to, cigarette rolling machines, rolling papers, scales, and plastic baggies."

(3) Evidence which may aid in a particular crime solution: helps catch the criminal.

Example: "Papers, documents, and effects which show dominion and control of said area, including, but not limited to, canceled mail, stenciled clothing, wallets, receipts."

## URINALYSIS CHECKLIST

Each urinalysis should be conducted with the understanding that positive samples could result in administrative or disciplinary action. Collection procedures should be designed to avoid problems during administrative and disciplinary proceedings.

At court-martial, the trial counsel must establish that the positive urine sample originated with the accused. During the government's case, the military judge or members, as factfinders, will closely scrutinize the command's procedures.

Based upon courtroom experience, certain procedures have proven to be most effective in establishing the source of the urine sample.

The unit coordinator should:

1. Ask for the member's ID card.
2. Compare the ID picture with the face of the member.
3. Copy the social security number from the ID card onto the urinalysis label and chain of custody.
4. Copy the name and social security number from the card into the urinalysis ledger.
5. Allow the subject to verify the label information and chain of custody form.
6. Place the label on a urine sample bottle and hand bottle to member for production of a sample under supervision of observer.
7. When member returns the sample, ask the member if the bottle contains his/her urine.
8. Again, allow member to verify the information on the label, chain of custody form, and ledger.
9. Have subject initial label.
10. Take sample bottle from bottom to confirm that it is warm.
11. Have member sign ledger.
12. Have observer sign ledger.
13. Have coordinator sign ledger.
14. Place bottle in original cardboard container.
15. After collecting all samples, sign the chain of custody document as releaser and hand carry/send samples to the appropriate screening laboratory.

The observer should:

1. Walk with member from unit coordinator's table to the head.
2. Ensure male members use urinal only. If there are two urinals, side-by-side, only one member should provide a sample at any one time. If there are more than two urinals, no more than two members should give samples at one time and each should use one of the two end urinals. If member is female, keep the stall door open.
3. Stand and clearly view the urine actually entering the bottle.
4. Accompany the member back to the unit coordinator's table.
5. Initial the ledger.
6. Sign the ledger.

If the above procedures are followed, an accused has difficulty claiming that the sample was not personally produced. At the court-martial, trial counsel will be able to call the unit coordinator and observer as witnesses to introduce the ledger, chain of custody document, and urine sample bottle into evidence. In addition, a diagram of the urinalysis area may be offered to show the relevant distances.

Problems arise in the following situations:

1. When one individual tries to observe multiple members at one time.
2. When the observer is unprepared.
3. When the observer fails to initial the ledger.
4. When the observer fails to sign the ledger, or no ledger is maintained.
5. When the member is absent at the time that the label is finally attached to the bottle.
6. When the observer does not accompany the member from the unit coordinator's table to the head and back.
7. When the same exact procedures are not used on every member.
8. When an atmosphere of confusion surrounds the collection.
9. When only the last four digits of the social security number are printed on the label.

Be aware that urinalysis cases take approximately 3 months from collection to trial. If the observer was only TAD to the testing command at the time of collection, the observer may have to return to his/her parent command by trial. Also, if the observer or unit coordinator is planning to transfer or deploy within 3 months of the urinalysis, he/she may be unavailable for trial. In all these cases, personnel may have to return to testify at convening authority expense. In addition, you should refer to Appendix A or enclosure (4) to OPNAVINST 5350.4A to determine the use of drug urinalysis results for administrative/disciplinary purposes.

USE OF DRUG URINALYSIS RESULTS

	Usable in disciplinary proceedings	Usable as basis for separation	Usable for (other than honorable) characterization of service
1. Search or Seizure -	YES	YES	YES
- member's consent	YES	YES	YES
- probable cause	YES	YES	YES
2. Inspection			
- random sample	YES	YES	YES
- unit sweep	YES	YES	YES
3. Medical - general diagnostic purposes (e.g., emergency room treatment, annual physical exam, etc.)	YES	YES	YES
4. Fitness for duty			
- command-directed	NO	YES	NO
- competence for duty	NO	YES	NO
- aftercare testing	NO	YES	NO
- surveillance	NO	YES	NO
- evaluation	NO	YES	NO
- mishap/safety investigation	NO	NO	NO
5. Service directed			
- rehab. facility staff (military members)	YES	YES	YES
- drug/alcohol rehab testing	NO	YES	NO
- PCS overseas, Naval Brigs, "A" school	YES	YES	YES
- Accession (entrance test)	NO	YES	NO

Appendix A to  
Enclosure (4)

URINALYSIS CONSENT FORM

I, \_\_\_\_\_, have been requested to provide a urine sample. I have been advised that:

(1) I am suspected of having unlawfully used drugs;

(2) I may decline to consent to provide a sample of my urine for testing;

(3) if a sample is provided, any evidence of drug use resulting from urinalysis testing may be used against me in a court-martial.

I consent to provide a sample of my urine. This consent is given freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness' Signature

\_\_\_\_\_  
Date



## DRUG SCREENING LABS

<u>Address</u>	<u>Telephone/Message Address</u>
Commanding Officer Navy Drug Screening Laboratory Naval Air Station Jacksonville, FL 32214-5240	AUTOVON: 942-2959 Commercial: (904) 772-2497 NAVDRUGLAB JACKSONVILLE FL
Commanding Officer Navy Drug Screening Laboratory Bldg. 38-H Great Lakes, IL 60088-5223	AUTOVON: 792-3701 Commercial: (312) 688-6862 NAVDRUGLAB GREAT LAKES IL
Commanding Officer Navy Drug Screening Laboratory Naval Air Station, Bldg. S-33 Norfolk, VA 23511-6295	AUTOVON: 564-8089 Commercial: (804) 444-8120 NAVDRUGLAB NORFOLK VA
Commanding Officer Navy Drug Screening Laboratory Bldg. 65, 8750 Mountain Blvd. Oakland, CA 94627-5050	AUTOVON: 855-6184 Commercial: (415) 633-6175 NAVDRUGLAB OAKLAND CA
Commanding Officer Navy Drug Screening Laboratory Naval Hospital, Bldg. 10-2 San Diego, CA 92134-6900	AUTOVON: 987-2371 Commercial: (619) 233-2349 NAVDRUGLAB SAN DIEGO CA

## AREAS OF RESPONSIBILITY

NDSL Jacksonville: Those units designated by CINCLANTFLT or CMC and those undesignated units in geographic proximity.

NDSL Great Lakes: All activities assigned to CNET, all USMC accession points as designated by CMC, and selected naval activities located in the Great Lakes area.

NDSL Norfolk: Those units designated by CINCLANTFLT, CMC, or CINCUSNAVEUR and those undesignated units in geographic proximity.

NDSL Oakland: Those units designated by CINCPACFLT or CMC and those undesignated units in geographic proximity.

NDSL San Diego: Those units designated by CINCPACFLT or CMC and those undesignated units in geographic proximity.

NOTE: Recruit Training Centers will send recruit accession specimens to the geographically nearest NDSL for confirmation testing.

REQUEST FOR AUTHORIZATION TO CONDUCT SEARCH AND SEIZURE  
REQUEST FOR AUTHORIZATION TO CONDUCT SEARCH AND SEIZURE

WITH THE UNITED STATES ARMED FORCES AT Newport County, Newport,  
Rhode Island, Continental USA  
(Location)

1. I, Robert T. Jacobs, Naval Investigative Service Resident Agency, Newport, RI  
(Name) (Organization or Address)

having first been duly sworn, state that: larceny of a Panasonic AM/FM radio  
Model RF-593, SN 00610, with a broken antenna from YN2 Douglas  
Wright, USN, on 10 January 19CY has been committed.

2. I further state that: BM1 Jonathan P. Rhodes was visiting YN2 Richard R.  
Blue in Bldg 346, Rm 13B, NETC, Newport, RI, on 15 Jan CY. BM1  
Rhodes saw a Panasonic AM/FM radio with a broken antenna which  
fit the description of a radio stolen from YN2 Douglas Wright.  
BM1 Rhodes informed me via phone conversation what he had witnessed.  
I talked with BM1 Rhodes on 15 Jan CY in my office, and he  
again went over the facts in more detail. BM1 Rhodes' CO  
informed me that BM1 Rhodes is a very trustworthy individual.

3. In view of the foregoing, the undersigned requests that permission be granted for the search of  
YN1 John T. Green's living area and wall locker, Bldg 346,  
(The person)

Rm 13B, NETC, Newport, Rhode Island,  
(and) (The quarters or billets) (and)

and seizure of a Panasonic AM/FM radio  
(The automobile) (Items searched for)  
Model RF-593, SN 00610

Robert T. Jacobs  
(Signature)  
ROBERT T. JACOBS  
NIS, Newport, Rhode Island  
Typed name and organization)

## J U R A T

I, SA James Q. Summerville, do hereby certify that the foregoing request for authorization to conduct search and seizure was subscribed and sworn to before me this 16th day of Jan, 19 CY, by SA Robert T. Jacobs, who is known to me to be a Special Agent.  
(Name of person making statement) (Status)\*  
with the U.S. Armed Forces.

And I do further certify that I am on this date empowered to administer oaths by authority of

Article 136, UCMJ

(Authority)\*

James Q. Summerville  
(Signature)

JAMES Q. SUMMERVILLE, GS7, SA

(Typed name, grade, and Branch of Service)

Naval Investigative Service Resident Agency  
Newport, Rhode Island

(Command or Organization)

## INSTRUCTIONS

1. Insert Country, State, and County in which request is acknowledged. If military considerations preclude disclosure of exact place of execution, insert "In a Foreign Country" or "In a possession of the United States outside of the continental United States."
2. In paragraph 1, set forth a concise factual statement of the offense that has been committed or the probable cause to believe that it has been committed. Use additional pages if necessary.
3. In paragraph 2, set forth facts establishing probable cause for believing that the person, premises, or place to be searched and the property to be seized are connected with the offense mentioned in paragraph 1, plus facts establishing probable cause to believe that the property to be seized is presently located on the person, premises, or place to be searched. The facts stated in paragraphs 1 and 2 must be based on either the personal knowledge of the person signing the request, or on hearsay information which he has plus the underlying circumstances from which he has concluded that the hearsay information is trustworthy. If the information is based on personal knowledge, the request should so indicate. If the information is based on hearsay information, paragraph 2 must set forth some of the underlying circumstances from which the person signing the request has concluded that the informant, whose identity need not be disclosed, or his information was trustworthy. Use additional pages if necessary.
4. In paragraph 3, the person, premises, or place to be searched and the property to be seized should be described with particularity and in detail. The types of items which may be seized are set forth in M.R.E. 316(d), MCM, 1984.
5. "U.S. Armed Forces member on active duty," or "the spouse of a U.S. Armed Force member," or "a person serving with the Armed Forces," or other appropriate description of status.
6. "Manual of the Judge Advocate General of the Navy, section 2502a(4)(b)," or "Art. 136, UCMJ," or other appropriate authority.

DEPARTMENT OF THE NAVY  
**AFFIDAVIT FOR SEARCH AUTHORIZATION**

UNITED STATES OF AMERICA

VS.

Yeoman First Class John T. Green, U.S. Navy

Before the Commander, Naval Education and Training Center, Newport,  
*(Identify person by title and command)*  
Rhode Island

The undersigned, being duly sworn, requests authority to search:

*(Identify the person and/or describe the premises with particularity and in detail)*

Living area and wall locker of YN1 John T. Green, Building 346,  
Room 13B, Naval Education and Training Center, Newport, Rhode  
Island

Believing that there is now being concealed certain property, namely:

*(Here describe the property)*

Panasonic AM/FM Radio, Model RF-593, SN 00610, with a broken  
antenna

The request for authorization to search and seize is made in connection with an investigation into  
the offense(s) of:

Article 121: Larceny

The facts and circumstances known to me tending to establish the foregoing grounds for authoriza-  
tion to search and seize, including comments demonstrating the reliability of the information and/or  
informant, are as follows:

*(Attach separate, sworn affidavit if more space needed)* SA Robert T. Jacobs was informed by BM1  
Jonathan Rhodes that BM1 Rhodes had been visiting YN2 Richard R.  
Blue on 15 Jan CY. YN2 Blue shares Rm 13B, Bldg 346, NETC,  
Newport, RI with YN1 John T. Green. BM1 Rhodes saw a Panasonic  
AM/FM radio of the same description which YN2 Douglas Wright had  
reported stolen. BM1 Rhodes immediately notified SA Jacobs. BM1  
Rhodes' Commanding Officer states BM1 Rhodes is a very trustworthy  
individual.

Robert T. Jacobs  
Signature of Affiant

Sworn to before me, and subscribed in my presence, this 16th day of January 19 CY

Patricia D. Fields  
Signature of Person Administering Oath

Capt, USN, Commander  
Rank, Service, Title

RECORD OF AUTHORIZATION FOR SEARCH (See JAGMAN 0177a(3))

RECORD OF AUTHORIZATION FOR SEARCH

1. At 1340 hours on 16 January 19CY I was approached  
Time Date  
by Robert T. Jacobs  
Name  
In his capacity as Special Agent, Naval Investigative Service who having  
Duty  
been first duly sworn,<sup>2</sup> advised me that he suspected YN1 John T. Green, USN  
Name  
of Article 121, UCMJ, larceny and requested permission to search his ~~bag~~  
Offense  
Wall locker and living area Panasonic AM/FM Radio,  
Bldg 346, Rm 13B, NETC for Model RF-593, SN 00610  
Object or place<sup>3</sup> Items<sup>4</sup>

2. The reasons given to me for suspecting the above named person were: <sup>5</sup>

On 15 Jan CY, BM1 Jonathan P. Rhodes, USN, was visiting YN2 Richard R. Blue,  
USN. YN2 Blue lives in Rm 13B, Bldg 346, NETC, Newport, RI. His roommate  
is YN1 John T. Green. While in Rm 13B, Bldg 346, BM1 Rhodes observed a  
radio in YN1 Green's area. It was a small Panasonic radio with a broken  
antenna. BM1 Rhodes was aware through a conversation with YN2 Douglas  
Wright, that YN2 Wright's radio had been stolen early in January 19CY. YN2  
Wright had described his radio to BM1 Rhodes as a Panasonic with a broken  
antenna.

3. After carefully weighing the foregoing information, I was of the belief that the crime of  
larceny [had been] ~~[was being]~~ ~~[was about to be]~~ committed.  
that YN1 John T. Green, USN was the likely perpetrator thereof, that a search of  
the object or area stated above would probably produce the items stated and that such items were [the fruits  
of crime] ~~[the object or area stated above would probably produce the items stated and that such items were the fruits of crime]~~.

RECORD OF AUTHORIZATION FOR SEARCH (continued)

4. I have therefore authorized Special Agent Robert T. Jacobs, NIS to

search the place named for the property specified, and if the property be found there, to seize it.

Captain

Grade

Patricia D. Fields

Signature

Commander, Naval  
Education and Training Center  
Newport, Rhode Island

Title

16 January 19CY

1440 hours

Date and time

INSTRUCTIONS

1. Although the person bringing the information to the attention of the individual empowered to authorize the search will normally be one in the execution of investigative or police duties, such need not be the case. The information may come from one as a private individual.
2. Other than his/her own prior knowledge of facts relevant thereto, all information considered by the individual empowered to authorize a search on the issue of probable cause must be provided under oath or affirmation. Accordingly, prior to receiving the information which purports to establish the requisite probable cause, the individual empowered to authorize the search will administer an oath to the person(s) providing the information. An example of an oath is as follows: Do you solemnly swear (or affirm) that the information you are about to provide is true to the best of your knowledge and belief, so help you God? (This requirement does not apply when all information considered by the individual empowered to authorize the search, other than his/her prior personal knowledge, consists of affidavits or other statements previously duly sworn to before another official empowered to administer oaths.)
3. The area or place to be searched must be specific, such as wall locker, wall locker and locker box, residence, or automobile.
4. A search may be authorized only for the seizure of certain classes of items: (1) Fruits of a crime (the results of a crime such as stolen objects); (2) Instrumentalities of a crime (example: search of an automobile for a crowbar used to force entrance into a building which was burglarized); (3) Contraband (items, the mere possession of which is against the law -- marijuana, etc.); (4) Evidence of crime (example: bloodstained clothing of an assault suspect).
5. Before authorizing a search, probable cause must exist. This means reliable information that would lead a reasonably prudent and cautious man to a natural belief that:
  - a. An offense probably is about to be, is being, or has been committed; and
  - b. Specific fruits or instrumentalities of the crime, contraband or evidence of the crime exist; and
  - c. Such fruits, instrumentalities, contraband, or evidence are probably in a certain place.

In arriving at the above determination it is generally permissible to rely on hearsay information, particularly if it is reasonably corroborated or has been verified in some substantial part by other facts or circumstances. However, unreliable hearsay cannot alone constitute probable cause, such as where the hearsay is several times removed from its source or the information is received from an anonymous telephone call. Hearsay information from an informant may be considered if the information is reasonably corroborated or has been verified in some substantial part by other facts, circumstances or events. The mere opinion of another that probable cause exists is not sufficient; however, along with the pertinent facts, it may be considered in reaching the conclusion as to whether or not probable cause exists. If the information available does not satisfy the foregoing, additional investigation to produce the necessary information may be ordered.

DEPARTMENT OF THE NAVY

**COMMAND AUTHORIZATION FOR SEARCH AND SEIZURE**

UNITED STATES OF AMERICA

VS.

Yeoman First Class John T. Green, U.S. Navy

To Special Agent Robert T. Jacobs

Affidavit(s) having been made before me by Special Agent Robert T. Jacobs

That there is reason to believe that on the person of and/or on the premises known as:

*Identify the person and/or describe the premises with particularity and in detail*

Living area and wall locker of YN1 John T. Green, USN, Bldg 346, Room 13B, Naval Education and Training Center, Newport, Rhode Island

which is/are under my jurisdiction,

There is now being concealed certain property, namely:

*Here describe the property*

Panasonic AM/FM Radio, Model RF-593, SN 00610, with a broken antenna

I am satisfied that there is probable cause to believe that the property so described is being concealed on the person and/or premises above described and that grounds for application for issuance of a command authorized search exist as stated in the supporting affidavit(s).

**YOU ARE HEREBY AUTHORIZED TO SEARCH** the person and/or place named for the property specified and if the property is found there to seize it, leaving a copy of this authorization and receipt for the property taken. You will provide a signed receipt to this command, containing a full description of every item seized.

Any assistance desired in conducting this search will be furnished by this command.

Dated this 16th day of January 19 CY

*Patricia D. Fields*

*Signature of Person Authorizing Search*

Capt, USN, Commander

*Rank, Service Title*

Naval Education and Training Center  
Newport, Rhode Island

*Command*

CONSENT TO SEARCH (See JAGMAN 0177a(3))

CONSENT TO SEARCH

I, YN1 John T. Green, USN, have been advised that inquiry is being made in connection with larceny of a Panasonic AM/FM Radio from  
YN2 Douglas Wright, USN, on 10 January 19CY.

I have been advised of my right not to consent to a search of [my person] [the premises mentioned below].

I hereby authorize SA Robert T. Jacobs  
\_\_\_\_\_ and \_\_\_\_\_, who  
[has] ~~have been~~ identified to me as a Special Agent, GS6, with Naval  
Investigative Service Resident Agency, Newport, RI  
Position(s)

to conduct a complete search of my ~~person~~ [residence] ~~motor vehicle~~ [wall locker] ~~xxxxxxxxxx~~  
~~xxxxxxxxxx~~ located at Building 346, Rm 13B, Naval Education and  
Training Center, Newport, Rhode Island.

I authorize the above listed personnel to take from the area searched any letters, papers, materials, or other property which they may desire. This search may be conducted on 16 January 19CY  
date

This written permission is being given by me to the above named personnel voluntarily and without threats or promises of any kind.

John T. Green  
Signature

WITNESSES

Robert T. Jacobs  
\_\_\_\_\_



## SAMPLE SEARCH AND SEIZURE INSTRUCTION

### INSTRUCTION 5510.3A

Subj: SEARCHES AND SEIZURES

Ref: (a) Mil.R.Evid. 315

1. Purpose. To establish the authority of various members of the U.S. Naval Ballistics Command to order searches of persons and property and to promulgate regulations and guidelines governing such searches.

2. Cancellation. NAVBALCOM Instruction 5510.3 is hereby cancelled.

3. Objective. To insure that every search conducted by members of this command is performed in accordance with the law. For purposes of this instruction, "search" is defined as a quest for incriminating evidence.

4. Authority

(a) Reference (a), as modified by court decision, authorizes a commanding officer to order searches of:

(1) Persons subject to military law and to his authority;

(2) persons, including civilians, situated on or in a military installation, encampment, vessel, aircraft, vehicle, or any other location under his control;

(3) privately owned property situated on or in a military installation, encampment, vessel, aircraft, vehicle, or any other location under his control;

(4) U.S. Government-owned or controlled property under his jurisdiction, which has been issued to an individual or group of individuals for their private use;

(5) all other U.S. Government-owned or controlled property under his jurisdiction; and

(6) in foreign countries, persons subject to military law and to his authority and any property of such persons located anywhere in the foreign country.

(b) As to property described in paragraph 4(a)(5) above, a search may be conducted at any time, by anyone in military authority on the scene, for any reason, or for no reason at all. Any property seized as a result of such a search will be handled in accordance with paragraph 7 herein.

(c) Items or other evidence seized as a result of a search of persons or property falling within paragraphs 4(a)(1), (2), (3), or (4) above, will be admissible in a subsequent court proceeding only if the search was based on probable cause.

This means that, before the search is ordered, the person ordering the search is in possession of facts and information, more than mere suspicion or conclusions provided to him by others, which would lead a reasonable person to believe that: (a) An offense has been committed; and (b) the proposed search will disclose an unlawful weapon, contraband, evidence of the offense or of the identity of the offender, or anything that might be used to resist apprehension or to escape.

(d) Before deciding whether to order any search of persons or property described in paragraphs 4(a)(1), (2), (3), or (4) above, the officer responsible is required to take all reasonable steps consistent with the circumstances to ensure that his source of information is reliable and that the information available to him is complete and correct. He must then decide whether such information constitutes probable cause as defined above. In making this determination, the responsible officer is exercising a judicial, as opposed to a disciplinary, function.

(e) Ordinarily the Commanding Officer, U.S. Naval Ballistics Command, will be the officer responsible for authorizing searches of persons or property described in paragraphs 4(a)(1), (2), (3), or (4), above, in this command. If the commanding officer is unavailable and full command responsibilities have devolved to another (normally the executive officer), that person then exercising full command responsibilities is permitted to authorize searches and seizures.

## 5. Criteria

(a) When so acting, the individual empowered to authorize searches will exercise discretion in deciding whether to order a search in accordance with the general criteria set forth above. No search will be ordered without a thorough review of the information to determine that probable cause, where required, exists. Due consideration will be given to the advisability of posting a guard or securing a space to prevent the tampering with or alteration of spaces while a further inquiry is conducted to effect a more complete development of the facts and circumstances giving rise to the request for a search.

(b) The following examples are intended to assist the responsible officer in placing the persons or property to be searched within the proper category (set forth in paragraph 4(a), above):

(1) Members of the armed forces and civilians accompanying armed forces in a combat zone in time of war;

(2) all persons, servicemembers and civilians, situated on or in a military installation, encampment, vessel, aircraft, or vehicle;

(3) automobiles, suitcases, civilian clothing, privately-owned parcels, etc., physically located on or in a military installation, encampment, etc., and owned or used by a servicemember or a civilian;

(4) lockers issued for the stowage of personal effects, government quarters, or other spaces or containers issued to an individual for his private use;

(5) the working spaces of this command, including restricted-access spaces, in the custody of one or a group of individuals where no private use has been authorized (e.g., a wall safe, gear lockers, government vehicles, government briefcases, and government desks); or

(6) persons under the authority of this command and their personal property, including vehicles located on or off base when located in a foreign country.

6. Exception. In circumstances involving vehicles, the interests of the safety or security of a command, or the necessity for immediate action to prevent the removal or disposal of stolen property may leave insufficient time to obtain prior authorization to conduct a search. Under such circumstances, any officer of this command, on the scene in the execution of his military duties, is authorized to conduct a search without prior authorization from the commanding officer. When so acting, such officer is limited by all the requirements set forth above. He must determine that the person or property to be searched falls within one of the categories set forth, that his information is reliable to the extent permitted by the circumstances, and that probable cause, if required, is present. He shall inform the command duty officer of all the facts and circumstances surrounding his actions at the earliest practicable time.

#### 7. Instructions

(a) If the circumstances permit, place the person requesting the authorization to search under oath or affirmation prior to giving such authorization. This oath or affirmation should be substantially in accordance with the one suggested in JAGMAN, app. A-1-1(3), para. 2.

(b) Any person authorizing a search pursuant to this instruction may do so orally or in writing, but in every case the order shall be specific as to who is to conduct the search, what person(s) or property are to be searched, and what item(s) or information are expected to be found on such person(s) or property. At the time the search is ordered, or as soon thereafter as practicable, the individual authorizing the search will set forth the time of authorization, the particular persons or property to be searched, the identity of the persons authorized to conduct the search, the items or information which was expected to be found, a complete discussion of the facts and information he considered in determining whether or not to order the search, and what effort, if any, was made to confirm or corroborate these facts and information. This report will be forwarded to the commanding officer and will be supplemented at the earliest practicable time by a written report, setting forth any items seized as a result of the search, together with complete details, including location of their seizure and location of their stowage after seizure.

(c) Where possible, searches authorized by this instruction will be conducted by at least two persons not personally interested in the case, at least one of whom will be a commissioned officer, noncommissioned officer, or petty officer.

(d) Once a search is properly ordered pursuant to this instruction, it is not necessary to obtain the consent of any individual affected by the search; however, such consent may be requested.

(e) Frequently, it will appear desirable to interrogate suspects in connection with an apparent offense. It is essential that the function of interrogation be kept strictly separate and apart from the function of conducting a search pursuant to this instruction. This instruction does not purport to establish any regulations or guidelines for the conduct of an interrogation.

(f) Personnel conducting a search properly authorized by this instruction will search only those persons or spaces ordered. If, in the course of the search, they encounter facts or circumstances which make it seem desirable to extend the scope of the search beyond their original authority, they shall immediately inform the person authorizing the search of such facts or circumstances and await further instructions.

(g) Personnel conducting a search properly authorized by this instruction will seize all items which come to their notice in the course of the search which fall within the following categories:

(1) Unlawful weapons (i.e., any weapon the mere possession of which is prohibited by law or lawful regulation);

(2) contraband (i.e., any property the mere possession of which is prohibited by law or lawful regulation);

(3) any evidence of a crime (e.g., the fruits or products of any offense under the Uniform Code of Military Justice, or instrumentalities by means of which any such offense was committed); and

(4) any object or instrumentality which might be used to resist apprehension or to escape.

All such items shall be seized even if their existence was not anticipated at the time of the search.

(h) Any property seized as a result of a search shall be securely tagged or marked with the following information:

(1) Date and time of the search;

(2) identification of the person or property being searched;

(3) location of the seized article when discovered;

(4) name of person ordering the search; and

(5) signature(s) of the person(s) conducting the search.

(i) No person conducting a search shall tamper with any items seized in any way, but shall personally deliver such items to the senior member of the search team. In the event that size or other considerations preclude the movement of any seized items, one of the persons conducting the search shall personally stand guard over them until notification is made to the person authorizing the search and receipt of further instructions.

(j) No person acting to authorize a search under the provisions of this order shall personally conduct the search. Such persons should also avoid, where possible and practical, being present during its conduct.

(k) Any person authorizing a search based upon this instruction should be careful to avoid any action which would involve him in the evidence-gathering process of the search.

(l) The person conducting a search should, when possible, notify the person whose property is to be searched. Such notice may be made prior to or contemporaneously with the search. An inventory of the property seized shall be made at the time of a seizure or as soon as practicable. At an appropriate time, a copy of the inventory shall be given to a person from whose possession or premises the property was taken.

(m) Nothing in this instruction shall be construed as limiting or affecting in any way the authority to conduct searches pursuant to a lawful search warrant issued by a court of competent jurisdiction, or pursuant to the freely given consent of one in the possession of property, or incident to the lawful apprehension of an individual. The Manual of the Judge Advocate General of the Navy contains suggested forms for recording information pertaining to the authorization for searches and the granting of consent to search. Use these forms whenever practicable.

(signed) COMMANDING OFFICER

## ADMINISTRATIVE DISCHARGES

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### ADMINISTRATIVE DISCHARGE CHECKLIST

The following checklist will assist you in preparing the documents needed for processing a servicemember for discharge under the notification procedure or the administrative board procedure, whichever is appropriate under the circumstances. Examples are also provided for the documents needed under both methods. You should consult chapter 36 of MILPERSMAN, NAVMILPERSCOMINST 1910.1D, NAVOP 013/87, and OPNAVINST 5350.4A for guidance.

1. Prepare the Notice of Proposed Action with the First Endorsement and the Statement of Awareness and Request for Privileges. Be sure to use the examples for the proper procedure (notification procedure or administrative board procedure), as the examples are different.
2. Deliver the Notice of Proposed Action to the member. Briefly explain what the options are for the member to ensure his/her understanding.
3. If member knows at this time which rights he/she wishes to elect, have him/her complete and sign the Statement of Awareness and Request for Privileges. Be sure to have the member waive the two-day waiting period.
4. If member needs time to think about which rights he/she desires, explain the two-day waiting period and inform him/her when the response is required.
5. If member wishes to consult with counsel prior to electing his/her rights, contact the NLSO, make arrangements for counsel, and inform the member of the time and date of the appointment.
6. Have member take his service record, a copy of the Letter of Notification, the Statement of Awareness, and any investigative reports to his counsel. Note: It is suggested that these documents be placed in a sealed envelope with a return envelope enclosed. The member should be directed not to open the package, and the defense counsel should be asked to reseal the documents in the return envelope. This helps to prevent the "loss" of documents or pages from the service record while in transit. Another approach would be to deliver the documents early or to place them in the custody of the duty driver.
7. If member is not eligible or does not elect an administrative discharge board, consult NAVOP 013/87 to see if command can act as separation authority. (If member has elected an administrative discharge board, go to number 10 below.) If command is authorized to act as separation authority, then coordinate with the administrative department to have separation paperwork complete. Consult NAVOP 013/87 and MILPERSMAN 3640200.7 and 3640370 for guidance. Be sure that servicemember signs a document (in addition to notification and statement of awareness paperwork) agreeing to be separated and not objecting to characterization of service. Send all documents, with a letter of transmittal, to NMPC upon separation of individual.

8. If command is not authorized to act as separation authority, then complete the Letter of Transmittal asking NMPC to separate. Consult NAVMILPERSCOMINST 1910.1D to determine when message requests are required or desired. When complete, make sufficient copies to place one in member's service record, one for the respondent, one for the office files, and whatever number is required for the administrative officer for command correspondence files.
9. Upon receipt of discharge authority, arrange with personnel or PSD for final out-processing.
10. If member has elected an administrative discharge board, an appointing letter for the members of the board must be prepared and signed by the commanding officer.
11. Distribute a copy of the appointing letter to each member, counsel for the respondent, the recorder (if someone other than yourself), and retain a copy for your files.
12. It is suggested that an administrative discharge board package be prepared for each member. These packages consist of copies of the Administrative Discharge Board Guide and MILPERSMAN, sections 3640300 through 3640350, and those sections that pertain to the grounds for processing. This will ensure that the members are familiar with the procedures prior to the start of the board.
13. Arrange for a time and place for the board to be held and inform all parties.
14. If the proceedings are to be recorded on a tape player, ensure that there are enough tapes for the proceeding. (This is not required, but may be helpful in preparing the results of the proceedings.)
15. Prepare a findings worksheet for the members and privacy act statement for the respondent.
16. Mark and copy any exhibits you will need as recorder prior to the board.
17. Obtain a list of witnesses from the counsel for the respondent and arrange for their presence at the hearing. Requests for out-of-area witnesses are handled much like E&M witness requests.
18. After the board is completed, collect all exhibits and materials. Have board members and counsel for respondent sign findings worksheet.
19. Prepare the report of the administrative board proceedings for the senior member to authenticate.
20. Forward these to the counsel for the respondent for review and/or comment if requested.
21. Prepare the Letter of Transmittal to NMPC for the commanding officer's signature.



22. Make sufficient copies of the transmittal letter, the report of the administrative board and the findings for the member's service record, for the respondent, for the office files, and as needed for the command's correspondence files.
23. Upon notification of retention or discharge from COMNAVMILPERSCOM, file a copy in the service record and in the office file and give one copy to the member.
24. If member has been retained, normally a warning will be required by COMNAVMILPERSCOM. This must be completed and filed in member's record.
25. If member has been discharged, contact personnel or PSD for final out-processing.

ROUTINE

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\* U N C L A S S I F I E D \*  
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PAGE 01

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FM CNO WASHINGTON DC  
TO NAVOP  
ACCT NA-CNRF  
BT

UNCLAS //NO1910// SECTION 01 OF 02

NAVOP 013/87

SUBJ: DELEGATION OF ADMINISTRATIVE SEPARATION AUTHORITY FOR  
ENLISTED PERSONNEL

A. MILPERSMAN

B. NMPCINST 1910.1C

C. CNO WASHINGTON DC 051927Z JUN 86 NAVOP 05R/86

D. SECNAVINST 1910.4A NOTAL

E. OPNAVINST 5350.4

F. NMPCINST 1900.1B

G. ASN (MRA) MEMO OF 27 OCT 86 NOTAL

1. SUMMARY. THIS NAVOP DELEGATES AUTHORITY TO SPECIAL COURT-MARTIAL  
CONVENING AUTHORITIES (SPCMCA'S) TO ADMINISTRATIVELY SEPARATE  
ENLISTED MEMBERS IN CERTAIN CIRCUMSTANCES. COPIES ARE TO BE FILED  
IN FRONT OF CHAP 36 OF REF A AND WITH REF B. ALSO, THIS NSB

PAGE 02 RUENAAA6600 UNCLAS

PROVIDES ADDITIONAL INFORMATION AMPLIFYING REF C, AND PROVIDES NEW  
GUIDANCE ON ISSUANCE OF DISCHARGE CERTIFICATES.

2. EFFECTIVE IMMEDIATELY, OFFICERS EXERCISING SPCMCA ARE DELEGATED  
AUTHORITY UNDER PARA 6 OF REF D TO SEPARATE ENLISTED MEMBERS WITH  
HONORABLE, GENERAL, OR ENTRY LEVEL DISCHARGES FOR FOLLOWING  
REASONS WHERE MEMBER DOES NOT OBJECT TO SEPARATION. (SEE REF A  
ARTICLES)

A. PARENTHOOD (3620200.1C)

B. CERTAIN DESIGNATED PHYSICAL OR MENTAL CONDITIONS  
(3620200.1F(1), (2), (3), (4), (7))

C. DEPENDENCY OR HARDSHIP (3620210)

D. PREGNANCY/CHILD BIRTH (3620220)

E. SURVIVING FAMILY MEMBER (3620240, 3620245)

F. OBESITY (3620250)

G. ERRONEOUS ENLISTMENT (3620280). IF DISCHARGE INVOLVES AN  
IMMEDIATE REENLISTMENT OF A REENLISTMENT-BONUS-ELIGIBLE  
INACTIVE-DUTY NAVAL RESERVIST, THEN NMPC-013 IS SEPARATION  
AUTHORITY.

H. FRAUDULENT ENLISTMENT (3630100). RETENTION OR WAIVER FROM  
PROCESSING FOR FRAUDULENT ENLISTMENT MUST BE AUTHORIZED BY CNMPC.

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IN CASES WHERE OTHER THAN HONORABLE IS APPROPRIATE, CNMPC IS  
SEPARATION AUTHORITY.

I. ENTRY LEVEL PERFORMANCE AND CONDUCT (3630200)

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- J. UNSATISFACTORY PERFORMANCE (3630300)
- K. HOMOSEXUALITY (3630400) BUT ONLY IN CIRCUMSTANCES NOTED IN PARA 3 BELOW.
- L. DRUG ABUSE REHABILITATION FAILURE (3630500)
- M. ALCOHOL ABUSE REHABILITATION FAILURE (3630550)
- N. MISCONDUCT (3630600) BUT ONLY AS NOTED IN PARA 3 BELOW.
- O. MISCONDUCT DRUG ABUSE (3630620) BUT ONLY IN CASES WHERE NONE OF THE EVIDENCE OF DRUG ABUSE MAY BE USED TO CHARACTERIZE SERVICE. SEE REF E.
- 3. IN ANY CASE WHICH MUST BE INITIATED UNDER ADMINISTRATIVE BOARD PROCEDURES VICE THOSE INITIATED UNDER THE NOTIFICATION PROCEDURES, A SPCMCA IS DELEGATED AUTHORITY TO SEPARATE THE MEMBER ONLY IF AN ADMIN DISCHARGE BOARD (ADB) RECOMMENDS SEPARATION WITH A GENERAL OR HONORABLE DISCHARGE, MEMBER DOES NOT OBJECT TO THE DISCHARGE, AND THAT CHARACTERIZATION IS CONSISTENT WITH GUIDANCE IN MILPERSMAN 3610700. THIS GENERAL LIMITATION DOES NOT LIMIT SPCMCA'S FROM EXERCISING SEPARATION AUTHORITY IN MISCONDUCT CASES USING

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NOTIFICATION PROCEDURES WHERE APPROPRIATE PER ARTICLE 3630600.4A OF REF A FOR REASONS SUCH AS MISCONDUCT PATTERN OF MISCONDUCT OR MISCONDUCT MINOR DISCIPLINARY INFRACTIONS WHERE AN OTH IS UNWARRANTED. WHEN SOLE REASON FOR PROCESSING IS MISCONDUCT DRUG ABUSE, CNMPC IS SEPARATION AUTHORITY, EVEN THOUGH AN ADB RECOMMENDS SEPARATION UNDER GENERAL OR HONORABLE CONDITIONS.

4. SEPARATION AUTHORITY REMAINS AS PROVIDED BY REF A FOR FOLLOWING LISTED SEPARATIONS (SEE REF A ARTICLES):

- A. CONSCIENTIOUS OBJECTORS (3620120)
- B. SELECTED CHANGES IN SERVICE OBLIGATION (3620100)
- C. EXPIRATION OF ENLISTMENT, SERVICE OBLIGATION, OR ACTIVE SERVICE TOUR (3620150)
- D. MOTION/SIR SICKNESS (3620200.1F(4))
- E. ALLERGIES (3620200.1F(5))
- F. ALIENS (3620260)
- G. DISABILITY (3620270, 3620275)
- H. DEFECTIVE ENLISTMENT (3620283)
- I. MINORITY (3620285)
- J. MISCONDUCT DRUG ABUSE (3630620) EXCEPT IN CASES WHERE UNDER REF E THE EVIDENCE OF DRUG ABUSE CANNOT BE USED TO CHARACTERIZE

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SERVICE THEN SPCMCA MAY SEPARATE. (USE NOTIFICATION PROCEDURES)

- K. IN LIEU OF COURT-MARTIAL (3630650)
- L. SECURITY (3630700)
- M. UNSATISFACTORY PARTICIPATION IN READY RESERVE (3630800)
- N. BEST INTEREST OF SERVICE (3630900)
- 5. THE FOLLOWING FURTHER CLARIFIES THIS DELEGATION OF AUTHORITY:
  - A. SPCMCA'S AND SUPERIORS IN CHAIN OF COMMAND MUST ENSURE VALUE OF AN HONORABLE DISCHARGE IS MAINTAINED AND REQUIREMENTS OF REFS A AND B ARE MET. COMMANDERS WITH QUESTIONS ARE ENCOURAGED

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TO OBTAIN ADVICE OR REVIEW FROM CNMPC BEFORE APPROVING DISCHARGE.

R. AUTHORITY TO SEPARATE A MEMBER WITH AN OTH DISCHARGE RESTS IN CNMPC AND IS NOT FURTHER DELEGATED.

C. IN CASES WHERE SPCMCA IS NOT SEPARATION AUTHORITY, E.G., AN OTH IS RECOMMENDED, ADM RECOMMENDS RETENTION, MEMBER OBJECTS TO THE DISCHARGE OR CHARACTERIZATION, ETC., PROCEDURES FOR PROCESSING AND FORWARDING CASES ARE UNCHANGED.

D. IN CASES WHERE SPCMCA'S ARE DESIGNATED SEPARATION AUTHORITIES, THEY SHALL FOLLOW ARTICLES 3640200.7 AND 3640370 OF REF A AS APPLICABLE.

E. ALL RELEVANT REASONS FOR SEPARATION SHALL BE USED WHEN

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PROCESSING A MEMBER FOR SEPARATION.

F. SPCMCA'S MAY EXERCISE THIS SEPARATION AUTHORITY ONLY OVER RESPONDENTS WHO ARE UNDER THEIR CHAIN OF COMMAND IN A PERMANENT OR TEMPORARY DUTY STATUS (NOT TAD). REF C IS STILL IN EFFECT.

G. IF A MEMBER BECOMES UA BEFORE APPROVAL OF SEPARATION, SPCMCA'S MAY NOT SEPARATE THE MEMBER SINCE IN-AGREEMENT SEPARATIONS MUST BE AUTHORIZED BY CNMPC.

H. SPCMCA'S MUST PROTECT AGAINST WASTE OF FUNDS PAID FOR SRB'S, MILITARY EDUCATION PROGRAMS, ETC. SEPARATION AUTHORITIES MUST ENSURE MAXIMUM COLLECTION OF INDENTFDNESS USING NODPM TABLE 7-7-6 AND NAVCOMPTMAN.

I. BEFORE APPROVING A SEPARATION UNDER THIS AUTHORITY, COMMANDERS MUST ENSURE THAT RESPONDENT HAS STATED IN WRITING THAT RESPONDENT DOES NOT OBJECT TO SEPARATION AND CHARACTERIZATION OF SERVICE.

J. ALL ADSEP DOCUMENTATION MUST BE FORWARDED TO NMPC-832, NMPC-913 OR NMPC-74, AS APPROPRIATE, IMMEDIATELY AFTER SEPARATION. DOCUMENTATION MUST INCLUDE A REPRODUCED COPY OF DD214. REF F APPLIES WHEN ASSIGNING SEPARATION PROGRAM DESIGNATOR (SPD) AND REENLISTMENT (RE) CODES.

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7NR UUUUU U RPNHPY T MEWSB YEOVILTON  
RUMHWEA T NAVSUPFORANTARCTICA OFT MCMURDO ANTARCTICA  
R 201614Z FEB A7 ZYR  
FM CNO WASHINGTON DC  
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K. WHEN A MEMBER HAS 18 OR MORE YEARS OF TOTAL SERVICE,  
CHNAVPERS IS SEPARATION AUTHORITY, REGARDLESS.

L. PREVIOUS RELEGATION OF SEPARATION AUTHORITY REMAINS  
UNCHANGED.

6. TO FURTHER ASSIST SEPARATION AUTHORITIES IN PROCESSING ALCOHOL  
ABUSE CASES, FOLLOWING IS PROVIDED. ALCOHOL ABUSE REHABILITATION  
FAILURE IS DEFINED AS:

A. REFUSAL TO PARTICIPATE IN LEVEL II OR III TREATMENT WHEN  
DIAGNOSED AS ABUSER OR DEPENDENT.

B. FAILURE TO COMPLETE LEVEL II OR III TREATMENT WHEN  
DIAGNOSED AS ABUSER OR DEPENDENT.

C. RETURN TO ABUSE OF ALCOHOL WITHIN 180 DAYS OF COMPLETING  
LEVEL II OR III TREATMENT (AFTERCARE PERIOD) AND EVALUATED BY CO AS  
HAVING NO POTENTIAL FOR FURTHER SERVICE. A FORTHCOMING REVISION TO

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REF E WILL PROVIDE ADDITIONAL INFORMATION AND CLARIFY REHAB FAILURE  
WITH REGARD TO LENGTH OF LIABILITY PERIOD.

7. IF DRUG OR ALCOHOL INVOLVEMENT IS INDICATED, REGARDLESS OF  
BASIS/REASON FOR PROCESSING, ALCOHOL AND/OR DRUG DEPENDENCY EVAL  
MUST BE CONDUCTED BY COUNSELING AND ASSISTANCE CENTER (CAAC) OR  
MEDICAL OFFICER TO SATISFY STATUTORY REQUIREMENTS. IF THE MEMBER  
IS DEPENDENT, VETERANS' ADMINISTRATION IN-SERVICE TREATMENT MUST BE  
OFFERED THE MEMBER. REFER TO TRANSNAV ART 43.0323 FOR PROCEDURAL  
GUIDANCE. A COPY OF THE DEPENDENCY EVAL MUST BE FORWARDED WITH  
SUPPORTING DOCUMENTATION.

A. IN AMPLIFICATION OF REF C, WHEN PROCESSING REQUIRES ACTION BY  
ADM, THE CONVENING AUTHORITY SHALL FORWARD RECORD OF PROCEEDINGS  
WITH THE SENIOR MEMBER'S AUTHENTICATING SIGNATURE AND REPORT OF  
ADMINISTRATIVE BOARD (REPORT) PREPARED IAW APPEN. B, ENCL 32, REF  
A. REPORT SHALL BE COMPLETED INCLUDING OBTAINING ALL NECESSARY  
SIGNATURES IMMEDIATELY AFTER ADM ADJOURNS. RESPONDENT'S COUNSEL  
SHOULD INDICATE ON REPORT AT THE TIME HE SIGNS IT WHETHER HE/SHE  
INTENDS TO SUBMIT A LETTER OF DEFICIENCIES.

9. REF 6 PROVIDES NEW DIRECTION FOR THE ISSUANCE OF DISCHARGE  
CERTIFICATES. EFFECTIVE UPON RECEIPT OF THIS NAVOP, ALL COMMANDS

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EFFECTING SEPARATIONS WILL NO LONGER ISSUE DISCHARGE CERTIFICATES FOR ADVERSE DISCHARGES (OTH, RCD, AND DD). THE DD-214 SATISFIES NECESSARY LEGAL AND ADMINISTRATIVE REQUIREMENTS FOR ADVERSE DISCHARGES. ACCORDINGLY, CERTIFICATES SHOULD ONLY BE ISSUED FOR HONORABLE OR GENERAL DISCHARGES.

10. FURTHER ADSFP PROCESSING CHANGES ARE CURRENTLY UNDER CONSIDERATION. ASSISTANCE MAY BE OBTAINED FROM NMPC-23, NMPC-24, AND NMPC-213. ADDITIONALLY, SEPARATION ACTIVITIES AND TRANSIENT PERSONNEL UNITS CAN PROVIDE GUIDANCE IN THIS AREA.

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SAMPLE LETTER OF COUNSELING/WARNING FORMAT (p.2 of 2)\*

NAVMILPERSCOMINST 1910.1D

24 JAN 1990

USE THIS FORMAT FOR MEMBERS WHO ARE BEING WARNED IN ACCORDANCE WITH THE COUNSELING REQUIREMENTS FOR SEPARATION BY REASON OF PARENTHOOD, PERSONALITY DISORDER ENTRY LEVEL PERFORMANCE AND CONDUCT, UNSATISFACTORY PERFORMANCE, AND/OR MISCONDUCT DUE TO MINOR DISCIPLINARY INFRACTIONS OR PATTERN OF MISCONDUCT.

1. You are being retained in the Naval Service, however, the following deficiencies in your performance and/or conduct are identified:

---

2. The following are recommendations for corrective action:

---

3. Assistance is available through \_\_\_\_\_

4. Any further deficiencies in your performance and/or conduct will terminate the reasonable period of time for rehabilitation that this counseling/warning entry implies and may result in disciplinary action and in processing for administrative separation. All deficiencies or misconduct during your current enlistment, occurring before and after the date of this action will be considered. Subsequent violation(s) of the UCMJ or conduct resulting in civilian conviction could result in an administrative separation under other than honorable conditions.

5. This counseling/warning entry is made to afford you an opportunity to undertake the recommended corrective action. Any failure to adhere to the guidelines cited above, which is reflected in your future performance and/or conduct, will make you eligible for administrative separation action.

6. This counseling/warning entry is based upon known deficiencies or misconduct. If misconduct, which is unknown to the commanding officer at the date of this entry, is later found to have occurred prior to this entry, this letter of counsel/warning may be considered null and void.

NOTE: THIS COUNSELING/WARNING MAY BE PG. 13 ENTRY OR A LETTER. IT MUST BE DATED AND SIGNED BY THE MEMBER. IF THE MEMBER REFUSES TO SIGN THE PG. 13 OR LETTER ENTRY, A NOTATION TO THAT EFFECT IS TO BE INDICATED ON THE PG. 13 OR LETTER ENTRY AND SIGNED AND DATED BY AN OFFICER. A COPY OF THE COUNSELING/WARNING MUST BE INCLUDED AS AN ENCLOSURE IN LETTER OF TRANSMITTAL OR IN CO'S COMMENTS IN MESSAGE SUBMISSION.

\* SEE APPENDIX O-1 FOR "PRELIMINARY NOTES"

24 JAN 1990

## SAMPLE NOTICE OF A NOTIFICATION PROCEDURE PROPOSED ACTION

From: Commanding Officer  
To: (Rate, Name, USN(R), SSN)  
Subj: NOTICE OF A NOTIFICATION PROCEDURE PROPOSED ACTION  
Ref: (a) MILPERSMAN \_\_\_\_\_

1. Under reference (a), you are being considered for an administrative separation from the naval service by reason of (list specific reason or reasons as appropriate) as evidenced by (specifics of basis for separation) e.g. misconduct due to minor disciplinary infractions as evidenced by all punishments under the UCMJ and misdemeanor civil convictions in your current enlistment and alcohol abuse rehabilitation failure as evidenced by your continued alcohol abuse subsequent to inpatient treatment within the last 12 months. (See enclosure (15) for correct statement of reasons and corresponding MILPERSMAN reference.)

2. If the separation is approved by the Commander, Naval Military Personnel Command or Commanding Officer, \_\_\_\_\_, it will result in (list one of the following).

- ( ) discharge
- ( ) release from active duty to a reserve component
- ( ) transfer from the Selected Reserve to the IRR
- ( ) release from custody or control of the U. S. Navy
- ( ) other form of separation (specify)

3. If separation is approved, the least favorable description of service authorized in your case is (Entry Level Separation, where applicable) or (a characterization of service as General).

4. You are entitled to the following rights:

a. If applicable - to request transfer to the Fleet Reserve/retired list understanding that a reduction in paygrade prior to transfer may be directed if you are being processed for misconduct or security.

b. To obtain copies of documents that will be forwarded to Commander, Naval Military Personnel Command, supporting the basis for the recommended separation. (Classified documents may be summarized).

c. To submit statements.

d. To consult with counsel qualified under Article 27(b) of the UCMJ. Nonlawyer counsel may be appointed if you are deployed aboard a vessel or in similar circumstances of separation from judge advocate resources as determined by commanding officer. You may consult with civilian counsel retained at your own expense.

Enclosure (2)



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e. To an administrative board if you have six or more years of total active and reserve military service.

f. You have at least two working days to respond to this notice. (Note: Must be at least two days in most cases, and 30 days if member is in confinement or a reservist not on active duty. CO may set any reasonable maximum time.) Failure to respond will result in a waiver of all rights.

g. To waive any or all of the above rights and privileges after being afforded a reasonable opportunity to consult with counsel.

5. Should you begin a period of unauthorized absence following delivery of this Notice of Action, the separation processing in your case may proceed in your absence, to include convening an admin board if one has been elected. However, processing need not necessarily proceed and desertion charges could possibly result.

6. (For members in civil confinement):

a. "You are hereby advised that separation proceedings in your case will be suspended for the time specified in paragraph 4f after the date this Notice is delivered to your confinement address in order to give you a reasonable opportunity to exercise the rights set forth herein."

b. (Insert name, address and telephone number of Counsel) has been appointed your Military Counsel for consultation and/or representation for this action.

7. (For members who are reservists not on active duty), "You are hereby advised that the separation proceedings in your case may continue in your absence if you so request or if you fail to respond to this notice within the time specified in paragraph 4f the Notice is delivered to you personally or received at your designated mailing address." (Note: Sub paragraph 4f must be included in Letter of Notification (LON)/Statement of Awareness (SOA) despite this paragraph.)

8. (For respondents who are reservists not on active duty whose separation may involve transfer to the Inactive Ready Reserve (IRR)), "You are advised that the characterization of service upon transfer to the IRR also will constitute the characterization of service upon discharge at the completion of the naval service obligation, unless the following conditions are met:

a. You take affirmative action to affiliate with a drilling unit of the Selected Reserve, and

b. You participate satisfactorily as a drilling member of the Selected Reserve for a period of time which, when added to any prior satisfactory service during this period of obligated service, equals the period of obligated service."

\_\_\_\_\_  
Signature of Command Representative

Enclosure (2)

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24 JAN 1990

FIRST ENDORSEMENT

From: (Respondent)

To: Commanding Officer, \_\_\_\_\_

1. I have received the above letter and I understand its contents.

\_\_\_\_\_  
Respondent's signature/Date of  
delivery to the member

NOTE: 1. Information in parentheses is to be provided by the command;  
otherwise, make no unauthorized modifications to the sample format above.

2. Members shall be processed for all reasons for which they meet  
minimum criteria.

(SEE APPENDIX P-1 FOR SAMPLE SWORN AFFIDAVIT OF SERVICE  
BY MAIL FORMAT)

24 JAN 1990

## SAMPLE STATEMENT OF AWARENESS FORMAT - NOTIFICATION PROCEDURE

(Note: Any mark/initialing made within closed parentheses ( ) indicates member elects that option. If a member desires to indicate awareness of a right which he or she is not electing, check or initial outside of ( ).)

From: (Rate, Name, USN(R), SSN))

To: Commanding Officer, \_\_\_\_\_

Subj: STATEMENT OF AWARENESS AND REQUEST FOR, OR WAIVER OF, PRIVILEGES

Ref: (a) CO, \_\_\_\_\_ ltr of \_\_\_\_\_  
(b) MILPERSMAN \_\_\_\_\_

1. I understand that per references (a) and (b) I am being considered for an administrative separation which could result in (an entry level separation) (characterization of discharge as (General)) by reason of my (restate the reason(s) for processing as they are given in paragraph (1) of Letter of Notification) and that I am subject to, and may be separated with, a discharge which will reflect the (character of my naval service) or (severity of my misconduct) as appropriate and/or my defective enlistment and induction due to fraudulent entry into Naval Service.

2. I have been advised that if the proposed separation is approved by Commander, Naval Military Personnel Command or by Commanding Officer, \_\_\_\_\_, it will result in my discharge for one of (the reason(s) stated in paragraph 1 above.

3. I understand that if separation is approved, the characterization of my service can be (fill in as stated in paragraph 3 of the Notice of a Notification Procedure Proposed Action).

4. I have been afforded and elect the following rights:

( ) If applicable - I have/will request(ed) transfer to the Fleet Reserve/retired list understanding that a reduction in paygrade prior to transfer may be directed if I am being processed for misconduct or security.

( ) To obtain copies of documents that will be forwarded to Commander, Naval Military Personnel Command, supporting the basis for the proposed separation. (Classified documents may be summarized.)

( ) To submit statements.

( ) To consult with counsel qualified under Article 27(b) of the UCMJ or, when circumstances warrant, nonlawyer counsel.

( ) To request an Administrative Board if I have six or more years of total active and reserve military service.

( ) To \_\_\_\_\_ working days to respond to the Notice of Notification Procedure Proposed Action. (Must be 30 days if member is in confinement or a

Enclosure (3)

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reservist not on active duty.) (Note 3)

( ) To waive all the above.

( ) I object/do not object to this separation.

5. I acknowledge the following: (check as appropriate)

( ) A. I understand that nonjudicial punishments, courts-martial convictions and/or civil convictions occurring before and after this statement of awareness may be considered by the separation authority in determining retention or separation where appropriate and the characterization of any discharge to be recommended.

( ) B. I understand the administrative board that I have elected may consider nonjudicial punishments, courts-martial convictions and civil convictions occurring up to the announcement of the findings and recommendation of the board in determining retention or separation and the characterization of any discharge to be recommended.

\_\_\_\_\_  
Respondent's name, rate, SSN/Date

\_\_\_\_\_  
Witnessed by:                      Signature                      Date  
Counsel (if applicable)

NOTE: 1. Information contained in parentheses is to be provided by command; otherwise, make no unauthorized modifications to this sample format.

2. Members shall be processed for all reasons for which they meet minimum criteria.

3. If the member elects the minimum time to respond, the date and signature on the statement of awareness should reflect at least the minimum time elected when compared with the date on the letter of notification.

MARINE CORPS SEPARATION AND RETIREMENT MANUAL

(Letterhead)

From: Commanding Officer  
To: (Individual Marine)

Subj: NOTIFICATION OF SEPARATION PROCEEDINGS

Ref: (a) MCO 1900.16D (MARCORSEPMAN)

Encl: (1) Purpose and Scope of the NDRB and BCNR  
(2) Acknowledgment of Respondent's Rights

1. You are hereby notified that I intend to recommend to the (Separation Authority; e.g., Commanding General) that you be discharged from the U.S. Marine Corps/released from active duty to a Reserve component per paragraph \_\_\_\_ of the reference by reason of (state the general and specific bases for discharge contained in the reference).

2. The basis (bases if multiple reasons) for this recommendation is (describe the circumstances supporting the CO's recommendation. Be specific because both the respondent and the Separation Authority need to know precisely why this Marine is being recommended for separation).

3. The least favorable characterization which you may receive is under honorable conditions (general). Although the (Separation Authority) will make the determination of characterization if you are separated, I am recommending you receive a(n) Honorable/General characterization of service.

4. As a result of these separation proceedings, you have the following rights:

a. You have the right to consult with qualified counsel. It is in your best interests to do so prior to waiving any of your rights.

b. You have the right to submit written statements to the (Separation Authority) in rebuttal to this proposed separation.

c. You have the right to obtain copies of documents that will be forwarded to the (Separation Authority) supporting the basis of this proposed separation. Classified documents shall be summarized.

d. You may waive any of these rights after being afforded a reasonable opportunity to consult with counsel and that failure to respond shall constitute a waiver of these rights.

5. Information on the Purpose and Scope of the NDRB and the BCNR is provided to you as enclosure (1).

6. You are directed to respond in writing to this notice not later than (time and date) (e.g., 0900, 4Jun82. Must allow at least 2 complete working days) by completing and returning enclosure (2). Failure to respond by the prescribed time constitutes a waiver of your rights.

Signature

Figure 6-2.--Sample Format for Notification Without an Administrative Separation Board.

MARINE CORPS SEPARATION AND RETIREMENT MANUAL

(Letterhead)

From: (Individual Marine)  
To: Commanding Officer

Subj: ACKNOWLEDGMENT OF MY RIGHTS TO BE EXERCISED OR WAIVED DURING  
SEPARATION PROCEEDINGS

Ref: (a) CO's ltr

1. \_\_\_\_\_ I acknowledge receipt of the reference notifying me of proceedings to (discharge me) (release me from active duty) by reason of (general and specific basis as found in MARCORSEPMAN).

2. \_\_\_\_\_ I understand that I am being recommended for separation with (an honorable or a under honorable conditions (general)) characterization of service and that the least favorable characterization which I may receive is under honorable conditions (general).

3. In view of the above, I chose to execute to following rights:

a. \_\_\_\_\_ I (have) (have not) included statements in rebuttal to this proposed separation.

b. \_\_\_\_\_ I (have) (have not) consulted with counsel. I realize it is in my best interests to so prior to exercising or waiving any of my rights. My counselor's name is: \_\_\_\_\_.

c. \_\_\_\_\_ I (do) (do not) desired to obtain copies of documents that will be forwarded to the (Separation Authority) supporting this proposed separation.

4. \_\_\_\_\_ I have read and fully understand the information contained in the Purpose and Scope of the MDRB and BCNR.

Witness \_\_\_\_\_ Date \_\_\_\_\_

Respondent \_\_\_\_\_ Date \_\_\_\_\_

Figure 6-2.--Sample Format for Notification Without an Administrative  
Separation Board--Continued.

24 JAN 1990

## SAMPLE LETTER OF TRANSMITTAL FORMAT - NOTIFICATION PROCEDURE

From: Commanding Officer, \_\_\_\_\_ (UIC)  
To: Commander, Naval Military Personnel Command

Subj: (RATE, NAME, USN(R), SSN), RECOMMENDATION FOR SEPARATION  
DUE TO (LIST ONE OR MORE OF THE REASONS FOR SEPARATION)

Ref: (a) MILPERSMAN \_\_\_\_\_

- Encl: (1) Copy of notice of notification procedure proposed action  
(2) Signed statement of awareness and request for or waiver of rights  
(3) Statement of member, if one is submitted  
(4) Copy of page 9, with final trait averages  
(5) Information concerning arrest, conviction, or disposition (include civil document if available), if applicable  
(6) Other pertinent documentation (include medical evaluation regarding dependency of member if drug/alcohol abuse is indicated within last six months or subsequent to most recent drug incident, most recent warning and counseling entry (if any), etc.  
(7) Proceedings of Administrative Board, if applicable  
(8) Appointing letter for nonlawyer counsel, if applicable

1. Per reference (a), the following information is submitted:

a. Reason for processing (one or more reasons).

b. Basic record data: Date of current enlistment: (fill in) for (fill in) years; EAOS: (fill in); marital status: (fill in); dependents: (fill in); months on board: (fill in); total service: active- (fill in number of years and months), inactive (fill in number of years and months and date commenced).

c. Involvement with civil authorities. If none, so state. Advise if member has appealed or intends to appeal any civil convictions. If appealed, when, what result or anticipated decision date. If not, what is the time frame mbr has to appeal. POC.

d. Summary of military offense(s). If none, so state. Otherwise, in subparagraph form give complete, detailed summary of UCMJ violations, i.e., judicial action, charges and specifications, date and/or period of offense(s), and punishment awarded; must include the convening authority's final action for all court-martial.

e. Finding of Administrative Board. If no board, so state.

f. Recommendation of Administrative Board. If no board, so state.

g. Type of discharge recommended by Administrative Board. If no board, so state. (NOTE: If fleet reserve eligible - Board must make recommendation regarding reduction in paygrade prior to transfer if member processed for misconduct, homosexuality or security and member elected right to transfer to the fleet reserve.)

h. Comments and recommendations of the commanding officer (or acting

Enclosure (4)

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commanding officer). Per reference (a), the commanding officer may not recommend any characterization worst than what the Administrative Board recommended.

i. Date and characterization of discharge if commanding officer separates under reference (c). POC for discussion of this case is (fill in Name, Rank, Billet): AUTOVON: (Fill in) State location of member if transferred TAD subsequent to completion of case processing.

\_\_\_\_\_  
Signature of Commanding Officer  
or acting Commanding Officer

Copy to:  
(appropriate PERSUPPACT/  
PERSUPPDET where applicable)



24 JAN 1990

MESSAGE FORMAT - SUBMISSION OF NOTIFICATION PROCEDURE

PROPOSED ACTION

FROM:

TO: COMNAVMILPERSCOM WASHINGTON DC

INFO: (ISIC, AS DESIRED AND TRANSITPERSU, PERSUPPACT/PERSUPPDET  
WHERE APPLICABLE)

UNCLAS: //N01910//

SUBJ: (RATE, NAME OF MEMBER, COMPONENT, SSN): RECOMMENDATION  
FOR ADMIN SEPARATION BY REASON OF \_\_\_\_\_ (N8322)

A. MILPERSMAN \_\_\_\_\_ (ARTICLE(S) CITING REASON(S))

B. NAVMILPERSCOMINST 1910.1D

1. IAW REFS A AND B FOLLOWING REQUEST FOR ADMIN DISCH SUBMITTED  
ICO SNM. CO HAS REVIEWED REFS A AND B AND CERTIFIES THAT THIS  
MESSAGE SUBMISSION SUPPORTS THE MOST APPLICABLE REASON(S) FOR  
PROCESSING, ACCURATELY REFLECTS THE COMPLETE RECORD IN THIS  
CASE, AND MEETS MINIMAL REQUIREMENTS FOR PROCESSING. IF DRUG OR  
ALCOHOL ABUSE IS INVOLVED INFO FM MOST RECENT DRUG OR ALCOHOL  
SUBSTANCE ABUSE REPORT IS CONTAINED IN PARA 13. AN ADMINIS-  
TRATIVE DISCHARGE BOARD HAS NOT BEEN CONVENED IN THIS CASE.  
INFORMATION PARAGRAPHS AS OUTLINED IN ENCL 5 TO REF B ARE  
LISTED IN TOTAL WITH APPLICABLE INFORMATION NOTED. IF PARA DOES  
NOT APPLY, "NA" HAS BEEN INDICATED.

2. REASON FOR SEPARATION PROCESSING: (ONE OR MORE SPECIFIC  
REASON(S) VERBATIM AS SPECIFIED IN MILPERSMAN.) BRIEFLY  
SUMMARIZE HOW CASE FOR SEPARATION WAS DEVELOPED, SPECIFICALLY THE  
BASIS FOR PROCESSING (E.G., COMMAND DIRECTED URINALYSIS, RECORD  
OF MISCONDUCT, REFUSAL TO PARTICIPATE IN REHAB, ETC).)

Enclosure (5)

24 JAN 1990

3. BASIC RECORD DATA: DATE OF CURRENT ENLISTMENT: (DATE) FOR (FILL IN) YEARS; EAOS: (FILL IN) MARITAL STATUS: (FILL IN); DEPENDENTS: (FILL IN); MONTHS ON BOARD: (FILL IN); TOTAL SERVICE ACTIVE: (FILL IN NUMBER OF YEARS AND MONTHS); INACTIVE: (FILL IN NUMBER OF YEARS AND MONTHS AND WHEN COMMENCED); REENLISTMENT STATUS: (FILL IN "RECOMMENDED"/"NOT RECOMMENDED.")

4. INVOLVEMENT WITH CIVILIAN AUTHORITIES: (FILL IN AS APPROPRIATE. IF CIVILIAN CONVICTION, INCLUDE INFO IN PARAS A AND B BELOW.)

A. CIRCUMSTANCES OF OFFENSE(S): (INCLUDE ALL FACTS AND CIRCUMSTANCES SURROUNDING OFFENSE(S) IN SUFFICIENT DETAIL TO INDICATE NATURE AND SERIOUSNESS OF OFFENSE(S).)

B. ACTION BY CIVILIAN AUTHORITIES: (INCLUDE CITATION OF CIVIL STATUTE(S) VIOLATED, CHARGE(S) ON WHICH TRIED AND CONVICTED, COURT IN WHICH CONVICTED, SENTENCE OF COURT, MAXIMUM PUNISHMENT WHICH COULD HAVE BEEN IMPOSED FOR SUCH A CONVICTION UNDER UCMJ, AND STATUS OF ANY APPEAL. ADVISE IF MEMBER HAS FILED OR INTENDS TO FILE AN APPEAL, AND TIME LIMIT WITHIN WHICH MEMBER MUST FILE APPEAL.)

5. SUMMARY OF MILITARY OFFENSE(S): (LIST IN CHRONOLOGICAL ORDER BY SUBPARAGRAPH DATE OF NJP/CM; TYPE: NJP/CM; OFFENSES(S); DATE OF OFFENSE(S); NOTE: IDENTIFY OFFENSE(S) TO INCLUDE ALL SPECIFICATIONS, E.G., LENGTH OF UA OFFENSE(S), ETC. ICO COURTS-MARTIAL INDICATE DATE OF CONVENING AUTHORITY FINAL ACTION AND APPROVED FINDINGS AND SENTENCE.) PROVIDE DATE OF PG 13 LTR OF COUNSELING/ WARNING HERE AS WELL AS IN PARA 13.

24 JAN 1990

6. SNM'S PAGE 9 IS PROVIDED IN TOTAL AS FOLLOWS: (REFLECT ALL PERFORMANCE MARKS, UCMJ PUNISHMENT(S) AND FINAL TRAIT AVERAGERS.)

7. NOTICE OF A NOTIFICATION PROCEDURE PROPOSED ACTION DTD (FILL IN), PROVIDED IAW MILPERSMAN 3640200.2 AND ENCL 2, OF REF B LISTS THE FOLLOWING SPECIFIC VERBATIM REASON(S) AS STATED IN MILPERSMAN FOR PROCESSING: (FILL IN — SEE ENCL (15)). NO ABBREVIATIONS). SNM WAS AFFORDED ALL RIGHTS IAW PARA 4 OF ENCL 3 TO REF B.

(THIS PARAGRAPH SHOULD MIRROR EXACTLY THE LETTER OF NOTIFICATION.)

8. SNM WAS ADVISED OF RIGHT TO CONSULT WITH COUNSEL BEFORE MAKING DECISION TO REQUEST OR WAIVE RIGHTS. SNM (DID/DID NOT) CONSULT WITH COUNSEL. (PROVISIONS MILPERSMAN 3640200.2C PERTAIN.)

9. STATEMENT OF AWARENESS DTD (FILL IN), EXECUTED IAW MILPERSMAN 3640200.4, AND ENCL 3 TO REF B INCLUDES VERBATIM REASON(S) FOR PROCESSING AS LISTED IN PARA 7, ABOVE. SNM REQUESTED FOLLOWING RIGHTS: (LIST ALL RIGHTS ELECTED). SNM WAIVED ALL OTHER RIGHTS.

10. (IF SNM HAS SIX OR MORE YEARS MILITARY SERVICE) SNM WAIVED RIGHT TO PRESENT CASE BEFORE ADMIN BOARD.

11. SNM (DID/DID NOT) ELECT TO MAKE A WRITTEN STATEMENT. SNM'S STATEMENT, IF ELECTED, IS QUOTED VERBATIM AS FOLLOWS:

12. (IF APPLICABLE) PSYCHIATRIC OR MEDICAL EVALUATION AS FOLLOWS: (BRIEFLY LIST PERTINENT FINDINGS, DIAGNOSIS, RECOMMENDATION(S), AND, IF ALCOHOL/DRUG INVOLVEMENT INDICATED, REGARDLESS OF REASON(S) PROCESSED, ADVISE IF MEMBER ALCOHOL/DRUG DEPENDENT. IF PROCESSED FOR PERSONALITY DISORDER, ADVISE IF MEMBER CONSIDERED A DANGER TO SELF OR OTHERS.) MEDICAL OFFICER

NAVMILPERSCOMINST 1910.1D  
24 JAN 1990

SIGNED EVALUATION ON (DATE), NAME OF HOSPITAL. EVALUATION INDICATES SNM (IS/IS NOT) DRUG DEPENDENT. SNM (IS/IS NOT) RECOMMENDED FOR FURTHER SERVICE BY MEDICAL OFFICER.

13. MOST RECENT PG 13 ISSUED BY PARENT, PROCESSING COMMAND, REGARDLESS OF REASON FOR PROCESSING. A PG 13 IS ONLY REQUIRED FOR PROCESSING FOR MISCONDUCT DUE TO A PATTERN OF MISCONDUCT OR DUE TO MINOR DISCIPLINARY INFRACTIONS, CONVENIENCE OF THE GOVERNMENT DUE TO PERSONALITY DISORDER, ENTRY LEVEL PERFORMANCE AND CONDUCT, OR UNSATISFACTORY PERFORMANCE. DO NOT INTERPRET THIS PARAGRAPH TO MEAN THE COMMAND MUST HAVE COUNSELED MEMBER BEFORE PROCESSING FOR ANY OTHER REASON(S), NOR TO MEAN MEMBER MUST NOW BE GIVEN PG 13. IF NONE, SO STATE.

14. COMMENTS AND RECOMMENDATION OF CO: (IF MEMBER PROCESSED FOR ENTRY LEVEL PERFORMANCE AND CONDUCT, UNSATISFACTORY PERFORMANCE, OR MISCONDUCT DUE TO MINOR DISCIPLINARY INFRACTIONS, CONFIRM COUNSELING REQUIREMENT MET IAW MILPERSMAN 3630200, 3630300 OR 3630600 AS APPROPRIATE AND INDICATE DATE MOST RECENT PAGE 13 COUNSELING AND WARNING ENTRY SIGNED BY MEMBER. (SHOULD BE THE SAME AS PARA 13.) STATE HOW THE COUNSELING/WARNING ENTRY WAS VIOLATED. IF SEPARATION IS RECOMMENDED, MAKE SPECIFIC RECOMMENDATION AS TO CHARACTERIZATION OF DISCHARGE.)

15. COPIES OF THE NOTICE OF NOTIFICATION PROCEDURE PROPOSED ACTION, STMT OF AWARENESS AND ALL SUPPORTING DOCUMENTATION WILL BE FORWARDED IN 15 WORKING DAYS TO NMPC 8322, NMPC 2422, NMPC 243, OR NMPC 2E IAW PARA 21C OF ENCL 1 TO REF B.

16. POC FOR DISCUSSION OF THIS CASE IS (FILL IN NAME, RANK, BILLET):  
AUTOVON NO: (FILL IN). STATE LOCATION OF SNM IF TRANSFERRED TAD  
SUBSEQUENT TO COMPLETION OF CASE PROCESSING.  
(INCLUDE AS INFO ADDEE.)

17. UIC (LOCATION OF SNM)

18. CO SENDS.

(COMMANDING OFFICERS SHOULD ENSURE COMPLETENESS OF SUBMISSIONS.  
OMISSIONS WILL RESULT IN UNNECESSARY DELAYS OR REPROCESSING)

Enclosure (5)

pp.4-5  
SJA-169

APPOINTING LETTER  
[NAVMILPERSCOMINST 1910.1D, encl(11)]

Rev. 4/90

(Although a Navy form,  
this letter meets USMC  
requirements.)

(LETTERHEAD)

25 Feb cy

(O-4 line officer, if  
available, mandatory.  
Sr mbr must be active  
list officer if resp  
active duty. O-4  
TAR can be used.)  
(USMC reference:  
MARCORSEPMAN, ch. 6,  
§ 3, part C.)

From: Commander, Naval Education and Training  
Center, Newport, Rhode Island  
To: Lieutenant Commander Eli Whitney, USN  
Subj: APPOINTMENT OF ADMINISTRATIVE BOARD  
Ref: (a) MILPERSMAN, art. 3640300  
(b) MILPERSMAN, art. 3640350

(At least one Reserve-  
officer member mandatory  
for reservist respondent.  
All officer members  
required when OTH is  
is authorized for  
reservist respondent.)

1. In accordance with references (a) and (b), an administrative board consisting of yourself as senior member and President and of Lieutenant Samuel Gompers, USNR, and Ensign Vera Miles, USN, is hereby appointed to conduct a hearing in the case of YNSR Ellen Anna DOE, USNR, 012-34-5678, who is being processed for administrative discharge by reason of misconduct due to drug abuse, misconduct due to a pattern of misconduct, misconduct due to the commission of a serious offense, and misconduct due to a civilian conviction.

(Indicate multiple  
reasons where  
appropriate,  
in paras. 1 & 2)

2. General procedural instructions, as well as instructions for the conduct of the hearing and submission of the board's report, are outlined in reference (b) and shall be followed. The Board is directed to make findings of fact relative to the specific reason(s) the respondent is being processed and to make a recommendation with respect to final action of retention, separation or suspension and to characterization of service or description of separation. The report of the Board shall be signed by all members. The dissent of any member shall be duly recorded in the board report.

3. Lieutenant Junior Grade Hamilton Burger, JAGC, USN, is appointed to act as recorder for the board.

4. Lieutenant Idona Mibest, JAGC, USNR, a lawyer certified in accordance with Article 27(b), Uniform Code of Military Justice, is appointed to act as counsel for the respondent.

5. The Board shall convene at 0900, 01 March cy, Naval Education and Training Center, Newport, Rhode Island, or as soon thereafter as practicable.

(Signature of CA or acting  
CA - no "By direction's.")

/s/ \_\_\_\_\_

("Copies to" not provided  
for in sample form, but  
important.)

Copy to:  
LT Gompers, member  
ENS Miles, member  
LTJG Burger, recorder  
LT Mibest, counsel for respondent  
YNSR Doe, respondent

NOTICE OF ADMINISTRATIVE BOARD (USN)  
[MILPERSMAN, art. 3640300.6, NAVMILPERSCOMINST 1910.1D, encl(6)]

(LETTERHEAD)

25 Feb cy

From: Commander Naval Education and Training  
Center, Newport, Rhode Island

To: YNSR Ellen A. Doe, USNR, 012-34-5678

Subj: NOTICE OF AN ADMINISTRATIVE BOARD  
PROCEDURE PROPOSED ACTION

(List references  
for all grounds.)

Ref: (a) MILPERSMAN, art. 3630600  
(b) MILPERSMAN, art. 3630620

(List general grounds  
and circumstances for  
each - must match  
Statement of Awareness.)

1. In accordance with references (a) and (b), you are being considered for an administrative discharge from the naval service by reason of misconduct due to a pattern of misconduct, misconduct due to drug abuse, misconduct due to the commission of a serious offense(s), and misconduct due to a civilian conviction, as evidenced by your service record, by (1) action tantamount to a conviction for shoplifting in Newport, Rhode Island Superior Court on 15 Jan cy, and/or (2) a positive urinalysis (THC) of 25 Jan cy.

(Indicate type of separation  
contemplated, including  
discharge, RAD, etc.)

2. If separation is approved by Commander, Naval Military Personnel Command, it will result in: Discharge.

3. If separation is approved, the characterization of your service may be under other than honorable conditions.

4. You are entitled to the following rights and privileges:

a. The right to consult with counsel prior to electing or waiving any of the afforded rights.

b. The right to obtain copies of documents that will be forwarded to Commander, Naval Military Personnel Command supporting the basis of the recommended separation. (Classified documents may be summarized.)

c. The right to request an administrative board.

d. The right to present written statements in your own behalf either verbally or in writing to the board, or in writing if an administrative board is not convened.

e. The right to representation at the administrative board by qualified counsel.

(Respondent's full name, rate, and SSN required on each page of case. NAVMILPERSCOMINST 1910.1D, encl.(1), para. 18.)

YNSR ELLEN ANNA DOE, USNR  
012-34-5678

Subj: NOTICE OF AN ADMINISTRATIVE BOARD  
PROCEDURE PROPOSED ACTION

f. The right to representation at the administrative board by civilian counsel at your own expense.

g. The right to waive any or all of the above rights after being afforded a reasonable opportunity to consult with counsel. (Failure to respond shall constitute a waiver of the above rights. Failure to appear without good cause at a hearing constitutes waiver of the right to be present at the hearing.)

(Should also indicate maximum time to respond.)

h. The right to a minimum of two working days to respond to this notice. Failure to respond will result in a waiver of all rights. Maximum time to respond will be 5 working days from receipt of this notice unless an extension is granted.

(See MILPERSMAN and NAVMILPERSCOMINST 1910.1D for additional paragraphs if respondent is in civil confinement or is a reservist NOT on active duty.)

5. You are advised that, should you begin a period of unauthorized absence following delivery of this notice, the separation processing in your case will proceed in your absence or it may be held in abeyance until you return to military control and appropriate disciplinary action is taken on the absence. You are further advised that your unauthorized absence will be considered a waiver of your right to appear personally before the administrative board if the separation processing is not held in abeyance. Your unauthorized absence could also result in termination of administrative action and your being declared a deserter.

(Signature of CO or other authorized person "By direction.")

/s/ \_\_\_\_\_

#### FIRST ENDORSEMENT

From: YNSR Ellen A. DOE, USNR, 012-34-5678  
To: Commander, Naval Education and Training Center, Newport, R.I.

1. I have received the above letter and I understand its contents.

(Signature of respondent and date delivered.)

/s/ \_\_\_\_\_  
Ellen A. Doe /Date

STATEMENT OF AWARENESS (USN)

[MILPERSMAN, art. 3640300.7, NAVMILPERSCOMINST 1910.1D, encl(7)]

(If date less than two  
working days from notice,  
ensure respondent checks  
time waiver in para. 4.)

27 Feb cy

From: YNSR Ellen A. DOE, USNR, 012-34-5678  
To: Commander, Naval Education and Training  
Center, Newport, RI

Subj: STATEMENT OF AWARENESS AND  
REQUEST FOR, OR WAIVER OF, PRIVI-  
LEGES

Ref: (a) COMNETC, Newport, RI ltr of  
25 Feb cy  
(b) MILPERSMAN, art. 3630600  
(c) MILPERSMAN, art. 3630620

(List general grounds and  
circumstances for each.  
Must match letter of  
notification.)

1. I understand that I am being considered for an administrative separation from the naval service which could result in an other than honorable discharge by reason of misconduct due to a pattern of misconduct, misconduct due to drug abuse, misconduct due to the commission of a serious offense, and misconduct due to a civilian conviction, as evidenced by my service record, by (1) action tantamount to conviction for shoplifting in Newport Superior Court on 15 Jan cy, and/o (2) a positive urinalysis (THC) of 25 Jan cy.

2. I understand that if such separation is under other than honorable conditions, it may deprive me of virtually all veterans' benefits based upon my current period of active service, and that I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of discharge received therefrom may have a bearing. I further understand that if an Other-Than-Honorable discharge is not directed, the characterization of my discharge, if based on misconduct or defective enlistment and induction due to fraudulent entry into naval service, will be General, or if not based on misconduct or defective enlistment and induction due to fraudulent entry into naval service, the character will be based on my naval service or, if appropriate, an entry level separation will be directed.



(Respondent's full name,  
rate, and SSN required  
on each page of case.  
NAVMILPERSCOMINST  
1910.1D,  
encl. (1), para. 18.)

YNSR ELLEN ANNA DOE, USNR  
012-34-5678

Subj: STATEMENT OF AWARENESS AND  
REQUEST FOR, OR WAIVER OF,  
PRIVILEGES

(Respondent checks  
appropriate blocks.)

3. I have been afforded an opportunity to consult  
with counsel and I: (check as appropriate)

☐ did consult with counsel

☐ did not desire to consult with counsel

4. I have been afforded and elect the following  
rights:

☐ The right to obtain copies of documents  
that will be forwarded to Commander, Naval  
Military Personnel Command, supporting the basis  
of the recommended separation. (Classified  
documents may be summarized.)

☐ The right to request an administrative  
board.

☐ The right to submit statements in my own  
behalf either verbally or in writing before an  
administrative board or in writing if an adminis-  
trative board is not convened.

☐ The right to representation at the  
administrative board by qualified counsel.

☐ The right to representation at the  
administrative board by civilian counsel at my  
own expense.

☐ The right to waive all the above.

☐ I have waived the minimum two working  
days to respond to the notice of the administrative  
board procedure proposed action.

5. I acknowledge and understand that the  
administrative board that I have elected may  
consider nonjudicial punishments, courts-martial  
convictions, and civil convictions occurring up to  
the announcement of the findings and recommen-  
dation of the board in determining retention or  
separation and the characterization of any  
discharge to be awarded. I understand further,  
that if an administrative board is not convened,  
such punishments or convictions may be considered  
by the separation authority in determining reten-  
tion or separation, and if a discharge is approved,  
the characterization of that discharge.

(Signed by respondent  
and witnessed by  
counsel for respondent.)

/s/ \_\_\_\_\_ /s/ \_\_\_\_\_  
Witnessed by:  
IDONA MIBEST ELLEN ANNA DOE Date  
LT, JAGC, USNR YNSR, USNR

NOTICE OF ADMINISTRATIVE BOARD (USMC)  
(MARCORSEPMAN, fig. 6-3)

(LETTERHEAD)

25 February 19cy

From: Commanding Officer  
To: Pvt Ellen A. Doe 012 34 5678 USMCR  
  
Subj: NOTIFICATION OF SEPARATION PROCEEDINGS  
  
Ref: (a) MCO 1900.16D (MARCORSEPMAN)  
  
Encl: (1) Acknowledgement of respondent's rights  
(2) Purpose and scope of the NDRB and BCNR

(Insert appropriate separation authority.)  
(Indicate whether discharge or RAD.)

(List reference for each ground.)

(List specific circumstances for each ground - must match statement of awareness.)

(Insert appropriate separation authority.)

1. You are hereby notified that I intend to recommend to the Commanding General, Marine Corps Base, that you be discharged from the USMC IAW para(s) 6210.3 and 6210.5 of the reference by reason of misconduct due to drug abuse, misconduct due to a pattern of misconduct, misconduct due to the commission of a serious offense, and misconduct due to a civilian conviction.

2. The bases for this recommendation are: Misconduct due to a pattern of misconduct as evidenced by NJP's of 21 Mar-1, 26 Jul-1, and 17 Feb cy, SPCM of 07 Oct-1, and action tantamount to conviction for shoplifting in Newport Superior Court on 15 Jan cy; misconduct due to drug abuse as evidenced by NJP of 26 July-1 for possession of drug paraphernalia and positive urinalysis (THC) of 25 Jan cy; by reason of misconduct due to the commission of a serious offense as evidenced by assault on a petty officer (SPCM of 07 Oct-1), and disrespect to a commissioned officer (NJP of 17 Feb cy); and misconduct due to a civilian conviction as evidenced by an action tantamount to conviction for shoplifting in Newport Superior Court on 15 Jan cy.

3. The least favorable characterization of service which you may receive is under other-than-honorable conditions. Although the Commanding General, Marine Corps Base, will make the determination of characterization if you are separated, I am recommending you receive an other-than-honorable discharge.

4. As a result of these separation proceedings, you have the following rights:

a. You have the right to consult with qualified counsel prior to electing or waiving any of your rights. It is in your best interest to do so prior to waiving any of your rights.

b. You have the right to request a hearing before an administrative discharge board IAW paragraph 6304 of the reference.

Subj: NOTIFICATION OF SEPARATION PROCEEDINGS

(insert appropriate separation authority.)

c. You have the right to present written statements to the Commanding General, Marine Corps Base, in rebuttal to this proposed separation and in lieu of having a hearing.

(Insert appropriate separation authority.)

d. You have the right to obtain copies of documents that will be forwarded to the Commanding General, Marine Corps Base, supporting this proposed separation. Classified documents shall be summarized.

e. You have the right to waive any of these rights after being afforded an opportunity to consult with counsel.

5. Should you request a hearing before an administrative discharge board, you would be afforded the following rights:

a. To appear in person before such a board or be represented by counsel if confined by civil authorities.

b. To be represented by military counsel-appointed or of your own choice, if available.

c. To be represented by civilian counsel if you desire and at your own expense.

d. To challenge voting members of the board or the legal advisor, if any, for cause only.

e. To testify in your own behalf, subject to the provisions of Article 31, UCMJ. (Compulsory self-incrimination prohibited.)

f. At any time during the proceedings you or your counsel may submit written or recorded matter for consideration by the board.

g. You or your counsel may call witnesses on your behalf.

h. You or your counsel may question any witness who appears before the board.

i. You or your counsel may present a argument prior to the board's closing the hearing for deliberations on findings and recommendations.

(Insert convening authority.)

j. Upon written request to the Commanding General, Marine Corps Base, to be provided with a copy of the report of the board and the endorsement thereon.

Subj: NOTIFICATION OF SEPARATION PROCEEDINGS

k. Failure to appear without good cause at a hearing constitutes waiver of your right to be present at the hearing.

l. You have the right to make a sworn or unsworn statement.

m. You have the right to examine evidence presented by the board, to cross-examine witnesses appearing before the board, to submit evidence before the board, and to present final argument before the board.

n. Failure to respond after being afforded a reasonable opportunity to consult with counsel constitutes waiver of the rights in paragraphs 6304.1d to 1m of the reference.

6. Information on the purpose and scope of the NDRB and BCNR is provided to you as enclosure (2).

(Must allow minimum of 2 working days.)

7. You are directed to respond in writing to this notice not later than 1600, 2 March 19cy by completing and returning enclosures (1) and (2). Failure to respond by the prescribed time constitutes a waiver of your rights.

(See MARCORSEPMAN, para. 6304.2 for additional paragraphs if respondent is in civil confinement, UA, or is a reservist NOT on active duty.)

(Signature of CO or acting CO.)

/s/ \_\_\_\_\_

(Provide copy to separation authority. MARCORSEPMAN, para. 6304.)

Copy to:  
Commanding General, Marine Corps Base

FIRST ENDORSEMENT

From: Private Ellen A. Doe 012 34 5678 USMCR  
To: Commanding Officer

1. I have received the above letter and I understand its contents.

(Signature of respondent and date delivered.)

/s/ \_\_\_\_\_  
Ellen A. Doe /Date

STATEMENT OF AWARENESS (USMC)  
(MARCORSEPMAN, fig. 6-3)

27 February 19cy

From: Private Ellen A. Doe 012 34 5678 USMCR  
To: Commanding Officer

Subj: ACKNOWLEDGEMENT OF MY RIGHTS TO BE  
EXERCISED OR WAIVED IN SEPARATION  
PROCEEDINGS

Ref: (a) CO's ltr of 25 February 19cy

Encl: (1) Purpose and Scope of NDRB AND BCNR

(List general grounds  
and specific  
circumstances for  
each - must match  
letter of notification.)

1. \_\_\_\_\_ I acknowledge receipt of the reference notifying me of proceedings to discharge me by reason of misconduct due to a pattern of misconduct as evidenced by NJP's of 21 Mar-1, 26 Jul-1, and 17 Feb cy, SPCM of 07 Oct-1, and action tantamount to conviction for shoplifting - Newport Superior Court, 15 Jan cy; by reason of misconduct due to drug abuse as evidenced by NJP of 26 Jul-1 for possession of drug paraphernalia and positive urinalysis (THC) of 25 Jan cy; by reason of misconduct due to the commission of a serious offense as evidenced by assault on a petty officer (SPCM of 07 Oct-1), and disrespect to a commissioned officer (NJP of 17 Feb cy); and misconduct due to a civilian conviction as evidenced by an action tantamount to conviction for shoplifting in Newport Superior Court on 15 Jan cy.

(Indicate recommended  
character of  
separation.)

2. \_\_\_\_\_ I understand that I am being recommended for separation under other than honorable conditions and that the least favorable characterization which I may receive is an Other Than Honorable discharge.

3. \_\_\_\_\_ In view of the above, I choose to execute the following rights:

\_\_\_\_\_ I (have)(have not) consulted with counsel. I realize it is in my best interests to do so prior to exercising or waiving any of my rights. Counsel's name is: LT Idona Mibest, JAGC, USNR.

\_\_\_\_\_ I (do)(do not) request a hearing before an administrative discharge board.

\_\_\_\_\_ In lieu of hearing, I (have)(have not) included written statements in rebuttal to this proposed separation.

(Insert appropriate  
separation authority.)

\_\_\_\_\_ I (do)(do not) desire to obtain copies of documents that will be forwarded to the Commanding General, Marine Corps Base, supporting this proposed discharge.

Subj: ACKNOWLEDGEMENT OF MY RIGHTS TO BE  
EXERCISED OR WAIVED IN SEPARATION  
PROCEEDINGS

4. \_\_\_\_\_ If I requested a hearing before an administrative discharge board, I realize I have the following rights:

\_\_\_\_\_ a. To be present or represented by counsel if confined by civil authorities.

\_\_\_\_\_ b. To be represented by military counsel - appointed or of my choice, if available.

\_\_\_\_\_ c. To be represented by civilian counsel if I desire and at my own expense.

\_\_\_\_\_ d. To challenge voting members of the board or the legal advisor, if any, for cause only.

\_\_\_\_\_ e. To testify in my own behalf, subject to the provisions of Article 31, UCMJ. (Compulsory self-incrimination prohibited.)

\_\_\_\_\_ f. At any time during the proceedings I or my counsel may submit recorded matter for consideration by the board.

\_\_\_\_\_ g. I or my counsel may call witnesses on my behalf.

\_\_\_\_\_ h. I or my counsel may question any witness who appears before the board.

\_\_\_\_\_ i. I or my counsel may present argument prior to the board's closing the hearing for deliberations on findings and recommendations.

\_\_\_\_\_ j. Upon written request to the (convening authority), to be provided with a copy of the report of the board and the endorsement thereon.

\_\_\_\_\_ k. Failure to appear without good cause at a hearing constitutes waiver of my right to be present at the hearing.

5. \_\_\_\_\_ I have read and fully understand the purpose and scope of NDRB and BCNR. Enclosure (1) is returned.

(Signature of respondent  
witnessed by counsel for  
respondent. Not con-  
tained in form, but  
required by MARCORSEPMAN,  
para. 6304.4.)

/s/ \_\_\_\_\_  
Signature of respondent

Witnessed by

/s/ \_\_\_\_\_  
Signature of counsel for respondent

RECORD OF PROCEEDINGS  
(MILPERSMAN, art. 3640350.6)  
(MARCORSEPMAN, para. 6320)

(Respondent's full name,  
rate, and SSN required  
on each page of case.  
NAVMILPERSCOMINST 1910.1D,  
encl.(1), para. 18)

PROCEEDINGS OF ADMINISTRATIVE BOARD

Held on board Naval Education and Training Center, Newport, R. I.

on 01 March 19cy

In the case of

YNSR ELLEN ANNA DOE, USNR, 012-34-5678

(Except for board's  
findings and  
recommendations, which  
must be verbatim, a  
summarized record will  
normally suffice. No  
official format has  
been promulgated.)

(USMC use as reference  
MARCORSEPMAN ch. 6,  
§ 3, part C.)  
(Exhibits 1,2,3  
required by both  
USN and USMC.)

(Note opening and  
closing times for  
all board sessions.)

(Identify persons  
present and legal  
qualifications of  
recorder, counsel,  
and legal advisor,  
if any.)

1. On 01 March 19cy on board Naval Education and Training Center (NETC) located at Newport, Rhode Island, an administrative board was conducted for the purpose of considering pertinent facts in the case of subject member who was being considered for administrative separation from the U.S. Naval Reserve by reason of alleged misconduct due to drug abuse, misconduct due to a pattern of misconduct, misconduct due to the commission of a serious offense, and misconduct due to a civilian conviction.

2. The board was conducted in compliance with the provisions of the Naval Military Personnel Manual (MILPERSMAN) and of NAVMILPERSCOMINST 1910.1D. The board was convened by order of Commander, Naval Education and Training Center, dated 25 February 19cy (exhibit 1 hereto). Exhibit 2 is a copy of the letter of notification. Exhibit 3 is the statement of awareness executed by respondent.

3. The board was called to order at 0900, 01 June 19cy. Present were: LCDR Eli Whitney, USN, President; LT Samuel Gompers, USNR, member; ENS Vera Miles, USN, member; YNSR Ellen A. Doe, USNR, respondent; LTJG Hamilton Burger, JAGC, USN, recorder; and LT Idona Mibest, JAGC, USNR, counsel for respondent. All parties indicated that they were ready to proceed. Both counsel for respondent and the recorder indicated that they were considered lawyers in the sense of Article 27(b), UCMJ.

(Respondent's full name, rate, and SSN required on each page of case. NAVMILPERSCOMINST 1910.1D, encl (1), para. 18.)

YNSR ELLEN ANNA DOE, USNR  
012-34-5678

(If challenge(s) made, indicate by whom, grounds, results. USMC - board votes on challenge. USN - Convening authority decides challenges to members. Identify any new replacement members and attach any modifications to convening order.)

4. The respondent was fully advised of her rights as provided in the MILPERSMAN and NAVMILPERSCOMINST 1910.1D, and she indicated that she had no questions concerning them.

5. The recorder asked the following questions of challenge for cause of board members:

Do you know of anything which will affect your ability to render a fair and impartial decision in the case? All board members responded negatively. Are you aware that the CNO's zero tolerance policy on drug abuse calls for mandatory processing if drug dependent and under E-3 on first offense? If not dependent, processing for the first drug offense is required unless the SNM has exceptional potential? Also, that two drug incidents require mandatory processing -- no matter what -- in the Navy?

Are you aware that the first purpose of this board is to determine if the misconduct alleged did occur and, if you determine that no misconduct occurred, that you can adjourn the board at that point? All board members replied that they were.

Are you aware that, even if you do find misconduct, you will decide whether to retain the respondent or discharge her? All board members replied that they were.

Are you aware that, if you decide to discharge the respondent, she may receive either an honorable, general, or other than honorable discharge? All board members replied that they were.

(If SNM has had prior service) If matters are presented involving prior service, such matters may only be considered on the question of retention or discharge (e.g., SNM's "potential for further naval service"). These matters are not relevant on the question of whether alleged misconduct occurred or, if you reach question of discharge, characterization of discharge (e.g., honorable, general, or other than honorable). Do you understand? All members stated that they understood.



(Respondent's full name, rate, and SSN required on each page of case. NAVMILPERSCOMINST 1910.1D, encl.(1), para. 18.)

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At this time, are all of the previously mentioned possible decisions viable options? All the members agreed that at that time, without having seen any of the evidence, it was possible they might find no misconduct, retain, or, if they reach the question of discharge, an honorable discharge was possible. All members agreed to keep an open mind until all the evidence was presented.

The recorder had no further questions.

The counsel for the respondent asked questions of challenge for the board.

If a misconduct due to drug abuse is found, is it possible to retain the respondent? All board members stated it was possible and depended on evidence. Do any of you discuss this case with anyone in the command? All board members stated they did not.

Do you understand that the MILPERSMAN is just a guideline? All board members replied that they did.

Could you find otherwise if this case is not the normal case, although MILPERSMAN says the characterization of discharge for a misconduct due to drug abuse is normally an other than honorable discharge? All board members stated they understood that each case is different. The senior member stated it would be based on evidence.

Are you aware that a person can make a mistake, learn from that mistake, and can still be a good sailor in the Navy? All board members replied positively.

The counsel for the respondent had no further questions.

Neither the recorder nor the counsel for the respondent had challenge for cause against any member of the board.

6. The recorder and counsel for respondent each made an opening statement.

(Respondent's full name, rate, and SSN required on each page of case. NAVMILPERSCOMINST 1910.1D, encl. (1), para. 18.).

YNSR ELLEN ANNA DOE, USNR  
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7. In addition to exhibits 1 through 3, the recorder offered the following documents for consideration by the board:

(Identify and attach to the record all exhibits considered by board.)

Exhibit 4	Service record page 9(2)
Exhibit 5	Service record page 601-7R submitted -1 Mar 22 (NJP of -1 Mar 21)
Exhibit 6	Service record page 601-7R submitted -1 Jul 30 (NJP of -1 July 26)
Exhibit 7	Service record page 13 counseling/warning of 26 Jul -1
Exhibit 8	Service record page 601-7R submitted -1 Oct 14 (SPCM of -1 Oct 07)
Exhibits 9a & 9b	Certified copy of Newport County Superior Court disposition #000-000 of 15 Jan cy with copy of General Laws of Rhode Island 11-41-20
Exhibit 10	Service record page 601-7R submitted cy Feb 21 (NJP of cy Feb 17)
Exhibit 11	Competence-for-duty examination of 25 Jan cy
Exhibit 12	NAVREGMEDCEN Portsmouth, VA 152345Z Feb cy laboratory confirmation)
Exhibit 13	Performance evaluation 23 Feb -1 to 26 Mar -1
Exhibit 14	Performance evaluation 27 Mar -1 to 30 Jun -1
Exhibit 15	Performance evaluation 1 Jul -1 to 31 Jan cy

(Exhibits 11 & 12: per OPNAVINST 5350.4 and MCO P5300.12, cannot be used for characterization.)

(Respondent's full name, rate, and SSN required on each page of case. NAVMILPERSCOMINST 1910.1D, encl.(1), para. 18.).

YNSR ELLEN ANNA DOE, USNR  
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Exhibit 16

Service record enlisted classification record

Exhibit 17

Service record page 601-7R submitted -3 Jun 29 (NJP of- 3 Jun 29)

(Specifically mention any limitations on use of evidence, such as certain urinalysis results, prior service incidents, etc.)

(Also have noted, and members acknowledge, on the record (e.g., exhibits 16 & 17), that matters from prior enlistments only to be considered on question of retention/separation.) (Detail any objections noted for the record.)

(Attach summaries of testimony of witnesses or summarize in record itself.)

(Attach any communications regarding production of witnesses, etc. CA's denial should articulate key facts and reasoning supporting denial/approval of witness requests.)

The recorder noted that exhibits 11 and 12 could be considered only as to the issue of drug abuse and retention or separation, but not as to the issue of characterization. Counsel for respondent indicated that she objected to all exhibits as being hearsay. Counsel for respondent also objected to exhibits 5, 6, and 10 as failing to indicate compliance with United States v. Booker. Counsel for respondent further objected to exhibits 4, 5, 6, 7, 8, 10, 11, and 12 as failing to properly reflect compliance with Article 1110, U.S. Navy Regulations. The President overruled all objections, noted the objections for the record, and accepted all exhibits. The recorder indicated that he had nothing further to present. The board recessed at 0940.

8. The board reassembled at 1000. All parties were again present. The respondent indicated that she understood her rights concerning the presentation of evidence in her behalf. Counsel for respondent called BMC Larry Roland, USN, Naval Education and Training Center, Newport, R.I., who was duly sworn and whose testimony is summarized in exhibit A.

9. Counsel for respondent had previously requested in writing the presence of LCDR J. R. Jackson, currently stationed at the Transient Personnel Unit, Great Lakes, Illinois (exhibit 17). The written denial thereof by the convening authority is attached as exhibit 18. Counsel for respondent first stated her objection to the denial of LCDR Jackson's personal appearance, then introduced a stipulation of expected testimony of LCDR Jackson as exhibit B.

(Respondent's full name, rate, and SSN required on each page of case. NAVMILPERSCOMINST 1910.1D, encl.(1), para. 18.)

YNSR ELLEN ANNA DOE, USNR  
012-34-5678

(Privacy Act needed if respondent is asked to provide information by the recorder or members.)

(NOTE: In lieu of making witness testimony exhibits, it may be summarized in the actual board record. NMPC prefers testimony to be summarized in the record itself.)

(Insert additional paragraphs as required to reflect all significant matters.)

10. Counsel for respondent next indicated that the respondent desired to make a sworn statement and would voluntarily subject herself to examination by the board and the recorder. Prior to receiving this evidence, the respondent was provided a Privacy Act statement (exhibit C-1). Respondent was then duly sworn, and her testimony is summarized in exhibit C-2. Counsel for respondent indicated she had nothing further to present. The board recessed at 1045.

11. The board reassembled at 1055. All parties who were present when the board recessed were again present. In rebuttal, the recorder called ENS Chester D. Carter, USN, Naval Education and Training Center, who was duly sworn and whose testimony is summarized in exhibit 19. The recorder provided the board with a description of the benefits associated with various administrative separations, which was received as exhibit 20. Counsel for the respondent indicated that she had no objection to exhibit 20, providing that the board was advised that there may be other disadvantages associated with general and other than honorable condition discharges (such as difficulty in securing employment, etc.). The recorder agreed and the board was so advised. The recorder provided the board with a findings and recommendations worksheet which is attached as exhibit 21.

12. The recorder and counsel for respondent both indicated they had nothing further to present. The recorder made opening argument. Counsel for respondent made closing argument. The recorder made closing argument.

13. The board was closed at 1110 for deliberation. The recorder, the respondent, and counsel for respondent withdrew from the board room at this time to permit deliberation by the board members in private.

14. The board was reopened at 1149. The recorder, the respondent, and counsel for respondent returned to the board room. The board announced the following:

(Respondent's full name, rate, and SSN required on each page of case. NAVMILPERSCOMINST 1910.1D, encl. (1), para. 18.)

YNSR ELLEN ANNA DOE, USNR  
012-34-5678

**FINDINGS OF THE BOARD:** The board, by unanimous vote, finds that the respondent did commit misconduct due to drug abuse, misconduct due to a pattern of misconduct, misconduct due to the commission of a serious offense, and misconduct due to a civilian conviction. The board specifically finds by a preponderance of the evidence:

(Findings should include complete summary of facts and circumstances, relating respondent to each allegation.)

1. That the respondent wrongfully possessed drug paraphernalia on board Naval Education and Training Center on -1 Jul 19 and wrongfully used marijuana (or a derivative thereof) while on liberty on 22-24 Jan 19cy; that respondent has exhibited a pattern of discreditable involvement with military and civilian authorities as evidenced by: NJP's of -1 Mar 21, -1 Jul 26, and cy Feb 17; SPCM of -1 Oct 07; and Newport County Superior Court action tantamount to a conviction for shoplifting adjudged 15 Jan cy; and that on 26 Jul -1 respondent was properly counseled and warned of the consequences of continued misconduct but violated the warning.

2. That each allegation set forth in the notice of proposed separation is supported by a preponderance of the evidence.

3. That, under the guidance in the Naval Military Personnel Manual concerning the specific reasons for separation, the board has determined:

(Board must make separate determination for each reason.)

a. That the findings warrant separation for misconduct due to drug abuse.

b. That the findings warrant separation for misconduct due to a pattern of misconduct.

c. That the findings warrant separation for misconduct due to the commission of a serious offense.

d. That the findings warrant separation for misconduct due to a civilian conviction.

**RECOMMENDATIONS OF THE BOARD:** The board, by 2/3 vote, recommends separation under other than honorable conditions by reason of misconduct due to drug abuse, misconduct due to a pattern of misconduct, misconduct due to the commission of a serious offense, and misconduct due to a civilian conviction. The board unanimously recommends that the discharge not be suspended. The board does not recommend transfer to the Individual Ready Reserve.

(Respondent's full name, rate, and SSN required on each page of case. NAVMILPERSCOMINST 1910.1D, encl.(1), para. 18.)

YNSR ELLEN ANNA DOE, USNR  
012-34-5678

(Board should specifically comment on limited use of any evidence such as certain urinalysis results, prior service incidents, etc.)

NOTE: The board specifically notes that it considered exhibits 16 and 17 only on the issues of retention or separation, and not on the issues of the misconduct due to a pattern of misconduct and characterization. Exhibits 11 and 12 were considered in establishing misconduct due to drug abuse and on retention or separation, but not on characterization.

The board adjourned at \_\_\_\_\_, 01 March 19cy.

AUTHENTICATED THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 19CY.

\_\_\_\_\_  
(signature)  
ELI WHITNEY  
LCDR, USN  
President

(\_\_\_\_\_  
(signature)  
HAMILTON BURGER  
LTJG, JAGC, USN  
Recorder

-----  
USE "A" OR "B" FOLLOWING

"A"

REVIEWED BY COUNSEL FOR RESPONDENT THIS  
\_\_\_\_\_ DAY OF \_\_\_\_\_, 19CY.

I have examined the summary of testimony of all witnesses heard and all supporting documents included in the record of proceedings and I:

(Counsel for respondent checks appropriate block.)

\_\_\_\_\_ agree with the summarization and/or documents.

\_\_\_\_\_ do not agree with the summarization and/or documents included, and I have included a statement of deficiencies for the record.

\_\_\_\_\_  
IDONA MIBEST  
LT, JAGC, USNR  
Counsel for the Respondent

(Respondent's full name,  
rate, and SSN required  
on each page of case.  
NAVMILPERSCOMINST  
1910.1D, encl.(1),  
para. 18.)

YNSR ELLEN ANNA DOE, USNR  
012-34-5678

-----  
-OR-

NAVY OPTION ONLY - "B"

Reviewed by counsel for the respondent: LT IDONA  
MIBEST, JAGC, USNR, per NMPC MSG 051927Z JUN  
86, para. 5A (NAVOP 058/86); counsel for the respon-  
dent was mailed a copy of the record of proceedings,  
summarized testimony of all witnesses, and exhibits on  
\_\_\_\_\_, 19CY, in lieu of receiving and signing  
the transcript of the board. Counsel for the respon-  
dent was told that, if any rebuttal to the board was  
desired, it should be sent directly to Commander, Naval  
Military Personnel Command (Code 8322), Washington,  
DC 20370-5322, making the Commander, Naval  
Education and Training Center, a "Copy to" addressee.

LAST PAGE OF "RECORD"

## REPORT OF ADMINISTRATIVE BOARD

Report of Administrative Board held at NETC, Newport, RI, on 01 March CY, in the case of YNSR Ellen Anna Doe, USNR, 012-34-5678

**FINDINGS OF THE BOARD:** The board by unanimous vote finds that the respondent did commit misconduct due to drug abuse, misconduct due to a pattern of misconduct, misconduct due to the commission of a serious offense, and misconduct due to a civilian conviction. The board specifically finds by a preponderance of the evidence:

(Findings should include complete summary of facts and circumstances, relating respondent to each allegation.)

1. That the respondent wrongfully possessed drug paraphernalia on board Naval Education and Training Center on -1 Jul 19 and wrongfully used marijuana (or a derivative thereof) while on liberty on 22-24 Jan 19cy; that respondent has exhibited a pattern of discreditable involvement with military and civilian authorities as evidenced by: NJP's of -1 Mar 21, -1 Jul 26, and cy Feb 17; SPCM of -1 Oct 07; and Newport County Superior Court action tantamount to a conviction for shoplifting adjudged 15 Jan cy; and that on 26 Jul -1 respondent was properly counseled and warned of the consequences of continued misconduct but violated the warning.

2. That each allegation set forth in the notice of proposed separation is supported by a preponderance of the evidence.

3. That, under the guidance in the Naval Military Personnel Manual concerning the specific reasons for separation, the board has determined:

(Board must make separate determination for each reason.)

a. That the findings warrant separation for misconduct due to drug abuse.

b. That the findings warrant separation for misconduct due to a pattern of misconduct.

c. That the findings warrant separation for misconduct due to the commission of a serious offense.

d. That the findings warrant separation for misconduct due to a civilian conviction.

**RECOMMENDATIONS OF THE BOARD:** The board, by 2/3 vote, recommends separation under other than honorable conditions by reason of misconduct due to drug abuse, misconduct due to a pattern of misconduct, misconduct due to the commission of a

Page One of Report



## REPORT OF ADMINISTRATIVE BOARD

Report of Administrative Board held at NETC, Newport, RI, on 01 March CY, in the case of YNSR Ellen Anna Doe, USNR, 012-34-5678

serious offense, and misconduct due to a civilian conviction. The board unanimously recommends that the discharge not be suspended. The board does not recommend transfer to the Individual Ready Reserve.

(Board should specifically comment on limited use of any evidence such as urinalysis results, prior service incidents, etc.)

NOTE: The board specifically notes that it considered exhibits 16 and 17 only on the issue of retention or separation, and not on the issues of the misconduct due to a pattern of misconduct and/or characterization. Exhibits 11 & 12 were considered in establishing misconduct due to drug abuse and on retention or separation, but not on characterization. The board adjourned at 1150.

(If unanimous, all three members sign here.)

\_\_\_\_\_  
(signature)  
ELI WHITNEY  
LCDR, USN  
President

\_\_\_\_\_  
(signature)  
SAMUEL GOMPERS  
LT, USNR  
Member

\_\_\_\_\_  
(signature of  
member if  
unanimous)

(Any dissent should be detailed in verbatim form and signed by the dissenting member.)

DISSENT: Although I agree with all other findings and recommendations of the board, it is my recommendation that the character of separation be GENERAL in view of the extenuating circumstances reflected in exhibit C.

\_\_\_\_\_  
(Signature)  
VERA MILES  
ENS, USN  
Member

Authentication by Senior Member this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_:

\_\_\_\_\_  
(Signature)  
ELI WITNEY  
LCDR, USN  
Senior Member

Page Two of Report

## REPORT OF ADMINISTRATIVE BOARD

Report of Administrative Board held at NETC, Newport, RI, on 01 March CY, in the case of YNSR Ellen Anna Doe, USNR, 012-34-5678

Authentication by Counsel for the Respondent this \_\_\_\_ day of \_\_\_\_\_, 19\_\_: I (do) (do not) agree with the findings and recommendations as stated above. I (will) (will not) submit a statement of deficiencies within \_\_\_\_ working days. These decisions are separate from my review of the summary of testimony of all witnesses heard and all supporting documents included in the record of proceedings. A decision to make a statement as to the record will be made after I have read it.

\_\_\_\_\_  
(Signature)  
IDONA MIBEST  
LT, JAGC, USNR  
Counsel for the Respondent

CONDITIONAL WAIVER FORMAT

(USMC ONLY)

Rate, Name, SSN  
Activity  
Date

I, (fill in), the respondent, being considered for an Administrative Board proceeding, do hereby certify that:

a. Provided I am recommended for a general discharge, I waive the Administrative Board to which I am entitled and have elected.

b. I understand that once this agreement is signed by me and the commanding officer, (fill-in activity name), it is binding upon me, the commanding officer, and Commander, Naval Military Personnel Command only if I have elected an administrative board and provided the offense(s) for which I am being processed does (do) not fall within the category of offenses which normally results in an other than honorable separation.

c. I understand if this agreement is accepted, and the Commander, Naval Military Personnel Command authorizes my discharge, such discharge shall be a general discharge.

d. I understand that a general discharge may deprive me of certain veterans' benefits based upon my current period of active service and that I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces, or the character of discharge received, may have a bearing.

e. My qualified counsel has fully advised me of the meaning and effect of this conditional waiver and I fully understand and comprehend the meaning thereof and all of its attendant effects and consequences. I am satisfied with his/her counsel. This offer to waive my right to an administrative board originated with me and my lawyer counsel. I enter into this conditional waiver free from duress or other promises of any kind. I have asked my counsel to witness my signature.

f. If applicable, add the following statement:

"In view of the above, I no longer desire to submit a statement."

(Signature of respondent)

\_\_\_\_\_  
Witnessed by:  
(Signature of counsel, state licensed)

"After thorough review of the entire case of subject member, I have determined that the facts and circumstances in this case do not warrant a separation under other than honorable conditions. Therefore, this conditional waiver for a general discharge is favorably endorsed."

\_\_\_\_\_  
(Signature of Commanding Officer  
or acting Commanding Officer)

24 JAN 1990

## SAMPLE LETTER OF TRANSMITTAL FORMAT - ADMINISTRATIVE BOARD PROCEDURE

From: Commanding Officer, \_\_\_\_\_ (UIC)  
To: Commander, Naval Military Personnel Commander (NMPC-83)

Subj: (RATE, NAME OF MEMBER, USN(R), SSN); RECOMMENDATION FOR SEPARATION DUE TO (INDICATE APPROPRIATE REASONS CITED IN THE MILPERSMAN AND THE SPECIFIC ARTICLE NUMBER(S)).

Ref: (a) MILPERSMAN \_\_\_\_\_

Encl: (1) Copy of notice of administrative board procedure proposed action  
(2) Signed statement of awareness and request for or waiver of rights  
(3) Statement of member, if one is submitted.  
(4) Copy of page 9, with final trait averages  
(5) Information concerning arrest, conviction, or disposition (include civil document if available), if applicable  
(6) Other pertinent documentation (include most recent counseling /warning entry, if executed) (if drug alcohol/abuse current medical dependency evaluation subsequent to most recent incident occurring within past six months.)  
(7) Proceedings of Administrative Board, if applicable  
(8) Appointing letter for nonlawyer counsel, if applicable

1. Per reference (a), the following information is submitted:

a. Reason for processing (one or more reasons).

b. Basic record data: Date of current enlistment: (fill in) for (fill in) years; EAOS: (fill in); marital status: (fill in) dependents: (fill in); months on board: (fill in); total service: active-(fill in number of years and months), inactive - (fill in number of years and months and when commenced),

c. Involvement with civil authorities; if none, so state. Advise if member has appealed or intends to appeal any civil convictions, and time limit within which member must file appeal. See encl (4) paragraph 1c.

d. Summary of military offense(s); if none, so state. Otherwise, in subparagraph form give complete, detailed summary of UCMJ violations, i.e., judicial action, charges and specifications, date and/or period of offenses, and punishment awarded. Must include the convening authority's final action on all courts-martial.

Enclosure (8)

24 JAN 1990

- e. Findings of Administrative Board; if no board, so state.
- f. Recommendation of Administrative Board; if no board, so state.  
(NOTE: If fleet reserve eligible - Board must make recommendation regarding reduction in paygrade prior to transfer if member processed for misconduct, homosexuality or security and member elected right to transfer to the fleet reserve.)
- g. Type of discharge recommended by Administrative Board: if no board, so state.
- h. Comments and recommendations of commanding officer (or acting commanding officer).
- i. Date and characterization of discharge if commanding officer separates under reference (c).
- j. POC for discussion of this case is (fill in Name, Rank, Billet),  
AUTOVON: (Fill in) State location of member if transferred TAD subsequent to completion of case processing.

\_\_\_\_\_  
(Signature of Commanding  
Officer or acting Commanding  
Officer)

Copy to:  
(appropriate PERSUPPACT/  
PERSUPPDET where applicable)  
(TAD Command where applicable)

24 JAN 1990

MESSAGE FORMAT- SUBMISSION OF ADMINISTRATIVE BOARD

PROCEDURE PROPOSED ACTION - NO ADMINISTRATIVE BOARD CONVENED

FROM:

TO: COMNAVMILPERSCOM WASHINGTON DC

INFO: (ISIC, AS DESIRED AND PERSUPPACT/PERSUPPDET  
WHERE APPLICABLE)

UNCLAS: //NO1910//

SUBJ: (RATE, NAME OF MEMBER, COMPONENT, SSN): RECOMMENDATION  
FOR ADMIN SEPARATION BY REASON OF HOMOSEXUALITY AND/OR MISCONDUCT  
AND/OR DEFECTIVE ENLISTMENT AND INDUCTION DUE TO FRAUDULENT  
ENTRY INTO NAVAL SERVICE (AS APPROPRIATE) (N8322)

A. MILPERSMAN \_\_\_\_\_ (ARTICLE(S) CITING REASON(S))

B. NAVMILPERSCOMINST 1910.1D

1. IAW REFS A AND B FOLLOWING REQUEST FOR ADMIN DISCH SUBMITTED ICO  
SNM. CO HAS REVIEWED REFS A AND B AND CERTIFIES THAT THIS MESSAGE  
SUBMISSION SUPPORTS THE MOST APPLICABLE REASON(S) FOR PROCESSING,  
ACCURATELY REFLECTS THE COMPLETE RECORD IN THIS CASE AND MEETS MINIMAL  
REQUIREMENTS FOR PROCESSING. IF DRUG OR ALCOHOL ABUSE IS INVOLVED, INFO  
FM MOST RECENT DRUG OR ALCOHOL SUBSTANCE ABUSE REPORT IS CONTAINED IN PARA  
13. AN ADMINISTRATIVE BOARD HAS NOT BEEN CONVENED IN THIS CASE.  
INFORMATION PARAGRAPHS AS OUTLINED IN ENCL 9 TO REF B ARE LISTED IN TOTAL  
WITH APPLICABLE INFORMATION NOTED. IF PARA DOES NOT APPLY, "NA"  
HAS BEEN INDICATED.

2. REASON FOR SEPARATION PROCESSING: (ONE OR MORE SPECIFIC REASON(S)  
VERBATIM AS SPECIFIED IN MILPERSMAN 3630100, 3630400, 3630600 OR 3630620  
AS APPROPRIATE.) BRIEFLY SUMMARIZE HOW CASE FOR SEPARATION WAS DEVELOPED,

Enclosure (9)

24 JAN 1990

SPECIFICALLY, THE BASIS FOR PROCESSING (E.G., PROBABLE CAUSE URINALYSIS, STATEMENTS, PUNISHMENTS UNDER THE UCMJ AND OTHER SUPPORTING FACTS).

3. BASIC RECORD DATA: DATE OF CURRENT ENLISTMENT: (DATE) FOR (FILL IN) YEARS; EAOS: (FILL IN); MARITAL STATUS: (FILL IN); DEPENDENTS: (FILL IN); MONTHS ON BOARD: (FILL IN); TOTAL SERVICE ACTIVE: (FILL IN NUMBER OF YEARS AND MONTHS); INACTIVE (FILL IN NUMBER OF YEARS AND MONTHS AND WHEN COMMENCED); REENLISTMENT STATUS: (FILL IN "RECOMMENDED"/"NOT RECOMMENDED".)

4. INVOLVEMENT WITH CIVILIAN AUTHORITIES: (FILL IN AS APPROPRIATE. IF CIVILIAN CONVICTION, INCLUDE INFO IN PARAS A AND B BELOW.)

A. CIRCUMSTANCES OF OFFENSE(S): (INCLUDE ALL FACTS AND CIRCUMSTANCES SURROUNDING OFFENSES(S) IN SUFFICIENT DETAIL TO INDICATE NATURE AND SERIOUSNESS OF OFFENSE(S).)

B. ACTION BY CIVILIAN AUTHORITIES: (INCLUDE CITATION OF CIVIL STATUTE(S) VIOLATED, CHARGE(S) ON WHICH TRIED AND CONVICTED, COURT IN WHICH CONVICTED, SENTENCE OF COURT, MAXIMUM PUNISHMENT WHICH COULD HAVE BEEN IMPOSED FOR SUCH A CONVICTION UNDER UCMJ, AND STATUS OF ANY APPEAL. ADVISE IF MEMBER HAS FILED OR INTENDS TO FILE AN APPEAL AND TIME LIMIT WITHIN WHICH MEMBER MUST FILE APPEAL.)

5. SUMMARY OF MILITARY OFFENSE(S): (LIST IN CHRONOLOGICAL ORDER BY SUBPARAGRAPH: DATE OF NJP/CM; TYPE: NJP/CM; OFFENSE(S); DATE OF OFFENSE(S); NOTE: IDENTIFY OFFENSE(S) TO INCLUDE ALL SPECIFICATIONS, E.G., LENGTH OF UA OFFENSE(S), ETC. ICO COURTS-MARTIAL INDICATE DATE OF CONVENING AUTHORITY FINAL ACTION AND APPROVED FINDINGS AND SENTENCE.) GIVE DATE OF PG 13 LTR OF COUNSELING/WARNING HERE AS WELL AS IN PARAGRAPH 13.



24 JAN 1990

6. SNM'S PAGE 9 IS PROVIDED IN TOTAL AS FOLLOWS: (REFLECT ALL PERFORMANCE MARKS, UCMJ PUNISHMENT(S) AND FINAL TRAIT AVERAGES.)
7. NOTICE OF AN ADMINISTRATIVE BOARD PROCEDURE PROPOSED ACTION DTD (FILL IN), PROVIDED IAW MILPERSMAN 3640300.2 AND ENCL 6 OF REF B LISTS THE FOLLOWING SPECIFIC VERBATIM REASON(S) AS STATED IN MILPERSMAN FOR PROCESSING: (FILL IN — SEE ENCL (15)) NO ABBREVIATIONS). SNM WAS AFFORDED ALL RIGHTS IAW PARA 4 OF ENCL 6 TO REF B. (THIS PARAGRAPH SHOULD MIRROR EXACTLY THE LETTER OF NOTIFICATION.)
8. SNM WAS ADVISED OF RIGHT TO CONSULT WITH COUNSEL BEFORE MAKING DECISION TO REQUEST OR WAIVE RIGHTS. SNM (DID/DID NOT) CONSULT WITH COUNSEL. (PROVISIONS OF MILPERSMAN 3640300.3 PERTAIN.)
9. STATEMENT OF AWARENESS DTD (FILL IN), EXECUTED IAW MILPERSMAN 3640300.7 AND ENCL 7 OF REF B INCLUDES VERBATIM REASON(S) FOR PROCESSING AS LISTED IN PARA 7, ABOVE. SNM ACKNOWLEDGED THAT IF SEPARATION IS APPROVED, CHARACTERIZATION OF SERVICE MAY BE UNDER OTHER THAN HONORABLE CONDITIONS. SNM REQUESTED FOLLOWING RIGHTS: (LIST ALL RIGHTS ELECTED). SNM WAIVED ALL OTHER RIGHTS.
10. SNM (DID/DID NOT) ELECT TO MAKE A WRITTEN STATEMENT. SNM'S STATEMENT, IF ELECTED, IS QUOTED VERBATIM AS FOLLOWS:
11. (IF APPLICABLE) PSYCHIATRIC OR MEDICAL EVALUATION AS FOLLOWS: (BRIEFLY LIST PERTINENT FINDINGS, DIAGNOSIS, RECOMMENDATION(S), AND, IF ALCOHOL/DRUG INVOLVEMENT INDICATED, ADVISE IF MEMBER ALCOHOL/DRUG DEPENDENT.) MEDICAL OFFICER SIGNED EVALUATION ON (DATE). EVALUATION INDICATES SNM (IS/IS NOT) DRUG/ALCOHOL DEPENDENT. SNM (IS/IS NOT) RECOMMENDED FOR FURTHER SERVICE BY MEDICAL OFFICER.

84 JAN 1990

12. IF MBR IS BEING DUAL-PROCESSED FOR CONVENIENCE OF THE GOVERNMENT DUE TO PERSONALITY DISORDER, PROVIDE PSYCHIATRIC EVALUATION HERE.

SPECIFICALLY STATE WHETHER MEMBER DIAGNOSED AS A DANGER TO SELF OR OTHERS.

13. MOST RECENT PG 13 ISSUED BY PARENT, PROCESSING COMMAND, REGARDLESS OF REASON FOR PROCESSING. A PG 13 IS ONLY REQUIRED FOR PROCESSING FOR MISCONDUCT DUE TO A PATTERN OF MISCONDUCT OR DUE TO MINOR DISCIPLINARY INFRACTIONS, CONVENIENCE OF THE GOVERNMENT DUE TO PERSONALITY DISORDER, ENTRY LEVEL PERFORMANCE AND CONDUCT, OR UNSATISFACTORY PERFORMANCE.

DO NOT INTERPRET THIS PARAGRAPH TO MEAN THE COMMAND MUST HAVE COUNSELED MEMBER BEFORE PROCESSING FOR ANY OTHER REASON(S), NOR TO MEAN MEMBER MUST NOW BE GIVEN PG 13.) IF NONE SO STATE.

14. COMMENTS AND RECOMMENDATION OF CO: (IF MEMBER PROCESSED FOR MINOR DISCIPLINARY INFRACTIONS, OR PATTERN OF MISCONDUCT, CONFIRM COUNSELING REQUIREMENT MET LAW MILPERSMAN 3630600 AND INDICATE DATE PAGE 13 ENTRY SIGNED BY MEMBER (SHOULD BE SAME AS PARA 13). CO IS TO STATE HOW THE COUNSELING/WARNING ENTRY WAS VIOLATED. ICO AN ESTABLISHED PATTERN OF FAILURE TO PAY JUST DEBTS, INCLUDE SUMMARY OF MEMBER'S FINANCIAL STATEMENT LAW MILPERSMAN 6210140.14. ICO HOMOSEXUALITY, COMMENT SHOULD INCLUDE INFORMATION WITH REGARD TO THE REASON(S) FOR THE PROCESSING AND WHETHER OR NOT THE MEMBER HAS ADMITTED OR DENIED HIS OR HER HOMOSEXUAL INVOLVEMENT AS DESCRIBED. IF SEPARATION IS RECOMMENDED, CO SHALL MAKE SPECIFIC RECOMMENDATION AS TO CHARACTERIZATION OF DISCHARGE.)

15. COPIES OF NOTICE OF AN ADMINISTRATIVE BOARD PROCEDURE PROPOSED ACTION, STMT OF AWARENESS AND ALL SUPPORTING DOCUMENTATION WILL BE FORWARDED IN 15 WORKING DAYS TO NMPC 8322 LAW PARA 17C OF ENCL 1 TO REF B.

Enclosure (9)

4

SJA-199

24 JAN 1990

16. POC FOR DISCUSSION OF THIS CASE IS (FILL IN NAME, RANK, BILLET):

AUTOVON: (FILL IN) STATE LOCATION OF SNM IF TRANSFERRED TAD SUBSEQUENT  
TO COMPLETION OF CASE PROCESSING.

17. UIC \_\_\_\_\_ (LOCATION OF SNM).

18. CO SENDS.

(COMMANDING OFFICER SHOULD ENSURE COMPLETENESS OF SUBMISSIONS.

OMISSIONS WILL RESULT IN UNNECESSARY DELAYS OR REPROCESSING).

## JAG MANUAL INVESTIGATIONS NOT REQUIRING A HEARING

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## CHECKLISTS FOR JAG MANUAL INVESTIGATIONS NOT REQUIRING A HEARING

This section is designed to be a concise summary for the more common JAG Manual investigations that are required to be conducted. Part A is a general checklist, to ensure that the JAGMAN investigation not requiring a hearing is administratively complete; Part B is a brief documents checklist; and Part C lists possible sources of information for the investigation. Parts D-J consist of special checklists for specific types of incidents. Samples of the documents required are also provided at the end of the section.

## PART A

### GENERAL CHECKLIST FOR JAG MANUAL INVESTIGATIONS NOT REQUIRING A HEARING

In writing or reviewing a JAG Manual investigation, the following should be checked or examined:

1. Appointing order (if written)

- a. Convened by commanding officer, or officer in charge, or delegate
- b. Name(s) of member(s)
- c. Seniority rule for member(s)
- d. Scope of inquiry defined, including sections in JAG Manual outlining special investigative requirements
- e. Whether opinions/recommendations required
- f. Deadlines addressed
- g. Warnings under article 31, § 0306, injury/disease; § 0308, Privacy Act
- h. Attorney Work Product Statement, § 503(c)
- i. Assistance available

2. Investigative report

- a. Heading and copies
  - (1) "From" command
  - (2) "To" JAG
  - (3) "Via" and "Copy to" addressees identified (JAGMAN, §§ 0209-0211)
  - (4) Advance copies (JAGMAN, § 0211c)
  - (5) Sufficient copies, complete with enclosures, for convening and reviewing authorities and JAG (JAGMAN, §§ 0209, 0211)
  - (6) legible
  - (7) All necessary documents/exhibits/enclosures attached
  - (8) Investigation properly classified or unclassified (JAGMAN, § 0209c)

b. Preliminary statement

- (1) Identify nature of investigation and reference appointing order
- (2) Limited participation of any member(s)
- (3) Difficulties encountered in the investigation
- (4) Conflicts in evidence and reasons for reliance on particular information, if any
- (5) Reasons for any delays
- (6) Failure to advise persons of article 31, Privacy Act, injury/ disease, or "party" rights
- (7) Attorney Work Product Statement

c. Findings of fact

- (1) Narrative or separate facts
- (2) Evaluation of evidence or lack of evidence (negative finding of fact)
- (3) Special factfinding requirements of chapters XIII, IX and XX of the JAG Manual addressed
- (4) Specific as to times, places, and events
- (5) Reference enclosure(s)
- (6) Person(s) connected with the incident identified by grade or rate, service number, organization, occupation or business, and residence
- (7) All factual evidence, including investigating officer's personal observations, considered and included in the report as enclosure(s) and finding(s) of fact

d. Opinions

- (1) Logical inferences or conclusions from facts
- (2) Reference findings of fact
- (3) Properly labeled
- (4) Those required by appointing order or JAG Manual addressed and any others considered appropriate

e. Recommendations

- (1) Logical and consistent with opinions and findings of fact
- (2) Those required by appointing order or the JAG Manual addressed and any others considered appropriate
- (3) Corrective, disciplinary or administrative action
- (4) Signed, sworn change sheet enclosed if court-martial recommended
- (5) Draft of punitive letter of reprimand if recommended

f. Enclosures

- (1) Checklist at appendix D-3 of this text
- (2) All evidence
- (3) Signed, sworn witness statement or summary of witness' oral statement
- (4) Authenticated copies of documents
- (5) Each statement, document or exhibit a separate enclosure
- (6) Separately numbered

g. Endorsements

- (1) Convening authority and subsequent addressees set forth action taken
- (2) State relevant disciplinary, administrative or operational information known at time investigation reviewed that is not contained in record or prior endorsements
- (3) Approve/disapprove/modify proceedings, facts, opinions, and recommendations in record and prior endorsements
- (4) Any action taken



## PART B

### DOCUMENTS CHECKLIST FOR JAG MANUAL INVESTIGATIONS NOT REQUIRING A HEARING

1. Appointing order, if necessary
2. Statement of doctor and/or copies of medical records as to extent of injuries (copies of private medical bills if reimbursement may be claimed)
3. Report of autopsy and, where available, autopsy protocol in death cases
4. Report of coroner's inquest or medical examiner's report in death cases
5. Laboratory reports, if any
6. Copy of reservist's orders, if applicable
7. Statements or affidavits of witnesses or others
8. Statement of investigating officer, if applicable
9. Photographs and/or diagrams properly labeled
10. Copy of local regulations, if applicable
11. Exhibit material to support IO's findings and opinions
12. Signed original Privacy Act statement for each witness if personal information has been solicited
13. Message traffic surrounding the incident

## PART C

### POSSIBLE SOURCES OF INFORMATION FOR SHIPBOARD INVESTIGATIONS

#### 1. Personnel

- a. Allowance
- b. Manning level
- c. Stability
- d. General personnel appearance
- e. Safety hazards
- f. Any history of accidents for person(s) involved

#### 2. Equipment

- a. History of failures
- b. Proper design or jury rigged
- c. COSAL, open purchase, substitute
- d. Complete operating instructions
- e. Safety precautions
- f. Properly labeled: Compartments, piping, ducts
- g. Piping systems
- h. PMS/MDCS coverage, documentation
- i. Clocks synchronized, time-check log maintained and, if appropriate, any time check in affected spaces
- j. Communication circuits adequate: IMC and other intercom systems, sound-powered phones
- k. Age of ship in years
- l. Firefighting and damage control equipment and techniques used to control or reduce damage, operative or inoperative, effective or ineffective

3. Location of accident (where most damage occurred)
  - a. Compartment number
  - b. Compartment noun name
  - c. In what compartment did primary accident cause occur?
4. Logs, records and reports - Review and check for corrective action taken/contemplated
  - a. Deck log
  - b. Sonar logs
  - c. Watch, quarter and station bill
  - d. Navigation center log
  - e. Engineering smooth log
  - f. Engine bell book
  - g. Engineering operating logs
  - h. Damage control closure log
  - i. Tag-out log
  - j. Standing orders: Unit commander, commanding officer, engineering officer, navigator
  - k. Night orders: Unit commander, commanding officer, engineering officer, navigator
  - l. Training records: Shipboard, plan of the day, team, watch qualification, equipment qualification, ship qualification, individual personnel
  - m. Quartermaster's notebook
  - n. Radio log
  - o. Personnel records
  - p. Ship's operating schedule
  - q. INSURV, command inspections, combined trials
  - r. Monthly hull reports, 2000 reports, zone inspections
  - s. Significant outstanding CASREPTS

- t. Machinery out-of-commission logs
  - u. Ships procedures adequate, followed
5. Morale
- a. Liberty/leave
  - b. Number of duty sections/watch sections
  - c. Working hours, as indicated in plan of the day and deck logs
  - d. Habitability (air conditioning, ventilation, laundry facilities, lighting system, general housekeeping, heads, living quarters, working spaces, recreational spaces)
6. Condition of ship's boats
7. Availability of shore services
- a. Electricity
  - b. Shore steam
  - c. Potable and firefighting water
  - d. High pressure air
8. Illumination
- a. Exterior
  - b. Interior
  - c. At scene
9. Full description of damage sustained to ship and equipment, including:
- a. Material costs to Navy
  - b. Navy manhours required to repair damage
  - c. Off-ship labor costs
  - d. Outside assistance costs (drydock, etc.)
10. Primary and contributing causes

## SPECIAL JAG MANUAL INVESTIGATION CHECKLISTS

General. In addition to those items listed previously, the following checklists should be consulted in appropriate JAG Manual investigations, as applicable.

### APPENDIX

D	LOD/Misconduct
E	Claims for/against Government
F	Fires
G	Flooding
H	Collision
I	Grounding
J	Article 138, UCMJ, complaints

PART D

LINE OF DUTY/MISCONDUCT-SPECIAL CHECKLIST

1. Injured person's/deceased's/witness' identifying data
  - a. Name
  - b. Sex and age
  - c. Military
    - (1) Grade or rate
    - (2) Service number, if applicable
    - (3) Regular or Reserve
    - (4) Organization
    - (5) Armed force
    - (6) Experience or expertise, i.e., training, licenses, etc.
  - d. Civilian
    - (1) Title
    - (2) Business or occupation
    - (3) Address
    - (4) Experience or expertise, i.e., training, licenses, etc.
2. Injury/death
  - a. Date/time/place of occurrence
  - b. Nature/extent of injury including description of body parts injured
  - c. Place, extent, and cause of hospitalization of injured/deceased
  - d. Status of injured/deceased vis-a-vis leave, liberty, unauthorized absence (UA), active duty, active duty for training, or inactive duty for training at time of injury/death

- e. Whether any UA status at time of injury materially interfered with his military duty
- f. Servicemember unable to perform duties for over 24 hours
- g. Servicemember's injury possibly permanent
- h. Training
  - (1) Formal/on the job
  - (2) Adequacy
  - (3) Engaged in tasks different from those in which trained
  - (4) Engaged in tasks too difficult for skill level
  - (5) Emergency responses/reaction time
- i. Supervision
  - (1) Adequate/lax
  - (2) Absent
- j. Physical factors
  - (1) Tired
  - (2) Working excessive hours
  - (3) Hungry
  - (4) Medication prescribed or unauthorized
  - (5) Ill or experiencing dizziness, headaches or nausea
  - (6) Suffering from exposure to severe environmental extremes
  - (7) Periods of alcohol or habit-forming drug impairment
    - (a) Individual's general appearance, behavior, rationality of speech, and muscular coordination
    - (b) Quantity and nature of intoxicating agent used
    - (c) Period of time in which consumed

(d) Results of blood, breath, urine or tissue tests for intoxicating agents

(e) Lawfulness of intoxicating agent

k. Mental factors

(1) Emotionally upset (angry, depressed, moody, tense)

(2) Inattention due to preoccupation with unrelated matters

(3) Motivation

(4) Knowledge of standard procedures and adherence to them

(5) Mental competence

(a) Presumption of sanity

(b) Attempted suicide (reasonable, adequate motive or not)

(c) Mental disease or defect

l. Design factors

(1) Equipment's condition, e.g., vehicle's mechanical condition

(2) Operating unfamiliar equipment/controls

(3) Operating equipment with controls that function differently than expected due to lack of standardization

(4) Unable to reach all controls from his work station and see and hear all displays, signals and communications

(5) Provided insufficient support manuals

(6) Using support equipment which was not clearly identified and likely to be confused with similar but noncompatible equipment

m. Environmental factors

(1) Harmful dusts, fumes, gases without proper ventilation

(2) Working in a hazardous environment without personal protective equipment or a line-tender



- (3) Unable to hear and see all communications and signals
- (4) Exposed to temperature extremes that could degrade efficiency or cause faintness, heart stroke or numbness
- (5) Suffering from eye fatigue due to inadequate illumination or glare
- (6) Visually restricted by dense fog, rain, smoke or snow
- (7) Darkened ship lighting conditions
- (8) Exposed to excessive noise/vibration levels

n. Personnel protective equipment

- (1) Using required equipment for the job, e.g., seatbelts, safety glasses
- (2) Not using proper equipment due to lack of availability (identify)
- (3) Not using proper equipment due to lack of comfort or "sissy" connotations (identify)
- (4) Using protective equipment that failed and caused additional injuries (identify)

o. Hazardous conditions

- (1) Inadequate/missing guards, handrail, ladder treads, protective mats, safety devices/switches, skid proofing
- (2) Jury-rigged equipment
- (3) Utilization of improper noninsulated tools
- (4) Incorrectly installed equipment
- (5) Defective/improperly maintained equipment
- (6) Slippery decks or ladders, obstructions
- (7) Improper clothing (leather heels, conventional shoes vice steel-toed shoes, loose-fitting clothes, no shirt, conventional eyeglasses vice safety glasses)

3. No LOD/Misconduct determination in death cases

## PART E

### CLAIMS FOR/AGAINST GOVERNMENT-SPECIAL CHECKLIST

1. Names/addresses of witnesses/passengers, if any
2. Names, grades, organizations, addresses and ages of all civilian/military personnel injured or killed
3. Claim prospects and name and address of claimant or potential claimant
4. Owner of damaged property, if any
5. Basis of claimant's alleged right to file a claim, e.g., owner, renter, etc.
6. Scope-of-employment status of Government employee(s)
7. Description of government property involved and nature and amount of damage, if any
8. Nature and extent of injuries, degree of permanent disability, prognosis, period of hospitalization, quality of medical care provided
9. Name and address of attending physician and hospital
10. Amount of medical, hospital and burial expenses actually incurred
11. Occupation and wage or salary of civilians injured or killed
12. Names, addresses, ages, relationships and extent of dependency of survivors of any person fatally injured
13. Violation of state or Federal statutes, local ordinances or installation regulations by a party
14. Police investigation results
15. Arrests made, or charges preferred, and result of any trial or hearing in civil or military courts
16. Comments and recommendations of investigating officer as to:
  - a. Amount of damages, loss, or destruction; and
  - b. extent of liability.
17. Statements in convening order and investigative report that the investigation has been prepared for the purpose of assisting attorneys representing the interests of the United States in this matter

**PART F**

**FIRE-SPECIAL CHECKLIST**

1. Items in addition to the Forces Afloat Accident/Near Accident Report (OPNAV Form 3040/1) and general checklist
  - a. Location of fire
    - (1) Compartment noun name
    - (2) Compartment number
  - b. Class of fire (A-B-C-D)
  - c. Time fire detected
  - d. Means of detection
  - e. Time fire started (estimated)
  - f. Time fire alarm sounded
  - g. Time fire located
  - h. Time started fighting fire
  - i. Time general quarters sounded
  - j. Time assistance was requested
  - k. Time assistance arrived
  - l. Time boundaries set
  - m. Time fire extinguished
  - n. Fire did/did not reflash
  - o. Extinguishing agents used (indicate effectiveness)
    - (1) Fire main water (submarines: trim/drain system water)
    - (2) Light water
    - (3) Foam (portable/installed)
    - (4) CO2 (portable/installed)

- (5) PKP
  - (6) Steam smothering
  - (7) Flooding
  - (8) Other
- p. Extinguishing equipment (indicate availability and operability)
- (1) Pumps (portable/installed) size and number (quantity)
  - (2) Nozzles/applicators (LC and HC)
  - (3) Foam maker
  - (4) Vehicles
  - (5) Eductors
  - (6) Type and size of hoses
  - (7) Other
- q. Firefighting organization used
- (1) Nucleus fire party
  - (2) Repair party (condition I or II watches)
  - (3) Inport fire party
  - (4) Outside assistance (explain)
  - (5) Fire party/repair locker personnel assigned in accordance with appropriate publications, ships organization and regulations manual, battle bill, etc.
  - (6) Personnel duties and responsibilities assigned in writing
  - (7) Fire/repair locker organization charts properly maintained
  - (8) Damage control system diagrams up to date and available for use
  - (9) Communications effectively established between control stations

r. Protective equipment used (Indicate availability, operability, and effectiveness)

- (1) OBAs
- (2) EAB masks
- (3) Fire suits
- (4) Boots
- (5) Gloves
- (6) Helmets
- (7) Other

s. Alarm system

- (1) CO2 flooding
- (2) High temperature
- (3) Other

t. Fire contained/spread

u. How it spread

- (1) Through hot deck/bulkhead
- (2) Through hole in deck/bulkhead
- (3) By explosion (type)
- (4) Through vent ducts
- (5) By liquid flow
- (6) By wind
- (7) Other (explain)

v. Electric power in area

- w. Jettison bill
  - (1) Current
  - (2) Used
- x. If ship underway, course changes (snorkeling, surfaced)
- y. Automatic vent closures
- z. Magazines flooded
- aa. Operational problems
  - (1) OBAs/canisters effective
  - (2) EABs effective
  - (3) Sufficient water and pressure
  - (4) Flooding problems
  - (5) Drainage problems (installed/portable)
  - (6) Desmoking problems (installed/portable)
  - (7) Lighting (explain)
  - (8) Adequate equipment readily available
  - (9) Adequate intra-ship communications
  - (10) Other (explain)
- bb. Material discrepancies of any equipment used (list and explain)
- cc. Determine all heat/ignition sources possible then eliminate those that are improbable
- dd. Operating personnel qualified in accordance with PQS requirements for the systems operation and maintenance

PART G

FLOODING-SPECIAL CHECKLIST

1. Items in addition to the Forces Afloat Accident/Near Accident Report (OPNAV Form 3040/1) and the general checklist
  - a. Location of flooding
    - (1) Compartment noun name
    - (2) Compartment number
  - b. Type of flooding (fresh or salt water, oil, JP-5, etc.)
  - c. Source of flooding (internal or external)
    - (1) Pipe rupture or valve failure
    - (2) Tank rupture/hull rupture/shaft seal failure
    - (3) Open to sea through designed hull penetration
    - (4) Other
  - d. Time flooding was detected
  - e. Flooding detection method
  - f. Time duty emergency party called away
  - g. Time general quarters sounded
  - h. Time assistance requested (from whom)
  - i. Time assistance arrived
  - j. Appropriate equipment used to dewater
  - k. Dewatering equipment used (effective, available, operative)

- l. Time required to dewater
- m. Time flooding was stopped or under control
- n. Time space was last inspected prior to flooding
- o. Cause of flooding
- p. Flooding contained within set boundaries
- q. Amount of flooding (effect on list, trim or depth control)
- r. Damage (list all items)
  - (1) Material costs
  - (2) Labor costs
  - (3) Outside assistance costs
- s. Injuries (list and submit NAVJAG Form 5800/15)
- t. Ship's procedures and safety precautions



PART H

COLLISION-SPECIAL CHECKLIST

1. Items in addition to the Forces Afloat Accident/Near Accident Report (OPNAV Form 3040/1) and the general checklist
  - a. Tactical situation existing at time of collision
  - b. Personnel manning and qualification
    - (1) CDO
    - (2) OOD/diving officer
    - (3) Helmsman, planesman
    - (4) Lookouts
    - (5) CIC team (including sonar team, fire control tracking party and navigation team)
    - (6) Phone talkers
    - (7) Location of conning officer
    - (8) Line handlers
    - (9) Personnel qualified in accordance with PQS requirements for the system operation and maintenance
  - c. Material factors
    - (1) Radar
    - (2) Sonar
    - (3) Navigational lights
    - (4) Periscopes
    - (5) Compasses
    - (6) Ship control systems
    - (7) Ballast, blow and vent systems
    - (8) UNREP special equipment

**d. Communication factors**

- (1) Radio**
- (2) Telephone**
- (3) Oral (audibility/understanding)**
- (4) Signal systems**
- (5) Interferences (e.g., background noise level)**

**e. Rules-of-the-road factors**

**f. Operating area factors**

- (1) Adherence to op area boundaries**
- (2) Existence of safety lanes**
- (3) Depth constraints**
  - (a) Depth separation**
  - (b) Depth changes**
  - (c) Out-of-layer operations**

**g. Environment and visibility**

**h. Unique local practices**

**i. Assistance factors**

- (1) Pilot - experience/language barrier**
- (2) Tugs**
- (3) Line handlers**

**j. For collisions in restricted waters or with fixed geographic features (including buoys) refer also to the checklist for groundings**

PART I  
GROUNDING

1. Items in addition to the Forces Afloat Accident/Near Accident Report (OPNAV Form 3040/1) and the general checklist
  - a. Tactical situation
  - b. Navigational factors
    - (1) Charts (available/correct/in use)
    - (2) Sailing directions/coast pilot
    - (3) Fleet guide
    - (4) Tide/current condition (computed/displayed/recorded)
    - (5) Track laid out/DR plot indicated/fixes plotted/track projected
    - (6) Notices to mariners
    - (7) Compass errors/application
    - (8) Navigation fix errors
    - (9) Navigation reset errors
    - (10) Depth of water
    - (11) Type of bottom
    - (12) Navigation reference points coordinated (radar/visual, points logged/plotting teams coordinated)
  - c. Material factors
    - (1) Radar
    - (2) Fathometer
    - (3) Compasses
    - (4) Ship's depth indicators
    - (5) Ship's speed log

- (6) Alidades, bearing circles, peroruses, periscopes, bearing repeaters
- (7) Sounding lead
- (8) Ship's draft/submerged keel depth
- (9) Ship's anchor
- (10) Ship's control system

d. Personnel factors (posted/qualified)

- (1) CDO
- (2) OOD
- (3) Diving officer
- (4) Navigator
- (5) Piloting officer
- (6) Fathometer operator
- (7) Lookouts
- (8) Helmsman
- (9) Planesman
- (10) Bearing takers
- (11) CIC team
- (12) Leadsman
- (13) Line handlers
- (14) Local pilot
- (15) Location of conning officer
- (16) Personnel qualified in accordance with PQS requirements for the systems operation and maintenance

e. Communications factors

- (1) Radio
- (2) Telephone

- (3) IC systems
- (4) Oral (audibility/understanding)

f. Environment

- (1) Light conditions
- (2) Visibility
- (3) Wind, current, tide condition (actual vs. predicted)

g. Assistance factors (tugs)

h. Organizational factors

- (1) Ship organization directives
- (2) Watch organization directives

i. Action taken after grounding

- (1) Ship secured to prevent further damage
  - (a) Anchors kedged out
  - (b) Ballast shifted
  - (c) Cargo shifted
- (2) Draft readings/soundings taken
- (3) Damage surveyed
- (4) Excess machinery secured

PART J

CHECKLIST FOR OEGCMJ REVIEW  
OF ARTICLE 138 COMPLAINT

1. Original complaint or certified copy received
2. Complaint is complete
  - a. Includes all documents submitted by complainant and intermediate endorsers
  - b. Signed and sworn by complainant
  - c. Cites Article 138, UCMJ
  - d. Addressed through respondent and appropriate chain of command
  - e. Clearly identifies respondent (and only one respondent) by name and title
  - f. Reflects complainant has made a prior request for redress from respondent which was denied (request and respondent's response should be enclosures to complaint)
  - g. Respondent has Article 15, UCMJ, power over complainant
  - h. Facts and circumstances giving rise to alleged wrong(s) are detailed and available supporting information included
  - i. Personal detriment or harm suffered from alleged wrong(s) detailed
  - j. Specific relief requested
  - k. Requested relief may be granted in command channels
3. Complaint lies within scope of Article 138, UCMJ
4. Complaint is timely, or delay justified
5. If complaint is not cognizable under Article 138, UCMJ, OEGCMJ shall return it to complainant advising him of alternative avenues of redress, e.g., article 1106, U.S. Navy Regulations, 1973, complaint or petition to the Board for Correction of Naval Records. (Where a complaint is not cognizable under Art. 138, UCMJ, but may be considered under art. 1106, U.S. Navy Regulations, 1973, and redesignation will not adversely affect complainant's interests, the OEGCMJ may redesignate the complaint and treat it on its merits rather than returning it to the complainant for redesignation and resubmission.)

6. If the complaint is cognizable under article 138, but otherwise defective, OEGCMJ will:
  - a. Return complaint and advise complainant of nature of defect
  - b. Give complainant 30 days to cure defect
  - c. Advise complainant that complaint will be acted on despite defect, only if complainant resubmits his complaint within thirty days and so requests
7. If redress is denied for failure to cure improper joinder or lack of timeliness, OEGCMJ must report to SECNAV
8. Complaint and associated materials
  - a. Document facts and circumstances of complaint
  - b. Permit OEGCMJ to make an informed decision whether to grant relief
  - c. Permit adequate review by SECNAV
9. Ensure complainant receives copies of all endorsements, enclosures, and adverse matters added to his complaint (including results of any inquiries ordered by OEGCMJ) and that record reflects that complainant received such materials
10. If relief is granted, include documentation of relief granted or that action to effect relief has been directed
11. Advise complainant of OEGCMJ's action on complaint including specific findings as to which complaints were determined to have merit and which were found to be without merit
12. OEGCMJ personally signed report to SECNAV setting forth action on complaint
13. Include in the report to SECNAV the entire file, including original/ certified copy of complaint, all information considered by OEGCMJ, and the action of OEGCMJ (Marine Corps activities forward the report via CMC)

FORMAT FOR APPOINTING ORDERS FOR ONE-OFFICER INVESTIGATION  
NOT REQUIRING A HEARING  
(See JAGMAN, § 0503 and Text)

(LETTERHEAD)

(File Information)  
(Date)

From: Commanding Officer, \_\_\_\_\_  
To: Lieutenant \_\_\_\_\_, U.S. Navy, 000-00-0000/1100  
Subj: INVESTIGATION TO INQUIRE INTO THE CIRCUMSTANCES CONNECTED  
WITH \_\_\_\_\_, WHICH OCCURRED AT (LOCATION) ON (TIME AND  
DATE), RESULTING IN INJURIES TO (RATE, NAME, BRANCH OF  
SERVICE, SERVICE NUMBER), AND DAMAGE TO GOVERNMENT VEHICLE  
(I.D. NUMBER)

Ref: (a) JAG Manual

1. Following reference (a), you are appointed to conduct an investigation, in accordance with chapter V, Part C, as soon hereafter as practicable, for the purpose of inquiring into all the circumstances connected with \_\_\_\_\_ which occurred at \_\_\_\_\_ on (DAY, MONTH).

2. You will conduct a thorough investigation into all the circumstances connected with \_\_\_\_\_ and report your findings of fact, opinions and recommendations as to the cause of \_\_\_\_\_ [the resulting damage,] [the injuries to members of the naval service and their line of duty and misconduct status,] [the circumstances attending the death of members of the naval service,] [potential claims for or against the government,] and responsibility for \_\_\_\_\_, including any recommended administrative or disciplinary action.

3. Your attention is directed to sections 0306, 0308, and 0505 of reference (a) which pertain to warnings required before requesting statements regarding disease or injury; compliance with the Privacy Act; and warnings required before requesting statements from a person suspected of improper performance of duty. Any personnel suspected of an offense must be advised of their rights under Article 31, UCMJ. Additionally, your attention is directed to sections \_\_\_\_\_ and \_\_\_\_\_ of reference (a) as they relate to \_\_\_\_\_. Additionally, your attention is directed to sections \_\_\_\_\_ and \_\_\_\_\_ of reference (a) as they relate to \_\_\_\_\_ [\*See A-1(3)].

4. (Additional paragraphs as required for additional guidance to the investigating officer, special instructions, etc. For instance, if potential claims are involved, add: "This investigation is being convened because of anticipated litigation for the purpose of assisting attorneys representing the interests of the United States.")



Subj: INVESTIGATION TO INQUIRE INTO THE CIRCUMSTANCES CONNECTED WITH \_\_\_\_\_, WHICH OCCURRED AT (LOCATION) ON (TIME AND DATE), RESULTING IN INJURIES TO (RATE, NAME, BRANCH OF SERVICE, SERVICE NUMBER), AND DAMAGE TO GOVERNMENT VEHICLE (I.D. NUMBER)

5. You are directed to forward your completed report within \_\_\_\_\_ days from the date of this letter. If, for any reason, the report cannot be forwarded within that period, report in writing the basis for your delay, the estimated date of completion, and specifically request permission for an extension of time.

6. By copy of this appointing order, \_\_\_\_\_ is directed to furnish the necessary reporters and clerical assistance for recording and transcribing the testimony of witnesses and assisting you in preparing the report of the results of your investigation.

/s/ A. B. Sea  
A. B. SEA

Copy to:

- \* In this paragraph, list all sections of the JAG Manual which may apply to the particular incident under investigation. The following list is not exhaustive but it does indicate the extent of research necessary to determine what factual data and what procedural requirements may have to be incorporated into a JAG Manual investigation.

JAG Manual  
Sections

Subject

Warnings

0306	Warning required before requesting statements regarding disease or injury
0308	Advice required by the Privacy Act
Article 31, UCMJ	Persons suspected of violations of UCMJ

Line of duty/misconduct determinations

0807	Mental responsibility and suicide attempts/gestures
0808	Intoxication and drug abuse
0810	Deaths
0811	LOD/Misconduct investigations which involve claims
0812, 0911	Reservists
0817	Checklists for factfinding bodies

Specific types of incidents

0902	Aircraft accidents
0903	Vehicle accidents
0904	Explosions
0905	Loss or stranding of a ship
0906	Collisions
0907	Flooding of a ship
0908	Pretrial investigation
0909	Loss of government funds or property
0910f	Sonic booms
0912	Firearm accidents
0913a	Security violations
0913b	Postal violations
0913d	Fires
0910, 2001-2007	General investigation requirements for claims
2122	Personnel claims
2220-2221	Foreign claims
2301	Nonappropriated fund claims
2404	Medical care recovery claims

FORMAT FOR INVESTIGATIVE REPORT FOR INVESTIGATION  
NOT REQUIRING A HEARING

From: Lieutenant \_\_\_\_\_, U.S. Navy, 000-00-0000/1100  
To: \_\_\_\_\_  
Subj: (SAME AS SUBJECT OF APPOINTING ORDER)  
Ref: (a) JAG Manual  
Encl: (1) CO, \_\_\_\_\_, appointing order dated \_\_\_\_\_,  
(and any modifications thereto)  
(2) Summary of (or verbatim) sworn/unsworn testimony/statement of  
LCDR M. D. Slasher, MC, USN, 456-78-9012/2100, Naval Hospital,  
Newport, R.I.  
(3) Summary of (or verbatim) sworn/unsworn testimony/statement of  
Mr. Harry Rhubarb, Sales Manager, AAA Computer Co., 174 Green  
St., Newport, R.I. 02840  
(4) Statement of SN Dan P. Jones, USN, 234-56-7890, with signed Art.  
31b, UCMJ, warning, Privacy Act warning, and JAGMAN, § 1306  
warning attached  
(5) Description of \_\_\_\_\_ (knife found at scene of the  
accident)  
(6) Photograph of \_\_\_\_\_ depicting \_\_\_\_\_

NOTE: The testimony of each witness should be a separate enclosure to the  
investigative report. Enclosures containing testimony or statements of  
witnesses should precede enclosures in the form of other documents,  
descriptions of real evidence, photographs, etc.

Preliminary Statement

Section 0608b of the JAG Manual lists the purposes:

- Procurement of evidence;
- whether the appointing order and all directives of the convening  
authority have been met;
- name and organization of any judge advocate consulted for assis-  
tance;
- nature of investigation (i.e. "An informal one-officer JAG Manual  
investigation was convened to inquire into the circumstances  
surrounding...");
- difficulties;
- delay;
- limited participation by a member; and
- any other information necessary to a complete understanding of the  
investigation.

**Legitimate uses:**

- Calling attention to conflicting facts in the enclosure (i.e., difficulty);
- the extent of compliance with rights warnings for injury/disease, Privacy Act, article 31 and "party" status; and
- in claims investigations, a statement to the effect that "This investigation has been conducted and this report is being prepared in contemplation of litigation and for the express purpose of assisting attorneys representing the interests of the United States in this matter."; and
- an explanation as to why delays were encountered.

**Common errors:**

- Including a synopsis of the facts (the preliminary statement is the wrong place for this - that is what the findings of fact are for);
- including opinions and recommendations; and
- including investigating officer's itinerary.

**Sample Preliminary Statements**

1. Pursuant to enclosure (1) and in accordance with reference (a), a one-officer JAGMAN investigation was conducted to inquiry into the circumstances surrounding a collision between Government vehicle 94-18021 and a privately owned vehicle which occurred at the intersection of U.S. highways 1 and 138, Newport, R.I., on or about 0900, 1 November 1985. All reasonably available relevant evidence was collected. The directives and special requirements articulated in enclosure (1) were met (except as noted below:).
2. While certain minor conflicts appear in the evidence, none was of sufficient degree or materiality to warrant comment. (While the testimony of witnesses A and B dramatically differed regarding which vehicle had the right of way, the testimony of witness A is considered to be the more creditable for the following reasons and was therefore relied upon to the exclusion of the testimony of witness B.)
3. All social security numbers contained in this report of investigation were obtained from official sources and were not solicited from the individual servicemember.
4. All enclosures attached hereto are either original documents or are certified to be true and accurate copies of the original documents they represent.
5. (Any other items necessary or pertinent to provide reviewing authorities a complete understanding of the investigation.)

### Findings of Fact

Facts are just that. They are not opinions, recommendations, or speculation. However, note the language of the JAG Manual in this area: "Findings of Fact constitute an investigating officer's description of details of events based on evidence." JAGMAN, App. A-5-e(1). The use of the word "description" implies a fact-sifting process that falls short of opinionmaking because direct evidence exists to support the sifted facts. The following problem should make this clear.

- Problem. Enclosures in our investigation reveal the following information. Mr. A (encl. (4)) states he had seen a vehicle speeding by him at 90 mph. Mr. A was almost hit by the car. Mr. A does not own a car, is 80 years of age, and has not driven since 1945. Mr. B, an off-duty police officer, also made a statement (encl. (5)). He states the car passed him, and he glanced at his speedometer. He was traveling at 35 mph. He estimates the speed of the car at 45 mph. Skid marks from the police report (encl. (6)) reveal that only 7 feet of skid marks on dry, smooth, asphalt pavement were necessary for the car to stop. How should the investigating officer record this information?
- Solution. Note the conflicting accounts in the preliminary statement as follows: "Two conflicting accounts of the speed of the vehicle in question appear in witnesses statements (encl. (4) and (5)), but only enclosure (5), the statement of Mr. B, is accepted as fact below because of his experience, ability to observe, and emotional detachment from the situation." Findings of fact should reflect only the investigating officer's evaluation of the facts: "That the vehicle left skid marks of seven feet in length in an attempt to avoid the collision. (encl. (6))." "That the skid marks were made on a dry, smooth, asphalt surface. (encl. (6))." "That the speed of the vehicle was 45 mph. at the time brakes were applied. (encl. (5))."
- Note that in some situations it may not even be necessary to reflect a discrepancy in the preliminary statement. In other situations, it may be impossible to ascertain a particular fact. If, in the opinion of the IO, the evidence does not support any particular fact, this difficulty could be properly noted in the preliminary statement: "The evidence gathered in the forms on enclosures (4) and (7) does not support a finding of fact as to the ..., and, hence, none is expressed."
- Only rarely will the conflict in evidence or the absence of it prevent the IO from making a finding of fact in a particular area. Thus, this should not be used as a "copout" for the IO who is either unwilling to evaluate the facts or too lazy to gather the necessary evidence.

Each fact must be supported by evidence and should be numbered separately rather than grouped into a cumbersome, narrative form as the JAG Manual permits.

- Thus, an enclosure number should follow each finding of fact: "That the vehicle was traveling at 25 mph. [encl. (14), (15), (16)]." (Here all three enclosures support the finding of fact.)
- If an enclosure is lengthy, number the pages of each so the reviewer will not have to thumb through 20 pages of enclosures to find what he wants: "That the vehicle was traveling at 25 mph. [encl. (14), p. 3; encl. (15), p. 7; encl. (16), p. 20]."

#### Opinions

Opinions may be required by the appointing order or the JAG Manual (chapters VIII and IX) or other regulation. They are not factual evaluations, but rather logical inferences or conclusions drawn from the facts. In certain situations, although not necessary, reference to the underlying findings of fact or enclosures as a basis for each opinion may be helpful. Facts should be developed so as to render opinions self-evident.

#### Recommendations

Recommendations will be made only when specifically directed in the appointing order. They should flow from the findings of fact and opinions. If a court-martial is recommended, a sworn charge sheet should normally be submitted as an enclosure. If a punitive letter of reprimand or admonition is recommended, a draft should be prepared and forwarded as an enclosure. If a nonpunitive letter is recommended, a draft should be prepared and separately forwarded to the appropriate commander for issuance but should not be included as an enclosure to the JAG Manual investigation.

ON COMMAND LETTERHEAD

SAMPLE ENDORSEMENT OF THE CONVENING AUTHORITY ON JAG MANUAL  
INVESTIGATION CONDUCTED PURSUANT TO JAGMAN, §§ 0810a OR 0814a

FIRST ENDORSEMENT on LT \_\_\_\_\_'s ltr of \_\_\_\_\_

From: Commanding Officer, USS \_\_\_\_\_  
To: Judge Advocate General  
Via: Commander, \_\_\_\_\_

Subj: (SAME)

Ref: (b) \_\_\_\_\_

1. Returned for compliance with sections \_\_\_\_\_ and \_\_\_\_\_ of reference (a).

or

1. Readdressed and forwarded.

\* \_\_\_\_\_ has been advised of this incident by separate correspondence as required by reference (b) (if required by chain of command directives).

\* By copy of this endorsement an advance copy of the basic correspondence is forwarded to \_\_\_\_\_ pursuant to section 0211 of reference (a). By copy of this endorsement a copy of the basic correspondence is being provided \_\_\_\_\_ for possible claims action in regard to recommendations \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. \_\_\_\_\_ additional copies are forwarded herewith for the Judge Advocate General pursuant to section 0211c of reference (a).

\* A Privacy Act record of disclosure sheet has been affixed before the first page of the report of investigation.

\* Opinion \_\_\_\_\_ in the basic correspondence is not substantiated by the findings of fact because \_\_\_\_\_ and is therefore disapproved (modified to read as follows: \_\_\_\_\_).

\* Recommendation \_\_\_\_\_ is not appropriate for action at this command; however, a copy of this investigation is being furnished to \_\_\_\_\_ for such action as may be deemed appropriate.

\* The action recommended in Recommendation \_\_\_\_\_ has been accomplished by \_\_\_\_\_.

\* The unauthorized absence of \_\_\_\_\_ at the time of his injury substantially interfered with the performance of his duties.

2. Subject to the foregoing remarks, the proceedings, findings of fact, opinions and recommendations of the investigating officer are approved; specifically including the opinion that the injuries suffered by \_\_\_\_\_ were incurred in the line of duty and not due to his own misconduct.

SIGNATURE OF CONVENING AUTHORITY

Copy to:

\*

(\* = as appropriate)

PRIVACY ACT STATEMENTS FOR INJURED SERVICEMEMBERS  
IN JAG MANUAL INVESTIGATIONS  
FOR LOD/MISCONDUCT AND CLAIMS PURPOSES

NAME: \_\_\_\_\_ RANK/RATE: \_\_\_\_\_

ACTIVITY: \_\_\_\_\_ UNIT: \_\_\_\_\_ TEL. NO: \_\_\_\_\_

Today, \_\_\_\_\_, 19\_\_\_\_, I acknowledge that I have received the following advisement statements from \_\_\_\_\_.

PRIVACY ACT STATEMENT

This statement is provided in compliance with the provisions of the Privacy Act of 1974 (Public Law 93-579) which requires that Federal agencies must inform individuals who are requested to furnish personal information about themselves as to certain facts regarding the information requested below.

1. Authority. 5 U.S.C. § 301; 10 U.S.C. §§ 972(5), 1201-1221, 2733, 2734, 2734a, 2737, 5131-5153, 5947, 6148, 7205, 7622-7623; 28 U.S.C. §§ 1346, 2671-2680; 31 U.S.C. §§ 71-75, 240-243, 951-953; 37 U.S.C. § 802; 38 U.S.C. § 105; 42 U.S.C. §§ 2651-2653; 44 U.S.C. § 3101; 49 U.S.C. § 1901.

2. Principal Purposes. The information which will be solicited is intended principally for the following purposes:

a. Determinations on the status of personnel regarding entitlements to disability pay, disability benefits, severance pay, retirement pay, increases of pay for longevity, survivor's benefits, involuntary extensions of enlistments, dates of expiration of active obligated service, and accrual of annual leave;

b. determinations on disciplinary or punitive action;

c. determinations on liability of personnel for losses of, or damage to, public funds or property;

d. adjudication, pursuit, or defense of claims for or against the Government or among private parties;

e. other determinations, as required, in the course of naval administration;

f. public information releases; and

g. evaluations of procedures, operations, material, and designs by the Navy and contractors, with a view to improving the efficiency and safety of the Department of the Navy.

3. Routine Uses. In addition to being used within the Departments of the Navy and Defense for the purposes indicated above, records of investigations are routinely furnished, as appropriate, to the Veterans' Administration for use in determinations concerning entitlement to veterans and survivors benefits; to Servicemen's Group Life Insurance administrators for determinations concerning payment of life insurance proceeds; to the U.S. General Accounting Office for purposes of determinations concerning payment of relief of accountable personnel from liability for losses of public funds and related fiscal matters; and to the Department of Justice for use in litigation involving the Government. Additionally, such investigations are



sometimes furnished to agencies of the Department of Justice and to State or local law enforcement and court authorities for use in connection with civilian criminal and civil court proceedings. The records of investigations are provided to agents and authorized representatives of persons involved in the incident, for use in legal or administrative matters. The records are provided to contractors for use in connection with settlement, adjudication, or defense of claims by or against the Government, and for use in design and evaluation of products, services, and systems. The records are also furnished to agencies of the Federal, State, or local law enforcement authorities, court authorities, administrative authorities, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions.

4. Mandatory/Voluntary Disclosure/Consequences of Refusing to Disclose. Disclosure is voluntary. You are advised that you are initially presumed to be entitled to have the (personal determinations) (disciplinary determinations) (pecuniary liability to the Government) (medical claims liability assignment) listed above resolved in your favor, but the final determination will be based on all the evidence in the investigative record. If you do not provide the requested information, you will be entitled to a favorable determination if the record does not contain sufficient evidence to overcome the presumption in your favor. If the completed record does contain sufficient evidence to overcome the presumption in your favor, however, your election not to provide the requested information possibly could prevent the investigation from obtaining evidence which may be needed to support a favorable determination.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

JAGMAN, § 0306 Warning

NOTE: If the injured party is the subject of the investigation which involves a disease or injury he incurred, the following should be acknowledged.

I have been advised that under section 0306 of the JAG Manual, if the matter under investigation involves disease or injury that I have incurred, I cannot be required to sign any statement relating to the origin, incurrence or aggravation of a disease or injury that I may have acquired.

NOTE: Attach article 31 warning if servicemember is suspected of committing an offense under the UCMJ.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

PRIVACY ACT STATEMENTS FOR WITNESS  
IN JAG MANUAL INVESTIGATION  
FOR LOD/MISCONDUCT AND CLAIMS PURPOSES

NAME: \_\_\_\_\_ RANK/RATE: \_\_\_\_\_

ACTIVITY: \_\_\_\_\_ UNIT: \_\_\_\_\_ TEL. NO: \_\_\_\_\_

Today, \_\_\_\_\_, 19\_\_\_\_, I acknowledge that I have received the following advisement statements from \_\_\_\_\_.

PRIVACY ACT STATEMENT

This statement is provided in compliance with the provisions of the Privacy Act of 1974 (Public Law 93-579) which requires that Federal agencies must inform individuals who are requested to furnish personal information about themselves as to certain facts regarding the information requested below.

1. Authority. 5 U.S.C. § 301; 10 U.S.C. §§ 972(5), 1201-1222, 2733, 2734-2734b, 2737, 5947, 6148, 7205, 7622-7623; 28 U.S.C. §§ 1346, 2671-2680; 31 U.S.C. §§ 71-75, 82a, 89-92, 95a, 240-243, 951-953; 37 U.S.C. § 802; 38 U.S.C. § 105; 42 U.S.C. §§ 2651-2653; 44 U.S.C. § 3101; 49 U.S.C. § 1901.

2. Principal Purposes. The information which will be solicited is intended principally for the following purposes:

a. Determinations on the status of personnel regarding entitlements to pay during disability, disability benefits, severance pay, retirement pay, increases of pay for longevity, survivor's benefits, involuntary extensions of enlistments, dates of expiration of active obligated service, and accrual of annual leave;

b. determinations on disciplinary or punitive action;

c. determinations on liability of personnel for losses of, or damage to, public funds or property;

d. evaluations of petitions, grievances, and complaints;

e. adjudication, pursuit, or defense of claims for or against the Government or among private parties;

e. other determinations, as required, in the course of naval administration;

f. public information releases; and

g. evaluations of procedures, operations, material, and designs by the Navy and contractors, with a view to improving the efficiency and safety of the Department of the Navy.

3. Routine Uses. In addition to being used within the Departments of the Navy and Defense for the purposes indicated above, records of investigations are routinely furnished, as appropriate, to the Veterans' Administration for use in determinations concerning entitlement to veterans and survivors benefits; to Servicemen's Group Life Insurance administrators for determinations concerning payment of life insurance proceeds; to the U.S. General Accounting Office for purposes of determinations concerning payment of relief of accountable personnel from liability for losses of public funds and related fiscal matters; and to the Department of Justice for use in litigation involving the Government. Additionally, such investigations are sometimes furnished to agencies of the Department of Justice and to State or local law enforcement and court authorities for use in connection with civilian criminal and civil court proceedings. The records of investigations are provided to agents and authorized representatives of persons involved in the incident, for use in legal or administrative matters. The records are provided to contractors for use in connection with settlement, adjudication, or defense of claims by or against the Government, and for use in design and evaluation of products, services, and systems. The records are also furnished to agencies of the Federal, State, or local law enforcement authorities, court authorities, administrative authorities, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions.

4. Mandatory/Voluntary Disclosure, Consequences of Disclosure. Disclosure is voluntary. If you do not provide the requested information, any determinations or evaluations made as a result of this investigation will be made on the basis of the evidence that is contained in the investigative record.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

### ARTICLE 31 WARNING

If, in the course of a JAG Manual investigation, any person is suspected of committing an offense under the UCMJ, the person should be advised of his rights under Article 31, UCMJ -- utilizing this form -- before interviewing or questioning that person.

I have been advised that I may be suspected of the offense of \_\_\_\_\_ and that:

- a. I have the right to remain silent. ( ) Init.
- b. Any statements I do make may be used as evidence against me in trial by court-martial. ( ) Init.
- c. 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. ( ) Init.
- d. I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview. ( ) Init.
- e. I have the right to terminate this interview at any time. ( ) Init.

### WAIVER OF RIGHTS

I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that: ( ) Init.

- a. I expressly desire to waive my right to remain silent. ( ) Init.
- b. I expressly desire to make a statement. ( ) Init.
- c. 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. ( ) Init.
- d. I expressly do not desire to have such a lawyer present with me during this interview. ( ) Init.
- e. This acknowledgement and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me. ( ) Init.

\_\_\_\_\_/\_\_\_\_\_  
(Witness' Signature) (Date) (Signature) (Date)

Understanding the above, I wish to make the following statement (attach continuation page, if necessary):

REPORT OF PROCEEDINGS UNDER SECTION 0815a(3) OF THE JAG MANUAL

I, \_\_\_\_\_, have been afforded a hearing which included the following advice and by initialing opposite each item I confirm that it was explained to me and that I fully understand the contents of each one:

\_\_\_ 1. I was advised of and signed a copy of the Privacy Act statement.

\_\_\_ 2. That questions have arisen concerning whether or not my injury/ disease, sustained or discovered on \_\_\_\_\_19\_\_\_\_, was incurred in the line of duty and/or as the result of my own misconduct.

\_\_\_ 3. That, in the event such injury/disease is determined to have been incurred not in the line of duty and/or as a result of my own misconduct, I will be required to serve for an additional period beyond my present enlistment or to make up for the duty time lost.

\_\_\_ 4. That lost duty time will not count as creditable service for pay entitlement purposes.

\_\_\_ 5. That I may be required to forfeit some pay (where absence from duty in excess of one day immediately follows intemperate use of liquor or habit-forming drugs).

\_\_\_ 6. That, if I am permanently disabled, I may be barred from receiving disability pay or allowances, as well as veterans' benefits.

\_\_\_ 7. That I have been given the opportunity to inspect the complete investigative report including all the enclosures and endorsements thereto; and to discuss said report with a disinterested person of my choosing (chaplain, lawyer, supervisor, or anyone else not acting for the Government in the investigation).

\_\_\_ 8. That I may not be required to give information or a statement relating to the origin, incurrence, or aggravation of any disease/injury that I have suffered.

\_\_\_ 9. That I have been given a full opportunity and a reasonable time to present any evidence, statements, letters, or other matters in explanation, refutation, rebuttal, or otherwise on my behalf respecting my injury/disease.

(Items 1 through 5 below need only be completed if the individual is suspected of an offense which is punishable under the Uniform Code of Military Justice. The fact that the individual is suspected of having incurred his injury/disease as the result of his own misconduct and/or not in the line of duty does not necessarily mean that he is suspected of having committed an offense).

I further certify and acknowledge by my initials opposite each item that I have been advised as follows:

\_\_\_ 1. That I am suspected of the following offense(s) which is (are) punishable under the UCMJ: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_ 2. That I have the right to remain silent.

\_\_\_ 3. That any statement I do make may be used as evidence against me in a trial by court-martial.

\_\_\_ 4. That I have the right to consult with a lawyer prior to any questioning. This lawyer may be a civilian lawyer retained by me at my own expense or, if I wish, Navy or Marine Corps authority will appoint a military lawyer to act as my counsel without cost to me, or both.

\_\_\_ 5. That I have the right to have such retained civilian lawyer and/or appointed military lawyer present during the interview.

\_\_\_ 6. That I have the right to terminate my interview.

I do/do not choose to submit evidence in refutation, explanation, rebuttal, or otherwise respecting the incurrence of my injury/disease. (If matters are submitted, they should be attached as enclosures to the investigative report).

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

## INVESTIGATIONS OPTIONS CHART

COURTS OF INQUIRY		INVESTIGATION	
		REQUIRING A HEARING	NOT REQUIRING A HEARING
CONVENING AUTHORITY	GCMA or SECNAV authorization (0401)	Any officer in command, except art. 139 requires SPCMA (0206b)	Any officer in command (0206b)
APPOINTING ORDER	Written, but may be preceded by oral or message (0402b)	Same (0503)	Same (0503)
COMPOSITION	3 officers plus counsel for the court (0401b). Members senior to parties (0402d).	Board: 2 or more, but at least one O-4.  Single member: Officer, senior enlisted, or DoN CIV (0502b)	Same (0502b)
HEARING PROCEDURE	Formal (0408)	Formal (0518, 0526)	Informal (0510)
SWORN TESTIMONY	Required (0415)	Optional (0502e)	Optional (0502e)
VERBATIM RECORD	Required (0435)	Optional (0502f)	Optional (0502f)
RULES OF EVIDENCE	N/A except privilege (0412)	N/A except privilege (0518)	N/A (0510b)
PARTIES	CA or court may designate (0302a,d; 0304)	CA may designate or delegate to IO (0302b,d)	May <u>not</u> designate (0302c)
SUBPOENA	Yes (0305a)	No, except art. 139 (0305a)	No (0305a)
REPORT	Record, Facts, Exhibits (0435). Opinions and Recommendations if directed (0401g).	Record, Facts, Opinions, Recommendations, Exhibits (0502h, 0523)	Preliminary Statement, Facts, Opinions, Recommendations. Ltr format (0512).

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## GENERAL SAFETY REFERENCES

OPNAVINST 3120.32B	STANDARD ORGANIZATION AND REGULATIONS OF THE U.S. NAVY
OPNAVINST 3750.8P	THE NAVAL AVIATION SAFETY PROGRAM
OPNAVINST 5100.12F	NAVY TRAFFIC SAFETY PROGRAM
OPNAVINST 5100.19A	NAVY SAFETY PRECAUTIONS FOR FORCES AFLOAT
OPNAVINST 5100.23B	NAVY OCCUPATIONAL SAFETY AND HEALTH PROGRAM
OPNAVINST 5102.1B	MISHAP INVESTIGATION AND REPORTING
NAVSAFECEN 5102/29	HANDBOOK FOR THE CONDUCT OF FORCES AFLOAT SAFETY INVESTIGATIONS
NAVSAFECEN 9077P5	SHIP SAFETY SURVEY GUIDE
NAVSUPPUB 4500	CONSOLIDATED HAZARDOUS ITEM LIST (CHIL)
NEPMU	SHIPBOARD OCCUPATIONAL HEALTH MANUAL VARIOUS CHAPTERS CONTAIN SPECIFIC SAFETY PRECAUTIONS
DOT-P5800.4	DEPARTMENT OF TRANSPORTATION PUBLICATION, HAZARDOUS MATERIALS EMERGENCY RESPONSE GUIDEBOOK
DOD 6050.5-LR (HMIS)	DOD HAZARDOUS MATERIALS INFORMATION SYSTEM HAZARDOUS ITEM LISTING
NAVSEA S9593-A7-PLN-010	SHIPBOARD HAZARDOUS MATERIALS/ HAZARDOUS WASTE MANAGEMENT PLAN

DEPARTMENT OF THE NAVY  
Office of the Secretary  
Washington, DC 20350-1000

SECNAVINST 5300.30B  
OP-136C  
15 December 1988

SECNAV INSTRUCTION 5300.30B

From: Secretary of the Navy  
To: All Ships and Stations

Subj: MANAGEMENT OF HUMAN  
IMMUNODEFICIENCY VIRUS (HIV)  
INFECTION IN THE NAVY AND  
MARINE CORPS

Ref: (a) SECDEF memo of 4 Aug 1988  
(NOTAL)  
(b) ASD (HA) memo of 11 Sep 1987  
(NOTAL)  
(c) SECNAVINST 1850.4B (NOTAL)  
(d) SECNAVINST 1910.4A (NOTAL)  
(e) SECNAVINST 1920.6A  
(f) SECNAVINST 5211.5C

1. **Purpose.** To revise the policy on identification, surveillance and administration of military members, applicants, and health care beneficiaries infected with Human Immunodeficiency Virus (HIV), in compliance with references (a) through (f).

2. **Cancellation.** SECNAVINST 5300.30A

3. **Policy.** Department of the Navy medical, manpower and personnel policies related to HIV are intended to reflect current knowledge of the natural history of HIV infection, the risks to the infected individual incident to military service, the risk of transmission of the disease to noninfected personnel, the effect of infected personnel on naval units, and the safety of military blood supplies. To this end the following policies are established:

a. Applicants who are HIV antibody positive are not eligible for entry into the naval service. Accessions, for active duty or reserve programs, in initial military training who are determined to be HIV antibody positive as a result of serologic testing are not eligible for military service and will be separated.

b. Military personnel (active and reserve) (A) shall be tested for the presence of HIV antibodies to maintain the health of the force and to develop scientifically based information on the natural history and transmission of HIV, Acquired Immune Deficiency Syndrome (AIDS), and AIDS-Related Complex (ARC). Family members of active duty personnel and DOD civilian employees entitled to military medical care, on a voluntary basis, shall be tested as resources permit. Mandatory testing of civilians for serologic evidence of HIV infection is not authorized except pursuant to valid requirements by a host country.

c. A surveillance program will be conducted (R) for active duty and reserve component members, other than accessions in initial military training, to determine if HIV infection exists.

(1) Active duty members who are HIV antibody positive but who demonstrate no evidence of immunologic deficiency, neurologic involvement, decreased capacity to respond to infection, or clinical indication of disease associated with HIV antibody positivity shall be retained in the naval service.

(2) HIV antibody positive members retained on active duty shall be assigned within the United States.

(3) Immunologic deficiency, neurologic involvement, decreased capacity to respond to infection, or progressive clinical or laboratory abnormalities associated with HIV, are unfitting conditions. Active duty members who are HIV antibody positive and demonstrate immunologic deficiency, neurologic involvement, decreased capacity to respond to infection, or progressive clinical or laboratory abnormalities associated with HIV shall be processed through the Disability Evaluation System (DES) under reference (c). Additionally, personnel diagnosed following the guidelines of reference (b), as having ARC and AIDS shall be processed through the DES.

R) d. Members of the Reserve components (Reservists not on extended active duty of more than 30 days) who are HIV antibody positive and who can be assigned to mobilization billets in the United States which do not require immediate deployment and do not require availability for reassignment overseas or to deployable billets shall be retained in the Ready Reserve. All HIV antibody positive Reservists for whom such mobilization billet assignments cannot be made shall be transferred involuntarily to the Standby Reserve Inactive.

e. HIV antibody positive reserve component members not on extended active duty are ineligible for medical evaluation in military treatment facilities.

f. To facilitate development of scientifically based information on the natural history and transmission patterns of HIV, it is important that HIV antibody positive members assist the military health care system by providing accurate information. Accordingly, simply the occurrence of HIV antibody positivity, infection, or HIV-related disease shall not be used as the basis for any adverse action against an individual.

g. Informational programs will be conducted to reduce apprehensions about the risks of HIV infection and to inform service members about the prevention and risks of HIV infection.

#### 4. Accession Policy

R) a. Both prior service and non prior service applicants for active or reserve service will be screened for exposure to HIV prior to entrance on active duty or affiliation in the Navy or Marine Corps Reserve. Individuals confirmed HIV antibody positive are not eligible for naval service because:

(1) The condition existed prior to appointment or enlistment.

(2) Such individuals may suffer potentially life threatening reactions to some live-virus immunizations at basic training.

(3) HIV antibody positive individuals are not able to participate in battlefield blood donor activities or other military blood donation programs.

(4) There presently is no way to differentiate those who will progress to clinical disease from those who will remain healthy.

(5) The Department of the Navy will avoid medical costs and the possibility that the individual will not complete the initial service commitment.

b. Applicants for active and reserve enlisted (R) service normally will be tested at Military Entrance Processing Stations (MEPS). Applicants not tested at the MEPS will be tested as part of their physical examination conducted prior to accession. If more than twelve months have elapsed between the pre-accession test and entry on active duty, a retest must be conducted. These new accessions who are confirmed HIV antibody positive are not eligible for military service and will be processed for separation by reason of erroneous enlistment at the accession point under reference (d). Prior service applicants for entry into a Reserve program must have a HIV test within twelve months of entry.

c. Individuals who are participating in, or (R) applying for, any commissioned or warrant officer procurement program who are HIV antibody positive are not eligible for the program or for appointment as officers. Candidates for service as officers (either regular or reserve), shall be tested during the pre-contract physical examination required for acceptance in the particular program applied for, and during the pre-appointment physical examination required prior to appointment or superseding appointment. Enlisted personnel also must be tested within twelve months prior to acceptance into the officer training program for which applying. Applicants who are ineligible for appointment due to HIV antibody positivity shall be processed as follows:

(1) Individuals in Officer Candidate School/Officer Indoctrination School/Aviation Officer Candidate School/Platoon Leaders Class/Naval Aviation Cadet School/Aviation Reserve Officer Candidate School (OCS/OIS/AOCS/PLC/NAVCAD/AVROC) as their initial entry training, shall be separated, discharged, or disenrolled as appropriate. Enlisted service members who are candidates in these programs shall be immediately disenrolled from the program. A candidate who was on extended active duty prior to entry into candidate status and who is HIV antibody positive shall be retained in enlisted status unless the individual requests discharge or is separated for disability under reference (c). In either case, if the sole basis for discharge is HIV positivity, an honorable or entry level separation, as appropriate, shall be issued.

(2) Individuals in Naval Reserve Officer Training Corps (NROTC) shall be disenrolled from the program at the end of the academic term (i.e.: semester, quarter, or similar period) in which evidence of HIV infection is detected. Disenrolled NROTC participants shall be permitted to retain any financial support through the end of the academic term in which the disenrollment is effected. Financial assistance received in these programs is not subject to recoupment if the sole basis for disenrollment is HIV positivity.

(3) Naval Academy midshipmen shall be separated from the Naval Academy and discharged when confirmed HIV positive. The Secretary of the Navy may delay separation to the end of the current academic year. A midshipman granted such a delay in the final academic year, who is otherwise qualified, may be graduated without commission and thereafter discharged. If the sole basis for discharge is HIV positivity, an Honorable discharge shall be issued.

(4) Commissioned officers in professional education programs leading to appointment in a

military professional specialty (including but not limited to medical, dental, chaplain, and legal/judge advocate) shall be disenrolled from the program at the end of the academic term in which HIV positivity is identified. Regular officers and Reserve officers on active duty or who entered the program from active duty shall be retained in a designator or MOS determined by the Chief of Naval Operations (CNO) or the Commandant of the Marine Corps (CMC), as appropriate on a case-by-case basis. Reserve officers on inactive duty who were commissioned for the purpose of participation in such programs shall be discharged. Except as specifically prohibited by statute, any additional service obligation incurred by participation in such programs shall be waived and financial assistance received in these programs shall not be subject to recoupment. Periods spent in these programs shall be applied fully toward satisfaction of any pre-existing service obligation.

d. Accessions who are confirmed positive (R) for HIV antibody will not be sent for medical evaluation. They will be informed of the test results; will be counseled on the relationship between the blood tests, HIV virus, and AIDS, and will be provided medical, psychological and spiritual support while awaiting separation.

## 5. HIV Testing Procedure

a. Testing of naval personnel for the antibodies associated with HIV will include a screening test (Food and Drug Administration approved enzyme immunoassay (EIA)), a confirmation test (immunoelectrophoresis (Western Blot)) and, if necessary, Department of Defense approved supplemental tests, as they become available. All personnel with either serologic evidence of HIV infection or a positive virus isolation shall be classified under the standardized clinical protocol defined in reference (b).

b. Delays in obtaining results of confirmation tests shall be minimized to prevent uncertainty

and apprehension of members awaiting the outcome. Military personnel not in a confined status shall not be segregated based on screening or confirmation tests.

#### 6. Active Duty Testing

- R) a. Active duty personnel serving in overseas and deployable units and all active duty health care providers shall be tested on an annual basis during each calendar year. All other personnel shall be tested in conjunction with routinely scheduled medical examinations if not tested within the preceding 12 months.
- R) b. Active duty members issued Permanent Change of Station (PCS) orders to a continental United States deployable command are required to have an HIV test within twelve months prior to transfer and results documented if received prior to transfer. If results are received after the member has transferred to the command, they shall be forwarded to the new duty station for insertion in medical/dental records.
- R) c. Personnel issued PCS orders to an overseas duty station are required to have a negative HIV test completed and results documented in health and dental records within twelve months prior to transfer.
- d. Active duty health care providers may be screened more often when prescribed by the Surgeon General.
- R) e. Due to increased risk of exposure to HIV, all military personnel identified with a Sexually Transmitted Disease (STD) will be retested on each episode or recurrence. Additionally, all military personnel counseled or treated for alcohol or drug abuse or presenting at prenatal clinics will be tested. Voluntary testing will be provided to dependent beneficiaries presenting for treatment or evaluation of STD, alcohol, drug, or prenatal care.
- f. All HIV antibody test results must be documented in the medical/dental records under current Naval Medical Command guidelines.

Commanding officers will assure all screening results are provided to appropriate medical and dental record holders.

#### 7. Reserve Component Testing

a. Reserve personnel in the following (A) categories shall be retested on an annual basis unless testing is required more frequently, as resources permit. Reserve health care providers may be screened more often when prescribed by the Surgeon General.

(1) Reserve personnel receiving orders to active duty for 30 days or more.

(2) Selected Reserve personnel subject to deployment on short notice to areas of the world with a high risk of endemic disease or with minimal existing medical capability.

(3) Selected Reserve personnel serving in units subject to deployment overseas.

(4) Selected Reserve health care providers as appropriate.

b. Testing will occur during each routine (R) physical examination including those required annually/tri-annually/quadrennially, as well as, those examinations conducted for the purpose of reenlistment if a test has not been performed within the last twelve months.

#### 8. Evaluation of HIV Positive Personnel

a. Active duty military members and, on a voluntary basis, dependents who test positive for exposure to HIV virus will be medically evaluated to determine the medical status of their infection. The standardized Department of Defense clinical protocol in reference (b) will be used. The medical evaluation for active duty members shall be documented by a Medical Board.

b. Reserve component members who are found HIV positive shall be counseled regarding the significance of a positive HIV antibody test

by an officer designated for the purpose and referred to their private physician for medical care and counseling. Reserve component members not on extended active duty are ineligible for medical evaluation in military treatment facilities.

**9. Active Duty Assignment and Retention**

a. Military personnel who demonstrate no evidence of immunologic deficiency, neurologic involvement, decreased capacity to respond to infection, or clinical indication of disease associated with HIV infection shall be retained in the service, unless some other reason for separation exists. This policy is based on the following considerations:

(1) There is no demonstrated risk of transmission of disease in normal daily activities.

(2) An investment in training of these members has been made.

(3) The condition may be incident to service.

A) b. HIV positivity shall not be used to deny reenlistment to members on continuous active duty.

R) c. Military personnel who are HIV antibody positive and retained under this policy shall be assigned within the United States to a unit not normally programmed for deployment within 300 miles of a Naval Medical Treatment Facility (MTF) designated by the Surgeon General.

R) d. The CNO and the CMC may establish further limitations on assignment of such members to operational units or specific duties when deemed necessary to protect the health and safety of HIV antibody positive members and of other military personnel. The Secretary of the Navy shall be advised 30 days in advance of each type of limitation in assignment or duties and the specific reasons therefore.

**10. Active Duty Separation**

a. Military personnel who are HIV antibody positive who demonstrate unfitting conditions of immunologic deficiency, neurologic involvement, decreased capacity to respond to infection, or clinical indication of disease associated with HIV infection will be processed through the Disability Retirement System under chapter 61 of title 10 of the United States Code, as implemented by reference (c).

b. Military personnel retained on duty under this policy, but who are found not to have complied with the directives given during lawfully ordered preventive medicine procedures are subject to appropriate administrative and disciplinary actions including separation for cause under references (d) and (e).

c. A member who is HIV positive and retained on active duty may request voluntary separation under the following guidelines:

(1) Members may apply for separation (R) because of HIV positivity within 90 days after initial medical evaluation and classification is completed. The 90 day period begins the day the medical board report of HIV positivity is signed by the member. Personnel requesting separation after the 90 day period has expired will be considered on a case-by-case basis. Separation may be delayed up to 180 days after initial evaluation in order to minimize manning shortfalls and to provide for continuity of functions. Members who volunteer for separation will be processed for convenience of the government, due to compelling personal need. The discharge shall be characterized as warranted by service record following the guidelines in references (d) and (e). Members who elect separation will not be allowed re-entry into the service at any future date.

(2) The CNO or CMC will normally deny the request when the member:

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**15 December 1988**

(a) Is serving in a competitive category, designator, rating, Navy enlisted code, occupational field, or military occupational specialty in which the CNO or the CMC determines that significant personnel shortage justifies retention.

(b) Has not completed obligated service incurred for funded education programs, enlisted education and/or training including Enlisted Education Advancement Program, advanced educational or technical training, initial and advanced skill training which require obligation beyond current service obligation, nuclear power field, advanced electronic field, and advanced technical field programs, and similar programs.

(c) Was notified of HIV positive status prior to executing orders or entering a program requiring obligated service.

(3) Due to the substantial investment in training of naval personnel, commands initially processing individuals requesting voluntary separation will ensure they have considered the cost to the naval service of voluntary separation. Additionally, the command will counsel the individual on the potential for lost benefits resulting from a voluntary separation. The individuals request for separation must document lack of implied pressure or coercion.

(4) Notwithstanding the limitation in paragraph 10c(2), a request for separation may be approved when in the judgment of the Secretary, with the advice of the CNO or the CMC, on a case-by-case basis, the applicant has demonstrated overriding and compelling factors of personal need which justify separation for HIV positivity.

(5) Members voluntarily separated from the active force by reason of HIV positivity who have a remaining military obligation, will be transferred to the Standby Reserve Inactive unless there are other medical reasons why the member would not be available to meet mobilization requirements.

d. Separation for cause or for other reasons under references (d) and (e), based upon evidence other than HIV positivity, is unaffected by this instruction, subject to the limitations in paragraph 15.

**11. Reserve Component Policy**

a. **Assignment.** Reserve members applying for extended active duty for a period over 30 days or active duty for training over 30 days in any capacity must have a current negative HIV test within twelve months of execution of orders documented in health and dental records. In circumstances where a current HIV test is not available and cannot be obtained prior to the required active duty, the reserve member may be ordered to active duty and the HIV test performed on blood drawn within the first 10 days. If that test is positive, the active duty will be terminated and the member will revert to inactive status. In addition, Reserve personnel performing official duty outside the United States for any period must have a negative HIV test documented in health and dental records within twelve months prior to departure date.

(1) Reserve component members testing positive for the HIV antibody are ineligible for active duty over 30 days except under conditions of mobilization.

(2) Members of the Reserve components (Reservists not on extended active duty of more than 30 days) who are HIV antibody positive and who can be assigned to mobilization billets in the United States which do not require immediate deployment and do not require availability for reassignment overseas or to deployable billets shall be retained in the Ready Reserve. All HIV antibody positive Reservists for whom such mobilization billet assignments cannot be made shall be transferred involuntarily to the Standby Reserve Inactive.

b. **Retention and Separation.** HIV antibody positive reservists who desire to continue

affiliation with the Ready Reserve and for whom a billet is available for duty in the United States as described in 11a(2) above must obtain from his/her civilian physician an evaluation conforming to the protocol prescribed by the Department of Defense for HIV evaluation. Reserve personnel presenting documented evidence from their civilian physician showing no evidence of immunologic deficiency, neurologic involvement, decreased capacity to respond to infections, or clinical indication of disease associated with HIV antibody positivity as determined by military health care providers may be retained in the Ready Reserve. If evaluation results are not provided within two months of notification of being HIV positive, the HIV antibody positive reservist shall be transferred to the Standby Reserve Inactive or processed for separation depending on the needs of the naval service.

A) c. HIV positivity shall not be used to deny continuous reenlistment of reservists in an active status. Continuous reenlistment will not be denied or delayed awaiting test results.

R) d. Reserve component members may apply for separation by reason of HIV positivity within 90 days of their initial formal counseling by representatives of the Naval service. The 90 day period begins the day the Reservist is formally counseled per current service regulations. Reserve component members requesting separation after the 90 day period has expired will be considered on a case-by-case basis. Members who elect separation will not be allowed to re-enter into the service at any future date. The CNO or CMC may approve such requests based on manpower requirements and the needs of the service.

(1) The CNO and CMC will deny this request if the Reserve Component member has any remaining statutory service obligation.

(2) Any request for separation must document the lack of implied pressure or coercion leading to such request by the command involved.

## 12. Medical and Epidemiological Factors

a. **On-going Clinical Evaluation.** An on-going clinical evaluation will be conducted at least annually of the health status of each active duty HIV antibody positive military member using the DOD protocol established in reference (b).

b. **Epidemiological Assessment.** The initial and on-going medical evaluations of each HIV positive individual will include an epidemiological assessment of the potential for transmission of HIV to close personal contacts and family members. This information is vital to appropriate preventive medicine counseling and to continued development of scientifically based information regarding the natural history and transmission pattern of HIV.

(1) Upon notification that an individual is HIV positive, the cognizant military health authority shall undertake preventive medical action including counseling of the individual and others at risk of infection such as his or her sexual contacts (who are military health care beneficiaries). Such preventive action and counseling will include information on transmission of the virus, coordination with military and civilian blood bank organizations to trace possible exposure through blood transfusion or donation of infected blood, and referral of appropriate case-contact information to the cognizant military or civilian health authority. Under the confidentiality and disclosure guidance in paragraph 14, any information linking the individual to HIV antibody positivity, is not to be released to civilian agencies or to military activities without a demonstrated need to know.

(a) HIV positive individuals who are military health care beneficiaries shall be counseled by a physician or designated health care provider regarding the significance of a positive antibody test. They shall be advised as to the mode of transmission of this virus, the appropriate precautions and personal hygiene measures required to minimize transmission through sexual activities and/or intimate contact (R)



with blood or blood products, and of the need to advise any past sexual partners of their infection and directed to follow these preventive medicine procedures. Women shall be advised of the risk of perinatal transmission during past, current, and future pregnancies. The beneficiary shall be informed that he or she is ineligible to donate blood, organs, sperm, or any other body part.

- R) (b) The assessment shall attempt to determine previous contacts of the HIV positive individual. The individual shall be informed of the importance of case-contact notification to interrupt disease transmission and shall be informed that contacts will be advised of their potential exposure to HIV. Individuals at risk of infection include sexual contacts (male and female), children born to infected mothers, recipients of blood or blood products, organs, tissues, or sperm, and users of contaminated intravenous drug paraphernalia. Those individuals determined to be at risk who are identified and who are eligible for health care in the military medical system shall be notified. Active duty military members identified to be at risk shall be counseled and tested for HIV infection. Other beneficiaries, such as retirees and family members, identified to be at a risk shall be informed of their risk and offered serologic testing, clinical evaluation, and counseling. If a Reserve component member is found to be HIV infected, his or her spouse shall be notified, either through local public health authorities or by DOD health care professionals following procedures developed by the Surgeon General in coordination with the Director of the Naval Reserve and the CMC. Reserve spouse notification will not be conducted until these procedures are promulgated by separate correspondence. The names of individuals identified to be at risk who are not eligible for military health care shall be provided to local civilian health authorities unless prohibited by the appropriate state or host nation civilian health authority. Anonymity of antibody positive individuals shall be maintained unless reporting is required under paragraph 12c.

c. Data Base of HIV Exposure. The Commander, Naval Medical Command will

establish and maintain a central data base of Department of the Navy military personnel exposed to HIV to support on-going clinical evaluation and longitudinal epidemiologic evaluation. Based on the guidance in paragraph 15 including data required by reference (b), data base information and information derived therefrom, including any information linking individuals to HIV antibody positivity, but excluding statistical data not linked to identifiable individuals, is not to be released to civilian agencies or to military activities without a demonstrated need to know. Within these limitations, information may be disclosed only as follows:

(1) To medical and command personnel to the extent necessary to perform their required duties.

(2) To civilian health authorities but only in response to a valid request. All such requests will be referred to Commander, Naval Medical Command. He will determine whether the civilian requirement to report HIV positivity is a valid formal request for such reporting from a civilian health authority.

(3) To activities outside DOD upon request, limited to aggregated testing data. All requests for such data will be referred to the CNO or CMC as appropriate.

(4) To authorized personnel for the purpose of conducting scientific research, epidemiological assessment, management audits, financial audits or program evaluation. Personnel receiving information from the data base shall not identify, directly or indirectly, any individual service member in any report of such research, assessment, audit or evaluation, or otherwise disclose service member identities in any manner.

(5) In response to an order of the judge of a court of competent jurisdiction.

(6) The Director, Naval Medicine, under (R) the CNO, will provide a quarterly report of HIV testing results, for the active forces and the

Reserve components, including trend analysis and evaluations of the reported information, to the CNO, CMC, and Assistant Secretary of the Navy (Manpower & Reserve Affairs) (ASN(M&RA)) within 30 days of the end of each fiscal quarter.

**d. Safety of the Blood Supply**

(1) Armed Services Blood Program Office policies, Food and Drug Administration guidelines, and accreditation requirements of the American Association of Blood Banks will be followed in the Department of the Navy Blood program and by civilian blood agencies collecting blood on naval installations. In the event that units of blood shall not be screened for infectious agents prior to transfusing (contingency of battlefield situations), the Armed Services Blood Program office in coordination with the military departments and unified or specified commands, shall provide guidance to operational units.

(2) Individuals found to be HIV antibody positive will be designated ineligible to donate blood or to be used as source of emergency transfusions. Military personnel found to be HIV antibody positive shall be designated as blood donor ineligible in their health records.

**13. Information Programs.** The Chief of Information (CHINFO) will conduct on-going Department of the Navy-wide information programs covering HIV infection using Department of Defense recommended HIV/AIDS information materials and other information media under his control or oversight. This program will keep military personnel informed and reduce uninformed speculation about the incidence and risks of infection in military service. In conjunction with this overall program, the Navy Surgeon General will provide public health information materials to the beneficiary

population served by Department of the Navy medical and dental facilities.

**14. Confidentiality and Disclosure.** Information on the sources of HIV exposure and the progress of the disease is limited. There is much

misinformation and unwarranted apprehension about who is or who can be a source of infection. Allegations and suspicions based on the current tests, which identify only the presence of HIV antibodies, can be disruptive to unit morale and unjustly harm professional standing and acceptance in military units. There are potential problems associated with disclosing a person's HIV positivity, such as discrimination in employment, health and life insurance, school attendance, etc. For these reasons:

a. HIV test results must be treated with the highest degree of confidentiality and released to no one without a demonstrated need to know. Strict compliance with the provisions of the Privacy Act instructions in reference (f), is required.

b. All command and medical personnel with access to such information must ensure careful, limited distribution within the specific guidelines of paragraphs 12c, 15, and reference (f) to affirmatively combat unfounded innuendo and speculation about the meaning of the information.

**15. Limitation on the Use of Information**

a. Information obtained from a service member during or as a result of an epidemiologic assessment interview may not be used against the service member in a court martial; nonjudicial punishment; involuntary separation (other than for medical reasons); administrative or disciplinary reduction in grade; denial of promotion; an unfavorable entry in a personnel record; a bar to reenlistment; and any other action considered by the Secretary of the Navy to be an adverse personnel action. The term epidemiologic-assessment interview means: that part of the medical assessment of a HIV positive individual where the questioning of the member is for the direct purpose of obtaining epidemiologic or statistical information regarding the occurrence, source, and potential spread of the infection. The epidemiologic-assessment interview will be conducted by the interviewing health care professional during the medical evaluation used

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to determine the possible mode of transmission and the status of potential infection.

b. Results of laboratory tests for HIV positivity may not be used against a service member as the sole basis of a charge in any disciplinary proceeding. However, such test results may be used as evidence at any stage in a disciplinary proceeding. Such test results may not be used to support, in whole or in part, the characterization of a discharge in administrative separation proceedings; or in a line of duty/misconduct determination in disability separation proceedings, except as specifically authorized by this instruction.

c. The limitations in paragraph 15a pertaining to the use of information obtained from a member by a health care professional during the epidemiologic-assessment interview does not apply to: the introduction of evidence for impeachment or rebuttal purposes in any proceeding in which the evidence of drug abuse or relevant sexual activity (or lack thereof) has been first introduced by the service member or to disciplinary or other action based on independently derived evidence; or, nonadverse personnel actions such as reassignment, disqualification (temporary or permanent) from a personnel reliability program, denial, suspension, or revocation of a security clearance, suspension or termination of access to classified information, and, duties requiring a high degree of stability or alertness such as flight status, explosive ordnance disposal, or deep-sea diving.

d. If any personnel actions are taken because of or are supported by serologic evidence of HIV infection or information described in paragraph 13a, care shall be taken to ensure that no unfavorable entry is placed in a personnel record in connection with the action. Recording a personnel action, including recording a disciplinary action, is not itself an unfavorable entry in a personnel record. Additionally, information that reflects that an individual has serologic or other evidence of HIV infection is not an unfavorable entry in a personnel record.

e. The CNO and the CMC may propose, with supporting justification, actions that should be considered to be adverse as defined in paragraph 15a.

16. The policies in this instruction will be reviewed following the next review of the policy guidance of reference (a) or as required by the Secretary of the Navy. This review will assess developments in medical management of HIV infections, information obtained through longitudinal epidemiologic studies of the natural history of HIV infections and of the effects on manpower and personnel management of these policies.

#### 17. Responsibility

a. ASN(M&RA) is responsible for overall HIV policy and execution. The CNO and CMC are responsible for carrying out the policies in this instruction. The CNO will ensure that medical assistance and laboratory testing is maintained to support the prescribed testing program consistent with maintaining quality control to assure the minimum achievable false positive and false negative confirmation rates, to meet the full testing requirements of the Navy and Marine Corps and their respective reserve components.

b. The Director, Naval Medicine, under the CNO, is responsible for the policy development of professional medical and epidemiological aspects of the HIV management program. He will participate in tri-service development of a standardized clinical protocol for medical evaluation of infection. He shall keep ASN(M&RA), CNO, and CMC advised of Department of the Navy and DOD epidemiological information and trends.

c. Chief of Information (CHINFO) shall conduct Department of the Navy-wide information programs using all information media under his control or oversight.

d. The Commander, Naval Medical Command, will establish and maintain a Department

of the Navy data base for statistical purposes and detailed analysis as needed. He is also responsible for entering all HIV test results (positive and negative) into the Reportable Disease Data Base System (RDDBS).

e. The Surgeon General in coordination with the Director of the Naval Reserve and the CMC will develop procedures for notification of spouses of Reserve component members found to be HIV infected either through local public health authorities or by DOD health care professionals. The procedures shall be forwarded for submission by the Assistant Secretary of the Navy (Manpower & Reserve Affairs) (ASN(M&RA)) to the Assistant Secretary of Defense (Force Management & Personnel), Assistant Secretary of Defense (Health Affairs), and DOD General Counsel within 90 days of the date of this instruction. Such notification shall comply with the Privacy Act of 1974, 5 U.S.C. 552a. Spouses who are notified shall be offered Secretarial designee status on a voluntary basis to receive serologic testing and counseling from Naval MTFs.

18. Reports. The reporting requirements contained in this directive are exempt from reports control by OPNAVINST 5214.7.

**H. LAWRENCE GARRETT, III**  
Acting, Secretary of the Navy

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## FREEDOM OF INFORMATION ACT (FOIA)

See SECNAVINST 5720.4D; MCO 5720.56; OPNAVINST 5510.161

I. The purpose of FOIA is to permit equal public access to agency records of the Federal government. Disclosure is the general rule. The burden of justifying nondisclosure is on the government.

II. All FOIA requests must meet basic requirements:

A. They must be in writing;

B. they must mention FOIA or the naval directives;

C. they must provide a description of the agency records requested from the command; and

D. they must either enclose payment or make a promise to pay for search and duplication costs, in accordance with the fee schedule contained in SECNAVINST 5720.42D, unless a waiver is granted.

III. A command is not required to create or to compile an agency record which is not in existence at time of the request.

IV. A command should immediately date-stamp and label the request as FOIA matter, and then ascertain who has cognizance over the requested agency record(s). Time is of the essence, as FOIA requires a written response to an FOIA request within 10 working days.

V. Requested information must be released under FOIA unless:

A. An exemption applies; and

B. the release would jeopardize government interest or release is prohibited by statute.

VI. FOIA exemptions include:

A. Properly classified documents;

B. internal personnel rules and practices;

C. law enforcement information and investigations; and

D. personnel, medical, and similar files which, if released, would constitute a clearly unwarranted invasion of privacy.

VII. In most instances, the CO has release authority but does not have denial authority. The references given above list the denial authorities, which include all GCMA's. The command should forward an FOIA request to the denial authority if:

A. It cannot locate the requested agency record(s); or

B. there is no agreement on a fee waiver; or

C. if the command does not want to release all of the agency records requested.

## PRIVACY ACT

See SECNAVINST 5211.5C; MCO P5211.2

### I. There are three major purposes served by the Privacy Act:

A. To safeguard personal information in the custody of the Federal government (in this regard, the Act deals with the collection, maintenance, dissemination, and use of personal information by Federal agencies);

B. to provide a means by which an individual can gain access to and to correct records pertaining to that individual which are in the custody of the Federal government; and

C. to prohibit the maintenance/use of secret files.

### II. There are three basic Privacy Act situations:

A. When the Federal government collects "personal information" from an individual about that individual for inclusion in a "system of records";

1. "Personal information" is information which is intimate or private and about an individual (such as information related to recreational, financial, or social matters -- as distinguished from information related solely to that individual's official duties or functions).

2. A "system of records" is one from which information can be retrieved by name, number, symbol, or some other identifying particular assigned to an individual.

B. when the Federal government is requested by an individual to permit access to personal information about that individual contained in a system of records; or

C. when the Federal government is requested to disclose personal information concerning an individual to a third-party.

### III. There are three basic rules contained in the Privacy Act:

A. When seeking personal information from an individual, which could later be retrieved from a system of records, that individual must be given Privacy Act advice. That individual must be informed of:

1. The authority for seeking the information;

2. the major purpose(s) of collecting the information;

3. the routine uses and use s of the information; and

4. whether disclosure by the individual is mandatory or voluntary and the consequences of nondisclosure.

B. An individual seeking access to personal information about that individual, which is contained in a system of records, is always granted that access unless the record is exempt from disclosure. Records which are exempt under the Privacy Act include:

1. Properly classified documents which are exempt under FOIA;
2. law enforcement investigations;
3. personnel evaluations; and
4. test or examination material for accession to Federal government employment or promotion -- if disclosure would compromise the testing or the examination process.

C. Without the consent of the individual whose personal information is concerned, a record of that personal information cannot be disclosed to a third-party -- unless an exception applies to that third-party. Those exceptions include:

1. Members of the Department of the Navy/DOD with a need to know that personal information in the performance of their duty if the contemplated use of that information is compatible with the purpose(s) for which the record is maintained. For example, these persons may include:

- a. Medical officers;
- b. discipline officers;
- c. courts-martial personnel;
- d. judge advocates; or
- e. Naval Investigative Service.

2. Personal information which is required to be released under FOIA.
3. Law enforcement.
4. Emergencies -- or in compliance with court order.

IV. In most instances, the CO can release -- but cannot deny release -- of the requested information. A list of denial authorities, which includes all GCMA's, is contained in the references listed above.

V. The command must acknowledge the Privacy Act request within 10 working days, and action should be accomplished within 30 working days.

VI. The command must maintain disclosure accounting records which display: the date of each disclosure, the nature and purpose of each disclosure, and the name and address of the recipient(s) of the personal information provided. The major exceptions to this rule include:

- A. Requests by DON/DOD personnel (as defined in the exception above); and
- B. disclosures made under FOIA.

NAVY AND MARINE CORPS  
ENLISTED ADMINISTRATIVE SEPARATIONS

<u>REASON FOR SEPARATION</u>	<u>CHARACTERIZATION OF SERVICE</u>	<u>MILPERSMAN/ MARCORSEPMAN</u>	<u>ADMIN BOARD (A)/ NOTIFICATION (N)</u>
1. EXPIRATION OF SERVICE OBLIGATION	HON/GEN/ELS	3620100/3620150 6202/6403/6404	
2. CONVENIENCE OF GOVERNMENT	HON/GEN/ELS		(N); (A) if 6 yrs
Dependency or Hardship		3620210/6407	
Pregnancy or Childbirth		3620220/6408	
Physical Condition Not Disability		3620200/6203	
Personality Disorder		3620200/6203	
Parenthood		3620220/6203	
Aliens		3620260/None	
Obesity		3620250/6203	
Conscientious Objection		1860120/6409 [MCO 1306.16 DoD Dir 1300.6]	
3. DEFECTIVE ENLISTMENTS			
Minority		3620285/6204	
Under 17	OOR		(N)
Age 17	ELS		(N)
Defective Enlistment	HON/ELS/OOR	3620283/6204	(N)
Erroneous Enlistment	HON/ELS/OOR	3620280/6204	(N); (A) if 6 yrs
Fraudulent Enlistment*	HON/GEN/ELS OTH/OOR	3630100/6204	(N); (A) if 6 yrs or OTH
New Entrant Drug/Alcohol Testing		6215	(N)
4. ENTRY LEVEL PERFORMANCE AND CONDUCT	ELS	3630200/6205	(N); (A) if 6 yrs
5. UNSATISFACTORY PERFORMANCE	HON/GEN	3630300/6206	(N); (A) if 6 yrs



<u>REASON FOR SEPARATION</u>	<u>CHARACTERIZATION OF SERVICE</u>	<u>MILPERSMAN/MARCORSEPMAN</u>	<u>ADMIN BOARD (A)/NOTIFICATION (N)</u>
6. HOMOSEXUALITY [Mandatory Processing]	HON/GEN/OTH ELS	3630400/6207 SECNAVINST 1900.9D	(A)
7. SECURITY	HON/GEN/OTH ELS	3630700/6212	(N); (A) if 6 yrs
8. DRUG/ALCOHOL ABUSE REHAB FAILURE	HON/GEN/ELS	3630500/3630550 6208/6209	(N); (A) if 6 yrs
9. MISCONDUCT	HON/GEN/ELS OTH		
Minor Disciplinary Infractions		3630600/6210	(N); (A) if 6 yrs or OTH
Pattern of Misconduct		3630600/6210	(N); (A) if 6 yrs or OTH
Misconduct due to Drug Abuse*		3630620/6210	(N); (A) if 6 yrs or OTH
Commission of Serious Offense*		3630600/6210	(A)
Civilian Conviction*		3630600/6210	(A)
10. SEPARATION IN LIEU OF COURT MARTIAL	HON/GEN/ELS OTH	3630650/6419	(N); (A) if 6 yrs or OTH
11. SEPARATION IN BEST INTEREST OF SERVICE	HON/GEN/ELS	3630900/6214	(N)
12. UNSATISFACTORY PERFORMANCE IN READY RESERVE	HON/GEN/ELS OTH	3630650/6213	(N); (A) if 6 yrs or OTH
13. DISABILITY	HON/GEN/ELS	3620270/8401-8512 SECNAVINST 1850.4B	(N)

HIV INFECTION (AIDS): SEE SECNAVINST 5300.30B

\* MANDATORY PROCESSING IN CERTAIN CASES

MANDATORY DOCUMENTED COUNSELING (Page 13/Page 11)

- I. CONVENIENCE OF GOVERNMENT
  - PARENTHOOD
  - OBESITY
  - PERSONALITY DISORDER
  - PHYSICAL/MENTAL CONDITION NOT DISABILITY
- II. ENTRY LEVEL PERFORMANCE/CONDUCT
- III. UNSATISFACTORY PERFORMANCE
- IV. MISCONDUCT
  - PATTERN OF MISCONDUCT
  - MINOR DISCIPLINARY INFRACTIONS

## OFFICER SEPARATION FLOW CHART

[Regular Commissioned Officers (other than commissioned Warrant Officers)]

### I. PROBATIONARY OFFICER

Substandard Performance ----- Notification  
Parenthood

Misconduct ----- CNP ----- Rec ----- Notification  
National Security Hon/Gen (SECNAV  
approval)

Board Procedures  
(3-tier)

### II. NONPROBATIONARY OFFICER

Any Basis----B/O----Show----B/I---Sep---B/R---Sep---SECNAV---Sep  
For Sep Cause

(Record)

(Hearing)

(Review)

Close Case

Close Case

Close Case

Close Case

### III. RESERVE OFFICER

R.A.D.-----No Board----- No Notification

Less Than-----Substandard-----No Board----- Notification  
3 years Performance/Parenthood

### IV. PERMANENT REGULAR WARRANT OFFICER

Less Than-----Substandard Performance----- Notification  
3 years Parenthood

Other Basis-----B/I-----CNP/CMC----- Sep/Retain

### V. TEMPORARY LIMITED DUTY OFFICER/WARRANT OFFICER

Any Basis----- Notification  
For Separation

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UNCLAS //N05370// SECTION 01 OF 02

**SUBJ: NAVY FRATERNIZATION POLICY**

A. OPNAVINST 5370.2

1. THIS NAVOP PROVIDES GUIDANCE ON THE NAVY'S FRATERNIZATION POLICY SPECIFIED IN REF A. THE POLICY FOCUSES ATTENTION ON THE IMPORTANCE OF MAINTAINING THE HIGHEST PROFESSIONAL RELATIONS, REASSERTS THE TRADITIONAL DEFINITION OF FRATERNIZATION, AND GIVES GUIDANCE FOR RELATIONS BETWEEN: OFFICERS/ENLISTED MEMBERS; AND SENIORS/SUBORDINATES.

2. BECAUSE OF THE IMPORTANCE OF THE ISSUE INVOLVED, REF A IS PROVIDED IN ITS ENTIRETY IN ADVANCE OF THE PRINTED INSTRUCTION WHICH WILL BE DISTRIBUTED IN MARCH. QUOTE:

SUBJ: NAVY FRATERNIZATION POLICY

1. PURPOSE. TO ISSUE POLICY REGARDING FRATERNIZATION.

2. POLICY. PERSONAL RELATIONSHIPS BETWEEN OFFICER AND ENLISTED MEMBERS WHICH ARE UNDOULY FAMILIAR AND DO NOT RESPECT DIFFERENCES IN RANK AND GRADE ARE INAPPROPRIATE AND COUNTER TO LONG-STANDING CUSTOM AND TRADITION OF THE NAVAL SERVICE. SIMILAR RELATIONSHIPS INVOLVING TWO OFFICERS OR INVOLVING TWO ENLISTED MEMBERS WHERE A SENIOR-SUBORDINATE SUPERVISORY RELATIONSHIP EXISTS ARE ALSO INAPPROPRIATE. INAPPROPRIATE CONDUCT OF THIS NATURE IS TO BE AVOIDED AND, WHEN IT IS FOUND TO EXIST, COMMANDS ARE EXPECTED TO TAKE ADMINISTRATIVE OR DISCIPLINARY ACTION AS NECESSARY TO CORRECT IT. ADDITIONALLY, SUCH INAPPROPRIATE RELATIONSHIPS SUBJECT THE INVOLVED

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CNO WASHINGTON DC

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ADMINISTRATIVE ACTIONS, TO INCLUDE COUNSELLING AND REASSIGNMENT.  
BT

CSN: 7596/041 4 M1 0420 041/14:28Z 101010Z FEB 89.  
0425 CNO WASHINGTON, DC

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ZNR UUUUU RUHHWEB T NAVSUPPDRANTARCTICA DET MCMURDO ANTARCTICA

U U N C L A S S I F I E D U



## REASONABLE ACCOMMODATION OF RELIGIOUS PRACTICES

The accommodation of a member's religious practice depends upon military necessity, and that determination of military necessity rests entirely with the commanding officer. For example, if a servicemember -- who is scheduled to stand duty on Friday evening -- requests, based on his religious principles, that he not be directed to stand duty between sundown Friday and sundown Saturday, the commanding officer should carefully consider granting that accommodation request if others are available to stand duty during those hours. However, if no other person is reasonably available to stand duty at that time, the commanding officer could order that member to stand duty based on his determination of military necessity.

SECNAVINST 1730.8 provides guidelines to be used in the exercise of command discretion concerning the accommodation of religious practices, including requests based on religious and dietary observances, requests for immunization waivers, and requests for the wearing of religious items or articles other than religious jewelry -- which is subject to the same uniform regulations as nonreligious jewelry -- with the uniform.

The issue of religious accommodation and the military uniform has been an area of particular concern in recent years. In that regard, this SECNAVINST provides a basis for determining a member's entitlement to wear religious apparel with the uniform. It provides that:

A. Religious items or articles which are not visible may be worn with the uniform as long as they do not interfere with the performance of the member's military duties; and that

B. religious items or articles which are visible may be authorized for wear with the uniform if:

1. The item or article is "neat and conservative" (meaning that it is discreet and not showy in style, color, design, or brightness), that it does not replace or interfere with the proper wearing of any authorized article of the uniform, and that it is not temporarily or permanently affixed or appended to any article of the member's uniform;

2. the wearing of the item or article will not interfere with the performance of the member's military duties due to either the characteristics of the item or article, the circumstances of its intended wear, or the particular nature of the member's duties; and

3. the item or article is not worn with historical or ceremonial uniforms, or while the member is participating in review formations, honor or color guards and similar ceremonial details and functions, or during basic and initial military skills or specialty training -- except during off-duty hours designated by the cognizant commander.

- a. For example, within the guidelines given above, a skullcap (yarmulke) may be worn:

- (1) Whenever a military cap, hat, or other headgear is not prescribed; or

(2) it may be worn underneath military headgear as long as it does not interfere with the proper wearing, function, or appearance of the prescribed headgear.

b. Several factors for commanding officers to consider when examining requests for religious accommodations are:

(1) The importance of military requirements, including individual readiness, unit cohesion, health, safety, morale, and discipline;

(2) the religious importance of the accommodation by the requester;

(3) the cumulative impact of repeated accommodations of a similar nature;

(4) alternative means available to meet the requested accommodation; and

(5) previous treatment of the same or similar requests made for other than religious reasons.

c. This SECNAVINST provides that any visible item or article of religious apparel may not be worn with the uniform until approved.

d. In any case in which a commanding officer denies a request to wear an item or article of religious apparel with the uniform, the member must be advised of the right to request a review of that refusal by CNO or CMC. That review will normally occur within 30 days following the request for review for cases arising in the United States, and within 60 days for all other cases.

e. Administrative action (including reassignment, reclassification, or separation) consistent with SECNAV and service regulations is authorized if:

(1) Requests for accommodation are not in the best interests of the unit; and

(2) continued tension is apparent between the unit's requirements and the individual's religious beliefs.

DEPARTMENT OF THE NAVY  
Office of the Secretary  
Washington, DC 20350-1000

SECNAVINST 1300.12A  
OP-13  
20 February 1989

SECNAV INSTRUCTION 1300.12A

From: Secretary of the Navy  
To: All Ships and Stations

Subj: ASSIGNMENT OF WOMEN  
MEMBERS IN THE DEPARTMENT  
OF THE NAVY

Ref: (a) 10 U. S. Code Sec. 6015

1. **Purpose.** To prescribe the guidelines under which women members, both officer and enlisted, in the Navy and Marine Corps may be assigned to duty on ships, aircraft and units of the Navy and Marine Corps. When the United States Coast Guard is assigned as a service within the Department of the Navy, the policies set out in this instruction will apply to women members of the Coast Guard. This instruction is a complete revision and should be read in its entirety.

2. **Cancellation.** SECNAVINST 1300.12.

3. **Background.** Reference (a) authorizes the Secretary of the Navy to prescribe the kind of military duty to which women members may be assigned, but prohibits the assignment of women for duty in vessels or in aircraft that are engaged in combat missions. This law allows women to be permanently assigned to hospital ships, transports, and vessels of a similar classification; furthermore, it allows women to be temporarily assigned to any naval vessel or aircraft squadron for up to 180 days provided the ship or squadron is not expected to be assigned to a combat mission. Navy and Marine Corps women are a valuable personnel resource contributing significantly to the attainment of the Service's mission.

4. **Definitions**

a. **Combat Mission.** A mission of an individual unit, ship or aircraft that individually or collectively as a naval task organization has as one of its primary objectives to seek out,

reconnoiter, and engage an enemy. The normal defensive posture of all operating forces is not included within this definition.

b. **Risk Rule.** Risks of direct combat, exposure to hostile fire, or capture are proper criteria for closing noncombat positions or units to women, when the type, degree, and duration of such risks are equal to or greater than the combat units with which they are normally associated within a given theater of operations.

c. **Temporary Duty.** Temporary duty (TEM DU) orders are orders which involve detachment from one station and assignment to another station or stations for TEM DU pending further assignment to a new permanent duty station or for return to the old permanent duty station. Members on TEM DU are not attached to any permanent duty station.

d. **Temporary Additional Duty.** Temporary additional duty (TEM ADD) orders are orders which temporarily assign a member to duty in addition to his or her present duties, and which direct him or her upon completion of this TEM ADD to resume regular or temporary duty.

5. **Policy.** It is Department of the Navy policy that women members, officers and enlisted, will be assigned to billets commensurate with their capabilities to the maximum extent practicable. Accordingly, women members:

a. May not be assigned to a unit, ship, or aircraft that has a combat mission except as provided below. If assigned on a vessel or aircraft that is required to execute a combat mission, every reasonable effort will be made to disembark women prior to execution of such mission.

b. May be permanently assigned to duty in hospital ships, oilers, ammunition ships, refrigerated stores ships, transports, training ships, and vessels of a similar classification not expected to be assigned a combat mission.

0579-LD-054-2385

c. May be assigned temporary duty (TEM DU or TEMADD) to any ship or aircraft not expected to conduct a combat mission during the period of temporary duty. Such periods of temporary duty may not exceed 180 days. Chief of Naval Operations and Commandant of the Marine Corps may promulgate specific guidelines governing these assignments.

d. Are authorized to participate, including landing on shipboard flight decks under conditions permitting temporary duty on naval vessels, as crew members or passengers in aircraft engaged in training or support not expected to execute a combat mission during the period of the assignment.

e. May be assigned to permanent duty in squadrons where such assignment would not require them to participate as crew members in a combat mission or embark, other than TEMADD, in vessels that may be assigned combat missions. They may be assigned to aircrew and support positions in squadrons that do not have combat missions. Women may be assigned to nonaircrew support positions in land based squadrons with combat missions. The Chief of Naval Operations and the Commandant of the Marine Corps will specify those squadrons in which women may be assigned.

f. Notwithstanding any of the provisions above, the Chief of Naval Operations and the Commandant of the Marine Corps may preclude women from the assignment to a noncombat unit, ship or aircraft when the type, degree, and duration of risk of direct combat, exposure to hostile fire, or capture are equal to or greater than the reasonably anticipated risks for land, air or sea combatant units with which they are normally associated in a theater of operations.

The Chief of Naval Operations and the Commandant of the Marine Corps will determine when the risk equals or exceeds the reasonably anticipated risks for land, air or sea combatant units normally associated in the same theater of operations.

6. Mission. The policy outlined above delineates when women members may serve on board Navy ships, aircraft, and with Marine Corps units, but does not mandate assignment of women members to any particular ship, aircraft, or Marine Corps unit. Specific plans and policy directives for assignment of women members shall be developed by the Chief of Naval Operations and the Commandant of the Marine Corps within the policy contained here. These policies shall be structured to ensure that women members of the Navy and Marine Corps are assigned and utilized to maximize Service benefit and provide for rewarding careers.

H. LAWRENCE GARRETT, III  
Acting Secretary of the Navy

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## STANDARDS OF CONDUCT AND GOVERNMENT ETHICS

The purpose of the standards of conduct rules is to provide ethical standards for all DON personnel. The primary reference for these rules is SECNAVINST 5370.2 (series), which applies to the military (Regular and reservist, active or ACDUTRA) as well as to civilians (including nonappropriated fund activities personnel and special government employees).

The standards of conduct rules in this chapter that are shown in bold type are regulatory general orders and, therefore, military violators of those rules are subject to the UCMJ, while civilian violators are subject to disciplinary action.

There are several important command responsibilities with regard to the standards of conduct. Individual commands must:

- A. Be responsible for ensuring compliance with the conduct rules within the command;
- B. provide regular training, at least annually, to all DON personnel in the command;
- C. periodically publish the bedrock standards [Appendix D in SECNAVINST 5370.2 - see at pp. 295/6, infra] within the command and provide a copy of these rules on request to DON personnel within the command;
- D. ensure that any required Private Interests Disclosure Reports, discussed below, are timely filed;
- E. make conflict of interest determinations per the rules and take appropriate remedial action;
- F. ensure that ACDUTRA reservists are assigned duties that avoid conflicts of interest and minimize the possibility of gaining information which could give them unfair advantage over their civilian competitors;
- G. receive and promptly handle reported violations; and
- H. ensure that individuals leaving Federal Service, including retirees, are briefed concerning post-government employment service restrictions and reporting requirements.

### ETHICS COUNSELORS

- A. Are designated as the delegated authority for initially reviewing Financial Disclosure Statements (SF-278) and for finally reviewing Confidential Statements of Affiliations and Financial Interests (DD Form 1555) submitted by DON personnel within their organization, activity, or geographic area.
- B. Are responsible for providing advice and assistance on standards of conduct, ethics, conflicts of interest, and post-government service employment restriction issues.

An appendix to SECNAVINST 5370.2 lists the ethics counselor billets in the naval service.

## **GENERAL POLICIES FOR ALL DON PERSONNEL**

- A. Know their scope of authority and do not exceed it.
- B. Are familiar with statutory prohibitions on conduct.
- C. Consult designated ethics counselors as needed.
- D. Avoid any action that results in or reasonably can be expected to create the appearance of:
  - 1. Using public office for private gain;
  - 2. giving preferential treatment to any person or entity;
  - 3. impeding government efficiency or economy;
  - 4. losing independence or impartiality;
  - 5. making a government decision outside official channels; or
  - 6. adversely affecting the confidence of the public in the integrity of the government.

## **AFFILIATIONS AND FINANCIAL INTERESTS**

**DON personnel shall not engage in personal, business, or professional activity nor hold a direct or indirect financial interest that conflicts with the duties and responsibilities of the DON positions. Unless expressly authorized below, all DON personnel who have or acquire an affiliation or a financial interest that conflicts or creates the appearance of a conflict with their official duties shall report the matter to their appropriate superior in the chain of command.**

A. For purposes of this rule, the private financial interests of an individual's spouse, minor child, immediate household member, or partner are considered the private financial interests of the individual.

B. Situations where conflicts of interest are likely to arise include those in which DON personnel have government duties or responsibilities related to persons or business entities with which they, their spouses, minor children, or immediate household members:

- 1. Are associated as employees, officers, owners, directors, members, trustees, partners, advisers, or consultants;
- 2. have established contact, are negotiating, or have arrangements for future employment; or
- 3. have interests such as ownership of stock, stock options, bonds, real estate, or other securities or financial arrangements, such as trusts, or through participation in certain types of pension or retirement plans.

C. Examples of conflict situations include:

1. A commanding officer who holds a position in an insurance company, or an employee welfare or benefit organization, that sells insurance to its members -- since the official duties of a commanding officer require the exercise of control over the solicitation of insurance within the command.

2. A supply officer who buys government supplies from a local firm while his son is trying to obtain employment with the same firm.

3. A contracting officer who owns stock in one of the companies bidding on a government contract which that officer is about to award.

D. The commander of the activity concerned must resolve a conflict, and the action taken may involve the individual's disqualification from duties related to the conflict, his or her transfer, the removal of the individual from the position, or a change in duties.

E. However, disqualification is not required for these financial interests:

1. Shares of a widely held and diversified mutual, money market, trust, or similar funds offered for sale by a financial institution or by a regulated investment company;

2. deposits in and loans from banks or other financial institutions, provided they are at customary and generally available terms and conditions; and

3. Federal, state, municipal, or local government bonds.

F. DON personnel who are members or officers of nongovernmental associations or organizations must avoid activities on behalf of such groups that are incompatible with their official government positions.

1. Individuals are not disqualified from rendering advice or making recommendations within their chain of command on particular matters affecting private, nonprofit associations or organizations that foster and promote the general interests of the naval service and which depend upon the voluntary leadership efforts of DON personnel if:

a. Such individuals disclose their interest or affiliation to their superior prior to rendering advice or making recommendations;

b. the final decision is made by higher authority; and

c. the individual's commander does not otherwise find disqualification to be necessary.

2. For additional policy guidance in this Private Associations area, see SECNAVINST 5760.4B.

## **OUTSIDE EMPLOYMENT**

**DON personnel shall not engage in any outside employment activity, with or without compensation, that:**

**A. Interferes with or is not compatible with the performance of their government duties;**

**B. may reasonably be expected to bring discredit upon the government or the Department of the Navy; or**

**C. is otherwise inconsistent with the requirements of the instruction.**

1. Commanders and individuals must assess each outside activity individually and prohibit those which can reasonably be expected to create the appearance of impropriety.

2. Commanders may require all individuals in their commands desiring to engage in outside employment to obtain advance permission.

3. There are many limitations on outside activities in Federal statutes and regulations, including:

a. Enlisted naval personnel on active duty cannot leave their post to engage in a civilian pursuit, business, or professional activity if it interferes with the customary or regular employment of local civilians in their art, trade, or profession.

b. Active duty Regular officers of the Navy and Marine Corps, including those on terminal leave, cannot be employed by any person or entity furnishing naval supplies or war materials to the United States. If so employed, that officer would not be entitled to payment from the United States during the duration of that employment.

c. DON personnel cannot receive pay or allowances from any source other than the United States for the performance of any official service or duty unless specifically authorized by law. Officers on active duty (except while on terminal leave) may not accept employment if it requires separation from their organization, branch, or unit, or interferes with the performance of military duties.

4. Examples of outside employment rule violations include:

a. An O-5 who violates the rule by accepting a consulting position that requires that officer to travel extensively during the workweek;

b. an O-3 who violates the rule by working part-time for a company under contract with DON to provide electronic data programming services to that officer's department, if (s)he has any official responsibility to oversee, manage, or deal with the company's representatives or products; or

c. an E-6 who violates the rule by taking a job providing, on behalf of a contractor, aircraft maintenance services to the same airplanes for which he is responsible as a part of his military duties.



## **COMMERCIAL DEALINGS INVOLVING DON PERSONNEL**

DON personnel shall not knowingly solicit or make solicited sales to DOD personnel who are junior in rank, grade, or position or their family members, at any time, on or off duty. In the absence of actual coercion, intimidation, or pressure, this prohibition does not include:

A. The sale or lease by an individual of his or her privately owned real or personal property not held for commercial or business purposes; and

B. sales in commercial establishments incident to employment by individuals working part-time on their off-duty hours.

1. The reasoning behind this rule is the elimination of the appearance of coercion, intimidation, or pressure from rank, grade, or position.

2. This rule applies to both the act of soliciting and to the act of selling as a result of soliciting, although in both cases a solicitation is necessary for a violation to occur.

3. This prohibition includes, for example, the solicited sale of insurance, stocks, mutual funds, real estate, household supplies, and other goods and services.

4. Additionally, officers are prohibited by Article 1131, U.S. Navy Regulations, 1973, from having any pecuniary dealings with enlisted personnel except as required in the performance of official duties.

5. While this rule prohibits a senior from making a solicited sale to a junior or to the junior's family, sales made because a junior approaches the senior and requests the sale be made are not prohibited.

a. Examples of commercial dealing situations:

(1) A GS-13 violates this rule if he circulates to his subordinates his business card showing that he is a certified life insurance underwriter with a note that he will be happy to advise them on his company's products, since such an act is a subtle form of solicitation.

(2) An O-7 does not violate the rule by selling his personal residence to an O-1 when the O-7 receives PCS orders.

(3) An O-5 does not violate the rule by teaching an O-1 to fly for a fee if the O-1 approached the O-5 and requested that he provide that instruction.

## **COMMERCIAL USE OF GOVERNMENT GRADE, RANK, TITLE, POSITION OR UNIFORM**

Naval personnel shall not use nor permit the use of their grade, rank, title, position, or uniform to promote any commercial enterprise or to endorse any commercial product, except that:

**A. Retired military personnel and members of Reserve components not on active duty may use their military titles in connection with commercial enterprises if they indicate clearly their inactive or retired status, the use of which does not discredit DON or DOD, and the use does not give the appearance of DOD or DON sponsorship; and**

**B. all personnel may identify themselves as authors or speakers who publish or lecture in accordance with prescribed procedures.**

1. DON personnel cannot indicate support for any private enterprise, whether commercial or not, where such support is or appears to be equivalent to preferential treatment or official endorsement.

2. The limited exception for inactive Reserve or retired personnel is also subject to the control of DON commanders in foreign countries who may limit or eliminate the exception in areas under their jurisdiction to avoid confusing foreign governments or nationals.

-- Examples of commercial use violations:

(1) An O-8 violates the rule by permitting his rank and title to be placed on the letterhead of a company in which he serves as a member of the board of directors.

(2) A Reserve officer not on active duty violates the rule by using his rank and military affiliation on his professional letterhead and implies that DON supports his activities in the substance of his letters.

## **CONTRIBUTIONS AND GIFTS TO SUPERIORS**

**DON personnel shall not solicit from a subordinate or give any contribution or gift to a superior or to the superior's immediate family, nor accept any gift or contribution from a subordinate or the subordinate's immediate family, unless the gift or total of gifts is:**

**A. Voluntary;**

**B. of reasonable value under the circumstances;**

**C. if procured with contributions, the contributions are voluntarily donated and of nominal amounts; and**

**D. presented to mark significant personal occasions such as marriage, transfer out of chain of command, death of a family member, illness or retirement.**

All four of these conditions must be met. What is "reasonable" or "nominal" depends on the circumstances prevailing at the time and place that the gift is presented. As used in this rule, these terms are limited to \$300.00 and \$10.00, respectively. Superiors are forbidden from soliciting gifts. Examples of contributions and gifts rule violations include:

1. An O-4 violates this rule by suggesting that a senior would be "gravely disappointed" if all hands did not contribute to a farewell present, since any contributions from subordinate personnel under these circumstances are not voluntary.

2. A GS-7 violates the rule by giving a Christmas present to his boss, even if it is of reasonable value, since the present does not mark a personal occasion -- and his boss violates the rule by accepting the present.

3. A bouquet of flowers presented to a superior's sick spouse by members of his office is reasonable and may be accepted.

A contribution of \$1.00 is of nominal value, but a gift purchased with 1,000 such contributions is not reasonable and cannot be presented or accepted.

### **GIFTS OR GRATUITIES FROM OUTSIDE SOURCES**

DON personnel and their spouses, minor children, and members of their immediate family shall not solicit, accept, or agree to accept any gratuity for themselves, members of their families, or others, either directly or indirectly, from or on behalf of a defense contractor or other entity that:

A. Is engaged in or seeks business or financial relations of any sort with any DOD component;

B. conducts operations or activities that are either regulated by a DOD component or significantly affected by DOD functions;

C. has interests that may be substantially affected by the performance or nonperformance of the official duties of DOD personnel; or

D. is a foreign government, or any representative or subdivision thereof, that is engaged in selling to any DOD component, and the gift or gratuity is tendered in the context of the foreign government's commercial activity.

1. Unless a specific exception to this general prohibition permits a gratuity to be accepted, DON personnel must refuse it. And, even if accepting a gift is permissible under a liberal reading of one of the exceptions, it should be refused if the appearance of impropriety is created by accepting it. If in doubt, a designated ethics counselor should be consulted prior to accepting the gift or as soon thereafter as practical.

2. This rule is based in part on a federal statute which prohibits both the offering or giving and the soliciting or accepting of a gratuity. That criminal statute does not require proof that the gratuity was given in order to influence a particular matter pending before the public official receiving it. Thus, if the motivation for the gratuity is to keep a public official "happy" or to create a better "working atmosphere," the gratuity may form the basis for a criminal charge.

3. Exceptions to gift or gratuity from outside sources rule:

a. Accepting unsolicited advertising or promotional items that have less than \$10.00 retail value in the United States;

b. accepting trophies, entertainment, prizes, or awards for public service or achievement in an individual capacity (not in an official capacity), or in games or contests that do not relate to official duties and are clearly open to a broad segment of the public generally, or that are approved officially for participation by DON personnel;

c. benefits available to the public;

d. discounts or concessions realistically available to all DON personnel, provided that such discounts or concessions are not used to obtain any item for the purpose of resale at a profit;

e. participation by DON personnel in civic and community activities when the involvement of DOD contractors is remote from the business purposes of any contractor sponsoring, supporting, or participating in the activity;

f. activities engaged in by senior officials of a DON component or officers in command, or their representatives, with local civic leaders as part of a DON community relations program authorized by SECNAVINST 5720.44A, Department of the Navy Public Affairs Policy and Regulations;

g. the participation of DON personnel in widely attended gatherings of mutual interest to government and industry, sponsored or hosted by higher institutions of higher learning -- or by industrial, technical, or professional associations (not by individual contractors), provided that, in the case of associations, their programs have been approved under DOD Instruction 5410.20 of 16 Jan 74, Public Affairs Relations with Business and Nongovernmental Organizations Representing Business;

-- This exception permits lunch, dinner, or refreshments that are part of the gathering to be accepted, but does not extend to the acceptance of transportation or accommodations unless otherwise authorized in the Travel and Transportation section of SECNAVINST 5370.2.

h. participation by naval personnel in public ceremonial activities of mutual interest to industry or local communities and DON -- such as ship launchings or aircraft rollouts -- if the activities serve the interests of the government and accepting the invitation is approved, after consultation with the appropriate ethics official or counselor, by the commanding officer or head of the activity to which the invitee is attached;

i. attending vendor training sessions when the vendor's products or systems are provided under DOD contract, the training facilitates use of those products or systems by DON personnel, and the appropriate supervisor determines that the training is in the best interests of the government, as long as the contractor waives any claim against the government for such training;

j. attending tuition-free training or refresher courses, or other educational meetings, offered by defense contractors (although not required to do so by DOD contract) and the appropriate supervisor determines that the training is in the best interests of the government, and the contractor waives any claim against the government for such training;

k. continued participation in employee welfare or benefit plans of a former employer when permitted by law and approved by the appropriate supervisor with advice of the cognizant ethics official or counselor;

l. customary exchanges of gratuities between DON personnel and their friends and relatives and the friends and relatives of their spouses, minor children, and members of their immediate household when the circumstances clearly indicate that it is the relationship, rather than the business of the person concerned, that is the motivating factor for the gratuity, and it is clear that the gratuity is not paid for by the government or any DOD contractor;

m. accepting benefits resulting from the business activities of a spouse, where it is clear that such benefits are accorded the spouse in the normal course of the spouse's employment or business, and have not been proffered or made more attractive because of the DON individual's status;

n. on an infrequent basis only, accepting coffee, doughnuts, and similar refreshments of nominal value offered as a normal courtesy incidental to the performance of duty; or

o. situations in which, in the sound judgment of the individual concerned or of his or her supervisor, the government's best interests are served by the individual participating in activities otherwise prohibited.

In any such case, a written report of the circumstances must be submitted in advance or, when an advance report is not possible, within 48 hours, by the individual to his or her commander via the appropriate ethics counselor. This last exception is not intended to be a "catch-all," and the burden of decision and accountability is placed on the individual who exercises it. Each time the exception is used, reasons why accepting an otherwise prohibited gratuity is or was in the best interests of the government must be made in writing to the chain of command.

4. Examples of gift or gratuity from outside sources rule violations include the following:

a. A contracting officer violates the rule if he accepts an unsolicited gift worth \$9.00 on his birthday from a DOD contractor, since the pertinent exception applies only to promotional or advertising items;

b. a DON employee violates the rule if he requests a promotional coffee mug worth \$5.95 from a DOD contractor, since the exception permits only unsolicited items to be accepted;

c. a newly qualified pilot violates the rule by accepting a model of the aircraft in which he qualified (worth more than \$10.00) from the plane's manufacturer; or

d. an O-7 sponsor at a ship christening ceremony violates the rule by accepting a post-ceremony dinner invitation from the shipbuilder, since the dinner is not a part of the sanctioned ceremony.

## **REPORTING GRATUITIES**

In addition to the reporting requirements detailed in SECNAVINST 5370.2, DON personnel who receive gratuities under circumstances not covered by the instruction, or have gratuities received for them, must report the matter in writing to their commander via the cognizant ethics counselor for appropriate action and disposition of the gratuity.

## **SPEAKING, LECTURING, WRITING AND APPEARANCES**

DON personnel shall not, either with or without compensation, engage in speaking, lecturing, or writing activities that are dependent on information obtained as a result of their government employment, except when the information does not focus specifically on the agency's responsibilities, policies and programs, and:

A. The information has been published or is generally available to the public;

B. the information is available to the public under the Freedom of Information Act; or

C. the concerned service secretary authorizes in writing nonpublic information to be used on the basis that the use is in the public interest.

This rule contains the general prohibition against using inside information for the benefit of oneself or for others; but, it does not preclude DON personnel from writing or speaking on matters in which they have developed expertise because of their DON experience.

-- Naval personnel may not accept a payment or fee for any appearance or writing unless undertaken in a purely private capacity.

(1) Government officers and employees are prohibited under 18 U.S.C. § 209 from accepting any contribution or supplementation of salary for the performance of official duties from any source other than the United States. Therefore, DON personnel are prohibited from receiving compensation for lectures or articles which focus specifically on DON's responsibilities, policies, and programs, or when it may be perceived by the public that the article or speech conveys DON policies, or when the activity interferes with the individual's official duties.

(2) If preparing or delivering a speech, writing, or other work was properly assigned by a superior, or was properly self-assigned within the context of one's position or billet description, the speaker or writer cannot accept compensation for doing so, even if the work was prepared and delivered outside of normal working hours.

(3) An example of payment for duty rule violation would be:

-- An O-6 in a sea systems engineering office who violates the rule by accepting a fee for delivering, after normal working hours, a speech on recent developments in naval ship design that he wrote while on annual leave using his own paper and ink, if that officer had been tasked by his superior with giving the speech.

## **HONORARIA**

**DON personnel shall not accept honoraria or suggest charitable contributions in place thereof:**

- A. That are provided in the performance of official duties;**
- B. that exceed \$2,000 (excluding expenses for travel, subsistence and agent fees or commissions);**
- C. that are provided by entities or groups doing or seeking to do business with DOD or DON, unless the cognizant commander determines after consulting an ethics counselor that accepting will not cause an actual or apparent conflict of interest; or**
- D. that are provided to a civilian presidential appointee whose appointment must be made by and with the advice and consent of the Senate for any consultation, lecture, discussion, appearance, or writing -- the subject matter of which is devoted substantially to naval responsibilities, programs, or operations, or that draws substantially from official material that has not become part of the body of public information.**

**1. An honoraria is any payment of money or other thing of value to DON personnel as consideration for an appearance, speech, writing, or presentation. DON personnel may not accept any honoraria without first consulting an ethics counselor.**

**An example of an honoraria rule violation would be:**

**-- An O-7 violates the rule by accepting an honorarium for participating in a debate on nuclear arms policy held after normal working hours if his commander has designated him to represent the Navy in the proceedings.**

### **2. Prepublication review**

**Prior to publishing or delivering any work or speech pertaining to military matters, national security issues, or subjects of significant concern to DOD, DON authors or speakers must ensure that cognizant DON authorities have reviewed it and cleared it for dissemination. In general, each such work must be subjected to both security and policy reviews.**

## **TRAVEL AND TRANSPORTATION**

**Except as authorized [in SECNAVINST 5370.2], naval personnel and their spouses, minor children, and members of their immediate household shall not solicit, accept, or agree to accept in-kind transportation or accommodations or reimbursement for transportation or travel-related expenses from -- or on behalf of -- a DOD contractor or other entity that:**

- A. Is engaged in or seeks business or financial relations of any sort with any DOD component;**

**B. conducts operations or activities that are either regulated by a DOD component or significantly affected by DOD functions;**

**C. has interests that may be substantially affected by the performance or nonperformance of the official duties of DOD personnel; or**

**D. is a foreign government, or any representative or subdivision thereof, engaged in selling to or buying from any DOD component (including foreign military sales), and the payment or service is tendered in the context of the foreign government's commercial activities.**

Exceptions to DOD contractor travel expense payment rule include:

1. Accepting such services, payments, or reimbursements from a potential employer in connection with a job interview if reporting requirements are met;

2. situations in which the recipient is on official government business and reports the circumstances in writing to his/her superior or supervisor and to the ethics counselor before accepting, if possible, or as soon as possible thereafter and accepts:

a. Space-available, previously scheduled, ground transportation to, from, or around a contractor's place of business provided by the contractor to its own employees; or

b. contractor-provided transportation, meals, or overnight accommodations when arrangements for government or commercial transportation, meals, or accommodations are clearly impracticable and refusing the contractor's offer would interfere significantly with the performance of official duties.

The exceptions listed in SECNAVINST 5370.2 are the only occasions in which DON personnel may accept transportation or travel-related expense payments or reimbursement from a DOD contractor.

3. Examples of DOD contractor travel expense payment rule violations:

a. An O-6 violates the rule by accepting hotel accommodations in a foreign country at a foreign government's expense if the O-6 is present to negotiate a U.S. weapons purchase from that country; or

b. a GS-13 violates the rule by sharing a taxi ride with a DOD contractor representative without paying for his share even if both are going to the same destination.

#### **NON-DOD CONTRACTOR TRAVEL EXPENSE PAYMENTS**

**DON personnel shall not accept from any non-DOD source transportation, accommodations, or subsistence in connection with official travel unless:**

**A. The recipient is a speaker, panelist, project officer, or other bona fide participant in a seminar, symposium, or similar event;**



B. the recipient obtains the prior written approval of his or her commanding officer or designee;

C. the transportation, accommodations, or subsistence are provided in-kind;

D. the provider is a nonprofit, tax-exempt organization, association, or institution listed in 26 U.S.C. § 501 (c)(3) (1982) or authorized by 5 U.S.C. § 4111 (1982); and

E. the transportation, accommodations, or subsistence are not extravagant or excessive.

1. An example of non-DOD contractor travel expense payment rule violation would be:

-- A GS-11 who violates the rule using his personal charge card to pay travel expenses in connection with attending a seminar hosted by the American Cancer Society to give a lecture as a representative of the Navy and subsequently accepting the Cancer Society's check in reimbursement, since the rule's exception is limited to the acceptance of in-kind services only.

2. Promotional benefits in connection with official travel

a. DON personnel may accept, but must surrender to their commanding officer or designee, promotional items or benefits such as "frequent flyer" airline tickets, coupons, dividends, and the like -- regardless of transferability limitations -- and tangible gifts of more than nominal value (\$10.00 or less).

b. "Credits," miles, "points," etc. accumulated in commercial airline frequent-flyer clubs or programs pursuant to official travel may not be used to upgrade accommodations from "coach" to "first-" or "business-" class, except when such accommodations would otherwise be approved (e.g., to accommodate medical necessities, handicapped travelers, the requirements of security, and the like).

## **GAMBLING**

While on government owned, leased, or controlled property, or while on duty for the government, DON personnel shall not participate in any gambling activity, including a lottery or pool, a game of chance for money or property, or the sale or purchase of a number slip or ticket, unless:

A. Necessitated by an individual's law enforcement duties; or

B. the activity is specifically authorized by the Secretary of the Navy; or

C. otherwise authorized by law (such as the sale on DOD premises of state lottery tickets by blind vendors licensed pursuant to the laws of that state).

1. For the purpose of this rule, military personnel are "on duty" except when on leave or liberty.

2. This rule prohibits all forms of gambling (including lotteries, football pools, numbers, raffles, wagering, bingo, and other games of chance). While games of skill are not prohibited, betting on them is prohibited.

3. A raffle to support Navy Relief, authorized by SECNAV, conducted in accordance with local law, and subject to adequate administrative controls is permitted. Additionally, CNO or CMC may authorize the playing of bingo on board Navy or Marine activities or vessels.

4. Although specifically not desired [see SECNAVINST 5370.2], requests for exceptions to this rule may be authorized by SECNAV. Such requests must be forwarded via the chain of command, including CNO or CMC as appropriate, and must include a complete statement of local gambling laws, proposed administrative controls, and a copy of the proposed implementing order.

5. Examples of violations of this gambling prohibition include:

a. An E-5 who violates the rule by running a weekly football pool on his ship, even if all winners are paid their winnings ashore and away from military property and even though the winners agree that their success is attributable to skill; or

b. DON personnel who attend a dance aboard a naval installation if the price of their admission includes the cost of a door prize to be awarded to one of the attendees whose name will be drawn at random.

#### **USE OF TITLE, RANK, OR POSITION TO RAISE FUNDS FOR CHARITIES**

DON personnel shall not use or allow the use of their titles, rank, or positions in connection with charitable or nonprofit organizations -- except that:

A. DON personnel may assist charitable programs administered by the Office of Personnel Management (OPM) under delegation from the President (Combined Federal Campaign, United Way) and other specifically authorized programs (e.g., Navy Relief); and

B. this prohibition does not preclude speeches before such organizations by DON personnel if the speech is designed to express an official position in a public forum.

This prohibition does not preclude volunteer efforts on behalf of charitable or nonprofit organizations by individuals who do not use their official titles, ranks, or positions.

#### **SOLICITATION OF GIFTS AND CONTRIBUTIONS**

Unless authorized by the Secretary of the Navy, requests for gifts or contributions for institutions or organizations of the Department shall not be initiated by DON personnel.

## **VOLUNTARINESS**

**DON personnel shall not take or permit actions or practices that involve actual or apparent compulsion, coercion, or reprisal in connection with fundraising events or campaigns.**

**A. Among the coercive practices proscribed by this rule are:**

- 1. Supervisory solicitation of supervised employees;**
- 2. setting 100 percent participation goals;**
- 3. providing or using contributor lists for purposes other than the routine collection and forwarding of contributions and pledges;**
- 4. establishing mandatory personal dollar goals or quotas;**
- 5. developing or using noncontributor lists; and**
- 6. "counseling" or grading individual service personnel or civilian employees about their failure to contribute or about the size of their donation.**

**B. An example of a violation of this voluntariness rule would be:**

-- A CO who violates the rule by designating his leading chief as a "key person" and directing him to personally solicit all the command personnel-- including individuals whom the chief directly supervises.

## **PROTECTING GOVERNMENT ASSETS**

**Naval personnel shall not directly or indirectly use, take, dispose of, or allow the use, taking, or disposing of government manpower, property, facilities, or information of any kind, including property leased to the government, for other than official government business or purposes.**

**A. This rule covers all government property, including telecommunication services, stationery, typing and word-processing assistance, duplication equipment, transportation services, computers, and information.**

**B. Posse Comitatus. As a matter of DON policy, uniformed naval personnel may not participate officially in civil law enforcement functions. See SECNAVINST 5820.7B, Posse Comitatus Act.**

## **USE OF INSIDE INFORMATION**

**Current and former naval personnel shall not use, directly or indirectly, inside information to further a private gain for themselves or others.**

**A. "Inside information" is information about the business of the Navy or the Marine Corps which is:**

1. Not generally available to the public and not releasable to the public under a Freedom of Information Act request; and

2. was obtained by virtue of an individual's DOD position.

B. This rule does not address the unauthorized use of classified or trade secret material, since use of such information is controlled by other directives.

C. An example of a violation of the inside information rule would be:

-- A personnel officer who provides her realtor husband with the names and addresses of personnel ordered to report to her unit in the future so that he can contact them about the purchase of new homes.

## **ACQUISITION INFORMATION**

Current and former naval personnel shall not release any information concerning proposed acquisitions or purchases by any DOD contracting activity, except per authorized procedures. Naval personnel, other than contracting officers, shall not make any commitment or promise relating to the award of a contract nor make any representation that could reasonably be construed as such a commitment.

This rule bars the unauthorized release of acquisition data even if no gain or benefit to the discloser, or to another person, is contemplated and even after the individual has left the naval service.

## **USING OFFICIAL POSITION**

Naval personnel shall not use their official positions to improperly induce, coerce, or influence any person, particularly subordinates, defense contractors, and potential defense contractors, to provide any benefit, financial or otherwise, to themselves or to others.

Examples of improper use of government position include:

1. A commanding officer who permits dinner in the captain's mess to be "auctioned" by a local charity to raise funds for the charity; or

2. a member of the shore patrol who uses his position to obtain favors at the bars along his patrol route.

## **POLITICAL ACTIVITIES FOR MILITARY PERSONNEL**

A. Military personnel are permitted to:

1. Register, vote, and express personal opinions on political candidates and issues, but not as members of the armed forces;

2. make monetary contributions to a political organization; or

3. attend both partisan and nonpartisan political rallies, as a spectator, while not in uniform.

B. Military personnel are prohibited from actions such as:

1. Using official authority or influence for interfering with an election, affecting its course or outcome, soliciting votes for a particular candidate or issue, or requiring or soliciting political contributions from others;

2. being a candidate or holding office except under specified conditions [in SECNAVINST 5370.2];

3. participating in partisan political management, campaigns, or conventions; or

4. making campaign contributions to a partisan political candidate, another member of the armed forces, or an employee of the Federal Government.

C. An active-duty member may serve as a regular or reserve civilian law enforcement officer, or member of a civilian fire or rescue squad. Such service must be in a personnel capacity, may not involve the exercise of military authority, and may not interfere with the performance of military duties.

#### PRIVATE INTEREST DISCLOSURE SYSTEM

There are three separate and distinct private interest disclosure systems in the Department of the Navy, the first two of which are of particular significance:

A. Confidential Statement of Affiliations and Financial Interests (DD Form 1555);

B. Financial Disclosure Report (SF 278); and

C. Report of DOD and Defense Related Employment (DD Form 1787).

For the first of the two main disclosure systems, the Confidential Statement of Affiliations and Financial Interests (DD Form 1555), the interests of a spouse, minor child, or member of the immediate household must be reported as if they were interests of the filing individual. That report must be filed initially and then annually by:

1. Regular Navy and Marine Corps officers frocked to O-7, and Reserve Navy and Marine Corps officers frocked to O-7 serving on voluntary extended duty in excess of 130 days.

2. Commanding officers (or heads of) and executive officers (or deputy heads of):

a. Navy shore installations with 500 or more military and civilian personnel (including foreign national and indirect-hire personnel regularly attached, but excluding personnel attached for duty under instruction); and

b. all Marine Corps bases and air stations.

3. DON civilian personnel classified at GS/GM-15 or below under 5 U.S.C. § 5332 (1982), or a comparable pay level under other authority.

4. DON military personnel below the rank of O-7, when their official responsibilities require them to exercise judgment in making government decisions or in taking government actions regarding contracting or procurement, regulation or audit of private or nonfederal enterprises, or other activities in which final decision or action may economically affect the interests of any nonfederal activity.

5. Special government employees [except those excluded in SECNAV-INST 5370.2].

6. Those DON personnel serving in positions in which the concerned commanding officer determines this disclosure report should be filed.

Individuals who must initially, and then annually, file the second of the two main disclosure reports, the Financial Disclosure Report (SF-278), include:

1. Regular Navy and Marine Corps officers who have been promoted (not frocked) to O-7, or above;

2. Reserve Navy and Marine Corps officers serving on voluntary extended active duty in excess of 130 days who have been promoted (not frocked) to O-7 or above;

3. special government employees; and

4. members of the Senior Executive Service;

D. All Navy officer filers must submit their SF-278 to JAG via their appropriate supervisor and ethics counselor, and all Marine Corps officer filers must submit their SF-278 to Director, Judge Advocate General Division, Headquarters, U.S. Marine Corps, unless their position requires a different submission chain [outlined in SECNAVINST 5370.2].

E. Both the DD Form 1555 and the SF-278 report are initially reviewed by both the individual's appropriate supervisor and the ethics counselor. If there is a disagreement between those individuals concerning whether there is or may be a conflict, based on the information provided on DD Form 1555, the filing individual's commanding officer or activity head will resolve the matter or forward the report to the cognizant deputy ethics official for resolution.

F. All DD Form 1555's and SF-278's must be retained for six years at the command or activity to which the reporting individual was assigned when the report(s) was (were) filed.

## **SEARCHING FOR POST-GOVERNMENT SERVICE EMPLOYMENT**

A. DON personnel shall not participate personally and substantially on behalf of the government in any particular matter in which an organization with which they are pursuing or have an agreement concerning post- government service employment has a financial interest.

Federal law prohibits DON personnel from participating "personally and substantially" in any particular government matter in which any private entity with which they are negotiating or with which they have an arrangement for future employment has a financial interest. That statute provides for a fine of not more than \$10,000, or imprisonment for not more than 2 years, or both.

1. To participate "personally" means to do so directly and includes the participation of a subordinate when actually directed by a superior in the matter.

2. To participate "substantially" means that the individual's involvement was of significance in the matter.

3. "Pursuing employment" includes sending letters or resumes, in pursuit of employment, to a finite number of firms or individuals, as well as discussions concerning employment.

4. This personal and substantial participation standard is also important with regard to post-employment compensation. A former or retired member of the armed forces (defined to not include the Coast Guard), while performing duties in paygrade 0-4 or above, or a former officer or employee of DOD in a pay rate of at least GS-13, may not accept compensation from a contractor for a period of two years after separation from DOD service if that person:

a. Spent a majority of his working days during a two-year period (ending on the date of that person's separation from service) in DOD or performed a procurement function relating to a DOD contract (principally at a site owned and operated by the contractor); or

b. performed a procurement function during a majority of his working days during that two-year period, involving his substantial and personal participation in decisionmaking responsibilities, with respect to a contract with that contractor.

A person who violates this prohibition is subject to a civil fine up to \$250,000. If it was an intentional or knowing violation, a civil fine of up to \$500,000 is authorized by that statute.

**B. If, at any time during their DOD service, either a military member 0-4 or above or a civilian employee serving in a position for which the rate of pay is equal to or greater than the minimum rate of pay for GS-11 -- who performed a "procurement function" in connection with a DOD-awarded contract which involved a contractor who does at least \$25,000 a year in DOD business -- should contact or be contacted by the DOD contractor to whom that contract was awarded regarding future employment, said personnel must report the contact in writing to their ethics counselor and to their reporting senior.**

1. This reporting requirement does not apply to the first contact if it is initiated by the contractor and the DON personnel involved immediately terminates the contact. However, if the contact is renewed by either the contractor or the DON individual within 90 days of the first contact, all contacts must be reported.

2. Additionally, such DON personnel must disqualify themselves from participating in any "procurement function" relating to contracts of that contractor for any period for which future employment opportunities have not been rejected.

3. The term "procurement function" is defined, with respect to a contract, as any function relating to:

- a. The negotiation, award, administration, or approval of the contract;
- b. the selection of a contractor;
- c. the approval of changes in the contract;
- d. quality assurance, operational and developmental testing, the approval of payment, or auditing under the contract; or
- e. the management of the procurement program.

4. Examples of violations of this reporting contacts rule are:

a. An O-7 who violates the rule by not reporting a telephone call from a defense contractor who said, "call me after you retire to talk about a job," if 6 years ago he performed a "procurement function" in connection with a contract award greater than \$25,000 to the same company -- even if he has not worked in procurement since that time.

b. An O-5 who violates the rule by failing to report the second employment inquiry made to her by a DOD contractor within a 90-day period, even though she firmly and unequivocally rejected both offers.

5. A violation of this reporting contacts rule also constitutes a violation of federal law and may be punished by sanctions (including a fine of up to \$10,000 and imprisonment for 2 years). Administrative penalties may also be imposed (including a prohibition of employment with that defense contractor for up to 10 years from the date of separation from service with DOD and an administrative penalty of up to \$10,000).

C. Active-duty Regular officers of the Navy and Marine Corps, including those on terminal leave, cannot be employed by any person or entity furnishing naval supplies or war materials to the United States. If so employed, that officer would not be entitled to payment from the United States during the duration of that employment.

D. After military retirement, Article 1, section 9, clause 8 of the U.S. Constitution is interpreted as prohibiting former members of the armed forces from accepting any compensation, office, or title from a foreign government without the consent of Congress, unless those members have received the approval of both the Secretary of State and the Secretary of their service. This need for pre-employment approval would also apply to domestic corporations which are ultimately controlled by a foreign government and the domestic corporation acts as an agent or instrumentality of the foreign government. This approval will not extend to post-retirement employment in a foreign military service.



Additional post-employment restrictions, and penalties for noncompliance with federal law in this area, are summarized on the chart shown below (at pp. 293/4).

## **POST-GOVERNMENT SERVICE REPORTING REQUIREMENTS**

### **A. Report of defense contractor employment**

-- Former DON personnel as specified below, who are employed by a DOD contractor within 2 years of leaving DON service, are required to file a report of Defense Contractor Employment (DD Form 1787) within 90 days after beginning such employment if that contractor was awarded \$10,000,000 in DOD contracts during the year preceding the employment of that former DON employee. Personnel must file this report if they left DON service on or after 8 November 1985, and if they are either:

a. A former or retired military officer who served on active duty for at least 10 years and held the paygrade of O-4; or

b. a former civilian officer or employee who attained pay rate GS-13 at any time during the 3 years preceding the end of their DOD service.

### **B. Statement of employment**

All retired Regular officers of the Navy and Marine Corps whose names have been on the retired list for 3 years or less must file a statement of employment (DD Form 1357) to advise the DON of that former officer's post-retirement employment activities. The initial statement of employment must be submitted within 30 days of retirement, and again within 30 days if that employment changes. After 3 years the use of that form is encouraged, but not mandatory unless that former officer is employed by the federal government.

## **PROCEDURES FOR ENFORCING COMPLIANCE**

A. Reporting instances of suspected fraud, waste, or abuse is the responsibility of all naval personnel. Toll-free numbers are available to report suspected violations. Those numbers are 1-800-

1. 424-9098 (DOD);
2. 424-5454 (GAO);
3. 533-3451 (DON) (also use: A/V 288-6743 for DON; A/V 224-2172 for USMC IG)
4. 356-3464 (NAVSEA IG);
5. 424-9071 (DOT IG);
6. 538-8429 (USAF); and
7. 446-9000 (USA).

B. Enforcement is the responsibility of appropriate command authority. Sanctions may be administrative and/or punitive in nature. Violators may receive warnings, letters of caution, loss of job, or criminal action.

# **POST EMPLOYMENT RESTRICTIONS STATUTE SUMMARY**

STATUTE	TYPE/DURATION/PENALTY	ACTIVITY PROHIBITED
<b>I. PRIOR TO TERMINATING FEDERAL EMPLOYMENT</b>		
18 U.S.C. § 208	Criminal, applies throughout employment; \$10,000 and 2 years' imprisonment	Participating in an official matter involving a firm with which the employee is negotiating future employment
10 U.S.C. § 2397a	Civil and administrative; applies throughout employment; 10-year ban on employment with that contractor; \$10,000 penalty, additional \$10,000 if employment taken	Affirmative requirement to report contact to ethics official and disqualify self from acting on pending matters with the prospective employer
<b>II. POST-FEDERAL EMPLOYMENT</b>		
<b>A. SELLING</b>		
37 U.S.C. § 801(b)	Civil; 3 years from date put on retired list; no pay from the United States	Engaging in selling naval supplies or war materials to DoD, CG, PHS, or NOAA
18 U.S.C. § 281	Criminal; 2 years from date put on retired list; fine \$10,000 and 2 years' imprisonment	Representing anyone in the sale of anything to the Government through the Department in which retired status is held
<b>B. REPRESENTING</b>		
18 U.S.C. § 207(a)	Criminal; applies for life; \$10,000 and 2 years' imprisonment	Acting as attorney/agent for another person by appearance before, or communication with, the Government in connection with a matter in which the employee participated personally and substantially while in Government service
18 U.S.C. § 207(b)	Criminal; applies for 2 years; \$10,000 and 2 years' imprisonment	Acting as attorney/agent for another person by appearance before, or communication with, the Government in connection with a matter which was actually pending under the employee's official responsibility within one year before leaving Government service

STATUTE	TYPE/DURATION/PENALTY	ACTIVITY PROHIBITED
18 U.S.C. § 281	Criminal; applies for 2 years after retirement; \$10,000 and 2 years' imprisonment	Acting as attorney/agent for prosecuting or assisting in the prosecution of any claim against the Government involving the Department in which retired status is held
18 U.S.C. § 281	Criminal; applies for life; \$10,000 and 2 years' imprisonment	Acting as attorney/agent for prosecuting or assisting in the prosecution of any claim against the Government involving any subject matter with which he was directly connected while in an active duty status

#### C. ACCEPTING EMPLOYMENT

§ 931, 1987 DoD Auth. Act 10 U.S.C. § 2397b	Criminal; applies for 2 years after negotiation/settlement; \$5,000 and 1 year imprisonment	Accepting employment with a DoD contractor with which he has acted in negotiating or settling a Government contract
---	---	---

#### D. POST-EMPLOYMENT REPORTING REQUIREMENT

10 U.S.C. § 2397b	Civil; applies for 2 years after leaving Government service; \$10,000 administrative penalty	Affirmative requirement for majors and above w/10+ years of service to file DD Form 1787 when employed at a salary of \$25,000+ by a DoD contractor which was awarded contracts exceeding \$10 million during the prior year
37 U.S.C. § 801(b)	Civil; applies for 3 years after retirement; withholding of retired pay	Affirmative requirement for retired Regular officers to file Statement of Employment, DD Form 1357, which indicates whether the officer is employed with a DoD contractor

## APPENDIX D

### Bedrock Standards of Conduct for Department of the Navy Personnel

To maintain the public's confidence in our institutional and individual integrity, all Department of the Navy (DON) personnel shall --

1. Avoid any action, whether or not specifically prohibited by the rules of conduct, which might result in or reasonably be expected to create an appearance of:

- a. Using public office for private gain,
- b. giving preferential treatment to any person or entity,
- c. impeding Government efficiency or economy,
- d. losing complete independence or impartiality,
- e. making a Government decision outside official channels, or
- f. adversely affecting the confidence of the public in the integrity of the Government;

2. not engage in any activity or acquire or retain any financial or associational interest that conflicts or appears to conflict with the public interests of the United States related to their duties;

3. not accept gratuities from Department of Defense contractors unless specifically authorized by law or regulation;

4. not use their official positions to improperly influence any person to provide any private benefit;

5. not use inside information to further a private gain;

6. not wrongfully use rank, title, or position for commercial purposes;

7. avoid outside employment or activities incompatible with their duties or which may discredit the Navy;

8. never take or use Government property or services for other than officially approved purposes;

9. not give gifts to your superiors or accept them from your subordinates when it is not appropriate to do so;

10. not conduct official business with persons whose participation in the transaction would violate law or regulation;

11. seek ways to promote efficiency and economy in Government operations;

12. preserve the public's confidence in the Navy and its personnel by exercising public office as a public trust;
13. put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department;
14. uphold the Constitution, laws, and regulations of the United States and never be a party to their evasion;
15. give a full day's labor for a full day's pay, providing earnest effort to the performance of duties;
16. never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not, and never accept for himself or herself or for family members, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of Governmental duties;
17. make no private promises of any kind binding upon the duties of office;
18. not engage in business with the Government, either directly or indirectly, inconsistent with the conscientious performance of Government duties; and
19. expose corruption wherever discovered.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
29 C.F.R. CHAPTER XIV  
PART 1604 - GUIDELINES  
DISCRIMINATION BECAUSE OF SEX

1604.11 Sexual harassment

(a) Harassment on the basis of sex is a violation of Sec. 703 of Title VII.<sup>1</sup> Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case-by-case basis.

(c) Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization [hereinafter collectively referred to as "employer"] is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of nonemployees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases, the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such nonemployees.

(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

---

<sup>1</sup> The principles involved here continue to apply to race, color, religion or national origin.

(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or request for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for -- but denied -- that employment opportunity or benefit.

10 November 1980

LETTERHEAD

DEPARTMENT OF THE NAVY  
Office of the Chief of Naval Operations  
Washington, DC 20350-2000

IN REPLY REFER TO  
OPNAVINST 3120.32B  
OP-03  
26 SEP 1986

OPNAV INSTRUCTION 3120.32B

From: Chief of Naval Operations

To: All Ships and Stations (less Marine Corps addressees not having Navy personnel attached)

Subj: STANDARD ORGANIZATION AND REGULATIONS OF THE U.S. NAVY

1. Purpose. To issue regulations and guidance governing the conduct of all members of the U.S. Navy.

2. Cancellation. OPNAVINST 3120.32A.

3. Applicability. Applies to all members of the U.S. Navy. Nothing in this directive is intended to contravene or supersede any provisions of U.S. Navy Regulations, 1973.

4. Information

a. Regulations. The portions of this instruction printed in bold-face type are regulatory. These regulations apply to each member of the U.S. Navy individually and will not be further implemented. Violation of any provision of these regulations is punishable in accordance with the Uniform Code of Military Justice (10 U.S.C. Art. 801-940).

b. Guidance. The portions of this instruction printed in plain type are for the guidance of commanders, commanding officers, and officers-in-charge. The organization and operational material may be amplified further or tailored through deletion, substitution, or addition within this volume to conform to the unit's mission, task, and function. Complete repetition of the Standard Organization and Regulations Manual is not desired.



DEPARTMENT OF THE NAVY  
Office of the Secretary  
Washington, DC 20350-1000

SECNAVINST 5822.2  
OP-01L  
27 February 1989

**SECNAV INSTRUCTION 5822.2**

**From:** Secretary of the Navy  
**To:** All Ships and Stations

**Subj:** SERVICE ON STATE AND LOCAL  
JURIES BY MEMBERS OF THE  
NAVAL SERVICE

**Ref:** (a) Title 10, United States Code,  
Section 982  
(b) DODDIR 5525.8 of 13 Jun 88,  
Service by Members of the Armed  
Forces on State and Local Juries

1. **Purpose.** To implement references (a) and (b) to establish a uniform policy for state and local jury service by members of the Naval Service on active duty; to exempt categories of personnel from all state and local jury duty; and, to provide procedures and to delegate authority for determining whether members are exempt from service under a particular call.

**2. Definitions**

a. **Active Duty.** Full-time duty in the Naval Service including full-time training duty, annual training duty, active duty for training, and attendance, while on full-time duty, at a school designated as a service school.

b. **Commander.** A commissioned or warrant officer who, by virtue of grade and assignment, exercises primary command authority over a military organization or prescribed territorial area which under pertinent official directives is recognized as a "command."

c. **Local.** Political subdivision other than state or Federal.

d. **Operating Forces.** Those forces whose primary missions are to participate in combat and the integral supporting elements thereof.

e. **State.** The United States, District of Columbia, U.S. Territories, Possessions, and Commonwealths.

3. **Policy.** Members of the Naval Service will be permitted to fulfill, to the maximum extent practicable, their civic responsibilities consistent with their military duties. Serving on a state or local jury is one such civic obligation. Servicemembers are exempt from jury duty, however, when it would unreasonably interfere with performance of their military duties or adversely affect the readiness of the command to which assigned.

**4. Exempt Personnel**

a. All general officers, flag officers, and commanders; and all personnel assigned to the operating forces, in a training status, or stationed outside the United States, are exempt from serving on a state or local jury. Such jury service would unreasonably interfere with the performance of military duties by these members and adversely affect the readiness of the command to which they are assigned.

b. Other servicemembers when it is determined by the appropriate exemption official that service on a state or local jury would:

(1) Unreasonably interfere with the performance of the servicemember's military duties, or

(2) Adversely affect the readiness of the command to which the member is assigned.

**5. Procedures**

a. Any officer exercising special court-martial jurisdiction is authorized to make an exemption determination. The decision of the official making such a determination is conclusive.

b. Commanders of servicemembers summoned for jury duty shall, if authorized to

0579-LD-054-2605

**SECNAVINST 5822.2**  
**27 February 1989**

do so, make an exemption determination as soon as possible. If the commander of the member is not authorized to make an exemption determination, a request for an exemption determination, with recommendation and supporting justification therefor, shall be submitted to the next superior in the chain of command who is authorized to make such a determination or to the area coordinator.

c. The member's command shall provide timely written notice of each exemption determination to the responsible state or local official. Telephone notice, with follow-on written confirmation, is permitted if required for timely notification.

d. Servicemembers who serve on state or local juries shall not be charged leave or lose any pay or entitlements during their period of jury duty. All fees accrued to members for jury duty are payable to the U.S. Treasury and

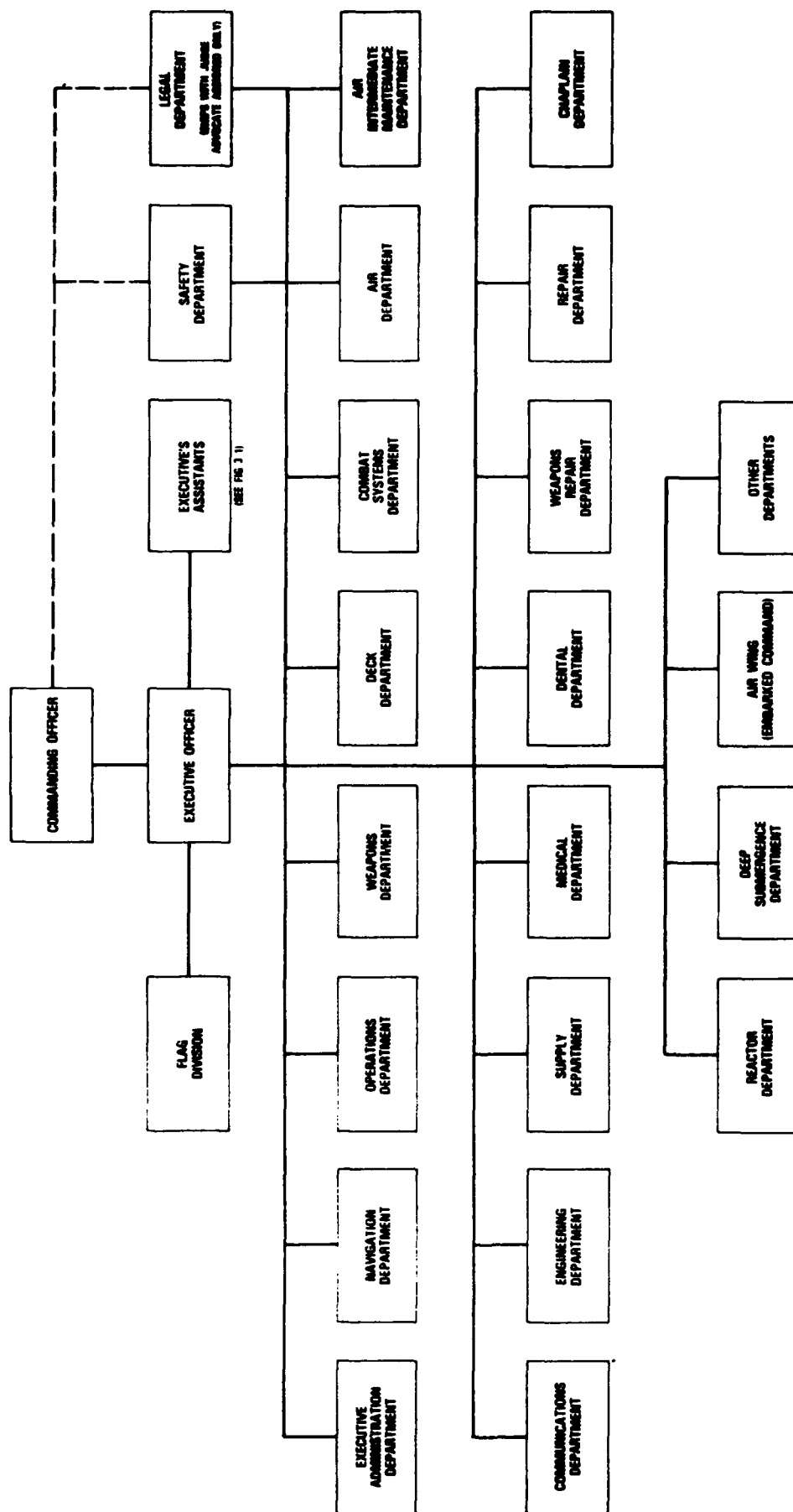
may not be retained by the member. Members are entitled to, and may retain, any reimbursement from the state or local jury authority for actual expenses incurred in the performance of jury duty.

**H. LAWRENCE GARRETT, III**  
Under Secretary of the Navy

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SJA-302

Figure 2--1 Shipboard Organization

# DEPARTMENT ORGANIZATION

SHIP TYPE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
	EXECUTIVE / ADMINISTRATION	NAVIGATION	OPERATIONS	WEAPONS	DECK	COMBAT SYSTEMS	AIR	AIMD	COMMUNICATIONS	ENGINEERING	SAFETY	SUPPLY 6	MEDICAL	DENTAL	WEAPONS REPAIR	REPAIR	LEGAL 7	CHAPLAIN	DEEP SUBMERGENCE
LCC	X	X	X		X				X	X		X	X	X					
LHA/LHD	X	X	X		X	X	X	X	X	X	X	X	X	X					
LKA	X	X	X		X				X			X	X						
LPD	X	X	X		X		X			X		X	X	X					
LPH	X	X	X	X			X	X	X	X	X	X	X	X					
LSD	X	X	X		X					X		X	X	X <sup>2</sup>					
LST	X	X	X		X					X		X	X						
BB	X <sup>1</sup>	X	X	X	X		X <sup>1</sup>		X	X		X	X	X			X	X	
CV/CVN	X <sup>1</sup>	X	X	X	X		X	X	X	X <sup>4</sup>	X	X	X	X			X	X	
CG/CGN	X	X	X	X <sup>3</sup>		X <sup>3</sup>	X <sup>1</sup>		X	X		X	X	X					
DD/DOG	X	X	X	X <sup>3</sup>		X <sup>3</sup>	X <sup>1</sup>			X		X	X						
FF/FFG	X	X	X	X <sup>3</sup>		X <sup>3</sup>	X <sup>1</sup>			X		X	X						
MACM/MSH/MSO	X		X		X					X									
PHM						X				X									
AD	X	X	X		X				X	X	X	X	X	X	X	X	X		
AE	X	X	X		X		X <sup>1</sup>			X		X	X						
AFS	X	X	X		X		X <sup>1</sup>			X		X	X						
AGF	X	X	X		X				X	X		X	X	X					
AO	X	X	X		X					X		X	X						
AOE	X	X	X		X		X <sup>1</sup>			X		X	X						
AOR	X	X	X		X		X <sup>1</sup>			X		X	X						
AR		X	X		X					X	X	X	X	X		X			
ARS	X	X	X		X					X		X							
AS	X		X		X					X	X	X	X	X	X	X	X		
ASH	X	X	X		X					X		X							X <sup>2</sup>
ATF	X	X	X		X					X		X							
ATS	X	X	X		X					X		X							
AVT	X <sup>2</sup>	X	X		X		X		X	X	X	X	X	X					

## NOTES:

1. ON LAMPS/VERTREP HELD DETACHMENT SHIPS ONLY.
2. ON CGN 9/LSD 41 CLASSES ONLY.
3. CG 26, CG 47, CGN 25, CGN 36, CGN 38, DD 963, DOG-51, DOG 993, AND FFG 7 CLASS SHIPS ARE REQUIRED TO HAVE A COMBAT SYSTEMS DEPARTMENT VICE A WEAPONS DEPARTMENT.
4. ASR 21 CLASS ONLY.
5. NUCLEAR POWERED CARRIERS WILL ALSO HAVE A REACTOR DEPARTMENT.
6. ON SMALL SHIPS WHEN A LINE OFFICER ASSUMES SUPPLY OFFICER DUTIES, HE/SHE SHALL BECOME A DEPARTMENT HEAD.
7. ON SHIPS WITH A JUDGE ADVOCATE ASSIGNED THERE SHALL BE A LEGAL DEPARTMENT.
8. IN BB/CV/CVN/AVT THERE IS AN ADMINISTRATION DEPARTMENT.

Figure 2-2 Shipboard Departmental Organization

DEPARTMENT	ONE DIVISION	OVER ONE DIVISION	FUNCTION
EMBARKED STAFF	C	C-1 C-2  C-3 C-4	ALL ENLISTED SERVING WITH AN EMBARKED STAFF ADMINISTRATIVE, OPERATIONS, LOGISTICS AND OTHER CLERICAL PERSONNEL BARGE AND BOAT CREWS, AND DRIVERS ORDERLIES, MESSING AND ASSOCIATED SERVICES
EXECUTIVE/ADMINISTRATION	X	X/I   N/X	ADMINISTRATION PERSONNEL ASSIGNED TO THE CAPTAIN'S OFFICE, EXECUTIVE OFFICER'S OFFICE, CHAPLAIN'S OFFICE, HOSPITAL CORPSMEN WHEN NO MEDICAL OFFICER IS ASSIGNED, AND INDOCTRINATION (RECRUITS AND NEWLY REPORTING PERSONNEL) NAVIGATION AND ADMINISTRATION (APPLIES TO SHIPS WHERE THERE IS NO NAVIGATION DEPARTMENT)
ADMINISTRATION (WHEN DESIGNATED)	ADMIN	EXEC  PERS PRT ADMIN I	ADMINISTRATION PERSONNEL ASSIGNED TO THE CAPTAIN'S OFFICE, AND EXECUTIVE OFFICER'S OFFICE. PERSONNEL RECORDKEEPING PRINT SHOP POSTAL AND OTHER ADMINISTRATION INDOCTRINATION (RECRUITS AND NEWLY REPORTING PERSONNEL)
NAVIGATION	N		ASSISTANTS TO THE NAVIGATOR
OPERATIONS	OPS	FIRST OA  OC  OD OE OI OP OS OX OZ	OPERATIONS DECK SEAMANSHIP, (NOTE 1) METEOROLOGICAL/OCEANOGRAPHIC SERVICES/MAPPING, CHARTING AND GEODESY/PHOTOGRAPHY. COMMUNICATIONS (AIR TRAFFIC CONTROL ON LPH, LHA, LHD, CV AND CVM) DATA PROCESSING ELECTRONIC REPAIR CIC AND ELECTRONIC WARFARE PHOTOGRAPHY/PHOTO INTELLIGENCE COMMUNICATIONS INTELLIGENCE ELECTRONIC REPAIR INTELLIGENCE, CRYPTOLOGIC, OPERATIONS

Figure 2-3. Division Designations

DEPARTMENT	ONE DIVISION	OVER ONE DIVISION	FUNCTION
AIR INTERMEDIATE MAINTENANCE DEPARTMENT		IM	AVIATION
		IM-1	ADMINISTRATION; MAINTENANCE/MATERIAL CONTROL; PRODUCTION CONTROL: QUALITY ASSURANCE, AVIATION 3M ANALYSIS.
		IM-2	GENERAL AIRCRAFT MAINTENANCE (AIRFRAMES/POWER PLANTS), ORGANIZATIONAL MAINTENANCE OF SHIP'S ASSIGNED AIRCRAFT AVIONICS AND AVIATOR'S EQUIPMENT; ARMAMENT SYSTEMS MAINTENANCE.
		IM-3	PRECISION MEASURING EQUIPMENT
		IM-4	QUALIFICATION AND REPAIR GROUND SUPPORT
AIR	V	V-1	AVIATION
		V-2	PLANE HANDLING (FLIGHT DECK) CATAPULTS AND ARRESTING GEAR, AIRCRAFT CARRIER LAUNCH AND RECOVERY EQUIPMENT MAINTENANCE AND QUALITY ASSURANCE (ALREM-QA)
		V-3	PLANE HANDLING (HANGAR DECK)
		V-4	AVIATION FUEL
		V-5	ADMINISTRATION
WEAPONS	WEPS	1-6	GUNNERY AND DECK SEAMANSHIP
		F	FIRE CONTROL
		F-1	MISSILE FIRE CONTROL
		F-2	ANTI-SUBMARINE WARFARE
		F-3	GUN FIRE CONTROL
		G	ORDNANCE/GUNNERY
		G-1	GUNNERY, MAIN BATTERY
		G-2	GUNNERY, SECONDARY BATTERY
		GM	GUIDED MISSILES
		MAR	MARINE DETACHMENT
		MT	BALLISTIC MISSILES
		ST	SONAR
		TASS	PASSIVE ASW SYSTEMS
		TM	TORPEDOES
		W	NUCLEAR WEAPONS ASSEMBLY
COMMUNICATIONS	COMM	CR	COMMUNICATIONS
		CS	RADIO COMMUNICATIONS
			VISUAL COMMUNICATIONS
DECK	DECK	1-2	DECK SEAMANSHIP, AND ANTI-SHIP MISSILE DEFENSE.
		BG	BOAT OPERATIONS, MAINTENANCE, AND REPAIR
		D&SL	DIVING AND SALVAGE
		RASE	REPLENISHMENT AT SEA EQUIPMENT MAINTENANCE AND OPERATION

Figure 2-3. Division Designation (Cont'd)

DEPARTMENT	ONE DIVISION	OVER ONE DIVISION	FUNCTION
COMBAT SYSTEMS	BATS	CA	COMBAT SYSTEMS
		CB	ANTI-SUBMARINE WARFARE
		CC	BALLISTIC MISSILES
		CD	COMMUNICATIONS
		CE	TACTICAL DATA SYSTEMS
		CF	ELECTRONICS REPAIR
		CG	FIRE CONTROL
		CI	GUNNERY, FIRE CONTROL, ORDNANCE
		CM	COMBAT INFORMATION CENTER
		CN	MISSILE SYSTEMS, FIRE CONTROL
		CO	NAVIGATION (NOTE 2)
		CP	GUNNERY AND GUIDED MISSILES
		CS	PASSIVE ASW SYSTEMS
		MAR	COMMUNICATIONS INTELLIGENCE
		CX	MARINE DETACHMENT
		CZ	ELECTRONICS REPAIR
ENGINEERING		A	INTELLIGENCE (NOTE 2)
		A/E	AUXILIARIES
		AER	AUXILIARIES AND ELECTRICAL
		ASLT	AUXILIARIES, ELECTRICAL AND REPAIR
			ASSAULT SYSTEMS/BOAT MAINTENANCE AND REPAIR (LMA ONLY)
		B	BOILERS
		E	ELECTRICAL AND INTERIOR COMMUNICATIONS
		IC	INTERIOR COMMUNICATIONS
		M	MAIN ENGINES
		MP	MAIN PROPULSION
		NUC	NUCLEAR PROPULSION
		R	REPAIR
		RC	REACTOR
REACTOR		RC	REACTOR CONTROL
		RE	REACTOR ELECTRICAL (CVN ONLY)
		RL	REACTOR CHEMISTRY LA (CVN ONLY)
		RM	REACTOR MACHINERY (CVN ONLY)
SUPPLY	SUP	S-1	SUPPLY
		S-2	GENERAL SUPPLY/STOCK CONTROL
		S-3	GENERAL MESS
		S-4	SHIP SERVICES/SHIP'S STORE
		S-5	DISBURSING
		S-6	OFFICER'S MESS
		S-7	AVIATION STORES
		S-8	DATA PROCESSING
		S-9	MATERIAL
			SURFACE SUPPORT/LOGISTIC SUPPORT CENTER

Figure 2-3. Division Designations (Cont'd)

DEPARTMENT	ONE DIVISION	OVER ONE DIVISION	FUNCTION
MEDICAL	H		MEDICAL
DENTAL	D		DENTAL
DEEP SUBMERGENCE	SUBD		DEEP SUBMERGENCE RESCUE SUPPORT
REPAIR		D R-1 R-2 R-3 R-4 R-5 R-6	REPAIR HULL REPAIR MACHINERY REPAIR ELECTRICAL REPAIR ELECTRONIC REPAIR ORDNANCE REPAIR OR RADIOLOGICAL CONTROLS NUCLEAR QUALITY ASSURANCE
WEAPONS REPAIR	WR	W-1 W-2 W-3 W-4 W-5	REPAIR TORPEDO, WEAPONS FIRE CONTROL SUBROC TORPEDO ASSEMBLY; QUALITY ASSURANCE WEAPONS LOGISTICS
SAFETY	AS		SHIP AND AVIATION SAFETY
LEGAL	L		LEGAL AND DISCIPLINE

- NOTES: 1. OPERATIONS DEPARTMENT DIVISIONS ONLY APPLY TO A SHIP WITH A COMBAT SYSTEMS DEPARTMENT.  
2. OPERATIONS DEPARTMENT DIVISIONS THAT ONLY APPLY TO A SHIP WITH WEAPONS DEPARTMENT.

Figure 2-3. Division Designations (concl.)



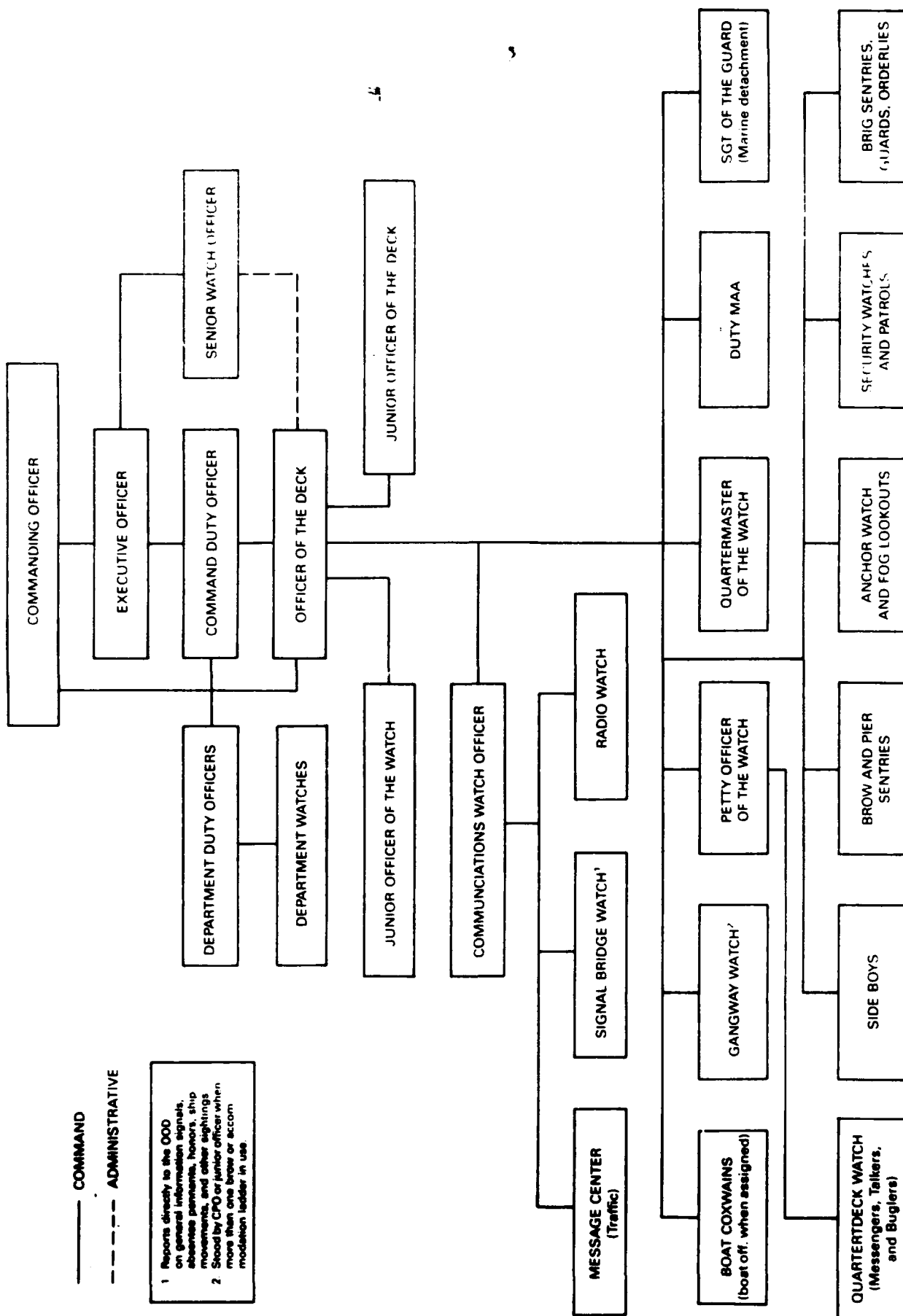


Figure 4-5. Watch Organization in Port

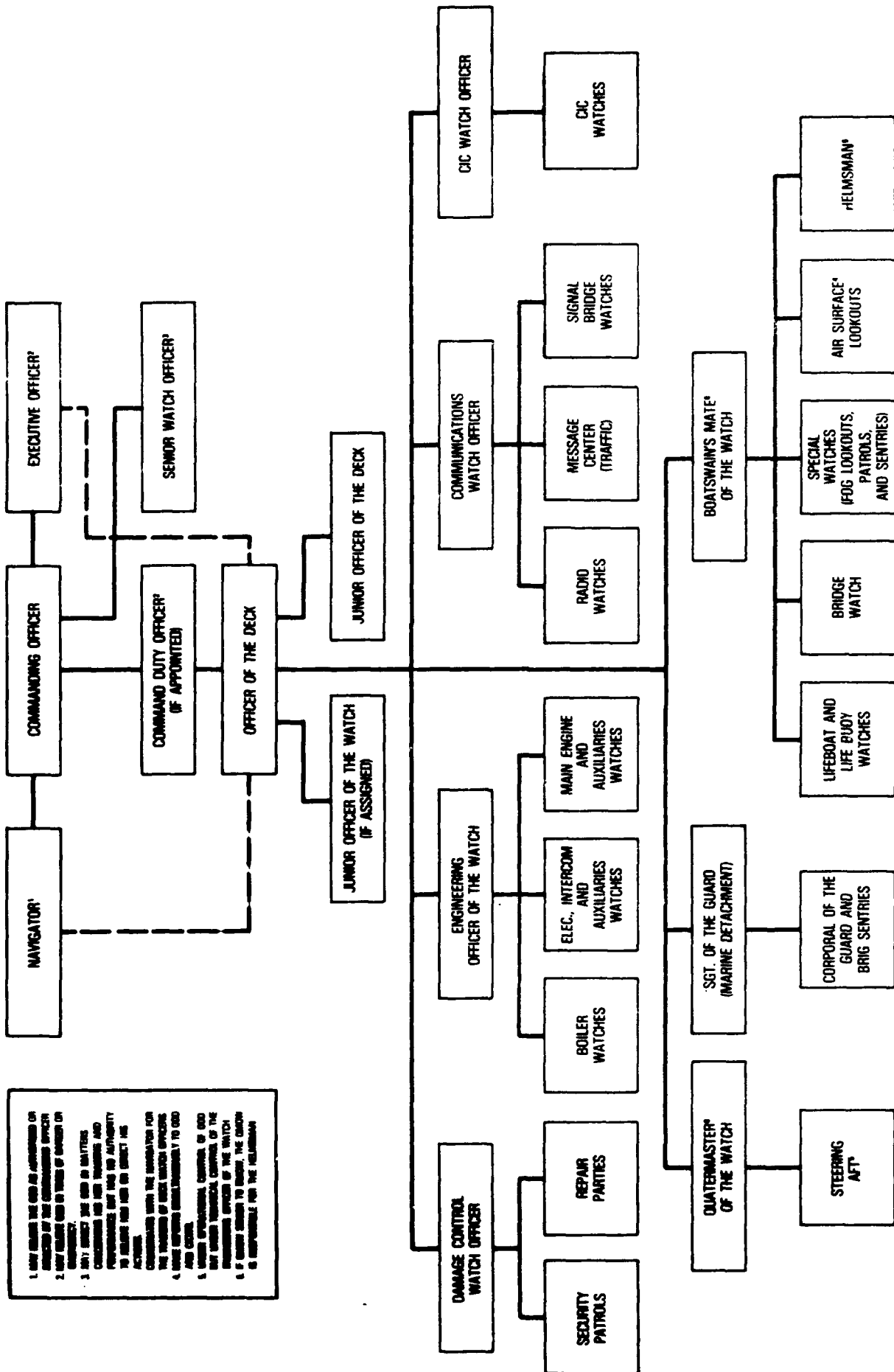


Figure 4-2. Watch Organization Underway — Condition Watch IV

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**SJA POST-TRIAL REVIEW PACKAGE**

**ROT REVIEW CHECKLIST**

**UNITED STATES v. \_\_\_\_\_**

- |   |   |
|---|---|
| <input type="checkbox"/> 1. Appellate Review Waived       | <input type="checkbox"/> 23. CARE Inquiry               |
| <input type="checkbox"/> 2. Appellate Rights Acknowledged | <input type="checkbox"/> 24. Evidentiary Problems       |
| <input type="checkbox"/> 3. Service on Accused            | <input type="checkbox"/> 25. PTA (Discuss Terms)        |
| <input type="checkbox"/> 4. Convening Order               | <input type="checkbox"/> 26. Voluntariness of Plea      |
| <input type="checkbox"/> 5. Referral                      | <input type="checkbox"/> 27. Findings                   |
| <input type="checkbox"/> 6. Three-Day Waiver              | <input type="checkbox"/> 28. Presentencing Advice       |
| <input type="checkbox"/> 7. Attorney Rights               | <input type="checkbox"/> 29. E and M                    |
| <input type="checkbox"/> 8. Quals of TC, DC, MJ           | <input type="checkbox"/> 30. Multiplicity               |
| <input type="checkbox"/> 9. Voir Dire of MJ               | <input type="checkbox"/> 31. Sentencing                 |
| <input type="checkbox"/> 10. Forum Rights                 | <input type="checkbox"/> 32. Not Guilty Pleas           |
| <input type="checkbox"/> 11. Judge Alone                  | <input type="checkbox"/> 33. Members                    |
| <input type="checkbox"/> 12. Assembly of Court            | <input type="checkbox"/> 34. Opening Statements         |
| <input type="checkbox"/> 13. Read Charges/Waiver          | <input type="checkbox"/> 35. Evidence - Objections      |
| <input type="checkbox"/> 14. Pg 1 & ID Info in ROT        | <input type="checkbox"/> 36. Evidence - Sufficiency     |
| <input type="checkbox"/> 15. Statute of Limitations       | <input type="checkbox"/> 37. Defenses                   |
| <input type="checkbox"/> 16. Specifications               | <input type="checkbox"/> 38. Instructions on Findings   |
| <input type="checkbox"/> 17. Motions                      | <input type="checkbox"/> 39. Presentencing Instructions |
| <input type="checkbox"/> 18. Guilty Plea                  | <input type="checkbox"/> 40. Clemency/Written Matters   |
| <input type="checkbox"/> 19. Rights Advice                | <input type="checkbox"/> 41. Auto Credit for PTC        |
| <input type="checkbox"/> 20. Maximum Sentence             | <input type="checkbox"/> 42. Auto Reduction to E-1      |
| <input type="checkbox"/> 21. Accused Sworn                | <input type="checkbox"/> 43. CA's Action                |
| <input type="checkbox"/> 22. Elements of Offense          | <input type="checkbox"/> 44. Promulgating Order         |

**REMARKS:**

## SPCM BCD CHECKLIST

RANK/NAME	BRANCH	SSN	UNIT
			TRIAL DATE
			DATE ROT DELIVERED TO ACCUSED
			RANK/NAME OF DEFENSE COUNSEL
			DATE COMMAND RECEIVED ROT (ORIG + 5)
			LOG ENTRY MADE (NUMBER: _____)
			COURT-MARTIAL DATA FORM (NAVJAG 5813/1)
			COURT-MARTIAL DATA COLLECTION SHEET
			APPELLATE RIGHTS STATEMENT SIGNED BY ACCUSED INDICATING DESIRE FOR COUNSEL OR WAIVER
			COMPANION CASE
			REPORT OF TRIAL
			PTC (DATES) _____
			RELEASE DATE _____
			PTA (EXCESS OF ____ DAYS CONF SUSP X ____)
			DRUGS (I.E. 1 X USE, 5 X DISTRIBUTION)
			ARTICLES & NUMBER OF SPECS FOR EACH MJA/MEMBERS
			SJA RECOMMENDATION PREPARED/DATED
			DC/CIV SERVED RECOMMENDATION
			DATE CA ACTION MAY BE SIGNED (10 DAYS AFTER RECEIPT OF ROT/RECOMMENDATION
			CLEMENCY PAPERS (IF ADDENDUM IS ATTACHED, WAIT 5 DAYS FROM RECEIPT OF ADDENDUM BY DC)
			DATE FWD MEMO, CERTIFIED COPY ROT, CERTIFIED COPY OF REC, PROPOSED CA ACTION, AND PROPOSED CMO SENT TO CA
			DATE CA ACTION SIGNED
			DATE PKG RETURNED TO COMMAND
			DATE DC/CIV COUNSEL SERVED CMO
			DATE DISTRIBUTION MADE OF CMO
			DATE ORIG + 3 MAILED TO JAG
			DATE STORED

CONVENING AUTHORITY'S ACTION WORKSHEET  
SPCM CASE OF \_\_\_\_\_, USN

APPROVAL/DISAPPROVAL OF FINDINGS OF GUILTY

- \_\_\_\_\_ Approve all the findings of guilty.
- \_\_\_\_\_ Disapprove only the findings of guilty of the following charge(s) and specification(s).
- \_\_\_\_\_ Disapprove all findings of guilty.

APPROVAL/DISAPPROVAL OF SENTENCE

- \_\_\_\_\_ Approve sentence as adjudged.
- \_\_\_\_\_ Approve only so much of the sentence as provides for:
- \_\_\_\_\_ Confinement for \_\_\_\_\_ month(s)/day(s);
- \_\_\_\_\_ Forfeiture of \$\_\_\_\_\_ pay per month for \_\_\_\_\_ month(s); and
- \_\_\_\_\_ Reduction to paygrade E-\_\_\_\_\_.

SUSPENSION OF SENTENCE

- \_\_\_\_\_ Suspend that/those portion(s) of the sentence providing for:
- \_\_\_\_\_ Confinement in excess of \_\_\_\_\_ month(s)/day(s);
- \_\_\_\_\_ Forfeiture in excess of \$\_\_\_\_\_ pay per month for \_\_\_\_\_ month(s); and
- \_\_\_\_\_ Reduction below paygrade E-\_\_\_\_\_.

For a period of \_\_\_\_\_ month(s) from the date of trial.

ADDITIONAL REMARKS:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of CO or signature and title of other officer  
directed by CO to sign

Date:

MEMORANDUM

From: Staff Judge Advocate

To: Commanding Officer, \_\_\_\_\_

Subj: SPECIAL COURT-MARTIAL CASE OF \_\_\_\_\_, USN

Ref: (a) R.C.M. 1107

Encl: (1) Certified True Copy of Record of Trial  
(2) Certified True Copy of Staff Judge Advocate Recommendation  
(3) Proposed Convening Authority's Action  
(4) Proposed Court-Martial Order  
(5) Convening Authority's Action Worksheet

1. Enclosure (1) is forwarded for your action per reference (a).
2. Enclosure (2) contains my recommendations regarding subject case.
3. In taking your action, you must consider the results of trial, my recommendation, and any matters submitted by the accused or defense counsel.
4. Enclosure (3) is a proposed action consistent with the recommendations contained in enclosure (2). Enclosure (4) is a proposed court-martial order which promulgates the results of trial and your action on the case. Enclosure (4) is also consistent with the recommendations contained in enclosure (2) and incorporates enclosure (3) verbatim. The proposed action and order constitute a suggestion which may be disregarded or modified by you within your sole discretion. If you wish to take an action which differs from this proposed action/order, please indicate the changes desired on enclosure (5). I stand ready to prepare such action as you may direct.
5. Enclosure (3), or such other action as you take, must reflect the date of your signature. Enclosure (3) should bear the same date as your action on the record. This date should be typed, not printed, on enclosures (3) and (4).
6. With respect to your action on subject case, you are advised you may disapprove or approve the findings or sentence in whole or in part; and mitigate or suspend any part or all of the approved sentence.
7. Upon taking your action, enclosures (1), (2), (3), (4), and (5) should be returned promptly to my office.
8. I am prepared to speak directly with you concerning subject case. I may be contacted at 222-2222/3333.

Very respectfully,

A. LAND  
LCDR, JAGC, USN

BCD REVIEW FORMAT  
USE WHEN APPELLATE REVIEW HAS BEEN WAIVED

Date:

REVIEW PURSUANT TO ARTICLE 64(a), UCMJ

The special court-martial case of \_\_\_\_\_, U.S. Navy, \_\_\_\_\_, tried on \_\_\_\_\_ 19CY, at Naval Legal Service Office, \_\_\_\_\_, by Commanding Officer, USS \_\_\_\_\_ (\_\_\_\_\_) Convening Order No. 1-CY of 28 February 19CY, has been reviewed by the undersigned judge advocate pursuant to Article 64(a), UCMJ; R.C.M. 1112, MCM, 1984; and Section 0146 of JAGMAN.

Upon review of the foregoing special court-martial, it is concluded that:

The court-martial had jurisdiction over the accused and the offense of which he was convicted;

The charge and specification of which the accused was convicted stated an offense; and

The sentence adjudged was within the limits prescribed by law.

No allegations of error have been submitted by the accused.

Subject to the foregoing, the proceedings, findings and sentence of the foregoing special court-martial, as approved and ordered executed by the Convening Authority and reviewed pursuant to Article 64(a), UCMJ, are final and conclusive in the sense of Article 76, UCMJ.

A. LAND  
LCDR, JAGC, USN  
Staff Judge Advocate

Distribution:

Original:

Orig ROT

Duplicate Original:

Original ROT (3)

Each copy of ROT (1)

COMNAVMILPERSCOM (NMPC-8)

COMNAV \_\_\_\_\_ (\_\_\_\_)

COMNAVBASE \_\_\_\_\_

USS \_\_\_\_\_ (\_\_\_\_)

NAVSTA \_\_\_\_\_ (Legal)

PSD \_\_\_\_\_ (Code \_\_)

PSD \_\_\_\_\_ (Appellate Leave Section)

Service Record

Navy Brig, \_\_\_\_\_

Plain Copies:

NAVLEGSVCOFF \_\_\_\_\_ (Code \_\_)

Military judge (w/name, rank, service)

TC (w/name, rank, service)

DC (w/name, rank, service)

Type Commander

File



SUBSTITUTE ACTION - BCD RECOMMENDATION

Date:

MEMORANDUM

From: Staff Judge Advocate

To: Commander, \_\_\_\_\_

Subj: RECOMMENDATION IN THE SPECIAL COURT-MARTIAL CASE OF  
(SPELL OUT RATE/NAME/USN/USNR/SSN) TRIED ON \_\_\_\_\_

Ref: (a) R.C.M. 1106  
(b) Article 60(d), UCMJ  
(c) USS \_\_\_\_\_ msg  
(d) R.C.M. 1107

Encl: (1) Certified Copy of Record of Trial  
(2) Matters submitted under R.C.M. 1105 (OMIT IF NOT NEEDED)

1. Background. The following constitutes my recommendation submitted pursuant to references (a) and (b). Matters contained in this recommendation are advisory in nature and should not be considered to be binding in any way upon you as convening authority. By reference (c), the convening authority requests you take initial action in subject case, per reference (d), due to his deployed status which has removed him from the trial situs.

2. Findings. (Pursuant to his/her pleas of guilty, the accused was convicted of ( ) specification(s) of \_\_\_\_\_, (a) violation(s) of the UCMJ, Article \_\_\_\_.

(Contrary to his/her pleas of not guilty, the accused was convicted of)

(Pursuant to the terms of the pretrial agreement (and prior to findings), the Government withdrew Charge \_\_\_\_\_ and the Specification thereunder alleging a violation of the UCMJ, Article \_\_\_\_.

3. Sentence adjudged. The accused was sentenced to a bad conduct discharge, confinement for \_\_\_\_\_ month(s)/day(s), forfeiture of \$\_\_\_\_\_ pay per month for \_\_\_\_\_ months, and reduction to paygrade E-\_\_\_\_.

4. Summary of accused's service record

a. Length and character of service:

(1) Current service: Initial date: \_\_\_\_\_ for \_\_\_\_\_ years;

(2) Prior service: \_\_\_\_\_ years, \_\_\_\_\_ months, and \_\_\_\_\_ days, as follows:

TERM	SERVICE	DISCHARGE
------	---------	-----------

b. Awards and decorations:

Subj: RECOMMENDATION IN THE SPECIAL COURT-MARTIAL CASE OF  
(SPELL OUT RATE/NAME/USN/USNR/SSN) TRIED ON \_\_\_\_\_

c. Records of nonjudicial punishment(s):

NJP - \_\_\_\_\_. Offense: Violation of the UCMJ,  
Article \_\_\_\_\_, ( ) specification(s) of \_\_\_\_\_. This nonjudicial punish-  
ment was considered at trial.

Punishment:

d. Previous convictions: None. Note if applicable or not offered at  
trial.

5. Pretrial restraint. None.

Nature

Duration

The accused must be granted day-for-day credit, in satisfaction of his  
sentence to confinement, for the \_\_\_\_\_ days he spent in pretrial confine-  
ment. U.S. v. ALLEN, 17 M.J. 126.

6. Pretrial agreement. None.

Consistent with the terms of the pretrial agreement, you may approve  
the sentence as adjudged. You must suspend that/those portion(s) of the  
sentence extending to confinement in excess of \_\_\_\_\_ days for a period of  
\_\_\_\_\_ year(s)/month(s) from the date of trial.

You are not required to suspend any portion of the sentence adjudged.

7. Recommended action on the sentence. I recommend you take action as  
follows:

- APPROVE THE SENTENCE AS ADJUDGED
- ORDER THE SENTENCE EXECUTED, BUT SUSPEND FOR A PERIOD  
OF (SIX MONTHS) (ONE YEAR) THAT PORTION OF THE SENTENCE  
EXTENDING TO CONFINEMENT IN EXCESS OF \_\_\_\_\_ DAYS.

NOTE - UNLESS REVIEW IS WAIVED BY THE ACCUSED, THAT  
PORTION OF THE SENTENCE EXTENDING TO A BAD  
CONDUCT DISCHARGE WILL BE REFERRED BY THE JUDGE  
ADVOCATE GENERAL TO A COURT OF MILITARY REVIEW.

8. Opinion regarding corrective action

By enclosure (2), defense counsel alleges

No allegations of legal error have been submitted under R.C.M. 1105,  
and no opinion regarding corrective action is otherwise deemed appropriate.

Subj: RECOMMENDATION IN THE SPECIAL COURT-MARTIAL CASE OF  
(SPELL OUT RATE/NAME/USN/USNR/SSN) TRIED ON \_\_\_\_\_

9. Optional matters. None. Under JAGMAN 0145a(7), if the sentence to a bad conduct discharge is approved by you and you fail to affirmatively order otherwise in your action on the case, the accused will automatically be reduced to paygrade E-1. The military judge/defense counsel recommends that/ The accused, through his individual civilian counsel/defense counsel, has requested clemency. A copy of the request appears as an addendum to this recommendation.

10. Service on defense counsel. Before forwarding of this recommendation and enclosure (1) for your action under reference (c), a copy of it has been served on the defense counsel.

Very respectfully,

B. C. STEVE  
LCDR, JAGC, USN

Copy to:  
Defense counsel  
Civilian counsel

SUBSTITUTE ACTION MEMO TO CONVENING AUTHORITY

Date:

MEMORANDUM

From: Staff Judge Advocate

To: Commander, \_\_\_\_\_

Subj: SPECIAL COURT-MARTIAL ICO \_\_\_\_\_

Ref: (a) R.C.M. 1107

Encl: (1) Record of Trial  
(2) Staff Judge Advocate Recommendation  
(3) Proposed Convening Authority's Action

1. Enclosure (1) is forwarded for your action per reference (a).
2. Enclosure (2) contains my recommendations regarding subject case.
3. In taking your action, you must consider the results of trial, my recommendation, and any matters submitted by the accused or defense counsel.
4. Enclosure (3) is a proposed action consistent with the recommendations contained in enclosure (2). If you wish to take an action which differs from this, I stand ready to prepare such action as you may direct.
5. With respect to your action on subject case, you are advised you may disapprove or approve the findings or sentence in whole or in part; and mitigate or suspend any part or all of the sentence.

Very respectfully,

A. LAND  
LCDR, JAGC, USN

SUBSTITUTE ACTION - BCD CONVENING AUTHORITY'S ACTION FORMAT  
COMMAND LETTERHEAD

Date:

ACTION OF OFFICER EXERCISING GENERAL COURT-MARTIAL  
JURISDICTION

In the Special Court-Martial case of \_\_\_\_\_, USN, (\$\$N), tried on \_\_\_\_\_ at Naval Legal Service Office, \_\_\_\_\_, the record of trial has been forwarded to me for substitute action pursuant to R.C.M. 1107(a). It is impracticable for the convening authority to take action due to his deployed status which has removed him from the trial situs.

In the foregoing case of \_\_\_\_\_, the sentence is approved and, except for that part of the sentence extending to a bad conduct discharge, will be executed, but the execution of that part of the sentence extending to confinement in excess of ninety (90) days is suspended for one (1) year from the date of trial, at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action.

The Naval Brig, \_\_\_\_\_, \_\_\_\_\_, is designated as the place of confinement.

In accordance with Article 58(a), UCMJ, the accused will be automatically reduced to paygrade E-1.

In taking this action, I have specifically considered the results of trial and the recommendation by the staff judge advocate (the military judge and matters submitted by the accused / by the individual civilian counsel in behalf of the accused / by the detailed defense counsel under R.C.M. 1105, MCM).

Per section 0145a(5), JAGMAN, a brief synopsis of the accused's conduct record during his current enlistment is provided as follows:

Nonjudicial punishment(s): COPY PARA 4c OF RECOMMENDATION

NJP - \_\_\_\_\_. Offense: Violation of the UCMJ, Article \_\_\_\_\_, wrongful use of marijuana. This nonjudicial punishment was considered at trial.

Punishment:

Previous convictions:

Medals, awards, and commendations: COPY PARA 4b OF RECOMMENDATION

Facts required under section 0145a(8), JAGMAN, are as follows: None.

The accused shall receive day-for-day credit, in satisfaction of his sentence to confinement, for the \_\_\_\_\_ days he spent in pretrial confinement. U.S. v. ALLEN, 17 M.J. 126. (OMIT IF NOT APPLICABLE)

Absent waiver of appellate review under R.C.M. 1110, the record of trial shall be forwarded to the Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington, D.C. 20374 for review pursuant to Article 66, UCMJ.

NAME OF OEGCMJ  
RANK  
TITLE  
COMMAND

Date:

MEMORANDUM

From: Staff Judge Advocate

To: Commander, \_\_\_\_\_

Subj: ADVICE IN THE SPECIAL COURT-MARTIAL CASE OF \_\_\_\_\_

Ref: (a) R.C.M. 1113(c), MCM, 1984  
(b) Article 60(d), UCMJ

1. Pursuant to references (a) and (b), the following information is provided:

a. Findings as approved by Commanding Officer, USS \_\_\_\_\_

Charge: Article 134. Plea: Guilty. Finding: Guilty.

Specification: Escape from Correctional Custody Unit on 9 February 19CY.

b. Sentence as approved by Commanding Officer, USS \_\_\_\_\_ (\_\_\_\_):  
Confinement for 60 days, forfeiture of \$300.00 pay per month for two months, and a Bad Conduct Discharge.

c. Status of the accused: The accused has been placed on appellate leave since completing that portion of the sentence extending to confinement.

d. Additional information: The accused has submitted a waiver of appellate review pursuant to R.C.M. 1110, MCM, 1984 and the provisions of Article 71(c), UCMJ have been complied with. The accused enlisted in the U.S. Navy on 27 May 19CY-2 for four years. The accused is not entitled to any awards or decorations.

e. Advice: Retention of the accused in the naval service is not considered to be in the best interest of the Navy. It is my recommendation that the punitive discharge be ordered executed at this time.

Very respectfully,

A. LAND  
LCDR, JAGC, USN

Date:

SUPPLEMENTARY SPECIAL COURT-MARTIAL ORDER NO. 2-CY

In the Special Court-Martial case of \_\_\_\_\_, U.S. Navy, SSN, USS \_\_\_\_\_ (\_\_\_\_), tried on \_\_\_\_\_ at Naval Legal Service Office, \_\_\_\_\_, the findings and sentence to confinement for 45 days, suspended for six months, forfeiture of \$300.00 pay per month for two months, and a Bad Conduct Discharge, as approved and promulgated by Commanding Officer, USS \_\_\_\_\_ (\_\_\_\_), Special Court-Martial Order Number 1-CY dated \_\_\_\_\_ 19CY, have been reviewed pursuant to Article 64(a), UCMJ and R.C.M. 1112, MCM, 1984.

Corrective or mitigative action by the Officer Exercising General Court-Martial Jurisdiction is not appropriate. The accused waived appellate review, and a review pursuant to Article 64(a), UCMJ was completed \_\_\_\_\_ 19CY. The provision of Article 71(c), UCMJ having been complied with, the Bad Conduct Discharge will be duly executed.

The advice of the Staff Judge Advocate, Commander, \_\_\_\_\_, submitted in accordance with R.C.M. 1113(c), MCM, 1984 was duly considered in taking this action.

S. K. WICKES  
Rear Admiral, U.S. Navy  
Commander

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NAVSTA \_\_\_\_\_ (Legal)

PSD \_\_\_\_\_ (Code \_\_\_\_)

PSD \_\_\_\_\_ (Appellate Leave Section)

Service Record

Navy Brig, \_\_\_\_\_

Plain copies:

NAVLEGSVCOFF \_\_\_\_\_ (Code \_\_\_\_)

Military judge (w/name, rank, service)

DC (w/name, rank, service)

TC (w/name, rank, service)

Type Commander

File



## LEVELS OF REVIEW AUTHORITY

- I. Convening authority
  - All cases
- II. Judge advocate review
  - SCM/NSPCM: Art. 64(a); R.C.M. 1112
  - BSPCM-WAIVER: R.C.M. 1110; Art. 61; R.C.M. 1112
  - GCM-WAIVER: R.C.M. 1112
- III. OEGCMJ
  - SCM/NSPCM - Corrective action required (C.A.R.): Art. 64(b); R.C.M. 1112
  - BSPCM-WAIVER: Art. 64(b); R.C.M. 1110; R.C.M. 1112
  - GCM < 6-month waiver/C.A.R.: R.C.M. 1112
  - GCM > 6-month waiver: R.C.M. 1112
- IV. JAG
  - SCM/NSPCM - C.A.R.-law: Art. 64(c); R.C.M. 1112/1201(b)(2)
  - BSPCM/GCM-WAIVER/C.A.R.-law: R.C.M. 1110/1112/1201(b)(2)
  - NGCM < 1 year: Art. 69(a); R.C.M. 1201(b)(3)
  - FSCM/NSPCM/GCM-WAIVER: Art. 69(b); R.C.M. 1201(b)(3)
- V. C.M.R.
  - BSPCM/NGCM > 1 year/BGCM: Art. 66; R.C.M. 1201/1203
  - NGCM < 1 year - JAG certified: Art. 66; R.C.M. 1201/1203
  - Other: Ex writ - JAG certified: Art. 69
- VI. C.M.A.
  - C.M.R. petitioned by accused - JAG certified: Art. 67; R.C.M. 1204
  - CAPGCM: Art. 67; R.C.M. 1204
  - JAG certified: Art. 69(a)
  - Other: Ex writ
- VII. S. Ct.: Art. 67

KEY: N = BCD not adjudged  
B = BCD adjudged

F = Ordinary review complete; case final  
CAP = Death adjudged

## POST-TRIAL EXERCISE

I. General. This exercise is designed to provide experience in preparing a post-trial legal officer recommendation, a convening authority's action, and a promulgating order.

### II. Action required

A. Prepare, in rough format only, a legal officer recommendation and a promulgating order. To save time, a separately prepared convening authority's action, though required in actual cases, will not be required for this exercise. This promulgating order will serve as the means for preparing the convening authority's action in this case. The following information will be used in preparing the legal officer recommendation and the promulgating order.

1. Use 25 July 19CY as the date of trial, findings, and sentencing. The date of the legal officer recommendation is 12 days after the date of trial.

2. The accused pleaded not guilty to all charges and specifications. Assume a finding of not guilty to charge I and its specification and guilty findings to the remaining charges and specifications.

3. The sentence adjudged will be confinement for five months, forfeiture of \$400.00 pay per month for five months, reduction to paygrade E-1, and a bad-conduct discharge.

4. No clemency recommendations or requests have been submitted.

5. In addition to the personal data available on the respective charge sheets, assume the accused is 23 years of age, has completed the 12th grade of school, is single, has a GCT of 45 and an ARI of 53. His average performance marks are 3.40 and he is entitled to no awards, medals, or decorations. His disciplinary record reflects one captain's mast from a shore-based command as follows: Date of mast - 14 October 19CY(-1); offense-violation of Article 86, UCMJ [UA from 26 September 19CY(-1) to 12 October 19CY(-1)]; NJP awarded - 15 days of restriction, 15 days of extra duty, and forfeiture of \$50 pay per month for one month. No Booker warnings are indicated.

6. Assume 25 days of legal pretrial confinement ending the day of the trial.

7. There was no pretrial agreement.

8. Assume that the accused has been served a copy of the record of trial on the tenth day after trial.

9. The convening authority will approve and execute the sentence as adjudged. Assume that confinement will be served at a brig located at Naval Base, San Diego, California.

10. When numbering the promulgating order, assume that it is the tenth order for the current year. The date of the promulgating order may be selected by the student, but should not be earlier than that allowed by law.

B. Copies of the appropriate charge sheets (DD Form 458) and convening orders are attached for informational purposes.

C. References: MCM, 1984, app. 16 and 17; JAGMAN, appendix A-1-x; Staff Judge Advocate Handbook, pp. 106-22.

# CHARGE SHEET

## I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) <b>BALDWIN, Joseph P.</b>		2. SSN <b>956-80-9111</b>	3. GRADE OR RANK <b>BM3</b>	4. PAY GRADE <b>E-4</b>
5. UNIT OR ORGANIZATION <b>USS BIG GUNS (BB 66)</b>			6. CURRENT SERVICE	
			a. INITIAL DATE <b>4 Nov 19-4</b>	b. TERM <b>4 yrs</b>
7. PAY PER MONTH			3. NATURE OF RESTRAINT OF ACCUSED	
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL	<b>NONE</b>	
9. DATE(S) IMPOSED				

## II. CHARGES AND SPECIFICATIONS

10. CHARGE: VIOLATION OF THE UCMJ, ARTICLE

SPECIFICATION: In that Boatswain's Mate Third Class Joseph P. Baldwin, U.S. Navy, USS BIG GUNS on active duty, at Naval Base, San Diego, California, on or about 6 June 19CY, was disrespectful in language toward Boatswain's Mate Second Class Peter K. Cameron, U.S. Navy, a petty officer, then known by the said Baldwin to be a superior petty officer, who was then in the execution of his office, by saying to him, "You're nothing but a God-damned E-5 stool pigeon," "I hate all SP's," or words to that effect.

Charge II: Violation of the Uniform Code of Military Justice, Article 128

SPECIFICATION: In that Boatswain's Mate Third Class Joseph P. Baldwin, U.S. Navy, USS BIG GUNS, on active duty, did, at Naval Base, San Diego, California, on or about 6 June 19CY, assault Boatswain's Mate Second Class Peter K. Cameron, U.S. Navy, who was then known by the accused to be a person in the execution of shore patrol duties, by striking him on the chest with his fist.

Charge III: Violation of the Uniform Code of Military Justice, Article 134

SPECIFICATION: In that Boatswain's Mate Third Class Joseph P. Baldwin, U.S. Navy, USS BIG GUNS, on active duty, was, at Naval Base, San Diego, California, on or about 6 June 19CY, drunk on station.

## III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) <b>TONIK, Gene N.</b>	b. GRADE <b>YN1</b>	c. ORGANIZATION OF ACCUSER <b>USS BIG GUNS (BB 66)</b>
12. SIGNATURE OF ACCUSER		d. DATE <b>7 July 19CY</b>

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 7th day of July, 19 CY, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

J. P. Jones  
Typed Name of Officer

USS BIG GUNS (BB 66)  
Organization of Officer

LT, USN  
Grade

LEGAL OFFICER  
Official Capacity to Administer Oath  
(See R.C.M. 307(b)—must be commissioned officer)

\_\_\_\_\_  
Signature

12.

On 7 July, 19 CY, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

THOMAS R. COLLINS

*Typed Name of Immediate Commander*

USS BIG GUNS (BB 66)

*Organization of Immediate Commander*

CAPT, USN

*Grade*

*Signature*

#### IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at 1200 hours, 7 July, 19 CY at USS BIG GUNS (BB 66)

*Designation of Command or*

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

FOR THE 1 Commanding Officer

THOMAS R. COLLINS

*Typed Name of Officer*

*Official Capacity of Officer Signing*

CAPT, USN

*Grade*

*Signature*

#### V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

USS BIG GUNS (BB 66)

b. PLACE

San Diego, CA

c. DATE

14 July 19CY

Referred for trial to the special court-martial convened by my special court-martial convening order  
# 3-CY, dated

14 July

19 CY

, subject to the following instructions:<sup>2</sup> None

By

*Command or Order*

of

THOMAS R. COLLINS

*Typed Name of Officer*

Commanding Officer

*Official Capacity of Officer Signing*

CAPT, USN

*Grade*

*Signature*

15.

On 16 July, 19 CY, I (caused to be) served a copy hereof on (each of) the above named accused.

Ernie T. DEADWIND

*Typed Name of Trial Counsel*

LCDR, JAGC, USN

*Grade or Rank of Trial Counsel*

*Signature*

FOOTNOTES: 1 - When an appropriate commander signs personally, inapplicable words are stricken.

2 - See R.C.M. 601(e) concerning instructions. If none, so state.

USS BIG GUNS (BB 66)  
FPO San Francisco 96601

14 July 19CY

SPECIAL COURT MARTIAL CONVENING ORDER 3-CY

A special court-martial is hereby convened. It may try such persons as may properly be brought before it. The court will be constituted as follows:

MEMBERS

THOMAS R. COLLINS  
CAPT, USN  
Commanding Officer

SAMPLE LEGAL OFFICER'S RECOMMENDATION

Date: 6 August 19CY

From: LT John P. Jones, USN, Legal Officer  
To: Commanding Officer, USS BIG GUNS (BB 66)

Subj: RECOMMENDATION IN THE SPECIAL COURT-MARTIAL CASE OF  
BOATSWAIN'S MATE THIRD CLASS JOSEPH P. BALDWIN, U.S. NAVY,  
956-80-9111

Ref: (a) R.C.M. 1106, MCM, 1984  
(b) JAGMAN, § 0145c

Encl: (1) Record of trial in the case of United States v. Boatswain's Mate  
Third Class Joseph P. Baldwin, U.S. Navy, 956-80-9111

1. Pursuant to references (a) and (b), the following information is provided:

a. The accused was tried on 25 July 19CY on the following offenses:

- (1) Charge I: Violation of UCMJ, Article 91  
Specification: Disrespect to a superior petty officer in the  
execution of his office on 6 June 19CY
- (2) Charge II: Violation of UCMJ, Article 128  
Specification: Assault upon a shore patrolman in the execution  
of his duties on 6 June 19CY
- (3) Charge III: Violation of UCMJ, Article 134  
Specification: Drunk on station on 6 June 19CY

b. The accused pleaded not guilty to all charges and specifications. He was found not guilty of charge I and its specification and guilty of charges II and III and the specifications thereunder.

c. The sentence, as adjudged 25 July 19CY, was: confinement for five months, forfeiture of \$400.00 pay per month for five months, reduction to pay-grade E-1, and a bad-conduct discharge.

d. There were no recommendations for clemency and, to date, no clemency requests or other matters pursuant to R.C.M. 1105, MCM, 1984, have been received from the accused.

e. The following is a summary of the accused's service record:

(1) The accused is 23 years of age, single, and enlisted in the U.S. Navy on 4 November 19CY(-4) for a term of 4 years. His GCT is 45, his ARI is 53, and he has completed the 12th grade of school. His average performance marks are 3.40. He is entitled to no awards, medals, or decorations.

Subj: RECOMMENDATION IN THE SPECIAL COURT-MARTIAL CASE OF  
BOATSWAIN'S MATE THIRD CLASS JOSEPH P. BALDWIN, U.S. NAVY,  
956-80-9111

(2) The following disciplinary action is noted:

14 OCT 19CY(-1): CO's NJP - Violation of Article 86, UCMJ:  
UA from 26 September 19CY(-1) to 12 October 19CY(-1).

NJP AWARDED: 15 days of restriction, 15 days of extra duty,  
and forfeiture of \$50.00 pay per month for one month.

f. The accused was in pretrial confinement from 1 July 19CY until 25 July 19CY, a period of 25 days. In accordance with the decision rendered in United States v. Allen, 17 M.J. 126, it will be necessary for you as the convening authority to award a credit of 25 days against the sentence to confinement executed.

g. There was no pretrial agreement in this case.

2. In my opinion, the sentence adjudged was legal and appropriate under all the facts of the case. Accordingly, I recommend that the sentence as adjudged be approved and executed, except that portion thereof extending to a bad conduct discharge.

3. A copy of this recommendation was served upon the accused's counsel on 8 August 19CY.

4. A copy of the record of trial was served on the accused on 4 August 19CY. Your action may be taken at any time following 19 August 19CY.

J. P. JONES  
Lieutenant, U.S. Navy



USS BIG GUNS (BB 66)

SPECIAL COURT-MARTIAL )  
ORDER NO.....10-CY )

25 August 19CY

Boatswain's Mate Third Class Joseph P. Baldwin, 956-80-9111, U.S. Navy, USS BIG GUNS (BB 66), was arraigned at Naval Legal Service Office, Naval Base, San Diego, California, on the following offenses at a court-martial convened by this command.

Charge I: Article 91 (not guilty)

Specification: Disrespect to a superior petty officer in the execution of his office on 6 June 19CY (not guilty).

Charge II: Article 128 (guilty).

Specification: Assault upon a shore patrolman in the execution of his duties on 6 June 19CY (guilty).

Charge III: Article 134 (guilty).

Specification: Drunk on station on 6 June 19CY (guilty).

The accused pleaded not guilty to all charges and specifications.

SENTENCE

The members adjudged the following sentence on 25 July 19CY:

Confinement for five months, forfeiture of \$400.00 pay per month for five months, reduction to paygrade E-1, and a bad-conduct discharge.

ACTION

USS BIG GUNS  
(BB 66)

25 August 19CY

In the case of Boatswain's Mate Third Class Joseph P. Baldwin, U.S. Navy, USS BIG GUNS (BB 66), the sentence is approved and, except for the bad-conduct discharge, will be executed. The Naval Brig, Naval Base, San Diego, California, is designated as the place of confinement. The accused will receive 25 days administrative credit in partial satisfaction of the sentence to confinement.

A copy of the legal officer's recommendation was served on counsel for the accused on 8 August 19CY and was considered in taking this action. No clemency recommendation or other matters pursuant to R.C.M. 1105 have been received.

Synopsis of the accused's prior conduct as required by JAGMAN, § 0145a(5):  
Commanding officer's nonjudicial punishment awarded on 14 October 19CY(-1)  
for violation of Uniform Code of Military Justice, Article 86, unauthorized  
absence from 26 September 19CY(-1) to 12 October 19CY(-1), for which  
punishment of 15 days of restriction, 15 days of extra duty, and forfeiture of  
\$50.00 pay per month for one month was imposed.

The accused is not entitled to any awards, commendations, or decorations.

The record of trial is forwarded to the Navy-Marine Corps Appellate Review  
Activity (Code 40.2), Office of the Judge Advocate General, Washington Navy  
Yard, Washington, DC 20374-2002 for review under Article 66, UCMJ.

/s/  
THOMAS R. COLLINS  
Captain, U.S. Navy  
Commanding Officer

The results of the foregoing case are hereby promulgated in accordance with  
Rule of Court-Martial 1114, Manual for Courts-Martial, 1984.

/s/  
J. P. JONES  
Lieutenant, U.S. Navy  
Legal Officer  
USS BIG GUNS (BB 66)  
By direction of  
THOMAS R. COLLINS  
Captain, U.S. Navy  
Commanding Officer  
USS BIG GUNS (BB 66)

Distribution:  
[see JAGMAN, § 0147(a)(5)]

## SUMMARY OF JURISDICTION OVER RESERVISTS

- I. Art. 2(a)(1), (3), JAGMAN 0102c - Reservists on active duty for training (ACDUTRA) or inactive duty training (IDT/weekend drill) are subject to the UCMJ while on active duty.
- II. Art. 3(d), JAGMAN 0116c(4) - Jurisdiction is not lost over reservists upon termination of IDT or ACDUTRA for an offense committed while subject to the UCMJ.
- III. Art. 2(d), JAGMAN 0116 - Regular component general court-martial convening authorities (GCMCA) can recall reservists to active duty involuntarily for an art. 32 investigation, trial by court-martial, or imposition of NJP for offenses committed while on IDT or active duty.
- IV. JAGMAN 0116(5)(b) - Only a court-martial convening authority can generate a request to a GCMCA to recall a reservist to active duty.
- V. JAGMAN 0122c(1) - A reservist on active duty can be extended beyond his normal release date if he has been apprehended, arrested, confined, is under investigation, or charges have been preferred. See R.C.M. 202(c). According to JAG (Code 20), a reservist on active duty can also be convicted at court-martial and confined without approval from SECNAV; nevertheless, it would be politically expedient to obtain Secretarial permission, as is required in cases involving reservists on IDT.
- VI. JAGMAN 0122c(2) - A reservist on IDT may be retained on duty by an officer authorized to convene courts-martial for not more than two full working days past his scheduled training if:
  - A. There is reasonable belief he committed an offense with a maximum punishment of more than 10 years confinement or death;
  - B. approval for holdover is granted by a GCM authority in the accused's chain of command; and
  - C. the officer empowered to convene courts-martial has requested a Regular component GCMCA to order the accused to active duty (for disciplinary action). See para. III above.
- VII. Pretrial confinement
  - A. JAGMAN 0117d - A reservist on IDT can be placed in pretrial confinement in accordance with R.C.M. 304 and 305 if ordered to active duty with Secretarial approval.
  - B. JAGMAN 0122c(2)(b) - An accused held over on active duty, as discussed in para. VI above, can be placed in pretrial confinement if the order to active duty receives Secretarial approval within two working days after the IDT was scheduled to terminate.

### VIII. Restraint on liberty

- A. JAGMAN 0105a(7)(1)/0122b - Restraint on liberty cannot be extended beyond the normal IDT period, but may be carried over to subsequent drill periods.
- B. JAGMAN 0105(7)(a)/0122b - A reservist on inactive duty cannot be ordered to active duty to serve restraint punishment without Secretarial approval.
- C. JAGMAN 0105(7)(a)/0122b/0122c(2)(e) - A reservist ordered to active duty for disciplinary purposes cannot be extended on duty to serve restraint punishment, nor can he receive confinement as a sentence, unless the order to active duty was with Secretarial approval.

### IX. EMI

- A. JAGMAN 0111b - Only the CO or OIC can assign EMI to be performed outside normal working hours unless such authority has been delegated to officers, petty officers, and noncommissioned officers in accordance with service regulations.
- B. JAGMAN 0111b - Reservists on IDT may not be required to perform EMI outside normal periods of IDT.

**SELECTED APPROVED CHANGES TO MCM, 1984**  
(Effective 1 April 1990 per Executive Order No. 12,708 of 23 March 1990)  
(Military Justice Advisory 1-90)

- I. R.C.M. 1003(b)(2) is amended to make compensation for inactive duty training subject to forfeiture of pay.
- II. R.C.M.'s 1103, 1106, 1107 and 1112 are amended to include, within their scope, cases in which there was a finding of not guilty only be reason of lack of mental responsibility.
- III. R.C.M. 1106(f)(1) is amended to require that a separate copy of the SJA recommendation be served on the accused, in addition to the copy served on defense counsel.
- IV. R.C.M. 1108(b) is amended by deleting, in the third sentence, "officer exercising GCM jurisdiction over the command to which the accused is assigned" and inserting in its place, "commanding officer." The rule is further amended by adding a provision which specifies that "the 'unexecuted part of any sentence' includes that part which has been approved and ordered executed but which has not actually been carried out."
- V. R.C.M. 1114(c)(2) is amended by specifying that the promulgating order shall bear the date of the initial CA action; orders promulgating acquittals, a court-martial terminated before findings, a finding of not guilty only by lack of mental responsibility of all charges and specifications, or actions on the findings or sentence taken after the initial action shall bear the date of the publication.
- VI. R.C.M. 1201(b)(3)(C) is amended to specify that the two-year period runs from the date the findings are announced for cases that do not proceed to sentencing.
- VII. Part V, para. 5c(8) is amended by striking out the second sentence and, in lieu thereof, adding the following: "'pay,' as used with respect to forfeiture of pay under Article 15, refers to the basic pay of the person or, in the case of Reserve component personnel in inactive duty, compensation for periods of inactive duty training, plus any sea or foreign duty pay."
- VIII. Part V, para. 6a is amended by redesignating subparagraph (4) as subparagraph (5) and inserting after subparagraph (3) a new subparagraph specifying that unless otherwise stated, an action suspending a punishment includes a condition that the servicemember not violate any punitive article of the Code, and that the NJP authority may specify, in writing, additional conditions of suspension.
- IX. The redesignated subparagraph (5) is amended to reflect that vacations may be based on any violation of conditions of suspension which occur within the period of suspension.

**SUMMARY OF PROPOSED CHANGES TO MCM, 1984**  
(At Fed. Reg. V. 54, No. 234 of Dec. 7, 1989, at 50524)  
(per 1989 Annual Review)

**I. Discovery**

- A. R.C.M. 701(b)(1) - The defense must disclose to trial counsel the witnesses (other than the accused) to be called on the merits in its case-in-chief and sentencing.
- B. R.C.M. 701(b)(2) - The defense must notify trial counsel of the intent to raise an innocent ingestion defense.

**II. Pretrial agreements. R.C.M. 705(d) - The government may initiate negotiations and propose any term not otherwise prohibited.**

**III. Speedy trial**

- A. R.C.M. 707(a) - Preferral of charges starts the clock (per public comment).
- B. R.C.M. 707(b)(1) - An accused is "brought to trial" when arraigned.
- C. R.C.M. 707(b)(3) - If the accused is released from restraint for a significant period, the clock restarts at zero upon referral or reimposition of restraint.
- D. R.C.M. 707(c) - Excluded from the 120-day count are pretrial delays approved by the convening authority (before referral) or the military judge (after referral).
- E. R.C.M. 707(d) - Unless the accused has been denied his constitutional right to a speedy trial, the court may dismiss the charges without prejudice as a remedy.
- F. R.C.M. 707(e) - A guilty plea waives any speedy trial issue on appeal.
- G. 90-day rule in pretrial confinement cases is deleted; however, drafters specifically state that Burton still controls until abandoned by C.M.A.

- IV. R.C.M. 908 appeals. R.C.M. 908(b)(1) - Automatic stay of proceedings when government appeal is taken (per 1988 Annual Review). R.C.M. 908(b)(9) - The accused's commander may continue pretrial confinement of the accused pending the outcome of the government's appeal. R.C.M. 1110(f) - Accused may waive appellate review any time after sentence is adjudged (per 1988 Annual Review).
- V. Polygraph exams. M.R.E. 707 - The results are not admissible.
- VI. Attempts. Art. 81 - The maximum confinement shall not exceed 20 years, even for those offenses with a mandatory minimum of life.
- VII. See also "Off the Record" 114.

SURFACE WARFARE OFFICERS SCHOOL COMMAND  
COMBAT SYSTEMS TRAINING DIVISION  
NEWPORT, RHODE ISLAND 02841

NAVAL JUSTICE SCHOOL  
INFORMATION SHEET

6/89

SPECIAL INCIDENT REPORTING

INTRODUCTION:

(U) The Navy makes use of several reporting systems to provide the National Command Authority (NCA) with timely, concise information on which to base an appropriate response to any significant incident. The systems that a Commanding Officer would most likely come in contact with include the OPREP 3, the Unit SITREP, and CRITIC reports.

REFERENCES:

- A. OPNAVINST 3100.6D SPECIAL INCIDENT REPORTING
- B. NWP 4A BASIC OPERATIONAL COMMUNICATIONS DOCTRINE
- C. DIAM 58-2, Vol II, Part 9 DEFENSE INTELLIGENCE  
COLLECTION REQUIREMENTS MANUAL - REQUIREMENTS  
REPORTING/GUIDANCE PROGRAMS

INFORMATION:

I. OPREP 3 REPORTS

- A. (U) The OPREP-3 is the single report within the Joint Reporting System for reporting events or incidents. The report was established to provide National Command Authority through the National Military Command Center with timely, concise information on which to base an appropriate response to any significant incident. OPREP-3 reports will be submitted by the lowest level command which has knowledge of the event and access to a communications network capable of relaying the information to the National Military Command Center. An OPREP-3 is normally the first indication to senior authority that an incident has occurred that is of national or Navy interest. The OPREP-3 system is divided into two sub-systems: PINNACLE and Navy Blue.



B. (U) The OPREP-3 PINNACLE reports events where national level interest is indicated. The initial report for all OPREP-3 PINNACLE messages is transmitted FLASH precedence. It is used in all national level events other than those OPREP-3 PINNACLE with Flagword listed below.

1. (U) OPREP-3 PINNACLE reportable incidents are indicated below:

- a. (U) Any incident having actual or potential international repercussions which could create tension or undesirable relations with another country.
- b. (U) Territorial violations, actual or presumed.
- c. (U) Defection of U.S. or foreign personnel.
- d. (U) Natural or man-made disasters or civil disorders which may be of national level interest.
- e. (U) Military operations or unusual incidents which may result in news inquiries at the national level or of an unusual intensity.
- f. (U) National level events or incidents which may seriously change current operations or involve ongoing military undertakings.
- g. (U) Acts of, or attempts at, sabotage by foreign nationals against U.S. Forces or installations.
- h. (U) Hijacking or attempted hijacking of ships or aircraft of U.S. or foreign ownership.
- i. (U) Initial or termination notices of SAR incidents in the distress phase.
- j. (U) Hostile action between two or more foreign forces regardless of the nationalities involved.

- k. (U) Serious personal injury of a civilian, or loss of/substantial damage to civilian property caused by military equipment such as aircraft or ships when national level interest is indicated.
  - l. (U) Loss or substantial damage to, major military equipment such as aircraft or ships when national level interest is indicated.
  - m. (U) Significant or unorthodox changes in the composition or structure of foreign governments.
  - n. (U) Attacks against a nuclear site or attempts to penetrate site perimeter.
  - o. (U) Violations of the law of war by or against U.S. Forces, civilian personnel serving with or accompanying the U.S. Forces, and allied military or civilian personnel or their property.
  - p. (U) Any other incident when it is reasonable that the highest levels of government will desire timely knowledge.
2. (U) The OPREP-3 PINNACLE/NUCFLASH is use to report information on any accidental or unauthorized launching, firing or use of a nuclear capable weapon system which could create the risk of a nuclear war. Incidents reportable under a PINNACLE/NUCFLASH include:
- a. (U) Accidental, unauthorized or any other unexplained detonation of a nuclear weapon.
  - b. (U) Unauthorized flight or deviation from an approved flight plan by nuclear armed or nuclear capable aircraft with the capability to penetrate the airspace of the USSR or other Warsaw Pact countries.

- c. (U) Accidental or unauthorized launch of a nuclear armed or nuclear capable missile in the direction of, or having the capability to reach, the USSR or other Warsaw Pact countries or the People's Republic of China.
- 3. (U) **OPREP-3 PINNACLE/BROKEN ARROW:** This message provides the NCA and Naval Commands with information concerning nuclear weapon accidents (other than war risk accidents) involving war reserve nuclear weapons or nuclear components. Any accident creating the risk of war would be reported as an OPREP-3 PINNACLE/ NUCFLASH. Reportable nuclear weapon accidents include:
    - a. (U) Nuclear detonations or possible detonations other than war risk detonations.
    - b. (U) Non-nuclear detonations or burning of a nuclear weapon.
    - c. (U) Radioactive contamination.
    - d. (U) Seizure, theft or loss of a nuclear weapon or nuclear component, including jettisoning.
    - e. (U) Public hazard, actual or implied.
  - 4. (U) **OPREP-3 PINNACLE/EMERGENCY DESTRUCTION:** To report to NCA and naval commands information on the emergency destruction of nuclear weapons.
  - 5. (U) **OPREP-3 PINNACLE/EMERGENCY EVACUATION:** To report information concerning the emergency evacuation of nuclear weapons.
  - 6. (U) **OPREP-3 PINNACLE/FRONT BURNER:** To report harassment or attack on U.S. forces.

C. (U) The OPREP-3 NAVY BLUE reports events where high Navy, vice National interest is indicated. The initial report for OPREP-3 NAVY BLUE messages is transmitted IMMEDIATE precedence. The NAVY BLUE/FADED GIANT messages which are transmitted FLASH precedence. Neither the ARMY nor the AIR FORCE have a similar report. Under the JINTACCS message reporting system OPREP-3 NAVY BLUES will go away and simply be called an OPREP.

1. (U) OPREP-3 NAVY BLUE reportable incidents include:
  - a. (U) Instances of misconduct which may be reported by local press.
  - b. (U) Significant damage to civilian property by Navy members.
  - c. (U) Near or actual collisions of minor significance of Navy ships or aircraft with civilian ships or aircraft.
  - d. (U) Discharges or spills of material or fluids that might be considered pollutants which endanger critical water areas.
  - e. (U) Events involving radioactive material or radiation exposure which do not present a hazard to life, health or property, but which are of such a nature as to warrant immediate notification of cognizant higher commands.
  - f. (U) Labor strikes which impairs Navy projects or operational readiness.
  - g. (U) Bomb threats (considered valid).
  - h. (U) Acts or attempts to willfully destroy Navy property.
  - i. (U) Disorders or natural disasters of minor significance if naval assistance is provided or requested.

- j. (U) Death of, critical injury to, or missing C.O. or flag officer.
- k. (U) Initial report of a submarine incident.
- l. (U) Fires, flooding, groundings, explosions or other accidents to naval units.
- m. (U) Disease of potential epidemic proportions.
- n. (U) Actual or suspected duress situation or unusual occurrence affecting any nuclear capable unit.
- o. (U) Initial/termination notification of SAR incident in the Alert or Uncertainty phase.
- p. (U) Major or serious incidents with racial overtones.
- q. (U) Any incident of high level Navy interest which does not fall into the category of any other report in the OPREP-3 PINNACLE or NAVY BLUE series.
- r. (U) Violation of the letter or spirit of the US-USSR agreement for prevention of incidents on and over the High Seas (INCSEA AGREEMENT).
- s. (U) Incidents involving Major Fraud, waste or abuse, which could involve high level Naval interests, media inquiry, or gross inefficiency or mismanagement.

2. (U) **OPREP-3 NAVY BLUE/BENT SPEAR:** Information on any unexpected event involving war reserve nuclear weapons or nuclear components which does not fall into the category of a nuclear weapon accident but:
- a. (U) Results in damage to a nuclear weapon or component requiring major rework, complete replacement, or examination/recertification by the DOE.
  - b. (U) Requires immediate action in the interest of safety.
  - c. (U) May generate adverse public reaction (National or International) or premature release of information.
3. (U) **OPREP-3 NAVY BLUE/DULL SWORD:** An event involving a nuclear weapon/component (including war reserve, testing, training weapons or BDUs) or associated test and handling equipment which is NOT a nuclear significant incident or nuclear accident but meets one of the following criteria:
- a. (U) Possibility of detonation or radioactive contamination is increased.
  - b. (U) Result from errors in assembly, testing, loading, or transporting which could lead to substantially reduced yield, increased dud probability, or to unintentional operation of all or parts of a weapon's arming and/or firing sequence.
  - c. (U) Any natural phenomenon which results in damage to weapon or component.
  - d. (U) Results from unfavorable environmental conditions which subjects weapon to shock, vibration, etc., that causes safety and reliability to be questioned.

4. (U) **OPREP-3 NAVY BLUE/FADED GIANT:** To report any nuclear reactor accident or radiological accident involving naval nuclear reactors or nuclear energy devices.
- D. (U) The reporting Time Criteria for OPREP-3 reports is listed below:
1. (U) Initial voice report within five minutes of incident.
    - a. (U) A PINNACLE/NUCFLASH requires an amplifying voice report within 5 minutes of the initial voice report.
  2. (U) An initial follow-up message report within 20 minutes.
    - a. (U) The initial message report for a PINNACLE/NUCFLASH is transmitted within 5 minutes of the initial voice report.
  3. (U) Initial voice and message reports are not to be delayed in order to obtain further information.
- E. (U) Formats for all OPREP-3 messages are contained in OPNAVINST 3100.6D which provides JINTACCS formatting instructions.
1. Under the JINTACCS format, message headings are essentially the same, however there are differences among the texts of individual messages. It is incumbent upon individual ships to ensure that preformatted message blanks are correctly prepared for each incident.
  2. All OPREP-3 and UNIT SITREP messages are serialized through a calendar year, regardless of flagword type. That is, a PINNACLE that follows a NAVY BLUE and a UNIT SITREP would be number 3.

## **II. UNIT SITREP**

- A. (U) The purpose of the Unit Situation Report is to provide operational commanders and higher authority, as applicable with:**
  - 1. Status of situation/events that do not require an OPREP-3.**
  - 2. Status of progress in special operational/events such as SAR effort.**
  - 3. Information about of specific events tailored to a unique operational requirement.**
- B. (U) The Unit SITREP is submitted by unit Commanding Officers, Officers in Charge and other Commanders as directed or appropriate.**
- C. (U) Unit Situation Reports will be addressed to the immediate superior with information addressees as appropriate.**
- D. (U) Unit SITREPs are submitted as necessary, as considered appropriate by the reporting activity, or as directed.**
- E. (U) The UNIT SITREP will be submitted by message communications, using precedence and classification as deemed appropriate by the originator.**
- F. (U) Unit SITREP Formatting**
  - 1. (U) The UNIT SITREP is a formatted narrative report which uses JINTACCS formatting rules.**
  - 2. (U) Unit SITREP content shall include all pertinent data as deemed appropriate by the originator.**



## USMC REFERENCES FOR LEGAL ADMINISTRATION

1. MCO 1050.14 \_\_\_ Excess Leave Program (Law)
2. MCO 1560.29 \_\_\_ Funded Law Education Program (FLEP)
3. MCO P1070.12 \_\_\_ Individual Records Administration Manual (IRAM)
4. MCO P1080.35 \_\_\_ PRIM
5. MCO P1200.7 \_\_\_ MOS Manual (Legal Services Officer - MOS 4420)
6. MCO 1306.16 \_\_\_ Conscientious Objectors
7. MCO 1600.6 \_\_\_ Crime Prevention Program
8. MCO 1640.3 \_\_\_ Procedures for the Transfer of Marine Corps Prisoners
9. MCO 1700.24 \_\_\_ Request Mast
10. MCO P1900.16 \_\_\_ Marine Corps Separation and Retirement Manual (MARCORSEPMAN)
11. MCO P4050.38 \_\_\_ Personal Effects and Baggage Manual
12. MCO 4340.1 Report of Missing, Lost, Stolen or Recovered Government Property
13. MCO P5211.2 \_\_\_ The Privacy Act of 1974
14. MCO 5211.3 Forms and Information Requirements Subject to Privacy Act of 1974
15. MCO 5216.11 \_\_\_ Congressional Correspondence
16. MCO 5300 Prohibition of the Wrongful Use, Possession, etc. of Anabolic Steroids
17. MCO P5300.10 Sexual Harassment
18. \* MCO P5300.12 The USMC Substance Abuse Program
19. \* MCO 5370.3 \_\_\_ Standards of Conduct and Government Ethics
20. MCO 5370.4 \_\_\_ Dissident and Protest Activities
21. MCO 5370.7 \_\_\_ Political Activities
22. MCO 5500.6 \_\_\_ Arming of Law Enforcement and Security Personnel and the Use of Deadly Force

- 23. MCO P5800.10 \_\_\_ Return of Marine Corps Absentees
- 24. MCO 5813.2 General Court-Martial Convening Authority for Marine Corps Districts
- 25. MCO 5830 Use of Military Personnel as Undercover Agents and Joint Drug Operations with Civilian Law Enforcement Agencies
- 26. MCO 5830.2 Military Police Criminal Investigation; Conduct and Report of
- 27. MCO 6100.10 \_\_\_ Weight Control and Military Appearance
- 28. MCO 6200.3 Smoking in Marine Corps Occupied Buildings and Facilities
- 29. MCO 7220.49 Deductions from Pay for Dishonored Checks Written by Marines to Non-appropriated Fund Instrumentalities (NAFI's) and Commissaries
- 30. MCO 7510.5 USMC Fraud, Waste and Abuse (F.W.A.) Awareness and Prevention Program

NOTE: \_\_\_ \* Frequently used directives

\_\_\_ "P" before subject ID code (SSIC) identifies a Manual

\_\_\_ Always check directives for additions, changes, revisions, and cancellation

### SJA OPLAW FLYAWAY KIT

1. Annotated Supplement to the Commander's Handbook on the Law of Naval Operations, NWP 9 (Rev. A)/FMFM 1-10, Washington, DC (1989)
2. Commander's Handbook on the Law of Naval Operations, NWP 9, Washington, DC (July 1987) (either carry it or ensure that the gaining command has it)
3. The Law of the Sea, United Nations Convention on the Law of the Sea (United Nations, 1983)
4. Maritime Claims Reference Manual, DoD 2005.1-M of 30 June 1987 (very bulky--ensure that gaining command has it or extract copies of the countries' claims and charts for your area of operational responsibility)
5. Selected International Agreements, AFP-110-20 (27 July 1981 with changes)
6. O'Connell, D. P., The Influence of Law on Sea Power, Manchester University Press (1975)
7. Geographical Unified Commander's Instruction on the Peacetime Rules of Engagement (e.g., USCINCPAC INST S3710.1F--Classified SECRET)
8. Supplemental Rules of Engagement for certain geographical areas or specific operations in which gaining command may be participating (e.g., USCINCENT/USCINCPAC PROE, Persian Gulf (PG), Strait of Hormuz (SOH), Gulf of Oman (GOO), Northern Arabian Sea (NAS))
9. Fleet Commander-in-Chief's operational order governing peacetime operations (e.g., CINCPACFLT's OPORDER 201)
10. Fleet Commander's operational orders (e.g., COMSEVENTHFLT OPORDS)
11. Protocols to the Geneva Conventions of 12 August 1949, DA Pamphlet 27-1-1 of September 1979 (if your command may be operating in countries or with forces from countries that have ratified or acceded to Protocol I to the Geneva Conventions)
12. AFP-220-31, International Law -- The Conduct of Armed Conflict and Air Operations (19 November 1976)
13. DA Pamphlet 27-161-1 of September 1979, Law of Peace (Vol. I); and International Law of October 1962 (Vol. II)
14. Status of Forces Agreements for those countries in your command's area of operational responsibility (some are contained in AFP 110-20, para. 5, supra, but not all)
15. Unified Commander's Inventory of Unpublished International Agreements (e.g., USCINCPAC IACS)

16. Stone, J., Legal Controls of International Conflict (2nd imp. rev. 1959)
17. Whiteman, M., Digest of International Law, Vols. 4, 10, 11, & 12 (Department of State Publication 7825)
18. US/USSR Dangerous Military Activities Agreement of 12 June 1989 with pertinent unified commander, fleet CINC, and fleet commander's implementing guidance/instructions
19. US/USSR Incidents at Sea Agreement of 25 May 1972 with Protocol of 22 May 1973
20. US/USSR Uniform Interpretation of Rules of International Law Governing Innocent Passage of 23 September 1989
21. AFP 110-34, Commander's Handbook on the Law of Armed Conflict (Department of the Air Force, Washington, DC 27 July 1981)
22. Convention on the International Regulations for Preventing Collisions at Sea of 20 October 1972 (COLREGS)

## SJA PHILOSOPHY/ATTITUDE

### I. You are a naval officer

- This is your first responsibility
- Lawyering is your specialty
- Stay in shape - look like a naval officer

### II. Gain the confidence of your command

- Know your client
- Educate yourself (Approach, Navy Times, Proceedings, message boards)
- Take on all challenges - volunteer. Be proactive.
- Stand watches
- Know the members of the staff

### III. Organize your office

- Learn the strengths and weaknesses of your people. Accentuate the strengths and shore-up the weaknesses.
- Log and track all work
- Establish processing goals
- Use checklists and proven forms
- Proofread what leaves your office

### IV. Know the other JAG's in the area - keep them informed

### V. Keep your head out of the cockpit

- Take time to THINK
- Ask the question, "Why?" Where is the work coming from? Is there a problem here? Should I be instructing/lecturing/training?
- Always look for ways to make the command/the Navy better

### VI. Be the constitutional conscience of the command

- Due process/fundamental fairness, NJP, admin boards, FNAEB's

### VII. You will make mistakes - that's OK, but to "BS" is not

### VIII. Know when and how to say "No"

- Always pose alternatives to the boss
- Always make recommendations

### IX. Be a counselor

## SOVEREIGNTY AFLOAT

### I. Status of Warships

A. Defined: "A ship belonging to the armed forces of a nation bearing the external markings distinguishing the character and nationality of such ships, under the command of an officer duly commissioned by the government of that nation and whose name appears on the appropriate service list of officers, manned by a crew which is under regular armed forces discipline."

-- Designated by "USS" in the Navy

B. International status: The warship enjoys sovereign immunity from interference by the authorities of nations other than the flag nation.

1. Police and authorities of foreign nations may board only with the express permission of the commanding officer.

-- U.S. Navy Regulations, 1973, art. 0740 addresses searches by foreign authorities:

(1) The CO shall not permit such searches under any pretense.

(2) The CO shall not allow any person to be removed from the command by foreign authorities.

(3) If use of force is attempted, the CO is to resist that force to the utmost of his ability.

-- The same with shore commands, but subject to international agreement.

(4) A ship cannot be required to fly the flag of another nation.

-- Example: A destroyer in the Middle East did this with some hesitation and then requested instructions from the CNO. The answer was clear: take the flag down and proceed to the high seas!

2. Warships are required to comply with coastal nation traffic control, sewage, health and quarantine restrictions via the LOS.

-- See ALNAV 161/88 for changes to SECNAVINST 6210.2, Subj: Medical and Agricultural Foreign and Domestic Quarantine Regulations for Vessels, Aircraft, and Other Transports of the Armed Forces.

(1) Prior to changes: Entry into a foreign port implied consent to visit and inspection pursuant to quarantine regulations.

(2) Currently: Ships will not be subject to inspections or searches by foreign officials for any purpose. Visits by foreign health officials may be permitted with the express consent of the CO.

3. Failure to comply is subject to diplomatic complaint or to the coastal nation ordering the ship to leave.

C. Sovereign immunity status also applies to auxiliaries owned or under the exclusive control of the armed forces (e.g., the Military Sealift Command, an afloat prepositioning force, and United States naval ships). This immunity includes: immunity from arrest and search; exemption from taxes and regulations; and the exercise of exclusive control by the commander over the crew with respect to acts performed on board.

D. Sovereign immunity status applies equally to military aircraft.

## II. U.S. Warships in Port

-- The same principles of sovereign immunity apply to warships in port; however, because of the extensive commitments overseas, the United States has entered into separate "naval visit" agreements with many nations. Foreign authorities are not entitled to board without the express permission of the CO; ship searches are not allowed; ships must comply with harbor regulations, sewage disposal regulations, and health and quarantine restrictions; and failure to comply may result in the coastal nation ordering the ship to leave.

## III. Asylum

A. References (both the result of the Kudurka case in 1970)

1. SECNAVINST 5710.22, Subj: Procedures for Handling Requests for Political Asylum and Temporary Refuge

2. U.S. Navy Regulations, 1973, art. 0940, Granting of Asylum and Temporary Refuge

B. On the high seas or in territories under the exclusive jurisdiction of the United States:

1. Receive on board if the foreign national requests asylum (including naval aircraft or waterborne craft, Navy or USMC activity or station).

2. Notify CNO/CMC by telephone or voice communication with confirmation by an immediate precedence message informing SECSTATE.

3. Do not surrender the individual unless at the personal direction of SECNAV or persons of higher authority.

4. Afford the person seeking asylum all reasonable care under the circumstances.

C. In territories under foreign jurisdiction:

1. Give temporary refuge, not asylum.

2. Granted for humanitarian reasons only in extreme or exceptional circumstances, wherein the life or safety of a person is put in imminent danger (pursuit by a mob). The CO decides.

3. A request by foreign authorities for the return of the person shall be referred to the CNO/CMC.

4. Terminated by SECNAV or higher authority. Same message requirements as above. Add the appropriate American Embassy or Consulate if the person requests information concerning an application of asylum.

5. Permanent asylum will not be granted in temporary refuge situations.



## FOREIGN CLAIMS COMMISSION

### I. Foreign Claims Act (10 U.S.C. 2734); JAGMAN, Chapter 22

- A. Purpose: To promote friendly relations with, and in, foreign countries through the prompt settlement of claims
- B. Scope: For death, injury, property damage, or loss at the hands of U.S. military forces or otherwise incident to noncombatant activities
- C. Claimants can be
  - 1. A foreign country
  - 2. A political subdivision
  - 3. An inhabitant (not servicemembers, government employees, or dependents)
- D. Claims not payable
  - 1. Admiralty claims
  - 2. Individual contractual claims
  - 3. Subrogated claims
  - 4. Bastardy
  - 5. Claims based on passionate grounds
  - 6. Patent infringement
  - 7. Negligence on the part of the claimant
- E. Crimes are compensable

### II. Processing

- A. Administrative only - Foreign Claims Commission
- B. Appointment
  - 1. Navy - any CO
  - 2. USMC - CO if JAG is part of the Commission; if not, to nearest USN/USMC with Foreign Claims Commission

3. Can appoint Commission for each claim, or have standing Commission
4. Composition - One or three commissioned officers with adequate experience
5. Amount of settlement depends on the number and type of officers appointed to the Commission

### III. Report of the Commission

A. No formal procedures control - recommend form of investigation not requiring a hearing

B. Report to CA should contain

1. Copy of appointing order
2. Claim document by the claimant containing notice of time, place, and nature of the incident and an estimate of the damage or claim (NOTE: Claim should be signed by the claimant)
3. Dates of the proceedings
4. Amount of the claim in foreign and U.S. currency
5. Summary of the facts by the Commission
6. Signed statements by witnesses
7. An evaluation of local laws and customs
8. Date the Commission reached its final decision
9. The amount awarded by the Commission
10. An explanation if the Commission has recommended an award amount in excess of its authority
11. A release from the claimant or notice of denial if the claim has been disallowed

-- See examples in JAGMAN App. A-22-a and fleet legal manuals

C. If claim has been awarded, submit all paperwork to CA

- D. If recommendation is in excess of the adjudicative authority, send copy of report and all paperwork to OJAG
  - Retain original and copy on board
- E. If the Commission has disallowed a claim, the original and copy of the report and paperwork should be sent to OJAG
- F. Do not release a copy of the report without approval of OJAG
- G. If the claim cannot be adjudicated within 30 days, send the report and an explanation of the delay to OJAG

#### IV. Notification of the award and payment

- A. Notification to the claimant will be made by the Commission when it has awarded a claim or when awarded by higher authority. If forwarded to OJAG, claimant should be told -- but do not tell claimant the Commission's recommendation.
- B. Payment comes from the local disbursing office via the tango numbers in JAGMAN, Chapter 22

#### V. Appeal and reconsideration

- There is no right of appeal, but the Commission may reconsider a claim when requested by the claimant, on its own initiative, or when directed by OJAG. If, upon reconsideration, the Commission again denies the claim, the report should be forwarded to OJAG.

#### VI. Private settlement

- A. First option in a foreign claims situation
- B. Wrongdoers should make voluntary private settlement
- C. Foreign claims officer should investigate, identify the wrongdoer, and ascertain his intentions in the matter. Arrange a meeting between the claimant and the wrongdoer.
- D. A release should be signed in the case, with a detailed summary of the case on the back of the release
- E. Should be placed in the Foreign Claims Status Report and forwarded to the appropriate commander

## FOREIGN CRIMINAL JURISDICTION

### I. References

- A. SECNAVINST 5820.4F, Subj: Status of Forces Policies, Procedures and Information
- B. OPNAVINST 3100.6D, Subj: Serious Incident Reporting
- C. Fleet Deployment/Legal Manual
- D. Applicable Status of Forces Agreement

### II. Apprehension of a U.S. servicemember

- A. Report is required via OPREP 3/NAVY BLUE under OPNAVINST 3100.6D for major incidents involving foreign criminal jurisdiction

#### 1. Major incident

- a. Arrest and/or confinement of American personnel or dependents
- b. Actual or alleged adverse publicity to the United States
- c. Possibility of adverse publicity to the United States
- d. Congressional or other domestic/foreign interest is likely
- e. Jurisdictional question has arisen
- f. Death of a foreign national is involved
- g. Capital punishment might be imposed

- 2. Fleet legal manuals contain examples of messages with all appropriate via addressees

- 3. Once message is sent, ensure that all follow-up/SITREPS are sent

4. Contents of message

- a. Identifying information of servicemember
- b. Nature of alleged offense(s)
- c. Status of individual when incident occurred
- d. Present status of individual

III. Servicemember is in custody

A. Make every effort to obtain release

- 1. Informal requests are permitted by SSPO, CO, SOPA, or U.S. country representative in the area
- 2. Following assurances can be made to foreign authorities
  - a. Release will not affect jurisdiction
  - b. Alleged offender will be made available for questioning
  - c. Alleged offender will be returned for trial
  - d. If the facts of the case warrant, the alleged offender will be restricted or confined pending disposition

IV. If the servicemember is confined by foreign authorities

A. Physical exam within first 48 hours, or when reasonably practicable

B. Visitation

- 1. Every 30 days to check conditions of confinement and welfare -- CO or designee shall perform
- 2. Chaplain and medical personnel should make periodic visits as well
- 3. File DD Form 1602 -- Report of Visit - US Personnel in Foreign Penal Institution (found in SECNAVINST)

V. The trial itself

A. Right to counsel

1. Act occurred in performance of official duty
2. Sentence could include confinement
3. Capital punishment might be imposed
4. An appeal is made from a trial where there has been a denial of rights to the individual
5. Conviction could result as the basis for an administrative discharge
6. The case not falling within the above could have an impact on the relations with the host nation or it involves any other particular interest of the United States

VI. Counsel

- Selected by defendant, hired by local JAG with a contract only for the immediate trial. United States will pay all necessary and reasonable fees. Bail can be paid, but the servicemember will reimburse.

VII. Trial observers

- A. Local JAG's will be designated
- B. Duties include: attendance at all proceedings, noting progress of the trial; filing a formal report after trial containing a factual description of the proceedings and a judgment on any failure to comply with procedural safeguards; review all police reports and other documentation before trial; assist the court in obtaining witnesses; etc.

## VIII. Waiver of jurisdiction

### A. May be requested in any case -- but consider the following factors:

1. Failure to file would prejudice some interest of the United States
2. Commander considers the case has particular importance in maintaining proper standards of discipline
3. Possibility of unsuspended confinement is substantial

### B. Do not request

1. Before criminal charges have been initiated
2. When the offense is one within the exclusive or primary jurisdiction of the United States

### C. Check local requirements for procedure

## IX. Trials in absentia

### A. Check particular country to see if allowed (allows accused to leave the country before completion of trial)

### B. Results of trial in absentia

1. Foreign authorities consent to removal of accused and waive jurisdiction
2. Consent given for removal, but retain right to trial -- in which case, accused has consent to removal

**DETACHMENT FOR CAUSE**  
**(MILPERSMAN 3410100.5)**  
**(MCO P1000.6.2209)**

- I. Administrative removal of officer from current assignment by reason of misconduct, unsatisfactory or marginal performance of duty
  - Filed in officer's official record
  
- II. Not intended for
  - A. When alternatives are available at the command to solve the problem
  - B. For, or in lieu of, disciplinary action
  
- III. Reasons for requesting
  - A. Misconduct after appropriate civil or military action has been completed
  - B. Unsatisfactory or marginal performance involving one or more significant events where negligence, incompetence, or disregard is involved
  - C. Documented unsatisfactory and/or marginal performance of duty over an extended period of time
  
- IV. Command action
  - A. Ensure that the difficulty cannot be corrected with training, guidance, or reassignment within the command or through command disciplinary action
    - 1. Frank discussion
    - 2. Letter of instruction
    - 3. Disciplinary action
    - 4. FITREPS
  - B. Once counseled, give officer reasonable time to correct deficiencies



- C. Ensure that full inquiry is conducted into any misconduct
- D. Before requesting DFC, ensure all action is complete if NJP or court-martial is involved

V. Submission of DFC

- A. From flag officers: Made by letter to CNMPC, with copies to administrative chain of command and copy to the operational commander (if not in admin chain of command). Advance copy to NMPC-82.
- B. From commanding officers: Submit through administrative chain of command to first flag officer (who then submits to CNMPC)
- C. First via addressee on request is the officer concerned; second is the requesting officer (when officer is on board)
- D. When officer not on board, first via addressee is the officer's command
- E. Request placed in double envelopes marked "For Official Use Only"
- F. If exigent circumstances, request submitted via message in "Personal For" format -- this does not alleviate requirement to forward detailed report later

VI. DFC request contains

- A. Statement as to basis of request
- B. Detailed statement of circumstances of request -- including specific description of misconduct, inadequate performance, or single significant event
- C. Statement of corrective action attempted -- command should place chronology of events here
- D. Statement of any disciplinary action taken or contemplated
  - If disciplinary action is contemplated or in progress, state that the action will be complete before the DFC request takes effect
- E. No NPLOC's can be mentioned, but the facts surrounding the NPLOC can be

VII. The officer's statement

- A. Officer has 10 working days to submit
- B. Officer must sign -- sample letter contained in MILPERSMAN 3410100.5h

VIII. Action following submission

- A. Officer can be assigned TAD to another command
- B. No mention in FITREP until complete, but CO can mention performance characteristics of officer
- C. Each endorsing command has five (5) working days to endorse

IX. USMC

- Requests for transfer due to unsat/unfavorable behavior or performance will be send to CMC (MMOA) with a change of duty fitness report after the third sighting by the appropriate general officer. If the transfer contains adverse information based on factual matters not documented in the Marine's official record, it must be referred to the Marine for comment.

X. DFC for enlisted personnel

- A. MILPERSMAN 3420260
- B. Reasons same as for officers
- C. For E-7 through E-9 -- E-6 and below who are only one in rating specialty on board unit
- D. Exhaust same alternatives as with officers
- E. Send to NMPC-831 from command, marked "Enlisted Performance For Official Use Only"

## LIBERTY RISK

### I. Background

- A. MILPERSMAN 3030100 defines liberty as authorized absence for short periods of time not chargeable as leave
- B. Art. 0921, U.S. Navy Regulations, 1973, states that the senior officer present shall regulate leave and liberty
- C. Art. 0917, U.S. Navy Regulations, 1973, states that the senior officer present shall uphold the prestige of the United States and will impress upon his officers and men to avoid any conflict with foreign authorities and local inhabitants

### II. Three areas where it is proper to curtail liberty

- A. Health risk: MILPERSMAN 3030150
- B. Improper appearance: Liberty should not be granted if a member's appearance is contentious, inflammatory, lewd, or violative of naval regulations
  - 1. Art. 1101, U.S. Navy Regulations, 1973, states "uniform shall be worn properly"
  - 2. Art. 1601 states that naval personnel shall insure that civilian clothing and personal appearance is appropriate and will not discredit the naval service
- C. Conduct ashore
  - 1. Evidence shows that the individual intends to conduct himself improperly in a liberty status
  - 2. Misbehavior at a previous liberty port should not be the determining factor
  - 3. Substantial discretion to the CO
  - 4. Use lesser means if possible (i.e. liberty hours)

### III. Guidelines

- A. CO reviews each case
- B. Limit to cases of serious breach of peace or flagrant discredit to the Navy
- C. Spell out the curtailment in writing and give member the chance to request captain's mast
- D. Don't muster or work with members undergoing punitive restriction
- E. No service record entries

### IV. "In a nutshell"

- A. Only overseas afloat/ashore
- B. Form of administrative restraint (no pending charges, court-martial, or NJP required)
- C. Intended to preserve good U.S foreign relations
- D. Must provide member
  - 1. Notice of assignment
  - 2. Basis for assignment
  - 3. Opportunity to respond
- E. Use of incremental categories ("A," "B," "C," "D") recommended
- F. CO must periodically review each assignment
- G. If not proper, is prior punishment/pretrial restraint (inadvertent speedy-trial issue)

### V. Authorized limitations on liberty

- A. Court-martial sentence
- B. NJP

C. Pretrial restraint (charges under investigation/preferred)

D. EMI

E. Administrative restraint

1. Bona fide training
2. Operational necessity
3. Medical
4. Protect foreign relations
5. Safety/security of personnel
6. Integrity of command

## SAMPLE LETTER OF COUNSELING/WARNING FORMAT

### I. Preliminary notes

-- Counseling is intended to give a member opportunity to improve by identifying specific, undesirable behaviors which the member has the ability to alter or cease. The member must be clearly informed of what is undesirable. In addition, counseling which addresses misconduct, without linking it to a personality disorder, entry level performance and conduct, or unsatisfactory performance may not be used to process the member for those reasons. Finally, to process a member for "misconduct due to a pattern of misconduct as evidenced by an established pattern of failure to pay just debts/to support dependents," counseling must address bad debts/returned checks or nonsupport.

### Examples

#### 1. Personality disorder

Correct: "a personality disorder manifested by inconsistent performance, habitual tardiness, argumentative behavior, being distracted and failing to complete assigned work, poor impulse control, aggressive behavior"

"a personality disorder manifested by CO's NJP for VUCMJ Art. 128 (simple assault), Art. 86 (missing restricted man's muster), Art. 117 (provoking speech, gestures)

Incorrect: "borderline personality disorder, chronic, severe"  
"immature personality disorder, failure to adjust"

#### 2. Entry level performance and conduct/Unsatisfactory Performance

Correct: "habitual tardiness, failure to complete assigned duties, failure to complete PQS within allotted time, failure to stand a proper watch"

Incorrect: "failure to perform in the manner expected of a PO3"

#### 3. Misconduct due to minor disciplinary infractions, misconduct due to a pattern of misconduct

Correct: "habitual tardiness, unauthorized absences, alcohol abuse, breach of peace"

"violation of UCMJ Arts. 86, 134 (incapacitated for the performance of duty), 116"

Incorrect: "minor disciplinary infractions"  
"pattern of misconduct"

**SWORN AFFIDAVIT OF SERVICE BY MAIL FORMAT**

State of \_\_\_\_\_

County of \_\_\_\_\_

(Name of individual who mailed orders), being duly sworn, deposes I am the (Job title, i.e., Personnel Officer) of (Unit) and on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, I mailed the original notice, a true copy of which is attached hereto, by Certified Mail (Return Receipt Requested) to (Name and Address of Member on orders), that being the last known address given to (Unit) as the one at which official mail would be received by or forwarded to the member by depositing same in an official depository of the U.S. Postal Service at (Location of Postal Facility) in a securely wrapped and sealed U.S. Government official postal envelope with a PS 3811, Domestic Return Receipt, attached and the envelope addressed to the member at the address provided. A PS 3800, Receipt for Certified Mail, attesting to such action is attached.

\_\_\_\_\_  
(Signature and Rank of Affiant)

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

\_\_\_\_\_  
(Signature and Rank of Officer Administering Oath)